

VARRO VILLE



4 April 2019

Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Sent by email to: ipcn@ipcn.nsw.gov.au

Submission on Varroville Crown Development Application, 166-176 St Andrews Road, Varroville

My husband and I are the owners of state heritage listed Varro Ville Homestead that would be completely surrounded to within 10 metres of our boundary by the proposed Crown cemetery in this development application ('DA') of the Catholic Metropolitan Cemeteries Trust ('CMCT') if it were approved.

As requested by the Commission it is not our intention to repeat what we have said in our original submission to the Public Exhibition conducted by Campbelltown City Council 2017-2018. However we urge the Independent Planning Commission ('Commission') to carefully read our prior submission and that of our heritage and visual consultant Geoffrey Britton because nothing that has been stated or amended in Urbis's Response to Submissions ('RTS') on behalf of the CMCT, or in the Assessment Report by the Department of Planning ('DOP') has changed any part of what we originally wrote. The RTS and Assessment Report have simply ignored or dismissed our concerns without seriously considering any of them. We and our consultant thus maintain our opposition to the Varroville Cemetery DA in its entirety and make the following additional comments.

Poor treatment of us

Our treatment in the RTS and Assessment Report continues the inexcusable behaviour towards us since the beginning of this dubious proposal and goes to the integrity of the process throughout.

The CMCT developed its original planning proposal in isolation from us, asked others to keep it from us, presented it to Council fully-formed and launched it at an invitation-only media event that excluded us. It then called us to a meeting where it presented its plans as a 'fait accompli' and where our concerns were met with highly insensitive and undignified responses from the then Chair of the CMCT, resulting in our walking out, determined to commission our own heritage study to protect the Homestead and its Estate for future generations. I will refer to more about this meeting where it is relevant below.

The CMCT's behaviour towards us during the progress of this proposal through the planning system has, with the apparent complicity of the DOP, cycled between neutralising us, bullying us or acting as if we did not exist. Its responses in this DA need to be read in that light. The CMCT (alone or via its consulting firm Urbis) and the DOP have consistently refused to acknowledge throughout the process that the cemetery would *completely surround* our property, suggesting (when it acknowledged that we existed at all) that the Homestead was merely 'adjoining' or 'neighbouring' the proposed cemetery. When Varro

Ville Homestead was mentioned it was merely as an empty building that was too often not separately identified from the outbuildings - for example in the public consultation letter box drop where the CMCT claimed it would restore the site's *'existing heritage buildings'* without mentioning that this did not include the house – thus potentially misleading people into thinking that the CMCT owned our house and it would be looked after.

Mostly we were deemed to be non-existent, starting with the Pre-Gateway Application form where the following section was left blank: *PROVIDE DETAIL OF ALL AFFECTED LANDOWNERS WHERE THEY ARE NOT THE DIRECT APPLICANT*. In papers sourced under the *Government Information (Public Access) Act 2009* ('GIPAA') in meetings with key decision makers (for example when the Minister for Primary Industries was asked to waive prior conditions of consent and allow the CMCT to buy the surrounding land outright in its own name), we and our state-listed home in the middle of the cemetery were not mentioned.

This appears as a deliberate intention to deceive, to hide the fact that a privately-owned state-listed property was in the middle of it, that it was someone's home and it was being destroyed by it.

The effect on us has been deeply distressing, but like all bullying it also morally degrades those who accept and participate in it, creating a downward spiral of declining integrity and trust in the system.

The DOP in the Assessment Report for this DA has continued this approach. It acknowledges *finally* that a state listed property is *in the middle of* the cemetery. However on p.15 of the Report, while key objectors are mentioned by name, including the Carmelite nuns and friars, we the *owners* of Varro Ville Homestead in the middle of the cemetery do not exist. Our objections are referred to anonymously (top of p.20) as *'one public submission'* that had raised concerns that the DA had *'not used relevant contemporary information in its assessment of heritage impacts, including the Curtilage Study Varro Ville by Orwell & Peter Phillips, dated May 2016'*. The DOP then dismisses that concern from consideration on the false basis that *'...this document was not made available to the Applicant on request'*. In a final act of obliteration, the DOP then instructed Urbis to remove the outline of the heritage curtilage - including that already gazetted in the Campbelltown Local Environment Plan 2015 ('CLEP15') - from its Landscape Masterplans making it difficult for anyone reviewing the plans to understand the true heritage impact.

The sum total of any consideration of us and our issues is thus wiped from the slate with one sentence and the stroke of a keyboard. The DOP has not made any effort in its Assessment Report to critically review or override any of the comments made by Urbis in the RTS on behalf of its client regarding issues we raised in our submission as follows.

