Australian Capital Territory

Planning and Development (Plan Variation No 354) Approval 2019

Notifiable instrument NI2019-730

made under the

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

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1 Name of instrument

This instrument is the *Planning and Development (Plan Variation No 354) 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 354 to the Territory Plan.

(2) In this section:

draft plan variation No 354 to the Territory Plan means the draft plan variation in the schedule.

Mick Gentleman MLA
Minister for Planning and Land Management
13 November 2019

ACT Government

Environment, Planning and Sustainable Development

SCHEDULE

Planning and Development Act 2007

Variation to the Territory Plan No 354

Waterways: water sensitive urban design general code review and associated consequential amendments to Territory Plan codes

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

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1. EXPLANATORY STATEMENT

1.1 Background

The ACT Government's Water Sensitive Urban Design Review Report (WSUD) was released in 2014 (WSUD review). The WSUD review identified eight priority projects. The Priority Project 1 called for a revision of the WSUD provisions of the Territory Plan and for these provisions to be supported by a WSUD practice guideline. This Variation provides greater clarity and consistency in interpretation and implementation of the WSUD provisions. The new provisions promote innovation and increase flexibility in options for meeting the various WSUD targets.

Previously, the ACT Government released the Waterways WSUD Guidelines in 2007. This was given further effect when it was incorporated into the Territory Plan through the introduction of the Waterways: WSUD General Code in 2009. Prior to this Variation the format of the WSUD Code was not in keeping with the standard rules and criteria format of the other Territory Plan codes.

Before, this Variation, the WSUD provisions were contained in a number of the zone and development codes. These provisions were presented in rules and criteria format and the rules stipulate quantifiable requirements to meet targets. However, the criteria left proponents with discretion to demonstrate that a particular method achieves the target.

Lastly, some precinct codes also contained site-specific WSUD provisions and requirements.

The WSUD review concluded that:

- The WSUD Code and the related WSUD requirements in development codes in the Territory Plan may inhibit innovation by limiting the options available to meet the rules.
- The rules and criteria in development codes require revision to clarify WSUD requirements to reflect contemporary industry best practice.
- Other jurisdictions have developed comprehensive WSUD guidelines that are responsive to the changing environment and allow for innovation.
- WSUD requirements need to recognise changes in development form including a trend to smaller block sizes, and the need to adapt the urban form in terms of green streetscape, waterways, overland flow paths and drainage corridors.

1.2 Summary of the Proposal

This variation revises the Waterways: Water Sensitive Urban Design General Code (WSUD Code) and proposes a number of associated consequential amendments to Territory Plan codes. The WSUD Code has been reviewed in response to the ACT Government's WSUD Review Report which was released in 2014 (WSUD Review). The WSUD review called for a revision of the WSUD provisions in the Territory Plan and for these provisions to be supported by a WSUD practice guideline.

The key changes in the WSUD general code include:

- Mains water reduction target remains at 40% i.e. developments of a similar size must aim to reduce mains water consumption by 40% compared to 2003 levels. However, it now encourages the use of water efficient landscaping into this calculation and it outlines more reuse options.
- The Stormwater quantity provisions focus on retaining and reuse of stormwater on site. This brings the provision in line with other jurisdictions across Australia. Stormwater detention ensures that the stormwater infrastructure is not overloaded by encouraging stormwater to be detained and slowly released on site.
- Stormwater quality targets remain in place to ensure that total suspended solids, total phosphorous and total nitrogen (nutrients) are captured on block. A new gross pollutant target has been introduced that is achievable using gross pollutant traps.
- Rationalisation of the minimum block sizes to trigger the various provisions of the WSUD code from a mix of sizes between 2000m2, 3000m2- and 5000m2 to a standard 2000m2.
- Climate change adaptation is considered in the revised code. WSUD is an excellent mechanism to help alleviate the urban heat island effect in our city. The code recommends a permeable surface target of at least 20% and encourages developers to consider onsite irrigation of rainwater captured onsite, use of landscaping to allow for a natural cooling mechanism through evapotranspiration if this target cannot be met.
- The planning provisions also recommend development applicants address nuisance flooding and not build within overland flow paths.

