

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."

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)

343

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 ACTEWAgI. 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 Gavana
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

24/2
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.

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

Canberra House, 40 Marcus Clarke Street, Canberra ACT 2601 Australia | D +61 2 6279 4009 | F +61 2 6279 4099 ads@claytonutz.com
www.claytonutz.com

 Please consider the environment before printing this e-mail

<<Call Option Deed.DOC>>

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<http://www.claytonutz.com>

22/11/2007

206-227	Draft Deed of Call Option	Oct 07	s. 36(1)	Exempt	Release
228	Email A. Del Rio to G. Lowe	30 Oct 07	NIL	Release	V
229-235	Email R. McKay conveying ACTGS opinion	8 Nov 07	s. 42(1), s. 36(1)	Exempt	Release
236-257	Draft Deed of Call Option	Nov 07	s. 36(1)	Exempt	Release
258-261	Email exchange between Lawyers for LDA & CMD	11 Nov 07	s. 42(1), s. 36(1)	Exempt	Release
262-283	Draft Deed of Option	Nov 07	s. 36(1)	Exempt	Release
284	Email Scott Carr to G. Lowe RE: Changes to Draft Deed of Option	12 Nov 07	s. 36(1)	Exempt	Release
285-286	Email exchange Lawyers/ LDA	20 Nov 07	s. 36(1)	Exempt	Release
287-288	Email A. Del Rio to S. Gavagna	20 Nov 07	s. 36(1)	Exempt	Release
289-290	Email A. Del Rio to S. Gavagna	20 Nov 07	s. 36(1)	Exempt	Release
291-315	Draft Deed of Option	Nov 07	s. 36(1)	Exempt	Release
316	Email A. Del Rio to S. Gavagna	21 Nov 07	s. 36(1)	Exempt	Release
317-341	Draft Deed of Option	Nov 07	s. 36(1)	Exempt	Release
342-343	Email from G. Lowe to Ross McKay/Lawyers	22 Nov 07	s. 42(1), s. 36(1)	Exempt	Release
345-346	Email A. Del Rio to S. Gavagna	7 Dec 07	s. 36(1)	Exempt	Release
348	Email A. Del Rio to G. Lowe	6 Dec 07	NIL	Release	V
350-351	Email H. Sheridan to G. Lowe	6 Dec 07	s. 42(1), s. 36(1)	Exempt	Release
352	Email A. Del Rio to S. Gavagna	27 Nov 07	s. 36(1)	Exempt	Release
353-356	Email exchange between lawyers	10 Dec 07	s. 36(1)	Exempt	Release
357-384	Draft Deed of Option	Dec 07	s. 36(1)	Exempt	Release

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 44,100m²; and
- (b) a Municipal Facility (Gas Fired Power Station) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 1,000m² together with associated ancillary infrastructure and services and capable of generating 140 Mega Watts

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164 3

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 Governments Strategic power needs in an emergency situation. i.e. the community obligation outcomes the Government would see from supporting such a venture.

