

# Planning and Development (Approval of Application DA201935667 - Downstream waterway remediation works Block 1 Section 37 Strathnairn (previously Block 1633 Belconnen)) Notice 2019

**Notifiable instrument NI2019-669**

made under the

**Planning and Development Act 2007, s 170 (Notice of approval of application)**

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## **1 Name of instrument**

This instrument is the *Planning and Development (Approval of Application No 201935667 - Downstream waterway remediation works Block 1 Section 37 Strathnairn (previously Block 1633 Belconnen)) Notice 2019*

## **2 Impact track development approval**

On 9 August 2019, the planning and land authority approved, subject to conditions, in the impact track, development application DA201935667. The development application is for remediation works on the downstream waterway of the first and second stages of the Ginninderry development (Block 1 Section 37 Strathnairn, previously Block 1633 Belconnen).

The decision to approve the development application was made under section 162 of the *Planning and Development Act 2007*.

The Notice of Decision for development application 201935667 is attached to this Notifiable Instrument as Schedule 1.

Brett Phillips  
Executive Group Manager  
Planning Delivery Division  
Environment, Planning and Sustainable Development Directorate

14 October 2019

**Schedule 1**  
(*See section 2*)



**ACT**  
Government

# NOTICE OF DECISION

Made under part 7 of the *Planning and Development Act 2007*

I, Dominic Riches, delegate of the planning and land authority, pursuant to section 162 of the *Planning and Development Act 2007*, **approve subject to conditions**, the proposal for **remediation works on the downstream waterway of the first and second stages of the Ginninderry development**, at Block 1633 Belconnen, in accordance with the plans, drawings and other documentation approved and endorsed as forming part of this approval.

DA Number: 201935667  
Block: 1  
Section: 37  
Suburb: Strathnairn  
Application lodged: 28 June 2019  
Assessment track: Impact

This decision contains the following information:

- Part A(1) – conditions of approval
- Part B– reasons for the Decision
- Part C – public notification & entity advice
- Attachment 1 – administrative information

*A copy of the development application and this approval may be inspected at the planning and land authority's office from 8.30 am to 4.30 pm, Monday to Friday at 16 Challis Street, Dickson, ACT 2602*

## CONTACT / ENQUIRIES

Phone: (02) 6207 6383

Online Form:

[https://www.accesscanberra.act.gov.au/app/forms/epd\\_feedback](https://www.accesscanberra.act.gov.au/app/forms/epd_feedback)

**Dominic Riches**

Delegate of the planning  
and land authority

09/08/2019

## NOTICE OF DECISION

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### PART A – CONDITIONS OF APPROVAL

This application is approved subject to the following conditions being satisfied. Some conditions of the approval require attention before work commences or before approved drawings will be released.

1. Construction Environmental Management Plan (CEMP)

Prior to construction, a CEMP must be prepared by the proponent and submitted to and approved by the planning and land authority (EPDImpact@act.gov.au). The CEMP must address issues raised by entities (refer Part C below) and consider, at a

- a. Consistency with Ginninderry CEMP framework, SMEC (2018)
- b. Contamination Management
- c. Weed management
- d. Landscape Management and Inner Asset Protection Zone for Ginninderry
- e. Construction work in vicinity of existing electrical infrastructure and easements

2. Works on unleased land

In accordance with the *Public Unleased Land Act 2013* no work is to be undertaken on road verges and other unleased Territory Land without the approval of the Territory. Such approval must be obtained from the Senior Manager, Place Coordination and Planning, Transport Canberra and City Services (TCCS) by way of:

- Letter of Design Review prior to the commencement of any work and
- A certificate of Operational Acceptance on completion of all works to be handed over to TCCS

unless written advice is provided by TCCS advising otherwise.

*Note: Contact TCCS on 62077480 for further details.*

3. Environment Protection Authority (EPA)

The contractor/builder developing the site must hold an Environmental Authorisation or enter into an Environment Protection Agreement with the EPA in respect of that activity prior to works commencing.

An erosion and sediment control plan must be submitted to and be endorsed by the EPA prior to works commencing.

4. Evoenergy and Icon Water

All matters raised by Evoenergy and Icon Water must be addressed accordingly (refer Part 3).

