

Planning and Development (Draft Variation No 350) Consultation Notice 2018

Notifiable instrument NI2018—277

made under the

Planning and Development Act 2007, s 63 (Public consultation—notification) and s 64 (Public consultation—notice of interim effect etc)

1 Name of instrument

This instrument is the *Planning and Development (Draft Variation No 350) Consultation Notice 2018*.

2 Draft variation to the Territory plan

The planning and land authority (the **Authority**) has prepared a draft plan variation No 350 – Changes to the definition of ‘single dwelling block’ (the **Draft Variation**) to vary the Territory Plan. The Draft Variation proposes to vary the definition of ‘single dwelling block’ and also to rename it ‘standard block’.

3 Documents available for public inspection

- (1) The Authority gives notice that the Draft Variation is available for public inspection and purchase.
- (2) Copies of the documents mentioned in section 3(1) are available for inspection and purchase at Access Canberra, Environment, Planning and Sustainable Development Directorate Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm for the period commencing on the day this notice commences and ending on **13 July 2018** (the **Consultation Period**).
- (3) Copies of the documents mentioned in section 3(1) are also available for inspection during the Consultation Period online at <http://www.planning.act.gov.au/draftvariations>

4 Invitation to give written comments

- (1) The Authority invites written comments about the Draft Variation during the Consultation Period. Comments should include reference to the Draft Variation and be addressed to the Territory Plan Section of the Environment, Planning and Sustainable Development Directorate (**EPSDD**). Please also provide your name and contact details to assist in the assessment of the comments provided and to enable the Authority to contact you in relation to your comments, if required.
- (2) Written comments should be provided to the Authority by:

- (a) email to terrplan@act.gov.au; or
- (b) mail to Territory Plan Section, EPSDD, GPO Box 158, Canberra, ACT 2601; or
- (c) hand delivery to Access Canberra, EPSDD Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson.

5 Public inspection of written comments

- (1) Copies of written comments about the Draft Variation given in response to the invitation in section 4, or otherwise, or received from the National Capital Authority will be available (unless exempted) for public inspection for a period of at least 15 working days starting 10 working days after the day the consultation period ends, at Access Canberra, EPSDD Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm and may be published on the EPSDD website at www.planning.act.gov.au.
- (2) You may apply under section 411 of the *Planning and Development Act 2007* (the **Act**) for part of your consultation comments to be excluded from being made available to the public. A request for exclusion under this section must be in writing, clearly identifying what you are seeking to exclude and how the request satisfies the exclusion criteria. Please note that your name and contact details and other personal information will not be made public unless you request otherwise.

Note Personal information will be managed in accordance with the *Information Privacy Act 2014* and the *EPSDD Information Privacy Policy* which are available through the EPSDD website.

6 Effect of the Draft Variation

- (1) Section 65 of the Act applies to the draft variation. This means that the provisions of Draft Variation No 350 have interim effect, and apply to development applications lodged on or after 25 May 2018.
- (2) During the period of interim effect, the Territory, the Executive, a Minister or a territory authority must not do or approve the doing of anything that would be inconsistent with the Territory Plan if it were varied in accordance with the draft plan variation. Where there is an inconsistency between provisions in the current Territory Plan and provisions in the draft variation, then the draft variation takes precedence for the extent of the inconsistency.
- (3) Interim effect will end on the day the earliest of the following happens:
 - (a) the day the public availability notice under section 70 for the draft variation being recommended to the Minister is notified in accordance with the *Legislation Act 2001*;
 - (b) the day the draft variation, or the corresponding variation, is withdrawn under section 68 (1) (b) or section 76 (2) (b) (v) of the Act;
 - (c) 1 year after the date of the consultation notice.

7 Obtaining further information

Further information about the Draft Variation can be obtained through email correspondence with the Territory Plan Section, EPSDD, at terrplan@act.gov.au, a reference to the Draft Variation should be included in any email.

