



**DATE ADOPTED: 24 OCTOBER 2019**

**VERSION: 2.0**

## **POLICY OBJECTIVES**

The objective of this policy is to provide a standard for the administration and maintenance of Maitland City Council's cemeteries.

## **POLICY SCOPE**

This policy applies to the General Manager, Mayor, Councillors, delegates and all staff of Maitland City Council. This policy also applies to all cemetery sites for which Council is the cemetery operator.

## **POLICY STATEMENT**

### **1. INTRODUCTION**

Maitland City Council is the cemetery operator for nine cemeteries in the Maitland Local Government Area (LGA), and as such is responsible for the administration and maintenance of these cemeteries.

The cemeteries under Council's authority include:

Operational

- Morpeth
- East Maitland
- Campbell's Hills (for existing interment rights only)
- Rutherford

Non-Operational/ Heritage

- Glebe
- Hiland Crescent
- Maitland Jewish
- Oswald
- Oakhampton

#### **1.1 Background**

Responsibility for the administration and management of Maitland cemeteries was transferred from local parishes and church trustees to Council in the 1970's under the Local Government Amendment Act No. 52 (Control of Cemeteries), which appointed Councils throughout New South Wales as trustees of public cemeteries in their area. Prior to this change the local parishes and church trustees administered the cemeteries.

Due to the age of Council cemeteries and the change of ownership there are a number of unknown or unmarked graves; as a result Council has incomplete burial records. These factors make it difficult in some cases to identify where a person has been interred.

## **2. MANAGEMENT**

Council is responsible for the administration and management of plot and niche purchases, transfer of interment rights, approvals for monumental works, issuing of licences to work in cemeteries, maintenance of cemetery grounds, and the interment of ashes into the columbarium walls.

### **2.1 Fees**

For each application made to Council for cemetery services an administrative fee is applied. These fees are reviewed annually and can be found in Councils fees and charges document.

### **2.2 Application for a Plot or Niche**

Council offers two burial options within its operational cemeteries – interment into a plot or interment into a niche in the columbarium wall (available at Morpeth cemetery only). At the completion of the application process the applicant will be issued with an interment right. The interment right is a legal document that will only be issued once for any individual plot or niche.

Unless otherwise indicated by Council staff, all cemetery plot dimensions are 1.2 x 2.4 metres.

Where possible, plots will be dug to double depth to allow for two caskets and four ashes per plot. However, this cannot be guaranteed at the time of reservation due to the unknown condition of the ground which may contain solid rock. The interment right holder may limit a plot to being single depth; however, this must be indicated by the applicant at the time of purchase.

A niche in columbarium wall one (1) can hold one (1) container of ashes. Columbarium wall two (2) can hold two (2) containers of ashes. Container dimensions for ashes are to be 230 x 110 x 76mm to fit within a niche.

### **2.3 Interment Right**

An interment right does not grant the holder ownership over that piece of land, rather, it gives exclusive entitlement to the holder to inter the remains of a deceased person in the reserved plot and section.

An interment right will be granted in perpetuity.

Council reserves the right to refuse to grant an interment right and will only issue an interment right for plots that have been surveyed by Council.

Interments will only be permitted in Council cemeteries with written approval issued by Council. Funeral directors, monumental masons and grave diggers must first contact Council to determine the allocation of a burial plot or confirmation of an existing reservation or reopening of a burial plot.

Following the death of the holder of the interment right, the interment right becomes part of the estate of the deceased and any disputes over ownership are a civil matter in which Council does not become involved. Interested parties must seek their own legal advice regarding the matter and then provide documentation to prove a legitimate claim to the interment site for subsequent applications to proceed.

Council holds the exclusive right to close a section of any cemetery and to refuse to issue an interment right for a closed section. Although a cemetery may appear to have vacant land available for burials, there may be reserved plots or unknown/unmarked graves preventing further use.

Council does not permit the placement of new vaults or crypts in any cemeteries under its authority.



## 2.4 Transfer of an Interment Right

Council will not reimburse fees paid for an unwanted plot or niche. If the interment right for a plot or niche is resold privately, then Council is to be notified and the appropriate administration fee paid. The original interment right will be required and a transfer is not legally complete until Council has endorsed the transfer.

Council will only accept the transfer of an interment right if:

- The interment site, as described in the interment right, has not been used for interment.
- The interment site is free of structural additions, for example a headstone, marker, plantings etc.

