

# Kyogle Council

## CEMETERIES AND BURIALS Local Approvals Policy

under the Local Government Act 1993



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## **Part 1 Introduction**

### **1.1 Name of the Policy**

This Policy is Kyogle Council Local Approvals Policy - Cemeteries and Burials.

### **1.2 Aims of the Policy**

- (1) The particular aims of this Policy are as follows:
  - (a) to provide a framework and an approach with clear guidelines, uniformity and consistency to approvals required under of the *Public Health Regulation 2012* so that members of the community know what is expected;
  - (b) to assist Council in the execution of its statutory responsibilities;
  - (c) to make Council's policies and requirements for approvals readily accessible and understandable to the public; and
  - (d) to provide a high level of customer and community service and to ensure that future generations will maintain a legal right to visit grave sites.

### **1.3 Land to which the Policy applies**

This Policy applies to the Local Government Area of Kyogle.

### **1.4 Definitions**

The Dictionary at the end of this Policy defines words and expressions for the purposes of this Policy.

### **1.5 Policy Statement**

Kyogle Council has prepared this Policy document to clarify circumstances where an approval must be obtained from Council prior to carrying out activities associated with cemeteries and burials, what form that approval may take, and matters that are considered by Council in its assessment process.

The Policy provides for consistent deliberation by Council on matters relating to burials in private cemeteries, public cemeteries, or on private land and will assist in the administration, management and maintenance of Council controlled cemeteries. It will also ensure the conduct of those entering cemeteries administered, operated and maintained by Council is in accordance with reasonable and practical standards.

### **1.6 Legislative Framework**

This Policy has been prepared and adopted under Chapter 7, Part 3 of the *Local Government Act 1993*. The *Local Government Act 1993* provides the legal framework for this policy.

In accordance with section 158 of the *Local Government Act 1993*, the Policy contains the following compulsory components:

- (1) Exemptions - the circumstances in which a person would be exempted from the necessity to obtain a particular approval of the Council;
- (2) Assessment Criteria for Approvals - the criteria which the Council must take into consideration in determining whether to give or refuse an approval of a particular kind;
- (3) Other Matters - additional matters relating to approvals under this Policy.

This Policy does not affect the operation of the *Public Health Regulation 2012* relating to cemeteries and burials.

## 1.7 Policy History

Date adopted	Resolution Number	Date Reaffirmed	Resolution Number
18 March 1996	180396 (008)	21 March 2005	210305/11
		17 August 2009	170809/17
		11 November 2013	111113/17
		11 September 2017	110917/18

## Part 2 Exemptions

### 2.1 General Provisions

A person is exempted from the necessity to obtain a particular approval of the Council under the *Local Government Act 1993* in the circumstances specified in this Part.

### 2.2 Limit of Activities Carried out by Exemptions

Where criteria for an exemption are not specified for a proposed activity or where an activity proposed would not strictly conform to the exemption criteria, an application for approval is required to be submitted to Council and approved prior to the activity being commenced.

### 2.3 Exempted Activities

The prior approval of Council is not required for the following activities:

- (1) The placing of cut flowers at burial places on headstones and monuments in lawn cemetery sections and monument sections or in dedicated garden areas of cemeteries in objects unlikely to cause a risk to health or safety;

- (2) The placing of cut flowers in Council supplied containers in a public columbarium;
- (3) The placing of artificial flowers on headstones and monuments in lawn cemetery sections or public monument sections in objects unlikely to cause a risk to health or safety;
- (4) The general weeding, tidying and cleaning of a burial site;
- (5) The decoration and ornamentation of graves on private property;
- (6) The maintenance, to trafficable standard, of a dedicated right of carriageway to an approved private cemetery.

## **Part 3 Assessment Criteria for Approvals**

### **3.1 General Provisions**

Where an activity is proposed to be undertaken for which no exemptions from approval exist, an approval must always be obtained.

### **3.2 Common matters for Consideration**

The matters that Council must consider in determining whether to approve applications are:

- (1) The matters prescribed in Section 89 of the *Local Government Act 1993* and the regulations there under;
- (2) Any relevant adopted Council Policy, performance standard or criteria; and
- (3) Principals of ecologically sustainable development.

