Canberrans for Power station Relocation, Inc (CPR Inc)
PO Box 40
Erindale Centre
ACT 2903
19 October 2009

Dear Ms Le Couteur, Ms Burch and Mr Smyth

Thank you for allowing CPR Inc to speak at the Committee hearing 30 September 2009 and for extending the time of that hearing to allow us to more fully express the views of CPR Inc and those members of the community who have approached us and asked us to speak on their behalf.

Please find attached to this letter those documents requested by the Committee in support of the evidence we gave.

We have also attached as a separate set of documents, information we can find regarding the $34 million request made by TRE to the Federal Government for funding to build the gas fired power station and data warehouses:

5th February 2009 - Technical Real Estate - submission to the Senate Finance and Public Administration Committee - TRE are unable to obtain either debt or equity funding from the market so are seeking Federal Government sponsorship

5th June 2009 - Canberra Times - No clients for Hume data centre, quoting TRE Director Andrew Campbell "You don't build a $50 million building and hope that somebody is going to come."

We note that there is not, in the documents we have filed, specifically a $34 million figure mentioned. We would therefore request to withdraw the figure of $34 million pending the discovery of where this figure came from and apologise if this figure, which currently cannot be supported by evidence, has caused any confusion to this process.

We have been, as a group, discussing the questions put to the representatives of CPR Inc by the Committee, specifically how the consultation system can be improved and what we hope to gain by requesting an apology from Mr Stanhope. As a consequence we would like to take this opportunity to answer those points.

Ms Le Couteur mentioned on a number of occasions her interest specifically in the consultation process and how this could be improved. We would suggest the following may assist:

- A group formed from ACTPLA, with expertise in development, construction, town planning and community consultation, which identifies and assesses 'extra-ordinary' developments – prior to developers filing a development application.
    - Potential Developers to be encouraged to present 'extra-ordinary development' concept plans to the group – in the case were early filing of these plans may open developers up to rival development bids, thought should be given to allocating a level of legislative protection to potential developers at this stage.
    - This group should sit under the independence of ACTPLA but with a specific purpose of facilitating good planning – rather than merely facilitating the development of

large projects – and ensuring that these "extra-ordinary" projects are dealt with efficiently and effectively by supporting:

- Cost/benefit analysis based on Community/local and Canberra wide
- Identifying potential environmental issues
- Identifying potential Aboriginal cultural heritage and archaeological issues
- Developing early financial viability studies
- Reviewing land application choices
- Supporting and overseeing early community engagement
- Ensuring the accurate interpretation of the Territory Plan and potential areas of concern or clash with the National Capital Plan – both of which are open to developers and members of the public to negotiate
- Supporting planners and community to negotiate differences
- Sitting as an independent overseer to co-ordinate early reviews of supporting papers filed in respect of matters concerning health, environment and well being of the Canberra community

  - The definition of such developments should be created by ACTPLA, with in-put from CMD, LDA and community groups and should, amongst other things, create a definition of "state significant" and create a concept of what is a development potentially for community benefit.

- The creation of an independent unit to support interested community members to engage in reviewing and responding to potential developments or changes to the Territory Plan.
  - This unit should be funded and supported by the government and should be accountable to the committee and legislative assembly process.
  - The unit should fall with the Ombudsman's responsibility to review and fall under the judicial review process.
  - This unit should provide a service that is both practical and instructive
- This "community consultation unit" to identify specific areas and community groups within Canberra which require more targeted information – for example identifying an area of potential development and using a variety of communication strategies within the potentially affected area to engage all citizens, including email, letter box, booths at local shopping centres etc
- This unit to review consultation within the ACT on a broader basis and to report to the full Assembly regarding necessary changes or improvements based on research conducted within the ACT.

Changes to Broadacre and Wildlife Corridors

- A review of the current 'Broadacre' land with a view to changing the Territory Plan to define and protect existing horse paddocks as recreational and environmentally necessary areas.
- To creating a meaningful consultation with citizens around how Canberra should be developed and how Broadacre should be used.
- To review specifically the wildlife corridors with a view to protecting these from encroachment by potential industrialisation plans

Removal of centralised government in planning.

- A removal of the ability for CMD and other centralised government bodies to become directly involved via land selection, advertising, explicit and implicit support etc to any development which has not been through a community consultation process.
- The removal of ACTPLA from the direct influence of CMD and other centralised government process.
- Where the above is not possible, the creation of an easier system of review for members of the public. [the current system of Judicial Review is expensive and negates most community members from accessing even if their facts and reasoning are sound – consideration be given to a legally aided Judicial Review accessible via a preliminary judicial merit review system for planning disputes which fall under the 'extra-ordinary development' definition.]
- The community be supported either via a financial grant system or information system to review and dissect complex planning issues – this could be a function of the community engagement unit and should be independent of the CMD or government
- When the government uses its 'call in powers' or uses legislation to pass a development – these powers to be automatically reviewed by the Judicial Review system as an independent reviewing body to ensure that 'due process' has been used.

EIS and HIA

- Where an Environmental Impact Study is called for within the current planning legislation – the ability for the community or other interested body, such as the Environmental Protection Agency, to oversee the independence, expert standard and veracity of the study presented.
- Consideration to be given to allowing Federal Review of "extra-ordinary developments" which have a potential negative effect on Australia's environment – such as a gas fired power station.
- Health officials to be appointed – and to remain appointed – to review data and reports which indicate potential health issues.
- EIS and HIA reports to be presented to members of the public.

The Role of The Auditor General

- The role of the Auditor General to be enhanced and adequately financially supported by the legislative assembly
  - Enhancement of the role would include the government having to give, to the Assembly and public, considered reasons why it would not adhere to recommendations made within an Auditor General's report
  - The ability for Opposition or the Auditor General to refer the refusal of the Government to adhere to recommendations to an independent body such as a legal tribunal for review and possible censor of an abstaining government
  - In acknowledging the flat level of government within the ACT and therefore the important independent position held by the Auditor General - The Auditor General's role to be adequately financially supported in order to fulfil her functions.

- Review of financial and other resource funding increases and decreases to the role of the Auditor General to be considered by a body independent of a majority government – perhaps including all parties.
- Any negative comments made by the Government in respect of the Auditor General's role to be carefully considered by the full Assembly [in view of the importance of the role of the Auditor General and the ability to undermine the accountability and power of this important role by denigration and disrespect.]

The importance to the Community of an apology by Mr Stanhope

- Mr Stanhope should apologise for his mistreatment and misinformation used against all members of the community who, having reviewed the development plans of the gas fired power station, did not support that development.
  - This would go someway to showing the community that the present government had reflected on their previous involvement with this development and was now able and willing to create better relationships between the government and community members
  - An apology would encourage community members to engage in future developments requiring community engagement, and would demonstrate to community members that their voice would be heard and respected.
  - An apology would give a clear message to business developers and others that the community not only had a right but a duty to have its voice heard
  - The community would feel that its role and contribution to good planning within Canberra had been acknowledged in a positive way.

In addition, we would like to make a brief response to those government and business units who responded to CPR Inc's submission to the Committee.

We received comments by various members of the community group we represent and the basis of these being they would have preferred those government and industry groups to have read as accurately and closely our submissions to the DA's, HIA and EIS as they appear to have done with this Committee submission.

We noted that while they held us to a high standard of providing evidence to back our statements, they felt no compulsion to do the same. Our evidence for all our statements is contained throughout our submissions to the three DA's, the HIA and the EIS taken from that evidence available to us.

We are happy therefore to apologise for using any misquoted statement from the press (as in the case of Ms Meredith Hunter) and believe the press should be held to account for passing erroneous information to the community.

We also apologise for the simple mistake of calling Mr Costello "Chair of ACTEW". The letter from ACTEW however merely states we were wrong and in fact Mr Costello held the position of managing director of ACTEW.

ACTEW even attach their letter to CPR Inc stating they had nothing to do with the project. It may have been more honest had ACTEW continued to expand that the correct title for his position of "managing director" carries a great deal of authority, and that there are emails and letters in the public arena signed by Mr Costello as "managing director of ACTEW" dealing with this project from 2007 and early 2008 before Mr Costello moved to ActewAGL, and that ACTEW gave $300,000 to the project.

Whilst factually those members of the community may have been wrong in stating his title incorrectly; the substance of what they were saying was correct. Likewise TRE , ActewAGL etc and Mr Stanhope, make sweeping statements that CPR Inc (a community group) was incorrect and that they all for example "consulted extensively with the community" without actually detailing when and how this "extensive consultation" took place.

Finally in response to the overall statements that CPR Inc wrote hyperbole and in defamatory terms - we would remind again those in government and in private development business that CPR Inc is a community based organisation who do not have the money, power and influence of a well funded business or government department and that each member involved in responding to this proposal felt they were fighting to be heard in defence of the 'bush capital', their lifestyle, their homes and their families' health.

If those in government do not recognise that a community group, by its very nature and reason, is bound to write and express itself in emotive writing, then perhaps they need to review their concept of community consultation.

CPR Inc and those members of the community who remain extremely interested and engaged in this process, would like to once again thank the Committee for allowing us to speak and to present this document to the committee.

