

Canberrans for Power Station Relocation, Inc
PO BOX 40
ERINDALE CENTRE ACT 2903

28 August 2008

Ms Pham
Auditor-General
Level 4
11 Moore St
Canberra ACT 2601

Dear Ms Pham,

Performance audit on the proposal to locate a gas-fired power station and data centre at Block 1610, District of Tuggeranong.

We acknowledge receipt of your letter dated 12 August 2008 and wish to thank you for writing to Canberrans for Power Station Relocation, Inc (CPR).

Your letter invited our comments on the proposal to build a gas fired power station and data centre at Tuggeranong Block 1610. We acknowledge the scope of your audit as concerning the decision making process and ensuring those decisions and the process accord with sound policies and proper procedures.

Please find below our comments in which we have limited ourselves to addressing those areas within your scope and to areas of which we have direct knowledge and pertinent information.

Please note that we are a community group that has no particular speciality in Planning Law or in Government practice, we have however attempted as far as possible to evidence everything we present to you here and where possible state what is opinion and what is supported by fact.

Many of the papers attached you will have copies of, being the documents obtained by the Liberal Party application for release of these papers under the Freedom of Information Act.

Site Selection – assessment of alternative sites, transparent manner and accountable to Assembly and ACT community.

Prior to stumbling on this development proposal, the residents whose homes immediately border Block 1610 believed this plot to be reserved land adjoined by Broadacre land. Those members of the community who use the horse agistments have been aware that this land was vulnerable to development proposals, as other horse agistments have been systematically lost throughout the ACT, but were not aware of any immediate threats.

One nearby resident moved into her property in early March 2008 and conducted a thorough land registry, development search over this land and found nothing pending beyond the possibility that the Territory and Municipal Services (TAMS) were considering a cemetery in the western corner of the block.

Locals had been aware of this possibility since 2006 when a draft of the suggested cemetery plot appeared in the Southern Chronicle Newspaper. Nothing more was heard regarding this proposal.

Everything the community has subsequently learned regarding site selection has been revealed by close study of the government documents received via The Canberra Times, but requested by the Liberal Party under the Freedom of Information Act (FOI). Prior to these documents being released the community had been told by ACTEWAGL (the proponents):

- they had been offered a choice of 3 (some quoted 4, and sometimes "a number") of sites;
- they had picked Block 1610 because after doing studies it was found to be perfect for their purpose;
- they had been committed to this site for "a while";
- the other sites had flooding and heritage issues; and,
- selecting this site was a "no brainer" [John Mackay to the Committee – Legislative Assembly] as it was considerably cheaper than their original choice which was in Industrial Hume.

BRIEF HISTORY

From 2002 until 2 May 2007 ACTEWAGL had determined on Block 7 Section 21 in Hume. The site had passed preliminary assessment for a stand alone power station on this site. The business case for this stand alone power station was however considered uncertain and the proposal appears not to have been developed beyond the suggestions stage.

By 2 May 2007 the Land Development Agency however informed ACTEWAGL that this site was no longer available. Around that time ACTEWAGL had stumbled across the concept of combining a data centre and power station as a business plan which was considered to be economically viable for both ACTEWAGL and the private real estate developers they had combined with to form the developing consortium. ACTEWAGL, possibly because of their close Labor government connections, led the project as the identified proponents.

On 9 May 2007 the Land Development Agency identified Block 18 Section 23 as suitable for ACTEWAG after the previous block of land was no longer available to them for a power station.

After considering the documents in detail it is CPR's opinion that the following events occurred:

Date	Activity	Comment
late 2006 (around October 2006)	ACTPLA commissioned consultants GHD to consider expansion of the Hume Industrial area [see HIPS study]	
29 May 2007	The Hume Industrial Planning Study (HIPS) (concept plan) was sent around in draft form for consideration to relevant departments	<ul style="list-style-type: none"> HIPS considered Block 1610 for possible expansion as an industrial site but noted that it would require a variation of the Territory Plan and no detailed survey was conducted on this area as it was reserved until 2010 to TAMS pending their decision to locate the new cemetery on this site (para 5 page 7 HIPS) HIPS did note however that the site allocated at that time to ACTEWAGL for their proposed power station and data centre was worth considerably more than when it was originally allocated to ACTEWAGL The size of the block would make more money for the government if it was divided into smaller blocks
September 2007	The HIPS is finalised	<ul style="list-style-type: none"> It is also worth noting that although this expensive report was paid for by the tax payers of the Territory, was not available to the community or discussed with the community but was quoted by the private consortium in their proposal The final recommendations and options were already obsolete by the time it was finalised in Sept 2007. Page 74 sets out the options and considers whether "the ACTEW gas power station" will advance or not on section 21 when the decision to use Tuggeranong Block 1610 was made by the Chief Minister almost three months earlier
13 July 2007	Page 2 of a brief written by Michael Britton project manager at the Land Development Agency, [1] states "No due diligence has been undertaken on this site [block 1610] in investigating the potential for development as a gas fired power generation site"	
18 July 2007	<ul style="list-style-type: none"> The FOI documents show that up to this date, ACTEWAGL were determined upon Hume Block 18 Section 23 and despite the heritage issues had offered to pay for the archaeologist and survey costs attached to this land [2] [3] On 18 July 2007 [2] the acting chief executive of the Chief Ministers Department sent a brief to the Chief Minister outlining the recently realised value of Hume Block 18 Section 23 (\$50 million) [4] and suggested in [2] clear terms that the Chief Minister will decide which block of land to "offer" to ACTEWAGL and which block now had more value. 	<ul style="list-style-type: none"> The chief minister signed this brief and circled "agreed" to this course of action This corresponds to the language used in an email from Rod Power, Senior Manager of Planning and Urban Services Section, Cabinet and Policy Group dated 7 July 2007 [5] which states "Notes there are three potential sites at Hume and that we are urgently assessing which one is most appropriate in order to advise the CM – who will then write a separate letter to mr mackay [sic] informing him of the final site."
19 July 2007	The letter (contents blacked out) from the Chief Minister to CEO of ACTEWAGL John Mackay appears to indicate the offer of that land was made on that date [6]	
6 August 2007	Block 1610 had been decided upon [7]	Although referred incorrectly as being in Hume

16 August 2007	An email from Michael Britton project manager at the Land Development Agency, responding to a request to start excising the land for subdivision of Block 1610, states "...wait until the offer has been accepted by ACTEW, otherwise, for some unknown [sic] reason if it doesn't go ahead we may end up with egg on our face" clearly showing the offer was made to ACTEW not ACTEW choosing the land [8]	It is clear from these documents that: <ul style="list-style-type: none"> The Chief Minister picked the site and his choice was based purely on the increased economic value of dividing Block 18 Section 23 into smaller sections Site selection was not based on detailed study or research into the appropriateness or not of this piece land No consultation was conducted with the nearest neighbours or those across southern Canberra who would be affected by the pollution of the power station
2007	ACTEWAGL and the consortium commence advertising the power station and data centre in newspapers and technical journals in Europe	
Early 2008	Publication produced in Australia for European distribution	http://europeanaustralianbusinessrealviewtechnologies.com/ - presenting the project as a 'done deal'
26 March 2008	ACTEWAGL files its application for a 210 mw gas fired power station and data centre with ACTPLA	<ul style="list-style-type: none"> Closing date for submissions on this application is 5 May 2008 The application for this proposal was dated 26 February 2008
31 March 2008	The Land (Planning & Environment) Act 1991 is repealed and the Planning and Development Act 2007 comes into force	
11 April 2008	<ul style="list-style-type: none"> ACTEWAGL places a small yellow sign on the fence at the paddock - facing the road - where there is no pedestrian walkway A small advert appears in the Canberra Times - it is seen by only a few people as this is the first day of the school holidays 	ACTEWAGL later claim that it was ACTPLA who instructed them to embargo the advertisement of this proposal until the first day of the school holidays
14 April 2008	The sign is noticed by a horse rider and she alerts the residents of Macarthur and the Tuggeranong County Council	
28 April 2008	The Tuggeranong County Council invites ACTEWAGL to attend the Vikings Club in Tuggeranong to explain to the community what this project means	<p>Residents become angry and upset - for some this is the first they have heard about it - they have less than 7 days to respond to the submissions</p> <p>No representative from ACTPLA attends</p> <p>Amongst the admission by ACTEWAGL are;</p> <ul style="list-style-type: none"> The Data Centre will employ between 5 and 50 people ACTPLA told them to embargo the release of the information This would be a major terrorist target
29 April 2008	The time for the responses to the submission is extended until 27 May 2008 - by Minister Barr	Minister Barr took this opportunity to recommend the proposal to the Assembly as being a benefit to Canberra
4 May 2008	ACTEWAGL apply to have their application amended - to reduce the size of the power station and data centres [9]	This is not released to the public until 6 June 2008 when the documents are placed on the ACTPLA web site
18 May 2008	<ul style="list-style-type: none"> ACTEWAGL and the Consortium Technical Real Estate (TRE) hold an open day at the Tuggeranong Vikings Club from 10am to 3pm to inform residents of their proposal The government and ACTEWAGL continue a campaign of undermining the community and extolling the virtues of this proposal. Part of this includes CEO of ACTEWAGL John Mackay claiming he consulted with the community by writing to the Karrilika Community Group - they had disbanded in 2004 	<ul style="list-style-type: none"> This is the first opportunity for ACTEWAGL or TRE to hear the concerns of the community The consortium offer line drawings of their proposal - none of which show the power station Throughout this presentation the proponents told the community this was an excellent proposal
27 May 2008	The Acting CEO of ACTEWAGL Michael Costello and the Chief Minister held a joint press conference - 2 hours before the deadline for submission announcing that the original plans would now be altered	The Chief Minister announces that this showed the process was working and that the community had been listened to

30 May 2008	Michael Costello tells the Canberra Times that he knew "weeks ago" that the power station was not viable as it was not big enough and that this change had nothing to do with the community complaints	This corresponds to the alteration supporting documents which are all filed on or around the end of May beginning of June 2008
6 June 2008	The new application is filed with ACTPLA	<ul style="list-style-type: none"> This is a 28MW (with 14mw on standby) power station and data centre ACTPLA place an explanation as to why they accepted this as an alteration on their web site (The community has filed an objection to this – page 8 of the second submission – attached)
22 June 2008	ACTEWAGL and TRE hold a second information day along the lines of the first	
30 June 2008	Deadline – the final submissions for the second application	The Community notes that this proposal is now a privately owned proposal and the sole role of ACTEWAGL is to sell the gas to the private developers who will own and run the power station and data centre
1 July 2008	A no confidence motion was called by the Liberal Party against Mr Jon Stanhope	Called when it was revealed within documents released under the Freedom of Information Act that Mr Stanhope had personally selected the site
2 July 2008	Katy Gallagher Minister for Health announced a Health Impact Assessment Steering Group and asked the Community to trust the process.	In addition to three medical practitioners, Ms Gallagher appoints the community advocate and Golders Associates to assist the process
15 July 2008	The community meets with the HIA Steering Group	<ul style="list-style-type: none"> Community expresses they have lost trust in the government and the process HIASG ask that the community trust them
23 July 2008	The community representatives meeting with the HIASG and engage in an evening workshop	
1 August 2008	The Community meets with the HIASG and presents them with a 50 page Submission	Submission sets out specific concerns regarding the impacts of this proposal
Early August 2008	ACTPLA release their evaluation of the proposal and set out 24 separate mistakes, flaws and gaps within the proponents reports	<ul style="list-style-type: none"> It is worth noting that ACTPLA (Page 13 of the Evaluation) cannot take into account any benefits that the proponents have claimed for this proposal as all the documentation is considered "commercial in confidence" therefore there are no verifiable benefits for Canberra attached to this private development It is also worth noting that ACTPLA does not address or mention the issues of Broadacre – although it was raised in two CPR submissions and many community submissions
Early August 2008	Auditor General announces she will investigate the issues of site selection within this proposal	
6 August 2008	Minister Barr announces an EIS and Minister Gallagher withdraws the services of the steering group health experts – stating they are no longer needed as the technical assessors "Golders Associates" will remain to assist the EIS	During the HIA process Golders stated they knew nothing about medical issues
18 August 2008	Minister Barr releases the terms of reference for the EIS – these are narrow – Flora and Fauna, Heritage and Health	<ul style="list-style-type: none"> Minister Barr warns the proponents that they have to have the EIS in before 26 March 2009 otherwise they will have to start the process again. He reminds them that the community have one month to respond to the EIS and then ACTPLA need time to consider it before this date This is not encouraging the proponents to do a thorough and fair report
26 August 2008	CPR gains its legal opinion that this proposal is unsuitable for Broadacre [11]	

SITE SELECTION

It is clear from reading those few papers, retrieved from the FOI request, the community has been given access to, that the site was selected by the Chief Minister and offered to John Mackay based on the realisation that the originally offered and surveyed land was now more valuable divided up than given as a whole lot. [2]

The community believes that this entire fiasco and the blinkered and unswerving support of this project voiced by the Chief Minister Jon Stanhope and the Minister for Planning Andrew Barr can be traced back to the governmental interference with site selection. Even when this proposal changed from being one which could vaguely claim to add benefit to Canberra to an entirely private consortium developing rental spaces for their own profit – the government has remained in condemnation of the community opposition and vocal in its support for this project.

From the chronology proven tight timeframe, it is impossible for the site selection to have been made with due consideration, of the environmental, social, health and safety impacts of this proposal in this site.

The community has been told throughout this process, by the government and the proponents, a variety of different and contradictory pieces of information regarding site selection. None of this corresponds to what is contained within the FOI documents nor does it correspond to the commonsense fact that a power station is an inappropriate development to be considered 660 metres from established residential homes and 400 metres from an established health facility.

There has been no transparency during the site selection process and the community considers it still does not have access to pertinent information.

MEANINGFUL SURVEY OF THE LAND AND ITS APPROPRIATENESS FOR THIS PROPOSAL

All the supporting reports, for this first proposal for a 210 mw power station and data warehouses, were requested and filed within 5 months of the site being settled upon. It is worth noting that as a consequence many of these reports are not site specific, and in many instances seriously flawed and lacking in necessary detail.

It is very clear that as late as 22 May 2007 [12] CEO of ACTEWAGL John Mackay was writing to the Chief Minister in detailed terms regarding the “mutually” decided upon site Block 18 Section 23 in Hume. Page 4 of that letter states “The land will be used ... data centres which fall within the definition of “communications facilities” in the Territory Plan. The site is contained within an “industrial” land use policy areas (or zone) in the Territory Plan and the proposed uses are compatible with this zoning.”

Mr Mackay was actually incorrect in that data centres cannot be defined as communications facilities and that “communications facilities” is not a definition in any event under Industrial zoned land. Whilst this may appear irrelevant in that this proposal did not go ahead on this plot of land – it is worthy of note that when the site was moved to broadacre, ACTEWAGL and ACTPLA did not choose to alter the definitions of these proposals or to explain how it was they were suitable for both.

ACTEWAGL on a number of occasions uses the Hume Industrial Planning Study (HIPS) to support their choice of Block 1610.

A letter from Ray Stone, senior project manager of the Land Development Agency [13] indicates the long list of deficiencies in the Hume Industrial Planning Study, (HIPS) and these include fundamental deficiencies in surveys around the Block 1610. This letter is dated 5 June 2007.

Scott Carr of ACTEWAGL writing on 8 August 2007 [14] to reassure Ms Kathy Pooley, project manager within Urban Development Office of the Land Development Agency stated "2. During the 12 month period [once the land is released to ACTEWAGL] ACTEWAGL will conduct the necessary approval of a DA. It is noted that the subject land has been reviewed in detail by the Southern Broadacre Study (ACTPLA 2005) and more recently by the draft Hume Industrial Planning Study (ACTPLA 2007) both of which confirm the suitability of this Land for industrial use." It is to be noted that the HIPS was roundly accepted, as shown above, as being deficient in many surveys attached to their proposals, hampered by the land in question being reserved to TAMS until 2010.

Neither of these studies is available to the public. [15]

Whilst it is important to note Mr Carr is referring to Industrial land when the block in question is Broadacre, the key argument for this letter is that the key reports were in fact prepared and filed in less than 5 months as opposed to the 12 months thorough investigation Mr Carr claims ACTEWAGL will file.

Confirming the lack of study - Tom Percival of ACTPLA was still collating comments as of 28 June 2007 [16] and noted that "the ACT Government has previously stated that the broadacre portion of Block 1610 Tuggeranong District will be held off from development until 2010 to allow preparation of feasibility studies for development of a cemetery on the site"

The submission to the Executive Policy Committee dated 5 November 2007 – [17] to consider the HIPS study and agree it as a background document - was still referring to the need for a "Whole of Government position on the siting and design of the gas fired power station."

Yet in the brief dated 17 July 2007 [2] (whilst the comments for the HIPS were still at that stage coming in [4]) Block 1610 was clearly on offer to ACTEWAGL for their Power Station and Data Centre – claimed to be one of the most significant developments for Canberra in recent years.

No due diligence could have taken place in such a short time frame.

It is worth noting that even on the most basic level, the government was requesting of ACTEWAGL a cost/benefits analysis and business plan for this project. In the Sunday Canberra Times on 24 August 2008, Andrew Campbell of TRE told the Canberra Times "a business case would be ready in the next few months" – well over a year from this project being thought about the business case still does not exist. For all of that Mr Stanhope and Mr Barr still feel able to recommend this proposal to the Assembly.

ALTERNATIVE SITES

We could find no evidence that there was appropriate and active consideration of alternative sites. Any consideration of alternative sites appears to have been perfunctory and the consideration criteria based solely on the potential value of industrial land.

This may not have been the case in 2002 and it is highly probable that some site survey was conducted in 2002 for potential sites but this has never been made available and certainly did not form any part of the decision making process around selecting Block 1610.

ACTPLA's own summary assessment of the first DA (undated) [18] states "No information is provided as to why this site has been chosen over any other. Given the abundance of comparable broadacre sites, a matrix indicating the order of importance for site selection prerequisites & a comparison between other suitable sites would be useful to understand that this is the best location for this proposal."

HASTE TO PUSH AHEAD

It is also clear that the haste in the allocation of land was almost entirely driven by the pressure placed on the government by Mr John Mackay and his deadline for securing investors for his development project [19]. There is no evidence that any consideration has been given to the views, wishes and concerns of the community or indeed the recommendations of the HIPS during any of these internal government discussions.

ACTPLA itself requested further documentation and reports [20] [21] from the proponents as early as 29 February 2008 but nothing has materialised since that date.

ACTPLA Urban Design Policy [21] commenting on the PA were scathing in their concerns around this project. None of those concerns have been addressed.

ALTERATION TO THE ORIGINAL APPLICATION

We draw the Auditor General to page 8 of the second submission of CPR [B]. We accept that this is most likely not a re-viewable decision under the AD(JR) Act as it is a decision leading to a decision but we raise this as an issue which remains unsatisfactorily answered.

We raised this with ACTPLA and enclose their response for your consideration. [D]

Consideration of environmental impacts

Heritage

Helen McKeown, conservator liaison and environmental coordination, responded to the HIPS study on 27 June 2008 [22] in which she indicated concerns around the possibility of finding important archaeological finds within the area considered. She points out that in the past important finds were uncovered by digging and that more research and study were needed. In her email dated 1 May 2008 [23] in which she is responding to a request to consider the DA and PA she states "Heritage acknowledges the research carried out to ascertain the heritage values of the site but considers that a number of issues require further resolution." The proponents re-filed

the same report in their altered application as Ms McKeown was commenting on in this email.

This heritage report was completed in Jan 2008 it was noted that this land contained important scatter sites and was likely to contain other important finds underground. The recommendations of the heritage report were deliberately misinterpreted by the proponents who repeated only one of the latter options which were to remove the artefacts. The primary recommendation made by the archaeologist was to keep the site intact.

Pollution

Pollution has been a major concern with a large portion of the community. This concern has been minimised by the government with the Chief Minister describing the power station pollution in reference to "cooking an egg".

The government has singularly failed to recognise under the new Federal Carbon Trading Scheme this power station will need to permits to continue working.

The EIS has called for a review of certain aspects of the pollution but the community feels it has only been asked to consider those which it stands a chance of returning a positive report in. The size of the particulates attached to the pollution is important. The smaller particulates travel further and remain in the lungs longer.

http://www.cma.ca/index.cfm?ci_id=10042903&la_id=1

A recent Canadian study has been conducted on these smaller particulates.

This Canadian study concludes "Essentially we've provided a roadmap for policy-makers about where we stand in terms of air quality ... and they can choose one of two routes: act now to improve air quality, or reap the consequences by failing to do so. The consequences are dire in terms of the increased mortality on those over 65 and the life-long impact on the very young. This is translated into a horrendous cost for our public health system."

The community believes that members of the HIASG were beginning to conclude this within their research and the government used the "process" to silence them.

<http://www.epa.gov/region4/sesd/pm25/p2.htm>

This EPA web site talks about PM2.5 (particulate matter smaller than 2.5 microns). If you 'google' PM2.5 you'll find any number of studies that have found a linear relationship between levels of PM2.5 and increased death rates. Canberra already has a much higher than average level of background PM2.5 especially in winter when wood heaters are common (see last web site); and to the best of our knowledge, the environmental data submitted with the DA and PA deliberately ignores PM2.5 in favour of larger particles (PM10) the WHO address.

<http://www.lead.org.au/Lanv7n3/L73-3.html>

This last web site provides some useful background on PM2.5 and where it comes from - eg. gas fired power stations.

This power station will put out 187,000 kilograms of greenhouse gases per turbine (three), per hour, 24/7/365. CPR has covered within our submissions the

discussions around nitrogen dioxides and sulphur dioxides and pre-cursors to PM2.5 that may or may not be emitted.

We believe the experts being paid by the proponents will simply provide a reassuring report and minimise the issues.

This has to be taken into consideration against the fact that this is a private consortium planning a development which offers no real tangible benefits to Canberra, on a block of land that has not been assessed or discussed with the citizens of Canberra.

Consideration of social impacts

In consideration of the health impacts we attach the CPR Submission to the Health Impact Assessment Steering group. [C]

This report details how the community perceives not only the immediate health threats of a power station but the attending disenfranchisement from the government process this lack of concern for the community has caused.

We would ask that the Auditor General consider those points detailed in the HIASG Submission to form part of this submission.

Consideration of any relevant advice on the merit of the proposed project

Benefits

In terms of the supposed benefits to Canberra we submit this proposal has promised hundreds of jobs, additional university courses, international investment and coupled with flamboyant remarks such as 'broadening the economic base', 'influx of international skilled workers', 'attracting innovation' and 'bringing high value customers to the region' – these claims however cannot be verified or actually backed up by realities.

Members of the community have scrutinised these promises of benefits and found them lacking.

First of all, how many full time jobs will be created by these Data Centres? The numbers espoused by Technical Real Estate (TRE) have varied wildly from between 50 to 600 jobs. In a recent Canberra Times article on 24 August, 2008 TRE claimed 350 to 400 jobs.

The FOI documents show a variety. ACTPLA in reviewing the PA to the original application [21] settled at 200. The Traffic Report filed with the new PA estimates around 175.

