

Submission
No 6

INQUIRY INTO FUNERAL INDUSTRY

Organisation:

Name: Mr Tom Gough

Telephone:

Date Received: 3/05/2005

Theme:

Summary

Tom Gough

29 April 2005

Ms Jan Burnswood, MLC
Committee Chair
Inquiry - Funeral Industry
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Burnswood

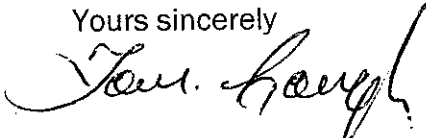
It would be appreciated if my concerns as a resident of Nulkaba who lives adjacent to a crematorium in Kerlew Street, Nulkaba could be taken into consideration as part of the Inquiry - Funeral Industry.

Attached for your information are copies of the following:

1. Copy of letter to Cessnock City Council dated 16 November 2004.
2. Copy of letter to my local member, Mr Kerry Hickey, MP, dated 16 November 2004.
3. Copy of response from Tony Kelly, MLC, Minister for Local Government, dated 15 December 2004.
4. Copy of response from Bob Debus, MP, Minister for The Environment dated 12 January 2005.
5. Copy of letter from ACM Landmark to Cessnock City Council dated 20 October 2004.
6. Copy of letter from ACM Landmark to Cessnock City Council dated 3 November 2003.
7. Copy of a report to Cessnock City Council meeting in November 2004 entitled "The Nulkaba Cremator".

Thank you for taking my concerns into consideration.

Yours sincerely



(Mr) Tom Gough

29.4.05

encls

Tom Gough

COPY

16th November 2004

The Hon Kerry Hickey MP
Member for Cessnock
PO Box 152
Cessnock 2325

OBJECTIONS TO AMENDMENTS TO CONSENT DA. No. 8/2000/433/2

Dear Sir

I am a resident off Nulkaba and live adjacent to the crematorium developed on the site of DP 128674.

It is my understanding that the owners of the site are in the process of requesting permission to expand the scale of the operations of the facility through an amendment to consent (DA 8/2000/433/2).

Before any decision is made on this new application I believe that any past breaches reported should be investigated fully and the appropriate penalty notices be issued before any decision is made to consider the proposed expanded operations to the cremator.

I believe that during the development application process and resulting consent (consent No. 8/2000/433/2), various conditions were placed on the business concerning hours of operation, the size of the buffer zone, the operating temperature of the furnace and the number of cremations to be carried out over a given period at the site.

I am led to believe that these conditions of consent have not been met in many significant areas and in fact have been breached on many occasions.

It is clear that the applicant has not complied with the consent conditions since the commencement of work on the cremator.

At this stage I believe that Cessnock City Council should instruct the applicants to show cause as to why the current cremator operations should not cease permanently due to the ongoing breaches of consent.

I believe that the applicants have contempt of Council and its planning instruments and to the local community of Nulkaba.

The following is my understanding of the outstanding breaches of consent that have not been addressed adequately by the developer or by Council.

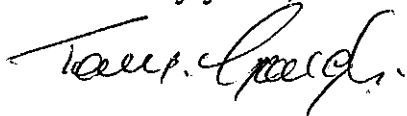
- Work was not to proceed during weekends and out of hours during the initial construction phase of the facility. This consent was breached and reported to authorities on a number of occasions.
- Cremations took place at the site before the facility was completed to council specifications.
- Car parking and signage issues were only addressed after much pressure from councillors.
- The buffer zone imposed by Cessnock City Council of 100metres (note: half that recommended by the Crematorium Association) has not been complied with as the residence on DP 662149 (within 50metres of the facility) has been occupied continuously since cremations commenced.
- It should be noted that the accepted 100metre buffer zone was a contentious issue when the original DA was passed by the Council with a maximum of 400 cremations per year.
- The accepted 400 cremations have been exceeded by at least 25% in the first year of the crematory's operation with no regard to residents in the area.
- I believe that the proposed increase to 1600 cremations per year should be rejected to ensure that the health and social impacts on the local community are not compromised.
- The amended DA refers to decreasing the burning temperature of the cremator (for economic reasons).
This will intensify any associated health impacts for local residents due to an increase in odours and particularly toxic emissions. (eg. Mercury and dioxins).

