

Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2021

Disallowable instrument DI2021–13

made under the

Planning and Development Act 2007, s 278 (Remission of lease variation charges)

EXPLANATORY STATEMENT

Background

On 25 June 2020, the Government announced a Construction Sector Recovery Package (Recovery Package) to help construction activity continue in the ACT and support the local economy to recover from the effects of the COVID-19 pandemic. As part of the Recovery Package, the Government reduced the Lease Variation Charge (LVC) by 50 per cent of the amount payable up to \$250,000 for developments requiring a lease variation.

The 50 per cent reduction (up to \$250,000) was available for LVC amounts deferred (excluding previously paid or deferred amounts) from 25 June 2020 until 23 December 2020, with a requirement that construction must commence by 31 March 2021 regardless of when the development application was lodged or approved.

On 17 December 2020, the Government announced a further continuation of the LVC remission at a reduced rate of 25 per cent.

This instrument provides for a further reduction in LVC by 25 per cent of the amount payable (up to \$125,000). The 25 per cent reduction is available for LVC amounts deferred (excluding previously paid or deferred amounts) from 24 December 2020 until 30 June 2021, with a requirement that construction must commence by 30 September 2021 regardless of when the development application was lodged or approved.

Reducing the LVC will provide an incentive for builders to begin construction activity that might not have otherwise occurred during the COVID-19 recovery phase and create more jobs for the local industry. This measure aims to continue to encourage projects that are ready to commence construction.

Overview

The LVC is payable when a lessee seeks to vary a lease and the lease variation is approved by a development approval granted under the *Planning and Development Act 2007* (the Act). The Act provides that part of the charge or the whole of the charge may be remitted under prescribed circumstances.

The *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2021* (the Remission Determination) prescribes those circumstances and the amounts that must be remitted.

The Remission Determination is made by two Ministers: the Minister for Planning and Land Management determines the circumstances in which an amount of a LVC must be remitted (section 278 (1) of the Act) and the Treasurer (section 278 (2) of the Act) determines the amount to be remitted.

The Remission Determination applies to:

- s 276E chargeable variations; and
- s 277 chargeable variations,

as defined at section 276 (Definitions—div 9.6.3).

Prescribed circumstances

The Remission Determination prescribes the following circumstances:

- a development application (DA) for the chargeable variation has been approved;
- the DA relates to the development of a building on the land under the lease;
- the LVC assessed has not previously been paid or deferred under subdivision 9.6.3.3 of the Act prior to 24 December 2020;
- an application to defer payment of the LVC is lodged on or before 30 June 2021 and subsequently approved;
- construction under the development approval has not yet commenced prior to 24 December 2020 but commences on or before 30 September 2021; and
- the LVC for the development application is not subject to a remission under the *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2020*.

The remission is also limited to that part of the LVC that is less than or equal to \$500,000.

Commencement of construction requires substantial earthworks, excavations (for example, excavation of footings or a basement), demolition and physical building work (for example, pouring a slab) to be undertaken.

Commencement of construction does not include preparatory works such as site clearing, fencing, site marking and delivery of building products (not exhaustive).

Amounts to be remitted

The Remission Determination provides a 25 per cent remission of LVC. Combined with the limited application to part of the LVC, the maximum amount of remission available is \$125,000 per development.

The Commissioner for ACT Revenue must remit the amount of the LVC that is required to be remitted by this determination (section 278 (4) of the Act).

Commencement and retrospectivity

The Remission Determination has retrospective commencement from 24 December 2020 to allow for the continuation of LVC remission from the operation of the *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2020*.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that it does not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person. This instrument provides a concession on the LVC payable for land that is developed in a manner that supports economic recovery from COVID-19. It is non-prejudicial and promotes a purpose which will be of overall benefit to the ACT community.

Expiry

The Remission Determination expires on 30 September 2021.

Authorised by

Andrew Barr
Treasurer

Mick Gentleman
Minister for Planning and Land Management