

Environment, Planning and Sustainable Development Directorate

To: Minister for Planning and Land Management Tracking No.: 22/65308

Date: 14 June 2022

From: Executive Group Manager, Planning and Urban Policy

Subject: DV387 – Amendment to RZDC and MUHDC for number of dwellings permitted on a non-standard block in Residential RZ1 zones - release for public consultation

Critical Date: 29 July 2022

Critical Reason: To allow for the release of the draft Territory Plan variation for public notification with interim effect as soon as possible

DDG, Planning and Sustainable Development

25/07/22

Recommendations

That you:

1. Note the information contained in this brief including the draft variation to the Territory Plan 387 at Attachment A; and

Noted / Please Discuss

2. Agree to the release of DV387 (Attachment A) for statutory public notification with interim effect.

Agreed / Not Agreed / Please DiscussMick Gentleman MLA  20/9/2022

Minister's Office Feedback

Background

1. The Environment, Planning and Sustainable Development Directorate (EPSDD) has prepared Draft Variation 387: Amendment to the Residential Zones Development Code and Multi Unit Housing Development Code for non-standard block in the Residential RZ1 zone - for public consultation.
2. Variation 350 to the Territory Plan (V350) (Attachment B), which commenced on 23 August 2019, was prepared in response to concerns about inappropriate multi-unit residential redevelopment occurring on certain residential blocks in some older Canberra suburbs.
3. This situation came about from an interpretation of the previous 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, as some of the controls in the Multi Unit Housing Development Code (MUHDC) did not apply to multi-unit residential redevelopment on those blocks.
4. This resulted in a built form and residential density that was not sensitive to the neighbouring blocks and the predominantly single dwelling streetscape character of the surrounding areas.
5. 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 capture those blocks that were originally leased, or used for the purpose of one or two dwellings or created by the consolidation of blocks where originally leased, or used for the purpose of one or two dwellings. The definition specifically excludes blocks where the original lease explicitly permits two dwellings.
6. This change was intended to make sure that redevelopment proposals for these blocks complied with the relevant provisions in the MUHDC in the residential suburban zones so that the built form is appropriate and complementary to the streetscape.
7. 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.
8. More recently, there have been concerns raised about redevelopment proposals where multiple dwellings are proposed on blocks in RZ1 zones where the lease explicitly allowed for two dwellings. In these cases, an application is sought to vary the lease to change the specific allowance for two dwellings to allow for additional dwellings.
9. 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 occurring, even

though this would result in a form of development inappropriate for the RZ1 zone.

Issues

10. DV387 proposes to amend the MUHDC in the Territory Plan to address the issue described above by adding 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.
11. 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
12. EPSDD is seeking your agreement to release DV387 (Attachment A) for public consultation with interim effect. If you agree, pursuant to the *Planning and Development Act 2007*, comments will be invited from the public for a period of not less than 30 working days.
13. DV387 will be published on the EPSDD website and the ACT Legislation Register.

Financial Implications

14. There are no financial implications in relation to this brief. Territory Plan variations are covered by directorate base funding.

Consultation

Internal

15. The relevant sections of EPSDD (Statutory Planning, including the Leasing section) have been consulted during the preparation of the draft variation. Changes were made to the draft variation in response to matters raised by Leasing:
 - a) the proposed wording of the new rule in the MUHDC was strengthened to:
 - i. remove any doubt, and
 - ii. refer to 'Crown lease' to make sure the original lease of the land was captured, and
 - b) a proposed new rule in the RZDC was added to limit subdivision of dual occupancies on non-standard blocks in the RZ1 zone only to that which is permitted under the *Unit Titles Act 2001*.

Cross Directorate

16. The draft variation was circulated to all relevant ACT Government agencies, including mandatory referral agencies, for input and comment. Comments from mandatory referral agencies are included in the draft variation document.

External

17. Mandatory agency consultation was undertaken with the National Capital Authority (NCA) and comments from the NCA have been included in the draft variation.

Benefits/Sensitivities

- 18. The proposed changes will address concerns around the potential for overdevelopment of non-standard blocks in the RZ1 zone.
- 19. The draft variation will be released with immediate interim effect, to stop any further inappropriate multi-unit redevelopment proposals being lodged with the planning and land authority.

Communications, media and engagement implications

- 20. A draft media release can be prepared at your request.

Signatory Name: Di Stewart Phone: 62054141
Action Officer: Janine Ridsdale Phone: 62054060

Attachments

Attachment	Title
Attachment A	DV387 Amendments to RZDC and MUHDC
Attachment B	Variation 350



ACT
Government

Environment, Planning and
Sustainable Development

Planning and Development Act 2007

REPORT ON CONSULTATION

**Draft Variation
to the Territory Plan
387**

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

January 2023

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1. INTRODUCTION

This consultation report was prepared in accordance with s 69 of the *Planning and Development Act 2007* (the P&D Act). The report describes the consultation undertaken on the draft variation with the public, the National Capital Authority (NCA), the Conservator of Flora and Fauna, the Environment Protection Authority (EPA), and ACT Heritage Council, and responds to the issues raised.

2. COMMENTS FROM THE PUBLIC

2.1 Details

Draft variation 387 (DV387) was released for public comment on 30 September 2022. The closing date for comments was 14 November 2022. A copy of DV387 that was released for public comment is at **Appendix 1**.

Copies of submissions received from the public are provided in **Appendix 2**.

The comments from the NCA, the Conservator of Flora and Fauna, EPA, and ACT Heritage Council were received and assessed prior to release of the DV387 and are addressed in section 4.2 of this report.

2.2 Summary of matters raised

A total of two written submissions were received. One was from an architecture practice and one was from a community organisation.

The following Table 1 provides a summary of the considerations raised in the public submissions, as well as the number of submissions that raised the matter.

Table 1 Summary of matters raised in public submissions

Issue	Number of submissions
Wording of Rule R10A of MUHDC is ambiguous and does not achieve the intentions of the draft variation	1
Strongly oppose the draft variation; should be withdrawn	1
Proposed changes do not encourage a compact and efficient city	1
Proposed changes do not encourage diverse and affordable housing	1
Restriction on subdivision of non-standard blocks in RZ1 areas is unjustified	1

2.3 Issues and responses

The key issues raised are summarised below, and responses provided.

2.3.1 Objection to the draft variation (Submission 2)

One submission is strongly opposed to the draft variation and said that it should be withdrawn in its entirety.

The submitter disputes that increased density results “in a built form that was not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas”.

The submitter said that the draft variation fails to advance the stated goals of the ACT planning system and will further reduce the opportunities for delivering medium-density housing in RZ1 areas. Rather, the Directorate should investigate options for providing for more housing choices and opportunities for medium-density housing in RZ1 areas, rather than the opposite.

Response

Noted.

2.3.2 Proposed changes do not encourage a compact and efficient city (Submission 2)

The submitter is concerned that the draft variation is directly contrary to the vision of a compact and efficient city as envisaged in the ACT Planning Strategy and is concerned that the draft variation may close off medium-density development options for RZ1 blocks in inner suburbs, such as Braddon, Barton and Forrest, that are in close proximity to town or group centres, public transport services and other urban amenities.

Response

The primary intent for the Residential RZ1 Suburban Zone is to achieve and/or maintain predominantly low density residential neighbourhoods in suburban areas. RZ1 areas can support a range of housing choices that meet changing household and community needs within a low density setting and where the original pattern of subdivision is respected.

Increased density development is intended to be provided in the RZ2 to RZ5 zones close to town and group centres and public transport. The new Territory Plan proposes changes to assist in addressing affordability and meeting the target of 70% of new residential development being accommodated in existing urban areas.

This includes allowing a block in the RZ2 to RZ5 zones to be subdivided without being required to construct the new dwellings first; multi unit development in the RZ2 zone being able to have more dwellings as part of the development, and allowing apartments (of no more than two storeys) in the RZ2 zone to provide

more single level dwellings (that are easier for residents to age in place), rather than only townhouses.

2.3.3 Proposed changes do not encourage diverse and affordable housing (Submission 2)

The submitter is concerned that the draft variation will add a further restriction on housing supply and delivery of a diversity of housing choices, with no compelling justification.

The submitter maintains that Canberrans wish to see more medium-density housing options of the kind that could potentially be delivered on non-standard RZ1 blocks.

Response

The Demonstration Housing Project was established to test and showcase how the ACT can best contribute to making a compact, sustainable, accessible and active city through innovative planning, design and delivery. Demonstration Housing is intended to deliver different housing types that are not currently available in Canberra and that support high quality design, build quality, housing choice, environmental sustainability and medium density infill. It offers a 'hands on' opportunity to test the effectiveness of different housing types through real examples and future review through post-occupancy assessment.

The experience gained from Demonstration Housing and assessment via post occupancy evaluation studies will be used to inform changes to housing policy and planning provisions more broadly. Any further changes that may be required in the future to the Territory Plan to encourage and support improved housing choice and housing quality in Canberra would be subject to further stakeholder involvement and community consultation.

In addition to the residential policy change noted in section 2.3.2, the draft new Territory Plan also proposes to introduce new development types to residential zones – community housing (affordable rental) and build-to-rent development. These new forms of housing aim to increase the housing options available to Canberrans.

2.3.4 Restriction on subdivision unjustified (Submission 2)

The submission notes that the proposed rule R38B [of the Residential Zones Development Code] bans subdivision under the P&D Act for non-standard blocks [in the RZ1 zone], and only permits unit titling for dual occupancies.

