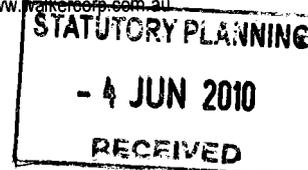


Boroondara City Council  
Action Officer: .....  
Copies to: .....  
- 4 JUN 2010  
Doc No: ..... Loose   
File No: ..... On file



32 Pine Court  
Kew, Vic 3101  
Australia

Telephone: + 61 3 9261 8300  
Direct Line: + 61 3 9261 8303  
Facsimile: + 61 3 9261 8377  
www.walkercorp.com.au



03 June 2010

Mr. Lorenz Pereira  
Senior Urban Planner  
Department of Planning & Community Development  
Level 9, 8 Nicholson Street  
EAST MELBOURNE, VIC 3002

Dear Lorenz,

**Re: Main Drive Kew – Addendum 3 to Walker Development Plan**

We wish to apply for an addendum to the WDP-K to formalise the existing Boundary Drive (extension of Main Drive) for vehicle access.

The use of Boundary Drive for vehicle access represents an efficient way of developing the land with minimal change to the landscape, whilst extending the grandeur of Main Drive, which is listed on the Victorian Heritage Register, to the west of the site.

Importantly, the use of the road for vehicle access harmonises with the approved WDP-K and the requirement that any variations carried out be generally in accordance with the plan. The reference to 'proposed road' on the Walker Development Plan-Kew Map (page 13) has the stipulation that roads are "subject to 'fine tuning' with more detailed design". The use of Boundary Drive for vehicle access will result in sections of road detailed on the Plan being replaced with parkland.

We have attached legal advice prepared by Best Hooper Lawyers dated 08 July 2008 that supports the addendum sought and the view that it is generally in accordance with the approved plan.

The use of Boundary Drive for vehicle access is also supported by Heritage Victoria as detailed in their attached letter dated 30 June 2008 which concludes by stating that "from a heritage perspective the full retention and use of Main Drive as a vehicular access for the site would be welcomed, and encouraged".

To assist in your consideration of this addendum we have attached the following:

- Three copies of the proposed addendum 3 to the WDP-K;
- Legal advice prepared by Best Hooper Lawyers; and
- A letter prepared by Ray Osborne or Heritage Victoria.

We look forward to working with you in the continuation of this exciting project.

Should you wish to discuss the proposal further please do not hesitate to contact myself on 9261 8300.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Evans', with a long horizontal flourish extending to the right.

Brad Evans  
**Manager Planning**  
**Walker Corporation Pty Limited**

CC. Ms Fiona Beard – Boroondara City Council  
Mr Ray Osborne – Heritage Victoria



**Walker Corporation**

**Addendum 3 to the Walker  
Development Plan – Kew  
(June. 2010)**

---

Walker Corporation Pty Limited

JUNE 2010

## **Foreword**

This addendum (Volume 3 provides updated text to a section of the endorsed Walker Development Plan – Kew (WDP-K (Dec 05 – revised Nov 07 and Feb 09) which has been varied principally as a result of the desire to utilise the existing Boundary Drive for vehicle access. The report structure is consistent with the original endorsed (WDP-K (Dec. 05 – revised Nov 07 and Feb 09), however, only the relevant section that requires amendment has been included within this addendum.

## **Background**

The WDP-K (Dec.05) was originally endorsed by the Minister for Planning on 9 March 2006.

The Minister for Planning (the Responsible Authority) previously agreed to vary the WDP-K (Dec 05) in November 2007 and February 2009.

The variation to the WDP-K described in this addendum will become effective and operational from the date the addendum is endorsed by the Responsible Authority.

