

Mills Oakley
[REDACTED]

25 January 2019

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

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

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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 your email and the announcement by the NSW Independent Planning Commission (the 'IPC') dated 24 January 2019.

The announcement states that the study titled *Curtilage Study Varroville by Orwell & Peter Phillips* dated May 2016 (the 'Study') is to be provided on a view-only basis to lawyers and heritage advisors of interested parties at the Commission's office.

The announcement further states that the closure date to provide comments on the review and hearing held on 14 January 2019 has been extended to Tuesday, 29 January 2019. We note that Monday, 28 January 2019 is a public holiday and, as such, there is one business day between the announcement and the proposed date for closure of submissions.

The Study is a primary piece of evidence in the IPC review and appears to form the basis of the Heritage Council's recommendation to expand the curtilage around Varroville across our client's land (the 'Recommendation').

The Study contains material and recommendations that are adverse to our client's interests as a landowner of the property that is the subject of the Recommendation and IPC review. We understand that the Study is approximately 150 pages in length. Our client has not previously been provided with a complete copy of the Study which is before the IPC for the purposes of the review.

With respect, the access arrangement proposed in the announcement is impractical and procedurally unfair for the following reasons:

- 1) Given that lawyers and consultants act on the instructions of their clients, it is reasonable that our

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client together with its lawyers and consultants on this project have access to the Study. The Recommendation and review have the potential to affect our client's interests significantly and, in fairness, it ought to be afforded a reasonable opportunity to review and comment upon on the Study. In order to instruct its lawyers and consultants properly, it is necessary for our client to have access to the Study.

- 2) In the present circumstances, our client and its professional advisors will require additional time to review and comment upon the Study. In light of the significance of the Recommendation and review, our client has engaged lawyers and consultants, which number eight in total. The amount of time necessary for our client and its lawyers and consultants to review, consider and discuss the Study will not be insignificant. The Study is lengthy and will require detailed review to ensure that our client can be properly and fully advised on its contents and so that clear instructions can be given by our client for the preparation of further submissions in the IPC review proceedings;
- 3) It is inappropriate for this review, consideration and discussion on the Study to take place at the Commission's office with view-only access to the Study as our client and its consultants will not be able to bring to the Commission's offices the resources, including computers, printers and relevant materials, that they would ordinarily and properly have access to when undertaking an exercise involving the review of a detailed Study and the preparation of responsive submissions; and
- 4) Access to the Study will be unacceptably restricted by the view only access and by the opening hours of the Commission's offices.

No other material before the IPC Panel in its review of this matter has been made available so late in the process and with such little time available before the close of general submissions. Nor has any other material before the IPC Panel in its review of this matter been made available on such restricted and disabling terms that have potentially significant implications for landowners whose proprietary interests may be adversely impacted by any decision to list an expanded curtilage around Varroville on the State Heritage Register. Furthermore, no explanation has been provided for the highly restrictive conditions on the use of the Study.

In these circumstances, and to alleviate the issues raised above, we request that:

- a) a copy of the Study be provided to our client and its consultants for review and consideration in the same form as has been to the IPC Panel. In this regard, our client and its advisors would be prepared to agree to reasonable conditions restricting onward disclosure of the Study in order to preserve any confidentiality in its contents; and
- b) our client be given an additional 4 weeks to provide further submissions in respect of the Study, the Recommendation and the IPC review proceedings including the hearing. We ask this as our client's further submissions should not be restricted to the Study itself in circumstances where the

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