DRAFT VARIATION TO THE TERRITORY PLAN NO 327
CAPITAL METRO – LIGHT RAIL STAGE 1 GUNGAHLIN TO CIVIC

STANDING COMMITTEE ON PLANNING, ENVIRONMENT AND TERRITORY
AND MUNICIPAL SERVICES

JUNE 2015

REPORT NUMBER 9
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RESOLUTION OF APPOINTMENT

On 27 November 2012 the ACT Legislative Assembly (the Assembly) agreed by resolution to establish legislative and general purpose standing committees to inquire into and report on matters referred to them by the Assembly or matters that are considered by the committees to be of concern to the community, including:

(e) a Standing Committee on Planning, Environment and Territory and Municipal Services to examine matters related to planning, public works, land management, municipal and transport services, heritage and sport and recreation and matters related to all aspects of climate change policy and programs, water and energy policy and programs, provision of water and energy services, conservation, environment and ecological sustainability.¹

The Assembly agreed that each committee shall have power to consider and make use of the evidence and records of the relevant standing committees appointed during the previous Assembly.

TERMS OF REFERENCE

In relation to a draft plan variation to the Territory Plan, section 73 (2) of the Planning and Development Act 2007 states:

The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate Committee of the Legislative Assembly together with a request that the Committee report on the draft plan variation to the Legislative Assembly.

The Minister for Planning, Mr Mick Gentleman MLA, referred draft variation to the Territory Plan 327 Capital Metro – Light Rail Stage 1 Gungahlin to Civic to the Standing Committee on Planning, Environment and Territory and Municipal Services on 23 October 2014.

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1 INTRODUCTION

CONDUCT OF THE INQUIRY

1.1 On 26 November 2014 pursuant to section 73 of the Planning and Development Act 2007 (the Act), the Minister for Planning, Mr Mick Gentleman MLA, referred draft variation to the Territory Plan No 327 Capital Metro – Light Rail Stage 1 Gungahlin to Civic, to the Standing Committee on Planning, Environment and Territory and Municipal Services (the Committee) for consideration and report to the ACT Legislative Assembly (the Assembly).

1.2 The Committee released a media release announcing the inquiry and seeking submissions on 5 March 2015 as well as directly emailing those who had provided submissions to the Environment and Sustainable Development Directorate public consultation process. The Committee received no submissions.

1.3 The Committee held one public hearing and heard from two witnesses: The Minister for Planning, Mr Mick Gentleman MLA and Mr Jim Corrigan, Executive Director, Planning Delivery, Environment and Planning Directorate. The transcripts of proceedings are accessible at: http://www.hansard.act.gov.au/hansard/2013/comms/default.htm.

ACKNOWLEDGEMENTS

1.4 The Committee would like to thank the Minister for Planning and officials from the Environment and Planning Directorate for their time appearing before the Committee and responding to its questions.
2 PLANNING IN THE AUSTRALIAN CAPITAL TERRITORY

INTRODUCTION

2.1 This chapter outlines the planning framework in the Australian Capital Territory (ACT) and briefly outlines the evolution of the Territory Plan from its inception, through early reviews and restructures, to the present day review of the policy content of the Plan.

2.2 The Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth) sets out the overarching legal framework for the planning of, and management of the land in, the Australian Capital Territory. It establishes the National Capital Authority, one of the functions of which is to prepare and administer a National Capital Plan. The objective of the National Capital Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.

2.3 The Australian Capital Territory (Planning and Land Management) Act 1988 also provided for the ACT Legislative Assembly to make laws to establish a Territory planning authority, and to confer on that authority the function of preparing and administering a Territory Plan. These requirements were incorporated into the Interim Planning Act 1990 (ACT) and subsequently, with expanded environmental assessment and heritage provisions, into the Land (Planning and Environment) Act 1991 (ACT).

2.4 In 2008, as part of the reform of the ACT planning system, the Land (Planning and Environment) Act 1991 was replaced by the Planning and Development Act 2007 (the Act), which includes the provision for the Planning and Land Authority (the Authority) and the Territory Plan.