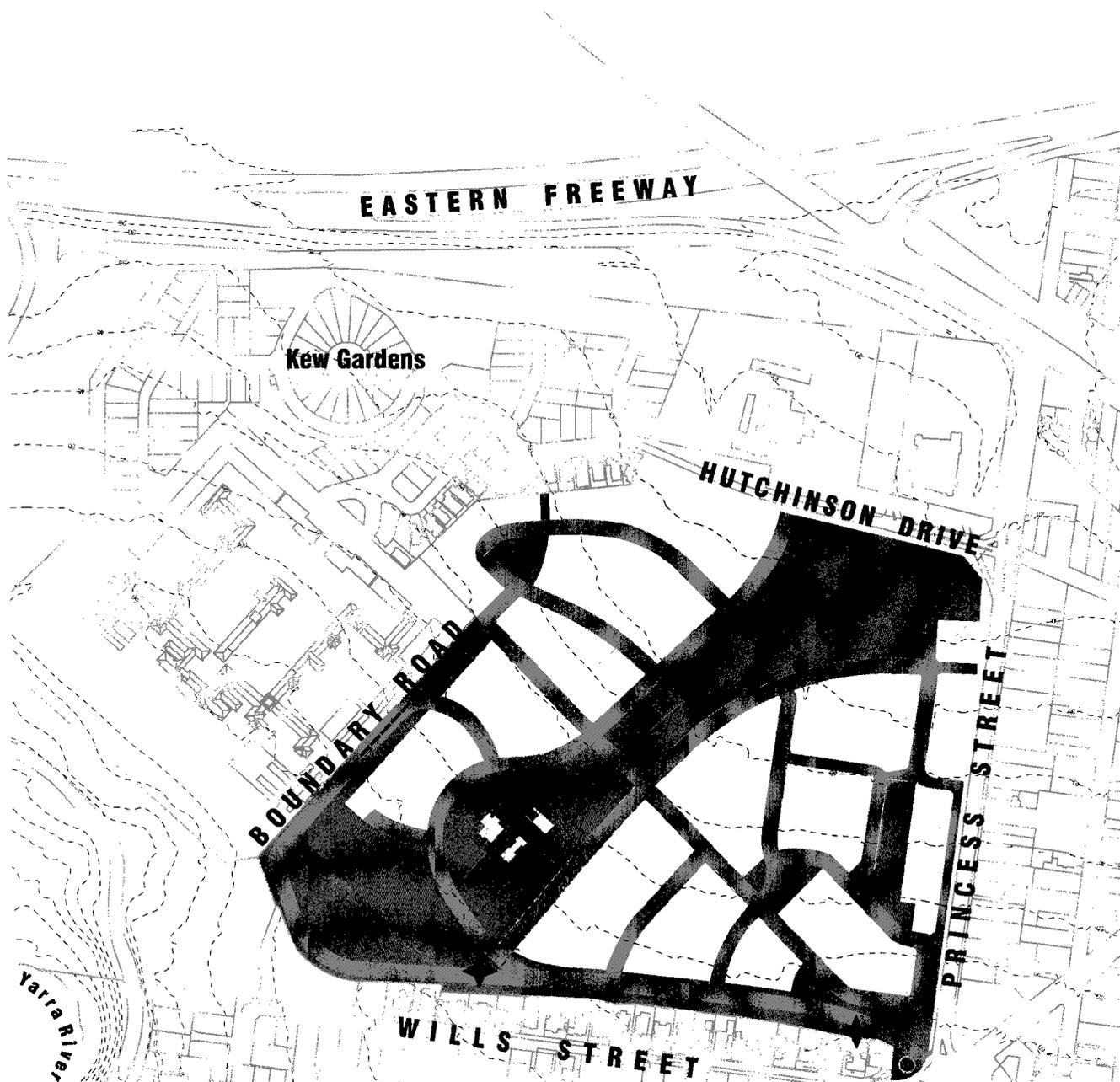
## **Agreed Terms – Variation to the Development Plan**

The Responsible Authority and the Developer agree the following:

- The WDP-K Map (Dec 05 and addendums dated Nov 07 and Feb 09) is varied only as set out in this addendum to allow for the use of Boundary Drive for vehicle access with the consent of the

Responsible Authority.

- The endorsed WDP-K (Dec 05 and addendums dated Nov 07 and Feb 09) includes a series of other plans throughout the document (using the WDP-K (Dec. 05) map base) that have not been varied. Compared with the WDP-K (Dec. 05) map, these plans are considered to be more illustrative rather than informative. On this basis, the addendum does not include amendments to all plans. The varied WDP-K map supersedes these plans in the endorsed WDP-K (Dec 05 and addendums dated Nov 07 and Feb 09).



