

2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for the Environment and Sustainable Development)

# Planning and Building Legislation Amendment Bill 2011 (No 2)

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
<b>Part 2</b>	<b>Building Act 2004</b>
4	Division 3.4 heading 3
5	Building commencement notices New section 37 (2A) 3
6	New sections 37A and 37B 3

		Page
<b>Part 3</b>	<b>Building (General) Regulation 2008</b>	
7	New division 3.2A	6
<b>Part 4</b>	<b>Construction Occupations (Licensing) Regulation 2004</b>	
8	Demerit grounds for occupational discipline Schedule 2, pt 2.1, new items 2.1.16A and 2.1.16B	9
<b>Part 5</b>	<b>Magistrates Court (Building Infringement Notices) Regulation 2008</b>	
9	Building legislation infringement notice offences and penalties Schedule 1, pt 1.1, new items 1A and 1B	10
<b>Part 6</b>	<b>Planning and Development Act 2007</b>	
10	New sections 138AE and 138AF	11
11	Form of development applications Section 139 (2), new notes	12
<b>Part 7</b>	<b>Planning and Development Regulation 2008</b>	
12	Section 20 heading	13
13	New part 3.1AA	13
14	Schedule 1, new section 1.71	14
15	New schedule 1B	14
<b>Part 8</b>	<b>Plastic Shopping Bags Ban Regulation 2011</b>	
16	Section 5	21

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## **Planning and Building Legislation Amendment Bill 2011 (No 2)**

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### **A Bill for**

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning and Building Legislation Amendment Act*  
4 *2011 (No 2)*.

5 **2 Commencement**

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

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

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

13 (2) If this Act has not commenced within 12 months beginning on its  
14 notification day, it automatically commences on the first day after  
15 that period.

16 (3) The Legislation Act, section 79 (Automatic commencement of  
17 postponed law) does not apply to this Act.

18 **3 Legislation amended**

19 This Act amends the following legislation:

- 20 • *Building Act 2004*
- 21 • *Building (General) Regulation 2008*
- 22 • *Construction Occupations (Licensing) Regulation 2004*
- 23 • *Planning and Development Act 2007*
- 24 • *Planning and Development Regulation 2008*
- 25 • *Plastic Shopping Bags Ban Regulation 2011*.

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## 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)).

- 1           (2) A licensed builder who carries out or supervises the building work  
2           on a parcel of land must display a sign on the parcel—
- 3           (a) while the work is being carried out; or
- 4           (b) if the work is prescribed by regulation—for the period  
5           prescribed by regulation for the work.
- 6           (3) However, if the building work must be carried out urgently to  
7           address a risk of death or injury to a person, serious harm to the  
8           environment or significant damage to property, the licensed builder  
9           who carries out or supervises the work must display a sign as soon  
10          as practicable after the work is begun.
- 11          (4) A sign under this section must comply with any requirement  
12          prescribed by regulation.
- 13          (5) If a sign under this section is removed or damaged, the person who  
14          must display the sign must replace or repair it—
- 15          (a) within 2 days after the day it is removed or damaged; or
- 16          (b) if another period is prescribed by regulation—within that  
17          period.
- 18          (6) A person commits an offence if—
- 19          (a) a sign is displayed under subsection (2); and
- 20          (b) the person moves, alters, damages, defaces, covers or prevents  
21          access to the sign.
- 22          Maximum penalty: 5 penalty units.
- 23          (7) An offence against subsection (6) is a strict liability offence.

1 **37B Sign to be displayed for building work in prescribed**  
2 **development**

3 (1) This section applies to building work that—

4 (a) is in relation to prescribed development; and

5 (b) is required to be done only by a licensed builder.

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

8 (2) A licensed builder engaged to carry out the building work on a  
9 parcel of land must display a sign on the parcel—

10 (a) that complies with the requirements prescribed by regulation;  
11 and

12 (b) for the period prescribed by regulation.

13 *Note* Power to make a statutory instrument (including a regulation) includes  
14 power to make different provision for different categories (see  
15 Legislation Act, s 48).

16 (3) If a sign under this section is removed or damaged, the person who  
17 must display the sign must replace or repair it—

18 (a) within 2 days after the day it is removed or damaged; or

19 (b) if another period is prescribed by regulation—within that  
20 period.