The local community has voiced concerns that this application is tied to the developers attempt to increase their share in the cremations business from all areas in the Hunter, it was noted in the first application that the cremator would only serve residents of the Cessnock area.

Cessnock City Council and the developer do not seem to be able to take responsibility for the breaches for the conditions of consent therefore I request that your office refer the outstanding matters to the Minister for Infrastructure and Planning, the Minister for the Environment and as Council has avoided responsibility for pursuing the breaches of consent it would be appropriate for the Minister for local Government to be requested to undertake the necessary investigations.

I look forward to the relevant departments taking action against the developer and Cessnock City Council before any decision is made by Council to approve the amendment to consent.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Tom Gough', written in a cursive style.

Tom Gough

Tom Gough

COPY

16th November 2004

The General Manager
Cessnock City Council
PO Box 152
CESSNOCK 2325

OBJECTIONS TO AMENDMENTS TO CONSENT DA. No. 8/2000/433/2

Dear Sir

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It is my understanding that the owners of the site are in the process of requesting permission to expand the scale of the operations of the facility through an amendment to consent (DA 8/2000/433/2).

Before any decision is made on this new application I believe that any past breaches reported should be investigated fully and the appropriate penalty notices be issued before any decision is made to consider the proposed expanded operations to the cremator.

I believe that during the development application process and resulting consent (consent No. 8/2000/433/2), various conditions were placed on the business concerning hours of operation, the size of the buffer zone, the operating temperature of the furnace and the number of cremations to be carried out over a given period at the site.

I am led to believe that these conditions of consent have not been met in many significant areas and in fact have been breached on many occasions.

It is clear that the applicant has not complied with the consent conditions since the commencement of work on the cremator.

At this stage I believe that Cessnock City Council should instruct the applicants to show cause as to why the current cremator operations should not cease permanently due to the ongoing breaches of consent.

I believe that the applicants have contempt of Council and its planning instruments and to the local community of Nulkaba.

The following is my understanding of the outstanding breaches of consent that have not been addressed adequately by the developer or by Council.

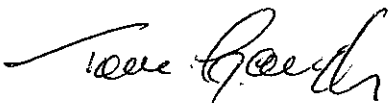
- Work was not to proceed during weekends and out of hours during the initial construction phase of the facility. This was consent was breached and reported to authorities on a number of occasions.
- Cremations took place at the site before the facility was completed to council specifications.

- Car parking and signage issues were only addressed after much pressure from councillors.
- The buffer zone imposed by Cessnock City Council of 100metres (note: half that recommended by the Crematorium Association) has not been complied with as the residence on DP 662149 (within 50metres of the facility) has been occupied continuously since cremations commenced.
- It should be noted that the accepted 100metre buffer zone was a contentious issue when the original DA was passed by the Council with a maximum of 400 cremations per year.
- The accepted 400 cremations have been exceeded by at least 25% in the first year of the crematory's operation with no regard to residents in the area.
- I believe that the proposed increase to 1600 cremations per year should be rejected to ensure that the health and social impacts on the local community are not compromised.
- The amended DA refers to decreasing the burning temperature of the cremator (for economic reasons).
This will intensify any associated health impacts for local residents due to an increase in odours and particularly toxic emissions. (eg. Mercury and dioxins).

The local community has voiced concerns that this application is tied to the developers attempt to increase their share in the cremations business from all areas in the Hunter, it was noted in the first application that the cremator would only serve residents of the Cessnock area.

As a result of the above concerns I strongly object to Council considering AMENDMENTS TO CONSENT DA. No. 8/2000/433/2.

