



Item No: 19.2

File No: 2.14.1.4

Date: 15 February 2021

Attachment: A, B, C, D, E, F, G, H

Meeting:	Council
Title:	Wesleyan Cemetery - Operational Status Update
Responsible Manager:	Business Analyst (Property & Contracts), Scott Reardon
Author:	Business Analyst (Property & Contracts), Scott Reardon
Key Pillar:	Strategic Framework – Key Pillar 7 – Leadership – A responsible and influential local government organisation
Key Focus Area:	Financial Guiding Principle 1 - Finances managed responsibly
Type of Report:	Information Only

Pursuant to Section 83(5) of the *Local Government Act 1999*, the Acting Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the *Local Government Act 1999* on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(h) of the Act being legal advice.

Recommendation

Pursuant to s90(3)(h)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except, Chief Executive Officer Kiki Cristol, Group Manager Asset & Infrastructure Ben Clark, Group Manager Planning, Environment & Regulatory Services Andreea Caddy, Group Manager Corporate Services Monique Palmer, Group Manager Customer Experience Danielle Garvey, Manager Community Development & Engagement Fiona Deckert, Business Analyst (Property & Contracts) Scott Reardon, Communications Officer Sarah Spencer and Acting Council Secretariat be excluded from attendance at the meeting for Agenda Item 19.1 Wesleyan Cemetery - Operational Status Update.

The Council is satisfied that, pursuant to section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item contains legal advice provided by Council's Lawyers regarding the Operational Status of the Cemetery.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because Council has not yet made a decision in relation to this matter, and the legal advice and is subject to professional privilege.

Recommendation (Confidential)

That Council receives and notes the Wesleyan Cemetery - Operational Status Update report.

Recommendation (Confidential)

Pursuant to s.91(7)

That having considered Agenda Item 19.1 Wesleyan Cemetery - Operational Status Update in confidence under section 90(2) and (3)(h) of the *Local Government Act 1999*, the Council pursuant to section 91(7) of that Act orders that the report, attachments and minutes relevant to this Agenda Item be retained in confidence for 12 months or until the matter has been finalised by Council.

and

That the Council resolves to end its confidential deliberations pursuant to Section 90(2) of the *Local Government Act 1999* and re-admit the public.

Summary

At their Ordinary Meeting of 20 July 2020, Council received the *Wesleyan Cemetery Community Survey Feedback* report and resolved (**CNC14/20-21**) to direct Administration to further consult with the Adelaide Cemeteries Authority (**ACA**) to obtain a full and complete understanding of the scope of legislative requirements and timelines associated with reopening the Wesleyan Cemetery to the burial of human remains (**Burials**).

Administration met with ACA on Friday 31 July 2020 and upon discussing the feasibility of re-opening the Cemetery to burials ACA advised that following their preliminary research they were unable to locate evidence that the Wesleyan Cemetery was ever officially closed.

Following this meeting Administration undertook extensive further research and after which obtained legal advice regarding the matter. Both the research and advice confirmed that the Wesleyan Cemetery was in fact never officially closed to burials at law. Therefore, with the exception of Council's current policy position,¹ there is nothing preventing the burial of human remains within the Cemetery.

This information is presented to Council as information only at this present time on the basis that Administration is currently working directly with the Wesleyan Cemetery Advisory Committee and Adelaide Cemeteries Authority to develop a set of conceptual governing principles, an expanded cemetery management policy, a transition plan, and potential site allotment map that will address all aspects of future burials within the cemetery in order to assist Council with their future deliberations.

It is expected that this further information will be presented to Council for consideration at the Ordinary Meeting of April 2021.

It should also be noted, that alternatively and in accordance with the current legislation, should Council instead determine to officially close the Wesleyan Cemetery at law, the Wesleyan Cemetery will not be eligible to be closed until June 2023, and a series of legislative steps and processes need to be undertaken before this date. These steps are outlined in this report.

