

Question 1

You raise concerns regarding the manner in which the LEP was changed to allow a previously prohibited use in premises on or in the vicinity of King Edward Park. Could you please advise the reasons for your concerns including if or how proper process was followed and the extent of informed community consultation in relation to the change?

Answer 1

Our concern is the spot rezoning under the 2012 LEP to allow a function centre with associated parking, landscaping and a kiosk on King Edward Headland Reserve.

Re: the question of Informed Community Consultation

In approximately May 2011, the draft Newcastle 2012 LEP was publicly exhibited for comment. At this stage there was no change in the zoning of the Headland Reserve. This is the only stage at which public comment was invited. At no stage after this were the general public informed of the rezoning or asked to comment on this. At no stage was it referred back to the Newcastle City Councillors for comment. There was no informed community consultation in relation to the change and no consultation with our elected representatives in the Council.

The first time that we became aware that the site had been re-zoned was a year later, in July 2012 when it was mentioned in a Newcastle planning report.

This goes to our concern about lack of transparency and community consultation.

Re: the Question of Process

Amending a Council's LEP is a legal process which must be carried out in accordance with Part 3 of the Environmental Planning and Assessment Act 1979. We assert that there has been no attempt to follow this process and we refer you to the following link

http://www.newcastle.nsw.gov.au/building_and_planning/planning_controls/lep_2012/related_links/amending_newcastle_lep_2012?a=126997

It is apparent that an application for change in the zoning was made initially in June 2011 because the re-zoning was refused by the Council. See appendix 5. Proper process was followed at this stage and the request was refused. It was stated that “adding a function centre as a permissible use on RE1 land was not supported.”

However, under GIPA, (see appendix 6), we obtained a sequence of emails between Annie Street Commercial, (the developer), the Newcastle City Council (NCC), the Lands Department and the Department of Planning relating to the spot rezoning. We would ask the committee to read these emails carefully. We contend that these emails display a complete disregard for the proper process required. Just a few weeks earlier, the Council had refused the re-zoning so you would expect to find at the very least some discussion as to why the decision should be reversed. However at no stage is this mentioned.

If proper process had been followed there should have been some discussion of

- the public interest,
- the significance of the site, its history and cultural importance
- the zoning of the site and the import of the dedication of the land under the Crown Lands Act: that the land must be open to the public as of right and not be a source of private profit.

As the emails show, Mr. Wesley Wilson, the Chief Planning Officer of Newcastle City Council who assessed the objections to the original development was also involved in the rezoning. He would have been aware that there was significant public opposition to a function centre on the Reserve (300 objections were received to the original application) and yet this forms no part of these emails. Public interest should have been a factor in the rezoning decision.

These requirements are set out in or implied in part 3 of the Environmental planning and Assessment Act 1979.

The emails highlight the close relationship between the parties, the lack of arm's length decision-making between the authorities determining the outcome and the applicant requesting the spot rezoning. It reeks of cronyism. Added to this we know from the ICAC transcripts that the developer has admitted to making an illegal donation to the campaign of the former member for Newcastle. We ask the inquiry to consider whether there was an improper relationship between the two and whether this affected the spot rezoning.

According to the EPA Act it is essential that all political donations are declared on the Political Donations and Gifts Disclosure Statement Form.

When we commenced litigation in February 2012 it was important for us to ascertain that re-zoning had not occurred as a win in the LEC might prove to be a Pyrrhic victory. No rezoning had occurred at this point and we understood that the draft LEP was now with the parliamentary counsel's office. That advice remains subject to legal privilege.

We now also understand that the Minister's delegate who signed off on the final 2012 LEP was not in a position to do so because he was not in possession of the relevant facts. Our legal representatives have advised that in the planning report presented to the Minister, the spot re-zoning in the LEP was not drawn to the attention of the Minister's delegate. The Minister's delegate was told that there were no changes to the draft Newcastle LEP varying policy intent or development potential in a manner that would trigger re-exhibition of the draft LEP and that no changes substantially affected the substance of the draft LEP.

We contend that the Headland Reserve is a very significant site, that re-zoning was not in the public interest and that the Minister's delegate was improperly briefed.

