Australian Capital Territory

Planning (Lease Variation Charges) Determination 2026 (No 2)

Disallowable instrument DI2026–235

made under the

***Planning Act 2023*, s 331 (2) (Standard chargeable variations)**

EXPLANATORY STATEMENT

The standard chargeable variations (also known as codification) of the Lease Variation Charge (LVC) in the Territory supports efficiency and transparency in the planning system, minimises unnecessary delays in development approvals and reduces ambiguity for any LVC covered by the determination. Standard chargeable variations are achieved in part through the development and application of a set of codes or schedules.

Changes in this instrument

The *Planning (Lease Variation Charges) Determination 2026 (No 2)* instrument replaces the *Planning (Lease Variation Charges) Determination 2026* (DI2026-142) to support implementation of the *Planning (Missing Middle Housing) Amendment Act 2026* (amendment Act) and related amendments to the *Planning (General) Regulation 2023*.

The amendments will ensure that the instrument applies to both development applications and exempt development declarations.

The instrument commences on the commencement of section 3 of the amendment Act to align with the commencement of the amendments to the *Planning (General) Regulation 2023*. The commencement ensures the instrument commences only when the exempt development declaration framework is in effect.

The instrument removes references to the meaning of 'lodged' and 'submitted' to better align with the primary legislation – *Planning Act 2023* and support the exempt development declaration framework. A lease variation charge is generally taken to be worked out on the day the development application for a chargeable variation is approved, or on the day a chargeable variation is declared as an exempt development (the Act, section 329 (2)). Accordingly, the lease variation charge for a standard chargeable variation is the determined charge in effect when the development application is approved or the declaration is made.

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If, on the day a lease variation charge is taken to be worked out in accordance with section 329 of the Act, more than one determination under section 331 of the Act applies, then the earliest determination prevails.

The instrument updates the terminology and incorporates the new exempt development pathway to accommodate the changes arising from the amendment Act.

In addition, the instrument incorporates references to exempt development declaration under section 149C throughout where relevant to reflect the application of the new provision and to provides greater clarity.

The instrument also simplifies columns 3 & 4 of table 3.4 Industrial Centres in schedule 3 by removing references to specific applicable criteria (column 3) for industrial zones in Fyshwick and retain a single additional GFA amount per square metre (column 4) for IZ1 and IZ2. The amounts remain unchanged.

LVC Determination

The *Planning (Lease Variation Charges) Determination 2026 (No 2)* (the LVC Determination) applies a set of schedules so that the relevant LVC can be worked out by reference to the instrument. The LVCs for lease variations covered by the LVC Determination are worked out pursuant to the LVC Determination (for the purpose of section 331 of the Act) and not under section 332 of the Act.

A lessee should be able to work out the applicable LVC under the LVC Determination by:

- checking the location of the lease against the maps in the Territory Plan; and
- cross referencing the location with the description applying to the lease variation in the relevant schedule.

The schedules to the LVC Determination are as follows:

- schedule 1 – specific charges;
- schedule 2 – residential charges;
- schedule 3 – commercial and industrial charges; and
- schedule 4 – statement of reasons.

Schedule 1, Lease Variation Charge Determination—Specific charges

- Variation to limit the maximum number of dwellings permitted on the land under a residential lease under table 1, item 1, is $49,000 (increased from $46,000).

Schedule 2, Lease Variation Charge Determination—Residential use

- LVC amounts are updated to market values for a 3-year average as at 1 January 2026.

Schedule 3, Lease Variation Charge Determination—Industrial and commercial use

- LVC amounts are updated to market values for a 3-year average as at 1 January 2026. The only changes in Schedule 3 are to items in table 4 Industrial Centres.

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Schedules 1 and 2 within the instrument provide an amount for each additional dwelling, dependant on the number of additional dwellings.

The 25 per cent reduction of LVC previously applied under the *Planning (Reduction of Lease Variation Charges) Determination 2023*, DI2023-276 has again been incorporated into the LVC amounts stated in this LVC Determination:

- schedule 1, items 8 and 9;
- schedule 2; and
- schedule 3.

Please note, reference to suburbs is not necessary for variations covered by schedule 1.

This LVC Determination does not apply to the LVC for variations that are not standard chargeable variations and does not apply to lease variations of leases that are not nominal rent leases (i.e. leases for which rent, other than nominal rent, is payable).

In considering whether to determine the relevant LVCs the Treasurer, as per requirements under sections 331 (2) and (3) of the Act, has: consulted with the Minister for Planning and Sustainable Development; and obtained and had regard to advice from an accredited valuer.

