

## **Annexure A: Perpetual Interment Terms and Conditions**

These terms and conditions are part of the agreement between Wollongong City Council (we, us) and the interment right holder(s) (you, your).

### **A.1. Perpetual interment right**

- (a) This agreement gives you the exclusive right to a specific burial place or place for ashes, permanently. This is called a perpetual interment right. As the person who has this right, you are the interment right holder.
- (b) As the interment right holder, you can nominate who is interred into the interment site. This is known as the 'person(s) to be interred'. You may nominate:
  - Yourself or another person, if you are buying the right 'pre-need' - which means you do not immediately need a burial place or a place for ashes, or
  - A person who is deceased, if you are buying the right 'at-need' - which means you need a burial place or a place for ashes now.
  - As the interment right holder, you will automatically have permission to be interred into the reserved or partly occupied site in which you hold the right for, unless we have something in writing to state otherwise.
- (a) An interment right certificate will be issued for reserved burial sites and a signed copy of the contract will be provided to all parties. Council will file their copy in our burial register. We must keep this register up to date and available to the public for inspection or for copies to be made on payment of a fee, subject to any applicable privacy laws.
- (b) A perpetual interment right does not include any rights or title in the land, roads, building or other structures in the interment site or on the premises.
- (c) Both parties to this agreement (you and us) agree that changes to the Cemeteries and Crematoria Act 2013 (the CC Act) and other laws can affect perpetual interment rights.
  - If you buy a perpetual interment right when you are 'at-need' the contract will describe the services that you have chosen.
- (d) If you buy a perpetual interment right to use in the future ('pre need'), you are buying the right now but (unless the contract states otherwise) you will need to pay for the interment service (the burial or placement of a body or ashes in the interment site) at the time of need. Whether you have selected related services (for example, a memorial service) within the contract or choose to add them later when needed, the price for these related services will be the price that applies in future when you need those services (if you still need them), unless otherwise specified in the contract
- (e) We must issue an order for interment before a person can be buried or their ashes placed in the interment site. We will contact you if we require any further information to do this. The only alteration to this will be to fulfill specific cultural requirements around burial timeframes, such as with Islamic burials. In this case, a burial booking request in writing will be accepted, with an interment right issued at the first available opportunity when the Memorial Gardens and Cemeteries office opens.

### **A.2. Memorials, maintenance and goods and services**

- (a) As the interment right holder, you are the person authorised to place a memorial or monument at the interment site and deal with it in future as long as you comply with the below requirements.
- (b) You must have our written approval to place a memorial or monument at the interment site. We will guide you on the type of memorial or monument that we will approve. We can prohibit, change or remove a memorial or monument if it does not have our approval or meet the requirements of the approval we provided.

- (c) If you are buying a memorial or monument from us as part of this contract then it is already approved, although some types of memorial/monument are only approved for specific interment sites. You can find out more by visiting our office or our website.
- (d) You are not allowed to place anything at the interment site that we believe is a public safety risk. Anything we believe is hazardous may be removed by us without notice.
- (e) We must maintain the premises regularly, at least to the minimum standard the law requires us to meet. This includes your interment site, with the exception of any memorial or monument built on your site. We may reduce the maintenance level in the future where we are no longer offering future interments at the premises.
- (f) You are responsible for the costs or activity needed to install or maintain a memorial or monument unless otherwise specified in the contract.
- (g) Council is not responsible for the construction, maintenance or repairs of any memorial or monument. If in the course of undertaking our work, a memorial or monument is damaged by council staff, our office will contact the Interment Right Holder with advice and direction on how to lodge an insurance claim with council for damaged property and have it repaired.
- (h) We will take all reasonable steps to make sure that our goods and services meet any religious or cultural requirements outlined in the contract as well as provide contact details for approved monumental masons to carry out the construction of memorials and monuments.
- (i) You can buy extra goods and services from us after the agreement has started (which must be agreed in writing and will be a variation to this agreement). These items are not part of the total price. You must pay the rates that apply for them at the time. For example, bronze memorial plaques, pillars and bases.

### **A.3. Price and payment**

- (a) If you are buying the perpetual interment right at the time of need (at need), you agree to pay the total price for the perpetual interment right and any other goods and services selected at the start of our agreement, as listed in part C of the contract.
- (b) If you are buying the perpetual interment right to use in the future (pre-need), you agree to pay for the perpetual interment right now (as listed in part C of the contract) and the interment service now or later at the time of need (in accordance with part C of the contract). You also agree to pay for any other related services selected at item 6 of the contract later, at the time of need (if you still need them).
- (c) We update our policies, guides, rules and process documents from time to time in line with our needs and any changes in the law. The updated details will apply to this agreement, except that the updated details will not affect the agreed price or agreed services listed in the contract.
- (d) You will pay for the items included in this agreement as set out in part C of the contract. We can charge you interest on the items listed in part C if you pay us late.
- (e) Goods and services tax (GST) applies to certain (not all) goods and services that you buy from us. You must pay GST at the same time as you pay for your goods and services. If the contract does not state that GST applies to what you are buying, then you do not have to pay GST.
- (f) The invoice provided by our office outlines all of the payment options that are available to you. Upon receipt of payment, a payment receipt will be provided.

