

Please note: this submission is related to two supplementary submissions provided by this submitter and eight responses to adverse reflections, all of which can be found here

Canberrans for Power Station Relocation, Inc
PO BOX 40
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31 July 2009

The Committee Secretary, Andréa Cullen
Standing Committee on Public Accounts
The Legislative Assembly

Dear Ms Cullen,

**Inquiry into Auditor-General's Report No. 7 of 2008:
Proposal for a gas fired power station and data centre - site selection process**

Thank you for the opportunity to make a submission to the inquiry.

Please find attached a copy of the submission on behalf of the community group, CPR Inc.

Should you have any queries, please contact me on 0418 620 076.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Bill Reid', with a stylized flourish at the end.

Bill Reid
President of CPR Inc

Canberrans for Power Station Relocation (CPR)

Written response to

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC
ACCOUNTS**

**Caroline Le Couteur MLA (Chair), Brendan
Smyth MLA (Deputy Chair), Joy Burch MLA**

**Review of Auditor-General's Report No. 7 of 2008 -
Proposal for a gas-fired power station and data centre**

CPR Response to the Auditor General's Report

Taken from the Auditor General

Review of Auditor General's Report

- The Auditor General's report was requested
To examine the Government decision-making process relating to the site selection for the proposed gas-fired power station and data centre.

1.14 In particular, the audit focussed on whether audited agencies have complied with relevant Government policies and better practices, including community engagement and other consultation requirements, and taking into account economic, social and environment impacts on the community.

Government agencies complied with existing Government processes, leading to the agreement to a site for the Canberra Technology City proposal. These processes, however, were not sufficiently robust to give confidence that the public interest was fully taken into account.

CPR Response

The Government has continued to use these poor processes including the selection of the new site for the proposed gas fired power station and data centre. Other examples are the proposed cemetery in the same block. There has been no meaningful consultation which has included choice of land or openness of site selection. The community remains with no confidence in the Governments' desire or ability to consider the best interests of the community in comparison to its desire to facilitate the needs of an elite group of private business consortium.

The behaviour of the Government and those in opposition in passing the legislation which excludes the community from appealing against poor decision making or processes within this development is further proof that there has been no cost benefit analysis undertaken in respect of the community and meeting their needs.

Taken from the Auditor General

The Government did not have sufficient information on the Canberra Technology City proposal prior to lending strong support to it and committing to an Option for a direct land sale. The Government, however, reduced the risks to the Territory by requiring the consortium to meet a number of conditions, including obtaining an approved Development Application and providing key information about the project, such as a business case, prior to a direct land transfer.

CPR Response

This was a sound and accurate observation by the Auditor General. The reduced risks however were sadly abandoned by the Government and the Opposition by passing legislation which utterly negated any need for review or independent analysis of the very real concerns raised by those members of the community with the skill and ability to independently review the reports who in doing so discovered serious errors and flaws with those reports.

Taken from the Auditor General

There is significant scope for improvement in the administrative processes used for consideration and facilitation of strategic projects.

CPR response

The Community has seen no evidence that the Government has considered the Auditor General's report and improved the administrative processes on behalf of the people of Canberra – see “What happened after the auditor general filed her report” (page 29) to illustrate what happened within this process after receipt of this report and to show just how little notice the Government gave to the considered recommendations contained within.

Taken from the Auditor General

Project initiation and facilitation

The Chief Minister's Department is responsible for coordination and facilitation of major projects for community and business development in the ACT. However, no formal policies or procedures for dealing with strategic projects existed within the Chief Minister's Department.

CPR Response

The community is still not aware of any formal policies or procedures around how better to deal with such projects.

Likewise there has been no apology or formal acknowledgement from Mr Stanhope regarding the horrendous treatment by Mr Stanhope and the proponents inflicted on the community in speaking up and responding as requested to this travesty of planning.

Taken from the Auditor General

In response to the commercial needs of, and the urgency communicated by, the consortium, the Government supported the Canberra Technology Centre proposal by committing to an Option over land without sufficient information and key documentation. The Government should have prepared a due diligence assessment of the consortium intended to carry out the project, the involvement of ACTEW (a Government Business Enterprise), as well as ensuring that the claims made by proponents were valid and substantiated.

CPR Response

There remains a tacit support by the Government to this consortium regarding this development without any due diligence assessment being imposed or filed and without any real verifiable evidence of ability to deliver the positive claims of the consortium. The community has suffered by a lack of cost benefit analysis being conducted which included the health and well being needs of the community and this continues even though the new development a mere 1 km further away has been “approved”.

The community notes that despite the claims made by the consortium, that speed was of the essence as they already had interested parties waiting for the data centre – The Directors of TRE recently applied for public money for \$34 million as they could raise no debt or equity and had no clients ready and therefore could not proceed with the development. This contradicts the claims made throughout this process by the consortium and supported by the Government.

Taken from the Auditor General

The Government reduced key risks to the Territory by requiring the consortium to obtain an approved Development Application and to provide key information about the project, such as the business case, as conditions of land transfer.

CPR Response

This has proved vacuous as the Government moved the development and fast tracked it with Legislation. The development has now been approved without the need for any planning safety or environmental protective factors to be considered and the views of the community being dismissed in a perfunctory and insulting manner.

Taken from the Auditor General

Planning and zoning

Permissible uses for broad acre zoned land as set out in the Territory Plan 2002 were not sufficiently clear to determine unambiguously that the Canberra Technology City proposal was a permissible use. The current version of the Territory Plan does not provide further clarification.

CPR Response

Both ACTPLA and oddly the proponents claimed to have contradicting legal advice, than that filed by the Community. TRE stated they could define a data centre as a Communications Facility, although this was never produced by either TRE or ACTPLA. Despite transferring the development to Industrial Land Mr Stanhope changed the Territory Plan to define a data centre as a communications facility presumably to prove to the community his power and authority and to allow for a development of a similar project on a broad acre site in West Macgregor without the need to show they never had an alternative legal opinion.

Taken from the Auditor General

Various legal advice provided conflicting interpretations of permissible broad acre land uses, indicating that the issue had created uncertainty to residents and industry and needed to be clarified.

CPR Response

Rather than clarify what had been claimed – and have Mr Stanhope stand by his answer to a caller on talk-back radio where he stated he would always look to the meaning and law of the Territory Plan in any development application – the Government quietly changed the Territory Plan – with the support from the Opposition ACT Liberals and ACT Greens to change the definition of the Territory Plan defining data centres as communications facilities and therefore able to be developed on broad acre. It is odd that at the time of the tabling of the legislation on 11 December 2008, the Opposition made much of removing this definition from the legislation, and have lauded this move to the community, yet quietly allowed the same amendment to be made later without word or note to the community.

Taken from the Auditor General's report

1.25 This overall response, forwarded by the Chief Executive of CMD is shown below:

There is a clear role for Government in facilitating investment in the Territory;

CPR Response

Yet the Government does not consider this role to include meaningful consultation with the community or allowing the community a voice in decisions which will directly affect them. The Government believes it has the right, without any cost benefit analysis to decide what is in the best interests of the Territory.

“Facilitating investment” to the Government obviously means supporting an insecure, badly planned, fluid private business development proposal on the basis of unsubstantiated claims of jobs and financial return regardless of the cost to the environment, the relationship between community and Government and the health and well being of the community members.

“Facilitating” has enormous power as defined by Mr Stanhope’s Government – it means channelling the resources of public servants (paid by the Territory tax payers) to smooth and support a vague development proposal where the safety and veracity or morality of which never appears to have been considered. That Mr Stanhope and his colleagues felt it to be a good idea appears to have been a ‘good enough’ reason to push, drive and pursue this idea ignoring the views and wishes of those people who pay the taxes, vote for the politicians and would be unfortunate enough to breath in the pollution fall-out.

And the Auditor General has pointed out on a number of occasions in her report, as the community did in their submissions, there never has been and never will be any guarantee that this development can deliver anything remotely resembling the benefits to the Territory it claims.

This was a development consortium, after all, which was cobbled together in August 2007 from the existing directors of CBR Ellis or their close colleagues and ACTEWAGL. CBR Ellis, a real estate company, had close access to Mr Stanhope and John Mackay and Michael Costello which is unlikely to be available to many other prospective developers. In the year before they filed their development application, their plans changed several times, never bothered to get site-specific surveys, never bothered to talk to their nearest neighbours, never considered the needs of those vulnerable residents in a health facility (after all it appeared that Ms Gallagher, the Health Minister and the Minister for Disability would move the health facility) and having never dealt in data centres before never really bothered to check their claims of jobs etc. The Government did however spend a rather large chunk of tax payer’s money to advertise the development in glossy European magazines.

These developers, realised before they filed their plans they would have to reduce the size of the power station component as it was not financially viable to build a 210MW power station on a block that size but went ahead regardless in order to get in before the change of planning laws. They did no financial viability report, no cost benefits analysis, no meaningful discussion with the community, they did not even register the name “Canberra Technology City” which is actually registered to another business. The Government checked none of these things before throwing itself fully behind this “concept”.

The Government continued to plough the project along long after any other similar and poorly planned project would have been cancelled within safe planning laws, community discussion or after questioning the morality of building a privately owned gas fired power station 600 metres from homes. This the CMD describes now as “facilitating investment” which we interpret to mean in this context “facilitating” any half-brained scheme with unthought-through claims and plans provided, it appears the Labor Government is “investing in business”.

