

Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2021

Disallowable instrument DI2021–12

made under the

Planning and Development Act 2007, s 279AA (1) (b) (Application to defer payment of lease variation charges) and s 279AC (2) (Conditions of deferral arrangement)

EXPLANATORY STATEMENT

Background

The deferred payment scheme for the lease variation charge (LVC) came into effect from 17 May 2018.

Ordinarily, LVC is payable before a nominal rent lease is varied. Under the scheme however, a leaseholder may opt to defer the payment of LVC provided they apply to defer, meet certain criteria and agree to the conditions of a deferral arrangement.

Section 279AA (1) of the *Planning and Development Act 2007* (Planning and Development Act), provides that an applicant for a development application may apply to the Commissioner for ACT Revenue to defer the payment of their LVC if:

- (a) the applicant is given a notice of assessment of LVC under section 276D (1) of the Planning and Development Act;
- (b) the LVC to be deferred is at least the amount determined by the Treasurer; and
- (c) the applicant satisfies any other criteria determined by the Treasurer.

Under section 279AB, the Commissioner must approve an application if satisfied that the applicant meets the criteria in section 279AA (1). The Commissioner's approval is subject to the applicant entering into an arrangement for the deferral of the LVC (the deferral arrangement), the conditions of which may be determined by the Commissioner (under section 52 (2) of the *Taxation Administration Act 1999* (TAA)), and by the Treasurer (under section 279AC (2) of the Planning and Development Act).

Section 279AC (4) states that any arrangement about the deferred payment of LVC must be consistent with the conditions set out in the legislation and as determined by the Treasurer.

This instrument replaces the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2020*, DI2020-225 and outlines the Treasurer's determination for an additional threshold for the amount of LVC to be deferred to account for the operation of the following determinations:

- *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2020*; and
- *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2021* (collectively, the LVC Remission).

Details of the instrument

Section 1 Name of instrument

This section states that the name of this instrument is the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2021*.

Section 2 Commencement and retrospectivity

This instrument is taken to have commenced on 24 December 2020 to align with the commencement of *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2021*.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that it does not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person. The retrospective commencement of this instrument supports a remission on the LVC payable for parties and supports economic recovery from the impacts of COVID-19. It is non-prejudicial and promotes a purpose which will be of overall benefit to the ACT community.

Section 3 Determination of amount to be deferred—s 279AA (1) (b)

This section provides that to be eligible to participate in the scheme, the amount of the LVC to be deferred in respect of a development application must be

- for an amount of LVC subject to the LVC Remission—a nominal amount of at least \$1; and
- for all other circumstances—at least \$50,000.

The new threshold will permit smaller developments to access the LVC Remission and assist with COVID-19 economic recovery measures.

This amount is the amount described in a notice of assessment of LVC given to an applicant under section 276D (1) of the *Planning and Development Act*, less any remission under section 278, plus any increase under section 279.

Section 4 Determination of other conditions—s 279AC (2)

Section 4 determines that the interest rate chargeable in respect of the amount payable under the deferral arrangement is the sum of the market rate plus a margin of 1.8 percentage points per annum (for lessees other than gaming machine club lessees). The market rate is adjusted in January and July each year in accordance with Table 26 of the TAA.

For gaming machine clubs wanting to opt in to the LVC deferred payment scheme, the interest rate chargeable in respect of the amount payable under a deferral arrangement is the market rate only. To qualify, gaming machine clubs must hold a class C licence under the *Gaming Machine Act 2004* and must be able to demonstrate to the satisfaction of the Treasurer that a public benefit will be derived from the development and/or use of the land that is subject to the lease variation charge. The Treasurer will have regard to the underlying objectives of the *Pathway to 4000 Gaming Machine Authorisations by 2020*, August 2018 in considering public benefit.

If at any time during the period of deferral, the gaming machine club ceases to develop the land and/or use it to derive a public benefit, any unpaid LVC and interest will become due and payable immediately (under the operation of the deferral arrangement).

The manner in which interest is calculated and imposed is described in section 4 (3) and section 4 (4). Interest will be calculated from the date of the execution of the lease variation until the amount payable under the arrangement is paid in full. It will accrue in respect of the amount payable on a monthly basis on the first day of that month.

For the purposes of calculating interest, the amount payable under a deferral arrangement includes the costs and expenses reasonably incurred by the Territory in attempting to recover the LVC and any other amounts payable under the deferral arrangement (section 4 (5) defines amount payable).

The amount payable also includes the interest payable under the deferral arrangements. Interest will be charged on a compounding, monthly basis until payment is received in full.

Section 4 (5) also defines the ‘market rate’.

The definition of market rate in this section is based on definition in the TAA, section 26 for ‘monthly 90-day bank bill rate’.

Section 5 Revocation

This instrument revokes *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2020*, DI2020-225.

Authorised by the Treasurer
Andrew Barr MLA