Yours sincerely

Bill Reid

President of CPR Inc

5th February 2009

Senate Finance and Public Administration Committee
Department of the Senate
Po Box 6100
Parliament House
Canberra ACT 2600

Senate Standing Committee on Finance and Public Administration.
Inquiry into the Nation Building and Jobs Plan

Submission enclosed as requested. Email to fpa.sen@aph.gov.au

Subject : **ICT industry new data centre development project supporting growth, new jobs and underpinning the Australian ICT sector.**

Request : **Technical Real Estate (TRE) are seeking Federal Government sponsorship to enable relevant departments to directly lease our Data Centre project in Canberra.**

Federal Government commitment will allow TRE to initiate an immediate commencement of the project.

At this point in time we have a lease commitment from a BBB rated covenant which currently have contracts with the Federal Government, <u>but we are unable to obtain either debt or equity funding from the market.</u>

Federal Government departments that have identified requirements to us are :

- **Department of Defence**
- **Australian Taxation Office**
- **AGIMO (Whole of Government data centre responsibility.)**

Technical Real Estate (TRE) request that the Canberra Technology City project be sponsored by the Federal Government and the ACT Government as a critical infrastructure project. This Project has received international acclaim and attention as one of the most significant green data centre projects in the world.

The Canberra Technology City Project in Summary :

1 Construction and delivery of 6 modern data centres on a 12 hectare campus in order to support the transfer and to hold the Federal Governments critical computer systems and IT support staff in the ACT.

2 A new data centre campus in the ACT that supports and ensures the lowest ongoing long term costs of operations to the Australian taxpayers.

3 The project is about to get ACT Government Planning Approval which would trigger TRE acquisition of a 12 hectare site at Hume and allow civil works to commence within 30 days. TRE has received tendered responses in October 2008 from Bovis Lendlease, Lang O'Rourke and Leighton's for the construction of our modular data centres.

4 **A full Economic Impact Study of this project was completed and submitted to the ACT Government in October 2008. In summary :**
   a. **Capital cost of construction of $748m**
   b. **229 direct and indirect jobs during the construction phase**
   c. **426 direct and indirect jobs supporting the 24 x 7 daily operational needs of the computer systems located on site. Contributing $60m per annum to the ACT turnover.**

5 **Cost reduction and carbon emission reductions** - The Canberra Technology City Campus will provide the Federal Governments computing infrastructure an opportunity to demonstrate leadership in the ICT industry by reducing its current Data centre operational costs by **50%**, its power consumption by **50%**, its power costs by **57%** and the resultant carbon emissions by **77%.** This campus will place Australia in a world leadership position and is one of the greenest data centre initiatives worldwide.

6 The Project directly supports and is in line with The Gershon Report published in October 2008 recommending that the Federal Government consolidates its Agency computer footprint.

   The findings in summary were :
   a. 18 data centres of the largest Agencies are completely full and at maximum capacity.
   b. 16 of the 45 data centres fail minimum availability (power , cooling floor strength)
   c. Savings of $1b over 15 years by consolidation of the computer footprints.

Technical Real Estate seek to support the Federal Government data centre consolidation project by providing a campus based data centre development. This Campus and its 6 data centres would provide via Government lease agreements both separate computer rooms and separate buildings for highly sensitive Agencies. The data centres will also be able to support the grouping of smaller clusters of Agency computers. This is as recommended by the Gershon report.

This Project will provide critical infrastructure for the Federal Government and the ACT Government and will deliver a significant increase in employment in the ACT. It is a project that can start construction in the 1st and 2nd quarter of 2009.

Your sincerely .

Directors
Andrew Campbell
Stephen Ellis
Bruce McEwen

Kind regards

Bruce Mc Ewen
Director

The Canberra Times
canberratimes.com.au

No clients for Hume data centre

BY EWA KRETOWICZ
05/06/2008

The controversial data centre planned for Hume has stalled with no clients signing up to store information at the proposed $1billion development.

The ACT Planning and Land Authority conditionally approved the consortium's development application on March 10 after it was scaled back and moved from a site in Mugga Lane at Tuggeranong.

The consortium includes Technical Real Estate and energy supplier ActewAGL'sDirector of Technical Real Estate Andrew Campbell blamed the global financial crisis on the lack of momentum.

"We do have numerous parties at different levels of interest but we don't have any commitments," he said.

"Clients are taking a lot longer to make decisions, that includes financial institutions, banks, and the like you've got the outcomes of the Gershon report so that are all factors that have slowed the wheels of economy significantly."

Peter Gershon's independent review of the Australian Government's use of information and communication recommended a freeze on big upgrades to, and replacement of, existing data centres.

The report was issued last year and the Government has not responded to the recommendations.

The report said, "To address the finding that there is no whole-of government strategic plan for data centres, I recommend developing a whole-of-government approach for data centre requirements over the next 10-15 years."

The data centre proponents indicated government departments had been supporters of the project.

Mr Campbell said the 53,000sqm project could be scaled up or down to cope with demand and was still a viable concern.

"The project was always designed in a modular scalable form. We don't need to do anything more than one deal and were happy or we can do 14. That is the 14 of the 1000sqm data centres for which we have approval to build and we would be very very happy."

He said once a client had committed to the project building could start within four weeks.

"You don't build a $50 million building and hope that somebody is going to come."

Mr Campbell said he could not speculate on when the project would move ahead.

"Since we got out approval we have been actively in the market talking to all the prospect lists that we'd developed over time. Since we've had our approval we've trying to engage and get people interested in the facility."

He said the company was well placed to deal with new policy as a result of the Gershon report.

"We will continue to engage with the federal market and try and secure a commitment with that market to lease the data centre space."

The first development application for the project did not meet the ACT Government's noise and pollution standards.

Supporting Evidence (with reference to Hansard page 78)

CPR INC has been asked to show evidence to the committee that Mr Jon Stanhope knowingly lied when he blamed the community for the loss of $1 billion of investment and for being the reason for the "down scaling" of the power station in May 2008. This matter lies at the heart of the community mistrust of the proponents and Mr Stanhope and for the loss of trust for the consultation and planning processes within the ACT - we therefore feel it is important for the Committee to have these documents and to be shown them in the same manner as the community has read them.

It appears, from reading the email threads that it was in August 2007 the intention of all to provide a second power source for Canberra supported by a data warehouse complex. Around November 2007 - February 2008, during the drafting of the Deed Option - especially under the clause concerning intent - it becomes clear that the financial viability study which was at that time incomplete, was indicating that it was not financially viable to provide an extra power source for Canberra.

Attachment 1 – **23 May 2007** Chief Minister Jon Stanhope issues a press release championing the need for the second power source for Canberra and requesting ActewAGL to investigate

Attachment 2 - **18 Jan 2008** - between Ray Stone (LDA) and Alfonso Del Rio of Clayton Utz discussing a reduction in the size of the power out put and whether it would still be enough to meet "Community obligation outcomes the Government would see from supporting such a venture" this relates to the deed of option.

Attachment 3 - a post it note revealed from FOI which states "DAVID, CTC, Draft fee waiver letter where ACTEWAGL will be seeking Partial fee waiver to $100k The other CRC issue is Costello may be contacting you to discuss removing the requirement for emergency power could you sound the chief out please (See attached email) Ross"

Attachment 4 - **5 February 2008** - email chain between David Dawes, Brooke O'Mahoney (someone blanked out), Ross Mackay and Carsten Larsen and Michael Costello - It states "David and Ross For information I understand from *BLANKED OUT* ACTEW that Michael Costello will write a letter of email to David today/ tomorrow regarding Annexure C of the Deed of Call Option agreement - along the lines that the Data Centre may stand on it [sic] own feet and that a peaking power station may not be required and as such a requirement to build a power station for export/emergency supply should not be prescribed in the land option agreement... It goes on to recommend by Brooke O'Mahoney that a "time critical issue for the project is submitted a DA before the new territory plan comes into force on 31 March 2008 which will add a further 3-5 months and additional cost"

Attachment 5 - **7 February 2008** an email from ACTEW Exec (Signed Michael Costello, Managing Director, ACTEW Corporation) to David Dawes "As you are no doubt aware there has been considerable discussion about the Deed of Call option for the proposed CTC site and in particular Annexure C with its reference to additional power generation for export to the ACT Electricity network... Whilst we would all like to see such a plant built obviously this would be dependent on the successful outcome of a detailed feasibility study. Should the outcome of the feasibility study be that the data centre and dedicated power plant would be a sound financial investment but the peaking plant was not financially viable, it would not make sense to stop the data centre and dedicated power plant from proceeding... until the feasibility study is completed it is important to retain a degree of flexibility in the conditions... regards Michael...

Attachment 6 - **7 February 2008** brief to "the Chief" "However ACTEW are now suggesting that they do not wish to provide any excess power over that needed by the data centre. You will be informed when ActewAGL resolve this issues with their partners and provide a response to Government... it is expected that ACTEW Corporation or one its wholly owned subsidiaries is likely to be the lessee... Signed Ross McKay and signed agreed Jon Stanhope.

Attachment 7 - **18 February 2008** they had signed Annexure C the Deed of Option to be as vague as (c) additional power plant capacity in excess of the Communication Facility requirements for export to the ACT electricity network in accordance with national electricity market regulations as soon as is economically feasible."

