



---

## P17156 Submission 1: Complaint re "Balance of Site" - Public Land Subdivision and Tree Removal

---

**Kew Cottages Coalition** <admin@kew.org.au>

3 August 2011 at 16:57

To: jim.gard'ner@dpcd.vic.gov.au

Cc: John Hawker <john.hawker@dpcd.vic.gov.au>, Fiona Beard <Fiona.Beard@boroondara.vic.gov.au>, Lorenz.Pereira@dpcd.vic.gov.au

Mr. Jim Gard'ner  
Executive Director  
Heritage Victoria.  
Department of Planning and Community Development (DPCD)  
MELBOURNE

Dear Mr. Gard'ner,

I understand that you have not issued any permits this year for works in the 'Balance of Site' area as described in Permit Application P17156 as prepared by Walker Corporation/Kew Development Corporation on behalf of the owner of the site, the State Government.

I write, therefore:

1. To object to the Heritage Permit Application P17156
2. To inform you that recent evidence from both local residents and aerial photographs suggests that the State Government has 'jumped the gun', and already commenced the proposed P17156 works without waiting for your approval. In other words, much of the earthworks and vegetation clearance forshadowed in the Application actually already appears to have been undertaken - much of it during the last few weeks ie: between April and July 2011
- 3 To complain that as a consequence of these unauthorised works, the State Government, as owner of the registered place is in our view not only in breach of your permit conditions (inc:P9639 Condition 7), but has also breached section 160 of the Act by failing to maintain the site to the extent that its conservation is seriously threatened.

I respectfully request therefore, that you investigate the State Government contractors' works on the 'balance of site' as a matter of urgency and serve notice on the Government as the owner to show cause why you should not make an order requiring the Government to undertake adequate and comprehensive conservation works, including the restoration of all of the "Balance of site" on the hillside south of Hutchinson Drive, up to and including the Heritage Core, to its original historical form as shown in the P9639 Permit.

I understand and appreciate that as an employee of the State Government this will not be an easy decision for you to take.

Yours sincerely,

Brian Walsh  
President  
Kew Cottages Coalition  
M. 0414 979 300  
W. [www.kew.org.au](http://www.kew.org.au)

enc: Submission 1

**"Baillieu Government Jumps the Gun at Kew Cottages."**

## **A. Current Heritage Permit Conditions.**

Relevant Permit Conditions include inter alia:

Heritage Permit P9639 Condition 7.

### **New Development**

**7. Full design details for the future development of the site, or stages thereof, shall be submitted to the Executive Director, for approval in writing, prior to the commencement of any proposed development. Any proposals which includes:**

- development or works to, F4 Main Drive, F5 Boundary Drive, F6 Lower Drive and F7 Oak Walk and the associated significant avenues of trees
- development or works within the vicinity of any other significant trees on the site
- the apartment buildings adjoining B1, B3 and B6
- the adaptive re-use of Buildings B1, B3 and B6
- the three apartment buildings in the south west corner of the site

**shall be accompanied by a Heritage Impact Assessment , prepared in accordance with the *Heritage Impact Statements Guidelines, adopted by Heritage Victoria.***

**Reason: *To allow a detailed assessment of the potential physical and visual impacts of these proposals on the significant buildings and landscape elements of the Kew Residential Site, and the adjacent former Willsmere Hospital site.***

## **B. Evidence of Unlawful Works on 'Balance of Site'.**

1. Bulk earthworks have substantially changed the historical topography and fabric of site (See [nearmap.com](http://nearmap.com) - Main Drive Kew )
2. Works apparently not in accordance with the approved plans, including public open space and landscape setting of the historical buildings, ie: both the Kew Cottages 'Heritage Core' buildings, and the adjacent former Willsmere Hospital heritage listed buildings (See: WDP-Kew and KCC Submission to Minister for Planning )
3. Removal of Tree Protection Fencing that the Kew Coalition had been assured by Heritage Victoria was to remain in place for the duration of the Walker Development Contract (See attached Nearmap aerial photographs of The Crescent flown April and June 2011);
4. Removal of trees formerly 'protected' by the latter fencing (As above);
5. Removal of large parts of the landscape and built form that supported interpretation of the historical and cultural 'story' of Kew Cottages and Willsmere (ie: the successive historical models of the Cottages development since 1887 on this part of the site including the Dax Model (Units 23/24 1950-; the Hamer/Perkin Community Model (Hydrotherapy, Medical, and Arts Centres 1973- , the Bracks CRU Model Unit 25, 2002-), all built within what P17156 terms the "balance of site" on the hillside reserve of the former Willsmere Hospital.

