

Australian Capital Territory

Planning and Development (Technical Amendment—Clarification) Plan Variation 2022

Notifiable instrument NI2022–416

Technical Amendment No 2022-07

made under the

Planning and Development Act 2007, s 89 (Making technical amendments)

1 Name of instrument

This instrument is the *Planning and Development (Technical Amendment—Clarification) Plan Variation 2022*.

2 Commencement

This instrument commences on 1 September 2022.

3 Technical amendment

I am satisfied under section 89 (1) (a) of the *Planning and Development Act 2007* that the Clarification plan variation is a technical amendment to the Territory Plan.

4 Dictionary

In this instrument:

Clarification plan variation means the technical amendment to the Territory Plan, variation 2022-07, in the schedule.

Lisa Teburea
Delegate of the planning and land authority
29 August 2022



ACT
Government

Environment, Planning and
Sustainable Development

Schedule

Planning and Development Act 2007

Technical Amendment to the Territory Plan

2022-07

Clarification of original intent regarding
application of living infrastructure provisions in
Variation 369

August 2022

Commencement version

under section 89 of the *Planning and Development Act 2007*

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1. INTRODUCTION

1.1 Purpose

This technical amendment makes the following changes to the Territory Plan:

Single Dwelling Housing Development Code

- Adjust the wording of the following provisions to expand the reference to blocks approved under an estate development plan before 1 January 2020 to include land for which a Crown lease was originally granted before 1 January 2020:
 - Rule R38
 - Rule R38A
 - Rule R39
 - Rule R39
 - Rule R39A
 - Rule R40
 - Rule R40A
 - Rule R40B (numbering rectified due to duplication of numbering in V369 Rule R40A)
 - Rule R40C (numbering rectified due to duplication of numbering in V369 Rule R40A)
- Adjust the wording in Table 7a in the Note referring to trees to clarify that any new trees cannot be a pest species.

Multi Unit Housing Development Code

- Adjust the wording of the following provisions to expand the reference to blocks approved under an estate development plan before 1 January 2020 to include land for which a Crown lease was originally granted before 1 January 2020:
 - Rule R38
 - Rule R38A
 - Rule R38B
 - Rule R38C
 - Rule R38D
 - Criterion C38E
 - Rule R38F
 - Rule R39
 - Rule R39A
 - Rule R39B
 - Rule R39C

- Rule R39D
- Rule R40A
- Rule R40B
- Criterion C40
- Rectify wording of item 4.3 to be consistent with Rule R39 in applying to Residential RZ3, RZ4, RZ5 zones and commercial zones
- Rectify paragraph numbering of Criterion C39
- Rectify numbering of item 5.2 to read item 4.4 Site open space – RZ3, RZ4 and RZ5 zones
- Adjust the wording in Table A7a in the Note referring to trees to clarify that any new trees cannot be a pest species.

1.2 Public consultation

Under section 87 (2) (a) and (e) of the *Planning and Development Act 2007* (the **Act**) this type of technical amendment is subject to limited public consultation.

TA2022-07 was released for public consultation from 17 June 2022 to 18 July 2022. Three public submissions were received.

Further information on the submissions received and response to the comments are contained in the report on consultation.

Comments received from the public and the National Capital Authority have been considered in the preparation of the final version of TA2022-07.

Minor changes were made to the technical amendment following consultation. These changes were made to:

- Clarification of the wording of the provisions applicable to those blocks approved before 1 January 2020 to remove any ambiguity regarding recently subdivided blocks in established areas
- Clarification of the wording where the existing provisions still apply to blocks if the original crown lease was granted on or after 1 January 2020, even if the estate development plan was approved before 1 January 2020
- Clarification of the note under table 7a in the Single Dwelling Housing Development Code and table A7a in the Multi Unit Housing Development Code that new trees cannot be a listed pest species.

1.3 National Capital Authority

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 Plan 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 not be inconsistent with the Plan. The areas covered by this technical amendment are within urban areas identified in the Plan.

The NCA advised that it has no objections to this technical amendment.

1.4 Process

This technical amendment has been prepared in accordance with section 87 of the Act.

Comments received from the public and the NCA will be taken into account before the planning and land authority “makes” the technical amendment under section 89 of the Act. The planning and land authority must then notify the public of its decision.

1.5 Types of technical amendments under the Act

The following categories of technical amendments are provided under section 87 of the Act:

- (1) Each of the following territory plan variations is a **technical amendment** for which no consultation is needed before it is made under section 89:
 - (a) a variation (an **error variation**) that –
 - (i) would not adversely affect anyone’s rights if approved; and
 - (ii) has as its only object the correction of a formal error in the plan;
 - (b) a variation to change the boundary of a zone or overlay under section 90A (Rezoning – boundary changes);
 - (c) a variation, other than one to which subsection (2) (d) applies, in relation to an estate development plan under section 96 (Effect of approval of estate development plan);
 - (d) a variation required to bring the territory plan into line with the national capital plan;
 - (e) a variation to omit something that is obsolete or redundant in the territory plan.
- (2) Each of the following territory plan variations is a **technical amendment** for which only limited public consultation is needed under section 90:
 - (a) a variation (a **code variation**) that –

- (i) would only change a code; and
- (ii) is consistent with the policy purpose and policy framework of the code; and
- (iii) is not an error variation;
- (b) a variation to change the boundary of a zone under section 90B (Rezoning – development encroaching on adjoining territory land);
- (c) a variation in relation to a future urban area under section 90C (Technical amendments – future urban areas);
- (d) a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan) if it incorporates an ongoing provision that was not included in the plan under section 94 (3) (g);
- (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan;
- (f) a variation to relocate a provision within the territory plan if the substance of the provision is not changed.

