

Planning (Reduction of Lease Variation Charges) Determination 2023

Disallowable instrument DI2023–276

made under the

Planning Act 2023, s 338 (Reduction of lease variation charges)

EXPLANATORY STATEMENT

The lease variation charge (LVC) is charged when the lessee seeks to vary their lease and this development is approved. A variation of a lease is a “development” for the purposes of the *Planning Act 2023* (the Act), section 14 (1) (f) meaning a development application (DA) for development approval is required unless exempt from requiring approval under section 145 of the Act.

The LVC provisions under the *Planning Act 2023* (the Act) replicate those from the repealed *Planning and Development Act 2007* (Repealed Act).

Section 338 of the Act provides that the Minister for Planning and Land Management may determine, by way of disallowable instrument, circumstances in which an amount of the charge must be reduced. If the Minister makes a determination, the Treasurer must determine an amount to be reduced for each LVC to which the determined circumstances apply. The amount of the remission must be expressed as a percentage of the LVC (section 338 (3) of the Act). The Commissioner for ACT Revenue must then reduce the LVC by the amount determined.

Only the amount remaining after the reduction needs to be paid (or deferred) before the lease variation can be executed (see section 328 of the Act).

The *Planning (Reduction of Lease Variation Charges) Determination 2023* (the Determination) continues the prior reduction/remission of LVC under the *Planning and Development (Remission of Lease Variation Charges) Determination 2018 (No 1)*, DI2018-94. The Determination incorporates updates for the commencement of the new Act provisions and minor technical drafting.

Details of the instrument

Section 1 Name of Instrument

Section 1 names the determination as the *Planning (Reduction of Lease Variation Charges) Determination 2023*.

Section 2 Commencement

Section 2 provides that the instrument commences with the new LVC provisions under the Act.

Section 3 Definitions

This section now provides direct references to terms used in the instrument.

Section 4 Reduction of lease variation charges—standard chargeable variation to increase number of dwellings—s 338 (1) and (2)

The section sets out the reduction amounts for certain lease variations to increase the number of dwellings permitted on the land.

It applies only to a standard chargeable variation that is prescribed in the *Planning (General) Regulation 2023* at section 75 (1) (a); section 75 (1) (c) (i); section 75 (1) (f) (i); or section 75 (1) (g) (i) where the lease variation charge has been codified. These sections are lease variation types that increase the number of dwellings permitted by the lease, or a newly consolidated or subdivided lease.

Subsection (2) provides that the percentage amount of the reduction in the codified charge is 25% of the charge. The reduction amount remains unchanged from previous determinations under the Repealed Act.

Section 5 Reduction of lease variation charges—standard chargeable variation to increase maximum gross floor area of any non-residential building or structure—s 338 (1) and (2)

This section sets out the reduction amounts for certain lease variations to increase the maximum gross floor area of any non-residential building or structure. It applies only to a standard chargeable variation that is prescribed in *Planning (General) Regulation 2023* at section 75 (1) (c) (ii); section 75 (1) (f) (ii); or section 75 (1) (g) (ii) where the lease variation charge has been codified.

These sections are lease variation types that increase or have the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease.

Subsection (2) provides that the percentage amount of the reduction in the codified charge is 25% of the charge. The reduction amount remains unchanged from previous determinations under the Repealed Act.

The reduction also applies to items 9 and 10 in Schedule 1 of Planning (Lease Variation Charge) Determination under section 331 of the Act) in respect of variations to increase maximum gross floor area of a club holding a club licence under the *Liquor Act 2010* and to increase the maximum number of self-care units in a retirement complex).

Section 6 Reduction of lease variation charges—all other chargeable variations—s 338 (1) and (2)

Section 6 applies to a chargeable variation other than those mentioned in sections 4 and 5 of the instrument.

The codified schedule of LVC under the Planning (Lease Variation Charge) Determination (under section 331 of the Act) contains three schedules of codified charges. Reductions are not available on all types of codified charges.

Subsection (2) provides that for all other chargeable variations, not mentioned in sections 4 and 5, the percentage amount to be reduced is 0% and therefore the full amount of the charge for an approved lease variation is payable.