

25 February 2015
CONFIDENTIAL



Revd the Hon Fred Nile MLC
Committee Chairman
Select Committee on the Planning Process in Newcastle
and the Broader Hunter Region
and
The Hon Trevor Khan MLC
Chairman
Privileges Committee
Legislative Council
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Dear Committee Chairmen,

**INAPPLICABILITY OF THE PROTECTION OF S. 28 DEFAMATION ACT, 2005 (NSW)
TO THE WRITTEN SUBMISSION BY MR TIM CRAKANTHORP TO THE COMMITTEE**

I write this submission in my professional role as the General Manager of Newcastle City Council (Council).

The purpose of this written submission is that the benefit of the protection of section 28 of the Defamation Act, 2005 (NSW) should be ruled not to extend to protect the defamatory statements made by Mr Crakanthorp in his written submission to the Legislative Council Select Committee of Inquiry on the Planning Process in Newcastle and the Broader Hunter Region (Committee) dated 24 October 2014 (Submission No. 268). The grounds for this submission are set out below.

As both Chairmen are no doubt aware, the Committee was established on 16 September 2014. The Committee's Terms of Reference (refer copy attached as **Attachment 1**) concern five specific planning related matters – items 2(a),(b),(c),(d) and (e). Item 2(c) is not relevant to Council. There is also included a sixth item, item 2(f) specified as “any related matters”.

Item 2(f) must be properly interpreted to have a comparatively narrow application in that the relevant matters that can be legitimately raised with the Committee must be limited to those planning matters that are somehow related to the five foregoing specific planning matters enumerated in the Committee's Terms of Reference. Item 2(f) “any related matters” must be given a limited particular meaning. In other words, the phrase should not be interpreted in

such a manner as to unintentionally substantially broaden the scope of the Committee's Terms of Reference merely because a particular item topic raised in a submission relates or otherwise incidentally pertains to Council, but does not concern a planning matter in some way connected to the five specific Terms of Reference conferred upon the Committee. Such an interpretation would be totally unacceptable as the limited and specific Terms of Reference could be unwittingly and substantially broadened by stealth to encompass matters that are not strictly within the proper scope of the Committee's Inquiry.

One of the key rules of statutory interpretation is the so-called ejusdem generis rule (literally translates to meaning "of the same kinds, class or nature"). Typically, the rule operates in the context of a list of two or more specific descriptors which is followed by a more general descriptor. The rule applies to the otherwise wide meaning of the general descriptor to restrict its meaning and application to the same class of the specific words that precede them.

That the ejusdem generis rule is to be properly applied in the present context is most important as the Committee called on the public to lodge written submissions via the Committee's website by the deadline date of 24 October 2014. In the Committee's letter of invitation dated 30 September 2014 addressed to me in my capacity of Council's General Manager (refer to the copy attached as **Attachment 2**), the statement is relevantly made as follows:

"Please note that no one, including the author, may distribute the submission unless authorised by the committee. Anyone who republishes a committee document apart from the Parliament or its committees is subject to the laws of defamation.

Submissions are confidential until the committee makes them public. Submissions are usually published by the committee and placed on the committee's website...."

It is my fundamental submission that section 28 of the Defamation Act 2005 (NSW) does not, and should not, be allowed to extend to operate to protect written submissions made by individuals to the Committee with respect to matters that are not within the strict and proper scope of the Committee's Terms of Reference. To allow protection against defamation to such so-called "public documents" (as defined in s. 28(4) of the Defamation Act) or parts of public documents represents an abuse of parliamentary process.

Attached, as **Attachment 3**, is a copy of the written submission lodged by Mr Tim Crakanthorp with the Committee on 24 October 2014 which has been published on the Committee's website. Interestingly, the author of the submission did not identify nor describe himself as holding the office of Newcastle City Council Councillor. Almost immediately subsequent to the lodgement of the written submission, Mr Crakanthorp also became recently elected ALP Member of Parliament for the Newcastle State electorate.

Also attached, as **Attachment 4**, is a copy of the Newcastle Herald article "Power, passion in city hall feud", by Ms Michelle Harris, published on the Herald's website on 30 December 2014 and in its newspaper edition on 31 December 2014 (Newcastle Herald article).

The submission claims to address items "2(a), (b), (d), (e) and (f)." of the Terms of Reference. Notwithstanding that Mr Crakanthorp states that "This Inquiry... provides an

opportunity to objectively examine a series of government decisions made in recent months about development in Newcastle..." one of the four main issues canvassed in its submission has nothing to do with items 2(a), (b), (d) or (e) but rather is totally unrelated to any of those foregoing items within the Committee's Terms of Reference. Amongst other matters raised by Mr Crakanthorp under the heading 'Newcastle Art Gallery', he makes the following questionable statements:

"..a consistent 7-6 majority, formed by the use of the Lord's Mayor's casting vote, carried a number of decisions that restructured the Council [sic], removing the [Newcastle] Art Gallery Director and his superior as well as the [Newcastle] Museum Director. The Newcastle Art Gallery Foundation was publicly accused of being in breach of taxation laws and its Chairman accused of misleading its Board.

The unprecedented behaviour conducted by the newly appointed General Manager (introduced to Council by Lord Mayor McCloy) in concert with the Lord Mayor has been very destructive for council morale. For example, there was a great hysteria created about council finances citing poor financial management and excessive debt. Over a year later it was quietly mentioned that there had been an \$8 million overstatement of depreciation...."

Cr Crakanthorp makes a number of recommendations to the Committee on the penultimate page of his submission.

Specifically, Recommendation 4(a) makes the allegation that I and the ex-Lord Mayor "improperly removed a Councillor from the Board of the Newcastle Art Gallery Foundation for the purpose of appointing another Councillor to the position who was more closely aligned to the Lord Mayor" and consequently, that the Committee strongly support an investigation "of the previous Lord Mayor and the current General Manager of Newcastle City Council".

