

# MANAGEMENT OF LOCAL GOVERNMENT CEMETERIES AND UNDERTAKING REGULATED ACTIVITIES REGARDING HUMAN REMAINS POLICY

## (COMMUNITY POLICY)

### 1. Scope

The Management of Local Government Cemeteries and Undertaking Regulated Activities Regarding Human Remains Policy (this 'Policy') applies to all local government cemeteries and to the undertaking of regulated activities regarding human remains within the Livingstone Shire.

### 2. Purpose

The purpose of this Policy is to ensure that:

- 1) All local government cemeteries within the Livingstone Shire are managed in a consistent manner that is acceptable to Council, the community and the bereaved;
- 2) Staff have direction from Council on how to address applications for undertaking regulated activities regarding human remains;
- 3) The disposal of human remains are undertaken in a respectful, timely and dignified manner; and
- 4) The bereaved are treated with respect and compassion.

### 3. References (legislation/related documents)

#### Legislative reference

*Births, Deaths and Marriages Registration Act 2003*

*Land Act 1994*

*Local Law No. 1 (Administration) 2011*

*Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011*

*Queensland Heritage Act 1992*

*Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011*

*Subordinate Local Law No. 1.13 (Undertaking Regulated Activities Regarding Human Remains) 2011*

#### Related documents

Cemeteries - Application for a Permit – Bringing and Disposing of Human Remains

Cemeteries - Application for a Permit – Memorials

Cemeteries - Application for a Permit – Reserve a Burial Site

Cemeteries - Application for Restrictions or Closure of a Burial Site

Cemeteries - Application to Retain or Relinquish a Burial Right

Management of Local Government Cemeteries and Undertaking Regulated Activities Regarding Human Remains Procedure

Queensland Courts – Burials Assistance Fact Sheet

Record Management Directive

#### 4. Definitions

To assist in interpretation, the following definitions shall apply:

Burial right	Are the entitlements described in Item 5.7, subsection 1.
Burial right holder	A person nominated on the Cemeteries - Application for a Permit – Bringing and Disposing of Human Remains or a person who is deemed to be the burial right holder pursuant to Item 5.7.
Burial site	Any place in a local government cemetery set aside as a final resting place for the deceased including crypt, grave, mausoleum, niche or vault.
Council	Livingstone Shire Council.
Cremated remains	Human remains that have undergone the cremation process and been reduced to small pieces of ash and bone and are contained within a receptacle.
Human remains	Has the same meaning as human remains in LL1 and includes cremated remains.
Inurn	The act of placing cremated remains in a <i>burial site</i> . Inurnment has an associated meaning.
Local government cemetery	Has the same meaning as local government cemetery in LL1.
Local government controlled area	Has the same meaning as local government controlled area in LL1.
LL1	<i>Local Law No. 1 (Administration) 2011.</i>
Lot	A separate, distinct parcel of land created on the registration of a plan of subdivision.
Memorial	Has the same meaning as memorial in SLL4.
Next of kin	A person's closest relative by blood or marriage
Procedure	Management of Local Government Cemeteries and Undertaking Regulated Activities Regarding Human Remains Procedure.
SLL1.13	<i>Subordinate Local No. 1.13 (Undertaking Regulated Activities Regarding Human Remains) 2011.</i>
SLL4	<i>Subordinate Local No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011.</i>
the sexton	Has the same meaning as sexton in SLL4.

#### 5. Policy Statement

Council is responsible for the management of multiple local government cemeteries throughout its region. This Policy and the Procedure outline Council's expectations to staff in relation to the administration of local government cemeteries. Consistent and effective management of local government cemeteries will ensure that the deceased and their bereaved are treated with respect and compassion.

