



Australian Capital Territory

Land (Planning and Environment) Regulations¹ (Amendment)

Subordinate Law No. 7 of 1997²

The Australian Capital Territory Executive makes the following Regulations under the *Land (Planning and Environment) Act 1991*.

Dated 7 April 1997.

GARY HUMPHRIES
Minister

TREVOR KAINE
Minister

Commencement

1. (1) This regulation and regulation 2 commence on the day on which these regulations are notified in the *Gazette*.

(2) Regulations 4 and 6 commence as provided for by paragraph 184C (5) (a) of the Act.

(3) Regulations 3, 5, 7 and 9 commence on the same day as regulations 4 and 6.

(4) Regulation 8 commences as provided for by paragraph 187C (5) (a) of the Act.

Principal Regulations

2. In these Regulations, “Principal Regulations” means the Land (Planning and Environment) Regulations.

Application

3. The Principal Regulations, as in force immediately before the day on which section 43 of the *Land (Planning and Environment) (Amendment) Act (No. 3) 1996* commences, continue to apply in relation to the determination of an amount under paragraph 184 (b) of the Act as so in force in respect of a variation of a lease approved, but not executed, before that day as if these regulations had not been made.

Substitution

4. Regulations 11A, 12 and 13 of the Principal Regulations are repealed and the following heading and regulations are substituted:

“Division 2—Variation of leases

Interpretation

“12A. (1) In this Division—

‘added value’, in relation to the variation of a lease, means the amount determined in accordance with the formula—

$$V_1 - V_2$$

where V_1 and V_2 have the same respective meanings in relation to the variation as in subsections 184A (2) and (4) of the Act;

‘change of use charge’, in relation to the variation of a lease, means the change of use charge under subsection 184A (1) of the Act for that variation;

‘consolidated lease’ means a lease granted in the course of a consolidation following the surrender of 2 or more previous leases;

‘further lease’ means a lease granted under section 171, 171A or 172 of the Act following the surrender of a previous lease over the same land;

‘regranted lease’ means a lease granted following the surrender of a previous lease, as referred to in section 184 of the Act;

‘subdivided lease’ means a lease granted in the course of a subdivision following the surrender of 1 or more previous leases.

“(2) Where—

- (a) a number of leases are surrendered in the course of a subdivision or consolidation;
- (b) the parcels of land over which such leases were granted are not of equal area; and
- (c) there are 2 or more such parcels of land of equal area that are larger than all the other parcels;

a reference in this Division to the lease over the largest such parcel is to be taken to be a reference to any of the leases over the equally large parcels referred to in paragraph (c).

Boundary variations remission—s. 184C (1)

“12B. (1) For the purposes of subsection 184C (1) of the Act, the Minister may entirely remit the change of use charge for the variation of a lease where—

- (a) the only effect of the variation would be to alter a common boundary between 2 or more adjoining leases;
- (b) the land comprised in each such adjoining lease is leased for the same purposes; and
- (c) no such adjoining lease permits the use of the leased land for rural purposes, or for purposes including rural purposes.

“(2) Where subregulation (1) applies in relation to the variation of a lease, this Division does not otherwise apply in relation to the variation.

Local Centre remission—s. 184C (1)

“13. (1) Subject to subregulation (2), for the purposes of subsection 184C (1) of the Act, the Minister may remit the change of use charge for the variation of a lease by an amount equal to 25% of the added value in relation to the variation where—

- (a) the lease is over land lying wholly within a Local Centre; and
- (b) the Minister has made a declaration in relation to that lease under regulation 13A.

“(2) If a change of use charge eligible for a remission under subregulation (1) is also subject to an increase under regulation 14A (Concessional lease increase—s. 184C (3)), regulation 14B (Recently commenced lease increase—s. 184C (3)) or regulation 14C (Enlarged area of land increase—s. 184C (3)), the remission is to be off-set by that increase.”.