Background

At their Ordinary Meeting of 20 July 2020, Council resolved:

CNC14/20-21

1. *That the Council receives and notes the Wesleyan Cemetery Community Survey Feedback report;*
2. *That based on the Community Survey Feedback, Council directs Administration to consult with Adelaide Cemeteries Authority in order to obtain a full and complete understanding of the scope of legislative requirements and timelines associated with reopening the Wesleyan*

¹ *Cemetery and Memorials Policy* (2019), https://www.walkerville.sa.gov.au/_data/assets/pdf_file/0027/317259/Cemetery-and-Memorials-Policy-as-endorsed-21-October-2019.pdf

Cemetery to burials, in order to further assist Council in their deliberations should a future determination be made to reopen the site;

3. *That a further report be returned to Council at a later date once all relevant information has been received and collated.*

At their Meeting of 17 December 2020, the Wesleyan Cemetery Advisory Committee, resolved in confidence:

WC6/20-21

1. *That the Wesleyan Cemetery Advisory Committee receive and note the Cemetery Closure Update report.*
2. *That Administration undertake consultation with the Cemeteries Authority regarding the practicalities of accepting new burials and allocating/ identifying burial sites.*
3. *That the Committee hold an informal gathering in February 2021 to further consider the matter of burials in the cemetery and provide guidance to Administration in order for Administration to prepare a draft policy.*
4. *That the Committee conduct a tour of the cemetery for Elected Members in February 2021.*

Discussion/Issues for Consideration

Past Council Decisions

Following the meeting between Administration and the Adelaide Cemeteries Authority (**ACA**) on Friday 31 July 2020, Administration undertook further extensive research of its records and past Council reports, recalled Council meeting minute books dating back to 1934 from State Records (maintaining significant focus on those Council minutes from between 11 July 1966 to 16 August 1993), and reviewed archived documents and emails. The key findings are outlined as follows.

The Wesleyan Cemetery (**Cemetery**) opened for public burials in April 1850,² however in May 1882 the Methodist Conference closed the Cemetery to **public** burials.³

In the late 1960s discussions commenced between Council and the Methodist Conference regarding the possible transfer of ownership of the Cemetery to Council. As a result of these discussions, at their meeting of 28 April 1969 Council received a report noting that Sir John Cleland intended to exercise his burial right in the Cemetery upon his death (refer Attachment A). The current records held by Council indicate that Sir John Cleland was buried therein on 13 August 1971 under a 50 year lease.

At their meeting of 9 June 1969 Council received a report which outlined the requirements for closing Cemeteries pursuant to section 587 of the *Local Government 1934*. Council resolved to then contact the Crown Solicitor's Office for further advice about the closure process (refer Attachment B). At their meeting 23 June 1969 Council received a report which noted basic information from the Crown Solicitors Office about the closure process (refer Attachment C). Council resolved to further investigate the matter, and at their meeting 8 September 1969 Council resolved to write to the Methodist Conference requesting they cease taking burial leases (refer Attachment D).

In late 1972 Council acquired the Cemetery, and thus assumed its care and control.⁴ The last recorded burial in the Wesleyan Cemetery was 12 May 1973 (Ms Margaret Jane Walters).⁵

² Lewis, J, 1988, *The Walkerville Story 150 Years*, Lutheran Publishing House, p.89.

³ Lewis, J, 1988, *The Walkerville Story 150 Years*, Lutheran Publishing House, p.91.

⁴ Lewis, J, 1988, *The Walkerville Story 150 Years*, Lutheran Publishing House, p.92.

⁵ Lewis, J, 1988, *The Walkerville Story 150 Years*, Lutheran Publishing House, p.92.

At their meeting of 28 May 1979 Council resolved **“that as a matter of policy, the Cemetery be retained as a historic item”** (refer Attachment E). As no other Council Resolution has been located specifically resolving to **“close of Wesleyan Cemetery”**, it is presumed that the 1979 resolution originated the assumed closure.