## 5.1 Locations of Cemeteries and Council's Functions and Powers over Cemetery Reserves

### 1) Location of Cemeteries

#### a) Local Government Cemeteries

Address	Lot & Plan	Tenure
<b>Cawarral Cemetery</b>		
Cemetery Road Cawarral	Lot 18 C855	Reserve for Cemetery
<b>Emu Park Cemetery</b>		
Emu Park Road Emu Park	Lot 132 CP906603	Reserve for Cemetery
<b>Joskeleigh Cemetery (The Sandhills South Sea Islander Historical Cemetery)</b>		
Joskeleigh Road Joskeleigh	Lot 32 LN2641	Reserve for Cemetery
NOTE: Heritage Listed Place ID600659		
<b>Milman Cemetery</b>		
Milman Road Milman	Lot 102 CP886608	Reserve for Cemetery & Historical
NOTE: Closed to future burials – refer to Government Gazette dated 1 December 2006 No. 96 Page 1501-1502 (Recfind File 886608/0102/CP).		
<b>Yaamba Cemetery</b>		
Iris Street Yaamba	Lot 79 LN1344	Reserve for Cemetery
<b>Yeppoon Cemetery</b>		
Cordingley Street Yeppoon	Lot 12 RP620865	Freehold
	Lot 135 LN2048	Reserve for Cemetery
<b>Capricorn Coast Memorial Gardens</b>		
Mulambin Road Tanby/Taroomball	Lot 1 SP190911 Lot 362 SP190911	Freehold

#### b) Cemeteries Not Under Council Control

Address	Lot & Plan	Tenure	Owner/Trustee
<b>Marlborough Cemetery</b>			
Coorumburra Road Marlborough	Lot 87 C8119	Reserve for Cemetery	Unknown
<b>Warcons Cemetery</b>			
Warcons Road Cawarral	Lot 4 RP887496	Freehold	Private Owner

## 2) Council's Functions and Powers over Cemetery Reserves

The cemeteries identified in Item 5.1 subsection 1) a) as reserves are subject to the provisions of the *Land Act 1994*. Importantly, ch 3, divs 5, 6 and 10 of the *Land Act 1994* identify Council's functions and powers as trustee of these reserves.

## 5.2 Register of Burials, Inurnments, Disturbance of Human Remains, Reservations and Prepaid Burials

The local government cemeteries identified in Item 5.1 subsection 1 ) a) as reserves are subject to the provisions s 79 of the *Land Act 1994* which requires Council as trustee to 'keep a register of all burials in the cemetery' and 'make the register available for public inspection at all reasonable times.'

- 1) The sexton will maintain registers in accordance with Item 5.2 of the Procedure, of the following:
  - a) Burials and inurnments;
  - b) Reservations and prepaid burials;
  - c) Disturbance of human remains including the recovery of cremated remains;
  - d) Scattering of cremated remains; and
  - e) Remembrance plaques.
- 2) Historic recordkeeping practices have resulted in some records in the register/s being incorrect and/or incomplete.
- 3) The register/s and associated records are to be maintained in accordance with Council's Recordkeeping Policy.
- 4) The register/s are to be maintained in the corporate Pathways System and published on Council's website.
- 5) Section 32(2) of the *Births, Deaths and Marriages Registration Act 2003* requires the sexton to give the registrar notice within seven days after the disposal of a human body.

## 5.3 Restricted Activities in Local Government Cemeteries

- 1) In a local government cemetery, the following are restricted activities pursuant to sch 2 of SLL4:
  - a) Carrying out a burial outside the hours during which burials may be performed as fixed by Council;
  - b) Disposing of human remains;
  - c) Digging or preparing a grave;
  - d) After a burial – reopening a grave for a further burial;
  - e) Bringing human remains;
  - f) Erecting or installing a memorial to a deceased person;
  - g) Reserving a niche or site; and
  - h) Carrying out maintenance or repair work on a memorial to a deceased person.

- 2) Applications for the restricted activities are to be made in the following manner:

<b>Restricted activity</b>	<b>Form name</b>
<ul style="list-style-type: none"> <li>• Disposing of human remains</li> <li>• After a burial – reopening a grave for a further burial</li> <li>• Bringing human remains</li> </ul>	Cemeteries - Application for a Permit – Bringing and Disposing of Human Remains
<ul style="list-style-type: none"> <li>• Carrying out a burial outside the hours during which burials may be performed as fixed by Council</li> </ul>	To be identified in Section 4 ‘Additional Information’ on the Cemeteries - Application for a Permit – Bringing and Disposing of Human Remains
<ul style="list-style-type: none"> <li>• Digging or preparing a grave</li> </ul>	In writing
<ul style="list-style-type: none"> <li>• Erecting or installing a memorial to a deceased person</li> <li>• Carrying out maintenance or repair work on a memorial to a deceased person.</li> </ul>	Cemeteries - Application for a Permit – Memorials
<ul style="list-style-type: none"> <li>• Reserving a niche or site</li> </ul>	Cemeteries - Application for a Permit – Reserve a Burial Site

- 3) Refer to Item 5.3 of the Procedure for extent of restrictions.

