

13 November 2018

Your ref:
Our ref: BMSS/AJWS/3348123

Professor Mary O'Kane
Independent Planning Commission
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Dear Professor O'Kane

**Crown Development Application for a Cemetery at Varroville
Ministerial Request for Advice on Proposed Varroville Curtilage Heritage Listing**

We act for the Catholic Metropolitan Cemeteries Trust (our '**Client**').

We write on behalf of our Client with respect to the referral to the Independent Planning Commission (the '**IPC**') of each of the following:

- a) our Client's Crown Development Application for a cemetery and parklands at 166-176 St Andrews Road, Varroville NSW, and
- b) the Ministerial request for advice on the proposed extension to the curtilage around the state heritage listed item Varroville (SHR00737) which is proposed to extend across our Client's land the subject of the Development Application mentioned above at 166 – 176 St Andrews Road, Varroville NSW.

Our Client wishes to bring to the IPC's attention a number of critical issues related to the consideration of these matters by the IPC, and request formally that the Crown Development Application matter be considered **ahead** of the proposed extension to the curtilage around Varroville or, in the alternative, the two matters be considered **together**. For reasons that will become apparent, in our view it is important that the proposed extension to the curtilage around Varroville **not** be considered ahead of the Crown Development Application.

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Background

Crown Development Application for a cemetery and parklands at 166 - 177 St Andrews Road, Varroville

1. Our client is the registered proprietor of Lot B in DP370979, Lot 22 in DP564065 and Lot 1 in DP218016, also known as 166-176 St Andrews Road, Varroville NSW (the '**Site**').
2. On or around October 2017 our client lodged a Crown Development Application to Campbelltown Council (3293/2017/DA-C) seeking approval for the development and use of the site as a 'cemetery with associated facilities' (the '**Crown DA**').
3. On 4 June 2018 the Hon Anthony Roberts MP referred our client's Crown DA to the IPC for assessment pursuant to Section 2.4 of the *Environment Planning and Assessment Act 1979* (NSW) (the '**EP&A Act**'), which is referred to by the IPC as '*Crown Cemetery Development Varroville*' (the '**Cemetery Project**').

Ministerial request for advice on the proposed extension to the curtilage around the state heritage listed item Varroville (SHR00737)

4. On or around 28 September 2017 the NSW Heritage Council made a recommendation to the NSW Heritage Minister to list a proposed extension to the curtilage around the state heritage listed item known as 'Varroville Estate' (SHR No. 00737), which is located on Lot 21 in DP 564065, also known as 196 St Andrews Rd, and which is in the vicinity of the Site.
5. On 12 October 2018 the Hon Gabrielle Upton MP referred the NSW Heritage Council's recommendation to the IPC for review, pursuant to Section 34(1)(b) of the *Heritage Act 1977* (NSW) (the '**Heritage Act**'), which is referred to by the IPC as '*Varroville: Request for advice on proposed listing on State Heritage Register*' (the '**Heritage Project**').

Geographic Proximity

6. As can be seen in the extract from the Heritage Council of NSW's map detailing the proposed extension to the curtilage around the heritage item Varroville below at Figure 1:
 - 6.1. Varroville is situated on a separate battle axe allotment within the Site; and
 - 6.2. the proposed extension to the curtilage around Varroville, marked with a red outline, extends across a large portion of the Site which is the subject of the Crown DA.

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Figure 1 – Extract from Heritage Council of NSW Map detailing proposed extension of curtilage around Varroville

7. The consequence of this close geographic proximity is that the Cemetery Project and the Heritage Project are **very closely related**.

IPC Consideration of the Cemetery Project and the Heritage Project

8. As can be seen above, the Cemetery Project and the Heritage Project are very closely related, however it is our view that the Cemetery Project should be reviewed by the IPC ahead of, and in the absence of, the Heritage Project for the following reasons:

- 8.1. The Cemetery Project is a matter of high public interest, noting the correspondence from the Hon Anthony Roberts MP dated 4 June 2018 states:

“Current cemetery capacity in Sydney is expected to be exhausted by 2051 it is important that the assessment and determination of [this] proposal is not unnecessarily delayed.”

