

Planning and Development (Plan Variation No 377) Approval 2021

Notifiable instrument NI2021-65

made under the

Planning and Development Act 2007, s 76 (Minister's powers in relation to draft plan variations)

1 Name of instrument

This instrument is the *Planning and Development (Plan Variation No 377) Approval 2021*.

2 Approval of draft plan variation

(1) I approve under section 76 (2) (a) of the *Planning and Development Act 2007* the draft plan variation No 377 to the Territory Plan.

(2) In this section:

draft plan variation No 377 to the Territory Plan means the draft plan variation in the schedule.

Mick Gentleman MLA
Minister for Planning and Land Management
4 February 2021



ACT
Government

Environment, Planning and
Sustainable Development

Planning and Development Act 2007

Variation to the Territory Plan No 377

1 Dairy Road Fyshwick:

**Rezoning from Industrial IZ1 General Industrial
Zone to Commercial CZ3 Services Zone and
Non-Urban NUZ3 Hills Ridges and Buffer Zone
and changes to the Fyshwick Precinct Map and
Code**

Final variation prepared under s76 of the
Planning and Development Act 2007

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1. EXPLANATORY STATEMENT

1.1 Background

1.1.1 Blocks 11 and 12 Section 38 Fyshwick (1 Dairy Road)

The variation rezones the site from Industrial IZ1 General Industrial Zone to Commercial CZ3 Services Zone allowing for a mix of uses, including commercial, light industrial, residential, creative and cultural uses.

The site is located at the western extent of the industrial suburb of Fyshwick, and due to its position (see section 1.4 Site Description), the location of proposed uses on the site responds to the particular constraints posed by adjacent land uses and activities.

The interface of those parts of the site adjacent to surrounding roads and the major public utility installations (Fyshwick Sewerage Treatment Plant and the high pressure gas pipeline in the Monaro Highway road reserve) will be managed by the provision of defined exclusion areas within the site where certain uses are restricted, or where specific mitigation measures are required. The residential component, comprising a diversity of housing and accommodation types, will be protected from adverse impacts by only being permitted in the south west part of the site.

The Jerrabomberra Wetlands Nature Reserve to the west is one of the most valuable wetland habitat areas in the ACT, and of national and international importance. The Jerrabomberra Wetlands are part of Canberra Nature Park nature reserve system. Any potential impacts on the wetlands will be mitigated by restrictions on the intensity and nature of development adjoining the wetlands, specific Water Sensitive Urban Design (WSUD) measures and landscaping requirements.

Block 11 Section 38 Fyshwick is also subject to a Main Avenues and Approach Routes (MAAR) overlay in the National Capital Plan, and as such will require a Development Control Plan (DCP) to be approved by the National Capital Authority providing for the specific planning and urban design objectives for the Dairy Road site's location adjacent to a MAAR.

1.1.2 Part of Block 14 Section 38 Fyshwick

The variation also rezones part of Block 14 Section 38 Fyshwick, which is unleased land adjacent to the Dairy Road site to the west, from IZ1 to Non-Urban NUZ3 Hills Ridges and Buffer Zone.

Block 14 Section 38 Fyshwick is registered on the ACT Heritage Register as part of the 'Jerrabomberra Wetlands', which is of heritage significance for the occurrence of paleochannels and wildlife habitation areas. Although the part of Block 14 which is to be rezoned is not included in the nature reserve, it is considered to function as part of the wetlands.

The rezoning to Non-Urban NUZ3 Hills Ridges and Buffer Zone confirms the use of this land as an open natural landscape buffer between the Dairy Road site and the Jerrabomberra Wetlands Nature Reserve.

1.2 Summary of the Proposal

The variation rezones Blocks 11 and 12 Section 38 Fyshwick from Industrial IZ1 General Industrial Zone to Commercial CZ3 Services Zone and changes the Fyshwick Precinct Map and Code by introducing specific controls and provisions for the site, known as Dairy Road.

The variation also rezones part of Block 14 Section 38 Fyshwick from the Industrial IZ1 zone to Non-Urban NUZ3 Hills Ridges and Buffer Zone confirming the use of this land as an open natural landscape buffer between the Dairy Road site and the Jerrabomberra Wetlands Nature Reserve.

1.3 The 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.

In accordance with section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988*, the NCP defines the planning principles and policies for Canberra and the Territory, for giving effect to the object of the NCP and sets out the general policies to be implemented throughout the Territory, including the range and nature of permitted land uses.

It also sets out the detailed conditions of planning, design and development for areas that have special significance to the National Capital known as designated areas and identifies special requirements for the development of some other areas.

1.4 Site Description

The Dairy Road site is identified as Blocks 11 and 12, Section 38, Fyshwick. It is currently zoned Industrial IZ1 General Industrial Zone and located on the western edge of the industrial suburb of Fyshwick, about five kilometres from Canberra City and three kilometres from the Canberra International Airport.

