

**Submission
No 258**

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

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Submission to the Legislative Council Select Committee on the Planning Process in Newcastle and the Broader Hunter Region

This submission relates to Guidelines 2 (a), (b) and (d) of the committee's terms of reference.

(a) State Environmental Planning Policy (SEPP) Amendment (Newcastle City Centre) 2014

(b) the Newcastle Urban Renewal Strategy

(d) DA 2014/323 – Newcastle East End Development

I am enthusiastically supportive of the revitalisation of Newcastle and am not opposed to high-rise development providing it is appropriately planned and located. High-rise can assist in reducing urban sprawl and associated economic, social and environmental costs. There are currently apartment sales taking place for high-rise residential towers to be built in King Street (Icon Central) and at Marketown (Spire). I am supportive of high-rise residential buildings in the West End of Newcastle and Wickham as recommended in the Newcastle Urban Renewal Strategy (NURS) (2012). I do not object to buildings of up to eight stories being constructed in the Newcastle city centre as permitted within the scope of the Newcastle LEP (2012).

The proposed development by GPT Group and UrbanGrowth NSW for high-rise towers in Newcastle's city centre contradicts the adopted NURS (2012). According to a report in the *Newcastle Herald* (20 June 2012), the NSW government purchased a 66.6 per cent stake of the GPT Group's property holdings in central Newcastle for \$20m in June 2012. According to a report in *The Australian* (18 June 2012), this deal marked a significant loss for the GPT Group, who had spent more than \$100m acquiring CBD lots, which are situated in and around the Hunter Street mall in central Newcastle.

Just over a year later, it was reported in the *Newcastle Herald* (19 July 2013) that lord mayor Jeff McCloy was critical of Newcastle city height restrictions that protect views to Christ Church Cathedral. In the same report the chairman of the Property Council of Australia's Hunter Board Ed Crawford was quoted as saying administration constraints ranging from view corridors to height limits to boundary setbacks made it tough for developers to get a green light. The lord mayor argued in the same article that the city's widespread mining subsidence – which required costly grouting before a project could literally get off the ground – meant developers had to build higher to get a decent return on their investment. Mr Crawford said the cost of grouting to counter mine subsidence alone could mean projects were not feasible, and when a project was "marginal", extra floors were required "just to make it work at all, financially". Assertions regarding the need for height to make a project financially viable are not uncommon from property development lobbyists advocating changes to building height laws. The *Newcastle Herald* (24 October 2014) revealed that a July 2014 report from the Urban Design Consultative Group concluded there was "no evidence the project wouldn't be viable without the new measures" and recommended to council that changes to height levels not proceed. That report from the Urban Design Consultative Group was not provided to councillors until October 2014. Council defended

its failure to provide the document to councillors by claiming it was “too late to have any bearing on the outcome of the planning process” for the new city centre controls on development. The Legislative Council Select Committee might consider a further examination of this defence by Newcastle City Council and why this important and influential report provided by a committee comprised of persons with architectural and urban design expertise was not provided to councillors.

In February 2014, the *Newcastle Herald* announced a plan for three residential high-rise towers to be built in the city as a deal between UrbanGrowth NSW and the GPT Group. The plans would require changes to the Newcastle LEP to permit an increase in heights of buildings from existing laws that set a maximum height of around eight storeys. UrbanGrowth NSW was part of the same department that would be the consent authority for necessary changes to state planning instruments. I believe this process – where a proponent is closely associated with an approval authority – needs clear checks and balances through transparency to minimise the opportunity for conflicts of interest to occur.

The consultation process for the high-rise towers, referred to in the *Newcastle City Centre Finalisation Report* as the “second exhibition period”, was inadequately brief. The public was provided just 16 days to comment on changes that would overturn decades of deliberate height controls in the area where spot rezoning was to occur to permit high-rise and allow height changes from 24 metres to 69.5 metres.

Key figures, project proponents and elected representatives in favour of the changes repeatedly conflated this period of 16 days – from 5 March until 21 March 2014 – with the period the Newcastle LEP was under public discussion from 14 December 2012 until 19 April 2013. It was repeatedly claimed there had been an adequate consultation period of over four months. But the issue for opponents was that significant changes regarding heights were bundled in the “second exhibition period” from 5 March until 21 March 2014.

I urge the Legislative Council Select Committee to look at the myriad issues and overwhelming opposition to the proposed changes in submissions during the second exhibition period.

