



22 February 2019

Review of the Recommendation to list a curtilage extension to Varroville Homestead on the State Heritage Register (SHR00737)

1. INTRODUCTION

2. On 12 October 2018, the NSW Independent Planning Commission (the **Commission**) received a referral from the Minister for Heritage (the **Minister**), relating to a recommendation made by the Heritage Council of NSW, on the curtilage extension for Varroville (SHR00737) (the **matter**) under section 32(2) of the *Heritage Act 1977* (the **Act**).
3. The Commission has been requested by the Minister, in accordance with section 34(1)(b) of the Act, to conduct a review and provide a report as specified in clause 21 of the *Heritage Regulation 2012* (**Heritage Regulation**) having regard to the requirements set out in section 36 of the Act.
4. Professor Mary O'Kane, Chair of the Commission, originally nominated Professor Richard Mackay AM as Chair, and Professor Helen Lochhead to constitute the Commission Panel to review the recommendation.
5. One of the parties involved in the matter raised an issue as to a potential conflict of interest affecting Professor Mackay's involvement. Professor Mackay subsequently stepped down from the panel.
6. Professor O'Kane later nominated Professor Helen Lochhead (Chair) and Ms Wendy Lewin, to constitute the Commission Panel to review the recommendation.

1.1. Minister for Heritage's request to review

7. Under section 34(1A) of the Act, the Minister has the power to request the Commission to conduct a review and provide a report within three months, as specified in clause 21 of the *Heritage Regulation 2012* (**Heritage Regulation**).
8. Certain requirements related to a review of this kind conducted by the Commission are set out in section 36 of the Act:
 - (1) *At a review conducted by the Independent Planning Commission each of the following is entitled to appear before the Commission either personally or, unless otherwise provided by the regulations, by an Australian legal practitioner or agent:*
 - (a) *an owner, mortgagee or lessee of land to which the proposed listing will apply or of land on which is situated the building, work or relic (being a relic that is attached to or forms part of land) that will be subject to the proposed listing,*
 - (b) *an owner of a relic (not being a relic that is attached to or forms part of land) or moveable object that will be subject to the proposed listing,*
 - (c) *the council of the area in which the item or precinct concerned is situated,*
 - (d) *the Heritage Council,*
 - (e) *the Secretary of the Department of Premier and Cabinet or a nominee of the Secretary,*
 - (f) *any other person with the leave of the Commission.*

(2) *At the conclusion of the review, the Independent Planning Commission is to provide a report in writing 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 dealt with. The Minister is to make copies of the report available to the public after the Minister decides whether or not to direct the listing.*

9. As set out in the review request from the Minister, dated 12 October 2018, read together with the requirements in section 36 of the Act, the Commission has been requested to undertake a review and to *“provide a report in writing 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 dealt with.”*

1.2. Summary of the Heritage Council of NSW recommendation

10. On 27 October 2017, the Heritage Council of NSW made a recommendation to the Minister to list a curtilage extension to Varroville on the State Heritage Register. The Heritage Council of NSW stated in its recommendation:

“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 association 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.”*

11. The Heritage Council of NSW recommendation and its background, was published on the Commission’s website on 9 November 2018, excluding any references made to the specialist report titled *Curtilage Study* prepared by Orwell & Peter Phillips in May 2016 on behalf of the owners of the Varroville homestead (the **Curtilage Study**),

2. THE COMMISSION’S HEARING

12. In carrying out the review, the Commission Panel invited the stakeholders, as specified in section 36 of the Act and as identified by the Heritage Council of NSW, to a hearing. The hearing was held on 18 January 2019 at the Commission’s offices and the invitations were extended to:
- The Catholic Memorials Cemeteries Trust – owners of:
 - Lot B of Deposited Plan 370979;
 - Lot 21 of Deposited Plan 564065;
 - Lot 22 of Deposited Plan 564065; and