CMD response to the Auditor General's Report

It is clear from the proposed report that this function, as it relates to facilitation and site identification of the CTC proposal, has been carried out within the legislative framework of the ACT and in accord with existing Government processes;

CPR response

So is the CMD taking responsibility here for the fiasco or not? The CMD is claiming here that everything they have done, they did within legislation and within the 'framework of the ACT' – which is extraordinary when you consider that they go on to change the legislation and the 'framework of the ACT' when it does not work in their favour, ignore the community in favour of their 'friends' in the private consortium and interfere throughout the process to the point where the CEO of the so called independent planning authority states to the press that the system is no longer independent when legislation is made. It is somewhat inconsistent for the CMD to claim "well it was all legal so it was all ok", and then go on to say.....(below)

CMD response to the Auditor General's report

Considerable care needs to be taken in pursuing the Auditor's opinion that Government should assume a greater role in communicating the details of development proposals to the public. There is a risk that the community would interpret this as advocacy on behalf of the developer;

CPR response

This is either the CMD's attempt at irony or one of the most dishonest statements the community has read in a long time. It is ridiculous that the CMD would consider the community has not regarded the Chief Ministers interference as rock solid advocacy on behalf of the private consortium against the best interests of the community. The community reminds the Chief Minister of this joint press release with the acting CEO of ACTEWAGL Michael Costello announcing, at the end of May 2008, the "downscaling" and then blaming the "down scaling" on the community concerns when the chief minister knew from February 2008 that the downscaling was inevitable. Or perhaps that whilst the Chief Minister or members of the CMD met regularly with the proponents, the community and CPR remains with 12 letters unanswered and not one meeting with the Chief Minister or perhaps the comment from the Chief Minister that the pollution from a gas fired power station is the same as a home heater in the ceiling and everyone pollutes every time they cook an egg; or perhaps the legislation allowing the development to pass without test or independent analysis. Or that the Government has driven this development on behalf of the proponents above and beyond anything that any other proponents could expect. Or perhaps both the Chief Minister, the Minister for Planning and the Treasurer talking up the importance for the Territory of this development being allowed to be passed at all speed and haste to the point that the benefits are guaranteed being worth the cost to the health of those unfortunate enough to live near the pollution drops.

What nonsense for the CMD to be concerned that greater communication with the community would be interpreted as advocacy on behalf of the proponents when the Chief Minister and the CMD has worked solidly and solely to achieve the aims of this private business consortium.

CMD Response to the Auditor General's Report

Whilst improvements in the notification of Development Applications are already in hand, I am pleased you took up our suggestion for seeking community engagement strategies from proponents of complex developments at an early stage of their discussions with Government.

CPR Response

Because it is not something the CMD or the Chief Minister have any intention of conducting as a real exercise just to write constant papers on how they “intend” to improve consultation. Obviously consultation means within the CMD an opportunity to tell the community what is about to happen to it. It is odd too that the CMD is clear about its role in facilitating investment but does not include engaging with the community only expecting the proponents to do this – They appear to have misunderstood where the power and authority lies in the ACT – not with the proponents though as clearly illustrated in this matter, the power lies squarely with the CMD. If anyone is in any doubt you merely have to refer to the number of times this Government has legislated its way out of a ‘sticky situation’ such as having to concede to the community on a planning matter, or how much pressure CMD puts on the “independent” planning authority to bend to the will of CMD, or the weighted press coverage of the proponents, or the changes made to the NCA plan or the Territory Plan or the land grants and options given over with little or no checks or guarantees, or that the Minister for Health said nothing about the pollution and harm to the residents of the health facility rather she chose to make plans to move the health facility.

CMD Response to the Auditor General's Report

I remain concerned by the findings of the Proposed Report that there should be some form of Government process prior to a proponent submitting a development application that would bring the community into a discussion of the merits of a private sector proposal, the full details of which are not fully documents until the Development Application is submitted. Community engagement is essential and it has been very carefully built into the planning and development assessment process. The development application is the means by which the details of the project are put forward for public comment. Any suggested pre-determined process prior to the consideration of the development application does not present natural justice to parties who in the end bear the financial risk for their investment proposal.

CPR response

The community would agree with this principle if this was how the Government behaved. Sadly it does not. There was nothing “private” or “independent” about this project. The proponents had virtually unlimited access to the Government, support, documents, press etc. The Government had “given” prime land to the proponents without any discussion with the community basing this on a report prepared for the Government by GHD and given to the proponents but not the community.

The CMD lauded this project on the one hand as being “vital to the Territory” – originally it was delivered as being necessary to fill an energy supply gap and then to create jobs and secure the economic diversification of the Territory. It would create university courses and lead the world in data centre technology whilst gas burning was cleaner than coal burning! Something of this importance to the Territory – is it a Territory development or is it a private development?? Are the rules the same for both? If they are then why did the CMD not support and drive all developments in the ACT in the same blind eyed manner?

Prior to the advertising of the development the CMD was closely involved in driving this project - giving land, smoothing development paths and asking the opinions of government departments – correct us if we are wrong but don't public servants work to support the Government and the government work for the people of the Territory? So how is it that tax paid public servants can support and drive a private development application on the expressed instructions of a politician voted in by the people of the Territory to represent their best interests – but the people who pay their wages and vote and whose best interests

are supposedly being represented – are not allowed to know what the public servants are driving and presenting until the development is filed and advertised?

Apart from the above - the ridiculously perfunctory responses the community have received to their submissions regarding the applications has shown, without a shadow of a doubt, what a meaningless exercise asking for community responses to an application really is. ACTEWAGL and the proponents did not “CONSULT” with the community during their time at the Vikings Club in Tuggeranong – they merely presented what was about to happen to the community. ACTPLA did not consider in an independent and expert manner the evidence filed by the community – this was passed to a HIA which was expert and did commence considering the health issues – the Government sacked them and passed it to an unskilled, consultancy firm. The EIS was a joke compiled by the same company who conducted the original HIPS. They did not conduct any site specific research or analyse any reports in an independent or expert manner. (See the financial viability report which GHD approved within less than 24 hours of receiving and has since proven to be pretty vacuous nonsense given TRE has requested \$34 million of tax payers money to support their private profit making scheme).

The fact remains the Government had made its mind up to support and deliver this project long before the application was filed – without any real evidence to suggest this development could deliver anything positive to the Territory and without any consideration of the real harm this development would bring to the community – and the Government and CMD never wavered from that position regardless of what the community responded.

The CMD and the Chief Minister stood next to the then proponents Michael Costello delivering a joint press release. The Chief Minister blamed the community for the loss of \$1 billion investment (when he knew it had not been financially viable since before the application was filed). “Any suggested pre-determined process prior to the consideration of the development application does not present natural justice to parties who in the end bear the financial risk for their investment proposal” Taken in relation to what actually happened – this is a laughable response from the CMD – the community recalls clearly the Chief Minister threatening to pay compensation to the proponents in the millions because the community – during the “fair” consultation stage – pointed out the innumerable flaws, faults and immorality of this development application.

Recommendation from the Auditor General’s Report

Recommendation 1 (Chapter 2)

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 Agencies' response:

Agreed. Government agencies noted the Auditor-General's finding that the government agencies complied with existing processes in relation to site identification process and that the process followed by government agencies reduced the risks to the Territory by requiring the consortium to meet a number of conditions, including obtaining an approved Development Application (DA) and providing key information about the project, such as a business case, prior to a direct land transfer. From the Territory's perspectives, the use of the Deed of Option ensured that the risks of the proposal not going ahead lay with the proponent rather than the Territory

CPR Response

Again CPR agrees with the Auditor General and dismisses the "Government Agency Response" as vacuous nonsense. The Government did not protect the Territory at all. The Government used the system to drive its own agenda.

CPR further suggests that those independent agencies who are created to protect planning and audit government behaviour should be given more authority and power to execute their duties with greater independence from the flat level of governance the Territory is suffering under at the moment. Currently any of the above documents needed to be filed can be filed without the need for an independent and expert check or peer review of their veracity, credibility etc. The Government crushed the only independent expert body, the HIA, when it became clear that the HIA doctors were voicing concern over some of those reports filed in support of the development. Nothing was done about this.

The community had recourse to the courts for review of this process which was taken from the community within the legislation to "enable this development". This is a very dangerous precedent to allow any government to take and it is disappointing that it was supported by the ACT Greens and the ACT Liberals. CPR interprets this as these politicians giving the community a clear message of, that in their arrogance and ignorance the politicians truly believe they are above reproach and they should not be audited or their actions questioned. It is one of the most blatantly un-democratic moves the community has witnessed and more so shocking when it is noted that this is not the first time Mr Stanhope has used this power and in this instance it was supported by other members of the Assembly.

CPR notes the impossible position throughout this debacle that the Government placed ACTPLA. By the direct intervention and actions of the Government ACTPLA was rendered inert and far from independent – the final killer blow being the legislation but the death throes had begun around the time ACTPLA was instructed to accept the second application as a "revision" rather than a new application. It was a slow and painful death and one which could not have made a better illustration of the appalling state of planning and development within the Territory driven by a dictatorial government that governs without audit, review, censure or consideration for the best interests of the people.

CPR therefore recommends that the Auditor General be given greater funding and greater authority to audit, inspect and implement recommendations.

CPR recommends that planning be taken away from a government minister and the appointment of planning chiefs be made away from the claws of a flat level of government and the individual choice of the Chief Minister. This would also include the appointment of the Chair of ACTEW.

CPR recommends that consideration be given to the appointments of Environment, TAMS and Health – who have some supporting role within safe planning processes. This debacle has illustrated that the Territory cannot look to these positions to defend or enquire in an expert or balanced way the best interests of their portfolios against the will of a dominating Chief Minister who has pre-determined a particular development should progress. CPR has innumerable examples of how the people of Canberra have been let down by these portfolios and how avenues of review or support have been closed to the community on the basis that the controlling Minister has blindly supported the Chief Minister. This is not safe and will lead to poor decisions and real health and environmental disasters.

Auditor General's recommendation

Recommendation 2 (Chapter 3)

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 Agencies' response:

Agreed. ACTPLA makes every effort to ensure definitions in the Territory Plan are consistent with the National Capital Plan. However, the latter is part of Commonwealth legislation and hence outside of the jurisdiction of Territory Agencies

CPR Response

Again the community refers to the above recommendation and notes that the Government changed the Territory Plan and the NCP in order to make the Territory Plan fit this development. CPR is pretty sure this is not what the Auditor General was driving for in her recommendation but it does illustrate the huge gap between principled recommendations and what the Government then does with it. What it does not illustrate and time will tell – will be the possibly unexpected consequence which will flow from these changes which now of course allow buildings of this size and ugliness to be built within the ACT.