#### **5.4 Undertaking Regulated Activities Regarding Human Remains**

- 1) Undertaking regulated activities regarding human remains is a prescribed activity pursuant to sch 2 of LL1 and is defined as:
  - a) Disturbance of human remains buried outside a cemetery; or
  - b) Burial or disposal of human remains (excluding cremated remains) outside a cemetery; or
  - c) Disturbance of human remains in a local government cemetery.
- 2) If a burial or disposal of human remains would result in two or more human remains being buried or disposed of on a lot, this activity is classified as ‘operation of cemeteries’ which is a prescribed activity pursuant to sch 2 of LL1 and is defined as to operate a place for disposing of human remains by:
  - a) Burial;
  - b) Cremation; or
  - c) Placement in a columbarium, mausoleum or vault.

A development application for a cemetery must be lodged with Council’s Development Assessment Unit and an approval granted before an application for the prescribed activity ‘operation of cemeteries’ will be considered.
- 3) An application for approval and an application to renew or extend an approval must be made in writing.
- 4) The term of an approval must not exceed twelve months.
- 5) SLL1.13 and the following sections of LL1 should be referred to when assessing an application:
  - a) s 8 – Form of application;
  - b) s 9 – Discretion in granting approvals; and

- c) s 10 – Conditions of approval.
- 6) Refer to Item 5.4 of the Procedure for additional information.

### **5.5 Order from State Coroner to Exhume Human Remains or Recover Cremated Remains**

Section 20 of the *Coroners Act 2003* authorises the State Coroner to order a body to be exhumed or cremated remains to be recovered.

- 1) Unless the State Coroner considers it is not, in the circumstances, in the public interest to notify the sexton, he is required to give at least two days notice of an intention to make an order.
- 2) Section 20(6) of the *Coroners Act 2003* authorises a police officer to enter and remain upon a local government cemetery for as long as reasonably necessary to exhume the body or recover cremated remains.
- 3) The police officer must arrange for the body or cremated remains to be dealt with in accordance with the directions in the order.
- 4) The burial site must remain available for the return of the body or cremated remains after release from the State Coroner.
- 5) Refer to Item 5.5 of the Procedure for additional information.

NOTE: For consistency with state legislation, exhume has been used in place of disturb.

### **5.6 Scattering of Cremated Remains**

- 1) Council discourages the scattering of cremated remains in local government controlled areas other than an area set aside for such a purpose within a local government cemetery.
- 2) Scattering cremated remains in a local government controlled area is permitted only with the written authorisation of the sexton.
- 3) In the event that the scattering of cremated remains in a local government controlled area is permitted, Council offers no guarantee that they will be protected from land management and maintenance activities or natural causes.
- 4) Council has no jurisdiction over scattering of cremated remains on land not under its control.

### **5.7 Burial Right**

- 1) When a burial site is paid for, there is no ownership of the actual site or land. Payment entitles the person nominated as the burial right holder to a burial right which includes the following:
  - a) An entitlement to be buried or inurned in a burial site;
  - b) Authority to grant consent for the inurnment of cremated remains or the reopening of a grave for a further burial;
  - c) Authority to grant consent for others to be buried or inurned in a burial site;
  - d) Request Council to impose restrictions on the future use of a burial site or close a burial site to future burials or inurnments; and
  - e) An entitlement, which is shared with the next of kin of the deceased, to apply for and be granted permission to erect or install a memorial.
- 2) A burial right cannot be sold.
- 3) A burial right holder is generally the person who pays for a burial site. In the event that the payer and the nominated burial right holder are different, the rights of the

nominated burial right holder will not be usurped by the person who paid for the burial site. A burial right holder must be nominated on the;

