

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

PV 16/03/21 – NOMINATION TO LIST NEWCASTLE RECREATION RESERVE (KING EDWARD PARK) ON THE STATE HERITAGE REGISTER

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Public Voice Committee

16 March 2021



City of
Newcastle

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ITEM-1 **Attachment A:** Newcastle Recreation Reserve Listing (under consideration) February 2021

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Newcastle Recreation Reserve (under consideration)

Item details

Name of item: Newcastle Recreation Reserve (under consideration)

Other name/s: Upper Reserve; King Edward Park
'The Horseshoe' (1860s to 1880s)
'Upper Reserve' (1880s to 1910)
'King Edward Park', (1910 to present)

Type of item: Landscape

Group/Collection: Parks, Gardens and Trees

Category: Reserve

Property description

Lot/Volume Code	Lot/Volume Number	Section Number	Plan/Folio Code	Plan/Folio Number
LOT	7003		DP	1077043
LOT	7004		DP	1077043
LOT	1238		DP	1096744
LOT	3116		DP	755247

The boundary includes the public lands described as follows:

- (a) King Edward Park (Lot 7004 DP 1077043);
 (b) Arcadia Park (Lot 7003 DP 1077043);
 (c) The Obelisk Tennis Courts (within Lot 7004 DP 1077043);
 (d) Obelisk Reserve (Lot 1238 DP 1096744);
 (e) Shepherds Hill Defence Reserve Military Installations, Aboriginal name Khanterin (Lot 3116 DP 755247) ; and
 (f) Part of cliffside above South Newcastle Beach, Aboriginal name Yi-ran-na-li, being from the top of the cliff (i.e. the eastern border of Lot 7059 DP116454) to the foot of the cliff-face (i.e. to the western kerb of Shortland Esplanade)

Boundary:

Whilst historically connected, this item does not include the private land of King Edward Headland Reserve (Lot 3109 DP 755247)

Owner/s

Organisation Name	Owner Category	Date Ownership Updated
City of Newcastle Council	Local Government	
Newcastle Coastal and Estuary Reserve Trust	State Government	07 Oct 20

Statement of significance:

The Newcastle Recreation Reserve maybe of state heritage significance in its demonstration of activities and processes of importance in the history of NSW. The Reserve includes sites of known cultural significance to the Awabakal people, and was the scene of important early interactions with Europeans. The Reserve is a rare example in NSW of a comparatively undeveloped inner city natural, Aboriginal and European landscape influenced by convict labour and recorded by important colonial artists.

The Reserve maybe of state heritage significance for its inclusion of Themeda grasslands, an endangered ecological community.

The Reserve maybe of state significance for its convict associations, including the grazing of government stock by convict shepherds; the construction of an early windmill; and the provision of the Bogey Hole and The Horseshoe access path. The convict mine workings demonstrate the transition between public sector and private sector operations, while The Obelisk demonstrates early public sector intervention in coastal navigation. The Bogey Hole and Horseshoe as later developed exemplify early sea bathing activities, together with the transition between gendered and ungendered bathing.

The Reserve maybe of state heritage significance for its association with important historical and community events and commemorations, and also for its association with important Federation-era, pre-War and wartime defence installations that demonstrate progress in armaments technology during the Twentieth Century. The Shepherds Hill structures, in particular, have an apparently unique importance in their occupation by all three Services. Strongly associated with Major James Thomas Morisset, a figure of importance in the history of NSW, the Reserve is specially associated with Biraban, an Awabakal man, and with Rev. Lancelot Threlkeld, a missionary and scholar of great importance to knowledge of Aboriginal cultures. The cliff face and cliff top called Yi-ran-na-li contribute to the way of life, traditions and belief system of the Awabakal people, and is representative of the Dreaming.

The Reserve maybe of state heritage significance in its setting, which incorporates coastal hills, headlands, gullies and sea cliffs with wide views across the lower Hunter Valley and the ocean. It has the principal characteristics of a nineteenth century belvedere park in the Picturesque style, demonstrating Victorian and Edwardian technical achievement, philosophy and customs, as well as continuity and change in the cultural landscape of NSW recreation reserves.

The convict-related and defence-related heritage items within the Reserve maybe of state heritage significance in providing archaeological and other information as to convict coal workings, as to which there is as yet comparatively little knowledge. The defence relics at, and to the east of The Obelisk are also little known, and like those of the Shepherds Hill Defence Group may be of state heritage significance for their potential to supply information as to the development of Federation era and WWII defence technology.

Date significance updated: 14 Oct 20

Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The State Heritage Inventory is continually being updated by local and State agencies as new information becomes available. Read the [OEH copyright and disclaimer](#).

Description

Designer/Maker: NSW government and local government

Builder/Maker: NSW government and local government

Construction years: 1818-2004

Physical description: The Newcastle Recreation Reserve (the Reserve) is located on Shepherds Hill, just south of the Newcastle CBD. Its landforms range from rolling hillocks to steep gullies and offer extensive ocean views. The majority of the site, called King Edward Park, is laid out in the Picturesque style of landscape architecture. Some of the northern portion of the Reserve is divided by roads into smaller areas known as Obelisk Park; the Obelisk Tennis Courts; and Arcadia Park. Adjoining King Edward Park is the King Edward Headland Reserve. Whilst all these parcels are historically part of the Reserve as dedicated for public recreation in 1856 and extended and rededicated in 1894, the now privately owned King Edward Headland Reserve is not included in this Newcastle Recreation Reserve site.

Historic items include the Bogey Hole baths (SHR 01678), the Shepherds Hill Defence Group Military Installations (SHR 01806); convict coal mine workings; The Obelisk navigational marker and adjoining infilled reservoir (the site of a convict-built windmill, miller's residence and store) and several defence-related sites. There are important geographical features of significance to Aboriginal people. The Newcastle Government House and Domain (SHR 01841) site is located just to the north. The landscape features of the Reserve display a mixture of Victorian, Edwardian and more modern influences, although some areas, including about 4 ha of Themeda grasslands, preserve their pre-European attributes.

Physical condition and/or Archaeological potential: The Reserve has a generally high level of integrity. The rotunda; sandstone drinking fountain (restored after May 2012 vandalism); gardens; drives; The Obelisk; and two surviving sandstone gate columns are well maintained. The Bogey Hole requires maintenance. The condition of historic military items varies according to their age, location and materials, with some in poor condition from vandalism.

Date condition updated: 05 Sep 16

Modifications and dates: Pre-1801: the Awabakal people use the sparsely-vegetated site for hunting, gathering, and cultural purposes.

1801: the site of the Reserve is remarked upon by a naval and military party exploring the Awabakal lands; the Newcastle penal settlement is founded, but within a year is withdrawn.

1804: an ongoing penal settlement is founded. At or after this time, convicts begin to graze stock on the sparsely-vegetated future site of the Reserve.

c.1814: a coal shaft is sunk. At least two additional shafts are later sunk.

1818-1823: J.T. Morisset is military commandant at Newcastle; Bogey Hole and access path are excavated by convict labour.

c.1820: the Prospect Hill windmill, miller's cottage and store are constructed by convict labour.

1847: the convict windmill, miller's cottage and store are demolished.

1850: The Obelisk is constructed on the site of the windmill.

1856: the northern part of the Reserve is dedicated.

1863: Newcastle Council is made Reserve trustee; improvement works are begun.

c.1865: part of the Commandant's Walk is widened for vehicles.

1884: the Bogey Hole is much enlarged by Council.

1880s-1890s: Reserve paths are established or extended; portions of the northern gully are filled; plantings occur. Roads are constructed near the northern boundary of the Reserve; Prospect Hill is quarried near The Obelisk.

1880-1889: sewage is disposed of in one of the coal shafts on the later site of the

Newcastle Bowling Club.

1885: a water supply reservoir is constructed adjacent to The Obelisk

c.1889: the 1879-era sandstone drinking fountain is relocated from Newcastle Railway Station.

1890: the Shepherds Hill 8-inch gun position is completed; the gun is mounted the following year.

1891: the Newcastle Bowling Club (later the Newcastle City Bowling Club) establishes a green and clubhouse within the Reserve.

1894: the Reserve is extended well to the south, and is rededicated.

1898: the bandstand rotunda is erected. A coastal artillery Observation Post is provided at The Obelisk.

1907: four-columned ornamental gates are constructed at the northern entry to the Reserve. 1906: more of the northern gully is filled.

1910: the main body of the Reserve is named King Edward Park.

1920s: more of the northern gully is filled to create Garside Gardens, a sunken garden, and a new carriageway.

1927: the new carriageway is extended to the southern entry, and renamed York Drive.

1936: a new northern vehicular entry is constructed in conjunction with the new Shortland Esplanade; the two larger gate columns are relocated to the southern entry to York Drive.

Pre-WWII and WWII: additional military positions are constructed.

1950: the lower part of the northern gully is reshaped as a grassed amphitheatre.

1966: the Bowling Club is granted a Crown lease over its site.

1978: the No. 2 gun emplacement is bulldozed and partly infilled.

1985: a town gas explosion damages The Obelisk reservoir, which is afterwards infilled.

2001: Newcastle City Bowling Club goes into liquidation.

2000s: Bathers Way, a coastal path, is commenced and extended.

2004: much of the remainder of the lower gully, including the remains of the Sunken Garden, is filled.

2009: the redevelopment of the bowling club site is announced.

2010: the bowling club premises are demolished, Lot 1309 DP 755247 created

2012: Aboriginal land claim made for former bowling green

2018: Land claim granted to Awabakal LALC for Lot 1309 DP 755247 former bowling green

Further information:

The Newcastle Recreation Reserve consists of six elements being the following public lands:

(a) King Edward Park (1A Ordnance Street and 3 Ordnance Street, The Hill, Crown Reserve 570075, including Bogey Hole Public Baths, Lot 7004, DP 1077043, including public reserve, drinking fountain and rotunda, vested in Newcastle Coastal and Estuary Reserve Trust with Newcastle City Council as Reserve Trust Manager);

(b) Arcadia Park (off Wolfe Street, physically separated from King Edward Park by Reserve Road, Crown Reserve 570075, Lot 7003, DP 1077043, vested in Newcastle Coastal and Estuary Reserve Trust with Newcastle City Council as Reserve Trust Manager);

(c) The Obelisk Tennis Courts (off Reserve Road, physically separated from King Edward Park by Reserve Road, adjoining Obelisk Park, Crown Reserve 570075, within Lot 7004, DP 1077043, vested in Newcastle Coastal and Estuary Reserve Trust with Newcastle City Council as Reserve Trust Manager);

(d) Obelisk Park (Lot 1238 DP 1096744, physically separated from King Edward Park by

Reserve Road and from Arcadia Park by Wolfe Street, since 2009 vested in Newcastle City Council, classified as Community Land under the Local Government Act 1993 (NSW) and burdened by positive covenant for retention for community use in perpetuity);

(e) Shepherds Hill Defence Reserve Military Installations (41 The Terrace, Newcastle, Crown Reserve 170100, Lot 3116, DP 755247), including residence, observation post and gun placement, surrounded by King Edward Park, vested in Newcastle Coastal and Estuary Reserve Trust with Newcastle City Council as Reserve Trust Manager, transferred from the Commonwealth in 1988, with covenants for the protection of the place), Aboriginal name Khanterin; and

(f) Cliffside above South Newcastle Beach (abutting Crown Reserve 570019 ie.the eastern boundary of Lot 7059 DP 1116454, to the western kerbside of Shortland Esplanade, thence adjoining King Edward Park, Newcastle City Council as Manager), Aboriginal name Yi-ran-na-li.

