

Submission
No 181

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

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Partially Confidential

PLANNING PROCESS IN NEWCASTLE AND THE BROADER HUNTER REGION (INQUIRY)

Legislative Council
NSW Parliament
6 Macquarie Street
SYDNEY NSW 2000

RE: BIASED PLANNING PROCESS FAVOURING GPT/URBANGROWTH NSW HIGH RISE DEVELOPMENT FOR NEWCASTLE'S HERITAGE CITY CENTRE – DA2014/323

To whom it may concern,

I wish to raise concerns with the NSW Legislative Council Inquiry into *Planning Process in Newcastle and the Broader Hunter Region*. In particular my concerns are in relation to **probity, a lack of transparency, inadequate community consultation, a perceived conflict of interests and excessive developer influence on planning decisions** surrounding the spot rezoning of Newcastle's Mall and East End heritage area to facilitate the development application **Newcastle East End DA2014/323**.

These matters are of particular importance since the **disclosures of illegal donations** to potential personal beneficiaries by politicians during the recent ICAC investigation.

The proposal submitted by joint developers GPT Group / UrbanGrowth NSW, for high-rise apartment towers in the low-rise heritage precinct of inner city Newcastle is of great concern to residents in the Newcastle community. This development triples height limits and significantly increases floor space ratios, despite the **Planning Minister** and developers insisting that they are **minor changes**.

The proposed development runs **contrary to the guiding principles of the adopted Newcastle Urban Renewal Strategy (NURS-2012)** in which high-rise towers were to be located at Wickham, or Newcastle West End, not in the heritage East End.

How this excessive and inappropriate development plan came to be produced and submitted when the existing strategic planning documents specifically ruled out high-rise in Newcastle's East End heritage precinct requires investigation. I recall just prior to the announcement of the proposed amendments which no-one knew about, the (now disgraced) Lord Mayor, Jeff McCloy, publicly declaring that Newcastle people have to get over their old idea of view corridors through to the cathedral. Members of the Property Council Hunter Chapter, The Business Alliance, GPT/Urban Growth and the Hunter Development Corporation supported him, of course. He appears now, to have been paving the way for the announcement of spot rezoning in this highly sensitive area. **The people of Newcastle have reason to be alarmed by the close association between Urban Growth, the Hunter Development Corporation, the**

Newcastle Business Alliance, the Property Council Hunter Chapter, GPT developers, Newcastle and Hunter Business Chamber, State Government representatives and local government personnel.

The controversial decisions made, and the lobbying for the truncation of the rail and spot rezoning on properties owned by a public/private partnership (Urban Growth and GPT) have huge ramifications for Newcastle, and do not serve the public interest. They raise **serious questions of impartiality**. The Inquiry needs to determine to what extent the NSW Public Sector Ethical Framework and careful delineation between “private and/or personal interest” and “public good”, have been able to effectively protect public sector employees, allowing them to continue to act with “integrity” and “impartiality” in deriving “merit” based decisions and quarantine them from “undue influence”.

Events in Newcastle conspired to create a **climate ripe for developers** to put dubious development on the city agenda. GPT made the decision to buy large areas of the city centre, with the intention of redeveloping and making a financial profit. Shortly afterwards the GFC hit, and it was evident that they had **overcapitalized**. As the result of a series of bad investments, their assets were now worth far less than they had paid for them.

Then, a perplexing decision was made by the **State Government** body Urban Growth (a re-badged version of Landcom) to become financially involved. So involved, in fact, that they became partners with a 2/3 ownership of the properties in question.

It begs the question as to why Urban Growth, a State Government body, felt compelled to give financial backing to GPT. As we now know, this was a poor financial decision. As a result, Newcastle has since been subjected to a raft of disastrous proposals, all driven by the imperative to recoup the losses created by GPT/Urban Growth. Good planning, or sensible, sustainable, renewal strategies do not drive these proposals. They were simply a way for GPT/Urban Growth to mitigate against their **economic mismanagement**.

