Royal Park
Parkville

Heritage Council Registrations Committee
Members – Jim Norris (Chair), Emma Russell, Mary Urquhart

REPORT TO THE MINISTER

The following report has been prepared by the Heritage Council Registrations Committee in response to a request by the Minister for Planning – the Hon. Matthew Guy MLC dated 9 May 2014 where he instructed the Heritage Council to report on the recommendation by the Executive Director for the registration of Royal Park and the submissions received in relation to the recommendation.

The Committee is of the view that Royal Park is of cultural heritage significance and that it be included in the Heritage Register under the Criteria set out in the Executive Director’s recommendation. The Committee suggests an assessment of the extent of registration and site values against other Criteria may be warranted in light of submissions received.

Jim Norris (Chair)  Emma Russell  Mary Urquhart

Date – 6 June 2014
The Place

1 Royal Park is a large public park of 188 hectares established in 1854 in the northern part of the City of Melbourne. It contains a wide range of designed and informal landscapes incorporating remnant indigenous vegetation, together with historic buildings, structures and community facilities.

Nominations

2 A nomination from Mr Ronald Jones and Mr Bruce Echberg for the land known as Royal Park to be included in the Victorian Heritage Register (‘the Register’) was accepted by the Executive Director on 11 November 2013.

Recommendation of the Executive Director

3 On 21 February 2014, the Executive Director recommended that Royal Park be included in the Victorian Heritage Register under the Heritage Act 1995 [Section 32 (1)(a)] (Attachment A).

Submissions

4 One hundred and fifty-eight (158) submissions were received pursuant to s38(1) of the Heritage Act 1995 (‘the Act’) in response to the Executive Director’s recommendation.

5 No submissions were received that objected to the recommendation.

6 One submission from the Linking Melbourne Authority (LMA) was silent on the recommendation but objected to the “Extent of Registration” and “Permit Policy/Permit Exemptions”.

7 Following the Heritage Council’s call for further submissions and circulation of s38 submissions to all parties on 5 May 2014 one further submission was received from Dr John Dwyer QC on 14 May 2014 in relation to s.41(4) of the Act.

Acceptance of Submissions

8 Pursuant to s38 of the Act all parties had 60 days after the date that notice of the recommendation was published to make a written submission to the Heritage Council (Council). This period finished on 21 April 2014 with the final date of acceptance being 22 April 2014 due to public holidays.

9 Of the 158 submissions 19 were received after the 22 April 2014 (Attachment B).

10 In its letter to all parties dated 5 May 2014 (Attachment C) the Committee stated that the admissibility of late submissions would be dealt with as a preliminary matter at the hearing. Despite not hearing submissions on this matter the Committee is of the view that all material received after 22 April 2014 should be excluded from its consideration.

11 The Committee also recommends that the submission received pursuant to s41(4) of the Act should be excluded as no other parties have had the opportunity to provide similar material.

June 2014
12 All submissions are available for the Minister’s consideration (and have been included at Attachment B) but no further reference to the late or excluded material has been made in this report.

Heritage Council Hearing

13 As noted above a letter was sent to all parties on 5 May 2014 advising that a hearing would take place and calling for submissions to the hearing. The letter also outlined the normal procedures for a Council hearing such as the provision of submissions and submissions in reply - this process is detailed in the Heritage Council Hearings Protocol 1 (see Attachment D).

Ministerial Call-in

14 On 9 May 2014, the Council received a letter from the Minister for Planning – the Hon. Matthew Guy MLC. Pursuant to s43(1) of the Heritage Act 1995 (Act), the Minister instructed the Council to refer the recommendation for the registration of Royal Park to him for determination.

15 As required by s44(1)(b) the Minister requested that a report, based on the Executive Director’s recommendation and the submissions received pursuant to s38 of the Act, be produced by the Council for his consideration. The Minister set a deadline of 6 June 2014 for the production of the report. Submitters were advised of the call in on 12 May 2014 and advised that a hearing would no longer be held (Attachment E).

