



MIDCOAST
council



THE BIGHT CEMETERY

Restoration Action Plan

July 2021



1. Background

During July 2019 Council staff incorrectly laid down a number of headstones at The Bight Cemetery, Wingham. Following concerns from the community all work in relation to the laying down of headstones at The Bight and other cemeteries was indefinitely suspended on 26 July 2019.

In the ensuing weeks a community group “The Blight of the Bight” was formed representing not only the families of those buried at the Bight Cemetery but also the broader community. The group called a public meeting on Sunday 11 August to discuss the matter. The Mayor, Councillors Bell and Epov, the General Manager, Director of Liveable Communities, Manager of Community Spaces, Recreation and Trades and other staff members attended the meeting.

The General Manager and Director of Liveable Communities both apologised for the hurt, distress, anger and general upset caused by Council’s actions at The Bight Cemetery during the meeting.

At the meeting the community specifically discussed 16 desired outcomes that were presented by the “Blight of the Bight” group. These outcomes were unanimously supported and the community requested their consideration and adoption by Council.

Both the General Manager and Director of Liveable Communities agreed at the meeting to consider each of the outcomes identified by the community.

Council staff then met with a representative of the “Blight of the Bight” group the following day to discuss the 16 desired outcomes requested by the community.

These outcomes and Council’s actions to deliver on each of them, were endorsed by Council on 11 September 2019.

An investigation into the condition of the headstones (identified both by Council and by the community) and the development of a Conservation Management Plan for the site has now confirmed that there are 68 headstones in need of repair. Council has committed publicly and to family members that all 68 headstones will be repaired, regardless of how that damage was sustained (through Council actions or through storm damage in December 2018).



2. Addressing community outcomes

The 16 outcomes desired by the community and the corresponding actions endorsed by Councillors (see **Annexure A**) can be categorised into five stages as follows:

1. Immediate – these actions have already been completed
2. Development of an Action Plan for the restoration of headstones at The Bight Cemetery
3. Development of a Memorials Risk Assessment Program
4. Development of a register of family interests in graves
5. Beautification program for The Bight Cemetery

3. Scope of The Bight Cemetery Restoration Action Plan

The items that this action plan addresses are those items identified as stage two actions – relating to the preparation of *The Bight Cemetery Restoration Action Plan*. Namely:

- “2. Council undertake the restitution of ALL damaged headstones in The Bight Cemetery regardless of their past reasoning or justifications, as a sign of goodwill and true apology to the community
4. Council to commit to the development of a timed Action Plan to restore the headstones at the Bight Cemetery and a separate timed Action Plan in relation to the Memorials Risk Assessment Program.
12. That any work carried out by Council as a result of an adverse risk assessment be done in accordance with National Trust Guidelines with expert supervision”

4. Principles of implementation

To meet the desired outcomes endorsed by Council, the action plan to restore The Bight Cemetery will be undertaken based on the following principles:

- All headstones that are damaged will be repaired
- The Council will communicate directly with either the lawful interment right holders to seek consent, or consult with the registered persons (as applicable) on the repair works proposed to be undertaken
- General updates will be provided to the lawful interment right holders, registered persons and wider community at various points in the program
- All repairs will be undertaken in line with the guidelines detailed in The Bight Cemetery Conservation Management Plan and the advice of qualified heritage stone masons in the case of “heritage” headstones
- All headstones will be repaired to meet the requirements of Australian Standard AS 4204 -2019 “Headstones and Cemetery Monuments” (where possible) and The Bight Cemetery Conservation Management Plan.
- Subject to the advice of professional and suitably qualified stone masons, where the restoration of a headstone or surround/kerbing/ashlar requires new material it should be a like for like material and colour matched as close as possible
- The restoration process seeks to restore the fabric of the cemetery to how it was before headstones were laid down in July 2019 as per the principles of the Burra Charter
- Council will liaise with the lawful interment right holders over the appointment of all stonemasons

5. Communicating with registered persons

This plan incorporates information on how and when we will communicate with the lawful interment right holders, registered persons (who have registered their contact details with the Council) and the wider community on the restoration of The Bight Cemetery. The goals of this communication are to:

- Provide open, honest, accurate, timely and accessible information to the community
- Directly communicate with the registered persons regularly throughout the restoration process
- Raise awareness of the actions being undertaken to rectify the situation and ensure it doesn't happen again

The key communication channels to be used during the restoration of The Bight Cemetery will be:

- Direct communication with lawful interment right holders and impacted families
- Website updates
- Media releases
- Provision of information to the "Blight of the Bight" group to share

When this action plan is endorsed by Council the following will occur:

- Direct email to all registered persons to provide them with a copy of the finalised action plan
- Council's "*The Bight Cemetery, Wingham repair program*" website page will be updated
- Media releases will be prepared and distributed to all local media channels

Wider communications and engagement plans will be developed to support the creation of a Council wide "*Memorials Risk Assessment Program*" when this occurs.

6. Action Plan

Item	Action	Details	Responsibility	Timeframe
1.	Inspect and confirm all headstones impacted	Compile a photographic record of all damaged headstones in The Bight Cemetery	Engagement, Communication and Education	Completed
2.	Create database of impacted family members	Collate information using records at hand and information provided by the community to create a database of affected families / interested parties	Community Spaces Recreation and Trades - <i>Cemeteries</i>	Completed
3.	Issue written apology to families	Apology issued from the Office of the Mayor to all parties who have registered an interest in one of the damaged headstones	Office of the Mayor	Completed
4.	OEH Section 91 licence application	Complete OEH Section 91 licence application to carry out works on site to ensure the protection of the critically endangered orchid <i>Diurus flavescens</i> at all times	Community Spaces Recreation and Trades and Natural Systems	Completed
5.	Develop a Conservation Management Plan for the cemetery	Council engage an independent professionally qualified heritage consultant to prepare a Conversation Management Plan for The Bight Cemetery	Community Spaces Recreation and Trades and Strategic Planning	Completed
6.	Seek to determine the legal Interment Right Holder/s for each of the headstones requiring restoration	<p>Council will:</p> <ol style="list-style-type: none"> 1. Investigate its records; 2. Carry out broad public notification for a 28-day period, inviting applications under the <i>Cemeteries and Crematoria Act 2013</i> to: <ol style="list-style-type: none"> (a) record an interment right devolving to another person (s49 or s50); (b) transfer an interment right to another person or to the Council as cemetery operator (s58 or s59); (c) request a determination as to whether a person/s is the holder of an interment right (s61); 3. Assess and determine any applications received in accordance with the <i>Cemeteries and Crematoria Act 2013</i> 	Community Spaces Recreation and Trades – <i>Cemeteries</i> and Engagement, Communication and Education	Ongoing

		<p>and amend the interment right holder in Council's cemetery register accordingly if necessary.</p> <p>Further information in relation to this Action is set out in Annexure B.</p> <p>.</p>		
7.	Seek advice from qualified stone masons	Council will seek advice from qualified stone masons (including qualified heritage stone masons where appropriate) to determine the works that need to be undertaken on each of the damaged headstones, taking into account the guidelines set out in The Bight Cemetery Conservation Management Plan to ensure repairs are undertaken in accordance with the heritage significant gradings outlined in the plan.	Community Spaces Recreation and Trades - <i>Parks and Reserves</i>	Underway
8.	Communicate with all families on process	<p>Following adoption of this action plan a letter or email will be sent to all registered persons listed on the database to inform them of the actions to be undertaken.</p> <p>The same information will be communicated to the "Blight of the Bight" group to assist in their communications with their members. Council will also update its "<i>The Bight Cemetery, Wingham repair program</i>" website page.</p>	Community Spaces Recreation and Trades – <i>Cemeteries</i> and Engagement, Communication and Education	Within a week of the adoption of this plan or any amended plan
9.	Prepare individual scopes of work	Each headstone will be inspected and assessed by a stone mason or heritage stone mason (as appropriate). This assessment will inform the individual scope of works to be prepared for each of the damaged headstones. In developing each scope of work the advice of the appropriately qualified stone mason will be taken into consideration.	Community Spaces Recreation and Trades - <i>Cemeteries</i>	To be completed concurrently as legal Interment Right Holders are established
10.	Gain approval of legal interment holder	Correspond with all legal interment right holders on the individual scope of works required for their particular headstone. The scope of works is to be provided to the legal interment right holder for review. Written approval will then be sought from the legal interment right holder for the repairs to be undertaken, within an expected timeframe.	Community Spaces Recreation and Trades - <i>Cemeteries</i>	To be completed as legal Interment Right Holders are established