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

Ray Stone

Ross responded by stating

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

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

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

ross

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


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

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

LAND DEVELOPMENT AGENCY

FILE NUMBER: 08/805

FILE TITLE: LAND SALE – Selling Land –Gas Fired Power Plant Generator

FOLIO	ITEM	DATE	EXEMPTION	RELEASE DECISION	REVIEWED DECISION
1	File Opening instructions	17 Jan 08	NIL	Release	V
2-20	Draft Deed of Option	23 Oct 07	s. 36 (1)	Exempt	Release
21-22	Email exchange LDA/Clayton Utz	26 Oct 07	s.42(1), s. 36(1)	Exempt	Release
23-69	Draft Deed of Option	13 Dec 07	s. 36(1)	Exempt	Release
70-73	Email exchange ACTGS, CMD, LDA & Clayton Utz	2 Jan 08	s.42(1), s. 36(1)	Exempt	Release
74-76	Email exchange ACTGS, CMD, LDA & Clayton Utz	3 Jan 08	s.42(1), s. 36(1)	Exempt	Release
77-80	Email exchange ACTGS, CMD, LDA & Clayton Utz	3 Jan 08	s.42(1), s. 36(1)	Exempt	Release
81-82	Plans of Development	Jan 08	NIL	Release	V
83-84	Email LDA/Clayton Utz	17 Jan 08	s.42(1), s. 36(1)	Exempt	Release
85-87	Email Ray Stone to Ross McKay	17 Jan 08	s.42(1), s. 36(1)	Exempt	Release
88-89	Email G King to Tony Adams	17 Jan 08	NIL	Release	V
90-113	Draft Deed of Option	Jan 08	s. 36(1)	Exempt	Release
114-117	Email exchange between legal advisers	2 Jan 08	s.42(1), s. 36(1)	Exempt	Release
118-141	Draft Deed of Option	Jan 08	s. 36(1)	Exempt	Release 
142-150	Email exchange between legal advisers LDA & CMD	9 Jan 08	s.42(1), s. 36(1)	Exempt	Release
151-158	Email exchange with between legal advisers LDA & CMD	3 Jan 08	s.42(1), s. 36(1)	Exempt	Release
159-160	Plans	Jan 08	NIL	Release	V
161-162	Email exchange between LDA & Lawyers	17 Jan 08	s.42(1), s. 36(1)	Exempt	Release
163-164	Email to Clayton Utz from Ray Stone	18 Jan 08	s.42(1), s. 36(1)	Exempt	Release

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Annexure C

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- (b) a Municipal Facility (Gas Fired Power Station) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 1,000m² together with associated ancillary infrastructure and services and capable of generating 140 Mega Watts

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08/25/99

527 New

DAVID

CTC

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

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

02/25/08
McKay, 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 MAY 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. Wanda
#.#

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---

577 Actew

20/01/2008

31 January 2008

PROJECT FACILITATION

32

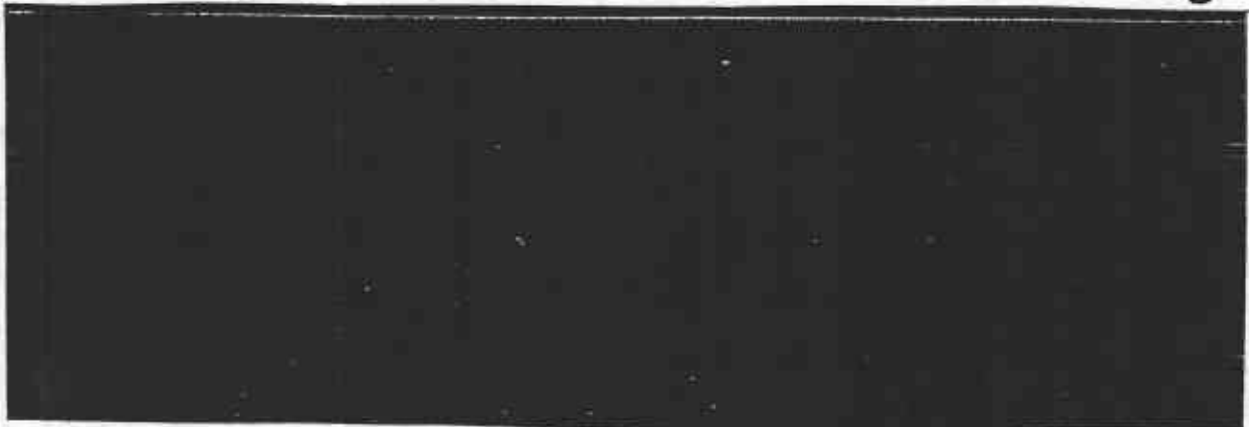


irrelevant and beyond scope

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

SLI (1)

Brooke

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

Regards

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

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, 3 land valuation needs to be undertaken, and Actew to become satisfied with all those outcomes, before it exercises the option to buy the land.
- The CTC project, particularly to obtain data centre tenant interest requires early (and soon) certainty to land. Not securing this land option could jeopardise the project and market confidence in the project.
- A time critical issue for the project is submitted a DA before the new territory plan comes into force on 1 April which will add a further 3-5 months and additional cost.

