

Australian Capital Territory

Planning and Development (Draft Variation No 353) Consultation Notice 2016

Notifiable instrument NI2016—238

made under the

Planning and Development Act 2007, s 63 (Public consultation—notification) and s 64 (Public consultation—notice of interim effect etc)

1 Name of instrument

This instrument is the *Planning and Development (Draft Variation No 353) Consultation Notice 2016*.

2 Draft variation to the Territory plan

The planning and land authority (the **Authority**) has prepared a draft plan variation No 353 – Changes to various zone development tables, codes and definitions (the **Draft Variation**) to vary the Territory Plan. The Draft Variation contains proposed changes to certain zone development tables for assessable and/or prohibited development; changes to provisions in some development codes, the Lease Variation General Code, the Estate Development Code, the Beard Precinct Map and Code and the Fyshwick Precinct Map and Code.

3 Documents available for public inspection

- (1) The Authority gives notice that the following documents are available for public inspection and purchase:
 - (a) the Draft Variation; and
 - (b) the background papers relating to the Draft Variation.
- (2) Copies of the documents mentioned in section 3(1) are available for inspection and purchase at Access Canberra, Environment, Planning and Land Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm for the period commencing on the day this notice commences and ending on 4 July 2016 (the **Consultation Period**).
- (3) Copies of the documents mentioned in section 3(1) are also available for inspection during the Consultation Period online at http://www.planning.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan/draft_variations_to_the_territory_plan

4 Invitation to give written comments

- (1) The Authority invites written comments about the Draft Variation during the Consultation Period. Comments should include reference to the Draft Variation and be addressed to the Territory Plan Section of the Environment and

Planning Directorate (**EPD**). Please also provide your name and contact details to assist in the assessment of the comments provided and to enable the Authority to contact you in relation to your comments, if required.

- (2) Written comments should be provided to the Authority by:
 - (a) email to terrplan@act.gov.au; or
 - (b) mail to Territory Plan Section, EPD, GPO Box 158, Canberra, ACT 2601; or
 - (c) hand delivery to Access Canberra, Environment, Planning and Land Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson.

5 Public inspection of written comments

- (1) Copies of written comments about the Draft Variation given in response to the invitation in section 4, or otherwise, or received from the National Capital Authority will be available (unless exempted) for public inspection for a period of at least 15 working days starting 10 working days after the day the consultation period ends at Access Canberra, Environment, Planning and Land Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm and may be published on the EPD website at www.environment.act.gov.au.
- (2) You may apply under section 411 of the *Planning and Development Act 2007* (the **Act**) for part of your consultation comments to be excluded from being made available to the public. A request for exclusion under this section must be in writing, clearly identifying what you are seeking to exclude and how the request satisfies the exclusion criteria. Please note that your name and contact details and other personal information will not be made public unless you request otherwise.

6 Effect of the draft plan variation

Section 65 of the Act does not apply in relation to the Draft Variation and therefore it does not have interim effect. The current Territory plan will continue to apply while the Draft Variation remains in draft form.

7 Obtaining further information

Further information about the Draft Variation can be obtained through email correspondence with the Territory Plan Section, EPD, at Terrplan@act.gov.au, a reference to the Draft Variation should be included in any email.

8 Meaning of *draft plan variation No 353 – Changes to various zone development tables, development codes and definitions*

In this instrument:

Draft plan variation No 353 – Changes to various zone development tables, development codes and definitions means the draft plan variation in the schedule.

Note 1: Your personal information will be managed in accordance with the *Information Privacy Act 2014* and the *EPD Information Privacy Policy* which are available through the EPD website.

Jim Corrigan
Delegate of the planning and land authority
18 May 2016



ACT
Government

Environment and Planning

Planning and Development Act 2007

**Draft
Variation to the
Territory Plan
No 353**

Changes to various zone development tables,
codes and definitions

May 2016

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

As part of the ongoing monitoring of the Territory Plan, a number of matters have been identified across different parts of the Plan that require changes in order to better meet the needs of government, industry and the community. These include: changes in the types of development permitted in certain zones; improving the understanding and functionality of certain code provisions; and refinements to some definitions.

The matters to be addressed in this draft variation are in three categories:

- 1. Zone development tables - assessable and/or prohibited development**
Amendments to certain zone development tables to permit or prohibit certain uses
- 2. Changes to code provisions**
Changes to provisions in some Territory Plan development codes, the Lease Variation General Code, the Estate Development Code, the Beard precinct map and code and the Fyshwick precinct map and code
- 3. Definitions of Development**
Clarification of definition of development for '*Major service conduits*'

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 and Planning Directorate (EPD).

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 EPD submits a report on consultation and a recommended final variation to the Minister responsible for planning for approval. The Minister has the discretion to determine if referral to the Legislative Assembly standing committee responsible for planning is warranted prior to approval, depending on the nature and significance of the proposal. If the draft variation is referred to the committee by the Minister or otherwise, 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 Monday 4 July 2016**.

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 EPD 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 EPD Information Privacy Policy, which is available for viewing on EPD's website.

Comments can be:

- emailed to terrplan@act.gov.au
- mailed to Territory Plan Section, GPO Box 158, Canberra, ACT 2601
- delivered to EPD's 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 EPD's customer service centre in Dickson and may be published on EPD'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, fact sheet and background document 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 Environment and Planning 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

2.1.1 Mobile phone facilities (Communications facility)

The telecommunications industry has raised concerns regarding constraints on where mobile phone facilities (MPFs) can be located in the ACT.

Between 2005 and 2008, approval of new mobile phone network infrastructure was managed outside the Territory Plan under the 'Guideline for Telecommunications (Mobile Phone) Networks' and what were called 'network plans'. Many of the MPFs which were introduced as part of the network plans approved under the previous planning regime are located in the PRZ1 Urban Open Space zone.