Council reserves the right to refuse to accept the transfer of an interment right from the holder.

## 2.5 Exhumation

The remains of a body must not be exhumed unless the exhumation has been ordered by a coroner or approved by the Director-General of NSW Health.

Council must be advised prior to an exhumation occurring.

## 2.6 Records

In accordance with legislation Council will collect the information necessary to meet its requirements for a cemetery register. Council's cemetery register is available on the Council website or by contacting Council.

## 2.7 Maintenance of Cemetery Grounds

Appropriate maintenance of Council's cemeteries is required so that the essential elements which give the burial grounds their character are preserved in a way that retains their significance.

Maintenance of cemetery grounds excludes the care and repair of monumental work, weeding and general maintenance of individual plots.

# 3. WORK UNDERTAKEN IN CEMETERIES

Work must not be undertaken of any kind in a Council cemetery unless a valid licence to undertake works is issued for that specific activity. Works are considered to be any gravesite activity; this includes but is not limited to grave digging, interment and exhumation of remains, and the construction, repair or removal of a monument.

Note: The placement of floral and other tributes on a gravesite is not considered "work" and therefore a licence is not required for this activity. All tributes must remain within the perimeter of the gravesite.

Anyone who wishes to conduct funeral or monument activities at a Council cemetery must formally apply and receive approval from Council before commencing any work.

### 3.1 Licence Application

An application for a licence to undertake works in Council cemeteries must be on an approved form, include all contractor documentation (as listed in the application form) and be accompanied by the appropriate fee.

The licence will be issued for the term of a financial year and it is the responsibility of the service provider to make an application for renewal.

The approved licence will apply to the service provider and their sub-contractors.

Approved applications will be issued with an approval letter and a licence. The service provider and its sub-contractors must have a copy of the licence with them when working in a cemetery and produce the licence upon request by a Council officer.



Council reserves the right to refuse to grant a licence to undertake work in cemeteries.

### **3.2 Service Provider Responsibilities**

Service providers must at all times comply with the conditions of the permit to undertake works.

Service providers are not permitted to make any comments to the media on behalf of Council.

### **3.3 Withdrawal of Licence Permissions**

In instances of misconduct or breaches of relevant responsibilities, non-compliance with legislative or regulatory requirements, or non-conformance with Council policy and procedure Maitland City Council may revoke the licence to undertake work in cemeteries and will give five days' notice in writing.

## **4. MONUMENTS**

When erecting new monuments it is recommended that applicants wait 6 – 12 months before monumental work is undertaken; this allows time for the ground to settle at the interment site and avoids the potential collapse of monumental work.

### **4.1 Monumental Works Applications**

Council requires a monumental application to be lodged on the approved form when new monuments are erected, inscriptions are added to an existing monument or if restoration work is to occur.

All monumental applications must comply with the Australian Standards 'Headstones and Cemetery Monuments' 4204-1994 and contain complete specifications regarding design and materials to be used for an application to be approved.

All monumental work is to be constructed within the legal boundary of the interment site.

If monumental works are approved, an approval letter will be issued to the monumental mason.

### **4.2 Monument Maintenance**

The care, maintenance and repair of monumental work are the responsibility of the family or estate of the deceased. If Council is required to undertake any work relating to a monument so as to ensure public or employee safety, it may recover these costs from the interment right holder.

### **4.3 Heritage Monuments**

Monuments 50 years and older are considered to be of heritage significance and require additional approvals from Council's Heritage Officer before work may commence.

When assessing requests for work on heritage monuments, Council must consider:

- The National Trusts Guidelines for Cemetery Conservation.
- Any conservation management plans in place for the Cemetery. A conservation management plan will include detailed guidelines for the maintenance of monuments in the cemetery.
- The Maitland Local Environmental Plan which lists eight (8) Maitland City Council cemeteries as being of local heritage significance.

## **5. DONATIONS**

Council appreciates that some individuals or families may wish to donate items to a cemetery (such as furniture, plants or trees); however, due to the long term management and future planning of the cemeteries these are not able to be accepted.



## 6. HERITAGE

Eight of Council's nine cemeteries are heritage listed under Council's Local Environmental Plan, and are recognised as being of local significance. In addition to this, Glebe and the Maitland Jewish cemeteries are listed on the State Heritage Register.

As the cemetery operator, Council has a responsibility to ensure maintenance of heritage sites is undertaken in a way that prevents damage to or loss of significant elements of the cemetery.

