

Burial on Private Land

1. Introduction This paper attempts to clarify the requirements that are to be met if a person's body is to be buried in a grave on private land. Firstly, a summary is given of the necessary steps, and then a detailed analysis of the regulations is attempted. It should be noted that some legal aspects are not very clear.

2. Summary of Steps.

2.1 Obtain Council approval of the site. This can be initiated by writing a letter to the Council showing the location of the proposed burial site, preferably with measurements to features of the plan of the land, such as boundaries or corners. Note that the land must be at least 5 ha, and the site must be away from any drinking or domestic water supply catchment area.

You should consider whether permanent access to the site is necessary - keep in mind that the land may be sold and that future owners may not permit access. The only way to ensure permanent access (if that is desired) may be to have a right of carriage way to the site from a public road.

It is very desirable to sink a test bore at the site, in case there is hidden rock that would make the digging impractical. And tell the Council that you have done so.

It would seem best to apply for a burial site, not a cemetery, and of course the obtaining of site approval is far easier beforehand. It would be quite impractical to think about an application after a death has occurred.

2.2 When a death occurs, obviously a Death Certificate is required, from a doctor. In addition, the Council will probably want to issue a Burial Permit. As discussed in section 3 below, the law doesn't seem to be clear on this point. You would need to decide whether to go along with Council, but their requirements are not very onerous. They would like to inspect the grave to ensure 1.2m cover. If the timing makes this awkward, perhaps a shallow cover would suffice until inspection could be arranged, with final filling in afterwards. Council would require the land holder to keep a register of burials.

3. Analysis of Legal Requirements

3.1 Relevant Regulations. The only ones that seem to apply are:-

3.1.1 Public Health (Funeral Industries) Regulation 1987, published 9-10-87.

3.1.2 Ordinance 68 of the Local Government Act, Cemeteries and Burials. Reprinted 9-5-83.

3.2 Analysis of the Regulations.

3.2.1 Public Health (Funeral Industries).

This regulation is divided into six parts. Part 1 is to do with definitions, etc. The only other part that seems relevant is part 111, Prohibitions of Burials in Certain Areas. All the other parts are to do with Undertakers and Mortuaries, Exhumations, Crematories and Miscellaneous.

3.2.2 Part 111 has only two clauses, 29 and 30, and 30 relates only to burial in vaults.

Clause 29(1) prohibits burials except in three categories of localities:-

(a) in a public cemetery,

(b) in a private cemetery,

or (c) on private land.

Thus clause 29 seems to make a clear distinction

between cemeteries on the one hand and burial on private land on the other. Perhaps this distinction needs to be preserved, as it seems a cemetery is much more regulated. Councils vary in their attitude here- Kyogle leans toward no distinction, whereas Lismore in the past has permitted burials on private land, but wasn't into little cemeteries springing up here and there. However, Kyogle has not indicated any opposition to private burials, and in fact has been quite helpful.

Clause 29 (1) (c) requires that "the area of landholding is 5 hectares or more and the location has been approved for that purpose by the local authority."

Clause 29 (2) is also relevant, and states:-
"A person shall not cause, suffer or permit the body of a deceased person to be interred in or on any land contained within a drinking or domestic water supply catchment area."

3.2.3 Ordinance 68.

This is divided into three parts. Part 1 is General, 11 is Cemeteries Under the Control of Councils, and 111 is Cemeteries Not Under the Control of Councils. Part 11 is certainly not applicable, and it would seem that Part 111 is also not relevant. ("Cemetery" is not defined.) However, experience with Councils suggests that some may try to put burial in private property under the same restraints as Cemeteries Not Under Council Control. (See below.)

3.2.4 Part 1 General, has the following clauses which seem to relate:-

Clause 3. The grave must be of a type specified in this ordinance. Thus any specification in any of the Parts would apply. A definition of "grave" is given in clause 2 as any burial place formed in the ground by excavation. With this in mind, there does not seem to be any specification relating to graves in Ordinance 68 except in this Part 1 under clauses 5 and 6, see below.

Clause 4. All burials must be carried out between sunrise and sunset.

Clause 5. The size of the allotment for one grave must be not less than 0.9m by 2.4m nor more than 3.6m by 2.4m.

Clause 6(1) Not more than two adults can be buried in one grave, and the upper surface of a coffin has to be at least 1.2m below the natural surface (unless approval is obtained from the Board of Health). But children under ten years count half, thus four could occupy one grave.

Clause 6(2) If there is more than one body in a grave, there must be at least 0.3m of earth left between each, and when adding the second, this layer must not be disturbed. In other words, if you wish to add later, dig deeper the first time.

Note that there does not seem to be any requirement to use a coffin in a grave on private land. Clause 7 only applies to vaults, and 8, 9 and 10 are about restrictions to sites that Council can make.

3.2.5 Part 111 Cemeteries Not Under Council Control. Although it could be argued that this Part does not apply, some of its requirements are mentioned here as it is probable that Councils will require them:-

Clause 32(1) A register of burials is to be kept. (Schedule C gives a sample.)

Clause 32(2) If the burial was of a still born child the register must show the same.

