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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

LAND (PLANNING AND ENVIRONMENT) REGULATIONS
(AMENDMENT)

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for the Environment, Land
and Planning
Mr Gary Humphries MLA

OUTLINE

This regulation amends the *Land (Planning and Environment) Regulations* (the Regulations).

Sections 184A and 187A of the *Land (Planning and Environment) Act 1991* (the Act) provides that the Executive shall not execute a variation of a lease, or a consolidation or a subdivision of a lease or leases, unless the amount prescribed in respect of the resulting increase in the value of the lease is paid. Those sections provide for the assessment of the amount, referred to as a change of use charge, to be paid by the lessee.

Sections 184C and 187C provide for the remission or increase of a change of use charge in circumstances prescribed by the regulations.

This regulation provides for the remission or increase of change of use charges by repealing regulations 11A, 12, 13 and 14 of the Regulations, amending regulation 13A of the Regulations and adding new regulations 12A to 14C and 15A to 15F.

The change of use charge applicable under section 184A to lease variations, and under section 187A to consolidations or subdivisions, is 75% of the added value calculated in accordance with those sections, unless the regulations provide for a remission or increase.

Remissions of 25% of the added value " $V_1 - V_2$ " as defined in regulation 12A apply to:

- Local Centre leases;
- Commissioner for Housing leases; and
- variations of leases to adjust common boundaries between two or more leases.

Increases of 25% of the added value " $V_1 - V_2$ " apply to:

- concessional leases;
- 'recently commenced' leases (less than 5 years elapsed since they commenced); and
- variations involving additional land.

The application of the remissions and increases cannot be cumulative, but increases may offset remissions in some cases.

Regulation 15 of the Regulations, which prescribes leases for the purposes of paragraph 186(1)(a) of the Act, has also been amended to clarify its application.

The remissions and increases affect the liability of applicants to pay a change of use charge under the Act.

FINANCIAL IMPLICATIONS

While the rate of charge in respect of certain leases will be reduced or increased, it is possible that overall revenue from lease variations will rise through increased economic activity.

CLAUSE NOTES

Clauses 1 and 2

Clauses 1 and 2 are machinery provisions that provide for the commencement of the Regulations and identify the regulations being amended.

Clause 3 - Application

Clause 3 provides that the Principal Regulations as in force before clauses 4 and 6 commence continue to apply to the determination of the charge payable under paragraph 184(b) of the Act as in force before those clauses commence.

Clause 4 - Substitution

Clause 4 repeals regulations 11A, 12 and 13 of the Principal Regulations, inserts a new heading:

"Division 2 - Variation of leases",

and also inserts new regulations 12A to 13. Division 2 deals with variations of leases, while Division 3, inserted by clause 8, deals with consolidation and subdivision.

Regulation 12A is an interpretation provision, setting out definitions of a number of terms for the purposes of Division 2 of the Regulations.

Regulation 12B provides that, where a variation of a lease would only have the effect of altering a common boundary between two or more adjoining leases, the Minister may remit all of the change of use charge for that variation. The remission is limited to circumstances in which the adjoining leases are leased for the same purpose, and none of the leases is a rural lease.

Regulation 13 allows the Minister to remit 25% of the added value (defined in regulation 12A) in relation to the variation of a lease where the leased land lies wholly within a Local Centre (which is defined in the Territory Plan) and the Minister has made a declaration for the purposes of regulation 13A. Subregulation 13(2) makes it clear that, if an increase in change of use charge also applies to the variation under regulation 14B or 14C, the remission is to be offset by that increase.

Clause 5 - Local Centre development - declarations

Clause 5 amends regulation 13A of the Principal Regulations to allow a declaration to be made by the Minister, rather than the Executive, that the Local Centre is no longer viable, or will not be viable within 3 years if no remission is allowed in accordance with regulation 13.

Subregulations 13A(2) and (3) are transitional provisions saving the status of declarations, and applications for declarations, made before these regulations commence.

Clause 6 - Substitution

Clause 6 repeals regulation 14 of the Principal Regulations and inserts new regulations 14 to 14C.

Regulation 14 provides for a remission of 25% of the added value in relation to the variation of a lease where the land is held by the Commissioner for Housing under a lease that was granted to the Commissioner on or before 16 December 1987.

Subregulation 14(2) makes it clear that, if an increase in change of use charge also applies to the variation under regulation 14C (enlarged area of land increase), the remission is to be offset by that increase.

Subregulation 14(3) ensures that, if a 'Commissioner for Housing' lease is also within a Local Centre, only regulation 13 (Local Centre remission) is to apply, and there will be no double remission in respect of the lease variation.

Regulation 14A provides for an increase of 25% of the added value in relation to the variation of a 'concessional' lease. The increase applies only if the variation provides for the use of the land other than for a community use, and the lease is not a lease held by the Commissioner for Housing to which a remission under regulation 14 (Commissioner for Housing remission) applies.

Subregulation 14A(3) defines concessional leases for the purposes of this regulation. Residential leases formerly owned or controlled by the Commissioner for Housing are not considered to be concessional leases. A consolidated, subdivided, further or regranted lease is a concessional lease only if the previous lease was a concessional lease. This subregulation now recognises that it is possible to remove the concessional status of a lease by payment of a capital sum reflecting its value.

Subregulation 14A(5) defines several terms used in the regulation to describe the concessional status of a lease.

