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

TUESDAY, 4 AUGUST 2009

Secretary to the committee:
Ms A Cullen (Ph: 6205 0142)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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 3.02 pm.

STANHOPE, MR JON, Chief Minister, Minister for Transport, Minister for Territory and Municipal Services, Minister for Business and Economic Development, Minister for Indigenous Affairs and Minister for the Arts and Heritage
DAWES, MR DAVID, Deputy Chief Executive, Business and Projects Division, Chief Minister's Department
TOMLINS, MR GEORGE, Executive Director, Strategic Project Facilitation, Chief Minister's Department

THE CHAIR: I formally declare open this public hearing of the Standing Committee on Public Accounts inquiring into Auditor-General's report No 7 of 2008. The terms of reference for the inquiry are the information contained in the Auditor-General's report, but the committee's inquiry is going to focus specifically on the administrative processes used in the consideration and facilitation of strategic projects.

On behalf of the committee, I welcome the Chief Minister, the officials from the department, my colleagues and members of the public. It is particularly pleasing to see some members of the public here. I would be fairly confident that all the people here before the committee have already seen the privileges card and understand its imputations. If I am wrong, please correct me. Chief Minister, do you have an opening statement to make?

Mr Stanhope: No, thank you, Madam Chair—other than, of course, to thank the committee for the invitation to attend today. I and my department colleagues are happy to be of what assistance we can. We will, of course, answer all questions to the extent that we are able.

THE CHAIR: Thank you, Chief Minister. I might just start off by quoting something in the government's submission:

> It is the view of Government agencies that pre-DA consultation on a proponent-driven development proposal is not, nor should be, the responsibility of ACTPLA (as distinct from ACTPLA's statutory requirement to notify and receive submissions on the DA once it is lodged). Were there to be a generalised requirement for community consultation to take place *before* a DA (or Environmental Impact Statement) was lodged, the following issues may arise:

Could you elaborate some more on the issues that you think might arise if there was more pre-DA consultation?

Mr Stanhope: Thank you, Madam Chair. I will provide my perspective in relation to that particular issue and invite my colleagues to expand on what I say. I have to say, Madam Chair, in relation to the Auditor-General's report, that some of the community discussion and concern around the process and the administrative processes relating to the proposed data centre was on this issue of pre-consultation. I think it would be accepted that it has been a very lively debate, a very lively conversation, and I think it has been a useful one for the government and the community to engage in.

But it has not been the norm in the ACT—I think through successive governments—in relation to significant projects by private sector proponents for the government,

particularly through ACTPLA, to engage in a process of consultation prior to the lodging of a formal application under our planning legislation for approval of a particular project. That has been the accepted procedure, as far as I can recall—there may be some notable exceptions, but I cannot think of them off the top of my head—in all my time in this place, and I believe prior to that, and that is through successive governments since self-government.

In relation to the scenario we face, a private sector proponent—in this particular case a proponent with major national and international interests and experience in relation to data centres and other construction—approaches the ACT government and its agencies in relation to an interest it has in a major investment in the territory in a data centre. The government's role, or the role that the government adopted in this particular instance—and the role which government would traditionally adopt in the first instance—is to be of assistance and to say, "Yes, this is an environment where we are interested in business. We're interested in supporting business; we're interested in supporting the expansion of the economy; we're interested and supportive of you seeking to identify opportunities that you believe exist here in the ACT."

We are unique—we are unique as a government around Australia—in that a significant proportion of the land in the territory is vested in the ACT government—as custodians for the people, of course. So it is not unusual for private sector interests to come to the government because it is the government here in the territory that has ownership of much of the available land. It is in that context that the government involved itself, essentially—in the context of the identification of possible sites—always with a view in mind that before any development of any sort can proceed, whether it is in relation to a data centre or anything else, it needs to meet the statutory planning requirements of the territory. That was always the position and the case here.

The statutory planning process, of course, is oversighted in the ACT by an independent statutory planning authority with independent statutory powers at arm's length from government. It makes its decisions independently—and independent, most particularly, of governments and ministers. We adopted that particular process here for very good reason—because it is transparent, because it leads to objective results and outcomes and because, quite frankly and bluntly, it is a system intended, and perhaps best suited, to ensure that there is not untoward or corrupt behaviour in relation to development and the sale of land.

I do not believe it is appropriate—and I have indicated this; it is a recommendation of the auditor or an approach that the auditor makes in relation to pre-development application consultation that we have some difficulty grasping in terms of all of its implications—that the government, through an independent planner, consults with the community on a proposal which may or may not go ahead and essentially becomes an advocate for a private sector proponent in relation to a development which it will then subsequently make decisions on in an independent statutory process.

How do you do that? How do you consult with the community on behalf a private sector proponent about a project prior to the formal lodgement of an application for approval for that particular project to go ahead—an approval which you, as an independent statutory planning authority, will make? On what basis does the government engage in that consultation on behalf of that proponent? It seems to me

that it is a conundrum and it is an issue. We have sought to respond as a government over this last year in relation to community concerns about consultation. We have done that, I think, quite significantly. I think everybody would acknowledge that.