Issues discussed in the RTS

1. **Security.** Urbis states that the cemetery will *increase* our security, rather than undermine it, because it will be regularly staffed - but this contradicts other statements in its DA that it will only operate from dawn to dusk. However there is a more sinister aspect to its response: The cemetery and its infrastructure will encroach right up to our boundary. When it then states that it will install *'regular security monitors and CCTV'*, does this mean our privacy will now be breached by the CMCT tracking our movements, activities and those who visit us? We further note there is no mention of fencing, though it clearly intends to remove our fencing from the rear of our property to push its burial room towards our house and workshop. There will be no



privacy at all and it will either abandon us to the inevitable intrusions from people accessing the cemetery during the day (or by stealth at night) or incarcerate us behind high security fencing. What is to stop the CMCT incarcerating us if this DA is approved? What recourse will we have if it does? If the DA is approved on this basis then the Commission will be complicit in enabling further threatening and bullying behaviour designed to make our life as unbearable as possible and drive us to leave.

2. **Heritage Assessment.** The RTS dismisses our issues by brazenly claiming that the study '*has not been made available to the proponent*' and '*has not been endorsed for the site by any level of government be it state or local.*' Both statements are false. At the date of the RTS of 21 June 2018 the study had been available at Campbelltown Council along with all the other DA documents in compliance with the *Government Information (Public Access) Act 2009* (GIPA Act). Further the study had been formally adopted by the Heritage Division of the Office of Environment and Heritage (which part paid for it under a NSW Heritage Grant) and the NSW Heritage Council when it adopted the study's Statements of Significance and recommended to the Heritage Minister on 31 October 2017 that most of the land intended for the Varroville Cemetery be placed on the State Heritage Register as a curtilage expansion for Varro Ville Homestead. As Urbis was a key participant in representing the CMCT in both these processes (DA and curtilage expansion) and a proclaimed expert on these issues, it cannot claim it did not know that these statements were false when it made them. This goes to the integrity of the whole RTS. Similarly it goes to the integrity of the DOP as it has clearly acted outside its remit in deciding to exclude our report without contacting us, as requested in our submission, and/or without referring it to the Panel.
3. **Land Value.** The RTS dismisses this on the basis that no evidence was provided that approval of the DA would have an impact on property prices and that, in any case, it is not a consideration under Section 4.15 of the *Environmental Planning & Assessment Act 1979*. ('EP&A Act').

Firstly, we had asked in our submission that if a valuation had to be provided to permit consideration of this issue in the DA assessment, then we were to be contacted. No request has been made to us. The DOP has simply allowed Urbis to dismiss this concern, again acting outside its remit.

However we also regard the response as disingenuous. The CMCT has, in its past discussions with us, acknowledged that the cemetery will adversely impact us financially. In our one and only meeting with the CMCT, when we raised this concern, the CMCT's CEO instructed us to get a valuation on the basis that the CMCT might be able to '*shore up [our] equity*'. However he was vague about what he meant and the conversation terminated when the CMCT's Chair exclaimed that they were '*not paying any bribes*' – a deeply insulting comment in that context leaving us the impression that the CMCT had no intention of treating us fairly but merely wanted to 'neutralise' us. More than a year later - after we had denied the CMCT's lawyers access to our property for its valuers and heritage consultants on the apparent pretence it now '*wanted to buy [our] house*' - we received an 'uninvited' phone call from the CMCT's CEO who suggested that our house would be worth more to it if we sold *then* rather than *later* when its plans were more fully developed and it could find no use for our house. In fact its plans were already fully



The RTS makes a circular *non-argument* that the retention of these features is consistent with its Masterplan and with its 'endorsed' Conservation Management Plan (***Conservation Management Plan Varroville Estate: 166-176 St Andrews Road, Varroville, Urbis, October 2015 ('CMP15')***) - as if this is all that counts. As we have stated in prior correspondence and submissions to the Commission, it is disingenuous for the CMCT/Urbis to keep claiming that its CMP15 is 'endorsed' when only the NSW Heritage Council can endorse a CMP. The Heritage Council has not endorsed this one as it can only do so for land that is already on the State Heritage Register ('SHR') and the CMCT is now objecting to this land being placed on the SHR. Further the DOP clearly acted outside its remit and outside its area of expertise in embedding this CMP15 into the CLEP15 in what is clearly a perversion of process that needs to be corrected.

