

## Environment &amp; Planning

## Our Values

**To:** Attention: Lisa Foley  
The Panel Secretariat  
Joint Regional Planning Panel

**From:** Sanju Reddy – Senior Town Planner  
City of Ryde

**Date:** 15 September 2015

**File:** LDA2015/0144 (JRPP Ref: 2015SYE027)

**Subject:** 12 Delhi Road Macquarie Park DA2015/0045  
(Cemetery redevelopment - Crown Development Application)  
Changes to recommended conditions

Professionalism  
Teamwork  
Leadership  
Ethics  
Pride  
Recognition

Reference is made to the email correspondence from Lisa Foley dated 27 August 2015 in relation to the above matter. Council was advised that the applicant (Trustees of the Macquarie Park Cemetery) have withdrawn its concurrence to the recommended conditions of consent and are seeking additional changes to the conditions previously recommended.

This memo is in response to the applicant's request of 27 August 2015 seeking further changes to recommended Conditions No. 25, 33, 34 (conditions dealing with site contamination & archaeological findings) and seeks the deletion of Condition 46 (condition requiring payment of Section 94 contributions). The specific requests are detailed in the letter dated 27 August 2015 from Glendining Minto & Associates (attached as **Attachment A**).

Council has reviewed the applicant's request and agrees to make the requested changes subject to minor modification where necessary. Where the conditions recommended by the applicant has been further modified by Council, further concurrence of the applicant have been obtained via email (refer to attached email – **Attachment B**).

### **REVIEW OF APPLICANT'S REQUEST**

1. **Conditions 25, 33 & 34** (deals with site contamination & archaeological findings)


Council has reviewed the request with respect to the above conditions and generally agree with the changes as proposed subject to minor amendments.

The respective conditions should now be as follows:

**Condition 25 (reworded):**

**25. Further site investigation** — In order to ensure that the site is suitable for the proposed development the site works must be managed in the following manner:-



- 
- a) Each of the four development areas is to be investigated and cleared by an experienced and appropriately qualified environmental or geotechnical engineer as suitable for the proposed works prior to works commencing in that area;
  - b) The clearance certificates/reports are to be submitted to Council and the Principal Certifying Authority (if Council is not the PCA);
  - c) An asbestos management plan is to be prepared for execution in the vicinity of bore hole BH104 and submitted to Council and the Principal Certifying Authority (if Council is not the PCA);
  - d) A contingency plan is to be prepared for unexpected finds (including fibro) in other sections of the site and submitted to Council and the Principal Certifying Authority (if Council is not the PCA); and
  - e) In the event unexpected conditions are encountered in the development areas during development work or between sampling locations that may pose a contamination risk, all works should stop in that area and an environmental consultant should be engaged to inspect the site and provide remediation measures that maybe required.

**Condition 33 (changes underlined):**

**33. Imported soil** - All imported soil must be validated in accordance with the *Contaminated Sites Sampling Design Guidelines* (EPA, 1995) by an experienced environmental or geotechnical engineer and a copy of the validation report must be submitted to the Principal Certifying Authority (and Council, if Council is not the PCA) before the soil is used.

**Condition 34 (changes are underlined):**

**34. Stop Work Provisions:** As required by the *NSW National Parks and Wildlife Service Act 1974* and the *NSW Heritage Act 1977*, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/ discovered where they are not expected, works must cease immediately in the affected area(s) to allow a suitably qualified archaeologist to make an assessment and recommendation of the findings. The archaeologist may need to consult with the NSW Heritage Division of the Office of Environment and Heritage regarding Aboriginal cultural heritage relics, or the significance of historic cultural material unearthed. If relics are encountered, the Heritage Division should be notified and further archaeological work may be required before works could recommence in the affected areas. Approvals/ permits from the NSW Heritage Division may also be required to disturb/relocate relics.

Accordingly, the redrafted conditions (25, 33 & 34) shown above were forwarded to the applicant for further consideration. The applicant has now provided their approval to the following modified conditions (see **Attachment B**).

## 2. Condition 46 (deals with payment of Section 94 Contributions)

The applicant's request as contained in **Attachment A** seeks an exemption with respect to the Section 94 contribution on the grounds that "S94 Contributions are not applicable to Crown application." On 28 August 2015, the applicant was advised by Council that that Crown DAs are not exempt from paying S94 contributions under any provisions of the EP& A Act. In response the applicant provided the following:

*I note your advice that "crown DA's are not exempt under any provisions of the EPA Act". The trust retains its position that the cemetery and it facilities provides community facilities and that based upon its contribution to the social fabric of the community that it should not be subjected to the contribution requirement.*

It is acknowledged that application is for the redevelopment works within an existing cemetery that has and will continue to benefit to the community and does not significantly create additional demand on the infrastructure needs in the locality. The proposal will upgrade facilities eliminating the need for occasional temporary marquee use. The intent of the development is to provide an improved level of services and amenity to the users of the cemetery. In the circumstances of the case Council agrees that a "cemetery" should not be subject to S94 contribution under Council's Section 94 Plan (as amended).

