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Jon Stanhope MLA

CHIEF MINISTER

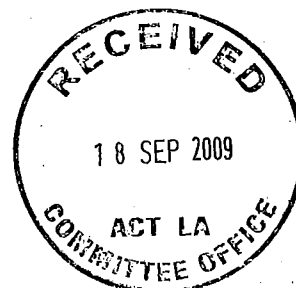
MINISTER FOR TRANSPORT MINISTER FOR TERRITORY AND MUNICIPAL SERVICES

MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT

MINISTER FOR INDIGENOUS AFFAIRS MINISTER FOR THE ARTS AND HERITAGE

MEMBER FOR GINNINDERRA

Ms Caroline Le Couteur MLA
Chair
Standing Committee on Public Accounts
GPO Box 1020
CANBERRA ACT 2601



Dear Ms Le Couteur

I refer to your letter dated 28 August 2009 inviting my comment on the confidential extracts of a submission received by the Committee in relation to its inquiry into Auditor-General's Report No.7 of 2008: *Proposal for a Gas-Fired Power Station and Date Centre – Site Selection Process*. I am responding on behalf of my Ministerial colleagues whom you also wrote to regarding this matter.

I note that the committee has not determined whether it might expunge some of the material in the extracts, as it is empowered to do under the Legislative Assembly's Standing Order No.264A (1). It is the view of the Government that the extracts are emotive and malicious in nature, and appear designed as character assassinations of certain persons rather than as a reasoned treatment of the actual issues. This makes many of the extracts irrelevant to the central issues, and prejudicial to the reputation of individuals. On this score, most of the extracts do not warrant publication.

I also note your statement that the extracts contain statements that could be considered as adverse reflections on me. The Committee will no doubt consider whether some of the extracts bear on the application of Standing Order No.259 (allegations against a Member of the Assembly). If the Committee decides to refer the allegations to the Assembly, I request that this response be included in the Committee's report. This will ensure Members are properly informed.

The Government is disappointed that the author of the extracts (Canberrans for Power Station Relocation (CPR), as explicitly stated in some of the extracts) persists in presenting its opinions without declaring its own interest in seeking to discredit agencies, individuals and processes. CPR provides no evidence to support the assertions in the extracts, which go far beyond the more measured opinions of the Auditor-General in her Report No.7. The extracts do not address the substantive issues raised by the proposed development. There is no attempt to distinguish between references to the original application, the amended application, and the second application – thus confusing the situation utterly. The extracts rely on emotive language, trumped-up claims, and either misguided or deliberately misleading

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statements. In the process, the extracts misrepresent many of the statutory events and incorrectly interpret the roles and responsibilities of those involved.

The authors of the extracts wrongly presume that their opinion is necessarily the opinion of the Canberra community, despite (for example) the contrary evidence provided by the unanimous support in the Legislative Assembly for special legislation to facilitate relocation of the data centre in accord with the second application. The support of the ACT Greens and the ACT Liberal Party hardly appeared 'collusive and weak' as stated in the extracts. The fact that the location was shifted, demonstrates the Government – and the Assembly's – willingness to address community concern about the location originally proposed.

The following points respond to the misinformation in the extracts, as they related to the role of the Minister for Health and her Department:

- The Health Impact Assessment (HIA) process announced by the Minister in June 2008 looked at the impacts on the residents of the health facility. The HIA Report provides the necessary information in relation to the assessments conducted and the recommendations that relate to the health facility. When the Environmental Impact Statement (EIS) process for the Canberra Technology City proposal was announced by the Minister for Planning, the Minister for Health and her Department asked that the completed HIA form part of the EIS process. This request was agreed to;
- The Health Protection Service (HPS) of ACT Health assessed the original Preliminary Assessment (PA) for the Canberra Technology City proposal and requested a fully independent HIA to be carried out, to ensure that all health implications, positive and negative, were considered in the decision making process. By requesting a HIA, the HPS demonstrated its professionalism and acted in the best interest of ACT Health and the Canberra community;
- The HPS provided feedback to the ACT Planning and Land Authority (ACTPLA) at the Preliminary Assessment stage of the process. The HPS, when requesting a HIA to be carried out, stated in its submission on the PA that a HIA would provide for negative impacts to be avoided or at least mitigated and positive impacts to be promoted. The HPS also stated that people's perceptions and anxieties about the proposal should be taken into account, as they can also have adverse health impacts. The HPS was of the opinion that predicting the health impacts of a proposal included community consultation and identification of the potentially affected population, information about risk assessment and risk management. The HPS clearly stated in its submission on the PA that results of the community consultation process should inform the identification of the potentially affected population and the risk management options;
- In relation to gaining the opinion, views and wishes of residents and workers in the health facility, the consultant engaged by ACT Health to conduct the HIA met relevant personnel of Disability ACT specifically around potential impacts from the proposed development on the health facility. The findings of their assessment and the recommendations were outlined in the HIA Report. Potential impacts on the health of the citizens of Canberra were also outlined in the HIA Report;
- Submissions made by ACT Health regarding PM2.5 were not ignored in the decision-making process. The work previously undertaken for an EIS for the Tuggeranong site was included in the assessment process for the development

application (DA) for the alternative site in Hume. This meant that the information from the EIS and HIA reports was included to inform the DA process for the new site.

