

4. THE BIGHT CEMETERY, WINGHAM – UPDATE 7

Report Author Paul De Szell - Director Liveable Communities

Date of Meeting 25 August 2021

Authorising Director Paul De Szell - Director Liveable Communities

SUMMARY OF REPORT

This report provides both Council and the community with an update on the most recent actions undertaken in relation to The Bight Cemetery, Wingham.

SUMMARY OF RECOMMENDATION

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.

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.

ATTACHMENT

A: The Bight Cemetery Restoration Action Plan July 2019

Attachment A has been circulated to the Councillors and Senior Staff, however this attachment is publicly available on Council's website.

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.*

DISCUSSION

Following Council's decision of 25 August 2021, the next step to be taken prior to commencing restoration works is to implement Annexure B of The Bight Cemetery Restoration Action Plan (see **Attachment A**).

This allows the determination of the lawful interment right holder for each of the damaged monuments. Once this is determined staff can then work with the lawful interment right holder to undertake the repair work.

As part of the process of determining the lawful interment right holder, we are required to and have published a notice providing members of the public with the opportunity to register as the lawful interment right holder for any of the damaged monuments (for the monuments which do not have a registered interment right holder recorded). The period for submissions closes on 19 October 2021.

A copy of the public notice, including the list of memorials and whether our records identify a holder of the interment right, is provided in **Annexure B**.

It is important to note that this list indicates if we have a legal interment right holder - it does not refer to a registration of interest with us in relation to a damaged monument. In this regard we have emailed all persons with a registered interest twice during the public notice period to ensure that they are aware of the process.

They have also been advised to make application for a transfer of an interment right or to seek a copy of an entry in our register by using the appropriate form below:

- [Transfer of an interment right \(by holder\)](#)
- [Transfer of an interment right as a bequest](#)
- [Transfer of an interment right as a result of intestacy](#)
- [Application for copy of entry in cemetery operator's register](#)

In addition, all persons with a registered interest have also been advised that under the provisions of Section 61(2) of the Cemeteries & Crematoria Act 2013, a person who believes that they are the holder of an interment right may apply to the cemetery operator (Council) for a determination on the interment right.

They have also been advised that to make this application they will need to write to us and provide evidence as to why they believe they are the holder of the interment right/s. As part of this advice, they have been informed that the documents that could be provided to support of such an application will depend on the circumstances.

- In most instances, if a person dies with a valid will, a copy of the grant of probate is required.
- In most instances, if a person dies without a valid will, a copy of the Letters of Administration is required.

In some instances, the grant of probate and Letters of Administration is unnecessary (usually because the assets of the estate are minimal), in which case, relevant evidence could be a copy of the will, proof of relationship to the deceased and a letter from a solicitor.

If none of this information is available due to the age of the monument the letter should state the relationship to the person interred and any other supporting documentation to prove this relationship.

If Council, as the cemetery operator, is satisfied that an interment right has devolved to the applicant, it is then required to amend the register kept under the Cemeteries and Crematoria Act 2013 to record the new holder (s63) and issue a certificate to the applicant (s65).

Council staff expect to receive several such submissions as a result of the public notification process and a decision-making flow chart has been prepared to provide both transparency and clarity for the general public. A copy of this flow chart is provided in **Annexure A**.

In addition, there may be circumstances where more than one person has an equal interment right and agreement between the parties can not be achieved. To address this circumstance, it is 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.

In effect, the panel would only act when the interment right holder could not be established, and agreement was not able to be reached by those persons who had applied to Council to have the right transferred to them.