Attachment 8 - **11 April 2008** Canberra Times continue to champion the scale of the project quoting John Mackay regarding the $2billion project and stating: "And fourthly, we are hopeful at the same site we can build a significant separate gas generator."

The second generator would provide emergency back-up power in the event of the electricity grid failing.

Attachment 9 - **28 April 2008** first meeting with ACTEWAGL to the Tuggeranong Community Council telling the community it was a second power source for Canberra - essential to Canberra to prevent black outs.

Attachment 10 - **30 April 2008** Alfonso Del Rio writes to Ross McKay, Gordon Lowe etc...: In my view it is better (but not essential) that the definition of Stage 1 stays as drafted as it reflects the intention to build the extra capacity where it is economically feasible to do so. If it turns out that this is not economically viable then the Crown lease is required to be amended (as Gordon notes by referencing clause 20.1 below) to delete the excess capacity references." Later on in this email chain Gordon Lowe states "... I understand and support the logic in acknowledging the aspiration for additional generating capacity in the crown lease but recognising economic reality in the Deed and providing that the final form of the crown lease may be amended to remove reference to additional capacity prior to issue. ACTEW may initially baulk at this as it varies from the form of crown lease previously provided. Given the wider interest now being shown in the power station both parties would however be prudent to recognise this aspiration in the documents. Ross do you concur with such a position from CMD's point of view?"

Attachment 11 - **3 May 2008** Brooke O'Mahoney signed the alteration documents on 3 May 2008 - under part 4:
"Fully describe your proposal or list amendments"... Major utility installation and communications facility altered DA due to reductions [sic] in 1. Generation Capacity 2. Number of data centres 3. Block size.

17 May 2008 the "consultation" at the Vikings club in which ACTEWAGL presented their plans to the public for a second power source - an essential service for Canberra

Attachment 12 - **27 May 2008** - the final day of filing submissions to ACTPLA - Mr Stanhope's press release in which he blames the community for the down scaling and loss of $1 billion and praises ActewAGL as being good corporate citizens - the same day Michael Costello says they had thought very hard and listened to the public and responded to the public concerns. On the news that night Chris Peters blasts the community for being responsible for the loss of the second power source. No one in ActewAGL, TRE or the Chief Minister or his officials steps up to correct the accusation leveled against the community and explain the downscaling was decided upon as the results of their financial viability study was revealed in early February 2008.

Attachment 13 - **31 May 2008** - Canberra Times article:
Mr Costello said the consortium was told three weeks ago a 100MW peaking station was commercially unviable.
He said the firm spent weeks perusing other options before making the announcement to scrap the peaking station on the Tuggeranong site and scale down the data centre.
"It's too small. It has to be 350 to 450 [megawatts] so that site was not suitable whether there were protests or not,"Mr Costello said.

Throughout these exchanges the proponents are referred to interchangeably as ACTEW and ActewAGL by government officials and letters being sent by both ACTEW and ActewAGL executives. It is difficult therefore to comprehend how ACTEW can write with such clarity to the community that they had nothing to do with this proposal and then scold us for referring to Michael Costello as the "Chair" as if he had nothing to do with this either.

Most importantly however it is clear to us that all major players - Jon Stanhope included - were aware that the economic viability for providing a second power source for Canberra was unlikely and they were aware of this from as early as February 2008.

We also note too that Tony Adams of CBR Ellis was appointed to advise ActewAGL on the land sales etc and as we know all TRE had recently been directors of CBR Ellis - so as to their claim they had nothing to do with CBR Ellis and there was no connection between CBR ellis and this project;
the community also finds this odd.

Attachment 1 – **23 May 2007** Chief Minister Jon Stanhope issues a press release championing the need for the second power source for Canberra and requesting ActewAGL to investigate

Gas-fired power station could help supply power station

Released 23/05/2007

256/07 23 May 2007

GAS-FIRED POWER STATION COULD HELP SECURE SUPPLY

Threats to the national power market caused by the protracted drought, and recent suggestions by the Independent Competition and Regulatory Commission that electricity prices should rise sharply, had prompted the ACT to re-investigate the feasibility of a gas-fired power station for the ACT, Chief Minister and Minister for the Environment, Water and Climate Change Jon Stanhope said today.

"I first asked ACTEWAGL to investigate the possibility of a gas-fired power station in the wake of the 2003 bushfires, when it became clear that in a disaster of such scale it might have been possible for 90% of the ACT's power to be cut off," Mr Stanhope said today.

"A contingency gas-fired power station was investigated at that time, but scoping studies showed it would not be economically feasible. Instead, it was decided to build an additional electricity access point into the ACT through Williamsdale, to help secure supply. ACTEWAGL is currently in the process of constructing that new access point.

"However, because of the protracted nature of the drought, which is affecting power generation in Queensland and NSW, and a looming hike in energy costs, I have asked that the numbers on a gas-fired power station again be crunched, to see whether such a project is now more feasible than it was when it was last investigated.

"The scoping of the proposal, like the contingency plans for power rationing, are nothing more or less than sensible and necessary approaches to securing supply.

"In relation to the possible siting of a gas-fired power station I asked officials some weeks ago whether they might be able to identify land at Hume and to advise me of the terms of conditions under which such land might be made available for a power plant. I also asked whether those calculations might affect the viability of the revived proposal."

Mr Stanhope said the ACT Government and ACTEWAGL had plans which were tested annually to deal with power shortages brought about by storms, bushfires, infrastructure breakdowns, drought or unforseen events.

"Every Government and every power utility on Australia's national energy grid face the potential of drought-related power shortages," Mr Stanhope said. "And all, including the ACT, have well-tested emergency procedures in place to deal with shortages.

"In the event of a shortage of supply the ACT could be called upon to carry its share of the shortfall. There is a schedule of substations which could, if necessary, be turned off on a rotational basis across NSW and the ACT, effectively putting the system back into balance.

"The plans protect the electricity supply to essential infrastructure and services such as traffic lights and hospitals. They also include provision for ensuring arrangements are in place for those with special needs, such as people reliant on oxygen concentrators and other life support equipment."

Mr Stanhope said while he hoped the contingency plans would never need to be put into action, they ensured that the 'pain' would be shared fairly throughout the community.

"Depending on the circumstances, the plan may schedule rotating power outages to all suburbs for periods of up to two hours. Studies and experience show that a power interruption for this period will not affect food left in the fridge, even in the middle of summer, as long as the fridge remains closed," Mr Stanhope said.

Mr Stanhope said there could never be any guarantee of uninterrupted power supply, but the ACT Government was exploring avenues for insulating the ACT from interruptions as far as possible. That was the reason for the new access point under construction and it was why the Government was now re-opening investigation of a gas-fired power station.

If any customer of an electricity retailer operating in the ACT, including ActewAGL, Country Energy, Energy Australia or Truenengy has further questions about their specific special needs arrangements for power outages they should contact the ActewAGL Call Centre on 131093.

Statement Ends

Media Contact: Penelope Layland 6205 9777 0438 289 714 penelope.layland@act.gov.au

Paul Kindermann 6205 51690 0403 600 955 paul.kindermann@act.gov.au

Back to Latest Media Releases

Attachment 2 - **18 Jan 2008** - between Ray Stone (LDA) and Alfonso Del Rio of Clayton Utz discussing a reduction in the size of the power out put and whether it would still be enough to meet "Community obligation outcomes the Government would see from supporting such a venture" this relates to the deed of option.

11

104 9

Stone, Ray

From: Stone, Ray
Sent: Friday, 18 January 2008 7:53 AM
To: Alfonso Del Rio (E-mail)
Subject: Deed of Call Option

Alfonso

It would appear that the LDA has sought a variation of Annexure C of the Deed of Call Option for Block 1671 Tuggeranong (see attached)

I have held discussions with Ross McKay of CMD on the amendments outlined in the attachment seeking calcification on the reasons for the changes.

The current version I have of the Deed (Annexure C) outlines the following.

- A requirement that the Communication Facility have a GFA of 44,100m2, current proposal reduces that by 100m2. Any reason for the change ?
- Municipal Facility of at least 1000m2 (this requirement has now been omitted ?)
- Generating capacity of the Municipal Facility has been reduced from 140 Mega Watts to 90 Mega Watts. I understand the explanation, however my understanding of the deal (I could be wrong) was the generation capacity of the facility was to achieve the servicing of the Data Centre in the first instance, this made the Municipal Facility commercially viable and secondly to provide sufficient generating capacity (in an emergency) to police, hospitals and emergency services . Is the reduction of capacity from 140 to 90 mega watts sufficient to meet the Governments Strategic power needs in an emergency situation. i.e. the community obligation outcomes the Government would see from supporting such a venture.

Other than those comments the other elements look fine. I would also assume that the development covenants outlined are supported by ACTPLA and would be incorporated into any lease agreement entered into between the parties.

Ray Stone

Ross responded by stating

Scott Carr who supplied this document is on leave but I think I can answer these questions.

- Not too worried about 100m2. it looks just like a rationalisation of the dimensions to me
- the GFA isn't an issue for the GFPS in the Option but I think it will need to be clarified for the lease preparation. both the above items will be clarified when the DA is approved.
- the 90mW is for the emergency grid input only and therefore whatever the Data centre needs will be over and above. Previously the figures were combined.

