

Planning and Development (Draft Variation No 366) Consultation Notice 2019

Notifiable instrument NI2019—707

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 366) Consultation Notice 2019*.

2 Draft variation to the Territory plan

The planning and land authority (the **Authority**) has prepared a draft plan variation No 366 – Franklin Grasslands Environmental Offset Site (the **draft variation**) to vary the Territory Plan. The draft variation proposes to add a nature reserve public land reserve overlay on the Territory Plan Map to Block 5 Section 47 Franklin.

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 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 20 December 2019 (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.act.gov.au/draftvariations>

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 Planning and Sustainable Development Directorate (**EPSDD**). 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, EPSDD, GPO Box 158, Canberra, ACT 2601; or
- (c) hand delivered to Access Canberra Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson.

Note All personal information will be managed in accordance with the *Information Privacy Act 2014* and the *EPSDD Information Privacy Policy* which are available through the EPSDD website.

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 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 EPSDD website at www.planning.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 Variation

Section 65 of the Act 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.

7 Obtaining further information

Further information about the draft variation can be obtained through email correspondence with the Territory Plan Section, EPSDD, at terrplan@act.gov.au, a reference to the draft variation should be included in any email.

8 Dictionary

In this instrument:

draft plan variation No 366 – Franklin Grasslands Environmental Offset Site
means the draft plan variation in Schedule 1.

Carolyn O'Neill
Delegate of the planning and land authority
7 November 2019



ACT
Government

Environment, Planning and
Sustainable Development

Schedule 1

Planning and Development Act 2007

Draft Variation to the Territory Plan 366

Franklin Grasslands
Environmental Offset Site

November 2019

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

The draft variation proposes to add a nature reserve public land reserve overlay on the Territory Plan Map to Block 5 Section 47 Franklin known as the 'Franklin Grasslands' site (the site).

The site is required to offset impacts on matters of national environmental significance (MNES) protected under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). The impact is due to the construction of an access road into the proposed Canberra Brickworks Precinct and the upgrading of Dudley Street in Yarralumla. The project has been determined to have residual impacts on golden sun moth (a critically endangered species) and natural temperate grasslands of the South Eastern Highlands (a critically endangered ecological community).

Known environmental values of the site include natural temperate grassland, golden sun moth, Ginninderra peppercress, Yellow Box – Red Gum Grassy Woodland, foraging habitat for the superb parrot, striped legless lizard habitat, and the perunga grasshopper.

The EPBC decision requires the offset site to be legally protected and to remain an environmental conservation offset in perpetuity. This will be achieved by classifying the site as a nature reserve and identifying on the Territory Plan Map as 'Pc – a nature reserve' Public Land Reserve overlay. There will be no change to the current non-urban NUZ3 Hills Ridges and Buffer zone.

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 that prepares and administers the Territory Plan, including continually reviewing and proposing amendments as necessary. The functions of the planning and land authority are administered by the Environment, Planning and Sustainable Development Directorate (EPSDD). The Director-General of EPSDD is the planning and land authority.

The Territory Plan is comprised of a written statement and a map. The written statement contains a number of parts, namely governance; strategic directions; zones (including objectives and development tables and zone or centre development codes); precinct codes; general codes; overlays; definitions; structure plans, concept plans and development codes for future urban areas.

The Territory Plan Map graphically represents the applicable land use zones (under the categories of residential, commercial, industrial, community facility, urban parks and recreation, transport and services and non-urban), precincts and overlays. The zone, precinct and overlay requirements are detailed in the volumes of the Territory Plan.

Draft variations to the Territory Plan are prepared in accordance with the Act. Following the release of the draft variation under section 63 of the Act, submissions from the public are invited. At the conclusion of the consultation period the EPSDD (planning and land authority) submits a report on consultation and a recommended final variation to the Minister responsible for planning for referral to the Legislative Assembly standing committee responsible for planning.