Local Centre declarations—lease variation

5. (1) Regulation 13A of the Principal Regulations is amended—

- (a)** by omitting from subregulation (1) “Executive” and substituting “Minister”;
- (b)** by omitting from paragraph (1) (b) all the words after “if” and substituting “no remissions under subsection 184C (1) of the Act were allowed in respect of change of use charges for variations of leases of land within the Local Centre”; and
- (c)** by omitting from subregulation (3) “Executive may, if it is” and substituting “Minister may, if”.

(2) If, before the day on which this regulation commences, the Executive had made a declaration under regulation 13A of the Principal Regulations, on and after that day the declaration is to be taken for all purposes to have been made by the Minister under that regulation as amended by subregulation (1) of this regulation.

(3) If, before the day on which this regulation commences, an application for a declaration had been made to the Executive under regulation 13A of the Principal Regulations, but no decision had been made in relation to the application, on and after that day the application is to be taken to have been made to the Minister under that subregulation as amended by subregulation (1) of this regulation.

Substitution

6. Regulation 14 of the Principal Regulations is repealed and the following regulations are substituted:

Commissioner for Housing remission—s. 184C (1)

“14. (1) Subject to subregulation (2), for the purposes of subsection 184C (1) of the Act, the Minister may remit the change of use charge for the variation of a lease by an amount equal to 25% of the added value in relation to the variation where—

- (a) the lease is held by the Commissioner for Housing; and
- (b) the lease was granted to the Commissioner for a term commencing on or before 16 December 1987.

“(2) If a change of use charge eligible for a remission under subregulation (1) is also subject to an increase under regulation 14C (Enlarged area of land increase—s. 184C (3)), the remission is to be off-set by that increase.

“(3) This regulation does not apply in relation to the variation of a lease if regulation 13 (Local Centre remission—s. 184C (1)) applies in relation to the variation.

Concessional lease increase—s. 184C (3)

“14A. (1) For the purposes of subsection 184C (3) of the Act, the Minister may increase the change of use charge for the variation of a concessional lease by an amount equal to 25% of the added value in relation to the variation.

“(2) This regulation applies in relation to the variation of a concessional lease only if—

- (a) the lease is to be varied to provide for a use other than a community use; and
- (b) the lease is not a lease held by the Commissioner for Housing to which regulation 14 (Commissioner for Housing remission—s. 184C (1)) applies.

“(3) For the purposes of this regulation, the following leases are concessional leases:

- (a) a lease granted for a consideration less than the full market value of the lease, whether any such consideration was paid as a lump sum for the grant or is payable under the lease as rent, and in relation to which neither of the following payments have been made to the Territory:
 - (i) a capital sum or sums in respect of its grant equal to the market value of the lease at the time of the payment, or at the time of the last such payment, as the case may be;
 - (ii) a capital sum or sums to reduce the rent payable under the lease to a nominal rent under section 186 of the Act;

except a further lease, a consolidated lease, a subdivided lease, a regranted lease, or a lease over land that, immediately prior to the

grant of the lease, was owned, controlled or held by the Commissioner for Housing under the *Housing Assistance Act 1987*;

- (b) a consolidated or subdivided concessional lease;
- (c) a further concessional lease;
- (d) a regranted concessional lease.

“(4) This regulation applies in relation to the variation of a lease consisting (by virtue of section 184 of the Act) of the grant of a lease following the surrender of a previous lease where the surrendered lease was a concessional lease.

“(5) In this regulation—

‘consolidated or subdivided concessional lease’ means a lease granted in the course of a consolidation or subdivision involving the surrender of 1 or more previous leases where—

- (a) each surrendered lease was a concessional lease; or
- (b) if more than 1 lease was surrendered, and any (but not all) of the surrendered leases was a concessional lease—
 - (i) the surrendered leases were not over parcels of land of equal area; and
 - (ii) the surrendered lease that was over the largest parcel of land was a concessional lease;

‘further concessional lease’ means a further lease where the surrendered lease was a concessional lease;

‘regranted concessional lease’ means a regranted lease where the surrendered lease was a concessional lease.

