



ACT
Government

Environment and
Sustainable Development

Lease Variation General Code

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Introduction

Name

The name of this code is **Lease Variation General Code**.

Application of the code

This code applies to the varying of *leases*.

Limits of variations to leases

No lease variation can be inconsistent with the Territory Plan.

National Capital Plan

Where a development is subject to special requirements under the National Capital Plan, or any relevant development control plan prepared under the National Capital Plan, the development is not inconsistent with the special requirements or development control plan. Where any provision of this code is inconsistent with special requirements under the National Capital Plan, or any relevant development control plan prepared under the National Capital Plan, that provision has no effect.

Purpose

This code will be used by the *Authority* to assess proposals to vary leases. It also offers guidance to applicants.

Structure

This code has an introduction, a reference to other relevant codes and the following parts:

Part A – Provisions relating to proposals in the merit or impact tracks

Part B – Provisions relating to proposals in the code track

Proposals in the code track need only comply with the relevant rules in part B.

Each part contains one or more elements. Each element has one or more rules and, unless the rule is mandatory, an associated criterion. Rules provide quantitative, or definitive, controls. In contrast, criteria are chiefly qualitative in nature.

In some instances rules are mandatory. Such rules accompanied by the words “This is a mandatory requirement. There is no applicable criterion.” Non-compliance with a mandatory rule will result in the refusal of the development application. Conversely, the words “There is no applicable rule” is found where a criterion only is applicable.

Assessment tracks

Assessment tracks for particular developments are specified in the relevant zone development table.

Proposals in the **code track** must comply with all rules relevant to the development.

Proposals in the **merit track** and **impact track** must comply with a rule or its associated criterion, unless the rule is mandatory (ie. it has no related criterion). Where a rule is fully met, no reference to the related criterion needs to be made. Where there is a departure from a rule, or where a criterion only applies, the onus is on the applicant to demonstrate that the relevant criterion is satisfied, through supporting drawings and/or written documentation. In addition, the applicant for proposals in the impact track must justify any non-compliance by reference to the Statement of Strategic Directions.

Code hierarchy

Where more than one type of code applies to a development, the order of precedence when there is inconsistency of provisions between codes is precinct code, development code, and general code, as defined by the *Planning and Development Act 2007*.

Definitions

Defined terms and references to legislation and other documents are italicised.

Definitions of terms used in this code are listed in part 13 of the Territory Plan or, for terms applicable only to this code, associated with the respective rule.

Acronyms

ACTPLA	ACT Planning and Land Authority
EPA	ACT Environment Protection Authority
ESA	Emergency Services Authority
ESDD	ACT Environment and Sustainable Development Directorate
EDD	ACT Economic Development Directorate
EDP	estate development plan
LDA	ACT Land Development Agency
NCA	National Capital Authority
NCC	National Construction Code
P&D Act	Planning and Development Act 2007
TAMS	ACT Territory and Municipal Services Directorate

Relevant development codes and general codes

Development codes that may be relevant to lease variation are:

- Residential Zones Development Code
- Single Dwelling Housing Development Code
- Multi Unit Housing Development Code
- Commercial Zones Development Code
- Industrial Zones Development Code
- Community Facility Zone Development Code
- Parks and Recreation Zone Development Code
- Transport and Services Zone Development Code
- Non-Urban Zones Development Code

In addition to the **development codes** specified above, **general codes** may be relevant. The following general codes, in particular, may be relevant to lease variation.

- Parking and Vehicular Access General Code
- Community and Recreational Facilities Location Guidelines General Code
- Crime Prevention Through Environmental Design General Code

Development must comply with all relevant codes (including precinct codes and other general codes not listed above), subject to the code hierarchy outlined in the introduction to this code. General codes are found in part 11 of the Territory Plan.

Part A – Lease variations in the merit or impact track

This part applies only to proposals in the merit or impact track.

Element 1: Variations - general

Rules	Criteria
1.1 Varying leases – general	
There is no applicable rule.	<p>C1</p> <p>A <i>lease</i> is varied only where all of the following are achieved:</p> <ul style="list-style-type: none"> i) the varied lease is consistent with the Territory Plan including all relevant codes ii) the land to which the <i>lease</i> applies is suitable for the development or use authorised by the varied <i>lease</i>.

