

# Planning and Development (Conditional Environmental Significance Opinion – Block 2 Section 39, Whitlam – Lower Deep Creek Pond Geotechnical Works) Notice 2021 (No 2)

Notifiable instrument NI2021–249

made under the

Planning and Development Act 2007, s 138AD (Requirements in relation to environmental significance opinions)

---

## 1 Name of instrument

This instrument is the *Planning and Development (Conditional Environmental Significance Opinion – Block 2 Section 39, Whitlam – Lower Deep Creek Pond Geotechnical Works) Notice 2021 (No 2)*.

## 2 Commencement

This instrument commences on the day after its notification day.

## 3 Conditional environmental significance opinion

- (1) On 15 April 2021, the Heritage Council, pursuant to section 138AB (4) (b) of the *Planning and Development Act 2007* (the **Act**), gave the Applicant a conditional environmental significance opinion in relation to construction, on Block 2 Section 39, Whitlam, involving preliminary geotechnical works to inform the design of the Deep Creek Corridor Regional Water Quality Pond.

- (2) In this section:

*conditional environmental significance opinion* means the opinion in the schedule.

*Note* Under section 138AD (6) of the Act, the conditional environmental significance opinion and this notice expire 18 months after the day the notice is notified.

Brett Phillips  
Delegate of the planning and land authority  
27 April 2021



## ACT Heritage Council

# HERITAGE ADVICE

## *Environmental Significance Opinion*

ACTPLA Reference: ESO202100008  
Heritage Reference: Whitlam-General  
Contact Officer: JM  
Received by Council: 2 March 2021  
Due date: 15 April 2021

**TO: Impact Assessment**  
Environment, Planning and Sustainable Development Directorate  
[EPDImpact@act.gov.au](mailto:EPDImpact@act.gov.au)

Block:	Section:	Division / District:	Heritage Places:
2	39	Whitlam	DC1; DC2; MG13; MG14; MG15; MG16; MG17; MG18; MG19; MG20; MG21; and MVIF1

Status of Place: Aboriginal Places  
Description of Works: Geotechnical investigations  
Report Details: “*Deep Creek Cultural Heritage Management Works*” (Navin Officer Heritage Consultants, February 2021)  
Council Advice provided by: Manager (Approvals and Advice)

---

Pursuant to Section 138AB of the *Planning and Development Act 2007* and Section 60 of the *Heritage Act 2004*, the ACT Heritage Council advises that:

- The proposal is **unlikely to have a significant adverse environmental impact, subject to conditions** described below.
- 

### Background:

On 2 March 2021, the ACT Heritage Council (the Council) was referred an application for an Environmental Significance Opinion (ESO) for proposed geotechnical investigations to support the design, construction and operation of the Deep Creek Corridor Regional Water Quality Pond (DCCRWQP) located at Block 2 Section 39 Whitlam. The DCCRWQP is a component of the first land release of Stage 3 of Whitlam, a subdivision in the Molonglo Valley.

The ESO application states that it does not include all proposed geotechnical works to support the DCCRWQP, as works beyond the river corridor are not subject to an ESO will avoid heritage places and accordingly, do not need to be included.

On 30 March 2021 the Council provided advice, seeking further information, on the associated Construction Environment Management Plan (CEMP) for this project. This CEMP includes some of the application works in the current ESO application.

The geotechnical investigations that form part of the ESO application have been divided into two distinct areas:

- The embankment site near the location of the DCCRWQP; and
- The Molonglo Valley Interceptor Sewer (MVIS) bridge downstream of the embankment site.

The proposed works in the ESO application include undertaking boreholes and test pits and costean trenches which are 30 to 60 m in length.

The ESO referral included a 2021 Cultural Heritage Assessment letter, authored by Navin Officer Heritage Consultants (the 'CHA letter') for the proposed works.

The CHA letter sets out the following key findings and recommendations:

- The project area is associated with the proposed geotechnical bore holes that are to be placed adjacent to Deep Creek within Block 1429 Belconnen. This is the MVIS project area;
- No previously recorded Aboriginal places are in or near the study area. The nearest previously recorded Aboriginal place is located approximately 100 m to the north of the study area;
- No areas of potential archaeological deposit were identified. The proposed bore holes will be located on moderate to high gradient slope with outcropping bedrock and shallow soils;
- Two Aboriginal places were recorded during the site inspection. The following was identified:
  - Aboriginal place, 'DC1' being an isolated stone artefact was recorded on a moderate slope on a bedrock and gravel outcrop. DC1 is located in the vicinity of the proposed bore hole locations; and
  - Aboriginal place, 'DC2' being an isolated stone artefact was recorded adjacent to the road in a highly disturbed area. DC2 was recorded on the access road above the study area.
- The CHA letter included details of consultation with Representative Aboriginal Organisations (RAOs) as follows:
  - Representatives from all RAOs were invited to attend the survey;
  - Representatives from Buru Ngunawal Aboriginal Corporation (BNAC) and Mirrabee participated in the field survey.
  - During the field survey BNAC and Mirrabee indicated that they supported the proposed works provided that the nearby Aboriginal site (DC1) is fenced during the works;
  - BNAC and Mirrabee also suggested that work vehicles should be use a single track in and out of the works area to minimise possible disturbance. It was also suggested that the area of Deep Creek should not be crossed by vehicles in the vicinity of the bore holes; and
  - A copy of the draft CHA letter was provided to all RAOs and no comments were received.

