

# Planning and Development (Draft Variation 381) Consultation Notice 2021

## Notifiable instrument NI2021—268

made under the

Planning and Development Act 2007, s 63 (Public consultation—notification)

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### 1 Name of instrument

This instrument is the *Planning and Development (Draft Variation 381) Consultation Notice 2021*.

### 2 Draft variation to the Territory Plan

The planning and land authority (the *Authority*) has prepared a draft plan variation 381 – Local Centre shop size (the *draft variation*) to vary the Territory Plan. The draft variation proposes to increase the maximum gross floor area (GFA) for shops in local centres from 1000m<sup>2</sup> to 1500m<sup>2</sup>.

### 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 Land, Planning and Building Services Shopfront, 8 Darling Street, Mitchell ACT, 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 **25 June 2021** (the *consultation period*).
- (3) Copies of the documents mentioned in section 3 (1) are also available for inspection during the consultation period online at: [www.act.gov.au/draftvariations](http://www.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](mailto: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 Land, Planning and Building Services Shopfront, 8 Darling Street, Mitchell ACT.

*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 Land, Planning and Building Services Shopfront, 8 Darling Street, Mitchell ACT, 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](http://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](mailto:terrplan@act.gov.au). A reference to the draft variation should be included in any email.

## 8 Dictionary

In this instrument:

***draft plan variation 381 – Local Centre shop size*** means the draft plan variation in Schedule 1.

Brett Phillips  
Delegate of the planning and land authority  
5 May 2021



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Schedule 1

*Planning and Development Act 2007*

**Draft**  
**Variation to the**  
**Territory Plan**  
**381**

Local Centre shop size

May 2021

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 proposes to increase the maximum gross floor area (GFA) for shops in local centres from 1000m<sup>2</sup> to 1500m<sup>2</sup>.

## 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 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 any recommendations 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 Public Consultation

Written comments about the draft variation are invited from the public by **25 June 2021**.

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 provided by:

- email to [terrplan@act.gov.au](mailto:terrplan@act.gov.au)
- mail to Territory Plan Section, GPO Box 158, Canberra, ACT 2601
- hand delivery to the Access Canberra Land, Planning and Building Services Shopfront, 8 Darling Street, Mitchell ACT.

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, Land, Planning and Building Services Shopfront, 8 Darling Street, Mitchell ACT and will be published on EPSDD's website. Comments made available will not generally 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](http://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 Land, Planning and Building Services Shopfront, 8 Darling Street, Mitchell ACT, Monday to Friday (except public holidays) between 8:30am and 4:30pm. Please call 13 22 81 to arrange a copy for purchase.



## 2. EXPLANATORY STATEMENT

### 2.1 Background

Territory Plan V304 which commenced in April 2015, placed a maximum 1000m<sup>2</sup> GFA limit on shops in local centres. Previously there were no limits on the GFA of a shop at local centres.

There was a considerable lead up to V304, which started with the commercial zones policy review (phase 1) discussion paper, released in 2011. There was feedback on various issues affecting development in commercial zones including supermarket sizes at local centres.

A total of 49 public comments were received about this discussion paper. Apart from individual comments, submissions were received from Woolworths Ltd, Coles supermarkets, Supabarn and various IGA supermarkets, five centre landowners / developers, Housing Institute of Australia, Planning Institute of Australia, a planning consultant, five community groups and/or associations and the ACT Greens. Importantly, there was

- strong support for:
  - limiting supermarket sizes in local centres; and to
  - assessing the potential economic impacts of ‘significant’ supermarket developments at adjacent centres.
- some support for:
  - reflecting centres hierarchy in commercial zones; and to
  - undertaking zoning changes on a case-by-case basis.

In 2013 the former ACT Legislative Assembly Select Committee issued its findings on the ACT Supermarket Competition Policy. Of relevance to the Territory Plan provisions was the following recommendation:

*Recommendation 7 – The Committee recommends that the Territory Plan be revised to specify gross floor area limits for supermarkets in local centres.*

Draft Variation DV304 was released for public comment in 2013 and was informed by the Select Committee recommendations of 2013 and the commercial zones policy review discussion paper of 2011.

In this regard, DV304 proposed a maximum gross floor area of 1500m<sup>2</sup> for shops selling food (including supermarkets) in local centres. However, there was also a provision that set a ‘*net selling area*’ for these shops at a maximum of 1000m<sup>2</sup>. For this provision the ‘*net selling area*’ was defined in the proposed rule as that part of the gross floor area of a shop that is:

- a) used for the display and sale of goods, and
- b) ordinarily accessible to the public.

A total of 14 submissions were received during the formal public notification period for DV304. The majority of submissions were from supermarket businesses and comments related primarily to the proposed GFA limits and the proposed re-alignment of commercial zones boundaries in some group centres. Key issues raised about DV304, which include comments about local centres:

- result in poor urban planning outcomes
- diminish convenience retailing
- create an oversupply of supermarket and retail space
- may affect the retail hierarchy of centres
- the proposed GFA limits are excessive
- the proposed introduction of the term 'net selling area' is considered to be unnecessary
- the definitions of GFA and NSA are potentially confusing and complex
- the proposed GFA limits may affect the viability of centres and result in pressure on available car parking areas
- the proposed GFA limits are considered to be inconsistent with the directions of the Commercial zones policy review (phase 1) discussion paper.

