Legislative Assembly for the Australian Capital Territory

# THE EXISTING PETROL SITES POLICY

Report No.17 of the Standing Committee on Urban Services

FEBRUARY 1999

**Resolution of appointment of the Standing Committee on Urban Services**

On 28 April 1998 the Legislative Assembly for the Australian Capital Territory resolved to establish a general purpose standing committee, called the Standing Committee on Urban Services, to inquire into and report on:

> planning and lease management, road and transport services, housing and housing assistance, government purchasing and public utilities purchasing, electricity industry and regulation, construction industry policy, parks and forests, private sector employment inspectorate, building services, environment, heritage and municipal services and any other matter under the responsibility of the portfolio minister.

**Committee Membership**

*Mr Harold Hird MLA* (Chair)

*Mr Dave Rugendyke MLA* (Deputy Chair)

*Mr Simon Corbell MLA* (appointed on 25 June 1998, replacing Mr Wayne Berry MLA who was discharged on the same day)

Secretary: Mr Rod Power

## Terms of reference for this inquiry

On 2 September 1998 the Legislative Assembly passed the following resolution:

> That the Standing Committee on Urban Services inquire into and report on existing petrol sites policy with particular reference to:
>
> (1) the need for requirements on the owners of petrol station site leases, upon vacation of the site (provided that attempts to pass the petrol station site to a new lessee for the purpose of continuing the petrol station business have been unsuccessful), to restore the site to as close to original condition as possible, with regard to the removal of contaminants in the soil caused by leakage from fuel storage tanks and the removal of buildings and fittings no longer required at their own expense;
>
> (2) the need for the restoration to meet standards imposed by the Commissioner for the Environment;
>
> (3) a requirement for future leases to include provision for restoration as a term of the lease;
>
> (4) requirements on existing lease holders to prepare environment restoration plans and submit them to the Commissioner for the Environment for approval;
>
> (5) the need to establish a financial penalty (based on restoration at public expense and recovery from the lessee) for defaulters, together with significant fines for non-restoration;
>
> (6) the possible application of any measures to all existing and new petrol station leases.

TABLE OF CONTENTS

| | Page |
|---|---|
| **List of recommendations** | **v** |
| **1. INTRODUCTION** | **1** |
| **Background** | **1** |
| **Layout of this report** | **1** |
| **Appreciation** | **2** |
| **2. SUMMARY OF EVIDENCE: ACT GOVERNMENT** | **3** |
| **3. SUMMARY OF EVIDENCE: MOTOR TRADES ASSOCIATION ACT LIMITED** | **5** |
| **4. SUMMARY OF EVIDENCE: BP** | **7** |
| **5. SUMMARY OF EVIDENCE: WOOLWORTHS** | **9** |
| **6. SUMMARY OF EVIDENCE: MEMBER OF THE PUBLIC** | **11** |
| **7. CONCLUSION** | **12** |

## LIST OF RECOMMENDATIONS (SEE FINAL CHAPTER)

The committee recommends:

- that the government ensure disused service station sites are offered not just to the petroleum industry majors but to independent fuel retailers as well [**recommendation 1**].

- that disused service station sites should be restored to appropriate standards to be set by the Environment Management Authority, utilising the three-pronged approach set out in the exposure draft of the Environment Protection (Amendment) Bill 1998 - involving a statutory framework, national guidelines (now being developed) and independent expert auditors [**recommendation 2**].

- that the government review the existing standards in relation to service station infrastructure to take account of changing trends in service delivery and in technology, and ensure that up-to-date and “best practice” standards apply [**recommendation 3**].

- that the legislation provide for a franchisee, such as a service station operation franchised to an oil industry major, to notify both the Crown lessee and the government in the event of contamination on his or her site [**recommendation 4**].

- that the government advise the parliament about the manner in which appropriate environmental controls may be exercised over small operators (such as backyard workshops) [**recommendation 5**].

- that the government amend the definition of an oil industry “major” in line with the definition used by the Commonwealth Government [**recommendation 6**].

- that the government advise the Assembly within the next two months on the experience to date with the Policy on Use of Service Station Sites (dated 17 July 1998) and in particular, on whether it appears that the level of change of use charge is acting as a deterrent to the re-development of service station sites (especially adjacent to local shopping centres) [**recommendation 7**].