A determination must also state the reasons for determining the LVC and how the charge was determined under section 331 (5) – this is provided by section 9 with reference to schedule 4 of the LVC Determination.

Application for multiple component lease variations

The following examples demonstrate how the rules are applied for a LVC for lease variations with multiple components. The examples are not exhaustive and do not form part of the LVC Determination.

Consolidation of two or more residential leases

If the variation is a consolidation only then the LVC is for the consolidation and there is no other LVC. For example, lease A permits up to three dwellings on the lease and lease B permits up to two dwellings on the lease. The relevant development approval approves a consolidation of these two leases resulting in a lease that permits up to five dwellings.

The only LVC is for the consolidation, there is no LVC payable in respect to the number of dwellings permitted in the consolidated lease as there is no increase in the total number of dwellings permitted.

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Consolidation of two or more non-residential leases

If the variation is a consolidation only then the LVC is for the consolidation and there is no other LVC. For example, lease A permits up to 900m^2 of gross floor area (GFA) on the lease for non-residential purposes and lease B permits up to 600m^2 of GFA. The relevant development approval approves a consolidation of these two leases resulting in a lease that permits up to 1,500m^2 of GFA.

The only LVC is for the consolidation (schedule 1). There is no LVC payable in respect to the increase in GFA permitted in the consolidated lease as there is no increase in the total GFA permitted.

Subdivision of a residential lease

For example, an original lease that permits up to five dwellings is subdivided into two leases that permit up to three dwellings and two dwellings respectively.

The only LVC is for the subdivision. There is no LVC payable in respect to the number of dwellings permitted in the subdivided leases as there is no increase in the total number of dwellings permitted.

Subdivision of a residential lease into two leases and an overall increase in the number of dwellings permitted on the resulting two leases

For example, an original lease that permits up to five dwellings is subdivided into two leases that permit up to three dwellings and four dwellings respectively (an aggregate increase of two dwellings).

In this case the LVC is the sum of the LVC for the subdivision (schedule 1) and the increase in the maximum number of dwellings from five to seven (schedule 2).

Subdivision of a non-residential lease

For example, an original lease that permits up to 900m^2 of GFA is subdivided into two leases that permit up to 400m^2 and 500m^2 respectively.

The only LVC is for the subdivision. There is no LVC payable in respect to the maximum GFA in the subdivided leases as there is no increase in the total amount of GFA.

The next three examples demonstrate application of the rules when a lease variation charge application triggers more than one LVC charge.

Subdivision of a non-residential lease into two leases and an overall increase in the maximum amount of GFA permitted on the resulting two leases

For example, an original lease that permits up to 900m^2 of GFA is subdivided into two leases that permit up to 400m^2 and 700m^2 respectively.

In this case the LVC is the sum of the LVC for the **subdivision** (schedule 1) and

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the increase in the maximum GFA from 900m^2 to 1,100m^2 (schedule 3).

Consolidation of two or more residential leases and an increase in the number of dwellings permitted on the consolidated lease

For example, lease A permits up to three dwellings on the lease and lease B permits up to two dwellings on the lease. The relevant development approval approves a consolidation of the two leases and an increase in the total number of dwellings with the result that the consolidated lease authorises seven dwellings.

In this case the LVC is the sum of the LVC for the consolidation (schedule 1) and the increase in the permitted number of dwellings from five to seven (schedule 2).

Consolidation of two or more non-residential leases and an increase in the maximum GFA

For example, lease A permits up to 900m^2 of GFA on the lease and lease B permits up to up to 600m^2 of GFA. The relevant development approval approves a consolidation of the two leases and an increase in the total GFA with the result that the consolidated lease authorises 2,000m^2 of GFA.

In this case the LVC is the sum of the LVC for the *consolidation* (schedule 1) and the increase in the maximum GFA from 1,500m^2 to 2,000m^2 (schedule 3).

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Details of the instrument

Section 1 Name of instrument

This section provides the name of the LVC Determination.

Section 2 Commencement

This section provides the instrument commences on the commencement of section 3 of the *Planning (Missing Middle Housing) Amendment Act 2026*.

Section 3 Definitions

This section defines key terms for this instrument.

Other terms used in this instrument have the same meaning as their defined meaning in the Act (see section 148 of the *Legislation Act 2001*).

