

Select Committee on the Planning Process in Newcastle and
the Broader Hunter Region

The planning process in Newcastle and the broader Hunter region

Final report

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Terms of reference

1. That a select committee be established to inquire into and report on aspects of the planning process in Newcastle and the broader Hunter Region.
2. The committee is to consider the role of the Department of Planning and Infrastructure, Newcastle City Council, UrbanGrowth NSW, Lake Macquarie Council, and the Hunter Development Corporation in the consideration and assessment of:
 - (a) State Environmental Planning Policy (SEPP) Amendment (Newcastle City Centre) 2014
 - (b) the Newcastle Urban Renewal Strategy
 - (c) the Whitebridge development plan in Lake Macquarie
 - (d) DA 2014/323 – Newcastle East End Development
 - (e) the decision to terminate the Newcastle rail line at Wickham and any proposal to construct light rail including along Hunter and Scott Streets, and
 - (f) any related matters.
3. That the committee report by 5 March 2015.

These terms of reference were referred to the committee by the Legislative Council on 16 September 2014.¹

¹ *Minutes*, Legislative Council, 16 September 2014, p 73.

Committee membership

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>Chairman</i>
Mr David Shoebridge MLC	The Greens	<i>Deputy Chair</i>
The Hon Catherine Cusack MLC	Liberal Party	
The Hon Greg Donnelly MLC	Australian Labor Party	
The Hon Greg Pearce MLC	Liberal Party	
The Hon Lynda Voltz MLC	Australian Labor Party	

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Chair's foreword

I am pleased to present the final report of the Select Committee on the Planning Process in Newcastle and the Broader Hunter Region.

This report focuses on the Newcastle Urban Renewal Strategy, the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014 and the proposed East End Development. It also discusses the proposed Whitebridge development, which is currently being assessed by Lake Macquarie City Council and the Hunter and Central Coast Joint Regional Planning Panel. The proposals to truncate the Newcastle heavy rail line at Wickham and construct light rail to the Newcastle city centre, which were extensively discussed in our interim report, are also revisited.

Significant concerns were expressed by inquiry participants regarding the height limits in the East End precinct prescribed by the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014, which permits a range of heights on the East End site from 20 metres to 65 metres. This differs significantly from the height limits originally proposed in the Newcastle Urban Renewal Strategy and its associated planning controls, which varied between 20 metres to 27 metres.

The committee has recommended that the Minister for Planning and Environment amend the height controls specified in the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014 by lowering the maximum permitted height of buildings within the East End precinct to 27 metres.

Conflicts of interest were also explored throughout the inquiry. Many stakeholders were of the view that the partnership between UrbanGrowth NSW and The GPT Group, co-owners of the East End development site, constituted a conflict of interest because UrbanGrowth (as a

state-owned corporation reporting directly to the Minister for Planning) has the ability to influence planning approvals that benefit the partnership, and therefore GPT, a private company. To minimise perceptions of conflict, we believe the Minister for Planning should refer any development application for the East End site to the NSW Planning and Assessment Commission to allow for an independent assessment.

Further, the committee considers that there is an irreconcilable conflict of interest in the relationship between UrbanGrowth NSW and the Department of Planning and Environment whereby the NSW Government is both the landowner, via UrbanGrowth, and the planning consent authority, via the department. This conflict is unacceptable and detracts from public confidence in the planning system. The committee has recommended that the NSW Government clearly separate the Department of Planning and Environment and UrbanGrowth NSW to eliminate this direct conflict of interest.

Some inquiry participants suggested that a single planning authority be created to oversee the revitalisation of Newcastle. However, we are reluctant to impose another layer of bureaucracy on an already heavily bureaucratised area. The committee has instead recommended that the Newcastle City Council be recognised as the principle planning authority for Newcastle, and that the council be given planning authority over all land in the city including land that is currently owned and/or managed by the Hunter Development Corporation.

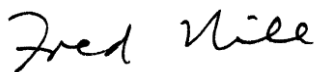
Finally, there have been a number of recent developments relating to the NSW Government's decision to terminate the Newcastle heavy rail line at Wickham and construct light rail. We wish to highlight the decision in *Save Our Rail NSW Inc v State of New South Wales* that an Act of Parliament will be required before the Newcastle rail infrastructure can be permanently removed.

The committee strongly reiterates our conclusion from our interim report that the cessation of rail services should not have proceeded on Boxing Day 2014. We remain convinced that the decision to truncate the line was based upon a flawed cost benefit analysis and without an adequate business case.

We have therefore recommended that the rail services that have ceased and infrastructure that has been removed from the Newcastle heavy rail line be immediately reinstated.

The committee is deeply concerned by the alarming contents of a leaked Cabinet Minute regarding the Newcastle rail line which became public on 17 February 2015 and highlighted cabinet differences. The document reveals a less than frank attitude by the government in dealing with this committee. We question why the government ignored the considered advice of the Transport Minister and chose a transport option that will reportedly cost around \$100 million more, greater delivery risks and greater impacts on local businesses.

I would like to extend my sincere thanks to all those who have participated in the inquiry. I would also like to thank my fellow committee members for their rigorous approach to this inquiry. Finally, I thank Teresa McMichael, Cathryn Cummins, Rhia Victorino and Emma Rogerson of the committee secretariat for their continued hard work and professionalism.



Revd the Hon Fred Nile MLC
Committee Chairman

Findings

Finding 1

40

That Mr Robert Hawes had a significant and ongoing conflict of interest in being a landowner at Wickham and having a managerial role in the NSW Government's decision to truncate the Newcastle rail line at Wickham, a decision from which Mr Hawes stands to financially benefit.

Finding 2

41

That the Board of the Hunter Development Corporation failed to adequately address the conflict of interest of Mr Robert Hawes, and this failure has damaged public confidence in the integrity of the Hunter Development Corporation and public decision making in Newcastle and the broader Hunter region.

Summary of recommendations

- Recommendation 1** **28**
That the Minister for Planning and Environment amend height controls specified in the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014 by lowering the maximum permitted height of buildings within the East End precinct to 27 metres.
- Recommendation 2** **36**
That the Minister for Planning and Environment refer any development application for the Newcastle East End site to the NSW Planning and Assessment Commission for determination.
- Recommendation 3** **37**
That the NSW Government clearly separate the Department of Planning and Environment and UrbanGrowth NSW.
- Recommendation 4** **41**
That the Board of the Hunter Development Corporation immediately take steps to ensure that none of its employees are materially involved in decision making, including the delivery of reports and information to board meetings and ministerial briefings, where they have a conflict of interest.
- Recommendation 5** **41**
That the Board of the Hunter Development Corporation immediately apply the NSW Planning and Infrastructure Conflicts of Interest Policy and Guidelines 2011 in all their dealings with conflicts of interest.
- Recommendation 6** **41**
That the Minister for Planning and Environment advise what steps will be taken to ensure that the Hunter Development Corporation has addressed conflicts of interest in its operations.
- Recommendation 7** **45**
That the NSW Government acknowledge Newcastle City Council as the principal planning authority for planning in Newcastle.
- Recommendation 8** **45**
That the NSW Government give Newcastle City Council planning authority over all land in Newcastle city, including land that is currently owned and/or managed by the Hunter Development Corporation.
- Recommendation 9** **70**
That the NSW Government immediately reinstate rail services that have ceased and infrastructure that has been removed from the Newcastle heavy rail line.

Glossary

JRPP	Joint Regional Planning Panel
LEP	Local Environmental Plan
NURS	Newcastle Urban Renewal Strategy
SEPP	State Environmental Planning Policy

Chapter 1 Introduction

This chapter provides an overview of the establishment of the Select Committee on the planning process in Newcastle and the broader Hunter region and its terms of reference. It describes the way in which the inquiry was conducted and outlines the structure of this report.

The chapter briefly discusses ‘Operation Spicer’, the Independent Commission Against Corruption investigation that is examining allegations of illegal donations made to members of Parliament. An overview of the key stakeholders involved in the revitalisation of Newcastle is also provided.

Establishment of the inquiry

- 1.1 On 16 September 2014 a motion was passed in the Legislative Council for the establishment of the Select Committee on the Planning Process in Newcastle and the Broader Hunter Region.²
- 1.2 The committee is comprised of six members as set out on page v. The resolution establishing the committee nominated Revd the Hon Fred Nile MLC as the Chairman of the committee.

Terms of reference

- 1.3 The committee was established to inquire into and report on various issues relating to the planning process in Newcastle and the broader Hunter region. This includes the role of the Department of Planning and Infrastructure, Newcastle City Council, UrbanGrowth NSW, Lake Macquarie City Council, and the Hunter Development Corporation in the consideration and assessment of the:
 - State Environment Planning Policy Amendment (Newcastle City Centre) 2014
 - Newcastle Urban Renewal Strategy
 - Whitebridge development plan in Lake Macquarie
 - Newcastle East End development
 - the decision to terminate the Newcastle rail line at Wickham and any proposal to construct light rail.
- 1.4 The full terms of reference are set out on page iv.

² *Minutes*, NSW Legislative Council, 16 September 2014, pp 73-76.

Conduct of the inquiry

Submissions

- 1.5 The committee invited submissions through advertisements in the *Newcastle Herald*, *Sydney Morning Herald*, *The Daily Telegraph* and *Maitland Mercury*. The committee also wrote to a number of key stakeholders inviting them to make a submission.
- 1.6 The committee received 379 submissions and 20 supplementary submissions.
- 1.7 A full list of submissions can be found in Appendix 1.

Right of replies

- 1.8 A number of submissions to the inquiry adversely named individuals or organisations involved in the projects identified in the terms of reference. The committee resolved that those individuals or organisations adversely named be provided with an opportunity to respond to these comments either in writing or by giving evidence.
- 1.9 Those individuals or organisations that availed themselves of this opportunity did so in writing. The responses of individuals that requested their correspondence to be published are available on the committee's website.

Public hearings

- 1.10 The committee held five public hearings over the duration of the inquiry: two hearings in Newcastle and three at Parliament House. A range of witnesses appeared at these hearings, including the Department of Planning and Infrastructure, Newcastle City Council, UrbanGrowth NSW, Lake Macquarie City Council and the Hunter Development Corporation. A number of community organisations and individuals also gave evidence.
- 1.11 A list of witnesses who appeared at the hearings can be found in Appendix 2. A list of the documents tabled at these hearings can be found in Appendix 4 and a list of the answers provided to questions on notice is at Appendix 5.
- 1.12 Transcripts of the hearings are available on the committee's website.

Public forum

- 1.13 The committee held a public forum at Newcastle City Hall on Friday 21 November 2014 at which community members expressed their views on a range of issues.
- 1.14 A list of forum speakers can be found at Appendix 3. The transcript of proceedings is available on the committee's website.

Site visit

- 1.15** On Friday 7 November 2014 the committee conducted a site visit of the East End and city development sites, the Wickham interchange site and the proposed light rail route.
- 1.16** The committee was accompanied by Mr Brendan O'Brien, Executive Director Infrastructure, Housing and Employment, Department of Planning and Environment, and Mr Bob Hawes, General Manager, Hunter Development Corporation.
- 1.17** The committee would like to thank all participants to this inquiry. The considered contributions of participants have greatly assisted the committee.

Tabling of interim report

- 1.18** On 18 December 2014, the committee tabled an interim report which made eight recommendations addressing the issues concerning the truncation of the Newcastle heavy rail line and the proposal to construct light rail.
- 1.19** The committee produced the interim report because of the NSW Government's intentions to truncate the rail line on 26 December 2014.
- 1.20** The recommendations of the interim report, together with recent developments relating to the rail line, are discussed in chapter 5 of this report.
- 1.21** A full copy of the interim report can be found on the committee's website.

Operation Spicer

- 1.22** As noted in the committee's interim report, concerns about inappropriate influence in Newcastle planning decisions are being examined by the Independent Commission Against Corruption (ICAC) investigation 'Operation Spicer', which is examining allegations of illegal donations made to members of Parliament:

... the ICAC is investigating allegations that certain members of parliament and others corruptly solicited, received and concealed payments from various sources in return for certain members of parliament and others favouring the interests of those responsible for the payments. It is also alleged that certain members of parliament and others solicited and failed to disclose political donations from companies, including prohibited donors, contrary to the *Election Funding, Expenditure and Disclosures Act 1981*.³

- 1.23** The scope and purpose of Operation Spicer contain a number of matters of direct relevance to Newcastle, including (but not limited to):

e) the circumstances in which the 2011 election campaign for the seat of Newcastle was funded by the Liberal Party, and whether funds were solicited and received from

³ Independent Commission Against Corruption, *Current investigations*, <<http://www.icac.nsw.gov.au/investigations/current-investigations>>.

prohibited donors, including Buldev Pty Limited, Nathan Tinkler, Jeff McCloy, Hilton Grugeon and other persons and companies associated with them;

f) whether members of Parliament, including Christopher Hartcher MP and Michael Gallacher MLC, solicited and received donations from prohibited donors for use in the Liberal Party 2011 State election campaign, including in the seat of Newcastle;

g) whether parties and persons, including Buldev Pty Limited, Nathan Tinkler, Darren Williams, David Sharpe, Jeff McCloy and Hilton Grugeon improperly sought to influence certain members of Parliament by making donations during the 2011 State election campaign.⁴

1.24 The full scope and purpose of Operation Spicer is available at Appendix 6.

1.25 In August 2014, the then Lord Mayor, Jeff McCloy, who is also a property developer, resigned from office after admitting to ICAC that he had made illegal donations to the now former Liberal MPs Tim Owen and Andrew Cornwell.⁵

1.26 Mr Owen, former member for Newcastle, and Mr Cornwell, former member for Charlestown, also resigned from office in August 2014 after making certain revelations during Operation Spicer. Mr Owen admitted lying to ICAC about returning \$10,000 he received from Mr McCloy, which he had actually used to fund his election campaign,⁶ and was allegedly aware of receiving money from the property development company Buldev.⁷ Mr Cornwell admitted to accepting \$20,000 of illegal payments from Mr McCloy and Hunter property developer Hilton Grugeon.⁸

1.27 At the time of writing, Operation Spicer remains an active investigation. The ICAC had anticipated reporting to Parliament in January 2015,⁹ however, this has been delayed due to the case of *Cunneen v ICAC* [2014] NSWCA 421.¹⁰

⁴ Independent Commission Against Corruption, *Operation Spicer – Amended Scope and Purpose – 12 September 2014*,

<<http://www.icac.nsw.gov.au/images/Spicer%20PI%202/legal%20spicer%20scope%20and%20purpose%2012%20september%202014.pdf>>.

⁵ Sean Nicholls and Jason Gordon, 'Newcastle mayor Jeff McCloy quits before being pushed', *Sydney Morning Herald*, 18 August 2014; Liz Farquhar, 'Jeff McCloy resigns as Newcastle Mayor over ICAC probe into Liberal Party banned donations scandal', *ABC News*, 17 August 2014.

⁶ Transcript of Proceedings, Operation Spicer (Independent Commission Against Corruption, E12/2107/0821, Latham J, 12 August 2014) p 5124T.

⁷ Transcript of Proceedings, Operation Spicer (Independent Commission Against Corruption, E12/2107/0821, Latham J, 8 August 2014) p 4954T; Michaela Whitbourn, Kate McClymont, 'MP Tim Owen knew Buldev illegally funded his campaign, ICAC told', *Sydney Morning Herald*, 9 August 2014; Sarah Gerathy, 'ICAC: NSW MP Andrew Cornwell quits Liberal Party, won't seek re-election after 'huge mistake'', *ABC News*, 8 August 2014.

⁸ Transcript of Proceedings, Operation Spicer (Independent Commission Against Corruption, E12/2107/0821, Latham J, 7 August 2014) pp 4859T, 4861T-4862T and 4866T.

⁹ Independent Commission Against Corruption, *Current investigations*, <<http://www.icac.nsw.gov.au/investigations/current-investigations>>.

¹⁰ Independent Commission Against Corruption, *Statement regarding Operations Credo and Spicer*, 5 December 2014, <<http://www.icac.nsw.gov.au/media-centre/media-releases/article/4707>>.

Key stakeholders

1.28 This section provides a brief overview of the roles of the Department of Planning and Environment, Hunter Development Corporation, UrbanGrowth NSW and The GPT Group (GPT). Each of these groups has a key role in the redevelopment of Newcastle and is referred to throughout this report.

Department of Planning and Environment

1.29 The Department of Planning and Environment is responsible for effective and sustainable planning to support the growth challenge for New South Wales. It makes plans, assesses proposals and develops policy based on evidence.¹¹

1.30 The department is the lead agency in the preparation and implementation of the Newcastle Urban Renewal Strategy. The department is also responsible for the State Environmental Planning Policy (SEPP) Amendment (Newcastle City Centre) 2014 and related development control plan.¹² These planning instruments will be discussed in detail in chapter 2.

Hunter Development Corporation

1.31 The Hunter Development Corporation is part of the Department of Planning and Environment. The corporation is responsible for facilitating a whole of government approach to Newcastle's urban renewal.¹³ It also works with the department, local government, UrbanGrowth NSW, Regional Development Australia Hunter and other government agencies and stakeholders to pursue opportunities for economic growth in the Hunter.¹⁴

1.32 The Hunter Development Corporation is also identified as having undertaken investigations and making recommendations to the government regarding options for catalyst developments as part of the Newcastle Urban Renewal Strategy.¹⁵

UrbanGrowth NSW

1.33 UrbanGrowth NSW is a state-owned corporation operating under the *Landcom Corporation Act 2001* and reporting directly to the Minister for Planning.¹⁶ It is the state's lead organisation responsible for urban transformation, aiming to:

- drive increases in the supply of housing and jobs
- strengthen the New South Wales economy by delivering centres that attract investment and boost productivity

¹¹ NSW Department of Planning and Environment, *Annual Report 2013-14*, p 6.

¹² Submission 253, NSW Government, p 16.

¹³ Submission 253, NSW Government, p 5.

¹⁴ Submission 253, NSW Government, Attachment 1, p 1.

¹⁵ Submission 253, NSW Government, p 5.

¹⁶ UrbanGrowth NSW, *Annual Report 2014*, p 16; Evidence, Ms Carolyn McNally Secretary, Department of Planning and Environment, 24 November 2014, p 15.

- optimise public investment in infrastructure through integrating land use and transport planning
- operate on a commercially astute basis, seeking a fair return for taxpayers
- promote public sector innovation through collaborating across government, the private sector and the community.¹⁷

1.34 In December 2013 UrbanGrowth NSW was appointed to lead the Newcastle Urban Renewal and Transport Program, in close collaboration with Transport for NSW, the Department of Planning and Environment, the Hunter Development Corporation and Newcastle City Council. The renewal program has three main components:

- truncation of the heavy rail and construction of a new transport interchange at Wickham
- introduction of a light rail system to Newcastle city centre
- implementation of a seven to ten year program for urban renewal.¹⁸

1.35 UrbanGrowth NSW is also a co-owner of the Newcastle East End site (discussed in chapter 2), owning two-thirds of the site with the remaining one-third owned by the GPT Group.¹⁹

The GPT Group

1.36 The GPT Group (GPT) is a property trust that has been publicly listed in Australia since 1971.²⁰ Its head office is in Sydney.²¹

1.37 GPT is an owner and manager of a diversified portfolio of Australian retail, office and logistics property assets. GPT owns a number of real estate assets, including Charlestown Square in Newcastle and the MLC Centre in Sydney.²²

1.38 As noted at paragraph 1.35, GPT owns a one-third stake in the Newcastle East End site, with the remaining two-thirds owned by UrbanGrowth NSW.²³

Report structure

1.39 The next chapter, **chapter 2**, examines the Newcastle Urban Renewal Strategy and the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014. It also discusses the proposed redevelopment of Newcastle's East End precinct.

¹⁷ UrbanGrowth NSW, *Annual Report 2014*, p 16.

¹⁸ Submission 253, NSW Government, Attachment 2, p 2.

¹⁹ Submission 253, NSW Government, p 5; Submission 262, The GPT Group, p 1.

²⁰ The GPT Group, *About GPT*, <<http://www.gpt.com.au/About-GPT/Overview>>.

²¹ The GPT Group, *Contact us*, <<http://www.gpt.com.au/Contact-GPT>>.

²² GPT, *GPT Annual Review 2013*, p 6.

²³ Submission 262, The GPT Group, p 1.

- 1.40** **Chapter 3** explores the perceived conflicts of interest that have arisen as a consequence of the interrelationships between the Department of Planning and Environment, UrbanGrowth NSW and GPT.
- 1.41** **Chapter 4** considers a development application for a mixed-use development at Whitebridge, in the Lake Macquarie City Council local government area.
- 1.42** The decision to terminate the Newcastle heavy rail line at Wickham and the proposal to construct light rail through the Newcastle city centre are briefly discussed in **chapter 5**. Both matters were extensively canvassed in the committee's interim report.
- 1.43** The final chapter, **chapter 6** considers the Newcastle Art Gallery redevelopment and the proposed development at King Edward Headland Reserve.

Chapter 2 Planning controls

This chapter examines the Newcastle Urban Renewal Strategy and the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014. It begins by outlining these planning instruments as a segue to examining the community's response to the plans and changes proposed for the city of Newcastle, including the development application for major redevelopment of the city's East End precinct.

Newcastle Urban Renewal Strategy

2.1 The following section details the Newcastle Urban Renewal Strategy and its initiatives. It outlines the proposed changes to the planning framework as part of the strategy and considers the strategy's development over time. It provides context for later consideration of the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014, introduced to give effect to the strategy.

The strategy and its initiatives

2.2 The Newcastle Urban Renewal Strategy (NURS) is a multi-faceted plan supported by a suite of initiatives to encourage urban renewal and the revitalisation of Newcastle's city centre over time.²⁴ The strategy is described by the NSW Government as setting 'a clear vision for Newcastle to grow, evolve and strengthen its position as the Hunter Region's capital, whilst capitalising on the city's unique attributes such as heritage, natural setting and its working harbour'.²⁵

2.3 The NURS comprises the following key features:

- a planning framework to promote activity, development and well-located land uses
- a place-making approach to the future development of the city
- physical improvements to the city's key public domain spaces
- a series of economic initiatives that will support urban renewal
- a strategy to promote transport, access and connectivity to and within the city centre
- an implementation plan that sets a clear delivery framework.²⁶

2.4 Based on a number of guiding principles, the strategy aims to make the Newcastle city centre 'a vibrant and innovative regional hub and an attractive destination for business, residents and visitors, providing accessible and suitable employment opportunities, a choice of retail and other services, and local, national and international investment opportunities'.²⁷

²⁴ Newcastle Urban Renewal Strategy 2012, p xvii.

²⁵ Submission 253, NSW Government, p 5.

²⁶ Newcastle Urban Renewal Strategy 2012, p xx.

²⁷ Newcastle Urban Renewal Strategy 2014 Update, p 6.

2.5 Underpinning the strategy is a range of initiatives that seek to have ‘significant short-term benefits as well as being catalysts for stimulating a wider change in the city centre’.²⁸ The initiatives are broadly characterised as place-based, economic and transport-related, and are outlined in Table 1.

Table 1 Place-based, economic and transport-related initiatives²⁹

	Aim	Key initiatives
Place-based	To reinforce and support development of distinct character areas that together form the city centre, including the East End, West End and Civic	<ul style="list-style-type: none"> • re-establishing Hunter Street as the main street and revitalising Hunter Street Mall • strengthening the Civic precinct as the main municipal, education and cultural hub of Newcastle • positioning the West End for long-term growth as the city’s future CBD • recognising the city’s heritage as an important asset.
Economic	To strengthen diversity and resilience of the city’s economy by supporting commercial development as well as the use of retail, cultural and other services to attract trade and activity	<ul style="list-style-type: none"> • planning for 10,000 additional jobs and 6,000 additional dwellings to 2036 • promoting a university presence to drive commercial, retail and residential demand • encouraging retail trade back into the city centre.
Transport-related	To promote an integrated transport network and facilitate connections and access to and within the city centre	<ul style="list-style-type: none"> • promoting a shift to public transport and other sustainable transport modes (such as walking and cycling) to reduce car use in the city centre • implementing a light rail system to connect key activity areas • constructing a transport interchange at Wickham for rail, light rail and bus services • improving the road network for all users.

Changes to the planning framework

2.6 To support the urban renewal strategy and implementation of its initiatives, significant changes to the planning framework are proposed in the NURS. These require amendments to

²⁸ Newcastle Urban Renewal Strategy 2012, p xvii.

²⁹ Newcastle Urban Renewal Strategy 2012, pp xxi-xxiii and p 64; Newcastle Urban Renewal Strategy 2014 Update, pp 8-9.

the Newcastle Local Environmental Plan (LEP) 2012 through a State Environmental Planning Policy (SEPP), and consolidation of three Development Control Plans (DCPs) applying to the city centre.³⁰

- 2.7** The proposed changes generally centre on zoning, height, floor space ratios and local provisions applying to the city centre under the LEP.
- 2.8** When the strategy was first released in 2012, the amendments to the planning framework specifically involved:
- creating clearly defined activity areas along Hunter Street
 - differentiating between commercial and mixed used zones
 - providing areas for high density residential development at the edges of the city centre
 - reducing building heights around Wickham and Civic where feasibility is an issue or where a transition in heights is appropriate between taller buildings and surrounding lower scaled areas
 - ensuring built forms respond appropriately to the heritage character and topography of Newcastle
 - simplifying floor space ratio controls for easier interpretation
 - increasing achievable floor space ratios for mixed use development across the city centre
 - proposing height limits varying from 20 metres to 27 metres and increasing the floor space ratio from 3:1 to 4:1 for the site owned by UrbanGrowth NSW and The GPT Group (GPT) in the city's East End precinct
 - proposing a height limit of 45 metres and a floor space ratio of 4:1 for the site of Newcastle University's city campus in Civic.³¹

Truncation of the rail line

- 2.9** In conjunction with the release of the NURS, the announcement was made on 14 December 2012 that the Newcastle rail line would be terminated at Wickham.³²
- 2.10** While the decision to remove the rail line was not made as part of the strategy itself, the rail truncation and associated transport interchange at Wickham is central to the strategy and is identified as supporting several of its initiatives. For example, the NURS states that the Wickham interchange will promote the development of the city's West End,³³ assist in

³⁰ Department of Planning and Environment, Explanation of intended effect of the proposed amendment to Newcastle Local Environmental Plan, p 1; Newcastle Urban Renewal Strategy 2012, p 156.

³¹ Submission 253, NSW Government, p 10.

³² Submission 253, NSW Government, p 10.

³³ Newcastle Urban Renewal Strategy 2012, p 94.

strengthening the Civic precinct and connectivity within its public domain,³⁴ and allow improved traffic flow of north-south traffic on Hannell Street and Stewart Avenue.³⁵

- 2.11** The decision to terminate the Newcastle heavy rail line at Wickham and the proposal to construct light rail into the Newcastle city centre was examined in detail in this committee's interim report, published in December 2014. An update on recent developments regarding the truncation of the rail line is provided in chapter 5 of this report.

Development of the NURS

- 2.12** The NSW Government stated that it has taken 'an integrated approach' to planning for the revitalisation of Newcastle and the growth of the Hunter Region, not only working with local councils, stakeholder groups and the community, but promoting close collaboration amongst government agencies 'to help deliver the best results for the region'.³⁶
- 2.13** The NURS was produced by the Director General of the Department of Planning and Environment in accordance with the SEPP (Urban Renewal) 2010, which identified the Newcastle city centre as one of three potential precincts for urban renewal.³⁷
- 2.14** The NURS builds upon work previously undertaken by the department, Newcastle City Council, Hunter Development Corporation and other government agencies to 'recommend an integrated package of initiatives aimed at developing a solid basis for the long term successful renewal of the city centre'.³⁸ This work spans activities, reports and committees dating back to 1992, including the Newcastle CBD Taskforce, the *Newcastle City Centre Renewal: Report to NSW Government* and community survey, and the Newcastle City Centre Steering Committee.³⁹
- 2.15** On 14 December 2012, the NURS was released for public consultation, together with the draft SEPP to amend the Newcastle LEP.⁴⁰ The strategy was exhibited for four months, from 14 December 2012 to 19 April 2013, during which time 420 submissions were received.⁴¹ Two community information sessions were also conducted by the Hunter Development Corporation during this period and were attended by over 400 people.⁴²
- 2.16** The majority of submissions received in response to the strategy concerned the decision to terminate the railway line at Wickham.⁴³ In response to these concerns, the government amended its plans to replace heavy rail services between Wickham and Newcastle with bus services by proposing to provide light rail instead. Increased funding for the city centre, with a

³⁴ Newcastle Urban Renewal Strategy 2012, p 86.

³⁵ Newcastle Urban Renewal Strategy 2012, p 126.

³⁶ Submission 253, NSW Government, p 2.

³⁷ Newcastle Urban Renewal Strategy 2012, p xvi; Submission 253, NSW Government, p 9.

³⁸ Newcastle Urban Renewal Strategy 2012, p xvi.

³⁹ Submission 253, NSW Government, pp 5-8.

⁴⁰ Media release, Hon Brad Hazzard MP, Minister for Planning and Infrastructure, 'New jobs and homes for Newcastle', 14 December 2012; Newcastle City Centre Finalisation Report, June 2014, p 15.

⁴¹ Submission 253, NSW Government, p 10.

⁴² Newcastle City Centre Finalisation Report, June 2014, p 9.

⁴³ Newcastle City Centre Finalisation Report, June 2014, p 3 and pp 10-12.

focus on providing the transport interchange at Wickham for bus, heavy rail and light rail, was also confirmed.⁴⁴

- 2.17** Submissions were also received in relation to the proposed planning controls affecting the UrbanGrowth/GPT development site in the East End and the University of Newcastle's new campus in Civic. In response to these submissions, amendments were made to the draft SEPP and re-exhibited for public comment in March 2014. The amendments affecting the UrbanGrowth/GPT site are discussed in the next section in the context of the SEPP Amendment (Newcastle City Centre) 2014.
- 2.18** In June 2014, the Department of Planning and Environment prepared an update to the NURS in consultation with Newcastle City Council, Hunter Development Corporation, Transport for NSW and UrbanGrowth NSW.⁴⁵
- 2.19** The update summarises key decisions that were made since the release of the strategy in 2012. These decisions include:
- the introduction of light rail services from Wickham
 - funding contributions of \$340 million from the proceeds of the Port of Newcastle lease and \$120 million from the Hunter Investment and Infrastructure Fund and Restart NSW for the Wickham interchange, rail truncation and light rail
 - construction of the \$94 million law courts complex at Hunter and Burwood streets
 - a \$25 million allocation to the University of Newcastle's NeW Space development at Civic
 - Hunter Development Corporation's land contribution for the redevelopment of the Empire Hotel site to provide for affordable dwellings.⁴⁶
- 2.20** The update also reported on the actions that have already been completed or are underway to revitalise the city centre, and updated the implementation plan in the strategy with the next steps and choices that will need to be considered into the future. These include the use of the rail corridor, the transformation of Hunter Street, and long term plans for the light rail network.⁴⁷

State Environmental Planning Policy Amendment (Newcastle City Centre) 2014

- 2.21** The following section discusses the SEPP Amendment (Newcastle City Centre) 2014 which makes significant changes to the planning framework for Newcastle's city centre. Key to these changes is the proposal for major redevelopment of Newcastle's East End precinct. As such, this section also discusses the Newcastle East End development application submitted by UrbanGrowth NSW and GPT.

⁴⁴ Newcastle City Centre Finalisation Report, June 2014, p 10; Revitalising Newcastle's city centre: Proposed planning amendments, March 2014, p 2 and p 5.

⁴⁵ Submission 253, NSW Government, p 12.

⁴⁶ Newcastle Urban Renewal Strategy 2014 Update, June 2014, p 3.

⁴⁷ Newcastle Urban Renewal Strategy 2014 Update, June 2014, p 2 and p 15.

The policy and its provisions

- 2.22** The SEPP Amendment (Newcastle City Centre) 2014 (Amendment SEPP) makes various amendments to planning and land use controls for the Newcastle city centre. In particular, it amends the Newcastle LEP 2012, which is the principal local planning instrument regulating development in the Newcastle city centre.⁴⁸
- 2.23** The Amendment SEPP seeks to meet a number of planning objectives to promote urban renewal within the Newcastle city centre, thus implementing many of the planning changes proposed in the NURS. These objectives are to:
- zone land and provide appropriate controls for the Newcastle city centre that will promote urban renewal, the creation of a quality urban environment, good urban design outcomes, and the realisation of jobs and housing targets for the Newcastle city centre in accordance with the Lower Hunter Regional Strategy
 - provide for development in the Newcastle city centre that encourages employment and economic growth, consistent with its status as a regional city
 - promote pedestrian and vehicle connectivity with adjoining areas and within the city centre
 - promote housing choice and affordability in the city centre
 - provide for the sustainable development of the city centre.⁴⁹
- 2.24** As outlined in the explanatory note for the Amendment SEPP, the amendments made to the Newcastle LEP by the SEPP fall into three categories:
- amendments to the land use table and zones pertaining to the Newcastle city centre to allow for urban development to occur in the manner envisaged by the NURS, by establishing new commercial, mixed use and high density residential land use zones
 - changes to principal development standards, including heights of buildings and floor space ratios for commercial, residential and mixed use development
 - changes to other local provisions pertaining to Newcastle city centre to promote housing choice and affordability by accommodating a wide range of residential dwelling types and densities that facilitate housing diversity.⁵⁰
- 2.25** This chapter focuses on the amendments relating to height controls, which were the primary cause of concern raised by inquiry participants in regard to the Amendment SEPP.

⁴⁸ Department of Planning and Environment, Explanatory note – State Environmental Planning Policy Amendment (Newcastle City Centre) 2014, p 1.

⁴⁹ Department of Planning and Environment, Explanatory note – State Environmental Planning Policy Amendment (Newcastle City Centre) 2014, p 1.

⁵⁰ Department of Planning and Environment, Explanatory note – State Environmental Planning Policy Amendment (Newcastle City Centre) 2014, p 1.

Height controls

- 2.26** The Amendment SEPP made a number of changes to the maximum height of buildings permitted across the city centre.
- 2.27** As mentioned previously, the draft SEPP to amend the Newcastle LEP was initially released for public exhibition in December 2012 together with the NURS.
- 2.28** During the exhibition period, UrbanGrowth NSW and GPT made a submission requesting the Department of Planning and Environment to review the proposed planning controls for the East End ‘to ensure the desired urban renewal outcomes were economically feasible’.⁵¹
- 2.29** Amendments were subsequently made to the draft SEPP. Among the changes, amendments were made to increase the height controls on the UrbanGrowth/GPT site in the East End precinct to:
- allow three tower buildings with maximum heights of RL⁵² 69.5 (corner Perkins and King Street), RL 54.5 (Wolfe Street between Hunter and King Street) and RL 58.5 (corner King and Newcomen Street), effectively allowing a range of heights on the site from 20 metres to 65 metres (a maximum of approximately 20 storeys)⁵³
 - increase the maximum height on Laing Street from 24 metres to 27 metres.⁵⁴
- 2.30** Mr Brendan O’Brien, Executive Director, Department of Planning and Environment, advised that the changes to the draft SEPP were based, in part, on the UrbanGrowth NSW/GPT submission. Given their significance the department decided to re-exhibit the draft SEPP.⁵⁵
- 2.31** Consequently, on 5 March 2014, the amended draft SEPP was released for public consultation and exhibited for 16 days, from 5 March to 21 March 2014.⁵⁶ The 16 day exhibition period was endorsed by the Secretary of the Department of Planning and Environment.⁵⁷
- 2.32** During this period, 266 submissions were received regarding the proposed changes to the draft SEPP. A petition signed by over 500 people and an online survey signed by 676 people were also received.⁵⁸
- 2.33** The majority of submissions, including the petition and online survey, expressed concern about the heights proposed for the three tower buildings on the UrbanGrowth NSW/GPT site in the East End precinct, raising issues such as the impact on views, shadowing, disruption

⁵¹ Submission 253, NSW Government, p 10.

⁵² RL = Reduced Level, the vertical height in metres above the Australian Height Datum.

⁵³ Submission 253, NSW Government, p 11; Newcastle City Centre Finalisation Report, June 2014, p 12.

⁵⁴ Submission 253, NSW Government, p 11.

⁵⁵ Evidence, Mr Brendan O’Brien, Executive Director, Department of Planning and Environment, 24 November 2014, pp 9-10.

⁵⁶ Submission 253, NSW Government, p 11.

⁵⁷ Answers to questions on notice, Mr Brendan O’Brien, Executive Director, Department of Planning and Environment, 5 December 2014, p 2.

⁵⁸ Submission 253, NSW Government, p 12.

of the skyline and heritage character. Another key concern was the length of the exhibition period, with many requesting more time to respond to the proposed amendments.⁵⁹

- 2.34** In June 2014, the department released the Newcastle City Centre Finalisation Report 2014, which detailed the public consultation undertaken for both the NURS and the Amendment SEPP. The report identified and responded to the issues raised in public submissions, and made recommendations based on these issues, including setting height controls for the East End precinct so that buildings would not exceed RL 58.9⁶⁰ (approximately 17 storeys).⁶¹ This height was set to match the parapet of the nave of Christ Church Cathedral, thus ensuring that the cathedral ‘remained the prominent element in the city skyline from important public view corridors’.⁶²
- 2.35** On 25 July 2014, the Minister adopted the department’s recommendations and announced that the SEPP Amendment (Newcastle City Centre) 2014 had been finalised.⁶³

The East End development

- 2.36** Intrinsically linked with the development of the Amendment SEPP is the development application for the UrbanGrowth NSW/GPT site in Newcastle’s East End (the East End development).
- 2.37** The development application (DA 2014/323) is a concept proposal for a staged major redevelopment of numerous properties adjoining the former Hunter Street Mall. The development comprises retail commercial, entertainment, community facilities and residential. Separate development applications will be required for each stage of the development.⁶⁴
- 2.38** The proposal includes the construction of the three tower buildings outlined in paragraph 2.29.
- 2.39** The proposed development has a capital investment value of approximately \$274 million.⁶⁵ Given its value, the development application has been referred to the Hunter and Central Coast Joint Regional Planning Panel (JRPP) for determination.

⁵⁹ Submission 253, NSW Government, p 12; Newcastle City Centre Finalisation Report, June 2014, p 12.

⁶⁰ Newcastle City Centre Finalisation Report, June 2014, pp 13-14.

⁶¹ Department of Planning and Environment, Newcastle Urban Renewal Strategy – Frequently asked questions, p 5, <http://www.planning.nsw.gov.au/Portals/0/NewcastleUrbanRenewal/Newcastle_Urban_Renewal_External_FAQ_FINAL.pdf>.

⁶² Submission 253, NSW Government, p 12.

⁶³ Submission 253, NSW Government, p 12.

⁶⁴ Submission 244, Newcastle City Council, p 4.

⁶⁵ Joint Regional Planning Panels, Development and Planning Register, *2014HCC011 DA – Staged development application*, <http://www.jrpp.nsw.gov.au/DevelopmentandPlanningRegister/tabid/62/ctl/view/mid/424/JRPP_ID/1733/language/en-US/Default.aspx>.

Ownership and acquisition of the site

- 2.40** As noted in chapter 1, the East End development land is co-owned by UrbanGrowth NSW and GPT, with UrbanGrowth owning two-thirds of the site and GPT owning one-third.
- 2.41** Between 2007 and 2009, GPT acquired 17 separate properties to comprise the East End development site. A master planned super-regional retail development was proposed for the consolidated land holding and identified by both state and local government as one of a number of catalyst projects for the revitalisation of the Newcastle city centre.⁶⁶
- 2.42** Following the global financial crisis, GPT did not proceed with the master planned proposal and was instructed by its Board to commence the sale of the land, either as one site or as individual parcels of land.⁶⁷
- 2.43** According to UrbanGrowth's submission to the inquiry, in early 2012 it recognised the importance of the site to deliver broader urban renewal in Newcastle. UrbanGrowth was of the view that if GPT sold the site, resulting in fragmentation, it would be a significant lost opportunity to the revitalisation of the city centre. As a result, discussions and negotiations began with GPT for UrbanGrowth to purchase an interest in the site to maintain a consolidated land holding.⁶⁸
- 2.44** In April 2012 the UrbanGrowth NSW Board approved the purchase of two thirds of the land from GPT for \$20 million.⁶⁹

Key events and decisions

- 2.45** The development application for the East End site was lodged on 31 March 2014 with the Newcastle City Council.⁷⁰
- 2.46** Following the gazettal of the Amendment SEPP and consequent amendments to the Newcastle LEP in July 2014, UrbanGrowth and GPT advised Newcastle City Council that the development application would be amended to comply with the new planning controls.⁷¹ A formal request from Newcastle City Council to UrbanGrowth and GPT for additional information regarding the development application was made in August 2014.⁷²
- 2.47** During the inquiry, Mr Peter Anderson, Head of Wholesale, Projects Division, UrbanGrowth NSW, advised that UrbanGrowth NSW and GPT were continuing to consider how their proposal might respond to the Amendment SEPP and amended LEP.⁷³

⁶⁶ Submission 253, NSW Government, Attachment 2, p 4.

⁶⁷ Submission 253, NSW Government, Attachment 2, p 4.

⁶⁸ Submission 253, NSW Government, Attachment 2, p 5.

⁶⁹ Submission 253, NSW Government, Attachment 2, p 5.

⁷⁰ Submission 244, Newcastle City Council, p 4.

⁷¹ Submission 253, NSW Government, Attachment 2, p 7.

⁷² Submission 244, Newcastle City Council, p 4.

⁷³ Evidence, Mr Peter Anderson, Head of Wholesale, Projects Division, UrbanGrowth NSW, 24 November 2014, p 27.

- 2.48 At the time of writing, the East End development application remains under assessment, pending receipt of additional information from UrbanGrowth and GPT.⁷⁴

Community response to planning controls

- 2.49 During the course of the inquiry, a range of concerns were raised by inquiry participants regarding the nature and development of the planning framework supporting the urban renewal of Newcastle. In particular, there was criticism of the consultation process to develop the Amendment SEPP as well as overwhelming opposition to the new building height controls for the East End precinct.

Concerns about the consultation process

- 2.50 Numerous inquiry participants commented on the nature and extent of the community consultation regarding the development of the NURS and Amendment SEPP.
- 2.51 Several stakeholders considered the consultation undertaken for the NURS to be thorough and inclusive, resulting in a strategy that was widely accepted by the community. As put by one submission author: ‘The NURS 2012 document was developed with wide-spread community consultation during 2012 and 2013, and was supported by many residents as well as prominent members of Newcastle’s business community ...’⁷⁵
- 2.52 Similarly, the Newcastle Inner City Residents Alliance highlighted the ‘extensive consultation and public acceptance of the previous NURS 2012 and the linked SEPP and Newcastle LEP 2012’.⁷⁶
- 2.53 Mr Tim Crakanthorp, Councillor, Newcastle City Council also acknowledged the ‘extensive community consultation and agreement’ over the NURS and its initial related planning controls.⁷⁷
- 2.54 In contrast, numerous inquiry participants criticised the development of the Amendment SEPP, arguing that there was a lack of genuine community consultation. Some described the process as ‘a joke’⁷⁸ and ‘farfical’,⁷⁹ given the brevity of the exhibition period and a perceived lack of transparency in the consultation process.
- 2.55 One inquiry participant complained that Newcastle residents were ‘denied a chance to participate in genuine community consultation about the major changes proposed for our city’.⁸⁰ This view was echoed by another inquiry participant who said:

⁷⁴ Evidence, Mr Anderson, 24 November 2014, p 21, Submission 244, Newcastle City Council, p 4.

⁷⁵ Submission 326, Name suppressed, p 2.

⁷⁶ Submission 103, Newcastle Inner City Residents Alliance, p 2.

⁷⁷ Submission 268, Mr Tim Crakanthorp, p 5.

Mr Crakanthorp was elected as the member for Newcastle on 25 October 2014.

⁷⁸ Submission 318, Name suppressed, p 1.

⁷⁹ Evidence, Dr Geoff Evans, President, Newcastle Inner City Residents Alliance, 7 November 2014, p 49.

⁸⁰ Submission 321, Name suppressed, p 2.

I believe community members are willing and eager to engage in respectful consultation and partnership to examine a range of options for the city, but have not been given the opportunity to do so in any meaningful, effective and genuine manner in this process.⁸¹

2.56 According to local resident Mr Paul Scott, public consultation on the amendments to the draft SEPP ‘appeared neither sincere nor genuine. It appeared to be a tick-box exercise’ that ignored the criticisms of many stakeholders.⁸² Another inquiry participant also described the consultation as a ‘tick-box exercise’ that did not elicit the ‘time, effort and genuine intention necessary required for proper community consultation’.⁸³

2.57 The following sections discuss specific concerns regarding the exhibition period and a lack of information and transparency during the decision making process.

