

Legislative Assembly

Documents for presentation to the Legislative Assembly under
section 79 of the *Planning and Development Act 2007*

Variation to the Territory Plan No. 350

Changes to the definition of
'single dwelling block'

JULY 2019

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Australian Capital Territory

Planning and Development (Plan Variation No 350) Approval 2019

Notifiable instrument NI2019 -

made under the

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

1 Name of instrument

This instrument is the *Planning and Development (Plan Variation No 350) Approval 2019*.

2 Approval of draft plan variation

(1) I approve under section 76 (2) (a) of the *Planning and Development Act 2007* the draft plan variation No 350 to the Territory Plan.

(2) In this section:

Draft plan variation No 350 to the Territory Plan means the draft plan variation in the schedule.


Mick Gentleman MLA
Minister for Planning and Land Management

24/7/2019

Schedule

(See section 2(2))



ACT
Government

Environment, Planning and
Sustainable Development

Planning and Development Act 2007

**Variation to the
Territory Plan
No 350**

Changes to definition of 'single dwelling
block'

July 2019

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

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1. EXPLANATORY STATEMENT

1.1 Background

The purpose of the residential development codes in the Territory Plan is to provide additional planning, design and environmental controls to support the objectives of the relevant residential zone. Residential codes currently make reference to 'single dwelling blocks' which is a defined term in the Territory Plan. These are blocks that were originally used or leased to be used for a single dwelling, as distinct from blocks that have always contained multi-unit development (i.e. more than one dwelling). The intent of this policy difference is to apply restrictions specific to single dwelling housing for elements such as plot ratio, number of dwellings, block subdivision and consolidation distinct from blocks originally developed or assigned for multi-unit housing.

Variation to the Territory Plan No 306 (V306) made a number of amendments to the residential codes and definitions in the Territory Plan that took effect in July 2013. One of the amendments was to change the term '*standard block*' to '*single dwelling block*' and revise the wording of the definition. The reason for the change was to introduce separate block definitions based on block size - that is: 'compact block' (250m² or less), 'medium block' (larger than 250m² and less than or equal to 500m²) and 'large block' (greater than 500m²). The previous definition of '*standard block*' was simply '...a block with an area greater than 500m² that was originally leased or used for the purpose of *single dwelling housing*.'

The current definition of '*single dwelling block*' post V306 is:

"...a block with one of the following characteristics –

- a) originally leased or used for the purpose of single dwelling housing
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of single dwelling housing."

A situation has since arisen concerning this definition and the application of the Multi-unit Housing Development Code (MUHDC) for multi-unit redevelopment on particular blocks in the older suburbs. These particular blocks were originally leased or developed with two dwellings (one house and one small flat) located on a block. At the time housing in these suburbs was being constructed in the late 1960s and early 1970s, two dwellings (known as a dual occupancy) were permitted to be built on a block, provided the development presented as a single dwelling to the street. The aim of this form of housing was to improve the availability of housing whilst maintaining the mainly single dwelling and low rise, low density residential suburban character.

The purpose of the provisions in the residential development codes pertaining to a specific residential zone are intended to 'control' the density and scale of development in that zone through limitations on aspects such as plot ratio, height, and maximum number of dwellings.

The concern is that the current definition of 'single dwelling block' (and equally the previous definition of 'standard block') does not apply to these original dual occupancy blocks, and consequently some of the provisions in the MUHDC that apply to the neighbouring blocks in the same zone do not apply to them where multi-unit redevelopment is proposed. These include restrictions on plot ratio, block size requirement, replacement dwellings, number of dwellings in each building, and restrictions on attics and basements. Furthermore the residential leases for these blocks do not specify or limit the number of dwellings permitted on the blocks.

For example, for residential leases granted before 5 July 2013, Rule R9 in the MUHDC pertaining to plot ratio restrictions does not apply. Maximum dwelling number restrictions for 'single dwelling blocks' in the RZ1 and RZ2 zones would also not apply to a proposed development, unlike the plot ratio or dwelling number restrictions on neighbouring blocks in the same zone. This has led to multi-unit redevelopment proposals being lodged with the planning and land authority that are contrary to the existing streetscape density and character.

As this was not the intended purpose of the 'single dwelling block' definition (and neither that of the previous 'standard block' definition), this draft variation proposes to adjust the wording in the current 'single dwelling block' definition to clarify the number of dwellings that can be built on these blocks to recognise and include these original scenarios where a dual occupancy with developed on a residential block. It is also proposed to change the name of the definition to refer to a 'standard block' as this also avoids the confusion around the terminology where one or two dwellings can be permitted on a block that is used for single dwelling housing.

The amendment to the definition will exclude blocks with original leases that explicitly permit multi-unit development.

The intent of this draft variation is to provide an interim measure to prevent further unconstrained multi-unit redevelopment occurring in the older established suburbs until the Housing Choices project has been completed. The Housing Choices Project is a broader policy review of housing options in the residential zones.

1.2 Summary of the Proposal

Variation to the Territory Plan No. 350 (V350) has been prepared in response to an issue that has arisen relating to multi-unit redevelopment of certain residential blocks in some older Canberra suburbs. The residential leases on these original blocks do not specify or limit the number of dwellings permitted. During the late 1960s and early 1970s, two dwellings (one house and one small flat) were allowed to be built on these blocks, provided the development presented as a single dwelling to the street. The aim at that time was to improve the availability of housing stock while maintaining the low density suburban character.

The current definition of 'single dwelling block' in the Territory Plan does not apply to these blocks with the extra flat. As a consequence some of the provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan such as restricting plot ratio, block size requirement, replacement dwellings, number of dwellings in each building and restrictions on attics and basements do not apply if multi-unit residential redevelopment is proposed for these blocks. This has resulted in a built form that is not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas.

This variation addresses this situation by changing the title of the definition from '*single dwelling block*' to '*standard block*' and adjusting the wording in the definition to include blocks that were originally leased or used for the purpose of one or two dwellings (or where the result of consolidation, that at least one of the blocks was originally leased or used for the purpose of one or two dwellings). This change will compel redevelopment proposals for these blocks to adhere to the relevant provisions in the MUHDC and ensure that the built form is appropriate and complementary to the streetscape.

The amendment to the definition will exclude blocks with original leases that explicitly permit multi-unit development.

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

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 (the Plan) and to keep the NCP under constant review and to propose amendments to it when necessary.

The Plan, which was published in the Commonwealth Gazette on 21 January 1990, is required to ensure Canberra and the Territory are planned and developed in accordance with their national significance. The *Australian Capital Territory (Planning and Land Management) Act 1988* also requires the Territory Plan is not inconsistent with the Plan. The area covered by this draft variation is within urban areas identified in the Plan.

1.4 Current Territory Plan Provisions

The current Territory Plan definition for 'single dwelling block' is:

Single dwelling block means a *block* with one of the following characteristics –

- a) originally leased or used for the purpose of single dwelling housing
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of single dwelling housing.

