

Planning and Development (Conditional Environmental Significance Opinion – Block 12, Section 682, Theodore – Overland Swale Drain) Notice 2021

Notifiable instrument NI2021–292

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 12, Section 682, Theodore – Overland Swale Drain) Notice 2021*.

2 Commencement

This instrument commences on the day after its notification day.

3 Conditional environmental significance opinion

- (1) On 3 May 2021, the Conservator of Flora and Fauna, 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 12, Section 682, of Theodore, involving maintenance and upgrade of an overland swale drain.

- (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.

George Cilliers
Delegate of the planning and land authority
12 May 2021

Schedule

See section 3(2)

ENVIRONMENTAL SIGNIFICANCE OPINION

In accordance with section 138AB(4) of the *Planning and Development Act 2007* (the Act), I provide the following environmental significance opinion:

APPLICANT

Indesco, as represented by Karl Martin, Senior Engineer.

APPLICATION and DEVELOPMENT PROPOSAL

The applicant has applied under section 138AA of the Act to the Conservator of Flora and Fauna for an environmental significance opinion to the effect that the development proposal set out in the submission is not likely to have a significant adverse environmental impact (the application).

The development proposal is for stormwater upgrades in Theodore as described in the submission.

LOCATION

Block 12 Section 682, Theodore, within Tuggeranong Hill Nature Reserve.

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 in addition to the mitigation measures contained in the supporting application for an ESO, 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 proponent must obtain and adhere to the requirements of a Nature Conservation Licence under the *Nature Conservation Act 2014*;

2. Temporary fencing is to be installed to protect nearby trees and the patch of Hoary Sunray *Leucochrysum albicans* var. *tricolor* prior to commencement of works;
3. Vehicle access is limited to existing tracks and machinery access is limited to the access tracks and area of development impact described in plans and supporting documents for this ESO;
4. Sediment and erosion controls are to be established prior to the commencement of work and maintained to the satisfaction of the ACT Parks and Conservation Service (PCS);
5. All equipment, machinery and vehicles (including underside, wheel arches etc.), plant, hand tools, boots, gloves, clothing, etc must be completely free of soil or mud (wet or dry) and plant propagules (including seeds) before entering the Tuggeranong Hill Nature Reserve;
6. A pre-works weed management program is to be undertaken with a particular emphasis on African Lovegrass. Follow-up weed monitoring and management (if required) is to be undertaken for a period of 12 months following completion of works to the satisfaction of PCS;
7. No works are to occur on days of Total Fire Ban, when the Fire Danger Index exceeds 30, or following rain events when the ground is wet and boggy;
8. Any rock removed from the area is to be placed in the adjacent area to the satisfaction of PCS; and
9. Rehabilitation of disturbed areas is to be undertaken to the satisfaction of PCS including using an approved species mix.

Attached is a Statement of Reasons for the decision.



Ian Walker
Conservator of Flora and Fauna

3 May 2021

STATEMENT OF REASONS REASONS FOR THE DECISION

The proposed development is a proposal mentioned in Schedule 4 of the *Planning and Development Act 2007* – Development proposal for an activity requiring an EIS Schedule 4, being:

Part 4.3, item 1(a) development that may impact on a species or ecological community that is endangered, a species that is vulnerable; protected; or has special protection status;

The area of proposed works contains:

One community listed as endangered:

- White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland (Box Gum Grassy Woodland).

One plant species listed nationally as threatened

- Hoary Sunray (*Leucochrysum alibans subsp. tricolor*).

Part 4.3, item 3 proposal for development in a reserve;

The proposed works are within Tuggeranong Hill Nature Reserve.

The proponent wants the application for the development approval assessed in the merit track on the grounds that the proposal is not likely to have a significant adverse environmental impact, and has applied to the Conservator of Flora and Fauna 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.

It has been determined that the proposal is unlikely to have a significant environmental impact, based on the documentation submitted, known values of the site, and provided the works and ongoing management are carried out in accordance with the conditions attached to this ESO.

Project description

The proposed works involve improvements and upgrades of a small section of an existing open swale drain within Tuggeranong Hill Nature Reserve. The work will include minor excavations of the existing drain to clean the drain out and improve embankments to provide better containment and flow of stormwater. Works will also include lining a section of the drain with rock rip-rap to ensure stabilisation and limit further erosion and sediment input into the drain.

The proposed works include:

- Pre-construction weed management
- Installation of temporary fencing
- Establishment of sediment and erosion controls
- Clearing debris and sediment from existing channels
- Reprofilng channel and installation of a rock lined channel (approx. 300mm deep and 2m wide for the northern section and reprofiled grass swale for the southern section)
- Restoration of disturbed areas

The aim of the project is to solve an ongoing flooding issue for the area.

