

Cemetery Interment Rights Policy

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Responsible Department:	Infrastructure & Environment
Related Policy/Procedure:	8.09 Memorials Policy 8.13 Cemeteries Management Policy
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Applicable Legislation:	Burial and Cremation Act 2013 Burial and Cremation Regulations 2014 Family Relationships Act 1975 Local Government Act 1999
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Review Frequency:	Every 4 years

1. Aim

The objective of this policy is to set out the requirements and process required by the Light Regional Council in relation to the management of Burial and Cremation Interment Rights.

2. Definitions

Act	the <i>Burial and Cremation Act 2013</i>
Adult	a person who has attained 18 years of age.
Authority	the Light Regional Council or referred to as Council
Authorised	a written authority has been issued by the management of the Authority in relation to the activity being undertaken at that time.
Bare Site	A site with no memorial but may or may not contain human remains (predominantly within a historic location)
Bodily Remains	means the whole or any part of a human body (whatever its physical state may be) but does not include the whole or any part of a human body that has been cremated
Cemetery Authority	the person or body for the time being responsible for the administration of the cemetery.
Cemetery	any and all the cemeteries and memorial parks under the control of the Authority.
Cemeteries	the plural of cemetery and has the same meaning as cemetery.
Chief Executive Officer or CEO	the Chief Executive Officer of the Light Regional Council.
Expiry Date	the date of expiry of the Initial or Renewed Term of the Interment Right
Human Remains	the body or part of the body of a deceased person and includes cremated remains.
Historic Sites	refers to sites; <ul style="list-style-type: none"> • Over 100 years old; or • With significant architecture; or • Where a person with historical significance or prominence to the region has been interred, or

	<ul style="list-style-type: none"> Where sites relate to a Significant Event As identified within the Cemetery Management Plan, or As defined within the Light Regional Council Development Plan
Initial Term	the initial duration of an Interment Right for a period of 50 years
Interment	of human remains includes - <ul style="list-style-type: none"> burial in the earth, a vault or a mausoleum; the placement of cremated remains; the burial in the earth of cremated remains.
Interment Right	Formerly known as a Lease or Grant. An Interment Right is a document written in plain english, forming a binding agreement between the Authority and Interment Right Holder over a site within a cemetery and is issued under the Act.
Interment Right Holder	Is the person issued the Interment Right by Council in accordance with its specified terms and conditions
Lapsed	means within a two year period after the Interment Right expiry date
LG Act	the <i>Local Government Act 1999</i> .
Monument	structures such as headstones, plinths and plaques erected at an interment site on land owned and operated by the Authority.
Regulations	the <i>Burial and Cremation Regulations 2014</i> .
Renewed Term	a term of 50 years commencing from a date determine by the Authority in accordance with this policy.
Significant Event	events of cultural, regional or local importance, scale or magnitude that had an impact on the region, (eg wars, pandemics, natural disasters)
Tenure Period	the term nominated on the Interment Right document.
Unleased family site	a site where an Interment Right has not ever been known to have been issued for the site and contains the interment of non-cremated and cremated human remains of people from one family group.
Unused Site	is a site that has not been previously used and does not contain any Human Remains

3. Application for an Interment Right

A document written in plain english is a mandatory form required by the Act and Regulations, it describes the terms and conditions for purchasing interment rights at a Cemetery and sets out the rights and responsibilities of the Authority and the person/s wanting to take out an Interment Right. A form written in plain english must be completed and a signed copy of this document must be received by the Authority before a grave or memorial can be used. The Authority will receive applications on its New Interment Right application form, which is available from the Authority upon request.

3.1 Issue by Funeral Directors prior to Interment

In conjunction with the Australian Funeral Directors Association, a standardised form, written in plain english, was developed for use throughout South Australia and is available to all Funeral Directors. The Authority will receive requests from Funeral Directors on that form.

The Authority requires Funeral Directors to, at the time of processing burial arrangements where there is a request for one of Council's sites, have the relevant family member complete this form. As a practice, Funeral Directors communicate with Council's administrative staff the details of upcoming burials and will be, at that time, allocated the appropriate site identification number and location.

The Funeral Director will submit to the Authority the completed *Plain English Statement* at the time the *Application for Burial* is submitted.

NOTE: A form, written in plain English, is required to be completed for new burial and memorial Interment Rights (formally Grants or Leases), renewal of an Interment Right and the transfer of an Interment Right. These forms are available from the Authority.

Second or further additional interments in a grave or memorial position do not require the completion of a *Plain English Statement* form.

