



Australian Capital Territory

Planning and Building Legislation Amendment Act 2011 (No 2)

A2011-54

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Australian Capital Territory

Planning and Building Legislation Amendment Act 2011 (No 2)

A2011-54

An Act to amend legislation about planning, building and the environment

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Building Legislation Amendment Act 2011 (No 2)*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the following legislation:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Regulation 2004*
- *Magistrates Court (Building Infringement Notices) Regulation 2008*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Plastic Shopping Bags Ban Regulation 2011*.

Part 2 Building Act 2004

4 Division 3.4 heading

substitute

Division 3.4 Building commencement notices and building work signs

5 Building commencement notices New section 37 (2A)

insert

- (2A) If, under section 37B, a sign must be displayed on the parcel of land before the application is made, the licensed builder must state in the application that the builder—
- (a) erected the sign, and displayed the sign for the required period;
or
 - (b) is reasonably satisfied that the sign was erected by a licensed builder and displayed for the required period.

Note Knowingly or recklessly giving someone information in relation to a construction service that is false or misleading is a ground for occupational discipline (see *Construction Occupations (Licensing) Act 2004*, s 55 (1) (b)).

6 New sections 37A and 37B

insert

37A Sign to be displayed for certain building work

- (1) This section applies to building work that is required to be done only by a licensed builder.

Note This section does not apply to exempt building work (see s 15 (Application of pt 3 to building work)).

- (2) A licensed builder who carries out or supervises the building work on a parcel of land must display a sign on the parcel—
- (a) while the work is being carried out; or
 - (b) if the work is prescribed by regulation—for the period prescribed by regulation for the work.
- (3) However, if the building work must be carried out urgently to address a risk of death or injury to a person, serious harm to the environment or significant damage to property, the licensed builder who carries out or supervises the work must display a sign as soon as practicable after the work is begun.
- (4) A sign under this section must comply with any requirement prescribed by regulation.
- (5) If a sign under this section is removed or damaged, the person who must display the sign must replace or repair it—
- (a) within 2 days after the day it is removed or damaged; or
 - (b) if another period is prescribed by regulation—within that period.
- (6) A person commits an offence if—
- (a) a sign is displayed under subsection (2); and
 - (b) the person moves, alters, damages, defaces, covers or prevents access to the sign.

Maximum penalty: 5 penalty units.

- (7) An offence against subsection (6) is a strict liability offence.

37B Sign to be displayed for building work in prescribed development

- (1) This section applies to building work that—
 - (a) is in relation to prescribed development; and
 - (b) is required to be done only by a licensed builder.

Note This section does not apply to exempt building work (see s 15 (Application of pt 3 to building work)).
- (2) A licensed builder engaged to carry out the building work on a parcel of land must display a sign on the parcel—
 - (a) that complies with the requirements prescribed by regulation; and
 - (b) for the period prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).
- (3) If a sign under this section is removed or damaged, the person who must display the sign must replace or repair it—
 - (a) within 2 days after the day it is removed or damaged; or
 - (b) if another period is prescribed by regulation—within that period.
- (4) A person commits an offence if—
 - (a) a sign is displayed under subsection (2); and
 - (b) the person moves, alters, damages, defaces, covers or prevents access to the sign.

Maximum penalty: 5 penalty units.
- (5) An offence against subsection (4) is a strict liability offence.

Part 3 Building (General) Regulation 2008

7 New division 3.2A

insert

Division 3.2A Building work signs

30A Requirements for sign for certain building work—Act, s 37A (4) and s 37B (2) (a)

The following requirements are prescribed:

- (a) the sign must be at least 600mm x 900mm;
- (b) the sign must contain the following heading in bold typeface at least 50mm high:
‘Notice about building work’;
- (c) the sign must include the following information:
 - (i) the name and licence number of the licensed builder;
 - (ii) a contact telephone number for the licensed builder;
 - (iii) the name and licence number of the certifier for the building work;
 - (iv) a contact telephone number for the certifier;
 - (v) the street address for each block of land in the parcel of land;
 - (vi) a description of the nature and scope of the building work to be, or being, carried out;
 - (vii) if development approval is required for the building work—the development approval number;

- (viii) if a development approval is not required for the building work—that the work is exempt from requiring approval;
 - (ix) if the requirement for development approval is not determined—that the requirement for development approval is not determined;
 - (x) for building work carried out in stages—the stage of the work to be, or being, carried out and a description of the nature and scope of the stage of the work;
- (d) the sign must be made of waterproof material;
 - (e) the sign must be placed prominently so that it can be seen and read easily by a person from each frontage of the parcel of land on which the sign must be displayed.