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

Draft Variation No 350 (DV350) was released for public comment between 25 May 2018 and 13 July 2018. A consultation notice under section 63 of the *Planning and Development Act 2007* (P&D Act) was published on the ACT Legislation Register on 25 May 2018.

A total of eight written submissions were received, which included three submissions in support of the proposed changes (including two community organisations), four submissions from industry bodies or practitioners and one individual submission.

Main issues raised by submitters included:

- Restrictions on future development opportunities as a result of DV350
- Significant financial impact on lessees of affected blocks
- DV350 contrary to policy shift towards increased density in existing suburbs
- Selective planning policy driven by specific instances of concern by individuals or small groups about particular projects in their suburbs
- Existing planning laws sufficient to prevent high-rise in older suburbs
- Lack of prior consultation on changes proposed in DV350
- Transition arrangements for current development projects should be allowed
- Dual occupancies in new subdivisions adversely affected by new definition

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

1.7 Revisions to the draft variation recommended to the Minister

The following changes were made as a result of public consultation:

The proposed definition of 'standard block' was revised to exclude blocks originally leased or used for the purpose of two dwellings on or after 18 October 1993 which is when the Territory Plan came into effect and new terminology for 'single dwelling housing' was incorporated into lease purpose clauses. This will ensure that, for example, new leases that are created for multi-unit blocks that are specifically to be developed for dual occupancies are not captured in the definition of standard block.

The revised definition of standard block in the recommended version was:

"A standard block is a block with one of the following characteristics –

- a) originally leased or used for the purpose of one dwelling
- b) originally leased or used for the purpose of two dwellings on or before 18 October 1993
- c) created by a consolidation of blocks, at least one of which is covered by a) or b)"

In response to Recommendation 3 made by the Standing Committee on Planning and Urban Renewal in their Report No. 7 and the subsequent Direction of the Minister, changes were made to the proposed definition of 'standard block'.

The definition was revised to correct drafting errors to read as follows:

'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 changes will require consequential amendments to all relevant provisions in various codes in the Territory Plan to replace 'single dwelling block/s' with 'standard block/s'.

2. DRAFT VARIATION

2.1 Variation to the Territory Plan

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

Variation to the Territory Plan Written Statement

1. Single dwelling block / single dwelling blocks

Omit

All references to '*single dwelling block*' and '*single dwelling blocks*' in the Territory Plan

Replace with

'standard block' and *'standard blocks'* respectively.

Variation to the Definitions of Terms

2. Single dwelling block

Substitute

'**Single dwelling block**' definition with new '**Standard block**' definition as follows:

'**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)

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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 τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna t'interpretu, čempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
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REPORT ON CONSULTATION

Draft Variation to the
Territory Plan No 350

Changes to the definition of 'single
dwelling block'

August 2018

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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), the ACT Heritage Council, and responds to the issues raised.

2. COMMENTS FROM THE PUBLIC

2.1 Details

Draft variation No 350 (DV350) Changes to the definition of 'single dwelling block' was released for public comment on 25 May 2018. The closing date for comments was 13 July 2018. The version of DV350 released for public comments is at **Appendix 1**.

A total of eight written submissions were received, which included three submissions in support of the proposed changes (including two community organisations), four submissions from industry bodies or practitioners and one individual submission.

The comments from the NCA are dealt with separately under section 3.2 of this report. Comments from the Conservator of Flora and Fauna, EPA, and the ACT Heritage Council, received and assessed prior to release of the DV350 are addressed in sections 3.3 - 3.5 respectively of this report.

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

2.2 Issues and responses

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

2.2.1 Support for the proposed changes (Submitters 2, 3, 4)

Response

Noted.

2.2.2 Use of terms 'duplex' and dual occupancy' (Submitter 1)

Why does the DV not use the term 'duplex' either to include such buildings or to rule them out?

Response

A dual occupancy is defined in the Territory Plan as two dwellings on a single block, whether unit titled or not. A duplex is not specifically defined in the Territory Plan but is commonly two attached dwellings (with a party wall) but each dwelling

is on its own block. This means both ‘halves’ of the duplex are considered single dwellings.

This draft variation deals specifically with one or two dwellings on the same block (ie. dual occupancies).

2.2.3 New definition of ‘standard block’ bit ambiguous (Submitter 3)

- is ‘used’ meant to relate to the original or current use?
- ‘originally leased’ may include a block which has had a purpose clause change to permit multi-unit housing
- may be better to replace ‘originally’ with ‘lawfully’ before ‘used’

Response

‘Used’ in this definition refers specifically to the original use of the block.

‘Originally leased’ refers specifically to the original lease without any modifications to the purpose clause at another point in time after the original lease was issued.

The leases that are the subject of this draft variation were generally for government built dwellings and the leases pre-date the requirements for building approvals. There is unlikely to be a building approval file for some of the dwellings and therefore the use of the term ‘lawfully’ would not necessarily capture these blocks.

2.2.4 Older blocks used for more than two dwellings (Submitter 3)

The DV does not cover any older blocks which are used for more than two dwellings where this is not a use specifically permitted by the lease. This would probably require another sub-clause, for blocks leased for residential use with no limit on the number of dwellings.

Response

Older blocks used for more than two dwellings would fall into the category of a multi-unit development and would be subject to specific multi-unit housing development controls. The intention of the changes to the definition is to differentiate between standard blocks (blocks intended for single dwelling housing) and non-standard blocks (ie. blocks that were intended for multi-unit development). The controls that apply to redevelopment of standard blocks for multi-unit development do not apply to these original multi-unit sites.

2.2.5 Restrictions on future development opportunities (Submitters 5,6,7,8)

DV350 imposes limitations for future development opportunities on RZ1 and RZ2 blocks (such as Blocks 17 and 18 Section 16 Aranda) that were previously not restricted prior the DV350.

Changes [to the Territory Plan] should be carefully considered to preserve development opportunities previously available to lessees and support the policy initiatives of the time.

Response

The intent of DV350 is to stop unrestricted and inappropriate development occurring in the RZ1 and RZ2 areas where there are specific controls and limitations for the majority of blocks in these zones. DV350 does not impose limitations on future development opportunities on the affected blocks, but rather to ensure these blocks are subject to the same provisions that apply to the majority of blocks in these zones. The lease clauses of the affected blocks were not specifically providing for additional development on the block but rather generic wording that was used at that point in time. The unintended consequence of the wording in these leases is the ability to develop the blocks for a dwelling density above that originally intended.

This issue was identified when redevelopment proposals for certain blocks were received by the planning and land authority that were inconsistent with the development intentions of the zone.

2.2.6 Significant financial impact (Submitters, 5, 6, 7, 8)

Lessees have purchased land (likely to have included a premium on the basis of the unique characteristic of the land) with the reasonable expectation that they would be able to undertake a development in accordance with the planning rules at the time.

Interim effect provisions in DV350 will have a significant financial impact on lessees who now have to reconsider current development proposals to comply with new requirements [eg building smaller townhouses or less townhouses than would have been allowed prior to DV350].