### **3.3 Activities involving Private Burials**

- (1) Council will not consent to private burials on land zoned Residential or Village under an environmental planning instrument or on land identified for potential residential, rural-residential or industrial development under any adopted Structure Plan unless a public or private cemetery is established under *the Environmental Planning and Assessment Act 1979*.
- (2) A person must not place a body in any grave or vault unless that grave or vault is located on private land where the area of the land holding is five (5) hectares or more in area and the location has been approved for that purpose by Council pursuant to this Policy.
- (3) Only one (1) burial is permitted on any land holding that is not a private cemetery or public cemetery.
- (4) A person must not bury a body in or on any land if to do so would make likely the contamination of a drinking water supply or a domestic water supply.

- (5) If there is any likelihood of landslip, contamination of ground waters and/or surface waters, or concerns over soil depth, Council will require the submission of a geotechnical report compiled by a suitably qualified practitioner to determine the suitability of the location.
- (6) Private burials must demonstrate full compliance with the following:
  - (a) the site must not be subject to flooding or inundation;
  - (b) the site must be located not less than 100 metres from any property boundary;
  - (c) the site must be fenced to prevent the possible intrusion of livestock;
  - (d) the site must be surveyed with four (4) pegs and two (2) reference marks connected to the cadastre by a registered land surveyor;
  - (e) the site must be provisioned with a restriction-as-to-user on the title of the land such that only private burials and ancillary activities under this Policy shall be carried out within the surveyed area; and
  - (f) the site must be provisioned with a right-of-way endorsed on the title of the land of not less than four (4) metres in width benefiting the public at large and capable of permitting vehicular access to, and egress from, the site in a forward gear.
- (7) The preparation of each grave shall be conducted and directed by an undertaker and shall be certified as satisfying Council's Environmental Health Officer and the *Public Health Regulation 2012* prior to the interment of the body.
- (8) Each grave must be permanently marked with details of the deceased and the boundaries of the grave excavation to permit the correct location of the grave. This will enable the public to pay respects to the deceased and facilitate potential exhumation.

#### **3.4 Activities involving Burials in a Private Cemetery**

- (1) Private cemeteries shall be established by a development application under the provisions of the *Environmental Planning and Assessment Act 1979*. Once a private cemetery and access road have been legally created, further development consent under the *Environmental Planning and Assessment Act 1979* is not required for the interment of remains.
- (2) Burials in a private cemetery shall be limited to the immediate relatives of those owners of the land as at the date of the first interment. In this regard "immediate relatives" means parents (including foster and step-parents), legal guardian, sister (including half, foster and step-sister), brother (including half, foster and step-brother), spouse (including de-facto partner and

same sex partner), child (including step and foster child) and parents of spouse.

- (3) The preparation of each grave shall be conducted and directed by an undertaker and shall be certified as satisfying Council's Environmental Health Officer and the *Public Health Regulation 2012* prior to the interment of the body.
- (4) Each grave must be permanently marked with details of the deceased and the boundaries of the grave excavation to permit the correct location of the grave. This will enable the public to pay respects to the deceased and facilitate any potential future exhumation.

### **3.5 Activities involving Burials in a Public Cemetery**

- (1) Burials are not to take place unless a licence of burial has been issued by Council.
- (2) A licence of burial shall not be issued by the Council without a certificate of exclusive rights of burial.
- (3) Burials shall be subject to the criteria established under this policy for lawn cemetery sections, monument sections and columbarium within public cemeteries.
- (4) The inter-grave space shall be 1.2 metres with a minimum requirement of 200mm offsets between plots.
- (5) Double interments in single graves are prohibited.
- (6) The interment of ashes within a standard grave site is permissible with consent.
- (7) Only cut flowers and artificial flowers pursuant to clause 2.3 are permitted to be left at burial places.
- (8) Mausoleums are prohibited.
- (9) No tree, shrub or other plant may be placed or planted on any grave in a public cemetery other than by Council at its absolute discretion.
- (10) A person shall not construct, install, alter, restore, renovate or improve any monument, memorial, foundation, vault, table, headstone, gravestone, kerbing, railing, or other structure, unless it is:
  - (a) of a material and design approved in writing by the Council;
  - (b) carried out to the standard of workmanship required by the Council; and
  - (c) constructed in accordance with Australian Standard 4204-1994 Headstones and Cemetery Monuments and best practice guidelines to associated works.
- (11) A person shall not make any inscription or carry out any adornment, unless it is approved by the Council and made or carried out to the standard required by the Council.