**The committee’s findings in relation to the six specific terms of reference for this inquiry are set out in the final chapter of the report.**

# 1. INTRODUCTION

## BACKGROUND

1.1. On 2 September 1998 the Legislative Assembly resolved that the Standing Committee on Urban Services inquire into and report on existing petrol sites policy with particular reference to six matters (*see full text of the resolution in the preceding section of the report*).

1.2. The committee noted that considerable overlap existed between this inquiry and another inquiry then underway, which was the committee's inquiry into the exposure draft of the Environment Protection (Amendment) Bill 1998 [also known as the Contaminated Sites Bill]. It was agreed to link the two inquiries as much as possible, though members accepted that two separate reports to the Assembly would be necessary.

1.3. In October 1998 the committee reported on the exposure draft of the Environment Protection (Amendment) Bill 1998.[1] The present report completes the committee's consideration of the two issues.

## LAYOUT OF THIS REPORT

1.4. In the following chapters, the committee summarises the oral and written evidence it received. The summaries are in dot format. They are not intended to be exhaustive but simply to act as a convenient reference to some of the principal points that arose during the inquiry.

1.5. The written evidence was in the form of five submissions, from the following persons and organisations: the ACT Government**;** Australian Independent Retailers Pty Ltd (Woolworths +*Plus Petrol*); BP Australia Limited; Miss FitzGerald; and the Motor Trades Association ACT Limited.

1.6. These submissions were authorised for publication and are available from the Committee Office of the Legislative Assembly.

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[1] Report No.10 of the Standing Committee on Urban Services

1.7. The oral evidence was in the form of the *Transcript* of the public hearing held on 16 October 1998. This public hearing dealt with both the current inquiry and that into the exposure draft of the Environment Amendment Bill. Appearing at the hearing were, in alphabetical order:

- *Environment ACT*: Mr Burnett (Director, Environment Protection)
- *Environmental Defender's Office* (ACT) Inc: Ms Budavari (solicitor)
- *Coffey Geosciences Pty Ltd*: Mr White
- *Law Society of the ACT*: Mr Bradbury( member of the Society's Planning & Environmental Law Committee)
- *Motor Trades Association ACT Limited*: Mr Riding-Hill (executive director) and Mr Ross Ellis (chairman of the service station division).
- *Property Council of Australia (ACT Division):* Ms Cunich (executive director, Property Council) and Ms Ryan (solicitor, Mallesons Stephen Jaques)
- *Woolworths Plus Petrol*: Mr Ludlow (National Property Manager, Petrol)

1.8. The committee authorised publication of oral evidence, and quotations from the *Transcript* are used throughout the report. Where a particular quotation is not acknowledged, it has been taken from the written submission.

1.9. The final chapter of this report sets out the committee's findings and recommendations, based on a careful perusal of the evidence gathered in the course of the inquiry.

## APPRECIATION

1.10. The committee extends its appreciation to all those who participated in the inquiry.

## 2. SUMMARY OF EVIDENCE: ACT GOVERNMENT

2.1. The government submitted that:

- the exposure draft of the Environment Protection (Amendment) Bill 1998 sets out the government's preferred way of dealing with any and all contaminated sites, including those associated with petrol stations
- the government supports the "polluter pays" principle by which, 'where site assessment or remediation is required, the owner of the former petrol station should meet the cost'
- 'Decisions on when a site should be assessed... [or] remediated... are complex and site specific. National technical guidelines are being developed which will provide a framework for making these decisions. Under the Contaminated Sites Bill, the person responsible for remediation will be required to engage independent auditors to make recommendations on these matters. In general, a former petrol station site would require assessment if a more sensitive land use, such as housing, is proposed. A decision on remediation...will be made by the Environment Management Authority...
  'The government believes that this approach, using a statutory framework, national guidelines and independent expert auditors, is the most appropriate means for dealing with potentially contaminated sites, including former petrol stations'
- 'The government believes that the Environment Management Authority... is the most appropriate person to determine remediation standards... The Commissioner [for the Environment] essentially has an independent review role and so the government does not consider it appropriate for the Commissioner to be involved in the administration of legislation'
- 'The substance of [the current] standards is that secondary containment, which is either a form of plastic lining under the tank or a double-walled tank..., has been a requirement in the ACT... for the last ten years or so... Once the legislation is through and we are looking at producing an environment protection policy in this

area, it will be necessary to revisit this area of standards and how they are promulgated'[2]

- 'the Environment Protection Act does require licensing in certain cases, but it really only covers the really large storage depots... where the amount stored is greater than 500 cubic metres'[3]
- the government does not consider that future leases should provide for restoration as a term of the lease, because 'environment protection legislation' can deal with the problem 'more comprehensively': 'the insertion of a site remediation provision in leases would not capture all existing sites. It may also compromise future developments in environmental standards...'
- the government does not consider that environment restoration plans should be submitted to the Commissioner for the Environment, because this is 'a mainstream function' of the Environment Management Authority under the proposed legislation
- the government supports the provision of a financial penalty 'for failure to comply with a remediation order'
- the government supports the application of environmental measures to all existing and new petrol station sites.