Whilst historically connected, this item does not include the private land of King Edward Headland Reserve (Lot 3109 DP 755247)

Current use:	Recreation Reserve
Former use:	Aboriginal land, Recreation Reserve

History

Historical notes: Aboriginal cultures: pre- and post-contact Aboriginal custodianship

The site of the Reserve is within the traditional lands of the Awabakal people, who despatched over long-distances tools crafted from stone from the nearby cliffs. (AHMS, 'Aboriginal Heritage Impact Permit No. 1098622 Excavation Report', May 2011). The whole site would be important, with three places of special significance, to the local Aboriginal community.

The first, 'Khanterin', generally known as South Shepherds Hill, is the highest point on Shepherds Hill. (Henry T. Plews, 'On the Coalfield of New South Wales', in Transactions of the North of England Institute of Mining Engineers, Vol. VI, 1858; Rev. W.B. Clarke to Chairman of the Coal Inquiry Committee, Sydney Morning Herald, 13 October 1847, p.2)

The second, 'Yi-ran-na-li', the cliff extending from east of King Edward Headland Reserve to a line east of the southern side of Church Street at its intersection with Watt Street, adjacent to South Newcastle Beach. Its Awabakal name was recorded by local missionary Rev. Lancelot Threlkeld following a conversation with his friend Biraban, also known as Eagle Hawk or John McGill. Threlkeld noted that beneath 'Yi-ran-na-li' was a sacred place at which speech was thought to cause stones to fall from the unstable cliff above. When Biraban, in company with other Awabakal, conducted his friend to the spot, Threlkeld called out to him, whereupon some small stones did indeed fall. The Awabakal at once motioned Threlkeld to be silent and to hurry on. (Neil Gunson (ed.), Australian Reminiscences & Papers of L.E. Threlkeld, Missionary to the Aborigines, 1824-1859, 1974, p.65)

The third is The Obelisk hill (Prospect Hill), which may have been a duelling and corroboree place. Here, in November 1801, two Awabakal men, observed by Aboriginal people summoned with message sticks, as well as by curious British servicemen, are said to have fought with nulla nullas. (H.W.H. Huntington, 'History of Newcastle and the Northern District, Number XXXVII', in Newcastle Morning Herald, 14th December 1897) A panorama of Newcastle shows Awabakal people at a corroboree just south-east of the present site of The Obelisk, while daylight battles between Awabakal and other clans are known to have occurred nearby. (E.C. Close, Panorama of Newcastle, 1821; Cynthia Hunter, The 1827 Newcastle Notebook and Letters of Lieutenant William S Coke, H.M. 39th Regiment,

European:

Convict: the Newcastle penal settlement

The Reserve forms part of an area known as Shepherds Hill, originally called 'Sheep Pasture Hills' as suggested by Lieutenant Colonel Paterson during his 1801 exploring expedition. (Paterson to King, 25 June 1801, in F.M Bladen (ed.), *Historical Records of NSW*, Vol. IV., 1896, p.448) After the failure of an initial convict settlement, a second was established in 1804. Convict shepherds grazed government stock in the area adjoining the Government Domain.

Mining: convict coal mines

The Newcastle penal station, a place of secondary punishment, employed convicts in lime burning, timber getting and coal mining. As coal easily obtainable by drift mining was gradually exhausted, shafts were sunk in various localities. The track along which some of the coal was carted to the harbour wharf evolved into Watt Street, Newcastle's first commercial thoroughfare. (John Turner, *Newcastle as a Convict Settlement: the Evidence Before J.T. Bigge in 1819-1821*, Newcastle, 1973; Wilfred Goold, *The Growth of Newcastle*, Newcastle, 1985, p. 32)

At least three, and possibly four, mine shafts sunk by convict labour are situated on and around the northern headland of the Reserve. (Suters Architects for Newcastle City Council, 'Newcastle Archaeological Management Plan', 1997) These are the so-called Bowling Green shaft; another shaft nearby, possibly for ventilation; a dewatering shaft; and perhaps another situated nearer what is now The Obelisk. Parts of these workings are connected by a convict-driven drainage adit, later called The Blowhole, to the sea cliffs, while a later adit appears to be drained into the steep gully to the south. (David Branagan, *Geology and Coal Mining in the Hunter Valley, 1791 - 1861*, Newcastle, 1972, p.32; Henry Dangar, 'Plan of the Town of Newcastle on Hunter's River', State Records AO Map 4398; George Boyle White, 'Sketch of the land in the Town of Newcastle', National Archives UK MPH1-681-(67)-NSW-Newcastle; NMH, 20 September 1887, p.4; John Armstrong, 'Plan of the Town of Newcastle Shewing its Present Actual State', 1830; Royal Commission on Earth Subsidence at Newcastle, 1908, reported in NMH, 20 February 1908, p.3; Newcastle Archaeological Management Plan (1997), Item 124)

The workings appear to date from between January 1820, when Commissioner J.T. Bigge visited Newcastle and noted the location of an earlier shaft, and the time of their description by Surgeon Peter Cunningham, who visited Newcastle in 1825 and perhaps earlier: 'The coal shaft is sunk upon the summit of the hill, and the coals carted down by bullocks; but from the defective nature of the working, and the lazy habits of the incorrigibles [sic] who are sentenced to this labour, the produce does not at all correspond with what may be expected when a more efficient system is introduced.' (P. Cunningham, *Two Years in New South Wales*, London, 1827, pp. 148-149)

Leisure: The Bogey Hole and Bowling Club

The rock shelf pool known as the Bogey Hole (SHR 01678) was excavated at some time between 1819 and 1823 by order of James Thomas Morisset, military commandant of the Newcastle penal station, who was fond of sea bathing. (John Bingle, *Past and Present Records of Newcastle*, Newcastle, 1873, pp.11-12) It was connected to the nearby Government Domain by the 'Commandant's Walk', leading from the end of the track to the mines. The pool was called the 'Commandant's Bath', the 'Commandant's Hole' or 'Morisset's Bath', although other members of the military, as well as Morisset's family, may well have used it. It may have been enlarged from an existing rock pool; but its Awabakal name, if any, is unknown. The fact that Commissioner J.T. Bigge did not mention the bath may indicate that it was built after January 1820, although this cannot be conclusive.

Morisset's connection with the bath gradually faded, for in 1852 English traveller John

Askew misheard its name as 'the Accommodence Hole', but nevertheless carefully recorded its dimensions as being 15 feet in length, 7 feet in width and 6 feet in depth, confirming the accuracy of an 1841 sketch by Conrad Martens. Askew commented as to the 'hoarse voice of the ocean, while lashed into fury by the north-east wind', and was struck by the 'thundering sound of its seething waters, as I have never been by any of the awe-inspiring phenomenon [sic] of nature'. He proclaimed that 'The feelings awakened by this majestic scene are indescribable; and I never stood on any spot which so heightened the impressiveness of a scene so terribly sublime'. (John Askew, *A Voyage to Australia and New Zealand*, London, 1857, pp. 260-261) From 1863 the pool was opened to the public. The isolated location was suitable for male bathing, which, as swimming costumes were not then worn, was elsewhere prohibited between 6am and 8pm. Further south were two more dangerous swimming spots called the Bar and Reef and The Gulf. From the early 1860s females had ceased to use the Bogey Hole; and not until 1911 were two days per week reserved for their use. (NMH, 14 December 1861, p.2; 26 January 1911, p.4)

In 1884 the bath was considerably extended by a Council contractor, whose plan shows the removal of nearly all of the original fabric, although part of Morisset's original floor survived. (Newcastle Council Minute Book 1883-1886, 21 April 1884, p.16, NMH, 18 June 1884, p.3, 2 September 1884, p. 3.) By this time the baths had become known as the Bogey Hole, a name not of local Aboriginal origin. (R.M.W. Dixon, *The Languages of Australia*, Cambridge, 1980, pp.69-71) From 1956, the baths were used for annual Greek Orthodox Epiphany Blessing of the Waters liturgies. From 1971, the Macedonian Orthodox community conducted a similar liturgy. Commemorating Christ's baptism by John the Baptist, participants pray for prosperity and the safety of seafarers before young men (and latterly women), watched by a clifftop crowd, dive into the pool in trying to retrieve a silver cross thrown from above by a priest.

Convict: the windmill

The Obelisk, a former navigational marker, stands on the site of the Government Flour Mill, a convict-built brick windmill, miller's house and grain store, all built c.1820 by order of J.T. Morisset. Here was ground wheat from the Newcastle government farm and Wallis Plains convict farms, so helping to improve the prisoners' diet, which Bigge had found inadequate. ('Report of the Commissioner of Inquiry into the State of the Colony of New South Wales, Settlement of Hunter's River', 1822) After the transfer of the penal station to Port Macquarie, the windmill was offered for lease to private parties. (Sydney Gazette, 25 March 1824; Sydney Morning Herald, 30 January 1832, p.4) By the 1840s its usefulness had passed, but mariners had for years used it as a navigation mark for entering Port Hunter. The colonial government, apparently unaware of this, in 1848 sold the mill to Thomas Adam, a local businessman, for demolition. (Colonial Secretary to Mortimer Lewis, 12 December 1848) It is said that Adam hurried to pull down the building before mariners could force a review of the decision. (J.D. Lang, *An Historical and Statistical Account of New South Wales*, 3rd ed., 1852, pp.230-231) The miller's house and store, too, appear to have been demolished at or before this time.