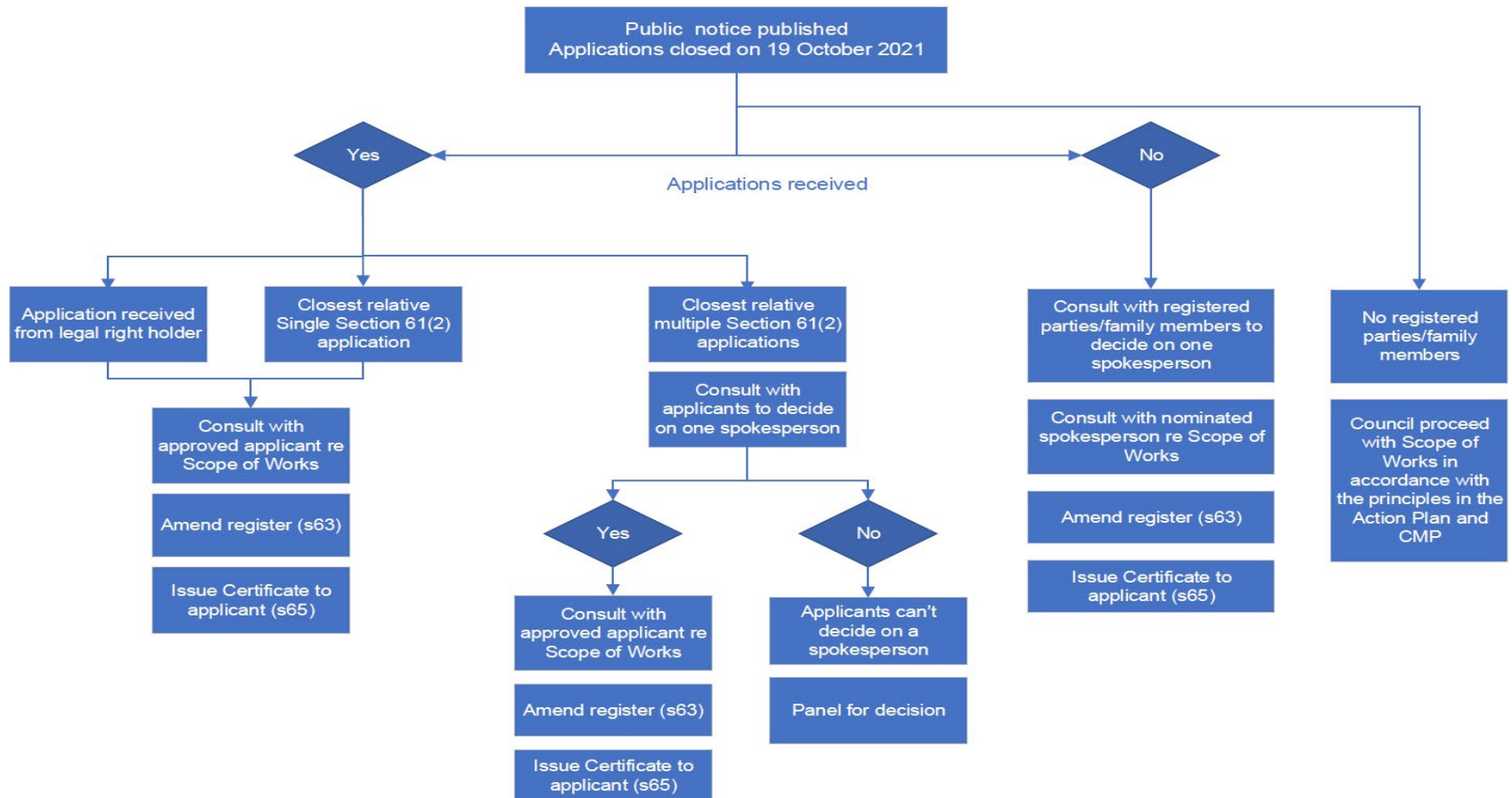
To add further transparency any decisions made by the panel would then be reported back to Council.

RECOMMENDATION

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.

ANNEXURES

A: Decision-making flow chart



B: Copy of public notice, including the list of memorials and whether our records identify a holder of the interment right

PUBLIC NOTICE

HEADSTONE MEMORIAL RESTORATION PROGRAM THE BIGHT CEMETERY, WINGHAM NSW

MidCoast Council is preparing to restore 68 memorials at The Bight Cemetery, Wingham in accordance with the Council's adopted Restoration Action Plan (July 2021). The process involves investigating whether there is an interment right holder/s for the memorials.

