

**Supplementary
Submission
No 102a**

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

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Aspects of the Planning Process in Newcastle - Tale of two cities



Executive Summary

Premier Baird has recommitted his Government to the revitalisation of Newcastle. But this should not be at the cost of probity and loss of public confidence in our planning process. The ends do not justify these means. Absent is a transparent, reliable, robust business and social case supporting some proposed large public investment including transport, spot rezoning of the CBD (with expanded building heights and density) and King Edward Park Headland reserve.

This submission relies upon my earlier submission dated 20 October 2014 that provided a checklist of statutory and related government material including the Public Sector Ethical Framework and other safeguards. These safeguards were put in place for just the kinds of evaluations and planning processes that are under consideration. The Newcastle community has long held legitimate concerns about non-compliance with these safeguards – but not with the need for sensible urban renewal and growth.

The important distinction between public good and private interest has become seriously blurred in the region. Newcastle has become a plutocracy with an unprecedented number of unlawful payments made to local politicians by prominent developers and other business interests (disclosed by the ICAC) with the expectation or perception of reciprocity of political/planning favours. This has fundamentally tainted the planning process.

In this submission, I observe, with the provision of examples, the dominant influence of a climate and/or network that is conducive to systemic corruption. This has fundamentally distorted the planning processes to render those controversial projects related to the rail, the SEPP 2014 spot rezoning and King Edward Park unsafe and unsound. Due process and probity considerations warrant their immediate rescission before further public money is spent and public dislocation occurs.

The impending findings of ICAC's Operation Spicer and the Upper House Inquiry have the potential to expose serious criminal conduct including corruption, a high risk of serious and substantial waste of public money and, maladministration. These findings are likely to reflect directly on the integrity of the planning process in NSW, including in Newcastle. Proceeding with the small number of highly contested development decisions before these findings are available to the public, suggests at the very minimum, undue haste and once again a failure of due process.

1. Context

Newcastle has been regarded as the quintessential Australian town by marketing organisations. It has been the test bed of many new consumer products.

In 2011, *Lonely Planet*¹ named Newcastle NSW, the 9th best city in the world.

Newcastle has also led the western world in the prevention of alcohol related (non-domestic) violence by the adoption of evidence based cost saving solutions in collaboration with the local community.

How do we then reconcile our international positive reputation with the ignominy and shame associated with the revelations arising from the recent ICAC investigations and hearings that have cast serious doubt on the integrity of our planning process²?

Never has such an Inquiry of its type in Australia resulted in the resignations from office of so many elected officials and other MPs moving on to the cross benches.

Newcastle has unfortunately become a Wild West town run by wealthy cowboys and it is tough luck for the poor Indians.

Why would so many donors (primarily property developers) and recipients of political “donations” go to such extraordinary lengths to conceal and in some cases, falsely deny under oath these transactions if there was no expectation of favours that would distort the planning process?³

2. The arguments against “business as usual”

Mr Edward Crawford Chairperson Hunter Chapter of the Property Council put the following argument in his organisation’s Newcastle Herald opinion article “City renewal must go on regardless of ICAC” on 8 August 2014,

“...Any assertion that there must be some link between the ICAC hearings and urban renewal projects in Newcastle is speculation. To call for an inquiry implies that the entire departments of Planning and Infrastructure, and Transport, have somehow been unduly influenced by junior MPs. This is clearly not the case...”.

¹ <http://www.lonelyplanet.com/travel-tips-and-articles/76165>

² See attached extracts from the ICAC Exhibits
<http://www.icac.nsw.gov.au/images/Spicer%20PI%202/Exhibit%20Z1.pdf>

³ This ICAC material provides a useful summary of the elements of “corrupt conduct” and the necessary legal proof required. It is reproduced at p12ff of my 20 October submission
<http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/C6B1C691D66DF2B2CA257D7A007D15B1>. The test is such that no “smoking gun” is required
http://www.icac.nsw.gov.au/component/docman/doc_download/820-report-on-an-investigation-into-corruption-allegations-affecting-wollongong-city-council-part-2-operation-atlas-28-may-2008 . See p40ff

In his “Open letter to the People of Newcastle”⁴ of 13 August 2014, Premier Baird echoed the calls from prominent local business leaders that all controversial projects continue despite the “regrettable” conduct of some former local MPs.

“...My solemn promise to the people of Newcastle and the Hunter is this: every project we have committed to will be completed... (I) recommit to the transformative projects we are funding...We will keep delivering the projects the city and its people need and deserve...And above all, while I lead this State, we will never again let the people of Newcastle down”.

