

14. DIRECTOR LIVEABLE COMMUNITIES

14.1. THE BIGHT CEMETERY, WINGHAM – UPDATE 12

REPORT INFORMATION

Report Author	Paul De Szell - Director Liveable Communities
Date of Meeting	23 November 2022

SUMMARY OF REPORT

This report provides both Council and the community with an update on the restoration works undertaken at The Bight Cemetery, Wingham.

RECOMMENDATION

That Council note the information provided in the report.

FINANCIAL / RESOURCE IMPLICATIONS

Council's insurers have advised that all rectification works at The Bight Cemetery will be covered under Council's Insurance Policy.

Council will however be required to pay the excess on the policy which is \$12,500. The cost of the excess is proposed to be funded out of revoted unspent funds in the cemetery operations budget which have been transferred to an internal reserve.

LEGAL IMPLICATIONS

Council has sought legal advice (externally) in relation to several matters of interpretation of the Cemeteries and Crematoria Act 2013 and Council's Special Counsel has liaised directly with staff from Cemeteries and Crematoria NSW to assist in this interpretation.

RISK IMPLICATIONS

Nil.

BACKGROUND

Council, at its meeting of 11 September 2019, considered an initial update report in relation to the actions that have occurred and are proposed to occur at The Bight Cemetery, Wingham.

At this meeting Council resolved:

- 1. That the information provided in this report be noted; and*
- 2. That Council endorse the actions identified in Annexure A to this report.*

The actions identified in Annexure A to the report that were presented to Council on 11 September 2019 were in a tabular form which was updated with additional columns to highlight:

- a) at what stage the action will be undertaken; and
- b) the status of the action.

This was presented to Council on 27 November 2019.

This table is contained in Attachment B in the above-mentioned report.

Also presented to Council at its meeting of 27 November 2019 was a draft 'Restoration Action Plan for The Bight Cemetery', Wingham which was agreed to as a stage two action.

At this meeting Council resolved:

1. *That the information provided in this report be noted.*
2. *That Council liaise with “The Blight of the Bight”, community group, National Trust, Heritage Advisor and affected families prior to the formal adoption of the Draft “The Bight Cemetery Restoration Action Plan”.*
3. *That information provided by Council in response to GIPA Application 20/20 be provided to Councillors via email by the next Council Meeting.*
4. *Council liaises with the families over the appointment of the stonemasons*

At the Council meeting of 25 March 2020, a report on point two of the above resolution was presented.

This report discussed the feedback received on the draft ‘The Bight Cemetery Restoration Action Plan’ from Council’s Heritage Advisor, Cemeteries and Crematoria NSW, Blight of the Bight community group, National Trust and family members.

At this meeting Council resolved:

1. *Council note the information provided in this report.*
2. *Council engage an independent professionally qualified heritage consultant to prepare a Conservation Management Plan for The Bight Cemetery in accordance with the NSW Heritage Office guidelines and the National Trust Guidelines for Cemetery Conservation.*
3. *Information from the Conservation Management Plan for The Bight Cemetery (once adopted by Council) be used to update the Draft ‘The Bight Cemetery Restoration Action Plan’.*
4. *The Draft ‘The Bight Cemetery Restoration Action Plan’ be updated as recommended in the body of this report.*
5. *Further to consultation with Council’s Heritage officer and Heritage Reference group, a further report be provided to Council that includes a finalised Restoration Action Plan for The Bight Cemetery so that it can be adopted and works can proceed.*
6. *As a parallel process, Council undertake the assessment of all impacted headstones as a separate task.*
7. *Council split the repair and restoration into 2 sections (headstones less than 50 years and headstones more than 50 years old).*
8. *Council discuss assessments with families.*
9. *Council proceed with work for headstones less than 50 years old (in parallel with the development of the Conservation Management Plan) if deemed appropriate by Council’s Heritage Officer.*

At the Council meeting of 16 December 2020 both Council and the community were provided with an update on the feedback provided in relation to the draft Conservation Management Plan and the revised Restoration Action Plan for The Bight Cemetery, Wingham.

