

Australian Capital Territory

Planning and Development (Technical Amendment— Code and clarification amendment) Plan Variation 2012 (No 1)

**Notifiable instrument NI2012—189
Technical Amendment No 2012-01**

made under the

Planning and Development Act 2007, section 89 (Making technical amendments)

This Technical Amendment commences on 13 April 2012.

Technical Amendment Number 2012-01 to the Territory Plan has been approved by the Planning and Land Authority.

Ben Ponton
Delegate of Planning and Land Authority

05 April 2012

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ACT

Government

Environment and
Sustainable Development

**ACT Planning and
Land Authority**

Planning & Development Act 2007

Technical Amendment to the Territory Plan Variation 2012-01

Code and clarification amendment, including
changes to various codes, definitions and
concept plans

April 2012

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1. INTRODUCTION

Outline of the process

The Commonwealth's *Australian Capital Territory (Planning and Land Management) Act 1988* allows for the Legislative Assembly to make laws to establish a Territory Planning Authority and for that Authority to prepare and administer a territory plan.

The *Planning and Development Act 2007* (the Act) establishes the ACT Planning and Land Authority as the Authority which prepares and administers the Territory Plan, including continually reviewing and proposing amendments as necessary.

Technical amendments to the Territory Plan are prepared in accordance with the Act. This technical amendment has been prepared in accordance with the following two sections of the Act:

A code variation (section 87(b) of the Act) is a technical amendment that

- (i) would only change a code; and
- (ii) is consistent with the policy purpose and policy framework of the code; and
- (iii) is not an error variation.

A variation under section 87(g) of the Act is a technical amendment that clarifies the language in the Territory Plan, provided it does not change the substance of the plan.

Following the release of the variation under section 90 of the Act, submissions from the public were invited. At the conclusion of the limited consultation period, any representations are considered by the ACT Planning and Land Authority (the Authority). The Authority then determines a day when the code variation is to commence by way of a commencement notice.

2. EXPLANATORY STATEMENT

Changes, reasons and compliance with the *Planning and Development Act 2007*

2.1 Code variations

A. Single dwelling housing development code – changes to provide flexibility for approving more than one driveway and kerb crossing per dwelling (item 1)

The technical amendment changes the vehicle access provisions in part C(1) of the single dwelling housing development code. Criterion 39 previously stated that “Provided all other rules in this element are met, more than one driveway and kerb crossing over the verge may be permitted ...”. The requirement to meet ‘all other rules’ in the relevant element means a second verge crossing is not permitted if it does not meet rules R40 - R45. However, instances may arise where a proposal does not meet the above mentioned rules but meets Territory requirements as well as the requirements of the *Parking and vehicular access general code*. In these cases more flexibility for approval is needed. The term ‘rules’ is therefore replaced with the term ‘provisions’ in criterion 39 of the single dwelling housing development code.

Section of Act	Statement of compliance with Act
s87(b) a variation (a code variation) that -	
(i) would only change a code; and	Only changes section 4.1 of the single dwelling housing development code.
(ii) is consistent with the policy purpose and policy framework of the code; and	The purpose of the code is to provide the controls for single dwelling housing in all residential zones. The amendment is considered to be consistent with the purpose of the single dwelling housing development code. The change is consistent with the objectives for all residential zones.
(iii) is not an error variation	Is not a formal error

B. CZ5 mixed use zone development code – allowing *Community Use* to be developed on first floor in CZ5 zones in the Gungahlin town centre (item 2)

The technical amendment makes changes to the commercial CZ5 mixed use zone development code, to remove the restriction on *Community Use* above ground floor level for CZ5 zoned land in the Gungahlin town centre. A question arose about the consistency of a restriction on the location and scale of community facilities on CZ5 zoned land in the Gungahlin town centre, which is contained in the commercial CZ5 mixed use zone development code, with the recommendations of the Gungahlin Town Centre Planning Study. As mixed uses are to be encouraged in the Gungahlin town centre, supported by variation 300 and its associated Planning Report, it is not considered necessary to restrict *Community Use* in the Gungahlin town centre and on this basis additional restrictions in the CZ5 zone are excluded for the town centre.

