

Planning and Development (Draft Variation 387) Consultation Notice 2022

Notifiable instrument NI2022—476

made under the

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

1 Name of instrument

This instrument is the *Planning and Development (Draft Variation 387) Consultation Notice 2022*.

2 Draft variation to the Territory Plan

The planning and land authority (the **Authority**) has prepared a draft plan variation 387 – Amendment to the Residential Zones Development Code and Multi Unit Housing Development Code for non-standard blocks in the Residential RZ1 zone (the ***draft variation***) to vary the Territory Plan.

The draft variation proposes to

- (a) amend the Multi Unit Housing Development Code in the Territory Plan to limit the number of dwellings in the RZ1 Suburban Zone to two where the lease explicitly permits two dwellings; and
- (b) amend the Residential Zones Development Code to introduce a new provision to limit the subdivision of a dual occupancy development on a non-standard block in the RZ1 zone to only that which is permitted under the Unit Titles Act 2001 and only where both dwellings in the dual occupancy have been lawfully constructed.

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 **14 November 2022** (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

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 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.
- (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 <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 387 – Amendment to the Residential Zones Development Code and Multi Unit Housing Development Code for non-standard blocks in the Residential RZ1 zone means the draft plan variation in Schedule 1.

Dianne Stewart
Delegate of the planning and land authority
27 September 2022



ACT
Government

Environment, Planning and
Sustainable Development

Schedule 1

Planning and Development Act 2007

Draft Variation to the Territory Plan DV387

Amendment to the Residential Zones
Development Code and Multi Unit Housing
Development Code for non-standard blocks
in the Residential RZ1 zone

September 2022

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 has been prepared to amend the Multi Unit Housing Development Code in the Territory Plan to limit the number of dwellings in the RZ1 Suburban Zone to two where the lease explicitly permits two dwellings. This change will remove the potential to vary the lease for a non-standard block that is permitted by a lease to have two dwellings to have more than two dwellings.

The Residential Zones Development Code will also be amended to strengthen these controls on two dwellings. A new provision is proposed to limit the subdivision of a dual occupancy development on a non-standard block in the RZ1 zone to only that which is permitted under the *Unit Titles Act 2001* and only where both dwellings in the dual occupancy have been lawfully constructed.

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
14 November 2022.

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
- 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 and background documents are 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 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

Variation 350 to the Territory Plan (V350), which commenced on 23 August 2019, was undertaken in response to concerns about inappropriate multi-unit residential redevelopment occurring on certain residential blocks in some older Canberra suburbs. This had resulted from the interpretation of the definition of ‘single dwelling block’ that enabled more dwellings than intended to be built on blocks in the Residential RZ1 Suburban and RZ2 Suburban Core zones.

The definition of ‘single dwelling block’ in the Territory Plan (which was in place prior to V350) did not apply to leases for certain blocks that originally contained two dwellings (often a primary dwelling and a flat, built in the 1960s and 1970s). The result was that some of the provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan, such as restricting plot ratio, block size requirements, replacement dwellings, number of dwellings in each building and restrictions on attics and basements, did not apply if multi-unit residential redevelopment was proposed on those blocks. This resulted in a built form that was not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas.

V350 addressed this issue by changing the title of the definition from ‘single dwelling block’ to ‘standard block’ and adjusting the wording in the definition to:

“Standard block means a block with one of the following characteristics: a) originally leased or used for the purpose of one or two dwellings except where the original lease explicitly permits two dwellings b) created by a consolidation of blocks, at least one of which is covered by a)”

The definition of ‘standard block’ specifically excludes blocks where the original lease explicitly permits two dwellings.

The change to the definition was intended to make sure that redevelopment proposals for these blocks complied with the relevant provisions in the MUHDC and ensure that the built form is appropriate and complementary to the streetscape.

Since then, there have been concerns raised about development proposals where multiple dwellings are proposed on blocks in RZ1 zones where the lease explicitly allowed for two dwellings. There is currently the possibility of varying the lease to change the specific allowance for two dwellings to allow for additional dwellings on the site.

The proposed developments are not captured by the definition of a ‘standard block’ (and therefore considered to be a non-standard block) and the current rules in the MUHDC do not limit the number of dwellings on a non-standard block in the RZ1 zone. There are currently no explicit prohibitions in the Territory Plan to prevent this lease variation occurring, even though this would result in a form of development inappropriate for the RZ1 zone.