The above allegation is totally false. It appears that Mr Crakanthorp has chosen to re-write history and has conveniently forgotten what actually occurred, and, most critically, that the former Lord Mayor behaved in a totally lawful manner in respect of this particular matter. The allegation is totally without factual basis and reflects Mr Crakanthorp's apparent frustration that his political faction at the time was in a minority on the elected Council and that Council's resolutions were passed by a majority that did not agree with his political view. That political frustration should not be taken out on me and I should not be abused or defamed as a scapegoat.

The former Lord Mayor lawfully appointed a replacement corporate representative onto the Board of Directors of the Newcastle Art Gallery Foundation (a company limited by guarantee that is unrelated to Council) in accordance with the Foundation's constitution. By way of background, the role of the Foundation is to exclusively benefit the Newcastle Art Gallery (which is owned by Council) through financial donations in order to facilitate acquisition of artworks for the Newcastle Art Gallery. Clause 12 of the Foundation's constitution provides that Council's Lord Mayor may directly appoint a corporate representative onto the Foundation Board by simply signing the template form of a written notice of appointment. The authority to so appoint a Council corporate representative is exclusively conferred upon Council's Lord Mayor. That decision and action had nothing to do with me in my role as Council's General Manager as it was the sole prerogative of the former Lord Mayor.

Moreover, the ALP faction Councillors, including Mr Crakanthorp, submitted a Notice of Motion in respect of the Council Representation on the Art Gallery Foundation Board

questioning the legality of such an appointment for consideration by Council at its meeting held on 26 November 2013. At the meeting, the Notice of Motion was withdrawn by the ALP faction and Council resolved to affirm the authority of the Lord Mayor to appoint the Corporate Representative to the Newcastle Art Gallery Foundation Board in accordance with the Foundation's Constitution and endorsed the Lord Mayor's decision under that authority to appoint Council's representative to the Foundation Board.

It should also be noted that the incumbent Labor Lord Mayor has since exercised exactly the same authority.

Recommendation 4(a) appears to have expanded to encompass, in the Newcastle Herald article "...the city's state MP and councillor Crakanthorp said an investigation by the Office of Local Government [sic] should be conducted into the general manager Ken Gouldthorp's interactions with Mr McCloy while he was in office." It is unclear what the source of this statement is as it does not directly correlate to Mr Crakanthorp's statements in his written submission to the Committee.

That Cr Crakanthorp's comments in his written submission are defamatory and constitute a vilification of my good name, character and reputation is beyond doubt. They are malicious in intent and contain numerous imputations that I have:

- (i) improperly conducted my office and responsibilities as General Manager;
- (ii) engaged in potentially corrupt behaviour;
- (iii) been dishonest;
- (iv) colluded with the former Lord Mayor to manipulate Council decisions;
- (v) not behaved impartially and professionally; and
- (vi) not complied with my obligations under the Local Government Act.

Mr Crakanthorp has improperly sought to take advantage of the protection of s. 28 of the Defamation Act provided to those Committee submissions that are not distributed by their authors to third parties prior to their publication on the Committee's website.

It is my submission that the Committee should not afford Mr Crakanthorp the protection of s. 28 of the Defamation Act in the present context of his submissions that stray beyond the Committee's strict Terms of Reference. It is my submission that his comments pertaining to item 2(f) are not properly to be construed as "any related matters" and accordingly should not prima facie attract the benefit and protection of s. 28. Mr Crakanthorp's submission to the Committee deliberately strays beyond the Lawful and proper scope of the Committee's Terms of Reference into matters that are totally extraneous and indeed unrelated to those Terms of Reference.

I submit that Mr Crakanthorp's defamatory allegations are totally incorrect, untrue and lack any justification or substance predominately relying on innuendo and are consequently to be dismissed on the basis that they lack any relevant or supporting factual evidence, as follows:

(a) use of the former Lord Mayor's casting vote

The previous Lord Mayor did not need to use his casting vote. Until his resignation, effective on 17 August 2014, the Lord Mayor, an independent, was usually part of a voting bloc that consisted of a Liberal Party faction (four Councillors) and an Independent faction (three Councillors, including the former Lord Mayor). In

aggregate, the voting block consisted of 7 Councillors, including the Lord Mayor. Hence, it was not necessary for the previous Lord Mayor to use his casting vote, unless a relevant member of the Liberal Party/Independent bloc was on a leave of absence or was an apology.

This matter has nothing do with the Committee's Terms of Reference in paragraphs 2(a)-(e) as it relates solely to the political divisions of the elected Councillors.

(b) Council's decision to remove the Newcastle Art Gallery Director

In my capacity as Council's General Manager, I took the decision to terminate the employment of both the former Newcastle Art Gallery Director and his manager. By way of background, Newcastle Art Gallery is owned by Newcastle City Council and is staffed by Council employees. Those decisions were appropriately taken by me after an independent investigator's report was provided to Council on 23 February 2014, and, in accordance with the independent investigator's report recommending that disciplinary action be taken against both Council employees for having engaged in serious breaches of, inter alia, Council's Code of Conduct.

This matter relates to Council staffing and has nothing to do with the Committee's Terms of Reference in paragraphs 2(a)-(e).

(c) Removal of the Newcastle Museum Director

Council is the owner of the Newcastle Museum and employs the relevant staff that operates the Museum. Council embarked on a major management restructure in late 2013 as a consequence of my review of the management structure in place when I was appointed as the new permanent General Manager in September 2013. My recommendation for an overhaul of the management structure, including the reduction of the number of functional Directorates reporting to me from four to three was endorsed by the elected Council. The management review involved an overall reduction in employed full time staff of 100 in a total staff complement of 1,100. This decision was also made in the context of reducing Council's payroll costs in an environment where the Council's financial sustainability was at risk unless substantial operating cost savings were made in all areas of Council's operations. Council's Museum Director role was made redundant, consistent with the substantially overhauled management structure, which included the recruitment of all new senior managers who were being employed on five year standard Office Of Local Government contracts for the first time in lieu of the scenario that previously applied whereby all management personnel (other than the General Manager) were employed under the State Award.

