

VARRO VILLE



29 January 2019

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

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

Re: Submission on Varroville: Ministerial request to review the Recommendation to list the curtilage expansion of the Varro Ville Homestead and Estate (SHR#00737) ('Review')

I write as the owner (with my husband) of state-listed Varro Ville Homestead (SHR #00737). We are the current nominators of the curtilage expansion for Varro Ville on the State Heritage Register (SHR) that is the subject of the above request to the Independent Planning Commission of NSW (**Commission**).

This submission supplements (and corrects) my presentation at the Hearing on 14 January 2019 at the Commission's offices.

Concerns re Hearing Transcript

I am deeply concerned at the quality of the hearing transcript on the Commission's website as it pertains to my presentation. I note that others read from a pre-prepared presentation which was handed to the transcriber such that no transcribing was necessary. I presented from notes and relied on the professional transcribing that I have previously experienced at parliamentary hearings. I note the following:

- The transcript is littered with errors – examples include reference to heritage expert Alan *Kroeger* (instead of *Croker*); *confirm* (instead of *conform*); *land, creek and collapse* (instead of *land creep and collapse*); *order* (instead of *ought to*), *serious decision* (instead of *Sirius decision*)...and so on, including numerous grammatical errors (missing 's' etc.) and wrong word order.
- Frequent parts of what I said are missing, replaced with 'dashes' where presumably the transcriber could not understand what was said. This is spread throughout the transcript.
- Different sections run into each other that were separated in my presentation.
- Some information is missing without being marked by dashes, suggesting some editing, but may be error.

While the gist of what I said remains, much has been lost and the overall effect is highly disjointed. The transcript should have been marked 'uncorrected proof' or 'draft' to show that we had not had the opportunity to read and correct it. I had previously phoned the Commission to ask that we be given this opportunity and was told it would be put on the Commission's website and we could raise any issues then which would be checked with the tape. The transcript was two days late in being loaded and then appeared in a different section of the site (not under '**Presentations made at the Hearing**') making it difficult to find.

Despite a request to extend the period for making submissions - given the lateness of loading the transcript and the Australia Day weekend, the Commission declined. I had also not anticipated that the errors and missing information would be so great. As such I cannot correct it now before the deadline but ask that the tape be given to another transcriber (as for parliament or the courts) to be properly transcribed and reloaded.

In the interim, I will attempt to remake the key arguments from my presentation that were lost, along with some additional commentary on other submissions.

Purpose of this review and its timing

As stated at the Hearing, we do not understand why the recommendation of the NSW Heritage Council (**NSWHC**) to expand Varro Ville's curtilage has been sent to the Commission and what the nature of this Review is, as follows:

1. Legislation

The NSW Heritage Minister referred this matter to the Commission under s.34 (1)(b) of the *Heritage Act 1977* (letter of 12 October 2018). The legislation reads:

'Heritage Act 1977 No 136 Part 3A, s.34: Action by Minister following recommendation for listing

(1) Within 14 days after the Heritage Council makes a recommendation for listing to the Minister, the Minister must:

(a) decide whether or not to direct the listing and inform the Heritage Council of that decision, or

(b) request the Independent Planning Commission to review the matter.

(1A) On receiving a request to review a matter, the Independent Planning Commission is to conduct its review and provide a report to the Minister within the time period specified in the regulations.'

'Heritage Regulation 2012 – Part 4, Cl. 21: Time period for review of recommendation for listing

For the purposes of section 34 (1A) of the Act, the time period within which the Planning Assessment Commission is to conduct its review and provide a report to the Minister is 3 months.'

By our reckoning the timeline for the Commission's review is as follows: Since the NSWHC recommendation was made to the Minister **31 October 2017**, a referral to the Commission should have been made by about **mid-November 2017**, and the Commission review should have been concluded around **mid-February 2018**.

The Commission's acceptance to conduct this review 'out of time' has not been satisfactorily addressed in its prior responses to us on this issue.

2. Non-controversial recommendation

As documented in the NSWHC's Ministerial Briefing of 31 October 2017, no pertinent issues against the expansion were raised by any parties under the *Heritage Act 1977*. The Catholic Metropolitan

The NSWHC declined to consider site specific exemptions at the time of its decision on 28 September 2017, and confirmed at the Hearing of 14 January 2019 that this is its procedure.