With the introduction of the new planning system in 2008, MPFs fall under the definition of 'Communications facility' in the Territory Plan. 'Communications facility' is permitted in 13 Territory Plan zones including industrial zones, most non-urban zones, most commercial zones and PRZ2 Restricted Access Recreation zone, but is prohibited in 10 zones including some commercial zones, all residential zones and the PRZ1 urban open space zone. While MPF's are prohibited in residential zones, many are located in residential areas as they are located in road reserves zoned TSZ1 Transport Zone. The impacts of these developments are assessed under the Communications Facilities and Associated Infrastructure General Code.

In considering where additional MPF's may be located it was determined that the PRZ1 Urban Open Space Zone is suitable. PRZ1 zoned land is distributed widely across the urban areas of Canberra. Permitting 'Communications facility' in the PRZ1 zone would substantially increase the range of potential locations for MPFs across urban areas and many such facilities already exist in this zone as a result of historical legislative settings. As such it is proposed to change the Territory Plan to permit 'Communications facility' in the PRZ1 zone.

The need to comply with the Communications Facilities and Associated Infrastructure General Code and proposed changes to the Parks and Recreation Zone Development Code will ensure that any development is appropriately assessed and does not detract from the use of the surrounding urban open space for its primary purpose.

2.1.2 Eating establishments – Beard Precinct Map and Code

The Eastern Industrial Estate of Beard is located within the NUZ1 Broadacre zone and is also subject to the Beard Precinct Map and Code. Currently, a take-away food shop or any other form of eating establishment is not permitted in the area, despite there being a clear need to provide these services for local employees and visitors. The demand for services providing food and beverages will continue to increase as the estate develops. At present, the nearest conveniences are located in Fyshwick or Queanbeyan, which requires employees to drive to these locations to purchase any food or drink products.

A 'SHOP' (including take-away food shop) and 'Restaurant' are permitted uses in the IZ2 Mixed Use Industrial zone; prohibited in the NUZ1 Broadacre zone; and not listed as 'Additional merit track development' in the Beard Precinct Code.

It is proposed to include 'Take-away food shop' and 'restaurant' in the Beard Precinct Map and Code as an additional merit track development to serve the needs of workers and visitors to the area bringing it into closer alignment with uses ordinarily permitted in a mixed use industrial area.

2.1.3 Supermarket –Fyshwick Precinct Map and Code

Block 8 section 48 Fyshwick (the site) is the location of the Canberra Outlet Centre (the Centre). It is located within the IZ2 Industrial Mixed Use zone and also subject to the Fyshwick Precinct Map and Code.

The site is bounded by Canberra Avenue to the South, Newcastle Street to the West and Iron Knob Street to the north. Because the block is immediately adjacent to the intersection of Canberra Avenue/Newcastle Street/Hindmarsh Drive, it is identified part of a Major Avenue and Approach Route under the National Capital Plan. Therefore, the block is also subject to Development Control Plan (DCP) 11/03 under the National Capital Plan.

A 'SHOP' selling food or supermarket (except produce market) of 200m² is currently permitted for the subject block in the Fyshwick Precinct Code. It is proposed to increase the maximum *gross floor area* for a 'SHOP' selling food or supermarket (except produce market) to 1000m² for one shop only. It is anticipated that this change will broaden the range of retail facilities offered in the Centre by allowing a local centre sized supermarket. This will also serve the needs of workers and visitors to the Centre and Fyshwick, and is expected to enhance the ongoing financial viability of the Centre.

2.1.4 Lease variations

'Varying a lease' is an assessable development in all zones. Certain categories of lease variation are intended to be assessed in the code track as outlined in the Lease Variation General Code. However these forms of lease variation are not currently listed under 'MINIMUM ASSESSMENT TRACK: CODE' in certain Territory Plan Zone Development Tables. It is proposed to amend these development tables to clarify the forms of lease variation that may be assessed in the code track.

Also, varying a lease to add a use listed as 'prohibited development' is itself a prohibited development. It is proposed to amend all zone development tables in order to clarify this.

2.1.5 Lease Variation General Code

An inconsistency has been identified in the Lease Variation General Code. Rule R7 should include wording that also refers to a change in the number of dwellings or units on land. This amendment does not change current processes and policy as the Act already permits this, but makes the requirements clearer and ensures that both changing or expressing the number of dwellings or units for residential and commercial premises respectively are recognised and included in the provision.

2.1.6 Estate Development Code

The Estate Development Code contains provisions which are designed to prevent narrow blocks from having vehicular access to busy streets and to ensure that where the northern boundary of a narrow block faces a street it is not dominated by garaging. For these sites vehicular access and garaging is instead provided through rear lanes in most instances.

The objective of this provision is supported. However, the provision does not allow consideration to be given to a block configuration which includes some narrow blocks whose only street frontage is a rear lane to the north. Having blocks with access from a rear lane to the north can be desirable as the access is not off a busy street and open space and solar access is able to be provided on the site through careful design in accordance with the Single Dwelling Housing Development Code.

In order to ensure the objectives of this rule are met while providing greater flexibility to allow a choice of block and housing types it is proposed to amend the wording of the rule so that it continues to apply unless the address street boundary is a rear lane.

2.1.7 Definitions of Development: Major service conduits

EPD has received a number of enquiries seeking clarification of the definition of 'Major service conduits' when referring to coaxial cables and optical fibre cables.

Coaxial cables and optical fibre cables of any size are deemed to be 'major service conduits' included under the umbrella term 'MAJOR UTILITY INSTALLATION' which is permissible in some zones and prohibited in others such as commercial zones. In residential zones, the use is assessable in the impact track.

Coaxial cables and optical fibre cables are typically no wider than 10mm. They are a common component in building wiring and ICT/AV equipment. Bundles of cables may be carried within conduits or ducts. The width of the duct will vary depending on the circumstances.

The inclusion of coaxial cables and optical fibre cables in the definition of 'Major service conduits' without any reference to their size is inconsistent with the way the rest of the definition is presented. It is proposed to adjust the definition by removing reference to coaxial cables and optical fibre cables specifically and instead allowing them to fall into the existing category of major telecommunication cable ducts where having a width equal to or greater than 1000mm. If the cables are not located within a duct of this size they would then be able to be assessed as minor service reticulation.

