

Planning and Development (Remission of Lease Variation Charges—Economic Stimulus and Sustainability) Determination 2016 (No 1)

Disallowable instrument DI2016–28

made under the

Planning and Development Act 2007, s 278 (When commissioner must remit lease variation charge—sustainability) and s 278E (When commissioner must remit lease variation charges—other)

1 Name of instrument

This instrument is the *Planning and Development (Remission of Lease Variation Charges—Economic Stimulus and Sustainability) Determination 2016 (No 1)*.

2 Commencement

This instrument commences on 7 March 2016.

3 Application

This instrument applies to a lease variation charge for a s 277 chargeable variation of a nominal rent lease if—

- (a) a development application for the variation is approved on or after 7 March 2016; and
- (b) the approval also relates to the development of a building on the land under the lease.

4 Determined circumstances—economic stimulus—Act, s 278E (1)

I, the Minister for Planning and Land Management, determine the following circumstances:

- (a) a development application for a s 277 chargeable variation of a nominal rent lease is approved; and
- (b) the approval also relates to the development of a building on the land under the lease.

5 Remission of lease variation charge—economic stimulus—Act, s 278E (2)

- (1) This section applies to a chargeable variation of a nominal rent lease to which the circumstances mentioned in section 4 apply.
- (2) I, the Treasurer, determine the amount of the lease variation charge for the chargeable variation to be remitted is worked out as follows:

$$(V1 - V2) \times 25\%$$

- (3) In this section:
V1—see the Act, section 277 (2).
V2—see the Act, section 277 (2).

Determined energy efficiency requirements—Act, s 278 (2)

- 6 I, the Minister for Planning and Land Management, determine the following requirements:
 - (a) a Green Star rating of 5 or 6;
 - (b) a NatHERS rating of—
 - (i) 6.5 or 7; or
 - (ii) 7.5 or more.

Note Green Star ratings may be accessed at www.gbca.org.au. NatHERS ratings may be accessed at www.nathers.gov.au.

7 Additional remission of lease variation charge for certain energy efficient developments—Act, s 278 (3) (a)

- (1) This section applies to a s 277 chargeable variation of a nominal rent lease.
- (2) I, the Treasurer, determine the following amounts of the lease variation charge for the chargeable variation to be remitted:
 - (a) if the relevant development application nominates an average Green Star rating of 5 for the building—an amount equal to 10% of the charge;
 - (b) if the relevant development application nominates an average Green Star rating of 6 for the building—an amount equal to 25% of the charge;
 - (c) if the relevant development application nominates an average NatHERS rating of 6.5 or 7 for the building—an amount equal to 10% of the charge;
 - (d) if the relevant development application nominates an average NatHERS rating of 7.5 or more for the building—an amount equal to 25% of the charge.
- (3) An amount remitted under subsection (1) is in addition to the amount to be remitted under section 5 (2).

8 Determined circumstances for adaptable housing—Act, s 278E (2)

I, the Minister for Planning and Land Management, determine the following circumstances:

- (a) a development application for a s 277 chargeable variation of a nominal rent lease is approved;
- (b) the approval also relates to the development of a building on the land under the lease;
- (c) the building, or parts of the building, will comply with AS 4299-1995 Adaptable housing.

Note The standard may be purchased at www.standards.org.au.

9 Additional remission of lease variation charge for adaptable housing—Act, s 278E (2)

- (1) This section applies to a chargeable variation of a nominal rent lease to which the circumstances mentioned in section 8 apply.
- (2) I, the Treasurer, determine the following amounts of the lease variation charge for the chargeable variation to be remitted:
 - (a) if the relevant development application nominates that 50% or more (but not 100%) of the building will comply with AS 4299-1995 Adaptable housing (Class C)—an amount equal to 10% of the charge;
 - (b) if the relevant development application nominates that 100% of the building will comply with AS 4299-1995 Adaptable housing (Class C)—an amount equal to 25% of the charge.
- (3) An amount remitted under subsection (2) is in addition to the amount to be remitted under section 5 (2).

10 Remission of lease variation charge—combination of compliance with energy efficiency or adaptable housing requirements—Act, s 278 (3) (a) and s 278E (2)

- (1) I, the Treasurer, determine that if a development application for a s 277 chargeable variation of a nominal rent lease to which this instrument applies nominates different compliance standards for different buildings or parts of a building, the amount of the lease variation charge for the chargeable variation to be remitted is the total of the amounts worked out under the relevant provision for each differently rated building or part of a building up to an amount equal to 25% of the charge.

Examples

Bruce applies for development approval to vary a nominal rent lease to allow a mixed-use development of the land under the lease. In the development application, Bruce nominates a Green star rating of 5 for the building and that 50% of the building will comply with AS 4299-1995 Adaptable housing (Class C). The total amount of the lease variation charge to be remitted under this section is 20% of the charge (see s 7 (2) (a) and s 9 (2) (a)). This amount is in addition to the amount to be remitted under s 5 (2) (see s (2)).

Lois applies for development approval to vary a nominal rent lease to allow a multi-unit development to be built on the land under the lease. In the development application, Lois

nominates a NatHERS rating of 7.5 for the building and that 100% of the building will comply with AS 4299-1995 Adaptable housing (Class C). Although the amounts worked out under s 7 (2) (d) and s 9 (2) (b) add up to 50%, the total amount of the lease variation charge to be remitted under this section is only 25% of the charge. This amount is in addition to the amount to be remitted under s 5 (2) (see s (2)).

Note An example is part of the instrument, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) An amount remitted under subsection (1) is in addition to the amount to be remitted under section 5 (2).

(3) In this section:

compliance standard, for a building or part of a building, means—

- (a) an energy efficiency rating mentioned in section 6; or
- (b) AS 4299-1995 Adaptable housing (Class C).

relevant provision, for a compliance standard, means—

- (a) for an energy efficiency rating mentioned in section 6—section 7 (2) (a), (b) (c) or (d); or
- (b) for AS 4299-1995 Adaptable housing (Class C)—section 9 (2) (a) or (b).

11 When amounts must be remitted—Act, s 278 (3) (b)

I, the Treasurer, determine that an amount to be remitted under section 7 or section 10 must be remitted at the time the notice of assessment of the chargeable lease variation is given to the lessee under the Act, section 276D.

Note An amount to be remitted under s 5 and s 9 may be remitted at the same time.

12 Disapplication of Legislation Act, s 47 (5)

The Legislation Act, section 47 (5) does not apply to the following under this instrument:

- (a) AS 4299-1995 Adaptable housing;
- (b) a Green Star rating or related document;
- (c) a NatHERS rating or related document.

Note 1 The text of another instrument applied under this instrument is taken to be applied as in force when this instrument was made (see Legislation Act, s 47 (4) (b)).

Note 2 AS 4299-1995 Adaptable housing may be purchased at www.standards.org.au. Green Star ratings and related documents may be accessed at www.gbca.org.au. NatHERS ratings and related documents may be accessed at www.nathers.gov.au.

13 Definitions

In this instrument:

Green Star rating means a rating under the national environmental rating system for buildings called the ‘Green Star’ rating system developed by the Green Building Council of Australia.

NatHERS rating means a rating under the Nationwide House Energy Rating Scheme (NatHERS) administered through the Ministerial Council of Energy.

14 Expiry

This instrument expires on 6 March 2018.

Andrew Barr
Treasurer
2 March 2016

Mick Gentleman
Minister for Planning and Land Management
4 March 2016