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

Regards

Brooke O'Mahoney
MANAGER COMMERCIAL DEVELOPMENT
ActewAGL

Telephone: 02 6248 3163

Facsimile: 02 6248 3451

Mobile: 0414 510 133

GPO Box 366 Canberra ACT 2601

www.actewagl.com.au

1/2
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

54(1)

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



ACEP file

CMD-B08/109



CHIEF MINISTER'S DEPARTMENT

Ref:

Date 7th February 2008

C/63/08

To Chief Minister

- Chief Executive
- Deputy Chief Executive, Business and Projects

10/7/08

From Director, Project Facilitation

Subject Canberra Technology Centre Issues

Purpose

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

Background

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

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

Issues

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

Emergency power generation

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

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

Signatories to the Option Agreement

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

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

Possible future sale of Data Centre component

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

Fee waiver as attachment

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

- S(43(1))
 b1c

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

Consultation


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


Financial

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

Recommendation

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


 Ross McKay
 Phone: 50675


7/2/08
}

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

08/256

527 Actew

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

Annexure C

Development Approval

An approval which requires the construction of:

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

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

Gas Power P/S. 86
DATA CEN.

21 February 2008

35

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.

From: McKay, Ross
Sent: Tuesday, 19 February 2008 12:02 PM
To: Lowe, Gordon
Subject: CTC Land Option Deed_ Annexure C comparisons (4).doc

Gordon,

attached is the Attachment C to the be included in the Option. This has been agreed by David Dawes and John Meckay and Michael Costello

Ross McKay | Director | Project Facilitation | Business and Projects
Chief Minister's Department | T: 02 62050675 | F: 02 62070033 | M: 0409499646



CTC Land Option
Deed_ Annexure...

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


Annexure C

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- (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.

}

165-174	Draft Crown Lease	Jan 08	s. 36(1)	Exempt	Release
175-179	Email exchange Clayton Utz, ACTGS, LDA & CMD	22 Jan 08	s.42(1), s. 36(1)	Exempt	Release
180	Revised Draft Annexure C to Deed	1 Feb 08	s. 36(1)	Exempt	Release
181-182	Email exchange Dulce Lander (ACTPLA) & Ray Stone (LDA), CMD & Lawyers	23 Jan 08	s.42(1), s. 36(1)	Exempt	Release
183-184	Email Ross McKay to G Lowe	19 Feb 08	s. 36(1)	Exempt	Release
185-186	Email exchange B. O'Mahoney ACTEW to R McKay and G Lowe: Lawyers & others	22 Feb 08	s.42(1), s. 36(1)	Exempt	Release
187	Email exchange B. O'Mahoney to R McKay and G Lowe; Lawyers & others	22 Feb 08	s.42(1), s. 36(1)	Exempt	Release
188-189	Email exchange ACTEW/LDA/CMD & Lawyers	23 Feb 08	s.42(1), s. 36(1)	Exempt	Release
190-191	Email exchange ACTEW/LDA/CMD & Lawyers	27 Feb 08	s.42(1), s. 36(1)	Exempt	Release
192	Phone message R McKay	28 Feb 08	NIL	Release	V
193	Email R Stone - R McKay - Lawyers	28 Feb 08	s.42(1), s. 36(1)	Exempt	Release
194-195	Email exchange ACTEW/LDA/CMD to Lawyers	27 Feb 08	s.42(1), s. 36(1)	Exempt	Release
196	Email S Carr to G Lowe	28 Feb 08	NIL	Release	V
197-256	Draft Deed of Option	March 08	s. 36(1)	Exempt	Release
257-258	Email Clayton Utz to LDA & others	2 March 08	s.42(1), s. 36(1)	Exempt	Release
259	Draft Annexure C	1 Feb 08	s. 36(1)	Exempt	Release
260-263	Email Advice Clayton Utz	3 March 08	s.42(1), s. 36(1)	Exempt	Release
264-298	Draft Deed of Option	March 08	s. 36(1)	Exempt	Release
299-302	Email exchange ACTEW/LDA/CMD/Lawyers	5 March 08	s.42(1), s. 36(1)	Exempt	Release
303-336	Draft Deed of Option	March 08	s. 36(1)	Exempt	Release 
337-340	Email exchange ACTEW/LDA/CMD/Lawyers	5 March 08	s.42(1), s. 36(1)	Exempt	Release
341-385	Draft Deed of Option	March 08	s. 36(1)	Exempt	Release