2.2 Current Territory Plan provisions and proposed changes

2.2.1 Mobile phone facilities (Communications facility)

The Territory Plan currently prohibits Communications facilities in the PRZ1 urban open space zone. In order to permit this development in this zone and provide suitable controls the following changes are proposed:

- In the **PRZ1 Urban Open Space Zone Development Table - MINIMUM ASSESSMENT TRACK MERIT**

Insert

'Communications facility'

- In the **PRZ1 Urban Open Space Zone Development Table -PROHIBITED DEVELOPMENT**

Omit

'Communications facility'

- In the **Parks and Recreation Zone Development Code, Part A(1)-PRZ1-Urban Open Space Zone, Element 2**

Insert a new item 2.4 and associated provisions:

2.4 Communications Facility	
There is no applicable rule.	<p>C6A</p> <p>Development of land for a Communications facility is compatible with the use of the surrounding open space and nearby residential areas by ensuring that:</p> <ul style="list-style-type: none"> a) sufficient surrounding open space is retained to meet the recreational and social needs of the community b) existing public access to surrounding open space is maintained c) any detrimental impacts on the site and surrounding area are minimised d) development complies with the Communications Facilities and Associated Infrastructure General Code

2.2.2 Eating Establishments – Beard precinct map and code

In order to allow food outlets in the Eastern Industrial Estate of Beard the following changes are proposed:

- In the **Beard Precinct Map and Code Table 2 - Additional merit track development:**

Insert in the column titled 'Development':

'Take-away food shop' and 'Restaurant'

- In the **Beard Precinct Map and Code – Additional Rules and Criteria-RC1-Harman Industrial Area-Element 1:**

Insert:

1.2 Take-away food shops and restaurants	
R2 The maximum gross floor area for each take-away food shop or restaurant is 200m ² .	This is a mandatory requirement. There is no applicable criterion.

2.2.3 Shop – floor area limit – Fyshwick precinct map and code

In order to allow a 'SHOP' with a maximum *gross floor area* of 1000m², the following changes are proposed to amend the Fyshwick Precinct Map and Code:

- Excluding block 8 section 48 Fyshwick from RC2 area on Fyshwick Precinct Map
- Introduce an RC5 area to include block 8 section 48 Fyshwick on Fyshwick Precinct Map
- Introduce a rule for RC5 area to permit one supermarket with a maximum *gross floor area* of 1000m²

- **Fyshwick Precinct Code**

Existing provision for block 8 section 48 Fyshwick

RC2 – Industrial mixed use zone

This part applies to blocks and parcels identified in area RC2 shown on the Fyshwick Precinct Map.

Element 2: Use

Rules	Criteria
2.1 SHOP – floor area limit	
<p>R2</p> <p>The maximum <i>gross floor area</i> per shop complies with all of the following:</p> <p>a) <i>SHOP</i> selling food or supermarket, except produce market – 200m²</p> <p>b) <i>SHOP</i>, except <i>bulky goods retailing</i> – 3000m²</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Proposed provision for block 8 section 48 Fyshwick

RC5 – Block 8 section 48 Fyshwick

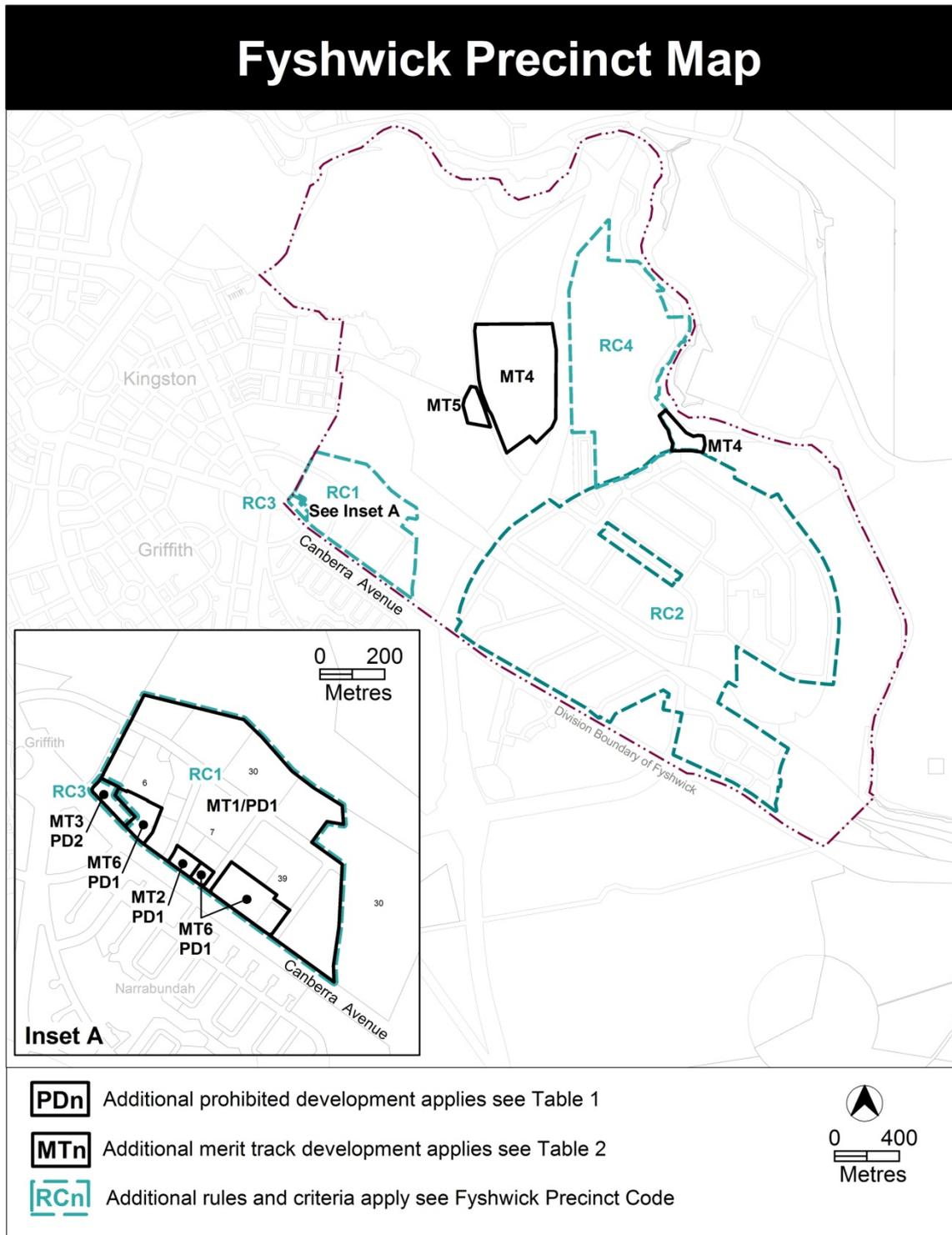
This part applies to blocks and parcels identified in area RC5 shown on the Fyshwick Precinct Map.

