

**Submission
No 329**

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

Organisation: Save our Rail NSW Inc

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SUBMISSION TO INQUIRY INTO NEWCASTLE PLANNING

A. Introduction and history

Save Our Rail NSW Inc is a community group of volunteers with the aim of retaining and improving public transport, especially in the Hunter Region and with a focus on retention of the Newcastle Rail Line. The rail provision includes electric trains direct from Sydney Central to Newcastle Station and two branches of the Hunter Line, serviced by diesel cars, Newcastle to Scone and Newcastle to Dungog both via Maitland.

Save Our Rail (SOR) has been active not only in defending the existing rail provision but has examined transport options with regard to perceived problems in the city of Newcastle and the needs of areas in the region that are deficient in transport availability. The group has put forward several major documents in the form of submissions to the NSW Government, two with creative solutions for consideration, others in the form of critical examinations of reports upon which decisions are being based.

Copies of these documents have been hand delivered to Revd Fred Nile and we request that these be considered as part of this submission.

The documents are as follows:

- NEWCASTLE Towards a Sustainable and Vibrant City - a proposal for CBD Integration (2008)
- (this major submission includes appendix A within it, but three separate appendices)
- Appendix B - Critical Appraisal of GPT Proposal (Jan 2009)

- Appendix C - Save Our Rail Response to HDC Report (July 2009)
- Appendix D - Critical Appraisal of NTBD Proposal (April 2010)
- Western Transport Initiative (Westrans) Concept Proposal (Nov 2010)

B. Propaganda campaign to remove Newcastle Rail Line

The following organisations, with wealth, influence and through common membership and close links between leadership teams form a powerful controlling lobby group within and around the city of Newcastle:-

- HDC- Hunter Development Corporation originally Honeysuckle Development Corporation, established in 1992 to manage the redevelopment of rail and port related land along the harbour front adjacent to Newcastle CBD. In 2008 it was renamed Hunter Development Corporation and its boundaries were expanded to include all Hunter LGA's In April 2011 HDC became a branch of the Department of Planning and Infrastructure.
- HBC - Hunter Business Chamber a representative body for business and commercial groups.
- Property Council of Australia (Hunter Chapter)
 - Represent the industry in the Hunter region, planning issues, monthly Hunter lunch, economic development, public affairs
 - PCA Contact: Mr Andrew Fletcher
 - Edward Crawford (Chair) - Crawford Robinson

Core group members (partial list)

- Bob Hawes - Hunter Development Corporation
- Hilton Grugeon - Hunter Land
- McCloy Group
- Newcastle City Council
- Transport for NSW
- Urban Growth NSW
- The GPT Group
- The Newcastle Alliance (Hunter Alliance) "The Alliance."
- FOC -- Fix Our City
- Hunter Advantage
- Newcastle Business Club

An examination of the Boards of Directors and lists of members shows

common memberships and connections.

We believe that there is misuse of power and influence involving those listed and others.

We wish to provide the Inquiry with information which will help in uncovering developer influences by detailing items from the Chronology (Appendix A) and to point to the Government's failure to adhere to the principles and goals outlined in their own 2021 document, thereby failing the community and being deceptive in causing the community to accept their intentions, but doing the opposite.

1. 1990 -Greiner Government closed Toronto Line. Promises to provide a free bus replacement . It has been free until now, but seamless and trouble free it has not been. Complaints have been numerous, of bus/ train disconnection & recently the moving of the bus stop away from the platform. Now with Opal card it is no longer free.

This is an example of a reduction of service and a breach of a promise to the community - i.e. of providing an equivalent service when removing the rail service. This is similar to the current situation of cutting the service at Broadmeadow, Hamilton or Wickham and promising a "green corridor" and a "seamless interchange" with buses every 10 minutes and a light rail in the future., which Hazzard had said was "not feasible."

2. The formation of Honeysuckle Development Corporation (HDC) with a stated aim of closing the rail line and developing on the corridor.This is written into the "Approved Scheme." Supporting documentation to this intention is in the GHD Economic Impact of Rail Closure in Newcastle, which attempts to prove black is white or conventional wisdom is not applicable to Newcastle. It states:

"Good potential at Newcastle station" and further quotes from "Broadmeadow Transport Interchange Feasibility Study" (TIDC) 2004. Transport Infrastructure Development Corporation as follows:

"demolition of overhead pedestrian paths and lowering of railway platform with productive reuse or Newcastle Railway Station and signal box ...transform the area into a vibrant precinct ... potential to provide approximately 300 apartment equivalents over the whole

site... assuming they were sold in 6 parcels without DA but masterplanned for the area.”

3. Lord Mayor Tate – advises against spruiking value of rail corridor for development ¹

This led to a massive propaganda campaign to influence the public to accept an adverse concept (sometimes known as “greenwashing.”) GPT employed Neatcorp to lobby the NSW Government to cut the rail line. In a program over more than ten years the concept that closing off the major intercity transport provision would be an advantage to the city was pushed in the local media. The use of “buzz” words and slogans was prolific, especially in the Newcastle Herald, which has adopted a biased position in favour of cutting the rail line. Some examples are:

- a) Buzz Word 1 “Green Corridor” – various Newcastle Herald reports – (e.g. 14/10/08)”Rail Must Go . Heavy rail a risk to CBD’s Grand Revival.” Jacqui Jones
- b) Buzz Word 2 – “Connectivity” – the community is being hoodwinked into thinking it is impossible to cross Newcastle Line, while in Sydney a huge sky train is being built. Bridges and tunnels are being built elsewhere but not Newcastle. (e.g. Newcastle Herald 15/08/08 - Karen Howard “Connecting precincts within the city is vital.”
- c) Buzz Word 3.”Light rail” – An alternative toy train would be more attractive to move people around Newcastle. The lie in this is the fact that these are two different purposes of transport. The existing “heavy rail” has the capacity and the capability for the long haul , for intercity transport Light rail could be used for its intended purpose of short trips within the city. Both could co-exist as in San Diego – however “light rail” cannot replace the intercity services as it simply does not have the capability. (various Newcastle Herald articles. e.g Jodi McKay -”Light Rail Preferred in city renewal debate.”)
- d) Buzz Word 4 – “Seamless interchange”, to quote Minister Gladys Berejiklian The conjunction of these two words is an oxymoron. Media Release Ministry of Transport 3 Jily 2014. “Revitalisation of Newcastle CBD underway with truncation to begin on Boxing Day.”

