inner south canberra community council

Mr Mick Gentleman MLA
Minister for Planning
ACT Legislative Assembly
gentleman@act.gov.au

Dear Mr Gentleman

PLANNING AND DEVELOPMENT (CAPITAL METRO) LEGISLATION AMENDMENT BILL 2014

I am writing to you to emphasise the Inner South Canberra Community Council's concerns about the proposed *Planning and Development (Capital Metro) Legislation Amendment Bill 2014*.

We are concerned that this Bill proposes to give the Minister for Planning similar powers, at least in some respects, to those proposed in the late but unlamented *Planning and Development (Project Facilitation) Amendment Bill 2014*. Our understanding is that the Bill is intended to:

- remove ACAT merit review and ADJR Act appeal rights for development approvals for light rail tracks and associated infrastructure (light rail);
- restrict to 60 days the period within which a Supreme Court common law appeal can be lodged against a light rail development approval;
- permit the planning and land authority to declare a proposal to be related to light rail;
- permit the Minister to reduce to three months the time within which the relevant Legislative Assembly committee must report on a light rail related planning variation;
- create additional grounds for a development approval decision-maker to depart from referral agency advice in relation to a light rail development (and presumably, as a consequence, override the *Heritage Act 2004* and the *Tree Protection Act 2005)*; and
- simplify development application documentation requirements for light rail related developments.

Unlike the *Planning and Development (Project Facilitation) Amendment Bill 2014* this Bill will only apply to 'infrastructure' lying wholly or partially within 1 km of the light rail

route. However, this seems to be a broad swathe of territory to be covered by a light rail infrastructure bill, and immediately raises the question as to why these dramatic new powers are not restricted so as to only be applicable within the legislated light rail easement.

The definitions accompanying the proposed amendment are inadequate. Light rail is defined in a circular fashion as 'a system of transport for public passengers using lightweight rail and rolling stock', which provided little guidance as to how a light rail (or tram) system is to be distinguished from a normal 'heavy rail' system. At present it is not clear that infrastructure within 1 km of the railway line through Kingston (including even those now disused portions to the west of Kingston Station) would not fall within the ambit of this Bill. We assume that this is not the Government's intention.

A development is a light rail related development if it may facilitate the construction, ongoing operation and maintenance, repairs, refurbishment, relocation or replacement of light rail track or infrastructure within or partly within 1 km from existing or proposed light rail track. Infrastructure in this sentence is not defined but the Bill gives as examples of such infrastructure as: temporary infrastructure for construction of light rail such as safety fencing, scaffolding, access roads and parking; stops, stations, terminus and associated shelters, seating and toilet amenities, ticketing infrastructure, parking, set-down areas and bicycle storage; access roads, footpaths and bicycle lanes; entry and access points and safety barriers; electricity supply infrastructure including substations, overhead lines and supports; signalling and other control facilities; and depot facilities.

However the Bill notes that these examples are not exhaustive and may extend, but do not limit, the meaning of the provision. Without any extension beyond what is written it would appear that the Bill will apply for example to any road, or power line, that passes within 1 km of an existing or proposed light rail track at any point in its length.

The Explanatory Memorandum assures us that the Planning and Land Authority will not be 'able to declare residential development along the light rail corridor to be related to light rail', but it is hard to see what this reassurance is based on, as there will be no one in a position to question the Authority's interpretation of what constitutes infrastructure. There does not appear to be any restriction of who can be a proponent of light rail related infrastructure. Concerns about this could be allayed if a light rail related proposal could only be brought forward by Capital Metro or a company of Government body providing a utility service within the ACT.

We understand that it is intended to debate the Bill as early as Tuesday 10 February. This timeframe seems to be extremely rushed and scarcely allows time for any informed public debate. There appears to be no need for this urgency.

We ask that you act to delay consideration of this Bill to allow a proper public debate about whether it is really necessary. We remain unconvinced that the Minister needs any further powers to override the *Heritage Act 2004* and the *Tree Protection Act 2005*, and the case for these enhanced powers remains to be made. The definitions in the Bill need to be considerably tightened to ensure that no wider range of proposals than is absolutely necessary is covered by the Bill. The scope of the Bill

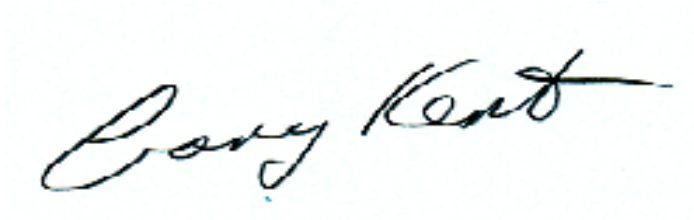
should be reduced from facilities within 1 km of existing or proposed track to the easement of the track as defined by the Assembly. Proposed Light Rail should be defined, and restricted to Light Rail routes whose route has been defined in detail by legislation. Only Capital Metro and providers of utility services should be able to bring forward light rail related development proposals.

Of course, fixing all of the flaws would not make any difference if the removal of rights of review via ACAT and the Supreme Court under ADJR are not restored. Why bother to tighten definitions if no one can question if a proposal falls within or outside the Bill's definitions? We appreciate that at present review via the ACAT can be slow, cumbersome and unpredictable, rather than providing the speedy justice initially intended. We would agree that planning hearings at the ACAT have become a lawyers' picnic. The correct response is however to reform the ACAT rather than remove its jurisdiction. It would be inequitable for the Government to exempt itself from the difficulties of ACAT planning hearings while leaving the public to deal with a dysfunctional ACAT system. And we are at a loss as to why you would seek to remove scope for review under ADJR. If in doubt about this reread Brendan Preiss' evidence in relation to the Planning and Development (Project Facilitation) Amendment Bill 2014.

The Government has sought to justify the restriction of rights of appeal by pointing to the *Symonston Mental Health Facility Amendment Act* which had similar provisions to remove citizens' rights, even though the only common theme between the Symonston Mental Health Facility and the Light Rail is that such review rights are tiresome. Passage of further restrictions in this Bill will only provide a precedent next time the Government wishes to further restrict review rights. Executive arms of government invariably find that any kind of restraints on their actions to be tiresome. However, the general experience over the past 800 years has been that such restraints make for better government. The onus is on the Government to argue how this is not true in this case.

We would be happy to discuss our concern with you in person and look forward to significant amendments to this bill.

Yours sincerely



Gary Kent
Chair
Inner South Canberra Community Council

9 February 2015

cc Members for Molonglo
Mr Alistair Coe MLA Shadow Minister for Planning