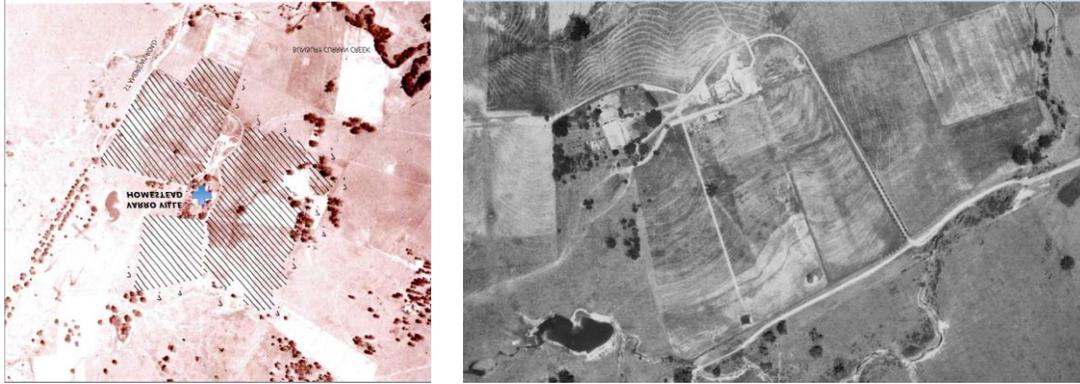
Notwithstanding that, the CMP15 itself allows for updating (Policy 9) and it has clearly (as outlined in our letter to the Commission of 6 March 2019) been updated by our study OPP16. OPP16 shows (as illustrated in Peter Gibbs' submission) that these roads and the burial room (no matter whether 'lawn' or 'headstone') will damage heritage identified in that study and included in the Statements of Significance adopted by the Heritage Council in its recommendation to the Heritage Minister to list the land on the SHR. It is further legally incorrect for the CMCT/Urbis to suggest in any way that clause 7.8A means that this land has been 'set aside' or must be used 'exclusively' for a cemetery (as the CMCT/Urbis *incorrectly* claimed during the Commission's review of the Varro Ville Homestead & Estate curtilage expansion)¹ and then use this to justify non-compliance with other parts of CLEP15 or any other requirement. Its response to the removal of these items thus has no basis.

- c. Refusal to consider Point 1.6 in Council's letter of 29 May 2018 to create a greater buffer zone around the Homestead and its outbuildings. This request is consistent with Point 1 of the NSW Heritage Council's Letter to Campbelltown Council of 19 February 2018, which the CMCT/Urbis has also rejected.

In reality, the buffer zone should be *at a minimum* the curtilage already included on the CLEP15 as – in addition to having the *least adequate soil depth* for burial under World Heritage Organisation guidelines (0.7 – 1.55 metres per p. 12 of the DA's Appendix U, *Geoscientific Investigation*) across the entire site - there is no demonstrable way burying so many bodies and putting in roads requiring so much cut and fill can *not* destroy the land's state heritage significance associated with the circa 20 hectares of agricultural trenching, early water conservation system and landscape setting of the Homestead, as identified in the Statements of Significance adopted by the NSW Heritage Council in its 31 October 2017 recommendation to list the land on the SHR. Such a large modern cemetery is simply not a safe or compatible land use within the curtilage.

¹ The rezoning merely added 'cemeteries' as an additional land use to those already included in CLEP15 for the E3 zoning





Visible extent of vineyard trenching at Varro Ville on the 1956 aerial photograph.

- d. Refusal to conduct a structural impact assessment on Varro Ville Homestead. This request by Council would appear to respond to our concerns about land stability relating to disturbance of the agricultural trenching surrounding the Homestead and its outbuildings (notwithstanding that it will also destroy state heritage identified at both the National and State level as rated in OPP16). The RTS defence that there would be no physical development within 70 metres of the Homestead and no significant works within 100 metres of it is a non-argument that has no basis in any expert assessment of the stability of the surrounding land when disturbed. It also appears to rely on the untenable defence of last resort for the CMCT/Urbis that *roads and graves do not matter when assessing heritage, visual and land stability impacts*.
- e. Additional Visual Impact Assessment (Point 1.11 in Council's letter). Although Urbis *has* carried out this assessment, it has completely ignored Council's request that this include a critical view line to the east (lower right in diagram below): including its former driveway approach and agricultural trenching. This is one of the two principal views identified in OPP16 (p.89) being the original approach to the Homestead past its outbuildings via an intentional landscape park setting and where the agricultural trenching is most prominent (see diagrams and photos next page). Note CMCT/Urbis have limited the trenching to the small hillside only partially captured by this view line.



Key view axes from the homestead demonstrating its siting rationale, Geoffrey Britton OPP16.