8 Meaning of *draft plan variation No 350 – Changes to the definition of ‘single dwelling block’*

In this instrument:

Draft plan variation No 350 – Changes to the definition of ‘single dwelling block’ means the draft plan variation in the schedule.

Fleur Flanery
Delegate of the planning and land authority

24 May 2018

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ACT
Government

Environment, Planning and
Sustainable Development

Planning and Development Act 2007

Draft
Variation to the
Territory Plan
No 350

Changes to definition of ‘single dwelling
block’

May 2018

Draft variation for public consultation prepared
under s60 of the *Planning and Development Act 2007*

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1. INTRODUCTION

1.1 Summary of the Proposal

Draft Variation to the Territory Plan No. 350 (DV350) has been prepared in response to an issue that has arisen relating to multi-unit redevelopment of certain residential blocks in some older Canberra suburbs. The residential leases on these original blocks do not specify or limit the number of dwellings permitted. During the late 1960s and early 1970s, two dwellings (one house and one small flat) were allowed to be built on these blocks, provided the development presented as a single dwelling to the street. The aim at that time was to improve the availability of housing stock while maintaining the low density suburban character.

The current definition of 'single dwelling block' in the Territory Plan does not apply to these blocks with the extra flat. As a consequence some of the provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan such as restricting plot ratio, block size requirement, replacement dwellings, number of dwellings in each building and restrictions on attics and basements do not apply if multi-unit residential redevelopment is proposed for these blocks. This has resulted in a built form that is not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas.

This draft variation proposes to address this situation by changing the title of the definition from '*single dwelling block*' to '*standard block*' and adjusting the wording in the definition to include blocks that were originally leased or used for the purpose of one or two dwellings (or where the result of consolidation, that at least one of the blocks was originally leased or used for the purpose of one or two dwellings). This change will compel redevelopment proposals for these original dual occupancy blocks to adhere to the relevant provisions in the MUHDC and ensure that the built form is appropriate and complementary to the streetscape.

1.2 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 planning and land authority as the Authority which prepares and administers the Territory Plan, including continually reviewing and proposing amendments as necessary. The functions of the planning and land authority are administered by the Environment, Planning and Sustainable Development Directorate (EPSDD).

The Territory Plan is comprised of a written statement and a map. The written statement contains a number of parts, namely governance; strategic directions; zones (including objectives and development tables and zone or centre development codes); precinct codes; general codes; overlays; definitions; structure plans, concept plans and development codes for future urban areas.

The Territory Plan Map graphically represents the applicable land use zones (under the categories of residential, commercial, industrial, community facility, urban parks and recreation, transport and services and non-urban), precincts and overlays. The zone, precinct and overlay requirements are detailed in the volumes of the Territory Plan.

Draft variations to the Territory Plan are prepared in accordance with the Act. Following the release of the draft variation under section 63 of the Act, submissions from the public are invited. At the conclusion of the consultation period the EPSDD submits a report on consultation and a recommended final variation to the Minister responsible for planning for referral to the Legislative Assembly standing committee responsible for planning. The Minister must consider the findings of the committee before deciding whether to approve the draft variation. If the Minister approves the variation, the variation and associated documents will be tabled in the Legislative Assembly. Unless disallowed by the Legislative Assembly within five sitting days, the variation commences on a day nominated by the Minister.

1.3 This document

This document contains the background information in relation to the proposed variation. It comprises the following parts

Part 1 This Introduction

Part 2 An Explanatory Statement, which gives reasons for the proposed variation and describes its effect

Part 3 The Draft Variation, which details the precise changes to the Territory Plan that are proposed.

1.4 Public Consultation

Written comments about the draft variation are invited from the public by **COB 13 July 2018**.

Comments should include reference to the draft variation and be addressed to the Territory Plan Section. Please also provide your name and contact details to assist in the assessment of the comments provided, and to enable EPSDD to contact you in relation to your comments, if required. Your personal information will be managed in accordance with the *Information Privacy Act 2014* and the EPSDD Information Privacy Policy, which is available for viewing on EPSDD's website.

