

Australian Capital Territory

# Planning and Development (Technical Amendment—Code Amendments) Plan Variation 2022

Notifiable instrument NI2022– 694

Technical amendment No 2022-10

made under the

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

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## 1 Name of instrument

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

## 2 Commencement

This instrument commences on 20 January 2023.

## 3 Technical amendment

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

## 4 Dictionary

In this instrument:

*Code amendments plan variation* means the technical amendment to the Territory Plan, variation 2022-10, in the schedule.

George Cilliers  
Delegate of the planning and land authority  
20 December 2022



**ACT**  
Government

Environment, Planning and  
Sustainable Development

*Planning and Development Act 2007*

# Technical Amendment to the Territory Plan

## 2022-10

Changes to the Single Dwelling Housing  
Development Code and the  
Whitlam Precinct Map and Code

December 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 - living infrastructure provisions*

- Amend rule R40C and Table 7a
- Add Table 7b

*Whitlam Precinct Map and Code – acoustic protection measures*

- Amend rules R6 and R8

## 1.2 Public consultation

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

TA2022-10 was released for public consultation from 28 October 2022 to 5 December 2022.

A total of three submissions were received.

Details about the submissions received and responses to the matters raised during consultation are contained in the report on consultation. One change was made to the technical amendment in response to public comments.

## 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 NCP 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 National Capital Authority has been advised of this technical amendment.

## 1.4 Process

This technical amendment has been prepared in accordance with section 87 of the *Planning and Development Act 2007* (the Act).

Comments received from the public and the National Capital Authority 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.

TA2022-10 has been prepared in accordance with section 87(2)(a) 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.

### 2.2 Changes to the Single Dwelling Housing Development Code

Living infrastructure provisions introduced into the Territory Plan in September 2022 via Variation 369 require a minimum level of tree planting and tree canopy coverage on single dwelling residential blocks. The size of trees and extent of canopy cover is dependent on whether the block is classified as a compact, mid-sized or large block.

Rule R40C of the Single Dwelling Housing Development Code is being amended to make it clearer how the provisions can be met for homeowners who wish to retain an existing tree or trees instead of planting a new tree or trees. It is preferable to keep an existing, established tree as the ecosystem services are already being provided rather than having to wait until the tree grows.

The changes to R40C and Table 7a aim to clarify how the requirements can be met through the retention of existing equivalent tree sizes or existing tree canopy cover on a block, and a new table 7b is introduced to provide the detail on the required equivalent existing tree sizes to satisfactorily meet the rule.

#### Existing provisions

<p><b>R40C</b>          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>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"> <li>a) for <i>compact blocks</i>, at least one small tree</li> <li>b) for <i>mid-sized blocks</i>, at least two small trees</li> <li>c) for <i>large blocks</i> less than or equal to 800m<sup>2</sup>, one small tree and one medium tree</li> <li>d) for <i>large blocks</i> more than 800m<sup>2</sup>, at least:             <ul style="list-style-type: none"> <li>i) one medium tree and one large tree, and</li> <li>ii) one additional large tree or two additional medium trees for each additional 800m<sup>2</sup> block area.</li> </ul> </li> </ul> <p><b>Note:</b> Existing canopy trees being retained as part of development may be considered to meet these requirements.</p>	<p><b>C40C</b>          Tree planting provided in the development ensures:</p> <ul style="list-style-type: none"> <li>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</li> <li>b) planting canopy trees of semi-advanced stock and reasonable heights at maturity.</li> </ul>
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**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 <sup>3</sup>
Medium Tree	8-12m	6m	5m	75**	42m <sup>3</sup>
Large Tree	>12m	8m	7m	75**	85m <sup>3</sup>
<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>					

