

Planning and Development (Plan Variation 381) Approval 2022

Notifiable instrument NI2022-94

made under the

Planning and Development Act 2007, s 76 (Minister's powers in relation to draft plan variations)

1 Name of instrument

This instrument is the *Planning and Development (Plan Variation 381) Approval 2022*.

2 Commencement

This instrument commences on the day after its notification day.

3 Approval of draft plan variation

(1) I approve under section 76 (2) (a) of the *Planning and Development Act 2007* the plan variation 381 to the Territory Plan.

(2) In this section:

plan variation 381 to the Territory Plan means the plan variation in the schedule.

Mick Gentleman MLA
Minister for Planning and Land Management
22 February 2022



ACT
Government

Environment, Planning and
Sustainable Development

Schedule (See section 3(2))

Planning and Development Act 2007

Variation to the Territory Plan 381

Local Centre shop size

Final variation prepared under s76 of the
Planning and Development Act 2007

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1. EXPLANATORY STATEMENT

1.1 Background

Territory Plan variation V304 which commenced in April 2015, placed a maximum 1000m² gross floor area (GFA) limit on shops in local centres. Previously there was no limit on the GFA of a shop at local centres.

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

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

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

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

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

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

DV304 proposed a maximum gross floor area of 1500m² for shops selling food (including supermarkets) in local centres. However, there was also a provision that set a 'net selling area' for these shops at a maximum of 1000m². For this provision the 'net selling area' was defined in the proposed rule as that part of the gross floor area of a shop that is:

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

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

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

The recommended DV304 was revised in response to the public comments received. This included an amendment to the maximum GFA for supermarkets in local centres to 1000m² inclusive of net selling area and all 'back of house' floor space. The primary reason for the GFA limit of 1000m² was to maintain the existing hierarchy of commercial centres. However, it was noted, at the time, that some existing supermarkets in local centres had already been developed beyond the maximum 1000m² in the variation. A criterion was introduced to account for lawfully constructed supermarkets above this limit, already lodged development applications, and existing approvals that were already in place. V304 commenced in April 2015.

In recent times, the viability and competitiveness of local centres has come into question. With social and consumer behaviour change, particularly evident in response to COVID-19, the role of local centres in our urban fabric is changing. To further understand this change, a strategic investigation of the effectiveness of the Territory Plan policy for local centres is being conducted. Variation 381 facilitates changes to the local centre policies for supermarket sizes to improve both the viability and competitiveness of local centres.

1.2 Summary of the Proposal

This variation increases the maximum GFA for shops in local centres from 1000m² to 1500m².

1.3 The 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 required that the Territory Plan is not inconsistent with the NCP.

In accordance with section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988*, the NCP defines the planning principles and policies for Canberra and the Territory, for giving effect to the object of the NCP and sets out the general policies to be implemented throughout the Territory, including the range and nature of permitted land uses.

It also sets out the detailed conditions of planning, design and development for areas that have special significance to the National Capital known as designated areas and identifies special requirements for the development of some other areas.

1.4 Current Territory Plan Provisions

Rule R51A in the Commercial Zones Development Code

15.6 Shops – floor area	
R51A The maximum <i>gross floor area</i> for a <i>shop</i> is 1000m ² .	C51A An existing <i>shop</i> that exceeds a <i>gross floor area</i> of 1000m ² may be redeveloped up to its existing <i>gross floor area</i> where the shop complies with one of the following: <ul style="list-style-type: none">a) was lawfully constructed on or before 10 April 2015b) was subject to development approval issued on or before 10 April 2015c) was the subject of a development application lodged on or before 10 April 2015 that was subsequently approved.

1.5 Changes to the Territory Plan

Detailed changes to the Territory Plan are noted in section 2 of this document.

1.6 Consultation on the Draft Variation

The draft variation was released for public comment between 7 May 2021 and 25 June 2021. A consultation notice under section 63 of the *Planning and Development Act 2007* (P&D Act) was published on the ACT Legislation Register on 6 May 2021. A public notice was placed on the ACT Government public notices website on 24 May 2021.

A total of four written submissions were received, which included submissions from Planit Strategic + Transport Town Planning, Molonglo Valley Community Forum, Canberra Town Planning on behalf of Inceptio Group and ALDI Stores.

Main issues raised by submitters included:

- support for the draft variation
- desire to maintain Canberra's centres hierarchy and achieve viable and competitive local centres

The above issues were considered and are detailed in a report on consultation.

A change to the draft variation was informed by the issues raised during consultation. The outcomes of consultation were considered by the Minister responsible for planning prior to approval of this variation.

1.7 Revisions to the Draft Variation Recommended to the Minister

No changes have been made to the draft variation following the referral of the recommended version to the Minister responsible for planning.

2. VARIATION

2.1 Variation to the Territory Plan

Variation to the Commercial Zones Development Code

1. Part D – Additional controls for local centres, Element 15: Use, 15.6 Shops – floor area, Rule R51A

Substitute

15.6 Shops – floor area	
<p>R51A</p> <p>The maximum <i>gross floor area</i> for a <i>shop</i> is 1500m².</p> <p>Note: For the purpose of this rule, the GFA of a shop includes any ancillary retail (such as liquor) and back of house areas and associated uses exclusively for the shop, such as offices, storage and circulation spaces.</p>	<p>C51A</p> <p>An existing <i>shop</i> that exceeds a <i>gross floor area</i> of 1500m² may be redeveloped up to its existing <i>gross floor area</i> where the shop complies with one of the following:</p> <ul style="list-style-type: none">a) was lawfully constructed on or before 10 April 2015b) was subject to development approval issued on or before 10 April 2015c) was the subject of a development application lodged on or before 10 April 2015 that was subsequently approved.

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