

# Cemetery closure and use of land for other purposes

## Information Sheet

December 2019

The [Burial and Cremation Act 2019](#) sets out the process for the closure of cemeteries.

Cemetery closure means that the cemetery manager is no longer accepting new interments, can negotiate with holders of an exclusive right of burial to be buried in another cemetery, and must hand over cemetery records to the State Archivist. Cemetery closure does not allow for alternative uses.

### Cemetery closure

A cemetery manager may apply to the Regulator to close a cemetery if it is 50 years since the last interment. This timeframe cannot be reduced.

The process to close a cemetery is outlined below:

**1. The cemetery manager must publish a notice of intention that the cemetery is to be closed (section 64(1)(a) and (2)).**

The notice must be published at least 60 days before an application to close the cemetery is made to the Regulator.

The notice must contain a statement that a person may provide information, or make a submission to the cemetery manager in relation to:

- the records of the cemetery;
- an exclusive right of burial;
- whether a person has the intention of having their remains interred; or
- whether there are any agreements in place for the cemetery manager to maintain the graves.

**2. Cemetery managers can apply to the Regulator to close all, or any portion, of the cemetery (section 64(4)).**

The application must be in the approved [Cemetery Closure Application](#) and be accompanied by:

- the number of exclusive rights of burial (or interment) that are yet to be fulfilled;
- a copy of the notice and any information provided under the notice;

- a copy of the cemetery records; and
- any other information the Regulator considers relevant.

### **3. The Regulator assesses the application (section 64(5)).**

The Regulator may consider:

- the cultural and historical value of the cemetery, including whether the cemetery contains graves of persons of historical or cultural significance to the community; and
- any other matter the Regulator considers relevant.

### **4. Approval or refusal of application (can apply conditions) (section 64(6)).**

The Regulator may refuse to approve the application to close the cemetery or approve on any condition he or she thinks fit.

### **5. Ongoing obligations.**

On closure the cemetery manager must forward all records relating to the closed cemetery to the State Archivist (section 66(1)).

A closed cemetery is still a cemetery under the Act (section 4(2)) and obligations relating to maintenance of the cemetery and allowing access continue to apply.

If a person holds an exclusive right of burial in a closed cemetery, the cemetery manager must grant the holder of the right an exclusive right of burial in another plot or portion of the cemetery that is not closed or in another cemetery. The cemetery manager must also move to the new plot any human remains, coffin, vault, monument or other thing in the plot or portion in respect of which the original exclusive right of burial was held (and must comply with the Act in carrying out the exhumation). If there is no agreement with the holder of the exclusive right of burial, the cemetery manager must pay the costs of commercial arbitration (sections 67 and 85).

## Use of land for other purposes

If a cemetery has been closed and at least 100 years have passed since the last interment, a cemetery manager may apply to the Regulator to take certain actions in respect of the closed cemetery.

Any action below is subject to conditions placed on the closed cemetery, or on the closure of the cemetery. The cemetery manager may apply to the Regulator for conditions placed on the closed cemetery, or closure of the cemetery, to be removed or varied.

### Removal of monuments (other than tombstone)

After 100 years since the last interment, and only if the cemetery has been closed, the cemetery manager can remove kerbs, railings and monuments (other than the tombstone) and cover the area with grass. No application is required.

### Closed cemetery laid out as a park or garden OR exhumation and re-interment of human remains

After 100 years since the last interment, and only if the cemetery has been closed, a cemetery manager can apply to the Regulator to lay out a closed cemetery as a park or garden for use as a place of quiet recreation only, or commence the process to exhume and re-inter human remains (sections 68 and 69).

- At least three months before applying to the Regulator, the cemetery manager must publish a notice setting out their intention to take the specified action (section 68(3)).
- The cemetery manager must apply to the Regulator to take the specified action (section 68(1)).
- The Regulator may approve the application subject to any conditions the Regulator thinks fit, refuse the application, or request further information from the cemetery manager (section 68(4)).
- If the land has been consecrated according to the rites or practices of a religious or cultural group, the cemetery manager must offer the cemetery (or portion) as a gift to that group (section 68(6)).
- If the Regulator approves the application (and the cemetery is not accepted as a gift by a religious or cultural group within 12 months) the cemetery manager may take the specified action.

Additional requirements relating to the exhumation and re-interment of human remains require the cemetery manager to:

- give public notification in a newspaper circulating in the relevant municipal area on 3 occasions at intervals over a 12 month period of the intention to demolish and remove graves, monuments and vaults, or to exhume human remains. The cemetery must prepare a statement setting out the details of graves to be demolished or removed and make this available for inspection free of charge (section 70); and
- apply to the Director of Public Health for permission to exhume human remains (section 30).

A cemetery from which all human remains have been removed in accordance with this Act ceases to be a cemetery (section 72(1)).

## Process to change use before 100 year time period

Section 71 provides that a cemetery manager may apply to the Regulator to reduce the 100 year timeframe so that they can take certain action in respect of a closed cemetery, including:

- the removal of monuments (other than a tombstone);
- laying out the closed cemetery as a park or garden; or
- exhuming and re-interring human remains.

After making an application, the cemetery manager is to publish a notice identifying the closed cemetery and the proposed action, and specifying that any lineal descendants of a person interred in the closed cemetery may provide the cemetery manager with a response in respect of the intended action (section 71(3)).

The notice must identify the cemetery, the action that is proposed and the timeframe to receive information (at least 21 days is recommended).

Any information received in response to the notice must be provided to the Regulator.

In making a decision the Regulator may also consider (section 71(6)):

- the cultural and historical value of the cemetery, including whether the cemetery contains graves of persons of historical or cultural significance to the community;
- whether the intended action may be prejudicial to public health or public safety; and
- any other matter the Regulator considers relevant.

The Regulator may refuse to approve the application or approve on any condition he or she thinks fit.

While exceptions to the 100 year period may be applied for, community and descendant support would be high amongst the Regulator's considerations to approve (and for any conditions that may be imposed).