Lessees of affected blocks are being asked to surrender a significant amount of value.

Government should ensure that the proposed changes do not bring about unintended consequences and unfairly restrict development opportunities to existing lessees with current redevelopment proposals in progress.

Response

As in response to 2.2.5, DV350 does not impose limitations on future development opportunities on the affected blocks, but rather to ensure these blocks are subject to the same provisions that apply to the majority of blocks in these zones. The lease clauses of the affected blocks were not specifically providing for additional development on the block but rather generic wording that was used at that point in time. The unintended consequence of the wording in these leases is the ability to develop the blocks for a dwelling density above that originally intended.

2.2.7 Planning policy initiatives and increased housing density (Submitters 5, 6, 8)

There is strong support amongst the community and policy makers for increased density in existing suburbs, to which this proposal runs contrary.

Affected blocks provide a development opportunity that contributes to the broader goals of increasing housing supply (and therefore improving affordability), reducing

Canberra's environmental footprint, and improving transport outcomes through greater density.

DV350 does not support the policy of innovation, renewal, sustainability and affordability as being promoted by the Government [through initiatives such as Housing Choices project, demonstration housing pilot projects etc).

Government should not proceed with DV350 or any other isolated Territory Plan variations that affect housing policy until the outcomes of Housing Choices is finalised.

Consequent amendments that implement Housing Choices policy should be progressed in an orderly and planned manner, supported by a communication strategy for community and industry.

Response

The ACT Housing Choices program is developing policies and delivering built outcomes to support a compact, liveable and sustainable city. It is part of the ACT whole of government priorities for housing choices, affordable housing, demonstration housing projects, urban renewal and regional connection.

The intent of the project is to get the balance right between enabling development to meet the demand for choice, whilst also achieving urban design principles to protect and enhance existing character and amenity in the established suburbs.

DV350 intends to limit ad hoc and piecemeal redevelopment from occurring until the outcomes and recommendations of the Housing Choices project have been implemented. Any changes made to the Territory Plan in response to the Housing Choices project will likely apply to all dwellings in the relevant zone, irrespective of whether the block originally contained 1 or 2 dwellings.

2.2.8 Selective planning policy (Submitter 6)

Planning policy should not be driven by specific instances of concern by individuals or small groups about particular projects in their suburbs.

Response

The planning and land authority has been contacted by community groups who have raised their concerns about multi-unit redevelopment in certain suburbs.

However, the changes in DV350 have not resulted through pressure from individuals or small groups about particular projects in their suburbs but by the planning and land authority's concerns with redevelopment that is contrary to the intent of the zones they are located within.

2.2.9 Existing planning laws sufficient (Submitter 8)

Sufficient planning laws and height restrictions are already in place to prevent high-rise multi-unit developments in older suburbs.

Response

Agreed. However, the planning laws and plot ratio restrictions in the Territory Plan to prevent inappropriate multi-unit redevelopment in older suburbs did not apply to the affected blocks, which is the reason the changes in DV350 were introduced.

2.2.10 Limited development permitted (Submitter 6)

Should a limited amount of development be allowed to occur on these blocks, there is still the opportunity for the planning authority to temper the level of development through the approval process to ensure that the rights of builders and developers are upheld, while being sympathetic to the character of the suburbs.

Response

The outcomes and implementation of the recommendations from the Housing Choices project will inform the changes to the Territory Plan to allow an acceptable level of redevelopment in the residential areas whilst maintaining the character of the suburbs.

2.2.11 Lack of prior consultation (Submitters 5,6, and 8)

Public and industry stakeholder consultation should have occurred prior to any variation being implemented. This would prevent existing owners from having to recommence the design and planning process at significant cost.

Response

DV350 was released with interim effect without prior consultation to prevent development applications being received on these blocks for redevelopment that did not support or complement the existing density and character of the older suburbs in which they are located.

2.2.12 Transition period for current development projects (Submitters 7, 8)

Various transitional arrangements were suggested which allowed owners who had bought blocks prior to 25 May 2018 a period of time (between 6 months to one year) to lodge a development application and have it assessed under the pre-DV350 planning rules and requirements.

Planning authorities work with applicants throughout the approval process to ensure that developments meet the character of the relevant suburbs, with potential reference to the newly constituted Design Review Panel.

Response

The planning intent for the blocks covered by DV350 has been that they are required to comply with the same provisions as their neighbouring blocks. Delaying the application of the changes in DV350 would enable more inappropriate development to occur particularly in the RZ1 and RZ2 zones.

2.2.13 Dual occupancies in new subdivisions affected (Submitter 7)

Certain blocks in new subdivisions have been sold on the basis of being specifically for dual occupancy with a 65% plot ratio and able to be unit titled. Unintended effect of DV350 is that this is no longer permitted as these blocks fall within the new definition of 'standard block'.

Response

The recommended version of DV350 submitted to the Minister includes a revised definition which excludes blocks leased for two dwellings on or after 18 October 1993 (the date when the Territory Plan came into effect and Territory Plan terminology for single dwelling housing was incorporated into lease purpose clauses). This will mean the changes proposed in DV350 will no longer apply to the multi-unit sites (such as surveillance units) mentioned above.

3. COMPLIANCE WITH THE PLANNING AND DEVELOPMENT ACT 2007

3.1 Release for Public Comment (section 63)

DV350 was made available for public comment from 25 May 2018 to 13 July 2018 and a consultation notice under s 63 of the P&D Act was published in the ACT Legislation Register on 25 May 2018.

3.2 National Capital Authority (section 61 (b) (i))

The NCA provided the following comments:

“The NCA has no comment to make on DV350.”

Response

Noted.

3.3 Conservator of Flora and Fauna (section 61 (b) (ii))

The Conservator made the following comments:

“In accordance with Section 61(b) of the *Planning and Development Act 2007* I advise that I have examined Draft Variation No 350, Changes to Definition of ‘Single Dwelling Block’, that proposes to amend the definition of single dwelling block to ‘standard block’ and adjusting the wording to ensure the desired urban outcomes.

There are no issues of concern to the Conservator of Flora and Fauna with the proposed amendment.”

Response

Noted.

3.4 Environment Protection Authority (section 61 (b) (iii))

The EPA made the following comments:

“The proposed variation is supported.”

Response

Noted.

3.5 ACT Heritage Council (section 61 (b) (iv))

The ACT Heritage Council made the following comments:

“Review of the ACT Heritage Register identifies that the term ‘single dwelling block’ is not referenced in any Heritage Guidelines for registered heritage places.

The Council also notes that the maximum plot ratios, maximum building heights and minimum setbacks outlined in the '*Single Dwelling Housing Development Code*' would apply to 'standard blocks', aiding in the retention of the existing low density suburban character in areas adjacent to registered heritage places.

In light of the above, the Council considers that the proposed variation would not diminish the heritage significance of any heritage places, and raises no objection to DV350 as Heritage Act 2004 provisions will continue to apply to blocks registered on the ACT Heritage Register."