It is bordered by the Monaro Highway to the east, Dairy Road and the Fyshwick Sewerage Treatment Plant to the north, the Jerrabomberra Wetlands Nature Reserve to the west and the Canberra-Sydney railway corridor to the south. The site currently contains surface car parking and several industrial and warehouse buildings, some of which have been repurposed to accommodate a variety of uses and businesses and indoor recreation activities.

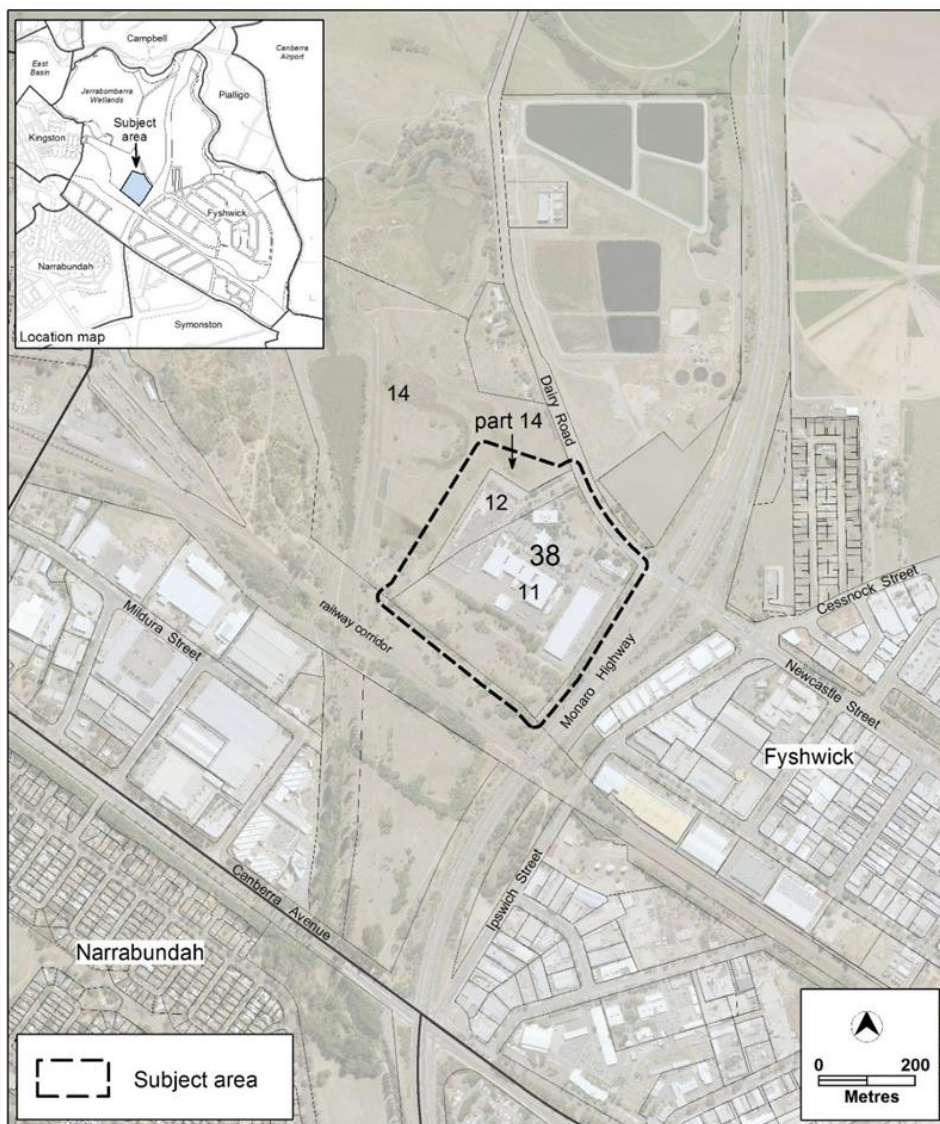


Figure 1 Site Plan

1.5 Current Territory Plan Provisions

The Territory Plan map for the area subject to this variation is shown in Figure 2.

