

Planning and Development (Remission of Lease Variation Charges—Affordable Rental Development Concession) Determination 2019

Disallowable instrument DI2019–229

made under the

Planning and Development Act 2007, s 278 (Remission of lease variation charges)

EXPLANATORY STATEMENT

Background

The Government undertook a review of the Lease Variation Charge (LVC) in 2018-19, its aims and alignment with other Government policies and objectives. Based on the findings of that review Government announced that it would, amongst other things, introduce a 25 per cent LVC remission for registered community providers to encourage the development of more affordable rental housing for low to moderate income households.

The remission is taken to have commenced on 1 October 2019 and will be available for an initial period expiring on 30 June 2022.

The LVC is charged when a lessee seeks to vary their lease and the variation is approved. There are three main categories of lease variations for the purposes of the LVC. These include variations of:

1. leases for which no LVC is payable. Such leases are identified in the section 276 definition of “chargeable variation”. For example, variations of two adjoining leases whose only effect is to alter the boundary between them;
2. leases where the variation is a section 276E chargeable variation; and
3. leases where the variation is a section 277 chargeable variation.

A “section 276E chargeable variation” is defined in the Act as meaning a chargeable variation prescribed by regulation. These are the chargeable lease variations that are codified under DI2017-208 Planning and Development (Lease Variation Charges) Determination 2017 (No 2) (LVC Determination).

A “section 277 chargeable variation” is a lease variation other than a section 276E chargeable variation, or a section 276E chargeable variation for which no LVC is set in the LVC Determination. The LVC for these variations is determined under section 277 of the Act.

Section 278 of the *Planning and Development Act 2007* (Act) permits the LVC to be remitted (reduced) in whole or in part by a disallowable determination.

Only the amount remaining after the remission needs to be paid before the lease variation can take effect (s276B (1) of the Act). For example, if the LVC was \$100 and the amount to be remitted was 25% then only \$75 needs to be paid. When the amount is paid (or deferred) the lease variation, approved through the development application process, can be executed and registered on the Register of Land Titles.

Overview

This instrument is made under s 278 of the Act. Section 278 provides that a determination can do two things: firstly, it can determine the circumstances in which an amount of LVC for a chargeable variation of a lease must be remitted.

In this instance, the circumstances are that:

- the land (the subject of the LVC) must be leased by a registered community housing provider;
- the development application for the chargeable variation (be it a section 276E or section 277 chargeable variation) is approved by the grant of a development approval by the Planning and Land Authority;
- the development approval and varied lease will include a condition that the lessee develop and use the land, or part of the land, for affordable rental for a minimum 7-year period from the date of the grant of a certificate of occupancy under the *Building Act 2004*.

A “registered community housing provider” is defined in this instrument as meaning a provider that is registered under the Community Housing Providers National Law 2013 (ACT).

In this instrument “affordable rental” means housing that is rented at a rate that is less than 75 per cent of the current market rent by an eligible household comprising of a person or persons whose combined gross income is (at the time of first rental) less than or equal to certain income limits. These income limits are specified in the instrument as being the greater:

- \$100,000 per annum (based on *ACT Housing Strategy*, October 2018), or
- the annual income limits for a household tabled (based on Commonwealth National Rental Affordability Scheme (NRAS) thresholds).

Secondly, a determination under section 278 of the Act can provide for an amount to be remitted for an LVC for the determined circumstances, expressed as a percentage of the LVC.

The determination is made by two Ministers—the Minister for Planning and Land Management determines the circumstances (section 278 (1)) and the Treasurer determines the amount to be remitted (section 278 (2)).

This instrument provides for a 25 per cent remission on LVC for a section 276E or a section 277 chargeable variation. The overall effect of the determination is to remit (or reduce) the LVC for certain lease variations where the purpose of the variation is to develop and use the land for affordable rental housing.

The Commissioner for ACT Revenue must remit the amount of the LVC that is required to be remitted by this determination (section 278 (4)).

Regulatory impact statement

A regulatory impact statement is not required under Part 5.2 of the *Legislation Act 2001* as this instrument does not impose appreciable costs on the community, or a part of the community. This instrument introduces a process for administering a development concession to promote affordable rental housing.

Retrospectivity

This instrument has retrospective commencement from 1 October 2019.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that is it does not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person. This instrument provides a concession on the LVC payable for land that is developed and used for affordable rental housing. It promotes a purpose which will be of overall benefit to the ACT community.

Specific provisions

Section 1 Name of Instrument

This instrument is known as the Planning and Development (Remission of Lease Variation Charges—Affordable Rental Development Concession) Determination 2019.

The section also references terms used in the instrument and provides that the terms have the same meaning as they have in the Act.

Section 2 Commencement

This section provides that the instrument is taken to have commenced on 1 October 2019.

Section 3 Definitions

Section 3 (1) sets out the meaning of various terms used in the instrument such as 'affordable rental' and 'registered community housing provider'.

Section 3 (2) outlines the affordable rental income limits being the greater of \$100,000 per annum or the annual income limits for a household described in Table 1.

Section 4 Determination of the circumstances for affordable rental development concession—s 278 (1)

This instrument applies if:

- (a) the land, the subject of the LVC is leased to a registered community housing provider;
- (b) a development application for the chargeable variation is approved by the grant of a development approval on or after 1 October 2019; and

- (c) the development approval and the lease that is varied includes a condition that the lessee develop and use the land, or part of the land, for affordable rental for a minimum of 7 years from the date of the grant of certificate of occupancy (for the affordable rental housing).

Section 5 Determination of the concession amount—s 278 (2)

The remission amount and how it is calculated is set out in sub-sections (1) and (2).

Sub-Section (1) provides that the amount of the remission is 25 per cent of the lease variation charge for the land, or that part of the land, to be developed and used for affordable rental.

Sub-section (2) provides the supporting formulae for the calculation of the LVC remission.

Section 6 Expiry

This instrument expires on 30 June 2022.

Authorised by the Acting Minister of Planning and Land Management
Chris Steel MLA

Authorised by the Acting Treasurer
Yvette Berry MLA