

To make a decision as to whether or not to refer 217/2019 to the Minister for the Environment, *Matters of National Environmental Significance: Significant Impact Guidelines* (<http://tiny.cc/shrineimpact>) asks the following questions:

<p><b>Are there any matters of national environmental significance located in the area of the proposed action?</b></p>	<p>Yes, the National Heritage listed Melbourne's Domain Parkland and Memorial Precinct is 50 meters away from the proposed action.</p>
<p><b>Considering the proposed action at its broadest, is there potential for impacts, including indirect impacts, on matters of national environmental significance?</b></p>	<p>The proposed development is likely to have a sustained and permanent impact on Melbourne's Domain Parkland and Memorial Precinct.</p> <p>217/2019 will directly impact the heritage listed area in the form of Vista, Reduced solar access (shadows) and Reflections.</p> <p>These are the three principal ways as identified in the Shrine of Remembrance's management document '<i>The Shrine of Remembrance, Managing the Significance of the Shrine, July 2013</i>' in which the significance of the Shrine could be compromised.</p> <p>As a consequence of these direct actions, 217/2019 will directly impact the way that people use the Shrine, the significance of the Shrine and the health of the environment. The action changes the heritage listed values of the precinct. It detracts the form and function of the act of remembrance by changing the focus from the sacrifices of the past to the present with an imposing building and its shadows and reflections.</p>
<p><b>Are there any proposed measures to avoid or reduce impacts on matters of national environmental significance (and if so, is the effectiveness of these measures certain enough to reduce the level of impact below the 'significant impact' threshold)?</b></p>	<p>Yes. The height of the existing building on the site does not impact the heritage listed area. The apartment building behind it at 148 Wells St is at a height that does not impact the heritage listed area. Any increase in height above this will cause shadow, reflection and vista impacts.</p>
<p><b>Are any impacts of the proposed action on matters of national environmental significance likely to be significant impacts (important, notable, or of consequence, having regard to their context or intensity)?</b></p>	<p>Yes - See the Significant Impact Assessment below.</p>
<p><b>'But for' the proposed action would the indirect impacts occur?</b></p>	<p>NO - The current building on the site does not impact the heritage values of the area</p>
<p><b>Is the proposed action a 'material and substantial' cause of the indirect impacts?</b></p>	<p>YES - The proposed action can be directly linked to the impacts.</p>
<p><b>Are the potential impacts of any subsequent or third-party actions known, or would they be expected to be known, by the person proposing to take the action?</b></p>	<p>YES – The developers state in their application that the building has been designed to respond to the relationship with the Shrine of Remembrance and the outlook to surrounding vistas. It is reasonable to assume that to make that statement they would have read '<i>The Shrine of Remembrance, Managing the Significance of the Shrine, July 2013</i>'.</p> <p>This document is used by local councils and law makers to make sure that the laws protect the heritage values of the Shrine and its Memorial gardens. This document also explains in great detail the considerations that new developments need to be aware of. It identifies areas where special care needs to be taken to maintain the heritage values of the area.</p> <p>This document should have been used as a guide to assessing whether 217/2019 will have a significant impact on the heritage listed values of the area.</p>
<p><b>Are these impacts likely to occur?</b></p>	<p>YES - As long as the sun continues to rise and 217/2019 is built as proposed, the impacts will continue to occur.</p>
<p><b>Is it likely to have a significant impact on a matter of national environmental significance?</b></p>	<p>YES – For more detail, see the Significant Impact Assessment below.</p>

## SIGNIFICANT IMPACT ASSESSMENT

An action is likely to have a significant impact on the National Heritage values of a National Heritage place if there is a real chance or possibility that it will cause:

- one or more of the National Heritage values to be lost
- one or more of the National Heritage values to be degraded or damaged, or
- one or more of the National Heritage values to be notably altered, modified, obscured or diminished.

To have a significant impact on National Heritage values, it is not necessary for an action to impact upon the whole of a National Heritage place, all of the values of a National Heritage place, or a whole value of a National Heritage place. It is sufficient if an action is likely to have a significant impact on a part, element, or feature of a National Heritage place which embodies, manifests, shows, or contributes to the values of that place.'