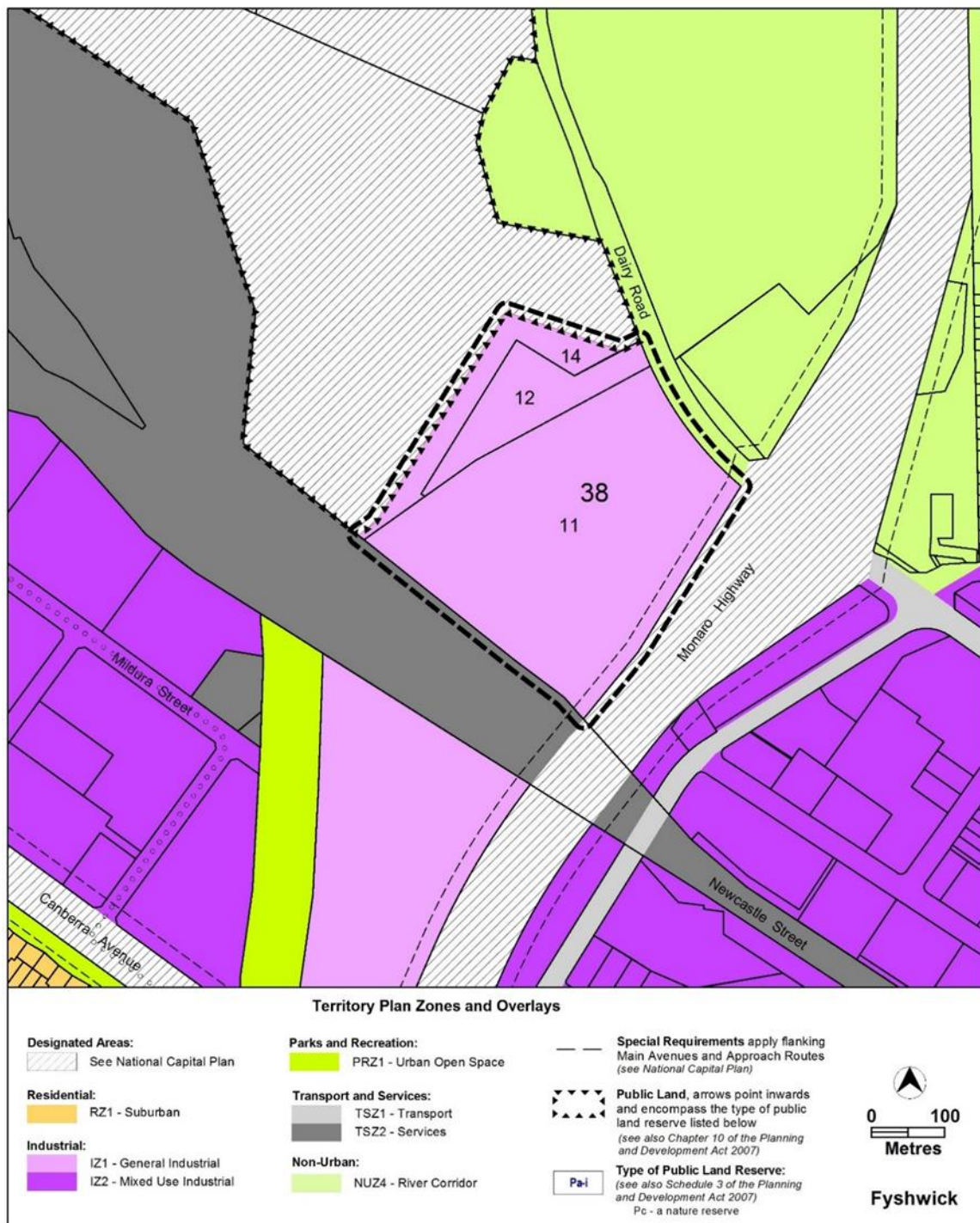


Figure 2 Territory Plan Zones Map

1.6 Changes to the Territory Plan

Detailed changes to the Territory Plan are noted in section 2 of this document.

1.7 Consultation on the Draft Variation

Draft Variation 377 (DV377) was released for public comment between 14 August 2020 and 25 September 2020. A consultation notice under section 63 of the *Planning and Development Act 2007* (P&D Act) was published on the ACT Legislation Register on 14 August 2020.

A total of 50 written submissions were received. 42 submissions were from individuals and 8 submissions were from community and business groups or organisations. 36 of the submissions supported the proposal.

The following table summarises key considerations raised in submissions:

Issue	Number of submissions
Concern about impacts of the development on Lake Burley Griffin, Jerrabomberra Wetlands and surrounds	9
Part Block 14 Section 38 (buffer) – width, integration, landscape, infrastructure	5
Building heights and development considerations	5
Issues with Fyshwick Precinct Map and Code: table of prohibited uses and proposed Rules R11, R12 and R18	3
Recreational facilities within or adjacent to Dairy Road site	2
Road, pedestrian and cycleway connectivity	2
Concern about impact of residential use close to industrial area	1
Impacts of sewage treatment plant on the development	1
Consideration be given to schools, public transport, medical, shopping and recreational facilities	1

The above issues were considered and are detailed in a report on consultation. Changes were informed by the issues raised. The outcomes of consultation were considered by the Minister responsible for planning prior to approval of this variation.

1.8 Revisions to the Draft Variation Recommended to the Minister

No changes were made to the draft variation recommended to the Minister.

