

Submission
No 324

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

Name: Mr John Sutton

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Partially Confidential

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

Dear Sir/Madam:

SUBMISSION TO COMMITTEE ON NEWCASTLE PLANNING

Please accept the following submission in relation to the current Inquiry into Newcastle Planning Processes.

Introduction

I thank the Select Committee for the opportunity to make this submission, and for conducting this Inquiry to help shine a light into the often opaque processes that have resulted in a number of major controversial planning and infrastructure decisions in Newcastle that will have a significant detrimental impact on the future of the city. I hope that the Inquiry can play a role in correcting the significant deficiencies that have characterised these processes, and provide the basis for more open, accountable, transparent and evidence-based public policy decisions, so they are made in the public interest rather than for the benefit of vested interests.

1. Relevant Inquiry Terms of Reference

This submission addresses clause 2(e) of the Committee's Terms of Reference, and specifically concerns the role of the Hunter Development Corporation (HDC), and, by association, the NSW Department of Planning and Infrastructure and local elected officials involved in the decision to terminate the Newcastle rail line at Wickham.

2. Focus of this Submission

This submission focusses on serious concerns related to the preparation and subsequent use of the HDC's *Newcastle City Centre Renewal Report to the NSW Government*, released in March 2009 (see http://www.hdc.nsw.gov.au/sites/default/files/HDC_-_Newcastle_City_Centre_Renewal_Report.pdf).

3. The Significance of the HDC's *Newcastle City Centre Renewal Report*

Since its release in 2009, the HDC's *Newcastle City Centre Renewal Report* (CCR Report) has provided the key legitimising document for the current decision to cut the Newcastle rail line. Its central role is acknowledged in subsequent key documents (including the 2012 Newcastle Urban Renewal Strategy), and the report has been (and still is) widely promoted and strongly advocated by supporters of the rail removal, including the former Lord Mayor of Newcastle, Jeff McCloy, and the former state Member for Newcastle, Tim Owen, and by other public agencies and officials involved in relevant discussions and decisions about the future of the rail line. A recent example is the submission to this Inquiry from _____ affirming the centrality and

ongoing influence of this HDC Report. In addition to the other roles that identifies in his submission, he is also a Director of the Board of the state government's Hunter Infrastructure and Investment Fund (along with other prominent advocates for cutting the Newcastle rail line), from which \$120million of public money has been allocated to implementing the government's proposal to terminate the rail line.

Repeated references to the significance of the HDC CCR Report in relevant state government documents (such as the 2009 NURS) and testimonials such as demonstrate the enduring regard and authoritative status and influence that the HDC's CCR Report has among relevant decision-makers.

The Report is the most recent publicly available government document that attempts to substantiate the removal of Newcastle's intercity rail services, and it remains the only public document that has attempted to provide a Cost/Benefit assessment for removing the rail (the government has refused to release a significant number of subsequent documents associated with its decision on the rail line, so it is possible that a subsequent cost/benefit analysis may have been prepared but not made public. I have requested such documents but have been refused).

4. Key deficiencies in the HDC's CCR Report

The ongoing status and influence of the HDC's CCR Report are entirely undeserved. The Report has been conclusively exposed as seriously and comprehensively flawed in relation to considerations that should be fundamental to any responsible and robust public policy decision.

Furthermore (and central to the concerns of this Inquiry), despite the fact that the HDC and other public officials have been specifically alerted to these deficiencies, they have refused to acknowledge and rectify them, and state government agencies and public officials (including a number of those who have been adversely implicated at the recent ICAC Hearings) have continued to treat the discredited report as authoritative, and to draw on it as the key basis for substantiating and legitimising the decision to cut the Newcastle rail line.

