

# LEASE VARIATION CHARGE DEFERRED PAYMENT SCHEME

## TERMS OF PAYMENT

### Preamble

- A. The LVC is a charge that is payable by a lessee under Division 9.6.3 of the Planning and Development Act on a variation of a nominal rent lease. Division 9.6.3 is a tax law for the purposes of the Taxation Administration Act and that Act applies as if the LVC is a tax payable by the lessee.
- B. Section 27B(1) of the Planning and Development Act provides that the planning and land authority must not execute a chargeable variation of a nominal rent lease unless the LVC for the variation has been paid to the Territory, or a deferral arrangement in relation to the charge has been entered into.
- C. A lessee has the option to pay the LVC upfront before a lease variation is executed, or to apply for approval for a deferred payment of LVC under the LVC Deferred Payment Scheme.
- D. Pursuant to section 279AB(1) of the Planning and Development Act, the Commissioner must approve an application to defer the payment of LVC if satisfied that:
  - (a) the applicant for a development application for a chargeable variation of nominal rent lease is given a notice of assessment of LVC;
  - (b) the amount of the LVC to be deferred is at least \$100,000, or an amount that is determined by the Treasurer; and
  - (c) the applicant satisfies any other criteria that is determined by the Treasurer in the Deferred Payment Scheme Determination.
- E. An approval of the Commissioner of an application to defer the payment of LVC under section 279AB(1) of the Planning and Development Act is subject to the applicant entering into an arrangement under section 52 of the Taxation Administration Act with the Commissioner for the payment of the amount of the deferred lease variation charge.
- F. The LVC and other amounts payable under Division 9.6.3 of the Planning and Development Act are debts owing to the Territory and under section 56H of the Taxation Administration Act gives rise to a charge on land the subject of the lease variation that takes priority over other interests such as a sale, conveyance, transfer, mortgage, charge, lien or encumbrance.
- G. For lease variations where a remission in lease variation charge is claimed for energy efficient buildings, it is a requirement of the Environmental Sustainability Determination 2018 that an applicant must enter into a deferral arrangement with the Commissioner.
- H. This arrangement sets out the conditions of payment for the deferral arrangement under section 279AC of the Planning and Development Act and includes conditions for the re-payment of LVC if the requirements of the Environmental Sustainability Determination for energy efficient buildings are not met.

### Terms and conditions of payment

By entering into this arrangement, the applicant agrees to the following terms and conditions.

ACT Revenue Office – Lease Variation Charge Deferral Arrangement

### ***Deferred amount***

1. The deferred amount is made up of:
  - 1.1 The amount of the LVC payable described in the notice of assessment given to an applicant under section 276D of the Planning and Development Act;
  - 1.2 Any increase or decrease in the amount in clause 1.1 because of a reconsideration, reassessment or review under section 279AD of the Planning and Development Act or the Taxation Administration Act;
  - 1.3 Any applicable remission amount; and
  - 1.4 Any interest that accrues in respect of the amounts in clauses 1.1, 1.2 and 1.3, at the rate and in the manner described in the Deferred Payment Scheme Determination.

### ***Interest***

2. The interest rate applicable is comprised of the monthly average of the 3-month bank bill swap rate, as published by the Reserve Bank of Australia, plus 1.8 percentage points per annum. The bank bill swap rate is adjusted bi-annually in January and July each year.
3. Interest will be calculated on the deferred amount at the determined rate and accrues on a monthly basis on the first day of the month. It is payable by the applicant from the date of the execution of the lease variation until the date payment of the deferred amount is made in full.

### ***Payment terms***

4. The applicant must pay the deferred amount to the Commissioner no later than the earlier of:
  - 4.1 The date a certificate of occupancy is issued for part of the building work for the development to which the lease variation relates, if stated in the Schedule; or
  - 4.2 The date a certificate of occupancy is issued for all of the building work for the development to which the lease variation relates; or
  - 4.3 Four (4) years from the date of the execution of the lease variation.
5. For the purposes of clauses 4.1 and 4.2, section 69(4) of the Building Act, read with Regulation 35B of the Building Regulation, makes it a requirement that the Constructions Occupations Registrar must first be satisfied that the deferred amount and any other outstanding amounts are paid to the Commissioner before a certificate of occupancy for building work is issued.
6. Payments of the deferred amount may be made in advance of the due date specified in clause 4, whichever date should apply. Advance payments may be made in part, or by instalment payment, as agreed with the Commissioner.
7. To facilitate the payment of the deferred amount, an applicant may request a statement of the deferred amount outstanding from the Commissioner.
8. Payments must be made electronically by Electronic Funds Transfer to the bank account nominated by the Commissioner from time to time.

### ***Default in payment***

9. A default in the payment of the deferred amount is a tax default for the purposes of the Taxation Administration Act.
10. If a tax default happens, the applicant is liable to pay additional interest on the deferred amount at the interest rate and calculated in the manner described in Division 5.1 of the Taxation Administration Act.
11. In addition, if a tax default happens the applicant may be liable under Division 5.2 of the Taxation Administration Act to pay penalty tax in respect of the amount unpaid under this deferral arrangement.

