

Planning and Development (Conditional Environmental Significance Opinion – Blocks 1 and 4, Section 35, Phillip – Estate Development Plan, Canberra Institute of Technology (CIT) Woden Campus) Notice 2022

Notifiable instrument NI2022–452

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 – Blocks 1 and 4, Section 35, Phillip – Estate Development Plan, Canberra Institute of Technology (CIT) Woden Campus) Notice 2022*.

2 Commencement

This instrument commences on the day after its notification day.

3 Conditional environmental significance opinion

- (1) On 10 August 2022, the planning and land authority, 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 the development, on Blocks 1 and 4, Section 35, Phillip, for an Estate Development Plan to create serviced blocks for facilitating future development of Canberra Institute of Technology (CIT) Woden Campus.

- (2) In this section:

conditional environmental significance opinion means the opinion in the schedule.

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

Craig Weller
Delegate of the planning and land authority
9 September 2022



ACT
Government

Environment, Planning and
Sustainable Development

SCHEDULE

ENVIRONMENTAL SIGNIFICANCE OPINION

An application for an Environmental Significance Opinion (ESO) has been received, by the planning and land authority, under section 138AA of the *Planning and Development Act 2007* (the Act). In accordance with section 138AB(4) of the Act, I provide the following opinion:

APPLICANT

Canberra Town Planning, as represented by Mrs Ingrid Shelton, Town planner.

PROPOSAL DESCRIPTION

An Estate Development Plan (EDP) is proposed to create serviced blocks of land in the Woden Town Centre, with the intention of facilitating the future development of a new Canberra Institute of Technology (CIT) campus.

LOCATION

Blocks 1 and 4 Section 35, PHILLIP (and road verges along Block 1 Section 7, PHILLIP)

MATTERS TO WHICH THIS OPINION APPLIES

This opinion applies only to the development proposal as described in the application (ESO202200017) and in relation to Part 4.3, Item 7, of the Act.

OPINION

The planning and land authority is of the opinion that the proposal is unlikely to cause a significant adverse environmental impact, provided any future development works permissible on the serviced blocks, created through the subject Estate Development Plan, are undertaken in a manner consistent with the following conditions.

This opinion is granted subject to the following conditions made under s138AB(4) of the Act.

Prior to the commencement of development works:

- *An environmental assessment of the development site in accordance with Environment Protection Authority (EPA) endorsed guidelines must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the development site from a contamination perspective and to determine whether the development site is suitable for the proposed uses;*
- *The adequacy of all contamination assessments and any proposed remediation and ongoing management must be independently audited by an EPA approved environmental auditor;*

- *The Auditor's findings into the development site's suitability for its proposed uses must be submitted to the EPA for review and endorsement in accordance with the Contaminated Sites Environment Protection Policy 2017 Information sheet 11 - EPA Report Submission Requirements;*

Note: *Where appropriate the EPA may support the commencement of development works, subject to conditions, following review and support of Auditor Interim Advice.*

- *An Unexpected Finds Protocol (UFP) is to be prepared and submitted to the planning and land authority, for approval, prior to ground disturbance during construction.*
- *the Intrusive Hazardous Materials Survey & Management Plan and associated documents relating to other hazardous materials, including the Asbestos Survey & Management Plan and the Asbestos Register, must be reviewed and updated, including a full survey of the site prior to any demolition work being carried out and the proposed development work begins.*

ADVISORY NOTES

This opinion is granted with the following advice.

- *A limited Sampling Analysis Quality Plan be undertaken for the proposed Easty Street Layover to identify the presence/absence of 'Contaminant of Potential Concern' associated with the former sheep dip. Alternatively, if practicable, the project should be redesigned to avoid disturbing the former sheep dip.*
- *Prior to the demolition phase of the project, all areas identified in the Hazmat Audit report for the Woden Bus Exchange are to be removed by an ACT WorkSafe licensed removalist, followed by an asbestos clearance certificate by an ACT WorkSafe licensed Asbestos Assessor.*

Note: Please refer to **CONSULTATION WITH ENTITIES** for further details.