Sincerely yours,



Tom Gough



New South Wales

The Hon Tony Kelly MLC
Minister for Rural Affairs,
Minister for Local Government,
Minister for Emergency Services, and
Minister for Lands

COPY

Ref: FF96/0300
RML: 04/7209
DTS: 99460

The Hon K A Hickey MP
Minister for Mineral Resources
Member for Cessnock
PO Box 242
CESSNOCK NSW 2325

15 DEC 2004

I refer to your letter of 16 November 2004 and your representations on behalf of Mr Tom Gough of 1 Kerlew Street, Nulkaba. That letter concerned the alleged non-compliance of development consent conditions by the operators of the Nulkaba Crematorium and proposed further development on the site.

The Environmental Planning and Assessment Act gives councils discretionary power to determine development applications. That Act also gives councils power to investigate alleged breaches of development consent conditions and, where necessary, to issue orders for compliance. The Local Government Act 1993 does not give the Department of Local Government or me any power to intervene in the assessment of development applications, or to direct a council to exercise its discretionary enforcement powers.

Notwithstanding the above, an officer from the Department of Local Government made enquiries into this matter with council. I am advised that council is currently investigating the alleged breaches of the development consent conditions, and will take action should there be evidence to justify such a step. It will be for council to assess and determine any development application for the site.

As council is the appropriate body to investigate the matter, and is currently investigating the breaches in question, I can only suggest that your constituent continues to raise his concerns directly with council. Your constituent should also consider making a submission to council on any current application for development consent for the site.

I trust that this clarifies the issue for both yourself and your constituent.

Yours sincerely

The Hon Tony Kelly MLC
Minister for Local Government

RECEIVED

20 DEC 2004



NEW SOUTH WALES

COPY

MINISTER FOR THE ENVIRONMENT

In reply please quote: MOF15938; MOF16534

RECEIVED

17 JAN 2005

The Hon K Hickey MP
Minister for Mineral Resources
Member for Cessnock
PO Box 242
CESSNOCK NSW 2325

12 JAN 2005


Dear Minister Hickey


I refer to your representations of 4 and 16 November 2004 on behalf of Mr Thomas Gough (1 Kerlew Street, Nulkaba 2325) and Mr Kevin Goodwin (86 Wine Country Drive, Nulkaba 2325) concerning the crematorium at Nulkaba. I apologise for the delay in replying.

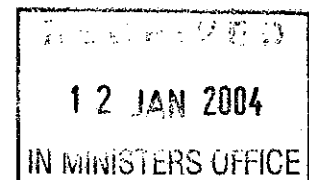
The Department of Environment and Conservation (DEC) does not have an approval role in the planning processes for this crematorium. Such developments are the responsibility of local government as part of the planning and zoning responsibilities set out in *the NSW Environmental Planning and Assessment Act 1979*.

Cessnock City Council is the authority responsible for investigating the matters raised by Mr Gough and Mr Goodwin. Council is also responsible for investigating any pollution incidents associated with the crematorium.

Any concerns your constituents have about Cessnock City Council's handling of this matter are most appropriately raised with and addressed by senior staff or elected Council representatives. If your constituents are still not satisfied with Council's actions, or feel that Council has not followed due process with regard to this facility, they may wish to contact the Minister for Local Government, the Hon Tony Kelly MLC, and/or the NSW Ombudsman (toll free number 1800 451 524).

Yours sincerely


Bob Debus



20 October 2004

Our Ref: 0082.ML/CCC-L3B-JJ.doc

ACM LANDMARK

ACN 087 236 217
ABN 55 269 517 527

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P.O. Box 627
CESSNOCK, 2325

Telephone: 02 4991 7171
Facsimile: 02 4991 7272
Email: acm@hotmail.net.au

The General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

ATTENTION:- MR ROD SANDELL

Dear Rod,

COPY

DA 8/2000/433/1, KERLEW STREET NULKABA

I refer to a Sec 96 (1A) application submitted to Council in November 2003 which sought to amend condition Number 2 and Condition Number 44 of the above consent. We note that to date this matter has not been concluded by Council.

