



Australia's property industry

**Creating for Generations**

Property Council of Australia  
ABN 13 00847 4422

Level 4, 10 Moore Street  
Canberra ACT 2600

T. + 61 2 6276 3601

E. [act@propertycouncil.com.au](mailto:act@propertycouncil.com.au)

[propertycouncil.com.au](http://propertycouncil.com.au)

[@propertycouncil](https://twitter.com/propertycouncil)

Mr David Nicol  
Under Treasurer  
Chief Minister  
[LVCReview@act.gov.au](mailto:LVCReview@act.gov.au)

## Review of the Lease Variation Charge

*Response provided by the ACT Division of the Property Council of Australia*

Dear Mr Nicol,

Thank you for the opportunity to provide comments and feedback on your review of the Lease Variation Charge (LVC).

The Property Council of Australia champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

On behalf of our members, we provide the research and thought leadership to help decision-makers create vibrant communities, great cities and strong economies.

We support smarter planning, better infrastructure, sustainability, and globally competitive investment and tax settings which underpin the contribution our members make to the economic prosperity and social well-being of Australians.

In the ACT, the property sector is the second biggest industry in Canberra – behind the public and health services – employing 1 in 7 Canberrans – driving economic growth and renewal across our city. Our sector is critical to the diversity of the economy and contribute 57.5% of all government revenue which funds our schools, hospitals, municipal, community and government services. Our contribution to renewing our city at a time of transformation and growth is immense.

Many of our members work on a daily basis with members and officials within the government to drive development and renewal across the city – from townhouses to mixed use

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developments, multi-residential sites and commercial and retail projects – to whole estates and suburbs and precincts from the local shops to the high-rise developments in our town centres.

Our members include developers, financiers, architects, property law specialists, valuers, town planners, heritage consultants, universities, government agencies at both the Federal and Territory level and local utilities.

Our advocacy priorities include:

- **Encouraging urban renewal** that is vital to the future of Canberra’s economic and social wellbeing.
- **Planning and Sustainable Development polices** which are outcomes focused.
- **Transport Orientated Development** that delivers density and liveability in the major transport corridors and in our town centres.
- **Housing choice for all Canberrans** including retirement living and affordable housing.
- **Taxes and charges which are fair**, administered efficiently and encourage development where it is needed.
- **Long term infrastructure planning** which will help transform our city.

It is with these priorities in mind, that we provide the attached response.

Once again, thank you for the opportunity to contribute to the LVC Review. Don’t hesitate to contact me should you require further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Adina Cirson'.

Adina Cirson  
**ACT Executive Director**



## **Review of the Lease Variation Charge**

*Response provided by the ACT Division of the Property Council of Australia*

October 2018

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## 1. Executive Summary

The Property Council of Australia (the Property Council) welcomes the opportunity to provide this submission to the ACT Government on the current operation of the Lease Variation Charge (LVC).

The Property Council acknowledges the important role that the LVC plays as a betterment tax, seeking to share the benefit of land value uplift with the broader community. However, we believe that an enhanced system would provide a better outcome for Government, the community, town planners, developers and other stakeholders. Through the proposed system there is an opportunity to better align the LVC framework with broader ACT Government policies and priorities, such as urban renewal, diversity of housing, affordable housing, sustainable development, housing for an ageing population and economic diversification.

This submission outlines first-hand industry experience in navigating the current LVC framework and provides an overview of potential enhancements to the system in its application to residential, commercial, industrial, retail and mixed-use developments.

Our submission is based on achieving the following key themes:

- Improving clarity, certainty and transparency;
- Simplification of the system to create efficiency;
- Ensuring more LVC matters opt for the codified route;
- Creating a fairer and socially equitable system;
- Minimising time delays in determinations;
- Ensuring revenue neutrality, including a flow on effect of increasing 'rateable' properties;
- Enhancing dispute resolution processes; and
- Reducing costs to both Government and industry.

## 1.1 Recommendations

Our recommended enhancements to the LVC are outlined below.

Number	Recommendation
<b>Residential</b>	
1	<p>That the basis for the LVC be amended from a “<i>Lease Variation Charge</i>” to a reflect <i>GFA based</i> charge for residential development. Additional development rights should allow for residential re-development as a result of higher use zoning, purchased on a per m<sup>2</sup> basis, not a per unit basis.</p> <p>This would mean that the LVC payable on a site is fixed as a difference between that allowed as a single dwelling under the <i>single dwelling housing code</i>, and that proposed as total GFA for any redevelopment of that site.</p>
2	The <i>single dwelling housing development code</i> should be amended to create a new block typology for 700m <sup>2</sup> + sites, with no change proposed for sites under 700m <sup>2</sup>
3	The plot ratio for single dwelling builds in RZ1 and RZ2 be limited to 35% for blocks over 700m <sup>2</sup> . Additional GFC could be purchased at \$200/m <sup>2</sup>
4	The Property Council and ACT Government work together to refine the detail of the enhanced system to ensure unintended consequences are avoided and revenue neutrality is maintained.
<b>Commercial</b>	
1	<p>Create a system whereby an applicant has the ability to:</p> <ul style="list-style-type: none"> <li>• Elect to apply under either the existing Section 277 V1/V2 framework; or</li> <li>• Apply under a simplified Schedule 3 - codified values with a remission then applied.</li> </ul>
2	Create the ability for a Crown Lessee to either acquire uses / GFA which is outright based on a codified value and the remission applied, or trade in lower order uses for deemed higher order uses based on the same set of codified values.
3	Engage the API as the peak industry body governing valuers to review the codified values annually.
4	Have regard to the impact of the cost of demolition and associated works if they apply in a development application.

## 2. LVC background

The LVC is the current form of a betterment tax which has existed in some form in the ACT since 1971. The LVC replaced the Change of Use Charge (CUC) which was put in place following the abolition of land rents and the implementation of the current leasehold system.

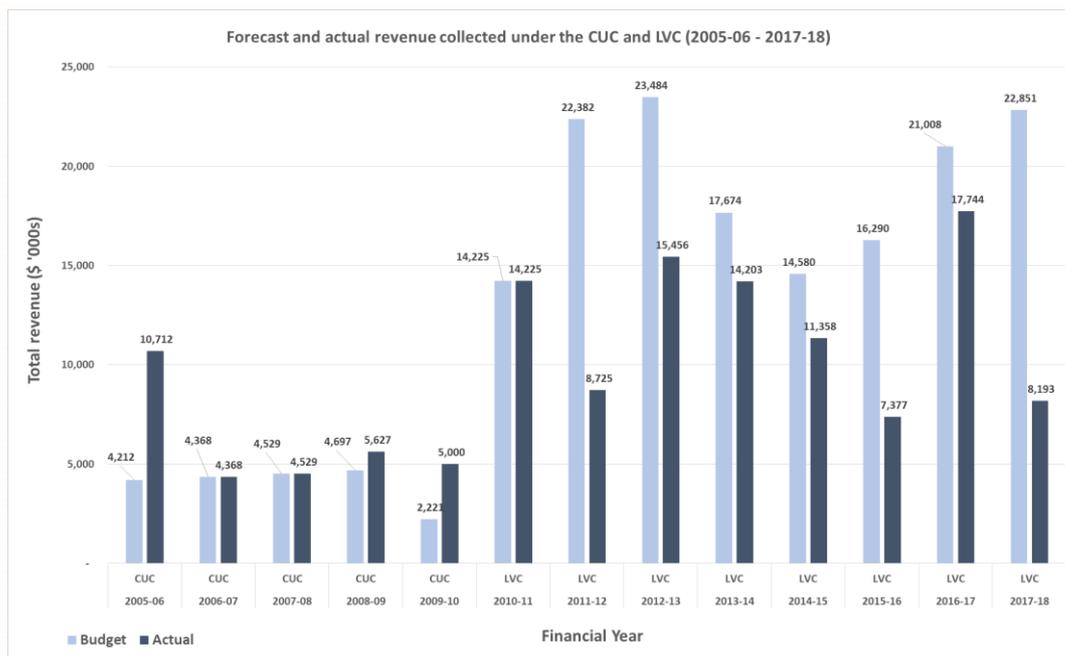
The ACT Government has stated that its objective for the LVC is that all Canberrans should benefit in the increase in the value of land arising from a change to the original lease granted by government.

