



**Cairns Regional Council
Local Law No. 7
(Human Remains and Cemeteries) 2016**

Current as at 1 March 2016

Cairns Regional Council

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 7 (Human Remains and Cemeteries) 2016*.

2 Purposes and how they are to be achieved

- (1) The purpose of this local law is to regulate the appropriate treatment of human remains in a befitting and respectful way.
- (2) The purpose will be achieved by regulating the handling of human remains through permits which can be conditioned to require befitting and respectful treatment of remains.

3 Relationship with other laws

This local law is:

- (a) to be read in conjunction with *Local Law No.1 (Administration) 2016* which contains provisions and definitions that apply to all local laws;
- (b) is made under the powers in Chapter 3 of the LGA; and
- (c) otherwise in addition to, and does not derogate from, laws regulating land use planning and development assessment.

Part 2 Disturbance of human remains buried outside a cemetery

4 Prescribed activity

- (1) Disturbance of human remains buried outside a cemetery is a category 1 prescribed activity.
- (2) To obtain a permit an application must be made to the local government on the approved forms required under *Local Law No. 1 (Administration) 2016* and this local law.

5 Activities that do not require approval

Nil.

6 Additional criteria for the granting of a permit

The following criteria must be considered for the granting of a permit:

- (a) whether the human remains have been buried for not more than three (3) days or not less than twelve (12) months.
- (b) written agreement of the owner, and anyone else with a registered interest in, the land on which the remains are buried;

- (c) a written statement of the reasons for the proposed disturbance;
- (d) the expressed wishes of the deceased and the deceased's family; and
- (e) a written statement of how and when the remains are proposed to be disturbed.

7 Conditions that must be imposed a permit

The following types of conditions must be imposed on a permit:

- (a) The disturbance of the human remains must only be carried out by a recognised undertaker; and
- (b) The permit must:
 - (i) stipulate the day on which the disturbance of human remains must be performed; and
 - (ii) stipulate the hours between which the disturbance of human remains must be performed.

8 Conditions that will ordinarily be imposed on a permit

The following types of conditions will ordinarily be imposed on a permit where applicable requiring the permit holder, its contractors or agents to:

- (a) give notice to the local government of the disturbance of human remains to enable an authorised person to enter the land and inspect the grave at any time either before or after the disturbance;
- (b) remove all markers or means of identification on or around the grave if the human remains are removed from the grave and dispose of appropriately; and
- (c) provide the local government with confirmation of the disturbance of human remains within 14 days of the event.

9 Spillage of waste, contaminant or other material

- (a) Any spillage of waste, contaminant or other material must:
 - (i) be cleaned up immediately; and
 - (ii) not be cleaned up by hosing, sweeping or otherwise releasing the waste, contaminant or material into any stormwater system or other waters.
- (b) The permit holder must take specified measures to:
 - (i) prevent harm to the health or safety of persons who may be involved in, or effected 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.

Part 3 Burial or disposal of human remains outside a cemetery

10 Prescribed activity

- (1) Burial or disposal of human remains outside a cemetery is a category 1 prescribed activity.
- (2) To obtain a permit an application must be made to the local government on the approved forms required under *Local Law No. 1 (Administration) 2016* and this local law.

11 Activities that do not require approval

Nil.

12 Additional criteria for the granting of a permit

- (1) The following criteria must be considered in deciding whether or not to grant a permit:
 - (a) evidence of the identity of the deceased person and the applicant's relationship (if any) with the deceased;
 - (b) the expressed wishes of the deceased and the deceased's family;
 - (c) whether in the opinion of an authorised person there is a special family, personal or historical association between the deceased person and the place at which it is sought to bury the body of that person; and
 - (d) whether there is written agreement of the owner, and anyone else with a registered interest in, the land on which the remains are to be buried or place of disposal of the remains on the land.
- (2) The following criteria may be considered in deciding whether or not to grant a permit:
 - (a) a written statement of how and when the remains are proposed to be disposed of or buried; and
 - (b) the nature of the ceremony (if any) to be conducted at the time of the burial.

13 Conditions that must be imposed on permits

The following types of conditions must be imposed on a permit:

- (a) The permit holder, its contractors or agents are required to give notice to the local government of the preparation of the grave to enable an authorised person to enter the land and inspect the grave before the burial; and
- (b) minimum depth of graves for adults and children;
- (c) minimum length and width of graves for adults and children;

- (d) minimum depth between the top of a coffin and the surface of the ground;
- (e) minimum clearance between the sides of a coffin and the sides of a grave;
- (f) maximum number of bodies which may be buried in a single grave;
- (g) the name and contact details of the undertaker or other person performing the interment or inurnment;
- (h) the day on which the interment or inurnment must be performed; and
- (i) the hours between which the interment or inurnment must be performed.