## 7. FAMILY HISTORY

A range of information relating to Cemeteries is available on the Council website including the burial register and location plans for all cemeteries. Family history enquiries may be made in person, in writing or over the phone to Council.

## POLICY DEFINITIONS

<b>Applicant</b>	Any person making an application for funeral or monumental permission or for a licence to work in cemeteries.
<b>Burial Register</b>	The record of all burial and niche interments in Council cemeteries.
<b>Cemetery Operator</b>	The person or body that directs the operations of a cemetery. For the purposes of this policy the cemetery operator is Maitland City Council.
<b>Council</b>	Maitland City Council.
<b>Exhumation</b>	The removal of a dead person's remains (not including cremated remains) from a grave. This does not include their removal for the purpose of reburial in the same grave.
<b>Gravesite</b>	A place of burial also referred to as a plot.
<b>Interment</b>	The placement of a coffin or ashes into a grave or niche for the purpose of burial.
<b>Interment right</b>	Previously known as a right of burial, right of interment and burial licence. This is a legal document which gives the licensee the exclusive right to use the specified piece of land for burials and to place a monument over the grave.
<b>Interment site</b>	The allocated space where an interment has or will occur. Also referred to as a plot.
<b>Licence</b>	An authorisation from Council that grants permission.
<b>Licensee</b>	The owner of a licence.
<b>Monument</b>	Any structure, plaque, headstone, masonry, metal work or casting placed over, in or around the interment site.
<b>Monument Permit</b>	The approval given by Council to place a monument over, in or around an interment site.
<b>Niche</b>	A recessed space in the columbarium wall suitable for a container of ashes.
<b>Perpetuity</b>	Lasting indefinitely with no fixed end date.
<b>Plot</b>	A small, numbered piece of land used for the purpose of burial within a section of a cemetery.
<b>Reservation</b>	The act of securing in advance a plot for the purpose of burial.
<b>Service Provider</b>	A business that supplies funeral services.

## POLICY ADMINISTRATION

BUSINESS GROUP:	Business Systems, Property & Governance
RESPONSIBLE OFFICER:	Group Manager Strategy, Performance & Business Systems
COUNCIL REFERENCE:	Ordinary Council Meeting 25 August 2015 – Item 10.1
POLICY REVIEW DATE:	Three (3) years from date of adoption
FILE NUMBER:	26/1
RELEVANT LEGISLATION	<ul style="list-style-type: none"> <li>· <i>Anti-Discrimination Act 1977</i></li> <li>· <i>Birth Deaths and Marriages Registration Act 1995</i></li> <li>· <i>Cemeteries and Crematoria Act 2013</i></li> <li>· <i>Cemeteries and Crematoria Regulation 2014</i></li> <li>· <i>Coroners Act 2009</i></li> <li>· <i>Crown Lands Act 1989</i></li> <li>· <i>Crown Lands (General Reserves) By-law 2006</i></li> <li>· <i>Environmental Planning &amp; Assessment Act 1979</i></li> <li>· <i>Environmental Planning &amp; Assessment Regulation 2000</i></li> <li>· <i>Government Information (Public Access) Act 2009</i></li> <li>· <i>Health Records Information Privacy Act 2002</i></li> <li>· <i>Heritage Act 1977</i></li> <li>· <i>Local Government Act 1993</i></li> <li>· <i>Privacy and Personal Information Protection Act 1998</i></li> <li>· <i>Public Health Act 2010</i></li> <li>· <i>Public Health Regulation 2012</i></li> <li>· <i>State Records Act 1998</i></li> <li>· <i>Work Health and Safety Act 2011</i></li> <li>· <i>Work Health and Safety Regulation 2011</i></li> <li>· <i>Workers Compensation Act 1987</i></li> <li>· <i>Workplace Injury Management &amp; Workers Compensation Act 1998</i></li> </ul>
RELATED POLICIES / PROCEDURES / PROTOCOLS	<ul style="list-style-type: none"> <li>· Cemetery Strategy</li> <li>· Cemetery Procedures</li> <li>· Requirements for Works within Council Cemeteries by External Agents.</li> <li>· Asset Management Policy 2018</li> </ul>

## POLICY HISTORY

VERSION	DATE APPROVED	DESCRIPTION OF CHANGES
1.0	25/08/15	New policy adopted
2.0	24/10/2019	Policy reviewed, no changes required.