- 8.2. The Site has specifically been planned and designated for use as a cemetery by clause 7.8A of the *Campbelltown Local Environment Plan 2015* (the ‘LEP’) which provides as follows:

7.8A Use of certain land at 166–176 St Andrews Road, Varroville

(1) This clause applies to land at 166–176 St Andrews Road, Varroville, being Lot 1, DP 218016, Lot B, DP 370979 and Lot 22, DP 564065.

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(2) Development for the purposes of a cemetery is permitted with development consent, but only if the consent authority is satisfied that:

(a) the development will complement the landscape and scenic quality of the site, particularly when viewed from surrounding areas including the Campbelltown urban area, "Varro Ville" (homestead group at 196 St Andrews Road, Varroville) and the Hume Highway, and

(b) the development will not adversely affect the visual or physical qualities of the site, and

(c) the development will cause minimal effect on the existing landform and landscape, and

(d) the site will also include a publicly accessible passive recreation space, and

(e) the development will be carried out in accordance with the conservation management plan titled "Conservation Management Plan, Varroville Estate: 166–176 St Andrews Road, Varroville", dated October 2015, and the supplementary information relating to the plan provided by letter by Urbis on 22 August 2016, published on the website of the Department of Planning and Environment.

Note. Clause 7.7 (3) restricts development on part of the land to which this clause applies to development for the purposes of a lawn cemetery.

9. The amendment of the *LEP* which resulted in the insertion of clause 7.8A on 20 February 2017 followed the unanimous determination by the Sydney West Joint Regional Planning Panel (the 'JRPP') on 9 September 2016 that the *LEP* should be amended to permit the Site to be used as a cemetery. Relevantly, the reasons for the determination included that:

9.1. the JRPP is satisfied that there is sufficient demand for further cemetery space to serve the needs of both the Campbelltown LGA and the Greater Macarthur area now and into the future and that provision of more affordable burial plots through a new public cemetery will be of public benefit;

9.2. the JRPP believes that the proposed proposal has been specifically designed such that it will not harm the area's visual, cultural and environmental qualities and will act to protect these values in perpetuity;

9.3. the JRPP considers the proposal includes particular statutory provisions which will ensure that future development occurs in an appropriate manner and, particularly, that such development must be consistent with the approved Conservation Management Plan;

9.4. in the opinion of the JRPP, the proposal will generally have no adverse impacts on adjoining uses nor on the natural and built environment; and

9.5. the JRPP is satisfied with the analysis of the heritage impact and finds it satisfactory.

10. With the planned use of the Site as a cemetery clearly planned for and set out in the *LEP*,

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the importance of considering the Cemetery Project ahead of, and in the absence of the Heritage Project, becomes apparent when the provisions of section 32(1)(c) and (d) of the *Heritage Act* are considered. Section 32 of the *Heritage Act* provides as follows:

32 Minister can direct listing on State Heritage Register

(1) The Minister may direct the listing on the State Heritage Register of a place, building, work, relic, moveable object or precinct that the Minister considers is of State heritage significance, but only if the Heritage Council has recommended that the item be listed and the Minister has considered the following: ...

... (c) whether the listing would render the item incapable of reasonable or economic use,

(d) whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated. ...

... (3) A listing in respect of an item can be expressed to apply (and if so expressed does apply) to:

(a) if the item is a building—the curtilage of that building or the site of that building, being the curtilage or site specified or described in the listing, or

(b) if the item is a work or a relic that is attached to or forms part of land—the site specified or described in the listing of that work or relic.

