



4 April 2019

Independent Planning Commission  
Level 3, 201 Elizabeth Street  
SYDNEY NSW 2000

Sent by email to: [ipcn@ipcn.nsw.gov.au](mailto:ipcn@ipcn.nsw.gov.au)

### ***Further Submission on Varroville Crown Development Application***

I am the Convenor of the Scenic Hills Association ('**Association**') as well as an owner of state listed Varroville Homestead which this cemetery proposal completely surrounds. I write here as the Convenor of the Association. This further submission supplements our presentation of 25 March 2019, submitted in writing on 26 March 2019.

### **Concerns about the Public Meeting and Process**

We have received complaints from the community regarding the Public Meeting of 25 March and the processes around it, making it necessary to raise these in a further submission. These are in addition to the issues outlined in the Association's presentation of 25 March.

Firstly we have received a variety of complaints about the notification of the Public Meeting.

1. Residents in suburbs closest to the proposed cemetery were letter-box dropped during the public consultation that preceded the DA lodgement. Representatives of those communities have told me they were promised a similar notification for a future Public Meeting, but received nothing from either the Commission or Campbelltown Council.
2. People who work were unable to attend a daytime Public Meeting. My attention has been drawn to Census data indicating that more than 60% of those who work in the Campbelltown Local Government Area travel out of the area for work, and that Monday was the worst day of the week for anyone in that situation.
3. People who had already made submissions (including directly to the Commission) only received written notification of the change of meeting venue *the day after* the meeting.

Secondly a number of people raised concerns about Mr Peter Thomson's presentation (which we will address later in this submission). We recognise that Mr Thomson has a right to be heard. However we would like to know why the Speaker Schedule was reissued after the closure of registrations to allow Mr Thomson to speak *last* as an objector. The Commission cannot break its own rules to favour one side and not apply it equally to all without giving rise to issues of partiality. In particular we would like to know if this was done at the request of the Catholic Metropolitan Cemeteries Trust ('**CMCT**').

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Many have also raised concerns, both immediately after the Public Meeting and since by email, about the apparent 'gagging' of Mr Peter Gibbs, owner of Varro Ville Homestead (and my husband) during his presentation at the meeting. Mr Gibbs concedes that he could have taken a different approach to his presentation but has raised the genuine concern that there appears to be no forum in which to talk about the behaviour of the proponent; that while we are prevented from raising our concerns, the proponent is permitted to continue to operate the way it does. The Committee of the SHA concurs. These issues go to the integrity of the process.

Notwithstanding this, many of the concerns raised by community members about Mr Gibbs' treatment relate to the perception of bias and undue influence by the CMCT in the process. The key issues raised were that:

1. The Chair prevented Mr Gibbs from speaking on issues that others were allowed to speak on, i.e. the personal impact of the cemetery proposal, planning matters etc., and that by comparison, Mr Peter Thomson, the belated entry to the speaker list in support of the cemetery, had been allowed to speak uninterrupted even when using defamatory language (such as 'lie') in relation to prior speakers.
2. The Chair's cautioning of Mr Gibbs followed the intervention of the lawyer for the CMCT, Mr Ben Salon, such that it appeared to be at Mr Salon's direction.

We note that Mr Salon had called out during my presentation for the Association, and then during Mr Gibbs' presentation without being cautioned. It was only when he located himself next to the Panel Chair and spoke directly to her, and when the Chair then moved to caution Mr Gibbs, that I and another community member protested. The reaction of the Chair was to caution *us* and only then to ask Mr Salon to relocate. We note that Mr Gibbs was subsequently 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.

It was also noticed that supporters for the CMCT behaved disrespectfully during Elizabeth Pemberton's presentation without being cautioned.

Whatever the truth of the matter and the reasonableness of the Chair's intervention, it was unfortunate that it occurred in the way it did and that the rules were not applied equitably to all speakers and members of the audience.

Finally, members of the Philippino community have contacted us about misrepresentations by so called 'leaders' of their community and other related matters of concern. I have urged them to make submissions to this effect but am conscious of the pressures within communities to not speak out.

### **Traffic Impact Assessment**

On 29 March 2019, I sent an email to the Commission saying that we had discovered a mistake in our presentation regarding the Traffic Impact Assessment ('TIA') having only just found that there had been an updated report. As it was Campbelltown Council who requested the further traffic assessment, we would have benefitted by having access to its response first. We thus restate our view that the DOP should *not* have completed its assessment without allowing Council the same opportunity as other

agencies to comment on the CMCT/Urbis's response to its letter of 29 May 2018 and making Council's comments publicly available.