- a) Cemeteries - Application for a Permit – Bringing and Disposing of Human Remains; or
  - b) Cemeteries - Application for a Permit – Reserve a Burial Site.
- 4) Despite subsection 3), there may be instances when the sexton deems it appropriate that some or all of the entitlements to a burial right be relegated to the next of kin of a deceased. If any of the entitlements to a burial right is relegated to the next of kin, the sexton must make all reasonable attempts to inform the burial right holder in writing of the relegation.
  - 5) The sexton is unable to relegate a burial right held by the Department of Justice and Attorney-General (refer to Item 5.10).
  - 6) Due to historic recordkeeping practices Council does not have a record of every burial right holder.
  - 7) If Council records do not clearly identify the burial right holder of a particular burial site, the sexton may deem a person to be the burial right holder only if that person provides:
    - a) Evidence such as receipts or correspondence which satisfies the sexton that the person should be the burial right holder; and/or
    - b) A Statutory Declaration which includes:
      - i) Details of the burial site in question;
      - ii) A declaration that to the best of their knowledge, they are the burial right holder or should be the burial right holder and their reasons for making this claim; and
      - iii) If the burial site is occupied, a statement as to the relationship with the deceased.

However, if there is evidence that burial assistance was provided by the state government, the Department of Justice and Attorney-General must be deemed to be the burial right holder.

- 8) a) If a burial right holder of a vacant burial site dies and:
  - i) The burial site was intended for that persons burial or inurnment;
  - ii) They are not buried or inurned in that burial site;
  - iii) Prior to their death they have not provided written instructions authorising use of the burial site for another party; and
  - iv) Council records identify their next of kin.

The sexton must make all reasonable attempts to contact the next of kin of the burial right holder to ascertain if they wish to retain or relinquish the burial right. The next of kin must lodge a completed Cemeteries - Application to Retain or Relinquish a Burial Right. If the next of kin:

- v) Wishes to retain the burial right, the sexton may deem them to be the burial right holder; or
  - vi) If they do not wish to retain the burial right, the burial site may be relinquished to Council and the next of kin will be offered a refund in accordance with Item 5.9 subsection 2) a).
- b) The sexton may deem the burial site relinquished to Council if reasonable attempts to contact the next of kin are unsuccessful. The next of kin may apply to Council for a refund in accordance with Item 5.9 subsection 2) a) up to a period of five years after the burial site was deemed to be relinquished.



- 9) When a burial right holder of an occupied burial site dies, the next of kin of the first person buried or inurned is deemed to be the burial right holder.
- 10) If a burial site has multiple burials or inurnments and the original burial right holder is deceased and the burial right holder (next of kin of the first person buried or inurned) is also deceased, the sexton may deem the next of kin of the second buried or inurned to be the burial right holder.
- 11) A burial right holder may request Council to close a burial site to future burials and/or inurnments or impose restrictions over a burial site. Application must be made on the Cemeteries - Application for Restrictions or Closure of a Burial Site.
- 12) If the sexton has approved an Application for Restrictions or Closure of a Burial Site, nothing in this section authorises the re-opening of the burial site or an action which contradicts the restrictions.

## **5.8 Historic Securement of Burial Sites for Future Use**

Prior to amalgamation of the four Councils creating Rockhampton Regional Council in March 2008, the former Livingstone Shire Council regularly accepted reservations of burial sites and prepaid burials. This practice which continued for a short period after amalgamation has resulted in numerous unoccupied burial sites which have the potential to remain vacant in the event that the party who made the reservation or prepayment has a change in life circumstances and neglects to relinquish the burial site to Council. Council will honour prepaid burials and reservations made prior to 27 September 2016, which is the date this Policy was first adopted.

