

## PERMIT

### HERITAGE ACT 1995

PERMIT NO: P13278

OWNER/S: State of Victoria  
ADDRESS: Major Projects Victoria  
Level 8, 121 Exhibition Street  
Melbourne VIC 3000



HERITAGE REGISTER NO: H2073 FILE NO: HER/2001/001389  
REGISTRATION CATEGORY: Heritage Place  
NAME OF PLACE : FORMER KEW COTTAGES (KEW RESIDENTIAL SERVICES)  
LOCATION: PRINCESS STREET KEW

Pursuant to Section 74 of the Heritage Act (1995) and in respect to the above-mentioned place / object, the Executive Director, Heritage Victoria hereby grants a PERMIT, subject to conditions as prescribed hereunder to carry out the following:

***Subdivision and removal of six (6) heritage registered trees as set out on submitted drawings 04-6099-010-sk008 1/7/2008, 04-6099-00102-1000 T1 9/10/2007 and untitled plan showing proposed lots and reserves submitted with the application and drawings Kew Stage 2\_Drawing MGA DATUM 24/06/08 and Plan of Subdivision Plan Number PS 603974 U, Sheets 1 to 5 version 4***

#### CONDITIONS:

1. This permit shall expire if the permitted works have not commenced within one (1) year of the date of issue of this permit, or are not completed within three (3) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
2. The removal of the English Oak reference number 292 is **not approved**.  
**Reason:** *The English Oak is not dead or dangerous, and is part of the oak Avenue along Lower Drive*
3. The proposed building envelope to lot 83 shall be redesigned to reduce its impact on heritage registered tree 68, with details of the redesign submitted to the Executive Director for approval in writing.  
**Reason:** *The current building envelope is too close to tree 68 and construction within this zone has the potential to adversely impact on this tree.*

#### Further details

4. Unless otherwise agreed in writing with the Executive Director, works, [other than the demolition of the non-heritage registered buildings and B5], shall not take place until the following additional drawings and details have been submitted and approved in writing.
  - i. Full engineering drawings for all excavation and/or filling across the site, showing existing and proposed final contours and retaining wall(s).
  - ii. Full construction details for the new roads, including the junction of the new road off Main Drive
  - iii. Full design/layout details for the buildings on lots 76, 77, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 96, 96, 106 to 113 inclusive, including any vehicular and or pedestrian access points.

**Reason:** *To enable a more detailed assessment of the potential impacts of any proposed engineering and/or construction within the vicinity of the heritage registered trees.*

## Tree Protection

5. Unless otherwise agreed in writing by the Executive Director, prior to the commencement of any works within Stage 2, including the demolition of the non-heritage registered buildings and building B5, a **Tree Protection Plan** at a scale of 1:500 or less, showing tree protection zones for all trees included in the Victorian Heritage Register, and the proposed protection fencing, shall be submitted and approved in writing by the Executive Director. The location of the protection fencing on the plan shall be fully dimensioned either in relation to the back edge of the kerb to Main Drive for the trees in the proposed reserves 1 and 3 north of the Drive, and/or from the trunk of the tree/s themselves. Unless otherwise agreed in writing with the Executive Director, the tree fencing shall be located outside the canopies all trees, and appropriately signed. The endorsed **Tree Protection Plan** shall form part of this permit.

**Reason:** *To provide for the accurate installation and monitoring of the tree protection fencing prior to and during the process of the demolition of the buildings on the site, the re-engineering of the site, construction of the new roads, buildings and services, to ensure maximum protection for the trees.*

## Arboricultural Management Plan

6. Unless otherwise agreed in writing by the Executive Director, prior to the commencement of any works within Stage 2, an **Arboricultural Management Plan** prepared by an arborist is to be submitted for approval in writing by the Executive Director. The plan must include:
- a full management plan for the dealing with *Phytophthora cinnamomi*
  - the steps necessary to protect trees during the construction of the development including the procedures to be adopted for working within any root protection zones
  - Tree Management Plan for all heritage registered trees documenting works to be undertaken during and 2 years post construction; including dead wooding, mulching, watering, disease and pest control, and weed control
  - Full details on the protection and management of Heritage Trees No 330 (*Cupressus macrocarpa*) and No 68 (*Pinus radiata*) 301, 302 (*Quercus robur*), and 53, 61 (*Quercus canariensis*)

An endorsed copy of the **Arboricultural Management Plan** shall form part of this permit.