4. The Interment Right

- 4.1 Is an agreement in accordance with the Act and Regulations that defines the parties, timeframes and responsibilities for an Interment.
- 4.2 Specifies any conditions and restrictions of interments.
- 4.3 Applicable fees for Interment Rights are covered within the Light Regional Council Fees and Charges Schedule as adopted.
- 4.4 All Interment Rights will be in a format as determined by the Authority and shall be signed on behalf of the Authority by the Chief Executive Officer or delegated officer.
- 4.5 The term of an Interment Right commences from the date of issue, not the date of the first interment
- 4.6 If any Interment Right issued to an interment right holder becomes lost, mislaid or destroyed, the Authority may issue to the person who is recorded as the holder of such Interment Right, or a person who is able to demonstrate to the satisfaction of the Authority their right to the Interment Right, a certified copy of the original Interment Right.

5. Authority to Grant Interment Rights

- 5.1 The Authority may grant an Interment Right in relation to one or more sites in a Cemetery where:
 - 5.1.1 The appropriate application form, recording the burial and memorial sites interment rights and responsibilities is signed by the proposed Interment Right holder
 - 5.1.2 The applicant pays the appropriate fee.
- 5.2 The Authority shall have the right to:

- 5.2.1 Refuse any application for an Interment Right or renewal;
 - 5.2.2 Limit the number of Interment Rights issues to any person/entity;
 - 5.2.3 Not permit a site to be used for burials/cremation or memorials; or
 - 5.2.4 Not permit the capacity of a burial site to be changed.
- 5.3 The minimum initial term of an Interment Right is determined by the Authority from time to time and is the period specified on the Interment Right.

Unless otherwise specified on the Interment Right, Interment Rights shall be for a term of 50 years. Any notice sent to an Interment Right holder at the last address recorded on the Authority's register of Interment Rights will be considered sufficient and proper notification in relation to any matter pertaining to an Interment Right. It is the Interment Right Holder/s responsibility to ensure up to date contact details are provided.

6. Renewal of Interment Rights

- 6.1 It is the responsibility of the Interment Right holder, or in the event of their death or legal incapacity their executor or administrator or successor, to renew an Interment Right.
- 6.2 The Authority may renew an Interment Right for an additional period or periods in accordance with the Act and Regulations where:
- 6.2.1 an application is received to do so; and
 - 6.2.2 the appropriate fee is paid, and
 - 6.2.3 Any other such documentation is provided as may be deemed necessary by the Authority
- 6.3 The Authority must, provide notice to the Interment Right Holder in accordance with the Act and Regulations before an Interment Right is due to expire, and take reasonable steps to give the Interment Right Holder written notice which informs the Interment Right holder:
- 6.3.1 of the Interment Right holder's entitlement to renew the Interment Right and the cost of renewing the Interment Right
 - 6.3.2 that if the Interment Right is not renewed and there is a Memorial to the deceased, the Memorial may be reclaimed from the Authority
 - 6.3.3 that if the Interment Right is not renewed the Authority is entitled to re-use the Interment Site.
- 6.4 Subject to clause 6.2, the Authority may renew a lapsed Interment Right from the date of expiry of the relevant term for a further term provided;
- 6.4.1 The application is received in writing by the Authority within two years of the Interment Right lapsing,
 - 6.4.2 an applicant provides evidence to the Authority, that it may require, as to the entitlement of the Interment Right over the expired lease (see clause 10 - Claimants to Interment Rights); and

- 6.5 Where an Interment Right has not been renewed the Authority may re-lease the Interment Rights and remove the monument, in accordance with any rules in force from time to time.
- 6.6 Subject to clause 6.2, the Authority may approve an application for Renewal of an Interment Right that has lapsed for more than two years after the expiry, providing;
- 6.6.1 an applicant provides evidence to the Authority, that it may require, as to the entitlement of the Interment Right over the expired lease (see clause 10 - Claimants to Interment Rights); and
- 6.6.2 Where an application for Renewal of an Interment Right has been approved, the date of commencement shall be taken from the date of application.
- 6.6.3 Subject to approval from the Authority, the options available to Interment Right holders when renewing expired lease interment sites are as follows:
- 6.6.3.1 Bare Sites:
- 6.6.3.2 *Interment Rights – Renewal of Bare Expired Lease Interment Sites which contains existing burials - 50 year renewal*
Renewal for historical purposes only. Note: the Authority will not approve future interments (ashes or burials) or memorials on the site on this fee basis
- 6.6.3.3 *Interment Rights – Re-use to inter ashes in Bare Expired Lease Interment Sites which contains existing burials – 50 year renewal*
Renewal for historical purposes with the intention to inter ashes only. Includes waiver of Memorial Permit Fee for memorial application over historic interments only. The Authority will not approve burials in order to preserve integrity of existing burials. The Authority may refuse interments and memorials to sites that they deem to be a historic site.
- 6.6.3.4 *Interment Rights – Renewal of Bare Expired Lease Interment Sites – No existing burials - 50 year renewal*
Future interments (burials and/or ashes). The Authority may refuse interments and memorials to sites that they deem to be a historic site.
- 6.6.3.5 Sites with Existing Memorials:
- 6.6.3.6 *Interment Rights – Renewal of Expired Lease Interment Sites which contains memorials and burials – 50 year renewal*
Renewal for historical purposes only. Includes waiver of Memorial Permit Fee for historic memorials restoration works. In the event, an Interment Right holder wishes to undertake restoration works, a Development Application is required to be lodged with Council. The Authority will not approve future interments (ashes or burials) or memorials on this fee basis.
- 6.6.3.7 *Interment Rights – Re-use to inter ashes in Expired Lease Interment Sites which contain memorials and burials – 50 year renewal.*