The ACT Government's objective for the LVC is that it (on behalf of the Community) should capture 75% of the rise in the market value of the lease. This revenue is then reinvested by Government in various Government policy priorities and initiatives. Historically, remissions have ranged from 0% to 100%, with 50% to 75% being more common. Remissions create flexibility for Government to achieve policy settings and it is critical for this to be retained.

In the 2017-18 Budget, the ACT Government increased the LVC from \$7,500 to \$30,000 per dwelling on certain residential leases. This was unexpected by industry and has eroded confidence significantly. It also appears at odds with the ACT Governments' own stated policy objectives of increasing diversity of housing at time of significant renewal across the territory.

The figure below shows the forecast and actual amount of betterment tax received by the ACT Government from 2005-06, highlighting that since the introduction of the LVC in 2010-11 it has generally been unable to meet the anticipated revenue forecast in any year since introduction.

Figure 1: Forecast and actual revenue collected under the CUC and LVC (2005-06 – 2017-18)



Source: ACT Government Budget Papers

The Property Council acknowledges the Government’s position that the LVC Scheme plays an important role in funding its Territory-wide policy objectives. However, we believe that further enhancements to the LVC could be made to create a fairer, simpler and more transparent system delivering greater certainty for both government and industry.

We also note that the ACT Government is undertaking a long-term tax reform agenda, and that the current LVC scheme commenced prior to the current rates reforms. As such we believe that recognition should be given to the increased rateable returns gained by the government for unit titled property – and that the current LVC scheme is acting as a disincentive in this regard.

We propose that through the following enhancements, Government will achieve its objectives as a betterment tax, while also supporting broader objectives including, sustainable development, carbon neutrality, affordability and diversity of housing stock, urban renewal and infill, densification and supporting development near major transport routes which support both bus, light rail and active travel options.

## 2.1 Challenges facing Canberra

Canberra is a vibrant, dynamic and modern city and is consistently ranked as one of the world’s most liveable cities. However, as Canberra continues to grow, it will face a number of challenges. The Property Council believes that a refocusing of the LVC to better align its operation with the ACT Government’s objectives would provide significant benefits to Canberra.

This section outlines some of the key challenges facing Canberra relevant to the application of the LVC system.

### 2.1.1 Urban renewal and economic diversification

In *Canberra: A Statement of Ambition*, the ACT Government charted the course for Canberra’s future as a progressive city that can continue to attract and retain talented people, with a more diversified economy, and high-quality infrastructure that embraces a digital mindset. Urban renewal and economic diversification were identified as the foundations for achieving this vision for the Territory.

The ACT Government’s significant investment in infrastructure projects, such as the first stage of light rail, and commitment to deliver a city wide light rail network, present an opportunity to fully integrate transport and land use planning to achieve urban renewal outcomes. Realising the ACT Government’s urban renewal vision for Canberra will require the alignment and integration of planning, value capture policies such as the LVC and other charges, to support urban renewal and densification objectives to create a ‘compact and connected’ city.

These are ambitions for Canberra which are shared by the property sector – but our members also know that to achieve these objectives – careful planning is essential – and as clearly articulated by the ACT Chief Minister,<sup>i</sup>

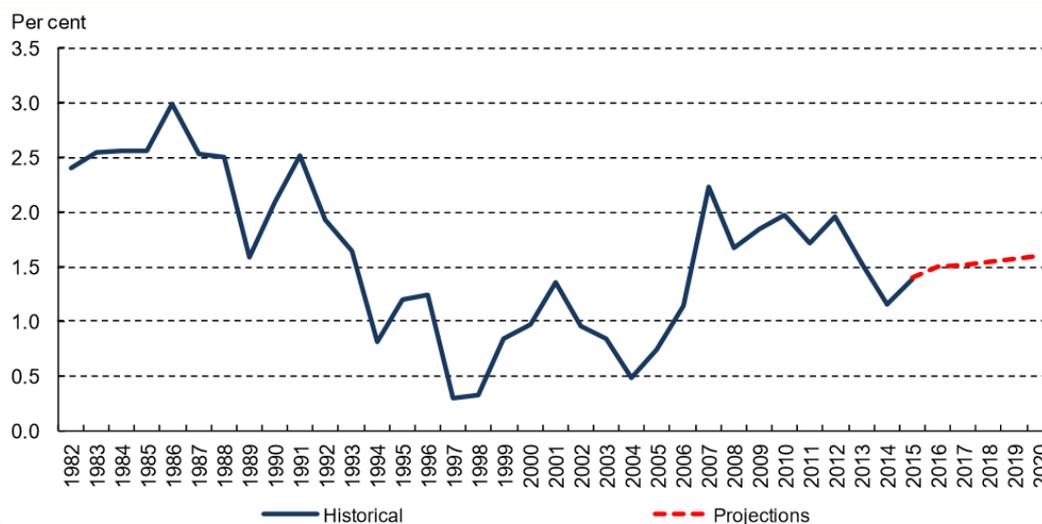
*Cities don’t succeed by accident or by leaving things to chance – they require design, good governance and great collaboration. Cities must internally*

*collaborate to compete in the modern era, and together we can ensure Canberra wins the global contest for investment and talent.*

### 2.1.2 Canberra's growing population

Canberra's population is expected to reach approximately 421,839 people by 2020 as outlined in the figure below.

Figure 2: Historical and Projected Population Growth 1982-2020



Source: ABS Cat. No. 3101.0 and ACT Government, Chief Minister, Treasury and Economic Development Directorate

Providing the infrastructure and services to cater for this increased population will require coordinated land use planning to ensure that a diverse mix of affordable housing is developed in line with increased demand. We note that significant work is currently underway to deliver an ACT Housing Strategy (including flagging of LVC remission to encourage the delivery of more affordable housing), Demonstration Housing project, a refresh of the ACT Planning Strategy and review of the Territory Plan (expected in 2019), and commend the investment being made by the Government in delivering these significant policy documents.