21 (4) A person commits an offence if—

22 (a) a sign is displayed under subsection (2); and

23 (b) the person moves, alters, damages, defaces, covers or prevents  
24 access to the sign.

25 Maximum penalty: 5 penalty units.

26 (5) An offence against subsection (4) is a strict liability offence.

1 **Part 3** **Building (General) Regulation**  
2 **2008**

3 **7** **New division 3.2A**

4 *insert*

5 **Division 3.2A** **Building work signs**

6 **30A** **Requirements for sign for certain building work—Act,**  
7 **s 37A (4) and s 37B (2) (a)**

8 The following requirements are prescribed:

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



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

13 **30B Prescribed development—Act, s 37B (1) (a)**

14 The following development is prescribed:

- 15 (a) a designated development mentioned in the *Planning and*  
16 *Development Regulation 2008*, schedule 1, section 1.45 for a  
17 garage that has a floor area that is more than the floor area  
18 mentioned in this regulation, schedule 1, section 1.1, definition  
19 of *large building*, paragraph (b) (iii) (B);
- 20 *Note* The floor area mentioned in this regulation is a floor area of not  
21 more than 36m<sup>2</sup> excluding areas underneath external walls.
- 22 (b) a development mentioned in the *Planning and Development*  
23 *Regulation 2008*, schedule 1, section 1.100 or 1.100A;
- 24 (c) a development mentioned in the *Planning and Development*  
25 *Regulation 2008*, schedule 1, section 1.100B if the  
26 development is not required to be carried out urgently to  
27 address a risk of death or injury to a person, serious harm to the  
28 environment or significant damage to property.

1 **30C Period for displaying sign—Act, s 37B (2) (b)**

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

1 **Part 4**2 **Construction Occupations  
(Licensing) Regulation 2004**3 **8 Demerit grounds for occupational discipline**  
4 **Schedule 2, pt 2.1, new items 2.1.16A and 2.1.16B**5 *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

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

4 **9 Building legislation infringement notice offences and**  
5 **penalties**  
6 **Schedule 1, pt 1.1, new items 1A and 1B**

7 *before item 1, insert*

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

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1 **Part 6** **Planning and Development**  
2 **Act 2007**

3 **10 New sections 138AE and 138AF**

4 *in division 7.3.1, insert*

5 **138AE Community consultation for certain development**  
6 **proposals**

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

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

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

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

4 **138AF Community consultation guidelines**

- 5 (1) The planning and land authority may make guidelines about how a  
6 proponent of a development proposal to which section 138AE  
7 applies must or may consult the community under that section.

- 8 (2) A guideline is a notifiable instrument.

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

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

12 **11 Form of development applications**  
13 **Section 139 (2), new notes**

14 *insert*

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

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

1 **Part 7** **Planning and Development**  
 2 **Regulation 2008**

3 **12 Section 20 heading**

4 *substitute*

5 **20 Exempt developments—Act, s 133, def *exempt***  
 6 ***development***

7 **13 New part 3.1AA**

8 *after section 20, insert*

9 **Part 3.1AA Pre-application matters**

10 **20A Prescribed development proposal for community**  
 11 **consultation—Act, s 138AE**

12 (1) A development proposal for 1 or more of the following is  
 13 prescribed:

14 (a) a building for residential use with 3 or more storeys and 15 or  
 15 more dwellings;

16 (b) a building with a gross floor area of more than 5000m<sup>2</sup>;

17 (c) a building or structure more than 25m above finished ground  
 18 level.

19 (2) However, subsection (1) does not apply to the following:

20 (a) a development proposal for development on land in an area  
 21 designated as an industrial zone in the territory plan;

22 (b) a development proposal for development in an area outlined in  
 23 bold on the plans in schedule 1B.

- 1 (3) In this section:  
2 *residential use*—see the territory plan (13 Definitions).

3 **14 Schedule 1, new section 1.71**

4 *in division 1.3.3, insert*

5 **1.71 Signs—required under Building Act**

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

- 7 (a) the sign is required to be put up, attached or displayed under  
8 the *Building Act 2004*, section 37A (Sign to be displayed for  
9 certain building work) or section 37B (Sign to be displayed for  
10 building work in prescribed development); and

- 11 (b) the sign complies with the requirements for it under that Act.

