

1 December 2008

Mr Jon Stanhope
Chief Minister

Dear Mr Stanhope,

Tuggeranong Power Station and Data Warehouses - EIS

We are writing in reference to a meeting that was held on 16 October 2008 by GHD, the consultants employed to provide an Environmental Impact Statement for the proponents of the above proposal.

As the Chief Minister, and the senior representative of the people of the Territory, we would like clarification from you as a matter of urgency as to the nature, intent and form of this meeting.

Although the subject matter of the Minutes state "ACT Government Agency Stakeholder Meeting" we would like to know what role Otis Projects plays in this?

We would like to know when CB Richard Ellis became an ACT Government Agency Stakeholder and why it was necessary to involve them at this meeting?

We would like to know why the Queanbeyan City Council was invited when the community group, based in the ACT and most directly concerned with this matter was excluded?

We note that Mr Ross McKay of your Department attended. We would like to know why Mr McKay attended this meeting? What was the agenda for the meeting and what instructions, point of view or position was Mr McKay representing during this meeting?

We have concerns regarding Mr McKay's position in this matter and attach for your consideration, an email dated 30 April 2008 in which Gordon Lowe of the Land Development Agency (LDA) appears to be asking Mr McKay and Mr Campbell whether they are "comfortable", in the light of "the wider interest now being shown in the power station" to change the crown lease to provide for an additional 90 MegaWatts, despite it having already been decided it was not feasible.

Mr McKay, a senior public servant in your office, responds that he concurs with [both] these points. Mr McKay did not feel the need to alert the public to this "misrepresentation" nor did he make any suggestion in this exchange that this course of action was:

- contrary to the public's best interests
- lacked transparency and accountability and
- clearly outside the rights or responsibilities for these unelected public servants to be making decisions around what the public should know.

They are clearly acting throughout this exchange on behalf of the best interests of these particular proponents, placing themselves and by association the LDA and your Department, in direct conflict with the views, wishes and best interests of the public.

We are therefore concerned that Mr McKay continues to represent the Chief Minister's Department at such meetings and we believe his attendance thus puts the Chief Minister's Department in direct conflict with the community.

We note that the Land Development Agency (LDA) was invited and sent apologies. We would like your consideration as to whether you consider it was appropriate for the LDA to have been invited to this meeting? What role was it envisaged they would have played?

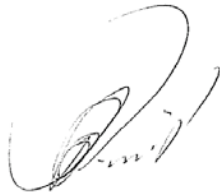
You will appreciate that the community is not in a position to wait until December 12 to ask these questions, given that you and Minister Barr have already determined this development should go ahead, regardless of the contents of the GHD report, or the concerns of the community.

You will also appreciate that the community has been taken aback by your determined support of this development, whilst asking the community to wait for, and stand by the results of what you describe as "an independent" report.

The community has found itself in the position of questioning the thoroughness and independence of this report.

We therefore ask for you, on behalf of the community, to investigate the nature of this meeting and enquire from GHD and Mr McKay answers to our questions within a time scale that will allow the community to consider before then proceeding to responding to this report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Reid', with a large, sweeping flourish above the name.

Bill Reid
President of CPR inc

Enc: Email dated 30 April 2008

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**

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 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 appened 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