

Burial on Private land

December 2022



A guide to the approval process

The Burial and Cremation Act 2019 (the Act) provides for a burial, or interment of human remains, on land other than in a cemetery. This is usually referred to as a Burial on Private Land or a Private Burial. The information in this guide will help you to understand the process for seeking permission for a burial on private land.

The Act and its requirements are administered by the Director of Local Government in the Department of Premier and Cabinet. However, there are a few matters, including Private Burials, which require input from the Director of Public Health or local Councils.

A person cannot conduct a burial on private land without the written permission of the landowner, the General Manager of the relevant Council and the Director of Public Health. In practice, the Council coordinates the application and approval process, which is described below.

Step 1

Complete the Council application form. It must include the following information:

- name and address of the applicant
- approved person doing the burial (i.e. funeral director)
- name of the person whose remains are to be buried
- a plan indicating the specific location of the proposed burial site and details of any existing graves on the land
- written permission of the land owner.

Step 2

Lodge the application with the Council in which area the burial site is situated (an application fee may apply).

You may need planning approval from the Council. You will be advised of any additional approval requirements when you lodge the application.

Step 3

- A council Environmental Health Officer (EHO) will inspect the site to see if it is suitable.
- In preparation for this, you must dig a test hole in the approximate area of the proposed burial site.
- The test hole must be dug to about 1.8 metres deep.
- The EHO may ask for an independent soil test.

Step 4

Council must then refer the application, together with the EHO's assessment, to the Director of Public Health.

The Director of Public Health will then advise the Council in writing if permission is granted for the Private Burial. Permission may be subject to conditions. If permission is granted, the Council will then provide you with written permission to proceed in line with any conditions set by the Director of Public Health or the Council.

Step 5

The permission for the burial granted by the Director of Public Health and the Council does not:

- provide for a right of access over the property
- guarantee that when the property is sold the deceased will remain buried there.

You should obtain independent legal advice regarding access to the property if ownership changes.

Site Selection

When you select a burial site consider the following:

- overall lot size – urban allotments are not considered suitable - and the relation of the proposed burial site to other structures on the property
- slope of the land
- setback distance to features such as other properties or waterways
- water table depth & soil depth
- ongoing accessibility of the site
- effect on general amenity.

Finalisation of burial

The burial process is considered finalised when the following conditions are met:

- the funeral director advises Council the burial has been completed in line with the Act
- the grave has been permanently marked with a headstone or plaque within 90 days of burial (The Director of Public Health or the Council may require the grave to be capped with a concrete plinth)
- an inspection of the completed site is completed by a Council Environmental Health Officer within six months of the burial
- any other conditions imposed by the Council and/or the Director of Public Health are met.

Record of the Site

Council must ensure a record of the burial site is kept and is shown on any certificate issued by it under section 337 of the *Local Government Act 1993*.

Time to Prepare

You are encouraged to allow time for council to process your application. It may not be possible to grant approval within days of a death, given the short timeframes between death and burial.

As the time around a person's death can be a stressful period, permission may be sought before death and granted potentially many years before a burial occurs.

If permission is granted in advance, you must notify the Council of the date of the proposed burial so the completed site can be inspected within six months of the burial.

The Council may ask you to make a supplementary application at the time of the death and burial.

For more information, contact your local Council's Environmental Health Officer.