This matter relates to Council staffing and has nothing to do with the Committee's Terms of Reference in paragraphs 2(a)-(e).

(d) Council's decision to suspend its dealings with the Newcastle Art Gallery Foundation

This decision was taken by the elected Council at the Extraordinary Council Meeting held on 24 February 2014 to suspend its dealings with the Newcastle Art Gallery Foundation. The Council decision was carried by a vote of 8 (including a Greens Councillor) in favour of the recommendation and four against. The decision was made by the elected Council following an oral presentation to Councillors by a Partner of PriceWaterhouseCoopers (PWC) Legal based on a lengthy confidential written investigation report and legal advice prepared by the same Partner that was subject to legal professional privilege.

Interestingly, Mr Crakanthorp was not present at that Extraordinary Council Meeting and obviously was not in attendance to hear the presentation details and analysis provided by the external lawyer in a closed confidential session. Hence, it would appear that Mr Crakanthorp is disadvantaged by not having had the benefit of the presentation and therefore not being in possession of all of the relevant information pertinent to the elected Council's decision. Notwithstanding his absence from the Council presentation and decision, he chooses to use this Council decision to launch a defamatory vendetta against me which appears to be based purely on ignorance of the facts and not being properly informed and without a proper understanding of those facts.

In respect of the matters relating to the Newcastle Art Gallery Foundation, Council's actions were totally justified in accordance with the investigation findings in the report it received from PWC.

Ironically, it was on 28 October 2014, being only four days after Mr Crakanthorp lodged his submission with the Committee, which the elected Council voted to lift the suspension on its dealings with the Newcastle Art Gallery Foundation. In that sense at least, Mr Crakanthorp's submission has been overtaken by subsequent events and is effectively redundant. However, the damage to my reputation remains and endures and I am left to suffer the on-going adverse consequences.

This matter relates to Council operational matters and has nothing to do with the Committee's Terms of Reference in paragraphs 2(a)–(e).

(e) My appointment as General Manager of Newcastle City Council

Mr Crakanthorp baldly and incorrectly asserts that I took "unprecedented behaviour conducted by the newly appointed General Manager" and that I was introduced to the Council by the previous Lord Mayor. This allegation is patently false and misleading. The disciplinary actions taken by me as Council's General Manager were totally justified by the findings of the investigations conducted by external independent professionals that had been engaged by Council to investigate inappropriate and unacceptable behaviour by certain Council staff.

This matter was reported to ICAC in accordance with my obligations as the principal officer of a public authority under s.11 of the Independent Commission Against Corruption Act 1988. ICAC subsequently responded to me confirming that Council had appropriately investigated the matter and was satisfied with the disciplinary

action taken against the two former Council employees. This occurred with a full professional independent investigation and appropriate action was taken. Neither of the two individuals affected elected to appeal the decision via the industrial or legal avenues readily available to them.

Insofar as my appointment as General Manager is concerned, I was recruited into the permanent General Manager role with Council after a, exhaustive and impartial recruitment process had been undertaken. Specifically, the elected Council appointed a General Manager Recruitment Panel (Panel) comprising 5 Councillors and an independent recruitment consultant. The Panel selected and engaged an external recruitment agency, Watermark Search International, to conduct a comprehensive public recruiting process. I was short-listed for an interview by the Panel, amongst many candidates. Ultimately, the Panel recommended only one candidate, being myself, to the elected Council during a closed confidential Extraordinary Council Meeting held on 16 September 2013. The Council resolved to approve my appointment after receiving a briefing from the General Manager Recruitment Panel recommending my appointment.

Until I applied for the General Manager role with Council, I had not previously met, heard of, or known the previous Lord Mayor. I categorically put on the public record that I was not merely introduced to Council the Lord Mayor, but rather through a full merit selection process. Furthermore Mr Crakanthorp is fully aware of the process undertaken and his statement is misleading and vexatious.

This matter relates to Council recruitment arrangements pertaining to the appointment of a General Manager and have nothing to do with the Committee's Terms of Reference in paragraphs 2(a)-(e).

(f) Council financial sustainability - External assessment of Council's financial sustainability

(i) New South Wales Treasury Corporation's Assessment

Treasury Corporation's (TCorp) Financial Assessment and Benchmarking Report dated 4 October 2012 provided an assessment of Council's financial health. TCorp compared the Council's key ratios with other councils in DLG Group 5. The key observations were:

- Council's financial flexibility as indicated by the Operating Ratio and Own Source Operating Revenue Ratio is generally below the group's average
- Council's DSCR and Interest Cover Ratio are below the group average and in the medium term Council's forecast ratios fall marginally to be around benchmark
- Council was in a sound liquidity position which on average is above the group's average liquidity level
- Council's performance in terms of its Building and Infrastructure Asset Renewal Ratio and Infrastructure Backlog are well below benchmarks and the group averages

TCorp noted that Council management were aware of the position at the time and the challenges that the Council faces in the medium to long term. TCorp made the following recommendations:

- The current Long Term Financial Plan (LTFP) and capital expenditure program is likely to lead to Council becoming illiquid by 2019
- A review of the LTFP assumptions should be undertaken to identify a sustainable way forward, whether that be by identifying new revenue sources, revising service levels, or rescheduling capital expenditure and associated borrowings to ensure that all liabilities are able to be met as required
- The additional borrowings currently scheduled within the LTFP of \$92.2m from 2014 to 2022, contribute to Council's potential future liquidity issues. If the liquidity issues scheduled in 2019 were addressed but the scheduled additional borrowings were still utilised then Council will not be in a position to meet the increasing repayments by 2022