The development covenants will need to be agreed by a DA approval before the option can be exercised. ACTPLA would wish to assess the DA before providing any comment on adequacy or otherwise. I will pass these comments onto ActewAGL for their information

ross

I requested that the revised Annexure C be cleared with Jock and that Jock would then liaise with you on the changes.

I am informed that this is not the procedure and that the revised documentation be made avalable to you under separate cover, hence this email.

Alfonso, could you amend the Deed to reflect the changes outlined above.

Attachment 3 - a post it note revealed from FOI which states "DAVID, CTC, Draft fee waiver letter where ACTEWAGL will be seeking Partial fee waiver to $100k The other CRC issue is Costello may be contacting you to discuss removing the requirement for emergency power could you sound the chief out please (See attached email) Ross"

111

38

DAVID,

CTC

DRAFT FEE WAIVER LETTER WHERE ACTEWAGL WILL BE SEEKING PARTIAL FEE WAIVER TO $100K

THE OTHER CTC ISSUE IS ~~[illegible]~~ LOBGUD MAY BE CONTACTING YOU TO DISCUSS REMOVING THE REQUIREMENT FOR EMERGENCY POWER. COULD YOU SOUND THE CHIEF OUT PLEASE (SEE ATTACHED EMAIL)

ROSS

08/2569

527 [illegible]

Attachment 4 - **5 February 2008** - email chain between David Dawes, Brooke O'Mahoney (someone blanked out), Ross Mackay and Carsten Larsen and Michael Costello - It states "David and Ross For information I understand from *BLANKED OUT* ACTEW that Michael Costello will write a letter of email to David today/ tomorrow regarding Annexure C of the Deed of Call Option agreement - along the lines that the Data Centre may stand on it [sic] own feet and that a peaking power station may not be required and as such a requirement to build a power station for export/emergency supply should not be prescribed in the land option agreement... It goes on to recommend by Brooke O'Mahoney that a "time critical issue for the project is submitted a DA before the new territory plan comes into force on 31 March 2008 which will add a further 3-5 months and additional cost"

√

Dawes, David

From: O'Mahoney, Brooke [brooke.omahoney@actewagl.com.au]

Sent: Tuesday, 5 February 2008 10:44 AM

To: McKay, Ross; Dawes, David

Cc: Mackay, John; Larsen, Carsten

Subject: FW: CTC - Deed of Call Option: Annexure C

David and Ross

For information, I understand from [redacted] ACTEW that Michael Costello will write a letter or email to David today / tomorrow regarding Annexure C of the Deed of Call Option agreement - along the lines that the Data Centre may stand on it own feet and that a peaking power station may not be required, and as such a requirement to build a power station for export / emergency supply should not be prescribed in the Land Option Agreement.

[redacted]d not suggest or reveal any revised wording to Annexure C to me so I gather we should wait and see the content of Michael's letter / email.

Regards

From: [redacted]

Sent: Tuesday, 5 February 2008 10:28 AM

To: O'Mahoney, Brooke

Cc: [redacted]

Subject: RE: CTC - Deed of Call Option: Annexure C

s41 (1)

Brooke

Michael is going to write to David Dawes with proposed wording.

Regards

[redacted]

From: O'Mahoney, Brooke

Sent: Tuesday, 5 February 2008 10:06 AM

[redacted]

Subject: RE: CTC - Deed of Call Option: Annexure C

[redacted]

Was wondering if there has been any update or thoughts on Annexure C.

regards

From: O'Mahoney, Brooke

Sent: Friday, 1 February 2008 1:08 PM

[redacted]

Cc: Mackay, John; Costello, Michael

Subject: CTC - Deed of Call Option: Annexure C

[redacted]

Further to our conversation this morning, please see below a revised drafting to Annexure C of the Deed of Call Option under which Actew / ActewAGL will be granted an option to acquire the land for the CTC project. CMD (Ross Mckay) has proposed the following words and seeks input / guidance as to what will be acceptable to all parties. Can you please review the words and suggest any alternatives.

- a power station facility that is capable of producing generation capacity sufficient to meet power requirements of the Communication Facility (Data Centre) with construction commencing within twelve (12) months of commencement of the lease; and an excess capacity over the Communication facility requirements for export to the ACT electricity network in accordance with national electricity market regulations for ACT emergency supply requirements to be determined prior to the Option Deed exercise date.

<< File: draft Annexure C.doc >>

Please note that

- Any excess capacity over the Communication facility requirements for export to the ACT electricity network will need to finalised and agreed between the parties (ACTEW, LDA, Govt) before the Option Exercise date. This will give the project, ACTEW and shareholders important time to reconsider positions, agree final market and price risk issues before committing to the project and presumably ACTEW exercising the option.
- Before the option can be exercised, the DA needs to be approved, 3 land valuation needs to be undertaken, and Actew to become satisfied with all those outcomes, before it exercises the option to buy the land.
- The CTC project, particularly to obtain data centre tenant interest requires early (and soon) certainty to land. Not securing this land option could jeopardise the project and market confidence in the project.
- A time critical issue for the project is submitted a DA before the new territory plan comes into force on 1 April which will add a further 3-5 months and additional cost.

I am happy to arrange a meeting between David Dawes & Ross Mackay and us to finalise.

Regards

Brooke O'Mahoney
MANAGER COMMERCIAL DEVELOPMENT
ActewAGL

Telephone: 02 6248 3163
Facsimile: 02 6248 3451
Mobile: 0414 510 133

GPO Box 366 Canberra ACT 2601

www.actewagl.com.au

Attachment 5 - **7 February 2008** an email from ACTEW Exec (Signed Michael Costello, Managing Director, ACTEW Corporation) to David Dawes "As you are no doubt aware there has been considerable discussion about the Deed of Call option for the proposed CTC site and in particular Annexure C with its reference to additional power generation for export to the ACT Electricity network... Whilst we would all like to see such a plant built obviously this would be dependent on the successful outcome of a detailed feasibility study. Should the outcome of the feasibility study be that the data centre and dedicated power plant would be a sound financial investment but the peaking plant was not financially viable, it would not make sense to stop the data centre and dedicated power plant from proceeding... until the feasibility study is completed it is important to retain a degree of flexibility in the conditions... regards Michael...

V1

Dawes, David

From: Actew Exec [Actew.Exec@actew.com.au]

Sent: Thursday, 7 February 2008 10:47 AM

To: Dawes, David

s4(1)

[redacted]

Subject: Proposed CTC site

Attachments: draft Annexure C - revised.doc

Dear David

As you are no doubt aware, there has been considerable discussion about the Deed of Call Option for the proposed CTC site and, in particular, Annexure C with its reference to additional power generation for export to the ACT electricity network. Building a gas-fired power capacity to provide peaking additional energy security for Canberra is an aim we have had for some time, but it has never proved economically feasible. The proposal to develop the Canberra Technology Centre has provided the opportunity of re-examining the feasibility of constructing the gas-fired power station to supply peak demand. Whilst we would all like to see such a plant built, obviously this would be dependant on the successful outcome of a detailed feasibility study.

Should the outcome of the feasibility study be that the data centre and dedicated power plant would be a sound financial investment, but the peaking plant was not financially viable, it would not make sense to stop the data centre and dedicated power plant from proceeding. In a similar vein, I do not believe it to be appropriate at this stage be stipulate a definitive development timeline. I propose that the requirement of "at least 44,000m2" be retained, but that stipulation of the timing of the staging be deleted. This will obviously be driven by market demand, as is indicated by the proposed wording.

Until the feasibility study is completed, it is important to retain a degree of flexibility in the conditions of the lease. I have attached proposed wording for Annexure C of the Deed of Call Option which I believe would achieve this flexibility.

Regards
Michael

Michael Costello
Managing Director
ACTEW Corporation

s4(1)

[redacted]

Annexure C

Development Approval

An approval which requires the construction of:

(a) a Communication Facility (Data Centre) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 44,000m2 which will be constructed having regard to market demand, with construction commencing within twelve (12) months of commencement of the lease;

(b) a power station facility that is capable of producing generation capacity sufficient to meet power requirements of the Communication Facility (Data Centre) with construction commencing within twelve (12) months of commencement of the lease; and

(c) if economically feasible, additional power plant capacity in excess of the Communication Facility requirements for export to the ACT electricity network in accordance with national electricity market regulations.

Attachment 6 - **7 February 2008** brief to "the Chief" "However ACTEW are now suggesting that they do not wish to provide any excess power over that needed by the data centre. You will be informed when ActewAGL resolve this issues with their partners and provide a response to Government... it is expected that ACTEW Corporation or one its wholly owned subsidiaries is likely to be the lessee... Signed Ross McKay and signed agreed Jon Stanhope.

ACEF file

OMD-B08/109

BRIEF

CHIEF MINISTER'S DEPARTMENT

Ref: C/163/08

Date	7th February 2008
To	Chief Minister • Chief Executive • Deputy Chief Executive, Business and Projects DD 7/2/08
From	Director, Project Facilitation
Subject	Canberra Technology Centre Issues

Purpose

To brief you of the progress and various issues in regards to the Canberra Technology Centre (CTC).

