

Australian Capital Territory

# Planning and Development (Technical Amendment—Various) Plan Variation 2017 (No 1)

Notifiable Instrument NI2017—655

Technical Amendment No 2017-16

made under the

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

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## 1 Name of instrument

This instrument is the *Planning and Development (Technical Amendment—Various) Plan Variation 2017 (No 1)*.

## 2 Technical amendment

I am satisfied under section 89(1)(a) of the *Planning and Development Act 2007* (the Act) that the Various plan variation is a technical amendment to the Territory Plan.

## 3 Commencement

This instrument commences on the day after its notification day.

## 4 Meaning of *Various plan variation*

For this instrument:

*Various plan variation* means the technical amendment to the Territory plan, variation 2017-16, in the schedule.

Fleur Flanery  
Delegate of the planning and land authority  
3 December 2017



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Planning & Development Act 2007

# Technical Amendment to the Territory Plan

## 2017-16

Various code and clarification amendments

November 2017

Commencement version

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# 1. INTRODUCTION

## 1.1 Purpose

**This technical amendment makes the following changes to the Territory Plan:**

### **Multi unit housing development code**

- Adjust Rule R9 to clarify that the exceptions in this rule also apply to blocks formerly classified as residential B1 and B8 area specific policy under the old Territory Plan prior to March 2008 that were lawfully constructed but not under a holding lease at that time.
- Amend Rule R26 (building envelope) to ensure that the more stringent solar fence requirements apply to all blocks (except those blocks approved under an estate development plan on or after 5 July 2013)
- Amend Rule R57 (solar access requirements) to clarify this rule applies to all blocks unless subject to R57A (which deals with blocks approved under an estate development plan on or after 5 July 2013).

### **Industrial zones development code**

- Add a new rule to include bushfire building requirements for identified bushfire prone areas in IZ2 zones in order to be consistent with provisions for IZ1 zones.

### **Deakin precinct map and code**

- Adjust block and unit identifier details in Rule R10 in line with changes to blocks due to subdivision to ensure the provisions for the swimming pool are retained and apply to the correct block and unit.

### **Definition of ‘attached house’**

- Adjust the definition of *attached house* to remove misinterpretation and misuse of the purpose of this type of development.

## 1.2 Public consultation

Under section 87 of the *Planning and Development Act 2007* (the Act) this type of technical amendment requires limited public consultation. The public was notified through an online public notice.

At the conclusion of the limited consultation period, one submission was received. The comments were considered by the planning and land authority (the Authority) within the Environment, Planning and Sustainable Development Directorate and a report on consultation prepared addressing the concerns.

The Authority then determines a day when the technical amendment is to commence by way of a commencement notice.

### 1.3 National Capital Authority

The National Capital Authority has been advised of this technical amendment.

### 1.4 Process

This technical amendment has been prepared in accordance with section 87 of the Act. Comments received from the public and the National Capital Authority were taken into account before the planning and land authority “made” the technical amendment under section 89 of the Act. The planning and land authority must now notify the public of its decision.

No changes were made to the technical amendment following public consultation.

### 1.5 Types of technical amendments under the Act

The following categories of technical amendments are provided under section 87 of the Act:

- (1) Each of the following territory plan variations is a **technical amendment** for which no consultation is needed before it is made under section 89:
  - (a) a variation (an **error variation**) that –
    - (i) would not adversely affect anyone’s rights if approved; and
    - (ii) has as its only object the correction of a formal error in the plan;
  - (b) a variation to change the boundary of a zone or overlay under section 90A (Rezoning – boundary changes);
  - (c) a variation, other than one to which subsection (2) (d) applies, in relation to an estate development plan under section 96 (Effect of approval of estate development plan);
  - (d) a variation required to bring the territory plan into line with the national capital plan;
  - (e) a variation to omit something that is obsolete or redundant in the territory plan.
- (2) Each of the following territory plan variations is a **technical amendment** for which only limited public consultation is needed under section 90:
  - (a) a variation (a **code variation**) 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;
  - (b) a variation to change the boundary of a zone under section 90B (Rezoning – development encroaching on adjoining territory land);

- (c) a variation in relation to a future urban area under section 90C (Technical amendments – future urban areas);
- (d) a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan) if it incorporates an ongoing provision that was not included in the plan under section 94 (3) (g);
- (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan;
- (f) a variation to relocate a provision within the territory plan if the substance of the provision is not changed.