Summary of issues

16 This section is not intended to be a complete record of submissions that were made. It is a summary of what the Committee considers to be the key issues relating to cultural heritage significance, followed by an explanation of the position the Committee takes on each issue.

17 Any reference to Criteria refers to the ‘Heritage Council Criteria for Assessment of Places of Cultural Heritage Significance’ (see Attachment F).

Issues

18 As noted above the analysis in this report is based on s38 submissions provided to the Council by 22 April 2014. As the normal Heritage Council hearing process was halted at this point, submitters have not had the opportunity to elaborate on the positions noted in their s38 submissions nor has the Committee been able to examine further the veracity of the submissions. Despite this, the Committee is satisfied that it has sufficient information to make a recommendation in accordance with the Act.

19 The Executive Director submitted that Royal Park is of cultural heritage significance to the state of Victoria and meets the threshold for inclusion on the Victorian Heritage Register under Criterion A, Criterion B and Criterion D.

20 One hundred and thirty nine (139) conforming s38 submissions were received. The purpose of s38 submissions is for parties to register with the Heritage Council their
support or objection to a recommendation using a tick box and/or a one sentence statement, the provision of additional information is unusual and would normally be provided in s41(4) submissions.

21 The majority of submissions received included a one sentence statement of support but did not provide any further detail. Thirty-two (32) submissions included additional information in their statements – these submissions are defined in this report as ‘more detailed submissions’.

22 More detailed submissions addressed one or more of the following issues:

- The significance of the place to Aboriginal people (relates to Criteria C & G)
- The place’s role as a corroboree ground (relates to Criteria C & G)
- The place’s role as a camping ground (relates to Criteria C & G)
- The place’s role providing natural habitat (relates to Criterion B and E)
- The benefits to health and wellbeing provided (relates to Criterion G)
- The place’s use as a recreational space (passive and active) (relates to Criteria A & G)
- The threat posed by incremental loss of parts of the place (relates to Criteria A & B – this may relate to any of the criterion that the Place satisfies)
- The place’s connection with Baron Von Mueller (relates to Criteria A & H)
- The place’s connection with Bourke and Wills (relates to Criterion A & H)
- The place’s role during World War I and II (relates to Criterion A)
- The extant native and indigenous vegetation (relates to Criterion B and E)
- The place’s connection with Charles LaTrobe (relates to Criteria A & H)
- The place’s social, political, cultural significance (relates to Criteria A and H)
- The place’s aesthetic significance (relates to Criterion E)
- Personal connections with the place (childhood memories) (relates to Criterion G)
- The need to increase the proposed extent of registration
- The permit exemptions proposed by the Executive Director

23 One more detailed submission from the Parkville Association is open to a number of possible interpretations. It might be interpreted to suggest that Royal Park may be of significance to the State of Victoria under all eight of the Criteria. The Committee notes no further evidence was provided to support this assertion.

24 One more detailed submission received from the Friends of Royal Park suggested a number of specific additions/alterations to the Executive Director’s recommendation. Some of these suggestions would appear to be valid. They may require further information and liaison with Heritage Victoria to determine whether they are necessary.
Criterion A – Importance to the course, or pattern, of Victoria’s cultural history

25 The Executive Director stated that Royal Park is of historical significance to the state of Victoria as an example of a public park set aside by Lieutenant-Governor LaTrobe, as the site of important scientific institutions, as the starting point of the Burke and Wills’ 1860 expedition, for its military uses and for its role with sport in Victoria.

26 The historical significance of the site was emphasised by many of the more detailed submissions, in particular with regard to claims about the vision and influence of Lieutenant-Governor Charles LaTrobe.

27 The Committee agree with the Executive Director that Royal Park is of historical significance and meets the threshold for inclusion on the Register under Criterion A.

Criterion B – Possession of uncommon, rare or endangered aspects of Victoria’s cultural history

28 The Executive Director stated that Royal Park is ‘significant as a rare example of an early metropolitan park which retains its early use and remnant vegetation, particularly indigenous and native plantings’.