- b. Statements of Significance. The CMCT, via its consultants Urbis, also requested that the Statements of Significance be amended to those in its CMP rather than our curtilage study - *Curtilage Study Varro Ville May 2016 by Orwell & Peter Phillips (OPP16)*. The HD correctly noted but did not accept this. A brief comparison between the two reports explains why:

The CMCT's CMP relied heavily on outdated secondary sources, many of which were derived from reports by the same consultants that authored OPP16 – namely Geoffrey Britton and Peter Phillips. Wendy Thorpe was also referenced in Artefact's Historical Archaeological Assessment (HAA) which fed into the CMP. Her analysis was input to a prior CMP for Varroville House by Orwell & Peter Phillips of May 1992, both of which are now 26 years old. I note that Geoffrey Britton's *Varroville Landscape Analysis*, 2007 is also referenced in Artefact's HAA yet this report is owned by us and has never been publicly released. In any case it has been superseded by OPP16 where Mr Britton substantially revised his findings (as did Peter Phillips from his 1992 CMP for the National Trust). Similarly Mr Britton has substantially 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).

The CMCT's CMP only examined its own land and in the context of developing that land for a cemetery. It did not have access to Varro Ville Homestead and, according to its 'Limitations' did not have access to the outbuildings due to safety concerns. Further, its claims that the CMP has been 'endorsed' does not appear to be correct as the only part of government that can endorse a CMP, as we understand it, is the NSWHC and it can only do so for land that is on the State Heritage Register (SHR). As the land is not yet on the SHR, and was not at the time it was strangely embedded in the CLEP15 by the DOPE, it has never been 'endorsed'.

OPP16, on the other hand, was commissioned as a curtilage study and took a broad approach to its investigation that included not only the original 1810 Varro Ville estate land, but adjoining land that formed part of its historical connection and visual curtilage. It was subject to a NSW heritage grant that contributed less than 50% of the cost, the rest being paid by my husband and me. The grant, however, meant that it was subject to quality oversight by the HD who we consulted prior to its commissioning. The HD asked us to answer the following *'Do the existing statements of significance capture all the values the property holds?'*

The CMCT may claim that it did *not* rely solely on secondary sources as it commissioned a well-known landscape consultant to conduct the landscape analysis. We know,

however, from our own experience that this analysis is only as good as the base historical material. By way of example, we had started our study in 2007 when the surrounding land was sold to land developers, the Cornish Group. We had tried to keep our costs down by using many of the same secondary sources used in the CMCT's CMP. Geoffrey Britton was also the landscape consultant at that time but his analysis raised more questions than it answered and the significance of the landscape was difficult to establish. For OPP16 then, we decided to return to original sources with a focus on what happened to the land, given that the history of the associated people had already been well covered in prior studies. To that end, Peter Phillips engaged Dr Terry Kass, an expert in land titles (amongst other things) who was able to supply previously unknown maps and aerial photos and traced the use of the land over time. This enabled Mr Britton to uncover a very different story in Varro Ville's heritage landscape, raising its significance at both the state and national levels. The statements of significance in OPP16 thus critically update and supersede the CMCT's CMP's, whose heritage analysis only related to its own land in any case.

Finally, the embedding of the CMCT's CMP in CLEP15 did not mean it could never be superseded. The CMCT's consultants' and legal advisers' claims about the operation of clause 7.8A of the CLEP15 (specifically relating to the CMCT's land surrounding Varro Ville Homestead, which references the CMP) are not consistent with our own understanding. 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 NSWHC for land on the SHR, which can only be endorsed by the NSWHC. We also understand that those CMPs are required to be updated about every five to ten years. Though the CMCT's CMP is deeply flawed (as described above, but also as outlined in our submission to the DA assessment where we elaborate on the many inconsistencies in the document along with its reliance on outdated secondary sources), the CMCT's CMP nevertheless 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 [my emphasis].'*

- c. Objections from the Office of Strategic Lands (OSL) to the inclusion of its land (Lot 4 DP 23957) in the curtilage expansion. The HD correctly dismissed OSL's objections to the inclusion of its land in the curtilage on the basis that there were other ways to handle these – notably if the land is to be later used for state infrastructure this would switch off the Heritage Act.

