

Submission  
No 292

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

**Organisation:** Hunter Community Environment Centre  
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Partially Confidential

# Hunter Community Environment Centre.



**Submission to the Planning process in Newcastle and the broader Hunter region  
(Inquiry)**

**Legislative Council inquiry conducted the Newcastle Planning Committee**

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

21<sup>st</sup> October 2014

Dear Director,

The Hunter Community Environment Centre (HCEC) welcomes the opportunity to contribute our submission to this Inquiry.

We wish to express our support for the Committee's inquiry into the probity and integrity of planning and approval decisions made by during the current term of Government, especially those that may have been influenced by the illegal dealings that have been revealed through ICAC investigations. The Committee's investigations will help to restore public trust in the planning process and the institutions whose credibility is in question. We hope that this inquiry will serve to appropriately demarcate between the failings of prior performance and as a means to restore community faith, confidence and public trust in the planning system of the State of New South Wales.

As per the terms of reference, The Hunter Community Environment Centre wishes to bring Committee's attention the planning and assessment process for the proposed fourth coal terminal (T4) in Newcastle, which is currently under the consideration of the New South Wales Government (Planning Department Ref: MP10\_0215).

The T4 proposal was submitted by Port Waratah Coal Services (PWCS) for the construction and operation of a coal export terminal at Kooragang Island comprising of rail infrastructure, stockyard, conveyor system, wharves, berths and ancillary facilities.

The initial major project application was lodged by PWCS on the 20<sup>th</sup> December 2010, and the Director General's requirements issued on the 14<sup>th</sup> March, 2011.

The proposal was referred by Mr Hazzard MP, in his former role as Planning Minister, to a Planning Assessment Commission on 12<sup>th</sup> September 2012, under terms of reference which included provision for holding public hearings on the proposal. The Planning Assessment Commission announced the commencement of the formal review process in the first week of July 2014, and convened a public hearing for the review process on 26<sup>th</sup> and 27<sup>th</sup> August, 2014. The Planning Assessment Commission is yet to deliver their review findings, however such an announcement is imminent.

Therefore, as a matter of urgency we request that this inquiry investigate a series of issues around the planning assessment process of the PWCS proposal. HCEC has raised these

issues previously, but to date we have not received sufficient explanation. We make this request in recognition of recent events that have eroded the public confidence in and the legitimacy of the planning process in New South Wales. It is vitally important that state significant projects such as T4, with significant social, environmental and legacy ramifications are not expedited, but are subject to the highest standards of rigour in terms of the integrity of the decision-making process.

With regards to the T4 Proposal:

- We firstly note that the PAC is currently under investigation by the NSW Ombudsman, following a series of complaints relating to a failure to disclose the Commissioners' pecuniary and non-pecuniary interests, and potential conflicts of interest arising from this. These allegations are serious, and warrant a full and complete investigation. Given the nature of these allegations relate specifically to coal and coal infrastructure projects, we believe there are reasonable grounds to suspect that this would have implications for the pending T4 decision. Certainly no further coal and coal infrastructure projects can be referred to a PAC hearing until these allegations of actual or perceived conflicts of interest are resolved.
- Secondly, we urge the Committee to investigate and resolve the issues around the sale of 242 hectares of land at Tomago for environmental offset purposes by the Hunter Development Corporation (HDC) to PWCS, despite the site being previously committed for another offset. The sale of this land was finalised on 28 May, 2012, which was less than a month after the exhibition period for the environmental assessment of the T4 concluded. The specific offset site purchased by PWCS had previously been relied upon by the Minister as an offset for the Westrac Development and Industrial Sub-Division Project in August 2009. There is a further complication to this issue, given that Sam Haddad was both on the board of the HDC and was the Director General of Planning at the time, which establishes a case for a conflict of interest inquiry around this land sale and the subsequent acceptance by the Department of Planning of the adequacy of this offset site. We refer the Committee's attention to the submission to the T4 Review PAC by Hardie Holdings, that reviews the validity of the offset site, the legality of the Minister's decision to rezone the land in question, and the breach of HDC's statutory responsibilities associated with sale of land for purposes that
- Thirdly, we draw the attention of the Committee to the recommendations of the Secretary's Preliminary Environmental Report on the Major Project Assessment for T4 in June 2014, and in particular the recommendations regarding the Developer Contributions (that is, Section 94 fees) to be paid by PWCS to the Newcastle Council. The Report recommends that the total developer contribution owed by PWCS to the council under Section 94A be \$528,140. Newcastle Council has a long established principle of developer contributions being equivalent to 1% of the total cost of construction, which for T4 would have been equal to \$48 million. The recommendations from the Secretary's Preliminary Environmental Report is approximately 1% of this amount. There has been no explanation from the Department of Planning for the vast and unprecedented discrepancy between the recommended s94 fees and the standard operating procedures of the Newcastle Council. We request that the Committee review all correspondence between PWCS and the NSW Government in relation to the negotiation around the developer contributions of the T4 proposal to determine the basis on which this decision was reached, and whether this decision was unduly or inappropriately influenced.
- We further note that the Secretary's Preliminary Environmental Report on the Major Project Assessment for T4 was remarkable as a report, given that it contained multiple errors of fact, untraceable and/or outdated references, and was of a

