

2006

LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT)  
AMENDMENT REGULATION 2006 (No 1)

Subordinate Law No SL2006-12

EXPLANATORY STATEMENT

Circulated by authority of Simon Corbell MLA  
Minister for Planning

## **Overview**

The *Land (Planning and Environment) Amendment Regulation 2006 (No 1)* (amendment regulation) repeals the following provisions for remission of change of use charge for lease variations in local centres.

Section 184A of the *Land (Planning and Environment) Act 1991* requires payment of a change of use charge (CUC) for lease variations. CUC is typically levied where value is added to the land through a change to the Crown lease (normally 75% of the added value). Section 184C of the Act also provides for remissions or increases to CUC in circumstances prescribed by regulation.

The *Land (Planning and Environment) Regulation 1992* requires the Planning and Land Authority to remit in full the change of use charge for variation of a lease in a local centre in specified circumstances. Full remission is required when a lessee applies to the Authority for a lease variation (including consolidation or subdivision) and at the same time obtains a declaration by the Authority that:

- the relevant local centre is no longer viable or would cease to be viable within three years if the variation does not proceed; and
- the local centre is unlikely to be developed if the Authority grants no remission of the change of use charge for lease variations in the centre.

This is the effect of sections 17 and 18 (lease variation) and 28 and 29 (consolidation and subdivision) of the *Land (Planning and Environment) Regulation*. The amendment regulation repeals these sections.

## **Background**

Many ACT local centres have been struggling to maintain commercial viability for some time due to a range of social and economic changes affecting retail patterns and shopper behaviour. In response to these circumstances and in light of the level of community support for local centres, governments have sought to introduce policies that would assist such centres to continue to provide an ongoing focus for their local communities.

The aim of the policy on CUC for local centres was ostensibly to assist lessees in local centres to adapt to changed economic circumstances by making it easier (through remissions) to develop and upgrade unviable centres and provide new services to local neighbourhoods. At the same time changes were introduced into the Territory Plan (Variation No 64) to enable greater flexibility in land use while also seeking to maintain the community access to local services and facilities (particularly convenience retailing). The variation to the Territory Plan permitted residential development of local centre land by more than 50% if it is established that the centre (or relevant parts) was no longer commercially viable.

The above policies (Territory Plan changes and remission of CUC provisions) were introduced in 1997 the economy was less buoyant than in recent years. There is now a concern that these same policies may in practice have the unintended effect of contributing to the decline of some local centres rather than supporting them. In particular, there are concerns that the policies encourage the unnecessary loss of local services through the conversion of commercial and retail services to residential use. The policies do this by distorting property and development markets through the provision of:

- financial incentives for commercial uses in local centres to be allowed to run down in order to fit criteria for approval of redevelopment for medium density residential uses;
- higher returns for residential development in local centres than in other areas (in general, lessees undertaking redevelopment outside local centres must pay 75% of the CUC);
- financial incentives for the developer to “fit in” as many residential dwellings as possible to gain maximum financial advantage from the remission; and
- full remission of CUC for variations that create additional development rights (increased gross floor area) even though the acquisition of these rights diminishes the financial need for remission.

The potential for these distortions to contribute to a decline in local centres can no longer be justified. This is particularly so in the current economic climate when the demand for new residential development within existing suburbs, especially in central locations, is already high.

The existing remission provisions have also proved difficult to apply in practice. The evidence and methods for deciding whether a local centre has ceased or will cease to be commercially viable are often contentious and do not always result in clear answers. This is not helped by the fact that it is often difficult to test the evidence in a fully open manner due to commercial confidentiality constraints.

The Planning and Land Council has advised the Planning and Land Authority that it supports the removal of these remission provisions.

### **The amendments in detail**

**Section 1 - Name of regulations** - provides that the name of the amendment regulation is the *Land (Planning and Environment) Amendment Regulation 2006 (No 1)*.

**Section 2 - Commencement** - provides that the amendment regulation commences on the day after its notification day.

**Section 3 – Legislation amended** – provides that the regulation amends the Land (Planning and Environment) Regulation.

**Section 4 – Repeal of sections** - repeals sections 17 and 18 of the Land Planning and Environment Regulation. These repealed sections required the Planning and Land Authority to remit in full the change of use charge for variations of leases in local centres if the Authority made a declaration that:

- the relevant local centre is no longer viable or would cease to be viable within three years if the variation does not proceed; and
- the local centre is unlikely to be developed if the Authority grants no remission of the change of use charge for variations of leases of land in the local centre.

**Section 5 – Repeal of sections** - repeals subsection 19(3) of the Land Planning and Environment Regulation. This amendment is required to remove a reference to repealed section 17 of the Regulation.

**Section 6 – Repeal of sections** - repeals sections 28 and 29 of the Land Planning and Environment Regulation. These repealed sections required the Planning and Land Authority to remit in full the change of use charge for the consolidation or subdivision of leases in local centres if the Authority made a declaration that:

- the relevant local centre is no longer viable or would cease to be viable within three years if the variation does not proceed; and
- the local centre is unlikely to be developed if the Authority grants no remission of the change of use charge for the consolidation or subdivision of leases of land in the local centre.

**Section 7 – Repeal of sections** - repeals subsection 30(2) of the Land Planning and Environment Regulation. This amendment is required to remove a reference to repealed section 28 of the Regulation.