

Policy

Cemeteries and Private Burials

Version 3.0

Adopted by at its meeting on 17 November 2022

Division:
Section:
File Reference:
Historical Reference:

Planning and Regulation
Environmental Health
Council Policies/Protocols/Procedures
See Version Control

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Policy Objective

This policy provides guidance on Council's role as the approval authority under the *Public Health Regulation 2022* and explains the conditions under which approvals may be 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 cemetery: Place established for the burial of more than five bodies.

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

Trust fund: A financial depository that holds funds in Trust for specific uses.

Policy Background

This Policy is being developed for the community to outline:

- The difference between a private burial site approved under the *Public Health Regulation 2022* only and private cemeteries that require Development Consent and approval under the *Public Health Regulation 2022*.
- Council's role as the approval authority under the *Public Health Regulation 2022* of locations to bury bodies on private land.

Policy

This policy applies to applications for new private cemeteries and burials that are received following authorisation of the Policy. Existing cemeteries and burials will continue to operate in accordance with their respective approvals.

The burial of more than five bodies on a single land parcel will require a Development Application. Burials of up to five bodies do not require a development application however require Council's approval under the *Public Health Regulation 2022*.

All applications received will be considered on merit.

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

Requirements

NOTE: Any proposal for a cemetery requires the submission of a Development Application. Burials of 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. Development Applications for cemeteries also need to obtain approval under the *Public Health Regulation 2022* prior the burials occur.

For approvals under the *Public Health Regulation 2022* the following is required:

1. Application in writing must submitted by the owner/s of the land and must include the following information:
 - (a) Proof of ownership of the land.
 - (b) Written approval of the Owners Corporation, Community Association, or other similar owner governing body where the land is within a strata title, community title or multiple occupancy development. The approval must refer to the resolution/determination of the relevant governing body granting its approval to the application and must include approval of the proposed location and number of proposed allotments.

The relevant governing body must properly consult with their community, and with the owners/occupiers of dwellings and dwelling sites immediately adjoining, and other sites within the neighbourhood of, the proposed cemetery.
 - (c) A layout is presented: Accurate details, to an approved scale, showing the precise location of the private cemetery or burial area as related to permanent existing observable landmarks. Council reserves the right to require that the location of the private cemetery or burial area

be set out and be verified by a registered surveyor, and that the private cemetery or burial area be formally incorporated into the title of the land. The layout of the burial must also consider the need for future maintenance of the burial 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 and the total land area of all lands within a multiple occupancy, community title or strata title development on which the private cemetery or burial area is to be located must:
 - Have a minimum area of five hectares;
 - no 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;
 - be provided with appropriate visual buffering from neighbouring dwelling sites, and otherwise, be suitable for the purposes of a private cemetery or burial site;
 - comply with the *State Environmental Planning Policy (Resilience and Hazards) 2021*; 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 grave sites must be sited:
 - For multiple occupancy (rural land sharing community) developments, a minimum of 100 metres from any neighbouring dwelling or approved dwelling site, and minimum of 100 metres from the boundary of any adjoining land that is not part of the multiple occupancy.
 - For community title or strata title developments, a minimum of 100 metres from the boundaries of individual lots within the developments, and a minimum of 100 metres from the boundary of any adjoining land that is not part of the community title or strata title development.
 - In all other circumstances a minimum of 100 metres from the boundary of any adjoining land.
4. The boundaries of the grave site/s 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 for Burial on Private Rural Land” has been approved by Council and payment in accordance with Council’s Fees and Charges has been made.
6. A certified copy of the death certificate, issued by a medical practitioner or the coroner, is to accompany the application if the person is deceased.
7. An inspection of the excavated grave will be conducted by Council’s Authorised Officer prior to burial to confirm it complies with the regulations.
8. Applicant will be required to register a right-of-way on the property from the nearest public road to the grave site. The right-of-way shall provide future visitor access to the grave site and shall be of sufficient area to allow any future servicing requirements.
9. The applicant will be required to provide evidence that an 88B restriction has be implemented to provide the long-term location of the grave site after the burial has occurred.
10. Applications expire every five years from the date of the approval.

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

Related Legislation

Guidance on Burying a Body on Private Land - *Public Health Regulation 2022*. Part 8 Disposal of Bodies.

Compliance

The application for a private cemetery or burial site on private rural land, any burials, and the operation of the private cemetery or burial site, must satisfy the relevant provisions of the *Public Health Act 2010* and *Public Health Regulations 2022*, any relevant NSW Health Policy, and this Policy.

Forms

1. Private Burials Application Form

Review Period

This policy will be reviewed within 12 months of the election of each new Council or more frequently in the event of any legislative changes or change in circumstances.

Useful Links

[Tweed Shire Council website](#)
[Office of Local Government](#)

Version Control:

Version #	Summary of changes made	Date changes made
1.0	Adopted by Council 15 December 2004	
1.1	Incorporated into new policy template	20/06/2013
2.0	Reviewed and amended to remove large sections of operational detail not required in a policy	12/10/2017
2.0	Adopted by Council - Minute Number 44	15/02/2018
3.0	Reviewed and amended to include private cemeteries and private burials requirements. Including incidental developments.	17/11/2022