We have compared other large data centres around the world and the size of their workforce:

Data Centre	Size	Employees
Microsoft's European Data Centre in Dublin. (www.rte.ie/business/2007/1106/microsoft.html)	51,000 ft ² (0.5 times CTC)	10-15
Microsoft's San Antonio Data Centre (http://www.mysanantonio.com/news/MYSA011907_01A_Microsoft_1bc19da_html7565.html)	470,000 ft ² (4.7 times CTC)	75
Microsoft's Quincy Data Centre (www.greenm3.com/2007/12/teeny-purple-ya.html), (www.greenm3.com/2008/01/of-data-center.html)	140,000 ft ² (1.4 times CTC)	50
Yahoo's Quincy Data Centre (http://www.greenm3.com/2008/01/of-data-center.html)	170,000 ft ² (1.7 times CTC)	50
CTC (Tuggeranong site only) (based on www.galileoconnect.com/1.3.0.0_products.html)	100,000 ft ²	300??

Based on these actual / real figures, the 100,000 ft² Tuggeranong CTC would employ around 30 people. This was originally verified by Mr Tony Adams of CBRE (representing the proponents) when on 28 April he told over 300 people that the CTC will employ somewhere between **5 and 50 people**.

The claims made recently by Mr Andrew Campbell of TRE appear to be exaggerated and misleading. They also serve to isolate those members of the community who object to this proposal - from those who believe that by objecting, these members of the community are being denied job creation, expansion of technology etc.

Given also that TRE have said that development of the CTC sites will take 10 years – that equates to far less than **10 jobs per year**.

In terms of this private developers previous record too -just how many Data Centre has TRE actually developed to date? According to their web site (www.technicalrealestate.com.au) they have not developed any before.

TRE will not be responsible for any employment, as they are simply 'renting out' the space. It will be the lessee's that will be responsible for employment numbers, so TRE are not accountable at all. In fact, as TRE are not actually in the business of managing data centres (they are into real estate development), they will on sell the facility once the positive return on investment is established. At no stage whatsoever will the profits flow into Canberra.

The Data Centres simply house the servers and store the software and data. The actual operation of the systems is done remotely (as it is now in most instances). Banks, federal government departments, international corporations and the likes are simply not going to send their staff to work in the data centres. In fact the whole business proposition is based on this principal: Operate remotely and keep costs down.

You can run a data centre with no staff at all.
(<http://www.greenm3.com/2008/01/synovus-financi.html>) – the data centre lessees will be trying to keep costs down as much as possible. They will not be investing in the data centres and there will not be any 'Broadening of our Economic base'. The market is the federal government (which we already support) and commercial companies looking to minimize their data storage overheads, nothing more.

Given that TRE have also admitted that they are going after the federal government market, what will be the impact on the current employment level? Most federal government departments have a high number of small data centres around Canberra. TRE will be hoping for a dramatic consolidation of these data centres. Coupled with the latest server technology, this consolidation will most likely result in a reduction in jobs as both the number of centres are reduced (to perhaps one or two buildings) and the number of servers to be maintained are reduced.

TRE have claimed they will create University courses for Canberra which will be needed to fill these job vacancies. In reality very few data centre jobs require tertiary qualifications.

The government and ACTPLA merely state that they have asked but not received a business plan from the proponents. It appears they have not done any independent checking of any figures stated by TRE and the proponents in respect of the promises they are making to Canberra and the economy in an attempt to offset the damage they will do.

Any checking and independent research has been left to the community.

Consideration of health and safety risks

During the 28 April 2008 meeting with the community ACTEWAGL admitted that the site was a terrorist target. This has been addressed within the proponent's reports as providing down lighting to ensure the facility does not draw attention to itself at night. This is thought, by those who live less than a kilometre away from the proposed site, to be an attempt at humour by the proponents.

The gas stacks are 35 metres tall and the warehouses are bigger than Jumbo Jets. It will be in the middle of rural broadacre – less than a kilometre from flight paths, next door to a re-cycle centre which has heavy trucks coming and going and can be seen from a good portion of the Monaro Highway.

The documents do not consider the health and safety of the nearby residents.

Interestingly within the FOI documents [21] consideration was given by one public servant to the health and safety of the office workers in the data centres complexes having to work so close to heavy pollution brought by the power station. "In this regard, the PA did not assess the implications of the data centre and its 200 workers, being located in an area of relatively heavy industry." Certainly no mention has been made of the needs of the residents who will live within 660 metres of "relatively heavy industry".

Community Engagement

CPR considers that in direct contravention to the best practice principles of meaningful engagement with the community, the government and the proponents have deliberately set out to exclude the community, mislead and distract the community, in order to have passed this real estate development plan.

The community first became aware of this development by accident on 14 July 2008. One of the horse riders who uses the horse agistment in Rose Cottage Paddocks rode passed a small yellow sign which was pinned to a fence. The sign faced onto Mugga Lane. Mugga Lane does not have a pedestrian walkway. The sign could only be seen by a passenger in a car looking to their left and could not have been read at all unless the car was stationary.

ACTPLA state on their web site they wrote to the nearest neighbours informing them of this proposal and have attached a blank copy of the form letter they state they sent out. CPR has asked extensively residents of Bracker Place, Starritt Place, Goldsbrough Close, Ebsworth Place, Beggs Place, Jackie Howe Cres, and Kater Close. No one recalls receiving any such letter. These are all the residential roads that border the proposed site. We invite the auditor general to re-interview these residents to confirm this.

During the Legislative Assembly Committee hearings and on radio, Mr John Mackay, CEO of ACTEWAGL stated he had consulted with the community by "writing to the Karralika Community Group". This was a community group based in Fadden, created to respond to the government's undisclosed plans to develop the Karralika drug and alcohol rehabilitation centre. They disbanded in 2004.

Throughout any advertisement of this proposal the government and the proponents have incorrectly referred to the site as being in Hume and have referred to the development as being a "data centre". Advertising of this proposal has been undertaken in technical magazines in Europe and computer directed business magazines. No one in the community noticed any advertisements regarding this proposal.

At the first community meeting with ACTEWAGL held on 28 April 2008 at the request of the Tuggeranong Community Council, the spokesman for the proponents stated ACTEWAGL had been specifically requested by ACTPLA to embargo the press release of this proposal until 11 April 2008 – the first day of the ACT school holidays. When the press release was viewed on the proponent's website it had "Embargo until 11 April 2008" as a footer.

Regardless of the advertisement of this proposal no consultation or discussion took place with the community prior to this application being filed in ACTPLA.

During his speech to the Assembly announcing the extension of the period for submissions, from the 5 May to 27 May, the Minister for Planning, Mr Andrew Barr, recommended the proposal to the Assembly and to the people of Canberra, stating it brought great benefits to the community.

Throughout this process the government and the proponents have both actively campaigned to have this proposal passed.

Compiled with relevant Government Policies and better practice

1. The community was not informed of the creation or completion or contents of the HIPS despite the implications for the community being extreme and accordingly has not been given the opportunity to comment on this study.
2. The community only learned of the HIPS via the release of these documents within the FOI request – despite the private consortium being able to quote this study in their proposal.
3. The community has still not had access to the Southern Broadacre Study.
4. This site was selected by Jon Stanhope as Chief Minister based on the brief dated 17 July 2007 and on the realisation that the land which was at that time reserved for ACTEWAGL was worth more in little blocks than one block to the proponents.
5. At the time of the announcement that this proposal was going ahead – there could not have been any detailed surveys, studies, investigations, consultations or research into the appropriateness of that block – there was not enough time.
6. From the decision to accept the Chief Minister's offer to the date of the supporting reports is just under 5 months. Given this is supposed to be the most significant development in the ACT for years this is incredibly lax by any standards.
7. ACTPLA itself was critical of the standard of reports and requested further reports – it is unknown whether these have been delivered and considered by ACTPLA – if they have they have not been made available to the community and they would have been received after the DA and PA had been filed.
8. If they did not receive any further plans it is extra ordinary that ACTPLA continues to use this process to allow the proponents "other chances" to get the correct reports submitted.
9. We note [24] that the language in this letter – asking for comments from the various departments on the PA does not allow for the recommendation of a rejection.
10. It appears throughout this process that ACTPLA and the government have forgotten that there does exist within this process the ability to reject an application which is in appropriately made.
11. The community was not informed that plans were being discussed to place a gas fired power station on horse agistment broadacre land.
12. ACTEWAGL and proponents have argued they have done what was required of them in consultation with the public.
13. There has been no meaningful consultation with the public – all the meetings conducted by the proponents have been to tell the public what the proponents consider good for them.
14. In the second meeting 17 May 2008 – despite the proponents writing the concerns of the community down and the government later claiming this showed the process working – the decision to down scale had been made before 4 May 2008 and had nothing to do with community concerns.
15. The decision by ACTPLA to accept the second application as an alteration is suspect. Their web site details that they "determined" this on an undisclosed scale of detriment. No member of the public has ever had access to this scale or detriment and this is certainly not the same test applied in other application alterations.
16. These proponents have unprecedented support and access to the government, internal government documents for their proposal and

- above and beyond anything else any other developer could expect with any other development.
17. The government created the HIA with a very narrow scope – to look at only two suburbs and told the HIA that they could not recommend a rejection of this proposal.
 18. The appointment of the HIA occurred at the time that the opposition party had called for a vote of no confidence with the Chief Minister regarding site selection.
 19. The Health Minister has avoided explaining why she, aware of the health impacts on the nearby residential health facility, merely set in motion plans to move the health facility but did not warn members of the public or express concern or dissent for this proposal.
 20. As Minister for Disability, Katy Gallagher did not inform the advocates and guardians of the residents of the Health Facility about the dangers should the development proceed.
 21. In disbanding the HIA the government has used the excuse the EIS would be sufficient.
 22. The EIS is very narrow in scope and the letter from Mr Barr to the proponents reminds them that if they do not get their reports in by March 26 2009 they will have to commence the process again. This leaves them less than 5 months to complete these studies and file them with ACTPLA.
 23. Throughout this sorry affair the Chief Minister has been vocal in his support of the proponents and the proposal and condemning of the community – yet when questioned by a member of the public recently about job numbers and pollution figures, Mr Stanhope was unable to respond and admitted that the person asking the question knew more than him.

Consideration of the requirements of the Territory Plan and land use policy objectives - Broadacre

The site selection for the first application, filed on 26 March 2008, which was originally intended to be a second power source for the Territory, could possibly be described, if the data centre component is ignored, as a major utilities installation and therefore suitable under broadacre.

CPR has recently filed a legal opinion [E] which sets out exactly why this proposal is not suitable for and cannot be defined as suitable for broadacre.

CPR notes that a current data centre operates its business from an unaltered industrial lease from a site in Hume. [F]

In determining where and how ACTPLA have considered this proposal a communications facility we have been unable to find any reference to this being considered. Emails and documents [25] [26] and [27] show that ACTPLA appears to have given this little if any consideration and has relied on the assessment of Tony Adams who is employed by ACTEWAGL from CBREllis to assist in getting this proposal through. Our research shows the only communications will be those provided by Telstra [28] which assist the data centres store data. The closest [25] ACTPLA appear to have come to considering this issue is to consider "the data centre is a scientific research establishment rather than an office use..." It is interesting that the next few words appear blanked out given that a huge proportion of this development is office space.

Conclusion

The community feels that it has been let down by this government and by its misuse of the planning process to consistently allow these proponents more and more chance to have their proposal passed.

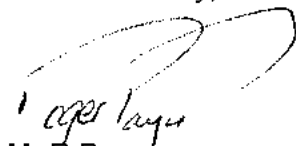
There has been no independent checking or due diligence by the government or ACTPLA around the facts and claims made by these proponents. On the example given above – expected job creation – shows that with a little research it is possible to completely debunk the claim that there will be 300 -500 jobs created by this data centre. In doing this research and disseminating these findings the government has accused the community of being hysterical "Not in My Back Yard".

The process calls for consultation and there has been none. It is not for the Chief Minister to select a site based on the expense of a previously selected site. It is an extraordinary thing when the proponents are partially so closely involved in the internal workings of government that they get access to land which was not previously available, internal government documents, ministers recommending the untested proposal to the Assembly and Ministers setting in plans to move established health facilities rather than ask the proponents to move their plans.

The community and its relationship with governance within the ACT have been severely damaged by its first hand experience of this matter.

We look to the Auditor-General to assist bring some standard of good governance to this situation.

Yours sincerely,



Mr R Payne
Vice President
Canberrans for Power Station Relocation, Inc

1

To: Ray Stone by hand & to

700 20

Ray Stone 22/8/07



[14]

THIS EMERGED IN THE CLEAN OUT.
It is now out of date is a decision/cabinet
process is of course now under way
utilising "Option 2" as described in your
paper. Gordon have 22/8/07.

Land Development Agency

B R I E F

Gordon 22/8/07.

Anne Skewes
Chief Executive Officer

EMO have already agreed a
site accordingly I suggest you
raise her matter at the Land
Supply Meets on Tuesday. 21/15/07

Ray Stone
A/G General Manager
Urban Development

18/7/07

note dates.

SUBJECT: GAS FIRED POWER STATION AT HUME

Purpose

To inform you on the current status of negotiations with ActewAGL on the offer of a parcel of land at Hume for the purpose of a gas fired power station and data storage centre.

Background

LDA, with ActewAGL's concurrence, identified part Block 18 Section 23 Hume (the Site), as being suitable for the purpose of a gas fired power station. LDA is currently in negotiations with ActewAGL for the offer of the land.

The offer of a parcel of land will be made available to ActewAGL for a period of 12 months on the condition that finalisation of the transfer will be dependant on development application approval. As part of the offer, ActewAGL will pay to the LDA a non-refundable fee, currently \$1 million, for the exclusive right to take up the offer of a lease anytime within this period.

Issues

Recent works adjacent to the Site have unearthed examples of aboriginal stone artefacts. These findings have resulted in Environment Protection and ACT Heritage requesting an archaeological investigation being completed on the site before any works proceed. The investigation will include the digging of several test pits and the salvage and collection of any artefacts unearthed. Environment Protection and ACT Heritage have provided a brief outlining the required archaeological works, a copy has been given to ActewAGL. It is anticipated by Environment Protection and ACT

ABN 20419925579

21 Wentworth Avenue, Kingston ACT 2604

GPO Box 158 • Canberra ACT 2601 • Telephone (02) 6207 5322 • Facsimile (02) 6205 0386

ACT Government Homepage: www.act.gov.au

Heritage that the investigation can be completed within three months of engaging a consultant.

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[14]

The need for these additional archaeological investigations was originally identified in the Preliminary Assessment completed in September 2002, which covered part of the Site.

At a meeting convened on 6 July 2007, ActewAGL expressed major concerns the impacts of the archaeological study may have on securing investors to develop the Site. ActewAGL stated:

"Our review of the draft brief for the archaeological project, and our knowledge of the legislation, tells us that even with the best will in the world site clearance may not be achieved within the suggested timeframe. Without surety on this site the project is at risk and we must explore other opportunities".

The meeting concluded that further options be examined in Hume to give some level of comfort for the development of the power station and data centre.

Three parcels of land have been identified as options for development.

Option 1

ActewAGL to undertake the archaeological investigation for the Site. As previously stated, Environment Protection and ACT Heritage have provided a brief which covers the works required and once this work is completed, it can form part of the requirement to obtain a DA for the site. The cost of this work, approximately \$100K is proposed to be reduced from the non-refundable deposit which ActewAGL will be required to submit when entering into the offer.

Option 2

21 hectares of land in part Block 1610 Tuggeranong district. The land has a Broadacre land use policy overlay. No due diligence has been undertaken on this site in investigating the potential for development as a gas fired power generator site. Due to the proximity of this site to Block 18 Section 23, there is also the possibility of artefacts being discovered.

Option 3

Block 7 Section 21 in Hume. This is LDA's least preferred option as it sterilises 24 hectares of land which has been identified in the Hume West Industrial estate Master planning, for at least 12 months. This has further impacts on the flexibility of the cross border access to the proposed Tralee estate in New South Wales. A Preliminary Assessment covering this site has been undertaken by ActewAGL in March 2002. This PA has never been formally endorsed and ACTPLA has advised that a new PA would need to be submitted.

Implications

Regardless of which option it is agreed upon, the application for the development of a gas fired power station, triggers the requirement to undertake a preliminary assessment.

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[14]
Master planning has commenced on the Hume West industrial estate with Block 7 Section 21 identified as a key component. The potential sale of this site to ActewAGL will impact on the LDA's ability to meet its industrial land release program. Impact on potential linkages to the future residential development of Tralee and reduces our opportunity to deliver a large parcel of zoned Industrial land to the market in a timely manner.

Option 1 is currently LDA's preferred option, partly due to the configuration of the site (elongated), the proximity of the site to methane gas produced from the Mugga land fill and the minimal impact on the short term Industrial Land release program.

Recommendation

That you note the above.

mi
Michael Britton
Project Manager

13 July 2007

*Responding to
email from Scott Cair
dated 8 July*

2

[16]

BRIEF



MINISTER'S DEPARTMENT

Ref:

Date July 2007

CMD-M 07/225

To Chief MinisterFrom [REDACTED]Subject ActewAGL Request for Land for a Gas-fired Power Station

- cc Acting Chief Executive, Treasury

Critical date and reason

URGENT - ActewAGL seeks an immediate offer of a lease over a portion of Block 18 Section 23 Hume.

Purpose

To seek your signature on two responses (Tabs A and B) to ActewAGL's proposal.

Background

The chief executive officer of ActewAGL (John Mackay AM) wrote to you on 9 May 2007 (Tab C) and 22 May 2007 (Tab D) outlining his company's proposal for a gas-fired power station and associated data centre (and backup facility). He asked you to issue a ministerial direction under s.44 of the *Planning and Land Act* to facilitate a direct sale of part Block 18 Section 23 Hume to ActewAGL. You requested advice from CMD and Treasury. The proposal involves:

- A gas-fired power station initially generating 75 MWh (increasing over time to 150 MWh) on three hectares of Industrial land at part Block 18 Section 23 Hume - this station would sell electricity to:
- A 'mission-critical' data centre on 19 hectares of land and consisting of eight data pods to be leased to commercial customers requiring premium data storage. In addition;
- ActewAGL is seeking to acquire 14 hectares of Broadacre land on part Block 1360 Belconnen to provide a disaster recovery backup site.

Issues

Land - The Land Development Agency (LDA) has liaised closely with ActewAGL to identify sites satisfactory to ActewAGL: part Block 18 Section 23 Hume and part Block 1360 Belconnen. The former is zoned for Industrial use while the latter is zoned as Broadacre. The Hume site comprises 21.5 hectares and the Belconnen site 14.3 hectares.

Other sites - There are two other possible sites in Hume: Industrial-zoned land at Block 7 Section 21 (to the southeast of the Monaro Highway) and the Broadacre site at Block 1610, District of Tuggeranong (located on the western side of the Monaro Highway south of Mugga lane). The Department of Territory and Municipal Services (TAMS) is about to bring forward a cabinet submission seeking approval to use part Block 1610 for a cemetery. Agreeing to this usage would remove it from being considered for the power station and data centre. In view of the importance of resolving a specific site for the ActewAGL proposal, it is considered TAMS should be advised that the cabinet submission should be deferred until you have determined which of the three sites is to

[16]

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be offered to ActewAGL. LDA and CMD are currently assessing the three sites and will shortly bring forward a separate brief.

Heritage issues (Aboriginal stone artifacts) have been identified near the southern end of Block 18 Section 23 Hume and Heritage ACT recommends a detailed heritage study be undertaken. The study would extend onto Block 18. The estimated cost of the study is \$100,000. Heritage ACT does not expect the study to lead to withdrawing the area from development and has undertaken to provide the LDA with a written assurance to this effect. ActewAGL has undertaken to fund the heritage study.

ActewAGL's ranking of possible sites - In light of the uncertainty created by the need for the heritage study, ActewAGL now advises that its ranking of the Hume sites is now:

- First, the site originally sought at Block 7 Section 21;
- Second, the site at part Block 18 Section 23 *provided* the heritage study lasted not longer than three months and that ACT Heritage could assure both the Government and ActewAGL that development could proceed after that time (no matter what was found on the site); and
- Third, the Broadacre site at Block 1610, District of Tuggeranong.

From the point of view of releasing industrial land onto the market in the near future, the LDA and CMD prefer the site at part Block 18 Section 23 because it is not immediately earmarked for release. By way of contrast, Block 7 Section 21 is currently being prepared for sale in the near future by the LDA to meet the current high demand for industrial estates in Hume; therefore, if this site becomes the final one offered to ActewAGL, there would be an urgent need to identify other replacement land for release. The Broadacre site has the merit that it would not utilise industrial land at all (a power station/major utility installation is a permissible use on the Broadacre zoning).

Valuations - The LDA has obtained a valuation (dated 18 June 2007) of part Block 18 Section 23 Hume and part Block 1360 Belconnen. The former is valued at \$1.5m (which equates to \$70/sqm) and the Belconnen site is valued at \$3.575m (\$25/sqm) - total is \$18.575m.

The valuation of the Hume sites appears very low, given that industrial estates have sold recently for \$200 to \$300/sqm. It is also way below what ActewAGL is budgeting for land acquisition (total of \$50m for the Hume and Belconnen sites). Therefore, the valuation needs to be revisited and, until this is done, it would not be wise to discuss potential sale prices with ActewAGL.

Non-refundable deposit - ActewAGL is willing to pay a non-refundable deposit to reserve suitable land. A suitable fee can be determined once the specific site is selected.

Business case - ActewAGL has not provided a Business Case setting out the costs and benefits of the proposal, though it has provided a draft Economic Impact Statement - this, however, is deficient in that it does not adequately address the costs, especially the risks associated with the proposal from the Territory's perspective. ActewAGL should be required to produce a detailed Business Case for discussion with Treasury that addresses (*inter alia*):

- The rationale for a gas-fired power station in the ACT needs to be established;
- The investment is significant and would carry some risk. According to the Draft Economic Impact Statement, the capital investment in the power generator and data centre is \$316m. Annual operating expenditure is estimated at \$186m. The proposal appears to indicate that ActewAGL would own 51% of the power generator and 25% of the data centre;
- While the existence of external investors may give some comfort in regard to the merits of the proposal, this was also thought to be the case with the Government's \$60m investment in TransACT, which has been written down to zero;

[16]

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- The proposal is likely to be a source of considerable gas sales revenue to AGL. The economic cost and benefit analysis would need to show that the arrangements for gas purchase were reasonable, to ensure that there was no transfer of profit from the jointly held generator to AGL;
- The investment in the data centre is significantly more than the generator. While the latter could be considered part of ActewAGL's core business and has an element of public good (security of ACT power needs), it is questionable as to why the ACT Government would seek to indirectly invest in a commercial data centre;
- The proposal needs to establish why the ACT is well located for a data centre and why we are best placed to build and operate such a centre;
- ~~Gas-fired power stations need a considerable volume of water so the detailed economic cost and benefit analysis needs to show where this water will be sourced.~~

Ministerial direction – Though ActewAGL has asked you to issue a ministerial direction to the LDA, this is not necessary as the LDA is cooperating fully with ActewAGL in identifying suitable land and is willing to reserve such land for 12 months pending confirmation by ActewAGL that it intends to go ahead with the proposal.

