



## 3.12.4 Kempsey Shire Council Cemetery Management Guidelines

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# 1 Background

## 1.1 Objectives

The objectives of these guidelines are to:

- a) guide Council's management approach to the day-to-day operation of cemeteries under the operational control of Council.
- b) provide a reference point for the consistent application of rules and requirements associated with Council's cemeteries.

## 1.2 Application of the Guidelines

A person, including the holder of an interment right, must comply with the *Cemeteries and Crematoria Act 2013*, related Regulations and the *Public Health Regulation 2012* and these management guidelines when they wish to undertake any of the following in a Council operated cemetery:

- inter human remains
- re-open an interment site containing bodily remains
- remove human remains from the cemetery
- install or remove a memorial at an interment site.

Council reserves the right to review and amend these guidelines and the related terms and conditions for the interment of bodily and cremated remains at any time, without notice.

## 1.3 Council's cemeteries

Kempsey Shire Council maintains 11 cemeteries throughout the local government area that range in both use and setting. This includes two closed cemeteries that are no longer available for interments, being the Arakoon Historical Cemetery and Comara Cemetery. Operational cemeteries in order of extent of use are:

- East Kempsey Cemetery - Open to burial, ashes interment and memorialisation
- Frederickton Cemetery - Open to burial, ashes interment and memorialisation
- Arakoon Cemetery - Open to burial, ashes interment and memorialisation
- Kinki (Stuarts Point) Cemetery - Open to burial, ashes interment and memorialisation
- Bellbrook Cemetery - Open to burial and ash interments into grave sites only
- West Kempsey Cemetery - Open to existing reservations only
- Toms Gully Cemetery - Open to burial and ash interments into grave sites only
- Crescent Head Cemetery - Open to memorialisation only
- Euroka Cemetery - Open to existing reservations and descendants only

## 2 Council's Cemeteries

### 2.1 Opening hours & access

Pedestrian access to all Council cemeteries is generally available 7 days a week, 365 days a year.

Cemetery gates may restrict vehicle access outside of daylight hours. No person, unless specifically authorised by Council, may be in the cemetery at any other time. The opening and closing of cemetery gates are undertaken by either Council or an external contractor appointed by Council.

### 2.2 Cemetery plans and information

Council will maintain a database of each Cemetery, including online mapping (to be developed over time). This mapping will show:

- each plot at which human remains (bodily or cremated) are interred, including the number and name/s of the person interred (where known)
- each plot that is reserved for the interment of human remains by a licence holder, but not current used (reserved plots)
- each plot that is otherwise available for interment on an as needs basis.

Such a database and mapping shall include sufficient identification information to establish the location of the respective plot (for example, the row and plot number).

An overview plan of cemeteries will generally be made available for download from the Council website and be present at the site where necessary.

Council shall also maintain a Cemetery Register that lists all Interment Rights, in accordance with the *Cemeteries and Crematoria Act* and associated regulations.

### 2.3 Cemetery development and site allocations

Council reserves the right to:

- Create, reallocate or designate bodily and cremated remains interment sections at its discretion.
- Determine whether bodily interment sites are created in single rows or double rows (head to head).

New bodily interment sites are usually established 1m wide x 2.4m long.

When the Interment Right is being reserved, the applicant may indicate the section within the cemetery in which they prefer the interment to occur, and Council will make reasonable efforts to accommodate such requests where possible.

A Jewish burial section is available at Frederickton Cemetery. This area is reserved for burials undertaken in accordance with these religious practices. Council may confirm these practices with appropriate authorities at the time of request.

Requests for other burial sections that restrict the general use of the area will be considered on an as needs basis and in accordance with legislative requirements. Any requirements for burial within these sections will be identified and enforced by Council at the time of need.

### 2.4 Cemetery landscape

No person, except a person authorised by Council, may landscape or change the landscaping of any portion of the cemetery. This includes:

- Unauthorised edging, brick work, timber, tiles, glass, stones, pebbles, garden arches or ferrous

material cannot be placed on or around the perimeter of any grave.

