

**Submission
No 103**

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

Organisation: Newcastle Inner City Residents Alliance

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**Submission for the Newcastle Inner City Residents Alliance
to the Legislative Council Select Committee on the Planning Process in Newcastle
and the Broader Hunter Region**

This submission relates to Point 2 sections (a), (b) and (d) of the Committee's Terms of Reference.

The Newcastle Inner City Residents Alliance (NICRA) supports urban renewal, including in Newcastle's unique Mall and East End, as long as it is done in response to extensive and inclusive consultation with residents and supports the cultural and natural heritage and values of the city.

NICRA represents a wide range of community views, including residents, urban planners, architects, and other small business people. Sixty percent of NICRA members live in suburbs of Newcastle outside the inner city area, and across the Hunter.

NICRA is alarmed that the NSW Government and the Newcastle City Council are facilitating the public / private partnership Newcastle East End Development (DA 2013/232) by the GPT Group and UrbanGrowth NSW that entails overthrowing the Newcastle Urban Renewal Strategy 2012 and the adoption to a State Environmental Planning Policy (SEPP) Amendment (Newcastle City Centre) 2014 to achieve this outcome.

This development entails excessive and inappropriate high-rise development that threatens the very qualities that make the heritage area of Newcastle special. The NSW Government and Department of Planning and Environment are supporting this project with an alarming lack of transparency, and in contradiction to long-standing and credible urban planning controls and principles.



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If this project proceeds it will destroy this heritage asset forever and constitute a clear breach of community trust in government planning processes. Furthermore, in simply economic terms, this precinct is a highly valuable asset belonging to the people of Newcastle. It's unique qualities are being sacrificed to benefit a few developers.

The GPT/UrbanGrowth proposal would clearly be unacceptable under the Newcastle Local Environmental Plan (LEP) 2012. This LEP, under cl.7.9 (4), restricts heights in Area C to a maximum of 24m (approximately 8 storeys). These planning controls enable a vigorous revitalization process currently underway.

It is essential that key documents and individuals relating to these decisions should be examined by the inquiry, including key documents between the Department of Planning and Environment, Newcastle City Council, developers GPT and UrbanGrowth NSW, and Hunter Development Corporation

We urge the inquiry to also interview key personnel from these agencies including:

- the Department of Planning and Environment in both Sydney and Newcastle, including Mr Brendan O'Brien Director of Housing and Employment;
- Newcastle City Council, including the General Manager, Mr Ken Goldthorpe;
- Hunter Development Corporation, including Director Mr Bob Hawes.

Former politicians, including former Newcastle City Council Lord Mayor, Jeff McCloy, and Newcastle MP, Tim Owen, and their advisors on these developments, should also be asked to provide evidence.

NICRA insists that a thorough social, economic and environmental impact assessment be done about developments in the Newcastle East End, and all documents relating to the changes to planning controls and the development should be publicly released for scrutiny and discussion.

There has been no publicly available clear and detailed economic, social, environmental rationale for such major amendments to planning controls provided for public scrutiny, especially given the extensive consultation and public acceptance of the previous NURS 2012 and the linked SEPP and Newcastle LEP 2012.

It is spurious, as some developers claim, that is necessary for high-rise developments to be built to pay for alleged foundation costs arising from historic mine activity and subsidence. The Newcastle City Council Administration building, for example, was built to 8 storeys in a mine subsidence area, similar to the underground environment in the heritage area. It was built without requiring 'primitive' massive

concrete filling of mine shafts and tunnels. This building was built in 1977 and survived the 1989 Newcastle earthquake.

The changes to planning controls, the SEPP Amendment and changes to the Newcastle LEP will benefit some interests at the expense of the wider Newcastle and Hunter community. Furthermore, NICRA asserts this development represents an inappropriate and undue response to GPT/UrbanGrowth lobbying and would particularly favour these developers over others in the region. The community fears these developers may not even build but will simply on-sell their properties and, through the planning control changes, gained a massive windfall profit having essentially gained a significant subsidy from the NSW Government.

