

29.7.09

**GOVERNMENT SUBMISSION TO THE STANDING COMMITTEE ON
PUBLIC ACCOUNTS IN RELATION TO RECOMMENDATIONS
CONTAINED IN THE AUDITOR-GENERAL'S REPORT ENTITLED
'PERFORMANCE REPORT: PROPOSAL FOR A GAS-FIRED POWER
STATION AND DATA CENTRE – SITE SELECTION PROCESS'**

Auditor's Recommendation 1:

To enhance accountability and to provide clarity to the community and private sectors about the requirements associated with a request for strategic project facilitation status, Government should adopt criteria to define a strategic project and the strategic project facilitation process.

In consultation with relevant agencies, the Strategic Projects Facilitation Unit should develop these criteria, which would identify when, how and what is required of proponents in relation to issues such as:

- *a business case;*
- *financial analysis;*
- *statement of financial and other risks, with appropriate risk allocation and mitigation measures;*
- *environmental and health impacts;*
- *planning approvals;*
- *a plan for appropriate consultation with the general community and identifiable stakeholders; and*
- *coordination arrangements.*

Government Response:

Agreed.

The criteria to define a strategic project or program involve one or more of the following:

- the project is of strategic significance to the ACT, for example, benefits the economy of the ACT or region and/or contributes to the environment, social or cultural features of the ACT and/or introduces new skills, technology or services in the ACT and/or contributes to the export earnings and import replacement of the ACT or region and/or facilitates the achievement of a major policy objective;
- Government approvals are required in relation to the release or identification of land or buildings;
- complex or sensitive approvals are required, perhaps due to the project's innovative nature and/or to the need to obtain Australian Government approvals, for example, National Capital Authority approval or Environmental Protection and Biodiversity Conservation Act (EPBC) approvals;
- the project impacts significantly on ACT infrastructure (which might be transport, utilities, services of social infrastructure);
- the project would benefit from whole-of-Government coordination by the Strategic Project Facilitation group;
- the project is associated with a key Government priority.

The reference to programs reflects the fact that the Strategic Project Facilitation group deals not only with individual projects but also with certain key priority areas of the Government such as the land supply strategy, implementation of the Affordable Housing Action Plan, managing the Territory/ANU Precinct Agreement, the assessment of eligibility for direct land sales, and implementation of the Building for Our Ageing Community Strategy. A variety of specific projects may be handled by the Strategic Project Facilitation group under these broad headings at any one time.

The strategic project facilitation process, in so far as it involves the Chief Minister and the Chief Minister's Department (CMD), generally involves one or more of the following:

- (i) advancing the implementation of a specific Government-funded activity such as the Arboretum or examination of a whole-of-Government office building;
- (ii) assessing, with agency assistance, whether a development proposal has met the criteria to define a strategic project, and advising the Government accordingly;
- (iii) if the proposal meets the criteria, then the Strategic Project Facilitation group may facilitate the proposal's entry and passage through the statutorily independent assessment system, recognising at all times that the involvement of the Chief Minister's Department does not extend to interference in the formal assessment process by the responsible assessment officers in the relevant Government agencies including the ACT Planning and Land Authority (ACTPLA), the Department of Territory and Municipal Services (TAMS) and the Department of the Environment, Climate Change, Energy and Water (DECCEW);
- (iv) providing services to the proponent that may include providing information to assist feasibility studies; advising on issues affecting the project; advising on site selection; assisting with Government regulatory and approval agencies; undertaking advocacy within government; providing intermediary support with energy providers, property agents, planning and development consultants; and establishing industry links;
- (v) assisting the proponent to understand the full gamut of what is required of them, including the need for an appropriate community engagement strategy at an early stage for sensitive projects;
- (vi) monitoring progress of the Development Application or Land Sale Application and, in conjunction with agencies, identifying any impediments to the project proceeding;
- (vii) providing regular reports to the Chief Minister/Minister for Business and Economic Development on the progress of projects;
- (viii) Ministers and departmental officers are required to treat a strategic project as a very high priority within their portfolios; and
- (ix) where appropriate, advising the Chief Minister/Minister for Business and Economic Development of the need to consider policy or procedural changes as a result of experience in handling the project or program.

In relation to specifying what is required of proponents, the details of what, when and how is required of proponents in relation to a business case, financial analysis, statement of risks, environmental and health impacts, planning approvals, community consultation and coordination arrangements is generally not for CMD to determine but, rather, is the responsibility of relevant Government agencies. For example, the Department of

Treasury may advise on the nature of a business case and financial analysis; the Department of Health on health issues; the Department of the Environment, Climate Change, Energy and Water on environmental issues; the Department of Territory and Municipal Services on various issues including traffic; and ACTPLA on the planning approval process. However, in light of the experience gained by the site selection process for the data centre/power station, the proponent of any significant or otherwise sensitive strategic proposal will be informed of the need to prepare a formal community engagement strategy at the pre-Development Application stage.