Later, at their Ordinary Meeting of 3 April 1995, Council resolved to “examine the possibility of re-opening the cemetery for the burial of ashes” (refer Attachment F). Then at their Ordinary Meeting of 5 October 2004, Council resolved to recommence allowing the internment of ashes in the Cemetery.⁶

An Act for Regulating Cemeteries 1862, and the Local Government Act 1934

Section 2 of the South Australian Act No.19 1862 (*An Act for the Regulation of Cemeteries*) (1882 Act) included a provision that authorised the Governor of South Australia to close a cemetery through proclamation by placing a Public Notice in the South Australian Gazette.

While the 1862 Act was repealed by the *Local Government Act 1934*, section 587 (2) of the *Local Government Act 1934* (Closing a Cemetery)⁷ retained the 1862 Act’s requirement for the Governor of South Australia to proclaim [via Gazette Notice] a cemetery closed, once a Council had followed a statutory process of consultation and petitioning.

Gazette Notice

Administration has searched all South Australian Government Gazette Notices published between 1973 and May 1981 for evidence that the Cemetery was closed via Gazette; to which **no** such notice or evidence was found.

Similarly, Administration searched all South Australian Government Gazettes from between January 1999 and December 2006 for evidence that the Cemetery was reopened to the internment of ashes via Gazette pursuant to the requirements of the *Local Government Act 1934*;⁸ to which **no** such notice or evidence was found.

Legal Advice

Following the aforementioned findings, Administration sought and obtained legal advice (**Advice**) regarding this matter. The Advice, appearing as Attachment G to this report, confirms that on the basis that there is no evidence to suggest the Council of the day specifically resolved to ‘**close the Cemetery**’ nor sought the Minister/Governor’s consent to close the Cemetery, and that there is no evidence a prescribed Gazette Notice was published, the Wesleyan Cemetery was in fact never officially closed to at law; and therefore has operationally been ‘open’ since Council acquired the site in 1972.

Implications

On the basis that Council has for decades unknowingly falsely maintained to the community that the Cemetery has been closed to the burial of human remains, and closed the burial of ashes up until 2004, Council could become exposed to reputational damage on the basis that an undetermined number of people have had their burial request refused over the years.

Future Operation Considerations

Commencing Burials

On the basis that the Cemetery was never officially closed at law, there is currently nothing preventing the recommencement of burials at the site.

⁶ Council Resolution CNC051004/11.10, resolved in public 5 October 2004.

⁷<https://www.legislation.sa.gov.au/LZ/C/A/LOCAL%20GOVERNMENT%20ACT%201934/1992.05.20/1934.2156.PDF>

⁸ *Local Government Act 1934*, s 586.

Should Council determine to actively recommence burying human remains however, a degree of prior planning will be required in order to: identify and survey burial sites; apply appropriate fees; and review and implement a revised Cemetery and Memorial's Policy.

The Wesleyan Cemetery Advisory Committee noted this need and at their Meeting of 17 December 2020 the Committee resolved in confidence:

“That Administration undertake consultation with the Cemeteries Authority regarding the practicalities of accepting new burials and allocating/ identifying burial sites.”

AND

“That the Committee hold an informal gathering in February 2021 to further consider the matter of burials in the cemetery and provide guidance to Administration in order for Administration to prepare a draft policy.”

As a result of this resolution, the Committee is scheduled to hold an Informal Gathering on Thursday 25 February 2021 to consider and develop a set of conceptual governing principles, an expanded cemetery management policy, a transition plan, and potential site allotment map, all of which will address all aspects of future burials within the cemetery in order to assist Council with their future deliberations.

It is expected that this further information will be presented to Council for consideration at the Ordinary Meeting of April 2021.

Current Procedure to Close a Cemetery

The *Burial and Cremations Act 2013* commenced 1 February 2014,⁹ and superseded the remaining active sections of the *Local Government Act 1934* that governed cemeteries. Section 24 of the *Burial and Cremations Act 2013* allows for the closure of a cemetery or natural burial ground if the land has become unsuitable for the disposal of human remains;¹⁰ or 50 or more years have elapsed since human remains were last interred.¹¹ Section 24 of the *Burial and Cremations Act 2013* also requires a Council to seek the Minister's approval¹² before placing a Public Notice in the Government Gazette on two (2) separate occasions.¹³