5. Heritage

All works must be in accordance with the 'Ginninderry Stream Erosion Works – Cultural Heritage Assessment and Statement of Heritage Effects' (Past Traces/16 May 2018) and the subsequent Council approval with conditions dated 18 July 2018.

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### PART B – REASONS FOR THE DECISION

The application was approved because it was found to meet the relevant rules and criteria of the Territory Plan and section 129 of the *Planning and Development Act 2007*. The following evidence formed part of the assessment of this application:

Development Application:	201935667
Territory Plan Zones:	RZ1 Suburban Zone and NUZ4
Development Codes:	Residential Zones Development Code & Non-Urban Zone Development Code
Precinct Code:	West Belconnen Concept Plan
Legislative requirements:	Sections 128 and 129 of the <i>Planning and Development Act 2007</i> List (addressed in Part C of this Decision)
Entity advice:	Ginninderry Urban Development Stage 2 EIS Exemption granted
Other:	on 24 October 2018

### PART C – PUBLIC NOTIFICATION AND ENTITY ADVICE

#### PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 4 July 2019 to 24 July 2019. Nil written representations were received during public notification period.

#### ENTITY ADVICE

Pursuant to Division 7.3.3 of the *Planning and Development Act*, the application was referred to relevant entities. Where an entity requested conditions to be imposed on this development, those conditions have been incorporated into Part A of this Decision. A summary of entity comments can be found below.

##### 1. ACT Health – Health Protection Service (HPS)

ACT Health provided advice on 22 July 2019 stating that:

*The Health Protection Service (HPS) notes that the project proposes to undertake the design of remediation works along isolated sections of a tributary creek line (Stream E) of the first and second stages of the Ginninderry development.*

*Documents provided note that uncontrolled filling of part of Stream E by the previous land owners is anticipated to contain builder's material and could include asbestos. However, no evidence was provided with this DA to indicate if any further testing has been undertaken to determine all possible contaminants within the uncontrolled fill. The HPS recommends further testing of the uncontrolled fill to be undertaken in order to identify any potential contaminants and inform any decision about the most appropriate remediation measures.*

*The HPS supports the need for construction works to comply with the approved Construction Environment Management Plan prepared by SMEC in 2018 and recommends that an unexpected finds protocol be developed to manage unexpected finds including of asbestos.*

The comments raised by ACT Health have been incorporated into the conditions of approval.

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### 2. Conservator of Flora and Fauna

The Conservator provided advice on 23 July 2019 stating that:

*This area was inspected by ACT Government ecologists 4 -5 years ago. It is a quite deeply incised creek (to a depth of about 10m in places). The incision appears to have happened a long time ago and is down to bedrock, good quality Box Gum woodland has colonised much of the banks, and this includes perhaps 80-100 + year old Blakely's Red Gum trees. The incised creek vegetation is probably both movement and breeding habitat of some rare and declining woodland birds such as the scarlet robin, dusky woodswallow, diamond firetail and speckled warbler.*

*to some of these spots. The bulk of the remnant creek side vegetation will be undisturbed. The proposed plant list is comprised of appropriate locally indigenous plant species, and these plantings/direct seeding, together with proposed weed control and the stabilisation of the creek is likely to improve the condition and functioning of the remnant vegetation within the creek.*

*Given the remediating nature of the work and proposed landscape schedule, I have no concerns with the proposed works and do not consider that they will result in a significant adverse environmental impact.*

*A weed control program does not seem to be an explicit commitment of the DA. A condition of approval should be that weeds are controlled to less than 10% of the perennial understorey vegetation cover within the areas of proposed disturbance at least up to 18 months after the works have been finalised.*

The comments raised by the Conservator have been incorporated into the conditions of approval.

