

**Submission  
No 314**

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

**Organisation:** Hunter Regional Committee of the National Trust of Australia  
(NSW)

**Date received:** 24/10/2014

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**Hunter Regional Committee**

Chairperson, Keith Parsons

29 October, 2014.

The Director,

Select Committee on the Planning Process in Newcastle & the Broader Hunter Region  
Parliament House  
Macquarie Street  
Sydney, 2000

**SUBJECT: Inquiry: Planning Process in Newcastle and the Broad Hunter Region.**

PLEASE NOTE THAT THIS AN AMENDED SUBMISSION AFTER PERUSAL BY HRC MEMBERS.

The Hunter Regional Committee (HRC) of the National Trust of Australia (NSW) wishes to make the following submission:

The National Trust has serious concerns with many aspects of the planning process involved in a number of proposed developments in Newcastle CBD.

These include:

1. The truncation of the Newcastle CBD rail line at Wickham, removal of heavy rail from Wickham to Newcastle.
2. The Wickham Interchange Project Review of Environmental Factors.
3. HDC City Centre Report (2009).
4. Newcastle Urban Renewal Strategy 2012 (NURS) and final report 2014.
5. Draft Urban Renewal SEPP and Draft DCP (Newcastle City Centre).
6. The GPT/Urban Growth high rise development proposal and associated documents, which include "Newcastle East End Project (DA 2014/323)".
7. The demolition of TPI House.

8. The relocation of Newcastle Courthouse from Church Street to Civic.
9. The proposed new development of the King Edward Park former bowling club site.

1. The removal of the heavy rail line from Wickham to Newcastle formed part of the Newcastle Urban Renewal Strategy (2012). The NURS was subject to a period of public exhibitions during late 2012-early 2013. However, the removal of the rail line and establishment of a Wickham interchange were the only aspects of the strategy that were non-negotiable and for which submissions were not permitted. It was argued that public consultation had already occurred and a final decision had been made. There was no public consultation and no period for public submissions. However, a large proportion of the submissions for the draft NURS did address this issue and objected to the removal. Presumably they were ignored. This indicates that a large section of the community were not prepared to be gagged.

The decision to remove the line appears to have resulted from the 2009 "Newcastle City Centre Report to the NSW Government" (HDCCCR) prepared by the Honeysuckle /Hunter Development Corporation (HDC) for the NSW Government. The HDC is a public sector property developer and has an obvious bias. We are also concerned that an organisation like the HDC is now part of the NSW Department of Planning and undertakes planning functions despite its conflict of interest and lack of expertise. Further, there was an "Urban Design Reference Panel" which included representatives of Newcastle University, Planning NSW and three firms of architects involved in property development and with a conflict of interest (Cox Richardson, EJE Architecture and Suturs Architects). There was no representation from independent transport planners or economists or urban designers.

Recommendation 6 of the Report calls on the State government to revise its policy of retaining the rail line to Newcastle Station and to prepare for of a new terminus at Wickham, west of Stewart Avenue. Recommendation 5 (b) also addresses this. There were no arguments based on transport planning or economics to justify the recommendations.

While there was a period of public exhibition there appears to be a clear anti-rail and pro-development bias from those who prepared and advised on the report.

2. The Trust made two submissions with respect to the Wickham Interchange Project Review of Environmental factors. Our concerns are as follows:

(i) Lack of transparency, accountability and genuine consultation. Importantly, the State Government has refused to release for public perusal, 5 documents referred to on p 33 of the Traffic Impact Assessment of the REF:

- GHD- 2014 Newcastle Light Rail, Options Identification and Initial Feasibility Assessment Study, Transport for NSW;
- GHD, 2014 Newcastle Light Rail, City Centre traffic Modelling Services-light rail alignment options assessment;

- GHD, 2014- Newcastle Light Rail-Microsimulation Model Calibration and Validation Report-Transport for NSW;
- Transport for NSW, 2014-Wickham Terminus Construction Period Services and Operational Plan;
- URS, 2014 Pedestrian Footbridge Requirement Study, Transport for NSW.

The refusal to release these reports, despite a number of community requests creates a perception that these reports may in some respects not be favourable to the project.