Section of Act	Statement of compliance with Act
s87(b) a variation (a code variation) that -	
(i) would only change a code; and	Only changes section 1.5, Part B of the CZ5 mixed use zone development code.
(ii) is consistent with the policy purpose and policy framework of the code; and	<p>The purpose of the code is to provide the controls for mixed use commercial development in all CZ5 mixed use development zones.</p> <p>The amendment is considered to be consistent with the purpose of the commercial mixed use development code.</p> <p>The change is consistent with the objectives for all commercial zones.</p>
(iii) is not an error variation	Is not a formal error

C. Macgregor West concept plan - changes to provide limited flexibility for increasing maximum dwelling yield (item 3)

The Macgregor West concept plan is amended by allowing for the consideration in certain circumstances, of an increased dwelling number. The concept plan previously limited the dwelling numbers to 1300 houses on the basis of traffic generation. At the time of preparation of the concept plan the standard trip generation rate of 8 trips per day for single dwellings and 6 trips for medium density dwellings was adopted. Recent traffic studies indicated that a traffic generation rate of between 6.5 and 7 trips per day is applicable to single dwellings on lots of 360m² and less. This would potentially allow for an increase in dwelling yield of 60 additional lots for Macgregor West. This amendment places the onus on the proponent to demonstrate that an increased dwelling number would not adversely impact traffic generation for the suburb.

Section of Act	Statement of compliance with Act
s87(b) a variation (a code variation) that -	
(i) would only change a code; and	Only changes section 5.9 of the Macgregor West concept plan, which is a precinct code for the purposes of Section 93 of the <i>Planning and Development Act 2007</i> .
(ii) is consistent with the policy purpose and policy framework of the code; and	<p>Section 93 of the <i>Planning and Development Act 2007</i> states that a concept plan guides:</p> <p><i>(i) preparation and assessment of development in future urban areas to which the concept plan relates; and</i></p> <p><i>(ii) assessment of development when the land ceases to be in a future urban area.</i></p> <p>The change adds provisions to the concept plan to provide for the consideration of a dwelling number above the current specified maximum number of units, where certain requirements, designed to ensure orderly development, can be demonstrated.</p> <p>The change is consistent with the policy framework of the code.</p>
(iii) is not an error variation	Is not a formal error

2.2 Clarification variations

D. Group centres development code – clarifying the meaning of *ground level* (items 4 - 6)

The group centres development code contains references to building heights in relation to “ground level”. In this context it is considered to mean ***natural ground level***. To clarify, changes are made to the group centres development code to add the qualifier “natural” to correspond with the Territory Plan defined term.

Section of Act	Statement of compliance with Act
s87(g) a variation to clarify the language in the territory plan if it does not change the substance of the plan	The changes will clarify the term “ground level” used in the group centres development code.

E. Gungahlin town centre precinct code – rewording of provisions for building setbacks in various precincts to clarify the intent of building form in the town centre (items 7 - 9)

The technical amendment makes changes to provisions for building setbacks in the Gungahlin town centre precinct code. Recent requests for advice about development options for Gungahlin town centre highlighted the potential for confusion about the interpretation of rule R59 and criterion C59 regarding building forms. It is noted that the provision is largely unchanged from the town centres development code of the Territory Plan (effective 29 April 2011) which had several similar provisions for commercial zones in Gungahlin town centre. It is considered necessary to reword various provisions (rule R24 and criterion C24, rule R31 and criterion C31 and criterion C59) to clarify and confirm the interpretation of intended building form for sites in Gungahlin town centre.

Section of Act	Statement of compliance with Act
s87(g) a variation to clarify the language in the territory plan if it does not change the substance of the plan	The changes will clarify the intent of building form provisions in the Gungahlin town centre precinct code.

F. Parking and vehicular access general code – clarifying the difference between a bedroom and a study when applying parking space provisions in residential areas (item 10)

This technical amendment inserts a note in the parking and vehicular access general code - car parking schedule for residential areas to clarify the use of a room as a study. Provisions in the code are made for a minimum amount of parking spaces based on the number of bedrooms in dwellings in residential areas. However, some residences might include a room to be used as a bona fide study, but which might be misconstrued as being a bedroom. This note will help to clarify when a room should be identified as being a bona fide study.

Section of Act	Statement of compliance with Act
s87(g) a variation to clarify the language in the territory plan if it does not change the substance of the plan	The change will clarify the meaning of a study for the application of the residential parking space provisions in the parking and vehicular access general code.

G. Definitions – clarifying the meaning of *child care centre* (item 11)

This technical amendment inserts an educational component into the Territory Plan definition of development for *child care centre*, to reflect current practice in the child care sector. Child care staff is expected to be “educators” and not solely “carers”. This change to the definition coincides with the implementation of the National Quality Framework in the ACT, through the recently passed *Education and Care Services National Law (ACT) Act 2011*. The new legislation aims to raise the quality of care to children in early childhood, as well as outside school hours care services, and includes a new ‘educator-to-child ratio’. The new standards will ensure that every child will have greater interaction with better qualified staff to help them learn and develop. The National Quality Standard came into effect in the ACT on 1 January 2012, and the new qualification standards will be phased in from 2014.

Section of Act	Statement of compliance with Act
s87(g) a variation to clarify the language in the territory plan if it does not change the substance of the plan	The change to the definition of <i>child care centre</i> is intended to reflect current child care practice by inserting an educational component into the definition and providing greater clarity as to what a child care centre constitutes.