National Capital Authority (NCA) involvement – The NCA has planning control over approach routes to Canberra and has already developed a Development Control Plan for Hume, which will need to be complied with.

Consultation

Treasury supports this brief and may provide an additional brief addressing shareholder issues. TAMS and the LDA were consulted in its preparation.

Financial

Subject to confirmation in a detailed Business Case, the proposal appears to have significant economic benefits to the Territory, including by way of attracting new business to the ACT and providing a backup source of power. As stated above, there would need to be replacement industrial land found urgently if ActewAGL acquires Block 7 Section 21 Hume, which is currently being prepared for release.

Media

The media will be very interested in your response to Mr. Mackay and a suitable media release will be prepared once you consider this brief.

Two responses to ActewAGL

It is suggested that you sign two letters to Mr Mackay, the shorter one informing him of the Government's in-principle support of the proposal and designed to assist his company's efforts in attracting co-investors; the longer one setting out more details of what ActewAGL will need to address in relation to obtaining the Government's support for the direct sale to be finalised.

Recommendation

That you sign the two letters to Mr Mackay at Items A and B.

Pam Davoren
Contact Officer: Red Power
Phone: x50887

Jon Stanhope MLA
(AGREED) NOT AGREED / NOTED / PLEASE DISCUSS
15/7/07

CHIEF MINISTER'S DEPARTMENT
Policy Division



Tom Percival
Project Manager
Land Use Planning
ACT Planning and Land Authority

Hume Industrial Planning Study – DRAFT Concept Plan Report

Thank you for the opportunity to provide comment on the draft Hume Planning Study.

Demand for industrial land is extremely strong and its ongoing supply is essential in maintaining Canberra's competitiveness and economic growth. Demand is particularly strong for the traditional industrial land uses, which are ideally located in the Hume Estate. Therefore, the timely identification, planning and release of industrial land in Hume is a priority for the Government.

- The proposal to increase the capacity of Hume is strongly supported.
- A key component of the study was to identify opportunities and constraints surrounding the release of industrial land. The study does not appear to identify any land release opportunities in the short term, i.e. released in the next 12 months.
- Section 8.2.1 identifies specific sections that could be suitable for release, however there are a number of unresolved issues that may impact on the timely release of this land. Constraints such as contamination, existing leases and heritage, for example, need to be addressed.
- It is unclear what market research was undertaken to determine what block sizes are preferred by the market in this location. The proposed emphasis on large blocks needs to be fully justified.
- It is important that the concept plan reflect the current planning for the proposed cemetery and gas-fired power station. The impact of large occupiers of land, such as these, on the short-term supply of land should be considered.
 - The gas-fired power station, as located in Options 1 & 3 would occupy land with a potential value of \$50 to \$60 million and take up half the land available for immediate release (refer to 7.3.2).
 - The alternate locations for the proposed cemetery occupy prime industrial land or land that is earmarked for expansion of the industrial

estate. An alternative site could be considered for the cemetery, possibly to the east of Jerrabomberra Creek in Symonston.

- The concept plan proposes the closure of vehicular access points from the Hume Highway and the upgrade of the Mugga Lane intersection. Reducing the number vehicular access points into an industrial estate at the same time as doubling the capacity of the estate could be further investigated.
- A need to revive the railway line may result from increased demand generated from an expansion of the industrial estate. If so, treatment of the crossing may need to be addressed in this study.
- Of the three Concept Plans, option 3 is appears to be better as it maximises use of the Tralee Street precinct while option 1 is appears better as it maximises the Mugga Lane precinct.
- In addition, the report does not appear to address many of the site conditions referred to in the Project Brief or included details on consultation.

If you wish to discuss the issues further, please contact Damien McNamara on 620 76045.

Ken Douglas
A/g Director
Economic, Regional and Planning Branch
Chief Minister's Department
June 2007

Britton, Michael

From: Stone, Ray
Sent: Monday, 9 July 2007 7:57 AM
To: Britton, Michael
Subject: FW: GAS-FIRED POWER STATION - UPDATE

[12]

Michael

FYI, can you keep me in the loop.

Ray S

-----Original Message-----

From: Power, Rod**Sent:** Saturday, 7 July 2007 4:34 PM**To:** Davoren, Pam; Dawes, David; Tomlins, George**Cc:** McKay, Ross; McNamara, Damien; Douglas, Ken**Subject:** GAS-FIRED POWER STATION - UPDATE

Attached is a greatly amended draft letter from CM to John Mackay in response to the request by ActewAGL for land at Hume for a power station and data centre. It incorporates the latest info that Damien and I learnt at a meeting at the LDA with ActewAGL reps on Friday 6 July (David and Ross unable to attend). It has not yet been discussed with Damien. In view of the urgency and importance of this matter, I am sending it now so that you have the chance to peruse it ASAP. I have also attached the earlier letter I emailed to you on Wednesday night so that you can, if you wish, see the differences.

In summary, the new letter:

- notes there are three potential sites at Hume and that we are urgently assessing which one is most appropriate in order to advise the CM - who will then write a separate letter to Mr Mackay informing him of the final site (ActewAGL reps sought this action at the meeting)
- states the government's offer to make available a Hume site (one of the three) at market value for 12 months (this gives the assurance needed by ActewAGL)
- notes the preference of ActewAGL is for block 7 s.21 (the original site and the one we are preparing for industrial land release in the near future), secondly part block 18 s.21 (the only site mentioned in my earlier draft letter but now the subject of an heritage investigation) and thirdly, the Broadacre site of Block 1610 Tuggeranong (the proposed site of the cemetery! - the land on the western side of Monaro highway and south of Mugga Lane)
- accepts ActewAGL offer of a non-refundable deposit to reserve a site
- states the non-refundable deposit should be \$1m but that this amount does not prejudice the eventual determination of market value (my earlier draft letter saw no need to accept the non-refundable deposit so this is a big change)
- notes the willingness of ActewAGL to fund the heritage study on part block 18 s.21 if this is found to be the site offered by the government
- states the development application process will require ActewAGL to provide a detailed economic cost and benefit analysis addressing certain specific matters.

The new letter has not been discussed with Treasury which might prefer that the economic cost and benefit study was done before a letter of offer was made - but this would mean ActewAGL could not immediately obtain the clear assurance of land being available.

The LDA is urgently assessing the three sites - key factors in this assessment include:

- making block 7 s.21 available will seriously affect the planned industrial land release at Hume (but the CM might be willing to accept this consequence)
- the layout of the power station and data centres lends itself better to a strip of land like that at part block 18 s.21 rather than block 7 s.21 which is being designed to integrate into the existing industrial area
- the Broadacre site is attractive because it means no loss of industrial land but it has not been examined for the proposed use and may have problems, one of which could be TAMS cemetery planning! (note that 'major utility installation is a permissible use on Broadacre')
- ActewAGL may provide more detailed information about its preferences by email to Damien or me on Monday, which

09/07/2007

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the LDA can then factor into the assessment.

- at Friday's meeting, ActewAGL reps stated they also wanted an assurance of the Belconnen land - this involves other issues and I do not know if LDA can address these in the timeframe. It is on this basis that I have omitted any mention of reserving land at Belconnen from the draft letter. Obviously the offer of 21 ha at Hume is the essential first step...

[12]

Rod Power
Senior Manager
Planning and Urban Services Section
Cabinet & Policy Group
PH: 6205-0887



[16 A] 13

Jon Stanhope MLA

CHIEF MINISTER

TREASURER MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT
MINISTER FOR INDIGENOUS AFFAIRS MINISTER FOR THE ENVIRONMENT, WATER AND CLIMATE CHANGE
MINISTER FOR THE ARTS

MEMBER FOR GINNINDERRA

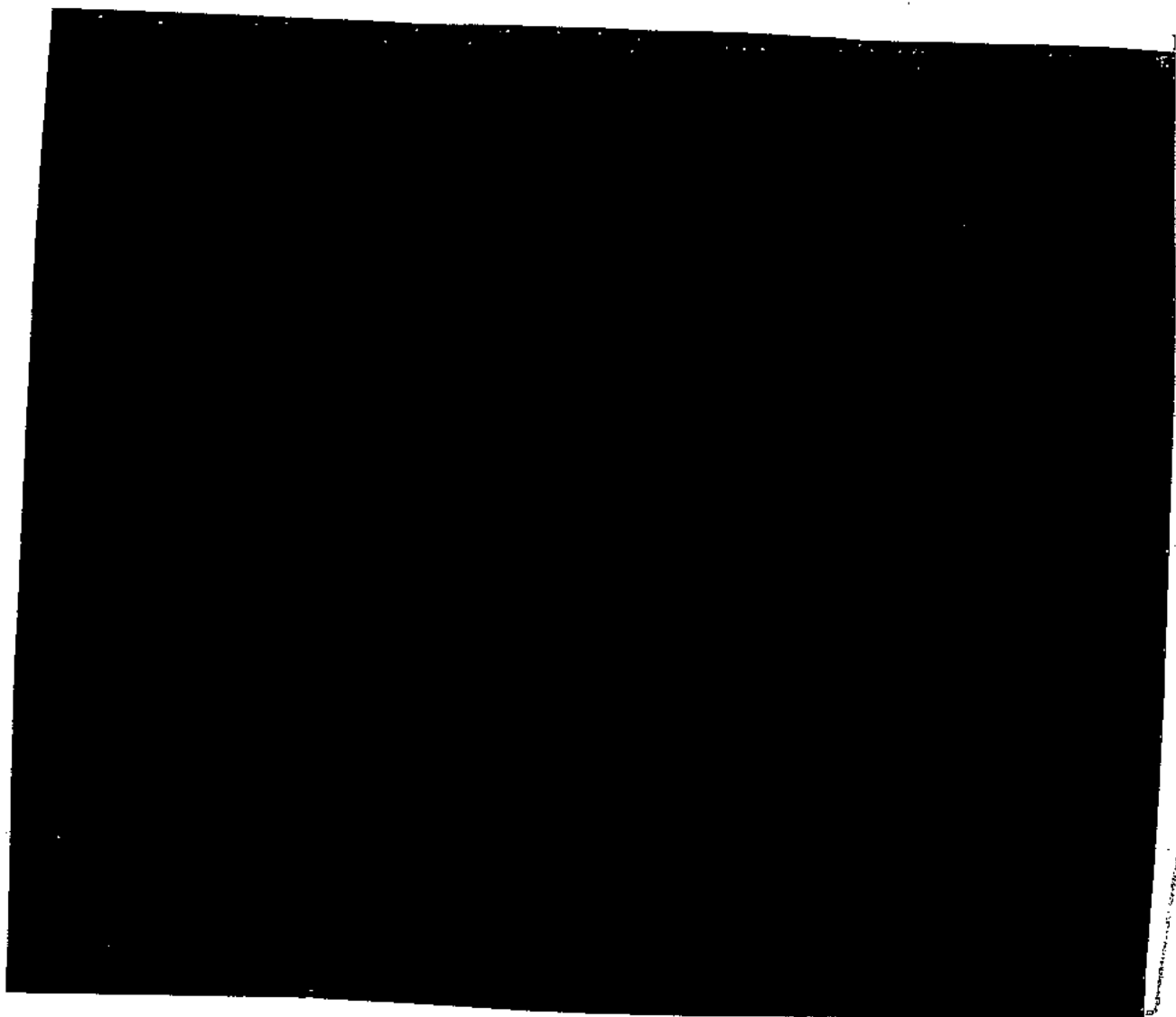
Mr J A Mackay AM
Chief Executive Officer
ActewAGL
GPO Box 366
CANBERRA ACT 2601

Dear Mr Mackay

Thank you for your two letters to me (dated 9 May and 22 May 2007) concerning ActewAGL's proposal to develop an integrated gas-fired power station and data centre in the ACT (to include a disaster recovery backup site some distance from the principal site). Your letter of 22 May sought the immediate offer of a lease of portion of part Block 18 Section 23 Hume in order for ActewAGL to obtain certainty with respect to its entitlement of the land and allow ActewAGL to complete commercial arrangements with prospective partners and clients.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0104 Fax (02) 6205 0433 Email stanhope@act.gov.au



Yours sincerely

Jon Stanhope MLA
Chief Minister

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[17]

Actew AGL – Meeting – Gasfired Station and Ancillary use - 6 August 2007

Present: Ross McKay, Gordon Lowe, Michael Britton, Kath Pooley, Tony Adams (consultant), Steven Gavagna & (Goodman Law), Scott Carr (ActewAGL)

Tony stated that the Chief Minister has agreed to offer land for the project (21ha). 3 site options were proposed in Hume. They have selected one that best suits their requirements.

Site in Hume has been selected for one of the two new stations proposed by ActewAGL (a section of land within Block 1610). The site will be developed for a gas fired station and data communications centre.

There are Land Act issues that must be met in order to proceed with the sale. However, there is urgency to meet the tight timeframe in which to secure the investors to the project. There will be a Memorandum of Understanding between ActewAGL and investors.

There is already two planning studies including a Broadacre Planning Study that permits the use. An Economic viability report has been prepared stating the public benefit of the proposal (not site specific)

The Proponent will carry out all relevant environmental, geotechnical studies including the SIR

Require easement access to electricity.

Issues:

Applicants need in-principle agreement urgently of an offer of the sale of land to keep the confidence of the investors. However, they must meet governance requirements. Timing is critical.

Need for achieving Government agreement and agency advice processes to be fast-tracked
Lawyers need a timeline for everything to be completed for investors

Outcomes:

CMD and LDA to come up with a timeline for all activities that need to be done prior to an Offer.

CMD to do the political leg work and prepare the cab sub through their major projects division

LDA to undertake:

Contract negotiations in lieu of letter of offer with Alfonso Del Rio, Claytons (which has a "put" or "put" and "take" option),

LRCC – to obtain agency comments – (mention only gas fired and ancillary),

Decide on a fee (based on cost to taxpayer of doing the admin work \$40,000?),

Commission the survey (Tony A has co-ordinates)

Preparation of Board info

Draft lease: no sale without approval for 5 years, easement access power lines (Including register of easement on land adjoining – Rose Cottage D).

Note: Graeme Walker has SIR for Belconnen site

Check we have the maps for the horse holding paddocks – land acquisition 6 months

Cemetries – check the status of request for land

Attachment 2: Detailed Information

Must provide full details of the development proposal

A large onsite data centre facility is proposed as a means of providing a large onsite electricity customer sufficient to underpin the viability of gas fired power station capability for the ACT. Such a co-development is expected to be economically viable and will provide the ACT with a gas fired power generation capability and will attract and retain high value tenants to the ACT.

There is an urgent demand for purpose-built data centre facilities with secure and scalable power infrastructure within the Asia-Pacific region. ActewAGL proposes to respond to this demand with an integrated gas fired power station and data centre solution ahead of competition from interstate and abroad.

The proposed solution will enable ActewAGL to properly manage power delivery and guarantee very high levels of power availability necessary for non-stop data centre operations compliant with the highest international ratings (Tier4). This will be achieved by integrating the power load (data centres), power generation, synchronisation and switching infrastructure into a single, manageable solution.

The scale and scope of the ActewAGL proposal is so advantageous that Canberra would become a regional leader in IT data centre infrastructure. The proposed development offers:

- o On-site secure power supply from a gas-fired power station to be constructed by ACTEWAGL.
- o Back up power from the adjacent zone substation on the Canberra existing electricity grid system,
- o Back up power from a second supply point (Second supply point is currently being developed ActewAGL)
- o High speed communications cable (ICT) and access to Federal government ICON network.
- o Adjacent site previously assessed (2002) and found suitable for a gas-fired power station.
- o Appropriate land use zoning already in place (industrial).
- o A large level site well suited to immediate development.
- o No other development in the Asia Pacific region offers this combination of beneficial attributes.

The success of this initiative is reliant on capturing a portion of the high-end data centre market for the ACT before it dissipates. This opportunity may be lost to the Territory if ActewAGL does not respond ahead of competition from Singapore, Hong Kong and other competing states within Australia. Securing the land for this development is necessary for the project to proceed.

LAND AREA: 21 Hectares

FLOOR AREA: Power: 2 x 500sqm
Data: 8 x 5520sqm

8

85

[22]

Browning, Kerry

From: Britton, Michael
Sent: Thursday, 16 August 2007 10:52 AM
To: Browning, Kerry
Subject: RE: re: Hume - ActewAGL

Kerry,

I would actually wait until the offer has been accepted by Actew, otherwise, for some unknown reason if it doesn't go ahead we may end up with egg on our face. Besides, the withdrawal clause is 6 months and during that time we can get access to the site for studies etc and I don't envisage Actew requiring access to begin construction within this 6 months. }

Regards

Michael

-----Original Message-----

From: Browning, Kerry
Sent: Thursday, 16 August 2007 10:45 AM
To: Britton, Michael
Subject: FW: re: Hume - ActewAGL

Hi Michael

Subject to all things going full steam ahead.. Am writing to Kerrin Styles regarding the proposed subdivision of Block 1610 Hume for the GFPS. Do you think we should commence excising this land now or wait until the sale progresses a little further?

Kerry



ACT Planning &
Land Authority

OFFICE USE ONLY

Application number

Technical check

Public notification

☐ Yes ☐ No

Neighbour notification

☐ Yes ☐ No

	Yes	No
Lessee's	<input type="checkbox"/>	<input type="checkbox"/>
Holding Lease	<input type="checkbox"/>	<input type="checkbox"/>
Unleased	<input type="checkbox"/>	<input type="checkbox"/>
Unit Titled	<input type="checkbox"/>	<input type="checkbox"/>
EER	<input type="checkbox"/>	<input type="checkbox"/>
Heritage	<input type="checkbox"/>	<input type="checkbox"/>
NCA	<input type="checkbox"/>	<input type="checkbox"/>
Compliance	<input type="checkbox"/>	<input type="checkbox"/>
Pub Reg	<input type="checkbox"/>	<input type="checkbox"/>
Exempt	<input type="checkbox"/>	<input type="checkbox"/>

Fees

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

Date received

Receipt number

Receiving officer

Land (Planning and Environment) Act 1991 - Form 1

Development Application

Type of Application (tick relevant box)

☐ New Application

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

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

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

☐ Conditional Approval (S245) - satisfying conditions of approval

☐ Additional information (S245)

☐ Minor Amendment (S247)

Original proposal No.

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

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

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

Part 1: Lease/Site details

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

Block

MRT 1671

Section

Unit (if applicable)

Suburb

District

TUGGERANONG

Street Number

Postcode

Street Name

MUGGA LANE

Part 2: Applicant details

Surname

O'MAHONEY

First Name

BROOKE

Australian Company Number (ACN)

ABN 76 670 568688

Company Name

ACTEWAGL DISTRIBUTION

If a company, position held within the company

MANAGER, COMMERCIAL DEVELOPMENT

Postal Address

GPO Box 366

Suburb

CANBERRA

State/Territory

ACT

Postcode

2601

Phone Number (business hours)

6248 3163

Email

Fax Number

6248 3109

BROOKE.OMAHONEY@ACTEWAGL.COM.AU

Unless otherwise specified your plan/s will be returned via email

Mail

☐

Pick Up

☐

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

Part 3: Lessee (Property Owner) details

1st Lessee's details

Or Govt. Land Manager (unless land only)	Surname	<input type="text"/>		
<table border="1" style="display: inline-table;"><tr><td>Office Use</td></tr><tr><td> </td></tr></table>	Office Use		First Name	<input type="text"/>
Office Use				
<table border="1" style="display: inline-table;"><tr><td>Init</td><td> </td></tr></table>	Init		Company name	<input type="text"/>
Init				
Australian Company Number (ACN)		<input type="text"/>		
If a company, position held within the company		<input type="text"/>		
Postal Address		<input type="text"/>		
Suburb		<input type="text"/>		
State/Territory		<input type="text"/>		
Postcode		<input type="text"/>		
Phone Number (business hours)		<input type="text"/>		
Fax Number		<input type="text"/>		
Email		<input type="text"/>		

* Lessee must sign Part 7 of the application form

All lessees must sign authorising the lodgement, and in doing so give authority to the applicant to negotiate any dealings with the application through to its determination by the relevant authority, or a Power of Attorney must be attached. If there are more than two lessees, please ensure that details and authorisation are attached to the application for each lessee.

If the lessee is a registered company, organisation or government agency you must execute this application in the proper manner for that company, organisation or government agency. For example, if the lessee is a community organisation, the full name of the community organisation must be stated and the signatory must identify what position of authority he/she holds in the organisation.

Part 3: Lessee (Property Owner) details

2nd Lessee's details

Or Govt. Land Manager (unless land only)	Surname	<input type="text"/>		
<table border="1" style="display: inline-table;"><tr><td>Office Use</td></tr><tr><td> </td></tr></table>	Office Use		First Name	<input type="text"/>
Office Use				
<table border="1" style="display: inline-table;"><tr><td>Init</td><td> </td></tr></table>	Init		Company name	<input type="text"/>
Init				
Australian Company Number (ACN)		<input type="text"/>		
If a company, position held within the company		<input type="text"/>		
Postal Address		<input type="text"/>		
Suburb		<input type="text"/>		
State/Territory		<input type="text"/>		
Postcode		<input type="text"/>		
Phone Number (business hours)		<input type="text"/>		
Fax Number		<input type="text"/>		
Email		<input type="text"/>		

* Lessee must sign Part 7 of the application form

Any application made over a site which has been Unit Titled will require approval in accordance with the articles of association for that unit's plan.

Part 4: Fully describe your proposal or list amendments

MAJOR UTILITY INSTALLATION AND COMMUNICATIONS FACILITY.

ALTERED DA DUE TO REDUCTIONS IN:

- ① GENERATION CAPACITY
- ② NUMBER OF DATA CENTRES
- ③ BLOCK SIZE

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

Part 5: Type of Development

☐ **Single Dwelling**

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

☐ **Multiple Dwelling**
 (incl Dual Occupancy)

- ☐ A10 Core Area or
☐ Suburban Area

- ☐ New development _____ No. of new Dwellings to be constructed
 _____ Total No. of Dwellings

- ☐ Addition/alteration to existing
☐ Outbuildings (Such as carports, garages & pergolas)

☒ **Non-Residential**
 (incl Commercial, Industrial,
 Rural, Community, Institutional)

- ☒ New building
☐ Addition/alteration to existing

☐ **Mixed Use**
 (combined Non-Residential &
 Residential Developments)

- ☐ New building _____ No. of Non-Residential Units
 _____ No. of Residential Dwellings
 _____ Total number of Dwellings

- ☐ Addition/alteration to existing

☐ **Signage**

☐ **Lease Variation**

- ☐ Clause changes
☐ Consolidation
☐ Subdivision
☐ Encroachment
☐ Land Rent Payout

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

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

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

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

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

\$ - 00

Existing GFA _____ m²
 and/or
 Added GFA _____ m²
 and/or
 GFA to be demolished _____
 Total GFA _____

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

"GFA" means gross floor area

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

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

WORKS ON VERGE AND/OR PUBLIC LAND: Are you proposing works or modifications on the verge or public land?

