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Parliament House
Macquarie St
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Mary O'Kane AC
Chair
Independent Planning Commission

By email: ipcn@ipcn.nsw.gov.au

30 November 2018

URGENT

Dear Chair,

RE: Conflict of interest

I note that the IPC is proposing to hold a hearing this Monday into the Varroville: Request for advice on proposed listing on State Heritage Register.

The chair of the IPC for this hearing is Professor Richard Mackay who was nominated to the chair by yourself on 5 November 2018. Since that time a significant additional disclosure has been made by Professor Richard Mackay under the IPC's conflict of interest policy as follows:

On 27 November 2018 Professor Mackay reviewed correspondence sent to the Commission from the legal representative for the Catholic Metropolitan Cemeteries Trust (CMCT), Mr Anthony Whealy, Partner at Mills Oakley. CMCT is the owner of part of the land subject to the proposed heritage listing.

On 27 November 2018 Professor Mackay contacted the Commission to disclose that he is currently retained by Mr Whealy on a separate unrelated matter to provide expert heritage advice to another client of Mills Oakley. This client and matter is unrelated to the current Varroville matter.

On 27 November 2018 Professor Mackay advised the Commission that he has considered the Commission's conflict of interest policy and advised that he does not consider this is a conflict of interest.

The records of the IPC then indicate that as the chair of the IPC you determined as follows:

The Commission also considered its conflicts of interest policy. Mary O'Kane, Chair of the Commission, decided Professor Mackay will continue as chair of the Commission panel for the Project on the basis there is no actual conflict and on the basis this disclosure is made.

As you would be aware the reason why conflict of interest policies are essential for the IPC is not simply to avoid a corrupt outcome (which no one suggests is the issue here) but also to ensure there is public confidence in a planning system that is suffering significant credibility problems. For this reason the IPC's policy expressly references perceived conflicts of interest as follows:

Perceived Conflict - It appears a member's private interest could influence the performance of official duties and responsibilities – whether or not this is true. A perceived conflict of interest may be enough to undermine public confidence in the Commission.

For example: a member has a relationship with a former business associate, employed by the applicant or with substantial shareholdings in the applicant's company.

Potential Conflict A member has private interests that could interfere with the performance of official duties and future responsibilities.

For example: the member's firm has represented environmental lobby groups unknown to the member, and may again.

Clearly Professor Mackay's disclosure establishes a perceived conflict of interest. I accept here is no evidence of an actual conflict or any corrupt conduct. However the Catholic Metropolitan Cemeteries Trust is the landowner of much of the land proposed to be included in the increased curtilage of Varroville. They are represented by Mr Anthony Whealy, who is a Partner at Mills Oakley. Mr Wheally is separately retaining Professor Mackay on another heritage matter. It is assumed this is for payment.

I have been approached by members of the local community very concerned about this perceived conflict of interest. Given the public statements made by you as chair that you are seeking to re-establish the reputation of the IPC as an independent body it seems incomprehensible that, being aware of this perceived conflict of interest, you determined to still allow Professor Mackay to chair the panel. The only reason given for this is that you do not believe there is an *actual* conflict of interest.

There is no evidence of you considering Professor Mackay's perceived conflict of interest or addressing the obvious reputational damage the IPC will suffer if he is allowed to continue as chair.

Given the hearing is this Monday I seek your urgent response.

Kind regards,



David Shoebridge
Greens NSW MP