

## Draft Revised NEWCASTLE LEP and DCP (6.01)

### OBJECTION TO INCREASED BUILDING HEIGHTS IN EAST END PRECINCT

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Note. *This submission is almost identical to that previously submitted on the LEP: the proposed amendments to the DCP cannot proceed without prior amendment to the LEP, which is the more important planning document and should have been much longer than 16 days on public exhibition.*

*I wish to emphasise that **planning is meaningless if it does not establish a template for project development but instead becomes just an instrument to be negotiated by vested interests.** A situation whereby proponents are active parties in the process of amending LEPs and DCPs, as they have been in this case and very much to their own benefit, is entirely contrary to due process and good government, subverts the independence and professionalism of planning, and mocks the public interest. The fact that the Minister himself is both planner (Planning) and proponent (Infrastructure) is itself unsound and contrary to all accepted principles of good government. At the very least this is a situation conducive to manipulation and a slippery slope to the sort of matters that are presently before ICAC. Public confidence in government has sunk to a low ebb and needs to be restored. It is incumbent upon the Department of Planning in this matter, as in like matters, to give the Minister fair, frank, fearless and fully professional advice that may be examined on the public record and tested against the public interest, not just the demands of lobbyists and proponents.*

### SUMMARY

Newcastle is the second oldest city in mainland Australia (official settlement 1804, as also Hobart). Its heritage value and unique character, recognised in principle by the Renewal Strategy and planning documents, will appreciate over time with sympathetic planning, especially in the older precincts from Civic to the East End.

However, the proposed massive increases in building heights in the Newcastle East precinct are unsympathetic and should be forthrightly rejected as being:

- A) inconsistent with the **Vision** of the Renewal Strategy;
- B) in fundamental conflict with the city's unique **heritage character** and associated identity;
- C) based on flawed **logic and documentation**;

D) **bad urban design**;

E) a perverse distortion of the **property market**;

F) an **unconscionably brief exhibition period** for community response;

G) **abuse of the planning process** that will deliver immediate windfall gains to private and public developers but impede the orderly development of the city.

## **A. INCONSISTENCY WITH THE VISION**

The **Vision** of the Draft Revised DCP (6.01) has it that 'Newcastle city centre will be an *attractive city* that is built around people and *reflects our sense of identity*' [my italics].

Fundamental to the Newcastle sense of identity and pride in the city is the way the inherited built environment (Heritage) connects with the present, especially in the historic East End precinct between The Hill and the Foreshore.

This connection is apparent both in the **iconic profile** of the city as seen across the water from Nobbys or Stockton and in its up-close 19-20<sup>th</sup> c. **streetscapes**.

However, the documents 'Proposed changes to the planning framework' and 'Explanation of intended effect' do not even mention heritage and aesthetics.

Other planning documents (including those of GPT-UrbanGrowth) acknowledge heritage values in the detail of individual facades and view lines but not in the overall character and profile of the precinct. Their 'effect' (sic), deliberate or otherwise, is to degrade heritage values. Such rhetoric without substance is tantamount to trickery.

## **B. CONFLICT WITH HERITAGE VALUES**

The Draft Locality Specific Provisions recognize the importance of **heritage values** to the character of each 'character area' (precinct) and set out sound principles.

Yet the outcome of the DCP revisions is not to protect the heritage character of the city centre but to degrade it in highly visible and unsympathetic ways.

The degradation can be seen at a **macro scale** by the proposed changes to the skyline as seen across the water from Stockton.



Hitherto, the skyline has been dominated by the sugarloaf contours of The Hill, rising gently from Pacific Park to a peak at the Cathedral, then following the ridge down to Darby Street. This profile is unique to Newcastle and underpins its character, heritage and identity as the second oldest city on the mainland of Australia and equal oldest with Hobart.