Clause 33 Access must be available to the register by any person.

Clause 34 Restrictions Upon Internments.

Keeping in mind that it is not at all clear that Part 111 (and therefore this clause 34) applies to burials on private property, it is worth comparing this section with its equivalent in Part 11. In Part 11, clause 23 is labelled "Permit to Bury", and prohibits burial without a Burial Permit unless in an emergency. Clause 24 of Part 11 goes on to say that the permit must not be issued unless the appropriate death certificate is available.

When we come to Part 111, there is definitely no equivalent section requiring a Burial Permit. Clause 34 of Part 111 requires that the person conducting the burial shall have available the appropriate death certificate. The death certificates required are specified by referring back to clause 24 of Part 11, but only to that section of clause 24 which mentions the death certificates, not to the section which mentions Burial Permits.

Thus it would appear that Councils are not required by law to issue Burial Permits either for burials in cemeteries not under Council control or for burials in private land, but we suspect that they will want to do so. It is probably not very onerous to go along with Council's wishes if you choose that path.

L. Corben. Aug 89.

Copies of subscribers (S) and Internment arrangements on private rural land (F) sent on 2/3/92 to :-

Brian Barkworth-7 Smith st, Uki (S) + (F)
Dharmananda - Ross Rd., The Channon. (S)
N.E.C. (S)
N.N.C. (S)
A Scholes - P.O.Box 282, Sth. Grafton.(S) + (F)
Paul McGuire - c/- P.O. Rockvalley. (S)
Moondani - Box 15 Nimbin. (S)
Paradise Valley (Secretary) - Crofton Rd. (S)
Mark R. + Linda Gould - Dreaming Camp, Hensen Rd. (S)
Co-ordination Co-op - Tuntable Falls (S)
Lilyfield, Murwillumbah Rd. Lillian Rock. (S)+(F)
Paul Jameson, Main Arm Rd. Mullumbimby. (S)+(F)
Nullum Co-op, Rolands Crk. Rd. Uki (S)+(F)
Peter Hamilton - Bodhi Farm. Wallace Rd. (S)
Nmbngee - Gwynnes Rd. Lillian Rock. (S)+(F)
Avalon (Secretary)- Lot 1, Stoney Chute. (S)+(F)
Sphinx Rock (Secretary) - Sphinx Rock via Uki. (S)+(F)
Blackhorse Crk. (Sec.) - Eden Crk Rd, Via Kyogle (S)+(F)
Andrew Murphy-Couchy Crk. Co-op. Via Chillingham (S)+(F)
Yulunga, - Williams Rd, Barkersvale. (S)+(F)
Joy Wallace - C/- Green's, Kyogle Rd, Lismore (S)+(F)
Blue Springs (Sec.) - P.O.Box 69, Nimbin. (S)
McKellar Range Trust (Sec.) - Rockvalley. (S)
Pinpuna - Zouch Rd., Stoney Chute. (S)
Pauline Davis - P.O. Box 158 Nimbin. (S)
S.Sledge + D.Voinst - Creemont RMB. Lillian R. (S)+(F)
Billen Cliffs - Martin Lane, Larnook. (S)
Cornucopia - P.O. Box 231 Nimbin. (S)
Pretty Gully - Byrril Crk. Rd., Byrril Crk. (S)+(F)
Barjuma - Lillian Rk. Rd. Nimbin. (S)+(F)
Carl Pickard -107 Beelarong St. Morningside, 4170 (S)

PLEASE
CIRCULATE
WITHIN YOUR
COMMUNITY

TELEPHONE (0661) 25 0500
FAXSIMILE (0661) 25 0400

The Council of the City of Lismore

Council Chambers
Oliver Avenue, Goonellabah, N.S.W.

COMPLIMENTS OF
PAN COMMUNITY
COUNCIL

P.O. BOX 23A
LISMORE, 2480
DX 7781

ALL COMMUNICATIONS TO
GENERAL MANAGER/TOWN CLERK

IN REPLY PLEASE QUOTE

KW:VLW

CONTACT

Mr Wade-250500

FURTHER ENQUIRIES

Environment & Development Services

January 15, 1992

<title>
<name>
<street>
<town>

Dear Sir/Madam,

CEMETERIES ON PRIVATE RURAL LAND AND INTERMENTS OF DECEASED PERSONS IN SAME

Council wishes to inform your community that the creation of any cemeteries on private rural land and the interment of any deceased persons requires a formal application and approval from Council before any interments may take place on the property.

Council may approve of the establishment of a cemetery on private land where the following conditions can be complied with.

1. Application in writing shall be from the owner/s of the land and shall include the following information:-
 - (a) Proof of ownership of the land.
 - (b) Written approval of the Body Corporate Neighbourhood Association or other similar owner governing body where the property is held in such ownership. Such approval shall refer to the resolution of the governing body granting its approval to the application and shall include approval of the proposed cemetery location, number of proposed allotments and the like.
 - (c) Accurate details to an approved scale showing the precise location of the cemetery as related to permanent existing observable landmarks. Council reserves the right to require that the location of the cemetery be set out and be verified by a registered surveyor.
 - (d) Accurate details to an approved scale showing the layout of the cemetery including each grave site and proposed dimensions of same. (sites are usually 1.2 m x 2.4 m)
2. The land on which the cemetery is to be located shall have minimum area of five (5) hectares and such land shall not be contained within a drinking or domestic water supply catchment area.

