



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**(Reference: Auditor-General's report No 7 of 2008:  
*Proposal for a gas-fired power station and data centre—site selection*)**

**Members:**

**MS C LE COUTEUR (The Chair)  
MR B SMYTH (The Deputy Chair)  
MS J BURCH**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 30 SEPTEMBER 2009**

**Secretary to the committee:  
Ms M Morrison (Ph: 6205 0136)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Committee Office of the Legislative Assembly (Ph: 6205 0127).

**WITNESSES**

**HOLMES, MR DUGALD**, Representative, Canberrans for Power Station  
Relocation Inc. .... **69**

**PENN-TURRALL, MRS SUSAN**, Representative, Canberrans for Power Station  
Relocation Inc ..... **69**

**REID, MR WILLIAM (BILL)**, President, Canberrans for Power Station  
Relocation Inc. .... **69**

## **Privilege statement**

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings.

All witnesses making submissions or giving evidence to an Assembly committee are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution. Witnesses must tell the truth, and giving false or misleading evidence will be treated as a serious matter.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

*Amended 21 January 2009*

**The committee met at 12.59pm.**

**REID, MR WILLIAM (BILL)**, President, Canberrans for Power Station Relocation Inc.

**HOLMES, MR DUGALD**, Representative, Canberrans for Power Station Relocation Inc.

**PENN-TURRALL, MRS SUSAN**, Representative, Canberrans for Power Station Relocation Inc.

**THE CHAIR:** Welcome. I formally declare this public hearing of the Standing Committee on Public Accounts inquiry into Auditor-General's report No 7 of 2008 open. Whilst the terms of reference for this inquiry are the information contained within the Auditor-General's report, the committee's inquiry is specifically looking into the administrative processes used for consideration and facilitation of strategic projects in the ACT. On behalf of the committee, I welcome representatives of the interest group Canberrans for Power Station Relocation Inc., members of the public and of course my colleagues.

I will now read out the privileges statement, which you will have a copy of in front of you. What it says is that the committee has authorised the recording, broadcasting and rebroadcasting of these proceedings. Witnesses making submissions or giving evidence to an Assembly committee are protected by parliamentary privilege. Parliamentary privilege means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively and enable those involved in committee processes to do so without obstruction or fear of prosecution. Witnesses must tell the truth and the giving false or misleading evidence will be treated as a serious matter.

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**Mr Reid:** No, that is fine.

**THE CHAIR:** Thank you. I remind you that, whilst parliamentary privilege does give you certain protections, as witnesses you also have certain responsibilities. You have the responsibility to ensure that your evidence is not intentionally defamatory, misleading and to tell the truth. The protections afforded by parliamentary privilege are not designed to allow groups or individuals to make public accusations about organisations and individuals when that information may be unreliable, actionable or incorrect.

I refer you again to the privileges card in this respect. I draw your attention to the following: where the committee has reason to believe that the evidence about to be given may reflect adversely on a person or organisation or when a witness otherwise requests it, the committee can adjourn proceedings and shall give consideration to

hearing the evidence in camera in private session. Where a witness gives evidence reflecting adversely on a person or an organisation, the committee may give consideration to directing Hansard to remove that evidence from the transcript of evidence during or after the hearing.

Before we come to questions, do you have an opening statement?

**Mrs Penn-Turrall:** We do. Given that we only have half an hour, and we accept that the committee wants to ask us questions, we would like to present our speaking notes. We were going to talk to those, but it would take too long—and again any questions. May we present the speaking notes to you as further evidence?

**THE CHAIR:** Certainly. If you want to give them to Andrea Cullen, she will make sure they are appropriately dealt with.

**Mrs Penn-Turrall:** The primary statement that we would like to make is to give this committee an idea of the effects of this process on the community. We feel this has not really been addressed. You have had various speakers—Mr Stanhope, Mr Barr and Ms Gallagher—in here talking about how they have seen the process go and what lessons they feel they have learnt from this. Throughout the entire process we feel as a community that we have been very badly done by, which brings us to the point that I think you made, Ms Le Couteur, about the consultation process within development. The consultation process, we believe, does not exist. The way this proposal has been dealt with has been pretty much our being told what is going to happen to us.