The OSL objections are, however, either ill-informed or disingenuous. Firstly it misquoted Campbelltown City Council, which manages this land, in claiming it joined with OSL in objecting to the land's inclusion in the curtilage. Council has since made a submission correcting this. Secondly a search by us under the *Government Information (Public Access) Act 2009 (GIPAA)* in 2013 showed the OSL negotiating with the CMCT to include

properly tested. We do not feel it is an appropriate role for the Commission to conduct a quasi-merits appeal or judicial review of the process to date. Nor is it appropriate to give the CMCT a second bite of the cherry to reverse its prior position because it has misjudged the outcome. If the Commission has, as stated on its website, *‘an important role to play in building community confidence in the decision-making processes for major development and land-use planning state-wide’*, then it cannot be seen to support Ministers in perverting the planning process and weighting the outcome in favour of large developers at the community’s, or other affected landowners’ expense. The Minister’s delay in making a decision has allowed the CMCT to progress its DA for a cemetery at Varroville on the land the subject of this curtilage expansion. In sending this recommendation to the Commission, ‘out of time’ and without good cause (as it was *not* controversial at the time the Minister was required to make the decision), the Minister would appear to be delaying this decision further while the DA progresses, but also giving the CMCT a ‘second bite of the cherry’ to reverse its position. By further exposing the heritage identified in our curtilage study to risk of destruction while the land remains outside the protection of the Heritage Act, the Commission could also be seen to be assisting the progression of the Varroville cemetery DA at the cost of the site’s state heritage significance, similar to the perceived Ministerial interference in not signing the NSWHC’s request for an Interim Heritage Order (**IHO**) in 2014 that would have protected the site while its significance was being determined. The Commission must be independent of Ministerial influence and interference, or the perception thereof, the more so as we are now operating in the Pre-Election Period in the lead up to the 2019 NSW Elections in March.

This raises issues regarding the time frame for the Commission's consideration of this matter. The material uploaded to the Commission's website is up to the point of the Ministerial Briefing of 31 October 2017 as the period that is being reviewed. The HD provided us with a different cut-off date when it told us in an email of 10 October 2017 that it could not include three submissions we had identified as validly sent within the public exhibition period that supported the curtilage expansion, including one from Historic Houses Association (sent twice). We were advised by the then Listings Manager, Katrina Stankowski that *'as the Heritage Council has already made its recommendation [on 28 September 2017], the submissions cannot be considered as part of the official documentation.'*

Yet now we have a situation where the CMCT can change its position, resubmit and gather support from those who depend on it for cemetery space and employment, who did not previously submit anything during the public exhibition of the curtilage expansion in July-August 2017.

The ability of large vested interests to influence governments and planning authorities to continually move the goal posts every time they find that the process is not giving them the outcome they want is a significant cause of the community's loss of trust and confidence in government generally and the planning process in particular.

Finally, if the Commission is opening up the timeframe to consider this as if the original public exhibition was still running, then there is a lot of valid information missing from the Commission's website. In particular we have lodged a GIPAA search for correspondence between the CMCT, its advisers and the HD and government Ministers, which we hope will explain more about why the Minister has not made the curtilage decision and why this recommendation has been referred to the

Commission out of time. The CMCT and its advisers are objecting to our having this correspondence and it will be months before we can access it. If the Commission can load up all our correspondence without regard for the normal operation of the GIPAA then it can request and upload this correspondence as well.

Moral context for the curtilage expansion

While this Review is concerned with assessing the significance of Varro Ville, there is a moral context that we have observed operating ‘informally’ in these decisions – that is, it appears to be rare for listings to be made if the owner objects. In our discussions with the HD, this appears to be the only reason for the OPP16’s recommended ‘critical minimum curtilage’ being further reduced. The CMCT did not want it to extend over the land where it wanted to put its cemetery buildings (part Lot B DP370979) and Scenic did not want it to extend to its ridgeline (part Lot 1 DP 541916). Both pieces of land have been excluded despite otherwise being identified as critical to Varro Ville’s state heritage significance in the OPP16 study and later submissions.

The moral context in this case is thus worth noting as follows:

1. A nomination for an expansion of Varro Ville Homestead’s curtilage was made in 2000 and remained pending (with boundaries undefined) when we and other affected landowners (the CMCT and Scenic) bought our respective pieces of the Varro Ville estate in 2006, 2016 and 2012 respectively. Indeed when the CMCT’s land changed hands in 2007 (for the first time since 1950) the then Heritage Office wrote to Colliers International at Parramatta asking it to advise this to prospective purchasers of the land. The then owners of the land told me that, on legal advice, they had incorporated the letter into the sales contract. When land developer, the Cornish Group, emerged as the purchaser, we met with it and suggested we carry out a joint curtilage study. The Cornish Group refused on the basis that it had its own heritage consultants. It engaged Paul Rappoport and we engaged Design 5 and Geoffrey Britton.¹ The CMCT has never pretended to be unaware of the proposed curtilage expansion. Indeed an Urbis Valuation document sourced under the GIPAA in 2013 shows that the Rappoport draft curtilage was used and is remarkably similar to the smaller curtilage proposed by the CMCT in its CMP (and now apparently its preferred curtilage), which seems to have more to do with maximising the value of the land than its heritage significance.
2. The National Trust listed Varro Ville on its heritage register in 1976 with a curtilage that included all the CMCT’s land and more. The National Trust’s submission states this (but is not part of the documentation listed on the Commission’s website, despite being listed in the Ministerial Briefing papers).
3. The CMCT committed to the curtilage expansion during the rezoning of its land. The CMCT’s CMP supported the larger curtilage to include the western dams. Submissions to the rezoning (for example from the National Trust) relied on this. The CMCT’s Planning Proposal