- Unauthorised ornaments are not to be placed anywhere within the cemetery.
- Any unauthorised landscaping may be removed by Council without notice.

No glass, pottery, ceramic container/vases and solar lights are to be placed on graves or within the Cemetery.

Unauthorised items will be removed and disposed of by Council, including any broken or unauthorised vases/containers, wire/fencing placed around a grave or plantings upon graves or elsewhere within the cemetery.

If the surface of any interment site sinks below the level of the natural surface of the ground, Council may fill, or request to be filled, the site to that level.

Council may plant and maintain lawn on interment sites at its discretion.

The Council may alter or transfer any landscaping, burial plots, memorial or memorial garden bed as it may determine, at its absolute discretion, and in accordance with associated legislation.

## 2.5 Traffic management and parking

A person must, while in charge of a motor vehicle within a Council cemetery, comply with any lawful directions of Council as to the driving and parking of the vehicle.

A person must not drive a motor vehicle within the cemetery in a dangerous or careless manner or without reasonable consideration for others.

A person may park a motor vehicle within the cemetery with reasonable consideration for others and in accordance with general road rules unless the road is clearly marked to the contrary.

## 2.6 Control of animals

All dogs in a Council cemetery must be kept under control and on a leash. All dog faeces must be removed by the person in control of the dog.

A person may not ride, drive or exercise other animals in the cemetery without the written approval of Council.

## 2.7 Behavior in the cemetery

A person must not cause any nuisance or breach the peace or disturb or interrupt any service, procession or activity being undertaken in connection to the cemetery.

A person must at all times conduct themselves in a manner that respects the rights and safety of others.

A person must seek the approval of Council before they:

- inter any human remains (whether cremated or not)
- erect a temporary shelter or canopy
- organise or take part in a meeting
- restore, alter or update inscriptions on existing memorials
- install any memorial or monument or plaque.

A person may not:

- sell or buy anything
- carry on a business
- distribute or display any advertisement

- disturb a funeral service
- discharge a firearm (except at a military funeral)
- take, injure or interfere with landscaping, signage, vases, animals or other property
- plant any tree or shrub on any land within the cemetery

## 2.8 Working within Council's cemeteries

An external party may not undertake work of any type in a cemetery unless that person and those engaged by that person:

- hold a valid work permit for that specific activity, and/or
- are currently registered with Council as a contractor

Specific requirements are also applicable to grave digging and monumental works identified in Sections 3.4 and 4.1 respectively.

## 2.9 Tributes and keepsakes

Flowers must be placed in the containers that form part of the monument. Flowers placed outside the designated area will be removed.

Planting of flowers, shrubs or trees within cemetery grounds is prohibited.

The following items are prohibited:

- In/on or around any gravesite:
  - Glass containers, vases or jars
  - Plants, trees or potted plants
  - Flags, clothing and decorations on spikes
- On the lawn surface:
  - Gravesite markers of any kind - including rocks, pebbles, pavers, fencing, timber edging or bricks and other markers that outline the gravesite
  - Ornaments, solar powered lights, flowers, grave filling (such as bark chips, stones or gravel)

Council conducts regular checks of its cemeteries to clear deteriorated and prohibited items. These include:

- Any unauthorised works
- Unapproved, excessive tributes or incorrectly located flower containers
- Any items encroaching onto the lawn
- Aged flowers and wreaths

Items considered as a safety hazard are not permitted within Council's cemeteries and will be removed.

Council may remove and dispose of any tribute when it is deemed unsightly, offensive, breakable or that is a risk to public safety.

It is important to respect your neighbour and ensure that your tributes do not encroach upon the neighbouring allotment. This can cause unnecessary distress to other families.

## 3 Interment process

As there is no office located at Council's cemeteries, all enquiries should be directed to Kempsey Shire Council on (02) 6566 3200 or by visiting Council's Administration Centre at 22 Tozer Street, West Kempsey.