We have changed our level of engagement. We advertise, for instance, every week in the *Canberra Times*. Significantly, we advertise and are consulting far more rigorously and significantly than we perhaps have in the past. I think that has produced some very positive outcomes. I have to say it is probably a very positive result of the Auditor-General's report and of the community debate and interest in this particular issue that the government has changed its consultation methodology. Having said that, we have not adopted the position of consulting on behalf of private sector proponents prior to any decision that they take to lodge a formal application seeking formal approval, which contains, of course, a statutory consultation requirement.

MR SMYTH: Can we clarify then right from the start how the proposal came to the government? Did the proponent approach the government or did the proponent approach Actew and Actew and the proponent came to the government?

Mr Stanhope: I would want to check my records in relation to this, but my memory—and it is a reasonably clear memory—is that the ultimate proponent, Technical Real Estate, in the first instance, developed a relationship with ActewAGL. I think it is fair to say that the initial relationship was a relationship developed between Technical Real Estate and ActewAGL. It was that relationship, or that consortium—I do not know whether "consortium" overstates the nature of that relationship—or that group that then approached the government initially in terms of a process for identifying a site for a development which they were giving consideration to. That is your understanding?

Mr Dawes: That is my understanding, Chief Minister.

MR SMYTH: So TRE approached Actew to provide the power component—the power generation component?

Mr Stanhope: My understanding, Mr Smyth, is that Technical Real Estate, in the context of their business plan—and their business plan is very much attuned to the need for data centres, enormous consumers of energy, to be more energy efficient and more greenhouse gas friendly. As you know, the Technical Real Estate data centre model proposed to replace black energy, coal-fired standard energy, with gas-produced energy to a significant degree. It was in that context that they looked for a partner that would have an interest in providing other than coal-driven power. Of course, ActewAGL, in this jurisdiction is the electricity utility and is also, through AGL, the second arm of that company, Australia's major provider of gas.

I can only imagine—and I am supposing here to some extent—that of course Technical Real Estate were interested in a partner that would have an interest in the power generation model that they were proposing to pursue and that would have been most certainly the AGL arm of ActewAGL.

MR SMYTH: And then to follow the process through the partners—

Mr Stanhope: But that is a question that you would probably need to put them. I am supposing—

MR SMYTH: No, I am just interested in your perspective. But then the partners—let's call them the partners—approached you as Chief Minister, or they approached Mr Dawes' major projects? How did the process commence?

Mr Stanhope: I would probably have to go back to correspondence in relation to where the first contact with the ACT government, whether it be me as Chief Minister or the Chief minister's department or indeed other agencies or arms of government, but certainly at some stage, Mr Smyth—I recall quite clearly being briefed on the proposal. I would have to check at what stage in the continuum that was, whether it was before or after an approach had been made to the Chief minister's department or whether an approach had been made to ACTPLA, for instance, for information. I am not sure. But certainly I was privy to briefings from, most specifically, ActewAGL. I would probably have to look at my records to see who was present at that meeting.

MR SMYTH: Could Mr Dawes or Mr Tomlins tell us if they have a different recollection or the same recollection?

Mr Dawes: I would have to double-check my notes, Mr Smyth. If we go back, Chief Minister, ActewAGL were looking some years ago at providing a gas-fired power station. Obviously the economics did not work. There was a discussion with TRE—I do not know how that particular relationship was formed—and the idea of a data centre was then mooted. Obviously then there was a natural linkage there to see if, for example, the numbers worked for both entities for a data centre and a gas-fired power station. Discussions ensued from there.

They then approached the government. I would have to reflect, but I remember that it was then referred to the department to explore to see whether we could accommodate land et cetera. We provided briefings to the Chief Minister. Obviously time was of the essence there—because at this point in time we were talking about $1 billion worth of investment for that first facility—to give some level of comfort for them to go out and seek financial backers and so on for the proposal. We provided them a letter of comfort saying, "Yes, at this point in time we will look at working with you to identify a block of land and try and turn that into reality."

But there were a whole lot of other things that needed to be done. They had to develop a business case and that had to be peer reviewed. There were a whole lot of other things that were stipulated that they were required to do. Obviously they had to go through any statutory planning processes and so on that were required from the territory—environmental impact assessments et cetera. We would have to go back and check all that, but that was it initially and we went from there.

MR SMYTH: Mr Tomlins, do you have any more to add?

Mr Tomlins: No, I cannot add to that, Mr Smyth. The prime involvement of Mr Dawes and I really did not start until about July. There were others involved. I have no different recollections.

MR SMYTH: Chief Minister, perhaps that can be taken on notice and you can clarify when the initial contacts were made?

Mr Stanhope: Yes, sure.

MR SMYTH: Thank you; that is fine.

Mr Stanhope: I am happy to do that, Mr Smyth, but I think it may be the case that the first of the agencies that ActewAGL may have approached on behalf of that group was the LDA. The LDA, I think, was approached before the Chief Minister's Department was approached.

MR SMYTH: Just in terms of getting to the start of the process, if you could clarify that, that would be good.

Mr Stanhope: Yes.

THE CHAIR: Can I just go back to the first question I asked? The situation, as I understand it, is that if ACTPLA receives a development application which is consistent with the territory plan, basically ACTPLA has no choice but to approve it.

Mr Stanhope: They would consult. There is statutory requirement to consult.