2.5 The object of the Territory Plan is to ensure that, in a manner not inconsistent with the National Capital Plan, the planning and development of the ACT provides the people of the

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3 Australian Capital Territory (Planning and Land Management) Act 1988, sections 5 and 6.
5 Australian Capital Territory (Planning and Land Management) Act 1988, section 25.
9 Planning and Development Act 2007, section 10.
10 Planning and Development Act 2007, section 46.
ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.\textsuperscript{11}

2.6 Under section 50 of the Act, the 'Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan'.

2.7 The Act requires the Territory Plan to set out the planning principles and policies for achieving its objective in a way that gives effect to sustainability principles, including policies that contribute to achieving a healthy environment in the ACT.\textsuperscript{12}

2.8 The Territory Plan includes:

- a statement of strategic directions;
- a map;
- objectives and development tables applying to each zone;
- a series of general, development and precinct codes; and
- structure plans and concept plans for the development of future urban areas.

2.9 The Territory Plan graphically represents the applicable land use zones under the following categories:

- Residential;
- Commercial;
- Industrial;
- Community Facility;
- Urban Parks and Recreation;
- Transport and Services; and
- Non-Urban.\textsuperscript{13}

2.10 Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan, prepared by the Authority for stakeholder comment.\textsuperscript{14} There can be a number of versions of a draft plan variation depending on the consultation program.\textsuperscript{15}

\textsuperscript{11} Planning and Development Act 2007, section 48.
\textsuperscript{12} Planning and Development Act 2007, section 49.
\textsuperscript{14} Planning and Development Act 2007, section 60.
2.11 Under the Act the Minister has the discretion to refer a draft plan variation, within 20 working days of receiving it,\textsuperscript{16} to an appropriate committee of the ACT Legislative Assembly (the Assembly) for consideration and reporting.\textsuperscript{17}

2.12 The Minister must not take action in relation to the draft plan variation until the committee of the Assembly has reported on it;\textsuperscript{18} unless the committee has not reported on the draft plan variation by the end of the period of six months starting the day after the day on which it was referred.\textsuperscript{19}

2.13 The Minister must take any recommendation of the committee into account before making his decision in relation to the draft plan variation.\textsuperscript{20} If the Minister approves it, the proposed plan variation and associated documents will be presented to the Assembly.\textsuperscript{21} Unless wholly or partially rejected by the Assembly on a motion for which notice has been given within five sitting days of its presentation, the plan variation will commence on the date nominated by the Minister.\textsuperscript{22}

2.14 If the Minister does not refer a draft plan variation to an appropriate committee of the Assembly, the relevant committee is not prevented from considering the draft plan variation documents.\textsuperscript{23}

\textsuperscript{16} Under section 70 of the Planning and Development Act 2007, the planning and land authority must prepare a public availability notice advising that draft variation documents, which have been provided to the minister, are available for public inspection. This notice, which is a notifiable instrument, may be accessed via the ACT Legislation Register website at http://www.legislation.act.gov.au/.

\textsuperscript{17} Planning and Development Act 2007, section 73. The Standing Committee on Planning, Environment and Territory and Municipal Services is currently the appropriate committee.

\textsuperscript{18} Planning and Development Act 2007, section 74.

\textsuperscript{19} Planning and Development Act 2007, section 75.

\textsuperscript{20} Planning and Development Act 2007, subsection 76(4).

\textsuperscript{21} Planning and Development Act 2007, section 79.

\textsuperscript{22} Planning and Development Act 2007, section 83.

\textsuperscript{23} Planning and Development Act 2007, subsection 73(4).
3 THE DRAFT VARIATION

DRAFT VARIATION TO THE TERRITORY PLAN 327

3.1 The intention of the draft variation is to make the following changes to the Territory Plan to enable the development of a light rail system from Gungahlin to Civic:

- Introduce the terms ‘Light rail’ and ‘Light rail depot’ to the Territory Plan. This will include:
  - Adding ‘Light rail’ and its definition as a sub-category in the definition for ‘Public transport facility’;
  - Amending the definition of ‘Railway use’ to exclude ‘Light rail’;
  - Amending the definition of ‘Road’ to include ‘light rail tracks’;
  - Amending the definition of ‘Municipal depot’ to cover vehicles and light rail vehicles; and
  - adding ‘Light rail depot’ under Common Terminology for “Municipal depot”.

