

Australian Capital Territory

Planning and Development (Technical Amendment—Clarification and Code Amendments) Plan Variation 2020 (No 1)*

Notifiable instrument NI2020—783

Technical Amendment No 2020-11

made under the

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

1 Name of instrument

This instrument is the *Planning and Development (Technical Amendment—Clarification and Code Amendments) Plan Variation 2020 (No 1)*.

2 Commencement

This instrument commences on the day after its notification day.

3 Technical amendment

I am satisfied under section 89(1)(a) of the *Planning and Development Act 2007* (the Act) that the clarification and code amendments are technical amendments to the Territory Plan.

4 Dictionary

In this instrument:

Clarification and Code Amendments means the technical amendment to the Territory Plan, variation 2020-11, in the schedule.

Note Limited consultation was undertaken in relation to the plan variation in accordance with section 90 of the *Planning and Development Act 2007*.

Lesley Cameron
Delegate of the planning and land authority
8 December 2020

*Name amended under Legislation Act, s 60



ACT
Government

Environment, Planning and
Sustainable Development

Planning & Development Act 2007

Technical Amendment to the Territory Plan

2020-11

Clarification amendments - Definitions
and the Residential Zones Development Code
and Code amendment - Single Dwelling Housing
Development Code

December 2020

Commencement version

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

Table of Contents

1. INTRODUCTION	2
1.1 Purpose	2
1.2 Public consultation	2
1.3 National Capital Authority	2
1.4 Process	3
1.5 Types of technical amendments under the Act	3
2. EXPLANATORY STATEMENT	4
2.1 Background.....	4
2.2 Variation to the definition of surrendered residential block.....	4
2.3 Variation to the Single Dwelling Housing Development Code.....	5
2.4 Variation to the Residential Zones Development Code.....	7
3. TECHNICAL AMENDMENT.....	9
3.1 Variation to the Territory Plan definitions	9
3.2 Variation to the Single Dwelling Housing Development Code.....	9
3.3 Variation to the Residential Zones Development Code.....	10

1. INTRODUCTION

1.1 Purpose

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

Definitions

- Clarify the definition of surrendered residential block for the purposes of the Territory Plan, to include unit-title residential blocks that have been acquired by the ACT Government under the Loose Fill Asbestos Insulation Eradication Scheme Buyback Program.

Single Dwelling Housing Development Code

- Amend Rule R39 to reduce the minimum dimensions for private open space for mid sized blocks less than 360m², to 5m. This is consistent with the requirement for a minimum area of private open space being at least 10% of the block area.

Residential Zones Development Code

- Clarify that Element 4 – Secondary residences is subject to elements 1 and 6 of the Single Dwelling Housing Development Code.

1.2 Public consultation

Under section 87 of the *Planning and Development Act 2007* (the Act) this type of technical amendment is subject to limited public consultation under section 90 of the Act.

TA2020-11 was released for limited public consultation on 30 October 2020 and concluded on 27 November 2020. Two public submissions were received.

The key issue raised was that the proposed amendment to the dimensions for private open space reduces the area for private open space on smaller blocks and undermines DV369 related to living infrastructure in residential zones.

Further information on the submissions received and response to the comments are contained in the Report on Consultation.

Comments received from the public and the National Capital Authority have been considered in the preparation of the final version of TA2020-11. No amendments were made to the technical amendment as a result of limited consultation.

1.3 National Capital Authority

The *Australian Capital Territory (Planning and Land Management) Act 1988* established the National Capital Authority (NCA) with two of its functions being to prepare and administer a National Capital Plan (the Plan) and to keep the Plan under constant review and to propose amendments to it when necessary.

The Plan, which was published in the Commonwealth Gazette on 21 January 1990, is required to ensure Canberra and the Territory are planned and developed in

accordance with their national significance. The *Australian Capital Territory (Planning and Land Management) Act 1988* also requires the Territory Plan not to be inconsistent with the Plan. The areas covered by this technical amendment are within urban areas identified in the Plan.

The National Capital Authority advised that it has no concerns with this technical amendment.

1.4 Process

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

1.5 Types of technical amendments under the Act

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

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

ongoing provision that was not included in the plan under section 94 (3) (g);

- (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan;
- (f) a variation to relocate a provision within the territory plan if the substance of the provision is not changed.

TA2020-11 has been prepared as a code variation in accordance with section 87(2)(a) of the Act and a clarification variation in accordance with section 87(2)(e) of the Act.