- (12) A person shall not remove a monument, memorial, foundation, vault, table, headstone, gravestone, kerbing, railing, or other structure from a cemetery without the permission of the Council.
- (13) A person shall not erase, correct, or require the erasure or correction of wording of any inscription that has been constructed, installed, made or carried out without the consent of Council.

### **3.6 Rights of Burial in Public Cemeteries**

- (1) A right of burial will only be granted to an individual and private person.
- (2) Any one (1) person may not be the owner of more than six (6) rights of burial.
- (3) Council will refuse to grant a right of burial if it reasonably suspects that the right of burial will be used for commercial gain or financial profit.
- (4) Any right of burial issued by the Council will be administered under the *Crown Lands (General Reserves) By-law 2006*.
- (5) The right of burial or any licence issued under its provisions does not transfer any equity or ownership of cemetery land to the owner of the Certificate or a beneficiary of it.
- (6) Council agrees to re-purchase unoccupied reserve burial sites only where there are necessary circumstances, subject to the applicant producing acceptable proof of ownership and transferring such ownership to Council and provided that no structural improvements have been carried out on the reserved site.
- (7) Council will compensate the grantee to a right of burial when the grantee wishes to relinquish the said right of burial in an unused state to the Council, subject to:
  - (a) the grantee producing acceptable proof of ownership of the right of burial;
  - (b) there being no structures over the plot described in the right of burial;
  - (c) there being no impediment or obstruction that prevents the right of burial being re-issued to another person.
  - (d) there being no interments in the plot described in the right of burial.
- (8) The amount of the refund will be as prescribed under regulation 35 of the *Crown Lands (General Reserves) By-law 2006*.
- (9) The transfer of a right of burial between private parties shall only be with the written consent of the Council.
- (10) A certificate of exclusive rights of burial issued by Council will clearly show:

- (a) the owners name and address;
  - (b) the amount paid;
  - (c) the date of issue;
  - (d) a description of the physical location of the grave; and
  - (e) the terms and conditions under which the certificate is issued.
- (11) Council may revoke a right of burial due to site constraints or other circumstances including, but not limited to, the presence of subterranean springs or unrecorded interments. In such instances compensation shall be afforded to the former holder of that right:
- (a) in the form of an alternative burial place in the same cemetery as the original burial place (if there is an alternative burial place available); and
  - (b) in the form of payment by Council an amount equal to half of the fee payable (as provided by the Council's current scale of fees) for an alternative burial place in the same cemetery.

### **3.7 Licence of Burial in Public Cemeteries**

- (1) The Council will only consider granting a licence to bury or immure a body or ashes in the space described in a right of burial when:
- (a) the deceased person is the person named in the right of burial certificate; or
  - (b) the person, or estate of the person, named in the right of burial certificate has given their formal consent.
- (2) The licence of burial, once issued by Council, is irrevocable.

### **3.8 Exhumations**

- (1) Exhumations are not to take place unless:
- (a) prior written consent has been obtained from the Director-General of the Department of Health (NSW); and
  - (b) Order for Exhumation has been issued by Council.
- (2) This clause does not apply if an exhumation has been ordered by a Court.

### **3.9 Lawn Cemetery Sections in Public Cemeteries**

- (1) Lawn cemetery sections are structured on a non-denominational basis.
- (2) No statues or structures other than headstones shall be erected or constructed over a grave in a lawn cemetery section.

