

# Planning (Reduction of Lease Variation Charges for Environmental Remediation) Determination 2023

Disallowable instrument DI2023-280

made under the

*Planning Act 2023*, s 338 (Reduction of lease variation charges)

## EXPLANATORY STATEMENT

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The lease variation charge (LVC) is charged when the lessee seeks to vary their lease and this development is approved. A variation of a lease is a “development” for the purposes of the *Planning Act 2023* (the Act), section 14 (1) (f), meaning a development application (DA) for development approval is required unless exempt from requiring approval under section 145 of the Act.

The LVC provisions under the Act replicate those from the repealed *Planning and Development Act 2007*.

Section 338 of the Act provides that the Minister for Planning and Land Management may determine, by way of disallowable instrument, circumstances in which an amount of the charge must be reduced. If the Minister makes a determination, the Treasurer must determine an amount to be reduced for each LVC to which the determined circumstances apply. The amount of the remission must be expressed as a percentage of the LVC (section 338 (3) of the Act). The Commissioner for Revenue must then reduce the LVC by the amount determined.

Only the amount remaining after the reduction needs to be paid (or deferred) before the lease variation can be executed (see section 328 of the Act).

The *Planning (Reduction of Lease Variation Charges for Environmental Remediation) Determination 2023* (the Determination) continues the prior reduction/remission of LVC under the *Planning and Development (Remission of Lease Variation Charges for Environmental Remediation) Determination 2018*, DI2018-92. The determination incorporates updates for the commencement of the new Act and minor technical drafting.

The determination provides for reductions to be made for LVC applying to environmental remediation of the land, specifically disused service station sites. In essence, the reduction 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.

## Details of the instrument

### Section 1      Name of Instrument

Section 1 names the determination as the *Planning (Remission of Lease Variation Charges for Environmental Remediation) Determination 2023*.

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.

### Section 2      Commencement

Section 2 provides that this instrument commences with the new LVC provisions under the Act.

### Section 3      Definitions

This section now provides direct references to terms used in the instrument.

### Section 4      Determination of circumstances which apply to the variation—s 338 (1)

Section 4 (1) of the determination sets out the circumstances which must apply to the lease variation if the variation is to qualify for a reduction of LVC. In summary, the circumstances that must be met are as follows:

- (a) the land must be assessed and remediated and an environmental completed audit is endorsed by the Environment Protection Authority to verify that the audit satisfied the *Environment Protection Act 1997* (and the *Environment Protection (Contaminated Sites) Environment Protection Policy 2017*, NI2017-698, affirming that the land is suitable for the uses authorised by the lease as varied;
- (b) 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;
- (c) the development application for the chargeable variation has been approved by a development approval granted under section 185 of the Act;
- (d) the development approval is granted on the condition that the lessee carry out remediation of the land under the lease.

### Section 5      Determination of the amount to be reduced—s 338 (2)

The amount of the reduction for the lease variations to which this instrument applies is determined by the Treasurer under section 338 (2). The amount can be between zero and 100 percent. Section 5 of the determination provides that the percentage amount of the reduction in the codified charge is 100% of the charge. 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 ACT Revenue must reduce the amount of the LVC by the percentage determined.