

# Statement of recommendation from the Executive Director, Heritage Victoria to the Heritage Council of Victoria

**Name:** Kwarau  
**Address:** 405 Toorong Road,  
Hawthorn  
**Local Government Authority:** Boroondara City



Kwarau (June 2020)

## Executive Director recommendation

I recommend to the Heritage Council of Victoria that the existing registration of VHR H0489, Kwarau, 405 Toorong Road in the Victorian Heritage Register (VHR) be amended under section 62 of the *Heritage Act 2017* (the Act).

Handwritten signature of Steven Avery.

**STEVEN AVERY**  
Executive Director, Heritage Victoria  
DATE OF RECOMMENDATION: 11 January 2021



# Statement of recommendation from the Executive Director, Heritage Victoria to the Heritage Council of Victoria

## Heritage Council determination

The Executive Director, Heritage Victoria recommends that the Heritage Council amends the existing registration of VHR H0489, Kawarau, 405 Toorong Road in the VHR by:

- Including additional land
- Determining categories of works or activities which may be carried out in relation to the place for which a permit is not required (permit exemptions)

## The process from here

### 1. The Heritage Council publishes the Executive Director's recommendation (section 41).

The Heritage Council of Victoria will publish the Executive Director's recommendation on its website for a period of 60 days. Submissions must be received by Heritage Council **on or before 15 March 2021**.

### 2. Making a submission to the Heritage Council (sections 44 and 45)

Within the 60 day publication period, any person or body can make a submission to the Heritage Council. This submission can support the recommendation, or object to the recommendation and a hearing can be requested in relation to the submission. Information about making a submission and submission forms are available on the Heritage Council of Victoria's website:

<https://heritagecouncil.vic.gov.au/registrations-reviews/executive-director-recommendations/>

### 3. Heritage Council determination (sections 46 and 49)

The Heritage Council of Victoria is an independent statutory body. It is responsible for making the final determination to include or not include the place or object in the VHR, or amend a place or object already in the VHR.

If no submissions are received the Heritage Council must make a determination within 40 days of the publication closing date.

If submissions are received, the Heritage Council may decide to hold a hearing in relation to the submission. If a hearing does take place, the Heritage Council must make a determination within 90 days after the completion of the hearing.

### 4. Obligations of owners of places and objects (sections 42 and 43)

The owner of a place or object which is the subject of a recommendation to the Heritage Council has certain obligations under the Act. These relate to advising the Executive Director, Heritage Victoria in writing of any works or activities that are being carried out, proposed or planned for the place.

The owner also has an obligation to provide a copy of this statement of recommendation to any potential purchasers of the place or object before entering into a contract.

### 5. Further information

The relevant sections of the Act are provided at Appendix 1.



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## Existing Description

There is no change to the existing description.

## Existing History

There is no change to the existing history of the place.

### Reasons for registration in 1981

The State level historic and architectural cultural heritage significance of Kawarau was recognised in 1981 by its inclusion in the Historic Buildings Register (VHR H0489). Kawarau is significant for its association with its former owner, the prominent philanthropist and retailer Frederick Cato, of Moran and Cato. It is also important as a substantially intact two-storey Italianate mansion, and for its extensive internal Edwardian plasterwork and decorative art nouveau fibrous plaster and timber work.

### Amendment application made on 7 September 2020

On 7 September 2020, the Executive Director made and accepted an application to amend the registration of Kawarau (VHR H0489) by including additional land and permit exemptions. to ensure that they are consistent with current practices under the Act.

### Amendment recommendation reasons

The Executive Director recommends that the Heritage Council amend this registration in accordance with section 62 of the Act because under section 32(1) of the Act he considers that:

- a) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the proposed land for inclusion in the Register was developed;
- b) land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place.

### Traditional Owner Information

Kawarau is located on the traditional land of the Kulin Nation. Traditional owners have not been formally recognised for this area. A Registered Aboriginal Party under the *Aboriginal Heritage Act 2006* has not been appointed.