Transport: The Obelisk

In 1850, when Sir Charles FitzRoy was Governor, the windmill was replaced by a purpose-built stone navigational marker in the form of an Egyptian obelisk. It was also known as 'The Monument' or 'Fitz Roy Pillar', perhaps in the mistaken belief that it commemorated FitzRoy himself. (John Askew, *A Voyage to Australia and New Zealand*, London, 1857, p.262). A similar but smaller obelisk already stood in Macquarie Place (1818, SHI No. 758942); later structures include navigational obelisks at Robe and Port Elliot in South Australia (early 1850s), together with the Lady FitzRoy monument in Parramatta Park (1888, SHR 596). Prominent on the skyline of Prospect Hill, also called Monument Hill, the structure was at some stage rendered and painted white. Not altogether successful in its role, in 1858 The Obelisk was supplemented by a timber-built version some distance to the north. Both structures became obsolete when, in the mid-1860s, they were replaced by leading light towers. As a splendid vantage point offering 360-degree views, the site of The Obelisk was used by colonial artists Joseph Lycett, Walter Preston, James Wallis, E.C. Close and Conrad Martens in their paintings of Newcastle, incorporating parts of what was to become the Recreation Reserve.

After the reopening of the State Dockyard in 1942, a timber pole with a triangle at its apex was erected just north of Shepherds Hill fort so as to mark a measured sea mile for ships'

trials. Part of this may remain below the surface. (NMH, 16 February 1946, p.5; additional information supplied by local historian Graeme Steinbeck, May 2016)

Health: The Obelisk reservoir

In 1885, as part of the Hunter district water supply scheme devised by William Clark (1821-1880), an English engineer who consulted in the supply of water in India and the Australasian colonies, a masonry-and-iron-built reservoir was completed adjacent to The Obelisk. (George Boase, 'Clark, William, 1821-1880', in Dictionary of National Biography, 1885-1900, Vol. 10, 1887, p.410) The construction of the reservoir, coupled with the quarrying of Prospect Hill, disrupted the natural landform, while road construction visually separated the 5.3 ha Obelisk site from the remainder of the Reserve.

In 1935, The Hill Tennis Club relocated from the bowling club to new courts just south of The Obelisk; its pavilion, which remains extant, was designed by F.A. Scorer, the City Architect. (NMH, 12 July 1935, p.20) In the late 1930s access to The Obelisk was improved by terracing and flights of steps. In 1967 the Hunter District Water Board provided a lookout plinth and in-ground commemorative plaques celebrating its 75th anniversary and tracing the history of the district's water supply. In 1985 the reservoir, damaged by a gas explosion, was drained and filled in, although The Obelisk itself was itself later damaged by lightning strikes and the 1989 earthquake. In 2009, the site was transferred to Newcastle City Council. (SMH, 25 September 1985, p.8; Robert Evans, King Edward Park, Newcastle: A History, Newcastle, 2016, p.131)

Defence: Shepherds Hill Defence Group, King Edward Park and The Obelisk

Items of military heritage include the Shepherds Hill Defence Group (SHR 01806), together with other items in King Edward Park and at The Obelisk. In 1890 a disappearing gun position, in which was later mounted a Sir W.G. Armstrong and Co. 8-inch calibre hydro-pneumatic gun, was constructed against raids by enemy warships. The location was suggested by Vice-Admiral Sir George Tryon, R.N. The position, sometimes known as Shepherd's Hill Fort, consisted of an open-topped gun pit and below-ground magazines, with a casemate reached via a ramp from the surface. It was protected by a post for a Nordenfeld machine gun. The gun, one of several imported from the UK in 1886, and identical to those installed at George's Head in Sydney, was mounted in 1891, and was first fired in 1892. (R.S. Mort, The Story of Shepherd's Hill, Newcastle, 1988; NMH, 7 February 1885, p.4, 28 May 1890, p.6, 24 November 1891, p.5)

A regular member of the NSW Military Forces lived in the associated District Gunner's Cottage, built to a standard NSW design. The gun position was also manned by part-time militia. In 1894, the land was belatedly reserved for defence purposes. In 1898 an Observation Post, of which the concrete slab survives, was provided near The Obelisk. (NMH, 6 December 1898) Having been transferred to the Commonwealth government, the gun was regularly used for practice shoots, but in 1906 the gun pit was cracked by mine subsidence. The gun was then dismantled, but for a time remained in situ nearby. (SMH, 17 May 1906; NMH, 6 January 1910, p.5) During and after WWI, the RAN operated a Port War Signal Station at the site. (NMH, 20 February 1918, p.8)

C.1938, a reinforced concrete Battery Observation Post was constructed at Shepherds Hill to serve new 9.2-inch counter-bombardment guns at Fort Wallace, at Stockton. During WWII, work began on Park Battery, a new gun position for 6-inch guns. No. 1 gun emplacement, accessible by tunnel from the yard of a neighbouring dwelling, was near the top of the cliff face, while No. 2 gun emplacement was further north, overlooking King Edward Park. At around the same time, two searchlight positions were provided: No.1 searchlight in the cliff face to the south, and No.2 searchlight near the bowling club to the north. Both were linked via tunnels to their subterranean engine rooms. Additions to the Fort Wallace Battery Observation Post provided for artillery requirements; a RAN Port War Signal Station; and a highly secret RAAF radar station with a prominent radar array. The use of the complex by all three Services at once is possibly unique, in an Australian context. (R.S. Mort, The Story of Shepherd's Hill)

During WWII, some Service personnel were housed in neighbouring homes, inside the redundant disappearing gun position and in huts built over and around it, while the redundant casemate housed an emergency electricity generator. Light machine-gun posts, a small-calibre quick-firing gun, air raid trenches, wire obstacles and the like were located nearby. (Information supplied by local historian Graeme Steinbeck, May 2016) From 1951, some of the huts housed 11 Cadet Battalion headquarters. (NMH, 30 November 1951, p.5) These were later removed, while the gun pit and magazines were partially filled. In 1978 No. 2 gun emplacement was collapsed and backfilled by Council (NMH, 6 March 1978); its site appears as a hillock, with some structural elements visible in the grass. No. 1 emplacement remains extant, although its subterranean entry is bricked off. The gunner's cottage continued in Service use until the mid-1980s. (Gardner Browne, 'Shepherds Hill Cottage and Surrounds Conservation Study', Newcastle, 1986, p.26)

In May 1942, just after the bombardment of Newcastle by a Japanese submarine, an alternate gun position was constructed just east of The Obelisk. The position, near the WWII Newcastle Defence Headquarters in nearby Jesmond House, consisted of two concrete circular gun platforms, amenities, and subterranean magazines, but guns were never mounted. The magazines, in one of which the cartridge racks remain intact, have now been sealed, but a concrete Depression Range Finder plinth remains. (NMH, 1 March 1952, p.5; Newcastle Sun, 5 June 1947, p.10; other information supplied by Graeme Steinbeck, May 2016 from Fort Scratchley records) In 1947, tank traps (tetrahedrons) from Merewether Beach were used to strengthen the sea wall along Shortland Esplanade, and also to seal the entry to the convict mine adit. (NMH, 29 May 1947, p.2) In 1965 the two six-inch guns of Fort Scratchley were remounted on plinths at The Obelisk, where their condition deteriorated until in 1978 they were returned to the Fort. (L. Carey (ed.), Fort Scratchley, Newcastle, New South Wales, Newcastle, 1986, pp.31-32)

Environment: naturally evolved

The Reserve includes areas of Themeda grasslands, an endangered ecological community found on NSW sea cliffs and coastal headlands. The Themeda grasslands of the Reserve are dominated by the species *Themeda australis* (Kangaroo Grass), a reddish, tufted, low growing native grass found along coastal cliffs and headlands. A range of shrubs and herbs, including *Acacia sophorae* (Coastal Wattle), *Banksia integrifolia* (Coast Banksia), *Lomandra longifolia* (Spiny Headed Mat-Rush) and *Westringia fruticosa* (Coastal Rosemary) are also present.

Environment: cultural landscape

When in 1823 surveyor Henry Dangar laid out the town of Newcastle, he reserved land, later called the Newcastle City Extension Reserve, for urban development and public recreation. In 1856, when the city has only 1,500 residents, the Newcastle Chamber of Commerce, inspired by the British movement for urban parks, successfully asked the colonial government 'to grant the citizens in perpetuity (35) thirty-five acres of land as a recreation ground in the most delightful and picturesque part of Newcastle from the top of Watt Street round the Horse Shoe to the Obelisk.' (John Bingle, Past and Present Records of Newcastle, Newcastle, 1873, p.21)

Although the northern portion of the Extension Reserve was sold for housing, the government gazetted much of the remainder as the Newcastle Recreation Reserve, of which in 1863 the Newcastle Council was made trustee. A further 5 acres were added, and from c.1865 engineer T.A. Ellis widened part of the Commandant's Walk, by then called The Horseshoe or Horseshoe Bend, and also formed paths and planted trees. The Upper Reserve, as it was called, catered for promenading; cricket; riding or driving; and later for tennis, lawn bowls and picnics. An ornate sandstone drinking fountain, erected in 1879 outside Newcastle railway station, in or around 1889 was relocated to the Reserve minus its livestock drinking basins. (NMH, 15 August 1879, p.3, 6 November 1888, p.8; Robert Evans, King Edward Park, p.78)

Entry to the widened portion of the walk, via the southern end of Watt Street, was from 1907 marked by ornate iron gates with four prominent stone columns and a decorative iron fence. These, designed by architect Frederick Menkens, were donated by Joseph Wood, who with his brother John operated the Castlemaine Brewery and Wood Brothers and

Company Ltd at Newcastle West. (NMH, 19 July 1906, p.4) The gates were near the round timber road alignment post placed in 1864 by surveyor D.M. Maitland when aligning Newcastle's streets. Whilst the post itself has disappeared, its location is marked by a concrete plinth and plaque.

In the 1880s, Wolfe Street and Wolfe Street were extended to a new thoroughfare, called Reserve Road. This divided the Reserve in three: the Upper Reserve; the Lower Reserve; and what was later called Arcadia Park. An 1890 park design competition was won by Alfred Sharp (1836-1908; originally Alfred Sharpe), an English-born watercolour artist, architect and conservationist who by the time he had come from New Zealand to Newcastle to join his prosperous brother William was profoundly deaf, and communicated via manual sign language. Sharp's plan for the Upper Reserve was for a park in the Picturesque style centred on the spring-fed watercourse in the steep lower northern gully. Here he planned to create a series of pools surrounded by groves of trees and spanned by bridges. He also planned recreational areas and ornamental plantings. (NMH, 22 March 1890, p.11; Newcastle City Council, 'Heritage Places: Strategic Plan and Plans of Management', 2014, p.78; Roger Blackley, *The Art of Alfred Sharp*)

Sharp's design was only partly executed. A belvedere arrangement of paths on different levels allowed courting couples to 'walk out' together under discrete observation by their chaperone. Pohutukawa saplings were introduced from New Zealand, and the upper northern gully was terraced to create a cricket ground and lower garden, although their form and features disregarded Sharp's plan and the natural rock formations were destroyed. (NMH, 16 August 1992, p.5) A rotunda, perhaps relocated from Sydney's Centennial Park, was erected in 1898, but not in the place of Sharp's choice. (NMH, 2 August 1898, p.5) A frustrated Sharp became severely critical, adopting the pen-name 'Asmodeus', after the mythical demon of that name, for letters to the editor of the leading local newspaper. (NMH, 25 April 1893, p.7)

In August 1910, Council altered the name of the Upper Reserve to King Edward Park. (Motion of Council, 29 August 1910) During the 1920s, the city's head gardener, J.V. Coleman, established east of the rotunda lawn the walled garden later called Garside Gardens after R. Garside, a long-serving parks and gardens supervisor. This was later joined by a sunken garden and rockery. Norfolk Island pine trees, now a defining feature of the park, were favoured by Coleman, although this further strayed from Sharp's plan.