Following the Premier’s open letter, Mr Richard Anicich (then) President of the Hunter Business Chamber provided the Newcastle Herald with the Chamber’s opinion article “City renewal must continue despite ICAC” dated 29 August 2014. He observed

“THE real tragedy that is besetting Newcastle from the revelations unfolding in the current ICAC hearings is that we have lost strong advocates for the much needed urban renewal of our city...”

“...There can be no justification for some of the conduct that has been revealed by our elected representatives. It is conduct that shows some of them to be naive and gullible and is plainly wrong...”

On 8 September 2014, the ABC reported⁵ the General Manager of the government’s Hunter Development Corporation (and former Chair of the Property Council Hunter Charter⁶) Mr Bob Hawes’ response to a community protest rally on the previous weekend.

“Mr Hawes says it would be disappointing if the city’s many redevelopment opportunities are stalled as a result of the protest action.... “Hopefully we can continue that and not lose sight of the fact that this region can do it when it needs to and hopefully not be overly distracted by the current circumstances and issues that are just a **speed hump** in the road of life”

In his submission to this Inquiry dated 2 October 2014, Mr Monteath a Board member of the government’s Hunter Infrastructure and Investment Board⁷ and Principal and manager of a large surveying, town planning and project management business *Monteath and Powys* contended that

“...there has been **no undue influence** on the recent planning decisions made for the Newcastle CBD area by the then politicians who were elected in 2011 to State Parliament. These politicians have **accepted the recommendations** of the 2009 report and have encouraged the implementation of the report”.⁸ (emphasis added)

A. The Premier aside, these various comments appear to reflect a concerted effort on the part of some people with significant financial interests to protect these interests notwithstanding grave concerns to the contrary.

B. There is still no publicly available accurate, strong independent business, transport and social case for the curtailment of the rail line.

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<https://cdn.fairfaxregional.com.au/lounews/An%20Open%20Letter%20to%20the%20People%20of%20Newcastle.pdf>

⁵ <http://www.abc.net.au/news/2014-09-08/hunter-development-corp-urges-newcastle-not-to-let-distractions/5726378>

⁶ <http://www.greencities.org.au/speaker/127/bob-hawes.aspx>

⁷ <http://www.hunterinfrastructure.nsw.gov.au/TheBoard.aspx>

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[http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/803cf2edd8408b93ca257d70000fb7d4/\\$FILE/10937881.pdf/0027%20Mr%20Robert%20Monteath.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/803cf2edd8408b93ca257d70000fb7d4/$FILE/10937881.pdf/0027%20Mr%20Robert%20Monteath.pdf)

C. Claims that rail truncation will lead to increased connectivity are unsubstantiated. Unsubstantiated claims are not an adequate basis for major infrastructure investment.

D. Residents of Newcastle have reasonable grounds for concern about the integrity of decision making by a number of government organisations and council. Notwithstanding NSW Public Sector Ethical Framework requirements and the Department of Planning's Code of Conduct, there appears to have been an unholy alliance between developers and elected representatives mediated by unlawful political donations. Operation Spicer findings are undoubtedly relevant to the decision making process about future developments in Newcastle CBD and broader NSW.

A number of local politicians integrally involved in and actively promoting the merits of the controversial projects have made admissions before the ICAC consistent at least with the findings of corrupt conduct.

E. Rushing through planning and development decisions before the ICAC publishes its findings and the Upper House Committee's report is considered by Parliament, has the appearance of a last ditch attempt to deliver on some undertakings at the cost of public confidence in these questionable planning decisions. If demonstrable integrity and due process were the real goals, there would be no question that these planning decisions need to be paused.

F. This Inquiry has the opportunity to ascertain if any link exists between property owners who surround the rail corridor and the extent of any broadly defined political donations they may have made leading up to and following the last state election.

Numerous exhibits before the ICAC illuminate the potential risk of undue influence and the overlap between public v private interest. This creates considerable apprehension that a similar scenario is now being played out in the decision to terminate the rail and build a transport interchange at Wickham.

The rezoning of land and the import of significant infrastructure such as for example a transport interchange or proposed light rail route in close proximity to that land, can result in significant windfall gains by increases in property values.

Any modest delay in the small number of controversial projects would be far outweighed by the erasure of the cloud of suspicion and mistrust over the region. Honesty, integrity and impartiality must be restored as the core objective of our planning system.

Tony Brown

Newcastle

24 October 2014