¹ “Hands of rail land, says Tate” - [ANNEXURE B]

4. Lower Hunter Transport Working Group – appointed by Transport Minister Costa. committee of four had three members who are on Board of Directors of HDC :
 - a. Glenn Thornton (also Director of Parsons Brinkerhoff,- prepared questionable report for HDC also CEO Hunter Business Chamber)
 - b. Gary Kennedy Sec Newcastle Trades Hall Council)
 - c. John Tate (Lord Mayor Newcastle City Council – owns automotive parts business and land holdings)

The LHTWG reports were faulty (condemned by independent reviewer, Prof. Graham Currie, Monash University as “biased, flawed and misrepresented advice.” ²

These reports are still being referenced in support of proposals to cut the rail line.

5. Michael Costa announces rail line to be cut at Broadmeadow - leads to reactivation of Save Our Rail – Hunter MP’s supporting rail retention and moving it at ALP Conference as policy. ³
6. Lord Mayor of Newcastle, John Tate, submitted the LHTWG report to a Broadmeadow Transport Interchange Feasibility Study (Nov 2004), as being jointly authored by Newcastle City Council. This was raised by councillors. The General Manager wrote a letter explaining that the Lord Mayor was not acting for council when he contributed to the LHTWG report and that it should be withdrawn from the document as representing the Council’s position, which he included showing there was a unanimous decision to retain the rail line.
7. In 2007 WorleyParsons delivered their report on the Warabrook proposal, which was to de-electrify the rail line between Hamilton and Newcastle and electrify the line to Warabrook. This was deemed to be not feasible and the Government decided against it, with Hunter Business Chamber’s reacting very angrily with abuse directed at those delivering the report.⁴
8. Reports prepared by Parsons Brinkerhoff in 2003 and GHD (2004) were both discredited as inaccurate by Prof. Currie yet these two firms were commissioned to undertake work by HDC toward in the

² ”Decision to Close the Newcastle Branch Rail Line - Independent review of Transport Reports”- November 2005

³ “MP’s Fight For Hunter Railway” –SMH - 01/06/2005 – Alexandra Smith

⁴ WorleyParsons Report on Hunter Business Chamber Plan to Electrify Rail to Warabrook - 2008

implementation of decision to cut the rail and install light rail.

C. Preliminary to Inquiry -- Executive Summary

The terms of reference of the Inquiry relate to both the decision to cut the rail line and the proposal to run light rail on Hunter and Scott Streets. Save Our Rail (SOR) submits that, upon the hearing of evidence adduced by it that the Inquiry will recommend that both decisions be overturned.

The basis for SOR's contention is that the above named decisions represent a systematic failure of local and state government. It is submitted that the government failed to comply with the Transport Administration Act, Public Sector Ethical Framework and other 'safeguards' to ensure that the central object of the determination is the '*public good*' rather than vested commercial interests and/or '*reciprocation*' for '*favours*' in respect to individuals and organisations that stand to benefit financially from the rail closure and the development of a vacated rail corridor.

One of the major failures has been a **lack of transparency** in the form of a steadfast refusal by the Minister for Transport to release the business case for both the Wickham Interchange and the light rail projects. Therefore SOR welcomes the call for those and other papers ordered by the upper house for the purposes of the Inquiry. SOR also moves the Inquiry to exercise its power to discover other documentation referred to herein and listed in **Appendix "B"** hereto.

SOR notes that Commissioner Latham has not yet tabled her report in Operation Spicer ('OS'). However SOR will rely on parts of the transcripts of evidence posted on ICAC's website.

Counsel assisting in OS, Geoffrey Watson SC, told the public last November that '*power*' as well as '*greed*' is a perennial motive for corrupt behaviour in political circles, saying '*Circles of influence develop, a favour is done, it requires reciprocation.*'⁵

SOR argues that a '*circle of influence*' was created in Newcastle between the member for Newcastle, Tim Owen, the member for Charlestown, Andrew Cornwell, the member for Swansea, Garry Edwards and the former Lord Mayor of Newcastle, Jeff McCloy and Buldev (Nathan Tinkler). As regards Tim Owen the '*circle of influence*' included a Newcastle developer called Keith Stronach and some Newcastle based business organisations, including the Newcastle Alliance(NA), 6.5 and the Hunter Chapter of the Property Council of

⁵ "All in the name of power and fortune" - Sydney Morning Herald - 2 February 2013 - <http://www.smh.com.au/nsw/all-in-the-name-of-power-and-fortune-20130201-2dpzx.html>

NSW. The ‘*circle of influence*’ involving Mr Owen was developed in the months leading to his election in March 2011, when the aforesaid developers and business organisations provided financial and in- kind support for his campaign.

C.1 - Jeff McCloy’s property interests in the Newcastle CBD

Mr McCloy has a significant development portfolio in the Newcastle CBD and the Hunter region. The McCloy Group website ⁶ and the Newcastle Herald ⁷ disclose that Mr McCloy and/or the McCloy Group own properties on either side of the rail corridor in the Newcastle east end, including the Lucky Country Hotel in Hunter Street. Therefore a removal of the rail line will potentially result in direct movement between all of his properties.