30B Prescribed development—Act, s 37B (1) (a)

The following development is prescribed:

- (a) a designated development mentioned in the *Planning and Development Regulation 2008*, schedule 1, section 1.45 for a garage that has a floor area that is more than the floor area mentioned in this regulation, schedule 1, section 1.1, definition of *large building*, paragraph (b) (iii) (B);

Note The floor area mentioned in this regulation is a floor area of not more than 36m² excluding areas underneath external walls.
- (b) a development mentioned in the *Planning and Development Regulation 2008*, schedule 1, section 1.100 or 1.100A;
- (c) a development mentioned in the *Planning and Development Regulation 2008*, schedule 1, section 1.100B if the development is not required to be carried out urgently to address a risk of death or injury to a person, serious harm to the environment or significant damage to property.

30C Period for displaying sign—Act, s 37B (2) (b)

At least 7 consecutive days in the 2 months before an application for a commencement notice is lodged in relation to the building work is prescribed.

Part 4 Construction Occupations (Licensing) Regulation 2004

8 Demerit grounds for occupational discipline Schedule 2, pt 2.1, new items 2.1.16A and 2.1.16B

insert

2.1.16A	fail to comply with <i>Building Act 2004</i> , s 37A (2)—carried out or supervised building work without displaying sign	carrying out or supervising building work without displaying sign	1
2.1.16B	fail to comply with <i>Building Act 2004</i> , s 37A (5)—carried out or supervised building work without replacing or repairing damaged sign within 2 days or prescribed period	carrying out or supervising building work without replacing or repairing damaged sign within 2 days or prescribed period	1

Part 5 **Magistrates Court (Building Infringement Notices) Regulation 2008**

9 Building legislation infringement notice offences and penalties
Schedule 1, pt 1.1, new items 1A and 1B

before item 1, insert

1A	37A (6)	5	100
1B	37B (5)	5	100

Part 6 Planning and Development Act 2007

10 New sections 138AE and 138AF

in division 7.3.1, insert

138AE Community consultation for certain development proposals

- (1) This section applies to a development proposal (a *prescribed development proposal*) prescribed by regulation for this section.
- (2) Before lodging a development application for a prescribed development proposal, the proponent of the proposal must consult the community (*community consultation*)—
 - (a) about the proposal; and
 - (b) if a guideline is made under section 138AF—in accordance with the guideline.
- (3) If a proponent proposes to lodge a development application for a prescribed development proposal (a *revised proposal*) that is not substantially the same as the proposal consulted on under subsection (2), the proponent must carry out community consultation in relation to the revised proposal.
- (4) The development application for a prescribed development proposal must be accompanied by a written notice of the community consultation carried out for the proposal.

Note 1 If a form is approved under s 425 for this provision, the form must be used.

Note 2 If particular information is to be included in the form for the written notice of the community consultation, or a particular document must be attached to or given with the form, the form is properly completed only if the requirement is complied with (see Legislation Act, s 255 (5)).

- (5) The validity of a decision on a development application for a prescribed development proposal is not affected by a defect or irregularity in relation to community consultation for the proposal.

138AF Community consultation guidelines

- (1) The planning and land authority may make guidelines about how a proponent of a development proposal to which section 138AE applies must or may consult the community under that section.
- (2) A guideline is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 Power to make a statutory instrument includes power to make different provision for different categories (see Legislation Act, s 48).

11 Form of development applications

Section 139 (2), new notes

insert

Note 4 A development application for a development proposal to which s 138AE applies must also be accompanied by a written notice of the community consultation carried out (see s 138AE (4)).

Note 5 If particular information is to be included in the form for a development application, or a particular document must be attached to or given with the form, the form is properly completed only if the requirement is complied with (see Legislation Act, s 255 (5)).