2. EXPLANATORY STATEMENT

2.1 Background

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

2.2 Variation to the definition of surrendered residential block

The current definition of *surrendered residential block* in the Definitions of the Territory Plan applies only to blocks where the leases have been formally ‘surrendered’ to the ACT Government under the Loose Fill Asbestos Insulation Eradication Scheme Buyback Program. However, unit title block leases cannot be surrendered. Instead the ACT Government opted to buy these unit title blocks under the asbestos program. This means that the current definition of *surrendered residential block* and the provisions for the affected blocks do not include existing dual-occupancy unit title blocks. This is an unintended outcome.

The proposed technical amendment to the definition of *surrendered residential block* seeks to clarify and remove any doubt that existing dual-occupancy unit title blocks are covered by the definition of the surrendered block for the purposes of the Territory Plan provisions.

Compliance with the *Planning and Development Act 2007*

Section	Statement
s87(2)(e) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan.	Compliant. The changes clarify that the definition of <i>surrendered residential block</i> applies to blocks that have been surrendered and to unit-title blocks that have been acquired by the ACT Government under the Loose Fill Asbestos Insulation Eradication Scheme Buyback Program. These changes clarify the language of the Territory Plan and do not change the substance of the plan.

Existing definition of a surrendered residential block

Surrendered residential block means a block that has been surrendered under the Loose Fill Asbestos Insulation Eradication Scheme Buyback Program and included as a surrendered block on the Affected Residential Property Register. It does not mean a surrendered residential block that is part of a registered heritage place or a provisionally registered heritage place under the *Heritage Act 2004*.

Proposed definition of a surrendered residential block

Surrendered residential block means a block that has been included on the Affected Residential Property Register **and that has been either:** surrendered to the ACT Government; **or it is a dual occupancy unit-title block that has been acquired, in full or in part,** by the ACT Government under the Loose Fill Asbestos Insulation Eradication Scheme Buyback Program. It does not mean a surrendered residential block that is part of a registered heritage place or a provisionally registered heritage place under the *Heritage Act 2004*.

2.3 Variation to the Single Dwelling Housing Development Code

The Territory Plan defines mid sized blocks as follows:

Mid sized block means a block with an area greater than 250m² but less than or equal to 500m².

Rule R39 of the Single Dwelling Housing Development Code stipulate requirements for private open space for mid sized blocks.

R39 b) ii) requires a minimum dimension for private open space of “6m for an area not less than 10% of the block area”. This rule works effectively for mid-size blocks that are 360m² or larger. In this regard, the 6m dimension for private open space is exactly equal to 10% of the block being 36m².

For mid sized blocks less than 360m², a private open space area with a minimum dimension of 6m is greater than 10% of the block area. Therefore, to comply with all of the requirements of R39, the private open space area would need to be more than 10% of the block.

A workable minimum dimension for private open space on mid sized blocks of less than 360m² is 5m. This is because the minimum area for mid-sized blocks is 250m² and 10% of 250m² is 25m². This results in an area of private open space with smaller dimensions. However, the total private open space required for the block remains unchanged at a minimum area equal to 40% of the block area, less 50m².

Compliance with the *Planning and Development Act 2007*

Section	Statement
<p>s87(2)(a) a) a variation (a code variation) that –</p> <ul style="list-style-type: none"> (i) would only change a code; and (ii) is consistent with the policy purpose and policy framework of the code; and (iii) is not an error variation; 	<p>Compliant.</p> <p>The amendment only changes a code and it is consistent with the policy purpose and framework of the code as it accommodates workable requirements within Rule R39 for the provision of private open space based on block size.</p>

Existing Rule R39 and Criterion C39

Rules	Criteria
<p>R39</p> <p>For <i>mid-sized blocks, private open space</i> complies with all of the following:</p> <ul style="list-style-type: none"> a) a minimum area equal to 40% of the block area, less 50m² b) a minimum dimension as follows - <ul style="list-style-type: none"> i) blocks that are identified in a precinct code as an alternative boundary setback block – 4m for an area not less than 20% of the block area ii) in all other cases - 6m for an area not less than 10% of the block area. c) at least 50% of the minimum area specified in a) is <i>planting area</i>. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p>	<p>C39</p> <p><i>Private open space</i> provides residential amenity on the subject site and protects the residential amenity of adjoining sites by achieving all of the following:</p> <ul style="list-style-type: none"> a) limits site coverage of buildings and vehicle parking and manoeuvring areas b) provides space for planting c) facilitates on-site infiltration of stormwater run-off d) provides outdoor areas that are readily accessible by residents for a range of uses and activities e) provides space for service functions such as clothes drying and domestic storage.

