

15 February 2019

Your ref:  
Our ref: BMSS/AJWS/3348123

Mr Jorge Van Den Brande  
Independent Planning Commission  
Level 3, 201 Elizabeth Street  
Sydney NSW 2000

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Dear Mr Van Den Brande

**Review of the recommendation to list the curtilage extension of the Varroville Homestead & State (SHR00737)**

We refer to the Independent Planning Commission's (the '**IPC**') letter dated 7 February 2019 (your '**Letter**') which in part provides three enumerated responses to our requests made on 25 January 2019 (the '**Responses**').

As you are aware, the expanded curtilage around Varroville recommended by the Heritage Council to be listed on the State Heritage Register (the '**Recommendation**'), which is subject of the review currently being undertaken by the IPC (the '**Review**'), is proposed to extend across **land owned** by the Catholic Metropolitan Cemeteries Trust ('**CMCT**').

We note in point 3 of the Responses the confirmation by the IPC that the Principal Officer of the CMCT or indeed any other employee of CMCT, as owner of the land which may be encumbered by the listing on the State Heritage Register as proposed by the Recommendation, **will not** be permitted by the IPC to view the study titled *Curtilage Study Varroville by Orwell & Peter Phillips* dated May 2016 (the '**Study**').

As previously mentioned, the Study appears to be the **principal document** upon which the Recommendation is based. Further and importantly, the Study is before and apparently being considered by the IPC for the purposes of the Review. For this reason, denying the Principal Officer of the CMCT access to the Study is **concerning** and amounts to a denial of procedural fairness, particularly as:

- (a) the reason for this denial **has not** been fully and properly disclosed or justified in a forum where the issues can be properly agitated;
- (b) the confidentiality restrictions were adopted and imposed by the IPC following correspondence with the persons who assert confidentiality over the study **without** the involvement of the CMCT

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or **unequivocally inviting the CMCT to be properly heard** on the proposed confidentiality restrictions: see *Percerep v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 483 at 504 (Weinberg J); and

- (c) our client has been denied an opportunity as the owner of the land to consider and understand for itself the material that is put against it and to provide meaningful instructions to its legal representatives and experts in respect of that material.

We note in point 1 of the Responses the confirmation by the IPC that a copy of the Study **will not** be provided to the CMCT. We further note that in the 14 January 2019 IPC Panel hearing that the Panel stated the IPC's principle is to 'ensure that everybody who is an interested stakeholder or an interested party has the same access to the same material to make decision-making and deliberations in submissions equitably'.

In circumstances where a copy of the Study which is before the IPC and the other interested stakeholders and parties for the purposes of the Review **will not** be provided to the CMCT, which is also an interested stakeholder and party to the Review, that principle **has not** been adhered to.

We are advised by our client's heritage advisors who have viewed the Study that it contains **new** information, **previously unseen** by the CMCT, which is **highly relevant** and appears to be **contrary** to conclusions drawn on heritage significance in the Recommendation. Further, we are informed that the high quality version of the Study reveals **new** information, **previously unseen** by the CMCT, that appears to **support** the CMCT's position on the Recommendation.

We note your Letter, including in point 2 of the Responses, refers to a letter dated 1 February 2019. We were previously **unaware** of this letter having **not** received it. Please forward this letter to us at your earliest convenience. Nevertheless we note with thanks the approved extension for further submissions up until 15 February 2019.

If you have any questions or require further information, please contact Anthony Whealy on [REDACTED] or Ben Salon on ([REDACTED]). Otherwise, we look forward to your prompt response.

Yours sincerely



 Anthony Whealy  
**Partner**  
Accredited Specialist - Local Government and Planning

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