At a delegation of community groups in October 2011 Mr Owen displayed a large table-sized map of Newcastle CBD with the proposed route for light rail running down Hunter Street. Significantly, this was almost identical to Jeff McCloy’s Hunter Street light rail proposal announced in 2012.

It is submitted that Mr McCloy’s wealth and influence interfered with Tim Owen’s capacity to act in the public’s interest where such interest were inconsistent with the personal and financial interests of Jeff McCloy.

Perhaps the most telling evidence adduced in the OS about the nature of the influence that Jeff McCloy exerted in Newcastle, and it is contended on Mr Owen, was by Garry Edwards, member for Swansea, who described Mr McCloy as being almost ‘*almost god- like*’ in Newcastle.⁸

C.2 - Tim Owen & Jeff McCloy et al

Hugh Thomson, the campaign manager for the former member for Newcastle, Tim Owen, gave evidence in OS about the dynamic of the ‘*favour*’ and its ‘*reciprocation*’, namely that the donation gets the donor ‘*access*’ to the donee, telling the commission that a donation gives the donor ‘*access*’ to the recipient.

It is submitted that the process of ‘*favour*’ and ‘*reciprocation*’ was at work when Hugh Thomson wrote to Tim Owen and Andrew Cornwall suggesting that they contact Garry Edwards, the Liberal member for Swansea, to remind

⁶ McCloy Group property portfolio - p. 9 -

http://mccloygroup.com.au/sites/default/files/content/mcg_commercial_portfolio_send.pdf

⁷ “People of influence” - Newcastle Herald - 24 June 2010 -

<http://newsstore.fairfax.com.au/apps/viewDocument.ac?docID=NCH1006246H50T34CQNC>

⁸ “ICAC: Swansea MP Garry Edwards accused of lying over McCloy cash claim” - Newcastle Herald - 4 September 2014 - <http://www.theherald.com.au/story/2535689/garry-edwards-accused-of-lying/>

him of Buildev's support during the election campaign.⁹ At the time, Mr Edwards was opposing a Buildev development in his electorate.

"Not sure if you guys feel up to reminding Garry who paid for the lion's share of his campaign," Mr Thomson wrote to the two MPs' parliamentary email accounts. *"Picking a fight with Buildev is not a smart move, particularly if he hasn't engaged with them privately."*¹⁰

Mr Owen admitted in Operation Spicer that he took a donation from Jeff McCloy for his 2011 election campaign. It is submitted that Mr Owen understood that the 'favour', in the form of the alleged illegal \$10,000 donation, required him to provide 'reciprocation' to Mr McCloy when he became Lord Mayor of Newcastle in September 2012. That reciprocation is evidenced by what Tim Owen failed to do, as well as what he did do.

Six months after his election Tim Owen was interviewed by the Newcastle Herald wherein he outlines his objectives.¹¹ Two of them were the cutting of the rail line and the completion of the Art Gallery project. Jeff McCloy was a zealot for the removal of the rail line, having spent a large amount on the 'Fix Our City', anti-rail, campaign before Owen's election in March 2011. However as Lord Mayor of Newcastle in **September 2012**, Mr McCloy effectively 'killed off' the Art Gallery project and as a result \$7 million in Commonwealth funding was lost, as well as half a million bequest by the estate of Margaret Olley.

SOR submits as Lord Mayor McCloy dismantled the Art Gallery project Tim Owen did nothing to save it, despite the fact that he had identified the same as one of his priorities. Certainly the \$7 million needed from the NSW Government was not forthcoming. This is in contrast to his actions in regard to the rail line, evidenced by the fact that in an interview on NBN TV in July this year, Premier Baird said that Tim Owen can be credited with the decision to cut the rail line and replace with a proposed light rail in Hunter and Scott Sts.

SOR submits that Tim Owen represented the 'circles of influence' in Newcastle in both the O'Farrell and Baird governments which were, and are, well disposed to the sale, privatisation and development of government assets in Newcastle.

⁹ "ICAC: MP Garry Edwards warned to be nice to Buildev" - 7 August 2014 -

<http://www.theherald.com.au/story/2473126/icac-mp-garry-edwards-warned-to-be-nice-to-buildev/>

¹⁰ "ICAC: MP Garry Edwards warned to be nice to Buildev" - 7 August 2014 -

<http://www.theherald.com.au/story/2473126/icac-mp-garry-edwards-warned-to-be-nice-to-buildev/>

¹¹ "Task force Tim Owen" - Newcastle Herald - 23 September 2011 -

<http://www.theherald.com.au/story/476296/task-force-tim-owen/>

In contrast SOR was refused a meeting with the then Planning Minister, Brad Hazzard, prior to the decision to cut the rail line that he announced in **December 2012**. Following the announcement SOR requested to meet with the then Premier O'Farrell but was refused.¹² SOR was also refused a meeting with the Mr Hazzard and the Premier in 2014. After the decision SOR has had to resort to civil action, like rallies and petitions, to try to get the 'ear of government'.

SOR contends that the majority of the community want to keep the rail line into Newcastle Station. That is reflected in the fact that petition of over 11,000 signatures was tabled in parliament and debated on 21 November, 2013. SOR submits that Tim Owen misled Parliament by misrepresenting the attendance of the community at a recent rally at Parliament House and a meeting with the an expert in the connection between rail services and an increase in property value.¹³

The community's support for the retention of rail services into Newcastle is also reflected in the fact that 6 of the 8 candidates in the seat of Newcastle bi-election support keeping the rail.

Some polls on the rail issue:

Newcastle Herald 15/12/2008

Q Is keeping heavy rail in the inner city in the best interests of Newcastle and its renewal?