The state and local governments should adopt clear planning principles that acknowledge, respect and reflect the form, character and heritage of our city and that the community consultation process that led to proposed changes to planning controls was too short and should be extended, and linked to discussions about railway land and buildings.

The grounds for NICRA objections include:

1. The proposed development is contrary to the adopted urban strategy in Newcastle for towers to be located at Wickham, or Newcastle West End
2. The proposed increase in permissible maximum heights on three of the sites owned by GPT and UrbanGrowth NSW, to permit residential towers above retail podiums, is very concerning due to its impacts upon the legibility of the landform and character of this important part of the heart of the city.
3. While it is suggested that certain limited 'view corridors' to and from the Cathedral can be preserved under the controls, this ignores the more significant visual perception of the area as part of a broader panorama.
4. This massive project will jeopardize the proposed future development opportunities elsewhere in the city, including the West End that formed a key element of the initial 2012 NURS.
5. The broad "master plan" does not address a range complex issues such as access for servicing large retail outlets on difficult steep sites, interface between retail and residential. The plan will pre-commit any future consent authority from possibly refusing or requiring changes to non-functional or unacceptable designs, which appear to conform to the "master plan".
6. Among the many specific questions that are now being raised is whether Council had properly consented to elements of this proposal: its land being used for access (the car park), the application of residential "vener" to the exterior of the car park, and re-location of Thorn Street.

7. Overall we believe the project results in inequitable development within Newcastle insofar as it selectively favours two developers on a specific site, through a spot rezoning to support that development, rather than a clearly announced set of planning principles.
8. The project has emerged from a flawed planning process that lacked transparency, has a concerning proximity to alleged illegal conduct by local leaders and business people, and was without an adequate or genuine community consultation process.

Issues pertaining to this Inquiry

For the purposes of this submission and to align with the focus of the Upper House Inquiry, NICRA wishes to expand on a number of serious concerns regarding the planning process relating to the proposed Newcastle East End/Hunter St Mall development. These concerns include

- a) **The inadequate methods of community consultation.** We propose that there has been a failure to demonstrate genuine and effective level of method of community engagement and participation in the key steps surrounding the amendment to the NURS that would enable this massive revision to past planning decisions to proceed;
- b) **Issues relating to perceived or serious potential conflicts of interest in the planning process.** The level of apparent political influence on the planning process itself and the role of NSW Government and Newcastle City Council in UrbanGrowth NSW/GPT partnership underpins and drives this proposal;
- c) **The proximity of these planning decisions to the revelations at the recent ICAC Inquiry (Operation Spicer).** Improper relationships between developers, a small number of key business people and local politicians who are in key decision-making positions relating to this development, including the role of the Newcastle City Council executive leadership are of concern. This includes the role of Newcastle Alliance;
- d) **The role of the Department of Planning and Environment and state agencies in subsidising a private developer at the expense of the community.** The role of state agencies, the Hunter Development Corporation and UrbanGrowth NSW is of concern, as they appear to be putting the interests of a small section of the developer community before the interests of the wider community.

a) The inadequate methods of community consultation

The proposal to increase the maximum city height limits almost 3 fold (from 8 to 20 floors) in this specific zone to enable this development was first on public display on March 14 for 2 weeks prior to closure of submissions relating to these altered height limits. This was a substantial revision of the previous NURS. Furthermore the

massive revision of the plans previously discussed with the community as part of the NURS 2012, to now include towers were clearly developed during 2013 without information or involvement of the community during this time. It is noteworthy that despite the prohibitively short time frames (16 days) the majority of public submissions in response to the change to the 2012 LEP opposed the increase in height limits (approximately 70% of submissions opposed the development), indicative of the level of community opposition to these changes. Regrettably the only response by Minister Goward to the opposition to the SEPP amendment was to make very minor changes to height limits (reducing these from the proposed 20 floors to 17), with claims of having listened to community concerns. The changes still enable flexibility for developers to increase heights if required. The response ignores the range and extent of community concerns, and since there was little or no effort on behalf of the Department of Planning to engage with community views, can only be considered tokenistic at best. There has to date been no formal response to community members in reply to submissions responding to the concerns raised.

