

AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT) ACT 1991

LAND (PLANNING AND ENVIRONMENT) CRITERIA FOR DIRECT LEASE GRANT
(ELIGIBLE INDEPENDENT FOR USE AS SERVICE STATION) DETERMINATION 2003

DISALLOWABLE INSTRUMENT DI2003-214

EXPLANATORY STATEMENT

This disallowable instrument is being redetermined as a result of the *Planning and Land (Consequential Amendments) Act 2002* which transfers certain powers from the Minister/Executive to the Planning and Land Authority.

Subsection 161(7) of the *Land (Planning and Environment) Act 1991* enables the ACT Executive to determine criteria for the direct grant of a Crown lease of land.

The purpose of the Determination is to set out the criteria under which the ACT Executive may make direct grants of land for the conduct of a service station under paragraph 161(1)(d) of the *Land (Planning and Environment) Act 1991*. The Determination stands apart from other Determinations made for the purposes of subsection 161(5) of that Act.

Under the Determination, direct grants may only be made to applicants who can demonstrate that they qualify as “Eligible Independents” as defined and meet the other specified criteria. This Determination implements Recommendation 11 of the Report of the ACT Government Working Group on Petrol Prices which states as follows:

11. It is recommended that the following short term intervention measure be undertaken to encourage the introduction of independent into the Canberra market:

- *Expression of interest from independent operators should be invited in relation to the already-nominated sites at Gold Creek and Gilmore and additional sites, up to a total of 7 sites, to be nominated by persons or groups expressing interest.*
- *These sites should meet planning requirements as recommended by the Report and should be offered at market value by direct grant or restricted auction.*

- *A maximum time frame of six months should be set for the receipt and assessment of expressions of interest and the grant of sites.*
- *The eligible grantees would have to be owner-operators and not own more than 3 sites already in the ACT.*

Explanatory notes on each part of the Determination follows.

Definitions

“applicant”

It is intended that only the applicant operate the service station. The lease will contain conditions to carry through this objective.

“Eligible Independent” and “major oil company”

These definitions need to be read together. Their purpose is to exclude applicants who are linked with, or are financially dependent on, the major oil refinery companies in the retail operation of the service station (but not if the link with a major oil company relates only to the supply of petrol – see comments below regarding the definition of “franchise agreement”).

The definition of “major oil company” has been tied to the *Petroleum Retail Marketing Sites Act 1980* (Cwth), in particular to the definition of “prescribed corporation” in subsection 3(1) of the Act which provides:

“prescribed corporation” means –

- (a) a prescribed oil company*
- (b) any other corporation that refines petroleum; or*
- (c) a corporation that is related to a corporation referred to in paragraph (a) or (b).*

“prescribed oil company” means a corporation that –

- (a) deals in petroleum products in liquid form; and*
- (b) is specified in the regulations for the purposes of this definition”.*

Regulation 3 of *Petroleum Retail Marketing Sites Regulations* specifies each of the following corporations for the purposes of the definition of “prescribed oil company”:

- (a) Ampol Limited;
- (b) BP Australia Holdings Pty Limited;
- (c) Caltex Oil (Australia) Pty Limited;
- (d) Mobil Oil Australia Limited; and
- (e) Shell Australia Limited.

Section 4 of the *Petroleum Retail Marketing Sites Act 1980* (Cwth) defines the circumstances in which a body corporate is related to another body corporate for the purposes of paragraph (c) of the definition of “prescribed oil company”.

Subsection 4(1) provides such a relationship exists where a body corporate –

- (a) is the holding company of another body corporate;
- (b) is a subsidiary of another body corporate; or
- (c) is a subsidiary of the holding company of another body corporate.

Subsections 4(2) to (6) of that Act further define “holding company” and “subsidiary” for the purposes of section 4.

“franchise agreement”

This definition gives effect to the criterion that applicants must demonstrate that they will not enter into a franchise agreement with a major oil company. Such agreements are regulated by the *Petroleum Retail Marketing Franchise Act 1980* (Cwth).

Section 3(1) of that Act defines “franchise agreement” while section 6 of *Petroleum Retail Marketing Franchise Act 1980* (Cwth) specifies the franchise agreements to which that Act applies. The provisions in those sections are lengthy and are therefore not included in this Statement. However, it may be noted that a franchise agreement of the kind in question usually has three features: (i) permission to use a brand name; (ii) permission to use infrastructure *ie premises, tanks and bowsers*; and (iii) provision for the supply of petrol. Agreements for the supply of petrol alone are not caught by the Determination for the reason that, unless they are able to import fuel directly themselves, independent petrol retailers are supplied by the major oil refinery companies in Australia.

“Service station”

The Territory Plan defines “Service station” as follows:

Service station means the use of land for the fuelling of motor vehicles involving the sale by retail of petrol, oil and other petroleum products whether or not either land is also used for any one or more of the following purposes:

- (a) the sale by retail of spare parts and accessories for motor vehicles;*
- (b) washing and greasing of motor vehicles;*
- (c) installation of accessories;*
- (d) the retail sale of other goods, within an ancillary retail area;*
- (e) providing toilet facilities, amenities and service for motorists;*
- (f) repairing and servicing of motor vehicles (other than body building, panel beating or spray painting);*
- (g) the hiring of trailers.*

Criteria

An application for a direct grant of a lease must provide certain essential information so that the applicant's credentials may be verified. In particular, the applicant must provide evidence to support the claim that the applicant comes within the definition of "Eligible Independent".

To be successful, an applicant must demonstrate the range of matters set out in the Determination. These are designed to ensure that applicants will be rigorously scrutinised and that they have a long term commitment to a competitive retail petrol market in the ACT.

Some of the conditions set out in the criteria (eg that an applicant will not enter a franchise agreement with a major oil company) will also be included in the lease agreement. In addition, the lease agreement will make provision as follows:

- For a period of 10 years the applicant will not be able to sell, transfer or sub-lease the site to be person/company other than to another 'Eligible Independent: except with the permission of the Planning and Land Authority; and
- If, within a period of 10 years, the applicant is taken over by a company that would not be an "Eligible Independent", the acquiring company must divest itself of the Service station to an "Eligible Independent" within a time frame agreed by the Planning and Land Authority.