The legacy of Mr Stanhope's single-minded belief that he is right will now likely be an ugly Territory in which the words "bush capital" are used in jest.

Auditor General's recommendation

Recommendation 3 (Chapter 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 Agencies' response:

Agreed. (See further comments at paragraph 3.63)

CPR response

CPR believes the Government should create a truly independent body to oversee this and future government dealings with development applications.

This fiasco has illuminated the reality of planning in the ACT and the real and active potential for the system to be abused for the benefit of an elite, well connected business group over the best interests of the Territory.

Auditor General's Recommendation

Recommendation 4 (Chapter 4)

Agencies should ensure their community engagement practices 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 Agencies' response:

Agreed. It is the view of government agencies that consultation on a proponent driven development proposal is not, nor should be, the responsibility of ACTPLA (as distinct to the consultation on the DA once it is lodged). There is a crucial distinction between the responsibilities of the proponent for a project and those of government agencies that may have statutory or other roles in relation to some aspects of the project.

CPR Response

CPR notes again the Government has, in this response, side stepped addressing the reality of what actually is happening. When government departments are requested to comment on a potential development proposal before it has been filed as an application (as occurred in this instance) it is remarkable that such agencies as Health, Environment, TAMS etc feel able to comment without conducting full and extensive research and enquiry in an expert manner – especially in the context of considering the cost benefits for the community for whom they work without asking the community what it wants.

The most relevant point to illustrate this would be that ACPTLA the independent planning authority, openly admitted that it did not employ staff with the level of expertise needed to accurately analyse the complex information contained in an application for a gas fired power station and data warehouses. ACTPLA stated they would have to bring in experts if they are required to respond to this. (Obviously as it turned out ACTPLA did not bring in experts and ignored the experts within the community and on the direction of the Government approved the application).

So when a group of public servants who are unlikely to have any qualifications in health but probably expert in administration, are asked to respond to this potential development it is unlikely they will respond considering the best interests of the health of the community or consider that the Department of Health should have found a way to gain the opinion, views and wishes of those residents and workers in the health facility situated a mere 100 metres from the proposed site. What did happen though was a perfunctory response and a preliminary plan from health to move the facility should the proposal be approved – no mention of the impacts on the health of the citizens of Canberra who could not just move, or who worked in the area, lived, played, went to school etc.

CPR further notes that the Government's response to the community's response was appalling. The Government berated and attacked the community for not agreeing with its plan.

The Chief Minister actually directly blamed those members of the community who had considered the application, gained independent assistance on interpreting the complex reports and placed a submission which pointed out the development was unsafe, unhealthy, unreasonable and immoral – as being responsible for the loss of 1 billion dollars investment – all the more shocking when the community knows now that at the time of his attack on the community, the Chief Minister knew that the down scaling was because the project was financially unviable and had been known to be since before the original application was filed.

This reaction from the Chief Minister was deplorable and demonstrated to the community the utter lack of respect the Chief Minister holds for the community and the total lack of

consideration the community can expect when ever it responds to development applications supported by the Chief Minister's Department, regardless of how sound and well considered those responses should be – if it does not agree with the opinion of the chief minister, it won't be considered.

It has been made clear to the community that the Government has a very different idea of what constitutes consultation than either the community or the dictionary. The Government believes it has, after being voted in, the absolute right to tell the Territory what is in its best interests and what type of life style it needs and what type of Capital Australia is going to get. If the law or Territory Plan or commonsense disagrees then the Government will legislate or plough through those blocks to reaching its aim and the aims of those private developers fortunate enough to have a close relationship with such an unaccountable Government as the Territory currently labours under. This is of course made possible by a collusive and weak ACT Greens and a ACT Liberal Party that appears unwilling to stand up for the rights of the people.

CPR warns this committee that unless something is done to stop this misuse of power and this slide towards an even further unaccountable and dictatorial system of governance, the ACT will be run by an even more privately driven elite group of privately profit making individuals which will not care for integrity, environment, bush capital, sustainable fuels, the health and well being of those citizens who live here – and more people will suffer the same deplorable treatment CPR did from proponents not unlike TRE and ACTEWAGL.

- Consultation needs to be meaningful
- It needs to be open and accessible – not just the Canberra Times advertisement but consideration given to those who do not read the Canberra Times, those who are house bound, and those who are isolated
- Consultation also needs to be targeted so that the community can identify which areas it needs to respond to and which it can leave
- Assistance given to the community to understand and make sense of complex applications – this would be easier if the community had a truly independent and expert planning authority it could trust to defend sound planning laws – rather than watch helplessly as the Government ploughed through independence and discarded safe planning laws
- Respect and consideration given to the responses of the community
- Clearly identified developments which are out of the ordinary and have a real potential to dramatically affect the health and well being of the community to be consulted and discussed with the community before applications proceed
- Absolutely no right for the government to interfere with planning laws, to legislate for to fast tracked dangerous and unsafe developments because it wants to fulfil a previous ambition or promise of the Chief Minister
- An independent and expert health authority which is well funded and free from the imposition of ministerial loyalty to report on health impacts of developments. – all right for the Government to silence such a committee to be removed
- An independent environmental committee again free from political loyalties, to inspect and review applications with the potential to damage the environment, to suggest changes and improvements and to refuse to allow progress if it was considered too environmentally unsafe
- A more powerful and well funded Auditor General who has the ability and authority to review such government interference including the role of ACTEWAGL and to impose recommendations onto government.

Auditor General's recommendation

Recommendation 5 (Chapter 4)

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 Agencies' response:

Agreed.

CPR Response

CPR would ask that this Committee inquire of the Government in what ways does this Government propose to ensure this happens

CPR would like the present Government to apologise to the community for placing the relationship it had with ACTEWAGL and the proponents before its responsibility to the community to act with integrity, honesty and fairness.

ActewAGL's response:

ActewAGL considers that its dealings with government agencies were conducted professionally and at arm's length.

CPR Response

CPR believes that this reply from ACTEWAGL actually requires a further independent inquiry.

If ACTEWAGL really does believe that its dealings especially in this matter have been professional and at arm's length then this committee should use the highest level of its own professionalism and integrity and require ACTEWAGL to be investigated. CPR does not believe that ACTEWAGL's conduct was either professional or at arm's length from the Government. CPR members can read and use this skill to read those documents received under the FOI which revealed a collusive and close relationship between ACTEWAGL and the Government.

CPR also wrote to ACTEW asking how they could be involved in this project when their terms of reference of incorporation were specifically pro-renewable energy and environmentally friendly. ACTEW denied they had anything to do with this project. On that basis CPR would ask that the role of Michael Costello be investigated and his relationship with this Government inspected. CPR note that Michael Costello was closely involved in the development of this project whilst he was Chair of ACTEW and signed letters on the subject of this development as Chair of ACTEW. We also note that Michael Costello was the person chosen to conduct the school closure survey. He conducted joint press conferences with the Chief Minister. There is clearly nothing arm's length in this relationship. If ACTEW and ACTEWAGL claim this status, CPR requests this committee to commence an inquiry into the relationship between the CEO and Chair of ACTEWAGL and ACTEW and the present Government – especially the Chief Minister.

Summary

The Auditor General filed her Performance Audit Report on “Proposal for a gas fired power station and data centre – site selection process” on 9 December 2008. The audit looked into the process, accountability, honesty and community involvement, engaged by the Government so that all citizens could be reassured that the decision to allocate a valuable Territory asset of land, to a private profit making industry, had been reasonably, honestly, safely and reliably made. The recommendations noted, amongst other things, a lack of rigorous attempts by any party to engage the community, and the reliance by the Government on the ‘minimalist’ demands made of the Land (Planning and Environment) Act 1991. It noted “Notwithstanding its involvement through facilitating the project and the Government decision to offer an Option for a direct land sale,ⁱ the Chief Minister’s Department did not engage the community on the site selection.”ⁱⁱ

Yet despite the thorough explanations included for each of the recommendations contained in the Auditor General’s report, on the same day as the receipt of this report, Jon Stanhope, the Chief Minister, passed legislation to push through as a fast track the development on a new plot of land. This new plot of land had been identified by a “taskforce” formed from administrators (public servants) employed within the Chief Ministers Department (CMD) and headed by Mr Andrew Capie-Wood.ⁱⁱⁱ The taskforce, which had no members with specific skills in site selection, power stations, community engagement, health or environmental qualifications; worked on undisclosed instructions directly from the Chief Minister, to identify a “new” site for the power station and data centre. A task they remarkably achieved in just 5 working days from commencing their search – allocating Hume Block 20/23, the originally desired block on industrial land, just over 800 metres from the contested Broadacre zoned site in Tuggeranong.

Again the community was not consulted, the terms of reference for the “search” not disclosed and the claim this was “the best available”^{iv} clearly made from the perspective of the proponents of the power station rather than the community who continued to be concerned about air quality, noise and proximity to existing and planned homes. It seems hardly surprising that the Chief Minister continued to ignore those recommendations contained in the Auditor General’s report, after continuing with passing the anti-community legislation to fast track a privately owned gas fired power station development – what the Chief Minister wants appears to be what the Territory gets.

Many members of the community continued to voice very real concern regarding the financial reliability of the Territory handing over a block, reported as being worth \$55 million,^v in an established industrial zoned land to proponents who had shown themselves to be less than “good corporate citizens”^{vi}

“The Government had clearly learned its lesson on community consultation from the gas fired data project and started early consultations”- Caroline Le Couteur

From the community perspective therefore it is doubtful that any positive pro-community lessons have been learned^{vii} by this Government from the Power Station and Data Centre debacle. In terms of re-assuring the community that they are the primary concern of the Government over meeting the needs of an elite group of business developers – this has turned out to be as empty as block 20/23 currently stands.