H. Definitions – clarifying the meaning of *front zone* (item 12)

This technical amendment changes the definition of *front zone* of a block by further clarifying the building setback to which it applies. In circumstances where the lower floor front setback differs from the upper floor front setback, the primary building zone commences at the lower floor front setback. This is because the definition of *front zone* refers to the 'minimum front setback' not the 'minimum upper floor level front setback'. While the primary building zone impacts mainly on the upper floor level, the definition is intended to apply to the whole of the building, not just the upper floor level. This change amends the definition of front zone so that it is clear that the front setback refers to the lower building level.

Section of Act	Statement of compliance with Act
s87(g) a variation to clarify the language in the territory plan if it does not change the substance of the plan	The change to the definition further clarifies the meaning of the front zone of a block.

3. TECHNICAL AMENDMENT

3.1 Code amendments

Variation to the residential zones – single dwelling housing development code

1. Residential zones – Single dwelling housing development code, Part C(1): Single dwelling housing, Element 4: Parking and site access, Section 4.1, criterion 39

- a) *Omit the crossed-out word in paragraph one*
- b) *Insert new wording as underlined below*

Rules	Criteria
4.1 Vehicle Access	
R39 There is one driveway and kerb crossing for each block.	C39 Provided all other rules <u>provisions</u> in this element are met, more than one driveway and kerb crossing over the verge may be permitted for: <ul style="list-style-type: none">a) forward entry to roads carrying greater than 3000 vpd; orb) large blocks where the visual impact to the streetscape is not adversely affected, provided the site access is of appropriate proportions and character with respect to:<ul style="list-style-type: none">i) relationship to verge footpathii) total proportion of the width of the access relative to the building widthiii) design featuresiv) protection of existing landscape features.

Variation to the commercial zones – CZ5 mixed use zone development code

2. Commercial zones – CZ5 mixed use zone development code, Part B: Site specific controls, Element 1: Restrictions on use, Section 1.5

Insert new wording as underlined below

1.5 Gungahlin District	
<p>R61 The following uses are not permitted in buildings above ground floor level: a) COMMUNITY USE, craft workshop, indoor entertainment facilities, indoor recreation facilities, NON RETAIL COMMERCIAL USE, restaurants and shops.</p> <p><u>This rule does not apply to COMMUNITY USE on CZ5 zoned land in Gungahlin Town Centre.</u></p>	<p>C61 Noise-generating uses are located to minimise impacts on residential or commercial accommodation development.</p>
<p>R62 The following GFA restrictions apply: a) COMMUNITY USE, Craft workshop, drink establishment, Indoor entertainment facility, NON RETAIL COMMERCIAL USE, restaurant, shop: maximum 200 m² per establishment or tenancy</p> <p><u>This rule does not apply to COMMUNITY USE on CZ5 zoned land in Gungahlin Town Centre.</u></p>	<p>C62 Small scale leisure, recreation, community and commercial activities are provided in conjunction with intensive residential development.</p> <p><u>This criterion does not apply to COMMUNITY USE on CZ5 zoned land in Gungahlin Town Centre.</u></p>

Variation to the Macgregor West concept plan

3. Concept plans – Macgregor West, Section 5 – Important planning requirements, Sub-section 5.9 – Dwelling numbers

- a) *Omit the crossed-out word in the first sentence below*
- b) *Insert wording underlined below*

5.9 Dwelling Numbers

An indicative subdivision plan for Macgregor West is located at Figure 3. The estate will contain a maximum of ~~4300~~ 1360 dwellings.

The 1992 Environmental Impact Assessment (EIS) associated with the Variation to the Territory Plan identified that the estate was to accommodate up to 850 dwellings. It was determined through the concept planning process that the additional 150 dwellings (i.e. 1000 dwellings for the estate) would not cause a significant change in the scale, size or purpose that was assessed as part of the EIS, consistent with Appendix II.1 of the Territory Plan.

At the time of the preparation of the concept plan, a trip generation (vehicle movements) rate of 9 trips per dwelling was applied. This rate was slightly higher than the standard trip generation rate of 8 trips per day for single dwellings and 6 trips per day for medium density dwellings.

Utilising the standard trip generation rates, an additional 300 dwellings is also considered not to significantly change the existing situation relating to the development of Macgregor West.

Note:

Recent traffic studies indicated that a traffic generation rate of between 6.5 and 7 trips per day is applicable to single dwellings on lots of 360m² and less. This would allow for an increase in dwelling yield of 60 additional lots in Macgregor West. An additional 60 dwellings may be considered, bringing the total to a maximum of 1360 dwellings for the estate, where the proponent can demonstrate that there is sufficient capacity in the infrastructure, services and the local and arterial road networks.