Brief exhibition period

2.58 For many inquiry participants, the lack of genuine community consultation was most apparent in the 16 day exhibition period given to the community to consider and respond to the amended draft SEPP.⁸⁴

2.59 For example, Ms Sharon Grierson, former Federal member for Newcastle, expressed her shock at the brevity of the exhibition period and commented on the difficulty community members faced in responding within such a short time frame:

I was horrified at that period because it came as such a shock to us. It was a radical amendment. To suddenly go from a SEPP that everyone was very happy about to these huge towers, et cetera, was absolutely a major change that required a longer submission period. I noticed in papers that I also looked at in Parliament recently that even Julie Rich [UrbanGrowth NSW], I think, had said that two weeks was even tight for them to get prepared. Imagine for the public; it was punitive.⁸⁵

2.60 Another inquiry participant contended that the short exhibition period favoured the developer and eroded community trust in the planning process:

The short 16 day period limited opportunities for public consultation and reduced the likelihood of more people making submissions to the planning department. This unfairly favoured the developers GPT/UrbanGrowth NSW over residents and was a contributing factor to the erosion of community trust in the planning process.⁸⁶

2.61 The Australian Institute of Architects (AIA) NSW Chapter also questioned the length of the exhibition period. While the AIA expressed support for the high rise development of the East End site, they indicated that ‘the Institute would like to have seen a longer and more

⁸¹ Submission 184, Name suppressed, p 5.

⁸² Submission 258, Mr Paul Scott, p 2.

⁸³ Submission 321, Name suppressed, p 2.

⁸⁴ See for example Submission 321, pp 1-2 and Submission 184, p 2.

⁸⁵ Evidence, Ms Sharon Grierson, former Federal member for Newcastle, 21 November 2014, p 41.

⁸⁶ Submission 349, Name suppressed, p 3.

transparent process of community engagement regarding the increased height of the GPT development'.⁸⁷

- 2.62** Clr Nuatali Nelmes, Lord Mayor, Newcastle City Council, criticised the exhibition period, particularly when compared with the first exhibition of the draft SEPP:

That is why there is so much community outcry. That is probably why we are all sitting here today. That SEPP was only exhibited for two weeks. The first iteration, which was widely supported by the community, was exhibited for four months.⁸⁸

- 2.63** Clr Nelmes advised that, because ordinary council meetings take place once a month and the amended draft SEPP was exhibited for 16 days, the council was unable to make a comprehensive submission in regard to the proposal.⁸⁹

- 2.64** Mr O'Brien advised the committee that the Department of Planning and Environment continued to receive and consider submissions for the amended draft SEPP for three months after the exhibition period ended. He said, however, that this was not publicly advertised and was only made known if a request was made to put a submission in.⁹⁰

- 2.65** Mr O'Brien maintained that, although significant, the amendments made to the draft SEPP were not complex, and thus the 16 day exhibition period was an appropriate amount of time for the community to respond:

I think the amendments proposed in the second exhibition were significant, and that is why we put them on exhibition, but I do not believe they were complex to understand. I think people had appropriate time to form a view and make a submission on that, and we received many submissions at the time. I think on the matter of height people make their point of view very quickly as to whether they are for or against. At the time we went to exhibition there was a lot of publicity so it was well known that these amendments were out for comment.⁹¹

- 2.66** However, Dr Geoff Evans disagreed, contending that the impact of such a dramatic height increase to buildings in the city indeed raised a number of significant and complex issues:

Mr O'Brien stated that the 16 day consultation process was adequate for the NURS as the changes were not complex. However, this is ridiculous, as the 2014 changes to the 2012 NURS are very significant. A change of building heights to almost 3 times previous levels to allow for high-rise developments raise very complex issues relating to city character, shading, wind effects, property values, aesthetics, and warrant a prolonged, and inclusive consultation process.⁹²

⁸⁷ Submission 92, Australian Institute of Architects NSW Chapter, p 1.

⁸⁸ Evidence, Clr Nuatali Nelmes, Lord Mayor, Newcastle City Council, 21 November 2014, p 19. Clr Nelmes was elected as Lord Mayor of Newcastle City Council on 15 November 2014.

⁸⁹ Evidence, Clr Nelmes, 21 November 2014, p 18.

⁹⁰ Evidence, Mr O'Brien, 24 November 2014, p 9.

⁹¹ Evidence, Mr O'Brien, 24 November 2014, pp 10-11.

⁹² Submission 224, Dr Geoff Evans, p 4.

- 2.67** Likewise, another inquiry participant insisted that the exhibition period was ‘grossly inadequate’ to comprehend the amendments, particularly as clear information about the amendments was not readily available:

The public was given just 16 days to lodge their submissions in response to the SEPP amendments (2014), from 5 - 21 March 2014. This very short period was grossly inadequate for residents to come to grips with the sheer volume of complex new planning information. To make matters more difficult the amendments were inserted into the NURS (2012) without any highlights, so it was extremely difficult to see where the changes were made.⁹³

Lack of information and transparency

- 2.68** Some inquiry participants also complained about a lack of transparency in the decision making process, and expressed concern about the limited availability and accessibility of public information regarding the Amendment SEPP.

- 2.69** For example, Mr David Blythe commented that ‘this whole process seems to me to be shrouded in secrecy and obfuscation and one-sided promotion’.⁹⁴ He claimed that there was a lack of clarity and information about the intentions and nature of the proposed developments in the East End and across the city centre.⁹⁵

- 2.70** Likewise, Dr Geoff Evans, President, Newcastle Inner City Residents Alliance, stated: ‘[W]e are particularly concerned about the lack of transparency, the lack of evidence and the farcical so-called community consultation that has occurred around these high-rise developments and the changes to the planning controls’.⁹⁶

- 2.71** Dr Evans argued that the limited public information available about the Newcastle planning controls is difficult to understand, unclear and at times misleading:

...what documentation has been put in the public domain, such as the amendments to the Newcastle Urban Renewal Strategy 2014, have been misleading. They have not identified the changes that were made in the documents. The video showing the flyover of the development area did not even show the high rise. It was a misleading document. Whether that was down to deception or to incompetence, the changes were buried inside the guide to the document.

The document did not indicate the changes. You needed to wade through a couple of hundred pages of documents to find the changes that were made between the 2012 and 2014 versions of the Newcastle Urban Renewal Strategy. So it is misleading. The average person, like myself, does not have the time to do this. If changes are made to key documents, you would think that they would be highlighted, that the community would be alerted to them and that the community would have more than 16 days to comment on them.⁹⁷

⁹³ Submission 349, Name suppressed, p 3.

⁹⁴ Submission 138, Mr David Blythe, Attachment 4, p 5.

⁹⁵ Submission 138, Mr David Blythe, Attachment 4, p 5.

⁹⁶ Evidence, Dr Evans, 7 November 2014, p 49.

⁹⁷ Evidence, Dr Evans, 7 November 2014, p 51.

- 2.72** In regard to Newcastle City Council's involvement in the planning process, some council members expressed concern that they had limited involvement in the amended draft SEPP, stating that they were not adequately informed about the proposed changes to it.
- 2.73** For example, Clr Doyle said that prior to the release of the amended draft SEPP, two briefings were given to council, one by the Department of Planning and Environment and the other by UrbanGrowth NSW, but that neither briefing provided detailed information or written material about the proposed changes to the planning controls. Clr Doyle remarked:
- We were given a very cursory explanation, with some very schematic diagrams of what the effect of the SEPP would be on the centre of the landscape in the centre of the city. That was 18 February and 24 February. The SEPP had not been published. We were given no written material, even though I asked immediately for written material.⁹⁸
- 2.74** Clr Nelmes told the committee that she 'found out on the front page of the paper exactly the details that were in those changes to the SEPP',⁹⁹ highlighting a significant flaw in the process: 'If you have elected representatives finding out on the front page of the paper what is actually changing in the building heights in their own city, you absolutely have a problem with the process'.¹⁰⁰
- 2.75** Clr Nelmes compared this to the council's discussions with the Department of Planning and Environment during the initial development of the draft SEPP, which she described as 'very open and transparent'.¹⁰¹
- 2.76** Because of the perceived inadequacy and lack of transparency in the decision making process, some stakeholders drew the conclusion that the decisions made in relation to the Amendment SEPP were not evidence-based, and that rather, perceived conflicts of interest came into play.
- 2.77** For example, Dr Evans from the Newcastle Inner City Residents Alliance contended that 'decisions are being made behind closed doors by insider networks with a lack of evidence and a lack of transparency about any documents that are being used to inform decisions...'.¹⁰²
- 2.78** Another inquiry participant expressed similar concern that 'critical decisions have not been based on actual evidence and there may been inappropriate influence by developers on decision makers or conflicts of interest that need to be investigated'.¹⁰³ Perceived conflicts of interest are explored further in chapter 3.

Committee comment

- 2.79** The committee acknowledges the concerns raised by inquiry participants about the nature and extent of the consultation process regarding the amendments to the draft SEPP (now the SEPP Amendment (Newcastle City Centre) 2014).

⁹⁸ Evidence, Clr Therese Doyle, Newcastle City Council, 21 November 2014, p 31.

⁹⁹ Evidence, Clr Nelmes, 21 November 2014, p 19.

¹⁰⁰ Evidence, Clr Nelmes, 21 November 2014, p 19.

¹⁰¹ Evidence, Clr Nelmes, 21 November 2014, p 18.

¹⁰² Evidence, Dr Evans, 7 November 2014, p 49.

¹⁰³ Submission 318, Name suppressed, p 1.

- 2.80** In comparison to the extensive consultation undertaken for the NURS, many stakeholders decried the 16 day exhibition period given to consider the amendments to the draft SEPP.
- 2.81** The committee agrees with inquiry participants that the exhibition period was inadequate. We believe there should have been a lengthier exhibition period to give the community, including Newcastle City Council, adequate opportunity to consider and respond to these important amendments.
- 2.82** The committee notes the evidence from the Department of Planning and Environment that submissions to the draft amended SEPP were still accepted for three months after the closing date. We are perplexed as to why the Secretary of the department endorsed only a 16 day period, as the additional three month period suggests that there was little rush for a decision to be made.

Building heights in the East End

- 2.83** The increase to building heights in the city's East End was a major concern for many inquiry participants. Some felt that the presence of high rise buildings would have an irreparable impact on Newcastle's heritage and character. Others questioned the rationale for constructing buildings of this height and scale in the East End for residential purposes. It was also suggested that the government's response to height concerns was superficial and did not reflect genuine consideration of the community's views.

Impact on heritage and character of the city

- 2.84** Numerous inquiry participants expressed concern over the impact of high rise development on the heritage and character of the city, with one inquiry participant declaring that high rise towers would 'compromise and destroy the character of the CBD of Newcastle forever'.¹⁰⁴
- 2.85** While a number of stakeholders supported efforts to promote development within Newcastle and renew the city centre, they argued that such development should be appropriately planned and complement the character and heritage of the city.
- 2.86** For example, local resident Mr Paul Scott, commented: 'I am enthusiastically supportive of the revitalisation of Newcastle and am not opposed to high-rise development providing it is appropriately planned and located'.¹⁰⁵ The Newcastle Inner City Residents Alliance expressed a similar view, stating that urban renewal should 'support the cultural and natural heritage and values of the city'.¹⁰⁶
- 2.87** In response to these views, Mr Anderson the committee that plans for the East End precinct have acknowledged the area's character and heritage, and the heights of buildings in other parts of the precinct have remained low to balance out the site:

... there is the balance of the site where we have actually delivered other things that have not taken up the height, and this is about flexibility in delivering a catalyst

¹⁰⁴ Submission 335, Name suppressed, p 1.

¹⁰⁵ Submission 258, Mr Paul Scott, p 1.

¹⁰⁶ Submission 103, Newcastle Inner City Residents Alliance, p 1.

project. We have delivered a market square, we have retention of more heritage and we have access to more open space and created additional pedestrian links through the development.¹⁰⁷

2.88 Nonetheless, many inquiry participants insisted that any high rise development in the East End would detrimentally impact the valued landscape, views, skyline and character of the city as a whole.

2.89 Mr Blythe argued that towers in the East End would ‘completely destroy the lovely profile of Newcastle when viewed from the harbor, from Stockton, and from Nobby’s Headland and the breakwater wall’.¹⁰⁸

2.90 Likewise, Dr Sue Outram and Mr Andrew Zdenkowski asserted that high rise buildings in the East End area would ‘change the wonderful landscape and silhouette of Newcastle’, suggesting that ‘for many citizens this amounts to desecration of our environment’.¹⁰⁹

2.91 Mr Charlie Bell and Mrs Penelope Bell highlighted the unique quality and appeal of Newcastle as a low-rise harbour city:

Newcastle has a unique character and skyline due the absence of tower block developments. This character makes it unique among large cities in Australia and contributes a great deal to the appeal of the city. It would be very shortsighted to compromise the unique character in the short term interests of development without due consideration of the potential for Newcastle to capitalise on it’s unique character as a low rise harbour city.¹¹⁰

2.92 Mrs Helen Sharrock asserted that local residents ‘did not want high rise and glitzy shopping mall Gold Coast type developments’, adding that ‘we have only one chance to make sure Newcastle grows and develops as a celebrated vibrant heritage city that has an enviable relaxed lifestyle’.¹¹¹

2.93 A number of inquiry participants criticised the new height controls as compared to the building heights proposed in the NURS and its original associated planning changes. For example, one inquiry participant remarked that the proposed planning controls released with the NURS were ‘far better’ than the final Amendment SEPP, pointing out that the initial plans kept ‘the city heritage area low-rise’.¹¹²

2.94 Similarly, another inquiry reflected on how the initial draft SEPP acknowledged the value of Newcastle’s heritage, stating that the initial proposed planning controls:

... acknowledged the historic significance of the city’s East End by maintaining a maximum 24 metres (or 8 storeys) height limit. This maximum height limit would protect the human scale, significant public vistas and historic character of this area.¹¹³

¹⁰⁷ Evidence, Mr Anderson, 24 November 2014, p 34.

¹⁰⁸ Submission 138, Mr David Blythe, Attachment 4, p 2.

¹⁰⁹ Submission 21, Dr Sue Outram and Mr Andrew Zdenkowski, p 2.

¹¹⁰ Submission 70, Mr Charlie Bell and Mrs Penelope Bell, p 1.

¹¹¹ Submission 80, Mrs Helen Sharrock, p 1.

¹¹² Submission 181, Name suppressed, p 6.

¹¹³ Submission 326, Name suppressed, p 2.

- 2.95** Ms Sharon Grierson, former Federal member for Newcastle, also observed that the NURS was well-received as it recognised and promoted various character areas within the city centre, unlike the plans for the GPT/UrbanGrowth NSW site in the city's East End which she claimed has triggered a 'rage' in Newcastle:

We had an urban renewal strategy that was well supported ... It recognised the eastern precinct as the historical heritage-base precinct. Its height limits were 24 metres. The GPT proposal was still accepted and part of that. It recognised that there was great scope for height development in the West End, which we would all like to see. It recognised the civic area of the harbour city with the museum, the art gallery, all the council buildings as well as the university and the law courts. It was a well-accepted document, but the amendments brought in to satisfy the submissions made by UrbanGrowth NSW and GPT are what has triggered this disquiet and rage, really, in Newcastle. It was going really well.¹¹⁴

- 2.96** Indeed, a number of inquiry participants called for the height limits to revert back to those originally proposed when the NURS was first released.¹¹⁵ For example, the Newcastle Inner City Residents Alliance appealed for the height limits to be 'restored' to the proposed limits under the planning controls recommended with the NURS in 2012,¹¹⁶ namely, 27 metres in the East End precinct.¹¹⁷

- 2.97** Clr Nelmes also appealed for the height controls to be amended, emphasising that a decision has not yet been made by the JRPP on the East End development application:

I would like the committee to realise that, with the SEPP, particularly regarding the controversial 17-storey towers, it is not too late to reverse that decision because there has been no determination by the Joint Regional Planning Panel [JRPP] on any development applications lodged. So sometimes when you do have controversial plans implemented it can be too late, particularly under the EPA Act and then subsequent Land and Environment Court legislation. But it is not too late for this committee to reverse that part of the SEPP and that is really important.¹¹⁸

- 2.98** The approval of development applications for the East End site is discussed further in chapter 3 in the context of conflicts of interest.

Rationale for development

- 2.99** The rationale for high rise development in the city's East End was raised by a number of inquiry participants who questioned whether there was justification for the construction of three residential towers.
- 2.100** In discussing the plans for the East End precinct, Mr Anderson from UrbanGrowth NSW said that studies revealed that the capacity of the site to deliver the amount of retail originally

¹¹⁴ Evidence, Ms Grierson, 21 November 2014, p 40.

¹¹⁵ See for example Submission 353, Submission 354, Submission 86, Submission 91, and Submission 181.

¹¹⁶ Submission 103, Newcastle Inner City Residents Alliance, p 11.

¹¹⁷ Newcastle Urban Renewal Strategy 2012, p 147.

¹¹⁸ Evidence, Clr Nelmes, 21 November 2014, p 22.

planned was not possible, ‘so there was a scaling back of the retail’.¹¹⁹ Mr Angus Gordon, Development Manager, GPT, further explained that this scaling back ‘has placed a greater emphasis on the mix of land uses other than retail, in particular, residential which is considered a major driver for successful mixed use urban regeneration in city centres’.¹²⁰

2.101 Mr Anderson informed the committee that market analysis had revealed a clear need for residential sites in the city centre, stating:

[W]hen we had a look at some of the market analysis that we undertook ... there was the demand for apartment living within the CBD and in particular the east end. Nearly 70 per cent of those types of people who were looking for that type of accommodation are aged between 20 and 44. In some respects that is young Novocastrians or young families in the area because that is the type of activity they are looking for. They are looking to go to a city and revitalising it.¹²¹

2.102 Mr O’Brien from the Department of Planning and Environment advised that the focus on residential use in the city was consistent with the NURS, stating:

... the urban renewal strategy aims to get more people living across the city centre of Newcastle to increase the viability, the integrity, the housing mix and affordability of the city centre ... We want residential living across the city centre and the east end is part of that.¹²²

2.103 However, several inquiry participants expressed concern over this justification of the high rise development in the East End. Dr Evans argued that there was no need for high rise residential accommodation, noting that there are a number of residential developments already underway:

... my understanding is that it is obvious that there is a steady growth in human-scale residential accommodation being built now, as we speak, in the inner-city part of Newcastle in mostly shop-top development and some new developments on the periphery of the heritage part of Newcastle. There is certainly no justification for three high-rise towers.¹²³

2.104 Others challenged the argument that the height and scale of the towers is necessary for the development to be financially viable. For example, one inquiry participant questioned the existence of evidence to support the need for this type of development:

While proponents may argue that the height and scale proposed in the DA are necessary for the financial viability of the project, no convincing evidence has been provided that support the proponent’s claims regarding the need for this type of development, no alternatives offered to the community, nor authentic involvement of the community in discussion about such major plans.¹²⁴

¹¹⁹ Evidence, Mr Anderson, 24 November 2014, p 30.

¹²⁰ Evidence, Mr Angus Gordon, Development Manager, The GPT Group, 21 November 2014, p 77.

¹²¹ Evidence, Mr Anderson, 24 November 2014, p 40.

¹²² Evidence, Mr O’Brien, 24 November 2014, p 12.

¹²³ Evidence, Dr Evans, 7 November 2014, p 50.

¹²⁴ Submission 184, Name suppressed, p 3.

- 2.105** Mr Greg Piper MP, Member for Lake Macquarie, agreed, noting that numerous smaller scale residential developments have been successful:

The community does not accept the argument that the viability of the UrbanGrowth/GPT development relies on buildings of this height. No business case has been presented to support this proposition and the community remains unconvinced by the argument that a residential tower in the Hunter Street mall precinct can only be financially viable if it is 17 storeys high, given that the median price for an apartment in the East End is over \$850,000 and luxury apartments can sell for up to \$3 million. A significant number of apartment blocks complying with the former, far more modest, height limits have been built or refurbished in the East End over the past decade and proved financially successful for the developers.¹²⁵

- 2.106** Some inquiry participants drew attention to the ‘ample opportunity’ for development in the city’s West End rather than East End.¹²⁶ They asserted that high rise buildings would be more appropriate in the West End which does not have ‘significant heritage landscape’ and is in need of more stimulus than the East End.¹²⁷

Consideration of height concerns

- 2.107** Given the community opposition to the increased building heights in the city’s East End precinct, a number of inquiry participants contended that the community’s concerns were not genuinely considered in the decision making process.

- 2.108** One inquiry participant declared: ‘This is an arrogant plan which has not taken into account the views of the residents’.¹²⁸ A similar view was expressed by Mr Brian Ladd from the Newcastle Inner City Residents Alliance who argued that, despite the majority of submissions to the draft amended SEPP opposing the towers in the East End, ‘the planning department chose not to recognise all those people who went to the trouble to follow their process. They ignored them’.¹²⁹

- 2.109** However, Mr O’Brien insisted that the Department of Planning and Environment genuinely considered the community’s concerns and acted upon them. He pointed out that the heights originally proposed by UrbanGrowth NSW and GPT were lowered in the Amendment SEPP in direct response to community’s views about their impact:

How did we take the community’s views into consideration? Well, we did. The views expressed concerned height, views and heritage impacts particularly on the cathedral and that is why we made the recommendation to reduce the height of the tallest tower to make sure that it did not exceed the parapet of the nave of the cathedral.¹³⁰

- 2.110** However, Mr Greg Piper, Member for Lake Macquarie, contended that the department’s response was tokenistic, suggesting that the original height proposal was somewhat of a ploy to make the revised height more acceptable:

¹²⁵ Submission 227, Mr Greg Piper MP, p 3.

¹²⁶ Submission 181, Name suppressed, p 6.

¹²⁷ Evidence, Dr Evans, 7 November 2014, p 50; Submission 80, Mrs Helen Sharrock, p 1.

¹²⁸ Submission 335, Name suppressed, p 1.

¹²⁹ Evidence, Mr Brian Ladd, Newcastle Inner City Residents Alliance, 7 November 2014, p 56.

¹³⁰ Evidence, Mr O’Brien, 24 November 2014, p 12.

The initial proposal was, inexplicably, for an even higher limit of 69.5 metres. The Government subsequently amended this after public consultation, but the reduction in height limit (by approximately two storeys) was widely regarded as a token response to community concerns. The popular view is that the original height limit was something of an ‘ambit claim’ designed to make the subsequent revised height more palatable.¹³¹

- 2.111** Mr Paul Scott echoed this view, stating that the decision to reduce the height limits confirms what he believed to be a common practice in development approvals:

Minister Goward ultimately reduced the height of one building to 17 storeys. This merely confirmed a view from those who have seen time and time again that property developers seeking large height development approvals in NSW always ask for more than they want to give planning authorities the ability to argue the project’s scale will be reduced ‘in response to public concern’.¹³²

- 2.112** One inquiry participant concluded that the ‘token height reduction’ not only failed to meet community expectations but ‘perpetuated many residents’ concerns about the Planning Department’s bias towards the vested interests of the two developers over the wider interests of the entire Newcastle and Hunter community’.¹³³

Committee comment

- 2.113** The committee acknowledges the overwhelming concern expressed by inquiry participants regarding the impact of increased height limits in the East End precinct, as prescribed by the Amendment SEPP. The committee agrees with inquiry participants that the unique heritage character of Newcastle should be preserved and considers that high rise development in the city’s East End would have a number of adverse impacts.
- 2.114** While it is noted that height limits were lowered to match the parapet of the nave of Christ Church Cathedral in response to community concerns, the committee believes that further lowering of building heights is necessary to protect the heritage character of the city. In particular, the committee notes the community’s support for the height limits proposed in the NURS and its original associated planning controls for the East End precinct, which varied between 20 metres to 27 metres at different locations.
- 2.115** The committee therefore recommends that the Minister for Planning and Environment further lower the maximum height of buildings within the East End precinct to reflect the height controls originally proposed in the NURS and Amendment SEPP in 2012.

Recommendation 1

That the Minister for Planning and Environment amend height controls specified in the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014 by lowering the maximum permitted height of buildings within the East End precinct to 27 metres.

¹³¹ Submission 227, Mr Greg Piper MP, p 3.

¹³² Submission 258, Mr Paul Scott, p 3.

¹³³ Submission 349, Name suppressed, p 5.

Chapter 3 Conflicts of interest

This chapter discusses the perceived conflicts of interest that have arisen as a consequence of the interrelationships between the Department of Planning and Environment, UrbanGrowth NSW and The GPT Group (GPT). These conflicts relate to the partnership between UrbanGrowth and GPT, and the multiple roles of the Minister for Planning. The chapter concludes by discussing the numerous agencies and planning documents that influence the Newcastle renewal planning process.

Perceived conflicts of interest

3.1 Inquiry stakeholders identified two perceived conflicts of interest arising as a consequence of the interrelationships between the Department of Planning and Environment, UrbanGrowth NSW and GPT.¹³⁴ The first potential conflict arises from the commercial partnership between UrbanGrowth and GPT, while the second conflict pertains to the multiple roles of the Minister for Planning, as well as the Department of Planning and Environment, in the planning and development process.

UrbanGrowth NSW and GPT partnership

3.2 As noted in chapter 1, UrbanGrowth NSW owns two-thirds of the Newcastle East End site with the remaining one-third owned by GPT.¹³⁵ The two bodies have formed a public-private partnership and lodged a development application which proposes the construction of three high-rise towers on the site. This proposal was discussed in chapter 2.

3.3 Mr Peter Anderson, Head of Wholesale, Projects Division, UrbanGrowth NSW, outlined the co-owners, property management and project delivery agreements that underpin the partnership between UrbanGrowth and GPT:

The first agreement is the co-owners agreement because we purchased two-thirds of the site so we are registered on title as two-thirds of the site. There is a co-owners agreement that says that this is how we operate and this is how we maintain the buildings and how we manage as owners of this property as part of the arrangement. The second agreement is a property management agreement because GPT brings the expertise of managing the property, maintaining that the leases are okay, that the tenants are accommodated, that maintenance upgrades are undertaken and that we deal with the security ... The third agreement was a project delivery agreement. That project delivery agreement is an agreement that allows us to guide us through the master planning phase.¹³⁶

3.4 Inquiry participants questioned the appropriateness of such a close relationship between a state-owned corporation and a private company.¹³⁷ Concern was raised that the relationship represented a clear conflict of interest because UrbanGrowth, as a state-owned corporation

¹³⁴ The roles of each of these agencies is outlined in chapter 1.

¹³⁵ Submission 253, NSW Government, Attachment 2, p 4; Submission 262, The GPT Group, p 1.

¹³⁶ Evidence, Mr Peter Anderson, Head of Wholesale, Projects Division, UrbanGrowth NSW, 24 November 2014, p 33.

¹³⁷ For example, Submissions 148, Ms Nicole Thomas, pp 1-2; Submission 202, Name suppressed, p 3.

reporting directly to the Minister for Planning, is in a position to influence planning approvals that benefit the partnership and therefore GPT, a private company.¹³⁸

3.5 For example, one inquiry participant said: ‘There is an obvious (and blatant) conflict of interest, with the NSW Government being both the beneficiary and authorising body for this development.’¹³⁹

3.6 The role of the government as developer and regulator was similarly criticised by another inquiry participant:

The state government in its role as GPT’s development partner Urban Growth NSW is completely conflicted being the planning regulator ruling on its own development ... The inherent conflict of interest of the state government as both developer and regulator in this development is untenable ...¹⁴⁰

3.7 Mr David Blyth suggested that any objectors to the development proposal may lack confidence in the independence of the appeals process given that the development proponents are so closely associated with the government:

All of the appellant avenues open (if that is the right word) to objectors are state government departments or instrumentalities. How can I appeal to the Department of Planning to object when that department is closely linked to the developer; in fact, it is ‘owned’ by the State government – just as UrbanGrowth is? This seems to be a very unhealthy arrangement to me ...¹⁴¹

3.8 Mr Blyth concluded: ‘How can it be that the arbiter is also the co-developer? There is no “arm’s length” here!’¹⁴²

3.9 Dr Geoff Evans described the partnership between UrbanGrowth and GPT as ‘an untenable conflict’,¹⁴³ declaring that ‘[i]t is inappropriate for the Minister to allow her agency, UrbanGrowth NSW, to play this role that favours a particular private developer and a further example of a clear conflict of interest’.¹⁴⁴

3.10 In his capacity as President of the Newcastle Inner City Residents Alliance, Dr Evans queried why GPT was afforded a ‘special relationship’ with a public agency when no other property developers seeking to develop other areas of Newcastle were granted the same privileges:

It [GPT] is being supported by the public-private partnership with UrbanGrowth. Why is it just GPT? If UrbanGrowth really does want to stimulate development in Newcastle, why is it in bed, for want of a better term, with GPT in an area that does not need any stimulus? What about all the other people who want to aid development opportunities in the West End and other parts of the city, including other parts not in the central business district, like Wallsend, and other parts that need support? For

¹³⁸ Submission 378, Ms Karen Bolben, pp 2-3.

¹³⁹ Submission 181, Name suppressed, p 7.

¹⁴⁰ Submission 274, Name suppressed, pp 1-2.

¹⁴¹ Submission 138, Mr David Blyth, Attachment 4, p 5.

¹⁴² Submission 138, Mr David Blyth, p 1.

¹⁴³ Submission 224, Dr Geoff Evans, p 3.

¹⁴⁴ Submission 224, Dr Geoff Evans, p 3.

some strange reason GPT ... has a special relationship with UrbanGrowth that seems to be denied to all other property developers in this city.¹⁴⁵

3.11 Mrs Ruth Adams was also critical of the close partnership between UrbanGrowth NSW and GPT, likewise suggesting that GPT had been afforded benefits from the partnership not available to other property developers in Newcastle. Mrs Adams described the situation as ‘both unfair and unethical’¹⁴⁶, stating: ‘I see this as an extreme example of poor practice and governance from a government who promised openness, transparency and genuine engagement with the community’.¹⁴⁷

3.12 Mr John Sutton, former councillor, Newcastle City Council, submitted that an example of the benefits to GPT from its partnership with a government agency was revealed in an order for papers relating to planning in Newcastle and the Hunter. Mr Sutton said that correspondence exists that appears to imply that GPT was relying on UrbanGrowth to minimise potential delays in the State Environmental Planning Policy (SEPP) approval process:

Documents that have come out of the call for papers reveal that an UrbanGrowth NSW representative observed there may be a risk of delays to the SEPP approvals process and that that might then result in delays to the development application. The document states that GPT was depending on UrbanGrowth NSW’s connections with the Department of Planning and Environment to minimise those risks. That is code for, ‘We are in partnership with you and you are a government agency. Go and see your other government agency mates and get this moved on quickly.’ That has to be a worry to anyone.¹⁴⁸

3.13 Mr Anderson was questioned by a committee member regarding an email exchange from within UrbanGrowth NSW by way of a handover note. That exchange was in the following terms:

... so you are both aware, the lord mayor Jeff McCloy called me this morning to ask how we were faring with our planning of our project and what the reaction has been by UrbanGrowth and GPT to last week’s budget announcement. I replied that we are progressing well with our planning and the news last week was welcomed, particularly by UrbanGrowth, placing added emphasis on the timely delivery of our project. He asked that we write a letter, either with GPT or separately to the Premier and Treasurer, to congratulate them on the additional \$340 million and support the option to have the light rail system placed in Hunter Street and not the existing rail corridor. I will prepare a draft letter for your review.¹⁴⁹

3.14 Mr Anderson advised the committee that he was ‘not privy to that email’¹⁵⁰ and, in response to a request from the committee to provide the letter, advised that ‘no letter or draft was found in UrbanGrowth NSW’s records’.¹⁵¹

¹⁴⁵ Evidence, Dr Geoff Evans, President, Newcastle Inner City Residents Alliance, 7 November 2014, p 54.

¹⁴⁶ Submission 325, Mrs Ruth Adams, p 1.

¹⁴⁷ Submission 325, Mrs Ruth Adams, p 1.

¹⁴⁸ Evidence, Mr John Sutton, former councillor, Newcastle City Council, 21 November 2014, pp 72-73.

¹⁴⁹ Evidence, Mr Anderson, 24 November 2014, p 36.

¹⁵⁰ Evidence, Mr Anderson, 24 November 2014, p 36.

- 3.15** GPT informed the committee that while it had made a number of submissions relating to the Newcastle Urban Renewal Strategy (NURS), the SEPP Amendment (Newcastle City Centre) 2014, and the East End development, it had not been involved in the consideration or assessment of any of these submissions as this was ‘the responsibility of various stakeholders including state and local government agencies’.¹⁵²
- 3.16** The committee heard that GPT had also participated in master planning meetings for the Newcastle redevelopment that were held with representatives from local and state government.¹⁵³ When questioned on the appropriateness of representatives from GPT attending such meetings, Mr Angus Gordon, Development Manager, GPT, replied that he ‘did not think it was peculiar’ for a private company to be involved in such meetings.¹⁵⁴
- 3.17** Mr Gordon highlighted the strategic importance of the East End site for the redevelopment of Newcastle, and maintained that such close collaboration between the state and private developers was not uncommon in successful urban regeneration projects:
- ... if you look at the Newcastle Urban Renewal Strategy document it identifies those three city blocks as a catalyst project for renewal in the city. I think if you look at urban regeneration in city projects around the world, and you look at best practice examples, it is not unusual to have collaboration between the private sector and the public sector. The master plan working group was simply a working group to try to ensure we had a coordinated response that was strategically looking at the key issues for regeneration.¹⁵⁵
- 3.18** However, other inquiry participants challenged the appropriateness of involving a private company in master planning meetings held by government agencies. For example, Mr Sutton argued that the presence of GPT at master planning meetings did not meet ‘reasonable standards of governance’,¹⁵⁶ declaring:
- This is a group of government agencies ... They are sitting around a table talking about the future of the city. That is one thing. It is quite a different thing when a major retail corporation that is in partnership with one of those government agencies on a city site is given a ticket to the table to discuss the future of the entire city. That is quite a different thing. I think we are entitled to be outraged about that ...¹⁵⁷
- 3.19** Professor Howard Dick also questioned the involvement of GPT in such meetings, insisting that public policy should be determined in a way that alleviates any suspicion that may arise from the involvement of a private company.¹⁵⁸ Professor Dick stated: ‘Transparency,

¹⁵¹ Answers to questions on notice, Mr Peter Anderson, Head of Wholesale, Projects Division, UrbanGrowth NSW, 4 December 2014, p 3.

¹⁵² Submission 262, The GPT Group, p 1.

¹⁵³ Evidence, exchange between Mr David Shoebridge MLC, committee member and Mr Angus Gordon, Development Manager, GPT Group, 21 November 2014, p 80.

¹⁵⁴ Evidence, Mr Angus Gordon, Development Manager, GPT Group, 21 November 2014, p 80.

¹⁵⁵ Evidence, Mr Gordon, 21 November 2014, p 80.

¹⁵⁶ Evidence, Mr Sutton, 21 November 2014, pp 72.

¹⁵⁷ Evidence, Mr Sutton, 21 November 2014, pp 72.

¹⁵⁸ Evidence, Professor Howard Dick, Faculty of Business and Economics, University of Melbourne, 21 November 2014, p 73.

consultation and accountability in Newcastle have become their [the NSW Government's] pretence. There are massive failures of governance and they are giving rise to bad policy ... I believe it is in the best interests of the Government itself to pull back from this precipice.¹⁵⁹

- 3.20** Mr Tim Crakanthorp, Councillor, Newcastle City Council, acknowledged that property owners frequently benefit from government decisions, however, considered that the close involvement of a property owner in decision making processes that may benefit them undermines the integrity of the planning process:

There is nothing wrong with landholders benefiting from government decisions that increase the value of their land; it does happen all the time. But there is something wrong if the landholders are directly involved in the decisions that benefit them. The potential conflicts of interest are why we have good planning processes that are open and transparent, based on the use of professional and impartial advice. The problem that we have is that the Government has disclosed neither its process nor its advice.¹⁶⁰

Ministerial and departmental roles

- 3.21** Some inquiry participants questioned the ability of the Minister for Planning and the Department of Planning and Environment to impartially undertake the multiple roles required of them in the redevelopment of Newcastle. It was highlighted that the Minister and department are acting as the regulator, developer and approver for many of the policies and projects being undertaken in Newcastle, which many inquiry participants felt inevitably led to conflicts of interest.
- 3.22** For example, Ms Sharon Grierson, former Federal member for Newcastle, expressed the view that the Minister for Planning giving final approval to the amended NURS while also being the Minister for UrbanGrowth NSW 'represents a major probity issue and conflict of interest'.¹⁶¹ Ms Grierson contended that the arrangements failed good governance practice:

I have major probity concerns regarding the approval of this amended Newcastle Urban Renewal Strategy by the Minister for Planning who is also the Minister who oversees the UrbanGrowth NSW agency of government which has a commercial partnership with GPT ... The UrbanGrowth NSW/GPT project is a profit making venture and the amendments proposed favour this commercial partnership over all landholders in the same precinct. I suggest that this situation fails established probity guidelines and good governance practice.¹⁶²

- 3.23** The Newcastle Inner City Residents Alliance also felt that the Minister has inherent conflicts in carrying out the multiple facets of the role as head of the Department of Planning and Environment and UrbanGrowth. The Alliance's President, Dr Evans, explained:

We feel that the Minister, Pru Goward, has a clear conflict of interest as both the Minister responsible for the Department of Planning and Environment and the

¹⁵⁹ Evidence, Professor Howard Dick, 21 November 2014, p 69.

¹⁶⁰ Evidence, Mr Tim Crakanthorp, Councillor, Newcastle City Council, 21 November 2014, p 18. Mr Crakanthorp was elected as the member for Newcastle on 25 October 2014.

¹⁶¹ Submission 279, Ms Sharon Grierson, p 6.

¹⁶² Submission 279, Ms Sharon Grierson, p 4.

Minister responsible for UrbanGrowth. She is the regulator, developer and approver and this is a clear demonstration of the inadequacy of the decision-making processes that are occurring in this State.¹⁶³

3.24 Dr Evans' personal submission to the inquiry identified three areas where he considered the Minister's judgement may be impeded due to a conflict of roles:

The changes to planning instruments affecting development in Newcastle's East End highlights real or apparent problems of conflict of interest regarding the Minister for planning's capacity to fairly judge developments involving UrbanGrowth NSW, as she is the Minister responsible for:

- planning policy and guidelines,
- planning approvals and
- for UrbanGrowth NSW, a major developer and development facilitator.¹⁶⁴

3.25 Mrs Margaret Ostinga similarly argued that, in specific regard to the East End site, a conflict arises with the Minister for Planning simultaneously having responsibility for both planning policy and the approval of the development itself:

I believe the Minister of Planning has a conflict of interest because in her capacity, the Minister of Planning made and approved the amendments to existing State Environmental Planning Policy and is also the minister to whom UrbanGrowth NSW is accountable. In this case, the Minister is both the developer and the policy maker of planning.¹⁶⁵

3.26 One inquiry participant submitted that the government's roles as both developer and consent authority have had a detrimental impact on public confidence in the decision making process:

Perhaps most concerning is the dual role of State government as developer and consent authority. This includes the controlling interest over the makeup of the Joint Regional Planning Panel itself. This creates the perception of an inescapable conflict of interest and contributes to the loss of community confidence in the probity of this process ... 'Spot rezoning' and proposed alteration of existing height limits to favour this proposal and this development on such a massive scale further accentuates a perception of conflict of interest in this process.¹⁶⁶

3.27 Professor Dick considered that there should be an independent assessment of any development proposals made for the East End site rather than a determination being made by a minister with a clear conflict of interest: '[T]here should be all the more rigorous and arms-length assessment, not a left-hand/right-hand ministerial deal'.¹⁶⁷

3.28 The Hunter Regional Committee of the National Trust of Australia (NSW) echoed the view that, given the partnership between UrbanGrowth NSW and GPI, the government should take an 'arm's length' approach to the planning process to minimise any perception of conflict:

¹⁶³ Evidence, Dr Evans, 7 November 2014, p 49.

¹⁶⁴ Submission 224, Dr Geoff Evans, p 2.

¹⁶⁵ Submission 375, Mrs Margaret Ostinga, p 1.

¹⁶⁶ Submission 184, Name suppressed, p 2.

¹⁶⁷ Submission 220, Professor Howard Dick, p 10.

The development application was prepared jointly by GPT and Urban Growth. Urban Growth is a public sector property developer. Both have a clear conflict of interest including a pecuniary interest in redevelopment in Newcastle CBD. The draft SEPP and draft Development Control Plan for the CBD Mall area appear to mirror the DA. This created a perception of collusion between the developers and the government.

Given UrbanGrowth's conflict of interest (pecuniary), the NSW Government should have taken an arms-length approach and the planning instruments (SEPP and Development Control Plan) should have been subject to an independent review. This does not appear to have occurred.¹⁶⁸

- 3.29** The National Trust of Australia (NSW) suggested that an appropriate way to address the perceived conflict of interest would be to refer any development application for the East End site to the NSW Planning Assessment Commission for determination:

As the NSW Government is both the part owner and determining authority for the GPT/UrbanGrowth development proposal, the Trust will urge that any development application be dealt with independently by the Planning Assessment Commission following a full and open public inquiry.¹⁶⁹

- 3.30** The Planning and Assessment Commission is a statutory body established under the *Environmental Planning and Assessment Act 1979*. The commission is independent of the NSW Government, the Minister for Planning and the Department of Planning and Environment.¹⁷⁰

- 3.31** The key functions of the commission include to:

- determine applications for major developments under delegation from the Minister
- review any major development, including conducting public hearings
- provide independent expert advice on planning and development matters.¹⁷¹

- 3.32** The delegation to determine certain major development applications applies to:

- applications made by private proponents where a reportable political donation has been declared
- applications objected to by the relevant council
- applications where more than 25 objection submissions are received by the Department of Planning and Environment.¹⁷²

¹⁶⁸ Submission 314, Hunter Regional Committee of the National Trust of Australia (NSW), p 4.

¹⁶⁹ Submission 171, The National Trust of Australia (NSW), p 2.

¹⁷⁰ NSW Planning Assessment Commission, *Welcome to NSW Planning Assessment Commission*, <<http://www.pac.nsw.gov.au/>>.

¹⁷¹ *Environmental Planning and Assessment Act 1979* s 23D; NSW Planning and Assessment Commission, *About the Planning and Assessment Commission – Functions*, <<http://www.pac.nsw.gov.au/AboutUs/tabid/55/Default.aspx>>.

¹⁷² NSW Planning and Assessment Commission, *About the Planning and Assessment Commission – Delegation*, <<http://www.pac.nsw.gov.au/AboutUs/tabid/55/Default.aspx>>.

- 3.33** The Planning and Assessment Commission has the power to hold public hearings into planning and development matters, following which a public report will be provided to the Minister or the department secretary for consideration.¹⁷³

Committee comment

- 3.34** The committee acknowledges that many inquiry participants held significant concerns regarding the potential conflicts of interest that arise as a consequence of the interrelationships between the Department of Planning and Environment, UrbanGrowth NSW and GPT.
- 3.35** Many inquiry participants questioned the appropriateness of the commercial partnership between UrbanGrowth and GPT. We acknowledge their arguments that this relationship constitutes a conflict because UrbanGrowth, as a state-owned corporation reporting directly to the Minister for Planning, has the ability to influence planning approvals that benefit the partnership and therefore GPT, a publicly listed corporation. We also note that some inquiry participants questioned the impartiality of the Minister for Planning and the department in undertaking the multiple roles required of them during the revitalisation of Newcastle.
- 3.36** The committee further notes the participation of GPT representatives in master planning meetings with government agencies for the East End redevelopment and question whether it is normal procedure for private parties to be involved in such meetings.
- 3.37** The committee supports the proposal from the National Trust of Australia (NSW) that to minimise perceptions of conflict of interest, the Minister for Planning should refer any development application for the East End site in Newcastle to the NSW Planning and Assessment Commission. This will allow an assessment of any development proposal to occur independently following a rigorous and transparent public inquiry.
-

Recommendation 2

That the Minister for Planning and Environment refer any development application for the Newcastle East End site to the NSW Planning and Assessment Commission for determination.