The submitter said that it is unclear how the restrictions on subdivision further the stated goal of upholding the character of the surrounding areas, when the built form and visual impact of a dual occupancy is identical whether it is held under a single title, unit titled or subdivided.

Response

The primary intent for the RZ1 zone is to achieve and/or maintain low density residential neighbourhoods in suburban areas. This includes limiting the extent of change that can occur particularly with regard to the residential density and original pattern of subdivision.

2.3.5 Wording of Rule R10A of MUHDC is ambiguous (Submission 1)

One submitter said that the wording of R10A of the Multi Unit Housing Development Code (MUHDC) does not achieve the intentions of the draft variation.

The submitter notes that the intention is 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. The word 'if' makes it clear that this only applies to blocks where the crown lease explicitly permits two dwellings.

The submitter maintains that because the word 'if' has been deleted and the statement split into two separate sentences, the limitation to 2 dwellings is no longer conditional on the crown lease and this could lead to an ambiguous interpretation that the number of dwellings permitted on any non-standard block in RZ1 is limited to two. The submitter points out that some leases for non-standard blocks in the RZ1 zone permit more than two, and some don't specify any number of dwellings. How the rule is to be interpreted with regards to those blocks is unclear.

The submitter suggested the wording be amended to read as follows:

“R10A

This rule applies to blocks other than standard blocks in RZ1 for which the crown lease explicitly permits 2 dwellings.

The maximum number of dwellings permitted on a block is 2.

* This rule does not apply to blocks for which the crown lease does not specify the number of dwellings permitted, or permits a number of dwellings greater than 2.”

Response

Agreed.

This change has been made to the recommended draft variation to remove any doubt about the application and purpose of the amendment proposed in DV387.

3. SUMMARY OF CHANGES TO THE DRAFT VARIATION

3.1 Changes to the draft variation after public consultation

Topic	What has changed?
Rule 10A – Multi Unit Housing Development Code	The rule has been amended to clarify the intent of the provision and to remove any doubt about the application and purpose of the proposed changes in DV387

3.2 Changes to the draft variation following consultation

Changes were made to the draft variation following public consultation:

Topic	What has changed?
Element and item numbering	The element and item numbering for the changes to the Residential Zones Development Code have been amended to refer to the correct element and item numbers in the code (changed from Element 9 and Item 9.5 to Element 10 and Item 10.5)
Rule 10A - Multi Unit Housing Development Code	The first sentence has been adjusted to specify that the rule does not apply to blocks that are intended to be used only for supportive housing

4. COMPLIANCE WITH THE PLANNING AND DEVELOPMENT ACT 2007

4.1 Release for Public Comment (section 63)

DV387 was made available for public comment from 30 September 2022 to 14 November 2022. A consultation notice under s 63 of the P&D Act was published on the ACT Legislation Register on 30 September 2022 and a public notice was posted online on 30 September 2022.

4.2 Consultation with Government agencies (section 61 (b))

Consultation was undertaken with the following agencies and their comments reported in the draft variation that was released for public notification (**Appendix 1**): the National Capital Authority, the Environment Protection Authority, the Conservator of Flora and Fauna and the ACT Heritage Council.

4.3 Notice of Submission to the Minister (section 70)

In accordance with s 70 of the P&D Act, a public availability notice will be placed on the ACT Legislation Register stating that DV387 has been submitted to the Minister and that the documents are available for public inspection.

5. APPENDICES

APPENDIX 1
Draft variation 387 public release version

APPENDIX 2
Copies of public comments received on draft variation 387

Environment, Planning and Sustainable Development Directorate

To:	Minister for Planning and Land Management	Tracking No.: 22/144978
Date:	29 November 2022	
From:	Executive Branch Manager, Planning and Urban Policy	
Subject:	Recommended draft variation and consultation report for Draft Variation 387: Amendment to RZDC and MUHDC for number of dwellings permitted on a non-standard block in Residential RZ1 zones	
Critical Date:	13 January 2023	
Critical Reason:	To enable DV387 to be referred to the Standing Committee for consideration as soon as possible	

Recommendations

That you:

1. **Agree** to the Public Availability Notice (PAN) being notified;
Agreed / Not Agreed / Please Discuss
2. **Agree** to commence a new period of interim effect for Draft Variation 387 (DV387);
and
Agreed / Not Agreed / Please Discuss
3. **Agree** to refer the recommended version of DV387 and report on consultation (at Attachment A and Attachment B) to the Standing Committee on Planning, Transport and City Services (the Committee).
Agreed / Not Agreed / Please Discuss

Mick Gentleman MLA/...../.....

Minister's Office Feedback

Background

1. DV387 was prepared to amend the Multi Unit Housing Development Code (MUHDC) in the Territory Plan 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.
2. The draft variation addresses the concerns raised about redevelopment proposals where multiple dwellings are proposed on blocks in RZ1 zones where the lease explicitly allowed for two dwellings. In these cases, an application has been sought to vary the lease to change the specific allowance for two dwellings to allow for additional dwellings.
3. 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 occurring, even though this would result in a form of development inappropriate for the RZ1 zone.
4. DV387 further strengthens the controls proposed on two dwellings in the MUHDC 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.

Issues

5. The draft variation was open for public comment from 30 September 2022, and the final closing date for comments was 14 November 2022. Two written submissions were received.
6. The key issues raised, noting the number of submissions that raised the issue, are summarised in the table below. Of the two written submissions received, one was from an architecture practice and one was from a community organisation.

Table 1: Summary of matters raised in public submissions

Issue	Number of submissions
Wording of Rule R10A of MUHDC is ambiguous and does not achieve the intentions of the draft variation	1
Strongly oppose the draft variation; should be withdrawn	1
Proposed changes do not encourage a compact and efficient city	1
Proposed changes do not encourage diverse and affordable housing	1
Restriction on subdivision of non-standard blocks in RZ1 areas is unjustified	1

7. A report on consultation ([Attachment B](#)) has been prepared responding to the issues raised in public submissions in more detail.

Recommended Variation

8. The recommended version of DV387 is at Attachment A. In response to comments received during consultation, the recommended draft variation proposes to adjust the wording of proposed rule R10A in the MUHDC to clarify the intent of the provision and to remove any doubt about the application and purpose of the proposed changes in DV387.

Process for Public Availability Notice and referral to Standing Committee

9. Under section 70 of the *Planning and Development Act 2007* (the P&D Act) the independent planning and land authority must prepare a Public Availability Notice (PAN) advising that the documents given to the Minister are available for public inspection. A PAN is a notifiable instrument. Following the signing of this brief, the Environment, Planning and Sustainable Development Directorate (EPSDD) will advise when the PAN is notified on the Legislation Register.
10. Once the PAN has been published, the recommended version of DV387 must be referred to the Committee within five working days. The Committee has twenty working days from the day after the draft plan variation is referred to the Committee to advise whether or not it will prepare a report (undertake an inquiry) on DV387.
11. A referral letter to the Chair of the Committee has been prepared and is at Attachment C for your signature once the PAN is notified. This letter includes copies of the recommended draft variation, the report on consultation and the background papers (planning report) for the Committee.

Interim Effect

12. Subject to your agreement, the draft variation will be placed on a second period of interim effect. The initial period of interim effect only applies until the PAN is released as the PAN will indicate whether a second period of interim effect is to apply. A second period of interim effect would apply for a maximum of eighteen months commencing on the date specified in the PAN. This means that during the prescribed period of interim effect, a decision cannot be made that is inconsistent with the Territory Plan as if it were changed in accordance with the recommended draft variation.

Financial Implications

13. There are no financial implications in relation to this brief. Territory Plan variations are covered by directorate base funding.

Consultation

Internal

14. Statutory Planning, including the Leasing section were consulted during the preparation of the draft variation.

Cross Directorate

15. The draft variation was circulated to all relevant ACT Government agencies, including mandatory referral agencies, for input and comment. Comments from mandatory referral agencies are included in the draft variation document.

External

16. Mandatory agency consultation was undertaken with the National Capital Authority (NCA) and comments from the NCA have been included in the draft variation.

17. Public consultation on DV387 occurred between 30 September 2022 and 14 November 2022.

Benefits/Sensitivities

18. The proposed changes will address concerns around the potential for overdevelopment of non-standard blocks in the RZ1 Suburban Zone.
19. Should the draft variation continue with immediate interim effect, this will stop any further inappropriate multi-unit redevelopment proposals being lodged with the planning and land authority until such time as the proposed changes can formally take effect in the Territory Plan.

Communications, media and engagement implications

20. A draft media release can be prepared at your request.

Signatory Name: Di Stewart Phone: 6205 4141
Action Officer: Janine Ridsdale Phone: 6205 4060

Attachments

Attachment	Title
Attachment A	DV387 Amendments to RZDC and MUHDC – recommended version
Attachment B	DV387 report on consultation and appendices 1 and 2
Attachment C	Letter to Standing Committee



ACT
Government

Environment, Planning and
Sustainable Development

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

December 2022

Draft variation submitted to the Minister
under s69 of the *Planning and Development Act 2007*

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1. EXPLANATORY STATEMENT

1.1 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.

1.2 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.

1.3 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 requires that the Territory Plan is not inconsistent with the NCP.

1.4 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.