Comments can be:

- emailed to terrplan@act.gov.au
- mailed to Territory Plan Section, GPO Box 158, Canberra, ACT 2601
- delivered to the Access Canberra Customer Service Centre at 16 Challis Street, Dickson

Copies of written comments will be made available for public inspection for no less than 15 working days starting 10 working days after the closing date for comment. The comments will be available at the Access Canberra customer service centre in Dickson and may be published on EPSDD's website. Comments made available will not include personal contact details unless you request otherwise.

A request may be made for parts of a submission to be excluded under section 411 or 412 of the *Planning and Development Act 2007*. A request for exclusion under these sections must be in writing, clearly identifying what parts of your submission you are seeking to exclude and how the request satisfies the exclusion criteria.

Further Information

The draft variation and background documents are available online at **www.act.gov.au/draftvariations** until the closing date for written comments.

Printed copies of the draft variation (this document) and background documents are available for inspection and purchase at the Access Canberra Customer Service Centre, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm. Please call 6207 1923 to arrange a copy for purchase.

2. EXPLANATORY STATEMENT

2.1 Background

The purpose of the residential development codes in the Territory Plan is to provide additional planning, design and environmental controls to support the objectives of the relevant residential zone. Residential codes currently make reference to 'single dwelling blocks' which is a defined term in the Territory Plan. These are blocks that were originally used or leased to be used for a single dwelling, as distinct from blocks that have always contained multi-unit development (i.e. more than one dwelling). The intent of this policy difference is to apply restrictions specific to single dwelling housing for elements such as plot ratio, number of dwellings, block subdivision and consolidation distinct from blocks originally developed or assigned for multi-unit housing.

Variation to the Territory Plan No 306 (V306) made a number of amendments to the residential codes and definitions in the Territory Plan that took effect in July 2013. One of the amendments was to change the term '*standard block*' to '*single dwelling block*' and revise the wording of the definition. The reason for the change was to introduce separate block definitions based on block size - that is: 'compact block' (250m² or less), 'medium block' (larger than 250m² and less than or equal to 500m²) and 'large block' (greater than 500m²). The previous definition of '*standard block*' was simply '...a block with an area greater than 500m² that was originally leased or used for the purpose of *single dwelling housing*.'

The current definition of '*single dwelling block*' post V306 is:

"...a block with one of the following characteristics –

- a) originally leased or used for the purpose of single dwelling housing
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of single dwelling housing."

A situation has since arisen concerning this definition and the application of the Multi-unit Housing Development Code (MUHDC) for multi-unit redevelopment on particular blocks in the older suburbs. These particular blocks were originally leased or developed with two dwellings (one house and one small flat) located on a block. At the time housing in these suburbs was being constructed in the late 1960s and early 1970s, two dwellings (known as a dual occupancy) were permitted to be built on a block, provided the development presented as a single dwelling to the street. The aim of this form of housing was to improve the availability of housing whilst maintaining the mainly single dwelling and low rise, low density residential suburban character.

The purpose of the provisions in the residential development codes pertaining to a specific residential zone are intended to ‘control’ the density and scale of development in that zone through limitations on aspects such as plot ratio, height, and maximum number of dwellings.

The concern is that the current definition of ‘single dwelling block’ (and equally the previous definition of ‘standard block’) does not apply to these original dual occupancy blocks, and consequently some of the provisions in the MUHDC that apply to the neighbouring blocks in the same zone do not apply to them where multi-unit redevelopment is proposed. These include restrictions on plot ratio, block size requirement, replacement dwellings, number of dwellings in each building, and restrictions on attics and basements. Furthermore the residential leases for these blocks do not specify or limit the number of dwellings permitted on the blocks.