¹ We suspended our study when the Cornish Group’s proposed development was rejected by Campbelltown Council and our report ran over time resulting in our losing our heritage grant.



(spot rezoning application) also claimed that its proposed cemetery ‘...respects the important colonial and non-colonial landscape’ as well as the CLEP15 objective ‘to preserve the rural heritage landscape character of the Scenic Hills.’

4. Papers sourced under the GIPAA in 2016 showed that the CMCT persuaded the Minister for Primary Industries to waive his prior conditions relating to the purchase of the Varroville land (namely that all planning approvals – rezoning and DA – were to be in place before the CMCT could complete the purchase of the land) and purchased the land in its own name in January 2016 (without publicly informing the rezoning process). At that time the DOPE and the CMCT had been informed that a curtilage expansion investigation was underway and that we had a heritage grant approved for our study.

There are two implications from this:

- The CMCT (and Scenic) took business risks in acquiring land at Varroville that no one else should be obliged to offset. This has implications for any claims under s. 32 (1) of the Heritage Act concerning the listing’s impact on ‘reasonable or economic use’ of the land or the listing’s ability to ‘cause undue financial hardship’.
- The CMCT committed to the larger curtilage expansion and to respecting the site’s heritage during the rezoning. It cannot now move the goalposts to remove impediments to its DA. If planning authorities, including the Commission supported this it would significantly undermine our and the wider community’s ‘confidence in the decision-making processes for major development and land-use planning’ in this state.

Misrepresentations in the Ministerial Briefing Document

At the Hearing of 14 January 2019 I raised concerns about certain statements in the Ministerial Briefing document. I reiterate these briefly here:

1. Papers to the NSWHC of 28 September 2017 referred to an IHO request of 6 August 2014 that the Heritage Minister (Rob Stokes) responded to on 8 September 2014. The Minister did *not* sign the IHO but was quoted thus: the Minister ‘has asked that the Heritage Council work with the landowners towards managing the heritage values as part of development (including potentially a heritage listing nomination).’ This appears to be a misunderstanding that has since been clarified at the Ministerial level. Papers sourced informally under the GIPAA show that the quote was on a Post It note attached to the IHO request by an unknown author quoting ‘Ed’ (presumably Edward Steane, the Minister’s heritage advisor) in turn quoting the Minister. In a letter to us, the HD linked this with the MacArthur Memorial Park (Varroville cemetery) development. However in a letter of 23 January 2015 to Jai Rowell, MP for Wollondilly, Minister Stokes clearly separated the curtilage assessment from development saying:

‘As the parcels of land concerned, that of Varroville Homestead and its landscape and outbuildings, are in separate ownership, I have requested that OEH work with both owners to manage the heritage values of the landscape and outbuildings as part of any future development. I have also requested

that OEH work with the owners towards extending the curtilage of the Varroville Homestead listing on the State Heritage Register, to incorporate the most significant elements of the surrounding landscape.'

The next Heritage Minister (Mark Speakman) further clarified the matter in response to a Question with Notice from Greg Warren, MP for Campbelltown, stating simply: *'If the Heritage Council makes a recommendation to the Minister to expand the curtilage of Varro Ville Homestead, the Minister must decide whether or not to direct the listing of the item (i.e. the expanded curtilage) in accordance with the Heritage Act 1977.'*

While it would not be appropriate for the Commission to consider any perversion of process suggested by a Minister, this nevertheless clarifies that the Ministerial direction was for the curtilage expansion to be considered appropriately under the Heritage Act, without reference to any development.