## **C. Relationship of June/July Earthworks and Land Clearance to Proposed Subdivision.**

### **Clearance of Vegetation and Tree protection fencing within the Proposed Subdivision.**

1. Aerial photographs flown by Nearmap.com show details of the earthworks at 17 stages of the State Government/Walker Corporation Main Drive Kew development from 12th October 2009 up until five weeks ago (28th June 2011).
2. Those flights flown on 6th April 2011 and 28th June 2011 clearly support verbal evidence provided to us by local residents in Hutchinson Drive regarding the removal of trees, vegetation, and earthworks during the later period.
3. The aerial photographs show the removal of Tree Protection fencing and protected trees from the NW Corner of the site near the former Hamer Centre.
4. The photographs show that the Tree Protection fencing was in place in April 2011 (when the current Permit Application was received by Heritage Victoria).

5. The photographs show that the Tree Protection Fencing had been removed by 28th June, ie before the Application had been advertised for public comment. (20th July 2011).

6. We understand that control and monitoring of the Tree Protection Fencing on the site is the responsibility of Heritage Victoria pursuant to the Act.

7. We note that following the developer being fined \$50,000 for unlawfully removing Tree Protection Fencing and damaging River Red Gums in Stage 1 of the Main Drive Kew Development we sought and received assurances from Mr. Ray Osborne, Operations Manager, Heritage Victoria that all future Tree Protection Fencing erected on the site would remain in place for the duration of each stage of the development, and that in order to help better protect the trees, he would welcome and investigate reports from residents of any Tree Protection Fencing being moved in future.

### **The Subdivision Area**

1. The nature and extent of the proposed subdivision in P17156 is a substantially larger area of land, and extends further along Hutchinson Drive than the subdivided land shown in the approved Development Plan (WDP-K). Thus the proposed P17156 plan indicates an increased level of potential threat to the historical fabric of the site.

2. Similarly, the increased amount of housing based on the new plan will, in our view have the potential to significantly intrude on site lines to both the Heritage Core and to the former Willsmere Hospital.

3. We understand also that according to a separate permit application made by Walker Corporation to the Minister for Planning, additional earthworks are planned in order to help reduce the costs of additional building. Such earthworks will have the potential to significantly change the historic topography and fabric of the site.

### **Recent Works.**

However, judging by the enormous amount of soil and rock excavated and dumped within the proposed subdivision area, much of the bulk earthmoving required to support the proposed changes to the WDP-K already appears to have occurred, despite the absence of permit approvals for this work within P9639.

## **D. Conclusion.**

### **a) Potential breaches of Permit Conditions.**

The nature and extent of all earthworks and vegetation clearance at Kew Cottages needs to be re-assessed in terms of recent evidence and compliance with current permit conditions and approvals. Any breaches of permit conditions need to be identified and dealt with before a decision is made on P17156.

### **b) The P17156 Application**

It is hard for local residents and other interested members of the public to properly understand many issues in the main Drive Kew Permit Applications because as we have stated on many previous occasions, in our view both the Heritage Permit Applications and the Planning Permit Applications for the Main Drive Kew Estate have traditionally been poorly presented by the applicant on behalf of the owner - the State Government. In our submission this has meant that the application determination process has not been accessible, open and transparent as required by the Act, and that as a consequence many potential problems have only been identified after permits have been issued.

Issues include:

- A failure to provide detailed and accurate drawings (eg: lack of contour lines, building, design, and tree details)
- Significant inconsistencies both between different applications and between documents within the same application (eg: the current application.)
- Disputes on definitions of key elements such as what legally constitutes 'Public Open Space'

For example:

1. Whereas we understand all River Red Gums on the site are protected, it is impossible to locate any of them using the P17156 Application 'Tree Identification Plan Balance of Site', because although individual trees are numbered on the plan the names of the trees have actually been removed !

2. Whereas P17156 says that all VPO trees will be retained in the "Balance of site", we understand that Walker's have also concurrently applied to the Minister for Planning for a Permit to remove some of the VPO trees (including River Red Gums) from within the same area !

3. Whereas the the WDP-K requires 30% of the site to retained as Public Open Space, the P17156 Application Plan appears to claim Road reserves as part of the 30% POS, a claim which is not supported by Boroondara Council, and which may therefore subsequently prove to be unlawful.

**Recommendation.**

We recommend, therefore, that notwithstanding the outcome of our complaint regarding P17156 , the required standard of accuracy and quality be raised for all future Heritage Permit applications that need to be advertised for public comment.

**Attachments.**

Fig 1 Aerial Photos from Nearmap.com showing Vegetation Removal - inc Tree Protection fencing and Protected Trees in the NW 'Balance of Site' adjacent to the Crescent.

- LHS Image flown before clearance April 2011
- RHS Image Flown after clearance June 2011

**LINKS:**

[www.nearmap.com](http://www.nearmap.com) 28 June 2011 Online

Other material will be made available to Heritage Victoria and to the public on our website [www.kew.org.au](http://www.kew.org.au) as it becomes available.



**2011VegetationClearance1.jpg**  
286K