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<sup>1</sup> This submission can be accessed via the PAC website here: <http://tinyurl.com/kkajasy>

significantly lower quality than the community has come to expect from reports of this nature. HCEC understands the standard practice of the Department of Planning pre-drafting the findings of the PAC Commissioners prior to the hearing of evidence at Public Hearings or Meetings. However, it is vital that this information is accurate, impartial, rigorous and defensible. In this instance, we do not believe that this report upheld these standards. As a consequence, the bias evidenced in this report warrants further review. The Hunter Community Environment Centre maintains strongly that the pre-emptive approval of T4 by the Planning Department in this report has eroded community trust in this decision specifically, and has wider implications for the entire NSW planning system and the approval of coalmines and other major infrastructure elsewhere in the state.

- We further note the submission to the Department of Planning on the T4 Preferred Project Report by the former Newcastle Lord Mayor Jeff McCloy. This submission was written from his personal perspective, but on submitted support for the project on behalf of the city of Newcastle. This was clearly a breach of his authority as Lord Mayor. Beyond this, however, the language and content of this submission was highly irregular and otherwise unprecedented, especially given that the Council's stated position at the time was opposition to the T4 proposal. Given the ICAC revelations regarding the conduct of the former Lord Mayor, this submission and the circumstances of its drafting should also be reviewed.
- We are concerned about efforts to expedite the planning approval for T4 in the absence of the appropriate evidence to determine the full extent of its health impacts. In July 2013, the Environment Minister announced that a particle characterisation study would be undertaken for the Lower Hunter. The Lower Hunter Particle Characterisation Study was initiated to assess the composition of airborne particles 2.5 micrometres and smaller in diameter (PM2.5) in the Lower Hunter region, and the composition of particles 10 micrometres and smaller in diameter (PM10) in the vicinity of the Newcastle Port. The study is being undertaken to provide communities in the Lower Hunter with scientific information about the composition and likely sources of particle pollution and will establish critically important information about current air quality in the region. We submit that it is inappropriate to assess or approve any major developments of export coal facilities in Newcastle at least until the findings of the Newcastle Particle Characterisation study have been determined. We further submit that the review process for the T4 application cannot be properly undertaken in the absence of a health impact assessment, detailing the likely impact of air quality, noise, vibration on community health, and an assessment of the likely risks particularly to vulnerable populations such as children, the elderly, and those with chronic disease. This is consistent with the recommendations from NSW Health in their submission on the Environmental Assessment for the T4 project. However, no health impact assessment has been provided for the project to date. If possible, we seek a determination from this Inquiry as to why the planning assessment for T4 has proceeded to this point in the absence of this vital evidence.

Given the scale of this project, its environmental impacts and its direct impact on the health and wellbeing of Newcastle's portside and rail corridor communities, it would be remiss of the Committee to exclude the planning assessment process of T4 from consideration. This is the largest and most controversial of all infrastructure and state significant projects under planning consideration during the period subject to this Committee's investigation. It is vital that all of the decisions impacting Newcastle with the potential to have been inappropriately influenced are not thoroughly investigated in this process.

Please do not hesitate to contact me with any questions or clarifications - I can be contacted via email or via telephone on \_\_\_\_\_ at your convenience.

Thank-you in advance for your consideration, and on behalf of the Hunter community, I look forward to the opportunity to support the Committee and Committee members in this vital work.

Sincerely,  
John Mackenzie.

Dr John Mackenzie  
Community Liaison  
Hunter Community Environment Centre