2. Statements in the Ministerial Briefing documents that the Varro Ville Homestead owners support a curtilage expansion over the *whole* of the estate give the impression that we were making an unreasonable ambit claim. This is not true. We had commissioned a report from heritage experts who had stated this. We had no reason to reject our own professional advice. We also note that this view is supported by Dr James Broadbent, the respected architect, historian, conservator and former government museum curator, who stated in his submission that the curtilage study *‘represents a substantial argument for the protection of the historical evidence of the site as a whole.’*
3. In the Ministerial Briefing documents, the HD wrote *‘Multiple members of the public, including the owners of Varro Ville Homestead have promoted the listing of the extended boundary as a way to stop development.’*

This is an unfortunate comment that suggests disingenuous or cynical motives on the part of submitters rather than serious support for heritage. I can find no evidence in the submissions to support this suggestion. People were aware of the heritage of Varro Ville and its Scenic Hills location, and of the potential damage to heritage from the CMCT's current cemetery plans. The curtilage expansion offered a way to ensure that the heritage was protected from any harm by bringing it under the control of the NSWHC.

It is particularly egregious to suggest this as a motive for my husband and me as follows: A curtilage expansion nomination was already in existence when we bought the Homestead; we commenced our curtilage study in 2007 seven years before the CMCT emerged as a potential buyer; we had been asked by the Minister (via the HD) to participate in this process; and our study is based on significance independently of any development. Our concern has always been to protect Varro Ville's heritage significance.

4. Finally, as previously noted, there are three valid submissions missing from the papers, including from Historic Houses Association. We also note that the National Trust's submission has not been included (though reference is made to it in the papers).

It is clear to us that unless the curtilage is expanded, the heritage significance of Varro Ville will be compromised, and probably fatally so. We note the following in support of our concerns:

1. The CMCT's demonstrated attitude to heritage and its actions to date:
 - a. The CMCT developed its cemetery plans for the land surrounding Varro Ville Homestead (the subject of this curtilage expansion) in isolation from us. We have been told that it asked others (such as our Carmelite neighbours) to keep the proposal from us on the basis of '*commercial in confidence*'. In August 2013 it presented its plans to Campbelltown City Council and called an invitation-only media conference (to which we were not invited and had no knowledge of) to announce its plans. The first official knowledge we had of the cemetery was when local journalists phoned us after the media event to get our reaction. The CMCT then called us to a meeting where it presented its unsympathetic modern cemetery plans as a '*fait accompli*'.
 - b. In our meeting of August 2013, the CMCT told us that it did '*not want to put any money into heritage unless [it was] forced to*' and added that it thought it would be '*forced to*'. After several other unpleasant comments (which we later documented in a letter to the Minister for Primary Industries) we walked out of the meeting determined to recommence our 2007 curtilage study, grants permitting.
 - c. The CMCT did not offer to buy our house in that first (and only) meeting but later appeared on Channel Ten claiming to have done so. The CMCT has never made any offer for our house, but induced us to get a valuation without any guarantees. It later asked to send its own valuers and heritage consultants to our home which we declined.
 - d. Despite all the heritage studies it has been obliged to conduct, and feedback during the rezoning process from us and other heritage organisations, its proposal and Masterplan have remained essentially unchanged and unsympathetic to heritage.
 - e. The Varroville cemetery DA's Heritage Impact Statement (HIS) references the Burra Charter in support of its philosophy to '*record and destroy*' Varro Ville's landscape heritage. This has been criticised by us, our heritage landscape consultant and the National Trust in submissions to the DA. The National Trust has placed its submission on its website: <https://www.nationaltrust.org.au/initiatives/varroville/>
 - f. We have had to battle the CMCT over the deterioration of the Varro Ville outbuildings, one of which has been identified in OPP16 as probably the original grantee's first house and of exceptional significance. Despite claims at the Hearing on 14 January that the CMCT had shown respect for the site's heritage by taking steps to protect these, in fact we had to appeal to Campbelltown Council to investigate their plight and Council issued an order to the owners to secure the roofs against wild cat storms at the time. We had to make a second complaint before proper action was taken, which even now is insufficient to prevent damage.