The Auditor-General pointed out in her report that the support from the government was given wholeheartedly and was given from as early as August 2007. We would ask: based on what? There has been no cost-benefit analysis given. At the time the government decided to allocate government resources in the form of a major projects development facilitation team, which has resources from the Chief Minister's department, it was based on a concept idea that ActewAGL and Technical Real Estate would deliver for the government a second power source for Canberra. That was the concept idea.

At that point, when the government threw itself into this proposal, there had been no site-specific studies done, no financial viability study and no environmental study. There had been no consultation with the community at all. There had been nothing done. It was a concept. I know you have received a submission from the ACT Division of the Planning Institute of Australia who said that they support the ministerial call-in powers. They mentioned this proposal as an example of when that would happen and those defined public good outcomes.

We would say that a concept may potentially be a defined public good outcome, but without proper research and study, consultation in a meaningful sense and a cost-benefit analysis, that concept could remain just that—a concept—so the public good outcome may never happen. It is dependent on who builds it, who runs it and how those things happen.

The Chief Minister also negated the suggestion by the Auditor-General that in certain proposals pre the development application being filed there should be consultation

with the community. I think at one point he said that was not fair; you could not possibly do that. The Chief Minister himself defined this as an exceptional process as early as August 2007. From August 2007 to February 2008 the Chief Minister was advertising this proposal in Europe in glossy magazines. He was throwing tax-funded resources behind having this development pushed through. On the one hand he accepts it was an exceptional proposal but, on the other hand, he says, “No, it’s not fair to consult with the community about it.” But he was advertising it in Europe at the time.

What happened in February 2008—that is the date I would indicate—was that the financial viability came in. This is an issue which I still find very shocking—the implications behind the actions of the Chief Minister, ActewAGL and Technical Real Estate around this issue. In fact, it seems to have been brushed over. In February 2008, the Chief Minister was told that financial viability of building a second power source for Canberra on that site would not happen; they were downscaling the development. The downscaling started in April 2008, unbeknownst to the community, but the Chief Minister knew that in February 2008. They only filed the DA in March 2008, knowing full well that they would have to downscale. They took it to the limit. They advertised it.

When eventually the community found out about this project, they advertised it to the community as a state significant second power source to Canberra. We were asked to look at the submissions. We did. We have engaged as a community. This is the body of our work that we have worked extremely hard at. We had experts in the community who spent their own time—they took time away from their families—to look at those submissions.

The Chief Minister, ActewAGL and Technical Real Estate allowed us to take it to the final hour on the final day of that submission before announcing the downscaling was happening. Then the Chief Minister went ahead and made a public statement on what good corporate citizens ActewAGL were for listening to the community and downscaling this project. By the way, the community is now responsible for the loss of \$1 billion of investment to the ACT. That was the message taken up by Chris Peters on television. He is the chair of the Chamber of Commerce. He went on TV to say, “These NIMBYs have cost us now \$1 billion of investment.”

At no point did the Chief Minister stand up and say, “Actually, we can’t really say that. We shouldn’t have said that. We’ve known for months and months. We knew before the DA was filed that this was going to be downscaled.” What they did was take us to the last hour of the last day. They allowed the community to spend all of that time and effort responding to an application that was never going to happen. Way back before they even had the first consultation ActewAGL had already filed their application to ACTPLA to amend their application. They then amended it.

At no point was a site specific survey done. They got their stack height wrong. The community pointed out an innumerable litany of problems. Again, the community spent their own time, their own efforts and energy—they spent hours and hours away from their own jobs and their own families—to respond to that. They were ignored. At no point has the Chief Minister ever stood up and said, “The consultation process wouldn’t work unless you had community members doing this.”

We have had this entire litany of issues going on. The Chief Minister, when he gave evidence before the committee, said that the HIA was called by ACTPLA. It was not. Then Ms Gallagher said that the EIS and the HIA could not possibly run parallel. They can. We have ministers saying it is no longer a power station; it is a cogeneration facility. We had two DAs running at the same time. If this is such a complicated issue for ministers to follow and the planning minister and the health minister to understand, what possible hope has the community but that we did our best?

