

# Planning and Development (Technical Amendment - Various) Plan Variation 2019 (No 2)

Notifiable instrument NI2019—796

Technical Amendment No 2019-14

made under the

Planning and Development Act 2007, s 89 (Making technical amendments)

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## 1 Name of instrument

This instrument is the *Planning and Development (Technical Amendment - Various) Plan Variation 2019 (No 2)*.

## 2 Commencement

This instrument commences on the day after its notification day.

## 3 Technical amendment

I am satisfied under section 89(1)(a) of the *Planning and Development Act 2007* (the Act) that the Various plan variation is a technical amendment to the Territory Plan.

## 4 Meaning of *Various plan variation*

In this instrument:

*Various plan variation* means the technical amendment to the Territory Plan, variation 2019-14, in the schedule.

*Note:* Limited consultation was undertaken in relation to the Various plan variation in accordance with section 90 of the Act.

Carolyn O'Neill  
Delegate of the planning and land authority  
6 December 2019



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Planning & Development Act 2007

# Technical Amendment to the Territory Plan

## 2019-14

Various code, clarification and miscellaneous  
amendments No. 2 2019

December 2019

**Commencement version**

under section 89 of the *Planning and Development Act 2007*

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# 1. INTRODUCTION

## 1.1 Purpose

This technical amendment makes the following changes to the Territory Plan:

### **Residential Zones Development Code**

- Adjust rules R38 and R45 to clarify controls around subdivision

### **Single Dwelling Housing Development Code**

- Amend the title of section 1.7 to include reference to compact blocks

### **Denman Prospect Map and Precinct Code**

- Amend figure 7 to replace section number 51 with section number 61
- Include reference to Figure 5 in Rule R8

### **Strathnairn Precinct Map and Code**

- Amend Figures 2,3,6,8,9 and14. The amendments will include a road name correction, adjustments to setback number location, missing setback numbers added, and a missing setback and add UFL label added to the figures so that they are consistent with the approved Strathnairn Estate Development Plan.

### **Watson Precinct Map and Code**

- Amend the nominated side boundary setback on block 17 section 116 Watson, from 3m to 2.5m

### **Definitions**

- Clarify the definition of '*side boundary*'.

## 1.2 Public consultation

Under section 87 of the *Planning and Development Act 2007* (the Act) this type of technical amendment is subject to limited public consultation under section 90 of the Act.

TA2019-14 was released for limited public consultation on 17 October 2019 and concluded on 15 November 2019. No public submissions were received.

## 1.3 National Capital Authority

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 (the Plan) and to keep the NCP under constant review and to propose amendments to it when necessary.

The Plan, which was published in the Commonwealth Gazette on 21 January 1990, is required to ensure Canberra and the Territory are planned and developed in accordance with their national significance. The *Australian Capital Territory (Planning and Land Management) Act 1988* also requires the Territory Plan is not inconsistent with the Plan. The areas covered by this technical amendment are within urban areas identified in the Plan.

The National Capital Authority has been advised of this technical amendment.

## 1.4 Process

This technical amendment has been prepared in accordance with section 87 of the *Planning and Development Act 2007* (the Act).

## 1.5 Types of technical amendments under the Act

The following categories of technical amendments are provided under section 87 of the Act:

- (1) Each of the following territory plan variations is a **technical amendment** for which no consultation is needed before it is made under section 89:
  - (a) a variation (an **error variation**) that –
    - (i) would not adversely affect anyone's rights if approved; and
    - (ii) has as its only object the correction of a formal error in the plan;
  - (b) a variation to change the boundary of a zone or overlay under section 90A (Rezoning – boundary changes);
  - (c) a variation, other than one to which subsection (2)(d) applies, in relation to an estate development plan under section 96 (Effect of approval of estate development plan);
  - (d) a variation required to bring the territory plan into line with the national capital plan;
  - (e) a variation to omit something that is obsolete or redundant in the territory plan.

- (2) Each of the following territory plan variations is a **technical amendment** for which only limited public consultation is needed under section 90:
- (a) a variation (a **code variation**) that –
    - (i) would only change a code; and
    - (ii) is consistent with the policy purpose and policy framework of the code; and
    - (iii) is not an error variation;
  - (b) a variation to change the boundary of a zone under section 90B (Rezoning – development encroaching on adjoining territory land);
  - (c) a variation in relation to a future urban area under section 90C (Technical amendments – future urban areas);
  - (d) a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan) if it incorporates an ongoing provision that was not included in the plan under section 94 (3) (g);
  - (e) a variation to clarify the language in the territory plan if it does not change the substance of the plan;
  - (f) a variation to relocate a provision within the territory plan if the substance of the provision is not changed.

TA2019-14 has been prepared in accordance with sections 87(1)(a) and 87(2)(a) and (e) of the Act.

## 2. EXPLANATORY STATEMENT

### 2.1 Background

This part of the technical amendment document explains the changes to be made to the Territory Plan, the reasons for the change, and a statement of compliance against the relevant section of the Act.

### 2.2 Variation to the Residential Zones Development Code

Rules R38 and R45 provide controls limiting subdivision of standard residential blocks to restrict separately titled dual occupancy development in the residential RZ1 suburban zone. Rule R45 applies to heritage registered blocks in the RZ1 zone.

The policy intent for these controls, which dates back to the Garden City Variation (V200) that took effect in 2003, is to prohibit subdivision (including unit titling) of standard blocks in the residential RZ1 suburban zone except in limited circumstances and where certain conditions have been met, such as where the dwellings were lawfully constructed prior to a particular cut-off date.

This technical amendment tightens the provisions contained in rules R38 and R45 to make it clear in the wording of the rules that where subdivision is permitted, each resulting subdivided block must contain a lawfully constructed and approved dwelling (prior to the 2002 / 2003 cut-off dates). This is consistent with the wording of Rule R40 which expressly stipulates that each proposed block created from subdivision contains a lawfully constructed dwelling. The adjustment to the provisions contained in R38 and R45 addresses instances where the rule may be misinterpreted to mean that a block can be subdivided regardless of the location or number of dwellings on a block.

Existing rule R38:

Rules	Criteria
<p>R38</p> <p>This rule applies to <i>standard blocks</i> in RZ1.</p> <p><i>Subdivision</i> (including subdivision under the <i>Unit Titles Act 2001</i>) is permitted only where all <i>dwellings</i> on the <i>block</i> comply with one of the following:</p> <ul style="list-style-type: none"><li>a) were lawfully constructed on or before 1 September 2003</li><li>b) were subject to <i>development approval</i> issued on or before 1 September 2003</li><li>c) were the subject of a <i>development application</i> lodged on or before 1 September 2003 that was subsequently approved.</li></ul> <p>This rule does not apply to <i>standard blocks</i> in</p>	<p>This is a mandatory requirement. There is no applicable rule.</p>

RZ1 that were subject to the A10 residential core area specific policy under Territory Plan 2002 at the time the development was approved.	
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Proposed rule R38 (see underlined changes):

Rules	Criteria
<p>R38</p> <p>This rule applies to <i>standard blocks</i> in RZ1. <i>Subdivision</i> (including subdivision under the <i>Unit Titles Act 2001</i>) is permitted only <u>where each proposed block contains a lawfully constructed dwelling, and</u> where all <i>dwellings</i> on the <i>block</i> comply with one of the following:</p> <p>d) were lawfully constructed on or before 1 September 2003</p> <p>e) were subject to <i>development approval</i> issued on or before 1 September 2003</p> <p>f) were the subject of a <i>development application</i> lodged on or before 1 September 2003 that was subsequently approved.</p> <p>This rule does not apply to <i>standard blocks</i> in RZ1 that were subject to the A10 residential core area specific policy under Territory Plan 2002 at the time the development was approved.</p>	<p>This is a mandatory requirement. There is no applicable rule.</p>

Existing rule R45:

Rules	Criteria
<p>R45</p> <p>This rule applies to <i>standard blocks</i> in RZ1 that are registered or provisionally registered under the <i>Heritage Act 2004</i>.</p> <p><i>Subdivision</i> (including subdivision under the <i>Unit Titles Act 2001</i>) is permitted only where all <i>dwellings</i> on the <i>block</i> comply with one of the following:</p> <p>g) were lawfully constructed on or before 1 September 2002</p> <p>h) were subject to <i>development approval</i> issued on or before 1 September 2002</p> <p>i) were the subject of a <i>development application</i> lodged on or before 1 September 2002 that was subsequently</p>	<p>This is a mandatory requirement. There is no applicable rule.</p>



<p>approved.</p> <p>This rule does not apply to <i>standard blocks</i> in RZ1 that were subject to the A10 residential core area specific policy under Territory Plan 2002 at the time the development was approved.</p>	
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Proposed rule R45 (see underlined changes):

Rules	Criteria
<p>R45</p> <p>This rule applies to <i>standard blocks</i> in RZ1 that are registered or provisionally registered under the <i>Heritage Act 2004</i>.</p> <p><i>Subdivision</i> (including subdivision under the <i>Unit Titles Act 2001</i>) is permitted only where <u>each proposed block contains a lawfully constructed dwelling, and where</u> all <i>dwellings</i> on the <i>block</i> comply with one of the following:</p> <p>j) were lawfully constructed on or before 1 September 2002</p> <p>k) were subject to <i>development approval</i> issued on or before 1 September 2002</p> <p>l) were the subject of a <i>development application</i> lodged on or before 1 September 2002 that was subsequently approved.</p> <p>This rule does not apply to <i>standard blocks</i> in RZ1 that were subject to the A10 residential core area specific policy under Territory Plan 2002 at the time the development was approved.</p>	<p>This is a mandatory requirement. There is no applicable rule.</p>

### Compliance with the *Planning and Development Act 2007*

Section	Statement
<p><b>s87(2)(a)</b></p> <p>(a) a variation (a <b>code variation</b>) that—</p> <p>(i) would only change a code; and</p> <p>(ii) is consistent with the policy purpose and policy framework of the code; and</p> <p>(iii) is not an error variation</p>	<p>Compliant.</p> <p>The changes clarify the current policy intent of the rules applying to subdivision of blocks in the RZ1 suburban zone.</p> <p>The changes are consistent with the policy purpose and policy framework of the code.</p>

## 2.3 Variation to the Single Dwelling Housing Development Code

Rules R8 and R9 in section 1.7 relate to mid-sized blocks and compact blocks that were approved before 5 July 2013, but the title of section 1.7 is 'Building envelope – mid-sized blocks approved before 5 July 2013'. The title has been amended to include reference to compact blocks.

