

# Planning and Development (Remission of Lease Variation Charges) Determination 2018

Disallowable instrument DI2018–92

made under the

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

## EXPLANATORY STATEMENT

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### Terms

In this explanatory statement:

“Act” means the *Planning and Development Act 2007*.

“Regulation” means the Planning and Development Regulation 2008.

“LVC” means lease variation charge.

“nominal rent lease” means as defined in the dictionary to the Act. The dictionary defines this lease as “a lease for nominal rent” ie a lease for which no significant rent is payable (as opposed to a rental lease).

“s 276E chargeable variation” is defined in s 276 of the Act as meaning a chargeable variation prescribed by regulation. These are the chargeable lease variations that are able to be codified under the LVC Determination, DI2017-208 Planning and Development (Lease Variation Charges) Determination 2017 (No 2). These lease variations are identified in s 170A of the Regulation.

“s 277 chargeable variation” is defined in s 276 of the Act. These are lease variations other than s 276E chargeable variations or s 276E chargeable variations whose LVC has not been set in the LVC Determination made under s 276E. The LVC for these variations is determined under s 277 of the Act.

### Background

A LVC may be charged when a lessee seeks to vary their lease. The Act sets out what types of lease variations attract a charge. The variation of a lease is a “development” for the purposes of the Act (s 7(1)(f)). Therefore, a lease variation requires a development application for development approval unless the variation is exempt from requiring development approval under s 133 of the Act and s 20 of the Regulation.

There are three main categories of lease variations for the purposes of the LVC. These

include variations of:

1. nominal rent leases for which no LVC is payable. Such leases are identified in the s 276 definition of “chargeable variation”. For example, variations of two adjoining leases whose only effect is to alter the boundary between them.
2. nominal rent leases where the variation is a s276E chargeable variation; and
3. nominal rent leases where the variation is a s277 chargeable variation.

A variation to a rental lease i.e. leases other than nominal rent lease, does not attract a lease variation charge. Rather an adjustment to rental payments is determined in accordance with Division 9.6.2 of the Act.

Section 278 of the Act permits the required LVC to be remitted (reduced) in whole or in part by a disallowable determination. Only the amount remaining after the remission needs to be paid before the lease variation can take effect (s276B (1) of the Act). For example, if the LVC was \$100 and the amount to be remitted was 80% then only \$20 needs to be paid. When the LVC has been paid, the lease variation approved through the development application process, can be executed and registered on the Register of Land Titles.

## **Overview**

This determination is made under s278 of the Act. It provides for remissions to be made for lease variations sought in association with environmental remediation of the land, specifically disused service station sites. In essence, the remission is to apply to disused service station sites if the site is remediated so that it can be used for purposes other than a service station site.

## **Sections of the determination in more detail**

### **Section 1 Name of Instrument**

Section 1 names the determination as the Planning and Development (Remission of Lease Variation Charges for Environmental Remediation) Determination 2018.

The section also makes reference to terms used in the instrument and provides that the terms have the same meaning as they have in the Act.

### **2 Commencement**

This section provides that this instrument commences on the day after its notification day.

### **3 Determination of circumstances which apply to the variation – s 278 (1)**

Section 3 (1) of the determination sets out the circumstances which must apply to the lease variation if the variation is to qualify for a remission (reduction) of LVC under this instrument. In summary, the circumstances that must be met are as follows:

- (a) the land must be assessed and remediated and an environmental audit completed affirming that the land is suitable for the uses authorised by the lease as varied;
- (b) the environmental audit must be endorsed by the Environment Protection Authority and the endorsement must confirm that the audit:
  - (i) satisfies the requirements of the *Environment Protection Act 1997*; and

- (ii) affirms that remediation has been undertaken in accordance with the Environment Protection (Contaminated Sites) Environment Protection Policy NI2012-301; and
- (c) the lease to be varied must authorise the land or part of the land to be used for the purpose of a service station, although it is not necessary for the lease to use the specific term “service station”. The proposed lease variation must have the effect that the lease no longer authorises the land or any part of the land to be used for the purpose of a service station;
- (d) the variation has been approved by a development approval granted under the Act;
- (e) the above approval is granted on the condition that the lessee carry out remediation of the land under the lease.

Sub-section (2) sets out definitions for section 3.

#### **4 Determination of the amount to be remitted – s 278 (2)**

The amount of the remission for lease variations to which this instrument applies is determined by the Treasurer under s278 (2). The amount can be between zero and 100 percent. Section 4 of the determination makes this remission amount 100% of the lease variation in all cases. This amount has been set in order to provide the maximum financial incentive for the remediation and subsequent use of former service station sites.

The Commissioner for Revenue must reduce the amount of the LVC that is required to be remitted by the determination (s 278 (4) of the Act).

#### **Regulatory impact statement**

The *Legislation Act 2001* section 36 states:

- 36. (1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:
  - (b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—
    - (i) adversely affecting the person’s rights; or
    - (ii) imposing liabilities on the person;
    - (k) an amendment of a fee, charge or tax consistent with announced government policy.

In this case, a regulatory impact statement is not required. This is because the determination does not adversely affect any rights and does not impose liabilities. The instrument instead operates to a lessee’s advantage by reducing the LVC in specified circumstances.