**Reason:** *To ensure retained heritage registered trees, trees subject to a Vegetation Protection Order, and other retained trees are protected during the construction phase of the development.*

## Landscape Plan

7. A Landscape Management Plan document for Stages 2, incorporating
- all the significant trees on the site and all other retained trees,
  - details of the propose demarcation of the boundaries between reserves 1 and 3 and the adjacent residential properties,
  - full details of the proposed landscape treatment of the Main Drive and Lower Drive including proposals for re-instatement plantings along Main Drive and Lower Drive,
  - full landscape details of the intersection of Lower Drive and Main Drive,
  - the planting of a replacement Bishops Pine tree
  - any proposed fencing treatment

is to be prepared and submitted for the approval of the Executive Director **before** the new development on the site commences. It should include clear recommendations for future management and maintenance of the significant trees within the Public Reserve, Highway Verges and Private Gardens (Tree Management Program). An endorsed copy of the **Landscape Management Plan** shall form part of this permit.

**Reason:** *To ensure and that the proposed landscape treatment of the public open space, re-instatement of trees, and fencing is appropriate and sympathetic to the existing landscape, and to ensure the existing trees and proposed landscaping for the site is maintained into the future.*



File Nos. HER/2001/001389  
Permit Nos. P13278

19 September 2008

**RE: FORMER KEW COTTAGES (KEW RESIDENTIAL SERVICES), PRINCESS STREET  
KEW, VICTORIAN HERITAGE REGISTER NUMBER H2073, PERMIT P13278**

Attached is a permit for the above place. Please read the conditions imposed on this permit carefully.

The removal of Oak Tree 292 is not approved. As discussed on site, this matter should be dealt with in the context of the required Landscape Plan for Main Drive and Lower Avenue, which addresses the issue of reinstatement and re-enforcement of the avenue plantings.

In relation to condition 3, Elm Trees reference numbers 67 and 72 may be removed as these do not form part of the formal planted avenue on the north side of Main Drive and are not heritage registered trees. Their removal will enable the redesign of the proposed building envelope for Lot 83 to avoid impacting on tree 68. You may need to check with the City of Boroondara if there is any requirement under a VPO in relation to these trees.

In relation to condition 8, it is considered the existing s.173 agreement in relation to the properties abutting to the south of Main Drive, [a copy of which was attached to your letter of 22 August 2008], could serve as a model for the required section 173 Agreement.

An appeal to the Heritage Council against any of the conditions must be lodged within 60 days of this permit. Appeal Forms can be obtained from the offices of Heritage Victoria (Level 7, 8 Nicholson Street East Melbourne 3002) or by phoning (03) 9637 9475.

Notice of appeal should be addressed to the Chairperson, Heritage Council, Level 7, 8 Nicholson Street East Melbourne 3002. If you have any queries about lodging an appeal please contact Renae Jarman, Hearings Officer, on 9637 9285.

Please contact Janet Sullivan Permits Co-ordinator Heritage Victoria on (03) 9637 9474 or write to Level 7, 8 Nicholson Street East Melbourne 3002 about any other queries.

Yours sincerely

**Ray Tonkin**  
**EXECUTIVE DIRECTOR**  
**HERITAGE VICTORIA**

Cc Statutory Planner, City of Boroondara and, DPCD

**HERITAGE ACT 1995**

**REPORT AND RECOMMENDATION  
TO EXECUTIVE DIRECTOR ON  
APPLICATION FOR A PERMIT**

**FEE RECEIVED:** Yes for previous heritage permit which was withdrawn

**AMOUNT:**

**REFUND REQUIRED:** No

**SENT:** N/A

**OWNER/S:** State of Victoria

**ADDRESS:** Major Projects Victoria  
Level 8, 121 Exhibition Street  
Melbourne Vic 3000

**APPLICANT/S:**

Kew Development Corporation Pty Ltd

**ADDRESS:**

**HERITAGE REGISTER NO:** H2073

**FILE NO:** HER/2001/001389

**NAME OF PLACE/OBJECT:** FORMER KEW COTTAGES (KEW RESIDENTIAL SERVICES)

**ADDRESS / LOCATION:** PRINCESS STREET KEW

**APPLICATION RECEIVED:** 9 July 2008      **60 DAYS EXPIRES:** 3 September 2008

**CLOCK STOPPED:** Advertising 14/7      **RESTART:** 21/7      **EXPIRES:** 10 Sept 08

**CLOCK STOPPED:** 11/8/08 Additional Info.      **RESTART:** 22/9/08      **EXPIRES:** 25 Sept 08

**ADVERTISING REQUIRED:** Yes

**WHERE ADVERTISED:** *The Age*, and two signs on site. Electronic copy of application was also placed on the Heritage Victoria Website for the duration of the public notice period including the additional 14 days [see below]. Also received media coverage in local paper.