Renewal for historical purposes with the intention to inter ashes only. Includes waiver of Memorial Permit Fee for historic memorials restoration works. In the event, an Interment Right holder wishes to undertake restoration works, inter ashes or place a memorial at the site, a Development Application is required to be lodged with Council. In order to preserve the integrity of existing burials and to not compromise existing memorials the Authority will not approve future burials at these sites. The Authority may refuse interments and memorials to sites that they deem to be a historic site.

- 6.7 The Authority will not approve the renewal of expired lease interment sites for future burials of bodily remains where the site contains existing burials and/or memorials at the site.

7. Transfer of Interment Right.

- 7.1 The right and responsibility of an Interment Right transfer resides with the Interment Right holder.
- 7.2 The Authority may permit a transfer of Internment Right upon receiving:
- 7.2.1 an application to transfer, in a form that the Authority may determine having regard to the Act and Regulations;
 - 7.2.2 evidence to the Authority, that it may require, to show that the Interment Right holder can achieve the transfer, or if the Interment Right Holder is deceased, evidence as to the entitlement of the Interment Right (see clause 10 – Claimants to the Interment Right or Rights; and
 - 7.2.3 payment of the relevant fee.
- 7.3 The Authority may decline to register a transfer.
- 7.4 In accordance with the Regulations, the transfer once approved will not take effect until it is recorded by the Authority in its register of Interment Rights. A transferor remains the holder of the Interment Right until the transfer is registered and the name of the transferee is entered in the Register of Interment Rights.

8. Disposition of Cremated Remains

- 8.1 If an Interment Right Holder advises the Authority that renewal of an Interment Right for a site designated for cremated remains only will not be sought, the Interment Right Holder may instruct the Authority on a preferred method of final disposition of the cremated remains by:
- 8.1.1 interment in an unmarked location, or
 - 8.1.2 collection for private dispersal.
- 8.2 Where no instructions are given by the Interment Right Holder upon termination of an interment right for a site containing cremated remains as to the final disposal of the cremated remains, then such remains will be dealt with in accordance with the Act, Regulations and the Authority's policies and procedures.

9. Surrender of Interment Right

- 9.1 An Interment Right holder, and only the Interment Right holder, has the right to surrender the Interment Right to the Authority in accordance with the Act and Regulations. On surrender the rights granted under the Interment Right are discharged.
- 9.2 Partial refunds are available in accordance with the Act and Regulations for unused sites.
- 9.3 Unused sites that are surrendered may be dealt with by the Authority in its absolute discretion.
- 9.4 Any Memorial may be reclaimed by the Interment Right holder upon surrender of the Interment Right, or if unclaimed will be disposed of by the Authority in accordance with the Act and the Regulations.