### 3. Environment Protection Authority (EPA)

EPA provided advice on 22 July 2019 stating that:

#### **Further Information:**

*The whole of the Ginninderry Development Area (GDA) is subject to an independent environmental audit of all contamination assessment, remedial works and the adequacy of any proposed contamination management processes.*

*The document titled "Stream E Remediation Works – Development Application" by Calibre Professional Services Pty Ltd dated 21 May 2019 does not accurately reflect the contamination assessment, management and audit requirements for the GDA. This document must be updated to comment on the requirements of the already completed audits where they intersect the proposed works area. Where works are proposed in areas where the audit process is not complete Auditor Interim Advice into the adequacy of any proposed contaminant management plan must be forwarded to the Environment Protection Authority for review and endorsement and these requirements appropriately referenced in the Calibre document.*

#### **Conditions:**

*As the site is greater than 0.3 hectares the construction is an activity listed in Schedule 1 as a Class B activity under the Environment Protection Act 1997. The contractor/builder developing the site must hold an Environmental Authorisation or enter into an Environment Protection Agreement with the Environment Protection Authority (EPA) in respect of that activity prior to works commencing.*

*An erosion and sediment control plan must be submitted to and be endorsed by the EPA prior to works commencing.*

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### **Advice:**

*The placement of more than 100m<sup>3</sup> of soil on the land and/or the extraction of 100m<sup>3</sup> or more of material from a waterway will require an environmental authorisation.*

*The use of bitumen straw mulch in the reinstatement of disturbed areas should be reconsidered for a product or polymer better suited to bind the soil and minimise erosion while promoting seed germination.*

*All excavations that collect rain water during a rain storm event would be considered as a sediment control pond, and must meet the following condition:*

*No discharge from pond unless sediment level is less than 60mg/litre. If sediment level is greater, then prior to discharge, the dam must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.*

The comments raised by EPA have been incorporated into the conditions of approval.

#### 4. ACT Emergency Services Agency (ESA)

ESA provided advice on 24 July 2019 stating that:

##### ***Bushfire Protection Requirements:***

*A portion of the area identified in the extent of works in this DA is currently zoned as Inner Asset Protection Zone (IAPZ) in the Ginninderry Stage 2 Estate Development Plan (EDP).*

*Landscape management for purposes of establishing and maintaining an IAPZ requires intensive clearing and ongoing maintenance and as such is considered by ACTF&R as inconsistent and incompatible with the revegetation of the landscape for the purposes of erosion control.*

*Further detail is sought to establish whether a conflict of landscape management practices exist in this area for Ginninderry Stage 2 and if so an adjustment of these two zones so no conflict exists in landscape management practices.*

The comments raised by ESA have been incorporated into the conditions of approval.

#### 5. Evoenergy

Evoenergy provided a conditional statement of compliance on 22 July 2019 stating that:

*Development is to comply with minimum 1.5m machinery access clear of obstacles and vegetation to assets within the block.*

*Development is to comply with minimum clearances to overhead conductors and poles. Ref Evoenergy Drawing 3811-004*

*Development is to comply with minimum separation requirements to underground assets. Ref Evoenergy Drawing 3832-018*

*Installation of electrical conduits (on or off block) will be the responsibility of the proponent.*

*There are ACT Government Streetlight assets located over or in the vicinity of your proposed application that have not been assessed for compliance or safety. Please contact TCCS on 6207 6222 or [tccs.streetlighting@act.gov.au](mailto:tccs.streetlighting@act.gov.au) for further information/advice/approval.*

The comments raised by Evoenergy have been incorporated into the conditions of approval.



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### 6. ACT Heritage Council

ACT Heritage Council provided advice on 19 July 2019 stating that:

*The Council supports the proposed works on the condition that all heritage management actions are to be undertaken in accordance with the "Ginninderry Stream Erosion Works – Cultural Heritage Assessment and Statement of Heritage Effects" (Past Traces/16 May 2018) and the subsequent Council approval with conditions dated 18 July 2018.*

*In particular:*

- *Aboriginal place RC1 must be salvaged as described in the SHE prior to works, in the company of the RAOs.*
- *Aboriginal places RC3, ULSIN3 and RC3 shall be fenced as described in the SHE prior to works, with the RAOs representatives present.*

The comments raised by the ACT Heritage Council have been incorporated into the conditions of approval.