The present northern entry to The Horseshoe, now part of Shortland Esplanade, completed c.1937, dates from 1936, when the vehicular entry through the Wood gates was closed, the larger gate columns being relocated to the south-western entry to York Drive, so named after the 1926 visit of the Duke and Duchess of York, who later became King George VI and Queen Elizabeth (later known as Queen Elizabeth The Queen Mother). (NMH, 5 June 1936, p.5, 23 October 1936; Newcastle Sun, 29 January 1927, p.3) The smaller columns are believed to have been transferred to a private residence.

After the Second World War the lower gully was shaped into a grassed amphitheatre for outdoor performances. A music shell was planned, but was not built. In 2004 much of this area was infilled. Bathers Way, a coastal path, now extends along the coastline.

Events

The Reserve has hosted many public events, such as Queen's Birthday and Anniversary Day (Australia Day) celebrations; musical concerts; torchlight processions; church services; Christmas events; war rallies; hospital rallies; and Anzac Day services. The Reserve continues to draw large crowds for open-air film nights; concerts; Christmas carols and the like.

Historic themes

Australian theme	New South Wales theme	Local
------------------	-----------------------	-------

(abbrev)		theme
1. Environment-Tracing the evolution of a continent's special environments	Environment - naturally evolved-Activities associated with the physical surroundings that support human life and influence or shape human cultures.	(none)-
2. Peopling-Peopling the continent	Aboriginal cultures and interactions with other cultures-Activities associated with maintaining, developing, experiencing and remembering Aboriginal cultural identities and practices, past and present.	(none)-
2. Peopling-Peopling the continent	Convict-Activities relating to incarceration, transport, reform, accommodation and working during the convict period in NSW (1788-1850) - does not include activities associated with the conviction of persons in NSW that are unrelated to the imperial 'convict system': use the theme of Law & Order for such activities	(none)-
3. Economy-Developing local, regional and national economies	Environment - cultural landscape-Activities associated with the interactions between humans, human societies and the shaping of their physical surroundings	(none)-
3. Economy-Developing local, regional and national economies	Events-Activities and processes that mark the consequences of natural and cultural occurrences	(none)-
3. Economy-Developing local, regional and national economies	Health-Activities associated with preparing and providing medical assistance and/or promoting or maintaining the well being of humans	(none)-
3. Economy-Developing local, regional and national economies	Mining-Activities associated with the identification, extraction, processing and distribution of mineral ores, precious stones and other such inorganic substances.	(none)-
3. Economy-Developing local, regional and national economies	Transport-Activities associated with the moving of people and goods from one place to another, and systems for the provision of such movements	(none)-
7. Governing-Governing	Defence-Activities associated with defending places from hostile takeover and occupation	(none)-
8. Culture-Developing cultural institutions	Leisure-Activities associated with recreation and relaxation	(none)-

and ways of life

Assessment of significance

SHR Criteria a)

[Historical
significance]

The Reserve maybe of state heritage significance for its strong association with activities important in the history of NSW. The Reserve area was used for cultural purposes by the Awabakal people, while two geographical features are identified by their Aboriginal names; one of these, 'Yi-ran-na-li', has cultural significance in the early interaction of Aboriginal people and Europeans. Considerable convict-related activity has occurred within the Reserve: the grazing of government stock by convict shepherds; coal mining; the construction and operation of the convict-built windmill, residence and store; and the creation of the original Bogey Hole and the Commandant's Walk. These demonstrate continuity and change from the NSW convict era to modern times.

The Obelisk maybe of state heritage significance for its association with the progress of NSW coastal navigation, and also for its special relationship to Port Hunter, a harbour of great importance in the economic development of NSW. The Bogey Hole (SHR 01678) is of state heritage significance as an early example of the important NSW pastime of sea bathing, demonstrating the transition between unrestricted male bathing, restricted gendered bathing, and unrestricted ungendered bathing. The Horseshoe, now part of Shortland Esplanade, is an early example of a convict-built path later improved for vehicular traffic.

The Reserve maybe of state heritage significance for its defence sites, and for its association with the transition from convict industry to free labour and private enterprise. It maybe of state heritage significance in demonstrating continuity and change in public recreation from the mid-nineteenth century to the present day.

SHR Criteria b)

[Associative
significance]

The Reserve maybe of state heritage significance because of its special association with James Thomas Morisset, military Commandant of the Newcastle penal settlement between late 1818 and 1823, under whom both the Bogey Hole baths and The Horseshoe walk were built. Morisset is a figure of historical importance because of his later roles as Commandant at the Bathurst and Norfolk Island penal stations. 'Yi-ran-na-li', the cliff extending from King Edward Park Headland Reserve to a line extending east from the southern side of Church Street at its intersection with Watt Street adjacent to South Newcastle Beach, maybe of state heritage significance because of its special association with Biraban (otherwise known as Eaglehawk or McGill) and Rev. Lancelot Threlkeld, an early missionary to the Awabakal people.

The Reserve maybe of state significance because of its association with Vice-Admiral Sir George Tryon R.N., an important figure in the development of the coastal fortifications of the Australian colonies, and with the Service personnel who between 1891 and the 1980s staffed or used the defence assets.

SHR Criteria c)

[Aesthetic
significance]

The Reserve maybe of state heritage significance in demonstrating the development of landscape architecture in NSW. Having been laid out as a late nineteenth century belvedere park, one of few in NSW, the Reserve has visual and sensory appeal derived from its extensive views of the ocean and the Hunter Valley, especially from its elevated locations. The basic openness of the Reserve continues to reflect its 1804 description as 'the sheep pasture hills', while the Reserve area has been sketched and painted by important artists Edward Charles Close, Joseph Lycett, Walter Preston, James Wallis, E.C. Close and Conrad Martens.

Defence sites within the Reserve, including but not limited to SHR 01806, are of state heritage significance in their demonstration of a high degree of creative and technical achievement. The 8-inch disappearing gun position and associated relics at The Obelisk demonstrates the technological progression of NSW coastal artillery in the nineteenth century. The WWII observation and command post, gun emplacements and searchlight positions illustrate important advances in twentieth century defence technology in NSW. The alternate gun position at The Obelisk provides information as to contingency planning

in case of a major Japanese attack on the NSW coast.

Although most of the Bogey Hole (SHR 01678) and Horseshoe path post-date the convict era, enough remains to demonstrate the creation by convict labour of an early sea bathing pool from a natural rock shelf, with carefully planned access path.

The Obelisk, a rendered stone-built structure historically used as a navigation aid, maybe of state historical significance in that it appears to be the only navigational obelisk of its kind in NSW; is aesthetically distinctive; and has landmark qualities and considerable aesthetic appeal, being visible across a wide arc and over considerable distances.

The iron rotunda, sandstone drinking fountain and remaining stone gate columns are associated with a high degree of creative achievement, while the western part of the Reserve exemplifies late-nineteenth century park design.

SHR Criteria d)
[Social significance]

The Reserve maybe of state heritage significance for its special association with the Aboriginal community of Newcastle and the Hunter Region. The Aboriginal names of two localities within the Reserve are known, with one of these localities, Yi-ran-na-li, being of demonstrable historical and cultural significance to the Awabakal people. Yi-ran-na-li is strongly associated with early interactions between the Awabakal people and Europeans by agency of Rev. Lancelot Threlkeld, a pioneering recorder of Aboriginal culture and language.

SHR Criteria e)
[Research potential]

The Reserve maybe of state heritage significance in its potential to yield new or further important archaeological information as to Aboriginal sites within the Reserve. These, together with artistic and documentary evidence, demonstrate early contact between Aboriginal and European people.

The convict mine shafts and drainage adit; the remaining convict-associated fabric of the Bogey Hole; and the site of the former windmill and associated buildings maybe of state heritage significance in the archaeology of early NSW coal mining. They have the potential to supply further information as to the transition between public sector and private sector coal mining in NSW, as well as information as to early sewage disposal technology.

The defence sites within the Reserve are of state heritage significance in demonstrating the way in which colonial and federal authorities reacted to changing defence technologies and threats, including the development of air power and the highly secret Ground Control Intercept radar network, and the fear of large-scale Japanese attack. The 8-inch gun pit is the oldest unmodified 8-inch disappearing gun pit in NSW, while the Shepherd's Hill position is probably unique in Australia in having been occupied by all three Services at once during WWII. The Obelisk and possible archaeological relics of the State Dockyard 'measured mile' post have the potential to supply information as to the maritime history of NSW. The remaining fabric of the Obelisk Reservoir has state significance in its potential to yield further information as to nineteenth century NSW water supply schemes, and particularly as to the work of William Clark, a hydraulic engineer of world standing.

The Reserve maybe of state heritage significance for its potential to supply further information as to the design and development of nineteenth century inner-city public reserves in NSW.

SHR Criteria f)
[Rarity]

The Reserve maybe of state heritage significance in possessing coastal native grasslands, including Themeda grass, in an inner-city location. Themeda grasslands on coastal headlands and sea cliffs in NSW are an endangered ecological community threatened by increasing coastal development and weed invasion.

The Reserve maybe of state heritage significance for its rare and uncommon features that include: The Bogey Hole and The Horseshoe, although much modified, are relics of the Newcastle penal station, and examples of Victorian era sea bathing amenities; The mine

workings are rare examples of convict coal mining activity and technology; The disappearing gun position is uncommon in regional NSW; and The relics of the former command post at The Obelisk are of state significance as a rare example in NSW of early Federation era coastal artillery command infrastructure.

The Reserve maybe of state heritage significance as a rare example in NSW of a comparatively undeveloped inner city natural, Aboriginal and European landscape influenced by convict labour and recorded by important artists such as Joseph Lycett; Walter Preston; James Wallis; E.C. Close and Conrad Martens.

SHR Criteria g)

[Representativeness]


The Reserve maybe of state heritage significance for its representative values. The Themeda grasslands are a rare example of endangered native grasslands in a NSW inner-city location. The cliff face and cliff top called Yi-ran-na-li contribute to the way of life, traditions and belief system of the Awabakal people, and are representative of the Dreaming.

