

# Planning (Lease Variation Charge Deferred Payment Scheme) Determination 2023

Disallowable instrument DI2023–282

made under the

*Planning Act 2023*, s 343 (1) (b) (Approval to defer payment of lease variation charges) and s 344 (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 343 (1) of the *Planning Act 2023* (the Act), provides that an applicant for a development application may apply to the Commissioner for ACT Revenue (Commissioner) to defer the payment of their LVC if:

- (a) the applicant is given a notice of assessment of LVC under section 329 (1) of the 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 343, the Commissioner must approve an application for deferral if satisfied that the applicant meets the criteria in section 343 (1) of the Act. 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* (TA Act)), and by the Treasurer (under section 344 (2) of the Act).

Section 344 (4) states that any arrangement about the deferred payment of LVC must not be inconsistent with the conditions set out in the legislation and as determined by the Treasurer.

This instrument is updated for the new LVC provisions under the Act. It continues the thresholds from the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2021*, DI2021-12 under the repealed *Planning and Development Act 2007*.

## **Details of the instrument**

### **Section 1    Name of instrument**

This section states that the name of this instrument is the *Planning (Lease Variation Charge Deferred Payment Scheme) Determination 2023*.

### **Section 2    Commencement**

This instrument commences with the new LVC provisions under the Act.

### **Section 3    Definitions**

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

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 3 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.

The definition of ‘market rate’ in this section is the rate worked out in accordance with the TA Act, section 26 (2) (b).

### **Section 4    Determination of amount to be deferred—s 343 (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 select previous LVC remissions—a nominal amount of at least \$1; and
- for all other circumstances—at least \$50,000.

### **Section 5    Determination of other conditions—s 344 (2)**

Section 5 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 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 LVC.

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 5 (3) and section 5 (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.