Result: YES : 64.8% NO: 35.2%

The Newcastle Star 03/06/09

Q Will terminating trains at Wickham renew Newcastle's CBD?

Result: YES: 19.8% NO: 75.8%

Newcastle Herald 13/06/09

Q Do you agree with Jeff McCloy to cut the rail to improve the CBD?

Do you agree with Jeff McCloy and Hilton Grugeon?

Result: Agree: 30.7% Disagree: 69.3%

Newcastle Herald 28/07/09

Q Is the government right to delay a decision on the removal of rail from Newcastle CBD?

Result: Yes it should take all the time it needs to get it right. 64% No – there's been too much talk already, get on with it. 36%

Newcastle Herald 18/09/09

Q Would you drive less in Lake Macquarie if the public transport system was improved?

Result: YES: 59% NO: 40.9%

¹² "Rail decision final: Owen" - Newcastle Herald - 12 March 2013 -

<http://www.theherald.com.au/story/1356959/rail-decision-final-owen/>

¹³ Refer Hansard - 21 November 2013.

Newcastle Herald 23/05/14

Q Do you like the route chosen for Newcastle's light rail?

Result: YES: 27.3% NO : 72. 7 %

Newcastle Herald 3/7/14

Q: Are you looking forward to the termination of the Newcastle Rail Line?

Result: YES; 40% NO : 60%

NBN TV 3/7/14

Q: The NSW Government has announced Newcastle's heavy rail line will be cut at Wickham on Boxing Day this year. Will you be glad to see it go?

Result: NO: 75% YES 23% DON'T KNOW: 2%

Fairfax Media 26/07/14

Q: Do you think the Railway Street rail crossing at Wickham should remain open?

Result: YES: 82.39% NO: 17.61%

Fairfax Media 07/08/14

Q: Should state government developments in Newcastle be put on hold until ICAC delivers the findings from its current inquiry?

Result: YES: 79.65% NO: 20.45%

Maitland Mercury 14/08/14

Q: Should the truncation of the Newcastle rail line be postponed until the results of the ICAC Inquiry are known?

Result: YES: 89.3% NO: 10.7 %

Maitland Mercury 20/08/14

Q: Will the findings of the latest ICAC inquiry make you change your vote at the next state election?

Result: YES: 62.5% NO: 37.5%

C.3 - The Lease of the Port of Newcastle, the light rail route, The Property Council of Australia(PCA) & UrbanGrowth(UG)

Despite having no mandate, and without any community consultation, the then Treasurer Baird announced in **July 2013** that the Port of Newcastle would be leased and that \$340 million of the proceeds would be used to construct light rail on the heavy rail corridor.¹⁴

However Lord Mayor McCloy immediately went public with his support for light rail in Hunter St, which he proposed would run past some of his developments, including the Lucky Country Hotel. The Newcastle Herald described him as throwing '*a spanner in the works by calling for the tracks to be laid along Hunter St.*'^{15 16} The McCloy Group's Lucky Country Hotel and

¹⁴ "Newcastle Port sold to pay for light rail" - ABC Newcastle - June 2013 -

<http://www.abc.net.au/local/stories/2013/06/18/3784241.htm>

¹⁵ "Editorial: Rail plan still not settled" - Newcastle Herald - 12 October 2013 -

<http://www.theherald.com.au/story/1836243/editorial-rail-plans-still-not-settled/>

¹⁶ Refer [ANNEXURE J - various parts] for "Newcastle Urban Renewal Project Steering Committee minutes for the period July 2011 to February 2012".

Rolly de With's Jolly Roger night club development applications were discussed at a meeting of the NURPS Committee on the 12 October 2011.

SOR, together with a good section of the Hunter community, certainly believe that Jeff McCloy and the 'corporate' members of the PCA were rewarded by Tim Owen for their financial and in-kind support. The 'corporate' members of the PCA are the McCloy Group, Hunter Land(Grugeon), the GPT Group, the Hunter Development Corporation(HDC), Newcastle City Council(NCC), UrbanGrowth NSW(UG) and Transport for NSW. After the light rail decision was announced The Hunter Chapter of the PCA posted a 'We did It!' notice referring to their '*major victory*' in regards to the Hunter St route. UG also claimed in their 2013 Annual Report that it had worked with the local and state government to remove the rail line as an enhancement to their plan to develop the Newcastle CBD.^{17 18}

*"In August 2012 we settled our purchase of a two thirds interest in four city blocks located in the heart of the Newcastle CBD and in November, we [UrbanGrowth NSW] entered into a delivery agreement to partner with the GPT Group in delivering the CBD redevelopment. This project represents one of the best opportunities for urban renewal in the country, and supports the emergence of the Hunter as a focus for significant economic activity. **We worked closely with state and local government to secure agreement for the removal of the heavy rail spur that currently divides the CBD and replace it with an integrated transport system, including light rail. This has provided greater certainty for the project and enabled detailed planning to proceed.**" (emphasis added by SOR)*

This view was consolidated by the fact that during the light rail consultation process in **March 2014**, SOR members and affiliates were told by TfNSW employees and a member of the co-ordination and implementation group for the Newcastle Urban Renewal project, that the route was chosen, *'because McCloy wanted it'*. Another TfNSW employee, told an affiliate of SOR that the Department of Transport wanted the light rail to run down the existing corridor to Newcastle Station but that this was overruled by the Department of Planning.

Following the making of the decision to run light rail down Hunter St in **December 2013**, TfNSW disclosed that the cost of construction would

¹⁷ Refer [ANNEXURE K] for "We did it - Newcastle's light rail with travel down Hunter Street" - Property Council of Australia (now removed from PCA website).