Agricultural Trenching looking east from the Homestead's fence line (right in photo), Geoffrey Britton OPP16



Key view line looking east from the Homestead's early road that forms part of the garden, Geoffrey Britton OPP16

The Additional Visual Impact Assessment has also only *partially* complied with Council's requirement that it assess the '*overall setting*' of the Homestead. It took a view line from Bunbury Curran Hill but omitted the critical public view (below) of the Homestead in its landscape setting looking east from St Andrews Road that will no longer be available to the public if this DA is approved.



The key public view of the Homestead in its landscape setting from St Andrews Road looking east, Geoffrey Britton OPP16



In reality it may not matter that these views were ignored as the Additional Visual Assessment already shows that the cemetery development does not comply with cl 7.8A (2)(a) of CLEP15 no matter which view line is assessed. Under CLEP15 the DA can only be approved if the consent authority is satisfied that (amongst other things):

'(2)(a) the development will complement the landscape and scenic quality of the site, particularly when viewed from surrounding areas including the Campbelltown urban area, "Varro Ville" (homestead group at 196 St Andrews Road, Varroville) and the Hume Highway'.

The DOP has disingenuously claimed that the DA complies with CLEP15 by (1) changing the criteria for deciding this (without any basis): i.e. that as long as no 'buildings' are visible then it is fine, but cars (parked or moving), roads, grave markers etc. do not matter, and (2) by re-defining 'complement' to mean 'will not significantly alter/degrade'. We are advised that the legal definition of 'complement' is 'make better'. The cemetery outlined in the DA clearly does not make these views better. We also note that the DOP's criteria are not consistent with Council's request that 'all proposed structures' be included in the assessment. It is not clear from Council's letter whether it intended that ground-level plaques be included in the potential to degrade views, but they *must be* given their greater visibility on sloping land.

- f. Acoustics (2.6 in Council's letter). Council had determined that Varro Ville Homestead would be most affected by the site's activities and requested that an acoustic assessment be made for it. No assessment has been made. This is despite the fact that the CMCT/Urbis has since added to the potential noise by allocating more exit traffic to Access C where it expects 'acceleration' will be at its highest. The acoustic consultant (Supplementary RTS, Appendix H – Acoustics Letter) has wrongly assumed that any noise experienced by the Homestead will be 'masked' by noise from the Hume Highway without taking into account that the vast majority of the cemetery runs around the northern and western sides of the house, the opposite of the highway. Currently the predominant wind direction during the day comes from that direction which we experience as very quiet. The cemetery noise will destroy any quietness associated with the property.

The need to assess this DA against 'Curtilage Study Varro Ville May 2016 by Orwell & Peter Phillips (OPP16)'.

We wrote to the Commission on 6 March 2019 regarding the importance of including the OPP16 study in assessing this DA. The Commission has agreed to do so. For completeness we reiterate our arguments below:

This study informed the NSW Heritage Council's recommendation to the Heritage Minister of 31 October 2017 to include most of the Varroville Cemetery land on the SHR. It was commissioned by us with the help of a NSW heritage grant and was submitted to the Heritage Division of the Office of Environment and Heritage ('HD') to support the curtilage expansion nomination. It was also part of our submission on the DA made during the Public Exhibition. The information contained in it supersedes the DA's heritage



study (CMP15)², and the NSW Heritage Council has reiterated its support for it and its reasons for relying on it in submissions to the Commission's curtilage expansion review. The Statements of Significance supporting the recommended state listing come from the OPP16 study.

We reiterate our position, outlined in our submission to the Commission's curtilage review, as follows:

1. CMP15 relied on outdated secondary sources, in many cases by the same consultants that authored OPP16 – namely Geoffrey Britton and Peter Phillips. We include Wendy Thorpe's March 1992 historical analysis and Geoffrey Britton's *Varroville Landscape Analysis*, 2007, referenced in the *Historical Archaeological Assessment (HAA)* appended to CMP15. Thorpe's analysis was part of a prior report on Varro Ville by Orwell & Peter Phillips of May 1992 for the National Trust, both now 26 years old. Mr Britton's 2007 report is owned by us and has never been published but in any case he has substantially revised his findings, as has Peter Phillips from his 1992 report. Similarly Mr Britton has revised and expanded his findings on Varroville from the report he co-authored with Colleen Morris for the National Trust of Australia (NSW), *Colonial Landscapes of the Cumberland Plain and Camden, NSW, Final Report*, August 2000 (now almost 19 years old) which the DA's Visual Impact Assessment relied on when assessing significant views to and from Varro Ville Homestead. The view lines used in the DA are outdated and superseded.
2. CMP15 was formulated in the context of developing the CMCT's land for a cemetery; it thus only examined that land and carries the assumption that the cemetery can proceed. This biases its findings.
3. CMP15 did not have access to Varro Ville Homestead and, according to its '*Limitations*' (p.4) did not have access to the outbuildings due to safety concerns. Our consultants had access to both, including an examination of the key outbuildings by Design 5's Alan Croker in 2007 (appended to OPP16).
4. Claims by consultants for the CMCT that CMP15 has been 'endorsed' are not correct as the only part of government that can endorse a CMP is the NSW Heritage Council and it can only do so for land that is on the SHR. As the land is not yet on the SHR, and was not at the time CMP15 was incongruously and inappropriately embedded in the CLEP15 by the DOP as delegate for the Planning Minister, CMP15 has never been 'endorsed'. The DOP thus acted outside its remit in overriding the NSW Heritage Council and this part of the process needs to be put right.
5. The embedding of the CMP15 in a new clause to CLEP15, Clause 7.8A, does not, in any case, mean it can never be superseded. CMP15 specifically allows for updating: Policy 9 states: '*All future planning [etc.]... must be guided by the statement of significance and significant spaces, landscape, fabric and building elements identified in this CMP together with any additional detailed research and assessment [our emphasis].'*

