



Determination for Interment Right factsheet

As required by CCNSW legislation, Maitland City Council keeps a Cemetery Register which records the permit holder(s) for allotments within our cemeteries.

The register can record up to two joint holders per allotment; however, under special circumstances an applicant may request more than two joint holders to be registered on one allotment. Generally, only registered and living holder(s) have authority over the allotment, except where legislation permits limited monument works following operator assessment and reasonable notification efforts. If the registered holder(s) are deceased, all rights of the allotment cease until the allotment is determined and transferred.

Why transfer?

- To allow an interment into an allotment (e.g. plot or niche).
- To erect, restore or alter a monument.
- Transfer their right of interment to another person.
- Add another person as a joint holder.

In compliance with the Cemeteries and Crematoria Act 2013, and Crown Lands Act, a 'living' interment right holder can only make necessary changes to the monument, or sign for further interments.

Please refer to the monumental works for non-interment right holder(s) factsheet¹ for more options and monumental works information.

Who can transfer?

- Current permit holder(s): as indicated in our Cemetery Register.
- Descendant: as recorded on a registered death certificate issued by the Registry of Births Deaths and Marriages.
- Executor(s): as recorded on a probated will (with Supreme Court seal) issued by the Supreme Court.
- Administrator: as recorded on a letter of administration (with Supreme Court seal) issued by the Supreme Court.

What documents may be required to transfer?

- Registered death certificate: to establish who the next of kin is/are.
- Probated will with Supreme Court seal: to establish who the executor(s) is/are.
- Letters of administration: to establish who the administrator(s) is/are.
- 100 points of ID

Note: Please be aware that other paperwork may be required² from time to time. Our Cemeteries team will provide further detail in these situations.

¹Apply to undertake minor repairs or updates to a monument if the Right Holder is unavailable, with operator's consent.

²From September 2025, certificates for Interment Rights must be issued any time the holder of a right changes, even when a right is transferred by Probated Will or intestacy. This helps ensure the register remains accurate and current. Fees apply.



When to transfer

- When the original interment right holder (right of burial holder) is no longer living.
- When a registered holder no longer wishes to remain a holder and wishes to:
 - transfer the allotment to another person; or
 - make changes to the original interment right, including updating contact details or adding an additional holder.

Conditions apply and transfer administration fees are applicable.

How to transfer

- Complete and sign the Determination for Interment Right application form (if you are the legal next of kin, executor or administrator and nominate yourself to be a new permit holder).
- Sign the terms and conditions of perpetual interment right, if you are to become the new permit holder.
- Provide a copy of probated will or letters of administration, if these documents are unavailable, provide a copy of the registered death certificate.
- Provide a copy of a registered marriage certificate or change of name by deed poll (if applicable)
- Provide proof of **two forms of valid ID for each new holder**, showing ID numbers and expiry dates (as per the application form) or have been **sighted by a registered Justice of the Peace (JP)** on the application. Please do not provide copies of ID documentation in accordance with Council's Privacy Policy.
- Make payment of the determination fee (non-refundable and paid at the completion of the transfer application, as per our current price list).

Where to transfer

- **Via email:** cemeteries@maitland.nsw.gov.au, this is our preferred method.
- **Via the Maitland City Council website:** maitland.nsw.gov.au/services/recreation-facilities/cemeteries-and-burials
- **In person:** 263 High Street, Maitland NSW 2320 (opposite the Maitland Regional Art Gallery). Please ensure you have made an appointment with the Cemeteries team, prior to your arrival.
- **Via phone:** 02 4934 9700 and ask to speak with one of the cemetery officers.

Understanding title by descent on registered death certificate.

Title by descent is the title by which a person, upon the death of another, acquires the assets of the latter as an heir(s) at law when the deceased died without a Will.

If the next of kin is a **spouse**, that is, the deceased was **married or separated (but not divorced), or de-facto** at the time of death, then the spouse is permitted to complete the application to transfer a perpetual interment right.

If the next of kin is an **only child**, because the deceased was **never married, divorced or was a widow/widower** at the time of death, then the only child is permitted to complete the application to transfer a perpetual interment right.

If the next of kin are **children**, because the deceased was **never married, divorced or was a widow/widower** at the time of death, then all of these children need to be established, and any death certificates provided in order to establish living new holder(s). The children who are established to become the new holder(s) are permitted to complete the application to transfer a perpetual interment right.

If the next of kin is a **parent**, because the deceased was **never married and had no children** at the time of death, then the parent(s) is/are permitted to complete the application to transfer a perpetual interment right.

Rank of surviving next of kin

Where no right holder is available, a family or community member may apply to restore or repair a monument with cemetery operator approval. ³From 1 September 2025, this may occur without transfer of the interment right where reasonable efforts have been made to contact existing holders. Refer to Monumental Works for Non-Interment Right factsheet.