Documentation Submitted

- ESO Application Submission Report – Theodore Stormwater Upgrades;
- Letters of Authorisation;
- Form 1M.

Natural conservation values present

Tuggeranong Hill Nature Reserve plays an important role in maintaining existing processes and natural systems of the ACT including regional connectivity as it forms part of an extensive open space reserve system.

At least eight species of mammals, two species of frog, 12 species of reptiles and 75 species of birds have been recorded in the reserve. There are five animal species listed as threatened under the *Nature Conservation Act 2014*:

- Pink-tailed Worm-lizard (*Aprasia parapulchella*)

- Scarlet Robin (*Petroica boodang*)
- Little Eagle (*Hieraaetus morphnoides*)
- White-Winged Triller (*Lalage sueurii*)
- Perunga Grasshopper (*Perunga ochracea*)

One vegetation community within the reserve has been identified as requiring special protection and management:

- White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland (Box Gum Grassy Woodland).

Several rare and unusual species occur within the reserve, but only two plant species are formally recognised as threatened:

- Pale Pomaderris (*Pomaderris pallida*)
- Hoary Sunray (*Leucochrysum alibans subsp. tricolor*)

The study site is considered to be part of the Box Gum Grassy Woodland threatened ecological community. The vegetation present is characterised as a small clump of mature and regrowth trees forming a small woodland patch, with a predominantly open understorey of few trees. The groundcover vegetation within the study area is in good condition with a relatively diverse composition of native herb, forb and grass species, although weeds are also present.

A patch of Hoary Sunray (approx. 1,500m²) was detected within the immediate area of the proposed works. The patch is in good condition.

Pink-tailed Worm-lizard habitat occurs over large parts of the reserve, however the closest suitable habitat is approximately 60m north of the study site, thus it is considered unlikely to be present in the immediate area.

Impact on the Reserve

The development site is a small area located at the very outer margins of the reserve and is bordered by residential areas to the east. The proposed works are of a minor scale and is unlikely to impact on any fauna species.

The patch of hoary sunray will be impacted, and the loss of approximately 50 plants is anticipated, which is about 20% of the patch population.

A small area of Box Gum Grassy Woodland will be impacted by the works, however, this is expected to be less than 500m². Given all existing trees are to be retained and the works are at the very edge of the ecological community, the impact is considered to be minor.

There are several important recommended mitigation measures included in the application documentation including:

- Installation of temporary fencing to protect existing trees and the patch of Hoary Sunray;
- Ensuring all machinery/vehicles entering the site are clean and free of any plant material or soil;
- Ensuring machinery used for cleaning out the swale (and subsequent rock lining) operates from the eastern side of the swale to the greatest extent possible.
- Undertaking a pre-works and follow up weed management program;
- Implementation of sediment and erosion control; and
- Rehabilitation of disturbed areas.

Potentially Significant Environmental Impacts

There will be minor impact to Hoary Sunray and Box Gum Grassy Woodland, however the total disturbance footprint is expected to be under 500m² and is confined to the edges of the reserve.

Conditions have been included to ensure that works will not impact the broader reserve and that rehabilitation is conducive to recovery of native vegetation:

1. The proponent must obtain and adhere to the requirements of a Nature Conservation Licence under the *Nature Conservation Act 2014*;
2. Temporary fencing is to be installed to protect nearby trees and the patch of Hoary Sunray *Leucochrysum albicans* var. *tricolor* prior to commencement of works;
3. Vehicle access is limited to existing tracks and machinery access is limited to the access tracks and area of development impact described in plans and supporting documents for this ESO;
4. Sediment and erosion controls are to be established prior to the commencement of work and maintained to the satisfaction of the ACT Parks and Conservation Service (PCS);
5. All equipment, machinery and vehicles (including underside, wheel arches etc.), plant, hand tools, boots, gloves, clothing, etc must be completely free of soil or mud (wet or dry) and plant propagules (including seeds) before entering the Tuggeranong Hill Nature Reserve;

6. A pre-works weed management program is to be undertaken with a particular emphasis on African Lovegrass. Follow-up weed monitoring and management (if required) is to be undertaken for a period of 12 months following completion of works to the satisfaction of PCS;
7. No works are to occur on days of Total Fire Ban, when the Fire Danger Index exceeds 30, or following rain events when the ground is wet and boggy;
8. Any rock removed from the area is to be placed in the adjacent area to the satisfaction of PCS; and
9. Rehabilitation of disturbed areas is to be undertaken to the satisfaction of PCS including using an approved species mix.

It has been determined that if the works are undertaken in a manner consistent with the above conditions attached to the ESO in addition to the mitigation measures contained in the supporting application for an ESO, they are unlikely to cause a significant adverse environmental impact.