However, having now reviewed the complete set of traffic assessments we stand by our comments in our Presentation of 25 March 2019. We criticised the original TIA (during the rezoning) because it only assessed Stage One of the development. Subsequent TIAs appear to be a cut and paste of the original which sometimes refer to all stages and sometimes to just Stage One. In the absence of a clearer assessment we take a conservative approach to the future impact. We also note that the latest study has not taken notice of prior criticisms about the inappropriateness of the 'existing cemeteries' it chose to rely on to estimate traffic generation. We are advised that more appropriate examples would have been the Northern Suburbs Crematorium and Macquarie Park. This is based on the age of the cemetery, on available parking spaces, public transport, and on-site facilities – all of which encourage or discourage the use of car transport. It is even more concerning that the data the TIA relied on was apparently provided by the CMCT from surveys relating to the cemeteries it manages. We know from two prior studies which similarly relied on client data that the data was ultimately shown to be unreliable, and is not sufficiently independent of the proponent. The stated ability of the intersections to handle the estimated traffic – notably at Spitfire Drive and St Andrews Road and particularly during school peak hours (noting the adjoining Mount Carmel Catholic College) - does not pass the 'pub test' for those of us who regularly use this road, suggesting that something is wrong with the data.

Having said this, our concern is not with the ability of the intersections to handle traffic volumes as presumably the intersections can be upgraded. Our issue remains the impact of the potential traffic on the amenity of the residents along St Andrews Road, and in particular the sensitive land uses and the communities who use those facilities, depending as they do on the peace and quiet of the surrounding area. It is clear that already the estimated traffic and the noise it will generate is unacceptable and is reason enough to refuse this DA.

However we reiterate our concern that the unreliability of the traffic estimation (and noting its lack of independence from the proponent) risks having to open up St Andrews Road as a through-road to Camden Valley Way at some time in the future. Given the accelerated staging plan that has 'wormed' its way into the DA post-Public Exhibition (and on the Commission's watch), it is likely that this will happen within 15-20 years if not sooner. Our Association objects to this due to the impact on sensitive land uses all along the road: two schools, two monasteries, the Retreat Centre and Church, Varro Ville Homestead and sensitive bushland along the ridge. St Sava College Serbian Orthodox School would lose its playing fields; the noise for the two monasteries, Retreat Centre, and Church would be greatly increased by the through-traffic. The ongoing closure of this road has been accepted by the Growth Centres which has always opposed its opening. The road's opening has never been subjected to an EIS and there has been no consultation with the Serbian Diocese or anyone else in regard to it.

This DA cannot be approved on this basis.

### **Impact of cemeteries on mental health**

We were moved by the presentation of Elizabeth Pemberton at the Public Meeting, speaking for the community of people who depend on the Carmelite Retreat Centre located directly across the road from the proposed cemetery, and her concerns for the impact of the cemetery on vulnerable people

attending there. The negative impact of a cemetery on people's mental health is important, and one I can personally attest to as the owner of Varro Ville Homestead, living as we have done over the past six years with the threat of being engulfed by one.

We thus want to draw the Commission's attention to the duty of care it has to ensure that those who have *not* spoken out on this for one reason or another, but who can be seen to be affected by it, are taken into account. I recall an interview, but cannot recall the name of the celebrity (a film producer or director I believe), who related the adverse effect of having to walk past an active cemetery every day to go to school as a child. I have searched but have yet to find the interview. The reason I raise it here is not only for those who attend the Retreat Centre, but because of the children from Mount Carmel Catholic College who will experience just this. We have not approached the School, noting the hold the Catholic Church has over school funding and the difficulties we have had engaging the School in the past. However the onus is on the Commission to investigate this further if there is any intention to approve this cemetery in spite of its non-compliance on so many grounds.

### **Reliance on Information not made available to the Public**

We note in correspondence between the Commission and the CMCT's consultant, Urbis, that the Commission will be meeting with the Greater Sydney Commission (GSC) to discuss Premier Gladys Berejiklian's request to the GSC under s. 10(1)(a) of the *Greater Sydney Commission Act 2015* to 'provide advice and recommendations on the strategic planning considerations for the provision of new cemeteries, with a focus on the Greater Sydney Region.' We note in that letter a reference to a report by David Harley, along with the Metropolitan Sydney Cemetery Capacity Report.

We are deeply concerned that this means the Commission will rely on information that has not been made public prior to closure of submissions today.

