

**OWNER OF VARROVILLE HOMESTEAD:
JACQUI KIRKBY**

**HERITAGE COUNCIL:
MARK DUNN**

**HERITAGE DIVISION OFFICE OF ENVIRONMENT AND
HERITAGE:
PAULINE McKENZIE
KATRINA STANKOWSKI**

**LOCATION: IPC OFFICE
LEVEL 3, 201 ELIZABETH STREET
SYDNEY, NEW SOUTH WALES**

**DATE: 1.06 PM, MONDAY, 14 JANUARY
2019 _____**

5 PROF H. LOCHHEAD: Good afternoon, everybody. And before we begin, I'd like
to acknowledge the traditional owners of the land on which we meet today, the
Gadigal-Eora nation, and pay my respects to elders past and present. I'd also like to
actually undertake introductions. My name is Professor Helen Lochhead, and I'm
the Chair of the panel for this meeting, and I am also working with a fellow
commissioner, Wendy Lewin, and the support of Jorge Van Den Brande from the
Commission Secretariat. I'd also like to just take this opportunity to ask everybody
10 who's in attendance today to introduce themselves for the record. So perhaps we
should just get everyone to come to a microphone and say their name and where
they're from or who they represent before we continue. Would you mind starting,
thank you.

15 Mr B. JAMES: Yes. I'm Bradley James, from the Independent Planning
Commission.

20 MR D. BLACKWELL: I am David Blackwell. I'm a director of the Urbis real
estate advisory group.

MR T. DE ANGELIS: My name is Thomas De Angelis. I'm here as a
representative for David De Angelis, who couldn't be here today.

25 MR C. NIXON: My name is Cameron Nixon, senior consultant with Urbis Town
Planning.

MR P. O'MEARA: My name's Peter O'Meara. I'm the CEO of the Catholic
Metropolitan Cemeteries Trust.

MR B. SALON: My name is Ben Salon. I'm an associate at Mills Oakley, and I'm here representing the Catholic Metropolitan Cemeteries Trust.

MR S. DAVIES: Stephen Davies. I'm a director at Heritage Urbis.

5 MS F. BINNS: I'm Fiona Binns. I'm an associate in the Heritage practice at Urbis.

MR G. BROOKS: Graham Brooks. I'm managing director of GBA Heritage on behalf of the CMCT.

10 MR D. HOY: David Hoy, regional director of Urbis and director of our planning business.

PROF LOCHHEAD: Sorry. Could you just repeat that? I didn't quite - - -

15 MR HOY: David Hoy.

PROF LOCHHEAD: Right. Yes. Thank you.

20 MS F. JAQUET: microphones actually working, because I can't hear very well from this end of it.

PROF LOCHHEAD: No, they're actually for the recording as opposed to amplification.

25 MS JAQUET: Okay. Yes. My name is Florence Jaquet. I'm the landscape architect for the project.

MS J. KIRKBY: I'm Jacqui Kirkby. I'm an owner with my husband of Varroville Homestead.

30 MS K. STANKOWSKI: Katrina Stankowski from the Heritage division of OEH.

DR M. DUNN: I'm Mark Dunn. I was deputy chair of the Heritage Council when this matter was before us.

35 MS P. McKENZIE: Pauline McKenzie from the Heritage division of the Office of Environment and Heritage.

40 MS A. SUMMERHAYES: And Anna Summerhayes. I'm the legal counsel for the independent planning commission.

PROF LOCHHEAD: Okay. So thank you everybody. One housekeeping matter to raise before we commence. There has been some correspondence between the parties in relation to a curtilage study prepared by Orwell & Peter Phillips in May 2016. We understand that some or all of the interested parties may have already viewed this study. So could we place have an indication which interested parties

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here have viewed the study in part or in full. Could you just provide a show of hands just – so Graham Brooks, Fiona Binns, Stephen Davies.

5 MR SALON: Ben Salon. Ben Salon.

PROF LOCHHEAD: Ben Salon.

MR NIXON: Cameron Nixon.

10 PROF LOCHHEAD: Cameron Nixon.

DR DUNN: Mark.

15 PROF LOCHHEAD: Mark Dunn from OEH.

MS MCKENZIE: Pauline McKenzie from OEH.

PROF LOCHHEAD: From OEH. And - - -

20 MS STANKOWSKI: Katrina from OEH.

PROF LOCHHEAD: Right.

25 MR SALON: Madam Chair, could I just - - -

MR BROOKS: One more.

PROF LOCHHEAD: And who else?

30 MR HOY:

MS JAQUET: Florence.

35 MR HOY: Yes.

PROF LOCHHEAD: And from – and - - -

MR HOY: And David Hoy. Yes.

40 PROF LOCHHEAD: David Hoy, and – I forgot your name.

MR HOY: Florence.

45 PROF LOCHHEAD: Florence.

MR HOY: Florence Jaquet.

PROF LOCHHEAD: Both from Urbis. So everybody from Urbis.

MR BROOKS: No, Florence is not with - - -

5 MS: Florence is the landscape architect. She's not from Urbis.

MR BROOKS: She's an independent - - -

PROF LOCHHEAD: No, not

10 MS JAQUET: Yes. I'm from - - -

MR SALON: Everyone on behalf of the CMCT has seen - - -

15 PROF LOCHHEAD: Has seen this - - -

MR SALON: - - - a copy of the report that is not complete.

PROF LOCHHEAD: Right. So which parts of the report have you seen?

20 MR SALON: I would have to take that on notice and give you a detail of – it appears there's some pages missing from the copy of the report that we have.

PROF LOCHHEAD: Right. Okay.

25 MR O'MEARA: Could I just make a point here. The point I'd like to make is that we've been denied access to that report for the last two years. We've attempted on several occasions to access the report, without success, so – we are the owners of the land, and this is the principal document that the office of Heritage and Environment

30 have relied on, essentially, to arrive at this position. So I'd just like to register our concern that we only obtained access to this report about a month ago.

PROF LOCHHEAD: Yes. So - - -

35 MR SALON: I will make a further submission on that at the - - -

PROF LOCHHEAD: Yes. So I will - - -

MR SALON: - - - another time.

40 PROF LOCHHEAD: Thank you, I've got that.

MR SALON: Okay.

45 PROF LOCHHEAD: So, basically, the commissioner principally undertaking this review is to make sure all interested parties participating should be able to have the opportunity consider and make submissions in respect of the same material that is

before the Commission. So if that material is made available to everybody, or it's not available to anybody, so I think we will take that on notice that, in fact, most people have seen it if they don't have a full and complete copy of that in their possession.

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MR SALON: Yeah. I mean, the only thing that the CMCT would say to that is that it cannot be known what is missing from the report that we have seen, and that constitutes a pretty serious problem with the material that's before some of the parties here today and not others.

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PROF LOCHHEAD: So I will just affirm what I just said; that is our principle to ensure that everybody who is an interested stakeholder or an interested party has the same access to the same material to make decision-making and deliberations in submissions equitably.

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MR SALON: Thank you, chair.

MS KIRKBY: Can I make a comment about that. I would like to know where everyone got a copy of this report, because there is this implication that, somehow, information has been withheld and that goes to a question of exactly how they accessed that report, because I would question that depending on where they got access to it, so I would like to know where they got access to the report.

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PROF LOCHHEAD: Well, what – I would like to stick to the agenda and go through this in a systematic way and if you – if we – we can take that on board and we can come back to that, but I would prefer to actually - - -

25

MS KIRKBY: Okay.

PROF LOCHHEAD: - - - just go through the agenda in an orderly fashion. The Minister for Heritage to the Independent Planning Commission has requested that we commissioners review the submissions made to the Heritage Council of New South Wales on the recommendation to list an extended curtilage for Varroville, SHR006737, under section 32C, part C, of the Heritage Act 1977, and provide a report with a summary of the submissions made, the findings of the Commission with respect to those submissions, and recommendation as to how those submissions should be dealt with.

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Before I continue, I should also state that all appointed commissioners must make an annual declaration of interest identifying potential conflicts with their appointed role and, for the record, we are unaware of any conflicts in relation to our review of the submissions. You can find our disclosures and any additional information on the way we manage conflicts of interests and potential conflicts in our policy paper on this matter, which is also available on the Commission's website.

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The hearing gives us the opportunity to hear your submissions on the review prepared by the New South Wales Office of Environment and Heritage and before

we produce our report for the Minister. The Independent Planning Commission of New South Wales was established by the New South Wales government on March the 1st 2018 as an independent statutory body operating separately to the Department of Planning and Environment. The Commission plays an important role in
5 strengthening transparency and independence in the decision-making processes for major development and land use planning in New South Wales.

Also, section 34 of the Heritage Act 1977 provides the Minister for Heritage with the power to refer matters to the Commission as well. The requirements for the review
10 undertaken by the Commission are set out in section 36 of the Heritage Act 1977. This hearing is one part of the process undertaken for this matter. We will carry out a site inspection tomorrow morning and, after today's hearing, we may convene with relevant stakeholders if clarification or additional information is required on matters raised. Transcripts of all meetings will be published on the Commission's website.

15 We have seen all the information provided to us and you will have two weeks to provide any additional comments on today's hearing and on this matter and, following today's hearing, we will endeavour to complete the request as soon as possible. However, there may be delays if we find we need additional information.

20 Today's ground rules are important to note. Before we hear from the first registered speaker, I would like to lay some ground rules that we expect everyone to take part in today's hearing to follow. First, today's hearing is not a debate, so I just would like to make that clear. Our panel will not take questions from the floor and no
25 interjections are allowed. Our aim is to provide the maximum opportunity for everyone to speak and be heard by the panel.

Public speaking can be an ordeal for some people and though you may not agree with everything you hear today, each speaker has the right to be treated with respect and
30 heard in silence. Today's focus is public consultation. Our panel is here to listen, not to comment. We may ask questions for clarification, but this is usually unnecessary, but there may be a few. It will be most beneficial if your presentation is focused on issues of concern to you and within the scope of this matter. It is important that everyone registered to speak receives the same time they have
35 requested to present. I will enforce timekeeping rules of your allocated times upon your registration and, as chair, I reserve the right to allow additional time for the provision of further technical material. A warning bell will sound one minute before the speaker's allotted time is up. Is someone doing that?

40 MS LEWIN: Yes.

PROF LOCHHEAD: Okay. And again, when it runs out. And please respect these times. I think everyone has more than adequate amount of time, so we shouldn't
45 need that, but if you would like to project something onto the screen, please give it to Jorge before the presentation and, if you have a copy of your presentation, it would be appreciated if you would provide a copy to the Secretariat after you speak. Please note any information given to us may be made public and the Commission's privacy

statement governs our approach to your information. If you'd like a copy of our privacy statement, you can obtain that from the Secretariat or, again, from our website.

5 In the interests of openness, transparency and information, all of the information provided to us will be made publicly available on our website and should you wish for your information not to be made publicly accessible, please inform this Commission. However, please note that the Commission will not have regard to confidential information as part of this process. Video or additional audio records of
10 the hearing are not allowed, except for the official recording for transcription purposes.

Finally, you will be aware that there is a separate matter in relation to the Varroville Crown Cemetery development application. I understand that some of you may be
15 interested in both matters, however, it would assist the Commissioners if you would address your comments in this hearing to the heritage review only. Comments in relation to the Crown Cemetery development application should be left for another time and that is subject to another process. Finally, I would ask that everyone please turn off their mobile phones, and thank you for that, and now I will, if there aren't
20 any other questions, I will call the first speaker, who is Mills Oakley on behalf of Catholic Memorial Cemeteries Trust.

MR DAVIES: We need that one's – we need the slide, don't we.

25 PROF LOCHHEAD: So who will that be?

MR SALON: I will kick off, Madam Chair. I just would like to - - -

30 PROF LOCHHEAD: So before you speak – if everyone, before they speak, if they could just reiterate who they are, again, for the record and who their – where they're from and who they're representing.

35 MR SALON: Yes. My name is Ben Salon and I'm an associate at Mills Oakley and I'm here representing the Catholic Metropolitan Cemeteries Trust. In the interests of time, I will open our presentation by saying nothing further that the curtilage as proposed – that the CMCT is of the position that the curtilage as proposed by the recommendation should not be heritage listed. The CMCT now calls on its experts to make submissions to the panel. I will list those experts now.

40 First of all, we will have Mr Stephen Davies, who is the director of heritage at Urbis. Next, we will have Mr Graham Brooks, who is the managing director of GBA Heritage; followed by Mr David Hoy, who is a town planning expert and the regional director at Urbis; followed up by Florence Jaquet, who is a landscape architect specialising in cemeteries. We do have some presentations that can go on
45 the screen. And if it's okay, Jorge, I will assist you just - - -

MR VAN DEN BRANDE: No worries.

MR SALON: - - - to bring up the correct presentation as we go.

MR VAN DEN BRANDE: Sure.

5 MR SALON: We also have hard copies of the respective submissions and other associated documents which we can hand up at the end. We have one for each of you, panel members.

10 PROF LOCHHEAD: Thank you. Okay. And so is that additional information to what we have already received to date? Is it - - -

MR SALON: We understood that this was our opportunity to make the submissions.

15 PROF LOCHHEAD: Okay.

MR SALON: We will be making oral submissions that are based on presentations which will be supplied in the hard copy folder.

20 PROF LOCHHEAD: Good. Yes. Thank you.

MR SALON: Stephen, do you just want the – just the slide?

25 MR S. DAVIES: Just the one slide, I think we had, didn't we?

MR SALON: Please, bear with us.

MR DAVIES: Should I start while that's happening?

30 PROF LOCHHEAD: Yes. As long as you don't need it.

MR DAVIES: No. I don't need it immediately.

35 PROF LOCHHEAD: Yes.

40 MR DAVIES: So my name is Stephen Davies. I am the director of heritage at Urbis. I'm representing CMCT. I am the former chair of the Heritage Council of New South Wales, a role I undertook between December 2015 and December 2018. Urbis has been involved in this project since 2013 when we were engaged by the CMCT to undertake a heritage assessment. My involvement in the application started prior to my role as the chair of the heritage council, and I've always declared an interest in the matter, absented myself from discussions. In fact, meetings on this matter were generally organised without my knowledge at all. I have to say that the secretariat and the director has been very stringent in excluding me and protecting my involvement in this matter.

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No business papers relating to this application have been received or read by me. I did work at the national trust of New South Wales when the Varroville Homestead was sold to the Pearson-Smiths in 1990 when that was de-accessed. So my involvement goes back quite some time. My attitude to the subject application, I have to say, was formed during careful consideration of the potential impact of the site and the homestead. My initial acceptance in a landscape sense was secured after detailed discussions with Florence Jaquet and her initial studies for the site for potential cemetery use. Florence is going to – I don't think that was the - - -

10 MS JAQUET: No. This – sorry. Keep going.

MR DAVIES: That was the one. Yes. Sorry. So in a sense, one of the most important matters for me was when I first came to this application, I, like others, would have been – you know, had a concern about the future heritage landscape surrounding Varroville Homestead, and it was really the work – and you will hear from Florence later, so I'm not going to repeat all that – but it was very much her analysis of the landscape and her understanding - - -

MR:

20 MR DAVIES: - - - of that, both in a flora and fauna sense, to provide a basis on which I thought that a contemporary cemetery in the – as described in the master plan could work on this site and protect the landscape and the setting. Urbis and the CMCT has always acknowledged the significance of the site, and we've worked with the landscape architects and the project team to deliver a highly considered scheme that is underpinned by the site's heritage values as defined in the Urbis CMP and subsequent investigations.

30 The CMP identified the present SHR curtilage, State Heritage Register curtilage, was insufficient to recognise and protect the site's heritage values. That was just the Varroville Homestead site as it was. The CMP policy recommended that the curtilage be extended in accordance with one of two options as set out in the CMP, curtilage 1 or curtilage 2. The recommended curtilage was informed by physical and historical analysis. Further research has been undertaken since the CMP was completed, and this includes work by Orwell Phillips architects – and we'll abbreviate that to OPP – Dr Sue Rosen, historian, and a former owner's oral history.

40 These sources, for example, provide further important information in relation to the existing and dating of dams on the property. As a result of further analysis, the preference of Urbis recommendation is for the adoption of curtilage 1, which is the curtilage shown in red on the slide. The IPC is required to advise the minister as to the proposed extension of the curtilage before the panel.

45 The following addresses the Heritage Act section 32 parts 1(a) and (b). While Urbis and the CMCT are supportive of an extension of the curtilage, only part of the site is considered to meet the thresholds for state heritage significance, and I think state heritage significance is important as part of my particular argument as to the

evidence based for state significance, and this is not appropriately represented in the proposed larger or curtilage 2 recommended by OEH. It is recommended that the IPC advise the minister not to list the curtilage in the form proposed by OEH, as Urbis contends that the assessment that underpins the Orwell Phillips study curtilage assessment, and hence the resultant curtilage and accompanying statement of significance, is flawed.

We believe that further information has been now provided and the analysis would not support that extended curtilage. I think it might be worth, at this point, just because it sort of sets the scene, is to hand you – perhaps we can copy of the – a map of the – yellow being the red on the screen, and the red being the OEH recommended curtilage. So you can see the extent, the comparison of the two proposed curtilages.

PROF LOCHHEAD: So this an A3 drawing which indicates the OEH curtilage boundary of the proposed Urbis curtilage 1, the barrier lands affected by the curtilage and barrier lands of high – high what? I don't know what they are. High lands or high zone low zone and terrace zone.

MR BROOKS: Yes.

MR DAVIES: They're the precincts relating to the master plan.

MR BROOKS:

PROF LOCHHEAD: Right. Thank you.

MR BROOKS: Yes.

PROF LOCHHEAD: Bearing in mind that we're not considering the master plan.

MR DAVIES: That's right. Thank you. However, in the event that the panel supports the curtilage of – recommended by OEH and listing in its present form, we request that the listing be required to be gazetted with the necessary site-specific exemptions which facilitate the ongoing use and management of the use in accordance with the Campbelltown Local Environmental Plan 2015 and the specific provisions for the site as set out in section 7.8 of that LEP. We will first consider the first part 1(a) of the Act. The minister can direct listing on the State Heritage Register, and (a) says the recommendation of the Heritage Council that the item should be listed.

It acknowledged that the Heritage Council has recommended that part of the Varroville estate reaches the threshold for state heritage listing. The CMCT and Urbis agrees that part of the estate reaches the threshold for state heritage listing. Site elements which are considered not to meet the threshold for state listing include – sorry, site elements which do meet the threshold include the former outbuildings to the south of the homestead, the former carriageway to Campbelltown Road, and a

portion of the former vineyard trenching, and you can see that on the current outline. This may also include the potential archaeological resource subject to which will be further investigation. And these will be subject to – any further archaeological matters would be subject to the Heritage Act notwithstanding the curtilage matters.

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These elements capture significant built and landscape elements which directly contribute to the historical understanding of the Varroville estate and the significance of the place as a whole. Other elements on the site form part of the broader grounds but are not considered to meet the threshold estate listing. For example, the western string of dams on the site adjoining St Andrews Road are not considered to meet the threshold of state heritage significance. The cultural CMCT recommended curtilage 1 would be protected by the landscape master plan and the conservation management plan, if it is adopted, as well as local listing under the Campbelltown LEP 2015, which affects part of the site. The master plan obviously – the conservation management plan is actually attached to the Local Environmental Plan as it currently stands.

We consider that the proposed OEH curtilage is flawed and is based solely on the OPP report, the Orwell & Phillips report, and excludes other relevant studies, including the Urbis CMP and further research. Many of the claims in the assessment of significance were not proven by hard documentary or physical records, expert opinion or have been derived from generalised or exaggerated connections to historical references, assumed facts, or material that is at best speculative. We therefore question the rigour of that assessment that underpins the statement of significant and the resultant curtilage recommendation.

The sole reliance on the OPP study and the mission of the 2015 Urbis CMP has resulted in an imbalance in the resultant recommendation in our opinion. For instance, the curtilage was extended by OEH specifically to incorporate the western dams and to acknowledge supposedly important views from the homestead. Oral evidence provided by Cherry Jackaman and Peter Thompson both confirm that the western dams adjoining St Andrews Road, which would actually be included in the extended curtilage were developed in the mid-20th century and they have no relationship to Charles Sturt or the supposed network of 1830s dams.

35

Further, primary research by historian, Sue Rosen, has uncovered military maps which confirm that no western dams were located along St Andrews Road in 1917, 1933 or 1954, and attached to my submission, which will be in your bundle, is an appendix A which gives a survey of those particular military maps which include dams that have been surveyed during those three periods and none of them are located in that area of the extended curtilage. Therefore, the consideration of the additional dams for state heritage listing and therefore inclusion within the expanded curtilage, we believe, is unfounded.

The extension of the curtilage is also based on and founded on romanticised claims that suggest the landscape was developed in a continuum by the first six successive owners over 40 years and in accordance with the ancient writings and the writings of

18th century English landscape designer, Humphrey Repton, and remain intact as a landscape park. Now, we know a bit about Humphrey Repton; he tended to look at a landscape before he attached his views and then filled in or made pictorial references, so you've got the Repton book, so you got the before and after; this was quite an important landscape method and there is no evidence that any work of that kind of urban design or landscape design at the time of the first six owners was ever carried out to provide for a special landscape park that we can actually either record or discern in the existing landscape.

The alternative statement instead identifies an evolved agricultural and pastoral landscape that has been developed and managed by almost 20 owners over a period of 200 years. The selective focus on the rural landscape does not acknowledge that Varroville has been regarded as a working and evolving enterprise for more than 200 years. A visual inspection will verify that the existing landscape is an neglected typical rural pastoral landscape of the 19th and 20th centuries with no distinguishing features characteristic of no ancient or English landscape park traditions. None of these supposed attributes occur within the proposed extension and no analysis or evidence has been provided in the studies of the site in relation to those particular views or philosophies.

We therefore recommend that prior to the listing OEH undertake a more rigorous review of the statement of significance and revise the proposed curtilage extension to exclude items which are not considered to meet the threshold for state listing. This includes the western dams, which are a product of the 1950s pastoral use by the Jackaman family and hence cannot seem to contribute to a colonial cultural landscape. This does not mean that the dams will be removed, in fact, the current dams are intended to be restored and retained. It is acknowledged that the 1950s dams provide a pleasant vista from the house, however, significance should not be accorded at the state level.