At this meeting Council resolved that:

1. *Council note the information provided in this report.*
2. *Council adopt draft ‘The Bight Cemetery Conservation Management Plan’ subject to the changes outlined in this report.*
3. *Council adopt the updated ‘The Bight Cemetery Restoration Action Plan’.*
4. *That Council acknowledge an error in the original report pertaining to the date in which the Heritage Reference Group received the information in relation to the draft CMP and The Bight Cemetery Restoration Action Plan.*

5. *That a letter be sent to families and contacts to update them.*

More recently, on 30 June 2021 both Council and the community were provided with a further update, which indicated that staff had continued to refine and correct the adopted Conservation Management Plan and confirmed the ongoing desire of staff to move forward and commence the restoration of the monuments and memorials which were laid over in July 2019.

The report also indicated that since the adoption of the Action Plan and Conservation Management Plan, staff had also been working through the advice provided by Cemeteries and Crematoria NSW (CCNSW) that was submitted in relation to the draft Conservation Management Plan and Action Plan for restoration (see Annexure A included in above report).

In particular, the last paragraph of the attachment to the advice received from CCNSW (Annexure A included in above report) states:

“Council should note that families saying they represent the families of the deceased interment right holder or those interred may not necessarily have the legal right to provide consent to works on monumentation on a grave. As noted above where a holder is deceased, the cemetery operator can transfer the interment right to the beneficiaries of the holder’s estate or their successors, with appropriate supporting documentation. That new holder can then give permission concerning any works to memorialisation of a grave. A cemetery operator cannot override that right. Beneficiaries of an estate may not necessarily be family members or those contacting Council. In addition, succession for those who pass away intestate is determined in accordance with intestacy rules set out in the Succession Act 2006”.

At this meeting Council resolved:

1. *That Council apologises for the delay in carrying out restoration works at The Bight Cemetery.*
2. *That Council liaise with Cemeteries & Crematoria NSW in relation to The Bight Cemetery Restoration Action Plan.*
3. *That Council staff correspond with and update all registered parties/ affected families in relation to enacting the steps outlined in the table of actions within The Bight Cemetery Restoration Action Plan.*
4. *That Council continue to update the conservation management plan (CMP) as necessary as more information comes to light, noting that the CMP is a document that can be edited and updated when needed.*
5. *That Council notes the report.*
6. *That an updated report come back to Council no later than August 2021.*

In accordance with this resolution a report was provided Council’s meeting of 25 August 2021 seeking adoption of a revised and updated ‘The Bight Cemetery Restoration Action Plan’. At this meeting the Council made the following resolution:

1. *That Council note the information provided in this report.*
2. *That Council adopt the revised and updated ‘The Bight Cemetery Restoration Action Plan’ provided in Attachment A.*
3. *That all registered parties / affected families be informed of the adoption of a revised and updated ‘The Bight Cemetery Restoration Action Plan’.*
4. *That the process outlined in the revised and updated ‘The Bight Cemetery Restoration Action Plan’ be commenced without any further delay.*

On 13 October 2021 both Council and the community were provided with an update on the most recent actions undertaken in relation to The Bight Cemetery, Wingham.

Council staff advised that they expected to receive several submissions as a result of the public notification process and that a decision-making flow chart had been prepared to provide both transparency and clarity for the general public.

In addition, the Council was also advised that there may be circumstances where more than one person has an equal interment right and agreement between the parties cannot be achieved.

To address this circumstance, it was recommended that a panel consisting of the Mayor, General Manager and Director of Liveable Communities be formed to make decisions as outlined in the flow chart.

At this meeting the Council made the following resolution:

1. *That Council note the decision-making flow chart provided in Annexure A.*
2. *That Council form a panel consisting of the Mayor, General Manager and Director of Liveable Communities to make decisions as outlined in the flow chart.*
3. *That any decisions made by the panel be reported back to Council for information as soon as practically possible.*

On 27 October 2021 both Council and the community were provided with an update on advice received from the Heritage section of the Department of Premier and Cabinet in relation to the Conservation Management Plan (CMP) for The Bight Cemetery, Wingham.

In response, to this advice, a number of the Guidelines in the CMP were updated in accordance with point 4 of Councils resolution of 30 June 2021 which states:

“That Council continue to update the conservation management plan (CMP) as necessary as more information comes to light, noting that the CMP is a document that can be edited and updated when needed”

The updated CMP was published on Council’s website and copy was provided for the information of Councillors. All registered parties / affected families were also advised of the update to the CMP.

At this meeting the Council made the following resolution:

“That Council note the information provided in the report”

On 23 February 2022 both Council and the community were provided with an update on the restoration works undertaken at The Bight Cemetery.