Every single one of the issues that we raised was backed by an expert who considered the matter. In the end, not one of them was considered. What consultation is that? Not one issue that the community raised has been addressed. What happened was in the end it was too difficult; it was legislated through. As to the HIA and the EIS, none of those things were considered in the final approval of this power station—this privately owned gas-fired power station. I would like to pass to Mr Holmes to talk about the promises that were made in terms of job numbers and technical issues.

**Mr Holmes:** Just adding to Mrs Penn-Turrall's comments on the issues we found, there were inflated numbers around the job figures. We heard initially 300; it went to 400. It reached 600 at one point. There were the claims, obviously, of the size of the proposal being \$2 billion for the territory initially, then quickly skating back to \$1 billion, ourselves being blamed. If you look beyond those figures, I will give you an example. Microsoft have just opened their super data centre, if you like, for Europe. It is going to be behind their search engine Bing to compete with Google. There is a 100,000 square metre facility that will provide up to 35 jobs.

If you look at the IT sector and the way that these buildings operate, they are manned by small teams that are called in on demand. It does not create in the region of 600 jobs. The internal report the government received, the Hume industrial planning study, in August 2007 flagged that it was a low employment project; it was not suitable for the employment corridor being created along the Monaro Highway down near Hume. So even in conflict with the spatial plan and those provisions being pursued from 2004, we were seeing that the professionals were calling out between 100 and 150 construction jobs for the gas pipeline and the power station and, beyond that, minimal operating staff. That was also in the disability access reports as part of the proposal. It just showed that there were not going to be a huge number of employees. Those figures were inflated throughout.

**Mrs Penn-Turrall:** Our point was that in terms of assigning the full support of the government to this based on a cost-benefit analysis, Mr Stanhope—when asked by this committee what was the cost-benefit analysis—merely replied that he had got the best price for the land. That is really not good enough when you are talking about the single most polluting structure to be built within the ACT. It is just not good enough.

This entire process has been quite an eye-opener as to how the flat level of government within the ACT is not conducive to accountability; it is not conducive to good governance. If you are not going to support communities to have a meaningful voice in these proposals, you might as well hand it over to a single person to make a decision—with or without any backing and without any reasoning or understanding of

what this means. The health of this community is put at risk by this. You are taking huge chunks of the wildlife corridor and horse paddocks that people use. There are Aboriginal sites which still have not been looked into. This is an appalling abuse of power, I think, by the government in planning.

**THE CHAIR:** Do you also have something to say, Mr Reid?

**Mr Reid:** I endorse everything that Susan and Dugald have said so far. What alarmed the community the most, I think, was at the initial presentation at the Tuggeranong Community Council, which I think was in April, when the town planner, when asked about the jobs creation that this development would provide, indicated somewhere between 30 and 50 jobs as per the documents that were presented to him as the town planner when they were developing the site. What we were told originally and what subsequently came out from the political parties was a lot different to what was told to the town planners. There seem to be anomalies in the information that was given, depending on the circumstances in which the questions were asked. When it came from the community, the public and the media a lot of information seemed to be greatly exaggerated.

To substantiate this, when Technical Real Estate were subsequently given the planning approval and the minister called in the development and approved it without any consideration of any of the matters that were raised by the public or subsequently by the planning authority in the ACT—I think there were 19 or 21 outstanding matters that had to be addressed—the minister dismissed every one of them and just approved it. Many of those were significant health issues. Once Technical Real Estate got their approval they went to the federal government and asked for financial assistance because they did not have financial backing themselves. Obviously the information that they gave the ACT government as to their financial substance to be able to develop this project was also false—otherwise they would not have had to go cap in hand to the federal government and ask for money to help develop it.

There seemed to be inconsistencies within the three parties that were involved in this proposal. Not only was the truth used quite sparsely to the public but also there seemed to be a similar situation between the three parties that were involved. Hence we are sitting here now trying to explain it to you. We have not had an opportunity to sit down with any government ministers. The one government minister in our electorate we asked to have a meeting with ambushed us and invited a lot of other people to try and mediate, in his words, a resolution, but without informing us who was going to be at the meeting. Mr Hargreaves never made an apology for that. Subsequently he made it public that he would not represent members of this community group, CPR Inc., in his electorate to the government on the issues. Because he personally did not believe in them, he was not going to represent us. This is another issue that should be covered under this hearing—the lack of impartial representation by our elected members. It has been extremely lacking.