Now, this has been recognised in a view analysis by the view expert and landscape expert, Richard Lam, who has undertaken a visual assessment of the property and has concluded that the grant was made and has remained a rural landscape with the exception of the land inside the lot boundary of Varroville Homestead. The pastoral appearance of the setting is also not confined to the original grant and remains in evidence on many of the lots into which it has been subdivided and from it is largely indistinguishable.

What we've got here is a situation where the original land grant was much wider than the application that we're looking at today. So there are – there is land on the other side of St Andrews Road and other property within the area that's the scenic hill. So we are actually just confined to this particular lot. The lot, the original lot, has been subdivided many times and much work has gone on over that time, so we're looking at a very – you know, a part of a whole and then looking, in this area, at a part of a whole, which really is just around the Varroville Homestead, without looking, I think, holistically, at the entire estate as it was originally dealt with.

- Below that level are views of and between heritage items that exist in the objective sense, but are incidental. That is, they're existing, but their existence while providing an attribute of the setting, does not contribute to the authentic values of the items or contribute substantial significance to the view. At a lower level, still, on the hierarchy of the views that might be claimed to be heritage views, are views from or in the vicinity of items, the curtilages or settings of items from which new or non-significant items are visible. Simply being able to see a heritage item, place or setting doesn't make the view a heritage view; it can be a circumstantial view.
- 5
- 10 By the same token, being able to see a new, different, or novel item of no current significance in the context of a heritage item does not create an impact on the heritage values unless it can be demonstrated that the acknowledged authentic heritage values of the item at levels 1 to 3 would be impaired to the detriment of the interpretation of that heritage values of the item. So views, in themselves, can be attractive views, can be incidental views; they don't necessarily need to be heritage views as identified through analysis. This is quoting – that was quoting from Richard Lamb.
- 15
- 20 The review should have regard for the Urbis CMP 2.15 and further historical analysis. It is also considered that the assessment overstates significance of the various elements and criteria including according exceptional significance to ephemeral associations, and we believe that that should be reviewed. It's very rare that everything comes up as exceptional in a heritage assessment when we could actually prove that they are not. Whether the long-term conservation of the item is necessary is another matter for consideration of the Minister. The long-term conservation of the site is necessary, however, this must be guided by a thorough understanding of the heritage significance.
- 25
- 30 The proposed cemetery use will facilitate the ongoing conservation of the site as a cultural landscape in accordance with the present zoning and is guided by the conservation management plan and landscape management plan. The proposal is underpinned by a detailed and thorough understanding of the site's significant heritage fabric and values and therefore minimises risks and potential impacts to the cultural landscape. There are also considerable benefits to the scheme from a heritage point of view with the scheme providing for the ongoing use, management and conservation of the site, the landscape and significant components providing protection of the remaining lot, the potential to include the house lot and consolidate the site in the future, and providing unprecedented site access and interpretation and allowing a sense of public ownership through the trust of the overall site.
- 35
- 40 Our client's proposal for the use of the property is a lawn cemetery and associated open space areas. It is an appropriate use for the site for its unique ability to conserve and maintain the significance of the Varroville estate. Most importantly, there is no other known use that has the inherent ability to provide funding for maintenance of the place in perpetuity and which similarly does not impact on the rural pastoral landscape values of the area.
- 45

CMCT is including a number of works and design approaches within the proposal which seek to conserve and celebrate the significant elements – speeding it up. Okay. All right. And I will move, then, through this quickly. The natural landscape of the place will be conserved in perpetuity – and you can read through that. And the
5 proposal brings with it many benefits: management and maintenance of the estate; protection of the existing boundaries; continued management; provision of continued conservation work to the built structures and landscape elements across the site, both of which you will see tomorrow; public accessibility to the site, which we think is important.

10 At its meeting of 6 December in 2017, the Heritage Council indicated it would consider any proposed site specific exemptions in line with the DA to ensure exemptions are appropriate to manage the future site’s uses whilst still maintaining its significance, and then we have given a large number of exemptions which we
15 have requested, which include anything from the erection of memorials in accordance with the landscape plan, mowing of paths and lawns, removal of trees, suppression of fires, a whole lot of things that would normally occur within a master plan for a cemetery. The site-specific exemptions would be in addition to the standard exemptions applicable to all state listed heritage items.

20 And I will go right to the end, because you will have this report. We respectfully request the following: that the panel recommend to the Minister that the extension of the curtilage and proposed statement of significance are not supported in their current form and further require the OEH review the curtilage and the statement. In the
25 event that the curtilage extension and statement of significance is recommended to OEH for approval and listing in its present form – that’s the extended curtilage – we recommend that the gazettal should not occur without the necessary site-specific exemptions which would facilitate the ongoing use and management of the site in accordance with the Campbelltown Local Environmental Plan 2015. It is reiterated
30 that CMCT has been through a rezoning LEP amendment process to specifically allow a cemetery as a permissible use on the site. Thank you.

MR SALON: Thank you, Stephen. We will now move to Graham Brooks, the
35 managing director of GBA Heritage who does not require any slides.

PROF LOCHHEAD: Sorry, just to clarify before we proceed to Graham, you said if
it does proceed you’re requesting the following site specific exemptions.

MR DAVIES: That’s right.

40 PROF LOCHHEAD: Do we get to know what they are?

MR DAVIES: Yes. We’ve – that’s what I – because of timing I didn’t read every
one of them out.

45 PROF LOCHHEAD: All right. Okay. All right. I think that’s - - -

MR DAVIES: They are – the following exemptions are requested on my page 5.

MS BINNS: Sorry; Fiona Binns from Urbis. Just clarifying as well, we would ask for those site specific exemptions irrespective of which curtilage is adopted. So
5 whether that's the curtilage 1 that we supported or the larger curtilage that OEH recommended.

PROF LOCHHEAD: Thank you.

10 MR DAVIES: Thank you.

MR SALON: Thank you, Graham.

MR BROOKS: Okay. Thank you, Madam Chair. My name is Graham Brooks.
15 I'm the managing director of GBA Heritage. I did a little bit of work on this site several years ago, in fact, before CMCT had finalised the purchase, primarily because a couple of summers ago there was an awful lot of grass had grown up around the outbuildings and CMCT was worried that a bushfire, snap fire could
20 destroy those buildings within about half an hour. So we gave some advice then and that included some very early conservation works on those buildings. After that we've had no – really no detailed involvement with this. We've done a lot of work with CMCT at Rookwood and other places. And so I was asked to come back in and, if you like, do a peer review primarily of the two documents, one of which was the document – and I will read the detail.

25 Document 17/496224 which is the Heritage Council's recommendation which was in the package of documents and more recently since December the 2016 OPP report of which we know we haven't got quite all of the documents in one place but there was enough there to do an assessment of that. Now, my interest in this is effectively that
30 as a heritage practitioner we're looking at a site and an ownership that can conserve this property for over 100 years into the future. It's a very rare guarantee that can be made within an owner that their whole function is generational continuity of their core business. In other words generational reuse and generational purchasing of plots on this land.

35 So my thought there was I didn't feel from the analysis that Stephen has referred to, the analysis that I've done that the assessment of significance and the statement of significance was good enough or comprehensive enough or realistic enough to act as a very firm basis for the Heritage Council to manage this site for the next 100 years.
40 So that's my ultimate objective here was to come up, as it turned out, with a suggested alternative statement of significance or at least a narrative of significance so that everybody has what I feel is a much more realistic and much more valid basis for management. So that has been the primary exercise.

45 Having done both of those documents – and they're both submitted for you – my current presentation will concentrate on the statement of significance as such. But I should make it clear that effectively what we're talking about is not this concept of a

protected – of a designed landscape in the middle of the 19th century that somehow or other survives to today because it doesn't. What I'm looking at is a narrative, is an evolving cultural landscape of agricultural and pastoral uses and there's enough documentation, which I've included in my work, to show that over time there has
5 been all manner of infrastructure on this site, fences, paddocks, barns, horse troughs, stables. You name it, this site has had it over the years. It has been a race track. It has been pastoral grazing land. It has been agricultural uses. All sorts of things.

10 And so the current descriptions and assessment of significance is one of the reasons why I'm very worried that if that goes forward – and particularly with the concept of exceptional – that the Heritage Council is going to be very reluctant – the officers are very reluctant to allow the sort of change that is already contemplated in the planning documents, and I know we're not talking about those. But it's something which is
15 allowing the next phase of evolution to take place in a very managed and protective manner and I feel that all of what has been done by the team so far has achieved that objective but it will be constrained if we have the wrong form of statement to which the Heritage Council and the heritage officers have to comply, have to take account of. So that's the background effective to what I'm saying.

20 And as we've said before, the statement of significance is derived from my detailed analysis of the OPP and of the statement that was prepared by the Heritage Council and it's that statement which quotes almost word for word the OPP material. Each of the paragraphs is in quotation marks and footnotes saying this is effectively derived from the OPP study. I should point out that the wording in the introduction of the
25 OPP, in the very first sentence of the OPP states that:

Orwell & Peters Phillips coordinated that 1916 report.

They did not write it in total.

30

MR SALON: 2016.

MR BROOKS: Sorry; 2016 report. Sorry. They did not write it in total. They drew from work that had been done by a variety of people including Terry Kass, including Design 5 but also including the current owners. So I think it's important to
35 understand that the document that was used by the Heritage Council and only made available to us very recently, in our view was flawed. It's not adequate. It takes, as Stephen has said, a number of incorrect assumptions, incorrect connections – what I would call fanciful, others would call entirely speculative – in its conclusions about the evidence that it has looked at. So my view is this needs a complete reworking
40 and I've put up something which I'm suggesting might be a starting point for the Heritage Council to take consideration of. It's not the definitive one because I've only written it while I was sitting up in Vietnam in the last two weeks but it's capturing what I think needs to be the new narrative for this program.

45

And that research has come from a lot of different people as Stephen mentioned. The Urbis report, Dr Sue Rosen's report, Florence's work, Dr Richard Lamb's work

and a number of other people. So it's very solidly based research that has been done progressively over the last six months and then going back to 2015 and it's often apparent that it needs a lot of rethinking and a lot of fresh minds when you're doing that sort of research to start to pick up the subtleties. Now, one of those subtleties
5 and one of the reasons why we're challenging the question about exceptional – exceptional rarity is one of them. And they use exceptional rarity as one of the reasons for justifying the contoured landscape which is said to be a vineyard landscape as a rarity at an exceptional level of state significance.

10 That landscape detailing occurs across the road at the St Andrews' site and I've got aerial photographs. If you look at map you can see the same contouring going on across the road. So how can something be of exceptional rarity when it exists on a nearby property. It turns out in fact that that other property was owned after 1912 by
15 the same owner as a chap who by then – a chap by the name of Staniforth who owned Varroville. He happened to use both properties for horseracing but he may have been the man who did some of that landscaping.

But everybody has jumped on some of these early assumptions that there's a
20 reference that Townson and some of the early owners had a vineyard. There looks to be something like a vineyard there now therefore it must be the same thing. And that's the bad connections that I'm talking about, that everyone – and we know what happens often with history. Somebody says something, somebody picks up something. They write it down. It is then – goes into the law, you know, the folklore, if you like, it becomes fact and sometimes becomes law.

25 And what we're doing in this process is trying to unpick those processes – and Sue Rosen has been very diligent in doing this – to say that we need to go back and look at all of the information and deal with it very, very carefully. Another case is the fact that Townson somehow or other at Varroville was producing huge amounts of
30 stock for the state government in that period between 1813 when he started working the land and the late 1820s when he sold it.

Now, in that period of time, he also had a 1200-acre grant at Hurstville Mortlake, a
35 75-acre grant at Kogarah Bay, and several thousand acres down in the Gundaroo area down in Murrumbateman. So this man was a substantial owner of land, substantial owner of stock, substantial owner of orchards and vineyards and whatever else, not all of which were at Varroville, but somehow or other, Varroville is quotes as the only place that he was doing all of this. Again, you need to look very carefully at the information that people have expanded from.

40 And the last one is that much of what was said about this property is quoted from auction statements in the newspapers at the time of a number of different sales, which I've outlined. Now, auction statements, as we know, have a tendency to
45 exaggerate. That's the nature of selling things. So it may be that we can't automatically quote directly from an auction statement that, yes, this was happening, and yes, it happened just there. The other side of all of this is that most of the things that happened on this land – and they're often recorded in those auctions statements

as pig pens and stables and horse tracks and whatever else – there’s no actual definition of the location on the Varroville land of those particular bits of infrastructure, so I suspect the archaeological record is going to be one of the ones that, in due course, as this project unfolds, is going to be a significant part of the interpretation process that goes forward.

So it’s for all of those reasons that I’m very concerned that the document that’s currently before the Commission has validity, that’s come from the Heritage Council, and it’s been mentioned before that it’s – the quotations are so strong that there’s absolutely nothing in that document in that analysis that takes account of the conservation management plan that Urbis have done. So I feel it’s a very one-sided thing which has been promoted largely by the property owners themselves, but it was commissioned as a public document. It’s only just recently been released. So I think my main point is we need to start again in more detail before this goes up into a formalised statement of significance.

The narrative that I’ve developed – and I’ve deliberately made it not specific to a piece of dirt on that land because, as you’ve seen this morning, there’s a number of different ways of approaching the actual definition of what might become state-registered land. What a narrative about an evolving landscape can do is to say that within that evolution, some things are more significant than others. Some features are more significant than others. And this is actually a system that’s in the ACT heritage legislation. It’s probably a little bit more useful. What are the features that express certain aspects of the significance that may or may not be more important than other aspects?

And I think a lot of the things that are being identified already definitely are at that higher level, and I think we’re all agreed with those, that the alignment of the road, the remnant houses, the remnant outbuildings – some form of agricultural definition, the boundaries of the site, the topography, the landscape – most of that is of state significance, but it’s the evolutionary processes that overlay that which, to my mind, is what’s created the state significance by protecting those values in a process of change. So that’s primarily my submission, Madam Chair. I have done us a very short summary of suggested statement of significance which I can read to you if you would like. It’s only about four paragraphs.

The surviving post-1950s central portion of the 1810 grant known as the Varroville Estate near Campbelltown is of state significance as an evolved agricultural and pastoral landscape that has seen a wide variety physical infrastructure and buildings developed and managed over a period of 200 years by almost 20 different owners. The fine 1859 single-storey Victorian colonial-style Varroville house on its elevated site together with a group of historic outbuildings forms the architectural core of the estate. The progressive evolution has retained and respected the core character of the central portion of the topography and landscape that has remained legible since the original grant to Dr Robert Townson, and then by subsequent owners and lessees over the following 200 years. It also retains evidence of Indigenous occupation. It is

this evolutionary process across that central portion that complements the established heritage significance of the current SHR listing and is of state significance.

5 And my final comment about the use of the word “extravagant” or “exceptional” – it does not exist in the current SHR listing state significance. So how – if it doesn’t exist in the core of the house, how can it be applicable to the landscape around that house if we’re extending that same listing? It just doesn’t make any logical sense whatsoever. So my recommendation’s fundamentally that what I’m suggesting is an updated statement of heritage significance should be considered and adopted if you
10 choose to by the Independent Planning Commission and included as part of the recommendations made by – to the Minister for Heritage as part of that expansion. But I make the point just in closing that I think it’s perhaps the beginning of a more detailed process that we need to work more closely together with the Heritage Council. Thank you.

15 MR SALON: Just to clarify, the hard copy bundle that will be handed up contains both the peer review of the OPP study and also the alternative statement of heritage significance mentioned by Graham during his presentation just now.

20 PROF LOCHHEAD: Thank you.

MR SALON: We move to Mr David Hoy, who’s a town planning expert and also the regional director for Urbis. David does have a presentation which we’ll put up on the screen.

25 MR HOY: Thank you, Madam Chair. As stated, my name’s David Hoy. I’m the regional director of Urbis, but I’m also a practising town planner. I’ve been involved in this project since its inception in 2013, and whilst I fully acknowledge the - - -

30 MR VAN DEN BRANDE: You want to have access to those.

MR HOY: If I may drive - - -

35 MR VAN DEN BRANDE: Sure.

MR HOY: - - - that’d be great. Thank you. Thank you. If I may recognise that I’m fully cognisant of the fact that this is a heritage matter and that today’s discussion is about the heritage curtilage; however, as I’ll be demonstrating to you today, this proposed heritage curtilage, in my view, has a significant impact on the ability to use
40 the land for which it is being planned, and I want to give you the town planning context on which that unreasonableness can be described. If I can just read briefly, one of the things that I do want to note, and it’s really important to note, is that CMCT has a long and proven track record in the management of heritage listed properties.

45 As an example, I guess the prime example of that is its management of the Rookwood Catholic Cemetery for over 150 years, so I guess what will be

demonstrated to you over the course of my presentation is, I guess, an ongoing commitment to work with government and the community and also for its own benefit to preserve heritage values where it sees fit and where it is appropriate. Today's discussion, as you know, is about the curtilage. I want to – we won't go
5 over matters which have already been raised by my peers beforehand, but on the left-hand side is a slide showing the proposition that's before the Commission today.

On the right-hand side is an extract from the conservation management plan that applies to the site and that has been endorsed in planning controls, which identifies
10 two curtilages – two options, one being the yellow curtilage, which is our client's preferred curtilage as recommended and as discussed earlier by Stephen and Fiona, but also a blue curtilage, being option 2, which is tied to property boundaries, if that's, in fact, an option that's worth considering. But, nonetheless, the core heritage proposition that our client has is that option curtilage 1, being the yellow, is what our
15 client and what the work to date has been done is based upon.

Stephen Davies talk to site specific exemptions, and, I guess, if I can just talk quickly here, so CMCT does not support any heritage curtilage being proposed on the site that does not include site specific exemptions. All the work that the subject – that is
20 currently subject of the current development applications for the site should be included as part of these exemptions. Exemptions should broadly apply to the ongoing management and operation of the cemetery and the day-to-day management of the site's heritage and environmental values. The exemptions reference plans currently subject to the separate development application process. The proposed
25 exemptions for the site have been provided to the Commission and it's both under separate cover.

The proposed exemptions – and it's important to make this point – align with the site specific planning framework, including a conservation management plan that has
30 been endorsed by the state and supports the site's use as a cemetery. The – apologies for the – this is an extract of this exemptions document, which is included in the bundle that'll be before you, but as you can see, it starts at the very top. The use of the various – three lots that comprise the CMCT site as a cemetery, ranging through to the more day-to-day management of the site, such as mowing of lawns and pars
35 and installation of directional signage, as well as all the typical things that are associated with cemetery use.

PROF LOCHHEAD: What – can I just ask a question. Why would exemptions such as that, which are quite pedestrian in nature such as spraying of paths with
40 selective herbicide, be part of a State heritage listing, as opposed to a development process.

MR HOY: If I may defer that question to my heritage colleagues.

45 MS BINNS: I guess, some of the – so, I guess, the intention with the exemptions was really to cover anything that we may want to do in association with the DA, and it really – it's more things like – that one is a fairly kind of mundane example of sort

of something you could do with maintenance, but it was more to cover things like the – essentially, to cover the DA so that we didn't have to then be adding another – so that potentially you could modify it down the track. You could do amendments to buildings and then those things would be covered because the DA has already been assessed.

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PROF LOCHHEAD: A lot of what I can just read from here – and it is quite a distance, are very routine maintenance things which don't really pertain to management of heritage in a real and critical way.

MR DAVIES: Well, it's – it really relates from the master plan – Stephen Davies speaking. It relates to the master plan and the development consent. So everything from the allocation of these precincts, the sort of areas that might have burials that have been approved in a master plan so that if – it's in accordance with the master plan. Firstly, that's the principal matters that they can then be carried out in a routine matter because we've already had a consent for those matters. And then every time you do something in a different precinct, you don't have to go back and get a new application.

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And, second – and the second part of that is, really, just the day-to-day operations that you might have in a cemetery without saying, “Well, we have some vegetation has grown up in the meantime and we want to remove it because it's interfering with the master plan.” And we can do that as a standard operation. You could take some of those out, or you could call it maintenance and pull a number of those matters back into that heading.

MS BINNS: I guess – sorry, in our experience, it's helpful to be quite specific sometimes with the examples because if you sort of say something like “general maintenance” then down the track when you're trying to do – trying to use your site-specific exemptions, you can be a bit caught out by what is defined as general maintenance. And it's really – it's also helpful for some of those things that, as Stephen said, are, you know, everyday activities of running a cemetery, like memorials – erecting memorials, for instance – to have those things all exempted. And it's really – the intent of it was to just streamline the everyday operation of the cemetery in the context of that heritage.

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MR DAVIES: And some of that might become clearer when Florence talks about her master plan itself.

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PROF LOCHHEAD: Thank you.

MR HOY: If I may just continue. Thank you. So just to give, again, some context, this is the first – this is a very broad timeline of the steps that have been taken to put in place the necessary planning framework to allow for this use to proceed. It's self-explanatory but, essentially, it has been a process that has involved substantial heritage investigation. Arising from the amendments to the LEP that were gazetted on 20 February 19 – 2017, a suite of amendments were gazetted to facilitate the use

of the site as a cemetery. These amendments were initiated over four years ago. The amendments were endorsed by the regional panel prior to gazettal and, importantly, the regional panel decision reflected the critical and demonstrable need to provide new interment space in metropolitan Sydney.

5

In summary, the LEP amendments permit the site to be used as a cemetery. They include specific heritage and visual impact provisions. They are contained within clause 7.7 and a new clause 7.8(a) that were inserted into Campbelltown LEP and they supplement existing planning controls that apply more broadly across the geography that's known as the Scenic Hills. These amendments I've discussed and detailed further. So if I can just go to clause 7.7 and specifically – which is an existing clause in the LEP which – clause 7.7 was amended to include a reference to a no-build area on the Varroville site. And I will read this out to you because it's important. And this is a direct extract from the LEP:

15

In determining whether to grant development consent to the development or not to the land on which this clause applies, the consent authority must consider the following matters. For land in Varroville identified as no-build area on the environmental constraints map; the fact that the land is not capable of accommodating development other than a lawn cemetery and associated fencing.

