

POLICY NAME: BURIALS ON PRIVATE RURAL LAND
POLICY REF: B05
MEETING ADOPTED: 27 May 2021
Resolution No. 270521/18
POLICY HISTORY:



TABLE OF CONTENTS

OBJECTIVE	1
POLICY	1
Part A – Application for a Private Burial Site	1
Part B – Requirements for Burial.....	3
Part C – Variation from the Policy	3
BACKGROUND	3
DEFINITIONS	4
SCOPE OF POLICY	4
RELATED DOCUMENTATION	4
REVIEW	5

OBJECTIVE

The objective of this Policy is to provide guidance for Council and the community on the applicable process and key considerations when authorisation of a burial on private rural land is sought.

POLICY

In accordance with the *Public Health Regulation, 2012*, Ballina Shire Council is recognised as the approval authority responsible for the assessment of private burial sites within the Ballina Shire. This Policy incorporates the requirements of the *Public Health Regulation 2012* and provides a framework for Council and applicants to consider when applying for burials on private rural land.

Part A – Application for a Private Burial Site

An application for a burial site must be in writing and must be made by or on behalf of the owner/s of the land. A burial shall not take place unless an “Application for a Burial on Private Rural Land” has been completed, received by Council and approved in writing. The application must include the following information:

- In all circumstances written approval from the property owner must be obtained.
- Where the ownership of the land is within a community title or multiple occupancy development (rural land sharing community) written approval from that governing body must be obtained.

- In all circumstances, a private grave site must be placed a minimum of 100 metres from any adjoining residence.
- A maximum of one double depth or two adjoining single depth grave sites may be provided on a rural holding. A proposal for more than one double depth or two single depth grave sites will be recognised as a private cemetery and will require the submission of a Development Application.
- The boundaries of the grave site/s must be permanently marked with concrete posts and fenced with suitable materials. Additionally, a headstone must be provided which identifies the deceased, date of birth and date of death. This requirement must be properly documented within the application.
- Accurate details must be provided to an approved scale showing the layout and the proposed dimensions of the grave site. The layout of the grave site must also take into account the need for future maintenance and any memorials located therein.
- The land area holding must be of a minimum area of five (5) hectares. This is a requirement of the Public Health Regulation and cannot be reduced.
- Information demonstrating that the burial will not make likely the contamination of a drinking water supply or a domestic water supply. Council may require the submission of a report/s from a suitably qualified person/s which provides relevant information showing compliance with these requirements.
- The grave site must be located above the 1 in 100 year flood level.
- At the cost of the applicant, the existence of a grave site is to be surveyed and designated on the land title as a permanent record. A copy of the amended title or planning instrument is to be provided to Council for its records.
- At the time of application, an undertaking from the property owner that a restriction to use of the land pursuant to Section 88 of the Conveyancing Act, which identifies the location of the grave site and right of carriageway, restricts the development and use of that land and allows appropriate public access to the burial plot shall be submitted to Council within three (3) months of the burial. The undertaking must be in writing. The 88 instrument shall contain the following wording or similar:

“The owner shall not restrict the reasonable access to the grave site by the most suitable route. Further, the owner shall not interfere or damage the grave site”.
- A register of burials must be kept by Council and immediately after a burial has been carried out, enter into the register the following details which must be provided to Council;
 - a) Name, age and last address of the person whose body or remains have been buried;
 - b) Date of the person’s death;
 - c) Date of the burial;
 - d) Identification of the allotment where the burial has been made;
 - e) Name of the undertaker supervising the burial;
 - f) Name of the person, if any, who conducted any ceremony at the burial.