I have included relevant excerpts from a submission I authored in 2009 in response to the public exhibition of the CCR Report. Among other things, that submission identifies the following core line of argument in the CCR Report:

- That a University CBD Campus could provide a major catalyst for revitalising the Newcastle CBD. Indeed, the CCR Report identifies this project as the only catalyst project that was of such value that it could by itself revitalise the CBD (note: my submission did not contest this, and was strongly supportive of the University CBD project).
- That the development of a University CBD Campus was "contingent on or strongly influenced by the removal of the rail" (CCR Report, p.56). **This was subsequently demonstrated to be false.** (see the excerpts from my submission to the CCR Report outlining this).
- That – based on the assumption that the above (false) assertion was true - a Cost/Benefit Assessment (prepared by Urbis for the CCR Report) of options for retaining or removing the

rail supposedly demonstrated that there was a significant benefit in removal. This Assessment was explicitly predicated and calculated on the assumption that a University CBD campus could *not* be developed unless the rail was removed. This assumption was used to justify including the *entire* estimated revitalisation value of a University CBD campus (estimated at more than \$600 million) on the “Removal” side of the ledger, and zero for the project on the “Retain” side of the ledger. As the report itself acknowledges, that is the only scenario that was capable of demonstrating a positive Cost/Benefit Assessment in favour of removing the rail – all other scenarios demonstrated a clear Cost Benefit outcome favouring retention. Since the only calculation favourable to removing the rail was based on a false assumption, the Cost/Benefit Assessment itself was fatally flawed. A CBA based on correct assumptions demonstrates a Cost/Benefit ratio that significantly favoured retaining the rail. (Note: only the (flawed) results of the CBA are contained in the body of the CCR Report. The (flawed) calculation is contained in an Appendix accompanying the Report).

This flawed line of argument, based on a false assumption and a consequently erroneous Cost Benefit calculation - is central to the CCR Report’s recommendation that the rail line be removed. Moreover, the fatally flawed Urbis Cost/Benefit assessment remains to this day the only publicly available Cost Benefit Assessment of the decision to cut the rail line by any government agency.

Ironically, the Cost Benefit Assessments section of the CCR Report (s.2.8) is introduced in the Report with the claim that it was included “To add to the rigor of the process and as a due diligence measure” to “assist government in decision making” (CCRR, p.58). In fact, the Cost Benefit Assessment lacks rigor, and the HDC’s continuing failure to rectify its errors constitutes a major abrogation of due diligence. The only sense in which that key part of the HDC CCR Report and its associated Cost Benefit Assessment could be regarded as “assisting government decision making” is the sense in which it has been misused to provide an appearance of legitimacy for the government’s decision.

5. Failure to acknowledge and rectify serious deficiencies in the CCR Report

The CCR Report contains many other deficiencies of varying degrees of seriousness. They have all been identified by community input. As far as I am aware, none has been addressed or rectified. In terms of the concerns of the current Inquiry, this ongoing failure to respond to and adequately address serious and legitimate concerns about this key report, and the ongoing use of, and reference to, the Report by the HDC, government agencies and public officials as though it is still authoritative, despite their awareness of its serious flaws, constitutes a culpable negligence and a major failure of public duty on the part of those involved.

6. Implication of CCR Report Deficiencies for rail line decision

Without the ostensible “justification” provided by the flawed CCR Report, the case for cutting the Newcastle rail line lacks even the semblance of rigor, accountability and legitimacy. The effect of the (mis)use of the CCR Report has been to allow the creation of a public policy house of cards, where recommendations based on seriously flawed information and data have been allowed to vitiate the

consequential sequence of reports and decisions (including the 2012 Newcastle Urban Renewal Strategy and the recent Review of Environmental Factors (REF) for the Wickham Transport Interchange Project, which attribute their genesis and legitimacy from the HDC report.

I am confident that a genuine and rigorous independent professional review of the HDC CCR Report's claims in relation to the University and the removal of the rail, including the spurious assumptions that formed the basis for the calculation of the Urbis Cost/Benefit Assessment, would conclude that the Report does not provide a sound basis for responsible public policy decision-making, and that any subsequent report that relies on it is consequentially flawed.

7. Corruption, Gross Incompetence or Invincible Bias?

I am not aware of any specific evidence that could confirm explicit criminal corruption in this process. However, there is, at the very least, clear evidence of gross incompetence and/or invincible bias on the part of those involved, and of subsequent gross negligence on the part of those who refused to take corrective action or turned a blind eye to the serious problems to which they were alerted. The magnitude of incompetence, bias and negligence involved is such that it is difficult to conceive that it could have occurred without some significant impropriety. If explicitly corrupt conduct was not involved, the only factor that might adequately explain what has happened is that the people involved had such a strong predisposition toward a particular outcome that they were prepared to overlook or ignore serious and fundamental deficiencies in the evidence and recommendations that they were presenting and advocating to government. That in itself represents a major failure of public duty.