*Proposed provisions*

<p>R40C</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>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"> <li>a) for <i>compact blocks</i>, at least one small tree</li> <li>b) for <i>mid-sized blocks</i>, at least two small trees</li> <li>c) for <i>large blocks</i> less than or equal to 800m<sup>2</sup>, one small tree and one medium tree (<u>or equivalent existing tree/s— see Table 7b</u>)</li> <li>d) for <i>large blocks</i> more than 800m<sup>2</sup>, at least:             <ul style="list-style-type: none"> <li>i) one medium tree and one large tree (<u>or equivalent existing tree/s – see Table 7b</u>), and</li> <li>ii) one additional large tree or two additional medium trees for each additional 800m<sup>2</sup> block area (<u>or equivalent existing tree/s – see Table 7b</u>).</li> </ul> </li> </ul> <p><b>Note:</b> Existing canopy trees being retained as part of development may be considered to meet these requirements.</p>	<p>C40C</p> <p>Tree planting provided in the development ensures:</p> <ul style="list-style-type: none"> <li>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</li> <li>b) planting canopy trees of semi-advanced stock and reasonable heights at maturity.</li> </ul>
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**Table 7a: Tree sizes and associated planting requirements**

Tree size	Mature height	Minimum canopy diameter <sup>***</sup>	Minimum soil surface area dimension	Minimum pot size (litres)*	Minimum soil volume
Small Tree	5-8m	4m	3m	45 <sup>**</sup>	18m <sup>3</sup>
Medium Tree	8-12m	6m	5m	75 <sup>**</sup>	42m <sup>3</sup>
Large Tree	>12m	8m	7m	75 <sup>**</sup>	85m <sup>3</sup>
<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> <p>***<u>Provided the minimum canopy diameter of the respective tree size can be met, this can be counted as meeting the tree size requirement.</u></p>					

**Table 7b – Tree sizes – equivalents for existing trees**

Tree size	Tree sizes - Equivalent
Small Tree	An existing tree of a larger size category can also substitute for a planting requirement for a smaller tree
Medium Tree	2 small existing trees
Large Tree	4 existing small trees or 2 existing medium trees or 1 existing medium tree plus 2 existing small trees

**Compliance with the *Planning and Development Act 2007***

Section	Statement
<p><b>s87(2)(a)</b>            (a) a variation (a <b>code variation</b>) 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</p>	<p>Compliant.            The changes are consistent with the policy intent of the living infrastructure provisions in the code to recognise and incorporate existing trees on a block when development is proposed.</p>

## 2.3 Whitlam Precinct Map and Code

The current wording of rules R6 and R8 about acoustic protection measures in the Whitlam Precinct Map and Code has led to an inconsistent interpretation of the provisions. Rules and criteria R6/C6 and R8/C8 are being amended as follows:

### Existing rule R6

2.1 Acoustic protection – front wall height	
<p>R6</p> <p>This rule applies to blocks or parcels in locations identified in Figures 2, 3, 4, 5, 6 and 7.</p> <p><i>Dwelling walls facing the front boundary are to achieve a minimum wall height within the primary building zone, of 6 metres above datum ground level.</i></p> <p>Note: The purpose of this rule is to provide acoustic protection measures for the estate.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

### Proposed rule R6

2.1 Acoustic protection – front wall height	
<p>R6</p> <p>This rule applies to blocks or parcels in locations identified in Figures 2, 3, 4, 5, 6 and 7.</p> <p><u><i>Dwelling walls facing the front boundary and within the primary building zone are a minimum wall height of 6 metres above datum ground level for the entire width of the dwelling.</i></u></p> <p>Note: The purpose of this rule is to provide acoustic protection measures for the estate.</p>	<p><u>C6</u></p> <p><u>An individual acoustic assessment is provided demonstrating that adequate acoustic protection measures for the estate will be in place.</u></p>

Existing rule R8

2.3 Acoustic protection – additional noise affected blocks	
<p>R8</p> <p>This rule applies to blocks or parcels in locations identified in Figures 6 and 7.</p> <p><i>Single level dwelling façade must be a minimum height of 3 metres and a maximum height of 4.5 metres above finished ground level.</i></p> <p>Note: The purpose of this rule is to provide acoustic protection measures for the estate.</p>	<p>C8</p> <p><i>Dwellings higher than 4.5 metres above finished ground level will require an individual acoustic assessment to be submitted.</i></p>