		See Annexure B for further detail.		
11.	Communicate the repairs proposed to be undertaken	We will communicate with all legal interment right holders, the 'Blight of the Bight' group and the broader community through media releases, website updates, signage at the cemetery and regular newspaper advertising to advise that works are about to start on the repairs, so it is clear when activity is underway that repairs are being undertaken.	Engagement, Communication and Education	As soon as the timeframe for repairs is finalised
12.	Undertake repair works	Repairs will be undertaken by a suitably qualified stone mason or heritage stone mason (as appropriate in accordance with the heritage gradings outlined in The Bight Cemetery Conservation Management Plan). Council will ensure that the repair works are undertaken as per the scope of works for each of the damaged headstones. This will be achieved by implementing a self-certification process to be undertaken by the monumental masons undertaking the work. This process would include documenting the materials used, certifying how the work complies with Australian Standard AS 4204 -2019 "Headstones and Cemetery Monuments" and if this was not possible why it was not. Council's Heritage Advisor will provide a monitoring and overseeing role of all documentation. The work is to be undertaken in line with The Bight Cemetery Conservation Management Plan.	Community Spaces Recreation and Trades – <i>Cemeteries</i> Heritage Advisor	Following the receipt of approval from each legal interment right holder
13.	Document repair works	Provide photographic evidence of repair works to each legal Interment Right Holder. The photographic evidence of the repair works will include photos of the work being undertaken at various stages.	Community Spaces Recreation and Trades - <i>Cemeteries</i>	Ongoing as each repair is finalised
14.	Report back to the community	Communication to be undertaken via media release, website update and information to the Blight of the Bight group to advise the community all repairs have been undertaken.	Engagement Communication and Education	When all repair works are completed

Annexure A: The community's desired outcomes and Council's response

Community's desired outcomes	Council actions	Stage
<p>1. <i>That Council provide a heartfelt apology for the hurt and distress caused to families and the community by the damage at The Bight Cemetery</i></p>	<p>Agreed – It was accepted that apologies had already been provided by the General Manager and Director of Liveable Communities. It was also agreed that personalised letters of apology would be sent to each affected family as they became known to Council. This process has been completed with letters sent from the Office of the Mayor.</p> <p>At its meeting of 28 August 2019 the Council also resolved to:</p> <p><i>“formally apologise to the Community and particularly to the families of those impacted by events at The Bight Cemetery, and that we as councillors are sincerely sorry for this outcome, and that we support all necessary measures commenced and to be undertaken to rectify the situation and to ensure that it doesn’t happen again”.</i></p>	<p>Stage 1</p>
<p>2. <i>Council undertake the restitution of ALL damaged headstones in The Bight Cemetery regardless of their past reasoning or justifications, as a sign of goodwill and true apology to the community</i></p>	<p>It was agreed that the community expect the Council to restore and rectify all damaged headstones at The Bight cemetery.</p> <p>It is agreed that Council will restore and rectify all damaged headstones at The Bight Cemetery, where the damage has been either caused by Council or storm activity in November and December 2018.</p>	<p>Stage 2</p>
<p>3. <i>That council commit to a community education program to fully explain the Memorials Risk Assessment Program, the nature of its impacts and rollout program</i></p>	<p>Agreed – A commitment was given to develop an education program once a <i>Memorials Risk Assessment Program</i> is formally developed, reviewed, publicly exhibited and adopted by Council. This education program would occur prior to the commencement of any formally adopted <i>Memorials Risk Assessment Program</i>.</p>	<p>Stage 4</p>
<p>4. <i>Council to commit to the development of a timed Action Plan to restore the</i></p>	<p>Agreed – A commitment was given at the public meeting that separate action plans would be prepared for:</p> <ol style="list-style-type: none"> 1. Restoration of headstones at The Bight Cemetery; and 2. A Memorials Risk Assessment Program 	<p>Stage 2</p> <p>Stage 4</p>