### Compliance with the *Planning and Development Act 2007*

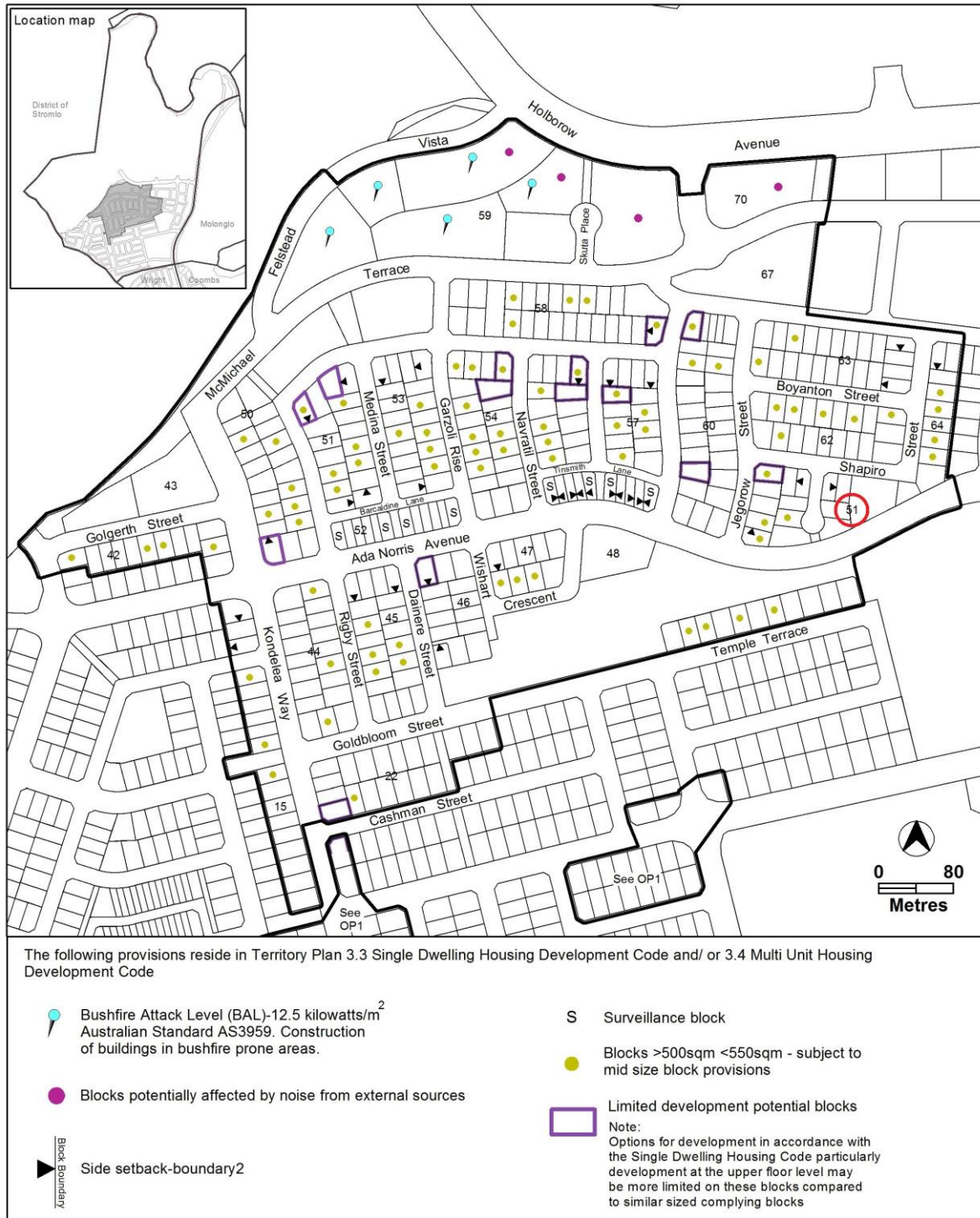
Section	Statement
s87(1)(a) (a) a variation (an <b><i>error variation</i></b> ) that— (i) would not adversely affect anyone's rights if approved; and (ii) has as its only object the correction of a formal error in the plan;	Compliant. This amendment corrects a formal error in the plan.

## 2.4 Variation to the Denman Prospect Precinct Map and Code

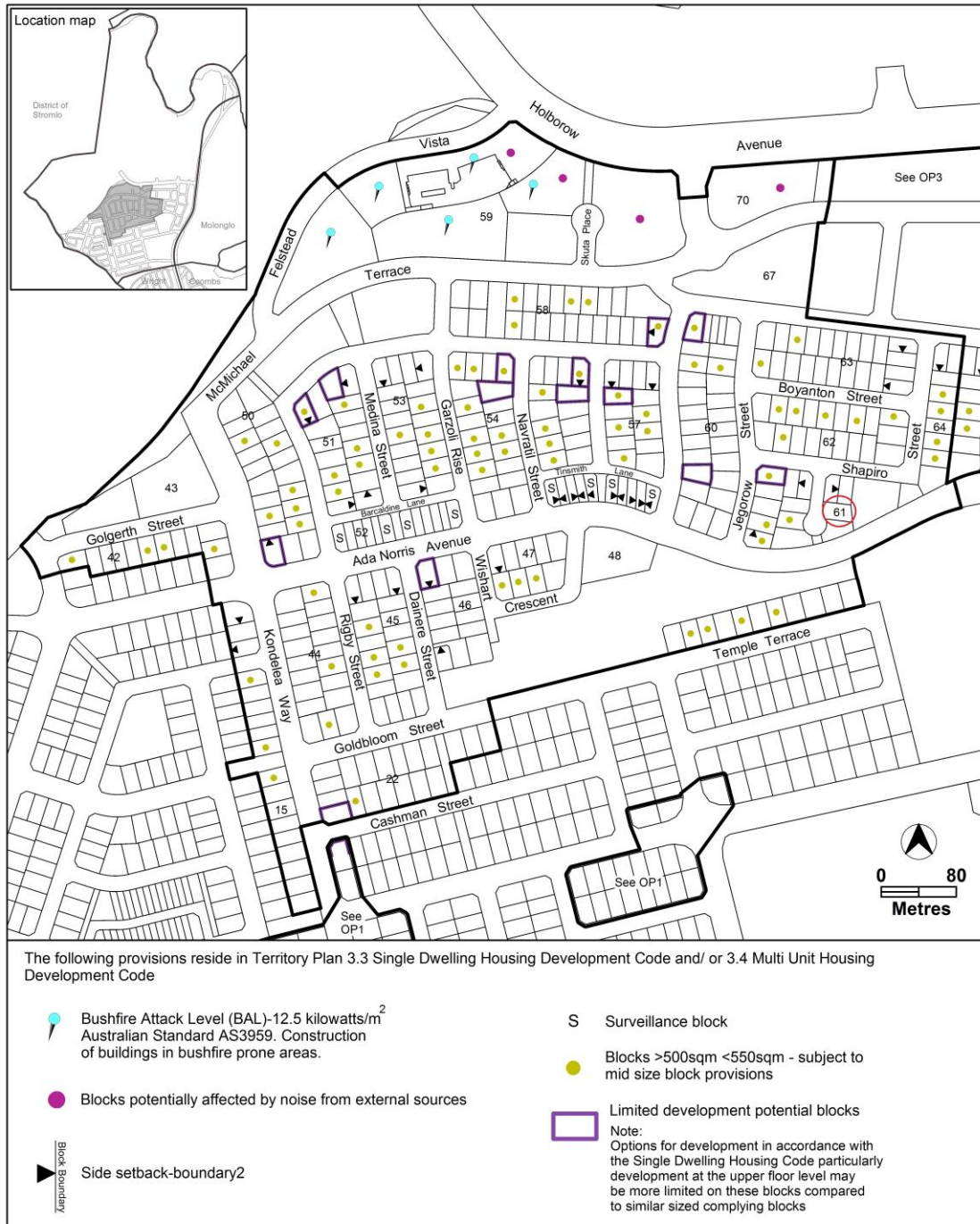
### 2.4.1 Amendment to Figure 7

The label of section 61 in figure 7 of the Denman Prospect Precinct Code is incorrectly shown as 51. This amendment will change the section label to 61.

Existing figure (section number identified by red circle)



Proposed figure (section number identified by red circle)



### Compliance with the *Planning and Development Act 2007*

Section	Statement
<p>s87(1)(a)                      (a) a variation (an <b>error variation</b>) that—                      (i) would not adversely affect anyone’s rights if approved;                      and                      (ii) has as its only object the correction of a formal error in the plan;</p>	<p>Compliant. This amendment corrects a formal error in the plan when TA2019-01 took effect.</p>

## 2.4.2 Amendment to Rule R8

Rule R8 refers to car parking requirements for blocks that are identified in certain figures in the Denman Prospect precinct code. When TA2019-12 took effect, Figure 5 was added (along with the renumbering of the previous Figure 5 to Figure 6) which included car parking requirements that are referenced in Rule R8. However, the rule was not simultaneously revised to include reference to Figure 5. This error is corrected in this technical amendment.