This **public/private partnership** leaves Newcastle in a dire predicament. Whilst renewal and growth is of paramount importance to the community, the type of development driving that growth needs to be carefully engineered so that Newcastle receives the best outcome. The proposed development presented by GPT and Urban Growth is NOT the path that will deliver the best deal for the city. It will certainly **deliver the best deal for the developers**, but it does not truly reflect the aims and objectives of the Newcastle Urban Renewal Strategy 2012.

It appears that there were many **secret/confidential meetings** between GPT/Urban Growth, the former State Member, the former Lord Mayor, the Business lobby, the Minister for Planning and HDC throughout the development application process. These **pseudo ‘advisory bodies’** were able to lobby all those involved in the decision making process, unimpeded by

the necessity to provide alternate options. Meetings with community groups to present alternative suggestions and plans were **consistently refused**.

It would be useful to investigate the **pecuniary interests of individual members** of this lobby group to determine whether the undue pressure they have exerted has a financial basis.

The Inquiry could investigate whether there exists in the region, a planning and political regime that has **contributed to a climate of corruption**.

For instance, under the current SEPP (developed after an exhaustive process involving all stakeholders) the development of the city would be carefully staged with height limits and density appropriate to various parts of the city. Heights in the West End of town (where development is urgently needed) would be higher, and the historic centre would be preserved, respected and enhanced by sympathetic development. When the current SEPP was adopted, the people of Newcastle truly believed they had an achievable, appropriate, shared plan for the future. The plan separated Hunter Street and the city into three distinct focus zones. Each zone was to be developed in an **appropriate and sustainable way**, building upon the unique features of each one.

But the economic returns resulting from this plan obviously weren't lucrative enough for the GPT/Urban Growth consortium.

Just months later, we were stunned to see a DA designed to overturn sections of the SEPP, and create a series of conditions which would maximize financial profits for the developer. **There was NO community consultation**, and the community was given only **16 days** to respond. There were two hurriedly organized "information sessions" by the developer (3 days before submissions closed), but these were simply an opportunity for the developer to promote their *fait accompli*. There was no genuine discussion, and developer representatives shut down any questions or dissenting voices. For a development of this significance, (with the potential to change dramatically the built landscape of the city), this was a totally **inadequate response period**. This is the first instance of the proper planning process and current regulations being ignored. **The process lacks accountability and transparency.**

The proposal to incorporate high-rise buildings is flawed in several respects. It seeks to **benefit the developer** by proposing changes to heights only on GPT sites. (This of course, will set a precedent. Future property owners will be able to cite this precedent when seeking height approvals for their own developments.) The proposal would clearly be unacceptable under the 2012 LEP, which — under cl.7.9 (4) — restricts heights in Area C (the heritage area of the East End and The Mall) to a maximum of 40m.

This 'spot rezoning' was clearly designed to give the GPT/Urban Growth developers an advantage over all others, enabling them to cash in on an inappropriate project in a sensitive heritage area. The existing comprehensive plan agreed to by stakeholders, respected the value of the heritage precinct, and made a strong commitment to preserve and enhance the existing historic buildings, favouring development that would be on a comfortable human scale. The proposed GPT/Urban Growth development does not acknowledge the significance of the heritage precinct, is a gross overdevelopment of the sites, and aggressively degrades the view corridors to our beautiful Cathedral.