20

And there is a specific definition of what a lawn cemetery is, which means a cemetery in which monuments and grave markers memorialising the interment of deceased persons do not extend above natural ground level.

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And what I have here is a composite plan which shows the no build area being an area identified in a blue outline on the wider Scenic Hills LEP extract. So the – the entire site is subject to existing provisions that extend across all areas of land coloured orange and specifically the no build area is in blue – blue border. Importantly, though, the no build area, as I said before, still means it can be used as a cemetery. I guess this is probably the most important aspect of the current planning controls that have – that reflect the work that's been done to acknowledge the heritage significance of the site.

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So this clause is extracted in full, and I've added emphasis where I think relevant for this particular discussion. But it does say that development for the purposes of a cemetery is permitted with consent only if the consent authority is satisfied that – and it's subclause (2)(e) – the development will be carried out in accordance with the conservation management plan titled Conservation Management Plan as outlined on the screen, and further, and the supplementary information relating to the plan provided by letter by Urbis on the 22nd of August 2016, published on the website of the Department of Planning and Environment note. So that is the exact clause that's included in the LEP. It is very prescriptive.

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So what does this all mean? Clause 7.8(a) of the LEP endorses a CMP for the Varroville Estate. By law, development for a cemetery on this site will – I emphasise

the word “will” – will be carried out in accordance with the CMP and the supplementary information. The CMP was informed by a conceptual master plan, which is explicitly referenced in the CMP, and Florence will talk to that briefly – talk to that after me. It introduces a total of 107 conservation policies which must be used to guide development for the site, and recommends a heritage curtilage, the two options which I mentioned before, but over a significantly reused area to that being currently considered by the Commission, and recommends that site-specific exemptions form part of any heritage listing, so hence the narrative that we’ve been talking through around how the site-specific flow right back to the planning controls that were endorsed back in 2017.

This is the CMP master plan that was endorsed – this is the master plan drawing that was endorsed a part of the LEP review process – sorry – LEP amendment process. And I guess the thing for me is that this provides a significant degree of certainty as to what the end outcome is intended to be for this site from a land use perspective, taking into account the heritage investigations that were done that led to the State’s decision to rezone this site or amend the LEP controls to allow for cemetery use. More specifically, during the Joint Regional Planning Panel’s deliberations of the planning proposal, they requested additional information to be submitted, and hence that is the reference to the supplementary information that’s now included in the LEP provisions.

That supplementary information is included in full in the package of documents that will be tabled with the Commission, but I just wanted to show you some extracts from it, because what it highlights is the degree of prescriptiveness that has actually gone into the design of this particular facility, having regard to the heritage constraints that have been acknowledged over the course of the conversation and before the Commission today, and specifically how the no build area was to be treated. Again, I apologise for the quality of this, but it is picked up in my copy of the submission that’s before you, but, essentially, highlights through Florence’s work how that no build area is to be developed subject to development consent.

So what are the key considerations that I think, from a planning perspective, are relevant for the consideration of heritage curtilage extension? The State has recognised the demonstrable need for additional interment space to meet metropolitan demand and a looming critical lack of supply. The State, via its Regional Panel, has deemed that the Varroville site is suitable for cemetery use based on the concept master plan design that has been formulated and is reflected in the current land use planning controls for the site. The planning controls that apply to the site are unambiguous, requiring that cemetery development will – not could or must or should, it says will – occur in accordance with the CMP and prescribed supplementary information.

The CMP was informed by the conceptual master plan that I’ve shown further – that I’ve shown earlier, that has been refined and is now the basis of a DA that is subject to separate consideration by the Commission. The CMP and supplementary information stated in the LEP contains site-specific conservation policies that will,

by inference to the LEP controls, be required to be satisfied in the assessment of the development application. The CMP is very clear in identifying the proposed curtilage that is aligned to its stated conservation policies and forms the basis for agreement of site-specific exceptions.

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So impact on curtilage. As it currently stands in the absence of any site-specific exemptions, the proposed curtilage has the effect of impacting up to 65 per cent of burial lands proposed for the site as reflected in the master plan, and to your question earlier, Madam Chair, where that drawing talked to high, lawn, low and terrace refers to the type of memorialisation proposed across the site. So high means memorials in the order of 1.4 metres in height. Lawn, obviously lawn cemetery with no memorialisation above natural ground level. Low, circa maximum .5 metres memorialisation. And terrace being an area where the monument – memorialisation will be built into the existing terracing of the site.

15

In terms of yield, so this site currently has an area – the total site has an area of 113 hectares. 40 hectares is proposed to be used for burial, generating an indicative yield of burials over the life of the cemetery of approximately 138,000 burial plots. The impact of that curtilage has the potential for loss of 93,000 plots. This table has been extracted from the submission that's been – that's put before the Commission, prepared by my colleague David Blackwell, and in terms of calculating the financial impact of the curtilage recommendation.

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I'm onto my last slide. So these are my concluding remarks. The land use planning for the site has resulted in the introduction of a comprehensive governance framework for the long-term management of the heritage and environmental character values of the site. The proposed curtilage before the Commission is considered to create significant uncertainty over the ability of the site to be effectively used as a cemetery for the purpose for which the State has previously deemed appropriate.

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The impact of a curtilage as currently proposed is in the order of 93,000 burial plots, or 67 per cent of the planned supply for the site. This is considered to represent an unreasonable impact on the ability of the site to be effectively used for the purpose for which it is planned. CMCT do not propose the proposed heritage curtilage on their land unless site-specific exemptions are endorsed, and the CMP and supplementary information explicitly referenced in the site-specific planning controls contained in the LEP, in my opinion, provide a logical and rational basis for the identification of a curtilage and upon which appropriate site-specific exemptions can be agreed. Thank you.

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MR SALON: Thank you, David. We will now move – and just to clarify, there's a copy of David's presentation in the hardcopy bundle. We'll now move on to landscape architect and cemetery specialist Florence Jaquet, and we have her presentation on the screen.

45

MS JAQUET: Is that it? This one?

MR SALON: The one to the left.

MS JAQUET: This one?

5 MR SALON: Yes. It should - - -

MR VAN DEN BRANDE: Maybe the other one.

MR SALON: Either.

10 MR HOY: It's going to take the full screen. Is that right?

MS JAQUET: I'm just looking for the pointer to go up and down on the page.

15 MR SALON: Yes. Up – to left.

MR HOY: Oh, the pointer?

MS JAQUET: Oh, yes. Up there. Top left.

20 MR SALON: See where it says 1 of 15?

MS JAQUET: Yeah. Yeah. Up there. Okay.

25 MR HOY: All done?

MS JAQUET: Madam Chair, my name is Florence Jaquet. I'm a landscape architect specialising in cemetery planning with over 30 years experience. I was trained in Switzerland, a country rich in beautiful landscape cemeteries, and that's probably where I got my inspiration. And since my arrival in Australia, I've worked over 30 – for over 30 cemetery clients in most states. In 2013, I was entrusted with landscape master plan for Rookwood Cemetery, the largest cemetery in the southern hemisphere, with complex issues including and especially heritage. I've worked on Macarthur Memorial Park since 2012 at the request of CMCT, and it has been more or less a labour of love for the past seven years.

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So welcome to the new generation of memorial parks. They're now designed as parks, and they're not just functional with efficiency as being the only driver for design. They don't have granite monumentation as far as the eye can see. And when the design these parks, they do not have a use-by date. They become usable and manageable when full. This is a very important part of the concept.

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This cemetery design represents a definite shift towards a more sustainable solution, recognising that cemeteries provide environmental benefits as part of a socially conscious business model. They need to perform a social function once they're full. And the brief to us was very simple – create an iconic landscape cemetery that will become a benchmark for the industry. And I must say that in my career, this is one

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of the very few jobs where there has been no pressure from the client for a particular bias or outcome, and to me that's very important, because it shows a willingness to do the right thing.

5 So when you visit the site tomorrow, you will be, like me, struck by the natural beauty of the land. It's undulating land. It's grassy hills punctuated by large clumps of trees. Some of it is Cumberland Plain Woodland. There is a lot of weedy African olives as well. There are farm dams which unfortunately have been heavily damaged by grazing cattle on closer inspection. And there's a lot of medium and long views
10 in many directions. It's not a unique landscape, but it has this bucolic quality to it which appeals, and from Bunbury Curran Hill top, which actually lies within our site – it has been labelled as being on council land in the Phillips report, but it's incorrect – you can see the Blue Mountains, and you can see as far as the city skyline.

15 So what was our vision for the site? Well, it comes in five parts, really. The first one is as per the brief, a distinctive landscape cemetery the best of its kind, and although this is the driving force, it does not come at the expense of other important considerations. In understanding the significance and beauty of the existing
20 landscapes, we've opted for a landscape that fits in. I could have gone for an ego trip and make a large mark, as landscape architects can, on a piece of land, but I decided it was not the right solution for this site. We've gone for a less is more philosophy. It's a landscape that therefore is more likely to be timeless, not subject to fashion, and it's a landscape which we think is important that it celebrates the entire history to date.

25 Second point – it's a concept that respects the landform onto which it is built. When you've got a beautiful undulating land like this one, why change it? And unlike a school campus, which is another permissible land use, by the way, a cemetery can take any shape. It does not require levelling for campus buildings or sports oval.
30 It can undulate with the land and minimise its impact. And this is a very important concept, and we've gone to great lengths to work with the land when placing the roads and the parking. This is the current master plan as it is, which is slightly revised from the one that David has shown you. And to show the extent to which we went, is – the civil engineer can tell you that I have been anal, literally, in my dealing
35 during the DA, in trying to verify that where the roads have been suggested will be able to follow the contours. So we went to unprecedented lengths during DA to verify all that with them. And you can hardly see it, because the line of existing is almost matching the line of proposed. There is some more significant levelling that's required for the buildings, but the buildings represent less than .5 per cent of the
40 site's area, and therefore the impact is minimal.

It's a concept that respects and safekeeps the colonial and non-colonial landscape. The general feel of the present site and its colonial landscape characteristics are preserved, the grassy hills, the dams, the clumps of trees. But these characteristics
45 remain today in principle. Apart from the grassy hills that haven't moved, really the dams are not where they used to be and the clumps of trees are not where they once were. Any attempts to freeze the appearance of this site in time is ill-informed, in

my view, and we acknowledge that the landscapes are naturally changing, especially on a working landscape, as the site was and still is. The site looks very different today than it did 200 years ago, and this is particularly important when we talk about significant views and landscapes. Its tree cover would have been cleared as part of a land grant process. It was a requirement of it. The erosion would have been modified and – would have modified the water course alignment over time, and has also been documented by reports commissioned in New South Wales. The new dams have been built, especially in the 20th century, and the African olive has since invaded the site.

So the aim of the landscape design is to recognise these facts, to preserve the essence of the place, and to provide a sensitive solution to an approved use. And the significant heritage features as documented in the endorsed SMP, which are the outbuildings, the vineyards and the original driveway, are preserved and restored, and beside this, there's a number of historic layers worth investigating and incorporated into the finer design, because we love to do storytelling in landscape. It doesn't mean that it's all significant. It's interesting, yes, but it's not necessarily of state significance. So for us, it's important not to forget the non-colonial landscape, the history of the site, includes many thousands of years of pre-colonial history visible in the geology, the ecology, and the almost invisible Aboriginal occupation.

The fourth point of the vision is a respectful and scenic space, and because the quality of the existing landscape is important to us, we have kept the headstones – and the headstones are not everywhere, as we've said before. But we've kept them low and concealed from the main path of travel. And this concealment offers three advantages: first, it creates some privacy screens for grieving family that can then mourn in private away from the main crowds and we've labelled those the "burial rooms"; secondly, it creates a headstone-free experience, because the rest is really plaques in lawn flush with the grass, so it leaves this lawn-like appearance on all the areas adjacent to the roads, therefore, the visitors travelling on the main road have this feeling of a park-like space; and the third point, importantly, is it goes towards maintaining the quality of the scenic hills as described in the LEP and minimising the development's visual impact.

And again, we have gone to enormous length to verify the claim of visual impact by doing a 3D model of the site, which is not – yes, there was a slide that seems to be missing. We've modelled the entire site to make sure that, from any sensible point, sensitive points, you could not see any of the headstones, and it leaves a legacy to the community, which is the last point; it's a sculpture park with artwork from Australian artists. It's an arboretum with specimen trees and Cumberland Plain woodland habitat for generations to enjoy. It's a publicly accessible green open space, including the top of the hill, in perpetuity and it's state heritage items and more conserved and protected for perpetuity.

So how did we come to this design? Well, as you can imagine, there's a number of constraints driving the design and the challenge is to uncover them early and turn them into opportunities. I like to be informed, so I do this early. And in many cases

these constraints and legislative requirements can work each other: heritage, in particular, can compete with ecology, riparian requirements and bushfire legislation. But the challenge doesn't stop here; cemeteries have their own operational requirements, adding an extra layer of complexity and, for that, I felt it was
5 imperative to analyse the site thoroughly, systematically and rigorously prior to the design phase, and we've done that as demonstrated in the first quarter, and this is an extract of the analysis map that we have in our design response report.

We came up – sorry, excuse me – we came up with the idea of the timeline concept.
10 A cemetery is a record of social and cultural history and the land also bears records of past events. Both of those are testament to this passing of time and the lifecycle. So this was an obvious design narrative appropriate for the site and its purpose, but it pays respect to the entire timeline: the geology, the ecology, the Aboriginal occupation, and the 200 years of colonial history, the entire timeline.

15 And how to respond to the heritage? Well, a number of state significant heritage elements were sufficiently documented to enable incorporation and interpretation in the designs. You can see the vineyards, the outbuilding, and the original driveway all in the area marked as red. The vineyards, contour trenches are clearly visible on
20 site. You will probably see them tomorrow. They've been surveyed and there's a proposal for a vineyard to be reinstated. We've suggested that the trenches should be left as is in section and planted in others as a representative sample of what was and what is now. We have the significant outbuildings as defined by the CMP, which will be restored and adapted. We've done very little around the precinct. It's
25 potential re-use for educational purposes, so we have designed it as a gathering space for students.

The original driveway is still visible on aerial photos, especially in dry months, but it's not visible on site, so our aim is to visually restore this alignment, mostly with
30 tree alignment. Unfortunately, the Cumberland Plain woodland and the watercourse have since established themselves in that alignment, which complicates its interpretation. All other reference to heritage items in the Phillips report are speculative with no evidence of state heritage significance, and we are committed to incorporating any historical reference into the design and we want to undertake that
35 research process. We would love to enrich the design with as many reference to its past, but our duty is to investigate with care and interpret history not invent it.

As David Hoy has said, we've aligned ourselves with all the CMP and the hundred and plus policies that are part of the endorsed CMP. We've also aligned with the
40 intent of the no-build area, but this is a zoning which does not just allow for a cemetery, it allows for this cemetery, and this development constitutes a change in use, and this will lead to change no doubt, but one which will be that the site will not exactly the same, but the driving force, from the discussions I have had both from the owner of Varro Ville House and OEH to date appears to be to relate to a wish to keep
45 the site as it is, and we question why and should this be the basis of a curtilage heritage extension.

5 We have produced two very detailed strategies: one is an interpretation, the other one a public art strategy has been formulated as part of the DA process and it shows a clear commitment on the part of CMCT to acknowledge the history of the site, to interpret it through artwork, displays, signage, design element, and this is one of an extract of our map and you can see it relates to the entire timeline.

10 In summary, I would have three points to make: we have had a very short timeframe to study this document, which is the Phillips report and it has, as we said before, poor quality photocopying, it's illegible, it's missing pages, it out of sequence, but by reading some of that we found that the information onto which the curtilage proposal appears to be founded has major inconsistency, speculation, it's at odds with our own research and is commissioned by the objector of the project.

15 And the reason we went into the detailed explanation of our design process is to demonstrate that the scheme is well informed, logical and rigorous foundation. The DA wasn't developed in a whimsical fashion and the level of information that we provided in that DA is well above the norm, and it shows an understanding of the past and present landscape and a commitment to transparency and excellence. It doesn't attempt to hide anything. It has provided way more information that was
20 required and it hasn't been prepared in a rush. And we expect the same rigour that we have shown when it comes to heritage and, unfortunately, it doesn't appear to be there.

25 My second point is that, as a landscape architect, we want to understand what makes a place special and unique. Its entire history, its character, and incorporate that into the design, and although the European heritage is a small portion of that history of the site, our disappointment in the rigour of OEH argument gives rise to the concern that the unfounded and often biased information put forward will become the basis of some of the interpretation, and we believe we have a duty of care to future
30 generation, which we take very seriously. We believe it is our common duty to investigate with care and interpret history, not invent it.

35 And we support, as has been said before, the preservation and restoration and interpretation of the state significant item, those three items we have shown before, as they clearly defined in the potential heritage curtilage as per the JRPP endorsed CMP, and that which is not of state significance should not and need not be the subject of an extended curtilage. We have shown that in our DA package and that is clearly our intention to go beyond, especially in our interpretation strategy, beyond
40 the state heritage items and look after it for perpetuity, providing a legacy to the community and all of which we believe can be controlled by existing planning mechanism. Thank you.

45 MR SALON: Thank you, Florence. That's the conclusion of our expert speakers, and I'll simply sum up in closing the five points to make. The CMCT and its consultants have identified that the heritage council statement of heritage significance and the OPP study upon which it is based lacked the requisite rigour, factual basis and supporting specialised expertise such that they are inappropriate to

form the basis of a recommendation for a listing on the state heritage register, or the long-term heritage management at the site.

5 The lack of requisite rigour, factual basis and supporting specialised expertise in the statement of heritage significance and study on which it is based resulted in a proposal of a curtilage that is far in excess of what can be justified as being of state heritage significance or required to conserve the Varroville heritage. The CMCT respectfully submits that a greatly reduced curtilage based on a more rigorous review of heritage significance is appropriate and should be considered. The CMCT was not
10 in possession of the part publically funded OPP study during the consultation and public notification period leading up to the making of the recommendation and, to this day, is not in possession of a full copy of that study.

15 This has prevented the CMCT from submitting a critical appraisal of that study prior to the making of the recommendation which constitutes a serious denial of procedural fairness in a legislative process that could result in the encumbrance of the CMCT lands with a heritage listing. No report in front of a land owner to which a heritage listing is proposed. The listing of an extended Varroville curtilage as proposed by the recommendation will render the CMCT lands incapable of
20 reasonable or economic use. That is a consideration that the Minister has to make before deciding to list an item on the state heritage register. The CMCT lands have specifically been planned and designated for use as a cemetery in the Campbelltown LEP as you've heard our consultants say in accordance with the construction management plan, and that use has been proposed by the CMCT in a development
25 application that is currently before the IPC.

The CMCT respectfully submits that any listing of the – on the state heritage register of an extended curtilage around Varroville across CMCT lands should include site specific exemptions from the restraining effect of the heritage listing so as to allow
30 the CMCT lands, the subject of the listing, to be used as a cemetery in accordance with the CMP planned for in the LEP and proposed in the DA. The listing of an extended curtilage around Varroville as proposed by the recommendation will have a significant financial impact on the CMCT as it will prevent the reasonable and economic use. The financial impact and hardship of a listing is a consideration of the
35 Minister that has to be made before a listing.

Because – prevent – the CMCT respectfully submits that the listing of an extended Varroville curtilage as proposed by the recommendation will cause the CMCT undue financial hardship. The CMCT further submits that to reduce the financial hardship,
40 any listing on the state heritage register of an extended curtilage around Varroville across the CMCT lands should include site specific events – exemptions from the restraining effect of the heritage listing so as to allow the CMCT lands to be used as a cemetery in accordance with the CMP as planned for in the LEP and proposed in the DA. Once it is known what site specific exemptions from the restraining effect of any heritage listing are to be applied, the CMCT submits that the proper and
45 required assessment as to whether the heritage listing will cause the CMCT undue

financial hardship could be undertaken. And that is the conclusion of our presentation, and we open you up to questions, if you have any.

5 PROF LOCHHEAD: I have a question. I'm still trying to make a nexus between the listing and the – to render the land incapable of use for its proposed use.

10 MR SALON: Yes. Perhaps I might start, Madam Chair, and just answer that, at present, the listing seems to come with nothing other than the standard restraining effects, restraining factors, that are imposed on an item that is state-listed, so there will be a restraint to what can be done on the land. There is power within the Heritage Act for a heritage listing to exempt an item, and in this case the CMCT lands, from those restraining factors. There's also scope for the listing to say that development, for example, on the site should be done in conjunction with an endorsed conservation management plan. In this case, there's a very well-developed and researched conservation management plan on the table, and it is open for the Heritage Council to engage with CMCT about site-specific exemptions. Fiona, perhaps you just - - -

20 MS BINNS: Yes, sorry. I'm thinking – I mean, sorry, if I could just go back to the conservation management plan, we did write – we have never – we have always supported an extension of the curtilage. We're just looking to define that correctly. We don't see that the extension of the curtilage necessarily has to preclude the – and nor should it preclude the cemetery development, but, essentially, we're just seeking confidence by having those, and an understanding, from the point of view of the proponent, having those sort of checks and balances in place to know that, managing it moving forward, that they can do that and that the extension of the curtilage won't affect the proposed use.

30 MR DAVIES: So, could I – Stephen Davies. Quite bluntly, if you get an enlarged curtilage without any exemptions other than standard maintenance and mowing or whatever, then the concern is that there is financial hardship because a great deal of the site is then unable to be used for any other purpose other than open space, so the issue is there's that confidence of what might happen in an expanded curtilage, and I can see that the Heritage Council will want to expand on this in due course, but the – so it's not so much a matter of saying that you couldn't have, you know, a curtilage over the entire original estate, as long as you, you know – including church lands, open space, various other things, as long as you had the exemptions within that – within that area or curtilage to allow you - - -

40 PROF LOCHHEAD: Or an endorsed CMP.

MR DAVIES: Or in the endorsed CMP.

45 PROF LOCHHEAD: Or an endorsed CMP.

MR DAVIES: Or an endorsed CMP - - -

MR SALON: Yes.

MR DAVIES: - - - to provide the policies to guide what might happen within that area.