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 30 September 2022 and 14 November 2022. A consultation notice under section 63 of the *Planning and Development Act 2007* (P&D Act) was published on the ACT Legislation Register on 30 September 2022. A public notice was placed on the ACT Government public notices website on 30 September 2022.

A total of two written submissions were received. These included a submission from an architecture practice and one submission from a community organisation.

Comments related to the following:

Issue	Number of submissions
Wording of Rule R10A of MUHDC is ambiguous and does not achieve the intentions of the draft variation	1
Strongly oppose the draft variation; should be withdrawn	1
Proposed changes do not encourage a compact and efficient city	1
Proposed changes do not encourage diverse and affordable housing	1
Restriction on subdivision of non-standard blocks in RZ1 areas is unjustified	1

The above comments were considered and are detailed in a report on consultation, which is available at www.act.gov.au/recommendedvariations.

Changes were informed by the issues raised. The Minister will consider the outcomes of consultation prior to making a decision on this draft variation.

1.7 Revisions to the Draft Variation placed on consultation

Changes were made in response issues raised during public consultation:

Topic	What has changed?
Rule 10A - Multi Unit Housing Development Code	The rule has been amended to clarify the intent of the provision and to remove any doubt about the application and purpose of the proposed changes in DV387

1.8 Revisions to the Draft Variation following consultation

Changes were made to the draft variation following public consultation:

Topic	What has changed?
Element and item numbering	The element and item numbering for the changes to the Residential Zones Development Code have been amended to refer to the correct element and item numbers in the code (changed from Element 9 and Item 9.5 to Element 10 and Item 10.5)

1.9 Interim Effect

Section 72 of the *Planning and Development Act 2007* applies to the draft variation. This means that the provisions of Draft Variation 387 apply from the day when the draft variation given to the Minister is notified (the notification day).

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

Note **Defined period**, for a draft variation—see the *Planning and Development Act 2007*, s 72 (3).

2. 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 10: Subdivision and consolidation

Insert after R38A

10.5 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

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 for which the crown lease explicitly permits 2 dwellings.</p> <p>The maximum number of dwellings permitted on a block is 2.</p> <p>Note: This rule does not apply to blocks for which the crown lease does not specify the number of dwellings permitted, or permits a number of dwellings greater than 2.</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-għajjuna 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 ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

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Planning and Development Act 2007

REPORT ON CONSULTATION

Draft Variation to the Territory Plan 387

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

December 2022

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	<i>Appendix 2</i>	Copies of public comments received on draft variation 387

1. INTRODUCTION

This consultation report was prepared in accordance with s 69 of the *Planning and Development Act 2007* (the P&D Act). The report describes the consultation undertaken on the draft variation with the public, the National Capital Authority (NCA), the Conservator of Flora and Fauna, the Environment Protection Authority (EPA), and ACT Heritage Council, and responds to the issues raised.

2. COMMENTS FROM THE PUBLIC

2.1 Details

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Copies of submissions received from the public are provided in **Appendix 2**.

The comments from the NCA, the Conservator of Flora and Fauna, EPA, and ACT Heritage Council were received and assessed prior to release of the DV387 and are addressed in section 4.2 of this report.

2.2 Summary of matters raised

A total of two written submissions were received. One was from an architecture practice and one was from a community organisation.

The following Table 1 provides a summary of the considerations raised in the public submissions, as well as the number of submissions that raised the matter.

Table 1 Summary of matters raised in public submissions

Issue	Number of submissions
Wording of Rule R10A of MUHDC is ambiguous and does not achieve the intentions of the draft variation	1
Strongly oppose the draft variation; should be withdrawn	1
Proposed changes do not encourage a compact and efficient city	1
Proposed changes do not encourage diverse and affordable housing	1
Restriction on subdivision of non-standard blocks in RZ1 areas is unjustified	1

2.3 Issues and responses

The key issues raised are summarised below, and responses provided.

2.3.1 Objection to the draft variation (Submission 2)

One submission is strongly opposed to the draft variation and said that it should be withdrawn in its entirety.

The submitter disputes that increased density results “in a built form that was not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas”.

The submitter said that the draft variation fails to advance the stated goals of the ACT planning system and will further reduce the opportunities for delivering medium-density housing in RZ1 areas. Rather, the Directorate should investigate options for providing for more housing choices and opportunities for medium-density housing in RZ1 areas, rather than the opposite.

Response

Noted.

2.3.2 Proposed changes do not encourage a compact and efficient city (Submission 2)

The submitter is concerned that the draft variation is directly contrary to the vision of a compact and efficient city as envisaged in the ACT Planning Strategy and is concerned that the draft variation may close off medium-density development options for RZ1 blocks in inner suburbs, such as Braddon, Barton and Forrest, that are in close proximity to town or group centres, public transport services and other urban amenities.

Response

The primary intent for the Residential RZ1 Suburban Zone is to achieve and/or maintain predominantly low density residential neighbourhoods in suburban areas. RZ1 areas can support a range of housing choices that meet changing household and community needs within a low density setting and where the original pattern of subdivision is respected.

Increased density development is intended to be provided in the RZ2 to RZ5 zones close to town and group centres and public transport. The new Territory Plan proposes changes to assist in addressing affordability and meeting the target of 70% of new residential development being accommodated in existing urban areas.

This includes allowing a block in the RZ2 to RZ5 zones to be subdivided without being required to construct the new dwellings first; multi unit development in the RZ2 zone being able to have more dwellings as part of the development, and allowing apartments (of no more than two storeys) in the RZ2 zone to provide

more single level dwellings (that are easier for residents to age in place), rather than only townhouses.

2.3.3 Proposed changes do not encourage diverse and affordable housing (Submission 2)

The submitter is concerned that the draft variation will add a further restriction on housing supply and delivery of a diversity of housing choices, with no compelling justification.

The submitter maintains that Canberrans wish to see more medium-density housing options of the kind that could potentially be delivered on non-standard RZ1 blocks.

Response

The Demonstration Housing Project was established to test and showcase how the ACT can best contribute to making a compact, sustainable, accessible and active city through innovative planning, design and delivery. Demonstration Housing is intended to deliver different housing types that are not currently available in Canberra and that support high quality design, build quality, housing choice, environmental sustainability and medium density infill. It offers a 'hands on' opportunity to test the effectiveness of different housing types through real examples and future review through post-occupancy assessment.

The experience gained from Demonstration Housing and assessment via post occupancy evaluation studies will be used to inform changes to housing policy and planning provisions more broadly. Any further changes that may be required in the future to the Territory Plan to encourage and support improved housing choice and housing quality in Canberra would be subject to further stakeholder involvement and community consultation.

In addition to the residential policy change noted in section 2.3.2, the draft new Territory Plan also proposes to introduce new development types to residential zones – community housing (affordable rental) and build-to-rent development. These new forms of housing aim to increase the housing options available to Canberrans.

2.3.4 Restriction on subdivision unjustified (Submission 2)

The submission notes that the proposed rule R38B [of the Residential Zones Development Code] bans subdivision under the P&D Act for non-standard blocks [in the RZ1 zone], and only permits unit titling for dual occupancies.

The submitter said that it is unclear how the restrictions on subdivision further the stated goal of upholding the character of the surrounding areas, when the built form and visual impact of a dual occupancy is identical whether it is held under a single title, unit titled or subdivided.

Response

The primary intent for the RZ1 zone is to achieve and/or maintain low density residential neighbourhoods in suburban areas. This includes limiting the extent of change that can occur particularly with regard to the residential density and original pattern of subdivision.

2.3.5 Wording of Rule R10A of MUHDC is ambiguous (Submission 1)

One submitter said that the wording of R10A of the Multi Unit Housing Development Code (MUHDC) does not achieve the intentions of the draft variation.

The submitter notes that the intention is 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. The word 'if' makes it clear that this only applies to blocks where the crown lease explicitly permits two dwellings.

The submitter maintains that because the word 'if' has been deleted and the statement split into two separate sentences, the limitation to 2 dwellings is no longer conditional on the crown lease and this could lead to an ambiguous interpretation that the number of dwellings permitted on any non-standard block in RZ1 is limited to two. The submitter points out that some leases for non-standard blocks in the RZ1 zone permit more than two, and some don't specify any number of dwellings. How the rule is to be interpreted with regards to those blocks is unclear.

The submitter suggested the wording be amended to read as follows:

“R10A

This rule applies to blocks other than standard blocks in RZ1 for which the crown lease explicitly permits 2 dwellings.

The maximum number of dwellings permitted on a block is 2.

* This rule does not apply to blocks for which the crown lease does not specify the number of dwellings permitted, or permits a number of dwellings greater than 2.”

Response

Agreed.

This change has been made to the recommended draft variation to remove any doubt about the application and purpose of the amendment proposed in DV387.

3. SUMMARY OF CHANGES TO THE DRAFT VARIATION

3.1 Changes to the draft variation after public consultation

Topic	What has changed?
Rule 10A – Multi Unit Housing Development Code	The rule has been amended to clarify the intent of the provision and to remove any doubt about the application and purpose of the proposed changes in DV387

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Changes were made to the draft variation following public consultation:

Topic	What has changed?
Element and item numbering	The element and item numbering for the changes to the Residential Zones Development Code have been amended to refer to the correct element and item numbers in the code (changed from Element 9 and Item 9.5 to Element 10 and Item 10.5)

4. COMPLIANCE WITH THE PLANNING AND DEVELOPMENT ACT 2007

4.1 Release for Public Comment (section 63)

DV387 was made available for public comment from 30 September 2022 to 14 November 2022. A consultation notice under s 63 of the P&D Act was published on the ACT Legislation Register on 30 September 2022 and a public notice was posted online on 30 September 2022.