The approved DV304 was revised in response to the public comments received. This included an amendment to the maximum GFA for supermarkets in local centres to 1000m<sup>2</sup> inclusive of net selling area and all 'back of house' floor space. The primary reason for the GFA limit of 1000m<sup>2</sup> was to maintain the existing hierarchy of commercial centres. However, it was noted, at the time, that some existing supermarkets in local centres had already been developed beyond the maximum 1000m<sup>2</sup> approved in V304 which commenced in 2015. A criterion was introduced to account for lawfully constructed supermarkets above this limit, already lodged development applications, and existing approvals that were already in place.

In recent times, the viability and competitiveness of local centres has come into question. With social and consumer behaviour change, particularly evident post COVID-19, the role of local centres in our urban fabric is changing. To further understand this change a strategic investigation of the effectiveness of the Territory Plan policy for local centres is being conducted. In the meantime, DV381 facilitates immediate changes to the local centre policies for supermarket sizes to improve both the viability and competitiveness of local centres.

## 2.2 Current Territory Plan Provisions

Rule R51A in the Commercial Zones Development Code

15.6 Shops – floor area	
R51A The maximum <i>gross floor area</i> for a <i>shop</i> is 1000m <sup>2</sup> .	C51A An existing <i>shop</i> that exceeds a <i>gross floor area</i> of 1000m <sup>2</sup> may be redeveloped up to its existing <i>gross floor area</i> where the shop complies with one of the following: a) was lawfully constructed on or before 10 April 2015 b) was subject to development approval issued on or before 10 April 2015 c) was the subject of a development application lodged on or before 10 April 2015 that was subsequently approved.

## 2.3 Proposed Changes

### 2.3.1 Proposed Changes to Territory Plan

This draft variation proposes to change the Territory Plan in the following way and as detailed in section 3:

- increase the gross floor area for shops in local centres from 1000m<sup>2</sup> to 1500m<sup>2</sup>

## 2.4 Reasons for the Proposed Draft Variation

The Environment, Planning and Sustainable Development Directorate is preparing this draft variation in response to the changing nature of our local centres, to improve their viability and competitiveness.

## 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, economic and social sustainability and spatial planning and urban design principles as follows:

*2.3 Commercial and retail activity will be concentrated in centres and other planned nodes of intensive activity that are well served by public transport to ensure an efficient pattern of development. Primary emphasis will be placed on strengthening and enhancing existing and new centres and nodes, including improved urban design and encouragement of more mixed-use development.*

The proposal is consistent with the ACT Planning Strategy 2018 action as follows:

*4.3.2 Investigate planning mechanisms to respond to the changing role of local centres and their long-term viability and place within the hierarchy*

## 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 381 have interim effect, and apply to development applications lodged on or after **7 May 2021**.

During the period of interim effect, the Territory, the Executive, a Minister or a territory authority must not do or approve anything that would be inconsistent with the Territory Plan as if it were amended by the draft variation.

## 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 27 April 2021.

*Thank you for the referral for Draft Variation 381, Local Centre shop size. The proposed variation is not inconsistent with the National Capital Plan and the NCA has no objections to DV381.*

#### Response

Noted

### **Conservator of Flora and Fauna**

The Conservator of Flora and Fauna made the following comments on 4 May 2021.

*I have no comment on this draft variation.*

#### Response

Noted

### **Environment Protection Authority**

The Environment Protection Authority provided the following comments on 4 May 2021.

*The Environment Protection Authority (EPA) has reviewed the Draft Variation 381 (DV381), which proposes to change Rule R51A in the Commercial Zones Development Code by increasing the maximum gross floor area of a shop from 1000m<sup>2</sup> to 1500m<sup>2</sup>. The EPA has no comment on the Draft Variation.*

#### Response

Noted

## **Heritage Council**

The Heritage Council provided the following comments on 3 May 2021

*The Council advises that it does not object to the proposed TPV 381. The changes will not affect heritage places, as the provisions of the Heritage Act 2004 will continue to guide the management of heritage places and objects within RZ4 zones.*

### Response

Noted

### 3. DRAFT VARIATION TO THE TERRITORY PLAN

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

#### Variation to the Commercial Zones Development Code

<b>1. Part D – Additional controls for local centres, Element 15: Use, 15.6 Shops – floor area, Rule R51A</b>
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*Substitute*

15.6 Shops – floor area	
<p>R51A</p> <p>The maximum <i>gross floor area</i> for a <i>shop</i> is 1500m<sup>2</sup>.</p>	<p>C51A</p> <p>An existing <i>shop</i> that exceeds a <i>gross floor area</i> of 1500m<sup>2</sup> may be redeveloped up to its existing <i>gross floor area</i> where the shop complies with one of the following:</p> <ul style="list-style-type: none"><li>d) was lawfully constructed on or before 10 April 2015</li><li>e) was subject to development approval issued on or before 10 April 2015</li><li>f) was the subject of a development application lodged on or before 10 April 2015 that was subsequently approved.</li></ul>

## 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 τηλεφωνήστε 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

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