The community has noted the behaviour of the Government in this matter and its close relationship with individuals in ACTEWAGL, and how this has taken a priority over the health

and well being of ordinary citizens of Canberra^{viii}. It has been noted by the community how this Government and the Opposition stand by while:

- unaccountable individuals dictate Territory policy;
- the Chief Minister altered land zoning definitions, created legislation which ran rough shod over the safety mechanisms and integrity of the “independent” ACT Planning and Land Authority (ACTPLA);
- the community was required to file response after response to complex technical and environmental issues only to have every single one ignored;
- how this Government, with the explicit support of the ACT Greens^{ix}, has used that unilateral power to ignore those real and valid concerns regarding the environment and health and well being of the citizens of Canberra.

The community notes the irony that throughout this debacle, the Government and to a lesser extent the Opposition, made much of the negative view other businesses would take of investing in the Territory in the light of the community opposition. It was blatantly clear to everyone that the greatest lesson being learned by businesses thinking of investing in the Territory was not to bother unless they had as close and collusive relationship with the Chief Minister as these proponents enjoyed; this would enable them too, to avoid close financial viability scrutiny, avoid the full cost of land rents, negate the need to adhere to strict environmental safety standards and consult with community who will be directly affected by your business and if all else fails, have legislation passed which would smooth through your development without the right of appeal by anyone concerned with health and safety of the Territory citizens.

It has been particularly disappointing to see how the ACT Greens have abandoned, for the sake of their alliance with Labor, any semblance of enforcing real Territory environmental protection. It has been noted that Meredith Hunter stated the ACT Greens “are just the same as Labor” which, for all those who voted for ACT Greens on the basis that they would fight to defend clean air and protect the environment, is a heart breaking reality.^x



Caption: evening sunset over the proposed site

Summary of CPR concerns

Canberrans for Power Station Relocation Inc (CPR) is a voluntary group of concerned members of the community formed in late May 2008. We have, without fail, engaged with proponents, government members and others who have been appointed or placed themselves in positions to direct, or influence, the application to develop a power station and data centre originally intended for broad acre land in Tuggeranong. We have conducted research, inquiry and survey into the potential impacts of the development on the community – including the potential financial impact, PM2.5 emissions, the impact on the environment both directly and indirectly, impact on existing homes and potential homes, the effect on horse agistments in Canberra, existing and future house prices, quality of life, noise, image of Canberra and the relationship between how the Territory is being governed and the community the Legislative Assembly represents. We have represented these findings in submissions to ACTPLA, in response to the three development applications, the Health Impact Assessment, the Environmental Impact Study, including responding to their draft report, the Auditor General's Investigation, and various reports to the Senate and other inquiries.

This submission appears to be the final opportunity for CPR to make comment on the process of the application made in March 2008 for the development of a gas fired power station and data centre. On that basis CPR will summarise both the response to the Auditor General's report and make comment on the treatment members of the community have been subjected to by the Government throughout the life of this development.

The price paid by the community

That the community was shocked and concerned when it learned during the April school holidays of 2008 of the plans to build a privately owned gas fired power station and data centre complex on land currently being used by horse agistments, wildlife corridor and much loved buffer between industrial land and existing suburban developments, seems hardly surprising when such things as air quality emissions from a gas fired power station, noise and poor financial viability of the project are considered – but the most surprising thing of all, is that the Government and the proponents never appeared to believe the community either should be concerned or needed to have been consulted.

Mr Stanhope, for reasons best known to himself, was putting his full weight of authority and power behind making it happen. That the actual business case of the development was fluid and unsettled did not concern him; nor it seems did the financial viability of the plan really cross his sights of concern. It is apparent that the morality of building a privately owned gas fired power station within 600 metres of established residential homes and within 100 metres of a residential health facility bothered the Government as little as reassuring itself that the environment would not suffer, that air quality would not diminish and that the best possible, most accurate, site specific survey's had been fairly and honestly conducted and peer reviewed. None of these things had been achieved as the application for the site on Tuggeranong lapsed and none of these things have been achieved on the 'new' site which is less than 1km away from the old site. It is with some concern that CPR notes that the 'new' site is still too close to Canberra residents as well as potentially affecting residents in New South Wales – pollution knows no boundaries.

This lack of government inspection and critique of matters fundamental to the health and well being of our children, our families and our community and the blatant and ferocious support being given by the Chief Minister and the Government to a private real estate development consortium above the best interest of the community spurred members of the community to inspect for themselves this development. The community has found it unsound, financially unviable, incorrectly zoned, environmentally destructive, noisy, ugly, unwarranted and most importantly dangerous to the health and well being of the community.

These were individual members of the community, who for the most part, had full time jobs, families, other responsibilities and concerns, who spent their own time; indeed an enormous amount of their own time; and professional skills and expertise researching the implications and impacts of this development on the community – not just the business community but every member of the community – including those who cannot speak for themselves and who had clearly not been asked by the proponents and the Government. This time was time spent away from families and out-of-work life and responsibilities.

Each development application contained technical and complex details, confusing information and plans, and modelling using non-site specific information – to understand these and analyse these required assistance from specifically skilled community members who used their professional skills and integrity to review and analyse the information filed in support of the applications.

To obtain this information, or to keep track of the Government position or proponents developments, required hours of researching and gathering information.

To compile and print reports required further colossal hours of hard work from members of the community, as did forming and running the group, disseminating the information, ensuring we were representing the entire community and trying to ensure the community's voice was heard in a meaningful way. All this required enormous amounts of time, effort, hard work, skill and dedication. It appears not to have occurred to any member of the Government that in order for the community to do this, must have required a conviction of their beliefs and that the alternative, allowing the development to proceed without objection, would cause such enormous negative impact on the health and well being of our children, our families, ourselves, our neighbours and our community that it drove those members to continue.

It has been a defining revelation for the community to work so hard to have their voice heard, and their review of the reports disseminated to all, only for this to be received by the Government in terms little short of being accused of treason, while the developers who have misled, lied, blamed the community and avoided scrutiny and consultation are praised by the Chief Minister as being “good corporate citizens”. It will be interesting to see the “spin” placed by the Government on the failure of this development.

During the life of this development however the community has been ignored by the proponents and the Government. It is reprehensible that not one of those concerns, stated and evidenced clearly in the documents filed by CPR has been acknowledged or responded to in an adequate way by the EIS/HIA, by ACTPLA's approval of the developments or by the Chief Minister.

The Chief Minister:

- has still not responded to 12 letters written to him by CPR from November 2008 and January 2009
- blamed the community for the downscaling of the power station from 210MW to 45MW when he was aware the decision had been made before the application had been filed because the project was not financially viable
- passed legislation to ensure the community, as third party, was not entitled to appeal the decision
- changed the Territory Plan and assisted the changing of the National Capital Plan without consultation to ensure the development was supported
- never met with CPR or responded to our requests but met regularly with the then proponents ACTEWAGL chair Michael Costello – including delivering joint press releases about the development.

John Hargreaves has admitted that he will not represent the views or opinions of CPR at any meeting, including a Cabinet Meeting, because he has been “stalked and abused” by CPR members – although Mr Hargreaves has never identified how he can show that any abuse or stalking he was subjected to was at the direction of CPR.

By way of an example, of how the valid concerns raised by CPR have been dismissed by the proponents and the Government and importantly by ACTPLA –on the 6 March 2009 ACTPLA released their decision to approve the application for a power station on Block 20/23 in Hume. The reasoning for the decisions were unilaterally brief, bland and based entirely on ACTPLA’s perfunctory, unprofessional, uncritical and unskilled review of those documents filed supporting the application and did not take into account those refuting documents filed by members of the community, including CPR. ACTPLA went so far as to ignore its first critique of the same earlier application in which it had identified 21 flaws or faults with the reports.

Health impact resultant from development

The Application has been referred to ACT Health for comment - not it is noted, any other documents. The entity has responded to the application commenting that the proposed new site is more appropriate being located in an industrial zone and approximately 1 km further away from the residential area of Tuggeranong and the Health Treatment Facility. ACT Health notes the air quality results and noise levels - taken from the application reports – are supportable^{xi}.

That is all ACTPLA commented on in this important and immense issue regarding air quality and the future health and well being of citizens of Canberra. The information they appear to have provided ACT Health has been only those reports commissioned by the proponents and filed in support of the application by the proponents. Given the HIA was disbanded before those medical members were able to comment or make any written recommendations, this would have been the first time a medical officer has been able to comment on this vital and important issue. As ACTPLA was not specifically required to give all the information to ACT Health – it did as little as required and only gave those documents filed by the proponents.

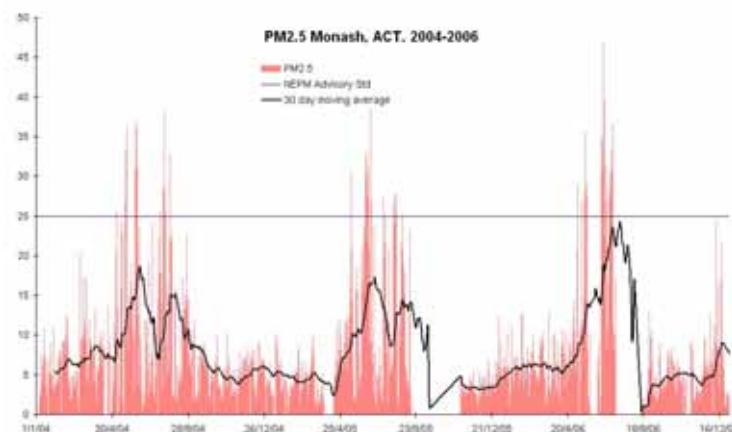
It is worth reminding those members of this committee the reasoning for calling an Environmental Impact Study given by the Government and ACTPLA at the time, were not small insignificant points – it was about gaining as much accurate and relevant information in which to decide a development application that had the very real prospect of causing irreparable damage and negative impact on the environment and the health and well being of the citizens of Canberra.