¹⁸ UrbanGrowth NSW Annual Report 2013 - Section "Newcastle CBD redevelopment" - p. 11 - http://www.urbangrowthnsw.com.au/downloads/uploaded/AR13%20FINAL_e011.pdf

exceed the costs of running light rail on the rail corridor. SOR submits that the light rail business case will reveal that the construction of the 'Hunter St' light rail route would be the most costly light rail project ever undertaken and hence an unjustified waste of public monies. TfNSW has only recently spent many millions of dollars on track work and signalling in the Newcastle CBD rail corridor and now proposes to spend millions more in tearing it up and laying new tracks 20 metres away in a busy main street.

Furthermore SOR submits that the community consultation and 3 focus groups held in March 2014 indicated that the community was overwhelmingly opposed to running light rail in Hunter St. It is alleged by SOR that the Minister has selected a project that will **waste** millions of dollars of tax payers' money and that the wasteful Hunter St light rail project is a form of '*reciprocation*' for favours done by Jeff McCloy and other prominent business men and organisations in Newcastle.

SOR submits that it is necessary to require the release of the documents generated during aforesaid consultation for assessment both of the outcomes of the consultation and the weight placed on them by the Minister for Transport.

C.4 - The Hunter Development Corporation (HDC), Newcastle Alliance (NA) & '6.5'

SOR submits that the '*circle of influence*' operating on Tim Owen and thereby on the NSW government extended beyond Jeff McCloy. Major developers, development organisations and some local representatives had designs on the rail corridor and its development potential since the earthquake in 1989 and that interest continued until the decision to cut the rail line at Wickham in December 2012.

It argues that from the time that Newcastle received the 'Honeysuckle Goods Yards' in 1992 that the rail line in the Newcastle CBD became the 'holy grail' for major developers in the Hunter region, the principal one of which was the Honeysuckle Corporation, now the Hunter Development Corporation ('HDC'). It is noted that HDC was created as a statutory authority pursuant to the Growth Centres Act (NSW).

In 1992 the Newcastle City Council at the time developed a business plan to work towards the development of the rail corridor in the Newcastle CBD.¹⁹ A committee was created to be funded by the rate payers of Newcastle and became the Newcastle Alliance ('NA') chaired by Paul Murphy. Mr Murphy

¹⁹ [ANNEXURE A -- p3, p5] - Refer "Newcastle CBD Business Plan" - Newcastle City Council

registered the NA as a 3rd party campaigner and ran an anti- rail campaign before the 2011 State election, called 'Fed Up'.

It is alleged by Counsel Assisting Operation Spicer. Geoffrey Watson SC, that \$70, 000 was paid by Nathan Tinkler's Buildev ('NT') for the campaign and that such monies were in the form of an illegal donation. It is also alleged that in addition to NT's donation that monies were paid by a group of Newcastle businessmen, called '6.5', to Paul Murphy to fund the 'Fed Up' campaign, which was originally to be run out of Tim Owen's office.

SOR considers that it is of considerable note that that the \$340 million allegedly promised to 'Newcastle' is the exact amount that Premier Baird promised to spend on the light rail project from the lease of the Port of Newcastle.

It is submitted that the influence of UG, GPT and HDC on the government, all of which are 'corporate' members of the PCA, was enormous. In its light rail submission to the NSW government in April 2013 it referred to a list of 'works' that had been tabled with the government in December 2012 and demanded the closure of the rail line by 30 September, 2014. ²¹

Accordingly SOR recommends that the Inquiry discover any communication between the PCA and the planning and transport departments for the period between April 2011 and December 2013.

C.5 - The UrbanGrowth(Newcastle) & GPT Public Private Partnership in June 2012

Even as at 18 June 2012, the Newcastle City Centre Connectivity and Accessibility Study was progressing on the basis that the Newcastle Urban Renewal project would involve the retention of the rail line into Newcastle:

²⁰ ICAC operation Spicer - transcripts and exhibits at <http://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>

²¹ Property Council of Australia submission on Newcastle Light Rail project - <http://www.propertyoz.com.au/library/140402%20PCA%20Submission%20on%20Newcastle%20Light%20Rail%20Project.pdf>

*“study progressing on the basis that the existing rail line will remain in tact in the short to medium term”.*²²

Therefore the question must be asked as to what happened between June and November leading up to the Cabinet’s decision to cut the rail line at Wickham. SOR submits that a number of events of significance occurred in 2012 leading up to the announcement in December that the rail would be cut, namely:

- 1) In June Tim Owen announced that Landcom and GPT would enter into a public private partnership in respect to GPT’s landholdings in Hunter and King Sts Newcastle. The NSW was to pay \$20 million for a 2/3 share of the landholdings said to be valued at \$100 million.²³
- 2) In June Landcom became UG and a Newcastle board was created to affect the ‘revitalisation’ process in the Newcastle CBD. Two HDC board members, being Julie Rich and David Antcliff were appointed to the board. Julie was the HDC representative on the NURPS and David became the Project Manager for the project.²⁴
- 3) In August UrbanGrowth entered into a partnership agreement with GPT
- 4) In September Jeff McCloy was elected the Lord Mayor of Newcastle
- 5) In November UG and GPT entered into a ‘delivery’ agreement for the Newcastle urban renewal project.
- 6) The NURPS Committee minutes for 14 June 2011 indicate that the NCC was complaining that HDC had not contributed to the cost of planning reports.²⁵ In December the CEO of the Hunter Infrastructure & Investment Fund (HI & IF) announced that \$60 million would be paid from the Fund towards the cost of the construction of a transport interchange at Wickham. The Planning Minister also announced that \$60 million would be paid out of the Planning budget to the project. SOR is of the understanding that these monies have been used for all

