

Planning and Development (Draft Variation No 373) Consultation Notice 2020

Notifiable instrument NI2020—26

made under the

Planning and Development Act 2007, s 63 (Public consultation—notification) and s64 (Public consultation- notice of interim effect etc)

1 Name of instrument

This instrument is the *Planning and Development (Draft Variation No 373) Consultation Notice 2020*.

2 Draft variation to the Territory Plan

The planning and land authority (the *Authority*) has prepared a draft plan variation 373 – Removal of mandatory gas provision from the Estate Development Code (the *draft variation*) to vary the Territory Plan. The draft variation proposes to remove the mandatory requirement for gas infrastructure to blocks in new suburbs from the Estate Development Code in the Territory Plan.

3 Documents available for public inspection

- (1) The Authority gives notice that the following documents are available for public inspection and purchase:
 - (a) the draft variation; and
 - (b) the background papers relating to the draft variation.
- (2) Copies of the documents mentioned in section 3 (1) are available for inspection and purchase at Access Canberra 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 6 March 2020 (the *consultation period*).
- (3) Copies of the documents mentioned in section 3 (1) are also available for inspection during the consultation period online at <https://www.planning.act.gov.au/tools-resources/plans-registers/plans/territory-plan/draft-variations-to-the-territory-plan>

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 Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson.

Note All 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.

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 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.

6 Effect of the draft variation

Section 65 of the Act applies to the draft variation. This means that the Territory, the Executive, a Minister or a territory authority must not, during the defined period, do or approve the doing of anything that would be inconsistent with the Territory Plan if it were varied in accordance with the draft variation.

Note **Defined period**, for a draft variation—see the *Planning and Development Act 2007*, section 65 (3).

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 Dictionary

In this instrument:

draft plan variation No 373 – Removal of mandatory gas provision from the Estate Development Code means the draft plan variation in Schedule 1.

Erin Brady
Delegate of the planning and land authority
14 January 2020



ACT
Government

Environment, Planning and
Sustainable Development

Planning and Development Act 2007

Draft
Variation to the
Territory Plan 373

Removal of mandatory gas provision from
the Estate Development Code

January 2020

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

The draft variation (DV373) proposes to remove the mandatory requirement for gas connection to blocks in new suburbs from the Estate Development Code in the Territory Plan. The provision of gas will be optional rather than mandated.

The ACT Climate Change Strategy 2019-2025 outlines the next stage of the ACT Government's climate change response and identifies actions to meet its emissions reduction target of net zero emissions by 2045 and prepare for climate change. This strategy places a strong focus on reducing emissions from transport and gas - the two largest sources of emissions from 2020 once emissions from electricity are zero.

One of the key priorities of the strategy is in the area of energy, buildings and urban development - to encourage a shift from gas to electricity by removing the mandated requirement for gas infrastructure in new suburbs, supporting gas to electric appliance upgrades and transitioning to all-electric new builds.

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 that 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 Director-General of EPSDD is the planning and land authority.

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 nonurban), 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 (planning and land authority) 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 **6 March 2020**.

Comments should include reference to the draft variation and be addressed to the Territory Plan Section, EPSDD. 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 received with respect to the draft variation 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 is 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 Estate Development Code in the Territory Plan applies to all development proposals in the ACT for the subdivision of land requiring the preparation of an estate development plan. The code provides additional planning, design and environmental controls, including a mandatory rule (R43) requiring utility services, including water, sewer, stormwater, electricity, gas and telecommunications to be provided to each block.

The ACT is the only jurisdiction in Australia that has a mandatory requirement for gas infrastructure to be provided in new estates and subdivisions.

Variation 356, which commenced in November 2018, supported a pilot project of 350 dwellings in Stage 1 of the Ginninderry Estate in West Belconnen to trial electric-only utility service provision in the residential area. This was achieved by amending the West Belconnen Concept Plan to make the provision of reticulated gas optional, rather than a mandatory requirement. The pilot was subsequently expanded to include Stage 2 of Ginninderry Estate via Variation 362 (V362). V362 took effect in June 2019.

The ACT Climate Change Strategy 2019-2025 (the strategy) sets out the actions required to reduce emissions and to build resilience to climate change impacts. (www.environment.act.gov.au/cc/act-climate-change-strategy)

The strategy sets out the next key challenges from 2020, once the ACT is powered by 100% renewable electricity. This will involve reducing emissions from transport, gas and waste.

Draft Variation 373 seeks to implement an action in the strategy under the goal of reducing emissions from gas by amending planning regulations to remove the mandating of reticulated gas in new suburbs by 2020.

This will be achieved by amending Rule R43 of the Estate Development Code to remove the requirement for the mandatory supply of gas reticulation to blocks in new subdivisions. This proposed change to the code supports the ACT Climate Change Strategy by extending the optional provision of gas reticulation to all new subdivisions in the ACT.

The draft variation will be released with interim effect, meaning that estate development plan development applications lodged after the date of release can be assessed under the new provision in the Estate Development Code.

The mandatory utility service requirements for water, sewer, stormwater, electricity, and telecommunications to each block will be retained.