At the time of the disbanding of the already commenced investigation of the HIA and the announcement of the EIS on 6 August 2008 Minister for Planning, Mr Andrew Barr stated “This is the planning system working as it should”. At the same time Neil Savery of ACTPLA stated “There is not enough adequate information available at this time in the face of the size of this project”.

According to ACTPLA and the Government the development which was moved from Tuggeranong, 1km further away to Hume, is the same application – yet by passing the legislation in December 2008, Jon Stanhope and those members of the Legislative Assembly who supported that legislation had determined this information, required and requested 4 months previously, was no longer necessary and this development could be approved without critical analysis of the veracity of even the most important impacts such as air quality and the impact the gas fired power station would have on the health and well being of citizens.

Below is a copy of the letter received by CPR regarding its letter written directly to ACT Health in which CPR raised the same issues directly to Health – that CPR raised in its responses to the various applications, HIA and EIS submissions. CPR was and is, very concerned about the PM_{2.5} emissions^{xii} which would come from a gas fired power station. During the filing of supporting reports and response to CPR’s query of PM 2.5 emissions it is noted that the proponents stated the ACT did not collect data or monitor PM_{2.5} so it had not included that in its reports. Oddly enough, the ACT Commissioner for the Environment released data later in the year showing that the ACT did in fact monitor PM_{2.5} and had done so for many years. In the Tuggeranong area, there had already been many breaches of the safety levels for PM_{2.5}.

In the letter from Health it appears clear that Health too has made submissions to ACTPLA regarding the PM_{2.5} emissions which will come from the gas fired power station and have an irrefutably negative impact on the health of those citizens living within a wide range of the gas fired power station.



Caption: The PM_{2.5} pollution data are most important because they monitor concentrations of minute particulates that are far travelling, ... and are generally regarded as a major cause of chronic illness and death for children, the elderly and in particular asthma sufferers



Chief Health Officer

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File No: 08/11359

Mr William Reid
President

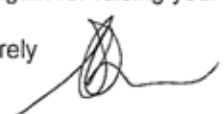
Thank you for your letters concerning health aspects of the Canberra Technology City (CTC) proposal to Dr Charles Guest, Chief Health Officer, received on 6 February 2009, Mr John Woollard, Acting Executive Director Population Health received on 17 February 2009 and other senior ACT Health officials. I am replying on their behalf as Acting Chief Health Officer.

I agree that effects of particulate matter of 2.5 micrometers in diameter ($PM_{2.5}$) are unquestionable. That is why ACT Health raised this issue in its submission concerning the draft Environmental Impact Statement (EIS) for the CTC proposal (at the Tuggeranong site). In particular, ACT Health noted that the Health Impact Assessment (HIA) report discussed a number of relevant scenarios modelled in the Preliminary Assessment, which were based on the PM_{10} fraction. Given that $PM_{2.5}$ better account for the smaller particles expected from combustion processes, ACT Health was of the opinion that, regardless of the results predicted for PM_{10} outlined in the HIA report, additional air quality modelling for $PM_{2.5}$ fraction would be warranted to provide further information about any potential health risks. ACT Health emphasised that this additional modelling should be undertaken as part of the EIS process. ACT Health also requested that the HIA report, along with ACT Health comments, be considered in the EIS process.

In relation to the Development Application (DA) for the CTC proposal at the new site in Hume, ACT Health understands that the work previously undertaken on the EIS for the proposed CTC on the previous site would be considered in the DA assessment process. ACT Health suggested in its submission to the ACT Planning and Land Authority on the DA for the proposed CTC in Hume that work on the HIA done for the previous site be also considered in the assessment process. This includes ACT Health's comments about $PM_{2.5}$ already communicated to the proponent during the EIS consultation process.

Thank you again for raising your concerns with ACT Health.

Yours sincerely


Dr Eddie O'Brien
Acting Chief Health Officer
6 March 2009

Amanda Bresnan – ACT Greens - stated in her speech in support of legislation to “fast track” the development and effectively remove any necessity for the proponents or anyone to review the proponents supporting documents “However we would like to ensure that this broad process will never happen again, that the auditor general’s recommendations are applied, that the HIA recommendations are taken into account and applied and that there is ongoing monitoring of data on 2.5 particulate pollution.” Given that the proposal was approved without ACTPLA even acknowledging the issue of PM2.5 existed and with Mr Stanhope with the support of the Legislative Assembly all approving the “fast track” of this development without the need for Environmental Impacts Studies and medical expert oversight of a Health Impact Study, the community assumes that the monitoring Ms Bresnan refers to will be after the development is built and after the community falls ill.

The Government, with the complicit support of ACTPLA, has set tremendously onerous tasks for the community to critique and analyse complex reports in short periods of time, with no support and no acknowledgement for the efforts the community has made.

The Government has, throughout this process, deliberately created a system which has been incomprehensible to all, including experienced ACTPLA staff – with two concurrent applications which are accepted by ACTPLA as being the same, but with different proponents, running under different legislation, on different sites but with the same supporting documentation – except for the community who was required to re-file their unassailable submissions with only 15 days to do this, again during the school holidays, when it is widely acknowledged that most Canberrans are not in residence.

One application held the EIS - which had been conducted by a consultancy firm which was already involved in support of the industrialisation of the site,- and a Health Impact Assessment - which had been conducted by consultants who had throughout admitted they had no medical expertise and no knowledge of the local issues. The other application merely re-filed the old reports, virtually unaltered, which had already been discredited by the submissions of CPR and other learned, expert and ordinary members of the public.

In any event neither the EIS nor the HIA accurately and specifically addressed those issues raised by CPR such as the inadequacy of non-site specific investigation and data; wrong plume study modelling; and no data on PM2.5 emissions. Despite the Government passing legislation which did not require the power station development in Hume to have an EIS or HIA, everyone, including Amanda Bresnan, appeared to assume that the recommendations contained within the EIS and HIA, however pointless and based on the views of non-health consultancy firms, would be followed within the new application. It is baffling to see how and in what way this would happen.

The creation and passing of a piece of legislation that disallows application for judicial review should have been as clear a signal as any to all that this was not a Government which was going to allow anything getting in the way of approving this development – including ‘little’ details such as the emissions were unsafe and the gas fired power station too close to homes, with wind patterns that would blow PM2.5 directly into homes, schools and health facilities.

It is also worth noting that Mr Stanhope is a lawyer and would be very aware that application to Judicial Review would only have been possible had the requirements been met – had there been an error of law, procedural unfairness and unreasonable and irrelevant consideration in decision making. That Mr Stanhope felt it necessary to remove the possibility of the community making such an appeal at that stage infers that he feared it was possible and that there had been an error of law, procedural unfairness and unreasonable and irrelevant consideration in the decision making. Had he been sure there had not been, why bother removing the right of appeal?

This is more so interesting when considered against the argument delivered at the time of the passing of this legislation – that time was of the essence – the legislation was necessary to speed through the development inferring it had been stalled by community opposition. The proponents had claimed, and the Government had not indicated it had doubted or checked the claim, that clients were queuing up to enrol into the data centre and that any delay would put off the investors and financial backers of this \$1 billion investment. A mere four months after this, Andrew Campbell of TRE admitted they had no clients.

As for the community opposition holding this development up – the Government has stated it would be nonsense to follow the advice of the Auditor General and commence community consultation prior to filing of plans. These proponents filed their plans in March 2008, already at the time of filing, knowing that it would need to radically alter the core business case and down scale the power station component as it was not financially viable to run a 210MW power station on that site. That the proponents needed to refile plans and then address the enormous flaws, gaps and mistakes contained in their supporting reports hardly seems the responsibility of the community, rather it is at it appears, the natural result of poor project management, bad planning and a disregard for environmental protection and good land management planning practices.

As Minister Barr pointed out in August 2008 – calling for an EIS was the planning system working as it should. The community had called for a full and accountable EIS from May 2008 – it is irrelevant that what it received in August was an attempt to silence the HIA, ward off an election issue and resulted in a worthless document which was shoddy, uncritical and written by a consultancy firm that already had a vested interest in the proposed industrialisation of that land.

The Government – who had directly influenced and meddled in this development process from the start - did not feel any compulsion to comment on the choice of GHD as the authors of the so called EIS. Here are some of the community's favourite quotes from the Hume Industrial Impact Plan Study (HIPS) written by GHD. The HIPS, you will recall was an internal Government document which was available to the proponents Technical Real Estate (the directors are also directors of CBR Ellis Real Estate) via their close friendship with ACTEWAGL CEO Michael Costello and John Mackay –who as the Auditor General said are treated as Government colleagues and friends. The HIPS was actually quoted to support the original application although the community was only able to review this document on application via the Freedom of Information.

ACTEW expressed concerns about lack of water should a data centre have a fire outbreak: *"From an infrastructure perspective, ACTEW Corporation has expressed concerns about the development of the data centre since it would require considerable volumes of water if there were a fire outbreak."*

GHD's concerns around over-stating job numbers with respect to original larger project and on land in the 'employment corridor': - *"The construction phase of the project is expected to employ up to 60 people in the construction of the high-pressure gas pipeline and another 50-100 in the construction of the power station and associated facilities. These figures are unlikely to vary significantly due to the construction of the data centre."*

"During the operational phase of the project, employment opportunities may be created in relation of the operations and maintenance of the power station. The operation of the data centre is not envisaged to require high levels of staffing. Overall, the project will be a potentially low employment generator during its operational phase."

To the knowledge of the community, although it is entirely feasible that the Government and the proponents had direct access to the consultancy firm throughout its compiling of the EIS^{xiii}, the EIS was not complete until early 2009 – thus the passing of the fast tracking legislation in December 2008 showed how little the Government cared about the contents or recommendations of an EIS and confirming it had been a stalling tactic to attempt to avoid making the development an election issue – rather than a genuine attempt to gain all relevant information about the potential harmful effects of a gas fired power station so close to homes.