- 3.38** Further, the committee considers that there is an irreconcilable conflict of interest in the relationship between UrbanGrowth NSW and the Department of Planning and Environment whereby the NSW Government is both the landowner, via UrbanGrowth, and the planning consent authority, via the department.
- 3.39** While there may be a broader public interest in restricting the size of a proposed development on the East End site, there may concurrently be a financial incentive to the government to increase the development size. This conflict of interest is accentuated when, as in this instance, UrbanGrowth is in a commercial partnership with a private property trust, GPT.

¹⁷³ *Environmental Planning and Assessment Act 1979* section 23D(1)(b)(iii); NSW Planning and Assessment Commission, *About the Planning and Assessment Commission – public hearings*, <<http://www.pac.nsw.gov.au/AboutUs/tabid/55/Default.aspx>>.

- 3.40** This conflict is unacceptable and detracts from public confidence in the planning system. The committee therefore believes that the NSW Government should clearly separate the Department of Planning and Environment and UrbanGrowth NSW to eliminate the direct conflict of interest between the department as the planning consent authority and UrbanGrowth NSW as a landowner.

Recommendation 3

That the NSW Government clearly separate the Department of Planning and Environment and UrbanGrowth NSW.

Hunter Development Corporation

- 3.41** The Hunter Development Corporation is part of the Department of Planning and Environment. The corporation works with other government agencies and stakeholders to pursue opportunities for economic growth in the Hunter.¹⁷⁴ It is a self-funded entity, with its main source of income being the proceeds of property sales.¹⁷⁵ The corporation owns a significant amount of land at Honeysuckle, along the Newcastle foreshore between Wickham and Civic.¹⁷⁶
- 3.42** The interim report discussed concerns about the conflicts of interest held by the corporation's General Manager, Mr Bob Hawes, who holds interests in two properties in Newcastle west, near Wickham station.¹⁷⁷ One of those properties, on Beresford Street, is subject to a development application to build a nine storey mixed commercial/residential building.¹⁷⁸
- 3.43** Mr Hawes commenced employment with the Hunter Development Corporation in March 2011. Prior to that he worked for the corporation as a consultant for a period leading up to May 2007.¹⁷⁹
- 3.44** Claims about conflict of interest issues were strongly refuted by Mr Hawes and the Hunter Development Corporation. Mr Hawes told the committee: '[M]y interest has always been disclosed. It has been there for everyone to see. There has been nothing hidden.'¹⁸⁰
- 3.45** In response to questioning from the committee as to when his interests were disclosed, Mr Hawes replied:

¹⁷⁴ Submission 253, NSW Government, Attachment 1, p 1.

¹⁷⁵ Submission 253, NSW Government, Attachment 1, p 2.

¹⁷⁶ Evidence, Mr Bob Hawes, General Manager, Hunter Development Corporation, 7 November 2014, p 3.

¹⁷⁷ Select Committee on the Planning Process in Newcastle and the Broader Hunter Region, NSW Legislative Council, *The planning process in Newcastle and the broader Hunter region: Interim report*, December 2014, pp 96-100, pp 101-102; Evidence, Mr Hawes, 7 November 2014, p 2 and pp 8-9.

¹⁷⁸ City of Newcastle, Minutes of the Development Applications Committee Meeting, 11 May 2010, Item 11.

¹⁷⁹ Evidence, Mr Hawes, 7 November 2014, p 11.

¹⁸⁰ Evidence, Mr Hawes, 7 November 2014, p 11.

It has been on the public record since March 2011, when I commenced employment with the Hunter Development Cooperation; and prior to that when I worked for them as a consultant through the period up to 2007.¹⁸¹

- 3.46** Evidence received by the committee shows that the first entry on the corporation's pecuniary interest register disclosing Mr Hawes' interests near Wickham station is 14 February 2011.¹⁸² Mr Hawes informed the committee that he submitted the development application for the Beresford Street site 'in 2005 or 2006',¹⁸³ and the application was approved in 2010.¹⁸⁴ According to evidence provided to the committee by the corporation, the first disclosure of Mr Hawes' development application on its pecuniary interest register was 19 February 2013.¹⁸⁵
- 3.47** In correspondence to the committee, however, Mr Hawes noted that the development approval on his Beresford Street property is on the public record through the development application process. Mr Hawes also advised that the status of the development approval has not changed since 2010, and stated: 'I do not have any intention of undertaking the project.'¹⁸⁶
- 3.48** The interim report also discussed concerns regarding Mr Hawes' involvement in planning decisions involving the Wickham Transport Interchange.¹⁸⁷
- 3.49** In response to this concern, the Chairman of the Hunter Development Corporation, Mr Paul Broad, advised that Mr Hawes did not participate in any board meetings considering the proposed redevelopment at Wickham.¹⁸⁸ Further, Mr Broad advised that the corporation's Board had only had one meeting since 2009 where it made a decision endorsing the Newcastle Urban Renewal Strategy and/or the future possible truncation of the rail line, and that Mr Hawes was not employed at the corporation at the date of that meeting.¹⁸⁹
- 3.50** Mr Hawes refuted suggestions that he had any role in determining plans for the Wickham interchange, given the timing of his employment with the corporation.¹⁹⁰
- 3.51** The Secretary of the Department of Planning and Environment, Ms Carolyn McNally, advised that the department was managing Mr Hawes' conflict of interest by 'ensuring that he is not

¹⁸¹ Evidence, Mr Hawes, 7 November 2014, p 11.

¹⁸² Answers to questions on notice, Mr Paul Broad, Chairman, Hunter Development Corporation, 2 December 2014, p 1.

¹⁸³ Evidence, Mr Hawes, 7 November 2014, p 10.

¹⁸⁴ Right of reply from Mr Bob Hawes, to Chairman, 5 December 2014, p 4.

¹⁸⁵ Answers to questions on notice, Mr Broad, Attachment C, p 3 and Attachment E, p 1.

¹⁸⁶ Right of reply from Mr Bob Hawes, to Chairman, 5 December 2014, p 4.

¹⁸⁷ Select Committee on the Planning Process in Newcastle and the Broader Hunter Region, NSW Legislative Council, *The planning process in Newcastle and the broader Hunter region: Interim report*, December 2014, pp 96-100, pp 101-102.

¹⁸⁸ Evidence, Mr Paul Broad, Chairman, Hunter Development Corporation, 7 November 2014, p 11.

¹⁸⁹ Answers to questions on notice, Mr Broad, p 1.

¹⁹⁰ Correspondence from Mr Bob Hawes, General Manager, Hunter Development Corporation to Chairman, 24 February 2015.

party to any decision-making processes that relate to anything to do with the Hunter Development Corporation.¹⁹¹

3.52 In its interim report, the committee recommended that the department ensure that Mr Hawes has his conflicts of interest consistently managed in accordance with the NSW Planning and Infrastructure Conflicts of Interest Policy and Guidelines 2011.¹⁹²

3.53 The conflicts of interest policy provides that the preferred method for dealing with a conflict of interest is to remove it.¹⁹³ This is particularly important when the disclosure is made in a non-public manner as occurred with the Hunter Development Corporation in relation to Mr Hawes. Disclosure of the conflict of interest does not remove it.

3.54 Following the tabling of the committee's interim report, the committee requested the Independent Commission Against Corruption (ICAC) to investigate Mr Hawes' conflict of interest.¹⁹⁴ The full response from the Hon Megan Latham, ICAC Commissioner, can be found in Appendix 7.

3.55 The response to the committee's request, Commissioner Latham stated:

The Commission notes that, while the conflicts of interests by Mr Hawes are apparent and he may benefit financially from the proposed truncating, in light of the Hunter Development Corporation chairman's statement, Mr Hawes has not had any involvement in any board meetings which have considered the proposed redevelopment at Wickham. Also, the Department of Planning and Environment has stated that it is managing Mr Hawes' conflict.¹⁹⁵

3.56 The response continued to note:

It appears that Mr Hawes did not lodge disclosures when he was engaged as a consultant to Hunter Development Corporation but he appears to have made disclosures in a timely manner as General Manager, including the first one which was just prior to being appointed. The only exception is in relation to his development application which was not disclosed in a timely manner.¹⁹⁶

3.57 ICAC advised that it would not be investigating the allegations raised because 'for conduct to be considered corrupt, there needs to be an element of dishonesty or deliberate wrongdoing. A mistake or even negligence are not sufficient indicators of corrupt conduct as having occurred'.¹⁹⁷

¹⁹¹ Evidence, Ms Carolyn McNally, Secretary, Department of Planning and Environment, 24 November 2014, p 15.

¹⁹² Select Committee on the Planning Process in Newcastle and the Broader Hunter Region, NSW Legislative Council, *The planning process in Newcastle and the broader Hunter region: Interim report*, December 2014, p 102.

¹⁹³ NSW Planning and Infrastructure, Conflicts of Interest Policy and Guidelines 2011, p 9.

¹⁹⁴ Select Committee on the Planning Process in Newcastle and the Broader Hunter Region, NSW Legislative Council, *Minutes No 10*, 12 December 2014, Item 2.

¹⁹⁵ Correspondence from the Hon Megan Latham, Commissioner, Independent Commission Against Corruption, to Chairman, 23 January 2015, p 1.

¹⁹⁶ Correspondence from the Hon Megan Latham, to Chairman, 23 January 2015, p 1.

¹⁹⁷ Correspondence from the Hon Megan Latham, to Chairman, 23 January 2015, p 2.

- 3.58** ICAC indicated that an element of its decision to not investigate the matter was that '[w]hile the GPT Group is not a public authority, it is noted that it is predominantly owned by a government entity'.¹⁹⁸ However, GPT is not predominantly owned by a government entity. It is private property trust, as noted on the company's website:

GPT is a property group with broad access to capital invested in quality assets which, through proactive management, creates great customer experiences and superior returns. Listed on the Australian Securities Exchange since 1971 the GPT Group is today one of Australia's largest diversified listed property groups. The Group has a substantial investor base, with more than 38,000 investors, is one of the top 50 stocks by market capitalisation and has \$16.7 billion of assets under management.¹⁹⁹

- 3.59** Following the publication of the ICAC letter, Mr Hawes wrote to the committee to advise that he submitted information concerning his pecuniary interests in the period leading up to May 2007 when he worked as a consultant for the Honeysuckle Development Corporation (the predecessor of the Hunter Development Corporation) and the department, to the then General Manager of the corporation.²⁰⁰

Committee comment

- 3.60** The committee remains significantly concerned about Mr Hawes' conflict of interest. The two properties owned by Mr Hawes are located in close proximity to the proposed Wickham Transport Interchange. Once completed, it is not unreasonable to anticipate that the land surrounding the interchange will increase in value.
- 3.61** The committee considers that the manner in which the Hunter Development Corporation and its Board have dealt with Mr Hawes' conflict of interest has been inadequate. At a minimum, the Board should have required Mr Hawes to dispose of the two properties to entirely remove the conflict of interest. If Mr Hawes was unwilling to take that step, we consider that the Hunter Development Corporation should have sought an alternative general manager that did not have such a conflict of interest.

Finding 1

That Mr Robert Hawes had a significant and ongoing conflict of interest in being a landowner at Wickham and having a managerial role in the NSW Government's decision to truncate the Newcastle rail line at Wickham, a decision from which Mr Hawes stands to financially benefit.

¹⁹⁸ Correspondence from the Hon Megan Latham, to Chairman, 23 January 2015, p 2.

¹⁹⁹ The GPT Group, *Overview – About GPT*
< <http://www.gpt.com.au/About-GPT/Overview>>.

²⁰⁰ Correspondence from Mr Bob Hawes, to Chairman, 24 February 2015.

Finding 2

That the Board of the Hunter Development Corporation failed to adequately address the conflict of interest of Mr Robert Hawes, and this failure has damaged public confidence in the integrity of the Hunter Development Corporation and public decision making in Newcastle and the broader Hunter region.

3.62 In order to address these concerns, the committee believes that:

- the Board of the Hunter Development Corporation should take action to ensure that none of its employees are materially involved in decision making, including the delivery of reports and information to board meetings and ministerial briefings, where they have a conflict of interest
 - the Board of the Hunter Development Corporation should apply the NSW Planning and Infrastructure Conflicts of Interest Policy and Guidelines 2011 in all their dealings with conflicts of interest
 - the Minister for Planning should advise what steps will be taken to ensure that the Hunter Development Corporation has addressed conflicts of interest in its operations.
-

Recommendation 4

That the Board of the Hunter Development Corporation immediately take steps to ensure that none of its employees are materially involved in decision making, including the delivery of reports and information to board meetings and ministerial briefings, where they have a conflict of interest.

Recommendation 5

That the Board of the Hunter Development Corporation immediately apply the NSW Planning and Infrastructure Conflicts of Interest Policy and Guidelines 2011 in all their dealings with conflicts of interest.

Recommendation 6

That the Minister for Planning and Environment advise what steps will be taken to ensure that the Hunter Development Corporation has addressed conflicts of interest in its operations.

Planning controls

3.63 Some inquiry participants were of the view that the multiple agencies and planning documents involved in the renewal of Newcastle have created a fragmented approach to redevelopment, and that the role of the Newcastle City Council has been ignored. It was argued that a single authority should be vested with responsibility for the redevelopment of Newcastle to ensure that coherent planning decisions are made.

- 3.64** Agencies and bodies involved in the revitalisation of Newcastle include the Department of Planning and Environment, Transport for NSW, the Hunter Development Corporation, UrbanGrowth NSW, GPT, Newcastle City Council and the Hunter and Central Coast Joint Regional Planning Panel.
- 3.65** Relevant planning documents include the NURS, SEPP Amendment (Newcastle City Centre) 2014 and Newcastle City Council Local Environmental Plan (LEP). There have also been numerous reports and studies conducted in relation to the revitalisation of Newcastle.²⁰¹
- 3.66** Clr Nuatali Nelmes, Lord Mayor, Newcastle City Council was critical of the multiple planning controls in Newcastle, noting that the CBD is largely controlled by the Hunter Development Corporation and the SEPP rather than by the Newcastle City Council:

... there is a serious problem with the planning controls and the four levels of planning controls. In our CBD we have the whole of the Honeysuckle hived off for 20 years and all the planning is done by what was the once the Honeysuckle Development Corporation, which is now the Hunter Development Corporation. That is a fair chunk of our CBD.

The Building Better Cities program was successful in turning that dockyard into a good area, but now the Newcastle City Council and the residents of this city do not have any controls over that development there. Now we have a SEPP about which the community is absolutely up in arms and that is controlling all of the city centre development.²⁰²

- 3.67** The SEPP is discussed in detail in chapter 2.
- 3.68** Clr Nelmes contended that it was not possible to achieve consistency in planning with so many layers of bureaucracy involved, and suggested that a way to overcome this problem would be to use the Newcastle City Council LEP as a unifying document:

You will never get a consistent voice or a consistent way we can move this city forward when you have so many levels of bureaucracy and layers of planning legislation controlling and working against each other. We need to sing from the same song sheet in Newcastle and we need one consistent document. I believe that should be the LEP.²⁰³

- 3.69** Clr Nelmes argued that at present, the council's LEP was being undermined by the multiple planning controls in existence:

The LEP that is council's strategic document for land use – heights, zoning, density plans – is absolutely being ignored. That is why we have so many problems in Newcastle. That is probably why we are all sitting here today ... Currently, our LEP has been undermined by all the different planning controls. We do not have local planning.²⁰⁴

²⁰¹ See Submission 253, NSW Government, pp 21-23 for a list of the publicly available documents relating to the inquiry's terms of reference.

²⁰² Evidence, Ms Nuatali Nelmes, Lord Mayor, Newcastle City Council, 21 November 2014, p 19.

²⁰³ Evidence, Ms Nelmes, 21 November 2014, p 19.

²⁰⁴ Evidence, Ms Nelmes, 21 November 2014, p 19.

- 3.70** Clr Nelmes considered that utilising the LEP as the ultimate, overarching planning document for Newcastle would achieve and consistency in the development process:

We have an excellent planning department and we have an excellent LEP. Our LEP is fantastic. It is widely consulted, all stakeholders are engaged – from the developers, the business community and residents – and that should be the overarching document. And if it was, we could be confident and we could be consistent. But every time people do not get what they want under our LEP, they go to another consent authority ...²⁰⁵

- 3.71** Clr Nelmes concluded that the council should ‘resume planning control because what is happening in Honeysuckle is not a consistent vision under our LEP ... the point in time is now that the LEP and locals resume planning control for the whole of the CBD’.²⁰⁶

- 3.72** Other inquiry participants were also concerned about a perceived lack of local involvement in planning decisions. For example, Mrs Christine Prietto said: ‘What has been missing in my view is a city wide, locally led planning initiative involving people who understand the place and want to live here’.²⁰⁷

- 3.73** Ms Nicole Thomas contended that planning decisions in Newcastle lacked a unified vision for the city’s redevelopment as a consequence of the multiple reports and initiatives that had been pursued over the previous decade:

Newcastle CBD’s identity needs to be supported by efficient and consistent public policy initiatives, including an efficient public transport system and ease of access. Due to the numerous and varied reports that have been done over the last decade in connection with the revitalisation of the CBD, it appears that ad-hoc initiatives have been implemented from each report, but without an overall vision as to how the implemented initiatives would work in unison.²⁰⁸

- 3.74** When questioned about the concerns that planning in Newcastle has been pursued in a piecemeal manner, Ms Carolyn McNally, Secretary, Department of Planning and Environment replied that the overarching principles for the redevelopment of Newcastle were articulated in the NURS, and that council and other stakeholders operated within the framework of both the strategy and the normal planning processes:

The urban renewal strategy went out to set the framework for what should happen in that area. Within that strategy various proponents, whether from the private sector or the government sector, will put forward their initiatives. Council will take an active role in how that area is developed, as many councils do right across the State. Then the planning approval process looks at a number of those issues. For example, if there were going to be traffic impacts from a building or from some development that was going to occur then that would need to be assessed as part of that particular approval process.²⁰⁹

²⁰⁵ Evidence, Ms Nelmes, 21 November 2014, p 21.

²⁰⁶ Evidence, Ms Nelmes, 21 November 2014, p 22.

²⁰⁷ Submission 295, Mrs Christine Prietto, p 2.

²⁰⁸ Submission 148, Ms Nicole Thomas, p 2.

²⁰⁹ Evidence, Ms McNally, 24 November 2014, p 19.

3.75 Ms McNally advised that the process pursued for the Newcastle redevelopment was consistent with the approach to planning used across the state: ‘How it is working in Newcastle is pretty much how it works right across New South Wales planning’.²¹⁰

3.76 Nonetheless, stakeholders remained concerned about the multiple agencies involved in Newcastle planning decisions. To overcome this issue, the Planning Institute of Australia (NSW Division) advocated for the establishment of a single agency to lead a whole of government approach to planning decisions in Newcastle:

Planning in the Lower Hunter Region has suffered as a result of the inadequate coordination between State agencies responsible for land use, transport, infrastructure and the environment ... A single agency, akin to the Greater Sydney Commission, with responsibility to streamline the way that infrastructure and urban planning priorities are delivered could be piloted for Newcastle’s urban renewal.²¹¹

3.77 EcoTransit Sydney similarly argued that an independent regional planning commission should be established to determine planning and transport policy issues for Newcastle, the Hunter and the Central Coast:

An authoritative regional planning commission should be appointed to reexamine the whole issue of Newcastle, Hunter Region and the Central Coast transport and planning. This commission should be professionally staffed and should specifically exclude representatives of business interests and senior public servants who have previously dealt with planning issues pertaining to the area under study. All dealings, studies and submissions should be made public in a timely fashion. The commission should hold public hearings and should subject all alternative proposals to cost-benefit analysis.²¹²

3.78 Mr Crakanthorp expressed support for a single planning authority, as well as a Hunter transport authority, stating: ‘That is certainly something that I would advocate very strongly for’.²¹³

3.79 Ms Grierson also supported Mr Crakanthorp’s suggestion for a dedicated Hunter transport authority in addition to a planning authority:

... not only do we need a Hunter urban transport planning authority, we need also a planning authority here. The Hunter is a huge region and it is not just about two kilometres of the CBD of Newcastle. It is an absolute economic driver for this State and for the nation and its potential is still untapped because of some of these issues.²¹⁴

Committee comment

3.80 The committee notes the concerns of some inquiry participants that there has been a fragmented approach to the renewal of Newcastle. We note that there have been numerous

²¹⁰ Evidence, Ms McNally, 24 November 2014, p 19.

²¹¹ Submission 312, Planning Institute of Australia (NSW Division), p 5.

²¹² Submission 269, EcoTransit Sydney, p 4.

²¹³ Evidence, Mr Crakanthorp, 21 November 2014, p 21.

²¹⁴ Evidence, Ms Sharon Grierson, former Federal member for Newcastle, 21 November 2014, p 41.

planning instruments, departments and agencies, reports and studies involved in the city's revitalisation.

- 3.81** The committee acknowledges the comments from the Secretary of the Department of Planning and Environment that the planning process pursued for the Newcastle redevelopment is consistent with the approach to planning used across New South Wales, and that the NURS provides a comprehensive, overarching strategy for the renewal of Newcastle. We hope that the NURS will successfully facilitate a unified approach to the regeneration of the city.
- 3.82** We further acknowledge the concern from Newcastle City Council that it has not been adequately consulted in the planning process and that its LEP has not been given sufficient consideration. We strongly encourage the NSW Government to more closely involve the council in planning decisions to ensure that the people of Newcastle are able to positively contribute to the renewal process.
- 3.83** In regard to the request from some inquiry participants that a single planning authority be created to oversee the revitalisation of Newcastle, we are reluctant to impose another layer of bureaucracy on an already heavily bureaucratized area.
- 3.84** The committee considers that a preferred solution to address the fragmented planning framework would be to recognise the Newcastle City Council as the principle planning authority for Newcastle. We also believe that the Newcastle City Council should be given planning authority over all land in the city, including land that is currently owned and/or managed by the Hunter Development Corporation.
- 3.85** This would unify the current planning framework under which the Department of Planning and Environment, UrbanGrowth NSW, and the Hunter Development Corporation are each responsible for certain parts of the city while the council is responsible for the remainder.
- 3.86** Further, we believe that there is a clear role for the Department of Planning and Environment to work constructively in partnership with the council to achieve citywide improvements. However this has not been an equal relationship to date, and has instead involved the department imposing decisions upon the council. The committee believes that this situation should be rectified.

Recommendation 7

That the NSW Government acknowledge Newcastle City Council as the principal planning authority for planning in Newcastle.

Recommendation 8

That the NSW Government give Newcastle City Council planning authority over all land in Newcastle city, including land that is currently owned and/or managed by the Hunter Development Corporation.

Chapter 4 The Whitebridge development

This chapter discusses a development application for a mixed-use development at Whitebridge, known as the Whitebridge development. The development proposes the construction of 91 dwellings and three commercial premises, and is currently under assessment by Lake Macquarie City Council and the Hunter and Central Coast Joint Regional Planning Panel. Inquiry participants raised a number of concerns with the proposed development, including that it represents an overdevelopment of the site and that the approval process may have been inappropriately influenced by the property developer.

The development application

- 4.1 The development application (DA 1774/2013) is for a mixed-use development at Whitebridge, in the Lake Macquarie City Council local government area.
- 4.2 The land subject to the development application is located at 142-146 Dudley Road and 2-4 Kopa Street, Whitebridge.²¹⁵ Lake Macquarie City Council advised that the parcel of land had been rezoned after it was no longer required by NSW Roads and Maritime Services for the construction of the East Charlestown bypass:

The land was formerly owned by NSW Roads and Maritime Services, as a future road corridor known as the East Charlestown bypass. In 2006 the East Charlestown Bypass was abandoned as the corridor was no longer required for arterial road purposes. The RTA then requested Council to prepare a Local Environmental Plan (LEP) amendment to rezone the land, to reflect that the corridor was no longer required for infrastructure.²¹⁶

- 4.3 The table below outlines the key developments in the rezoning process.

Table 2 Whitebridge rezoning process²¹⁷

Year	Agency	Relevant activity
2006	Roads and Maritime Services	Minister for Roads announced abandonment of East Charlestown Bypass.
2007	Roads and Maritime Services	Advised Lake Macquarie City Council to remove the road reservation over the land from the Local Environmental Plan (LEP).
2008	Lake Macquarie City Council	Resolved to progress rezoning proposal.
2009	Lake Macquarie City Council	Referred proposal to Department of Planning and Environment.
2009	Department of Planning and Environment	Issued agreement to proceed with rezoning and delegation for Council to exhibit and finalise the

²¹⁵ Submission 306, Lake Macquarie City Council, p 1.

²¹⁶ Submission 306, Lake Macquarie City Council, p 1.

²¹⁷ Submission 253, NSW Government, pp 14-15.

Year	Agency	Relevant activity
		proposal.
2010	Lake Macquarie City Council	Exhibited the rezoning proposal and consulted with relevant state agencies.
2011	Lake Macquarie City Council	Resolved to finalise rezoning proposal with minor changes. Referred proposal to the Department of Planning and Environment for a gateway determination.
2011	Department of Planning and Environment	Issued gateway determination dated 18 April 2011. Amended gateway determination to recognise earlier exhibition of the proposal on 27 August 2011. Finalised the rezoning, consistent with Lake Macquarie City Council's request. The amendment came into effect on 2 September 2011.
2013	Roads and Maritime Services	As landowner, undertook tender process to sell the land.

4.4 Ms Elizabeth Lambert, Senior Town Planner, Development Assessment and Compliance, Lake Macquarie City Council, advised that the site has three zonings over it: '... a 3 (1) commercial core and a 2 (2) residential and a 7 (2) conservation zone'.²¹⁸

4.5 The initial development application for the land was lodged by SNL Building Constructions Pty Ltd, on behalf of Simhil Living Pty Ltd, on 21 November 2013.²¹⁹ The proposed development consisted of 91 dwellings comprised of:

- 77 dwellings on the land zoned 2(2) Residential (Urban Living)
- 10 dwellings in the 3(2) zone (as part of mixed use development)
- four retail/commercial units in the 3(2) zone as part of mixed use development.²²⁰

4.6 A revised design was lodged on 25 August 2014 in response to a number of issues identified with the original application.²²¹ The amended development application includes 94 dwellings comprising of:

²¹⁸ Evidence, Ms Elizabeth Lambert, Senior Town Planner, Development Assessment and Compliance, Lake Macquarie City Council, 7 November 2014, p 42.

²¹⁹ Submission 253, NSW Government, p 13; Submission 306, Lake Macquarie City Council, p 2.

²²⁰ SNL Building Constructions Pty Ltd, *Statement of Environmental Effects: 142-146 Dudley Road and 2-4 Kopa Street, Whitebridge*, 21 November 2013, p 9.

<http://apptracking.lakemac.com.au/modules/DocumentMaster/ViewDocument_Normal.aspx?key=xce7qvwvPUs%3d&size=590613>.

²²¹ Answers to questions on notice, Lake Macquarie City Council, received 3 December 2014, p 1; Correspondence from Mr Wade Morris, Approvals Coordinator, SNL Building Constructions Pty Ltd, to Lake Macquarie City Council, 21 August 2014, pp 1-2.

<http://apptracking.lakemac.com.au/modules/DocumentMaster/ViewDocument_Normal.aspx?key=HBhzVm60Fk7nWigcBVVsng%3d%3d&size=59771>.

- 78 dwellings on the land zoned 2(2) Residential (Urban Living)
- 13 dwellings on the land zoned 3(2) (as part of a mixed use development)
- three retail/commercial units in the 3(2) zone (as part of a mixed use development).²²²

- 4.7 Ms Lambert advised that the site is ‘within the realm of what is considered medium density development’ under the council’s present LEP (the Lake Macquarie LEP 2004).²²³
- 4.8 The proposed development has a capital investment value of approximately \$23 million.²²⁴ Schedule 4 of the *Environmental Planning and Assessment Act 1979* requires that the proposal must therefore be referred to a Joint Regional Planning Panel (JRPP) for determination.²²⁵ In this instance, the relevant panel is the Hunter and Central Coast JRPP.
- 4.9 Each of the state’s JRPPs are comprised of five members: three independent experts appointed by the Minister for Planning and two appointed by the relevant local council.²²⁶
- 4.10 At the time of writing, the Whitebridge development application remains under assessment.²²⁷
- 4.11 A timeline of the development application process can be found in Table 2.

Table 3 Whitebridge development application process²²⁸

Date	Event
23 July 2013	Pre-lodgement meeting held at Lake Macquarie City Council with council officers and the development proponent.
12 September 2013	Second pre-lodgement meeting held at Lake Macquarie City Council with council officers and the development proponent.
21 November 2013	Development application (DA 1774/2013) lodged with Council. Registration of application on the JRPP website.
29 November 2013	Notification of application to adjoining and adjacent properties, including letters being sent to over 400 properties. Extended period for notification until 15 January 2014.
2 December 2013	Letter to NSW Department of Planning advising of development

²²² Correspondence from Lake Macquarie City Council, to secretariat, 16 January 2015.

²²³ Evidence, Ms Lambert, 7 November 2014, p 47.

²²⁴ Submission 306, Lake Macquarie City Council, p 2.

²²⁵ Submission 306, Lake Macquarie City Council, p 2.

Joint Regional Planning Panels determine a range of development applications, including those with a capital investment value over \$20 million, and council and Crown applications.

²²⁶ NSW Government, Joint Regional Planning Panels, *About us*, <<http://www.jrpp.nsw.gov.au/AboutUs/tabid/64/language/en-US/Default.aspx>>.

²²⁷ Lake Macquarie City Council, *Application Tracking – DA1774/2013*, <<http://apptracking.lakemac.com.au/modules/ApplicationMaster/default.aspx?page=bigapp&key=573207>>.

²²⁸ Submission 306, Lake Macquarie City Council, pp 2-5.

Date	Event
	<p>and providing an exhibition copy of documentation for display.</p> <p>Letter to JRPP attaching a copy of the development application.</p> <p>Notification sign placed on site at Dudley Road frontage and Kopa Street frontage.</p> <p>Integrated referral letter sent to Mine Subsidence Board.</p> <p>Referral to Roads and Maritime Services under State Environmental Planning Policy (Infrastructure) 2007.</p> <p>Referral to interested government agencies, including Ausgrid, Hunter Water Corporation, and NSW Police.</p>
16 December 2013	Extension of notification period to 12 February 2014.
17 December 2013	Councillor briefing session providing development application overview and opportunity for councillors to identify matters to be raised in the councillor submission. This process is undertaken independently of the DA assessment using separate staff to coordinate each activity.
17 January 2014	Complete set of documentation made available to the community at Charlestown library.
12 February 2014	End of notification period, over 400 submissions received.
13 February 2014	Briefing session with Hunter Central Coast JRPP.
24 February 2014	Council resolution to endorse and submit a submission as part of the report to the JRPP.
4 March 2014	Letter sent requesting comment from NSW Rural Fire Service.
5 March 2014	Letter received from Mine Subsidence Board refusing to issue General Terms of Approval for development but requesting additional information from the applicant.
12 March 2014	Development presented to State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Development (SEPP 65) Panel for comment.
11 April 2014	Formal notification of request for information from applicant, seeking redesign of development having regard to Mine Subsidence Board comments, community involvement and Council staff comments.
1 May 2014	Email to councillors advising of application status.
9 July 2014	Draft revised development scheme presented to SEPP 65 Panel.
22 August 2014	Amended and revised development application package submitted to council.
27 August 2014	Notification of modified application to adjoining and adjacent properties, with notification to end 12 September 2014. Over 600 letters and emails were sent to people who previously responded to the notification and those people previously notified.

Date	Event
27 - 28 August 2014	Internal referral requests sent.
29 August 2014	Integrated referral letters sent to Mine Subsidence Board and NSW Rural Fire Service. Letter sent to NSW Department of Planning seeking concurrence under SEPP No. 1 – Development Standards. Referral to interested government agencies, including Ausgrid, Hunter Water Corporation, and NSW Police.
2 September 2014	Letter received from Mine Subsidence Board refusing to issue General Terms of Approval for development but requesting additional information from the applicant.
3 September 2014	Email to councillors advising of receipt of amended plans.
8 September 2014	Email to applicant advising of Mine Subsidence Board non-issue of General Terms of Approval and request for information. Email to councillors advising of extension of time for notification period to 26 September 2014.
26 September 2014	End of notification period, with over 170 submissions received.
8 October 2014	Revised development scheme presented to SEPP 65 Panel for comment.
9 October 2014	Re-briefing session with Hunter Central Coast JRPP.
Current status	The application remains under assessment.

Concerns about the development application

- 4.12** Inquiry participants expressed concerns that the Whitebridge development proposal represented an overdevelopment of the site and would have negative consequences for the community. These inquiry participants referred specifically to the high density of the proposed development compared to the Lake Macquarie LEP 2004.

Overdevelopment of the site

- 4.13** Some inquiry participants argued that the proposed Whitebridge development represented a significant overdevelopment of the site. It was argued that the proposal to construct 94 dwellings contravened Amendment No. 53 of the Lake Macquarie LEP, which states that the land can support approximately 50 dwellings. For example, the Whitebridge Community Alliance said:

The proposed building heights, bulk and intense density are totally out of character with the surrounding built environment. Moreover, they do not comply with the basis on which the land was rezoned by Lake Macquarie City Council. Amendment No. 53 of Lake Macquarie LEP 2004 specifically states that the rezoned land in Whitebridge

(which includes land to the north of this site) should support approximately 50 dwellings in total.²²⁹

4.14 The net community benefit statement submitted by the council to the Department of Planning as part of the approval process for Amendment No. 53 identified that the LEP would permit a small amount of infill development of approximately 50 dwellings (based on development potential of 12 dwellings per hectare), and that this was ‘considered consistent with working towards achieving the Lower Hunter Regional Strategy 2006 dwelling targets for the region’.²³⁰

4.15 Lake Macquarie City Council advised the committee that the Lower Hunter Regional Strategy had been used as the basis for preparing the rezoning advice, rather than any request from a landowner:

There was no specific proposal/concept from the landowner at the time amendment No. 53 was being assessed. A yield estimate is provided either, based on a development outcome a landowner/proponent is seeking or, based upon an already published guide.

The estimate of a yield of 50 dwellings provided in the Planning Proposal was based on 12 dwellings per hectare, which is the figure published in [the] Lower Hunter Regional Strategy.²³¹

4.16 In addition, Mr Wesley Hain, Principal Strategic Land Use Planner, Lake Macquarie City Council, advised of the range of other factors that were considered during the determination of the most appropriate land-use zone for the site:

... there was a whole range of factors that were considered, those being the need for providing accommodation for a growing population, councils’ strategic direction: Lifestyle 2020 Strategy, as well as taking advice from our environmental staff and experts in-house and with a whole range of other staff members.²³²

4.17 With respect to the amended development application for the Whitebridge site, Lake Macquarie City Council informed the committee that ‘[t]he overall gross density of the development, which includes half the width of the roads fronting the development site and the 7(2) zoned lands, is 34 dwellings per hectare’.²³³

4.18 Some inquiry participants were very concerned that despite 50 dwellings being recommended by the LEP, the Whitebridge development application is seeking permission to build

²²⁹ Submission 179, Whitebridge Community Alliance, p 4.

²³⁰ Lake Macquarie City Council, Planning Proposal: Draft Amendment No. 53 to Lake Macquarie LEP 2004 (East Charlestown Bypass – Stage One), p 4.
<<http://leptracking.planning.nsw.gov.au/PublicDetails.aspx?Id=420>>.

²³¹ Answers to questions on notice, Lake Macquarie City Council, received 3 December 2014, p 2.

²³² Evidence, Mr Wesley Hain, Principal Strategic Land Use Planner, Lake Macquarie City Council, 7 November 2014, p 48.

²³³ Answers to questions on notice, Lake Macquarie City Council, received 3 December 2014, p 3.

94 dwellings. Ms Michelle Burdekin, member, Whitebridge Community Alliance, described the proposal as ‘an incompatible development with the suburb’.²³⁴

4.19 The Australian Institute of Architects – NSW Chapter, on the other hand, suggested that a medium-rise residential development (such as what is being proposed in the current development application) seemed a ‘logical fit’ for the Whitebridge site, but noted that the council must determine a suitable scale for any development taking into consideration the current and future needs of local residents.²³⁵

4.20 In its submission to the inquiry, the Whitebridge Community Alliance was highly critical of the proposed development, insisting that the difference in the number of dwellings recommended by the LEP and what has been requested by the development application ‘cannot be considered minor’.²³⁶

The devastating shift that has occurred between the initial intention in this Amendment to the LEP on the question of density and retention of local character has not been clearly or effectively communicated.²³⁷

4.21 The alliance listed numerous concerns with the amended development application, including:

- the effect on local infrastructure, especially roads
- traffic congestion and lack of parking in the Whitebridge neighbourhood centre
- safety of motorists and pedestrians
- social impact due to the density and resultant lack of private space
- impact on the natural environment
- visual impact due to the bulk and scale of the proposal
- impact on the privacy and amenity of nearby residents
- the effect on the heritage Fernleigh Track
- poor planning in the Bushfire Prone Land zoning
- lack of a proper study of the impact on endangered flora and fauna
- lack of consultation with, and disregard for, the local community
- a perception that approval of the development application is a ‘foregone conclusion’²³⁸
- the inability of the developer to comply with requirements of the Mines Subsidence Board.²³⁹

²³⁴ Evidence, Ms Michelle Burdekin, member, Whitebridge Community Alliance, 7 November 2014, p 57.

²³⁵ Submission 92, Australian Institute of Architects – NSW Chapter, p 2.

²³⁶ Submission 179, Whitebridge Community Alliance, p 13.

²³⁷ Submission 179, Whitebridge Community Alliance, p 13.

²³⁸ Submission 179, Whitebridge Community Alliance, p 6.

²³⁹ Submission 179, Whitebridge Community Alliance, pp 5-6.

- 4.22** The Whitebridge Community Alliance also contended that the amended development application failed to address any of the concerns raised in regard to the initial proposal, and was in several ways a worse proposal:

The initial proposal was not accepted by the Lake Macquarie City Council, the councillors, the community or the Mines Subsidence Board. As a result SNL Building Constructions Pty Ltd amended the proposal, but have ignored all concerns about the density of the project and have in fact increased the number and height of units planned. We believe they have also ignored the objectives and intended outcomes which were the basis for the rezoning of the land when the East Charlestown Bypass was abandoned.²⁴⁰

Fernleigh Track

- 4.23** It was suggested that the proposed development may have an impact on the Fernleigh Track,²⁴¹ which runs adjacent to the proposed development site. For example, Mr Sean Brown, member, Whitebridge Community Alliance, submitted that the development may not be sympathetic to the track or the surrounding natural environment:

The land runs along the edge of the Fernleigh Track so there is potential for the development to look down on the Fernleigh Track if it is not developed sympathetically to the area. Most people in Whitebridge are not opposed to development of the site; they just want something that is relatively low impact so that if you were to walk along the Fernleigh Track all of a sudden there is not a five-storey tower looking down upon you. That does not really meet with the natural environment of the area and what draws people to the area.²⁴²

- 4.24** Mrs Susan Hellyer was also concerned about the potential impact of the development on the track, as well as the impact on local traffic congestion:

... our relatively quiet little leafy neighbourhood centre at Whitebridge is threatened with a four storey development adjacent to the local shops and very popular 'Fernleigh' cycleway/walking track, adding a further 95 dwellings to an already congested road network, with no plans to improve the traffic problems this will undoubtedly create.²⁴³

Perceptions of developer influence

- 4.25** Some inquiry participants speculated that if the proposed increase to the density of the Whitebridge site was approved, this may be attributable to the undue influence of the owners of Simhil Living Pty Ltd, particularly Mr Hilton Grugeon, who has a financial interest in Simhil Living Pty Ltd and is also a company director.²⁴⁴

²⁴⁰ Submission 179, Whitebridge Community Alliance, p 3.

²⁴¹ The Fernleigh track is a 15 kilometre shared pathway, which follows a disused coal haul rail line between Adamstown and Belmont.

²⁴² Evidence, Mr Sean Brown, member, Whitebridge Community Alliance, 7 November 2014, p 59.

²⁴³ Submission 185, Mrs Susan Hellyer, p 1.

²⁴⁴ Right of reply from Mr Hilton Grugeon, to secretariat, 18 November 2014, p 2.

- 4.26** As noted in chapter 1, concerns about inappropriate influence on planning decisions in Newcastle are currently being investigated by the Independent Commission Against Corruption (ICAC) in ‘Operation Spicer’, which is examining allegations of illegal donations made to members of Parliament.²⁴⁵
- 4.27** The scope and purpose of Operation Spicer includes a reference to whether parties and persons, including Mr Grugeon, improperly sought to influence certain members of Parliament by making donations during the 2011 State election campaign.²⁴⁶
- 4.28** The Whitebridge Community Alliance said:
- There are many questions from the community about the awarding of the tender for this site to Simhil Living Pty Ltd. There is an extreme departure between what is requested in the DA and what was acknowledged as a possibility in Amendment No. 53 to the LEP which covers this site. Many are concerned about the balance between personal gain and public interest and the processes which may have tipped the scales in favour of this developer.²⁴⁷
- 4.29** Ms Burdekin expressed concern that ‘[c]ouncil’s interpretation of their strategies, their documentation and the LEP seems to be favouring the developer’s request despite their own documentation’.²⁴⁸
- 4.30** Mr Peter Morris claimed that ‘[t]he contentious development at Whitebridge is clearly tainted by the illegal acts exposed by ICAC and in many ways would be an overdevelopment of the site’.²⁴⁹
- 4.31** Mr Brown questioned if the matters being considered by ICAC had unduly influenced any aspect of the Whitebridge site:
- What we want to know is if the money that had exchanged hands, which was revealed in the ICAC proceedings, if that did have any influence on the rezoning of the land, the sale of the land, and now in the assessment of the DA. That is what we are asking should be looked into, to make sure that it is a fair playing field.²⁵⁰
- 4.32** At the public hearing in Newcastle, Mr Brown and Ms Burdekin raised concerns regarding a perceived failure of the former member for Charlestown, Mr Andrew Cornwell, to oppose the Whitebridge development proposal on behalf of the local community because of the undue influence of the property developer.²⁵¹ This perception was based on the Lake Macquarie City

²⁴⁵ Independent Commission Against Corruption, *Current investigations*, <<http://www.icac.nsw.gov.au/investigations/current-investigations>>.

²⁴⁶ Independent Commission Against Corruption, *Operation Spicer – Amended Scope and Purpose – 12 September 2014*, <<http://www.icac.nsw.gov.au/images/Spicer%20PI%202/legal%20spicer%20scope%20and%20purpose%2012%20september%202014.pdf>>.

²⁴⁷ Submission 179, Whitebridge Community Alliance, p 12.

²⁴⁸ Evidence, Ms Burdekin, 7 November 2014, p 63.

²⁴⁹ Submission 128, Mr Peter Morris, p 1.

²⁵⁰ Evidence, Mr Brown, 7 November 2014, p 65.

²⁵¹ Evidence, Ms Burdekin, 7 November 2014, p 62; Evidence, Mr Brown, 7 November 2014, pp 63-64.

Council development application website not displaying any submission from Mr Cornwell on the matter.²⁵²

- 4.33** When the matter was raised with Lake Macquarie City Council, the council advised that Mr Cornwell provided four submissions to the council pertaining to the proposed development. The submission from Mr Cornwell ‘details issues with the development including density, local road safety, drainage and privacy’.²⁵³ Mr Cornwell also suggested the ‘negotiation of a voluntary planning agreement for the development’.²⁵⁴
- 4.34** The remaining three submissions were forwarded on behalf of constituents, and expressed objections to the proposed development.²⁵⁵
- 4.35** The council advised that Mr Cornwell’s individual submission had been incorrectly filed and that, as a consequence of this administrative error, the submission had not been placed on the council’s development application website.²⁵⁶
- 4.36** This oversight has since been rectified.
- 4.37** Mr Grugeon strongly refuted suggestions that there were any improper dealings, noting that the land was rezoned several years prior to it being placed on the market:

... the land was rezoned by the Roads & Maritime Services between 2006 and 2008 long before it was put up for sale. The property was advertised publicly and highest and best offer and a short list of five offers were referred to the vendor and the offer by Simhil Living Pty Ltd was accepted, presumably based on it being the best offer made ... I wish to make it clear that I have never received any favours or input from any politicians or other person in relation to any development in which I have been involved.²⁵⁷

- 4.38** As noted at the beginning of this chapter, the Whitebridge development application process has yet to be finalised. When questioned as to its preferred outcome, Mr Brown replied that the Whitebridge Community Alliance was not trying to halt the development entirely, but that it would be preferable for the approved development application to have a reduced density that aligned more closely aligned with the LEP:

We are not trying to stop the development. We are not against development. What we want is the development to be reduced to something that complies with Amendment No. 53 of the LEP when the land was rezoned.²⁵⁸

²⁵² Evidence, Ms Burdekin, 7 November 2014, p 62 and Evidence, Mr Brown, 7 November 2014, p 63.