- Rezone a parcel of land on a number of blocks to TSZ1 Transport Zone to allow for undertaking light rail associated road works. The proposed sites to be rezoned include:
  - Part block 1 section 231 Gungahlin, currently zoned as CZ2 Business Zone and PRZ1 Urban Open Space Zone.
  - Parts of block 1 section 60, block 1 section 74 and block 1 section 76 Lyneham and parts of block 3 section 15 and block 1 section 42 Mitchell, currently zoned as NUZ3 Hills, Ridges and Buffer Zone. The Pc Nature Reserve Overlay will be removed from these sites as required by the Conservator of Flora and Fauna.
  - Parts of blocks 797 and 798 Gungahlin, and parts of block 2 section 61, block 5 section 72, block 1 section 75, blocks 5, 19, 20 and 21 section 71 Lyneham, currently zoned as NUZ1 Broadacre Zone.
  - Part block 4 section 67 Lyneham, currently zoned as PRZ2 Restricted Access Recreation Zone.
  - Part block 49 section 59 Lyneham, currently zoned as PRZ1 Urban Open Space Zone.

- Amend TSZ1 Transport Zone Objective b) to cover ‘light rail’ to ensure that any light rail developments are consistent with relevant zone objectives.

- Rezone a small triangle area in block 1 section 42 Mitchell from NUZ3 Hills Ridges and Buffer Zone to Iz1 General Industry Zone to accommodate the proposed light rail depot. The Pc Nature Reserve Overlay over the site to be rezoned is to be removed.24

3.2 The draft variation does not have interim effect.\textsuperscript{25}

THE SITES

3.3 The sites proposed to be rezoned to TSZ1 Transport Zone (or IZ1 General Industry Zone in the case of block 1 section 42 Mitchell) are show in Figure 1 and described below:

\footnotesize

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figures/site_plan.png}
\caption{Site Plan}
\end{figure}

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1. Part Block 1 Section 231 Gungahlin

3.4 This site is located along Flemington Road and immediately east of Kate Crace Street. It is currently in CZ2 Business Zone and PRZ1 Urban Open Space Zone. This block is unleased Territory land and managed by Land Development Agency. At present there are no active development proposals over it.

2. Parts of Blocks 797 and 798 Gungahlin

3.5 These two sites are located at the intersection of Flemington Road, Sandford Street and Morisset Road and are currently in NUZ1 Broadacre Zone. The blocks are vacant unleased Territory land and managed by the Territory and Municipal Services Directorate (TAMS).

3. Parts of Block 1 Section 42 and Block 3 Section 15 Mitchell

3.6 Block 1 section 42 and block 3 section 15 are located west of Flemington Road and covered by two zones: NUZ3 Hills, Ridges and Buffer Zone for the majority of the land and IZ1 General Industry Zone for a small section at the north end of the blocks.

3.7 The blocks are unleased Territory land and managed by TAMS. The Pc Nature Reserve Overlay applies over block 1 section 42 in NUZ3 Zone which is known as the Crace Grassland Nature Reserve. The portion of land to be rezoned from NUZ3 Zone to IZ1 Zone includes some lowland woodland which has been assessed as being substantially and severely modified.

4. Parts of Block 2 Section 61, Block 5 Section 72, Block 1 Section 75, Lyneham

3.8 These blocks are located east of Flemington Road and north of the corner of Flemington Road and Federal Highway. They are currently zoned as NUZ1 Broadacre Zone. Block 2 section 61 and block 1 section 75 Lyneham are unleased Territory land and managed by TAMS. Block 5 section 72 Lyneham is known as the EPIC site and is covered by the Exhibition Park Corporation Act 1976.

5. Parts of Block 1 Section 60, Blocks 5 and 21 Section 71, Block 1 Section 74 and Block 1 Section 76 Lyneham

3.9 These sites are located at the intersection of Randwick Road and Flemington Road. The small section in block 1 section 60 to be rezoned is currently in NUZ3 Hills, Ridges and Buffer Zone with a Pc Nature Reserve Overlay over it. It is on unleased Territory land and managed by TAMS.

