

Toowoomba Regional Council

Subordinate Local Law No. 1.9 (Operation of Cemeteries) 2020

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Part 1 Preliminary

1 Short title

This subordinate local law may be cited as *Subordinate Local Law No. 1.9 (Operation of Cemeteries) 2020*.

2 Purpose and how it is to be achieved

- (1) The purpose of this subordinate local law is to supplement *Local Law No. 1 (Administration) 2020* which provides for a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws, subordinate local laws and other regulatory powers, and for miscellaneous administrative matters.
- (2) The purpose is to be achieved by providing for—
 - (a) various matters regarding the granting of approvals for prescribed activities; and
 - (b) further specification of the definitions relevant to various prescribed activities.
- (3) In particular, the purpose of this subordinate local law is to supplement the legal and procedural framework for the prescribed activity named in schedule 1, section 1.

3 Authorising local law

The making of the provisions in this subordinate local law is authorised by *Local Law No. 1 (Administration) 2020* (the **authorising local law**).

4 Subordinate local law repealed

This subordinate local law repeals *Subordinate Local Law No. 1.9 (Operation of Cemeteries) 2011*.

5 Definitions

- (1) Particular words used in this subordinate local law have the same meaning as provided for in the authorising local law.
- (2) The dictionary in schedule 3 defines particular words used in this subordinate local law.

Part 2 Approval for prescribed activity

6 Matters regarding the prescribed activity—Authorising local law, sections 6(3), (4), 8(2)(a), 9(1)(d), 10(3), 12, 13(a), 14(1)(a)

- (1) Schedule 1—
 - (a) names a prescribed activity in section 1; and
 - (b) prescribes the matters specified in this section for the prescribed activity.
- (2) For section 6(3) of the authorising local law, it is declared that section 6(2) of the

authorising local law does not apply to the particular activities stated in section 2 of schedule 1.

- (3) For section 6(4) of the authorising local law, it is declared that the prescribed activity named in section 1 of schedule 1 is a category 2 activity.
- (4) For section 8(2)(a) of the authorising local law, the documents and materials that must accompany an application for approval for the prescribed activity are stated in section 2 of schedule 1.
- (5) For section 9(1)(d) of the authorising local law, the local government may only grant an approval for the prescribed activity if it is satisfied the proposed operation and management of the activity would be consistent with the additional criteria prescribed in section 4 of schedule 1.
- (6) For section 10(3) of the authorising local law, the conditions that must be imposed on an approval for the prescribed activity are stated in section 5 of schedule 1.
- (7) For section 10(3) of the authorising local law, the conditions that will ordinarily be imposed on an approval for the prescribed activity are stated in section 6 of schedule 1.
- (8) For section 13(a) of the authorising local law, the term of an approval for the prescribed activity is provided for in section 7 of schedule 1.
- (9) For section 14(1)(a) of the authorising local law, the further term for renewal or extension of an approval for the prescribed activity is provided for in section 8 of schedule 1.
- (10) For section 12 of the authorising local law, in Table 1 of schedule 1—
 - (a) column 1 lists the application requirements for which the local government may accept as evidence the certificate of a third party certifier; and
 - (b) column 2 lists the individuals or organisations that are declared to be third party certifiers for the corresponding application requirement in column 1; and
 - (c) column 3 lists the qualifications that are necessary for an individual or organisation to be a third party certifier for the corresponding application requirement in column 1.

7 Approvals that are non-transferable—Authorising local law, section 15(2)

For section 15(2) of the authorising local law, it is declared that the categories of approval listed in schedule 2 are non-transferable.

Schedule 1 Operation of cemeteries

Section 6

1. Prescribed activity

Operation of cemeteries.¹

2.