As an early example of a regional reserve granted through public lobbying, the Reserve demonstrates the principal characteristics of a late nineteenth century Belvedere park in the Picturesque style, and demonstrates the philosophy and customs of its Victorian founders and Edwardian developers. Its setting, incorporating coastal hills, headlands, gullies and sea cliffs with wide views across the lower Hunter Valley and the ocean, together with its internal vistas across a variety of terrain, make it of potential state significance in terms of its setting.

Integrity/Intactness:

The Reserve has a generally high level of integrity. The rotunda; sandstone drinking fountain (restored after May 2012 vandalism); gardens; drives; The Obelisk; and two surviving sandstone gate columns are well maintained. The Bogey Hole requires maintenance. The condition of historic military items varies according to their age, location and materials, with some in poor condition.

Assessment criteria:

Items are assessed against the  **State Heritage Register (SHR) Criteria** to determine the level of significance. Refer to the Listings below for the level of statutory protection.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Heritage Act - Under consideration for SHR/IHO listing	Nomination received from Coal River Working Party		11 Jul 12		
Heritage Act - Under consideration for SHR/IHO listing	nomination reactivated		16 Sep 20		
Local Environmental Plan		579-580	01 Jan 12		

Study details

Title	Year	Number	Author	Inspected by	Guidelines used
Newcastle City Wide Heritage Study	1996		Suters Architects Snell		N o
Newcastle Archaeological	1997		Suters, Lavelle,		

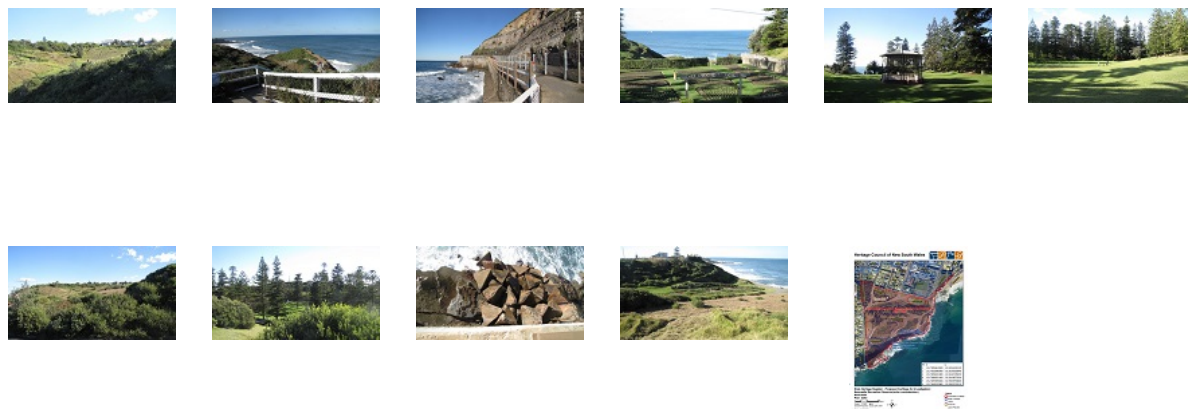
Management Plan			Doring, Turner		Y e s
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References, internet links & images

Type	Author	Year	Title	Internet Links
Written	Blackley, Roger	1992	The Art of Alfred Sharpe	
Written	Cynthia Hunter	1997	The 1827 Newcastle Notebook and Letters of Lieutenant William S. Coke, H.M. 39th Regiment	
Written	David Branagan	1972	Geology and Coal Mining in the Hunter Valley, 1791-1861	
Written	Evans, Dr. Robert	2016	King Edward Park, Newcastle: a History	
Written	F.M. Bladen (ed.)	1896	Historical Records of NSW, Vol. IV	
Written	Gardner Brown	1986	Shepherds Hill Cottage and Surrounds Conservation Study	
Written	George Boase	1887	Dictionary of National Biography, 1885-1900, Vol 10	
Written	Henry T. Plews	1858	Transactions of the North of England Institute of Mining Engineers	
Written	J.D. Lang	1852	An Historical and Statistical Account of New South Wales (3rd ed.)	
Written	James Tucker (attrib.)	1952	Ralph Rashleigh, or, The Life of an Exile	
Written	John Askew	1857	A Voyage to Australia and New Zealand	

Writt en	John Bingle	1873	Past and Present Records of Newcastle	
Writt en	John Turner	1973	Newcastle as a Convict Settlement: the Evidence before J.T. Bigge in 1819-1821	
Writt en	L. Carey (ed., rev. R.S. Mort)	1986	Fort Scratchley, Newcastle, New South Wales	
Writt en	Neil Gunson (ed.)	1974	Australian Reminiscences and Papers of L.E. Threlkeld, Missionary to the Aborigines, 1824-1859	
Writt en	Newcastle City Council	2014	Heritage Places: Strategic Plans of Management	
Writt en	Peter Cunningham	1828	Two Years in New South Wales	
Writt en	R.M.W. Dixon	1980	The Languages of Australia	
Writt en	R.S. Mort	1988	The Story of Shepherd's Hill	
Writt en	Wilfred Goold	1985	The Growth of Newcastle	

Note: internet links may be to web pages, documents or images.



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Data source

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ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

PV 16/03/21 – NOMINATION TO LIST NEWCASTLE RECREATION RESERVE (KING EDWARD PARK) ON THE STATE HERITAGE REGISTER

ITEM-1 **Attachment B:** State Heritage Register – Proposed Curtilage for
Investigation dated 14 October 2020

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Public Voice Committee

16 March 2021



City of
Newcastle

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Heritage Council of New South Wales



State Heritage Register - Proposed Curtilage for Investigation:
Newcastle Recreation Reserve (under consideration)
Newcastle
Plan: 3263

0 50 100 200 Meters
 Scale: 1:2,500 @A4
 Datum/Projection: GCS GDA 1994
 Date: 14/10/2020



- Legend**
- ▭ Proposed Curtilage
 - ▭ SHR Curtilage
 - ▭ LGAs
 - ▭ Suburbs
 - ▭ Land Parcels

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PV 16/03/21 – NOMINATION TO LIST NEWCASTLE RECREATION RESERVE (KING EDWARD PARK) ON THE STATE HERITAGE REGISTER

ITEM-1 **Attachment C:** Friends of King Edward Park Submission to
Heritage Council, December 2020

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PROPOSED STATE HERITAGE LISTING OF THE NEWCASTLE RECREATION RESERVE: SUBMISSION OF THE FRIENDS OF KING EDWARD PARK INC.

INTRODUCTION

In August 2017 the Heritage Council recommended to the then Minister for the Environment and Heritage that the Newcastle Recreation Reserve (NRR) be listed on the State Heritage Register. The recommendation was resubmitted to the Minister in March 2018 after an error was corrected.

The NRR, as it was then proposed, included the following elements:

- (a) King Edward Park;
- (b) Arcadia Park;
- (c) The Obelisk Tennis Courts;
- (d) Shepherds Hill Defence Reserve Military Installations, Aboriginal name *Khanterin*;
- (e) King Edward Headland Reserve (the Headland Reserve);
- (f) Obelisk Reserve; and
- (g) Part of the cliffside above South Newcastle Beach, Aboriginal name *Yi-ran-na-li*

On 16 September 2020 the Minister rejected the recommendation. His decision was communicated to the Friends of King Edward Park (FoKEP) in a letter headed 'Not listing on the State Heritage Register' dated 29 September 2020. The letter explained, 'after careful consideration', the reasons for his decision. In summary, they were:

- More than three years had passed since the Recommendation was made
- There had been a change in ownership of the Headland Reserve
- The new owners, the Awabakal Local Aboriginal Land Council (ALALC) objected to the proposed listing
- The Minister stated that he was required to consider 'the effect of the use of the Headland Reserve and any financial hardship to the owner which may be caused by the listing'.

The Minister then requested that the Heritage Council 'give fresh consideration to making a recommendation to list the Newcastle Recreation Reserve'.

A letter to the Friends of King Edward Park from the Department of Premier and Cabinet dated 17 November 2020 stated that at the Minister's request, the Heritage Council had resolved on 4 November 2020 of its intention to consider listing on the State Heritage Register of the Newcastle Recreation Reserve and invited written submissions to be made by 7 January 2021.

A diagram titled 'Proposed Curtilage for Investigation', which accompanied this letter, included all of the elements of the Newcastle Recreation Reserve in the Heritage Council's previous recommendation except that the King Edward Headland Reserve (identified as 3109/75527) had been excised from the proposed curtilage.

Also, in correspondence dated 30 October 2020 from the Minister Harwin MLC to Ms Catherine Cusack MLC as the (then) Parliamentary Secretary for the Hunter (which Ms Cusack copied to the FoKEP) the Minister wrote:

I recognise the heritage significance of the site and have requested under section 32(2) of the Act that the Heritage Council give fresh consideration to the making of a recommendation to list the Newcastle Heritage Reserve with an amended curtilage.

The Department of Premier and Cabinet's letter dated 17 November 2020 does not explain why it is now proposed that the King Edward Headland Reserve be excised from the Newcastle Recreation Reserve. Instead, presumably, we need to rely on the earlier letter from the Premier and Cabinet dated 29 September 2020 which set out the Minister's reasons for rejecting the Heritage Council's recommendation.

Given both letters were signed 'Ms Cheryl Brown, Heritage NSW, As delegate of the Heritage Council of NSW', the Friends of King Edward Park sought advice from Heritage NSW as to whether Ms Brown's letter represented the position of the Heritage Council. In response, we were advised that the Heritage Council is yet to determine its recommendation and so, accordingly, we were invited to comment on the listing of the Newcastle Recreation Reserve and whether the King Edward Headland Reserve should be excised from the NRR. We were informed that the King Edward Headland Reserve had been excised (in the proposed diagram) because of the 'owner's objection'.

The Friends of King Edward Park Incorporated

The Friends of King Edward Park is a community-based organisation which has actively sought to preserve and promote the heritage and public recreation values of the Newcastle Recreation Reserve including the King Edward Headland Reserve (HR). We have been engaged, for example, in extensive litigation in the Land and Environment Court which successfully ensured that the Headland Reserve was protected from private development by proving that the development was contrary to the Reserve's public dedication (see: *Friends of King Edward Park Inc v Newcastle City Council (No 2) [2015] NSWLEC 76*).

Part of our media campaign involved the production of the 'SAVE OUR PARK' aerial photograph shown below:



Tellingly, Justice Sheahan's judgment in the case confirmed that land can be said to be used for 'public recreation' only if it is open to the public as of right and is not a source of private profit.