TA2022-07 has been prepared in accordance with section 87 (1) (a) and 87 (2) (e) of the Act.

2. EXPLANATORY STATEMENT

2.1 Background

This part of the technical amendment document explains the changes to be made to the Territory Plan, the reasons for the change, and a statement of compliance against the relevant section of the Act.

Variation 369 Living Infrastructure in Residential Zones (V369)

V369 was prepared to incorporate living infrastructure elements into the residential codes of the Territory Plan as part of the ACT Planning Strategy 2018 recommendations to make Canberra a resilient city within the landscape. The variation was also prepared as a first step in response to Action 2 of Canberra's Living Infrastructure Plan, which seeks to achieve 30 percent tree canopy cover (or equivalent) and 30 per cent permeable surfaces in urban areas by 2045.

Variation 369 will require single residential and multi-unit developments to have a certain level of canopy cover, which will contribute to the increase of tree canopy coverage across the city.

Prior to approval of the variation, the Minister for Planning and Land Management, Mick Gentleman MLA, directed the planning and land authority to amend V369 so that these new living infrastructure provisions do not apply to blocks approved under an estate development plan after 1 January 2020. This was done in response to feedback that the provisions would have disadvantaged people who had bought a block of land in a new estate with an expectation of building a particular dwelling type at the time of purchase, especially those people who had bought a 'house and land' package and would not be able to build the house they had envisaged for their block if the provisions in V369 were applied.

Members of the community have indicated a desire for greater clarity of language in V369, given the reference to 'blocks approved under an estate development plan before 1 January 2020'. The view put to the planning and land authority is that as the term 'estate development plan' has only been used in the Territory Plan since 2002 and only defined in the Act since 2007, the living infrastructure provisions may not apply to blocks created before 2002 (or 2007 if referencing the definition in the Act). It has been suggested that this could be interpreted to mean that the provisions would not apply to any blocks that were created at any time under a process other than via an 'estate development plan', and therefore V369 will only apply to blocks created between 2002 and the end of 2019 when it commences on 1 September 2022. This is not the view of the planning and land authority, however, in this technical amendment is being proposed to provide abundant clarity as to the intent of the original provisions.

As the vast majority of blocks in the ACT would have had a form of estate approval (including prior to self-government), it is considered that most blocks would comply with the Territory Plan definition. Therefore, the living infrastructure provisions introduced with V369 would apply to blocks approved before 2002.

This technical amendment proposes to clarify the wording of the relevant provisions in the residential codes to be introduced to the Territory Plan via V369 to provide certainty about their applicability. This change will clarify that the living infrastructure provisions apply to all blocks approved before 2002.

This technical amendment will be introduced when V369 commences, which is 1 September 2022.

Once the new Territory Plan commences in 2023 (proposed as one element of the reformed planning system under the Planning System Review and Reform Project), the living infrastructure provisions will apply to all residential zoned blocks, regardless of when the block was approved.

2.2 Single Dwelling Housing Development Code

2.2.1 Estate development plans and leases

A. Blocks approved or leased before 1 January 2020

The provisions that contain references to ‘blocks approved under an *estate development plan* before 1 January 2020’ are proposed to be expanded to include ‘land for which a Crown lease was originally granted before 1 January 2020’. This will include any blocks including single dwelling blocks and blocks that were subsequently created through subdivision or consolidation of the original blocks.

As a block must have a Crown lease to be able to undertake residential development, the reference to the granting of a Crown lease would cover the rare occasion that either a block was never formally approved or if the legitimacy of the estate development plan is questioned.

The provisions to which these changes apply to is detailed in Section 3 of this technical amendment.

Compliance with the *Planning and Development Act 2007*

| Section | Statement |
|--|--|
| s 87 (2) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan. | Compliant. This amendment clarifies the intent of the provisions in V369 to provide certainty about their applicability on blocks that were created prior to 2002 (when definition was introduced into the Territory Plan) or 2007 (if referencing the definition in the Act) |

B. Blocks leased on or after 1 January 2020

Variation 369 explains that the existing provisions for private open space on single dwelling blocks will still apply for blocks approved under an estate development plan on or after 1 January 2020.

In order to further clarify the application of these provisions, and to not disadvantage lessees of blocks where the original Crown lease was only granted after 1 January 2020 (even if the estate development plan was approved before this date) the relevant provisions have been adjusted to apply to blocks approved under an estate development plan on land for which the original Crown lease was granted on or after 1 January 2020.