Recently commenced lease increase—s. 184C (3)

“14B. (1) For the purposes of subsection 184C (3) of the Act, the Minister may increase the change of use charge for the variation of a recently commenced lease by an amount equal to 25% of the added value in relation to the variation.

“(2) For the purpose of this regulation, the following leases are recently commenced leases:

- (a) a lease (other than a further lease, a consolidated lease, a subdivided lease or a regranted lease) the term of which

commenced 5 years or less before the date of the application for variation;

- (b) a consolidated or subdivided recently commenced lease;
- (c) a further recently commenced lease;
- (d) a recently regranted lease.

“(3) Subregulation (1) applies in relation to the variation of a lease consisting (by virtue of section 184 of the Act) of the grant of a lease following the surrender of a previous lease where the surrendered lease was a recently commenced lease, unless the variation has the effect only of correcting an error in the surrendered lease.

“(4) This regulation does not apply in relation to the variation of a lease if regulation 14A (Concessional lease increase—s. 184C (3)) applies in relation to the variation.

“(5) In this regulation—

‘consolidated or subdivided recently commenced lease’ means a lease granted in the course of a consolidation or subdivision involving the surrender of 1 or more previous leases where—

- (a) each surrendered lease was a recently commenced lease;
or
- (b) if more than 1 lease was surrendered, and any (but not all) of the surrendered leases was a recently commenced lease—
 - (i) if the surrendered leases were not over parcels of land of equal area—the surrendered lease that was over the largest parcel of land was a recently commenced lease; or
 - (ii) if all surrendered leases were over parcels of land of equal area—any surrendered lease was a recently commenced lease;

‘further recently commenced lease’ means a further lease where the surrendered lease was a recently commenced lease;

‘recently regranted lease’ means a regranted lease where the surrendered lease was a recently commenced lease.

Enlarged area of land increase—s. 184C (3)

“14C. (1) This regulation applies in relation to a variation of a lease consisting (by virtue of section 184 of the Act) of the grant of a lease following the surrender of a previous lease if the area of land comprised in the new lease is larger than the area of land comprised in the surrendered lease.

“(2) Where this regulation applies, for the purposes of subsection 184C (3) of the Act the Minister may increase the change of use charge for the variation by an amount equal to 25% of that portion of the added value of the variation attributable to the additional portion of land comprised in the new lease.

“(3) This regulation does not apply in relation to the variation of a lease if regulation 14A (Concessional lease increase—s. 184C (3)) or regulation 14B (Recently commenced lease increase—s. 184C (3)) applies in relation to the variation.”.

Variation of lease to pay out rent—prescribed leases

7. Regulation 15 of the Principal Regulations is amended—

- (a) by omitting from paragraph (b) “but not more than 50 years”; and
- (b) by omitting paragraph (c) and substituting the following paragraph:

“(c) concessional leases within the meaning of regulation 14A.”.

Insertion

8. After regulation 15 of the Principal Regulations the following Division is inserted:

“Division 3—Consolidation and subdivision

Interpretation

“15A. (1) In this Division—

‘added value’, in relation to a consolidation or a subdivision, means the amount determined in accordance with the formula—

$$V_1 - V_2$$

where V_1 and V_2 have the same respective meanings in relation to the consolidation or subdivision as in subsections 187A (2) and (4) of the Act;

‘change of use charge’, in relation to a consolidation or subdivision, means the change of use charge under subsection 187A (1) of the Act for that consolidation or subdivision;

‘consolidated lease’ means a lease granted in the course of a consolidation following the surrender of 2 or more previous leases;

‘further lease’ means a lease granted under section 171, 171A or 172 of the Act following the surrender of a previous lease over the same land;

‘regranted lease’ means a lease granted following the surrender of a previous lease, as referred to in section 184 of the Act;

‘subdivided lease’ means a lease granted in the course of a subdivision following the surrender of 1 or more previous leases.