Most recently we successfully argued in the Land and Environment Court that we be joined as a party in the court's proceedings to a proposed development on land adjoining the NRR; the developer and, in effect, the City of Newcastle Council objected. Part of our submissions in the on-going case includes expert advice detailing the negative impact of the proposed development on the NRR included Arcadia Park and sight lines to and from the Obelisk.

Beyond seeking to protect the NRR through litigation, we have also supported the publication of Dr Robert Evans' book *King Edward Park Newcastle NSW : A History* in 2016, conducted two very-well attended public forums on the park and Crown land, initiated the amendment of the *Newcastle Local Environment Plan 2012*, appeared before the NSW Legislative Council's Select Committee on the *Planning Process in Newcastle and the Broader Hunter Region* in 2014, made a detailed submission to the NSW Legislative Council's Committee of Inquiry into Crown Land in 2015, have sponsored an annual student prize in the University of Newcastle Law School, resourced a research project with the University of Newcastle on the Headland Reserve and built networks with the Awabakal Local Aboriginal Land Council, members of the Coal River Working Party (now Living Histories @UoN) and other community organisations.

We believe our Association has standing in the consideration of the heritage listing of the NRR including the HR. Indeed, Justice Biscoe's judgment which dismissed an interlocutory application by the Newcastle City Council for security of costs against the Friends of King Edward Park over the Headland Reserve found (at paragraph 63 in *Friends of King Edward Park Inc. v. Newcastle City Council* [2012] NSWLEC 113 16 May 2012), *inter alia*, that:

I am satisfied that the proceedings have been brought in the public interest having regard to the following:

- (a) The applicant is seeking to enforce public law obligations on the part of the council and the Minister;
- (b) The proceedings relate in part to the protection of *heritage items, including Aboriginal heritage items* (emphasis added) . . .
- (c) The proceedings have been brought to preserve the Reserve for its dedicated purpose of public recreation and to preserve the Park which is a public park . . .

Later, in paragraph 64(c) his Honour found:

The proceedings have been brought to protect the environmental and heritage values of the subject land which are of significant value and importance. The Constitution of the applicant and the evidence of its President Dr Ostinga show that it was incorporated not solely for the purpose of the proceedings but to do something positive for the park and surrounds, assist the council to maintain the Park and monitor further commercialisation of the coastal reserve. On Dr Ostinga's evidence, questions arise as to whether significant consideration has been given to the significant early history of the site, including its convict and coal mining history, its importance as a defence site during the Second World War, its proximity to the original Newcastle Government House and Barracks, and its significance to the local Aboriginal people pre and post-settlement as a place of ceremony.

THRESHOLD ISSUES

Headland Reserve satisfies the criteria to be State Heritage listed

The Heritage Council has resolved that the Newcastle Recreation Reserve, including the Headland Reserve, meets the criteria to be State Heritage listed and made a recommendation accordingly to the Minister on 2 August 2017.

No challenge has been made, to our knowledge, against the Heritage Council's finding.

Accordingly, the case as to the suitability of the NRR, including the HR, to be State Heritage listed, does not need to be remade.

Minister's decision to reject Heritage Council's recommendation was unlawful

The original recommendation, made in August 2017 and which was referred back to the Minister in March 2018 by the Heritage Council after an error was corrected, had to be dealt with within 14 days as specified by section 34(1)(a) of the *NSW Heritage Act*.

The Minister made the decision to reject the recommendation on 16 September 2020 which was more than three years after the original recommendation by the Heritage Council. No explanation has been provided which has sought to mitigate the Minister's breach of the Act.

Does this void the Minister's decision? In *Millers Point Community Association Incorporated v. Property NSW [2017] NSWLEC 92*, Justice Molesworth noted (at paragraph 12) that the Minister's decision was 'made well after the prescribed 14 day limit for so doing ... Respondents submitted that this failure to adhere to the statutory timeframe by the Minister did not give rise to any issue of significance in these proceedings because any such breach by the Minister would be insufficient to invalidate the decision. The Applicant agreed with this position'.

Justice Molesworth's *obiter dicta* raises the question as to whether the Minister's failure to comply with the *Heritage Act* may give rise to an issue of significance which would be sufficient to invalidate the decision to reject the Heritage Council's recommendation to list the NRR.

The chronology detailed in the Minister's Reasons for Decision set out in the letter dated 29 September 2020 (referred to above) states that between 21 June to 12 July 2017 the NSW Aboriginal Land Council (ALC) and the Awabakal Local Aboriginal Land Council (Awabakal LALC) requested that 'no further action be taken to list the NRR on the Register until such time as a pending Aboriginal land claim to the Headland was determined under the *Aboriginal Land Rights Act 1983*'.

In June 2018 the relevant Minister found the land was claimable and therefore granted the claim lodged on 25 October 2012 and, as a consequence, refused a claim lodged on 7 January 2015.

Tellingly, the letter does not state, however, that in August 2011 a claim by the NSW Aboriginal Land Council which was lodged in January 2010 was refused because the Minister determined that the Headland Reserve was not 'claimable Crown land' as defined in the *Aboriginal Land Rights Act*.

So, are there issues of significance which invalidate the Minister's decision? We contend the following reasons do that:

- There was no statutory discretion for the Minister to delay his determination of the Heritage Council's recommendation. It should have been rejected or accepted as

prescribed by the Act within 14 days of it being made by the Heritage Council in March 2018.

- The Minister can make decisions within the statutory time frame. As reported in the *Sydney Morning Herald* (see: Saulwick, J. [2018] ‘Hadley alone on heritage fast track’, 11-12 August) in 2018 the Minister approved a Heritage Council recommendation in ten days.
- The Minister cannot use his own breach of the Act as an allowable consideration for rejecting the Heritage Council’s recommendation.
- Withholding a decision while awaiting the outcome of a claim under the *Aboriginal Land Rights Act* is not provided for by the *Heritage Act*. A statutory decision-maker is bound by the relevant statutory considerations and that they must be applied within the prescribed timeframe.
- Documents procured by the Friends of King Edward Park through the *Government Information (Public Access) Act 2009* indicate that the government has been concerned with how to justify an approval of the land claim and how the new owners could facilitate the development of the Headland Reserve. For instance, a Department of Primary Industries – Land’s Communication Strategy outlined how a decision to grant the land claim would be announced and justified. One comment in the margin stated:

Caution on language – FKPEP will argue that they wanted to use the site for public purpose (recreation) and because of the fencing it was inaccessible and therefore denied to lawfully use the site.

Documents we obtained in June 2015 (while the Aboriginal Land Council’s claim was underway) explained that the developer Annie Street Commercial (ASC) is ‘very much committed to the site’ and ‘nothing stops ASC proceeding with the same development with ALC’.

- It was available to the Minister to approve the recommendation for the NRR to be State Heritage listed and, later, if the land claim over the Headland Reserve was successful, then the new owners - the Awabakal LALC - could have initiated action pursuant to Section 38 of the *Heritage Act* seeking the removal of the item from the State Heritage Register.

EVALUATING THE REASONS TO EXCISE THE HEADLAND RESERVE

Given the delay in the Minister acting according to their statutory obligations, the FoKEP sought the release of documents associated with the submissions by the NSW Aboriginal Land Council and the Awabakal LALC to the Heritage Council on the basis that this would assist the FoKEP to better understand the (unlawful) delay in the Minister’s decision.

We were denied the release the documents and not provided with a summary of them. No reasons for withholding the information were given; rather we were invited to initiate an application under the *Government Information (Public Access) Act 2009*.

From the Minister’s 29 September 2020 letter, we now know that documents which we were denied included the submissions made by the Awabakal LALC in August 2018 to the Minister and the Heritage Council’s summary of the consultations held with the Aboriginal Cultural Heritage Advisory Committee.

We argue that as no detailed explanation for the proposition that the HR be excised from the NRR, nor that the documents on which this proposition was decided by the Minister have been

made public, we have been denied procedural fairness. This is contrary to the consultation provisions set out in section 33(1)(a) of the *Heritage Act*.

Section 32(d) of the *Heritage Act* specifies that in directing a listing on the Register the Minister is to consider, *inter alia*, ‘whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated’. The obligations on the Heritage Council are different. Whereas the Minister must consider ‘undue financial hardship’, section 33(2)(d) specifies that the Heritage Council can consider a ‘submission that conservation of the item the subject of the proposed recommendation could not be achieved without causing undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated’. So, the obligation on the Minister is mandatory whereas it is discretionary for the Heritage Council, plus, the Minister is required to apply a broad test – whether the listing would require undue financial hardship – whilst the Heritage Council’s test is much more specific – ‘the conservation of the item’.

Without the relevant documents being made public, there is no opportunity to evaluate the ‘undue financial hardship’ contended by the owner.

In *Millers Point Community Association Incorporated v. Property NSW [2017] NSWLEC 92* the court, in summary, reasoned that a landowner must show more than just the diminution in the value which may be caused by listing but also that any financial hardship must be undue.

Our initial research shows that the Awabakal LALC is a sophisticated, financially robust organisation. From the *Annual Report*, for the financial year ended 30 June 2019 it held just over \$15 million in net assets derived, in part, from the reported sale of the Newcastle Post Office for \$3.5 million in August 2018. Revenues (surplus) from its operations to June 2019 neared \$2.5 million.

We accept that this information may or may not be relevant subject to how the owner made their argument.. The key issue is that the onus falls on the objecting owner to show, with evidence, how the test of undue financial hardship is warranted. Equally, as well, the Minister, and/or the Heritage Council, as the case may be, need to be able to demonstrate how they were satisfied that the submissions and evidence of the owner has been appropriately tested. Of course, and appropriately, such decisions may be subject to judicial review.

More broadly, using NSW Heritage Office sources we are persuaded of the economic benefits of heritage listing. This is convincingly evidenced in, for example, research by Wills, P. and Eves, C. (n.d.) *Heritage Australia: A Review of Australian Material Regarding the Economic and Social Benefits of Heritage Property*. Based on a literature review, the authors concluded that (page 8):

- employment can be created through conservation
- there are definite costs of conservation but this is more that often offset by the benefits (economic, social, and psychological)
- area and precinct conservation help people maintain their socio-cultural identity
- conservation of property may have long term economic benefits to the owner, and the greater community in the form of tourism and related businesses
- isolated property conservation, when properly used, can benefit the owner as well as those in the immediate vicinity.

