

## Director City Planning Report No. CP28/15



**Subject:** Botany Cemetery Expansion Proposal  
**Folder No:** F2004/07905  
**Author:** Bronwyn Englaro, Senior Sustainability Officer

### Introduction

On 16 June 2015, Cemeteries and Crematoria NSW provided a briefing to Councillors on the Botany Cemetery (Eastern Suburbs Memorial Park) expansion proposal. This proposal primarily involved the Cemetery relinquishing its licenses and interests in the Chinese Market Gardens; Randwick Council gaining management control of the market gardens site; and Randwick Council assisting the Cemetery to secure land for its cemetery use from the adjacent Bumborah Point area, parts of Military Road and unformed Crown Road land.

### Background

Since 2010, the Southern Metropolitan Cemeteries Trust (SMCT) which was created as a result of the amalgamation of the former Botany and Woronora Cemeteries Trust, has held a license over the western lot of the Chinese Market Gardens land (Lot 1079 in DP 752015) "to investigate the feasibility of expanding the cemetery into the market gardens sites".

In June 2014, Council at its meeting resolved to call on the State Government to return Lot 1079 to Market Garden use, consistent with its RU4 Land Use Zoning. Consequently, in June 2015, the SMCT advised Council in a letter and briefing document that it had reviewed the Cemetery's proposal to expand onto the Market Gardens site and resolved to no longer pursue this proposal subject to "Randwick Council's cooperation to assist to gain an equivalent amount of land for cemetery use by the SMCT".

### The Proposal

The proposal to Council as outlined in the attached briefing document (Attachment 1) involves:

- The transfer of the management of the Chinese Market Gardens to Randwick Council and commitment to cease future cemetery expansions onto this land.
- The closure of the unformed Crown road on the southern boundary of Botany Cemetery and add part of this land to the Cemetery.
- The closure of the unformed Council road that adjoins the Cemetery on the western side and add this land to the Cemetery. Council's agreement will be required as to the extent of road to be closed for addition to the Cemetery.
- The addition of Crown land comprising part of Lot 4858 to the Cemetery and setting aside part of this land for public access along Botany Bay.

### Issues

#### Crown land part of Lot 4858 at Bumborah Point

The portion of Crown land at Bumborah Point proposed for expansion comprises part of Lot 4858 and is under Council care and control. It is approximately 3.47 hectares

CP28/15

in area and forms part of the Yarra Bay Bicentennial Park. The issues that need to be addressed as part of any cemetery expansion include the following:

- The land is zoned Public Recreation (RE1) in which cemetery use is prohibited. A planning proposal to rezone the land will be required in future if the cemetery expansion proposal is to proceed.
- The land is covered by the Botany Bay National Park Heritage Conservation Area, which is significant in terms of coastline, remnant bushland and early Aboriginal and European contact. Additionally, the proposed expansion area contains two sites of Aboriginal significance, recorded as containing shelters, middens and rock engravings under the NSW Office of Environment and Heritage (OEH) Aboriginal Heritage Inventory management System (AHIMS). A heritage impact assessment will be required to be undertaken in consultation with the OEH as part of any expansion proposal.
- The land is subject to Aboriginal Lands Claims and appropriate negotiations with the Local Aboriginal Land Council will need to be undertaken prior to any expansion proposal proceeding.
- The land contains remnant coastal heathland vegetation site and is being managed by Council under contract in conjunction with a local Bushcare Group that meets regularly to assist in the maintenance of this vegetation. Any expansion proposal for cemetery use will require appropriate impact assessment of this vegetation and any potential endangered community/species will need to be validated and assessed.
- The subject land contains a number of infrastructure easements which transverse the site (see Attachment 4) including the following:
  - Easement for circulating water tunnels, manholes and inlets (BK1784 NO979)
  - Easement for sewerage (Q822546)
  - Easement for services (Q949422)
  - Easement for saltwater intake (Q949422)

An investigation of the relevance and operation of these easements, and the possibility of extinguishing them, to accommodate the expansion proposal must be undertaken with the relevant agencies that are party to the easements.