Element 6: Use

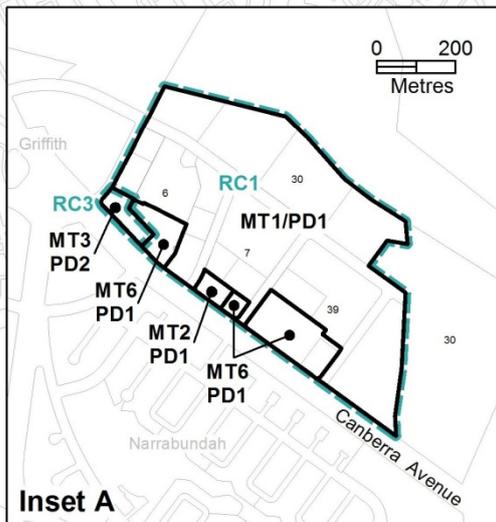
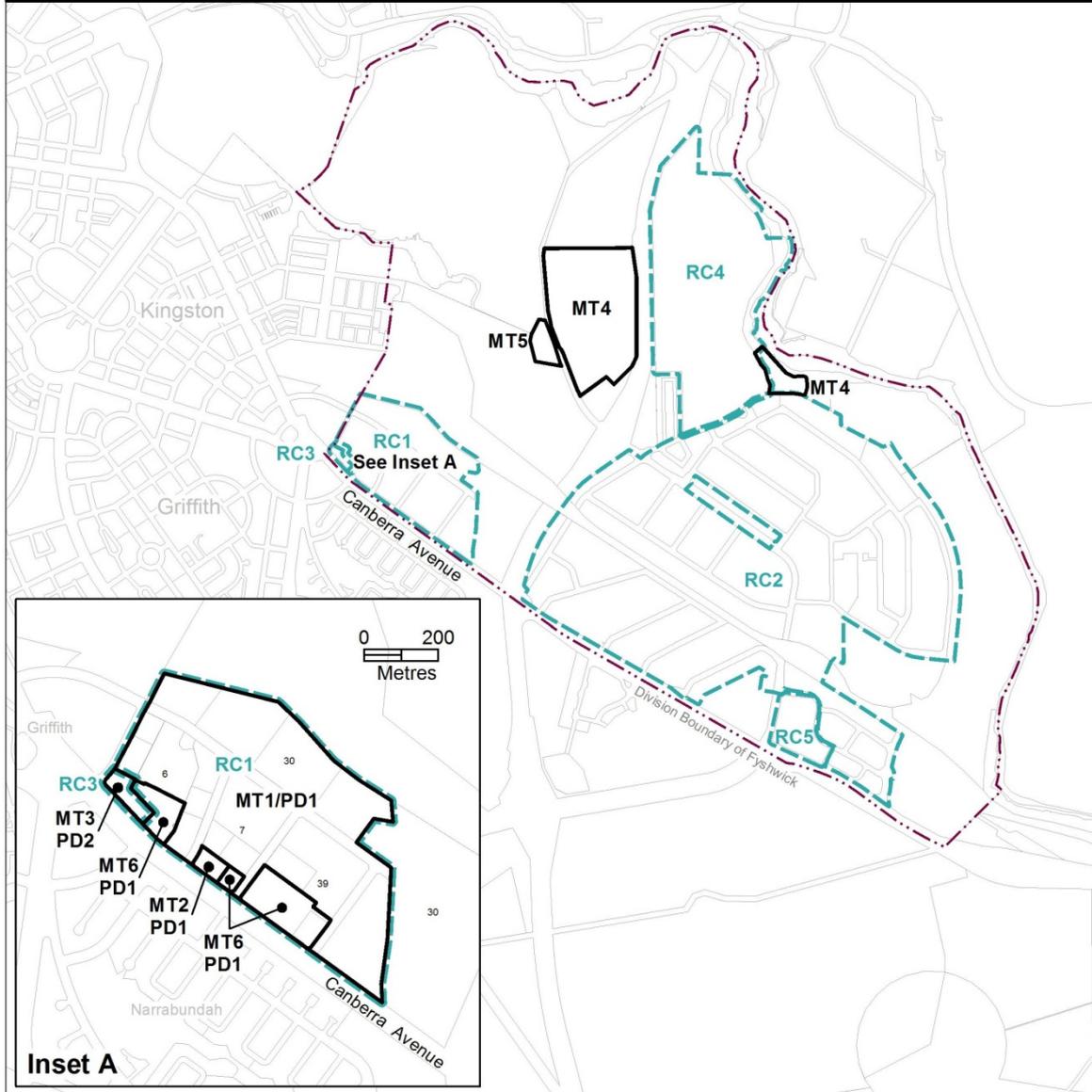
Rules	Criteria
6.1 SHOP – floor area limit	
<p>R8</p> <p>The maximum <i>gross floor area</i> per shop complies with all of the following:</p> <p>a) for one supermarket only – 1000m²</p> <p>b) for all other <i>SHOP</i> selling food or supermarket, except produce market – 200m²</p> <p>c) <i>SHOP</i>, except <i>bulky goods retailing</i> – 3000m²</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