Background

Cabinet agreed (Decision No 3420) on 10 October 2007 for the Land Development Agency (LDA) to enter into an Option Agreement with ActewAGL to purchase Block 1671, Tuggeranong for the purpose of a Gas Fired Power Station and Data Centre.

Cabinet further agreed (Decision No 3537) on 17 December 2007 for the LDA to enter into an Option Agreement with ActewAGL to purchase part Block 1622 Belconnen for the purpose of a backup disaster recovery facility for the Data Centre.

Issues

After some extended negotiation between all parties the Option Agreement is almost ready to finalise. However a number of issues of which you should be aware have arisen since the Cabinet decisions.

Emergency power generation

The draft Option Agreement had a clause which required the gas fired power station to have a 90mW excess capacity (over that needed by the data centre) to be available to the Territory as an emergency power source. ACTEW objected to this clause and it was understood that a compromise clause of *"an excess capacity over the Communication facility requirements for export to the ACT electricity network in accordance with national electricity market regulations for ACT emergency supply requirements to be determined prior to the Option Deed exercise date"* had been agreed by all parties.

However, ACTEW are now suggesting that they do not wish to provide any excess power over that needed by the data centre. You will be informed when ActewAGL resolve this issue with their partners and provide a response to Government.

Signatories to the Option Agreement

The Cabinet submission referred to ActewAGL as the organisation with which LDA would enter into the Option agreement. Since then, ActewAGL have nominated all partners to be signatories to the agreement; specifically ActewAGL Retail Ltd, ActewAGL Retail Investments Ltd, ACTEW Distribution Ltd and Alinta GCA Pty Ltd. While all joint venture partners signing the option agreement provides the proponents with the greatest flexibility in the formative stages of the project, it is expected that ACTEW Corporation or one of its wholly owned subsidiaries is likely to be the lessee.

Possible future sale of Data Centre component
ActewAGL have advised that they are likely to subdivide the block (at some stage after the development is underway) and retain the gas fired power station site, while the data centre operator Technical Real Estate Pty Ltd will own and operate the data centre portion. This is yet to be agreed and will need approval of ACTPLA.

Fee waiver as attachment
ActewAGL are seeking a fee waiver for the Development Application (Attachment A). They have four major issues being:

[redacted]

s 43(1) 6 c

- As the ACTPLA fees are non-refundable, if the project does not proceed to development, the significant fee outlay (possibly more than the land cost) at this early stage of the project could act as deterrent to the CTC partners;
- The development is principally a small number (10 to 15) of reasonably simple building designs repeated over the site and therefore is not a complex building or development that incurs a lot of effort and expense to assess in the approval process; and
- Any fee waiver or relief will be more than offset by the direct and indirect financial benefits to the Territory and community when the project is developed.

Consultation

LDA, Treasury and GSO have been consulted on the issues contained in this brief.

Financial

If you agree to the request to partially waive the fees there will be a cost, however this will come to you via a future briefing from Treasury and ACTPLA.

Recommendation

That you note the information contained in this brief and that you will be informed of any development of these or other issues.

Ross McKay
Phone: 50675

7/2/08

Jon Stanhope MLA .... / /
AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

Attachment 7 - **18 February 2008** they had signed Annexure C the Deed of Option to be as vague as (c) additional power plant capacity in excess of the Communication Facility requirements for export to the ACT electricity network in accordance with national electricity market regulations as soon as is economically feasible."

081^

VIII

S27 Actew

Revised ActewAGL, Chief Ministers, LDA (1-2-08)

Annexure C

Development Approval

An approval which requires the construction of:

(a) a Communication Facility (Data Centre) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 44,000m2 which will be constructed having regard to market demand, with construction commencing within twelve (12) months of commencement of the lease, in accordance with the following schedule:
   i) within four (4) years of commencement of lease 17,000 m2
   ii) within ten (10) years of commencement of lease 42,000 m2
   iii) within twelve (12) years of commencement of lease 44000m2

(b) a power station facility that is capable of producing generation capacity sufficient to meet power requirements of the Communication Facility (Data Centre) with construction commencing within twelve (12) months of commencement of the lease; and

(c) additional power plant capacity in excess of the Communication Facility requirements for export to the ACT electricity network in accordance with national electricity market regulations as soon as is economically feasible.

agreed with John McKay on Monday 18/2/08.

GAS FIRED P/S. 86

DATA CNT.

Attachment 8 - **11 April 2008** Canberra Times continue to champion the scale of the project quoting John Mackay regarding the $2billion project and stating:
"And fourthly, we are hopeful at the same site we can build a significant separate gas generator."

The second generator would provide emergency back-up power in the event of the electricity grid failing.

The Canberra Times
canberratimes.com.au

Capital data hub a $2b gas giant

BY JOHN THISTLETON BUSINESS EDITOR
11/04/2008 8:45:16 AM

Canberra is a step closer to its first gas-fired electricity generator, with a consortium lodging plans for a $2billion, world-class data centre at Hume.

Canberra multi-utility ActewAGL formed the consortium last year to target global financial institutions and large government departments to lease data storage space and fund a $1 billion business case supporting gas-fired electricity.

A decade of studies had failed to establish a case for gas-fired power, until last year when ActewAGL noticed the sudden and dramatic shift in demand for data centre storage.

The consortium, Canberra Technology City, took the concept to potential users in the Asia-Pacific and Australian capital cities, and has now lodged a $2 billion project over the next decade to build a highly secure, non-stop operation.

An ActewAGL spokeswoman said the proposal was always worth more than $1 billion, but the consortium had played down its potential in the beginning.

The natural gas power station will supply electricity and chilled water for multimillion-dollar data pods, with surplus electricity being sold into the ACT and national electricity network.

The consortium comprises ActewAGL, a British-based world leader in data centres, Galileo Connect, Technical Real Estate, which will develop and own the data centres, and CB Richard Ellis.

Canberra Technology City says its leading-edge data centre will provide a comprehensive and environmentally sustainable approach to handling and securing computing and data storage needs for major financial institutions and governments across the Asia-Pacific region.

ActewAGL chief executive John Mackay said the significance of the technology city could not be understated. "It is going to be fantastic for Canberra. We will have a thriving business here.

"Secondly, it will provide jobs for young bright people. Thirdly, it will be a great opportunity for universities to help train the young bright people.

"And fourthly, we are hopeful at the same site we can build a significant separate gas generator."

The second generator would provide emergency back-up power in the event of the electricity grid failing.

"Finally this is a very environmentally friendly way of powering a data centre."

Thirteen data pods will be established at Hume and more will be built later in Belconnen.

The data pods, each worth $70million and taking two years to construct will be provided by Galileo Connect which leads the industry in Europe. The pods come in three and four-storey models and have technical space and front office areas providing service and general administration facilities.

An amenities block for reception, catering, security and general maintenance staff is expected to have 33 employees .

ActewAGL will build a dedicated gas pipeline from Fyshwick.

The gas-fired power is expected to strengthen the ACT's position as a leader in data centre infrastructure. Data centres have traditionally relied on diesel generators for back-up power.

As well as gas the data centre will have two separate electricity lines with the additional power security aimed at attracting high value data centre tenants.

A London-based international bank is among the offshore companies poised to sign a contract to use the new centre. The consortium sought customers for 22,000sqm of data storage but received enough interest for 26,000sqm and may auction the first three buildings at Hume.

Mr Mackay said the response presented a solid case for the gas-fired generators. "All the ducks are lining up nicely and that's why we have gone to this stage, we are cautiously optimistic all of these things can happen.

"We have still got work to do but we would not have submitted a development application unless it was all looking pretty good.

"The underlying case is looking very, very solid. The level of interest from potential customers is looking very encouraging."

ActewAGL's general manager of commercial development, Carsten Lawson, said the project was at a stage where contracts could be signed.

The ACT Government will make a direct sale to Canberra Technology City of the 21.6ha site on the south side of Mugga Lane, across from Mugga landfill.

Mr Larsen said a key was having companies competing with one another to sub-let space, as this would enable them to bid for government business. ActewAGL expects development approval either next month or in June, and will seek final approval from its board on June 30.

Mr Mackay said while the response was promising, the concept had not been marketed to its full potential. "We have been a little bit cautious, as we get closer to something we are convinced we can build we will crank up the marketing substantially."

It was no secret the Commonwealth and state governments had a significant need of data storage and Canberra Technology City hoped to be the one chosen to meet that need. With the Rudd Government setting greenhouse emission targets by the end of 2008 there was strong incentives to build environmentally-friendly power stations.