We are also concerned that the information being sought is the responsibility of Cemeteries & Crematoria NSW ('**CCNSW**') not the GSC or any other authority, and that the attempt to seek it elsewhere is due to discontent, particularly from the CMCT.

Concerns have also been raised with me that the GSC does not have the staff to do this work and that this request may be referred back to the Department of Planning ('**DOP**'). We have already outlined our concerns about the way the DOP has conducted itself throughout the progress of this proposal.

We are particularly concerned that the GSC has been asked to consider the report by Mr David Harley. This first came to our attention during the Commission's review of the Varro Ville curtilage expansion. It appeared in a submission from Netcorp Pty Ltd (who appear to be part of the CMCT) dated 13 November 2018. We are deeply concerned that, according to that submission (still on the Commission's website for the Varro Ville curtilage review), the Planning Minister, Anthony Roberts, and Minister for Lands, Paul Toole, apparently commissioned industry consultant David Harley to prepare 'a report into the future planning for cemeteries' in December 2017, **a month after** the NSW government's own statutory body, CCNSW – established in 2013 to oversee the interment industry and provide research support - released its own report into the industry. Adding to that concern is that the findings of the Harley report (as quoted in submissions on the curtilage expansion) appear to contradict those of

CCNSW's official report published in November 2017<sup>1</sup>. The Harley Report is apparently not publicly available, though according to the Nettcorp submission was lodged with the Department of Planning and Crown Lands in March 2018. We have thus not read the Harley report and rely on quotes in the Nettcorp submission that this report supported the urgent need for cemeteries and recommended that the CMCT's proposed cemeteries at Varroville and Wallacia proceed. Yet CCNSW's report clearly states on p. 39:

*'Only the West-Central and South-West regions are well served for capacity in proportion to the number of persons projected to die in each region.*

*Central, North and South regions are disadvantaged in terms of current capacity ...*

*... Provision of capacity in the North and South regions would sustain the desirable distribution of cemetery infrastructure across the planning regions of Sydney, maintain reasonable equitability of access to cemeteries for the communities of the Central, North and South regions, and provide for burials close to the region of the life and social networks of deceased persons. This outcome would also sustain positive effects in respect of costs and visitation for those communities, as compared with an outcome where limited land availability and affordability require the direction of burial activity from all the regions of metropolitan Sydney toward Western Sydney.'*

The Harley report has obviously been made available to the CMCT and its associates since the Nettcorp submission quotes it at length. We are also concerned about the apparent influence of the CMCT in the commissioning of this report. According to Nettcorp, on December 2017, the Planning Minister, Anthony Roberts wrote to the Deputy Chair of the CMCT and advised that the Minister had appointed Mr David Harley to undertake "an independent review to identify suitable lands for Sydney's burial needs".

This report and the Premier's referral would appear to undermine the role of CCNSW. It is no wonder to us then that the Chair of CCNSW may have felt obliged to send a letter supporting the approval of these two cemeteries at Varroville and Wallacia, even though it is contrary to his own organisation's report.

If the Commission meets with the GSC and further relies on information not previously made available to the public (such as the Harley Report) without publishing it and then giving the community an opportunity to make further submissions, it would be going against the very rules it has until now imposed on us on the basis of transparency and fairness.

### **Peter Thomson's presentation**

We have a number of concerns about Mr Thomson's presentation and the accuracy of his statements. Mr Thomson is one of only two local landholders who spoke in favour of the cemetery at the public hearing into the rezoning. Both have made applications to rezone land in the Scenic Hills for development. This does not make their submissions invalid, but it would have been useful to the Commission if that had been declared. Mr Thomson also made a submission to the curtilage review. At

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<sup>1</sup> See: [https://www.industry.nsw.gov.au/data/assets/pdf\\_file/0014/143402/CCNSW-Metropolitan-Sydney-Cemetery-Capacity-Report.pdf](https://www.industry.nsw.gov.au/data/assets/pdf_file/0014/143402/CCNSW-Metropolitan-Sydney-Cemetery-Capacity-Report.pdf)

the Public Meeting on 25 March, Mr Thomson stated that his family owned 'the whole' of Varro Ville. In prior submissions Mr Thomson has used that to question the truth of some of our claims (as owners of Varro Ville Homestead), and those of our consultants. The OPP16 study traces all land titles up to the present time and shows that Robert Stanley Thomson bought and sold only the Varro Ville Homestead lot in a single day in an apparent land speculation deal when the estate (owned by A J Smith) was subdivided for the first time in mid-1950. Mr Thomson's family appears to have retained some estate land closer to the current M31 but this does not relate to key heritage items under review – in particular the early dams which are well documented in the OPP16 study. I am not entirely clear about other claims by Mr Thomson, but we note that the Andrew Thompson (spelled with a 'p') who was the original grantee of the St Andrews estate died in 1810 unmarried and without offspring. His estate was ultimately sold off by his executors on questionable terms: <http://adb.anu.edu.au/biography/thompson-andrew-2728>