²⁵³ Correspondence from Mr Brian Bell, General Manager, Lake Macquarie City Council, to Chairman, 17 December 2014, p 1.

²⁵⁴ Correspondence from Mr Bell to Chairman, 17 December 2014, p 1.

²⁵⁵ Correspondence from Mr Bell to Chairman, 17 December 2014, p 1.

²⁵⁶ Correspondence from Mr Bell to Chairman, 17 December 2014, p 1.

²⁵⁷ Right of reply from Mr Hilton Grugeon, to secretariat, 18 November 2014, pp 3-4.

²⁵⁸ Evidence, Mr Brown, 7 November 2014, p 63.

Committee comment

- 4.39** The committee appreciates that the disparity between the Lake Macquarie City Council LEP 2004 and the submitted development applications for the Whitebridge site has caused significant consternation within the affected community. In particular, inquiry participants expressed considerable concern that the proposals represent an overdevelopment of the site that will have negative ramifications for the community. The influence of the development proponent was also questioned.
- 4.40** The committee notes that the development application remains under assessment by the council and the Hunter Central Coast Joint Regional Planning Panel. We encourage both bodies to be rigorous in their assessment of the proposed development, and to give serious consideration to only approving developments that align with the 2004 LEP (particularly Amendment No. 53).

Chapter 5 Newcastle heavy rail line

This chapter briefly discusses the decision to terminate the Newcastle heavy rail line at Wickham and the proposal to construct light rail through the Newcastle city centre. Both matters were extensively canvassed in the committee's interim report which was published in December 2014.

The chapter recaps the relevant recommendations of the interim report before outlining recent developments relating to the rail line. This includes the Supreme Court case of *Save Our Rail NSW Inc v State of New South Wales by the Minister administering Transport for New South Wales*, the cessation of train services, an Aboriginal land claim that has been made over the rail land, the proposed future use of Newcastle Station, and a Cabinet Minute from the Minister for Transport providing advice on the truncation of the heavy rail line and preferred light rail route.

The interim report

5.1 On 18 December 2014 the committee tabled an interim report that examined issues relating to the truncation of the Newcastle heavy rail line and the proposal to develop light rail into the Newcastle city centre.²⁵⁹ The committee produced the interim report due to the NSW Government's intention to truncate the heavy rail line on 26 December 2014.

5.2 The committee made the following recommendations in its interim report pertaining directly to both the heavy and light rail:

- that no steps be taken to remove Newcastle's existing rail infrastructure until a peer-reviewed report is obtained by the NSW Government that thoroughly considers the economic, social and environmental costs and benefits of the alternative options of removing and retaining the existing rail line
- that in undertaking the above-mentioned cost benefit analysis, the NSW Government consider a series of alternative options to the removal of the rail line including sinking the rail line, constructing additional overbridges and/or level crossings, landscaping the existing rail corridor and reducing train speeds
- that the NSW Government not proceed with the proposed Hunter Street light rail route unless and until supported by a peer-reviewed cost benefit analysis that thoroughly considers not only the retention of the existing rail line but also the provision of light rail on the existing rail corridor
- that, if the truncation of the Newcastle heavy rail line proceeds, the NSW Government postpone the date of truncation until construction of the light rail service commences
- that, if the truncation of the Newcastle heavy rail line proceeds, the NSW Government ensure that the unused portion of the rail corridor be used only for low scale development associated with community, recreational and public uses
- that, if the truncation of the Newcastle heavy rail line proceeds, the NSW Government ensure that any proposed development on the unused portion of the rail corridor be

²⁵⁹ Select Committee on the Planning Process in Newcastle and the Broader Hunter Region, NSW Legislative Council, *The planning process in Newcastle and the broader Hunter region: Interim report*, December 2014.

subject to a transparent planning process, under the control and direction of Newcastle City Council, that involves ample opportunity for public consultation.

- 5.3 A government response to the report's recommendations is required by 18 June 2015. No response has been received to date.

Order for papers

- 5.4 As discussed in this committee's interim report, on 23 October 2014, Dr Mehreen Faruqi MLC, moved a motion in the Legislative Council to order the production of papers relating to planning in Newcastle and the Hunter. Among other materials, the motion ordered the production of a range of documents regarding the Wickham Interchange, heavy rail and light rail in the Newcastle CBD.²⁶⁰
- 5.5 None of the documents were provided when the return to order was received on 6 November 2014.
- 5.6 As such, Dr Faruqi asked the Clerk of the Parliaments to inquire into the reasons why the documents were not released.²⁶¹
- 5.7 The Deputy General Counsel of the Department of Premier and Cabinet advised that Transport for NSW had reviewed its files to determine whether it held 'any documents, other than Cabinet documents' that fell within the terms of the order and confirmed that it had nothing further to provide.²⁶²
- 5.8 On 13 November 2014, Dr Faruqi gave notice for a further order for papers ordering that the documents not provided be produced.²⁶³ However, the notice was not moved before the end of the parliamentary session on 29 November 2014.
- 5.9 On 19 December 2014, the committee wrote to the Secretary of the Department of Premier and Cabinet requesting that the documents not provided in the return to order for papers relating to planning in Newcastle and the Hunter, dated 23 October 2014, be released to the committee by 31 January 2015.
- 5.10 At the time of writing, no response to the committee's request has been received.

Recent developments

- 5.11 Since the tabling of the committee's interim report a number of developments have occurred, including a New South Wales Supreme Court case regarding the ability of the government to close part of the Newcastle rail line without an Act of Parliament. In addition, train services to

²⁶⁰ *Minutes*, Legislative Council, 23 October 2014, pp 198-199.

²⁶¹ *Minutes*, Legislative Council, 12 November 2014, p 285.

²⁶² Correspondence from Deputy General Counsel of Department of Premier and Cabinet to Clerk of the Parliaments relating to an order for papers regarding planning in Newcastle and the Hunter, 12 November 2014.

²⁶³ *Notice Paper*, Legislative Council, 18 November 2014, p 1552.

the Newcastle city centre ceased on Boxing Day 2014, an Aboriginal land claim on the now unused portion of the heavy rail corridor has been made, and the Minister for Planning has announced a potential future use of Newcastle Station.

5.12 The following section of the report discusses each of these developments.

Supreme Court case

5.13 As noted in the interim report, in New South Wales the closure and disposal of railway lines is regulated by the *Transport Administration Act 1988*. Section 99A of the Act provides:

- (i) A rail infrastructure owner must not, unless authorised by an Act of Parliament, close a railway line.
- (ii) For the purposes of this section, a railway line is closed if the land concerned is sold or otherwise of or the railway tracks and other works concerned are removed.
- (iii) For the purposes of this section, a railway line is not closed merely because a rail infrastructure owner has entered into an Australian Rail Track Corporation arrangement or lease or other arrangement in respect of it pursuant to an agreement entered into by the Commonwealth and the State.²⁶⁴

5.14 The Act defines a ‘rail infrastructure owner’ as:

- (a) in the case of any rail infrastructure facilities that are managed or controlled by Transport for NSW for the purposes of exercising its functions under this Act, Transport for NSW, or
- (b) in the case of any rail infrastructure facilities that are subject to an Australian Rail Track Corporation lease or licence or are installed, established or replaced by Australian Rail Track Corporation in or on land subject to an Australian Rail Track Corporation lease or licence, Australian Rail Track Corporation, or
- (c) in any other case, the person in whom ownership of rail infrastructure facilities is vested by or under this Act.²⁶⁵

5.15 Under the Act, ‘rail infrastructure facilities’ include: railway track, associated track structures, over track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings, service roads, signalling systems, train control systems, communication systems, overhead power supply systems, power and communication cables, and associated works, buildings, plant, machinery and equipment.²⁶⁶

5.16 Under the Act, rail infrastructure facilities do not include any stations, platforms, rolling stock, rolling stock maintenance facilities, office buildings or housing, freight centres or depots,

²⁶⁴ *Transport Administration Act 1988*, s 99A.

²⁶⁵ *Transport Administration Act 1988*, s 3(1), definition of “rail infrastructure owner”.

²⁶⁶ *Transport Administration Act 1988*, s 3(1), definition of “rail infrastructure facilities” (a).

private sidings or spur lines connected to premises not vested in, owned by, managed or controlled by a rail infrastructure owner.²⁶⁷

- 5.17** In its interim report, the committee noted that as it had not received authoritative legal advice on the matter, it was unable to draw a definitive conclusion as to the governments' ability to close the rail line without an Act of Parliament.
- 5.18** On 20 December 2014, two days after the tabling of the interim report, the Save Our Rail group was granted a Supreme Court hearing to apply for an injunction to stop the government truncating the heavy rail line on Boxing Day.²⁶⁸
- 5.19** Following two days of hearings, Justice Michael Adams delivered his judgement on 24 December 2014, granting the injunction to prevent the removal of the Newcastle inner-city rail line infrastructure.²⁶⁹
- 5.20** During the hearing it emerged that the NSW Government had instructed RailCorp to transfer certain rail infrastructure facilities, including signalling systems, lighting equipment, overhead wiring and boom gates, to the Hunter Development Corporation.²⁷⁰
- 5.21** Justice Adams found that this transfer rendered the Hunter Development Corporation a 'rail infrastructure owner within the meaning of s 99A of the *Transport Administration Act 1988*', and that the corporation therefore required an Act of Parliament to remove the rail tracks or undertake other related works.²⁷¹ Justice Adams said:
- It seems to me, therefore, that the sale of the relevant infrastructure by the Corporation [RailCorp] and its acquisition by Hunter Development Corporation has rendered the latter a 'rail infrastructure owner' within the meaning of s 99A of the Act. It follows that without the authority of an Act of Parliament it cannot remove 'railway tracks or other works concerned', I take it those relating to the tracks.²⁷²
- 5.22** According to media reports, counsel for Railcorp advised that the government would appeal the decision.²⁷³

²⁶⁷ Transport Administration Act 1988, s 3(1), definition of "rail infrastructure facilities" (b).

²⁶⁸ ABC online, 'Save Our Rail granted pre-Christmas court hearing', 20 December 2014, <<http://www.abc.net.au/news/2014-12-20/save-our-rail-granted-pre-christmas-court-hearing/5980134>>.

²⁶⁹ *Save Our Rail NSW Inc v State of New South Wales by the Minister administering Transport for New South Wales* [2014] NSWSC 1875; ABC, 'Supreme Court rules to save Newcastle rail', 24 December 2014 <<http://www.abc.net.au/news/2014-12-24/supreme-court-rules-on-newcastle-rail-truncation/5987370?>>.

²⁷⁰ *Save Our Rail NSW Inc v State of New South Wales by the Minister administering Transport for New South Wales* [2014] NSWSC 1875 at 6-8.

²⁷¹ *Save Our Rail NSW Inc v State of New South Wales by the Minister administering Transport for New South Wales* [2014] NSWSC 1875 at 28.

²⁷² *Save Our Rail NSW Inc v State of New South Wales by the Minister administering Transport for New South Wales* [2014] NSWSC 1875 at 27.

²⁷³ Jacob Saulwick, 'Newcastle rail line to stay – for now', *Sydney Morning Herald*, 24 December 2014, <<http://www.smh.com.au/nsw/newcastle-rail-line-to-stay--for-now.20141224-12diwy.html>>.

- 5.23** Despite the decision of Justice Adams, the NSW Government proceeded to halt rail services beyond Wickham station on 26 December 2014.

Cessation of train services

- 5.24** As noted above, on 26 December 2014, train services ceased to operate to the Newcastle city centre. The Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter, said:

The final train services into the city centre ran late last night, and Newcastle, Civic and Wickham stations have now stopped operating as train stations. With trains no longer operating in the city centre, the boom gates on Stewart Avenue and Merewether Street will now be open, which will see an improvement to the traffic flow in these areas. Construction of a brand new \$73 million train, bus and light rail interchange at Wickham will also get under way.²⁷⁴

- 5.25** The Minister stated that construction of the new transport interchange at Wickham and stabling facilities is expected to be completed in late 2016, while the construction of the light rail is expected to commence in late 2015.²⁷⁵

- 5.26** On 5 January 2015, Transport for NSW advised that all Newcastle trains would terminate at Hamilton Station to allow for construction of the Wickham interchange to commence. Transport for NSW further advised that some work had already been carried out since the closure of the rail line, including:

- track work and a platform extension
- installing new station passenger information boards, walkways and buffer stops for temporarily stabling trains near Railway Street
- signalling work
- building temporary staff accommodation
- increasing security with new CCTV cameras and temporary fencing at Newcastle, Civic and Wickham stations.²⁷⁶

- 5.27** A shuttle bus service has replaced trains between Hamilton and Newcastle stations, with buses 'timetabled to meet trains for customers travelling in both directions'.²⁷⁷

²⁷⁴ Media release, Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter, 'New era for Newcastle', 26 December 2014.

²⁷⁵ Media release, Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter, 'New era for Newcastle', 26 December 2014.

²⁷⁶ Media release, Transport for NSW, 'Revitalising Newcastle: Hamilton Station re-opens today', 5 January 2015.

²⁷⁷ Media release, Transport for NSW, 'Revitalising Newcastle: Hamilton Station re-opens today', 5 January 2015.

Aboriginal land claim

5.28 In January 2015, the Awabakal Aboriginal Land Council made a land claim²⁷⁸ on the two-kilometre stretch of the heavy rail corridor that is no longer being used following the cessation of train services to the Newcastle city centre.²⁷⁹

5.29 According to the Chief Executive Officer of the council, Mr Steven Slee, there had been limited consultation on future usage of the rail corridor despite the fact that the corridor is likely to contain items of cultural significance, including campsites, middens and ceremonial and burial grounds.²⁸⁰ Mr Slee said:

... if the government and the rail have no longer use for the area, instead of selling it off to private developers and just trying to make a buck for their own agenda, the land should be handed back to the traditional people of this country ... The Premier and the Minister for Transport haven't consulted with myself at all. We will continue to monitor it and continue to ensure, at all costs, that the culture and heritage of that corridor is upheld.²⁸¹

Future use of Newcastle train station and the unused rail corridor

5.30 On 6 February 2015 the Minister for Planning, the Hon Pru Goward MP, announced plans to convert the now unused Newcastle train station into a regional fresh food hall.²⁸²

5.31 Minister Goward advised that UrbanGrowth NSW has commenced work on the design of the proposed food hall, in consultation with Newcastle City Council. The Minister anticipates releasing the plan for public comment by mid-2015.²⁸³

²⁷⁸ Under the *Aboriginal Land Rights Act 1983*, a land claim must be lodged with the Office of the Registrar which, under the Act, is responsible for maintaining the Register of Aboriginal Land Claims. The claim is determined by the Minister for Lands. If the Minister refuses a land claim, the claimant Aboriginal Land Council may appeal the decision to the Land and Environment Court.

See Office of the Registrar, *Aboriginal land claims: the land claim process*, 29 May 2012, <<http://www.oralra.nsw.gov.au/landclaimsprocess.html>>.

²⁷⁹ Matthew Kelly, 'Awabakal Aboriginal Land Council claim on Newcastle rail line', *Newcastle Herald*, 7 January 2015, <<http://www.theherald.com.au/story/2803585/land-claim-on-rail-line/>>.

ABC, 'Awabakal land claim over rail corridor', 8 January 2015, <<http://www.abc.net.au/news/2015-01-08/awabakal-land-claim-over-rail-corridor/6005740>>.

²⁸⁰ Matthew Kelly, 'Awabakal Aboriginal Land Council claim on Newcastle rail line', *Newcastle Herald*, 7 January 2015; ABC, 'Awabakal land claim over rail corridor', 8 January 2015.

²⁸¹ ABC, 'Awabakal land claim over rail corridor', 8 January 2015.

²⁸² ABC, 'Newcastle station set to become fresh food market', 6 February 2015, <<http://www.abc.net.au/news/2015-02-06/newcastle-station-set-to-become-fresh-food-market/6074738?section=nsw>>.

²⁸³ ABC, 'Newcastle station set to become fresh food market', 6 February 2015, <<http://www.abc.net.au/news/2015-02-06/newcastle-station-set-to-become-fresh-food-market/6074738?section=nsw>>.

5.32 In regard to plans for the future use of the disused rail corridor, government representatives advised that, as at 24 November 2014, a final decision had yet to be made.²⁸⁴

5.33 On 3 December 2014 the Premier, the Hon Mike Baird MP, noted that the Newcastle City Council would have to endorse any development on the unused rail corridor:

Under our plan Newcastle Council will have the final say about what development occurs on the former rail corridor and it must tick off on any proposal before it proceeds. I know the council and some in the community have concerns about this project. We want to ensure we get the best outcome for Newcastle, which is why we are taking this step ... Given the importance of this once-in-a-generation revitalisation process, we believe it is critical that Newcastle Council plays a key role in the planning decisions for the city's future.²⁸⁵

Consideration of light rail route and implementation schedule

5.34 As outlined in the committee's interim report, three light rail routes in the Newcastle CBD were considered:

- alignment with the existing heavy rail corridor
- alignment with Hunter Street
- a hybrid alignment, utilising part of the rail corridor and Hunter and Scott Streets.²⁸⁶

5.35 On 23 May 2014, the NSW Government announced that the hybrid light rail route option, which includes part of Hunter Street, had been selected.²⁸⁷

5.36 On 3 July 2014, the Minister for Transport and Minister for the Hunter, the Hon Gladys Berejiklian MP, announced that trains would cease operating beyond Wickham from Boxing Day 2014.²⁸⁸

5.37 On 18 February 2015, this committee obtained a Cabinet Minute which was produced by the Minister for Transport, the Hon Gladys Berejiklian MP on 9 December 2013, containing advice regarding the truncation of the heavy rail line at Wickham and the preferred light rail alignment in the Newcastle CBD.

²⁸⁴ See Evidence, Mr Peter Anderson, Head of Wholesale, Projects Division, UrbanGrowth NSW, 24 November 2014, p 27 and p 38; Evidence, Ms Carolyn McNally, Secretary, Department of Planning and Environment, 24 November 2014, p 18.

²⁸⁵ Michelle Harris, 'Premier Mike Baird confirms rail corridor open to development', Newcastle Herald, 3 December 2014 <<http://www.theherald.com.au/story/2741384/rail-corridor-to-be-developed-premier/>>.

²⁸⁶ Submission 253, NSW Government, p 19; Submission 253, NSW Government, Attachment 2, p 3.

²⁸⁷ Media Release, Hon Pru Goward MP, Minister for Planning and Minister for Women; and Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter, 'Newcastle light rail route announced', 23 May 2014.

²⁸⁸ Media Release, Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter, 'Revitalisation of Newcastle CBD underway with truncation to begin on Boxing Day', 3 July 2014.

5.38 Rather than the hybrid alignment announced by the government in May 2014, the minute identified an alignment utilising the existing heavy rail corridor and Scott Street as the preferred light rail route stating that this option ‘supports the urban revitalisation of Newcastle, minimises road impacts as well as the cost and risk of delivery’.²⁸⁹ It highlighted the following benefits of this alignment:

- the railway corridor provides a more efficient light rail service with less interference from other traffic;
- it is more cost effective to deliver light rail within the existing heavy rail corridor than on Hunter Street, and will allow the re-use of some existing heavy rail infrastructure for light rail;
- light rail within the railway corridor and Scott Street with a beach extension can be accommodated within the current budget allocation;
- light rail within the heavy rail corridor allows more space for initiatives outlined in the *Newcastle Urban Renewal Strategy* on Hunter Street, including footpath widening, cycle ways and greening of the street;
- utilising the heavy rail corridor minimises overall transport network including impact on traffic time signals, removal of parking, taxi stops and loading zones, and the delivery of separated cycle ways on Hunter Street;
- construction of light rail within the rail corridor will have fewer impacts on local business and the transport network than on-road construction in Hunter Street with fewer delivery risks;
- the delivery of light rail in Scott Street allows delivery of the preferred extension to Newcastle Beach (Pacific Park).²⁹⁰

5.39 The cabinet minute states that a combined route utilising the existing corridor and Hunter Street was ‘seriously considered’, however advised that it was not the preferred option for the following reasons:

- space constraints, particularly through the Hunter Street Mall and at the west end of the city centre, which with the addition of light rail would limit footpath space, impact on outdoor event spaces, entertainment and dining opportunities and street greening and cycle ways all of which are key urban renewal initiatives of interest to the Newcastle community;
- higher road network impacts and increased road and light rail travel time for an on road Hunter Street light rail alignment;
- removal of on-street car parking, delivery zones and taxi ranks to deliver a light rail in Hunter Street which will impact businesses on an ongoing basis; and
- higher costs, greater delivery risks and greater impacts on local businesses during construction compared to delivery of light rail in the rail corridor.²⁹¹

²⁸⁹ Department of Premier and Cabinet, Cabinet Standing Committee on Infrastructure Decision Paper, Cabinet Minute, 9 December 2013, p 2. (Hereafter referred to as Cabinet Minute, 9 December 2013).

²⁹⁰ Cabinet Minute, 9 December 2013, pp 16-17.

- 5.40 The minute advised that ‘an alignment including Hunter Street Mall does not provide the best urban renewal outcomes for the precinct.’²⁹²
- 5.41 The minute further noted that the delivery of light rail in the Newcastle city centre may open up development opportunities within the former corridor, however, for those opportunities to be realised the government would need to revisit its previous position of retaining the corridor in public ownership.²⁹³
- 5.42 In regard to timeframes, the minute stated that it was preferable for work on the transport network to commence in early 2015 with truncation of the heavy rail line to occur in the third quarter of 2015, and all construction, including light rail, to be completed in the first quarter of 2017.²⁹⁴
- 5.43 According to the minute, truncation of the heavy rail line *could* occur at the end of 2014, however, it would require additional investment in a temporary platform extension, new cross-overs, changes to stabling and new signalling ‘which would later become obsolete’.²⁹⁵ It noted that truncating the rail line at the end of 2014 would also ‘negatively impact customers through forced interchange and increased journey times for a prolonged period of time...’.²⁹⁶

Source of cabinet document

- 5.44 The committee sought to determine the circumstances under which the cabinet minute was found, in light of media reports that the document was left in the former member for Newcastle’s electorate office.
- 5.45 Mr Tim Owen, former member for Newcastle, told the committee that he did not recall seeing the cabinet minute during his time as a member:
- I cannot recall the document. I am advised by my staff that in no way do they recall the document as being part of the documentation in the Newcastle office when I was the member for Newcastle.²⁹⁷
- 5.46 Mr Owen also asserted that he did not recall ‘ever seeing a Cabinet minute in my hands as a backbencher ...’,²⁹⁸ adding that ‘it would be very unusual for a backbencher to be provided with or to see a document like that’.²⁹⁹
- 5.47 Mr Owen maintained that the decision to select the Newcastle light rail route was ‘a Cabinet decision’³⁰⁰ and commented that it was ‘not a decision I had any influence on’.³⁰¹

²⁹¹ Cabinet Minute, 9 December 2013, p 3.

²⁹² Cabinet Minute, 9 December 2013, p 17.

²⁹³ Cabinet Minute, 9 December 2013, p 11.

²⁹⁴ Cabinet Minute, 9 December 2013, p 2.

²⁹⁵ Cabinet Minute, 9 December 2013, p 2.

²⁹⁶ Cabinet Minute, 9 December 2013, p 22.

²⁹⁷ Evidence, Mr Tim Owen, former member for Newcastle, 23 February 2015, p 2.

²⁹⁸ Evidence, Mr Owen, 23 February 2015, p 6.

²⁹⁹ Evidence, Mr Owen, 23 February 2015, p 4.

³⁰⁰ Evidence, Mr Owen, 23 February 2015, p 10.

- 5.48** Further evidence was provided to the committee by Mr Owen's electorate staff who described their actions in clearing out the Newcastle electorate office following Mr Owen's resignation from Parliament.
- 5.49** Witness A told the committee that the four filing cabinets containing documents of a parliamentary nature were emptied and the contents shredded.³⁰² Witness A advised that a 'triple check'³⁰³ on the filing cabinets had been done, stating: 'I was very vigilant about making sure everything was removed ... I can 100 per cent claim that they were empty...'.³⁰⁴
- 5.50** Likewise, Witness B advised that the filing cabinets were cleared of all documents, stating that 'I cleared them and so did Witness A'.³⁰⁵ Witness B asserted that it was 'unlikely'³⁰⁶ that a document of the cabinet minute's nature would have been left behind in the office. Witness B maintained:
- I do not believe that we missed anything, but I would not like to speculate from that. But I believe that we checked and double-checked and I am confident that we took everything out of there and that everything was shredded.³⁰⁷
- 5.51** Mr Tim Crakanthorp MP, member for Newcastle, also gave evidence to the committee regarding the cabinet document. Mr Crakanthorp stated that the document was found in the Newcastle electorate office by one of his staff members, after the office had been vacated by Mr Owen.³⁰⁸
- 5.52** Mr Crakanthorp informed the committee that he wrote to Mr Owen on 15 December 2014 to inform Mr Owen that campaign material had been left in the office and inviting him to reclaim it.³⁰⁹ Mr Crakanthorp said that the cabinet document had been found prior to sending this letter³¹⁰, but was unclear as to the exact date it was found.³¹¹ Mr Crakanthorp's letter to Mr Owen did not mention the cabinet document.³¹²
- 5.53** Upon seeing the document, Mr Crakanthorp stated that he contacted the office of the then Leader of the Opposition, Mr John Robertson MP.³¹³ Mr Robertson's office advised Mr Crakanthorp to provide the documents to their office.³¹⁴ Mr Crakanthorp stated that he gave

³⁰¹ Evidence, Mr Owen, 23 February 2015, p 10.

³⁰² Evidence, Witness A, 23 February 2015, pp 1-2 and p 4.

³⁰³ Evidence, Witness A, 23 February 2015, p 2.

³⁰⁴ Evidence, Witness A, 23 February 2015, p 2.

³⁰⁵ Evidence, Witness B, 23 February 2015, p 12.

³⁰⁶ Evidence, Witness B, 23 February 2015, p 14.

³⁰⁷ Evidence, Witness B, 23 February 2015, p 14.

³⁰⁸ Evidence, Mr Tim Crakanthorp MP, member for Newcastle, 27 February 2015, p 2.

³⁰⁹ Evidence, Mr Crakanthorp MP, 27 February 2015, p 2.

³¹⁰ Evidence, Mr Crakanthorp MP, 27 February 2015, p 12.

³¹¹ Evidence, Mr Crakanthorp MP, 27 February 2015, p 4 and p 12.

³¹² Evidence, Mr Crakanthorp MP, 27 February 2015, p 12.

³¹³ Evidence, Mr Crakanthorp MP, 27 February 2015, p 2 and p 5.

³¹⁴ Evidence, Mr Crakanthorp MP, 27 February 2015, p 15.

the document to one of Mr Robertson's media staff at an event in Newcastle.³¹⁵ The committee was subsequently informed by Mr Crakanthorp's staffer that this occurred on 3 December 2014.³¹⁶

5.54 Mr Crakanthorp advised that the cabinet document became public on 17 February 2015.³¹⁷ On the same day, Mr Crakanthorp provided a copy of the document to ICAC.³¹⁸

5.55 The committee also received evidence from the electorate officer who stated that she found the document. The officer, Witness C, described the four filing cabinets in the office as having four drawers each. She stated that the drawers contained a large number of hanging files, some containing manila folders, and some of those folders still contained documents.³¹⁹

5.56 When asked by the committee as to whether it was obvious that some of the folders contained documents, she replied: 'Not necessarily'.³²⁰

5.57 Witness C told the committee that she had found the cabinet document on 28 November 2014 in a plain, unmarked and open white envelope at the back of one of the four filing cabinets:

On Friday 28 November I discovered Cabinet-in-confidence document number 71. It was in a plain white envelope in one of 16 filing cabinet drawers. It was wedged up against the wall of the drawer ...³²¹

5.58 Witness C stated that the presence of the envelope was only apparent when moving the drawer backward and forward.³²²

5.59 She told the committee that upon seeing the cabinet document, she realised the sensitivity of the documents and informed Mr Crakanthorp about the document as soon as she saw him later that afternoon.³²³

5.60 On 23 February 2015, the Secretary of the Department of Premier and Cabinet requested that the Independent Commission Against Corruption consider the possible leaking of the confidential cabinet document.³²⁴

³¹⁵ Evidence, Mr Crakanthorp MP, 27 February 2015, pp 12-13.

³¹⁶ Evidence, Witness C, 27 November 2015, p 1.

³¹⁷ Evidence, Mr Crakanthorp MP, 27 February 2015, p 2.

³¹⁸ Evidence, Mr Crakanthorp MP, 27 February 2015, p 2, and pp 5-6.

³¹⁹ Evidence, Witness C, 27 November 2015, p 1 and p 3.

³²⁰ Evidence, Witness C, 27 November 2015, p 2.

³²¹ Evidence, Witness C, 27 November 2015, p 1.

³²² Evidence, Witness C, 27 November 2015, p 1.

³²³ Evidence, Witness C, 27 November 2015, p 1.

³²⁴ Sean Nicholls, 'Possible leaking of cabinet document referred to ICAC by NSW Premier's department', Sydney Morning Herald, 23 February 2015, <<http://www.smh.com.au/nsw/possible-leaking-of-cabinet-document-referred-to-icac-by-nsw-premiers-department-20150223-13m40h.html>>; ABC, 'Leaked cabinet document referred to ICAC', 24 February 2015, <<http://www.abc.net.au/news/2015-02-24/leaked-cabinet-document-referred-to-icac/6246412>>.

- 5.61** The Premier, the Hon Mike Baird MP, supported the Secretary's referral of the matter to the commission stating: 'We need to get to the bottom of what appears to be a breach of cabinet confidentiality, and test the veracity of claims that this document was "found in the back of a filing cabinet"'.³²⁵

Committee comment

- 5.62** The committee notes the recent developments relating to the NSW Government's decision to terminate the Newcastle heavy rail line at Wickham and the proposal to construct light rail, including the cessation of train services to Newcastle Station, the Aboriginal land claim on the now-unused portion of the rail corridor, and the announcement of a proposed new use for Newcastle train station.
- 5.63** We wish to draw particular attention to the decision in *Save Our Rail NSW Inc v State of New South Wales* that an Act of Parliament will be required before the Newcastle rail infrastructure can be permanently removed, and note the government's intention to appeal this decision.
- 5.64** The committee strongly reiterates our conclusion from our interim report that the truncation of rail services to Newcastle should not have proceeded on Boxing Day 2014. The committee remains convinced that the decision to truncate the line was based upon a flawed cost benefit analysis, without an adequate business case, and remains concerned that it occurred prior to the commencement of the construction of the light rail line, which has no defined completion date.
- 5.65** The committee therefore recommends that the rail services that have ceased and infrastructure that has been removed from the Newcastle heavy rail line be immediately reinstated.

Recommendation 9

That the NSW Government immediately reinstate rail services that have ceased and infrastructure that has been removed from the Newcastle heavy rail line.

- 5.66** The committee further notes the advice provided by the Minister for Transport in her Cabinet Minute of 9 December 2013 regarding the light rail route and associated implementation schedule for the works to commence.
- 5.67** In particular, we note the numerous reasons cited in the minute regarding why a hybrid route utilising Hunter Street was not a preferred option, and question why the government nonetheless adopted this route. The committee also notes that the minute advises against truncating the rail line in 2014, and instead advises the truncation to occur toward the end of 2015.
- 5.68** We cannot ignore the alarming contents of this minute, which reveal a less than frank attitude by the government in dealing with this committee. Further, we question why the government

³²⁵ Sean Nicholls, 'Possible leaking of cabinet document referred to ICAC by NSW Premier's department', Sydney Morning Herald, 23 February 2015, <<http://www.smh.com.au/nsw/possible-leaking-of-cabinet-document-referred-to-icac-by-nsw-premiers-department-20150223-13m40h.html>>.

ignored the considered advice of the Transport Minister regarding these important decisions, and chose a transport option that has higher costs, greater delivery risks and greater impacts on local businesses.

- 5.69** The committee notes the evidence provided by Mr Owen and Mr Crakanthorp and their respective staff about their knowledge of the cabinet document and how it came to be found.
- 5.70** The committee acknowledges and appreciates the evidence given by current and former electorate staff, whose professionalism and diligence in performing their duties is not in question. We thank them for their assistance.
- 5.71** Given the differing accounts presented to the committee, the committee is unable to determine the circumstances under which the cabinet document was found, and does not have sufficient evidence to draw any conclusions about how the document came to be available outside the New South Wales Cabinet.
- 5.72** The committee notes that the matter has been referred to the Independent Commission Against Corruption for their consideration. We await the outcome of that process.

Chapter 6 Newcastle Art Gallery and King Edward Headland Reserve

The Newcastle Art Gallery redevelopment and the proposed development at King Edward Headland Reserve were other planning issues raised by inquiry participants. This chapter examines the proposed art gallery redevelopment and explores the rezoning of King Edward Headland Reserve for commercial purposes.

Newcastle Art Gallery redevelopment

- 6.1** In 2004 Newcastle City Council proposed the redevelopment of the Newcastle Regional Art Gallery as part of the Newcastle civic and cultural precinct master plan.³²⁶
- 6.2** The redevelopment of the gallery was estimated to cost \$21 million.³²⁷ The Commonwealth Government provided a \$7 million grant to the project in 2011, and it was anticipated that the state government would provide a further \$7 million. The remaining \$7 million was to be raised by the Newcastle City Council, primarily through a special rate increase.³²⁸
- 6.3** The then member for Newcastle, Mr Tim Owen, expressed support for the redevelopment in his maiden speech to Parliament in 2011:
- I am focused on securing funding for the Newcastle Regional Art Gallery and our burgeoning public art program. While Newcastle is known around the country for our great sports men and women and industrial pursuits, it has produced some outstanding artists of all ilks. I do not believe enough attention or money has been invested into harnessing the talents of our creative men and women. The time has come for this to change.³²⁹
- 6.4** However, in October 2012 the then Minister for Arts, the Hon George Souris MP, announced that the state government ‘could not afford to contribute’ to the art gallery redevelopment, and that the government would not be making a financial contribution.³³⁰
- 6.5** In December 2012, Mr Owen requested that the council release the gallery’s final design after it was revealed that the approved plans for the redevelopment would cost up to \$30 million.³³¹

³²⁶ Newcastle City Council and NSW Government Architect’s Office, Newcastle civic and cultural precinct master plan, March 2004, p 2.

³²⁷ Independent Pricing and Regulatory Tribunal, Newcastle City Council’s application for a special variation 2012/13, Local Government — Determination, June 2012, p 9.

³²⁸ Independent Pricing and Regulatory Tribunal, Newcastle City Council’s application for a special variation 2012/13, Local Government — Determination, June 2012, p 7.

³²⁹ *Hansard*, Legislative Assembly, 25 May 2011, p 1078.

³³⁰ Michelle Harris, ‘Art Gallery redevelopment in jeopardy’, *Newcastle Herald*, 19 October 2012, <<http://www.theherald.com.au/story/406749/art-gallery-redevelopment-in-jeopardy/>>; Submission 147, Save Our Cultural Institutions, p 1.

³³¹ Ben Smee, ‘Costs shrink art gallery’, *Newcastle Herald*, 9 December 2012, <<http://www.theherald.com.au/story/1174179/costs-shrink-art-gallery/>>.

Mr Owen reportedly expressed concern over the uncertainty regarding the planning and design for the redevelopment.³³²

- 6.6** On 9 April 2013, Newcastle City councillors were informed of an audit committee report which described the council's financial situation as 'worsening' and as an 'extreme risk'.³³³ The art gallery redevelopment was debated, with seven councillors voting against and six councillors voting in support of the project proceeding.³³⁴
- 6.7** The council funding set aside for the redevelopment was instead used to reduce council debt³³⁵ and the Commonwealth grant money was reclaimed.³³⁶
- 6.8** Several inquiry participants expressed concern over Mr Owen's perceived withdrawal of support for the project, and questioned whether this was due to the influence of the then Lord Mayor, Mr Jeff McCloy.³³⁷ These concerns stemmed from Mr McCloy's resignation from office after admitting to the Independent Commission Against Corruption (ICAC) during Operation Spicer that he had made illegal donations to the now former Liberal MPs Mr Tim Owen and Mr Andrew Cornwell.³³⁸
- 6.9** According to Dr Robert Henderson, immediate past President of the Newcastle Art Gallery Foundation, upon election as Lord Mayor of Newcastle in September 2012 Mr McCloy made 'no secret' of his views opposing the art gallery redevelopment.³³⁹
- 6.10** Mrs Catherine Tate, former Lady Mayoress of Newcastle, alleged that Mr McCloy had 'expressed ... a great deal of antagonism towards the Art Gallery and its staff because they did not handle the \$50,000 public art donation he made to Newcastle City Council in a manner that suited him'.³⁴⁰

³³² Ben Smee, 'Costs shrink art gallery', *Newcastle Herald*, 9 December 2012, <<http://www.theherald.com.au/story/1174179/costs-shrink-art-gallery/>>.

³³³ *Minutes*, Newcastle City Council, 9 April 2013, p 8.

³³⁴ *Minutes*, Newcastle City Council, 9 April 2013, p 6. The following councillors voted against the project: The Lord Mayor and Councillors D Compton, B Luke, A Robinson, A Rufo, L Tierney and S Waterhouse. The following councillors voted for the project: Councillors T Crakanthorp, T Doyle, J Dunn, N Nelmes, M Osborne and S Posniak.

³³⁵ Ian Kirkwood, 'Newcastle Art Gallery expansion funds conflict', *Newcastle Herald*, 23 August 2013, <<http://www.theherald.com.au/story/1726834/newcastle-art-gallery-expansion-funds-conflict/>>.

³³⁶ Jason Gordon, 'Art gallery loses federal funds to Glendale interchange' *Newcastle Herald*, 10 July 2013, <<http://www.theherald.com.au/story/1629073/breaking-art-gallery-loses-federal-funds-to-glendale-interchange/>>; Submission 174, Mrs Catherine Tate, p 2.

³³⁷ See Submission 279, Ms Sharon Grierson, p 8; Submission 136, Name suppressed, p1; Submission 268, Mr Tim Crakanthorp, p 8; Submission 174, Mrs Catherine Tate, p 2; Submission 33, Name suppressed, p 1.

³³⁸ Sean Nicholls and Jason Gordon, 'Newcastle mayor Jeff McCloy quits before being pushed', *Sydney Morning Herald*, 18 August 2014; Liz Farquhar, 'Jeff McCloy resigns as Newcastle Mayor over ICAC probe into Liberal Party banned donations scandal', ABC News, 17 August 2014.

³³⁹ Submission 119, Dr Robert Henderson, p 2.

³⁴⁰ Submission 174, Mrs Catherine Tate, p 2. Mrs Tate was Lady Mayoress of Newcastle from 1999 until 2012 when her husband Mr John Tate was Lord Mayor of Newcastle.

- 6.11** Save Our Cultural Institutions questioned whether Mr Owen and Mr McCloy had ‘private discussions’ about the redevelopment which prompted Mr Owen’s withdrawal of support for the project.³⁴¹
- 6.12** Likewise, Dr Henderson speculated as to whether an ‘understanding’ between Mr McCloy and Mr Owen had been reached for Mr Owen to oppose the redevelopment.³⁴² According to Dr Henderson, the withdrawal of support from the state government and Mr Owen ‘occurred after Lord Mayor McCloy made it clear he totally opposed the project’.³⁴³
- 6.13** Ms Barbara Witcher and Mr Bernie Bernard similarly commented:
- It is very difficult to understand why both Newcastle City Council ... and Tim Owen ... should enthusiastically support the planned redevelopment in 2011 but withdraw support afterwards. The only answer is undue influence of former Lord Mayor Jeff McCloy after his election in 2012.³⁴⁴
- 6.14** However, Mr Owen refuted these claims, stating: ‘If I remember correctly, I was advised by the Arts Minister (by letter) before McCloy was elected that the funding would not be forthcoming at this time, despite my strong advocacy.’³⁴⁵
- 6.15** Mr Owen added that even though he thought the redevelopment was a ‘great project’, there was ‘never a funded commitment by the NSW Government’ toward the art gallery.³⁴⁶ He referred to the proposed redevelopment being over budget and noted that the council has undertaken to seek future funding from the government once it agrees on a way forward and had detailed costings.³⁴⁷
- 6.16** Mr McCloy also adamantly rejected the allegations of undue influence, attributing the termination of the project solely to the council. He described the council’s management of the project as ‘one of the most self-indulgent waste of rate payers money with no outcomes’.³⁴⁸

Committee comment

- 6.17** The committee notes that concerns were raised by inquiry participants regarding the withdrawal of support by the state government for the redevelopment of the Newcastle Art Gallery, including the concerns that the former Lord Mayor, Mr McCloy, influenced the former member for Newcastle, Mr Owen, to withdraw support from the project due to Mr McCloy’s alleged opposition to the project.

³⁴¹ Submission 147, Save Our Cultural Institutions, p 2.

³⁴² Submission 119, Dr Robert Henderson, p1.

³⁴³ Submission 119, Dr Robert Henderson, p 2.

³⁴⁴ Submission 251, Ms Barbara Witcher and Mr Bernie Bernard, p 2.

³⁴⁵ Correspondence from Mr Tim Owen, former member for Newcastle to the Chairman, 14 November 2014, p 2.

³⁴⁶ Correspondence from Mr Owen to Chairman, 14 November 2014, p 2.

³⁴⁷ Correspondence from Mr Owen to Chairman, 14 November 2014, pp 2-3.

³⁴⁸ Correspondence from Mr Jeff McCloy, former Lord Mayor of Newcastle to Chairman, 14 November 2014, p 2.

- 6.18** However, we acknowledge that the state government never committed to provide funds to the project, and that Mr Owen and Mr McCloy deny the existence of any undue influence.
- 6.19** The committee does not consider that there has been any undue influence with respect to the state government's withdrawal of support from the project, as we have not received any evidence to substantiate this concern.

King Edward Headland Reserve

- 6.20** The committee heard from numerous inquiry participants concerned about the spot rezoning of the King Edward Headland Reserve.
- 6.21** The reserve, at 1 Ordnance Street Newcastle, is located within King Edward Park and was originally dedicated to the people of Newcastle for public recreation in 1863.³⁴⁹ The reserve is administered by the *Crown Lands Act 1989*.
- 6.22** In August 2007 the then Department of Lands (now Department of Primary Industries, Crown Land Division) adopted a Plan of Management for the reserve with the purpose of clearly defining the reserve 'as a place for public recreation'.³⁵⁰

Newcastle City Council rezoning

- 6.23** In December 2010, Newcastle City Council received a development application for a 450 capacity private function centre, kiosk and associated car parking and landscaping on the reserve.³⁵¹ The application was considered under the 2003 Local Environment Plan (LEP) which classified the site as an 'open space and recreation zone', and which prohibited function centres except under plans of management with consent.³⁵²
- 6.24** In June 2010, while considering a new LEP (the draft 2012 Newcastle LEP), the council considered spot rezoning the headland but rejected it on the grounds that 'function centres are not permissible' in public recreation zones.³⁵³

³⁴⁹ Integrated Site Design Pty Ltd, Plan of Management of Land for the King Edward Headland Reserve, Newcastle (Reserve 1011189) for the Department of Lands, August 2007, executive summary.

Kind Edward Headland Reserve is also referred to as Lot 3109.

³⁵⁰ Integrated Site Design Pty Ltd, Plan of Management of Land for the King Edward Headland Reserve, Newcastle (Reserve1011189) for the Department of Lands, August 2007.

³⁵¹ Newcastle City Council, Development Applications Report, Item 24 DA 10/1735 - 1 Ordnance Street, Newcastle – Proposed function centre, kiosk and associated carparking and landscaping, Attachment C, Processing Chronology DA 10/1735 - 1 Ordnance Street, Newcastle, p 69, <http://www.newcastle.nsw.gov.au/__data/assets/pdf_file/0005/173273/King_Ed.pdf>.

³⁵² Submission 87, Friends of King Edward Park Inc., p 6.

³⁵³ Newcastle City Council, *Draft Newcastle Local Environmental Plan (DNLEP) 2011 Exhibition Summary of Public Submissions*, p 4, <http://www.newcastle.nsw.gov.au/__data/assets/pdf_file/0010/154198/Attachment_C.pdf>; Submission 87, Friends of King Edward Park Inc., p 13.