- (3) Headstones may be erected at any time subsequent to burial and shall be finalised within six (6) months of interment for the neatness and aesthetic value of the lawn section.
- (4) In a lawn cemetery section, the grantee shall only erect a headstone of a type and design approved by Council. Applications that do not utilise the standard drawings under Schedule 2 may be considered by Council through formal application.
- (5) The Council shall provide a table (a flat concrete base on which the desk sits) of a standard size and type as determined by the Council to be placed at the head of each grave in the lawn cemetery section.
- (6) As soon as practicable after a burial or interment has taken place the applicant for the burial or their delegate shall provide a monumental plinth and memorial plaque. The design and type of the plinth and/or plaque must be consistent with the requirements determined by Council.
- (7) New headstones shall be aligned according to row and column so that the structure aligns with existing work.

### **3.10 Monument Sections in Public Cemeteries**

- (1) In a monument section, the grantee shall only erect a monument of a type and design approved by Council. Applications that do not utilise the standard drawings under Schedule 2 may be considered by Council through formal application.
- (2) Standard monumental work shall involve:
  - (a) the alignment of the structure with existing work;
  - (b) concrete kerbing constructed to existing ground level;
  - (c) cement render on kerbing that extends 50mm below existing ground level;
  - (d) the infill of the grave between kerbings with concrete;
  - (e) the lawful disposal of surplus concrete and building material; and
  - (f) the deposition of surplus soil in a Council approved area.
- (3) Monumental work shall be commenced within a period of twelve (12) months after interment to allow for settling.
- (4) After all monumental work is completed to the satisfaction of the Council any bond held for the works shall be refunded to the grantee or their delegate.

### **3.11 Columbarium Sections in Public Cemeteries**

- (1) The Council shall place over each immurement chamber, as soon as practicable after a burial has taken place in that niche, and upon receipt of written instructions from the grantee, a

memorial plaque, supplied by the Council, of a standard size and type as determined by the Council.

- (2) Public cemetery columbarium at Kyogle provide niches for small pyxis only in original walls. As crematoriums generally issue large pyxis Council will consider the columbarium interment of one pyxis and the dispersal of residual ashes in a dedicated garden area situated within the cemetery grounds or, alternatively, the interment of a second pyxis within an existing grave site of the immediate family.
- (3) Public cemetery columbarium in other Council controlled cemeteries, and within new walls erected at the Kyogle cemetery, accommodate large pyxis.

### 3.12 Indigenous burials

Kyogle Council recognises the diverse cultural practices of the Indigenous Communities in the Local Government Area and, subject to statutory obligations being met, may amend provisions of this Plan to facilitate Indigenous cultural obligations.

## Part 4 Other Matters

### 4.1 Application of the Policy

This local approvals policy applies to those activities associated with cemeteries and burials for which approval is required under the *Public Health Regulation 2012* and the provisions of Chapter 7 Part 3 of the *Local Government Act 1993*.

Additional approvals or consents may be required for activities and works under the provision of separate legislation such as the *Environmental Planning and Assessment Act 1979*, the *Roads Act 1993*, the *Water Management Act 2000* and the *Native Vegetation Act 2003*.

### 4.2 Procedures for making an Application

- (1) The persons who may make application under this Policy are as follows:
  - (a) Any person over the age of eighteen (18) years may make application for the burial of a person within a Council cemetery;
  - (b) Any person over the age of eighteen (18) years may apply to reserve a grave site in a Council cemetery;
  - (c) Any person over the age of eighteen (18) years may apply to reserve a niche in a Council cemetery columbarium;
  - (d) A property owner, or any person with the written consent of a property owner, for the burial of a person in a private cemetery or on private land.
- (2) Application must be made on the forms annexed and marked Schedule 1 or as current at the date of application.

- (3) An application for approval must be accompanied by such matters as are necessary to enable Council to make an informed decision.
- (4) Application fees are required pursuant to the Kyogle Council Management Plan - Fees and Charges as current at the time of application.