4.2 Consultation with Government agencies (section 61 (b))

Consultation was undertaken with the following agencies and their comments reported in the draft variation that was released for public notification (**Appendix 1**): the National Capital Authority, the Environment Protection Authority, the Conservator of Flora and Fauna and the ACT Heritage Council.

4.3 Notice of Submission to the Minister (section 70)

In accordance with s 70 of the P&D Act, a public availability notice will be placed on the ACT Legislation Register stating that DV387 has been submitted to the Minister and that the documents are available for public inspection.

5. APPENDICES

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Draft variation 387 public release version

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387**

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January 2023

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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

January 2023

Draft variation submitted to the Minister
under s69 of the *Planning and Development Act 2007*

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1. EXPLANATORY STATEMENT

1.1 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.

1.2 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.

1.3 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 requires that the Territory Plan is not inconsistent with the NCP.

1.4 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.

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 30 September 2022 and 14 November 2022. A consultation notice under section 63 of the *Planning and Development Act 2007* (P&D Act) was published on the ACT Legislation Register on 30 September 2022. A public notice was placed on the ACT Government public notices website on 30 September 2022.

A total of two written submissions were received. These included a submission from an architecture practice and one submission from a community organisation.

Comments related to the following:

Issue	Number of submissions
Wording of Rule R10A of MUHDC is ambiguous and does not achieve the intentions of the draft variation	1
Strongly oppose the draft variation; should be withdrawn	1
Proposed changes do not encourage a compact and efficient city	1
Proposed changes do not encourage diverse and affordable housing	1
Restriction on subdivision of non-standard blocks in RZ1 areas is unjustified	1

The above comments were considered and are detailed in a report on consultation, which is available at www.act.gov.au/recommendedvariations.

Changes were informed by the issues raised. The Minister will consider the outcomes of consultation prior to making a decision on this draft variation.

1.7 Revisions to the Draft Variation placed on consultation

Changes were made in response issues raised during public consultation:

Topic	What has changed?
Rule 10A - Multi Unit Housing Development Code	The rule has been amended to clarify the intent of the provision and to remove any doubt about the application and purpose of the proposed changes in DV387

1.8 Revisions to the Draft Variation following consultation

Changes were made to the draft variation following public consultation:

Topic	What has changed?
Element and item numbering	The element and item numbering for the changes to the Residential Zones Development Code have been amended to refer to the correct element and item numbers in the code (changed from Element 9 and Item 9.5 to Element 10 and Item 10.5)
Rule 10A - Multi Unit Housing Development Code	The first sentence has been adjusted to specify that the rule does not apply to blocks that are intended to be used only for supportive housing

1.9 Interim Effect

Section 72 of the *Planning and Development Act 2007* applies to the draft variation. This means that the provisions of Draft Variation 387 apply from the day when the draft variation given to the Minister is notified (the notification day).

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

Note **Defined period**, for a draft variation—see the *Planning and Development Act 2007*, s 72 (3).

2. 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 10: Subdivision and consolidation

Insert after R38A

10.5 Subdivision of blocks other than standard blocks – RZ1	
<p>R38B</p> <p>This rule applies to <i>blocks</i> other than <i>standard blocks</i> in RZ1.</p> <p>Subdivision under the <i>Planning and Development Act 2007</i> is not permitted.</p> <p><i>Subdivision</i> 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

Insert after R10

3.6A Additional dwellings – blocks other than standard blocks – RZ1	
<p>R10A</p> <p>This rule applies to blocks other than <i>standard blocks</i> in RZ1 for which the crown <i>lease</i> explicitly permits 2 <i>dwellings</i>, but not to <i>blocks</i> that are intended to be used only for <i>supportive housing</i>.</p> <p>The maximum number of <i>dwellings</i> permitted on a <i>block</i> is 2.</p> <p>Note: This rule does not apply to <i>blocks</i> for which the crown <i>lease</i> does not specify the number of <i>dwellings</i> permitted, or permits a number of <i>dwellings</i> greater than 2.</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-għajjuna 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 ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE

131 450

Canberra and District - 24 hours a day, seven days a week

Environment, Planning and Sustainable Development Directorate

To: Minister for Planning and Land Management Tracking No.: 22/144978

Date: 01 February 2023

From: Executive Branch Manager, Planning and Urban Policy

Subject: Recommended draft variation and consultation report for Draft Variation 387: Amendment to RZDC and Multi Unit Housing Development Code (MUHDC) for number of dwellings permitted on a non-standard block in Residential RZ1 zones

Critical Date: 20 February 2023

Critical Reason: To enable DV387 to be referred to the Standing Committee for consideration as soon as possible

- DDG, Planning and Sustainable Development .../.../...

Recommendations

That you:

1. **Agree** to the Public Availability Notice (PAN) being notified;
Agreed / Not Agreed / Please Discuss

2. **Agree** to commence a new period of interim effect for Draft Variation 387 (DV387);
and
Agreed / Not Agreed / Please Discuss

3. **Agree** to refer the recommended version of DV387 and report on consultation (at Attachment A and Attachment B) to the Standing Committee on Planning, Transport and City Services (the Committee).
Agreed / Not Agreed / Please Discuss

Mick Gentleman MLA  21/2/2023

Minister's Office Feedback

Background

1. DV387 was prepared to amend the Multi Unit Housing Development Code (MUHDC) in the Territory Plan 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.
2. The draft variation addresses the concerns raised about redevelopment proposals where multiple dwellings are proposed on blocks in RZ1 zones where the lease explicitly allowed for two dwellings. In these cases, an application has been sought to vary the lease to change the specific allowance for two dwellings to allow for additional dwellings.
3. 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 occurring, even though this would result in a form of development inappropriate for the RZ1 zone.
4. DV387 further strengthens the controls proposed on two dwellings in the MUHDC by introducing a new provision in the Residential Zones Development Code (RZDC) 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.

Issues

5. The draft variation was open for public comment from 30 September 2022, and the final closing date for comments was 14 November 2022. Two written submissions were received.
6. The key issues raised, noting the number of submissions that raised the issue, are summarised in the table below. Of the two written submissions received, one was from an architecture firm and one was from a community organisation.

Table 1: Summary of matters raised in public submissions

Issue	Number of submissions
Wording of Rule R10A of MUHDC is ambiguous and does not achieve the intentions of the draft variation	1
Strongly oppose the draft variation; should be withdrawn	1
Proposed changes do not encourage a compact and efficient city	1
Proposed changes do not encourage diverse and affordable housing	1
Restriction on subdivision of non-standard blocks in RZ1 areas is unjustified	1

7. A report on consultation has been prepared at [Attachment B](#) responding to the issues raised in public submissions in more detail.

Recommended Variation

8. The recommended version of DV387 is at Attachment A. In response to public comments received during consultation and from Housing ACT (Community Services Directorate) following consultation, the recommended draft variation proposes to adjust the wording of proposed rule R10A in the MUHDC to:
 - a. clarify the intent of the provision and to remove any doubt about the application and purpose of the proposed changes in DV387; and
 - b. clarify that the rule does not apply to blocks that are intended to be used only for supportive housing. This is consistent with Rule 10 of the MUHDC which does not apply to blocks intended to be used for supportive housing. This will enable Housing ACT to build supportive housing when redeveloping non-standard blocks leased to the Commissioner for Social Housing to achieve a greater yield in order to better meet its housing supply intentions and commitments.

Process for Public Availability Notice (PAN) and referral to Standing Committee

9. Under section 70 of the *Planning and Development Act 2007* (the P&D Act) the independent planning and land authority must prepare a PAN advising that the documents given to the Minister are available for public inspection. A PAN is a notifiable instrument. Following the signing of this brief, the Environment, Planning and Sustainable Development Directorate will advise when the PAN is notified on the Legislation Register.
10. Once the PAN has been published, the recommended version of DV387 must be referred to the Committee within five working days. The Committee has twenty working days from the day after the draft plan variation is referred to the Committee to advise whether or not it will prepare a report (undertake an inquiry) on DV387.
11. A referral letter to the Chair of the Committee has been prepared and is at Attachment C for your signature once the PAN is notified. This letter includes copies of the recommended draft variation, the report on consultation and the background papers (planning report) for the Committee.

Interim Effect

12. Subject to your agreement, the draft variation will be placed on a second period of interim effect. The initial period of interim effect only applies until the PAN is released as the PAN will indicate whether a second period of interim effect is to apply. A second period of interim effect would apply for a maximum of eighteen months commencing on the date specified in the PAN. This means that during the prescribed period of interim effect, a decision cannot be made that is inconsistent with the Territory Plan as if it were changed in accordance with the recommended draft variation.

Nexus with new Territory Plan

13. DV387 was prepared to address a loophole in the current Territory Plan provisions, enabling more dwellings on a block that anticipated following a lease variation to amend the number of blocks permitted on a block. However, the changes to the provisions in the MUHDC and RZDC to address the concerns about inappropriate multi unit development on RZ1 blocks will not be required in the new Territory Plan, due to the proposed change to the 'standard block' definition in the new Territory Plan.