29 Over half of the more detailed submissions noted the importance of the native and indigenous remnant vegetation within the park.

30 The Committee agree with the Executive Director that Royal Park is significant for its rare vegetation and meets the threshold for inclusion on the Register under Criterion B.

Criterion C – Potential to yield information that will contribute to an understanding of Victoria’s cultural history

31 The Friends of Royal Park submission requested that Royal Park be considered under Criterion C. They submitted that the park is of significance for its association with and use by Aboriginal groups. A number of other more detailed submissions also noted that Royal Park was used by Aboriginal groups as a campsite and Corroboree ground.

32 The Committee draws attention to the Executive Director’s recommendation not including the Aboriginal cultural heritage of Royal Park in its assessment against the Criteria. However it does provide historical information on the use of the land occupied by Royal Park as a camping ground by the Wurundjeri and other groups in the area.

33 The Committee points out that the protection of Aboriginal cultural heritage in Victoria is provided for under the Aboriginal Heritage Act 2006 however it draws to your attention that the Heritage Act 1995 also includes provisions for the recognition and protection of significant post-contact Aboriginal cultural heritage.

34 The Committee unable to conclude that the Place satisfies Criterion C on the basis of the information before it. However, the Committee is of the view that there may be a prima facie case that the Place satisfies Criterion C. The Committee formed a view that the Minister may wish to consider whether this matter warrants further investigation.

June 2014
Criterion E – Importance in exhibiting particular aesthetic characteristics

35 The Executive Director stated that Royal Park is aesthetically significant ‘as an outstanding example of a large metropolitan park, particularly notable for its remnant indigenous vegetation and important views of the city’.

36 Many of the more detailed submissions mentioned the importance of the aesthetic qualities of Royal Park.

37 The Committee agrees with the Executive Director that Royal Park is significant for its aesthetic characteristics and meets the threshold for inclusion on the Register under Criterion E.

Criterion G - Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions.

38 The importance of Royal Park to the health and wellbeing of the Melbourne community both in terms of passive and active recreation was a recurring theme in the more detailed submissions received.

39 Also, as mentioned above, some more detailed submissions argued that Royal Park is of importance for its association with Aboriginal groups.

40 Places may be included under Criterion G for strong or special association with a particular community or cultural group for social, cultural or spiritual reasons, this includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions.

41 The Committee is unable to conclude that the Place satisfies Criterion G on the basis of the information before it. However, the Committee is of the view that the Minister may wish to consider if there is a prima facie case that the park satisfies Criterion G for social significance to the Melbourne community and for its significance to Indigenous peoples as part of their continuing and developing cultural traditions. This matter may warrant further investigation.

Documents

42 The importance of the 1984 and 1997 Royal Park Master Plans were noted by a number of submitters and the City of Melbourne included both plans in their submission.

43 The Committee is of the opinion that the 1984 and 1997 Master Plans are documents which include valuable guidance in relation to the assessment of the nomination (Attachment G).

44 The Committee is also of the view that the 2013 report titled ‘Cultural and Historic Significance of Royal Park’ by Christina Dyson, referred to by the Executive Director and submitters, contains a large amount of information relevant to the assessment of the
cultural heritage significance of Royal Park. A copy is attached for the Minister’s consideration (Attachment H).

Extent of Registration

45 The extent of registration was raised as an issue by two submitters who requested that additional land be included beyond that already nominated and set out in the Executive Director’s report.

46 The Executive Director, and therefore the Heritage Council, are bound to limit their assessment to the place as defined in the nomination. As a result, the Committee has not considered whether additional land should be included in the registered area.

47 However if Royal Park is included in the Register the Minister may wish to consider requesting that the Executive Director investigate the possibility of assessing the land which is part of the current boundaries of Royal Park between CSL and Orygen and the land as outlined in the Friends of Royal Park submission.