Element 2: Variations to increase rights

Rules	Criteria
2.1 Increasing rights	
There is no applicable rule.	<p>C2</p> <p>A right under a <i>lease</i> is increased only when all of the following are achieved if the additional rights are granted and activated:</p> <ul style="list-style-type: none"> i) sufficient car parking is provided on site or is available off site in accordance with the <i>Parking and Vehicular Access General Code</i> ii) any increase in traffic flow is within the capacity of the surrounding road network iii) adequate post occupancy waste management and disposal can be provided to the relevant Territory standard iv) no unreasonable increase in the level of noise for the occupants of <i>dwellings</i> on the <i>block</i> or on adjoining land. <p>Note: examples of rights are the maximum <i>gross floor area</i>, the maximum floor area allocated to a particular use, <i>building heights</i>.</p>

Element 3: Variations to add uses - general

Rules	Criteria
3.1 Adding uses generally	
There is no applicable rule.	<p>C3</p> <p>An additional use is authorised by a <i>lease</i> only when all of the following are achieved if the additional use is granted and activated:</p> <ul style="list-style-type: none"> i) sufficient car parking is provided on site or is available off site in accordance with the <i>Parking and Vehicular Access General Code</i> ii) any increase in traffic flow is within the capacity of the surrounding road network iii) adequate post occupancy waste management and disposal can be provided to the relevant Territory standard iv) no unreasonable increase in level of noise for the occupants of <i>dwellings</i> on the <i>block</i> or on adjoining land v) no unreasonable risk to occupants of the <i>block</i> through any contamination of the <i>block</i> or on adjoining land vi) no unreasonable level of odour for the occupants of <i>dwellings</i> on the <i>block</i> or on adjoining land vii) no unreasonable level of light emission for the occupants of <i>dwellings</i> on the <i>block</i> or on adjoining land.

Element 4: Variations to add particular uses

Rules	Criteria
4.1 Community and Recreational Facilities	
There is no applicable rule.	<p>C4</p> <p>Community facilities or recreational facilities that are authorised by a <i>lease</i> comply with the <i>Community and Recreational Facilities Location Guidelines General Code</i>.</p>
4.3 Secondary residence	
<p>R6</p> <p>A variation to a <i>lease</i> to authorise a <i>secondary residence</i> is approved only where the <i>block</i> affected by the <i>lease</i> is 500m² or larger.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

4.4 Emergency management plan	
<p>R6A</p> <p>A variation to a <i>lease</i> to authorise an <i>animal care facility</i> in the industrial zones is approved only where an emergency management plan is provided and has been endorsed by the Emergency Services Authority (ESA).</p>	<p>C6A</p> <p>If an endorsed Emergency Management Plan is not provided, the application will be referred to the relevant agency in accordance with the requirements of the <i>Planning and Development Act 2007</i>.</p>
4.5 Noise	
<p>R6B</p> <p>A Noise Management Plan, prepared by an accredited acoustic specialist who is a member of the Australian Acoustic Society, is provided for an <i>animal care facility</i></p> <p>The Noise Management Plan details the design, siting and construction methods, which will be used to minimise the impact of noise on neighbouring uses, and reduce the intrusion of noise from industrial uses into the facility.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Part B – Lease variations in the code track

This part applies only to proposals in the code track.

Element 5: Variations to express the number of dwellings

Rules	Criteria
5.1 Expressing the number of dwellings or units	
<p>R7</p> <p>This rule applies to any of the following:</p> <ul style="list-style-type: none">a) Varying a <i>lease</i> to express the number of approved or lawfully erected <i>dwellings</i> or unitsb) Varying a <i>lease</i> to change the number of approved or lawfully erected <i>dwellings</i> or unitsc) Varying a <i>lease</i> to add a <i>secondary residence</i> where erection of a <i>secondary residence</i> has been approved <p>The variation to the <i>lease</i> is consistent with the following:</p> <ul style="list-style-type: none">i) all other provisions of the <i>lease</i>; andii) the Territory Plan, including all relevant codes.	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Element 6: Variations to remove, relocate or change easements

Rules	Criteria
6.1 Removing relocating or changing easements	
<p>R8</p> <p>A proposal to vary a lease to remove, relocate or change easements is consistent with both of the following:</p> <ul style="list-style-type: none">a) is supported by written endorsement from the relevant service providerb) is supported by drawings and information demonstrating that easements are not required or are provided elsewhere on the land.	<p>This is a mandatory requirement. There is no applicable criterion.</p>