

Kew Cottages Coalition Objection to Heritage Permit Application P26760



One of Von Mueller's Moreton Bay Figs 1890. (See p.9)

Main Drive entrance to the Gardens of the Kew Asylum 1890



Walker's Proposed Apartments 2017

"No" Means No!
A SUBMISSION TO HERITAGE VICTORIA
July 2017

1. Introduction.

This objection to Walker's second application to construct apartments on the land bounded by Main Drive (F4) and Oak Walk (F7) is made by the Kew Cottages Coalition - one of the nominators of the Kew Cottages site to the Victorian Heritage Register in 2004.

Following the addition of Kew Cottages to the Heritage Register (H2073) we recommended that the cultural significance and integrity of both Kew Cottages and Willsmere would be improved by:

1. Restoring the 19th century Gateway to the Princess Street entrance of the Asylum Reserve at the east end of Main Drive; and
2. Restoring the 19th century main approach to the Willsmere by extending the west end of Main Drive back to Willsmere and Boundary Drive.

It was pleasing, therefore, to note that in June 2010 Walker Corporation successfully requested an amendment to both the Kew Cottages Development Plan and the approved Heritage Master Plan in order to extend Main Drive back to Boundary Drive, in the manner that we had previously recommended ie by restoring Main Drive's historical alignment through Yarra Bend Grove.

Walker emphasized that their 2010 proposal had merit from a heritage perspective because:

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.

Walker Corporation to DPCD, 3 June 2010

It was disappointing, therefore, to learn that by 2014 Kew Cottages heritage was once again in danger because Walker Corporation appeared to have totally forgotten their previously stated objectives of "extending the grandeur of Main Drive" and "minimal change to the landscape."

Instead, Walker's 2014 Stage 8 Application for heritage approval to build private apartments in Yarra Bend Grove proposed substantial change to *the landscape*, to *the grandeur of Main Drive*, and thereby presented a significant risk to the cultural heritage significance of both Kew Cottages

and Willsmere.

It was particularly disappointing that Walker's Heritage Impact Statement provided in support of their 2014 apartment building application somewhat strangely appeared to avoid seeing "*any adverse heritage impact*" and bravely claimed that:

6.0 Conclusion

The proposed construction of a five level apartment building within the Stage 8 development area will not result in any adverse heritage impact to the former Kew Cottages site and its landscaped setting, or the adjacent former Willsmere Hospital buildings. The height and scale of the proposed building is largely consistent with that contemplated by the original permit for the layout of the Kew cottages site, and the currently proposed location of the apartment building is further south than those originally proposed. This provides greater separation between the new building, the remaining heritage buildings associated with Kew Cottages, and the former Willsmere Hospital. The new building will have limited visual impact on the Kew Cottages heritage buildings, and will have little impact on the prominence of the former Willsmere Hospital buildings.

Walker's 2014 application was strongly opposed by Boroondara Council, the Kew Cottages Coalition, and many community groups and individuals.

The Executive Director's refusal to accept Walker's permit application was warmly welcomed by the wider community, and Walker's subsequent appeal to the Heritage Council was once more strongly opposed.

During Walker's appeal additional evidence was presented regarding the cultural significance of Yarra Bend Grove - the land bounded by Main Drive and Oak Walk including details of:

1. How Yarra Bend Grove was created in the 19th century as an integral part of the development of Main Drive, and the highly regarded Public Gardens of the Kew Asylum;
2. The high degree of technical achievement that is still evident in the landscape today due to the work of Baron Ferdinand von Mueller, Abraham Morrison, and Hugh Linaker;
3. How the public interest is best served when heritage values and landscape values coincide in an area used by the general public.

We refer here, therefore to that evidence, and to the Conservation Analysis of the Willsmere Mental Hospital, a Project completed for the Major Projects Unit of the Victorian Government by Best Overend and Partners Architects and Dr. Miles Lewis (1988).

2. Relevant Matters (Section 73)

We submit that the Executive Director in determining Application P26760 shall consider the following matters relevant to the protection and conservation of both Kew Cottages (H2073) and Willsmere (H0861):

1. The primary reason for the Executive Director's 2015 refusal to grant a Permit for Walker's first Stage 8 Apartments application (P22396) was that:
 - ***"Any construction on the part of the registered land bounded by Main Drive and Oak Walk is considered detrimental the significant cultural heritage values of this Heritage Place and the adjacent Heritage Place - the former Willsmere Hospital (H0861);***
2. Melbourne Leader articles published in 1881 and 1885, now publicly available on Trove regarding the significant heritage values of the Willsmere Gardens, including the aesthetic, historic, scientific, and social values of the landscape bounded by Main Drive and Oak Walk.
3. The failure of the Government, as the Owner of the registered Place to comply with the Terms and Conditions of the enabling Heritage Permit 9639. To wit the Government breached Condition 9 by:
 - a. Proceeding with the re-development without ever obtaining an approved Landscape Management Plan for the site (Condition 9); and
 - b. Failed to stop the re-development works when Permit 9639 expired in 2012