(ii) The Statement of Heritage Impact (HIS) only considers the impact between Wickham and Hamilton. Consequently, it is a very deficient document. The major works that will be undertaken east of Wickham including the removal of rail infrastructure and possible development on the corridor recently announced by Planning Minister Goward, the heritage impact on the historic 1857 Great Northern railway corridor and two heritage listed railway stations (Newcastle and Civic) are not considered. The heritage impact on the Newcastle City Centre Heritage Conservation Area (NCCHCA), between Newcastle and Wickham is not considered. The REF incorrectly states that only a small portion of the NCCHCA falls within the proposed site. The removal of the Wickham to Newcastle line forms part of the REF and is referred to in the REF Overview (“The need for change”). It, therefore, should have been assessed in the HIS.

(iii) The project has been placed on exhibition before any clear plans for future uses of the corridor and the two heritage –listed (State Heritage Register) stations have been announced.

3. As indicated in 2. above, The HDC City Centre Report was prepared for the State Government by a public sector property developer and the main urban design advisory group was made up of architects with record of development in the city and the university which plans to develop in the CBD. There was no independent transport expert and arguably no independent expert in urban design (as opposed to architecture). It's hard not to conclude that their views would prevail and that those involved had a clear conflict of interest.

4. NURS:

(i) There was no input into the document from the elected council or its independent Urban Design Consultative Group (UDCG).

Council's independent Urban Design Consultative Group, according to an article in the Newcastle Herald (24/10/14, issued advice to Council last July but Newcastle City Council took no action and councillors were only informed about it last week after a councillor (Doyle) made a request for it. This creates a perception of Council mismanagement and a failure to provide councillors with very important information they are entitled to receive.

(ii) While there were 420 submissions during the public exhibition period, the majority of them included a submission that the rail should not be removed, despite the rail truncation being declared by the Government to be final and non-negotiable.

(iii) Submissions from Newcastle University and GPT called for floor space ratio (FSR) and maximum height increases (e.g., heights for the proposed university development to increase from 30 to 45 m and provide for far greater density through FSR increases). These major changes were reflected in amendments in 2014 to Newcastle LEP 2012 and DCP using a draft urban renewal SEPP and DCP. These draft documents sought to legalise what Newcastle University and GPT/Urban Growth wanted in the Civic and Mall areas respectively. It can reasonably be inferred that the Department of Planning and these bodies appeared to be colluding on this matter.

#### 5. Draft Urban Renewal SEPP and Draft DCP (Newcastle City Centre):

(i) The 2012 NURS, Newcastle LEP 2012 and DCP 2012 had all been through a public exhibition process. The 2014 draft changes to the LEP and DCP with respect to the mall and Civic areas are not justified on urban design grounds and appear to be tacit acceptance of commercial viability claims (N.B., the document refers to “economic revitalisation”) rather than urban design and town planning arguments.

The SEPP had a public exhibition period of 16 days. This is extraordinarily short and inadequate time period and unprecedented in this region for such important and far-reaching strategic planning statutory instruments and made a mockery of the concept of genuine public consultation. Further, there was no public meeting by the Department of Planning that is traditionally used to explain the changes to the SEPP/LEP or DCP. The developers held such a meeting which creates the impression of the developer running the planning process. Any advice to the community would have been compromised by their conflict of interest.

(ii) According to the Newcastle Herald (24 October, 2014) Council’s independent Urban Design Consultative Group (UDCG), which has for decades advised Council on issues relating to DAs, planning instruments and the like, issued advice to Council management last July (on either the draft SEPP and DCP or the GPT DA-this is unclear) but they took no action and councillors were only informed about it last week after a councillor (Doyle) and a request. This creates an impression of gross Council mismanagement and a failure to provide councillors with very important information that they (and the community) have a right to receive.

#### 6. GPT/Urban Growth DA (2014/323):

(i) The development Application was prepared jointly by GPT and Urban Growth. Urban Growth is a public sector property developer. Both have a clear conflict of interest including a pecuniary interest in redevelopment in Newcastle CBD. The draft SEPP and draft DCP for the CBD Mall area appear to mirror the DA. This created a perception of collusion between the developers and the government.