The Minister must consider the findings of the committee before deciding whether to approve the draft variation. If the Minister approves the variation, the variation and associated documents will be tabled in the Legislative Assembly. Unless disallowed by the Legislative Assembly within five sitting days, the variation commences on a day nominated by the Minister.

1.3 This document

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

Part 1 This Introduction

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

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

1.4 Public Consultation

Written comments about the draft variation are invited from the public by **COB 20 December 2019**.

Comments should include reference to the draft variation and be addressed to the Territory Plan Section, EPSDD. Please also provide your name and contact details to assist in the assessment of the comments provided, and to enable EPSDD to contact you in relation to your comments, if required. Your personal information will be managed in accordance with the *Information Privacy Act 2014* and the EPSDD Information Privacy Policy, which is available for viewing on EPSDD's website.

Comments can be:

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

Copies of written comments received with respect to the draft variation will be made available for public inspection for no less than 15 working days starting 10 working days after the closing date for comment. The comments will be available at the Access Canberra customer service centre in Dickson and may be published on EPSDD's website. Comments made available will not include personal contact details unless you request otherwise.

A request may be made for parts of a submission to be excluded under section 411 or 412 of the *Planning and Development Act 2007*. A request for exclusion under these sections must be in writing, clearly identifying what parts of your submission you are seeking to exclude and how the request satisfies the exclusion criteria.

Further Information

The draft variation and background documents are available online at www.act.gov.au/draftvariations until the closing date for written comments.

Printed copies of the draft variation (this document) and background documents are available for inspection and purchase at the Access Canberra Customer Service Centre, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm. Please call 6207 1923 to arrange a copy for purchase.

2. EXPLANATORY STATEMENT

2.1 Background

Draft Variation to the Territory Plan 366 (the draft variation) proposes to vary the Territory Plan to incorporate a new area into Canberra's nature reserve system as an environmental offset site. The new site is Block 5 Section 47 Franklin, known as the 'Franklin Grasslands'.

An ACT Government capital works project involving the construction of a 130 metre access road into the proposed Canberra Brickworks Precinct and the upgrading (widening and minor realignment) of Dudley Street in Yarralumla has been determined to have residual impacts on matters of national environmental significance (MNES) protected under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). This relates specifically to the golden sun moth (a critically endangered species) and natural temperate grasslands of the South Eastern Highlands (a critically endangered ecological community).

To meet the conditions of approval of the EPBC decision (EPBC 2017/8072) for the proposed road works, the Franklin Grasslands site was identified as a suitable environmental offset site for the impacts to the MNES.

The EPBC decision requires the offset site to be legally protected and to remain an environmental conservation offset in perpetuity. This will be achieved by classifying the site as a nature reserve and identifying it on the Territory Plan Map as 'Pc – a nature reserve' Public Land Reserve overlay. The current non-urban NUZ3 Hills Ridges and Buffer zone will remain the same.

The Environment Planning and Sustainable Development Directorate (the Directorate) will be responsible for the preparation and implementation of an Offset Management Plan in accordance with the Commonwealth's conditions of approval.

Management of the site as a nature reserve for habitat improvement and long term resilience of MNES will need to include weed and pest control, review of grazing regimes, and management of biomass. Investment in site infrastructure (fencing, access tracks etc) and remediation and reseedling of the spoil site on the south edge of the offset area will also be required.

2.2 Site description

The Franklin Grasslands are located within the suburb of Franklin in the north Canberra district of Gungahlin. It is approximately 20 hectares in size and is zoned 'non-urban zone NUZ3: Hills, Ridges and Buffer'. The block is identified as Block 5 Section 47 Franklin.

The offset area is identified as a Category 1 Conservation Site in the ACT Native Grassland Conservation Strategy as it provides habitat for one of four known populations of Ginninderra peppercress, a plant that is endemic to the ACT and listed as vulnerable under the EPBC Act.