Compliance with the *Planning and Development Act 2007*

| Section | Statement |
|--|---|
| s 87 (2) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan. | Compliant. This amendment clarifies that the new living infrastructure provisions do not apply to blocks approved under an <i>estate development plan</i> for which the original Crown lease was granted or after 1 January 2020 |

2.2.2 Rectification of duplicate numbering – Rule R40A / Criterion C40A

The approved version of V369 inadvertently contained two R40A/C40A provisions. This technical amendment rectifies this duplication by renumbering the second R40A/C40A provisions to R40B/C40B and the subsequent R40B/C40B to R40C/C40C.

2.2.3 Table 7a - tree species of new trees

The note under Table 7a has been adjusted to clarify that only new trees planted on a block to meet the tree canopy requirement cannot be a listed pest species. Any existing tree that meets the size requirements can be considered to meet the provision, even if it is a pest species.

Compliance with the *Planning and Development Act 2007*

| Section | Statement |
|--|---|
| s 87 (2) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan. | Compliant. This amendment clarifies that only new trees cannot be a listed pest species. |

2.3 Multi Unit Housing Development Code

2.3.1 Estate development plans and leases

A. Blocks approved or leased before 1 January 2020

The provisions that contain references to 'blocks approved under an *estate development plan* before 1 January 2020' are proposed to be expanded to include 'land for which the original Crown lease was granted before 1 January 2020'. This will include any blocks that were subsequently created through subdivision or consolidation of the original blocks.

As a block must have a Crown lease to be able to undertake residential development, the reference to the granting of a Crown lease would cover the rare occasion that either a block was never formally approved or if the legitimacy of the estate development plan is questioned.

The provisions to which these changes apply to is detailed in Section 3 of this technical amendment.

Compliance with the *Planning and Development Act 2007*

| Section | Statement |
|--|--|
| s 87 (2) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan. | Compliant. This amendment clarifies the intent of the provisions in V369 to provide certainty about their applicability on blocks that were created prior to 2002 (when definition was introduced into the Territory Plan) or 2007 (if referencing the definition in the Act) |

B. Blocks leased on or after 1 January 2020

Variation 369 explains that the existing provisions for site open space on multi-unit blocks will still apply for blocks approved under an estate development plan on or after 1 January 2020.

In order to further clarify the application of these provisions, and to not disadvantage lessees of blocks where the original Crown lease was only granted after 1 January 2020 (even if the estate development plan was approved before this date) the relevant provisions have been adjusted to apply to blocks approved under an estate development plan on land for which the original Crown lease was granted or after 1 January 2020.

Compliance with the *Planning and Development Act 2007*

| Section | Statement |
|--|---|
| s 87 (2) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan. | Compliant. This amendment clarifies that the new living infrastructure provisions do not apply to blocks approved under an <i>estate development plan</i> for which the original |

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| | Crown lease was granted or after 1 January 2020 |
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2.3.2 Rectification of item wording and item and paragraph numbering discrepancies

This technical amendment also rectifies item and paragraph numbering discrepancies and item wording in V369 as follows:

- Rectify wording of item 4.3 to be consistent with Rule R39 in applying to Residential RZ3, RZ4, RZ5 zones and commercial zones. Item 4.3 is amended to read: '4.3 Site open space – RZ3, RZ4, RZ5 and commercial zones'
- Rectify paragraph numbering in Criterion C39
- Rectify item numbering of 5.2 to read '4.4 Site open space – RZ3, RZ4 and RZ5 zones'.

Compliance with the *Planning and Development Act 2007*

| Section | Statement |
|--|--|
| s 87 (1) (a) (a) a variation (an error variation) that— (i) would not adversely affect anyone's rights if approved; and (ii) has as its only object the correction of a formal error in the plan. | Compliant. This amendment rectifies item and numbering discrepancies and item wording in V369. |

2.2.2 Table A7a - tree species of new trees

The note under Table A7a has been adjusted to clarify that only new trees planted on a block to meet the tree canopy requirement cannot be a listed pest species. Any existing tree that meets the size requirements can be considered to meet the provision, even if it is a pest species.

Compliance with the *Planning and Development Act 2007*

| Section | Statement |
|--|--|
| s 87 (2) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan. | Compliant. This amendment clarifies that only new trees cannot be a listed pest species |

3. TECHNICAL AMENDMENT

This section of the technical amendment document provides the actual instructions for implementing the changes to the Territory Plan.