We note that at the Public Meeting Mr Thomson said he had been advised by the CMCT (and/or its consultants) to correct our claims concerning the use of a 35 tonne excavator. We ask the Commission to carefully read what we said in our presentation and reference it against the nominated studies. We are aware that certain studies were conducted using a backhoe, but there is no suggestion that those excavations went beyond the top soil into rock.

#### **Privatisation of Crown Cemeteries**

Information has been provided to us, which we have been unable to fully verify but we raise it here because of the potentially damaging implications for both the Varroville and Wallacia communities and the irreparably damaging impact the information, if true, would have on the reputations of the current NSW Government and the Commission.

On the 15 November 2017 an article appeared in the Australian newspaper. It stated,

*'All cemeteries across metropolitan Sydney could be up for sale, with a \$1 billion privatisation proposal being considered by the NSW government that involves handing control to the Catholic Church.*

*Catholic Archbishop of Sydney Anthony Fisher has been an active supporter of the proposal advocated by an investment advisory firm, Fabrico, which claims "a commercial way of thinking" is needed to tackle a burial-space shortage on crown land in greater Sydney.*

*Under the sell-off plan, Sydney's four cemetery trusts currently owned by the NSW government and operating on crown land would be consolidated into a new company and leased for 99 years to Fabrico.*

*Fabrico would then seek to sublease management of the combined cemeteries covering all religious faiths to the Catholic Metropolitan Cemeteries Trust, which currently manages Australia's largest cemetery at Rookwood in Sydney's west, and is controlled by Sydney's Catholic Archdiocese.*

*The CMCT would manage the cemeteries in a commercial partnership with InvoCare, a large private funeral home and crematorium operator.'*

The rest of the article can be read here: <https://www.theaustralian.com.au/nation/politics/catholic-church-in-1bn-plot-to-sell-off-sydneys-cemeteries/news-story/eb5ba2f515672857fe5af5f5d3873b75>

Though former Lands Minister Paul Toole subsequently ruled out plans to privatise<sup>2</sup>, we ask the Commission to investigate whether the government and/or the Catholic Cemeteries Board has any plans to privatise Crown Cemeteries and/or to dissolve the CMCT and replace it with a private entity.

If this cemetery were to be approved as a Crown application only to be later privatised, it would be a gross violation of process. A private operator would not have been able to get this far on such an unsuitable site.

### **Support for Varroville Cemetery at the Public Meeting**

Members of communities from multi-cultural backgrounds have raised concerns with us regarding the claimed support for the cemetery here in Campbelltown. We have urged people to put in submissions. Notwithstanding that, we wish to point out that the CCNSW report shows that the cremation rate in Sydney is 65.4%. Thus 'popular support' for any cemetery, as claimed by the CMCT, is at best a third of Sydney's population. It is important to maintain a perspective in these claims. For example, support for cremation is greater than the support for marriage equality in the recent plebiscite (61.6%) that was proclaimed (rightly) as a popular victory. While we support the right of minority cultural practices (within the bounds of ethics and the law), this does not justify destroying or compromising NSW's cultural heritage, or other cultural or religious practices that will be harmed by it.

### **Impact on local amenity**

The multiple and damaging impacts of the proposed cemetery on this community - social, spiritual and economic - are such that the Commission must take this into account. We understand that the law in NSW is still as described in *Randall Pty Ltd v Willoughby City Council*, which is that social and economic impacts on the locality can be taken into account. Careful scrutiny of the reports accompanying this DA have demonstrated that the sensitive land uses along St Andrews Road, the amenity of this part of the Scenic Hills to the community and heritage identified as being state significant will suffer irreparable damage if this cemetery is approved.

This submission is to be read in conjunction with prior submissions.

We ask the Commission to not approve this DA and instruct the Sydney Western City Planning Panel accordingly.

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Convenor  
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<sup>2</sup> <https://www.smh.com.au/national/nsw/burial-plots-running-out-but-minister-rejects-cemetery-privatisation-20180428-p4zc73.html>