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# NEW TRICKS ? - KCC Objection to Lot Q Subdivision Permit Application P24938. (Part 1)

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**Kew Cottages Coalition** <admin@kew.org.au>  
To: Executive Director, Heritage Victoria

27 July 2016

## 1. Summary

This submission is presented in two parts. Part 1 includes a Summary, and addresses mandatory considerations under the Heritage Act .

Part 2 deals with discretionary considerations, and includes Appendices.

### 1.1 Mandatory Considerations: (S73(1)(a) Issues

#### **The Kew Cottages Site Context Plan 2005** (Also known as P9639. Attachment 4.' Site Concept Plan')

The Kew Cottages Coalition objects strongly to the proposed 'Lot Q Subdivision' of the Heritage Core, and respectfully requests that the Executive Director refuse the Application in so far as it refers to Lot Q.

The proposed Lot Q Subdivision is shown located on land set aside in the Site Context Plan endorsed as part of Permit P9639 as Public Open Space with the listed buildings B1, B3, and B6 retained.

As the Executive Director noted in giving his reasons for refusing the Applicant's last Heritage Permit Application (P22396. May 2015 [Stage 8]) the Site Context Plan has remained an endorsed document without amendment for the duration of the now almost completed development of the registered land.

The proposed Lot Q Subdivision of the Heritage Core in our submission, therefore, must be considered detrimental to the significant cultural heritage values of both this and the adjacent Place - the Former Willsmere Hospital (HO861).

#### **The Kew Cottages Conservation Management Plan. 2008**

The Lot Q proposal is also deeply flawed, because it appears to completely ignore the Applicant's other longstanding Heritage Permit Conditions regarding the Heritage Core, including the endorsed Kew Cottages Conservation Management Plan that was prepared at Heritage Victoria's direction, by Walker's Heritage Consultant, Ms Helen Lardner in September 2008. (HCLD. CMP 2008: Permit P9639 - Condition 2.iv).

As a consequence of this oversight by the Applicant, we believe, that the Lot Q Subdivision Proposal fails to comply with Heritage Victoria's Application Guidelines, and presents a serious threat to the conservation and the significance of the registered place.

It is clearly in the public interest for all Government Heritage Permit Applicants to take reasonable steps to comply with Heritage Victoria's Permit Conditions and Permit Application Guidelines. Similarly, in cases where compliance may not be possible due to circumstances beyond the control of the Applicant, and the cultural heritage significance of the place may be affected by the application, then a reasonable explanation should be provided as part of the Application when it is advertised..

Unfortunately, this has not happened with the Lot Q Subdivision Application. No explanation has been provided for the Applicant's lack of compliance. The Government Heritage Buildings B1, B3, and B6 identified in the Kew Cottages CMP as of 'potential national significance' have been allowed to fall into disrepair. Previous Permit Conditions remain unfulfilled.

## **S73(1)(b), and S73(1)(e) Issues**

We note that, as with Stage 8, the Applicant has not requested consideration be given to either economic or operational constraints, and we therefore submit that the Executive Director may refuse the Lot Q application without further investigation on those matters in accord with sections S73(1)(b), and S73(1)(e) of the Act.

## **Alternative Plans for the Heritage Core**

In our submission there are more appropriate solutions for the Future Use of B1, B3, and B6 that should be addressed by the Applicant.

Appropriate Heritage Core Conservation Options include:

### **1) The Bracks Proposal.**

The provision of a range of Community Services and Recreation Centre using both the remaining and new buildings as promised by the Bracks Government (2003);

### **2) The Kew Cottages Conservation, Childcare, and Cafe (Triple-C) Proposal**

Conservation of the Heritage Core in accord with the CMP, including the establishment of a Childcare Centre and Cafe, together with interpretation facilities addressing the historical development of both the Kew Childrens Cottages and Willsmere in B1, B3, and B6..

Plus a new Public Car park to be built in accord with the CMP on the adjacent site of the former B4 Building now demolished.

(i.e.: The Car park will be located on Main Drive west of B6 .Shown as 'T Part ' on the Application Subdivision Plan, and labelled 'Future Development Subject to Approval on the Application 'Heritage Core Site Plan AR-HH-00)

## **Lot 283 - DHS Car park.**

Unlike the proposed Lot Q , Lot 283 is not located on land set aside in the Site Context Plan (P2639) as Public Open Space.

