

# Subordinate Local Law No. 1.9 (Operation of Cemeteries) 2011

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## Part 1 Preliminary

### 1 Short title

This subordinate local law may be cited as *Subordinate Local Law No. 1.9 (Operation of Cemeteries) 2011*.

### 2 Purpose and how it is to be achieved

- (1) The purpose of this subordinate local law is to supplement *Local Law No. 1 (Administration) 2011* which provides for a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws, subordinate local laws and other regulatory powers, and for miscellaneous administrative matters.
- (2) The purpose is to be achieved by providing for—
  - (a) various matters regarding the granting of approvals for prescribed activities; and
  - (b) further specification of the definitions relevant to various prescribed activities.
- (3) In particular, the purpose of this subordinate local law is to supplement the legal and procedural framework for the prescribed activity named in schedule 1, section 1.

### 3 Authorising local law

The making of the provisions in this subordinate local law is authorised by *Local Law No. 1 (Administration) 2011* (the **authorising local law**).

### 4 Definitions

- (1) Particular words used in this subordinate local law have the same meaning as provided for in the authorising local law.
- (2) The dictionary in schedule 3 defines particular words used in this subordinate local law.

## Part 2 Approval for prescribed activity

### 5 Matters regarding the prescribed activity—Authorising local law, ss 6(3), (4), 8(2)(a), 9(1)(d), 10(3), 12, 13(a), 14(1)(a)

- (1) Schedule 1—
  - (a) names a prescribed activity in section 1; and
  - (b) prescribes the matters specified in this section for the prescribed activity.
- (2) For section 6(3) of the authorising local law, it is declared that section 6(2) of the authorising local law does not apply to the particular activities stated in section 2 of schedule 1.

- (3) For section 6(4) of the authorising local law, it is declared that the prescribed activity named in section 1 of schedule 1 is a category 2 activity.
- (4) For section 8(2)(a) of the authorising local law, the documents and materials that must accompany an application for approval for the prescribed activity are stated in section 2 of schedule 1.
- (5) For section 9(1)(d) of the authorising local law, the local government may only grant an approval for the prescribed activity if it is satisfied the proposed operation and management of the activity would be consistent with the additional criteria prescribed in section 4 of schedule 1.
- (6) For section 10(3) of the authorising local law, the conditions that must be imposed on an approval for the prescribed activity are stated in section 5 of schedule 1.
- (7) For section 10(3) of the authorising local law, the conditions that will ordinarily be imposed on an approval for the prescribed activity are stated in section 6 of schedule 1.
- (8) For section 13(a) of the authorising local law, the term of an approval for the prescribed activity is provided for in section 7 of schedule 1.
- (9) For section 14(1)(a) of the authorising local law, the further term for renewal or extension of an approval for the prescribed activity is provided for in section 8 of schedule 1.
- (10) For section 12 of the authorising local law, in Table 1 of schedule 1—
  - (a) column 1 lists the application requirements for which the local government may accept as evidence the certificate of a third party certifier; and
  - (b) column 2 lists the individuals or organisations that are declared to be third party certifiers for the corresponding application requirement in column 1; and
  - (c) column 3 lists the qualifications that are necessary for an individual or organisation to be a third party certifier for the corresponding application requirement in column 1.

## **6 Approvals that are non-transferable—Authorising local law, s 15(2)**

For section 15(2) of the authorising local law, it is declared that the categories of approval listed in schedule 2 are non-transferable.

## Schedule 1      Operation of cemeteries

### Section 5

#### 1.      Prescribed activity

Operation of cemeteries.

#### 2.      Activities that do not require an approval under the authorising local law

No activities stated.

#### 3.      Documents and materials that must accompany an application for an approval

- (1)      Details of the proposed cemetery including—
  - (a)      a site plan; and
  - (b)      the proposed number of grave sites; and
  - (c)      the proposed hours of operation.
- (2)      Details of the proposed administration and management of the proposed cemetery.
- (3)      If a development approval for the cemetery is required under the *Sustainable Planning Act 2009* — a copy of the development approval.
- (4)      If the application for an approval does not relate to a local government cemetery and the applicant is not the owner of the premises on which the prescribed activity is to be undertaken — the written consent of the owner of the premises.