- |   |  |   |   |
|---|--|---|---|
|  | <p><b>CONVENTIONAL DENSITY RESIDENTIAL DEVELOPMENT</b><br/>MAY ALSO INCLUDE ANY RESIDENTIAL USE PERMISSIBLE UNDER SECTION 1 OR 2 OF THE RESIDENTIAL 1 ZONE, INCLUDING APARTMENTS AND DISPLAY HOMES</p> |  | <p><b>PROPOSED ROAD</b><br/>SUBJECT TO 'FINE TUNING' WITH MORE DETAILED DESIGN</p>                |
|  | <p><b>APARTMENTS</b><br/>CONVENTIONAL DENSITY RESIDENTIAL DEVELOPMENT AND FUTURE DISPLAY HOMES ALSO POSSIBLE</p>   |  | <p><b>RECREATION CENTRE</b></p>   |
|  | <p><b>HERITAGE BUILDINGS</b><br/>RESIDENTIAL, COMMUNITY OR COMMERCIAL USE (INCLUDING VEHICLE ACCESS FROM LOCAL STREET)</p>   |  | <p><b>TEMPORARY SALES AND INFORMATION CENTRE</b><br/>APPROXIMATE POSITIONS OF POTENTIAL SITES</p> |
|  | <p><b>PUBLIC OPEN SPACE</b><br/>AREAS AND BOUNDARIES SUBJECT TO 'FINE TUNING' WITH MORE DETAILED DESIGN BUT NOT LESS THAN A TOTAL OF 30 PER CENT OF THE SUBJECT LAND</p>                               |  | <p><b>HERITAGE WALK LINKS</b></p>   |



## WALKER DEVELOPMENT PLAN-KEW MAP

Modified 3 June 2010

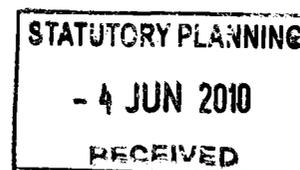


# Department of Planning and Community Development

1 Spring Street  
Melbourne, Victoria 3000  
GPO Box 2392  
Melbourne, Victoria 3001  
Australia  
Telephone (03) 9208 3833  
Facsimile (03) 9208 3690

File: PL-HE/03/0291 [1- 9]  
Refs: VHR2073,

30 June 2008



Brad Evan -- Principal Planner -- Approvals  
Walker Corporation  
670 Flinders Street  
The Goods Shed No 2  
Docklands  
Melbourne Vic 3008

Dear Mr Evans

**Re: Continued use of Main Drive for vehicular traffic, Kew Cottages site**

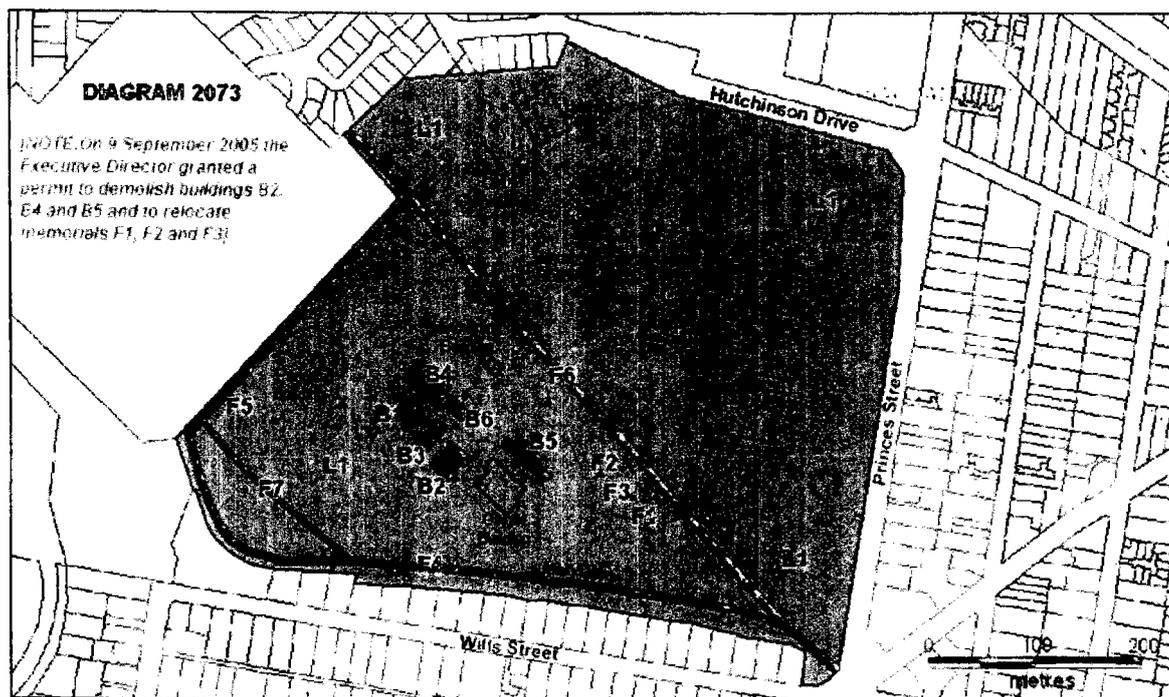
I refer to the recent discussions, and your email dated 30 June 2008 in relation to the above matter.