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

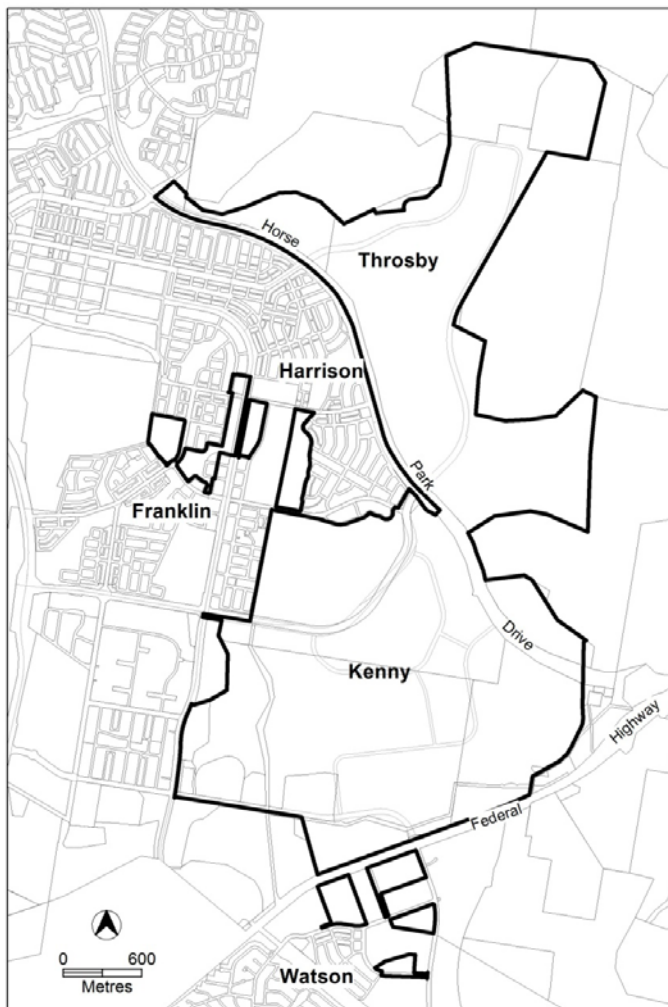
15 **15 New schedule 1B**

16 *insert*

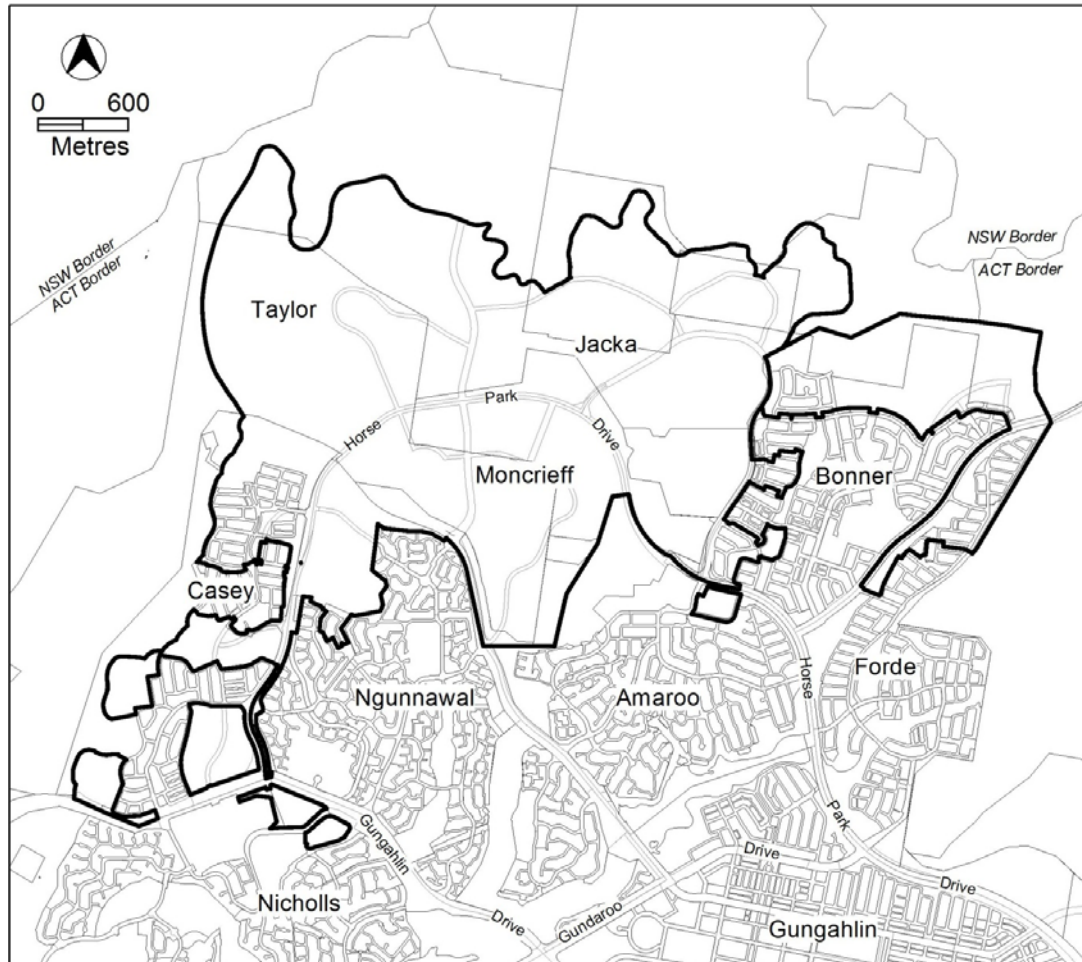