Details of the 68 memorials identified for restoration are available below. The list includes the name of person interred and date of death and whether Council's records identify a holder of the interment right for the site in question.

The Council is the cemetery operator under the *Cemeteries and Crematoria Act 2013* for The Bight Cemetery. Any member of the public may request access to Council records in respect of an interment and may apply to Council to:

- (a) record an interment right devolving to another person;
- (b) transfer an interment right to another person or to the Council as cemetery operator;
- (c) request a determination as to whether a person/s is the holder of an interment right.

Applications are requested to be submitted prior to 5pm on Tuesday 19 October 2021. If applications are not received by this date, Council advises it may not be able to carry out restoration works to a specific memorial.

An application can be made by completing the relevant form, which can be found on Council's website at www.midcoast.nsw.gov.au/Council/Forms-Library

Information about the process the Council will follow to determine an interment right holder and proceed with restoration works is set out in The Bight Cemetery Action Plan.

The Council is also keeping a register of interested family members with whom it will correspond in accordance with the Action Plan.

Please contact Kimm Christie on 02 7955 7777 if you wish to be included on the register or require any further information.

For information go to www.midcoast.nsw.gov.au/bightcemetery

CMP - ID	Family name	Name on memorial	Date of death (on memorial)	Holder of interment right identified in Council's records
ID098	Anderson	Wylie Anderson	2.6.1992	Yes
ID071	Beattie	Faith Beattie & Son (nee Thiele)	19.7.1944	No
ID087	Berriman	Betty Colina Berriman + Derry & Desiree (Infants)	1.2.1997	Yes
ID226	Bird	Victor Vincent Bird	27.1.1963	No
ID229	Bird	William & Elizabeth Bird	10.2.1887 & 6.9.1891	No
ID228	Brewer	Veronica Agnes Brewer & Mervin George Brewer	7.4.1974 & 7.10.1978	Yes
ID047	Bringolf	Mary Bringolf	8.3.2008	Yes
ID024	Brown	Ann Brown	16.5.1879	No
ID152	Brown	Arthur & Elizabeth Brown & 2 children	4.9.1923 & 24.8.1923	No
ID170	Brown	Edward & Susannah Brown	27.12.1939 & 14.5.1936	No
ID138	Brown	Henry Brown	3.5.1867	No
ID181	Brown	James & Myrtle Brown	7.11.1966 & 24.3.1969	Yes
ID160	Brown	John L Brown	19.1.1992	Yes
ID186	Bryan	Elizabeth Bryan	19.5.1919	No
ID012	Cameron	John & Eliza Cameron	14.6.1961 & 20.8.1963	No
ID007	Cameron	John Cameron	5.6.1874	No
ID014	Cameron	Margaret & Peter Cameron	1862 & 1858	No
ID201	Coy	Septimus Coy	19.5.1980	Yes
ID198	Deer	John Ross Deer	12.9.2001	Yes
ID096	Dennes	Archie & Cecil Dennes	24.12.1960 & 8.6.1951	No
ID134	Fitzgerald	Kenneth Roy Fitzgerald	14.8.1999	No
ID048	Fowler & Kennedy	George Fowler, Emily Kennedy, Alexander Kennedy & Allan Kennedy	10.8.1895, 24.12.1893, 29.11.1877 & 16.9.1906	No
ID027	Gardiner	John Gardiner	5.1.1971	Yes
ID021	Gilmour	Hugh & Elizabeth Gilmour	13.10.1900 & 12.10.1933	No
ID133	Goddard	Kenneth Goddard	13.6.1994	Yes
ID207	Grijzen	Agnes Grijzen	18.6.1986	Yes
ID037	Hammond	Harry Josling & Jane Hope Hammond	28.12.1927 & 14.11.1939	No
ID053	Harman	Joseph & Jessie Harman	10.2.1976 & 31.8.1994	Yes
ID191	Harman	Joseph Albert Harman & Janet Harman	23.2.1929 & 2.6.1927	No
ID070	Harris	Charlotte Harris	19.8.1947	No
ID066	Harris & Mitchell	Reginald Harris & Christina Mitchell	24.4.1938 & 18.6.1997	No
ID040	Hodgins	James Hodgins	25.3.1907	No
ID140	Jones	Kevin John Jones	15.10.1999	No
ID148	Jones	Robert & Olive Jones	23.11.1999 & 7.7.2004	Yes
ID030	Kirton	Harry & Jeanie Kirton	25.6.1978 & 1.10.1991	Yes
ID116	Knight	Jeffrey Charles & Betty Clare Knight	4.9.1995 & 6.10.2013	Yes