Section 4 Working out lease variation charge for more than 1 standard chargeable variations—Act, s 330 (a) and s 331 (1)

Where a lease variation includes 2 or more section 331 standard chargeable variations, the total LVC payable must be worked out by adding the determined charges together. The following is an example:

Schedule 1 provides that a variation to consolidate 4 leases is calculated at the rate of $7,500 for the first 3 leases plus $5,000 for each additional lease (under schedule 1, table 1, item 5):

3 × $7,500 + 1 × $5,000 = $27,500

If the lease variation seeks to also increase GFA in a CZ1 zone in the City (Commercial Town Centre) from an existing 10,000m^2 to 19,000m^2 (under schedule 3, table 1):

9,000 × $488[1] = $4,392,000

The total LVC is: $27,500 + $4,392,000 = $4,419,500.

Section 5 Specific lease variation charges—Act, s 331 (2)

This section applies to standard chargeable variations listed in schedule 1.

Specifically, this section applies to the variations identified in the descriptions in columns 2 and 3 of schedule 1—the "specific charges". These are charges of a very specific nature which are able to be applied uniformly in the ACT. In other words, the

[1] Note, a 25% reduction is incorporated into the LVC amounts (where applicable) in the instrument, which was previously contained in a separate remission instrument.

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charges do not vary from location to location. These variations are able to be identified in a list in schedule 1.

These items include the following matters:

- A variation to insert into a lease a limit on the number of dwellings or non-residential units that can be built on the lease (items 1 to 3).
    - For example, an existing lease might permit the land to be used for residential purposes but have no express limit on the number of dwellings that can be built. A variation to insert a limit (for example, to specify that a maximum of 5 dwellings can be built) is covered in this schedule. A lessee might seek a variation of this type in order to be able to subsequently make a 'unit title application' to subdivide the lease under the *Unit Titles Act 2001*.
- A variation to consolidate 2 or more leases (items 4 and 5).
- A variation to subdivide a lease into 2 or more leases (items 6 and 7).
- A variation to increase the maximum:
    - GFA that can be used for a service station (item 8);
    - GFA of a club holding a club licence (item 9); or
    - number of care beds or self-care units in a retirement complex (items 10 and 11).
- A variation of a lease that authorises an incorporated association to use the land to remove the reference to the association (item 12).

Section 5 (1) identifies the matters that are covered by this section, that is the matters listed in schedule 1. The schedule consists of a list with item numbers in the first column, descriptions of the item in columns 2 and3, and any applicable criteria in column 4.

Section 5 (2) provides that a lease variation that meets the descriptions in columns 1 to 4 attracts the charge indicated in column 5.

Section 5 (3) is a rule on how to apply this LVC Determination. The section applies to lease variations to which both schedule 1 and another schedule applies. Where more than one schedule applies, schedule 1 has priority. In other words, schedule 1 must be applied and the other schedule must not be applied. An example of this rule is provided in section 6 and above.

Section 6 Lease variation charges for increased number of dwellings—Act, s 331 (2)

This section applies to section 331 chargeable variations listed in schedule 2.

Section 6 (1) states the lease variations to which this section applies. Specifically, this section applies to the variations of a lease to increase the maximum number of dwellings permitted by the lease.

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These include standard chargeable variations to increase the:

- maximum number of dwellings;
- number of dwellings permitted on the land under the lease;
- number of dwellings permitted on the land under a consolidated lease; and
- number of dwellings permitted on the land under a subdivided lease.

(See the definition of ***standard chargeable variation*** in the Act, section 331, and *Planning (General) Regulation 2023*, section 75.)

In schedule 2,

- row 3 is the total number of dwellings that would be permitted on the final lease, were the proposed lease variation to be executed; and
- columns 2 through to and including 9 are the charges per additional dwelling to be applied corresponding to the suburb in column 1.

Section 6 (2) states that the determined charge for schedule 2 lease variations is worked out as follows:

increased number of dwellings × ***additional dwelling amount***

These terms are defined in section 6 (3).

Increased number of dwellings means the number of dwellings that would be added to the permitted maximum were the proposed lease variation to be executed, that is the difference between the maximum specified in the original lease and the maximum specified in the lease as varied.

Additional dwelling amount is the amount indicated in schedule 2, columns 2 to 9 for the suburb.

Approved maximum number of dwellings means the maximum number of dwellings permitted on the land under the lease after the chargeable variation is executed.

The following is an example of how this formula is to be applied.

- A residential lease in Chapman permits 2 dwellings to be built on the land. The lessee obtains development approval to vary the lease to permit 6 dwellings on the land. The determined charge is:

  increased number of dwellings (4) × ***additional dwelling amount*** ($56,750)

The $56,750 figure above is the figure in column 5, corresponding to the '5-10 dwellings' for the suburb Chapman. The '5-10 dwellings' item in column 5 for Chapman applies because the total number of dwellings on the varied lease is 6 and the increased number of dwellings is 4 (the charge incorporates the 25 per cent reduction).