14 Conditions that will ordinarily be imposed on permits

The following types of conditions will ordinarily be imposed on an a permit where applicable:

- (a) the permit holder, its contractors or agents supply the Global Positioning System (G.P.S) coordinates of the grave to the local government, so that the details of the deceased person can be placed on the property record; and
- (b) the permit holder, its contractors or agents to erect a marker or means of identification on or around the grave and stipulate the information required to be recorded on it.

Part 4 Disturbance of human remains in a cemetery

15 Prescribed activity

- (1) Disturbance of human remains in a cemetery is a category 1 prescribed activity.
- (2) To obtain a permit an application must be made to the local government on the approved forms required under *Local Law No. 1 (Administration) 2016* and this local law.

16 Activities that do not require approval

Nil.

17 Additional criteria for the granting of a permit

- (1) The following criterion must be considered in deciding whether or not to grant a permit:
 - (a) whether the human remains have been buried for not more than three (3) days or not less than twelve (12) months;

(2) The following criterion may be considered in deciding whether or not to grant a permit:

(a) a written statement of the reasons for the proposed disturbance.

18 Conditions that must be imposed on permits

The following types of conditions must be imposed on a permit where applicable requiring the permit holder, its contractors or agents to:

(a) remove any monuments on the existing grave and dispose of appropriately in the opinion of an authorised person;

(b) ensure that the coffin, body, ashes or other remains disinterred are removed under the supervision and to the satisfaction of the local government;

(c) ensure that the grave is opened and closed by the local government; and

(d) ensure that exhumation is carried out by a recognised undertaker.

19 Conditions that will ordinarily be imposed on permits

The following types of conditions will ordinarily be imposed on a permit where applicable to:

(a) regulate the manner of preparation of the grave;

(b) stipulate the day on which the disturbance of human remains may be performed; and

(c) stipulate the hours between which the disturbance of human remains may be performed.

Part 5 Burial or disposal of human remains in a cemetery

20 Prescribed activity

(1) Burial of human remains or inurnment in a local government cemetery and the erection of a memorial vault or columbarium are category 1 prescribed activities.

(2) To obtain a permit an application must be made to the local government on the approved forms required under *Local Law No. 1 (Administration) 2016* and this local law.

21 Activities that do not require a permit

Nil.

22 Additional criteria for the granting of a permit

The following criteria must be considered in deciding whether or not to grant a permit:

- (a) evidence of the identity of the deceased person and the applicant's relationship (if any) with the deceased;
- (b) date of interment or inurnment;
- (c) cemetery of interment or inurnment;
- (d) provision of an allocated plot;
- (e) name and contact details of the recognized undertaker or other person performing the ceremony;
- (f) a written statement as to who will conduct the burial or inurnment; and
- (g) a written statement as to details as to how the proposed burial of human remains, inurnment or erection of a memorial is to be undertaken.

23 Conditions that must be imposed on permits

The following types of conditions must be imposed on a permit where applicable:

- (a) minimum depth of graves for adults and children;
- (b) minimum length and width of graves for adults and children;
- (c) minimum depth between the top of a coffin and the surface of the ground;
- (d) minimum clearance between the sides of a coffin and the sides of a grave;
- (e) maximum number of bodies which may be buried in a single grave;
- (f) the name and contact details of the undertaker or other person performing the interment or inurnment;
- (g) the cemetery of the interment or inurnment;
- (h) the allocated plot for the interment or inurnment;
- (i) the day on which the interment or inurnment must be performed; and
- (j) the hours between which the interment or inurnment must be performed.

24 Conditions that will ordinarily be imposed on permits

The following types of conditions will ordinarily be imposed on a permit where applicable:

- (a) the time and place of service;
- (b) the arrival time at cemetery;
- (c) the dimensions of the coffin or casket; and
- (d) the specifications of the proposed memorial.

Part 6 Erection of a memorial, vault or columbarium

25 Prescribed activity

- (1) The erection of a memorial, vault or columbarium is a category 1 prescribed activity.
- (2) To obtain a permit an application must be made to the local government on the approved forms required under *Local Law No. 1 (Administration) 2016* and this local law.

26 Activities that do not require a permit

Nil.

27 Additional criteria for the granting of a permit

The following criteria must be considered in deciding whether or not to grant a permit:

- (a) construction details of any memorial, vault or columbarium to be erected;
- (b) the proposed location of the memorial vault or columbarium;
- (c) details of the finish proposed to any memorial vault or columbarium, including wording to be used and evidence of the applicant's relationship (if any) with the deceased; and
- (d) for a memorial whether the ashes or other remains are placed in a columbarium, vault or grave.