### **A.4. Changes and cancellations**

- (a) You can ask us to transfer ownership of the perpetual interment right to someone else. We must respond to a transfer request within a reasonable time. We charge a fee for transferring ownership.
- (b) Perpetual interment rights can be held by 1 person (solely) or 2 or more people (jointly):
  - When a sole interment right holder dies, we must transfer the perpetual interment right to the person named in their will as Executor(s), or act as the law tells us if the interment right holder did not leave a will.

- When a joint interment right holder dies, we must transfer the perpetual interment right to the surviving interment right holder(s).
- (c) You must talk to us if you want to transfer your rights or duties under this agreement to someone else. Your changes must be legal, and we must agree to them in writing.
- (d) Either party (you or we) can waive their own rights under this agreement by telling the other party in writing.
- (e) We can cancel a perpetual interment right when:
  - the interment site has not been used within 50 years of the time when it was granted (as per the CC Act). The 50-year time period may change if the law changes.
  - we follow all other cancellation requirements under the CC Act.

#### A.5. End of agreement

- (a) You or we can end the agreement if the other party breaches the agreement and either:
  - the breach can be fixed, but the party does not fix it within **30 days** of being told in writing about the breach, or
  - the breach cannot be fixed.
- (b) You can end this agreement by writing to us before you want it to end, and in line with clause 5(c) below.
- (c) You can only end this agreement if the interment site has not been used for a burial or to place ashes.
- (d) The agreement automatically ends when you have paid us all the fees you owe and either:
  - the burial or placement of ashes in the interment site has been completed, or
  - we have cancelled your perpetual interment right, in line with section 52 of the CC Act.
- (e) Some rights and duties that you and we have under this agreement continue after the agreement has ended. These include the rights and duties set out in:
  - clauses 1(c), 2(b), 2(d), 2(e), 2(g), 2(h), 2(i), 4(c), 4(d), 5(f), 5(g), 7
  - clause 6 (for as long as legally required)
  - any other terms (including Contract details and Definitions) which are intended to continue after the agreement has ended.
- (f) Where an exhumation has taken place in line with section 66 of the CC Act, the rights and duties set out in clauses 2(b), 2(d), 2(e), 2(g), 2(h), 2(i), 4(c), 4(d), 7 that you and we have under this agreement will no longer continue.
- (g) If any part of the agreement cannot be enforced in court, then that part will be treated separately but the rest of the contract stands.

#### A.6. Personal information

- (a) Privacy Notification (Privacy and Personal Information Protection Act 1998 – Section 10) - The information that Council is collecting from you via this application may be personal information for the purposes of the Privacy and Personal Information Protection Act 1998. The intended recipients of the personal information are officers within Council. Any person may apply to inspect the application in accordance with the Government Information (Public Access) Act 2009. The supply of the information by you is voluntary and if you cannot, or do not wish to provide the information sought, Council will be unable to process your application. You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with legislation. Enquiries concerning this matter can be addressed to Council by telephoning 4227 7111.

- (b) You agree that we need to collect and store personal information in line with this agreement, the CC Act and privacy legislation. We will use this personal information to provide the rights, goods and services this agreement covers.
- (c) We must manage personal information in line with our privacy policy and privacy legislation. We may need to share it with other regulatory authorities, if the law requires us to do so.
- (d) You must not give us other people's personal information unless they agree that we can have it and use it.
- (e) You must make sure that we have correct and up-to-date details (including contact details) for you and any next of kin or secondary contact which is necessary for us to provide the rights, goods and services this agreement covers. Please contact our Wollongong Memorial Gardens and Cemeteries Office if you wish to check, update or correct any of the personal information that you give us.
- (f) We will write to you or call when we need to tell you something, and we will use the contact details set out in the contract, or the updated contact details you have given us.

#### **A.7. Consumer protections, disputes and complaints**

- (a) We will follow all relevant laws when we provide you with the rights, goods and services included in this agreement. This includes complying with Australian Consumer Law, privacy laws, work health and safety law, the CC Act, and public health laws.
- (b) Nothing in the contract changes or limits your legal rights as a consumer. Find out more about these rights at <https://www.accc.gov.au/consumers/buying-products-and-services>.
- (c) We and you agree to follow our dispute resolution process if there is a disagreement about anything in this agreement. You can find and access our complaints and dispute resolution process at [www.wollongongmemorialgardens.com.au](http://www.wollongongmemorialgardens.com.au)
- (d) Our dispute resolution process is consistent with the CC Act, and gives us the power to decide who holds the perpetual interment right for a particular site (on application), based on the CC Act.
- (e) To give us your feedback or to complain, please contact our Wollongong Memorial Gardens and Cemeteries Office – 4227 7780.
- (f) If you are not satisfied with how we deal with your complaint, our dispute resolution process shows you who to contact next. In addition, you can also contact the government authority that regulates us: Cemeteries & Crematoria NSW. Visit <https://www.cemeteries.nsw.gov.au/complaints-and-enquiries/complaints>.
- (g) The laws of New South Wales govern this agreement. If you or we are unhappy with the dispute resolution outcome and the complaint is taken to court, you or we will use a New South Wales court.

