

General Manager's Office
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21 August 2014

Mr Hennie du Plooy
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Dear Mr du Plooy

Port Waratah Coal Services Terminal 4 Project

I refer to your letter of 19th August 2014 and our subsequent teleconference on Wednesday 20 August.

For convenience, I will address the matters raised in your letter of 19th August utilising the corresponding numbers from your letter:

- 1 Newcastle City Council (**NCC**) agrees that the Minister for Planning is not bound by Council's Development Control Plan. He is however, significantly influenced by it as is the Planning Assessment Committee (**PAC**) that will make recommendations to the Minister following their review. NCC does not accept that the recommendation by a Planning Assessment Officer necessarily reflects the view of the Department. The Premier has publicly advised that he believes Port Waratah Coal (**PWC**) and NCC should negotiate and enter an appropriate agreement in respect to development contributions. Likewise the PAC has also stated a preference for PWC and NCC to negotiate and advise them of an agreed contribution. NCC further notes that once the Minister has made a determination taking into account the recommendation from PAC and the various submissions, including NCC's, the decision is not reviewable.
- 2 NCC's initial understanding was intent for PWC and NCC to reach agreement on the relevant quantum of development contributions and then jointly notify the PAC to seek that the agreed quantum be included as a condition. NCC notes that PWC is now seeking to enter a section 93F Voluntary Planning Agreement (VPA). Council notes that s93F (5) states:

If a planning agreement excludes the application of section 94 or 94A to the particular development, a consent authority cannot impose a condition of development consent in respect to that development under either of these sections.

NCC confirms its willingness to enter a s93F VPA. The VPA however would need to be in place with an appropriate clause addressing s93F (5) prior to issuing development approval. In the absence of having entered a VPA s94A will still apply and Council will seek the full application of its s94A

Development Contributions Policy. To be clear, the mere promise or intent to enter a VPA is not suffice to preclude the application of a s94A being conditioned at time of approval.

- 3 NCC requires the initial payment and subsequent annual payments to be linked to a clear trigger point. As discussed on Wednesday, the final decision would rest purely with PWC and the timing of that decision will not necessarily be clear or explicit to Council. NCC is open to considering alternate clear trigger points.
- 4 I can confirm that either s93, s94 or s94A contributions are retained in constrained reserves, clearly segregated from Council's normal operating accounts and full transparency and accountability is provided on how these funds are allocated to specific works. NCC is willing to enter an arrangement that would allow PWC to be consulted and submit recommendations on the application of these funds. Further, NCC is also willing to publicly acknowledge PWC's contribution throughout the construction phase of the projects funded from the contributions.

I trust the above clarifies Council's position sufficiently to enable PWC to respond to the quantum proposed in Council's without prejudice offer dated 11 August. As stated above, the mere intent to enter a VPA is not sufficient in Council's view to grant a DA. In the absence of an agreed VPA, s93F (5) does not apply and Council's s94A development contribution policy (1% of assessed construction value) should be applied in full.

Council looks forward to your response to our offer of 11th August following the provision of the above clarifications. The Deputy Mayor and I will make ourselves available to meet with PWC to advance this matter to an agreed solution prior to determination by PAC. In the absence of reaching an agreement, Council will be urging PAC and the Minister to apply NCC's s94A Development Contribution levy in full.

Yours sincerely



Ken Gouldthorp
GENERAL MANAGER

Newcastle City Council

ACTION ITEM

Ordinary Council
25 February 2014

SUBJECT: LMM 25/02/14 – COMMITMENT TO THE CONTINUING REVITALISATION AND FUTURE PROSPERITY OF THE CITY OF NEWCASTLE

RESOLVED: (The Lord Mayor)

- 1 Council is committed to driving the future prosperity of the City of Newcastle by:
 - (a) Fostering and supporting economic development and job creation.
 - (b) Partnering with the NSW State government to deliver the Newcastle Urban Renewal Strategy and various catalyst projects and infrastructure initiatives, which will stimulate activity, jobs, development and investment in the City.
 - (c) Supporting the growth of the Port of Newcastle including the proposed Terminal 4, which is essential to ensure the long term benefits of the coal industry are maintained well into the future provided that the environmental concerns have been appropriately and scientifically addressed by the approval authority.
 - (d) Working with UrbanGrowth NSW (the lead NSW State agency for the revitalisation of the City Centre) to deliver significant catalyst projects for the City's revitalisation such as the Hunter Street Mall revitalisation project with The GPT Group, which UrbanGrowth believe "has strong potential to be one of the most exciting and significant urban renewal projects in the country".
 - (e) Noting the NSW State government's decision to lease the Port of Newcastle and supporting its decision to invest some of the proceeds in truncating the heavy rail and establishing a transport interchange at Wickham while consulting with the community about the community's preferred route for light rail.



