

Planning and Development (Remission of Lease Variation Charges for Community Purpose – Childcare Services) Determination 2014 (No 1)

Disallowable instrument DI2014-97

made under the

Planning and Development Act 2007, Section 278B (When commissioner must remit lease variation charge – community purpose)

EXPLANATORY STATEMENT

1. TERMS

In this explanatory statement:

“the Act” means the *Planning and Development Act 2007*.

“the regulation” means the *Planning and Development Regulation 2008*.

“determination” means the *Planning and Development (Remission of Lease Variation Charges for Community Purpose – Childcare Services) Determination 2014 (No 1) (DI)*.

“LVC” means lease variation charge.

“nominal rent lease” means as defined in the dictionary to the Act. The dictionary defines this lease as “a lease for nominal rent” i.e. a lease for which no significant rent is payable (as opposed to a rental lease).

“s277 chargeable variation” is defined in s276A(1) of the Act. These are lease variations other than s276E chargeable variations or s276E chargeable variations and LVC has not been set in the LVC Determination (the LVC code) made under s276E. The LVC for these variations is determined under s277 of the Act.

2. BACKGROUND

A Lease Variation Charge (LVC) is charged when the lessee seeks to vary their lease and this is approved. A variation of a lease is “development” for the purposes of the Act (s7 (1) (f)) meaning a development application (DA) for development

approval is required unless exempt from requiring development approval under s133 of the Act (and s20 of the Regulation).

Sections 278 to 278F of the Act permit the required LVC to be remitted (or reduced) in whole or in part by a disallowable determination (DI). Only the amount remaining after the remission needs to be paid before the lease variation can take effect and be registered (see s276B (1) of the Act). For example, if the LVC was \$1,000 and the amount to be remitted was 80%, only \$200 needs to be paid and the lease variation can be registered on the Register of Land Titles.

3. OVERVIEW

The disallowable determination (DI) is made under s278B of the Act. Section 278B provides that a determination can do two things: firstly it can determine a 'community purpose' in this instance the community purpose is 'childcare services'. Secondly, it can determine an amount to be 'remitted' for a lease variation charge for the community purpose. The amount can be between zero and 100 percent.

The determination is made by two Ministers: the Minister for the Environment and Sustainable Development determines the 'community purpose' (s278B (2)) and the Treasurer (s278B (3)) determines the amount to be remitted.

The overall effect of the DI is to remit (or reduce) the LVC for certain lease variations where the purpose of the variation is for the provision of childcare services. The DI also provides that, for other types of chargeable variations for childcare services, no remission is given (see section 6).

This is the second DI that provides a remission for childcare services. The DI supports announcements made on the 6 March 2014 by the government to promote a two year stimulus package for the ACT. In that announcement government advised that remissions would be frozen at their present level for two years.

The DI maintains the existing remission but also provides that a DA that is lodged but not decided on 6 March 2014 can access a remission under the DI (see s3). This ensures that applicants who had lodged a DA before the 6 March 2014 are not disadvantaged.

The DI revokes (see s2) the existing instrument DI 2011-319 upon commencement to ensure a seamless transition to the new DI.

Section 5 applies to a chargeable variation of a nominal rent lease if the only effect of the variation, other than any other approved chargeable variation approved as part of the DA, must be to do one or other of the following:

- authorise the use of the land for a childcare centre; or
- authorise the use of the land for a childcare centre and place a limit on the maximum gross floor area of a childcare centre; or
- increase the maximum gross floor area of a childcare centre.

This means that the DA can only approve one or more of the above. If the DA approves other chargeable variations, no remission is available (even if one of the chargeable variations is one of those mentioned above). In this way, the instrument ensures that the purpose of the variation delivers the policy objectives.

If the lease variation is seeking to do only one or more of these things at s5, the LVC is fully remitted i.e. 100% of the LVC is remitted.

The Commissioner for Revenue must remit the amount of the LVC that is required to be remitted under this DI (s278B (5)).

4. REGULATORY IMPACT STATEMENT

The *Legislation Act 2001* section 36 states:

36. (1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:

- (b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—
 - (i) adversely affecting the person's rights; or
 - (ii) imposing liabilities on the person;
- ...
- (k) an amendment of a fee, charge or tax consistent with announced Government policy.

In this case, a regulatory impact statement is not required. This is because the determination does not adversely affect any rights and does not impose liabilities. The DI instead operates to a lessee's advantage by reducing the LVC in specified circumstances. In addition, the disallowable instrument has the end effect of amending a charge consistent with government policy.

5. SECTIONS OF THE DETERMINATION IN MORE DETAIL

Section 1 - Name of Instrument

Section 1 names the determination as the *Planning and Development (Remission of Lease Variation Charges for Community Purpose – Childcare Services) Determination 2014 (No 1)*.

The section also makes reference to terms used in the instrument and provides that the terms have the same meaning as they have in the *Planning and Development Act 2007*.

Section 2 - Revocation

Section 2 revokes the existing childcare remission DI2011-319. This is necessary to ensure that all applications for remission are treated equitably.

Section 3 - Application

Section 3 provides that the DI applies to all development applications lodged before 6 March 2016 whether or not the application is decided when the instrument expires on 6 March 2016. This ensures that the DI applies to a development application that was lodged before commencement of the instrument.

If the LVC was determined before commencement of the DI, the DI cannot apply to that application.

Section 4 - Community purpose – Act, s 278B (2)

Section 4 identifies the provision of childcare services as a “community purpose” for the purposes of the Act.

Section 5 - Remission of lease variation charges – certain childcare services variations – Act, s 278B (3)

Section 5 (1) applies to a chargeable variation of a nominal rent lease if the only effect of the variation, other than any other chargeable variation approved, is to:

- (a) authorise the use of the land under the lease for a childcare centre; or
- (b) authorise the use of the land under the lease for a childcare centre and limit the maximum number of children provided care in a childcare centre permitted under the lease; or
- (c) increase the maximum number of children provided care in a childcare centre permitted under the lease.

Section 5 (2) provides that the Treasurer has determined that the amount to be remitted is 100% of the charge.

This means that if the lease variation is for one or more of the above (and does not include any other type of chargeable variation) then the remission amount is 100%.

Section 5 (3) defines the term “childcare centre”.

Section 6 - Remission of lease variation charges – certain childcare services variations – Act, s 278B (3)

Section 6 (1) provides that the section applies to all other types of lease variations for a childcare service that are not of a type mentioned at section 5.

Section 6 (2) provides that the Treasurer has determined the remission amount is 0% of the charge. The provision makes it clear that there are no remissions of LVC for childcare services other than that provided by section 5.

Section 7 Expiry

Section 7 provides that the instrument (that is this determination) ends on 6 March 2016.