On the basis that the last burial of human remains occurred in the Cemetery in 1973, pursuant to section 24 (1) (b) of the *Burial and Cremations Act 2013*, should Council determine to close the Cemetery at law, the Cemetery will not be eligible to be closed until June 2023, prior to which time Council must:

1. Specifically resolve to 'close the Cemetery';
2. Consult with the community on the proposed closure and advertise the proposed closure in a state-wide newspaper;¹⁴
3. Seek the Minister's approval;¹⁵
4. Publish two (2) separate Public Notices in the South Australian Government Gazette, the first at least 18 months prior to the proposed closure date, then the second not more than nine (9) months prior to the closure date.

It should be noted that subsequent to this aforementioned closure process, as the Cemetery also carries Community Land Classification, a formal revocation process must be undertaken in accordance with

⁹ South Australian Government Gazette No.3, 16 January 2014, p.120,

https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2014/January/2014_003.pdf

¹⁰ *Burial and Cremations Act 2013*, s 24 (1) (a).

¹¹ *Burial and Cremations Act 2013*, s 24 (1) (b).

¹² *Burial and Cremations Act 2013*, s 24 (2).

¹³ *Burial and Cremations Act 2013*, s 24 (3).

¹⁴ *Burial and Cremations Act 2013*, s 24 (3) (a).

¹⁵ *Burial and Cremations Act 2013*, s 24 (2) (b).

section 194 of the *Local Government Act 1999* prior to undertaking the closure process.

Cemetery Survey Consultation and Key Findings

Following an analysis of the findings of the Cemetery Survey Consultation Feedback, the following key points were made evident:

1. The vast majority of the people surveyed were aware that the Cemetery existed (87.72%), and 82% of those surveyed had visited the site.
2. Approximately 60% of those surveyed knew that prominent early settlers were buried in the Cemetery.
3. Approximately 70% of those surveyed *supported* the promotion of cultural, historical and social events.
4. **The majority of those surveyed (65%) *did not* know the Cemetery only allowed the interment of ashes.**
5. The majority of those surveyed (55.54%) *would not* have their own or a deceased family member’s ashes interred at the Cemetery.
6. **Approximately 47% *supported* the reopening of limited areas within the Cemetery for ‘burials’, whereas 41% were opposed and 11% did not respond.**
7. Approximately 50% *did not support* the reopening of limited areas within the Cemetery for ‘reburials’ whereas 36% were in support and 14% did not responded.
8. The majority of those surveyed (52%) were *opposed* to Council closing the Cemetery entirely.

The following table outlines the percentile breakdown of responses for **Questions 1, 2, 4, 5, 6, 7, 9, 10, 11, 12 & 13** (Yes / No answers):

	Yes	No	NS / B
Did you know there was a cemetery in the Town of Walkerville?	87.72%	10.63%	1.65%
Have you visited the site	82.04%	16.02%	1.95%
Were you aware that many South Australia's prominent early settlers/citizens are buried there (ie Mary Lee, Le Cornu Family, etc)?	58.98%	36.98%	4.04%
Would you like Council to do more to promote the cultural and historical significance of the site?	71.11%	20.51%	8.38%
Would you support appropriate social events being held within the cemetery (ie guided tours, arts and cultural events)?	76.50%	16.17%	7.34%
Would you attend a paid social event in this site?	39.82%	49.70%	10.48%
Are you aware that the Wesleyan Cemetery currently allows the interment of ashes only?	30.54%	64.97%	4.49%
Would you consider having your - or a deceased family members - ashes interred at the Wesleyan Cemetery?	33.68%	55.54%	10.78%
Would you support the Town of Walkerville reopening limited areas within the Cemetery in order to allow burials?	47.16%	41.77%	11.08%
Would you support the Town of Walkerville reclaiming other areas within the Cemetery for the purpose of reburials?	35.78%	49.70%	14.52%

Should the Town of Walkerville close the Wesleyan Cemetery entirely to interments and only maintain and preserve the Cemetery as a historic site?	31.44%	51.95%	16.62%
---	--------	--------	--------

NS / B = Not Selected / Blank

The following table outlines the response percentiles for **Questions 3** (What was your reason for visiting the site):

	Someone Buried Onsite	Interest in Local History	Short-Cut	Other	NS / B
What was your reason for visiting the site?	7.49%	50.75%	13.32%	10.03%	18.41%

A total of **418** people responded to **Question 8** (What would you like to see happen to the site?). Overall, consistent responses were received in answer to this question. The following outlines a summary of the general responses to the question:

“Remain as it currently is now”.