Proposed Rule R39 and Criterion C39

Rules	Criteria
<p>R39</p> <p>For <i>mid-sized blocks</i>, <i>private open space</i> complies with all of the following:</p> <ul style="list-style-type: none"> a) a minimum area equal to 40% of the block area, less 50m² b) a minimum dimension as follows - <ul style="list-style-type: none"> i) blocks that are identified in a precinct code as an alternative boundary setback block – 4m for an area not less than 20% of the block area ii) blocks less than 360m² – 5m for an area not less than 10% of the block iii) in all other cases – 6m for an area not less than 10% of the block area c) at least 50% of the minimum area specified in a) is <i>planting area</i>. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p>	<p>C39</p> <p><i>Private open space</i> provides residential amenity on the subject site and protects the residential amenity of adjoining sites by achieving all of the following:</p> <ul style="list-style-type: none"> a) limits site coverage of buildings and vehicle parking and manoeuvring areas b) provides space for planting c) facilitates on-site infiltration of stormwater run-off d) provides outdoor areas that are readily accessible by residents for a range of uses and activities e) provides space for service functions such as clothes drying and domestic storage.

2.4 Variation to the Residential Zones Development Code

Element 4: Secondary residences of the Residential Zones Development Code states that secondary residences are subject to the requirements of element 1 of the Single Dwelling Housing Development Code. However, under this element Rule R11 calls up Element 6 of the Single Dwelling Housing Development Code.

The proposed technical amendment seeks to update Element 4: Secondary Residences to clarify that both elements 1 and 6 of the Single Dwelling Housing Development Code are applicable to secondary residences.

Compliance with the *Planning and Development Act 2007*

Section	Statement
<p>s87(2)(e) (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan.</p>	<p>Compliant.</p> <p>The changes clarify that the secondary residences are subject to the requirements of elements 1 and 6 of the Single Dwelling Housing Development Code.</p> <p>These changes clarify the language of the Territory Plan and do not change the substance of the plan.</p>

Existing Element 4 – Secondary residences

Element 4: Secondary residences

Secondary residences are subject to this element and element 1 of the Single Dwelling Housing Development Code. Where there is an inconsistency between this element and the Single Dwelling Housing Development Code, this element shall prevail to the extent of that inconsistency.

Proposed Element 4 – Secondary residences

Element 4: Secondary residences

Secondary residences are subject to this element and elements 1 and 6 of the Single Dwelling Housing Development Code. Where there is an inconsistency between this element and the Single Dwelling Housing Development Code, this element shall prevail to the extent of that inconsistency.

3. TECHNICAL AMENDMENT

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

3.1 Variation to the Territory Plan definitions

1. Part B – Definition of Terms

Substitute

Surrendered residential block means a block that has been included on the Affected Residential Property Register and that has been either: surrendered to the ACT Government; or it is a dual occupancy unit-title block that has been acquired, in full or in part, by the ACT Government under the Loose Fill Asbestos Insulation Eradication Scheme Buyback Program. It does not mean a surrendered residential block that is part of a registered heritage place or a provisionally registered heritage place under the *Heritage Act 2004*.

3.2 Variation to the Single Dwelling Housing Development Code

2. 5.2 Private open space – Rule R39 and Criterion C39

Substitute

Rules	Criteria
<p>R39</p> <p>For <i>mid-sized blocks, private open space</i> complies with all of the following:</p> <ul style="list-style-type: none"> a) a minimum area equal to 40% of the block area, less 50m² b) a minimum dimension as follows - <ul style="list-style-type: none"> i) blocks that are identified in a precinct code as an alternative boundary setback block – 4m for an area not less than 20% of the block area ii) blocks less than 360m² – 5m for an area not less than 10% of the block iii) in all other cases - 6m for an area not less than 10% of the block area. c) at least 50% of the minimum area specified in a) is <i>planting area</i>. <p>Note: Private open space includes principal private open space, as required elsewhere in this element.</p>	<p>C39</p> <p><i>Private open space</i> provides residential amenity on the subject site and protects the residential amenity of adjoining sites by achieving all of the following:</p> <ul style="list-style-type: none"> a) limits site coverage of buildings and vehicle parking and manoeuvring areas b) provides space for planting c) facilitates on-site infiltration of stormwater run-off d) provides outdoor areas that are readily accessible by residents for a range of uses and activities e) provides space for service functions such as clothes drying and domestic storage.

3.3 Variation to the Residential Zones Development Code

3. Element 4 – Secondary residences

Substitute

Element 4: Secondary residences

Secondary residences are subject to this element and elements 1 and 6 of the Single Dwelling Housing Development Code. Where there is an inconsistency between this element and the Single Dwelling Housing Development Code, this element shall prevail to the extent of that inconsistency.

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, çempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:
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