### Victorian Aboriginal Heritage Register

Kawarau is not included in the Victorian Aboriginal Heritage Register and is not within an area of cultural heritage sensitivity.

### Change of heritage category

No change of category.

### Change of name

No change of name.

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## Statutory requirements under section 40.

### Terms of the recommendation (section 40 (3)(a))

The Executive Director, Heritage Victoria recommends that the registration of Kawarau in the VHR is amended.

### Information to identify the place or object (section 40(3)(b))

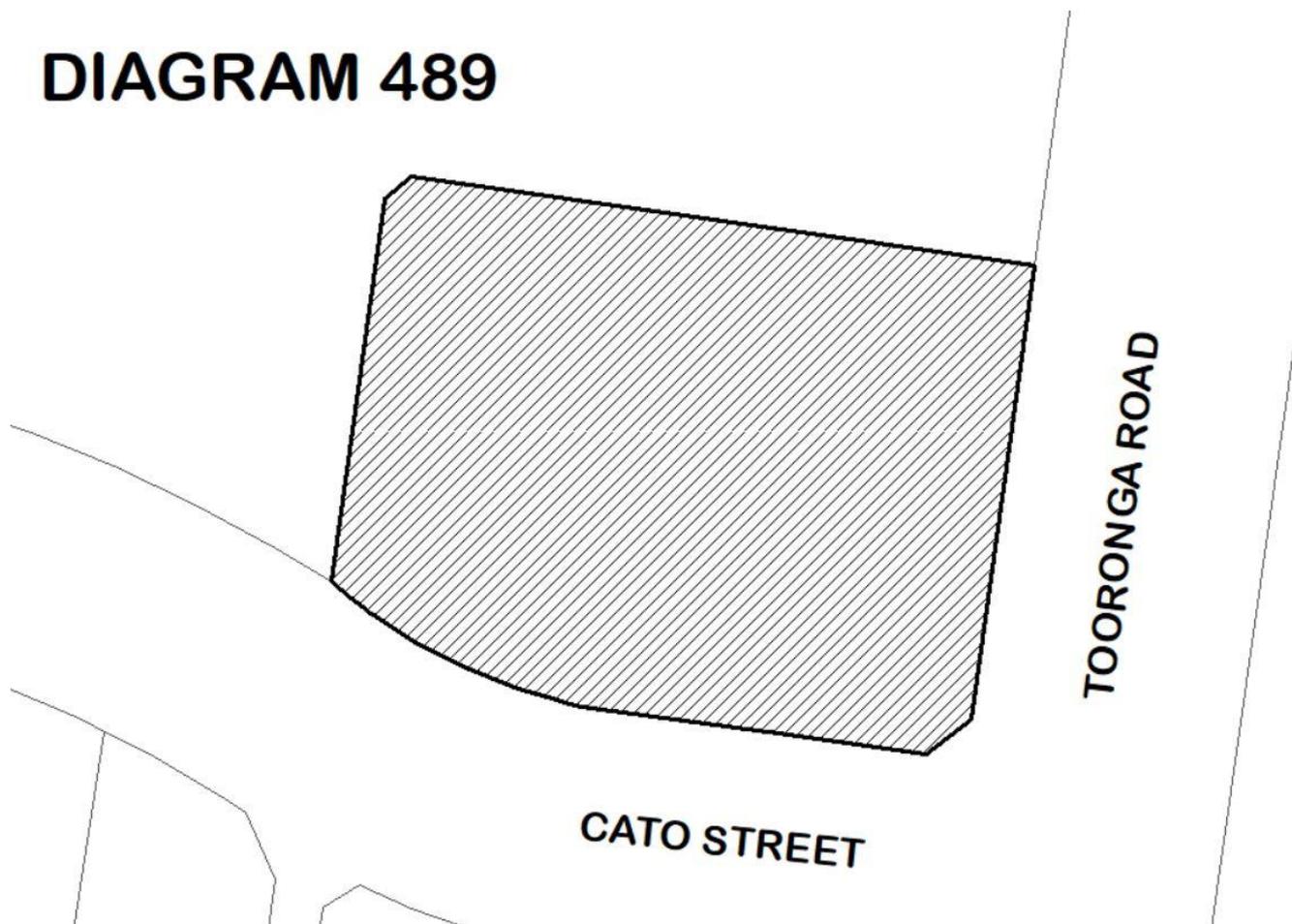
**Name:** Kawarau

**Address:** 405 Toorong Road, Hawthorn

### Proposed extent of registration

All of the place shown hatched on Diagram 489 encompassing all of Lot 2 on Plan of Subdivisions 522210.

## DIAGRAM 489



The extent of registration of Kawarau in the Victorian Heritage Register affects the whole place shown on Diagram 489 including the land, all buildings (including the exteriors and interiors), landscape elements and other features.

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## Aerial photo showing recommended extent



## Rationale for extent

The recommended amended extent of registration is sufficient for the protection of the cultural heritage values of the place and contributes to an understanding of the place.

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## Statement of significance

No change.

## Categories of works or activities (permit exemptions) recommended under section 38 (section 40(4)(b))

### Introduction

The purpose of this information is to assist owners and other interested parties when considering or making decisions regarding works to a registered place. It is recommended that any proposed works be discussed with an officer of Heritage Victoria prior to making a permit application. Discussing proposed works will assist in answering questions the owner may have and aid any decisions regarding works to the place.

It is acknowledged that alterations and other works may be required to keep places and objects in good repair and adapt them for use into the future. However, under the Act a person must not knowingly, recklessly or negligently remove, relocate or demolish, damage or despoil, develop or alter or excavate all or any part of any part of a registered place without approval. It should be noted that the definition of 'develop' in the Act includes any works on, over or under the place.