The associated consequential Territory Plan amendments locate the water sensitive urban design provisions applying across all zones in one place, being the WSUD General Code. This excludes any site specific provisions which are contained in the relevant suburb precinct codes and the mains water reduction targets for single dwellings and secondary residences which will be retained in the single dwelling housing development code.

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 (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 requires that the Territory Plan is not inconsistent with the NCP.

In accordance with section 10 of the *Australian Capital Territory (Planning and Land Management*) *Act 1988*, the National Capital Plan defines the planning principles and policies for Canberra and the Territory, for giving effect to the object of the NCP and sets out the general policies to be implemented throughout the Territory, including the range and nature of permitted land uses.

It also sets out the detailed conditions of planning, design and development for areas that have special significance to the National Capital known as designated areas and identifies special requirements for the development of some other areas.

1.4 Current Territory Plan Provisions

The current Territory Plan provisions for water sensitive urban design are contained in the existing Waterways: Water Sensitive Urban Design General Code in addition to existing provisions in the following codes:

- Residential zones development code
- Multi unit housing development code
- Commercial zones development code
- Industrial zones development code
- Community facility zone development code
- Transport and services development code

- Parks and recreation zones development code
- Estate development code

The existing site specific water sensitive urban design provisions contained in various precinct codes are not intended to be amended by this variation. Additionally, the existing water reduction target provisions contained in the single dwelling housing development code will remain in place.

1.5 Changes to the Territory Plan

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

This Variation will replace the existing Waterways: Water Sensitive Urban Design General Code with a revised general code. It will also consequentially amend a number of other zone and development codes to remove water sensitive urban design provisions. These provisions will be consolidated into the revised WSUD general code with the exception of any site specific provisions in the precinct codes and the existing provisions of the Single Dwelling Housing Development Code which will remain unamended.

1.6 Consultation on the Draft Variation

Draft Variation No 354 (DV354) was released for public comment between 21 September 2018 and 9 November 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 21 September 2018. The date for public comments was further extended to 21 December 2018. A public notice was also placed on the ACT Government website and the EPSDD website.

A total of two written submissions were received. Comments related to the following:

- objection to the implementation and operation of an offset scheme for the code
- concern that increasing the number and range of options for water sensitive urban design outcomes may also provide increased opportunities for proponents to avoid compliance with the code requirements
- a perceived lack of capacity to respond to non-compliance with the code including through fines
- the meaning of a ‘suitably qualified person’ to prepare the various reports required by the code
- concerns about the cost of compliance with the code requirements.

1.7 Revisions to the Draft Variation Recommended to the Minister

No changes were made to the draft variation recommended to the Minister.

2. VARIATION

Variation to the waterways: water sensitive urban design general code

1. Waterways: water sensitive urban design general code

Substitute the existing waterways: water sensitive urban design general code with

Appendix A – waterways: water sensitive urban design general code.

Variation to the residential zones development code

2. Element 14 Environment – 14.1 water sensitive urban design

Omit section 14.1 water sensitive urban design, including rules and criteria 57 – 60.

Variation to the multi-unit housing development code

3. Element 4: Site design – 4.1 site design

Omit from rule 37 - item d) water sensitive urban design.

4. Element 8: Environment – 8.1 water sensitive urban design

Omit section 8.1 water sensitive urban design, including rules and criteria 86 – 89.

Variation to the commercial zones development code

5. Element 7: Environment – 7.1 water sensitive urban design

Omit section 7.1 water sensitive urban design, including rules and criteria 24 – 28.

Variation to the industrial zones development code

6. Element 6: Environment – 6.1 water sensitive urban design - mains water consumption – 6.3 water sensitive urban design – stormwater quantity

Omit sections 6.1 – 6.3 water sensitive urban design, including rules and criteria 38 – 41.

