

Minister for the Environment and Heritage

FOR APPROVAL within 14 days of receiving the Heritage Council recommendation

Recommendation to list a curtilage extension to Varroville on the State Heritage Register

Purpose: To inform the Minister's considerations for listing an extension to the curtilage (boundary) of Varroville (SHR No 00737) on the State Heritage Register (SHR) as required under section 32(1) of the *Heritage Act 1977*.

Analysis: The Heritage Council of NSW resolved at its meeting of 28 September 2017 to recommend to the Minister that an extension to the boundary of Varroville Homestead at Varroville be listed on the SHR.

Recommendations

1. Approve the reasons for the decision to list.

Approval

		
Approved:	Pauline McKenzie, Executive Director Heritage	27/10/2017
Contact:	Pauline McKenzie, Executive Director Heritage	9873 8584
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Gabrielle Upton MP, Minister		Date

Timeframes

Under section 34(1) of the Act, the Minister must decide whether or not to direct the item be listed on the SHR within 14 days of receiving a recommendation from the Heritage Council, or ask the Planning Assessment Commission (PAC) to review the matter.

Key issues

Reasons for recommendation

Upon listing of Varroville under the *Heritage Act 1977* in 1993, a larger SHR boundary was considered by the Heritage Council. At the time, it was determined that only the homestead would be listed. The Heritage Council resolved to investigate extending the boundary to incorporate the homestead's outbuildings and its former estate on a number of different occasions.

Varroville Homestead and Estate is a remarkable rural landscape that is relatively intact and retains a high degree of integrity. The estate has rare and innovative features, the estate core and outbuildings, unusual and extensive vineyard trenching that served dual purpose of vineyards and water conservation and system of dam networks that are of high significance.

The Varroville estate landscape is a rare example of an English landscape park approach in NSW and demonstrates architect William Weaver's awareness of classic country villa setting. The homestead with its picturesque views is an integral part of the visually cohesive landscape setting. The estate has strong associations with a number of significant early Australians – Dr Robert Townson, Governor Lachlan and Mrs Elizabeth Macquarie, explorer Captain Charles Sturt, NSW's first Postmaster-General James Raymond, Justice Alfred Cheeke, Colonial architect William Weaver and more recently Cherry Jackaman, the first female President of the National Trust of Australia (NSW). Varroville is rare as one of the few larger estate landscapes remaining in the Campbelltown area where the form of the original grant, its former agricultural use and its rural landscape character can be appreciated.

Growing development pressures in Western Sydney have resulted in large scale developments on a number of homesteads and pastoral properties. Varroville provides the opportunity for the homestead and the estate to be heritage-listed to allow for sympathetic development within the heritage boundary and in the immediate vicinity of this significant rural cultural landscape.

Recommendation to list an extension to boundary

Under sections 32 and 34 of the Act, the Minister has discretion to direct a listing on the SHR of a place, building, work, relic, moveable object or precinct. The Minister can only direct that an item be listed on the SHR if the Heritage Council has recommended to do so.

The Heritage Council has recommended that an extension to Varroville be listed on the SHR (DOC17/496224).

The recommendation was made under section 32(2) of the Act. The Minister must now decide whether to exercise her discretion and direct the listing of the item under section 34 of the Act.

Section 34(4) requires that the Minister provide reasons for listing an item on the SHR, and that the Heritage Council publish these on the internet within seven days of the Minister's decision.

Recommended reasons for the decision to list

The following reasons are suggested for the listing of an extension to Varroville's boundary on the SHR:

- a. Varroville Homestead and Estate is considered to be of state significance as an early farming estate with early structures, 1850s homestead, layout, vineyard trenching and evidence of early access road. The remnant estate with its landscape, estate core, rare and innovative features, early establishment, substantial intactness as a cultural landscape and important colonial associations has significant state heritage values. Varroville is rare as one of the few larger estate landscapes remaining in the Campbelltown area where the form of the original grant, its former agricultural use and its rural landscape character can be appreciated. The revised curtilage extension is of historical, associational, aesthetic, technical, rare and representative significance.
- b. Listing will provide for the identification and registration of this item of state heritage significance.
- c. Listing will promote an understanding of the state's heritage.
- d. Listing will encourage the conservation of this item of the state's heritage.

