

## 14. DIRECTOR LIVEABLE COMMUNITIES

### 14.1. THE BIGHT CEMETERY – UPDATE 10

<b>Report Author</b>	<b>Paul De Szell, Director Liveable Communities</b>
<b>Date of Meeting</b>	<b>25 May 2022</b>

#### 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.

#### 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:

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

## **DISCUSSION**

Since October 2021 Council staff have been working collaboratively with lawful interment right holders and registered parties / affected families in accordance with the process adopted by Council as outlined in Attachment 1.

The purpose of this work has been to undertake restoration of the damaged monuments at The Bight Cemetery.

As a result of the work done since October the following restoration work at The Bight Cemetery has been able to be undertaken to date:

Monuments requiring restoration (68)	Status
44	Restoration completed
8	Stonemason engaged to undertake repairs (1 Local / 7 outside LGA)
0	Waiting for signed "Approval of Works" form from lawful interment right holder
0	Waiting for approval from Insurers
10	Waiting for scope of works and quote from Stonemasons
6	Waiting for application and/or response from registered parties/families (3 will potentially become Council's responsibility following no response from registered parties)

Council staff will continue to work with lawful interment right holders and registered parties / affected families to ensure that each of the 68 damaged monuments are restored in accordance with "The Bight Cemetery Restoration Action Plan" and "The Bight Cemetery Conservation Management Plan".

### Restoration Issues

Since the writing of the last update report to Council a number of issues have been raised in community about the restoration work undertaken to date. One complaint has also been received from a lawful interment right holder. Each of the issues that have been raised are addressed below:

- Compliance with the Australian Standard AS 4204 has been questioned.

All repairs have been carried out by qualified heritage stone masons and stone masons in accordance with Australian Standard AS 4204. All stone masons engaged to undertake restoration work are aware of the updated standard and are required to certify that the works that have undertaken are in accordance with it.

- Cleaning of monuments with chlorine bleach and high-pressure water cleaning.

Pressure cleaning of monuments has been carried out, not high-pressure cleaning. Following direct questioning, advice received from contractors indicates that no chlorine bleach has been used and that a non-chemical water cleaning process is utilised.

- Repairs and over-cleaning detracts from the overall fabric of The Bight Cemetery.

Contractors have been previously provided with a copy of the Conservation Management Plan for The Bight Cemetery and have been reminded of its requirements in relation to the restoration and cleaning of monuments. The extent of cleaning relates directly to the area of repair. No additional cleaning has been approved.

- Those monuments laying down continue to deteriorate whilst awaiting repair.

Following the events in July 2019 the monuments which were laid down were lifted and sand was packed underneath them so that water could fully shed from the monument. Since this time there have been significant periods of wet weather. Each of the monuments that have not been restored will need to be audited to ensure that the sand has not washed away and water can shed freely to prevent further deterioration. This audit will be undertaken during May.

- Graves at the Cemetery continue to be run over

It is clearly apparent that a vehicle has driven over the toe of grave site at The Bight Cemetery. This is an extremely unfortunate occurrence. There are multiple contractors and staff on site carrying out repairs and burials and as such it is impossible to apportion blame to any particular individual. As the cemetery operator with ultimate responsibility, Council has re-emphasised the importance of driving on the established vehicle tracks.

- Wrong plantings along the front boundary of Cemetery

It is clear that Liquidambar have been planted along the front boundary of Cemetery. There was no approval to undertake these plantings and as such they have been carried out without the consent of Council.

Council is critically aware of the views of the community in relation to plantings along the front boundary of the cemetery and landscape plans will be presented for consultation with the community and Council approval before works are carried out.

- Stonemason no longer undertaking work at The Bight Cemetery

Council has received correspondence from one of the stone mason businesses that have been working at The Bight Cemetery indicating that they will no longer undertake any insurance work for Council at this site. An extract of this correspondence is below:

*“Our installation team have been on site most of last week, which has caused them distress and it has been extremely difficult for them to process the emotions behind what they have encountered.....*

*Onsite some family members have loved our work, whilst others have been threatening our team with legal action. The latter is not acceptable in any workplace & ours is no exception.....*

*Safety of our team is paramount and therefore, unfortunately, we have decided to no longer put our team or reputation at risk. We will finish the outstanding jobs.....*

*and not take on any further of this insurance work for you”.*

This will create a significant delay in the completion of restoration works on the site. Further updates will be provided when I have more information.

### Summary

The issues raised above are of significant concern and as a result, an audit of the works undertaken to date will be undertaken commencing in May. The results of this audit will be reported in the next quarterly update.

### **ATTACHMENT**

1. Application assessment process (1 page)

Attachment 1 is available on Council's website for this meeting under the "Related Information" heading.

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