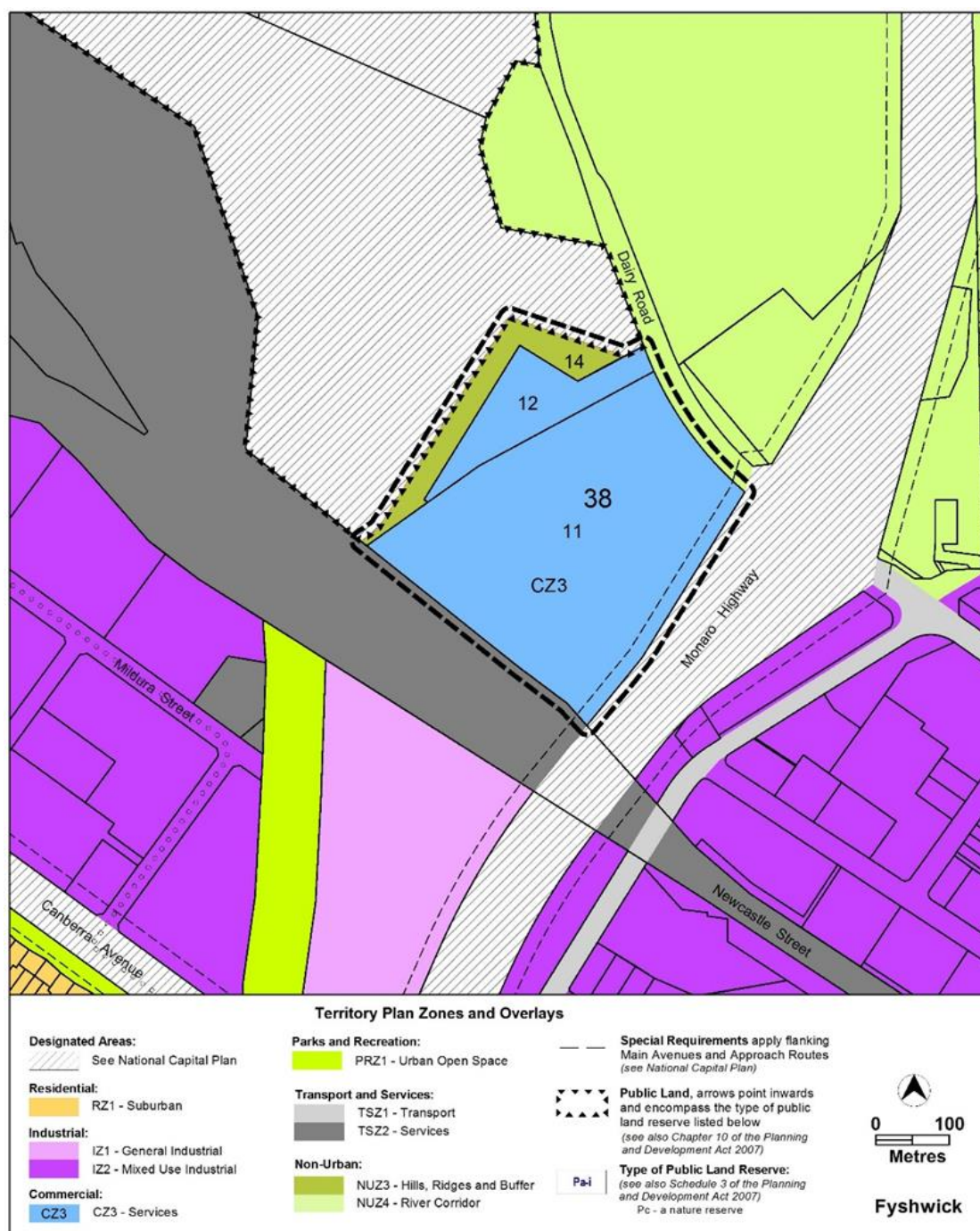
2. VARIATION

2.1 Variation to the Territory Plan

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

Variation to the Territory Plan map

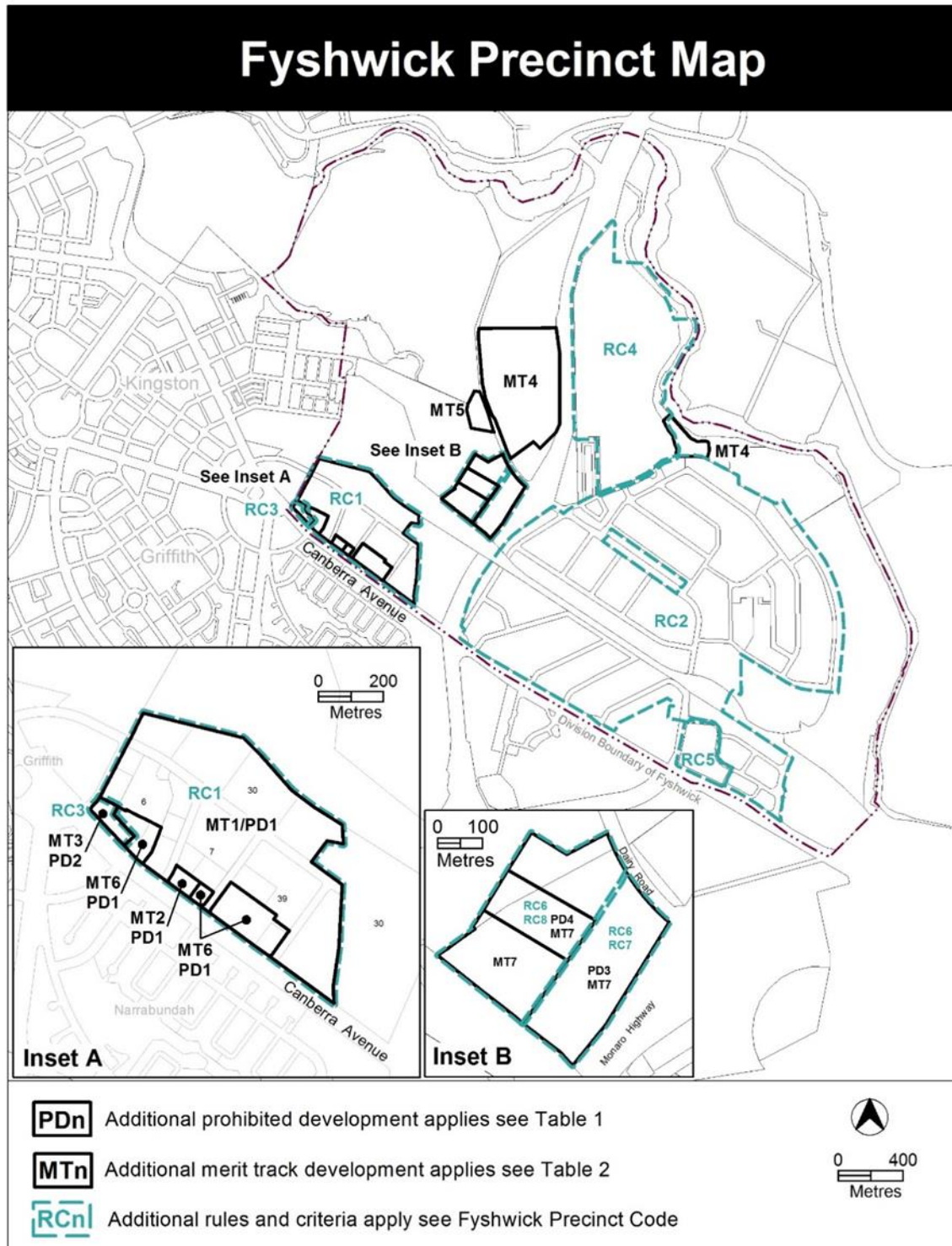
Substitute



Variation to the Fyshwick precinct map and code

1. Fyshwick Precinct Map

Substitute



2. Fyshwick Precinct Code: Table 1 – Additional prohibited development

Insert PD3 and PD4 into Table 1 after PD2

Additional prohibited development		
Suburb precinct map label	Zone	Development
PD3	CZ3	<i>child care centre</i> <i>hospital</i> <i>RESIDENTIAL USE</i>
PD4	CZ3	<i>RESIDENTIAL USE</i>

3. Fyshwick Precinct Code; Table 2 – Additional merit track development

Insert after MT6 in Table 2:

Additional merit track development that may be approved subject to assessment		
Suburb precinct map label	Zone	Development
MT7	CZ3	<i>agriculture</i> <i>defence installation</i> <i>scientific research establishment</i>

4. Fyshwick Precinct Code; Additional rules and criteria

Insert after RC5 – Block 8 Section 48 Fyshwick:

RC6 - Dairy Road mixed use area

This part applies to any proposed residential development on the blocks and parcels identified in the area RC6 shown on the Fyshwick Precinct Map.

Element 7: Residential Amenity

Rules	Criteria
7.1 Noise attenuation - external sources	
<p>R9 This rule applies in addition to R67 of the <i>Multi Unit Housing Development Code</i> and R42 of the <i>Single Dwelling Housing Development Code</i> which require mitigation of noise from road traffic, rail and regulated sources.</p> <p>For residential development all dwellings shall be constructed to comply with the relevant sections of AS/NZS 2107:2016 - <i>Acoustics – Recommended design sound levels and reverberation times for building interiors</i> (the relevant satisfactory recommended interior design sound level).</p> <p>Compliance with this rule is demonstrated by an acoustic assessment and noise management plan, prepared by a member of the Australian Acoustical Society with experience in the assessment of rail traffic noise, and endorsed by the ACT Government entity responsible for transport planning.</p>	<p>This is a mandatory requirement. There is no applicable criterion</p>
<p>R10 Development complies with a noise management plan prepared by a suitably qualified person and endorsed by the Environment Protection Authority (EPA).</p> <p>The noise management plan will detail the proposed design, siting and construction methods that will be employed to ensure compliance with the Noise Zone Standard as detailed in the Environment Protection Regulation 2005, based on the estimated noise levels when the facility is in use.</p> <p>Note: A condition of development approval may be imposed to ensure compliance with the endorsed noise management plan.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