- **Fyshwick Precinct Map**

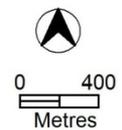
Existing precinct map



Fyshwick Precinct Map



- PD_n** Additional prohibited development applies see Table 1
- MT_n** Additional merit track development applies see Table 2
- RC_n** Additional rules and criteria apply see Fyshwick Precinct Code



2.2.4 Lease variations

In order to align development tables with the Lease Variation General Code and clarify that varying a lease to add a prohibited use is itself prohibited the following changes are proposed:

- In all the **Residential zones development tables- MINIMUM ASSESSMENT TRACK CODE**

Insert underlined text:

‘Varying a lease to do one or more of the following:

1. express or change the number of approved or lawfully erected *dwelling*s
2. allow a secondary residence where erection of a secondary residence has been approved
3. remove, relocate or change easements.’

- In all the **Residential zones development tables: MINIMUM ASSESSMENT TRACK MERIT**

Insert underlined text:

‘varying a lease (where not prohibited, code track or impact track assessable)’

- In all the **Commercial and Industrial zones development tables- MINIMUM ASSESSMENT TRACK CODE**

Omit

‘No development identified’

Insert:

‘Varying a lease to do one or more of the following:

1. express or change the number of approved or lawfully erected units
2. remove, relocate or change easements.’

- In all other zones development tables **-MINIMUM ASSESSMENT TRACK MERIT**

Insert:

‘varying a lease (where not prohibited, code track or impact track assessable)’

2.2.5 Lease variation general code

In order to rectify the inconsistency identified in the Lease Variation General Code Rule R7 it is proposed to amend the wording as provided below:

Existing provision:

Rules	Criteria
5.1 Expressing the number of dwellings	
<p>R7</p> <p>A variation to a <i>lease</i> that expresses the number of approved or lawfully erected <i>dwellings</i> is consistent with both of the following:</p> <p>a) all other provisions of the <i>lease</i></p> <p>b) the Territory Plan, including all relevant codes.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Proposed provision

Element 5: Variations to express or change the number of dwellings or units

Rules	Criteria
5.1 <u>Expressing or changing the number of dwellings or units</u>	
<p>R7</p> <p>This rule applies to any of the following:</p> <p>a) Varying a <i>lease</i> to express the number of approved or lawfully erected <i>dwellings</i> or units</p> <p>b) Varying a <i>lease</i> to change the number of approved or lawfully erected <i>dwellings</i> or units</p> <p>c) Varying a <i>lease</i> to add a <i>secondary residence</i> where <u>erection of a <i>secondary residence</i> has been approved</u></p> <p>The variation to the <i>lease</i> is consistent with the following:</p> <p>(i) all other provisions of the <i>lease</i>; and</p> <p>(ii) the Territory Plan, including all relevant codes.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

2.2.6 Estate Development Code

In order to provide greater flexibility for the design of narrow blocks with an address street facing rear lanes it is proposed to amend the wording of R61 in the Estate Development Code as outlined below:

Existing provision:

9.3 Vehicular access – blocks less than 8m wide	
<p>R61</p> <p>This rule applies to <i>single dwelling blocks</i> where the width of the block at the minimum allowable front boundary setback is less than 8m.</p> <p>No direct vehicular access is provided to either of the following:</p> <ul style="list-style-type: none"> a) a road with actual or forecast traffic volumes in excess of 3000 vehicles per day b) any road that is adjacent to an address street boundary with a bearing between 70° and 120° <p>Note: Item b) refers to narrow blocks oriented north-south, with the access street to the north. Refer to appendix A for an explanation of how a street boundary bearing is defined.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Proposed provision:

9.3 Vehicular access – blocks less than 8m wide	
<p>R61</p> <p>This rule applies to <i>single dwelling blocks</i> where the width of the block at the minimum allowable front boundary setback is less than 8m.</p> <p>No direct vehicular access is provided to either of the following:</p> <ul style="list-style-type: none"> a) a <i>major collector road</i> b) any <i>minor collector road or access street</i> that is adjacent to an address street boundary with a bearing between 70° and 120° <p>Note: Item b) refers to narrow blocks oriented north-south, with the access street to the north. Refer to appendix A for an explanation of how a street boundary bearing is defined. Item b) does not apply where the access is from a rear lane irrespective of boundary orientation.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

2.2.7 Definitions of Development: *Major service conduits*

Existing definition (underlined text to be deleted)

Major service conduits means the major bulk water supply and reticulation mains having a diameter equal to or greater than 675mm, trunk sewers having a diameter equal to or greater than 750mm, stormwater main drains having a diameter equal to or greater than 900mm or comprising open drains or waterways, transmission lines having a voltage greater than 66kV, gas mains having a diameter greater than 100mm, and major telecommunication cable ducts having a width equal to or greater than 1000mm, coaxial cables, and optical fibre cables.

Proposed definition

Major service conduits means the major bulk water supply and reticulation mains having a diameter equal to or greater than 675mm, trunk sewers having a diameter equal to or greater than 750mm, stormwater main drains having a diameter equal to or greater than 900mm or comprising open drains or waterways, transmission lines having a voltage greater than 66kV, gas mains having a diameter greater than 100mm, and major telecommunication cable ducts having a width equal to or greater than 1000mm.

2.3 Reasons for the Proposed Draft Variation

The reasons for the draft variation are as follows:

- 1) to provide improved opportunities for specific types of development in certain zones
- 2) to enhance the functionality of some Territory Plan provisions
- 3) to reduce ambiguity and improve clarity of some Territory Plan provisions
- 4) to clarify the interpretation and useability of certain definitions

2.4 Planning Context

2.4.1 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.

2.4.2 Territory Plan Statement of Strategic Directions

The proposal is consistent with the principles set out in the Territory Plan's Statement of Strategic Directions. In particular the principles of balancing economic, social and environmental objectives and ensuring community involvement in the pursuit of sustainable, appropriately designed and suitably located development.