14. The proposed change to the definition of 'standard block' removes the reference to the phrase 'except where the original lease explicitly permits two dwellings' thereby capturing all leases that permit two dwellings on a block in the definition of 'standard block'. Therefore, there will no longer be a requirement to limit the number of dwellings on a block where the lease explicitly permits two dwellings.
15. Though the changes proposed with DV387 will not be needed in the new Territory Plan, DV387 is required to continue to commencement to prevent unintended developments being approved in the interim. It is for this reason interim effect was applied to DV387 when public consultation commenced, as well as why interim effect will be continued with the PAN.

Financial Implications

16. There are no financial implications in relation to this brief. Territory Plan variations are covered by directorate base funding.

Consultation

Internal

17. Statutory Planning, including the Leasing section were consulted during the preparation of the draft variation.

Cross Directorate

18. The draft variation was circulated to all relevant ACT Government agencies, including mandatory referral agencies, for input and comment. Comments from mandatory referral agencies are included in the draft variation document.

External

19. Mandatory agency consultation was undertaken with the National Capital Authority (NCA) and comments from the NCA have been included in the draft variation.
20. Public consultation on DV387 occurred between 30 September 2022 and 14 November 2022.

Benefits/Sensitivities

21. The proposed changes will address concerns around the potential for overdevelopment of non-standard blocks for multi unit development in the RZ1 Suburban Zone.
22. Should the draft variation continue with immediate interim effect, this will stop any further inappropriate multi-unit redevelopment proposals being lodged with the planning and land authority until such time as the proposed changes can formally take effect in the Territory Plan.

Communications, media and engagement implications

23. A draft media release can be prepared at your request.

Signatory Name:	Freya O'Brien	Phone:	6205 8434
Action Officer:	Janine Ridsdale	Phone:	6205 4060

Attachments

Attachment	Title
Attach A	Recommended version
Attach B	Report on consultation
Attach B.1	Appendix 1 - DV387 public consult
Attach B.2	Appendix 2a DV387 Submission - redacted
Attach B.3	Appendix 2b Submission
Attach C	Letter to Standing Committee
Attach C.1	DV387 - Recommended
Attach C.2	Report
Attach C.3	Appendix 1
Attach C2.1.2	Appendix 2a
Attach C2.1.3	Appendix 2b



ACT
Government

Environment, Planning and
Sustainable Development

Schedule 1

Planning and Development Act 2007

**Draft
Variation to the
Territory Plan
DV387**

Remove draft watermark prior to releasing for public consultation

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

July 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 **DD MM 20YY**.

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.

DRAFT

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 **[date consultation starts]**.

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

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-għajjuna 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

Canberra and District - 24 hours a day, seven days a week

DRAFT

Environment, Planning and Sustainable Development Directorate

To: Minister for Planning and Land Management Tracking No.: 23/30022

Date: 27 March 2023

From: Senior Director, Territory Plan Section, Planning and Urban Policy

Subject: Consideration of Draft Variation 387 Limit number of dwellings permitted on non-standard blocks in RZ1 for approval and tabling

Critical Date: 27 March 2023

Critical Reason: To enable the Territory Plan 387 to be tabled in the Legislative Assembly on the 30 March 2023

- EGM, Planning and Urban Policy 27/3/23

Recommendations

That you:

1. **Note** the advice of the Standing Committee for Planning, Transport and City Services (the Committee) at Attachment A that it will not undertake an inquiry into Draft Variation 387 (DV387);

Noted / Please Discuss

2. **Sign** the approval instrument at Attachment B, agreeing to approve DV387 Limit number of dwellings permitted on non-standard blocks in RZ1; and

Signed / Not Signed / Please Discuss

3. **Agree** to table Variation 387 including the report on consultation at Attachment C in the ACT Legislative Assembly on 30 March 2023.

Agreed / Not Agreed / Please Discuss

Mick Gentleman MLA  28/3/2023

Minister's Office Feedback

Background

1. DV387 was prepared to amend the Multi Unit Housing Development Code (MUHDC) in the Territory Plan 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.
2. The draft variation addresses the concern raised about redevelopment proposals where multiple dwellings are proposed on blocks in RZ1 zones where the lease explicitly allowed for two dwellings. In these cases, applications have been sought to vary the lease to change the specific allowance for two dwellings to allow for additional dwellings.
3. The proposed developments are not captured by the definition of a 'standard block' (and are 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 occurring, even though this would result in a form of development inappropriate for the RZ1 zone.
4. DV387 further strengthens the controls proposed on two dwellings in the MUHDC 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.

Issues

5. The Committee advised on 24 March 2023 that it will not be holding an inquiry into the draft variation ([Attachment A](#)). As no inquiry is being undertaken, there are no outstanding issues in relation to DV387.
6. The final version of DV387 is at [Attachment B](#) for your consideration for approval under section 76 of the *Planning and Development Act* (the Act). This instrument is a notifiable instrument under the Act and will be notified by the Environment, Planning and Sustainable Development Directorate (EPSDD) if you choose to approve DV387.
7. In considering whether to approve DV387, under section 76 (3) of the Act you must consider the report on consultation at [Attachment C](#).
8. Under section 79 of the Act, if approved, you are required to table DV387 ([Attachment B](#)) and background papers ([Attachments C](#)) in the Legislative Assembly no later than five sitting days after the approval date.

Financial Implications

9. There are no financial implications arising from the content of this brief.

Consultation

Internal

10. Legal Policy and Integrity within EPSDD reviewed and cleared the approval instrument at [Attachment B](#) on 22 March 2023. This instrument is a notifiable instrument.

Cross Directorate

11. Not applicable.

External

12. Not applicable.

Work Health and Safety

13. There are no work health and safety issues arising from this brief.

Benefits/Sensitivities

- 14. The proposed changes address concerns around the potential for overdevelopment of non-standard blocks for multi-unit housing development in the RZ1 Suburban zone.
- 15. While the draft variation currently has interim effect, which prevents any further inappropriate multi-unit housing redevelopment proposals being lodged with the planning and land authority, it would be of benefit for the variation to be approved and take effect, prior to the commencement of the new planning system, which includes a new Territory Plan.

Communications, media and engagement implications

16. A draft media release can be prepared at your request.

Signatory Name:	Alix Kaucz	Phone: x50864
Action Officer:	Sonya Moser	Phone: x72623

Attachments

Attachment	Title
Attachment A	Standing Committee advice in relation to DV387
Attachment B	Final DV387 and approval instrument
Attachment C	Report on Consultation Appendix 1 – Planning and Development (Draft Variation 387) Consultation Notice 2022 Appendix 2a – DV387 Submission - redacted Appendix 2b - Submission

From: [REDACTED] <[REDACTED]@philipleeson.com.au>
Sent: Tuesday, 22 November 2022 8:52 AM
To: Terrplan
Subject: DV387 - problem with wording of R10A

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Dear EPSDD

I fear that the wording of R10A does not achieve the intentions of the draft variation.

The intention, stated repeatedly in the summary, the background, and the reasons given for proposed changes, is to:

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.

The word 'if' in there makes it clear that this only applies to blocks where the crown lease explicitly permits to dwellings.

Draft rule R10A on the other hand, says:

R10A

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

The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings.

'The maximum number of dwellings permitted on a block is 2.' - is now a stand-alone sentence, and the sentence about the crown lease that follows it has an uncertain relationship to it. Because the word 'if' has been deleted and the statement split into two separate sentences, the limitation to 2 dwellings is no longer conditional on the crown lease. Lawyers are sure argue in front of ACAT that the number of dwellings permitted on any non-standard block in RZ1 is 2 – full stop.

Some leases for non-standard blocks in the RZ1 zone permit a greater number of dwellings than 2, and some don't specify any number of dwellings. How the rule is to be interpreted with regard to those blocks is unclear enough for argument and opens up the potential for appeals.

My suggestion is that the wording of R10A be changed to read:

R10A

This rule applies to blocks other than standard blocks in RZ1 for which the crown lease explicitly permits 2 dwellings.

The maximum number of dwellings permitted on a block is 2.

** This rule does not apply to blocks for which the crown lease does not specify the number of dwellings permitted, or permits a number of dwellings greater than 2.*

Cheers


Architect: ACT 802

PHILIPLEESONARCHITECTS
4/9 McKay Street, Turner ACT 2612

T 

E  [@philipleeson.com.au](mailto:philipleeson.com.au)

W www.philipleeson.com.au

From: Greater Canberra <greatercanberra@gmail.com>
Sent: Sunday, 30 October 2022 3:10 PM
To: Terrplan
Subject: Comment on DV387
Attachments: DV387 RZ1 Non-Standard Blocks - Comment by Greater Canberra Inc.PDF

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Dear Territory Plan Section

Please find attached our comment on Draft Variation 387.

We would be more than happy to discuss our concerns with this variation further - we can be contacted via this email address, or by phone to myself (Andrew Donnellan, Secretary) on [REDACTED] or Howard Maclean, Convenor, on [REDACTED].

Thank you very much for your consideration.

Regards

Andrew Donnellan | Secretary | [REDACTED]
Greater Canberra Inc | <https://greatercanberra.org> | ABN 75 940 110 964

From: Richard Nash <richard.nash@purdon.com.au>
Sent: Wednesday, 5 April 2023 9:01 PM
To: Kaucz, Alix; OBrien, Freya
Cc: Bradley Yates; Nick Heerdegen; Terrplan
Subject: RE: Comments and recommendation regarding Plan Variation 387

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Hi Alix,

Appreciate the consideration.