## **A.8. General Site Conditions**

### **General Public Requirements Within the Cemeteries & Memorial Gardens**

A person must **NOT** do any of the following within Council's Cemeteries & Memorial Gardens -

- (a) Damage, deface, interfere with, alter or remove any monument, memorial, foundation, vault, table, headstone, gravestone, kerbing, rail or other structure from a Cemetery without Council's written permission.
- (b) Disturb or interrupt any service, procession, cortege, gathering, meeting or assembly.
- (c) Bury, inter or exhume any human remains, whether cremated or not, without Council permission.
- (d) Enter or remain at the Cemetery & Memorial Gardens at night, between the hours of sunset and sunrise.
- (e) Cause or permit an animal that is NOT under the person's control or restraint, to enter or remain in the Cemetery or Memorial Gardens. This does not prohibit a person from being accompanied by a companion dog, whilst the person is at the Cemetery or Memorial Gardens.
- (f) Take part in any gathering, meeting, or assembly, except for the purpose of a religious, research, historical, educational or other ceremony or burial or commemoration.
- (g) Place fresh flowers unless in approved vases (unbreakable containers). A maximum of two vases per site. Excessive arrangements or wilted arrangements will be removed.
- (h) Place artificial flowers unless in Council approved vases in the approved area of the plot, however arrangements must be replaced when faded, weathered or otherwise degraded.
- (i) Place ceramic or glass objects that are fragile or breakable.
- (j) Place metal objects, or any other objects that are likely to cause a risk to the health or safety of visitors or workers at the Cemetery or Memorial Gardens.
- (k) Construct or install any monument, memorial, foundation, headstone, gravestone, kerbing, railing, pebbles, matting or other structure on a burial plot or plots, unless it is of a material and design carried out to a standard of workmanship approved by the Operations Manager, through the appropriate approval process.
- (l) Carry out any adornment including large ornaments and candle holders on a burial plot or plots unless approved by the Cemetery Coordinator and made or installed to a standard of workmanship approved by the Cemetery Coordinator.
- (m) Place or install any item that extends beyond the constructed headstone, monument or niche, including pot plants, flower holders or live plants; that includes no items placed on grassed or landscaped areas both within burial plots and general areas.
- (n) Glue or permanently attach items to gardens wall sites, lawn cemetery concrete beams or any monumental structure.
- (o) Use a hose for the washing of monuments.
- (p) Erase, correct, or require the erasure or correction of, working of any inscription that has been constructed installed, made or carried out -
  - (q) a Without Council's written consent
  - (r) b Otherwise than in accordance with an approval given by Council.
- (s) Engage in trade or commerce.
- (t) Distribute any circular, advertisement, paper or other printed, drawn, written or photographic matter unless such item is a funeral booklet or order of service.
- (u) Drive a vehicle, or ride a horse, except on a road provided for that purpose.

- (v) Park a motor vehicle on any known burial place, verge or plantation or in a manner that is likely to impede traffic or detract from the sanctity of the Cemetery or Memorial Gardens.
- (w) Camp or reside on any land in the Cemetery or Memorial Gardens.
- (x) Possess or consume alcohol or intoxicating beverage or substance, unless undertaken responsibility as part of a commemoration.
- (y) Remove any dead timber, logs, trees, flora, whether standing or fallen.
- (z) Create a rockery or pebble garden unless specific permission has been given by Council.
- (aa) Plant any tree, shrub or other herbage or plant in any place unless written permission has been obtained from Council.
- (bb) Kill, capture, or in any way interfere with any animal, bird or other fauna, whether native or introduced.
- (cc) Bring into or leave, in the Cemetery or Memorial Gardens, any rubbish, refuse, scrap metal, rock, soil, sand, stone or other such substance.

To assist on the operation of the Cemeteries or Memorial Gardens, Council will make every attempt to liaise with the Interment Rights Holder prior to any action being taken. Council may request a person leaves or remove any person trespassing or causing annoyance, interference or nuisance or otherwise committing a breach of these regulations. Council may rectify situations including removing items placed and considered not appropriate, hazardous or contrary to the regulations, after attempting to liaise with families, without notice. Council will make every effort to contact the Interment Right Holder or his/her representative on maintenance issues, but safety of the site and its users will be paramount to any decision made.