Response

Noted.

3.6 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 in the ACT Legislation Register stating that DV350 has been submitted to the Minister and that the documents are available for public inspection.

4. APPENDICES

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APPENDIX 1
Draft variation 350 public release version

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APPENDIX 2
Copies of public comments received on draft variation 350



ACT
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Environment, Planning and
Sustainable Development

Planning and Development Act 2007

**Draft
Variation to the
Territory Plan
No 350**

Changes to definition of 'single dwelling
block'

May 2018

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

Draft Variation to the Territory Plan No. 350 (DV350) has been prepared in response to an issue that has arisen relating to multi-unit redevelopment of certain residential blocks in some older Canberra suburbs. The residential leases on these original blocks do not specify or limit the number of dwellings permitted. During the late 1960s and early 1970s, two dwellings (one house and one small flat) were allowed to be built on these blocks, provided the development presented as a single dwelling to the street. The aim at that time was to improve the availability of housing stock while maintaining the low density suburban character.

The current definition of 'single dwelling block' in the Territory Plan does not apply to these blocks with the extra flat. As a consequence some of the provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan such as restricting plot ratio, block size requirement, replacement dwellings, number of dwellings in each building and restrictions on attics and basements do not apply if multi-unit residential redevelopment is proposed for these blocks. This has resulted in a built form that is not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas.

This draft variation proposes to address this situation by changing the title of the definition from '*single dwelling block*' to '*standard block*' and adjusting the wording in the definition to include blocks that were originally leased or used for the purpose of one or two dwellings (or where the result of consolidation, that at least one of the blocks was originally leased or used for the purpose of one or two dwellings). This change will compel redevelopment proposals for these original dual occupancy blocks to adhere to the relevant provisions in the MUHDC and ensure that the built form is appropriate and complementary to the streetscape.

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 which 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 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 non-urban), precincts and overlays. The zone, precinct and overlay requirements are detailed in the volumes of 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 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 the findings 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 This document

This document contains the background information in relation to the proposed variation. It comprises the following parts

Part 1 This Introduction

Part 2 An Explanatory Statement, which gives reasons for the proposed variation and describes its effect

Part 3 The Draft Variation, which details the precise changes to the Territory Plan that are proposed.

1.4 Public Consultation

Written comments about the draft variation are invited from the public by **COB 13 July 2018**.

Comments should include reference to the draft variation and be addressed to the Territory Plan Section. 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:

- emailed to terrplan@act.gov.au
- mailed to Territory Plan Section, GPO Box 158, Canberra, ACT 2601
- delivered to the Access Canberra Customer Service Centre at 16 Challis Street, Dickson

Copies of written comments 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 customer service centre in Dickson and may be published on EPSDD's website. Comments made available will not 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 Customer Service Centre, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm. Please call 6207 1923 to arrange a copy for purchase.

2. EXPLANATORY STATEMENT

2.1 Background

The purpose of the residential development codes in the Territory Plan is to provide additional planning, design and environmental controls to support the objectives of the relevant residential zone. Residential codes currently make reference to 'single dwelling blocks' which is a defined term in the Territory Plan. These are blocks that were originally used or leased to be used for a single dwelling, as distinct from blocks that have always contained multi-unit development (i.e. more than one dwelling). The intent of this policy difference is to apply restrictions specific to single dwelling housing for elements such as plot ratio, number of dwellings, block subdivision and consolidation distinct from blocks originally developed or assigned for multi-unit housing.

Variation to the Territory Plan No 306 (V306) made a number of amendments to the residential codes and definitions in the Territory Plan that took effect in July 2013. One of the amendments was to change the term '*standard block*' to '*single dwelling block*' and revise the wording of the definition. The reason for the change was to introduce separate block definitions based on block size - that is: 'compact block' (250m² or less), 'medium block' (larger than 250m² and less than or equal to 500m²) and 'large block' (greater than 500m²). The previous definition of '*standard block*' was simply '...a block with an area greater than 500m² that was originally leased or used for the purpose of *single dwelling housing*.'

The current definition of '*single dwelling block*' post V306 is:

"...a block with one of the following characteristics –

- a) originally leased or used for the purpose of single dwelling housing
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of single dwelling housing."

A situation has since arisen concerning this definition and the application of the Multi-unit Housing Development Code (MUHDC) for multi-unit redevelopment on particular blocks in the older suburbs. These particular blocks were originally leased or developed with two dwellings (one house and one small flat) located on a block. At the time housing in these suburbs was being constructed in the late 1960s and early 1970s, two dwellings (known as a dual occupancy) were permitted to be built on a block, provided the development presented as a single dwelling to the street. The aim of this form of housing was to improve the availability of housing whilst maintaining the mainly single dwelling and low rise, low density residential suburban character.

The purpose of the provisions in the residential development codes pertaining to a specific residential zone are intended to 'control' the density and scale of development in that zone through limitations on aspects such as plot ratio, height, and maximum number of dwellings.

The concern is that the current definition of 'single dwelling block' (and equally the previous definition of 'standard block') does not apply to these original dual occupancy blocks, and consequently some of the provisions in the MUHDC that apply to the neighbouring blocks in the same zone do not apply to them where multi-unit redevelopment is proposed. These include restrictions on plot ratio, block size requirement, replacement dwellings, number of dwellings in each building, and restrictions on attics and basements. Furthermore the residential leases for these blocks do not specify or limit the number of dwellings permitted on the blocks.

For example, for residential leases granted before 5 July 2013, Rule R9 in the MUHDC pertaining to plot ratio restrictions does not apply. Maximum dwelling number restrictions for 'single dwelling blocks' in the RZ1 and RZ2 zones would also not apply to a proposed development, unlike the plot ratio or dwelling number restrictions on neighbouring blocks in the same zone. This has led to multi-unit redevelopment proposals being lodged with the planning and land authority that are contrary to the existing streetscape density and character.

As this was not the intended purpose of the 'single dwelling block' definition (and neither that of the previous 'standard block' definition), this draft variation proposes to adjust the wording in the current 'single dwelling block' definition to clarify the number of dwellings that can be built on these blocks to recognise and include these original dual occupancy scenarios. It is also proposed to change the name of the definition to refer to a 'standard block' as this also avoids the confusion around the terminology where one or two dwellings can be permitted on a block that is used for single dwelling housing.

The proposed definition of 'standard block' is "...a block with one of the following characteristics –

- a) originally leased or used for the purpose of one or two dwellings.
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of one or two dwellings."

These changes do not include original non-single dwelling blocks specifically reserved for lawful multi-unit development. The intention was for those blocks to be excluded from density restrictions (plot ratio and dwelling numbers) applying to single dwelling housing blocks.

This solution is being proposed to provide an interim measure to prevent further unconstrained multi-unit redevelopment occurring in the older established suburbs until the Housing Choices project has been completed. The Housing Choices Project is a broader policy review of housing options in the residential zones.