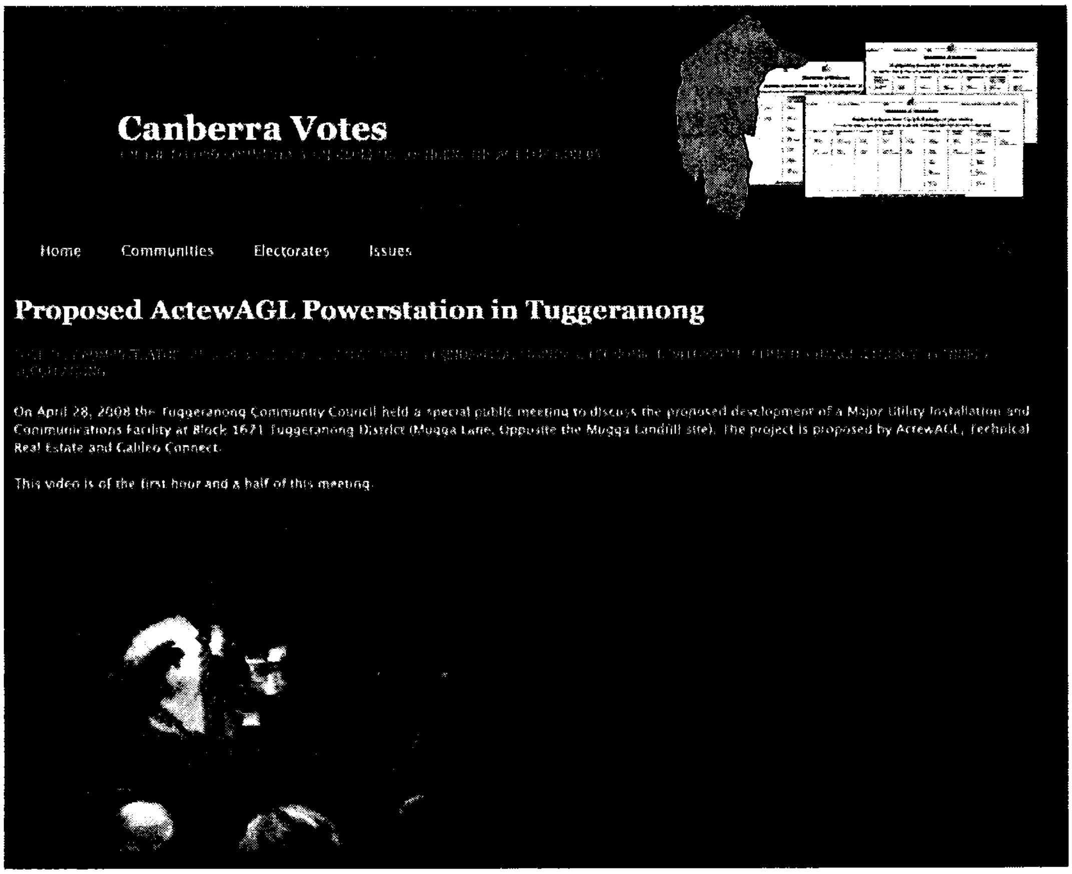
Technical Real Estate would provide much of the finance, while the gas-fired power station funding would likely come from one of ActewAGL's parent companies.

"We are not looking for the [ACT] Government to carry any of the debt. It will be good for the Government because it will deliver this without [the Government] having to take huge risks.

"While all of this is looking fantastic, it still has to pass the scrutiny of our board who will make the critical final decisions. Nothing is a done deal until that day."

Attachment 9 - **28 April 2008** first meeting with ACTEWAGL to the Tuggeranong Community Council telling the community it was a second power source for Canberra - essential to Canberra to prevent black outs.

http://www.canberravotes.com/2008/04/proposed-actewagl-powerstation-in-tuggeraning/



Canberra Votes

Home Communities Electorates Issues

Proposed ActewAGL Powerstation in Tuggeranong

On April 28, 2008 the Tuggeranong Community Council held a special public meeting to discuss the proposed development of a Major Utility Installation and Communications Facility at Block 1671 Tuggeranong District (Mugga Lane, Opposite the Mugga Landfill site). The project is proposed by ActewAGL, Technical Real Estate and Galileo Connect.

This video is of the first hour and a half of this meeting.

Attachment 10 - **30 April 2008** Alfonso Del Rio writes to Ross McKay, Gordon Lowe etc...: In my view it is better (but not essential) that the definition of Stage 1 stays as drafted as it reflects the intention to build the extra capacity where it is economically feasible to do so. If it turns out that this is not economically viable then the Crown lease is required to be amended (as Gordon notes by referencing clause 20.1 below) to delete the excess capacity references." Later on in this email chain Gordon Lowe states "... I understand and support the logic in acknowledging the aspiration for additional generating capacity in the crown lease but recognising economic reality in the Deed and providing that the final form of the crown lease may be amended to remove reference to additional capacity prior to issue. ACTEW may initially baulk at this as it varies from the form of crown lease previously provided. Given the wider interest now being shown in the power station both parties would however be prudent to recognise this aspiration in the documents. Ross do you concur with such a position from CMD's point of view?"

X 176

Dmitrieva, Marina

From: Del Rio, Alfonso [adelrio@claytonutz.com]
Sent: Wednesday, 30 April 2008 8:23 PM
To: McKay, Ross; Lowe, Gordon; Mitchell, Philip (LDA); Campbell, Jock; Stone, Ray; Wendy Dawes (E-mail)
Subject: RE: ACTEW Power Station Data Centre Deed and Lease

I just need to clarify the position with respect to the additional 90MW of additional generating capacity.
I am sorry to do this by email but am conscious that everyone want this resolved and to move on.
The Crown Lease attached to our (Wendy Dawes) email of 26 March (11:37 AM) did not in the definition of Stage 1 refer to the additional generating capacity.
However this reference was contained (and continues to be contained) in the purpose clause (3(e)) of the Crown Lease.
I am happy to take it out of the Stage 1 definition but reference to the extra capacity will remain elsewhere.
I just want to make sure that this is clearly understood so there is no confusion later.

In my view it is better (but not essential) that the definition of Stage 1 stays as drafted as it reflects the intention to build the extra capacity where it is economically feasible to do so.
If it turns out that this is not economically viable then the Crown lease is required to be amended (as Gordon notes by referencing clause 20.1 below) to delete the excess capacity references.
If it is feasible then the Crown lease should make it clear that the extra capacity needs to be provided for as part of Stage 1.

I agree with the transitional comments point.

Let me know what you want to do.
Happy to discuss.

Alfonso del Rio | Partner-In-Charge | Canberra
Clayton Utz
Canberra House, 40 Marcus Clarke Street, Canberra ACT 2601 Australia | D +61 2 6279 4009 | F +61 2 6279 4099 adelrio@claytonutz.com
www.claytonutz.com

From: McKay, Ross [mailto:Ross.McKay@act.gov.au]
Sent: Wednesday, 30 April 2008 7:40 PM
To: Lowe, Gordon; Mitchell, Philip (LDA); Campbell, Jock; Stone, Ray; Del Rio, Alfonso; Wendy Dawes (E-mail)
Subject: RE: ACTEW Power Station Data Centre Deed and Lease

Gordon,

I concur with both points.

Ross McKay | Director | Project Facilitation | Business and Projects
Chief Minister's Department | T: 02 62050675 | F: 02 62054835 | M: 0409489845

From: Lowe, Gordon
Sent: Wednesday, 30 April 2008 5:24 PM
To: McKay, Ross; Mitchell, Philip (LDA); Campbell, Jock; Stone, Ray; Alfonso Del Rio (E-mail); Wendy Dawes (E-mail)

Subject: ACTEW Power Station Data Centre Deed and Lease

FOR INFORMATION: Wendy Dawes, Ross McKay, Phillip Mitchell, Jock Campbell

PURPOSE

Response to the revised crown lease, option deed and sales contract circulated by Wendy Dawes on 29 April 2008.

ISSUES

Having reviewed the document I raise the following matters:

Power Station - Stage 1

The crown lease previously provided to ACTEW did not contain within the crown lease a reference to an additional 90 megawatts.

There new draft crown lease in Interpretation Clause 1(o) "Stage 1" states that "Stage 1 means the construction of a power station which uses gas to generate electricity and is capable of generating the power consumption requirements of the communications facility *plus an additional 90 megawatts electricity at all times*". I note that Clause 20.1 of the Option Deed provides that the Buyer, prior to the exercise date may inform the Seller that it is not economically feasible to generate the additional 90 megawatts in which case Annexure A (form of the crown lease) will be amended.

I understand, and support, the logic in acknowledging the aspiration for additional generating capacity in the crown lease but recognising economic reality in the Deed and providing that the final form of the crown lease may be amended to remove reference to additional capacity prior to issue. ACTEW may initially baulk at this, as it varies from the form of crown lease previously provided. Given the wider interest now being shown in the power station, both parties would however be prudent to recognise this aspiration in the documents. Ross do you concurr with such a position from CMD's point of view?

Compliance with Planning and Development ACT 2007 - Form of Deed

In the circulation comments there was a view expressed that the Executive's decision was made under the old legislation and the option deed can be entered into in accordance with the Executive's decision to make the direct grant and that the only problem that need be addressed is the form of the Crown lease which will be granted under the new legislation.

My understanding however is that the Executive has not made a decision to grant the lease. It has simply considered and endorsed the terms of the "deal". The grant of the lease- upon the conditions in the Options Deed being satisfied - will go back to the Executive. This is an important distinction for the purposes of the new Planning and Development Act and the Regulations. The transitional provisions relate only to situations where the grant of the lease has been formally approved - and that hasn't yet appened in this case. In any event the transitional provisions only apply for six months and teh conditions precedent may bno be satisfied within that period.

Given the above the amendments to the Option Deed are therefore necessary. **Ross, Jock** are you both comfortable with that?