☐ No ☐ Yes (If yes please specify)

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

Part 5: Type of Development (continued)

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

Is there an approved Tree Management Plan for the block where the development is proposed or any of the neighbouring blocks?

☐ No ☒ Yes

If yes, you will need to lodge the approved Tree Management Plan with your Development Application.
Note: You may apply to Environment and Recreation for approval to replace or amend an existing Tree Management Plan.

Is there a protected tree on the block where the development is proposed?

☐ No ☐ Yes

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

Is there a protected tree on any of the neighbouring blocks?

☐ No ☒ Yes

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

• Is it a Regulated Tree?

☐ No ☒ Yes

If yes, you will need to lodge either an approved or draft Tree Management Plan if the canopy of the tree is within 2m of the block where the development is proposed.

• Is it a Registered Tree?

☐ No ☐ Yes

If yes, you will need to lodge either an approved or draft Tree Management Plan with your Development Application.

Is there any proposed works within the tree canopy of any tree on public land/verge adjacent to the development site?

☐ No ☒ Yes

DRIVEWAYS:

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

Relocation of existing entrance ☐

Construction of additional entrance ☐

Construction of new driveway ☒

Construction other than plain concrete ☐

Other (please specify) ☐

OVERHEAD WIRES: Are there any overhead wires over the block?

☐ No ☒ Yes

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

STORMWATER: Are there any stormwater easements on the block.

☒ No ☐ Yes

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

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

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

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

Information to be excluded from the register

Please give reasons in support of your request for exemption

Part 7: Applicant & Lessee Declaration

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

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

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

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST DECLARATION:

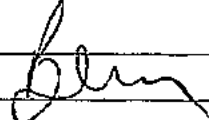
Does the applicant or lessee have any association with ACT Planning and Land Authority staff?

☒ No

☐ Yes

If yes, please provide details: _____

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

		Office Use	
Applicant's Signature(s)		Date	3/5/2008
1st Lessee's Signature(s)		Date	
2nd Lessee's Signature(s)		Date	
Govt. Land Manager's Signature (unleased land only)		Date	
Delegate of ACTPLA Signature (unleased land only)		Date	
			Init <input type="checkbox"/>
			Init <input type="checkbox"/>
			Init <input type="checkbox"/>
			Init <input type="checkbox"/>
			Init <input type="checkbox"/>

01 September 2008

ACT Planning and Land Authority
PO Box 365
MITCHELL ACT 2911

By Facsimile: (02) 6207 6258

Development Application No 200704152

Block 1671, Tuggeranong

Dear Sirs,

We refer to the above matter and confirm we act for Canberrans for Power Station Relocation (CPR) Inc, an objector to the subject application.

Further to the material already submitted by our client in relation to this application, we **enclose** a legal opinion from Mr David Mossop of counsel, which goes to the lawfulness of the proposed development.

We note that this opinion is concerned with questions of law surrounding the use of the subject land and is not concerned with claims about impacts to amenity etc. As such, we anticipate no obstacles to the Authority having regard to this opinion outside the relevant notification period.

Please confirm receipt in writing at your earliest convenience.

Should you have any questions in relation to the above please do not hesitate to contact the writer on (02) 6247 6077.

Yours faithfully,

J.S. O'Connor Harris & Co.

Per Mark Popplewell.

25 August 2008

**RE: DEVELOPMENT PROPOSED ON BLOCK 1671
TUGGERANONG**

OPINION

SOLICITORS:

O'CONNOR HARRIS

DX 5617 CANBERRA

RE: DEVELOPMENT PROPOSED
ON BLOCK 1671 TUGGERANONG

OPINION

1. My instructing solicitors act for Canberrans for Power Station Relocation (CPR) Inc ("CPR").
2. CPR is a community group concerned with a proposal to build what are described as "data centres" on part of block 1671 Tuggeranong. That proposed site is located between Mugga Lane, the Monaro Highway, the Wanniasa Hills Nature Reserve and the suburb of Macarthur.
3. I have been briefed with:
 - a. Development application 200704152 dated 26 February 2008;
 - b. ActewAGL Preliminary Assessment for Canberra Technology City, Part Block 1671 Tuggeranong District, 26 February 2008;
 - c. Alteration of development application pursuant to s 226(7) of the *Land (Planning and Environment) Act* 1991 dated 3 May 2008;
 - d. Statement of reasons by Paul Nicholas Lees, Manager Development Assessment (North and Estates), Development Services, ACT Planning and Land Authority dated 15 July 2008;
 - e. ActewAGL Preliminary Assessment for Canberra Technology City, Part Block 1671 Tuggeranong District, 3 June 2008 ("**Preliminary Assessment**");
 - f. ActewAGL Design Response Report Canberra Technology City Part Block 1671 Tuggeranong District, 3 June 2008 ("**Design Response Report**");
 - g. Evaluation of Preliminary Assessment by the ACT Planning and Land Authority dated August 2008;

4. I am asked for my opinion on the following questions:

- a. is the component of the development in development application 20074152 that is described as "data centres" properly characterised as a "communications facility" for the purposes of the Territory Plan made under the *Land (Planning and Environment) Act* 1991 (repealed)?
- b. is the "data centres" use proposed a permissible use of land subject to the Broadacre Land Use Policies set out in the Territory Plan?
- c. is it lawfully open to the ACT Planning and Land Authority ("ACTPLA") to approve the proposed "data centres" on block 1671 Tuggeranong?

Legislation applicable to development application

5. The development application was lodged on 26 March 2008 shortly prior to the repeal of the *Land (Planning and Environment) Act* 1991 (repealed) ("**Land Act**") on 31 March 2008. Notwithstanding the repeal of the Land Act, the development application is required by s 442 of the *Planning and Development Act* 2007 to be dealt with under the Land Act and the Territory Plan in force under that Act ("**Territory Plan**").
6. On 3 June 2008 the applicant requested that its application be altered pursuant to s 226(7) of the Land Act and ACTPLA made that alteration.
7. The application, as modified, is still being considered by ACTPLA.
8. Clause 9.1 of Part A3 of the Territory Plan provides:

9.1 The relevant authority shall not approve a development or a proposal for the use of land that would be inconsistent with:

(a) the applicable land use policy in Part B;

...
9. The Territory Plan map indicates that the land to which the application relates (part of block 1671 Tuggeranong) is subject to the Broadacre Land Use Policies (Part B10) of the Territory Plan ("**B10 Policy**"). Relevantly, the B10 Policy sets out the land uses which are permissible in Broadacre areas. Clause 2.1 of the B10 Policy and the schedule of permissible uses which forms part of that clause are reproduced below:

2. CONTROLS

2.1 Land Use [V54]' [V81]'

Subject to the provisions of the Broadacre Land Use Policies below, land described on the Map as Broadacre may be used for one or more of the purposes listed in the schedule below.

SCHEDULE 1	
BROADACRE LAND USE	
<i>Purposes for which land may be used</i>	
Agriculture	Municipal depot*
Animal care facility	Nature conservation area
Animal husbandry	Outdoor recreation facility*
Caravan park/camping ground*	Parkland
Cemetery	Place of worship
Communications facility*	Road*
Community activity centre	Scientific research establishment*
Corrections facility*	Special care establishment
Defence installation*	Special care hostel
Educational establishment	Tourist facility
Emergency services facility	Transport depot*
Health facility	Veterinary hospital
Land management facility	Woodlot
MAJOR UTILITY INSTALLATION*	
<p>* May be subject to mandatory preliminary assessment under the Land Act (see Appendix II)</p> <p>Notwithstanding the provisions of this schedule, land may be used for temporary uses, minor uses and uses ancillary to the principal use of the land, provided there is no conflict with the objectives in section 1. Subject to the National Capital Plan, land may be used for the purpose of educational, recreational, cultural, community, research, farm tourist development or other rural business which is an adjunct to the primary permitted use of the land and which does not adversely impact on the environmental quality of the locality.</p>	

10. It is relevant to note that both "Communications facility" and "MAJOR UTILITY INSTALLATION" are uses which, subject to the terms of the B10 Policy, are permissible in Broadacre areas.

11. Clause 3.1 of Part A3 of the Territory Plan provides:

"The terms used in the Plan have the meaning defined in Part D. Where a term is not defined in Part D, it has its ordinary meaning unless otherwise defined in applicable legislation."

12. Part D contains a schedule of definitions prefaced by the following:

The definition of land uses, water uses and many other terms used in this Plan are set out in the left hand column in Schedule 1 below. All terms are mutually exclusive, that is, there is no overlapping between definitions unless stated otherwise. Terms used within definitions and printed in italics (for example, dwelling) are defined elsewhere in the schedule. Terms printed in capitals (for example, COMMUNITY USE) are collective terms used to express groups of terms defined elsewhere in the schedule.

The right hand column contains some examples of the types of activities, which are covered by the accompanying definition.

13. The terms "Communications facility" and "MAJOR UTILITY INSTALLATION" are both defined in Appendix D.

14. In relation to "Communications facility" the definition in the left hand column of the schedule is:

Communications facility means the use of land for the provision of facilities for postal, telecommunications and other communication purposes including facilities used for receiving and transmitting radiated signals using radio masts, towers, and antennae systems but does not include cabling or ducting used for the carrying of electromagnetic signals. [V100]¹³

15. The examples of the types of activities which are covered by the definition appear in the right hand column of the schedule of definitions under the heading "Some Common Terminology". They are as follows:

*Mobile phone antenna
Satellite or microwave dish
Radar equipment
Aviation navigation communication
Space tracking facility
Telecommunication facility, depot
Television/radio broadcasting facility
Australia Post exchange
Australia Post facility, Depot
Telephone exchange*

16. The definition of "MAJOR UTILITY INSTALLATION" is:

MAJOR UTILITY INSTALLATION means a distribution reservoir; a major electrical sub-station; a major gross pollutant trap; a major pump station; a major service conduit; a power generation station; a sewerage storm tank; a treatment plant; a tunnel; an urban lake, pond and/or retardation basin; or a water storage dam.

17. As made clear in the preface to Part D quoted above, each of the terms in the definition of "MAJOR UTILITY INSTALLATION" is then defined elsewhere in the schedule. Relevant for present purposes is the definition of "power generation station" which is as follows:

Power generation station means equipment and associated buildings constructed for the generation of electricity utilising gas, coal or other fuel sources.

The proposed use

18. The proposed use is described in the development application (par 3(a) above) and the amendment to the development application (par 3(c) above) as being "MAJOR UTILITY INSTALLATION AND COMMUNICATIONS FACILITY".

19. The documents accompanying the amendment to the development application describe the nature of the proposed use. They include the Design Response Report and the Preliminary Assessment including their associated reports and plans.

20. The Preliminary Assessment (paragraph 3(e) above) contains the following:

a. in section 2.5.1:

The CTC project will provide a number of purpose built, next generation data centres, which will revolutionise the way that computer systems and data are secured and supported. The facility will provide a comprehensive long term solution for Australian and international organisations.

A data centre is a facility used to house computer systems and associated components, such as telecommunications and storage systems. It generally includes redundant or backup power supplies, redundant data communications connections, environmental controls (e.g., air conditioning, fire suppression), and special security devices. Communications in data centres are most often based on networks running the IP protocol suite and contain a set of routers and switches that communicate and transport traffic (data) between the servers and to the outside world.

b. in section 2.5.2:

2.5.2 Natural Gas Co-generation Facility

The co-generation facility component consists of three main activities:

1. Construction of the Natural Gas Co-generation facility and its associated switchgear/transformer yard.

2. Construction of a high pressure natural gas pipeline to provide fuel for the co-generation facility and

3. Construction of over head high voltage power lines from the co-generation facility to the existing electricity 132kV distribution network.

Construction of the Natural Gas Co-generation Facility

The development will include 3 gas turbine electrical generators; these are made up as follows:

2 x 14MW gas turbines in production

1 x 14MW gas turbine in standby;

Operating output of the co-generation facility is approximately 28 MW.

The electricity generated will be used to supply the onsite data centres and may also feed minor quantities of surplus electricity into the 132 kV distribution network. Surplus electricity is not expected to be large and would not be suitable as an emergency source of electricity for the ACT.

21. The facility is described as a "cogeneration" facility because it produces both electricity and chilled water for the operation of the data centres. The chilled water assists in the cooling of the buildings which house large amounts of heat-generating computer equipment.

22. The Design Response Report describes the layout of the site as follows:

The Canberra Technology City site at Tuggeranong consists of 17.39 Ha of Broad Acre land. The proposed use is Major Utility Installation (natural gas co-generation facility) and Communications Facility (Data Centre).

Approximately 3.8 Ha of the site is required for the Major Utility Installation which includes a secure holding area. The remaining 13.59 Ha will accommodate computer data centres with the required road access and parking. ... Featured on site will be the following Major Utility Installation and Communications Facility components:

- A plant facility comprising, secure holding area, turbines, generators and ancillary plant as required;*
- A high voltage switchyard comprising high voltage transformers and switchgear;*
- Central Amenities with car parking; and*
- Computer Data Centres with associated car parking.*

23. The plans filed with the amended application show that there will be 10 main buildings on the site. Two of those contain the power generation facility. The other eight buildings contain the data centres. Those eight buildings are made up of three types, described as GC1, GC2 and GC3. There are to be three GC1 buildings, three GC2 buildings and two GC3 buildings.

24. Each of these types of building is a modular data centre building designed by a company called Galileo Connect Ltd. The GC1 and GC2 buildings have the appearance of being a large rectangular warehouse with a curved roof. The GC3 building is similar except that it has a square footprint approximately double that of the other buildings.

25. The GC1 building (as shown in drawing 3378_DA61 Revision B) has three levels:

- a. a ground floor labelled "PLANT";
- b. level 1 which is labelled "DATA HALL" and appears to have an elevated floor and a distance of 5.2 metres between the elevated floor and the floor level above;
- c. a roof cavity which contains roof plant (labelled "CHILLER") with crawl access down either side.

26. It has a footprint of 28.8 metres by 61.2 metres and is recorded in the Design Response Report as having a gross floor area of 2300m².

27. The GC2 building (see Drawing 3378_DA64 Revision B) has a similar layout except that:

- a. between the data hall on level 1 and the roof cavity area is another floor labelled "OFFICE – DISASTER RECOVERY" which is more like a normal office floor in that it does not have an elevated floor and is only 3.45m floor to floor;
- b. in the roof cavity area there are, in addition to chillers, small rooms for other types of plant;
- c. it is recorded in the Design Response Report as having a gross floor area of 3,987.9m².

28. The GC3 building (see Drawing 3378_DA67 Revision B) is the largest of the three. It is almost double the size of the other buildings having:

- a. a much larger footprint of 61.2 by 61.2 metres with a gross floor area recorded in the Design Response Report as 7140.7m²;
- b. four chiller compounds in the roof cavity (as opposed to two in GC1 and GC2);
- c. in addition to a ground floor and the roof cavity area, two levels labelled "DATA HALL"; and
- d. two data halls on each such floor.

Correct approach to characterising uses for the purposes of zoning restrictions

29. The approach to characterisation of uses has most often been considered in the context of planning provisions which protect existing uses. However, the approach to characterisation described in the cases relating to existing uses can, for present purposes, be taken as the same as that applicable to characterising a use for the purposes of the Territory Plan. In *Woolworths v Pallas Newco* (2004) 61 NSWLR 707 at [98] Spigelman CJ (with whom Mason P. agreed) summarised the position as follows:

98 The general approach to characterisation for planning purposes has often been stated in terms such as those adopted by Kitto J in Shire of Perth v O'Keefe [(1964) 110 CLR 529] at 535:

"The application of the by-law in a particular case is therefore not to be approached through a meticulous examination of the details of processes or activities, or through a precise cataloguing of individual items of goods dealt in, but by asking what, according to ordinary terminology, is the appropriate designation of the purpose being served by the use of the premises at the material date."

(See also Woollahra Municipal Council v Banool Developments Pty Ltd (1973) 129 CLR 138 at 145-147; Royal Agricultural Society of New South Wales v Sydney City Council (1987) 61 LGRA 305 at 310-311.) For present purposes it is unnecessary to consider whether a different approach is appropriate when determining existing uses, than that which is used when dealing with a development application.

30. In the same case at [205]-[206] Cripps AJA said:

205 A council when considering the characterisation of a use for which development consent is requested is, of course, concerned with what is proposed to be done on the land. In doing so, in my opinion, the various tests referred to in Royal Agricultural Society of New South Wales v Sydney City Council (1987) 61 LGRA 305 and North Sydney Municipal Council v Boyts Radio and Electrical Pty Ltd (1989) 16 NSWLR 50 provide guidance as to the task to be undertaken by the Council notwithstanding that the tests there set out were stated in the context of existing use rights. In Royal Agricultural Society after referring to the test to be applied McHugh J said with respect to existing uses:

"Accordingly a test has been devised which requires the purpose of the use of the land to be described only at that level of generality which is necessary and sufficient to cover individual activities, transactions or processes carried on at the relevant date. Thus the test is not so narrow that it requires characterisation of the purpose in terms of detailed activities, transactions or processes which have taken place. But it is not so general that a characterisation can embrace activities, transactions or processes which differ in kind from the use which the activities, transactions or processes as a class have made of the land."

206 In *Boyts Kirby P* (at 90E to F) referred to the fact that what was required was a determination of the "appropriate genus which best describes the activities in question". He continued: "In determining that genus attention should be focused on the purpose for which the determination is being made. That is a town planning purpose."

"Communications facility"

31. Prior to undertaking the characterisation process contemplated in *Shire of Perth v O'Keefe* and *Woolworths v Pallas Newco* it is necessary to say something more about the definition of "communications facility".

32. For convenience I will break the definition up into its component parts. Communications facility is defined to mean:

- a. the use of land for the provision of facilities for
- b. postal,
- c. telecommunications and
- d. other communication
- e. purposes
- f. including facilities used for receiving and transmitting radiated signals using radio masts, towers, and antennae systems
- g. but does not include cabling or ducting used for the carrying of electromagnetic signals.

33. The first point to note is that part (b) is clearly not relevant because the facility has nothing to do with postal communications. Secondly, part (f) (which picks up the terms of the limited definition of communications facility prior to variation 100 to the Territory Plan) is not relevant because the facility is not of that kind. Thirdly, in relation to the exclusion in (f), it is only relevant to note that because the proposal involves much more than cabling and ducting it is not relevant to the present questions.

34. I note that "the use of land for the provision of facilities for telecommunications or other communication purposes" is broader than simply "the use of land for the provision of telecommunications or other communication purposes" because of the reference to "the provision of facilities for". This suggests that the definition extends to uses which are

less directly associated with the actual provision of communications at least where it is clear that the facilities exist for the purpose of providing communication services. This is consistent with the inclusion of two forms of "depot" (Telecommunications facility, depot" and "Australia Post Facility, depot") in the "Some Common Terminology" column (set out above).

35. The use of land for the provision of facilities for "telecommunications ... purposes" involves the use of land for provision of facilities for the sending or receipt "telegraphic or telephonic communications by line or radio transmission" (see *Macquarie Dictionary* (2nd ed, 1991) "telecommunication") or alternatively for "communication over a distance, especially by cable, telegraph, telephone or broadcasting" (*New Shorter Oxford English Dictionary* (1993)).
36. The use of land for the provision of facilities for "other communications ... purposes" is broader in the sense that it is not limited to communications by line or radio transmission. In other words it is less tied to any particular technology for communications. However, it does not avoid the requirement that the use of the land must be for the purposes of providing facilities for communications.
37. Further, the definition is broad enough to cover facilities that form part of communications infrastructure for air navigation and more specialist technical uses. "Radar equipment" and "Aviation navigation communication" are included so that it is clear that infrastructure for this kind of communication is included. Similarly, "space tracking facility" is an anomalous technical use of land which can be defined by its communications purpose. However, the fact that a range of different examples are given with the definition is not sufficient, in my view, to indicate that any land use with a communications component will be within the scope of a "communications facility". Rather the facility must exist for "telecommunications" or "other communications purposes".

Is the component of the development in development application 20074152 that is described as "data centres" properly characterised as a "communications facility" for the purposes of the Territory Plan made under the Land Act?

38. One is then left with consider whether the proposal involves "the use of land for the provision of facilities for telecommunications or other communication

purposes". This is done by considering what, according to ordinary terminology, is the appropriate designation of the purpose being served by the use of the land.

39. In the present case, the proposal for the data centres is not specific to any particular type of underlying business.

40. The proposed use outlined in the Design Response Report and Preliminary Assessment is for a development that would provide purpose-built buildings in which to operate large scale computing facilities. The benefits of the development to users are that the buildings are large, purpose built and secure. There is nothing in the documentation to suggest that tenants in the facility will be limited to any particular type of business or government organisation. More specifically, there is nothing in the documentation which indicates that the facilities are to be limited to tenants who provide telecommunications or communications services to business, government or the public. Thus, if one has regard to the underlying business goals of the tenants of the proposed facility the development, as currently described, goes beyond what can be classified as a communications facility.

41. However, in my opinion, it is not appropriate even to embark on an inquiry as to the business goals of the tenants of the facility. That is because, in my opinion the use of the land is, in a planning sense, divorced from the business or governmental purpose of the organisations which might be tenants of the facility. What is being provided is a generic accommodation facility for large scale computing equipment. That use, having regard to its extent, and the specialised nature of the buildings and the systems which they require, is a separate and distinct type of land use.

42. The provision of specialised accommodation for computer equipment is similar, in this regard, to the provision of office accommodation for business or government tenants. When one is characterising, for planning purposes, the use of office accommodation one generally does not look at the specific identity of the tenants in order to characterise the nature of the use. Rather, the nature of the use is, in terms of its planning consequences, sufficiently generic for it to be considered as a distinct use separate from the corporate goals of any particular tenant. So too where a standard form of accommodation is provided for large scale computing facilities. The nature of the use is not determined by the particular corporate purpose for which

the tenant organisations use their computers because that does not change the physical features of the use to which the land is put.

43. The use of the property for providing such generic purpose-built computer accommodation facilities will involve some communications. Plainly the facility will be connected to the telephone network. It will also be connected to data networks and the internet and it is likely that large volumes of data will be transmitted to and from the facility by those means. However, in my view the fact that there are significant inflows and outflows of data from the facility is not a factor which would lead to the facility being characterised as a communications facility. That is because the purpose of the facility is not to facilitate communications but rather the communications exist in order to allow the facility to function where it does. The communications are simply ancillary to the use of the land for the purpose of housing large quantities of computing equipment, in the same way that a significant communications network is likely to be necessary for the operation of any large area of office space used for business purposes.

44. As a consequence, the use of the land for data centres as described in the Preliminary Assessment and Design Response Report is not properly characterised as a "communications facility" within the meaning of that term in the Territory Plan.