<https://www.ags.gov.au/publications/legal-briefing/br82.pdf> notes that *"the word 'significant' is intended to distinguish impacts that are important enough to justify regulation at the Commonwealth level from impacts that are considered to be less important and adequately dealt with at the state and local government levels."*

As you are aware, the Shrine and its Memorial Precinct has had its protection gutted recently by the Planning Minister Richard Wynne. Amendment C154 removed all shadow protection for Memorial Gardens (detailed here: <https://www.fightingshadows.com.au/a-history-of-protection>). This along with the limited shadow requirements in DDO26, results in no local or state laws being adequate to protect Melbourne's Domain Parkland and Memorial Precinct. Only the EPBC act is broad enough to protect the Shrine and its Memorial gardens from significant impact.

## HOW TO ASSESS IMPACT

A National Heritage site's listing contains record the values of the site that make it unique and worthy of protection. Any change to those values changes needs to be carefully scrutinised. If a change in the value is likely, then the proposed action must be referred.

The following table lists the 'Value' of Melbourne's Domain Parkland and Memorial Precinct taken from <https://www.legislation.gov.au/Details/C2018G00091>. It applies the Significant Impact Criteria defined in the guidelines from <https://www.environment.gov.au/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance> and details the impact that 217/2019 will have on that heritage value.

## Value

'The shrine of remembrance has a similar visual interaction with the city.'

## Impact

This value talks about the relationship between the City and the Shrine and the meaning that it conveys.

*The Shrine of Remembrance, Managing the Significance of the Shrine, July 2013'* has this to say regarding how tall buildings can change the context of the Shrine.

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*"If the skyline views around the Shrine become enclosed or over-shadowed by tall buildings in the foreground, it becomes difficult to read the wider context of the Shrine. The distinctive qualities of this unique setting, and its separation from the urban environment, will be lost in deference to more imposing adjacent and nearby built form."*

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It is clear by this, that buildings in all directions can change the visual interaction with the city and 217/2019 will form part of the city's interaction with the Shrine of Remembrance.

Before 217/2019, the interaction between the Shrine of Remembrance and the City on the western and south-western quarter of the Shrine Reserve is at an equilibrium. Existing buildings on Dorcas St. that are behind the Cenotaph are at a height that do not detract from the monument. They enforce a sense of separateness and ceremonial experience, thus respecting the views from the forecourt.

The Shrine remains separate from the City. Their low height maintains the open sky behind the cenotaph as seen in the picture below.



Figure 1 Current view of Eternal Flame and Cenotaph

This interaction is significant and worthy of protection as it plays a key role in ceremonies.

*'The Shrine of Remembrance, Managing the Significance of the Shrine, July 2013'* identifies the concern regarding ceremonies.

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### **5.2.2 Key concern: Building height and bulk (west and south-west of Shrine)**

*On the western and south-western quarter of the Shrine Reserve, buildings that are too high and too close intrude on the sense of separateness and ceremonial purpose experienced on the forecourt and the western memorial grounds in particular. Buildings in this context should play a subservient role – many of them do but some do not. During formal ceremonies, when the command 'eyes right' is made, which focuses viewers to the Cenotaph, the place of this memorial should not be eroded by tall buildings with vertical proportions that compete with the Cenotaph's form.*

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217/2019 significantly changes the interaction between the city and the Shrine by imposing itself on the parade participants, both with built form, shadows and reflections. It will restrict or inhibit the continuing use of a National Heritage place as a ceremonial site causing its values to notably diminish over time.



Figure 2 Eyes right at ceremony from forecourt



Figure 3 Eyes right at ceremony from forecourt



Figure 4 The proposed building - 217/2019 from forecourt.

'The Shrine of Remembrance, Managing the Significance of the Shrine, July 2013' identifies building surface glare as something that will have a negative impact on the sense of place of the Shrine.

### 5.3 Secondary building impacts

The potential impacts on prospect and aspect views primarily relate to building siting and scale along view corridors and in the area around the Shrine. However, there are a number of more detailed building design and elements that can have negative impacts that detract from the sense of place of the Shrine.

#### 5.3.1 Building surface glare

Building surface glare can intrude at any time from dawn to late morning. It is particularly intrusive when it occurs during a formal ceremony such as behind the Cenotaph when the 'eyes right' command is called. It is also intrusive in the south and south-western quarter where it creates a backdrop distraction to the Shrine on a parade to the forecourt.

