

Planning and Development (Conditional Environmental Significance Opinion – Block 7, Section 7, Fyshwick – Retail and Fast-Food Restaurant Development) Notice 2024

Notifiable instrument NI2024–103

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 7, Section 7, Fyshwick – Retail and Fast-Food Restaurant Development) Notice 2024*.

2 Commencement

This instrument commences on the day after its notification day.

3 Conditional environmental significance opinion

- (1) On 17 January 2024, the Planning and Land Authority, pursuant to section 138AB (4) (b) of the *Planning and Development Act 2007* (repealed), gave the Applicant a conditional environmental significance opinion in relation to construction on Block 7, Section 7, of Fyshwick. The proposed works consist of demolition of the existing car wash structure, construction of two single level retail buildings, development of signage and landscaping and related works.

- (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 territory planning authority
27 February 2024

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 Jackson Nichelle, Town Planner.

PROPOSAL DESCRIPTION

The proposal is for demolition of an existing car wash and construction of two single level retail buildings, development of signage, and landscaping and associated site works.

LOCATION

Block 7 Section 7, Fyshwick

MATTERS TO WHICH THIS OPINION APPLIES

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

OPINION

Provided the works are undertaken in a manner consistent with the following conditions, they are unlikely to cause a significant adverse environmental impact. This opinion is granted subject to the following conditions made under s138AB(4) of the Act.

1. The site is to be assessed and remediated in accordance with the Environment Protection Authority (EPA) endorsed guidelines by a qualified environmental consultant and the assessment report to be independently audited by an EPA approved environmental auditor.
2. Prior to commencement of the remediation works, a remedial action plan (RAP) for any proposed remediation works must be reviewed and endorsed by the auditor with a copy of the RAP endorsement provided to the EPA.
3. Prior to the commencement of development works, auditor interim advice indicating that the commencement of development will not impact on the on-going assessment and remedial works, must be reviewed and endorsed by the EPA.
4. Prior to the area being used for purposes other than the current use, the findings of the independent audit into the site's suitability for its proposed and permitted uses from a contamination perspective must be reviewed and endorsed by the EPA.
5. All spoil identified at the site must be managed in accordance with EPA *Information Sheet – Spoil Management in the ACT*.

6. 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.*
7. No soil is to be disposed from site without approval from the Office of the EPA.
8. An updated and approved Site Management Plan and/or Construction Management Plan, an Unexpected Finds Protocol and Groundwater Management Plan must be developed and implemented before the proposed works commence.
9. The design and construction of any sedimentation ponds must minimise the potential for them to cause an insanitary condition (local mosquito nuisance) under the *Public Health Act 1997*.
10. A hazardous material survey must be undertaken prior to demolition. Any resulting asbestos removal works undertaken should be completed by a suitably licensed person and a clearance certificate issued by a licensed Asbestos Assessor.
11. All reasonable and practicable measures are to be taken to suppress dust and minimise detrimental impacts to air quality during demolition, construction, and landscaping works.
12. The proposed food business must comply with the *Food Act 2001* and the *ACT Food Business Fit-Out Guide*. The proponent must submit food business registrations and fit-out applications (with suitably detailed plans) to the Health Protection Service (HPS) for any food business prior to construction.
13. The operator of the fast-food restaurant (regulated utility) must have an appropriate liquid trade waste practice per the Utility technical Regulator's technical codes requirements. The operator of the fast-food restaurant needs to have a customer agreement with Icon Water for liquid trade waste disposal to the sewerage system.

Note: *Reckless introduction of substances to a sewerage network that could form a blockage without being authorised by Icon Water to do so, could result in regulatory action against the operator of the restaurant under Section 25 of the Utilities (Technical Regulation) Act 2014.*

Attached is a Statement of Reasons for the decision.



Craig Weller
Delegate of the planning and land authority
17 January 2024

STATEMENT OF REASONS

The proposed development 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 (the 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

The Work Health and Safety Commissioner does not have any comments on the proposed works identified in this application for an Environmental Significance Opinion (reference ESO 202300047).

Note: The response has been provided on the basis of information provided by the Impact Assessment Unit by email at 3:55 pm on 7 December 2023 and the accompanying documents attached for the Work health and safety Commissioner's consideration. The response does not take into account any subsequent changes to the document(s) or any other information held by the Impact Assessment Unit. In providing this response, the Work Health and Safety Commissioner is not approving or endorsing any proposed work arrangements or any proposed risk control measures and nothing in this response affects the safety duties of person involved in carrying out the proposed work under the Work Health and Safety Act 2011.