#### **4.3 Reconsideration of Applications**

Where Council is formally requested by an applicant to review the determination of an application pursuant to section 100 of the *Local Government Act 1993*, the request must be made in writing to the General Manager within 28 days of Council's determination. The request must provide justification for Council's review and is to be accompanied by the appropriate fee. The council may review the determination pursuant to section 100 of the *Local Government Act 1993* and, as a consequence of its review, may confirm or change the determination having taking into consideration the grounds for review. The determination of the review is final.

#### **4.4 Right of Appeal**

An applicant who is dissatisfied with the determination of Council with respect to the applicant's application for an approval may appeal to the Land and Environment Court as described in section 176 of the *Local Government Act 1993*.

#### **4.5 Revocation of Approval**

Council reserves the right to revoke or modify an approval in any one or more of the following circumstances:

- (1) if the approval was obtained by fraud, misrepresentation or concealment of facts;
- (2) if there is cause arising after the granting of the approval which, had it arisen before the approval was granted, would have altered the terms of the approval or caused Council to refrain from the granting of the approval;
- (3) if there is any failure to comply with a requirement made by, or under, the *Local Government Act 1993*, the *Public Health Act 2010* and their respective regulations relating to the subject of the approval;
- (4) if there is any failure to comply with a condition of the approval.

#### **4.6 Power of Entry**

The right of Council staff involved in the processing of applications to enter and examine the subject private land is inferred and accepted by the applicant without the requirement for any advance notification. This power of entry is limited to the assessment of the application only and does not permit Council staff entry into any structure without the consent of the owner.

#### **4.7 Exemption of Application Fees**

Council does not waive application fees as a general rule. Consideration may be given by Council to reimburse application fees pursuant to Council's Financial Assistance Policy.

#### **4.8 Registers**

- (1) A register of burial, as required by the Regulations of the Public Health Act, must be kept in respect of all burials.
- (2) A register of rights of burial granted must be kept.
- (3) Each register, which may be kept in written, printed or electronic form, must contain sufficient information to allow for simple cross-referencing of entries by surname; date of burial or cremation; and, burial place location.
- (4) Each register should contain the name and address of the owner of the burial right.
- (5) Each burial must be recorded in its respective register immediately after the service.
- (6) Registers may be amended to remove or correct inaccuracies.
- (7) The Council must, on application made by any person on an approved form, make available to the person a copy of any entry made in the burial registers. Each form shall be limited to a single register entry.

#### **4.9 Maintenance of Cemeteries**

- (1) General maintenance of public cemetery grounds will be undertaken by authorised Council staff or appointed contractors with all reasonable efforts made to ensure the amenity of the area. Maintenance generally includes mowing, edge trimming, weeding and the preservation of internal roads and fencing.
- (2) Council's responsibility for any structure in a cemetery is limited to its preservation as defined in the Burra Charter: "Preservation means maintaining the fabric of a place in its existing state and retarding deterioration."
- (3) The maintenance, repair or restoration of a structure in a cemetery is the responsibility of the estate or heirs and successors of the deceased person buried or commemorated in the respective burial.
- (4) The Council may act to remove, demolish or alter any structure or adornment which has become dilapidated, unsightly, is crumbling, or deemed to be unsafe by a risk assessment conducted by the Council.
- (5) Where any work that has been approved is not completed within a reasonable time, the Council may remove or demolish such partially finished work as it deems necessary to preserve the fabric of the cemetery and the public safety.

- (6) The Council may remove any trees, shrubs or other vegetation where, in its opinion, it is in the interest of the cemetery to do so.
- (7) The removal of cut flowers and wreaths in public cemeteries will be undertaken seven (7) days following a burial, or earlier where the deterioration is deemed to be unsightly.
- (8) The removal and disposal of artificial flowers in public cemeteries will be undertaken when, in Council's opinion, the flowers are not appropriately placed, or have faded or become dishevelled.
- (9) Any items deposited on grassed areas may be promptly removed.
- (10) Council's Property Insurance Policy has provision for the indemnity of the shelter and storage sheds, amenities block, columbarium walls, internal road works, fencing and entrance gate at the Kyogle cemetery.

