



6 November 2019

Professor Mary O'Kane
Chair, Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

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

Dear Professor O'Kane:

Re: Crown Cemetery Development Varroville – A085/18

I write to you on behalf of the Scenic Hills Association to seek your response, as Chair of the Independent Planning Commission ('the Commission'), to concerns about the integrity of the process that was followed by the Commission in determining the Varroville Cemetery Development Application ('DA') of the Catholic Metropolitan Cemeteries Trust ('the CMCT').

I am sure you are aware of the community-wide dismay in response to the above decision. If not, you can find much of the media on our website: <http://www.scenichills.org.au/issues--cemetery.html>. Whatever merits the Commission may claim for its decision, the community response shows that the Commission failed to deliver a critical part of its mission on its website and we cannot let this lie:

'We will build the community's confidence and trust in the Commission's independence by ensuring our processes are open and transparent, and encouraging and promoting greater community participation throughout the assessment and determination process.'

The quality of the decision

The DA patently did *not* comply with local or regional planning, and was flawed on many other counts which we believe we could conclusively demonstrate in a fair and rigorous review; but as you know the Crown status of the application means we are unable to challenge the merit of the decision in the Land and Environment Court. This is unfortunate for all parties. The Independent Commission against Corruption advised in 2012 (*Anti-corruption Safeguards and the NSW Planning System February 2012*):

'Merit appeals provide a safeguard against biased decision-making by consent authorities and enhance the accountability of these authorities. The extension of third party merit appeals acts as a disincentive for corrupt decision-making by consent authorities.'

The discretions available to the Commission require it ensure it is above reproach if it is to fulfil its mission. We do not know what scope you have to address this community's concerns regarding the merit of the decision but we are open to any positive actions on the Commission's part.

Problems of process

The widespread view in the community that the decision had 'already been made' has not been helped by the Commission's management of this project. We have specific concerns about the actual independence of the Commission and its commitment to fairness and transparency in all matters. We thus seek your response and action regarding the following (which is not comprehensive):

1. The Secretariat (Dennis Lee) confirmed to us that sometime in June 2019 senior executives of the CMCT (CEO Peter O'Meara, the Chair Greg Smith) met with you regarding its two cemetery DAs (Wallacia and Varroville). Mr Lee advised us that although the Commission's legal counsel was present, and that any discussion of the specifics of the projects would be 'discounted', there were NO transcripts or notes available from that meeting. It simply does not pass scrutiny that the Commission would meet with the proponent 'behind closed doors' on such a controversial and sensitive matter before the decision had been made.

We further note that a year earlier on 12 July 2018 we wrote to you requesting a meeting with our Association which was denied.

2. We are aware that the Panel Chair, Ms Dianne Leeson, on 19 February and on/around the 21st February 2019 had lengthy phone conversations with two members of the community, being respectively the President of the Wallacia Progress Association (where the Panel was concurrently assessing another CMCT cemetery and subsequently refused it) and with the Prioress of the Carmel of Mary and Joseph at Varroville. No one else was privy to those conversations (that we know of) and no transcripts or notes were published by the Commission. We do not know whether the Panel Chair had conversations with other parties, but these procedural breaches suggest others were possible.
3. There have been ongoing problems with correspondence not being published in relation to this matter (similarly in the Commission's prior Varro Ville curtilage review). We note, for example, that EDONSW wrote to the Commission on behalf of the owners of Varro Ville Homestead (of which I am one) on 31 May 2019 and received a response on 12 June 2019. Neither letter was posted to the website leaving us wondering whether the stated undertakings would be adhered to (see next point), and what other correspondence was missing.
4. The Commission's above response to EDONSW of 12 June 2019 indicated that the Panel would consider the *Report* of the Commission's review of the curtilage expansion for Varro Ville Homestead. We were grateful for the Commission's decision to include this document in its determination of the DA; but were then dismayed to see in the Commission's Direction of 15 July 2019 that it took into account '*all materials considered* (the **Curtilage Review**)'. The Panel for the DA thus appeared to review the other Panel's decision when it did not have that Panel's expertise. It also brought into play numerous problems of process in the conduct of that review (documented in our correspondence to the Commission and in the Hearing) that now infect the DA determination.