**ADVERT PERIOD ENDS:** The original period for public notice was given on 16 July 2008. The site notices, however, were not dated and so a further 14 days was allowed for written submissions from the dating of the notices. This expired on 13 August 2008

**OFFICER REPORTING:** Ray Osborne

**DESCRIPTION OF APPLICATION:** Subdivision and removal of six (6) trees, as set out on submitted drawings 04-6099-010-sk008 1/7/2008, 04-6099-00102-1000 T1 9/10/2007 and untitled plan showing proposed lots and reserves submitted with the application and drawings Kew Stage 2\_Drawing MGA DATUM 24/06/08 and Plan of Subdivision Plan Number PS 603974 U, Sheets 1 to 5 version 4 submitted in response to the request for further information.

**SITE INSPECTION:** Yes on a number of occasions, most recently on 25 August 2008 in relation to the current proposal and request made for additional information

**DISCUSSION WITH APPLICANT:** Yes on a number of occasions most recently on site on 25 August 2008

**RECORD OF CURRENT CONDITIONS:**  
Slides/photographs in Heritage Victoria collection

**HOW CULTURAL HERITAGE SIGNIFICANCE OF REGISTERED PLACE OR OBJECT IS AFFECTED BY PROPOSAL:** The proposal will have some limited physical impacts due to the proposed removal of six (6) trees included in the Heritage Register, and the creation of a new road off Main Drive. The demolition of building B5, and the relocation of a number of memorials was the subject of a prior heritage approval [P9639] and are being dealt with under the terms of this approval. The proposal will also have some visual impacts as new housing will replace the existing buildings on the site, and thus intensify the level of development and change the current landscape aspects of the site. The majority of the heritage registered trees along the north side of Main Drive are proposed to be included in a public reserve, which will be managed in due course by the City of Boroondara.

**EXTENT TO WHICH THE PROPOSAL WOULD AFFECT THE CULTURAL HERITAGE SIGNIFICANCE OF ANY ADJACENT OR NEIGHBOURING PROPERTY THAT IS SUBJECT TO A HERITAGE CONTROL OR INCLUDED IN THE VICTORIAN HERITAGE REGISTER** The proposal will have a minimal direct impact on the adjacent former Wilsmere Lunatic Asylum site.

**EFFECT REFUSAL WOULD HAVE ON REASONABLE OR ECONOMIC USE OF THE PLACE OR OBJECT:** No case put in the application. A refusal would delay the implementation of the heritage permit issued under P9639.

**EXTENT OF UNDUE FINANCIAL HARDSHIP ON THE OWNER IF THE APPLICATION IS REFUSED:** No case put in the application. A refusal is not likely to result in undue financial hardship to the State of Victoria.

**IF THE APPLICANT IS A PUBLIC AUTHORITY, THE EXTENT TO WHICH THEIR ABILITY TO CARRY OUT A STATUTORY DUTY WOULD BE AFFECTED BY REFUSAL OF THE APPLICATION:** The applicant is not a statutory authority

**ANY REPRESENTATIONS MADE FOLLOWING ADVERTISEMENT OF AN APPLICATION:** One written submission received from the Kew Cottages Coalition making extensive comments. A copy is included at Appendix A.

The submission raises a number of procedural issues, including the lack of adequate information to enable the Executive Director to determine the application, and the public notice process. It also raises issues concerning the inter-relationship with and inconsistencies between the planning permit for Stage 2 and the previous and current heritage permit applications. It makes a range of points over the past management of tree issues in Stage 1, and the lack of compliance with conditions on the previous heritage permits, and ability of the applicant to comply. It recommends refusal of the current proposal for the following reason:

The refusal will minimise the likelihood of the State being caused financial hardship in relation to the registered place, and increase the potential for the State to provide improved heritage outcomes and a more inclusive community service for the disabled.