Existing Rule R8:

Rules	Criteria
<b>2.5 Parking</b>	
<p>R8</p> <p>This rule applies to blocks or parcels in locations identified in Figures 2, 3 and 4.</p> <p>All visitor parking requirements as determined by the Parking and Vehicle Access General Code are to be provided within the block.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Proposed Rule R8:

Rules	Criteria
<b>2.5 Parking</b>	
<p>R8</p> <p>This rule applies to blocks or parcels in locations identified in Figures 2, 3, 4 and 5.</p> <p>All visitor parking requirements as determined by the Parking and Vehicle Access General Code are to be provided within the block.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

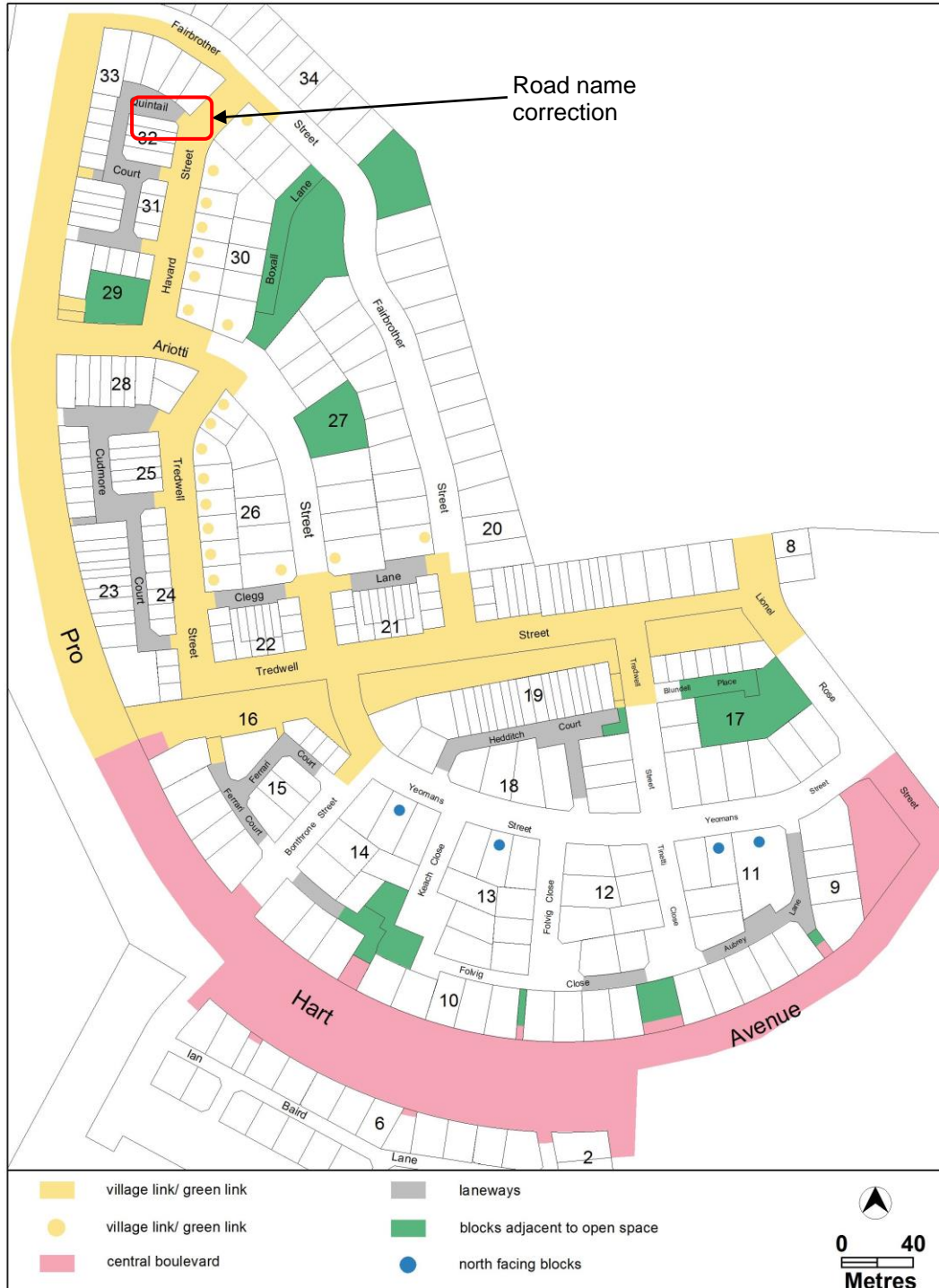
## Compliance with the *Planning and Development Act 2007*

Section	Statement
<p>s87(1)(a)</p> <p>(a) a variation (an <b>error variation</b>) that—</p> <p>(i) would not adversely affect anyone's rights if approved;</p> <p>and</p> <p>(ii) has as its only object the correction of a formal error in the plan;</p>	<p>Compliant. This amendment corrects a formal error in the plan when TA2019-12 took effect.</p>

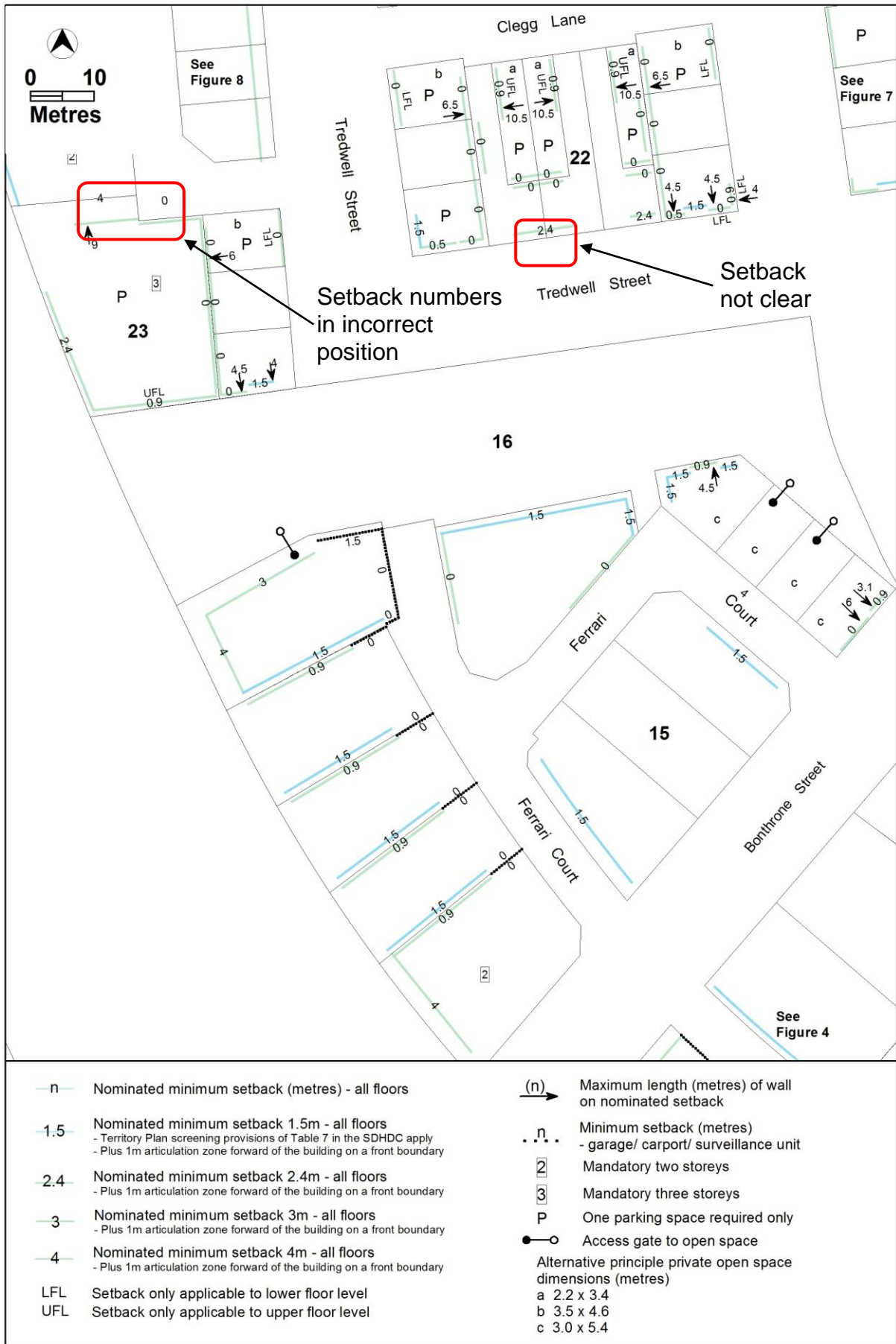
## 2.5 Variation to the Strathnairn Precinct Map and Code

The Strathnairn Precinct Map and Code requires additional information to be added to figures 3, 6, and 8 to move and clarify required setbacks as identified in the approved Strathnairn Estate Development Plan. An additional setback and Upper Floor Level (UFL) labels are to be added to figure 8, where they were omitted. A road name correction is required for figures 2, 9 and 14.

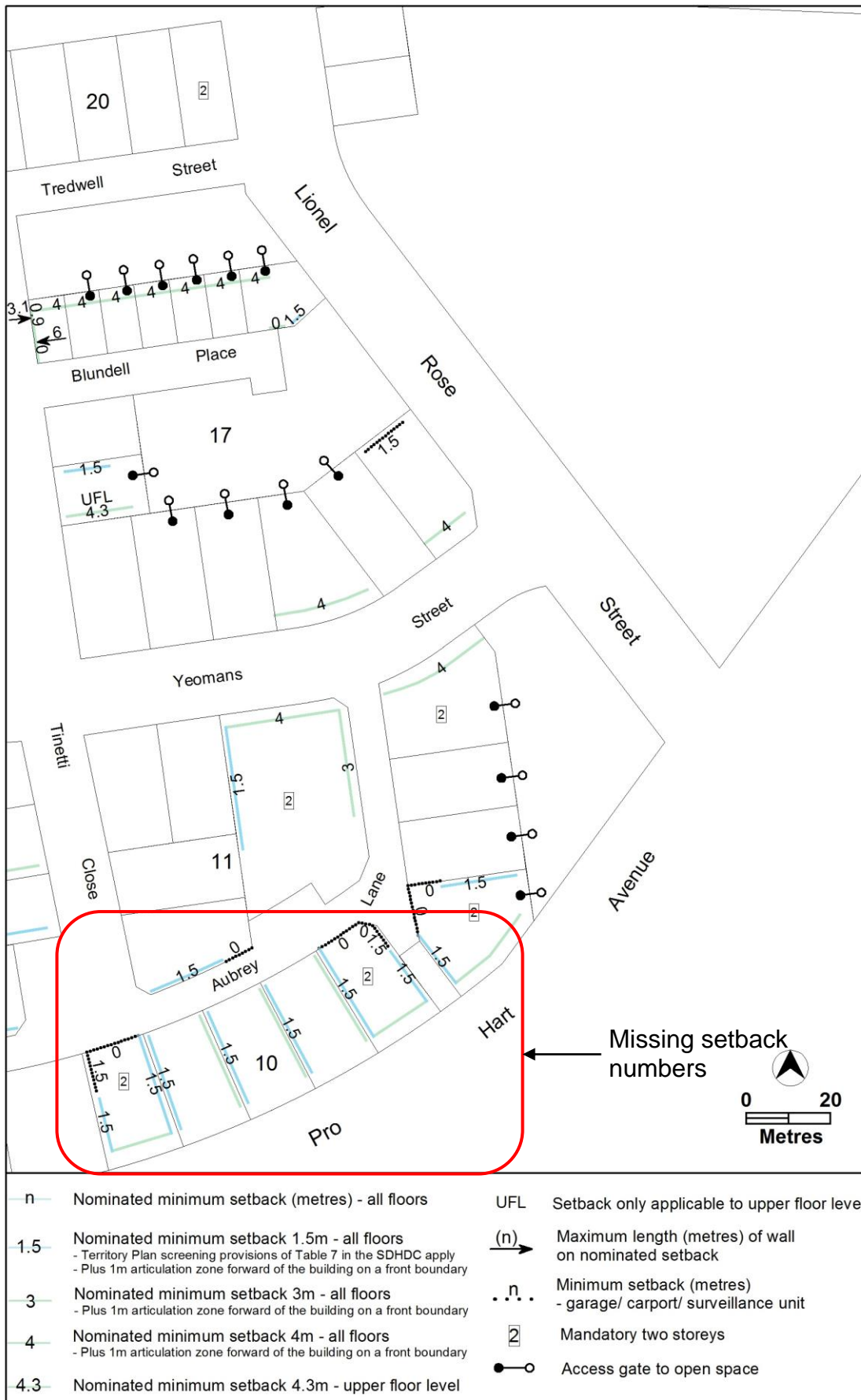
Existing diagrams:



**Figure 2 Strathnairn fencing controls**

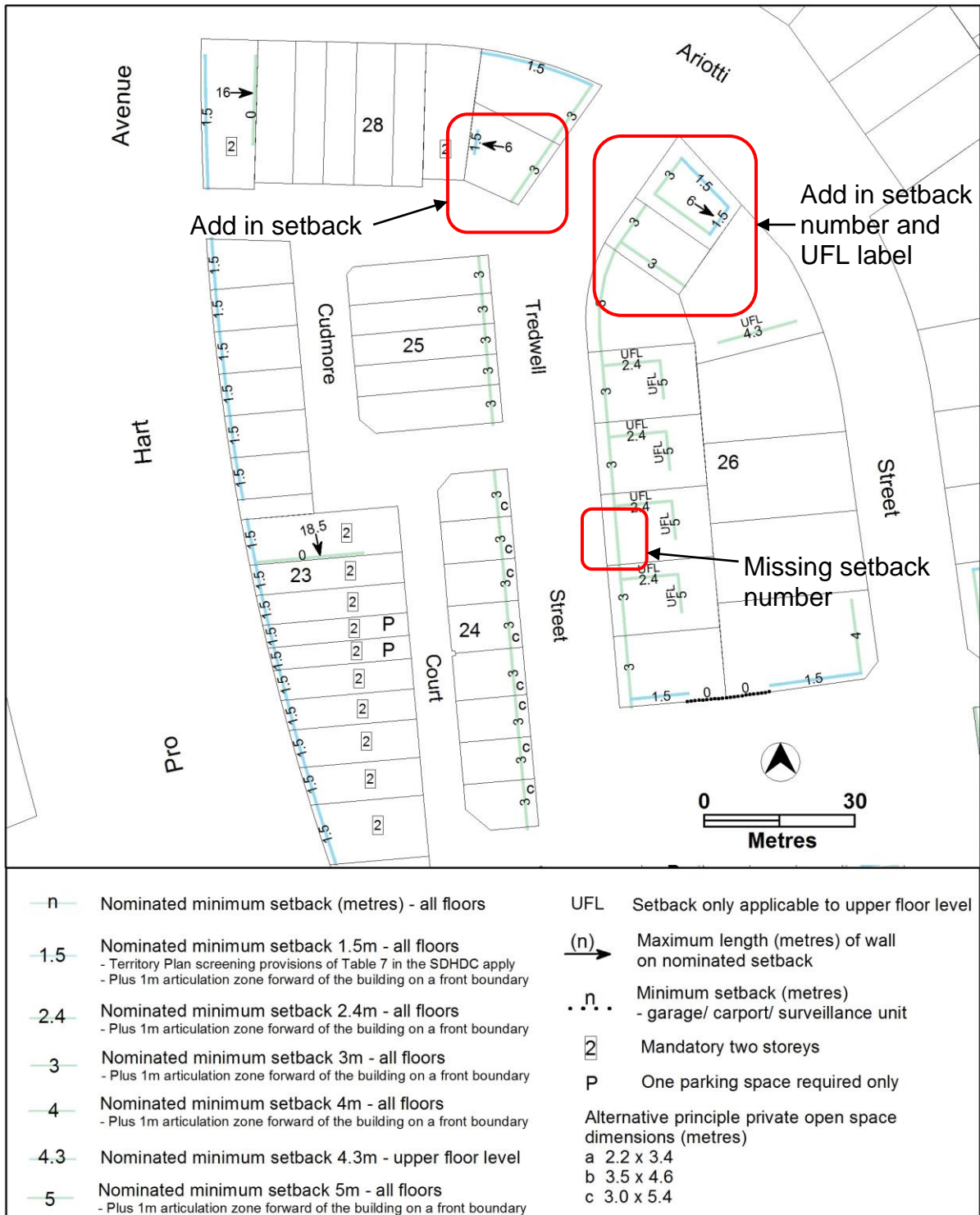


**Figure 3 Strathnairn residential area 1**

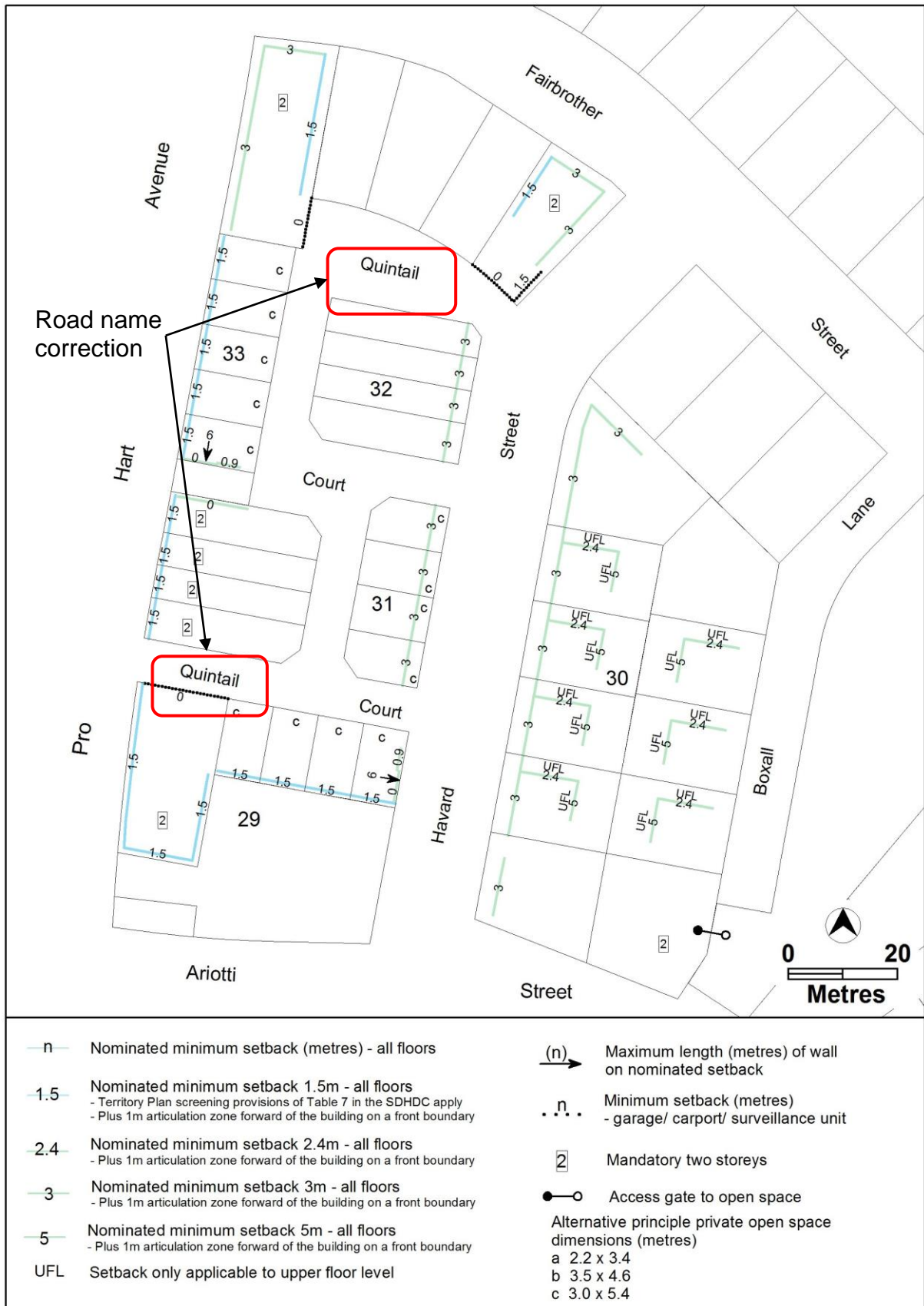


**Figure 6 Strathnairn residential area 4**





**Figure 8 Strathnairn residential area 6**



**Figure 9 Strathnairn residential area 7**

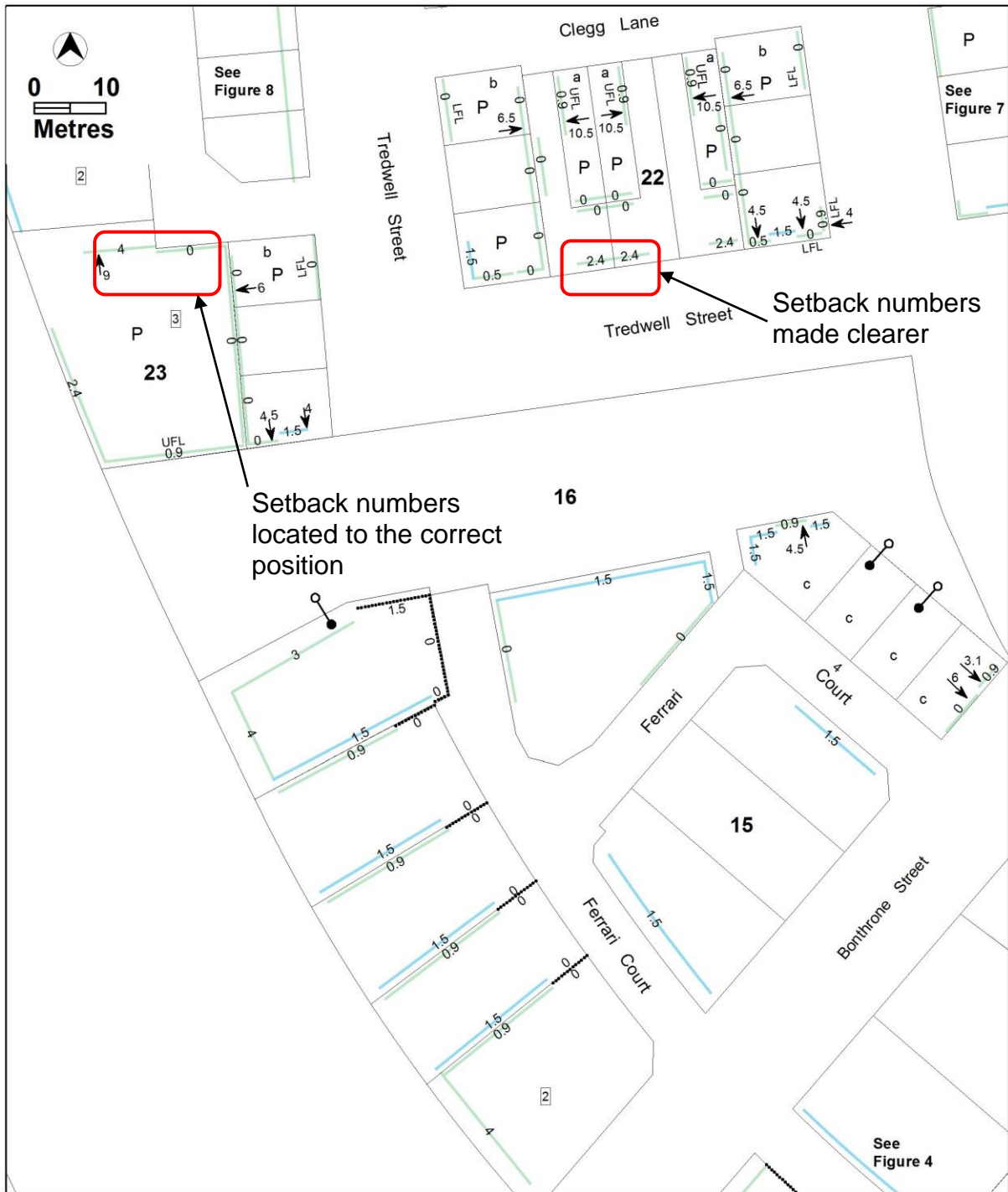


**Figure 14 Strathnairn residential area ongoing provisions**

Proposed diagrams:



Figure 2 Strathnairn fencing controls

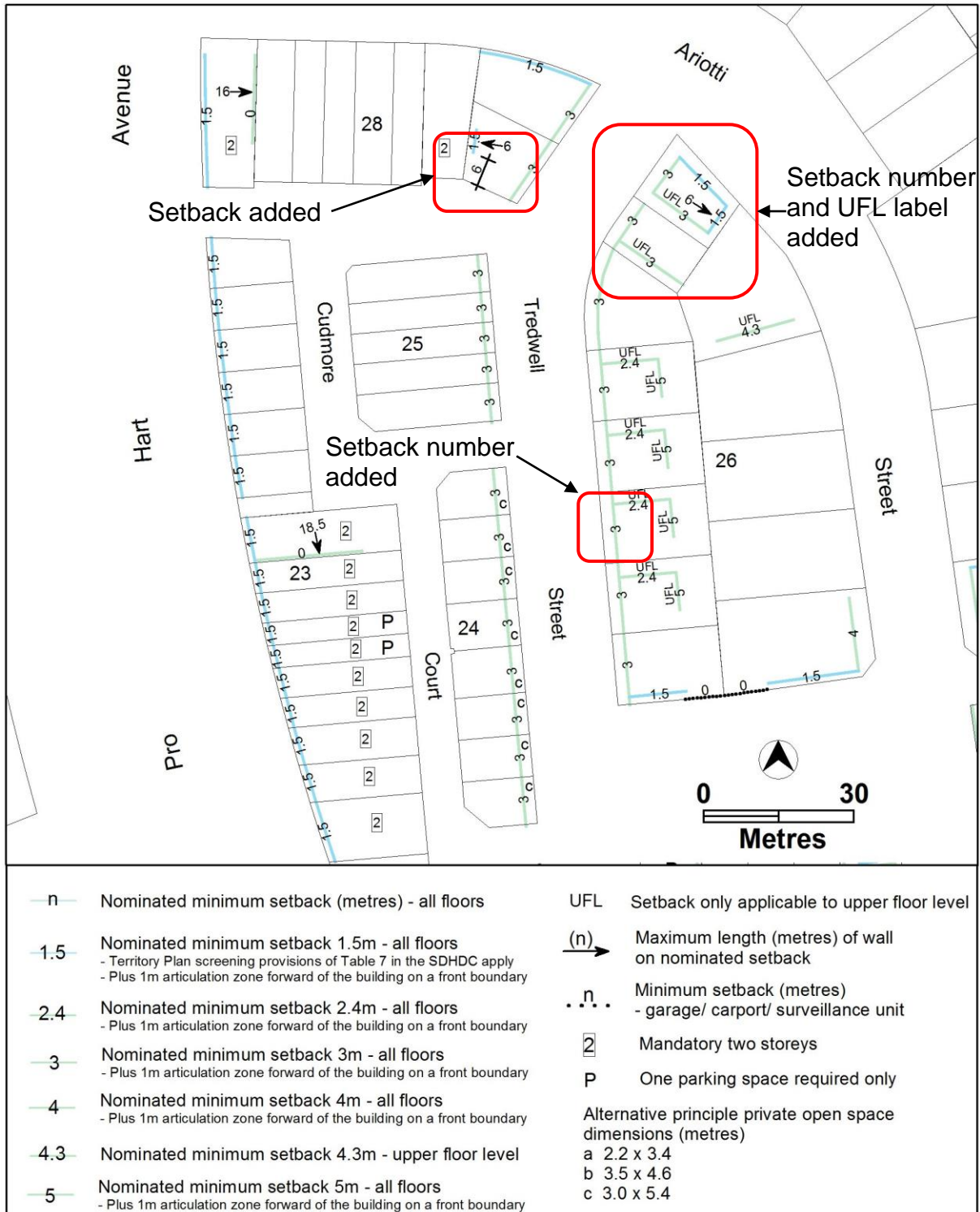


<ul style="list-style-type: none"> <li>—n— Nominated minimum setback (metres) - all floors</li> <li>-1.5- Nominated minimum setback 1.5m - all floors - Territory Plan screening provisions of Table 7 in the SDHDC apply - Plus 1m articulation zone forward of the building on a front boundary</li> <li>-2.4- Nominated minimum setback 2.4m - all floors - Plus 1m articulation zone forward of the building on a front boundary</li> <li>-3- Nominated minimum setback 3m - all floors - Plus 1m articulation zone forward of the building on a front boundary</li> <li>-4- Nominated minimum setback 4m - all floors - Plus 1m articulation zone forward of the building on a front boundary</li> <li>LFL Setback only applicable to lower