We have, therefore, no objection to the Lot 283 Subdivision Proposal for the existing DHS Car park.

We respectfully submit, therefore that the Executive Director should approve the Lot 283 Proposal, but **refuse the 'Lot Q' Proposal,**

## **Permit Conditions.**

We do **not** believe that a Heritage Permit with Conditions for Lot Q is an appropriate response because:

a) Any subdivision of the type proposed for the Heritage Core presents too great a risk to future generations' understanding of both the form and function of the Heritage Core Buildings, and is therefore undesirable, as explained in the CMP;

b) The sorry history of Heritage Permits with Conditions at Kew Cottages to date is that key Conditions often appear to have been either unenforceable, unable to prevent significant damage occurring, or have in practice been simply ignored e.g.;

1. The owner's failure to properly repair and conserve B1, B3, and B6 in accordance with P9639 Conditions (2005) and the CMP (2008);
2. The developer's failure to seek Heritage Approval for a Landscape Management Plan for the whole site before commencing the Main Drive Kew Development ( Condition 9 of Permit P9639 [2005])
3. The developer being prosecuted for damage to Heritage listed trees in Red Gum Park (2008);
4. The developer's failure to replace the significant Bishops Pine (Tree 297) that was cut down in 2006.
5. The Developer's failure to protect Heritage Tree 160 which was cut down in Stage 8 parkland at the time of the Applicant's Permit Application to build apartments on that land. (2014).

## **1.2 Discriminatory Considerations: (S73(1A)) Issues**

If we are wrong, and the Executive Director sees some merit in the issuing a Permit with Conditions for Lot Q pursuant to S.73(1)(a) then we submit consideration should also be given to the following matters with regard to S73(1A) :

1. The failure of Kew Cottages Heritage Permit Conditions to date;
  2. The failure of the Applicant (Major Projects Victoria and their agent Walker Corporation) to properly comply with the Victorian Government Cultural Heritage Asset Management Principles (2009)
  3. The failure of the Applicant to comply with the Permit Application Guidelines, including the Applicant's failure to include any reference whatsoever in their Lot Q Proposal to the endorsed *Kew Cottages Conservation Management Plan (2008)*.
  4. The impact of the Lot Q proposal on an understanding of the relationship between the Heritage Core Buildings and the neighbouring listed property - the former Willsmere Hospital;
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## **2. No Subdivision without Conservation.**

### **2.1 The Proposed Lot Q Subdivision Plan (2016)**

The Applicant seeks to create a 'super lot' for the *"existing three buildings (B1, B3, and B6) to be known as Lot Q.... Lot Q may be further subdivided in the future with B1, B3, and B6 individually titled to enable their separate sale."* (Walker 25/5/16)

### **2.2 The Endorsed Site Context Plan (2005)**

However, the proposed Lot Q Subdivision is shown located on land set aside in the Site Context Plan endorsed as part of Permit P9639 as Public Open Space with the listed buildings B1, B3, and B6 retained.

As the Executive Director noted in giving his reasons for refusing the Applicant's last Heritage Permit Application (P22396. May 2015 [Stage 8]) the Site Context Plan has remained an endorsed document without amendment for the duration of the now almost completed development of the registered land.

The proposed Lot Q Subdivision of the Heritage Core in our submission, therefore, must be considered detrimental to the significant cultural heritage values of both this and the adjacent Place - the Former Willsmere Hospital (HO861).

### **2.3 The Endorsed Conservation Management Plan (2008)**

Conservation Plans for B1, B3, and B6 are set out in detail in the endorsed Kew Cottages Conservation Management Plan (CMP) prepared by HCLD Pty Ltd on behalf of the Applicant in 2008 at Heritage Victoria's direction.

However, surprisingly, the current Lot Q Application makes no reference to either the endorsed Site Context Plan (2005) OR the endorsed Conservation Management Plan (2008).

