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**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

CITY AREA LEASES (BETTERMENT CHARGE ASSESSMENT) REGULATIONS

EXPLANATORY MEMORANDUM

Circulated by Authority of the Chief Minister

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CITY AREA LEASES (BETTERMENT CHARGE ASSESSMENT) REGULATIONS

The City Area Leases (Betterment Charge Assessment) Regulations are made under the City Area Leases Act 1936 (the Act). The Act provides for the administration of residential and business leases issued in the "city area".

Section 11A of the Act provides the Minister with the power to levy a betterment charge in situations where a variation to the lease purpose clause has been subject to a provisional order by the ACT Supreme Court.

Changes to the Act are set out in the City Area Leases (Amendment) Act 1991. These changes are a result of the Government's announcement on 22 February 1990 in respect of betterment.

These Regulations are designed to provide for the calculation of, and remission of, betterment charges imposed as a result of that amendment.

Details of the City Area Leases (Betterment Charge Assessment) Regulations are set out in the Attachment.

NOTES ON REGULATIONS

Regulation 1 provides that these Regulations may be cited as the City Area Leases (Betterment Charge Assessment) Regulations.

Regulation 2 provides definitions for the purposes of these Regulations: In summary:

"added value": is the amount by which the unimproved value of the land, with the clause changed, would exceed the unimproved value based on the the existing clause on the date on which the Supreme Court makes a provisional order;

"the Act": means the City Area Leases Act 1936; and

"unimproved value": has the same meaning as in the Rates and Land Tax Act 1926.

Regulation 3 sets out the formula which will be used to calculate the betterment charge.

Subregulation 3(1) provides that the amount of betterment charge payable in respect of a variation of a lease will be an amount equal to the added value. However, if a lease attracts a remission rate (in accordance with subregulation 4(4)) the betterment charge will be the added value less an amount which is ascertained by applying the appropriate remission rate. The remission rate is based on the age of the lease and whether it was granted at full charge, on a concessional basis or as a grant free of charge.

Subregulation 3(2) requires the Minister to determine the added value for the purposes of determining the betterment charge payable in respect of a variation of a lease. This subregulation binds the Minister to the use of added value in determining the betterment charge payable in respect of a variation of a lease.

Subregulation 3(3) provides that no reduction in the added value shall be allowed where a provisional order for variation of a lease is conditional upon the lessee financing or undertaking certain works on the land or any unleased Territory Land. This will ensure that the cost of required works are borne by the applicant rather than by a partial remission of betterment.

Regulation 4 establishes the basis on which remission rates are calculated for betterment charges. This regulation provides that remission rates will be determined according to the length of time since the issue of the lease and whether the lease was granted at full market value, a concessional price or granted free of charge.

Subregulation 4(1) defines "prescribed lease" as a lease

- . for which a provisional order for the variation of the lease has been made; and
- . which is classified as either a full-charge grant, a grant at a concessional rate or a grant free of charge

Subregulation 4(2) clarifies the meaning of references in this regulation to the period since the grant of a lease.

Subregulation 4(3) explains the meaning of references in this regulation to market value.

Subregulation 4(4) defines the remission rate applicable in respect of a prescribed lease. The rates are set out in the Schedule to the Regulations.

Subregulation 4(5) provides for the classification of a lease as a full charge grant, a concessional grant or a grant free of charge in the circumstances set out in this subregulation.

Subregulation 4(6) provides that a lease shall be taken to be a prescribed lease classified as a full charge grant where, since the grant of the lease, it has in whole or in part been replaced by a further lease under the Act, and the further lease does not require the lease to be occupied by the original grantee or to be used for the original purpose.

Subregulation 4(7) clarifies the meaning of the period since the date of grant of a lease referred to in subregulation 4(6).

Subregulation 4(8) provides that, where two or more leases of differing sizes are amalgamated into one lease and those leases would have had more than one classification under this regulation, the composite lease has the classification of the larger area of the amalgamated leases.

Subregulation 4(9) clarifies the meaning of the period since the date of grant of an amalgamated lease referred to in subregulation 4(8).

Subregulation 4(10) provides that, where two or more leases of the same area are amalgamated into a single lease and those leases would have had differing classifications under this regulation, the composite lease has the classification which would attract the lower betterment charge.

Subregulation 4(11) clarifies the meaning of the period since the grant of an amalgamated lease referred to in subregulation 4(10).

Subregulation 4(12) provides that where a prescribed lease other than a lease referred to in subregulation 4(6) is granted for a lease that has been surrendered to

- .vary the term;
- .correct an error; or to

subdivide the land into parcels under leases having the same purposes as permitted under the surrendered lease;

the period since the grant of the prescribed lease shall commence on the date of the grant of the surrendered lease.

Leases addressed in subregulation 4(6) are excluded because those leases are those in respect of which only the purpose of the lease has been changed.

SCHEDULE

The Schedule, referred to in subregulations 4(2) and 4(4), sets out the rates of remission for calculating betterment charges under these Regulations.

There are three tables. Table 1 sets out the remission rate for leases originally granted at full charge, Table 2 deals with concessional leases and Table 3 concerns leases originally granted free of charge.

In each case the remission rate is determined by the number of years that have elapsed since the lease was issued.