- Lot 1 of Deposited Plan 218016.
 - Minister for Planning and Environment– owner of Lot 4, DP 239557;
 - Campbelltown City Council;
 - Heritage Council of NSW;
 - the Secretary of the Department of Premier and Cabinet; and
 - owners of the State Heritage Register (SHR) listed Varroville homestead, within the Varroville area.
13. Only three parties attended the Commission’s hearing. These were:
- the owners of the Varroville Homestead;
 - the CMCT; and
 - the Heritage Council of NSW.
14. Transcripts from this hearing were published on the Commission’s website on 22 January 2019. The Commission allowed for all stakeholders to provide submissions on the transcripts until 29 January 2018. All further submissions received after the hearing, were published on the Commission’s website on 7 February 2019.
15. The Commission received a total of (19) nineteen submissions, including Campbelltown City Council, the owners of the Varroville homestead, the Heritage Council of NSW, and the CMCT. All but (5) five of the submissions received objected to the Heritage Council of NSW’s recommendation and supported the CMCT’s proposal. The five submissions which supported the recommendation of the Heritage Council of NSW were from Campbelltown City Council, the Heritage Council of NSW and the owners of the Varroville homestead.
16. The following is a summary of the written and oral submissions received by the Commission:
- two submissions from the owners of the SHR listed Varroville homestead within the Varroville area, dated 14 and 29 January 2019. The following points were made:
 - the important history and heritage significance of the Varroville Area; and
 - there were factual misrepresentations in Ministerial Briefing Documents;
 - the proposed curtilage is less than the critical minimum specified in the Curtilage Study;
 - Varroville State Heritage is at risk if the ‘minimum’ curtilage expansion of the curtilage in the Curtilage Study, is not listed; and
 - it was not reasonable to have site specific exemptions without a DA.
 - a submission from Campbelltown City Council (CCC), dated 19 January 2019. The following points were made:
 - CCC does not object to the curtilage amendment;
 - CCC was never afforded the opportunity to make comment on the curtilage alternatives; and
 - A suitable mechanism should be put in place to ensure the future strategic value of Lot 4 is not to be fettered and/or reduced;
 - two submissions from the Heritage Council of NSW, dated 14 and 29 January 2019. The following points were made:
 - site specific exemptions (SSE) were not lodged when listing was recommended
 - SSE had not been developed in negotiation with the Heritage Council;
 - SSE are not supported as part of listing rather as part of a development application
 - the Curtilage Study was robust, and reasonable in all aspects, such that an informed opinion about the appropriate curtilage could be made;
 - the evaluation of the proposed curtilage options;

- the explanation of the significance assessment and
 - conclusion of the assessment and the recommended curtilage extension;
- two submissions from The Catholic Memorials Cemeteries Trust (CMCT), one dated 13 November 2018, followed by a second submission dated 14 January 2019, which included eighteen supporting specialist submissions. The following points were made:
 - the assessment that underpins the Curtilage Study is flawed as it does not provide a logical and rational basis for the identification of a curtilage;
 - there would be financial hardship if curtilage is listed;
 - there would be development constraint on the site if curtilage is listed;
 - the recommended curtilage is far in excess of what the State heritage significance is;
 - site-specific exemptions would have to be endorsed if recommended curtilage is listed; and
 - a new statement of significance should be undertaken to consider a review of vineyard and dams, among other items.
- a submission from Mills Oakley, representing the CMCT, dated 29 January 2019. This included five (5) supporting specialist submissions. The following points were made:
 - that the Commission's role is not confined to considerations only on the State significance but rather, to review and consider all things relevant to the potential listing;
 - that the Commission should consider undue financial hardship;
 - that the presentation made by the Heritage Council of NSW can be contested; and
 - that should the Commission recommend the listing, that a re-evaluation of the heritage significance be undertaken.
- a submission from Mills Oakley, representing the CMCT, dated 15 February 2019. This included two supported specialist submissions on the Curtilage Study. The following points were made:
 - the full version of the Curtilage Study contained information that was not available to relevant parties;
 - the full version of the Curtilage Study contained assertions on the historical development that can be challenged; and
 - the full version of the Curtilage Study contained maps and plans of poor quality.
- a submission from Kenneally's Funerals, received on 16 November 2018. The following points were made:
 - the south western area of Sydney is fast becoming home to a growing multi-cultural and diverse community; and
 - that there is a need for affordable burial space.
- a submission from the New South Wales Jewish Board of Deputies, dated 8 March 2018. The following points were made:
 - that the alternative curtilage proposal put forward by the Office of Environment and Heritage be rejected; and
 - that the CMCT's development proposal be approved.
- a submission from FJMT Architecture Interiors Urban Landscape Community, dated 13 November 2018. The following points were made:
 - CMCT's proposal will set a new standard for the integration of memorial landscape and architecture; and
 - the recommended curtilage extension jeopardizes the project's potential.
- a submission from NETTCORP PTY LTD, dated 13 November 2018. The following points were made:
 - the Sydney West Joint Regional Planning Panel had already determined the zoning for cemetery use; and