Attached is a Statement of Reasons for the decision.



Craig Weller
Delegate of the planning and land authority
10 August 2022

STATEMENT OF REASONS

The proposed development (ESO202200017) is a proposal mentioned in Schedule 4 of the *Planning and Development Act 2007* – development proposal requiring an EIS, specifically:

Part 4.3 Item 7 - proposal involving land included on the register of contaminated sites under the *Environment Protection Act 1997*.

The proponent is seeking an environmental significance opinion to remove the proposal from the impact track on the grounds that the proposal is not likely to have a significant adverse environmental impact, and has applied to the planning and land authority for an opinion to that effect.

Meaning of *significant* adverse environmental impact

An adverse environmental impact is *significant* if—

- (a) the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or
- (b) the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity.

In deciding whether an adverse environmental impact is *significant*, the following matters must be taken into account:

- (a) the kind, size, frequency, intensity, scope and length of time of the impact;
- (b) the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.

In deciding whether a development proposal is likely to have a significant adverse environmental impact it does not matter whether the adverse environmental impact is likely to occur on the site of the development or elsewhere.

CONSULTATION WITH ENTITIES

In deciding whether a development proposal is likely to have a significant adverse environmental impact the planning and land authority consulted with the following entities, in accordance with s138AA (3) of the Act.

Work Safety Commissioner

Both the Asbestos Survey & Management Plan and the asbestos register contained in the Invasive Hazardous Materials Survey & Management Plan are considered out of date under the Work Health and Safety Regulation 2011 (the Regulation) because these documents were prepared more than five years ago.

An asbestos management plan must be reviewed and revised as necessary at least once every five years (Section 430 of the Regulation) and an asbestos register must be maintained so as to ensure that the information in the register remains up-to-date (Section 425 of the Regulation).

Our view is that the asbestos management plan and the asbestos register must be reviewed and updated before the proposed work begins, and we strongly recommend that this include a full survey of the site prior to any demolition work being carried out.

We have also identified that these documents and other material relating to the proposed work may not be sufficiently clear in identifying the party responsible for ensuring compliance with the regulatory requirements. The documents refer to the responsible party as being the person with management or control of the workplace (consistent with provisions in the Regulation relating to asbestos) but do not appear to define this term.

This could cause confusion, because the responsible party for asbestos matters other than at a workplace which are regulated under the Dangerous Substances Act 2004 (such as the obligations of persons at residential premises where loose-fill asbestos may be present) is usually the person in control of the premises, being any person who has control of the premises or the authority to make decisions about the management of the premises.

In contrast, only a person conducting a business or undertaking (PCBU) under the Work Health and Safety Act 2011 (the Act) may be recognised as a “person with management or control of a workplace” for the purpose of the asbestos-related requirements set out in the Act and the Regulation.

We recommend that any documents which identify the responsible person as being the person with management or control of the workplace include a specific definition of this term which is consistent with Section 20 of the Act, so that it is clear that this does not include site managers or other persons who have the authority to make decisions about the activities on site on behalf of the PCBU but are not PCBUs themselves.

Similarly, we recommend that any reference in these documents to codes of practice for the management and control of asbestos at the workplace or the safe removal of asbestos specifically identify them as the codes of practice currently approved under the Work Health and Safety Act 2011, so as to avoid confusion with earlier codes of practice for such work (such as those approved under the Dangerous Substances Act 2004 before the current work health and safety legislation commenced). The current codes of practice can be found on the Codes of practice page on the WorkSafe ACT website.

We also recommend that the Intrusive Hazardous Materials Survey & Management Plan and associated documents relating to other hazardous materials at the site be reviewed and updated as necessary, as we have identified several references to outdated Australian Standards and it appears that the documents may not identify all of the licensing requirements which will apply to persons carrying out the proposed work. For example, no reference was found to the need for persons undertaking the degassing of refrigeration and air conditioning plant to hold a refrigerant handling licence.

