



**** Urgent Please** S165 Request for the Executive Director to issue a 'Stop Order' on the P32075 excavation works at Kew Cottages (H2073)**

Brian Walsh <bwa007@gmail.com>

13 February 2020 at 14:58

To: Avery Steven <steven.avery@delwp.vic.gov.au>

Cc: Phillip Storer <Phillip.Storer@boroondara.vic.gov.au>

To: Mr. Steven Avery, Executive Director , Heritage Victoria.
cc: Mr. Phillip Storer, CEO, Boroondara Council

Dear Mr. Avery,

Further to my correspondence with Ms. Jessica Hood yesterday I am writing to respectfully request that you investigate the following issue as a matter of the highest priority and, pursuant to S165 of the Heritage Act 2017, issue a Stop Order on the P32075 excavation works currently being undertaken at Kew Cottages (H2073).

In our submission there are reasonable grounds for believing that the registered place could be harmed unless a stop order is issued.

The reasonable grounds for you to believe that Heritage listed trees and plants could be harmed are as follows:

1. *Phytophthora cinnamomi*, or 'dieback' as the pathogen is more commonly known was discovered to have infected the Kew Cottages development site in 2006 soon after construction works commenced, and a number of trees died.
2. In July 2006 Ray Tonkin, Executive Director, Heritage Victoria endorsed a *Phytophthora Cinnamomi* Management Plan for the Walker Kew Cottages Development., quarantine provisions were maintained around the infested site during housing construction works at Kew Cottages, wash down facilities were installed to reduce the chance of the reintroduction of the pathogen, and warning signs were erected on the site.
3. However, Walker appear to have removed all these environmental protection measures some years ago.
4. No *Phytophthora cinnamomi* protection measures appear to have been put in place for the new Stage 8 development works that started last week (P32075) - despite a contractor being warned by Drew Wilson, Heritage Enforcement, last year for undertaking excavations on the site without a permit.
5. Indeed it appears that the unauthorised excavations last year were also undertaken without any quarantine provisions or wash down facilities, and the health of the Canary Island Pine adjacent to the Walker sales building began to deteriorate in the months soon after the unauthorised excavations.
6. The specimen tree in question, Kew Cottages Heritage Tree 191, a mature Canary Island Pine was reported to be in good health by Walker's arborist at the time of their P26760 Heritage Council Permit Review. Walkers assured the Heritage Council that Tree 191 would be irrigated and retained as part of their proposed apartment development.
7. However, I understand from Jessica Hood, that Tree 191 has now been assessed to be "in an advanced state of decline".
8. The possibility that *phytophthora cinnamomi* has contributed to the Tree 191's advanced state of decline cannot yet be ruled out, because tests for the pathogen have not yet been completed.
9. The rapid decline of Tree 191 bears a remarkable similarity to the fate of Heritage Tree 295 - the mature Bishops Pine that in a few months went from good health into an advanced state of decline in the summer of 2006. The topographic, climatic, hygiene management, and soil conditions at the time also appear similar - both trees climatically stressed, both trees located down slope of new excavation works, both trees near underground pipes which increased the risk of pooled water in their root zones, an absence of even basic hygiene management procedures - all factors reported to be conducive to the the spread of *phytophthora cinnamomi*. All factors requiring strict hygiene and quarantine arrangements to help control the spread of the pathogen.
10. As Boroondara Council's expert site inspection and report (ENSPEC 2006) stated after Tree 295 tested positive for *Phytophthora cinnamomi* on 27 February 2006:
 1. *These spores of the fungus are easily transported in storm water, drainage water, contaminated soil, on tools, footwear and vehicles. The fungus is very adaptive as it has*

the capability to produce spores that can wait for favourable conditions even if the time is not right now to proliferate. This allows Phytophthora to survive in dead plant tissue and in the soil for extended periods. (ENSPEC March 2006)

In summary, in our submission it is reasonable for you to conclude that:

1. As Canary Island Pines are known to be susceptible to *Phytophthora cinnamomi*, Tree 191 could be infected with the pathogen, and therefore should be tested without delay.
2. Pending the outcome of *Phytophthora cinnamomi* tests, the whole site should be treated as a high risk area
3. As no *Phytophthora cinnamomi* Management Plan is currently in place, further excavation works on the site could result in harm to the heritage place with the spread of *phytophthora cinnamomi* and the death of more heritage trees unless a stop order is issued.
4. A Section 165 Stop Order is, therefore, both necessary and appropriate.