“(2) Where—

- (a) a number of leases are surrendered in the course of a subdivision or consolidation;
- (b) the parcels of land over which such leases were granted are not of equal area; and
- (c) there are 2 or more such parcels of land of equal area that are larger than all the other parcels;

a reference in this Division to the lease over the largest such parcel is to be taken to be a reference to any of the leases over the equally large parcels referred to in paragraph (c).

Local Centre remission—s. 187C (1)

“15B. (1) Subject to subregulation (2), for the purposes of subsection 187C (1) of the Act, the Minister may remit the change of use charge for a consolidation or subdivision by an amount equal to 25% of the added value in relation to the consolidation or subdivision where—

- (a) each lease to be surrendered is over land wholly within a Local Centre; and
- (b) the Minister has made a declaration in relation to the consolidation or subdivision under regulation 15C.

“(2) If a change of use charge eligible for a remission under subregulation (1) is also subject to an increase under regulation 15E (Concessional lease increase—s. 187C (3)) or regulation 15F (Recently

commenced lease increase—s. 187C (3)), the remission is to be off-set by that increase.

Local Centre declarations—consolidation and subdivision

“15C. (1) A lessee who is applying for a consolidation or subdivision of leases over land within a Local Centre may, for the purposes of that application, apply to the Minister in writing for a declaration—

- (a) that the Local Centre is no longer viable as such a centre or that it will cease to be so viable within 3 years if the consolidation or subdivision is not effected in the manner proposed in the application; and
- (b) that the Local Centre is unlikely to be developed if no remissions under subsection 187C (1) of the Act are allowed in respect of change of use charges for the consolidation or subdivision of leases over land within the Local Centre.

“(2) An application under subregulation (1) shall set out the grounds on which the applicant considers that the declaration should be made.

“(3) On receiving an application under subregulation (1) the Minister may, if satisfied that the circumstances specified in paragraphs (1) (a) and (b) exist in relation to the consolidation or subdivision, by writing make a declaration to that effect.

Commissioner for Housing remission—s. 187C (1)

“15D. (1) For the purposes of subsection 187C (1) of the Act, the Minister may remit a change of use charge for a consolidation or subdivision by an amount equal to 25% of the added value in relation to the consolidation or subdivision where—

- (a) each lease to be surrendered is held by the Commissioner for Housing; and
- (b) each lease to be surrendered was granted to the Commissioner for a term commencing on or before 16 December 1987.

“(2) This regulation does not apply in relation to a consolidation or subdivision if regulation 15B (Local Centre remission—s. 187C (1)) applies in relation to the consolidation or subdivision.

Concessional lease increase—s. 187C (3)

“15E. (1) This regulation applies in relation to a consolidation or subdivision where any of the leases to be surrendered in the course of the consolidation or subdivision is a concessional lease.

“(2) For the purposes of subsection 187C (3) of the Act, the Minister may increase the change of use charge for a consolidation or subdivision to which this regulation applies by an amount equal to 25% of that portion of the added value in relation to the consolidation or subdivision that is attributable to the surrender of the concessional lease or leases in the course of the consolidation or subdivision.

“(3) This regulation applies in relation to a consolidation or subdivision only if a lease is to be granted in the course of the consolidation or subdivision for a use other than a community use.

“(4) For the purposes of this regulation, subject to subregulation (5), the following leases are concessional leases:

- (a) a lease granted for a consideration less than the full market value of the lease, whether any such consideration was paid as a lump sum for the grant or is payable under the lease as rent, and in relation to which neither of the following payments have been made to the Territory:
 - (i) a capital sum or sums in respect of its grant equal to the market value of the lease at the time of the payment, or at the time of the last such payment, as the case may be;
 - (ii) a capital sum or sums to reduce the rent payable under the lease to a nominal rent under section 186 of the Act;

except a further lease, a consolidated lease, a subdivided lease, a regranted lease, or a lease over land that, immediately prior to the grant of the lease, was owned, controlled or held by the Commissioner for Housing under the *Housing Assistance Act 1987*;

- (b) a consolidated or subdivided concessional lease;
- (c) a further concessional lease;
- (d) a regranted concessional lease.