The definition of ‘standard block’ was specifically worded to allow a block to have two dwellings if the lease allowed two dwellings. However, it was not the intent of the definition to enable a block with a lease allowing two dwellings to then have additional dwellings by varying the lease.

It is proposed to amend the MUHDC in the Territory Plan to address this issue by adding a provision to the MUHDC to limit the number of dwellings on a non-standard block in the RZ1 zone to two if the Crown lease explicitly permits two dwellings. The reference to ‘Crown lease’ also makes sure that this provision captures the original lease over the land.

It is also proposed to further strengthen these controls on two dwellings by introducing a new provision in the Residential Zones Development Code to limit subdivision of a dual occupancy development on a non-standard block in the RZ1 zone to only that which is permitted under the *Unit Titles Act 2001* and only where both dwellings in the dual occupancy have been lawfully constructed.

2.2 Current Territory Plan Provisions

There is currently no provision in the Multi Unit Housing Development Code to limit the number of dwellings on a non-standard block in the RZ1 zone if the lease explicitly permits two dwellings.

2.3 Proposed Changes to the Territory Plan

The draft variation proposes the following changes to the Territory Plan:

- Residential Zones Development Code

Amend Element 9 Subdivision and Consolidation of the Residential Zones Development Code to add a provision to limit subdivision of a dual occupancy on a non-standard block in RZ1 to only that which is permitted under the *Unit Titles Act 2001* and only where both dwellings in the dual occupancy have been lawfully constructed.

- Multi Unit Housing Development Code

Amend Element 3 Building and Site Controls of the Multi-Unit Housing Development Code to add a provision to limit the number of dwellings on a non-standard block in the RZ1 zone to two if the Crown lease explicitly permits two dwellings.

Section 3 of this document contains the details of the proposed provisions to be included in the codes.

2.4 Reasons for the Proposed Draft Variation

The reasons for the draft variation are:

- To address concerns around the potential overdevelopment of non-standard blocks in the RZ1 zone.

- To make sure that by amending the relevant controls in the Multi Unit Housing Development Code, multi-unit proposals on non-standard blocks in the RZ1 zone are restricted to two dwellings only, where the Crown lease explicitly permits two dwellings. This will restrict residential redevelopment to that which is appropriate in the zone.
- To provide immediate interim effect to the proposed controls, to prevent further inappropriate multi-unit redevelopment occurring in the residential RZ1 areas.

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, specifically:

1.1 Planning processes and decisions will be focused on the combined achievement of economic vitality, community wellbeing, and environmental quality. Broad community involvement will be a key element in the pursuit of sustainable development, as will complementary regional strategies and agreements.

2.5 A wide range of housing types will be permitted in identified residential areas close to commercial centres and some major transport routes to increase choice; maximise opportunities for affordable housing; and secure some intensification of development consistent with maintaining residential amenity. Outside of these areas, planning policies will protect the typically low density, garden city character of Canberra's suburban areas.

ACT Planning Strategy 2018

The proposed variation is consistent with the ACT Planning Strategy 2018. In particular, it is consistent with the following directions and actions of the planning strategy:

1 Compact and Efficient City

1.1 Support sustainable urban growth by working towards delivering up to 70% of new housing within our existing urban footprint, and by concentrating development in areas located close to the city centre, town and group centres and along key transit corridors

4 Liveable Canberra

4.4 Deliver housing that is diverse and affordable to support a liveable city.

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 387 have interim effect and apply to development applications lodged on or after **30 September 2022**.

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 25 May 2022:

“The proposed variation is not inconsistent with the National Capital Plan and the NCA has no concerns.”

Response

Noted.

Conservator of Flora and Fauna

The Conservator of Flora and Fauna made the following comments on 26 May 2022:

“Thank you for providing the Conservator of Flora and Fauna the opportunity to review this Draft Variation to the Territory Plan 387. We provide no comments on this TPV”

Response

Noted.

Environment Protection Authority

The Environment Protection Authority provided the following comments on 7 June 2022:

“Thank you for the opportunity to review and provide comment on the draft variation to the Territory Plan DV387. The Environment Protection Authority has no comments on the proposed variation.”