Deed of Call Option

Land Development Agency
ABN 20 419 925 579

Seller

Actew Retail Ltd

ABN 23 074 371 207

and

AGL ACT Retail Investments Pty Ltd

ABN 53 003 631 588

(a partnership trading as ActewAGL Retail ABN 46 221 314 841) a partnership of Actew Retail Ltd
~~ABN 23 074 371 207 and AGL ACT Retail Investments Pty Ltd ABN 53 003 631 588 having its~~
principal place of business at Level 5, ActewAGL House, 221 London Circuit, Canberra City ACT
2601 in the Australian Capital Territory

and

ACTEW Distribution Limited

ABN 53 073 025 224

and

Alinta GCA Pty Ltd

ABN 24 008 552 863

(a partnership trading as ActewAGL Distribution ABN 76 670 588 888) a partnership of ACTEW
Distribution Limited (ABN 53 073 025 224) and Alinta GCA Pty Ltd (ABN 24 008 552 863), having its
principal place of business at Level 5, ActewAGL House, 221 London Circuit, Canberra City ACT
2601 in the Australian Capital Territory.

Buyer

The Clayton Utz contact for this document is
Alfonso del Rio on +61 2 6279 4000

Clayton Utz
Lawyers
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GPO Box 1940 Canberra ACT 2601
T +61 2 6279 4000 F +61 2 6279 4099

www.claytonutz.com

Our reference 218/15225/60063879

Legal\106109502.1\Legal\104942189.7

Annexure C

Development Approval

An approval which requires the construction of the following facilities:

- (a) the first stage of a Communications Facility (Data Centre) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 44,100 not less than [insert] m² and not more than [insert] m² (defined as "Stage 2" in Annexure A (Form of Crown Lease) in the Contract for Sale); and
- (b) a Municipal Facility (Gas Fired Power Station) comprising a gross floor area (as that term is defined in the Territory Plan) of at least 1,000m² together with associated ancillary infrastructure and services and capable of generating 140 Mega Watts at all times:
 - (i) electrical power sufficient to satisfy the consumption requirements of the Communications Facility; and
 - (ii) [90 ?] megawatts electricity in excess of those requirements (being the "Major Utility Installation" defined in Annexure A (Form of Crown Lease) in the Contract for Sale).

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 44,000m²
- (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.