This update focussed on decisions made by the decision making panel adopted by Council, consisting of the Mayor, General Manager and Director of Liveable Communities; and the approval sought from the Board of Cemeteries & Crematoria NSW to allow multiple interment right holders at The Bight Cemetery.

The update also provided details on the restoration work at The Bight Cemetery that had been undertaken to date.

At this meeting the Council made the following resolution:

1. *“The report be noted.*
2. *It is noted that Council continues to provide quarterly reports to Cemeteries and Crematoria NSW and consequently continues to inform the elected body.”*

On 25 May 2022 a further update report was provided for both Council and the broader community.

This report outlined the restoration work undertaken to date and outlined a number of issues that were raised by the community about the restoration work.

At this meeting the Council made the following resolution:

“That Council note the information provided in the report and recognise that the May “Audit” will include all works undertaken to date”.

On 24 August 2022 a further update report was provided for both Council and the broader Community.

This report advised that restoration works had slowed considerably due to a number of factors. It also provided details of two audits of the repaired monuments.

At this meeting the Council made the following resolution:

“That Council note the information provided in the report.”

DISCUSSION

Very little restoration work has been undertaken at The Bight Cemetery since the writing of the last report. This has largely been as a result of two factors:

1. The flowering and seed set period of the threatened *Pale Yellow Doubletail (Diuris flavescens)* on the site; and
2. The reluctance of stonemasons to work at the site.

The threatened *Pale Yellow Doubletail (Diuris flavescens)* is discussed further below in this report.

As a result of these factors there has only been one additional monument restored over the reporting period.

The following table outlines the current status of monument restoration at The Bight Cemetery:

Monuments requiring restoration (68)	Status
47	Restoration completed
10	Stonemason engaged to undertake repairs (10 outside LGA)
0	Waiting for signed “Approval of Works” form from lawful interment right holder
0	Waiting for instruction in relation to “preferred stone mason” from lawful interment right holder
11	Waiting for approval from Insurers
0	Waiting for scope of works and quote from Stonemasons
0	Waiting for application and/or response from registered parties/families

Once the insurers have approved the quote for the 11 monuments, Council staff will work with the lawful interment right holders to obtain their approval for the works.

When all works are approved by the interment right holders, a stonemason will be engaged to undertake the repairs.

At this stage one stonemason has committed to repairing five (5) monuments in December and will cease all services after then. The only remaining stonemason willing to provide services at The Bight Cemetery will not be in a position to start work on the remaining monuments until February-March 2023.

The intent is to have the remaining stonemason who is willing to work at the site complete the restoration of the remaining 16 monuments by the end of March 2023.

Restoration Issues

The most significant issue now facing Council is that after December only one stonemason is willing to work at The Bight Cemetery.

The availability of the remaining stonemason is a significant limitation and staff are trying to ensure that all approvals (both family and insurers) are in place so that all remaining monuments can be repaired during a confined period over February – March next year.

Staff have explored a range of options to bring this date forward however there are no other options available at present.

Pale Yellow Doubletail (Diuris flavescens)

As indicated above the cemetery is home to the threatened *Pale Yellow Doubletail (Diuris flavescens)*. Council has a Biodiversity Conservation Licence to work at the cemetery however Condition 3 of this licence states:

3. *“Mowing and maintenance works such as weed removal, spraying and headstone replacement must not be carried out during the months of September, October or November each year, outside Diuris flavescens flowering and seed set period, so as not to impact on the species’ ability to reproduce.”*

Council staff requested (28 August 2022) the Department of Planning and Environment to vary the Biodiversity Conservation Licence issued under Part 2 of the Biodiversity Conservation Act 2016 (BC Act), to enable the continuation of monument restoration works at the cemetery to recommence in November 2022 (a month earlier than normally permitted).

The Department of Planning and Environment responded to Council on 26 October 2022 (see Attachment 1) advising that it *“permits early commencement of the gravestone restoration program in November 2022, in accordance with varied Condition 3 which has been split it into two parts.*

Part (a) remains unchanged and will apply to the licence until it lapses (2023 – 2024), whilst Part (b) (2022 Variation) specifically deals with the proposed early gravestone restoration works in 2022 (i.e.it only applies to this year)”.

Despite this change to the Biodiversity Conservation Licence no works can be undertaken as stonemasons are not available until December and then again in February / March 2023.

LIST OF ATTACHMENTS

The following attachments are available on the meeting page of Council's website under the 'Attachments to Agenda' heading.

Attachment 1 Department of Planning & Environment response (7 pages)