Other environmental values located within the site include:

- Golden sun moth recorded at moderate density
- a patch of Yellow Box – Red Gum Grassy Woodland in the north-east corner of the site, which is an endangered ecological community under the *ACT Nature Conservation Act 2014* (NC Act)
- foraging habitat for superb parrot, an EPBC listed vulnerable bird species. Habitat coincides with the Yellow Box – Red Gum Grassy Woodland patch
- the striped legless lizard, an EPBC listed vulnerable reptile species
- the perunga grasshopper, an NC Act listed vulnerable invertebrate
- 3.81 hectares of natural temperate grassland.

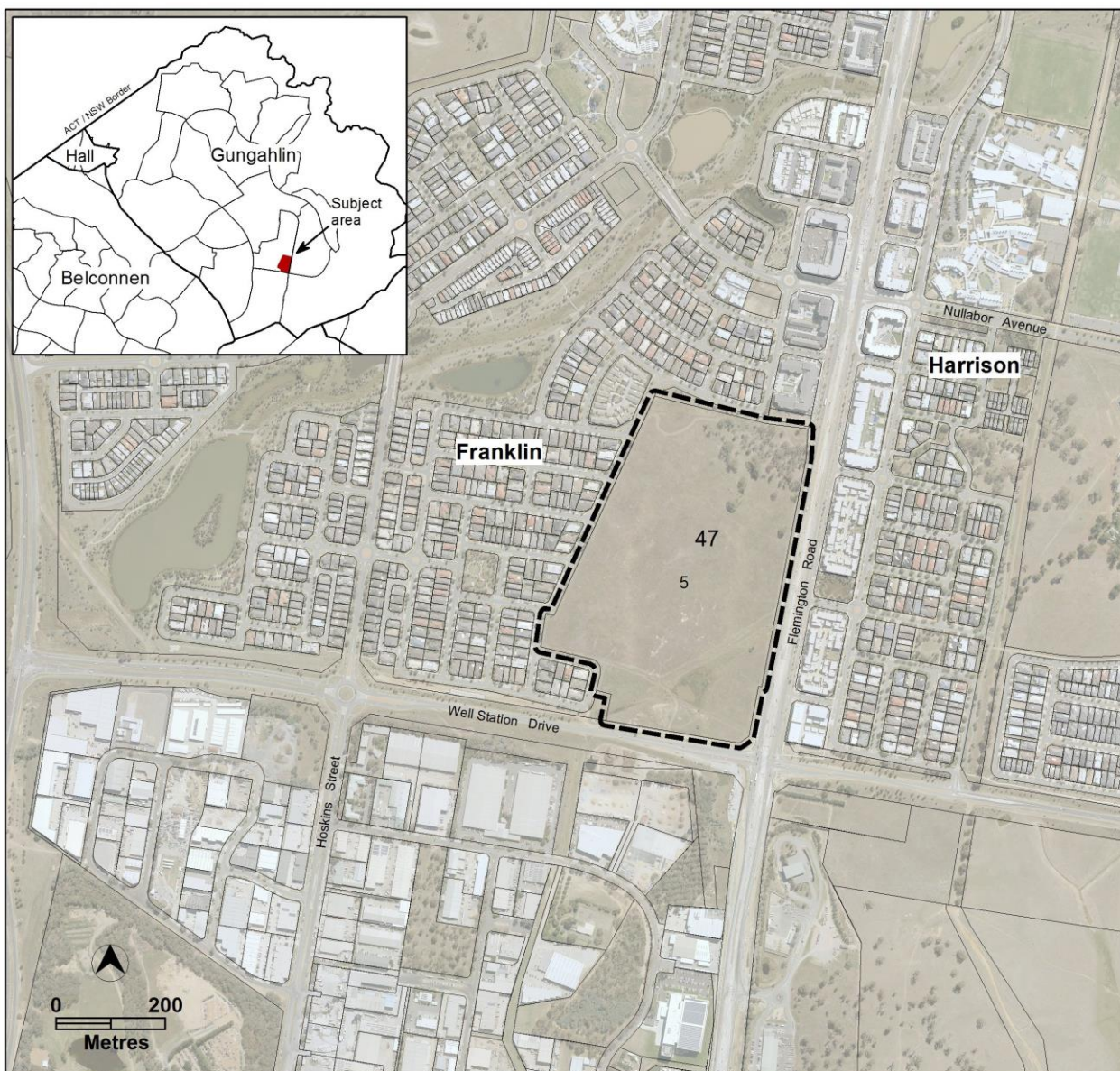


Figure 1: Location Plan

2.3 Current Territory Plan Map

The current Territory Plan map shows the existing zones applying to the land subject to this draft variation.