386-389	Email exchange ACTEW/LDA/CMD/Lawyers	12 March 08	s.42(1), s. 36(1)	Exempt	Release
390	Email G Lowe/ K Welham	11 March 08	NIL	Release	V
391-393	Email exchange ACTEW/LDA/CMD/Lawyers	11 March 08	s.42(1), s. 36(1)	Exempt	Release
394-398	Email exchange Lawyers, CMD, LDA	13 March 08	s.42(1), s. 36(1)	Exempt	Release
399-403	Email exchange Lawyers, CMD, LDA	13 March 08	s.42(1), s. 32(1)	Exempt	Release
404-410	Email exchange Lawyers, CMD, LDA	13 March 08	s.42(1), s. 32(1)	Exempt	Release
411-417	Email exchange ACTEW/LDA/CMD/Lawyers	13 March 08	s.42(1), s. 36(1)	Exempt	Release
418-476	Draft Deed of Option	March 08	s. 36(1)	Exempt	Release
477-478	Email exchange CMD/LDA/ACTEW/Lawyers	14 March 08	s.42(1), s. 36(1)	Exempt	Release
479-480	File Notes G Lowe	14 March 08	s. 36(1)	Exempt	Release
481-483	Email exchange	19 March 08	s.42(1), s. 36(1)	Exempt	Release
484-487	Email exchange ACTEW/LDA/CMD/Lawyers	19 March 08	s.42(1), s. 36(1)	Exempt	Release
488-491	Email exchange Lawyers/CMD/LDA/ACTEW	19 March 08	s.42(1), s. 36(1)	Exempt	Release
492-523	Draft Deed of Option	March 08	s. 36(1)	Exempt	Release
524-529	Email exchange ACTEW/LDA/CMD/ACTGS	20 March 08	s.42(1), s. 36(1)	Exempt	Release
530-535	Email exchange ACTEW/LDA/CMD/Lawyers	20 March 08	s.42(1), s. 36(1)	Exempt	Release
536-567	Draft Deed of Option	March 08	s. 36(1)	Exempt	Release
568-573	Email exchange ACTEW/LDA/CMD/Lawyers	20 March 08	s.42(1), s. 36(1)	Exempt	Release
574-575	Letter from ACTEW to LDA (G Lowe) RE: Terms of Deed of Option	19 March 08	s.36(1)	Exempt	Release
576-582	Email exchange Lawyers/CMD/LDA/ACTEW	20 March 08	s.42(1), s. 36(1)	Exempt	Release
583-584	Copy of 575	19 March 08	s.36(1)	Exempt	Release
585-592	Email exchange Lawyers/ LDA/CMD	20 March 08	s.42(1), s. 36(1)	Exempt	Release
593-599	Email exchange Lawyers/ LDA/CMD	25 March 08	s.42(1), s. 36(1)	Exempt	Release

AUSTRALIAN CAPITAL TERRITORY
LAND (PLANNING AND ENVIRONMENT) ACT 1991

**Australian Capital Territory (Planning and Land
Management) Act 1988 (C'th ss 29, 30 & 31**

LEASE GRANTED pursuant to the Land (Planning and Environment) Act 1991
and the Regulations thereunder on the day of

LESSEE Two thousand and **WHEREBY THE PLANNING AND LAND**
AUTHORITY ("the Authority") ON BEHALF OF THE COMMONWEALTH OF
AUSTRALIA ("the Commonwealth") in exercising its functions grants to,
a company having its registered office at

LAND in the Australian Capital Territory number of shares/tenants in
common/joint tenants ("the Lessee") **ALL THAT** piece or parcel of land situate in
the Australian Capital Territory containing an area of square metres or
thereabouts and being **Block 1671 Division of Tuggeranong** as delineated on
Deposited Plan Number [insert] in the Registrar-General's Office at

TERM Canberra in the said Territory ("the land") **RESERVING** unto the Territory all
minerals **TO HOLD** unto the Lessee for the term of ninety nine years commencing
on the day of **Two thousand and eight**
("the date of the commencement of the lease") to be used by the Lessee for the
purpose set forth in Clause 3(e) of this lease only **YIELDING AND PAYING**
THEREFOR rent in the amount and in the manner and at the times hereinafter
provided and **UPON AND SUBJECT TO** the covenants conditions and agreements
hereinafter contained.

writing by the Authority complete Stage 3 within the lease in accordance with the Approved Stage 3 Plans and Specifications and in accordance with every Statute Ordinance or Regulation applicable thereto.