You will note from the entry on the Victorian Heritage Register that Main Drive [ F4] is an important part of the historic infrastructure of the site, as the following extracts demonstrate.

*The Kew Lunatic Asylum (Willsmere) had been constructed between 1868 and 1872. The principal access to the complex was from a drive from Princess Street culminating in an elliptical carriageway in front of the main building.*

*The Main Drive comprises an unusual double avenue of trees, the outer rows are planted with Algerian Oaks, and the inner avenue with English Elms. Towards the western end the avenue changes to alternating Elms and Moreton Bay Figs.*

*The Main Drive is of historical significance for its association with the Kew Lunatic Asylum (Willsmere), the largest nineteenth century mental institution in Victoria and later its use by the Kew Cottages complex*



Accordingly, from a heritage perspective the full retention and use of Main Drive as a vehicular access for the site would be welcomed, and encouraged.

If you wish to discuss this matter, do not hesitate to contact Ray Osborne, Director, Operations on 9637 9495 or [ray.osborne@dpcd.vic.gov.au](mailto:ray.osborne@dpcd.vic.gov.au)

Yours sincerely

*[Signature]*  
**RAY TONKIN**  
**EXECUTIVE DIRECTOR**  
**HERIATGE VICTORIA**

Contact: Dominic Scally  
Direct Line: 9691 0219  
Direct Email: dscally@besthooper.com.au  
Partner: Dominic Scally  
Our Ref: DS:LP:0820.0897  
Your Ref:

8 July 2008

Mr Brad Evans  
Principal Planner - Approvals  
Walker Group Holdings Pty Ltd  
The Goods Shed  
670 Flinders Street  
DOCKLANDS VIC 3008

Dear Sir

**re: 115 Princess Street, Kew - Development Plan Overlay Advice**

---

We refer to the writer's meeting in conference with you at our office on 2 July and confirm our advice to you as follows.

You have sought our opinion as to whether the retention of the existing Boundary Road in the area of the "Heritage Walk Links" shown on the approved Development Plan, would be generally in accordance with the Development Plan. No road is shown on the alignment of the heritage walk link on the approved Development Plan.

In summary, in our opinion, the retention of the road is generally in accordance with the plan.

We are fortified in this opinion because if the road is retained, it will not be retained conditional upon the loss of the heritage walk link. Relevantly the letter of Ray Tonkin, Executive Director of Heritage Victoria of 30 June 2008 confirms Heritage Victoria's support for the retention of the road. Suffice to say, the existing main road is, in itself, of historical significance for its association with the Kew Lunatic Asylum and its retention would be "*welcomed and encouraged*" by Heritage Victoria.

In considering what is or is not generally in accordance with the plan may require consideration of the configuration of the proposed road network. A traffic report prepared by Ratio Consultants forms part of the approved Development Plan. The report does not specify that the proposed road

network on the approved plans must remain in this configuration. Indeed, the approved plan, in the case of the proposed roads is to be *"subject to fine tuning with more detailed design"*.

In our opinion, the critical aspect of the road network identified in the traffic report which should be maintained are the entry and egress points to Princess Street and Hutchinson Drive. This is not affected by the proposed change.

Relevant legal principles.

Clause 43.04-1 of the Planning Scheme requires a permit to use or subdivide land, construct a building or construct or carry out works to be *"generally in accordance with the Development Plan"* and *"include any conditions or requirements specified in the schedule to this overlay"*. Schedule 3 relates to *"Kew Residential Services (KRS)"*. IN our opinion there is nothing in the DPO3 and KRS that affects this proposed change such that the changed plans will not generally accord with the DP.