- 6.25** The council submitted the draft LEP to the Department of Planning in July 2011 without any zoning amendments.³⁵⁴
- 6.26** In November 2011 the council approved the development application for the function centre under the 2003 LEP, seven months before the finalised 2012 LEP was published.³⁵⁵
- 6.27** The council minutes state that the development proposal was ‘consistent with the relevant aims and general objectives of Newcastle LEP 2003’, as the development would:

... provide short term construction and ongoing hospitality employment opportunities. The proposed development will also provide opportunities for residents of the local area, together with visitors from outside of the local area, to utilise (either by attending a private function or by enjoying the formalised public gardens and public kiosk) a currently underutilised and closed-off section of public reserve.³⁵⁶

- 6.28** In February 2012, Friends of King Edward Park (FoKEP) commenced an appeal against Newcastle City Council in the NSW Land and Environment Court regarding its consent of the development application.³⁵⁷ FoKEP argued that:

... the PoM [Plan of Management] does not validly grant permission for a function centre, and furthermore a function centre is inconsistent with the dedication of the land and contravenes section 112a of the *Crown Lands Act*. This states “a purpose cannot be an additional purpose within the act if it is inconsistent with, contravenes, or negates the purpose for which the land was reserved.”³⁵⁸

- 6.29** FoKEP noted that [t]he outcome of the case has state-wide implications for all similarly dedicated Crown Lands; changing an LEP classification simply cannot negate Crown Land legislation.³⁵⁹
- 6.30** At the time of writing, the Land and Environment Court has yet to deliver a judgement on this matter.
- 6.31** The court has, however, made a related judgement in response to an application by the Newcastle City Council seeking security of costs for the action brought by FoKEP. That case was heard in April 2012, with Justice Biscoe dismissing the council’s application on 16 May 2012, stating *inter alia* that:

... the applicant [FoKEP] is seeking to enforce public law obligations on the part of the council and the Minister, the proceedings relate to the protection of heritage items

³⁵⁴ Submission 87, Friends of King Edward Park Inc., p 8.

³⁵⁵ *Minutes*, Development Applications Committee, Newcastle City Council, 8 November 2011, p 5; Submission 87, Friends of King Edward Park Inc., p 14.

³⁵⁶ Newcastle City Council, Development Applications Report, Item 24 DA 10/1735 - 1 Ordnance Street, Newcastle – Proposed function centre, kiosk and associated carparking and landscaping, p 5, <http://www.newcastle.nsw.gov.au/__data/assets/pdf_file/0005/173273/King_Ed.pdf>.

³⁵⁷ Submission 87, Friends of King Edward Park Inc., p15; See also Evidence, Dr John Lewer, Vice President, Friends of King Edward Park Inc., 21 November 2014, pp 46 and 49.

³⁵⁸ Submission 87, Friends of King Edward Park Inc., pp 6-7.

³⁵⁹ Submission 87, Friends of King Edward Park Inc., p 7.

including aboriginal heritage items ... the proceedings have been brought to preserve the Reserve for its dedicated purpose of public recreation and to preserve the Park which is a public park.³⁶⁰

- 6.32** In June 2012, contrary to its June 2010 decision to reject the rezoning of the reserve, the council gazetted the 2012 Newcastle LEP with a spot rezoning of the land, stating that ‘certain land at 1 Ordnance Street, Newcastle ... for the purpose of a function centre and kiosk with associated car parking and landscaping is permitted with consent’.³⁶¹
- 6.33** This spot rezoning generated significant concerns amongst inquiry participants, which are discussed in the next section.

Stakeholder concerns

- 6.34** Inquiry participants expressed several concerns in regard to the council’s decision to rezone the King Edward Headland Reserve.
- 6.35** One concern, raised by the Greater Western Sydney Heritage Action Group, was that the rezoning contravened Crown Lands legislation. The group noted that public reserve lands must be accessible to the public as of right and must not be a source of private profit:

The term ‘public reserve’ ... has been considered in legal proceedings to be... an unoccupied area of land preserved as an open space or park for public enjoyment, to which the public ordinarily have access as of right. The two criteria which land must satisfy to be a public reserve are that the land must be open to the public generally as of right; and it must not be a source of private profit.³⁶²

- 6.36** The group asserted that by applying the above definition to the reserve, the construction of a private function centre should be prohibited.³⁶³
- 6.37** Dr John Lewer, Vice President, Friends of King Edward Park Inc, likewise argued that the spot rezoning contradicted the *Crown Lands Act* and added that it failed to take into account Justice Biscoe’s judgement that highlighted the significance of the area:

The decision to spot rezone the headland ignored the judgement of Justice Biscoe in the Land and Environment Court. The spot rezoning decision fails to recognise the incredible heritage and other values of the headland. The decision is contrary to the dedication of the land under the Crown Lands Act which means it is open to the public as a right and not a source for private profit.³⁶⁴

³⁶⁰ *Friends of King Edward Park Inc v Newcastle City Council* [2012] NSWLEC 113 (16 May 2012).

³⁶¹ Newcastle Local Environmental Plan 2012, Schedule 1 Additional permitted uses, <<http://www.legislation.nsw.gov.au/maintop/view/inforce/epi%2025%202012%20cd%200%20N>>.

³⁶² Submission 369, Greater Western Sydney Heritage Action Group, p 2, referring to NSW Trade and Investment Crown Lands Trust Handbook, p 116. Both legal interpretations are from: Council of the Municipality of Randwick v Rutledge (1959) 102 CLR 54.

³⁶³ Submission 369, Greater Western Sydney Heritage Action Group, p 2.

³⁶⁴ Evidence, Dr John Lewer, Vice President, Friends of King Edward Park Inc., 21 November 2014, pp 47-48.

6.38 Another concern raised during the inquiry involved the lack of public consultation regarding the rezoning.³⁶⁵ For example, Dr Lewer said:

We were not invited to provide our views about whether the 2012 draft LEP should or should not incorporate a private function centre. We were not invited to be part of that discussion.³⁶⁶

6.39 Questions were raised as to ‘why and by what process the draft LEP ... was amended to incorporate a private function centre as an exception on the Headland Reserve’, despite this proposal being previously rejected by Newcastle City Council.³⁶⁷ FoKEP stated: ‘We have never been able to establish how the amendment was made – it never went back to Council and it was never put to the public for comment.’³⁶⁸

6.40 Stakeholders expressed further concern that the rezoning decision may have been tainted by illegal developer donations.³⁶⁹ These concerns stemmed from admissions made during the ICAC’s Operation Spicer by Mr Keith Stronach, the sole director of Annie Street Commercial Pty Ltd (the company that lodged the development application), that he had illegally donated money to Mr Owen’s election campaign.³⁷⁰

6.41 FoKEP noted that Mr Stronach ‘stated that he approached Mr Owen to assist with an audience with the Department of Planning’³⁷¹ and suggested that the conversation took place around the same time the spot rezoning was made.³⁷² Further to this, FoKEP highlighted that the wording of the spot rezoning ‘exactly replicates the wording of the earlier Development Application made by the developer, Mr Keith Stronach’, and requested that these matters be investigated.³⁷³

Preferred use of the site

6.42 FoKEP made three recommendations regarding its preferred future use of the headland and King Edward Park:

- that Schedule 1 of the Newcastle LEP 2012 be revoked to ensure the headland remains as an area for public recreation ‘for future generations to enjoy’³⁷⁴
- that all development on King Edward Park be suspended, and

³⁶⁵ See submission nos. 87, 206, 226, 233, 254, 246, 95, 311, 139, 121, 122, 110, 109, 97, See also Pro forma A; Pro forma B and Pro forma C.

³⁶⁶ Evidence, Dr Lewer, 21 November 2014, p 50.

³⁶⁷ See submission nos. 87,130, 97, 109, 110, 122, 311, 95, 254, 159, 246, 139, 134.

³⁶⁸ Submission 87, Friends of King Edward Park Inc, p 8.

³⁶⁹ See submission nos. 87, 206, 246, 95, 311, 139, 121, 122, 110, 109, 97, See also Pro forma B and Pro forma C.

³⁷⁰ Transcript of proceedings, Operation Spicer (Independent Commission Against Corruption, E12/2107/0821, Latham J, 15 August 2014) pp 5416T-5418T.

³⁷¹ Submission 87, Friends of King Edward Park Inc, p 4.

³⁷² Submission 87, Friends of King Edward Park Inc, p 4.

³⁷³ Submission 87, Friends of King Edward Park Inc, p 8.

³⁷⁴ Submission 87, Friends of King Edward Park Inc., p 11.

- that FoKEP be made trustees of the headland reserve.³⁷⁵

- 6.43** However, Dr Lewer submitted that if there was to be development on the headland then it should be ‘modest, certainly not a 450 seat private function centre with associated car parking. It would probably be a small kiosk, or something of that nature, that would be available to the public’.³⁷⁶
- 6.44** On 7 January 2015, it was reported that the Awabakal Aboriginal Land Council had made a claim on the King Edward Headland Reserve, among other sites, under the *Aboriginal Land Rights Act 1983*.³⁷⁷ The claim by the land council is founded upon the land ‘no longer being used or occupied for a public purpose’.³⁷⁸ Development of the function centre, kiosk and car park has been halted until the claim has been resolved.³⁷⁹

Committee comment

- 6.45** The committee acknowledges the concerns of inquiry participants regarding the rezoning of the King Edward Headland Reserve and the approval for the construction of a function centre, kiosk and car park within the reserve.
- 6.46** Like inquiry participants, the committee questions why the reserve was spot rezoned, given that the council had earlier rejected a proposal to rezone the land. We are significantly concerned about the lack of consultation and information provided to the community on this matter.
- 6.47** We acknowledge the concerns regarding undue influence being exerted by the property developer; however, we have not received any evidence to substantiate this concern.
- 6.48** The committee notes the arguments that the construction of a private function centre contravenes the *Crown Lands Act 1989*, and note the current appeal the Land and Environment Court against the development application. We also note the pending Aboriginal land claim on the land and await the final outcomes of both of these matters.

³⁷⁵ Evidence, Dr Lewer, 21 November 2014, p 48.

³⁷⁶ Evidence, Dr Lewer, 21 November 2014, p 52.

³⁷⁷ Matthew Kelly, ‘Awabakal Aboriginal Land Council claim on Newcastle rail line’, *Newcastle Herald*, 7 January 2015, <<http://www.theherald.com.au/story/2803585/land-claim-on-rail-line/>>.

³⁷⁸ Matthew Kelly, ‘Awabakal Aboriginal Land Council claim on Newcastle rail line’, *Newcastle Herald*, 7 January 2015, <<http://www.theherald.com.au/story/2803585/land-claim-on-rail-line/>>.

³⁷⁹ Matthew Kelly, ‘Awabakal Aboriginal Land Council claim on Newcastle rail line’, *Newcastle Herald*, 7 January 2015, <<http://www.theherald.com.au/story/2803585/land-claim-on-rail-line/>>.

Appendix 1 Submission list

No	Author
1	Dr Stephen Ticehurst and Dr Rhonda Ticehurst
2	Mr Michael Palmer
3	Mr Daniel Mendes
4	Mr George Patsan
5	Confidential
6	Mr David Suttor
7	Mr Leon Oberg
8	Miss Sarah Blakemore
9	Mr Peter Hood
10	Mr Greg Price
11	Mr Agner Sorensen
11a	Mr Agner Sorensen
11b	Mr Agner Sorensen
11c	Mr Agner Sorensen
12	Ms Julie Jordan
13	Mr Martin Schlaeger
14	Dr Anna Enno
15	Name suppressed
16	Ms Bronwyn McDonald
17	Mrs Leanne Piller
18	Confidential
19	Name suppressed
20	Mr Earl Morris OAM
21	Dr Sue Outram and Mr Andrew Zdenkowski
22	Mr Steven Roberts
23	Ms Veronica Antcliff
24	Mr Paul Finnane
25	Mr Christopher Dodds
26	Mr Victor Carroll
27	Mr Robert Monteath
28	Mr Ian Thomas
28a	Mr Ian Thomas

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31	Parks and Playgrounds Movement Inc
31a	Parks and Playgrounds Movement Inc
32	Campbelltown & Districts Commuter Assoc.
33	Name suppressed
34	Mr Kevin Harrison
35	Mr Neil Kembrey
36	Mr Eric Tierney
37	Professor Philip Laird
38	Miss Heather Roberts
39	Mr Bruce Matthews
39a	Mr Bruce Matthews
40	Mr Bernard Griffin
40a	Mr Bernard Griffin
41	Mr David Threlfo
42	Name suppressed
43	Mr Lance Kindleysides
44	Mr Max Bignell
45	Mr Gary Jones
46	Mr Shane Forrest
47	Mr Peter Sansom
48	Mr Kevin Eadie
49	Ms Helen Cummings
50	Confidential
51	Dr Catherine Laudine
52	Confidential
53	Mr Lutz Barz
54	Name suppressed
55	Ms Nicole Geoghegan
56	Name suppressed
57	Mr Roy Lazarevic
58	Mr George Paris
58a	Mr George Paris
59	Two More Trains for Singleton

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60	Professor Philip Seccombe
61	Name suppressed
62	Ms Christine McLean
63	Mr Keith Wilson
64	Mr Sid Gray
65	Mr Stephen Date (<i>partially confidential</i>)
66	Mr Peter Willis
67	Mrs Pat Staker
68	Mr Finnbar Crennan
69	Folly Park Residents Group Inc
70	Mr Charlie Bell and Mrs Penelope Bell
71	Mr Leigh Blackall
72	Mr Graeme Tychsen
73	Mr Paul Shearston
74	Name suppressed
75	Dr Tessa Morrison
76	Name suppressed
77	Ms Judith Smith
78	Ms Pam Mitchelhill
79	Professor Suzanne Ryan
80	Mrs Helen Sharrock
81	Mr Steven Roberts
82	Ms Wendy Wales
83	Ms Maryann Lees
84	Mr Douglas Paisley
85	Ms Ruth Colman
86	Ms Kate Tuohy-Main
87	Friends of King Edward Park Inc (<i>partially confidential</i>)
87a	Friends of King Edward Park Inc
87b	Friends of King Edward Park Inc
88	Name suppressed
89	Mr Barry Portus
90	Name suppressed
91	Name suppressed
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94	Mr David Bennetts
95	Ms Jacinta Dalton
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97	Ms Elizabeth Thwaites
98	Name suppressed
99	Mr Bhadro McDonald
100	Name suppressed
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102	Mr Tony Brown
102a	Mr Tony Brown
102b	Confidential
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104	Woodlands Close Community Team
105	Mr Richard Young AM
106	Mr Gary Townsend
107	Dr Steve Mohr
108	Ms Marg Edwards
109	Mr Bruce Wilson
110	Mr James Stokes
111	Ms Jaye Quinlan
112	Confidential
113	Ms Robyn Meincke
114	Mr Geoff Smith
115	Dr Greg Berry
116	Confidential
117	Mr S Stepowski
118	Mr Trevor Hooker
119	Dr Robert Henderson
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121	Mr Brian Suters AM
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123	Mr Rod Holding
124	Mr Adam Metcalf
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132	Dr John Burgess
133	Ms Pam Mitchelhill
134	Ms Stephanie Williams
135	Mr Ron Brown
136	Name suppressed
137	Name suppressed
138	Mr David Blythe
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140	Ms Val Connor
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142	Mr George Southern
143	Ms F J Gardiner
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147	Save Our Cultural Institutions
148	Ms Nicole Thomas
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163	Mrs Leslie Krey
164	Ms June Beilby
165	Confidential
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168	Name suppressed
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170	Mr Max Phillips
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173	Mr Kerry Bowen
174	Mrs Catherine Tate
175	Ms Paula Morrow
176	Name suppressed
177	Mr Greg Cameron
178	Mr Kerry Suwald
179	Whitebridge Community Alliance (<i>partially confidential</i>)
180	Name suppressed
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182	Mr Francis McQuade
183	Name suppressed
184	Name suppressed
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186	Mr David Geraghty
187	Ms Judith Gatland
188	Confidential
189	Mr Derek Dowding
190	Name suppressed
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195	Ms Julianna Walton
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197	Confidential
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199	Mrs Renee Tate
200	Mr John de Bruyn
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202	Name suppressed
203	Mrs Anna Holmes
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205	Mr Graham Mullane
206	Prof Richard Leplastrier
207	Confidential
208	Confidential
209	Mr Robert Alder
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212	Confidential
213	Confidential
214	Rev Warwick Cadenhead
215	Mr John Kaye
216	Confidential
217	Mr Peter Newey
218	Mr Robert Tiedeman
219	Confidential
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221	Mr Bruce Hardiman
222	Mr Cecil Jones
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224	Dr Geoff Evans (<i>partially confidential</i>)
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233	Mr John Cooper
234	Name suppressed
235	Ms Sally Corbett
236	Dr Ross Kerridge
237	Dr Virginia Reid
238	Ms Wendy White
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242	Mr Tim Curtis
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249	TVT Transport Development and Road Safety Research
250	Ms Genni Siudek
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257	Mrs Monica Warren
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268	Mr Tim Crakanthorp
269	EcoTransit Sydney
270	Dr Raoul Walsh
271	Cr Steve Tucker
272	Property Council of Australia
273	Confidential
274	Name suppressed
275	Name suppressed
276	Name suppressed (<i>partially confidential</i>)
277	Name suppressed
278	Name suppressed
279	Ms Sharon Grierson
280	Community Too Inc
281	Mr Tony Lawler
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282	Hunter Transport for Business Development (<i>partially confidential</i>)
283	Confidential
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301	Name suppressed
302	Confidential
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304	Confidential
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308	Ms Emma Brooks Maher
309	Ms Judith Cousins
310	Ms Carrie Jacobi
311	Dr Kristen Rundle
312	Planning Institute Australia
313	Retired Mineworkers Association Westlakes Branch
314	Hunter Regional Committee of the National Trust of Australia (NSW)
315	Honeysuckle Residents Association Inc.
316	Dr Paul Rippon
317	Planning Plus
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319	Ms Therese Doyle
319a	Ms Therese Doyle (<i>partially confidential</i>)
320	Name suppressed
321	Name suppressed
322	Name suppressed
323	Mr Milton Caine
324	Mr John Sutton (<i>partially confidential</i>)
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325	Mrs Ruth Adams
326	Name suppressed
327	Mr Stefan Rose

No	Author
328	Name suppressed
329	Save Our Rail NSW Inc (<i>partially confidential</i>)
330	Mr Francis Young (<i>partially confidential</i>)
331	Mr Stephen Weatherstone
332	Mrs Rhonda Hartwig
333	Confidential
334	Mr David Stewart
335	Name suppressed
336	Mr Martin Cousins
337	Ms Helen Johnson
338	Mr Odiferous Mcdonald
339	Ms Kim Farnham
340	Ms Helen Knott
341	Mr Michael Helmore
342	Mrs Patricia Walker
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345	Name suppressed
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347	Confidential
348	Confidential
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351	Confidential
352	Confidential
353	Ms Johanna Trainor
354	Name suppressed
355	Ms Kerry Fagan
356	Name suppressed
357	Ms Joan Browning
358	Name suppressed
359	Ms Dianne O'Keeffe
360	Mr Neil Jensen
361	Mr Colin Keith
362	Mrs Anne Wood

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368	Confidential
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371	Ms Jennifer Hamilton Langbien
372	Ms Caroline Bergman Hart
373	Mr David Horkan
374	Mr Richard Taylor
375	Mrs Margaret Ostinga
376	Ms Linda Evans
377	Ms Gail Davies
378	Ms Karen Bolben
379	Lord Mayor Nuatali Nelmes
400a	Pro forma A
400b	Pro forma B
400c	Pro forma C
400d	Pro forma D
400e	Pro forma E
400f	Pro forma F

Pro forma A – 5 responses

Dear Sir/ Madam

I am aware that the King Edward Headland Reserve was spot re-zoned to make it an exception to the rule that applies to RE1 Land in the Newcastle 1012 LEP that excludes function centres. I have been informed by the Friends of King Edward Park Inc. that the proposal to change the LEP was rejected by Council but that the alteration was written into the new LEP by a process that was not transparent and did not involve community, in spite of the fact that there is strong public interest in the DA proposing the construction of a 450 capacity private function centre and car park on this iconic public property.

In the light of the recent ICAC investigation I request that the probity of this matter be examined by the Parliamentary enquiry.

Yours sincerely

Pro forma B – 2 responses

Reverend the Hon Fred Nile MLC

Chair

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region,
NSW Legislative Council

newcastleplanning@parliament.nsw.gov.au

Dear Sir

King Edward Headland Reserve (KEHR) is dedicated under s.87 of the Crown Land Act (CLA) to the public for the purpose of public recreation and under the act, need to satisfy two conditions. It must be accessible to the general public as of right, and it must not be used as a source for private profit.

Public interest should have been a factor in the rezoning decision. In December 2010 when a DA for a function centre was advertised, 300 objections were received. This vital evidence that was available should have informed the debate but was ignored.

In June 2011, the Draft 2012 LEP, like the 2003 LEP, excludes function centres on RE1 Land

June 2011 Newcastle City Council rejects an application to allow a function centre as an exception on KEHR.

June 2012 LEP changed to Spot rezone KEHR to allow a function on this land as an exception to other RE1 land.

Friends of King Edward Park have been unable to define the process adopted by the Government that legitimised the rezoning. Information obtained under FOI gives no reason for re-zoning.

The historical significance of the site should have been considered.

The Biscoe judgement in May 2012 should have informed the decision. Mr Justice Biscoe highlighted the significance of the site.

I respectfully request that the Upper House Inquiry examine this matter because of the issues of probity, lack of transparency, accountability, fairness, lack of community consultation and developer influence.

Pro forma C – 6 responses

Reverend the Hon Fred Nile MLC

Chair

Select Committee on the Planning Process in Newcastle and the Broader
Hunter Region, NSW Legislative Council

newcastleplanning@parliament.nsw.gov.au

Dear Sir

It is greatly appreciated by the people of Newcastle that an inquiry is being held by the Upper House into planning decisions in their City and it is understood that this inquiry is in the light of revelations from the recent ICAC investigation into illegal developer donations to political representatives.

The attention of the enquiry is respectfully directed to the spot-rezoning of the King Edward Headland Reserve. The process by which this was achieved fails the basic tests of probity, transparency, accountability and public consultation and raises strong questions of developer involvement in the political, decision making process.

Background

The King Edward Headland reserve is situated within the King Edward Park which was part of the Government domain containing Government House in the early settlement. It was dedicated to the people as parkland in the middle of the nineteenth century. The Headland commands spectacular views of Coast, river, Park and town with the Obelisk and the Cathedral sky-lined. It contains the first coal shaft in the country and the track that was carved by the carts carrying the coal to the port that became Watt Street, the first street in Newcastle.

It is known to the Worimi and Awabakal people as *Yirranali*, the place of falling rocks and is one of the places documented by Threlkeld in the early 1820s. As late as 1980, it was the sacred place where the Worimi people held up their newborn babies to their ancestors.

The Park is highly valued by all the people of Newcastle.

The KEPHR was used (in spite of public protest at the time) from the latter part of the nineteenth century for a bowling club and tennis court the latter being moved to the Obelisk in the 1930's. The bowling club eventually failed and was demolished in about 2003-4. One of the rinks became an unofficial car park. Since that time it has been shamefully enclosed with public exclusion wire and has fallen into a state of neglect and disrepair. Public appeals to the Trustees (responsible for fulfilling the dedication for public recreation of the site) to allow the area to be tidied have failed for the obvious advantage of making any suggestion for development seem attractive by comparison.

Reasons for investigation

- **The dedication of the land.**

King Edward Headland Reserve (KEHR) is dedicated under s.87 of the Crown Land Act (CLA) to the public for the purpose of public recreation and under the act, need to satisfy two conditions. It must be accessible to the general public as of right, and it must not be used as a source for private profit.

- **Public interest should have been a factor in the rezoning decision.** In December 2010 when a DA for a function centre was advertised, 300 objections were received. This vital evidence that was available should have informed the debate but was ignored.
- **The historical and cultural significance** of the site should have been considered.
- **The Biscoe judgement in May 2012** should have informed the decision. Mr Justice Biscoe highlighted the significance of the site.
- **Non Transparent Process**

In June 2011, the Draft 2012 LEP, like the 2003 LEP, excludes function centres on RE1 Land

June 2011 Newcastle City Council rejects an application to allow a function centre as an exception on KEHR.

June 2012 LEP changed to Spot rezone KEHR to allow a function on this land as an exception to other RE1 land.

FoKEP have been unable to define the process adopted by the Government that legitimised the rezoning. Information obtained under FOI give no reason for re-zoning.

Enquiries have failed to determine the process by which this has occurred, but it is noted that the wording is identical to the developer application for the change.

All references are present in the main submission from the committee of FKEP.

Yours sincerely,

Pro forma D – 7 responses

The Director
Select Committee on the Planning Process in Newcastle and the Broader Hunter Region
Parliament House
Macquarie St
Sydney NSW 2000

Re NSW Senate Inquiry into the planning process in Newcastle and the broader Hunter region

Dear Sir

I refer to the Inquiry on the planning process in Newcastle and the broader Hunter region and in particular Clause 1 which states "1. That a select committee be established to inquire into and report on aspects of the planning process in Newcastle and the broader Hunter Region."

My particular concerns relate to the relationship between the NSW Department of Planning and Environment (DPE) and Rio Tinto on the applications and approvals for the Warkworth Mine expansion. Over a period of four years I have observed what I believe is inappropriate behaviour at the best or corruption at the worst in the relationship between the DPE and the Officials and their consultants at Rio Tinto.

My concerns are as follows

The original bribe (DPE offer to council)

In 2010 Mr David Kitto from DPE in a letter to Council offered \$10 million dollars to Council if they would close Wallaby Scrub Road. The closure of Wallaby Scrub Road is essential for the Warkworth Application to proceed. Council unanimously voted not to close Wallaby Scrub Road and the offer was rejected. However in the DGR and the Conditions of Approval the DPE altered the offer and the Council was placed under pressure to close the road.

It is not the role of the DPE officers to offer monetary considerations on behalf of Rio Tinto. I consider that this was the start of a very corrupt process to get the Warkworth Open Cut Mine approved

The Deed of agreement

The 2003 a Deed of Agreement was entered into between the Government and Warkworth Mining Limited (Rio Tinto) and was intended to protect a large area of land and Endangered Ecological Communities and prevent open cut mining. I believe that at the request of Rio Tinto this protection was secretly removed by Minister Hazzard in 2013 under pressure from Rio Tinto and the DPE to allow the application by Rio Tinto to open cut mine these protected areas.

The secret committee

In the transcript of committee proceedings of the General Purpose Standing Committee No.1 of 21 August 2014 it was confirmed that meetings took place between the Department of Planning & Infrastructure (now DPE), the Office of Environment and Heritage, the EPA, Rio Tinto and their solicitors Minter Ellison together with Rio Tinto's consultants, EMM and Cumberland Ecology. These meetings have been held over the past two years since the Land and Environment Court overturned the approval to expand the Warkworth Mine and have been convened to explore and workshop ways around the court's decisions.

This secret meeting process to agree ways to gain approval for the expansion appears to us to run close to corruption. It is certainly against the stated objectives of the DPE to carry out independent assessments of mining applications.

In June 2014 Rio Tinto resubmitted the same application the Courts rejected because the NSW Government has changed the assessment rules to assist the Mine to overcome the Court's rulings and of course the coaching by the DPE on ways around the Court decisions.

The same DPE officials who have conspired with Rio Tinto to get Mount Thorley Warkworth Continuation projects approved are currently assessing the two applications. Probity requires that this corrupted assessment process must be discontinued until proper investigations have been completed into the dealings between DPE and Rio Tinto. Such actions by the DPE in secret dealings with a large mining corporation to secure an approval can only lead to possible legal action and loss of trust in the Government.

It is important that there is an immediate and independent investigation into the relationship between Rio Tinto and the DPE on the Mount Thorley Warkworth applications process. The secret dealings behind this latest application by Rio Tinto have corrupted this current application and assessment.

Warkworth Amendment 6 process

The two week public exhibition for this Amendment 6 to the Warkworth Mine approval and submission period closed on 29th November 2013. Incredibly, Rio Tinto's substantial Response to Submissions report was provided to the Government on 2nd December, the very next business day after submissions closed. It is completely implausible that Rio Tinto could have adequately responded to in excess of 1,000 submissions in that amount of time.

Just two days after the response report was lodged, the Department issued a 24 page Assessment Report –including a recommendation to approve the mine expansion – and a 35 page Consent Conditions report and referred the project to the Planning Assessment Commission on 4 December. This rapid response to the application could have only been possible with the cooperation of DPE and a completion of reports prior to the public exhibition period closing. This to me is corruption.

The Warkworth continuation EIS process

In 2014 without any consultation with the community, Rio Tinto submitted a new Warkworth expansion application which in my view is exactly the same as the previous scheme rejected by the Land and Environment court and the Supreme Court.

The DPE has set about corrupting the processes involved in the assessment of this application. I believe that the DPE has led a small group in an unofficial committee to ensure Warkworth approval get through. They meet regularly with the Consultants for Rio Tinto to discuss their proposal.

On the 22 of May 2014, Rio Tinto received the Secretary's Requirement and by the first week in June the EIS comprising thousands of pages of reports was printed. Clearly Rio Tinto had access and carried out negotiations with them as to the secretary's requirements. How else you could produce reports of this magnitude in the matter of two weeks?

It is my view that over the past four years the Dept. of Planning and Environment has engaged in corrupt practices which are to the advantage of large commercial enterprises such as Rio Tinto and to the disadvantage of communities such as Bulga.

Non-compliance by Rio Tinto with the NSW Industrial Noise Policy with unofficial agreement by the DPE For mining project approvals particularly in the Hunter Valley, the Minister for Planning includes requirements that set rules for the maximum noise allowable under the terms of the consent.

In accordance with the Conditions of Approval, noise produced by open cut mines is required to be measured and controlled in accordance with the requirements set down in the NSW Industrial Noise Policy (2000). Compliance with these noise levels is monitored by NSW DoPI compliance officers. The DPE is allowing the Mine to exceed the maximum limits set down in the Approval. The DPE and Rio Tinto have an agreement that the NSW INP will be ignored in certain areas and this is to the detriment of the community.

The DPE and the Rio Tinto refuse to use the Low Frequency Noise (LFN) data and apply the corrective factors as required by the NSW Industrial Noise Policy (INP) in operational noise monitoring. Despite many requests and discussions with the DPE and Rio Tinto the INP is being ignored.

This collusion is a corrupt practice.

Conclusion

It is my view that the very close working relationship between Rio Tinto and the Government is an indication of corrupt practices and not in the interests of the community or the ecology. The processing of this current application must be halted until this inquiry is complete.

Please consider my submission

Yours sincerely

Pro forma E – 2 responses

I wish to make a submission concerning two parts in The Terms of Reference for the Select Committee on the Planning Process in Newcastle and the broader Hunter Region. The two parts are 2D and 2E.

2 D.

The iconic Newcastle East skyline is unique in Australian coastal cities. High rise development would completely spoil the cityscape and ruin something special. This type of development is better suited west of the civic area.

2 E.

The termination of the Newcastle rail line at Wickham is a senseless destruction of a public transport asset and a huge waste of money and resources. The Wickham site is too constricted, and would see this city left with a third rate, non functioning terminus and large questions over the fate of the rail corridor remain unanswered.

From the current Civic station, it is a very short walk to the City Hall, the Art Gallery, and Civic Park, the new University Campus and the new Law Courts. (The Uni Campus and the Law Courts have only about 36 car parking spaces between them).

Under the present arrangement it is only a 12 minute train ride between the two University sites. If the termination at Wickham takes place and the arrangements announced by Gladys Berejiklian are adopted, the result would be much more time and inconvenience with changing to buses from Hamilton or Broadmeadow station. As well it will result in more congestion on the roads, already a problem in peak hours. It will result in many more problems than if the rail line was not terminated at Wickham.

In a time when public

transport use should be encouraged, the rail termination at Wickham will do just the opposite.

Pro forma F – 2 responses

Reverend the Hon Fred Nile MLC

Chair

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region, NSW
Legislative Council.

Dear Sir,

My letter below is part a form letter and I thank those who have composed it as I could not have done better myself. I moved here over 4 years ago and I love this city. However I do not like what has been happening at a political and corporate level.

I am one of the grateful people of Newcastle that appreciate that an inquiry is being held by the Upper House into planning decisions in our City and it is understood that this inquiry is occurring in the light of revelations from the recent ICAC investigation into illegal developer donations to political representatives.

The attention of the enquiry is respectfully directed to the spot-rezoning of the King Edward Headland Reserve. The process by which this was achieved fails the basic tests of probity, transparency, accountability and public consultation and raises strong questions of developer involvement in the political, decision making process. This same lack of transparency and accountability has also been applied to the truncation of the rail.

However on the subject of the King Edward Headland reserve which is situated within the King Edward Park, this was part of the Government domain containing Government House in the early settlement. It was dedicated to the people as parkland in the middle of the nineteenth century. The Headland commands spectacular views of Coast, river, Park and town with the Obelisk and the Cathedral sky-lined. It contains the first coal shaft in the country and the track that was carved by the carts carrying the coal to the port that became Watt Street, the first street in Newcastle.

It is known to the Worimi and Awabakal people as Yirranali, the place of falling rocks and is one of the places documented by Threlkeld in the early 1820s. As late as 1980, it was the sacred place where the Worimi people held up their newborn babies to their ancestors.

The Park is highly valued by all the people of Newcastle.

The KEPHR was used (in spite of public protest at the time) from the latter part of the nineteenth century for a bowling club and tennis court the latter being moved to the Obelisk in the 1930's. The bowling club eventually failed and was demolished in about 2003-4. One of the rinks became an unofficial car park. Since that time it has been shamefully enclosed with public exclusion wire and has fallen into a state of neglect and disrepair. Public appeals to the Trustees (responsible for fulfilling the dedication for public recreation of the site) to allow the area to be tidied have failed for the obvious advantage of making any suggestion for development seem attractive by comparison.

Reasons for investigation

- The dedication of the land.

King Edward Headland Reserve (KEHR) is dedicated under s.87 of the Crown Land Act (CLA) to the public for the purpose of public recreation and under the act, need to satisfy two conditions. It must be accessible to the general public as of right, and it must not be used as a source for private profit.

- Public interest should have been a factor in the rezoning decision. In December 2010 when a DA for a function centre was advertised, 300 objections were received. This vital evidence that was available should have informed the debate but was ignored.
- The historical and cultural significance of the site should have been considered.
- The Biscoe judgement in May 2012 should have informed the decision. Mr Justice Biscoe highlighted the significance of the site.

- Non Transparent Process

In June 2011, the Draft 2012 LEP, like the 2003 LEP, excludes function centres on RE1 Land

June 2011 Newcastle City Council rejects an application to allow a function centre as an exception on KEHR.

June 2012 LEP changed to Spot rezone KEHR to allow a function on this land as an exception to other RE1 land.

FoKEP have been unable to define the process adopted by the Government that legitimised the rezoning.

Information obtained under FOI give no reason for re-zoning.

Enquiries have failed to determine the process by which this has occurred, but it is noted that the wording is identical to the developer application for the change.

All references are present in the main submission from the committee of FKPE.

Appendix 2 Witnesses

Date	Name	Position and Organisation
Friday 7 November 2014 Novotel Newcastle Beach	Mr Paul Broad	Chairman, Hunter Development Corporation
	Mr Bob Hawes	Director, Hunter Development Corporation
	Mr Peter Chrystal	Director, Planning and Regulatory, The City of Newcastle
	Ms Jillian Gaynor	Manager, Strategic Planning Services, The City of Newcastle
	Mr John Andrews	Chief Development Planner, Development Assessment and Compliance, Lake Macquarie City Council
	Mr Wesley Hain	Principal Strategic Land Use Planner, Lake Macquarie City Council
	Ms Elizabeth Lambert	Senior Town Planner, Development Assessment and Compliance, Lake Macquarie City Council
	Dr Geoff Evans	President, Newcastle Inner City Residents Alliance
	Ms Daniela Heil	Treasurer, Newcastle Inner City Residents Alliance
	Mr Brian Ladd	Member, Newcastle Inner City Residents Alliance
	Mr Sean Brown	Member, Whitebridge Community Alliance
	Ms Michelle Budekin	Member, Whitebridge Community Alliance
	Mr Alistair Christie	Secretary, Honeysuckle Residents Association
	Mr Peter Medi	Member, Honeysuckle Residents Association
	Mr Bruce Wade	Member, Honeysuckle Residents Association
	Ms Kim Cross	Vice President, Save Our Rail NSW Inc
	Mr Darrell Harris	Advisor, Save Our Rail NSW Inc
	Ms Joan Dawson	President, Save Our Rail NSW Inc

Date	Name	Position and Organisation
Friday 21 November 2014 Newcastle City Hall	Mr Nat McGregor	Chief Operating Officer, University of Newcastle
	Mr Allan Tracey	Director, Infrastructure and Facilities Services, University of Newcastle
	Mr Chris Chapman	Managing Director, Colliers International Newcastle
	Clr Tim Crakanthorp	Councillor, The City of Newcastle
	Clr Nuatali Nelmes	Lord Mayor, The City of Newcastle
	Clr Therese Doyle	Councillor, The City of Newcastle
	Ms Sharon Grierson	Former Federal member for Newcastle
	Dr John Lewer	Vice President, Friends of King Edward Park
	Mrs Margaret Ostinga	Committee member, Friends of King Edward Park
	Mr Bruce Wilson	Committee member, Friends of King Edward Park
	Mr Richard Anicich	Immediate Past President, Hunter Business Chamber
	Ms Kristen Keegan	Chief Executive Officer, Hunter Business Chamber
	Mr Alan Squire	Convenor , Hunter Transport for Business Development
	Dr Graham Boyd	Secretary, Hunter Commuter Council
Prof Howard Dick	Faculty of Business and Economics, University of Melbourne	
Mr John Sutton	Former councillor for The City of Newcastle	
Mr Angus Gordon	Development Manager, GPT Group	

Date	Name	Position and Organisation
Monday 24 November 2014 Parliament House	Ms Carolyn McNally	Acting Secretary, Department of Planning and Environment
	Mr Brendan O'Brien	Executive Director, Department of Planning and Environment
	Mr Peter Anderson	Head of Wholesale, Projects Division, UrbanGrowth NSW
	Mr Andrew Fletcher	New South Wales Regional Director, Property Council of Australia
	Mr Glen Byres	New South Wales Executive Director, Property Council of Australia
	Dr Bruce McFarling	Visiting Professor of Economics, International College Beijing, China Agricultural University
Monday 23 February 2015 Parliament House	Mr Tim Owen	Former member for Newcastle
	Witness A	
Thursday 26 February 2015 Parliament House	Witness B	
	Mr Tim Crakanthorp MP	Member for Newcastle
	Witness C	

Appendix 3 Participants at public forum

Date	Name
Friday 21 November 2014 Newcastle City Hall	Mr Francis Young
	Mr Rick Banyard
	Mr Graeme Tychsen
	Mr Robert Monteath
	Mr Tony Lawler
	Ms Beverley Atkinson
	Ms Jeane Gravolin
	Mr Terry Gavolin
	Mr Paul Rippon
	Mr Brian Ladd
	Ms Helen Sharrock
	Ms Helen Lynch Foster
	Ms Joy Llewellyn-Smith
	Mr Brian Kelly
	Ms Wendy Wales
	Ms Jan Davis
	Mr Tony Brown
	Mr Dennis Taylor
	Mr Matthew Newman
	Mr Jonathan Moylan
Mr Adam Mikka	
Ms Patricia Gillard	
Mr James Thomson	

Appendix 4 Tabled documents

Friday 7 November 2014

Novotel Newcastle Beach

1. Planning map of Newcastle CBD, *tendered by Mr Bob Hawes, General Manager, Hunter Development Corporation*
2. Booklet entitled 'Honeysuckle celebrating 20 years' *tendered by Mr Bob Hawes, General Manager, Hunter Development Corporation*
3. Correspondence from Mr Jeff McCloy, Lord Mayor of Newcastle to Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber urging support for proposed planning changes in Newcastle CBD, *tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance*
4. Open letter from Mike Baird MP, Premier to people of Newcastle, *tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance*
5. Mailbox drop letter from The GPT Group informing residents of public consultation meetings being held, *tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance*
6. Correspondence from the Hon Mike Baird MP, Premier to Ms Daniela Heil outlining government commitment to revitalising Newcastle, *tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance*
7. Newcastle Herald article entitled 'ICAC: Premier apologises to Hunter for scandal', *tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance*
8. Hunter Business Chamber dinner registration leaflet attended by Hon Mike Baird MP, Premier, *tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance*
9. PowerPoint slides of Lynchs Prawns site, Wharf Road, Newcastle, *tendered by Mr Alistair Christie, Secretary, Honeysuckle Residents Association.*

Friday 21 November 2014

Newcastle City Hall

10. Opening statement, *tendered by Mr Tim Crakanthorp, Councillor, Newcastle City Council*
11. Revitalising Newcastle, Update in progress, *tendered by Mr Tim Crakanthorp, Councillor, Newcastle City Council*
12. Photograph of King Edward Park, *tendered by Dr John Lever, Vice President, Friends of King Edward Park Inc*
13. Attitudes toward redevelopment of the Newcastle CBD: Survey of Residents in the NSW Electorate November 2008, *tendered by Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber*
14. Newcastle City Centre Renewal Community Survey, Final Report 24 July 2009, Hunter Valley Research Foundation, *tendered by Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber*
15. Newcastle City Centre Renewal Report to NSW Government March 2009, Hunter Development Corporation, *tendered by Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber*
16. Newcastle CBD/Rail Strategy 'Why the HDC/Urbis Cost-Benefit Study is Invalid', *tendered by Professor Howard Dick, Faculty of Business and Economics, University of Melbourne.*

Wednesday 18 February 2015

Parliament House

17. Cabinet Minute SC577-2013, entitled 'Newcastle Revitalisation Project', dated 9 December 2013, *tabled by Revd the Hon Fred Nile MLC*
18. Cabinet Standing Committee on Infrastructure Decision Paper, dated 11 December 2013, *tabled by Revd the Hon Fred Nile MLC*
19. Email from (name suppressed), regarding Newcastle Electorate Office, dated 18 February 2015, *tabled by Hon Catherine Cusack MLC*
20. Newcastle Herald article by Sean Nicholls, Michelle Harris and Jason Gordon entitled 'Rail document found in Owen office: Labor', dated 18 February 2015, *tabled by Hon Catherine Cusack MLC*

Monday 23 February 2015

Parliament House

21. SAI Global ASIC Personal Current and Historical Extract of Mr Timothy Owen, *tabled by Hon Lynda Voltz MLC*

Friday 27 February 2015

Parliament House

22. Email from Witness A replying to further questions asked by Ms Cusack regarding folders kept in the office, *abled by Hon Catherine Cusack MLC*
23. Emails from Mr Luke Mellare, Parson Brinckerhoff and Ms Julie Rich, Operations Manager, Hunter Development Corporation, *tabled by Mr Shoebridge MLC*
24. NSW Department of Planning, Conflicts of Interest - Policy and Guidelines 2011, *tabled by Mr Shoebridge MLC*
25. Letter from Mr Tim Crakanthorp to Independent Commission Against Corruption, dated 17 February 2015, *tendered by Mr Tim Crakanthorp MP, Member for Newcastle*
26. Letter from Mr Tim Crakanthorp to Mr Tim Owen regarding cabinet in confidence document, *tendered by Mr Tim Crakanthorp MP, Member for Newcastle*
27. Twenty-seven manila files various contents, including electorate surveys, correspondence from the Treasurer, *tendered by Mr Tim Crakanthorp MP, Member for Newcastle*
28. Statutory declaration from electorate office staffer, *tendered by Mr Tim Crakanthorp MP, Member for Newcastle.*

Appendix 5 Answers to questions on notice

The committee received answers to questions on notice from the following:

- Hunter Development Corporation
- Lake Macquarie City Council
- Honeysuckle Residents Association
- University of Newcastle
- Lord Mayor Nuatali Nelmes, Newcastle City Council
- Friends of King Edward Park
- Hunter Transport for Business Development
- The GPT Group
- Department of Planning and Environment
- UrbanGrowth NSW
- Property Council of Australia
- Transport for NSW and Roads and Maritime Services
- Mr Paul Broad, Chairman, Hunter Development Corporation
- Mr Bob Hawes, General Manager, Hunter Development Corporation
- Mr Ken Gouldthorp, General Manager, Newcastle City Council
- Newcastle City Council

Appendix 6 Scope and purpose of Operation Spicer

Amended Scope and Purpose - 12 September 2014

OPERATION SPICER – PUBLIC INQUIRY

In Operation Spicer the commission is currently investigating allegations of corrupt conduct involving:

- a) whether, between April 2009 and April 2012, certain Members of Parliament, including Christopher Hartcher MP, Darren Webber MP, and Christopher Spence MP, and others, including Timothy Koelma and Raymond Carter, corruptly solicited, received and concealed payments from various sources in return for certain Members of Parliament agreeing to favour the interests of those responsible for the payments;
- b) whether, between December 2010 and November 2011, certain Members of Parliament, including Christopher Hartcher MP, Darren Webber MP, and Christopher Spence MP, and others, including Raymond Carter, solicited, received and failed to disclose political donations from companies, including prohibited donors, contrary to the *Election Funding, Expenditure and Disclosures Act 1981*;
- c) whether Eightbyfive, a business operated by Timothy Koelma entered into agreements with each of a series of entities including Australian Water Holdings Pty Ltd, whereby each respective entity made regular payments to Eightbyfive purportedly for the provision of media, public relations and other services and advice, in return for which Christopher Hartcher MP favoured the interests of the respective entity;
- d) the circumstances in which false allegations of corruption were made against senior executives of Sydney Water Corporation (see also Operation Credo).
- e) the circumstances in which the 2011 election campaign for the seat of Newcastle was funded by the Liberal Party, and whether funds were solicited and received from prohibited donors, including Buildev Pty Limited, Nathan Tinkler, Jeff McCloy, Hilton Grugeon and other persons and companies associated with them;
- f) whether members of Parliament, including Christopher Hartcher MP and Michael Gallacher MLC, solicited and received donations from prohibited donors for use in the Liberal Party 2011 State election campaign, including in the seat of Newcastle;
- g) whether parties and persons, including Buildev Pty Limited, Nathan Tinkler, Darren Williams, David Sharpe, Jeff McCloy and Hilton Grugeon improperly sought to influence certain members of Parliament by making donations during the 2011 State election campaign;
- h) whether members of Parliament, including Christopher Hartcher MP and Michael Gallacher MLC, used or attempted to use their power and influence improperly to confer, or attempt to confer, benefits upon donors to the Liberal Party in the 2011 State election campaign;
- i) the circumstances in which two campaigns were conducted against the sitting member of the seat of Newcastle, Jodi McKay MP, including the publication and distribution of misleading information, and whether certain persons were involved in organising, or attempting to organise, and/or funding those campaigns, including Joseph Tripodi MP, Anne Wills, Nathan Tinkler, Darren Williams, David Sharpe and members of the Newcastle Alliance;
- j) whether members of Parliament, including Joseph Tripodi MP, used or attempted to use their power and influence either to improperly confer benefits, or attempt to improperly confer benefits, upon certain parties and persons, including Buildev Pty Limited, Nathan Tinkler,

Darren Williams and David Sharpe, in respect of a development of a coal terminal proposed at the Port of Newcastle;

- (k) whether members or associates of the Liberal Party of NSW used or attempted to use the Free Enterprise Foundation as a means of receiving and disguising donations from prohibited donors in the lead up to the 2011 election campaign;
- (l) whether certain companies and persons, including Buildev Pty Limited, Boardwalk Resources Pty Limited, Nathan Tinkler, Darren Williams, David Sharpe and Troy Palmer used or attempted to use the Free Enterprise Foundation as a means of making donations to the Liberal Party with the intention of attempting to improperly influence certain members of Parliament,
- (m) whether certain companies and persons including Buildev Pty Limited, Darren Williams and Mark Regent influenced or sought to influence a public official, namely Bart Bassett, to make planning decisions for their benefit,
- (n) whether Craig Baumann MP and Vincent Heufel agreed to make false or inaccurate electoral funding disclosures in 2007 and 2011 and whether the disclosures were made for the purpose of concealing benefits already exchanged or to be exchanged with amongst others Jeffrey McCloy and Hilton Gurgeon.