Next steps

There are three potential steps (detailed overview at Tab 2):

1. If the Minister approves the listing, the decision will be published on the OEH website.
2. The Minister may choose to refer the listing to the Planning Assessment Commission for advice before making a decision.

3. If the Minister does not approve the listing, the decision will be published on the OEH website.

Supporting analysis

Legislative consequences

The Minister must consider a number of legislative factors in making the decision to list. Advice on these considerations is at Tab 1.

Consultation

Listing on the SHR is supported by some owners and the local council. 35 submissions were received during the exhibition period, and two late submissions were received. Of these, 36 were in support of the listing with 18 of the 35 requesting an increased boundary that was the same as the 'minimum curtilage' recommended in the 'Curtilage Study – Varroville' prepared by the owners' consultants Orwell & Peter Phillips, 2016. None were opposed to the listing. However, one submission from the land owner, the Minister administering *Environmental Planning and Assessment Act 1979*, objected to the inclusion of Lot 4 DP239557 in the curtilage and another from Urbis, consultants to CMCT, a land owner, supported the listing provided site-specific exemptions could be finalised.

Contentious issues

The proposed boundary extension has been a long standing matter. In August 2014, the Heritage Council recommended an interim heritage order (IHO) on all of the land that surrounds Varroville. The then Minister determined not to make the IHO. Instead, the Minister asked the Heritage Council to work with the land owners to manage the heritage value as part of development, including potentially expanding the heritage listing.

The owners of Varroville Homestead were granted Heritage Council funding of \$10,000 in 2015–16 to undertake a study that explored the boundary issues, which resulted in the 'Curtilage Study – Varro Ville' report. Following the completion of the report, the owners asked that the curtilage be extended to the minimum recommended in the report. The owners have been keen to keep the report confidential as they believe it has sensitive information that needs to be protected.

The owners have expressed unhappiness that the boundary recommended by the Heritage Council is smaller than their preferred boundary.

The Catholic Metropolitan Cemeteries Trust owns the land that surrounds the Varroville Homestead. This land was the subject of a rezoning, to allow 'cemetery' as a landuse. The rezoning was decided by the Joint Regional Planning Panel and the 'cemetery' use has been allowed along with other permissible uses.

The Trust has agreed to support the boundary recommended by the Heritage Council, noting that a lawn cemetery is proposed to be developed on this land. The development application for the lawn cemetery was submitted to Campbelltown City Council on 17 October 2017. The Trust has foreshadowed seeking site specific exemptions from the Heritage Council to manage and develop the site.

The 'lawn cemetery' proposal has been a contentious local issue for some time and 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.

Listing of the extended boundary will mean that any development on the site needs Heritage Council approval. The Heritage Council would consider the impact of any proposal on the heritage significance of the site.

Lot 4 DP239557 is owned by the Minister administering the *Environmental Planning and Assessment Act 1979*. The Office of Strategic Lands which is managing the land has objected to the inclusion of this lot in the heritage listing, because the land is proposed for recreational uses and for future on-ramp provision to the adjoining M31 Freeway. This lot is of high significance for the extension of Varroville's boundary. As any future recreational uses could

be accommodated with suitable site-specific exemptions, the Heritage Council has recommended that this land be listed as part of the boundary revision. In addition, any future works to for the M31 Freeway would most likely be classified as State Significant Infrastructure and override the Heritage Act requirements for approvals if this lot is included in the listing.

The records for this matter have been the subject of two *Government Information (Public Access) Act 2009* requests. [REDACTED]

[REDACTED]

Tabs

Tab	Title
1	Factors to be considered in making the decision
2	Background on listing process

Background on listing process

State Heritage Register listings

The State Heritage Register (SHR) is established under section 31(1) of the *Heritage Act 1977* and lists places and items of particular importance to the people of NSW.

State heritage significance, in relation to a place, building, work, relic, moveable object or precinct, means significance to the state in relation to the historical, scientific cultural, social, archaeological, architectural, natural or aesthetic value of the item [section 4A(1)].

Effect of listing

Listing on the SHR gives public recognition and protection to heritage places under NSW state legislation and celebrates places and events important in the history of NSW.

Approval must be gained from the Heritage Council of NSW before making changes to a place listed on the SHR. If the works could affect the listed significance of the SHR item, an application under section 60 of the Act must be made to the Heritage Council or its delegate and may be required to be advertised for public submissions before determination. If the works are minor in nature, and will have minimal impact on the heritage significance of the item, they may be exempted from the requirement to obtain a full section 60 approval.