- the extension of the curtilage at Varroville will significantly affect the number of spaces available for in ground burials;
- a submission from an individual, dated 8 November 2018. The following points were made:
 - supports the CMCT’s proposal as it is the most appropriate development for the state and does not support the extension of the curtilage of Varroville estate; and
 - the heritage value and significance attributed to the dams has been overstated.
- a submission from the Riverstone Muslim Cemetery Board Inc, dated 6 November 2018. The following points were made:
 - that the IPC allow the Cemetery Development Application to be assessed in advance of the proposed curtilage recommendation from OEH.
 - that the proposed recommended curtilage is exaggerated and overreaching.
 - that site specific exemptions be negotiated between OEH and the CMCT;
 - that CMCT’s proposed curtilage be supported as it sufficiently protects the historic qualities of the Varroville Estate.
- a submission from Sue Rosen Associates, dated 12 November 2018. The following points were made:
 - that CMCT’s proposal is extremely positive in terms of heritage conservation; and
 - that the proposed curtilage will compromise the viability of the project and the generous overall plan.
- one anonymous undated submission. The following points were made:
 - the proposed curtilage would put in jeopardy the provision of multid denominational burial space for local community groups and families; and
 - that the CMCT’s development applicant be assessed in advance of any proposed curtilage recommendation from the OEH and the Heritage Council of NSW.
- one submission from GBA Heritage, dated 13 November 2018. The following points were made:
 - that the CMCT proposal will provide unique and well managed public access to the land, and excellent heritage interpretation experiences and opportunities; and
 - that the recommended curtilage has the potential to constrain aspects of the cemetery proposal by subjecting parts of the subject land to inappropriate.
- one submission from Architectural Projects, dated 13 November 2018. The following points were made:
 - that the recommended curtilage may provide inappropriate and unnecessary restrictions in gaining consent for the proposed use; and
 - That site-specific exemptions could be used to limit development anticipated by the CMP policies.

17. All submissions received during the review, including those referenced above, can be accessed on the Commission’s website.

3. THE COMMISSION’S SITE INSPECTION

18. On 15 January 2019, the Commission panel undertook a site inspection to understand the physical attributes of the heritage items within the context of the site and locality. This included the sites proposed to be part of the listed curtilage extension. Notes from the site inspection were published on the Commission’s website on 23 January 2019.

4. THE COMMISSION'S CONSIDERATION

19. In undertaking the review, the Commission has carefully considered the following material (the **Material**):
- the Minister's request dated 12 October 2018;
 - the Heritage Council of NSW's recommendation to the Minister, dated 27 October 2017, and accompanying submissions;
 - the Curtilage Study;
 - the oral submissions made at the Commission's hearing on 18 January 2019;
 - the submissions received during the review, both before and after the hearing;
 - the observations made at the site inspection; and
 - all of the correspondence received from the affected stakeholders, including:
 - the owners of the Varroville homestead;
 - the Environmental Defenders Office of NSW on behalf of the owners of the Varroville homestead;
 - Mills Oakley on behalf of the CMCT;
 - Campbelltown City Council;
 - the Heritage Council of NSW; and
 - the Minister for Heritage.
20. All of the correspondence is publicly available on the Commission's website.

5. THE CURTILAGE STUDY

21. One of the sources of information considered by the Commission was the Curtilage Study.
22. The Curtilage Study was received as part of the documentation referred by the Heritage Council of NSW on 12 October 2018. Access to the Curtilage Study by all stakeholder groups has been a contentious part of the Commission Panel's review as the owners of the Varroville homestead who procured the Curtilage Study asserted that parts of it should be kept confidential.
23. The Commission was concerned to deal with those confidentiality concerns while still maintaining transparency and procedural fairness. Following correspondence between the owners of the Varroville homestead and the Commission, the owner of the Curtilage Study agreed to provide access to the Curtilage Study on a "*view only basis to lawyers and heritage advisors of interested parties*". The Curtilage Study was made available for access on this basis at the Commission's office from 24 January 2019 until 8 February 2019. The Commission panel provided a seven-day period from 8 February 2019 to 15 February 2019 for the interested parties to provide any further submissions in relation to the Curtilage Study. All correspondence related to this aspect of the matter is available on the Commission's website.