We also note that Clause 7.8A is merely one of the clauses in the CLEP15 that the CMCT's development must comply with. It does not override the rest of CLEP15. Further

² *Conservation Management Plan Varroville Estate: 166-176 St Andrews Road, Varroville, Urbis, October 2015.*



it does not override any CMP endorsed by the NSW Heritage Council for land on the SHR, which can only be endorsed by *it*. We understand that those CMPs are required to be updated about every five to ten years. CMP15 was outdated at the time it was written due its reliance on outdated secondary sources.

6. OPP16, on the other hand, was commissioned purely to investigate the heritage significance of the whole Varro Ville Estate without regard for any particular development. Its landscape analysis was underpinned by a new historical examination using primary sources relating to the land and its uses over time. This led to revised statements of significance that substantially differ from CMP15.
7. OPP16 was subject to a NSW heritage grant that meant that it was subject to quality oversight by the HD. The HD's submission during the 2016 rezoning of the land makes it clear that CMP15 was not subject to this (though it should have been under the Gateway Determination conditions).

In opposing the rezoning of the land around Varro Ville Homestead, the Heritage Division, acting as delegate for the NSW Heritage Council wrote:

'The Heritage Division has awarded Ms Jacqui Kirkby a heritage grant to prepare a Heritage and Curtilage Study for Varroville. The findings of this study are due but yet to be received. These findings are considered to be crucial in determining the appropriate curtilage of the Varroville House [sic] and any Planning Proposal should not proceed before these findings are available. The reports supporting the Planning Proposal such as the draft CMP and Visual Impact Study and Design Master Plan may all need revision and alteration as a result of cross-comparison with this study.'

A new CMP is now required based on the OPP16 findings to support the revised Statements of Significance together with a new Heritage Impact Statement and Archaeological Impact Assessment. Given the clear conflict of interest and integrity issues associated with the cemetery DA, these studies should be carried out by qualified experts independently of the DA and its proponent.

Without these independent assessments, particularly a revised CMP, the Panel will find it difficult to assess the implications of OPP16 for this DA. Our review of the Heritage Division's briefing to the Heritage Council shows that it has struggled, in the absence of these revised documents, to properly assess the impact of the DA on Varro Ville's state heritage significance. It has led to a focus instead on the Homestead without coming to grips with the rationale for the curtilage expansion: i.e. that the Homestead had been sitting on the state register for 26 years taking much of its state significance from elements in the surrounding land that were not part of its listing and only protected by the planning controls that the DOP, under delegation from the Planning Minister, stripped away in the spot rezoning of the land for the CMCT in 2017. If these key elements are destroyed then the Homestead's state and identified national significance is fatally compromised. These elements include (but are not limited to):



- The only remaining 19th century access road (from St Andrews Road) that keeps the integrity of the approach to the Homestead intact (see Peter Gibbs presentation of 25 March 2019),
- The circa 20 hectares of pre 1827 agricultural trenching (not known elsewhere in Australia),
- The early water conservation system that was used as the model for opening up agriculture in Australia by Charles Sturt in his report to the Colonial authorities (OPP16, p.54-55). This includes small water holes along watercourses that CMP15 has missed but are included in OPP16 (p.82) and require further investigation,
- The famed orchard of Dr Robert Townson, and
- The landscape setting of Varro Ville Homestead as designed and sited by the former colonial architect William Weaver. The Homestead is his only known single storey country residence.

We also note that a 'living chapel' is planned for the hill overlooking the Homestead that has been identified as an early gravel borrow, the gravel of which is found on the early roads around the Homestead. In removing it, it not only deprives the estate of an important colonial feature but also the restoration of the Homestead's roads and carriage circle using original material from the estate.