Variation to the community facility zone development code

7. Element 5: Environment – 5.1 water sensitive urban design

Omit section 5.1 water sensitive urban design, including rules and criteria 15 – 18.

Variation to the parks and recreation zones development code

8. Element 6: Environment – 6.2 water sensitive urban design – mains water consumption – 6.4 water sensitive urban design – stormwater quantity

Omit sections 6.2 – 6.4 water sensitive urban design, including rules and criteria 32 – 35.

Variation to the transport and services development code

9. Element 6: Environment – 6.2 water sensitive urban design – mains water consumption – 6.4 water sensitive urban design – stormwater quantity

Omit sections 6.2 – 6.4 water sensitive urban design, including rules and criteria 23 – 26.

Variation to the estate development code

10. Element 5: Environment – 5.1 water sensitive urban design

Omit section 5.1 water sensitive urban design, including rules and criteria 30 – 33.

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ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
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ACT Government
Environment, Planning and Sustainable Development

Appendix A

Waterways: Water Sensitive Urban Design General Code

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Contents

1. Introduction

Name

The name of this code is **Waterways: Water Sensitive Urban Design General Code**

Application of the code

This code applies to development and redevelopment on sites across all zones of the Territory Plan that:

- are currently connected or intended to be connected to the mains water supply; or
- are likely to alter the stormwater regime of the site.

This code does not apply to any of the following:

- single dwellings and secondary residences subject to the single dwelling housing development code; and
- as excepted within the provisions of this code.

This code stipulates the outcomes sought in relation to water sensitive urban design primarily through a series of targets for mains water reduction, water quality and stormwater quantity. The ACT Practice Guidelines for Water Sensitive Urban Design provides guidance and options for compliance with this code for both private and public developments.

While the ACT Practice Guidelines for Water Sensitive Urban Design is external to the Territory Plan, it is called up in the various rules and criteria of this code. In this way a key element of the Guidelines is to provide information on the 'online assessment tools' and other contemporary methods for proponents to demonstrate compliance with the relevant code requirements. The ACT Government also has design standards for municipal infrastructure which is external to the Territory Plan.

Purpose

Water sensitive urban design (WSUD) is an approach to urban planning and design that aims to integrate the management of the water cycle including stormwater into the urban development process which considers integrated water cycle management. The importance of WSUD is acknowledged in the statement of strategic directions of the Territory Plan, which states that "land and water resources will be planned in accordance with the principles of integrated catchment management and water sensitive urban design".

In conjunction with other relevant codes, the ACT Practice Guidelines for Water Sensitive Urban Design will be used to assess development applications and outline the relevant requirements to intending applicants in designing development proposals and preparing development applications.

The WSUD general code aims to provide the necessary WSUD targets and strategies to be implemented to ensure improved environmental sustainability.

Structure

The code requirements contain a number of elements. Each element has one or more rules and, unless the rule is mandatory, an associated criterion is provided. Rules provide quantitative, or definitive, controls. In contrast, criteria are chiefly qualitative in nature.

In some instances rules are mandatory. Such rules are accompanied by the words "This is a mandatory requirement. There is no applicable criterion." Non-compliance with a mandatory rule will result in the refusal of the development application. Conversely, the words "There is no applicable rule" is found where a criterion only is applicable.

Assessment tracks

Assessment tracks for particular developments are specified in the relevant zone development table.

Proposals in the **code track** must comply with all rules relevant to the development.

Proposals in the **merit track** or **impact track** must comply with a rule or its associated criterion, unless the rule is mandatory (ie. it has no related criterion). Where a rule is fully met, no reference to the related criterion needs to be made. Where there is a departure from a rule, or where a criterion only applies, the onus is on the applicant to demonstrate **compliance with the criterion**.

