

Australian Capital Territory

Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2019 (No 2)

Disallowable instrument DI2019–236

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 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 2019*, DI2019-140 and outlines the Treasurer's determination for:

- a new rate of interest chargeable on the amount payable under the deferral arrangement for gaming machine clubs where they can demonstrate a public benefit, in line with the *Pathway to 4000 Gaming Machine Authorisations by 2020*, August 2018;
- the rate of interest chargeable on the amount payable under the deferral arrangement for lessees other than gaming machine club lessees; and
- a minimum amount of LVC as a pre-requisite for participating in the scheme.

The rate of interest for lessees other than gaming machine club lessees and minimum pre-requisite amount of LVC remains unchanged from the previous instrument.

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 2019 (No 2)*.

Section 2 Commencement

This instrument commences on the day after its notification date.

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 at least \$50,000.

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
Section 6 Transitional

This instrument revokes *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2019*, DI2019-140.

For the avoidance of doubt, DI2019-140 will continue to apply in relation to a lease variation charge assessed under the Planning and Development Act, section 276D (1), within the period 1 July 2019 to the notification date of this instrument, inclusive.

Authorised by the Treasurer
Andrew Barr MLA