



The General Manager  
Liverpool City Council  
33 Moore Street,  
Liverpool NSW 2170

5 December 2016

**Attention Jonathon Cleary – Senior Development Planner**

**Section 96 (2) Application  
Modification of DA1133/2010/B  
321 Greendale Road, Greendale**

Dear Sir,

Reference is made to Council's email of 1 December 2016 to Design Cubicle regarding the abovementioned application. It is understood that the consent authority has questioned why the application can't be dealt with as a s96(1A) application instead of a s96(2) application.

The provisions contained within s96(1A) of the EP&A Act 1979 are set out as follows:

**96 (1A) Modifications Involving Minimal Environmental Impact**

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), (2) and (5) do not apply to such a modification.*

**Response**

The modified application was made under s96(2) because we were of the view that because there were numerous modifications proposed to the consent, Council would from past experience with them with other modification applications, require the application be dealt with under s96(2) rather than s96(1A) of the EP&A Act 1979.

If the consent authority is happy to deal with it under Section 96(1A) of the EP&A Act 1979 we raise no objections to that approach.

It could be argued that while the application seeks to make numerous changes to the consent, the changes proposed are of minimal impact and the development remains substantially the same development as that approved because:

- the modified proposal is permissible under the sites Rural zone;
- the plot numbers do not increase and therefore the traffic generated by the cemetery will not increase;
- modifications to the staging of the development do not change the development as approved;
- the amount of deep soil and landscaping is increasing not decreasing and as such the proposed cemetery will readily fit within its rural context;
- the proposed modifications could be described as being cosmetic changes to the approved development that will have no impact upon the surrounding natural environment;
- the design changes and siting of buildings within the cemetery are not viewed from the street and will have no impacts upon the streetscape or the character of this neighbourhood;
- no increase in noise will result of the proposed modifications;
- the hours of operation of the cemetery are not proposed to change under this application.

It is for the above reasons that we are of the view that the proposal could be assessed under Section 96(1A) because it will have minimal environmental impact and the development as approved will be substantially the same as that approved.

Yours sincerely,



Farah Georges  
Director  
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Design Cubicle Pty Ltd  
Nominated Architect: Alex Sibir (#2961)