“Repair the broken headstones”.

“Respectfully keep neat and tidy”.

“Retain and preserve historical nature”.

“Similar tours to West Tce”.

“Clear the land and build a park or similar”

“To be able to bury someone there (body or ashes)”.

Next Steps

Administration is currently working directly with the Wesleyan Cemetery Advisory Committee and Adelaide Cemeteries Authority to develop a set of conceptual governing principles, an expanded cemetery management policy, a transition plan, and potential site allotment map that will address all aspects of future burials within the cemetery in order to assist Council with their future deliberations.

An informal gathering of the Committee is scheduled for 25 February 2021 at which time the Committee will workshop the aforementioned deliverables. It is expected that these deliverables will be presented to Council for consideration at the Ordinary Meeting of April 2021.

Attachment

Attachment A	Council Minutes – 28 April 1969
Attachment B	Council Minutes – 9 June 1969
Attachment C	Council Minutes – 23 June 1969
Attachment D	Council Minutes – 8 September 1969
Attachment E	Council Minutes – 28 May 1979
Attachment F	Council Minutes – 3 April 1995
Attachment G	Legal Advice
Attachment H	Grave Site Aerial Survey

GENERAL PURPOSES COMMITTEE

Meeting held on 28th April 1969 at 8 p.m.

PRESENT: His Worship the Mayor (L.T. Ewens Esq.) Chairman,
Councillors A.H. Calder, R.L. Colley, E.C. Phillipson,
W.L. Russell, E.C. Scales, J.M. Simpson and
G.W. Sparnon and the Town Clerk.

Noted that Councillor Thwaites was out of the area.

WESLEYAN CEMETERY.

Councillor Simpson reported that Sir John Cleland had again expressed a wish to be buried in the cemetery on his demise, in view of his having taken out a recent ninety nine year lease .

Report Noted.

WALKERVILLE DISTRICT FOOTBALL CLUB INC.

The Town Clerk reported that a meeting with representatives of the Club regarding the licence fee for the use of the old clubrooms and the oval would be held on Tuesday, 29th April, when His Worship the Mayor and the Chairman of the Finance Committee would be available to discuss the matter.

Report Noted.

HAWKERS ROAD - CHILDREN CROSSING.

The Town Clerk reported that no official reply had been received from the Committee regarding the suggestions made at the meeting of the Committee held on the 31st March. However, discussions had been had with the Headmistress, and the Town Clerk together with the Traffic Inspector had made observations of the traffic flow on the morning of the 28th April. It had been noted that the speeds of vehicles past the school had been reasonable and that the U-turns made by parents were apparently dictated by the destination of the vehicle after the school delivery had been made.

RESOLVED to defer the matter pending receipt of further advice from the School Committee.

STEPHEN TERRACE - WALKERVILLE TERRACE INTERSECTION.

The Town Clerk tabled a copy of a letter from the Highways & Local Govt. Dept. dated 1st April 1969 advising that Ministerial approval had been obtained for the Department to contribute two-thirds of the estimated cost of installing traffic signals at the intersection during the financial year 1969-70. The estimated cost of the installation was \$12,000.

The Town Clerk reported that the Planning Engineer of the Highways Department had stated that no definite plans had been formulated for the widening of Stephen Tce. but that private enquirers were being advised to allow for seven feet of widening along each side. The Planning Officer estimated that the earliest possible date for widening works for Stephen Tce. would be 1979 but that the date was more likely to be 1994.