It is also interesting to note that this EIS – which was intended to provide sound and credible recommendations and information on all relevant matters – approved the one and only financial viability study filed by the proponents. GHD the authors of the EIS considered this report over a period of less than one working day and found it sound. Given that the development has no clients and remains without financial security it begs the question ... **If GHD found this financial viability study to be sound - and it clearly wasn't – what else did they approve in the proponents plans which would equally have proven, when the gas fired power station was up and running, to be unsafe, unsound and plainly dangerous?**

ACTPLA approved the application without giving any insight or reasoning for passing the application. Another example – CPR raised an issue regarding the definition of Communications Facility within the Territory Plan and produced an eminent Barrister's detailed legal opinion that a data centre could not be defined as a Communications Facility. ACTPLA merely responded "It falls under the definition of a communications facility" which is curious as even Mr Stanhope felt it best to actually change the Territory Plan definition of a communications facility to include a data centre.

So having approved the application by relying totally on the reports of the proponents taken at face value, and ignoring the numerous submissions filed by the community and the issues they raised and the supporting evidence filed for the issues they raised, it appears the community was not alone in being ignored – it appears that ACTPLA and the Government also ignored the submissions made by Health regarding PM2.5.

The price paid by the Community then – should this fiasco of a privately owned gas fired power station and data centre ever be built in this site – will be irreparable and catastrophic damage to their health and well being, to their families, children, and communities. The damage already paid by the community is to realise that those who govern them are doing so under an agenda that has nothing to do with meaningful consultation nor putting the needs of the citizens of the Territory before those of a private consortium of business.

For the record, CPR would be grateful if this committee will ask of the Government who is reviewing the likelihood of PM2.5 emissions from the gas fired power station **prior** to it being built rather than waiting for it to be built and then monitoring it as people get sick.



Caption: Children at play in safety behind residential suburbs

The Importance of the Auditor General's Report

"I will do whatever somersault and swallow whatever little bit of pride I might have to swallow in order to ensure that this community doesn't lose this investment."
Jon Stanhope^{xiv}, 5 December 2008

On the premise that Mr Stanhope believes that he acts solely for the benefit of the Territory he serves, on the face of it, there would be an argument to allow Mr Stanhope to continue to govern in the way he always has – using his majority in the Assembly and his close alliance with ACT Greens to make legislation to stop community "involvement" or "protest" over something he wants to see happen; or being directed by close personal friendships with the CEO of ACTEWAGL or ACTEW and allowing them intimate access to Government departmental heads and reports etc; even allowing the Chair of ACTEW to direct which schools should close in Canberra; or appointing the Chair of ACTEW using an unusual and oddly unaccountable process of Mr Stanhope "merely thinking about it."

Mr Stanhope recently criticised the Auditor General after she audited the Ambulance Service. The current Government has, so far, ignored the recommendations of the report on the power station. The only recommendation that Mr Stanhope openly rejected however was the suggestion that the Government commence consultation early in the process – before the application was filed. Mr Stanhope said this was nonsense and unfeasible, yet did not draw any comparison to the Government having spent a considerable amount of money advertising the development in Europe, on behalf of the Territory, before the application was filed or disseminated to the community.

Mr Stanhope does not appear to have spent any time reflecting on the recommendations of the Auditor General's report and in such dismissal shows contempt for her work, going so far as to receive the report the same day as passing legislation which continued to drive through Mr Stanhope's aim of delivering a development which was reported within the Appropriation Bill 2008- 2009 as "While the actual budgetary outlays in the ACT budget are minimal for the project, the Committee considers that the size and level of interest in the project on the ACT warranted a detailed and thorough examination of the issue."

And which, as late as 6 August 2008, was being touted by Michael Costello as providing "\$1 Billion investment, 300 jobs and courses at universities."

The development site is empty as of 18 July 2009 and Andrew Campbell of Technical Real Estate recently stated in support of his application for \$34 million of Federal money to support the development that he did not have one single investor or client lined up for the data centre.

"Government did not have sufficient information on the Canberra Technology City proposal prior to lending strong support to it and committing to an Option for a direct land sale." "The Government should have prepared a due diligence assessment of the consortium intended to carry out the project, the involvement of ACTEW (a Government Business Enterprise) as well as ensuring that the claims made by proponents were valid and substantiated" – Auditor General's report 2008

The Auditor General, echoing a point made on several occasions by CPR in their submissions comments on a number of occasions that not only did the Government have very little, if any,

evidence to support the claims of the proponents before throwing the full weight of Government support behind this proposal, but that the entire project appears to be coloured by the close proximity between the proponents, ACTEWAGL, and the Government. The Government, she says, assuming at times ACTEWAGL was a department and part of the Government's infrastructure and thus allowed ACTEWAGL unprecedented access to Government reports, heads of department, conversation and access directly to the Chief Minister, land options, joint press releases, total support from the elected representative of the Territory for an unelected proponent to a real estate development without requiring the proponents to file one piece of evidence that would support their claims of job creation, investment amounts etc.

This must surely show members of this committee and members of the Assembly, as it has shown members of the community and the Auditor General, these close and unaccountable relationships within Government and business, even if they are not actually disreputable or corrupt, certainly give the impression that such special favouritism could lead to corruption.

One issue which remains unaddressed within this theme is the role of ACTPLA. ACTPLA is supposedly an independent land and planning body which has clear principles of acting protectively towards the ACT and its citizens within its planning decision making authority. It is, as the community understands it, supposed to be separated from the Government, behaving independently and in lines with the legislative direction of best principle planning practice. In this incident it is clear that ACTPLA and most notably Neil Savery, were under enormous pressure to conform to the Government's will and was not acting independently.

- ACTPLA allowed the second application to be filed as "an alteration" – siting that the reason for allowing this as an alteration rather than a new application was "it was less damaging than the first application". This would have been an issue raised by the community in a judicial review had the matter been concluded via this application as it is clearly not a means of sound reasoning to consider whether an application is an alteration based on the potential damage either will cause if approved and it is clearly not the same standard applied to all applications applying for alteration status.
- ACTPLA would not be counted as a third party for the purposes of applying for Judicial Review. Mr Savery himself noted the politicisation of the process in the passing of the legislation^{xv} must have also realised that the passing of that legislation and his adherence to it, rendered ACTPLA far from independent. ACTPLA was no longer acting therefore within its own principles and independence status and by approving that development under that legislation was approving something outside its independent authority. It was also approving a development which from any definition was clearly outside best planning practice and principles
- ACTPLA did not appeal this or stand up as the independent planning authority to defend the planning process, and sound safe planning practices - when that legislation allowed this gas fired power station to be approved without any real critical analysis of the devastating impact of PM2.5, pollution or noise etc would have, or without having a full and independent EIS and a health expert written HIA, ACTPLA turned its back on its duty as an independent planning authority incorporated to protect safe planning in the ACT and merely complied with the will of the majority^{xvi} Government.

ACTPLA therefore falls into the same category as ACTEWAGL and appears to be merely a tool for the will of the Government rather than displaying any independence or auditing capacity on behalf of sound planning in the ACT – this leaves only the Auditor General to stand up to such a singular and almost dictatorial system.

The ACT is currently labouring under a flat level of governance. Whilst Mr Stanhope rails against the criticism in the Auditor General's reports or ignores them, in so doing he diminishes the authority of the Auditor General and lays the foundations of a dictatorship; of the ability of majority Government to merely pass any legislation to drive its own agenda – and that agenda may not be in the best interests of the Territory rather it may be the best interests of a small elite group of business people who appear regularly in the close circles of governance yet who remain unelected and unaccountable to the very people over whom they hold enormous power.

Whilst Mr Stanhope and those who support him may believe they are doing the best for the Territory, if they continue to diminish the power of the Auditor General and leave that post underfunded and disrespected - a 'toothless tiger' - then Mr Stanhope and those who support him, are laying the foundations for a future charismatic and long serving, majority powered Chief Minister to behave in a way which would, and could, obliterate the lifestyle and face of Canberra. Without the Auditor General, there is no one else to audit and point out officially the things which are clearly easy for the Government to ignore when the community points them out.

The ACT Ombudsman does not fulfil this role and would not take this on. Asking Mr Stanhope to audit his own decision making processes or to consider where a conflict of interest may rise is problematic.

Under the Chief Minister the following responsibilities lie:

1. Government policies, priorities and projects
2. InterGovernmental relations
3. Council of Australian Governments
4. Coordination of Government administration
5. Support to Cabinet and its committees
6. Government accountability frameworks and access to Government information
7. Regional policy
8. Land release policy
9. Land development
10. Sustainability policy coordination
11. Major project facilitation
12. Infrastructure strategy
13. Public sector management
14. Community engagement
15. Audit services to Government

Mr Stanhope also holds the following portfolios

Minister for Territory and Municipal Services

16. Municipal services
17. Libraries
18. Land management and stewardship
19. Government services including shared services, transactional, information, payment and property services

Minister for Business and Economic Development

20. Economic development
21. Business support programs

Looking to one of his colleagues too for support on an important issue regarding perhaps a clash of interests – for example when a development which claims to bring in \$2 billion of investment requires itself to be built dangerously close to an existing Health Facility – you could apply to the Minister for Health – except that she is also the Treasurer and the Chief Minister’s Deputy. She has already declared this development vital to the financial future of the Territory, which then becomes confusing if she is expected as minister to defend the rights of those residing in a health facility which is required to move because of this development.

Ms Katy Gallagher holds the following portfolios:

Minister for Health

1. Health policy
2. Health infrastructure
3. Acute health services
4. Community health services
5. Cancer services
6. Aged care and rehabilitation services
7. Mental health services
8. Population health services

Minister for Women

9. Status of women

Treasurer

10. Fiscal and economic policy
11. Taxation and revenue
12. Budget and financial reporting
13. Insurance
14. Competition policy
15. GBE ownership policy
16. Regulatory reform
17. Public sector super fund management

Minister for Community Services

18. Carers
19. Community recovery
20. Therapy Services
21. Community support services
22. Concessions
23. Community facilities
24. Volunteering

The Auditor General therefore holds, or should hold, a higher level of respect and authority within the Legislative Assembly – which currently Mr Stanhope appears to be diminishing and disrespecting. This does his Government and the ACT an extreme disservice and one with which, if this continues, in the longer term, the Territory will pay the price of Mr Stanhope driving to

achieve what Mr Stanhope wants whilst silencing all those who ask him to reconsider, change his mind and see a different view point.