THE CHAIR: There is a statutory consultation period, but basically ACTPLA has got to approve it. That is how the territory plan is. I have shortened it, but that is the end result of it. Given that, why would there not be more consultation before we have reached the stage where the DA is going to be approved because it is consistent with the territory plan? That was one of the big issues for the community in this instance. Given the fact that ACTPLA has little room to move once a conforming DA has been put in, I am really interested in why you think there are issues with more consultation beforehand.

Mr Stanhope: I think there are issues around certainty, in the first instance, for potential investors within the territory. These are significant decisions. If you speak to any major investor or any major company wishing to invest in the territory and you ask them what is it they look for—is it the planning regime?—they say, "We look for certainty."

If I might respond rhetorically, and I say this by way of expansion of my answer, Ms Le Couteur: what if, in relation to this land, the government had not actually entered into negotiations around the potential for its sale; it had simply sold the land? The government could just have sold this land. We could have put a "for sale" notice on this block of land. The land could then have been transferred to the LDA, the LDA could have advertised in the *Canberra Times* and nationally prime—

THE CHAIR: Prime industrial land.

Mr Stanhope: Prime industrial land.

THE CHAIR: Yes.

Mr Stanhope: Technical Real Estate come to town and say, "Jeez, there's a nice bit of prime industrial land. We might buy that and keep it in the back pocket. We might want to build a data centre one day." The land is sold. There is certainty. The buyer knows in the context of the territory plan what permissible uses there are for that block of land which they have purchased at auction against the rest of the world. Through their legal advisers and their agents they say, "This land is capable of development as a data centre. We'll bung a development application into ACTPLA to build a data centre on this land."

THE CHAIR: Yes.

Mr Stanhope: And ACTPLA would have considered that development application. It would have had in mind the territory plan. It would have said, "Under the territory plan, what uses are permissible on this block of land which has been bought at auction and for which a development application has been lodged?" That is the process that has operated since the first day of self-government. That is the process that we believe is potentially acceptable for any of them.

You could then have another conversation and another discussion: "Well, the territory plan is wrong." Ms Le Couteur, when you work back in relation to this debate about this site and the data centre, at its heart the issue is that the territory plan description or designation for this land, in the view of I think the Liberal Party and others, was wrong. The government says, "Well, we have no reason to believe it was wrong." If you work it out, the issue at the heart of this debate has been: were the permissible uses for this land, the uses permitted under the territory plan, appropriate? There is a view now being propounded by you and by the Liberal Party though your actions in relation to this issue in which you are essentially saying, "Our position really is that the territory plan is wrong."

THE CHAIR: Well, moving away—

Mr Stanhope: That is how I interpret your position. That is not the government's position.

MR SMYTH: We are here to look at what the Auditor-General said, and in paragraphs 3.5 to 3.19—

Mr Stanhope: Yes, and we disagree with what the Auditor-General—

MR SMYTH: The Auditor-General says there is a need for clarity on permissible uses of broad acre land. She says that no advice seen was definitive on whether or not this was a permissible use. So the doubt still exists.

Mr Stanhope: At the end of the day then, Mr Smyth, ACTPLA would have made a decision on whether or not broad acre permitted that use. It would have decided either yes or no. We will never know now what ACTPLA would have decided. They were not given a chance because the statutory process was interfered with. But say they had decided that a data centre was a permissible use, one imagines there would have been

an appeal. The decision of ACTPLA would have been tested judicially, and I insist that that is the appropriate process.

MR SMYTH: But it is not the process you followed. You could have sold the block—

Mr Stanhope: We did not follow the process.

MR SMYTH: but you chose not to.

Mr Stanhope: We chose not to—no, we did not. We were seeking to facilitate, in good faith, a request from a major consortium proposing to invest hundreds of millions of dollars into the territory to do just that. I raise this hypothetically, but if one follows through and looks reasonably and objectively at the process—and I would be interested in what the Auditor-General would say had the land been sold and had the development application been lodged by Technical Real Estate on a block of land which they owned. What would the Auditor-General have said then? "The government should have consulted about whether or not to sell the land"? That is an absurdity.

THE CHAIR: I think there is a whole question about community consultation, given that the territory plan—

Mr Stanhope: There is.

THE CHAIR: governs everything and the decisions are made on that when at times people do not really understand what they are letting themselves in for. I will be continuing this conversation with the Minister for Planning next week, but to my mind it is one of the very interesting issues because—

Mr Stanhope: It is. I do not disagree.

THE CHAIR: the DA process is very limited.

Mr Stanhope: In the context of the discussion we have had it is very interesting, but if we are to be honest with ourselves and work backwards, you come to a conclusion where the consensus—

THE CHAIR: I think your analysis has a degree of correctness to it.

Mr Stanhope: within the Assembly—that is, the Liberal-Green consensus—was that the territory plan description on this land was wrong. I think you are suggesting, Ms Le Couteur, that at the time the territory plan description or descriptor of this land as broad acre was made perhaps it should not have been made. But it was consulted on at the time. The territory plan was consulted on at the time that it actually described this land as broad acre. I do not doubt for a minute that you are right, but nobody would have engaged and they thought, "Broad acre. Jeez, I hope nobody ever builds a gas-powered data centre there."

THE CHAIR: Yes. They never would have—

Mr Stanhope: That is a very genuine issue and we accept that.

