



Update

Property & Projects

April 2010

Australian Capital Territory Property Update

In the first of a series of briefs looking at recent news and developments in property and planning in the Australian Capital Territory, we look at the Canberra leasehold system and the proposed codification of the change of use charge.

The Leasehold Land Tenure System in the ACT

In 1911, the land comprising what is now known as the Australian Capital Territory was acquired from New South Wales as the site for the Australian capital. At the same time, control of the Territory was officially assumed by the Commonwealth government under the *Seat of Government (Administration) Act 1910*. Under this Act no land in the ACT could be held by freehold. Instead, a leasehold land tenure system was created.

The creation of a leasehold system of land tenure stemmed from the widespread belief in the early years of Federation that there should be government ownership of land in the Territory. Aside from the desire to deter speculative investment, the core philosophy behind the Canberra leasehold system was that the system would enable the Commonwealth to capture rises in property values and use that money to fund infrastructure and to stimulate community development in the ACT.

Historically described as the 'unearned increment', this took the form of a yearly rent of 5% of the value of the leased land. In 1971 the rent was abolished and replaced by a change of use charge or 'betterment' as it was originally known.

What is a Change of Use Charge?

Essentially, the change of use charge is a form of taxation on increases in the property value of Crown land arising as a result of a varied use of the land that is not otherwise permitted under the Crown Lease.

If a lessee seeks to develop or use their property in such a way that requires a variation of the Crown Lease and that variation increases the value of the leasehold interest, a change of use charge will apply.

The charge is calculated by reference to the difference or 'added value' between the property's existing value and its estimated value following the variation of the Crown Lease.

Generally, the change of use charge is assessed at 75 per cent of the 'added value'. The rationale behind the choice of a 75% rate is that most of the increase should go to the Territory to help pay for public works and the remaining quarter should be left as an incentive for entrepreneurial activity.

Of note, in June 2009 the ACT Government announced the reduction of the change of use charge for a one year period in a bid to support investment in the ACT. For certain applications involving construction proposals lodged between 1 June 2009 and 1 June 2010, the change of use charge has been reduced from 75% to 50% of the "added value".

Review of the Change of Use Charges system

The Change of Use Charges System has gone through six independent reviews between 1990 and the present day. This is indicative of the problematic nature of the charge since its inception in 1971. Most recently, assessment of the charge has come under attack for lacking 'transparency, simplicity and timeliness'. This is largely because assessments are made on a case-by-case basis by individual surveyors with few objective criteria, making the findings arbitrary and open to legal challenge.

The Codification Project

In the 2009-10 Budget the ACT government initiated a review of the change of use assessment process and the codification of the system based on ten 'core' principles underpinned by the desire to simplify assessments and to promote fairness and transparency.

It is envisaged that codification of the change of use charges system will involve the creation of a publicly accessible universal register of property prices in the ACT to assist in the objective, fair, simple and timely assessment of the change of use charge.



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The register would list fixed costs for various land uses throughout the ACT. Valuations would be based on objectively determined average values in particular localities.

Average values for residential properties would be calculated using market rate index values for property based on land sales for similar property uses. For commercial and industrial properties, land average values would be based on the market rate per square metre of gross floor area. Indexes would be estimated based on a three year average to prevent inconsistencies. In leisure zones or rural areas, it is proposed that the ACT Government will adopt a framework to guide surveyors to determine objective values. In instances where comparison is complicated due to the nature of the property or what is proposed by the variation or use, independent surveys would continue to be used for the purpose of making an assessment.

Of note, a lessee would have no right to appeal a determination of value where an assessment was made by reference to the register. The right to appeal to the ACT Civil and Administrative Tribunal would be retained only where an assessment was made having regard to an independent survey.

The proposed changes do not contemplate the alteration of the 75% rate of the uplift in value. In instances where there is no effective change in value, an administrative fee will apply.

Further Information

The Draft report on the Review of the Change of Use Charges System in the ACT was released on 16 March 2010. The release of the report marked the commencement of a 6 week consultation process which was coupled with industry briefings and round table discussions. The consultation period finishes on 23 April 2010 after which a final report will be delivered to the ACT Government.

We will provide a detailed brief on the Government's response to the report and the implications for investors and developers in the ACT. In the interim, if you have any questions or require further information in relation to the Canberra leasehold system or change of use charges please see contact details below.

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