217/2019 changes the city's interaction with the Shrine by means reflecting the sun. The morning sun will hit and reflect off the building directly as shown below:

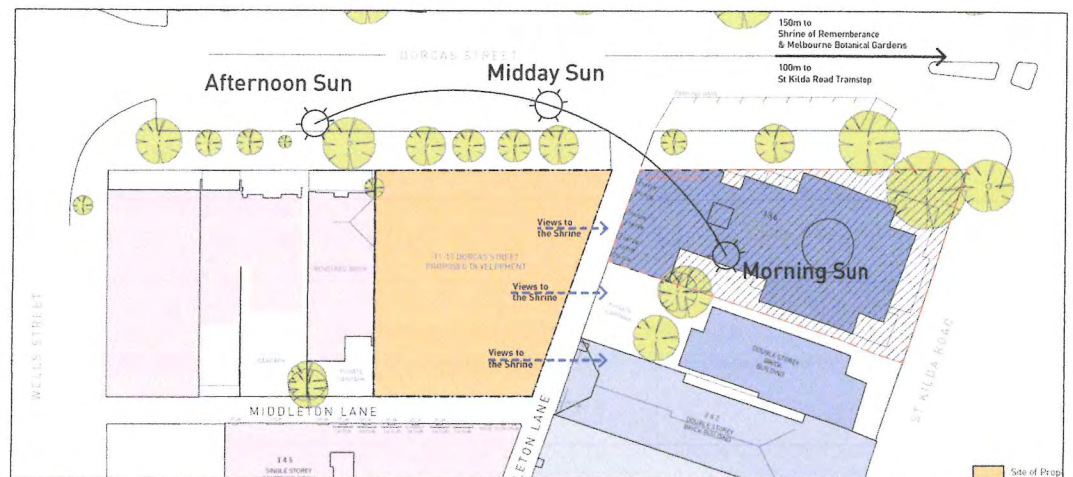


Figure 5 The proposed site is in orange.

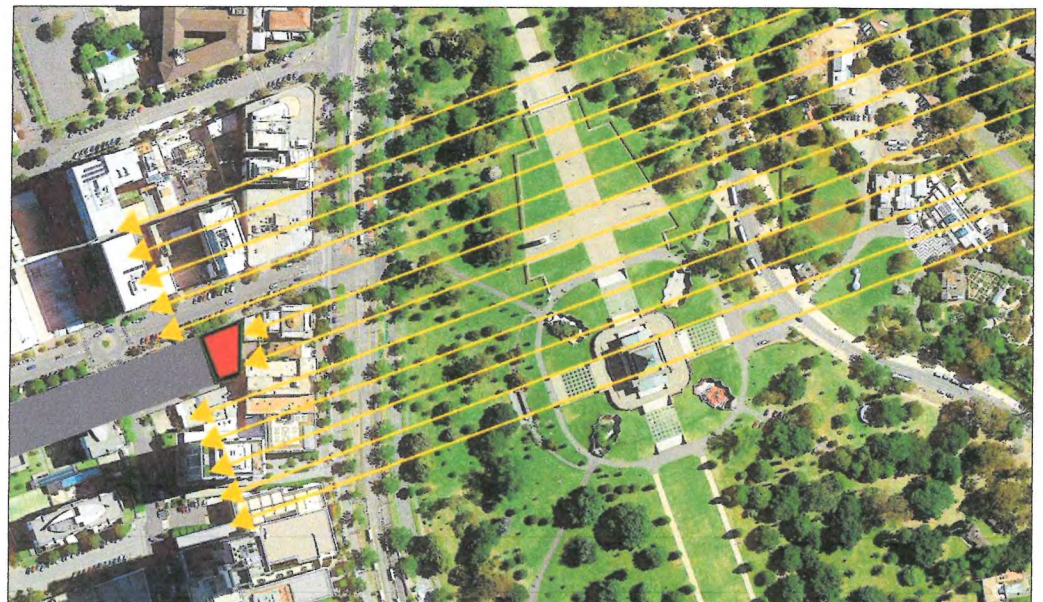
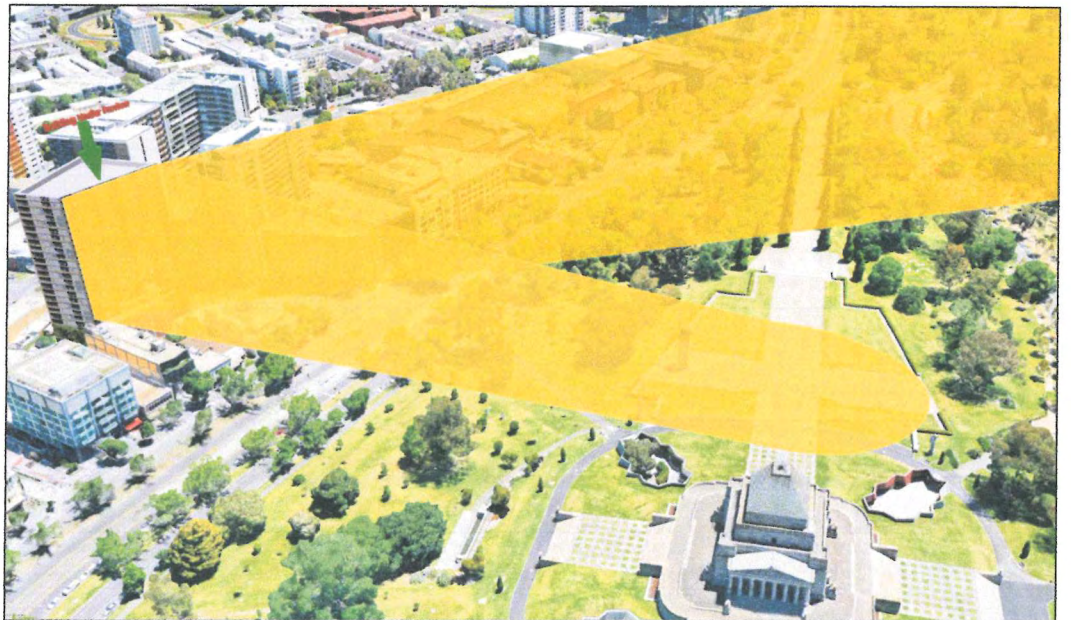