Following each item in Part 2 Explanation of this technical amendment is a statement of compliance against the specific criteria for the relevant category of technical amendment.

TA2017-16 has been prepared in accordance with sections 87(2)(a) and 87(2)(e) of the Act.

## 2. EXPLANATION

### Background

This part of the technical amendment document explains the changes made to the Territory Plan, the reasons for the change, and a statement of compliance against the relevant section of the Act.

### 2.1 Variation to the multi unit housing development code

#### Rule R9 (Plot ratio)

The existing rule R9 reads as follows:

Rules	Criteria
<b>3.5 Plot ratio – other than single dwelling blocks – RZ1, RZ2, RZ3 and RZ4</b>	
<p>R9</p> <p>This rule applies to blocks other than <i>single dwelling blocks</i> in RZ1, RZ2, RZ3 and RZ4</p> <p>The maximum <i>plot ratio</i> is:</p> <p>a) in RZ1, RZ2 and RZ3 – 65%</p> <p>b) in RZ4 – 80%.</p> <p>This rule does not apply to:</p> <p>i) <i>blocks</i> with both of the following characteristics:</p> <ul style="list-style-type: none"><li>• subject to either a residential B1 or B8 area specific policy under the Territory Plan at 30 March 2008</li><li>• held under a holding lease at 30 March 2008</li></ul> <p>ii) blocks in RZ1 approved before 5 July 2013</p> <p>For the purpose of calculating <i>plot ratio</i> for this rule, the <i>gross floor area</i> includes 18m<sup>2</sup> for each roofed car space provided to meet Territory requirements for resident car parking, but does not include <i>basement</i> car parking.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

This amendment addresses the situation for blocks in the previous residential B1 (Three Storey Development) and B8 (Residential Mixed Use) area specific policy areas under the old Territory Plan (prior to 31 March 2008) that were lawfully approved and constructed but not necessarily held under a holding lease at that time.

Rule R9 has been adjusted to clarify that the provisions do not apply if either the blocks were lawfully approved and constructed, or held under a holding lease as at

30 March 2008. This is to safeguard blocks that were not held under a holding lease but were lawfully approved and constructed (or vice versa) are not inadvertently disregarded from the exclusions to the rule. This adjustment to rule R9 will preserve the previous development rights that applied to blocks in these specific situations.

*Proposed R9 (see underlined changes)*

Rules	Criteria
<b>3.5 Plot ratio – other than single dwelling blocks – RZ1, RZ2, RZ3 and RZ4</b>	
<p>R9</p> <p>This rule applies to blocks other than <i>single dwelling blocks</i> in RZ1, RZ2, RZ3 and RZ4</p> <p>The maximum <i>plot ratio</i> is:</p> <p>a) in RZ1, RZ2 and RZ3 – 65%</p> <p>b) in RZ4 – 80%.</p> <p><u>This rule does not apply to:</u></p> <p>a) <u>blocks subject to a residential B1 or B8 area specific policy under the Territory Plan at 30 March 2008 with any of the following characteristics:</u></p> <p>i) <u>lawfully approved and constructed</u></p> <p>ii) <u>held under a holding lease at 30 March 2008</u></p> <p>b) <u>blocks in RZ1 approved before 5 July 2013</u></p> <p>For the purpose of calculating <i>plot ratio</i> for this rule, the <i>gross floor area</i> includes 18m<sup>2</sup> for each roofed car space provided to meet Territory requirements for resident car parking, but does not include <i>basement</i> car parking.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

**Compliance with the Planning and Development Act 2007**

<b>Section</b>	<b>Statement</b>
<p>s87(2)(a)</p> <p>(a) a variation (an <b>code variation</b>) that—</p> <p>(i) would only change a code</p> <p>(ii) is consistent with the policy purpose and policy framework of the code; and</p> <p>(iii) is not an error variation</p>	<p>This code amendment is consistent with the policy purpose and policy framework of the multi unit housing development code. This amendment will clarify that Rule R9 does not apply to blocks that were lawfully built on prior to 30 March 2008 but not necessarily held under a holding lease at that time (or vice versa). This scenario needs to be captured by the rule as it is a legitimate historical application to where the rule does not apply in order to preserve previous development rights.</p>



## Rule R26 (building envelope)

Different solar access provisions relating to the solar building envelope ('solar fence') in R26 applies to blocks either approved before 5 July 2013 or approved under an estate development plan on or after 5 July 2013.