²² Newcastle City Centre connectivity and accessibility study - AECOM for Department of Planning and Infrastructure and City of Newcastle - 18 June 2012 - p. 18 - http://www.planning.nsw.gov.au/Portals/0/HousingDelivery/revitalisnewcastle/Appendix3_Newcastle_City_Centre_Connectivity_and_Accessibility_Study_AECOM_2012.pdf

²³ “\$20m for GPT properties to revitalise city mall” - Newcastle Herald - June 20, 2012 (online publication date) -

<http://www.theherald.com.au/story/204862/20m-for-gpt-properties-to-revitalise-city-mall/>

²⁴ “Renewal body has muscle” - Newcastle Herald - 19 June 2012 (online publication date) -

<http://www.theherald.com.au/story/204825/renewal-body-has-muscle/>

²⁵ [Annexure J - various parts] - Steering committee minutes

the planning and transport studies together with the preliminary works done in preparation of the construction of the Wickham Interchange.

SOR submits that in order to expose the '*circle of influence*' that it alleges led to the alteration of the draft Newcastle Urban Renewal Strategy in mid-2012 for the removal of the rail line into Newcastle, **the Inquiry must require records of any communication and or contact between the following entities and the Department of Planning and Infrastructure, the Department of Transport and the Department of Premier & Cabinet for the period February and December 2012:**

1. UrbanGrowth,
2. GPT,
3. HDC,
4. Hunter Infrastructure & Investment Fund,
5. Jeff McCloy,
6. The Property Council of NSW

It is also submitted that **the minutes of NURPS for the period March-December 2012 be required** to reveal why the committee changed its approach and presumably recommended the closure of the rail line at Wickham.

C.6 - The Hunter Investment & Infrastructure Fund (HI & IF) & Mr Bob Hawes (General Manager of HDC)

SOR alleges that Mr Hawes is a key person in the '*circle of influence*'. Prior to his appointment as the General Manager of HDC in **January 2011** he was a Project Manager for Buildev and the Regional Director of the Hunter Chapter of the Property Council of Australia. He is a life member of PCA. In **March 2013** he was also appointed as ex-officio member of the co-ordination and implementation group created by the then Premier O'Farrell to assist the implementation of the urban renewal project, including the proposed light rail project.²⁶

The HI & IF was established by the then Premier O'Farrell in **May 2011**. The Fund's process is administered by HDC. At that time, a then member of SOR, was told by the then Planning Minister, Mr Brad Hazzard in 2011/2012, that the General Manager of HDC, Bob Hawes, personally appointed the Fund's Board, of which Mr Hawes is an ex-officio. The HI & IF's website indicates that the process for project approval is that '*3 senior representatives of HDC*', with

²⁶ "Newcastle urban renewal committee disbanded" - Newcastle Herald - 22 June 2014 - <http://www.theherald.com.au/story/2368524/newcastle-urban-renewal-committee-disbanded/>

2 other representatives from a list of government departments and statutory authorities form an 'evaluation panel' that then refers projects to the Planning Minister for the ultimate approval of the Premier. Projects called for in 2012 were to commence by 2013/2014 and to be completed by 2015. SOR submits that the Wickham Interchange project has not met that criteria and that it was clearly incapable of meeting the same in December 2012, when it was announced.²⁷

SOR submits that in order for the Inquiry to determine the nature of Mr Hawes' influence that **all documents relating to the \$60 million payment from the Fund need to be discovered.**

These documents are particularly relevant considering that when he was appointed in January 2011 Bob Hawes owned, and still does, 2 significant landholdings in close proximity to Wickham Station.²⁸ Although Mr Hawes has disclosed his conflict of interests on the Annual Pecuniary Interests Register of HDC, SOR submits that he had not publicly disclosed that conflict when advocating for the Wickham Interchange project. Mr Hawes obtained a development application in respect to the property at Beresford Street, Newcastle West, yet this was not disclosed in the HDC register until 2014.²⁹ SOR contends that his conflict of interests is inconsistent with his obligations as a senior public servant.

In a community meeting in Newcastle City Hall in February 2013 following the release of the NURS Mr Hawes said that it was anticipated that parts of the rail corridor and areas around the Newcastle CBD railway stations would be developed when the rail line was terminated at Wickham.³⁰ Furthermore SOR submits that the NURS indicates that the value of property in Wickham will increase when the Wickham Transport Interchange is constructed.³¹

SOR contends therefore that it was, and is, in the public interest that Mr Hawes discloses that he has a vested personal financial interest in the project.

C.7 - False & Deceptive Conduct -- The Wickham Transport Interchange REF

²⁷ Hunter Infrastructure and Investment Fund - Call for Projects - July 2012 -

<http://www.hunterinfrastructure.nsw.gov.au/Portals/0/Projects/hiifcallforprojects2012julyfinal.pdf>

²⁸ Refer ANNEXURE D - maps of property Beresford St

²⁹ Refer ANNEXURE E - HDC pecuniary interest register

³⁰ "Newcastle transformation to start in December, video" - Newcastle Herald - 8 March 2014 -

<http://www.theherald.com.au/story/2135324/newcastle-transformation-to-start-in-december-video>

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³¹ Newcastle Urban Renewal Strategy 2012 (NURS) -

<http://www.planning.nsw.gov.au/revitalisingnewcastle>

HDC has commissioned 2 major reports that SOR contends have informed the Wickham Transport Interchange Review of Environmental Factors ('REF'), released by TfNSW in July this year. They were the Lower Hunter Working Transport Group Report (LHWTG) in 2004 and the Hunter Development Corporation Report in 2009.

In regards to the HDC Report, SOR notes that major omission therein relates to the failure to assess the benefit of keeping the rail line into Newcastle based on the false premise that the University inner city campus would not proceed otherwise. SOR relies upon its Document 'C' that is linked to the Chronology annexed hereto for a detailed critique of both reports.