3.10 The existing Pc overlay also covers block 1 section 74 and block 1 section 76 Lyneham and block 1 section 42 Mitchell. These sites contain an area that adjoins the site on block 1 section...
60 and has been used for a storm water pond and past spoil dumping. The Conservator of Flora and Fauna has advised that this area is neither used for nature conservation nor managed as part of the nature conservation estate.

3.11 The sites in section 71 are zoned as NUZ1 Broadacre Zone. These two blocks are unleased Territory land and managed by TAMS. Block 21 section 71 is currently used as the EPIC temporary car park.

6. PARTS OF BLOCKS 19 AND 20 SECTION 71, LYNEHAM

3.12 These two sites are located along Federal Highway and adjacent to the access to Kamberra Winery. The blocks are currently zoned as NUZ1 Broadacre Zone. They are unleased Territory land and managed by TAMS.

7. PARTS OF BLOCK 4 SECTION 67 AND BLOCK 49 SECTION 59 LYNEHAM

3.13 Block 4 section 67 is currently zoned as PRZ2 Restricted Access Recreation Zone. It is in the Yowani Country Club site which is under a private lease. Block 49 section 59 is currently zoned as PRZ1 Urban Open Space Zone. It is in the Lyneham Sports Precinct which supports several existing sporting and community groups. The block is unleased Territory land and managed by TAMS.

CONSULTATION BY ACT PLANNING AND LAND AUTHORITY

3.14 DV327 was released for public comment between 29 August and 15 October 2014. The Directorate received 10 written submissions with the majority against the light rail proposal.

3.15 The main issues raised by submitters to ACTPLA were:

- Opposition to the light rail proposal;
- The potential impact on equestrian use at Mitchell;
- The potential impact on the Belconnen Dog Obedience Club at block 601 Gungahlin; and
- The potential impact on National Archives main ACT repository at blocks 1 and 4 section 15 Mitchell.

3.16 ACTPLA made no changes to the draft variation as a result of consultations. ACTPLA's consultation report can be accessed at: http://www.planning.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan/recommended_final_variations
4 COMMITTEE COMMENTS

4.1 The members of the Committee hold differing views on the merits of the Capital Metro project as a whole. This report is intended solely to look at the draft variation and nothing in it should be read as endorsement or condemnation of the project itself. The merits of the project have been, and will be, addressed in other fora, including hearings held by this Committee. The Committee notes that this draft variation is one stage in the planning process for future works.

4.2 The introduction of the terms ‘Light rail’ and ‘Light rail depot’ to the Territory Plan are necessary technical changes and the Committee has no comment on them.

4.3 The Committee notes that the rezoning to TSZ1 Transport Zone (and IZ1 for the proposed depot area) covers small areas of land with the intent to allow widening and intersection work where necessary to permit more efficient integration between the proposed light rail and traffic.

CONCERNS OF SUBMITTERS

4.4 The Committee notes the following concerns raised during ACTPLA’s consultation on this draft variation:

- In the Flemington Road area there are horse agistment areas, equestrian facilities and equestrian trails linking them. The ACT Equestrian Association Inc has expressed concerns that light rail development could impact on equestrian use of the Crace Grasslands Nature Reserve and the equestrian trail crossing Flemington Road.
- The Belconnen Dog Obedience Club, on the corner of Morisset Rd and Flemington Rd, is concerned that member’s entry and exit and the club’s ability to conduct its business could be affected by the variation.
- The National Archives of Australia has its main ACT repository at 95 Flemington Road, Mitchell, adjacent to the proposed light rail depot. Archives have highlighted concerns about access to the repository during construction and construction effects such as dust, vibration, flooding and noise.

4.5 The Committee notes the Minister’s advice that these issues are matters for consideration at the environmental impact statement and development application stages and so no changes were made to the variation in response to these concerns. The Committee considers that the concerns raised were reasonable and expects that Capital Metro will work with submitters

26 Transcript of Evidence, 8 April 2015, p. 2.
as the planning process proceeds to address their concerns. While some disruption during construction would be unavoidable, there would appear to be no reason that the substantive concerns cannot be simply addressed to the satisfaction of all parties.

Ms Meegan Fitzharris, MLA
Chair
9 June 2015