Part 7 Planning and Development Regulation 2008

12 Section 20 heading

substitute

20 Exempt developments—Act, s 133, def *exempt development*

13 New part 3.1AA

after section 20, insert

Part 3.1AA Pre-application matters

20A Prescribed development proposal for community consultation—Act, s 138AE

- (1) A development proposal for 1 or more of the following is prescribed:
 - (a) a building for residential use with 3 or more storeys and 15 or more dwellings;
 - (b) a building with a gross floor area of more than 5000m²;
 - (c) a building or structure more than 25m above finished ground level.
- (2) However, subsection (1) does not apply to the following:
 - (a) a development proposal for development on land in an area designated as an industrial zone in the territory plan;
 - (b) a development proposal for development in an area outlined in bold on the plans in schedule 1B.

- (3) The planning and land authority must, at least once every 5 years, review the operation of subsection (2).
- (4) In this section:
residential use—see the territory plan (13 Definitions).

14 Schedule 1, new section 1.71

in division 1.3.3, insert

1.71 Signs—required under Building Act

The putting up, attaching or displaying of a sign if—

- (a) the sign is required to be put up, attached or displayed under the *Building Act 2004*, section 37A (Sign to be displayed for certain building work) or section 37B (Sign to be displayed for building work in prescribed development); and
- (b) the sign complies with the requirements for it under that Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