It should be noted that, since its formation in 2007 the Hunter Development Corporation (and its predecessor, the Honeysuckle Development Corporation) has strongly advocated removing the Newcastle rail line, and that appointees to the HDC Board have generally been active public advocates for such an outcome, often with strong associations with vested interest organisations involved in lobbying governments for that outcome. Not surprisingly, senior HDC staff have held similar views, and have often had strong links with organisations representing vested interests that have been at the forefront of advocating the removal of the rail line. The current General Manager of the HDC, Bob Hawes, for example, is a life member and former Chair of the Hunter Chapter of the Property Council, and a Director of the Hunter Business Chamber. Both these organisations represent business and property interests who stand to profit from the cutting of the Newcastle rail line, and have been among the most active advocates for removing the rail line for the past two decades. The HDC was also responsible for failing to follow up an earlier recommendation from a consultant's report that it commissioned some years before to further investigate the installation of rail crossings across the Wickham to Newcastle line.

While this submission is not focussed on the broader role of the HDC in local development and infrastructure planning and decisions, the association that HDC members and staff have with influential local non-government organisations involves conflicts of interests in its agency role that create a climate inherently conducive to corruption and to the exercise of bias.

It would hardly be surprising given this background that the HDC would have approached the preparation of the CCR report with a highly preconceived and pre-emptive bias in relation to the desired outcome, seeing it as a major opportunity to realise a long-standing objective of the local development community, of which they consider themselves to be part. The position of the HDC in this case is not dissimilar to that of the former Games Council in relation to representing the interests of shooters, and it would be appropriate for the Inquiry to recommend a review of the role played by the HDC in planning and development in the Hunter, and the appropriateness of such a body providing recommendations on such matters to governments.

Documents from GIPA disclosures (see HDC disclosure log, item AD1003C2, <http://hdc.nsw.gov.au/sites/default/files/HDC%20Disclosure%20log.pdf>) reveal the highly interventionist approach adopted by HDC staff in communication with consultants engaged to provide data and other content for the 2009 CCR Report, including specific pressure placed on consultants to include content that would detrimentally portray the section of the Newcastle rail line between Wickham and Newcastle stations. These documents expose an organisational culture and approach that might be acceptable for a non-government advocacy organisation preparing a report to argue their case to government, but is completely unacceptable for a government agency charged with the responsibility of providing government with independent, professional advice and recommendations in the public interest on an important and controversial matter of public policy.

8. Questions for the HDC

The questions I urge the Inquiry to ask of the HDC about this fundamental element of the process leading to the decision to cut the Newcastle rail line are:

1. What was the basis for the key assertion expressed in the HDC CCR Report that the University of Newcastle CBD campus project “was contingent on or strongly influenced by the removal of the rail”? What action was taken to check the veracity of that assertion?
2. What corrective action did the HDC take when the University (via its Vice Chancellor) indicated that this did not reflect the University’s position in relation to the rail line?
3. What corrective action did the HDC take in response to submissions to its CCR Report that pointed out this key deficiency in the report that was fundamental to its Cost/Benefit assessment and its associated recommendation to terminate the rail line?
4. Given that the university was proceeding with developing its CBD campus well before the decision to cut the rail line was announced, does the HDC still hold the view that the University CBD campus is not possible without the truncation of the rail line? If so, on what basis? If not, when did the HDC change its view, and why has it not corrected the report and the Urbis Cost/Benefit analysis (and the associated recommendation) that was based on the false assertion?

I urge the Committee to recommend that the decision to truncate the Newcastle rail line be suspended, and that the processes that led to this decision be reviewed to determine the role and culpability of relevant public officials and agencies in failing to properly advise government on this matter in accordance with their duty to the public interest.

I would be happy to provide the Committee with any clarification or further information I have on these matters.

John Sutton

24 October 2014