45. Further, the data centre use does not become permissible by reason of the fact that "MAJOR UTILITY INSTALLATION" is permitted by the B10 Policy. The power generation component of the proposed development falls within the scope of that definition because it is a "power generation station". That is because it is equipment and associated buildings constructed for the generation of electricity utilising gas. Where a use is ancillary and subordinate to, and not independent of, another use it is generally not considered to be a separate use for planning purposes. In *Foodbarn Pty Ltd v Solicitor-General* (1975) 32 LGRA 157 at 161 Glass JA (with whom Samuels and Hutley JJA agreed) said:

It may be deduced that where part of the premises is used for a purpose which is subordinate to the purposes which inspires the use of another part, it is legitimate to disregard the former and to treat the dominant purpose as that for which the whole is being used. Doubtless the same principle would apply where the dominant and servient purposes both relate to the whole and not to separate parts. ... Where the whole of the premises is used for two or more purposes none of which subserves the others, it is, in my opinion, irrelevant to inquire which of the multiple purposes is dominant. If any one purpose operating in a way which is independent and not merely incidental to other

purposes is prohibited, it is immaterial that it may be overshadowed by the others whether in terms of income generated, space occupied or ratio of staff engaged. The ordinance is nonetheless being disobeyed."

46. This is consistent with the terms of the land use table from B10 Policy set out above which, notwithstanding the restrictions imposed by the body of the table, allows uses which are "ancillary to the principal uses of the land, provided that there is no conflict with the objectives in section 1".

47. However, the data centres are not a use which is ancillary to the use of the land for a power generation station. The purpose of the power generation facility is simply to provide power to the data centre. As indicated in the section of the Preliminary Assessment quoted above, any supply of electricity from the power generation facility into the ACT grid "is not expected to be large". Both in terms of the purpose of the facility and in terms of the overall nature of the land use proposed on the site, it is the power generation facility which is ancillary to the use of land for data centres and not the other way around. As a consequence the fact that a "power generation station" and "MAJOR UTILITY INSTALLATION" are permissible uses does not mean that the use of the land for data centres is a permitted use.

48. As a consequence, in my opinion, the data centres component of the development proposed in the documentation with which I have been briefed is not a communications facility within the meaning of the Territory Plan.

Is the "data centres" use proposed a permissible use of land subject to the Broadacre Land Use Policy set out in the Territory Plan?

49. The use of the land for "data centres" is:

- a. not permissible by reason of being a "communications facility" as defined in the Territory Plan;
- b. not permissible by reason of being ancillary to a permitted use, namely, power generation station.

50. None of the other uses set out in the schedule to clause 2.1 of the B10 Policy would accommodate the data centres as proposed. The effect of this is that under the terms of clause 2.1 of the B10 Policy the "data centres" are not a permissible use of the land.

Is it lawfully open to the ACTPLA to approve the proposed "data centres" on block 1671 Tuggeranong?

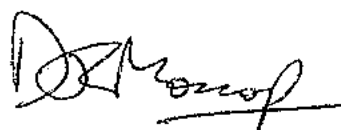
51. Section 8 of the Land Act provides:

"The Territory, the Executive, a Minister, or a territory authority must not do any act, or approve the doing of any act, that is inconsistent with the plan."

52. ACTPLA is either "the Territory" or "a territory authority" for the purposes of s 8: see Land Act, Dictionary, "territory authority"; *Planning and Development Act 2007* s 10, 11.

53. In the present case, the use has been described as a "communications facility" in the development application. However the description of the proposal on the application form is not determinative of its approvability. Fundamentally this is because what is being approved is not the use of land but the carrying out of "development" on land as defined in s 222 of the Land Act. That includes, relevantly, the erection of buildings and other structures on the land and the carrying out of earthworks or other construction work on the land. The obligation upon ACTPLA is to determine whether the buildings and works on the land are for a purpose which is consistent with clause 2.1 of the B10 Policy. If, having regard to the plans and the description of the proposal in the documents accompanying the application, the proper characterisation of the proposed use is that the proposal is not in fact a "communications facility" then it is not open to ACTPLA to approve the proposal. That is because to do so would be to "approve a development or a proposal for the use of land that would be inconsistent with ... the applicable land use policy in Part B" contrary to clause 9.1 in Part A3 of the Plan and hence contrary to s 8 of the Land Act.

54. Because the data centres component of the proposed development is not a "communications facility", approval of the proposal would be contrary to s 8 of the Land Act and hence is a course not lawfully open to ACTPLA.



David Mossop

Blackburn Chambers

25 August 2008

12

Site Selection

[5]

ActewAGL

ActewAGL House 221 London Circuit Canberra ACT 2601 • GPO Box 366 Canberra ACT 2601
 Telephone 02 6248 3111 Facsimile 02 6249 7237 www.actewagl.com.au

C 685/07

22 May 2007

Mr Jon Stanhope, MLA
 Chief Minister for the ACT
 ACT Legislative Assembly
 London Circuit
 CANBERRA ACT 2601

Dear Chief Minister,



*Ms Davore
 Far advice
 please
 D 25/5*

Land for an Integrated Gas-fired Power Station and Data Centre in the ACT

Further to my letter of 9 May 2007 and subsequent discussions we are now in a position to outline the site requirements of our proposal in more detail to facilitate the ministerial direction under section 44 of the Planning and Land Act 2002.

We have come to a mutual understanding with the Land Development Agency (LDA) regarding a suitable site at Hume, on the northern side of the Monaro Highway and to the south-east of the Mugga Lane Landfill which should give us the best chance of responding to the data centre opportunity ahead of competition from interstate and abroad.

The subject site is a portion of Block 18 Section 23 Hume. Details relating to the suitability of the site as discussed with the LDA are attached. The LDA is satisfied that Block A can be transferred with the confirmation of findings from a previous Preliminary Assessment. Block B will need a Site Investigation Report which would need to include Planning and Environmental Assessments.

For reasons relating to the timely delivery of land necessary for the commercial success of this initiative, ActewAGL seeks an immediate offer of lease of site A. Development of Block A will be subject to ACTPLA approval processes.

Key events relating to the transfer of this site are as follows.

- On receipt of notification that the Government has agreed to the land transfer the LDA will be in a position to proceed with the withdrawal of the land required from the existing lease which covers the subject site.
- The offer of lease will be made after the land requisition is initiated. The offer will be made exclusively to ActewAGL Distribution (ActewAGL).
- The offer will remain open for a period of twelve (12) months and ActewAGL will pay the LDA a non-refundable fee for the exclusive right to take up the offer of lease anytime within this period. This is intended to give ActewAGL certainty with respect to its entitlement to the land and allow ActewAGL to complete commercial arrangements with prospective partners and clients. The value of the non-refundable fee will be determined by the LDA. The LDA may also decide to charge ActewAGL a refundable fee up to 10% of the land value.

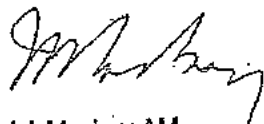
Your reliable source of life's essentials

- The offer of the lease will include a condition that finalisation of the transfer will be dependant on development application approval.
- With a lease offer in hand ActewAGL and its partners will be in a position to progress formal commercial arrangements with end users; development application and approval processes can then proceed.

I wish to foreshadow that we have also opened discussions with the LDA concerning a second site at Belconnen to provide a disaster recovery back-up site. I will brief you on these discussions in due course.

I would be grateful if you would give this matter your early attention and notify the LDA that the Government has agreed to the land transfer of part block 18, Section 23, on the basis that it enables ActewAGL to have certainty in negotiations with prospective partners and clients with respect to its entitlement to the land and that it enables ActewAGL to properly complete its commercial assessment and due diligence processes.

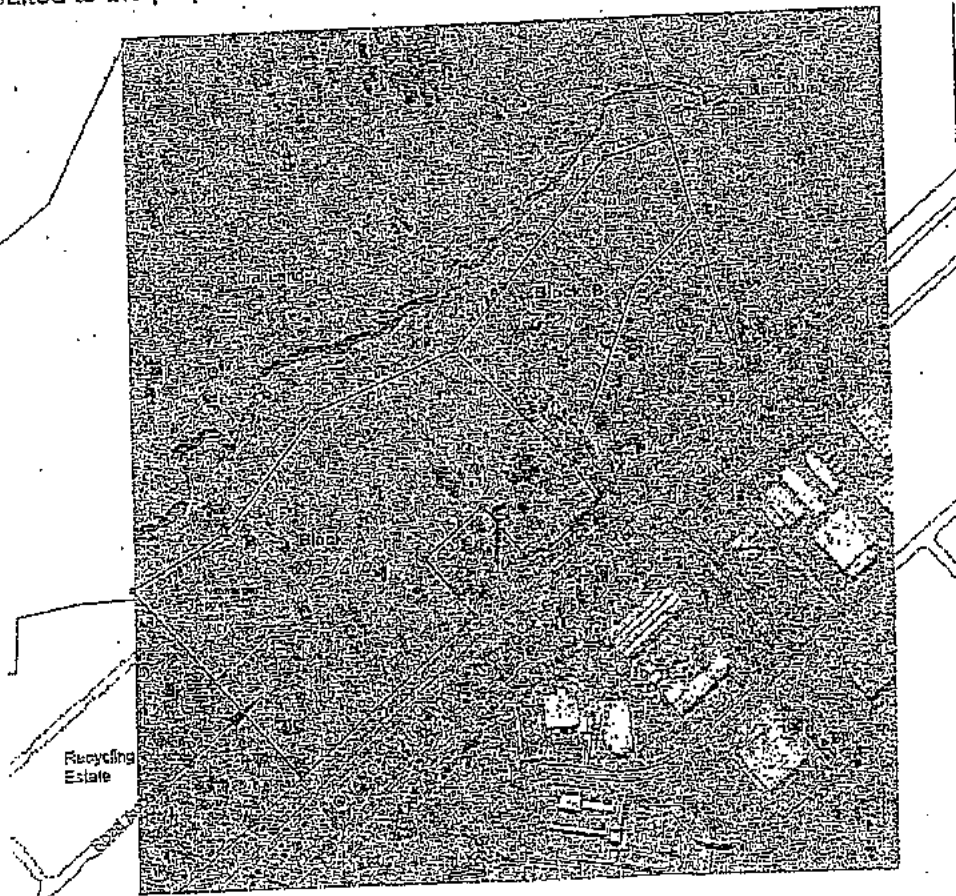
Yours Sincerely



J A Mackay AM
Chief Executive Officer

Primary Site - Humie

The total area is approximately 21 hectares; it is flat and well configured for the intended use. A road access off Mugga Lane is in place through the existing and future recycling estate. It is located adjacent to the Monaro Highway and significantly, to the Commonwealth Government high speed communication (ICT) cable that runs along the highway alignment. It is close to a major substation which will provide secure backup power supply. It is readily accessible for gas supply which will run through a new pipe along the Monaro highway alignment from Hindmarsh Drive. There is potential also for the gas power to utilise methane from the adjacent Mugga land fill site. It is well located relative to major Commonwealth Government clients (not too close and not too far). This site is exceptionally well suited to the proposed use.



The land will be used for natural gas power generation which falls within the definition of a "major utility installation" in the Territory Plan, and for data centres which fall within the definition of "communication facilities" in the Territory Plan

The site is contained within an "industrial" land use policy area (or zone) in the Territory Plan and the proposed uses are compatible with this zoning. A Territory Plan variation is not required.

The site, together with adjoining land, has been mooted as a recycling estate for some years however only limited development has occurred. Substantial sites will remain available for the development of further recycling facilities. The LDA have undertaken to discuss this with ACT NoWaste. It is also noted that LDA is proceeding to make further land in the Hume industrial area available for development in the immediate future; this will be suitable for general industrial uses including recycling.

The land is currently held under a rural lease. Because it is intended for development the lease includes a withdrawal clause and can be made available at three months notice. LDA stand ready to arrange the appropriate withdrawal notice.

Blocks A & B have been subject to an environmental assessment (PA) completed as part of the recycling estate proposal. This work, together with the earlier ACTPLA "Southern Broadacre Study" has established a thorough body of technical research covering flora and fauna and other issues related to the natural environment. Sensitive areas including a stand of trees and a box gum woodland have been identified in the environmental research. The Block A & B boundaries are based on this work.

Further assessment relating specifically to the natural gas power generation and the data centre will be required and will be incorporated into the DA process. A further Preliminary Assessment may be triggered by the proposal, if so this will be conducted in parallel with and within the same timeframe as the development application. There is sufficient information available from previous work to ensure that no new factors will emerge that would preclude development of the site.

Other than ownership of the land there is no impediment to development of this site for the proposed purpose.



Land Development Agency

Tom Percival
Project Manager
Land Use Planning
ACT Planning and Land Authority

Hume Industrial Planning Study – DRAFT Concept Plan Report

Tom,

Thank you for the opportunity to review and provide comments on the above document.

The Land Development Agency is particularly interested in industrial land which is able to be released in a timely manner to meet market demand.

Due to the commitment made by Government to release industrial land, the timeliness and quality of data contained in the final report of the Planning Study is of paramount importance.

The LDA is working on preliminary drawings and financial feasibilities for Sections 8, 21 and 22.

The report submitted, (in LDA's view), is lacking fundamental information which was sought in the Hume Industrial Planning Study Project brief, advertised by Procurement Solutions. In particular the report is lacking in detail or has failed to address the following site conditions:

6.1.1 Physical Environment

- Microclimate, including prevailing winds, shadow areas and any restrictions to solar access;
- Geo-technical information;
- Contamination including location, nature, use of the area affected and possible remediation measures; and
- Urban edge requirements between the proposed development areas including maintenance, access and fire protection.

6.1.2 Environment Analysis

- There does not appear to be any evidence that the Consultant has liaised with Environment ACT (Dr Murray Evans, Wildlife and Monitoring Unit or his nominated representative) regarding the interface between the items and the proposed development.

- The consultant is to engage the services of an appropriately qualified and experienced conservation scientist to assist in this phase of the work.

6.1.3 Heritage Analysis

- There does not appear to be any evidence that the consultant has liaised with Environment ACT, Heritage Unit (Ms Samantha McKay) regarding the heritage significance of any existing heritage sites within the study area, as well as note any significant cultural features and the interface between the items and the proposed development;
- Identification of any conservation management principles;
- Identification of processes that need to be followed to resolve native title issues.

6.1.5 Infrastructure Analysis

- Identify existing internal and external infrastructure, including sewerage, stormwater, water supply, aerials, telecommunications, gas, electricity and the capacity of the existing infrastructure to service the proposed development and any additional requirements to service Hume;
- Identify 1:100 year flood level particularly relating to Jerrabomberra Creek, Dog Trap Creek and major floodways;
- Identify overland flow paths

6.1.6 Other issues

- Identify noise issues, including any existing noise sources and likely sources during development (such as traffic generation and air traffic);

6.4 Draft Concept Plan for the Hume Industrial Area

The draft Concept Plan would appear not to have:

- Considered and recommended all necessary engineering requirements (such as roads, water, sewerage and stormwater) in sufficient detail for the development of the suburb;
- Identified heritage requirements for Couranga Homestead, Tralee Homestead and Travelling Stock Route);
- Identified the relationship with Rose Cottage.
- Identified mandatory internal roads and connections to existing roads;
- Identified internal road paths, including traffic management measures;
- Identified external paths and cycleways, including appropriate connections;
- Suggested subdivision staging plan;
- Identified all existing trees;
- Identified any heritage buffer requirements and conservation measures;

ABN 20419925579

27 Wentworth Avenue, Kingston ACT 2604

GPO Box 158 • Canberra ACT 2601 • Telephone (02) 6207 5322 • Facsimile (02) 6205 0386

ACT Government Homepage: www.act.gov.au

- Suggested appropriate suburb entrance treatments;
- Identified 100 year ARI flood levels and recommended minimum floor levels;
- Identified possible siting of basins, water quality control ponds and their backwater effects on minimum floor levels;
- Identified appropriate public land buffer and access with existing sewer pumping station, electrical networks, future floodway works (including possible GPT's) and floodways'
- Identified any earthworks and spoil requirements;

6.4.1 Roads and Traffic Report

- Identified recommendations for any necessary infrastructure improvements and timing (eg road realignment, intersection upgrades, new medians, pedestrian crossings, road widening, traffic calming, configuration of intersection arrangements);
- Identified pedestrian and cycle needs at all intersections and crossings;
- Suggested infrastructure improvements that could be included as off-site works or should be constructed in the Territory's capital works program;
- Provided implications for proposed road networks in the concept area, if Tralee and Googong were to proceed with development;
- Provided a schedule of costs for the above proposals

6.4.2 Site Servicing and Engineering Report

- Identified the capacity of the existing infrastructure to service the area for the recommended purposes;
- Identified any additional external infrastructure requirements to service this area for the recommended purposes;
- Provided location and analysis of the existing internal and external infrastructure including sewerage, stormwater, water supply, telecommunications, gas, electricity and any land, vent stack or easement requirements;
- Identified ACTEW requirements for easements and site servicing;
- Identified the site's ability to maintain stormwater quality and quantity for the recommended design option;
- Provided indicative costs of servicing the site;
- Provided indicative costs and implications if the site were to require additional servicing as a result of Googong and Tralee development.

The consultant has not indicated that they have incorporated water sensitive urban design and integrated urban land and water management principles into the Concept Plan.

Also missing from the Concept Plan is:

- Site servicing and Engineering report; and

- Sustainable urban land and water management principles.

There is no Consultation Report attached to the Concept Plan nor does the report make reference to any form of consultation undertaken with stakeholders.

The report makes no mention of current land tenure within the study area. There is no mention of what implications any tenure over any parcels may have, or how this may impact on the development of any sites and what processes need to be put in place to ensure there are no disruptions regarding the withdrawal of any parcels of land.

The report submitted does not give any clear indication for future use in a number of areas despite being required in the brief. A lot of the recommendations require additional works and studies which were requested to be provided in the brief.

Due to the commitment made by the ACT Government to release a Resource Recovery Estate and Industrial Land to the local industries, within the next financial year, it would be welcomed if the final document was produced in a timelier manner with the information requested.



Ray Stone
Senior Project Manager
Urban Development

5 June 2007

ActewAGL House 221 London Circuit Canberra ACT 2600 • GPO Box 368 Canberra ACT 2601
Telephone 13 14 93 Facsimile 02 6249 7237 www.actewagl.com.au

8 August 2007

Ms Kath Pooley
Project Manager, Urban Development
Land Development Agency
21 Wentworth Avenue Kingston ACT 2604

Dear Kath,

Land (Planning and Environment) Act 1991 Section 164
Request for land at Hume for integrated gas-fired power station and data centre

ActewAGL has examined the three sites proposed to develop an integrated gas-fired power station and data centre in Hume. A section of land within Block 1610, District of Tuggeranong has been identified as the preferred site.

ActewAGL has engaged Tony Adams to provide expert advice on the land transfer process under section 164 of the Land (Planning and Environment Act) 1991. We understand the process involves three steps.

1. Upon Government approval, an offer of lease with a draft lease attached will be made to ActewAGL. The offer will remain open for a 12 month period.
2. During the 12 month period ActewAGL will conduct the necessary environmental investigation and research to support a development application (DA) and to achieve approval of a DA. It is noted that the subject land has been reviewed in detail by the Southern Broadacre Study (ACTPLA 2005) and more recently by the draft Hume Industrial Planning Study (ACTPLA 2007) both of which confirm the suitability of this Land for industrial use.
3. On successful completion of the DA process a lease will be issued. Key clauses will include a purpose clause providing for use of the site for a "Major Utility Installation and Communications Facility" and clauses limiting the transfer of land as required by section 164 of the Land (Planning and Environment Act) 1991.

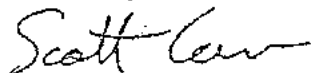
With respect to the first point above and pursuant to section 164 of the Act, we provide attached supporting information to assist the Government in making a determination on this matter.

We note that Disallowable Instrument DI2003-194 proposes a two stage process involving a preliminary application followed by the provision of further detailed information if the negotiations are progressed. The second stage occurs when the Land Development Authority is satisfied that the proposed grant of lease is in the public interest.

The first stage has been progressing for some time and the Government has given in principal support and a commitment to provide a suitable site of approximately 21 hectares in Hume. In light of the progress already made we attached the detailed supporting material required by DI2003-194. The detailed supporting information is presented in the familiar "Application for Direct Sale of Land" form.

A separate request for land at the Belconnen site will follow in the near future.

Yours sincerely,



Scott Carr
Senior Commercial Analyst
ActewAGL

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Access to the paper

Page 1 of 2

54

54

Chami, Nadia

From: Hicks, Katherine @ Canberra [katherine.hicks@cbre.com.au]
Sent: Thursday, 1 May 2008 5:41 PM
To: Percival, Tom
Subject: RE: Hume Industrial Planning Study - Draft Concept Plan Report May 2007

Hello Tom,

As you may be aware we are working with ActewAGL on the Gas Power Station and Data Centre project. So it's in connection with this project that we're requesting an electronic copy. The copy of the report we have informs that the site selected for the ActewAGL project would sometime in the future be zoned for industrial purposes and it is labled as the Hume Study area. It would be useful to compare the final report issued in September with the one we have dated May 2007.

Thanks

Regards,

Katherine Hicks | Town Planner
CB Richard Ellis (V) Pty Ltd | CBRE Consulting
Level 1, 11 Lonsdale Street | Braddon, ACT 2612 | GPO Box 1987 | Canberra, ACT 2601
T 61 2 6232 2733 | F 61 2 6232 2740 | M 61 419639670
katherine.hicks@cbre.com.au | www.cbre.com.au

From: Percival, Tom [mailto:Tom.Percival@act.gov.au]
Sent: Thursday, 1 May 2008 4:59 PM
To: Hicks, Katherine @ Canberra
Subject: RE: Hume Industrial Planning Study - Draft Concept Plan Report May 2007

Katherine

Yes, a final was issued as "Final Report - September 2007". However, this study was prepared as an internal Government report to inform further work, so I need to ask what capacity you are requesting it in - ie is there another study that you are working on that it is required for?
Any questions, please call/email me

Tom Percival
Land Policy, ACT Planning and Land Authority
P: 620 71829
E: tom.percival@act.gov.au

From: Hicks, Katherine @ Canberra [mailto:katherine.hicks@cbre.com.au]
Sent: Thursday, 1 May 2008 4:28 PM
To: Percival, Tom
Subject: Hume Industrial Planning Study - Draft Concept Plan Report May 2007
Importance: High

Tom,

We have a hard copy of the Hume Industrial Planning Study - Draft Concept Plan Report May 2007. Could you confirm if this report was finalised (Ray Stone at LDA says he has a September 2007 copy), and would it be possible for us to have an electronic copy of the report?