THE CHAIR: Yes. As you said, that is probably at the heart of this little issue here.

Mr Stanhope: Yes.

THE CHAIR: Mr Tomlins?

Mr Tomlins: If I could just add a couple of points in relation to your question about early consultation. The process we follow is probably akin to that that is followed by the commonwealth government on major projects and the Western Australian government, the South Australian government and the Queensland government. It is do with facilitating major projects. It a process of gradual development and evolution and it is always that the projects are subject to the statutory process, and the facilitation process is different from that.

If we went out early and consulted on a project while it was in its development, there are two difficulties. One is that the government is sponsoring, other than in principle—which is probably appropriate—a project that may evolve into something that, when it gets to its fully fleshed out stage and is assessed, it may not agree with. That can lead to a number of problems: (a) confusion in the community and (b) the possibility of being sued by the proponent because we supported a project and then refused it. So there are those sorts of difficulties.

The other issue is that it is appropriate to get a project fully developed before it is properly assessed. At the early stages that is the difficulty—if the government goes out and consults on X and the actual product turns out to be Y. What happens is that we generally ask the proponent to go out and answer all of the questions of the community, which may relate to planning issues and a whole host of issues that are outside the relevant planning. That is the other reason to separate the planning consultation from other consultation and why the government needs to facilitate but to keep, to some extent, at arm's length from total support at an early stage.

THE CHAIR: One of the things the government talked about in its response was the criteria for what are strategic projects. The Auditor-General talked a lot about what they were and were not. You gave some criteria. Are these formal criteria now or are they guidelines or policy—or are they still being developed?

Mr Stanhope: Ms Le Couteur, the point that the Auditor-General made in relation to the definition of strategic projects was well made and the government accepts it. We were in the process at the time of developing or giving consideration to this issue, but I believe it has now been finalised and is formal policy. Mr Dawes can give the detail of that.

Mr Dawes: Without harping back on it, we have to remember that this was a new unit that was being established as well as this particular project was being undertaken. There are a number of things on which we have agreed with the Auditor-General. The process that we now follow is to look at the implementation of specific government-funded activities, such as we had in managing the arboretum. We also assess the

particular application to see whether we need to engage with a number of agencies across government, which may involve cleaning or even the National Capital Authority—so we might facilitate that.

We assess the level of involvement. Some of the projects that come through the door may be just a simple connection of that particular business—with business registration, for example. It is as simple as that; we put them in touch. Some of them are more complicated and we have to work across the whole of government. We facilitate a meeting with all the relevant agencies involved and walk people through the process.

I think one of the most transportable things today is capital investment. Obviously when you look at all of the states and territories vying for major investment in their jurisdictions it is important that we try and ensure that when people come to the ACT we can convince them that the ACT is a good place for investment. It is a matter of working through all of those issues.

You can look at major developments and land supply here as well, when you have major investment coming from outside, out-of-towners. It is all right if you have lived and breathed the ACT for a long time; you understand some of the processes. Look at a major national corporate investor, Delfin Lend Lease. They have purchased a major bit of land here in the territory. We were able to get all of the players there so that they understood all of the planning processes that they needed to do.

They needed to understand some of the heritage and environmental issues and these were explained to them. There is nothing worse—and we have seen this in the past—than having a particular proponent go through the whole exercise, having got their approvals, and then finding they have missed an important thing such as heritage. That has happened in the ACT. All of a sudden we brought heritage into the piece very late and the particular project was then held up for several months. In one case a civil contract had been let. So we try and minimise that happening.

We make sure that the particular proponent is fully briefed on what is required in the ACT. We do not provide any statutory approvals. They still have to go through those particular approvals. We ensure that they meet the right people so that they can progress the applications. It just means it is far smoother for them and that when they get their approvals they know that they can go from day one. I think that is very important. It provides certainty for them. We have been able to assist a number to ensure that that occurs. That is what it is about.

One thing that came through was the community consultation. It follows on from what Mr Tomlins said: we have to be very careful that we are not seen to be absolutely supporting a particular proposal until they go through the statutory processes. One of the things that we are building into our process is the key component of community engagement. We are ensuring that they have a community engagement plan. We encourage them to go out and work with the community far earlier than they have in the past. There are a number of examples where that has worked quite well, I believe, over the course of the last few months.

MR SMYTH: In paragraphs 2.31 to 2.36 the auditor looks at the due diligence that

was done in support of the proposal and found that the government did not have sufficient information on the proposal, such as the make-up of the consortia, and had no independent assessment on the merits of the project and, indeed, Treasury said that some of the documents they were given were unreliable. Why, Chief Minister, did the government accept what was being told to it when it was clearly lacking in detail and there was a real lack of due diligence?

Mr Stanhope: I will have to go back and read both the Auditor-General's report and our response, Mr Smyth, to perhaps be of more assistance. We have believed all along, and still believe and accept, that the auditor raised some concerns about the level of our comfort with the capacity of the proponent. I think that the relationship between the government and the proponent in relation to this needs to be understood. We were certainly interested—as we are in anybody that is seeking assistance from the government. When anybody is seeking a direct grant of land, we have quite formal proposals in relation to capacity to pay and their financial standing.

