

**New Tricks ? - KCC Objection to "Lot Q" Heritage Core Permit Application P24938. (Part 2)**

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

27 July 2016


# KCC Objection to Lot Q. Part 2

**FORMER KEW COTTAGES  
115 PRINCESS STREET, KEW**

**CONSERVATION MANAGEMENT PLAN**

for

B1 Cottage (Unit 10)	F1 Fire Memorial
B3 School House (Parents Retreat/Chapel)	F2 Long Term Residents' Memorial
B6 Dining Room (STAD)	F3 Residents' Sculpture



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**FINAL REPORT** **SEPTEMBER 2008**

**The Proposed Lot Q Subdivision fails to comply with the Endorsed Kew Cottages Conservation Management Plan (2008)  
See KCC Annotated PDF File Copy Attached**

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

### 4.1 The failure of Kew Cottages Heritage Permit Conditions to date.

If we are wrong in our Part 1 submissions, then the Executive Director may see some merit in issuing a Permit with Conditions designed to specifically avoid the cultural heritage significance of Kew Cottages being detrimentally affected.

However, we would strongly recommend against any further reliance on Permit Conditions at Kew Cottages, because on the evidence available it now appears clear that key Heritage Permit Conditions applied over the past decade have proved to be ineffective.

For example, Permit conditions relevant to the Lot Q Application that do not yet appear to have been adequately complied with include:

- Repair of B1, B3, and B6 (2005)
- Conservation of B1, B3, and B6 (2008)
- A Comprehensive Landscape Management Plan for the site including full details of the proposed landscape treatment of the public open spaces, including the landscape treatment of the heritage core area (2005)
- An Interpretation Plan that includes proposals for the use of one of the retained buildings for the display of interpretive material (2005)
- Conservation of Memorials (Heritage Core. 2005)
- Heritage Tree Protection (e.g. Red Gum Park prosecution 2008; Tree 160 removal Stage 8 **2014**.)
- Heritage Tree Replacement (e.g.: Main Drive Trees, Tree 297, Bishops Pine. **2006**, )
- Removal of Walker Temporary Site Office (Stage 8 2015)
- Reinstatement of Main Drive and Oak Walk Parkland (Stage 8. 2015)

There appear to be two possible reasons for this long list of failures, either false assumptions have been made on the capability and willingness of the Permit holder to comply with particular conditions, and/or there has been a failure to enforce compliance.

However, in our submission, by definition it is not in the public interest for Heritage Permit Conditions to be imposed if they cannot be enforced.

Because, to do so can only serve to bring Heritage regulation in Victoria into disrepute.

However, as the Ombudsman reported to Parliament in 2010, Heritage Victoria does not have enough resources to proactively monitor compliance with its Heritage Permit Conditions.

As a consequence, we submit there is a 'built in' risk of systemic non compliance, that is compounded by an unacceptable lack of monitoring and enforcement of Heritage Permit Conditions.

In addition:

a) With the Walker/MPV Kew Cottages Contract due to expire in only 3 months time on 27 October 2016 it appears clear there is now insufficient time remaining to make a reasonable assessment of what new Permit Conditions, if any, might be both appropriate and enforceable in the limited time left available for compliance; and

b) We believe that the existing Security (Bank Guarantee) provided by the Applicant may not now be sufficient to cover all of the long delayed Conservation works required, including both the Heritage Core and Stage 8 Conservation works.

#### **4.2 The failure of the Applicant to comply with the Victorian Government Cultural Heritage Asset Management Principles (2009)**

As the Government aims "**to set the standard for the community in the management of heritage assets**", we respectfully submit that it is reasonable for the public to expect that Heritage Victoria will ensure that any advertised Government heritage proposal will comply with the "Victorian Government Cultural Heritage Asset Management Principles" as adopted by the Heritage Council on 6 September 2007, and endorsed by the Government in December 2009.