Thanks

Regards,

Katherine Hicks| Town Planner
CB Richard Ellis (V) Pty Ltd | CBRE Consulting
Level 1, 11 Lonsdale Street | Braddon, ACT 2612 | GPO Box 1987 | Canberra, ACT 2601
T 61 2 6232 2733 | F 61 2 6232 2740 | M 61 419639670
katherine.hicks@cbre.com.au | www.cbre.com.au

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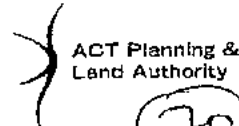
Comments from Land Use Planning on Hume Industrial Planning Study Draft Concept Plan Report May 2007

- Desktop heritage report needs to be prepared, providing recommendations on homesteads, PAD discoveries and advice on handling travelling stock route and native title claim
- A consultation summary report or section outlining meetings should be prepared and attached.
- Review 2.3 Study Area Characteristics first point listing identifiers – refer to diagram or correct list of descriptors
- Include B2D Commercial 'Local Centre' in section 3.1 and figure
- Still unclear what Figure 19 is explaining and the impact / restriction on the planning and development of the area
- 5.3.4 Public Transport
 - Peak services do pass the area on Monaro highway but do not stop
 - Some comment on the demand for public transport, if services should be provided and how these should be incorporated. As an industrial area, what should be the public transport target?
- 5.4.1 – note on frontage roads is unclear if parallel streets or service lanes would be appropriate
- 5.4.3 – Section appears more as discussion than recommendations – include recommended works and staging
- 6.3.2 – Sewerage agreements in place for Resource Recovery Estate to replace pump station with gravity main – need to reflect here
- Details of stormwater management in the area should be included ie where are the ponds, floodways, can sections be piped?
- 7.1 – Earlier discussions were that some review of industrial land demand and development trends were prepared early in the study (input into block sizes). No outcomes or discussion are included and could provide the starting point for future review.
- Railway only receives a cursory treatment and little evidence of review of rail issues. At least some detail of opportunities for new blocks with sidings, potential risks and principles for constructing rail crossings should be included.
- More info on issues surrounding Block 1610 Tuggeranong could be included at 7.4. A second diagram focusing on broadacre section would be useful, showing buffer to landfill, Monaro Highway DCP zone, steep land and low lying areas.
- At 7.4.1, open with "The ACT Government has previously stated that the broadacre portion of Block 1610 Tuggeranong District will be held off from development until 2010 to allow preparation of feasibility studies for development of a cemetery on the site"
- Concept Plan can now be refined to a single plan incorporating agency input, location of ActewAGL and cemetery proposals and known constraints and demands.
- Stage A could be broken into development ready and constrained land.
- An approved DCP has surfaced for part of the study area, and should be recognised in the new DCP.

Tom Percival
28 June 2007



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SUBMISSION TO EXECUTIVE POLICY COMMITTEE

Agenda Item No.	3(d)
Date of Meeting	5 November 2007
Subject	Hume Planning Study
Branch	Planning Services
Presented by	Paul Lewis/Tom Percival

Purpose

1. To brief Executive Policy Committee on the progress of the Hume Planning Study.
2. To seek a recommended position of EPC to endorse the Hume Planning Study as a document for background information purposes.

Background

The Authority engaged consultants GHD in November 2006 to prepare a study into the potential for future industrial development in the Hume area as an expansion of the existing industrial suburb. The study principally considers areas around Monaro Highway, Tralee Street and Mugga Lane, and was completed in late September 2007.

The study has considered existing site conditions of the area including environmental, traffic and service infrastructure, and recommended future industrial development in areas around Tralee Street, extending stages of the Hume Resource Recovery Estate, and land on the southern side of Mugga Lane that is currently a Broadacre Land Use Policy.

Issues

Future industrial development opportunities in the short term are in the areas around Tralee Street on the southern side of Monaro Highway, and an extension to the Hume Resource Recovery Estate. CMD/LDA are currently considering estate development proposals for this area to meet future industrial land supply.

There are a number of broader planning issues that emerged through the study that could not be resolved by the planning study. These require a Whole of Government position to be declared. Principal issues are shown at Attachment A:

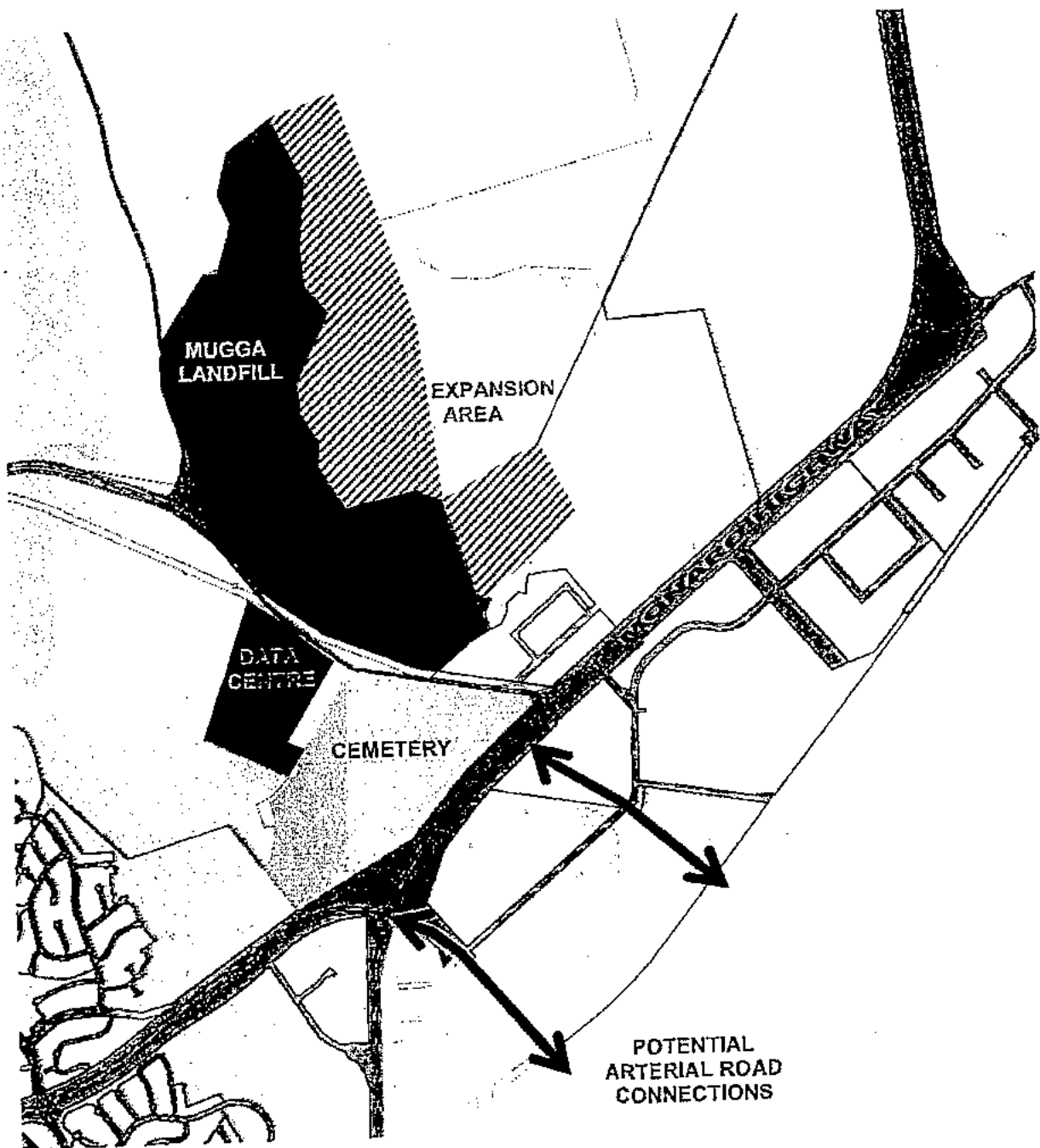
- Major arterial road connections in south Hume for cross-border traffic;
- Future traffic conditions on Monaro Highway;
- Siting of a new cemetery in the south Canberra area;
- Siting and design of a Gas-fired power station and data centre;
- Future expansion of Mugga Landfill.

Planning Services Branch position

The *Hume Industrial Planning Study Final Report* (Attachment B) is a background document to be used for information in the preparation of further studies and site selection, such as Eastern Broadacre Study.

Recommendation

The Executive Policy Committee's recommended position is sought to endorse the final report as a background document.



Preliminary Assessment for Canberra Technology City
Block 1671 Tuggeranong District

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Components:

1. Construction of a Natural Gas Power Station and its associated Electricity Switchyard/Substation (Major Utility Installation);
2. Construction of Computer Data Centres (Communications Facility);
3. Construction of overhead high voltage power lines from the existing electricity power lines to the power station transformer yard and;
4. Construction of a high pressure natural gas pipeline to provide fuel for the power station.

Questions:

General:

- Strong support for the intended use, however the PA appears not to address basic information supporting site selection and the requirement for a power station.

Site:

- No information is provided as to why this site has been chosen over any other. Given the abundance of comparable broadacre sites, a matrix indicating the order of importance for site selection prerequisites & a comparison between other suitable sites would be useful to understand that this is the best location for this proposal.
- The appearance of 4 storey buildings fronting Long Gulley road is questionable. The road has a distinctive rural character which could be lost with a development of this scale. Alternatives sites at Hume or Symonston, which have developments of this scale would be more appropriate.
- While the Hume Industrial Planning Study and the Southern Broad acre study both recommend this site be zoned to accommodate an expansion of the Hume industrial area, this would possibly be in the distant future. Construction of this site indicates expansion of this zone is a certainty.
- The site is remote from public transport and facilities. This will require all 203 people eventually employed on the site to drive to work. This does not reflect ActewAGL's statement on their web site regarding the development: "...our commitment to the environment will also be demonstrated by helping to deliver an environmentally friendly data centre campus that leads the industry in reducing the carbon footprint of such facilities." Private car usage is a major contributor to carbon emissions.
- Could the power station be remote from the computer data centre? This would enable the data centre to be located in an area with reasonable public transport and facilities.
- Locating the data centre and possibly power station in Hume and especially Symonston may reduce the need for sewer and water main upgrades.

Power Station

- No background is given as to why the gas fired power station is required. I assume it is to provide a guaranteed uninterrupted supply, however this is not stated. Isn't the existing grid able to supply the additional demand?
- Will the proposal be able to supply power at a cheaper price? Given the undoubted community opposition to a power station, further explanation of why this is the best solution is required.
- The project displays some energy efficient features; however this is a significant opportunity to demonstrate more environmentally sustainable technology. The large roof area offers potential for a considerable area of photo voltaic cells to supplement power needs; however this is not discussed in the PA. Government incentives to install domestic photovoltaic cells indicate current technology is economically feasible.

- If photovoltaic cells are not currently feasible, it is likely that they will be in the future. The design of the buildings should allow for this and the proposed curved roofs be replaced by north facing skillion roofs.

Detail in the PA

- The Canberra Technology web site indicates 'rainwater harvesting' and 'green roofs' however these are not discussed in the PA. Site plans don't indicate locations for rainwater tanks.
- As the web site promotes the proposal as a 'green, sustainable solution', collection of rainwater should be a priority. The PA states the steam turbines will consume a total of 600ML of water per year – can suitably filtered rainwater be used for this purpose?
- While the NO2 impact assessment states that limits will not be exceeded, it is not clear if residential areas will be affected. This study requires a map indicating the extent of plume spread to be easily understood.
- The visual effect of the exhaust stacks is not convincingly documented. The effect of 18 x 35m high stacks could be significant. No information provided on stack width or colour.

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Pressure from Ian Mackay

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ActewAGL House 221 London Circuit Canberra ACT 2600 • GPO Box 366 Canberra ACT 2601
Telephone 13 14 93 Facsimile 02 6249 7237 www.actewagl.com.au

30 April 2008

Mr Andrew Barr MLA
Minister for Planning and Member for Molonglo
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Andrew
Dear Mr Barr

Preliminary Assessment for the Canberra Technology City (CTC) Project

I refer to your decision to extend the period of public comment on the proposed ActewAGL gas-fired power station and data centre from close of business May 5 to close of business Tuesday 27th May 2008.

I support this decision. Our investment partners TRE, together with their major shareholder Thakral Holdings are, however, concerned that protracted delays may jeopardise the viability of the project. They have also indicated that a change of site at this stage would almost certainly create delays that will destroy the project's viability.

As you will appreciate, the commercial viability of the CTC project is largely based on the project's ability to retain and attract high value data centre tenants to the ACT. There is a window of opportunity for the ACT to present a comprehensive infrastructure solution to an international data centre market ahead of other developments in competing locations such as Hong Kong and Singapore. Current project assumptions and investment schedules are based on the ACTPLA Development Application process being completed by July 2008.

Our investment partners have informed us that the risks associated with attracting high value tenants to the ACT increase significantly if the market perceives development delays. While our partners are preparing to invest substantial capital into the project, any further delays will increase the risk exposure for Technical Real Estate and restrict their ability to commit investment funds. Extended delays will certainly discourage investment and jeopardise the projects potential to broaden the ACT's economic base, create jobs and also protect the ACT's power supply, which is an important factor in encouraging continued business investment in the ACT.

For this reason, I urge you to request that the ACTPLA commence their assessment of the Preliminary Assessment immediately so that by the time the extended consultation period closes, ACTPLA will be able to quickly review their assessment in light of the public comments received and make a speedy decision.

Sincerely,

JA Mackay AM
Chief Executive Officer

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further Reports needed 29/2/08



Chami, Nadia

From: Taylor, Bob
Sent: Friday, 29 February 2008 11:30 AM
To: Velzen, Pam; Deedman
Cc: Chu, Jack
Subject: TUGGERANONG BLOCK 1671 - Prescribed Conditions and Site Investigation Comments

Pam,

The following are Infrastructure Planning Sections comments and advice for consideration on the above documentation.

The Prescribed Conditions for Associated Works cost estimates to provide services to this block to be in excess of \$5.0m. Is it known if any part of these works are ActewAGL capital works otherwise this would suggest the provision of services to the block should be dealt with under a deed of agreement.

Site Investigation report comments are as follows;

The report is somewhat confusing in the description of some of the existing elements and its proposed outcomes.

Executive Summary

Easements - suggest deleting first sentence. There is an existing overhead electrical service through the site, therefore an easement exists.

4.0 Site Description....

Last sentence in last paragraph - reword to better describe what is happening and exists.

5.2 Sewerage

Sewerage infrastructure needs to be investigated further a field that just locally. The sewer in John Cory Circuit is serviced by a rising main from the Resource Recovery Estate to Hume.

8.0 Access

As no traffic study has been done for this site, it is recommended that one be done to properly assess the size, width and lengths of the driveway, storage and deceleration lanes. Advise for TAMS is required for the need of a traffic study, it would need to include future projections for Mugga Lane and determining the timing of its upgrade from Monaro Hwy to Long Gully Rd.

Drawings

The alignment of proposed services need to take into consideration the future planning for Hume and its surrounds and be consistent with service master plans. They also need to take into consideration the findings of the recently completed Hume Planning Study by ACTPLA.

Prescribed Conditions

Like the description of services in the Site Investigation, associated works listed in 2. a) - f) need to be clearer in what is being delivered. The amount of \$5m associated works is considered to be too large to be managed by the method of Prescribed Conditions.

There needs to be further consultation with all the respective agencies, e.g. ACTPLA, ActewAGL, TAMS, etc to work out the break down of what is expected to be delivered by the proponent and those by the Territory. X

Should any further discussion or information be required, please contact me.

regards

Bob Taylor
Infrastructure Planning Section
ACT Planning and Land Authority
Ph. 6207 1669 Fax. 6207 2587
Email: bob.taylor@act.gov.au

ACT Planning and Land Authority - Urban Design Policy
Comments on the PA for the:
"Gas fired power station, switch yard/electricity sub station, 132kV powerlines,
9km gas pipeline and data centre"
at Block 1671 District of Tuggeranong

1. General comments on the Information provided in the Preliminary Assessment (PA)

The following comments relate to the information provided in the PA. In this regard, the PA did not consistently provide sufficient information on, or analysis of all potential environmental impacts of the proposal. This made it difficult to make meaningful comment on the potential impacts of the proposal.

In addition, there was no information as to how the site was selected for the proposed uses or if any other sites were investigated.

2. Specific comments on the PA

Potential impacts of the power station on the amenity of the data centre

There is no assessment undertaken in the PA on the potential impacts of the proposed power station on the amenity of the data centre. The PA does not discuss whether the data centre and power station actually need to be located on the same site or in proximity to each other. The data centre may well be a 'communications facility' under the Territory Plan, however it will employ over 200 people. This makes it more akin to an 'office' use. The implications of locating this office use in proximity to a power station need to be identified and assessed.

Heavy industry in Hume

The PA cites recent studies and indicates that the site is likely to be rezoned from Broad Acre to Industrial to accommodate the expansion of industrial uses in this locality. In this regard, the PA did not assess the implications of the data centre and its 200 workers, being located in an area of relatively heavy industry. Information should have included:

- o The future amenity of the data centre with industrial development surrounding it; and
- o The impact of the data centre in terms of constraining further industrial uses in this area.

Future expansion of the power station

The PA states that the primary purpose of the power station is to meet the energy requirements of the data centre. In essence it is a 'boutique' power station. The area of land allocated for the power station, the size of the turbines and all other related infrastructure limit the power station to this one key function.

There is no provision made for future expansion of the power station to supply other energy demands of future industrial uses in the locality or to give a greater level of supply to the grid as a whole. Given that there will be a considerable effort to construct a gas pipeline to the power station (some 9km long). It seems illogical that there is no option for the power station to be extended in the future.

Accessibility of the data centre for 200 workers

There has been no assessment of the carbon likely to be produced through transport to and from the site by the 200 workers of the data centre. Transport is a high source of carbon emissions in the ACT. In this regard, the PA indicates that the majority of the 200 workers would need to commute to work using a private vehicle. The PA dismisses alternative transport modes for the 200 workers on the basis that:

- It is not required to provide pedestrian access in the Broad Acre Zone;
- "It's unlikely that the site will not be serviced by a bus"; and
- There is no discussion in the PA of cycle paths or for existing or future bus routes.

In order to reduce carbon emissions from private vehicle, there should be an analysis of alternative modes of transport including:

- Bus Transport - There are three bus routes along the Monaro Highway linking Tuggeranong with the Russell Offices and beyond. None of these routes currently stop along the highway. There are currently no routes along Mugga Lane. Options to either utilise the existing bus services and/or expanding a service to include the site should be investigated. This might include provision of bus stops either on the Monaro Highway or on Mugga Lane in proximity to the site.
- Cycle Path - There are on road cycle paths on the Monaro Highway, linking Hume to Isabella Drive. The shoulder of the road is wide allowing for cyclists to ride clear of the traffic even with a vehicle parked on the shoulder. However there is no cycle path along Mugga Lane. Options to link the site with the existing cycle network should be explored.
- Pedestrian Network - The PA locality maps shows a number walking trails on the public land between the site and Macarthur and Fadden. The PA airphotos also reveal a network of informal trails and horse trails on the land west of the Monaro Highway linking with Isabella Drive. Options for linking the site with the existing pedestrian network should be investigated.

Visual amenity

Notwithstanding the presence of the dump on a ridge on the south side of Mugga Lane, this road and Long Gully Road are both rural in character. Thirteen, four storey buildings, a power station with some 18, 35metre high stacks, a substation and 60 metre 132kV power line up the ridge behind is likely to have some impact

on the rural character of the locality and the implications of this have not been assessed.

The PA contains no discussion of the power station design. Reference is made to 'a' stack. The design drawings provide some further details but clarification is required in relation to:

- How many 35m high stacks there will be? The drawings show a total of 18 stacks. Nine (9) each over the HRSG and 9 each for bypass stacks and diverters.
- Clarification as to the dimensions of the stack(s) and materials proposed to be used.
- An assessment of visual impacts from the stack (s) particularly from the Monaro Highway which the PA confirms is designated under the national Capital Plan as an 'approach route'.

In the absence of this assessment it is difficult to determine how visibly obtrusive the stack(s) will be.

From the airphotos and topographic maps provided in the PA the proposed power station is located at the lowest point on the block. The block itself drops some 20m from highest point to lowest. The surrounding locality is a basin surrounded by hills well over 35 metres above the block.

A road side site inspection was undertaken on Friday 18 April 2008 by an officer from the Urban Design Team. It appears that the stack(s) will be highly visible from a stretch of the Monaro Highway from Gilmore in the South through to the northern end Hume. The implications of this high level of visibility need to be identified particularly in relation to the requirements of the National Capital Plan provisions for the Monaro Highway.

Clean energy

The gas fired powered station is more efficient than coal, but it cannot be stated that the power station will give a "positive impact in terms of green house gas emissions". The development includes an overall increase in energy demand for the ACT as a result of the data centre which is energy hungry. The data centre will therefore increase energy demand and green house gas emissions from existing levels.

It is a step in the right direction that gas fired power will be used to meet the energy needs of the data centre and that there will be some opportunities for the power station to feed into the grid. The impact of the gas power station could be positive if there was an opportunity for it to be expanded to meet existing and other future power needs in the locality. However, the design of the facility does not currently permit this.

There is no provision for other forms of energy supply. While it is not likely that solar energy could meet the demands of the data centre, there is a considerable roof area for the 13 data centre buildings, yet no provision made for photovoltaics.

The curved design of the roofs is not conducive to photovoltaics now or in the future.

Plume

It is assumed that the stack(s) height of 35metres differs from the Plume Study recommended 36 metres because of differences in measuring ground level and that the 35metre stack(s) will meet the requirements identified in the Plume Study for a 36 metre stack(s). This was not explained in the PA.

While the NO2 impact assessment states that limits will not be exceeded, it is not clear if residential areas will be affected. This study requires a map indicating the extent of plume spread to be easily understood.

Air quality

The information provided in relation to air quality assumed a lot of prior knowledge on the part of the reader. In this regard, clarification is required in relation to the following matters:

- o How within the standards is 'comfortably met' for ground level emissions? This does not give any indication of the potential impacts.
- o How reliable is the demister and what are the chances of oil vapour escaping? Does the demister collect all or just some of the vapour? If it escapes what are the implications?
- o Why hasn't regional air quality been modelled yet? Will it be modelled and if so when will it be modelled?

Power lines

It appears that the existing power lines traversing the site will be relocated to the Mugga Lane verge or road reserve. However the implications of this have not been assessed.

In addition there has been no assessment provided of the potential impacts, if any of the proposed 132kV power lines from the power station along an easement in an adjoining property to join the existing 132kV power lines south of the site.

Noise

The noise report found that the power station would exceed acceptable limits for the health treatment facility on the ridge above Macarthur. It recommends that a 10 metre high noise barrier be erected at this facility to bring noise levels down to an acceptable limit. However the PA does not discuss if the noise barrier would be an acceptable solution or structure to have in place at the health treatment facility.

There is no evidence that the owners and/or operators of the health facility have been approached as to their opinion of a 10m noise barrier or where that barrier might be located.

Additionally, there is no assessment of the potential visual impact of a 10 metre high noise barrier on the Macarthur Ridge.

Wind

The PA dismisses any potential for wind funnelling from the stack(s) yet the basis for this is not clear. In the absence of information on the number of stacks, their size and proximity to each other, no interpretation of wind impacts is possible.

Stormwater

There is a deeply incised gully on the site and the PA indicates overland flow into the site can be channelled down to Mugga Lane. However on the landscape plans a proposed pond exists showing the stormwater channel running into it. It is not clear how overland flow will be treated. There is no evidence of attempts to promote water sensitive urban design on the site.

Rainwater

The Canberra Technology web site indicates "rainwater harvesting" and 'green roofs' however these are not discussed in the PA. The site plans don't indicate the locations for the rainwater tanks. As the website promotes the proposals as a 'green sustainable solution' collection of rainwater should be a priority.