(ii) Financial Advisory Panel & Fiscal Star

Council's course of action following TCorp's review of the LTFP was to undertake a strategic review. The report produced was called the Integrated Strategic Financial Analysis (ISFA). Based on the ISFA strategies, advice was sought from the Financial Advisory Panel [an independent group of Newcastle based individuals with business and government experience] and Fiscal Star (an independent consulting practice run by Professor Percy Allan, Visiting Professor at the Macquarie Graduate School of Management) which confirmed the following:

- Council is not financially sustainable in the medium to long term
- Council will become insolvent as early as 2017 if no corrective action is taken
- The infrastructure backlog is a serious issue to be addressed
- Taking on extra debt is a high risk strategy and should be avoided
- Taking on large scale capital projects should be avoided (until the solvency and deficit issues are addressed)
- Bringing budgets back into surplus is essential
- No one single solution will work and all solutions will have an impact on the community and services to varying degrees.
- A number of strategic initiatives is required in order to adequately address the budget issues

(iii) Council's Audit Committee

Advice from the independent members of Council's Audit Committee also stated:

- Council's future financial position is deteriorating and unsustainable
- This situation requires immediate and decisive action
- Decisions must be made based on current, reliable, independently tested information and be free from political influence
- Given the risks associated with the assumptions and achievement of proposed sustainability options, the current 'Recommended Option' may not be sufficient to avoid the projected ongoing future financial difficulties.

(iv) Council's External Auditor's Assessment (Report to Council 2012/13)

In the Council workshop meeting held on 19 November 2013, PriceWaterhouseCoopers (Council's external Auditor) noted the following regarding Council's 2012/13 Financial Results:

Operational Performance:

- Council needed strategies to manage financial stability

Asset Management:

- Council required strategies and systems for managing the performance of its commercial and infrastructure asset base, including service levels, maintenance, renewal and replacement and future options.
- Required annual maintenance was significantly higher than current annual spend with Building maintenance contributing mostly to the shortfall

(v) Chronology of the depreciation "overstatement and adjustment"

- The overstatement of depreciation of \$8.7 m arose in the 2011/12 financial statements (under the tenure of the last council)
- Issue was identified during the finalisation of the 2012/13 financial statements
- 2011/12 results were restated
- Communication of the restatement 2011/12 and revision of 2012/13 was communicated to council and made public (council workshops and meetings - September to November 2013)
- Budget for 2013/14 was adopted in June 2013 (prior to identification of the overstatement) and therefore included the overstatement
- Budget for 2013/14 was revised in March 2014 (the adjustment was only determined around the time of preparation for the December 2013 quarterly review)

(vi) Impact of the depreciation adjustment on 2013/14 performance

- If the depreciation matter had been identified prior to the adoption of the 2013/14 budget the deficit would have been \$21.2m (instead of \$29.9m) – either budget amounts would position NCC as one of the worst performing councils in NSW.
- Key decisions were made including (1) accelerate the staff reductions and restructuring and (2) actively turnaround Summerhill. Other initiatives of smaller scale were also addressed.
- These key initiatives have been successfully implemented resulting in a significant improvement in council financials (even with the depreciation adjustment excluded) – approximately \$14.5m

(vii) Was there a financial emergency in the first place?

- The depreciation was not manipulated to create a financial emergency (the overstatement was a legacy from the last council and prior to any determination that there was a financial crisis)
- An adjustment of the depreciation would not change the conclusion that council financials was not sustainable nor the conclusions regarding solvency if not action was taken
 - The financial projections would still reflect significant (and unsustainable) operating deficits – projected at up to \$29m to \$30m per annum (rather than \$37m as noted on the 2012/13 Delivery Program)

- Ongoing deficits would have resulted in there being insufficient funds generated for capital works, the erosion of council reserves and ultimately insufficient funds to run council and maintain council assets.
- There was (and still is) an unsustainable asset backlog that still needs to be addressed – currently estimated at \$97m
- Depreciation is added back to determine funds available for capital works (including asset renewal) – therefore the **depreciation** adjustment has no impact on funds available – it is the other expense lines which determine the improvement in the funding position
 - current reserves are not adequate to address the asset backlog, and
 - there would be no capacity would exist to resolve the funding shortfall with ongoing operating deficits)

(vii) Is depreciation a “fudge factor”?

- Could not be construed as a fudge factor due to the overstatement arising in the last council (and before a financial crisis was recognised)
- There has been no change in depreciation policy– however auditors sought some changes in council approach regarding partial disposal – doing this for the first time was a factor:
 - 2010/11 – asset revaluation for roads, pathways, drainage etc – resulted in significant increase in the value of these assets with increase in depreciation (from \$33.7m to \$42.4m)
 - 2011/12 – auditors requested council recognise partial disposal of these assets where asset renewal (to avoid overstatement of NBV) – this was the first year such an exercise occurred) – new approach combined with key staff being absent meant issue was not identified.
 - 2012/13 – practice of using budgeted depreciation as proxy for actual depreciation during year meant issue was only identified at year end for 0212/13
- Depreciation calculation is audited (external audit) to confirm Council has applied policies correctly. The audit did not pick up the error in 2011/12.

The above analysis confirms and verifies the serious factual nature of Council’s financial sustainability issues and is further supported by the fact that Council will shortly be lodging a Special Rate Variation of 8% with IPART. The above summary amply demonstrates that there is absolutely no truth to Mr Crakanthorp’s superficial and dismissive comments concerning Council’s financial sustainability issues and unfortunately reflects poorly on his understanding and comprehension of those very important matters.