Owners of places listed on the SHR can apply for Heritage Council grants for management and maintenance of their property. These competitive funding grants open on an annual or two-yearly basis depending on the grant type. There is also an Emergency Works Grants Fund that can be accessed as required on a case by case basis.

Who can nominate an item to the SHR and how are nominations made?

Items can be nominated by any individual or group, including owners or community members, by downloading and completing the nomination form, which is available on the OEH website.

The Heritage Council also generates nominations through their thematic listings program. The current thematic studies include items associated with the modern movement, rural, Aboriginal and migrant heritage as well as priority places.

How do OEH and the Heritage Council assess nominations to the SHR?

Once a nomination is received, OEH assesses the nomination against the Heritage Council's significance criteria. An item must meet two of the seven significance criteria at a state level to be recommended for listing – if it meets only one, it must be of such particular significance that it should be listed.

Those items found to be potentially of state heritage significance are reviewed by the SHR Committee at its monthly meetings. After considering the merits of the nomination, the SHR Committee may advertise a notice of intention to consider listing the item and ask for public submissions on the matter.

After considering the public submissions, the SHR Committee or the Heritage Council will recommend that the Minister direct the listing of the item on the SHR if they consider the item to be of state heritage significance. The Heritage Council may also take into account the factors that the Minister must consider in relation to the need to conserve the item, its reasonable economic use, and financial hardship.

OEH provides concurrent advice to the Minister outlining the SHR listing process and the Minister's role, identifies any contentious issues the Minister may need to be aware of and provides suggested reasons for the Minister's decision to list.

What is the Minister for Heritage's role in the SHR listing process?

Section 32(1) of the Act states that the Minister may direct the listing on the SHR of a place, building, work, relic, moveable object or precinct that the Minister considers is of state heritage significance, but only if the Heritage Council has recommended that the item be listed.

Section 32(2) also states that the Minister may request that the Heritage Council consider the recommendation of an item for listing on the SHR.

Section 34(1)(a and b) of the Act states that within 14 days of receipt of the Heritage Council's recommendation to list an item on the SHR, the Minister must decide whether or not to direct the listing and inform the Heritage Council of that decision, or request the Planning Assessment Commission to review the matter.

When making this decision the Minister is also obliged to further consider:

- whether the long term conservation of the item is necessary (section 32(1)(b))
- whether the listing would render the item incapable of reasonable or economic use (section 32(1)(c))
- whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated (section 32(1)(d)).

The decision of the Minister to direct, or not to direct, the listing on the SHR of an item that the Heritage Council has recommended must contain the reasons for listing/not listing the item. This decision must be made publicly available on the internet by the Heritage Council within seven days.

If the Minister decides to direct the listing:

1. Within seven days of the Minister's decision, the Heritage Council will make the decision publicly available at www.environment.nsw.gov.au/heritageapp/minister.aspx.
2. Within 14 days of being notified of the Minister's decision or a recommendation for listing on the State Heritage Register, the Heritage Council will notify stakeholders of the Minister's decision and gazette the listing in the NSW Government Gazette. The listing takes effect on the date of publication.
3. The Heritage Council may organise an event with the owner to celebrate the listing. If this occurs, an event brief will be provided for the Minister to ascertain if she or the local MP wishes to participate.
4. OEH will provide a media release to the Minister's media advisor for release on the gazettal date.

If the Minister decides to refer the matter to PAC:

1. The PAC conducts a review. A broad range of stakeholders are entitled to attend the review and make submissions to the PAC.
2. The PAC provides a report to the Minister containing a summary of the submissions made to the review, the findings of the commission with respect to those submissions and a recommendation as to how those submissions should be managed.
3. The Minister must make copies of the report available to the public after the Minister decides whether or not to direct the listing.
4. Once the Minister receives the PAC report she has 14 days to decide whether or not to direct the listing, and then 14 days to inform the Heritage Council of that decision.

If the Minister decides not to direct the listing:

1. The Minister must provide reasons for the decision (section 34(4)).
2. Within seven days of the Minister's decision, the Heritage Council will make that decision publicly available at www.environment.nsw.gov.au/heritageapp/minister.aspx.