- Crown Lands will be required to grant a licence to SMCT to investigate the expansion proposal over Lot 4858 including commencement of full site investigations and work that will form part of a future Planning Proposal application.

### **Military Road road reserve**

This parcel of land to the west of the cemetery is approximately 0.9 hectares and is currently allocated as a road reserve within Military Road. The issues that need to be addressed as part of any cemetery expansion involving this road reserve include the following:

- The parcel of land is currently owned by Council and zoned for public recreation (RE1). A planning proposal to rezone the land will be required in future if the cemetery expansion proposal is to proceed.
- The extent of Council road that can be closed between the western side of the Cemetery and Lot 4858 and along sections of Military Road is unclear at this

stage and will involve Council negotiating with SMCT. Once agreement has been reached, SMCT will be in a position to lodge a road closing application with a view to adding this land to the cemetery.

- The subject parcel (see Figure in Attachment 5) adjoins an existing car park associated with a section of the coastal walkway constructed in 2007 as part of the Bicentennial Park works. A traffic, parking and infrastructure assessment will be required to assess the impact on public access, circulation and traffic and parking as part of any cemetery expansion proposal.
- The subject land may be affected by soil and groundwater contamination depending on the history of land use over the site. A soil and groundwater investigation having regard to this history will be required as part of any cemetery expansion proposal.

### **Chinese Market Gardens**

If Council was to take on the management and/or ownership of the market gardens site a number of issues will need to be addressed including the following:

- Currently the three market garden lots are held under three separate licences from the Crown. Two of the three lots continue to be leased by Chinese families and used for market garden purposes. The third lot, Lot 1079, the most westerly lot, is licensed to SMCT for future cemetery expansion and is currently overgrown with weeds and the subject of some reports of illegal dumping. Security of tenure and better land management outcome including WH&S may be achieved by a single long term lease over the three lots. Options include reserving or dedicating the land and appointing Council as Trust manager or vesting the land in Council. Council will need to consult with Crown Land on the merits of a single long term lease over the three lots to be held by Council and the best option for doing this.
- The heritage listing dictates that the land needs to continue to be used for Chinese Market Gardens. As part of Council's responsibility for protecting the State Heritage Significance of the Chinese Market Gardens, the market garden use of all the three lots will need to be preserved. This will involve the rehabilitation of Lot 1079, and then reinstatement and resumption of market garden use on this lot. SCMT's responsibilities in this regard needs to be clarified. Consultation with OEH on the necessary approvals as well as advice on changes in management, tenure arrangements or onsite works will be required prior to any formal takeover of the site.
- The Market Gardens land has a high water table and is susceptible to flooding. Council will need to undertake a flood assessment to guide the future management of the subject site prior to any formal takeover of the subject site. Furthermore, increased drainage from the industrial development to the north, and draining through the Cemetery, as well as water from upstream residential developments and blockage of the outlet into Botany Bay that contribute to the periodic destruction of planted crops after a storm event, will need to be included in any assessment. Council will need to investigate these drainage issues, discuss with the market gardeners, SMCT and Crown Lands as to the best way forward to deal with this issue.
- The Chinese Market Gardens land is subject to Aboriginal Lands Claims and appropriate negotiations with the Local Aboriginal Land Council will need to be undertaken prior to any changes in ownership.

## Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 5: Excellence in recreation and lifestyle opportunities

Direction 5c: Create new open space as opportunities arise.

## Financial impact statement

There is no direct financial impact for this particular stage of the subject proposal.

## Conclusion

The expansion proposal seeks to address the need for additional burial space for the Cemetery while recognising the heritage significance and strong community support for the market gardens. SMCT are seeking Council's in principle approval to the Cemetery expansion proposal as detailed above so that it can commence with the all necessary site investigations and a Planning Proposal Application. It is noted that there is merit in Council taking on the management and ownership of the Chinese Market Gardens site, and thereby preserving its operation and heritage significance. However, it is important, beforehand, to determine the merit and feasibility of the Cemetery's expansion into Bumborah Point and Military Road given all of the issues identified above. A major initial component of this exercise is to clarify the position of all stakeholders on the expansion proposal. Accordingly, it is considered prudent, as a first step, to hold discussions with all stakeholders including Crown Land, OEH, LALC, utility agencies, service providers and SMCT prior to any in-principle approval being given to SMCT.