Permit Exemptions

48 An objection was received from the Linking Melbourne Authority (LMA) in relation to permit exemptions. The LMA submitted that ‘permit exemptions are permitted to be granted for works or activities that will have an impact (and even a significant impact) on the cultural heritage significance of a registered place’.

49 Specifically the LMA contends that considerations outlined in s73 of the Act are relevant when determining permit exemptions and therefore the Heritage Council may ‘consider and determine that the works and activities necessary for the construction, operation and maintenance of the Project at Royal Park be exempt from the need for a permit’. The ‘Project’ being the East West Link described as ‘an 18 kilometre freeway-standard road connecting the Eastern Freeway to CityLink and the Port of Melbourne area and then extending to the Western Ring Road’ the impacts of which are outlined in the Project Comprehensive Impact Statement (CIS).

50 The proposed permit policy and permit exemptions in the Executive Director’s recommendation state that ‘Permit exemptions usually cover routine maintenance and upkeep issues faced by owners as well as minor works’. The Committee notes that the LMA requested permit exemption goes beyond this.

51 The Committee sought advice from Susan Brennan SC on the determination of permit exemptions under s42(4) of the Act. Advice was requested on the following issues:

- Are the considerations outlined in s.73 of the Act relevant when making a determination under s.42(4) of the Act?
- Are there limits to the scope of works which can be exempt under s42(4) of the Act?

June 2014
• How precisely do the works and/or activities need to be defined under s42(4)? Is it possible to exempt all works or activities relating to a particular project when the specific works relating to the project have not been defined?

52 The legal advice received by the Committee is annexed for your consideration (Attachment I).

53 The advice received concludes that:

• ‘the considerations in s73 are not relevant in making a determination under s.42(4) that certain works and activities can be carried out without the need for a permit (“exempt works”’);

• ‘the scope of exempt works is limited to works and activities which do not materially affect the cultural heritage significance of a registered place’;

• ‘exempt works must be defined with sufficient particularity that it can be demonstrated that such works and activities will not materially affect the cultural heritage significance of a registered place’.

54 It has been the practice of past Registration Committees to only issue permit exemptions for works that will not have a material impact on the cultural heritage significance of the place. This approach is consistent with the purposes of the Act, which are defined in s1(a) as being ‘to provide for the protection and conservation of places and objects of cultural heritage significance and the registration of such places and objects’. It is also consistent with the legal advice received.

55 If Royal Park is included in the Register the Minister may wish to consider the legal advice in relation to any determination of permit exemptions.

Conclusion

56 The Committee refers this report on the Executive Director’s recommendation to the Minister for his consideration as requested. It is of the view that Royal Park satisfies Criterion A, B and E.

57 The Committee refers the Minister to paragraph 23 as set out above. The Minister may wish to consider if there is a prima facie case that Royal Park satisfies any of the Criteria not mentioned specifically in this report.

58 The Committee refers the Minister to paragraph 24 as set out above. The Minister may wish to consider if the suggested additions/alterations to the Executive Director’s report are valid.

59 The Committee refers the Minister to paragraph 34 as set out above. The Minister may wish to consider if there is a prima facie case that Royal Park satisfies Criterion C.

60 The Committee refers the Minister to paragraph 41 as set out above. The Minister may wish to consider if there is a prima facie case that Royal Park satisfies Criterion G.

61 The Committee further refers the Minister to paragraph 47 as set out above which states that if Royal Park is registered the Minister may wish to consider requesting the
Executive Director to investigate the possibility of registering additional land associated with the place.

If Royal Park is registered and the Minister is considering determining works and activities that can be carried out at the place without the need for a permit (permit exemptions) he may wish to consider the advice of Brennan SC which provides an opinion that ‘only works and activities which do not materially affect the cultural heritage significance of a place can be exempt from the need for a permit’ and that exempt works must be ‘defined with sufficient particularity that it can be demonstrated that such works and activities will not materially affect the cultural heritage significance of a registered place’.

This report as requested by the Minister is based on the Executive Director’s recommendation and the submissions received in response to the recommendation pursuant to s38 of the Act.