3.1 Variation to the Single Dwelling Housing Development Code

1. Element 5: Amenity; Item 5.2 Private Open Space

Substitute

| 5.2 Private open space | |
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| <p>R38</p> <p>For <i>large blocks</i> approved under an <i>estate development plan</i> on land for which the original Crown lease was granted on or after 1 January 2020, <i>private open space</i> complies with all of the following:</p> <ul style="list-style-type: none"> a) has a minimum area equal to 60% of the block area, less 50m² b) has a minimum dimension of 6m for an area not less than 10% of the block c) at least 50% of the minimum area specified in a) is <i>planting area</i>. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p> | <p>C38</p> <p><i>Private open space</i> provides residential amenity on the subject site and protects the residential amenity of adjoining sites by achieving all of the following:</p> <ul style="list-style-type: none"> a) limits site coverage of buildings and vehicle parking and manoeuvring areas b) provides space for planting c) facilitates on-site infiltration of stormwater run-off d) provides outdoor areas that are readily accessible by residents for a range of uses and activities e) provides space for service functions such as clothes drying and domestic storage. |
| <p>R38A</p> <p>For <i>large blocks</i> approved under an <i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020, <i>private open space</i> complies with all of the following:</p> <ul style="list-style-type: none"> a) has a minimum area equal to 60% of the block area b) has a minimum dimension of 6m for an area not less than 10% of the block c) at least 30% of the block area is <i>planting area</i>, with a minimum dimension of 2.5m. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p> | <p>C38A</p> <p>To reduce urban heat island effects, retain water and maintain ecosystem services, and to provide residential amenity on the subject site and protect residential amenity of adjoining sites, <i>private open space</i> achieves all of the following:</p> <ul style="list-style-type: none"> a) limits <i>site coverage</i> of buildings and vehicle parking and manoeuvring areas b) facilitates on-site infiltration of stormwater run-off c) provides substantial outdoor areas that are readily accessible by residents for a range of uses and activities d) provides space for service functions such as clothes drying and domestic storage e) provides <i>planting areas</i> that demonstrates: <ul style="list-style-type: none"> i) establishment of landscaping to provide substantial shade in summer |

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| | <p>and admit winter sunlight to outdoor and indoor living areas</p> <p>ii) enhancement of living infrastructure through water-sensitive urban design and providing adequate areas for deep soil zones for ground water recharge, canopy trees and vegetation.</p> |
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Substitute

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| <p>R39</p> <p>For <i>mid-sized blocks</i> approved under an <i>estate development plan</i> for which the original Crown lease was granted on or after 1 January 2020, <i>private open space</i> complies with all of the following:</p> <p>a) a minimum area is not less than 40% of the block area, less 50m²</p> <p>b) a minimum dimension as follows:</p> <p>i) blocks that are identified in a precinct code as an alternative boundary setback block – 4m for an area not less than 20% of the block area</p> <p>ii) blocks less than 360m² – 5m for an area not less than 10% of the block</p> <p>iii) in all other cases - 6m for an area not less than 10% of the block area</p> <p>c) at least 50% of the minimum area specified in a) is <i>planting area</i>.</p> <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p> | <p>C39</p> <p><i>Private open space</i> provides residential amenity on the subject site and protects the residential amenity of adjoining sites by achieving all of the following:</p> <p>a) limits site coverage of buildings and vehicle parking and manoeuvring areas</p> <p>b) provides space for planting</p> <p>c) facilitates on-site infiltration of stormwater run-off</p> <p>d) provides outdoor areas that are readily accessible by residents for a range of uses and activities</p> <p>e) provides space for service functions such as clothes drying and domestic storage.</p> |
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| <p>R39A</p> <p>For <i>mid-sized blocks</i> approved under an <i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020, <i>private open space</i> complies with all of the following:</p> <ul style="list-style-type: none"> a) a minimum area is not less than 40% of the block area b) a minimum dimension as follows: <ul style="list-style-type: none"> i) blocks that are identified in a precinct code as an alternative boundary setback block – 4m for an area not less than 20% of the block area ii) blocks less than 360m² – 5m for an area not less than 10% of the block iii) in all other cases - 6m for an area not less than 10% of the block area c) at least 20% of the block area is <i>planting area</i>, with a minimum dimension of 2.5m. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p> | <p>C39A</p> <p>To reduce urban heat island effects, retain water and maintain ecosystem services, and to provide residential amenity on the subject site and protect residential amenity of adjoining sites, <i>private open space</i> achieves all of the following:</p> <ul style="list-style-type: none"> a) limits <i>site coverage</i> of buildings and vehicle parking and manoeuvring areas b) facilitates on-site infiltration of stormwater run-off c) provides substantial outdoor areas that are readily accessible by residents for a range of uses and activities d) provides space for service functions such as clothes drying and domestic storage e) provides <i>planting areas</i> that demonstrates: <ul style="list-style-type: none"> i) establishment of landscaping to provide substantial shade in summer and admit winter sunlight to outdoor and indoor living area ii) enhancement of living infrastructure through water-sensitive urban design and providing adequate areas for deep soil zones for ground water recharge, canopy trees and vegetation. |
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Substitute