Position of the NSW Heritage Council and inadequacies in its Assessment.

The Heritage Council's opposition to development of the Varro Ville Estate and the Scenic Hills, and in particular its opposition to this cemetery, has a long history. Here is a brief chronology:

In 1976 the National Trust of Australia (NSW) placed all the land intended for this cemetery on its heritage register for Varro Ville.

In 1993, a Permanent Conservation Order ('PCO') (later transferred to the SHR) was placed on the Homestead Lot following its subdivision from the rest of the estate and bequest to the National Trust. The Heritage Council has since actively and consistently opposed any change to the planning controls for the land surrounding the Homestead, consistent with the view that the land included on the PCO was inadequate.

In 2000, a curtilage expansion for Varro Ville Homestead onto the surrounding land was nominated but a decision deferred.

In June and October 2000, the Heritage Office ('HO', later HD) wrote to Campbelltown Council raising concerns about proposed amendments to the Local Environment Plan affecting the land surrounding the Homestead. The proposed amendments did not proceed.

In 2007, when the land now owned by the CMCT was put on the market for the first time since 1950, the HO wrote to Colliers International asking it to inform prospective purchasers of a pending investigation to expand the Homestead's curtilage onto the sale land. According to the owners at the time, this letter was incorporated into the sales contract. The land was bought by land developer the Cornish Group.

In 2007 (28 August) the HO wrote to Campbelltown Council raising concerns about the Cornish Group's proposed spot rezoning of the land for a Business Park. The rezoning was rejected by Council.



The rezoning proceeded nevertheless, and *without* endorsement of the CMP15 as the land had not been placed on the SHR despite the CMCT agreeing to do so in its rezoning application (planning proposal).

In 2017 (31 October), the NSW Heritage Council recommended to the Heritage Minister that most of the land owned by the CMCT and more, be placed on the SHR as a curtilage extension for the Homestead, but the Minister failed to make the decision in accordance with *the Heritage Act 1977* .

In 2018, it was revealed that, though the CMCT had supported this curtilage extension as part of the rezoning and during the Heritage Council's assessment, it had since withdrawn its support. The Heritage Minister sent it to the Commission 'out of time' for a review. During that review, the Heritage Council reaffirmed its commitment to the curtilage expansion and its support for the OPP16 study.

It is thus disturbing to read in the Assessment Report (pp.19-20),

'In its original submission to [Campbelltown] Council the NSW Heritage Council did not object to the proposed cemetery...

and '...rather than requiring a new DCP for the site, the Heritage Council and the Department are satisfied the CMP and associated development management plans submitted with the DA provide an appropriate framework for ongoing management.'

This would appear to be an incredible about-turn that is hard to reconcile with the history of the Heritage Council's prior opposition and its ongoing support for the curtilage expansion based on the OPP16 study.

The first thing to note is that while the first sentence above is true, the second one is a distortion of what the Heritage Council actually said and again goes to the integrity of the DOP's assessment. In Point One of its letter to Campbelltown Council of 19 February 2018, the Heritage Council was clearly acting consistently with its submission during the rezoning of the land, requiring an 'endorsed CMP' (the CMP15 is *not* endorsed) and other associated documents as part of a DCP prior to development consent. As the Heritage Council was told it could not have a DCP, the Heritage Council had no choice but to accept this and hold out for a state heritage listing when it could request this again (see response to RTS of 29 November 2018).

However, given the Heritage Council's history of opposition to development of this land and in particular this cemetery, the decision to not specifically oppose the cemetery *is* an about-turn.

We requested and received informally under the GIPAA, the briefings given to the Heritage Council when it considered the Varroville Cemetery DA. Unusually, there were no briefing notes for the meeting of 7 February 2018 when the Heritage Council approved the letter that went to Campbelltown Council or for the meeting of 21 November 2018 when the Heritage Council was asked to consider the RTS report. However there is a briefing paper for the meeting of 21 November 2018. A comment in that paper indicates that, having been overridden in the rezoning of the land, the Heritage Council had reverted to damage control:

'...given the changes to the planning legislation to allow a cemetery, the Heritage Council determined to work with the Applicant and its consultants to ensure the best heritage outcome for the lands which form part of the Varroville Homestead Curtilage Amendment Recommendation to List.'



This is *not* the way to protect state heritage and we have a number of other concerns regarding the Heritage Council's response and briefing as follows:

There is evidence that the Heritage Council has not been properly briefed.