[2] *Transcript* of the public hearing held on 16/10/98 (Mr Burnett, Director - Environment Protection, Department of Urban Services) p41
[3] *Transcript* (Mr Burnett) p42

## 3. SUMMARY OF EVIDENCE: MOTOR TRADES ASSOCIATION ACT LIMITED

3.1. The Association stated that:

- it represents 29 service station members
- it is concerned that 'backyard operators' do not comply with the appropriate environment preventive and remedial measures, a situation 'which successive ACT governments have tolerated'. Further, 'sanctions to deal with offenders are inadequate and ineffective'[4]
- it is concerned that no service station site can accurately measure its fuel loss, because the volume of fuel delivered to service stations is greater that the volume of fuel in the service station underground tanks: 'The problem arises because tanker loads of fuel are not "temperature-corrected" on delivery to service station sites as they are by law in the oil company refinery terminals... The fuel loaded for dispatch to Canberra is at a much higher temperature (and therefore a greater volume) than when it has acclimatised in the underground tanks of the ACT service station'. This problem of "shrinkage" is an extremely important issue for the Motor Trades Association
- it considers that 'the responsibility for environmental remediation' belongs with the lessee which - in all but a few cases in the ACT - is the oil company and not the operator of the service station
- other issues of concern include:
  - 'for new sites, an environmental impact study should establish the condition of the site prior to construction and should then be used as the standard for subsequent environmental remediation'
  - 'in the case of existing sites, a general benchmark needs to be established so that incoming lessees of Crown land may have a guide to their obligations'
  - 'all environmental restoration plans should include an appropriate timetable for works to be completed'

- 'punitive fines for not-compliance by the prescribed time should be hefty enough to constrain lessees to maintain standards at all times'
- 'monitoring of environmental standards at service station sites by lessees should be mandatory and there should be some provision for the requirement of actual operators to report to lessees and the government on significant "spills".'

[4] Submission, and *Transcript* of the public hearing on 16/10/98 (Mr Ellis of the Motor Trades Association of the ACT) p30

## 4. SUMMARY OF EVIDENCE: BP

4.1. BP Australia Limited stated that:

- it 'is the lessee for nine service stations in the ACT'
- 'As a general policy, BP believes that all service station owners (or lessees in the ACT) or operators have the responsibility for environmental maintenance and clean up of sites that have been contaminated by their actions, and that this principle should be enforced, that is, the "polluter pays" principle should apply. There should be no exceptions to this rule. It should be a condition of entry into the business'
- 'BP's approach is to work with site owners, regulators, et cetera to remediate to levels that are consistent with current land usage and zoning... It should be noted that it may not be a worthwhile use of funds to remediate to greenfield/pristine conditions'
- 'we believe the ACT Government [Environment Management Authority] should work with the oil industry to specify requirements to limit and prevent contamination occurring in the first instance'
- in relation to the inquiry's specific terms of reference, BP states:
  - 'BP supports the proposal that requirements be imposed on lessees of petrol station sites to remediate the site, provided that attempts to pass the site to a new lessee for the purpose of continuing petrol station business have been unsuccessful';
  - 'we support the proposal that restoration meet the standards imposed by the Commissioner for the Environment';
  - 'we support the requirement that future leases include provision for restoration as a term of the lease';
  - 'While BP fully supports the need for restoration, BP does not support the need for restoration plans. The key point is that restoration must be done. Given that this may not for 20 or 30 years (and actually be required of a subsequent owner), preparation of a plan would be a waste of resources for both lessee and the administration. Furthermore, technology advances will mean that plans created

today will quickly become dated and irrelevant to future restoration operations';

- 'The financial penalty should be defined by the remediation and administration costs. This should ensure that governments are not forced to pay for insolvent operators. It may be appropriate to consider a penalty premium to facilitate remediation by the lessee/operator';
- 'all measures should apply to existing and new petrol stations'.