Gordon Lowe

Attachment 11 - **3 May 2008** Brooke O'Mahoney signed the alteration documents on 3 May 2008 - under part 4:
"Fully describe your proposal or list amendments"... Major utility installation and communications facility altered DA due to reductions [sic] in 1. Generation Capacity 2. Number of data centres 3. Block size.

9

ACT GOVERNMENT

ACT Planning & Land Authority

OFFICE USE ONLY

Application number

Technical check

Public notification ☐ Yes ☐ No

Neighbour notification ☐ Yes ☐ No

	Yes	No
Lessee's	☐	☐
Holding Lease	☐	☐
Unleased	☐	☐
Unit Titled	☐	☐
EER	☐	☐
Heritage	☐	☐
NCA	☐	☐
Compliance	☐	☐
Pub Reg Exempt	☐	☐

Fees

D&S	
P/Not	
L/Var	
Dial/S	

Date received / /

Receipt number

Receiving officer

Land (Planning and Environment) Act 1991 - Form 1

Development Application

Type of Application *(tick relevant box)*

☐ **New Application**

If you attended a Pre-lodgement meeting please provide the Proposal Number

☒ **Alteration (S226(7))** - to a current application not yet approved

☐ **More Information (S233)** - providing additional information to a current application which is in response to a written request from the Authority.

☐ **Conditional Approval (S245)** - satisfying conditions of approval

☐ Additional information (S245)

☐ **Minor Amendment (S247)** *Original proposal No.*

An amendment to an application with an approval already in force where a Certificate of Occupancy has not been issued.

Has development commenced on the property? ☒ No ☐ Yes If yes, date of commencement ______

☐ Additional information (S247) In support of current S247 application

Part 1: Lease/Site details

If more than one lease/site, attach the following details for each lease/site.

Block: PART 1671

Section:

Unit (if applicable):

Suburb:

District: TUGGERANONG

Street Number: Postcode:

Street Name: MUGGA LANE

Part 2: Applicant details

Surname: O'MAHONEY

First Name: BROOKE

Australian Company Number (ACN): ABN 76 670 568688

Company Name: ACTEWAGL DISTRIBUTION

If a company, position held within the company: MANAGER, COMMERCIAL DEVELOPMENT

Postal Address: GPO BOX 366

Suburb: CANBERRA

State/Territory: ACT Postcode: 2601

Phone Number (business hours): 6248 3163

Fax Number: 6248 3109

Email: BROOKE.OMAHONEY@ACTEWAGL.COM.AU

Unless otherwise specified your plan/s will be returned via email Mail ☐ Pick Up ☐

Did you know? Development applications can be lodged electronically. The steps involved are detailed on our website at: www.actpla.act.gov.au

Part 3: Lessee (Property Owner) details

1st Lessee's details

Or Govt. Land Manager
(unleased land only)

Office Use	
Init	

Surname

First Name

Company name

Australian Company Number (ACN)

If a company, position held within the company

Postal Address

Suburb

State/Territory Postcode

Phone Number (business hours)

Fax Number

Email

*** Lessee must sign Part 7 of the application form**

- *All lessees must sign authorising the lodgement, and in doing so give authority to the applicant to negotiate any dealings with the application through to its determination by the relevant authority, or a Power of Attorney must be attached. If there are more than two lessees, please ensure that details and authorisation are attached to the application for each lessee.*
- *If the lessee is a registered company, organisation or government agency you must execute this application in the proper manner for that company, organisation or government agency. For example, if the lessee is a community organisation, the full name of the community organisation must be stated and the signatory must identify what position of authority he/she holds in the organisation.*
- *Any application made over a site which has been Unit Titled will require approval in accordance with the articles of association for that units plan.*

Part 3: Lessee (Property Owner) details

2nd Lessee's details

Or Govt. Land Manager
(unleased land only)

Office Use	
Init	

Surname

First Name

Company name

Australian Company Number (ACN)

If a company, position held within the company

Postal Address

Suburb

State/Territory Postcode

Phone Number (business hours)

Fax Number

Email

*** Lessee must sign Part 7 of the application form**

Part 4: Fully describe your proposal or list amendments

MAJOR UTILITY INSTALLATION AND COMMUNICATIONS FACILITY.
ALTERED DA DUE TO REDUCTIONS IN:
(1) GENERATION CAPACITY
(2) NUMBER OF DATA CENTRES
(3) BLOCK SIZE

Examples: •New 2 storey residence & garage • Addition of bedroom & ensuite to rear of residence

Part 5: Type of Development

☐ **Single Dwelling**
- ☐ New residence
- ☐ Addition/alteration to existing
- ☐ Demolition/rebuild
- ☐ Outbuildings (Such as carports, garages & pergolas)

☐ **Multiple Dwelling** (incl Dual Occupancy)
- ☐ A10 Core Area or
- ☐ Suburban Area

- ☐ New development ______ No. of new Dwellings to be constructed ______ Total No. of Dwellings
- ☐ Addition/alteration to existing
- ☐ Outbuildings (Such as carports, garages & pergolas)

☒ **Non-Residential** (incl Commercial, Industrial, Rural, Community, Institutional)
- ☒ New building
- ☐ Addition/alteration to existing

☐ **Mixed Use** (combined Non-Residential & Residential Developments)
- ☐ New building ______ No. of Non-Residential Units ______ No. of Residential Dwellings ______ Total number of Dwellings
- ☐ Addition/alteration to existing

☐ **Signage**

☐ **Lease Variation**
- ☐ Clause changes
- ☐ Consolidation
- ☐ Subdivision
- ☐ Encroachment
- ☐ Land Rent Payout

☐ **Home Business** (Please complete Form 2 Home Business Checklist in addition to this form)

☐ **Estate Development Plan** (Please complete Form 3 Estate Development Plan Checklist in addition to this form)

☐ **Public Works** (incl Roads, Stormwater Drainage, Parks, Electricity, Gas, Telecommunications, Water, Sewerage, Services)

Please note that the estimated cost to be stated here is to include the cost of all associated works such as landscaping, parking, etc. as well as off site works.

What is the estimated cost of the development as calculated in accordance with the Building Cost Guide?

$ ______ . 0 0

Existing GFA ______ m²
and/or
Added GFA ______ m²
and/or
GFA to be demolished ______

Total GFA ______

"GFA" means gross floor area

The Building Cost Guide can be located on the Authority's website: www.actpla.act.gov.au

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ENERGY RATING: Was the orginal dwelling first approved after 30 June 1995? ☐ No ☐ Yes Date (MM/YY) ______

ENVIRONMENTAL IMPACT: Does the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* affect your proposal?
(Please refer to last page of this application form for further information) ☐ No ☐ Yes

WORKS ON VERGE AND/OR PUBLIC LAND: Are you proposing works or modifications on the verge or public land?
☐ No ☐ Yes (If yes please specify)

New or Existing Services ☐ No ☒ Yes Road Work ☐ No ☐ Yes Footpaths ☐ No ☐ Yes Landscaping ☐ No ☒ Yes

Part 5: Type of Development (continued)

TREES: *(For more information see page 19 of application form)*

Is there an approved Tree Management Plan for the block where the development is proposed or any of the neighbouring blocks? ☐ No ☒ Yes

If yes, you will need to lodge the approved Tree Management Plan with your Development Application.

Note: You may apply to Environment and Recreation for approval to replace or amend an existing Tree Management Plan.

Is there a protected tree on the block where the development is proposed? ☐ No ☐ Yes

If yes, you will need to submit either an approved or draft Tree Management Plan with your development application.

Is there a protected tree on any of the neighbouring blocks? ☐ No ☒ Yes

If yes, you will need to answer the following questions:

- Is it a Regulated Tree? ☐ No ☒ Yes
  If yes, you will need to lodge either an approved or draft Tree Management Plan if the canopy of the tree is within 2m of the block where the development is proposed.
- Is it a Registered Tree? ☐ No ☐ Yes
  If yes, you will need to lodge either an approved or draft Tree Management Plan with your Development Application.

Is there any proposed works within the tree canopy of any tree on public land/verge adjacent to the development site? ☐ No ☒ Yes

DRIVEWAYS:

For proposals that include construction or modification of driveway/s please indicate works to be undertaken:

Relocation of existing entrance ☐ Construction of additional entrance ☐

Construction of new driveway ☒ Construction other than plain concrete ☐

Other (please specify) ☐ ________________

OVERHEAD WIRES: Are there any overhead wires over the block? ☐ No ☒ Yes

If yes, please indicate location of wires on site plan.

STORMWATER: Are there any stormwater easements on the block. ☒ No ☐ Yes

Part 6: Exempting Parts of Your Application From the Public Register

The *Land (Planning and Environment) Act 1991* requires all applications to be placed on a Public Register.

If you meet specific criteria you may apply to exclude parts of your application from the Public Register (refer to section 228 *Land (Planning and Environment) Act 1991*).