The method of communication about these changes was inappropriate and insufficient. GPT and UrbanGrowth jointly held two brief meetings in total, 1 and 2 days prior to the closure of submissions regarding the LEP. Those attending were told that these were information sessions not consultation sessions i.e. for community to be told what was going to occur. Information about these sessions was not widely or effectively distributed by GPT. Many of those affected were not informed of the meetings. Community concerns were not addressed. As noted above the local council has not had the opportunity to formally debate these amendments (<http://www.theherald.com.au/story/2172205/opinion-tall-city-towers-may-not-be-the-cure-for-inner-city/>).

The methods of consultation and response to community concerns do not conform to Departmental standards, Council's stated values and vision and acceptable planning practice.

Such significant changes to a previous plan that have such a substantial impact on local community and on state and national heritage locations deserves more serious and authentic consultation.

The superficial and cursory approach to community involvement undertaken throughout this process and relating specifically to this DA fails to conform to NSW Government's own planning guidelines and UrbanGrowth NSW's own stated goals of community engagement as reflected in statements e.g.:

"The NSW Government knows that engaging communities in these projects is fundamental to their success" and

*"Has always worked in a collaborative manner with local councils **and the community** and this mode of operation will continue"*
(<http://www.urbangrowthnsw.com.au/news/news/government-says-build,-build,-build.aspx>)

Furthermore the elected council has never formally debated the proposals (<http://www.theherald.com.au/story/2172205/opinion-tall-city-towers-may-not-be-the-cure-for-inner-city/>)

Alongside concerns about the method of community consultation there has been a level of obfuscation within formal correspondence and discussion with the Department of Planning and Minister's office regarding the level of community consultation that was necessary and that actually occurred. This is best exemplified in the reference to the massive large scale development as a "minor amendment" not requiring the level of consultation that community was calling for; and the repeated reference by the Department, the Minister for Planning and the Premier that "extensive community consultation" had occurred without providing examples or evidence of that consultation. There is an inappropriate and misleading conflation of the community consultation relating to the 2012 NURS (at the end of 2012) with the consultation that has been essentially absent or inappropriate in relation to the massive amendments to that plan (i.e. in early 2014).

It is particularly concerning that the development application does not include a Social Impact Assessment even though the applicants acknowledge that the development falls within the category that would require such as assessment. This does not accord with the scale, impact and level of community concern about this development. The lack of such an assessment alone should be grounds to reject the application.

b) Issues relating to perceived or serious potential conflicts of interest in the planning process.

The level of apparent political influence on the planning process itself; and the role of NSW Government and Newcastle City Council in UrbanGrowth/GPT partnership that underpins and drives this proposal,

Perhaps most concerning is the dual role of State government as developer and consent authority. This includes the controlling interest over the makeup of the JRPP itself. This creates the perception of an inescapable conflict of interest and contributes to the loss of community confidence in the probity of this process. **This concern has been raised in the public domain (Newcastle Herald, March 22nd 2014:**

<http://www.theherald.com.au/story/2166644/opinion-urban-renewal-plan-risk-to-city-heritage/>: *“That the Minister for Planning NSW will endorse these significant planning changes to favour (his) own agency and their corporate partner above the interests of other developers, and to expedite the opportunity for windfall profit, raises serious conflict of interest issues”.*

The response from the now Minister for Planning when this matter has been raised, is that the local Council and JRPP holds the key decision-making role. Nevertheless, both the JRPP and UrbanGrowth are entities of NSW Government. In addition there are concerns regarding the local council role are noted below, and the JRPP comprises nominated council representatives and reports through to the Minister.

