

Council Policy

Burials Outside Cemeteries



COUNCIL POLICY

 <p>Adelaide Hills COUNCIL</p>	BURIALS OUTSIDE CEMETERIES
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Policy Number:	COM-15
Responsible Department(s):	Property Services
Other Relevant Policies:	Nil
Relevant Procedure(s):	Nil
Relevant Legislation:	<i>Burial & Cremation Act 2013</i> <i>Burial & Cremation Regulations 2014</i>
Policies and Procedures Superseded by this policy on its Adoption:	Nil
Adoption Authority:	Council
Date of Adoption:	22 January 2019 (Item 12.5)
Effective From:	1 February 2019
Minute Reference for Adoption:	8/19
Next Review:	No later than 5 years from the date of adoption, or as required by legislation or changed circumstances

BURIALS OUTSIDE CEMETERIES POLICY

1. INTRODUCTION

Adelaide Hills Council recognises that some families have a desire to bury a deceased relative on a privately owned property that has significance to the deceased person or their family.

The Council acknowledges the need for requirements to ensure that a burial on privately owned land is undertaken in an appropriate location and ensures the long term identification of the burial site to limit the likelihood of those buried remains being disturbed in the future.

This policy establishes how applications for burials outside of cemeteries are to be assessed and authorisation granted by the Council. The approval process is intended to guide how the interests of the deceased person, relatives and friends, landowners and Council are to be considered and protected.

The development of this policy has taken into account the requirements of the *Burial and Cremation Act 2013* and the *Burial and Cremation Regulations 2014*.

2. OBJECTIVES

This policy provides a framework for Council to consider those applications to ensure that burials undertaken on private land are:

- undertaken in accordance with the requirements of the relevant legislation
- in locations that limit the likelihood of disturbance of the remains in the future
- in locations that do not pose a threat to the pollution of waterways
- publicly recorded on the Certificate of Title on the land on which the burial is undertaken

3. DEFINITIONS

The words and phrases used in this policy have the same meaning as they do in the *Burial and Cremation Act 2013* and *Burial and Cremation Regulations 2014*.

bodily remains means the whole or any part of a human body (whatever its physical state may be) but does not include the whole or any part of a human body that has been cremated;

cemetery means a place set apart for the disposal and memorialisation of human remains, but does not include—

- (a) a place at which cremated remains are scattered but is not otherwise used for the disposal of human remains; or
- (b) an Aboriginal site as defined in the *Aboriginal Heritage Act 1988*; or
- (c) a natural burial ground; or

- (d) a place which consists of a single interment site where only—
- (i) the remains of 1 deceased person; or
 - (ii) the remains of 2 or more members of the same family, are, or are intended to be, interred;

council means Adelaide Hills Council;

cremated remains means bodily remains that have been reduced by cremation;

cremation means a process for the reduction of bodily remains involving the use of fire or heat;

death includes still-birth;

disposal of human remains means—

- (a) cremation of bodily remains; or
- (b) burial of bodily remains (including burial at sea); or
- (c) placement of bodily or cremated remains in a mausoleum, vault, columbarium or other structure;

disposal authorisation means an authorisation to dispose of human remains granted under the *Coroners Act 2003* or a corresponding authorisation as defined in that Act;

funeral director means a person who carries on the business of arranging for the disposal of human remains;

human remains means bodily remains and includes—

- (a) the remains of a still-born child; and
- (b) bodily remains after they have been cremated;

interment of human remains means—

- (a) the placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains; or
- (b) the burial in the earth of human remains (directly in the earth or in a container);

interment site means—

- (a) a mausoleum, vault, columbarium or other structure in which human remains are interred; or
- (b) a site in which human remains are buried;

natural burial of human **remains** means burial in the ground—

- (a) without preparation of the remains using chemical preservatives; and
- (b) by containment of the remains only in a shroud or biodegradable coffin;

personal representative of a **deceased** person means a person aged 18 years or more who is—

- (a) the executor of the estate of the deceased person or, if there is more than 1 executor, 1 of the executors acting with the permission of all the other executors; or
- (b) the administrator of the estate of the deceased person;

Registrar means—

- (a) the Registrar of Births, Deaths and Marriages; or

- (b) a Deputy Registrar of Births, Deaths and Marriages, under the *Births, Deaths and Marriages Registration Act 1996*;

relative of a **deceased** person means a person aged 18 years or more who is—

- (a) a parent or grandparent of the deceased person; or
 (b) a brother or sister of the deceased person; or
 (c) a spouse or domestic partner of the deceased person; or
 (d) a child, grandchild or great grandchild of the deceased person; or
 (e) a child, grandchild or great grandchild of a brother or sister of the deceased person;

spouse—a person is the spouse of another if they are legally married;

township has **the** same meaning as in the *Local Government Act 1999*;

4. LEGISLATIVE CONTEXT

Burial and Cremation Act 2013

Part 2—Disposal of human remains

Division 1—Disposal by burial or cremation

7—Offence to dispose of bodily remains except by burial or cremation

- (1) Subject to this Act, a person must not dispose of bodily remains, or cause, suffer or permit bodily remains to be disposed of, except by burial or cremation.
 Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) In this section—
burial includes the placement of bodily remains in a mausoleum, vault or other structure.