In the context of this particular proposal, from memory—I will ask Mr Dawes and Mr Tomlins to expand on this—we entered into, I understand, what we call a deed of agreement with proponents in relation to the steps in the process. We did seek advice, I think, from the ACT Government Solicitor in relation to that. We believed that the territory was protected at every step of the way. In fact, I think at the end of the day, the contents of the deed or the arrangements that were formally entered into protected the territory absolutely. I might just quickly look at my notes here, but it might be that Mr Dawes and Mr Tomlins can expand on exactly the depth of the steps that we did go to to protect the commonwealth. I remain completely satisfied that the public interest was absolutely protected by the arrangements that we entered into.

Mr Dawes: If I can just expand on one of the points that the Chief Minister made just a few minutes ago. We opted not to sell the block of land by direct sale because at that point in time when we were dealing with the particular proponents we put a requirement into the option deed and stressed—and I know the Auditor-General has disagreed with this particular point—that they needed to have a business plan. That business plan had to be signed off by their board.

We have to remember that at this point in time the idea had been supported by their board, but no formal business plan had been signed off by that board. We insisted that as far as the option for us to proceed to a direct sale was concerned there were a number of things that they had to do. One of them was to have a business plan signed off by the board. Secondly, it had to be peer reviewed. We would have that peer reviewed by an independent or Treasury to ensure that they had the financial capacity and the ability to conclude the transaction. The other thing that they had to do was comply with all the statutory requirements in the ACT.

So we felt that we were protected. Rather than actually entering into a direct sale of a large parcel of land, there was an option deed for 12 months for them to get their house in order—for example, to provide the business plan, to flesh out and further develop their proposal. It was presented as a deed of option rather than a direct sale with an unconditional exchange where we were locked in then to a sale of land that we would not technically have had the control over that we felt we needed to have at that point in time. By the option we felt that that actually satisfied the territory and

further protected the territory because they had to achieve these other milestones before the transaction could go any further.

Mr Tomlins: The only issue that I would add to that is that often when we are doing standardised land releases, such as residential housing, the first thing we do is sell the land. The people then get their designs done and get their house approved. Generally, that is a process that works well because people have invested money up-front and they want to move quickly. We have got clear rules for ensuring that the development that occurs is appropriate et cetera. In this instance, because there were so many complications and so many hoops to jump through, we essentially made the sale of the land the last piece of the jigsaw. In other words, we essentially required that all of the other conditions necessary for this project to go ahead would be completed before they were able to get their hands on the land. I think that is a very safe approach. It could be argued that it is an approach that sometimes slows things down, but it is a more risk-averse approach for the territory to take.

MR SMYTH: The auditor mentions that Treasury had suggested that a cost-benefit analysis be done and included in the brief to the Chief Minister. Was that cost-benefit ever done?

Mr Tomlins: No, I do not think a cost-benefit has been done. I guess the business plan would cover those issues.

Mr Dawes: Yes, they had to further develop that. At that point in time they had not developed that. One of the reasons we put that as a condition of the dead of option was that they had to provide that so that we could have it peer reviewed.

MR SMYTH: But it has never been provided.

THE CHAIR: But that would have been a cost-benefit. The business plan, presumably, would have been looking at it from the point of view of business. What about looking at it from the point of view of the territory?

Mr Tomlins: It is fairly easy to extrapolate the benefit for the territory from the business plan.

MR SMYTH: So therefore it would have been easier to do a cost-benefit analysis. It just begs the question: why was it not done?

Mr Tomlins: I guess you need the information out of the business plan. You need to know what the business is before you can do the sums. It is the chicken and egg issue. We needed to get them to tell us what they were doing so that we would know what all the benefits were and all the costs would be.

THE CHAIR: So no cost-benefit analysis was ever done?

Mr Tomlins: I am not aware that a cost-benefit process in that form was done. As to the issue of a business case, I think Treasury—when Actew and ActewAGL were involved—were raising that issue. The ownership framework has changed so I do not know whether in those terms that is necessary. The cost-benefit analysis in terms of

the sale of land is, I suppose, done in as much as we get valuation for the land, and valuation well and truly covers the cost of servicing. So from the territory's point of view, a cost-benefit is done once we get valuation for the land.

MR SMYTH: But this leads then to paragraph 3.44—

Mr Tomlins: If the territory is not involved—I am sorry; in any other way the cost-benefit of valuation will certainly pay for the services.

MR SMYTH: But it was your Treasury's suggestion that you do it to determine whether or not the project should go ahead. Indeed, in paragraph 2.35 it states:

> CMD further advised that Treasury supported the briefing provided to the Chief Minister in July …

Treasury asked for a cross-benefit analysis to be done. It was not done, but then we are told that Treasury was supportive of what was done. Where is the logic in that?

Mr Tomlins: I think the situation was changing. We do not do a cross-benefit analysis for every block of land that we release, but we certainly make sure that in financial terms the return that we are getting on the land exceeds the cost of servicing the land.

THE CHAIR: But surely, in a situation like this, the cost of servicing was probably the least cost to the ACT as a whole. There has been considerable discussion about the health impacts and what they would or would not have been. Surely those sorts of things were always going to be of greater magnitude than the cost of servicing the land. I cannot see how—

Mr Stanhope: Yes, they were part of the statutory process. It is, once again—

THE CHAIR: But I cannot see how the cost-benefit analysis you are suggesting can be based just on the proponent's figures. The proponent's business plan did not deal with the cost of any health impacts.