Canberra is also in a unique position relative to other capitals, as the economic hub of the region, surrounded by some of the fastest growing regional areas in Australia, including Queanbeyan, Murrumbateman and Yass, that remain subject to different planning and taxation systems. These areas have experienced strong residential growth over recent years. The potential for cross-border substitution means that Canberra's policies need to be carefully crafted to ensure they capture this growth and are not a disincentive to development and indeed investment inside of the ACT borders.

### 2.1.3 Housing affordability

The 2016 Census shows that the proportion of households in the ACT paying more than 30% of their income on mortgage costs has declined over the last five years since the 2011 Census, from 7.8% to 5.5%. The number of rental households paying more than 30% of their income on rent payments has stayed steady at around 8% of rental households. However, around 7,000 Canberra households are experiencing housing

stress, 11,500 households are living in public or community housing, and a further 1,700 people are estimated to be homeless<sup>4</sup>.

With Canberra’s population set to increase over time, ensuring access to housing which is affordable is fast becoming one of the most significant challenges for policymakers. Appropriately aligned land release, planning and urban renewal policies, as well as fairer taxes and charges, have the potential to secure the supply of affordable housing options for Canberrans into the future.

#### 2.1.4 Diversity of housing supply

An ageing Canberra, and changing household structure and consumer preferences, are directly influencing diversity in available housing options.

For example, traditional family structures (i.e. a couple with children) have fallen from 45% to 33% as a share of total households since 1991. In comparison, the number of couples with no children and single persons living alone has increased.

In 2017, the ACT Government commenced a discussion with the community on housing choices. This found that the community felt there was not enough housing diversity and there should be a greater mix of townhouses, terrace houses, dual occupancies and triple occupancies, as well as apartments.

As articulated in our response to the *Housing Choices Discussion Paper*, meeting the housing demand of Canberrans is critical if we are to cater to the needs of our growing and ageing population – as clearly articulated in the discussion paper.<sup>ii</sup>

According to [www.missingmiddle.com](http://www.missingmiddle.com) – it can be described as:

*A range of multi-unit or clustered housing types compatible in scale with single-family homes that help meet the growing demand for walkable urban living.*



It is important to understand the benefits that can be gained by the whole community by ensuring the missing middle is delivered.

The Property Council is of the firm view that enabling development of the ‘missing middle’ also requires the ACT Government to consider that the ‘return to the community’ is more than just levying charges upon developers. Developers must be

enabled to not only deliver to the market the product of greatest demand in a growing and ageing city – but must be coupled with recognition that this heavy lifting can bring immense social and community benefits.

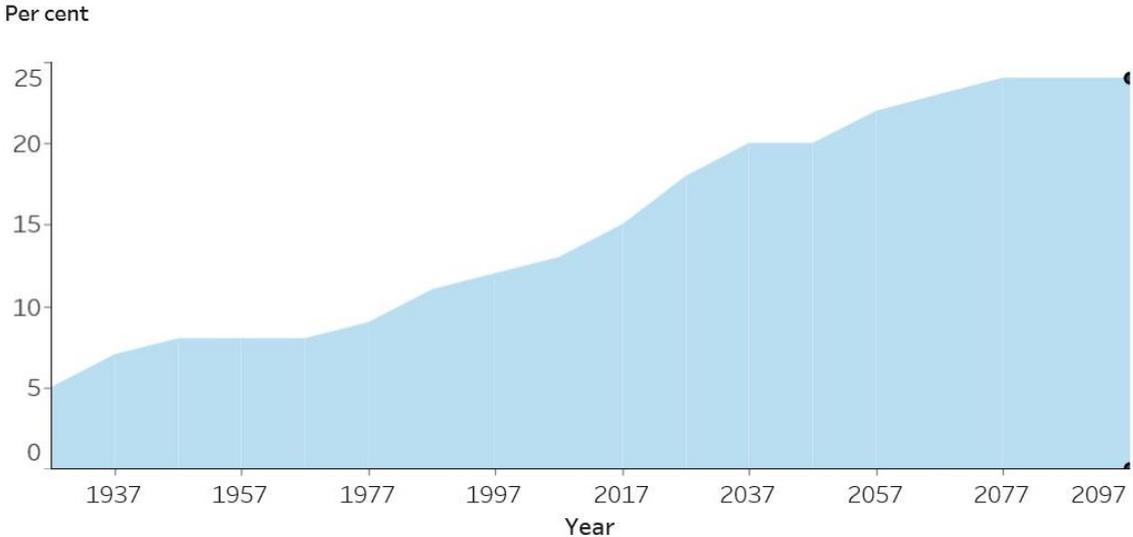
In its current form, the LVC is inhibiting housing diversity by providing a barrier to small-scale developments (e.g. building second dwelling or townhouses). A careful and targeted alignment of planning policies, with the government’s revenue collection measures could help to support the creation of greater housing choice to Canberrans, enable the development of the housing ‘missing middle’ in Canberra, whilst achieving the forecasted revenue targets for reinvestment back into the community.

2.1.5 The ageing population and demand for retirement living

In 2017, there were 3.8 million Australians aged 65 and over (comprising 15% of the total population) - increasing from 319,000 (5%) in 1927 and 1.3 million (9%) in 1977.<sup>3</sup> By 2057, it is projected that there will be 8.8 million older people in Australia (22% of the population); by 2097, 12.8 million people (25%) will be aged 65 and over.

The following figure outlines the growing proportion of Australians aged 65 and over.

Figure 3: Proportion of Australians aged 65 and over



Source: <https://www.aihw.gov.au/reports/older-people/older-australia-at-a-glance/contents/demographics-of-older-australians/australia-s-changing-age-and-gender-profile>

This trend is only set to continue. A study completed by Macro Plan Dimasi to explore the demand amongst older Australians for appropriate housing for the Retirement Living Council found that by 2032, 20% of the population are projected to be aged 65 and over.<sup>iii</sup>

Despite this, there is currently a lack of appropriate housing options for our ageing population, with a majority of older Australians (65 and over) forced to move to the outer suburbs due to lack of housing affordability in the inner and middle ring suburbs, despite their desire to ‘age in place’.

Coupled with our ageing population is a rise in the demand for retirement village living, with many existing homes often not suitable for sustained living in retirement due to physical hazards and/or ongoing maintenance requirements. Retirement villages can offer a more suitable housing option for older Australians, providing a community lifestyle with access to healthcare, services and social activities.

However, access to retirement villages is limited. Demand is highest in the inner suburbs, while supply is greatest in the outer suburbs. Without policies appropriately focused on incentivising the development of affordable and appropriate housing for older Australians, where they need it, lack of housing affordability and choice will become a growing challenge. Coordinated planning that is aligned with Government actions must be undertaken to ensure that future retirement villages and real housing choices, for ‘downsizers’ are located in areas of highest demand - where people need them most.

### 2.2 Previous Property Council submissions

The Property Council has made a number of submissions to Government on the LVC and related issues over the past few years. These submissions are summarised in the table below.