8—Offence to dispose of bodily remains except in cemetery or natural burial ground

- (1) Subject to subsection (2), a person must not, without the approval of the Attorney-General, inter bodily remains, or cause, suffer or permit bodily remains to be interred, except in a lawfully established cemetery or natural burial ground.
 Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) A person may inter bodily remains in a prescribed area on land outside a cemetery or natural burial ground with the permission of the owner of the land and—
- (a) in the case of land within a council area—
- (i) with the approval of the council for the area in which the land is situated; and
 - (ii) in accordance with the regulations; or
- (b) in any other case—in accordance with the regulations.
- (3) A person must not, without the approval of the Attorney-General, dispose of bodily remains by burial at sea, or cause, suffer or permit bodily remains to be disposed of by burial at sea.
 Maximum penalty: \$10 000 or imprisonment for 2 years.
- (4) In this section—
prescribed area means—
- (a) an area outside a township or Metropolitan Adelaide; or
 - (b) an area defined by the regulations.

Burial and Cremation Regulations 2014**Part 2—Disposal of human remains****4—Interment of bodily remains in prescribed area outside cemetery or natural burial ground (section 8(2)(a)(ii) and (b) of Act)**

- (1) A person who interments bodily remains in a prescribed area on land outside a cemetery or natural burial ground must ensure that the remains are interred—
 - (a) at a depth of at least 1 metre from the surface of the ground; and
 - (b) at a distance of at least 20 metres from any building, structure or water well on the land.
- (2) Subregulation (1) does not apply to the interment of bodily remains in a mausoleum or vault in accordance with regulation 18.

5. POLICY STATEMENT**5.1 Principles**

In accordance with subsection 8(2) of the *Burial and Cremation Act 2013*, the Council will receive applications and may grant permission for a burial of bodily remains on private land outside “metropolitan Adelaide” and outside the boundary of a township.

5.2 Application and Criteria for Assessment

Applicants must complete the Application for Approval for Burial on Private Land available on the Council’s website and submit the Application with the application fee as published annually in the Council’s fees and charges schedule.

The Application must be accompanied by the following:

- Evidence that the Applicant is the personal representative or relative of the deceased
- Written approval of the owner of the land on which the burial is to occur
- Plan/map of the property detailing the exact location of the burial
- A copy of the Certificate of Title for the land on which the burial is to occur
- Written consent of anyone with an interest in the land on which the burial is to occur (i.e. mortgagee or easement holder)

Approval will not be granted to Applications where the burial is to occur:

- Within townships
- In areas where there is a likelihood of contamination of water supplies, being within a 1 in 100 year (or greater) flood area, within 2 metres of groundwater or within 100 metres of surface water
- On land where the land owner or persons with interests in the land have not provided their written consent
- In a location less than 20 metres from any building, structure or water well
- On land or in a location that the Council deems, in its absolute discretion, unsuitable for the burial of bodily remains
- Where there the burial would result in more than one burial site or grave on the land

5.3 Conditions of Approval

If the Council approves the burial of bodily remains on private land, the Council may impose conditions of the approval including, but not limited to, the following:

- the burial must be undertaken by a funeral director
- written confirmation from the Applicant and the funeral director that they understand and will comply with the requirements of the *Burial and Cremation Act 2013* and the *Burial and Cremation Regulations 2014*
- the address of the property, the certificate of title reference of the property and the GPS coordinates of the burial site (exact location of the grave) must be submitted to the Registrar of Births Deaths & Marriages and Council
- a Land Management Agreement, pursuant to section 57 of the *Development Act 1993*, be entered into between Council and the owner of the land and noted on the certificate of title of the property detailing the exact location of the burial as evidenced by map and GPS coordinates, at the cost of the applicant

5.4 Register

The Council will, in addition to the register it maintains of Land Management Agreements, maintain a register of approvals issued by it for the burial of bodily remains outside of a cemetery

6. DELEGATION

The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

7. AVAILABILITY OF THE POLICY

This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website www.ahc.sa.gov.au. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.