Regulation 14B provides for an increase of 25% of the added value in relation to the variation of a 'recently commenced' lease.

Subregulation 14B(2) defines a recently commenced lease as one which commenced less than 5 years before the date of application for variation. Further, consolidated, subdivided or regranted leases are excluded, unless the previous (surrendered) lease was a recently commenced lease. The grant of a lease following surrender of a lease, where the purpose of that grant was only to correct an error in the previous lease, is also excluded from the increase in change of use charge under this regulation.

Subregulation 14B(4) provides that the increase in charge does not apply to the variation of a lease if the increase in accordance with regulation 14A (concessional lease increase) applies. This avoids the imposition of a double increase.

Subregulation 14B(5) defines a number of terms clarifying the application of this regulation.

Regulation 14C provides for an increase of 25% of the added value in relation to the variation of a lease where that variation results in the area of land under the lease being increased. The increased charge applies only to the portion of the added value attributed to the additional land, not to the whole lease variation.

Subregulation 14C(3) ensures that this regulation does not apply if regulation 14A (concessional lease increase) or 14B (recently commenced lease increase) also apply, so that there is no double imposition of the increase.

Clause 7 - Variation of lease to pay out rent - prescribed leases

Clause 7 amends regulation 15 of the Principal Regulations to clarify the reference to concessional leases, and to ensure that all rural leases granted for a period of not less than 21 years are now prescribed leases for the purposes of paragraph 186(1)(a) of the Act. Regulation 15 does not provide for remissions or increase in the change of use charge, but is amended by these regulations to maintain the numeric sequence of the Principal Regulations.

Clause 8 - Insertion - Division 3 - Consolidation and subdivision

Clause 8 inserts a new heading for Division 3:

“Division 3 - Consolidation and subdivision” ,

containing regulations 15A to 15F. The provisions are similar in content to regulations 12A to 14C, which relate only to variations of leases where consolidation or subdivision are not involved.

Regulation 15A is an interpretation provision, setting out definitions of a number of terms for the purposes of Division 3 of the Regulations.

Regulation 15B allows the Minister to remit 25% of the added value in relation to a consolidation or subdivision where the leased land lies wholly within a Local Centre (which is defined in the Territory Plan) and the Minister has made a declaration for the purposes of regulation 15C. Subregulation 15B(2) makes it clear that, if an increase in change of use charge also applies to the consolidation or subdivision under regulation 15E (concessional lease increase) or 15F (recently granted lease increase), the remission is to be offset by that increase.

Regulation 15C allows a declaration to be made by the Minister that the Local Centre is no longer viable, or will not be viable within 3 years, if the proposed consolidation or subdivision is not effected, and that the Centre is unlikely to be developed if no remission is allowed in accordance with regulation 15B.

Regulation 15D provides for a remission of 25% of the added value in relation to a consolidation or subdivision where the land is held by the Commissioner for Housing under a lease or leases granted to the Commissioner on or before 16 December 1987.

Subregulation 15D(2) ensures that, if a 'Commissioner for Housing' lease is also eligible for a remission under regulation 15B (Local Centre remission), only regulation 15B is to apply, and there will be no double remission in respect of the lease variation.

Regulation 15E provides for an increase of 25% of the added value in relation to a consolidation or subdivision involving a 'concessional' lease or leases. The increase applies only if the consolidation or subdivision provides for the use of the land other than for a community use.

Subregulation 15E(4) defines concessional leases for the purposes of this regulation. Residential leases formerly owned or controlled by the Commissioner for Housing are not considered to be concessional leases. A consolidated, subdivided, further or regranted

lease is a concessional lease only if the previous lease was a concessional lease. Subregulation 15E(4) recognises that it is possible to remove the concessional status of a lease by payment of a capital sum reflecting its value.

Subregulation 15E(5) makes it clear that this regulation will not apply to a lease held by the Commissioner for Housing to which a remission under regulation 15D (Commissioner for Housing remission) applies.

Subregulation 15E(6) provides that the increase in change of use charge under this regulation does not apply if regulation 15F (recently granted lease increase) applies, provided that the increase payable under this regulation is less than the increase payable under regulation 15F. This avoids the imposition of a double increase, while ensuring that the higher increase applies.

Subregulation 15E(7) defines several terms used in the regulation to describe the concessional status of a lease.

Regulation 15F provides for an increase of 25% of the added value in relation to a consolidation or subdivision involving 'recently commenced' leases.

Subregulation 15F(3) defines a recently commenced lease as one which commenced less than 5 years before the date of application for consolidation or subdivision. Further, consolidated, subdivided or regranted leases are excluded unless the previous lease was a recently commenced lease. The grant of a lease following surrender of a lease, where the purpose of that regrant was only to correct an error in the previous lease, is also excluded from the increase in change of use charge.

Subregulation 15F(4) provides that the increase in charge does not apply to a consolidation or subdivision if the increase in accordance with regulation 15E (concessional lease increase) applies, provided that the increase payable under this regulation is less than or equal to the increase payable under regulation 15E. This avoids the imposition of a double increase, while ensuring that the higher increase applies.

Subregulation 15F(5) defines a number of terms clarifying the application of this regulation.

Clause 9 - Repeal of Schedule 3

Clause 9 repeals Schedule 3 to the Principal Regulations.