1 **Schedule 1B Land not requiring community**  
2 **consultation for development**  
3 **proposal**  
4 (s 20A (2) (b))

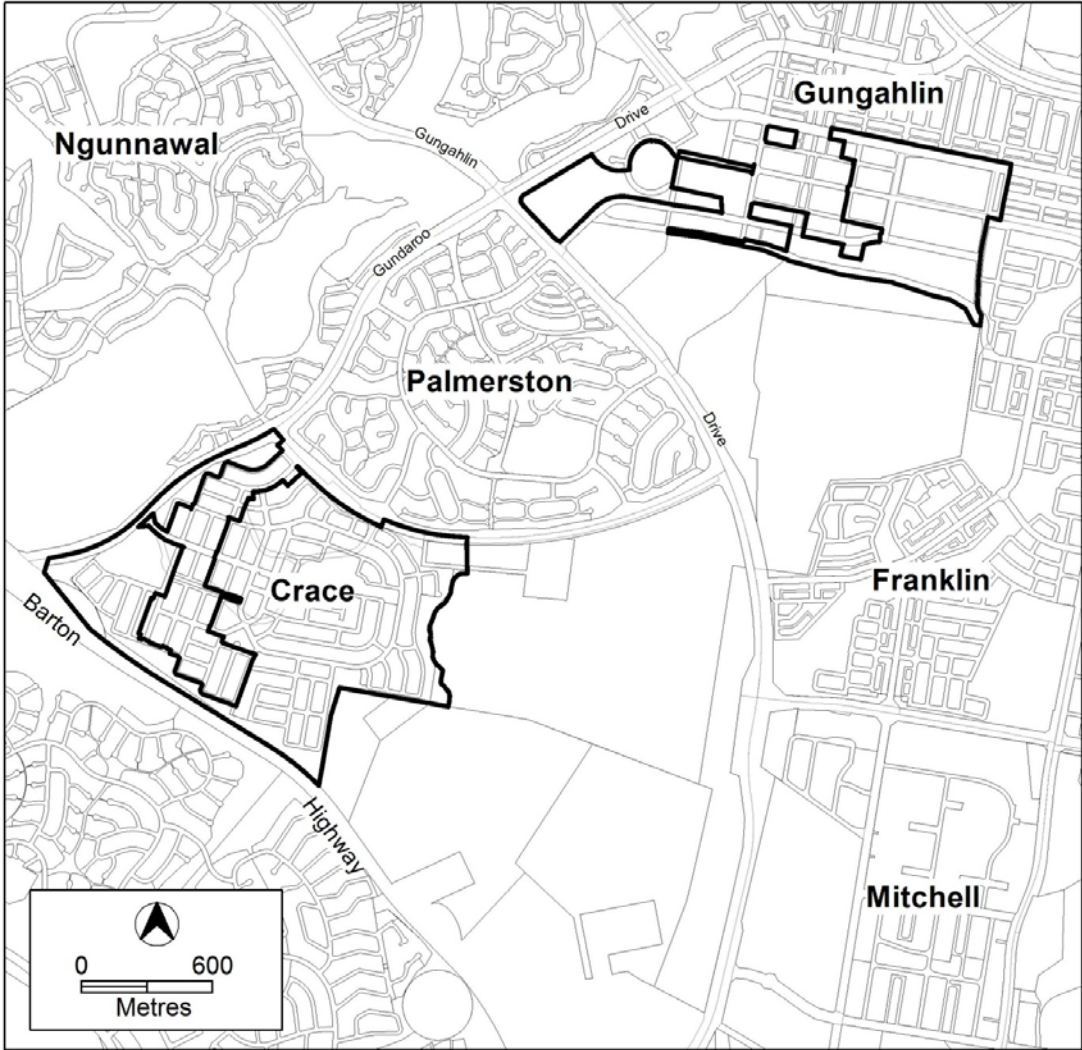
**Franklin, Harrison, Kenny, Throsby and Watson**