Again, the financial position of Council has nothing to do with the Committee’s Terms of Reference in paragraphs 2(a) – (e).

In conclusion, the matters detailed above that are raised by Mr Crakanthorp in his written submission fall outside the proper scope of the Committee’s Terms of Reference. I reiterate that they are categorically untrue and consequently adversely affect my good name and reputation due to their defamatory nature.

I request that the Committee rule:

- (i) that the false allegations concerning me are improper and do not validly fall within the scope of the Committee’s Terms of Reference;

- (ii) that the Committee apologise for publishing Mr Crakanthorp's submission that contains material of a defamatory nature and beyond the Committee's Terms of Reference on their website.
- (iii) that Mr Crakanthorp be obliged to issue me with a suitably written and unqualified apology; and
- (iv) that the matters raised by Mr Crakanthorp not be referred to, either directly or indirectly, in the Committee's Final Report due on or by 5 March 2015.

Yours sincerely

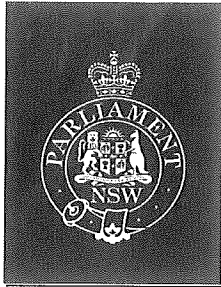
Ken Gouldthorp
GENERAL MANAGER

Attachment 1: Select Committee on the Planning Process in Newcastle and the Broader Hunter Region Terms of Reference;

Attachment 2: Committee Chairman letter dated 30 September 2014 addressed to Mr Ken Gouldthorp, General Manager, Newcastle City Council, inviting the lodgement of a submission;

Attachment 3: Written submission dated 24 October 2014 by Mr Tim Crakanthorp to the Inquiry into Planning Process in Newcastle and the Broader Hunter Region;

Attachment 4: Newcastle Herald article dated 30 December 2014 by Michelle Harris "Power, passion in city hall feud".



LEGISLATIVE COUNCIL

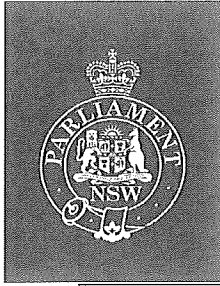
SELECT COMMITTEE ON THE PLANNING PROCESS IN NEWCASTLE AND THE BROADER HUNTER REGION

Inquiry on the planning process in Newcastle and the broader Hunter region

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.

Committee membership

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



LEGISLATIVE COUNCIL

SELECT COMMITTEE ON THE PLANNING PROCESS IN NEWCASTLE AND THE BROADER
HUNTER REGION

30 September 2014

Mr Ken Gouldthorp
General Manager
Newcastle City Council
PO Box 489
Newcastle NSW 2300
mail@ncc.nsw.gov.au

Dear Mr Gouldthorp

Inquiry on the planning process in Newcastle and the broader Hunter region

As you may be aware, the NSW Legislative Council's Select Committee is currently conducting an inquiry on the planning process in Newcastle and the broader Hunter region. A copy of the terms of reference and list of committee members is enclosed for your information.

On behalf of the committee, I would like to invite you to make a submission to the inquiry. The closing date for submissions is **Friday 24 October 2014**.

The committee intends to hold public hearings on Friday 7 November, Friday 21 November and Monday 24 November 2014. Further details will be published on the website as they become available.

Submissions can be lodged via the committee's website at www.parliament.nsw.gov.au/newcastleplanning, emailed to newcastleplanning@parliament.nsw.gov.au, faxed to (02) 9230 2981, or hard copies can be mailed to: The Director, Select Committee on the Planning Process in Newcastle and the Broader Hunter Region, Legislative Council, Parliament House, Macquarie Street, Sydney NSW 2000. Background information about [Legislative Council committees](#) and information about [making a submission](#) is attached to assist you with your submission.

Please note that no one, including the author, may distribute the submission unless authorised by the committee. Anyone who republishes a committee document apart from the Parliament or its committees is subject to the laws of defamation.

Submissions are confidential until the committee makes them public. Submissions are usually published by the committee and placed on the committee's website. If your submission contains information you do not wish to be made public, please mark it **confidential**. The committee will

consider all requests for confidentiality, but is not obliged to keep a submission confidential if it determines that it is not in the public interest to do so.

If you would like further information about the inquiry or making a submission, please do not hesitate to contact Ms Emma Rogerson on (02) 9230 2898. Please feel free to forward this information to any other interested parties.

The committee would greatly appreciate your contribution to this inquiry.

Yours sincerely

Revd the Hon Fred Nile MLC
Committee Chairman

Submission
No 268

**INQUIRY INTO PLANNING PROCESS IN NEWCASTLE
AND THE BROADER HUNTER REGION**

Name: Mr Tim Crakanthorp

Date received: 24/10/2014

24 October 2014

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

Dear Director

I submit the following for consideration by this Select Committee and its Chairman, Rev the Hon Fred Nile. As per the terms of reference of the committee, my comments relate to 2 (a), (b), (d), (e) and (f). While these matters are complex, and have occurred over time, I have attempted to keep this submission brief.

This Inquiry is a timely and appropriate response to revelations at the recent Independent Commission Against Corruption (ICAC) hearings. It provides an opportunity to objectively examine a series of government decisions made in recent months about development in Newcastle, all of which involve one or more of the people who have had their behaviour and motivation impugned during these hearings.

There are four main issues that need to be closely re-examined in light of this information:

1. The termination of the Newcastle railway line at Wickham
2. The proposal to run a light rail track from the new termination point at Wickham, easterly along the existing rail track to Worth Place, then along new lines down Hunter Street to Pacific Park
3. The decision to massively increase the allowable building heights on land owned by GPT and Urban Growth contrary to the recently reviewed plans
4. The decision not to support the Newcastle Art Gallery expansion and refurbishment, and a number of other decisions by Newcastle City Council during the current term

Termination of Newcastle rail line

The issue of how the Newcastle rail line should function as the city expands has been debated for many years and through a number of governments. It is an issue that has divided our community. Everyone can agree that they would like to see better access across the rail corridor between Hunter Street and the Harbour Foreshore. It is the manner in which this should be done, and what is lost in the process, that causes disagreement.