floor level</li> <li>UFL Setback only applicable to upper floor level</li> </ul>	<ul style="list-style-type: none"> <li>(n) → Maximum length (metres) of wall on nominated setback</li> <li>...n... Minimum setback (metres) - garage/ carport/ surveillance unit</li> <li>2 Mandatory two storeys</li> <li>3 Mandatory three storeys</li> <li>P One parking space required only</li> <li>● Access gate to open space</li> <li>Alternative principle private open space dimensions (metres) a 2.2 x 3.4 b 3.5 x 4.6 c 3.0 x 5.4</li> </ul>
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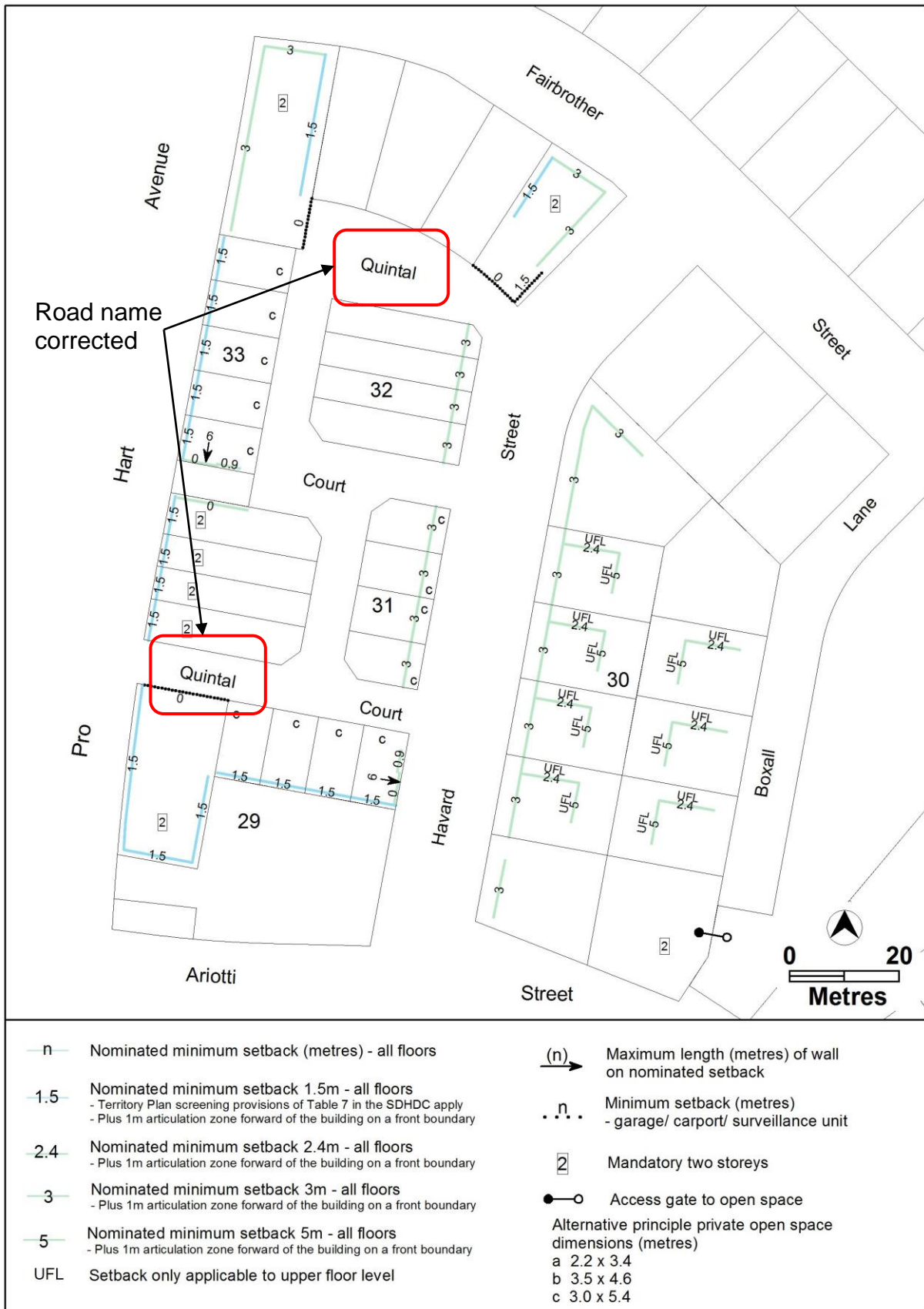
**Figure 3 Strathnairn residential area 1**



**Figure 6 Strathnairn residential area 4**



**Figure 8 Strathnairn residential area 6**



**Figure 9 Strathnairn residential area 7**





**Figure 14 Strathnairn residential area ongoing provisions**

## Compliance with the *Planning and Development Act 2007*

Section	Statement
s87(1)(a) (a) a variation (an <b><i>error variation</i></b> ) that— (i) would not adversely affect anyone’s rights if approved; and (ii) has as its only object the correction of a formal error in the plan;	Compliant. This amendment corrects formal errors in the plan when TA2019-10 took effect.