- g. The CMCT's own CMP recommends an Archaeological Impact Assessment (AIA) for the European heritage as part of any DA. We understand that the CMCT cancelled this after the HD criticised its methodology and the CMCT lodged its DA without one.
 - h. In September last year we asked the HD to investigate the CMCT's excavating in sensitive areas around the dams and in the agricultural trenching areas (apparently for further studies) – both of which had been identified in the CMCT's CMP as requiring an AIA before commencing any works. The HD reported it could do nothing because the CMCT did not require a permit to operate outside the SHR curtilage (currently limited to our property) and in areas where 'relics' were not anticipated (the definition of 'relics' does not cover landscape elements such as agricultural trenching). Campbelltown Council also wrote to the CMCT but has stated that it did not receive a reply. We had to watch for two weeks while the CMCT apparently drove pipes into the dam walls and excavated in the trenching areas, within view of the Homestead and without any prior AIA despite this being recommended for the dams in its own CMP.
 - i. The DOPE was complicit with the CMCT in presenting the cemetery plans during the rezoning as a 'lawn cemetery', thus lulling many in the community into believing the cemetery would do little damage. The detail of its plans has always showed that it was a 'general purpose cemetery', noting that even the proposed lawn cemetery would compromise Varro Ville's state significance by its location over the agricultural trenching and within views of the Homestead.
 - j. The CMCT has claimed it wants to work with the HD in respecting Varro Ville's heritage but we have seen no evidence that it is sincere.
2. The impact of the rezoning and DA on us and Varro Ville Homestead's state heritage significance:
- a. Valuers and real estate agents that we have consulted have estimated a decline in the value of Varro Ville Homestead of between 40%-100% (i.e. at the upper end 'unsaleable') due to the rezoning of the land around us to permit cemeteries. Add to that the cost of our time and consulting expenses to fight this rezoning and development over the last six years, the impact on us has been immense.
 - b. We have thus had to reduce our investment in the property as we lose a minimum of 40 cents in the dollar for every dollar spent. After six years, the maintenance of our state listed property is now reaching a critical point where damage to original fabric is occurring.
 - c. We have also had to put our future plans on hold: the restoration of the courtyard (pallets of 1850s bricks remain unused on site since 2007), replacement of guttering, and the restoration of the garden and significant views that were advised by heritage consultants to us and prior owners.
 - d. As a consequence of maintenance issues and concerns that heritage 'guns for hire' could access our property during public openings, we have had to suspend all further public

openings. We had previously permitted three openings prior to moving in while we were still trying to sell our state listed East Maitland home. Historic House Trust led two tours, and the Australian Garden History Society (AGHS) one. We have had numerous requests since from the National Trust, AGHS, Furniture History Society, Historic Houses Association and local groups – all of which we have had to decline.

- e. The CMCT's mooted ownership of the Homestead and Estate is not the answer given its record to date and the customary approach of developers evident in the CMCT's plans. Typically developers claim they must develop around heritage buildings in order to pay for their maintenance. The community is then held to ransom in a Sophie's choice: the destruction of the buildings or the destruction of their contexts. It is well established that the destruction of context not only destroys the heritage significance of buildings but also their financial value. Thus five to ten years later, when these buildings need further maintenance (as they always do) no one can justify the ongoing investment. The focus on buildings is, in any event, fifty years out of date. What is proposed to be lost at Varro Ville is a unique agricultural landscape with features, such as the agricultural trenching and other water conservation methods established by Sturt and his predecessor Thomas Wills.

This is clearly not the way to protect and conserve the state's heritage.

Brief Commentary on submissions and presentations at the Hearing of 14 January 2019 objecting to the curtilage expansion.

The submissions made by consultants, advisors and others apparently beholden to the CMCT are barely worth mentioning as they all appear to have missed the point of this Review, i.e. that this is about establishing a curtilage expansion based on the significance of the site for the state of NSW, independently of any development. The submissions are obsessively focussed on objecting to the curtilage due to the desire to see a cemetery on the site.

Nevertheless, in case any of these arguments carry weight I address some of these below:

1. The claim that the CMCT's land at Varroville has been set aside for/specifically designated as a cemetery. This claim is not consistent with our understanding of the spot rezoning of the CMCT's land surrounding Varro Ville Homestead. The CMCT and its consultants might have hoped for this outcome, but it had claimed during the rezoning process that it was not intending to change the zoning but merely to have 'cemeteries' added as a permissible land use for the site. As a consequence, that is all that it was given - with development subject to consent. We urge the Commission to gain its own advice if it intends to give any weight to the CMCT's claims, particularly with regard to the '*reasonable or economic use*' of the site. The zoning permits a number of other land uses and a number of them are completely compatible, even enhance, the heritage value of the land. We note that the land has successfully been used as a riding school, dairy, cattle property. Its tourism value as a heritage site has never been explored.



2. Claims about the urgent need for cemeteries in Sydney's South West, the Macarthur area or even Sydney generally and the suggestion that there is popular support for it.