We note that during the Commission's curtilage expansion review the CMCT/Urbis were persistently misleading in claiming that the land had been 'set aside' for a cemetery when in fact all that had happened was 'cemeteries' had been added to the CLEP15 as an additional land use. If this was not corrected by HD officers (as evidenced in the Commission's curtilage review), this may have influenced the Heritage Council into believing it had no choice but to resort to damage control to get the best outcome it could.

The Executive Director of the HD assured me that the OPP16 report was used to guide the Heritage Council's response. Yet we can find no evidence in any of the briefing papers, minutes or written responses that it did so. The briefing to the Heritage Council appears to be based on the CMCT/Urbis documentation alone without that being made explicit. The response of the Heritage Council to the DA is in conflict with the Statements of Significance it adopted from OPP16 for its recommendation to list the land on the SHR, and inconsistent with the presentation given by the Deputy Chair of the Heritage Council at the Commission's curtilage review in January this year which *followed* the meeting of 21 November 2018.

We note that none of the issues that other heritage experts including our own consultants have raised were mentioned by the Heritage Council – including non-compliance with CLEP15 on heritage and visual grounds, flaws and inconsistencies in the CMP15, the need for an Archaeological Impact Assessment (European), and issues around the misuse of the Burra Charter in the Heritage Impact Statement.

There are some glaring errors as follows:

1. The view lines in the Heritage Council briefing paper of 21 November 2018 were the outdated ones provided by the CMCT/Urbis (see below), not the updated ones from OPP16. If the latter had been used (consistent with Campbelltown Council's letter of 29 May 2018), the Heritage Council would have clearly seen that views to and from the Homestead will be significantly degraded by the cemetery development.



2. There is no evidence that later amended studies that impact heritage were brought to the attention of the Heritage Council e.g. the Additional Visual Impact Assessment of 3 December 2018, or the study by JK Geotechnics (*aka* Dam Stability Assessment) at Appendix G of the RTS Report that recommends the dams within the early water conservation system be either removed or reconstructed. Potential early waterholes identified in OPP16 are not even mentioned.
3. The Heritage Council had requested that the trees lining the roads be removed to ensure the maintenance of the informal and open rural landscape character of the site. This is partially consistent with its prior objections, however in its attempt to accommodate the cemetery it has missed the fact that cars will now be clearly visible driving along the roads and parked on both sides within full view of the Homestead and within the site. There is no way to resolve this except by reverting to the Council's original and logical position that a cemetery within the proposed curtilage is incompatible with the retention of the state heritage significance of Varro Ville Homestead and its Estate.

Development Creep

The RTS, the Supplementary RTS and the Assessment Report are deeply flawed, as are the processes that have been followed in developing them. The CMCT and its consulting firm Urbis, with the apparent support of the DOP, have variously responded aggressively and/or disingenuously to criticisms to push this development through, suggesting that they know this DA does *not*, and *cannot* comply with CLEP15 on many grounds and should be rejected.

A common practice by planning authorities wishing to avoid the rejection of a DA is to put all the unresolved issues into Conditions of Consent. This merely defers assessment of things – things that should have resulted in the development being rejected - to a later period when the developer already has a foot in the door. It also complicates the oversight of the project. Both these factors lead to inappropriate development creep.

Given the environmental constraints and the sensitivity of the land (state heritage and scenic protection) and sensitive land uses adjoining it, this cannot be allowed to happen. The CMCT and the DOP have already demonstrated that they cannot be trusted to work with the community or other agencies.

Development creep on a massive scale has already occurred and we could be forgiven for feeling that the purpose of this is to head off any heritage listing and to make our life as difficult as possible.

Compare what was stated during the various stages of the rezoning of the land to what has been revealed in this DA on exhibition with the Commission. In the rezoning:

- The CMCT promoted the proposal, with the apparent complicity of the DOP, as a 'lawn' cemetery. It is now fully revealed as a general purpose one, as it always was.
- The catchment area (with a 'critical/severe shortage' of burial space,) started out as Macarthur's, then became the South-west's, then Western Sydney's and is now revealed as the Greater Sydney Region's, as it always was.
- The CMCT claimed it would '*safe keep*'/'*conserve*' the heritage of the site, including its '*important colonial landscape*', with its CMP15 supporting a curtilage expansion for Varro Ville