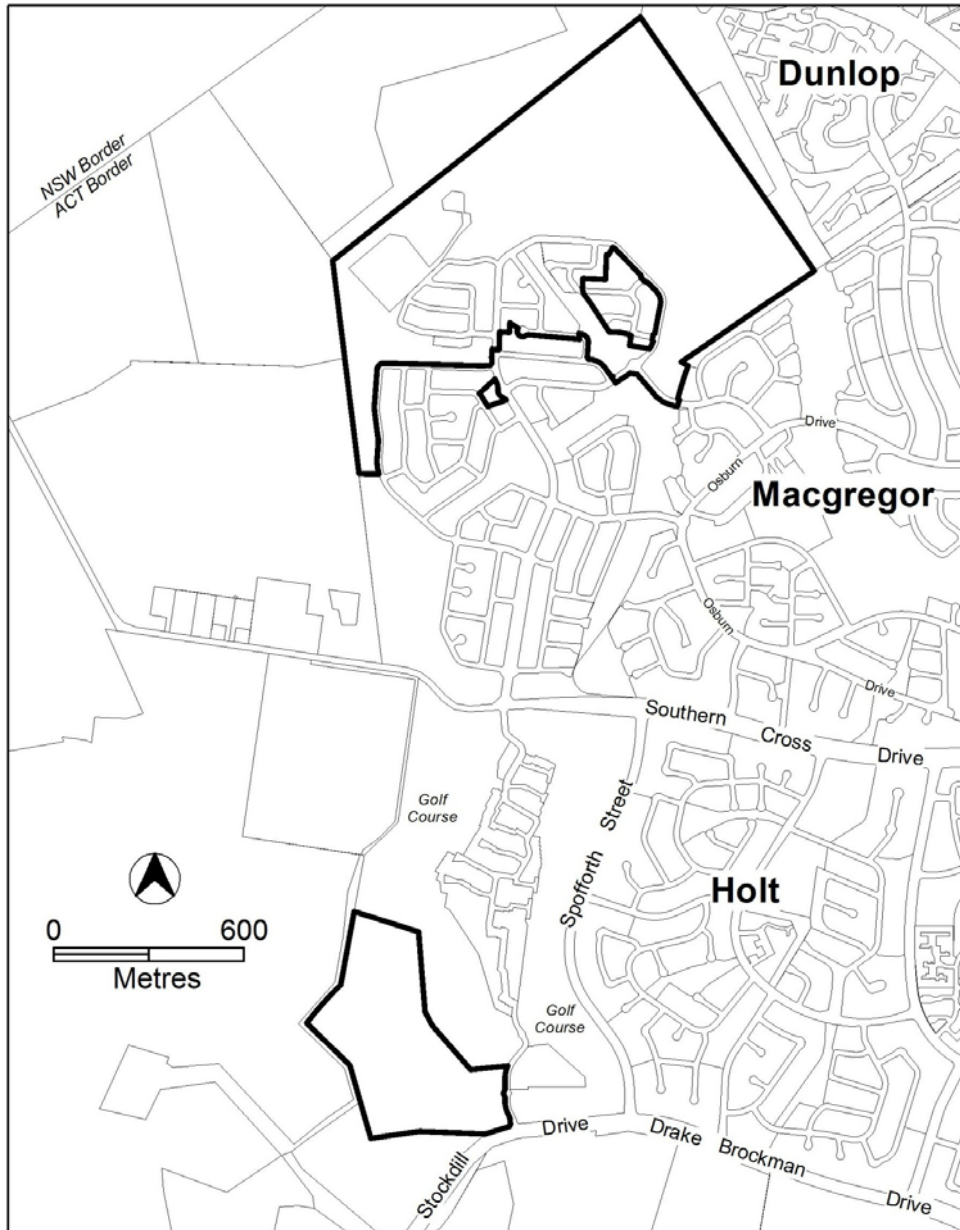
**Amaroo, Casey, Bonner, Forde, Jacka, Moncrieff, Nicholls, and Taylor**