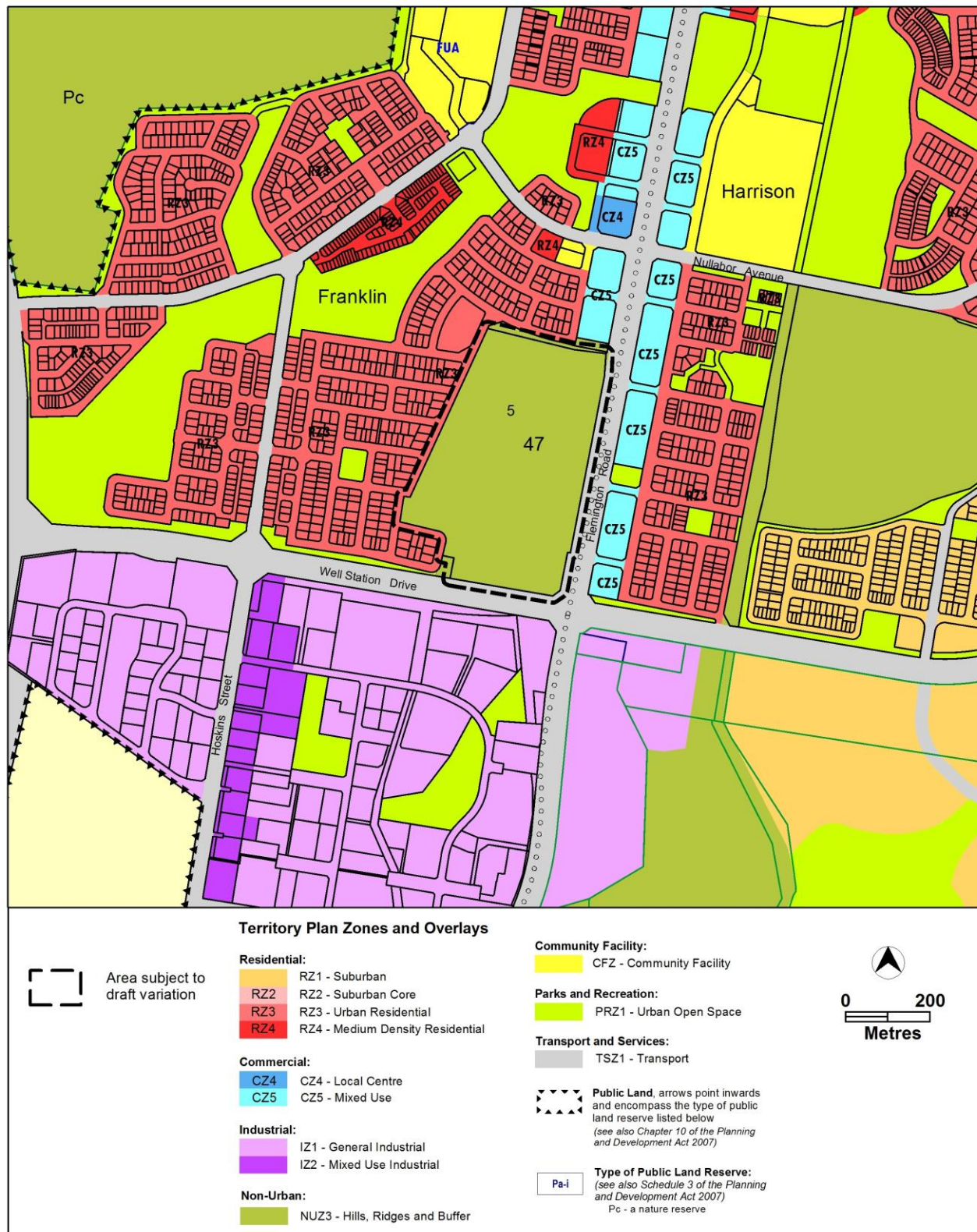


Figure 2: Current Territory Plan Map

2.4 Proposed Changes to the Territory Plan Map

The draft variation proposes to amend the Territory Plan Map as follows:

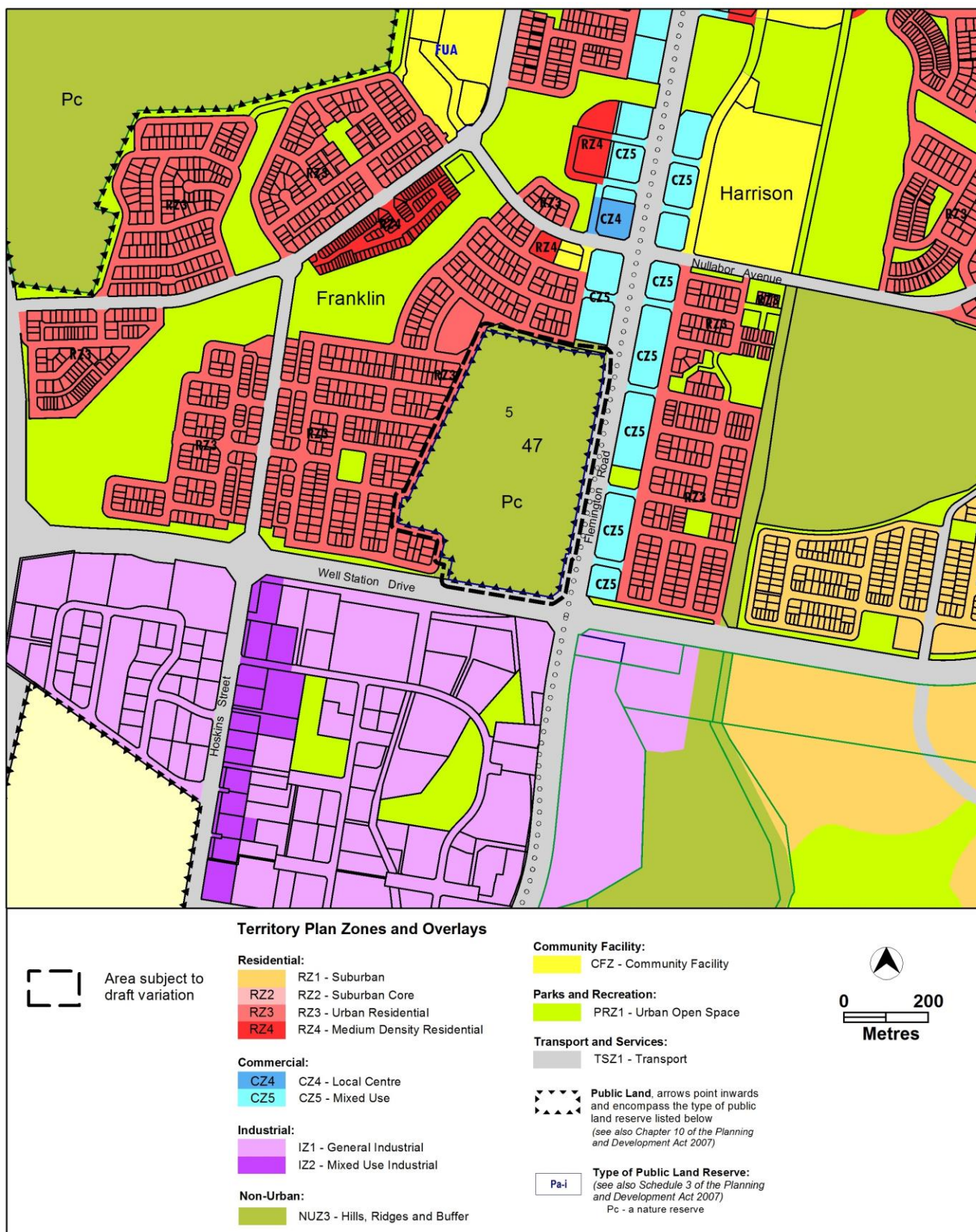


Figure 3 Proposed Territory Plan Map changes

2.5 Reasons for the Proposed Draft Variation

This draft variation has been prepared to establish the environmental offset site that is required by the Commonwealth Government under the EPBC Act approval for the construction of an access road into the proposed Canberra Brickworks Precinct and the upgrading of Dudley Street in Yarralumla.

2.6 Planning Context

2.6.1 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.

2.6.2 ACT Planning Framework

Statement of Strategic Directions

The Statement of Strategic Directions sets out the principles for giving effect to the main objective of the Territory Plan as required by the *Planning and Development Act 2007*. The proposal is consistent with the following Territory Plan - Statement of Strategic Directions in terms of environmental, economic and social sustainability and spatial planning and urban design principles:

1. Principles for Sustainable Development

General Principles

- 1.3 Economic, social and environmental objectives will be pursued in a balanced and integrated way, having regard to both short-term and long-term factors, such that present needs can be met without prejudicing the welfare of future generations, and without serious or irreversible loss of life-supporting natural resources or damage to the environment.*

The draft variation is consistent with this principle as it facilitates the establishment of a nature reserve to offset the impacts on matters of national environmental significance due to the construction of the roads serving the Canberra Brickworks Precinct in Yarralumla.

Environmental Sustainability

- 1.5 *Planning policies will seek to ensure the efficient use of all resources and to reduce consumption of non-renewable resources. Waste minimisation, reuse and recycling will be encouraged, whilst energy-rating and conservation measures will be applied wherever appropriate, particularly in transport, subdivision planning, and building design and construction.*

The draft variation is consistent with this principle as it facilitates the conservation of endangered species and ecological communities.