Figure 6 The morning sun shines across the forecourt directly on the building. The building will collect and focus the morning sun.



The curved glass will focus the morning sun like the Eureka Tower does.

The low angle of the sun means that more light will be reflected, and the shape of the building will focus and intensify the sun. As the sun moves through the year, the direction of the reflection will change, and different parts of the Shrine and gardens will be impacted.



On ANZAC day, the rising sun will shine directly onto 217/2019 and reflect to the forecourt where processions and memorial services are held. This reflection will burn and modify the environment permanently as well as modifying the atmosphere of significant reference.



Figure 7 Formal ceremony that will be severely impacted by reflections.

Sun reflection from buildings has been shown to burn people, cook eggs, melt cars and discolour buildings. Once a building is finished there is little one can do to stop the impact. The reflective impact on the Shrine and the gardens will cause burning and discolouration of the monument itself, dead and burned parts of the parkland and making some parts of the area unsafe for people to occupy at certain times of the day.

#### EXAMPLES OF BUILDINGS WITH REFLECTIVE ISSUES

**Walkie Schorcie building, London, UK:** Melts cars, breaks tiles, burns hair on people's heads.

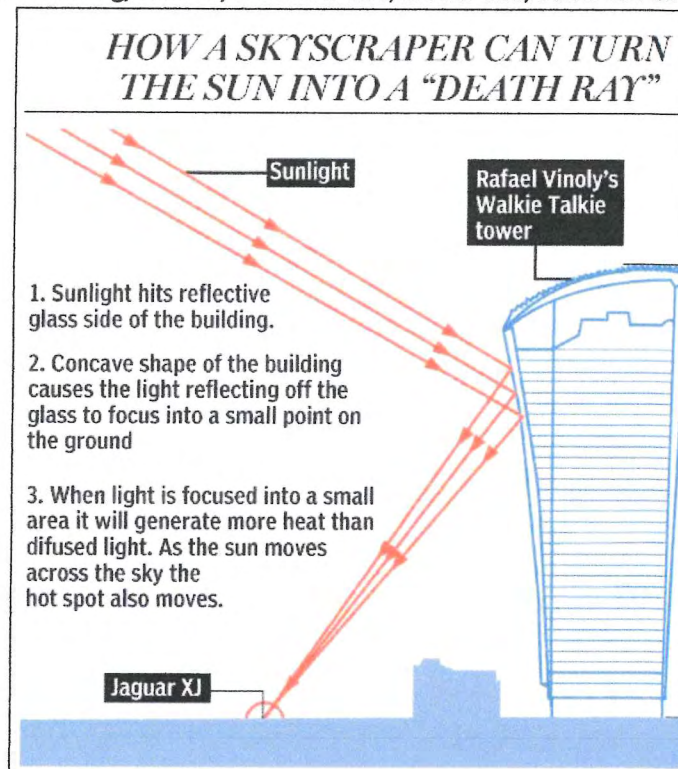




Figure 8 Woman on street saluting glass building.