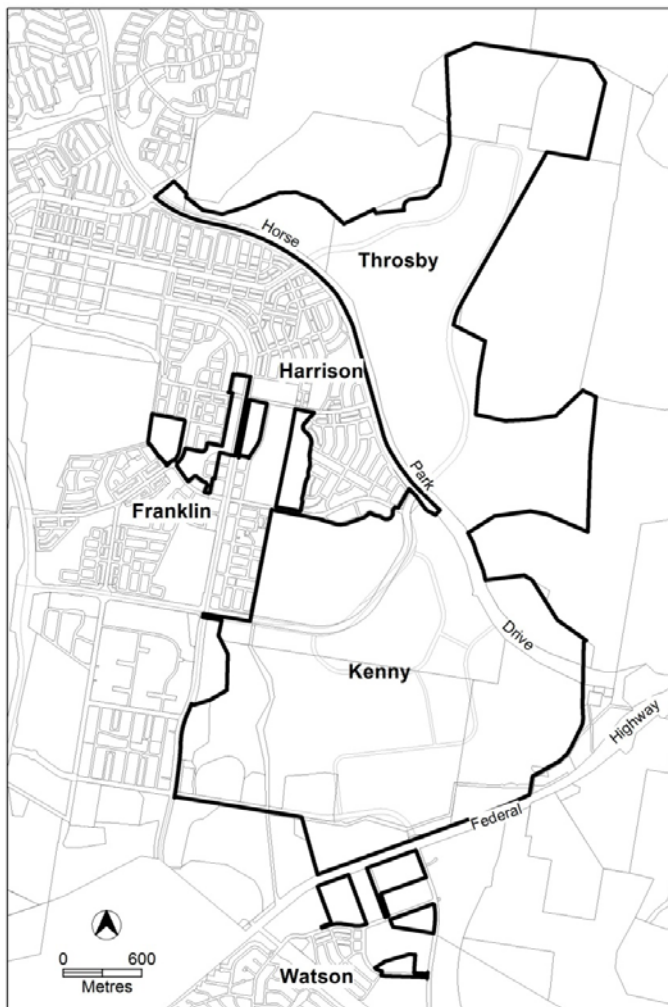
15 New schedule 1B

insert

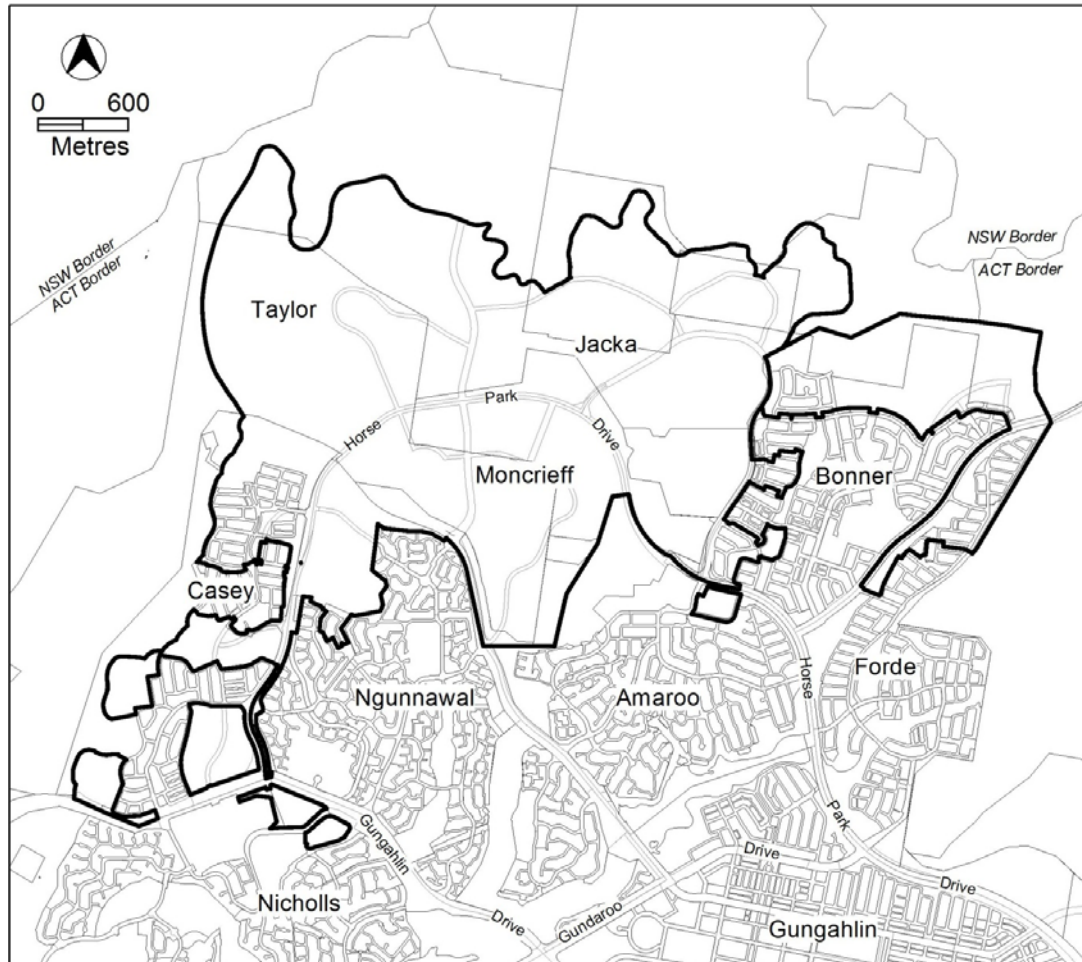
Schedule 1B Land not requiring community