5

PROF LOCHHEAD: I mean, because my understanding is the exemptions aren't required as part of the listing. It would – there could be exemptions at some future date, but in terms of protecting the heritage, which is what we're here to actually ensure, is that there is a state heritage listing, there's a CMP, there's a DA process which would actually include exemptions as part of that, but there's no clear nexus, as far as I can see, between the state heritage listing and the requirement for exemptions, and I'm just trying to unpack - - -

10

MR DAVIES: Well, all - - -

15

PROF LOCHHEAD: - - - the nexus between these.

MR DAVIES: All state – all state heritage listings – we could probably get this technically if you wish - - -

20

PROF LOCHHEAD: Yes, no, I will look.

MR DAVIES: - - - have exemptions, standard exemptions, and then they have, sometimes, specific exemptions, and those specific exemptions often relate to a specific approved DA.

25

PROF LOCHHEAD: Yes, exactly. That's what I'm – yes, so let's just define the - - -

30

MR DAVIES: But because this is - - -

PROF LOCHHEAD: - - - difference between standard exemptions and very particular - - -

35

MR DAVIES: But - - -

PROF LOCHHEAD: - - - site-specific exemptions.

40

MR DAVIES: Because we're now dealing with this without a DA, there's always that concern from CMCT's point of view that the extension would be applied, a larger curtilage, without any DA, and then the Heritage Council might determine that they don't wish to approve any uses within that – you know, within that area, so, you know, and you might want to follow that on - - -

45

MR O'MEARA: Yes. Peter O'Meara. Look, our concern and our negotiation with the Office of Heritage and Environment over the last two years, there was an expectation that we would support a curtilage with exemptions for the placement of

buildings, roads and so on, but the Department refused that, which caused us to actually step back from the process and say, “Well, if you’re not prepared to negotiate or engage in goodwill with us around these exemptions, it’s difficult for us to support the registration of a curtilage as extensive as what you have proposed.” In addition to that, there’s been public statements in newspapers by the objector and the person who’s procured the Orwell & Phillips report that the objective of registering the curtilage is to sanitise the site. That’s in writing, it’s in the submissions, and we – we’re faced with this predicament that if we agree to the registration of this curtilage and the underlying objective is to sanitise the site, we incur a massive impediment financially, and we’re not prepared to do that.

MR SALON: So – sorry. If I just - - -

PROF LOCHHEAD: But, I mean, there’s – notwithstanding what people said, there are other - - -

MR O’MEARA: Processes.

PROF LOCHHEAD: - - - processes in place - - -

MR O’MEARA: Yes.

PROF LOCHHEAD: - - - including the LEP process - - -

MR O’MEARA: Of course.

PROF LOCHHEAD: - - - as well, which makes this use permissible.

MR SALON: Madam - - -

MR O’MEARA: Well, it does, yes.

MR SALON: Madam chair, if I could just say that we have well covered the idea that this site has been specifically designated for use as a cemetery. The proposed listing and the curtilage does not include exemptions that would permit that use to go on. It’s open to the panel to receive our submission on this and to suggest to the Minister that, when the Minister, if the Minister is minded to pursue a listing, makes the mandatory consideration of whether or not the listing will render the item incapable of reasonable economic use, in the full knowledge that the reasonable use of this site is as a lawn cemetery, it’s open to the panel to suggest and the IPC to suggest to the Minister that there should be site-specific exemptions, and that is the purpose of our submission on this point.

MS LEWIN: Yes, we note that.

PROF LOCHHEAD: Okay. All right.

MR SALON: Thank you.

MR BROOKS: Madam chair, if I could just add one small point to this, there's two
5 examples that we've been involved in in the city over the last 20-odd years where
there was a distinction within one property about what was actually covered by state
listing. One is the State Theatre, and it was very clearly set out that, for the State
Theatre, the State Heritage Register listing covered what we might call the Gothic
components, the theatre, the foyer, etcetera, and the Sydney LEP listing covered the
10 remainder – in fact, covered the entire site, so there was a separation of the parts of
the building that were covered by the state register.

The same thing happened after a study we did for the old Westpac Banking Chamber
at the end of – in George Street at the bottom of Martin Place, where the state
15 heritage listing was put only over the more decorative lower sections, the banking
chamber and the executive floor, and all of the rest of the building was simply
covered by the LEP, so that's a very practical way of thinking about this site, that we
can either cover parts of the site with the state listing or we can have the whole site
covered by the state listing but with significant explanations or limitations in the
20 listing, which is where I was coming from with the statement of significance, to
clarify for the future generations of management as well as of owners of the State
Heritage Council that everyone understand what the – what we're really trying to
protect and how we go about it, because if it's too general, people are going to forget.
Different personalities, different views, different attitudes over time, it's going to get
25 very, very complicated unless we are as clear as possible from the beginning exactly
what we're trying to do with this land by way of protection and use.

PROF LOCHHEAD: Okay.

MR BROOKS: So that's really where we're coming from.

30

PROF LOCHHEAD: Do you have any specific questions?

MS LEWIN: No, I think our questions have mostly been covered from your side.
Thank you very much.

35

PROF LOCHHEAD: Okay. Great.

MS LEWIN: And thanks for clarifying that.

40

PROF LOCHHEAD: Yes.

MS LEWIN: All noted.

45

PROF LOCHHEAD: Yes. Thank you. Thank you. Okay, so if - - -

DR DUNN: Madam chair, is it possible to have a two-minute break, at least for me?

PROF LOCHHEAD: Yes.

MS LEWIN: We have a break scheduled.

5 DR DUNN: Of course.

PROF LOCHHEAD: Well, we have a break in after – but we can break quickly now.

10 MR SALON: Yes.

DR DUNN: Mine won't take long, as such. I just need to use the bathroom.

PROF LOCHHEAD: Yes.

15

MS KIRKBY: So do I.

RECORDING SUSPENDED

[2.49 pm]

20

RECORDING RESUMED

[2.58 pm]

25 PROF LOCHHEAD: Okay. So if everybody is ready to reconvene, we might just go on to the next presentation by Jacqui Kirkby and Peter Gibbs. And so if you're ready, we can - - -

MS KIRKBY: Yes, yes.

30

PROF LOCHHEAD: Yes.

MS KIRKBY: Now, I'm presuming at this point that you don't want a reply from us to what has been said on the other side, because a number of extraordinary statements have been made which I think is false and misleading information, particularly in the planning area and legal advice on the Heritage Act and with regard to planning is completely different to what we have been provided with. I'm not sure that all of it is appropriate for this particular panel, anyhow, but I would not want the panel to be misled in a lot of that sort of thing.

40

PROF LOCHHEAD: So I think there are a couple of things there. One, you will have to speak up much more loudly - - -

MS KIRKBY: Okay. Yes.

45

PROF LOCHHEAD: - - - because it's very hard to hear you and – just because this room is quite large. Secondly, we would like you to address your submission, but if

there are other issues that you feel are pertinent to your submission and that may be too thorough and too detailed and go off the point, you can also put in another submission within the next two weeks while we're preparing our report. So this isn't the only opportunity where you have the opportunity to provide any clarifications that you think need to be - - -

MS KIRKBY: Well, I think some of the statements that have been made here, if the panel is going to rely on it, you would need further expert advice on those issues because things that have been said are not consistent with what we understand under the legislation.

MS LEWIN: We're happy for you to identify those issues.

MS KIRKBY: All right.

PROF LOCHHEAD: And we will note them and will get our own advice as appropriate.

MS KIRKBY: I think that would be a good idea.

PROF LOCHHEAD: Yes.

MS KIRKBY: All right. My husband can't be here today because of the site inspection. So we have had to divide our time. He has had to stay behind to do that work, but he has given me a statement that he would like me to read out, time permitting. So, first of all, I want to thank the Commission for giving us equal time to respond to the other parties. At risk of upsetting people and at risk of upsetting the Commission, I first want to talk to the treatment of my husband and I and our issues in correspondence, because I think it's pertinent to what we're going to talk about. So I will just briefly address that. Some of it has been resolved with regard to the curtilage study but not entirely.

We sent – we had four letters outstanding to the Commission as at Friday afternoon about the Commission's processes and whether they were fit for purpose. The earliest letter was 30 November. We got a response to those letters, if it can be called that, on Friday afternoon, giving no time to respond, and it was essentially a take-it-or-leave-it response. There's a pattern to this because when the hearing was scheduled for 3 December, we had the same thing. I mean, the Commission has had the minister's request since 12 October and everything was dealt with at a very late stage and there was an exchange of legal letters between our legal advisors and the Commission. And we received a response. Again, the response came back on Friday afternoon with the hearing on the Monday.

Now, I just want to say that that's a corporate tactic and in corporate, because I have worked in large corporates, it's designed to blindsides your opponent and put them at a disadvantage. And I don't feel that it's appropriate for the Commission to be using that tactic or giving the impression of it to anyone but particularly to private

individuals like my husband and I. And, as a consequence, we nearly didn't come today. It puts us in the position of feeling like we are opponents and therefore we're not being treated fairly and we won't get an impartial outcome, so – and I think it's contrary to the Commission's objective to build community confidence and trust.

5

The other thing that added to this was that the Commission did not respond to our issues and it acted as if it didn't have to. Now, the claim discretionary power – I don't know whether the Commission has that, but if it does, the onus is on everyone who has that kind of power not to abuse it. And we have felt it as abuse and as State heritage owners – and my husband concurs with this; this is how he feels, as well – we feel we're on trial for trying to save State heritage and uphold the Heritage Act. We're expected to uphold the Heritage Act, and we – and the minister is not doing it in this case, so – I will address that a bit later. It has undermined our confidence in a fair outcome.

15

Now, a key issue that was still outstanding that we got a letter on Friday indicated that the panel had carried over a decision of a prior chair without considering any of the issues that we put in the letters. There was no response to those issues. The prior chair stood down on a perceived conflict of interest. We weren't accusing the chair of any wrongdoing per se, but there was a genuine perception on our part. And the handling of the study was a major contributor to that. It provided us, as we said in our letters, with a no-win situation for heritage but favoured Mills Oakley as the lawyer for – not just for Catholic Cemeteries but also for another landowner, Scenic Proprietary Limited, in a variety of ways.

25

And there was a declared commercial relationship between the chair and Mills Oakley, so we had reason to have a perception about this. Now, our feeling is that by carrying over that decision carries that perception of bias into these proceedings and we are hoping that that will be corrected along the way, because there has been some start on that already. One of the things that was still outstanding – now, I should say, as well, before I go on to the next point, is that we had legitimate concerns. I understand the other landowner saying, "Well, we should have had access to the report, but no one has given any consideration for the fact that our report, contrary to some of the comments here, was extremely detailed and extremely well done, going back to very good source documents, and it identified heritage that would get in the way of development.

35

There's no doubt about it. It's – it was important. And that needs to be protected. You don't go through this process of developing these reports, identifying State heritage to destroy it. You identify it in order to protect it. And by putting it out there with two landowners who are requesting intensive development of that land contrary to the original zoning of environmental protection which we all bought the land under. There is a very real risk that that heritage will be destroyed before protections can be put in place. And we're already going through the process of testing that in the – in NCAT, and the Commission felt it did not have regard for that, so it has put us at a disadvantage. Now, in one of our letters, we offered solutions to that.

45

5 The obvious solution – and the Heritage Council knows this – is that in sensitive
situations like this, an IHO is the best way to handle it. Had the minister agreed to an
IHO, our report could have been distributed to everyone. We wouldn't have been
concerned. We would have encouraged that. But the original minister back in – I
think it was 2014, when the Heritage Council asked for an IHO, didn't sign it and the
Heritage Council, as I understand it, was reluctant to put up another one because we
did request it again and the Heritage Council was reluctant to put it forward, given
that a previous minister had not – he didn't reject it, but he didn't sign it. So I think
that was a mistake, because it didn't give new ministers the opportunity to revise that
10 situation and it has put us through a world of woe.

15 Everyone – everyone involved in this, all landowners have had to go through this
because of this problem of whether the heritage in that land would be protected if this
information was made available. Now, that report detailed a lot more than Urbis's
report, and I think, you know, the Commission could easily compare the two and
would see that. So that's the first thing. Now, as at today, we still have a letter to the
Commission that's outstanding of 7 January where we had new information about
the handling of our study. And for that – for us to get a letter back saying:

20 *The Commission is going to take the same approach that it had before and if
you're not going to hand the report over, then we're not going to consider it or
we're only going to consider that part that you are prepared to hand over –*

25 when the other side had had access to it, was extremely distressing. That was our
letter of 7 January. The Commission's letter of 28 November said that it would
consider our study if we gave access to the other side as follows:

30 *Access limited to the interested parties' legal advisors and heritage experts
only and on the basis that those parties will not disclose the contents of the
study.*

35 Access has been provided and I would be interested – I think it's important for the
Commission to know, because a couple of statements have been made here, where
the copies of those reports came from and what exactly is missing from the study
because they're trying to make out as if someone has done this deliberately. That's
the implication of it. And I'm not aware of that, so I think for the Commission to be
able to look at the whole report and the other side saying something is missing, we
need to know that. So I would like to know where they got the copies from, because
I know what I provided to whom, and I think it's important to know that. Are we
40 able to know that now?

PROF LOCHHEAD: Where did you get the - - -

45 MR SALON: I'm not sure that we're actually obligated to say, but what I will say is
that the report was obtained by proper means through a GIPA application to a
government agency who held that information.

MS KIRKBY: But you've got copies of it. You took copies of it.

PROF LOCHHEAD: Did you have copies? Do you have a copy of it?

5 MR SALON: We were able to view the report and we were able to make copies of it under an exemption to the Copyright Act for the purposes of providing legal advice.

10 MS KIRKBY: Okay. All right. Well, what I have been informed is that Campbelltown Council has provided access under its open access relating to DAs, which I wasn't aware of, and I had made it clear to council that they should consult us before they actually did something like that. Mills Oakley made an application on 24 October to access that and viewed it on 22 November. Now, Campbelltown Council has indicated that that was made available on a view only basis and it's a
15 breach of copyright if copies were made. So if it's a poor copy, it's likely to have been made with a mobile phone. So I just want to state that for the record.

Now, the fact of the matter is that that report did have one – excuse me, did have one page missing. One page, and I have documentation showing that shortly after I
20 submitted it, I found the page on the desk. I immediately – and I've got written documentation showing I immediately contacted council and said, one page – I've missed one page. We've got a communication. Can you please provide it? Yes. I took it down and provided it. So there was one page missing. If it was missing from – if that's the page missing from the report, then that's where you've got it from and
25 it's council's problem that they didn't include it, but it's one page. It's not a huge amount of information missing and it was corrected by us. So I don't want any fancy footwork being conducted within this commission. I think everything has to be out in the open and transparent.

30 So the problem now is that we do want to make sure that the commission keeps to its word as of the 28th of the 11th, the letter it sent us, because it didn't define what access was. View only is still access and it seems like they've taken copies anyhow and we put in our letter of the 7th a couple of questions. How is the commission now going to protect the identified heritage, given that it has been – Campbelltown
35 Council has provided this as part of the DA, which is now with the commission, and we don't know – we find it hard to believe the commission couldn't have known that that was happening, I have to say, and to say, well, you know, they're different projects. You know, the curtilage expansion and the DA, it's all going through the same parties at the top level.

40

PROF LOCHHEAD: Just to clarify, they are completely separate processes.

MS KIRKBY: Yes, but from an administrative point of view, they're going through the same sort of people, the same legal people. We wrote letters to the chair –
45 commission - - -

PROF LOCHHEAD: Well, we are not party to any other process. Sorry. Yes. Yes. We will – yes. Look, we’re not going to be accepting any questions from the floor per se, but just to clarify, they are separate processes and then – and also the assertions that you make about due process being undertaken by the commission. As
5 you know, there was a new panel convened, a new commission convened of the – of Wendy and myself and we have actually got information in a timely fashion, got advice in a timely fashion and responded as quickly as possible. So I do not see there is any untoward tactics from our engagement in terms of responding in a timely manner and I do think that if the information was made available by the council, then
10 that’s a separate issue to the undertakings of the commission. So I just think you just really need to clarify - - -

MS KIRKBY: Well, we’ve put that to the commission and we expect to get a response back because it has been very confusing for us and, I would think for the
15 commission as well, embarrassing that we’ve been negotiating access to that report and it has been provided out the back end somewhere else. So anyhow, the fact of the matter is they have had access to that report. There was one page missing which was provided. If that wasn’t in the report that council provided, then that’s council’s problem because we certainly provided it and it is only one page of a 150 page
20 report. Okay. Now, what we’re asking is a consequence of that and it hasn’t been determined that the commission keep to the letter of the 28th of the 11th and now consider the whole of that report.

I should also say that the commission took it upon itself to redact information that
25 went up on the website without consulting us and we indicated in one of those letters that we were – we might have been happy to have some of that information made available. We weren’t given the choice. So I’m just stating here, given that they’ve had access to that report, that any photographs from our report that appeared in those papers, we’re happy for it not to be redacted, to be part of that report. So that can
30 certainly go up on the website. Now, the next thing I want to talk to is – well, first of all, I would like to say that I think the other parties here have misunderstood the nature of this review. This review is not to do with a cemetery or any other development. It’s about establishing the state significance of the site. That’s it, and I will talk about that when I talk a bit more about the report.

35
By the way, I would also like to say, just with regard to tactics, just to go back a bit, we did feel blindsided by responses on a Friday on two different occasions, but I have to say we’re also blindsided by my turning up alone at this hearing and we now have 10 people from Catholic Cemeteries and the hearing had suggested that Mills
40 Oakley was going to speak for Catholic Cemeteries and they’ve brought along a range of heritage consultants. Had we known that that was going to be the schedule of speakers, we would have brought along our own heritage consultants to hear what they had to say and we were blindsided on this. So we feel that if the commission is going to accept these late submissions, that our heritage consultant’s order be given
45 the opportunity to respond as well. I’m actually going to make a point that I don’t think is necessary, but they should be, to be fair, and – yes, I think, you know – and how – I will come to that later.

Now, the first thing I want – or the other thing I want to do is say, given that they’ve had all of this time with all of these consultants, I would like to be given some leeway to say what we have to say completely today. So why has this been referred to the commission at all and after such a delay? This is a real problem for us. We don’t understand – even understand why we’re here. The minister referred this to the commission under section 34(1)(b) of the Heritage Act. The Heritage Act section 34 says:

Action by a 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 –*

etcetera, or:

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

(1A) *On receiving a request to review the matter, the commission is to conduct its review and provide a report to the Minister within the time specified in the regulations.*

The regulations say that the commission is to conduct its review and provide a report to the minister in three months. By our reckoning, on that timeline, the council made its – the Heritage Council made its recommendation on 31 October to the minister. That means it should have been referred to the Minister. That was 2017. That means it should have been referred to the commission by around mid-November with the commission’s decision around mid-February last year, 2018. So the commission – we’ve put this to the commission before and it has not properly addressed this issue in its response, so it remains on the table. We don’t understand why this delay and whether that’s valid.

The other reason why we don’t understand why it has come to the commission is it was not a controversial decision. There were – no pertinent issues were raised within the specified timeframe and that’s clear in the ministerial briefing. Other issues that were in those papers were minor issues. They might not be minor issues to the other side, but they are not relevant under the Heritage Act, but I am going to address those because some reference has been made to them. The first is site-specific exemptions for the cemetery as part of a listing. This was never appropriate. First of all, some statements have been made here that – I’m not sure of the wording, but something to the effect of that it has been – the site has been specifically designated for a cemetery. No, it hasn’t. All that has happened is that cemeteries have been added to the LEP as a permissible land use. Development with consent. There are a range of other land uses that still apply. It’s not just cemeteries. So that was a piece of false information.

I will get to the CMP because that's another one, there was a lot of discussion about it being endorsed, an endorsed CMP. It's not an endorsed CMP. The only people who can endorse a CMP, as far as I know, is the Heritage Council and they can only do it if the land is on the State Heritage Register, which this isn't. So it's embodying
5 in the LEP was a very strange thing to and I would like to address that later on. But anyhow, coming back to the site-specific exemptions, we put it to the Heritage Council that it was not appropriate for the Heritage Council to be approving site-specific exemptions for something that had not yet been approved. So it – we're still going through a DA process.

10 The site is, according to EDO New South Wales in speaking to us, the most environmentally constrained site for development that they have ever seen in New South Wales. So it may not get through on a variety of other grounds, not just heritage, and it just wouldn't – it's just not appropriate for the Heritage Council to be
15 approving something that may not get wrong and particularly for things which may not be approved. It's like it's facilitating something before it's actually had a DA approval.

20 And it's also wrong procedurally. I mean, the procedure is you identify – if there's a potential state significance there, you identify the state significance of it, list it, and then development is assessed against that, and – so that you make sure that you preserve the state significance. New South Wales Heritage Council asked the Department of Planning on several occasions – and it's documented in a submission and it's documented elsewhere, I think, in the papers here – they asked the
25 Department of Planning to wait and not do the rezoning until this site had been assessed for its state significance, and the Department of Planning just refused. They went ahead, and so did Catholic Cemeteries.

30 This may have – there may have also been a misunderstanding that the management of the site's heritage was wrongly linked to development by a previous Minister, Rob Stokes, back in 2014 when the Heritage Council first asked for an interim heritage order. Now, if he did intend that, and I'm going to dispute that because I think the evidence is that he didn't, and I can't see that he would, given his expertise in
35 planning and heritage in particular. But if he did, it's not consistent with the Heritage Act, so that – and at the time that that was made, it was also potentially in breach of a Ministerial code of conduct, given where it came within – in this process. So I want to address that because I don't think he did it.

40 Now – so site specific exemptions are not appropriate under those circumstances. And this curtilage should be made and the state significance of it established before the development is assessed. I'm just going to take issue here with Peter O'Meara's suggesting that I've made statements in the media saying that the site will be sanitised by the cemetery. It's not my call, for starters. There are other authorities who are going to decide that, not Jacqui Kirkby. I've never used the word "sanitise"
45 and I don't think I would, and anyone who takes quotes from the media quoting me should be very careful because I'm frequently misquoted, to my much annoyance, particularly in the local media because they write what they want to write, and I think

it's very – you're on very dangerous ground, unless you see it in a media release with my signature on it, then you can't assume that it's come from me and that I'm being quoted correctly.