**THE CHAIR:** That is a different issue. I guess one of the things I am most interested in is consultation. I share some of your concerns. Consultation is very hard. Have you any suggestions as to how it could be better?

**Mrs Penn-Turrall:** Meaningful consultation means that; it has a meaning to it. Take

the cemeteries issue that is going on—the new cemetery in southern Canberra. I do not consider it is meaningful consultation if you are not giving people a choice of the site or choices. It is not meaningful. You are actually telling them what is going to happen to them. They have picked that site—

**THE CHAIR:** They have picked that site, yes.

**Mrs Penn-Turrall:** They have picked that site, so the question they are asking is: should there be a new cemetery in southern Canberra? Of course, most people are going to say yes. To pick 60 people out of a pool of 15,000 of the nearest suburbs to where that cemetery is going to be placed and say, “Should there be a cemetery in southern Canberra?” of course they are going to say yes. Then they say, “Well, 90 per cent of the people we asked agreed.” Ninety per cent of 60 is nothing. The difficulty with that is that meaningful consultation means just that; it means consult and give choice. Let people have their choice and have it with meaning. What I think is happening now—with respect to the government’s very great pride in the way they are consulting—is carpet bombing consulting. You can completely swamp people with so much consultation.

This was a huge issue. I would be very careful about entering into another issue because this took up an enormous amount of my time and the time of a large number of my friends and neighbours. Experts came and gave freely and willingly of their time to study the documents. It was an enormous task for us to do it, in the face of a government that was really angry and aggressive towards us. Our own elected ministers were being angry and aggressive towards us. The press was. Then there was business—the property developers. An elite group of property developers were putting out full-page adverts saying, “Bring back our children to Canberra and allow this to happen”. For 35 jobs? There are 35 children out there who are going to stay. We understood that, but not to be in a position of being called NIMBYs because you are thinking about the whole of southern Canberra, polluting a huge area of southern Canberra.

That is where you need to address this issue of consultation. Make it matter. Do not consult on everything that no-one is going to listen to. If you are going to consult, if the government is going to sit down and say, using the cemeteries example again, “If you are going to have a cemetery in southern Canberra, where is the best place for it?” Why pick the most northern part of southern Canberra to have a cemetery in southern Canberra? Why are we not consulting with Queanbeyan, who are proposing to build a crematorium there? Why are we not looking at Lanyon or further down that way? If southern Canberra is going to develop out to the numbers that the government is projecting, having a cemetery in southern Canberra and south of that would be more logical than having it further over in Tuggeranong. Give us choice.

**MR SMYTH:** So how do you make it better? In the notes that you have just delivered to the committee, on page 8 you say that consultation is meaningless unless those who have been consulted with are being listened to and have a rational chance of being heard, that consultation in the ACT is lip-service and perhaps the biggest lesson the community has learnt is that consultation is pointless. How do you make it better?

**Mrs Penn-Turrall:** You make it literally that—that if you are going to consult then

the people you are consulting with have a voice. Again, I go back to our experience of what has happened. As to “meaningless” and “lip-service”, we responded to every single one of the government’s blocks they put before us. We responded to two DAs, we responded to HIA, an EIS, an Auditor-General’s report and this committee. Each one of those things that we raised—you have read them, Brendan—in consultation was valid and backed by expert advice. We did not make any of that stuff up. They remain an issue but none of them were addressed. What happened in the end, as the government did with the GDE, was that it came across a block to its desire and it basically legislated through it.

I totally get what the Planning Institute of Australia is saying when they say, “It has got to be allowable for a state significant development.” But if you have it as an ability of the government—and a flat level government the way we have in the ACT—to literally legislate through whatever issues or blocks it comes across then consultation will remain meaningless. You cannot offer the community a voice and then say, “We don’t like what we’re hearing, so we’re taking that away. We don’t like the issues you’re putting. We’re not going to address those issues. What we’re going to do is legislate through them.” That is where you have to make it matter; otherwise why would we bother doing this again?

**MS BURCH:** Regarding some of the points on the EIS and some of your data around the concerns about pollutants in the area—and I recognise the efforts put in by the group—would that not then be sought through the HIA and the EIS for those proposals?