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| <p>R40</p> <p>For compact blocks approved under an estate development plan for which the original Crown lease was granted on or after 1 January 2020, private open space complies with all of the following:</p> <ul style="list-style-type: none"> a) a minimum area is not less than 20% of the block area b) at least 50% of the minimum area specified in a) is planting area. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p> | <p>C40</p> <p>Private open space provides residential amenity on the subject site and protects the residential amenity of adjoining sites by achieving all of the following:</p> <ul style="list-style-type: none"> a) limits site coverage of buildings and vehicle parking and manoeuvring areas b) provides space for planting c) facilitates on-site infiltration of stormwater run-off d) provides outdoor areas that are readily accessible by residents for a range of uses and activities e) provides space for service functions such as clothes drying and domestic storage. |
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| <p>R40A</p> <p>For <i>compact blocks</i> approved under an <i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020, <i>private open space</i> complies with the following:</p> <ol style="list-style-type: none"> a) a minimum area is not less than 30% of the block area b) at least 15% of the <i>block area</i> is <i>planting area</i> with a minimum dimension of 2.5m. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p> | <p>C40A</p> <p>To reduce urban heat island effects, retain water and maintain ecosystem services, and to provide residential amenity on the subject site and protect residential amenity of adjoining sites, <i>private open space</i> achieves all of the following:</p> <ol style="list-style-type: none"> a) limits <i>site coverage</i> of buildings and vehicle parking and manoeuvring areas b) facilitates on-site infiltration of stormwater run-off c) provides substantial outdoor areas that are readily accessible by residents for a range of uses and activities d) provides space for service functions such as clothes drying and domestic storage e) provides <i>planting areas</i> that demonstrates: <ol style="list-style-type: none"> i) establishment of landscaping to provide substantial shade in summer and admit winter sunlight to outdoor and indoor living areas ii) enhancement of living infrastructure through water-sensitive urban design and providing adequate areas for deep soil zones for ground water recharge, canopy trees and vegetation |
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2. Element 5: Amenity

Substitute

| 5.2A Site coverage and tree planting | |
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| <p>R40B</p> <p>This rule applies to <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020.</p> <p><i>Site coverage</i> is a maximum of:</p> <ol style="list-style-type: none"> a) for <i>large blocks</i>: 40% of the <i>block area</i> b) for <i>mid-sized blocks</i>: 60% of the <i>block area</i> c) for <i>compact blocks</i>: 70% of the <i>block area</i>. | <p>C40B</p> <p><i>Site coverage</i> and vehicle parking and manoeuvring areas is limited to:</p> <ol style="list-style-type: none"> a) maximise outdoor areas that are readily accessible by residents for a range of uses and activities b) provide adequate space for service functions such as clothes drying and domestic storage c) provide adequate <i>planting area</i> on the site. |
| <p>R40C</p> <p>This rule applies to <i>blocks</i> approved under an</p> | <p>C40C</p> <p>Tree planting provided in the development</p> |

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| <p><i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020.</p> <p><i>Development</i> provides a minimum level of tree planting in <i>deep soil zones</i>, with associated planting requirements as described in table 7a, consistent with the following:</p> <ul style="list-style-type: none"> a) for <i>compact blocks</i>, at least one small tree b) for <i>mid-sized blocks</i>, at least two small trees c) for <i>large blocks</i> less than or equal to 800m², one small tree and one medium tree d) for <i>large blocks</i> more than 800m², at least: <ul style="list-style-type: none"> i) one medium tree and one large tree, and ii) one additional large tree or two additional medium trees for each additional 800m² block area. <p>Note: Existing canopy trees being retained as part of development may be considered to meet these requirements.</p> | <p>ensures:</p> <ul style="list-style-type: none"> a) Planting or retention of suitably sized canopy trees in <i>deep soil zones</i>, including adequate dimensions for <i>deep soil zones</i> to support healthy canopy tree growth, and provide adequate room for canopy trees b) planting canopy trees of semi-advanced stock and reasonable heights at maturity. |
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Substitute

Table 7a: Tree sizes and associated planting requirements

| Tree size | Mature height | Minimum canopy diameter | Minimum soil surface area dimension | Minimum pot size (litres)* | Minimum soil volume |
|---|---------------|-------------------------|-------------------------------------|----------------------------|---------------------|
| Small Tree | 5-8m | 4m | 3m | 45** | 18m ³ |
| Medium Tree | 8-12m | 6m | 5m | 75** | 42m ³ |
| Large Tree | >12m | 8m | 7m | 75** | 85m ³ |
| <p>Notes:</p> <p>For the purposes of this table, a tree is defined as a woody perennial plant suitable for the Canberra climate. Any new trees cannot be a plant described in schedule 1 of the Pest Plants and Animals (Pest Plants) Declaration 2015 (No 1) or any subsequent declaration made under section 7 of the Pest Plants and Animals Act 2005, unless the tree is included on the ACT tree register.</p> <p>*Minimum pot size refers to the container size of new trees prior to planting.</p> <p>**The maximum pot size for small, medium and large <i>eucalyptus sp.</i> trees if selected is 45 litres, with maximum height at planting of 2.5m and maximum trunk caliper of 3cm.</p> | | | | | |