### 7. Icon Water

Icon Water provided a conditional statement of compliance on 11 July 2019 stating that:

*A sewer maintenance structure is located on this block. Unobstructed 24 hour - 7 day a week access a minimum 1.5m wide is to be maintained across the land to the asset.*

*As per Criterion 1 - Easement and other access Clearances of the Planning and Development Regulation 2008. No structures are to be built over Icon Water easements, pipe protection envelopes or access passages without Icon's written approval. In accordance with this provision, access is to be maintained across land in these areas.*

*Icon Water assets shall be protected for the duration of the construction works from short term load shedding from construction machinery or vibration and groundwater ingress or infiltration. Any damage to Icon assets resulting from the construction works shall be repaired by Icon Water at the contractor's expense. Access to Icon's assets including sewer structures, manholes, hydrants and valves is to be maintained for the duration of the construction works.*

The comments raised by Icon Water have been incorporated into the conditions of approval.

### 8. Transgrid

Transgrid provided a conditional statement of compliance on 24 July 2019 stating that:

*TransGrid can confirm at this stage of the development, our understanding is the proposed remediation works for Stream E will be located outside of our easement corridor. Therefore, TransGrid has determined this Development Application acceptable, subject to the following standard requirements:*

- *No mounds of earth or other materials may be left on the easement during and after earthworks, as this creates a hazard by reducing the vertical clearances to transmission lines.*
- *During construction, traffic control measures need to be implemented to prevent vehicles colliding with TransGrid's transmission towers.*



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- *Please formally notify TransGrid of any amendments or modifications to the proposed work. This will also include any change to the existing ground levels within TransGrid's Easement corridor.*

The comments raised by Transgrid have been incorporated into the conditions of approval.

9. Transport Canberra and City Services (TCCS)

TCCS raised no concerns in relation to the proposal.

10. Suburban Land Agency (SLA)

SLA raised no concerns in relation to the proposal.

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### Translation and interpretation services

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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:
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefonirajte:
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

## ATTACHMENT 1

### ADMINISTRATIVE INFORMATION RELATING TO NOTICE OF DECISION.

#### Submission of revised drawings or documentation

If a condition of approval requires the applicant to lodge revised drawings and / or documentation with the planning and land authority for approval under section 165 of the *Planning and Development Act 2007*, the submission must be made by completing an application in e-development.

#### DATE THAT THIS APPROVAL TAKES EFFECT

Unless a condition of approval provides for otherwise this approval takes effect the day after the date of this decision. The effective date for development applications approved subject conditions could also be adjusted if the approval is reconsidered by the planning and land authority or if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 184 of the Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect;
- the development is not finished two years after the day the development begins; or
- the development approval relates to land comprised in a lease that requires the development to be completed on a stated date – the date stated in the lease for completion of the development, or the approval is revoked under section 189 of the Act.

Under section 184 of the Act, the applicant may apply to the planning and land authority to extend the prescribed period to finish the development, but such an application must be made within the original period specified for completion.

A development approval, to which section 184 of the Act applies, continues unless the approval ends under sections 184, 185, 186 or 187 of the Act.

#### Reconsideration of the Decision

If the applicant is not satisfied with the decision made by the planning and land authority, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision under section 191 of the *Planning and Development Act 2007*. A longer timeframe may apply only if granted in writing by the planning and land authority under section 184 of the *Planning and Development Act 2007*.

#### Other approvals

A notice of decision grants development approval only. Other approvals may be required, including:

##### 1. Building Approval

Most building work requires building approval to ensure it complies with building laws such as the Building Code of Australia. The lessee should engage a private building certifier to determine whether building approval is required and assess and approve the building plans before construction commences. A list of certifiers can be obtained from the Environment, Planning and Sustainable Development Directorate.

2. Tree damaging activity approval

A Tree Management Plan under the *Tree Protection Act 2005* is required for approval where it is proposed to undertake groundwork within the tree protection zone of a protected tree or likely to cause damage to, or remove, any trees defined as protected trees by that Act. More information is available from the Transport Canberra and City Services Directorate.

3. Use of verges or other unleased Territory Land

In accordance with the *Public Unleased Land Act of 2013*, road verges and other storage of materials or waste, without prior approval of the Territory. Approval can be obtained from the Transport Canberra and City Services Directorate.