What happened after the Auditor General filed her report

What happened after the filing of Auditor General's report, for every member of the community, illustrates exactly what lessons the Government learned. It demonstrates the level of disrespect the Government holds for the community, the power and destruction when Government opposition within the Legislative Assembly is weak, collusive and compliant with a single level of power. It illuminated for the community the reality of governance in the Territory with egotistical driven policy, unaccountable decision making and the brazen mis-use of legislation. The Government continues to govern, unchecked, with a "majority" Government power around matters which should ignite full debate and involvement with every member of the Territory. What happened in the case of the Power Station and Data Centre, after the filing of the Auditor General's report, was on behalf of the Government a calculated dissection of community rights, environmental safety and creation of legislation designed to legalise the silence of environmental concerns and achieve the aims and ambitions of a small group of political and business individuals.

❖ A new site was identified:

- It was 800 metres from the old site
- It was the site which had been estimated as being worth \$50 million
- It had been 'cleared' of Aboriginal Artefacts
- It had been 'identified' by a group of public servants who had no particular skill in site selection
 - On 8 August 2008 – Andrew Campbell of Technical Real Estate – the then proponents- stated that the site would not be re-considered when it came back on the market because
 - It was too small
 - Under a flight path
 - Too close to the Monaro Highway
 - Low lying and subject to one in 100 flood zone and therefore
 - Too great a risky site for investors to consider for a data centre
- The selection was not consulted, or discussed with the community
- The terms of reference for the site selection were not disclosed or discussed
- The selection was made without any accountability, inspection or consideration

❖ Jon Stanhope introduced legislation to "assist the transfer of the application from one site to another (11 December 2008):

- The Assembly and the community were given less than 24 hours to consider this piece of legislation
- Jon Stanhope's introduction to the legislation was misleading – there is no legal reason to "assist the transfer of one application on one site to another".
- The intention of the legislation was actually to
 - Fast track the application negating the need for any environmental studies
 - Extend the ability of the proponents to "add" supporting infrastructure without having to apply to a new application
 - Remove any opportunity for a third party to appeal against the approval

❖ **The two applications ran concurrently:**

- This was confusing for everyone – one member of the community received five different explanations from ACTPLA regarding the status of the concurrent Applications
- It was advertised on 9 January 2009 – during the school holidays – without the nearest neighbours or CPR being informed
- Interested parties were given 15 working days to respond to this “new” application – without explanation as to how the proponents – now different – could merely file the same reports for the old application when
 - The reports were prepared for ACTEWAGL not Technical Real Estate, with caveats attached that only ACTEWAGL could rely on them
 - They were able to re-file the same reports, virtually unaltered, when the originals had been prepared, supposedly, for a power station to be built on a specific site, with specific wind, topography, proximity to homes, wildlife, etc and the application had now moved to a different location
 - They were able to continue to file the same reports despite the community having filed academically researched reports which directly questioned the reliability of the reports and their findings and indicating that there were serious flaws in this
- ACTPLA and members of the legislative assembly stated that whilst the “power station” was being fast tracked, it would still use the information contained in the HIA/EIS which was still awaiting finalisation on the old application^{xvii}
- The use of the HIA/EIS was confusing to many members of the public, especially the stated reliance on this report by ACT Greens^{xviii} who stated they would be looking to the recommendations in this report to inform the new application
- The new development did not require a full EIS due to exemption by the Hume Development Application Assessment Facilitation Bill, as is required under the planning Act’s impact track for a class A scheduled power generating facility
- Only on direct questioning were individual members of the community told that although “it was the same application”, ACTPLA could not and would not, transfer the same documents filed in support of the first application to the second – making it confusing as to how they could then ‘transfer’ the recommendations of an EIS/HIA specifically created for the original site to a completely new site
- Most members of the community believed that their objections, already filed, would stand and have to be responded to
- Oddly ACTPLA was able to accept the same documents, virtually unaltered, merely re-filed to support the new application on a different plot of land, with a different topography, contours and position in relation to wind, land formations, existing infra-structure and intended infra-structure
- The original site was never withdrawn by ACTEWAGL and no specific announcement made by ACTPLA, the proponents or the Government to declare it had lapsed – despite the community having proven over and over again that it had a keen interest in the development

❖ **The community was asked to respond to this new submission:**

- Despite the application being merit tracked and there being no right of appeal attached
 - The advertisement for this new development was again limited to web site and Canberra Times
- Noting the Labor Government had recently put out a paper about consultation relating the difficulties the Government of Queensland had consulting with its citizens to the difficulties of consulting with ACT citizens

- Notably not in this instance being prepared to engage with the community about something the community had clearly indicated it wished to be engaged with.

❖ **The reports filed in support of the application were virtually the same as the original reports:**

- Yet ACTPLA did not this time find 21 flaws as it originally did and did not refer onto an EIS or HIA.

❖ **The proponents changed to Technical Real Estate:**

- Yet the reports did not – despite the authors of those reports clearly aligning themselves and the evidence they filed to support the original commissioners of the reports – ACTEWAGL
- ACTPLA felt able to ‘trust’ TRE to file in evidence their reliance on reports they had no right or technical expertise to rely on.

So in other words ACTEWAGL who commissioned those reports are the only ones who have a ‘right’ assigned to them by the authors of the reports to rely on the contents of those reports. The second ACTEWAGL ceases to be the proponents of that development so does the reliance of trust upon those reports cease. It does not transfer to the new proponents. Yet ACTPLA did not think this was worth mentioning or commenting on – despite the reports dealing with matters which will affect the health and well being of many Canberrans.

- ❖ Those submissions filed by the community in the second application received perfunctory replies with the gist of the approval from ACTPLA being “We had no reason to believe the reports filed in support of the application to be incorrect”
- ❖ The press announcement stated “The application meets the requirements of the Territory Plan 2008 and the National Capital Plan Development Control Plan (DCP)” without stating that this was only possible after both had been specifically amended without consultation to make this development fit these plans
- ❖ There were limited caveats attached to the approval – screened by TAMS – the minister of which was John Stanhope and EPA – Minister Simon Corbell – although it is a statutory position occupied by a public servant – Director Bob Neil.
- ❖ TAMS merely require parking and sewage (fully detailed drawings of everything) in order to approval.
- ❖ EPA requires an environmental authorisation because under the Environment Protection Act 1997 – it is a Class A activity which is the generation of electricity by a generator classified as a scheduled generating unit under the national electricity rules clause 2.2.2 under the National Electricity (ACT) Law.
- ❖ “Under the Environment Protection Act 1997 most decisions of the EPA such as the granting of environmental authorisations may be reviewed by ACT Civil and Administrative Tribunal”
- ❖ The community has not received any notification as to whether these caveats have been approved.
- ❖ The community did not receive any clear concise notification of the caveats either – this can only be found by reading the details of the approval from ACTPLA and researching the original laws and department authorities.

The general 'feel' from statements made from a number of legislative Assembly members, especially by Amanda Bresnan, is that the safety of this development for the environment will be protected by those in EPA and Health watching emissions etc. The community can relax as the supporting reports say this development is safe; Health and EPA will watch to make sure it is.

Health has not been given either the community research or the full understanding of this development. EPA appears nowhere to have contributed, considered or studied this development. In short the only independent reports or study done around the veracity and safety of the reports filed in support of this development have been conducted by the community. The community reports have highlighted flaws, gaps and mistakes in the research of those commissioned by ACTEWAGL to support their development plans. The community has shown this development to be unsafe, environmentally devastating and can see nowhere any evidence that the claim of 300 jobs created by this development would offset the damage caused by this development – even if those 300 jobs ever eventuated.

❖ **The Government smoothed the path of the second development:**

- This was done via changing the Territory Plan to allow for building height and changes in the definition of "Communications Facility"
 - Although the Territory Plan was changed to increase the heights of buildings to allow for the steam stacks of the power station, they originally did not increase it enough and had to alter it again
 - At the same time they increased the height on the National Capital Plan, also incorrectly for the purposes of the Power Station – this had to be changed again
 - This was all done with minimal consultation on the changes to the National Capital Plan and no consultation on the Territory Plan changes

❖ **The results of the HIA/EIS were, when finalised, inconclusive and did not respond to the concerns of the community:**

- The Health Impact Study was not created by medical health professionals – they had been 'fired' by the Government before they had written a word and the report taken over by Golders, a consultancy firm
- The draft EIS which was supposed to incorporate the HIA, was written by GHD consultants – they were the authors of the Hume Industrial Planning Study which had originally recommended the conversion of the Tuggeranong Broadacre buffer zone into industrial and had suggested the site as being suitable for a gas fired power station – albeit without doing any topographical or specific studies on the land

What does this mean?

This development has illustrated what is happening slowly but surely to Canberra.

The Government writes on virtually every web site and paper about the “bush capital” and uses phrases such as “Community consultation” – these have no real meaning in the present drive for development and the illusion of financial credibility which defines the mechanism of Stanhope’s governance. It is smoke and mirrors in which the hard work of some community members cleared the smoke and smashed the mirrors to reveal a Government which favoured an elite business group over the needs and well being of a large portion of Canberrans.

This flat level of Government has too much power and not enough morality and integrity to actually consider in a balanced measured intelligent manner where this form of governance is leading Canberra.

Consult – means to seek information or advice from a person or book etc; take counsel with; take into consideration;

Consultation- means a meeting for deliberation, discussion or decision. Consultation is the act of “consulting” from consult.

The Government and these proponents consider “consultation” as the community being told what is going to happen to it – an example is the proposed cemetery on the broadacre block which was considered “the best choice for a power station” and now is considered “The best choice for a cemetery”. The Government is so intent on proclaiming it has consulted with the community yet has given no alternative to the location of the cemetery, not divulged how the land was chosen, not given the community an alternative to a new cemetery or for that matter proven that a cemetery is needed.