Significance

As we have said before, the King Edward Headland Reserve is a very significant site in both Aboriginal and European history and we refer you to pages 5 and 6 of our submission.

In further establishing the credentials of the Headland Reserve (which it would appear the relevant authorities completely ignored) we would like to submit an old letter from the Director of the Australian Heritage Commission (AHC), Mr. Max Bourke. At the time, the AHC was a

national body responsible for heritage items of national significance and had significant power in relation to heritage. The letter is written in response to a proposal to allow parking on one of the bowling greens on the Headland Reserve, which is ironic, considering the present proposal. He decries the proposal, abhors the impact it will have on the park itself and refers to the park as a belvedere park of national significance.

As you probably know, in 1983 a listing on the Register of the National Estate was very significant, now of course it's just a register of places. This letter illustrates the significance of the site and the care with which development on the site should be accorded. It is disappointing that the proposed changes have not received the same consideration. The letter and the Place Details from the Australian Heritage Database are attached.

Question 2

Do any of your concerns relate to extant court proceedings regarding the matter? If so how?

Answer 2

Our concern is the spot rezoning under the 2012 LEP to allow a function centre with associated parking, landscaping and kiosk on King Edward Headland Reserve.

Our concerns do not relate to our court case that involves the **2003** Newcastle LEP. It's important to understand that we are only concerned in this inquiry with the 2012 LEP and the spot re-zoning of the Headland Reserve under the 2012 LEP.

We have referred at one stage to the Security of Costs litigation brought against us by Newcastle City Council in April 2012. The only reason that we refer to that judgement in May 2012 is that Justice Biscoe recognised in his judgement the significance of the park and the Headland Reserve and the credentials of the Friends of King Edward Park.

Since the NCC and the Minister would have been privy to the judgement we consider that that information should have formed part of the decision making in the spot re-zoning.

Dear Reverend Nile

Thank you for the opportunity to clarify a previous answer, it relates to a question from the Honourable Catherine Cusack:

“In relation to the proposal for trustees for the headland, how would you like that to work¹.”

We would suggest that two members of our association be appointed to the represent the community on the Reserve Trust of the King Edward Headland Reserve.

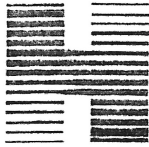
Since the formation of the association we have been involved in raising funds. It has always been our intention that when litigation ended fund raising would continue and the money available would be put towards the improvement of the park. This would need to be done under the auspices of the consenting authority Newcastle City Council.

At our last meeting, the committee voted to investigate the cost of a landscape plan for the Reserve from a qualified landscape architect, Mr. Anton James.

Thank you again for allowing us to comment

¹ Page 51 report of proceedings

1/9/63/18 KC



To protect the National Estate

18 February 1983

Mrs M.J. Bond,
Secretary,
Newcastle Hill Residents'
Group,
42 Perkins Street,
NEWCASTLE. N.S.W. 2300

Dear Mrs Bond,

re KING EDWARD PARK, NEWCASTLE

Thank you for keeping this Commission informed of proposals affecting the Newcastle Conservation Area.

The Australian Heritage Commission entered the Newcastle Conservation Area on the Register of the National Estate for both its townscape and landscape significance. For the reasons outlined in the Commission's letter to you dated 29 March 1982, proposals for the bowling club site on the cliffs above King Edward Park deserve thorough scrutiny.

A seemingly innocuous proposal such as the current suggestion to convert a bowling green into a carpark, which would have little effect at another site, is likely on this site to lessen the vulnerable quality of its landscape and affect King Edward Park, a belvedere park of national significance. The change of use from recreation to car parking could then lead to a case being made for a more substantial parking structure which would be unacceptably intrusive.