The current decision has an all-or-nothing approach. It does not consider alternatives such as modern, safe level crossings as are used in Perth. Hunter (then Honeysuckle) Development Corporation built, in anticipation of the line having improved access points, the foundations of crossings at locations such as Steel St and Worth Place.

All sides talk of connectivity, but surely we have to think of the wider connectivity of the Region. I believe that a rail line which connects the centre of our city with the wider Hunter Region, and Sydney, is an invaluable asset for our future; an asset that will become increasingly important as new revitalisation projects come on-line. Projects such as the new 5,000 student university campus, the new law courts, and the proposed GPT/Urban Growth development. With these developments and the increasing population of surrounding suburbs, parking will become more and more difficult. The need to have effective, viable, connective public transport into the city is critical.

The Newcastle Urban Renewal Strategy (2012) states "(s)everal key initiatives will have significant short-term benefits as well as being catalysts for stimulating a wider change in the city centre." It then nominates "providing additional connections across the rail corridor for pedestrians, cyclists and cars" as a priority. Labor's recently released *Plan for the Revitalisation of Newcastle* outlines new vehicle and pedestrian crossings at Steel St, Worth Place and Wolfe St. Added to this would be new pedestrian crossings near the Hunter St TAFE campus and at the ends of both Darby St and Brown St.

Significant growth centres such as Maitland and Singleton, as well as other important Hunter centres such as Scone and Dungog have become reliant on the train as a reliable, efficient and timely method of both commuter and leisure travel. These people have not been heard in the decision-making process. Until recently, the Liberal member for Maitland, Robyn Parker, was a

staunch advocate of retaining the line into Newcastle. She understood the benefits to her constituents. Then, it appears, she was pressured by Liberal ministers to keep quiet on the matter, and now, is not contesting the election in March 2015.

GPT saw the advantages of having an existing rail line within a block of its proposed development (their website states that its Melbourne Central project is "conveniently located directly above Melbourne Central train station"). It was only when the GFC occurred that their stance changed dramatically.

The decision to terminate the Newcastle service on 26 December 2014 was made with no clear alternative in place; this is not just bad planning but will be extremely disruptive. The Transport Minister has admitted that this decision is not one that improves public transport. There has been no cost-benefit analysis, and not even the most rudimentary costings have been made available for the proposed light rail. No costings, no details and no schedule for light rail - only a termination of the existing service. It appears that the Baird government's only commitment is to secure the rail corridor for development before the March election, and the only way they can do this, that does not require a great deal of planning, is terminate the service past Wickham.

The Proposed Light Rail

For some time the government has been dangling the idea of light rail to replace heavy rail. The implication was that the existing tracks would be used for the light rail following some cosmetic treatment including removing fences etc.

There was a great deal of surprise in our community when the former Lord Mayor Jeff McCloy announced last year that the light rail should run down Hunter Street. There was even greater surprise earlier this year when the Minister announced that the proposed route would in fact run down a large part Hunter Street and into Scott Street. Many people commenced speculating as to who was making these decisions, and why?

There are two significant impacts of this plan.

The first is the effect on businesses in Hunter Street during the construction process. While we have

not been given even the slightest advice as to how long the light rail construction will take, it will obviously be an extended period over many months. This will be compounded by the possibility of previous tram tracks and other services in Hunter Street. During this time it is impossible to imagine how people will be able to access businesses in the street, let alone get across to the Foreshore. It is equally unlikely that any form of compensation will be available. There does not seem to have been any thought given to this impact.

The second impact is that the land beneath the current rail line is not substantially undermined and, therefore, provides prime redevelopment potential. Again, the government's position going into the last election, and until very recently, was that this land would be retained as a transport corridor. The Minister for Planning recently announced that this was no longer the case and despite specific questioning in Parliament this week, the Government has not denied that the land would be developed.

These decisions increasingly appear to the community to have been greatly influenced by former Lord Mayor McCloy. Problematically for all involved, there has been very little transparency around how these decisions were made or what matters the relevant ministers took into account. Novocastrians are finding it almost impossible not to suspect that Ministers are more influenced by what benefits developers rather than what is best for our community. These are questions that I believe this inquiry should delve into and answer.

Increased CBD building heights

A revision of the Local Environment Plan for the city has been underway for some years. A proposal, with increased building heights in the CBD, was on display for the latter half of 2013 and received general community approval. Late in the display period GPT and UrbanGrowth, the major landowners of sites along and around the Hunter St Mall, made a submission calling for a further substantial increase in the height limits on their properties. This was a considerable change from their previous, approved, concept plans for the same site. Subsequently, a revised plan went on display incorporating these new heights for a very brief submission period.

The Newcastle community was outraged with these new plans and a substantial number of

submissions were lodged objecting to these new, inappropriate heights. The Minister has since announced the acceptance of the plan with a few, superficial amendments.

There are a number of important elements to this issue. Perhaps the most unavoidable is the fact that there are substantial mine workings under the CBD and these pose serious limitations on what can be built. GPT/UrbanGrowth maintain that the additional heights are required to allow for the cost of grouting these cavities below the city. There has been a call for the state government to accept that the restitution of these mine workings, and that a program to fill these workings should be undertaken by the NSW government. This would ensure that all property owners were treated equally and building heights could be set at the original Newcastle Urban Renewal Strategy (NURS) heights - heights that underwent extensive community consultation and agreement.

The NURS 2012 states:

- Reduce building heights where testing has confirmed a lack of feasibility as well as in areas of the city where a transition in height is needed between the taller city buildings and surrounding lower-scaled areas.
- Ensure the built form responds appropriately to the heritage character and topography of Newcastle
- Provide appropriate controls on key redevelopment sites along with a range of permitted uses to encourage their development.