Date	Context	Recommendations / findings
March 2016	A submission to ACT Government to outline potential enhancements to simplify the LVC system	<p>The paper made six key recommendations:</p> <ol style="list-style-type: none"> <li>1. <b>A sliding scale of remission should be applicable depending on the age and added value (m<sup>2</sup>) of the improvements</b></li> </ol> <p>This will encourage urban renewal and support infill development</p> <ol style="list-style-type: none"> <li>2. <b>The codified rates system should be rationalised to group the suburbs by region and apply a scaled charge depending on the number of units to be developed</b></li> <li>3. <b>Associated works should be treated as offsets (deductions)</b></li> </ol> <p>Deductions should be allowed for:</p> <ul style="list-style-type: none"> <li>• Demolition costs</li> <li>• Offsite works</li> </ul> <ol style="list-style-type: none"> <li>4. <b>LVC should not be applicable where there has been no change in use. Instead, a separate, flat administrative charge should be applicable.</b></li> </ol> <p>That LVC is payable for changes that do not correspond to a change of building use. For example, getting rid of an electrical easement would incur a charge under the existing LVC system.</p> <ol style="list-style-type: none"> <li>5. <b>A deferred payment system should be introduced</b></li> </ol> <p>The liability arising for the LVC would be deferred for 3 years or until redevelopment is complete – whichever was earlier.</p>
April 2015	A submission was prepared by Knight Frank and Colliers International on behalf of the property industry	<p>The brief paper included case studies on the impact of the LVC under the current system, highlighting that the LVC is a significant up-front barrier impacting on development in the Territory. The paper argued that the current definitions of V1/V2, combined with the remissions system are impacting on the redevelopment of the City centre, transport corridors, industrial areas and older town centres.</p> <p>The paper recommended that LVC remissions should be restructured:</p> <ul style="list-style-type: none"> <li>• 50% remission: all developments where construction commences prior to 1 July 2017;</li> <li>• 75-90% remission: all developments where construction commences prior to 1 July 2017 and buildings are 30-45 years old (on a sliding scale); and</li> </ul>

Date	Context	Recommendations / findings
		<ul style="list-style-type: none"> <li>90-95% remission: all developments where construction commences prior to 1 July 2017 and involves buildings that are over 45 years old and/or construction of two or more properties occurs.</li> </ul>

The Property Council’s earlier attempts to amend the LVC to reflect the varying ages of Crown leases (and buildings) was rejected by the ACT Government in 2015. We welcomed the introduction of the LVC deferred payment scheme, earlier this year.

This latest submission attempts to work within the existing LVC framework with only minor modification required.

The approach is to encourage more applicants to utilise the codified path in residential, commercial and other applications. This will in turn provide more certainty to the applicants and their financiers/advisors and reduce the costs for both industry and the Government. The recommendations include the application of a remission to provide flexibility and equity for all parties.

The recommended approach would operate in effect, as a trading scheme where Crown Lessees can trade lower order uses (e.g. community use) in for higher order uses (e.g. office) and get recognition for the uses they currently have.

By paying market rates for higher order uses, either in addition to, or trading in lower order uses and then applying the remission on the resultant value, this system would reflect the more equitable approach than currently exists.

### 3. Proposed enhancements to the LVC

#### 3.1 Introduction

The LVC has long been an issue of contention between the development industry, town planners, valuers, community and government. In recent years the Property Council and Government have been able to come to a mutual understanding of the intent of the LVC that, as a betterment tax, is designed to share the benefit of the value created by a variation in a property's Crown lease with the broader Canberra community. However, we have been unable reach agreement on the effective application of the LVC.

The Property Council and its members understand the role that that taxes and charges raised through development play in our economic growth and diversification.

Ultimately it is the sectors contribution which assists our cities progression towards meeting our societal hopes and desires and to the social fabric of an increasingly developed urban environment. We understand the intent of the LVC is to provide the mechanism for a fair return to society for the opportunity to develop, but it must be carefully balanced with the need to enable development to occur, where and when it is needed.

This section of our submission highlights the challenges we have experienced in navigating the current LVC framework and proposes enhancements to support better alignment between the outcomes and objectives of the LVC.

Our consideration of the LVC has been split into two broad categories:

- Application to residential developments.
- Application to commercial and other developments, including mixed use, retail and industrial uses.

#### 3.2 Impact on development activity

##### 3.2.1 Residential development activity

The impact of LVC and its effect on feasibility is best demonstrated by the lack of development applications lodged within RZ2 zones across Canberra's suburbs. In the 2017/2018 financial year, just one dual occupancy with an LVC assessment of \$30,000 per unit was lodged across 119 Canberra Suburbs.<sup>iv</sup>

In the 6 years between 2011 and 2017, we estimate that just 6 development applications were lodged throughout all of Belconnen where 'Schedule 2' fees were payable and just 8 in the Inner South.

The Property Council believes that this highlights the impact of Schedule 2 on development activity. The increased LVC for 'Schedule 1' implemented in the 2017/18 Budget has brought Schedule 1 into a level of parity with Schedule 2. In the 12 months following its introduction (2017/18), only one development application for the renewed

fees, reinforces that LVC in its present design is a significant impediment on development activity.

It is the Property Council's view that the current operation of the LVC is creating a trend towards much larger dwellings within Redevelopment Zones as a consequence of the LVC's flat rate charge per unit.

For example, assuming a site within Belconnen or Woden has 500m<sup>2</sup> of development potential, then two 250m<sup>2</sup> dwellings will attract LVC of \$60,000, while a development of six 80m<sup>2</sup> single level 'age in place' townhouses would attract an LVC of \$180,000.

Although the \$60,000 LVC in itself, has slowed this type of development application down to just one application across the entirety of the ACT's 15,000 RZ2 zoned properties between July 2017 and July 2018, the \$180,000 levy payable on 6 smaller dwellings is impacting on the ability to provide smaller dwellings that would provide Canberrans with greater housing choice, as well as supporting the achievement of housing affordability objectives.

It is the view of the Property Council that the LVC is acting as an inadvertent lever which is seeing an increase in development of large expensive houses, most predominately being single dwelling builds – in areas where greater densification is necessary - and fast becoming a significant roadblock to the 'missing middle' or single level 'ageing in place' townhouses that were once a norm within Canberra's housing mix.

### 3.2.2 Commercial and other uses

Commercial and other development have also been constrained by LVC in its current form. Since the introduction of the LVC in 2011 there has been limited meaningful redevelopment of existing assets and a slowdown in minor variations due to complexities of the current system.

As such, use of the codified system (Schedule3) is very limited, with codified rates too expensive, the matrix too complex and the ultimate value not having access to remissions. This is evidenced by the schedule being revised several times since being established in 2011 and with certain leases requiring both a codified approach and Before/After Value lease assessment.

Furthermore, the impact of the current system is seen as inequitable by the market, primarily due to:

- The lack of recognition of the existing improvements in the 'V2 Before Value' scenario;
- No allowance for demolition;
- No allowance for decontamination or associated works;
- No acknowledgement or incentive to invest in offsite works with public benefits – such as investment in the public realm or green spaces.

These factors are all real 'hard costs' of a development, and therefore distort the economic fundamentals of a project, if ignored.