5 All right. The statements of significance. The other objection that Catholic
Cemeteries had, or Urbis had on their behalf, was that they felt that the statements of
significance from their CMP should be adopted, not the ones from our report. All
right. Well, let's just – first of all, when this went on public exhibition, we agreed to
10 the release of all the information that the heritage division and the Heritage Council
asked us to to comply with the public exhibition of this. So our report findings were
incorporated into the heritage database, and the statements of significance were
detailed, etcetera, as part of that process. Now, as I said, you know, we would have
been happy to give the other side a report if we'd been given some guarantee of
protection.

15 And that's reasonable. I mean, the interim heritage orders are in the Heritage Act
because they know that heritage can be damaged by people wanting to develop. So
let me just compare the CMP heritage study of Urbis with our study. First of all –
and we've criticised this in the context of the DA – their study relied on outdated
20 secondary sources of information, not in total, but in a large part, in the heritage
assessment. They only looked at their own land, and they did it in the context of
development. The CMP assumes that development can happen. That's not really
appropriate. It was not endorsed by the Heritage Council because they can only
endorse something for land that's on the State Heritage Register. And I hope that if
25 I'm saying something wrong, then Mark will correct me.

On the contrary, we use the same authors. So they used outdated information, and
they did extensively – used outdated information from Orwell & Peter Phillips and
Geoffrey Britton in prior studies, which was 17 to 25 years out of date. Now, no one
30 would take that. CMPs, as I understand, are supposed to be updated about every five
years – five to 10 years. So these were heavily out of date, and there were some
other secondary sources that they used. They could have engaged the same authors
again, but they didn't. We did because they were obviously well-qualified with their
familiarity with Varroville, having done this work before, in doing it again.

35 What we found was that so many errors were being repeated in secondary sources
that my direction to them was to go back to original source documents. Our report
was based on significance. It wasn't based on any development. It took a wide look
at it. It didn't look at a piece of land. It looked at – went wide in order to come in
40 because we were trying to assess the significance of Varroville as a whole. And we
consulted with the OEH about what they would like from this particular process, and
the brief we had, the wording was, "Do the existing statements of significance
capture all the values the property holds?" and that was my brief to Peter Phillips.
Now, I note that criticism has been made of Peter Phillips, or perhaps not of Peter
45 Phillips but suggesting that he merely collated this, which I find extraordinary.

Mr Davies has referenced the fact that he is the former chair of the Heritage Council. Now, I'm sure Peter will forgive me in these circumstances, but Peter is the secretary – currently the secretary general of ICOMOS International, and it is on him to not use that in his work, and so we've been put at a disadvantage when everyone else is using these things to show the quality of their work, we have to respect Peter's wish in that because that's what ICOMOS demands. So it's really got not a lot to do with whether he's qualified to do a particular piece of work, but it does show that he actually is a highly regarded heritage specialist, and I don't think he would put his name to any work that he was collating without quality controlling it and ensuring that it met the certain standard.

And I have to say that in – it allowed him, in doing that, to be able to select the best specialist he could to do the specific job that he needed, rather than passing it down through a number of juniors, and that's the way, I understand it, that he operates. So that was the difference between our report and Urbis'. Now, yes, we did get a heritage grant. It didn't make it a public document, and that's already been looked at before. As owners of state heritage, we're entitled to apply for grants. We could've put it to fixing the guttering on the house, which desperately needs doing. The public wouldn't have had the right to come in and say if we'd used it for something internally. They wouldn't have had the right to come in and inspect our house to see if we'd used the public money appropriately. It's up to the Heritage Council to do that, so – or the heritage division.

Now, that gave our report some quality supervision, that fact that we had a grant, and so we had to go through various processes before we could even get the grant. They only gave it to us at the end after it had all been completed. Now, Urbis may say, well, it wasn't all secondary sources because we engaged a qualified, a well-known landscape heritage consultant. Well, we know, from our own experience with Geoffrey Britton, that they can really only be as good as the base material. And we had started – initially started our study back in 2007 and suspended it, but we had Geoffrey Britton working with Alan Kroeger. Now, we were trying to keep the costs down, which it seems the other side have tried to do, and so we were using secondary material, and it was very difficult because it opened up more questions than it answered. Geoffrey really wasn't sure about the true significance of what he was finding there. This time around, my brief to Peter Phillips was, well, we need to go back to secondary sources.

We weren't that interested in people because that had already been well-documented. What we were interested was land. And so Peter Phillips engaged Dr Terry Kass, who is widely respected historian, and my understanding is he has expertise – specialist expertise in land grants, and what he unearthed in terms of the history of the way in which the land changed was – made a world of difference to what Geoffrey Britton, as the landscape heritage architect, could then use in looking at the land and came up with vastly different conclusions as a consequence, and the documentation that Terry Kass was able to unearth including things about the dams – I mean, I'm surprised to hear comments on the other side that these were all 20th

century when, you know, they were identified when the grant was first mapped out in eighteen – I think it was 1810 or – 1810, I think it was – is just extraordinary.

5 But all of that is contained in our report, which the opposite side has had access to but clearly hasn't read in detail. Now, the other thing I wanted to say about the statements of significance is first of all, ours updates – using the same consultants, our consultants have updated the significance, and they had identified in the – in prior studies. So, really, the Heritage Council is right to adopt ours rather than ones based on outdated information from the same authors. But the other reason is that
10 CMPs are not frozen in time. So I don't know – it's a very strange thing for this have been embedded in the LEP, but it is not that the cemetery is going to – I don't want to talk too much about the cemetery because it's not really relevant, but it's not that the cemetery complies just with that CMP.

15 That particular insertion into that clause in the Local Environment Plan is just one thing that they have to comply with. It doesn't preclude all the other evidence in the LEP; nor does it preclude the Heritage Council getting updated information on an updated CMP. And I have to say that the Heritage Division, as delegate for the Heritage Council, said again and again, and one of their submissions, which I could
20 show you, but it – the submission actually says – actually said – asked them to wait for the rezoning because we were doing this study and it may require a new CMP, and it does.

25 So I also have – want to say that Urbis' CMP, policy 9, allows for updating. It's not frozen in time. It says, policy 9, all future planning, etcetera, must be guided by the statement of significance in significant spaces, landscape fabric and building elements identified in the CMP – emphasis – together with any additional or detailed research and assessment. So to try and limited just to their CMP would not be in the best interests of Heritage.

30 Now, that – these were the things which Catholic Cemeteries and their consultants raise as an objection, which I'm saying are not that relevant – I don't think that they're relevant under the Heritage Act for the purpose of this review, but I wanted to deal with them anyhow. There was an objection from the Office of Strategic
35 Lands, and I'd like to address that, because we felt that that objection to it going onto their land was disingenuous. First of all, they implicated Campbelltown Council as agreeing with them in objecting to it going onto that land, because Campbelltown Council manages that land. Campbelltown Council has rightly objected to being misquoted. OSL contacted them to ask them what the strategic use of that land was,
40 and that's what they gave them. They said this is what we're using the land for. And that was somehow converted into an objection to a curtilage going onto that land.

45 Now, OEH rightly rejected – dismissed OSLs objection anyhow, because their objections could have been dealt with in other ways, but I also just want to say that I think it was disingenuous because a GIPA, Government Information Public Access search in November 2013 showed that OSL was happy to sell that land to Catholic Cemeteries as part of a cemetery. So all of this claimed use, we have to keep it for

these reasons, is questionable. It – the GIPA shows that it was going to be given. At one stage, Cemeteries was suggesting that it be given to Catholic Cemeteries for nothing, and Catholic Cemeteries was interested in it, purely, it seems, according to those documents, because it would assist them in making a Crown application with the Department of Planning, and it would mean that they didn't – that Campbelltown Council and the local community would not have any basis to object. They could put it through as a Crown application from the beginning.

When that was – when they found out that they couldn't do that, and OSL stepped in and said, no, you will have to pay for the land, and no, it won't work for it to be a combined application; it will have to be from you, Catholic Cemeteries then rejected the purchase of the land and said – and it's important to know this:

Our advisers indicate the land is low-lying, carries significant surface water, has easements which will impact usage, and includes a large riparian corridor which renders the site only partially suitable for cemetery purposes. Significant remediation would be required, which we would need to carry out over time.

So if OSL wasn't interested in the land and it's regarded as poor quality land, and Catholic Cemeteries is not interested in it, but it has high heritage value – no one else is interested in it because it has low value – high heritage value, and it does because it is part of the – the flattest area on the old Varroville Estate where a lot of the farm activity was going on and we expect that it would be of high archaeological value, including where the racecourse that one of the owners had on his – on the property, it's also part of the landscape of Varroville as seen from Campbelltown Council Road and from the M31. So it is incredibly important from that point of view, and it should be included.

Now, the only other objector was Scenic Proprietary Limited, and Mills Oakley is also acting for Scenic. Part of their land was proposed to be included, which is a ridge line, and when you come out tomorrow you'll see that it's looking right at us, and it was important to include it. They objected because they wanted to see the study, which is fair enough. But we couldn't – they were told – well, I'll come back to that, but the way in which that was handled was to not include that land. So Scenic was advised by OEH – and I hope I'm corrected if I get anything wrong, they were advised by OEH to come and talk to us about accessing that report. They never did. They launched straight into a GIPA to try and wrench it away from us, which is what Catholic Cemeteries did as well. So no one has tried to ever work with us at any point in time. And I think it's a bit unfortunate when lawyers get involved, because it becomes adversarial and completely negates any opportunity for adjoining landowners to thereafter work things out between themselves. So that's where it's at.

Now, Scenic have – Mills Oakley has continued to go after that report through successive GIPA searches where they're launching the next one before the results of the first one have even been achieved, and we're starting to feel that as vexatious. We have to wonder why they're doing it for Scenic when their land is not even

included in this. So I just want to head that off. I thought that might have been brought up today, but it hasn't. Okay. So getting down to the nature of this review, I really – you know, listening to the other side and some of the statements made, some of these things are best taken up in a court of law, which I don't think this
5 Commission is.

This can't become a quasi-merits appeal or judicial review. It doesn't seem to me that that's appropriate in this context. And this brings up the issue of the timeframe under consideration by the Commission. We have to assume that by the material
10 that's on the website, that what's under consideration is everything that went on up to the ministerial briefing on the 31st of October 2017. Now, OEH gave us an even earlier cut-off when we came back with some missing submissions, which was the 28th of September 2017, when the Heritage Council made its decision.

15 Now, what we found was three people who had made submissions contacted us, because they found out other people had got notification about it and they didn't, and they made submissions. We had evidence to show that they made submissions to the right address and within the right timeframe, but they weren't included, and one of
20 them who I've been talking to this weekend, but he's had a computer hiccup and can't find it at this point in time, is the chair of Historic Houses Association, who said they made submissions twice and they – and they were missing from the list.

Now, what OEH said – and I do actually have an email, but since it's from Katrina, she can verify it for herself – they told us that it's – okay, it's nice to have those for
25 the file, but unfortunately they – even though they were part – should have been part of that process, they cannot be included now that the Heritage Council has made its decision at the 28th of September. Now, we all have to work to the same rules. If we couldn't put anything new in – and it wasn't new, we're saying this was missing – then everyone else does too. And one of the problems of planning – and Heritage is
30 part of that – in New South Wales is the way in which large vested interests keep getting the goalposts moved when they don't get the result they want, or something changes and they want to change what they're doing.

So I think if the Commission is about engendering trust and confidence in the
35 planning system, it needs to be very careful about engaging with any large vested interest, and the – certainly, Catholic Cemeteries is a large developer in that regard, to assist them in moving the goalposts. This is a major issue, I know from talking to other people within New South Wales about these planning issues. So this review can't be, from what we can see, to give Catholic Cemeteries a second bite of the
40 cherry. They didn't object to it to begin with. So why now? And this is what we don't know.

If the Commission is going to allow Catholic Cemeteries to change their position and put up new information, etcetera, then there's an awful lot of information missing
45 from your website. So up to the 31st of October, irrespective of I was not given an opportunity to object under the – under GIPA and so on, but all our correspondence with the Heritage Division and Council has been published. But we have a GIPA in

at the moment where we want to know why the Minister hasn't signed off on this, and now why the Minister has referred it here on a late referral.

5 So we have asked for information from 28 September up until now. And Catholic Cemeteries and their consultants are objecting to release of any communication they have had with Ministers, with the department, and so on. OEH and GIPA officers had determined that we should have that information. It's been to an internal review. They've decided we should have that information. They now can exercise an external review. Since – it seems, from the communication we've had, the
10 Commission feels that it doesn't have to comply with the GIPA Act in the same way.

If you're going to be allowing new information to come in that wasn't part of the original briefing to the Minister and you feel that you don't have to comply with the GIPA, then save us a lengthy wait and go in and get that information and put it up on
15 the website so we can see why the Minister hasn't signed off, what influence is being exercise here, and why the Commission is hearing this. I mean, I would prefer that you just dealt with what's on the table. But I'm just putting it out there that I think there's some information missing, if this is a second bite of the cherry, which I don't think it should be. Now I want to talk about the moral context for the curtilage
20 expansion.

There was a nomination for a curtilage expansion for Varroville in existence from 2000 that had been deferred. It was in existence before all affected parties purchased their land. We were aware of it when we purchased Varroville House that a curtilage
25 expansion was sitting there waiting to be examined, without borders determined, onto the surrounding land. We know that Catholic Cemeteries knew that as well, and I can document that. And whether Scenic, who also bought their land in 2012, were – but if they did a due diligence they must have been aware of it as well. We know, for example, that a letter from the heritage office went to Colliers International in
30 2007 when the land was sold to the Cornish Group, who subsequently sold to Catholic Cemeteries.

I find it hard to believe that Cornish would have removed that from the sales contract when he sold to Catholic Cemeteries, but I'm letting them know now, in case they
35 have an issue. We know that Cornish knew about that. Now, I have to say that – that, yes, the previous owners told us it was incorporated into the – into the contract. They took legal advice and said, "We decided to incorporate that letter into the sales contract." Now, we met with Cornish and we offered to go 50/50 on a curtilage expansion, because he knew and we knew that it had to be done. He rejected that
40 and said, "No, I've got my own heritage consultant," and he went to Paul Rappoport. So we went to Alan Kroeger at Design 5.

That was – that – I'll talk a bit about that later, because we ended up suspending it. Now, Catholic Cemeteries must have known about it, because it was in a valuation
45 document for Varroville, which we – came to us through a GIPA search. And they were using a draft curtilage from Cornish's heritage consultant, which roughly confirms with the one that they're now saying that they want, and which they used in

their valuation document. I don't think it's supported at all by any statements of significance. It was certainly not given to the Heritage Council and was never approved. But it was played around with in the valuation document, as to whether it could be reduced in order to increase the money that was paid to the Cornish Group.

5

So the – that had nothing to do with significance. So it was just a valuation issue, which makes us question whether this isn't about the value – valuation of the land and what they paid for it, rather than anything to do with significance. But all of that aside, Catholic Cemeteries went ahead and purchased this land. They got permission to purchase it in 2015, and, I think, purchased it in about January 2016, when they had been advised of a curtilage expansion by the Office of – by OEH, and we were in the process of doing out curtilage study, which they would have known. Now, the original conditions granted by the Minister for Crown Lands about the purchase of that land was that they were not to purchase it.

15

They – I presume they had an option. They were not to purchase it until they got all planning approval through – that meant a rezoning and a DA through. They were not to purchase it. They convinced the Minister, who was Niall Blair at the time, to change those conditions and allow them to purchase it outright. So they took a risk, knowing that there was going to be a curtilage expansion. We can't be held liable for their financial risk that they now cry poor financially that a curtilage expansion is going to go ahead. And, quite frankly, in presenting it here today, I wonder whether it isn't more appropriate for a court of law. But whether it would actually stand up in a court of law – and I don't think the Commission should accept anything that wouldn't have legs in those circumstances.

25

Now, the next point under the moral context is that the National Trust's curtilage for Varroville took in all of the land that Catholic Cemeteries now own, and that – that curtilage dated from 1976. I notice that the – you know, their submission from the National Trust is missing. It's noted as being there, but is not part of your package. But, nevertheless, that was there. So this is – so what's being proposed is less than the National Trust curtilage, but they would have known about that if they'd done – presumably done their due diligence – that – that all of the land was considered to be of heritage value. The third thing is that Catholic Cemeteries committing, during the rezoning, to a curtilage expansion. And, yes, they did nominate two curtilages, not just that little one.

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There was a bigger one, which is roughly consistent with what is now proposed in front of you. There has just been a small extension into lot B. That's what they proposed. They did not distinguish between the two and we have criticised their CMP because of the inconsistencies in that document, where the statements of significance look like they have been reduced down for a result. But if you go back through the body of the document, you will see that things – for example, the dams – were being talked about as of state significance, and various other things. You know, the archaeology of the site was supposed to be of state significance, and none of that appears in the statements of significance.

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So if you go through that document and you look at what was said in the body of it, and what comes out in the statement of significance, there are an enormous number of anomalies, and it gives the impression of having been edited poorly. So – and that’s all I can really say about that. It was – you know, that there are inconsistencies about what is state heritage and what isn’t. But certainly the western dams was seen to be – should have been included. And that’s really what their CMP supports. Now, when it came to going on the LEP, they agreed to the larger curtilage. And this – you know, I think you would need to really – you would need a proper peer review of their document, if that’s what they’re saying we should be complying with, in order to identify some of the problems in it.

Now, it’s not simply that Catholic Cemeteries during the rezoning committed to the curtilage expansion, and they also agreed to the taking lot 1, lot 22, and the larger one, and extending it into lot B. They agreed that with the Office of Environment and Heritage. So I’m at a bit of a loss to understand why they’re – having agreed to that, they’re now saying they don’t agree with it, because that’s what went to the Minister.

As part of the rezoning they also said that their proposal for rezoning respects the important colonial and non-colonial landscape and the LEP objective to preserve the rural heritage landscape character of the Scenic Hills. They can’t keep shifting the goal posts. If they made those statements to get the rezoning through and that was relied on at the rezoning stage – and it was a spot rezoning. It doesn’t apply to the rest of the Scenic Hills. We’re just sitting in the middle of it still complying with the rest of the Scenic Hills surrounded by something that doesn’t. You know, that destroys trust in the system. So I think we have to be – think to restore trust in the system the Commission needs to take note of what it was promising at that point with the rezoning.

So that’s the moral context for the curtilage expansion. And as a consequence I question the comments now about it renders the land economically un-useful or something and financial hardship – financial hardship is a different issue anyhow and they should read the serious decision before making comments about that. Okay. The misrepresentation – I just want to address now misrepresentations in the ministerial briefing document. These are probably niggly little things but sometimes they do influence how people think about these things including other parties like ourselves. And I think sometimes we haven’t been well presented.

This is not to present a major criticism of the heritage division and the Heritage Council who, in my experience of dealing with most of the New South Wales bureaucracy, I have to say are the one area that seems to operate with a high degree of integrity but what I have noticed is that there has been a loss of corporate knowledge with a high staff turnover and there’s also – I can see that they’re under incredible pressure to toe the line for development which I think is unfortunate and I think we all need to stand up for state heritage.

So I just want to address a couple of things. One was this link with development which is really not appropriate. That's not what we're here for. We're here to establish significance, not whether a development can happen or not. Papers that went to the Heritage Council on 28 September 2017 referred to an IHO request of 6 August 2014 where the Minister responded on 8 September 2014. That had indicated that all of the land owned by the Catholic Cemeteries was of potential state heritage significance. Now, the Minister didn't sign it and what the documents in those papers say:

10 *Ask that the Heritage Council work with the landowners towards managing the heritage values as part of development (including potentially a heritage listing nomination).*

That misunderstanding has since been clarified. First of all, we got access to those papers on an informal basis and that comment comes off a post it note on the back of it, unsigned by anyone so we don't know who wrote it, referring to "Ed" saying that – and we presume "Ed" was Edward Steane, the adviser to the Minister – "Ed says that the Minister blah, blah, blah." So I think it's a highly unreliable source of this and I'm not aware that there was any other source. And if the Commission wants it I can provide those documents to you. I will find the documents before the time is up. Yes, so we actually then received a letter from the heritage division where the link with development became a Macarthur Memorial Park and it said that the Minister had had said that we should be – that they should work with the landowners, us included, towards managing the heritage values as part of the Macarthur Memorial Park development.

Well, that wasn't what was on the post it note and we don't know where that came from. But then we became concerned because it was potentially in breach of the ministerial code of conduct because the Minister can't redirect bureaucrats to give different advice. So we were a bit concerned. It was a grey area. But one of our local MPs, a Liberal MP, then wrote to the Minister on our behalf regarding the whole process and he sent a letter back where he clearly distinguished between working with the heritage values as part of development and a curtilage expansion. So he separated the two out. We then – another MP, a Labor MP for Campbelltown then put questions to the new incoming Minister who was Mark Speakman and we put it in the context of the Macarthur Memorial Park development and he clearly came back saying that the Minister would consider any curtilage expansion that the Heritage Council put to it. No development.

So it is clearly distinguished now that the Ministers have not directed that development be part of any curtilage expansion. So I just want to make that clear. And I will – I do have those papers and I will document them. Okay. The next misrepresentation – and this is just a small point and maybe we're being overly sensitive – but we're being quoted in numerous papers where the owners of Varroville House support a curtilage over the whole Varroville estate and it makes us look like we're being unreasonable and it's an ambit claim. This was not correct.

We commissioned experts to do a report for us and they came back and said the whole of the estate was of state heritage significance.

5 Why would we, in being asked what we supported, support something other than we were told by our own experts. And so we were just supporting our experts' report. This is what our experts told us. So that's what we supported. And I have to say that it was also supported by Dr James Broadbent – and I hope he pardons me for
10 referencing his submission – who, as you know, is a well-known architect, historian, conservator and former museum curator for the government. And he indicated that the report represents a substantial argument for the protection of the historical evidence of the site as a whole. So it was not unreasonable for us to say that. It wasn't an ambit claim. That's all it was. We were just being professional.

