

Australian Capital Territory

Planning and Development (Plan Variation No 350) Approval 2019

Notifiable instrument NI2019-476

made under the

Planning and Development Act 2007, s 76 (Minister's powers in relation to draft plan variations)

1 Name of instrument

This instrument is the *Planning and Development (Plan Variation No 350) Approval 2019*.

2 Approval of draft plan variation

(1) I approve under section 76 (2) (a) of the *Planning and Development Act 2007* the draft plan variation No 350 to the Territory Plan.

(2) In this section:

Draft plan variation No 350 to the Territory Plan means the draft plan variation in the schedule.

Mick Gentleman MLA
Minister for Planning and Land Management
24/7/2019



ACT
Government

Environment, Planning and
Sustainable Development

Planning and Development Act 2007

Variation to the Territory Plan No 350

Changes to definition of ‘single dwelling
block’

July 2019

Final variation prepared under s76 of the
Planning and Development Act 2007

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1. EXPLANATORY STATEMENT

1.1 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 scenarios where a dual occupancy with developed on a residential block. 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 amendment to the definition will exclude blocks with original leases that explicitly permit multi-unit development.

The intent of this draft variation is 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.

1.2 Summary of the Proposal

Variation to the Territory Plan No. 350 (V350) 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 variation addresses 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 blocks to adhere to the relevant provisions in the MUHDC and ensure that the built form is appropriate and complementary to the streetscape.

The amendment to the definition will exclude blocks with original leases that explicitly permit multi-unit development.

Detailed changes to the Territory Plan are noted in section 2 of this document.

1.3 The 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 (the Plan) and to keep the NCP under constant review and to propose amendments to it when necessary.

The Plan, which was published in the Commonwealth Gazette on 21 January 1990, is required to ensure Canberra and the Territory are planned and developed in accordance with their national significance. The *Australian Capital Territory (Planning and Land Management) Act 1988* also requires the Territory Plan is not inconsistent with the Plan. The area covered by this draft variation is within urban areas identified in the Plan.

1.4 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.

1.5 Changes to the Territory Plan

Detailed changes to the Territory Plan are noted in section 2 of this document.

1.6 Consultation on the Draft Variation

Draft Variation No 350 (DV350) was released for public comment between 25 May 2018 and 13 July 2018. A consultation notice under section 63 of the *Planning and Development Act 2007* (P&D Act) was published on the ACT Legislation Register on 25 May 2018.

A total of eight written submissions were received, which included three submissions in support of the proposed changes (including two community organisations), four submissions from industry bodies or practitioners and one individual submission.

Main issues raised by submitters included:

- Restrictions on future development opportunities as a result of DV350
- Significant financial impact on lessees of affected blocks
- DV350 contrary to policy shift towards increased density in existing suburbs
- Selective planning policy driven by specific instances of concern by individuals or small groups about particular projects in their suburbs
- Existing planning laws sufficient to prevent high-rise in older suburbs
- Lack of prior consultation on changes proposed in DV350
- Transition arrangements for current development projects should be allowed
- Dual occupancies in new subdivisions adversely affected by new definition

The above issues were considered and are detailed in a report on consultation.

1.7 Revisions to the draft variation recommended to the Minister

The following changes were made as a result of public consultation:

The proposed definition of 'standard block' was revised to exclude blocks originally leased or used for the purpose of two dwellings on or after 18 October 1993 which is when the Territory Plan came into effect and new terminology for 'single dwelling housing' was incorporated into lease purpose clauses. This will ensure that, for example, new leases that are created for multi-unit blocks that are specifically to be developed for dual occupancies are not captured in the definition of standard block.

The revised definition of standard block in the recommended version was:

"A standard block is a block with one of the following characteristics –

- a) originally leased or used for the purpose of one dwelling
- b) originally leased or used for the purpose of two dwellings on or before 18 October 1993
- c) created by a consolidation of blocks, at least one of which is covered by a) or b)"

In response to Recommendation 3 made by the Standing Committee on Planning and Urban Renewal in their Report No. 7 and the subsequent Direction of the Minister, changes were made to the proposed definition of 'standard block'.

The definition was revised to correct drafting errors to read 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 except where the original lease explicitly permits two dwellings
- b) created by a consolidation of blocks, at least one of which is covered by a)'

The changes will require consequential amendments to all relevant provisions in various codes in the Territory Plan to replace 'single dwelling block/s' with 'standard block/s'.

2. DRAFT VARIATION

2.1 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 / single dwelling blocks

Omit

All references to '*single dwelling block*' and '*single dwelling blocks*' in the Territory Plan

Replace with

'standard block' and *'standard blocks'* respectively.

Variation to the Definitions of Terms

2. Single dwelling block

Substitute

'**Single dwelling block**' definition with new '**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 except where the original lease explicitly permits two dwellings
- b) created by a consolidation of blocks, at least one of which is covered by a)

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