OFFICE OF THE LORD MAYOR
COUNCILLOR JEFF McCLOY
CITY HALL NEWCASTLE
N.S.W. 2300

Lord Mayor's Office

29 July 2014

The Honourable Pru Goward, MP
Minister for Planning
Level 34 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Email: office@goward.minister.nsw.gov.au

Dear Minister

RE: NEWCASTLE URBAN RENEWAL AND ITS STATE SIGNIFICANT PROJECTS

Thank you for your recent telephone call to discuss the Newcastle Urban Renewal State Environmental Planning Policy and its announcement. As discussed, The City of Newcastle strongly supports the renewal of Newcastle and will work actively and co-operatively with the State Government and the relevant Departments including Transport New South Wales and Urban Growth NSW to ensure a successful outcome for Newcastle.

Council is supportive of economic development, jobs growth and the renewal of Newcastle. The significant State investment in the City of Newcastle and the broader renewal strategy provides the opportunity to establish Newcastle as the predominant regional City in the Asia Pacific and the genuine second retail and commercial centre to Sydney within New South Wales.

To achieve this outcome the City must continue to develop essential and community infrastructure to maintain its amenity and support efficient commerce. It is to this end that I seek your assistance. In particular, with two State significant projects – Port Waratah Coal Terminal 4 and the Newcastle University Civic Campus.

Subsequent to the community uproar following the media announcing that a State Assessment Officer was recommending a Section 94 infrastructure contribution from the \$4.8billion Terminal 4 project of just \$524,000 (less than the \$3.3million application fee!) Council has been in limited dialogue with Port Waratah Coal (PWC) to attempt to negotiate a reasonable agreed position.

Port Waratah Coal (PWC) committed to providing a proposed contribution amount by 28 July during a meeting held by myself, Council's General Manager, the CEO and a Director of PWC. Rather than meeting this commitment, PWC has subsequently advised that they will provide their proposition at a meeting scheduled for 5 August. Council will continue to pursue an agreement. I request your support to encourage PWC to do likewise, and in the

event that agreement is not reached, request that the State apply the full one percent Section 94A levy.

The City of Newcastle is a participant in advancing the University of Newcastle's City Campus to the stage where they have funding approval and have completed their State Assessable Development application. This has included underwriting the site demolition costs, facilitating the land sale on deferred payment terms and waiving a range of charges.

Unfortunately, and despite Council's objection, the University of Newcastle is proceeding with the development application including only five car parks on site and seeking no contribution to public car parking despite Council's planning controls requiring 233 spaces for the proposed development. Council is aware of the site constraints and the expense of building multiple level car parking within the development. It is therefore willing to enter agreement with the University for them to make a contribution to public car parking in lieu. However, Council strongly objects to the current proposition by the University which would result in the parking impact of the development being transferred to Council through publicly provided car parking without any financial contribution.

Council acknowledges that future public transport will ameliorate the parking impact, however this is already taken into consideration in Council's assessment of the number of car parks required. Anyone who has ever attended a University will be aware of the difficulty in obtaining car parking in the vicinity and the suggestion that the provision of just five sites on site is adequate, without making a contribution to public car parking, is ludicrous. Your support to encourage the University to reach agreement with The City of Newcastle or require them to contribute to public car parking in accordance with Council's planning controls would be appreciated.

The PWC matter and media generated identified a flaw in the planning system whereby applicants are effectively able to bypass Councils with State Planning Assessment, not withstanding that Councils ultimately bear a considerable portion of the impact of the development. This gap should be addressed and I encourage the Department to review the framework and procedures that have given rise to this issue.

Thank you in anticipation of your assistance in the above matters. I reiterate that Council looks forward to working productively with the State to implement the Newcastle Renewal Strategy and will continue to positively promote the investment the State is making in this City and the benefits that can be achieved from it.

Yours Sincerely,



Jeff McCloy
Lord Mayor of Newcastle