The Conservation Management Plan deals with the issue of Subdivision in S.6.4.3. It says;

*Part of the significance of Kew is the grouping of buildings B1, B3 and B6 which provide evidence of the establishment period of the site. Hence subdivision of those three elements may detract from this aspect of significance. As subdivision usually leads to physical barriers and different management of items, **it is undesirable to subdivide these elements.***

It appears, therefore, that at face value the Applicant is not keen to advertise the fact that they are now ignoring both the Site Context Plan, and the expert advice of their own Heritage Consultant (HCLD) who prepared the CMP.

We have, therefore, looked for any evidence in the Application of a 'second opinion' on subdivision of the Heritage Core Buildings being provided in the Lot Q Proposal, but have found none. Similarly, we can find no evidence that the Applicant has taken any specific steps to comply with the Site Context Plan, and/or help avoid the type of negative impacts identified in the CMP.

On the contrary, all that appears to have been provided by way of the Applicant's 'Heritage Core Site Plan' AR-HH-00, is an indication of how future 'Lot Boundaries' and 'New Structures' may be laid out with respect to Existing Structures and Open Space.

Further examination of the Applicant's proposed boundaries and structures, however reveals that additional expert conservation advice provided by HCLD in the endorsed CMP also appears to have now been simply ignored by the Applicant.

For example:

### **Lot Q Car Parking.**

The Proposed Lot Q Heritage Core Site Plan appears to be designed to illustrate that three (3) new garages can be built in appropriate locations in the Heritage Core, i.e.: one new garage is shown attached to each building B1, B3, and B6.

However, the CMP does not support the location and form of the garage structures proposed.

Firstly the CMP says that car parking will need to be carefully controlled i.e.:

*Car parking areas at ground level are appropriate in the vicinity of the three buildings as long as they don't impinge on the significant open spaces or view lines identified in this report. ( Setting 6.3.2 Emphasis added)*

Secondly, the CMP says that:

*New buildings should not be attached to buildings except where set out in the Conservation Plans in Appendix 9.4, Section 9.4.3 and should require minimal change to significant fabric.*

However, according to the Applicant's Heritage Core Site plan two (2) of the three (3) proposed new garages are not attached in accord with the CMP, and do impinge on the significant open space identified in the CMP report (i.e.the open space :between B3 and B6)

Thirdly, the Conservation Policy Plans in the CMP are quite explicit in rejecting both of the proposed B3 and B6 garage locations i.e.:

**B3. "No new additions to the building (B3) are appropriate. "(See: Cons- B3); and**

**B6. We note that the proposed Lot Q B6 garage in the Application is shown attached to the south wall of B6.**

However, the CMP rejects any new additions on the south wall .

The CMP says that **all** of the south wall fabric is of "**primary significance to be conserved**".  
(See: Cons-B6)

### **Lot Q Boundaries**

The stated intent, location and length of the proposed super lot Q boundaries are unacceptable because:

1. The stated intent appears to be to deny public access to the Heritage Core by subdivision and sale of the listed property for private housing;
2. The proposed boundaries fail to provide the 3m Curtilage for the Heritage Core Buildings as prescribed in the Boroondara Planning Scheme. (e.g.: In fact according to the plans provided, the southern boundary as shown appears to be less than 1 metre from the external wall of B1, and the eastern boundary as shown appears to be less than 2m from the external walls of both B3 and B6.
3. The proposed boundaries appear to be designed to alienate each of the existing 'CMP significant' open spaces between the buildings from the public realm
4. The orderly domestic scale 'town square' layout of the original institution so valued by the CMP will be

- destroyed.
5. The remaining public parkland will be split into two separate areas - with one open space south of B1 and the second north of B6.
  6. Connectivity between the two pieces of parkland. will be reduced by 90%
  7. The existing view lines identified by the CMP for conservation will all be broken.
  8. Public access to the B1, B3, and B6 will be denied.

### 3. Alternative Plans to Lot Q (Applicant's Plan A).

#### 3.1 Plan B: The Bracks Proposal

The long standing commitment by the Bracks Government to provide a range of health, recreation, and community services using both the existing and new buildings was the subject of Heritage Permit Application by Walker Corporation in 2010.

However Walker subsequently withdrew the latter Application without any public explanation.