The proposed changes will add a **14-storey** building with a tower to mimic the Cathedral to the Left on Newcomen Street, a solid building face to run along the Mall, then to the Right two more **15-** and **19-storey towers** on the DJ site, in all 3 towers to dwarf all existing buildings in that historic precinct and greatly distort the profile of The Hill and the Cathedral.

Moreover, these new towers will be *modern buildings completely out of sympathy* with what elsewhere in the DCP is correctly recognised as the '19<sup>th</sup> and early 20<sup>th</sup> century' character of these precincts.

In heritage terms, the proposed height increases are **crude vandalism** that will ensure cumulative and permanent degradation of the heritage assets of Australia's second oldest mainland city, an opposite outcome from what the Strategy claims to achieve.

### C. FLAWED LOGIC AND DOCUMENTATION

The flawed logic and documentation for the revised LEP/DCP is manifest in the backwards and muddled sequencing of the so-called 'character areas' (should be 'heritage precincts'):

1. The sequence runs from West to East, thus *against the grain of the city's foundation and expansion*, which was from Watt Street to the West.
2. The sequence jumps from D. Civic to E. Parry Street, then back to F. City East, thereby breaking the logical (but back to front) transition from The Hill to Civic.
3. The Mall is identified in the Contents as 'City East' but the detail appears under the heading 'East End'.
4. The transition from City East/East End to H. East End Conservation Area is broken by G. Newcastle Beach.

Such a backwards and broken sequence suggests that the heritage consultants and planners do not grasp what is at stake. They see some of the detail but not the Big Picture.

Confirmation of this indifference to history and heritage is the promotional 'fly through' video released on 7 March 2014 to show potential property investors what the city might look like in 2030 [<http://www.theherald.com.au/story/2135324/newcastle-transformation-to-start-in-december-video/?cs=12>]. The scan begins at the West End/Honeysuckle and moves east along the peninsula to show an unbroken line of modern buildings, even along what is now the rail line. There is no sign of heritage whatsoever, not even the Customs House. The features of The Hill and the cathedral are a mere glimpse. Past and present have both been obliterated as surely as if they had been bombed. This is not revitalisation but destruction.

It is an extraordinary oversight, if it is not deliberate, that the key overview document 'Proposed changes to the planning framework' refers to 'increasing heights' without any specifics. The specifics are relegated to a table on page 3 of a subsidiary document 'Explanation of the intended effect' (2.3.1). Only there does it become apparent that **the changes are not marginal but MASSIVE**: by location, 10M goes up to 24M, 24 to 35M, 24 to 70M, 30 to 55M, 30 to 59M, 30 to 49M. Given that these documents have been prepared and placed on exhibition in order to inform community consultation, it would appear that the Department has sought to obscure the import of the changes in order to minimise community opposition.

#### D. BAD URBAN DESIGN

*Scale is fundamental to heritage character.*

The Draft DCP at p.32 (6.01.03) clearly states:

"The city centre contains **a concentration of heritage items and streetscapes typified by late 19<sup>th</sup> and early 20<sup>th</sup> century buildings of between two and six storeys of a consistent scale**, form and character. Many of these buildings have architectural emphasis at the skyline in the form of tower elements and parapet details. The rich architectural detail of many heritage items is a distinctive characteristic of the Newcastle city centre".

This is well stated but misses the **macro perspective** whereby the whole is more than the sum of the parts. If the human scale and integrity of the Mall-East End are destroyed, as these high-rise proposals most certainly will do, then the **heritage value** of the city is diminished, and thereby also its attraction to visitors, who will not travel to see more ordinary high-rise. Are NSW planners unaware of travel literature and travel motivation?

**Fremantle** in the 1980s faced a very similar dilemma, being also a late 19<sup>th</sup> and early 20<sup>th</sup> century port city strung out along a narrow peninsula with a beach and fort at the far end and a railway and harbour along the side. Fremantle preserved its heritage character and with imaginative recycling and in-fill re-created a unique and vibrant modern urban environment that attracts visitors and residents.

**Hobart** likewise has preserved the historic character of its waterfront, recycling old buildings instead of imposing blocks of high-rise.