Furthermore, by not considering or recognising the work that could be undertaken by a developer in the surrounding public realm, greater collaboration between the community, developer and government to get the best from every development and represents a missed opportunity that could benefit all parties.

### 3.3 Better alignment with Territory planning and housing policies

The Property Council supports a fair and equitable charge that encourages the right development outcomes in the right places. To this end we believe that the planning outcomes expected of the Territory Plan and other Government policies, need to be in sync with the application of the lease variation charge, not working against each other.

Presently, the LVC rewards some development outcomes with low or nil LVC payable assessment, while charging other fees that impact upon development feasibility.

In this way, the LVC is picking winners and losers based on the wording in residential Crown leases, and complex tables and schedules.

The Property Council understands that the LVC was never intended to have such widely varying outcomes and we believe that enhancements could be made to the LVC to improve its fairness and equitability, and better align it with Territory housing and planning policies.

#### 3.3.1 Residential development

LVC is a significant impediment to the provision of smaller, compact, more affordable and sustainable dwellings, and will, if left as is, see a continuation of large expensive dwellings as the predominant redevelopment in Canberra's residential zoned redevelopment areas. These lease holdings (and dwellings) are often located in the "redevelopment" areas of the inner north, south, inner Belconnen and Woden/Weston creek – the older Canberra suburbs.

In its ultimate expression, this is seeing single dwelling builds that do not attract LVC replace dual occupancy and other forms of multi-unit housing development as a development choice.

The RZ2 zone is currently the largest zone for redevelopment in Canberra and includes over 15,000 potential development sites across the ACT.

The Property Council believes LVC is impacting on the redevelopment in RZ2. This is exacerbated by existing rules within the Territory Plan that allow a single dwelling build in RZ2 to be built to 50% GFA (or plot ratio). This is as compared to a typical 'one house behind the other' RZ2 dual occupancy type development which is limited to 35% GFA of which the 'rear' dwelling is limited to 17.5% of the maximum of the total plot ratio, available regardless of the floor area of the other dwelling.

RZ2 planning policy therefore encourages large single dwelling builds in lieu of a dual occupancy (or multi-unit builds on larger blocks) redevelopment. LVC acts as a further

impediment with a minimum \$60,000 charge for dual occupancy development of a lower GFA or 'development potential' than a single dwelling build.

Effectively, an LVC of \$60,000 is being sought to achieve a reduced development outcome, from 50% down to 35%, so the potential for RZ2 to meet its own zone objectives is being sidelined by the imposition of LVC.

Further to this, the current LVC schedule of \$30,000 per unit charges a dual occupancy development for both additional dwellings, as well as the existing dwelling on the land. This is a unique situation within all planning jurisdictions and/or local government areas within Australia and fails to acknowledge that the redevelopment of a single dwelling for the same is often exempt from planning approval and does not therefore attract a charge.

It is also worth noting that the medium density RZ3 and RZ4 re-development zones in Canberra's Inner North are also exceptionally well located and desirable areas for wealthier home buyers.

The combination of market forces (increased demand and value for single dwellings) and application of LVC will continue to favour the single dwelling market, while the current planning and taxation policy is in place.

Conversely and as highlighted, LVC creates winners with no LVC payable where the current dwelling is simply being replaced with a larger single dwelling, and in these situations LVC is no barrier to redevelopment.

### 3.3.2 Commercial and other development

The Property Council understands that the ACT Government is undertaking a 'wholesale review' of the Territory Plan during 2018-19 which is welcomed by industry.

The Territory Plan came into effect in 1993 and so has been in place now for 25 years. During that period, Canberra has essentially seen development of new commercial/industrial and other lands (e.g. Gungahlin Town Centre, Fyshwick Bulky Goods Precinct) with significantly limited redevelopment of existing sites within urban areas (including commercial and industrial areas).

In contrast to this pattern of urban growth, one of the ACT's key planning objectives is to support a compact, sustainable city with modern transport infrastructure. Under this objective, the redevelopment and densification of these urban areas will be the main focus for the next 25 years.

There is therefore an imperative that the revised LVC works in conjunction with the revised Territory Plan - to help enable redevelopment of brownfield sites to occur across all areas of the ACT, including Town Centres, service trades and industrial areas, as well as unlock the potential of major corridors following the completion of stages of Light Rail and other Government led initiatives.

Canberra has unnecessarily complex site-specific zonings (via Crown Lease purpose clause) and therefore a simplification of a codified system will allow market participants to effectively and efficiently take advantage of planning initiatives introduced by the ACT

Government and achieve equitable outcomes without utilising expensive and time-consuming appeals process.

The Property Council supports the retention of the Section 277 V1 Before Value and V1 After Value for more complex or 'unique' lease matters that cannot readily utilise the Schedule 3 codified system.

We propose that a simpler, codified system with benchmark values applied for higher order uses with an ability to gain credit for existing uses (if traded or considered in context when higher order uses are being added) would be a fairer outcome. This coupled with the application of a remission would encourage the market to participate whilst still showing a fair return to the community.

### 3.4 A simpler and more transparent system

Creating certainty will lead to a greater ability to be transparent, not only to the ACT Community, but also demystify the Crown leasing process for national and global investment in Canberra.

Codifying LVC was a step in the right direction, however there are innumerable potential lease wordings within these historic Crown leases, many of which date back to the earliest leases in Canberra, when a variety of authors would add their own interpretation of crown lease wording, possibly to meet the intent of the new lessee. It is relevant to consider that Crown leases have been granted at different times in different statutory contexts under different pieces of legislation with different outcomes intended over the history of our city.

We support the continuation and simplification of a codified system.

We have sought input from the breadth and width of professionals within development assessment, town planning, urban design, accounting and legal fields to try and engineer a repair or alternative schedule of tables for codified LVC, that might assist LVC to be far more equitably targeted and to encourage the forms of redevelopment the Territory Plan expects within redevelopment areas.

Sometimes a problem so complex needs a simple solution. We have delved into the analysis of the LVC to create a simpler, more equitable and fair solution.

#### 3.4.1 Residential development

LVC as the current mechanism has proven to be cumbersome, complicated and inefficient, and in its application within residential redevelopment, is creating significant anomalies in the LVC and the promotion of development outcomes that can be in direct conflict with the Zone objectives of The Territory Plan.

One of the fundamental problems lies within the wording within a residential Crown lease. Interpretation creates a number of issues which cause conflict in an equitable and consistent application of this charge.

Residential Crown leases within the ACT fall under 3 different calculation analysis within the lease variation charge legislation, these being;

- Schedule 1; “*residential purpose*” leases which are predominant across Canberra from Federation until 1976;
- Schedule 2: “*single dwelling*” leases, which are common from 1976 onwards; and
- V2/V1 assessment for leases with wording or other anomalies that do not allow assessment under Schedule 1 or Schedule 2 or residential leases in commercially zoned areas, with the latter not included in this suggested approach, but rather in the commercial approach outlined below.

As such, the wording can create significant variabilities into the LVC assessment and is plagued with the historical anomaly of house leases, which were drafted over time and under various statutory instruments, with many leases being crafted before the concept of LVC was conceived. These variabilities may see no LVC payable on significant projects whilst taxing minimal cottage type development very heavily.