2.2 Current Territory Plan Provisions

The current rule in the Estate Development Code in the Territory Plan is:

| 6.2 Utility Services | |
|--|---|
| <p>R43 Utility services, including water, sewer, stormwater, electricity, gas and telecommunications are provided to each block.</p> <p>Note: A condition of development approval may be imposed to ensure compliance with this rule.</p> | <p>This is a mandatory requirement. There is no applicable criterion.</p> |

2.3 Proposed Changes to the Territory Plan

The proposed rule in the Estate Development Code in the Territory Plan is:

| 6.2 Utility Services | |
|---|---|
| <p>R43 Utility services, including water, sewer, stormwater, electricity, gas and telecommunications are provided to each block.</p> <p>Note: A condition of development approval may be imposed to ensure compliance with this rule.</p> | <p>This is a mandatory requirement. There is no applicable criterion.</p> |

2.4 Reasons for the Proposed Draft Variation

The draft variation implements the action in the ACT Climate Change Strategy 2019-2025 under the goal of reducing emissions from gas by amending planning regulations to remove the mandating of reticulated gas in new suburbs by 2020.

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 requires 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 Territory Plan's statement of strategic directions in terms of environmental principles:

Environmental Sustainability

1.5 Planning policies will seek to ensure the efficient use of all resources and to reduce consumption of non-renewable resources. Waste minimisation, reuse and recycling will be encouraged, whilst energy-rating and conservation measures will be applied wherever appropriate, particularly in transport, subdivision planning, and building design and construction.

1.10 Integrated land use and transport planning will seek to maximise accessibility and transport efficiency, prioritise active travel, reduce energy consumption, increase physical activity, support the preferred pattern of development, promote safety, safeguard environmental quality, and minimise greenhouse gas emissions.

The ACT Climate Change Strategy 2019-2025 addresses the reduction in consumption of non-renewable resources and minimising greenhouse gas emissions. The Strategy has been developed in coordination with the ACT Planning Strategy 2018, among other policies.

ACT Planning Strategy 2018

The proposal is consistent with the ACT Planning Strategy's theme of a 'Sustainable and Resilient Territory' as it supports the transition to net zero carbon emissions by 2045 by removing the mandating of reticulated gas in new suburbs by 2020 contained in the ACT Climate Change Strategy.

2.6 Interim Effect

Section 65 of the *Planning and Development Act 2007* applies to the draft variation. This means that the provisions of DV373 have interim effect, and apply to development applications lodged on or after the notification day of this instrument.

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 10 December 2019:

The NCA has no comment for the Draft Variation.

Response

Noted.

Conservator of Flora and Fauna

The Conservator of Flora and Fauna made the following comments on 16 December 2019:

In accordance with Section 61(b) of the Planning and Development Act 2007 I advise that I have examined Draft Variation No 373 – Change to estate development code – removed mandatory provision of gas.

I support the Draft Variation and have no comment.

Response

Noted.

Environment Protection Authority

The Environment Protection Authority provided the following comments on 18 December 2019.

Thank you for the opportunity to review and provide comment on the proposed variation to the Territory Plan, DV373, to vary the Estate Development Code by making the provision of reticulated gas optional, rather than a mandatory requirement.

The proposed variation is supported in principle however it should be noted the proposed change will limit the choices available for heating in homes and could result in an increased reliance on solid fuel heating options.

Requirements similar to those in the Dunlop and Molonglo areas which require planning approval for the installation of solid fuel heaters should be developed and implemented to specifically require that solid fuel heaters are restricted to pellet heaters and/or units that have an overall efficiency standard of not less than 65% and an emissions standard not greater than 1 g/kg. In addition second-hand heaters are prohibited. These planning requirements should be included in all leases in the new estates.

Consideration should also be given to the potential noise impacts of relying more heavily on reverse cycle heating systems that can be noisier than gas systems.

Response

The comments are noted.

With regard to solid fuel heaters it is noted that the ACT currently has emissions standards for these. While Dunlop and Molonglo had restrictions on their installation these restrictions were made as a result of a Strategic Planning requirement as these developments were in valleys, increasing the potential impact of solid fuel heaters on local air quality.

Applying a blanket restriction across all developments may be difficult without similar requirements.

Increased electric heating installation may increase the likelihood of noise complaints in new developments. At this stage there are not any specific restrictions on their installation when it comes to noise. An education campaign for new residents may be sufficient to mitigate this issue.

Heritage Council

The Heritage Council provided the following comments on 10 December 2019:

Thank you for referring Draft Variation DV373 to the ACT Heritage Council (the Council) for entity advice.

The Council understands that DV373 proposes to remove the mandatory requirement for gas infrastructure to blocks in new suburbs from the Estate Development Code in the Territory Plan.

Following review, the Council does not object to the changes proposed by DV373, as Heritage Act 2004 provisions will continue to apply to heritage places and objects that may be affected by new urban developments within the ACT.

Response

Noted.

3. DRAFT VARIATION

3.1 Variation to the Territory Plan

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

Variation to the Estate Development Code

| |
|--|
| 1. Element 6: Services and Infrastructure; Item 6.2 Utility Services; Rule 43 |
|--|

Substitute

| 6.2 Utility Services | |
|---|---|
| <p>R43 Utility services, including water, sewer, stormwater, electricity and telecommunications are provided to each block.</p> <p>Note: A condition of development approval may be imposed to ensure compliance with this rule.</p> | <p>This is a mandatory requirement. There is no applicable criterion.</p> |

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