

Australian Capital Territory

Planning and Development (Lease Variation Charges) Amendment Determination 2015 (No 1)

Disallowable instrument DI2015–205

made under the

Planning and Development Act 2007, s 276C (2) (a) (Lease variation charges—amount payable) and s 276E (1) (Lease variation charges—s 276E chargeable variations)

EXPLANATORY STATEMENT

Purpose

The purpose of this instrument is to amend the schedules of codified Lease Variation Charges (LVCs) in the *Planning and Development (Lease Variation Charges) Determination 2011 (No 1)* DI 2011-198 (the LVC Determination).

Summary

The LVC Determination is made under section 276E (1) of the *Planning and Development Act 2007* (the Act), which provides that the Treasurer may determine the LVCs for a ‘s 276E chargeable variation’ by disallowable instrument.

A s 276E chargeable variation is defined in section 276A (1) of the Act as a chargeable variation that is one or more of the matters mentioned in paragraphs (a) to (h) of that provision.

In considering whether to determine the relevant LVCs, section 276E (2) (a) of the Act requires the Treasurer to obtain and have regard to advice from an accredited valuer before the start of each financial year. This is in order to make a fresh determination with respect to the LVC fees and schedules. It must also state the reasons for determining the LVC and how the charge was determined, under section 276E (4).

LVC Determination

The LVC Determination commenced on 15 July 2011. Its purpose is to apply a set of codes and schedules so that the relevant LVC to be worked out by reference to the instrument. This is in order to improve efficiency and transparency in the planning system, minimise unnecessary delays in development approvals and minimise ambiguity as to what the LVC is for a lease variation covered by the determination.

Section 5 (1) of the LVC Determination states that schedule 3 of the determination applies if:

- the lease is in a suburb and zone mentioned in schedule 3, columns 1 and 2; and
- a development approval approves a chargeable variation to a lease to increase the maximum gross floor area (GFA) of any building or structure permitted for non-residential use on the land under the lease.

Section 5 (2) of the LVC Determination states that the applicable LVC is determined as the product of the increased GFA and the amount per square metre listed in schedule 3, column 4.

Schedule 3 of the LVC Determination then sets out the charges applicable to commercial and industrial lease variations, by zone, suburb and any additional criteria.

Section 6 of the LVC Determination states that the statement of reasons for determining the charges covered by the determination are set out in schedule 4. The statement of reasons explains the reasons for determining the LVC and how the charges were determined.

Instrument

This instrument amends the schedules of industrial and commercial LVC fees in the LVC Determination, based from the advice of accredited valuers from the ACT Valuation Office (ACTVO).

Valuers from the ACTVO have provided an assessment of the average market value per square metre of all commercial and industrial zones in Canberra.

Section 4 of this instrument amends schedule 3 of the LVC Determination, substituting a new schedule of commercial and industrial LVCs.

Section 5 amends schedule 4 of the LVC Determination to substitute a new statement of reasons as required by section 276E (4) (a) of the Act.

The main changes to the statement of reasons relate to the process for reviewing schedule 3. The statement of reasons also clarifies that schedule 2 of the LVC Determination (lease variations to increase the maximum number of dwellings permitted under the lease) is current for the purposes of the LVC.

The statement of reasons also explains that the new schedule 3 figures were calculated using a three year rolling average of land in a particular land use zone for each suburb as at 31 March 2013, 31 March 2014 and 31 March 2015. The final averages reflect market values as at 31 March 2015.

Authorised by the Treasurer
Andrew Barr MLA