3.2 Variation to the Multi Unit Housing Development Code

3. Element 4: Site design; Item 4.2 Site open space – RZ1 and RZ2 zones

Substitute

| 4.2 Site open space – RZ1 and RZ2 zones | |
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| <p>R38</p> <p>This rule applies to all development in RZ1 and RZ2 zones on <i>blocks</i> approved under an <i>estate development plan</i> for which the original Crown lease was granted on or after 1 January 2020.</p> <p>Not less than 40% of the total site area is allocated to one or more of the following:</p> <ul style="list-style-type: none"> a) <i>communal open space</i> with a minimum dimension of 2.5m; and/or b) <i>private open space</i> that complies with all of the following: <ul style="list-style-type: none"> i) a minimum dimension of 2.5m; and ii) is associated with dwellings at the <i>lower floor level</i>. <p>Not less than 20% of the total site area is <i>planting area</i></p> | <p>C38</p> <p>Open space on the site achieves all of the following:</p> <ul style="list-style-type: none"> a) sufficient space for the recreation and relaxation of residents b) sufficient space for planting, particularly trees with deep root systems, to accommodate on-site infiltration of stormwater run-off c) provision of outdoor areas that are readily accessible by residents for a range of uses and activities. <p>One or more of the following matters may be considered when determining compliance with this criterion:</p> <ul style="list-style-type: none"> i) whether the total area of <i>upper floor level private open space</i> contributes to the function of other open space on the site ii) whether any adjoining or adjacent public open space is readily available for the use of residents. |
| <p>R38A</p> <p>This rule applies to all development in RZ1 and RZ2 zones on blocks approved under an estate development plan before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Not less than 40% of the total site area is allocated to one or more of the following:</p> <ul style="list-style-type: none"> a) <i>communal open space</i> with a minimum dimension of 2.5m; and/or b) <i>private open space</i> that complies with the following: <ul style="list-style-type: none"> i) a minimum dimension of 2.5m; and ii) is associated with dwellings at the | <p>C38A</p> <p>To reduce urban heat island effects, retain water and maintain ecosystem services, open space on the site achieves all of the following:</p> <ul style="list-style-type: none"> a) adequate space for the recreation and relaxation of residents b) adequate space for planting, particularly trees with deep root systems, to accommodate on-site infiltration of stormwater run-off c) outdoor areas that are readily accessible by residents for a range of uses and activities. <p>One or more of the following matters may be considered when determining compliance</p> |

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| <p><i>lower floor level.</i></p> | <p>with this criterion:</p> <ul style="list-style-type: none"> i) whether the total area of <i>upper floor level private open space</i> contributes to the function of other open space on the site ii) whether any adjoining or adjacent public open space is readily available for the use of residents. |
| <p>R38B</p> <p>This rule applies to all development in RZ1 and RZ2 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020.</p> <p><i>Site coverage</i> is a maximum of 40% of the <i>block</i> area.</p> | <p>C38B</p> <p>To reduce urban heat island effects, retain water and maintain ecosystem services, <i>development</i> complies with all of the following:</p> <ul style="list-style-type: none"> a) limits <i>site coverage</i> and vehicle parking and manoeuvring areas b) provides outdoor areas that are readily accessible by residents for a range of uses and activities c) provides space for service functions such as clothes drying and domestic storage. |
| <p>R38C</p> <p>This rule applies to all development in RZ1 and RZ2 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020.</p> <p><i>Planting area</i> is a minimum of 35% of the block area.</p> <p>The minimum dimension of any area included in the <i>planting area</i> calculation is 2.5 metres.</p> | <p>C38C</p> <p>Planting area provided in the development achieves all of the following:</p> <ul style="list-style-type: none"> a) landscaping to provide substantial shade in summer and admit winter sunlight to outdoor and indoor living areas b) enhance living infrastructure through water-sensitive urban design, providing deep soil zone areas for ground water recharge, canopy trees and vegetation c) infiltration of stormwater run-off and allow a greater ability to plant. |
| <p>R38D</p> <p>This rule applies to all development in RZ1 and RZ2 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020 or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Existing and new trees on the block are to provide at least 15% canopy cover to the block at maturity. Trees are to be planted in <i>deep soil zones</i>.</p> | <p>This is a mandatory rule. There is no applicable criterion.</p> |
| <p>There is no applicable rule.</p> | <p>C38E</p> <p>This criterion applies to all development in RZ1 and RZ2 zones on blocks approved under an estate development plan before 1 January 2020</p> |

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| | <p>or land for which the original Crown lease was granted before 1 January 2020.</p> <p><i>Planting area</i> provided in the development achieves all of the following:</p> <ul style="list-style-type: none"> a) Planting of suitably sized plants in <i>deep soil zones</i>, including adequate dimensions for <i>deep soil zones</i> to support healthy canopy tree growth, and provide adequate room for canopy trees b) <i>deep soil zones</i> should allow subsoil drainage to support groundwater infiltration c) planting of canopy trees with semi-advanced stock and suitable heights at maturity d) landscaping to provide substantial shade in summer and admit winter sunlight to outdoor and indoor living areas. |
| <p>R38F</p> <p>This rule applies to all development in RZ1 and RZ2 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020, or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Development provides a minimum level of tree planting, with associated planting requirements as described in table A7a, consistent with the following:</p> <ul style="list-style-type: none"> a) for large blocks less than or equal to 800m², at least one small tree and one medium tree b) for large blocks more than 800m², at least: <ul style="list-style-type: none"> i) one medium tree and one large tree, and ii) one additional large tree or two additional medium trees for each additional 800m² block area. <p>Note: Existing canopy trees being retained as part of development may be considered to meet these requirements.</p> | <p>C38F</p> <p>Tree planting in the development ensures:</p> <ul style="list-style-type: none"> a) planting or retention of suitably sized canopy trees in deep soil zones, including adequate dimensions for deep soil zones to support healthy tree growth, and provide adequate room for canopy trees b) planting canopy trees of semi-advanced stock and reasonable heights at maturity. |