## Recommendation

That:

- A. Council commence discussions with all stakeholders including Crown Land, OEH, LALC, utility agencies, service providers and SMCT to identify all issues affecting the proposed Botany Cemetery expansion into Lot 4858, Military Road and the unformed Crown Road and the feasibility of addressing these issues.
- B. Council commences consultations with Crown Lands Department on the future operation and ownership of the Chinese Market Gardens site and the proposed transfer of the unformed Crown road on the southern side of Botany Cemetery to form part of the Cemetery.
- C. the findings on the discussions/consultations with the stakeholders and agencies be reported to Council for Council to consider its in-principle support for the Botany Cemetery expansion proposal as detailed in the SMCT Briefing Document.

## Attachment/s:

1. Briefing Randwick Council- Market gardens and Botany Cemetery addition
2. Draft Development Areas - Acquisition Plan
3. Alternative/Possible Addition Proposals - Botany Cemetery
4. Bumborah Point Easements Plan
5. Aerial of Military Road road reserve and Coastal Walkway

## Briefing Randwick Council Matraville Chinese Market Gardens & Botany Cemetery (Eastern Suburbs Memorial Park) expansion proposal

### Objective

To confirm an arrangement between Randwick Council and the Southern Metropolitan Cemeteries Trust (SMCT) for the SMCT to relinquish its licenses and interests in the market gardens and for Randwick Council to confirm its willingness to assist the SMCT to gain access to Crown land and roads to enable the SMCT to secure an equivalent amount of land for its cemetery use.

These two aims are intrinsically aligned and both are required to settle once and for all the market gardens dilemma with a written agreement between all parties to work cooperatively to achieve those goals.

### Background

The first phase of the NSW Government Cemetery Reforms was the amalgamation of the Crown Cemeteries Trust in Sydney. The former Botany and Woronora Cemeteries Trust were dissolved. A new Trust was established that controls both Woronora and Botany Cemeteries, the Southern Metropolitan Cemeteries Trust (SMCT).

The second phase of the reforms was the passing of the Cemeteries and Crematoria Act 2013 which commenced on 1 November 2014 with the establishment of the Cemeteries and Crematoria NSW (CCNSW). CCNSW aims to ensure that NSW cemetery and crematorium operators provide sustainable, innovative and culturally appropriate services in a consistent, transparent and accountable manner. CCNSW is led by an independent board which is supported by a business unit.

One of the key projects for CCNSW will be to address the shortage of burial space in the greater Sydney Metropolitan Area. The latest understanding is without new burial space Sydney will run out of burial space by about 2040-2050.

### Botany Cemetery proposal

The SMCT has reviewed the former Botany Cemetery Trust's proposal to expand onto the Market Gardens and has resolved to **no longer** pursue this proposal. However as already discussed and approved in principle it requires Randwick Council's cooperation to assist to gain an equivalent amount of land for cemetery use by the SMCT.

See the attached diagrams. It is intended to

- Close the unformed Crown road on the southern boundary of Botany Cemetery and add part of this land to the Cemetery.
- Close the unformed Council roads that adjoins the Cemetery on the west and add this land to the Cemetery. Council's agreement will be required as to the extent of road to be closed for addition to the Cemetery.
- Add Crown land, part of Lot 4858 to the Cemetery and set aside part of this land for public access along Botany Bay.

CP28/15

The additions of these lands will require the appropriate rezoning by a Planning Proposal from the SMCT. Council will need to consider this proposal in due course.