At issue here is that any multi-unit development in RZ1 above two dwellings now appears to be locked in permanently and the unit title scheme cannot be changed unless its to create a gigantic dual occupancy.

This does not appear to be what the policy is seeking to achieve. Given many older suburbs are going through renewal, I suspect we will see numerous examples of multi-unit RZ1 sites looking to redevelop that won't have an opportunity to unit title.

Happy to meet and discuss one such example which will be lodged as a DA soon.

I'm away next week but back the week after if you would like to catch up for a brief teams meeting.

Richard

----- Original message -----

From: "Kaucz, Alix" <Alix.Kaucz@act.gov.au>
Date: 5/4/23 18:13 (GMT+10:00)
To: Richard Nash <richard.nash@purdon.com.au>, "OBrien, Freya" <Freya.OBrien@act.gov.au>
Cc: Bradley Yates <bradley.yates@purdon.com.au>, Nick Heerdegen <Nick.Heerdegen@purdon.com.au>, Terrplan <Terrplan@act.gov.au>
Subject: RE: Comments and recommendation regarding Plan Variation 387

Hi Richard

Thank you for your email.

As Variation 387 has been approved by the Minister and tabled in the Assembly, it is not possible for it to be changed now. However, we will consider the comments you have made as we finalise the new Territory Plan.

Kind regards

Alix

Alix Kaucz | Senior Director, Territory Plan

Phone 02 6205 0864

Planning and Urban Policy | Environment, Planning and Sustainable Development | ACT Government

From: Richard Nash <richard.nash@purdon.com.au>
Sent: Wednesday, 5 April 2023 11:15 AM
To: Kaucz, Alix <Alix.Kaucz@act.gov.au>; OBrien, Freya <Freya.OBrien@act.gov.au>
Cc: Bradley Yates <bradley.yates@purdon.com.au>; Nick Heerdegen <Nick.Heerdegen@purdon.com.au>
Subject: Comments and recommendation regarding Plan Variation 387

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Hi Freya & Alix,

We have had a chance to review Plan Variation 387, and we have the following comments for the Authority to consider:

We understand that the purpose of the Variation is to specifically limit the redevelopment of existing RZ1 non-standard blocks containing two dwellings, and explicitly leased for two dwellings, to a maximum of two dwellings. We understand that this is implemented to prevent lease variations enabling large multi-unit developments on non-standard blocks explicitly leased for two dwellings. We believe this change is in line with the objectives of RZ1-Suburban, and the intentions of the Residential Zones and Multi Unit Housing Development Codes.

We believe this purpose is reflected well in the below rule 10A of the Multi-Unit Development Code, proposed in V387:

3.6A Additional dwellings – blocks other than standard blocks – RZ1	
<p>R10A</p> <p>This rule applies to blocks other than <i>standard blocks</i> in RZ1 for which the crown lease explicitly permits 2 dwellings, but not to blocks that are intended to be used only for <i>supportive housing</i>.</p> <p>The maximum number of dwellings permitted on a block is 2.</p> <p>Note: This rule does not apply to blocks for which the crown lease does not specify the number of dwellings permitted, or permits a number of dwellings greater than 2.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

However, Rule 38B of the Residential Zones Development code does not explicitly refer to non-standard blocks explicitly leased for two dwellings in the same way as the above rule, instead referring broadly to non-standard blocks.

10.4A Subdivision of blocks other than standard blocks – RZ1	
<p>R38B</p> <p>This rule applies to <i>blocks</i> other than <i>standard blocks</i> 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>

This rule effectively prohibits the unit titling (subdivision under the Unit Titles Act 2001) of a redeveloped multi-unit site in RZ1 of more than two dwellings, unless the redeveloped dwelling numbers are reduced and it becomes dual occupancy.

We understand that C53 of the Residential Zones development code intends to **maintain** dwelling density in RZ1 and RZ2 by allowing multi-unit redevelopment on sites already lawfully used for multi-unit residential. We believe this criterion prevents over-development of these sites:

Rules	Criteria
14.1 Redevelopment generally – RZ1 and RZ2	
<p>There is no applicable rule.</p>	<p>C53</p> <p>In RZ1 and RZ2, residential re-development on blocks originally used for <i>multi-unit housing</i> may be approved subject to consideration of adverse impacts on adjoining properties resulting from any increase in building bulk.</p>

We therefore recommend, given the intention of the code, the objectives of the RZ1 zone and the background information of the Explanatory Statement of V387, that R38B be changed as such:

Version in V387:

<p>R38B</p> <p>This rule applies to <i>blocks</i> other than <i>standard blocks</i> 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>
---	---

Our proposal:

<p>R38B</p> <p>This rule applies to blocks other than <i>standard blocks</i> in RZ1 for which the crown <i>lease</i> explicitly permits 2 <i>dwellings</i>, but not to <i>blocks</i> that are intended to be used only for <i>supportive housing</i>.</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>
--	---

We believe this proposal better reflects the intentions of V387 and we hope that you can consider changing it as such, given that it is still awaiting commencement.

Kind Regards

RICHARD NASH

Managing Director | Head of Planning
purdon.com.au | [LinkedIn](#)

243 Northbourne Avenue,
Lyneham ACT 2602



Dhawura nguna, dhawura Ngunnawal.

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From: Kaucz, Alix
Sent: Thursday, 13 October 2022 4:47 PM
To: [REDACTED]
Cc: Terrplan; Ridsdale, Janine
Subject: RE: DV387 - non-standard blocks RZ1

OFFICIAL

Hi [REDACTED]

Thank you for your email and my apologies for the delay in responding.

The intent of the changes in DV387 is to limit blocks that have a lease that specifically allows two dwellings to only have two dwellings. In other words, if the lease specifically allows two dwellings (and therefore is not a standard block) the lease couldn't then be varied to have more dwellings.

However in reviewing the wording, this is not as clear as it could be and could be interpreted to apply to old-style flats or townhouses that are relatively common in RZ1. In the final variation this wording will be revised to clarify the intent of the policy change.

Kind regards

Alix

Alix Kaucz | Senior Director, Territory Plan

Phone 02 6205 0864

Planning and Urban Policy | Environment, Planning and Sustainable Development | ACT Government

Level 2, 480 Northbourne Avenue Dickson ACT 2602 | www.environment.act.gov.au

From: [REDACTED]@planning.org.au>

Sent: Thursday, 6 October 2022 11:48 AM

To: Kaucz, Alix <Alix.Kaucz@act.gov.au>

Subject: DV387 - non-standard blocks RZ1

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Hi Alix

Some PIA members have noted the release of DV387 relating to multi-Unit housing on non-standard blocks in RZ1 and have asked me to seek clarification on this DV.

It is understood that the intent is to close a 'loophole' where leases could increase above 2 dwellings. However, it seems that the wording of new mandatory Rule 10A inadvertently catches other redevelopment opportunities.

For example, there are a number of unit developments in inner Canberra suburbs on RZ1. These are often old-style 'walk-up flats' of 10 or more units. On face value it seems that Rule 10A would prevent redevelopment of such a site at the same density as currently exists (e.g. 10 walk-up flats redeveloped to 10 townhouses).

The wording of the mandatory rule (repeated below) seems to require such a non-standard block (that might currently have, say 10 dwellings) that is the subject of a redevelopment proposal to rebuild to the same number of dwellings, to now have no more than 2 dwellings and also requires the lease to be varied to state 2 dwellings only.

Are you able to advise if we are interpreting the new Rule correctly.

Regards



R10A

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

The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings.

 MPIA (Fellow)

PIA ACT President

E:  @planning.org.au

PO Box 5427 KINGSTON ACT 2604



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Subject: Commencement Notice for Variation 387 Amendment to the Residential Zones Development Code and Multi Unit Housing Development Code for non-standard blocks in the Residential RZ1 zone

To

Ben Green
Executive Group Manager
Planning and Urban Policy

Recommendations

That you:

1. Sign the commencement notice ([Attachment A](#)); and
2. Agree to the publication of a notice in the online public notices ([Attachment B](#)).

Background

Variation 387 (V387) to the Territory Plan is scheduled to commence on **Friday 9 June 2023**.

The variation amends 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 removes 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 strengthen these controls on two dwellings. A new provision limits 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.

V387 was approved by the Minister for Planning and Land Management on 28 May 2023 and tabled in the Legislative Assembly on 30 March 2023. No motion was moved during the disallowance period that finished on 1 June 2023. This was confirmed by Government Services on 2 June 2023.

Issues

There are no outstanding issues in relation to this variation. The commencement of V387 is a statutory administrative process and requires a commencement notice to be published on the Legislation Register ([Attachment A](#)) and a notice on the ACT Government's online public notices website ([Attachment B](#)) in accordance with section 83 of the *Planning and Development Act 2007*.

Section 83(2) of the Act requires the Minister to fix a day when the plan variation is to commence. The Minister has delegated this function to you.

The commencement notice has been reviewed and cleared by the Legal Policy and Integrity Team on 15 May 2023.

Media issues

There is unlikely to be media interest in the commencement of V387.

Financial implications

There are no budget implications arising from commencing V387 as Territory Plan variations are covered by base funding.

Consultation strategy

The commencement notice sets a date for the variation to commence in accordance with s83(2) and is published on the Legislation Register. In accordance with s83(3) EPSDD is required to give public notice of the commencement of V387 and indicates where copies of the plan variation can be inspected and purchased, which is achieved by publishing a public notice.