The four basic characteristics of spot rezoning are:

Typically a single parcel **rezoned for uses that are quite dissimilar from the zoning of land around it,**

Typically a small area,

Typically **grants a right to use land that is not enjoyed by similarly situated adjacent parcels of land,**

Typically is **inconsistent** with the future land use plan and **the policies of the comprehensive plan.**

In the case of GPT/Urban Growth's proposal, the spot rezoning has been hurriedly approved on three sites, by the Minister for Planning, **after meetings with the business lobby** in Newcastle. **When approached by community representatives for a similar chance to put forward the community view, the Minister refused access.**

The Inquiry could investigate whether these controversial decisions have been based **solely on merit and whether there is evidence of actual or possible improper political interference in the decision-making process?**

Erratic zoning such as this, erodes the fabric of the cityscape by disrupting the 'big picture' plan for the city. It appears unfair because it IS unfair. It **provides an unjustified benefit to the property owner (in this case the State Government....also the approving body)**, to the detriment of the agreed public goals and vision for the future of the city. The rezoning provides unjustified special treatment that benefits GPT/Urban Growth, while undermining the pre-existing rights and uses of adjacent property owners. Because spot zoning focuses on particular sites without considering the broader context (that is, the area and land uses surrounding them), **it is commonly considered the antithesis of planned zoning.**

In the 2012 NURS it was clearly intended to **develop high-rise in the burgeoning commercial/residential sector of the West End. The spot rezoning of the GPT/Urban Growth sites in the heritage precinct has**

reduced the viability of the development of the West End. There is a finite, critical mass of apartment dwellings that a city can support. When that market is saturated, there is a drop in demand and development is disrupted. The GPT/Urban Growth spot re-zoning is a very real threat to development in other targeted areas of the city.

Suspicious spot zoning depends largely upon the facts surrounding the zoning decision. **The Minister for Planning clearly had a conflict of interest.** Not only was the developer part of the State Government machine (Urban Growth), but the approving body as well. This, in itself, demonstrates that the process has been corrupt. There can be no independence and no objectivity when the **developer and the approving body are one and the same.**

The amendments to previously approved LEP height limits will permit an increase in height limits almost three-fold, allowing for inappropriate scale and a development that is out of character with the current built environment. High-rise towers are totally incongruent in this low-rise setting. The topography of the hill and the Cathedral perched on top, have been used in planning decisions since the Cathedral was first built. Views to and from the Cathedral form the particular characteristic of the Newcastle skyline. These views, including views to and from Stockton and Nobbys, will be severely compromised.

The claim that **high-rise towers are essential for revitalization is false.** This is mischievous and misleading information. The city was well on its own way to renewal with the Renew Newcastle project created by Marcus Westbury. This is evidenced in the proliferation of independent cafes, restaurants, market stalls and small businesses that have provided a new vibrancy to the mall. GPT/Urban Renewal would have us believe that the mall has been dead for some time, and that only their project can be the catalyst for change. This is a **deliberate deception on the part of the consortium.** One of the reasons that business died in the Mall was that GPT/Urban Growth bought up the properties in the three-block section referred to in this DA, and evicted the tenants, effectively killing off trade. It was **a tactic meant to throw the consortium into a good light**, as it 'rejuvenated' a lifeless city centre. Despite this setback, the people of Newcastle created their own renewal, and gradually re-built a city centre with a reputation for creativity and innovation. With few resources and little money, a sub-culture of independent, unique and attractive businesses has developed.

To date, the developers **have not provided the community with demonstrable evidence** to show that the renewal project is economically unsustainable without high-rise towers. In other parts of the city, there are developments both commercial and residential, successfully proving that renewal is economically viable without high-rise towers and within the constraints of the 2012 LEP. There is a deliberate ruse by the developers to convince the community that only these towers will make the project viable. Where are the costings to prove their case? Where is the economic evidence that the community has been demanding? The Inquiry could ask for

substantiating and verifiable proof of their economic necessity.

The Inquiry could investigate the **role of government agencies** to prevent the release of information on **pretexts such as commercial-in-confidence**, and the use of authority or administrative processes to frustrate or prevent the flow of information, or to prevent a matter being raised during decision-making.

In addition, there needs to be **scrutiny of non-compliance with Codes of Conduct** or other relevant formally recognised standards of performance or behaviour.