If a person wishes to undertake works or activities in relation to a registered place or registered object, they must apply to the Executive Director, Heritage Victoria for a permit. The purpose of a permit is to enable appropriate change to a place and to effectively manage adverse impacts on the cultural heritage significance of a place as a consequence of change. If an owner is uncertain whether a heritage permit is required, it is recommended that Heritage Victoria be contacted.

Permits are required for anything which alters the place or object, unless a permit exemption is granted. Permit exemptions usually cover routine maintenance and upkeep issues faced by owners as well as minor works or works to the elements of the place or object that are not significant. They may include appropriate works that are specified in a conservation management plan. Permit exemptions can be granted at the time of registration (under section 38 of the Heritage Act) or after registration (under section 92 of the Act). It should be noted that the addition of new buildings to the registered place, as well as alterations to the interior and exterior of existing buildings requires a permit, unless a specific permit exemption is granted.

### Disrepair of registered place or registered object

Under section 152 of the Act, the owner of a registered place or registered object must not allow that place or object to fall into disrepair.

### Failure to maintain registered place or registered object

Under section 153 of the Act, the owner of a registered place or registered object must not fail to maintain that place or object to the extent that its conservation is threatened.

### Conservation management plans

It is recommended that a Conservation Management Plan is developed to manage the place in a manner which respects its cultural heritage significance.



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## Archaeology

There is no identified archaeology of State level significance at the place. However, any works that may affect historical archaeological features, deposits or artefacts at the place is likely to require a permit, permit exemption or consent. Advice should be sought from the Archaeology Team at Heritage Victoria.

## Aboriginal cultural heritage

To establish whether this place is registered under the *Aboriginal Heritage Act 2006* please contact Aboriginal Victoria. The *Heritage Act 2017* and the *Aboriginal Heritage Act 2006* are separate pieces of legislation. Please be aware that both Acts are required to be satisfied and satisfying the requirements of one Act may not satisfy the requirements of the other.