The changes proposed in this draft variation will require consequential amendments to all relevant provisions in the residential development codes in the Territory Plan to replace 'single dwelling block' with 'standard block'.

2.2 Current Territory Plan Provisions

The current Territory Plan definition for 'single dwelling block' is:

Single dwelling block means a *block* with one of the following characteristics –

- a) originally leased or used for the purpose of single dwelling housing
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of single dwelling housing.

2.3 Proposed Changes to the Territory Plan

DV350 proposes to amend the definition of 'single dwelling block' as follows:

~~Single dwelling block~~ **Standard block** means a *block* with one of the following characteristics –

- a) originally leased or used for the purpose of ~~single dwelling housing~~ one or two dwellings.
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of ~~single dwelling housing~~ one or two dwellings.

Consequential changes will be made throughout the Territory Plan to replace all references to '*single dwelling block*' with '*standard block*'.

2.4 Reasons for the Proposed Draft Variation

The reasons for the draft variation are as follows:

- To address concerns regarding the application of the current definition of 'single dwelling blocks' to some residential leases in the older suburbs of Canberra

- To ensure that by changing the definition to include blocks that were originally allowed two dwellings on them, the relevant development controls in the Multi Unit Housing Development Code will apply to enable multi-unit redevelopment of these blocks appropriate to the zone.
- To provide an interim measure to prevent unrestricted multi-unit redevelopment occurring in the residential RZ1 and RZ2 areas until the Housing Choices Project has been completed.

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 required 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 following Territory Plan - Statement of Strategic Directions in terms of environmental, economic and social sustainability and spatial planning and urban design principles:

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 2012

The draft variation is also consistent with the ACT Planning Strategy 2012 Strategy 6:

“Invest in design that will ensure urban change creates amenity, diversity, a more sustainable built form and adds to Canberra’s landscape setting.”

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 No 350 have interim effect, and apply to development applications lodged on or after 25 May 2018.

During the period of interim effect the ACT Government must not do or approve anything that would be inconsistent with the Territory Plan as if it were amended by the draft variation. Where there is an inconsistency between provisions in the current Territory Plan and provisions in the draft variation, then the draft variation takes precedence for the extent of the inconsistency.

Interim effect will end on the day the earliest of the following happens:

- i. the day the public availability notice under section 70 for the draft variation being recommended to the Minister is notified in accordance with the Legislation Act
- ii. the day the draft variation, or the corresponding variation, is withdrawn under section 68 (1)(b) or section 76 (3)(b)(v)
- iii. 1 year after the date of the consultation notice.

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 11 May 2018:

“The NCA has no comment to make on DV350.”

Response

Noted.

Conservator of Flora and Fauna

The Conservator of Flora and Fauna made the following comments on 21 April 2018:

“In accordance with Section 61(b) of the *Planning and Development Act 2007* I advise that I have examined Draft Variation No 350, Changes to Definition of ‘Single Dwelling Block’, that proposes to amend the definition of single dwelling block to ‘standard block’ and adjusting the wording to ensure the desired urban outcomes.

There are no issues of concern to the Conservator of Flora and Fauna with the proposed amendment.”

Response

Noted.

Environment Protection Authority

The Environment Protection Authority provided the following comments in May 2018

“The proposed variation is supported.”

Response

Noted.

Heritage Council

The Heritage Council provided the following comments on 24 April 2018:

“Review of the ACT Heritage Register identifies that the term ‘single dwelling block’ is not referenced in any Heritage Guidelines for registered heritage places.

The Council also notes that the maximum plot ratios, maximum building heights and minimum setbacks outlined in the ‘*Single Dwelling Housing Development Code*’ would apply to ‘standard blocks’, aiding in the retention of the existing low density suburban character in areas adjacent to registered heritage places.

In light of the above, the Council considers that the proposed variation would not diminish the heritage significance of any heritage places, and raises no objection to DV350 as Heritage Act 2004 provisions will continue to apply to blocks registered on the ACT Heritage Register.”

Response

Noted.

Land Custodian

There is no land custodian for this draft variation.

3. DRAFT VARIATION

3.1 Variation to the Territory Plan

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

Variation to the Territory Plan Written Statement

1. Single dwelling block / standard block

Replace all references to '*single dwelling block*' in the Territory Plan Written Statement with '*standard block*'

Variation to the Definitions of Terms

2. Single dwelling block / standard block

Substitute 'single dwelling block' definition with 'standard block' definition as follows:

Standard block means a *block* with one of the following characteristics –

- a) originally leased or used for the purpose of one or two dwellings
- b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of one or two dwellings.

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 τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, òmpel:
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

From: Brian & Pat Stone [REDACTED]
Sent: Tuesday, 29 May 2018 5:03 PM
To: Terrplan
Subject: Comment on Draft Variation to the Territory Plan No 350

Follow Up Flag: Follow up
Flag Status: Completed

This comment is both a suggestion for clarifying the draft document and a request for information.

The background is that I own and rent out a dual occupancy building, with one two-bedroom flat and one single-bedroom flat, in another suburb. I have always called it a "duplex" and this term seems to be widely understood. A quick scan of DV350 has not indicated any way in which my duplex does not match the draft proposal.

So my question is, why does the draft not use the term "duplex", either to include such buildings or to rule them out? I think the document would be more meaningful to numerous owners in Canberra if this were done.

Yours sincerely
Brian J Stone.

| [REDACTED] | Brian J Stone PhD
| FIEAust Canberra Australia |
| [REDACTED]
● [REDACTED] ●
● [REDACTED] Weetangera 2614 |
|

From: David Denham [REDACTED]
Sent: Thursday, 31 May 2018 3:46 PM
To: Terrplan
Subject: Draft Variation 350

Follow Up Flag: Follow up
Flag Status: Completed

Fully supported.
Not sure why it took so long to deal with this issue.

David Denham

[REDACTED]
Griffith ACT 2603
Australia
[REDACTED]
[REDACTED]

To whom it may concern

TERRITORY PLAN DRAFT VARIATION NO. 350 (DV350)

This submission is by the Kingston and Barton Residents Group (KBRG), which is a community association representing the residents of these Inner South Canberra suburbs.

KBRG is committed to enhancing the social, residential, environmental, cultural and economic qualities of the area to ensure the highest standards of livability. The objectives of KBRG are to:

- 1) Promote a healthy social, cultural and economic environment for Kingston and Barton
- 2) Improve, strengthen and promote Kingston and Barton as a safe, inviting and connected community
- 3) Positively contribute to, and enhance the character and community spirit of the area
- 4) Provide access to information of interest to residents and an easy accessible forum for residents to raise and pursue issues of concern
- 5) Ensure all members of the community, particularly the more vulnerable (i.e.: children, elderly, disadvantaged), are adequately represented in matters impacting the area
- 6) Provide an entity to represent, negotiate and lobby the ACT and Commonwealth Governments and their relevant agencies, tribunals and courts on matters of concern to Kingston and Barton residents, with particular reference to urban planning and community assets
- 7) Arrange and coordinate activities and projects as required

The KBRG supports the intention of DV350, which it understands is to address a 'loophole' in the Territory Plan where residential leases issued up to the 1970's did not specify the number of dwellings permitted and in some cases two dwellings were permitted on such leases.