A preliminary print of the proposed traffic signal lay-out received from the Road Traffic Board was tabled. It provided for two phases for vehicle movement, each phase incorporating both right-hand and left-hand turning movements. In addition, pedestrian push-buttons would be provided at each corner

REPORT OF GENERAL PURPOSES COMMITTEE.

ATTACHMENT B

Meeting held 9th June 1969 at 10.25 p.m.

PRESENT: His Worship the Mayor (L.T. Ewens Esq.) Chairman, Councillors A. H. Calder, R.L. Colley, E.C. Phil- lipson, W.L. Russell, E.C. Scales, J.M. Simpson, G.W. Sparnon, The Building Inspector (Mr. L.L. Taylor) and the Town Clerk (Mr. M.M. Paech.)

1. APOLOGIES:

Councillor D. W. Thwaites.

2. WESLEYAN CEMETERY:

The Town Clerk reported that the Local Government Dept. had limited experience with the closing of cemeteries but confirmed that burial rights granted by way of lease are not cancelled on the granting of a petition by the Governor to close a cemetery pursuant to section 587 of the Local Government Act.

Only when the Governor makes a proclamation dedicating the closed cemetery as parklands are the trusts and burial rights deemed to be determined. Such dedication as parklands could only be proclaimed after receipt of a petition by the Minister and only after the substance of the petition had been published at least twice in a newspaper circulating in the area, and after the Minister had made enquiries ascertaining whether any rights for burial purposes existed over the said land and whether there was any cause why the power to extinguish such rights should not be exercised. A period of six months would be allowed after the publication of the last notice of the petition, during which time any persons objecting to the proposed dedication and the determining of burial rights could make suitable representations.

The first step after accepting the transfer of the cemetery would be for Council to petition to have it closed and to cease issuing any further leases. This having been done a further petition seeking the dedication of the land as parklands could then be submitted to the Minister.

A quick examination of the lease and burial records of the cemetery suggested that all necessary information was on record. The plan of the cemetery was drawn to a small scale and lacking in detail and measurements. Much time would be necessary for comparing the lease and burial registers to determine which leases had not been used for burial and could therefore be required in the future. Having determined which leases were still current and might be required for use, a further difficulty would arise in accurately locating the burial plots concerned.

The Town Clerk tabled a letter from Council's Solicitors enquiring whether Council was ready to accept the transfer of the Cemetery property.

RESOLVED that this matter be carried forward onto the Agenda for the next meeting of the Committee and that in the meantime the Crown Solicitor be contacted regarding quick means of effecting the transfer and closure of the Cemetery.

Certified as correct

L.T. Ewens
Mayor

Meeting held 23rd June, 1969 at 10.55 p.m.

PRESENT: His Worship the Mayor (L.T. Ewens Esq.) (Chairman) Councillors A.H. Calder, R.L. Colley, E.C. Scales, J.M. Simpson, and G.W. Sparnon, the Building Inspector (L.L. Taylor) and the Town Clerk (M.M. Paech)

APOLOGIES: Councillors E.C. Phillipson, D.W. Thwaites, and W.L. Russell

1. WESLEYAN CEMETERY.

Councillor E.C. Scales reported on the discussion he had with the Crown Solicitor who had outlined the alternatives of assuming the care and control of the cemetery, the clearing and tidying-up of the cemetery at the expense of the Trustees, and the petitioning to close the cemetery and to terminate existing leases. Difficulty could arise in connection with leases still current at the time the cemetery was brought under the control of the Council.

RESOLVED that it be ascertained when the last current lease for the cemetery would expire and that information be obtained from the Town of Kensington and Norwood and from the City of Enfield regarding cemeteries in those areas which had been closed and dedicated as parks.

2. EDWIN TCE., - HOUSE NUMBERING

The Town Clerk tabled a block plan showing existing house numbering in Edwin Tce., together with a possible arrangement of re-numbering to accommodate any resubdivision of large allotments which might take place.

RECOMMENDED that the residents along the north-western side of Edwin Tce., be written advising of a proposal to renumber that side of the street as shown on the plan submitted.