**Mrs Penn-Turrall:** You would have thought so. What happened in our case was that we were given a team of health professionals to discuss that with. We spoke to them, we met with them, we consulted with them. We did everything possible, but before they even put a pen to paper they were disbanded and taken over by a group of consultants who were not health professionals; they were consultants. They told us at the time that we met with them, “We are not doctors. We do not understand the health implications. That is not our role.”

**MS BURCH:** But a decent, rigorous investigation into health issues and environment issues—that global health—would have picked up that.

**Mrs Penn-Turrall:** Absolutely.

**MS BURCH:** You do not necessarily need a doctor on that, but you need rigorous, scientific evidence and a process to make those assessments.

**Mrs Penn-Turrall:** And you need a doctor to interpret them.

**Mr Holmes:** You also need site specific data. We did call out at a very early stage that the source data being taken from Bega in New South Wales and other places was not specific to the hills and valleys of Tuggeranong Valley. Tuggeranong Valley suffers from pollution already from the particulates from wood smoke, for example, in winter. Building a power station in this location in the first place was questionable.

**Mrs Penn-Turrall:** If we had got what we asked for right at the beginning, which

was an independent EIS, as was intended by the original planning laws, then we would have had a safety measure put in. It was actually fought for by the Labor Party at one point to have it in.

**MS BURCH:** I am sorry for jumping in, but I think that is the planning process. Once you get bits through then final development cannot proceed until there is an EIS.

**Mrs Penn-Turrall:** That is absolutely right and that is what should have happened. That is why they filed it prior to the new legislation. They filed their application literally days before the new legislation which would have ensured an EIS, but in the end, when the EIS was in and there were still these outstanding issues, the government just legislated through it. It did not use the EIS. The EIS was not used.

**Mr Holmes:** May I add that ACTPLA state that in their reasoning for the development approval the EIS was not considered because it was put through a merit track. A merit track does not require an EIS. Although we were having the spin in the media and the PR from the Chief Minister that it would be taken from the previous site and applied to the new, that was not the case.

**Mrs Penn-Turrall:** That is my difficulty. We have safe planning laws. We have a so-called independent planning authority that should review these things. It does not work in this level. If you have the Chief Minister supporting it and having a major projects development facilitation team from the Chief Minister's department working on it six months before the public even gets to hear about it and then in the end you have EIS and HIA submissions—and God knows what else—and real issues being brought up by health professionals saying, "This is not right," in the end the government just legislates through it.

**MS BURCH:** While we are on communication and community consultation—how long is a piece of string?—I refer to that balance and point where work needs to be done within a facilitation unit on big projects before it comes out to the community. Where do you feel we need to come to the community? Is it earlier? Is there a point where internal stuff has to happen to get the project to a point before it can come out to the community?

**Mr Holmes:** I would like to suggest, as we said, that in August 2007 this project was published in the Department of Innovation, Industry, Science and Research brochures distributed to Europe. At that point that they were canvassing for business trade from across the world and also took the roadshow around Asia, the community should know what is going on.

**Mrs Penn-Turrall:** Going back to what the Auditor-General picked up and what we spoke about—it is very close to the wire—this was very collusive. There is a very collusive relationship between the proponents in this particular instance and the Chief Minister. It was very collusive. You had ActewAGL using government documentation to support their application that nobody else had seen.

If you are talking about earlier, by all means have designated projects identified as being state significant, as being in the benefit of the community. We are the community; we like benefit. But at some point somebody has to decide independently

a cost-benefit analysis and say, “What is the cost of this to the community as opposed to the benefits?” It is the benefit to the community, not an elite private real estate developer: “As to the costs we don’t really care.” That is exactly what happened.

If you are going to have a facilitation team that is funded by the taxpayer you need to have an independent person allocating on an independent level what the projects mean—are they just concepts or are they backed by real, viable studies?—and then take them out.

**MR SMYTH:** On page 3 of your submission I note you make the claim that the directors of TRE recently applied for public money, \$34 million. How do we know this? Is there a source for that claim?

**Mr Reid:** Yes, they went to the commonwealth—

**Mr Holmes:** The specific number may not be communicated there. We have added that in. The actual statement was that Technical Real Estate applied to the federal government to imply they needed funding to build a building worth \$50 million. The building was \$50 million to construct and build.