These economic benefits are further detailed by Heritage NSW on its webpage titled *Heritage listing: a positive for owners* which, summarised, include:

- Heritage listing provides certainty for owners, neighbours and intending purchasers.
- Protection of an item also requires the local council to consider the effect of any proposed development in the area surrounding heritage items or conservation areas.
- It confirms a heritage status that is a source of pride for many people. This status can be very useful for commercial operators in their advertising.
- The assessment process leading to listing often unearths new information on the history and style of the item.
- Through flexibility clauses in local environmental plans, owners of heritage items can request councils to agree to land use changes, site coverage and car parking bonuses unavailable to other owners.
- Listing gives owners access to the free heritage advisory services provided by many councils.
- Listing provides potential savings through special heritage valuations and concessions . . . If your property is on the State Heritage Register under the Heritage Act, you automatically receive a heritage valuation for both local rates and land tax purposes.
- Listing enables access to heritage grants and loans through both Heritage NSW and local councils. Listing is generally a requirement for Heritage Council funding.
- Listing on the State Heritage Register also enables owners to enter into heritage agreements, which can attract land tax, stamp duty and local rate concessions.
- Listing on the State Heritage Register makes the property eligible for consideration under the Commonwealth's Annual Cultural Heritage Grants Program, which is open to both private owners and community groups.
- Heritage listing enhances applications to other bodies where the building or site might be eligible for funding.

So, we'd expect these economic benefits presumably informed the Minister's consideration of 'financial hardship'.

THE HEADLAND RESERVE: INTEGRAL TO THE NEWCASTLE RECREATION RESERVE

The NRR must be considered for listing in its totality; the Headland Reserve is an integral entity in the Park.

Some history here is important.

The Headland Reserve is comprised in Lot 3109, DP 755247. It is 0.65 ha excised from the larger 38 ha King Edward Park which surrounds it on all sides. It has no access to Ordnance Street to its north nor any other public road otherwise than through King Edward Park. The Pacific Ocean is directly to the east of the site.

The HR did not exist as a separate parcel of land until it was surveyed in early 1963 and then, on 10 May 1963, the Minister for Lands revoked the dedication of that part of King Edward Park (NSWGG No 41, p. 1278) under the (now repealed) *Crown Lands Consolidation Act* 1913. The purpose for revoking the dedication was to recognise the land's use as a public bowling club.

This means that the HR was integral to the whole of King Edward Park prior to 1963 and, after, by being landlocked wholly within the Park.

The history shows the creation of a separate land title for the HR does not square with cultural heritage practice. In our application to the Land and Environment Court to ensure the HR was used for its dedicated purpose, we submitted affidavit evidence from Deborah Dates, an aboriginal person and member of the Worimi. This evidence included:

6. When my eldest daughter was born in 1981 my father and me took her up to the top of King Edward Park where the old bowling club was located and held her up and spoke in his language. He then said “I did this to you and now I will do it to every girl you have. This lets you ancestors know that my blood runs strong out of the waterways.” My father said to me “The place where I have taken your daughter is the land of the falling rocks and this is a special and strong place for women”.

7. My father died about a month after my eldest daughter was born. I had another daughter in 1982 and I walked out of Newcastle Hospital, held her up at the same place and in the same way my father did to me, and then I said “You are blessed on the water, the same way as me”.

Jack Gillmer’s (a Worimi man) University of Newcastle project - ‘Waking a Consciousness - Self Interpretation of the Surroundings’ speaks of the cultural significance of *Yi-ran-na-li* within the Indigenous community and, from our interpretation of the Work, shows ‘the place of falling rocks’ intrinsically linked with the Headland Reserve (see <https://architecture.gradschool.edu.au/projects/waking-consciousness-self-interpretation-of-the-surroundings>).

It would be disrespectful to accept that because of a government’s desire in 1963 to survey the site of a (now defunct) bowling club that a setting of such indigenous heritage significance is worthy of State Heritage listing on one side of an imaginary line drawn on a title diagram but not the other.

This principle of understanding the NRR in its totality is acknowledged in the request by the Heritage Council in response to the nomination in 2008 when it commented:

... that the nomination did not argue the totality of the Park’s significance sufficiently. More clarity was required as to what makes up the King Edward Park group ... More information was required on the context of the *individual* park elements as well as their *linkages* ... (emphasis added).

We invite the Heritage Council to return to the submission made by the University of Newcastle’s Coal River Working Party document dated July 2012 which supported the nomination of the NRR onto the State Heritage Register and which addressed the Heritage Council’s request for a better understanding of the linkages. The document shows the intense inter-relationship of all the items in the NRR. Having these concerns resolved, the Heritage Council made the Recommendation for State Heritage listing to the Minister in August 2017.

Reflect, too, on how the NSW Office of Heritage and Environment’s website treats the NRR as consisting of integrated elements (<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=50634690>):

The Reserve maybe of state significance for its convict associations, including the grazing of government stock by convict shepherds; the construction of an early windmill; and the provision

of the Bogey Hole and The Horseshoe access path. The convict mine workings demonstrate the transition between public sector and private sector operations, while The Obelisk demonstrates early public sector intervention in coastal navigation. The Bogey Hole and Horseshoe as later developed exemplify early sea bathing activities, together with the transition between gendered and ungendered bathing . . . the Reserve is specially associated with Biraban, an Awabakal man, and with Rev. Lancelot Threlkeld, a missionary and scholar of great importance to knowledge of Aboriginal cultures. The cliff face and cliff top called *Yi-ran-na-li* contribute to the way of life, traditions and belief system of the Awabakal people, and is representative of the Dreaming.

It'd be informative as well, to reflect on Dr Ann Hardy's commentary on the intersection of all these elements of King Edward Park in the notes and photographs from her broadcast on ABC Radio in April 2014. It's available at <https://hunterlivinghistories.com/2019/10/15/local-treasures-kep/>

These integrations and linkages are visually reinforced by the image below. It shows the seamless topographical relationship between the Headland Reserve on the right in the mid-field, the Obelisk and Arcadia Park to the left and with the Shepherds Hill Defence Installations (*Khanterin*) in the foreground on the right.



We would question that for those who would seek to render this asunder i.e. to excise the Headland Reserve from the park; it plainly requires them to produce submissions and evidence which describe and analyse the heritage consequences of a NRR without a heritage-protected Headland Reserve.

Archaeological significance of the Headland Reserve

Investigators reviewing the heritage significance of the Headland Reserve have commented on the yet-to-be investigated archaeological relics which may be present on the site.

As the Coal River Working Party show in their submission to the Heritage Council (and in which they cite the (very extensive) City of Newcastle (1997) *Newcastle Archaeological Plan*) the HR was the first commercial vertical shaft coal mine in Australia and that it was worked from 1817

to 1831 by convict labour. Similarly, an archaeological report by Archaeological Management and Consulting Group prepared for the proposed development of the HR found:

The potential archaeological remains on the study site of an early 19th century government mine shaft are considered to be of State and potentially National significance. The study site may contain archaeological relics associated with early government mining procedures and techniques. Vested in these remains, exists the potential for rare, scientific evidence of coal mining in the early days of the colony; in this way, the site is of significance in the evolution and pattern of the cultural history of Newcastle and the State.

To repeat, to be of 'State and potentially National significance'.

We have not been able to locate (to date) any specific sources or references to the Indigenous archaeological potential of the HR. This, though, may be understood given *Yi-ran-na-li* is listed on the Aboriginal Heritage Information Management System as a place of Aboriginal Ceremony and Dreaming.

The Friends of King Edward Park are concerned that the sometimes (often?) far less than acceptable treatment of Newcastle's Indigenous and convict heritage demands that State Heritage listing is required to protect the HR's outstanding archaeological potential.

This indifference to archaeological heritage is evidenced, for example, when a KFC fast food outlet was constructed in the city at a site which contained 'carbon-dated evidence of Aboriginal occupation dating back between 6716 and 6502 years – the oldest evidence of human settlement in Newcastle' - and which was reported as having 'high to exceptional cultural and scientific significance' (*Newcastle Herald* [2011] '6500-year-old heritage junked', 20 May).

Thoughtful and detailed research by David Roberts and Erik Eklund ('Australian Convict Sites and the Heritage of Adaptation: The Case of Newcastle's Coal River', *Australian Historical Studies*, [2012] 43:379) is particularly instructive on the imperative of Newcastle's archaeological heritage; a heritage which is largely under-examined yet strongly contested. They found:

Newcastle has long been a frontline in the seemingly innate 'battle' between the interests of heritage and development ... More recently, minor acts of resistance to the examination and promotion of sites within 'Coal River' were evidenced by delays and interference with geotechnical fieldwork, and in instances of support for development applications within the Precinct that appeared to sidestep its status as a State Heritage registered site ...

Protective heritage management, however, ought to ensure that such development accords with and contributes to the heritage values of the Precinct, and the failure to extend protection obviously serves the interests of those would wish to elude such obligations.

Current Heritage 'protection'

Apart from the modest, at best, protection from being located within The Hill Heritage Conservation Area in the *Newcastle Local Environment Plan 2012*, the Headland Reserve has no heritage protection. This is unlikely to change. We have been advised by the City of Newcastle Council that they plan to initiate action over whether the Newcastle Local Environment Plan should be amended to specifically list the Headland Reserve however no timetable has been set. Of course, should an amendment to the *Newcastle Local Environment Plan 2012* be recommended, it would still require the NSW Minister's discretionary approval.

It's our submission that it falls to the Heritage Council to seek to have the astonishing heritage values of the Headland Reserve protected by not excising it from the NRR; to do otherwise is to accept its vulnerability.

The intersection between the *Heritage Act* and the *Aboriginal Land Rights Act*

The Minutes of the Heritage Council meeting held on 7 August 2019 record that: it was resolved (Resolution 2019-41):

1. Noted that the wording of the final resolution for item 2.1 *Newcastle Recreation Reserve* should read:
 - (a) Advice that in considering the listing and potential exclusion of the King Edward Headland Reserve, the Heritage Council is not solely being asked to consider this matter under its remit of the *Heritage Act*, but to address the larger question of land justice and its intersection with other legislation in NSW such as the *Aboriginal Land Rights Act*; and therefore considers this is a precedent issue that should not be dealt with in isolation.
2. Noted that the minutes for Item 2.1 Newcastle Recreation Reserve should reflect that the Heritage Council was unable to reach a consensus view around the excision of the headland but agreed that there was an intersection of a range of issues that needed to be relayed to the Minister.

How, briefly, does the *Heritage Act* intersect with the *Aboriginal Land Rights Act*?

As the Heritage Council is aware, under the *Aboriginal Land Rights Act* the Minister is required to apply a number of tests to assess a claim which, in summary, turn on whether the land was lawfully occupied and 'required for the essential public purpose of social, recreational and economic benefits'. If a claim is accepted, freehold title (generally) is then granted. Alternatively, the *Heritage Act* does not have property title as its cardinal purpose. Section 3 *Objects* of the Act seek, *inter alia*, 'to encourage the conservation of the State's heritage' [s3(b)] and 'to provide for the identification and registration of items of State heritage significance' [s3(b)]. Section 33 outlines the procedure which is undertaken by the Heritage Council and the Minister before a recommendation for listing. Subsections (2) and (4) are particularly relevant here: they specify, respectively that: 'without limiting the submissions that can be made for the purposes of this section' and 'without limiting any other matter it may consider in determining whether to make a recommendation.