- The CHA letter identifies that the creek line is also culturally important as a pathway and resource area, as evidenced by the Aboriginal sites recorded during the site inspection.

The Council notes the following content from the review of the ESO:

- The ESO includes details of a previously approved Statement of Heritage Effect (SHE) for the development of the Whitlam Residential Estate Molonglo Valley Rural Release Stage 3B (Cultural Heritage Management Australia 2018). The ESO notes that part of the project area was assessed in this SHE. The part of the ESO not assessed in the SHE was subject to the CHA letter;
- The ESO notes the completion of a Cultural Heritage Assessment for the 132 kV transmissions lines by Past Traces (2020a) which recorded Aboriginal places MG15 and MG16 near the proposed works;
- The ESO includes a copy of the Construction Environmental Management Plan (CEMP). The Council provided comments on this CEMP on 30 March 2021 noting that review of an ESO for the same project was underway. The CEMP was to be updated with any heritage requirements outlined by the Council in subsequent ESO advice; and
- The CEMP indicates an additional works area, being test pits for the potential borrow area(s) for construction material, the locations of costean trenches, and additional investigative locations that has not been included in this ESO application. These works areas are located near a number of Aboriginal places that have not been considered in the CHA letter, ESO or CEMP. These are MG17; MG18; MG19; MG20; MG21; and MVIF1. Additionally, MG13, MG14, MG15 and MG16 area located in close proximity to the proposed works and are not substantively considered. The Council notes that some of these places are quite recent discoveries (late 2020), however they should be considered in the CHA for the current works.

### **Decision and Conditions:**

Following review of the application, the Council concludes that, as the proposal is not likely to damage registered Aboriginal places, it is unlikely to have a significant adverse environmental impact subject to the conditions described below:

1. The CHA letter must be updated and upgraded to a full CHA report which is to be submitted to, and endorsed by, the Council prior to the commencement of works. The updated CHA report must include the information as required by the Council's *Cultural Heritage Reporting Policy* (2015), and:
  - a. The CHA letter must include consideration of Aboriginal places: MG13; MG14; MG15; MG16; MG17; MG18; MG19; MG20; MG21; and MVIF1. If the proposal will cause damage to any of these Aboriginal places then statutory approvals under the *Heritage Act 2004* would be required. If proposed works will occur in close proximity to these Aboriginal places, mitigation measures, such as protective fencing would be required;
  - b. The study area of the CHA letter must be expanded in the report to include all proposed works areas. This will assist in demonstrating whether works will not or will not impact all known Aboriginal places; and
  - c. Should the further assessments within the CHA conclude that further steps under the *Heritage Act 2004* will be required for the works, then these steps must be described, and Council advice or approval obtained prior to the commencement of geotechnical investigation works;

2. The above information will also identify whether further heritage assessment actions are required for the project, and if the Council concludes that such actions are required, they must be completed to the satisfaction of the Council prior to the commencement of the work;
3. Outcomes of the endorsed CHA letter must be included in a revised CEMP. This will likely include matters such as onsite inductions, buffer zones and fencing requirements. Where protective fencing is installed around Aboriginal places, fence locations are to be demarcated by a qualified archaeologist and RAOs, and fencing must be adequate to physically protect each site, such as star pickets spaced no more than 4m apart and with high visibility barrier mesh. Once installed, the location and adequacy of protective fencing is to be visually confirmed by a qualified archaeologist and RAOs; and the Council is to be notified of the completion of this action;
4. Fencing requirements have been identified for DC1. The Council advises that the proposed works also appear to be in close proximity to Aboriginal places MG15 and MG16. These places should be fenced prior to works commencing to prevent against inadvertent impact. Additional fencing and buffer zones will likely be required following the consideration of: MG13; MG14; MG15; MG16; MG17; MG18; MG19; MG20; MG21; and MVIF1. All such fencing must receive Council endorsement as noted above; and
5. Modifications to the Unexpected Finds Protocol (Heritage) are required. The protocol suggests that Aboriginal places are only protected if they meet *Heritage Act 2004* significance criteria. All Aboriginal places, regardless of assessed significance, are protected by the *Heritage Act 2004*. Point 6 in the Unexpected Finds Protocol (Heritage) must be edited address this.



Meaghan Russell  
**Manager (Approvals and Advice)(as delegate for),  
ACT Heritage Council**

15 April 2021