4.1. Consideration of the Heritage Council of NSW Recommendation

24. As part of its considerations, the Commission has considered all of the Material as it relates to the recommendation made by the Heritage Council of NSW and the submissions received during the Commission's review.

Submissions received

25. The Commission received written and oral submissions from the relevant stakeholders and heard opposing views and concerns on the recommended curtilage extension at the hearing. The Commission received submissions to the effect that:
- the curtilage extension is less than the critical minimum specified in the Curtilage Study;
 - that the assessment that underpins the Curtilage Study is flawed;
 - the curtilage extension would cause financial hardship because a great deal of the site would be unable to be used for any other purpose other than open space and would constrain development on the site;
 - the curtilage extension is far in excess of what can be justified as being of State heritage significance or required to conserve the Varroville heritage;
 - the curtilage extension represents an unreasonable impact on the ability of the site to be effectively used for the purpose for which it is planned;
 - the Curtilage Study does not provide a logical and rational basis for the identification of a curtilage;
 - it is necessary to endorse site-specific exemptions; and
 - a new statement of significance should be undertaken that would consider a review of vineyard and dams, among other items.

Heritage Council of NSW comments

26. In its recommendation to the Minister, the Heritage Council of NSW stated:

“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 land use. The rezoning was decided by the Joint Regional Planning Panel and the ‘cemetery’ use has been allowed along with other permissible uses.”

...

“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.”

...

“The Heritage Council found that the item satisfied six of the seven Heritage Council criteria developed under s4A for listing on the SHR...”

27. The Heritage Council of NSW also stated the reasons for recommending approval of the listing, as discussed in paragraph 10 above.
28. At the Commission’s hearing held on 18 January 2019, the representative of the Heritage Council of NSW stated:

“the Heritage Council recommended to the Minister that the revised boundary of Varroville be listed. We consider ...that the land proposed as the extension to Varroville’s curtilage is of State 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.”

29. In relation to the heritage significance of the site, the Heritage Council of NSW stated that the site identified:

- *“...some of the outbuildings in the precinct and in the outbuildings precinct...several of the 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, ... 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...”*
- *“...a substantial archaeological resource associated with those buildings;”*
- *“...the cottage out the back ... and the stables or a coach house on site;”*
- *“...the former wool shed ... and a dairy site ... These sorts of outbuildings also contribute to the idea that this is an ongoing use of the farm with different uses as different economic purpose for that land comes through, which is what we’re trying to capture;”*
- *“...The vineyard trenching...unusual trenching pattern relative to the topography and apparent dual function as a means of intercepting rainfall and the run-off for water conservation...;”*
- *“...The relation of Varroville to its landscape ... organised to engage with its landscape setting across the four view lines...;”*
- *“...Its extended northern wing projects over falling ground to exploit a broad side views of the western valley with its signature dams...;”*
- *“...the reverse views along the valley and over the dams to the homestead, with its mantle of gardens and landmark plantings...;”*
- *“...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, ...;”*
- *“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...;”*
- *“...pastoral view of the time, ...looking across from the living room, across the landscape, through the dams and then other views across the landscape...;” and*
- *“...water features, ...including the dams...”*

30. The Heritage Council of NSW stated in relation to the recommended curtilage extension:

“...Option 6, we believe captured all the elements...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 lands, the water landscape 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.”

...

“...the curtilage ...encapsulates all significant heritage values of the Varroville Estate and strikes an appropriate balance.”

...

“...the listing as it came forward... was advertised for public comment in July, as I said. To August we had ... 35 [submissions] ... all generally in support of the listing. None opposed to the listing ... some wanted us to increase the curtilage. Some wanted us to reduce it...”

31. In relation to the various curtilage extension options the Heritage Council of NSW had considered, the Council stated:

“...We had a number of options that were put forward to the council over a number of meetings,

32. With respect to options 1 and 2 proposing a larger curtilage, the Heritage Council of NSW stated:

“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 <option 2>, it’s a smaller proposal that was put forward, also in that study;...”

...

“We consider that the fact that there were non-contiguous portions was a difficulty.”

33. With respect to option 4, the Heritage Council of NSW stated:

“...we discounted this, essentially because we don’t think it captures all the elements that are significant to this site.