Critical date

For V387 to commence on Friday 9 June 2023 the commencement notice will need to be signed by **Wednesday 7 June 2023**.

Alix Kaucz
Senior Director, Territory Plan
Planning and Urban Policy
62050864

Contact Officer
Sonya Moser
62072326

AGREED/NOT AGREED/DISCUSS

Executive Group Manager, Planning and Urban Policy



Mick Gentleman MLA

Manager of Government Business
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

22/144978

Ms Jo Clay MLA

Chair

Standing Committee on Planning, Transport and City Services

ACT Legislative Assembly

LACommitteePTCS@parliament.act.gov.au

Dear Chair 

Referral of Draft Variation 387 Amendment to the Residential Zones Development Code and Multi Unit Housing Development Code for non-standard blocks in the Residential RZ1 zone (DV387)

DV387 was prepared to address concerns about inappropriate multi-unit redevelopment occurring on residential blocks in RZ1. It amends the Multi Unit Housing Development Code (MUHDC) in the Territory Plan 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 draft variation further strengthens the controls proposed on two dwellings in the MUHDC 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.

DV387 was released for public consultation on 30 September 2022 until 14 November 2022. Two submissions were received during public consultation on the draft variation. The comments made regarding DV387 and responses are provided in the Report on Consultation.

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601

 +61 2 6205 0051  gentleman@act.gov.au

 @GENTLEMANMick

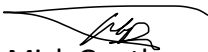
 MickGentleman

 mick.gentleman

I believe that the matters raised during the consultation period have been adequately addressed in the Report on Consultation. I am therefore now referring DV387 to the Standing Committee on Planning, Transport and City Services under section 73(2) of the *Planning and Development Act 2007* for your consideration and request the Committee decides and advises me within 20 working days (under section 73(5) of the Act) whether it will prepare a report on the draft variation.

I have provided copies of the draft variation and the Report on Consultation. Relevant officers from the Environment, Planning and Sustainable Development Directorate can be made available to brief the Committee on the draft variation, if required. Please contact my office on 02 6205 0218 or at gentleman@act.gov.au to make the necessary arrangements.

Yours sincerely



Mick Gentleman MLA
Minister for Planning and Land Management

27/2/2028

ENCL

Attach 1	DV387 - Recommended
Attach 2	Report
Attach 2.1	Appendix 1
Attach 2.2	Appendix 2a
Attach 2.3	Appendix 2b

From: Oshyer, Aaron
Sent: Friday, 3 June 2022 3:26 PM
To: Ridsdale, Janine
Cc: Kaucz, Alix; Walker, Karen
Subject: RE: FOR AGENCY COMMENT: Draft Variation to the Territory Plan 387 (DV387) - Amendment to the MUHDC to limit number of dwellings permitted on non-std blocks in RZ1 zone

OFFICIAL

Hi Janine,

I suspect the concern raised by Heritage is for the same concern I raised about the potential misinterpretation of the provision.

I suggest that the wording proposed to read: "The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings"

achieves the same result of no more than two dwellings for a 'non-standard block'.

Karen is better placed to comment on the consideration of the proposed heritage wording for the rule in the MUHDC for a lease variation DA.

Thanks,
Aaron

From: Ridsdale, Janine <Janine.Ridsdale@act.gov.au>
Sent: Friday, 3 June 2022 2:54 PM
To: Oshyer, Aaron <Aaron.Oshyer@act.gov.au>
Cc: Kaucz, Alix <Alix.Kaucz@act.gov.au>
Subject: RE: FOR AGENCY COMMENT: Draft Variation to the Territory Plan 387 (DV387) - Amendment to the MUHDC to limit number of dwellings permitted on non-std blocks in RZ1 zone

OFFICIAL

Hi Aaron,

Thank you for your comments on this matter. Territory Plan Section is happy to make your suggested change to the wording of the rule to read: "The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings".

ACT Heritage Council have responded to the agency circulation request for comments with a suggestion that the rule should be worded to read:

*"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."*

The Council's rationale is that the proposed wording of the change is somewhat open to interpretation, as it does not mention, or rule out, lease changes. The Council stated in their comments that with their preferred 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.

Please can you advise, from a Leasing perspective, whether this suggested wording can be taken into consideration in the assessment of a lease variation.

Many thanks for your advice.

Regards

Janine

From: Oshyer, Aaron <Aaron.Oshyer@act.gov.au>

Sent: Friday, 20 May 2022 5:24 PM

To: Terrplan <Terrplan@act.gov.au>

Subject: RE: FOR AGENCY COMMENT: Draft Variation to the Territory Plan 387 (DV387) - Amendment to the MUHDC to limit number of dwellings permitted on non-std blocks in RZ1 zone

OFFICIAL

Hi Territory Planning team,

Thanks for the opportunity to comment.

Could the proposed wording be read as “where the lease explicitly permits two dwellings the maximum number of dwellings permitted on a block is 2”?

Wonder if the provision could be reworded to say “The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings”.

Proposed Changes to the Territory Plan

The draft variation proposes to amend Item 3.6 of the Multi-Unit Housing Development Code to include a provision to limit the number of dwellings on a non-standard block in the RZ1 zone to two if the lease explicitly permits two dwellings:

- *Amend Item 3.6 Additional dwellings – standard blocks – RZ1 to read as follows:*

“3.6 Additional dwellings – standard blocks and non-standard blocks – RZ1”

- *Insert a new mandatory Rule 10A to read as follows:*

“R10A

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

The maximum number of dwellings permitted on a block is 2 where the lease explicitly permits two dwellings “

Happy to discuss further.

Thanks,

Aaron Oshyer | Director Leasing Administration

Phone 02 6205 8394 | Email: aaron.oshyer@act.gov.au

Statutory Planning | Environment, Planning and Sustainable Development Directorate | ACT Government

Level 1, 480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Terrplan <Terrplan@act.gov.au>

Sent: Friday, 20 May 2022 4:31 PM

To: WorksApproval <WorksApproval@nca.gov.au>; Heritage <Heritage@act.gov.au>; EPAPanningLiaison <EPAPanningLiaison@act.gov.au>; ConservatorFloraFauna <ConservatorFloraFauna@act.gov.au>; ACTPLA DA

Leasing <ACTPLADALeasing@act.gov.au>; ACTPLA Leasing <Leasing@act.gov.au>; Davies, Richard <Richard.Davies@act.gov.au>; Weller, Craig <Craig.Weller@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>

Cc: Terrplan <Terrplan@act.gov.au>; Kaucz, Alix <Alix.Kaucz@act.gov.au>; rebecca.sorensen@nca.gov.au; Russell, Meaghan <Meaghan.Russell@act.gov.au>; OConnell, Jennifer <Jennifer.OConnell@act.gov.au>; Brown, Robin <Robin.Brown@act.gov.au>; Oshyer, Aaron <Aaron.Oshyer@act.gov.au>; Walker, Karen <Karen.Walker@act.gov.au>; Myers, Rhonda <Rhonda.Myers@act.gov.au>; Gell, Chris <Chris.Gell@act.gov.au>; Sandeman, Graham <Graham.Sandeman@act.gov.au>; Jamaly, Rumana <Rumana.Jamaly@act.gov.au>; Musgrove, Anna <Anna.Musgrove@act.gov.au>; Strudwicke, Kym <Kym.Strudwicke@act.gov.au>; Larson, Eliza <Eliza.Larson@act.gov.au>

Subject: FOR AGENCY COMMENT: Draft Variation to the Territory Plan 387 (DV387) - Amendment to the MUHDC to limit number of dwellings permitted on non-std blocks in RZ1 zone

OFFICIAL

FOR AGENCY CIRCULATION AND COMMENT

Variation 350 (commenced 2019) was prepared in response to concerns about inappropriate multi-unit residential redevelopment occurring on certain residential blocks in some older Canberra suburbs.

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)”

Since then, there have been concerns raised about development proposals where multiple townhouses are proposed on blocks in RZ1 zones where the lease explicitly allowed for two dwellings. 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 these cases, the lessee can apply to vary the lease to permit more than two dwellings, as there are currently no explicit prohibitions in the Territory Plan to prevent this occurring, even though this would result in a form of development inappropriate for the RZ1 zone.

DV387 has been prepared to address this situation, by amending the Multi Unit Housing Development Code (MUHDC) 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 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.

The proposed new provision in the MUHDC is as follows:

R10A This rule applies to blocks other than standard blocks in RZ1.	This is a mandatory requirement. There is no applicable criterion.
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The maximum number of dwellings permitted on a block is two where the lease explicitly permits two dwellings	
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Please send your comments, including Nil Comment, to the Territory Plan Section at terrplan@act.gov.au by COB Friday 27 May 2022.

Many thanks and regards

Territory Plan Section | General Enquiries Inbox

Email: terrplan@act.gov.au

Planning and Urban Policy | Environment, Planning and Sustainable Development Directorate | ACT Government

480 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Stewart, Di
Sent: Tuesday, 3 January 2023 12:50 PM
To: Roland, Skye
Cc: Terrplan; Kaucz, Alix; Wilson, Kristen; El Hussein, Susu; Champness, Briar; Robinson, Tracey; Ridsdale, Janine; Moser, Sonya
Subject: RE: Territory Plan Draft Variation 387

OFFICIAL

Hi Skye (and Briar),
Thank you for the email alerting us to this possible issue.