- | | |
|-----------------------|-------------------------------|
| • 1st Spouses | • 5th Grandparents |
| • 2nd Children | • 6th Aunts and uncles |
| • 3rd Parents | • 7th Cousins |
| • 4th Siblings | |

Understanding probate

A grant of probate is a legal document that authorises an executor(s) to manage the estate of a deceased person in accordance with the provisions of the deceased's will. The executor can transfer the assets to the executor (or to such other persons as the executor may nominate in accordance with the probated will). If a probated Will with Supreme Court seal has been granted, then the executor(s) are permitted to complete the application to transfer a perpetual interment right.

Understanding Letters of Administration

A grant of Letters of Administration is a legal document issued by the Supreme Court, which allows the administrator(s) to manage and distribute the deceased's assets. There are two distinct types of applications for Letters of Administration:

Letters of Administration – the deceased passed away without leaving a Will (for example, intestate).

Letters of Administration with the Will annexed – the deceased left a Will, but there is no executor available to apply for a grant of probate. For example, if the Will did not name an executor or the sole executor has passed away or is otherwise unwilling or unable to act.

If Letters of Administration with Supreme Court seal has been granted, then the administrators(s) are permitted to complete the application to transfer a perpetual interment right.

Why is it important to keep the grantee's details for an interment right current?

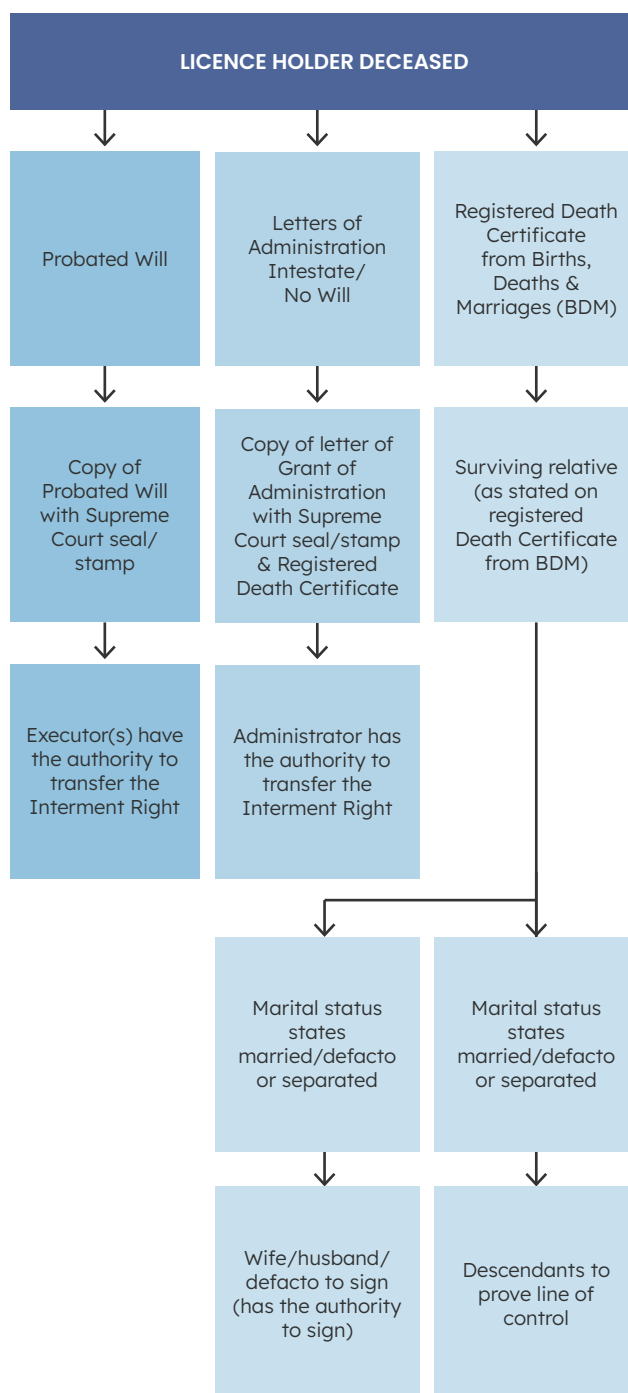
It is important to keep the interment right holder(s) details current as that person's written permission is needed to make any changes necessary to the monument or to request approval for interments.

Operators are also now required to update the cemetery register as soon as they become aware of new information about interment rights. This ensures all interments and approvals are made based on accurate records.

What happens if it is not transferred?

Without an up-to-date interment right holder, no interment or monument work can be completed, and the cemetery will not be able to keep interested members of a family up to date with the most current requirements for interments, monumental works and maintenance.

Limited monument maintenance works may still be considered under the September 2025 legislative provisions.