Yours sincerely,

MAX BOURKE
Director

5

Place Details

[Send Feedback](#)

King Edward Park, The Terrace, Newcastle, NSW, Australia

Photographs



List	Register of the National Estate (Non-statutory archive)
Class	Historic
Legal Status	Registered (21/10/1980)
Place ID	16584
Place File No	1/09/063/0039

Statement of Significance

One of the finest Belvedere parks in Australia, rising high above the ocean to a number of vantage points commanding extensive views. Planting and carriage drives were begun about 1865 by borough engineer, T A Ellis, while the design of the park has been attributed to Alfred Sharp in 1890. The result is a well laid out Victorian park which uses natural contours to good effect. The sunken floral garden and adjacent outdoor amphitheatre are most evocative of past eras when promenading, picnicing and cultural activities were organized there. The social significance of the park continues today in its use for major events. The park's historical significance is focussed on the 1819-22 Bogey Hole, a convict built swimming pool in the waterfront rock shelf, the 1850 obelisk, a navigational marker which replaced a windmill on the summit of the hill, an 1890 gunner's cottage and the associated defence site with an important World War Two Gun emplacement, and an 1898 band rotunda.

Official Values Not Available

Description

(2582)

The park's main physical features are two gullies, facing east and their associated ridges which provide uncluttered views of the eastern horizon. There are extensive ocean views north towards Newcastle Bight and south to Glenrock and beyond. There is a formal developed area with an outstanding sunken floral garden with a terraced valley to the east. A focal feature is the impressive central band rotunda, built in 1898 with elaborate cast iron work. The character of the park is largely determined by the broken landform and central valley which contains the rotunda and the stately presence of Norfolk Island pines planted in long rows down the slopes. The south area maintains the same character it would have possessed from the beginning of European settlement. It is an open ground area without formal plantings and near the coastal cliffs retains indigenous vegetation. The reserve road bisects the obelisk hill section of the park. The obelisk (1850) was erected as a marker for shipping and the views of the coastline to the north from this vantage point are breathtaking. The obelisk itself is highly visible from all parts of the city. The original park area was part of 2,000 acre coal grant to the Australian Agricultural Company in 1827. It was dedicated as a recreation reserve in 1863. It was vested in Newcastle Borough Council in 1895 and renamed King Edward Park in 1910 to mark the death of Edward VII. It has been the city's principal park since 1863 and contains a number of historically and archaeologically significant structures, including the band rotunda (1898), erected by local builder, Thomas Hardyman, the obelisk (1850) a navigation marker, the sandstone drinking fountain (1879-88) and the sandstone gate posts, all that remain of a set of ornamental gates which were a gift to the city in 1907 from Joseph Wood. Perhaps the most significant structure is the Bogey Hole swimming pool, convict built under the supervision of major James Morisset between 1819-22 and extended in the 1880s. It is one of the very few tangible reminders of Newcastle's first settlement in the convict penal period. On Shepherds Hill on the southern border of the park, are the remains of the Shepherds Hill Battery. These military relics date from c1890 to the World War Two. The installations are of particular importance as they contain one of the only surviving 8in disappearing gun emplacements in Australia and one of the few structures (Battery Observation Post) used simultaneously by all three services during the World War Two. Nearby, the former battery gunners' cottage (1890) survives.

An area of land in the Upper Reserve was granted for use as a bowling green in 1890 and the green was ready to play by 1891. In 1917 three extra bowling rinks were constructed. A Memorial Fence was erected in 1918 in memory of Henry Detley Hingst. Two sandstone gate piers erected in memory of David Miller adjoin the fence. The City Bowling Club continues to use this site. There is a club building and bowling green.

History Not Available

Condition and Integrity

Well maintained park but lacking in an overall management plan.

Location

Approximately 38ha, bounded by The Terrace, the extensions of Bingle and Wolfe Streets, Ordnance Street and the coast, Newcastle.

Bibliography

HUNTER REGION LANDSCAPES P.25 (NATIONAL TRUST)
FILE-NEWCASTLE REGION LIBRARY (LOCAL HISTORY DEPT.)
FILE-HUNTER REGION OFFICE OF NATIONAL TRUST
FILE-HUNTER REGION OFFICE - DEPT. ENVIRONMENT AND PLANNING
NEWCASTLE INNER AREAS CONSERVATION PLANNING STUDY (NEWCASTLE CITY COUNCIL) 1984.
NEWCASTLE CITY COUNCIL OPEN SPACE STUDY (1987)
PHOTOGRAPHIC FILES - NEWCASTLE HERALD.
FILES - NEWCASTLE CITY COUNCIL

Report Produced Mon Apr 23 12:24:36 2012

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