The community is baffled that the ACT Greens, who took such a strong environmental line to begin with.

“I do hope that now a fairly thorough environmental study of the area has been done, that local landcare groups and paddock users will work towards rehabilitating some of the upper area on the hill and extending the buffer to the endangered woodland adjacent to the site. It is hoped that the Government will find a more suitable use for the original site in a broad acre zone in close proximity to residential houses and a buffer zone for endangered grassy woodland nature preserve” – Amanda Bresnan – speech to Legislative Assembly on the legislation 11 December 2008.



Caption: Buffer zone for endangered grassy woodland

Furthermore, Ms Bresnan has not openly condemned the development of a cemetery on the very site closer to endangered yellow-box red gum, grassy woodlands – when the cemetery would ironically include a gas fired crematorium, buildings to house the ceremonials, toilet blocks, the digging equipment, traffic through ways, traditional and non-traditional enclosed cemeteries, preventing animals through the “wildlife corridor” etc. Not to mention the continued plans of the Government to develop this entire corridor into an industrial estate. The siting of this “much needed” cemetery is also peculiar. If it is to service southern Canberra then why is it not further towards, Calwell and Lanyon. Canberrans who can reach Hume can easily reach Queanbeyan cemetery which has plans to build a crematorium.



Caption: early morning mist rising over the proposed site

Conclusion

- The importance of the Auditor General and her role can not be under-estimated within the governance system Canberra currently labours under. Without true independent auditors with authority and power to intercede, Canberra will continue to be carved up and mutilated in the best interests of elite private developers whilst the Government rhetoric continues around a “bush capital” and “solar power capital” and other such meaningless nonsense.
- Without the Auditor General being given greater authority and power to actively pursue revision and response the Government can and does merely revert to legislating to exclude the community from having a voice in the courts and amongst the press.
- The Government needs to implement truly independent authorities who can arbitrate between the desires of the Chief Minister and the single level Government and the needs, views and best interests of the community.
- The Government needs to use meaningful consultation with all members of the community and implement practical and pragmatic measures to include everyone to have a say especially in situations which will affect them. The Government cannot rely on a small advertisement in the Canberra Times as adequate consultation
- The Government needs to take a sensible approach to advertising applications prior to applications being filed – it cannot claim independence and “fair play for the developers on one hand” and be intimately involved and drive the application on the other.
- There needs to be a clear distinction between the roles of ACTEWAGL, ACTEW and the Government and those consultants these organisations use. Exposing a small group of consultants and members of ACTEW and ACTEWAGL to internal and otherwise Government-only documentation gives these consultants an unfair advantage over other prospective developers which in this instance was clearly used and abused.
- An investigation needs to be conducted into the collusive and close relationship between the Government and Michael Costello and John Mackay
- An investigation needs to be conducted into what appears to be unreasonable pressure placed on ACTPLA by the Chief Ministers Department and Government colleagues to create an outcome favourable only to the CMD and the proponents
- An investigation needs to be conducted into how the Government was able to legislate on a number of occasions for changes in the Territory Plan, NCA plan and to exclude the community from appealing – all in order to achieve the Chief Ministers personal aims – this investigation should consider whether this lacuna should be closed up.
- Consideration should be given by the chief minister and Michael Costello to apologising to the community for blaming them for the loss of \$1 billion of investment.
- Consideration should be given by the Chief Minister to applauding the efforts and work the community actually put in to responding to various submissions and enquiries throughout this process. The Chief Minister complains on one hand that he needs to improve consultation and on the other condemns and attacks members of the community who do respond. The chief minister is reminded he referred to the proponents as “good corporate citizens” whilst knowing they were lying when they blamed the community for the down scaling.

- Consideration should be given by the ACT Greens in pursuing their election promises and protecting the Broadacre plot 1610 from any further development, including a cemetery and a crematorium which would impact significantly on the wildlife corridor.
- Consideration should be given to reviewing the behaviour of those close business allies – Catherine Carter, Chris Peters and Chris Faulks^{xix} - and their press advertisement and endorsement of a project, claiming this project would “keep their children in Canberra” which, as the auditor general pointed out, had no verifiable merit. These Canberra business people placed an expensive advert (out of the financial reach of the community to respond) endorsing this proposal – the Chief Minister talks of fairness and parity in the process – the community would like the actions of these individuals considered as part of this enquiry into their motives and the pressure their inaccurate advertisement placed on the people of Canberra.
- An investigation into the behaviour of the Department of Health and Department of Disability in relation to the Health Facility, asking why were the residents not informed? Why was no move made to gain the views and wishes of the residents, their carers and their family regarding the development? Why was the first reaction of the then Minister for Disability Katy Gallagher to move the facility?



Caption: Some of the concerned members of the community of over 3,500 signatories to the petition to the Legislative Assembly

END NOTES

ⁱ It is worth remembering that the CMD originally denied any involvement in the land selection (page 37 of the Select Committee on Estimates 2008-2009 Appropriation Bill 2008-2009) but later admitted that it had been involved (page 77 of above)

ⁱⁱ Auditor General's report no. 7, 2008

ⁱⁱⁱ Taskforce hunts new site (Canberra Times, 25 November 2008); Taskforce finds current data centre site 'most suitable' (ABC News, 1 December 2008)

^{iv} Alternative site identified for data centre: "A Task Force set up to investigate alternative sites had concluded that the current site, on Mugga Lane, opposite the rubbish tip, was still the most suitable location for the development." (Chief Minister, 5 December 2008)

^v Documents received under FOI – LDA /CMD email dated May 2007

^{vi} Jon Stanhope Press Release May 31 2008 – referring to ACTEWAGL and the decision to "down scale" the power station which he claimed was due to "community pressure" and failing to mention that the decision to "Down Scale" had been made months before on the basis that it was not financially viable for ACTEWAGL to build a 210 MW power station on that site.

^{vii} Caroline Le Couteur stated to the Canberra Times on 14 July 2009 (article by John Thistleton) "*The Government had clearly learned its lesson on Community Consultation from the gas fired data centre project and started early consultations*"

^{viii} The Auditor General makes mention of this throughout her report. She refers to the close and collusive relationship between the Government and ACTEWAGL – who in this incident are proponents of a private real estate development scheme which sits outside their normal business. The community also voiced concern as to how it was the proponents were able, in their application for this development, to reference an internal Government report, available only to Government departments (and written by the same consultants who would later prepare the EIS), when the community only received this via the auspices of an FOI application made by the Opposition. Since then it has been noted that Michael Costello, the CEO of ACTEWAGL (and formally the Chair of ACTEW) was also the author of the school closure report which has been declared not to be disclosed to the public for many years. It is also noted that the former CEO of ACTEWAGL, who is now the chair of ACTEW, John Mackay, was made Canberra Citizen of the year and when asked in the Assembly what process the Chief Minister had used to appoint John Mackay as Chair of ACTEW – Mr Stanhope replied "he had thought about it and decided he was the right man for the job". The Auditor General notes that whilst ACTEWAGL offered the Government \$100,000 for the land, the Government only took \$40,000. .

^{ix} Amanda Bresnan's speech to Legislative Assembly – 11 December 2008 – "*This bill is a sign of changing times. I would like to say that it is a sign that the Government is listening to the community, but more to the point this bill is a result of the Greens-Labor Agreement, which ultimately delivered Government back to Labor. If the Greens had not ensured that a new site being found urgently was part of the agreement, the data centre project may still be going ahead on the Tuggeranong site As we have heard constantly over the past eight months or so, putting a data centre, and more to the point, a gas-powered co-generation facility, just over the hill from a residential area, and also right next to a health treatment facility was inappropriate. The fact that, and the Auditor-General noted this too, the site was referred to as Hume for the initial phase of flagging the project was quite misleading.*"

^x Meredith Hunter quoted in the City News.

^{xi} From the ACTPLA approval document

^{xii} PM2.5 are the smaller more deadly particles which cause respiratory illness and suspend in the air longer and travel longer distances. They are a definite by-product of incomplete combustion found in gas fired power stations.

^{xiii} Note the meeting held by GHD during the compilation of the EIS which included the CMD, LDA, ACTPLA and the proponents but not the community

^{xiv} Jon Stanhope – direct quote to Win TV 5 December 2008

^{xv} Win TV Neil Savery – 10 March 2009

^{xvi} We accept that in theory it is not a majority but the behaviour and compliance of the ACT Greens show the community they are little more than minor members of Mr Stanhope's party and

incapable of defending what they were elected to defend nor represent those who elected them in trust.

^{xvii} Amanda Bresnan 11 December 2008 *"However we would like to ensure that this broad process will never happen again, that the auditor general's recommendations are applied, that the HIA recommendations are taken into account and applied and that there is ongoing monitoring of data on 2.5 particulate pollution."*

^{xviii} Amanda Bresnan 11 December 2008 *"I would like to note that in this project being moved to the new site and for expediency reasons the merit track is being used, when such a large scale project should ordinarily be assessed under the impact track. We understand that processing this project under the impact track would cause long delays and thus the EIS data will be transferred to the new site wherever possible. However, in order to ensure that this EIS process is done properly without anymore of these improper side steps". And "Even with the project being moved to another site, it is very important that the recommendations of the health impact assessment are taken into account. These recommendations and those of the social impact assessment will need to be followed closely. There are concerns with the Plume study, the Plume modelling shown in the EIS had cause enough for concern, however, there were some major flaws with it and when done properly with a good base starter, we will have a better idea of what the real health impacts of the gas turbines will be."*

^{xix} This was a full page advertisement in the Canberra Times signed by key representatives of various business groups including Chris Peters of ACT Chamber of Commerce and Industry, Catherine Carter of Property Council of Australia and Chris Faulks of Canberra Business Council – the same people who had openly and incorrectly attacked the community in media coverage for the supposed loss of \$1billion in investment