We understand that Heritage Victoria's Guidelines for preparing Heritage Impact Statements state:

##### ***"Government Owned Heritage Places and Objects***

*Places or objects included in the Victorian Heritage Register that are owned or managed by the Victorian Government or agencies on behalf of the Victorian Government should comply with the Victorian Government Cultural Heritage Asset Management Principles. ...." (p.4)*

and we note that

*The Executive Director, Heritage Victoria has adopted the [Victorian Government Cultural Heritage Asset Management Principles](#) as guidelines for all permits applied for by State Government departments and agencies under s.67 of the Heritage Act 1995.*

*The adoption of the Principles as decision making guidelines under s. 73(1)(f) of the Heritage Act will take effect for permit applications for State Government owned or managed places and objects on the Victorian Heritage Register made on or after 1 July 2010.*

Disappointingly, however, we submit that the Walker/MPV **'Lot Q' Subdivision Proposal** does not even attempt to comply with the *Victorian Government's Heritage Asset Management Principals*. We submit:

1. The Applicant has failed to consult with the local community (Principle 10. Consultation);
2. The **Lot Q Heritage Impact Statement (HIS)** provided by the Applicant fails to comply with Heritage Victoria's **'Guidelines for preparing Heritage Impact Statements'**; and
3. The **'Lot Q' Proposal** fails to conserve the Heritage assets **'to retain their heritage significance to the greatest extent feasible'**; ( Principle 5. Conservation Outcomes);

#### **4.3 The failure of the Applicant to comply with the Heritage Permit Application Guidelines**

We submit that the Lot Q Proposal for B1, B3, and B6 fail to comply with Heritage Victoria Guidelines for preparing a Heritage Impact Statement (HIS) for the following reasons:

##### **1. Failure to provide *Kew Cottages Conservation Management Plan (CMP) Summary*.**

The HIS Guidelines Template on Page 6 sets out the requirement for the Applicant to provide a "**Summary from the Statement of Significance and Conservation Plan (Where relevant)**".

However, the Applicant has not only failed to provide the required summary of the **Kew Cottages Conservation Management Plan (CMP)**, but fails to even mention the existence of the **Kew Cottages CMP** anywhere in the Application documents.

We find this is particularly concerning because we understand that at Heritage Victoria's direction, in September 2008 Walker Corporation's Heritage Consultant, Ms. Helen Lardner, (HCLD Pty Ltd) prepared a 142 page **Kew Cottages Conservation Management Plan** that deals in considerable detail with conservation of the buildings that the Applicant now seeks Heritage approval to subdivide into Lot Q, namely, B1 Cottage (Unit 10), B3 School House (Parents Retreat Chapel), and B6 Dining Room (STAD) .

##### **2. Failure to adequately answer HIS Table 1 S6 Subdivision Questions**

The HIS Guidelines Table 1 Section 6 sets out the Questions an Applicant seeking Subdivision of a heritage registered place is required to address as follows:

- ***Does the proposed subdivision provide an adequate setting or context for the registered place?***
- ***Could future development that results from this subdivision compromise the significance of the registered place?***
- ***Could future development that results from the subdivision affect views to, and from, the registered place?***
- ***What management processes, such as a Body Corporate, is being considered to ensure the conservation of any common property resulting from the subdivision?***

To which the Applicant merely responds:

***..... Lot Q is a super lot in which the existing three heritage buildings B1, B3 and B6 (formally used as part of the Kew Residential Services site) will be contained. The land surrounding Lot Q will be dedicated as public open space in favour of Boroondara Council. Lot Q may be further subdivided in the future with 81, 83 and B6 individually titled to enable their separate sale....***

##### ***Description of Works***

***....***

***Access to the lot would be via Main Drive with each of the three dwellings using a shared accessway to the 2290m2 allotment. The lot will enable the buildings to be excised from the existing larger balance lot which includes the surrounding public open space to be vested with***

***Boroondara Council.***

***How do the works affect the Heritage Place?***

***The proposal involves no physical works rather subdivision of the existing three buildings known as***

***B1, B3 and B6 all contained on the Victorian Heritage Register....***

The Applicant then goes on to briefly summarise the register listing for B1, B3, and B6 and make reference to the Walker Development Plan- Kew before concluding that:

***...From our review the proposed transfer of land directly accords with the requirements of the Walker Development Plan - Kew and accordingly warrants support.***

***Is the subdivision appropriate having regard to the Heritage Place?***

**Mandatory considerations**

***s.73(1)(a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object***

***At issue is the impact of the proposed works "the subdivision" upon the cultural heritage significance of the place being the former Kew Residential Services (Kew Cottages).***

***We submit that the subdivision is appropriate as it will not lead to any further fragmentation of the heritage Place, nor the (sic) impact upon the understanding of the Place.***

***The subdivision itself will not have a significant impact upon the cultural heritage significance of the Place, because the subdivision does not require any works to be undertaken.***

***To assist with your approval I attach the following documents:***

- Six copies of proposed Plan of Subdivision PS 724290B;***
- Completed application Form;***
- Current Certificate of Title;***
- Fee of \$340.00;...***

The latter brief and disingenuous response by the Applicant is also we submit both seriously misleading and deceptive.

