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Kingston and Barton Residents Group Inc.

To: **STANDING COMMITTEE ON PLANNING,
TRANSPORT AND CITY SERVICES**
LACommitteePTCS@parliament.act.gov.au

INQUIRY INTO URBAN FOREST BILL 2022

The Kingston and Barton Residents Group Inc. (KBRG) is an incorporated, voluntary, not for profit, non-political, community organisation that seeks to promote and protect the interests of our local community and the environment. We thank you for the opportunity to present to the public hearing on 6 October for this Inquiry. You have our detailed submission on the draft Bill, but we thought it would be useful to record some specific points for the public hearing, as follows:

We have reviewed the Bill as presented to the Legislative Assembly, as far as we can in the time available. It is difficult to see immediately how the Bill responds to many of the concerns we raised in our detailed submission and further advice from TCCS on this would be helpful.

Our key points, also referred to in the submission by the Inner South Canberra Community Council, were in summary:

1. Concern regarding decision-making powers vested in the 'Director-General' regarding public land and circumstances in which the conservator's advice can be overturned, with insufficient requirements for scrutiny by the Legislative Assembly and many risks of decisions being overturned under the urban planning legislation.
2. Concern that residents should be able to get approval for tree work in a reasonable time when evidence is presented that a tree is threatening lives or property.
3. Concern that there should be some (limited) discretion for applications regarding work on a tree on single residence where the tree is just above the dimensions covered by legislation (eg a tree that is 8.1m instead of 8m.)
4. Concern about transparency and public notification of decisions – these transactions should not just be between the applicant and relevant government bodies but should be publicly accessible.

5. Importance of 'granular' measurement and setting targets for tree canopy coverage.
6. Need for mandatory provisions for developer contributions to funding of the canopy to ensure consistence and enforceability. Voluntary provisions will not deter bad practice.
7. Further clarity is needed for requirements for replacement of trees that are removed and tree bond.
8. General support for the mature tree action plan.
9. Need for enforcement and adequate penalties, especially regarding parking under protected trees.
10. Support for 'declared site' s69 requirements.

We are pleased to see the Bill clarifies to some extent the situation of trees on public land in built-up urban areas - our point 1 (above). Section 9 of the Bill states that a *protected tree* includes "a tree on public unleased land". The *protection zone* for a *protected tree* would therefore apply, but there seem to be no other criteria for *public trees*.

An application would be required for approval of 'tree damaging activity' of a *protected tree* (under s.21). However, the *decision-maker* for matters relating to *public trees* remains "the director-general" (Dictionary – page 113). We ask: which 'director-general', and why isn't the *decision-maker* the conservator, as for trees on leased land?

Also, under s.35(4), an "applicant need not enter into a canopy contribution agreement if – (b) if the approval relates to a public tree - an administrative unit has approved the removal of the tree at the applicant's cost"!

To add further confusion, s.34 states that "*decision-maker*, in relation to a development proposal to remove a protected tree under the *Planning and Development Act 2007*, means the conservator." As noted above, *public trees* are (under this Bill) *protected trees*.

It is not clear to us how the conservator's approval power in this regard is supposed to work with the planning authority's approval powers under the 'P&D' Act, or indeed the Planning Bill 2022, which enable the planning authority to override or disregard the conservator's advice. This seems to happen wherever convenient and KBRG has experience of this occurring in regard to a current, very alarming, development approval by the planning authority. We offer this case study (attached) to the Committee as an example of the way the system currently works (for the benefit of the developer).

Also it should be noted that the conservator is an officer of the Environment, Planning & Sustainable Development Directorate, under its Director-General who is ALSO the planning authority. The Tree Protection area is on the other hand under TCCS. There is a clear potential for conflicts of interest through this confusing bureaucratic arrangement.

Richard Johnston

B. Arch., Dip. T&C Planning, Dip. Environ. Studies
 Life Fellow, Planning Institute of Australia
 President, Kingston & Barton Residents Group Inc.

3 October 2022

CASE STUDY: DA NO. 202139248 – BLOCKS 13 & 22 KINGSTON (84 & 86 GILES STREET)

A significant *Quercus robur* (English Oak), on public land immediately adjacent to the rear boundary of Block 22, is to be removed as part of a redevelopment proposal, as it will be directly affected by the new building, with two basements built right up to the boundary.

Advice from the Conservator was that the DA is NOT supported. “Tree Protection preference would be basement reconfiguration to allow for the retainment of this tree.” NOTE that his advice was from a “delegate of the Conservator of Flora and Fauna” located in “Urban Treescapes, City Presentation/ **Transport Canberra & City Services Directorate**”.

The planning authority’s ‘DA Assessment’ states: “On review of the survey and supporting information the tree has been found to be located on territory land and **not a protected tree. TCCS have been referred the proposal and do not raise any issues with regards to tree removals.** Notwithstanding this the applicationhas been supported **on design grounds.**”

The planning authority’s ‘DA Assessment’ is very problematic (and currently subject to review by ACAT), **because:**

1. They decided to ignore the “conservator’s” advice because tree’s trunk was located on unleased land and so this was not a *protected tree*, notwithstanding that nearly half the canopy and root system would extend into Block 22.
2. The advice NOT supporting the DA came from the relevant area of TCCS, acting as a delegate of the conservator. It is therefore NOT correct that TCCS “do not raise any issues with regards to tree removals”.
3. The only ‘design grounds’ considered seem to involve a conflict with a proposed service driveway which was incorrectly shown as connecting to unleased land which may be redeveloped in future.
4. The approval does not appear to have been properly considered against the relevant matters set out in section 119(2) of the ‘P&D’ Act, ie:
 - (i) any applicable guidelines;
 - (ii) any realistic alternative to the proposed development, or relevant aspects of it; and whether:
 - (b) the decision is consistent with the objects of the territory plan.