I wish to apply for exemption from the Public Register. ☐ No ☐ Yes

Information to be excluded from the register

____

Please give reasons in support of your request for exemption

____

Part 7: Applicant & Lessee Declaration

I/we the undersigned, hereby apply for approval to carry out the development described on the land specified in this application;

I/we hereby authorise the ACT Planning and Land Authority to erect sign/s on the subject property(s) as required;

I/we hereby authorise ACT Government officers to access the subject property(s) for the purpose of evaluating the proposal (including the inspection of trees);

I/we understand that this application may be electronically scanned and made available for public inspection via the internet;

I/we declare that all the information given on this form and its attachments is true and complete;

I/we understand that the information submitted with this application form will undergo a documentation check prior to the formal lodgement of the application (and payment of fees), and further information may be required prior to the acceptance of the development application by the Authority;

I understand that all costs including the relocation of any engineering services (light poles, stormwater, sumps etc) will be at my expense and that I will indemnify the ACT Government, its servants and agents against any claims arising during construction;

I understand that construction of any driveway associated with this application may not commence until the contractor has received endorsement by Asset Acceptance. I understand that a Certificate of Design Acceptance must be obtained from the Asset Acceptance Section of the Department of Territory and Municipal Services prior to the start of construction works and a Road Opening Permit and Temporary Management Plan obtained from Roads ACT.

I/we the undersigned (lessee) appoint the applicant whose signature appears below to act on my/our behalf in relation to this Development Application. This authorises the applicant to pay all application fees, bonds and securities, liaise with the ACT Planning and Land Authority when required, alter, amend or provide further information as necessary and receive any communications relating to this Development Application.

In addition, if signing on behalf of a company, organisation or Government agency.

I/we the undersigned, declare I/we have the appropriate delegation or authority to sign on behalf of the company, organisation or Government agency.

CONFLICT OF INTEREST DECLARATION: Does the applicant or lessee have any association with ACT Planning and Land Authority staff? ☒ No ☐ Yes

If yes, please provide details: ____________________

PLEASE NOTE: *There are penalties for deliberately giving false and misleading information. The Planning and Land Authority or Minister may revoke an approval if satisfied that the approval was obtained by fraud or misrepresentation.*

				Office Use
Applicant's Signature(s)	[signature]	Date	3/5/2008	Init
1st Lessee's Signature(s)		Date		Init
2nd Lessee's Signature(s)		Date		Init
Govt. Land Manager's Signature *(unleased land only)*		Date		Init
Delegate of ACTPLA Signature *(unleased land only)*		Date		Init

Attachment 12 - **27 May 2008** - the final day of filing submissions to ACTPLA - Mr Stanhope's press release in which he blames the community for the down scaling and loss of $1 billion and praises ActewAGL as being good corporate citizens - the same day Michael Costello says they had thought very hard and listened to the public and responded to the public concerns. On the news that night Chris Peters blasts the community for being responsible for the loss of the second power source. No one in ACTEWAGL, TRE or the Chief Minister or his officials steps up to correct the accusation leveled against the community and explain the downscaling was decided upon as the results of their financial viability study was revealed in early February 2008.

Downscaled data centre plan proves system works - without ministerial interference

Released 27/05/2008

187/08 27 May 2008

DOWNSCALED DATA CENTRE PLAN PROVES SYSTEM WORKS – WITHOUT MINISTERIAL INTERFERENCE

Chief Minister Jon Stanhope said the decision to downscale a proposed secure data centre campus proved that existing statutory assessment systems worked, and were responsive to community concerns.

A consortium, which includes ActewAGL, had proposed a secure data centre campus, comprising a gas co-generating facility and gas-fired peaking power station, at a site opposite the Mugga Lane Tip.

The community consultation phase of the assessment of the proposal ends today.

In response to community concerns at the impact of the development, ActewAGL has told the ACT Planning and Land Authority that it proposes a significant downscaling of the development.

The altered Development Application, which will need to be renotified, scales back the proposed development in a number of ways:

- the proposal for a 'peaking power' station – capable of providing a back-up power supply to the people of the ACT in the event of problems with the electricity supply – has been eliminated from the DA altogether;
- as a consequence, the number of turbines and power generation capacity have reduced from 210 MW to 28 MW. The remaining gas turbines will service the data centre power demands and will be housed inside a building, reducing the visual impact of the power-generating component of the proposal;
- the number of exhaust stacks required would fall from 18 to 4; and
- the amount of land required for the proposal has been scaled back from 21.1 hectares to approximately18 hectares.

"I understand that the revised DA will decrease emissions from the complex – one of the biggest concerns of nearby residents – with Nitrogen Dioxide levels at least 20% below World Health Organization guidelines," Mr Stanhope said. "The initial proposal would have nudged those limits and the consortium has now put forward an amended proposal that deserves to be assessed on its own merits.

"I understand too that the scaled-back proposal will comfortably meet standards in relation to noise."

Mr Stanhope said he was not in a position to judge the merits of the amended proposal – any more than he had been equipped to assess the original application. But he said the consortium's preparedness to be a good corporate citizen and listen to community concerns, showed that the existing statutory methods for assessing development applications worked.

"I have only ever been concerned that we give the proponents of this major investment a chance to be assessed on their merits and to be accorded procedural fairness.

"I do regret that some people have misunderstood the purpose of our arm's-length statutory assessment processes, and have wanted or expected me to abort that process before all the facts are in, and before all the views are known.

"We see today the system at its best – giving voice to the community, leaning on developers to amend their aspirations, putting all views on the public record and on the front page of the local paper."

Mr Stanhope said he understood that the consortium was still interested in building a peaking power plant and a back-up data centre campus on a second site, but that the proponents had accepted that this site should be appropriately distanced from urban and concentrated residential areas or population centres.

"There is now no prospect of a power station secondary site anywhere near Belconnen, for example," Mr Stanhope said.

"I truly hope that what the consortium will achieve with this altered DA is a proposal that will answer the main concerns of Tuggeranong locals, while retaining for Canberrans at large this massive investment in their local economy, an investment creating hundreds of skilled jobs."

Mr Stanhope said it was important for Canberrans to understand that the scaled-down data centre campus would not deliver the same benefits to the economy or the job market as the initial proposal but would continue to deliver secure world-leading data centre capability that is in high demand. The proposal, initially valued at about $2 billion, would now be worth around $1 billion, while the number of jobs created would be up to 300, instead of 400.

He said he understood that new plume and noise studies relating to the revised proposal would be lodged with ACTPLA early next week.

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Back to Latest Media Releases

Attachment 13 - **31 May 2008** - Canberra Times article:
Mr Costello said the consortium was told three weeks ago a 100MW peaking station was commercially unviable.
He said the firm spent weeks perusing other options before making the announcement to scrap the peaking station on the Tuggeranong site and scale down the data centre.
"It's too small. It has to be 350 to 450 [megawatts] so that site was not suitable whether there were protests or not,"Mr Costello said.

The Canberra Times
canberratimes.com.au

Chief in dark on gas plant backflip

BY JOHN THISTLETON AND EWA KRETOWICZ
31/05/2008 10:36:00 AM

ActewAGL's incoming chief executive, Michael Costello, shelved a prized gas-fired power station to back-up Canberra's electricity supply without telling the project's champion, John Mackay.

Mr Mackay, ActewAGL's chief executive who retires next month, vowed the utility would do whatever it took to establish the gas-fired power station.

Named Canberra's citizen of the year for ActewAGL's success and his civic and charitable work, Mr Mackay had trumpeted the $2billion power station and data centre as one of the territory's most significant projects.

He was overseas on Tuesday when Mr Costello, who will replace him on July 1, announced a dramatic scaling back of the contentious power station from 110 megawatts to 28 megawatts.

If approved, the project will be enough to drive multi-million-dollar computer data pods, but insufficient to realise a dream of more than a decade to back-up Canberra's power supply with a gas-fired station.

After taking the brunt of Macarthur residents' opposition to the project, Mr Costello said there had not been any reaction from Mr Mackay to scaling down because he was on leave. "I didn't tell him," he said. "When you are on holidays, you are on holidays."

Mr Costello said Mr Mackay's "whatever it takes" comment meant ActewAGL would do whatever was necessary to meet emission standards, including scaling it down, and was not a Rambo-style declaration of crash or crash through. ActewAGL engaged one of Australia's top public relations companies, Parker and Partners, in December to advise on communications.

Mr Costello said it was rubbish to suggest ActewAGL contributed to a negative message to potential investors by not better managing the preliminary consultation.

"I think it is disappointing that people react as strongly as they do and with an **obvious sort of sense that somehow, someone is trying to pull the wool over their eyes**," Mr Costello said.

He said it was bizarre to say ActewAGL acted secretly, when it had trumpeted the project and was proud of it.

He would not be drawn on the October ACT election's influence on the project.

Mr Costello said the consortium **was told three weeks ago a 100MW peaking station was commercially unviable**.

He said the firm spent weeks perusing other options before making the announcement to scrap the peaking station on the Tuggeranong site and scale down the data centre.

"It's too small. It has to be 350 to 450 [megawatts] so that site was not suitable whether there were protests or not,"Mr Costello said.

He said ActewAGL was committed to building a 400-600MW gas power station in Canberra, but it would be well away from town centres.

Mr Costello said the scaled down data centre would not satisfy everyone but the environmental impact would be significantly smaller.

"We believe that we will be so far below conceivable standards that everyone will be completely reassured and we will have reports that say that," he said.