<p><i>headstones at the Bight Cemetery and a separate timed Action Plan in relation to the Memorials Risk Assessment Program.</i></p>		
<p>5. <i>That a full meeting of Council determine their reporting requirements until all matters in relation to this issue are resolved</i></p>	<p>Agreed – Matter has been reported to the Council on a number of occasions. The matter will continue to be reported as necessary or as required by Council..</p>	<p>Stage 1</p>
<p>6. <i>That Council commits to regular reporting progress on the Action Plan on the council website, posts to the Council Facebook page, together with media releases the first of which is to occur not more than 3 months from the date of this meeting.</i></p>	<p>Agreed – Council has worked and communicated closely with the “Blight of the Bight” group and has reported on progress since the public meeting on the Council’s website, via posts to the Council Facebook page and media releases.</p> <p>This update report has been provided within three months of the public meeting and further reporting and draft action plans will be provided within this timeframe.</p>	<p>Stage 1</p>
<p>7. <i>The Monuments Risk Assessment and Management Program remain suspended until</i></p> <ul style="list-style-type: none"> • <i>the Council review is completed,</i> • <i>a comprehensive Cemeteries Policy and set of processes and procedures is developed in consultation with community representatives, the Heritage Advisor, Heritage Reference group, National Trust and other stakeholders and subject matter experts</i> 	<p>Agreed - All work in relation to the laying down of headstones at The Bight Cemetery and other cemeteries was indefinitely suspended on 26 July and will not recommence until each point is addressed and satisfactorily completed</p>	<p>Stage 1</p>

<ul style="list-style-type: none"> • <i>The Cemeteries Policy, processes and procedures are tested under expert and community supervision</i> • <i>The complete policy and potential impacts is presented at community meetings across the MidCoast allowing Council to explain why this is necessary and how it will be rolled out and for people have an opportunity to comment and ask questions about the policy</i> • <i>Council workers are trained and/or experts brought in</i> 		
<p>8. <i>That the assessment program address ALL risks in a cemetery</i></p>	<p>Agreed – Any new <i>Memorials Risk Assessment Program</i> formally developed, reviewed, publicly exhibited and adopted by Council must address all risks in a cemetery.</p>	<p>Stage 3</p>
<p>9. <i>The Assessment program treat assessment and Action/management as separate events. In short:</i></p> <ul style="list-style-type: none"> • <i>Notification of family</i> • <i>Assessment/Testing (including documentation)</i> • <i>Consultation</i> • <i>Agreed Actions (what agreed actions, by when, by whom)</i> 	<p>Agreed - Any new <i>Memorials Risk Assessment Program</i> formally developed, reviewed, publicly exhibited and adopted by Council will separately address Assessment and Action/Management as separate events.</p>	<p>Stage 3</p>

<ul style="list-style-type: none"> • <i>Supervised Action.</i> 		
<p>10. <i>That consideration be given to other options to secure headstones at imminent risk of falling such as:</i></p> <ul style="list-style-type: none"> • <i>to tag at risk headstones,</i> • <i>to support the headstone or exclude people from the immediate area, until family can be contacted and repairs carried out. (Council would retain the right to lay the headstone down if the family cannot be found or repairs not be carried out within an agreed time (timeframe to be agreed).</i> <p><i>Such an approach, with appropriate consultation with community and Heritage experts, could be considered if the “Assessment only” part of the Program needs to proceed in parallel with the work in (7) above.</i></p>	<p>Any new <i>Memorials Risk Assessment Program</i> formally developed, reviewed, publicly exhibited and adopted by Council will need to look at a range of options to secure headstones at imminent risk of falling.</p>	<p>Stage 3</p>
<p>11. <i>That full documentation, including photos, be created for each monument assessed and these be made available through the Council website</i></p>	<p>Agreed – This information is currently provided on Council’s website in relation to the work undertaken at the Bight Cemetery. A formal process for documenting headstones will need to be incorporated into any new <i>Memorials Risk Assessment Program</i> formally developed, reviewed, publicly exhibited and adopted by Council.</p>	<p>Stage 3</p>