A leading decision on the phrase *"generally in accordance with"* is *City of South Melbourne v. Raftopoulos* (unreported) Application for Review No. 1999/34936 dated 7 February 1989 by Senior Member Byard in which the Tribunal stated:-

*"General accordance with plans allows much greater variation from them than would accord with the same plans.*

*I understand Mr Molesworth to suggest that these two expressions amount to the same thing, and that the inclusion of "generally" is merely to allow for more and insignificant variations that must inevitably occur with the actual constructing of a building.*

*If he is saying that I do not I agree with him. Carpenters, bricklayers and such tradesman (sic) do not construct buildings with the precision of a watchmaker. That would be impossible. A building is still built in accordance with plans and specifications, although there may be minor and significant variations. The responsible authority would not have sought an enforcement order because of a dimension being out by a millimetre in 30 metres. If it did its application would fail on the basis that the law takes no account of trifles. (Apart from that, the Tribunal has a discretion in granting and (sic) enforcement order and would not create one in such circumstances). Tiny immaterial variations do not mean that a structure does not accord with the plans.*

*General accordance allows much greater latitude. Whether there is general accordance with the plans in a particular case is a question [of] fact that must be judged in accordance with the facts and circumstances of that case. Some cases may be clear whilst others are doubtful. The line between general accordance and with*

*non-general accordance may be hazy in some circumstances, and reasonable people may differ as to the correct classification in some instances (see in support Connors v Yarra City Council and Patterson 1998/49223 (unreported); Lowther Hall Anglican Grammar School v Moonee Valley City Council, (31 August 200) unreported; Canet v Brimbank CC [2003] VCAT 13)."*

Accordingly, the following principles apply:-

- a) "Generally in accordance" is a question of fact to be judged on the facts and circumstances of each case; and
- b) The less detail and precision there is in the primary document of documents, the more flexibility is given by the phrase "*generally in accordance with*".

### **Relevant Planning Permissions**

You have also sought our opinion as to whether if one complies with the Development Plan Overlay, one is exempt from complying with the Residential 1 zone.

In our opinion you are "not"; no such exemption applies.

The DPO3 is a built form control. Whereas, the Residential 1 zone sets out the primary planning permission required to be granted. It relates to use and development and can require use conditions upon development and includes particular provisions relating to subdivision and "relevantly" sets out no exceptions to the requirement to comply with its provisions if in the event a DPO applies.

Yours faithfully  
**BEST HOOPER**

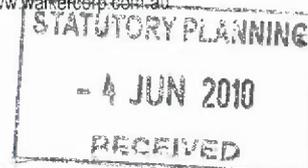
**Dominic Scally**  
Partner

Boroondara City Council  
Action Officer: S-Stewart  
Copies to:  
- 4 JUN 2010  
Doc No: 3045102 Loose   
File No: 401409/05.146 on file  AG



32 Pine Court  
Kew, Vic 3101  
Australia

Telephone: +61 3 9261 8300  
Direct Line: +61 3 9261 8303  
Facsimile: +61 3 9261 8377  
www.walkercorp.com.au



03 June 2010

Mr. Lorenz Pereira  
Senior Urban Planner  
Department of Planning & Community Development  
Level 9, 8 Nicholson Street  
EAST MELBOURNE, VIC 3002

Dear Lorenz,

**Re: Main Drive Kew – Addendum 3 to Walker Development Plan**

We wish to apply for an addendum to the WDP-K to formalise the existing Boundary Drive (extension of Main Drive) for vehicle access.

The use of Boundary Drive for vehicle access represents an efficient way of developing the land with minimal change to the landscape, whilst extending the grandeur of Main Drive, which is listed on the Victorian Heritage Register, to the west of the site.

Importantly, the use of the road for vehicle access harmonises with the approved WDP-K and the requirement that any variations carried out be generally in accordance with the plan. The reference to 'proposed road' on the Walker Development Plan-Kew Map (page 13) has the stipulation that roads are "subject to 'fine tuning' with more detailed design". The use of Boundary Drive for vehicle access will result in sections of road detailed on the Plan being replaced with parkland.

We have attached legal advice prepared by Best Hooper Lawyers dated 08 July 2008 that supports the addendum sought and the view that it is generally in accordance with the approved plan.

The use of Boundary Drive for vehicle access is also supported by Heritage Victoria as detailed in their attached letter dated 30 June 2008 which concludes by stating that "from a heritage perspective the full retention and use of Main Drive as a vehicular access for the site would be welcomed, and encouraged".

To assist in your consideration of this addendum we have attached the following:

- Three copies of the proposed addendum 3 to the WDP-K;
- Legal advice prepared by Best Hooper Lawyers; and
- A letter prepared by Ray Osborne or Heritage Victoria.