7.2 Air quality assessment	
<p>R11</p> <p>Prior to any residential development being proposed for the site, an air quality assessment must be undertaken to demonstrate that the existing industrial uses both within and external to the site will not have adverse impacts on existing and proposed sensitive uses.</p> <p>The air quality assessment will need to demonstrate that impacts from emissions sources both within the site and from the surrounding industrial uses is appropriately assessed in accordance with the Environment Protection Authority's applicable guidelines at the time and endorsed by the Environment Protection Authority.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
7.3 Noise and odour – internal sources	
<p>R12</p> <p>Where subdivision (including unit titling) of parcels is proposed, noise and odour management plans are prepared by a suitably qualified person and endorsed by the Environment Protection Authority.</p> <p>The plans will demonstrate how the development addresses noise and odour emissions from within the site and how the impacts are mitigated for sensitive uses on and adjoining the site.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Element 8: Use

Rules	Criteria
8.1 Restrictions on use	
<p>R13</p> <p>The maximum <i>gross floor area</i> for a supermarket or a <i>shop</i> selling food is 300m²</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R14</p> <p>The maximum <i>gross floor area</i> for an <i>office</i> on any <i>tenancy</i> is 2000m².</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R15</p> <p>The maximum gross floor area for all NON RETAIL COMMERCIAL USE is 40,000m²</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R16</p> <p>This rule applies to Area A in Figure 1: The maximum number of storeys is 4</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

<p>R17</p> <p>This rule applies to Area B in Figure 1: The maximum number of storeys is 8.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R18</p> <p>This rule applies to <i>multi-unit housing</i> only.</p> <p>The maximum number of <i>dwellings</i> is 1300.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R19</p> <p><i>Educational establishment</i> is only permitted where it is for technical and vocational training.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R20</p> <p>Stadium or arena is not permitted.</p> <p>Note: Stadium, arena fall under the definition of <i>outdoor recreation facility</i></p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R21</p> <p>Agriculture is only permitted where it is for horticulture and apiaries</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
8.2 Contamination	
<p>R22</p> <p>An environmental assessment into the site's suitability from a contamination perspective must be undertaken in accordance with the ACT Contaminated Sites Environment Protection Policy and be endorsed by the Environment Protection Authority prior to development or a change in use.</p> <p>This rule does not apply if the Environment Protection Authority has provided written advice that the site has been assessed for contamination to its satisfaction.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