The effect of this LVC interpretation has meant that some developers pay zero LVC, while a typical dual occupancy in any suburb in Canberra will attract a minimum \$60,000 charge, including the inclusion of a \$30,000 cost for the right to replace an existent home on that block.

This variability in assessment cannot readily be remedied while the basis of the LVC is within Crown lease wording. This variability in assessment is also a driver of social inequity, with larger projects gaining different treatment to small cottage type development, and with larger dwellings being encouraged in lieu of smaller more affordable dwellings.

The amount of LVC being assessed across similar sites in the ACT varies significantly, resulting in uncertainty and reduced diversity of housing types. For example:

- Under the current Schedule 1, a charge of \$30,000 per unit is applied per apartment, regardless of the apartment size. As a consequence, a 50m<sup>2</sup>, 1 bedroom apartment attracts the same \$30,000 LVC charge as a 300m<sup>2</sup> penthouse apartment.
- Translating this to a per square metre cost, a 50m<sup>2</sup> apartment carries a \$600/m<sup>2</sup> LVC charge as opposed to a 300m<sup>2</sup> apartment that carries a \$50/m<sup>2</sup> LVC charge. The net effect of the per unit charge, regardless of unit size, is the favouring ( in economic terms) of larger, more expensive apartments over smaller more affordable apartments.

This inequity places LVC and the planning system in direct conflict, as it promotes the approval and construction of larger dwellings and positions LVC as the largest barrier to the provision of affordable or age in place housing, causing significant entry barriers and increased costs at the entry point of the housing market.

It is our view that LVC as a charge levied against residential Crown Lease wording is inefficient and creates uncertainty and inequity in its application. The inability of LVC to achieve its income production targets is repeated each year and is unlikely to improve.

Specifically:

- 1) A per unit LVC works against the defined planning policies within the Territory Plan
- 2) A per unit LVC promotes larger dwellings at the expense of affordable housing
- 3) LVC is therefore consistently working against the Government's own affordable housing and planning policies

As such, we propose that the basis of the LVC be amended from a "*Lease Variation Charge*" to a *GFA based* charge for residential development, where additional development rights allowed for residential re-development as a result of higher use zoning, is purchased on a per m<sup>2</sup> basis, not a per unit basis.

This would mean that the LVC payable on a site is fixed as a difference between that allowed as a single dwelling under the *single dwelling housing code*, and that proposed as total GFA for any redevelopment of that site.

There would therefore be no difference in applicable charges for any type of lease whether that be a single dwelling lease, or a residential purposes lease. Creating a level playing field would mean all residential sites in Canberra are treated fairly and equitably.

As the charge levied is based on GFA, smaller units would pay a smaller charge and larger properties, a larger charge. This is as fair and equitable as a progressive tax approach can be.

This creates the environment to encourage affordable housing and to encourage age in place housing being developed in Canberra's established older suburbs.

To form the basis or foundations for this GFA based tax would require a definition change to the *single dwelling housing development code*. The change required would be to create a new block typology for 700m<sup>2</sup>+ sites. No change is proposed to existing block typologies for sites under 700m<sup>2</sup>.

700m<sup>2</sup> is the minimum block size allowed for development in RZ2 and for Fluffy sites in RZ1. RZ2 as redevelopment zone includes over 15,000 blocks in Canberra.

This submission proposes that the plot ratio for single dwelling builds in RZ1 and RZ2 be limited to 35% for blocks over 700m<sup>2</sup>. This ensures that single dwelling housing will retain the existing character and landscape environment that is a defining quality of Canberra's older areas, and more established areas which are those most affected by redevelopment.

In essence, this returns the development potential for single dwellings to the bulk and scale and GFA that was allowed as a maximum, across the ACT until 2003.

Additional GFA purchased at \$200/m<sup>2</sup>, for instance, produces a GFA based levy of \$46,000 for a 300m<sup>2</sup> unit in RZ5, or \$9,200 for a 60m<sup>2</sup> unit in that same zone.

This system is simple, with charges proportionate to the defined zoning and the size of the unit.

We believe that this system could be implemented in such a manner that ensures revenue neutrality and would welcome the opportunity to work collaboratively with the ACT Government to finalise the detail of our proposed scheme.

### 3.4.2 Commercial and other development

The Property Council have reconsidered and revised the existing codified Schedule 3 for commercial/industrial purposes. Set out below is the outline of a potential codified table which highlights the values for higher order uses and groups the lower order uses on a \$/m<sup>2</sup> of GFA basis.

#### ***Simplification of codification arrangements***

We propose that the basis of assessment be shifted away from a V<sup>1</sup> / V<sup>2</sup> basis to a primarily codified charge, however allowing the applicant to elect the path they apply under. A codified charge would simplify the process and create certainty unlike the current methodology.

The codified charge as proposed would create a simpler system of assessment, in which industry participants could simply look up the proposed use and location, with a range of areas available depending on the size of the application. The codified cost would potentially get smaller incrementally with the more area proposed.

The applicant can then purchase the additional GFA or a use, in reference to the codified charge table, which increases and improves transparency for all involved. Once the codified value is applied, the value can be multiplied by the remission rate, say 25%, with the applicant paying the balance.

We propose that the codified values will be set each year by the API by a three member panel, with the panel including at least 1 private valuer and 1 ACTVO valuer.

An example of the proposed codified charge table for the higher order uses is shown below, along with the community and other uses deemed to be lower order uses:

## Proposed Codified Charge Table

### Retail

Locality	Suburb	Use	GFA - Less than 500m <sup>2</sup>	GFA - 500m <sup>2</sup> - 5,000m <sup>2</sup>	GFA - Over 5,000m <sup>2</sup>
Civic	City	Retail	\$1,000	\$850	\$700
Inner South	Barton, Parkes, Forrest	Retail	\$800	\$700	\$600
Inner North	Braddon, Dickson, Lyneham, Turner	Retail	\$700	\$600	\$500
Town Centres	Belconnen, Phillip, Greenway, Gungahlin	Retail	\$600	\$550	\$500
Group Centres	Kaleen, Hawker.....	Retail	\$550	\$500	\$450
Local Centres	Aranda, Banks, ....	Retail	\$500	\$450	\$400
Employment / Other	Deakin, Bruce ....	Retail	\$450	\$400	\$350

### Office

Locality	Suburb	Use	GFA - Less than 1000m <sup>2</sup>	GFA - 1000m <sup>2</sup> - 5000m <sup>2</sup>	GFA - Over 5000m <sup>2</sup>	Value Date
Civic	City	Office	\$550	\$450	\$450	Oct-18
Inner South	Barton, Parkes, Forrest	Office	\$500	\$450	\$450	Oct-18
Inner North	Braddon, Dickson, Lyneham, Turner	Office	\$450	\$400	\$350	Oct-18
Town Centres	Belconnen, Phillip, Greenway, Gungahlin	Office	\$400	\$350	\$300	Oct-18
Group Centres	Kaleen, Hawker.....	Office	\$350	\$300	\$350	Oct-18
Local Centres	Aranda, Banks, ....	Office	\$250	\$225	\$200	Oct-18
Employment / Other	Deakin, Bruce, Symonston ....	Office	\$400	\$350	\$300	Oct-18