consultation for development proposal

(s 20A (2) (b))

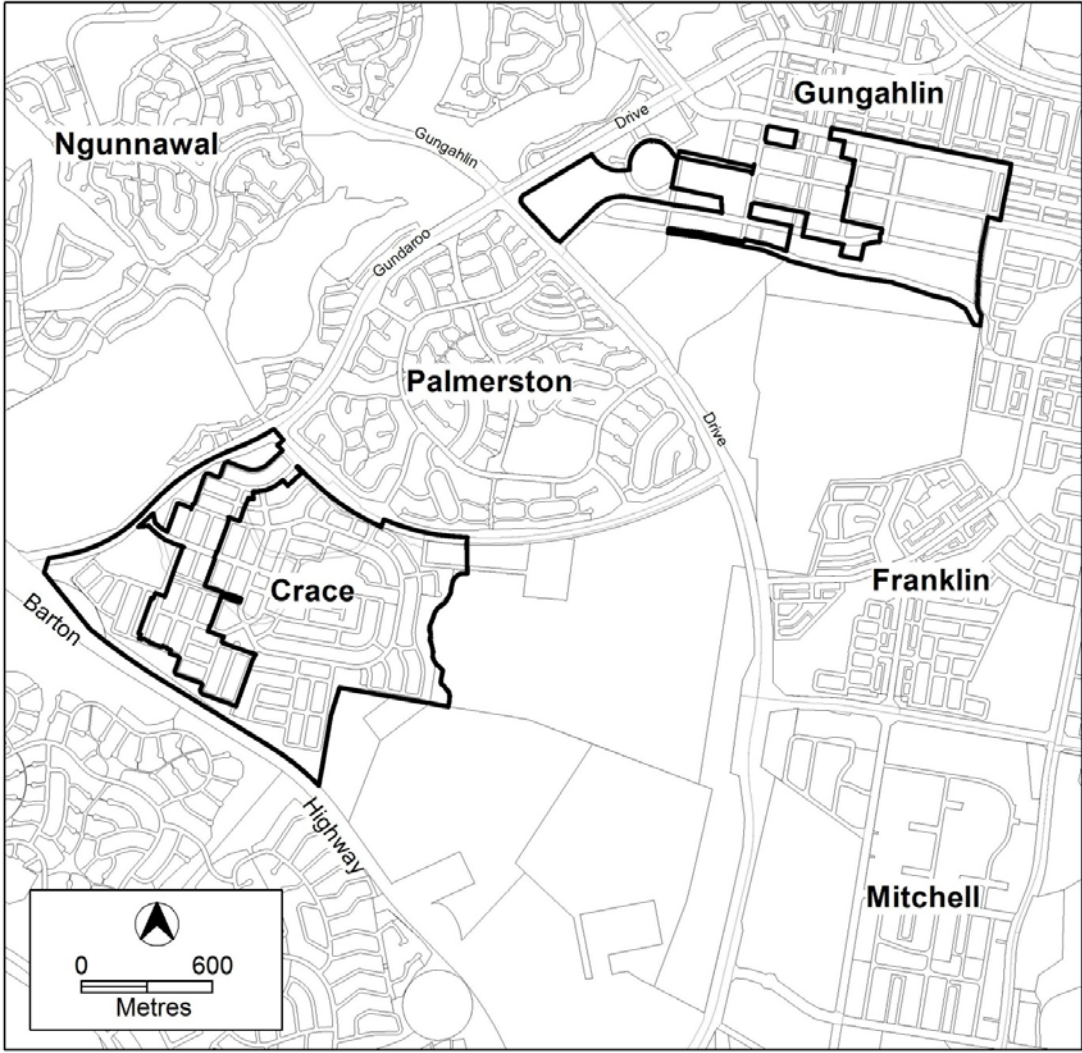
Franklin, Harrison, Kenny, Throsby and Watson