Substitute

Table A7a: Tree sizes and associated planting requirements

| Tree size | Mature height | Minimum canopy diameter | Minimum soil surface area dimension | Minimum pot size (litres)* | Minimum soil volume |
|---|---------------|-------------------------|-------------------------------------|----------------------------|---------------------|
| Small Tree | 5-8m | 4m | 3m | 45** | 18m ³ |
| Medium Tree | 8-12m | 6m | 5m | 75** | 42m ³ |
| Large Tree | >12m | 8m | 7m | 75** | 85m ³ |
| <p>Notes:</p> <p>For the purposes of this table, a tree is defined as a woody perennial plant suitable for the Canberra climate. Any new trees cannot be a plant described in schedule 1 of the Pest Plants and Animals (Pest Plants) Declaration 2015 (No 1) or any subsequent declaration made under section 7 of the Pest Plants and Animals Act 2005, unless the tree is included on the ACT tree register.</p> <p>*Minimum pot size refers to the container size of new trees prior to planting.</p> <p>**The maximum pot size for small, medium and large <i>eucalyptus sp.</i> trees if selected is 45 litres, with maximum height at planting of 2.5m and maximum trunk caliper of 3cm.</p> | | | | | |

4. Element 4: Site design

Substitute

| 4.3 Site open space – RZ3, RZ4, RZ5 and commercial zones | |
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| <p>R39</p> <p>This rule applies to:</p> <ol style="list-style-type: none"> a) all development in commercial zones b) all development in RZ3, RZ4 and RZ5 zones on <i>blocks</i> approved under an <i>estate development plan</i> for which the original Crown lease was granted on or after 1 January 2020. <p>Not less than 20% of the total site area is allocated to the following:</p> <ol style="list-style-type: none"> a) for developments with fewer than 20 <i>dwellings</i>, none of which are <i>apartments</i>, one or more of the following: <ol style="list-style-type: none"> i) <i>communal open space</i> that complies with the following: | <p>C39</p> <p>Open space on the site achieves all of the following:</p> <ol style="list-style-type: none"> a) sufficient useable space for a range of recreational activities for residents to support active living b) sufficient space for planting, particularly trees with deep root systems c) a contribution to on-site infiltration of stormwater run-off d) reasonable accessibility that is designed to be inclusive for all residents e) reasonable connectivity for pedestrians and cyclists to key local |

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| <ul style="list-style-type: none"> a) a minimum dimension of 2.5m b) is directly accessible from common entries and pathways; and/or ii) <i>private open space</i> that complies with the following: <ul style="list-style-type: none"> a) a minimum dimension of 2.5m; and b) is associated with <i>dwellings</i> at the <i>lower floor level</i>; and/or b) in all other cases, <i>communal open space</i> that complies with the following: <ul style="list-style-type: none"> i) a minimum dimension of 2.5m; and ii) is directly accessible from common entries and pathways. <p>Not less than 10% of the total site area is <i>planting area</i>.</p> | <p>destinations and community uses.</p> <p>One or more of the following matters may be considered when determining compliance with this criterion:</p> <ul style="list-style-type: none"> i) whether the total area of <i>upper floor level private open space</i> contributes to the function of other open space on the site; and/or ii) whether any adjoining or adjacent public open space is readily available for the use of residents. |
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| 4.4 Site open space – RZ3, RZ4 and RZ5 zones | |
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| <p>R39A</p> <p>This rule applies to all development in RZ3, RZ4 and RZ5 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020 or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Site coverage is a maximum of 45% of the block area.</p> | <p>C39A</p> <p>To reduce urban heat island effects, retain water and maintain ecosystem services, development complies with all of the following:</p> <ul style="list-style-type: none"> a) limits site coverage of buildings and vehicle parking and manoeuvring areas b) provides outdoor areas that are readily accessible by residents for a range of uses and activities c) provides space for service functions such as clothes drying and domestic storage. |
| <p>R39B</p> <p>This rule applies to all development in RZ3, RZ4 and RZ5 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020 or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Planting area is a minimum of 25% of the block area.</p> <p>The minimum dimension of any area included in the planting area calculation is 2.5 metres.</p> | <p>C39B</p> <p>Planting area provided in the development achieves all of the following:</p> <ul style="list-style-type: none"> a) landscaping to provide substantial shade in summer and admit winter sunlight to outdoor and indoor living areas b) enhance living infrastructure through water-sensitive urban design, providing areas for deep soil zones for ground water recharge, large canopy trees and vegetation c) if the minimum required planting area can't be provided on site, an equivalent area should be achieved through planting on |