## 5. SUMMARY OF EVIDENCE: WOOLWORTHS

5.1. Australian Independent Retailers Pty Ltd (Woolworths +*Plus Petrol*) submitted that:

- it has been trading for two years with 65 sites nationally, three of which are in the ACT (as of 2 October 1998)
- specifically requests that the ACT government stipulate that, where the owners of a petrol site attempt to pass it onto a new lessee, this include the 'independent' operators such as Woolworths, Gull and Burmah[5]
- considers that the premium to be paid to the government by the new owner of a former petrol station site should not be 100%, because: 'there is a great deal of rationalisation going on in the industry at the moment, with the majors clearly stating that they wish to reduce their sites by one-third nationally... A penalty of 100%, therefore, seems... to be a little harsh on an existing lessee who has an unviable business and yet an incoming lessee will only offer, obviously, half the money that the site is really worth so that he, in fact, does not pay double. These people generally are business people. It seems... that you are forcing a person wanting to get out of a bad business to take half for his site. We believe that it is in the interests of the government and the people of the ACT to allow these sites to close and encourage new development...'[6]
- a further aspect of the industry's rationalisation involves the way cars are serviced, for example, car warranties of three to five years tie consumers to specific service providers; also, 'the move to more technically advanced [cars]... probably makes it difficult for the local garage mechanic to service those vehicles... however, many service station sites currently have purpose-use clauses that require lube bays to be constructed on that site or maintained on that site... It is quite possible that in the next few weeks we will be submitting ourselves on the basis of taking over a site and wanting to remove those lube bays...'[7]

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5 Submission, and also *Transcript* (Mr Ludlow, national property manager for Woolworths Plus Petrol) p22
6 *Transcript* p22
7 *Transcript* p23

- another aspect of the rationalisation is in the way petrol outlets are constructed, for example, Woolworths ‘use a universal petro-pipe, which is a plastic pipe with a dupont lining [making a double pipe]. It is a nylon lining; it is totally impervious. We have totally welded joints, not screwed joints like old gal-pipe. [In the ACT] you require us to have secondary containment... [With these hoses] we do not think that is necessary. It is a bit of an overkill... [The] technology has been in existence in Europe for many years... We use fibreglass storage tanks as well. We put monitoring wells around the tank farms and monitor them every three months. We dip those wells; so we are doing our own site assessment every three months.... Under the bowsers, we have containment sumps which will catch any spill. It is possible to design a station that is totally environmentally friendly’[8]
- further, ‘mostly we go into leased sites - we do not buy the lot - and most of our landlords require us to remediate back to a car park, as [the ACT] is seeking to do here. So, it is not new to us; in fact, it is quite common’[9]
- specifically requests that ‘the ACT definition of independent retailers be modified to that included in the Federal Government Sites Act’, which involves a refining capacity[10]. At present, the ACT’s definition ‘of an independent fuel retailer... is one who has no more than three sites’;[11] thus, Woolworths is about to be considered a ‘major’ though it has only three sites.

[8] *Transcript* p24
[9] *Transcript* p25
[10] *Transcript* p24
[11] *Transcript* p23

## 6. SUMMARY OF EVIDENCE: MEMBER OF THE PUBLIC

6.1. Miss FitzGerald (a member of the public) stated that:

- she objects to a neglected, disused petrol service site on the corner of Strangways Street and Waddell Place, Curtin
- she is not opposed to commercial use of the site provided new work does not damage nearby buildings and appropriate insurance provisions are in place to cover this possibility.

## 7. CONCLUSION

7.1. The committee is aware that the major portion of the policy and legislative framework for dealing with petrol sites is contained in the government's Environment Protection (Amendment) Bill 1998 and in this committee's report on the exposure draft of that Bill.