11. As can be seen, a decision to list the proposed extension to the Varroville curtilage can only be lawfully made **after** consideration of:
 - 11.1. whether the listing would render the item, which includes the land that forms a curtilage by virtue of section 32(3)(a) of the *Heritage Act*, incapable of reasonable or economic use; and
 - 11.2. whether the listing would cause undue financial hardship to the owner, mortgagee or lessee of the item or the land on which the item is situated, which again by virtue of section 32(3)(a) of the *Heritage Act* includes the land that forms part of a curtilage.
12. An extension of the Varroville curtilage across the Site has the potential to **prevent or considerably reduce the capacity** of the Site for its planned and *LEP* designated purpose as a cemetery thereby rendering the Site incapable of reasonable or economic use. This would be **contrary** to, and **undermine**, the recent rezoning review process making it otiose.
13. This in turn would cause undue financial hardship to our Client who owns the Site which was purchased for the sole purpose of developing the Site for its planned and *LEP* designated use as a cemetery which was the result of an extensive *LEP* amendment process. That purpose is pursued with the Crown DA.
14. Further, the Conservation Management Plan mentioned in clause 7.8A(2)(e) of the *LEP* (the '**CMP**'), which the use of the Site as a cemetery **must be carried out in accordance with**,

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specifically contemplates in section 8.3.2 and following the use of the Site as a cemetery in the context of a lesser extension to the Varroville curtilage than which is proposed in the Heritage Project.

15. In that light and given the planned and designated use of the Site as a cemetery in the *LEP*, it is our view that proper consideration of the Heritage Project by the IPC could only be made **after** the IPC's assessment of the Cemetery Project and determination of the Crown DA. Only then can the true impact of the listing of an extended curtilage across the Site be known and given proper consideration.
16. If the IPC is not minded to consider the Cemetery Project ahead of the Heritage Project, an alternative course would be to consider the Cemetery Project and Heritage Projects together. In our view this would be an appropriate alternative given that the Heritage Project is closely related to the Cemetery Project which of course is a matter of high public importance.
17. This approach would enable the projects to be considered holistically with competing interests and matters of public interest appropriately balanced. In addition, the measures detailed in the CMP on the use of the Site as a cemetery in the context of an extended Varroville curtilage could be more capably assessed and incorporated in any IPC assessment of the two projects.
18. Either of the above suggestions in relation to the consideration of the Cemetery Project and Heritage Project in our view **is preferable** to the scenario in which the Heritage Project is considered by the IPC ahead of, and in isolation from, the Cemetery Project.
19. If the projects are considered in isolation, there is a **very real risk** the Heritage Project could see the Site sterilised, or reduced in its capacity for use as a cemetery as planned for and designated by the *LEP* which as detailed above is matter of high public importance. This would thwart the planned purpose and *LEP* designation of the Site for use as a cemetery and leave the Campbelltown LGA, the Greater Macarthur area and Sydney without sufficient cemetery capacity.

Submissions and Appearance before the IPC

20. Given the interests of our Client as landowner and proponent with respect to the Crown DA and Cemetery Project, we respectfully request that the IPC confirm our Client will be permitted to make submissions and attend to address the IPC when its panel convenes to review this project.

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21. Likewise and with the interest of our Client as an affected landowner with respect to the Heritage Project, across who's land the Varroville curtilage is proposed to extend, we again respectfully request that the IPC confirm our Client will be permitted make submissions and attend to address the IPC when its panel convenes to review this project. We understand section 36 of the *Heritage Act* provides for this appearance.

Conclusion

22. For the reasons given above, in our view the Cemetery Project should be considered ahead of the Heritage Project due to the planned and specific designation of the Site for use as a cemetery by the *LEP*, the high public interest in the Cemetery Project and the potential for the Heritage project to sterilise or considerably reduce the capacity of the Site for its planned and *LEP* designated use as a cemetery.

23. In the alternative, the Cemetery Project and Heritage Project could be considered together. This would be appropriate given the close relationship between the two projects. Further, the suggested scenarios for consideration of the two projects are preferable to a consideration by the IPC of the Heritage Project ahead of, and in isolation from, the Cemetery Project which would expose the people of Sydney to the real risk of being without sufficient cemetery capacity.

If you have any questions or require further information, please contact Anthony Whealy on (02) [REDACTED] or Ben Salon on ([REDACTED]) [REDACTED]. Otherwise, we look forward to your response in relation to the matters raised at above at your earliest convenience.

Yours sincerely



Anthony Whealy
Partner
Accredited Specialist - Local Government and Planning

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