We look forward to working with you in the continuation of this exciting project.

Should you wish to discuss the proposal further please do not hesitate to contact myself on 9261 8300.

Yours sincerely



Brad Evans  
**Manager Planning**  
**Walker Corporation Pty Limited**

CC. Ms Fiona Beard – Boroondara City Council  
Mr Ray Osborne – Heritage Victoria



**Walker Corporation**

**Addendum 3 to the Walker  
Development Plan – Kew  
(June. 2010)**

---

Walker Corporation Pty Limited

JUNE 2010

## **Foreword**

This addendum (Volume 3 provides updated text to a section of the endorsed Walker Development Plan – Kew (WDP-K (Dec 05 – revised Nov 07 and Feb 09) which has been varied principally as a result of the desire to utilise the existing Boundary Drive for vehicle access. The report structure is consistent with the original endorsed (WDP-K (Dec. 05 – revised Nov 07 and Feb 09), however, only the relevant section that requires amendment has been included within this addendum.

## **Background**

The WDP-K (Dec.05) was originally endorsed by the Minister for Planning on 9 March 2006.

The Minister for Planning (the Responsible Authority) previously agreed to vary the WDP-K (Dec 05) in November 2007 and February 2009.

The variation to the WDP-K described in this addendum will become effective and operational from the date the addendum is endorsed by the Responsible Authority.

## **Agreed Terms – Variation to the Development Plan**

The Responsible Authority and the Developer agree the following:

- The WDP-K Map (Dec 05 and addendums dated Nov 07 and Feb 09) is varied only as set out in this addendum to allow for the use of Boundary Drive for vehicle access with the consent of the

Responsible Authority.

- The endorsed WDP-K (Dec 05 and addendums dated Nov 07 and Feb 09) includes a series of other plans throughout the document (using the WDP-K (Dec. 05) map base) that have not been varied. Compared with the WDP-K (Dec. 05) map, these plans are considered to be more illustrative rather than informative. On this basis, the addendum does not include amendments to all plans. The varied WDP-K map supersedes these plans in the endorsed WDP-K (Dec 05 and addendums dated Nov 07 and Feb 09).



- |   |  |   |   |
|---|--|---|---|
|  | <b>CONVENTIONAL DENSITY RESIDENTIAL DEVELOPMENT</b><br>MAY ALSO INCLUDE ANY RESIDENTIAL USE PERMISSIBLE UNDER SECTION 1 OR 2 OF THE RESIDENTIAL 1 ZONE, INCLUDING APARTMENTS AND DISPLAY HOMES |  | <b>PROPOSED ROAD</b><br>SUBJECT TO 'FINE TUNING' WITH MORE DETAILED DESIGN                |
|  | <b>APARTMENTS</b><br>CONVENTIONAL DENSITY RESIDENTIAL DEVELOPMENT AND FUTURE DISPLAY HOMES ALSO POSSIBLE   |  | <b>RECREATION CENTRE</b>  |
|  | <b>HERITAGE BUILDINGS</b><br>RESIDENTIAL, COMMUNITY OR COMMERCIAL USE (INCLUDING VEHICLE ACCESS FROM LOCAL STREET)   |  | <b>TEMPORARY SALES AND INFORMATION CENTRE</b><br>APPROXIMATE POSITIONS OF POTENTIAL SITES |
|  | <b>PUBLIC OPEN SPACE</b><br>AREAS AND BOUNDARIES SUBJECT TO 'FINE TUNING' WITH MORE DETAILED DESIGN BUT NOT LESS THAN A TOTAL OF 30 PER CENT OF THE SUBJECT LAND                               |  | <b>HERITAGE WALK LINKS</b>  |



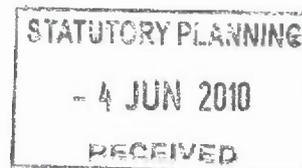


## Department of Planning and Community Development

i Spring Street  
Melbourne, Victoria 3000  
GPO Box 2392  
Melbourne, Victoria 3001  
Australia  
Telephone (03) 9208 3333  
Facsimile (03) 9208 3680

File: PL-HE/03/0291 [1- 9]  
Refs: VHR2073,

30 June 2008



Brađ Evan -- Principal Planner -- Approvals  
Walker Corporation  
670 Flinders Street  
The Goods Shed No 2  
Docklands  
Melbourne Vic 3008