Accordingly, as the application is still current, we seek formally Councils inclusions or the deletion or amendment of Condition No 4 of Development Consent 8/2000/433/1 within the current Sec 96 (1A) application.

Condition No 4 required:

"The temperature in the primary combustion chamber shall be maintained above 900°C under oxidising conditions whenever a body is being cremated."

As you are aware by previous correspondence (3rd November 2003), various discussions with Mr John Court, discussions between Mr John Court and Major Engineering and Mr John Court and ERM it has been quite apparent that condition No 4 cannot be practically complied with.

The operating conditions of the primary combustion chamber are such that whilst the chamber can be at or above 900°C when the chamber door is opened and a coffin inserted naturally the combustion chamber temperature drops to below 900°C.

It should be noted that the coffin inserted into the cremator always comes from a cool store situation where the ambient storage temperature is between 1° and 5°C.

As a result of the insertion of a cooled fuel load within the cremator the temperature within the primary combustion chamber will drop to below 900°C until such time as combustion increases the temperature to near or above the 900°C

Operation of the cremator is quite normal below 900°C and full combustion occurs in each and every operation. The monitored data submitted to council attests to this occurring.

ACM Landmark Pty Ltd

Major Engineering, the Cremator manufacturers have quantified to John Court that the method of operation of the cremator does not and cannot practically achieve the 900°C temperature conditions for all cremations. The operating temperature will vary depending upon size and temperature of fuel load.

It is for this reason that we consider that the condition is unreasonable and is unachievable and should be deleted or amended to read:

"The temperature within the primary combustion chamber shall be maintained at or above manufacturers specifications to achieve oxidising conditions whenever a body is being cremated".

Naturally we would expect that Council's consultant Mr Court would advise Council and in this regard we would again welcome Mr Courts direct contact with Major Engineering to verify operational parameters of the cremator unit.

As discussed we note that this matter will require Councils readvertising and notification and in this regard have included our client's cheque in the amount of \$310 - being \$230 advertising fee and \$80 notification fee.

We reaffirm our requirement to not have cremation numbers limited to 400 but should Council consider limiting the number of cremations we would ask that the figure of 1 000 cremations per annum be the limit. In this way should the facility exceed expectations then an additional Sec 96 (IA) amendment could be avoided.

In respect to hours of operation we have reconsidered our initial request and seek that the following hours be approved:

| | |
|------------------------------------|---------------------|
| Monday to Friday | 8:00 am to 4:30 pm; |
| Monday to Friday (Daylight Saving) | 8:00 am to 6:00 pm; |
| Saturday | 8:00 am to 1:00 pm. |

We also seek clarification within the condition that the hours of operation are cremation times only. As you are aware the facility has a heat up phase and cool down phase and we seek that these phases could occur outside of these hours. Please be aware that it is not intended to cremate within this period but simply to achieve more efficient use of the available times by heating up and cooling down outside of hours of normal operation. These lead in and phase out times occur automatically without the need for staff on site. The following condition is suggested:

"Following commencement of occupation, the premises shall operate and cremate only between the time stated as follows:

| | |
|------------------------------------|---------------------|
| Monday to Friday | 8:00 am to 4:30 pm; |
| Monday to Friday (Daylight Saving) | 8:00 am to 6:00 pm; |
| Saturday | 8:00 am to 4:30 pm. |

I trust this meets with councils requirements and should you have any questions please contact me.

Yours faithfully


MARK LEEK

Enc.

3 November 2003

Our Ref: 0082.ML/CCC-L31-CC.doc

1,200 3 | 2,305 |

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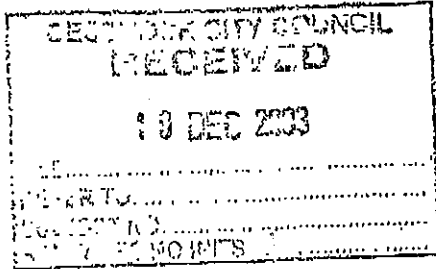
ACM LANDMARK