28 Conditions that must be imposed on permits

The following types of conditions must be imposed on a permit where applicable.:

- (a) approval of the design and materials of construction of the memorial, vault or columbarium (as a separate approval to any approval required under the *Building Act 1975* or any other law);
- (b) the maintenance and repair of the memorial, vault or columbarium by a person other than the local government;
- (c) any inscription plate to be erected in a cemetery must:
 - (i) be of uniform quality and construction as prescribed by the local government; and
 - (ii) be supplied by the local government on payment of the prescribed fee; and
- (d) the demolition and removal of the memorial, vault or columbarium by the local government if it falls into a state of disrepair.

29 Conditions that will ordinarily be imposed on permits

The following types of conditions will ordinarily be imposed on a permit where applicable:

- (a) ashes or other remains must not be placed in a columbarium, vault or grave unless contained in a sealed receptacle;
- (b) ashes or other remains in a columbarium or vault must have a memorial identifying the deceased affixed to or adjacent to the niche in which they are placed; and
- (c) the placing of flowers and tokens on graves or memorials including the prohibition of artificial flowers.

Part 7 Local government cemeteries

30 Application of this part

This part applies to all local government cemeteries.

31 Preparation of graves by local government

- (1) When an application under section 20 has been approved, the local government must use its best endeavours to have the required grave dug and available for use at the required time.
- (2) Notwithstanding subsection (1), the local government may, at the time of receipt of the application or at any later time, advise the person responsible that, by reason of weather, ground condition, difficulty of excavation or any other reason:
 - (a) the grave will not be ready until a later hour in the day proposed for the burial or a day later than that proposed for the burial; or
 - (b) the burial must take place in another grave plot or at another local government cemetery.

32 Transport of body

A person must not bring a body into a local government cemetery for burial unless it is:

- (a) brought in for the purpose of burial pursuant to an approval under this local law; and
- (b) contained in a coffin of sound construction with an identifying name plate.

33 Funerals to be conducted by an undertaker

- (1) All funerals in a cemetery must be conducted by an undertaker or as stated in a permit.

- (2) The next of kin and legal personal representative of the deceased must ensure that subsection (1) is complied with.

34 Records to be maintained

- (1) In respect of every cemetery, there must be made and retained by the local government records of:
 - (a) the names of all deceased persons buried or whose ashes or other remains are interred in the cemetery;
 - (b) the date of interment;
 - (c) the specific place of interment within the cemetery; and
 - (d) any dealing with concerning the body, ashes or other remains of the deceased person after interment including disinterment.
- (2) Records made and retained pursuant to subsection (1) must:
 - (a) not be destroyed or otherwise disposed of without the written approval of the local government;
 - (b) be kept at:
 - (i) some part of the cemetery to which they relate; or
 - (ii) another specified place approved by the local government; and
 - (c) be open to inspection by the public on payment of a prescribed fee at all times when the place at which the records are kept is attended by some person.
- (3) The owner of land used as a cemetery (other than a local government cemetery) must ensure that this section is complied with.

Maximum penalty for section 34 - 50 penalty units.

35 Closure

The local government may close a local government cemetery to further burials or the placement of further ashes.

36 Maintenance

The local government may maintain a local government cemetery including all graves and memorials therein in such manner and to such extent as it thinks fit.

37 Repairs or removal by local government

- (1) The local government may repair or remove any grave or memorial:
 - (a) if the repair or removal is necessary for public health or safety;
 - (b) which in the opinion of the local government is in a state of disrepair; or
 - (c) which in the case of a memorial has been placed on the wrong grave site.

- (2) The local government:
 - (a) is not required to but may replace or reinstate a grave or memorial dealt with under subsection (1) including the placement of the memorial on the correct grave site; and
 - (b) if there is no immediate danger to the public, the local government must, before removal of a memorial under subsection (1), give reasonable notice of its intention to remove the memorial to members of the deceased's family whose identity and whereabouts are known to the local government.

38 Conduct in a local government cemetery

A person in a local government cemetery must comply with a reasonable direction given by the local government.

39 Removal of persons

- (1) An authorised person may direct any person found committing an offence against this local law to leave a local government cemetery forthwith.
- (2) Failure to comply with a direction given under subsection (1) is an offence.
Maximum penalty for subsection (1) - 20 penalty units.

CERTIFICATION

This and the preceding 10 pages bearing my initials is a certified copy of Cairns Regional Council *Local Law No. 7 (Human Remains and Cemeteries) 2016* made in accordance with the provisions of the *Local Government Act 2009*, by Cairns Regional Council by resolution dated 27 January 2016.

Peter Tabulo
Chief Executive Officer
Cairns Regional Council