The general scope and purpose of the public inquiry is to gather evidence relevant to the matters being investigated, as detailed above in 'Nature of Allegations', for the purpose of determining the matters referred to in section 13(2) of the ICAC Act.

Appendix 7 Correspondence from Independent Commission Against Corruption



Reverend The Hon Fred Nile MLC
Chairman
Select Committee on the Planning Process in Newcastle
and the Broader Hunter Region
Parliament House
Macquarie Street
SYDNEY NSW 2000

Our ref: E14/2702

23 January 2015

IN CONFIDENCE

Dear Reverend Nile

Att: Teresa McMichael, Committee Director

I refer to your letter of 19 December 2014 on behalf of the Select Committee on the Planning Process in Newcastle and the Broader Hunter Region. You referred information provided to the Committee in relation to conflicts of interests involving the Hunter Development Corporation (HDC), its General Manager Robert Hawes, UrbanGrowth and GPT Group.

The Commission notes that, while the conflicts of interests by Mr Hawes are apparent and he may benefit financially from the proposed truncating, in light of the HDC chairman's statement, Mr Hawes has not had any involvement in any board meetings which have considered the proposed redevelopment at Wickham. Also, the Department of Planning and Environment has stated that it is managing Mr Hawes' conflict. I note that the Select Committee will consider in its final report the issue about Mr Hawes having addressed the board on the truncation issue in his capacity as General Manager.

It appears that Mr Hawes did not lodge disclosures when he was engaged as a consultant to HDC but he appears to have made disclosures in a timely manner as General Manager, including the first one which was just prior to being appointed. The only exception is in relation to his development application which was not disclosed in a timely manner.

In relation to Mr Hawes' disclosures, I note that there appears to be an error at 6.42 of the Select Committee's Interim Report regarding the date when Mr Hawes first made a disclosure. It appears that the date should be 14 February 2011.

Level 7, 255 Elizabeth Street
Sydney NSW 2000
GPO Box 500 Sydney NSW 2001
ABN 17 934 402 440
T 02 8281 5999 F 02 9264 5364
E icac@icac.nsw.gov.au
www.icac.nsw.gov.au

The planning process in Newcastle and the broader Hunter region

In relation to the potential financial benefits to HDC and UrbanGrowth, the Commission notes that these are government-related entities and the benefits would go to them rather than any individual. While the GPT Group is not a public authority, it is noted that it is predominantly owned by a government entity.

In relation to the allegation that the Department of Planning and Environment has been ruled or influenced by UrbanGrowth in the truncating issue, the Select Committee's interim report does not contain any information to support this allegation which originates from Hunter Environment Lobby Inc. In the absence of information indicating who from UrbanGrowth may have influenced the Department and in what manner, the allegation remains vague and there are no proper lines of enquiry to pursue it in an efficient manner.

In the absence of information indicating a reasonable likelihood of corrupt conduct, we will not be investigating the allegations raised. In short, for conduct to be considered corrupt, there needs to be an element of dishonesty or deliberate wrongdoing. A mistake or even negligence are not sufficient indicators of corrupt conduct as having occurred.

Although we are not investigating the issues raised, I thank you for bringing them to the Commission's attention.

Yours sincerely



The Hon Megan Latham
Commissioner

23 January 2015

Appendix 8 Minutes

Minutes no. 1

Wednesday 24 September 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Parkes Room, Parliament House, 1.04 pm

1. Members present

Revd Nile, *Chairman*

Ms Cusack (via teleconference)

Mr Donnelly

Mr Shoebridge

Ms Voltz (via teleconference)

2. Apologies

Mr Pearce

3. Procedural resolutions

Resolved, on the motion of Mr Donnelly: That, unless the committee decides otherwise, the following procedures apply for the life of the committee:

Filming, broadcasting and still photography of public proceedings

That the committee authorise the filming, broadcasting, webcasting and still photography of the public proceedings of the committee, in accordance with the resolution of the Legislative Council of 18 October 2007.

Publishing transcripts of evidence

That the committee authorise the publication of transcripts of evidence taken at public hearings.

Publishing answers to questions on notice

That the committee authorise the publication of answers to questions on notice.

Publishing submissions

That the committee authorise the publication of all submissions to the inquiry, subject to the committee clerk checking for confidentiality, adverse mention and other issues and, where those issues arise, bringing them to the attention of the committee for consideration.

Attachments to submissions

That all attachments to submissions remain confidential, unless otherwise published by the committee.

Media statements

That media statements on behalf of the committee be made only by the Chairman.

4. Conduct of the inquiry on the planning process in Newcastle and the broader Hunter region

4.1 Inquiry timeline

Mr Shoebridge moved: That the committee adopt the following inquiry timeline:

Call for submissions	Wednesday 24 September 2014
Closing date for submissions	Friday 24 October 2014
Site visit & public hearing #1	Friday 7 November (Newcastle)
Public hearing # 2 and public forum	Friday 21 November 2014 (Newcastle)
Public hearing # 3	Monday 24 November (Sydney)
Report deliberative	Monday 23 February 2015
Table report	Friday 27 February 2015

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That after the closing date for submissions the committee consider delivering an interim report before Christmas.

4.2 Stakeholder list

Resolved, on the motion of Mr Donnelly: That the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders.

4.3 Advertising

Resolved, on the motion of Mr Shoebridge: That the committee place advertisements in the Early General News section of the following newspapers: Newcastle Herald, Sydney Morning Herald, Daily Telegraph and Maitland Mercury.

4.4 Process for determining witnesses

Resolved, on the motion of Mr Shoebridge: That the secretariat circulate to members the Chairman's proposed list of witnesses to provide them with the opportunity to amend the list or nominate additional witnesses, and that the committee agree to the witness list by email, unless a meeting of the committee is required to resolve any disagreement.

4.5 Questions on notice and supplementary questions

Resolved, on the motion of Mr Shoebridge: That for the duration of the inquiry:

- supplementary questions be lodged with the secretariat up to two days following the receipt of the hearing transcript
- witnesses be requested to return answers to questions on notice and supplementary questions within 21 days of the date on which questions are forwarded to the witness.

5. Adjournment

The committee adjourned at 1.17 pm, *sine die*.

Teresa McMichael

Clerk to the Committee

Minutes no. 2

Thursday 16 October 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Member's Lounge, Parliament House, 9.16 am

1. Members present

Revd Nile, *Chairman*

Ms Cusack

Mr Donnelly

Mr Pearce

Mr Shoebridge, *Deputy Chair*

Ms Voltz

2. Election of Deputy Chair

The Chairman called for nominations for Deputy Chair.

Mr Donnelly moved: That Mr Shoebridge be elected Deputy Chair of the committee.

There being no further nominations, the Chairman declared Mr Shoebridge elected Deputy Chair.

3. Draft minutes

Resolved, on the motion of Ms Voltz: That item four of draft minutes no. 1 be amended by inserting 'and public forum' after 'Public hearing #2'.

Resolved, on the motion of Ms Voltz: That draft minutes no. 1, as amended, be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 26 September 2014 – From Mr Agner Sorensen to committee secretariat
- 29 September 2014 – From Mr Tony Farrell, Acting General Manager, Lake Macquarie City Council to committee secretariat requesting information about the inquiry
- 30 September 2014 – From Mr Tony Farrell, Acting General Manager, Lake Macquarie City Council to committee secretariat expressing concern about the inquiry
- 5 October 2014 – From Mr Zenon Helinski to committee secretariat expressing concern about the inquiry terms of reference.

Sent:

- 1 October 2014 – From committee Chairman to Mr Tony Farrell, Acting General Manager, Lake Macquarie City Council responding to request for information about the inquiry.

5. Submissions

5.1 Public submissions

The committee noted that the following submissions had been published by the committee clerk under the authorisation of an earlier resolution: submission nos. 1-4, 7-14, 16-17, 20-32, and 34.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 6, 15, 19 and 33, with the exception of identifying information which is to remain confidential, as per the request of the authors.

5.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee keep submissions nos. 5 and 18 confidential, as per the request of the authors.

6. Site visit and public hearing in Newcastle

Resolved, on the motion of Ms Voltz: That the committee travel to and from Newcastle by bus for both the 7 November and 21 November 2014 visits.

In regard to the site visit and public hearing in Newcastle on Friday 7 November 2014, the committee discussed the following potential itinerary:

- site visit in Newcastle, including inspections of the proposed interchange site at Wickham, the proposed light rail route towards the city, and the East End and city development sites
- public hearing in Newcastle
- site visit to the proposed site of the Whitebridge development, Lake Macquarie, on the way back to Sydney.

The committee noted that any suggestions for witnesses at the public hearing on Friday 7 and Friday 21 November 2014 should be emailed to the secretariat.

7. Confidential documents

The committee agreed to defer consideration of the distribution of confidential documents to participating members until a later meeting.

8. Adjournment

The committee adjourned at 9.30am, until Friday 7 November 2014 (site visit and public hearing, Newcastle).

Cathryn Cummins

Clerk to the Committee

Minutes no. 3

Wednesday 5 November 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Members' Lounge, Parliament House, 10.30 am

1. Members present

Revd Nile, *Chairman*

Mr Shoebridge, *Deputy Chair*

Ms Cusack

Mr Donnelly

Mr Pearce

Ms Voltz

2. Previous minutes

Resolved, on the motion of Ms Cusack: That draft minutes no. 2 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 15 October 2014 – From Ms Heather Berry to committee advising that Maitland is experiencing similar problems to Newcastle with regard to planning and developers
- 21 October 2014 – From Mr D Williamson to committee discussing mining in the Hunter Valley
- 24 October 2014 – From Mr David Antcliff, Project Leader, Urban Renewal NSW to committee advising that he has had limited involvement with the matters being examined by the inquiry.

4. Submissions

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos 35-41, 43-49, 51, 53, 55, 57-60, 62-73, 75, 77-86, 89, 92-97, 99, 101-102, 104-111, 113-115, 117-118, 120-124, 126-128, 130-134, 138-143, 146, 148-149, 151-152, 154-160, 162-164, 167, 169-173, 175, 177-178, 182, 185-187, 192-195, 198-201, 203-206, 209-211, 214-215, 217-218, 220-222, 225-229, 231-233, 235-238, 240-242, 244, 246-250, 252-253 and supplementary submission nos. 127a, 130a and 154a.

4.2 Partially confidential and confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee:

- authorise the publication of submission nos 42, 54, 56, 61, 74, 76, 90-91, 98, 100, 129, 136-137, 145, 150, 153, 166, 168, 176, 183, 190, 196, 230, 234 and 239 with the exception of identifying information which is to remain confidential, as per the request of the authors
- authorise the publication of submission no. 224 with the exception of the name of an individual third party which is to remain confidential, as per the recommendation of the secretariat
- keep submission nos 52, 125, 144, 165, 188, 191, 219 and 243 confidential, as per the request of the authors
- authorise the publication of submission no. 87 (previously circulated as confidential), as per the request of the author.

4.3 Submissions containing potential adverse mention

Mr Pearce noted that the matters raised in submission nos 50, 56, 88, 103, 119, 135, 147, 174, 180, 181,189 and 251 are the same matters that are currently being reviewed by the ICAC.

Ms Cusack moved: That consideration of the publication status of submission nos 50, 56, 88, 103, 119, 135, 147, 174, 180, 181,189 and 251 be deferred to the next meeting in order to give committee members more time to review the submissions.

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce

Noes: Revd Nile, Mr Donnelly, Mr Shoebridge, Ms Voltz

Question resolved in the negative.

Ms Voltz moved: That the committee authorise the publication of submission nos 50, 56, 88, 103, 119, 135, 147, 174, 180, 181,189 and 251, and that the individuals or organisations adversely named be provided with an opportunity to respond to these comments in writing or by giving evidence.

Question put.

The committee divided.

Ayes: Revd Nile, Mr Donnelly, Mr Shoebridge, Ms Voltz

Noes: Ms Cusack, Mr Pearce

Question resolved in the affirmative.

Resolved, on the motion of Mr Pearce: That the committee keep submission no. 212 confidential, as it contains potential adverse mention.

Resolved, on the motion of Ms Voltz: That the committee authorise the publication of submission no. 223, with the exception of potential adverse mention which is to remain confidential.

Resolved, on the motion of Mr Shoebridge: That the secretariat omit from submission nos. 179 and 329 potential adverse mentions of individuals who have not been previously named in other submissions or the media, and circulate the proposed redacted versions of the submissions to committee members for approval, and that if no objections are received by 5.00 pm, Wednesday 5 November, the committee authorise the publication of the redacted submissions.

Resolved, on the motion of Mr Donnelly: That the committee keep submission nos 112, 116, 161, 197, 207, 208, 213, 216 and 245 confidential, as they contain potential adverse mention and may not fall within the terms of reference.

5. Other business

Resolved, on the motion of Ms Cusack: That Clr Therese Doyle appear before the committee as a witness at the public hearing on Friday 21 November 2014.

6. Adjournment

The committee adjourned at 11.13 am until Friday 7 November, 9.15 am, Novotel Newcastle Beach, 5 King St, Newcastle (site visit and public hearing).

Teresa McMichael

Clerk to the Committee

Minutes no. 4

Friday 7 November 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Novotel Newcastle Beach, Newcastle, 9.25 am

1. Members present

Revd Nile, *Chairman*

Mr Shoebridge, *Deputy Chair*

Ms Cusack

Mr Donnelly

Mr Pearce

Ms Voltz

2. Site visit

Revd Nile, Mr Donnelly, Mr Shoebridge and Ms Voltz toured the following sites:

- Wickham interchange
- the proposed light rail route
- East End and city development.

The committee members were accompanied by:

- Mr Brendan O'Brien, Executive Director Infrastructure, Housing & Employment, Department of Planning & Environment
- Mr Bob Hawes, General Manager, Hunter Development Corporation.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 30 October 2014 – From Mr Tony Brown to the committee informing of a NBN news segment regarding planning and the agencies and organisations involved
- 31 October 2014 – From Mr Alan Squire to the committee secretariat, requesting that he and Dr Bruce McFarling be invited to appear at a public hearing
- 31 October 2014 – From Ms Margaret Ostringa, Friends of King Edward Park Inc to the committee secretariat, requesting that representatives from Friends of King Edward Park Inc, be invited to appear at a public hearing.
- 4 November 2011 – From Mr John Sutton to the committee, offering to appear as a witness
- 4 November 2011 – From Ms Jodi McKay to the committee director, declining the invitation to appear as a witness.

Sent:

- 3 November 2014 – From Chairman to Mr Tim Crakanthorp, Member for Newcastle advising, as a courtesy, that the committee will be visiting Newcastle on Friday 7 and Friday 21 November 2014.

4. Allocation of hearing questioning

Resolved, on the motion of Mr Shoebridge: That the sequence of questions to be asked during the hearing alternate between opposition, cross bench and government members, in that order, with an equal proportion of time being allocated to each.

5. Submissions**5.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos. 87a, 87b, 102a, 130a, 155, 201a, 202, 254-259, 262, 264, 267, 269-272, 280-281, 284-286, 288-289, 293, 295-296, 298-299, 305-317, 319, 323, 325, 327-328, 330-332, 334-343, 346, 348 and 350.

5.2 Partially confidential submissions

The committee noted the following submissions were partially published by the committee clerk under the authorisation of an earlier resolution: submission nos. 184, 260, 274-278, 287, 290, 294, 300, 301, 318, 320-322, 326 and 345.

Resolved, on the motion of Mr Donnelly: That the committee keep the following information confidential, as per the request of the authors: names and/or identifying and sensitive information in submissions nos. 184, 260, 274-278, 287, 290, 294, 300, 301, 318, 320-322, 326 and 345.

5.3 Confidential submissions

Resolved, on the motion of Mr Pearce: That the committee keep submission nos. 102b, 283, 297, 344 and 347 confidential, as per the request of the authors.

6. Monday 24 November hearing – Sydney

Resolved, on the motion of Mr Donnelly: That the committee extend the half day hearing on Monday 24 November to a full day hearing.

7. Answers to questions on notice

Resolved, on the motion of Mr Shoebridge: That in order to allow the committee to consider an interim report before Christmas, witnesses be requested to return answers to questions on notice and/or supplementary questions from members within 14 days of the date on which questions are forwarded to the witnesses by the committee clerk for the public hearings on Friday 21 and Monday 24 November 2014.

8. Request to suspend termination of rail line

Mr Donnelly moved: That, on behalf of the committee, the Chairman write to the NSW Government to request that it put a hold on the termination of the Newcastle rail line until the committee has tabled its final report.

Question put.

The committee divided.

Ayes: Revd Nile, Mr Shoebridge, Ms Voltz, Mr Donnelly

Noes: Ms Cusack, Mr Pearce

Question resolved in the affirmative.

9. Public hearing

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Paul Broad, Chairman, Hunter Development Corporation

- Mr Bob Hawes, General Manager, Hunter Development Corporation

Mr Pearce tabled the Hunter Development Corporation, Newcastle City Centre Renewal: Report to NSW Government, 2009.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter Chrystal, Director, Planning and Regulatory, The City of Newcastle
- Ms Jill Gaynor, Strategic Planning Services, Planning and Regulatory, The City of Newcastle

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Andrews, Chief Development Planner, Development Assessment and Compliance, Lake Macquarie City Council
- Ms Elizabeth Lambert, Senior Town Planner, Development Assessment and Compliance, Lake Macquarie City Council
- Mr Wesley Hain, Principal Strategic Landuse Planner, Lake Macquarie City Council

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Geoff Evans, President, Newcastle Inner City Residents Alliance
- Mr Brian Ladd, Member, Newcastle Inner City Residents Alliance
- Ms Daniela Heil, Member, Newcastle Inner City Residents Alliance

Dr Geoff Evans tendered the following documents:

- correspondence from Mr Jeff McCloy, Lord Mayor of Newcastle to Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber urging support for proposed planning changes in Newcastle CBD
- open letter from Mike Baird MP, Premier to people of Newcastle
- mailbox drop letter from The GPT Group informing residents of public consultation meetings being held
- correspondence from Mike Baird MP, Premier to Ms Daniela Heil outlining Government's commitment to revitalising Newcastle
- Newcastle Herald article entitled 'ICAC: Premier apologises to Hunter for scandal'
- Hunter Business Chamber dinner registration leaflet attended by Hon Mike Baird MP, Premier.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Sean Brown, Whitebridge Community Alliance
- Ms Michelle Burdekin, Whitebridge Community Alliance

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Alistair Christie, Secretary, Honeysuckle Residents Association
- Mr Peter Medi, Honeysuckle Residents Association
- Mr Bruce Wade, Honeysuckle Residents Association

Mr Christie tendered the following document:

- Slides of images and text of development in Newcastle City Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Joan Dawson, President, Save Our Rail NSW Inc
- Ms Kim Cross, Vice President, Save Our Rail NSW Inc
- Mr Darrell Harris, Member, Save Our Rail NSW Inc

The evidence concluded and the witnesses withdrew.

The hearing concluded at 4.00 pm.

The public and media withdrew.

10. Adjournment

The committee adjourned at 4.00 pm until 1.30 pm, Wednesday 12 November 2014 (*deliberative meeting*).

Teresa McMichael

Clerk to the Committee

Minutes no. 5

Wednesday 12 November 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region
Members' Lounge, Parliament House, 1.32 pm

1. Members present

Revd Nile, *Chairman*

Mr Shoebridge, *Deputy Chair*

Ms Cusack

Mr Donnelly

Mr Pearce

Ms Voltz

2. Previous minutes

Resolved, on the motion of Mr Pearce: That draft minutes no. 3 be amended by:

- (a) omitting 'Ms Cusack' from item 5 and inserting instead 'Mr Pearce'
- (b) omitting 'appear' and inserting instead 'be considered to appear'.

Resolved, on the motion of Mr Donnelly: That draft minutes no. 3 as amended, be confirmed.

Resolved, on the motion of Mr Donnelly: That draft minutes no. 4 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 4 November 2014 – From Councillor Therese Doyle, Newcastle City Council, formally requesting to appear as a witness at the public hearings
- 5 November 2014 – From Ms Joan Dawson, President, Save our Rail NSW Inc, forwarding media release regarding Government's' failure to meet goals set out in NSW 2021 – A Plan to make NSW number one'
- 6 November 2014 – From Mr Dave Stewart, Secretary, Transport for NSW, declining the committee's invitation to appear at the public hearing on Monday 24 November 2014

- 10 November 2014 – From Prof Howard Dick, Faculty of Business & Economics, University of Melbourne, requesting to appear as a witness at a public hearing
- 10 November 2014 – From Mr Kevin Parish, Chair, NSW Commuter Council and Chair of Hunter Commuter Council, requesting to appear as a witness at the public hearing on Friday 21 November 2014.
- 10 November 2014 – From Ms Helen Lynch-Foster, Woodlands Close Community Team, requesting to appear as a witness at the public hearing on Friday 21 November 2014.

Sent:

- 6 November 2014 – From Chairman to Mr Hilton Grugeon, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region
- 6 November 2014 – From Chairman to Mr Tim Owen, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region
- 6 November 2014 – From Chairman to Mr Jeff McCloy, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region
- 6 November 2014 – From Chairman to Mr Ken Gouldthorp, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region
- 6 November 2014 – From Chairman to Mr Keith Stronach, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region
- 6 November 2014 – From Chairman to Mr Nathan Tinkler, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region
- 6 November 2014 – From Chairman to Mr Gary Edwards, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region
- 6 November 2014 – From Chairman to Mr Andrew Cornwell, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region.
- 10 November 2014 – From Chairman to Mr Bob Hawes, providing an opportunity to respond to comments made in submissions to the inquiry regarding his role in planning issues in the Newcastle or broader Hunter region.

4. Tended documents from 7 November hearing

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing on Friday 7 November 2014:

- Planning map of Newcastle CBD, tendered by Mr Bob Hawes, General Manager, Hunter Development Corporation
- Booklet entitled 'Honeysuckle celebrating 20 years' tendered by Mr Bob Hawes, General Manager, Hunter Development Corporation
- Correspondence from Mr Jeff McCloy, Lord Mayor of Newcastle to Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber urging support for proposed planning changes in Newcastle CBD, tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance
- Open letter from Mike Baird MP, Premier to people of Newcastle, tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance

- Mailbox drop letter from The GPT Group informing residents of public consultation meetings being held, tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance
- Correspondence from the Hon Mike Baird MP, Premier to Ms Daniela Heil outlining government commitment to revitalising Newcastle, tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance
- Newcastle Herald article entitled 'ICAC: Premier apologises to Hunter for scandal', tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance
- Hunter Business Chamber dinner registration leaflet attended by Hon Mike Baird MP, Premier, tendered by Dr Geoff Evans, President, Newcastle Inner City Residents Alliance
- PowerPoint slides of Lynchs Prawns site, Wharf Road, Newcastle, tendered by Mr Alistair Christie, Secretary, Honeysuckle Residents Association.

5. Witnesses

The committee considered the following witness suggestions and appearance requests:

- Mr Angus Gordon, GPT Development Manager, GPT
- Ms Kristen Keegan and Mr Richard Anachich, Hunter Business Chamber
- Mr Andrew Fletcher and Mr Glen Byrnes, Property Council of Australia
- Mr Michael Costa, former Minister for Transport
- Mr Chris Chapman, Principal, Colliers International Newcastle
- Mr Barney Collins, Principal, EJE Architecture
- Ms Carolyn McNally, Secretary and Mr Brendan O'Brien, Executive Director, Infrastructure, Housing & Employment, Department of Planning and Environment
- UrbanGrowth NSW
- Hon John Robertson MP, former Minister for Transport
- Mr Sam Haddad, former Director General, Department of Planning
- Ms Julie Ainsworth, former General Manager, Newcastle Newspapers
- Planning Institute of Australia
- University of Newcastle
- Tourism and Transport Forum
- Friends of King Edward Park Inc.
- Hunter Transport for Regional Development
- Dr Bruce McFarling
- Mr John Sutton
- Prof Howard Dick, Faculty of Business & Economics, University of Melbourne
- Mr Kevin Parish, Chair, NSW Commuter Council and Chair of Hunter Commuter Council
- Ms Helen Lynch-Foster, Woodlands Close Community Team
- Mr Tim Owen, former State Member for Newcastle
- Mr Andrew Cornwell, former State Member for Charlestown
- Mr Jeff McCloy, former Lord Mayor of City of Newcastle
- Mr Hilton Grugeon, Property Developer
- Roads and Maritime Services
- Hon Duncan Gay MLC, Minister for Roads and Freight, Minister for the North Coast, Leader of the Government in the Legislative Council and Leader of the House in the Legislative Council
- Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter.
- Ms Sharon Grierson, former Federal Member for Newcastle
- Clr Stephanie Posniak, Acting Mayor of City of Newcastle
- Clr Therese Doyle, Newcastle City Council
- Mr Bob Hawes and Mr Paul Broad, Hunter Development Corporation.

Debate ensued.

Resolved, on the motion of Mr Shoebridge: That Clr Therese Doyle, Newcastle City Council, be invited to appear as a witness at the 21 November 2014 hearing.

Resolved, on the motion of Mr Shoebridge: That the committee agree to the appearance of Hunter Transport for Regional Development, Dr Bruce McFarling, Mr John Sutton and Ms Helen Lynch-Foster by email.

Mr Pearce left the meeting.

Ms Voltz moved: That Ms Sharon Grierson, former Federal Member for Newcastle, be invited as a witness.

Mr Shoebridge moved: That the motion of Ms Voltz be amended to defer consideration of Ms Grierson's invitation until the committee considers the appearance of Hunter Transport for Regional Development, Dr Bruce McFarling, Mr John Sutton and Ms Helen Lynch-Foster.

Amendment of Mr Shoebridge put.

The committee divided.

Ayes: Ms Cusack, Mr Shoebridge.

Noes: Revd Nile, Mr Donnelly, Ms Voltz.

Question resolved in the negative.

Original question of Ms Voltz put and passed.

Mr Pearce re-joined the meeting.

Resolved, on the motion of Ms Voltz: That the Mayor (or Acting Mayor) of Newcastle City Council, and any Newcastle City councillors that wish to attend, be invited to appear as witnesses.

Mr Shoebridge moved: That the Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter, and the Hon Duncan Gay MLC, Minister for Roads and Freight, Minister for the North Coast, Leader of the Government in the Legislative Council and Leader of the House in the Legislative Council, be invited as witnesses.

Question put.

The committee divided.

Ayes: Revd Nile, Mr Donnelly, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That Mr Ken Gouldthorp, General Manager of Newcastle City Council, be invited to appear as a witness.

Resolved, on the motion of Mr Shoebridge: That the following individuals or organisations be invited to appear as witnesses, and that where possible they be invited to appear at the 21 November 2014 hearing:

- Mr Tim Owen, former State Member for Newcastle
- Mr Andrew Cornwell, former State Member for Charlestown
- Mr Jeff McCloy, former Lord Mayor of City of Newcastle
- Mr Angus Gordon, GPT Development Manager, GPT
- Ms Kristen Keegan and Mr Richard Anachich, Hunter Business Chamber
- Mr Chris Chapman, Principal, Colliers International Newcastle
- University of Newcastle
- Friends of King Edward Park Inc.

- Prof Howard Dick, Faculty of Business & Economics, University of Melbourne
- Mr Kevin Parish, Chair, NSW Commuter Council and Chair of Hunter Commuter Council
- Ms Carolyn McNally, Secretary and Mr Brendan O'Brien, Executive Director, Infrastructure, Housing & Employment, Department of Planning and Environment
- UrbanGrowth NSW
- Mr Andrew Fletcher and Mr Glen Byrnes, Property Council of Australia
- Planning Institute Australia
- Mr Hilton Grugeon, Property Developer
- Roads and Maritime Services
- Hon Duncan Gay MLC, Minister for Roads and Freight, Minister for the North Coast, Leader of the Government in the Legislative Council and Leader of the House in the Legislative Council
- Hon Gladys Berejiklian MP, Minister for Transport and Minister for the Hunter.

6. Interim report

Resolved, on the motion of Ms Voltz: That the committee table an interim report on the Newcastle rail line by Friday 19 December 2014.

7. Request to suspend termination of rail line

Mr Shoebridge moved: That the committee confirm its resolution of 7 November 2014 to write to the NSW Government to request it to defer termination of the Newcastle rail line at Wickham until the committee has tabled its final report, and that the letter be amended to:

- (a) note that the committee has not formed a recommendation regarding whether or not the truncation should proceed
- (b) question any urgency to truncate the rail line by Boxing Day 2014, and
- (c) question the cost of delaying the truncation of the rail line.

Question put.

The committee divided.

Ayes: Revd Nile, Mr Donnelly, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

8. Adjournment

The committee adjourned at 2.22 pm, until Friday 21 November 2014 (*public hearing, Newcastle*).

Teresa McMichael

Clerk to the Committee

Minutes no. 6

Tuesday 18 November 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Room 1153, Parliament House, Sydney at 2.00pm

1. Members present

Revd Nile, *Chairman*

Mr Shoebridge, *Deputy Chair*

Mr Donnelly

Mr Pearce

Ms Voltz

2. Apologies

Ms Cusack

3. Witnesses

Resolved, on the motion of Mr Shoebridge: That the committee invite the following witnesses to appear at the 21 or 24 November hearings:

- Hunter Transport for Business Development
- Dr Bruce McFarling (via international teleconference)
- Mr John Sutton.

4. Response to witness invitation

Resolved, on the motion of Mr Shoebridge: That the committee advise Mr Ken Gouldthorp that the committee will not be conducting hearings after 24 November, and invite Mr Gouldthorp to attend the 24 November 2014 hearing via a 45 minute teleconference.

5. Interim report deliberative

Resolved, on the motion of Ms Voltz: That the committee meet on 12 December 2014 to consider the Chairman's draft interim report.

6. Witness appearance request

Mr Shoebridge moved: That Mr James Ryan, NSW Greens Planning and Environmental Law Officer, be invited to appear with Clr Therese Doyle on 24 November 2014.

Question put and negatived.

7. Adjournment

The committee adjourned at 2.12 pm, until Friday 21 November 2014 (*public hearing, Newcastle*).

Teresa McMichael

Clerk to the Committee

Minutes no. 7

Friday 21 November 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Banquet Room, Newcastle City Hall, 9.40 am

1. Members present

Revd Nile, *Chairman*

Mr Shoebridge, *Deputy Chair*

Ms Cusack (arrived 10.05 am)

Mr Donnelly

Mr Pearce

Ms Voltz

2. Previous minutes

Resolved, on the motion Ms Voltz: That draft minutes no. 5 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 7 November 2014 – From Save Our Rail Inc. to committee providing the following documents:
 - Appendix B from Save Our Rail NSW Inc report Newcastle: Towards a Sustainable and Vibrant City, Critical Appraisal of GPT Proposal, January 2009
 - Appendix D from Save Our Rail NSW Inc report Newcastle: Towards a Sustainable and Vibrant City, Critical Appraisal of NTBD “Plan B”, April 2010
 - report from Save Our Rail NSW Inc, ‘Newcastle: Towards a Sustainable and Vibrant City’, December 2008
 - report from Save Our Rail NSW Inc, ‘Western Transport Initiative (WesTrans) Concept Proposal’, November 2010
 - report from Save Our Rail NSW Inc, ‘Save Our Rail – Pedestrian Crossing Ideas’, July 2013
 - media release from EcoTransit Sydney, regarding Newcastle rail line, dated 19 August 2014
 - four emails from Mr Tony Lawler to government ministers, regarding Newcastle rail line, various dates
 - two letters from Mr Gareth Robinson, ICAC, to Mr Tony Lawler, regarding allegations about undeclared conflicts of interest by several persons, various dates
 - seven media articles regarding corruption allegations and Newcastle rail project, various dates.
- 11 November 2014 – From Mr Hugh Thomson to committee secretariat providing a response to comments made in submission no. 329
- 11 November 2014 – From Hon Catherine Cusack MLC to committee providing a discretionary disclosure of interest to the committee
- 12 November 2014 – From Mr Trevor Prior to committee secretariat requesting to appear as a witness at a public hearing
- 14 November 2014 – From Mr Tim Owen to committee secretariat providing a response to comments in submission nos. 50, 56, 103, 119, 147, 174, 180, 181, 189, 251 and 329
- 14 November 2014 – From Mr Jeff McCloy to committee secretariat providing a response to comments in submission nos 50, 56, 8, 103, 119, 147, 174, 179, 181, 189, 251, 329
- 14 November 2014 – From Mr Keith Stronach to committee Chairman providing a response to comments in submissions 50 and 329
- 14 November 2014 – From Mr Bob Hawes to Director requesting to see attachments to the submission no. 329 which refer to Mr Hawes.
- 19 November 2014 – From Mr Peter Duncan, Chief Executive, Roads and Maritime Services to secretariat declining the invitation to appear as a witness at a public hearing
- 20 November 2014 – From Premier Mike Baird to Chairman responding to questions regarding the urgency to truncate the rail and the cost to delay truncation.

Sent:

- 14 November 2014 – From Chairman to Hon Mike Baird MP, Premier, cc Hon Pru Goward MP, Minister for Planning and Hon Gladys Berejiklian MP, Minister for Transport, requesting NSW Government to defer truncation of the Newcastle rail line.

Resolved, on the motion of Mr Pearce: That the committee:

- keep all of the emails and letters provided by Save Our Rail Inc. on 7 November 2014 confidential
- keep the correspondence from Mr Thomson regarding response to comments in submissions, dated 14 November 2014, confidential, as per the request of Mr Thomson
- authorise the publication of correspondence from Mr Owen regarding response to comments in submissions, dated 14 November 2014, as per the request of Mr Owen
- authorise the publication of correspondence from Mr McCloy regarding response to comments in submissions, dated 14 November 2014, as per the request of Mr Mc Cloy

- keep the correspondence from Mr Stronach regarding response to comments in submissions, dated 14 November 2014, confidential, as per the request of Mr Stronach

4. Request for confidential documents

Resolved, on the motion of Mr Pearce: That the committee publish, but not put on the website, Annexures D and E to submission no. 329, and provide a copy to Mr Bob Hawes.

5. Answers to questions on notice

Resolved, on the motion of Ms Voltz: That witnesses from the 21 and 24 November 2014 hearings be requested to return answers to questions on notice and supplementary questions within 7 days of the date on which questions are forwarded to witnesses.

6. Questions for Department of Transport

Resolved, on the motion of Ms Voltz: That the committee write to Transport for NSW to ask questions on notice, and that:

- a) members provide written questions to the secretariat by midday Tuesday 25 November 2014
- b) the secretariat circulate the proposed questions to the committee for comment on the same day, before providing it to the department by 5pm
- c) the department be requested to provide the answers by 5pm Tuesday 2 December 2014.

7. Submissions

7.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos. 284, 282, 324, 324a, 353, 355, 357, 359-364.

7.2 Partially confidential submissions

The committee noted that the following submissions were partially published by the committee clerk under the authorisation of an earlier resolution: submission nos. 354, 356, 358 and 365.

Resolved, on the motion of Ms Voltz: That the committee:

- keep the following information confidential, as per the request of the author: names and/or identifying in submissions nos. 354, 356, 358 and 365.
- keep the names of third parties in submission no. 87 confidential, with the exception of Mr Keith Stronach and Mr Tim Owen who are to be offered a right of reply.

7.3 Confidential submissions

Resolved, on the motion of Mr Pearce: That the committee keep submission nos 351 and 352 confidential, as per the request of the authors, as they contain identifying and/or sensitive information

7.4 Supplementary submission no. 319a

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of supplementary submission no. 319a, with the exception of adverse mentions which are to remain confidential.

7.5 Submission no. 50

Resolved, on the motion of Mr Pearce: That the committee change the publication status of submission no. 50 from public to confidential.

7.6 Request to change publication status

Resolved, on the motion of Mr Pearce: That the committee change the publication status of submission no. 348 from public to confidential, as per the request of the author.

7.7 Submissions containing adverse reflections

Resolved, on the motion of Ms Voltz: That the committee:

- authorise the publication of submission nos 261, 268 and 279, and that the individuals adversely named be provided with an opportunity to respond to these comments
- authorise the publication of submission nos 276, 292, 303 and 349, with the exception of potential adverse mentions of individuals who have not been previously named in other submissions or the media, which are to remain confidential, and that all other individuals adversely named in the submissions be provided with an opportunity to respond to these comments
- keep submission nos 263 and 304 confidential, as they contain potential adverse mention of individuals that have not previously been named in other submissions or the media
- keep submission nos 265, 273, 302 and 333 confidential, as they contain potential adverse mention and may not fall within the terms of reference.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no 266, and that the individuals adversely named be provided with an opportunity to respond to the comments.

7.8 Pro formas

Resolved, on the motion of Mr Pearce: That the committee publish one copy of each pro forma submission on its website, noting the number of copies of the submission that have been received.

8. Public hearing

Witnesses, the public and the media were admitted.

The public hearing commenced at 9.51 am.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Nat McGregor, Chief Operating Officer, University of Newcastle
- Mr Allan Tracey, Director, Infrastructure and Facilities Services, University of Newcastle

Ms Cusack arrived at 10.05am.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Chris Chapman, Managing Director, Colliers International Newcastle

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Clr Nuatali Nelmes, Lord Mayor, Newcastle City Council
- Clr Tim Crakanthorp, Councillor, Newcastle City Council

Mr Crakanthorp tendered the following documents:

- Opening statement
- Revitalising Newcastle, Update in progress report

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Clr Therese Doyle, Councillor, Newcastle City Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

The planning process in Newcastle and the broader Hunter region

- Ms Sharon Grierson, Former Federal Member for Newcastle

Ms Grierson tendered the following document:

- Opening statement

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr John Lewer, Vice President, Friends of King Edward Park Inc
- Mrs Margaret Ostinga, Member, Friends of King Edward Park Inc
- Mr Bruce Wilson, Member, Friends of King Edward Park Inc

Dr Lewer tendered the following document:

- Colour photograph of King Edward Park

The evidence concluded and the witnesses withdrew.

Ms Cusack left the meeting at 1.15 pm.

Resolved, on the motion of Mr Pearce: That the committee authorise the publication of correspondence from the Premier regarding committee's to the request to defer truncation of the rail line.

The following witnesses were sworn and examined:

- Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber
- Mr Richard Anicich, Immediate Past President, Hunter Business Chamber

Ms Keegan tendered the following documents:

- Attitudes toward redevelopment of the Newcastle CBD: Survey of Residents in the NSW Electorate November 2008
- Newcastle City Centre Renewal Community Survey, Final Report 24 July 2009, Hunter Valley Research Foundation
- Newcastle City Centre Renewal Report to NSW Government March 2009, Hunter Development Corporation

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Professor Howard Dick, Faculty of Business and Economics, University of Melbourne
- Dr Graham Boyd, Secretary, Hunter Commuter Council
- Mr John Sutton

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Angus Gordon, Development Manager, GPT

The evidence concluded and the witness withdrew.

The hearing concluded at 4.15 pm.

9. Public forum

The public forum commenced at 4.35 pm.

The Chairman made an opening statement regarding the broadcasting of proceedings and the forum proceedings.

The following individuals appeared before the committee:

- Mr Francis Young
- Mr Rick Banyard
- Mr Graeme Tychsen
- Mr Robert Monteath
- Mr Tony Lawler
- Ms Beverley Atkinson
- Ms Jeane Gravalin
- Mr Terry Gravalin
- Mr Paul Rippon
- Mr Brian Ladd
- Ms Helen Sharrock
- Ms Helen LynchFoster
- Ms Joy Llewellyn-Smith
- Mr Brian Kelly
- Ms Wendy Wales
- Ms Jan Davis
- Mr Tony Brown
- Mr Dennis Taylor
- Mr Matthew Newman
- Mr Jonathan Moylan
- Mr Adam Mikka
- Ms Patricia Gillard
- Mr James Thomson

The public forum concluded at 6.31 pm.

10. **Adjournment**

The committee adjourned at 6.32 pm, until Monday 24 November 2014, 9.00am, Room 814/815, Parliament House (*public hearing*).

Teresa McMichael

Clerk to the Committee

Minutes no. 8

Monday 24 November 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region
Room 814/815, Parliament House, 9.00am

1. **Members present**

Revd Nile, *Chairman*
Mr Shoebridge, *Deputy Chair*
Ms Cusack
Mr Donnelly
Mr Pearce
Ms Voltz

2. **Public hearing**

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Carolyn McNally, Secretary, Department of Planning and Environment
- Mr Brendan O'Brien, Executive Director, Infrastructure, Housing and Employment, Department of Planning and Environment

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Peter Anderson, Head of Wholesale, UrbanGrowth NSW

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Fletcher, NSW Regional Director, Property Council of Australia
- Mr Glen Byres, Executive Director NSW, Property Council of Australia

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined via teleconference:

- Dr Bruce McFarling, Visiting Professor of Economics, University College Beijing

The evidence concluded and the witness withdrew.