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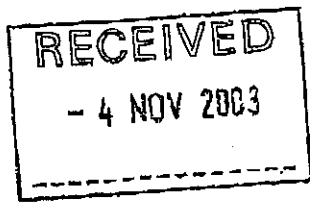
Telephone: 02 4991 7171
Facsimile: 02 4991 7272
Email: acm@hotmail.com



The General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

ATTENTION:- MR ROD SANDELL

COPY



Dear Rod,

DA 8/2000/433/1 -ST PATRICKS of NULKULBA

Attached, please find a duly completed Section 96 (1A) amendment together with our client's cheque in the amount of \$504.75 for the alteration of the following Conditions of Consent.

Condition No 2:

'The proposed Cremation facility shall process a maximum four hundred (400) bodies per annum'

The limitation of the number of bodies that can be processed to 400 per annum is an inefficient use of the cremator facility. Major Engineering, the manufacturer of the Cremator, advise that the HD 90 series Cremator is capable of a through put of up to 1600 cremations per year. The use of the cremator for this number of cremations makes for a more efficient use of the furnace. The furnace operates at a more optimal temperature with a higher through put, that is, the operating temperature of the furnace is held more constant the longer the operating time. Also, there is less time for the system to cool, which provides less efficiencies.

The restriction of the number of cremations for the facility is also considered to be a restriction of trade under the Trade Practices Act in that if there is a greater demand for the facility use, then Council's Condition of Consent actually restricts this more efficient and demand driven use.

The number of cremations nominated within the Development Application documentation was at the time a best estimate based upon one funeral directors use of a similar facility. Since commencement of operation and the more effective operation of the system, this level is now seen to be restrictive.

We therefore request that Condition No 2 be amended to read sixteen hundred (1600) bodies per annum.

ACM Landmark Pty Ltd

Condition No 44

Following commencement of occupation, the premises shall operate or trade only between the times stated as follows:

Monday to Friday – 8.30am to 4.00pm'

We request that this condition be amended to read:

Monday to Friday 8.30am to 4.30pm

Monday to Friday (daylight saving) 8.30am to 6.00pm

Saturday 8.30am to 1.00pm

The reason for the alteration of operating times stems from the need to fully comply with the Department of Health regulations. As you would be aware, bodies can only be temporarily stored for a maximum period of 48 hours within the facility. As a result, if deliveries are taken on a Friday, and cremations are already under way, the limiting of the cremation times can mean that not all bodies could be cremated in that day. Accordingly, bodies cannot be held over until the Monday for cremation. As a result, the situation can arise where up to seven (7) or eight (8) cremations may need to be done in one day (Monday) and this means that time periods may be exceeded and Health Department regulations may also be breached.

This situation can be exacerbated with a long weekend or peak period time.

The use of Saturday morning gives the opportunity for some cremations to relieve the 48 hour holding period. This would assist to meet the Health Department regulations.

As the operation of the St Patricks Wedding Chapel and the Cremator are within the same ownership, regulation of Saturday cremations can be controlled to not conflict with Wedding services on the same day.

In the event of the need for a continued operation time as a result of unforeseen demand or extenuating circumstances, restrictions such as imposed, by Condition No 44, would limit the ability of the facility to meet those demands and needs.

We therefore respectfully request that Council amend both Condition No 2 and Condition No 44 as requested.

Should you have any questions, please do not hesitate to contact me.

Yours faithfully,

Mark G. Leek
PER

MARK G. LEEK.

Encl

The Nulkaba Cremator

Environmental Resources Management was engaged by ACM Landmark to prepare a report about the operational details of the Nulkaba Cremator in compliance with the development consent of Cessnock City Council. This report, dated 15/12/03, (the ERM report) was submitted to council by the developer. The report contains details about the operation of the cremator during the first year of its operation.

1. Condition of consent No 44

This condition states that the premises shall operate only between the hours of 8.30am to 4.00pm.