“(5) For the purposes of this regulation, a lease held by the Commissioner for Housing to which regulation 15D (Commissioner for Housing remission—s. 187C (1)) applies is not a concessional lease.

“(6) This regulation does not apply in relation to a consolidation or subdivision if—

- (a) regulation 15F (Recently commenced lease increase—s. 187C (3)) applies in relation to the consolidation or subdivision; and
- (b) the amount of the increase in the change of use charge otherwise payable under this regulation is less than the amount of such an increase payable under regulation 15F.

“(7) In this regulation—

‘consolidated or subdivided concessional lease’ means a lease granted in the course of a consolidation or subdivision involving the surrender of 1 or more previous leases where—

- (a) each surrendered lease was a concessional lease; or
- (b) if more than 1 lease was surrendered, and any (but not all) of the surrendered leases was a concessional lease—
 - (i) the surrendered leases were not over parcels of land of equal area; and
 - (ii) the surrendered lease that was over the largest parcel of land was a concessional lease;

‘further concessional lease’ means a further lease where the surrendered lease was a concessional lease;

‘regranted concessional lease’ means a regranted lease where the surrendered lease was a concessional lease.

Recently commenced lease increase—s. 187C (3)

“15F. (1) This regulation applies in relation to a consolidation or subdivision where any of the leases to be surrendered is a recently commenced lease.

“(2) For the purposes of subsection 187C (3) of the Act, the Minister may increase the change of use charge for a consolidation or subdivision to which this regulation applies by an amount equal to 25% of that portion of the added value in relation to the consolidation or subdivision that is attributable to the surrender of the recently granted lease or leases in the course of the consolidation or subdivision.

“(3) For the purposes of this regulation, the following leases are recently commenced leases:

- (a) a lease (other than a further lease, a consolidated lease, a subdivided lease, or a regranted lease) the term of which commenced 5 years or less before the date of the application for consolidation or subdivision;
- (b) a further recently commenced lease;
- (c) a consolidated or subdivided recently commenced lease;
- (d) a recently regranted lease.

“(4) This regulation does not apply in relation to a consolidation or subdivision if—

- (a) regulation 15E (Concessional lease increase—s. 187C (3)) applies in relation to the consolidation or subdivision; and
- (b) the amount of the increase in the change of use charge otherwise payable under this regulation is less than or equal to the amount of such an increase payable under regulation 15E.

“(5) In this regulation—

‘consolidated or subdivided recently commenced lease’ means a lease granted in the course of a consolidation or subdivision involving the surrender of 1 or more previous leases where—

- (a) each surrendered lease was a recently commenced lease;
or
- (b) if more than 1 lease was surrendered, and any (but not all) of the surrendered leases was a recently commenced lease—
 - (i) if the surrendered leases were not over parcels of land of equal area—the surrendered lease that was over the largest parcel of land was a recently commenced lease; or
 - (ii) if all surrendered leases were over parcels of land of equal area—any surrendered lease was a recently commenced lease;

‘further recently commenced lease’ means a further lease where the surrendered or expired lease was a recently commenced lease;

‘recently regranted lease’ means a regranted lease where the surrendered lease was a recently commenced lease.”.

Repeal of Schedule 3

9. Schedule 3 to the Principal Regulations is repealed.

NOTES

Principal Regulations

1. Reprinted as at 31 January 1996. See also Nos. 20 and 21, 1996; Acts Nos. 62 and 71, 1996.

Notification

2. Notified in the ACT Gazette on 8 April 1997.