

## REDUCTION IN CHANGE OF USE CHARGE

On 8 June 2009 the Treasurer and Minister for Planning jointly announced that the Change of Use Charge reduction previously announced during the Treasurer's 2009/10 Budget speech will be made available to all applications involving construction proposals made between 1 June 2009 and 1 June 2010. The reduction to 50 percent will apply to new applications, while leases granted in the last five years will be charged at a reduced rate of 75 percent.

In addition, the ACT Government will also provide a 100 percent remission of the Change of Use Charge for applications made between 1 June 2009 and 1 June 2010 to develop disused service station sites that ceased to operate as a service station by 1 June 2009, provided the new development completes its first building inspection approval by the end of the period (1 June 2010). Developers will need to pay the charge but it will be remitted in full on completion of the first building inspection of the approved development.

In response to industry concerns around uncertainty in change of use charge determinations, and delays in development approvals, the ACT Government has also announced steps to codify the Change of Use Charge during 2009/10 to be implemented in 2010/11 following consultation with industry.

Bradley Allen Lawyers have recently sought clarification from the Treasurer as to whether the concessions to the change of use charge will be applied in respect of concessional leases ... watch this space.

## MORATORIUM ON DEVELOPERS FEES

The ACT Government has granted a two year moratorium on fees for late commercial developments in light of the current circumstances in credit markets and the economy. These fees were originally introduced to encourage timely developments and prevent "land banking" in an environment of sharply appreciating land values, where the holding costs of land were more than offset by capital gains. The moratorium is an acknowledgement that some developers are finding it difficult to arrange finance and secure commitments from prospective tenants, leading to delays in development beyond a developer's control.

## UNIT TITLES AMENDMENT ACT 2008

### *Disclosure in Contracts for Sale before Registration of Units Plan*

From 31 March 2009 all contracts for sale of a unit in a units plan before the units plan is registered must include the following:

- the proposed articles of the owners corporation of the units plan;
- details of any contract the developer intends the owners corporation to enter into, including:
  - a) the amount of the buyer's contribution to the corporation's general funds that will be used to service the contract; and
  - b) any personal or business relationship between the developer and another party to the contract;
- the developer's estimate, based on reasonable grounds, of the buyer's contribution to the corporation's general funds for 2 years after the units plan is registered;
- if a right to approve the keeping of animals during the developer control period is reserved – details of the reservation, including the kind and number of animals;
- if a staged development of the units is proposed – the proposed development statement and any amendment to the statement.

By entering into the contract, the developer warrants that the information so disclosed is accurate. If the developer's disclosure is incomplete or inaccurate and the buyer is as a result significantly prejudiced then the buyer may, by written notice given to the developer prior to completion, cancel the contract. The Act does not define what is meant by the word "cancel," however in light of the fact that the Act provides that if a contract is cancelled the buyer is entitled to a refund of any amounts paid to the seller we consider that the courts are likely to eventually define the right to cancel as akin to entitlement to rescind.

### *Limits on Developer Proxy Votes at General Meeting*

From 31 March 2009 a developer of a units plan who is appointed as the proxy under a contract for the sale of a unit in the units plan must not exercise 3 or more proxy votes in a vote on a matter at a general meeting of the owners corporation for the units plan unless:

- each contract for the sale of a unit in the units plan contains a “proxy disclosure statement”; and
- the use of each proxy vote is consistent with the statement; and
- the matter being voted on relates to development (the development matter) rather than the ordinary operation of the owners corporation.
- the statutory books and records of the corporation, up to the date of the meeting;
- any insurance policy issued in the name of the corporation;
- any plans, specifications, diagrams or drawings that relate to the design or service of the units or common property of the units plan for which the corporation is established;

If the developer exercises a proxy vote in contravention of this requirement, the proxy vote is void.

A “proxy disclosure statement” is a statement that includes the following:

- if a person is appointed as a proxy – the name of the person;
- if the proxy is appointed by naming the occupant of a position – the name of the position;
- the length of time of the appointment; and
- a sufficient description of the development matter for the buyer of a unit to easily identify the matter.
- a copy of any contract entered into by the corporation that relate to the common property of the units plan;
- any warranty that relates to the common property of the units plan;
- the corporation’s seal; and
- any other document that relates to the units or common property of the units plan.

### ***Restrictions during Developer Control Period***

From 2 February 2009 a developer may not, during the developer control period:

- enter into a contract unless the contract is disclosed in each contract to sell a unit in the units plan and either the contract is for a period not longer than 2 years or ACAT authorises the entering into the contract;
- change the articles of the corporation;
- approve the keeping of an animal by a member of the units plan in the member’s unit unless the right to keep an animal was reserved in each contract to sell a unit in the units plan.

The “developer control period” is the period that starts on the day the owners corporation for the units plan is established and ends on the day people other than the developer hold 1/3 or more of the unit entitlements for the units plan.

### ***Other New Developer Obligations***

At the first annual general meeting of an owners corporation the developer must give the following records to the corporation:

### **For more information, please contact:**

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