

Planning and Development (Conditional Environmental Significance Opinion – Blocks 11 and 12, Section 38, Fyshwick – Crown Lease Variation) Notice 2021

Notifiable instrument NI2021– 691

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 11 and 12, Section 38, Fyshwick – Crown Lease Variation) Notice 2021*.

2 Commencement

This instrument commences on the day after its notification day.

3 Conditional environmental significance opinion

- (1) On 11 November 2021, 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 a Crown Lease variation, on Blocks 11 and 12, Section 38, Fyshwick.

- (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
11 November 2021



SCHEDULE – see section 3 (2)

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

Molonglo Group (Australia) Pty Ltd, as represented by Will Pearson, Town Planner.

PROPOSAL DESCRIPTION

The proposal is to support a Crown Lease variation for the subject site to permit:

- Non-Retail Commercial Use (Limited to 2,500m² GFA)
- SHOP (Limited to 300m² GFA)
- Restaurant (Limited to 300m² GFA)

LOCATION

Blocks 11 and 12 Section 38 Fyshwick (1 Diary Road, Fyshwick) ACT

MATTERS TO WHICH THIS OPINION APPLIES

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

OPINION

The current Crown lease authorises the following uses on the site:

- Freight transport facility
- Transport depot
- Industrial trades
- Light industry
- Car park
- Plant and equipment hire establishment
- Store
- Warehouse
- Office.

The proposal is to vary its current Crown Lease to formally add uses that were previously ancillary. The proposed uses for this site are currently assessable uses in the Territory Plan. As described in the application, the proposed uses will be wholly contained within existing buildings on site and no new structures or earthworks are proposed.

The Environment Protection Authority (EPA) did not support the proposal, as an environmental audit into the suitability of the whole site for the proposed and permitted uses has not been completed and therefore the findings of an audit have not been endorsed by the EPA. The planning and land authority has considered the comments from the EPA and notes that an environmental audit is not a mandatory requirement of the ESO process but a matter to consider in the development assessment process.

The planning and land authority is of the opinion that the proposal is unlikely to cause a significant environmental impact as no excavation or ground penetration will be likely to occur, provided the works are undertaken in a manner consistent with the following condition.

This opinion is granted subject to the following condition made under s 138AB(4) of the Act:

- The proposal to vary the Crown Lease, as described in the application, must not take effect until an environmental audit into the site's suitability, from a contamination perspective, is undertaken in accordance with the ACT Contaminated Sites Environment Protection Policy and endorsed by the Environment Protection Authority.

ADVISORY NOTES

This opinion is granted with the following advice. It is recommended that careful consideration be given to the advisory notes prior to commencing work.

Emergency Services Commissioner

- The proposed site is adjacent to an area of land that may be inundated by a 1% Annual Exceedance Probability (AEP) flood and should dam infrastructure fail at Googong Dam.
- It is recommended that specific flood risk control measures, including vehicle evacuation routes are considered and detailed in the Emergency Plan for the development.

Director-General of ACT Health

- Prospective food businesses will need to comply with the *Food Act 2001* and the ACT Food Business Fit-Out Guide.
- Prospective food businesses will need to submit a food business registration and fit-out application (with suitably detailed plans) to the Health Protection Service prior to construction.

Attached is a Statement of Reasons for the decision.



George Cilliers

Delegate of the planning and land authority

10 November 2021

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 and received the following comments, in accordance with s138AA (3) of the Act.

Work Safety Commissioner

The Work Safety Commissioner had no concerns on the application.

Environment Protection Authority (EPA)

The EPA provided the following advice:

Given the applicant is yet to address the contamination issues which are the trigger for the ESO and in accordance with previous advice provided by the EPA on redevelopment and change of use at this

site, the EPA at this time does not support the ESO or any further development or change of use at the site until the EPA has reviewed and endorsed the findings of the final environmental audit of the site.

Emergency Services Commissioner

The Emergency Services Commissioner provided the following advice:

Identified Flood Zone (1% AEP):

The proposed site is adjacent to an area of land that may be inundated by a 1%AEP flood.

ACTSES note that potential flooding may present a public safety risk due to the proximity of public access areas to land that may be subject to flooding. It is recommended that the project risk assessment consider flood risk, and that specific flood risk control measures are detailed in the Emergency Plan for this development.

General vehicle evacuation:

Evacuation routes are not compromised by potential 1% AEP flooding and vehicle options for inundation free egress remain open.

Identified Dam Infrastructure Failure Flood Zone:

The proposed site is in an area that may become inundated should a dam infrastructure failure occur at Googong Dam.

While an incident of this type is rated by the ACT Government as RARE and of MEDIUM risk, it is recommended that the project risk assessment consider this risk and that specific risk control measures are detailed in the Emergency Plan for this development.

Director-General of ACT Health

The Director-General of ACT Health provided the following advice:

As a restaurant is proposed within the lease variation, the prospective food business will need to comply with the Food Act 2001 and the ACT Food Business Fit-Out Guide. Prospective food businesses will need to submit a food business registration and fit-out application (with suitably detailed plans) to the HPS for any food business prior to construction.

As the submitted documents indicate that the proposed land uses will only be applied to existing structures and there are no exposure pathways of potential contamination through excavations or ground penetrations, there are no further public health concerns in relation to the ESO application.

POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

The subject blocks are identified on the register of contaminated sites.

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