Environment Protection Authority

As per EPA records the site is occupied by operational service station and was subject to a site audit which concluded that *'the site remains suitable for its current use as a service station under its current layout. Prior to any configuration of buildings at the site or the site being used for any other land used permitted under its zoning, further assessment and independent audit of the site will be required to determine whether the site is suitable for these uses'*. In light of these findings, EPA requests the following conditions to be applied on the proposal:

- The site must be assessed and remediated in accordance with the guidelines endorsed by the EPA by a suitably qualified environmental consultant.
- The adequacy of the assessment and remedial works must be independently audited by an EPA approved environmental auditor.
- Prior to the commencement of remediation works, a remedial action plan (RAP) for any proposed remediation works must be reviewed and endorsed by the auditor with a copy of the RAP endorsement provided to the EPA.
- Prior to the commencement of development works, auditor interim advice indicating that the commencement of development will not impact on the on-going assessment and remedial works at the site must be reviewed and endorsed by the EPA.
- Prior to the area being used for other purposes the findings of the independent audit into the site's suitability for its proposed and permitted uses from a contamination perspective must be reviewed and endorsed by the EPA.
- 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 approval from the Office of the Environment Protection Authority.

Emergency Services Commissioner

ACT Emergency Service (ACT Fire & Rescue) has reviewed ESO 202300047– Block 7 Section 7, Fyshwick and have no comments or objections.

Director-General of ACT Health

The Health Protection Service (HPS) notes that the Development proposes the demolition of the existing car wash, construction of two single level retail buildings, development signage, landscaping, and associated works.

The HPS has reviewed the documents provided and advises the applicant that:

- The proposed food business will need to comply with the *Food Act 2001* and the *ACT Food Business Fit-Out Guide*. The applicant is required to submit food business registrations and fit-out applications (with suitably detailed plans) to the Health Protection Service (HPS) for any food business prior to construction. The applicant is advised to contact the HPS for further information.
- The design and construction of any sedimentation ponds must minimise the potential for them to cause an insanitary condition (local mosquito nuisance) under the *Public Health Act 1997*.
- The HPS supports the need for an approved and updated Site Management Plan and/or Construction Management Plan, an Unexpected Finds Protocol and Groundwater Management Plan be developed and implemented before the proposed works commence.
- The HPS recommends that a hazardous material survey be undertaken prior to demolition. Any resulting asbestos removal works undertaken should be completed by a suitably licensed person and a clearance certificate issued by a licensed Asbestos Assessor.
- All reasonable and practicable measures are to be taken to suppress dust and minimise detrimental impacts to air quality during demolition, construction, and landscaping works.

There are no further public health concerns in relation to the ESO.

Utilities Technical regulation

The technical regulator has functions set out in Section 78 of the *Utilities (Technical Regulation) Act 2014* and primarily relate to compliance of regulated utility services.

Section 6 of the Act sets out the objects of the Act, and includes a requirement to ensure the safe and reliable operation and maintenance of regulated utility networks and regulated utility services to protect the public and the environment, amongst other matters.

In the context of this development, Utilities Technical Regulation advised that the only possible impact of this development on regulated utility services in relation to the environment could relate

to Liquid Trade Waste practices associated with fast food restaurants. UTRs code requires regulated utilities to have appropriate liquid trade waste practices. Accordingly, the operator of the fast-food restaurant needs to have a customer agreement with Icon Water for liquid trade waste disposal to the sewerage system. Reckless introduction of substances to a sewerage network that could form blockage without being authorised by Icon Water to do so, could result in regulatory action against the operator of the restaurant under Section 25 of the *UTR Act*.

POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

The potentially significant environmental impacts resulting from the proposed construction relates predominantly to the presence of contamination (soil, underground water, materials) and hazardous materials. These may include impacts on the health of workers resulting from contact with contaminated or hazardous materials through direct contact or exposure to dust emissions during construction works. Risks to public health via exposure to contaminated soils, Synthetic Mineral Fibres (SMF) or asbestos fibres, has also been identified as a potential impact. Considering the significance of these potential impacts, HPS recommends that a hazardous material survey be undertaken prior to demolition works.

Identified potential impacts to the surrounding environment includes ground water, soil and stormwater contamination due to fuel spills or leaks, and a reduction in stormwater quality due to sediment and erosion run off. Ground water may also be intercepted during excavations works and become contaminated.

After a careful review of the supporting documents for the ESO, which includes previous groundwater monitoring reports, an environmental management plan and an EPA audit report, it is has been assessed that the site will need to be assessed and remediated as per the EPA endorsed guidelines to ensure it is suitable for the proposed use.

In addition to the proposed mitigation measures, the need for an approved and updated Site Management Plan and/or Construction Management Plan, an Unexpected Finds Protocol and Groundwater Management Plan is deemed necessary before the proposed works can commence.

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