Part B – Requirements for Burial

In addition to obtaining approval from Council for the grave site, the following matters must be satisfied as part of the burial process:

- The excavated grave site has been inspected and approved by Council's authorised person.
- Bodies must be buried at a minimum depth of 900 millimetres to the top of the coffin.
- Bodies must be placed in coffin prior to burial. Approvals may be granted upon application to the Director General, Ministry of Health for exemptions under this clause of the regulation.
- A certified copy of the death certificate or medical cause of death certificate, issued by a medical practitioner or the coroner has been provided to Council.
- The burial must comply with the requirements of the Public Health Regulation, 2012 as amended.
- The burial must be undertaken under the supervision of a licensed undertaker.

The application fee for an “Application for Burial on Private Rural Land” including the grave inspection fee shall be set by Council in its annual fees and charges.

Part C – Variation from the Policy

The General Manager is authorised to vary this policy where deemed appropriate in light of the circumstances of the case to do so. Where a variation is sought, the applicant must provide a comprehensive submission to accompany the application. Council may notify any affected neighbour/s of an application for a variation.

If the variation is to reduce the 100 metre setback distance from an adjoining property, the applicant must detail what measures are to be undertaken to mitigate any impacts on affected neighbours bearing in mind the potential for change of ownership of the property. These measures are to be determined following proper consultation of the proposal with all affected neighbour/s.

BACKGROUND

Whilst Council would prefer persons to be buried in a public cemetery, Council recognises that it will, on occasions be requested to allow for burials on private land for various reasons. Traditionally, it was once accepted as common practice for members of farming families to be buried in a private cemetery located on their own property. On occasions, a private cemetery or grave site may also have some historical significance. For example, the grave may host the remains of noted individuals and or families who have made important contributions to the community and or country.

The Public Health Regulation allows for the burying of a body/s in a grave or vault on private land holdings of over 5 hectares where this has been approved by Council. The Public Health regulation does not limit the number of graves which can be approved upon one property. This Policy seeks to appropriately regulate the process, number and environmental health considerations which apply to the practice of private burials.

DEFINITIONS

Cemeteries and Crematoria Act, 2013

Cemetery means a building or place used primarily for the interment and memorialisation of human remains (whether or not it contains an associated building for conducting memorial services) but does not include the following:

(c) a place on private land, where the area of the landholding is 5 hectares or more and the location has been approved by a local government authority for the purposes of placing a body in a grave or vault.

Private burial means placing human remains in a grave or vault located on private land where the area of landholding is 5 hectares or more and the location has been approved for that purpose by a local government authority or on other private land prescribed by the regulations.

Vault is a container, often made of metal or concrete, that encloses a coffin in ground.

Note: A vault encloses a coffin underground to help prevent the soil surface of a grave from sinking.

Note: *Private burials and private cemeteries established in accordance with the Public Health Regulation are excluded from the provisions and requirements of the Cemeteries and Crematoria Act, 2013. Additionally, the placement of ashes on private rural land does not require Council approval.*

SCOPE OF POLICY

This Policy applies to private rural land within Ballina Shire Local Government Area and provides information for Council officers, the local community and wider public in the event that an application is received by Council for burial on private rural land. The Policy outlines Council's responsibilities and requirements in relation to assessing applications for burials on private rural lands.

The Policy applies to applications for new burial sites that are received following authorisation of the Policy. Existing private cemeteries will continue to operate in accordance with their respective approvals.

The requirements of **Part B** – Requirement for Burial and **Part C** – Variation from the Policy apply to existing cemeteries.

RELATED DOCUMENTATION

Related documents, policies and legislation:

- *Local Government Act 1993*
- *Cemeteries and Crematoria Act 2013*
- *Conveyancing Act 1919*
- *Public Health Regulation 2012*
- *Protection of the Environment Operations Act, 1997*

- NSW Health Guideline - Guidance on Burying a Body on Private Land - Public Health Regulation 2012
- Registrar General Guidelines - Easements and Restrictions for Burial Grounds
- Cemeteries and Crematoria NSW – General consumer guide to interment rights in NSW

REVIEW

The Burials on Private Rural Land Policy is to be reviewed every four years.