Dear Mr Evans

**Re: Continued use of Main Drive for vehicular traffic, Kew Cottages site**

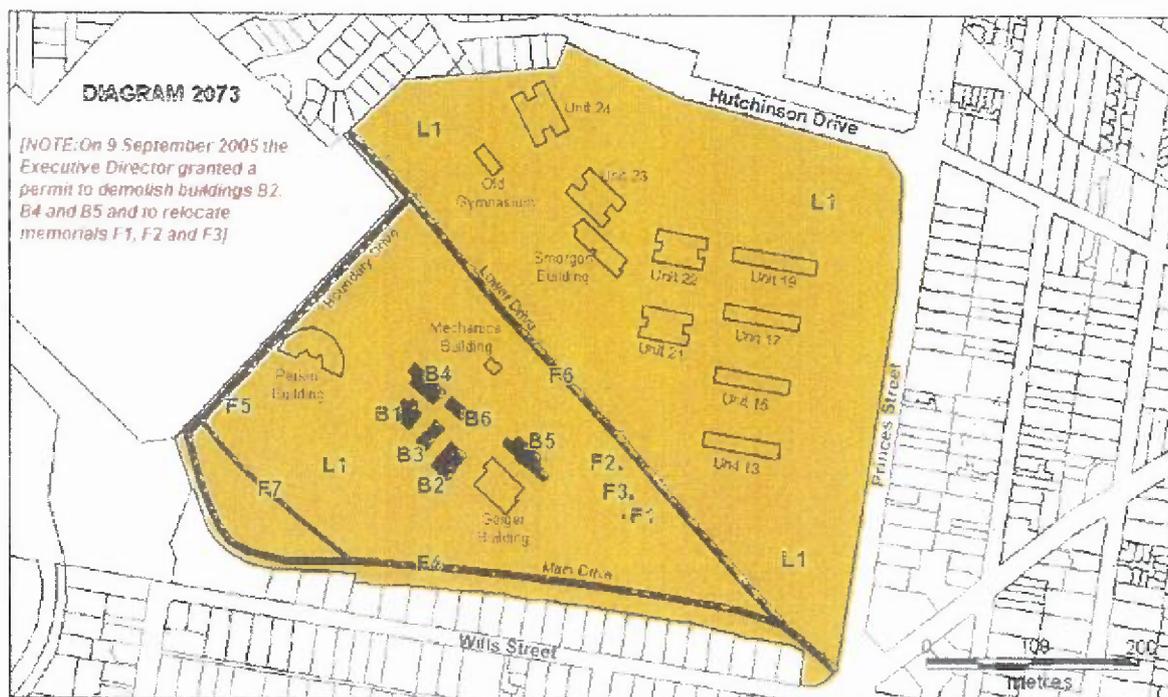
I refer to the recent discussions, and your email dated 30 June 2008 in relation to the above matter.

You will note from the entry on the Victorian Heritage Register that Main Drive [ F4] is an important part of the historic infrastructure of the site, as the following extracts demonstrate.

*The Kew Lunatic Asylum (Willsmere) had been constructed between 1868 and 1872. The principal access to the complex was from a drive from Princess Street culminating in an elliptical carriageway in front of the main building.*

*The Main Drive comprises an unusual double avenue of trees, the outer rows are planted with Algerian Oaks, and the inner avenue with English Elms. Towards the western end the avenue changes to alternating Elms and Moreton Bay Figs.*

*The Main Drive is of historical significance for its association with the Kew Lunatic Asylum (Willsmere), the largest nineteenth century mental institution in Victoria and later its use by the Kew Cottages complex*



Accordingly, from a heritage perspective the full retention and use of Main Drive as a vehicular access for the site would be welcomed, and encouraged.

If you wish to discuss this matter, do not hesitate to contact Ray Osborne, Director, Operations on 9637 9495 or [ray.osborne@dpcd.vic.gov.au](mailto:ray.osborne@dpcd.vic.gov.au)

Yours sincerely

**RAY TONKIN  
EXECUTIVE DIRECTOR  
HERIATGE VICTORIA**

Contact: Dominic Scally  
Direct Line: 9691 0219  
Direct Email: dscally@besthooper.com.au  
Partner: Dominic Scally  
Our Ref: DS:LP:0820.0897  
Your Ref:

8 July 2008

Mr Brad Evans  
Principal Planner - Approvals  
Walker Group Holdings Pty Ltd  
The Goods Shed  
670 Flinders Street  
DOCKLANDS VIC 3008

Dear Sir

**re: 115 Princess Street, Kew - Development Plan Overlay Advice**

---

We refer to the writer's meeting in conference with you at our office on 2 July and confirm our advice to you as follows.

