

Public Exhibition for the Explanation of Intended Effect – Cemeteries as State Significant Development

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Explanation of Intended Effect (EIE): Proposed Amendment to State and Regional Development SEPP to identify large scale cemeteries as State Significant Development

Councils in rural and regional areas are a significant part of the cemetery sector in NSW. Many councils own or manage a number of cemeteries; this includes cemeteries formerly managed by various churches/religions. Outside of the Sydney metropolitan area, councils are the dominant sector, both owning and managing cemeteries, with some councils owning the associated crematorium or leasing these facilities to private operators.

The most effective way to address the shortfall in cemetery sites/burial plots would be for DPIE to work collaboratively with councils towards the identification and acquisition of appropriate sites for large scale cemeteries and associated/ancillary facilities.

The contentious Marulan Cemetery DA and subsequent LEC Appeal [*Al-Mabarāt Benevolent Society Limited v Goulburn Mulwaree Council [2018] NSWLEC 1261* (henceforth referred to as 'Al-Mabarāt')], was an example of how cultural issues can be used both for and against a proposal for a large scale cemetery (this was evident through the public submissions and surrounding commentary at the time). Al-Mabarāt highlighted the need to focus on the planning issues rather than the cultural issues. The only way to avoid new cemetery proposals being bogged down in divisive cultural arguments is to actually use the planning system from a strategic level to provide the planning criteria for suitable sites and to include this in forward planning with potential sites being zoned for purpose.

General Comment

The Al- Mabarāt application also highlighted key planning considerations which would be relevant in many cases in particular the definitional issues around what a cemetery actually is as opposed to a function centre, place of public worship and the primary use of a site etc. Furthermore, it also highlighted key considerations for site suitability in a rural context such as: bushfire hazard, biodiversity, access and lack of reticulated water/sewer for large scale ancillary associated amenities and structures.

Council's experience with *Al-Mabarāt* identified the need to ensure inappropriate development is excluded from environmentally sensitive lands.

The connection between the development and the impact that cemeteries would have on environmentally sensitive land, was highlighted by the scale of development and the additional permitted uses that could be considered as ancillary to cemeteries. With no development standards applicable to cemeteries or ancillary development, the decision in *Al-Mabarat* prompted Council to prohibit cemeteries in the E2 Environmental Conservation and E3 Environmental management. Cemeteries in these zones would inherently involve the clearing of land both through direct and indirect development impacts. This would thereby be in direct conflict with the objectives of the *E2 Environmental Conservation* zone and the *E3 Environmental Management* zone under *GM LEP 2009* as previously stated. The Goulburn Mulwaree LEP 2009 was subsequently amended to reflect this by excluding this form of development from these zones. The planning proposal associated with this LEP amendment was supported by the Council's Cemeteries Plan of Management which identified demand and supply for cemetery plats in the Goulburn Mulwaree Local Government

The issues associated with cemetery development and the potential impacts associated with this type of development are quite broad. These issues include: direct and indirect impacts on biodiversity due to the need to clear land for plots, access, fencing, on site infrastructure (roads, car parking, amenities etc.). Suitable sites of an appropriate size are generally located outside of urban environments on rural roads in bushfire prone land locations. The inherent issues with clearing to provide suitable asset protection zones and conflicts with biodiversity legislation are therefore more problematic. The potential need to provide for the safe assembly of large numbers of people attending ceremonies on these sites is in itself a land management issue.

The statutory definition of cemeteries provided by the Standard Instrument LEP (below) provides that ancillary development is tentatively permitted, whether or not it contains an associated building for conducting memorial services.

***cemetery** means a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services.*

The definition is therefore, providing for more than interment and sets up the expectation that a larger facility catering for services is permissible. Permissibility issues surrounding the definition have proven to be complex as demonstrated in the judgement in *Al-Mabarat*.

Revision of the definition under the dictionary with the inclusion of development standards to clarify what is defined as *an associated building for conducting memorial services*, may be required, the judgement in *Al-Mabarat* demonstrates that it is difficult to provide a universal definition or development standards, due to the various ways in which ancillary buildings are used by different religions.

The cemetery definition provides no limitation on the number of *associated buildings* that could be used for memorial services. This could result in the proliferation of structures on any given site and the need to provide further development (land clearing, car parking access and amenities buildings) with both direct and indirect impacts.

In light of the above issues, appropriate site selection for large scale cemeteries is critical.

Councils should be encouraged to identify the expansion of cemeteries or the location of new cemeteries in suitable locations. A "Cemetery Strategy" approach with appropriate criteria developed to inform the location of new cemetery sites which is relevant to the particular area is recommended. Then using the LEP zoning approach would then identify these sites to enable future residents and landowners to be aware that these facilities are planned for the future (thereby negating cultural arguments or NIMBYism).

Funding for the acquisition of suitable sites could then be achieved through 7.11 contributions or State Infrastructure Contributions (SICs may be applicable given that the development may be supplying demand for burial sites from outside the local community i.e. to service Sydney).

Currently the development process around the identification of prospective sites by the private sector appears to be driven by a "land is cheap – what can I do with it?" approach.

Typically this leads to the nomination of unsuitable sites in DAs and hence conflict with local councils and the community. If the community values the need for social infrastructure then the community should be a part of the strategic process for identifying suitable sites?

The 10ha area is too small to trigger a SSD planning pathway. Effectively a greenfield site in most contexts will need a greater area than this. As previously discussed there can be substantial associated or ancillary infrastructure with a large scale cemetery. In addition to this buffer distances to residential or asset protection zones for bushfire may be required. Furthermore, in Goulburn Mulwaree the suitability of the site in relation to water quality in the Sydney Drinking Water Catchment should be considered given the potential for burials to impact upon groundwater. A greater than 10ha threshold should be considered.

In general a more strategic approach conducted with local councils via a Cemetery Strategy involving the application of appropriate criteria and community consultation for the selection of appropriate sites would be a better approach and also achieve the objective of ensuring more certainty in the planning process.

On a separate matter, Council is regularly receiving enquiries for the use of private properties for family burial plots. This is not clearly covered in LEPs and possibly warrants a separate definition i.e. private burial ground (as opposed to a cemetery). Use of private land for a family burial plot seems to be a growing trend but has long term implications for access to the burial site once the property is sold, or even in relation to ownership? This matter could do with greater clarity and direction in the planning system. Currently councils tend to use restrictions on the land title or easements to facilitate ongoing access to a burial plot but it is likely that there is some inconsistency and difference in approach between council on the approach to this issue.