Based on the above, Council agrees with the applicant's request to delete Condition No. 46.

### Recommendation

- Council agrees to modify the conditions 25, 33 & 34 as discussed in this memorandum.
- Council also agrees to waive the Section 94 contribution previously recommended for this DA and agrees to the deletion Condition No. 46 as requested by the applicant.

In accordance with Clause 89(1)(b) of the Act, the consent authority must not impose a condition of its consent, except with the written approval of the Minister or the applicant. The applicant has now agreed to the recommended conditions subject to above amendments. On this basis, it is recommended that the application be approved via electronic means as previously agreed.



**Sanju Reddy**  
**Senior Town Planner**





**glendinning minto & associates p/l**

planning & development control consultants abn 68 091 465 271

27 August 2015  
GMA Ref: 9/2015

Regional Planning Secretariat  
GPO Box 39  
SYDNEY NSW 2001

Attention: Lisa Foley

Dear Lisa

**RE: 2015 SYE027 Ryde City Council LDA2015/45  
MACQUARIE PARK CEMETERY AND CREMATORIUM**

I refer to the above application. My client have instructed me to advise that the trust withdraws its consent to the draft conditions. The trust suggests that the conditions be amended as follows:-

**Condition 25**

The contamination report at clause 8.4 advises that the consultants are of the opinion that the site can be made suitable for the proposed development provided that the site works are managed in the following way:-

- Each of the four development areas are investigated and cleared as suitable for the proposed works prior to works commencing.
- An asbestos management plan is proposed for execution in the vicinity of bore hole BH104; and
- A contingency plan is prepared for unexpected finds (including fibro) in other sections of the site.

In the event unexpected conditions are encountered in the development areas during development work or between sampling locations that may pose a contamination risk, all works should stop in that area and an environmental consultant should be engaged to inspect the site and provide remediation measures that maybe required.

**Condition 33**

After 'experienced environmental' insert 'practitioner'.

**Condition 34**

In the 4<sup>th</sup> line, after 'works must cease immediately' insert 'in the affected area(s)'.

In the second last line, after 'commence' insert 'in the affected areas'. The clause currently would stop all works on site.

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## **glendinning minto & associates p/l**

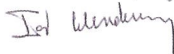
planning & development control consultants abn 68 091 465 271

### Condition 46

We are advised that S94 contributions are not applicable to Crown application. Could this condition be reviewed and waived particularly having regard to the public benefit provided by the Trust in maintaining a public cemetery and crematorium.

I have advised Sanju Reddy at Ryde City Council of the above.

Yours Sincerely



Ian Glendinning  
DIRECTOR

**Sanju Reddy**

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**From:** Kay Felsman <kay@glendinningminto.com.au>  
**Sent:** Friday, 4 September 2015 2:26 PM  
**To:** Sanju Reddy  
**Cc:** 'Ian Glendinning'  
**Subject:** Macquarie Park Cemetery - LDA 2015/45

Sanju

I refer to the above and your memo dated the 29 August 2015.

Condition 25

Agreed except for minor grammatical errors as follows:

**Condition 25.**

**Further site investigation** — In order to ensure that the site is suitable for the proposed development the site works must be managed in the following manner:-

- a) Each of the four development areas is to be investigated and cleared by an experienced and appropriately qualified environmental or geotechnical engineer as suitable for the proposed works prior to works commencing in that area;
- b) The clearance certificates/reports are to be submitted to Council and the Principal Certifying Authority (if Council is not the PCA);
- c) An asbestos management plan is to be prepared for execution in the vicinity of bore hole BH104 and submitted to Council and the Principal Certifying Authority (if Council is not the PCA);
- d) A contingency plan is to be prepared for unexpected finds (including fibro) in other sections of the site and submitted to Council and the Principal Certifying Authority (if Council is not the PCA); and
- e) In the event unexpected conditions are encountered in the development areas during development work or between sampling locations that may pose a contamination risk, all works should stop in that area and an environmental consultant should be engaged to inspect the site and provide remediation measures that maybe required.

**Condition 33** - Agreed as per your amendment - 'geotechnical engineer'

**Condition 34** - Agreed

**Condition 46**

I note your advice that "crown DA's are not exempt under any provisions of the EPA Act".

The trust retains its position that the cemetery and its facilities provides community facilities and that based upon its contribution to the social fabric of the community that it should not be subjected to the contribution requirement.

Based upon the above, the only outstanding issue is the question relating to S94 contributions requirement.

Can you consider the Trust's position and let me know.

Regards

Ian Glendinning

**Glendinning Minto & Associates P/L**

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**[www.glendinningminto.com.au](http://www.glendinningminto.com.au)**

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