For example, for residential leases granted before 5 July 2013, Rule R9 in the MUHDC pertaining to plot ratio restrictions does not apply. Maximum dwelling number restrictions for ‘single dwelling blocks’ in the RZ1 and RZ2 zones would also not apply to a proposed development, unlike the plot ratio or dwelling number restrictions on neighbouring blocks in the same zone. This has led to multi-unit redevelopment proposals being lodged with the planning and land authority that are contrary to the existing streetscape density and character.

As this was not the intended purpose of the ‘single dwelling block’ definition (and neither that of the previous ‘standard block’ definition), this draft variation proposes to adjust the wording in the current ‘single dwelling block’ definition to clarify the number of dwellings that can be built on these blocks to recognise and include these original dual occupancy scenarios. It is also proposed to change the name of the definition to refer to a ‘standard block’ as this also avoids the confusion around the terminology where one or two dwellings can be permitted on a block that is used for single dwelling housing.

The proposed definition of ‘standard block’ is “...a block with one of the following characteristics –

- a) originally leased or used for the purpose of one or two dwellings.
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of one or two dwellings.”

These changes do not include original non-single dwelling blocks specifically reserved for lawful multi-unit development. The intention was for those blocks to be excluded from density restrictions (plot ratio and dwelling numbers) applying to single dwelling housing blocks.

This solution is being proposed to provide an interim measure to prevent further unconstrained multi-unit redevelopment occurring in the older established suburbs until the Housing Choices project has been completed. The Housing Choices Project is a broader policy review of housing options in the residential zones.

The changes proposed in this draft variation will require consequential amendments to all relevant provisions in the residential development codes in the Territory Plan to replace 'single dwelling block' with 'standard block'.

2.2 Current Territory Plan Provisions

The current Territory Plan definition for 'single dwelling block' is:

Single dwelling block means a *block* with one of the following characteristics –

- a) originally leased or used for the purpose of single dwelling housing
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of single dwelling housing.

2.3 Proposed Changes to the Territory Plan

DV350 proposes to amend the definition of 'single dwelling block' as follows:

~~Single dwelling block~~ **Standard block** means a *block* with one of the following characteristics –

- a) originally leased or used for the purpose of ~~single dwelling housing~~ one or two dwellings.
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of ~~single dwelling housing~~ one or two dwellings.

Consequential changes will be made throughout the Territory Plan to replace all references to '*single dwelling block*' with '*standard block*'.

2.4 Reasons for the Proposed Draft Variation

The reasons for the draft variation are as follows:

- To address concerns regarding the application of the current definition of 'single dwelling blocks' to some residential leases in the older suburbs of Canberra

- To ensure that by changing the definition to include blocks that were originally allowed two dwellings on them, the relevant development controls in the Multi Unit Housing Development Code will apply to enable multi-unit redevelopment of these blocks appropriate to the zone.
- To provide an interim measure to prevent unrestricted multi-unit redevelopment occurring in the residential RZ1 and RZ2 areas until the Housing Choices Project has been completed.

2.5 Planning Context

2.5.1 National Capital Plan

The *Australian Capital Territory (Planning and Land Management) Act 1988* established the National Capital Authority (NCA) with two of its functions being to prepare and administer a National Capital Plan (NCP) and to keep the NCP under constant review and to propose amendments to it when necessary.

The NCP, which was published in the Commonwealth Gazette on 21 January 1990 is required to ensure that Canberra and the Territory are planned and developed in accordance with their national significance. The *Planning and Land Management Act 1988* also required that the Territory Plan is not inconsistent with the NCP.

2.5.2 ACT Planning Framework

Statement of Strategic Directions

The Statement of Strategic Directions sets out the principles for giving effect to the main objective of the Territory Plan as required by the *Planning and Development Act 2007*. The proposal is consistent with the following Territory Plan - Statement of Strategic Directions in terms of environmental, economic and social sustainability and spatial planning and urban design principles:

1.1 Planning processes and decisions will be focused on the combined achievement of economic vitality, community wellbeing, and environmental quality. Broad community involvement will be a key element in the pursuit of sustainable development, as will complementary regional strategies and agreements.