- 1.6 *The pattern of development is to reflect land capability constraints resulting from topography, soils, geotechnical factors, drainage, natural hazards, microclimate and the sensitivity of ecosystems. Particular attention will be given to the need to conserve soil, water and vegetation; maintain biological diversity; safeguard important ecosystems and ecological processes; and provide and protect wildlife corridors.*

The draft variation is consistent with this principle as it facilitates the safeguarding of important ecosystems and maintenance of biological diversity through the establishment of the nature reserve.

- 1.7 *Land and water resources will be planned in accordance with the principles of integrated catchment management and water sensitive urban design. Policies will seek to protect identified environmental values, whilst focusing on opportunities for multi-purpose use of resources. Special attention is to be given to protecting sources of the Territory's water supply and to maintaining environmental flows in rivers and streams.*

The draft variation is consistent with this principle as the establishment of the nature reserve serves to protect identified environmental values.

ACT Planning Strategy 2018

The draft variation is consistent with the ACT Planning Strategy 2018, specifically Strategic Direction 3: Sustainable and Resilient Territory, element 3.5 to: *Protect biodiversity and enhance habitat connectivity to improve landscape resilience.*

The Franklin Grasslands nature reserve will protect endangered and vulnerable species and endangered ecological habitat into perpetuity.

2.7 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.

2.8 Consultation with Government Agencies

The Directorate is required to, in preparing a draft variation under section 61(b) consult with each of the following in relation to the proposed draft variation:

- the National Capital Authority
- the Conservator of Flora and Fauna
- the Environment Protection Authority
- the Heritage Council
- the Land Custodian, if the draft variation would, if made, be likely to affect unleased land or leased public land – each custodian for the land likely to be affected.