Removal of items from State Heritage Register

The Minister can direct the removal of a listing from the SHR following the same procedure and considering the same factors as for the listing of an item (section 38).

Key issues Factors to be considered in making the decision

Recommendation to revise the curtilage of Varroville (SHR No 00737) on the State Heritage Register

Relevant factors for consideration	Application of factors
<i>Section 32 preconditions</i>	
In accordance with section 32 of the Act, the Minister must consider the following matters in reaching a decision to list an item on the SHR:	
1. the Heritage Council has recommended that the item be listed (section 32(1));	At its 28 September 2017 meeting, the Heritage Council resolved to recommend that the revised curtilage of the item be listed.
2. the Minister is satisfied the item is of state heritage significance (section 32(1));	<p>The Minister must only direct a listing under section 32 if satisfied the item is of 'State heritage significance'.</p> <p>'State heritage significance' is defined in s4A as:</p> <p>'State heritage significance in relation to a place, building, work, relic, moveable object or precinct, means significance to the State in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.'</p> <p>The Heritage Council found that the item satisfied six of the seven Heritage Council criteria developed under s4A for listing on the SHR (see section 34 factors below).</p>
the Minister has considered:	
(a) the recommendation of the Heritage Council that the item should be listed (section 32(1)(a));	<p>At its 28 September 2017 meeting, the Heritage Council resolved to recommend that the revised curtilage of the item be listed.</p> <p>The Minister must consider the Heritage Council's recommendation (DOC17/496224).</p>
(b) whether the long-term conservation of the item is necessary (section 32(1)(b));	<p>It is considered that long term conservation is necessary due to its:</p> <ul style="list-style-type: none"> Assessed state significance against six of the criteria for listing. Rarity as one of the few remaining rural estates retaining many original features and a high degree of integrity.
(c) whether the listing would render the item incapable of reasonable or economic use (section 32(1)(c)); and	<p>The item may be capable of economic use and reasonable use because:</p> <ul style="list-style-type: none"> The owners have not raised concerns about the revised curtilage of Varroville rendering the item incapable of reasonable or economic use.

Relevant factors for consideration	Application of factors
(d) whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated (section 32(1)(d)).	The owners have not, during the exhibition period or in negotiations with OEH, advised that listing the item on the SHR will cause undue financial hardship.

Section 34 factors	
<p>If the preconditions in section 32(1) are met, the Minister must decide whether to direct that the item be listed under section 34.</p> <p>Relevant factors include the objects of the Act, the factors in section 32(1) of the Act and the criteria approved under section 4A of the Act.</p> <p>The Heritage Council has assessed the recommendation for listing against the s4A criteria, which are:</p> <ul style="list-style-type: none"> a) an item is important in the course, or pattern, of NSW's cultural or natural history b) an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history c) an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW d) an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons; e) an item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history f) an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history g) an item is important in demonstrating the principal characteristics of a class of NSW's cultural or natural places or cultural or natural environments. <p>An item is not to be excluded from the SHR on the ground that items with similar characteristics have already been listed on the SHR.</p>	<p>The Heritage Council considers the item to be significant under criteria:</p> <ul style="list-style-type: none"> a (historical values), The item is significant historically in demonstrating the original grant and agricultural development over a period of 200 years. b (associations with people or groups of people), The item is associated with many important Australians—Dr Robert Townson, Governor Macquarie, Charles Sturt, James Raymond, Justice Alfred Cheeke, Architect William Weaver and Cherry Jackaman. c (aesthetic values), The landscape remains since 1809 as a traditional rural and pastoral landscape with picturesque landscape qualities. e (research potential), The item retains rich archaeological information to understand early farming practices from as early as 1810s. f (rarity), Varroville estate's landscape has numerous elements that are rare individually and collectively. g (representative values). An excellent example of an early colonial estate, where 200 years of agricultural history can be interpreted through its intact landscape and buildings.
A decision of the Minister to direct, or not direct, that an item be listed on the SHR must contain reasons for listing or not listing the item which must be made publicly available on the internet by the Heritage Council within 7 days after the decision is made (section 34(4)).	Recommended reasons for listing are provided in the briefing note.

Other relevant factors	No other relevant factors were identified in regard to this listing. Submissions received are included with the Heritage Council's briefing note on this matter (DOC17/496224).
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