Mr Stanhope: No, but their development application would have. It was a vital consideration in relation to the decision-making that ACTPLA engaged in its consideration of the development application. This is the same issue, Ms Le Couteur. A proponent actually does all of the studies before he lodges his development application. This is the point that the government goes to in relation to the Auditor-General's recommendation and this position. You do all of your studies before you get to first base, then when you get to first base you do them all again and you subject them then to a statutory approval process.

It was ACTPLA, remember, that requested a health impact assessment as part of the development application. In the context of a cost-benefit, the government comes to the table as the provider of land. As Mr Dawes and Tomlins have said, the government has to be satisfied, in relation to that, whether or not the land is being sold at an appropriate price. We have processes in place in relation to that, which include that we get three valuations and we demand the highest.

MR SMYTH: Yes, but you did not test it against other uses for the block of land. The auditor goes on in paragraphs 3.44 to 3.47 to say that there was no specific purpose to assess and rank sites to ensure benefits for the territory. So there is no cost-benefit analysis to work out what benefits the territory was getting.

Mr Stanhope: Which paragraph is this?

MR SMYTH: Paragraphs 3.44 to 3.47. The Auditor-General summarised it as saying there was no specific process to assess and rank sites to ensure benefits for the territory.

Mr Stanhope: No, that is a different issue. Let us stay in context, Mr Smyth. The context there is that you are talking about—

MR SMYTH: No, they are inextricably linked.

Mr Stanhope: No, Mr Smyth. After your last question I went back to look at the paragraph you quoted and the paragraph you quoted does not say anything like you said.

MR SMYTH: I could read it out. I read it out for you, Chief Minister. If I am wrong, point out where I am wrong.

Mr Stanhope: You are wrong in actually suggesting that the statement—and it is not a recommendation; it is a comment—

MR SMYTH: I am reading from the notes supplied by the auditor.

Mr Stanhope: It is a comment in relation to the formal policies and procedures relating to the assessment of strategic projects by the strategic project facilitation group, Mr Smyth. That is what paragraph 2.44 goes to. It goes to the basis on which Mr Dawes' area operates—

MR SMYTH: No, I did not quote paragraph 2.44.

Mr Stanhope: "Weaknesses in project facilitation processes".

MR SMYTH: Sorry, Chief Minister—

Mr Stanhope: We have already responded. No, Mr Smyth.

MR SMYTH: I did not quote paragraph 2.44.

Mr Stanhope: Yes, you did. You just did.

MR SMYTH: No. I have quoted paragraphs 2.31 to 2.36 and 3.44 to 3.47.

Mr Stanhope: Mr Smyth, your last—

MR SMYTH: So you need to actually listen if you are going to misquote me.

Mr Stanhope: No. I will have to do this now, Madam Chair: I will have to ask for the *Hansard* in relation to this particular conversation to be checked by the committee—

MR SMYTH: Yes, you can ask for the *Hansard*.

Mr Stanhope: and for the fact that Mr Smyth has just misled the committee to be noted.

THE CHAIR: As soon as there is a *Hansard*—

MR SMYTH: I am reading from the notes here, Chief Minister.

THE CHAIR: We will send you a copy of the *Hansard*, Mr Stanhope. I did not write down which numbers they were, so I cannot help you I am afraid.

Mr Stanhope: Well, I can tell you. Mr Smyth prefaced his last question with a reference to paragraph 2.44—

MR SMYTH: No, 3.44 to 3.47—about site selection. Paragraph 2.44 does not relate to that, Chief Minister.

THE CHAIR: I suspect he is right because I can see it written down there, but I did not write it—

MR SMYTH: I hate to disappoint you, Chief Minister.

Mr Stanhope: That is not true.

THE CHAIR: I did not write it down myself so I cannot help you on this one iota. Perhaps we can go to, hopefully, a less contentious subject. Mr Dawes mentioned a little while ago that you were doing more work in terms of community engagement—

Mr Stanhope: I have just checked 3.44, Mr Smyth. You referred to 2.44.

MR SMYTH: No, I am reading from the auditor's notes as provided.

THE CHAIR: He has got that number written down.

Mr Stanhope: He just said 2.44.

THE CHAIR: I think we will have to leave this here and check *Hansard*, because—

Mr Stanhope: I am happy to leave it. I will defer to the *Hansard*.

THE CHAIR: I certainly did not write the numbers down. Let us move to community engagement. You were saying that more work was being done on community engagement, which is great—and I am aware of the Bang the Table consultation—but, Chief Minister, could you tell us what is the status of your consultation on

community engagement? You are updating the community engagement manual, I understand?

Mr Stanhope: I am sorry, Madam Chair, could you just repeat that question?

THE CHAIR: One of the things that came out of this was a commitment to more community engagement, which Mr Dawes touched upon in his answer earlier. I was wondering if you could tell us where we are up to in terms of improving the community engagement processes, which I understand the government is working on as part of the Bang the Table website. Where is that up to, along with your other work on updating the manuals?