GHD were the authors of the LHWTG and the REF.

Particularly to the extent that it relied upon the analysis of both the current patronage to and from the Newcastle & Civic Stations 'since 2004'. TfNSW did the barrier count on a week day when rail services would be 'least busy'. By omitting to do a weekend count it did not recognise the swell in patronage that occurs on weekends or the concomitant drop off in patronage at stations such as Wickham.

In any event the fact remains that of the last 4 stations on the Sydney to Newcastle Rail Line the station chosen as the new terminus is by far the least patronised of them all. Furthermore rail will no longer be able to be used as a direct mass transport service to Newcastle for major events and festivals, like the Heritage Express Steam weekend ³², Surf Fest and the New Years Eve celebrations.

C.8 - Lack of transparency & accountability - Planning & Transport

³² "October Steam - Newcastle Rail Line" - YouTube Video - https://www.youtube.com/watch?v=iQVCylq9_6A (skip ahead to 2 min 30 seconds into the video to see large number of passengers at Newcastle Station).

Furthermore SOR submits that Minister for Transport has failed to meet her obligation to make the process transparent by steadfastly refusing to release the business cases for both the Wickham Interchange and light rail projects. In doing so she has failed to meet her obligations outlined in the NSW State Plan in respect to the **'trust'** and **'accountability'**.

SOR claims that having made the decision to cut the rail line at Wickham the government 'controlled' the consultation opportunities made available to the community. One such incident was in a public meeting in February 2013 following the release of the NURS.³³

Another example of this was in April 2013 when a meeting was held in Newcastle Town Hall in relation to the NSW Long Term Transport Plan. 12 of the 13 tables reported that the most important issue was to keep the rail line into Newcastle. Yet this was not reflected in the meeting feedback. SOR entered into correspondence with TfNSW to no avail.³⁴

The **Government Sector Employment Act** requires public servants to act *'ethically and in the public interest'*. SOR submits that TfNSW public servants failed to discharge their obligations in that regard at the aforesaid meeting, at which both Tim Owen and Minister Berijikian were present. Alan Squire may give evidence at the Inquiry that an employee of TfNSW who reported back to the meeting on behalf of the 'table' that he was chairing, refused to report the position of the 'table' on the rail line.

However the major blow to transparency is in the form of the government's intention to close the rail line in the Newcastle CBD with only the approval of the Minister whereas **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. It is submitted that by failing to do so the government has breached all 4 pillars of the **NSW State Plan**- integrity, trust, service and accountability.

The government did not run a 'cut the rail' campaign. Mr O'Farrell met with the President of SOR (Maitland) before the election as Ms Parker promised to keep the rail line. She said on TV 'our government will not be ripping out major infrastructure.'

SOR contends that in circumstances where the government is refusing to delay the cessation of rail services until after the March election, that it is incumbent

³³ "Newcastle rail cut disgust at public forum" - Newcastle Star - 25 February 2013 (online publication date) - <http://www.newcastlestar.com.au/story/1324861/newcastle-rail-cut-disgust-at-public-forum/>

³⁴ [ANNEXURE L] - SOR email correspondence

to demonstrate ‘**good**’ governance and allow both houses of parliament to vote on the rail closure.

Mr Bob Hawes, the General Manager for HDC, is a public servant within the Department of Planning & Infrastructure. In Part 2 Objective 6 of the Act he is required to act professionally with **honesty, consistency and impartially** and to place the public interest over his personal interest. He is also, particularly having regard to the significance of his position, required to provide **transparency for public scrutiny**.

Mr Hawes has never gone public with the fact that he has 2 Wickham properties, including a 50% interest in a proposed \$64 million development next to the Wickham Station. It is in the public’s interest to know about this conflict of interest yet SOR only found this out by putting in a ‘GIPA’ and searching the property register.

Jeff McCloy’s conflict of interests in regards to his former position as Lord Mayor of Newcastle and his property interests in Newcastle was breathtaking. His hubris is all encompassing considering The McCloy Group currently has a DA before NCC to build a deck on a public park adjacent to his recently renovated ‘Lucky Country Hotel’, citing that it would be part of the revitalisation of the Newcastle CBD. He brazenly called on the government to run light rail past his business when there is a perfectly good rail corridor 20 meters away and to the astonishment of those who believed in due process and good and impartial governance TfNSW bent to his will at an enormous loss to the taxpayer and the citizens of the Hunter.

C.9 - Rail patronage loss and Hunter Rail Line capacity

SOR is of the view that the Government is fully aware that rail patronage on the Hunter Rail Line will fall significantly if the Wickham Transport Interchange Project proceeds. Technical Paper 1 to the REF reports that only 77% of the current patronage will continue after the closure of the rail line on Christmas Day. However the Government is prepared to proceed with the closure in the full knowledge that it inconsistent with Goals 8 and 9 of the “NSW 2021: A Plan to Make NSW Number One”.

- **GOAL 8** says : *“Increase the share of commuter trips made by public transport to and from Newcastle CBD by 20% by 2016”*
- **GOAL 9** says : *“Improve customer experience with transport services. The NSW Government will put customers at the centre of public transport planning and provision to ensure their needs, preferences and opinions are reflected in decision making, planning activities and operations.*

SOR draws the Inquiry's attention to the fact that evidence was given in Operation Spicer that an obstacle to the T4 Coal Loader project is that the Hunter Rail Line is at full capacity. SOR anticipates that there will be a reduction in the number of passenger services once the rail line is closed at Broadmeadow & Hamilton after Christmas Day. Accordingly there will be an increase in rail capacity for coal haulage. Therefore SOR is of the view that one of the motivations for rail closure is the increased revenue flowing from the increased freight of coal and from the operation of a 4th coal loader.