7.2. The committee endorsed the purpose and nature of the exposure draft of the Environment Protection (Amendment) Bill. It went on to make a number of specific recommendations, some of which bear on the present inquiry, including:

- that the government, being ultimately responsible for ensuring a safe and healthy environment, pay for the costs associated with remediation of contaminated land in those cases where the polluter cannot be found (or it is impracticable for the Environment Management Authority to make an order against the person responsible) - accepting always that the government should do all that it possibly can to seek recovery of costs from the polluter

- that all information relating to contaminated sites be made available at no cost to the Commissioner for the Environment for the purpose of that officer compiling *State of the Environment Reports* or such other reports as are required by legislation

- that the definition of "contaminated" or "contamination" be amended along the lines of 'a significant risk to human health' and 'a risk of material environmental harm or serious environmental harm'

- that the definition of "land" include 'water on or below the surface of the land and the bed of such water'

- that the government investigate how to incorporate the proposed Register of Contaminated Lands into an existing search process such as the Lease Conveyancing Enquiry, and how to ensure that an order to remediate the land appears on the Certificate of Title rather than on a separate register

- that the proposed requirement to make it obligatory for the environmental auditor of <u>any</u> contaminated site to notify the Authority be amended to exclude voluntarily commissioned assessments

- that the Bill be amended to give the Authority discretion to waive the requirement for an environmental audit for special cases such as the validation of the removal of underground fuel tanks if such work is (a) carried out voluntarily (ie not by direction of the Authority) and (b) in the opinion of the Authority, the validation report prepared by an experienced environmental consultant indicates that the site has been satisfactorily remediated
- that the legislation give the Authority the discretion to exclude from public access, reports relating to assessment of land and orders relating to the remediation of land
- that the final Bill take into account the desirability of reducing the number of different people required to be involved in the assessment, audits and remediation
- that the final Bill clarify in what instances an auditor is required to notify the Authority about his or her activity
- that the list of auditors maintained by the Authority be available for public inspection
- that section 125 of the Principal Act should provide for an environmental protection order by the Authority, in relation to land that is not contaminated but which might cause harm if used for a particular purpose, to be incorporated onto the Register
- that the final Bill provide for an individual to volunteer to assess or remediate land on the basis that the Authority does not issue an order
- that the final Bill clarify the extent of the duty to notify the Authority as soon as practicable about land that is likely to be contaminated
- that the government provide information about the standards and procedures to be used by the Authority in relation to an assessment or remediation
- that the Authority provide some guidance to lessees or occupiers of land about what should be contained in their notification, to the Authority, of contamination or possible contamination
- that the government provide further information on the legal position in relation to the liability of trustees

- that the Bill specify what is a "portion" in relation to recovering some of the costs of carrying out the requirements of an order.

7.3. Against this background, the committee makes the following comments on the six specific matters contained in the current inquiry's terms of reference.

7.4. **In relation to the first terms of reference**, the committee:

**-** agrees that the owners of petrol station site leases should attempt, if they are vacating their business, to sell the site to another fuel retailer; and recommends:

- ***that the government ensure disused service station sites are offered not just to the petroleum industry majors but to independent fuel retailers as well [recommendation 1].***

7.5. Further, the committee recommends:

- ***that disused service station sites should be restored to appropriate standards to be set by the Environment Management Authority, utilising the three-pronged approach set out in the exposure draft of the Environment Protection (Amendment) Bill 1998 - involving a statutory framework, national guidelines (now being developed) and independent expert auditors [recommendation 2].***

7.6. The committee considers that these standards should take account of both the existing high standards in the ACT and the need to keep up to date with changing technology, as shown (for example) by the use of double-pipe hoses and fibreglass tanks. It is possible that the detail contained in existing prescriptive controls may act to the detriment of encouraging the use of new, and safer, technology; if so, the committee expects the Environment Management Authority to recommend that the legislation or regulations be promptly amended.

7.7. The committee recommends:

- ***that the government review the existing standards in relation to service station infrastructure to take account of changing trends in service delivery and in technology, and ensure that up-to-date and "best practice" standards apply [recommendation 3].***

7.8. **In relation to the second terms of reference**, the committee accepts the view that the role of the Commissioner for the Environment is not to set the restoration standards but, rather, to report (in his *State of the Environment Report* and such other reports as he may choose to bring down under the legislation) on the overall environmental health of the ACT. The committee expects that, as part of his reporting activity, he would promptly alert the government and the public to any deficiencies in the way service station sites were being remediated.

7.9. **In relation to the third terms of reference**, the committee notes the government's advice that environmental protection legislation can deal with restoration problems 'more comprehensively' than a requirement in a lease can do (see section on the government's evidence). In light of the detailed provisions in the Environment Amendment Bill, the committee considers it is reasonable to see how legislation works in practise before going down the path of inserting requirements in specific leases.

7.10. **In relation to the fourth terms of reference**, the committee considers that the Environment Management Authority - rather than the Commissioner for the Environment - should approve restoration plans.