### **Council's Interest in the Chinese Market Gardens land.**

It is understood Council as part of its consideration of an approval in principle to the Botany Cemetery addition proposal wishes to secure the management of the Chinese Market Gardens to prevent future cemetery expansions onto this land. See attached letter from Crown Lands 18 February 2015. The letter states that *“Crown Lands will work with Council to investigate options to achieve that outcome.”*

### **Matters that require consideration and resolution to transfer the Market Gardens**

- 1 **Aboriginal Land Claims**  
All Crown lands in the area are subject to Aboriginal Lands Claims. Including the three Market Garden lots, the Botany Cemetery and Lot 4858.  
**Action Proposed:** that Council, CCNSW and SMCT commence a negotiation with the Aboriginal Lands Council with a view to removing all claims.
- 2 **Future leasing of Market Gardens**  
Currently the three market garden lots are held under three separate licences from the Crown. Security of tenure and better land management outcome may be achieved by a single long term lease over the three lots.  
**Proposed Action:** Crown Lands in consultation with Council review the current arrangements and consider a tender for a long term lease to a market gardener.
- 3 **Options to transfer the land to Council**  
Options include reserving or dedicating the land and appointing Council as Trust manager or vesting the land in Council.  
**Proposed Action:** after resolution of the land claims and leasing review Council and Crown Lands determine the best options.
- 4 **Heritage Listing**  
The heritage listing dictates that the land needs to continue to be used for Chinese Market Gardens. OEH needs to be consulted on any changes in management, tenure arrangements or onsite works.  
**Proposed Action** Consult directly with OEH, about proposed actions and once the proposals for tenure arrangements, site management and onsite works are finalised.
- 5 **Site management issues**
  - A. **Rehabilitation of Lot 1079**  
SMCT has a report from the NSW Soil Conservation Service on how best to remove the weeds. A copy of this report has been provided to Council. The report suggest that approvals will be required from Office of Environment and Heritage (OEH) before works can commence. See attached letter from OEH providing exemption to that requirement.  
**Proposed Action.** Once SMCT relinquishes its current licence for rehabilitation its liabilities for this site will cease, on transfer to Council. Until then the SMCT will abide by its exiting licence to rehabilitate the site and consider the engagement of NSW Soil Conservation Service, or other contractors, to undertake works under the agreement, supervision and assistance of Council.
  - B. **Management of existing Market Gardens**  
The existing gardens are poorly managed. The buildings are generally in a

CP28/15

dilapidated state and weeds are present outside of the cultivated areas. There is also concerns with WHS practices.

**Proposed Action:** Council and Crown Lands as part of the future leasing arrangement consult with the current market gardeners to establish appropriate management and WHS standards for inclusion in future leasing requirements.

### C. Drainage issues

Increased drainage from the industrial development above the cemetery and draining through the cemetery, water from upstream residential developments and blockage of the outlet into Botany Bay all contribute to the periodic destruction of planted crops after a storm event

**Proposed Action** Council to investigate the drainage issues, discuss with the market gardeners, SMCT and Crown Lands the best way forward to deal with this issue.

### Other matters for cemetery addition

#### A. Extent of Council road for closure

The SMCT needs to reach agreement with Council about the extent of Council road that can be closed between the western side of the Cemetery and Lot 4858 and along sections of Military Road.

**Proposed Action:** Council to negotiate the extent of road to be closed with SMCT. Once agreement has been reached SMCT is in a position to lodge a road closing application with a view to adding this land to the cemetery.

#### B. Licence for Investigation over Lot 4858

SMCT to seek licence from the Crown to investigate the expansion proposal over Lot 4858. Once Council has provided its in principle agreement to the overall proposal SMCT will commence full site investigations and work on a Planning Proposal application.

**Proposed Action:**

- (a) Crown Lands grant a licence for investigations purposes.
- (b) Council provide in principle agreement to the addition proposal to allow the trust to commence its site investigations.