15 Now, the other comment – and this one is a bit more serious – in the brief ministerial briefing was that:

Multiple members of the public, including the owners of Varroville Homestead, have promoted the listing of the extended boundary as a way to stop this development.

20 Now, it's an unfortunate comment and it may not have been intended to sound the way it does. But it suggests disingenuous and cynical motives on the part of people making submissions and particularly us, rather than serious support for heritage. It was a way to stop the cemetery. That is not what it was about and I've read those
25 submissions and there is no evidence to suggest that that was the motivation of people supporting the curtilage expansion. It's well known that most people don't even know their own motivations, let alone guessing at other people's and I think you're getting on to dangerous ground. Most people knew that Varroville was important heritage for the local area and in heritage organisations. And also the
30 Scenic Hills.

And they did have a view that this cemetery was going to damage it and I think it's fairly clear that what is being proposed at the moment will. Whether any cemetery can go in there is another matter. We can only look at what's on the table. And
35 that's all that they were saying. So what they saw was that this important heritage, there was a chance that it would be properly managed if it came under the Heritage Council.

40 Now, in terms of us, it really – it's close to being defamatory of us, although I wouldn't go that far to make a case, but there was already a nomination in existence from 2000. We bought the house in 2005, so this is not to do with us trying to stop a cemetery. We started out study in 2007, seven years before the Catholic cemeteries emerged. We did it because there was, up until then, the heritage had been largely
45 protected by the Environmental Protection Zone, but as soon as there was a proposal to change the zoning and, in 2007, it was to put a business park across it, which was extraordinary given the instability of the land and the undulating land, it's not suitable for a business park.

But, nevertheless, it was clearly going to be at risk, and so since the Cornish Group were not prepared to do one with us, which we thought it would mean it would be above both parties and it would look more professional, we started to do one ourselves. Now, we suspended it because the business park was knocked back and the report was late in coming such that we had lost our heritage grant, so we
5 suspended it and said, look, if they didn't make grants available again for a number of years, we said if the grant becomes available again then we will restart it. But I just wanted to state that it's not to do with the cemetery. It was independent of any development.

10 Now, the other thing was we were asked to participate in this. You know, we've got a letter from the Office of Environment and Heritage saying that the Minister had said that they were to work with us on it, so we didn't launch into this to stop a cemetery, this – we were requested to participate in it and, as a consequence of that,
15 we said, well, we can't participate unless we have our own study and that's why we applied for a grant, and the Minister signed off on it.

And the other thing is that our study is clearly based on significance independent of any development, so to suggest that we were not about protecting the significance of Varroville and Varroville Homestead just because we didn't want a cemetery there is
20 wrong. I don't know whether another cemetery could go there. I know this one is particularly damaging. The other misrepresentation is that there are still three missing submissions and I don't know whether they can be tabled or – it's not essential to our case, but three people did feel aggrieved that their submissions were
25 left out.

Now, if there is no curtilage expansion, I just want to talk about the risk, and this is why there should have been an IHO. I know Peter O'Meara is going to get very annoyed with me about this, but I think it has to be said, because this is how we feel;
30 this is why we feel the way we do: Catholic Cemeteries – there was no prior consultation with us prior to the development of this plan, so Catholic Cemeteries put the plan together without ever talking to us, and actually asked other people – we know this from our neighbours – to not tell us about it on the basis of commercial in confidence, so we were completely blindsided.

35 They presented it to Campbelltown Council, had a media conference, which was invitation only, to which we were not invited, and the first we heard about it officially was when journalists were ringing us up to say, "What's this about a cemetery right around your house?" So that doesn't exactly engender trust, but how
40 can you actually expect that they had any regard for heritage as well. Now, we were called to meeting after that media conference, and in that meeting we were told by Catholic Cemeteries, "We do not want to put any money into heritage unless we're forced to," and a second sentence was added to that, "We think we'll be forced to." So I think that tells you what you need to do in terms of letting the Heritage Council
45 take control of this.

There's been no offer to buy Varroville Homestead, which Catholic Cemeteries then went on TV and said that they had offered to buy it, which they hadn't. That was not what came out of that meeting. They have since said they would like to buy it, but that was much later and it was accompanied by a request to send their heritage consultants over with the valuers and we saw that there was no guarantee that anything would happen, and we saw that it was just a way to complete their studies, and given the way this whole thing started, we had no trust in that process. In any case, Varroville Homestead was not for sale.

5

10 Now, what we also know about the heritage risk is that the proposal masterplan has remained essentially unchanged right from the beginning. So despite the fact that they were obliged by the heritage division or Heritage Council to go back and do all these heritage studies, there were community consultation, we put forward submissions, etcetera, when the DA came around practically nothing had changed.

15 Now, they said that it was informed by community consultation; we can't see anything in that plan that came out of community consultation and we've already put into the DA that we were completely blindsided in that there was a lack of integrity in the way that the consultation with us was handled and we've put it into our DA submission; that was not just us, it was the Scenic Hills Association.

20

So nothing has changed. They've not had regard to heritage at all, and we get the impression that Catholic Cemeteries just want to do what they want to do. They don't want to change anything; that's their plan and that's what they want to go ahead with. The heritage impact statement seems to have a philosophy, when we read through it, of record and destroy, and that was justified under the Burra Charter. Now, we and our consultants and the National Trust in their submissions – and the National Trust has put their submission on their website. It has been sitting up there since they've submitted it – have criticised that as not being consistent with the Burra Charter at all.

25

30 We don't know what other submissions were, because we haven't seen them, but, you know, I think probably those who made a submission on the curtilage expansion – keep in mind that all of the state heritage organisations have supported this curtilage expansion, so if you decide not to go with it, you're going against a great

35 tide of people who have supported it: the Royal Australian Historical Society, the Australian Garden History Society, the National Trust Historic Houses Association say theirs was – they submitted it twice, but it wasn't received, and so on. So we're presuming that other submissions on the DA were also made about this.

40 The other problem we've had is we've had a battle over the deteriorating outbuildings. Now, when we rang the – the roofs were about to lift off in storms, and when we rang the Heritage Council – this is going back some years – they said there's nothing we can do. They talked to Cornish, who was then who had talked to Catholic Cemeteries apparently, and they just, you know, they said, "Let us know

45 in writing." With these wildcat storms coming through. So we appealed to Campbelltown Council and it was Campbelltown Council that stepped in and issued an order for them to stabilise them. So I've listened over here to, "You know, we

took a lot of trouble to do this around it,” etcetera, etcetera; that only came about because Campbelltown Council came up and looked at it after we made a complaint and sent an order. Now, they still didn’t do it properly and we had to complain again and Campbelltown Council had to come back again.

5

The other thing – and I’m going to a range of things as to why we think the heritage is at risk – under their own CMP, they were required to do an archaeological – it was recommended that they do archaeological impact assessment as part of the DA. Now, our understanding is that they did start doing that and we understand that an application was submitted to OEH, but OEH was not happy with the methodology and, as a consequence of that, they withdrew it and then went straight to a DA, and so there has been no archaeological impact assessment.

10

15 Recently, we complained to the heritage division that they were doing excavation in sensitive areas and we wanted to know whether they had a permit. And it’s well within sight of our – the homestead lot, within the homestead and looking out my office window and I can see it. So what came back to us was that there’s nothing we can do, because it’s not on the State Heritage Register and they didn’t expect to find any artefacts there, so that’s it. They were in sensitive areas. They were in the dams, driving pipes into the dam walls, and also in the area of the vineyard trenching.

20

The other this is – and I’ve seen it presented here again – the Department of Planning was complicit in this. When this was going through rezoning, it was presenting it as a lawn cemetery, and that’s what it was entitled all the way through the rezoning, and so you had pretty pictures looking like, you know, master plans looking like it was a lawn cemetery. It has never been a lawn cemetery. It has always been a general purpose cemetery. If you looked into it, it was always a general purpose cemetery. And so we feel that that was another attempt to gloss over the damage that might be done. The lawn cemetery, in any case, will still damage the heritage depending on where it goes.

25

30

Now, we notice that Catholic Cemeteries have continued to say, “We want to work with the Heritage Council on this.” We have not seen any evidence from our point of view that the Catholic Cemeteries has tried to genuinely work with the Heritage Council on this. They just want the Heritage Council to give them what they want. Now, the impact on us – and this is important for heritage being at risk.

35

The impact on us and Varroville Homestead as State heritage, we have been advised by valuers and the real estate agent who sold us the house – and he had sold it once before – that the drop – once they launch this, the drop in value was at least 40 per cent – somewhere between 40 and 100. So 40 per cent was a guarantee based on other properties that have been – that are subject to cemeteries. What this had meant was that every dollar we spend on that property, we’re going to be losing at least that in the dollar, 40 cents in the dollar or more. Now, this is – we’re now in our sixth year where we have had to really tighten up on what maintenance we do to this property and it’s now becoming critical. And you will see that when you come out.

45

How can we be expected as State heritage homeowners to continue to invest and maintain our obligations to State heritage when the government has authorised something that has been so damaging. Our future plans have been put on hold. When you come out, you will see that we have got pallets of bricks – 1850s bricks
5 out the back where we brought them down from Maitland when we moved down in 2007 and they sat there ever since. They were to restore the courtyard. The same thing with replacing the guttering in 2013. We actually got quite a number of quotes to redo the guttering. It was very expensive, so we had to put that on hold.

10 The restoration of the garden and significant views, we took up where the previous homeowners had started. They had started to restore all of that and to clear away all the self-seeded rubbish, of which there's an enormous amount. And we had to stop that, too, because we just – for example, in 2007, we weren't sure we weren't going to have a business park going up around us. So we just let that stuff grow up and
15 continue to grow up, and it has started to come across the views. It will have to be removed eventually and so there are a number of things there. For example, the view out the back door in winter, you can still see it because the tree loses its leaves, but it's a self-seeded coral tree. Geoffrey Britton has told us to remove it. He said it won't last, anyhow. They're short-lived, etcetera. He has told us to remove a
20 number of things there that are not sympathetic.

So this is what's happening to State heritage. Now, we have also had to suspend public openings. We – we actually had opened the house. We had – we get numerous requests, and we opened the house three times to the Historic Houses Trust
25 and Australian Garden History Society before we even moved in. We were selling a heritage home in Maitland and we were moving down, so we let them come through before we had even moved in. We have had – we get numerous requests, and we have had to suspend it because of the maintenance issue but also because of our concerns that people who are not on our side could then come through on that basis
30 and we were particularly concerned about that.

Now, given the state of Varroville Homestead and what it – now into our sixth year, Catholic Cemeteries ownership is not the answer. I mean, we don't want to sell to them, anyhow, but based on what we have seen to date and what they propose, it
35 would destroy the State heritage of it unless someone can work – unless they can genuinely work with the Heritage Council to properly protect the heritage. We know what developers do. They always say, "We have to develop around it. You know, in order to save the buildings and pay for the restoration, we have to develop around it." The problem is that five years down the track, these buildings always need more
40 maintenance work on them and once the context is destroyed, it not only destroys the significance but it destroys the value.

It doesn't matter what you have built around it. Once that happens, there's no incentive to put more money into the maintenance of these properties and they're not
45 significant now, anyhow, and the value is destroyed. This is not the way to save State heritage. All right. This – what is before you represents a compromise, and you can see that from the report. We started to look at the true significance of

Varroville and dragged it in and dragged it in. We looked at what the minimum curtilage should be. Then when we were being pressured even further, I asked the consultants to look at the minimum critical curtilage, which appears in your package, which is where does it start to crumble – the State significance of it? At what point do you go so far that it starts to give way? And so that’s really what they gave us.

The curtilage that is before you is less than that, and it’s just barely hanging on. If you reduce it any further, then that’s it. And the same is true of Varroville Homestead. I mean, I have heard some very silly statements here today that somehow the State significance of Varroville should be on already associated with a homestead if the land around it is significant. Well, a lot of them are. I mean, State – Varroville Homestead has been sitting on the State Heritage Register, taking its significance from things outside its boundary now ever since it became subject to a permanent conservation order. But that’s a silly thing to say because the work hadn’t been done to establish just how significant some of those things were.

So this is a compromise. It is supported by all the top heritage – State heritage organisations. The Heritage Council has done a very thorough job on it. I understand that they would have liked to have seen the report, but we are concerned about the protection of that heritage, which we have had no guarantee about at all. And we actually said to the Commission, “Why don’t you talk to the minister about getting an IHO on it so then everyone can have the report.” Anyhow, it doesn’t matter. They have now got it, so I think, you know, that – it can now be assessed using that full report. If there’s time, my husband wrote something out. It takes seven minutes to read. Can I read it?

PROF LOCHHEAD: Yes.

MS KIRKBY: So this is a submission by Peter Gibbs. Now, my husband doesn’t believe that you should ever flash badges, but he has been involved in heritage for 40 years or more up in Maitland, and he believed in putting his money where his mouth is by trying to save heritage, in the end, by buying a heritage house and restoring. It took him 25 years to restore Englefield and I did all the work to put it on the State Heritage Register. The minister at the time, Frank Sartor, wouldn’t sign off on it. I had to ring his office eventually and just say, “Will you, please, sign off on this.” And his advisor came back and said, “The minister wants to know why any owner of heritage would want to put their home on the State Heritage Register.” And I said, “Well, because it took 25 years to restore it and we don’t want developers to wreck it.”

As a consequence of that, developers would have paid us a lot more money. We lost money on that project. We don’t want to do it – we don’t want to go through this again. I mean, that’s it for us. You know, no one can doubt that we have been totally devoted in this to preserving State heritage, not just our own interests. So – and he worked with the National Trust, I should say, when he was up in Maitland. All right. Varroville New South Wales. It’s a summary of significance. The architect in the house is the first section. There have been three dwelling houses on

the site since the 1810 grant to Robert Townson. Townson was known as the most educated man in the colony, and his portrait by Augustus Earle resides in the State Library of New South Wales.

5 Townson's modest cottage, the first house, survives and is one of the earliest extant houses remaining in Australia from the period of Cox's Cottage at Mulgoa. Unbelievably, this cottage and its coach house have been excised from the current title but the important visual connection between the buildings survives. The second house, located almost certainly on the site of the present tennis court, has disappeared
10 and was last mentioned in a sale advertisement of 1876. It was most likely destroyed by fire between 1876 and 1906. The third or big house was constructed in 1858 and is a house of architectural pretension, being designed by the colonial architect William Weaver.

15 Weaver was an architect engineer, and had the distinction of being rigorously trained by the great engineer of the Victorian age, I.K. Brunel. Weaver arrived in New South Wales in 1851 at the age of 23 and rapidly found himself in the post of colonial architect in 1854 after Blacket left to design the Sydney University buildings. How he did this is unknown, but it's likely that being a pupil of Brunel
20 gave him an ace up his sleeve that no one could match. Weaver designed and built exceptionally well, with a classical rigour that places his style similar to Pender in the Hunter Valley. Further research needs to be done on Weaver.

25 Clive Lucas is the most knowledgeable authority on Weaver but has postponed publishing until more detail emerges on his short life. Weaver was found dead in a hotel room in Geelong in 1868 at the age of 40. His architectural legacy is, however, significant, given his short period of activity. Like John Verge and Mortimer Lewis before him, Weaver designed some outstanding country houses. His most substantial double-storey house is Burrundulla at Mudgee, 1864. This large house was built for
30 the Cox family and is the only great colonial house in New South Wales apart from Camden Park which survives with its contents in the family for which it was built, now, seven generations later.

35 Varroville is Weaver's most substantial single-storey house. Both houses share a design based on a cruciform motif with views of the landscape in four directions, and both houses survive in a remarkably original state. It is likely that Weaver was inspired by the work of Andrea Palladio, particularly the Villa La Rotonda, which is the single-most influential building in western architectural history. Palladio's four books of architecture was published in 1570 and no serious architect since has
40 considered this as anything but a primary study. Indeed, Clive Lucas has stated with respect to Varroville that he is unaware of any other Australia colonial house where the landscape view from the rear door rivals that from the front. At the moment, that's closed over for reasons I have already outlined.

45 The second part is the landscape relationship to the house and the need for permanent curtilage protection. From the outset, Townson introduced landscape and agricultural features that have shown to be unique in Australia. As a classical

agricultural scholar, he revered the great writers of the Roman Augustan age on the subject: Cato, Columella, Pliny the Younger, and in particular, Marcus Terentius Varro, after whom he named his estate, were his heroes.

5 With Gregory Blaxland, Townson was considered a leader in viticulture in New South Wales. However, he introduced something to the colony that no one else had done. He used the Roman idea of trenching rather than the usual terracing to grow grapes. To date, no other extant example of this technique has been found in Australia. A large area of the subject curtilage extension retains the vineyard
10 trenching, which survives in good condition that it still holds water in heavy rain 200 years later. This must be the subject of curtilage protection so that it can be preserved and be the focus of further study. Is it a coincidence that by the time Weaver comes along that he continues the thematic Roman overlay, or did he recognise and continue it?

15 A subsequent owner, Captain Charles Sturt, who was a pioneer in water conservation and drought management, enlarged the chain of ponds into a network of dams that remains today and contribute to the clear landscape park intention within the estate as found by heritage consultant Geoffrey Britton. This feature of water conservation
20 now has enormous contemporary relevance, and likewise being a large area, the subject curtilage extension warrants permanent protection due to its significance.

The combination of the house and manipulated landscape form a remarkable example of a Humphry Repton style landscape park of the early 19th century, which,
25 when viewed from the house, has a remarkable English accent to it. No one fails to notice it. For Repton, the relationship between the house and the surrounding landscape was paramount. He argued that they be considered as one. Rather than deploy the vast earthworks typical of Brown and Kent, Repton felt that country houses were better presented with the help of terracing and garden beds in the
30 immediate surroundings and the usage of an undulating natural landscape appearing to be a cradle for the house within its wider context.

The views of the dams from the drawing room and library of the house recall a plate from Ackermann's Repository in 1815, published in the Australian Garden History
35 Journal, Volume 21, Number 4 (2010) page 19, which shows that through a window, a virtually identical idealised Arcadian landscape in the Reptonian style of the day. This feature excites every landscape historian who views it, indeed, anyone who visits, and is one of the main features of the power of house/landscape combination. As well, these water features have a dynamism that was a feature of the English
40 models of Capability Brown and Repton. In heavy rain, the dams cascade, which not only enhances the view from the house but can actually be heard from it.

These aspects of movement, sound and light were all features of the use of water in the English models. The site of cattle lounging around the dams further conjures up
45 the calm, bucolic dignity of Claudian idealised paradise, the concept of Arcadia as written about, discussed and painted for centuries. For no other reason than this, this landscape must be the subject of curtilage protection, because without it, a large part

of the significance of the house would be lost. Very few remaining colonial properties show the overlay of 200 years of unbroken rural activity within the framework of a rational, organised Arcadian setting.

5 It is noteworthy that nearly all of Townson's original grants survive surrounding the estate core. Indeed, because the inner garden retains its natural evolution, it dissolves seamlessly into the surrounding landscape, enhancing the picturesque qualities of decay and renewal. In an era of imagined Disneyland and manufactured heritage, it is remarkable that this has not fallen to unsympathetic modernisation.
10 Witness the miles of box hedges and iceberg roses that are characteristic of the structure of the naturalistic gardens of the Southern Highlands; gardens that have been manicured out of their minds. As more properties fall victim to unsympathetic change, this makes Varroville increasingly significant and rare because it's real. It is a heritage resource that is increasing in cultural value daily.

15 As custodians of State heritage, we have tried to avoid unsympathetic modernisation of the house and instead trying to present it with an appropriate and sympathetic interior collection so that the visitor detects a hint of a more genteel former age. Every unsympathetic restoration elsewhere makes Varroville increasingly rare and
20 significant. Further, the views from the house reveal what is arguably the finest Humphry Repton inspired early 19th century landscape park remaining in New South Wales. It's time to likewise freeze this increasingly rare landscape with the curtilage protection it deserves.

25 MS LEWIN: Just a question. Earlier in the presentation - - -

MS KIRKBY: Yes.

MS LEWIN: - - - you made a comment, this is why the site is considered by EDO
30 one of the most constrained sites – environmentally constrained sites in New South Wales. I'm just wondering whether you have a document that is from EDO that could be tabled - - -

MS KIRKBY: No. It was a comment made, and - - -

35 MS LEWIN: - - - to support that.

MS KIRKBY: - - - because I wanted to use that comment, they sent me an email saying – because I was misquoting it, and they sent me an email saying, no, this is
40 what we said. So I actually have an email relating to it, if you like, from the principal – the then principal solicitor.

MS LEWIN: Yes. So we're just interested to know how it is in their consideration the most constrained side in New South Wales. It might help us to unpack - - -

45 MS KIRKBY: Well, we're getting into planning issues, but the reason that the Scenic Hills were set aside from development as an environmental protection area

going back to the State Planning Authority's plans in 1973, I think it was, the – what they call Three Cities Structure Plan – the land was deemed to be unstable land, so it was not suitable for development, and they said the Scenic Hills and parts of the Razorback Ranges were subject to land, creek and collapse, and you can – you can see that when you come out on site, because you can see a whole lot of olives on the hillside, Bunbury Curran Hill, and the native vegetation here, and that's where there was a big landscape going back, we understand, in the 1980s. But it is unstable.

I mean, one of the issues for us is that the extent of the trenching – and we can provide diagrams of that that we've since come up with. The extent of the trenching has been a water conservation measure, not just a terracing, and it has helped to stabilise the site, it would appear, when you get a large amount of water, because the – we have talked to the New South Wales Geological Survey Team about it, and we've read some of the documents which go back to that time, but they haven't updated, and it remains what it is, that often in heavy rain is when it becomes unstable. And if you start to disturb that land, that can cause problems. So we really have some concerns about digging it up for 136,000 graves and putting roads all over. One way you can – because some unstable land has been developed within Campbelltown, but they do it by raising the tops of hillsides, putting roads every which way, etcetera, and that can help direct the water, etcetera. So that's one of the issues there.

The other issue, of course, is heritage, that it has been deemed to be important from a heritage point of view, not just from, you know, the National Trust and various other ones. So there are a number of different things there, the management of water, the undulating nature of the land, etcetera. It's also constrained from the point of view of access to it. I mean, this is not an easy site to get to, apart from everything else. So there's a whole lot of things that have now formed part of the DA that's for the Department of Planning to look at, not that we have a lot of confidence in that given what happened during the rezoning. But yes, there are problems with regard to the site itself.