The Department of Planning & Infrastructure and Newcastle City Council would be better advised to refer to best practice in **Fremantle** or **Hobart** than to apply a stale high-rise template that will ruin for all time the character of the city that it claims to want to revitalize.

**Best practice urban planning** seeks first to reassure the community that the old and new can be imaginatively blended, then to create a distinctive ambience and unique brand for the city to attract visitors, residents, creative professionals and investors.

There are many good examples in Australia and around the world and a huge literature on heritage planning and sympathetic urban renewal. The Department of Planning & Infrastructure should be well aware of them. In fact none of these precedents and international experience are referred to.

*As the second oldest city in mainland Australia, Newcastle is entitled to best-practice urban planning instead of hyped-up developer marketing and promotion.*

#### **E. PERVERSE MARKET DISTORTIONS**

The existing height codes have been factored into market valuations and were current at the time GPT acquired its holding in 2007. By pushing to double the allowable building height, GPT is seeking to change the market in its favour in order to achieve a **windfall gain**.

The argument is made that extra height is needed to justify the cost of remediating underground mineworkings. Yet this is an entirely circular argument. If the buildings were not twice as high and heavy, such expensive remediation would not be needed.

In fact, *significant residential redevelopments have already been achieved in Newcastle East within the height codes and heritage constraints*. There is no reason why this process cannot continue. There is plenty of scope to build taller buildings in Newcastle West/Honeysuckle where they will not detract from the historic skyline.

If the allowable heights are increased for some parcels of land, the **bad precedent** creates a new and distorted market at a higher level with **unrealistic expectations**. Existing owners of consolidated parcels like GPT enjoy **windfall gains**; these higher prices are then built in for new entrants who need to scale up to get a satisfactory return, which drives further consolidation and a slow-motion race for the sky along with the destruction of the heritage fabric, as envisaged in the UrbanGrowth video.

At the same time, because the growth prospects for Newcastle CBD are only moderate, the more so in a climate of falling real prices for coal as China diversifies its energy sources, the rate of new projects will tend to slow, reducing the continuity and restricting the spread of redevelopment.

Ironically, the height increase in the Mall/East End will draw demand away from property owners in Newcastle West where greater heights are already allowable. The Department of Planning & Infrastructure is thereby undermining its own Renewal Strategy.

It is even more curious that the revised LEP seeks to REDUCE building heights between Auckland Street and Wickham (ref. 2.3.1). *Why would heights be increased massively where there is obvious heritage and aesthetic impact and reduced very considerably where there is not unless it is to favour the particular GPT-UrbanGrowth project in East End (Mall)?*

These **perverse outcomes** are antithetical to the proposed CBD revitalization as a sustainable 25-year project. The Department appears to be subverting its own Strategy.

#### **F. UNCONSCIONABLY BRIEF EXHIBITION PERIOD**

The LEP documentation was placed on public exhibition on Wednesday 5 March to close on Friday 21 March. An exhibition period of **barely a fortnight** for proposals that will transform the face and character of the city is unconscionably brief, minimal time for the nature and significance of the changes to be diffused and discussed through the community with opportunity for informed comment. Requests for extension of the exhibition period were made and refused without even so much as extension of the LEP exhibition to 4 April to coincide with that for the DCP, a curious anomaly.

These short exhibition periods compound a *massive information asymmetry*. The property interest has been intrinsic to the 'planning process' from the outset and is fully cognisant of the proposed changes, being indeed the proponents. The community that is affected, by contrast, has largely been kept in the dark and is hereby being all but shut out. As set out in Section C above, the Department's own exhibited documents have downplayed the extent and impact of the increased building heights in the heritage zone (Old Town) of the East End. This is completely contrary to the Department's claim that "we will work with locals to protect the local character of Newcastle" (ref. FAQ).

Such an egregious departure from the Department's normal practice cannot be mere oversight. It would appear that the Department of Planning's **necessary independence** has been abandoned to favour information-rich proponents, including commercial government agencies (UrbanGrowth, HDC).