Or if it is wrong in terms of its submission, seek additional information in order to assist in the orderly and logical determination of the application. In summary, these details include:

- Licensed Surveyor Plans for State 2
- Plans showing contours, roads footpaths, building envelopes, and trees

- 3D modelling and computer generated modelling to show impacts
- An independent assessment of s.73(1)(b) –economic impacts
- Information about a Supreme Court case in relation to the Kew site
- Heritage Covenant for lots 76, 83-91 inclusive
- Evidence current permit conditions have been complied with

It also argues for the re-establishment of the original gates from Wilsmere, removed many years ago, to the front of Main Drive, and raises a number of ecological issues.

**Comments** – A number of the issues raised are not directly relevant to matters the Executive Director must take into account, and its arguments in relation to s.73(1)(b) and issues in relation to a Supreme Court action appear to stem from a misunderstanding of these provisions. Accordingly, the justification for the request to refuse the application is not well based.

The procedural issues are considered to be overstated, and it is difficult to conclude that any party has been to any degree materially disadvantaged by the placement of the signs on site, particularly given the public notices in newspapers and ongoing media coverage for this development.

It is acknowledged there is an inconsistency between the planning permit and the current heritage permit application, and that the previous heritage permit [P12879] which was withdrawn and the current planning permit did not/do not have adequate regard to the original Heritage Permit [P9639] in relation to the treatment of the Main Drive trees. The comments and commentary made in the written submission about this issue are not material to the Executive Directors considerations. For the development to proceed in Stage 2 the Planning Permit and Heritage Permit will have to align in due course.

The written submission does, however, raise a range of valid issues in relation to the protection and management of trees, and many of these points have been taken up in correspondence and discussions with the applicants, and can legitimately be dealt with by conditions. Additional information has been submitted in relation to the subdivision plans and the proposed reserve, and details of the requirement for a covenant provided.

Compliance with previous conditions is also acknowledged as an active issue. Part of the difficulty is that some of the conditions on the original Heritage Permit P9639 will be for the life of the development of the whole site, and will thus inevitably be complied with in stages. Furthermore, it is perhaps inevitable that the development of the site will evolve, and new and/or revised conditions will need to be considered Stage by Stage.

**ADDENDUM** – KCC submitted an additional submission on 18/9/2008 [attached at Appendix B] drawing attention a Report from the Select Committee on Public Land, and comments made in relation to Kew. KCC requested that the applicant/owner be requested to provide additional information to the Executive Director by responding to a number of the recommendations and findings in the report. KCC also request that the applicants respond to the *Victorian Governments Cultural Heritage Asset Management Principles* endorsed by the Heritage Council in September 2007. Essentially KCC are seeking the retention and adaptive re-use of the existing buildings on site for continued disability facilities.

It should be noted that the demolition of B5 and the relocation of the memorials was approved in September 2005 under the original heritage permit, and is not the subject of the Stage 2 heritage permit application. Furthermore, the HC is entering the site on the VHR exempted all the other buildings from a permit to demolish, subject to recording. It is therefore considered irrelevant to seek the applicants to respond to the matters raised by KCC in relation to the Select Committee Report, or the *Victorian Governments Cultural Heritage Asset Management Principles*.

The policy issues raised by the Select Committee are clearly relevant for the Whole of Government to consider, but not directly relevant to the Stage 2 permit for subdivision and removal of six trees.

**ANY COMMENTS FROM THE RESPONSIBLE AUTHORITY:** No objections to the proposal. During the discussions and correspondence in relation to the previous heritage permit for Stage 2, the City of Boroondara indicated strong support for the creation of a public reserve on the north side of Main Drive and agreed to its long term management. Copy of letter 18 July 2008 attached.

**ANY RELEVANT MATTERS RELATING TO PRESERVATION OR CONSERVATION OF THE PLACE OR OBJECT:** A Draft CMP has been prepared for the remaining three buildings and the three memorials. This provides detailed advice on the three buildings, including recommendations for conservation works and a maintenance schedule.

**AS A RESULT OF THE WORKS TO BE APPROVED UNDER THIS PERMIT, IS IT CONSIDERED THAT NEW PERMIT EXEMPTIONS ARE APPROPRIATE:** Not at this stage but in due course it is considered a range of standard permit exemptions will be granted under s.66(3) to remove the need for the new houses to seek heritage approvals for works. Once the development is completed, the entire registration will be revisited.