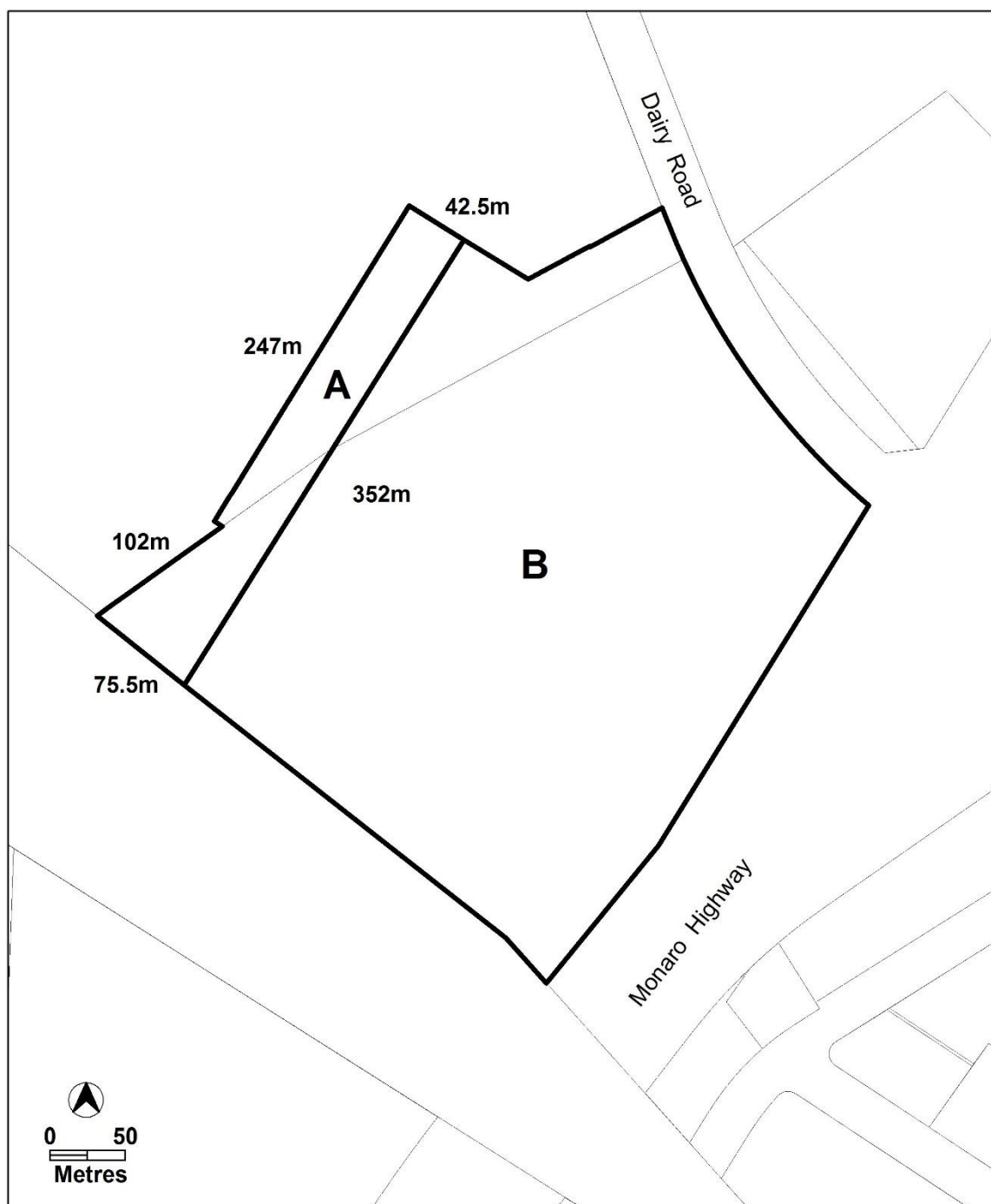


Figure 1 Building heights

Element 9: Environment

Rules	Criteria
9.1 Environment Protection	
<p>R23</p> <p>The Estate Development Plan (EDP) must address all of the following to avoid adverse ecological impacts on the Jerrabomberra Wetlands:</p> <ul style="list-style-type: none"> a) Stormwater runoff and water sensitive urban design measures b) Landscaping to be in accordance with a landscape master plan to complement the existing species and prevent the spread of invasive species. The vegetation adjacent to the site boundary with the wetlands must be a combination of mid-layer shrubs and advanced stock tree planting to provide visual screening of the site from the wetlands. The species are to be chosen to have minimal impact on the wetlands and to avoid any exotic species entering the reserve. c) Bushfire containment measures including but not limited to an edge road and asset protection zone d) Lighting to be designed to avoid light spill into the reserve e) Location of infrastructure including roads, footpaths, utilities, etc f) Public realm considerations including <ul style="list-style-type: none"> • the location and provision of pedestrian access into the wetlands is to be suitable and capable of dealing with the expected increase in patronage as a result of the future residential population on the site • provision and location of suitable open space and recreational facilities on the site to ease pressure on the wetlands as a recreational destination • adequate infrastructure is provided to mitigate any potential significant adverse environmental impact on the wetlands from pedestrian / cycling traffic leaving the site g) no utility infrastructure associated with the development is constructed within the reserve boundary and no overhead lines are constructed adjacent to the wetlands. <p>The above measures in the EDP must be endorsed by the Conservator of Flora and Fauna.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

9.2 Sustainability	
There is no applicable rule	<p>C24</p> <p>Development demonstrates that there is no net gain of urban heat.</p> <p>Compliance with this criterion is demonstrated in a microclimate assessment report by a qualified professional which details building and place design and use of mitigating measures including:</p> <ul style="list-style-type: none"> a) low thermal mass, high albedo and or high emissivity building materials and/or finishes b) inclusion of canopy trees to achieve an overall minimum of 30% shade across the precinct. c) use of permeable surfaces. d) use of water features e) appropriate location of open space and buildings f) other types of cooling measures such as green roofs, vertical gardens and shade structures. <p>This criterion does not apply to a development application for the change of use of an existing building or structure.</p>
9.3 Cat containment	
<p>R25</p> <p>The provisions of the Domestic Animals Act relating to cat containment apply.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

RC7 - Gas pipeline impact area

This part applies to blocks and parcels identified in the area RC7 shown on the Fyshwick Precinct Map.

Element 9: Use

Rules	Criteria
9.1 Safety management study (SMS)	
<p>R26</p> <p>This rule applies to the gas pipeline impact area shown in Figure 2.</p> <p>Development complies with a Safety Management Study plan specific to the development application, prepared by an experienced SMS facilitator who has been approved by a senior officer within the licensed</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

gas utility provider and endorsed by the ACT Government's Technical Regulator.

The plan will detail an assessment against the safety management study process and location classifications in accordance with *Australian Standard AS2885.1 Pipelines – gas and liquid petroleum*.

Note: a senior officer within the licensed gas utility provider needs to be a principal engineer, a senior pipeline engineer or the gas network manager.