### Industrial

Locality	Suburb	Use	GFA - Less than 1000m <sup>2</sup>	GFA - 1000m <sup>2</sup> - 5000m <sup>2</sup>	GFA - Over 5000m <sup>2</sup>	Value Date
Fyshwick	Fyshwick	General Industry	\$300	\$250	\$200	Oct-18
Mitchell	Mitchell	General Industry	\$300	\$250	\$200	Oct-18
Hume	Hume	General Industry	\$200	\$150	\$125	Oct-18
Beard	Beard	General Industry	\$250	\$200	\$150	Oct-18
Employment / Other	Symonston, Oaks Estate,....	General Industry	\$250	\$200	\$150	Oct-18

### Bulky Goods

Locality	Suburb	Use	GFA - Less than 1000m <sup>2</sup>	GFA - 1000m <sup>2</sup> - 2000m <sup>2</sup>	GFA - Over 2000m <sup>2</sup>	Value Date
Fyshwick	Fyshwick	Bulky Goods Retail	\$350	\$300	\$250	Oct-18
Mitchell	Mitchell	Bulky Goods Retail	\$350	\$300	\$250	Oct-18
Hume	Hume	Bulky Goods Retail	\$300	\$250	\$200	Oct-18
Beard	Beard	Bulky Goods Retail				Oct-18
Employment / Other	Oaks Estate,....	Bulky Goods Retail				Oct-18
Town Centres	Belconnen, Phillip, Greenway, Gungahlin	Bulky Goods Retail	\$400	\$350	\$300	Oct-18
Group Centres	kaleen, Hawker, Kingston, Wanniasa.....	Bulky Goods Retail	\$350	\$300	\$350	Oct-18

### Commercial Accommodation

Locality	Suburb	Use	Less than 10 Rooms	Rooms - 10- 50	Rooms - over 50	Value Date
Civic	City	Hotel, Motel,....	\$40,000	\$35,000	\$30,000	Oct-18
Inner South	Barton, Parkes, Forrest	Hotel, Motel,....	\$35,000	\$30,000	\$25,000	Oct-18
Inner North	Braddon, Dickson, Lyneham, Turner	Hotel, Motel,....	\$35,000	\$30,000	\$25,000	Oct-18
Town Centres	Belconnen, Phillip, Greenway, Gungahlin	Hotel, Motel,....	\$35,000	\$30,000	\$25,000	Oct-18
Group Centres	Kaleen, Hawker.....	Hotel, Motel,....	\$30,000	\$25,000	\$20,000	Oct-18
Local Centres	Aranda, Banks, ....	Hotel, Motel,....	\$25,000	\$22,500	\$20,000	Oct-18
Employment / Other	Deakin, Bruce, Symonston ....	Hotel, Motel,....	\$30,000	\$25,000	\$20,000	Oct-18

### Retirement Independent Living Units (ILUs)

Locality	Suburb	Use	Less than 10 Rooms	Rooms - 10- 50	Rooms - over 50	Value Date
Civic	City	Retirement ILU's	\$30,000	\$25,000	\$20,000	Oct-18
Inner South	Barton, Parkes, Forrest	Retirement ILU's	\$30,000	\$25,000	\$20,000	Oct-18
Inner North	Braddon, Dickson, Lyneham, Turner	Retirement ILU's	\$30,000	\$25,000	\$20,000	Oct-18
Town Centres	Belconnen, Phillip, Greenway, Gungahlin	Retirement ILU's	\$25,000	\$20,000	\$15,000	Oct-18
Group Centres	Kaleen, Hawker.....	Retirement ILU's	\$20,000	\$17,500	\$15,000	Oct-18
Local Centres	Aranda, Banks, ....	Retirement ILU's	\$25,000	\$22,500	\$20,000	Oct-18
Suburbs	Campbell, ....	Retirement ILU's	\$25,000	\$22,500	\$20,000	Oct-18

### Community & Other Lower Order Uses

Locality	Suburb	Use	GFA - Less than 100m <sup>2</sup>	GFA - 100m <sup>2</sup> - 2000m <sup>2</sup>	GFA - Over 2000m <sup>2</sup>	Value Date
Civic	City	Community / other lower order uses	\$300	\$250	\$200	Oct-18
Inner South	Barton, Parkes, Forrest	Community / other lower order uses	\$300	\$250	\$200	Oct-18
Inner North	Braddon, Dickson, Lyneham, Turner	Community / other lower order uses	\$300	\$250	\$200	Oct-18
Town Centres	Belconnen, Phillip, Greenway, Gungahlin	Community / other lower order uses	\$250	\$200	\$150	Oct-18
Group Centres	Kaleen, Hawker.....	Community / other lower order uses	\$200	\$175	\$150	Oct-18
Local Centres	Aranda, Banks, ....	Community / other lower order uses	\$175	\$150	\$125	Oct-18
Suburbs	Campbell, ....	Community / other lower order uses	\$150	\$125	\$100	Oct-18

The Property Council believes that the proposed model would encourage more participants to go down the commercial codified path – in order to simplify applications and provide much needed certainty and timeliness.

It would also reduce cost to both industry and Government from assessment, negotiation, mediation, determination and reduce tribunal review. At present, ACAT appeals cost each party in the order of \$80,000 - \$100,000 and take some 12 months to resolve, much of which could be avoided if a simpler codified system could be put in place.

The purpose of our proposed model is primarily to:

- modify and simplify schedule 3 – commercial and industrial
- Provide an alternative to section 277 assessment

The reason why we would like to see a review of the current schedule 3 (Commercial) is to deliver certainty around the Crown lease's value for both applicants and Government and to allow Government to better estimate future potential revenue streams.

As previously mentioned, the fundamental flaws with the existing V2 before value assessment is that it has no regard for the economic position of the current Crown lessee in any proposed development i.e. makes no allowance for:

- The added value of improvements at the date of assessment (current LVC relates to land values only);
- Makes no allowance for the cost of demolition in order to achieve a vacant site
- Makes no allowance or offset for associated works associated with a particular development; and
- No allowance is made for proposed improvements to offsite public realm infrastructure that is often sought and/or conditioned in development proposals – an increasing consideration that is asked for when commercial/industrial properties are proposed to be redeveloped – and potentially an investment that is made by the developer, which would be considered favourably by the community, and also save the ACT Government significant resource – if recognised as a valuable contribution, through remission.

These key issues have a fundamental impact on the economic position of the Crown Lessee in the V2 Before Value (or ultimate LVC cost) and therefore their appetite to explore a Crown lease variation under Section 277. Examples of the impact this has had include historic office buildings within Woden and the CBD which have run down in value to as near as possible to land value over the past 7 years which does not achieve the desired outcomes of the Government or community, or readily allow the applicant to redevelop a site.