The public hearing concluded at 12.45pm.

The public and media withdrew.

3. Correspondence

The committee noted the following correspondence:

Received:

- 21 November 2014 – From Mr Ken Gouldthorp, General Manager, Newcastle City Council to secretariat, advising he will no longer be appearing as a witness via teleconference at the hearing on Monday 24 November 2014.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of correspondence from Mr Ken Gouldthorp regarding his withdrawal as a witness via teleconference, dated 21 November 2014.

4. Questions for General Manager, Newcastle City Council

Resolved, on the motion of Mr Shoebridge: That the committee write to Mr Ken Gouldthorp, General Manager, Newcastle City Council to ask questions on notice, and that:

- a) members provide written questions to the secretariat by midday Tuesday 25 November 2014
- b) the secretariat circulate the proposed questions to the committee for comment on the same day, before providing it to Mr Gouldthorp by 5pm
- c) Mr Gouldthorp be requested to provide the answers by 5pm Tuesday 2 December 2014.

5. Adjournment

The committee adjourned at 12.45 pm until Friday 12 December 2014, Macquarie Room (*interim report deliberative*).

Teresa McMichael
Clerk to the Committee

Minutes no. 9

Friday 12 December 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Macquarie Room, Parliament House, 9.33 am

1. Members presentRevd Nile, *Chairman*Mr Shoebridge, *Deputy Chair* (from 9.37 am)

Ms Cusack

Mr Donnelly

Mr Pearce

Ms Voltz

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes nos. 6, 7 and 8 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 17 November 2014 – From Mr Alan Squire to secretariat, requesting a select number of individuals be called as witnesses to a public hearing
- 19 November 2014 – From Mr Hilton Grugeon to secretariat, providing a response to comments made in submissions
- 19 November 2014 – From Dr Steve Mohr, Senior Research Consultant, Institute for Sustainable Futures University of Technology Sydney to Chairman, regarding the truncation of the rail line
- 19 November 2014 – From Ms Lynda Gavenlock to secretariat, regarding 7 November hearing
- 19 November 2014 – From Mr Terry Gravalin to secretariat, regarding information given by Mr Bob Hawes during 7 November hearing
- 19 November 2014 – From Ms Melissa Hole to secretariat, regarding Maryland Community Alliance
- 21 November 2014 – From Mr Paul Broad, Chairman, Hunter Development Corporation to Chairman, providing a response to comments made in submissions
- 21 November 2014 – From Mr Peter Newey to secretariat, regarding truncation of the rail line
- 21 November 2014 – From Cooks Hill Community Group Inc to secretariat, regarding Glovers Lane reserve and Jolly Roger Hunter shopping village
- 21 November 2014 – From Mr Tony Lawler to secretariat, providing correspondence and media articles regarding the truncation of the rail line
- 21 November 2014 – From Ms Jeane Gravalin to secretariat, regarding disability access to trains in Newcastle
- 21 November 2014 – From Mr Adam Mikka to secretariat, regarding Caves Beach, Lake Macquarie
- 21 November 2014 – From Ms Joy Llewellyn-Smith to secretariat, regarding Catherine Hill Bay
- 24 November 2014 – From Ms Bev Atkinson to secretariat, regarding light rail proposal
- 24 November 2014 – From Mr Tony Lawler to secretariat providing additional information to the inquiry
- 24 November 2014 – From Ms Joy Llewellyn-Smith to secretariat, providing additional information to the inquiry
- 24 November 2014 – From Ms Alison McLaren to secretariat regarding filming of proceedings at 24 November hearing

- 25 November 2014 – From Mr Hilton Grugeon to Chairman, providing a response to comments made in submissions
- 25 November 2014 – From Mr Ken Chant to secretariat, regarding rail overpasses in Newcastle
- 27 November 2014 – From Mr Ken Gouldthorp to Chairman, seeking an extension to provide answers to questions on notice
- 27 November 2014 – From Mr John Sutton to secretariat, providing report on level crossing risk analysis by Sinclair Knight Merz
- 28 November 2014 – From Mr Michael Sparrow to secretariat, regarding truncation of the rail line
- 28 November 2014 – From Mr Tony Lawler to Chairman, regarding truncation of the rail line
- 28 November 2014 – From Mr Warren Smith to Chairman, regarding other services in Newcastle such as hospitals, education and housing
- 28 November 2014 – From Mr Tony Lawler to secretariat, regarding evidence from the Property Council of Australia at the 24 November hearing
- 28 November 2014 – From Ms Mel James to secretariat, regarding truncation of the rail line
- 1 December 2014 – From Mr Dennis Taylor to secretariat, regarding evidence from the Property Council of Australia at the 24 November hearing
- 1 December 2014 – From Mr Keith Stronach to Chairman, providing a response to comments made in submissions
- 2 December 2014 – From Mr Ken Chant to secretariat, regarding alternative train options
- 2 December 2014 – From Mr Ken Gouldthorp to secretariat, providing a response to comments made in submissions
- 3 December 2014 – From Mr Bobbie Antonic to secretariat, regarding evidence from the Property Council of Australia at the 24 November hearing
- 3 December 2014 – From Ms Ann Hardy to secretariat, regarding excavation work at James Fletcher Hospital
- 4 December 2014 – From Ms Mel James to secretariat, regarding truncation of the rail line
- 5 December 2014 – From Clr Brad Luke to secretariat, providing a response to comments made in submissions
- 5 December 2014 – From Mr Bob Hawes, General Manager, Hunter Development Corporation, providing a response to comments made in submissions
- 5 December 2014 – From Mr Ken Gouldthorp to secretariat, providing answers to questions on notice by the committee
- 5 December 2014 – From Mr John Sutton to secretariat, regarding a GIPA disclosure
- 5 December 2014 – From Ms Michelle Burdekin to secretariat, regarding correction to transcript of 7 November 2014
- 8 December 2014 – From Ms Joan Dawson, President, Save Our Rail NSW to secretariat, providing a final submission to the inquiry
- 9 December 2014 – From Mr Ken Gouldthorp to secretariat, providing replacement Attachment C to answers to questions on notice
- 10 December 2014 – From Mr Jeff McCloy to secretariat, providing a response to comments made in submissions
- 10 December 2014 – From Ms Bev Atkinson to secretariat forwarding letters sent to Newcastle Herald.

Sent:

- 21 November 2014 – To Clr Allan Robinson providing an opportunity to respond to comments made in submissions to the inquiry
- 21 November 2014 – To Mr Hilton Grugeon providing an opportunity to respond to comments made in submissions to the inquiry

- 21 November 2014 - To Mr Jeff McCloy providing an opportunity to respond to comments made in submissions to the inquiry
- 21 November 2014 – To Mr Keith Stronach providing an opportunity to respond to comments made in submissions to the inquiry
- 21 November 2014 – Mr Ken Gouldthorp providing an opportunity to respond to comments made in submissions to the inquiry
- 21 November 2014 – To Mr Tim Owen providing an opportunity to respond to comments made in submissions to the inquiry
- 21 November 2014 – To Newcastle City Alliance providing an opportunity to respond to comments made in submissions to the inquiry
- 25 November 2014 - To Ms Alison McLaren regarding filming of proceedings at 24 November hearing
- 28 November 2014 – To Mr Ken Gouldthorp regarding an extension to answers to questions on notice
- 3 December 2014 – To Mr Jonathan Moylan, regarding suppression of his submission
- 5 December 2014 – To Lake Macquarie City Council, providing additional questions regarding submissions made to the council by Mr Andrew Cornwell in relation to the Whitebridge development.

Resolved, on the motion of Mr Donnelly: That:

- a) the committee authorise the publication of all responses to comments in submissions that have been received, or that will be received, where the author has requested the response to be published
- b) the committee keep correspondence from Mr Keith Stronach, regarding his response to comments in submissions, dated 1 December 2014, confidential, as per the request of Mr Stronach.

4. Public submissions

Resolved, on the motion of Mr Donnelly: That the committee authorise the replacement of submission no. 220 with a revised version, with the submission to read 'Revised submission' on the cover.

Mr Shoebridge joined the meeting at 9.37 am.

5. Submission no. 368

Resolved, on the motion of Ms Cusack: That the committee keep submission no. 368 confidential.

6. Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of an earlier resolution:

- answers to questions on notice from Mr Alan Squire, Convenor, Hunter Transport for Business Development, received 30 November 2014
- answers to questions on notice from Mr Nat McGregor, Chief of Staff, University of Newcastle, received 1 December 2014
- answers to additional questions on notice from Mr Paul Broad, Chairman, Hunter Development Corporation, received 2 December 2014
- answers to questions on notice from Lake Macquarie City Council, received 3 December 2014
- answers to additional questions on notice from Transport for NSW and Roads and Maritime Services, received 3 December 2014
- answers to supplementary questions from Friends of King Edward Park, received 4 December 2014

- answers to questions on notice from Mr Peter Anderson, Head of Wholesale Projects Division, UrbanGrowth NSW, received 4 December 2014
- answers to questions on notice from Mr Andrew Fletcher, Property Council of Australia, received 5 December 2014
- answers to questions on notice and supplementary questions from Department of Planning and Environment, received 5 December 2014
- answers to questions on notice from Mr Angus Gordon, The GPT Group, received 5 December 2014
- answers to questions on notice from Honeysuckle Residents Association, received 5 December 2014
- answers to questions on notice from Hunter Development Corporation, received 5 December 2014
- answers to questions on notice from Lord Mayor Nuatali Nelmes, Newcastle City Council, received 5 December 2014
- answers to questions on notice from Lord Mayor Nuatali Nelmes, Newcastle City Council, received 9 December 2014
- answers to questions on notice from Mr Peter Chrystal, Newcastle City Council, received 10 December 2014.

7. Transcript corrections

Resolved, on the motion of Mr Shoebridge: That the committee authorise the insertion of a footnote to p 60 of Ms Burdekin's transcript of evidence from 7 November 2014, as requested by the witness.

8. Tended documents

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following documents tendered during the public hearing on 21 November 2014:

- Opening statement tendered by Clr Tim Crakanthorp, Newcastle City Council
- Revitalising Newcastle, Update in progress, tendered by Clr Tim Crakanthorp, Newcastle City Council
- Photograph of King Edward Park, tendered by Dr John Lewer, Vice President, Friends of King Edward Park Inc
- Attitudes toward redevelopment of the Newcastle CBD: Survey of Residents in the NSW Electorate November 2008, tendered by Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber
- Newcastle City Centre Renewal Community Survey, Final Report 24 July 2009, Hunter Valley Research Foundation, tendered by Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber
- Newcastle City Centre Renewal Report to NSW Government March 2009, Hunter Development Corporation, tendered by Ms Kristen Keegan, Chief Executive Officer, Hunter Business Chamber
- Newcastle CBD/Rail Strategy 'Why the HDC/Urbis Cost-Benefit Study is Invalid', tendered by Professor Howard Dick, Faculty of Business and Economics, University of Melbourne.

Ms Cusack moved: That the committee accept and keep confidential the opening statement tendered by Ms Sharon Grierson, former federal member of Newcastle, during the public hearing on 21 November 2014 on the grounds that it contains defamatory statements and lacks credibility.

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Donnelly moved: That the committee accept and keep confidential the opening statement tendered by Ms Sharon Grierson, former federal member of Newcastle, during the public hearing on 21 November 2014.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

9. Consideration of Chairman's draft interim report

The Chairman submitted his draft interim report entitled '*The planning process in Newcastle and the broader Hunter region*', which, having been previously circulated, was taken as being read.

Ms Cusack moved: That the following statement be inserted on the front cover of the report:

'WARNING: this report has been rushed out in order to benefit the interests of a certain political parties contesting the 28 March 2015 State Election. It therefore canvasses issues before ICAC that are unresolved and regrettably pre-empt the ICAC's Report – this has been necessary in order to meet the campaign priorities of certain members of the committee.

The report contains numerous unsupported allegations by local politicians in Newcastle who were campaigning for the Newcastle and Charlestown by-elections and/or the Lord-Mayor's by-election, but failed to disclose the obvious conflict of interest when submitting their evidence. We note key recommendations in the report were already being publically called for by the Chair and Deputy Chair of the committee prior to even the first witness being called.

The committee apologises to witnesses who have been unfairly defamed under parliamentary privilege during hearings, in published material and in this report. We sincerely apologise to the people of Newcastle for the lack of fairness and objectivity in our approach to the inquiry and the resultant political bias in the following report. This is due to the state election occurring in three months time and conducting a more considered inquiry was not possible due to the pressing need to generate and exploit incorrect and defamatory material under the guise of a parliamentary committee in order to further our own political campaigns.'

Mr Shoebridge took a point of order that the proposed amendment was out of order.

The Chairman upheld the point of order.

Ms Cusack moved: That the committee dissent from the ruling of the Chairman on the grounds that the amendment is in order.

Question put: That the committee dissent from the ruling of the Chairman.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Ms Cusack moved: That all the report recommendations concerning the truncation of the railway line be omitted and that the following new paragraph be inserted instead:

'We note that as a parliamentary committee we quite properly have no role or expertise in planning decisions, the terms of reference required that we investigate planning processes and not seek to improperly come up with our own planning recommendations. We lack the evidence and authority to

make recommendations concerning the timing of changes to the rail line, let alone comment on the proposed route.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Chapter 1

Mr Shoebridge moved: That the following new paragraphs be inserted at the end of the chapter introduction:

‘This is an interim report delivered by the committee in the shadow of the NSW Government’s ill-considered plan to remove heavy rail from the centre of this state’s second city. This report identifies the lack of any coherent economic, social or environmental case for the removal of the heavy rail line and is forwarded to both the government and the people of Newcastle and the broader Hunter region as a considered attempt to closely and carefully review the evidence in relation to the project. Our conclusion is clear, the rail line should remain.

There is no cogent argument available to support the removal of heavy rail in Newcastle, while in almost every other major city in the country governments are investigating the delivery of more and improved heavy rail as essential transport infrastructure of the 21st century.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Resolved, on the motion of Ms Voltz: That chapter 1, as amended, be adopted.

Chapter 2

Resolved, on the motion of Ms Voltz: That:

- a) paragraph 2.17: ‘The report recommended terminating the Newcastle rail line at Wickham on the western side of Stewart Avenue to permit ‘... unencumbered private vehicle and pedestrian movement across the rail corridor around Newcastle, Civic and Wickham, and to encourage urban renewal in the Newcastle City Centre and its waterfront’ be moved to appear after paragraph 2.21
- b) paragraph 2.18: ‘In order to achieve this goal, the following action was required:
 - closure of existing Newcastle, Wickham and Civic stations
 - closure of Newcastle Stabling yard
 - removal of all level crossings east of, and including, Stewart Avenue
 - construction of a new Wickham Station and stabling facility to compensate for loss of Newcastle Stabling
 - potential land acquisition for the new terminus and stabling’be moved to appear after paragraph 2.22
- c) paragraph 2.22 be amended by omitting ‘would be preferable, and achieve’ and inserting instead ‘would achieve’
- d) paragraph 2.32 be amended by omitting ‘appointed AECOM to undertake’ and inserting instead ‘commenced’

- e) paragraph 2.32 be amended by inserting 'In February 2010, AECOM was appointed by Transport for NSW to develop a Transport Management and Accessibility Plan for the Newcastle city centre.' at the end [FOOTNOTE: AECOM Australia, prepared for Transport NSW, *Newcastle City Centre Renewal – Transport Management and Accessibility Plan, Phase 2: Integrated Transport Strategy*, 22 October 2010, p 3.]
- f) paragraph 2.71 be amended by inserting a full stop after '\$220,000 per week' and inserting 'This estimated cost is' before 'due to staffing'
- g) paragraph 2.74 be amended by omitting 'the majority of feedback questioning the' and inserting instead 'one of the key pieces of feedback around the'
- h) paragraph 5.1 be amended by omitting 'it stated that' and inserting instead 'it was reported that'.

Mr Shoebridge moved: That paragraph 2.11 be amended by inserting 'what is described as' after 'UrbanGrowth NSW led'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 2.12:

'A number of consultant and agency reports are discussed in this chapter together with the conclusions reached in those reports. Unless expressly stated this committee does not endorse any such conclusions which are included as necessary background to understanding the purported basis on which the government has determined to remove Newcastle's heavy rail line.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Resolved, on the motion of Ms Cusack: That paragraph 2.14 be amended by inserting at the end: 'The committee requested Ms McKay to appear to give evidence, however, Ms McKay declined.'

Resolved, on the motion of Mr Shoebridge: That paragraph 2.18 be amended by inserting 'said to be' after 'following action was'.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.29 be amended by omitting ', in particular, identified' and inserting instead 'concluded'.

Mr Donnelly left the meeting.

Mr Shoebridge moved: That paragraph 2.38 be amended by inserting at the end: 'Despite the centrality of the removal of the rail line to the Newcastle Urban Renewal Strategy, no submissions were sought on the government's decision to remove the rail line'.

Question put.

The committee divided.

Ayes: Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Donnelly rejoined the meeting.

Mr Shoebridge moved: That paragraph 2.43 be amended by inserting at the end: 'No factual basis has been provided to support this allocation or budget as sufficient or appropriate to the task.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Ms Cusack moved: That paragraph 2.43 be amended by inserting at the end: 'We note the committee did not request this information from the government.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Pearce moved: That paragraph 2.68 be amended by omitting 'Much of the evidence received' and inserting instead 'Evidence received'.

Question put and negatived.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.69 be amended by omitting 'Committee Chairman wrote' and inserting instead 'committee resolved to support the Committee Chairman writing'.

Mr Pearce moved: That paragraph 2.79 be omitted:

'The remaining chapters of this report explore in detail the concerns raised by inquiry participants regarding the truncation of the heavy rail line (chapter 3), the construction of light rail (chapter 4), and the influence of developer donations (chapter 5).'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That chapter 2, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Chapter 3

Mr Pearce moved: That paragraph 3.16 be amended by omitting 'Numerous inquiry participants' and inserting instead 'Some inquiry participants'.

Question put and negatived.

Resolved, on the motion of Mr Pearce: That paragraph 3.21 be amended by omitting ‘there are two widely divergent views’ and inserting instead ‘there are widely divergent views’.

Resolved, on the motion of Mr Shoebridge: That the following paragraphs be inserted after paragraph 3.22:

‘It is notable that almost every one of the submissions in support of cutting the rail line came from business and/or property interests in the city. Only a small number of Newcastle residents made a submission in support of truncating the rail line.

Overwhelmingly the submissions from the general public and from transport academics were strongly opposed to the cutting of the rail line. The committee did not receive a single submission from a resident of Maitland or the Upper Hunter, a region that relies on the rail line connection to the Newcastle CBD, in support of the rail truncation.

As a committee that is formed from a democratic chamber we give significant weight to the strong and consistent opinions that were delivered to us by the people of Newcastle and the Hunter and we believe that any responsible government should do the same.’

Resolved, on the motion of Ms Voltz: That paragraph 3.34 be amended by inserting the following footnote after ‘a report by the Hornery Institute called “Decay to Destination”’:

[FOOTNOTE: The committee notes that the ‘Decay to Destination’ report was undertaken by the Hornery Institute on behalf of their client The GPT Group. We also note the Hornery Institute states that this report should not be relied on wholly or in part when making decisions with financial or legal implications.]

Ms Cusack moved: That paragraph 3.39 be amended by omitting ‘removing the perceived barrier’ and inserting instead ‘removing the barrier’.

Question put and negatived.

Mr Shoebridge moved: That paragraph 3.40 be amended by inserting ‘It is an undeniable fact that the City of Newcastle has a rail line that runs to the northern side of its CBD. This is a far from unusual feature in a city the size of Newcastle. It is difficult to accept that the presence of a heavy rail public transport infrastructure in the centre of a city’s CBD is a net negative to the growth and development of a modern city. Nevertheless,’ at the beginning of the paragraph.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Ms Voltz moved: That chapter 3, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Chapter 4

Mr Pearce moved: That the heading ‘Waste of money’ and paragraphs 4.3 to 4.17 be omitted:

‘Waste of money

Many inquiry participants argued that truncating the heavy rail line and replacing it with a light rail service so close to the existing train line was financially wasteful. For example, Mr Alan Squire, Convenor, Hunter Transport for Business Development, remarked:

... it is waste for the Government to put forward a proposal costing \$460 million to truncate the rail, shift the railway line 20 metres, in effect, to Hunter Street, and incur that cost when there are alternatives available which would avoid all that waste.

As noted in chapter 2, Transport for NSW advised that \$460 million has been allocated to the Newcastle Urban Renewal and Transport Program, which includes the truncation of the rail line, construction of a new transport interchange at Wickham, introduction of a light rail system and implementation of a seven to ten year program for urban renewal. The portion of that amount that has been allocated to the light rail was not specified.

The NSW Commuter Council similarly questioned the value of replacing the rail with a service only metres away from the current line, stating: 'Terminating a perfectly functional and convenient system which has delivered people promptly to their destination for over a century cannot be bettered by forcing people to take a similar system 40 metres away from their current transport.'

The estimated cost of the projects was criticised by numerous stakeholders, such as the author of submission no. 274 who argued that the plan to remove the heavy rail line, and build a light rail system and new interchange at Wickham was 'a ludicrous waste of money to duplicate the current level of access with no apparent gains.'

Concerns about costs were also raised by Ms Sharon Grierson, former federal member for Newcastle, who contrasted the estimated expense of the proposed two kilometre light rail service against the proposed light rail in the Australian Capital Territory:

... two kilometres of light rail at a cost of \$350 million does not present value for money, particularly when compared to the Australian Capital Territory plan to build a 12 kilometre light rail service at an estimated cost of \$750 million, nor does this two-kilometre stretch drive public transport patronage.

EcoTransit Sydney similarly compared the cost per kilometre between the proposed light rail in Newcastle and light rail in Europe:

The line would be about 2.5km in length and would therefore cost \$184m per (double) track kilometre. Recent light rail "start-ups" in equivalent small European cities (and there have been many) have come in at between \$30m and \$40m per kilometre. This would make the very simple Newcastle project four and a half times higher than the per-kilometre cost of the most expensive recent European start-up.

This is an extraordinarily high sum for such a tiny project ... No factor of topography, geology, urban form, historic structures or complications related to underground services could remotely account for such a difference. In fact all of these factors have typically been far more challenging in most of the European projects.

The cost of the proposed light rail caused particular angst for a number of inquiry participants who considered light rail to be an inferior mode of transport to heavy rail. For example, Mr Peter Sansom asserted: '[T]his government is determined to press ahead with wasting hundreds of millions of dollars to close the railway and leave Newcastle with a grossly inferior transport system?'

Planning Plus shared a similar view, commenting:

The sum of money likely to be involved is extraordinary for a project that would merely replace an existing functional piece of infrastructure with another one that at best would provide no service improvement, but which might significantly reduce the quality of service for existing and potential future users.

According to the hierarchy of transport outlined by Cllr Tim Crakanthorp from the City of Newcastle, shifting from heavy to light rail would be regressive and problematic:

In terms of hierarchy of transport, you have walking, then bikes, then cars, then buses, then light rail, then heavy rail. We are putting 5,000 students in a new set of law courts, which you have all seen, plus GPT's 500 units, 25,000 square metres of retail and other commercial. And we are going to step backwards in the hierarchy to a less frequent system, one with less capacity. That is the big problem.

Mr Peter Newey suggested that the shift would have a negative impact on patronage: 'Train services into Newcastle have worked well for 150 years. Why replace with something inferior that would drive people away from public transport?'

Rail patronage will be considered in more detail later in this chapter.

Dr Graham Boyd, Secretary, Hunter Commuter Council, questioned why the rail was being truncated when substantial funds have been spent on upgrading the heavy rail line:

... millions have been spent upgrading the railway line, upgrading the stations, upgrading the signalling system, upgrading the level crossings. Instead, we are going to not use that. We are going to build a tram line down Hunter Street and Scott Street for \$400 million at the risk of causing great disruption to traffic, particularly the replacement bus service.

Dr Boyd added: '[T]here seems to be no rationale for replacing expensive infrastructure with even more expensive infrastructure'.

Others suggested that there would be greater economic benefit in using the allocated funds for other developments within Newcastle. As put by Mrs Cecily Grace: 'Such a lot of money which could be shared for the many projects throughout the entire city!'.

Dr Geoff Evans, President of the Newcastle Inner City Residents Alliance, agreed that the money could be better used to improve other important services and infrastructure within Newcastle:

Why spend money ripping up a railway line, duplicating it with a light rail just a couple of metres to the opposite side when that money could be used for proper development – hospitals, schools, infrastructure for the western areas of Newcastle and services for young people, for disabled people and all those other services that Newcastle has been denied? The opportunity is there but this Government seems determined to waste half a billion dollars.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That the following heading and paragraphs be inserted after paragraph 4.77:

Legal capacity to close railway line

In New South Wales the closure and disposal of railway lines is governed by specific legislation. The legislation is the *Transport Administration Act 1988*. Section 99A of the Act provides:

- (i) A rail infrastructure owner must not, unless authorised by an Act of Parliament, close a railway line.
- (ii) For the purposes of this section, a railway line is closed if the land concerned is sold or otherwise of or the railway tracks and other works concerned are removed.
- (iii) For the purposes of this section, a railway line is not closed merely because a rail infrastructure owner has entered into an ARTC arrangement or lease or other arrangement in respect of it pursuant to an agreement entered into by the Commonwealth and the State.

The Act was referred to by some inquiry participants, such as Mr Budd who told the committee:

... a railway in New South Wales cannot be closed except by an Act of Parliament. No such act has been passed since the 1960s. Since then many rail lines in the state – country branch lines – have had their services withdrawn, but they have not been legally closed. Importantly the rails and sleepers cannot be removed without closure by way of an Act of Parliament. As a result, the many ‘closed’ railway lines throughout country New South Wales remain intact but in a derelict state.

The submission from Hunter Transport for Business Development also noted that ‘the Transport Administration Act prohibits the removal of railway lines without parliamentary authorisation’.

Similarly, Save Our Rail commented:

... s 99A of the Transport & Administration Act requires the ‘Act of Parliament’ for the closing of ‘railway or rail line’. If the government does introduce legislation to cut the rail line it would enable the decision to be fully debated in the parliament.

We note the concerns raised in submissions as to the capacity of the government to remove the railway line given the terms of s 99A of the *Transport Administration Act*. However, the committee has not been furnished with authoritative legal advice on this matter and is unable to draw a conclusion in this regard.’

Resolved, on the motion of Ms Voltz: That the Chairman write to the Premier to seek a copy of any legal advice that has been provided to the NSW Government in regard to the truncation of the Newcastle rail line under section 99A of the *Transport Administration Act 1988*.

Mr Pearce moved: That paragraph 4.78 be amended by omitting ‘the overwhelming opposition’ and inserting instead ‘the opposition’.

Question put and negatived.

Mr Pearce moved: That paragraph 4.80 be amended by inserting ‘some’ before ‘inquiry participants’.

Question put and negatived.

Mr Pearce moved: That paragraph 4.80 be amended by:

- a) inserting ‘what is described as’ before ‘the significant impact’
- b) inserting ‘what is described as’ before ‘The likely’.

Question put and negatived.

Resolved, on the motion of Ms Voltz: That paragraph 4.78 be amended by omitting 'heavy rail line' and inserting instead 'electric railway line'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 4.80:

'The committee accepts that the balance of evidence presented to us was that the removal of the rail line would create significant negative outcomes for the city's and the region's transport network.'

Resolved, on the motion of Ms Voltz: That the quote in paragraph 4.96 be amended by omitting: 'In relation to the light rail, in February and March this year UrbanGrowth led a robust community engagement process on three possible routes. Over 300 members of the community attended those sessions and we received 1,000 feedback forms. The findings of the engagement were strong support for the light rail in the city centre.' and the following new quote be inserted instead:

'Over 60 stakeholders attended the engagement forums and approximately 300 community members visited the community information sessions.' [FOOTNOTE: Answers to questions on notice, Mr Peter Anderson, Head of Wholesale, UrbanGrowth, 4 December 2014, p 1.]

Mr Pearce moved: That paragraph 4.108 be amended by inserting the following footnote at the end:

[FOOTNOTE: Hunter Research Foundation (HRF) is an independent, world-class research organisation dedicated to the growth and success of the Hunter Region and working in partnership with individual research clients.]

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That paragraph 4.113 be amended by omitting 'is a major issue for many residents' and inserting instead 'is a major issue'.

Mr Shoebridge moved: That paragraph 4.118 be omitted: 'It is clear from conflicting results between the Hunter Valley Research Foundation survey and other poll and surveys that there are two very opposing views to the rail truncation, however, we have not received enough evidence to comment on the validity of those polls,' and the following new paragraph be inserted instead:

'The evidence before the committee makes it clear that there is no polling or public consultation process in support of truncating the rail line that is accepted as a legitimate expression of the views of the people who will be impacted by the removal of the rail line. The government's failure to engage the community in an open and transparent manner so as to gauge their views on the proposed removal of the rail line has fostered a divisive debate in the community on the issue. This is seen by the committee as a significant failing in the decision making process and greatly undermines the legitimacy of the current plans.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Pearce moved: That paragraph 4.137 be omitted: 'The fact that these documents have not been provided was criticised by inquiry participants, such as Ms Grierson, who questioned whether they even exist:

'I am not aware of any Cabinet papers being released. You have asked for papers. I don't even know if they exist and neither do you. As I say to you, were proper feasibility studies done? Were proper cost-benefit analyses done? You don't know and I don't know. No-one has ever seen such documents.'

[FOOTNOTE: Evidence, Ms Sharon Grierson, former Federal member for Newcastle, 21 November 2014, p 43.]

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Pearce moved: That paragraph 4.147 be amended by omitting 'false' before 'assumption'.

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Pearce moved: That paragraph 4.148 be amended by omitting 'NSW Government' and inserting instead 'Hunter Development Corporation'.

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 4.148 be amended by inserting 'Hunter Development Corporation and the' before 'NSW Government'.

Mr Shoebridge moved: That paragraph 4.148 be amended by omitting 'While we acknowledge Mr Anicich's suggestion that the flaw in the analysis is irrelevant, we are nonetheless significantly concerned that it occurred in the first place and that the analysis appears to have formed the basis of the government's decision to truncate the rail line' and inserting instead 'We do not accept Mr Anicich's suggestion that the flaw in the analysis is irrelevant. This flaw, together with the defects identified by Professor Dick, make it clear that the analysis was fundamentally flawed and it is deeply troubling that this analysis has formed the basis of the government's decision to truncate the rail line. No government should be making such an important decision on this material.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Pearce moved: That paragraphs 4.149, 4.150 and Recommendation 1 be omitted:

'The committee also notes the concerns regarding the lack of other cost benefit analyses or business cases for the rail truncation, Wickham Interchange or light rail projects. We regret that these

documents were not provided in the return to Dr Faruqi's order for papers as it has made it difficult for the committee to make definitive conclusions regarding these decisions. We are of the view that the government should provide these documents by 31 January 2015 in order for the committee to make sound conclusions about the integrity of the decisions in its final report.

The committee has therefore agreed to write to the Secretary of the Department of Premier and Cabinet to request that the documents not provided in the return to order for papers relating to planning in Newcastle and the Hunter, dated 23 October 2014, be released to the committee by 31 January 2015.

Recommendation 1

That the NSW Government provide all of the documents listed in the order for papers relating to planning in Newcastle and the Hunter, dated 23 October 2014, by 31 January 2015, as requested by the committee.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.149 be amended by:

- a) omitting 'in order for the committee to make sound conclusions about the integrity of the decisions in its final report' and inserting instead 'to assist the committee in its work'
- b) omitting 'We regret that these documents' and inserting instead 'We note that these documents'.

Resolved, on the motion of Ms Cusack: That paragraph 4.149 be amended by inserting the following footnote at the end:

[FOOTNOTE: However, we accept the longstanding convention that cabinet documents properly the subject of cabinet-in-confidence are not produced under Standing Order 52.'

Mr Shoebridge moved: That the following new recommendation be inserted after paragraph 4.181:

'That no steps be taken to remove Newcastle's existing rail infrastructure until a peer-reviewed report is obtained by the NSW Government that thoroughly considers the economic, social and environmental costs and benefits of the alternative options of removing and retaining the existing rail line.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Donnelly moved: That, as per the committee comment at paragraph 4.150, the committee write to the Secretary of the Department of Premier and Cabinet to request that the documents not provided in the return to order for papers relating to planning in Newcastle and the Hunter, dated 23 October 2014, be released to the committee by 31 January 2015.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Pearce moved: That paragraphs 4.180, 4.181 and Recommendation 2 be omitted:

‘The committee notes that inquiry participants have identified a number of alternative proposals to truncating the rail line at Wickham, including sinking the rail line underground, constructing additional overbridges and level crossings, and landscaping the existing rail corridor. We also note the criticism of the NSW Government for a perceived failure to explore the costs and benefits of these alternatives.

The committee shares the concerns of inquiry participants that a number of seemingly practical and cost-effective options to improving the connection between the Newcastle city centre and the foreshore appear to have been inadequately explored by the government. Given the significant proposed costs involved with removing the rail line and replacing it with the light rail, we believe that it is prudent for the government to adequately explore and provide cost benefit analyses on other alternatives, before commencing the truncation of the rail line.

Recommendation 2

That the NSW Government postpone the truncation of the Newcastle heavy rail line until it undertakes and publishes cost benefit analyses of alternative options, including sinking the rail line, constructing additional overbridges and/or level crossings, landscaping the existing rail corridor and reducing train speeds.’

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That Recommendation 2 be omitted: ‘That the NSW Government postpone the truncation of the Newcastle heavy rail line until it undertakes and publishes cost benefit analyses of alternative options, including sinking the rail line, constructing additional overbridges and/or level crossings, landscaping the existing rail corridor and reducing train speeds.’ and the following new recommendation be inserted instead:

‘That in undertaking the cost benefit analysis in Recommendation X the NSW Government consider a series of alternative options to the removal of the rail line including sinking the rail line, constructing additional overbridges and/or level crossings, landscaping the existing rail corridor and reducing train speeds.’

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Resolved, on the motion of Ms Voltz: That paragraph 4.108 be amended by inserting the following footnote at the end:

[FOOTNOTE: The research conducted by Hunter Valley Research Foundation was paid for by The GPT Group. (Hunter Valley Research Foundation, *Attitudes Toward Redevelopment of the Newcastle CBD: Survey of Residents in the Newcastle Electorate*, November 2008, p 1).

Mr Donnelly moved: That chapter 4, as amended, be adopted.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Chapter 5

Resolved, on the motion of Ms Voltz: That the following paragraphs 5.18 to 5.23 be relocated to appear after paragraph 5.2:

‘Support for proposed route

Other inquiry participants supported the proposed light rail service running down Hunter Street. For example, Mr Peter Chrystal, Director of Planning and Regulatory, The City of Newcastle, contended that if the light rail were to run along the existing rail corridor it would continue to act as a barrier to the waterfront:

Council’s key goal for the city centre is revitalisation through attracting people to live, recreate, work and invest in our city. Council’s view is hence the option to run a Light Rail system on the existing corridor does not deliver on the council’s revitalisation goals for Newcastle and perpetuates the existing barrier to the waterfront.’ [FOOTNOTE: Evidence, Mr Peter Chrystal, Director of Planning and Regulatory, The City of Newcastle, 7 November 2014, pp 37-38.]

Mr Andrew Fletcher, NSW Regional Director, Property Council of Australia, also supported the proposed light rail route down Hunter Street, insisting that it will provide greater access to areas of Newcastle city for more people:

I am excited about the proposed light rail route because it will make access to the beach and across the city far easier for everyone – the elderly, the disabled, pedestrians and cyclists, who currently have to negotiate pedestrian overpasses and railway level crossings. An upgrade over a few metres between a heavy rail and a light rail system will be an enormous improvement for the people of Newcastle.’ [FOOTNOTE: Evidence, Mr Andrew Fletcher, NSW Regional Director, Property Council of Australia, 24 November 2014, p 48.]

Extension of the light rail

Another consideration raised by some inquiry participants was the desire for a light rail service that extends to other major areas and destinations around Newcastle. Mr Chris Chapman, Managing Director, Colliers International Newcastle commented to the committee:

I would love to get onto a tram or light rail and head down to Wickham. That would be fabulous. The great cities of the world all have light rail systems and I think it would be the thin edge of the wedge. In my lifetime I would like to see it run down Union Street, connect up to Darby Street and head up to the beach. I think it would be great. I am excited by it.’ [FOOTNOTE: Evidence, Mr Chris Chapman, Managing Director, Colliers International Newcastle, 21 November 2014, p 15.]

The former member for Newcastle, Ms Sharon Grierson, likewise expressed support for a more extensive light rail network as opposed to the proposed two kilometre route which she strongly viewed to be inadequate. Further, Ms Grierson emphasised the importance of the light rail being connected to a truly seamless transport network:

... in the best cases I saw, and some of those were in France, it was so seamless and it was multimodal. Park-and-ride, major bus connectivity, heavy rail – stepping right off

the heavy rail with a suitcase that just rolled straight on to light rail. I have seen the benefits of light rail and Newcastle would be wonderfully served by light rail, but that is not what we are getting in a two-kilometre \$350 million waste of money.’ [FOOTNOTE: Evidence, Ms Sharon Grierson, former Federal member for Newcastle, 21 November 2014, p 42.]

A light rail system that extends to the inner suburbs of Newcastle was supported by Mr Richard Anicich, Immediate Past President, Hunter Business Chamber, who commented:

I look forward to the day when there is light rail running from the new Newcastle terminus around the inner suburbs to the stadium at Broadmeadow, to the John Hunter Hospital, to the Mater Hospital, to the airport, to the university. People need to think, not about today or tomorrow but 10 years, 20 years, 30 years time and you need to get started; you need to have the vision of what can be and have the passion to get there.’ [FOOTNOTE: Evidence, Mr Richard Anicich, Past President, Hunter Business Chamber, 21 November 2014, p 59.]

Transport for NSW advised in its Hunter Regional Transport Plan, released in March 2014, that during the planning stage of the light rail network, consideration will be given to how the network can be extended in the future:

As we plan for the first stage of light rail for Newcastle, we are at the same time investigating how the light rail could be extended in the future. Planning work will consider how to better connect with key destinations and activity centres, such as Hunter Stadium; the University of Newcastle at Callaghan; Charlestown Square; John Hunter Hospital; Mater Hospital and Newcastle Airport.’ [FOOTNOTE: Transport for NSW, *Hunter Regional Transport Plan*, March 2014, p 47.]

Resolved, on the motion of Mr Pearce: That the following new paragraphs be inserted after paragraph 5.5:

The letter from Mr McCloy to Minister Hazzard advised that four projects planned by the McCloy Group for the Newcastle CBD had been put on hold until a decision is made on the heavy rail line. [FOOTNOTE: Correspondence from Mr Jeff McCloy, Chairman, McCloy Group to the Hon Brad Hazzard MP, Minister for Planning and Infrastructure, 13 February 2012. The four projects mentioned are the Lucky Country Hotel, Telstra Civic Building, a vacant block on Bolton Street, and the Blackwood site on Hannell Street.]

Mr McCloy noted that these sites had been purchased on the basis that the rail line would be closed and that the GPT Group projects would proceed, and concluded that the McCloy Group ‘... has no further desire to add to its property portfolio whilst the current heavy rail line is in place’. [FOOTNOTE: Correspondence from Mr Jeff McCloy, Chairman, McCloy Group to the Hon Brad Hazzard MP, Minister for Planning and Infrastructure, 13 February 2012.]

A briefing note prepared by the Hunter Development Corporation notes that the NSW Government had been approached by several landowners, investors and developers from Newcastle seeking a commitment from the government to remove the heavy rail line. [FOOTNOTE: Briefing note, Department of Planning and Infrastructure, Hunter Development Corporation, *Newcastle heavy rail line*, 27 February 2012.]

The response to Mr McCloy from the Minister advised that the Department of Planning and Infrastructure was currently preparing an urban renewal strategy for Newcastle to ‘help create an environment conducive to further investment and urban renewal’. [FOOTNOTE: Correspondence from the Hon Brad Hazzard MP, Minister for Planning and Infrastructure to Mr Jeff McCloy, Chairman, McCloy Group, undated.]

Mr Pearce moved: That paragraph 5.6 be omitted:

‘Similar concerns were echoed by other inquiry participants, such as Hunter Transport for Business Development, which contended that the decision to run the light rail along Hunter Street represented considerable waste and that it was necessary to examine the rationale for this decision:

We consider it vital to explore the reasoning/rationale just why the government turned 180 degrees from its original decision and chose an option costing more than twice as much as the full corridor option, wasting the capital already invested in the existing line, to in effect duplicate the existing rail line in Hunter Street which in most places is 20 to 30 metres from the rail corridor and right next to Scott Street.’
[FOOTNOTE: Submission 282, Hunter Transport for Business Development, p 5.]

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That paragraph 5.11 be omitted:

‘Likewise, another inquiry participant submitted:

You are no doubt aware that the route chosen for the light rail primarily runs down one of the busiest streets in Newcastle. Co-incidentally, this was the preferred route for a prominent Newcastle developer and former Lord Mayor, Jeff McCloy.’
[FOOTNOTE: Submission 190, Name suppressed, p 3.]

Resolved, on the motion of Mr Pearce: That paragraph 5.14 be omitted unless the submission author agrees to have their submission made public:

‘Another submission author contended that the decision to not use the existing corridor and rail infrastructure suggests the light rail option has not been properly considered by the NSW Government:

The plan to remove the heavy rail and replace it with light rail extending down Hunter and Scott St a mere 20 metres away is such a ludicrously expensive duplication of current infrastructure it is no wonder that the state government has not supplied a business case to support the plan. It is indeed no wonder that the state government hasn’t costed the plan and hasn’t in anyway begun to initiate the plan and have stated that it may commence is a couple of years.’ [FOOTNOTE: Submission 274, Name suppressed, p 3.]

Mr Pearce moved: That paragraphs 5.24, 5.25 and Recommendation 3 be omitted:

‘The committee notes the concerns raised by inquiry participants regarding the proposed Hunter Street light rail route and considers that the decision to not utilise the entire existing rail corridor should be revisited.

In the committee’s view, the cost and disruption of constructing light rail down Hunter Street, especially given the existence of infrastructure available to use along the heavy rail corridor if it is truncated, represents an unnecessary waste and impact on the community. We therefore recommend that, if the truncation occurs and the light rail project proceeds, the NSW Government abandon its plans to run the light rail down Hunter Street and instead run the light rail down the existing corridor.

Recommendation 3

That, if the Newcastle light rail project proceeds, the NSW Government abandon the proposed Hunter Street route and use the existing rail corridor for the light rail service.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 5.24:

'The committee believes that the current proposal for the light rail route does not have broad community support and was delivered after a process that has been rightly criticised as flawed. On all the evidence before the committee the light rail option proposed represents a poor alternative to the existing heavy rail line in the CBD.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Shoebridge moved: That Recommendation 3 be omitted: 'That, if the Newcastle light rail project proceeds, the NSW Government abandon the proposed Hunter Street route and use the existing rail corridor for the light rail service' and the following new recommendation be inserted instead:

'That the NSW Government not proceed with the proposed Hunter Street light rail route unless and until supported by a peer-reviewed cost benefit analysis that thoroughly considers not only the retention of the existing rail line but also the provision of light rail on the existing rail corridor.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Donnelly left the meeting.

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 5.44:

'The government presented no viable argument to support the decision to terminate rail services on Boxing Day. The government representatives acknowledged they had no existing plans for the rail corridor after the closure of the rail line and therefore the purported urgency to terminate services can only be seen as running to a political as opposed to practical timetable by the government. For the good of the people of Newcastle and the Hunter the existing rail line services should be retained until a considered and well informed decision is made on the future of the rail corridor, as proposed in Recommendation X. At the very minimum, the government should not proceed with closing the existing rail line until their alternative light rail is fully funded and approved with a clear timetable for completion.'

Question put.

The committee divided.