**MR SMYTH:** But there is a source document where you get this information from?

**Mrs Penn-Turrall:** It was in the *Canberra Times* and it was in the—

**Mr Holmes:** It is the submission to the federal finance—

**Mrs Penn-Turrall:** It was in one of the Senate—

**Mr Holmes:** We can provide you with a copy of that.

**THE CHAIR:** That would be helpful.

**Mrs Penn-Turrall:** As to the \$34 million, I apologise if that is wrong. I had that in my head. I read it; it was a Senate—

**Mr Holmes:** I will get the source.

**MR SMYTH:** Thank you. You said in your opening statement that it is really the effect on the community. I notice that you have called for an apology from Mr Stanhope and you repeat the concerns in the notes that you have delivered here this afternoon. Can you tell us what the effects on the community are and why an apology is important?

**Mrs Penn-Turrall:** I think the impacts on the community have been enormous. Last year we spent a year—I felt like I had lost a year of my family life—trying to deal with this constantly. That was not just me. This is hundreds of people in the community. We have had people who are housebound and concerned with their health issues feeling that they are now being trapped and that things are happening to them where they do not have a voice.

I think the overall effect will be: if I was a member of the community and the government came to me and said, “We want to consult with you again about building this, that and the other,” I would not believe them. I would not believe that this is an honourable, accountable system. I would sit there and say, “No, I’m not engaging in this because you still haven’t addressed what I said last time.”

In terms of an apology, this committee was asking Mr Stanhope what lessons they have learnt and he did not address that. I do not think he has learnt this. I do not think he has actually understood, from a community point of view—from a member who was engaged in this consultation—how insulting it was to have Mr Stanhope knowingly blame the community for the loss of a billion dollars of investment to the ACT. That was outrageous, when he knew in February 2008 that that was not going to happen; they knew they had to downscale it in February 2008.

**THE CHAIR:** How do you know that he knew in February 2008?

**Mr Reid:** Under the freedom of information there were documents that we procured.

**Mrs Penn-Turrall:** In part of our submission there is an email that was sent to the Chief Minister and signed and agreed by the Chief Minister in which it indicated that the financial viability study for the 210 megawatt power station was in and that it was unlikely that the 210 megawatt power station would be built and that they would probably go ahead with a smaller power station and the data warehouses. That was signed and agreed in February 2008 by the Chief Minister himself.

**MR SMYTH:** The committee does not have such an FOI. Can you provide that document?

**Mrs Penn-Turrall:** Yes, they are all here. They are all in our submissions. They have been filed several times. You can certainly have them. In fact, the freedom of information documents came from the efforts of the Liberal Party who got them for us.

**MR SMYTH:** This committee is not the Liberal Party.

**Mrs Penn-Turrall:** I am just saying that they were done for us. The community itself has great difficulty getting documents. It would be expensive and really laborious for us to get them.

**MR SMYTH:** You say on page 9 of your submission that CPR therefore recommends that the Auditor-General be given greater funding and greater authority to audit, inspect and implement recommendations. That is kind of curious, given the article on the front page of the *Canberra Times* this morning. Why do you feel this?

**Mrs Penn-Turrall:** Because it is a flat level of government. We have noticed throughout this process that when you have one party in the ACT that has power in the Legislative Assembly, there is very little anybody can do to stop it doing what it wants. There are several ways. If the community councils were stronger and had a voice and through the Auditor-General. These are the two main issues where you can call to account a government that has a history of, as I said before, ploughing through with legislation. Again, that legislation was shocking. It was presented a day before it

was actually passed. It was an enormous piece of powerful legislation that gave the community absolutely no right of appeal. It took away a fundamental right within a democracy—the right to appeal when things went wrong.

If you are going to disallow, if you are going to reduce the cost of the Auditor-General, which is one of the primary independent, accountable figures in the ACT government, you are left with nothing. You are left with a dictatorship. You are left with a voiceless community. It is not right.