<p>12. <i>That any work carried out by Council as a result of an adverse risk assessment be done in accordance with National Trust Guidelines with expert supervision</i></p>	<p>Agreed – A commitment was given that any work carried out by Council as a result of an adverse risk assessment would be done in accordance with National Trust Guidelines with expert supervision for monuments over 50 years in age.</p> <p>Since that time a Conservation Management Plan for the Bight Cemetery has been developed which also provides guidelines for restoration that must be followed.</p>	<p>Stage 2</p>
<p>13. <i>That the assessment framework and criteria be made available so families may make their own proactive, amateur, assessments of family headstone and take corrective action if they feel warranted without prejudice to the Council program</i></p>	<p>Any new <i>Memorials Risk Assessment Program</i> formally developed, reviewed, publicly exhibited and adopted by Council will identify a clear assessment framework and criteria for decision making. These will be freely available online for all interested parties.</p>	<p>Stage 3</p>
<p>14. <i>That there be wider promotion and longer notification periods be used because many families are outside the area and consideration be given to large notices being posted on cemetery gates</i></p>	<p>Any new <i>Memorials Risk Assessment Program</i> formally developed, reviewed, publicly exhibited and adopted by Council will identify appropriate notification periods for families that are located outside the area.</p>	<p>Stage 3</p>
<p>15. <i>That the Council modify their system used to manage Council Cemeteries to include a “Register of Family Interests in Graves in the Municipality”.</i></p>	<p>This concept was generally agreed however the timing is uncertain as the intent is to utilise the Property and Rating Phase (Phase 2) of MC1 Implementation to develop a new system for cemetery management.</p>	<p>Stage 4</p>
<p>16. <i>That a Beautification program be developed for the Bight cemetery</i></p>	<p>Agreed – It was generally agreed that Beautification program should be developed for the Bight cemetery. It was accepted however that this was the third priority following the development of separate action plans for:</p> <ol style="list-style-type: none"> 1. Restoration of headstones at the Bight Cemetery; and 2. A Memorials Risk Assessment Program 	<p>Stage 5</p>

Annexure B: Process for determining lawful interment right holders in accordance with the Cemeteries and Crematoria Act 2013

A public notice will be displayed, at a minimum, in the following ways:

1. On display at a prominent location at the cemetery;
2. On the Council’s website;
3. In the Council’s offices and libraries;
4. In both a local newspaper and a newspaper circulating throughout the State.

In accordance with this Action Plan, a copy of the public notice will also be provided to registered family members and the “Blight of the Bight” group.

The public notice will include the following information, as a minimum:

1. Identify the interment site, name of person interred and date of death;
2. State whether the Council’s records identify a ‘holder’ in respect of the interment site;
3. Advise that a person is entitled to apply to the Council as cemetery operator under the *Cemeteries and Crematoria Act 2013* to:
 - (a) record an interment right devolving to another person (s49 or s50);
 - (b) transfer an interment right to another person or to the Council as cemetery operator (s58 or s59);
 - (c) request a determination as to whether a person/s is the holder of an interment right (s61);
4. Advise that, unless applications are received prior to a specified date, the Council may not be able to carry out restoration works to a specific memorial under the Action Plan.
5. Advise that the Council is keeping a register of interested family members with whom it will correspond in accordance with the Action Plan.

After the conclusion of the public notice period, the following process will be followed:

Circumstances	Process
A person requests access to an entry in the Council’s old cemetery register or other records in respect of an interment.	Such requests will be processed as an ‘informal request’ under the <i>Government Information (Public Access) Act 2009</i> and a copy of records will be provided, subject to the protection of personal information. None of the headstones to be repaired relate to an interment that is currently recorded in the register kept under the <i>Cemeteries and Crematoria Act 2013</i> .
A holder of an interment right is registered and alive	Council can issue a certificate (s65) if it has not done so already. If the holder wants no further involvement, the person can transfer the right to the cemetery operator (s59) or to another person (s58).
The interment right is held jointly	If one of the joint holders is dead, the right passes to the surviving joint holder (s51). Council can amend the register (s63) and issue a certificate (s65).