It is deeply disturbing to read in a submission from Netcorp Pty Ltd (who appear to be part of the CMCT) that the Planning Minister, Anthony Roberts, and Minister for Lands, Paul O'Toole, commissioned industry consultant David Harley to prepare 'a report into the future planning for cemeteries' in December 2017, *a month after* the NSW government's own statutory body, Cemeteries and Crematoria NSW (CCNSW) – established in 2013 to oversee the interment industry and provide research support - released its own report into the industry. It is particularly concerning that the findings of the Harley report (as quoted in submissions on the curtilage expansion) appear to contradict those of CCNSW's official report published in November 2017:

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

We have not read the Harley report and rely on quotes in the Netcorp submission that this report supported the urgent need for cemeteries and recommended that the CMCT's proposed cemeteries at Varroville and Wallacia proceed. Yet CCNSW's report clearly states on p. 39:

'Only the West-Central and South-West regions are well served for capacity in proportion to the number of persons projected to die in each region.

Central, North and South regions are disadvantaged in terms of current capacity ...

... Provision of capacity in the North and South regions would sustain the desirable distribution of cemetery infrastructure across the planning regions of Sydney, maintain reasonable equitability of access to cemeteries for the communities of the Central, North and South regions, and provide for burials close to the region of the life and social networks of deceased persons. This outcome would also sustain positive effects in respect of costs and visitation for those communities, as compared with an outcome where limited land availability and affordability require the direction of burial activity from all the regions of metropolitan Sydney toward Western Sydney.'

The CCNSW report also shows that the cremation rate in Sydney is 65.4%. Thus 'popular support' for any cemetery is at best a third of Sydney's population. It is important to maintain a perspective in these claims. For example, support for cremation is greater than the support for marriage equality in the recent plebiscite (61.6%) that was proclaimed (rightly) as a popular victory. While we support the right of minority cultural practices (within the bounds of ethics and the law), this does not justify destroying or even compromising NSW's cultural heritage, noting that the OPP16 report also finds the Varro Ville estate significant at the National level on three of the seven listing criteria.

3. Media quotes from me in the CMCT's submission.

It is hard to understand why these have been included in the CMCT's submission and I addressed this at the Hearing of 14 January 2019 saying that unless the CMCT can show that I authorised any quote in the media then it cannot rely on it. I do not have the time to check the veracity of these quotes, noting that they have been transcribed from the articles rather than supplying the original articles. Nevertheless I stand by actual

██
██
██

I deal with these briefly:

- a. Peter George Thomson. Mr Thomson is one of only two residents/landholders (the other being Scenic) who spoke in favour of the cemetery at the public hearing into the rezoning. Both Thomson and Scenic have made applications to rezone land in the Scenic Hills for development. This does not make their submissions invalid, but the claims need to be scrutinised in that light. Mr Thomson claims *'my family owned Varroville from the 1940's up until the property was sold to WF Ross in the 1950s.'* Our curtilage study OPP16 traces all land titles up to the present time and shows that this statement is untrue. Robert Stanley Thomson bought and sold the Varro Ville Homestead lot on the same day in an apparent land speculation deal when the estate (owned by A J Smith) was subdivided for the first time in mid-1950. Mr Thomson's family appears to have retained some estate land closer to the current M31 but not any land relevant to his subsequent comments about the estate. I note that Mr Thomson would be aware that the land was successfully opened to the public over a long period of time when it was leased to the adjoining riding school, which makes one of his comments curious. I also note that there is no evidence that W F Ross carried out any works on the Varro Ville dams as he quickly on-sold the land in the same year he bought it.
- b. Submission by unknown heritage expert. A submission claiming great expertise and experience in heritage has had all identifying details (name, company) redacted. The Commission can give no credence to an 'expert' who does not want to be identified.
- c. Submissions by the Muslim Cemetery Board Inc. and Jewish Board of Deputies. Like many of the other submissions, these have nothing to contribute to the expansion of Varro Ville's curtilage based on significance. Like many other submissions these also contain misstatements of fact which the Commission will readily be able to identify for itself without my trawling through these. I would just like to say that it is sad to see these two organisations supporting the destruction of NSW's heritage in order to support their own cultural practices that could be practiced on less sensitive land elsewhere and where that does not cause us so much personal and financial harm. We support their right to minority cultural practice but not at ours or others expense or at the expense of NSW's (and potentially Australia's) cultural heritage.

Further, in urging the government to decide the cemetery DA before the curtilage expansion, they are also urging the Minister (and the Commission) to continue to breach the Heritage Act and pervert proper process. That these organisations, like the CMCT, are entities of religious organisations, that are supposed to provide moral and ethical leadership in the community, is not only disappointing but may explain why there are so many problems in our society. From my own experience, I believe that the standards exhibited in these submissions fall below the majority standards in our society, which is the only thing that gives me hope.