ID110	Lambert	Thomas Henry Lambert, Mary Anne Lambert, James Lambert	1906, 1914 & 1945	No
ID200	Lawrence	Casey David Lawrence	27.3.1994	Yes
ID199	Lawrence	David Edward Lawrence	15.9.2014	Yes
ID036	Lobban	Alexander Lobban	30.1.1876	No
ID044	Lobban	David John Lobban, Catherine Lobban, Janet Lobban & Alexander Lobban	16.3.1898, 25.8.1904, 16.11.1963 & 17.4.1878	No
ID039	Lobban	Thomas & Flora Lobban	30.12.1883 & 20.10.1859	No
ID176	Longworth & Somerville	Barbara Annie, Victoria Armstrong & William Somerville	5.9.1895, 3.9.1895 & 20.9.1889	No
ID023	MacDonald	Lachlan & Duncan MacDonald	23.11.1892 & 26.12.1863	No
ID136	Maitland	William James Maitland	11.1.1973	Yes
ID079	McDermid	Archibald & Madeline McDermid	10.11.1986 & 15.2.1952	No
ID051	McIntosh	John & Barbara McIntosh	13.10.1910 & 13.3.1896	No
ID143	McLean	Isabella & Hector McLean	6.6.1879 & 21.9.1919	No
ID035	McLennan	Mary McLennan	17.10.1880	No
ID025	McLeod	Donald & Elizabeth McLeod	1.3.1909 & 14.8.1933	No
ID029	McLeod	William McLeod	2.6.1962	No
ID151	Murray	John William & Margaret Clara Murray	4.12.1917 & 29.10.1941	No
ID101	Parbery	Reginald & Cecilia Parbery	17.10.1991 & 28.7.2010	Yes
ID243	Parsons	Frederick & Margaret Parsons	22.2.1951 & 5.12.1956	No
ID154	Pollock	Isabella & John Pollock	12.3.1888	No
ID139	Pollock	Sarah Pollock & John Ernest Pollock	7.11.1909 & 1894	No
ID168	Somerville	Barbara Ann Somerville	20.10.1903	No
ID161	Somerville	William Somerville	19.2.1909	No
ID080	Stewart	Allan, Sarah Ann & Mary Isabel	2.10.1942 & 11.4.1963 & 31.7.1943	No
ID075	Stewart	Charles Stewart & Margaret Stewart	14.10.1937 & 1.10.1953	No
ID045	Stewart	Donald & Eliza Ann Stewart	18.8.1932 & 7.4.1946	No
ID113	Stewart	Janet Campbell & Donald Stewart	18.12.1900 & 30.10.1914	No
ID084	Stewart	Robert & Ann Stewart	30.5.1944 & 25.6.1975	No
ID162	Taylor	Job & Elizabeth Taylor	22.10.1923 & 15.2.1936	No
ID145	Thompson & Norris	Gilbert & Gwendoline Thompson & Florence Norris	7.3.2001 & 12.3.1998 & 29.4.1995	Yes
ID205	Vaile	George Vaile	15.2.2006	Yes
ID167	Vrieling	Gertrude (Trudy) Vrieling	5.6.2017	Yes
ID103	Young	Elsie Isabel Young & Hepburn Young	27.4.1988 & 24.9.1992	Yes