However, the situation has arisen where blocks in established areas have been subdivided after 5 July 2013 and multi unit dwellings built on them where no estate development plan approval was required. This has meant that neither of the solar building envelope provisions are applicable as the blocks were not approved before 5 July 2013 nor were the blocks approved under an estate development plan on or after 5 July 2013.

Adjustments to Rule R26 will ensure that solar building envelope requirements apply to all blocks whether approved before or after 5 July 2013. This will close a loophole and ensure that the required solar access amenity is provided to all multi unit housing developments to which R26 applies.

### Compliance with the Planning and Development Act 2007

Section	Statement
s87(2)(a) (a) a variation (an <b>code variation</b> ) that— (i) would only change a code (ii) is consistent with the policy purpose and policy framework of the code; and (iii) is not an error variation	This code amendment is consistent with the policy purpose and policy framework of the multi unit housing development code. This amendment clarifies that the more onerous solar fence requirements in Rule R26 applies to all blocks except those approved under an estate development plan on or after 5 July 2013, which are subject to different requirements. This will ensure that all blocks are captured in the provision and that there are no loopholes which may lead to substandard solar access and building envelope development outcomes.

## Existing R26

Rules	Criteria
<p>R26</p> <p>This does not apply to either of the following:</p> <ul style="list-style-type: none"> <li>a) <i>buildings</i> with more than 3 <i>storeys</i> in RZ5</li> <li>b) <i>buildings</i> with more than 3 <i>storeys</i> in commercial zones.</li> </ul> <p><i>Buildings</i> are sited wholly within the solar building envelope formed by planes projected over the subject <i>block</i> at <math>X^\circ</math> to the horizontal from the height of the ‘solar fence’ on any <i>northern boundary</i> of an adjoining <i>residential block</i>.</p> <p><math>X^\circ</math> is the apparent sun angle at noon on the winter solstice. Values for X are given in Table A4.</p> <p>The height of the ‘solar fence’ is:</p> <p>For a <i>block</i> approved before 5 July 2013:</p> <ul style="list-style-type: none"> <li>i) in the <i>primary building zone</i> – 2.4m</li> <li>ii) all other parts of the boundary – 1.8m</li> </ul> <p>For a <i>block</i> approved under an <i>estate development plan</i> on or after 5 July 2013:</p> <ul style="list-style-type: none"> <li>i) in the <i>primary building zone</i> – 3m</li> <li>ii) all other parts of the boundary – 2.3m</li> </ul> <p>This rule does not apply to those parts of a boundary where the adjacent part of the adjoining <i>residential block</i> comprises only an access driveway (i.e. a “battleaxe handle”).</p> <p>The previous rule applies to this part of the boundary.</p> <p>An example of a typical building envelope is shown at Figure A1.</p> <p><b>Note:</b> To remove any doubt, the reference to a building with more than 3 storeys is a reference to the whole building, not just that part of the building over 3 storeys.</p>	<p>C26</p> <p><i>Buildings</i> achieve all of the following:</p> <ul style="list-style-type: none"> <li>a) consistency with the <i>desired character</i></li> <li>b) reasonable solar access to <i>dwellings</i> on adjoining <i>residential blocks</i> and their associated <i>private open space</i></li> <li>c) reasonable levels of privacy for <i>dwellings</i> on adjoining <i>residential blocks</i> and their associated <i>private open space</i></li> <li>d) where an adjoining <i>block</i> is not yet developed, the potential for reasonable solar access and privacy on the adjoining <i>residential block(s)</i> is maintained</li> </ul>