<https://www.youtube.com/watch?v=hIRNO8xcrGU> and  
<https://www.youtube.com/watch?v=JZ1Hgzi2EIQ>

**Museum tower, Dallas USA:** <https://www.dallasnews.com/arts-entertainment/architecture/2018/11/02/the-glare-from-museum-tower-makes-its-national-tv-debut-and-we-learned-it-s-really-hot-in-dallas/>

After years of trying to find a solution, they eventually gave up saying it would be costly to fix.  
<https://www.archdaily.com/773066/search-ends-for-solution-to-museum-towers-glare-problems-at-nasher-sculpture-center>

**Vdara, Las Vegas USA:**

<https://amp.businessinsider.com/the-vdara-death-ray-hotel-is-still-burning-people-in-las-vegas-2016-6>

*"I knew this was going to happen," he said of London's skyscraper. "But there was a lack of tools or software that could be used to analyze the problem accurately ... When it was spotted on a second design iteration, we judged the temperature was going to be about 36 degrees [Celsius]. But it's turned out to be more like 72 degrees. They are calling it the 'death ray,' because if you go there you might die. It is phenomenal, this thing."*

The problem is that it is very hard to judge the temperature, in this building they were off by more than 30 degrees Celsius.



Value

'Over a long period the place has been recognised as a home for memorials to important events and people. In this way the park is a significant holder of the city's memory. The many memorials located within the place indicate the high esteem held for the area by the community.'

'the presence of the park on its southern edge also contributes to the city's prestige as a garden city and lends its prestige to st.kilda road and surrounding arts precinct.'

Impact

This value is referring to the importance of the area known as the 'Memorial Gardens'. In the Memorial Gardens there are many trees with plaques commemorating different groups that served Australia during and after war.



The City of Port Phillip had this to say in their St Kilda Road North Precinct Plan 2013 about the Memorial Gardens:

**Rational: Edge of the Shrine Memorial Gardens**

*The Plan will also protect the Memorial Gardens from overshadowing. The Gardens are used frequently for ceremonial purposes and require solar access at all times of the year.*

217/2019 changes the park and its memorials severely and permanently by casting 994 additional hours of shadow on the Shrine's Memorial Gardens. There are already shadows impacting on the Memorial Gardens from other buildings and trees. This increases the value of the remaining sunlight and the need for the 217/2019's height to be reduced. A video showing the full potential impact of afternoon shadows over 52 weeks can be viewed here: <https://vimeo.com/388884221> or <https://tiny.cc/shrine>



217/2019 fails to protect the Shrine of Remembrance as a significant historic and cultural landmark and place of reverence by not maintaining solar access to the Shrine's Memorial Gardens.

**Value**

'The aesthetic characteristics of the building are also important. They convey the community's respect for those who have served in combat and in supporting roles.'

**Impact**

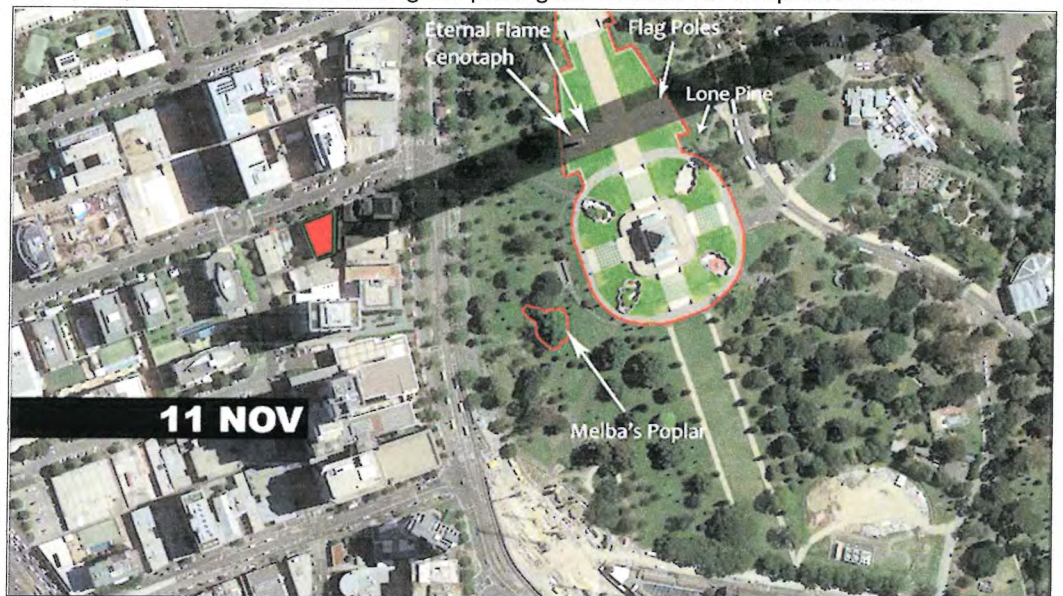
'The Shrine of Remembrance, Managing the Significance of the Shrine, July 2013' identifies how shadows to the Shrine grounds can impact the 'sense of place' of the Shrine.