ASSOCIATED WORKS

- (c) That the Lessee shall commence within twenty-four (24) months and complete within forty-eight (48) months respectively from the date of the commencement of the lease or within such further time as may be approved in writing by the Authority for that purpose, and prior to the commencement of any trading or business from the premises, the design and construction of:

(i) *[works required by ACTPLA to be inserted]*

(ii)

(iii)

including all ancillary works and fittings in accordance with the prescribed conditions for associated works and plans and specifications previously submitted to and approved in writing by the Authority;

INDEMNITY

- (d) That the Lessee shall indemnify and keep indemnified the Commonwealth, the Territory, the Authority, their servants and agents from all actions claims suits and demands brought maintained or made against the Commonwealth, the Territory, the Authority, their servants or agents by any person or body of persons arising out of the provision by the Lessee of the design and construction of the associated works referred to in Clause 3(c) until such works are completed and formally handed over to the Territory;

PURPOSE

- (c) To use the premises only for the purpose of:

- (i) Communications Facility; and
(ii) Power Generation 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;

OR

- (iii) Communications Facility; and
(iv) Power Generation 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; and

[This wording repeated in successive versions of the lease.]

(v) Major Utility Installation.

- | | |
|---|--|
| GROSS FLOOR AREA | (f) That the combined gross floor area of all the Communications Facility buildings erected on the land shall not be less than 44,000 square metres (being the aggregate of the minimum gross floor areas of Stages 2 and 3) and shall not exceed 46,000 square metres (being the aggregate of the maximum gross floor areas of Stages 2 and 3); |
| CARPARKING | (g) That the Lessee shall provide and maintain an approved drained and sealed carparking area on the land to a standard acceptable to the Authority in accordance with plans and specifications previously submitted to and approved in writing by the Authority; |
| BICYCLE PARKING | (h) That the Lessee shall provide and maintain bicycle parking within the land in accordance with AS 2890.3-1993, and with plans and specifications previously submitted to and approved in writing by the Authority; |
| PEDESTRIAN ACCESS | (i) That the Lessee shall provide and maintain access to all pedestrian areas and pathways on and adjacent to the land in accordance with specifications previously submitted to and approved in writing by the Authority; |
| LIGHTING | (j) That the Lessee shall illuminate and keep illuminated all public areas, car parks, driveways, and pedestrian areas and pathways on the land during evening hours when any part of the Building is occupied and in use, at the Lessee's cost, in accordance with plans and specifications previously submitted to and approved in writing by the Authority; |
| FACILITIES AND ACCESS FOR PERSONS WITH A DISABILITY | (k) That the Lessee shall provide and maintain facilities and access on the land for persons with a disability in accordance with plans and specifications submitted and approved in writing by the Authority; |
| UNLOADING AND LOADING VEHICLES | (l) That the Lessee shall provide and maintain an area for the loading and unloading of all vehicles on the land in accordance with the plans and specifications previously submitted to and approved in writing by the Authority; |
| LANDSCAPING | (m) That the Lessee shall provide and maintain landscaping on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the lessee and previously submitted to and approved in writing by the Authority; |
| PRESERVATION | (n) That the Lessee shall not, without the previous consent in writing |

Dmitrieva, Marina

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

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

I agree with the transitional comments point.

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

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

Canberra House, 40 Marcus Clarke Street, Canberra ACT 2601 Australia | D +61 2 6279 4006 | 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.

Rose McKay | Director | Project Facilitation | Business and Projects
Chief Minister's Department | T: 02 62050675 | 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 "deal". The grant of the lease - upon the conditions in the Options Deed being satisfied - will go back to the Executive. This is an important distinction for the purposes of the new Planning and Development Act and the Regulations. The transitional provisions relate only to situations where the grant of the lease has been formally approved - and that hasn't yet happened in this case. In any event the transitional provisions only apply for six months and the conditions precedent may not 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

**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