Full agency circulation was not undertaken on this DV as it was fixing up a loophole in the previous variation (V350) which was prepared to address the issue of inappropriate multi-unit development occurring on certain blocks in the RZ1 zone.

In recognition of Housing ACT's email, the proposed change may have unintended consequences for Housing ACT that were not anticipated.

The Recommended Draft Variation and accompanying documents were with the MO, for the Minister to forward on to the Standing Committee. We have now recalled these while we work through the issues you have raised.

Janine or Sonya from the Territory Plan team will be in touch.

Kind regards
Di

Di Stewart

Executive Branch Manager | Planning & Urban Policy
Environment, Planning and Sustainable Development Directorate | ACT Government
(02) 6205 4141 | [REDACTED] | Email: di.stewart@act.gov.au



From: Roland, Skye <Skye.Roland@act.gov.au>
Sent: Wednesday, 21 December 2022 4:03 PM
To: Stewart, Di <Di.Stewart@act.gov.au>
Cc: Terrplan <Terrplan@act.gov.au>; Kaucz, Alix <Alix.Kaucz@act.gov.au>; Wilson, Kristen <Kristen.Wilson@act.gov.au>; El Hussein, Susu <Susu.ElHusseini@act.gov.au>; Champness, Briar <Briar.Champness@act.gov.au>; Robinson, Tracey <Tracey.Robinson@act.gov.au>
Subject: Territory Plan Draft Variation 387
Importance: High

Hi Di

Housing ACT have a number of current and future proposals for non-standard blocks within RZ1 zones and have been quite surprised by the changes proposed in Draft Variation 387. I would like to propose setting up a meeting to discuss the following queries we have:

- A large portion of our proposals within RZ1 include a lease variation to include supportive housing, which will typically allow us to achieve a greater yield. Under this draft variation, it appears that a yield greater than two will still not be possible even with a variation to include supportive housing. Can you please clarify how this relates to the supportive housing provisions under the Territory Plan?
- Will the proposed variation apply to consolidated sites? I.e. Will consolidation of two non-standard blocks still only result in a yield of two?
- I understand that this has taken interim effect on 30 September 2022, how does this apply to DA's submitted after this date and under assessment?
- I understand that the draft variation was open for public consultation, however, this ended on the 14th of November 2022. I am not aware that anyone within Housing ACT received notice of this, when we typically do. Can someone please investigate why this occurred and make sure that I am included in all future distribution of draft variations?

This will have a huge impact on how we deliver the Growth and Renewal Program, so I would appreciate your response as soon as possible.

Kind Regards

Skye Roland (she/her) | Program Director, Growing and Renewing
Infrastructure and Contracts, Housing ACT ACT Government

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From: Walker, Karen
Sent: Tuesday, 17 January 2023 6:19 PM
To: Kaucz, Alix
Cc: Oshyer, Aaron; Myers, Rhonda; Strudwicke, Kym; Ridsdale, Janine
Subject: DV387 R10A revised wording

Hi Alix,

After our meeting this morning I have had further discussions with Aaron and Rhonda,

We are concerned that the amended wording we had decided on will create a number of leases that will permit 'residential purposes or supportive housing' together with a physical development of three (or more) dwellings. While initially the development for supportive housing will be owned and operated by housing there may come a time where housing needs to on-sell. While the development approval will be for supportive housing the physical development will appear to be a multi unit housing development.

It may be unclear at that time as to what is permitted on the site and how the dwellings are to be used. Perhaps restricting the non standard blocks to only two dwellings, unless the site is only used for supportive housing would be clearer.

Current wording:

R10A This rule applies to blocks other than standard blocks in RZ1. The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings.

Proposed wording:

R10A This rule applies to blocks other than standard blocks in RZ1 **but not to blocks that are intended to be used for supportive housing**. The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings.

New proposed wording:

R10A This rule applies to blocks other than standard blocks in RZ1 **but not to blocks that are intended to be used only for supportive housing**. The maximum number of dwellings permitted on a block is 2. The Crown lease must explicitly permit two dwellings.

The addition of the word 'only' would require leases to be varied to permit only supportive housing for these developments.

Another question has also been raised regarding that same rule.

If two non standard blocks, where the leases specify two dwellings, were to be consolidated would the new block be permitted only two dwellings? As the consolidation of two non standard blocks would create a non standard block rule 10A would still apply.

Hope I have explained clearly, however happy to discuss.

While I am on leave until 31 Jan, Aaron and Rhonda are available if needed.

Thanks,
Karen.

Karen Walker | Leasing DA

Phone 02 6207 7257 | Fax 02 6207 1856

Statutory Planning | Environment, Planning and Sustainable Development | **ACT Government**

480 Northbourne Ave, Dickson | GPO Box 158 Canberra ACT 2602 | www.planning.act.gov.au

From: Kaucz, Alix
Sent: Friday, 20 January 2023 5:33 PM
To: Oshyer, Aaron
Cc: Moser, Sonya; Ridsdale, Janine; Walker, Karen
Subject: RE: Draft Variation 387 and implications for Housing

Fyi

I spoke to Jason today re his comments. He was happy to keep the wording as currently drafted to address the concerns raised by Leasing.

The amended DV has been sent up the line accordingly

Alix

From: Hart, Jason <Jason.Hart@act.gov.au>
Sent: Thursday, 19 January 2023 4:45 PM
To: Kaucz, Alix <Alix.Kaucz@act.gov.au>; Ridsdale, Janine <Janine.Ridsdale@act.gov.au>; Champness, Briar <Briar.Champness@act.gov.au>; Roland, Skye <Skye.Roland@act.gov.au>; Oshyer, Aaron <Aaron.Oshyer@act.gov.au>; Walker, Karen <Karen.Walker@act.gov.au>; Wilson, Kristen <Kristen.Wilson@act.gov.au>; El Hussein, Susu <Susu.ElHusseini@act.gov.au>; Robinson, Tracey <Tracey.Robinson@act.gov.au>
Cc: Moser, Sonya <Sonya.Moser@act.gov.au>
Subject: RE: Draft Variation 387 and implications for Housing

Hi Alix,

Appreciate you actioning this so quickly.

The only concern we'd raise is with the wording '...used only for supportive housing'.

It might seem finicky, but should this be interpreted as a requirement to surrender other uses (residential) as part of the development, it may have some fairly significant cost implications for us in the future.

Of course whilst under our ownership, these developments would only be used for supportive housing and we have no intent to sell any redeveloped assets (standard lifespan of +50 years within the portfolio), should future Territory Plan changes see our sites rezoned or enable unit titling in RZ1, we'll be hit with LVCs in having to re-add residential use.

As an alternative, could we propose the wording '...but does not apply to *supportive housing*.' This would keep things consistent with how it is worded in other rules, see below:

3.1 Dwelling replacement – standard blocks	
R5	
This rule applies to <i>standard blocks</i> in all residential zones that are proposed to be redeveloped for <i>multi unit housing</i> , but does not apply to <i>supportive housing</i> .	Tf af
a) where there has been no consolidation of	

Happy to discuss.

Cheers,

Jason Hart | Director | Portfolio Planning and Alignment
Infrastructure and Contracts Branch | Housing ACT | Community Services Directorate
Level 3, Nature Conservation House | 153 Emu Bank Belconnen 2617 | Locked Bag 3000 Belconnen ACT 2617
t. +61 2 6207 3423 | m. [REDACTED] | e. Jason.hart@act.gov.au



From: Kaucz, Alix <Alix.Kaucz@act.gov.au>
Sent: Thursday, 19 January 2023 2:45 PM
To: Ridsdale, Janine <Janine.Ridsdale@act.gov.au>; Champness, Briar <Briar.Champness@act.gov.au>; Roland, Skye <Skye.Roland@act.gov.au>; Oshyer, Aaron <Aaron.Oshyer@act.gov.au>; Walker, Karen <Karen.Walker@act.gov.au>; Wilson, Kristen <Kristen.Wilson@act.gov.au>; El Hussein, Susu <Susu.ElHusseini@act.gov.au>; Robinson, Tracey <Tracey.Robinson@act.gov.au>
Cc: Moser, Sonya <Sonya.Moser@act.gov.au>; Hart, Jason <Jason.Hart@act.gov.au>
Subject: RE: Draft Variation 387 and implications for Housing

Hi all

Following our discussion on DV387 on Tuesday, we have prepared the following provision to replace R10A in DV387 (blue text is new)

3.6A Additional dwellings – blocks other than standard blocks – RZ1	
<p>R10A</p> <p>This rule applies to blocks other than <i>standard blocks</i> in RZ1 for which the crown <i>lease</i> explicitly permits 2 <i>dwellings</i>, but not to <i>blocks that are intended to be used only for supportive housing</i>.</p> <p>The maximum number of <i>dwellings</i> permitted on a <i>block</i> is 2.</p> <p>Note: This rule does not apply to <i>blocks</i> for which the crown <i>lease</i> does not specify the number of <i>dwellings</i> permitted, or permits a number of <i>dwellings</i> greater than 2.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Please let us know as soon as you can if there are any issues with the proposed changes, noting we would like to get the interim effect details changed as soon as possible (which happens once the Minister considers the recommended version).

Kind regards

Alix

Alix Kaucz | Senior Director, Territory Plan
Phone 02 6205 0864
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