Code Hierarchy

Where more than one type of code applies to a development, the order of precedence when there is inconsistency of provisions between codes as defined in the *Planning and Development Act 2007* is

1. precinct code

2. development code

3. general code.

Definitions

Defined terms and references to legislation and other documents are italicized throughout this code. Definitions of terms used in this code are either listed in part 13 of the Territory Plan or, for terms that are only applicable to this code, the meaning of the terms are spelt out within the respective rule or referred to in the ACT Practice Guidelines for Water Sensitive Urban Design.

2. Development codes and general codes

Development must comply with all relevant codes (including precinct codes and other general codes), subject to the code hierarchy outlined in the introduction to this code. General codes are found in part 11 of the Territory Plan.

3. Code requirements

This part applies to all assessable development subject to this code, except where stated in the relevant provisions.

Element 1: Mains water use reduction

Rules	Criteria
1.1 Mains Water Use Reduction Target	
R1 This rule applies to all development currently connected or intended to be connected to mains water supply except any of the following: a) development subject to the estate development code b) development for minor alterations or extensions involving 50% or less of the existing floor area. Development achieves a minimum 40% reduction in mains water consumption compared to an equivalent development constructed in 2003. **Note:** Compliance with this rule is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design.	This is a mandatory requirement. There is no applicable criterion.

Element 2: Stormwater Quantity

Rules	Criteria
2.1 On-site stormwater retention	
R2 This rule applies to development for at least one of the following: a) development on sites greater than 2,000m² involving works that have the potential to alter the stormwater regime of the site, including sites subject to the estate development code b) development within existing urban areas which increases impervious area by 100m^2. This rule does not apply to any of the following: a) development of major roads b) sites identified in a precinct code that stormwater retention requirements for the site have been fully dealt with through an estate development plan. Development complies with at least one of the following: a) stormwater retention management measures are provided and achieve all of the following: i) Stormwater storage capacity of 1.4kL per 100m² of the total impervious area of the site is provided specifically to retain and reuse stormwater generated on site as a whole ii) Retained stormwater is used on site b) development captures, stores and uses the first 15mm of rainfall falling on the site. For this rule, on-site stormwater retention is defined as the storage and use of stormwater on site. **Note:** Compliance with this rule is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design. **Note:** ACT Practice Guidelines for Water Sensitive Urban Design defines acceptable uses of stormwater on site. **Note:** Any site specific stormwater retention requirements for new estates must be nominated on planning control plans submitted with the estate development plan.	C2 Development complies with all of the following: a) It is demonstrated that stormwater retention measures can be more successfully met offsite b) development complies with at least one of the following stormwater retention management measures: i) An equivalent volume of stormwater is stored and used at an offsite location within the same catchment or a catchment in proximity to the site as part of a stormwater offset agreement ii) If it is demonstrated that the above stormwater retention measures are unable to be provided, then a contribution to the construction of offsite measures within the same catchment or a catchment in proximity to the site as a means of offset may be approved by the Planning and Land Authority. For this criterion, the meaning of a stormwater offset agreement as defined and detailed in the ACT Practice Guidelines for Water Sensitive Urban Design. **Note:** Compliance with this criterion is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design.