Interment right holder(s)

If the perpetual interment right holder is deceased, Maitland City Council will collaborate with the applicant/s to establish a living holder.

Any living holder/s are all required to apply for any interment/s or any monumental applications.

³Important – September 2025 Changes

From 1 September 2025, cemetery operators may approve limited monument repairs or maintenance works without transfer of the Interment Right, where reasonable efforts have been made to contact existing holders. This does not permit new interments, transfer of ownership rights, or major monument alterations. Reasonable Notification Guidelines now replace newspaper and Gazette notices.

Visit maitland.nsw.gov.au or refer to the Memorial Works for a Non-Interment Right Holder factsheet for more information.

Can an interment right to an allotment be sold?

Maitland City Council does not purchase interment rights back once sold. A holder can transfer an unwanted interment right.

What if there is a dispute around who should be the holder?

If there is uncertainty or disagreement about who legally holds or can apply for the interment right of a particular site, the NSW Cemeteries and Crematoria Act 2013 authorises the cemetery operator to determine who the rightful holder is.

Any person who believes they hold an interment right may apply for a formal determination to confirm their status. This process includes providing notice in accordance with current legislative notification requirements. A minimum of 28 days must pass before a determination can be made.

If an urgent determination is required, for example where an upcoming interment involves a person closely related by blood, marriage, or domestic partnership to the applicant or someone already interred at the site, please contact the cemetery operator as soon as possible.

Examples for determination or transferring of interment rights.

Holder-to-holder/update register: Holder 1 is the current interment right holder and wishes to include their child (holder 2), as a joint holder so that there is another authorised person to approve future interments after their death. Holder 2 does not currently hold any other interment rights at the cemetery and agrees to be added as a joint holder.

To proceed, both holder 1 and holder 2 are required to complete the Determination for Interment Right application, provide two forms of identification each for verification. Fees apply.

Following approval, council will issue a new certificate of perpetual interment right in both their names and update the cemetery operator's register to reflect holder 1 and 2 as joint holders of the plot/site.

Bequest: Holder 1 (deceased) was the sole or last remaining holder of an interment right. Following their passing, a Will that has been granted probate states that the estate is to be divided equally among their children. Each child therefore has an interest in the interment right and may be recorded as a joint holder in the Cemetery Register.

To proceed, all beneficiaries must be included in, and complete, a Determination for Interment Right application, provide suitable legal documentation confirming their entitlement, and pay any applicable fees.

Where a beneficiary does not wish to take up their interest in the interment right, they must formally relinquish it, usually by

completing documentation prepared by a legal practitioner endorsing their relinquishment of this benefit from the estate.

Joint holders: Holders 1, 2, and 3 share joint ownership of the interment right for a plot with capacity of two (2) burials and six (6) sets of ashes. The families plan to allocate four (4) ashes to each for future use.

When holder 1 passes away, the survivorship rules take effect, and the interment right automatically transfers to the remaining holders, holders 2 and 3.

The remaining holders can continue to manage the plot together, or they may choose to add another holder as a joint holder to maintain the original allocation arrangement among the families.

The cemetery operator does not involve itself in how the site is internally managed between the holders.

Intestacy: Holder 1 passes away without leaving a Will, leaving behind a spouse (holder 2) and two adult children. Under the rules of intestacy, the interment right would transfer to the spouse, holder 2.

To formally recognise this, holder 2 must complete the Determination for Interment Right application to update the cemetery operator's register, enabling them to manage the interment right, including activities such as placing a memorial or authorising future interments.

Holder 2 will need to provide the death certificate and any other legal documents required to confirm their entitlement to the interment right.

If holder 2 does not update the cemetery register during their lifetime and later passes away leaving a Will, the intestacy rules for holder 1 continue to apply, as the interment right was not part of holder 2's estate.

Definitions:

Grant of probate: A court document authorising executor(s) to manage and distribute an estate under a Will.

Letters of Administration: A Court document appointing an administrator to manage an estate where there is no valid Will (intestacy).

Letters of Administration with the Will annexed: A court document appointing an administrator where a named executor cannot act.

Determination of interment right: The process used to establish the lawful holder of an interment right.

Transfer of interment right: The process of recording a change of interment right holder in the cemetery register.

Interment: The process of burying human remains (either bodily or ashes) in the earth or columbarium wall.

Allotment: The specific location on the premises where a person will be buried, or their ashes will be placed. May also be referred to as a plot.

Note: Executors or administrators must apply to the court and provide estate and beneficiary details.

Disclaimer

This factsheet is provided as general information to assist families and representatives with interment right transfers. While Maitland City Council has made every effort to ensure the accuracy of the information contained herein, this document does not constitute legal advice and is subject to change with updates to relevant legislation or regulatory guidance.

Visit maitland.nsw.gov.au or refer to the Memorial Works for a Non-Interment Right Holder factsheet for more information.