Permit 9639 Condition 9 Landscaping

Landscaping

9. A comprehensive Landscape Management Plan shall be prepared for the site, [Excluding Stages I & II] incorporating,
- all the significant trees on the site.
 - the hard landscape elements of F4 Main Drive, F5 Boundary Drive, F6 Lower Drive and F7 Oak Walk, including the gutters and the lamp posts.
 - all other retained trees
 - proposals for re-instatement plantings along proposed F4 Main Drive, F5 Boundary Drive, F Lower Drive, and F7 Oak Walk
 - any fencing treatments fronting F4 Main Drive, F5 Boundary Drive, F Lower Drive, and F7 Oak Walk and the Public Open Space areas
 - full details of the proposed landscape treatment of the public open spaces, including the landscape treatment of the heritage core area., and any proposed play equipment, furniture, lighting

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

4. The Heritage Council's acceptance of the Executive Director's 2010 submission that it is not required by the Heritage Act to consider decisions to grant a Planning Permit under the P&E Act. (Hotel Windsor Appeal P15781, 2010. Para 211.)
5. The nature of Walker's 2015 appeal to the Heritage Council, including Walker's highly unusual application for the Heritage Council to be reconstituted (P22396);
6. Walker's official withdrawal of their permit appeal in April 2016 prior to a determination by the Heritage Council;
7. Walker's withdrawal and re-submission of their Stage 2 Permit Application because they had failed to provide for the creation of a public reserve on Main Drive. (P13278, 19 Sep 2008)

Why are these matters relevant to the current Application?

The current Permit Application is the third attempt by the Applicant to progressively obtain heritage approval to privatize sections of the Main Drive public parkland. The precedents set by the Executive Director of Heritage Victoria in consistently refusing to approve the first two attempts, and to insist that public reserves be created instead is therefore very relevant.

Similarly, the Owner and the Applicant appears to have made several attempts in the past to obtain heritage approvals on the grounds that they have already received planning approvals for a particular development proposal. That being the case for example in the Applicant's 2015 appeal to the Heritage Council regarding Walker's first application to build private apartments in Stage 8. This matter, therefore, is also highly relevant to Walker's current application.

At face value the history of the Applicant's appeals, withdrawals, and non-compliance with permit conditions appears to suggest a lack of candour by the Owner and/or their representatives in their pursuit of heritage approvals for the Kew Cottages Development. This goes to the question of the potentially high level of risk associated with trying to ensure a public reserve is created for all of Main Drive, Oak Walk, and Yarra Bend Grove, and how to best to manage that risk in assessing the current application.



3. The Place – Yarra Bend Grove

We understand that in 2016 the Kew Cottages public land owner, Major Projects Victoria, decided to privatize, subdivide and sell the heritage core public land, including their three remaining heritage listed public buildings.

As a consequence, from a heritage perspective, the site of Walker’s proposed private apartments – i.e.: Stage 8 in Yarra Bend Grove - has now become the single most important piece of publicly accessible land still remaining on the site. Despite its importance, however, a public reserve has apparently still not been created to protect it. Similarly, the current Stage 8 application makes no mention of a public reserve, nor of the Owner’s proposed sub-division of the Yarra Bend Grove public open space.

Two (F1 and F2) of the three memorials on the site are now located in Yarra Bend Grove, and three of the four listed avenues, Main Drive, Boundary Drive, and Oak Walk (F4,F5,7F7) all meet in Yarra Bend Grove.

Yarra Bend Grove is historically and aesthetically significant at a state level. As recorded in the Kew Cottages Statement of Significance the planting is dominated by towering conifers from the nineteenth century including Hoop Pines, Bunya Bunya Pines, Monterey Pines, Canary Island Pines, and Monterey Cypress.

As recorded in the Kew Cottages Conservation Management Plan, and the Conservation Analysis of the Willsmere Mental Hospital the Yarra Bend Grove landscape was established as an integral part of a new '*Main Drive*', '*Boundary Drive*', and '*Oak Walk*' tree lined avenue approach to Willsmere through the Asylum Reserve between 1881 and 1885. The tree plantings and sweeping realignment of the carriageway are the result of the critical efforts of von Mueller, Morrison, and Linaker.

