

DIRECTOR LIVEABLE COMMUNITIES

2. THE BIGHT CEMETERY, WINGHAM – UPDATE 9

Report Author Paul De Szell - Director Liveable Communities

File No. / ECM Index

Date of Meeting 23 February 2022

Authorising Director Paul De Szell - Director Liveable Communities

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.

ATTACHMENT

A: CONFIDENTIAL - Letter from Cemeteries & Crematoria NSW dated 7 February 2022

Attachment A has been classified as confidential and circulated to the Councillors and Senior Staff only. The attachment has been classified as CONFIDENTIAL in accordance with Section 10A(2)(a) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following:

- (a) personal matters concerning particular individuals (other than councillors)
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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”

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 Annexure A.

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

In this regard it is important to note that the decision making panel adopted by Council, consisting of the Mayor, General Manager and Director of Liveable Communities has not been required to make any formal decisions as there has been agreement between all applicants seeking to be interment right holders. This agreement has arisen as a result of proactive discussions between staff and applicants to decide on the preferred applicant.

The panel has however continually reviewed the process (on 11 and 22 November 2021) to ensure that a consistent approach has been undertaken in approving interment right holders.

Concurrently, Council has also sought approval from the Board of Cemeteries & Crematoria NSW to allow multiple interment right holders at The Bight Cemetery.

This is because there have been six (6) applicants that have applied for more than two (2) interment rights. These applicants are all direct relations of the persons interred and therefore should be the lawful interment right holder for each of the Monuments for which they have applied.

More specifically there have been:

- 4 applicants each seeking 3 interment rights
- 1 applicant seeking 4 interment rights
- 1 applicant seeking 6 interment rights

Part (4) of section 56 of the Cemeteries and Crematoria Act 2013 (see below) applies in this instance.

“56 Grant of interment right

- (1) *A cemetery operator may grant an interment right in respect of an interment site in a cemetery.*
- (2) *An application for an interment right must be in the form approved by the Cemeteries Agency and be accompanied by the appropriate fee.*
- (3) *An interment right may be granted to one person or to 2 or more persons as joint holders.*
- (4) *A cemetery operator cannot, without the approval of the Cemeteries Agency, grant or transfer an interment right to a person if the granting or transfer of the interment right will result in the person holding (including jointly holding) interment rights in respect of more than 2 interment sites in the cemetery for which the interment right is sought or sought to be transferred”.*

On 7 February 2022, the CEO of Cemeteries and Crematoria NSW provided the following response:

“I refer to your letter of 23 December 2021 with attachments and seeking approval to grant multiple interment rights subject to Section 56 (4) of the Cemeteries and Crematoria Act 2013 (‘the Act’).

I note that you have undergone a rigorous assessment of determining the most appropriate interment rights holders under sections 58 and 61 of the Act.

On that basis, and under delegation from the Board of Cemeteries & Crematoria NSW, I am happy to provide approval to grant interment rights as specified in your letter to –

- : 6 interment rights for ID nos 024,138,152,170,181,136
- : 3 interment rights for ID nos 007,012,027
- : 4 interment rights for ID nos 191,075,084,113
- : 3 interment rights for ID nos 140,148,145
- : 3 interment rights for ID nos 036,044,039
- : 3 interment rights for ID nos 176,168,161

The efforts of MidCoast Council to resolve this situation with the local community and family members is commended”.

A full copy of this letter is provided in Attachment A which is confidential as it contains personal information.

As a result of the activities undertaken over this period the following restoration work at The Bight Cemetery has been able to be undertaken to date:

Monuments requiring restoration (68)	Status
23	Restoration completed
2	Stonemason engaged to undertake repairs (2 local)
1	Waiting for signed “Approval of Works” form from lawful interment right holder
16	Waiting for approval from Insurers
5	Waiting for scope of works and quote from Stonemasons (6 local / 5 out of area)
7	Waiting on preferred stonemason from interment right holder after receiving approval from CCNSW on 7 Feb 2022
14	Waiting for application and/or response from registered parties/families

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*”.

RECOMMENDATION

That Council note the information provided in the report.

ANNEXURE

A: Assessment of applications