Without a full disclosure by the Heritage Council, we can only speculate on its reported inability to reach a consensus over the Headland Reserve. So, for example, can 'without limiting any other matter it may consider' be read so broadly as to allow 'the larger question of land justice' as a relevant consideration such that the Heritage Council then denies its own finding that the Headland Reserve satisfies the test for State Heritage listing? Other relevant considerations may be that the statutory intention of the undue economic hardship provision is to protect landowners from costs associated with preserving heritage items. How should this be applied to the Headland Reserve which has little built structure? Given the intense heritage value of the Headland Reserve, how should this be weighed against the owner's financial hardship objection? How does the Heritage Council weigh both the Aboriginal and post-settlement heritage of the Headland Reserve as 'any other matter' considerations?

This, as we note, is speculation. To formulate a detailed submission on this issue, we ask that the Heritage Council explain those factors which they contend are relevant considerations and to make these known to the owners, interested parties and the public.

CONCLUSION

We submit that there is no case to excise the Headland Reserve from the recommended listing of the Newcastle Recreation Reserve. Rather, we submit, on the grounds explained above, that the Headland Reserve must be included in any recommendation for the listing of the NRR.

We accept, in good faith, that the reconsideration request from the Minister is not a direction that the Heritage Council recommend the listing of the Newcastle Recreation Reserve with the King Edward Headland Reserve excised from the proposed curtilage. Similarly, we, and no doubt the wider community, have an expectation that the Heritage Council will act in good faith in fulfilling its statutory obligations in making decisions about the care and protection of heritage places and items and in making recommendations to the Minister of those identified as being of State significance.

We ask that the Heritage Council act in accord with the Objects of the *Heritage Act* and resubmit its August 2017 Recommendation unchanged for, at stake, is, as the Department of Premier and Cabinet's 17 November 2020 letter states:

... a rare example in NSW of a comparatively undeveloped inner city natural, Aboriginal and European landscape influenced by convict labour and recorded by important colonial artist.

We publicly celebrated the Awabakal LALC's success when the claim over the Headland Reserve was granted and we have had dialogue with the CEO over the Awabakal's plans for the Headland Reserve and offered our assistance. He is aware that we do not agree with his organisation's submission that the HR should not be listed on the State Heritage Register. Also, in these discussions, the CEO has acknowledged the deep-seated heritage significance of the site to their community. We pointed to the affidavit evidence of Aboriginal witnesses the Friends of King Edward Park submitted as part of our case in the litigation over the Headland Reserve before the Land and Environment Court and as discussed earlier.

So, we submit that the Headland Reserve, perhaps unlike any other land which has been successfully claimed under the *Aboriginal Land Rights Act*, has immense Indigenous and post-settlement heritage significance. Weighed against the owner's undue financial hardship objection, the exceptional heritage significance of the Headland Reserve, and as an integral component of the Newcastle Recreation Reserve, means it must be afforded State heritage listing.

Finally, we particularly note commentary by the Heritage Council of the importance of the Burra Charter in underpinning the Council's work. This holds, on 'Why conserve', (The Australia ICOMOS Charter for Places of Cultural Significance, 2013 cited at www.heritage.nsw.gov.au/what-we-do/heritage-council-of-nsw):

Places of cultural significance enrich people's lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records, that are important expressions of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious. These places of cultural significance must be conserved for present and future generations in accordance with the principle of inter-generational equity.

The Heritage Council is a trusted, authoritative, ‘clean hands’ institution committed to, as the Burra Charter and the Objects of the *Heritage Act* require, the protection of the ‘precious and irreplaceable’ in the landscape. A recommendation for the whole of the Newcastle Recreation Reserve, including the King Edward Headland Reserve, is justified as it is such a place.

December 2020

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

PV 16/03/21 – NOMINATION TO LIST NEWCASTLE RECREATION RESERVE (KING EDWARD PARK) ON THE STATE HERITAGE REGISTER

ITEM-1 **Attachment D:** Awabakal Local Aboriginal Land Council
Submission to Heritage Council, February 2021

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Public Voice Committee

16 March 2021



City of
Newcastle

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Submission by Awabakal Local Aboriginal Land Council responding to the Notice of the Intention to Consider Listing Newcastle Recreation Reserve on NSW State Heritage Register – 3 February 2021

Background

Awabakal Local Aboriginal Land Council's CEO presented to members of the Heritage Council of NSW in February 2019, and to the Heritage Council's *Aboriginal Cultural Heritage Advisory Committee* in April 2019, requesting they recommend to the Minister that the Minister excise Lot 3109/DP 755247 (the 0.6ha site of the former Newcastle Bowling Club) from the proposed curtilage for listing of the 38ha Newcastle Recreation Reserve (ie excise 1.6% from the total). The Heritage Council's Delegate advised in writing in September 2020 that the Minister has directed that the Newcastle Recreation Reserve not be listed, as recommended by the Heritage Council, with the caveat that the Minister considers "it appropriate to request under section 32(2) of the Act that the Heritage Council give fresh consideration to the making of a recommendation to list Newcastle Recreation Reserve".

Key Information

Awabakal Local Aboriginal Land Council (ALALC) was established in 1985 and acknowledges and supports the individual and group aspirations of the Awabakal Aboriginal community, and promotes and enhances the social, cultural and economic well-being and self-sustainability of that community. Currently with over 500 members (11% of Aboriginal population within ALALC boundaries) ALALC manages 33 residential (social housing) and several commercial properties, with over 270 Aboriginal Land Claims yet to be determined by Crown Lands. ALALC has have been through some very difficult times but is beginning to prosper and looks forward to a very bright future.

ALALC's functional area includes three Local Government Areas: Newcastle, Lake Macquarie and Cessnock, and regards its organisational values as accountability, transparency, professionalism, reliability and empowerment. Its primary functions include land acquisition, land use and management, financial stewardship, and conservation and protection of Aboriginal culture and heritage.

Aboriginal Land Rights Act 1983 (NSW) - ALRA

The ALRA contends that land once traditionally 'owned' by Aboriginal people – ie occupied and cared for agriculturally and spiritually by Aboriginal people – continues to be of enormous spiritual, social, cultural and economic importance, recognises the rights of Aboriginal people to land and water, and is a vehicle for self-determination, self-governance, self-actualisation and compensation. ALRA provides:

- land rights for Aboriginal people in NSW,
- for the establishment and prosperity of LALCs to represent Aboriginal people,
- for the acquisition and management of those lands by LALCs as assets, and
- for the provision of Community Benefits Schemes by LALCs.

LALCs are established to improve, protect and foster the best interests of all Aboriginal persons within the LALC's boundaries, and ALRA's central purpose and the intrinsic philosophy of its creation is to provide Aboriginal people with economic independence, to alleviate disadvantage and to compensate for past injustices, through improving Aboriginal self-sufficiency and economic well-being, and supporting sustainable Aboriginal communities.

Former Newcastle Bowling Club Site

This land was granted to ALALC in June 2018 (through Aboriginal Land Claim 36078) in freehold title, as the Minister considered that it was not needed for any essential public purpose, although zoned RE1 Public Recreation. There is tenuous evidence of significance or heritage value – a small, vacant parcel of land with

no significant vegetation, previously disturbed and developed, then the structure was demolished in 2010 and site virtually abandoned.

From the lodgment of Aboriginal Land Claim 36078 in 2012, ALALC has held a right and entitlement to the transfer in fee simple of the site under Section 36(1) of the *Aboriginal Land Rights Act 1983 (NSW)*. NSW Aboriginal Land Council requested in September 2016 that the Heritage Council wait for the determination of ALC 36078 before any further action re nominating this land for listing, but this request was denied. *Direction 27* of the Hunter Regional Plan directs planning bodies to: 1) Work with Awabakal LALC to identify priority sites, & 2) Identify landholdings and map the level of constraints for each site to develop options for potential commercial use.

State Heritage Register listing of this land, and the consequent environmental controls, would negatively impact on Awabakal LALC's opportunities to achieve any financial reward to distribute to its community from the granting of ALC 36078 – it could in fact do the opposite as site owners are responsible for maintaining the heritage values of the site: *'Inclusion on the Heritage Register would limit options on what might subsequently be done with that land and therefore reduce the land's commercial value.'* (Paul Scott, University of Newcastle's School of Creative Industries, *Newcastle Herald* 14 December 2020, p10)

Friends of King Edward Park (FoKEP)

The Friends of King Edward Park have graciously provided ALALC with a copy of their submission in response to the notice of the intention to consider listing Newcastle Recreation Reserve on the State Heritage Register, and ALALC notes that each of the citations noted within that submission's *Introduction* and *Threshold Issues* sections refers to documents and decisions made prior to June 2018, when the land was granted to ALALC, and subsequently became land in private and not public ownership.

In *Evaluating The Reasons To Excise The Headland Reserve*, the FoKEP submission declares ALALC is *'a sophisticated, financially robust organisation'* with *'just over \$15 million in net assets'* and *'Revenues (surplus) from its operations to June 2019 neared \$2.5 million.'* The financial situation of ALALC is hardly robust, as \$15 million in net assets refers to almost \$12.5 million in land holdings mostly unable to be developed, ie the *raison d'etre* of Aboriginal Land Councils, which makes ALALC asset rich but cash poor, and does not consider that ALALC's 2018 and 2020 Annual Reports (both publicly accessible documents) reveal a loss of \$371,000 in 2018 and a meagre profit of \$139,000 in 2020.

In *The Headland Reserve: Integral To The Newcastle Recreation Reserve*, the FoKep submission refers to affidavit evidence from a Worimi descendant, and also to published evidence from another Worimi descendant, which supports the FoKEP argument. ALALC contends that this land is within Awabakal boundaries, not within Worimi boundaries which lie to the north of the Hunter River, and that this evidence is misleading and irrelevant due to its off-country, non-Awabakal origins.

Conclusion

Awabakal Local Aboriginal Land Council remains in support of the excision of Lot 3109/DP 755247 (the 0.6ha site of the former Newcastle Bowling Club) from the proposed Newcastle Recreation Reserve, as it is now private not public land, and listing will reduce and/or remove any scope for development and financial advantage.

Recommendation

That the Heritage Council of NSW list Newcastle Recreation Reserve on the State Heritage Register as indicated on the attached *Proposed Curtilage for Investigation* ie with Lot 3109/DP 755247 (the 0.6ha site of the former Newcastle Bowling Club) excised.

Author

Robert D Russell – CEO, Awabakal Local Aboriginal Land Council
3 February, 2021