You have sought our opinion as to whether the retention of the existing Boundary Road in the area of the "Heritage Walk Links" shown on the approved Development Plan, would be generally in accordance with the Development Plan. No road is shown on the alignment of the heritage walk link on the approved Development Plan.

In summary, in our opinion, the retention of the road is generally in accordance with the plan.

We are fortified in this opinion because if the road is retained, it will not be retained conditional upon the loss of the heritage walk link. Relevantly the letter of Ray Tonkin, Executive Director of Heritage Victoria of 30 June 2008 confirms Heritage Victoria's support for the retention of the road. Suffice to say, the existing main road is, in itself, of historical significance for its association with the Kew Lunatic Asylum and its retention would be "*welcomed and encouraged*" by Heritage Victoria.

In considering what is or is not generally in accordance with the plan may require consideration of the configuration of the proposed road network. A traffic report prepared by Ratio Consultants forms part of the approved Development Plan. The report does not specify that the proposed road

network on the approved plans must remain in this configuration. Indeed, the approved plan, in the case of the proposed roads is to be "*subject to fine tuning with more detailed design*".

In our opinion, the critical aspect of the road network identified in the traffic report which should be maintained are the entry and egress points to Princess Street and Hutchinson Drive. This is not affected by the proposed change.

Relevant legal principles.

Clause 43.04-1 of the Planning Scheme requires a permit to use or subdivide land, construct a building or construct or carry out works to be "*generally in accordance with the Development Plan*" and "*include any conditions or requirements specified in the schedule to this overlay*". Schedule 3 relates to "*Kew Residential Services (KRS)*". IN our opinion there is nothing in the DPO3 and KRS that affects this proposed change such that the changed plans will not generally accord with the DP.

A leading decision on the phrase "*generally in accordance with*" is *City of South Melbourne v. Raftopoulos* (unreported) Application for Review No. 1999/34936 dated 7 February 1989 by Senior Member Byard in which the Tribunal stated:-

*"General accordance with plans allows much greater variation from them than would accord with the same plans.*

*I understand Mr Molesworth to suggest that these two expressions amount to the same thing, and that the inclusion of "generally" is merely to allow for more and insignificant variations that must inevitably occur with the actual constructing of a building.*

*If he is saying that I do not I agree with him. Carpenters, bricklayers and such tradesman (sic) do not construct buildings with the precision of a watchmaker. That would be impossible. A building is still built in accordance with plans and specifications, although there may be minor and significant variations. The responsible authority would not have sought an enforcement order because of a dimension being out by a millimetre in 30 metres. If it did its application would fail on the basis that the law takes no account of trifles. (Apart from that, the Tribunal has a discretion in granting and (sic) enforcement order and would not create one in such circumstances). Tiny immaterial variations do not mean that a structure does not accord with the plans.*

*General accordance allows much greater latitude. Whether there is general accordance with the plans in a particular case is a question [of] fact that must be judged in accordance with the facts and circumstances of that case. Some cases may be clear whilst others are doubtful. The line between general accordance and with*

*non-general accordance may be hazy in some circumstances, and reasonable people may differ as to the correct classification in some instances (see in support Connors v Yarra City Council and Patterson 1998/49223 (unreported); Lowther Hall Anglican Grammar School v Moonee Valley City Council, (31 August 200) unreported; Canet v Brimbank CC [2003] VCAT 13)."*

Accordingly, the following principles apply:-

- a) "Generally in accordance" is a question of fact to be judged on the facts and circumstances of each case; and
- b) The less detail and precision there is in the primary document of documents, the more flexibility is given by the phrase "*generally in accordance with*".

### **Relevant Planning Permissions**

You have also sought our opinion as to whether if one complies with the Development Plan Overlay, one is exempt from complying with the Residential 1 zone.

In our opinion you are "not"; no such exemption applies.

The DPO3 is a built form control. Whereas, the Residential 1 zone sets out the primary planning permission required to be granted. It relates to use and development and can require use conditions upon development and includes particular provisions relating to subdivision and "relevantly" sets out no exceptions to the requirement to comply with its provisions if in the event a DPO applies.

Yours faithfully  
**BEST HOOPER**

**Dominic Scally**  
Partner