“Spot rezoning” and proposed alteration of existing height limits to favour this proposal and this development on such a massive scale further accentuates a perception of conflict of interest in this process. The development application cannot claim to reflect improved community amenity or community best interest (in the absence of any level of genuine community contribution to the proposal). Regrettably the process has contributed to a widely held view of developer interest dominating decision-making. Furthermore such “spot-rezoning” to support a specific development (i.e. the State Government’s own investment and development) raises serious questions regarding the process for and motivations underpinning the State Government’s financial investment in the partnership with GPT in this site, and the level of political influence to support the proposal. Other matters relating to this relationship that require investigation are an apparent donation by GPT to the Liberal Party of NSW in 2010 via the Millennium fund, and the circumstances surrounding this donation and its subsequent withdrawal: see the NSW Electoral Funding Authority document available at <http://searchdecs.efa.nsw.gov.au/Documents/D2011-123.pdf>

In regards to the perceived conflicts of interest at both the local Council and State Government level, it is noteworthy that ICAC guidelines on conflict of interest direct that “situations where there is the appearance of a conflict of interest must (also) be avoided, if only because protestations of innocence and integrity may be impossible to judge”. This concern has been raised in the public domain (Newcastle Herald, March 21st 2014 as noted above).

The issue of perceived conflicts of interest relate also to the business interests of key decision makers, such as the then Lord Mayor (Mr. McCloy) that requires investigation. There is a widely held concern that these planning decisions have the

potential to benefit the interests of the McCloy group within the Newcastle CBD area.

c) The proximity of these planning decisions to the revelations at the recent ICAC Inquiry (Operation Spicer)

The ICAC inquiry has identified improper relationships between developers, a small number of key business people and local politicians who are in key decision-making positions relating to this development (such as is demonstrated in the role of the Newcastle City Council executive leadership). This includes the role of Newcastle Alliance.

It has been difficult for many to comprehend the rationale for this dramatic change to planning for the city, and the obvious haste and dogged determination of local political leaders to proceed despite concerns by residents, experienced planners and community organisations. Public statements by both Mr Owen and Mr McCloy indicated that rather than openness to community concerns, community views were perceived as obstacles to be overcome. Most concerning was Mr McCloy's public call during the review period for residents to make submissions in support of the GPT/UrbanGrowth NSW proposal. This, we believe, is highly inappropriate attempt to influence the process, when NCC is also undertaking a role in evaluating the proposal.

d) The role of the Department of Planning and Environment (DoP) and state agencies in subsidising a private developer at the expense of the community.

State agencies, the Hunter Development Corporation and UrbanGrowth NSW is of concern, as they appear to be putting the interests of a small section of the developer community before the interests of the wider community.

The Department of Planning appears to be facilitating changes to thoroughly considered, and widely accepted, planning controls (Newcastle SEPP 2012, Newcastle LEP 2012) and strategies (NURS 2012) in order to favour spot rezoning to assist GPT and UrbanGrowth, representing an apparent favouring of developers over accepted proper urban planning principles and strategies.

Issues of concern relate to:

- The role and actions of the Newcastle Alliance and developer members, the Hunter Business Chamber and the Hunter Development Corporation in driving such proposals, operating without an appropriate regard for community engagement, or consultation requires further investigation

- The lack of equity in development that will occur as a result of government supported spot rezoning of its own development, and its adverse impact of development at other previously agreed sites (e.g. West End)

In response to a number of these concerns about transparency of the planning processes and decisions, NICRA believes a number of key documents relating to these planning decisions and processes need to be obtained and reviewed:

- A request to Public Access to Information Unit Under the Government Information (Public Access) (GIPA) Act, for the Statement of Reason regarding SEPP amendment approval by the Minister for Planning. This request has been refused. NICRA is currently appealing this decision.
- A request under the GIPA Act has been submitted seeking information regarding Council documents and correspondence among senior council officers (this includes Mayor, Deputy Mayor, GM and directors and deputy directors) pertinent to the SEPP amendment since the NURS in December 2012 until the present. It is understood that in the usual process of considering a major development proposal Council receives important internal advice from key advisors such as the Urban Design Consultative Committee. What advice was received from this body regarding the SEPP amendment and what was the Council's response?
- It is apparent from Council meetings that key documents have not been provided to Councillors. It is not clear whether Council itself made a submission relating to the SEPP amendment and if so what the contents of that were; or if not why it did not provide a submission. Scrutiny of this process and resulting decisions is required.