PROF LOCHHEAD: Thank you. I don't have any additional questions.

MS KIRKBY: Okay.

PROF LOCHHEAD: So thank you. Okay. So thank you for that. We might just have a quick small break. 15 minutes. Is that good for everybody? Great. Thank you.

40

RECORDING SUSPENDED [4.23 pm]

45 **RECORDING RESUMED** [4.40 pm]

PROF LOCHHEAD: Okay. If everybody's ready, we might just reconvene, and I will actually ask Mark Dunn, representing the Office of Environment and Heritage, if he could make his presentation, and then we might have some queries, questions that – clarifications.

5

DR DUNN: Thank you, Madam Chair, and thank you for asking us to come and present. I should just clarify that I'm presenting on behalf of the Heritage Council, not the Office of Environment and Heritage, and the recommendations to list the curtilage extensions in Varroville come from the Heritage Council and not the Office of Environment and Heritage. They provide background and support to the council, but it's the council who has made these recommendations. Okay. So I think some of these we've probably covered, and I will move through them reasonably quickly, and I think we'll try to focus on the reasons we have come to our decision round the significance of the site and then running through the options we had and then the one we landed on. Okay? So it shouldn't take too long.

15

These basic maps show, on the left at the top, the location of Varroville in relation to the Western Sydney area. You can see it's close to Minto, Campbelltown, etcetera. Here is the current listed boundary that was put forward as the permanent conservation order boundary that was made 1990 and that went onto the State Heritage Register in 1999. You'll note, as can be seen, it is just effectively the house and the house paddock, the outbuildings, which are some concern for everyone around here. This, in the time when this went on, was really the way heritage moved forward at that point. It was really about the building, the item. It wasn't about its broader setting and its landscape.

20

25

This is an aerial photo showing that curtilage in the broader landscape that we are discussing. Okay. There are some significant landscape elements in the rest, and I'll just quickly go through them. I've said when it was listed on as a PCO and then on State Heritage Register. A larger State Heritage Register boundary was, in fact, considered in 1993 at the time, but it was determined only the homestead would be listed. I'm not party to that decision; that was way before my time. However, the Heritage Council has resolved to investigate extending that boundary and incorporate the buildings, the homestead's outbuildings particularly, and former estate landscape elements on a number of different occasions and conversations with a number of different owners. It's not the first time this has happened.

30

35

So this is where we're at now. Some of the significant landscape elements that have already been discussed and that can be seen in some of these slides here are evident. So Varroville – I'll quickly run through the history. We've done that already, but I'll just reiterate. It's a very early estate. It's a farm estate in Western Sydney granted around 1810. It has early structures on it, some of them which date to those early first decades. The homestead that exists is an 1850s homestead with a layout that is – takes into consideration the landscape that it's in. We also have the evidence, as you can see in both the aerial photo on the left from 1955 and the current one, which was from the Urbis report, of the vineyard trenching and some of the early roads and other landscape features.

40

45

- It has been associated with a number of important Australians, including Dr Robert Townson, who was the first grantee, the Macquaries, the explorer, Charles Sturt, who is associated with some of the dam and water structures, a number of other significant early colonial figures, including, of course, the architect, William Weaver, who designed and built the current house. Varroville's a rare – is one of the large fuel – the few – sorry – large estate landscapes that remain on the urban fringe of Sydney, where the former – the original grant and former agricultural uses and rural landscape character can be appreciated.
- 10 One of the things that we should also note is that we do acknowledge, as with all landscapes, that this is a change in cultural landscape. It's not set in some sort of aspect from the past. We are taking into consideration all the uses of this site over 200 plus years of it's being under cultivation and other things. So the new land, as we've discussed, that's proposed to be included in this boundary is primarily owned
- 15 by the Catholic Metropolitan Cemeteries Trust, and in October 2017, the cemetery submitted a DA application to the Campbelltown City Council to develop the cemetery. Macarthur Memorial Park. And that's being dealt with in the other IPC matter.
- 20 Now, the proposed listing that we have – and I'll get to that – was advertised for public comment on 12 July 2017 through to 9 August 2017, which is a standard practice for all nominations. We had 35 submissions, taking into consideration that apparently some haven't come through, but we did get 35 – were received during that exhibition period, including from Urbis and the landowners. Of those, all agree that
- 25 it was of state heritage significance and all supported the listing generally. None were opposed to the listing specifically. There were a number of – a range of views on the appropriateness of the curtilage – why we find ourselves here now. Of the 37, 18 requested that, in fact, an increased curtilage should be put in to match the curtilage that was put forward in the study, the Orwell & Peter Phillips 2016 study.
- 30 So that's where we landed. Now, on 28 September, following that period and those submissions, 28 September 2017, the Heritage Council recommended to the Minister that the revised boundary of Varroville be listed. We consider – the council considers that the land proposed as the extension to Varroville's curtilage is of state
- 35 heritage significance and worthy of listing on the SHR as it's an important contribution to the overall significance of Varroville and the Heritage Council recommended the item based on its meeting six of the state significant criteria. Now, I don't think I need to go into the criteria. We've got that in submissions, but I'm happy to if you think that's relevant. No?
- 40 MS LEWIN: No.
- DR DUNN: Okay.
- 45 MS LEWIN: It's in the submissions.

DR DUNN: I think we all know what the criteria are. Good. So I'll now focus the rest on the landscape elements and then the determination of the recommended curtilage. Okay. First of all, some of the outbuildings in the precinct and in the outbuildings precinct. As you can see here, we've got written up there, several of the
5 early buildings survive on the former estate that testify to the early uses and a number of the different phases of uses of this estate, including the outbuildings, one of which is possibly dated to Robert Townson's occupation of the site, and, if so, would be one of the earliest surviving cottages in the state. There is also highly likely a substantial archaeological resource associated with those buildings.

10 This image here is from 1925. It shows the cottage out the back here and the stables or a coach house on site. This is a more current image which has got the former wool shed here and a dairy site here. These sort of outbuildings also contribute to the idea that this is an ongoing use of the farm with different uses as different economic
15 purpose for that land comes through, which is what we're trying to capture. The vineyard trenching. So we consider the Varroville's rare features, including this vineyard trenching. It's an unusually extensive area. It's a very early period, and it's an unusual trenching pattern relative to the topography and apparent dual function as a means of intercepting rainfall and the run-off for water conservation.

20 It's potentially unique in the Australian context, as we've discussed, and it's possibly this inspiration from Roman ideas of trenching. It's also, I should add, just been noted in the first history of Australian winemaking as one of these sites. So we can see through there – I think you can all read Dr Robert Townson's rare in Australia on
25 account of its unusually extensive area – it's what I've just said. This image here, 1956, shows some of the shaded area has vineyard trenching. It's not an ideal photograph, but we've got better ones in our own submission that you'll have copies of. This is a 2016 photo taken as part of the curtilage study that shows some of that landscaping going up through the rest of the site.

30 Now, as you can see, this extended right across parts of this landscape which have now been truncated by fence lines and the rest, but it is still there and evident in the ground. The dams. So evidence of some of these early dams. There's a number of
35 large dams on the site that are not present on historic plans. There are some smaller dams in those areas. We're not suggesting that the 1950s dams are anything other than 1950s dams. They are on the site of some of the earlier dams that we have evidence for. So the ongoing use of this part of the site for water storage and water retention is something that is part of the historic landscape. They happen to be
40 expanded, but that's our position.

This 1947 aerial photograph, which you've got better copies of, shows in the blue some of the identified – what appear to be identified dams across the site, including Varroville House – is here – is here. Varroville House is here, where it says it. But
45 you can see that there are dams right across the site there. Probably of particular note is this quote from Sturt, who, as we know, owned the site, when he later wrote about being at Varroville, he noted, on his farm at Varroville:

Until labour and skill were exerted –

Etcetera, etcetera:

5 ...when I passed that farm, every paddock had a proper water-hole.

10 In a severe drought, so we are fairly confident that there has been some sort of either water retention or work around water conservation on this site for a considerable number of years, the views, so Varroville Homestead sits here, the centre of this estate. It demonstrates the former colonial architect William Weaver's awareness of a classic country villa siting with formal planning and design principles. The relation of Varroville to its landscape on the principles of a country villa sited are demonstrated in the ways that the homestead has been organised to engage with its landscape setting across the four view lines.

15 Its orientation reflects a concern to exploit these scenic vistas, both from the front and the back, as well as along its main axis. Its extended northern wing projects over falling ground to exploit a broad side views of the western valley with its signature dams, which are in this direction, and then the reverse views along the valley and over the dams to the homestead, with its mantle of gardens and landmark plantings, is one of the most significant views across that landscape. It is, as we say, a house in the landscape. It's sited to take advantage of all of the sweeping, wraparound views of the scenic hills from Raby Road right across to Bunbury Curran Hill in the north and extending to a ridge-line. The important western views, as well, dominate the entry through the front door, as we can see here. Here is the house. Views through the doors rear to the hill in the back, with Raby Road running across here on this line of trees, and then looking back to the house, which is here. Here? Here.

30 The views. This is a view that was in the study and has been shown that it's sort of a preferred pastoral view of the time, which we take into consideration that these are the kind of considerations that were put into the house when it was being constructed. This is looking across from the living room, across the landscape, through the dams and then other views across the landscape. It's this essential component to demonstrate the notions of this classic villa planning, and, etcetera, the landscape, which we have covered already. Again, further views looking back to the estate core from the northeast, here is the homestead here with some of the significant plantings, including the pine that is a landmark in the landscape, and back from St Andrews Road across the valley, the homestead.

40 Over here, water features, as you can see quite clearly in the foreground, and this, of course, is the landscape plan and views and vistas, which is taken from the Urbis CMP for the site. The house is down here. Views that we're talking about including the dams are up here, and you'll notice that, in the CMP at the time, those views have been noted as being significant to the significance of the site. Okay. I'll get through to the curtilages. We had a number of options that were put forward to the council over a number of meetings, and we've determined – the one that we get to as we're coming.

- These are the first two. It was done. This is the recommended curtilage from the landscape study. The house, as you can see, is here. The red line is the recommended curtilage. It's quite large. We expect that from a landscape study. They were looking at a broader landscape. The Heritage Council itself considered this was not appropriate and the reasons are put here. It's not recommended as it includes areas that were also part of other estates, it wasn't contiguous across the landscape. Similar to this one, it's a smaller proposal that was put forward, also in that study, I think.
- 5
- 10 MS STANKOWSKI: Yes.
- DR DUNN: Yes, in that study. Again, this is a central core, the estate. Again, we consider that the fact that there were non-contiguous portions was a difficulty.
- 15 MR O'MEARA: Mark, can I just ask a question? I have never seen these pictures. Is that – is that the whole estate, is it, the 1000 acres on the left?
- MS STANKOWSKI: No.
- 20 DR DUNN: No, no. The whole estate was - - -
- MR DAVIES: It goes up to the top yellow stuff.
- DR DUNN: Yes, yes. I have got a - - -
- 25 MR O'MEARA: All right.
- DR DUNN: - - - land grant here, but no, it's not. It's not.
- 30 MR O'MEARA: It's the majority of it, though, is it?
- DR DUNN: Yes, yes. Yes, yes, yes, yes.
- MR O'MEARA: Sorry. Just wanted to clarify that.
- 35 DR DUNN: No, no, you're all right. You're
- MR O'MEARA: So we own roughly 29 per cent of the original estate, correct?
- 40 DR DUNN: I don't know how much you own.
- MR O'MEARA: 29 per cent?
- PROF LOCHHEAD: Only you'd know that.
- 45 DR DUNN: I'm not sure. I don't know how much you own.

PROF LOCHHEAD: Probably only you know that.

MR O'MEARA: Yes, I think it's about that.

5 DR DUNN: All right.

MR O'MEARA: Our site is about 29 per cent of the old - - -

10 DR DUNN: The original estate was 1000 acres.

MR O'MEARA: 1000 acres. We've got about – just under 300.

DR DUNN: Okay. All right. This is our option 4. This is based on the
Campbelltown LEP and is in the LEP from 2017, an amendment. Again we
15 discounted this, essentially because we don't think it captures all the elements that
are significant to this site. It's – now, image 5 above is the curtilage that was
presented earlier, that is the cemetery's current preferred and put forward by their
consultants. This is the LEP in the red. This is their blue. Again, we don't consider
20 that this catches all the essential elements of the site. In fact, I would say that this
goes not far off what we had from 1993, which was just capturing elements which
doesn't actually address the significance overall. Option 6 was our first. It's a
smaller curtilage, it's accepted – granted, than what has been proposed by the
landscape study, but this is what we believe captured all the elements.

25 This was amended to this, which is the current curtilage as recommended, and that
went to the Minister in September 2017. You will note it runs along a property
boundary line on this side and then it follows across, effectively, the LEP boundary
and then goes up to take in this portion of the site which captures the dams and the
land and that sort of water trenching – sorry, the dams and lands, the water landscape
30 up there, comes back down along what was the edge of the grant site on St Andrews
Road to the Hume Highway and back, capturing the house, which is currently listed,
as we know, the outbuildings which are here, the significant terracing sites which are
around the house here, and the views which have been identified by all the studies
done on this site to date. You can see there the listing as it came forward. It was
35 advertised for public comment in July, as I said. To August we had 37 submissions.
Sorry, I - - -

MS STANKOWSKI: No, it's 35 within the time frame - - -

40 DR DUNN: We had 35, sorry - - -

MS STANKOWSKI: - - - and then the two extra.

DR DUNN: - - - and two came in late, which maybe are the two that - - -

45 MS STANKOWSKI: Yes.

DR DUNN: - - - are being referred to, all generally in support of the listing. None opposed to the listing. Again, as I said, some wanted us to increase the curtilage. Some wanted us to reduce it. This portion of land is this portion here, which is owned by State Government with a road - - -

5

MS STANKOWSKI: Proposal.

DR DUNN: - - - proposal on it. They objected, which is standard, and we have responded to them and are waiting for any further. They have not send anything further on that. They have seen this curtilage since. Submission from Urbis on behalf of Catholic Cemeteries Trust supported the listing, providing the site-specific exemptions could be finalised for the land. I just might note that in the letter we – from Urbis, they said the curtilage extension proposed in the notice of intention increases the curtilage recommended in the CMP, however is generally consistent with the intent of the CMP. And then this was taken to the State Heritage Register Committee, of which I am a member, or was a member, as part of that recommendation to list, and we supported that curtilage as we considered, as I have said, encompassed all the State significant values of the larger Varroville landscape identified in the curtilage study.

20

So I said I'd be quick, and I am. The conclusions for that are – and as you can read there, other listing considerations, including the need for long-term conservation, reasonable economic use and financial hardship were not raised and were not specifically considered by the Heritage Council in any part of this – of our considerations, and weren't raised in any of the submissions either. So the site-specific exemptions requested to accompany the listing recommendation, and that's – we will determine those, and the site-specific exemptions, as, Madam Chair, you've sort of asked already, are standard practice of the Heritage Council, and standard practice for anything on the State Heritage Register. However, we consider these once development proposals or DAs are finalised, and that is standard practice.

25

30

Again, we affirm that the curtilage – it has recommended – encapsulates all significant heritage values of the Varroville Estate and strikes an appropriate balance. I should also – I would also like to mention that, yes, we have used the Phillips report, which was partly funded through the Heritage Council through the grant system. We have also used other reports and information to come to these conclusions, and that report was done with a high level of professionalism by professional historians and landscape people, and has been used appropriately, I think. So I just want to put that on the record, that we've done that. There has been no shortcuts in this process. There has been nothing thrown in for good measure or made up. This has been based on rigorous study. And that's the curtilage that we have put to the Minister. That is the curtilage we stand behind. And that's our presentation. Thank you.

35

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45 PROF LOCHHEAD: Just when you were going through – just a clarification before the – you went through option 1, 2, then you said 4, 5, 6, and I was just wondering, did I miss something, or did you not talk about three?

DR DUNN: No, I didn't talk about three.

5 PROF LOCHHEAD: Because it was not relevant or – I just wanted to make sure that I hadn't missed – you've covered it all, or you had just inadvertently changed the numbering.

MS STANKOWSKI: No, they - - -

10 DR DUNN: No.

MS STANKOWSKI: No. Not all the curtilage options that - - -

DR DUNN: Refer to my office.

15 MS STANKOWSKI: - - - originally went up were put in the PowerPoint presentation because it – after six, they got really confusing.

DR DUNN: Yes.

20 PROF LOCHHEAD: Yes. They start looking to - - -

DR DUNN: Yes.

MS STANKOWSKI: But there was, in fact, eight that were considered by the - - -

25 DR DUNN: Which we have - - -

PROF LOCHHEAD: Okay. No. That's - - -

30 DR DUNN: We have copies of all them and they'll be with you.

PROF LOCHHEAD: That's fine. It's just that you just jumped a number.

DR DUNN: Yes. Sorry. That was - - -

35 PROF LOCHHEAD: You were going through systematically and you jumped one.

DR DUNN: Yes. No.

40 PROF LOCHHEAD: And I just wanted to make sure either I hadn't missed it or you hadn't missed it or - - -

DR DUNN: No. Good point. I didn't put all of them up because – yes, we had eight.

45 PROF LOCHHEAD: Yeah. Yeah.

MS STANKOWSKI: It's overlapping.

DR DUNN: Some of them were very similar.

5 PROF LOCHHEAD: Yeah.

MS STANKOWSKI: So these were the core ones that we considered.

10 PROF LOCHHEAD: So there was another question. Is it – I understand the options which do not have contiguous land or they're different landholdings. For example, one was part of the St Andrews Estate and this one was part of Varroville Estate. So, like, you go, well, they're different considerations in terms of their heritage. But then the consideration of extending the boundary line, not aligning the property boundary, is that considered, for example here - - -

15

DR DUNN: This one?

20 PROF LOCHHEAD: Yes. The reason of – I mean, because there is quite a significant topographical definition of the site, you know, in terms of valleys and hills and ridges, shape of catchments, and I was just – and so some of these wiggly lines have a clear logic to them when you see the terrain in which they align with, but you've brought it back to the property boundary, so is that because of just degree of difficulty, or why is that?

25 DR DUNN: Well, that is partly, but also once – to be honest, once we considered the options, we don't think that this section adds anything greater to the significance that would be captured by this.

PROF LOCHHEAD: Right.

30

DR DUNN: It doesn't add anything.

PROF LOCHHEAD: Okay.

35 DR DUNN: As far as we're concerned, it doesn't add anything to the story – the picture.

PROF LOCHHEAD: Just – we just wanted - - -

40 DR DUNN: And then the property boundary makes it an easier boundary to work with.

PROF LOCHHEAD: Okay.

45 MS KIRKBY: Can I say something?

PROF LOCHHEAD: No, not right now.

MS KIRKBY: Because we won't be able to talk to you tomorrow. It's just in relation to that ridge line. I'm not adding anything.

5 PROF LOCHHEAD: No. Yeah. I'd just rather us just ask these questions right now.

MS KIRKBY: Okay.

10 PROF LOCHHEAD: So you've also outlined that the best practice is to include the site-specific exemptions once there's a development application, so that question has been answered. Did you – the CMP, have you – has the Heritage Council had consideration of the CMP prepared by Urbis?

15 MR DUNN: Yes. Yes, the CMP was done in 2015, I think, and that was part of the documentation that we've used. This is all from 2017, so all those studies were in front of us.

20 PROF LOCHHEAD: So when – so when you – the listing is affirmed, whatever shape and form, will that particular CMP be endorsed by the Heritage Council, or would you require a new CMP which is current, or an updated CMP?

MR DUNN: We would – I – we will require an updated CMP, because we – we can't endorse a CMP for a place that's not on the State Heritage Register.

25 PROF LOCHHEAD: No, no, no.

MR DUNN: Yeah. So - - -

30 PROF LOCHHEAD: But I'm – I'm talking about process.

MR DUNN: Yeah.

PROF LOCHHEAD: So - - -

35 MR DUNN: Yeah. That would be - - -

MS McKENZIE: So the curtilage in this CMP as it stands reflect the curtilage as was

40 MR DUNN: As recommended by - - -

MS McKENZIE: By Urbis. So clearly that - - -

45 PROF LOCHHEAD: Is not part - - -

MS McKENZIE: - - - will depend on what the curtilage ultimately - - -

PROF LOCHHEAD: Yes.

MR DUNN: Yes.

5 MS McKENZIE: - - - is approved.

PROF LOCHHEAD: Yes.

MR DUNN: Yes. That's what the CMP recommends. That's – obviously if that's
10 what - - -

PROF LOCHHEAD: Yes. Yes.

MR DUNN: and there's a different statement of significance to what we have,
15 so there will be some - - -

PROF LOCHHEAD: But there would be a requirement if and when it does get
endorsed as a state heritage item that there would be a new CMP to actually provide
20 policies to guide the - - -

MS STANKOWSKI: Update it.

PROF LOCHHEAD: Yes.

25 MR DUNN: Update it. Yes.

PROF LOCHHEAD: Okay. That's what I'm saying updated one, even – so
they'd have to update it to reflect whatever the current - - -

30 MS STANKOWSKI: A lot of the history around Varroville is can be re-used. A
lot of the policies are perfectly good; it's just that there are fundamental differences
in terms of the curtilage - - -

PROF LOCHHEAD: Yes.

35 MS STANKOWSKI: - - - and the statement and assessment of significance that
- - -

PROF LOCHHEAD: Yes.

40 MR DUNN: Need to be updated to reflect whatever curtilage is – goes forward.

PROF LOCHHEAD: Yes.

45 MS McKENZIE: Just to clarify around CMPs, there's no requirement in any
state heritage to have a CMP, and if they do have a CMP, there's no requirement
for it to be endorsed. It is a decision for the landowner if they wish to do that. In this

case, there's clearly some motivation, because the LEP is reliant on the CMP, but as I understand it, the LEP doesn't require it to be endorsed. It just says a CMP.

MS STANKOWSKI: Yes. That is true.

5

MR HOY: It's – the clause says that development will occur in accordance with the CMP.