*Proposed R26 (see underlined changes)*

Rules	Criteria
<p>R26</p> <p>This does not apply to either of the following:</p> <ul style="list-style-type: none"> <li>a) <i>buildings</i> with more than 3 storeys in RZ5</li> <li>b) <i>buildings</i> with more than 3 storeys in commercial zones.</li> </ul> <p><i>Buildings</i> are sited wholly within the solar building envelope formed by planes projected over the subject <i>block</i> at <math>X^\circ</math> to the horizontal from the height of the ‘solar fence’ on any <i>northern boundary</i> of an adjoining <i>residential block</i>.</p> <p><math>X^\circ</math> is the apparent sun angle at noon on the winter solstice. Values for X are given in Table A4.</p> <p>The height of the ‘solar fence’ is:</p> <p>For a <i>block</i> approved under an <i>estate development plan</i> on or after 5 July 2013:</p> <ul style="list-style-type: none"> <li>i) in the <i>primary building zone</i> – 3m</li> <li>ii) all other parts of the boundary – 2.3m</li> </ul> <p><u>For all other <i>blocks</i>:</u></p> <ul style="list-style-type: none"> <li>i) <u>in the <i>primary building zone</i> – 2.4m</u></li> <li>ii) <u>all other parts of the boundary – 1.8m</u></li> </ul> <p>This rule does not apply to those parts of a boundary where the adjacent part of the adjoining <i>residential block</i> comprises only an access driveway (i.e. a “battleaxe handle”). The previous rule applies to this part of the boundary.</p> <p>An example of a typical building envelope is shown at Figure A1.</p> <p><b>Note:</b> To remove any doubt, the reference to a building with more than 3 storeys is a reference to the whole building, not just that part of the building over 3 storeys.</p>	<p>C26</p> <p><i>Buildings</i> achieve all of the following:</p> <ul style="list-style-type: none"> <li>a) consistency with the <i>desired character</i></li> <li>b) reasonable solar access to <i> dwellings</i> on adjoining <i>residential blocks</i> and their associated <i>private open space</i></li> <li>c) reasonable levels of privacy for <i> dwellings</i> on adjoining <i>residential blocks</i> and their associated <i>private open space</i></li> <li>d) where an adjoining <i>block</i> is not yet developed, the potential for reasonable solar access and privacy on the adjoining <i>residential block(s)</i> is maintained</li> </ul>

## Rule R57 (solar access other than apartments)

Similarly to R26, Rule R57 has been amended to clarify the rule applies to all blocks except those blocks subject to R57A which specifically applies to blocks approved under an estate development plan on or after 5 July 2013.

The situation has arisen where blocks in established areas have been subdivided after 5 July 2013 and multi unit dwellings built on them where no estate development plan approval was required. This has meant that neither the solar access provisions in R57 or R57A are applicable as the blocks were not approved before 5 July 2013 nor were the blocks approved under an estate development plan on or after 5 July 2013.

Adjustments to Rule R57 will ensure that solar access requirements apply to all blocks whether approved before or after 5 July 2013. This will close a loophole and ensure that the required solar access amenity is provided to all multi unit housing developments to which R57 or R57A applies.

### Existing R57

6.1 Solar access – other than apartments	
<p><b>R57</b></p> <p>This rule applies to multi unit housing on <i>blocks</i> approved before 5 July 2013. This rule does not apply to <i>apartments</i>.</p> <p>The floor or internal wall of a daytime living area of a dwelling is exposed to not less than 3 hours of direct sunlight between the hours of 9am and 3pm on the winter solstice (21 June).</p> <p><u>For this rule:</u></p> <p><b>Daytime living area</b> means a <i>habitable room</i> other than a bedroom</p> <p><b>Note:</b> Where a development comprises a mixture of <i>apartments</i> and other multi unit housing, this rule applies to the other multi unit housing, but does not apply to the <i>apartments</i>.</p> <p><b>Note:</b> To remove any doubt, when assessing a development on a block with existing dwellings, the development must comply and must not cause an existing dwelling to then contravene this requirement. However, if the existing dwelling does not currently comply, the development must not increase the level of non compliance for that other dwelling.</p>	<p><b>C57</b></p> <p>This is a mandatory requirement. There is no applicable criterion.</p>