Auditor's Recommendation 2:

To provide greater certainty for the business sector and the broader ACT community, ACTPLA should:

- *clarify the purposes for which broadacre land may be used, as defined in the Territory Plan, and*
- *as far as is practical, ensure definitions are consistent with those in the National Capital Plan.*

Government response:

Agree in-principle. While ACTPLA makes every effort to align the definitions in the Territory Plan to those in the National Capital Plan, there is always likely to be instances where the definitions do not align, reflecting the fact that the National Capital Plan is a Commonwealth document responding to the Commonwealth's specific interests whereas the Territory Plan is ACT legislation responding to our particular needs and responsibilities. In short, the content of the National Capital Plan is outside ACTPLA's control and it does not operate at the same level of detail as the Territory Plan.

It also needs to be recognised that, no matter how tight the definition of a particular planning term, there is likely to be room for ambiguity and even legal uncertainty about the application of that definition to a specific circumstance.

Recommendation 3:

Government should not depart from the established and sound procedures for direct land sales unless there are compelling reasons. Any case to support departure from these procedures should be clearly documented.

Government response:

Agreed.

It is important to acknowledge that the Auditor found the existing procedures for direct land sales were followed by Government agencies in the site identification process for the gas-fired power station and data centre. The statement in the Audit report that the important issue of proximity of the proposed data centre to the respite facility managed by the Department of Disability, Housing and Community Services (DHCS) was not addressed, is questioned by the Department which advises that it was aware a Development Application would be required where the proponents would need to address specific issues. DHCS was considering whether it would need to move the respite service if the development proceeded in its original form.

Notwithstanding the finding that existing processes were followed, new processes were instituted during 2008 to improve the process for direct land sales by tightening the eligibility requirements. In particular, the Government has established an inter-agency Assessment Panel (chaired by Chief Minister's Department) to determine whether applicants meet the statutory eligibility requirements, which are set out in the *Planning and Development Act 2007* Section 240 (2). The Assessment Panel requires applicants to demonstrate that they have the financial capacity to undertake the proposed development on the land they are seeking to acquire. The Panel informs the Chief Minister about the outcome of this process. The Government has appropriately resourced the Chief Minister's Department to ensure there is improved rigour at this 'front end' of the direct sale process.

Recommendation 4:

Agencies should ensure their community engagement practises reflect the principles and better practices inherent in the ACT Government Community Engagement Service Charter and Community Engagement Manual. In particular, agencies that are involved in facilitating strategic projects should assess the need for early and appropriate community consultation.

Government response:

Agreed. The Government has agreed to refresh the community engagement frameworks based on current best practice and is reviewing and updating the ACT Guide to Engaging with the Community. The Government has also agreed that CMD should work with agencies to further develop an approach to community engagement that would include Community Engagement Plans in tandem with new policy development.

It is important to note that the Auditor-General found the existing consultation processes were followed in relation to the site identification process for the data centre and power station. However, the Auditor-General considers that these processes are insufficient in some unusually sensitive cases such as the proposal for the gas-fired power station and data centre. In such cases, the Auditor-General considers there should be community consultation *before* any Development Application (DA) is lodged.

Under the current process, there is no requirement for the proponent to engage in a consultation process prior to submitting a DA (though it is ACTPLA's policy to routinely encourage proponents to consult community councils before lodging a DA). Once the DA is lodged, ACTPLA has the statutory responsibility to notify the DA to the public and seek submissions from the public on that DA. ACTPLA routinely advises community councils of significant DAs and did so in the case of the data centre/power station proposal; however, none of the community councils (including the Tuggeranong Community Council) responded to ACTPLA's offer to arrange a briefing by the proponents on the DA.

It is the view of Government agencies that pre-DA consultation on a proponent-driven development proposal is not, nor should be, the responsibility of ACTPLA (as distinct to ACTPLA's statutory requirement to notify and receive submissions on the DA once it is lodged). Were there to be a generalised requirement for community consultation to take place *before* a DA (or Environmental Impact Statement) was lodged, the following issues may arise:

- a) greater uncertainty would be introduced to the planning and assessment process; this may lead to the ACT being perceived as a less attractive place to invest;
- b) the public may mistakenly believe the Government has definitely committed to the project;
- c) the answers to many matters of detail raised by the public during the consultation process may not be known so early in the process, leading to unnecessary public angst.

However, as stated in the response to Recommendation 1, in light of the experience gained by the site selection process for the data centre/power station, any sensitive or complex strategic proposal will be required to submit a formal community engagement strategy to CMD. The strategy should identify possible issues and outline the proposed consultation process to take place *before* the DA is submitted.

Recommendation 5:

Agencies should ensure a high level of probity in dealing with the Territory owned businesses and their commercial partners such as ActewAGL by:

- *clearly identifying the status and the nature of business dealings i.e. whether they are of a commercial or of a government nature*
- *adopting an arm's-length approach to all business dealings, which recognises that such bodies are generally established to operate in a commercial manner, and*
- *communicating clear processes to relevant agencies and staff.*

Government response:

Agreed. It remains the agencies' view that a high degree of probity is exercised by agencies in dealing with the Territory owned businesses and their commercial partners. Agencies are generally aware of the status of commercial (as opposed to government entities), and adopt a professional, arms-length approach in their business dealings with such organisations.