National Capital Authority

The National Capital Authority provided the following comments on 4 June 2019:

The NCA has no objections to the draft variation.

Response

Noted.

Conservator of Flora and Fauna

The Conservator of Flora and Fauna made the following comments on 13 June 2019:

In accordance with Section 61(b) of the Planning and Development Act 2007 I advise that I have examined Draft Variation No 366, North Mitchell [Franklin] Grasslands.

I strongly support the Draft Variation which seeks to add a nature reserve overlay to the North Mitchell [Franklin] Grasslands site. The Draft Variation will ensure that the site's important ecological values will be protected in perpetuity.

There are a few minor corrections required:

- *Pg 5 [page 1 of the draft variation document], Section 1.1: Environment Protection and Biodiversity Conservation Act 1999 should be italicised.*
- *Pg 5 [page 1 of the draft variation document], Section 1.1 and Pg 8 [page 4 of the draft variation document], Section 2.1: 'pc – a nature reserve' should be capitalised with 'Pc – a nature reserve'. It appears this way on the Territory Plan.*

- *Pg 8 [page 4 of the draft variation document], Section 2.1, the second last paragraph, final sentence: Please replace with: “The Environment Planning and Sustainable Development Directorate will be responsible for the preparation and implementation of an Offset Management Plan in accordance with the Commonwealth’s conditions of approval.”*
- *Pg 9 [page 5 of the draft variation document], Section 2.2, second paragraph: Ginninderra Peppercress is now known from a total of four locations, with two small patches recently found in the Jerrabomberra Valley.*

Response

Noted.

The minor corrections have been made to the draft variation.

Environment Protection Authority

The Environment Protection Authority provided the following comments on 25 July 2019:

The Environment Protection Authority (EPA) supports the Territory Plan variation subject to the site's management plan including the following requirements for the management of the stockpiled material located at the south of the site:

- *A site specific Unexpected Finds Protocol must be prepared by a suitably qualified environmental consultant and implemented as part of the on-going management of the site; and*
- *No soil is to be disposed from the site without the EPA’s approval.*

Response

Noted.

It is recognised that the EPA determined that the stockpile does not have to be removed from site. Site remediation will align with management requirements including for revegetation and ongoing management access.

Preliminary Site Investigation and a Limited Stockpile Assessment have been completed, with spoil on site to be managed as per the report’s recommendations. Any contamination identified during re-shaping of the spoil site will be managed as per an Unexpected Finds Protocol as prepared by a suitably qualified environmental consultant.

Heritage Council

The Heritage Council provided the following comments 12 June 2019:

The Council does not object to the changes proposed by DV366, as the provisions of the Heritage Act 2004 will continue to apply to the site. The Council also considers that management of the block as a nature reserve is likely to conserve any Aboriginal places and objects that may occur within the area.

However, to ensure that future reserve management actions will not damage Aboriginal places and objects, the Council recommends a cultural heritage assessment of the block be prepared by a qualified archaeologist and Representative Aboriginal Organisations.

Response

Healthy Country team has been contacted regarding the Reserve establishment; consultation with Representative Aboriginal Organisations is in very early stages at this point. Discussions will continue and a cultural heritage assessment will be undertaken in the future.

Land Custodian (Parks and Conservation Service)

The land custodian for land affected by this draft variation is ACT Parks and Conservation Service (PCS). PCS provided the following comments on 23 May 2019:

PCS Environmental Offsets have reviewed the draft content of the proposed TPV for North Mitchell [Franklin] Grasslands EPBC offset site at block 5 section 47 Franklin. We see no problem with the draft TPV and have no further comment.

Response

Noted.