2.5 Interim Effect

Section 65 of the Planning and Development Act 2007 does not apply in relation to the draft variation so it does not have interim effect. The current Territory Plan will continue to apply while the variation remains in draft form.

2.6 Consultation with Government Agencies

EPD 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
- 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 4 May 2016.

“The NCA has no objection to the changes proposed in Draft Variation to the Territory Plan No. 353. In regard to proposed change ‘C’ (Eating Establishments – Beard Precinct Map and Code), the NCA has previously advised CIC Australia Limited that it would be willing to support food establishments within the Eastern Industrial Estate (refer attached letter). The NCA maintains no objection to the proposal.”

The National Capital Authority provided additional comments on 11 May 2016:

“I’ve reviewed the additional change for Canberra Outlet Centre and can advise that the NCA has no objection. The proposed change is not inconsistent with either the National Capital Plan or DCP11/03.”

Response

Noted.

Conservator of Flora and Fauna

The Conservator of Flora and Fauna made the following comments on 9 May 2016:

“In accordance with Section 61(b) of the Planning and Development Act 2007 (the Act), I advise that I have examined Draft Variation No 353. This variation is to provide for miscellaneous changes to the Territory Plan relating to:

1. *Allow telecommunications facilities in urban open space.*
2. *Allow for eating establishment within the industrial estate of Beard.*
3. *Clarifying that a lease variation is a code track assessable development.*
4. *Removing reference to Neighbourhood Plans from the Commercial Zones Development Code and the Parks and Recreation Zones Development Code.*
5. *Correcting an inconsistency within the Lease Variation General Code.*
6. *Minor amendment to the Estate Development Code to allow for more flexibility regarding access to narrow blocks.*
7. *Removing the inclusion of coaxial cables and optical fibre cables in the definition of 'Major service conduits' to recognise their use as minor service reticulation.*

There are no issues of concern with the proposed amendments.”

The Conservator of Flora and Fauna made the following additional comments on 13 May 2016:

“In accordance with Section 61(b) of the Planning and Development Act 2007 I advise that I have examined the additional item to be included in Draft Variation No 353. The additional item relates to increasing the allowable gross floor area limit for a shop within the Canberra Outlet Centre located on Block 8 Section 48 Fyshwick.

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 on 10 May 2016:

“Thank you for the opportunity to review and provide comment on the Territory Plan draft variation DV353.

Parts of Beard Estate have undergone and other parts are currently undergoing an independent environmental audit into the site's suitability, from a contamination perspective, for its permitted uses. If a variation is proposed for the whole of the Estate then all blocks must be reassessed and reaudited for suitability against the proposed new uses. The findings of the audit must be reviewed and endorsed by the EPA prior to the variation being enacted.”

Response

Noted.

The draft variation will not commence (be enacted) until such time as the site audit has been endorsed by EPA.

Heritage Council

The Heritage Council provided the following comments on 2 May 2016:

“The Council does not object to the proposed amendments to the Territory Plan described by DV353, on the basis that Heritage Act 2004 provisions will continue to guide the management of heritage places and objects that may be affected by proposed changes.”

The Heritage Council provided additional comments on 17 May 2016:

“Draft Variation 353 - Canberra Outlet Centre

Thank you for the opportunity to provide comments on the Draft Variation to the Territory Plan 353 (DV353).

The ACT Heritage Council (the Council) understands that DV353 proposes to vary the Territory Plan for Block 8, Section 48, Fyshwick (the Canberra Outlet Centre) to increase the gross floor area limit of the existing supermarket from 200m² to 1000m², and to rezone the block as RC5.

Review of the ACT Heritage Register confirms that no registered or recorded heritage places are found within, or in the immediate vicinity of, the proposed development area. Due to the highly disturbed nature of the subject land, it is also considered unlikely that unrecorded heritage places or objects would be affected by future works.

In this context, the Council has no objection to the proposed Territory Plan Variation for Block 8, Section 48, Fyshwick.”

Response

Noted.

Land Custodian (TAMSD)

The land custodian provided the following comments on 3 May 2016.

“Re: Comment on Draft Variation 353

2.2.1 Changes to zone development tables and associated code changes

A. Mobile Phone facilities

PRZ1 Urban Open Space zones are found throughout residential areas. Consideration on the impacts on the installation of communications facilities immediately adjacent to residents needs to be considered in addition to not detracting from the use of the surrounding UOS for its primary purpose. As such the proposal of permitting communications facility in PRZ1 should also not destroy the visual quality of the UOS with the presence of large steel lattice towers and masts. Vehicle access to the communication facilities and associated infrastructure also needs to be considered as part of the impact.

B. Eating Establishments

If take-away food shops and restaurants are permitted, parking for these establishments should also be considered to avoid damage to UOS from illegal parking.

2.2.3 Changes to Definitions of Development

A. In the Parks and Recreation Zone Development Code, should this read 'Insert a new item 2.4 and associated provisions, not 1.4?'

In the Table 2.4 (p. 8) - C6A relating to communication facilities and associated infrastructure, it is suggested that Item c) also includes impacts on the amenity of the surrounding area. TAMS has concern that the current wording of 'detrimental' effects will not take into consideration that while the installation of a communications facility may not be detrimental, it may still have a negative impact on the surrounding landscape, e.g. in a high use park. We need to ensure that the proponents of a communications facility consider all options and not go with the most cost effective option resulting in a less than desirable outcome for the community."

Response

Noted.

In response to impacts of mobile phone facilities immediately adjacent to residents, the Communications Facilities and Associated Infrastructure General Code has stringent requirements that need to met for any proposal for the establishment of a mobile phone tower. The proposed criteria for the Parks and Recreation Zone Development Code are not intended to duplicate the provisions contained in the Communications Facilities and Associated Infrastructure General Code.

The intent of the code is to ensure that adverse impacts from telecommunications infrastructure are reduced to an acceptable and balanced level commensurate with its benefits; ensure that the design and siting of telecommunications infrastructure is as unobtrusive as is technically and economically feasible and ensure impacts on the natural and built environment from the installation of communications facilities are minimised and balanced against its benefits.