The current definition of "single dwelling block" only applies to a block "originally leased or used for the purpose of *single dwelling housing*" which is defined as "the use of land for residential purposes for a *single dwelling* only". Residential leases with no restriction on the number of dwellings are not covered by the current definition of "single dwelling block" so various provisions of the Multi Unit Housing Development Code do not apply to multi-unit residential development on blocks with those unrestricted leases. As the explanatory report notes: "This has resulted in a built form that is not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas."

To address this situation DV350 proposes to amend the definition of "*single dwelling block*" with a new title: "*standard block*", which is to mean a block "originally leased or used for the purpose of one or two dwellings".

The KBRG feels that the proposed definition is an improvement on the current one but may be a little ambiguous, eg. is 'used' meant to relate to the original or current use? Also, "originally leased" may include a block which has had a purpose clause change to permit multi-unit housing. It may be better to delete the word 'originally' and insert 'lawfully' before 'used'.

The draft variation also does not cover any older blocks which are used for **more than two** dwellings where this is not a use specifically permitted by the lease. This would probably require another sub clause, eg.: "c) leased for residential use with no limit on the number of dwellings."

Thank you

SIGNED

Rebecca

13 July 2018



P.O. Box 4082
HAWKER ACT 2614
secretary@friendsofhawkervillage.com
0435 534 998

COVERING SCULLIN, PAGE, WEETANGERA & HAWKER

Territory Plan Section,
GPO Box 158,
Canberra, ACT 2601

By email: terrplan@act.gov.au

DRAFT VARIATION TO THE TERRITORY PLAN NO. 350

Changes to definition of 'single dwelling block'

May 2018

The Friends of Hawker Village Incorporated (FOHV) welcome the opportunity to comment on this draft variation. We also wish to express our appreciation of the intention to ensure that certain unintended consequences of provisions in the Territory Plan 2008 affecting only a few suburbs are identified and covered by appropriate regulation.

The proposed change of the relevant block definition from 'single dwelling block' to 'standard block originally leased or used for the purpose of one or two dwellings' definitely addresses the issue of concern to FoHV. This was the existence of random blocks in RZ1 and RZ2 areas that contain a single house-sized building comprising a two-bedroomed residence and a single bedroomed flat on blocks not specifically identified for multi-dwelling use at time of sale, and under one ownership.

FoHV has the strong view that treatment of these blocks under the same rules as neighbouring blocks containing a single dwelling house building should continue into the future in both RZ1 and RZ2.

Contact: Robyn Coghlan, FoHV Secretary, phone 6254 0487 / 0435 534 998



site within a plot ratio of 65%; this was able to be considered at the time of this application. We understand this is no longer the case as the changes in DV350 reduce this opportunity to 50% plot ratio and limit the unit yield subject to the provisions in Table A2 and A3 of the Multi Unit Housing Development Code.

We further note that this draft variation and the policy changes it introduces, have not been subject to broad community and stakeholder discussion or consultation and provide the Lessee no opportunity to consider the impact of these changes to the project and indeed the recently purchased development project. This results in this project no longer being viable with a direct and significant financial loss and hardship for the proponent.

It is also of concern that this draft variation was introduced with interim effect to prevent potentially unique and innovative multi-unit redevelopment opportunities occurring in the residential RZ1 and RZ2 areas at the same time the ACT Government is progressing Housing Choices expressions of interest for pilot projects. It does not appear that DV350 while not a broad ranging policy change effective over a large range of sites in Canberra, supports the policy of innovation, renewal, sustainability and affordability as being promoted by the Government. It is disappointing to see this change pushing a homogenous development context across low density residential zones at a time where there is such a strong call for innovation, sustainability and affordability in the suburbs of Canberra. The effect of the policy change will not impact on a large number of leases and the development outcome change may not be large; but the effect of this change of current active development projects are devastating. In the context of the subject site this change will impact on the gross realisation in excess of \$2,000,000, effectively rendering the project unviable and resulting in a loss to the proponent based on the May 2018 purchase of the approved lease variation.

Whilst the ongoing review of the Territory Plan is supported to reflect ongoing change, it is important that any changes made are carefully considered to preserve development opportunities previously available to Lessees and to support the policy initiatives of the time. To ensure the viability of future redevelopment in cases such as this, it is critical that the ACT government ensure that the proposed changes do not bring about unintended consequences and unfairly restrict development opportunities to existing Lessees that is within the development cycle of lease variation and design and siting approvals which can often take 12 months to come to fruition. As outlined in this submission, DV350 imposes limitations for future development opportunities for RZ2 blocks (such as Blocks 17 and 18 Section 16 Aranda) that were previously not restricted prior to the implementation of DV350 and with no visibility or consultation relating to the impending changes the Lessee of these Blocks is now in an impossible position.



We request that the matter be carefully considered and that as a minimum, the Lessee be provided the opportunity to complete the development that was foreshadowed by the approved Lease Variation.

We also request that consideration be given to the Housing Choices policy initiative of the Government; DV350 appears to go against the core of this policy which promote a broader approach to the application of the planning controls for residential zones to provide flexibility for improved development outcomes subject to fulfilling design objectives.

Please feel free to contact me if you have any questions in relation to the above.

Yours sincerely

Pieter van der Walt
Director
Canberra Town Planning



79 Constitution Avenue
Canberra ACT 2612
t (02) 6245 1300
f (02) 6257 5658
hia.com.au

9 July 2018

Territory Plan Section
Environment, Planning & Sustainable
Development Directorate
GPO Box 158
CANBERRA ACT 2601

terrplan@act.gov.au

RE: Draft Variation 350

The Housing Industry Association (HIA) welcomes the opportunity to comment on Draft Variation 350 to the Territory Plan. While appreciating the rationale for the variation, the housing industry has the following concerns:

- there are currently a number of planning reviews underway, meaning that ad hoc changes risk further confusing an already complex system;
- it would appear that there is strong support amongst the community and policy makers for increased density in existing suburbs, to which this proposal runs contrary; and,
- the decision to apply interim effect to draft variation in accordance with *Planning and Development Act 2007*, has effectively made this decision retrospective, impacting current holders of these blocks that are in various stages of development.

Existing Reviews

There are a number existing planning related projects currently underway or foreshadowed in the ACT, that are yet to be concluded. These include:

- Housing Choices discussion paper (2017)
- Affordable Housing Strategy (2017)
- Demonstration Housing Project (2018)
- Collaboration Hub (2018)
- Planning Refresh (2018)
- Review of the Territory Plan (2019)

With such a wide ranging group of reviews currently being undertaken - influencing both the strategic direction of planning in the ACT as well as having implications on a day to day basis for business and community - HIA questions the decision to propose this variation outside of these broader processes.

