



1 March 2019

Ms Dianne Leeson
Panel Chair, Crown Cemetery Development Varroville
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

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

Dear Ms Leeson:

Re: Crown Cemetery Development Varroville – procedural concerns

I write to you on behalf of the Scenic Hills Association (SHA) regarding the Varroville cemetery development application ('DA') proposed by the Catholic Metropolitan Cemeteries Trust ('CMCT'). As you know, I am also the owner (with my husband) of state-listed Varro Ville Homestead (SHR #00737) located *in the middle of* the proposed development.

My husband and I recently participated in a review by the Independent Planning Commission ('Commission') of the NSW Heritage Council's recommendation to extend the curtilage of the Homestead ('Review'). During that Review we experienced a number of problems of process that we felt disadvantaged us relative to the CMCT, who had belatedly decided to oppose the extension. We documented our concerns with the Commission, including as recently as last Monday, 25 February.

We have deep concerns that this is now being repeated in the assessment of the CMCT's DA for the same piece of land surrounding the Homestead, affecting all landholders and those in the community who oppose this development.

Site visit

Recently the DA Panel conducted a site visit. Notwithstanding that the request was made at short notice, we provided *one* representative from the SHA, as invited, to attend the visit on the CMCT's land, on the written advice that the CMCT would also have one representative in attendance. Sister Jocelyn Kramer was nominated as our representative because she has wide knowledge of the scientific issues of the site. We were therefore surprised when the CMCT had four representatives on site, two of whom were heritage consultants. We later learned that the primary intention of the visit was to assess the site's heritage. This gave the appearance that the CMCT had privileged information and unbeknown to us was allowed to bring its consultants. Had the same information and opportunity been offered to us, I would have accompanied Sister Jocelyn to cover the heritage issues on the first part of the site visit, and/or, if possible on such short notice, made one of our heritage consultants available.



This continues an apparent bias in the conduct of these projects that pervaded the curtilage Review, allowing the CMCT to blindsides those most affected by its proposed use of the land and to dominate proceedings by weight of numbers, claimed 'experts' and lawyers.

Meetings

We note that the SHA, and my husband and I have separately requested meetings with the Commission. We have been told that we can have our say, along with the rest of the public at a Public Meeting where we will have but one chance to make our case either orally or in writing. Members of the SHA are some of the most affected landholders, and my husband and I are clearly not ordinary members of the public in this matter. Given the extensive briefing allowed the CMCT and its advisers, we experience this as significantly disadvantaging us in making our case. We ask that the Panel, at the very least, arrange a further site visit with us, after the Public Hearing, at which a heritage consultant from the *Curtilage Study Varro Ville May 2016 by Orwell & Peter Phillips* can also be present.

Erroneous material on Commission website

Claims made to Sister Jocelyn at the site meeting by representatives of the CMCT, suggest that there is a 'new DA' that is different from that which appears on the Commission's website. For example the proposed crypts and the road running between Varro Ville Homestead and its outbuildings were claimed to have been removed. The DA Assessment Report supports claims that there are revised plans and references the Applicant's Supplementary Response to Submissions ('RTS'). However the documents currently on the Commission's website, including the Supplementary RTS Landscape Plans, do not support this. Further, while the overheads accompanying the transcript of the Commission's meeting with the CMCT 'suggest' there have been changes (with areas circled in red), these are unclear and not formalised anywhere that we can see.

It is deeply concerning that the Commission has announced a public meeting while the formal documents on the website either do not reflect the current DA as claimed by the CMCT's representatives or only do so in a confusing and inconsistent way. It is hard to see how the Public Meeting can have any validity unless it is clear what people are responding to.

The mismatch between the CMCT's consultants' claims and website documents also has the potential to produce a further perversion of process if there is any uncertainty about what is actually approved (or not) by the Commission when it makes its decision. There is enormous room for slippage in the project, particularly as it pertains to all stages of the project over time.