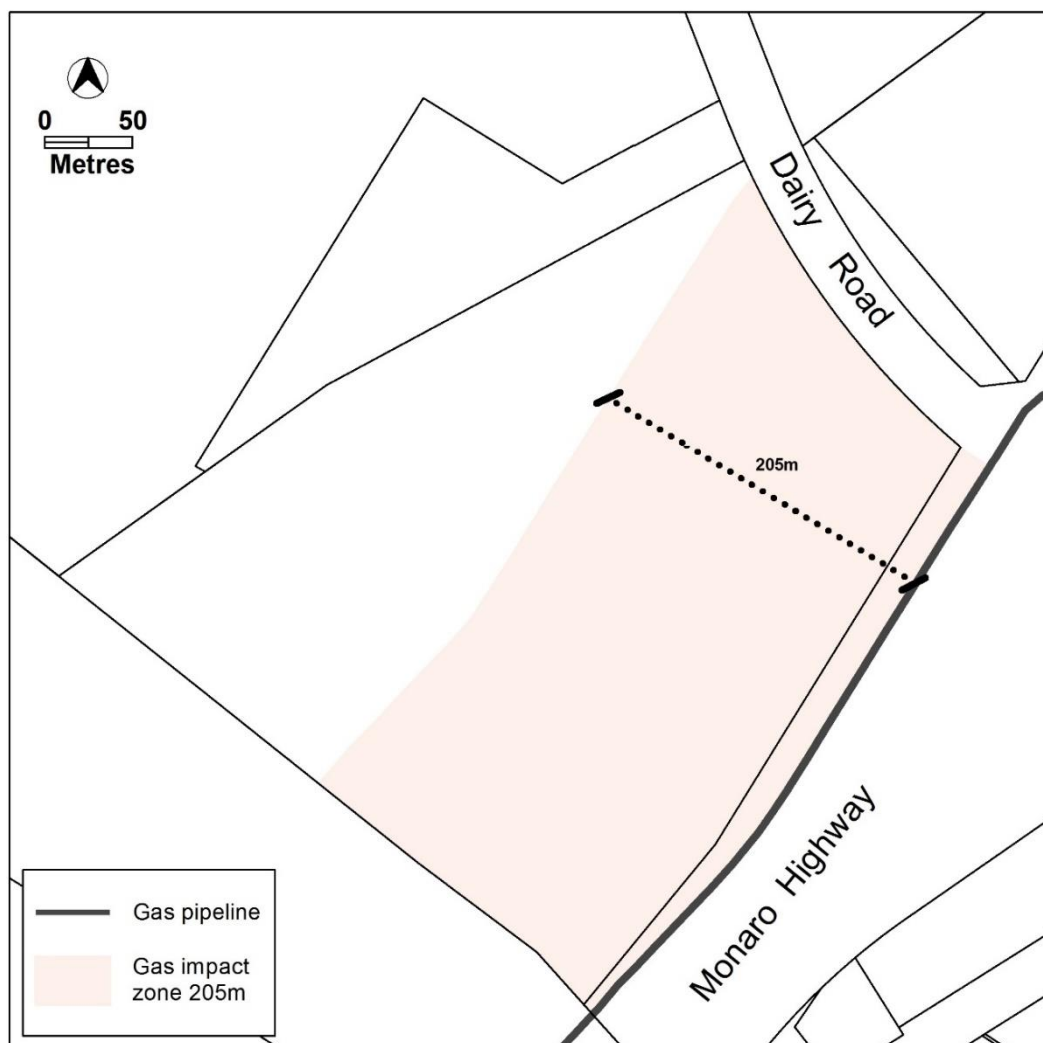


Figure 2 Gas pipeline impact area

RC8 – Jerrabomberra Wetlands interface

This part applies to blocks and parcels identified in the area RC8 shown on the Fyshwick Precinct Map.

Element 10: Use

Rules	Criteria
10.1 Environment	
<p>R27</p> <p>This rule does not apply to any Estate Development Plan Development Application.</p> <p>Any development within 50 metres of the site boundary adjacent to the Jerrabomberra Wetlands must have a light spill assessment demonstrating that there will be no adverse impacts from lighting on the adjacent wetlands.</p> <p>The light spill assessment must be prepared by a suitably qualified professional and must be to the satisfaction of the Conservator of Flora and Fauna.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R28</p> <p>This rule does not apply to any Estate Development Plan Development Application.</p> <p>A hydrological assessment is to be provided to demonstrate that there will be no adverse hydrological impacts on the Jerrabomberra Wetlands as a result of development on the site.</p> <p>The assessment must be prepared by a suitably qualified hydrological professional and endorsed by the Conservator of Flora and Fauna.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R29</p> <p>This rule does not apply to any Estate Development Plan Development Application.</p> <p>Water Sensitive Urban Design (WSUD) measures shall be implemented in accordance with a WSUD assessment demonstrating that there are no adverse impacts on the Jerrabomberra Wetlands and be endorsed by the Conservator of Flora and Fauna.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>
<p>R30</p> <p>This rule does not apply to any Estate Development Plan Development Application.</p> <p>A landscape plan for the site shall be prepared demonstrating that the species used are appropriately chosen and managed to remove any risk of introduction of incompatible species to the Jerrabomberra Wetlands.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

<p>The vegetation adjacent to the site boundary with the wetlands must be a combination of mid-layer shrubs and advanced stock tree planting to provide visual screening of the site from the wetlands. The species are to be chosen to have minimal impact on the wetlands and to avoid any exotic species entering the reserve.</p> <p>The landscape plan is endorsed by the Conservator of Flora and Fauna.</p>	
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ENGLISH	If you need interpreting help, telephone:
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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, čempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
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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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