

**1993**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**LAND (PLANNING AND ENVIRONMENT) REGULATIONS (AMENDMENT)**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of Bill Wood MLA  
Minister for the Environment, Land and Planning**

### General Outline

These regulations amend the *Land (Planning and Environment) Regulations* (the Regulations).

The *Land (Planning and Environment) Act 1991* (the Act) provides, amongst other things, that where a variation to a lease would increase the market value of the lease, the Executive shall not execute the variation unless the lessee has paid an amount as prescribed that would result from the variation. Such a payment is commonly known as "betterment".

These regulations put into effect a number of changes to the way betterment is determined. First, the calculation of betterment will be made on the basis that no lease purpose change will occur during the life of the lease. This will eliminate the "potential" of a lease purpose change from being taken into account. Second, there will be no remission for lease purpose changes involving changes from residential to commercial or commercial to higher order commercial.

A number of exceptions are made to these changes. In respect of the Fyshwick area, because of efforts that are being made to have lessees regularise their leases, the proposed changes will not apply for a period of twelve months. Development policies in the Kingston/Griffith Redevelopment Area have been based on an augmentation fee and this arrangement will continue.

These changes were announced by the Minister for the Environment, Land and Planning in the Legislative Assembly on 14 September 1993.

These regulations will also provide that where a lease between two adjoining properties is varied, with the agreement of each lessee, then the regulations for determining betterment will not apply.

## **Financial Implications**

The amendments involve no additional administrative costs.

## **CLAUSE NOTES**

### **Clauses 1 & 2**

Clauses 1 and 2 are machinery clauses that provide for the commencement of the Regulations and specify the Principal Regulations.

### **Clause 3**

Clause 3 amends the definition of "added value" in Regulation 12 of the Principal Regulations. A new paragraph 12(2)(c) is added to the term "added value", to the effect that in relation to the value of the lease immediately before the variation, it must be assumed that no variation of the lease would be agreed to during the remaining term of the lease.

The intent of this regulation is to ensure that the "potential" of a lease being varied is not taken into account during the remaining term of the lease when determining the "added value".

### **Clause 4**

Clause 4 amends regulation 13 of the Principal Regulations. Regulation 13 provides for the calculation of the amount payable in respect of a variation of a lease.

Subregulation 13(1) is omitted. Subregulation 13(1) provided that the amount payable was equal to the added value or, if a remission applied, the added value less the applicable remission. A new subregulation 13(1) is inserted which

provides the formula for determining the amount payable in respect of a lease variation:

- (a) in the Kingston/Griffith Redevelopment Area [as defined in subregulation 13(4)]; or
- (b) in any other case:
  - (i) the added value;
  - (ii) if a remission is applicable in accordance with subregulation 14(2), the added value less the appropriate remission rate.

The new subregulation provides that where a lease is varied in respect of a boundary variation [as defined in the new subregulation 13(4)], there will be no amount payable.

A subregulation, 13(4), is inserted in the Principal Regulations which defines the terms, "boundary variation", "prescribed land" (being the Kingston/Griffith Redevelopment Area) and "dwelling", that are applicable in regulation 13.

## Clause 5

Clause 5 amends regulation 14 of the Principal Regulations. Regulation 14 establishes the basis on which remission rates are calculated for determining betterment charges.

Subregulation 14(1) is amended so that a "prescribed lease" is one:

- . to which a variation is proposed; and
- . which is classified as either a special residential lease, a concessional

lease or a free of charge lease.

Paragraph 14(3)(a) is omitted. Subregulation 14(3) specifies the circumstances in which a lease shall be classified. The new paragraph 14(3)(a) defines the classification of "special residential lease". Amendments are also made to paragraph 14(3)(b) and (c) to define the terms "concessional lease" and a "free of charge lease".

Subregulations 14(4) to (9) are omitted. A new subregulation 14(4) is inserted which provides that for determining the appropriate remission rate a prescribed lease that is classified as both:

- . a concessional lease and a special residential lease shall be taken to be a concessional lease; and
- . a free of charge lease and any other kind of lease shall be taken to be a free of charge lease.

A new subregulation 14(5) is inserted which specifies that for the purpose of determining the period since the grant of a prescribed lease which amalgamated two or more prior leases, the relevant period shall be taken to have commenced:

- . where the amalgamated leases were granted in respect of parcels of land of different areas, on the date of the larger or largest of the amalgamated leases; or
- . where the amalgamated leases were granted in respect of parcels of land having the same area, on the date of the grant of whichever of the amalgamated leases would, if varied separately, have attracted the greater or greatest remission rate.

A new subregulation 14(6) is inserted which specifies that for the purpose of

determining the classification of a prescribed lease which amalgamated two or more prior leases, the prescribed lease shall be taken to have the same classification:

- where the amalgamated leases were granted in respect of parcels of land of different areas, as the larger or largest of the amalgamated leases; or

- where the amalgamated leases were granted in respect of parcels of land having the same area, as whichever of the amalgamated leases would, if varied separately, have attracted the greater or greatest remission rate.

Subregulation 14(10) is amended by removing the words "other than a lease referred to in subregulation (4)". The subregulation referred to has been repealed.

#### **Clause 6**

Clause 6 amends Schedule 3 of the Principal Regulations. These changes are necessary as a result of the amendments to Regulation 14. The references to the subregulations and the headings of the tables are amended.

#### **Clause 7**

Clause 7 is a savings provision which provides that Regulations 12, 13 and 14 of the Principal Regulations, in force before the commencement of these regulations, continue to apply to the Division of Fyshwick until 14 September 1994.