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Heritage

Chami, Nadia

From: McKeown, Helen
 Sent: Wednesday, 27 June 2007 4:58 PM
 To: Percival, Tom
 Subject: Draft concept plan report for Hume Industrial Planning Study

The following comments are provided on the draft concept plan report for the Hume Industrial Planning Study. I apologise for the delay in the response.

Contaminated Sites:

The draft concept plan does not specifically address the issue of potential land contamination associated with past or current uses of land within the study area.

The "ACT Government 1995 Strategic Plan for Contaminated Sites Management" requires that studies be undertaken at the earliest planning stages to ensure issues associated with contaminated sites are addressed. The Contamination studies once completed must be provided to the Environment Protection Authority (EPA) and be endorsed for the proposed and permitted land uses prior to any development works occurring in areas known to be or potentially contaminated from past activities at the site in accordance with the ACT EPA Contaminated Sites Environment Protection Policy under the Environment Protection Act 1997.

The purpose of the contamination studies are to ensure that areas within the study area are suitable for the proposed and permitted uses and do not pose a risk to human health and the environment.

The location of commercial blocks, Figure 34, Lots 1 to 48 and Lots 110 to 121, in close proximity to residential blocks may result in properties in Gilmore and Macarthur being exposed to industrial pollution, i.e.: light, noise, air etc.

When designing the area, blocks should be positioned so that properties in either Gilmore or Macarthur do not have a direct line of sight to the industrial estate. This will assist with noise mitigation and light pollution. Consideration is also to be given to the proposed land uses for these blocks.

Heritage -

The Hume Industrial Planning Study covers the area immediately adjacent to the location where archaeological material was found on the existing Resource Recovery Estate and the culturally significant area to be retained. See Figure 26 'Aboriginal and European cultural heritage sites' in the Concept plan report.

Current Issues

In June 2007 Huonbrook Environment and Heritage Pty Ltd submitted the final report on the monitoring of ground disturbance at the Hume Resource Recovery Estate. The results of this study indicate that contrary to prior assessments of low to moderate archaeological sensitivity the area contained a dense deposit of stone artefacts. This potential for buried deposits was recognized originally by Barber (2000), then by Navin and Officer (2001) as well as being endorsed in the AASC 2003 report on limited test pitting for the Resource Recovery Estate which led to the ground disturbance monitoring undertaken by Huonbrook Environment and Heritage Pty Ltd. However, the early studies did not predict the presence of dense regionally significant sub surface material because mostly surface surveys were carried out.

The report on the monitoring at the Resource Recovery Estate by Huonbrook Environment and Heritage Pty Ltd states (2007:30)

Very much larger numbers of artefacts than expected were recovered (approximately 300 from the southern site HID 1391, and 450 from HID 1395 to the north). The collected assemblages were unusually rich and diverse in terms of the range of raw material types and artefact types. Overall, the character of the collected artefacts assemblages indicates that they were derived from dense, diverse and rich sites which were used by Aborigines as occupation sites (perhaps even base camps) as well as artefact production sites.

In light of these findings the area is now considered by ACT Heritage to be of a high regional significance and has considerable potential for more buried cultural material in the areas between the deeply incised creek line and the Monaro Highway. It is apparent from the monitoring work at the Resource Recovery Estate that other areas in and adjacent to Section 23 and 17 between the boundary of this development and the area nominated for exclusion from the Hume Industrial Planning Study area is a potential archaeological deposit. The absence of exposed artefacts does not reduce the likelihood of high densities or undisturbed buried material.

Implications for Heritage Management

The development opportunities and constraints applicable to the study area with respect to Aboriginal archaeological sites, as identified in Section 8.2 of the planning study, need to be reconsidered in light of the findings at the Resource

Recovery Estate. A detailed assessment of the archaeological sensitivity of all relevant areas already identified as potential archaeological deposits in conjunction with a review of the results of previous archaeological surveys is needed.

The key recommendations in Section 9.5 acknowledge the need for a detailed heritage study to review the status of existing sites. The recommendation for further archaeological studies on Block 6 of Section 23 by specialised archaeologists at the subdivision and construction phases of development needs to be expanded to include other areas of archaeological sensitivity. The timing of these studies should be brought forward to ensure that informed decisions on the management of archaeological sites are made at the planning rather than the development phase. The high regional significance of the archaeological material salvaged from the Resource Recovery Estate was unexpected, due in part to the absence of large scale controlled excavations in an area where the surface indications were limited. The test pitting undertaken by AASC in 2003 clearly demonstrated the presence of buried artefacts; however the pits were small and failed to reveal the actual density of the cultural deposit.

Recommendation

Recent investigations for the Hume Resource Recovery Estate have provided evidence of the presence of buried archaeological deposits of high cultural significance in areas previously considered to be of low to moderate significance. This information was not available at the time the Hume Planning Study was being prepared.

Both a review of the status of all known Aboriginal archaeological sites in the Hume Industrial Planning Study area and further field studies to map areas of potential archaeological deposit should be undertaken as part of the planning study. These investigations should not be left to the development phase as this does not allow for informed heritage management decisions to be made. These studies are necessary to meet the commitment to "Recognize and protect the European and Indigenous heritage of the localities" listed as one of the planning principles guiding the Hume Concept Plan.

Helen McKeown
Conservator Liaison and Environment Coordination
Environment and Recreation

phone: 6207 2247 fax: 6207 2244

Chami, Nadia

From: McKeown, Helen
 Sent: Thursday, 1 May 2008 3:53 PM
 To: App Sec; Reid, Geoff
 Subject: Tuggeranong Block 1671 DA 200704152 and preliminary assessment

Thank you for the opportunity to comment on the preliminary assessment and development application for the computer data centre and gas fired power station to be located at Block 1671 Tuggeranong. The documentation has been examined and the following comments provided:

Air Quality

The modelling was done in accordance with the NSW Department of Environment and Climate Change "Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales".

Assumptions in the modelling are very conservative i.e. maximum stack emissions, maximum background levels of pollutants, worst case scenario for climatic conditions and all generators running simultaneously. Modelling shows that emissions will meet the NO2 impact assessment criteria set in Table 7.1 of 246 ug/m3 at the site boundary. This level is taken from the Ambient Air Quality National Environment Protection Measure.

- * The facility is a Class A activity and will also need to be authorised under the *Environment Protection Act 1987*. Emission standards and testing requirements will be included in the environmental authorisation.

Whilst predicted emissions levels are close to the maximum ground level concentrations for NO2 the modelling is based on worst case scenarios, including maximum ambient levels, maximum stack emissions and worst case climatic conditions.

Environment Protection:

The development would require an environmental authorisation where the activity meets the following criteria.
 - 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.

- * A condition of the Environmental Authorisation will be the submission and endorsement of an Environment Management Plan. The proponent should contact the EPA as there are statutory time frames in applying, and granting of authorisation under the Act.

Noise.

While the Acoustic Assessment concludes that the noise from the development will meet the noise standard at the residential properties in Macarthur, this does not reflect the potential for the development to affect the residents. The noise logging undertaken at Goldsbrough Close and Bracker Place shows a background noise level during the night down to 21dB(A). The modelled noise levels, no wind, indicates that properties at these locations will be subjected to noise levels 10dB(A) above the existing background noise level with the noise level rising as the wind increases.

- * As a result of the development some properties in Macarthur will be subjected to a significant increase in noise levels. This is not acceptable to Environment Protection.

Erosion and Sediment

Construction activities on a site of 0.3 hectares or greater is an activity listed in Schedule 1 as a Class B activity under the Environment Protection Act 1997. The contractor/builder proposing to develop the site must hold an Environmental Authorisation or enter into an Environment Protection Agreement with the Environment Protection Authority (EPA) in respect of that activity PRIOR TO WORKS COMMENCING. Ph (02) 132281 for further information.

Erosion and Sediment control plans are to be provided to the Environment Protection Authority for approval prior to works commencing. Two copies of the plan are required to be submitted,

The Plan must include the following.

- Flow Paths
- Sediment Controls
- Dust Controls
- Stabilised access points
- Noise controls and hours of operation
- Project Manager or Site Supervisor contact details
- Size of the site, if over 0.3ha then environment agreement required.
- Waste Controls including areas for concrete washdown etc
- Spoil Controls - If soil is to be removed or imported on site, the details of origin of the soil imported or the location

where the soil is to be exported are to be provided.

- Location of stockpile areas
- Maintenance Schedule of Controls

Where works occur in a waterway and material is extracted an environmental authorisation is required. Contact Canberra Connect for further details.

Water

We advise the contractor seek alternatives to water for dust suppression. These could include but are not limited to:

- Staging of works to minimise areas of disturbance at any one time before working on other areas;
- The use of temporary grassing;
- The use of bitumen straw mulching;
- The use of bitumen spraying;
- The use of hydromulching and seeding; and
- Ceasing work in dry and windy conditions.

Please note, while there is provision for a contractor to apply to the EPA for an exemption from a license to take water for short-term construction activities, a water exemption is intended for construction activities other than dust suppression e.g. compaction and mortar mixing purposes and approval for use of water for dust suppression are unlikely to be granted. However, the conditions of an exemption are not as restrictive for water taken from an on-site sediment retention pond as detailed in an EPA approved sediment and erosion control plan.

Any surface or ground water intercepted on site may only be used onsite after making an application with the Water Resources Unit, ring 02 6207 5606 for advice.

Any works undertaken on a defined waterway or the construction or alteration of a water structure with a capacity of 2ML or more will require a Waterway Works Licence application to be submitted to the Water Resources Unit, ring 02 6207 5606 for advice.

Heritage -

Heritage acknowledges the research carried out to ascertain the heritage values of the site, but considers that a number of issues require further resolution prior to being assured that the area has been properly examined.

Heritage notes that Recommendation Two is most likely impractical as the plans for the site indicate that the majority of the block will be affected by development. In addition, Heritage considers that the definition and extent of the PADs have not been sufficiently defined or described. There is assertion that two PADs exist on the site, but there is little supporting evidence as to why this conclusion has been reached, or why they are delineated in the areas proposed.

Prior to any further development the Heritage Unit requires the following:

1. The evidence or criteria for defining these areas as PADs,
2. A proposal to test the evidence with a series of test pits (including sampling and excavation methodology), and
3. An analysis of the significance of any cultural material.

The estimation of the extent of the PADs, the test pitting methodology and the analysis of any cultural material to determine its significance, including HA16, Block D-1 and Block D-2 should be carried out in a manner consistent with other recent work being carried in adjacent blocks within the Hume region.

Heritage Unit can be contacted for clarification on any of the above issues on 6207 5556.

Ecological

There are no known ecological concerns with the project.

Helen McKeown

Conservator Liaison and Environment Coordination
Environment and Recreation

phone: 6207 2247 fax: 6207 2316

*This was written after
the Heritage Unit was
contacted for advice
on the PADs*

MINUTE

SUBJECT: Preliminary Assessment – Proposed Natural Gas Power Station and Computer Data Centres, Block 1671 District of Tuggeranong.

Helen McKeown

Conservator Liason and Environment
Coordination, Environment Protection

Gabriel Joseph

Manager, Asset Acceptance

Kuga Kugathas

Manager, Transport Planning and Strategy

Harvey Chambers

Manager, Infrastructure Policy

Garrick Calnan

Manager, Development Policy

Gay Williamson

Manager, Design Policy

Please find attached the Preliminary Assessment (PA) for the project described above. The final PA was lodged on 26 March 2008, requiring the Minister to complete his assessment by **8 May 2008**. We would like to complete the evaluation early in this period to allow time to consider the evaluation in light of public submissions.

Your advice is sought in the following areas:

1. Does the PA adequately identify and assess all potentially significant environmental issues? The PA is not required to resolve issues; it is required to identify issues and provide sufficient information for their resolution in the DA process.

Should the Minister conclude that issues have not been adequately addressed, he has no option but to require further assessment. If your advice is that the PA has not addressed all issues, could you please provide details as to exactly what issues remain unaddressed, or what information is lacking. You will appreciate that the decision to proceed to further assessment is a significant one and should be based on full information.

2. If the PA provides sufficient detail, the evaluation of the PA can include recommendations about mitigation measures for the proposal. Consequently your advice is also sought on what mitigation measures (if any) should be included in the evaluation.

Please note that the proposal has not previously been submitted as a draft, and the final PA document cannot accommodate advice on editorial changes.



Can you please provide your advice to app.sec@act.gov.au by **COB, Monday 28 April 2008**.

Geoff Reid
Principal Officer
Environment Assessment
Development Services Branch
ACT Planning and Land Authority
10 April 2008

Broadacre 26

(7)

Calnan, Garrick

From: Calnan, Garrick
Sent: Tuesday, 28 August 2007 2:41 PM
To: Lavis, Jacqui; Percival, Tom; Lewis, Paul
Cc: Peters, Colleen
Subject: RE: Block 1610 Tugg GAs Fired Power Station

(77)

I think the data centre may also potentially be able to be considered as a communications facility depending on the nature of the activities?

-----Original Message-----

From: Lavis, Jacqui
Sent: Tuesday, 28 August 2007 1:21 PM
To: Percival, Tom; Lewis, Paul; Calnan, Garrick
Cc: Peters, Colleen
Subject: Block 1610 Tugg GAs Fired Power Station

My comments. you need to provide any supplementary advice to Colleen by 2pm so she can consolidate and pass onto Leonie. In particular commentary is required on the status of the Hume Study [Tom < Paul. can we ensure that this goes to EPC on the October meeting]

The proposal appear to be consistent with the National Capital Plan and Territory Plan only if it is considered that the data centre is a scientific research establishment rather than an office use. More detail regarding the operation will be required to make that assessment but the expectation of commercial operations will be a significant factor.

The proposal will need to be integrated with locality planning including the Hume Industrial Area expansion, realignment of Mugga Lane, the Resource Recovery Centre, extension of the employment lands in Queanbeyan and the Proposed Cemetery. It is suggested that any project budget make provision for a planning co-coordinator to be employed by ACTPLA [or equivalent resource allocation] to ensure that the statutory planning is delivered via a Precinct Code for this locality.

An EIS will be required, rather than preliminary assessment. The criteria for Direct sales will be redefined under the Planning and Development Regulation, rather than Disallowable Instruments and a sound business case will be the major prerequisite

Jacqui Lavis
Deputy Chief Planning Executive
Director Planning Services
ACT Planning and Land Authority
Phone: 02 6207 1950 Mobile 0400 957 930
email: jacqui.lavis@act.gov.au



RECORD OF DISCUSSION

ACT Planning and Land
Authority
PO Box 365
MITCHELL ACT 2911
Ph: 02 6207 1687
Email: app.sec@act.gov.au

Block: 1671	Section:	Suburb: Tuggeranong	Proposal Number:
Meeting: <input checked="" type="checkbox"/>	Phone Call	Date: 10.12.07	Case Officer: Rumana Jamaly
Participants: Authority		Agencies	Proponent
See attached.			

Details of Proposal & Land Use Policy:

Presentation on gas-fired power station & data centre
in Tuggeranong (Block 1671)

PROPONENT - Items for Discussion:

2049

Data centre complex comprising a number of buildings
natural gas fired power station - to supply power
to data centres. For banks (Westpac etc.). Two sites
run parallel to each other.

Home - data centres + power station.

canberra technology city. com. au.

LDA - in principle support for direct grant of land.

AUTHORITY - Response to issues raised:

Proposed advised in writing by ACTPLA,
ministers' office that data centre falls within communications
facility (as advised by Tony Adams). DA will trigger 2008.

PA. site investigation underway. off-site works, sewer, water,
storm water etc, gas pipes, need to be provided to the site
space, in case of emergency. EPBC Act - will it apply?

Underground cables - proponent to check leave purposes
of different leaves to check if it is permissible.

IMPORTANT NOTE

The advice recorded on this record is based on the information provided by the inquirer at the time of the
regarding any development proposal can only be made upon the lodgement of a formal Development Application and following a full and proper assessment of that application. It is
advised that relevant policies may alter between the time the information on this form is provided and the lodgement of any Development A
on this record/during this discussion arise during the processing of any formal application, you will be duly advised in writing by the Authority.

Proponents Representative Signature:

Authority Representative Signature:

Rumana Ms Jamaly

RECORD OF DISCUSSION

AGENCY Issues:

?
 Approved
 already
 how
 report
 in
 table

Heritage artefacts - site investigation to pick up.
 Documentation will be required. Consultant will propose
 mitigation strategy.

Tree survey undertaken for Home Site. Flora & Fauna
 survey is being undertaken.

Follow Up Action Required PROPONENT: Fibre optic cable will also trigger a PA.

* Fibre-optic cable may cause more environmental
 problems. Road reserve ~~is~~ would be preferable.

More investigation required for off-site works.

If any off-site works through designated area, need to
 consult with NCA. Co-ordination betⁿ geotech people &

Follow Up Action Required AUTHORITY: archaeologists required.

Follow Up Action Required AGENCIES:

GENERAL COMMENTS:

Block/s:

Section:

Suburb:

DA No.

28

Calnan, Garrick

From: Calnan, Garrick
Sent: Tuesday, 11 December 2007 9:13 AM
To: McEvoy, Justin
Subject: RE: pre-app meeting on Data Centre and Power Station at HUME

79

~~78~~OR ~~79~~

Thanks

-----Original Message-----

From: McEvoy, Justin
Sent: Monday, 10 December 2007 5:11 PM
To: Calnan, Garrick
Cc: Quirk, Mike
Subject: pre-app meeting on Data Centre and Power Station at HUME

Garrick,

I attended the briefing by Tony Adams (CBRE) and Scott Carr (Actew) on the proposal for a data centre and gas-fired power station at Hume and a parallel/duplicate data centre at Actew proposing connecting the two centres by fibre optic cable so that the centres can operate in parallel. Unfortunately, Carr could not get his presentation to run on ACTPLA's IT system so Adams provided a brief outline of the proposal. Adams advised us to visit the following website for more information on the project, www.canberratechnologycity.com.au.

- Adams advised attendees that ACTPLA had indicated the data centre met the definition of a communications facility and that the power station would be a utility.
- Adams understood that both elements would necessitate a **Preliminary Assessment** and that Actew/CBRE were proposing to lodge the necessary DAs and PAs for parallel assessment in February 2008. The fibre optic cable would be subject to a separate DA and possibly a PA. They expected to be able to move towards land acquisition after ACTPLA gave development approval (45 days from lodgement of the DA/PA), i.e. possibly mid-June 2008.
- Adams identified the Hume sites as part TUGGERANONG 1671
 r. TAMS noted that both blocks were licensed to the same person under TAMS' horse paddock program.
- Adams provided scant details of the expected, extensive off-site works.
- Adams indicated that they were liaising with LDA's Geoff King about the necessary land acquisition for the project.

Tom Percival also attended the presentation.

Happy to discuss.

Regards,

Justin McEvoy
 Planning and Land Policy
 ACT Planning and Land Authority
 Tel. (02) 62075451

Decisions Get to comment
on the 14

Page 1 of 1

98

Chami, Nadia

From: Singh, Anant [Anant.Singh@actewagl.com.au]

Sent: Wednesday, 27 February 2008 4:34 PM

To: Deedman

Subject: Tuggeranong Block 1671

98

ActewAGL's comments regarding electricity supply to the block are as follows:

Page (i) Last Paragraph - any electricity supply to the block will be at the project proponent's cost

Also relocation of existing asset ie high voltage overhead line will be at the proponent's cost.

Please do not hesitate to contact me if you require further information.

Regards
Anant Singh

13/05/2008

29
CF
Reply

These will be the communication facilities

To MR RON BROOKER
DEED MANAGEMENT UNIT

95

Access network planning
CANBERRA.

Company METROPOLITAN Planning & Land
Management
DICKSON

Australia

Telephone (02) 62132520

Facsimile (02) 62307867

Facsimile (02) 62075522

From EDWARD MURRAY CFW8

Subject TUGGERANONG BLOCK 1671 (FORMERLY
PART BLOCK 1610) - Prescribed
Conditions & Site Investigation Report

Date 27th February 2008

File Total Pages 1
Attention

Attention: PAM VELZEN

Thank you for your correspondence on the above subject.

This site is the proposed natural gas power station for ACTEW/AGL and proposed large data centre.

I have studied the plan and read the accompanying documentation for the above TUGGERANONG BLOCK 1671 (FORMERLY PART BLOCK 1610) - Prescribed Conditions & Site Investigation Report, and do not anticipate any difficulties in the provisioning of communication facilities.

Telstra and AGL & ACTEW can reticulate the estate under standard conditions as per the DEEDS documentation if requested by developer.

Telstra has new existing conduit network along Monaro Highway from the Telstra exchange at Hume to corner at Mugga Lane.

There is network connections to Thiess Site at Block 16 Section 23 on John Corey Circuit at Hume and this is the closest available cable or conduit to this site.

A new conduit would be required from Monaro Highway along Mugga Lane to this site for Telstra optic fibre and copper communications services to be connected to this site. This may be at Telstra cost depending on the commercial arrangements with developer and the amount of services required by future customer at this site.

Distance is approximately 1,000m.

The Telstra Jerrabomberra exchange is 1,600m from this development.

Telstra has capacity to supply communications services to Block 1671 Tuggeranong if requested by developer as per above.

Telstra reserves the right to change it's decision on network deployment within this development without prior notice.

If you have any planning issues you wish to discuss please contact Canberra Network Planning, Mr Ted Murray, Ph. (02) 62132520.

Yours faithfully,

Ted Murray

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Telstra Corporation Limited
ACN 051 775 556

1st September 2008

Appendix to the original letter.

This appendix is written to include recently released documents under the Freedom of Information Act.

CPR has learned that the government had a very controlling role in the development of this project. This project has been recommended to the community consistently by the government and by the proponents as being a development with excellent credentials, able to diversify the economy, create hundreds of jobs and new university courses.

It is startling to note the true depths of the lack of details, consideration and planning which has gone into this "state significant" proposal. It is more so startling to consider that it is backed by the Territory owned ACTEW – who stand as guarantors in the lease, the government which has consistently supported and actively pushed this proposal, and ACTPLA who have used every mechanism available within the process not to reject it.

Whilst the government and ACTEWAGL have consistently told the public via the media campaigns of the high credentials of this proposal it is worth noting that the main proponents Technical Real Estate (TRE) actually only became incorporated in August 2007 (i). Indeed one of the issues, as late as 22 November 2007 was to find guarantors for TRE so they could be included on the lease.

The third paragraph of this email (i) also paints a cynical but realistic description of why there is such a push for this power station. "This is because a key outcome that the Government has long sought is the provision of a Gas Fired Power Station to secure the Territory's power supply in the light of the possible impacts of climate change." – this is, as the community has suspected, more about getting these power stations up before Carbon Trading Scheme is introduced than about delivering a "green" sustainable power source to the community.

In the email dated 18 January 2008 (ii) – less than one month before most of the reports and supporting documents for the proposal were dated and two months before the actual proposal was filed with ACTPLA – this "state significant" development was suddenly reduced in size and capacity.

The government, specifically Mr Stanhope and Mr Barr were, before seeing a business plan, development plans, reports or research, supporting the venture. This support continued even after it was made public – 4 months after – on 27 May 2008 that the power station was to be down scaled. It was therefore no longer providing the people of Canberra a back-up power but was there solely to support the private consortiums data warehouses.