Mr Stanhope: As you would be aware, Ms Le Couteur—I am sure all members are aware, and indeed the community—since this particular issue generated the level of conversation and concern that it did, the government has assessed and reassessed vigorously and genuinely consultation and engagement. We have put in place a whole raft of new approaches, and certainly an enhanced commitment to community consultation—to the point indeed where I heard Mr Mark Parton, the celebrated candidate at the last election and now host of 2CC, reflecting a month or two ago: "For goodness sake, why doesn't the government just get on with the job and stop all this damned community consultation?" "They're paid to make decisions," I think he went on to say. So it is interesting, isn't it, how the worm turns? When an ex-candidate criticised the government so trenchantly on issues of consultation in another life but now criticises the government for overdoing it, it may be a sign that we are just about getting the balance right. We have put enormous effort and thought into community consultation and engagement. Mr Dawes may be able to give an update on the formal processes that are in place.

Mr Dawes: It is not being run in my particular area, but I have a limited knowledge of where it is up to and I can bring the committee up to date. The ACT government are enhancing and improving the community engagement manual, which we are all aware of. We have had a consultant on board and it has been titled: the preferred methods of engagement project. We have looked at different methodologies, including surveys. We have had focus groups and observations on line techniques. We have been getting all the feedback from the particular community. We are getting to the point whereby we should have a draft report within the next month, which will then be taken to government for consideration. I suppose we are getting to the pointy end, where we are in the process of putting all that together into a final report to go forward to government for the government's deliberations. We hope to have that over to government within the month of September.

THE CHAIR: This may be something that you cannot answer because it is part of the report, but once you have got your new improved framework, how are you going to monitor that agencies actually comply with it?

Mr Dawes: That is part and parcel of the recommendations that will go forward. I think there has been a mandate, in particular, in this term of government. There has been a clear recognition that we have to engage and consult more with the community. That is being done. There are a number of very good examples—for example, as the Chief Minister has already pointed out, the notice board that appears

in the paper. There has been some good community consultation about the solar farm. That is another one that has occurred.

When you look at the potential Muslin community centre at Gungahlin, there has been some very good community consultation there. That will be utilised as a community facility for the Gungahlin residents as well as their house of worship on the required day. There are a couple of issues that we are working through there that have been identified by the community, but it has all been very up-front with the community. We are working through those particular issues on that site. So there are a number of examples.

With the direct sales processes, we have actually gone back and reviewed how we do direct sales here in the territory. As part and parcel of any direct sale that might come through to that committee—it is a whole-of-government committee that looks at the particular direct sale to ensure that it complies with the relevant instruments across the territory—there is community consultation. That is considered as part and parcel of the particular application, to ensure that there will be that community engagement up-front. That has just been enshrined into common work practices today.

Mr Tomlins: We tend to work with the agencies and the various proponents on developing their plans et cetera.

MR SMYTH: Chief Minister, paragraphs 3.48 to 3.69 and 3.78 deal with the offer of the option over the land. The analysis of the auditor could be summarised as that it was basically granted without the merits of the project being determined, without analysis of that merit. Why was this approach taken? Why was no analysis of the merits of the project undertaken?

Mr Stanhope: Which paragraph says that, Mr Smyth?

MR SMYTH: If you read 3.48 to 3.69 and paragraph 3.78. It looks at that whole—

Mr Stanhope: Which ones—3.48?

MR SMYTH: 3.48 to 3.69 and then paragraph 3.78.

Mr Stanhope: I need to read it. Paragraph 3.48 says:

> Most land sales by the Land Development Agency use the auction process, to achieve transparency and receive the best commercial return, generally expected in a competitive sale.

MR SMYTH: Yes.

Mr Stanhope: Paragraph 3.49:

> Direct land sales are a method by which the Government can sell land …

MR SMYTH: The whole section is about the land transfer process. That is what the heading at the top says.

Mr Stanhope: I am just looking for something that supports the statement, the allegation, contained in your—you have called it an analysis. I just need to go through it and find out what it is you are talking about. Between 3.48 and 3.69—

MR SMYTH: All I am asking you is: what analysis of the merits of the project warranted the offer of the option?

Mr Stanhope: I just need to see the basis on which you have made your opening statement that actually frames your question. All the way up to 3.69?

MR SMYTH: Yes, 3.48 to 3.69 and paragraph 3.78—

Mr Stanhope: 3.55 to 3.69 are essentially a discussion of the draft deed of option, which actually goes to the—

MR SMYTH: Which are all the subparagraphs under "Land transfer process", looking at the process—

Mr Stanhope: to the extreme.

MR SMYTH: You have done no analysis, but you decided to go ahead. Why did you go ahead without the analysis?

Mr Stanhope: Just point me to a paragraph that actually gives some substance to your underlying assertion, Mr Smyth.

MR SMYTH: The whole section does.

Mr Stanhope: No, it doesn't.

THE CHAIR: 3.69 is a specific question about the direct sale process, given that the—

Mr Stanhope: 3.69?

THE CHAIR: 3.69.

Mr Stanhope: 3.69.

THE CHAIR: Yes. It states:

> Following the removal of the peaking power station from the proposal, the public benefit of increased security of electricity supply no longer applies. Accordingly, the proposal may not warrant the same special consideration by the Government, which was based on the original proposal. After the proposal was revised to a smaller scale, neither CMD nor LDA re-assessed the merit of a direct land sale to the consortium.