7.11. **In relation to the fifth terms of reference**, the committee agrees that a financial penalty should apply to defaulters, meaning people or organisations that do no comply with restoration orders.

7.12. **In relation to the sixth terms of reference**, the committee considers that environmental measures should apply to all existing and new petrol station sites.

7.13. The committee also makes some additional recommendations.

7.14. The Motor Trades Association suggested that the legislation should require operators to report significant "spills" to both the lessees and the government. The committee agrees with this suggestion.

7.15. The committee recommends:

- ***that the legislation provide for a franchisee, such as a service station operation franchised to an oil industry major, to notify both the Crown lessee and the government in the event of contamination on his or her site [recommendation 4].***

7.16. The Motor Trades Association also expressed concern about the application of environmental standards to small 'backyard operators'. The committee notes that the government's Environment Amendment Bill is intended to apply just to large fuel storage depots.

7.17. In its report on the Environment Protection (Amendment) Bill, the committee expressed concern:

> that the existing and proposed environmental controls may be avoided by small backyard operators (such as motor workshops). The committee strongly considers that the same environmental controls and standards should apply across the board. It appears that there may be a need for greater monitoring of these small operators.[12]

7.18. The committee reiterates its concern.

7.19. The committee recommends:

- ***that the government advise the parliament about the manner in which appropriate environmental controls may be exercised over small operators (such as backyard workshops) [recommendation 5].***

7.20. A representative of Woolworths Plus Petrol told the committee about his firm's concerns about being treated as an oil industry "major" simply on the basis of holding three or more sites in the ACT. He suggested that a more appropriate definition of "major" is that used by the Commonwealth Government, which relates it to oil refining capability. The committee agrees with this view.

7.21. The committee recommends:

- ***that the government amend the definition of an oil industry "major" in line with the definition used by the Commonwealth Government [recommendation 6].***

7.22. Miss FitzGerald expressed concern about the state of a disused service station site near her residence and local shops. The committee also is concerned about the number of disused sites throughout Canberra, some of which have lain idle for over a year.

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[12] Report No.10, p16

7.23. The government's policy of sale and future use of disused service station sites is set out in the *Policy on Use of Service Station Sites* (dated 17 July 1998). The Policy states:

> (1) The sale of the site must be advertised...
> (2) ... Where there is a significant difference between the prices sought and offered, the government will seek an independent valuation through the Australian Property Institute... ['The pre-sale valuation of the site will include an estimation of the remediation costs for the site.'] This will be made available to the parties and, in the event there are still disagreements, the Australian Valuation Office will be asked to determine a value.
> (3) If the lessee chooses not to sell the site (when a satisfactory offer has been received) and not continue to operate the service station, compliance action... will be commenced. Where necessary, the Territory will invoke lease conditions which state that if a site is unused for 12 months, consideration will be given to terminating the lease and it will revert to the Territory.
> (4) Lessees will be expected to finalise use of the site as quickly as possible, to address environmental concerns relating to the abandonment of underground tanks, and site remediation.
> (5) In the event that all offers are significantly below the determined market value or no offer is received... the application to vary the lease will proceed...
> (6) Where a service station site is on-sold as a service station the purchaser will be required to operate the site as a service station for five years before a change to the use would be considered. Variations to this would only be considered in exceptional circumstances...
> [In relation to the change of use charge] the government has determined that a 100 per cent Change of Use Charge will apply on **all** disused service station sites, including those at local centres...
> [Finally,] this policy will be reviewed after 12 months...

7.24. The Woolworths representative pointed out the difficulty for vendors in the 100 per cent change of use charge. The committee would appreciate advice from the government about the experience to date with this charge and, in particular, whether it is acting as a deterrent to the re-development of service station sites (especially adjacent to local shopping centres).

7.25. It appears to the committee that the government should also provide advice about the overall operation of the new petrol sites policy. The committee recognises that such advice would be of an interim nature but considers that it would be useful anyway - given the lack of any apparent action on a considerable number of disused service station sites and consequent public concern.

7.26. The committee recommends:

- ***that the government advise the Assembly within the next two months on the experience to date with the*** **Policy on Use of Service Station Sites** ***(dated 17 July 1998) and in particular, on whether it appears that the level of change of use charge is acting as a deterrent to the re-development of service station sites (especially adjacent to local shopping centres) [recommendation 7].***

Harold Hird MLA
Chair
12 February 1999