

VARROVILLE

6 March 2019

Ms Dianne Leeson
Panel Chair, Crown Cemetery Development Varroville
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

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

Dear Ms Leeson:

Re: Crown Cemetery Development Varroville – Use of our curtilage study by Orwell & Peter Phillips

We are the owners of state-listed Varro Ville Homestead (SHR #00737), located *in the middle of* the land which is the subject of the Varroville Crown Cemetery development application ('DA') of the Catholic Metropolitan Cemeteries Trust ('CMCT'), now being decided by the Independent Planning Commission of NSW ('Commission'). We have always objected to the cemetery development.

We are also the nominators of a curtilage expansion for Varro Ville Homestead and Estate on the State Heritage Register ('SHR') over much of the same land. The NSW Heritage Council recommended the curtilage expansion to the NSW Heritage Minister on 31 October 2017, and she forwarded it to the Commission for review 'out of time' on 12 October 2018. We understand the Commission's review was completed and sent to the Minister on 22 February 2019; however the Minister did not make the decision, as required, prior to the commencement of the 2019 NSW Election Caretaker Period on 1 March 2019. We have been told that the Commission will not publish its advice to the Minister until after the Minister makes the decision.

We reiterate that we believe the Commission should postpone its assessment and decision on the Varroville cemetery DA until the issue of the curtilage expansion has been concluded and the appropriate DA documents amended accordingly. It otherwise continues the outgoing government's political interference in the planning for Varroville and the Scenic Hills favouring the development arm of the Sydney Catholic Archdiocese, thus risking reputational damage to the Commission.

If the Commission decides to pursue the conclusion of the DA as is, then at the very least it must consider the curtilage study that informed the NSW Heritage Council's recommendation of 31 October 2017 to the Minister. The study, ***Curtilage Study Varro Ville May 2016 by Orwell & Peter Phillips Heritage Conservation Architecture ('OPP 16')*** was commissioned by us with the help of a NSW heritage grant and was submitted to the Heritage Division ('HD') of the Office of Environment and Heritage 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 ***Conservation Management Plan Varroville Estate: 166-176 St Andrews Road, Varroville, Urbis, October 2015***

(‘CMP15’), 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.

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.
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’ is not correct as we understand 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 it was oddly embedded in the Campbelltown Local Environment Plan 2015 (‘CLEP15’) by the Department of Planning (‘DoPE’) as delegate for the Planning Minister, it has never been ‘endorsed’.
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 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.



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.

The DoPE's decision to exclude our study from its assessment of the cemetery DA on the basis of its not being available to the applicant is an extraordinary decision without foundation and goes to the integrity of the DoPE's assessment for the Commission.

Our desire to keep the report confidential (as stated in prior communication) relates to the fact that it identifies elements in the landscape of state heritage significance that can be destroyed without penalty for as long as the land remains outside the protection of the *Heritage Act 1977*. If the curtilage expansion had been approved and gazetted, as it should have been in 2017, the report could have been made publicly available for the DA assessment.

If the Commission is unwilling to postpone its consideration of the DA then it is extremely regrettable that we have to ask the Commission to continue to restrict access to our study on a 'view only' basis as per the Commission's handling of this report during the curtilage expansion review. If the Commission has reason to believe that this does not afford the applicant procedural fairness then we would have expected the Commission to advise us of that during that review. Nevertheless we are prepared to extend 'view only' access to the CMCT's CEO, along with his heritage and legal advisers, and to give others access upon specific request to us.

We note that the lawyer for the CMCT, Mills Oakley, admitted during the curtilage review that it made a (poor quality) copy of our study and distributed it to the CMCT and its consultants when it accessed it on a 'view only' basis at Campbelltown Council. Council maintains that it did not permit this, making it a breach of copyright. Mills Oakley also claimed the study was incomplete.

We ask that the Commission ensure there is no further breach of copyright and advise us what part of the study is missing so that we can supply that part. We believe that one page, double printed, may have been missing, being pp.12-13.

To avoid a repeat of problems caused during the curtilage review, we ask the Commission to act early in determining how our study is to be included in the Commission's assessment of the DA.

Yours sincerely



For: Jacqui Kirkby and Peter Gibbs

