VARRO VILLE



25 February 2019

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

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

Dear Sam:

Re: Varro Ville Homestead & Estate curtilage expansion review ('Review') – pending issues

Two weeks have passed since our phone conversation on Monday 11 February where I raised a number of matters which remain outstanding. As these are matters that could prejudice the outcome of this Review, I outline these below and add some other concerns that have arisen since:

1. A letter from the Independent Planning Commission ('**Commission**') of 7 February to the lawyer for the Catholic Metropolitan Cemeteries Trust ('**CMCT**'), Mills Oakley, stated the Commission had 'provided your letter of 25 January to the owner of the Curtilage Study for comment, who responded via telephone on 4 February 2019'.

As discussed, the Commission provided Mills Oakley's letter to us on 31 January 2019 with a request that we provide any comment by 3.00pm on 4 February 2019, which we duly did *in writing*. We presume that this letter was notified to the Panel.

2. Until we found correspondence on the Commission's website on Monday 11 February, we were unaware that the CMCT and its consultants had been given a two-week extension to 15 February 2019 to make submissions. You confirmed that this was for comments on the curtilage study only. You also confirmed that the extension of time was to ensure that the CMCT and its consultants were afforded procedural fairness. To this end we have no quarrel. However we were not informed of the agreement and, despite our asking for an 'extension of time' ourselves – mainly to compensate for delays by the Commission in listing the transcript and the errors contained within it - we were not granted this. We are concerned that there remains an issue of procedural fairness in this *for us*: notably that while the CMCT and its consultants have been given an extension of time to 15 February 2019 to lodge critiques of our study, we and our consultants have been given no right of reply. You indicated that you would discuss this with your team but we have heard nothing further.

While we feel that our study stands on its merits, and has been supported by the NSW Heritage Council, to resolve any procedural unfairness regarding submission deadlines we ask the following:

If the Panel has any doubts about any part of the Study as a consequence of the CMCT's and its consultants' criticisms, the Panel refer these to us to give us and/or our consultants the opportunity to respond.

- 3. We sent a letter to the Chair of the Commission, Professor O'Kane regarding the sequencing of the two projects with the Commission the Varro Ville Curtilage Expansion Review and the Varroville Cemetery Development Application ('DA') to ensure consistency with proper process and the Commission's independence from political interference in the process (and/or the perception thereof). You confirmed that our letter *was* provided to Professor O'Kane and to both project panel chairs. I note that it has now appeared on both website pages however *a response to this letter remains outstanding.*
- 4. A submission from Florence Jaquet, the CMCT's cemetery designer, contained a defamatory statement against me, suggesting that I had lied to the Commission in relation to a meeting with the CMCT in August 2013. We documented what was said in that meeting in various letters at the time, including to the Minister responsible for Crown Lands and subsequently to the CMCT's CEO Mr Peter O'Meara, copied to Chancellor of the Catholic Archdiocese of Sydney. The CMCT did *not* offer to buy our house in the one and only meeting we had with it. Subsequent entreaties were covered in our submission.

My concern is that, despite alerting the Commission to the defamatory comment, it has remained on the Commission's website for all to see. [I note the Ms Jaquet has also misquoted me in relation to other statements).

- 5. Until public submissions *against* the curtilage expansion appeared on the Commission's website, we were unaware that anyone other than those who had been asked to appear at the hearing could make submissions. We can find no evidence that there was any attempt by the Commission to notify the general public of this Review. This means in effect that the CMCT has had privileged information that has allowed it to have a second bite of the cherry in garnering support for its opposition, noting that none of these late objectors made submissions during the original Public Exhibition period. Under these circumstances it would be deeply concerning if these submissions and the imbalance towards objectors was given undue weight.
- 6. We note that Mills Oakley has made another late submission (15 February 2019) regarding its client's access to our curtilage study. We have already stated that the access arrangements we agreed to were those proposed by the Commission in its letter of 28 November 2018. If the Commission has had any advice since suggesting that this would *not* afford procedural fairness to the CMCT, then we would have expected the Commission to make us aware of this so that we could consider it. Thus if the Panel subsequently finds that this has any substance and it influences the outcome, we would be greatly aggrieved.



7. Finally we wish to reiterate that, following the Commission's provision of advice to the Minister, our curtilage study is not to be published by the Commission. We draw your attention to the exchange of letters between EDONSW, acting for us in this matter, regarding the Commission's obligations versus the Minister for Heritage.

Consistent with our prior statements:

- a. We do not want the curtilage study published until the land to which it pertains comes under the protection the *Heritage Act 1977*. If the Minister decides to *not* approve the curtilage expansion then this process may be extended via the courts.
- b. If and when the study *is* eventually published we have requested that it comply with the copyright agreements in place between the OEH and ourselves, i.e. *'limited to a resolution unsuitable for publication-quality printing'*.

We ask that this letter be forwarded to the Panel Chair.

Yours sincerely



For: Jacqui Kirkby and Peter Gibbs