- (1) Section 6(2) of the authorising local law does not apply if the undertaking of the prescribed activity complies with the minimum standards prescribed in subsections (2) and (3).
- (2) The person undertaking the prescribed activity must keep and maintain written records about the undertaking of the prescribed activity as follows—
 - (a) the position of each interment site; and
 - (b) particulars of each lease or other right of occupation of each interment site; and
 - (c) the depth, size and other dimensions of each interment site; and
 - (d) the number of bodies buried in each interment site which is a grave; and
 - (e) the frequency with which, and the period within which, bodies have been buried in each interment site; and
 - (f) each burial at an interment site, together with an associated map of the interment site; and
 - (g) each occasion on which an interment site is reopened.
- (3) The person undertaking the prescribed activity must—
 - (a) keep the cemetery open to the public during normal business hours or as otherwise specified by the local government; and
 - (b) ensure that an appropriate identifying plaque is placed on or adjacent to the place of each disposal until an appropriate memorial to the deceased is erected or installed; and
 - (c) not permit a burial, cremation or other disposal at a cemetery to be carried out outside the hours during which the cemetery is open to the public; and
 - (d) not permit a person to reopen a grave, or exhume a body or the remains of a body buried in a cemetery other than—
 - (i) under the authority of an approval under the *Coroners Act 2003* and the approval must be produced to an authorised person of the local government prior to the reopening or exhumation; or
 - (ii) under the authority of a local government on conditions the Local

¹ See *Local Law No. 1 (Administration) 2020*, schedule 2, part 2, **operation of cemeteries** means to operate a place for disposing of human remains by—

- (a) burial; or
- (b) cremation; or
- (c) placement in a columbarium, mausoleum or vault.

Government considers appropriate; and

(iii) a person to whom an authorisation is given under this subordinate local law must comply with the conditions of the authorisation; and

Examples—

- The local government may authorise the removal of the remains from 1 cemetery to another to comply with the wishes of the relatives of the deceased.
 - The local government may authorise the removal of the remains from one grave to another within the same cemetery in compliance with the expressed wishes of the interments right holder, the relatives' nominated representative or the legal representative (as the case may be) of all deceased persons who have been or are to be buried in the grave.
 - The local government may authorise the opening of a grave and the burial of another in the same grave in compliance with the expressed wishes of the interments right holder, the relatives' nominated representative or the legal representative (as the case may be) of all deceased persons who have been or are to be buried in the grave.
- (e) ensure that all remains in a cemetery are enclosed in a coffin, or other form of container, or a shroud, appropriate to the form of disposal; and
- (f) take all reasonable measures to —
- (i) prevent harm to the health and safety of persons who may be involved in, or affected by, the undertaking of the prescribed activity; and
 - (ii) prevent personal injury, property damage or loss of amenity resulting from the undertaking of the prescribed activity; and
- (g) take out and maintain adequate insurance indemnifying each person who may suffer personal injury, loss or damage as a result of the undertaking of the prescribed activity; and
- (h) ensure that an appropriate and permanent identifying plaque or memorial which identifies each deceased person whose remains are disposed of at an interment site is erected or installed on or adjacent to the interment site.

3. Documents and materials that must accompany an application for an approval

- (1) Details of the proposed cemetery including—
- (a) a site plan, drawn to scale; and
 - (b) the proposed number of grave sites; and
 - (c) the depth of each proposed grave site; and
 - (d) the number of bodies to be buried in each proposed grave site; and
 - (e) reinterment arrangements for each proposed grave site; and
 - (f) the proposed hours of operation.
- (2) Details of the proposed administration and management of the proposed cemetery.
- (3) Details of any development approvals or other approvals required.

- (4) If the application for an approval does not relate to a local government cemetery and the applicant is not the owner of the premises on which the prescribed activity is to be undertaken — the written consent of the owner of the premises.

4. Additional criteria for the granting of an approval

- (1) The operation of the prescribed activity must not result in—
- (a) harm to—
 - (i) human health; or
 - (ii) safety; or
 - (iii) any watercourse or underground water system; or
 - (b) personal injury; or
 - (c) a loss of amenity; or
 - (d) a nuisance.
- (2) The proposed administration and management of the cemetery, and in particular, the proposed record keeping system, must be appropriate.

5. Conditions that must be imposed on an approval

- (1) The approval holder must—
- (a) keep the cemetery open to the public during particular hours as specified by the local government; and
 - (b) ensure that an appropriate identifying plaque is placed on or adjacent to the place of each disposal until an appropriate memorial to the deceased is erected or installed.
- (2) A burial, cremation or other disposal at the cemetery must not be carried out outside the hours during which the cemetery is open to the public.
- (3) A person must not reopen a grave, or exhume a body or the remains of a body buried in the cemetery other than—
- (a) under the authority of an approval under the *Coroners Act 2003* and on the production of the approval; and
 - (b) with the approval of the local government (under the subordinate local law regulating activities regarding human remains, if applicable).
- (4) All remains in the cemetery must be enclosed in a coffin, or another form of container, or a shroud, appropriate to the form of disposal.