Proposed rule R8

2.3 Acoustic protection – additional noise affected blocks	
<p>R8</p> <p>This rule applies to blocks or parcels in locations identified in Figures 6 and 7.</p> <p><u>For a single level dwelling, façade must be between a minimum height of 3 metres and a maximum height of 4.5 metres above datum ground level.</u></p> <p><u>Dwellings more than a single level are not permitted.</u></p>	<p><u>C8</u></p> <p><u>Dwellings more than a single level will require an individual acoustic assessment to be submitted</u></p>

Section	Statement
<p><b>s87(2)(a)</b>                      (a) a variation (a <b>code variation</b>) 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</p>	<p>Compliant.                      The changes are consistent with the policy intent of providing acoustic protection measures.</p>

### 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 5.2A Site coverage and tree planting, rule R40C**

*substitute*

<p>R40C</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>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"> <li>a) for <i>compact blocks</i>, at least one small tree</li> <li>b) for <i>mid-sized blocks</i>, at least two small trees</li> <li>c) for <i>large blocks</i> less than or equal to 800m<sup>2</sup>, one small tree and one medium tree (or equivalent existing tree/s— see Table 7b)</li> <li>d) for <i>large blocks</i> more than 800m<sup>2</sup>, at least:             <ul style="list-style-type: none"> <li>i) one medium tree and one large tree (or equivalent existing tree/s – see Table 7b), and</li> <li>ii) one additional large tree or two additional medium trees for each additional 800m<sup>2</sup> block area (or equivalent existing tree/s – see Table 7b).</li> </ul> </li> </ul> <p><b>Note:</b> Existing canopy trees being retained as part of development may be considered to meet these requirements.</p>	<p>C40C</p> <p>Tree planting provided in the development ensures:</p> <ul style="list-style-type: none"> <li>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</li> <li>b) planting canopy trees of semi-advanced stock and reasonable heights at maturity.</li> </ul>
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## 2. Element 5: Amenity; Item 5.2A Site coverage and tree planting; Table 7a

*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 <sup>3</sup>
Medium Tree	8-12m	6m	5m	75**	42m <sup>3</sup>
Large Tree	>12m	8m	7m	75**	85m <sup>3</sup>
<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> <p>***Provided the minimum canopy diameter of the respective tree size can be met, this can be counted as meeting the tree size requirement.</p>					

## 3. Element 5: Amenity, Item 5.2A Site coverage and tree planting

*Insert after Table 7a*

**Table 7b:** Tree sizes – equivalents for existing trees

Tree size	Tree sizes - Equivalent
Small Tree	An existing tree of a larger size category can also substitute for a planting requirement for a smaller tree
Medium Tree	2 small existing trees
Large Tree	4 existing small trees or 2 existing medium trees or 1 existing medium tree plus 2 existing small trees

### 3.2 Variation to the Whitlam Precinct Map and Code

**4. Additional rules and criteria, RC1 – Whitlam Residential, Element 2: Amenity, 2.1 Acoustic protection – front wall height, rule R6**

*substitute*

<p><b>R6</b></p> <p>This rule applies to blocks or parcels in locations identified in Figures 2, 3, 4, 5, 6 and 7.</p> <p><i>Dwelling walls facing the front boundary and within the primary building zone are a minimum wall height of 6 metres above datum ground level for the entire width of the dwelling.</i></p> <p>Note: The purpose of this rule is to provide acoustic protection measures for the estate.</p>	<p><b>C6</b></p> <p>An individual acoustic assessment is provided demonstrating that adequate acoustic protection measures for the estate will be in place.</p>
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**5. Additional rules and criteria, RC1 – Whitlam Residential, Element 2: Amenity, 2.3 Acoustic protection – additional noise affected blocks, rule R8**

*substitute*

<p><b>R8</b></p> <p>This rule applies to blocks or parcels in locations identified in Figures 6 and 7.</p> <p>For a single level dwelling, façade must be between a minimum height of 3 metres and a maximum height of 4.5 metres above datum ground level.</p> <p>Dwellings more than a single level are not permitted.</p>	<p><b>C8</b></p> <p><i>Dwellings more than a single level will require an individual acoustic assessment to be submitted</i></p>
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## 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:

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**131 450**

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