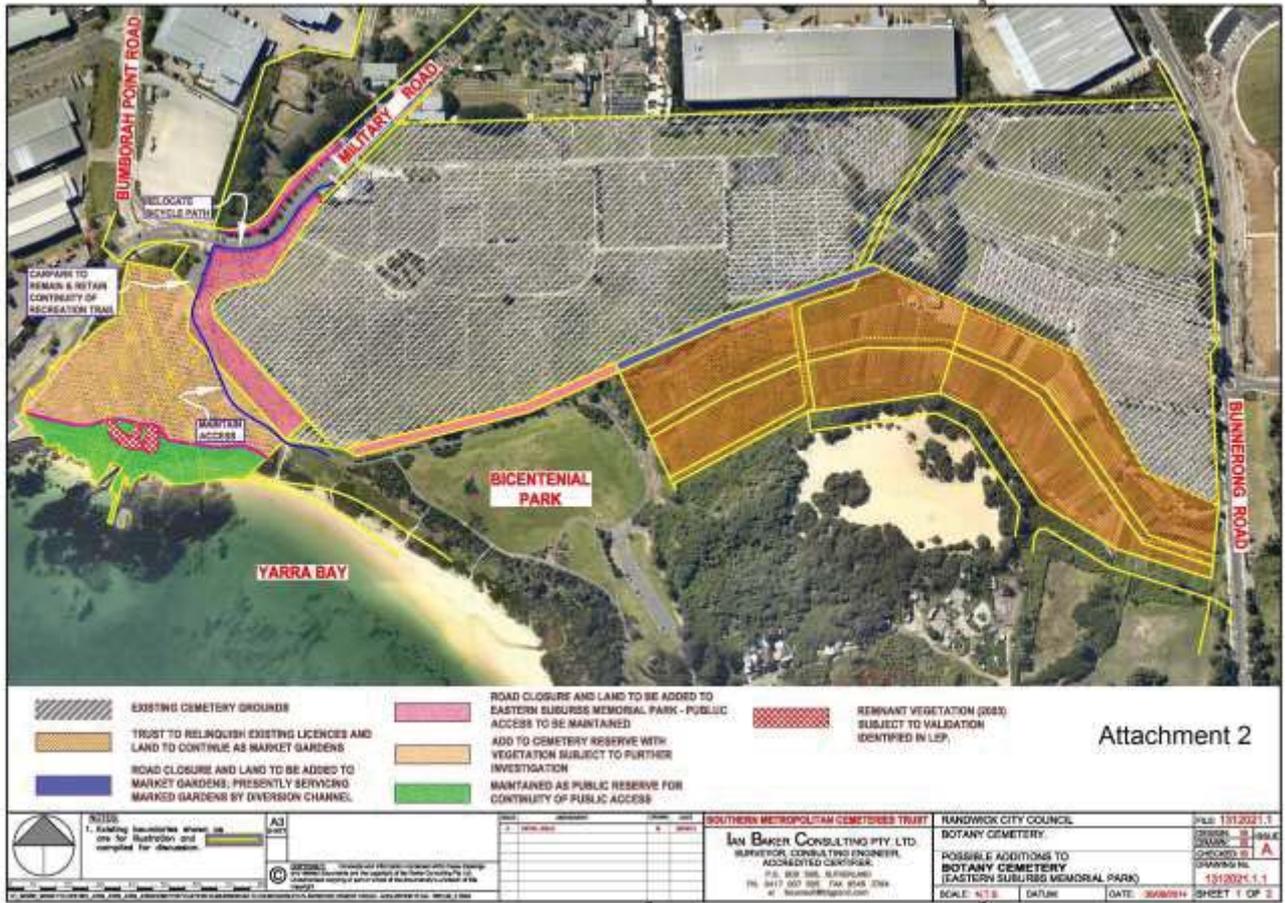
### Conclusion

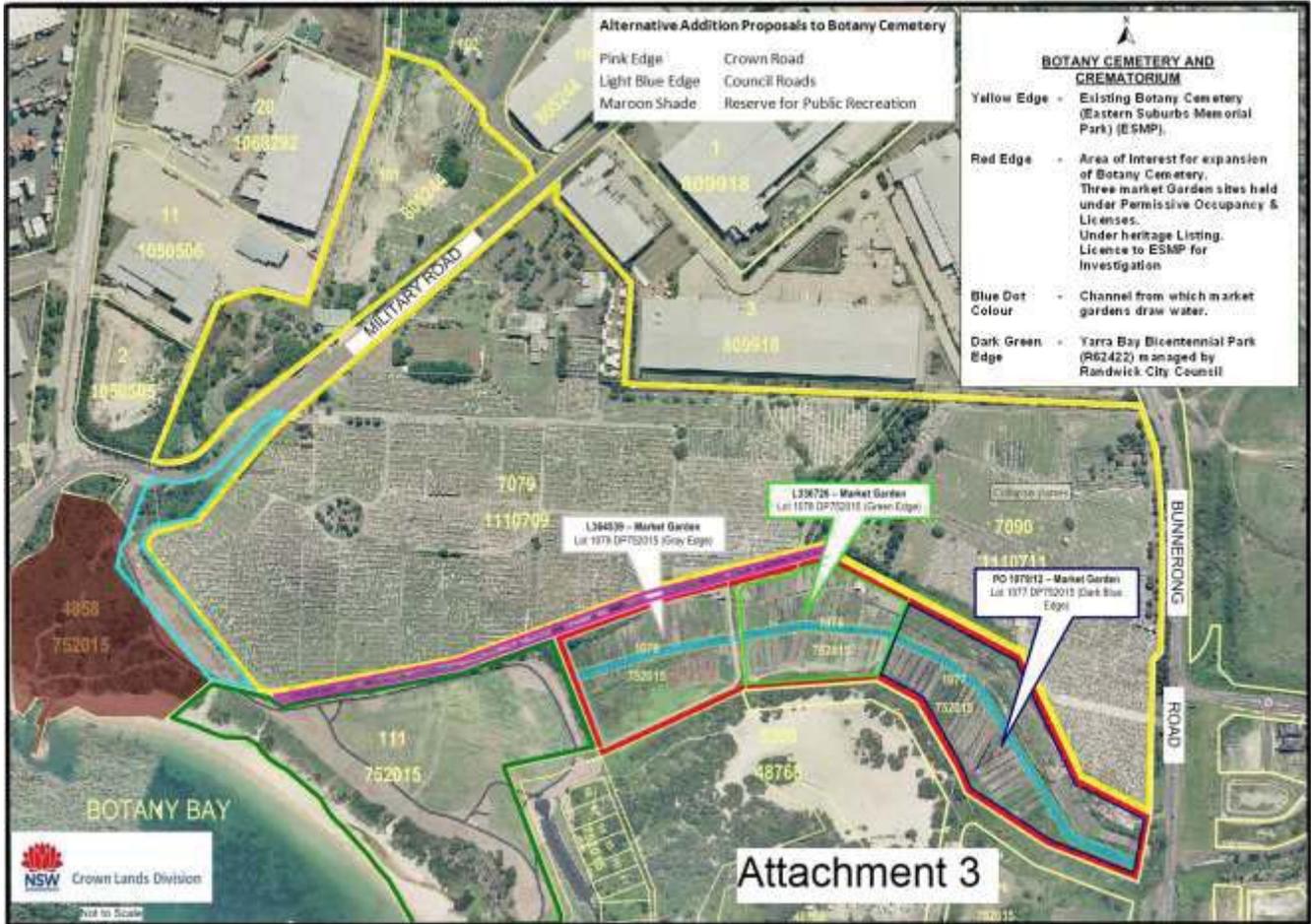
In order for the SMCT to commence work on investigations and expend significant funds on the Cemetery addition proposal, Council's in principle agreement to the proposal is required.

Crown Lands is supportive of Council gaining management control of the Chinese Market Gardens site. For Council to gain management control over the land a number matters needs to be resolved which will require Council to work cooperatively with Crown Lands, CCNSW, SMCT and others to resolve.

Council should consider a resolution to provide in principle agreement to the Cemetery addition proposal and work cooperatively to seek the best way to transfer the Market Gardens lands to its control.

107/10





CP28/15





CP28/15