*Proposed R57 (see underlined changes)*

6.1 Solar access – other than apartments	
<p><b>R57</b>  <u>This rule applies to all multi unit housing on blocks with the exception of blocks subject to R57A.</u></p> <p>This rule does not apply to <i>apartments</i>.</p> <p>The floor or internal wall of a daytime living area of a dwelling is exposed to not less than 3 hours of direct sunlight between the hours of 9am and 3pm on the winter solstice (21 June).</p> <p><u>For this rule:</u></p> <p><b>Daytime living area</b> means a <i>habitable room</i> other than a bedroom</p> <p><b>Note:</b> Where a development comprises a mixture of <i>apartments</i> and other multi unit housing, this rule applies to the other multi unit housing, but does not apply to the <i>apartments</i>.</p> <p><b>Note:</b> To remove any doubt, when assessing a development on a block with existing dwellings, the development must comply and must not cause an existing dwelling to then contravene this requirement. However, if the existing dwelling does not currently comply, the development must not increase the level of non compliance for that other dwelling.</p>	<p><b>C57</b>                      This is a mandatory requirement. There is no applicable criterion.</p>

**Compliance with the Planning and Development Act 2007**

Section	Statement
<p>s87(2)(a)                      (a) a variation (an <b>code variation</b>) that—                      (i) would only change a code                      (ii) is consistent with the policy purpose and policy framework of the code; and                      (iii) is not an error variation</p>	<p>This code amendment is consistent with the policy purpose and policy framework of the multi unit housing development code. This amendment clarifies that Rule R57 applies to all blocks except those subject to Rule R57A. This will ensure that either R57 or R57A applies to all blocks and that there are no gaps in the provisions which may lead to substandard solar access development outcomes.</p>

## 2.2 Variation to the industrial zones development code

A rule has been inserted into the industrial zones development code for bushfire prone areas regarding building requirements to include the IZ2 industrial mixed use zones. This is to address an issue in the industrial zones development code whereby there is a rule for the IZ1 general industrial zone but not the IZ2 zone. Precinct codes identify BALs (bushfire attack levels) for bushfire prone areas and this ongoing provision is referenced to the rule for building requirements in the relevant development codes depending on the zone. The new rule for the IZ2 areas is the same as the rule pertaining to IZ1 areas for bushfire prone areas building requirements.

*Proposed new rule*

### Element 2: Building and site controls

Rules	Criteria
<b>2.1 Bushfire</b>	
<p>R2A</p> <p>This rule applies to blocks identified in a precinct code as having a specified Bushfire Attack Level.</p> <p>Buildings are constructed to Australian Standard AS3959 – Construction of buildings in bushfire prone areas for the specified Bushfire Attack Level.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

### Compliance with the Planning and Development Act 2007

Section	Statement
<p>s87(2)(a)</p> <p>(a) a variation (an <b>code variation</b>) that—</p> <p>(i) would only change a code</p> <p>(ii) is consistent with the policy purpose and policy framework of the code; and</p> <p>(iii) is not an error variation</p>	<p>Compliant.</p> <p>This additional provision added to the industrial zones development code for the IZ2 zone is to rectify an inconsistency in the code where the bushfire building provisions should apply to both industrial zones, not just IZ1. Precinct codes identify BAL ratings in both industrial zones which is to be cross-referenced with the relevant provisions in the industrial zones development code.</p>

## 2.3 Variation to the Deakin precinct map and code

Deakin Precinct Code Rule 10 has been adjusted as the previous Block 13 Section 68 Deakin Unit 17 (pool site) has been subdivided and the pool is now located in Unit 22 Block 27 Section 68 Deakin. This is to ensure that the provisions for the swimming pool are preserved and applied to the correct block and unit identifier.

### *Existing provision*

Rules	Criteria
<b>3.2 Office</b>	
<p>R10</p> <p>This rule applies to area c shown on figure 1.</p> <p>An application to vary the lease to increase the permissible quantum of gross floor area for office use on unit 17 shall not be approved unless the lessee has entered into a binding agreement with the Territory to provide a swimming pool which is a minimum of 25m in length and all associated amenities for access and use by members of the public on reasonable commercial terms and otherwise to a standard acceptable to the Planning and Land Authority.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

### *Proposed provision (underlined)*

Rules	Criteria
<b>3.2 Office</b>	
<p>R10</p> <p>This rule applies to area c shown on figure 1.</p> <p>An application to vary the lease to increase the permissible quantum of gross floor area for office use on <u>unit 22</u> shall not be approved unless the lessee has entered into a binding agreement with the Territory to provide a swimming pool which is a minimum of 25m in length and all associated amenities for access and use by members of the public on reasonable commercial terms and otherwise to a standard acceptable to the Planning and Land Authority.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