Parking for take away food shops and restaurants in Beard will considered as part of any development application for the use.

Item 1.4 in the Parks and Recreation Zone Development Code has been rectified to read item 2.4.

3. DRAFT VARIATION

3.1 Variation to the Territory Plan

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

3.1.1 Variation to zone development tables

1. Residential RZ1-RZ5 zone development tables – MINIMUM ASSESSMENT TRACK CODE

Insert underlined text:

‘Varying a lease to do one or more of the following:

1. express or change the number of approved or lawfully erected *dwellings*
2. allow a secondary residence where erection of a secondary residence has been approved
3. remove, relocate or change easements.’

2. Residential RZ1-RZ5 zone development tables – MINIMUM ASSESSMENT TRACK MERIT
--

Insert underlined text:

‘varying a lease (where not prohibited, code track or impact track assessable)’

3. Commercial CZ1-CZ6 zone development tables – MINIMUM ASSESSMENT TRACK CODE
--

Omit

‘No development identified’

Insert:

‘Varying a lease to do one or more of the following:

1. express or change the number of approved or lawfully erected units
2. remove, relocate or change easements.’

4. Commercial CZ1-CZ6 zone development tables – MINIMUM ASSESSMENT TRACK MERIT

Insert:

‘varying a lease (where not prohibited, code track or impact track assessable)’

5. Industrial IZ1 and IZ2 zone development tables – MINIMUM ASSESSMENT TRACK CODE

Omit

‘No development identified’

Insert:

‘Varying a lease to do one or more of the following:

1. express or change the number of approved or lawfully erected units
2. remove, relocate or change easements.’

6. Industrial IZ1 and IZ2 zone development tables – MINIMUM ASSESSMENT TRACK MERIT

Insert:

‘varying a lease (where not prohibited, code track or impact track assessable)’

7. Community Facility CFZ zone development table – MINIMUM ASSESSMENT TRACK MERIT

Insert:

‘varying a lease (where not prohibited, code track or impact track assessable)’

8. PRZ1 Urban Open Space Zone Development Table – MINIMUM ASSESSMENT TRACK MERIT

Insert

‘Communications facility’

'varying a lease (where not prohibited, code track or impact track assessable)

9. PRZ1 Urban Open Space Zone Development Table – PROHIBITED DEVELOPMENT

Omit

'Communications facility'

10. PRZ2 Restricted Access Recreation Zone Development Table – MINIMUM ASSESSMENT TRACK MERIT

Insert

'varying a lease (where not prohibited, code track or impact track assessable)

11. TS1 and TS2 Transport and Services Development Tables - MINIMUM ASSESSMENT TRACK MERIT

Insert

'varying a lease (where not prohibited, code track or impact track assessable)

12. Non Urban Zones NUZ1-NUZ5 zone development tables - MINIMUM ASSESSMENT TRACK MERIT

Insert

'varying a lease (where not prohibited, code track or impact track assessable)

3.1.2 Variation to Parks and Recreation Zone Development Code

13. Part A(1) – PRZ1-Urban Open Space Zone, Element 2: Building and Site Controls

Insert

2.4 Communications Facility	
There is no applicable rule.	<p>C6A</p> <p>Development of land for a Communications facility is compatible with the use of the surrounding open space and nearby residential areas by ensuring that:</p> <ul style="list-style-type: none">a) sufficient surrounding open space is retained to meet the recreational and social needs of the communityb) existing public access to surrounding open space is maintainedc) any detrimental impacts on the site and surrounding area are minimisedd) development complies with the Communications Facilities and Associated Infrastructure General Code

3.1.3 Variation to the Lease Variation General Code

14. Part B – Lease variations in the code track

Substitute

Element 5: Variations to express or change the number of dwellings or units

Rules	Criteria
5.1 Expressing or changing the number of dwellings or units	
<p>R7</p> <p>This rule applies to any of the following:</p> <p>(a) Varying a <i>lease</i> to express the number of approved or lawfully erected <i>dwellings</i> or units</p> <p>(b) Varying a <i>lease</i> to change the number of approved or lawfully erected <i>dwellings</i> or units</p> <p>(c) Varying a <i>lease</i> to add a <i>secondary residence</i> where erection of a <i>secondary residence</i> has been approved</p> <p>The variation to the <i>lease</i> is consistent with the following:</p> <p>(i) all other provisions of the <i>lease</i>; and</p> <p>(ii) the Territory Plan, including all relevant codes.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

3.1.4 Variation to the Beard Precinct Map and Code

15. Table 2 – Additional merit track development

Insert in the column titled 'Development':

'Restaurant'

'Take-away food shop'

16. Additional Rules and Criteria-RC1-Harman Industrial Area-Element 1: Use

Insert

1.2 Take-away food shops and restaurants	
<p>R2</p> <p>The maximum gross floor area for each take-away food shop or restaurant is 200m².</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

3.1.5 Variation to the Fyshwick Precinct Map and Code

17. Fyshwick Precinct Map and Code

*Substitute Fyshwick Precinct Map
With Appendix A*

Insert

RC5 – Block 8 section 48 Fyshwick

This part applies to blocks and parcels identified in area RC5 shown on the Fyshwick Precinct Map.