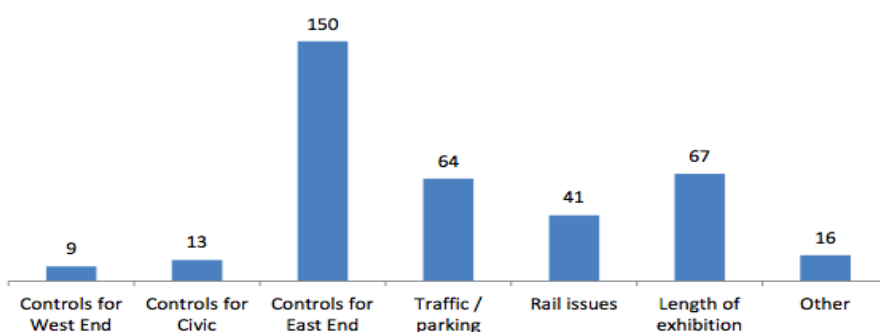


Figure 5: Key issues during the second exhibition period – 5 March to 21 March 2014 (n=266 submissions)

The consultation during this period appeared neither sincere nor genuine. It appeared to be a tick-box exercise that would ignore the many criticisms from eminent architects, urban design experts and those concerned that long-standing planning laws designed to maintain the visual integrity of the city centre were being rushed through by a council headed by a lord mayor developer supported by the state member who later admitted to ICAC that he had taken \$10000 from that lord mayor.

Criticism regarding both the brevity and integrity of the consultation process concerning changes to planning instruments that would allow the height increases was deflected by the lord mayor, the state member, Minister Hazzard and Minister Goward by collectively claiming there was adequate and transparent consultation. Opponents were claiming an inadequate consultation and non-transparent process had occurred while proponents were claiming the opposite. Minister Goward ultimately reduced the height of one building to 17 storeys. This merely confirmed a view from those who have seen time and time again that property developers seeking large height development approvals in NSW always ask for more than they want to give planning authorities the ability to argue the project's scale will be reduced "in response to public concern".

The process of public consultation pertinent to this development is a key question for this Legislative Council Select Committee. What constitutes proper consultation when planning instruments are being altered in NSW? Were the decisions to change planning instruments undertaken in a manner that was free from an environment where conflicts of interest may have occurred?

It is a given that government must make decisions and that such decisions will rarely please all parties. But it is both risibly inadequate and a stain on democracy for elected representatives to collectively chant that there has been adequate consultation on an issue while being unable to clearly articulate what constitutes an adequate consultation process. The opportunity to make submissions alone does not constitute adequate consultation.

The Legislative Council Select Committee might be interested to note that on the *ABC 7.30 New South Wales* program that went to air on 17 October 2014, NSW Mining minister Anthony Roberts explained his reason for cancelling coal seam gas licenses was "inadequate community consultation":

There are two types of consultation of course. There is the consultation where I say "Quentin, this is what I am going to do, I have consulted with you, thank you, you have no input." But if you have sincere consultation and if you believe as I do that co-existence is possible in some areas, then the only way to go about that to have that marriage, to have that unity, is through open, transparent and very much honest communication and dialogue.

I believe that in the case of the changes to planning instruments that now permit high-rise in the Newcastle city centre, the first scenario outlined by Minister Roberts – *this is what I am going to do, I have consulted with you, thank you, you have no input* – is a reflection of what occurred.

UrbanGrowth NSW's website boasts its "most important work is work you won't ever see". I believe the Legislative Council Select Committee should seek all documentation from within the Department of Planning and Infrastructure relating to changes to planning instruments that allowed the spot rezoning and changes to heights in Newcastle city centre to occur.

I remain concerned about the transparency of Newcastle City Council in regard to the changes of planning instruments. Because of this concern, I lodged the following GIPA application with Newcastle City Council on October 20, 2014:

This GIPA application seeks the following documents:

Any internal or external communication (including, but not limited to, emails, memos, letters, notes), reports, recommendations, advice, meeting records or minutes and/or meeting agendas in the possession of, and/or received or distributed by any senior council officials (including the lord mayor, acting lord mayor, general manager, council directors and deputy-directors) from 1 December 2012 to the present in relation to the State Environmental Planning Policy Amendment (Newcastle City Centre) and/or to proposed changes to the Newcastle LEP or Newcastle DCP, and/or concerning the GPT/UrbanGrowth NSW inner city development.

If some documents may take longer than others please provide me with those documents that can be provided as expeditiously as possible.

Council has advised that the above is an extensive request and it may take time to process and it may be expensive.

For that reason, I have included the GIPA request for documents from Newcastle City Council in this submission in the belief that it may be possible for the Legislative Council Select Committee to request such documents so as to ensure communication to and from council regarding changes to planning instruments that have permitted the spot rezoning was both legislatively compliant and ethically beyond reproach. The Legislative Council Select Committee might consider issuing a similar request to the Department of Planning and Infrastructure.

Minister Roberts has shown that it is possible and even desirable to reverse government decisions due to inadequate public consultation. I believe Minister Goward should follow the approach taken by Minister Roberts and revoke all changes to planning instruments that allow for buildings in the Newcastle city centre over 24.5 metres.

Thank you for the opportunity to make this submission.

Paul Scott