6. Conditions that will ordinarily be imposed on an approval

- (1) The approval holder must take specified measures to—

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- (a) prevent harm to the health and safety of persons who may be involved in, or affected by, the undertaking of the prescribed activity; and
 - (b) prevent personal injury, property damage or a loss of amenity resulting from the undertaking of the prescribed activity.
- (2) The approval holder must—
- (a) take out and maintain specified insurance indemnifying a person who may suffer personal injury, loss or damage as a result of the undertaking of the prescribed activity; and
 - (b) give the local government specified indemnities.
- (3) The local government may regulate—
- (a) the position of interment sites; and
 - (b) periods of leases for interment sites; and
 - (c) requirements for the proper maintenance of memorials and other buildings and structures in the cemetery; and
 - (d) the hours when the cemetery may be open to the public; and
 - (e) the hours when a burial, cremation or disposal may take place in the cemetery; and
 - (f) standards for —
 - (i) the minimum depth, size and other dimensions of an interment site; and
 - (ii) the size of niches; and
 - (g) standards for —
 - (i) coffins; and
 - (ii) shrouds; and
 - (iii) other receptacles for cremated remains; and
 - (h) the number of bodies which may be buried in a single interment site; and
 - (i) the frequency with which, and the period within which, bodies may be buried in a single interment site; and
 - (j) the keeping of interment records and associated maps; and
 - (k) when a grave may be reopened; and
 - (l) the layout of the cemetery including, for example, the location of internal roads within the cemetery; and

- (m) the manner in which—
 - (i) interment sites are dug; and
 - (ii) interment sites are maintained.

7. Term of an approval

- (1) The term of an approval must be assessed by having regard to the information submitted by the applicant.
- (2) The term of the approval must be specified in the approval.
- (3) An approval may be granted for a term of up to 3 years.

8. Term of renewal of an approval

- (1) The term for which an approval may be renewed or extended must be determined by having regard to the information submitted by the approval holder.
- (2) The term for which an approval may be renewed or extended must not exceed 3 years.
- (3) The term of the renewal or extension must be specified in the written notice.

Table 1 – Third party certification

Column 1 Application requirement	Column 2 Individuals or organisations that are third party certifiers	Column 3 Qualifications necessary to be a third party certifier
No application requirement stated.		

Schedule 2 Categories of approval that are non-transferable

Section 7

No category specified.

Schedule 3 Dictionary

Section 5

burial—

- (a) means the process of placing a body in a coffin or casket and then into the ground and covering it over with soil; and
- (b) a burial can occur in either a lawn section (where a small plaque or monument may be erected at the head of the grave) or in a monumental section (where a monument partially or completely covers the grave).

columbarium means an arrangement of niches that may include a wall or an entire building, with niches for the entombment of cremated remains.

cremated remains means the remains after the cremation process is completed.

crypt means an "in-ground" or "above-ground" burial chamber constructed of steel-reinforced concrete, gravel, and other waterproof materials that uses a drainage system to keep moisture out.

development approval has the meaning given in the Planning Act.

entombment means the placement of human remains in a crypt.

grave means an area of land at a cemetery used or intended to be used for the burial of human remains.

interment means—

- (a) the burial of human remains or placement of the human remains in an above ground mausoleum or vault; or
- (b) the placement of cremated ashes in a grave, columbarium, rose garden or vault.

interment site—

- (a) means a grave, crypt, niche, vault or rose garden; and
- (b) for the avoidance of doubt, no proprietary rights attach to an interment site.

mausoleum —

- (a) means an above ground structure for interment of human remains; and
- (b) a mausoleum may contain a combination of crypts, niches or columbaria.

memorial includes—

- (a) a headstone; and
- (b) an inscribed plaque or commemorative plate; and
- (c) monumental, ornamental or other structures erected on a grave site; and
- (d) anything else erected or placed to mark the site where human remains have been buried or placed, or to commemorate a deceased person.

monument means a memorial made principally of stone which extends above the surface of the earth, in upright form.

niche means a space in a mausoleum or columbarium used or intended to be used for the interment of cremated remains.

rose garden means an interment site for the placement of cremated remains.

shroud means a length of cloth or an enveloping garment in which a dead person is wrapped for burial.

vault means a compartment in a mausoleum, or an underground chamber, in which human remains are, or may be, interred.

virtual memorial means an online memorial web site that celebrates the personal life story of a departed loved one.