Element 6: Use

Rules	Criteria
6.1 SHOP – floor area limit	
<p>R8</p> <p>The maximum <i>gross floor area</i> per shop complies with all of the following:</p> <p>a) for one supermarket only – 1000m²</p> <p>b) for all other <i>SHOP</i> selling food or supermarket, except produce market – 200m²</p> <p>c) <i>SHOP</i>, except <i>bulky goods retailing</i> – 3000m²</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

3.1.6 Variation to the Estate Development Code

18. Part B- Estate Planning in residential zones and CZ5

Substitute

Element 9: Street Network

9.3 Vehicular access – blocks less than 8m wide	
<p>R61</p> <p>This rule applies to <i>single dwelling blocks</i> where the width of the block at the minimum allowable front boundary setback is less than 8m.</p> <p>No direct vehicular access is provided to either of the following:</p> <ul style="list-style-type: none">c) a <i>major collector</i> roadd) any <i>minor collector</i> road or <i>access street</i> that is adjacent to an address street boundary with a bearing between 70° and 120° <p>Note: Item b) refers to narrow blocks oriented north-south, with the access street to the north. Refer to appendix A for an explanation of how a street boundary bearing is defined. Item b) does not apply where the access is from a rear lane irrespective of boundary orientation.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

3.1.7 Variation to the Territory Plan Definitions of Development

Substitute

Major service conduits means the major bulk water supply and reticulation mains having a diameter equal to or greater than 675mm, trunk sewers having a diameter equal to or greater than 750mm, stormwater main drains having a diameter equal to or greater than 900mm or comprising open drains or waterways, transmission lines having a voltage greater than 66kV, gas mains having a diameter greater than 100mm, and major telecommunication cable ducts having a width equal to or greater than 1000mm.

Interpretation service

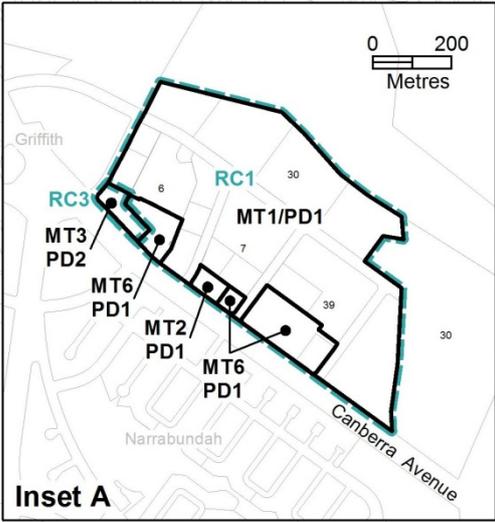
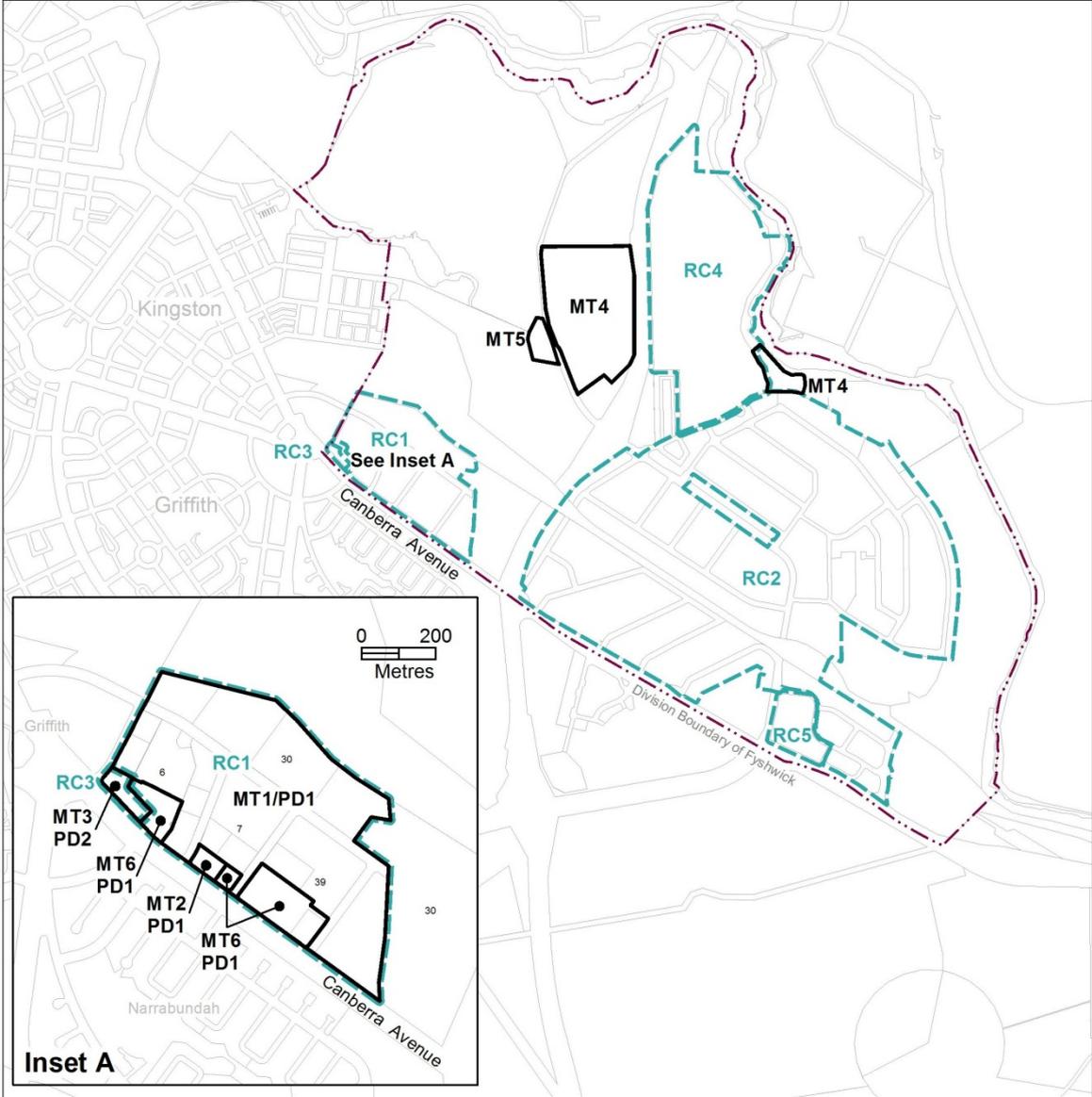
ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
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GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
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SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

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Fyshwick Precinct Map



- PD_n** Additional prohibited development applies see Table 1
- MT_n** Additional merit track development applies see Table 2
- RC_n** Additional rules and criteria apply see Fishwick Precinct Code