As a final comment and in mitigation for their submissions, I note that these two organisations undoubtedly feel pressure to support the CMCT given the privileged position the NSW government has put the CMCT in. This cemetery is not a true 'multi-faith' Crown cemetery - the government has allowed the CMCT, an entity of the Sydney Catholic Archdiocese, to reserve 45% of the land for itself which is not supported by the statistical distribution of faith in the community. This has put other religions that depend on burial in the position of having to go 'cap in hand' to the CMCT thus giving the latter undue power within the industry. We believe that Crown cemeteries should be run by secular bodies on behalf all those who desire to be buried, independently of faith or favour.

d. CMCT consultant 'peer review'

Due to problems with the Hearing transcript, I have had to divert this submission to largely restating what I said at the Hearing. This has allowed little time to respond to the CMCT's peer review; however I feel I have probably addressed this in prior comments that foresaw their response. Our curtilage study was commissioned by highly respected experts in their field who, unlike the CMCT's consultants, had access to Varro Ville Homestead as well as access to the outbuildings in 2007 for a detailed examination when they were in much better condition. Attempts to discredit the thoroughly professional work of the authors of OPP16 by mere words rather than detailed research, and by people without the credentials and experience of the OPP16 authors is transparent. If Urbis had had so little regard for these authors, why did it rely so extensively on their earlier work without critiquing it then? We also question the ethics of the CMCT's lawyers who apparently gained earlier access to our report in breach of copyright. If the Commission wants a true 'peer' review I strongly urge the Commission to engage experts in the league of the OPP16 authors to *independently* critique the OPP16 study. Its authors have advised me that they would welcome the feedback and debate.

In summary

We urge the Commission to *not* reduce the curtilage further than that recommended by the NSWHC to the Minister on 31 October 2017. What was recommended was a compromise agreed to by all landowners at the time and falls below the ‘minimum critical curtilage’ identified by the OPP16 authors in later submissions to the HD.

The recommended curtilage (or alternatively the minimum curtilage recommended in the OPP16 study) has been supported by all the major state heritage organisations – the National Trust of Australia (NSW), the Australian Garden History Society, the Royal Australian Historical Society and Historic Houses Association.

If the Commission intends to alter the recommended curtilage in any way, we urge it to expand it further to include all that land identified in the OPP16 study, and subsequently by our consultants, as the 'minimum critical curtilage.' This would include all of Lot B DP370979 and part Lot 1 DP 541916. This would largely capture the landscape setting of Varro Ville as seen from public lookouts on Bunbury Curran Hill and St Andrews Road. It would also include Bunbury Curran Hill, noting its significance to the identity of the estate and its role in historical writings such as those of Governor Lachlan Macquarie in 1810 when he visited the estate. It would also capture the important ridgeline overlooking the Homestead and outbuildings, which forms a critical part of the estate core's visual curtilage.

Finally, I have been reluctant to make any comment about aboriginal heritage in our prior submissions as we could not afford to include any original research in our study and I did not want to 'use' aboriginal history to support our case without their permission and sufficient evidence. However, given the desperation of Varro Ville's current situation, I wish to draw the Commission's attention to the 'potential' importance of the views in this regard. One of our consultants in 2007 commented that in his prior experience working on these studies, many colonial houses are built on special aboriginal places. He believed that Varro Ville Homestead (and its prior homestead) was likely to be one of these. He then pointed to two landmarks observable from the Homestead along the range, including Bunbury Curran Hill, that he believe would also be likely candidates. The views from the Homestead are magical. If visitors walked up the hill to the Homestead backwards they would note that the range rises up from behind St Andrews Road with them. These changing views as one moves around inside the estate are a mystery but critically important to the heritage significance of the estate and the preservation of the country's early colonial house sitings and their impact on the original inhabitants. No one with any sensitivity could take in these views without feeling the dispossession of those who had them first. If the views are lost so will be the ability to feel the impact in the same way. 'Recording' before 'destroying' does not achieve that end.

My husband and I are merely the current caretakers of Varro Ville Homestead. If the heritage is lost it will be the state's (and potentially) Australia's loss for future generations. We urge the Commission to recommend a curtilage expansion that captures all the significance the land holds at the state level, independently of any development that may or may not emerge in the future.

Yours sincerely

A large black rectangular box redacting the signature of the sender.

For: Jacqui Kirkby and Peter Gibbs

A series of black rectangular boxes of varying sizes redacting the footer information at the bottom of the page.