Given the date of preparation of these documents, the exposure standards set out in the documents should also be reviewed against the Workplace exposure standards for airborne contaminants (2019) published by Safe Work Australia, which became a declared exposure standard under the Regulation

on 1 July 2020 by reason of the Work Health and Safety (Workplace Exposure Standards) Declaration 2020 (No 1).

Lastly, we note that an unexpected finds protocol is to be developed prior to work involving disturbance of the ground as persons on site could be exposed to chemical residues from a suspected undocumented fill site and/or a former plunge sheep dip site within the proposed development area, and that the substances which could be present may include arsenic, organochloride pesticide and organophosphorus pesticide.

We encourage the proponent to include directions in the unexpected finds protocol to contact WorkSafe ACT and seek advice from an inspector in the Dangerous Goods and Hazardous Chemicals unit in the event of any incident occurring which may potentially result in exposure to arsenic, organochloride pesticide or organophosphorus pesticide.

Environment Protection Authority

Prior to the commencement of development works:

- An environmental assessment of the development site in accordance with Environment Protection Authority (EPA) endorsed guidelines must be undertaken by a suitably qualified environmental consultant to determine whether past activities have impacted the development site from a contamination perspective and to determine whether the development site is suitable for the proposed uses;
- The adequacy of all contamination assessments and any proposed remediation and ongoing management must be independently audited by an EPA approved environmental auditor;
- The Auditor's findings into the development site's suitability for its proposed uses must be submitted to the EPA for review and endorsement in accordance with the [Contaminated Sites Environment Protection Policy 2017 Information sheet 11 - EPA Report Submission Requirements](#);

Note: Where appropriate the EPA may support the commencement of development works, subject to conditions, following review and support of Auditor Interim Advice.

All stages of development:

- All works must be undertaken in accordance with an Auditor endorsed remediation action plan and/or contaminant management plan;
- All spoil identified at the site must be managed in accordance with EPA [Information Sheet – Spoil Management in the ACT](#);
- All soil subject to disposal from the site must be assessed in accordance with EPA [Information Sheet 4 - Requirements for the reuse and disposal of contaminated soil in the ACT](#);
- No soil is to be disposed from site without the approval of the Office of the Environment Protection Authority.

Further conditions of approval may be recommended to be included in the Notice of Decision following review of the Development Application documentation.

Emergency Services Commissioner

ACTF&R has no concerns or issues for the ESO and EDP for 2022000017 for Phillip Block 1 & 4 Section 35.

Director-General of ACT Health

The HPS supports the need for the following recommendations to be completed prior to intrusive works:

- *A limited Sampling Analysis Quality Plan be undertaken for the proposed Easty Street Layover to identify the presence/absence of 'Contaminant of Potential Concern' associated with the former sheep dip. Alternatively, if practicable, the project should be redesigned to avoid disturbing the former sheep dip.*
- *Prior to the demolition phase of the project, all areas identified in the Hazmat Audit report for the Woden Bus Exchange are to be removed by an ACT WorkSafe licensed removalist, followed by an asbestos clearance certificate by an ACT WorkSafe licensed Asbestos Assessor.*
- *An Unexpected Finds Protocol (UFP) is to be prepared prior to ground disturbance during construction. The UFP will include measures to be implemented in the event of encountering unexpected contamination.*

POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

The proposal is for an Estate Development Plan to create serviced blocks of land in the Woden Town Centre, with the intention of facilitating the future development of a new CIT campus. The proposal does not involve excavation or ground penetration at this stage and will be unlikely to cause a significant environmental impact. The proposal has been conditioned to ensure that future developments on the sites created as a result of the EDP will require assessment and remediation to the satisfaction of the EPA.

It has been demonstrated that if the works are undertaken in a manner consistent with the above conditions attached to the ESO, they are unlikely to cause a significant adverse environmental impact.