10. Claimants to Interment Rights

- 10.1 As the devolution of Interment Rights is governed by legislation, the Authority will not recognise or register an expressed, implied or constructive notice of authority.
- 10.2 Where there is one or more joint Interment Right holders, and one of the Interment Right holders dies, the Authority will recognise the surviving Interment Right holder or holders as the only person or persons having title to an Interment Right.
- 10.3 The Authority will recognise the claim of an executor or administrator of a deceased Interment Right holder as having title to an Interment Right registered in the name of a deceased person.
- 10.4 Where a sole Interment Right holder remains in respect of an Interment Right, the rights granted to the Interment Right holder may be exercised upon the death or legal incapacity of the Interment Right holder by any one of the following people in descending order of entitlement:
 - 10.4.1 in the case of the legal incapacity of the Interment Right holder, by a person acting under the authority of an enduring power of attorney granted by the Interment Right holder or by a duly appointed manager or guardian of the Interment Right holder.
 - 10.4.2 in the case of the death of the Interment Right holder by:
 - 10.4.2.1 the executor of the estate of the deceased person, or
 - 10.4.2.2 if there is more than one executor, one of the executors acting with the permission of all the other executors, or
 - 10.4.2.3 the administrator of the estate of the deceased person, or
 - 10.4.2.4 by the spouse or domestic partner of the Interment Right holder, or
 - 10.4.2.5 if there is no living spouse or domestic partner – by the eldest living relative of the Interment Right holder in the following descending order of priority:
 - a child
 - a grandchild or great-grandchild
 - a brother or sister

- a parent
- a grandparent
- an aunt or uncle
- a nephew or niece
- a cousin
- any other blood relative.

10.4.3 For the purposes of this clause "domestic partner" has the same meaning ascribed to it under the Family Relationships Act 1975 (SA).

10.4.4 The substituted right envisaged in this clause may be devolved to one person in succession in the event of the subsequent death or legal incapacity of such person

10.4.5 A person claiming ownership of an Interment Right must, if necessary, prove their ownership to the Authority. The Authority will determine the evidence necessary to demonstrate the relationship and entitlement of a person claiming a substituted right and the Authority retains discretion to determine which person will be entitled to exercise the substituted rights in the event of a dispute between one or more persons

11. Instructions from Interment Right Holders

11.1 The Authority may choose not to comply with a request or direction by an Interment Right holder where sufficient evidence of the Interment Right and proof of identity is not provided, if so requested by the Authority.

12. Interment Rights issued in two or more names

12.1 Where an Interment Right is registered in the names of two or more persons the Authority may take instructions from the Interment Right holders jointly or severally.

12.2 Notices will be delivered to the person first named in the register of Interment Rights.

12.3 Notice will be deemed given if the Interment Right holder is sent a letter or email to the person's last known contact details. Failure by the Interment Right holder to respond within 90 days will constitute abandonment of his or her right to give instructions and the Authority may act in accordance with the instructions of the other Interment Right Holders (if any) who are contactable.

12.4 All Interment Right holders have the responsibility to keep the Authority informed of their current contact details. Failure to do so will result in the Authority, after reasonable notice, accepting instructions from the other Interment Right holder (if any) without their input.

13. Rights of Interment Right Holder/s

13.1 Subject to the rules and regulations established under the relevant Acts and Regulations and in Council's Cemeteries Management Policy and Cemetery Memorials Policy, varied from time to time. The Interment Right holder has, for the term of the Interment Right, the right to:

- 13.1.1 inter human remains in the site allocated, with regard to the Cemeteries Management Policy
- 13.1.2 request and advise the Authority as to who may be interred at the site
- 13.1.3 erect, repair or remove an approved monument on the site, with regard to the Cemetery Memorials Policy
- 13.1.4 exclusive use of foundations provided by the Authority (if any) to erect an approved monument, with regard to the Cemetery Memorials Policy
- 13.1.5 the obligation to notify the Authority of any change of mailing address of details
- 13.1.6 use of the ground allocated for the purposes set out in this clause and not for any other purposes
- 13.1.7 renew, transfer or cancel the Interment Right, with regard to the relevant clauses in this policy

14. Register of Interment Rights

The Authority must keep a register of Interment Rights in accordance with the Act and Regulations.

15. Interment Right Capacity

The number of interments that may take place in an interment site is outlined in policy 8.13 – Cemeteries Management Policy.

16. Complaints

All complaints received by Council concerning the operation of this Cemetery Memorials Policy shall be managed in accordance with Council Policy 6.12 Complaints Handling Policy or its successor policy or procedural document.

17. History

- 17.1 Policy adopted at the Ordinary Council Meeting held 26 August 2014, Refer Item 11.2.2, Page 2014/325
- 17.2 Policy Amendment No. 1 adopted at the Ordinary Council Meeting held 27 September 2016, Refer Item 12.2.1 page 2016/385
- 17.3 Policy Amendment No. 2 reviewed by the General Manager Group with no amendments required – further review to be carried out at December 2020.
- 17.4 Policy Amendment No. 3 adopted at the Ordinary Council meeting held 24 November 2020, refer item GAP9.2.2/2020, page 2020/208
- 17.5 Policy Amendment No. 4 adopted at the Ordinary Council meeting held 26 October 2021, Minute Reference GAP11.1/2021, Page Reference 2021/221