Rules	Criteria
2.2 On-site stormwater detention	
R3 This rule applies to development for at least one of the following: a) development on sites greater than 2,000m² involving works that have the potential to alter the stormwater regime of the site, including sites subject to the estate development code b) development within existing urban areas which increases impervious area by 100m² This rule does not apply to any of the following: a) development of major roads b) sites identified in a precinct code indicating that stormwater detention requirements have been fully met. Stormwater detention measures are provided and achieve all of the following: a) capture and direct runoff from the entire site b) Stormwater storage capacity of 1kL per 100m² of impervious area is provided to specifically detain stormwater generated on site c) The detained stormwater is designed to be released over a period of 6 hours after the storm event. For this rule on-site stormwater detention is defined as the short term storage and release downstream of stormwater runoff. **Note:** Compliance with this rule is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design. **Note:** Calculating on-site detention can include 50% of the volume of rainwater tanks where stormwater is used on-site. **Note:** For new estates any stormwater detention must be nominated on planning control plans submitted with the estate development plan. In particular, where an estate development plan has partially achieved the stormwater detention measures, this can be taken into account for the detention measures on individual sites.	C3 Stormwater detention measures are provided and achieve all of the following: a) ensure that the peak rate of stormwater runoff from the site does not exceed the peak rate of runoff from an unmitigated (rural) site of the same area for the 1 Exceedance per Year (1EY) b) A maximum of 30% of the runoff from the site may bypass the onsite stormwater detention system where it can be demonstrated that at least one of the following circumstances applies: i) Difficult ground levels ii) The nature of the receiving drainage system cannot receive runoff from the entire site iii) The need to retain significant trees or vegetation iv) other demonstrated circumstances. **Note:** Compliance with this criterion is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design. **Note:** where an estate development plan has partially achieved the stormwater detention measures, this can be taken into account for the detention measures on individual sites.

Rules	Criteria
2.3 Stormwater quantity for major road on sites over 2000m^2	
R4 This rules applies to development of major roads involving sites greater than 2000m^2. Development complies will all of the following: a) The capacity of existing pipe (minor) stormwater connection to the site is not exceeded in the 1 in 10 year storm event b) The capacity of the existing overland (major) stormwater system to the site is not exceeded in the 1 in 100 year storm event.	C4 Development for major roads on sites greater than 2000m^2 complies with at least one of the following: a) A reduction of the 1 in 5 year and 1 in 100 year stormwater peak run off flow to pre-development levels b) The capacity of the downstream piped stormwater system to its outlet with an open channel is not exceeded in the 1 in 10 year storm event. **Note:** Compliance with this criterion is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design.
2.4 On-site stormwater detention for estate development plans	
There is no applicable rule.	C5 This criterion applies to estate development plans. Stormwater detention measures are provided and the peak rate of stormwater runoff from the estate does not exceed the peak rate of runoff from an unmitigated (rural) site of the same area for minor and major storms. **Note:** Compliance with this criterion is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design. **Note:** The Major (1% Annual Exceedance Probability (AEP)) and Minor storms are as defined by Transport Canberra and City Services Directorate (TCCS) or the agency responsible for stormwater management. **Note:** Stormwater detention measures required for each individual block may contribute toward meeting the overall detention requirements for the estate as demonstrated in an estate development plan. **Note:** Any site specific stormwater detention must be nominated on planning control plans submitted with the estate development plan.

Element 3 – Stormwater Quality

Rules	Criteria
3.1 Stormwater Quality Target – sites greater than 2000m^2	
R6 This rule applies to development for all of the following: a) where the development site is greater than 2,000m^2 b) where development involves works that have potential to alter the stormwater regime for the site. This rule does not apply to development of major roads. The average annual stormwater pollutant export is reduced when compared with an urban catchment of the same area with no water quality management controls for all of the following: a) gross pollutants by at least 90% b) suspended solids by at least 60% c) total phosphorous by at least 45% d) total nitrogen by at least 40%. **Note:** Compliance with this rule is consistent with the ACT Practice Guidelines for Water Sensitive Urban Design and is demonstrated by a report by a suitably qualified person, using the MUSIC model. If a tool other than the MUSIC model is used then a report by an independent suitably qualified person must be submitted demonstrating and confirming compliance with the rule. If parameters that are non-compliant are used then a report must also be submitted by an independent suitably qualified person stating how and why the parameters are appropriate.	C6 It is demonstrated that at least one of the following applies: a) stormwater quality measures can be more successfully met offsite b) a sensitive downstream environment will be negatively impacted. Development complies with at least one of the following: a) an equivalent load of pollutants is captured at an offsite location as part of a stormwater offset agreement b) if the above stormwater quality measures are unable to be provided, then a contribution to the construction of offsite measures as a means of offset may be approved by the Planning and Land Authority. For this criterion a stormwater offset agreement is defined as detailed in the ACT Practice Guidelines for Water Sensitive Urban Design. **Note:** Compliance with this criterion is consistent with the ACT Practice Guidelines for Water Sensitive Urban Design and is demonstrated by a report by a suitably qualified person, using the MUSIC model. If a tool other than the MUSIC model is used then a report by an independent suitably qualified person must be submitted demonstrating and confirming compliance with the criterion. If parameters that are non-compliant are used then a report must also be submitted by an independent suitably qualified person stating how and why the parameters are appropriate.