Public recognition came very soon after the Asylum Gardens were established. The Gardens were highly commended in the Melbourne press¹ at a much earlier date than suggested in the Kew Cottages CMP.

According to the Melbourne Leader in 1885 the trees planted in Main Drive, Oak Walk the Grove, and throughout the Gardens were largely planted by the Asylum patients themselves, under the Morrison's direction and management. Such work was considered by the doctors at the time to be highly therapeutic for a number of the patients.

The social value of the Yarra Bend Grove parkland increased steadily after Kew Cottages was established in 1887. The Grove was at the cross roads between the Asylum, the Cottages, and the wider community of Kew. Tennis courts were built on the ridgeline overlooking Oak Walk. The trees provided shade from the summer sun, and shelter from wind and rain throughout the year.

Air-conditioning in Morrison's Melbourne was powered not by electricity, but by canopy trees, and Morrison used them to great effect. Once grown, the shade and evaporation that his oaks provided could drop the open-air temperature on a baking hot summer's day by ten degrees. Then in winter when the deciduous trees had lost their leaves the early morning sunshine would stream down Main Drive and provide all those walking west with outstanding views of Willsmere, Yarra Bend Park, and the city skyline, and all those walking east up Oak Walk, and across the Grove with the vista of Main Drive sloping gently away towards the Princess Street entrance to the reserve.

A number of trees in the Grove were removed in the 1960's . Aerial photographs of Melbourne flown in 1945 suggest six trees were removed to construct the former Nurses administration building. We recommend that these trees be replaced with mature plantings approved by Heritage Victoria when the building itself is removed (Permit P22396 allows for the building to be demolished).

¹ See Appendix 1.



Stage 8 in Yarra Bend Grove Aerial Photo Link [1945.melbourne](https://www.melbourne.gov.au/1945)

The CMP states:

"Planting may have begun on the Kew Lunatic Asylum Reserve land as early as the 1880s when the Kew Cottages complex was established on the reserve east of Willsmere near Princess Street".
(p.9)

However, as reported in the Leader (1881) we now know that Morrison actually began his planting 4 or 5 years earlier, i.e. around **1875/6**.

To subsequently achieve such extraordinary results, and at such an early date, it appears Morrison must, therefore, have benefitted from a 'critical mass' of resources and outside assistance in order to so successfully deal with challenges he faced.

We know that compared to other public gardens the Kew Asylum had the advantage not having to worry about additional labour costs, when there were patients more than ready and able to assist, and that they were encouraged to do so by the medical staff. But that does not explain Morrison's access to such a diversity of plant stock and seeds, plus the knowledge to overcome so many difficulties in planting them out, and maintaining so many trees in such challenging conditions.

According to Biosis Research Pty Ltd in their *Kew Cottages Cultural Heritage Study* in August 2001, Baron von Mueller, Director of the Botanic Gardens, is credited with supplying many of the first trees and plants used on the site.

It appears, however, that Baron Ferdinand von Mueller's involvement at Kew is likely to have been much greater than previously realised, compared to some of

the regional botanical gardens, and other government institutions including the Beechworth Asylum.

Access to von Mueller's active support and encouragement would have meant that Morrison had the benefit of one of the world's leading botanical experts to help him prepare and grow his towering specimen trees in Stage 8 (e.g. *Araucaria cunninghamii*, *Cupressus macrocarpa*, *Cedrus atlantica*, and *Pinus canariensis*), as well as the oaks, elms and Moreton Bay Figs (von Mueller's favourite Australian avenue tree), that Morrison was already planting at this end of Main Drive.



Von Mueller's *Ficus Macrophylla* in Yarra Bend Grove 2017. (See 1890 photograph of this tree on p.1)

More research is needed to help determine the full extent and nature of von Mueller's influence on the landscaping of the Stage 8 parkland, and his contribution to Morrison's 'improved approach' to the Asylum.

Von Mueller would certainly have been able to provide Morrison with details of the historical development of similar, large scale plantings of 'double avenues' of oaks and elms in England and Europe. He was well placed to suggest solutions to common problems. One well-documented and unavoidable problem, given that all trees eventually die, was the need for an effective tree replacement policy.

We understand that tree replacement on Main Drive is still a significant problem today, and that many of Walker's attempts to plant replacement elms and oaks in Main Drive have failed.