If any Aboriginal cultural heritage is discovered or exposed at any time it is necessary to immediately contact Aboriginal Victoria to ascertain requirements under the *Aboriginal Heritage Act 2006*. If works are proposed which have the potential to disturb or have an impact on Aboriginal cultural heritage it is necessary to contact Aboriginal Victoria to ascertain any requirements under the *Aboriginal Heritage Act 2006*.

## Other approvals

Please be aware that approval from other authorities (such as local government) may be required to undertake works.

## Notes

- All works should ideally be informed by a Conservation Management Plan prepared for the place. The Executive Director is not bound by any Conservation Management Plan and permits still must be obtained for works suggested in any Conservation Management Plan.
- Nothing in this determination prevents the Heritage Council from amending or rescinding all or any of the permit exemptions.
- Nothing in this determination exempts owners or their agents from the responsibility to seek relevant planning or building permits where applicable.

## General Conditions

- All exempted alterations are to be planned and carried out in a manner which prevents damage to the fabric of the registered place.
- Should it become apparent during further inspection or the carrying out of works that original or previously hidden or inaccessible details of the place are revealed which relate to the significance of the place, then the exemption covering such works must cease and Heritage Victoria must be notified as soon as possible.

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## Permit Exemptions

The following permit exemptions are not considered to cause harm to the cultural heritage significance of Kowarau.

### General

- Minor repairs and maintenance which replaces like with like. Repairs and maintenance must maximise protection and retention of fabric and include the conservation of existing details or elements. Any repairs and maintenance must not exacerbate the decay of fabric due to chemical incompatibility of new materials, obscure fabric or limit access to such fabric for future maintenance. This exemption does not apply to the internal decorative plasterwork.
- Maintenance, repair and replacement of existing external services such as plumbing, electrical cabling, surveillance systems, pipes or fire services which does not involve changes in location.
- Repair to, or removal of items such as antennae; aerials; and air conditioners and associated pipe work, ducting and wiring.
- Works or activities, including emergency stabilisation, necessary to secure safety in an emergency where a structure or part of a structure has been irreparably damaged or destabilised and poses a safety risk to its users or the public. The Executive Director, Heritage Victoria, must be notified within seven days of the commencement of these works or activities.
- Painting of previously painted external and internal surfaces in the same colour, finish and product type provided that preparation or painting does not remove all evidence of earlier paint finishes or schemes. This exemption does not apply to areas where there are specialist paint techniques such as graining, marbling, stencilling, hand-painting, murals or signwriting, or to wallpapered surfaces, or to unpainted, oiled or varnished surfaces.
- Cleaning of external surfaces including the removal of surface deposits by the use of low-pressure water (to maximum of 300 psi at the surface being cleaned) and neutral detergents and mild brushing and scrubbing with plastic not wire brushes.

### Outdoor areas

#### *Hard landscaping and services*

- Subsurface works to existing watering and drainage systems provided these are outside the canopy edge of trees. Existing lawns, gardens and hard landscaping, including paving and paths, are to be returned to the original configuration and appearance on completion of works.
- Like for like repair and maintenance of existing hard landscaping including carparks, paving, footpaths and driveways where the materials, scale, form and design is unchanged.
- Removal or replacement of external signage provided the size, location and material remains the same.
- Installation of physical barriers or traps to enable vegetation protection and management of vermin such as rats, mice and possums.
- Like for like maintenance and repair of the brick retaining wall to the south of the Kowarau residence.
- Like for like maintenance and repair of the brick wall to the east of the Kowarau residence.

#### *Gardening, trees and plants*

- The processes of gardening including mowing, pruning, mulching, fertilising, removal of dead or diseased plants, replanting of existing garden beds, disease and weed control and maintenance to care for existing plants.
- Removal of tree seedlings and suckers without the use of herbicides.
- Management and maintenance of trees including formative and remedial pruning, removal of deadwood and pest and disease control.
- Emergency tree works to maintain public safety provided the Executive Director, Heritage Victoria is notified within seven days of the removal or works occurring.



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## *Modern covered garage area*

- Maintenance and repair of the covered garage to the east of the Kwararau residence.
- Demolition.