### ***Charge on land***

12. An amount payable under a deferral arrangement is a debt owing to the Territory and under section 56H of the Taxation Administration Act is a statutory charge on land that ranks ahead of other interests in the parcel of land including a mortgagee's interest.
13. The Commissioner may cause an instrument of charge to be registered against the title to the land the subject of the variation at any time after the deferral arrangement is entered into. The registration of an instrument of charge does not derogate from the Commissioner's rights in respect of the statutory charge under the Taxation Administration Act.

### ***Review of decisions***

14. A decision of the Commissioner to approve an application and impose conditions under a deferral arrangement is subject to internal review by the Commissioner and review by the ACAT under Schedule 1, Taxation Administration Act.
15. An applicant wishing to object to a decision of the Commissioner must apply in writing within 60 days after the date of service of the decision to the address set out in the Schedule.
16. The applicant bears the burden of showing that their objection should be upheld. The applicant must state in the objection, in full and in detail, the grounds upon which the applicant relies, and must include any supporting documentation the applicant wants considered at the time the objection is determined. The applicant agrees to provide any additional information the Commissioner may request in determining the objection.
17. The applicant is responsible for any expenses they incur in relation to the objection, such as the applicant's legal fees and or valuer's fees.
18. The applicant, if dissatisfied with the decision upon objection, may apply to the ACAT for review. Applications for review to the ACAT must usually be made within 28 days after the day the reviewable decision is made.

### ***Remission of applicable Environmental Sustainability remission amount***

19. This condition applies only in respect of a deferred amount of a section 277 lease variation, for which an environmental sustainability remission under the Environmental Sustainability Determination may be applicable.

20. The remission amount is calculated at the time the notice of assessment of the chargeable lease variation is issued to the lessee under section 276D of the Planning and Development Act.
21. An amount of LVC is only remitted by the Commissioner if the energy efficiency requirements under the Environmental Sustainability Determination for the building or buildings constructed on the land have been satisfied.
22. An applicant must:
  - 22.1 obtain at the applicant's own cost evidence from a licensed building assessor of the building's compliance with the energy efficiency ratings of the Environmental Sustainability Determination; and
  - 22.2 provide that evidence to the Commissioner of Revenue.

### **Variation**

23. Under section 279AD(3) Planning and Development Act, the applicant may apply to the Commissioner to vary this arrangement if the amount deferred increases as a result of a reconsideration, reassessment under the Planning and Development Act or the Taxation Administration Act.
24. The Commissioner may vary the date for the payment of the deferred amount for part building work, stated in this arrangement pursuant to clause 4.1, by giving the applicant seven (7) days' notice of the variation.

### **Definitions**

25. In this deferral arrangement:

**applicant** means the lessee of land the subject of the lease variation described in the Schedule, and includes their legal representative, assigns and nominees.

**Building Act** means the [Building Act 2004](#).

**Building Regulation** means the *Building (General) Regulation 2008*.

**Certificate of occupancy** means a certificate under section 69 of the [Building Act 2004](#).

**Commissioner** means the Commissioner for Australian Capital Territory Revenue.

**deferred amount** means the amount described in clause 1.

**Deferred Payment Scheme Determination** means the [Planning and Development \(Lease Variation Charge Deferred Payment Scheme\) Determination 2018 – DI2018-88](#), and includes any other disallowable instrument determined by the Treasurer in accordance with section 279AA(1)(b), section 279AA(1)(c), and section 279AC(2) of the Planning and Development Act.

**Environmental Sustainability Determination** means the [Planning and Development \(Remission of Lease Variation Charges-Environmental Sustainability\) Determination 2018 \(No 2\) - DI2018-89](#) determined by the Minister for Planning and Land Management and the Treasurer in accordance with section 278 of the Planning and Development Act.

**Licensed building assessor** means an assessor licensed under the [Construction Occupations \(Licensing\) Act 2004](#) for carrying out energy assessment work.

**LVC** means a lease variation charge within the meaning of Division 9.6.3 of the Planning and Development Act.

**Planning and Development Act** means the [Planning and Development Act 2007](#).

**remission amount** means the amount calculated in accordance with the Environmental Sustainability Determination described in the notice of assessment issued to an applicant under section 276D of the Planning and Development Act.

**Schedule** means the Schedule to this deferral arrangement.

**Taxation Administration Act** means the [Taxation Administration Act 1999](#).

**tax default** for the purposes of the Taxation Administration Act, means a failure by a taxpayer to pay, in accordance with a tax law, the whole or part of tax that the taxpayer is liable to pay.

**Execution of agreement**

***Applicant/Lessee***

I agree to the terms and conditions of this deferral arrangement:

Name of Applicant/s:

Signature Applicant/s

Date:

Witness:

Name of Lessee/s:

Signature Lessee/s

Date:

Witness:

***Commissioner for ACT Revenue***

Name of delegate:

Signature of delegate

Date:

## SCHEDULE

Applicant	Full name: Address: Contact details:
Lessee, if not the applicant	Full name: Address: Contact details:
Land, the subject of the lease variation	Suburb: Section: Block:
Development application	Development Application No.:
The amount of the LVC payable described in the notice of assessment (cl.1.1)	\$
Remission amount (cl.25)	\$
The date a certificate of occupancy is issued for part of the building work for the development to which the lease variation relates (cl 4.1)	
Bank account details (cl.8)	
Address for Objections (cl.15)	By post: The Commissioner for ACT Revenue PO Box 293 CIVIC SQUARE ACT 2608  By email: <a href="mailto:objections@act.gov.au">objections@act.gov.au</a>