## 2.6 Variation to the Watson Precinct Map and Code

This amendment changes the nominated minimum side setback on block 17 section 116 Watson, as shown on Figure 3 of the Watson Precinct Code, by reducing the setback from 3m to 2.5m.

The 3m setback was nominated in the approved estate development plan and was subsequently transferred into the Watson Precinct Code when the future urban area overlay was uplifted in technical amendment TA2018-04. However, the intent of the estate development plan was to nominate a 2.5m setback in line with the accompanying residential subdivision plan. A setback of 3m would prevent the development of the proposed housing typology that was included as part of the estate development plan.

Existing figure (block 17 identified by red shading)

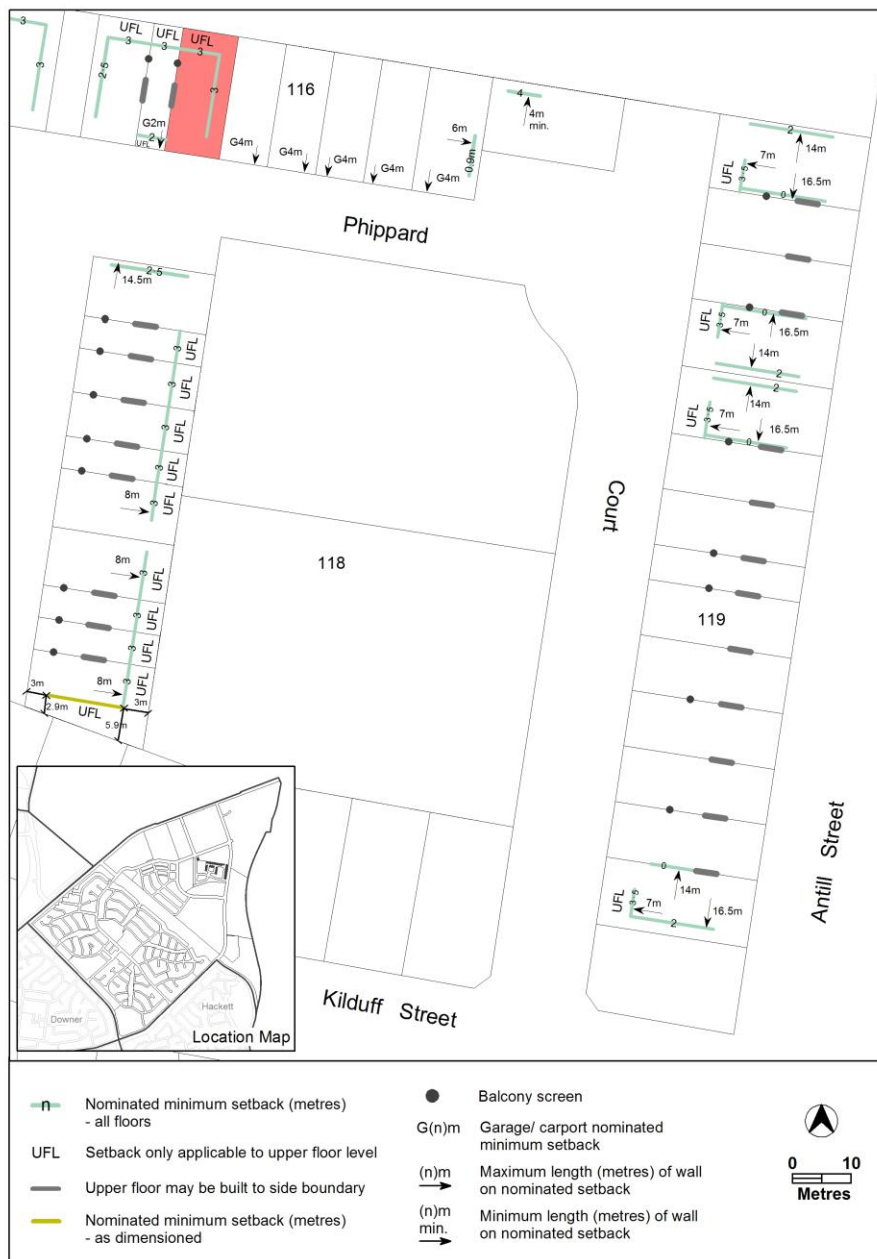


Figure 3 Watson residential area 2

Proposed figure (block 17 identified by red shading)

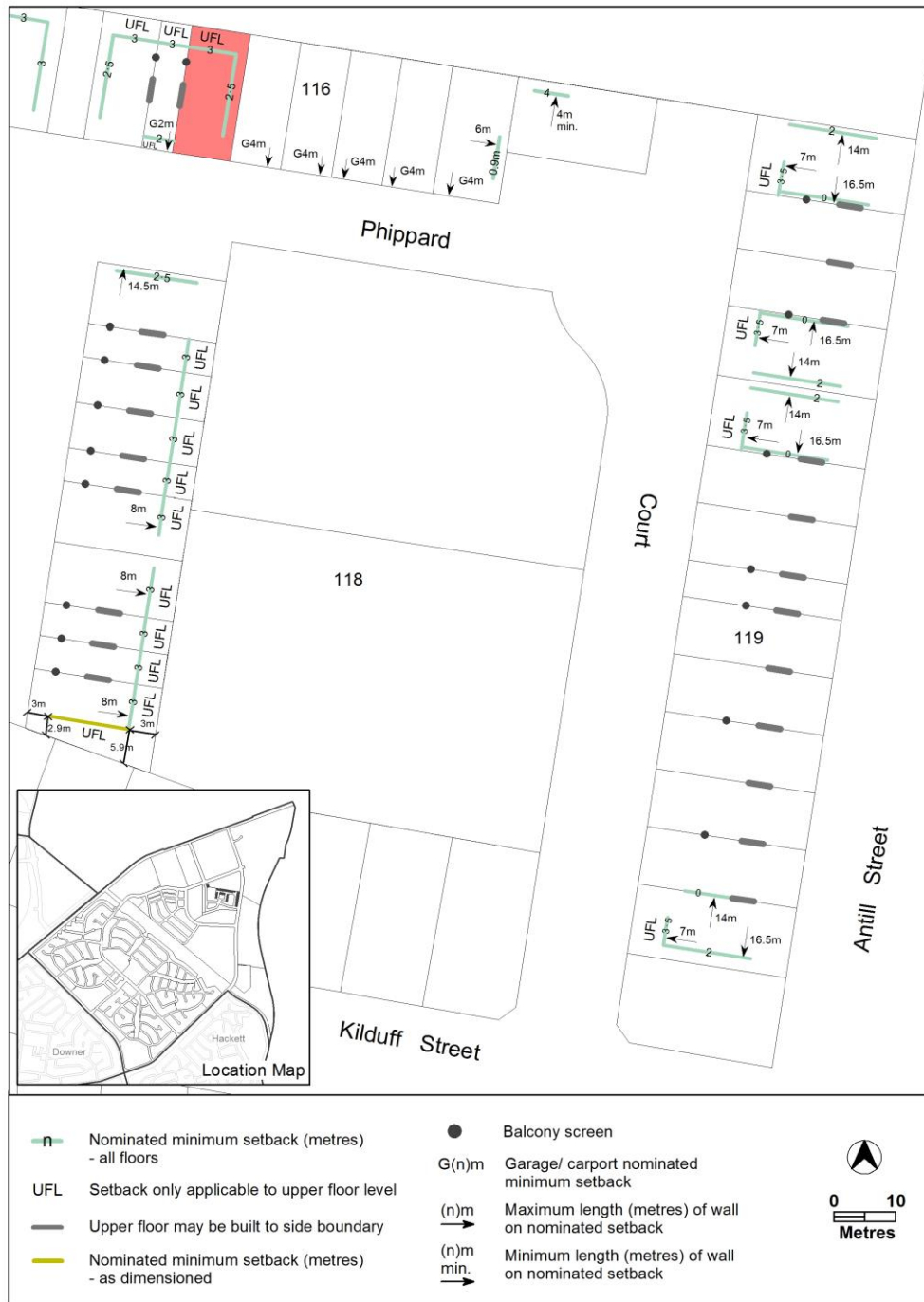


Figure 3 Watson residential area 2

**Compliance with the *Planning and Development Act 2007***

Section	Statement
<p><b>s87(2)(a)</b>                      (a) a variation (a <b>code variation</b>) that—                      (i) would only change a code; and                      (ii) is consistent with the policy purpose and policy framework of the code; and                      (iii) is not an error variation</p>	<p>Compliant.                      This change to figure 3 provides the outcome that was originally intended in the estate development plan.</p>

## 2.7 Variation to the definition of ‘side boundary’

The current definition of ‘side boundary’ in the Territory Plan can lead to an interpretation that the same boundary can be both a front boundary and a side boundary simultaneously. *Side boundary* is defined as a *block boundary* extending from a street frontage along a single bearing. A boundary fronting open space is considered a front boundary but under the current definition can also be interpreted as a side boundary when it projects from a street frontage. This situation has been clarified by amending the definition of ‘side boundary’ as follows:

*Current definition:*

**Side boundary** means a block boundary extending from a street frontage along a single bearing.

*Proposed definition:*

**Side boundary** means a block boundary extending from a street frontage along a single bearing. A boundary is not a side boundary if it meets the definition of front boundary.