Rules	Criteria
3.2 Stormwater quality target – major roads	
R7 This rule applies to development of major roads, including the duplication of an existing major road in full or in part. The average annual stormwater pollutant export is reduced when compared with a road catchment of the same area with no water quality management controls for all of the following: a) gross pollutants by at least 90% b) suspended solids by at least 60% c) total phosphorous by at least 45% d) total nitrogen by at least 40%. **Note:** Compliance with this rule is consistent with the ACT Practice Guidelines for Water Sensitive Urban Design and is demonstrated by a report by a suitably qualified person, using the MUSIC model. If a tool other than the MUSIC model is used then a report by an independent suitably qualified person must be submitted demonstrating and confirming compliance with the rule. If parameters that are non-compliant are used then a report must also be submitted by an independent suitably qualified person stating how and why the parameters are appropriate.	C7 If it can be demonstrated that the stormwater quality measures specified in the rule are unable to be provided, then a contribution to the construction of offsite measures as a means of offset may be approved by the Planning and Land Authority. **Note:** Compliance with this criterion is consistent with the ACT Practice Guidelines for Water Sensitive Urban Design and is demonstrated by a report by a suitably qualified person, using the MUSIC model. If a tool other than the MUSIC model is used then a report by an independent suitably qualified person must be submitted demonstrating and confirming compliance with the criterion. If parameters that are non-compliant are used then a report must also be submitted by an independent suitably qualified person stating how and why the parameters are appropriate.

Element 4 – Climate change adaptation

Rules	Criteria
4.1 Nuisance flooding – sites greater than 2000m^2	
There is no applicable rule.	C8 This criterion applies to development on sites greater than 2,000m^2 involving works that have potential to alter the existing drainage and overland flow regime for the site. Overland flow paths are provided and achieve all of the following: a) accommodate overland stormwater flows up to the 1%AEP b) reduce nuisance flooding. **Note:** Compliance with this criterion is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design.

Rules	Criteria
4.2 Green/living infrastructure	
R9 This rule applies to at least one of the following developments: a) Development on sites greater than 2000m^2 involving works that have potential to alter the stormwater regime for the site b) Development within existing urban areas that increase the impervious area of the site by 100m^2 or more. Development achieves a minimum of 20% of the site area to be permeable. **Note:** Compliance with this rule is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design.	C9 It is demonstrated that the development achieves all of the following: a) Increases permeable surfaces and living infrastructure through green spaces b) Plants that require irrigation are supported by sustainable water systems such as onsite stormwater harvesting to achieve microclimate benefits c) Promotes evapotranspiration to mitigate extreme temperatures, improve air humidity and overall human comfort. **Note:** Compliance with this criterion is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design.

Element 5 – Entity (Government agency) Endorsement

Rules	Criteria
5.1 Water infrastructure	
There is no applicable rule.	C10 This criterion applies to development that will result in municipal water sensitive urban design infrastructure being handed to the ACT Government. An operation and maintenance plan is to be endorsed by the ACT Government for the water sensitive urban design assets that are to be handed to the ACT Government. **Note:** Compliance with this criterion is demonstrated through a report from a suitably qualified person consistent with the methods specified in the ACT Practice Guidelines for Water Sensitive Urban Design.