That Mr Stanhope knew about this as early as November 2007 and was sounded out about these changes is detailed in a post-it note (iii).

These discussion continued (iv) around the proposed use of the power station component and whether this should be enshrined in the lease – it is unlikely we have all the documents at the moment about this issue.

It is worth noting that (v) on 1 February 2008 the matter had not been resolved but Brooke O'Mahoney of ACTEWAGL was warning that "A time critical issue for the project is submitted [sic] a DA before the new territory plan comes into force on 1 April which will add a further 3-5 months and additional costs". This confirms the issue highlighted previously that the main consideration of these proponents was pushing this proposal through with all haste and without consideration to planning and details – in order to meet their imposed deadlines, - manipulating the process to meet their needs.

Given too that this was written less than 55 days before the proponents filed their "completed" application with ACTPLA - it again shows the utter lack of due consideration, necessary care, community consultation, research, investigation and development plan inspection that could have possibly occurred having not even settled on a business plan or the size or power requirements of the power station. It makes a mockery of any ability to consider the details in this "state significant" development.

It is worth noting too that there has been no evidence to suggest that the government, ACTPLA, or any other government body noted this lack of clarity, business plan or detail. There is no evidence to suggest that anyone within the government, land planning department or ACTPLA, made a suggestion to the proponents that perhaps it would be prudent, before the Territory owned corporations supported financially and ethically this proposal that this needed further consideration, more planning and community consultation or that without the core details being decided upon it was perhaps not prudent that the government throw its weight behind this development. Unfortunately this insight was not forthcoming and without the proponents having a settled business plan – the government recommended and supported this project regardless.

In the email from Michael Costello, the then Managing Director of ACTEW Corporation (note he was not at ACTEWAGL at this stage) dated 7 February 2008 (vi) he states that the final capacity of the power station would be dependent on the results of a feasibility study. He goes on to state that should that feasibility study show that it was not feasible to make power to sell to the grid it would "not make sense to stop the data centre and dedicated power plant from proceeding."

It is worth noting exactly what Mr Costello is stating here as managing director of ACTEW – he is declaring that they were intent on pushing ahead, regardless of any outcome from the feasibility study – in fact an negative outcome would merely mean delivering only one half of the business plan. It is also worth noting that this statement was made one month before they filed their application with ACTPLA and before they had received, considered or consulted relevant stakeholders about the results of the feasibility study.

The second point he is declaring is that regardless of meeting the needs of the Territory, the proponents had every intention of pushing ahead and satisfying the power requirements of a private consortium.

It is worth recalling this sentiment in the light of the behaviour and actions of Mr Costello and the government and the consortium as they advertised and recommended this proposal to the public once it was discovered. They claimed consistently – right up until admitting it had never been viable on 30 May 2008 – that it was for the public's good that this power station was being created.

To complain against it was to deny the second power source to the Territory – a gift the power station was never going to bestow. This was changed when the announcement to “down scale” was made - to complain against it is to deny the Territory diversification of economy, jobs and university courses – a claim which cannot be substantiated.

These emails – all of which the government departments were either in receipt of or contemporaneously circulated to – show that this proposal was poorly managed at every level. It was created and pushed along without any proper consideration or assessment of merit or worth. The community was completely mislead about the nature and intent of this project and excluded from the lack of planning and true details of this mess. It bundled along throughout without having settled on a core business plan and feasibility study – regardless of the lack of these fundamental business details, the Territory owned corporation and the Chief Ministers Department felt able to support, push and back this proposal. This is reckless mismanagement and shows a supreme lack of care with the Territory's businesses.

In the brief to the Chief Minister (signed agreed by Jon Stanhope on 7 February 2008 (vii) it is noted that ACTEWAGL were stating at this time that they did not wish to provide any excess to the grid. Again it should be remembered that ACTEWAGL despite this fundamental change of business case, power supply and development purpose, changed nothing in their supporting documents and in their preliminary assessment. If this had been exposed, as it should have been, it would have had a profound impact on all the investigations, reports, site surveys, supporting documentation and preliminary assessment and development assessment documents, compiled and signed around January and February 2008. In order to save time, and ensure that they filed before the new act, these fundamental changes were ignored. No one in any government department tasked with the duty to protect the integrity of land development and Territory planning, required any honesty or integrity from ACTEWAGL and the other proponents. ACTPLA was clearly aware of this core shift in business case, as was the Land Development Agency and the Chief Ministers Department. They all chose to ignore it and allow the “dishonest” development proposal to slip inside the old land act.

This is the most profound and clear example of government interference, lack of integrity and manipulation within the land development and planning process – all for the benefits of a private consortiums business plans.

It is also noted on page 2 (vii) that the proponents had plans to subdivide the plot – this has never been consulted with the community and has great implications for the way this project develops if approved. It is also worth noting that at this point, the proponents own description of the ease of constructing these warehouse modules would negate the claim of 100's of jobs created during the construction phase.

In the final "agreed" lease clause (viii)– which was not released to the public – it is agreed that ACTEWAGL need only provide excess to the grid when "economically feasible" to do so. Again this can be tied into the interview Michael Costello gave to the Canberra Times on 30 May 2008 when he stated he had "known for weeks" the second power supply to the Territory was not feasible and the down scaling was not due to the complaints from the community.

It is revealed here that he had known since before they filed their application. Likewise it is finally proven disingenuous for Jon Stanhope to declare the down-scaling of the project was proof "the process worked" and that the community had been listened to – he too had known since before the application was even filed that there was little if any prospect of the power station supplying the Territory with extra power. He already knew that a compromise within the lease had been struck with ACTEWAGL and the proponents – he clearly did not think it was important for the public to know any of these agreements and deals – there was never any intention that this power station would supply the Territory with a second source of power.

The option agreement (ix) dated 21 February 2008 was being discussed with the Chief Minister Department as well as the Land Development Agency and the Government Solicitors. It is nonsense for the Chief Minister to attempt to claim he knew nothing about the ACTEWAGL plans to down scale before the application was submitted.

An email dated 30 April 2008 (x) over one month after the application was filed and 16 days after the community first became aware of the proposal - the core business case of this proposal had still not been settled upon. During this time it is worth noting that the community spent a great deal of time analysing and considering these plans and proposals. ACTEWAGL spent time meeting the people and talking them through these proposals. ACTEWAL never intending creating the business case they were selling to the community and the community was considering documents which had been created on a false premise. Mr Stanhope had known this all along. He did nothing to protect the community from this duplicity and save them the efforts of considering and submitting responses to that preliminary assessment. It is disingenuous for him to claim he could not interfere. He had been kept informed throughout and had taken time to actively, vocally support this proposal.

Finally however it appears that Gordon Lowe of the Land Development Agency writing to the various government departments, including the Chief

Ministers Department, via Ross McKay, (xi) dated 1 May 2008 admitted that whilst it looked unlikely that the power station would ever fulfil the requirements of the Territory, he suggested and sort approval from the Chief Ministers office, that "given the wider interest now being shown in the power station, both parties would however be prudent to recognise this aspiration in the documents." - bluntly put - to keep the idea of the benefit to the Territory in the lease would then be easier to sell the proposal to the public. That it was never going to fulfil that need and that this was untruthful and dishonest manipulation in order to pass through a private consortiums real estate plan clearly was not a problem for these officials within these departments.

We include (xii) a series of questions given to the Chief Minister and his answers – plus a series of statements made by the Chief Minister in respect of his professed views on government interference in private sector proposals. The last highlighted three are of particular interest given the documents released under the Freedom of Information and the experience of the community in responding to this development proposal is one which would contradict the claims of the Chief Minister.

CPR inc
1 September 2008

243
Lowe, Gordon

From: Lowe, Gordon
Sent: Thursday, 22 November 2007 17:47
To: McKay, Ross
Cc: Ryan, Gerry; Pooley, Kathleen; King, Geoff; Alfonso Del Rio (E-mail)
Subject: FW: Hume Power Station and Data Centre

Ross

The revised version attached addresses the essential points sought by ACTEWAgf. In simple terms the revisions that they sought were based on their commercial need for a clear undertaking by Government from the outset hence the renaming of the Commencement Date to the Exercise Date.

You will see that ACTEW have inserted a new nominee entity of "Technical Real Estate Pty Ltd" which is an entity only incorporated in August 2007 and presumably with no significant assets of its own. LDA would have no objection to a nominee provided that the direct grant application was amended and suitable guarantees provided.

ACTEW sought however to amend the Deed so that there is no guarantee and indemnity provided by guarantors. I do not believe that this is acceptable given the value of the asset that they seek to acquire from the Territory. I believe that the Guarantor should be ACTEW Distribution. This is because a key outcome that the Government has long sought is the provision of a Gas Fired Powered Station to secure the Territory's power supply in light of the possible impacts of climate change. In a sense the Data Centre is fortunate in that it serves to underpin the economic viability of the power station. I think it important that an emphasis on the Government securing power supply through a GFPS remains. Do you agree?

One of the questions that needs to be resolved then is the generating capacity of the GFPS. The direct sale application I believe shows the Data Centre requiring 70-140 megawatts. The question is, what capacity is required to meet both the needs of the Data Centre and provide the necessary capacity to secure continuation of supply to the Territory. It is this capacity that I believe should be in the agreement. Do you agree?

The block and section reference for the Land we can supply to Alfonso as the Deposited Plan was registered today and I am getting the details.

As you see we are still awaiting comments from ACTEW lawyers on the contract of sale and draft crown lease provided on 10 September 2007.

There are two other issues that I would ask you take in hand:

1. Confirm that the revised Deed remains entirely consistent with the cabinet decision; and
2. Consistent with that decision refer the Deed back through the ACT Government Solicitor. It might be expeditious if you, me, Alfonso and Jock Campbell simply met to deal with any issues or questions.

Gordon Lowe

—Original Message—

From: Del Rio, Alfonso [mailto:adelrio@claytonutz.com]
Sent: Wednesday, 21 November 2007 10:36
To: Steven Gavagna
Cc: Lowe, Gordon; McKay, Ross; Sheridan, Helen
Subject: Hume Power Station and Data Centre

Steven,

I refer to our discussions earlier this evening.

I attach a revised version of the deed.

Please note I have accepted all the changes made to the document provided by Scott Carr to Gordon Lowe.

22/11/2007

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on Monday 12 November at 12:48PM.

I have then tracked my additional changes for ease of reference.

The main change is to Clause 17 to make it clear that if a Nominee is appointed (Including Technical Real Estate) then the Buyer (as defined in the Option).

I have not had a chance to review my changes to keep this matter moving.

As discussed, LDA and the ACT Government Solicitor will also need to review.

OUTSTANDING ITEMS

- Block and Section references for the definition of 'Land'.
- Generating capacity of power station for Annexure C.
- I do not believe I have received any comments regarding the Contract for Sale (originally emailed to you on 10 September 9:03AM) or the Crown Lease provided with the same email.

Afonso del Rio | Partner-in-Charge | Canberra

Clayton Utz

Canberra House, 40 Marcus Clarke Street, Canberra ACT 2601 Australia | D +61 2 6279 4009 | F +61 2 6279 4069 adolio@claytonutz.com
www.claytonutz.com

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<<Call Option Deed.DOC>>

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22/11/2007

Stone, Ray

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

Alfonso

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

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

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

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

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

Ray Stone

Ross responded by stating

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

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

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

Ross

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

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

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

08/25/99

DAVID,

CTC

DRAFT FEE WAIVER
LETTER WHERE NOT EQUAL
WILL BE SEEKING PARTIAL
FEE WAIVER TO \$100K

577 New

THE OTHER CTC ISSUE
 IS ~~THE FEE WAIVER~~ LOGGED
 MAY BE CONTACTING YOU
 TO DISCUSS REMOVING THE
 REQUIREMENT FOR EMERGENCY
 POWER. COULD YOU SOUND
 THE CHIEF OUT PLEASE
 (SEE ATTACHED DRAFT)

Lois

08/2 201
IV
Mickay, Ross

From: O'Mahoney, Brooke [brooke.omahoney@actewagl.com.au]
Sent: Friday, 25 January 2008 10:39 AM
To: McKay, Ross
Subject: RE: CTC Land Purchase

DAVID, THIS MUST BE
SUFFICIENT FOR THE
OPTION (NOT THE LEASE)

EXCESS CAPACITY OVER
THE DATA CENTRE REQUIREMENT

Ross - As discussed, perhaps some words like those below:

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

For consideration?

regards

1. Words

ROSS: \$350

From: O'Mahoney, Brooke
Sent: Friday, 25 January 2008 10:04 AM
To: 'McKay, Ross'
Subject: FW: CTC Land Purchase

Ross - As discussed in confidence. Please note the email looks like it has been cut and paste from another and doesn't read grammatically correct.

I will also seek guidance from John Mackay also about how to approach.

I am happy to set up a meeting between Actew reps and CMD is necessary. Let me know how you think we need to proceed and assess implications for the process that is already in train (i.e. land option deed, DA submission etc).

regards

From: [REDACTED]
Sent: Thursday, 24 January 2008 4:57 PM
To: O'Mahoney, Brooke
Subject: CTC Land Purchase

Brooke

[REDACTED]

Regards---

977 Actew

31 January 2008

PROJECT FACILITATION

32

irrelevant and beyond scope

ActewAGL Gas Fired Power Station and Data Centre development proposal

- Ongoing discussions continue over Option agreement between, LDA, GS, CMD and ActewAGL. The Option agreement is nearing agreement
- ActewAGL will be formally seeking a partial fee waiver on the Development Application. CMD is facilitating discussions between all parties
- Met with GSO over final issues with Option and draft Crown lease
- ACTEW are seeking a variation to the requirement to provide emergency power, discussions are continuing.

}

irrelevant & beyond scope

✓

Dawes, David

From: O'Mahoney, Brooke (brooke.omahoney@actewagl.com.au)
Sent: Tuesday, 5 February 2008 10:44 AM
To: McKay, Ross; Dawes, David
Cc: Mackay, John; Larsen, Carsten
Subject: FW: CTC - Deed of Call Option: Annexure C

David and Ross

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

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

Regards

From: [REDACTED]
Sent: Tuesday, 5 February 2008 10:28 AM
To: O'Mahoney, Brooke
Cc: [REDACTED]
Subject: RE: CTC - Deed of Call Option: Annexure C

SL1 (1)

Brooke

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

Regards

[REDACTED]

From: O'Mahoney, Brooke
Sent: Tuesday, 5 February 2008 10:06 AM
Subject: RE: CTC - Deed of Call Option: Annexure C

[REDACTED]

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

Regards

From: O'Mahoney, Brooke
Sent: Friday, 1 February 2008 1:08 PM
Cc: Mackay, John; Costello, Michael
Subject: CTC - Deed of Call Option: Annexure C

29/05/2008.

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

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

<< File: draft Annexure C.doc >>

Please note that

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

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

Regards

Brooke O'Mahoney
MANAGER COMMERCIAL DEVELOPMENT
ActewAGL

Telephone: 02 6248 3163

Facsimile: 02 6248 3451

Mobile: 0414 510 133

GPO Box 366 Canberra ACT 2601

www.actewagl.com.au

V1
Dawes, David

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

Sent: Thursday, 7 February 2008 10:47 AM

To: Dawes, David

[REDACTED]

Subject: Proposed CTC site

Attachments: draft Annexure C - revised.doc

Dear David

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

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

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

Regards
Michael

Michael Costello
Managing Director
ACTEW Corporation


54(1)

[REDACTED]

Annexure C

Development Approval

An approval which requires the construction of:

- (a) a Communication Facility (Data Centre) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 44,000m² which will be constructed having regard to market demand, with construction commencing within twelve (12) months of commencement of the lease;
 - (b) a power station facility that is capable of producing generation capacity sufficient to meet power requirements of the Communication Facility (Data Centre) with construction commencing within twelve (12) months of commencement of the lease; and
 - (c) if economically feasible, additional power plant capacity in excess of the Communication Facility requirements for export to the ACT electricity network in accordance with national electricity market regulations.
- 

BRIEF



ACEF file

CMD-808/109



CHIEF MINISTER'S DEPARTMENT

Ref:

Date 7th February 2008

C/63/08

To Chief Minister

• Chief Executive

• Deputy Chief Executive, Business and Projects

10 7/2/08

From Director, Project Facilitation

Subject Canberra Technology Centre Issues

Purpose

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

Background

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

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

Issues

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

Emergency power generation

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

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

Signatories to the Option Agreement

The Cabinet submission referred to ActewAGL as the organisation with which LDA would enter into the Option agreement. Since then, ActewAGL have nominated all partners to be


signatories to the agreement; specifically ActewAGL Retail Ltd, ActewAGL Retail Investments Ltd, ACTEW Distribution Ltd and Alinta GCA Pty Ltd. While all joint venture partners signing the option agreement provides the proponents with the greatest flexibility in the formative stages of the project, it is expected that ACTEW Corporation or one of its wholly owned subsidiaries is likely to be the lessee.

Possible future sale of Data Centre component

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

Fee waiver as attachment

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

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

Consultation


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


Financial

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

Recommendation

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


Ross McKay
Phone: 50675

 7/12/08
Jan Stanhope MLA / /
AGREED/NOT AGREED/NOTED/PLEASE DISCUSS

03/11

527 Review

VIII

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

Annexure C

Development Approval

An approval which requires the construction of:

- (a) a Communication Facility (Data Centre) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 44,000m² which will be constructed having regard to market demand, with construction commencing within twelve (12) months of commencement of the lease, in accordance with the following schedule:
 - i) within four (4) years of commencement of lease 17,000 m²
 - ii) within ten (10) years of commencement of lease 42,000 m²
 - iii) within twelve (12) years of commencement of lease 44000m²
- (b) a power station facility that is capable of producing generation capacity sufficient to meet power requirements of the Communication Facility (Data Centre) with construction commencing within twelve (12) months of commencement of the lease; and
- (c) additional power plant capacity in excess of the Communication Facility requirements for export to the ACT electricity network in accordance with national electricity market regulations as soon as is economically feasible.

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

GAS POWER P/S. 86

DATA CENT.

irrelevant and beyond scope

ActewAGL Gas Fired Power Station and Data Centre development proposal

- Ongoing discussions continue over Option agreement between, LDA, GS, CMD and ActewAGL. The Option agreement is nearing agreement
- ActewAGL have sought a partial fee waiver on the DA.
- Option agreement issues have been resolved and expect to sign agreement week commencing 25 Feb.
- Proponents expect to submit DA week commencing 25 Feb subject to fee waiver discussions.

Dmitrieva, Marina

176

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

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

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

I agree with the transitional comments point.

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

**Alfonso del Rio | Partner-in-Charge | Canberra
 Clayton Utz**

Canberra House, 40 Marcus Clarke Street, Canberra ACT 2601 Australia | D: +61 2 6279 4099 | F: +61 2 6279 4099 | adelrio@claytonutz.com
www.claytonutz.com

 Please consider the environment before printing this e-mail

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

Gordon,

I concur with both points.

**Ross McKay | Director | Project Facilitation | Business and Projects
 Chief Minister's Department | T: 02 62050875 | F: 02 62054835 | M: 0409469845**

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

01/05/2008

Subject: ACTEW Power Station Data Centre Deed and Lease

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

PURPOSE

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

ISSUES

Having reviewed the document I raise the following matters:

Power Station - Stage 1

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

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

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

Compliance with Planning and Development ACT 2007 - Form of Deed

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

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

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

Gordon Lowe

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01/05/2008

JON STANHOPE ON AN ARMS-LENGTH PROCESS

Mr Stanhope: "It would be a risky business indeed for the government, all of sudden, to get into the game of advising major multinational specialist corporations about their commercial requirements. It would open us to a whole range of potential liability and conflict that would not be appropriate." (Hansard of Estimates Committee, 27 May 2008, p.736)

Mr Stanhope: "It is not for the government to decide whether an application for a nightclub in a certain site should proceed or not. ... It is not for the government to decide whether a grog shop is appropriate for a fixed site. Those are matters for the proponent and our independent statutory planning regime." (Hansard of Estimates Committee, 27 May 2008, p.720-1)

Mr Stanhope: "It is an appalling message, the message that if I were to intervene and to pre-empt a statutory process before it had been concluded is dreadful for the territory. ... The perception it creates is, I believe, just dreadful—that this is a town where political influence is brought to bear on statutory planning processes. That is just an untenable position." (Hansard of Estimates Committee, 27 May 2008, p.766)

Mr Stanhope: "This is not a government proposal. ... There is not a single other private sector proposal in the ACT in which the ACT government involves itself in a technical sense. This is a matter for the proponents, ActewAGL and its partners. ... It would simply be improper for the ACT government to be a party to a private sector proposal, which will be adjudicated on by an ACT government agency. That would represent such a conflict of interest as to undercut and distort our entire planning arrangement structure. To seriously suggest that the ACT government should pick particular private sector proposals in which to inject itself, or to seek to influence the outcome, is entirely inappropriate." (Hansard of Estimates Committee, 19 May 2008, p101)

Mr Stanhope: "To suggest that the ACT government should involve itself in the development, the fostering, the articulation, of a particular development application, which will be adjudicated upon by an ACT government statutory authority, would simply undermine completely the statutory independence of our planning arrangements." (Hansard of Estimates Committee, 19 May 2008, p101)

TRANSCRIPT
Legislative Assembly 27 August 2008

Mr Seselja: "My question is to the Chief Minister.

"Chief Minister did ActewAGL or any other representative of the Canberra Technology City consortium approach the ACT Government in February this year seeking to remove the requirement for a peaking power station from the Deed of Agreement over Block 1671? Did your Government refuse their request to remove the power station from the proposal?"

Mr Berry: "Chief Minister?"

Mr Stanhope: "Ah thank you Mr Speaker.

"Mr Speaker, I must say I can't, ah, recall or say with any, ah, certainty or certitude that, ah, the Government received an approach in February this year.

"I, ah, would certainly have to take advice and check the record in relation to that, in relation to, ah, the, ah, the issue, the subject, the question or indeed of any other issue.

"So, ah, I will take the question on notice, ah, Mr Speaker. But, ah, ah, suffice to say I have no memory of the Government agreeing or otherwise to any such, ah, um, [cough] request. But, ah, I'm more than happy to, ah, to, ah, have the record checked in relation to these particular issues."

**CHIEF MINISTER FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY QUESTION**

**Question Without Notice Taken On Notice
26 June 2008**

MR SMYTH - Asked the Chief Minister upon notice on 26 June 2008:

My question is to the Chief Minister and relates to the direct sale of land for the development of the power station and data centre in the district of Tuggeranong. Chief Minister, is the direct sale of land for a data centre and power station conditional on the development of a gas-fired power station that would provide a back-up power generation source for the whole of the ACT on the same site?

MR STANHOPE - The answer to the Member's question is as follows:

The project proposed by ActewAGL is for a data centre and gas fired power generators. While the Government has agreed to a number of conditions which need to be met as part of the option agreement or before ActewAGL can exercise the option and proceed to a direct sale, there is no specific condition that the gas generators have the capacity to provide a back-up power generation source for the ?
ACT on the same or any other site.

Approved for circulation to the Member and incorporation into Hansard.

Jon Stanhope MLA
Chief Minister

Date:.....

4/8/2008