

Planning and Development (Lease Variation Charges) Determination 2023

Disallowable instrument DI2023–172

made under the

Planning and Development Act 2007, s 276C (2) (a) (Lease variation charges—amount payable) and s 276E (1) (Lease variation charges—s 276E chargeable variations)

EXPLANATORY STATEMENT

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 as to what the LVC is for a lease variation covered by the determination. Codification is achieved in part through the development and application of a set of codes or schedules.

LVC Determination

This instrument (the LVC Determination) commences on 1 July 2023 and replaces *Planning and Development (Lease Variation Charges) Determination 2017 (No 2)*, DI2017-208.

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 and not under section 277 of the Act.

The LVC Determination permits the relevant LVC to be worked out by reference to the schedules and maps in the Determination. In summary, a lessee should be able to work out the applicable LVC by:

- checking the location of the lease against the maps in the LVC Determination; 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.

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

This LVC Determination does not apply to the LVC for variations that are not section 276E chargeable variations and does not apply to lease variations of leases that are not nominal rent leases (i.e. leases for which significant rent is payable).

In considering whether to determine the relevant LVCs the Treasurer, as per requirements under section 276E, has: consulted with the Minister for Planning and Land Management; and obtained and had regard to advice from an accredited valuer – see also the statement at section 5.

A determination must also state the reasons for determining the LVC and how the charge was determined under section 276E – this is provided by section 8 with reference to schedule 4 of the LVC Determination.

Changes in this instrument

Under section 10 the LVC Determination is to apply only to those development applications for lease variations submitted on or after 1 July 2023. Earlier development applications will remain subject to DI2017-208.

The LVC for schedule 1, item 1 for lease variations to limit the number of dwellings on a residential lease for unit title purposes is increased from \$30,000 to \$40,000 per dwelling regardless of the number of dwellings.

Schedules 2 and 3 are subject to a partial update of market values. The increase in values represents 50 per cent of the uplift to the 3-year average of values to 1 January 2021 (that is, the average of values as at 1 January 2019, 2020 and 2021).

In schedule 4, the reasons are updated for the above changes.

Commencement and application

This instrument commences on 1 July 2023. Development applications submitted before 1 July 2023 and lodged before 1 April 2024 remain subject to the previous determined LVC rates under DI2017-208.

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 instrument.

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.

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 900m² of gross floor area (GFA) on the lease for non-residential purposes and lease B permits up to 600m² of GFA. The relevant development approval approves a consolidation of these two leases resulting in a lease that permits up to 1,500m² 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 900m² of GFA is subdivided into two leases that permit up to 400m² and 500m² 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 900m² of GFA is subdivided into two leases that permit up to 400m² and 700m² respectively.

In this case the LVC is the sum of the LVC for the **subdivision** (schedule 1) and the increase in the maximum GFA from 900m² to 1,100m² (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 900m² of GFA on the lease and lease B permits up to up to 600m² 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 2,000m² 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 1,500m² to 2,000m² (schedule 3).

Details of the instrument

Section 1 Name of instrument

This section provides the name of the instrument.

Section 2 Commencement

This section provides the instrument commences on 1 July 2023.

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 multiple s 276E chargeable variations—Act, s 276C (2) (a)

Where a lease variation includes 2 or more section 276E 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):

$$3 \times \$7,500 + 1 \times \$5,000 = \$27,500$$

If the lease variation seeks to also increase GFA in a CZ1 zone in the City from an existing 10,000m² to 19,000m² (under schedule 3, table 1):

$$9,000 \times \$423 = \$3,807,000$$

$$\$3,807,000 - \text{applicable remission (say, 25\%)} = \$2,855,250$$

The total LVC is: $\$27,500 + \$2,855,250 = \$2,882,750$.

Section 5 Determination of lease variation charges—schedule 1—Act, s 276E (1)

This section applies to section 276E 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 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 unit title 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 unnumbered column, descriptions of the item in columns 1, 2 and 3 and the determined charge in column 4.

Section 5 (2) provides that a lease variation that meets the descriptions in columns 1, 2 and 3 attracts the charge indicated in column 4.

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 above.

Section 6 Determination of lease variation charges—schedule 2—Act, s 276E (1)

This section applies to section 276E 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.