### Compliance with the *Planning and Development Act 2007*

Section	Statement
<b>s87(2)(e)</b> a variation to clarify the language in the territory plan if it does not change the substance of the plan.	Compliant. This amendment clarifies the definition of ‘side boundary’ to address the unintended consequence whereby certain boundaries can meet both definitions of a front or side boundary.

### 3. TECHNICAL AMENDMENT

This section of the technical amendment document provides the actual instructions for implementing the changes to the Territory Plan.

#### 3.1 Variation to the Residential Zones Development Code

<b>1. Part D – Subdivision and consolidation, Element 9: Subdivision and consolidation; Item 9.4 Subdivision of standard blocks – RZ1; Rule R38</b>
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*Substitute*

Rules	Criteria
<p>R38</p> <p>This rule applies to <i>standard blocks</i> in RZ1.</p> <p><i>Subdivision</i> (including subdivision under the <i>Unit Titles Act 2001</i>) is permitted only where each proposed block contains a lawfully constructed dwelling, and where all <i>dwellings</i> on the <i>block</i> comply with one of the following:</p> <ul style="list-style-type: none"><li>m) were lawfully constructed on or before 1 September 2003</li><li>n) were subject to <i>development approval</i> issued on or before 1 September 2003</li><li>o) were the subject of a <i>development application</i> lodged on or before 1 September 2003 that was subsequently approved.</li></ul> <p>This rule does not apply to <i>standard blocks</i> in RZ1 that were subject to the A10 residential core area specific policy under Territory Plan 2002 at the time the development was approved.</p>	<p>This is a mandatory requirement. There is no applicable rule.</p>

**2. Part D – Subdivision and consolidation; Element 9: Subdivision and consolidation; Item 10.2 Subdivision of standard blocks – heritage registered – RZ1; Rule R45**

*Substitute*

Rules	Criteria
<p>R45</p> <p>This rule applies to <i>standard blocks</i> in RZ1 that are registered or provisionally registered under the <i>Heritage Act 2004</i>.</p> <p><i>Subdivision</i> (including subdivision under the <i>Unit Titles Act 2001</i>) is permitted only where each proposed block contains a lawfully constructed dwelling, and where all <i>dwellings</i> on the <i>block</i> comply with one of the following:</p> <p>p) were lawfully constructed on or before 1 September 2002</p> <p>q) were subject to <i>development approval</i> issued on or before 1 September 2002</p> <p>r) were the subject of a <i>development application</i> lodged on or before 1 September 2002 that was subsequently approved.</p> <p>This rule does not apply to <i>standard blocks</i> in RZ1 that were subject to the A10 residential core area specific policy under Territory Plan 2002 at the time the development was approved.</p>	<p>This is a mandatory requirement. There is no applicable rule.</p>

**3.2 Variation to the Single Dwelling Housing Development Code**

**3. Element 1: Building and site controls, 1.7 Building envelope – mid sized blocks approved before 5 July 2013**

*Substitute 1.7 Building envelope – mid sized blocks approved before 5 July 2013 with:*

1.7 Building envelope – mid sized blocks and compact blocks approved before 5 July 2013

### 3.3 Variation to the Denman Prospect Precinct Map and Code

#### 4. Other ongoing provisions, OP2 –Denman Prospect residential area, Figure 7 Denman Prospect residential area ongoing provisions

Substitute Figure 7 with

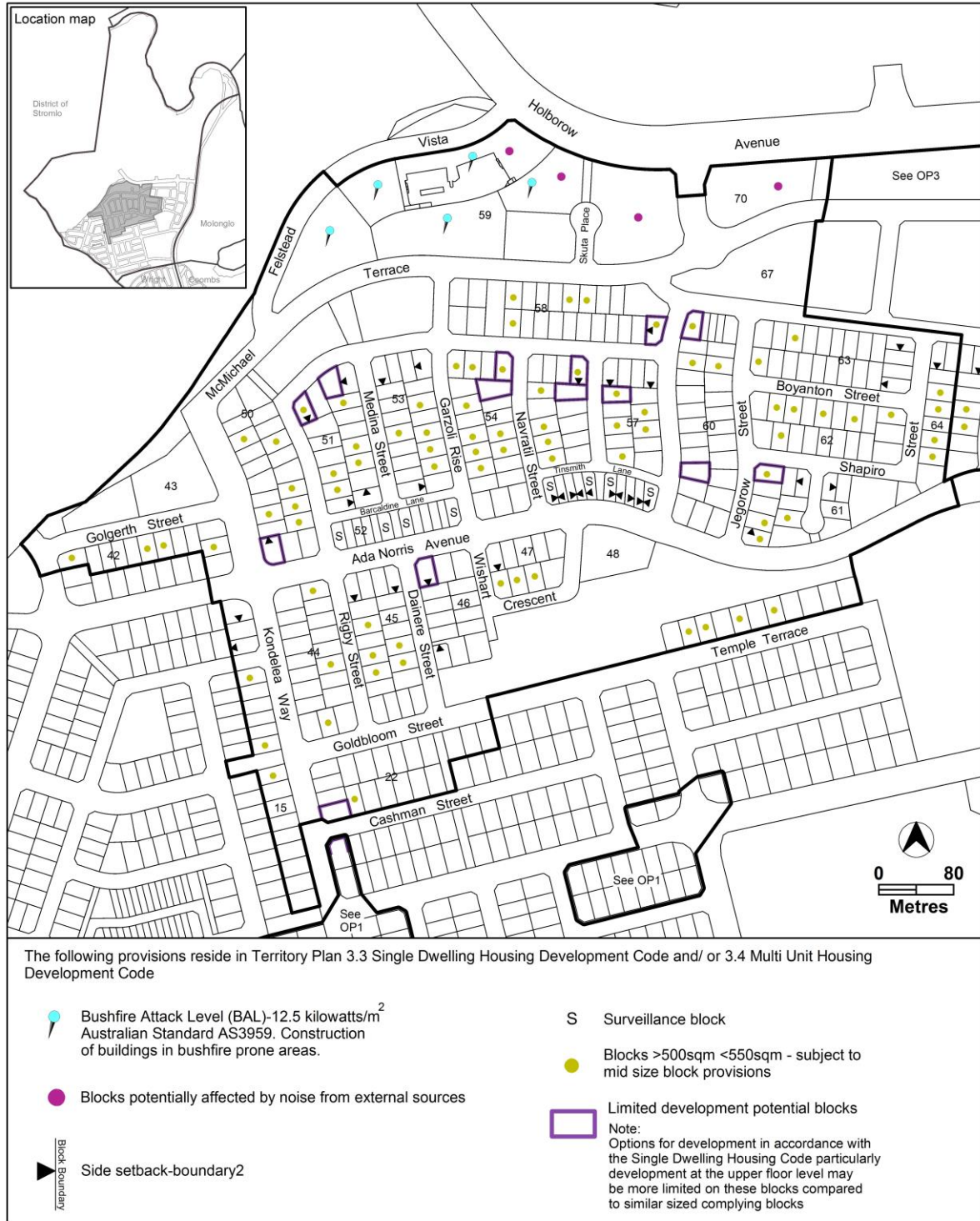


Figure 7 Denman Prospect residential area ongoing provisions



**5. Additional rules and criteria; RC2 – Residential Area; Element 2: Building and Site Controls; Item 2.5 Parking Rule R8**

*Substitute*

Rules	Criteria
<b>2.5 Parking</b>	
R8 This rule applies to blocks or parcels in locations identified in Figures 2, 3, 4 and 5.  All visitor parking requirements as determined by the Parking and Vehicle Access General Code are to be provided within the block.	This is a mandatory requirement. There is no applicable criterion.

### 3.4 Variation to the Strathnairn Precinct Map and Code

#### 6. Strathnairn Precinct Code, RC1 – Residential area; Figure 2 Strathnairn fencing controls

Substitute existing Figure 2 with:



Figure 2 Strathnairn fencing controls

**7. Strathnairn Precinct Code, RC1 – Residential area; Figure 3 Strathnairn residential area 1**

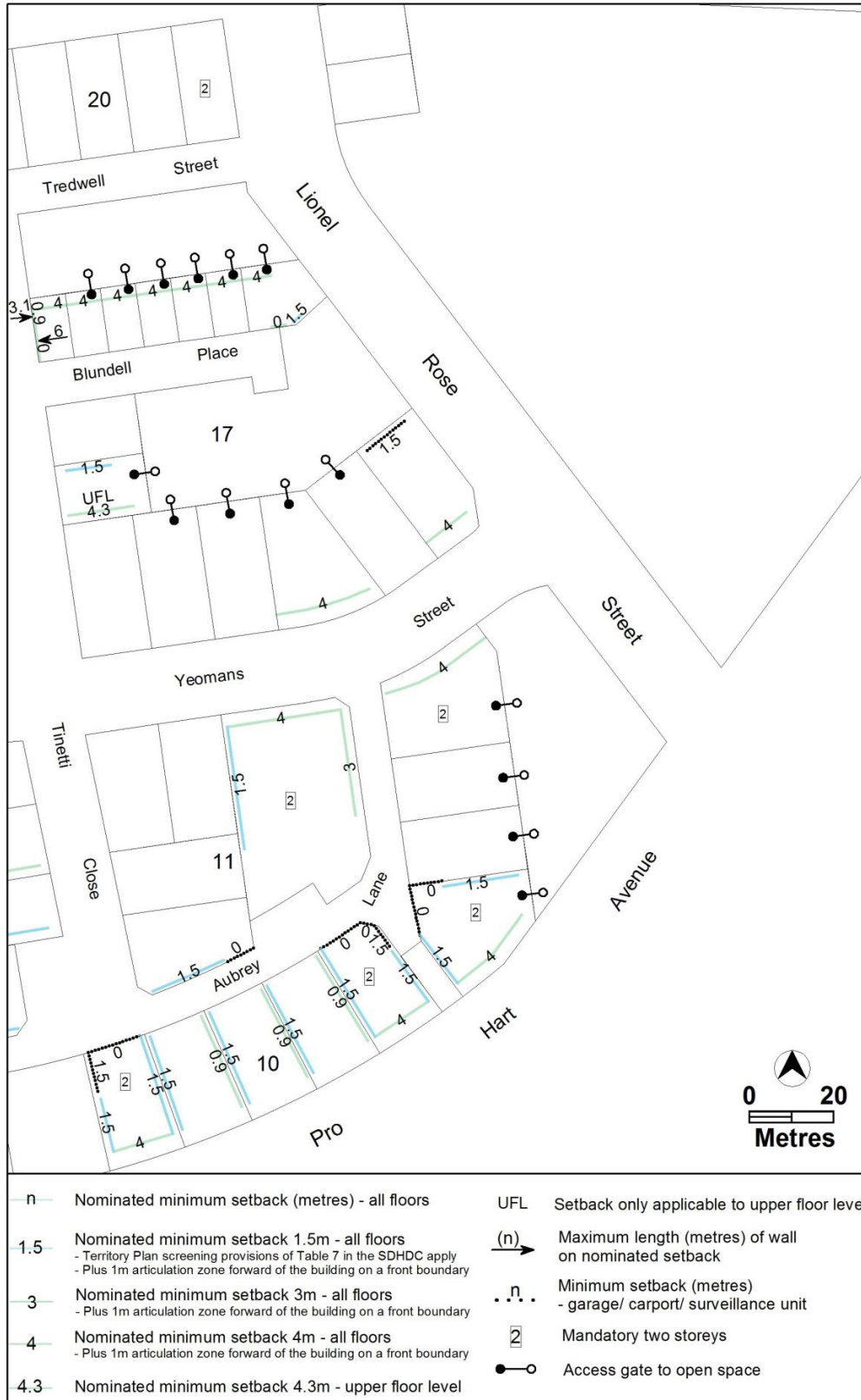
Substitute existing Figure 3 with:



**Figure 3 Strathnairn residential area 1**

**8. Strathnairn Precinct Code, RC1 – Residential area; Figure 6 Strathnairn residential area 4**

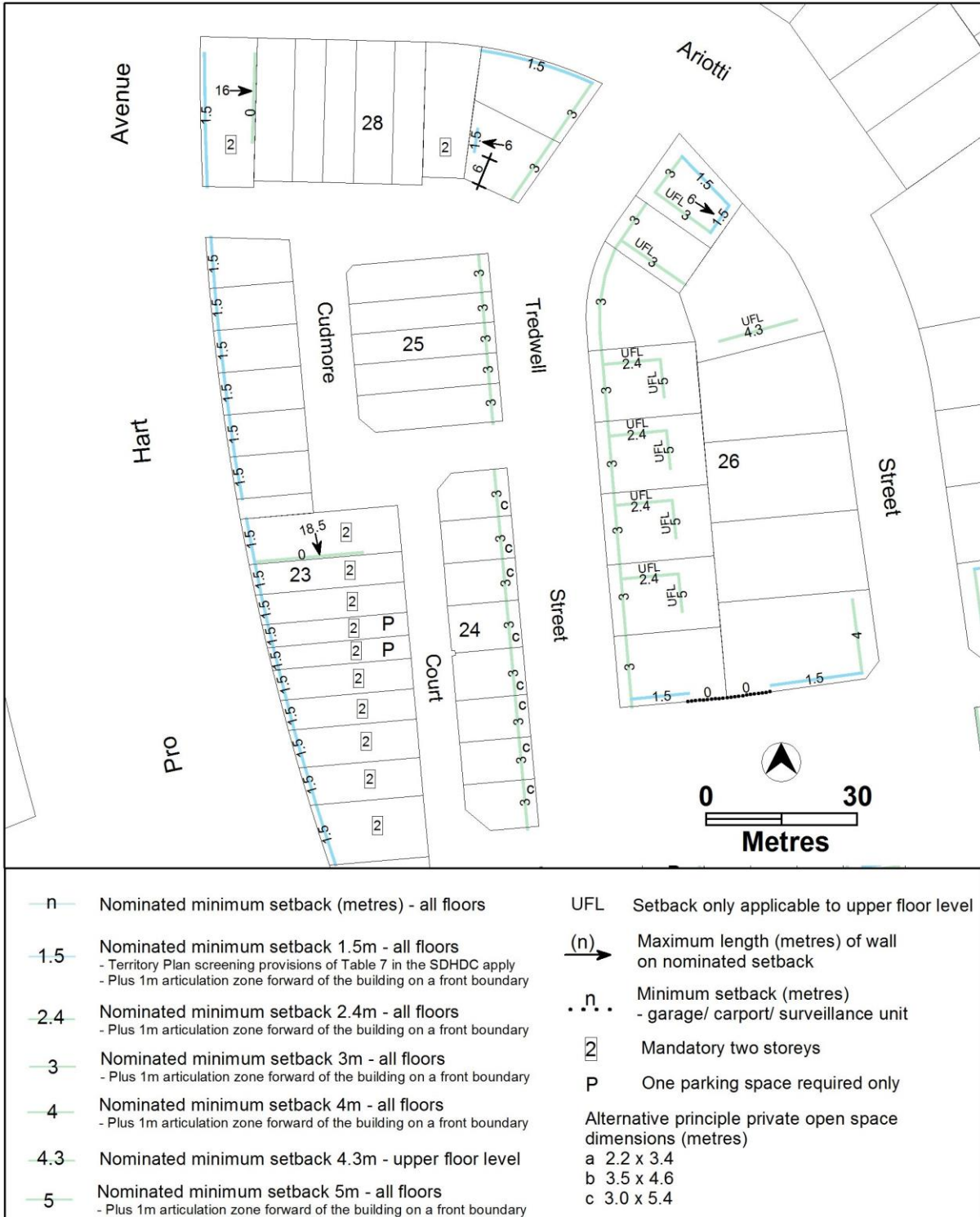
Substitute existing Figure 6 with:



**Figure 6 Strathnairn residential area 4**

**9. Strathnairn Precinct Code, RC1 – Residential area; Figure 8 Strathnairn residential area 6**

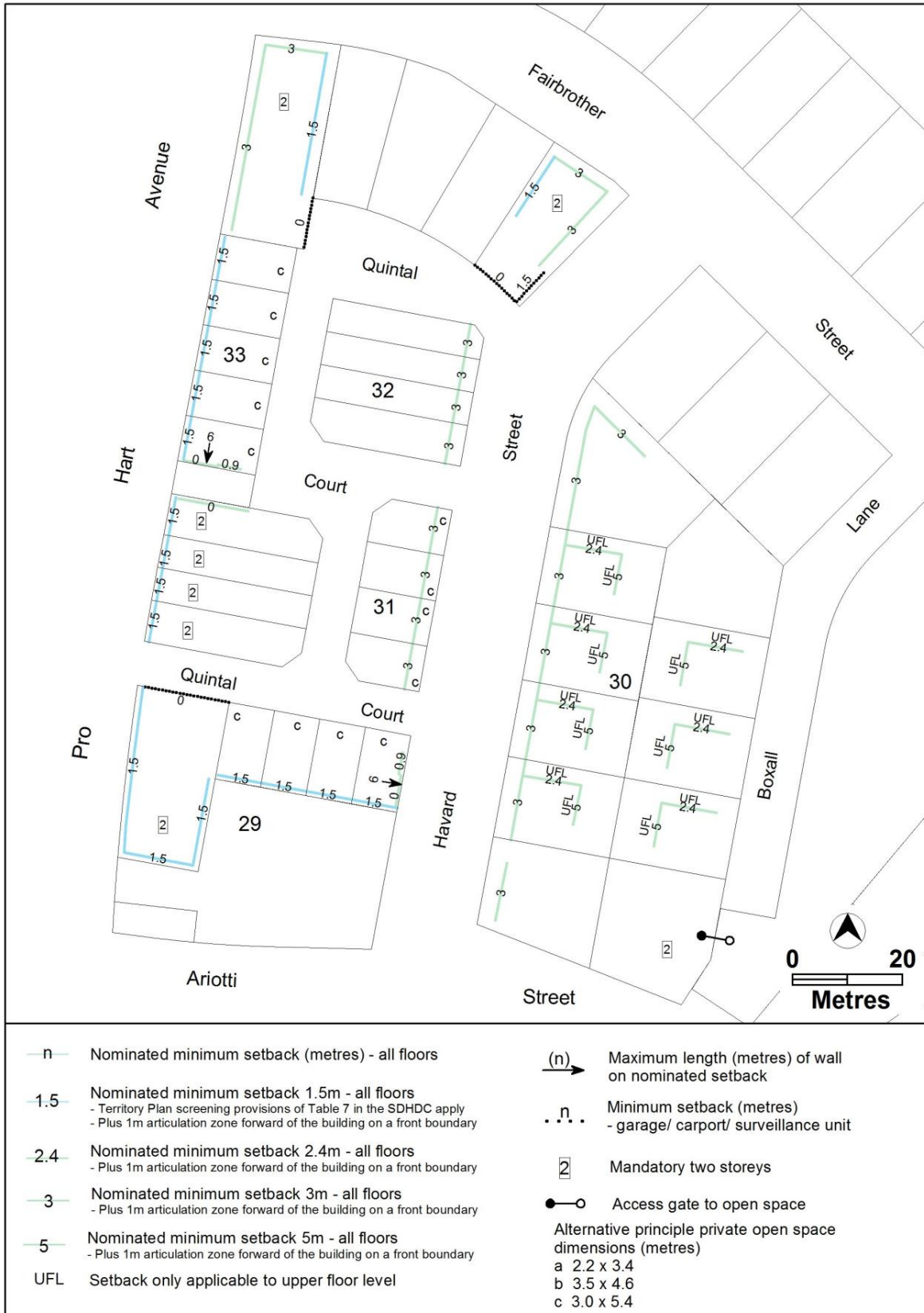
Substitute existing Figure 8 with:



**Figure 8 Strathnairn residential area 6**

**10. Strathnairn Precinct Code, RC1 – Residential area; Figure 9 Strathnairn residential area 7**

Substitute existing Figure 9 with:



**Figure 9 Strathnairn residential area 7**

**11. Strathnairn Precinct Code, OP4 – Strathnairn residential area; Figure 14 Strathnairn residential area ongoing provisions**

Substitute existing Figure 14 with:



**Figure 14 Strathnairn residential area ongoing provisions**

### 3.5 Variation to the Watson Precinct Map and Code

#### 12. Watson Precinct Code, RC2 – Residential, Figure 3 Watson residential area 2

Substitute existing Figure 3 with:



Figure 3 Watson residential area 2



## 3.6 Variation to the Definitions

### 13. Part B - Definition of Terms – ‘Side boundary’

*Substitute*

**Side boundary** means a block boundary extending from a street frontage along a single bearing. A boundary is not a side boundary if it meets the definition of front boundary.

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