2.5 A wide range of housing types will be permitted in identified residential areas close to commercial centres and some major transport routes to increase choice; maximise opportunities for affordable housing; and secure some intensification of development consistent with maintaining residential amenity. Outside of these areas, planning policies will protect the typically low density, garden city character of Canberra's suburban areas.

ACT Planning Strategy 2012

The draft variation is also consistent with the ACT Planning Strategy 2012 Strategy 6:

“Invest in design that will ensure urban change creates amenity, diversity, a more sustainable built form and adds to Canberra’s landscape setting.”

2.6 Interim Effect

Section 65 of the *Planning and Development Act 2007* applies to the draft variation. This means that the provisions of Draft Variation No 350 have interim effect, and apply to development applications lodged on or after 25 May 2018.

During the period of interim effect the ACT Government must not do or approve anything that would be inconsistent with the Territory Plan as if it were amended by the draft variation. Where there is an inconsistency between provisions in the current Territory Plan and provisions in the draft variation, then the draft variation takes precedence for the extent of the inconsistency.

Interim effect will end on the day the earliest of the following happens:

- i. the day the public availability notice under section 70 for the draft variation being recommended to the Minister is notified in accordance with the Legislation Act
- ii. the day the draft variation, or the corresponding variation, is withdrawn under section 68 (1)(b) or section 76 (3)(b)(v)
- iii. 1 year after the date of the consultation notice.

2.7 Consultation with Government Agencies

The EPSDD is required to, in preparing a draft variation under section 61(b) consult with each of the following in relation to the proposed draft variation:

- the National Capital Authority
- the Conservator of Flora and Fauna
- the Environment Protection Authority
- the Heritage Council
- the Land Custodian, if the draft variation would, if made, be likely to affect unleased land or leased public land – each custodian for the land likely to be affected

National Capital Authority

The National Capital Authority provided the following comments on 11 May 2018:

“The NCA has no comment to make on DV350.”

Response

Noted.

Conservator of Flora and Fauna

The Conservator of Flora and Fauna made the following comments on 21 April 2018:

“In accordance with Section 61(b) of the *Planning and Development Act 2007* I advise that I have examined Draft Variation No 350, Changes to Definition of ‘Single Dwelling Block’, that proposes to amend the definition of single dwelling block to ‘standard block’ and adjusting the wording to ensure the desired urban outcomes.

There are no issues of concern to the Conservator of Flora and Fauna with the proposed amendment.”

Response

Noted.

Environment Protection Authority

The Environment Protection Authority provided the following comments in May 2018

“The proposed variation is supported.”

Response

Noted.

Heritage Council

The Heritage Council provided the following comments on 24 April 2018:

“Review of the ACT Heritage Register identifies that the term ‘single dwelling block’ is not referenced in any Heritage Guidelines for registered heritage places.

The Council also notes that the maximum plot ratios, maximum building heights and minimum setbacks outlined in the ‘*Single Dwelling Housing Development Code*’ would apply to ‘standard blocks’, aiding in the retention of the existing low density suburban character in areas adjacent to registered heritage places.

In light of the above, the Council considers that the proposed variation would not diminish the heritage significance of any heritage places, and raises no objection to DV350 as Heritage Act 2004 provisions will continue to apply to blocks registered on the ACT Heritage Register.”

Response

Noted.

Land Custodian

There is no land custodian for this draft variation.

3. DRAFT VARIATION

3.1 Variation to the Territory Plan

The Territory Plan is varied in all of the following ways:

Variation to the Territory Plan Written Statement

1. Single dwelling block / standard block

Replace all references to '*single dwelling block*' in the Territory Plan Written Statement with '*standard block*'

Variation to the Definitions of Terms

2. Single dwelling block / standard block

Substitute 'single dwelling block' definition with 'standard block' definition as follows:

Standard block means a *block* with one of the following characteristics –

- a) originally leased or used for the purpose of one or two dwellings
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of one or two dwellings.

Interpretation service

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE

131 450

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