

# Planning and Development (Remission of Lease Variation Charge for Environmental Remediation) Determination 2012 (No 1)

Disallowable instrument DI2012–125

made under the

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

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## 1 Name of instrument

This instrument is the *Planning and Development (Remission of Lease Variation Charge for Environmental Remediation) Determination 2012 (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 1 July 2012.

## 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 lease variation is not registered on the Register of Land Titles under the *Land Titles Act 1925*;
  - (b) 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 is required 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 Contaminated Sites Environment Protection Policy 2012 NI2012-301 made under chapter 4 of the Environment Protection Act; and
- (c) 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
- (d) 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 2007*. 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 2007* Dictionary as it applied before the commencement of the *Planning and Development (Lease Variation Charges) Amendment Act 2011*.

**environmental audit** – see section 91A of the *Environment Protection Act 1997*.

**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.

**5 Expiry**

This instrument expires on 30 June 2016.

Simon Corbell MLA  
Minister for the Environment and Sustainable Development  
13 June 2012

Andrew Barr MLA  
Treasurer  
18 June 2012