The current government has overruled this strategy and, against its own guidelines, increased heights in the historic precinct of Newcastle East.

Again, this process was rushed through with little time for community consultation.

It has also been revealed today that Newcastle Council's own independent expert advice that was highly critical of the increased building height limits was kept from both council and the public.

It is widely commented, by residents and visitors alike, that Newcastle has an extremely charming cityscape with many fine buildings; commencing with Customs House near the harbour, leading up the hill and topped by Christchurch Cathedral. The proposed new building heights will substantially

impact on that cityscape.

Given that the consent authority, the Planning Minister, is also directly responsible for UrbanGrowth there would seem to be a substantial conflict of interest.

There has been a great deal of comment in recent years about the decline of the Newcastle CBD. What has not been discussed is GPT's contribution to this decline. GPT commenced acquiring land in the CBD about ten years ago and announced major plans for a CBD shopping centre.

In fact, GPT purchased these sites in full knowledge of the surrounding infrastructure and the existing planning regulations. The purchase took place over time, and many existing tenants were hustled out of their premises on the basis that redevelopment would commence soon. Announcements were made about what was being proposed. The Newcastle community was very responsive to these proposals and GPT were given a great deal of community support.

GPT's attitude changed quite dramatically, however, about the time of the GFC and there were suddenly a number of obstacles in the path of the development. The first notable one was the rail line. What had originally been an attraction to the developer – building a shopping centre adjacent to a railway station that provided direct access from the Central Coast, Hunter Valley and the Mid-north populations - became a demand for the NSW government to spend around \$150 million to remove the rail line. What went wrong?

The only conclusions one can draw are either GPT was looking for an excuse not to go ahead with the project they had been talking up for years (they were in the middle of an extensive, expensive expansion project at nearby Charlestown Square), or the due diligence undertaken by GPT was faulty and they had not properly evaluated the sites they had purchased. Whichever it was GPT certainly were not explaining. They subsequently sold a significant amount of their land to UrbanGrowth for an apparently low price.

Somehow, we seem to have reached a point where GPT and UrbanGrowth have successfully submitted an application for a significant increase in the allowable building height for their land. Apparently the purpose in doing so was to seek the necessary DA approvals for the maximum building height for their sites. Now these applications have been rubber-stamped, it is widely anticipated that they will seek to sell the land.

The Newcastle cityscape has been developing for over two centuries and been nurtured by state and local planners, especially over the last four decades (Newcastle appointed a qualified town planner in 1971). It seems that the future of the cityscape will be determined by the mines that are beneath it or the value of the land owned by two large developers, not by planning principles or aesthetics. One has to wonder why this city has been singled out for this special degree of non-planning and why the NSW government chose to follow this course?

Even before Newcastle City Council developed their Newcastle Urban Strategy the local community has long envisaged that "(t)he City Centre will become a vibrant and safe place to live and work, capitalising on its beachside location, harbour views and rich built heritage." Novocastrians are rightly proud of their history and are rediscovering it for a range of reasons. People want to live in the historic East End and modern entrepreneurs are also embracing the ambiance of the area. It is recognised as valuable and as an attraction similar to the Rocks precinct in Sydney.

The approach of this government, however, has been to ignore the planning, consultation and processes that are the foundation of documents such as the 2012 Newcastle Urban Renewal Strategy, the DCP and LEP. These plans had sensible, sustainable height limits, were sympathetic to existing precincts, and encouraged higher development in western precincts; the current Planning Minister, under dubious circumstances and with little transparency, has summarily overturned them.

Newcastle Art Gallery

For some time it has been accepted that the Newcastle Art Gallery, with its fabulous collection, has long outgrown its available space.

Upgrading and renovating an Art Gallery is a complex and controversial business. Newcastle City Council had been dealing with the matter for almost a decade. Early plans were deemed to be too expensive and new plans were developed prior to the 2012 council elections.

The city revitalisation strategy had the establishment of the Newcastle Museum and the renovation of the Art Gallery at its core. It recognised that Newcastle had sufficient attractions to entice visitors

to stay in the city rather than pass through and go to the vineyards or Port Stephens. A better set up Art Gallery and a modern museum, especially one appealing to children, the Honeysuckle Precinct and the Maritime Centre would provide a core of activities that would be capable of attracting visitors and holding them for more than a few hours. This was the planning context of the Art Gallery extensions – a Civic Cultural Precinct - and was one that was supported by the tourist industry.

A total of \$7 million, \$1 million from the community and \$6 million from Council through a special rate levy, was committed to this project. Applications were made to both the Commonwealth and State governments for matching grants. Prior to the 2011 NSW elections there was bi-partisan support for the project; the Liberal candidate, Mr Tim Owen, was particularly supportive. The Commonwealth government finally gave its approval subject to matching funds from the NSW government. This was just prior to the NSW local government elections.

The election of Jeff McCloy as Lord Mayor dramatically changed the situation. McCloy, in conjunction with a block of Liberal Party Councillors, almost immediately began talking down the Art Gallery redevelopment. Astonishingly, the Liberal Member for Newcastle, Mr Tim Owen, who had been such an outspoken supporter of the project to this point, reversed his position.

Meetings took place between Mr Owen and Mr McCloy which gave the impression to many that Mr Owen was very much under the influence of Mr McCloy. This perception has been increasingly shared by many in our community, particularly following the information revealed at the ICAC hearings as it shed light on the background to Mr Owen's unexpected change of position. Indeed, Mr Owen met then Lord Mayor McCloy the same day he was interviewed by ICAC investigators.