These include section 276E 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 *section 276E chargeable variation* in the Act, and *Planning and Development Regulation 2008*, section 170A.)

In schedule 2 the following columns are repeated for each suburb:

- column 1 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, 3 and 4 are the charges per additional dwelling to be applied corresponding to the total in column 1 for the specified suburb:
 - column 2 applies only to leases in **locality A**;
 - column 3 applies to leases in **locality B**; and
 - column 4 applies to leases in **locality C**.

Locality A, Locality B and Locality C referred to in columns 2, 3 and 4 respectively refer to residential localities as identified in the maps in Attachment A to this instrument. **Residential locality** is defined in section 6 (3) as ‘a locality identified as residential in the legend in a map of the suburb set out in Attachment A’. The boundaries of these suburbs are taken from the Territory Plan. For some suburbs columns 3 and 4 are blank as there are no such residential localities identified.

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

$$\textit{increased number of dwellings} \times \textit{additional dwelling amount}$$

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. The **additional dwelling amount** is the amount indicated in either column 2, 3 or 4 depending on the locality identified on the attached maps.

The following is an example of how this formula is to be applied. A residential lease in Chapman, residential locality C 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:

$$\textit{increased number of dwellings} (4) \times \textit{additional dwelling amount} (\$73,333)$$

The \$73,333 figure above is the figure in column 3 (for locality C) corresponding to the ‘5-10 dwellings’ item in column 1. The ‘5-10 dwellings’ item in column 1 applies because the total number of dwellings on the varied lease is 6 and the increased number of dwellings is 4.

Section 7 Determination of lease variation charges—schedule 3—Act, s 276E (1)

Section 7 (1) states the lease variations to which this section applies. In summary, this section applies to the section 276E chargeable variations listed in schedule 3.

This section applies only to leases that:

- are located in a suburb/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 section 276E chargeable variations to which the following provisions apply. These variations are the ones mentioned in the definition of *section 276E 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 1: commercial—town centres;
- table 2: commercial—group centres;
- table 3: commercial—local centres; and
- table 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 charge applies;
- column 3 refers to additional criteria, if any, that must be met for the charge to apply;
- column 4 refers to the determined charge to apply for lease variations that meet all of the descriptions in columns 1, 2 and 3. The charge is expressed as a dollar amount per square metre of “additional GFA”.

The suburbs referred to in column 1 are as identified in the attached maps (Attachment A of this instrument). The boundaries of these suburbs are taken from the Territory Plan. The zones are as identified in the attached maps; the locations of these zones are also taken from 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.

The “criteria” in column 3 (see the definition in section 7 (3)) refers to either:

- a range of maximum GFA for non-residential use. This range refers to the maximum GFA that would be permitted under the lease after the proposed variation is executed; or
- a location for the relevant lease. In the case of a lease variation that also includes a consolidation; the location criteria apply to the lease as consolidated.

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

$$\textit{increased GFA} \times \textit{additional GFA amount}$$

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 2 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 non-residential lease in Dickson, in commercial zone CZ3 permits a maximum GFA of 8,000m² to be built on the land. The lessee obtains development approval to vary the lease to increase the GFA to permit a maximum of 15,000m². The determined charge is:

$$\textit{increased GFA} (7,000\text{m}^2) \times \textit{additional GFA amount} (\$523)$$

The \$523 figure above is the figure in column 4 (for additional GFA amount per square metre) corresponding to the “10,000m² to 20,000m² GFA maximum” criteria in column 3. The “10,000m² to 20,000m² GFA maximum” applies because the maximum amount of GFA permitted on the lease after the variation is 15,000m².

Section 8 Reasons etc for determining lease variation charges—Act, s 276E (4)

Section 276E (4) 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 Application and transitional

This section provides transitional arrangements to ensure that development applications submitted before the commencement of this instrument remain subject to the LVC provisions in the *Planning and Development (Lease Variation Charges) Determination 2017 (No 2)*, DI2017-208.

Section 9 (1) limits the application of the LVC Determination to development applications not subject to DI2017-208.

Section 9 (2) amends DI2017-208 to only apply to development applications submitted before 1 July 2023 and lodged before 1 April 2024.

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.

Attachment A

This attachment contains suburb maps for the purposes of identifying zones and localities under this instrument.

Authorised by the Treasurer
Andrew Barr MLA