The Administration Centre's opening hours are 9.00am to 4.30pm, Monday to Friday, and an appointment is recommended to ensure that Officers are available to attend to your enquiry.

### 3.1 Application for an interment right

To reserve a site for interment (bodily or ashes interment), you will be required to purchase a Perpetual Interment Right. You must complete an "Application for a Perpetual Interment Right" form prior to Council issuing the interment right. This may be done directly with Council if "reserved" prior to the time of need.

Once the "Application for a Perpetual Interment Right" has been accepted by Council and the interment location allocated, an "Interment Right Certificate" [TBC] will be issued.

An Interment Right may be granted to one person or to 2 or more persons as joint holders. When purchasing an interment right to be used for two or more interments, the right holder should be specific and name who can be interred in the site. A second interment cannot be on-sold by individuals or operators.

A perpetual interment right must be used within 50 years of purchase. If it is not used, the cemetery operator can revoke the right in accordance with legislative requirements.

An Interment Right entitles the holder to utilise the interment location for approved purposes - an 'interest' in the land. It does not convey ownership of the land.

No person can hold more than two interment rights in the one cemetery in NSW.

### 3.2 Application for interment

Council has no involvement in Funeral Arrangement. A funeral director should be contacted by the family of the deceased (or other representative as applicable) to:

- make arrangements with Council for the interment, including the timing and approval of the interment right if not already reserved
- make arrangements with Council for the digging and backfilling of the grave (and removal of existing monuments on the grave where applicable) where applicable
- make payment to the Council of the necessary fees associated with the conduct of the interment prior to the interment.

In the case of interment of cremated remains within Council's cemeteries, placement may be carried out by Council officers or by an external contractor approved by Council in a garden bed, niche wall or other dedicated cremated remains interment location. Placement of cremated remains may also be undertaken by Council officers or by an external contractor approved by Council in an existing interment allotment.

If monumental work must be removed to allow a grave to be re-opened for a second interment, this must be arranged by the funeral director on behalf of the person arranging the funeral.

### 3.3 Timing of interment

Interments will generally occur between 9am and 3pm. Additional fees may apply outside these times, as well as on weekends and public holidays. Council may reserve the right to limit the number of interments in a single day and requires the pre-digging of a burial site.

### 3.4 Grave digging

Grave digging is to be undertaken by Council or its approved contractors only. Fees for grave digging are included within Council "Interment" fee.

Coffins/Caskets or other bodily burial must be undertaken in accordance with relevant legislative requirements. This includes the interments must:

- Be at a minimum depth of 900mm below the natural surface level. Where this depth cannot be met, the applicant must seek the approval under the *Public Health Regulation 2012*. If approved and lodged with Council (along with other required forms), to a level of not less than 400mm or as otherwise identified by the approval.

The interment site will be covered/backfilled as soon as practicable on the same day as the interment.

### 3.5 Transfer of interment rights

An Interment Right is passed down to descendants of the original holder or transferred to another holder.

An unused interment right can be bequeathed as part of a personal estate. If the holder dies and has not used or bequeathed the interment right, it forms part of the estate. In these cases, the new holder should contact Council so that the cemetery register can be amended.

Interment rights can also be transferred to another person using Council's "*Transfer of a Perpetual Interment Right by Holder*" form. Only the existing rights holder can apply for the transfer. If the interment right is held by joint holders, the application must be made by all right holders.

It is the responsibility of each right holder to inform Council of any change in contact details. When an interment right is transferred, Council will update its register with the details of the new holder.

Council will then issue a new certificate of interment right to the new holder.

It is noted that Council has the right to refuse the transfer if (in Council's opinion) it would tend to create a monopoly or encourage dealing in interment rights.

### 3.6 Surrender of an unused interment right

An Interment Right which has not been exercised i.e. where no interment has occurred, can be surrendered back to Council by the holder of that Right.

### 3.7 Exhumation

Exhumation is the removal of remains from a grave. There are strict public health regulations for exhumation. A body can only be exhumed once an order to exhume has been approved by the Secretary of NSW Health. An application fee to NSW Health will apply. More information on exhumation can be obtained from NSW Health.

