

+GCC File: DPC re Cemeteries  
Your Reference:  
Enquiries: Customer Service  
Direct Phone: (03) 62 166 800  
eMail: gccmail@gcc.tas.gov.au



7  
10 July 2019

Dept of Premier and Cabinet  
GPO Box 123,  
Hobart, TAS 7001

Dear Sir/Madam,

**RE: Update of Tasmanian Cemetery Register**

I am instructed to respond to your letter dated 21 June 2019. You have asked us to confirm the Cemeteries Register entries for the following Council land:

- Granton Gordon Family Headstones, Montrose Train, Wellington Park.  
A review of historic material and an on-site visit has confirmed that there are no human remains at the site, which is an unauthorised set of two small, modern memorials erected on stony ground beside an eroded creekbed, at the old home site of the Gordon family (now burned out and reverted to bush). It is possible but uncertain if any ashes have been spread at the site by family members. This site not a cemetery and contains only unauthorised memorials, and should be removed from being covered by the definitions in the Bill, and thus removed from the Register.
- St Matthew's Uniting Church, 2 Tolosa Street Glenorchy.  
This heritage cemetery has been closed since 1904. In 1954 the memorial stones were relocated to the perimeter wall and the burial ground cleared for a lawn. In 2000 Council took over the site and surviving headstones were relocated to a garden area in 2007 (probably not the original location). The most recent surviving stone is dated 1875. The site is now used as a community hall with the remaining curtilage converted mainly to lawns. The monumental works at the St Matthews site are being retained purely as a heritage site within a garden, and inside a fenced zone ordinarily closed to the public except by appointment, to prevent vandalism.

We have also been asked to provide feedback on the draft *Burial and Cremation Bill 2019*. Our further comments are in Appendix A

Please contact me on 6216 6483 or Michael.Jacques@gcc.tas.gov.au.

Yours faithfully



Michael Jacques  
Senior Legal Counsel

## APPENDIX A

### Feedback on the draft *Burial and Cremation Bill 2019*

This Council does not manage any active cemeteries, so the immediate impact of the Bill on this municipality is limited.

#### **Closed cemetery obligations**

In our view the management of closed cemeteries should be limited to a general information gathering and audit power, then the means to preserve the heritage features of the cemetery when high value features, such as pioneer headstones, come under threat.

A large proportion of Tasmania's urban sportsfields, parks, roads and other public facilities (even hospital complexes) are situated on old rubbish tips and burial grounds. Lack of urban planning in former times led to these areas surviving as undeveloped zones within districts that now have little land for public infrastructure. From time to time, they will also lie across strategic areas that may need to be re-used for public purposes, such as road realignments and placement of buried infrastructure.

The traditional practice in English and early Australian law has been to use cemeteries for limited periods before they are re-purposed. They are rarely retained in perpetuity. The concept that all cemeteries are to be preserved is a new concept.

On the whole, these public needs appear to have been incorporated into the current legislation, except for the following suggestions for improvement.

#### **Works adjacent to closed cemeteries**

Public bodies, at very rare intervals, run the risk of inadvertently exposing human remains during earthworks in long-re-purposed and poorly delineated closed cemeteries, e.g. in roads and footpaths adjacent to former burial grounds. This is a small risk, due to the burial depths traditionally used and gradual disappearance of identifiable remains due to natural processes in any event. It may be useful to have some kind of published guidelines for such incidents, so that project works are not disrupted by delays while seeking information or approvals. Perhaps it should be clearer that noting positions, respectful removal for boxing and tagging, before later reburial in an adjacent location is sufficient for works adjacent to closed cemeteries.

#### **Definitions in the act - memorials and monuments**

The definition of "monument" captures erection of memorials in any public location (see subsection 3(b)(ii)), even if they were placed there as a trespass, or as a temporary commemorative for the service life of the attachment point, e.g. a seat.

The definition is too broad, it is capable of capturing even the entry sign announcing the "Doone Kennedy Memorial Aquatic Centre". There needs to be a direct link to an approved place of burial or cremation and the monument must have been erected in compliance with the Act, and with the landowner's consent at the time of erection. The elements of Section 84(1) should actually be included in the definition of a "monument".

It shouldn't be the case that a couple of small apparent memorials erected unlawfully at a place can create a cemetery reporting requirement (s.42) or an obligation to manage the memorial.

#### **Restrictions on Dealings in closed cemeteries (Division 4)**

The obligations to register and maintain an inactive closed cemetery (as they have, by definition, been inactive for usually a century) aren't really affected by a change of ownership, especially if it has already been predominantly cleared. Provided the owner notifies the Department, the sale of a closed cemetery need not be delayed by reporting and approval requirements. This could be amended by changing the "cemetery" definition for the purposes of Division 4 to exclude closed cemeteries, and merely retain the notification of sale requirement for closed cemeteries. The usual provisions preventing damage to monuments, and general powers requiring audits where there is a perceived need, would still apply to the new owner.

#### **Notification requirements for closed cemeteries**

For a long disused cemetery, public notification requirements of 12 months seem unreasonably long (see s.70). Notification is longer than probably the entire implementation cycle of a park renovation project for a closed cemetery. Even a high rise development doesn't require 12 months advance notice. It should also be noted that printed daily newspapers have shrunk considerably in readership numbers in modern times. Some smaller country councils don't have local newspapers and three advertisements in a State daily represents a considerable cost. An alternative should be to publish information on the manager's website for a 28 day period, as well as a notice on the land.