Implementation.

We would respectfully suggest that to get the regulatory process, and permitted works back on track in an efficient and timely manner, then the resumption of work should be framed in accordance with Permit P26760 Condition 14 (Covenant), which states that before works begin the owner of the land must enter into a covenant with the Heritage Council of Victoria.

I understand progress is already being made in the latter regard, and that as the proposed covenant will be exhibited, then the public will have an opportunity to make further submissions to you on this matter.

This timeframe should also enable *Phytophthora cinnamomi* testing to be undertaken, and for you to obtain all of the expert advice needed to identify not only the nature and extent of the current *Phytophthora cinnamomi* contamination on the site, but also to ensure that the long term environmental risks posed by the pathogen to the heritage place have been adequately and comprehensively addressed in the Heritage Permit 26760 Tree Management Plan.

Poor communication and Transparency Issues..

I am aware that in the past Walker Corporation appeared particularly reluctant to implement some provisions of the Kew Cottages *Phytophthora cinnamomi* Management Plan. Indeed I understand your predecessor Ray Tonkin, had to write to Walkers several times over a number of months before they finally managed to install the public warning signage required by the *Phytophthora cinnamomi* Management Plan. (see copy letter attached - R. Tonkin to L.McKie, Development Manager, Walker Corporation 26 October 2006.)

More recently it appears that the applicant failed to provide sufficient documentation to Heritage Victoria to enable a proper assessment to be made of their proposed works in the P32075 permit exemption determination.

Hopefully, you will be able to help convince Walkers that a more cooperative approach, in accordance with the 2018 National Threat Abatement Plan for *Phytophthora Cinnamomi* would be in the public interest, and could help gain them more community support in today's environment !

With warm regards,

Brian

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Encs:

2006

- Copy Letter Ray Tonkin, Executive Director, Heritage Victoria, to Luke McKie, Development Manager, Walker Corporation 26 October 2006.
- ENSPEC Preliminary Site Inspection and Summary Report Bishops Pine (Tree 295) , Boroondara Council, March 2006.

2017

- **Heritage Act 2017 - Section 165 Issue of stop orders**

10 Photographs including:

2019

- Tree 191 Dieback - 2 photographs show how the health of the Canary Island Pine adjacent to the Walker sales building began to rapidly deteriorate following unauthorised excavations on the site in 2019.
- The jpg files include the GPS coordinates of the hillside site on Main Drive, Kew, which is close to (ie: within ~ 50metres) both Willsmere and Yarra Bend Park (Wills Street Picnic Area)

2020

1. Feb 2020 The Canary Island Pine Tree 191 now appears to be dead (
2. Feb 2020 New excavations start on the site (7 jpg photographs in zip file showing excavations, pit locations, boring machine, and root detail)

7 attachments



CanaryIslandPine_Tree191Stage8_Dieback2019cu.JPG
2499K



Tree191dieback_Stage8_AfterUnauthorised2019Excavations.JPG
2850K



Canary Island Pine, Tree 191 Now appears dead Feb 2020.jpg
362K

 **20061026RTonkinHV2WalkerPhytophthoraPlan copy.pdf.pdf**
339K

 **ENSPEC7184786.pdf**
754K

 **HERITAGE ACT 2017 - SECT 165 Issue of stop orders.pdf**
47K

 **MainDrive-NewExcavations2020.zip**
2672K