Through the planning directorate, the ACT government has been transparent in these consultation processes, to attempt to deliver a more unified approach to planning policy in the Territory.

HIA is concerned that DV350 risks undermining this wider strategic and cooperative approach to policy development, and returning to an environment where planning policy is determined through a piecemeal and politicised approach. Planning policy should not be driven by specific instances of concern by individuals or small groups about particular projects in their suburbs.

Increased Density and Housing Choice

A key theme to both the government's climate change and housing strategy has been to increase density within the inner suburbs.

It is argued that the group of blocks not currently captured by the definition of a 'single dwelling block' are the result of an anomaly and are causing an outcome that was not foreshadowed. However, they nonetheless provide a development opportunity that contributes to the broader goals of increasing housing supply (and therefore improving affordability), reducing Canberra's environmental footprint, and improving transport outcomes through greater density.

In a more efficient planning system of the future, a much greater range of blocks might have the opportunity for sustainable development that promotes increased density, on their merit. This would potentially provide even more opportunities and greater transparency. However, these mooted changes are not guaranteed, while on the other hand, individuals are being asked to surrender a significant amount of value in the DV350 blocks.

Should a limited amount of development be allowed to occur on these blocks, there is still the opportunity for the planning authority to temper the level of development through the approval process to ensure that the rights of builders and developers are upheld, while being sympathetic to the character of the suburbs.

Interim Effect

Despite our concerns about the draft variation more broadly, HIA accepts it is not unusual for government to attempt to limit the opportunity for 'gaming' the system prior to the conclusion of consultation, through land purchases and 'speculative' development applications.

Nonetheless, the application of an interim effect for the decision has left a small number of businesses exposed to financial loss, whereby they have purchased land with the reasonable expectation that they would be able to undertake a development in accordance with the planning rules at the time.

While these builders or developers may not have submitted a development application, they have expended significant funds to progress these plans – often in the tens of thousands of dollars – with consultants and architects, without access to the knowledge that DV 350 was being drafted.

Equally, the investment in the land itself was likely to have included a premium on the basis of the unique characteristic of the land, which will be lost through no fault of their own, if the interim effect of this proposed change stands as is.

To manage the requirements of the government and broader community for the character of suburbs to be protected, while not unfairly impacting on small businesses in the building and development industry, HIA proposes the following:

- builders or developers that own blocks that will be affected by DV350, will be exempt from the variation, provided that:
 - they purchased the block prior to 25 May 2018, and
 - the development application is submitted before 1 January 2019, and the application is lodged with all requisite documentation required to pass the completeness check before 1 July 2019.
- Planning authorities work with applicants throughout the approval process to ensure that developments meet the character of the relevant suburbs, with potential reference to the newly constituted Design Review Panel.

HIA notes that over the past two years, the housing industry has faced significant imposts with respect to infill development, including the water and sewerage Capital Contributions Charge and the increase in the Lease Variation Charge.

While industry did not support either, it was encouraging that both the water utility and Territory Government worked with industry to formulate a fair implementation process that reflects the reality of the development process.

Investigations by HIA suggest that this change will impact on a relatively small number of proposed developments. However, while the overall number is limited, the magnitude of the impact on the affected small to medium businesses is likely to be very significant.

Please do not hesitate to contact me if you require additional information.

Yours sincerely



Greg Weller
Executive Director ACT/Sthn NSW

From: Terrplan
Sent: Thursday, 26 July 2018 11:37 AM
To: Terrplan
Subject: FW: DRAFT VARIATION DV350& Block 18 Section 127 Holt and Block 21 Section 128 Holt [SEC=UNCLASSIFIED]

To: the Territory Plan Section of EPSDD

Dear Alix

RE: DRAFT VARIATION 350 and Block 18 Section 127 Holt & Block 21 Section 128 Holt

As discussed by phone yesterday can you please add this submission to the objections to DV350.

1. The above blocks have been purchased by my client (Capital Homes/Woodhaven Investments) and have been significantly devalued because of an unintended effect of DV350.
2. The two blocks were offered for sale and purchased on the basis of being two multi-unit blocks that would have a 65 % plot ratio and would be able to be unit titled.
3. With the effect of DV350 the two units than can be placed on these blocks will be much smaller than what was possible before the DV350 change and not worthwhile to produce.
4. The sale did not take account of DV350 and the blocks have become 'standard blocks' or old definition 'single dwelling blocks' in RZ1. Once the new definition is applied all blocks originally leased for one or 'two dwellings' become single dwelling or standard blocks. The leases for these blocks are to be issued for two units. The plot ratio changes from 65% from R9 of the Multi Unit Housing Development Code (MUHDC) to the sliding scale plot ratio from R6 of the MUHDC to around 30 to 35%.
5. The current designs have been under preparation for months and are now ready for lodgement but they now do not comply. If the sliding scale plot ratio is applied the units would be so small as to be unviable.
6. The blocks also cannot be sold separately or unit titled as could have done before the DV350 change because of R38 of the Residential Zones Development Code.

Can you please review this as a matter of urgency and make an allowance in DV350 to allow it not to apply to new Greenfields blocks so that these severe devaluing restrictions do not apply? This would be consistent with the original intention for the sale of these blocks.

We wish to submit these DAs now to keep my clients work flow in process and to do so some immediate action to rectify the situation is required. It would be appreciated if we did not have to wait the many months that this process normally takes for a resolution.

Can you please provide an email receipt for this submission?

Sincerely

Ted Streatfeild RPIA
Resolution Planning
Town Planning Consultancy

02 6404 7143

www.resolutionplanning.com.au

26 July 2018

Territory Plan Section
Environment, Planning and Sustainable Development Directorate
GPO Box 158
CANBERRA ACT 2601

By email only: terrplan@act.gov.au

Dear Sir/Madam

Draft Territory Plan Variation 350

Thank you for allowing Master Builders ACT (**Master Builders**) the opportunity to make a submission regarding the Draft Variation 350 to the Territory Plan.

As you would be aware, Master Builders is the peak industry body representing Canberra's building and construction industry. Our members are predominantly small businesses and collectively employ around 14,000 Canberrans.

DV350

We note that the DV350 discussion paper states that the broader community has little to no desire for high-rise multi-unit developments to feature in some of our older and more established suburbs, such as Aranda. Whilst the implementation of DV350 (with interim effect) may provide further legislative instruments to prevent these multi-unit developments from being approved in established suburbs, Master Builders is of the view that sufficient planning laws and height restrictions are already in place that prevent this from occurring.

In our experience, the development applications that are lodged for the established suburbs are not for large scale high-rise developments (which we consider would be excluded already under the Territory Plan requirements) but are typically for the development of medium scale 3 to 5 townhouses. The developers in these instances are very unlikely to be national corporations and are usually everyday people in the ACT attempting to get ahead, whether it be to invest personally or perhaps establish a self-managed superannuation fund.