<p>An application is received under s49 (Interment rights may be bequeathed) or 50 (Rules of intestacy to apply to interment rights not bequeathed)</p>	<p>The documents required to be provided in support of such an application will depend on the circumstances.</p> <p>In most instances, if a person dies with a valid will, a copy of the grant of Probate is required.</p> <p>In most instances, if a person dies without a valid will, a copy of the Letters of Administration is required.</p> <p>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.</p> <p>Two flowcharts sourced from the NSW Communities and Justice website are provided in Annexures C and D to further outline the process.</p> <p>If the Council as cemetery operator is satisfied that an interment right has devolved to the applicant, it will amend the register kept under the Cemeteries and Crematoria Act 2013 to record the holder (s63) and issue a Certificate to the applicant (s65).</p>
<p>An application is received under s61 in circumstances where <i>“there is a dispute or other doubt about who holds an interment right for a particular interment site in a cemetery”</i></p>	<p>Under section 61 of the <i>Cemeteries and Crematoria Act 2013</i>, a person may apply to the Council as cemetery operator who must make a decision about whether the person holds or does not hold the interment right for the interment site. Before deciding the application, the Council must notify for at least 28 days to:</p> <ul style="list-style-type: none"> <i>(i) displays a notice about its intention to make the decision in a prominent position at the cemetery, and</i> <i>(ii) publishes a notice about its intention to make the decision in the Gazette, and</i> <i>(iia) publishes a notice about its intention to make the decision in a newspaper circulating throughout the State or in a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of persons who may hold the relevant interment rights for interment sites, and</i> <i>(iii) takes any other steps it considers reasonable in the circumstances to determine who holds the interment right for the interment site,</i> <p>If the Council is satisfied that the applicant is the holder of the interment right, it will amend the register (s63) and issue a Certificate to the applicant (s65).</p>
<p>In respect of some of the headstones, the Council has no record of a holder of an interment right.</p> <p>This means that it has no record of any burial licence or</p>	<p>In addition to the above, an application under ss49, 50 or 61 may also need to be supported by evidence of the person who originally held the interment right.</p> <p>It cannot be assumed that the person interred was the holder of an interment right.</p>

any right, licence or other entitlement in the nature of an interment right given by contract or other agreement by the person responsible for the management of the affairs of the cemetery.	<p>Prior to 1968, interments at the Bight Cemetery were managed by the churches, not the predecessor of the Council, and the Council's records are limited.</p> <p>Accordingly, a prospective applicant may need to firstly obtain a copy of the Council's records and then make further enquiries in order to be able to provide sufficient information to the Council for it to assess and determine an application under s49, 50 or 61.</p>
If no applications are received or if the determination of any applications results in there being no registered holder in respect of an interment right relevant to a headstone proposed for repair.	<p>The Council will consult with registered interested family members in relation to the proposed restoration works.</p> <p>Whether to proceed with a particular scope of works for a headstone will be decided on a case-by-case basis, taking into account any submissions received.</p>
If there is no registered holder and no registered family members	The Council will proceed with a particular scope of works in accordance with the principles in this Action Plan and the Conservation Management Plan.