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## Appendix 1

### Heritage Council of Victoria determination (section 41)

The Heritage Council of Victoria is an independent statutory body that will make a determination on this recommendation under section 49 of the Act. It will consider the recommendation after a period of 60 days from the date the notice of recommendation is published on its website under section 41.

### Making a submission to the Heritage Council (section 44)

Within the period of 60 days, any person or body with a real and substantial interest in the place or object may make a submission to the Heritage Council regarding the recommendation and request a hearing in relation to that submission. Information about making a submission and submission forms are available on the Heritage Council's website.

### Consideration of submissions to the Heritage Council (section 46)

- (1) The Heritage Council must consider—
  - (a) any written submission made to it under section 44; and
  - (b) any further information provided to the Heritage Council in response to a request under section 45.
- (2) The Heritage Council must conduct a hearing in relation to a submission if—
  - (a) the submission includes a request for a hearing before the Heritage Council; and
  - (b) the submission is made by a person or body with a real or substantial interest in the place or object that is the subject of the submission.
- (3) Despite subsection (2), the Heritage Council may conduct a hearing in relation to a submission in any other circumstances the Heritage Council considers appropriate.

### Determinations of the Heritage Council (section 49)

- (1) After considering a recommendation that a place or object should or should not be included in the Heritage Register, or should be amended in the Heritage Register, and any submissions in respect of the recommendation and conducting any hearing into the submissions, the Heritage Council may—
  - (a) determine that the place or part of the place, or object, is of State-level cultural heritage significance and is to be included in the Heritage Register; or
  - (b) determine that the place or part of the place, or object, is not of State-level cultural heritage significance and is not to be included in the Heritage Register; or
  - (c) in the case of a recommendation in respect of a place, determine that the place is not to be included in the Heritage Register but—
    - (i) refer the recommendation and any submissions to the relevant planning authority for consideration for an amendment to a planning scheme; or
    - (ii) determine that it is more appropriate for steps to be taken under the Planning and Environment Act 1987 or by any other means to protect or conserve the place; or
  - (d) in the case of a recommendation in respect of additional land which has been nominated to be included in the Heritage Register as part of a registered place in accordance with section 32, determine that the land be included in the Heritage Register if—

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- (i) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed; or
  - (ii) the land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place; or
  - (e) determine that the object is integral to understanding the cultural heritage significance of a registered place or a place the Heritage Council has determined to be included in the Heritage Register.
- (2) The Heritage Council must make a determination under subsection (1)—
- (a) within 40 days after the date on which written submissions may be made under section 44; or
  - (b) if any hearing is conducted into the written submissions, within 90 days after the completion of the hearing.
- (3) A determination that a place or part of a place, or object, should be included in the Heritage Register may include categories of works or activities which may be carried out in relation to the place or object for which a permit under this Act is not required, if the Heritage Council considers that the works or activities would not harm the cultural heritage significance of the place or object.
- (4) If the Heritage Council determines to include a place in the Heritage Register, with the consent of the owner of the place, the Heritage Council may determine to include in the Heritage Register additional land of the owner that is ancillary to the place.
- (5) If a member of the Heritage Council makes a submission under section 44 in respect of a recommendation, the member must not take part in the consideration or determination of the Heritage Council.
- (6) The Heritage Council must notify the Executive Director of any determination under this section as soon as practicable after the determination.