Adding to the above concerns, we note that infrastructure identified as essential to the running of a cemetery during the rezoning phase (including for SafeWork compliance) does not appear to be part of the current documentation, undermining the reliability of the Visual Impact Assessment. Similarly, excavation works carried out on the site by consultants for the CMCT (subsequent to Campbelltown Council's letter of 29 May 2018 requesting further information), apparently relating to the suitability of the soil for grave digging and land stability, do not appear in any new report that we can identify. We would be grateful if the Commission could investigate these issues and advise.

Submissions

Assuming the DA can be corrected in time, the issue of *who* can make a submission and *when* needs to be balanced fairly and communicated to everyone equally and in a timely manner.

Our experience as owners of Varro Ville Homestead during the curtilage expansion Review found us constantly blindsided by the CMCT which appeared to have privileged information regarding the making of submissions, both at the Hearing and subsequently. This effectively gave it a second bite of the cherry to undermine the overwhelming support the curtilage expansion received during the original Public Exhibition of it.

We are now concerned about the DA in this regard. It is our understanding that, if this DA had proceeded as planned through the Sydney Western City Planning Panel ('SWCPP'), then only those who had already made submissions could appear at the Hearing. The DA was taken away from the SWCPP before it could hold a hearing. Noting that, during the DA Public Exhibition, submissions that were *against* it outnumbered those *for* it, it could appear that the decision of the Commission to open it up to 'all and sundry' has once again given the CMCT a second bite of the cherry to garner support for its DA.

We are further concerned that the CMCT has 'form' in canvassing those who rely on it for business or burial space to support this DA and it will be able to use its power, influence and money to weight the process in its favour. There can be no procedural fairness for the community unless provision is made to counter-balance this.

Since the CMCT and its advisors have already had the opportunity to provide a detailed briefing to the Commission, we thus ask that the Public Meeting be weighted to others and that the meeting is balanced and fair. We feel, for example, given that the issue is not about *burial space capacity* but the *suitability of this site* for purpose, and that only about *a third* of the public seek burial anyway, those speaking should be weighted accordingly and sufficient time allocated to local residents and those involved with heritage and environment. We also ask that those who present at the Hearing have the right to make further written submissions in response to issues that come up at the Hearing.

Curtilage expansion for Varro Ville Homestead

The Commission's recent review of a curtilage expansion for the Homestead has procedural and game-changing implications for the DA. I wrote as the owner of Varro Ville Homestead to the Chair of the Commission in this matter and she responded this week clearly delegating the decision to the DA Panel.

If there is to be any procedural fairness and adherence to proper process, the DA assessment should be *postponed* until such time as the curtilage is decided. If the Minister decides to *not* approve the recommended curtilage then this may be subject to further action via the courts. To proceed before the curtilage expansion process is concluded continues a perversion of process that started under the current government and does so during the Pre-election Period, and into the Caretaker Period leading up to the NSW 2019 Election. The guidance provided by the Office of Premier and Cabinet for the NSW 2019 Elections states:



'Whilst agencies are concerned at all times to avoid partisanship, the circumstances of an election campaign require special attention to the need to ensure the impartiality and apolitical nature of the public service, and its continuing ability to serve whatever government is elected.'

Irrespective of the Commission's advice to the Heritage Minister in this matter, the curtilage should have been approved and gazetted in 2017 when it had all landholders' agreement and there were no impediments to its approval under the *Heritage Act 1977*. The recent Review was conducted 'out of time', continuing a breach of the Heritage Act by the Minister that has not only further delayed the curtilage expansion while the DA progresses through the system, but has effectively given the CMCT the opportunity to change its position '*after the fact*', reversing commitments it made during the rezoning and later during the legitimate curtilage expansion process - with the apparent purpose of ensuring there are no impediments to its DA from a state heritage listing (this conclusion is supported by statements made by the CMCT and its advisers during the Review).