**MS BURCH:** Was that legislation in December?

**Mrs Penn-Turrall:** Yes, it was.

**MS BURCH:** Who passed it? Who agreed to it?

**Mrs Penn-Turrall:** It was unanimous. It was passed unanimously.

**Mr Holmes:** By all of you.

**MS BURCH:** I know, but so did everybody—

**Mr Holmes:** Which also removed the committee’s right of appeal.

**Mrs Penn-Turrall:** It removed the committee’s right of appeal. That is what I am saying—on a flat level of government. It was shocking.

**MS BURCH:** I go to your point about a flat level of government. There are indeed three parties in the Assembly. If those parties chose not to support that legislation then it would not have got through. In many ways it is a bit of a misrepresentation to say a flat level of government got that through when other parties supported that legislation as well.

**Mrs Penn-Turrall:** It could have got it through on a majority, though. Even if the ACT Greens had just signed an agreement with Labor, it would have gone through. With all due respect to the ministers and the MLAs who have been voted in and were new to that role, a piece of legislation with this amount of power had been given to them with one day’s notice to read it and consider it and then pass it. That was really a quite extraordinary feat. I was about to say something rude! I think it was extraordinary. If you had two levels of government, somebody somewhere would say, “Hold on; this is not right.”

**MS BURCH:** Back to levels of government, you have made various comments around processes being sidestepped when we have independent authorities—the Auditor-General is one of them, who has provided a report. In the report it is said that processes were followed; there need to be some improvements but, in the main, requirements on the table that needed to be followed were indeed followed. There is also an independent ACTPLA whose processes and planning requirements were followed.

**Mrs Penn-Turrall:** But we have ACTPLA here. Mr Savery, who was the chair of

ACTPLA, was sitting here and saying, “Yes, we have a statutory duty to inform the nearest neighbours and that’s it. That’s all we have to do.” In fact, we went around the entire street and there was not one person who had got a letter from ACTPLA. So while they say on one hand—that was the minimum they had to do—that statutory processes were followed, we say no, they were not. We did not get the letter.

**THE CHAIR:** I note that it is now past half an hour and we are still talking. Would everyone be happy if we extend it to quarter to two? I think that that will really have to be the end. Is that okay?

**MR SMYTH:** Yes.

**MS BURCH:** Yes.

**MR SMYTH:** On page 7 of the document you gave to the committee today, the middle paragraph states that in its final approval ACTPLA ignored its own 21 flaws found in the original DA and stated it could see no reason not to accept the report filed by the proponents in support of the DA.

**Mrs Penn-Turrall:** Yes.

**MR SMYTH:** Can you explain to the committee what the 21 flaws were and how you would prevent this from what happening again?

**Mrs Penn-Turrall:** The 21 flaws were the ACTPLA review of the second DA that had gone through on the original site. They included things like they had recognised the preliminary study was wrong; they recognised that some of the height stacks the proponents were given were incorrect. They wanted more detailing on pollution studies. There was a whole litany. I cannot remember them off the top of my head, but they were fairly serious flaws and some of them picked up the same issues that we had found with the original submissions.

Again, going back to those original submissions, they were commissioned in 2007 when this was a second power source for Canberra and they picked data, as Doug said, from Bega, from the airport, from all over the place. There were no site specific studies done. They did not change those from when it became a downscaled project with a different business case and to when they actually moved the site. The original documents remained the same, pretty much, give or take a few alterations.

**MR SMYTH:** They were the same sorts of concerns with the 2.5 microns?

**Mrs Penn-Turrall:** Yes, they did eventually put some studies in—

**Mr Holmes:** Again, that 2.5 study is based on the non-site specific data. The same issue carries through.

**MR SMYTH:** And the information you provided concerning the 2.5 microns, do you think it was handled appropriately or was it just ignored by government?

**Mr Reid:** It was ignored. The health minister came out and said that the ACT

legislation only required them to look at particulate matter PM10 and above and, therefore, anything below PM10 was not considered. Therefore, all that information that was supplied was ignored. The health minister subsequently confirmed that as well.

**MS BURCH:** What do you mean? How has she confirmed that—that she has ignored PM2.5?

**Mr Reid:** The letter that we got back said that they considered the application; the health issues were considered as per current ACT legislation.

**Mr Holmes:** I have a quote here from Katy Gallagher dated 21 April 2008: “I am advised there is insufficient scientific evidence to suggest a threshold below which no adverse health effects may occur. Consequently, the ACT government does not declare any level as safe or otherwise in relation to PM2.5.”