Once approval from NSW Health has been obtained, arrangements can be made with Council and a fee will apply.



## 4 Monumental and on-site works

### 4.1 Monumental works

Council must approve all monumental works carried out in cemeteries. Headstones are to be installed by a licensed monumental mason, whose work must be consistent with *Australian Standard AS4204: 2019, Headstones and Cemetery Monuments*.

For Council approval, the mason and interment right holder must together complete an “*Application to Carry Out Work in Cemeteries*” form.

In the lawn section of the cemeteries, an approved headstone can be placed on the concrete beam at the head of the grave. The design will be assessed against Council’s “*Headstone Specifications*” and cannot be any wider than 1M or higher than 1M and must not encroach on adjoining plots.

If the burial is in a monumental section of a cemetery, an approved headstone and/or kerbing or slab may be installed, subject to approval via an “*Application to Carry Out Work in Cemeteries*”.

If monumental work must be removed to allow a grave to be re-opened for a second interment, this must be arranged by the funeral director on behalf of the person arranging the funeral. Council under no circumstances is responsible for the removal of monumental work.

Graves and monuments 50 years and older are subject to the *Heritage Act 1977 (NSW)*. Any proposed work must meet the requirements of the Act.

It is noted that Council is not liable for the care, maintenance, preservation, conservation or restoration of the construction (headstone and surrounds) erected or placed over the grave.

### 4.2 Works without approval

While Council will attempt to contact the interment right holder before doing so, and within legislative requirements, Council may remove or alter any memorial or erase any inscription that has not been approved.

### 4.3 Site access and working arrangements

Monumental masons and their staff and contractors:

- Must repair any and all damage to cemetery infrastructure attributed to them to the satisfaction of the Council
- May place clean fill that was removed to enable installation of the memorial in Council’s designated stockpile area, provided that permission is given to do so
- Remove all other waste created during the completion of works from the cemetery site. No contractor waste is to be placed within any part of the cemetery.
- Must have the permission of Council before storing any goods or materials on the cemetery site overnight.

## 5 Site maintenance

### 5.1 General maintenance

Council shall maintain cemetery grounds in accordance with allocated levels of service that respond to the extent of use of the cemetery and/or sections thereof.

### 5.2 Maintenance of memorials

An Interment Right entitles the holder to utilise the interment location for approved purposes - an 'interest' in the land. It does not convey ownership of the land.

Installation of a memorial on the interment right location may be undertaken with approval of Council - refer to Section 0.

The holder of the Interment Right, not Council, is responsible for ensuring appropriate maintenance of any memorial or structure that is present on the site. Council will not be liable for the future care, maintenance, preservation, conservation or restoration of the construction (headstone and surrounds) erected in association with, or placed over, the grave.

Any restoration work on a memorial must be done by an experienced, suitably qualified tradesperson, in accordance with the relevant Australian Standards and with Council's approval.

### 5.3 Unapproved memorials

At its absolute discretion, Council may remove and dispose of any memorial that is constructed without approval.

## 6 Fees and Charges

Council publishes its fees and charges for cemetery activities annually in accordance with the *Local Government Act 1993*.

The published fee for a “Perpetual Interment Right”:

- includes the allocation of the right to use a particular piece of land or cremated remains interment location for interment, but which is not the ownership of the land
- includes related costs including perpetual maintenance and administration
- excludes interment costs such as grave digging and administration

Payment for the “perpetual Interment Right”, as well as the “Interment” fee, must be made prior to any bodily or ashes interments taking place.

If an interment is to be located within an area of an existing Interment Right i.e. previously reserved, proof of the interment right (certificate) or proof of past purchase acceptable to the Council i.e. a receipt, should be provided to the funeral director, so that it may be presented to Council or directly to Council. Where evidence cannot be provided, Council reserves the right to refuse permission for interment or may require the purchase of a new interment right.

Payments must be made at Council or electronically and will not be accepted at the cemetery.