This has limited the Heritage Council's statutory role in the DA assessment to protecting the only part of Varro Ville currently on the State Heritage Register ('**SHR**'), being the Homestead. Unfortunately, as our curtilage study shows, it cannot succeed when the Homestead's SHR status depends on elements in the surrounding landscape, the subject of this DA, which according to the DA's Heritage Impact Statement, will simply be recorded before being destroyed to make way for the cemetery. The whole purpose of the curtilage expansion was to ensure that the SHR listing captured all the state heritage values that the property holds and ensure that identified state heritage was not negatively impacted by any ongoing use of the land. We note that an expansion nomination has been pending since 2000, long before any current affected landholder bought their land, and long before the recent spot rezoning to permit cemeteries. Further, the Office of Environment and Heritage, as delegate for NSW Heritage Council, had requested in 2015/2016 (submission to the South West Joint Regional Planning Panel) that the rezoning not proceed until the curtilage expansion process had been completed as:

'...reports supporting the Planning Proposal such as the draft CMP and Visual Impact Study and Design Master Plan may all need revision and alteration as a result of cross-comparison with this study.'

Use of Curtilage Study Varro Ville May 2016 by Orwell and Peter Phillips (curtilage study)

A related concern is that the Department of Planning and Environment ('**DoPE**'), in its assessment of the DA for the Commission, has ignored the curtilage study that was commissioned by my husband and me to support the curtilage expansion nomination for Varro Ville Homestead and Estate, even though it clearly supersedes the CMCT's own heritage study (Conservation Management Plan ('**CMP**')) and has been vetted and supported as such by the NSW Heritage Council - a position that the Heritage Council re-affirmed during the Commission's Review. As discussed during the site visit, the exclusion of our study on grounds of 'confidentiality' is in error, as follows:

1. We wrote to the Commission asking for our study to be kept confidential until such time as the curtilage expansion process had concluded, but *not* to exclude it as part of the DA assessment. It was up to the Commission to contact us if this caused a problem. No further correspondence in this matter was received in relation to the DA prior to the completion of the assessment.

[REDACTED]

2. We also included a letter with our study, when we submitted it during the DA Public Exhibition last year, stating that we wanted it taken into account as part of our submission and that, if the copyright issues associated with it caused any problems, we were to be contacted. We received no contact during the DA assessment from either the Commission or the DoPE;
3. Campbelltown City Council had initial carriage of the DA assessment. It accepted our study as part of our DA submission and, without further contact, made the study available via its offices as 'open access information' for DAs under the *Government Information (Public Access) Act 2009* ('GIPA' Act) and *Government Information (Public Access) Regulations 2018* on a 'view only' basis. Despite our expressed concerns for the heritage protection of the land to which it pertains, the Applicant's lawyer was given access to it on 22 November 2018.

Thus the comment in the Assessment Report (p.20) that *'the document was not made available to the Applicant upon request'* (as a reason to exclude it) is not true. It was made available by Council, but also we did not receive any request from the Commission or the DoPE.

It is deeply concerning that the DoPE has already concluded its assessment without taking our submission fully into account or bothering to contact us regarding the study's inclusion, instead giving preference to a CMP that it questionably 'endorsed' during the rezoning of the land by embedding it into the *Campbelltown Local Environment Plan 2015*. In doing this it clearly acted outside its remit as we understand that the only part of government that can endorse a CMP is the NSW Heritage Council, and it had declined to endorse the CMCT's (Urbis) CMP at the time consistent with its own procedures that the land must first be on the SHR. The use of the CMP in this way continues a perversion of process that can only be corrected by considering our study as an update on the CMP's information base, noting that the CMP also permits this (Policy 9). It follows that a new or substantially revised CMP will then be required, as previously flagged by the Heritage Council, which it reiterated during the curtilage Review.

We acknowledge the Panel's subsequent willingness to consider the study and a separate letter will be sent to the Commission on the availability of the study for the DA assessment.

In conclusion

We feel the Commission is rushing this process before critical issues have been sorted out and this undermines the professional assessment of the DA. This in turn raises questions of procedural fairness for those most affected by the proposed cemetery, and whether this is in the public interest given the identified heritage significance of the site. There seems to be no good reason why, after six years since the launch of this project, the Commission would now want to rush it to a flawed conclusion. We hope the Commission will consider the issues we have raised.

Yours sincerely



Jacqui Kirkby

Convenor