The Inquiry must ascertain **whether there are any examples of “bias”** in the evaluation/consideration process, and whether for example

- All reasonable alternative options have been fairly considered with the **same degree of scrutiny** and alacrity
- Consideration was given to non-meritorious issues such **political donations** and **business connections**
- Any assumptions underpinning the preferred proposal have been scrupulously tested and could **withstand any external independent analysis** by an agreed independent expert.

The renewal of the city can be successfully implemented under the current SEPP (without high rise towers), and is in fact, well under way. There is ample opportunity for buildings to have a higher profile in the West End and there is **no empirical evidence to show that the GPT/Urban Growth project is not viable without the towers**. As it stands, there is a distinct possibility that developments in nearby Honeysuckle, Wickham, Newcastle East and the proposed residential buildings in the city centre, will instead, compete with each other, one being detrimental to another. Far better is the original NURS 2012, offering two completely different types of development (keeping the city heritage area low-rise) so that they complement each other. **The 2012 NURS provided for high-density commercial and residential growth in the west end** of the city- an area that has long needed revitalization. It was here that affordable housing and a commercial centre was to be established. (There is, already, the beginnings of such a precinct in this location.) The only problem with this vision, is that GPT/Urban Growth are not big stakeholders here! Their solution was to squeeze other developers out of the market by building high density (requiring a change in zoning laws) on the properties they had purchased at premium cost. The inappropriateness of the developments and their proximity to the heritage conservation area, is of no interest to the developers. The development and its tower-driven ideology is driven by an attempt to maximize profits for the developers. It has **nothing to do with good planning, good design, preservation and re-use of existing buildings and good outcomes for the community**.

The process surrounding the DA submission has been flawed and undoubtedly favours the developer. At the public meeting convened to unveil the plans, it was revealed that Council Officers had been party to several meetings with developers. It was clear to everyone at the meeting, that the developers had been encouraged by the reception the development had received by these Council Officers, despite them acknowledging that the public would probably be resistant to the proposal and object to the DA. There is **an obvious (and blatant) conflict of interest**, with the **NSW Government being both the beneficiary and authorising body for this development.** Yet, in a letter to the Newcastle Herald (May 8, 2014), Planning Minister Pru Goward asserts: "The process has been open and transparent and completely reliant on input from the community. The same rules apply to this project as to any others. There is no conflict of interest as it is not the department nor me that will make the final decision, but the council or the independent Joint Regional Planning Panel." Her information is incorrect. This development was NOT reliant on input from the community. That is why the community has passionately protested and objected to it. **As for the same rules applying, how many developers are able to set their own criteria for a development by amending the SEPP, DCP and LEP to suit themselves?**

After much outcry about **lack of community consultation**, the developers convened a weekend 'workshop' to get 'ideas and input' from the community. **It was a farce.** The agenda was strictly orchestrated, and any discussion or suggestion of alternative vision for the city was quickly shut down. The community members for the Saturday 'workshop' were hand-picked by the conveners, and remunerated for their time, with an **envelope containing \$150** per participant. (Yes....this envelope full of money was a sign of what would become ICAC's symbol of corruption! Later envelopes of cash would lead to the downfall of Tim Owen, Andrew Cornwell and Jeff McCloy!) On the Sunday, participants were able to register for inclusion. Again the agenda was carefully censored. In each group was an officer from Newcastle City Council....ostensibly there to 'facilitate' the ideas of the group. As soon as talk turned to opposing the tower DA or the truncation of the rail, discussion was shut down. **This was not community consultation**, although the developers would have used it as a means to tick the box! The fact that it happened long after submissions were due, meant that any ideas brought to the table were not even considered.

Throughout this "consultation" weekend, it became very apparent that the developers, Newcastle City Council representatives, the Lord Mayor, the State Member, the Business Chamber and the Hunter Development Corporation had been in lengthy collusion over the future of the city. It was abundantly clear to participants that this consortium had plotted and planned together the way the city would be developed. What was very evident, was the lack of input from the community throughout the process.