The latter Permit Application (2010) for the adaptive reuse of B1, B3, and B6 appeared to have a number of significant advantages compared to the current Lot Q proposal including:

- Continuing the long standing use of the buildings in the provision of community services for the intellectually disabled residents and the wider community;
- Compliance with the endorsed Conservation Management Plan; and
- Compliance with Heritage Victoria Permit Application Guidelines.

Heritage Victoria Permit Application Guidelines state:

***If there are detrimental impacts on the cultural heritage significance of the place or object, detail alternative proposals that were considered and reasons why these were dismissed (relates to s.73(1)(b), (e) and (f) and s.73(1A) of the Heritage Act)***

*A detailed analysis of alternative options and reasons for their dismissal should be provided where there is a negative impact on the cultural heritage significance of the place or object. (HIS Guidelines 2014. p7)*

However the Applicant has failed to provide any analysis or reason for dismissal of the Bracks solution in their new Lot Q Application.

#### 3.2 Plan C: The Kew Cottages 'Triple-C' Proposal (Conservation, Childcare, and Cafe)

The KCC respectfully suggests that the Applicant be requested to consider alternative options to Lot Q, including the feasibility of establishing a Childcare Centre and Cafe, together with Public Access to interpretation facilities using the remaining buildings.

The Minister for Planning, Mr. Richard Wynne, has expressed interest in receiving further details of the KCC proposal.

In our submission the Kew Children's Cottages 'Triple-C' Proposal is both a practical and preferable solution for the use of the existing buildings because:

1. The CMP recommends that Public Access to a historical interpretation of the development of Kew Children's Cottages be provided within the remaining buildings. This would also include the architectural and historical development of the adjacent Heritage site - the Former Willsmere Hospital. Willsmere currently has very restricted Public Access to the interpretation material located on site, as Willsmere is a gated community.)
2. Residents have long requested the establishment of a Childcare Centre and Cafe within the Kew Cottages Development;

3. These 3 uses would be very much in keeping with the historical use of the three remaining buildings - i.e.:
  - o The original Kew Childrens' Cottages School House (B3);
  - o The Children's Cottages' Dining Hall (B6), and
  - o One of the first Children's Cottages opened in 1887; (B1)
4. No amendment is required to the current GRZ2 Zoning under the Boroondara Planning Scheme to allow these uses;
5. Significantly less fencing and new building structures will be required , and
6. The adjacent site of the former B4 listed Building (now demolished) can be used to provide a Public Car park of the type approved by the CMP. (i.e. Located on Main Drive west of B6 .Shown as 'T Part ' on the Application Subdivision Plan, and labelled 'Future Development Subject to Approval on the Application 'Heritage Core Site Plan AR-HH-00)

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## PART 2.

### 4. Discretionary Considerations S73(1A) Issues

\*See KCC Submission Part 2 (NOT in this email due to file size constraints)

### 5. APPENDIX

\*See KCC Submission Part 2 (NOT in this email)

### 6. Attachments & Links

**The Kew Cottages Site Context Plan 2005 (Also known as P9639. Attachment 4.' Site Concept Plan') (Attached)**

#### **P24938 Application Files (Attached)**

1. P24938-Heritage-Impact-Statement.pdf
2. P24938-Heritage-Core-Plan-within-Q-Lot.pdf
3. P24938-Subdivision-Plan.pdf

#### **Links:**

[CONSERVATION MANAGEMENT PLAN FORMER KEW COTTAGES ...](#)

<http://www.dtpli.vic.gov.au/heritage/apply-for-heritage-permits/how-to-apply-for-a-permit>

[Permit Application Instructions \(DOC 162.5 KB\)](#)

[Heritage Impact Statements \(DOC 103.5 KB\)](#)

[Permit Application Checklist \(DOC 121.0 KB\)](#)

[Guidelines for implementation of Government Heritage Asset Management Principles \(PDF, 44.4 KB, 3 pp.\)](#)

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4 attachments

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2055K

 **P24938-Heritage-Impact-Statement.pdf**  
2577K

 **P24938-Heritage-Core-Plan-within-Q-Lot.pdf**  
814K

 **P24938-Subdivision-Plan.pdf**  
325K