MS McKENZIE: Yeah. The non-endorsed CMP. So that depend on the landowner and the landowner's choice

10

MS STANKOWSKI: And obviously CMPs are a moveable feast, so they can be updated and still meet the planning controls.

MR BROOKS: Madam Chair, there was a comment earlier also about the fact that the 2015 – if I may ask a question, 2015 Urbis CMP was only for the CMCT land. If it's a combined single listing, would the Heritage Council be likely to request that it becomes a comprehensive CMP, or could there still be two separate considerations of two separate pieces of land within the overall listing?

20

MS McKENZIE: We'd have to consider that at the time.

MR DUNN: Yeah.

MS McKENZIE: I mean, the council

25

MR DUNN: The council – heritage council - - -

MS McKENZIE: I think there's further discussion - - -

30

MR DUNN: - - - will have to

MS McKENZIE: - - - needed about - - -

PROF LOCHHEAD: Yeah. So - - -

35

MR DAVIES: May I just then say that there would be no objection to an updated CMP through a, you know, further process.

PROF LOCHHEAD: Yes.

40

MR DAVIES: Yes.

PROF LOCHHEAD: I would think that if you have a CMP and it's no longer current, you - - -

45

MR DAVIES: Yeah

PROF LOCHHEAD: You would have to do it. Sorry, Jacqui, what was the point that you were trying to make? I just wanted to make sure I got the questions I needed to ask.

5 MS KIRKBY: I don't want to embarrass Mark, but - - -

PROF LOCHHEAD: But I'll go ahead and

10 MS KIRKBY: When you actually come out onsite, you'll see why our consultants had that wiggly line. That's actually a ridge line, and

PROF LOCHHEAD: Yeah. That's what I was - - -

15 MS KIRKBY: Yes. And when – when you come out, you'll see it's very hard to tell with these aerials just how close things are. So when you come out, you'll see – it's like we're in a goldfish bowl.

PROF LOCHHEAD: Yeah.

20 MS KIRKBY: So these things – that ridgeline rears up in front of us and the other buildings so we're looking right at it. So it was the visual catchment that if any development went there, it would destroy the visual - - -

25 PROF LOCHHEAD: Yeah. No, that's – that was understood. And that's why I was wondering why the - - -

30 MS STANKOWSKI: Katrina Stankowski, OEH. You'll note that the resolution from the Heritage Council when they did remove or pull the curtilage back was that they did still want to pursue that at a later date, and they requested that OEH officers stay in contact and make contact with the owners of that land to try and negotiate that, but for the immediacy of this decision, that the main values were encompassed in that curtilage. Now, we have spoken with Mills Oakley, the lawyers for the owners of that land, and they have not wanted to engage in the curtilage process until they received a copy of the curtilage study, which is – so they could see what was
35 said about that specific piece of land. And we are – that is where we're at.

40 PROF LOCHHEAD: There was – I mean, you – I think you affirmed it that there was a point made that the extension substantially limit the utilisation of the site and – and imposed undue financial hardship, but as you've affirmed, there was no representations or submissions made - - -

MR: Not at the time.

45 PROF LOCHHEAD: - - - on the basis of that. Yeah. I think they're the main

MS LEWIN:

PROF LOCHHEAD: Do you have any other questions?

MS LEWIN: No.

5 PROF LOCHHEAD: Okay. Great. Thank you, Mark.

MR DUNN: Thank you.

10 PROF LOCHHEAD: That's really clear. Now, in terms of the agenda, we have 15 minutes for each group the opportunity to reply or or make a final statement, I suppose. So perhaps we just go round the room.

MR SALON: Are we able to – I realise that it's 5 o'clock already, but - - -

15 PROF LOCHHEAD: Well, yeah.

MR SALON: - - - are we able to just – now that we've heard the submissions and – and other comments already made, are we able to meet just ever so briefly with our teams to decide what we'd like to reply and – or perhaps reserve - - -

20 PROF LOCHHEAD: Well, okay. I mean, I suppose I should put it to the room. Does anybody want to use – I mean, as we have gone longer than probably planned, so it's already – like, it's ten past 5, so we can – I mean, there's a number of options. One, we can continue until everyone has the opportunity to do a – you can decide

25 whether you want to reply and how long you'll take to do it, or you could make those comments in a written form – third, you can make the comments in a written form as part of your submission or additional comments in the next two week period. So that's up to you. So maybe just have a couple of minutes just to think about which option you prefer we're – are you open to stay

30 MS LEWIN: Yes, I can, but I think it has to be considered an imposition

MR SALON: It would – it would appear that our team is happy with written submission.

35 MR:

PROF LOCHHEAD:

40 MR SALON: It would appear that our team is happy to make a written submission in reply.

PROF LOCHHEAD: Okay. All right. Okay. That's fine. And - - -

45 MS LEWIN: There's a good two week period

PROF LOCHHEAD: - - - you don't need to do anything

MR DUNN: Yes

PROF LOCHHEAD: So Jacqui, if you want to make any additional comments, you can still - - -

5 MS KIRKBY: I just went through the notes that I made, and I think I picked up a lot of them from memory. I hope I didn't just think it in my mind. I think I picked up a lot of them as we went along. I mean, I am concerned this re-emphasis about

10 in the LEP, and the insistence that somehow that CMP is the only document to be referred to, but I think I did actually cover that.

MS LEWIN: Yes. There is - - -

MR SALON: Yes. Substantial reply during the submission period.

15 MS LEWIN: Yes. There is also a two week period in – within which you can make submissions.

PROF LOCHHEAD: Yeah. And I think that the opportunity is that if - - -

20 MS LEWIN: In response to the - - -

PROF LOCHHEAD: Yeah.

25 MS LEWIN: What has been presented today. If there's any questions.

MS KIRKBY: Will we see those submissions – we've heard it but will we see them?

30 PROF LOCHHEAD: Yes. Everything that we receive will go up on to the website and so you will be able to see each other's submissions. If you have – if you think of something after you've left the hearing today, feel free to actually bring that to our attention through a formal process in the next two weeks.

35 MS KIRKBY: Now - - -

PROF LOCHHEAD: Sorry - - -

MS STANKOWSKI: No, that's all right. You answered my question.

40 PROF LOCHHEAD: Yes.

MR SALON: I wonder, just as an item of housekeeping, pre the visit tomorrow.

45 PROF LOCHHEAD: Yes.

MR SALON: We were on the understanding through communications that tomorrow is not a forum for providing further submissions. And we just wanted assurance, based on some of the comments today, as to whether that was still the case.

5

PROF LOCHHEAD: Yes. That is correct. And it's only really for our information. So for example just to see where ridges are and view catchments are and the property boundaries are because, as you know, there is quite a lot of terrain and its physical features - - -

10

MR SALON: Yes, of course.

PROF LOCHHEAD: - - - that we need to appreciate. But we're not expecting or seeking any additional narration tomorrow.

15

MR SALON: But that applies to all the parties - - -

PROF LOCHHEAD: It applies to - - -

20

MR SALON: The Varroville owners and ourselves.

PROF LOCHHEAD: It applies to yourselves, the landowners.

MR SALON: Only to us.

25

PROF LOCHHEAD: The landowners and JRP is not going to be - - -

MS KIRKBY: It has been made very clear to us that we cannot make further submissions tomorrow.

30

PROF LOCHHEAD: Yes.

PROF LOCHHEAD: So the only submissions that are available to you - - -

35

MR SALON: Okay. I will - - -

PROF LOCHHEAD: - - - in terms of avenue - - -

MR SALON: - - - just answer my own questions.

40

PROF LOCHHEAD: The only avenue - - -

MR SALON: The OEH is not a landowner.

45

PROF LOCHHEAD: No.

MR SALON: So I just want to clarify what you said. You said it was the landowners can't make submissions. Is it that the OEH also can't make submissions?

5 MR VAN DEN BRANDE: For the site inspection no one can make submissions.

PROF LOCHHEAD: No.

MR SALON: Okay. Thank you. I just wanted to get that clarification.

10 PROF LOCHHEAD: Yes. But anyone can make the submissions - - -

MR: In the next two weeks.

15 PROF LOCHHEAD: In the next two weeks.

MR SALON: Yes, of course. I just meant - - -

PROF LOCHHEAD: In writing.

20 MR SALON: Because - - -

PROF LOCHHEAD: No.

25 MR SALON: - - - all parties aren't present at each of the little - - -

PROF LOCHHEAD: Yes. That's right.

MR SALON: The visit sites.

30 PROF LOCHHEAD: To ensure parity and transparency.

MR SALON: Yes. Understood. Just getting clarification. Further housekeeping, so you mentioned just before that everyone will get put up on to the website. Is that going to include the OPP study? I'm happy for you to take them on notice but – because otherwise it's not everything.

35 PROF LOCHHEAD: Well, it's just that we need to clarify how the OPP study was made public and that if it is in the general public domain - - -

40 MS KIRKBY: It was on a view only basis, it was made public.

PROF LOCHHEAD: Yes. So if it's in the general public domain and accessible in the public domain then we need to - - -

45 MR SALON: Well, no, it's available for people who make an application for it.

PROF LOCHHEAD: Yes. Well, that's what we need to clarify so - - -

MR SALON: Yes. But just in specific response then, to it not being available for so long and during this process there has been talk about resolving that issue and how
5 it's used in the IPC review of this matter, how is that going to be resolved?

MS SUMMERHAYES: We will have to take that on notice. Yes. Under our policy people can make an application to, I suppose, keep things confidential or redact things and then the Commission makes a determination based on that but it's a very
10 high threshold. Our number 1 principle is the transparency so things that are before the Commission should be made available to the interested parties so that everyone has that. But we just need – we don't have all the information to make the decision yet.

MR SALON: Okay. Well, it would be good if you could advise us on that because as it stands today information before the Commission has not been made available to all parties through the Commission or via the Commission. And that means for this process that there's an issue that needs to be resolved because how the – I mean, I can make – we can make the submission in the two week period but for example
15 there was talk about different things and it may be about the significance of different items and it may be that – where we have seen no evidence of those things and it may be that the evidence of those things are in the parts of the report we don't have. So
20 - - -

PROF LOCHHEAD: Although I do understand from the briefing by the Heritage Council that they did take into consideration the OPP study so that in the documentation that they had and they had deference to that would have been also something which you would have been responding to in terms of your submission with regard to the proposed curtilage.
25

30

MR SALON: No, weren't able to respond to the study because the study was not available at the time.

PROF LOCHHEAD: No, but you made a submission that – in response to the
35 recommendation of the curtilage - - -

MR SALON: Yes, indeed.

PROF LOCHHEAD: - - - based on the information that they were using.
40

MR SALON: We also withdrew that support some months later after we became that they would not honour – they would not honour what they said they would do in terms of accepting proposals from us for site-specific exemptions. So it should be noted in our documents that we did not make a submission. We were acting in good
45 faith on undertakings that were made to us about site-specific exemptions which were never forthcoming.

MS BINNS: It's probably also worth noting that there are certain things having – when we made that submission, we hadn't seen the OPP report ourselves and, now that we have, it actually has contributed to us changing our views in terms of the significance. So there was information in that report – and we'll put this in our
5 written submission – that contributed to us changing our views on the significance – curtilage, sorry.

MS STANKOWSKI: I would just like to point out that, during the recommendation to list and the notice of intention to list, all of the documents were made available on
10 the web as part – well, all of the information, as they pointed out, that we used in our statements of significance and assessments of significance were from the OPP, so they did have access to all of that information and it has since been made available on your website as well, so - - -

15 MR SALON: But not the study.

MS STANKOWSKI: Not the study itself - - -

MR SALON: Yeah, okay.
20

MS STANKOWSKI: - - - but all of the information - - -

MR SALON: Just so we're clear on that.

25 MS STANKOWSKI: - - - that was – yeah.

MR SALON: Because the issue is - - -

PROF LOCHHEAD: Yeah, yeah.
30

MR SALON: - - - that in the process of this, this it matters not actually that a – for a GIPA application or its access to it, it's that this process of the Commission has not made that particular so important a study to this decision available.

35 MS SUMMERHAYES: Yes. We'll take that on notice.

PROF LOCHHEAD: Yeah.

MR SALON: Yes, of course.
40

MS SUMMERHAYES: But we're - - -

PROF LOCHHEAD: It's not – yeah.

45 MR SALON: I understand that it's not an easy issue.

PROF LOCHHEAD: Yeah, and it's not our study, so if we have to get advice on that - - -

MR SALON: Yep, okay.

5

PROF LOCHHEAD: - - - on how we can actually - - -

MR SALON: Of course. And I understand that, because it's not an easy issue, but as we submit, it - - -

10

PROF LOCHHEAD: Yes, okay. So any additional information that we will put online, we will give you appropriate additional time to comment on - - -

MS LEWIN: If it raises - - -

15

PROF LOCHHEAD: - - - if it raises new issues.

MR SALON: Yes, but we would like a formal notification from the Commission about how that issue is resolved, that particular issue that the study isn't available. And just one final matter of housekeeping: the IPC website does have a register of conflicts on it, but sadly missing from that register of conflicts is the allegations of conflicts that saw the previous chair removed, and so forth, and that means that – and from the submissions that have been made here today, it would seem that there was ongoing communication about those issues and other allegations that have not been put on the register of conflicts. Our conflicts are on the register, just none of the others that apparently have been raised. And it would have been - - -

20

25

PROF LOCHHEAD: Sorry, what other ones?

30

MS LEWIN: Through the - - -

MR SALON: Well, there was the removal of the – I mean, the ones that led to the resignation of the former chair. I'm just so sorry, I've just forgotten his name.

35

MS LEWIN: Mr David Mackay, but the letters – the letters of - - -

MR O'MEARA: Richard Mackay.

MS LEWIN: - - - resignation. So the letters of resignation - - -

40

PROF LOCHHEAD: It should

MS LEWIN: So the letters of resignation - - -

45

PROF LOCHHEAD: It should be up.

MR SALON: Well, the letter of resignation is on there, but the register of the - - -

MS LEWIN: And the notice.

MR SALON: - - - conflicts does not detail the conflict, the allegations, that led to that.

5 PROF LOCHHEAD: Okay.

MR SALON: And then we have heard today - - -

10 MS LEWIN: I don't think they were.

MR SALON: - - - about letters going to and from the Commission in regard to conflicts and other issues. None of those are detailed in the conflicts register, so I'm just wondering why it is that the conflict register details conflicts potentially of our firm being engaged with the former chair in a highly niche area of heritage, where it was found by the Commission there was no conflict, yet other allegations of conflicts are not on the register.

15

PROF LOCHHEAD: Yes. I don't know what people want - - -

20 MR SALON: Well, sorry, what do you need me to tell you?

MS SUMMERHAYES: Well, we're just not sure what - - -

25 PROF LOCHHEAD: We're just trying to ascertain what conflicts you're talking about.

MR SALON: Okay. So there was apparently letters sent to the IPC – two letters sent to the IPC - - -

30 MS SUMMERHAYES: From?

MR SALON: - - - alleging conflicts of interest regarding the former chair.

35 MS SUMMERHAYES: From?

MR SALON: From people I don't know.

MS SUMMERHAYES: Well, there was the David – do you want to this?

40 MR VAN DEN BRANDE: wrong with that. There was a few from David Shoebridge, but that should be up on the website. If it's - - -

MR SALON: It's not on the website.

45 MS SUMMERHAYES: No, it isn't.

MR SALON: And it's not listed in the register of conflicts.

MS SUMMERHAYES: Okay. Well, we will get our house in order. They should all be made available. So, yes, we will make sure that's - - -

5 MR SALON: Yes. that would be good.

MS SUMMERHAYES: Yes, yes. Sure.

10 PROF LOCHHEAD: Okay. So was – I just - - -

MR SALON: I'm so sorry. Thank you.

PROF LOCHHEAD: Okay. Right.

15 MS KIRKBY: If – yes. They keep – Mills Oakley keep talking about bits of the report missing. The report is 150 pages. If there is anything missing, they can just look at the number on the page and determine exactly what it is that's missing.

20 MS JAQUET: The pages are not legible.

MR SALON: Hold on. Please, Jacqui, continue.

MS KIRKBY: Yes. Well, that's it. I'm saying that they're – the pages are

25 numbered. So you can determine from that what's missing.

MR SALON: Yes.

MS KIRKBY: If this came from council, I'm saying, yes, there was a page missing

30 which I immediately corrected within days of submitting it and if council didn't provide that - - -

MR SALON: I'm just not sure that any of that's relevant. I'm so sorry.

35 MS KIRKBY: Well, it is relevant if you're trying to make a point that you haven't got information.

MS LEWIN: Yes. Well, if you - - -

40 MR SALON: No, no, what we're making the point is – is that if the report is in front of the IPC, it should be in front of us via the IPC.

MS SUMMERHAYES: That is our position.

45 PROF LOCHHEAD: Yes.

MR SALON: And it's not.

MS SUMMERHAYES: So if it's not, then it won't – we won't – the IPC won't - - -

PROF LOCHHEAD: That's – yes, I think - - -

5 MR SALON: It is not.

MS SUMMERHAYES: that is our position.

PROF LOCHHEAD: So - - -

10 MR SALON: It is not. Put it on the website.

PROF LOCHHEAD: Well - - -

15 MS LEWIN: It hasn't been ours to put on the website - - -

PROF LOCHHEAD: Yes.

MR SALON: Send it to us, then.

20 MS LEWIN: - - - at this point.

MR SALON: I mean, if it's – if the IPC is going to consider the report - - -

25 PROF LOCHHEAD: I think we stated at the beginning of the session - - -

MR SALON: I'm so sorry.

PROF LOCHHEAD: - - - that if we are able to share it, everyone will get it
30 equitably. If we are not in a position to share it fully, then we will not take it into
consideration as part of your deliberations.

MR SALON: So do the - - -

35 PROF LOCHHEAD: And that stands.

MR SALON: Are the OEH in possession of the study by way of the IPC?

MS LEWIN: No.

40 PROF LOCHHEAD: No.

MR SALON: No.

45 MS SUMMERHAYES: No.

MR SALON: So it's just - - -

MS KIRKBY: Can I just say that there was a letter which I referenced at 28 November specifying the basis on which the commission would consider the report and it wasn't publishing it on its website. So it took into account the issues that we raised, which are genuine issues about the risks to the heritage identified in it, and so
5 – you know, it's indicated that at – they had to get access. Now, I'm happy to talk to the commission about the kind of access that can be provided, but I don't want - - -

PROF LOCHHEAD: Of the document?

10 MS KIRKBY: Of the curtilage study.

PROF LOCHHEAD: Yes.

MS KIRKBY: Because the wording was very specific about what would be
15 provided. Now, I'm just concerned that there's kind of a vexatious thing going on here about access to a study that they already have. So I just want to be clear about that and they can determine what's missing and if it came from council, it was one page and it's unfortunate if council didn't put it in.

20 PROF LOCHHEAD: I know, but as you can – and as you can appreciate, we didn't go to the council from the council - - -

MS KIRKBY: No, but council has done it as part of the DA.

25 PROF LOCHHEAD: Yes.

MS KIRKBY: And – which is under the auspices of the commission. So that's the letter that I've put - - -

30 PROF LOCHHEAD: No, no, no. There are two separate processes. The only thing that we have concern with is the heritage listing. The DA is a completely separate process and we may have nothing to do with it ever in our entire lives. So the – we can't conflate these two processes. If they have accessed that report through that, that's their – that's something that you've done, but for us to actually take it into
35 consideration, it has to be provided to us in a way which we can make it publicly accessible, and if there are – if you could actually be very clear about what is able to be made publicly accessible, and notwithstanding your concerns, but as you - - -

MS KIRKBY: Well, consistent with that letter that we received.
40

PROF LOCHHEAD: Yes. Well, just - - -

MS KIRKBY: Which was the basis on which it would - - -

45 PROF LOCHHEAD: Just to clarify it.

MS KIRKBY: Yes.

PROF LOCHHEAD: So that it can be taken into consideration fully and equitably, then we're very happy to do that, but we do also need to respect the instructions that we've had from you not to divulge stuff which you think is going to be of critical concern. So if we can clarify it – and up until now, it's been a little bit unclear. So
5 in the best – yes, we would be very happy and very keen to do that for everybody's interests.

MR SALON: Because the contention, of course, is that if it's not provided to the IPC, it simply can't be regarded as part of the – any form or part or reference to it
10 can't be regarded in terms of the recommendation.

PROF LOCHHEAD: Yes. Yes.

MS McKENZIE: Can I just make a statement?
15

MR SALON: Yes.

MS McKENZIE: There is a statement of significance that has been provided by - - -

20 MR SALON: Yes.

MS McKENZIE: - - - the Heritage Council and that is what they have relied on to determine it.

25 MS LEWIN: Yes. Yes.

MR SALON: Determine the curtilate.

MS McKENZIE: So with or without the report – with the report, it adds to that
30 because it tells you where some of that came from without the report that is still there.

PROF LOCHHEAD: And I – and - - -

35 MR SALON: Yes. It does - - -

MS McKENZIE: And it is available on the web.

MR SALON: It does say where the information comes from.
40

PROF LOCHHEAD: Yes. And I would concur with that. That – I mean, we're relying on expertise from a range of sources to come to our deliberations.

MR SALON: Yes. But you've heard our contentions, Madam Chair.
45

PROF LOCHHEAD: Yes. But it doesn't mean we can't come to an informed decision based on the information we have available

MR SALON: Okay.

PROF LOCHHEAD: In the public domain.

5 MR SALON: Well, we would just like some clear communication from the commission on how that is to be handled, given the issues that we've raised. They're not insignificant issues.

10 PROF LOCHHEAD: Yes. Yes. And we hear that and - - -

MR SALON: Thank you so much.

PROF LOCHHEAD: - - - we are keen to resolve that as well.

15 MR SALON: Thank you so much.

PROF LOCHHEAD: Okay. So based on – I think everyone's had their say. There's still two weeks to actually confirm and deliberate about your complete submission and any further advice that you would like to contribute and otherwise I will call this meeting to a close and thank you for your representations today and we will see some of you onsite tomorrow. Thank you.

MR SALON: Thank you so much.

25

RECORDING STOPPED

[5.29 pm]