## Obligations of owners of places and objects (section 42)

- (1) The owner of a place or object to whom a statement of recommendation has been given must advise the Executive Director in writing of—
- (a) any works or activities that are being carried out in relation to the place or object at the time the statement is given; and
  - (b) any application for a planning permit or a building permit, or for an amendment to that permit, that has been made in relation to the place but not determined at the time the statement is given; and
  - (c) any works or activities that are proposed to be carried out in relation to the place or object at the time the statement is given.
- (2) An advice under subsection (1) must be given within 10 days after the statement of recommendation is given under section 40.
- (3) The owner of a place to whom a statement of recommendation has been given must advise the Executive Director in writing of an application, permit or amendment if, before a determination under section 49 or 52 in respect of a place—
- (a) an application for a planning permit or a building permit or for an amendment to that permit in relation to the place is made; or
  - (b) a planning permit or building permit or an amendment to that permit in relation to the place is granted.
- (4) An advice under subsection (3) must be given within 10 days after the making of the application or the grant of the permit or amendment.
- (5) The owner of a place or object to whom a statement of recommendation has been given must advise the Executive Director in writing of the following activities or proposals if, before a determination is made under section 49 or 52 in respect of a place or object—
- (a) any activities are carried out in relation to the place or object that could harm the place or object;



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- (b) any activities are proposed to be carried out in relation to the place or object that could harm the place or object.
- (6) An advice under subsection (5) must be given within 10 days after the owner becomes aware of the activity or the proposal, as the case requires.
- (7) If, before a determination is made under section 49 or 52 in respect of a place or object, a proposal is made to dispose of the whole or any part of the place or object, the owner of the place or object must advise the Executive Director in writing of that proposal.
- (8) An advice under subsection (7) must be given at least 10 days before entering into the contract for the disposal of the place or object.
- (9) The owner of a place or object who proposes to dispose of the whole or any part of the place or object before a determination is made under section 49 or 52 in respect of the place or object must, before entering into a contract for that disposal, give a copy of the statement of proposed contract, is to acquire the place or object or part of the place or object.

## **Owners of places and objects must comply with obligations (section 43)**

An owner of a place or object to whom section 42 applies must comply with that section.

Penalty: In the case of a natural person, 120 penalty units;  
In the case of a body corporate, 240 penalty units.

## Appendix 2: Existing registration detail

### Existing Category of Registration

Registered Heritage Place.

### Existing Extent of Registration

Historic Building No. 489, Kawarau, 405 Tooronga Road, Hawthorn [*Victoria Government Gazette* No. 22 4 March 1981 p. 765]

No extent diagram accompanies this registration.

### Existing Statement of Significance

What is significant?

Kawarau, an Italianate mansion was originally known as Warrington. It was built for Robert Robinson, a Melbourne grain merchant and completed in 1893 at the time of the bank crash and economic depression. The design of the original house has been attributed to Francis Coote, of the architectural practise Beswick and Coote. The house was acquired by Frederick Cato, of the retailing firm Moran and Cato in 1904. Cato commissioned the architectural firm Ussher and Kemp to undertake extensions, including a billiard room. The two-storey house is constructed of stuccoed brick with a slate roof and is symmetrically planned with a double-storey arcade supported by Corinthian columns. The interior is a mixture of Victorian and Edwardian styles. The 1904 billiard room contains deep fibrous plaster frieze of Art Nouveau ornamentation with a the ceiling of red pine divided into an octagonal pattern.

How is it significant?

Kawarau is of historic and architectural significance to the State of Victoria

Why is it significant?

Kawarau is of historical importance through its ability to demonstrate the wealth amassed by Melbourne merchants in the late nineteenth century, and their demise following the economic depression of the 1890s. The former mansion is also of historical significance as a result of its association with the philanthropist Frederick Cato and his retailing firm Moran and Cato which was founded in 1881. It demonstrates the wealth amassed by the firm in less than a decade, and the continuing success of the firm illustrated by the addition of finely-detailed interior features, including the billiard room constructed in 1904. Kawarau is architecturally important as the grandest of a small group of Italianate mansions and possesses one of the most extensive and complete collections of Edwardian plasterwork in Victoria . It incorporates the widest known assemblage of decorative art nouveau fibrous plaster and timber work, including exceptional examples in the billiard room. Kawarau is important as a rare example of the architect Coote's work. It is also important t as the most intact surviving example of the work of Ussher and Kemp, one of the most important practitioners in Victoria in the Edwardian period.

### Existing Permit Exemptions

There are no existing permit exemptions.