(ii) Given Urban growth’s conflict of interest (pecuniary), the NSW Government should have taken an arms-length approach and the planning instruments (SEPP and DCP) should have been subject to an independent review. This does not appear to have occurred.

(iii) When the DA was placed on public exhibition, the planning instruments/policies being used to assess them were still in draft form and, therefore, had no legal status.

## 7. TPI HOUSE

(i) This building is a Newcastle City Council-owned, Newcastle LEP heritage listed building.

For many years its sale to Newcastle University has been the subject of informal deliberations.

(ii) On 20 December 2011, Council received a report on the reclassification of TPI House from Community to Operational to facilitate its sale and a report was mentioned that the building was “condemned “because it was “structurally compromised” by termite infestation.

The report to Council also mentioned correspondence with Newcastle University who were interested in acquiring the site. The reports were dated 2006 and 2009. The report also mentions a quantity surveyor’s report about future options for the building and site. However, there was NO heritage report or heritage impact statement.

(iv) On 28 May 2013 Council deliberated on” Item 64, 231 King St (TPI House) Demolition subdivision and sale”

The matter was held in confidential session, Council management having cited s. 10A (2) of the Local government Act. This is yet another example of Council abusing the act with respect to confidentiality. The reasons cited included a confidential report about valuation, sale costs, potential revenue, conferring a commercial advantage on a person making an offer to purchase the land.

However, the recommendation to sell and/or demolish the building and the reasons for that also formed part of the item and presumably any staff advice and debate and should not have been dealt with in confidential session.

(v) The resolution arising from the confidential Council meeting was for Council to lodge a DA and call tenders for demolition. Again (the elected) Council was not provided with a heritage impact statement to allow it to make an informed judgment about demolition or any alternative use for the building. Calling for tenders concurrently pre-empted any DA recommendations.

(vi) The DA was publically exhibited in October, 2013 and 2 objections were received. The HIS was produced on 03 September, 2013, long after the May 28 Council meeting. Approval was finally given on 23 July 2014, by staff under delegated authority. Despite the small number of submissions received (probably due to the short 2 week statutory period) and despite their being fewer than the 10 objections that automatically trigger the decision being dealt with by the elected Council, Council had a clear interest in the matter as owner and developer (for demolition). Council resolved that a DA be lodged. That does not imply they would have approved it if armed with further relevant information. Further, the initial decision to support demolition in principle was made without adequate information by a previous council in 2011. The current council were not provided with adequate information on which to base a decision either.

(vii) Importantly they were not provided with the heritage impact report authored by a very experienced local conservation architect. That report questioned the need to demolish, particularly given that there was allegedly no future use for the site other than to widen about 100 m of the King Street footpath for cyclists. The statement of

environmental effects (SEE) for the DA also cited the need for King Street road widening, presumably on the advice of Council staff. This idea was abandoned years ago as it would have involved taking land from Civic Park and there was no possibility of further widening east of Darby Street. The advice in the SEE appears to be misinformation.

The report provides alternative proposals such as construction a concrete upper floor for adaptive recycling or retaining the King St facade and structure to a depth of 3.5 metres.

(viii) The normal procedure when Council acts as a developer/applicant as well as the consent authority is for planning staff to prepare a report and recommendations which are then assessed by an independent planning consultant who prepares recommendations for the elected council to consider. Why didn't this occur?

(ix) In this case an independent firm of architects prepared the SEE-a clear departure from accepted practice. This firm (DWP Suters) commissioned a heritage impact statement. This appears to be a reversal of process and an abuse of process, given the approval was made by council management rather than an independent consultant. The consultant prepared the application rather than independently reviewing it. It cannot be argued that DWP Suters, having been commissioned and paid by Council to prepare a DA to demolish can act as the independent, arms-length planning assessor as well.

(x) Council actions contravene its own heritage policies (1998 and 2013) which require it to properly maintain its heritage assets and lead the community (including the property industry) by example. Its June 2013 policy states (7.1.5) "Council is committed to leading by example by strategically managing heritage assets under council's care and control". The decision to demolish TPI House, particularly in light of the recommendations in the HIS for other options to retain all or part of the building, are shameful and make a mockery of Council's approved heritage policy and its DCP (see (xi) below).