Subsequently a consistent 7-6 majority on Newcastle City Council, formed by the use of the Lord Mayor's casting vote, carried a number of decisions that restructured the Council, removing the Art Gallery Director and his superior as well as the Museum Director. The Newcastle Art Gallery Foundation was publicly accused of being in breach of taxation laws and its Chairman accused of misleading its Board.

This unprecedented behaviour conducted by the newly appointed General Manager (introduced to the Council by Lord Mayor McCloy) in concert with the Lord Mayor has been very destructive for council morale. For example, there was a great deal of hysteria created about council finances,

citing poor previous financial management and excessive debt. Over a year later it was quietly mentioned that there had been an \$8 million overstatement of depreciation.

The Council suspended contact with the Art Gallery Foundation, an organisation that has raised many millions of dollars for the acquisition of art works. Subsequently, it was indicated that relations could only be restored if the Chairman was removed. The forced resignation was achieved months ago but relations still have not been re-established. A number of donors have indicated that they are reviewing their future plans and the Margaret Olley Trust have announced that they will not be making some planned donations. The behaviour of these people has seriously damaged a number of long-term relationships to the detriment of the Art Gallery.

Recommendations

1. That the details of the decision-making process to cut the Newcastle rail line at Wickham be made public; including the rationale for the terminus location and its ability to be fit for purpose (that is, as an intermodal interchange for buses, trains, trams and taxis).
2. That the detailed process for the decision leading to the route of the light rail line in Newcastle be made available to the public.
3. That all submissions regarding the increased heights of the GPT/Urban Growth be made public and that the decision-making process to allow the increased heights be made public.
4. That the committee strongly support an investigation of the previous Lord Mayor and the current General Manager of Newcastle City Council with regard to:
 - a) The attempt by the current General Manager and ex-Lord Mayor to improperly remove a Councillor from the Board of the Newcastle Art Gallery Foundation for the purpose of appointing another Councillor to the position who was more closely aligned to the Lord Mayor.
 - b) Whether there had been communication between the General Manager and/or the Lord Mayor and the state government, at any level, regarding the Art Gallery that was not

reported to the Council.

5. Establish and report to the Parliament on whether there was departmental advice prepared for Premier O'Farrell regarding the application for matching funds for the Newcastle Art Gallery extensions. Was the department cognisant of the issue, and was the Premier advised of a departmental view on the redevelopment?
6. Have there been other examples when both the Commonwealth and the local Council have committed to funding a project where the NSW government has subsequently refused?

There is a strong perception growing across the Newcastle community that the NSW government, including the former Liberal member for Newcastle, Tim Owen, was inappropriately influenced by ex-Lord Mayor McCloy. This is particularly in relation to decisions about the redevelopment of Newcastle Art Gallery and, potentially, the removal of the existing rail line and the ad hoc proposed light rail route. Many of the decisions made by the current Liberal government in relation to Newcastle development have been poorly planned, lack details such as costings, seem to benefit small sections of the community rather than the majority, absolutely lack transparency and have not provided the community with adequate opportunity to give their input. Given this, it is now essential that Premier Baird institute a formal Inquiry into this whole matter with a view to having these tainted decisions reversed.

Yours sincerely

Tim Crakanthorp

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Power, passion in city hall feud

By MICHELLE HARRIS State

Dec. 30, 2014, 10:30 p.m.



FACE OFF: Tim Crakanthorp, left, wants an inquiry into dealings between the council's general manager and Jeff McCloy, right.

FORMER lord mayor and corruption watchdog target Jeff McCloy has rubbished claims that he and Newcastle City Council's general manager improperly influenced the council's views or processes on matters including the art gallery redevelopment.

But the city's state MP and councillor Tim Crakanthorp said an investigation by the Office of Local Government should be conducted into general manager Ken Gouldthorp's interactions with Mr McCloy while he was in office.

As the year draws to a close, relations between Mr Gouldthorp and some councillors appear at rock bottom, after both Labor and Greens representatives accused him in separate submissions and evidence to a parliamentary inquiry of riding roughshod over the elected council in doing the bidding of the then lord mayor.

Cr Crakanthorp told the inquiry that the “unprecedented behaviour” of Mr Gouldthorp “in concert with the lord mayor has been very destructive for council morale”, citing as an example the “hysteria” whipped up over the council’s troubled financial position before an \$8 million accounting error was found.

He called on the inquiry to support an investigation of Mr McCloy and Mr Gouldthorp in relation to matters including the “attempt by the current general manager and ex-lord mayor to improperly remove a councillor from the board of the Newcastle Art Gallery Foundation for the purpose of appointing another councillor to the position who was more closely aligned to the lord mayor”.

Greens councillor Therese Doyle told the inquiry she thought “there is reason to believe council staff have been directed not to provide advice to the elected councillors” in relation to changes to the city’s planning controls.

Mr McCloy hit back in a second right of reply lodged with the inquiry, which is looking into city planning decisions.

He said Cr Crakanthorp should have raised previously within council or with the state government the problems he had with council processes, instead of now “merely trying to create political mileage at my expense”.

Mr McCloy said the majority of the council had voted to support the government’s urban renewal strategy while he was in City Hall.

“I watch with interest as Cr Doyle and Cr Crakanthorp ask for further investigation into the process without anything but their opinion that it wasn’t right,” he wrote. “Both had a minority view on the council of the day and failed to accept a view that was different to their own.”

Cr Crakanthorp has said an Office of Local Government investigation is needed once the Independent Commission Against Corruption delivers its findings from investigations into Mr McCloy and others.

He said the failure of staff to brief councillors on the advice of the council’s own advisory panel of architects about the government’s city planning control changes was a “prime example” of the problems.

Mr Gouldthorp told the inquiry that Cr Doyle's evidence that the council failed to do its duty in relation to the city planning changes was "categorically incorrect", and "grossly misleading" in parts.



Newcastle Herald

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