



1 November 2018

The Hon. Anthony Roberts MP
Minister for Planning
GPO Box 5341
SYDNEY NSW 2001

Sent via website: www.nsw.gov.au/your-government/ministers/minister-for-planning-minister-for-housing-and-special-minister-of-state/

Dear Minister:

Re: Role of the Independent Planning Commission in the Crown Cemetery Development Varroville (A085/18) AND the Heritage Minister's subsequent referral to the same: 'Varroville: Request for advice on proposed listing on State Heritage Register'

I write again on behalf of the Scenic Hills Association and as an owner of Varro Ville Homestead located in the middle of the proposed cemetery land. My husband and I are also the recent nominators of the Varroville curtilage expansion on the State Heritage Register (SHR) – noting that there was a deferred nomination in existence since 2000, lodged prior to all current landowners purchasing the affected land.

We wrote to you on 19 October 2018, and previously on 10 July and 21 August, raising concerns about unclear processes of the Independent Planning Commission of NSW (IPCN) and other matters that lie outside the delegation of your functions to the IPCN. One concern was that the Heritage Minister, in breach of s.34 of the *Heritage Act 1977*, had not made the decision to expand Varro Ville's curtilage on the SHR within 14 days of receiving a recommendation from the Heritage Council of NSW (NSWHC).

The IPCN contacted me on Tuesday, 30 October 2018, to advise that it had received a request from the Heritage Minister for advice on the curtilage expansion on 12 October 2018 and that it had only listed it on its website that morning along with all materials received. I advised the IPCN Secretariat that the listing of the materials was potentially in breach of the *Government Information (Public Access) Act 2009 (GIPAA)*. The material was subsequently removed from the website pending advice.

We wish to advise you of two ongoing concerns that affect our perceptions of the planning process:

Firstly, the request for advice continues the Minister's breach of s.34 of the Act because any referral to the IPCN had to be made within 14 days of receiving the recommendation to list by the NSWHC. While we do not have a problem with it otherwise being referred to the IPCN, information recently sourced under the GIPAA supports our ongoing concern that the Minister's referral could inappropriately weight the process in favour of land developers, in particular the Catholic Metropolitan Cemeteries Trust (CMCT). The belated referral coincides with an apparent change of stance by the CMCT confirming (as we had suspected) that it did not support the conservation of the heritage of the site if it interfered with its plans to put a cemetery on the land. If this referral to the IPCN gives the CMCT another 'bite at the cherry' to revise its prior stance – a stance that it had used to persuade planning authorities to rezone the site to permit 'cemeteries' – and if this referral is used to further delay the curtilage expansion

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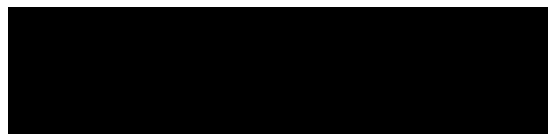
decision allowing the Varroville cemetery development application (DA) to be decided first, then this would greatly increase perceptions of large developers' inappropriate influence in the planning process.

We also reiterate our concerns that the IPCN does not yet have clear procedures to deal with matters outside its major role of deciding State Significant projects. The publication of materials yesterday in breach of the GIPAA is a deep concern and we will be writing to the IPCN specifically on this matter. I do not feel that this is the fault of the IPCN Secretariat with most of the staff new to their roles, noting that they acted to quickly correct the situation. However we are deeply concerned, for example, at the publication of names and contact details of all those who made submissions supporting the curtilage expansion. We are concerned about potential bullying in this matter, as documented in our submission during the rezoning. Recently, adjoining landowners who oppose the cemetery received letters from the CMCT's lawyers containing unsubstantiated allegations of trespass. I attach a copy of the letter and the article that appeared in the local newspaper to which the letter pertains. A letter was sent separately to me, my husband, the Carmelite nuns, the Carmelite Friars (monasteries adjoining the cemetery), our local MP (Anoulack Chanthivong) and the local newspaper. We understand that the farmer leasing the cemetery land may also be facing eviction relating to the photograph that appeared in the paper. This is deeply disturbing coming as it does from an entity, not only of the Sydney Catholic Archdiocese, but one acting for the Crown. We have had further cause to be concerned that the CMCT is not treating the heritage of the site respectfully and have had correspondence with the Heritage Division in this matter.

For all these reasons we do not want certain confidential information relating to the curtilage expansion process made public *at this point in time* and are concerned if the Heritage Minister's referral to the IPCN seeks to avoid the operation of the GIPAA to the benefit of various developers/land speculators including, but not limited to the CMCT. In particular my husband and I have opposed the publication of a curtilage study commissioned by us to support our re-nomination of a curtilage expansion for Varro Ville. We object primarily on the basis that it identifies elements in the landscape that are critical to Varro Ville's state significance that can be destroyed without penalty by those seeking to develop the land. The correct process for dealing with these kinds of controversial assessments is for the Minister to make an Interim Heritage Order (IHO) over the land proposed for listing (at least the 'minimum curtilage' proposed in our study) until such time as the matter is resolved. Under an IHO, information, including our curtilage study, could be made available to all parties for a fairer, more transparent process. It is the intervention by successive Heritage Ministers, contrary to the Heritage Act and potentially breaching the Ministerial Code of Conduct in one instance, to favour development, along with other actions of the Department of Planning under Ministerial delegation, which has created the current situation.

As previously advised, we consider that this goes to *whole of government* integrity and requires a *whole of government* response. We have copied the Heritage Minister on this letter.

Yours sincerely



Jacqui Kirkby
Convenor

Cc NSW Heritage Minister, the Hon. Gabrielle Upton; IPCN Secretariat; Deputy Secretary Mr Marcus Ray.