#### 4.      Additional criteria for the granting of an approval

- (1)      The operation of the prescribed activity must not result in—
  - (a)      harm to—
    - (i)      human health; or
    - (ii)      safety; or
  - (b)      personal injury; or
  - (c)      a loss of amenity; or
  - (d)      a nuisance.
- (2)      The proposed administration and management of the cemetery must be appropriate.

#### 5.      Conditions that must be imposed on an approval

- (1) The approval holder must—
  - (a) keep the cemetery open to the public during particular hours as specified by the local government; and
  - (b) give the local government notice prior to any burial, cremation or other disposal at the cemetery; and
  - (c) ensure that an appropriate identifying plaque is placed on or adjacent to the place of each disposal until an appropriate memorial to the deceased is erected or installed.
- (2) A burial, cremation or other disposal at the cemetery must not be carried out outside the hours during which the cemetery is open to the public.
- (3) A person must not reopen a grave, or exhume a body or the remains of a body buried in the cemetery other than—
  - (i) under the authority of an approval under the *Coroner's Act 2003* and on the production of the approval; and
  - (ii) with the approval of the local government (under the subordinate local law regulating activities regarding human remains, if applicable).
- (4) All remains in the cemetery must be enclosed in a coffin or other form or container appropriate to the form of disposal.

## **6. Conditions that will ordinarily be imposed on an approval**

- (1) The approval holder must take specified measures to—
  - (a) prevent harm to the health and safety of persons who may be involved in, or affected by, the undertaking of the prescribed activity; and
  - (b) prevent personal injury, property damage or a loss of amenity resulting from the undertaking of the prescribed activity.
- (2) The approval holder must—
  - (a) take out and maintain specified insurance indemnifying a person who may suffer personal injury, loss or damage as a result of the undertaking of the prescribed activity; and
  - (b) give the local government specified indemnities.
- (3) The local government may regulate—
  - (a) the position of grave sites; and
  - (b) periods of leases for grave sites; and
  - (c) requirements for the proper maintenance of memorials and other buildings and structures in the cemetery; and
  - (d) the hours when the cemetery may be open to the public; and

- (e) the hours when a burial, cremation or disposal may take place in the cemetery; and
- (f) standards for the minimum depth, size and other dimensions of graves and grave sites; and
- (g) standards for coffins; and
- (h) the number of bodies which may be buried in a single grave; and
- (i) the keeping of burial records.

## **7. Term of an approval**

- (1) The term of an approval must be determined by the local government having regard to the information submitted by the applicant.
- (2) The term of the approval must be specified in the approval.
- (3) An approval may be granted for a term of up to 1 year.

## **8. Term of renewal of an approval**

- (1) The term for which an approval may be renewed or extended must be determined by the local government having regard to the information submitted by the approval holder.
- (2) The term for which an approval may be renewed or extended must not exceed 1 year.
- (3) If the local government grants the application, the local government must specify in the written notice, the term of the renewal or extension.

**Table 1 – Third party certification**

<b>Column 1</b> <b>Application requirement</b>	<b>Column 2</b> <b>Individuals or organisations that are third party certifiers</b>	<b>Column 3</b> <b>Qualifications necessary to be a third party certifier</b>
No application requirement stated.		

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**Schedule 2      Categories of approval that are non-transferable**

Section 6

Each approval for the prescribed activity named in schedule 1, section 1 is transferable.

## Schedule 3      Dictionary

### Section 4

***development approval*** has the meaning given in the *Sustainable Planning Act 2009*.

***memorial*** includes—

- (a) a headstone; and
- (b) an inscribed plaque or commemorative plate; and
- (c) monumental, ornamental or other structures erected on a grave site; and
- (d) anything else erected or placed to mark the site where human remains have been buried or placed, or to commemorate a deceased person.