It is interesting, therefore, to note that one well documented (1861) example of the 19th century tree replacement policy adopted in England for the famous 'Long Walk' in Windsor Great Park (which originally consisted of over 1600 elm trees in two double rows) was to build small enclosures on the line of the Avenue for young plants of oak which provided the basis for a gradual substitution of oak for elm, as a means of coping better with both tree replacement and difficult soil conditions. *

Morrison's 'tree plots' in Stage 8 between Main Drive and Oak Walk were well placed to provide a similar purpose for him as he struggled with similarly difficult soil conditions in establishing and maintaining his 'improved' approach to Willsmere.

We recommend, therefore, that further research be undertaken into how Morrison used Stage 8 for tree replacement, and a conservation management plan be developed that addresses **the cultural heritage significance of the visual and spatial relationships between the existing trees and new, Stage 8 replacement trees.**

We submit that as a first step, conservation of Morrison's Reserve will require replacement plantings for the six Avenue and Specimen trees that were removed when the Stage 8 Administration building was built.

Now that the Fire Memorial Column (F1), and the Longterm Resident's Memorial (F2) have both been moved to Yarra Bend Grove it would be appropriate to name this part of the Grove 'Morrison Reserve' as a memorial to all those who all helped Morrison design and build this scientifically and socially significant link between Willsmere and Kew Cottages.

3. Prevent completion of the Main Drive Public Reserves from Princess Street to Boundary Drive;
4. Fragment the aesthetic and historical value of Main Drive, Oak Walk, and Boundary Drive
5. Degrade the social value of the Fire Memorial, and the Long Term residents Memorial now located in Yarra Bend Grove.

Therefore, in our respectful submission this second Walker application should be refused heritage approval on the same grounds as the first Stage 8 application was refused

4.2 Potential S61 breach of the Act

If the Executive Director wishes to reconsider Walker's proposal to *"modify the original concept plan and to replace the existing building on the site."* (HIS p.17), then in our submission:

The Application is out of order, and should therefore once again be refused.

The Application is out of order because the existing temporary site office building only remains standing as a consequence of the Owner's failure to adequately comply with existing heritage controls including the Terms and Conditions of Permit 9639.

The Applicant is only able to raise the question of *'modifying the original concept plan'* at this late stage because the Applicant failed to comply with the Permit Condition 9 of Permit P9639.

If the Owner had taken appropriate steps to ensure that Walker Corporation complied with the Permit Condition 9 then they would not have allowed Walker to commence the redevelopment without first obtaining the necessary approvals.

Condition 9 required Heritage approval of a comprehensive Landscape Management Plan (LMP), including details of the Stage 8 public open space, re-instatement of trees in the footprint of the temporary site office etc . We understand that approval was never given, and that Condition 9 has still not been complied with.

The Owner has thereby in our view failed to act in good faith, and failed to maintain the place in accordance with the Act.

Under section 160 of the Act we understand that the owner of a registered place must not:

- Allow the place to fall into disrepair; or
- Fail to maintain the place to the extent that its conservation is threatened

Therefore, if the Executive Director, as a consequence now believes that either of the above breaches of the Act has happened then we submit that a written notice be served on the Owner requiring them to show cause why an order should not be made obliging them to carry out specified conservation works.

4.3 Impact on Aesthetic and Historical Values

Walker's Heritage Impact Statement claims that:

The proposed building will also not interrupt key views of the site, being largely screened by the existing vegetation that will continue to surround the new building, and existing built form within the site. (HIS p.18)

In our submission that claim is simply wrong.

In its appeal to the Heritage Council regarding its first Stage 8 Apartments Application Walker provided a considerable volume of visual evidence including photomontages etc by which it sought to justify similar claims about the impact on key views.

Shortly after we challenged Walker's interpretation of their visual data with our own evidence Walker withdrew their Appeal.

We attach here therefore, for completeness our evidence as presented at the time - 'Balloon-Assisted Building Visualisation' prepared by Kristian Grayson, plus a new revised, and rescaled version that addresses Walker's current Application. (Appendix 2)

This material clearly demonstrates the proposed building will interrupt key views of the site.

Taken together with the Applicant's Proposed TPZ Encroachment – Site Plan AR 08-01.06 Rev E (Dated 20.4.17) our visualisation also suggests the revised building, though smaller in scale has a potentially higher encroachment on the TPZ of key trees because of its new location.

Similarly, there appears to be an increased potential risk of the adjacent significant trees needing be heavily pruned to accommodate the building at higher levels.

We note that the Arborist's Report claims that all pruning will be undertaken in accordance with Australian Standards. However, no evidence appears to have been provided to support that assumption, nor demonstrate that this will in fact be possible in practice.

We recommend, therefore, that the applicant be requested to provide further and better particulars to explain any proposed increases in encroachment, and to support the assumptions made regarding tree protection in the application. (For example, full details of the tree canopies needing to be protected should be provided.)