In summary a number of factors have contributed to the erosion of community trust in this planning process:

- The proximity of this planning process to the alleged corrupt dealings between politicians at local and state level, and developers;
- The perception of conflicts of interest between the Lord Mayor's own development interests and these decisions;
- The close relationship between local political decision makers and developers/business lobby, and the level of political influence that has been exerted over the planning process
- Lack of transparency and secrecy concerning key council decisions relating to the support of the proposal, and documents (including the practice of the General Manager of the Council to block disclosure of key council reports)

- Lack of clarity whether Councillors had the opportunity to view all the necessary internal documents and reports relating to the proposal
- The aforementioned role of the Department of Planning and UrbanGrowth NSW as developers in this instance.
- The role and actions of the Newcastle Alliance and developer members, the Hunter Business Chamber and the Hunter Development Corporation in driving such proposals, operating without an appropriate regard for community engagement, or consultation requires further investigation
- The lack of equity in development that will occur as a result of government supported spot rezoning of its own development, and its adverse impact of development at other previously agreed sites (e.g. West End)
- The lack of willingness of Newcastle City Council, the NSW Department of Planning, UrbanGrowth NSW and GPT to engage in a level and method of effective community consultation that confirms to their own stated policies and guidelines for a major development. This has been accompanied by a clear pattern of dismissive attitude to community concerns, with a contrasting high level of engagement with and consultation with the developers, Newcastle Alliance, the Property Council of Australia and the Hunter Business Chamber.
- The lack of assurance at this stage regarding the probity of Council and state government planning decisions regarding this development.

As indicated above, NICRA recommends the Inquiry seek a number of key documents:

- The Statement of Reason by the Minister for Planning supporting SEPP amendment.
- Council documents and correspondence among senior council officers (this includes Mayor, Deputy Mayor, GM and directors and deputy directors) pertinent to the SEPP amendment since the NURS in December 2012 until the present.
- Advice received from the Urban Design Consultative Committee and the Council's response to this advice.

In the light of the concerns outlined above we believe that the Inquiry should endorse recommendations NICRA made to the Minister, Pru Goward at a meeting we had with her in her office in Sydney on October 2nd, specifically:

1. Revoke the SEPP amendment by providing a revised SEPP amendment overriding the 2014 approval.
2. Restore the NURS (2012) that includes:
 - Acceptable height limits (maximum 24 metres or roughly 8 storeys)
 - Appropriate floor-space density provisions
 - Maintains iconic public vistas to and from the city, and
 - Facilitates development in the West End.
3. Place an immediate moratorium on all development associated with the amended parts of the Newcastle LEP.
4. Commission a report that evaluates the risk of West End development being stymied because of the uncertainty created over the East End.
5. UrbanGrowth NSW should utilize the NURS to facilitate innovative, equitable and balanced development across the city, in particular by increasing housing for low-income families and students, especially with the University of Newcastle campus being developed in the Civic precinct.
6. The NSW Government initiate an urban design award for innovative ideas about revitalizing Newcastle in accordance with the NURS 2012 framework and that models world's best planning principles and protects the natural environment and cultural heritage, urban sustainability and improves the livability of Newcastle's inner city.

I have attached a copy of an earlier submission to the Joint Regional Planning Panel that also addresses concerns about this planning process and the proposed development itself.

Please contact me if you have any questions on [redacted]. I, or an alternative representative of NICRA, would like to make a verbal presentation to the committee at its public hearings. I look forward to hearing from the committee about the time and place for these hearings.

Yours sincerely,

Dr Geoff Evans
President

Newcastle Inner City Residents Alliance