34. With respect to option 5, the Heritage Council of NSW stated:

“...that is the cemetery’s current preferred and put forward by their consultants...”

“...we don’t consider that this catches all the essential elements of the site. In fact, I would say that this goes not far off what we had ... which was just capturing elements which doesn’t actually address the significance overall.”

35. As to the site-specific exemptions, the Heritage Council of NSW stated:

“...So the sites specific exemptions requested to accompany the listing recommendation...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.”

Commission’s considerations

36. The Commission panel notes that submissions made on the proposed listing of a curtilage extension raised various concerns in relation to the significance and values of the Varroville area. The Commission was variously requested to recommend that:

- the minimum curtilage as proposed in the Curtilage Study;
- the listing be required to be gazetted with the necessary site-specific exemptions; and
- an updated heritage significance be undertaken as part of the recommendation to the Minister.

37. The Commission visited the site, as discussed in paragraph 18. The Commission noted the heritage significance items referenced by the Heritage Council of NSW in paragraph 29.

38. The Commission notes that the recommended curtilage extension of the Varroville area is defined by property boundaries (Lot 4, Lot 1, Varroville, Lot 22, Lot B); and includes a number of heritage significance items, as discussed in paragraph 29.

39. The Commission notes that the final proposed curtilage, (option 6) was recommended to the Minister as it “*encapsulates all significant heritage values of the Varroville Estate and strikes an appropriate balance;*” as discussed in paragraph 30.
40. The Commission notes that various options of a curtilage extension were proposed for consideration by the Heritage Council of NSW and that those were not recommended to the Minister for various reasons, as discussed in paragraph 32 and 33, including that:
- they included “*areas that were also part of other estates*”;
 - the curtilage “*wasn’t contiguous across the landscape*” and;
 - they did not capture “*all the elements that are significant*”.
41. The Commission notes that the recommendation made by the Heritage Council of NSW does not include development application constraints, and that if the recommended curtilage extension is approved by the Minister, “*...The Heritage Council would consider the impact of any proposal on the heritage significance of the site*” should a development application proposal be lodged for the site, as discussed in paragraph 26.
42. The Commission notes that a submission was received during the review in relation to how the recommended curtilage extension would cause financial hardship for CMCT. The Commission notes that financial hardship concerns were not raised to the Heritage Council of NSW on the recommended curtilage extension.
43. The Commission Panel notes that site specific exemptions would be considered as part of the development application proposal and not as part of the recommendation to list, as discussed in paragraph 35.

Commission’s findings in respect to the submissions.

44. The Commission finds that the submissions made to the IPC during its review, do not affect the integrity of the assessment undertaken by the Heritage Council of NSW or its recommendation to list the proposed curtilage. The Commission finds that none of the evidence or submissions that it considered leads to the conclusion that the Heritage Council’s recommendation is flawed or should not be followed.
45. The Commission finds that the recommendation to list a recommended curtilage extension of Varroville, as proposed by the Heritage Council of NSW, is appropriate because:
- The recommended curtilage extension satisfied six of the seven heritage Council criteria under s 4A for listing on the SHR, discussed in paragraph 26;
 - the Heritage Council of NSW assessment of the value of the recommended curtilage extension encapsulates the Significant Heritage values and elements, as discussed in paragraphs 30 and 39;
 - the various alternative options put forward to the Heritage Council of NSW were not appropriate as these variously either did not capture all the elements that are significant to the site (Option 5), involved a curtilage that was not contiguous across the landscape (Options 1 and 2); or included parts of other estates (Options 1 and 2), as discussed in paragraphs 32 and 40; and
 - the proposed curtilage extension would not constrain development on the site as there are permissible uses listed in the Campbelltown LEP, as approved by the Joint Regional Panel, subject to obtaining approval from the Heritage Council of NSW, as discussed in paragraphs 26 and 41.

Commission's recommendations as to how the submissions should be dealt with.

46. Based on the findings above, the Commission Panel recommends that the Minister should give consideration to all of the submissions received by the Heritage Council of NSW and by the Commission during this review. In particular, but without limiting the consideration of those submissions, the Minister should assess those submissions in the context of the debate as to how the recommended curtilage extension would advance heritage values having regard to the broader scenic, cultural and landscape values of Varroville.



Prof Helen Lochhead (Chair)
Member of the Commission



Wendy Lewin
Member of the Commission