

Planning and Development (Remission of Lease Variation Charge for Environmental Remediation) Determination 2016 (No 1)

Disallowable instrument DI2016–260

made under the

Planning and Development Act 2007, Section 278D (When commissioner must remit lease variation charge – environmental remediation)

1 Name of instrument

This instrument is the *Planning and Development (Remission of Lease Variation Charge for Environmental Remediation) Determination 2016 (No 1)*

Note Terms used in this instrument have the same meaning that they have in the *Planning and Development Act 2007* (see *Legislation Act*, section 148). For example, the following terms are defined in the *Planning and Development Act 2007*, dict:

- chargeable variation
- lease variation charge

2 Commencement

This instrument commences on the day after its notification.

3 Determination of additional circumstances which apply to the variation – Act, s 278D (2) (a)

- (1) Pursuant to section 278D (2) (a) I, the Minister, determine the following circumstances for the purposes of section 278D (1) (c):
 - (a) The Environment Protection Authority has given the Planning and Land Authority an endorsement of an environmental audit of the land and the endorsement verifies that the audit:
 - (i) satisfies the requirements of the *Environment Protection Act 1997*;
 - (ii) affirms that an assessment of the land to determine whether remediation to make the land suitable for the purposes authorised by the lease as varied has been undertaken;
 - (iii) affirms that remediation of the land or part of the land was required and the required remediation has been undertaken; and
 - (iv) affirms that the assessment and remediation has been undertaken and completed as required by the Environment

Protection Policy (Contaminated Sites) Environment
Protection Policy NI 2012 - 301 made under chapter 4 of the
Environment Protection Act; and

- (b) the lease to be varied authorises the land or part of the land to be used for the purpose of a service station, however expressed, and the lease as varied does not authorise the land or part of the land to be used for this purpose; and
- (c) for lease variations approved before the commencement of the *Planning and Development (Lease Variation Charges) Amendment Act 2011*, the change of use charge for the lease variation was unpaid as at 30 June 2009.

Note In addition to compliance with the above circumstances for a lease variation charge to be remitted it must also meet section 278D (1) (a) and (b) of the Planning and Development Act. Section 278D (1) (a) requires the lease variation to be approved by the grant of a development approval under section 162 of the Act. Section 278D (1) (b) requires the development approval for the lease variation to include a condition that the lessee carry out remediation of the land.

(2) In this section:

change of use charge – see the Planning and Development Act Dictionary as it applied before the commencement of the Planning and Development (Lease Variation Charges) Amendment Act.

environmental audit – see section 91A of the Environment Protection Act.

environment protection authority means the authority established under section 11 of the Environment Protection Act.

remediation – see the Environment Protection Act Dictionary.

service station means an entity whose function or purpose includes, but need not be limited to, one or more of the following:

- (i) fuelling motor vehicles through the use of fuel pumps or similar;
- (ii) the service or repair of motor vehicles (other than body building, panel beating or spray painting);
- (iii) the sale or distribution of fuel for motor vehicles; or
- (iv) the storage of fuel for motor vehicles.

the land means the land under the lease that is the subject of the lease variation.

Note The Environment Protection Act Dictionary states that remediation:

“In relation to contaminated land, includes –

- (a) preparing a long-term management plan (if any) for the land; and
- (b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land; and
- (c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of people or animals on the land).”

4 Determination of the amount to be remitted – Act, s 278D (3)

Pursuant to section 278D (3), I, the Treasurer, determine the amount of the lease variation charge for the chargeable variation to be remitted is an amount equal to 100% of the charge.

Mick Gentleman MLA
Minister for Planning and Land Management
29 August 2016

Andrew Barr MLA
Treasurer
29 August 2016