Ayes: Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Pearce moved: That paragraph 5.44 be omitted:

‘The committee shares the concerns of inquiry participants regarding the timeframe to truncate the rail line on Boxing Day 2014, considering that construction of the light rail is not expected to commence until late 2015. We see no reason why the government needs to rush the closure of such a vital piece of transport infrastructure, especially given that the proposed light rail route will not be using the existing tracks.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Pearce moved: That Recommendation 4 be omitted:

‘Recommendation 4

That, if the truncation of the Newcastle heavy rail line proceeds, the NSW Government postpone the date of truncation until construction of the light rail service commences.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Donnelly re-joined the meeting.

Mr Pearce moved: That paragraph 5.59 be omitted:

‘The committee acknowledges that Transport for NSW have advised that surfboards and other luggage can be carried on the buses, however, we question whether the buses can accommodate multiple passengers with prams, bicycles, surfboards and wheelchairs as the heavy rail can.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 5.81 and Recommendation 5 be amended by omitting ‘low-rise development only’ and inserting instead ‘low scale development associated with community, recreational and public uses’.

Resolved, on the motion of Mr Pearce: That Recommendation 5 be amended by omitting ‘guarantee’ and inserting instead ‘ensure’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 5.78:

‘On 3 December 2014 the Premier, the Hon Mike Baird MP, said that the Newcastle City Council would have to endorse any development on the unused rail corridor:

Under our plan Newcastle Council will have the final say about what development occurs on the former rail corridor and it must tick off on any proposal before it proceeds. I know the council and some in the community have concerns about this project. We want to ensure we get the best outcome for Newcastle, which is why we are taking this step ... Given the importance of this once-in-a-generation revitalisation process, we believe it is critical that Newcastle Council plays a key role in the planning decisions for the city’s future.’ [FOOTNOTE: Michelle Harris, ‘Premier Mike Baird confirms rail corridor open to development’, Newcastle Herald, 3 December 2014 < <http://www.theherald.com.au/story/2741384/rail-corridor-to-be-developed-premier/>>]

Mr Shoebridge moved: That paragraph 5.81 and Recommendation 6 be amended by inserting ‘, under the control and direction of Newcastle City Council,’ after ‘transparent planning process’.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Shoebridge moved: That paragraph 5.109 be omitted: ‘The committee notes that the final design for the interchange is yet to be determined, and acknowledge the comments from the Transport Minister that the community’s feedback will be considered. We urge the NSW Government to ensure that this occurs.’, and the following new paragraph be inserted instead:

‘The committee accepts the balance of opinion presented to it that the proposed transport interchange at Wickham will produce significant negative outcomes for both local traffic and public transport users. These problems are intrinsic to the site chosen for the interchange and do not appear to be able to be resolved by further design refinements.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Donnelly moved, That chapter 5, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Chapter 6

Resolved, on the motion of Mr Pearce: That paragraph 6.10 be omitted unless the submission author agrees to have their submission made public:

‘Similar concerns were voiced by other inquiry participants, such as the author of submission no. 6, who referred to the illegal donations accepted by some government members from developers and commented:

It is ... the developers generally who have the most to gain from the truncation of the rail line. For they have a desire to build on sections of the line, and in fact a Government minister was quoted in the media as confirming that sections of the line would be sold off for development.

I therefore feel that the Government hasn’t made their decision based on the best interests of the community. Rather, their motivation has been to benefit the developers from whom they have been accepting donations illegally.

The decision seems so illogical and makes no sense from a public policy perspective, hence, the reason to question the motives of the Government in making the decision.’ [FOOTNOTE: Submission 6, Name suppressed, p 3.]

Resolved, on the motion of Mr Pearce: That paragraph 6.11 be omitted unless the submission author agrees to have their submission made public:

‘The author of submission no. 189 alleged outright that ‘[i]t has become apparent in the ICAC inquiry that illegal political donations were given to successful candidates in the Hunter and it is evident that one “payoff” for achieving a Liberal victory was the removal of the rail ...’. [FOOTNOTE: Submission 189, Name suppressed, p 1.]

Resolved, on the motion of Mr Pearce: That paragraph 6.16 be omitted unless the submission author agrees to have their submission made public:

‘Similarly, another submission author noted that Mr McCloy was involved in a major campaign to remove the rail line – Fix Our City – and observed that as Mr McCloy owns several properties in and around Hunter Street, his development company ‘stand[s] to gain a lot of money from acquiring former rail corridor land or the contract to develop it.’ [FOOTNOTE: Submission 274, Name suppressed, p 2.]

Resolved, on the motion of Mr Pearce: That paragraph 6.19 be omitted unless the submission author agrees to have their submission made public:

‘Concern was also raised about the impact of illegal donations from Buildev to the former member for Newcastle, Mr Owen. As articulated by one inquiry participant:

The fact that the member for Newcastle was found to have accepted illegal donations from Buildev, a firm that would stand to make a lot of money from potential commercial and residential development contract on the rail land, raises the prospect that the decision was initiated and motivated by the potential monetary gains this firm stood to make from development of the rail corridor.’ [FOOTNOTE: Submission 274, Name suppressed, p 2.]

Resolved, on the motion of Mr Pearce: That paragraph 6.62 be amended by inserting ‘, at or about the time he commenced as the General Manager’ after ‘14 February 2011.’

Resolved, on the motion of Mr Pearce:

- a) That paragraph 6.65 be amended by omitting ‘continue to be excluded from all duties related to his conflicts of interest for as long as those conflicts of interest exist. This is consistent’ and inserting instead ‘conflicts of interest are managed consistently in accordance with the NSW Planning and Infrastructure Conflicts of Interest Policy and Guidelines 2011.’
- b) That Recommendation 7 be amended by omitting ‘continues to be excluded from all duties related to his conflicts of interest for as long as those conflicts of interest exist.’ and inserting instead ‘has his conflicts of interest managed in accordance with the NSW Planning and Infrastructure Conflicts of Interest Policy and Guidelines 2011.’

Resolved, on the motion of Mr Shoebridge: That paragraph 6.64 be amended by omitting ‘Nonetheless, we acknowledge the evidence from the corporation that Mr Hawes has not participated in any board meetings considering the proposed redevelopment at Wickham, and that in fact the board itself has only had one meeting since 2009 where it made a decision endorsing the Newcastle Urban Renewal Strategy and/or the future possible truncation of the rail line, due to its limited decision-making role.’ and inserting instead:

‘The committee notes that the corporation asserts that there have been no decisions made by the Board regarding the proposed redevelopment at Wickham since Mr Hawes became General Manager and therefore no conflict of interest has been declared by him. However, it is clear from matters on the public record, including the evidence from the Secretary of the Department of Planning and Infrastructure, that Mr Hawes has addressed the Board on the issue of the truncation of the rail line in his capacity as General Manager.’

This is a matter that the committee will consider in its final report.’

Ms Voltz moved: That chapter 6, as amended, be adopted.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Ms Cusack moved: That chapter 1 be reconsidered in order to consider the following amendment:

That the following words be inserted at the beginning of the chapter:

‘WARNING: this report has been rushed out in order to benefit the interests of a certain political parties contesting the 28 March 2015 State Election. It therefore canvasses issues before ICAC that are unresolved and regrettably pre-empt the ICAC Report.’

The report contains numerous unsupported allegations by local politicians in Newcastle who were campaigning for the Newcastle and Charlestown by Elections and/or the Lord-Mayor’s by-election, but failed to disclose the obvious conflict of interest when submitting their evidence.

The committee apologises to witnesses who have been unfairly defamed under parliamentary privilege during hearings, in published material and in this report. We sincerely apologise to the people of the Hunter for the lack of fairness in our approach to the inquiry.’

The Chairman ruled that the motion was out of order.

Resolved, on the motion of Mr Donnelly that:

- a) the draft report, as amended, be the report of the committee and that the committee present the report to the House;
- b) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

- c) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- d) dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- e) the report be tabled on Thursday 18 December 2014.

10. Other business

The committee noted that the deliberative for the final report will be held on 23 February 2015.

11. Adjournment

The committee adjourned at 1.26 pm *sine die*.

Teresa McMichael
Clerk to the Committee

Minutes no. 10

Friday 12 December 2014

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region
Macquarie Room, Parliament House, 1.27 pm

1. Members present

Revd Nile, *Chairman*
Mr Shoebridge, *Deputy Chair*
Ms Cusack
Mr Donnelly
Mr Pearce
Ms Voltz

2. Correspondence to the Independent Commission Against Corruption

Resolved, on the motion of Mr Shoebridge: That, on behalf of the committee, the Chairman write to the Independent Commission Against Corruption (ICAC) to request that:

- a) ICAC examine evidence received by the committee regarding conflicts of interest and the General Manager of the Hunter Development Corporation, Mr Robert Hawes
- b) a response be provided by ICAC prior to the committee's next meeting on Monday 23 February 2015.

3. Final report deliberative

Resolved, on the motion of Mr Shoebridge: That the next meeting of the committee be the final report deliberative on Monday 23 February 2015.

4. Adjournment

The committee adjourned at 1.31 pm until Monday 23 February 2015 (*final report deliberative*).

Teresa McMichael
Clerk to the Committee

Minutes no. 11

Wednesday 18 February 2015

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region
Members' Lounge, Parliament House, 4.33 pm

1. Members present

Revd Nile, *Chairman*
Mr Shoebridge, *Deputy Chair* (via teleconference)
Ms Cusack
Mr Donnelly (via teleconference)
Mr Pearce
Ms Voltz

2. Letter to Premier requesting document

Ms Voltz moved: That the committee write to the Premier request the voluntary production of the document referred to in the Sydney Morning Herald article by Sean Nicholls entitled 'NSW Government rejected advice on Newcastle light rail, opted for developers', which appeared on 17 February 2015, in addition to the documents requested by the committee in its letter to the Premier on 19 December 2014.

Mr Shoebridge moved: That the motion of Ms Voltz be amended to include that the committee enclose a copy of the document and request the government to ascertain its authenticity.

Amendment of Mr Shoebridge put and passed.

Amended question of Ms Voltz put.

Committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

3. Tabling of documents

The Chairman tabled the following documents:

- Cabinet Minute SC577-2013, entitled 'Newcastle Revitalisation Project', dated 9 December 2013
- Cabinet Standing Committee on Infrastructure Decision Paper, dated 11 December 2013.

Ms Voltz moved: That the committee publish the Cabinet Minute SC577-2013 and associated Decision Paper for reference in the committee's final report on the planning process in Newcastle and the broader Hunter region.

Ms Cusack moved: That the motion of Ms Voltz be amended by inserting 'alleged' before 'Cabinet Minute SC577-2013'.

Amendment of Ms Cusack put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Amendment resolved in the negative.

Original question of Ms Voltz put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Ms Cusack tabled the following documents:

- Email from (name suppressed), regarding Newcastle Electorate Office, dated 18 February 2015
- Newcastle Herald article by Sean Nicholls, Michelle Harris and Jason Gordon entitled 'Rail document found in Owen office: Labor', dated 18 February 2015.

Resolved, on the motion of Ms Cusack: That the committee write to Mr Tim Crakanthorp requesting information about the circumstances in which he obtained the document referred to in the Sydney Morning Herald article and inviting him to comment on (name suppressed's) email, subject to (name suppressed's) consent for the email to be sent to Mr Crakanthorp.

4. **Adjournment**

The committee adjourned at 5.07pm, until 9.30 am Monday 23 February 2015, Room 1254 (final report deliberative).

Teresa McMichael
Clerk to the Committee

Minutes no. 12

Thursday 19 February 2015

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region
Members' Lounge, Parliament House, 3.33 pm

1. **Members present**

Revd Nile, *Chairman*
Mr Shoebridge, *Deputy Chair*
Ms Cusack
Mr Donnelly
Mr Pearce
Ms Voltz (*at 3.35 pm*)

2. **Correspondence received**

The committee noted the following item of correspondence received:

- 19 February 2014 - From Mr Shoebridge, proposing that a further half-day public hearing be held on Monday 23 February 2015 to hear from the following witnesses: Mr Tim Owen, Mr Tim Crakanthorp MP, Witness A and Witness B.

3. **Further public hearing – Monday 23 February**

Mr Shoebridge moved: That:

- the committee invite the following individuals to appear before the committee at a public hearing on Monday 23 February 2015:
 - Mr Tim Owen, from 11.00am - 11.30am
 - Mr Tim Crakanthorp MP, from 11.30am - 12.00pm
 - Witness A, from 12.00pm - 12.30pm
 - Witness B, from 12.30pm - 1.00 pm
- with the exception of Mr Crakanthorp, should any of the above named individuals decline the committee's invitation, that they be summonsed to appear before the committee
- Witness A and Witness B be offered the opportunity to appear via teleconference and *in camera*.

Ms Cusack moved that: That the motion of Mr Shoebridge be amended by omitting all words after 'Witness B, from 12.30-1.00 pm'.

Amendment of Ms Cusack put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Amendment of Ms Cusack resolved in the negative.

Original question of Mr Shoebridge put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That the secretariat, in consultation with the Chairman, amend the letter to Mr Tim Crakanthorp MP, requesting information about the circumstances in which he obtained the document referred to in the *Sydney Morning Herald* article and inviting him to comment on (name suppressed's) email, subject to (name suppressed's) consent for their email to be sent to Mr Crakanthorp, to reflect the committee's decision at this meeting to invite Mr Crakanthorp to appear at a public hearing at 11.30 am on Monday 23 February 2015.

4. **Adjournment**

The committee adjourned at 3.55 pm, until 11.00 am Monday 23 February 2015, Macquarie Room (*public hearing*).

Cathryn Cummins

Clerk to the Committee

Minutes no. 13

Friday 20 February 2015

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Members' Lounge, Parliament House, 1.35 pm

1. **Members present**

Mr Shoebridge, *Acting Chair*

Mr Donnelly

Ms Voltz

2. **Apologies**

Revd Nile who was ill and unable to attend.

3. **Draft minutes**

Resolved, on the motion of Ms Voltz: That the consideration of draft minutes no. 12 be deferred until the next committee meeting.

4. Correspondence

Resolved, on the motion of Ms Voltz: That the consideration of correspondence be deferred until the next committee meeting.

5. Further public hearing – Monday 23 February

Resolved, on the motion of Ms Voltz: That the committee confirm that the resolution of 19 February 2015 was to invite Mr Owen to appear in person before the committee, and that in the event he did not consent to appear in person, he would be summonsed.

6. Adjournment

The committee adjourned at 1.40 pm, until 11.00 am Monday 23 February 2015, Macquarie Room (*public hearing*).

Teresa McMichael
Clerk to the Committee

Minutes no. 14

Monday 23 February 2015

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Macquarie Room, Parliament House, 11.00 am

1. Members present

Revd Nile, *Chairman*
Mr Shoebridge, *Deputy Chair*
Ms Cusack
Mr Donnelly
Mr Pearce
Ms Voltz

2. Answers to questions on notice

Resolved, on the motion of Mr Donnelly: That the committee authorise that answers to questions on notice taken during the hearing on 23 February 2015 be provided within 24 hours.

3. Public hearing

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Tim Owen, former member for Newcastle.

Ms Voltz tabled the following document:

- SAI Global ASIC Personal Current and Historical Extract of Mr Timothy Owen.

The evidence concluded and the witness withdrew.

The public hearing concluded at 11.45 am.

4. Previous minutes

Resolved, on the motion of Mr Donnelly: That:

- draft minutes nos. 9 and 10 be confirmed

- item 3 of draft minutes no. 11 be amended to omit the name of the individual associated with the email tabled by Ms Cusack and replace it with ‘name suppressed’, and that the amended draft minutes no. 11 be confirmed
- that items 2 and 3 of draft minutes no. 12 be amended to omit the names of the two witnesses that have been invited to appear in camera and replace them with ‘Witness A’ and ‘Witness B’.

Ms Cusack moved: That the amended draft minutes no. 12 be further amended to omit the third dot point that reads ‘Witness A and Witness B be offered the opportunity to appear via teleconference and *in camera*.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Ms Voltz moved: That the amended draft minutes no. 12 be adopted.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

Mr Shoebridge moved: That draft minutes no. 13 be confirmed.

Question put.

The committee divided.

Ayes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Noes: Ms Cusack, Mr Pearce.

Question resolved in the affirmative.

5. Correspondence

The committee noted the following items of correspondence:

Received:

- 9 December 2014 – From Mr Ken Gouldthorp to secretariat, providing corrected attachment C to answers to questions on notice received on 5 December 2014
- 11 December 2014 – From Mr John Sutton to secretariat, responding to Mr Ken Gouldthorp’s right of reply to comments made in submission nos. 324 and 324a
- 15 December 2014 – From Mrs B Davidson to secretariat, regarding Newcastle rail line
- 17 December 2014 – From Mr Brian Bell, General Manager, Lake Macquarie City Council to Chairman, responding to additional questions regarding submissions made to the Council by Mr Andrew Cornwell in relation to the Whitebridge development

- 17 December 2014 – From Hon Catherine Cusack MLC to committee, regarding unauthorised disclosure of committee proceedings
- 19 December 2014 – From Mr Peter Chrystal, Director of Planning and Regulatory, The City of Newcastle to secretariat, regarding incorrect attributions of evidence in the interim report
- 5 January 2015 – From Mr Trent White, Manager Assessment, Independent Commission Against Corruption to secretariat, advising that the commission is assessing the committee's request to investigate Mr Bob Hawes, General Manager, Hunter Development Corporation
- 5 January 2015 – From Mr Richard Taylor to secretariat, regarding Newcastle rail line
- 5 January 2015 - From Mr Richard Taylor to secretariat, forwarding an open letter to Premier regarding the rail truncation from concerned citizens of Newcastle and the Hunter
- 7 January 2015 – From Clr Therese Doyle to secretariat, responding to comments made by Mr Gouldthorp, Mr McCloy and Clr Brad Luke regarding her submission
- 8 January 2015 – From Mr Richard Marr to Chairman, forwarding letter sent to Premier protesting the state of Newcastle affairs
- 15 January 2015 – From Ms Kaye Duffy to secretariat, regarding Newcastle rail line
- 16 January 2015 – From Mr Brian Gibson, Senior Development Planner, Lake Macquarie City Council to secretariat, confirming details of the original and amended Whitebridge development application
- 27 January 2015 – From Hon Megan Latham, Commissioner, Independent Commission Against Corruption to Chairman, advising that the commission will not be investigating Mr Bob Hawes, General Manager, Hunter Development Corporation
- 19 February 2015 – From Mr Owen to secretariat, declining the committee's invitation to appear at a public hearing at 11.00 am on Monday 23 February 2015
- 19 February 2015 – From Mr Owen to secretariat, requesting to appear before the committee via teleconference at 11.00 am on Monday 23 February 2015
- 20 February 2015 – From Hon Gladys Berejiklian MP, Minister for Transport, Minister for Hunter, to Chairman, regarding production of documents relating to planning in Newcastle and the broader Hunter region
- 22 February 2015 – From Mr Tim Crakanthorp MP to secretariat, declining invitation to appear before the committee and discussing the Cabinet-in-Confidence document.

Sent:

- 16 December 2014 – Chairman to Premier, seeking copies of any legal advice received by the NSW Government regarding the truncation of the Newcastle rail line
- 19 December 2014 – Chairman to Premier, requesting the voluntary production of documents relating to planning in Newcastle and the broader Hunter region
- 19 December 2014 – Chairman to Hon Megan Latham, Commissioner, Independent Commission Against Corruption, requesting the commission to consider investigating Mr Bob Hawes, General Manager, Hunter Development Corporation
- 9 January 2015 – Chairman to Mr Peter Chrystal, Director Planning and Regulatory, Newcastle City Council, responding to concerns raised about evidence used in the interim Newcastle report
- 18 February 2015 – Chairman to Premier, requesting the voluntary production of documents relating to planning in Newcastle and the broader Hunter region, enquiring about an article in the *Sydney Morning Herald* on Monday 16 February 2015, entitled 'NSW Government rejected advice on Newcastle light rail, opted for developers' preference' by Sean Nicholls, and requesting the government to ascertain the authenticity of the Cabinet document discussed in the article
- 19 February 2015 – Secretariat to (name suppressed), requesting permission to publish the individual's email to Hon Catherine Cusack MLC and forward a copy of the email to Mr Tim Crakanthorp MP to invite him to comment

- 19 February 2015 – Secretariat to Mr Tim Owen, inviting him to appear at a public hearing at 11.00 am on Monday 23 February 2015
- 19 February 2015 – Secretariat to Mr Tim Owen, advising that if he declines the committee’s invitation the committee has resolved to summon him to appear at a public hearing at 11.00 am on Monday 23 February 2015
- 20 February 2015 – Chairman to Mr Tim Crakanthorp MP, inviting him provide comments on the Cabinet document discussed in the Sydney Morning Herald article.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of correspondence from:

- Chairman to Hon Mike Baird MP, Premier, seeking copies of any legal advice received by the NSW Government regarding the truncation of the Newcastle rail line, dated 16 December 2014
- Chairman to Hon Mike Baird MP, Premier, requesting the voluntary production of documents relating to planning in Newcastle and the broader Hunter region, dated 19 December 2014
- Chairman to Hon Megan Latham, Commissioner, Independent Commission Against Corruption, requesting the committee to consider investigating Mr Bob Hawes, General Manager, Hunter Development Corporation, dated 19 December 2014
- Mr Trent White, Manager Assessment, Independent Commission Against Corruption to secretariat, advising that the commission is assessing the committee’s request to investigate Mr Bob Hawes, General Manager, Hunter Development Corporation, dated 5 January 2015
- Clr Therese Doyle to secretariat, regarding comments made by Mr Gouldthorp, Mr McCloy and Clr Brad Luke about her submission, dated 7 January 2015
- Mr Brian Gibson, Senior Development Planner, Lake Macquarie City Council, to secretariat, responding to additional questions regarding submissions made to the Council by Mr Andrew Cornwell in relation to the Whitebridge development, dated 16 January 2015
- Hon Megan Latham, Commissioner, Independent Commission Against Corruption to Chairman, advising that the commission will not be investigating Mr Bob Hawes, General Manager, Hunter Development Corporation, dated 27 January 2015
- Chairman to Hon Mike Baird MP, Premier, requesting the voluntary production of documents relating to planning in Newcastle and the broader Hunter region, enquiring about an article in the Sydney Morning Herald on Monday 16 February 2015, entitled ‘NSW Government rejected advice on Newcastle light rail, opted for developers’ preference’ by Sean Nicholls, and requesting the government to ascertain the authenticity of the Cabinet documents discussed in the article, dated 18 February 2015.

6. Submissions

6.1 Submission nos. 6 and 189

The committee noted that submission nos. 6 and 189, which previously had names suppressed, were fully published by the committee clerk under the authorisation of an earlier resolution, with the permission of the authors.

6.2 Public submission nos. 378 and 379

The committee noted that submission nos. 378 and 379 were published by the committee clerk under the authorisation of an earlier resolution.

6.3 Attachment to submission no. 138

Resolved, on the motion of Mr Pearce: That the committee authorise the publication of attachment 4 to submission no. 138.

6.4 Pro formas

The committee noted that one additional pro forma submission C has been received taking the total number of pro forma submissions labelled C to six. The committee also noted that one new type of pro

forma submission, which the secretariat has labelled pro forma F, has been received, and that the committee has received two pro forma F submissions.

7. Deliberative meeting to consider Chairman's draft report

Resolved, on the motion of Mr Shoebridge: That the committee meet at 2pm Monday 23 February 2015 to consider the Chairman's draft report on the planning process in Newcastle and the broader Hunter region.

8. In camera hearing

According to a previous resolution of the committee, the committee proceeded to take evidence *in camera*.

Persons present other than the committee: Beverly Duffy, Steven Reynolds, Teresa McMichael, Rhia Victorino, Cathryn Cummins, Emma Rogerson and Hansard reporters.

Witness A was sworn and examined via teleconference.

The *in camera* evidence concluded and the witness withdrew.

Witness B was sworn and examined via teleconference.

The *in camera* evidence concluded and the witness withdrew.

9. Further public hearing

Resolved, on the motion of Ms Cusack: That:

- the committee again invite Mr Tim Crakanthorp to appear before the committee at a public hearing for 45 minutes, and that he be offered the opportunity to appear via teleconference if necessary
- the committee invite Ms Samantha Marsh to appear before the committee at a public hearing for 30 minutes, and that she be offered the opportunity to appear via teleconference and *in camera*.
- should Ms Marsh decline the committee's invitation, that Ms Marsh be summonsed to appear before the committee.

10. In camera transcripts

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of Witness A and Witness B's *in camera* transcripts, with the exception of all staff members' names, as agreed to by the witnesses.

Resolved, on the motion of Mr Pearce: That the committee authorise the publication of the email from (name suppressed) tabled by Ms Cusack on 18 February 2015, with the exception of all staff members' names, as agreed to by (name suppressed).

11. Consideration of Chairman's draft report

The Chairman submitted his draft final report, entitled '*The planning process in Newcastle and the broader Hunter region*', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Voltz: That chapter 1 be adopted in principle.

Mr Pearce moved: That paragraphs 2.113, 2.114, 2.115 and recommendation 1 be omitted:

'The committee acknowledges the overwhelming concern expressed by inquiry participants regarding the impact of increased height limits in the East End precinct, as prescribed by the Amendment SEPP. The committee agrees with inquiry participants that the unique heritage character of Newcastle should

be preserved and considers that high rise development in the city's East End would have a number of adverse impacts.

While it is noted that height limits were lowered to match the parapet of the nave of Christ Church Cathedral in response to community concerns, the committee believes that further lowering of building heights is necessary to protect the heritage character of the city. In particular, the committee notes the community's support for the height limits proposed in the NURS and its original associated planning controls for the East End precinct, which varied between 20 metres to 27 metres at different locations.

The committee therefore recommends that the Minister for Planning and Environment further lower the maximum height of buildings within the East End precinct to reflect the height controls originally proposed in the NURS and Amendment SEPP in 2012.

Recommendation 1

That the Minister for Planning and Environment amend height controls specified in the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014 by lowering the maximum permitted height of buildings within the East End precinct to 27 metres.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That chapter 2 be adopted in principle.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph and quote be inserted after paragraph 3.12:

'The committee was provided with an email exchange from within UrbanGrowth NSW by way of a hand-over note. That exchange was in the following terms:

... so you are both aware, the lord mayor Jeff McCloy called me this morning to ask how we were faring with our planning of our project and what the reaction has been by UrbanGrowth and GPT to last week's budget announcement. I replied that we are progressing well with our planning and the news last week was welcomed, particularly by UrbanGrowth, placing added emphasis on the timely delivery of our project. He asked that we write a letter, either with GPT or separately to the Premier and Treasurer, to congratulate them on the additional \$340 million and support the option to have the light rail system placed in Hunter Street and not the existing rail corridor. I will prepare a draft letter for your review.'

Mr Pearce moved: That paragraph 3.33 be amended to omit 'We acknowledge their arguments that' and inserting instead 'Their arguments are that'.

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That paragraph 3.33 be amended to omit 'private company' and insert instead 'publicly listed corporation'.

Mr Pearce moved: That paragraph 3.34 be omitted: 'The committee acknowledges that many inquiry participants held significant concerns regarding the potential conflicts of interest that arise as a consequence of the interrelationships between the Department of Planning and Environment, UrbanGrowth NSW and GPT.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That paragraph 3.35 be amended to omit 'The committee supports the proposal' and inserting instead 'The committee notes the proposal'.

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That the secretariat, in consultation with the Chairman, draft new sections to appear after paragraph 3.35 to discuss the relationship between UrbanGrowth NSW and the Department of Planning and Environment, and that the draft sections be considered at the committee's next report deliberative meeting.

Resolved, on the motion of Mr Shoebridge: That the secretariat, in consultation with the Chairman, draft new sections to appear after paragraph 3.56 to discuss the role of the Newcastle City Council in planning for the city, and that the draft sections be considered at the committee's next report deliberative meeting.

Resolved, on the motion of Mr Pearce: That the secretariat, in consultation with the Chairman, draft new sections to appear after paragraph 3.31 to discuss Mr Bob Hawes' conflict of interest and the response from the Independent Commission Against Corruption regarding the committee's request to investigate Mr Hawes, and that the draft sections be considered at the committee's next report deliberative meeting.

Resolved, on the motion of Mr Donnelly: That chapter 3 be adopted in principle.

Resolved, on the motion of Ms Cusack: That the secretariat, in consultation with the Chairman, draft a new section for chapter 4 to discuss Lake Macquarie City Council's failure to publish Mr Andrew Cornwell's submission opposing the Whitebridge development on the development application website, and that the draft section be considered at the committee's next report deliberative meeting.

Resolved, on the motion of Mr Donnelly: That chapter 4 be adopted in principle.

Resolved, on the motion of Mr Shoebridge: That the secretariat, in consultation with the Chairman, draft a new section for chapter 5 to recommend that the services and infrastructure that have been removed from the Newcastle rail line be reinstated, and that the draft section be considered at the committee's next report deliberative meeting.

Resolved, on the motion of Mr Pearce: That the secretariat, in consultation with the Chairman, draft a new section for chapter 5 to note the Premier's comments that any future use of the rail corridor (assuming the rail line is not reinstated) will require the consent of Newcastle City Council, and that the draft section be considered at the committee's next report deliberative meeting.

Mr Pearce moved: That paragraphs 5.13 and 5.16 on p 59 be omitted:

'The committee strongly reiterates our conclusion from our interim report that the truncation of rail services to Newcastle should not have proceeded on Boxing Day 2014. The committee remains convinced that the decision to truncate the line was based upon a flawed cost benefit analysis, without an adequate business case, and remain concerned that it occurred prior to the commencement of the construction of the light rail line, which has no defined completion date.

We cannot ignore the alarming contents of this minute, which reveal a less than frank attitude by the government in dealing with this committee. Further, we question why the government ignored the considered advice of the Transport Minister regarding these important decisions, and chose a transport option that has higher costs, greater delivery risks and greater impacts on local businesses.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That chapter 5 be adopted in principle.

Resolved, on the motion of Mr Shoebridge: That paragraph 6.17 be amended to omit 'notes the concerns raised' and insert instead 'notes that concerns were raised'.

Resolved, on the motion of Mr Donnelly: That chapter 6 be adopted in principle.

Resolved, on the motion of Mr Shoebridge: That:

- the draft report, as amended, be adopted in principle.
- the committee schedule another meeting to consider the inclusion of evidence from the 23 February 2015 hearing into the draft report, and for the committee to adopt the final report.

12. Adjournment

The committee adjourned at 3.15pm *sine die*.

Teresa McMichael
Clerk to the Committee

Draft minutes no. 15

Friday 27 February 2015

Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

Macquarie Room, Parliament House, 12.59 pm

1. Members present

Revd Nile, *Chairman*

Mr Shoebridge, *Deputy Chair*

Ms Cusack

Mr Donnelly

Mr Pearce

Ms Voltz

2. Answers to questions on notice

Resolved, on the motion of Mr Donnelly: That no answers to questions on notice be taken during the hearing on 27 February 2015.

3. Public hearing

Witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding the broadcasting of proceedings and other matters.

The Chairman noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

Mr Tim Crakanthorp MP, Member for Newcastle was admitted and examined.

Mr Crakanthorp tendered the following documents:

- 27 manila files containing various contents, including electorate surveys and correspondence
- Letter from Mr Tim Crakanthorp to Independent Commission Against Corruption, dated 17 February 2015.
- Letter from Mr Tim Crakanthorp to Mr Tim Owen regarding Cabinet Minute, dated 16 February 2015
- Statutory declaration from electorate office staffer.

The evidence concluded and the witness withdrew.

The public hearing concluded at 1.45pm.

The public and media withdrew.

4. Deliberative meeting

Ms Cusack tabled the following document:

- Email from (name suppressed) replying to questions asked by Ms Cusack regarding folders kept in electorate office.

Resolved, on the motion of Ms Cusack: That the committee accept and keep confidential the email from (name suppressed) replying to questions asked by Ms Cusack regarding folders kept in electorate office.

5. In camera hearing

According to a previous resolution of the committee, the committee proceeded to take evidence *in camera*.

Persons present other than the committee: Beverly Duffy, Teresa McMichael, Rhia Victorino, Cathryn Cummins, Emma Rogerson and Hansard reporters.

Witness C was sworn and examined via teleconference.

The *in camera* evidence concluded and the witness withdrew.

6. Documents tendered during hearing

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following documents tendered by Mr Crakanthorp during the public hearing on Friday 27 February 2015:

- letter from Mr Tim Crakanthorp to the Independent Commission Against Corruption, dated 17 February 2015
- letter from Mr Tim Crakanthorp to Mr Tim Owen regarding the Cabinet Minute, dated 16 February 2015

Resolved, on the motion of Mr Shoebridge: That the committee accept and keep confidential the following documents tendered by Mr Crakanthorp during the public hearing on Friday 27 February 2015:

- 27 manila files containing various contents, including electorate surveys and correspondence
- Statutory declaration from electorate office staffer.

7. Consideration of Chairman's amended draft report

The Chairman submitted his amended draft final report, entitled '*The planning process in Newcastle and the broader Hunter region*', which, having been previously circulated, was taken as being read.

Mr Shoebridge tabled the following documents:

- Emails from Mr Luke Mellare, Parson Brinckerhoff and Ms Julie Rich, Operations Manager, Hunter Development Corporation
- NSW Department of Planning, Conflicts of Interest - Policy and Guidelines 2011.

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents:

- Emails from Mr Luke Mellare, Parson Brinckerhoff and Ms Julie Rich, Operations Manager, Hunter Development Corporation
- NSW Department of Planning, Conflicts of Interest - Policy and Guidelines 2011.

Mr Pearce moved: That the following paragraph 3.38, 3.39, 3.40, Recommendation 3 and 3.41 be omitted:

'Further, the committee considers that there is an irreconcilable conflict of interest in the relationship between UrbanGrowth NSW and the Department of Planning and Environment whereby the NSW Government is both the landowner, via UrbanGrowth, and the planning consent authority, via the department.

While there may be a broader public interest in restricting the size of a proposed development on the East End site, there may concurrently be a financial incentive to the government to increase the development size. This conflict of interest is accentuated when, as in this instance, UrbanGrowth is in a commercial partnership with a private property trust, GPT.

This conflict is unacceptable and detracts from public confidence in the planning system. The committee therefore believes that the NSW Government should clearly separate the Department of Planning and Environment and UrbanGrowth NSW to eliminate the direct conflict of interest between the department as the planning consent authority and UrbanGrowth NSW as a landowner.

Recommendation 3

That the NSW Government clearly separate the Department of Planning and Environment and UrbanGrowth NSW.

The Hunter Development Corporation is part of the Department of Planning and Environment. The corporation works with other government agencies and stakeholders to pursue opportunities for economic growth in the Hunter. It is a self funded entity, with its main source of income being the proceeds of property sales. The corporation owns a significant amount of land at Honeysuckle, along the Newcastle foreshore between Wickham and Civic.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Pearce moved: That the following paragraph 3.60, paragraph 3.61, Finding 1, Finding 2, the first dot point of paragraph 3.62 and Recommendation 4 be omitted:

‘The committee remains significantly concerned about Mr Hawes’ conflict of interest. The two properties owned by Mr Hawes are located in close proximity to the proposed Wickham Transport Interchange. Once completed, it is not unreasonable to anticipate that the land surrounding the interchange will increase in value.

The committee considers that the manner in which the Hunter Development Corporation and its Board have dealt with Mr Hawes’ conflict of interest has been inadequate. At a minimum, the Board should have required Mr Hawes to dispose of the two properties to entirely remove the conflict of interest. If Mr Hawes was unwilling to take that step, we consider that the Hunter Development Corporation should have sought an alternative general manager that did not have such a conflict of interest.

Finding 1

That Mr Robert Hawes had a significant and ongoing conflict of interest in being a landowner at Wickham, and having a managerial role in the NSW Government’s decision to truncate the Newcastle rail line at Wickham, a decision from which Mr Hawes stands to financially benefit.

Finding 2

That the Board of the Hunter Development Corporation failed to adequately address the conflict of interest of Mr Robert Hawes, and this failure has damaged public confidence in the integrity of the Hunter Development Corporation and public decision making in Newcastle and the broader Hunter region.

...

- the Board of the Hunter Development Corporation should take action to ensure that none of its employees are materially involved in decision making, including the delivery of reports and information to board meetings and ministerial briefings, where they have a conflict of interest

...

Recommendation 4

That the Board of the Hunter Development Corporation immediately take steps to ensure that none of its employees are materially involved in decision making, including the delivery of reports and information to board meetings and ministerial briefings, where they have a conflict of interest.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Pearce moved: That the following paragraphs 3.84, 3.85, 3.86, Recommendation 7 and Recommendation 8 be omitted:

‘The committee considers that a preferred solution to address the fragmented planning framework would be to recognise the Newcastle City Council as the principle planning authority for Newcastle. We also believe that the Newcastle City Council should be given planning authority over all land in the city, including land that is currently owned and/or managed by the Hunter Development Corporation.

This would unify the current planning framework under which the Department of Planning and Environment, UrbanGrowth NSW, and the Hunter Development Corporation are each responsible for certain parts of the city while the council is responsible for the remainder.

Further, we believe that there is a clear role for the Department of Planning and Environment to work constructively in partnership with the council to achieve citywide improvements. However this has not been an equal relationship to date, and has instead involved the department imposing decisions upon the council. The committee believes that this situation should be rectified.

Recommendation 7

That the NSW Government acknowledge Newcastle City Council as the principle planning authority for planning in Newcastle.

Recommendation 8

That the NSW Government give Newcastle City Council planning authority over all land in Newcastle city, including land that is currently owned and/or managed by the Hunter Development Corporation.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That paragraph 5.32 be amended to insert ‘, as at 24 November 2014,’ after ‘representatives advised that’.

Mr Pearce moved: That the following paragraph 5.54 and Recommendation 9 be omitted:

‘The committee therefore recommends that the rail services that have ceased and infrastructure that has been removed from the Newcastle heavy rail line be immediately reinstated.

Recommendation 10

That the NSW Government immediately reinstate rail services that have ceased and infrastructure that has been removed from the Newcastle heavy rail line.’

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Pearce.

Noes: Mr Donnelly, Revd Nile, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 5.55 be amended by omitting 'claimed to have' and inserting instead 'stated that she'.

Resolved, on the motion of Ms Voltz: That paragraph 5.55 be amended by omitting 'hanging manila folders' and inserting instead 'hanging files, some containing manila folders.'

Resolved: on the motion of Ms Cusack: That the following new paragraph be inserted after paragraph 5.57:

'The committee acknowledges and appreciates the evidence given by current and former electorate staff, whose professionalism and diligence in performing their duties is not in question. We thank them for their evidence.'

Resolved, on the motion of Mr Shoebridge: That the draft report, as amended, be the report of the committee, subject to the inclusion of quotes and/or extracts from the 27 February 2015 transcript which will be inserted by the secretariat under the direction of the Chairman once the transcript has been received, and that the committee present the report to the House.

Resolved, on the motion of Mr Donnelly:

- a) That the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report;
- b) That upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee;
- c) That the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- d) That the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- e) That dissenting statements be provided to the secretariat by 9am Monday 2 March 2015;
- f) That the report be tabled at 10am Tuesday 3 March 2015
- g) That a press conference be held at 11am Tuesday 3 March 2015 in the press gallery.

8. Correspondence

The committee noted the following items of correspondence:

Received:

- 24 February 2015 – From Mr Bob Hawes, General Manager, Hunter Development Corporation to Chairman, regarding statements in the committee's interim report
- 25 February 2015 – From Mr Ken Gouldthorp, General Manager, The City of Newcastle to Chairman, regarding comments made about him in Tim Crakanthorp's submission to the Newcastle planning inquiry
- 26 February 2015 – From Witness A, providing additional comments and clarification to the hearing transcript from 23 February 2015
- 26 February 2015 - From Mr Ken Gouldthorp, General Manager, The City of Newcastle to Committee Director, regarding publication of his letter dated 25 February 2015

- 27 February 2015 - From Mr Ken Gouldthorp, General Manager, The City of Newcastle to Committee Director, regarding reconsideration of the publication of his letter dated 25 February 2015.

Sent:

- 26 February 2015 - From Committee Director to Mr Ken Gouldthorp, General Manager, The City of Newcastle regarding publication of his letter dated 25 February 2015.

Resolved, on the motion of Ms Cusack: That the Chairman write to Mr Gouldthorp to advise that the committee is unable to agree to the four requests made in his correspondence, and that the committee authorise the publication of Mr Gouldthorp's letter, dated 25 February 2015.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of correspondence from Witness A, providing additional comments and clarification to the hearing transcript from 23 February 2015, dated 26 February 2015, and publish it on the committee's website next to the transcript.

9. Draft minutes

Resolved, on the motion of Mr Donnelly: That draft minute's no. 14 be confirmed.

10. In camera transcript

Resolved, on the motion of Mr Shoebridge: That

- the committee authorise the publication of Witness C's *in camera* transcript, with the exception of the staff members' name and subject to the approval of the staff member
- in the event the staff member declines to have the transcript published, the secretariat be authorised to publish those extracts of the transcript quoted in the committee's final report.

11. Inclusion of evidence from 27 February 2015 hearing

Resolved, on the motion of Mr Pearce: That if the Hansard transcript from the 27 February 2015 has not been received before the committee adopts the final report on the planning process in Newcastle and the broader Hunter region, that the committee agree to the general content of the section of the committee's report pertaining to the leaked Cabinet document, including the committee comment, with the exception of the quotes and/or extracts from the transcript which will be inserted by the secretariat under the direction of the Chairman once the transcript has been received.

12. In-camera witnesses

Resolved, on the motion of Ms Voltz: That the secretariat contact Witness A, Witness B and Witness C to advise them that the committee's final report contains no adverse statements or findings against their conduct.

13. Adjournment

The committee adjourned at 3.32 pm, *sine die*.

Teresa McMichael
Clerk to the Committee

Appendix 9 Dissenting statement

The Hon Catherine Cusack MLC and the Hon Greg Pearce MLC, Liberal Party

As noted in the Committee's Interim Report, the decision to truncate the Newcastle Rail line at Wickham has been hotly debated for many years, and was first officially proposed by a Report initiated by former Hunter Minister Jody MacKay in 2009. The Interim Report did not disclose any compelling reason for the Government to change its long announced program for truncation of the line on 26 December 2014. “

Notwithstanding the further deliberations of the Committee we could not identify any coherent or cogent case for reinstatement of the rail line nor any reliable reasons to reject the various expert reports referred to in the Interim Report which formed the basis of the Government's decision to remove the physical rail line barrier that separates Newcastle CBD from its own harbour and is considered a detriment to the future vitality and growth of the City. We rejected the Committee's recommendation to reinstate the rail line (Recommendation 9) and note the enormous cost that would be incurred as well as the detriment to growth opportunities for the City which such an action would entail.

Whilst the Report sets out in detail concerns expressed in relation to the planning processes for the State Environmental Planning Policy Amendment (Newcastle City Centre) 2014 and the East End development, we do not consider that the Committee had the appropriate expertise nor adequate expert advice and evidence to reach the conclusions set out in Committee Comments at paragraphs 2.113 to 2.115 nor Recommendations 1 and 2 which we oppose.

The report also sets out the concerns of some concerning the relationship between UrbanGrowth NSW and the Department of Planning and Environment. However it is noted that issues arise continuously in relation to land ownership and the separation of planning and other decisions and also in the necessary dealings between government and the private sector. The evidence before the Committee did not substantiate the comments made in clauses 3.38 to 3.40 nor Recommendation 3 which we also opposed.

Whilst the key reason given in Parliament for conducting this inquiry was to uncover any links between allegedly improper political donations revealed by ICAC's Operation Spicer and Newcastle Planning decisions including truncation of the rail line we note that Operation Spicer as not concluded and no such evidence was received by our Inquiry.

The committee received evidence prior to the Interim Report in relation to the interests of Mr Robert Hawes and resolved to seek advice from ICAC. That advice is now dealt with in chapter 3. Nevertheless some members of the Committee were determined to continue to pursue these matters. The evidence is that any conflict of interest or perceived conflict of interest has been dealt with in accordance with the relevant policies and accordingly we reject paragraphs 3.60 and 3.61, Findings 1 and 2 and Recommendation 4.

We disagree with all planning recommendations in this highly politicised report as these recommendations are not a reflection of our expertise (the Committee has none) nor are they carefully considered or the subject of proper consultation – rather they reflect a desire to crowd-please. Specifically we reject the comments in paragraph 3.84-3.86 and Recommendations 7 and 8.

As we indicated in the Interim Report we deeply regret the publication of evidence submitted by political candidates and their supporters, which contains so much adverse comment and defamatory material. This was published by the Committee in its unsuccessful bid to cast doubt on the integrity of the Rail Line truncation and the Newcastle CBD Renewal Strategy.