POSTED 2-3-92

3. The proposed cemetery shall be sited a minimum of 100 metres from the boundary of the land and any habitable buildings (other than the applicants dwelling) on the land.
4. A maximum of ten (10) burial allotments shall be provided in the cemetery. The controlling body of the land shall keep a register of all interments within any cemetery on the land.
5. The boundaries of the cemetery shall be permanently marked with posts, fencing or other approved method.
6. The operation of the cemetery and the interment of deceased persons in same are carried out in accordance with the provisions of Ordinance No. 68 of the Local Government Act and the Public Health Act, 1991 Regulations.
7. No interment shall take place unless a "Permit for Burial" is issued by Council. A copy of the death certificate issued by a medical practitioner or the coroner is to accompany the application for a Burial Permit, together with the application fee.
8. No interments in the cemetery shall take place until the excavated grave has been inspected by Council's authorised person.
9. The application fee for establishment of a private cemetery on rural land shall be set by Council in its annual fees and charges (the fee for 1992 shall be \$130.00). This fee is not refundable.
10. The application fee for a "Permit for Burial" including the grave inspection shall be set by Council in its annual fees and charges. (the fee for 1992 shall be \$80.00)
11. Any other criteria considered necessary by the Chief Environmental Health Officer.

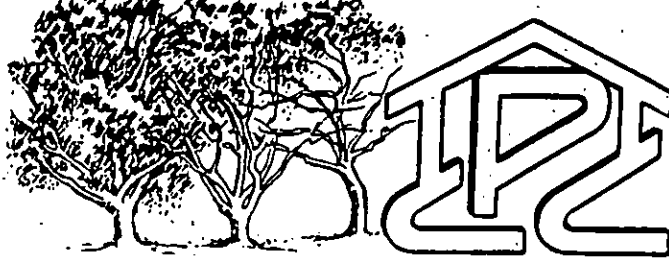
Council requests that your community consider it's needs in relation to the provision of a cemetery or cemeteries on the Multiple Occupancy, as this issue may be difficult to resolve expeditiously if an urgent interment is necessary.

For further enquiries please contact Council's Senior Environmental Health Officer Mr. Kieran Wade, at the Council's Administration Centre, Oliver Avenue, Goonellabah, on telephone 250 500, between the hours of 8.30am and 10.00am, Monday to Friday.

Yours faithfully,

T J Doherty
CHIEF ENVIRONMENTAL HEALTH OFFICER

per:-



PAN-COMMUNITY
COUNCIL
P.O. BOX 102,
NIMBIN 2480

19th. February, 1992.

Dear Subscriber,

At the last Pan Community Council (P.C.C.) meeting, it was decided to dispense with the monthly newsletter for the time being and concentrate that energy towards a market stall every month at the Nimbin market. The next market being 23rd. Feb. 1992. We plan on having a meeting at the stall at 1pm on the same day.

We have appreciated your financial support over the past months but will refund your yearly subscription if you write to us requesting this action. We would be more than happy to keep your subscription as a donation.

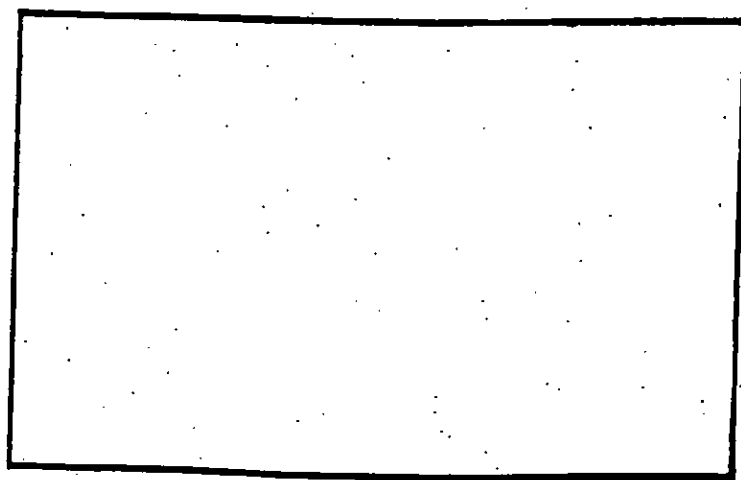
P.C.C. members still staff the Nimbin Neighbourhood Centre on Saturdays, for enquiries, or write to the above address.

Yours Faithfully

Judy Lancaster - Treasurer

March 22nd, - Nimbin Market + meeting at 1pm

Please note that the P.C.C. festival has been cancelled as the property on which the festival was to be held, is being sold. Check at Nimbin Neighbourhood Centre on Mondays or Saturdays for further information or write to the above address.



P.O. Box 102
Nimbin

if not claimed please return to:

2480