Response

Noted.

Heritage Council

The Heritage Council provided the following comments on 27 May 2022:

“On 20 May 2022, Draft Territory Plan Variation 387 (DV387) was referred to the ACT Heritage Council (the Council) for entity advice. The draft variation seeks to amend a code within the Territory Plan, the ‘Multi-Unit Housing Development Code’ to apply controls to the number of dwellings which can be developed on a ‘standard block’ by limiting “the number of dwellings in the RZ1 Suburban Zone to two where the lease explicitly permits two dwellings. This change will remove the potential for a non-standard block that is permitted by a lease to have two dwellings to have more than two dwellings after amending the lease.”

This change follows on from DV350, which changed the Definitions section of the Territory Plan to amend the descriptor for RZ1 blocks in suburban subdivisions from ‘Single Dwelling Blocks’ to ‘Standard Blocks’. The change proposed under DV387 is intended to prevent lease variations for these blocks which could permit more than two dwellings, ensuring that the RZ1 subdivisions are not overdeveloped.

The Council notes that the majority of the blocks in the Housing Precincts (the Precincts) on the ACT Heritage Register (the Register) are zoned RZ1. While many of the Precincts have additional layers of protection against overdevelopment in the ‘Specific Requirements for the Conservation of the Precinct’ (Guidelines) which are included in their Register entries, there are instances where this change to the Territory Plan may directly benefit the conservation of heritage at the Precincts. Further the Council supports any move to harmonise the Register entries with the Territory Plan, and to afford greater protection from overdevelopment to the RZ1 zone generally, as this will also assist with the continued conservation of the Precincts.

However, the Council notes that the wording of the change is somewhat open to interpretation, as it does not mention, or rule out, lease changes. This is not consistent with what the explanatory statement suggests.

The Council's suggested wording would be as follows:

This rule applies to blocks other than standard blocks in RZ1.

Where the lease explicitly permits two dwellings, the maximum number of dwellings permitted on a block is two and no change to the lease to increase this number is permitted.

With this wording, leases in Precincts such as the "Hall Village Housing Precinct" and the "Tocumwal Housing Precinct" where the heritage Guidelines rely on Territory Plan controls, would be further protected.

Advice:

The Council supports the proposed amendment to the Territory Plan as set out in TPV387, as the change will have no known detrimental impact on heritage significance at places on the ACT Heritage Register and may assist with their conservation.

The Council's preferred wording is as set out above."

Response

Noted.

The proposed wording has been adjusted to read: "The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings".

This revised wording in the rule achieves the same protections as the Council's preferred wording. A Crown lease cannot be varied to be inconsistent with the Territory Plan. As such, Crown leases in Precincts such as the "Hall Village Housing Precinct" and the "Tocumwal Housing Precinct" where the heritage Guidelines rely on Territory Plan controls, will be protected by the proposed wording.

Land Custodian

There is no land custodian for this draft variation.

3. DRAFT VARIATION TO THE TERRITORY PLAN

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

Variation to the Residential Zones Development Code

1. Part D – Subdivision and consolidation; Element 9: Subdivision and consolidation
--

Insert after R38A

9.5 Subdivision of blocks other than standard blocks – RZ1	
<p>R38B</p> <p>This rule applies to blocks other than standard blocks in RZ1.</p> <p>Subdivision under the <i>Planning and Development Act 2007</i> is not permitted.</p> <p>Subdivision under the <i>Unit Titles Act 2001</i> is permitted where all of the following are met:</p> <ul style="list-style-type: none">a) It is only for <i>dual occupancy housing</i>b) Both <i>dwellings</i> in the <i>dual occupancy</i> have been lawfully constructed. <p>Note: Staged development under the <i>Unit Titles Act 2001</i> is not permitted.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Variation to the Multi Unit Housing Development Code

2. Part A - General Controls; Element 3. Building and Site Controls; Item 3.6
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Insert after R10

3.6A Additional dwellings – blocks other than standard blocks – RZ1	
<p>R10A</p> <p>This rule applies to blocks other than standard blocks in RZ1.</p> <p>The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

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	Ako vam je potrebna pomoć prevodioca telefoniрајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE

131 450

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