In support of that contention SOR draws the Inquiry's attention to an entry in the chronology dated 11 March 2014 when a Save Our Rail member met with Tim Owen who told him that the Government's plan was to remove all heavy (passenger) rail services from the Hunter Line within 10 years.

SOR also submits that the Government is thereby in breach of its obligations under national guidelines for the delivery of efficient transport for persons suffering from a disability. This conclusion is based on the fact that, as a result of the rail closure, disabled persons including the wheelchair-bound and the blind will be greatly affected by having to change modes of transport.

Newcastle and part of Civic stations are heritage listed and the Government as previously breached the Heritage Act with the removal of an engine road at Newcastle Station in April 2012.³⁵ SOR is concerned that the heritage value of Newcastle Station will not be preserved as a result of the closure of the rail line.

If this is the case then it is submitted that the Government has breached its ethical requirement to make decisions in the best interests of the public, rather than for the maximisation of revenue.

C.10 - Plans to develop the rail corridor

When Brad Hazzard announced the rail closure in December 2012 he said that the rail corridor would remain in public ownership and serve as a transport corridor, although the decision in December 2013 to put light rail in Hunter St rather than in the 'transport corridor' obviously suggested otherwise.

SOR asks the Inquiry to view the image of GPT's 2008 plan to develop on the eastern end of the rail corridor.^{36 37} It also asks you to consider GPT's strident call for the rail line to be cut and its claim that it walked away in 2009 because the government refused to do so at the time. Also that immediately

³⁵ Refer ANNEXURE K.

³⁶ Still images of GPT proposed building at Save Our Rail website: <http://saveourrail.org.au/?p=193>

Also original GPT YouTube video at www.youtube.com/watch?v=NDJkDkr0oPM

³⁷ [Annexure M] - "Confusion over plans" - Newcastle Star - 19 November 2008

after the government, in the form of its statutory authority, UrbanGrowth, partnered with GPT and entered into a delivery agreement to develop their properties in Newcastle's east end, the cabinet voted to cut the rail line at Wickham.

There is strong evidence to support the argument that the government plans to make some of the rail corridor land for housing and commercial development. SOR is convinced that UrbanGrowth and the Minister for Planning and Infrastructure have completed plans that they will reveal pursuant to a staged development application process. The SEPP enables any development on the rail corridor to be of significant height, particularly as it is not undermined. Premier Baird has refused to rule out such development as has Minister Goward.^{38 39 40}

That decision, combined with the refusal to legislate to cut the rail line, reflects extremely poorly upon the government in this regard. The **Public Interest Disclosures Act 1994** considers whether a planning process may give rise to 'serious and substantial waste', 'maladministration' and 'corrupt conduct'. SOR contends that if the government has a commercial interest in closing the rail line, namely advancing its development with GPT, then a conflict of interest arises in regards to its obligation in regards to the provision of public transport services and the proper use of public monies arising from the sale or lease of public assets.

SOR reiterates the causal connection between the rail decisions and the representation of Tim Owen in the government. SOR submits that it is likely that Commissioner Latham will find that Mr Owen knowingly breached electoral funding legislation when he took political in-kind donations from developers Nathan Tinkler, Keith Stronach and Jeff McCloy. Keith Stronach was reported in the Newcastle Herald to say that he would like to 'rip it up with his bare hands'.

The Inquiry does not need to be reminded that Mr Owen took \$10,000 in cash from Mr McCloy for use in his political campaign. However in a news conference he told the public that he had only just become aware that he had breached the electoral funding laws. Clearly it is submitted that he deliberately sought to mislead the public for his own personal and political purposes. Accordingly any advocacy he undertook in respect to issues that were

³⁸ "Green corridor or developer dream" - ABC Newcastle - 30 May 2014 - <http://www.abc.net.au/local/stories/2014/05/30/4015852.htm>

³⁹ "Rail corridor to be developed: Pru Goward" - Newcastle Herald - 4 June 2014 - <http://www.theherald.com.au/story/2327638/rail-corridor-to-be-developed-pru-goward/>

⁴⁰ "Premier Mike Baird refused to rule out development of the Newcastle rail corridor after the truncation of the line at Wickham" - Maitland Mercury - 22 October 2014 - <http://www.maitlandmercury.com.au/story/2644338/premier-refuses-to-rule-out-rail-corridor-development/?cs=170>

manifestly those being championed by Mr McCloy must be tainted and thereby fail any test based on the grounds of honesty, impartiality and accountability.

Finally, SOR submits that in order to demonstrate that it has fulfilled its obligation to act impartially, transparently and in the public interest, the government need to ensure that the community was **properly** consulted and that individuals and organisations with vested interests were not given favoured access to ministers and local members. Most particularly however SOR submits that in light of the pending findings in Operation Spicer, this Inquiry and the March election, the decision to stop rail services on Christmas Day is unfathomable, particularly in light of the groundswell of opposition to the project (see Maitland Mercury cartoon below).



Finally, SOR argues that the only plausible explanation for the Government's refusal to delay any action on the rail line until after the March election, based on the current evidence, is that is motivated by the following:

- Alleged contractual obligations in respect to its partnership and delivery agreement with the GPT Group for the development of its properties in Hunter and Kings Streets and potentially development of the rail corridor, and
- The reciprocation of favours to Jeff McCloy and the corporate members of the Property Council of Australia, and

- The maximisation of coal freight on the Hunter Rail Line and the royalties that flow therefrom.

Refer also:

- Appendix A - Chronology
- Appendix B - List of documents requests (not already included in the Order 52 call for documents) + List of requested witnesses.
- Various annexures of scanned hard-copy documents