

Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2018

Disallowable instrument DI2018–88

made under the

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

EXPLANATORY STATEMENT

Background

The *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Act 2018* amended the *Planning and Development Act 2007* (Planning and Development Act), the *Building Act 2004* and the *Taxation Administration Act 1999* (TAA) to enable the implementation of a deferred payment scheme for the lease variation charge (LVC).

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

New section 279AA (1) of the Planning and Development Act, provides that an applicant for a development application may apply to the Commissioner for 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 new section 279AB, the Commissioner for Revenue 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 TAA), and by the Treasurer (under new section 279AC (2) of the Planning and Development Act).

New 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 outlines the Treasurer's determination for:

- a minimum amount of LVC as a pre-requisite for participating in the scheme,
- the rate of interest chargeable on the amount payable under the deferral arrangement.

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 2018.

Section 2 Commencement

This instrument commences on the commencement of the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Amendment Act 2018*, section 2.

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 \$100,000 and above. 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.

In the case where an applicant is eligible for a remission under the Planning and Development (Remission of Lease Variation Charges-Environmental Sustainability) Determination 2018 (No 2) (DI2018-89), the Treasurer determines that the amount of the lease variation charge to be deferred is any amount. This section gives effect to the requirement in the Determination that all applicants of the energy efficiency remission must enter into a deferral arrangement with the Commissioner of Revenue.

In all other cases, the \$100,000 LVC limit applies.

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. The market rate is adjusted in January and July each year in accordance with Table 26 of the TAA.

The manner in which interest is calculated and imposed is described in section 4 (2) and section 4 (3). 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 remission amount (if any) (section 4 (4) defines amount payable). Should the building fail to meet the energy efficiency requirements claimed under DI2018-89, interest will be charged on the amount of the deferred LVC and the amount of the remission, until payment is received in full.

The amount payable also includes the costs reasonably incurred to recover the overall debt due to the Territory, as well as the interest payable under the deferral arrangements. In effect interest will be charged on a compounding, monthly basis.

Section 4 (4) also defines the ‘market rate’ and ‘remission amount’.

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

The definition of ‘remission amount’ means the amount to be remitted under the Planning and Development (Remission of Lease Variation Charges-Environmental Sustainability) Determination 2018 (No 2). This amount will only be remitted if the requirements of the Determination have been satisfied.

Authorised by the Treasurer
Andrew Barr MLA