4.4 Risk Management

The actions of the Owner and the their representatives to date appear to suggest that permit conditions with enforceable time frames will be required to help manage a potentially high risk of non-compliance and/or delay in compliance.

Previous issues include damage to heritage trees in Red Gum Park due to earthworks; delay and neglect of the remaining heritage buildings, failure to replace damaged heritage trees, including Tree 295 which was removed in 2006, and has still not been replaced.

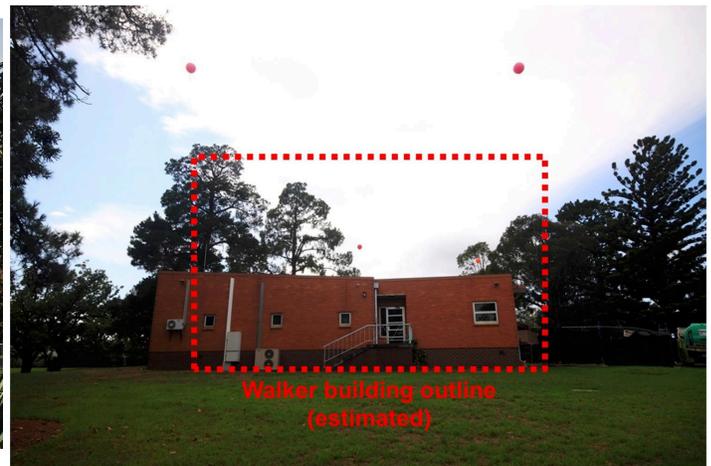


Figure 3 – Annotated view from Main Drive, camera location 1, 1.7m height, 22mm eq. lens

4.5 Other Options for Stage 8 Development - Kew Cottages Coalition's Preferred Alternative

1. Our preference is for Yarra Bend Grove, including Oak Walk and Walker's 'Stage 8', to be first reserved as public parkland to match the existing Main Drive Stage 1 and Stage 2 public reserves; and then
2. Adequately and comprehensively restored as an integral part of the main approach to Willsmere, in accordance with the objectives of its creators von Mueller, Morrison, and Linaker.



5. Recommendations

The Kew Cottages Coalition recommends that the Executive Director of Heritage Victoria:

1. Refuse Walker Corporation's Second Application (P26760) to build private apartments on the Public Open Space between Main Drive and Oak Walk (Stage 8).
2. Update and amend existing Permit P22396, or issue a new Permit with Conditions to ensure that Walker's temporary Site Office building is demolished and the public parkland restored without further delay.
3. Require by way of Permit Conditions that the site Owner shall prepare and submit for approval within 60 days the long overdue comprehensive Landscape Management Plan (LMP) for the site (See copy below – Note: This LMP was formally required pursuant to *Heritage Permit 9639, Condition 9*, but never delivered). The Landscape Management Plan shall specify inter alia :
 - a. Full details of the proposed landscape treatment of the Yarra Bend Grove (Stage 8) Public Open Space; including:
 - b. Proposals for re-instatement tree plantings in the Public Open Space footprint of Walker's demolished site office;
 - c. Replacement trees are to be super advanced plantings of species selected in accord with the objectives of the Willsmere Garden's landscape architects, Baron von Mueller, Abraham Morrison, and Hugh Linaker.
 - d. Replacement trees shall have a minimum trunk diameter of 120mm. They are to be located as close as practicable to the locations of the trees shown in the 1945 aerial photographs (copy attached) so as to ensure the integrity of the planting arrangement of Yarra Bend Grove is consistent with the contiguous landscape of Willsmere Gardens (H0861).
 - e. Replacement trees shall include a replacement for the highly significant *Pinus muricata* - Bishop's Pine Heritage Tree 295 (The Bishops Pine was removed from Brady Lane by Walker Corporation in 2006 and has still not been replaced by the developer despite a Permit Condition requiring its replacement in 2008).

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. (Permit 9639 Condition 9. 2005)*

APPENDIX 1.

Extracts from A Conservation Analysis of the Willsmere Mental Hospital.

Dr. Miles Lewis, 1988

- 1. Gardening at the Kew Asylum, The Melbourne Leader, 1881**
- 2. Gardens of the Kew Asylum, The Melbourne Leader, 1885**

APPENDIX 2

The Constant Gardner,

(Including Chronology of the Stage 8 Parkland up to and including Heritage Victoria's insistence on the creation of the Main Drive Public Reserves 1878 - 2008)

Kew Cottages Coalition

Submission to the Heritage Council, February 2016

APPENDIX 3

Balloon-Assisted Building Visualisation,

Kristian Grayson

July 2017