3.2 Clarification amendments

Variation to the commercial zones – group centres development code

4. Commercial zones – Group centres development code, Part A(1) – Group Centres – CZ1 Core Zone, Element 2: Building and Site Controls, Section 2.4, Criterion 8

Insert wording as underlined below

For Macquarie (Jamison) Section 50

- a) Building heights comply with all of the following:
- i) are compatible with existing, or future desired character of, adjacent development
 - ii) are appropriate to the scale and function of the use
 - iii) minimise detrimental impacts, including overshadowing and excessive scale.
- b) Maximum building heights are whichever is the greater of 4 storeys or 15 m above natural ground level.

5. Commercial zones - Group centres development code, Part A(2) – Group Centres – CZ2 Business Zone, Element 2: Building and Site Controls, Section 2.6: Macquarie (Jamison) Section 49 and 50, Criterion 21

Insert wording as underlined below

- a) Building heights comply with all of the following:
- i) are compatible with existing, or future desired character of, adjacent development
 - ii) are appropriate to the scale and function of the use
 - iii) minimise detrimental impacts, including overshadowing and excessive scale.
- b) Maximum building heights are whichever is the greater of 4 storeys or 15 m above natural ground level.

6. Commercial zones - Group centres development code, Part A(3) – Group Centres – CZ3 Services Zone, Element 2: Building and Site Controls, Section 2.3: Macquarie (Jamison) Section 48, Criterion 28

Insert wording as underlined below

- a) Building heights comply with all of the following:
 - i) are compatible with existing, or future desired character of, adjacent development
 - ii) are appropriate to the scale and function of the use
 - iii) minimise detrimental impacts, including overshadowing and excessive scale.
- b) Maximum building heights are whichever is the greater of 4 storeys or 15 m above natural ground level.

Variation to the Gungahlin town centre precinct code

7. Precinct codes – Other precinct codes, Gungahlin town centre precinct code, Part C(1) - Precinct 1a – Retail core, Element 2: Building and site controls, Section 2.3

Substitute with the following

Rules	Criteria
2.3 Setbacks	
R24 Buildings are joined at party walls and built to the front property boundary along main pedestrian areas and routes identified in Figure 13.	C24 Buildings achieve all of the following: <ul style="list-style-type: none"> a) consistency with desired planning outcomes b) compatibility with adjacent development. Minor setbacks in building alignment may be permitted to provide small spaces for active uses.

8. Precinct codes – Other precinct codes, Gungahlin town centre precinct code, Part C(2) - Precinct 1b – Retail core mixed use, Element 2: Building and site controls, Section 2.1

Substitute with the following

Rules	Criteria
2.1 Building envelope and setbacks	
<p>R31</p> <p>Buildings are joined at party walls and built to the front property boundary along main pedestrian areas and routes identified in Figure 13.</p>	<p>C31</p> <p>Buildings achieve all of the following:</p> <ul style="list-style-type: none"> a) consistency with desired planning outcomes b) compatibility with adjacent development. <p>Minor setbacks in building alignment may be permitted to provide small spaces for active uses.</p>

9. Precinct codes – Other precinct codes, Gungahlin town centre precinct code, Part C(8) - Precinct 4b – Northern transition, Element 2: Building and site controls, Section 2.1

Substitute with the following

Rules	Criteria
2.1 Building envelope and setbacks	
<p>R59</p> <p>Buildings are joined at party walls and built to the front property boundary along Anthony Rolfe Avenue and main pedestrian areas and routes identified in Figure 13.</p>	<p>C59</p> <p>Buildings achieve all of the following:</p> <ul style="list-style-type: none"> a) strong urban edge for the town centre along Anthony Rolfe Avenue b) compatibility with adjacent development c) consistency with desired planning outcomes.

Variation to the parking and vehicular access general code

10. Parking and vehicular access general code, Section 3: Parking and vehicular access, Sub-section 3.1.5, Schedule 1 – Residential zones

Insert the following under Note, as underlined below

1. 'Spaces' refer to 'car parking spaces' unless otherwise stated.
2. For this schedule a room may be classified as a study if it has at least one of the following characteristics:
 - a) It has both of the following:
 - i) a built-in desk
 - ii) access from the dwelling to the study through an opening of at least 1.2m wide.

Or

- b) A floor area of not more than 7m².

Variation to definitions

11. Part A – Definitions of Development

Insert wording underlined below into the development definition of child care centre in the development column

Child care centre means the use of land for the purpose of educating, supervising or caring for children of any age throughout a specified period of time in any one day, which is registered under the Children and Young People Act 2008 and which does not include residential care.

12. Part B – Definitions of Terms

Insert the wording underlined below into the definition for Front Zone

Front Zone means the area of a block between the *front boundary* and the *building line* or at the minimum front setback of the lower floor level for the block whichever is greater. (Note: for the purpose of this definition, the *front zone* shall not be more than 10m from the *front boundary*).

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