It is misleading because the Applicant has failed to answer Heritage Victoria's HIS questions:

**a) Does the proposed subdivision provide an adequate setting or context for the registered place ? and**

**b) Could future development that results from the subdivision compromise the significance of the place ?**

It is deceptive, because the Applicant has failed to answer:

**c) Could future developments that result from the subdivision affect views to, and from, the registered place ? and**

**d) What management processes, such as a Body Corporate, is being considered to ensure the conservation of any common property resulting from the subdivision ?**

The Applicant's failure to answer these questions is significant in our submission, and all the more surprising given that Walker's expert Heritage Consultant, Ms Helen Gardner, had taken the trouble in 2008 to address just these same questions on the Applicant's behalf in great detail.

As we have noted in Part 1 of our Submission the Kew Cottages Conservation Management Plan (2008) is unequivocal in concluding that it is undesirable to subdivide the remaining Heritage Core Buildings B1, B3, and B6

Section 6.4.3 of the CMP addresses the issue of Subdivision as follows:

### 6.4.3 SUBDIVISION

*Subdivision of parts of the Kew Cottages site has already occurred and can be expected to continue under current development proposals.*

*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. However, if it was required for the reasonable ongoing use and conservation of these heritage items, then it may be possible if these negative impacts were avoided.*

*It should be noted that any proposed subdivision of the site may result in new development. The new development on the subdivided land would still need to conform to the policies set out elsewhere in this report, in order to lessen the impact on the cultural significance of the former Kew Cottages site. (KCC Emphasis added)*

The CMP thus raises the possibility that circumstances may arise where subdivision may still be required 'for ongoing use and conservation of these heritage items', and the CMP addresses how 'it may be possible if these negative impact were avoided'.

The Applicant in our submission should, therefore, be requested to provide evidence of:

1. Why their proposed Lot Q subdivision is required for the **"reasonable ongoing use of the heritage items"**, and
2. How the Applicant will ensure subsequent development on the subject land will conform to the policies set out in the endorsed Conservation Management Plan.

In the absence of the latter evidence being provided to the satisfaction of the Executive Director, we submit that the Application should be refused.

#### **4.4 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.**

Kew Cottages Heritage Permit Conditions provide for one of the retained buildings in the Heritage Core to be used for the display of interpretive material. in order:

*To inform and enhance the public understanding of the cultural heritage significance of the Kew Cottages site.* (Condition 6. P9639 2005)

The Kew Cottages site was originally a part of Willsmere Hospital, and the historical relationship between these two listed sites is of potentially national significance as explained in the Kew Cottages Conservation Management Plan (CMP).

The Kew Cottages CMP goes into some considerable detail, both with regard to the significance of the historical setting of the three remaining Cottages, their relationship to the adjacent former Willsmere Hospital (Kew Asylum), the importance of the views to, and from the Heritage Core, and the nature and form of conservation appropriate for the individual buildings themselves.

The CMP states that:

***Kew Cottages is of cultural significance because it demonstrates the adaptation of the European 'cottage system' by the Victorian government for intellectually disabled children from the period of its establishment, 1887-1917, including the provision of teaching rooms and good hygiene facilities. The three buildings are rare surviving examples from this period and provide information about other buildings now gone from the site. Kew Cottages has State and possibly national significance as reputedly the first Government institution set up for***

intellectually disabled children in Australia. (Emphasis added)

In its comparative analysis of Australia's intellectual health facilities the CMP states that:

***Of the six Registered examples (in Victoria) named above, only Kew continues to be used to provide accommodation for people with an intellectual disability. The other sites have been adapted and are now used for residential, educational or other purposes. One of the most important aspects of the significance of Kew in relation to other former institutions is that it represents the continuation of a historic use, and has the ability to demonstrate development in society's manner of caring for people with an intellectual disability from the nineteenth century into the twenty first century.***

## Risk Management

We believe there will be a will be a fourfold increase in risk of unacceptable impacts flowing from approval of the Lot Q Proposal.