**MR SMYTH:** What is the particular problem with PM2.5?

**Mr Reid:** PM2.5 is a very fine particulate matter. According to the ACT and New South Wales asthma foundations, these particulate matters are so fine that they can bypass the natural body filters that are built into the human body. They can bypass into the lungs, to be absorbed into the bloodstream. They can cause deep tissue lung damage and subsequently can also be absorbed into the bloodstream and cause blood clotting and serious health issues through cardiovascular problems.

**MS BURCH:** My understanding is that the information around the PM2.5 was not ignored but taken through the EIS and the HIA to inform the DA process for the new site.

**Mr Reid:** When the call-in powers were effected, the merit track, all of that information was subsequently deemed not required for the approval, so none of it was subsequently considered.

**Mr Holmes:** Yes, it fell between the cracks because of the merit track.

**Mrs Penn-Turrall:** We wrote to the department of health and they wrote back and said, “We’ve put our concerns to the EIS.” When we wrote back and said, “The health minister has said it is in the EIS but the EIS is not going ahead,” we were told it was going to be considered. One side was expecting the other side to do something and nobody did anything.

**MS BURCH:** That HIA was rolled into the EIS which, for any development, will be—

**Mr Holmes:** It was interesting listening to the evidence given by ACTPLA and previously by Katy Gallagher. There was discrepancy as to whether the HIA was rolled into the EIS and, in fact, I think it was Ben Ponton of ACTPLA who confirmed that it was not.

**Mrs Penn-Turrall:** It was not.

**MS BURCH:** It was probably rolled in. The information from that would have been considered within the EIS is my understanding.

**Mrs Penn-Turrall:** It may have done, but when the approval went through for this project it was not used. The EIS was not considered. It was exactly as we said. ACTPLA approved it because they could see no reason why the reports filed by the proponents in support of this DA could not be considered as acceptable. The EIS was not put into a merit track. It was passed on merit track. The legislation allowed that to be passed without consideration of an EIS. In fact, it was passed through before the EIS was finalised.

**Mr Holmes:** If the EIS was linked to the original DA, it was allowed to lapse. That was the one filed by ACTPLA. This consequent DA that was approved on the merit track was the one filed by Technical Real Estate—two different legal bodies—and the reports, I believe, belonged to ActewAGL, who commissioned them in the first instance. It is a bit like a neighbour saying, “I couldn’t build on my block of land so I handed them over to the other person and they can apply and get it through my documentation.”

**Mrs Penn-Turrall:** We also dispute the independence of the EIS when it was written by GHD, who were the original authors of the HIP study which was used to support the development on that site in the first place.

**MS BURCH:** You question their independence? Have you got any information to say they are compromised?

**Mrs Penn-Turrall:** Exactly for that reason—they were GHD. When we looked at the EIS, when they had consultation and they had meetings with people, we were not invited to any of those consultations. For example, they gave an economic study which GHD approved with less than, I think, 12 hours of considering the study that they had. They were going and approving that economic study. Even with the best will in the world, you need time to consider things. We have again put that into our submission, our response to the EIS.

**Mr Holmes:** If I may finally add, with the Hume industrial planning study recommending industrialisation up the natural corridor, the wildlife corridor, alongside Mugga Lane, that will be coming out obviously for consultation again towards the end of this year, ACTPLA have flagged, and that will be under the eastern broadacre study. We expect to be in a similar situation where the industrial expansion threatens the rural buffer between the existing industrial at Hume, residential suburbs, the wildlife corridor.

**THE CHAIR:** We have to draw this hearing to a close, unfortunately, from a time point of view. Thank you very much to our three witnesses and all members of the public for attending. I would like to confirm that you will be happy for us to treat these notes as a submission to the inquiry.

**Mrs Penn-Turrall:** Yes.

**Mr Holmes:** Yes, certainly.

**THE CHAIR:** We will treat it as such and consider whether or not to authorise it. We will consider it at our next available private meeting. A proof *Hansard* will be forwarded to witnesses to make any corrections of factual errors. I formally declare this public hearing closed.

**The committee adjourned at 1.44 pm.**