The following points respond to the misinformation in the extracts, as they related to the role of the Minister for Planning and the ACT Planning and Land Authority (ACTPLA):

- The Health Impact Assessment (HIA) was a separate exercise to the Environmental Impact Assessment (EIS);
- The EIS and therefore the development application (DA) were never completed for the original site;
- ACTPLA did not receive any instruction to accept any application (the law outlines the process that must be followed);
- The Chief Minister had no say in determining the definition of the data centre as a communications facility, this was entirely a matter for ACTPLA officers who based their view on informal advice from ACTPLA's General Counsel and the Government Solicitor's Office (both of whom considered the data centre satisfied the definition of communications facility). Later advice from independent Counsel supported this view;
- The ACT Government cannot change the National Capital Plan;
- The buildings of the type and nature contemplated with the DA were already capable of being considered in a number of locations within the ACT;
- Territory planning policy is determined by the Government and the Legislative Assembly, not the Chief Minister or ACTPLA;
- If the community had been ignored, there would not have been an amendment to the original DA or the proposal moved to an alternative site;
- ACTPLA did not ignore submissions;
- No HIA or EIS was required for the development on the alternative site;
- ACTPLA's processes for assessing development applications are largely set by statute and, in relation to this project, transcended two pieces of legislation for the original site and a third for the alternative site;
- ACTPLA is only an independent statutory authority for a number of specified statutory functions, including development assessment. It is bound by the laws and policies set by the elected representatives. It is certainly not able to be 'abused for the benefit of an elite, well connected business group';
- ACTPLA has to interpret those laws and policies that are available to be disputed and reviewed. This does not make the act of arriving at an interpretation that differs to the opinion of another party wrong; and
- There is no legislative basis for the claims made in respect to how ACTPLA acted having regard to its statutory responsibilities.

In relation to the role of the Department of Territory and Municipal Services (TAMS), some examples of the misinformation in the extracts include:

- TAMS *was* adequately consulted at different stages to assess the viability of the project. There was no evidence from TAMS' point of view suggesting a pre-determined position on the implementation of the development;
- It is a well established process for proponents to seek pre-lodgement advice on significant projects. This is achieved through Pre-Application meetings between the proponents and relevant agencies (e.g. all Estate Development Plans, as well as large commercial and industrial development proposals, go through a pre-application meeting process);

- It is not the role of government agencies to undertake full and extensive research when providing comments *prior to completion of project designs and lodgement of a DA*; rather, it is their role to identify and clarify the various issues likely to be raised by the proposal and the nature of the documentation that will be required if a formal application is lodged with ACTPLA;
- The Parks, Conservation and Lands (PCL) area of TAMS provided professional comment at several stages of the applications in relation to bushfire protection and management, natural resource protection and horse paddock management, and ecological and environmental impacts. PCL's comments were largely technical and factual in nature and did not reflect strategic planning or social planning issues, which are the prerogative of planning agencies;
- The PCL comments were consolidated into a single objective view and did not reflect subjective preferences;
- The Environment area of the (then) TAMS likewise provided professional comment at various stages of the applications, including advice on environmental, heritage and ecological clearances for the site;
- At no time was any area of TAMS subject to direction by the minister in relation to the applications.

The following points respond to the misinformation in the extracts, as they related to my role as Chief Minister and the role of the Chief Minister's Department (CMD):

- Due diligence was required of the original application, as shown by the use of a Deed of Option which protected the Territory's interest by specifying precisely the conditions to be satisfied by the proponent. Unless all of these conditions were met, the LDA could not even consider granting the land;
- The Auditor-General found that Government agencies complied with existing processes in relation to the site identification process;
- The Auditor-General found also that the process followed by Government agencies reduced the risks to the Territory by requiring the proponent to meet a number of conditions including obtaining an approved DA and providing key information about the project, such as a business case, prior to a direct land transfer;
- It is the view of all Government agencies that consultation on a proposal *before a DA is lodged with ACTPLA*, is not the latter's responsibility but the proponent's. For Government agencies to conduct such consultation before the DA is lodged, would run the risk the community would interpret this as advocacy on behalf of the proponent;
- CMD does not pressure ACTPLA in relation to interfering in its statutory assessment processes;
- The Government had not made its mind up 'to support and deliver the project long before the application was filed', as is shown by the *conditional* nature of the Government's *in-principle* support;
- It was a requirement of the Government's conditional approval that the financial viability of the proposal be proved to the Territory's satisfaction before the sale could be finalised;
- The alternative site for the proposed development was selected by a professional group of public servants bringing their particular agency expertise to the task – the group included representatives of ACT Health, TAMS, the Department of the Environment, Climate Change, Energy and Water, the LDA and ACTPLA. The group carefully examined a number of potential sites and ranked them according to size, zoning, proximity to existing services,

proximity to residences, land tenure, past site studies, ecological and heritage issues. The site in the Hume industrial area emerged as the most desirable on these criteria;

- The government of the ACT has a right, and indeed a duty, to promote economic development that will benefit the people of Canberra. Given that our city is the most knowledge-intensive regional economy in Australia, it is obvious that *any* Territory government would seek to reinforce this strength – and the data centre industry is a business that is strategically advantageous to Canberra. Such encouragement of investment in Canberra does not obviate the need for independent assessment of development proposals.

There are three overarching comments to make on the extracts. First, the number of occasions when the Government I lead has been held up for comment by Members of the Assembly, the general public and also by the Auditor-General, disproves claims about the Government being 'dictatorial' or governing 'without audit, review, censure or consideration for the best interests of the people'. Second, I do not, and cannot, direct the heads of Environment, TAMS, Health or ACTPLA in relation to their view of 'the best interests of their portfolios' - though I must point out that is a requirement of our democratic system that those officers carry out the policies of the lawful Government of the day. Third, the malicious and malevolent comment on the character of noted Canberra citizens is, quite simply, unacceptable.

In conclusion given the extensive inaccuracies and defamatory comments contained in the extracts that bear directly on the professionalism, character and dedication of both elected officials and public servants I cannot envisage any circumstances that would justify the release or publication of the extracts.

Yours sincerely



Jon Stanhope MLA
Chief Minister

18 SEP 2009