We submit that as foreshadowed in the CMP, the proposed Lot Q Subdivision will inevitably lead to an undesirable sale of public land, followed by the erection of physical barriers and separate management structures that taken together will serve to:

1. Prevent B1, B3 and B6 being clearly perceived as a part of both the former Willsmere Hospital, AND the first Government school for the intellectually disabled children in Australia;
2. Remove the ability to clearly read the conception, scale and form of the original Children's Cottages set against the backdrop of Willsmere;
3. Conceal the extraordinary Victorian innovation that the establishment of the Kew Children's Cottages represented for Australia in 1887; and
4. Close the current window of opportunity that exists to provide public access to both Willsmere and Children's Cottages interpretative material in one of the remaining buildings.

The Kew Cottages Coalition has argued for over a decade that it is in the interest of all Victorians to help defend and extend public understanding of the historical relationship between Willsmere and Kew Cottages.

We have argued for the return of the former Willsmere Hospital's original Gates to the entrance of Main Drive, for the restoration of Abraham Morrison's Avenue Parkland between Main Drive and Oak Walk at the entrance to Willsmere, and for the adequate and comprehensive conservation of the Heritage Core outside the walls of Willsmere.

Sadly, however, the public reading of the historical relationship between Willsmere and the Cottages has been steadily eroded over the past ten years:

- Firstly, by the nature and form of the Walker Development with all of the new Housing Estate development north of Main Drive now dominating the landscape; and
- Secondly by the the remaining buildings B1, B3, and B4 being left empty and unused.

Now only a small windows of opportunity is left to help restore a better understanding of the relationship between Willsmere and the Children's Cottages.

The decisions still to be made on the final use of the remaining Heritage Core Buildings (B1,B3,& B6), and the Stage 8 and Heritage Core parkland present that opportunity.

The Kew Cottages 'Triple-C' Plan (Conservation, Childcare, and Cafe) for the future use of the remaining buildings, as outlined in Part 1 of our submission is designed to take advantage of this window of opportunity.

The Triple-C Plan is in accord with the site Concept Plan and will support a proactive approach to improving public understanding of the relationship between B1, B3, B6, and Willsmere.,

The Triple-C Plan for the Heritage Core maintains the key ingredients of conservation, public access, public open space, and the provision of community services using the remaining buildings.

The Triple-C Plan provides for the retention of one of the buildings for the display of interpretative material covering not only the evolution and development of the Children's Cottages since 1887, but also the history of whole of the Kew Asylum Reserve during the 19th Century, including the building of Willsmere, and the Asylum's extensive

farmlands, and botanical gardens that were developed , first by Abraham Morrison with the assistance of the renowned Victorian Government Botanist, Dr. Baron von Mueller, and later by the prominent landscape gardener Hugh Linnaker. (Statement of Significance [2004])

By way of contrast the Lot Q Application simply proposes the 'separate sale of B1, B3, and B6'.

The future use of one of the retained heritage buildings for the display of interpretive material as prescribed in Permit P9639 Condition 6 is simply ignored by the Applicant.

In our submission this form of subdivision will have an unacceptable impact on an understanding of the relationship between the Heritage Core Buildings and the neighbouring listed property - the former Willsmere Hospital.

The retention of one of the Buildings in accord with the Condition 6 (P9639), and the CMP is particularly important because public access is currently severely restricted to the interpretive material located within Willsmere, as Willsmere, unlike the Cottages, is a gated community.

## **5 CONCLUSION.**

On balance we believe that the risks associated with the approval of any form of Heritage Permit for Lot Q are unacceptable.

The Lot Q Subdivision Proposal is not in accord with the endorsed site Concept Plan.

We submit that the Application should, therefore, be refused.

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### **LINKS:**

<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 \(PDF, 44.4 KB, 3 pp.\)](#)

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

### **APPENDICES**

See both Part 1 and Attached Files

1. Kew Cottages Heritage Permit P9639 including Conditions (2005)
2. Endorsed Kew Cottages Heritage Core Concept Plan (P9639: 2005)
3. Endorsed Kew Cottages Conservation Management Plan (2008) (KCC Annotated Copy)


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**3 attachments**



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1168K

 **Kew\_Cottages\_CMP\_KCC\_AnnotatedCopy.pdf**  
9901K

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