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22 November 2018

Anna Summerhayes
Acting Director
Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
Sydney NSW 2000

BY EMAIL: ipcn@ipcn.nsw.gov.au

Dear Ms Summerhayes

Review of the recommendation to list the curtilage extension of the Varroville Homestead & Estate (SHR00737) (“Review”)

1. We act for Ms Jacqui Kirkby and Mr Peter Gibbs in relation to the above matter. We refer to your letter dated 19 November 2018, in relation to the treatment of the confidentiality of the Curtilage Study, prepared by Orwell and Peter Phillips and dated May 2016 (the **Report**).
2. Our clients confirm that the Report is an important and relevant document for the Independent Planning Commission NSW (**IPC**) to consider in relation to the Review. However, our clients respectfully request that the IPC does not make the Report publicly available at this stage (subject to the exception set out in paragraph 5 below).
3. In this regard, we note that proceedings in relation to maintaining the confidentiality of the Report have been commenced by our clients against the NSW Office of Environment and Heritage in the NSW Civil & Administrative Tribunal (**NCAT**) (2018/00352608), pursuant to s 100 of the *Government Information (Public Access) Act 2009* (**GIPA Act**). The proceedings are listed for Case Conference on 22 January 2019.
4. We note that cl 5 of Schedule 2 of the *Environmental Planning and Assessment Act 1979* states that the IPC may restrict the publication of documents lodged with the IPC, if satisfied that this is in the public interest, for any reason. Further, we note that under s 54(6) of the GIPA Act, the Office of Environment and Heritage, must not release the Report while our clients’ review rights are pending. In our view, as our clients are currently pursuing their statutory review rights under the GIPA Act in relation to the Report and in light of s 54(6), it would not be in the public interest to defeat the purpose of the statutory review process

provided by the GIPA Act, to make the Report publicly available at this time. Accordingly, our clients consider that the IPC should defer its decision as to whether to make the Report publicly available until after the NCAT has finally determined the matter.

5. We have been instructed that substantive parts of Section 7 of the Report are already publicly available. Therefore, our clients have no issue with the IPC including Section 7 of the Report on its website.
6. We would be grateful if you could provide a response to the issues raised in this letter by **5pm on 28 November 2018**.

If you have questions, please do not hesitate to contact Natalie Vella on [REDACTED]

Yours sincerely
EDO NSW

[REDACTED]

per Natalie Vella
Senior Solicitor

Ref: [REDACTED]