

VARRO VILLE



30 November 2018

Professor Mary O’Kane  
Chair  
NSW Independent Planning Commission  
Level 3, 201 Elizabeth Street  
SYDNEY NSW 2000

URGENT

*Sent by email to [ipcn@ipcn.nsw.gov.au](mailto:ipcn@ipcn.nsw.gov.au)*

Dear Professor O’Kane:

***Re: Potential Conflicts of Interest and other matters in: ‘Varroville: Request for Advice on proposed listing on State Heritage Register’***

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 this matter was referred to the IPCN on 12 October 2018. We are therefore deeply concerned that it has taken so long for certain crucial matters to surface in relation to this project, and only after a date for a public hearing had been set. This has given us little time to seek advice and effectively respond and for the matters raised to be effectively dealt with, as follows:

**Publication of our curtilage study:** We first raised our concerns regarding the publication of our curtilage study in relation to this project on 30 October 2018 when we were orally advised that the matter had been referred to the IPCN, and we subsequently wrote to the IPCN expressing our concerns on 7 November 2018. We were only advised that the IPCN might publish our curtilage study on its website on 19 November 2018. Solicitors acting for us wrote to the IPCN on 22 November 2018 and received a response on the night of the 28 November giving us an ultimatum in relation to the publication of our study, including that we could redact parts of the study. The study contains 149 pages and is a comprehensive whole. This would thus have involved a huge amount of work with no guarantee that the proposed redactions would be accepted. We were given two days to respond. This presumed that we had no other commitments during those two days. Our solicitors have written to the IPCN asking it to reconsider its position with little time to act on this prior to Monday’s public hearing. We feel that this is unreasonable and unfair to us.

**Panel Chair’s potential conflict of interest:** A declaration of a potential conflict of interest by the Panel Chair (Professor Richard Mackay) was only published on 28 November after the public hearing had been set for the following Monday 3 December 2018, thus giving little time to appoint a new Chair. We are deeply concerned that the potential conflict of interest involves the law firm Mills Oakley, and that the depth of Mills Oakley’s involvement in this matter and of its relationship with the Panel Chair has not been sufficiently explored or publicly notified. The declaration of 28 November shows Mills Oakley lawyer

Anthony Whealy is acting for the Catholic Metropolitan Cemeteries Trust (CMCT) in this matter. Mr Whealy also acted for another interested party – Elton Consulting Group (acting for Scenic Pty Ltd) in attempting to gain access to our curtilage study under the *Government Information (Public Access) Act 2009 (GIPAA)* earlier this year. Mills Oakley has been the applicant in two subsequent requests for our information (including the curtilage study) under the GIPAA. All three GIPAA matters are still in progress, with an NCAT hearing in the first matter scheduled for 22 January 2019. The decision of the Chair to make our study public, or provide it to Mills Oakley on a confidential basis or face having it withdrawn from consideration by the IPCN (or limited consideration) circumvents the above GIPAA matters in favour of Mills Oakley and their clients and deprives us of our rights under the GIPAA. In doing so it brings the Chair's declaration that he is currently engaged by Anthony Whealy of Mills Oakley on another heritage matter into stronger focus. We feel that not enough information has been provided concerning Mills Oakley involvement and the Panel Chair's relationship with the firm, to decide whether a conflict of interest exists. We note that the Panel Chair may not be aware of Mills Oakley's greater involvement in this matter and we are not suggesting corrupt conduct. However we cannot be satisfied that an actual conflict does not exist.

Clearly these matters are interrelated. We feel that the delays in dealing with these matters and the unseemly haste with which the IPCN is attempting to conclude the matter under these circumstances is not providing us, and possibly other participants, with a fair process.

We would be grateful for your urgent attention to this.

Yours sincerely

A large black rectangular redaction box covering the signature area of the letter.

For: Jacqui Kirkby and Peter Gibbs