(xi) The HIS makes it clear (p 18, 2.4.3, Planning Controls) that demolition does not appear to satisfy the general principles (objectives) of 5.05.01 of Newcastle DCP 2012 with respect to heritage.

(xii) Newcastle University has announced (19/10/2014) that it has purchased the TPI House site at the same time it is being demolished. The HIS (Sept, 2013, 2.6) shows a University plan for the neW Space precinct with the TPI House site identified as Council land earmarked for future university development. This is long before the July, 2014, development approval.

(xiii) It would appear that Newcastle City Council and Newcastle University have had a long term plan to redevelop the site without the encumbrance of the heritage-listed TPI House building being considered for retention and adaptively recycling. In other words they have embarked on a process to subvert the normal procedures in place for dealing with a Newcastle LEP Heritage Schedule listed heritage item that should have included the University after purchase examining the option of adaptive recycling the TPI House building.

## 8. THE RELOCATION OF NEWCASTLE COURTHOUSE TO CIVIC:

A number of questions arise from the decision to relocate the court facilities (the "Legal Precinct") to Civic.

(i) Why wasn't an existing and probably cheaper Government proposal to redevelop and upgrade the court facilities in the existing (since the early 19th century) legal precinct considered? They included possible demolition of the c 1950 registry building, upgrading of the 1980s and 1960s court buildings, possible new rear construction within the grounds of the James Fletcher Hospital site and possible use of part of the Newcastle Police Station building.

(ii) Why would the Government undertake recent refurbishment works costing well over &1M to the State Heritage Register listed (SHR) Maitland Courthouse (1895); yet decline to consider refurbishing the 1891 (also SHR-listed) Newcastle court building, (along with new development within the existing legal precinct)?

(iii) What analysis was undertaken of the impact of moving the legal precinct to Civic (in terms of heritage and economic impact and issues like traffic management, car parking facilities for the public and difficulties in finding sympathetic new uses for the existing court buildings).

(iv) What assessment was taken of the objections of bodies like Newcastle Law Society, Newcastle Bar Association and the National Trust?

(v) It appears that there was little account taken of the impacts of relocating Newcastle Courthouse or the consequent future of the existing legal precinct that includes many heritage listed buildings, such as the Church Street (SHR and National Trust Register listed) terrace groups presently used for barristers' chambers and solicitors' offices. This is unacceptable.

(vi) The decision to relocate appears to arise from a proposal by Jodi McKay (MP for Newcastle, 2007-11) and a recommendation of the 2009 HDC City Centre Report. What account did she and the report take of the impact (environmental, social and economic, as required in the E, P & A Act) of the relocation proposal, not just on the Civic Precinct but also on the Eastern CBD, including the Legal Precinct?

(vii) What account of impacts did Newcastle City Council take, particularly given

- it involved the demolition of the New Frederick Ash Building (NFAB), assessed in 1996 in a report to Council to be of local and regional heritage significance. While an HIS was prepared prior to demolition, what investigations were made into possible future uses for the NFAB, including incorporation part or all of it into the proposed court building?

- Council was the owner of the land on which the building was sited. In other words Council had a pecuniary interest in the project.

We believe no genuine investigation of the obvious negative impacts of the development, alternative sites or adaptive recycling possibilities for the NFAB.



10. King Edward Park former bowling club site.

King Edward Park is being considered by the NSW Heritage Minister for listing on the State Heritage Register. It also listed on the National Trust Register.

We are aware of a development proposal for a private function centre that we believe doesn't comply with the Plan of Management for the site in a number of respects.

We have serious concerns about the process used to allow a "spot rezoning" of the site, which is zoned RE1 (Public Recreation). A private function centre is not an activity that is permitted with consent under the zoning. The spot rezoning allows this impermissible use on the bowling club site. While Newcastle city Council opposed the necessary change to their LEP, it was ultimately written into the instrument. We ask that this matter be investigated.

Yours sincerely,

Keith Parsons (Chair).

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Chair,  
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