**5.3.2 Shadow to Shrine grounds**

This can be a problem in the late afternoon for memorial gardens in the western quarter adjacent to St Kilda Road. Planning controls around the Shrine should ensure that these shadowing impacts are not worsened by any new development. Whilst some shadowing of the memorial gardens is inevitable, the shadow impacts of new development needs to be carefully considered to understand the impact on the 'sense of place' of the Shrine.

This 'sense of place' is what is protected under the EPBC act. The 994 additional hours of shadow on the Memorial Gardens and the 412 additional hours of shadow on the Shrine itself notably alter the 'sense of place' of the Shrine.

An example of how severe the shadow impact will be on Remembrance Day. On the afternoon of 11/11, 217/2019 will block the setting sun putting the forecourt in complete shadow.



Changing the Shrine area by putting it in shadow for an additional 412 hours changes the aesthetic characteristics of the building. It makes it a cold place and does not reflect the respect for those served that is felt by the people visiting. It will also make it a hot place by reflecting the morning sunlight creating 'hotspots' that people cannot visit.

**Value**

'The shrine's establishment on a hill, along st kilda road and within view (from the city) was purposeful and reflects the 'weight' of impact of the first world war on victorians, their families and wider australian communities.'

**Impact**

By casting 412 hours of additional shadow on the Shrine and its forecourt, 217/2019 changes the Shrines relationship with St.Kilda Road and thus changes the 'weight' that the Shrine is supposed to reflect.

The two existing high-rise buildings close to the Shrine are not an indication of the high esteem held for the Shrine by the community. They are examples of how a Planning Minister can act unilaterally to damage a sacred site and how heritage protection can fail. They are also the reason why the Shrine needs protection from the further encroachment and dilution of the Shrines character.

217/2019 changes the narrative from honouring personal sacrifice to that of an imposing tribute to foreign investment.

**Value**

“Specific features which express this value include the shrine building with its associated ceremonial landscape and commemorative memorials including but not limited to ...plantings”

**Impact**

The heritage listing for Melbourne’s Domain Parkland and Memorial Precinct identifies its plantings as one of the key features that add to its value.

While the whole of the Memorial Princinct will be perminately impacted by 217/2019, an example of direct impact is the 140 hours of additional shadow on the State Level of a Significant Heritage Listed Tree. The Golden Poplar, which deserves every minute of sunlight it can obtain, was planted by Dame Nellie Melba on 11th April, 1903 just prior to her returning to England.

**Heritage Database ID:** 71422      **File Number:** T11916      **AGE:** 117 years

[https://trusttrees.org.au/tree/VIC/Melbourne/Royal Botanic Gardens Birdwood Avenue 30](https://trusttrees.org.au/tree/VIC/Melbourne/Royal%20Botanic%20Gardens/Birdwood%20Avenue%2030)



**LONE PINE**

Another tree worthy of protection is the Lone Pine. 217/2019 will cast 61 hours of additional shadow on it. This pine tree commemorates those who served in World War One. The Lone Pine was the name given to a solitary tree on the Gallipoli Peninsula in Turkey, which marked the site of the Battle of Lone Pine in 1915 during World War One and it was the sole survivor of a group of trees that had been cut down by Turkish soldiers who had used the timber and branches to cover their trenches.



**Value**

‘..its parks were a valued part of the development of the city and its image as a sophisticated, modern city.’

**Impact**

Here the heritage listing identifies value of the park and it’s relationship with a sophisticated, modern city. The function of large city parks is to allow people to be with nature and along with access to natural light.

By substantially decreasing the amount of direct sunlight to the park, 217/2019 will change both the park and the way that the people of the city and visitors interact with it.