Mr Stanhope: The merit of the direct land sale I do not think has changed at all. We have a company still proposing to spend—how many hundreds of millions of dollars

in the territory?

Mr Dawes: About 750.

Mr Stanhope: This company proposes during its existence in the territory to spend somewhere in the order of $700 million, Ms Le Couteur. I do not know what part of $700 million is not deemed by the Liberals or the Greens to be a benefit to the territory.

MR SMYTH: What part of "without analysis" do you not understand? We have got no business case.

Mr Stanhope: What part I do understand of that, Mr Smyth, is the essential position of the government—which is at some length at odds with the Auditor-General—that we do not believe in a double "bung up" approval process. The merits of the process and all of the issues around whether or not this particular proposal met the requirements of the territory plan and a development application, which should be approved independently by a statutory authority according to the law of the territory, was a process that follows the lodgement of a development application.

This notion of what analysis was done before the statutory planner, ACTPLA, undertook an analysis of whether or not the development application should succeed, goes to the heart of this particular discussion. It is a position that the government follows now and will continue to follow. As custodians of the land for the people of the ACT, we believe that it is our responsibility to ensure that if that land is sold through a direct sale process, a non-auction process, we are duty bound to ensure that we get the highest value—a value that is determined through three independent valuations, and we take the highest. It is non-negotiable, non-debatable—three valuations by independent valuers, and we take the highest. Of course, this goes to the whole continuum, the line at which point the government decided, "Oh well, this is the highest valuation for this block of land consistent with its territory plan potential utility."

That is the basis on which the valuation is undertaken. The valuer looks at the land. The valuer says, "This land is capable of supporting this level of development and this is the value of this land for that purpose." We get three separate valuers to go through that process. They look at the territory plan and they say, "Under this range of accepted uses of this piece of land, this is its highest value." We then take the highest of those three valuations and say, "This is the value which we as the government demand of this piece of land for this range of purposes." If the proponent then buys it and wants to change the use he has to change the territory plan, and we go through the whole process again and we change the notional value of the land and require them to pay that higher value through exactly the same process.

So when you say no analysis was done at the highest value, yes, it was. That is the process that has been used by every government, every minister for planning, since self-government. It is the process that has been used for the last 20 years and it is the process that will be used for the next 20 years—three independent valuers valuing it at the highest value consistent with its potential use, and we accept the highest value, not the middle value, not the lowest value: the highest value. To suggest no analysis was

done of the value is just absurd.

THE CHAIR: Mr Stanhope, I think we have all got that point.

Mr Stanhope: I am not sure that the auditor has.

MR SMYTH: I am not sure he has explained it.

THE CHAIR: I think we have all got the point of valuation. Can I ask you—

Mr Dawes: If can just add, Chief Minister, as well? If you are trying to link back to the Treasury comment, you have got to understand that the nature of the transaction has changed. One of the reasons why, I assume—

MR SMYTH: So therefore the analysis had changed and it was renewed?

Mr Stanhope: The value has not changed.

Mr Dawes: The value, in a sense, has not changed; the consortia have. At the end of the day, I think you will find—and I am speculating here so we would have to ask Treasury—that ActewAGL, and the ACT government is an owner of part of that, wanted to ensure there was a proper business case prepared by the consortia. I think I have explained to you that one of the advantages of the deed of option was to ensure that before we let a large parcel of land fall into a consortia there were some conditions put on them.

One was that they had to develop their business case so we could then do the financial analysis et cetera and ensure that the territory was protected. If we had actually sold them the block of land they would have had in their possession 21 hectares of land at that point in time and they could have ended up using it for whatever purpose they wanted to; we would not have had the control over it. That was the issue and that was the protection for the territory.

Because the application changed over time, obviously there were the requirements as ACTPLA put that out. The DA was lodged and then there was the removal of the peaking power plant and then all of a sudden ActewAGL—it was not in those terms—the nature of the transaction was changing. There was no real need for ActewAGL to really be involved in the transaction. So the nature of it is changed where now simply ActewAGL is a supplier of energy to that particular proponent.

TRE in their own right have now demonstrated the fact that they have the financial ability to complete that particular transaction. That is something that we do with every direct sale. They have to demonstrate their financial capacity. It was only recently that we knew what entity was proceeding. ActewAGL are no longer in it, so there would have been a whole lot expense until we knew exactly the nature of the transaction. Getting a proper financial analysis when you engage professionals can cost several hundred thousands of dollars. As I said, they changed over time. That financial analysis has now been done for them to proceed with their purchase.

THE CHAIR: Thank you. I am conscious of the fact that it is a few minutes past

four. I imagine that you gentlemen—

Mr Stanhope: We would be happy to take any other questions which the committee may have on notice.

THE CHAIR: I do have some more questions, as you can probably imagine. Mr Smyth may also have some. Thank you very much for volunteering to take them on notice, Chief Minister.

Mr Stanhope: We would be more than happy to do that, Madam Chair.

THE CHAIR: Thank you very much, and Mr Dawes and Mr Tomlins, for attending.

Mr Stanhope: I refer the *Hansard* to the committee for appropriate action.

THE CHAIR: I will have a read of it, yes. Thank you all.

The committee adjourned at 4.03 pm.