

VARRO VILLE



8 February 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: Interrelationship of two projects before the Independent Planning Commission: (1) Crown Cemetery Development Varroville – A085/18 & (2) Varro Ville Curtilage Expansion Review.

We write to you on a matter of urgency as the owners of state-listed Varro Ville Homestead (SHR #00737).

As you know the Independent Planning Commission (**Commission**) is considering two projects under two different panels which are interrelated and which affect us and the public deeply being: the *Crown Cemetery Development Varroville – A085/18 (DA)* and the *Varro Ville Curtilage Expansion Review*.

Our prior attempts to raise the interrelationship of the two projects with the respective panels have been deflected on the basis that the panels operate independently of each other. We thus wish to raise with you as the Chair of the Commission the importance of sequencing these two projects based on their interrelationship and the need for the Commission to be seen to be following proper process. We have previously written to the respective Ministers for Planning and Heritage on this matter and copied the Commission. In their response to us and to questions from our MP (Macquarie Fields), the Ministers have formally indicated that the burden of responsibility for this matter now resides with the Commission. I thus reiterate our concerns below.

The curtilage expansion under review by the Commission includes much of the land that is the subject of the Varroville Cemetery DA and is a critical consideration in the DA assessment. The progression of this matter through the planning system to this point, where the two elements - heritage versus cemetery development – are vying for legitimacy, is littered with problems of process destroying our and the wider community’s confidence in the system. The expansion’s listing *must* be decided by the Heritage Minister, in accordance with the *Heritage Act 1977*, with or without the advice of the Commission, *before* the DA is assessed if we and the rest of the community are to have any confidence left in the system and the Commission’s role in it. The relevant facts in this are:

1. The curtilage expansion’s nomination to the State Heritage Register (**SHR**) preceded both the land’s ‘spot’ rezoning to permit ‘cemeteries’ (lodged 9 September 2013 and made 17 February 2017) and the DA (lodged 17 October 2017).

The curtilage expansion was first nominated in 2000 – nineteen years ago - and was pending at the time that all affected landowners bought their land: my husband and I bought in April 2006 and the CMCT in January 2016 (apparently exercising a prior option on the land from 2013). On 8 September 2014, at the direction of the then Heritage Minister (Rob Stokes), it was brought forward for investigation and, in the absence of any action by the CMCT to progress it, we re-nominated it on 23 May 2016 accompanied by a curtilage study part-funded by a heritage grant from the Heritage Council of NSW (**NSWHC**). Both the CMCT and the Department of Planning & Environment (**DOPE**) were aware of this when they questionably proceeded with the rezoning.

2. Common sense and proper practice dictates that the state heritage significance of a property is determined first and any development subsequently assessed for its impact on the identified significance. The intention of the curtilage expansion was to correct an error in the original 1993 Permanent Conservation Order over Varro Ville Homestead and its garden that left many of the elements contributing to its state significance outside its SHR boundary and in separate ownership. The NSW Office of Environment and Heritage (**OEH**), as delegate for the NSWHC, objected to the CMCT's rezoning application writing to the South West Joint Regional Planning Panel (**SWJRPP**):

'The Heritage Division has awarded Ms Jacqui Kirkby a heritage grant to prepare a Heritage and Curtilage Study for Varroville. The findings of this study are due but yet to be received. These findings are considered to be crucial in determining the appropriate curtilage of the Varroville House [sic] and any Planning Proposal should not proceed before these findings are available. The 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.'

The SWJRPP and the DOPE, the latter as delegate for the Planning Minister, ignored this request and rezoned the land (166-176 St Andrews Road, Varroville, NSW) to permit cemeteries as an *additional* land use within the Campbelltown Local Environment Plan 2015 (**CLEP15**), with development subject to *consent* and a CMCT Conservation Management Plan (**CMP**) based on outdated information embedded in the CLEP15 that the NSWHC had declined to endorse. The DOPE was clearly acting outside its remit when overrode the NSWHC by including it in the CLEP15. The rezoning was highly controversial in both the local and heritage communities – it was opposed not only by the NSWHC but by 12/15 local councillors (from both sides of politics), the relevant state and federal MPs, adjoining landowners (notably the Carmelite community of nuns and friars and us as the owners of state-listed Varro Ville Homestead) and by state heritage bodies, the National Trust of Australia (NSW) and the Australian Garden History Society (NSW). Other heritage organisations - the Royal Australian Historical Society and Historic Houses Association – have now joined them in supporting the curtilage expansion and its revised statements of significance.

3. The NSWHC finally resolved to recommend the expansion's listing to the Heritage Minister on 28 September 2017 *prior to the DA's lodgement with Campbelltown City Council on 17 October 2017*, and briefed the Minister on this on 31 October 2017. Under s.34 (1) of the *Heritage Act 1977*, the deadline for the Minister's deciding the expansion or referring it to the Commission, was *mid-*



large powerful developer and an entity of the Sydney Catholic Archdiocese.¹ The Commission's continuation of that process implicates it similarly.

8. The balance of public interest in this case adds weight to the proper and legal consideration of the curtilage expansion *first*. The conservation of the state's heritage (as identified by the government body endowed with the responsibility for doing this - being the NSWHC, *not* the Department of Planning), *versus* a minority cultural practice of burial (preferred by a third of the population) that can be carried out on other less sensitive Crown land on Sydney's outer rim - noting that Sydney's South West is not even a preferred strategic location for cemeteries identified by Cemeteries and Crematoria NSW, the statutory body set up to oversee the industry².

We urge the Commission to defer the assessment of the Varroville Cemetery DA until the curtilage expansion for Varroville has been settled. Should the DA be decided before the curtilage expansion is legally decided under the Heritage Act, it would call into question the role of the Commission's Varro Ville Curtilage Expansion Review in this process and significantly undermine the perception of the Commission's independence from powerful vested interests and inappropriate Ministerial interference in the planning process.

Yours sincerely



For: Jacqui Kirkby and Peter Gibbs

¹ The above perception is aggravated by the government's appointment of the CMCT's heritage consultant, Mr Stephen Davies, to the NSWHC in 2014 and then as its next Chair during the progress of this matter through the NSWHC. Mr Davies was not able to participate in any matters pertaining to Varro Ville at the NSWHC but his role as Chair was inappropriately used by the Department of Planning (in its report to the SWJRPP) to justify choosing his opinion over that of our consultants during the rezoning process.

² See p.39: https://www.industry.nsw.gov.au/data/assets/pdf_file/0014/143402/CCNSW-Metropolitan-Sydney-Cemetery-Capacity-Report.pdf