

8.7 Burials on Private Land Policy

REPORT BY THE MANAGER BUILDING AND DEVELOPMENT
TO 21 FEBRUARY 2024 ORDINARY MEETING
GOV400105, PUB600019

RECOMMENDATION

That Council:

1. **receive the report by the Manager Building and Development on the Burials on Private Land Policy; and**
2. **place the Burials on Private Land Policy on public exhibition for a period of 28 days; and**
3. **adopt the Burials on Private Land Policy if no submissions are received during the public exhibition period.**

Executive summary

The Burials on Private Land Policy has been prepared as a guideline for Council to regulate the approval process for burials on private land, whilst upholding its responsibilities under the *Public Health Regulation 2022*.

Disclosure of Interest

Nil

Detailed report

Currently Council has a procedure for single burials on private land where an applicant is required to submit an online application via Councils website supported by details of compliance with the *Public Health Regulations 2022* and a site plan of the proposed burial site.

Recently Council has received enquiries relating to the burial of more than one (1) body on private land. One of the purposes of the policy is to define the difference between a private burial site approved under the *Public Health Regulation 2022* and private cemeteries that require Development Consent and approval under the *Public Health Regulation 2022*.

Private burial sites for up to five bodies are considered incidental to the existing property uses and do not constitute development for the purpose of the *Environmental Planning and Assessment Act 1979*, therefore no Development Application is required.

For the burial of more than five bodies, this is considered a private cemetery and requires development consent pursuant to the *Environmental Planning and Assessment Act 1979*.

Community Plan implications

Theme	Good Government
Goal	Strong civic leadership
Strategy	Provide accountable and transparent decision-making for the community

Strategic implications

Council Strategies

Nil

Council Policies

Nil

Legislation

Public Health Act 2010

Public Health Regulation 2022

Environmental Planning and Assessment Act 1979

Financial implications

Nil

Associated Risks

Not Applicable

TY ROBSON
MANAGER BUILDING AND DEVELOPMENT

ALINA AZAR
DIRECTOR DEVELOPMENT

5 February 2024

Attachments: 1. Draft - Burials on Private Land Policy.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



POLICY Burials on Private Land

*A prosperous
and progressive
community.*

Council Resolution		VERSION NO	1.0
COUNCIL MEETING MIN	[xx/xx]	REVIEW DATE	TBA
DATE:	TBA	FILE NUMBER	PUB600019

Objective

This policy provides guidance on Council's role as the approval authority for burials on private land and explains the requirements for which applications must satisfy prior to consent being granted for burials on private land.

It should be noted that Council is not approving each instance of burial; rather it is approving the burial location.

Definitions

Private burial site: Place established for the burial of up to five bodies.

Private cemetery: Place established for the burial of more than five bodies.

Policy Background

This Policy is being developed for the community to outline:

- Council's role as the approval authority.
- The difference between a private burial site explicitly approved under the *Public Health Regulation 2022* and private cemeteries that require Development Consent pursuant to the *Environmental Planning and Assessment Act 1979* as well as approval under the *Public Health Regulation 2022*.

Legislative requirements

- *Public Health Act 2010*
- *Public Health Regulation 2022*
- *Environmental Planning and Assessment Act 1979*

Policy

General

Private burial sites for up to five bodies are considered incidental to the existing property uses and do not constitute development for the purpose of the *Environmental Planning and Assessment Act 1979*, therefore no Development Application is required.

For the burial of more than five bodies, this is considered a private cemetery and requires development consent pursuant to the *Environmental Planning and Assessment Act 1979*, whilst also demonstrating compliance with the *Public Health Regulation 2022* prior to the burials occurring.

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Private Burial Site

A private burial site requires approval from Council prior to any burial. An application shall be lodged for a private burial site via Council's website and supported by details of compliance with this Policy, the *Public Health Regulation 2022* as well as the conditions imposed by the NSW Health's Fact Sheet: Burials on private land. The application shall also be supported by a site plan of the subject property clearly delineating the proposed burial site and setback distances to site constraints e.g., water courses, buildings etc.

Private Cemetery

For the burial of more than five bodies, this is considered a private cemetery as the use is not incidental and requires development consent pursuant to the *Environmental Planning and Assessment Act 1979*, whilst also demonstrating compliance with the *Public Health Regulation 2022* prior to the burials occurring. This application shall be lodged via the NSW Planning Portal.

Applicants are encouraged to phone Council's Duty Planning Officer to discuss the approval process for a private cemetery.

Private Burial Site Assessment Process

Lodge an "Application to Bury a Body on Private Land" with Council. The application shall be supported by the relevant information as listed below.

Council officers will assess the information provided before conducting a site inspection. The site inspection is conducted as an assessment of the location of the burial site, not an inspection of the burial hole.

If the site inspection and information submitted is considered satisfactory, a determination for a private burial site will be returned to the applicant via email.

Fees and charges apply and must be paid upon lodgement of the application.

Requirements

The following is required for an application for a private burial site:

1. Application in writing must be submitted by the owner/s of the land and include the following information:
 - Proof of ownership of the land.
 - Site-layout plan - Accurate details, to an approved scale, showing the precise location of the burial site as related to permanent existing observable landmarks. Council reserves the right to require that the location of the burial site be set out and be verified by a registered surveyor, and that the burial site or private cemetery be formally incorporated into the title of the land. The layout of the burial site must also consider the need for future maintenance and any memorials and any other appurtenances. At the request of Council, the layout is to be prepared by a registered surveyor.
2. The land on which the burial site is to be located must:
 - Have a minimum area of five hectares;
 - Not be likely to contaminate any drinking water supply or a domestic water supply or intercept any on sewage management system;
 - Have reasonable and safe pedestrian and vehicular access to the plot locations;

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- Be provided with appropriate visual buffering from neighbouring dwelling sites, and otherwise, be suitable for the purposes of a private cemetery or burial site; and
- Not have any compliance or ongoing neighbourhood issue that may be aggravated by approving the private cemetery or burial site.

Council may require the submission of a report/s from a suitably qualified person/s that provides relevant information showing compliance with these requirements.

3. All burial sites must be sited:

- a minimum of 100 metres from any dwelling or approved dwelling site,
 - a minimum of 100 metres from the boundary of any adjoining land.
4. The boundaries of the burial sites must be permanently marked with posts, fencing or other approved method, and this must be properly documented in the application.
 5. No burial shall take place unless an “Application to Bury a Body on Private Land” has been approved by Council and payment in accordance with Council’s Fees and Charges has been made.
 6. Applicant will be required to register a right-of-way on the property from the nearest public road to the burial site or private cemetery. The right-of-way shall provide future visitor access to the grave site and shall be of sufficient area to allow any future maintenance/servicing requirements.
 7. The applicant will be required to provide evidence that an 88B restriction has been implemented to provide the long-term location of the grave site after the burial has occurred.
 8. An approval expires when a property which has an approval issued for a private burial and has not been acted upon changes ownership.
 9. The burial site shall be maintained in a safe and healthy condition to the satisfaction of Council.
 10. An approval expires shall a relevant condition not be satisfied.

Note: The burial or placement of ashes on private rural land does not require Council’s approval.