- 1) Historic record keeping and burial site location practices has resulted in some reserved and prepaid burial sites being encroached upon by other burials or memorials from surrounding burial sites. In cases where the sexton identifies such encroachments and there is inadequate width for a burial or there are safety issues associated with a burial, the sexton will offer the burial right holder an alternative burial site or offer a refund in accordance with Item 5.9 subsection 2) b).
- 2) To allow for the efficient use of limited burial sites in the Yeppoon and Emu Park Cemeteries, any burial site that was secured by reservation or prepayment prior to 27 September 2016 which remains vacant for 75 years or more from the date of payment to Council, may be deemed by the sexton to be relinquished to Council and granted for use to a party other than the original burial right holder.
- 3) Before deeming a burial site relinquished to Council, the sexton must make reasonable attempts to contact the burial right holder to ascertain the likelihood of the burial site being utilised.
- 4) If a burial right holder wishes to relinquish the vacant burial site, they must lodge a Cemeteries - Application to Retain or Relinquish a Burial Right. Council will approve the request and offer a refund in accordance with Item 5.9 subsection 2) a).
- 5) If the sexton deems a vacant burial site relinquished to Council, the burial right holder will be offered a refund in accordance with Item 5.9 subsection 2) a). If the burial right holder cannot be located, they may apply to Council for release of the refund up to a period of five years after the burial site was deemed to be relinquished.
- 6) On 1 July 2008, Rockhampton Regional Council adopted a different fee structure to the former Livingstone Shire Council resulting in a new fee for the purchase of a burial site. The following is intended to ensure that Council fulfils prior commitments in the form they were originally made, which in this instance requires recognition that the fee to purchase a burial site is not applicable to reservations and prepaid burials/inurnments made prior to 1 July 2008. The table below applies if Council has received:



- a) Payment for the reservation of a burial site; or
- b) Payment for a prepaid burial or inurnment.

<b>Payment made:</b>	<b>30 June 2008 and earlier</b>	<b>1 July 2008 onwards</b>
A burial or inurnment in a burial site which has an earlier reservation	Burial site fee is not payable Burial fee is payable	Burial site fee is payable Burial fee is payable
	The reservation fee is not deducted from fees payable at the time of burial/inurnment	
Prepaid burial or inurnment	No fees payable	

## 5.9 Refunds

- 1) Refunds are calculated based on the current dollar value of the fee that was paid to Council. The current dollar value can be determined using calculators on the Reserve Bank of Australia website. The Australian currency was decimalised on 14 February 1966. The date on which the fee to be refunded was paid to Council will establish which calculator should be used to determine the current dollar value. If the fee was paid to Council:
  - a) Prior to 14 February 1966, the 'Pre-Decimal Inflation Calculator' is to be used (<http://www.rba.gov.au/calculator/annualPreDecimal.html>); or
  - b) On 14 February 1966 or after, the 'Inflation Calculator' is to be used (<http://www.rba.gov.au/calculator/>)
- 2) Council will offer refunds in certain circumstances as outlined throughout this Policy and the Procedure. The value of refunds are detailed below:

<b>a) Refund of 75% of the current dollar value of the fee paid or \$90 whichever is higher</b>
The sexton deeming a vacant burial site relinquished under: <ul style="list-style-type: none"> <li>- Item 5.8 subsection 5);</li> <li>- Item 5.7 subsection 8) b); or</li> <li>- Item 5.3 subsection 6) e) of the procedure</li> </ul>
A burial right holder wishing to relinquish a vacant burial site as outlined in: <ul style="list-style-type: none"> <li>- Item 5.8 subsection 4);</li> <li>- Item 5.4 subsection 3) g) of the procedure; or</li> <li>- Item 5.3 subsection 6) d) of the procedure</li> </ul>
Next of kin wishing to relinquish a vacant burial site as outlined in: <ul style="list-style-type: none"> <li>- Item 5.7 subsection 8) a) vi).</li> </ul>

<b>b) Refund of 100% of the current dollar value of the fee paid or \$90 whichever is higher</b>
Refund associated with encroachments and inadequate width being available as outlined in: <ul style="list-style-type: none"> <li>- Item 5.8 subsection 1.</li> </ul>

## 5.10 Burials Assistance

- 1) The Department of Justice and Attorney-General may organise and pay for a burial if the deceased estate or the family and friends of the deceased cannot cover the cost of a funeral. In these instances:
  - a) The Department of Justice and Attorney-General becomes the burial right holder;
  - b) The Department of Justice and Attorney-General may bury another unrelated deceased in the same burial site; and
  - c) Council is unable to give permission for family members or friends of the deceased to place a memorial at the burial site.

## 6. Changes to this Policy

This Policy is to remain in force until any of the following occur:

- 1) The related information is amended/replaced; or
- 2) Other circumstances as determined from time to time by the Council.

## 7. Repeals/Amendments

Version	Date	Action
1	27/09/2016	Adopted
1.1	31/08/2018	Administrative Amendments – reflect organisational restructure

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