## Compliance with the Planning and Development Act 2007

Section	Statement
s87(2)(a) (a) a variation (an <b>code variation</b> ) that— (i) would only change a code (ii) is consistent with the policy purpose and policy framework of the code; and (iii) is not an error variation	Compliant. This change updates the provision with the correct reference to unit identification for the pool site which is subject to the requirements of R10

### 2.4 Definition of ‘attached house’

The current definition of *attached house* is as follows:

**Attached house** means a *dwelling* within a *building* containing two or more *dwelling*s where each *dwelling* has within its curtilage open space at ground level and private access for the exclusive use of the occupants of the *dwelling*.

This creates the potential issue that dwellings may be created which have the form of townhouses without the function; if one of the dwellings within any given building does not have one of the two components of an attached house. Consequently this means that amenity provisions such as the solar requirement of a mandatory 3 hours minimum will no longer apply to any of the dwellings in that building. Given that the community has an expectation of the amenity of a townhouse form of dwelling based on the rules for this form, such an outcome could create misconceptions when such units are purchased.

This issue has been addressed by adjusting the definition as follows:

**Attached house** means a any dwelling, within a *building* containing two or more *dwelling*s, which ~~where each dwelling~~ has within its curtilage open space at ground level and private access for the exclusive use of the occupants of the *dwelling*.

## Compliance with the Planning and Development Act 2007

Section	Statement
S87(2)(e) a variation to clarify the language in the territory plan if it does not change the substance of the plan.	Compliant. This amendment to the definition of ‘attached house’ tightens the language used to describe the intent of the definition to ensure that it is not open to misinterpretation and misuse.



### 3. TECHNICAL AMENDMENT

This section of the technical amendment document provides the actual instructions for implementing the changes to the Territory Plan.

#### 3.1 Variation to the multi unit housing development code

<b>1. Element 3: Building and site controls; Item 3.5 Plot ratio – other than single dwelling blocks – RZ1, RZ2, RZ3 and RZ4; Rule R9</b>
---

Substitute

Rules	Criteria
<b>3.5 Plot ratio – other than single dwelling blocks – RZ1, RZ2, RZ3 and RZ4</b>	
<p>R9</p> <p>This rule applies to blocks other than <i>single dwelling blocks</i> in RZ1, RZ2, RZ3 and RZ4</p> <p>The maximum <i>plot ratio</i> is:</p> <ul style="list-style-type: none"><li>a) in RZ1, RZ2 and RZ3 – 65%</li><li>b) in RZ4 – 80%.</li></ul> <p>This rule does not apply to:</p> <ul style="list-style-type: none"><li>a) blocks subject to a residential B1 or B8 area specific policy under the Territory Plan at 30 March 2008 with any of the following characteristics:<ul style="list-style-type: none"><li>i) lawfully approved and constructed</li><li>ii) held under a holding lease at 30 March 2008</li></ul></li><li>b) blocks in RZ1 approved before 5 July 2013</li></ul> <p>For the purpose of calculating <i>plot ratio</i> for this rule, the <i>gross floor area</i> includes 18m<sup>2</sup> for each roofed car space provided to meet Territory requirements for resident car parking, but does not include <i>basement</i> car parking.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

**2. Element 3: Building and site controls; Item 3.20 Building envelopes – all blocks except buildings over 3 stories in RZ5 and commercial zones – R26**