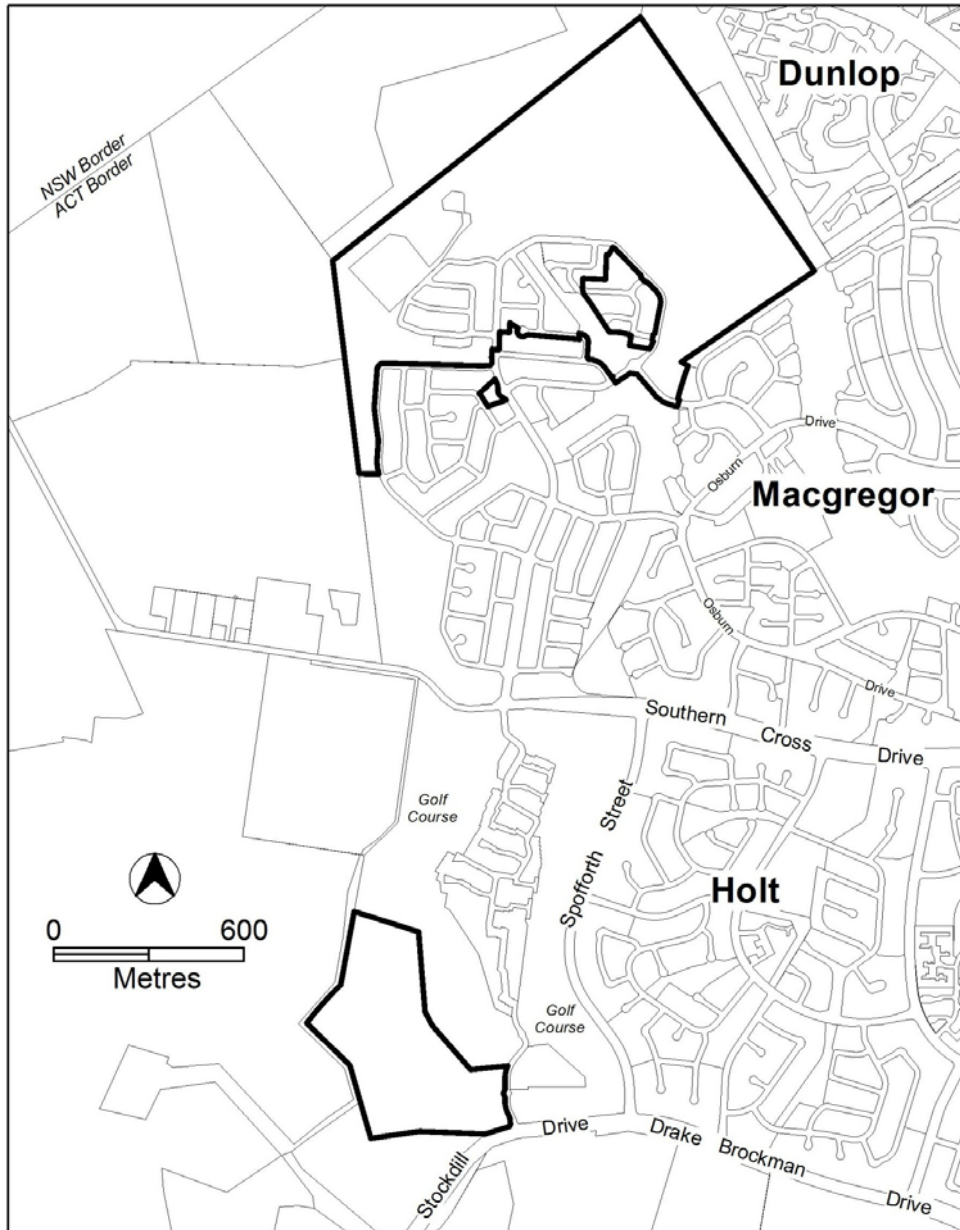
Amaroo, Casey, Bonner, Forde, Jacka, Moncrieff, Nicholls, and Taylor



