

Planning and Development (Conditional Environmental Significance Opinion – Flemington Road, Mitchell – Light Rail Stop) Notice 2020

Notifiable instrument NI2020–586

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 – Flemington Road, Mitchell – Light Rail Stop) Notice 2020*.

2 Conditional Environmental Significance Opinion

- (1) On 4 September 2020, a delegate of the planning and land authority, pursuant to section 138AB(4) of the *Planning and Development Act 2007* (the **Act**), gave the applicant a conditional environmental significance opinion in relation to the construction of a light rail stop in Mitchell, located immediately south of the Flemington Road and Sandford Street intersection.

- (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
8 September 2020

ENVIRONMENTAL SIGNIFICANCE OPINION

An application for an Environmental Significance Opinion (ESO) has been received 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 environmental significance opinion:

APPLICANT

Major Projects Canberra, as represented by Ashley Cahif.

PROPOSAL DESCRIPTION

The proposal is for the construction of a light rail stop in Mitchell. The works will include earthworks, utility connections, landscaping and other associated works. The proposed stop is located between existing rail tracks immediately south of the intersection of Flemington Road and Sandford Street, within the road reserve of Flemington Road.

LOCATION

Flemington Road road reserve, Mitchell.

MATTERS TO WHICH THIS OPINION APPLIES

This opinion applies only to the development proposal as described in the application.

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:

- Prior to the commencement of construction:
 - Either:
 - the environmental audit of the Operational Phase Area of the Stage 1 Canberra Light Rail, including any site management plan required by the environmental auditor, must be finalised and the findings endorsed by the EPA; or
 - interim audit advice by the auditor indicating that an Operational Phase Contamination Management Plan is adequate and appropriate for the management of potential contamination within the proposed works area, be provided and endorsed by the EPA; and
 - Canberra Metro Operations must enter into an Environmental Protection Agreement with the Environment Protection Authority for the ongoing

management of the Operational Phase Area of the Stage 1 Canberra Light Rail;
and

- A comprehensive Construction Environmental Management Plan that includes an Unexpected Finds Protocol and an Asbestos Management Plan must be developed and endorsed.
- During construction:
 - Demolition and asbestos management must be undertaken in accordance with the *Building Act 2004*, *Dangerous Substances Act 2004*, *Work Health and Safety Act 2011* and Work Health and Safety (How to Safely remove asbestos Code of Practice) approval 2014;
 - ACTF&R must be notified on commencement and completion of all significant asbestos removal (Phone the ACTF&R Communication Centre on 6200 4111);
 - The construction of any sedimentation control measures must minimise the potential for them becoming a local mosquito nuisance;
 - All reasonable and practicable measures must be taken to suppress dust and minimise detrimental impacts to air quality during construction; and
 - Any incident involving potential exposure to chemicals during construction must be dealt in accordance to with obligations under the *Work Health and Safety Act 2011*.

Attached is a Statement of Reasons for the decision.



Brett Phillips

Delegate of the planning and land authority

4 September 2020

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 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

On 28 August 2020, WorkSafe ACT provided the following comments on the ESO application:

The potential for asbestos contamination on site and appropriate responses in the event of suspect material being found are satisfactory as outlined in the management plan. There is no available information on file at WorkSafe ACT that identifies any large quantities of asbestos containing material on the site.

WorkSafe ACT notes the references to chemicals appear to be observations that:

- A chemical odour may indicate contaminated soil or material, and
- Soil contamination may have occurred due to spills of petrol, oil or other chemicals during past use of the site.

WorkSafe ACT have not identified any indications that there would be a quantity of chemicals on site during the proposed construction and civil works which would necessitate specific measures under Part 7.1 (Hazardous chemicals) of the Work Health and Safety Regulation 2011.

Any incident involving potential exposure to chemicals due to existing soil contamination or arising from pipe penetrations or similar incidents (unexpected finds) during the construction work must be dealt with under the obligations of the Work Health and Safety legislation.

These comments have been incorporated into this opinion as conditions.

Environment Protection Authority (EPA)

On 31 August 2020, the EPA provided the following comments on the ESO application:

The proposed works fall within the Operational Phase audit area. The environmental audit for this area is yet to be finalised and its findings reviewed and endorsed by the Environment Protection Authority (EPA). The Operational Phase Contamination Management Plan which is required under this audit and is included in the ESO documentation is also yet to be finalised and endorsed by the environmental auditor.

The environmental audit of the Operation Phase Area of the Stage 1 Canberra Light Rail must be finalised, including any required site management plan, by the environmental auditor and the findings of the audit endorsed by the EPA.

Alternately, interim audit advice can be provided to the EPA by the auditor indicating that the current version of the Operational Phase Contamination Management Plan included with the ESO is adequate and appropriate for the management of potential contamination within the proposed works area.

These comments have been incorporated into this opinion as conditions. This proposed approach was supported by the EPA on 2 September 2020 where they stated the following:

A conditional approval such as the one below will achieve the same outcome:

Prior to the commencement of any construction, the environmental audit of the Operational Phase Area of the Stage 1 Canberra Light Rail must be finalised, including any required site management plan, by the environmental auditor and the findings of the audit endorsed by the EPA; or interim audit advice be provided to the EPA by the auditor indicating that an Operational Phase Contamination Management Plan is adequate and appropriate for the management of potential contamination within the proposed works area, and that advice is endorsed by the EPA.

The EPA also requests that the following condition also be included:

Prior to the commencement of any construction Canberra Metro Operations must enter into an Environmental Protection Agreement with the Environment Protection Authority for the ongoing management of the Operational Phase Area of the Stage 1 Canberra Light Rail.

Both proposed conditions have been included in this opinion.

Emergency Services Commissioner

On 27 August 2020, the Emergency Services Agency provided the following advice:

- *Hazardous Materials:*
 - *Demolition and asbestos management must be undertaken in accordance with the Building Act 2004, Dangerous Substances Act 2004, Work Health and Safety Act 2011 and Work Health and Safety (How to Safely remove asbestos Code of Practice) approval 2014.*
 - *ACTF&R request notification on commencement and completion of all significant asbestos removal. Notification can be made to the ACTF&R Communication centre on 62004111.*

These comments have been incorporated into this opinion as conditions.

Director-General of ACT Health

On 26 August 2020, the Health Protection Service (HPS) within ACT Health provided the following comments:

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

- *The HPS supports the development of a comprehensive Construction Environmental Management Plan, which must contain an Unexpected Finds Protocol and an Asbestos Management Plan, before works commence.*
- *The construction of any sedimentation control measures must minimise the potential for them becoming a local mosquito nuisance.*
- *All reasonable and practicable measures are taken to suppress dust and minimise detrimental impacts to air quality during construction.*

These comments have been incorporated into this opinion as conditions.

POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

The Light Rail Stage 1A area (including the subject area of the Flemington Road road reserve) is subject to the *Operational Phase Area of the Stage 1 Canberra Light Rail* audit which is yet to be complete and endorsed by the EPA. As such, the site is listed on the Register of Contaminated Sites under section 21A of the *Environment Protection Act 1997*.

However, 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.