

Submission in connection to:

Interpretation and enactment of Covenants placed upon land transferred from Commonwealth of Australia to the State of NSW.

Background:

During 1988 former defence land (45 The Terrace, Newcastle) was transferred from the Federal Government to the State of N.S.W.

Newcastle City Council, as the trustee of the site, has over the last 23 years considered many uses for this site.

The site consist of, in chronological order:

a gun emplacement, machine gun post and barracks/cottage and toilet block constructed in 1890.

a Depression Range Finding Station/observation post and the foundations of a twin demolished observation post (1899-1900).

a Port War Signal Station (early 20th Century) later removed to entrance of Newcastle harbour.

a observation post erected 1938 for Fort Wallace (approx 6kms north of observation post).

a Port War Signal Station erected 1940.

a Fortress Observation Post, Coast Artillery Search Light Directing Station, Radar Station and a Battery Observation Post for Park Battery situated north and south of the site. (WW2)

The site was heavily occupied by buildings during WW2, all of which have been removed some 40 years ago.

With the exception of WW2 and the current use of the cottage, during the last 10 years, the cottage has always been used as a residence.

The 1890 gun emplacement is the only surviving emplacement constructed to house a 8in "disappearing" gun. The emplacement is the one of two constructed of this type and is the only one of the two to still have its "barracks" intact.

The barracks/cottage is one of five of the same design and of the five only three remain.

The site is a unique example of a 1890's coastal defence site as it possible to demonstrate all aspects of how the site operated from the washing of clothes to the firing of the gun.

No other site in Australia during WW2 had all three branches of the defence forces working on the same site. Port War Signal Station (Navy), Radar (RAAF), Coast Defence (Army)

The Radar was the first of its type installed in Australia and all the coast artillery defences for Newcastle were commanded from the Fortress Observation.

The 8inch 1890's gun was taken out of service due to mine subsidence in 1908 that caused damage over a 1km area during a three year period.

The site is the only place that has evidence of this event as can be seen by the cracks in the concrete of the emplacement.

Past and current usage of the site since transfer from Federal to State:

Newcastle City Council has over the last 23 years used or leased the cottage for a:

Artist in Residence.

Leased the site under a normal tenancy agreement.

Radio base, current use.

The proposed uses that have been accepted and failed to take up occupancy are:

A restaurant with kiosk, which required major alterations to the internal and external appearance of the cottage.

Art gallery and workshop.

The Covenants:

Schedule Three

- 1. The Transferee shall not demolish, damage, or change the essential historic character of the land and the improvements thereon or permit same and shall maintain the land and the improvements thereon in good condition having regard to their essential historic character;***
- 2. The Transferee shall not use or permit to be used the land and any improvements thereon for any purposes other than as an historical and recreational site provided however that the cottage on the said land (being the cottage known as "No. 45 The Terrace, Shepherds Hill"), may be occupied as a home for an artist-in-residence or for any similar purpose not inconsistent with said historical character;***
- 3. The Transferee shall not permit any new buildings or structures to be erected on the said land which adversely affects the historic character of the cottage, battery or King Edward Park; and***
- 4. These covenants shall run with the land.***

I received a copy of the Covenants during 1994 and since that time I have on occasion sought interpretation of the Covenants to clarify how the protection of the heritage of this site is to be enacted.

I have contacted State and Federal politicians with one Federal Member raising my question in Parliament which resulted in only confirming the existence of political paradoxes by

providing the answer that the Covenants existed and could be used to protect the heritage of the site.

On contacting State or Federal Departments the usual reaction is the department contacted asks Newcastle City Council if there is a problem with the management of the site, for which Newcastle states "no".

To the best of my knowledge the N.S.W. Lands Department as owner never inspects the site or is contacted in relation to questions I have raised.

I have spoken to a member of the Lands Department staff as to how and when the Covenants could be used. I was told that Newcastle City Council could be removed as trustee of the site but this would create more problems than those already at hand.

The problem with preserving the history of the site with Newcastle City Council as Trustee is nobody can or will interpret the Covenants.

The Covenants rather than being a neutral reference point in the preservation of the site have been locked away with the result that Newcastle City Council can say or do whatever it likes with the site.

On many occasion, after providing a written complaint listing concerns about the use of or lack of care for the site, I have received a response that simply states Newcastle City Council could find no basis for my complaints.

Again I will state that to the best of my knowledge the Lands Department as owner was not contacted.

On the face value of this situation I can only assume the Lands Department is negligent as owner and therefore in breach of the Covenants.

Newcastle City Council has failed to seek out a use for the site that respects and promotes the site in turn has failed to provide finance or support for the preservation of the remaining structures within the site.

Even though Newcastle Council has spent some money on the Cottage there are other structures on the site that require restoration.

One structure alone could cost up to \$200,000 to repair as it is of concrete construction and is in a salt air environment.

The older 1890's structures, with the exception of the Cottage, are also of concrete, steel and brick construction.

No site history has been printed since the 1980's. No promotion of the site has appeared within the tourist industry.

The site does not exist other than in passing it.

Reason for submission:

While I will admit I have little understanding as to the aims of calling for submissions, I was advised to comment on the basis of the difficulties in resolving the interpretation and use of the Covenants.

My main hope in submitting my problem is to demonstrate the difficulties and to inform you of the many years of not being able to attain interpretation of what appears to be the simple everyday words that make up Schedule Three of the Covenants.

The simple way to sum up is to state that a Covenant that "runs with the land" should be at all times accessible in its interpretation and implementation with regards to the protection of the heritage of the site.

The site was retained because of its value as part of our history and that history should be respected and retained as part of the site, not as a separate publication or web site detached from its point of origin.

Historic sites can only exist with their histories attached.

Thank you for your time.

Regards

Graeme Steinbeck