Substitute

Rules	Criteria
<p>R26</p> <p>This does not apply to either of the following:</p> <ul style="list-style-type: none"> <li>a) <i>buildings</i> with more than 3 storeys in RZ5</li> <li>b) <i>buildings</i> with more than 3 storeys in commercial zones.</li> </ul> <p><i>Buildings</i> are sited wholly within the solar building envelope formed by planes projected over the subject <i>block</i> at <math>X^\circ</math> to the horizontal from the height of the ‘solar fence’ on any <i>northern boundary</i> of an adjoining <i>residential block</i>.</p> <p><math>X^\circ</math> is the apparent sun angle at noon on the winter solstice. Values for X are given in Table A4.</p> <p>The height of the ‘solar fence’ is:</p> <p>For a <i>block</i> approved under an <i>estate development plan</i> on or after 5 July 2013:</p> <ul style="list-style-type: none"> <li>i) in the <i>primary building zone</i> – 3m</li> <li>ii) all other parts of the boundary – 2.3m</li> </ul> <p>For all other <i>blocks</i>:</p> <ul style="list-style-type: none"> <li>i) in the <i>primary building zone</i> – 2.4m</li> <li>ii) all other parts of the boundary – 1.8m</li> </ul> <p>This rule does not apply to those parts of a boundary where the adjacent part of the adjoining <i>residential block</i> comprises only an access driveway (i.e. a “battleaxe handle”). The previous rule applies to this part of the boundary.</p> <p>An example of a typical building envelope is shown at Figure A1.</p> <p><b>Note:</b> To remove any doubt, the reference to a building with more than 3 storeys is a reference to the whole building, not just that part of the building over 3 storeys.</p>	<p>C26</p> <p><i>Buildings</i> achieve all of the following:</p> <ul style="list-style-type: none"> <li>e) consistency with the <i>desired character</i></li> <li>f) reasonable solar access to <i>dwellings</i> on adjoining <i>residential blocks</i> and their associated <i>private open space</i></li> <li>g) reasonable levels of privacy for <i>dwellings</i> on adjoining <i>residential blocks</i> and their associated <i>private open space</i></li> <li>h) where an adjoining <i>block</i> is not yet developed, the potential for reasonable solar access and privacy on the adjoining <i>residential block(s)</i> is maintained</li> </ul>

**3. Element 6: Amenity; Item 6.1 Solar access- other than apartments – R57**

*Substitute*

<b>6.1 Solar access – other than apartments</b>	
<p><b>R57</b>            This rule applies to all multi unit housing on <i>blocks</i> with the exception of blocks subject to R57A.</p> <p>This rule does not apply to <i>apartments</i>.</p> <p>The floor or internal wall of a daytime living area of a dwelling is exposed to not less than 3 hours of direct sunlight between the hours of 9am and 3pm on the winter solstice (21 June).</p> <p><u>For this rule:</u></p> <p><b>Daytime living area</b> means a <i>habitable room</i> other than a bedroom</p> <p><b>Note:</b> Where a development comprises a mixture of <i>apartments</i> and other multi unit housing, this rule applies to the other multi unit housing, but does not apply to the <i>apartments</i>.</p> <p><b>Note:</b> To remove any doubt, when assessing a development on a block with existing dwellings, the development must comply and must not cause an existing dwelling to then contravene this requirement. However, if the existing dwelling does not currently comply, the development must not increase the level of non compliance for that other dwelling.</p>	<p><b>C57</b>            This is a mandatory requirement. There is no applicable criterion.</p>

## 3.2 Variation to the industrial zones development code

### 4. Part A(2) – IZ2 – Industrial mixed use zone

*Insert*

#### Element 2: Building and site controls

Rules	Criteria
<b>2.1 Bushfire</b>	
<p>R2A</p> <p>This rule applies to blocks identified in a precinct code as having a specified Bushfire Attack Level.</p> <p>Buildings are constructed to Australian Standard AS3959 – Construction of buildings in bushfire prone areas for the specified Bushfire Attack Level.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

## 3.3 Variation to the Deakin precinct map and code

### 5. RC2 – Deakin Office Site; Element 3: Use

*Substitute*

Rules	Criteria
<b>3.2 Office</b>	
<p>R10</p> <p>This rule applies to area c shown on figure 1.</p> <p>An application to vary the lease to increase the permissible quantum of gross floor area for office use on unit 22 shall not be approved unless the lessee has entered into a binding agreement with the Territory to provide a swimming pool which is a minimum of 25m in length and all associated amenities for access and use by members of the public on reasonable commercial terms and otherwise to a standard acceptable to the Planning and Land Authority.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

### 3.4 Definition of ‘attached house’

<b>6. Part A – Definitions of Development - Development: Multi-unit housing; Sub-categories: Attached house</b>
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*Substitute*

**Attached house** means any *dwelling*, within a *building* containing two or more *dwellings*, which has within its curtilage open space at ground level and private access for the exclusive use of the occupants of the *dwelling*.

## Interpretation service

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