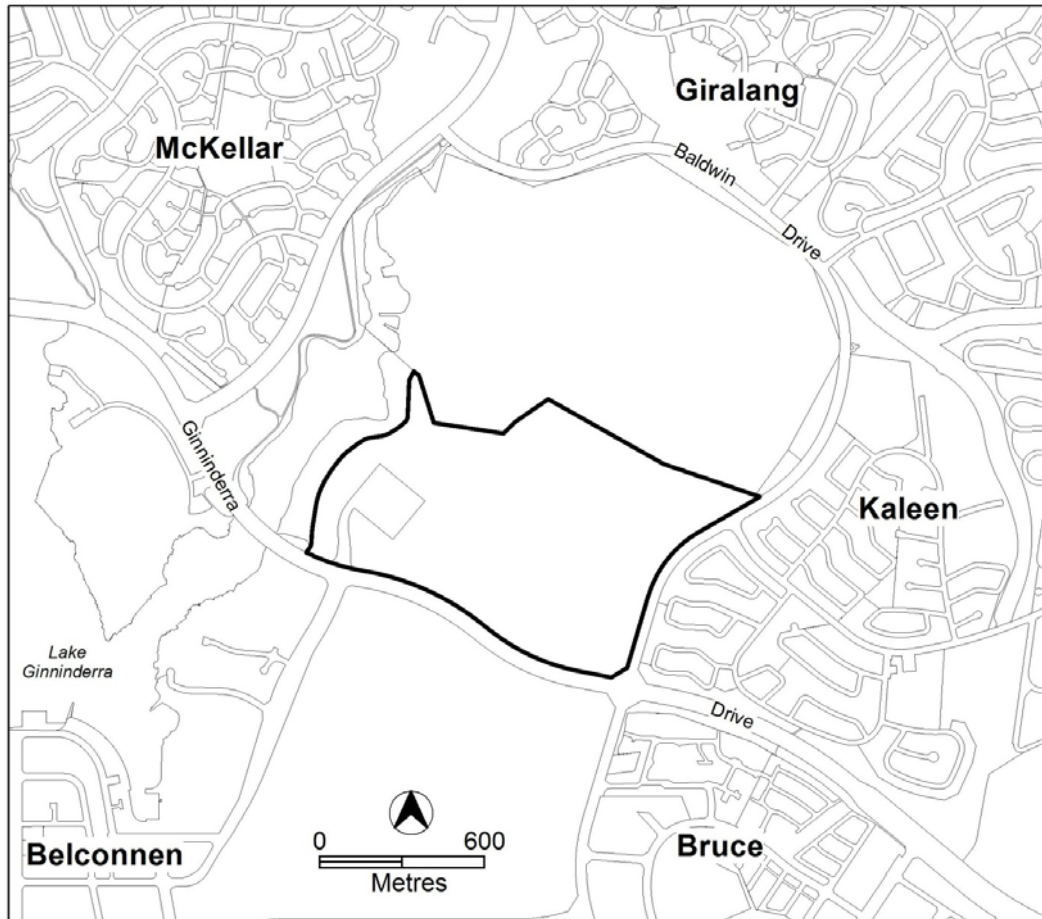
Crace and Gungahlin



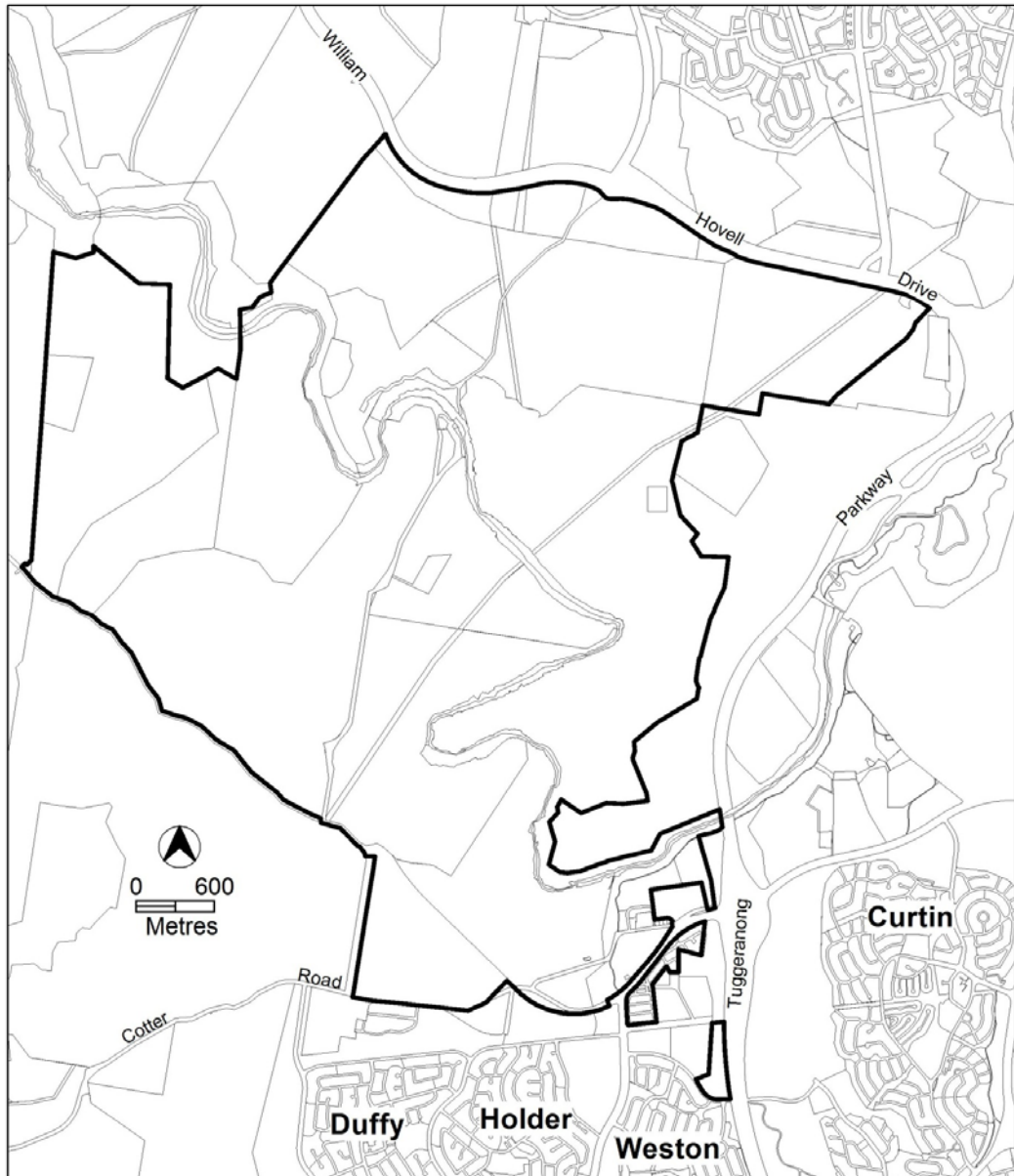
Holt and Macgregor



Lawson



Molonglo and Weston North



Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 November 2011.

2 Notification

Notified under the Legislation Act on 13 December 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Planning and Building Legislation Amendment Bill 2011 (No 2), which was passed by the Legislative Assembly on 6 December 2011.

Clerk of the Legislative Assembly

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