The ERM report states that at least 69 cremations were carried out outside the hours of operation and a further 42 cremations would have been carried out partially outside the permitted hours of operation. This means at least 111 cremations were carried out outside the permitted hours of operation. The developer breached condition no 44 at least 111 times during the first year of operation. Council put this condition in place to protect the environmental amenity of the adjoining land owners by restricting excessive noise to business hours.

2. Condition of consent No 2

This condition permits a maximum of 400 bodies to be cremated each year.

The ERM report states that in the first year of operation 451 bodies were cremated. The approval of the cremator on such an inappropriate site was justified by council on the basis of it being a small facility cremating a maximum of 400 bodies per year and therefore not requiring the recommended 200 metre buffer zone.

The Cremator exceeded the maximum Cremations by 25% at a cost to the Community of increased emissions.

3. Condition of consent No 4

This condition requires a minimum temperature of 900 degrees in the primary chamber when a body is being cremated.

The ERM report states that on 337 occasions the primary chamber did not meet this temperature requirement. The developer breached this condition

337 times in the first year of operation. The Director Corporate & Regulatory Services Report No. 24/2001 prepared by Mr Rod Sandell states that 'the accepted way of controlling odour emissions from combustion processes is to ensure combustion is complete. Monitoring of combustion temperatures is recommended to ensure complete combustion is achieved.' Therefore the breaches of the minimum temperature requirements affects not only possible dioxin emissions during the cremation process but also results in odours being emitted.

4. Condition of consent No 12

This condition required the operator to carry out stack emission testing to determine the emission rates of six different substances. This testing was to be carried out during the cremation of at least 4 bodies and caskets. The condition specifies 'Not more than one of the bodies so tested is to be edentulous'

This testing was carried out on 26/9/2003. Six bodies were cremated but three were edentulous (toothless), one was 50% edentulous and only two were non edentulous. To make matters worse one of the non edentulous bodies was cremated after testing was completed. So instead of 75% of the tested bodies being toothless only 30% were toothless.

The average temperature at which testing was carried out was between 450 degrees and 490 degrees. Testing was required to be done while combustion of the body was occurring. Combustion occurs between 800 degrees and 1000 degrees. The results of this critical testing are useless. To add insult to injury, not only was this condition breached but this testing was carried out partially outside the permitted hours of operation!

Each breach of a condition of consent can result in a maximum \$1.1 million fine. There are 450 breaches of councils conditions of approval in the first year of operation by the developers own admission

Proposed Amendment to Approval of the Nulkaba Cremator

The Buffer Zone

The recommended buffer zone requirements were not required in Nulkaba for two reasons. The first was that the cremator was a small operation only cremating between 235 to 400 bodies per year.(report of Mr Sandell). The

second reason was that health assessment studies had been carried out and these indicated no detrimental effects on the surrounding residences.

By the operators own admission the number of cremations carried out in the first year of operation grossly exceeded the maximum amount permitted by council. The health assessment reports carried out were all based on a maximum of 400 cremations per annum. Why is council allowing these breaches when the safety of the residents of the area is being compromised merely so the owner can make more money?

No assessments were submitted indicating the possible risks of a cremator carrying out an unlimited amount of cremations without the recommended buffer zone where the nearest residence is 100 metres from the stack.

The developers own relevant trade association suggests that a crematorium should not be located less than 200 meters from surrounding developments and the proposal goes against the recommendation of the developers own association.

Mr Sandell also says the provisions of a buffer zone are less important because of the large tract of community land to the west of the site. This land belongs to the people of Cessnock and should not be placed at risk for the financial gain of a private commercial operator. Contamination of our community land can result in unforetold consequences in the future.

The Community land could, in the future be developed by council as another Mount view development
. The economic loss of this community asset could amount to many millions of dollars.

If council grants the amendment no further conditions can be imposed by council. Testing required under the original consent ceases this year. If there is a 400% increase in cremations council and the community will have no way of monitoring the activities and emissions of this developer who has already breached the law over 450 times during it's first year of operation.

The granting of the development consent will be a licence for the developer to pollute Nulkaba with Mercury and Dioxin emissions without any way of controlling or monitoring emissions.