#### **G. ABUSE OF PLANNING PROCESS**

This rushed amendment to the LEP strongly suggests that **the Department has not yet established sound governance procedures to accommodate the merger of Planning and Infrastructure within the same Ministry**. *Logically, and according to best practice, Planning should set the framework for Infrastructure, not Infrastructure tweak Planning and its legislated LEPs to facilitate immediate project outcomes.*

Planning should try to achieve **community consensus** over LEP guidelines, then apply them without fear or favour. **It is not the proper role of the Department of Planning & Infrastructure to subvert its own LEPs and thereby reward short-term opportunism by out-**

**of-town property developers, not even when they are government agencies like UrbanGrowth and the HDC.**

The Department is obliged to ask the *cui bono* question.

Commercial advice is that GPT bought into the Mall on the eve of the financial crisis, in full knowledge of the height codes and, as it transpired, paid too much. By all accounts, it no longer sees a good prospect for a large-scale retail complex and it is not a residential developer, so it is pursuing an **exit strategy**.

However, that is a commercial problem for GPT, not a justification for subverting planning codes to give a windfall gain to a commercial developer wanting to sell out at a premium (or at the very least to minimise losses).

***If the Department and Council are aware of GPTs intentions, as they most certainly should be, then the question must be asked whether doubling the allowable height in a way that clearly facilitates a windfall gain and thereby 'socialises' GPTs losses is in fact a defensible decision and not a serious abuse of the planning process.***

The fact that state-owned UrbanGrowth is now a two-thirds stakeholder in the Mall project as part of GPT's exit strategy in no way mitigates the force of this concern. Though state-owned, UrbanGrowth, like the Hunter Development Corporation, is also a landholder and developer. On the face of it, Urban Growth as a government agency is seeking to usurp sound and independent planning practice and community-backed planning codes.

It is fundamentally unsound and **a blatant abuse of due process** that these three developer entities with the full backing of the Property Council have been allowed into the heart of the NSW Government to lobby, propagandize and consult in pursuit of their own vested interests at, to achieve passage of friendly regulations that subvert established, professional and community-supported guidelines, and then to push through those changes with the full support of the NSW Government.

Indeed, UrbanGrowth made its most recent promotion and released its 'fly through' video at a **Property Council** lunch in Sydney on Friday 7 March 2014. Beyond any doubt, this is a very tight and chummy vested interest with no interest in heritage whatsoever.

These incestuous dealings make a mockery of the planning process which must be independent of proponents if it is to retain integrity and enjoy community support. Otherwise planning becomes mere window dressing for political and commercial opportunism.

The final nasty twist is that the revised LEP and DCP are being **rushed through** with just a fortnight's exhibition to meet a developer-cum-political agenda which has it that work must start some time before the March 2015 State election. Planning matters with far-reaching consequences for the future of the city are being buried in voluminous and complex planning documents that say nice things about protecting the character of the city but then subvert it. And all this within a very short period that leaves little time for community

discussion and consideration. *It is not professional and responsible planning and it is certainly not good governance.*

## **RECOMMENDATION**

The proposed drastic amendments to the Newcastle LEP and associated DCPs are contrary to the spirit and logic of the Renewal Strategy and should be forthrightly rejected. The existing height codes were enshrined in the LEP after a rigorous and professionally sound process and with strong community support. The market has factored them in as the template for project development. It is bad public policy to inflate property values by subverting the codes to generate a windfall for GPT-UrbanGrowth and permanently distort the market in what the Department itself recognises to be a sensitive heritage precinct. The proposed massive height increases will set a new benchmark, the market will adjust upwards, and the change will not be reversible. The results will be private gain, accumulating public loss. *Cui bono? It is not the role of planning to line the pockets of individual developers, be they private or state agencies, and it will not facilitate the long-run sustainability of the Revitalisation Strategy over the next 25 years.*

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