



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
- City Centre Development Code
- Town Centres Development Code
- Group Centres Development Code
- Local Centres Development Code
- CZ2 Office Areas Outside Centres Development Code
- CZ5 Mixed Use Zone Development Code
- CZ6 Leisure and Accommodation Zone 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
- Home business general code
- Signs 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 provided on site or in the near vicinity ii) traffic increases within the capacity of local streets adequate waste management and disposal iii) no unreasonably increase the level of noise for the occupants of <i>dwelling</i>s on the <i>block</i> or on adjoining <i>blocks</i>. <p>Note: examples of rights are the maximum gross floor area, the maximum floor area allocated to a particular use, building heights.</p>

Element 3: Variations to add uses - general

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 provided on site or in the near vicinity

	<ul style="list-style-type: none"> ii) local streets capable of accommodating any additional traffic iii) adequate waste management and disposal iv) not unreasonable level of noise for the occupants of <i>dwellings</i> on the <i>block</i> or on adjoining land v) not unreasonable risk to occupants of the <i>block</i> through any contamination of the <i>block</i> or on adjoining land vi) not unreasonable level of odour for the occupants of <i>dwellings</i> on the <i>block</i> or on adjoining land vii) not unreasonable level of light emission for the occupants of <i>dwellings</i> on the <i>block</i> or on adjoining land.
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Element 4: Variations to add particular uses

4.1 Community and Recreational Facilities	
There is no applicable rule.	<p>C4</p> <p>Community facilities or recreational facilities are authorised by a <i>lease</i> comply with the <i>Community and Recreational Facilities Locational Guidelines General Code</i>.</p>
4.2 Removing concessional status	
<p>R5</p> <p>A variation to a <i>lease</i> that removes its concessional status is supported by a social impact assessment prepared by a suitably qualified person.</p>	This is a mandatory requirement. There is no applicable criterion.
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>	This is a mandatory requirement. There is no applicable criterion.

Part B – Lease variations in the code track

This part applies only to proposals in the code track.

Element 5: Variations to add uses

5.1 Expressing the number of units	
<p>R7</p> <p>A variation to a <i>lease</i> that expresses the number of approved or lawfully erected dwelling is consistent with both of the following:</p> <ul style="list-style-type: none">a) all other provisions of the leaseb) the Territory Plan, including all relevant codes.	<p>This is a mandatory requirement. There is no applicable criterion.</p>
5.2 Removing easements	
<p>R8</p> <p>A proposal to vary to a <i>lease</i> to remove easements is endorsed by the relevant utility provider.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>