5. In our submission of 4 April 2019 we raised numerous concerns regarding the Public Hearing held on 25 March 2019 for which we have not received a response and which we reiterate here:
- a. It was scheduled for the first business day after the State election creating cynicism regarding its timing, including that the distraction of the election interfered with notification of the Hearing. This was raised by us and the MP for Macquarie Fields at the Hearing.
 - b. People who work were unable to attend a daytime Hearing. Census data shows that more than 60% of those who work in the Campbelltown Local Government Area travel *out of the area* for work, and Monday was the worst day of the week for anyone in that situation.
 - c. The venue was changed on short and inadequate notice (the Friday before Monday's Hearing), leaving people stranded at the wrong location. People who had already made submissions (including directly to the Commission) did not receive written notification of the change of meeting venue until *the day after* the meeting.
 - d. We would like to know why the Speaker Schedule was reissued *after the closure of registrations* to allow Mr Peter Thomson to speak (and speak *last*) as a supporter of the Cemetery. In particular we would like to know if this was done at the request of the CMCT and why. If the Schedule was to be re-opened it should have been notified publicly and available to all.
 - e. The Panel Chair repeatedly interrupted and then 'gagged' Mr Peter Gibbs, owner of Varro Ville Homestead (my husband) during his presentation at the Hearing. While we and Mr Gibbs concede that he could have presented differently, our concern is that the Panel Chair did not appear to act either consistently or independently in the matter:
 - i. The Chair barred Mr Gibbs from speaking on issues that others were allowed to speak on, including the personal impact of the development and planning matters.
 - ii. The Chair cautioned Mr Gibbs for being 'inflammatory'; in contrast Mr Peter Thomson, the belated entry to the speaker list, was allowed to speak uninterrupted on matters of irrelevance and when using defamatory language ('lies') in relation to the owners of the Homestead (we note this was not recorded in the transcript – see below).
 - iii. The Chair's cautioning of Mr Gibbs immediately followed the intervention of Mr Ben Salon, the lawyer for the CMCT, such that it appeared to be at Mr Salon's direction. Mr Salon tried to interrupt my presentation for the Association, and then Mr Gibbs' presentation *without being cautioned* by the Chair. It was only when he located himself closer to the Chair and spoke directly to her, and when the Chair interrupted Mr Gibbs again, that I and another community member

protested. It is our and others' recollection that the Chair cautioned *us* first and only *then* asked Mr Salon to relocate. We note that Mr Gibbs was stopped from speaking several more times such that it was difficult for him to go on. This gave the appearance of being done to placate Mr Salon acting for the Applicant.


- iv. Supporters for the CMCT were audibly derisive during Ms Elizabeth Pemberton's presentation against the cemetery, again *without being cautioned*. She later complained to the Commission about this.
- v. We note that the transcripts of the Hearing do not support the sequence of the events that many in the community saw and commented on to us in relation to the above. We also note Mr Gibbs' presentation has been redacted (inexplicably in parts); while Mr Thomson's defamatory remarks were simply missing from the transcript. Had they been shown as redactions, the Panel Chair's unequal treatment of the respective presentations would have been explicit.

If the Commission intends to stand by the transcript then we ask that we be given access to the recording of the meeting.

- 6. The site visits were poorly organised, with inadequate notice and different communication to opposite parties regarding who could be present. The notes from the site visit did not reflect what was discussed or the questions asked and answered. The short notice and disparity in communication did not allow us to have a heritage adviser present as the CMCT had been able to do (the same happened at the Commission's curtilage review). The Panel had indicated it would carry out another visit to the Homestead at which we, the owners of the Homestead, had expected to have a heritage expert present. We heard nothing more, thus the proponent was given significant advantage.
- 7. The transcripts of the Commission's meeting with Campbelltown Council showed that the Commission had agreed to allow Council to participate in the development of the Schedule of Conditions if the Panel intended to recommend approval of the DA. We understand that though Council reiterated this in its submission of 3 April, it was not further contacted or involved in the development of these, with undesirable consequences for compliance with local planning.
- 8. Finally we note that there are a number of non-compliances with standard government procedures that undermine the Commission's commitment to transparency, are unprofessional and undermine trust.
 - a. The Commission does not release its transcripts as 'uncorrected proof' to allow speakers to correct their input. At both Varroville Hearings the transcripts were full of errors, were misleading in parts, and open to manipulation or the perception thereof.

- b. The Commission does not abide by the *Government Information (Public Access) Act 2009*, publishing and redacting what it sees fit without allowing affected parties the right of review.
- c. The Secretariat makes file notes in phone conversations on which it clearly relies but it does not agree the accuracy of these notes at the time or subsequently with the opposite party in these conversations (with one exception that I can recall).

In writing to you now, we want to give the Commission the opportunity to address our concerns. We would therefore appreciate your response as soon as possible. Your response will also inform submissions to the current enquiry into the Commission.

Should you wish to meet or speak with us (on the record) I can be contacted by email or 

Yours sincerely



Jacqui Kirkby
Convenor