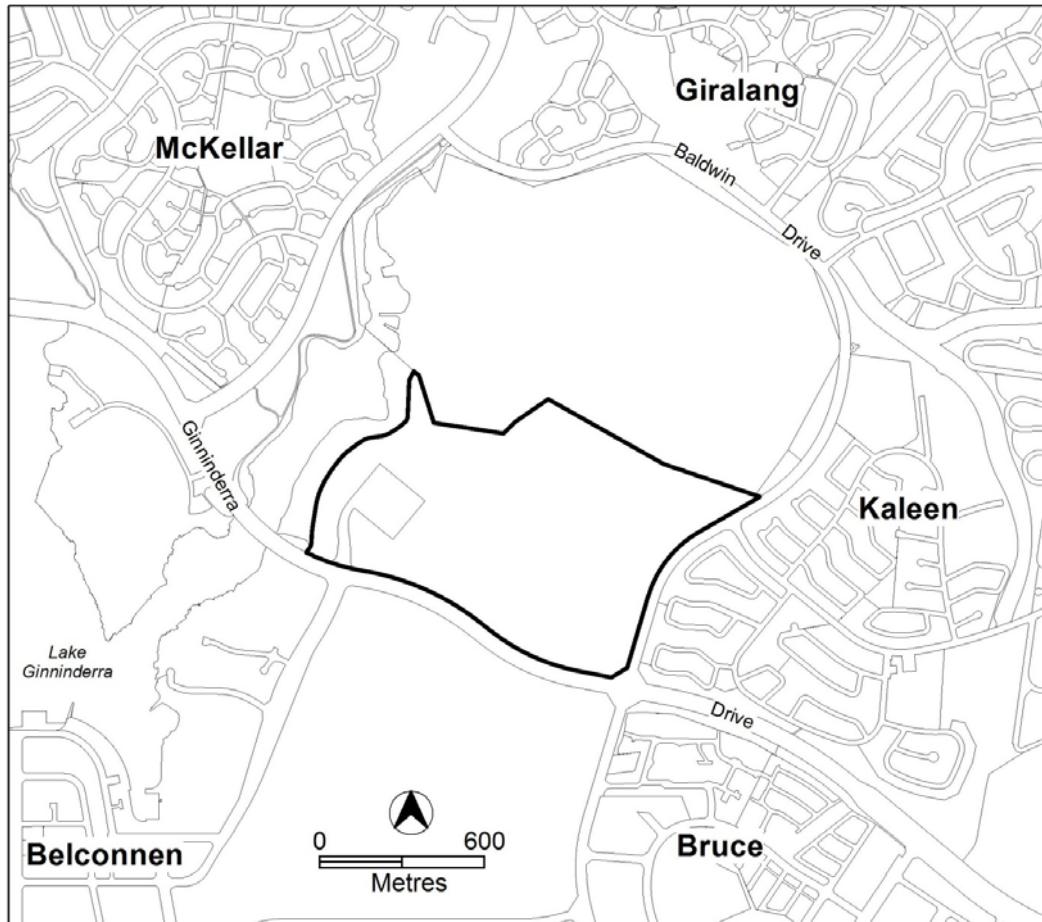
**Crace and Gungahlin**



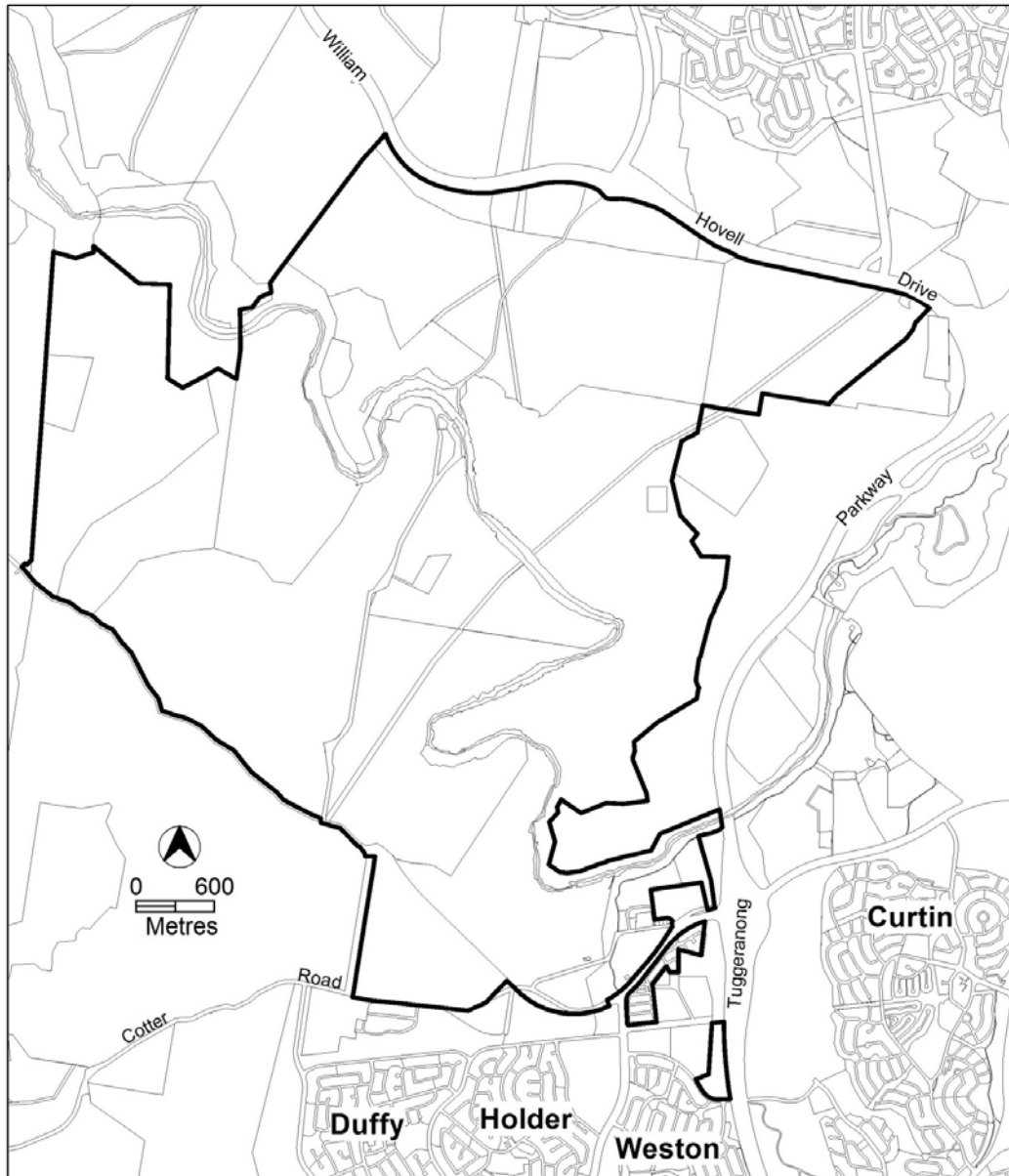
**Holt and Macgregor**



**Lawson**



**Molonglo and Weston North**



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1 **Part 8** **Plastic Shopping Bags Ban**  
2 **Regulation 2011**

3 **16** **Section 5**

4 *substitute*

5 **5** **Biodegradable bag—Act, dict, def *biodegradable bag***

6 (1) The requirement that a plastic bag is made from plastic compostable  
7 in accordance with AS 4736-2006 (*Biodegradable*  
8 *plastics-Biodegradable plastics suitable for composting and other*  
9 *microbial treatment*) as in force from time to time is prescribed.

10 (2) The Legislation Act, section 47 (6) does not apply to AS 4736-2006.

11 *Note* AS 4736-2006 does not need to be notified under the Legislation Act  
12 because s 47 (6) does not apply (see Legislation Act, s 47 (7)). The  
13 standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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