#### **COMMENTS FROM REPORTING OFFICER:**

The development of the former Kew Cottages site has a complex history. In brief, the original Heritage Permit P9639, granted approval for the overall development of the site, and also for the detailed development of what was then termed Stages I & II. This permit included a raft of permit conditions, some of which run for the period of the permit, in that it covers later stages of the development. Other conditions related to Stages I & II only.

Subsequently, Stage I & II were combined to just Stage 1, and due to a range of amendments, a new Heritage Permit was issued for Stage 1 P10367. This included a number of the conditions from P9639 and some additional conditions, particularly in relation to addressing the issue of *Pc*.

There have been a number of compliance issues in relation to the development of Stage 1, which in the case of Red Gum Park, resulted in a prosecution for unauthorised works within the vicinity of 5 heritage registered trees. Out of this, a regular tree monitoring process arose with weekly meetings on site, and regular reports submitted on all agreed works on and/or in the vicinity of VHR trees, either in Stage I or across the whole site.

In March a heritage permit application P12879 was submitted for Stage 2. It included seeking approval for a whole range of works which were actually covered under permit conditions on the originating heritage permit P9639, and did not need a further heritage permit. More importantly, however, it failed to take into account the reserve shown along Main Drive on the original approved drawings for the development of the overall site. While this plan was diagrammatic, it clearly showed the residential lots fronting Main Drive set back, and not including the avenue of trees which are included in the VHR. This application was given public notice and a submission was received from Kew Cottage Coalition, one from concerned residents about the lack of a public reserve to protect the trees and need for a covenant, and one from the National Trust objecting to the demolition of the building B5.

Following correspondence and discussions with the applicant this heritage permit application was withdrawn and the current stripped back application submitted. This clearly shows the creation of a public reserve. The other issues, such as the demolition of B5 and relocation of memorials are being dealt with under P9639.

The current heritage permit application has also been the subject of correspondence and discussions in relation to the best information and/or mechanisms to protect the trees on the site. Stage 2 has more



trees and lessons clearly have to be learnt from the development of Stage 1. Accordingly, it has been signalled and discussed that a higher level of information will be required to ensure the maximum protection possible for the trees on the site. This is reflected in the conditions above.

The issue of the removal of the six trees was discussed in some detail. Options to relocate and replant a number of the trees was explored with the applicants. The arborist at the City of Boroondara did not support the proposals from a practical and cost perspective. Accordingly, following a review of these comments and a site visit it was agreed that all but one of the trees could be removed. The exception is Oak Tree 292 on Lower Drive. While it is acknowledged that its condition is poor, it is part of the original avenue, and it is considered its potential removal should be assessed in the context of a fully developed Tree Planting Plan for Lower Drive and Main Drive, which will include proposals for reinstating missing element from the avenue.

The creation of the public reserve along the north side of Main Drive will ensure all the VHR trees will eventually be retained in public ownership and management possibly by 2010. The reserve, however, does not include the canopies of the trees along the northern edge, only the trunks and a small distance beyond. Accordingly, to ensure long term protection and management by adjacent private lot owners, a covenant will be included on all the relevant titles.

A s.173 agreement already exists for the trees on the southern side of Main Drive which overhang the gardens of houses in Wills Street, and a copy of this has been provided to the applicants as a potential model. It is not considered that a covenant under the Heritage Act 1995 is an appropriate mechanism in this case. Notwithstanding a covenant, however, any major works to the VHR trees will require a heritage permit.

**Summary** – It is inevitable that as the former Kew Cottages site continues to develop its existing character will change, as the density of the building increases. The concerns of the KCC in relation to the trees and Main Drive are acknowledged, and a number of valid points and observations are included, but many of the issues raised in its submission are tangential to the relevant issues to be addressed under s.73 and go to broader issues outside the scope of the Heritage Act.

The lessons learnt in Stage 1, together with the proposed conditions, and continuation of regular monitoring, which commence in early 2007, should ensure a higher level of protection for the trees.

#### **RECOMMENDATIONS:**

That a permit be issued with the conditions set out above.

**OFFICER:** \_\_\_\_\_

R J Osborne

**DATED:** \_\_\_\_\_

19 September 2008

**PERMIT:** P13278

#### **APPENDIX A**

Copy of submission from KCC in response to public notice.  
Copy of letter from City of Boroondara  
Copy of submission from KCC 18/09/2008

Amended to remove personal names 23 Dec 2008