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| | structures. |
| <p>R39C</p> <p>This rule applies to all development in RZ3, RZ4 and RZ5 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020 or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Existing and new trees on the block are to provide at least 20% canopy cover of the block at maturity. Trees are to be planted in <i>deep soil zones</i> in communal areas.</p> <p>Note: for the purposes of this rule deep soil zones are areas of natural or structured soil medium with a minimum unobstructed depth of 1.2m, minimum surface area of 64m² and minimum volume of 85m³.</p> | <p>C39C</p> <p>Planting area provided in the development achieves all of the following:</p> <ul style="list-style-type: none"> a) planting in <i>deep soil zones</i>, including minimum dimensions for deep soil zones, to support healthy tree growth, and provide adequate room for canopy trees b) planting of canopy trees with appropriate species and with a semi-advanced stock and minimum heights at maturity c) landscaping to provide substantial shade in summer and admit winter sunlight to outdoor and indoor living areas d) if the minimum required canopy trees cannot be provided on site, an equivalent area should be achieved through planting on structures. |
| <p>R39D</p> <p>This rule applies to all development in RZ3, RZ4 and RZ5 zones on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020 or land for which the original Crown lease was originally granted before 1 January 2020.</p> <p>Not less than 20% of the total site area is allocated to the following:</p> <ul style="list-style-type: none"> a) for developments with fewer than 20 dwellings, none of which are apartments, one or more of the following: <ul style="list-style-type: none"> i) communal open space that complies with the following: <ul style="list-style-type: none"> a) a minimum dimension of 2.5m b) is directly accessible from common entries and pathways; and/or ii) private open space that complies with the following: <ul style="list-style-type: none"> a) a minimum dimension of 2.5m b) is associated with dwellings at the lower floor level b) in all other cases, communal open space that complies with the following: <ul style="list-style-type: none"> i) a minimum dimension of 2.5m ii) is directly accessible from common entries and pathways. | <p>C39D</p> <p>To reduce urban heat island effects, retain water and maintain ecosystem services, open space on the site achieves all of the following:</p> <ul style="list-style-type: none"> a) adequate useable space for a range of recreational activities for residents to support active living b) a contribution to on-site infiltration of stormwater run-off c) reasonable accessibility that is designed to be inclusive for all residents d) utilise planting on structures where planting area, canopy trees cannot be achieved on site e) reasonable connectivity for pedestrians and cyclists to key local destinations and community uses f) if the minimum required planting area can't be provided on site, an equivalent area should be achieved through planting on structures. <p>One or more of the following matters may be considered when determining compliance with this criterion:</p> <ul style="list-style-type: none"> i) whether the total area of upper floor level private open space contributes to the function of other open space on the site; and/or |

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| | <p>ii) whether any adjoining or adjacent public open space is readily available for the use of residents.</p> |
| <p>There is no applicable rule.</p> | <p>C40</p> <p>This criterion applies to all development on <i>blocks</i> approved under an <i>estate development plan</i> for which the original Crown lease was granted on or after 1 January 2020.</p> <p>Landscape and site design achieves all of the following:</p> <ul style="list-style-type: none"> a) planting of trees of semi-mature stock b) planting of trees with a minimum mature height of 4m c) a contribution to energy efficiency by providing substantial shade in summer, especially to west-facing windows and open car-parking areas, and admitting winter sunlight to outdoor and indoor living areas, especially to the north d) reasonable residential amenity e) reasonable visibility along paths and driveways f) visual interest in pavement materials and finishes g) species with appropriate growth habits and mature height in relation to site conditions |
| <p>R40A</p> <p>This rule applies to all development on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020 or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Development provides a minimum level of tree planting, with associated planting requirements as described in table A7b, consistent with the following:</p> <ul style="list-style-type: none"> a) for large blocks less than or equal to 800m², one small tree and one medium tree b) for large blocks more than 800m²: <ul style="list-style-type: none"> i) one medium tree and one large tree, and ii) one additional large tree or two additional medium trees for each additional 800m² block area. | <p>C40A</p> <p>Tree planting provided in the development ensures:</p> <ul style="list-style-type: none"> a) planting in deep soil zones, including minimum dimensions for deep soil zones, to support healthy canopy tree growth, and provide adequate room for canopy trees b) planting of canopy trees with appropriate species and with a semi-advanced stock and minimum heights at maturity c) landscaping to provide substantial shade in summer and admit winter sunlight to outdoor and indoor living areas. |

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| <p>There is no applicable rule.</p> | <p>C40B</p> <p>This criterion applies to all development on <i>blocks</i> approved under an <i>estate development plan</i> before 1 January 2020 or land for which the original Crown lease was granted before 1 January 2020.</p> <p>Where one or more existing canopy trees located within the subject block are to be retained as part of development to count towards canopy tree coverage requirements as described elsewhere in this code, development applications are supported by a report prepared by a suitably qualified person demonstrating how the development complies with all of the following:</p> <ul style="list-style-type: none"> a) shows the tree(s) are in good health and likely to actively grow at the completion of works b) details how the tree(s) will be suitably protected during construction works c) provides adequate deep soil area to ensure the tree(s) will remain viable d) confirms that the tree(s) to be retained are sited appropriately and will not detrimentally impact the development in the future. |
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