Examples exist in the CBD of institutional investors leaving Canberra as the impact of LVC has eroded the capital value of their asset due to the high level of LVC payable by an intending developer for an alternate use. This is hardly a desirable outcome for one of Australia's largest office markets and does not allow for the transition for older assets to an alternate use, either through conversion or redevelopment.

The proposed model would deliver more activity, create more revenue and certainty around budget forecasts, and generate greater investment and annuity income to the ACT Government through a greater rating base, more transaction activity and therefore stamp duty, and other non-property related revenue streams.

What we are proposing would also see the existing Section 277 (V1, V2) remain in acknowledgement that the complexity and specific nature of some existing Crown leases, warrants an in-depth assessment under the current system. Retaining the Section 277 (albeit with some changes to facilitate consideration of the fundamental flaws set out above) would deliver an alternative pathway where needed and/or preferred by lessees.

### ***Increased certainty in the valuation process***

API Appointed valuers could be engaged through their professional body, and directed to act in accordance with API standards and guidelines. The API, as the peak industry body for valuers, with members including the ACT Valuation office, could review and adopt the schedules annually.

The Property Council would support any disputes being resolved by an appropriately qualified mediator from the API (ACT Division) as the governing institute who looks after valuation matters.

### ***A more transparent dispute resolution process***

At present the avenues for appeal of an LVC decision are limited to either an application to Treasury on the grounds of hardship/financial waivers or alternatively a formal ACAT hearing. Until recently there has been inadequate involvement by experienced industry participants such as valuers and architects on the ACAT panel.

Given most disputes relate to the level of LVC payable which are in turn valuation matters, Property Council recommends a formal approach to the Australian Property Institute (API) to appoint an appropriately qualified valuer from a pre-qualified panel for major LVC disputes and/or determination.

In this event both parties could make formal oral and written submissions to the API representative who would in turn determine the appropriate amount. This approach could prove to be a good middle ground for all valuation and other professional participants and provide a more time and cost-effective solution than a full hearing at ACAT. This approach would bind both party's valuers and the umpire/determining valuer to the API standards and deliver a professional outcome.

## **3.5 Remissions**

Remissions were an important part of the original architecture of the LVC Scheme. The Remissions should remain at the ACT Government's discretion and allow the appropriate policy levers to be pulled to facilitate and encourage the practical delivery of key policy initiatives. As was evidenced by the economic stimulus remission and childcare use LVC remissions (remitted to nil LVC) – which delivered a significant increase in activity in the

market and the establishment of many new childcare centres, the mechanism is critical to achieve the policy outcomes desired by the Government and community.

Remissions have been an integral and important part of the original architecture of the LVC Scheme and have provided a much-needed lever to encourage and incentivise particular forms of development/location.

Remissions also tend through their nature to reward particular outcomes and through that effect, act against other development outcomes. There is therefore a need to ensure that the codified charges or V2/V1 LVC assessment that applies prior to a remission is feasible and allows development to occur, and that any remission offered is a desired outcome to take precedent over other forms of development.

Examples of remissions and their effect:

#### **Economic Stimulus Remission (25% additional remission)**

This delivered a significant increase in activity in the market, at a time when development confidence was low and was successful as a mechanism to achieve policy outcomes desired by the community.

As we leave a buoyant market that has been on a bull run for 8 years, this remission will likely need revisiting in the near future

#### **Child care centre Remission (100% remission)**

The remission for child care centres also demonstrated how powerful the remission instrument can be to achieving policy outcomes which benefit the whole community – and demonstrated that returning a benefit to the community can be delivered through non-fiscal measures.

#### **Service station redevelopment remission (100% remission)**

This remission encouraged the redevelopment of retired service stations. Although well intended, the inherent costs of environmental site remediation still far exceed the benefits of an LVC remission. Further to this this remission only applied to service station sites, not sites that were equally contaminated by other forms of industry. If such a remission were to be revisited in the future, then a remission that deals with contaminated sites ad-infinitum would be far more beneficial to the clean-up and redevelopment of contaminated land and the inclusion of that land within future urban renewal projects.

#### **Energy efficiency remission (25% remission)**

This remission rewards applicants who can achieve a minimum average EER rating of 7.5 stars and acts as a positive contributor to encourage energy and resource efficient development.

### 3.5.1 Enhancements to remissions

Remissions have produced development outcomes as intended and can be seen as successful, however the question really is;

***Would a similar outcome have been affected had the LVC assessment been more realistic, and sustainable in the first place?***

If LVC assessments were to place a value on the real costs of development, particularly where significant costs are engaged in site remediation, or off-site works, then the need to effect a remission for particular purposes would be reduced or potentially negated altogether. For example, the “service station redevelopment remission” was an acknowledgement of the significant costs and impediment involved in redeveloping a contaminated service station site. The LVC remission assisted, however if the LVC assessment included the real costs of remediating a contaminated site, or of building off site services into the V2 (before) valuation, and then assessed the V1 (after) value on that basis, it is as likely no LVC would have been payable, and the remission would not have been required.

Numerous service station sites sit undeveloped as they decontaminate over time. What will be the incentive to bring these sites back into the urban renewal interest of Canberra?

We support remissions as the only lever, currently available to encourage more diverse and affordable housing, environmental and sustainable development, more retirement living in urban infill areas and aged care, and adaptive reuse of tired office stock.

As there is no other lever currently available, the ability to remit or waive the charge, therefore remain as a an appropriate policy lever available to government.

Looking forward, it would be useful to analyse where these levers can be replaced with a formal process and acknowledgement of the value or cost of development site remediation or creation within the V2 assessment.

Government policy that can (and should) be encouraged by creation of additional remission instruments include:

- LVC remissions for delivering Retirement Living and Residential Care Accommodation to the appropriate standards to address the shortage of supply of these facilities; especially in the context of an aging population;
- Innovative thinking in the delivery of housing choices to the Canberra Community
- The demonstrable delivery of affordable dwellings to the market (and to this effect the Government affordability index used in Suburban Land Agency (SLA) land sales may be off use as a yardstick);
- Ongoing and further encouragement to deliver innovative initiatives in sustainability that stretches beyond building efficiency;
- Urban renewal in key areas that deliver demonstrable more than one key policy outcome; and

- Willingness to create and/or construct public realm benefits off-site that will deliver public and community benefit is worth consideration in review of the LVC Scheme. In order to qualify for the remission, these assets/initiatives could be required to meet agency standards including the principles of design and quality required by the City Renewal Authority (CRA) / Suburban Land Agency (SLA) or Design review panel in their inception, presentation and delivery.

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<sup>i</sup> Canberra: A Statement of Ambition, 2016, prepared in partnership by Arup and ACT Government.

[www.cmtedd.act.gov.au](http://www.cmtedd.act.gov.au)

<sup>ii</sup> ACT Government, *Housing Choices Discussion Paper*, p21.

<sup>iii</sup> [http://www.retirementliving.org.au/wp-content/uploads/2014/01/RLC\\_Census\\_Review\\_final.pdf](http://www.retirementliving.org.au/wp-content/uploads/2014/01/RLC_Census_Review_final.pdf)

<sup>iv</sup> Response to Question on Notice, Questions on Notice Paper 23, Question No. 1700, 24 August 2018.