

## Burials on Private Land - Approval by Local Authority

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**Summary** This document is intended for the guidance of local authorities in their role as the approval authority under Public Health (Disposal of Bodies) Regulation 2002, of locations to bury bodies on private land not being a public or private cemetery. It is also intended to provide guidance to those wishing to bury the dead on private land and to Area Health Service Public Health Unit staff who may become involved. This guideline will provide the conditions on which approvals may be granted for burials on private land.

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**Applies to** Environmental Health Officers of Local Councils, Public Health Units

**Audience** Local Councils, Public Health Unit staff

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## BURIALS ON PRIVATE LAND – APPROVAL BY LOCAL AUTHORITY

This document is intended for the guidance of local authorities in their role as the approval authority under *Public Health (Disposal of Bodies) Regulation 2002*, of locations to bury bodies on private land not being a public or private cemetery. It is also intended to provide guidance to those wishing to bury the dead on private land and to Area Health Service Public Health Unit staff who may become involved.

Clause 22(1)(c) of the *Public Health (Disposal of Bodies) Regulation 2002* provides that "A person must not place a body in any grave or vault unless that grave or vault is located on private land where the area of landholding is 5 hectares or more and the location has been approved for that purpose by the local authority."

Further, clause 22(2) states "A person must not bury a body in or on any land if to do so would make likely the contamination of a drinking water supply or a domestic water supply."

It should be noted that the local authority is not approving of each instance of burial; rather it is approving of the burial location. To obtain an approval much has to be considered and much information has to be gathered prior to an interment. The applicant should not have an expectation that approval will be achieved within days of the death of a person who is intended to be interred at the location.

A burial location may contain more than one grave site and approval for each successive interment may not be required.

The applicant should also be aware of, as well as the need to comply with, other legal requirements pertaining to burying the body of a deceased person. An example of this is obtaining a death certificate from the NSW Registry of Births, Deaths and Marriages in relation to registering the death of the person. It should be noted that this is not the only legal requirement but one of the requirements of burying a deceased person.

Both the applicant (when preparing and submitting an application) and the local authority (local council) in determining an approval for a location for burial of a body on private land, should consider the following issues.

- 1. Landholding:** *The total landholding must be equal to or exceed five hectares.*

This is a requirement of the Regulation and cannot be reduced. It is not considered appropriate that private burial be practiced on smaller landholdings or greater population densities unless a public or private cemetery is established under the Environmental Planning and Assessment framework.

- 2. Geotechnical Report:** *A geotechnical investigation may be considered if there is any likelihood of contamination of ground waters and/or surface waters. It will also determine the suitability of the location in regard to the depth of soil, and the water table.*

Clause 20 requires a minimum soil cover of 900 mm between the finished ground level and the lid of the coffin. Clause 22 (2) prohibits burial where it is likely to contaminate a drinking or domestic water supply. A “drinking water supply” means a water supply which is, or could be, used for internal ingestion or consumption, food preparation or ablutions (showering, cleaning of teeth, etc). A “domestic water supply” means a water supply used for domestic purposes (apart from drinking) such as clothes washing and toilet flushing. A geotechnical report can give an indication of ground water movement and water tables, even in dry times. Further, an indication of the soil depth and underlying substrate will enable both the proponent and the council to be aware of problems, such a rock outcrops or rock floaters, that may be encountered in digging a grave to a suitable depth. Consideration can also be given to the possibility of second interments in the same grave.

- 3. Access:** *Public access to the area should be maintained by direct access, or alternatively, by a right of way/easement. Future access needs to be considered especially should the property be sold, and/or if the remains are to be exhumed at a later date or other interments made.*

If the property is sold after an interment, access to the burial location could be denied and it may also affect the ability to exhume the remains of a body, should this be desired at a later date. It may also impact on the land use potential of the property and therefore may be a limiting factor in providing or locating a private burial ground.

- 4. Fencing:** *The area should be suitably fenced to delineate the boundaries of the location and secure the location.*

Both aspects are important as there should be some permanent marking of the site boundaries as described on the property title. The security of the area will vary according to the needs of the locality and could range from a stock-proof fence to a 1.8 metre high security fence.

- 5. Planning:** *Council should ensure that the approval is consistent with the provisions of Section 149, Environmental Planning and Assessment Act 1979 including advice on other relevant matters which may affect the land.*

- 6. Building Restriction:** *A restriction on the immediate use of the area adjacent to the private burial ground should be considered, if warranted, to prevent building or disturbances of the grave sites.*

The purpose of 5 and 6 are to ensure that any purchaser is aware that approval has been granted to use a particular location and that bodies may have been

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interred. It may be necessary to protect the location from encroachment of other buildings or facilities and vice versa.

- 7. Records:** *The burial location site should be described and drawn by a registered land surveyor together with details of the location of the deceased buried in respective sites and a copy should be forwarded to the local authority for placement on the property file.*

The purpose of this guideline is to ensure that there is a second set of records that can be called upon to locate a grave site should the originals be lost. This is important should there be a need to exhume the remains of bodies or for the use of historical societies.

- 8. Register:** *Council should maintain a register of private burial locations.*

A register is simply a list of private burial sites and should indicate where the details of the location and the interment are maintained particularly if the details are not held on the property file. Such records are also of benefit to historical societies and should be marked “not to be destroyed.”

- 9. Grave Markings:** *Each grave should be permanently marked with details of the deceased and the boundaries of the grave excavation should also be permanently marked.*

The correct grave needs to be located in order to simply pay respects to the deceased and in the event of exhumation. Also it may be possible in some areas for members of the public to interfere with headstones and markings; so some permanency would be necessary. Trying to locate a grave site in a paddock is extremely difficult when there is no grave site identification. A permanent marking of the grave excavation will help locate the coffin and greatly reduce the chances of the grave sides slipping during an exhumation due to the unstable nature of backfilled ground.

- 10. Burial Chamber:** *The provision of an above ground burial chamber should not be encouraged unless additional security precautions are taken.*

Placing the remains in an above ground chamber in an unsecured location may lead to vandalism, desecration or theft. Furthermore, maintenance of the remains and the encasement may need to be carried out irregularly to prevent the occurrence of nuisances. Additionally, high costs are associated with such maintenance and it has to comply with the provision of clause 23(1)(2).

- 11. Concurrence:** *The concurrence of adjoining property owners may be necessary in some instances.*

The location of the proposed burial ground needs to be considered in relation to the boundaries of the property, adjoining housing and the views of adjoining property owners. As most councils would deal with the matter as a

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Development Application, councils would normally seek the concurrence of adjoining property owners. This, however, could be left to council's discretion.

**12. Application Lodgement:** *An application to have a grave location on private property approved under clause 22(1)(c) should be lodged with council showing the above mentioned details, and the appropriate application fee set by the council. It would be appropriate to negotiate a common position with the council prior to the lodgement of any application.*

Most councils would require a development application for such a proposal. If council and the applicant(s) are aware of requirements it is easier to make a reasoned and informed decision.

**13. Approval Required:** *No private burial area shall be used for private burials unless the written permission of council has been obtained.*

**It is not sufficient to just consider this guideline. A formal approval of the local authority (council) is required. Otherwise, there may be a breach of the Regulation which may incur prosecution and a penalty.**