

VARROVILLE

██████████, VARROVILLE NSW 2566
██████████ NSW 2566
(██████████)

7 January 2019

Director Secretariat,
NSW Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Sent by email to ipcn@ipcn.nsw.gov.au

Dear Sir/Madam:

Re: Heritage Minister's referral to Independent Planning Commission (IPCN): 'Varroville: Request for Advice on proposed listing on State Heritage Register'- Hearing Schedule and structure

We write to you as the owners of state-listed Varro Ville Homestead (SHR #00737) and nominators of the curtilage expansion for Varro Ville on the State Heritage Register (SHR) that is the subject of the above request to the Independent Planning Commission of NSW (IPCN).

We note that we have written two prior letters (7 December and 20 December 2018) raising concerns in relation to the IPCN processes in this matter for which receipt has been acknowledged but formal responses are pending. We now wish to raise a further concern specifically in relation to the hearing schedule and structure.

We understand from the Secretariat that those parties originally scheduled to speak at the Hearing of 3 December 2018 were those the (prior) IPCN panel wished to hear from. We note that legal firm Mills Oakley was scheduled to speak on behalf of the Catholic Metropolitan Cemeteries Trust (CMCT) at the hearing. This raises a number of concerns:

Firstly, we are not aware (and can find no evidence) that Mills Oakley was involved in any way in the curtilage expansion process during the relevant time period up to the Ministerial briefing of 31 October 2017, noting that up until that time the decision was purportedly non-controversial. We thus do not understand why the Panel would want to hear from current lawyers for the CMCT rather than the CMCT itself. As stated in our prior correspondence we support the IPCN's wish to be transparent and fair, but this does not appear to be consistent with that stance as the CMCT will not have to directly answer any questions about its involvement in the process during the relevant period, leaving this to its lawyers. This is not the case for my husband and me or the Heritage Council of NSW (NSWHC).

We are also concerned about whether other parties are able to ask questions either directly or through the panel. If so, this would allow the CMCT's lawyers to legally interrogate both my husband and me and the NSWHC – an opportunity that would not otherwise be available to it except in legal proceedings which are subject to other protocols for the protection of all parties. Neither we nor the NSWHC (as far as we know)

are bringing legal representation to this hearing and we do not see why we should be forced to given the nature of the matter before the IPCN. We are thus deeply concerned that while the CMCT is able to legally protect itself from scrutiny in this way, we may be legally exposed. This potentially lends itself to an imbalance of power between the parties and opens up the potential for bullying and intimidation. We feel we have good reason to be concerned as, following the NSWHC's decision to recommend the curtilage expansion on 28 September 2017, Mills Oakley has been involved in successive searches of the Office of Environment & Heritage and NSWHC under the *Government Information (Public Access) Act 2009 (GIPAA)* naming us as third parties, where new searches have been lodged before the prior ones have been concluded leaving us concerned about the intent. In September last year we also – along with our Carmelite neighbours, the local state MP and local newspaper – received letters from another law firm acting for the CMCT containing unsubstantiated allegations and a recommendation to seek legal advice in relation to a community photograph in support of the curtilage expansion (previously copied to the IPCN).

We are deeply concerned that the IPCN should not lend itself to an abuse of its powers and role in this process and would be grateful if the IPCN Secretariat and Panel could give this their consideration, along with the other matters raised in our prior letters.

Yours sincerely



For: Jacqui Kirkby and Peter Gibbs