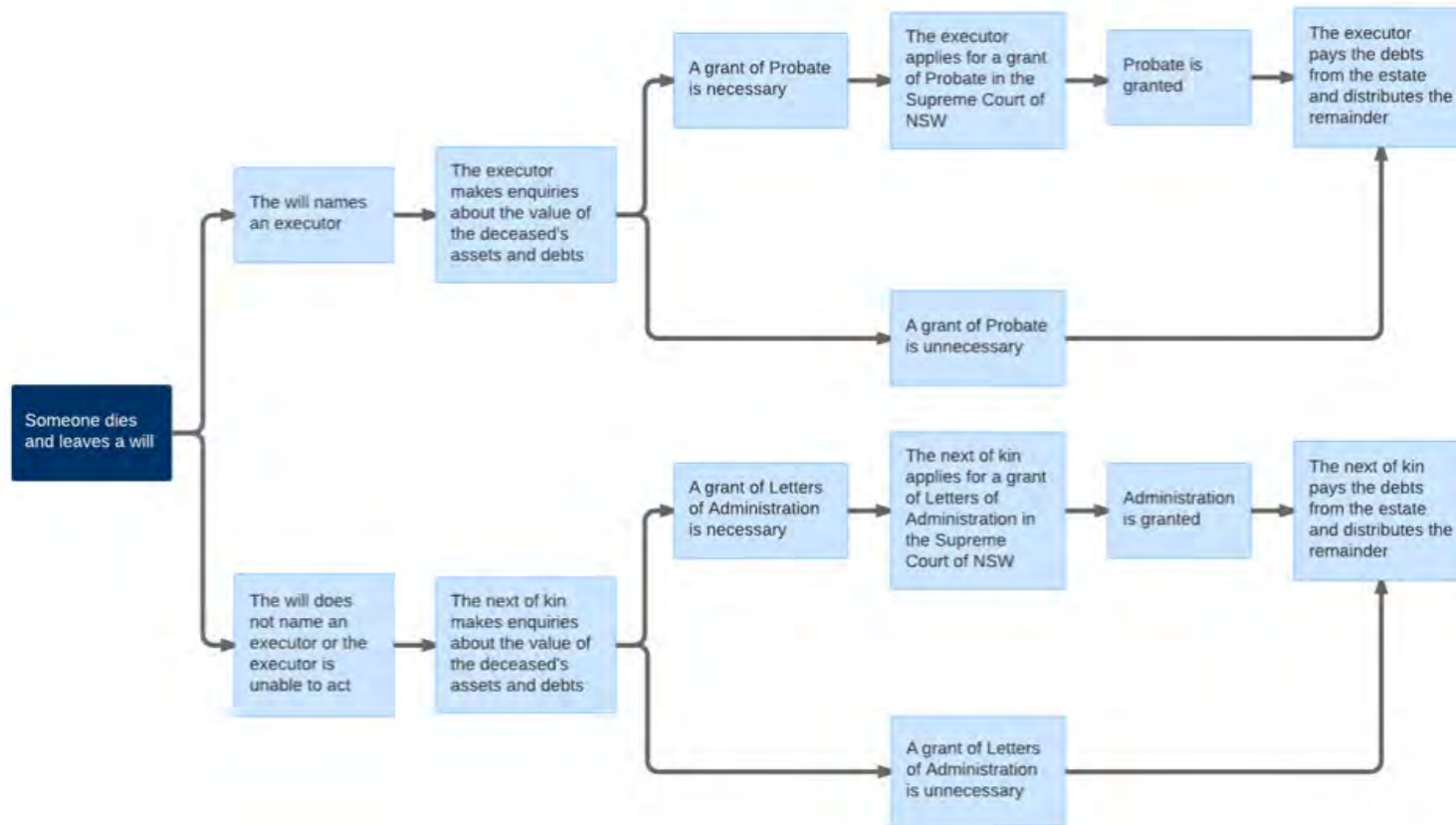
Two flowcharts sourced from the NSW Communities and Justice website are provided in Annexures C and D to further outline the process.

Further resources

The following resources may also be helpful to interested family members who are considering making an application to the Council under the *Cemeteries and Crematoria Act 2013*:

- Cemeteries and Crematoria NSW Fact Sheet "Interment rights in New South Wales" https://www.industry.nsw.gov.au/_data/assets/pdf_file/0009/209880/QG1-Interment-Rights-general-fact-sheet.pdf
- Cemeteries and Crematoria NSW Quick Guide "Transfer or bequest of an interment right" https://www.industry.nsw.gov.au/_data/assets/pdf_file/0004/209884/QG5-Transfers-bequests-Consumers-fact-sheet.pdf
- State Library of NSW publication "Rest Assured" <https://legalanswers.sl.nsw.gov.au/rest-assured-legal-guide-wills-estates-planning-ahead-and-funerals>
- NSW Communities and Justice website "After someone dies" in particular flowcharts "Someone dies and leaves a will" and "Someone dies without a will" https://www.lawaccess.nsw.gov.au/Pages/representing/after_someone_dies/flowcharts.aspx

Annexure C: Department Communities & Justice Flowchart – Someone dies and leaves a will



Annexure D: Department Communities & Justice Flowchart – Someone dies without a will