#### **4.10 Risk containment and Workplace safety in Public Cemeteries**

- (1) It is prescribed in the *Work Health and Safety Act 2011* that it is the responsibility of everyone to ensure safety in workplaces, and thereby the wellbeing of workers and visitors to public cemeteries. To achieve this Council shall conduct risk assessments to minimise the impact or likelihood of an incident occurring.
- (2) To lessen the likelihood of any hazards developing, Council staff, in accordance with a determined schedule, shall conduct periodic inspections of all fixtures and structures in public cemeteries.
- (3) Any employee considered at risk of contracting tetanus should be offered vaccination. Any Casual/contracted employees performing works on Council sites shall be subject to the same conditions and should avail themselves of vaccination.
- (4) There shall be a minimum of two (2) employees present at all times while grave work is underway. This applies to new graves and the reopening of existing sites. All preventative measures as deduced by the risk assessment must be in play as work progresses.
- (5) All interments, including the placement of ashes, shall only be carried out by authorised persons who hold the necessary public liability cover.
- (6) All structures and fixtures such as monuments, headstones and surrounding masonry shall be examined for both safety and integrity prior to any works commencing.
- (7) When hazards, including unsafe structures, are identified Council will act promptly to eliminate them as follows:
  - (a) Identification and reporting shall be by risk assessment.
  - (b) Consequent actions under this clause shall be thoroughly documented, including supporting photographs, and recorded against the respective cemetery register entry.

- (c) Where subsidence is evident, Council will fill and compact the ground.
- (d) Structures identified as unsafe or a hazard shall be secured with temporary barriers and warning signs and steps taken to secure or repair it as soon as practicable.
- (e) Where the structure is associated with a burial plot Council will attempt to write to the last known applicant for the burial plot, giving seven (7) days notice for the applicant or deceased's estate to arrange for the proper repair or restoration or complete removal of the structure.
- (f) When there is no record of an applicant, a single public notice shall be placed in the local press media advising that within seven (7) days Council will take reasonable action to eliminate the risk or hazard posed by the unsafe structure.
- (g) Reasonable action may include laying a headstone down and removing crumbling or deteriorating concrete, aggregate or stone materials.

#### **4.11 Review of Policy**

This policy will be automatically revoked at the expiration of twelve (12) months after the declaration of the poll for the next general election, unless the Council revokes it sooner.

**Note.** Section 165(4) of the Local Government Act provides for automatic revocation of the Policy. The next general election is expected to be held in September 2016.

## **Schedule 1 Application Forms**

### **Part 1 Burials**

### **Part 2 Reservation of Burial Rights**

### **Part 3 Columbarium Plaque Inscriptions**



**Schedule 2      Standard Drawings**

**Part 1   Kyogle Lawn Cemetery Headstone**

## Dictionary

**Applicant** means the person making an application for a burial, burial or memorial right, or other Council consent under this Policy.

**Ashes** mean the cremated remains of a body.

**Body** means the body of a dead person.

**Burial** includes putting in a vault and the disposal of ashes of a body in a cemetery after cremation.

**Cemetery** means a building or place for the interment of deceased persons or their ashes.

**Cemetery authority** means the person or persons (including a council) by whom the cemetery's operations are directed.

**Columbarium** means a structure with recesses in the walls to receive pyxis holding ashes.

**Council** means the Kyogle Council.

**Dead Person** includes the body of a still-born child of not less than 28 weeks' gestation.

**Grantee** means the person to whom a right of burial is granted.

**Mausoleum** means a large ornate structure for use as a tomb.

**Policy** means the Kyogle Council Local Approvals Policy - Cemeteries and Burials.

**Private burial** means the burial of a body on any private land holding that is not a private cemetery or public cemetery.

**Private cemetery** means any cemetery where Council is not the cemetery authority.

**Public cemetery** means any cemetery where Council is the cemetery authority.

**Pyxis** means a container or casket for the holding of ashes.

**Reservation of burial rights** means a pre-need right of burial.

**Right of burial** means a written undertaking by Council to reserve the burial place in respect of which it is granted for the person to whom it is granted.