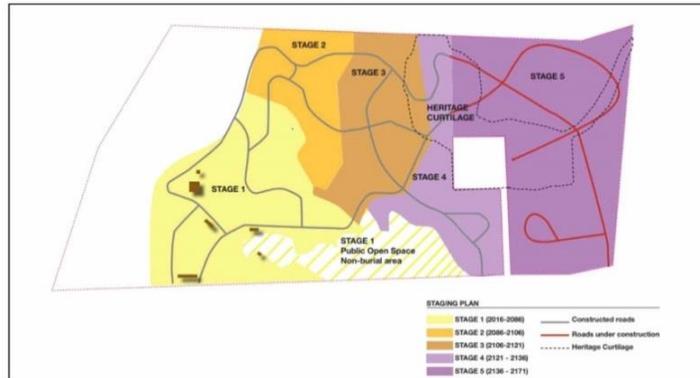
Homestead over most of the cemetery land and the expressed desire to 'work with' the Heritage Council. It has now been made clear that protection of the land's heritage is incompatible with the CMCT's Crown cemetery plans, as it always was. Thus in a clear breach of ethics and public trust, the CMCT has withdrawn its support for the Heritage Council's recommended curtilage and is refusing even the barest of protections that the Heritage Council has tried to impose.

- The cemetery was promoted as a 150 year project, with claims that we will 'be dead' before it developed anywhere near the Homestead. This was never an argument to destroy heritage and scenic views for future generations, or to mitigate the devaluation effect on our property, but now it has also been shown for the massive sham it always was. The Metropolitan Sydney Cemetery Capacity Report November 2017 (p.44) claims that

'If the number of deaths per annum in metropolitan Sydney were to remain at the 2056 level for following years and decades, and the cremation and occupancy rates of scenarios 4 or 5 also persist at 2056 levels, metropolitan Sydney would require capacity equivalent to that of the Macarthur Memorial Park development approximately every 15–20 years.[my emphasis]'

The diagrams below show the enormous expansion of land take-up from Stage One of the approved 2015 Planning Proposal (over 70 years), to Stage One of the DA on Public Exhibition in 2017/2018 (over 85 years), to Stage One of the DA that has suddenly 'appeared' during the DOP's re-assessment for the Commission (over a mere 11 years).

FIGURE 8 – STAGING PLAN (SOURCE: FLORENCE JAQUET)



Staging Plan, Macarthur Memorial Park Planning Proposal 2015

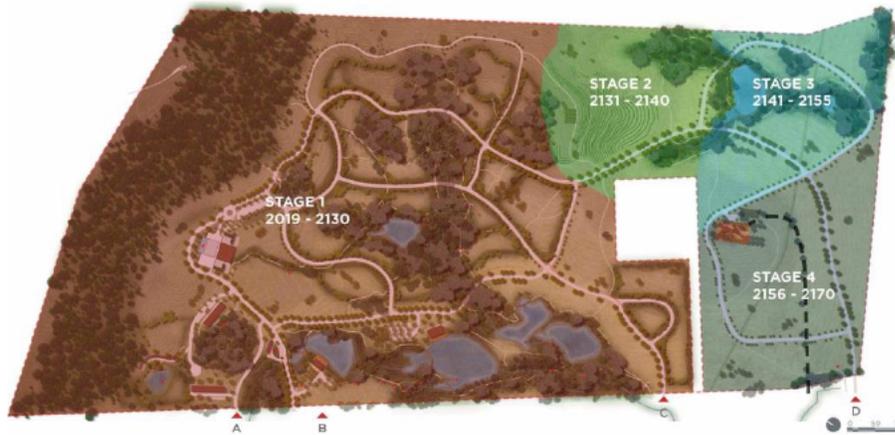
Figure 22 – Indicative Staging Plan



Table 10 – Indicative Staging Plan

Staging Plan, Macarthur Memorial Park, Development Application 2017





Revised Staging Plan, Macarthur Memorial Park, 'Development Application 2019'

How was this last expansion allowed to happen *after* the original Public Exhibition? The DA now indicates that the whole of Stage One will be constructed in just three years.

We know from GIPAA searches that there is more appropriate government land available in more strategic locations, that the Metropolitan Sydney Cemetery Capacity Report does *not* want more cemeteries in South-West or West-Central Regions³, that nearby Forest Lawn has burial capacity for upwards of 70 years at the current take-up and with prices that are more than competitive with the CMCT, and that private cemetery operators have sufficient stocks of land banked.

Does the Commission really believe that if this is approved it will be able to predict what it will become, and at what cost to the us, to state significant heritage, to the sensitive land uses, to our Scenic Hills, to the community?

If there is to be any trust and confidence in the system, the DA cannot be approved as it does not comply with CLEP15. If it is approved, how can the government expect anyone in the community to have any trust in the planning system or respect for the plans that bind them.

Please, for all our sakes do not unleash this monster on us.

Yours sincerely

Jacqui Kirkby and Peter Gibbs

³ See p.39, https://www.industry.nsw.gov.au/data/assets/pdf_file/0014/143402/CCNSW-Metropolitan-Sydney-Cemetery-Capacity-Report.pdf