4. Works on unleased Territory Land

In accordance with the *Public Unleased Land Act of 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Manager Development Review and Coordination, Transport Canberra and City Services Directorate by way of:

- (a) a certificate of design acceptance prior to the commencement of any work; and
- (b) a certificate of operational acceptance on completion of all works to be handed over to TCCS.

Works on unleased Territory land may include the construction or upgrading of driveway verge crossings, public footpaths, roads, street lighting, stormwater works, waste collection amenities, street signs and line marking, road furniture and landscaping.

Review by the ACT Civil and Administrative Tribunal (ACAT)

- 1. Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for matters that are exempted under Schedule 3 of the *Planning and Development Regulations 2008* (matters exempt from third party review).
- 2. The notice of decision and this advice has been sent to all people who made a representation in relation to the application.
- 3. The ACAT is an independent body. It can review a large number of decisions made by ACT Government ministers, officials and statutory authorities on their merits. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.
- 4. If you think you have a right of appeal, you may apply for a review. Application forms can be obtained from the ACAT. You can also download the form from the ACT Legislation Register.

5. If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.
6. The time limit to make a request for a review is 28 days from the date of this notice of decision. The time limit can be extended in some circumstances (refer to sections 10(2), 10(3), 25(1)(e) and 25(2) of the *ACT Civil & Administrative Tribunal Act 2008*; section 7 of the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*; and section 409 of the *Planning and Development Act 2007*).
7. Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.
8. The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.
9. The following organisations may be able provide you with advice and assistance if you are eligible:
  - ACT Attorney-General, write to the Director General, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601
  - the ACT Legal Aid Office, telephone 1300 654 314
  - ACT Council of the Ageing, telephone 02 6154 9740
  - Welfare Rights Centre, telephone 1800 226 028
  - Environmental Defender's Office (ACT), telephone 02 6243 3460.
10. You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.
11. You may apply for access to any documents you consider relevant to this decision under the ACT Freedom of Information Act 1989. Information about Freedom of information requests is available on the planning and land authority's web site or by contacting us by phone on 02 6207 1923.

12. The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

Contact details for relevant agencies

<b>ACT Civil and Administrative Tribunal</b> Level 4, 1 Moore Street CANBERRA CITY ACT 2601 GPO Box 370, CANBERRA, ACT, 2601	<a href="http://www.acat.act.gov.au">www.acat.act.gov.au</a> <a href="mailto:tribunal@act.gov.au">tribunal@act.gov.au</a> 02 6207 1740 02 6205 4855
<b>Health Directorate</b>	<a href="http://www.health.act.gov.au">www.health.act.gov.au</a> 02 6205 1700
<b>Environment, Planning and Sustainable Development Directorate</b> <i>Planning and land authority</i> <ul style="list-style-type: none"> <li>- list of certifiers for building approval</li> <li>- demolition information</li> <li>- asbestos information</li> </ul> <i>Environment Protection Authority</i> <ul style="list-style-type: none"> <li>- environment protection</li> <li>- water resources</li> <li>- asbestos information</li> </ul> <i>Conservation, Planning and Research</i> <ul style="list-style-type: none"> <li>- threatened species/wildlife management</li> </ul>	<a href="http://www.planning.act.gov.au">www.planning.act.gov.au</a> 02 6207 1923  <a href="http://www.environment.act.gov.au">www.environment.act.gov.au</a> 02 6207 6251  <a href="http://www.environment.act.gov.au">www.environment.act.gov.au</a> 02 6207 1911
<b>Transport Canberra and City Services</b> <ul style="list-style-type: none"> <li>- tree damaging activity approval</li> <li>- use of verges or other unleased Territory land</li> <li>- works on unleased Territory land - design acceptance</li> <li>- damage to public assets</li> </ul>	<a href="http://www.tccs.gov.au">www.tccs.gov.au</a>  132 281 02 6207 7480 (asset acceptance)
<b>Utilities</b> <ul style="list-style-type: none"> <li>- Telstra (networks)</li> <li>- TransACT (networks)</li> <li>- Icon Water</li> <li>- Electricity reticulation</li> </ul>	02 8576 9799 02 6229 8000 02 6248 3111 02 6293 5738

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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 τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjnuna t'interpretu, ċempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefoniрајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

#### **TRANSLATING AND INTERPRETING SERVICE**

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