This **systemic culture of business interests driving growth and development to suit themselves** has been entrenched for many years. Self-

interested groups such as the Hunter Development Corporation, the Property Council and the Newcastle Business Alliance, teamed up with a pro-development Lord Mayor (Jeff McCloy-himself a developer), the General Manager of Newcastle Council (brought in on recommendation from Jeff McCloy), and the GPT/Urban Growth consortium. The aim of this powerful lobby group was to realise the truncation of the rail so that the land could be developed, and to profit from commercial/residential developments that would return huge profits to those involved, as can be seen in this excerpt from NMH (October 22nd, 2014) *...the Property Council of Australia's submission to the government on the best light rail route for the city, which backs lord mayor Jeff McCloy's view the light rail system must run along Hunter Street. While recognising that the existing rail corridor option would cost less and cause fewer disruptions to business during construction, the chamber says this option "does not appear to offer the best long-term gain for improved activity and urban renewal opportunities"*.

The Inquiry could investigate the advantages that will be gained by Jeff McCloy and others in the 'business alliance' due to increased values to properties they own along the rail corridor, when the heavy rail is truncated and the light rail is diverted to Hunter Street.

Under the stewardship of Jeff McCloy and Ken Gouldthorp, Council Heritage Officers' reports and recommendations have been overturned, allowing developments to proceed, the Art Gallery development was halted, and the previously mentioned coalition of pro-development groups enjoyed a period of influence and authority.

It is in this climate of subterfuge and covert operations that State Government decisions about Newcastle's future were handed down. Since then, ICAC has exposed the secret meetings, the intense lobbying, the buying of favours and the furtive deals that were rife in the city. With that exposure, and the stepping down of disgraced politicians, comes an opportunity to cleanse the system. The recommendations handed down by your inquiry will enable the community to move forward. Newcastle deserves better! Provisions need to be put into place, to prevent large, influential consortiums from controlling the planning process to benefit themselves.

In summary, the planning process and the role of current state government representatives, disgraced former state and local representatives and the business community should be thoroughly investigated through your inquiry because:

There has been a **refusal or failure to properly investigate reasonable alternative options.**

The amended DA is NOT the one the community collaborated upon, and **lacks any form of legitimate community consultation**

The changes to the building heights will be detrimental to the existing heritage precinct and are excessive in scale. The **community was given just 16 days to respond** to this raft of changes

The towers will overshadow **valuable heritage buildings and residences**

The development does not respect view corridors to and from the city, and **destroys the focal point of the cathedral** at the city's apex

The proposed changes to current SEPP, DCP and LEP are **designed to advantage the developer only**, and are unfair to all others

The development will **adversely affect the viability of other developments** in the West End, Wickham and Honeysuckle

The proposal has **little public benefit**

Powerful business groups and **stakeholders lobbied the State Government** to make dubious planning decisions. These groups have a vested interest in pushing this development agenda. **Community groups were not afforded the same access to politicians, and were not able to voice an alternative view.**

The approval panel has the appearance of a conflict of interest through close relationship to the major stakeholders.

I thank you for your inquiry and for the opportunity for the community at last, to have an equal voice in the chain of events that have led to the present situation. This confidential information will help you understand the poor planning decisions and undue influence exerted by the development consortium, the conflicts of interest, and the climate of perceived corruption endemic in the city. Through your investigation, we hope to get answers to the many questions that have been raised in relation to the process and the outcome of these far-reaching changes to our city.

I respectfully urge the Upper House Committee to please consider making the following recommendations:

1. Revoke the SEPP amendment by providing a revised SEPP amendment overriding the 2014 approval.
2. With respect to building heights, 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 high rise development in the West End rather than the heritage precinct.
3. Place an immediate moratorium on all development associated with the amended parts of the Newcastle LEP.

Regards