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The total determined charge is $227,000 ($56,750 x 4)

Section 7 Lease variation charges for increased GFA—Act, s331 (2)

Section 7 (1) states the lease variations to which this section applies. In summary, this section applies to the standard chargeable variations listed in schedule 3.

This section applies only to leases that:

- are located in a suburb and zone listed in columns 1 and 2 of each table in schedule 3; and
- specify a maximum GFA that can be used for non-residential purposes and only if the proposed lease variation is to increase the maximum GFA permitted for a non-residential use.

In relation to the Act these are standard chargeable variations to which the following provisions apply. These variations are the ones mentioned in the definition of ***standard chargeable variation*** and include a lease variation:

- to increase the maximum GFA permitted for non-residential use;
- for a consolidation of 2 or more nominal rent leases that increases the maximum GFA permitted for non-residential use – this section applies to the increase in GFA component only of the lease variation; and
- for a subdivision of 1 or more nominal rent leases that increases (or has the effect of increasing) the maximum GFA permitted for non-residential use – this section applies to the increase in GFA component only of the lease variation.

The tables in the schedule are categorised by non-residential purpose and centre type, as follows:

- Table 3.1: commercial—town centres;
- Table 3.2: commercial—group centres;
- Table 3.3: commercial—local centres; and
- Table 3.4: industrial centres.

In schedule 3, the following columns are repeated in each of the tables:

- column 1 refers to the suburb to which the determined charge (column 4) applies;
- column 2 refers to the zone to which the determined charge applies;
- column 3 refers to additional criteria, if any, that must be met for the determined charge to apply; and
- column 4 refers to the determined charge to apply for lease variations that meet all the descriptions in columns 1, 2 and 3. The determined charge is expressed as a dollar amount per square metre of "additional GFA".

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The suburbs referred to in column 1 are as identified in the Territory Plan. The boundaries of these suburbs and zones are also as identified in the Territory Plan. In the case of a lease variation that also includes a consolidation; the suburb/zone criteria apply to the lease as consolidated.

The term "additional GFA" in column 4 is the difference between the maximum GFA permitted under the existing lease for non-residential use and the maximum GFA that would be permitted were the proposed lease variation to be executed.

Section 7 (2) states that the determined charge for schedule 3 lease variations is worked out as the:

increased GFA* × *additional GFA amount

These terms are defined in section 7 (3). ***Increased GFA*** is the difference between the maximum GFA permitted under the existing lease for a non-residential use and the maximum GFA that would be permitted were the proposed lease variation to be executed. ***Additional GFA amount*** is the amount set out in column 4 of schedule 3 applying to lease variations that meet the descriptions in the corresponding columns 1, 2 and 3.

The following is an example of how this formula is to be applied.

A commercial lease in Dickson in a Group Centre, in commercial zone CZ3 permits a maximum GFA of 8,000m^2 to be built on the land. The lessee obtains development approval to vary the lease to increase the GFA to permit a maximum of 15,000m^2 on a development application submitted on 15 December 2026. The determined charge is:

increased GFA (7,000m^2) × ***additional GFA amount*** ($450)

The $450 figure above is the figure in table 3.2, column 4 (for additional GFA amount per square metre) corresponding to the "10,000m^2 to 20,000m^2 GFA maximum" criteria in column 3, for the suburb Dickson in zone commercial CZ3. The "10,000m^2 to 20,000m^2 GFA maximum" applies because the maximum amount of GFA permitted on the lease after the variation is 15,000m^2. The charge incorporates the 25 per cent reduction provided under DI2023-276.

Section 8 Reasons etc for determining lease variation charges—Act, s 331 (5)

Section 331 (5) of the Act requires the LVC Determination to include a statement of the reasons for determining the lease variation charges covered by the LVC Determination and how the charges were determined. This statement is in schedule 4 of the LVC Determination.

Section 9 Revocation

The provision revokes the *Planning (Lease Variation Charges) Determination 2026*, DI2026-142.

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Schedule 1 Specific charges

This schedule details the specific lease variations that apply irrespective of location.

Schedule 2 Residential

This schedule details lease variations to increase the maximum number of dwellings permitted.

Schedule 3 Commercial and industrial

This schedule details lease variations to increase the maximum amount of GFA permitted for non-residential use.

Schedule 4 Statement of reasons

This schedule is the statement of reasons for determining the charges covered by the LVC Determination and how the charges were calculated.

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