Master Builders is concerned about the impact of the implementation of DV350 (with interim effect) on these people and the broader ACT economy. Our concerns can be summarised as follows:

- The interim effect provisions do not consider those people who may have been investing heavily in designs and plans for a significant period, only to find that they will no doubt have to start the process again or significantly modify the existing plans, to comply with the new requirements.
- The changes proposed by DV350 have pre-empted the outcome of the Housing Choices consultation. This has resulted in a mixed message being sent to the community and industry about the government's housing policy and support, or otherwise, for alternative forms of housing (such as townhouses) in residential areas.
- Whilst we understand that the ACT Government wished to avoid a situation where they announced their intended changes and then experienced a rush of development applications to avoid being covered by the new requirements, we believe that public and industry stakeholder consultation should have occurred prior to any variations being implemented. This would prevent existing Owners from having to recommence the design and planning process, which occurs at a significant cost to the Owner.
- **Master Builders calls for a "transition" period, where Owners who can establish that they have been working towards lodging a development application prior to 25 May 2018, would have their development application assessed based on the pre-DV350 requirements.**
- The implementation of DV350 and the essentially retrospective application may be considered to be a denial of natural justice and procedural fairness to a number of applicants who are working towards the pre-DV350 requirements. In that vein, we urge EPSDD to exercise discretion when assessing development applications for those Owners who can clearly demonstrate that they have been working towards the lodgment of a development application.
- We are also interested in whether EPSDD have considered the flow-on consequences if several development applications are refused due to the implementation of DV350, and additional review applications are made to ACAT. **Does the ACAT have the resources to adequately respond to an increased number of reviews?**

Consequences and Examples

The implementation of DV350 does not prevent high-rise multi-unit developments from being built in established suburbs, as this is already prevented by current planning laws.

For example, a couple in their mid-50s purchased an 900m² block in Aranda. The block is zoned RZ2. The couple intended to build four reasonably-sized townhouses, which could have been 146.25m² in size (allowing for 65% plot ratio requirements). Under the DV350 requirements, they are now able to build either four townhouses of 112.5m² each (which is closer to the size of an apartment), or only build three townhouses at 150m² each. This will have a significant financial impact on the couple as either they need to build smaller townhouses or build one less.

The implementation of DV350 provides a disincentive to residents in the ACT to innovate and build. Take another example, where a young builder in his 30s has purchased a block of land of 800m². Prior to DV350, he was able to build townhouses up to the total area of 520m². This could

have been three large townhouses of 173m² each, or perhaps four medium-sized townhouses of 130m² each. Following the implementation of DV350, the builder is now only able to build up to a total area of 400m². After looking at his likely costs and profit for building less (or smaller) townhouses, the builder decides to build a luxury home close to 400m² as he considers this is the only way to ensure a profit is made.

Master Builders has had a number of members approach us providing examples not dissimilar to those outlined above. Not only do those examples highlight the consequences for the individuals that own the affected blocks, but also the key issue of housing affordability in the Territory that needs to be addressed.

Recommendations

In order for government to respond to the concerns raised in this submission, and to balance the need to provide affordable and diverse forms of housing with the desire of the community to avoid over-development in residential areas, we recommend the following:

- A six month transition period be provided, which allows for Owners who have already committed to development proposals (and can provide evidence of such commitment) to lodge and have their development application assessed under the pre-DV350 planning rules and requirements.
- Government not proceed with DV350, or any other isolated Territory Plan Variations that affect housing policy, until the outcome of the Housing Choices policy is finalised. This would allow a suite of Territory Plan amendments that implement the Housing Choices policy to be progressed in an orderly and planned manner, supported by a communication strategy for community and industry.

If you would like to discuss any aspects of our submissions please do not hesitate to contact me on (02) 6175 5900.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Hopkins', with a long horizontal flourish extending to the right.

Michael Hopkins
Master Builders ACT



ACT
Government

2019

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON
PLANNING AND URBAN RENEWAL REPORT NO. 7 - Draft Variation
to the Territory Plan No 350 Changes to the definition of 'single
dwelling block'**

**Presented by
Mick Gentleman MLA
Minister for Planning and Land Management**

Introduction

The Government thanks the Standing Committee on Planning and Urban Renewal for the recommendations put forward in Report 7 Draft Variation to the Territory Plan No 350 Changes to the definition of 'single dwelling block'.

Draft Variation to the Territory Plan No. 350 (DV350) was prepared in response to matters involving multi-unit redevelopment of certain residential blocks in some older Canberra suburbs. The residential leases on these particular original blocks do not specify or limit the number of dwellings permitted. By way of background, during the late 1960s and early 1970s, two dwellings (one house and one small flat) were allowed to be built on these blocks, provided the development presented as a single dwelling to the street. The aim at that time was to improve the availability of housing stock while maintaining the low density suburban character.

The current definition of 'single dwelling block' in the Territory Plan does not apply to these blocks with the extra flat. As a consequence some of the provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan such as restricting plot ratio, block size requirement, replacement dwellings, number of dwellings in each building and restrictions on attics and basements do not apply if multi-unit residential redevelopment is proposed for these blocks. This has resulted in some cases in a built form that is not in keeping with the neighbouring suburban residential development and the low density streetscape character of the surrounding areas.

DV350 proposes to address this situation by changing the title of the definition from 'single dwelling block' to 'standard block' and adjusting the wording in the definition to include blocks that were originally leased or used for the purpose of one or two dwellings (or where the result of consolidation, that at least one of the blocks was originally leased or used for the purpose of one or two dwellings). This change will compel redevelopment proposals for these original dual occupancy blocks to adhere to the relevant provisions in the MUHDC and ensure that the resulting built form is appropriate and complementary to the streetscape.

Recommendations

No.	Recommendations
Recommendation 1	The Committee recommends that, subject to the following recommendations, Draft Variation 350: Changes to the definition of 'single dwelling block' be approved.
Recommendation 2	The Committee recommends that the Environment, Planning and Sustainable Development Directorate consider a review of references to the Planning and Development Act 2007 in Draft Variation 350: Changes to the definition of 'single dwelling block' and in future draft variations.
Recommendation 3	The Committee recommends that the ACT Government reword the proposed definition of a ' <i>standard block</i> ' so that drafting errors are corrected.

ACT Government Response to the Standing Committee on Planning and Urban Renewal Report No. 7 - Draft Variation to the Territory Plan No 350 Changes to the definition of 'single dwelling block'

The following summarises the Government response to:

- 1. The Committee recommends that, subject to the following recommendations, Draft Variation 350: Changes to the definition of 'single dwelling block' be approved.**

Government Response: AGREED

- 2. The Committee recommends that the Environment, Planning and Sustainable Development Directorate consider a review of references to the Planning and Development Act 2007 in Draft Variation 350: Changes to the definition of 'single dwelling block' and in future draft variations.**

Government Response: AGREED

- 3. The Committee recommends that the ACT Government reword the proposed definition of a 'standard block' so that drafting errors are corrected.**

Government Response: AGREED