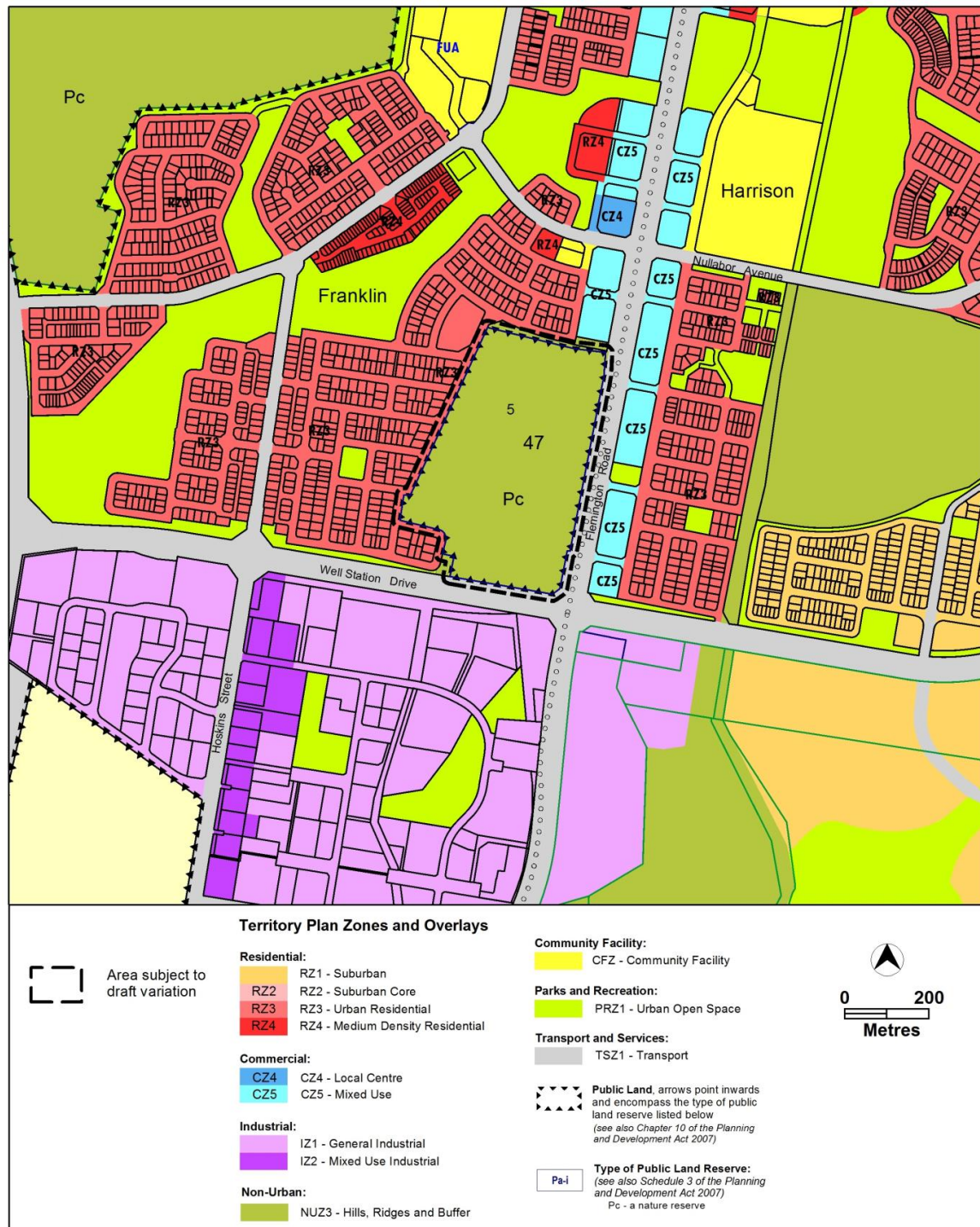
3. DRAFT VARIATION

3.1 Variation to the Territory Plan

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

Variation to the Territory Plan Map

Substitute



Interpretation service

ENGLISH	If you need interpreting help, telephone:
ARABIC	إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjuna 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	Ако вам је потребна помоћ преводиоца телефонирајте:
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:

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