3. WAR MEMORIAL FUND.

His Worship the Mayor reported that the questionnaire from the Commissioner of Taxation had been received, completed and returned to the Department and that the approval of the Commissioner for gifts to the fund to be allowed as deductions for the purposes of the Income Tax Assessment Act 1936-1968 was awaited.

Report Received

4. SWIMMING POOL SPECIAL COMMITTEE.

The report of the Swimming Pool Special Committee dated 18th June, 1969, was received and the proposal therein regarding the location of the Work of Art being provided by Mr. Rickett for the River Torrens Area was adopted.

The Town Clerk reported on preliminary discussions with relatives of Mr. L.A.S. Klaus who would be interviewed in the near future.

Report Received

5. COUNCIL AND COMMITTEE MEETINGS.

The Town Clerk tabled a report dated 23rd June, 1969 setting out proposed terms of reference for various committees.

the report be received and the

13. WESLEYAN CEMETERY - Smith Street.

The Town Clerk tabled a report on the closing and dedication as parklands of disused cemeteries in the Cities of Enfield and Kensington and Norwood, where there had been no comparable problems of honouring leases still current. The report summarized the negotiations to date with the Methodist conference regarding the transfer of the cemetery to Council.

RESOLVED that the Methodist Conference be written requesting that it cease issuing leases at the cemetery and that it be requested to erect screen fences around the cemetery and in addition, it make arrangements to clear unsightly vegetation from the cemetery at its own expense as in default, Council could carry out the work and recover the cost.

14. ASSESSMENT REVISION COMMITTEE

The Town Clerk reported that appeals against the assessment had been received and that it would be necessary to call a meeting of the Assessment Revision Committee to consider the appeals.

RESOLVED that the Assessment Revision Committee meet at 8 p.m. on Monday 29th September prior to the usual Committee meetings to be held that night.

15. COUNCIL SEAL

Cr. Ewens moved that the use of the Council Seal by the Mayor and the Town Clerk for the following purposes:-

- a. Letters of authority to the Savings Bank of South Australia and the A.N.Z. Bank Limited on 11th August 1969 and
 - b. Letter of authority re deposit stock to the Savings Bank of South Australia on 29th August 1969
- be confirmed.

Seconded and carried

The meeting closed at 11.17 p.m.

Signed as correct . . .  . . . Mayor

date 14/10/69

ROBE TERRACE MEDIAN STRIP ADJACENT TO MAIN NORTH ROAD INTERSECTION

The Town Clerk tabled a copy of a letter dated 14th May, 1979 from the Highways Department in relation to the representations made on behalf of Messrs. D.L. Davidson and K.R. Seedsman for modifications to the median strip layout in Robe Terrace. The letter sought Council's official approval to the layout as shown on Drawing No.50486 Sheets 5 & 6.

Councillor Sparnon moved that the correspondence be received and the layout of the median strip in Robe Terrace as shown on Drawing No. 50486 Sheets 5 & 6 be approved.

Seconded and carried

WALKERVILLE CEMETERY - SMITH STREET

Councillor Davidson moved that as a matter of policy the cemetery be retained as an historical item in its existing form preserving the existing iron railings and headstones in situ so far as possible.

Seconded and carried

BUDGET 1979/80

Councillor Norman reported briefly on the budget discussions held that evening at a meeting of the Finance Committee.

Report received

The meeting closed at 11.10 p.m.

Signed as correct Mayor

W.A. Lucie
Date 12.6.79

(c) Smith Street Cemetery

At the Community Services Committee meeting held 20th February 1995, it was resolved that Council staff prepare a report on the upgrading/restoration work required at the Smith Street cemetery and examine the possibility of re-opening the cemetery for burial of ashes.

Councillor Higbed moved that:

- (1) an employee of the Payneham and Dudley Park cemeteries trust be engaged for a fee of \$200 to check the Smith Street cemetery records for current leases and associate burials between 1944 and 1973 with leases.
- (2) consideration be given to funding minor restoration work in the 1995/96 budget.
- (3) consideration be given in the 1995/96 budget to funding drafting and design costs associated with the creation of a memorial garden and the reopening of a section of the cemetery for the receipt of ashes and the erection of a columbarium for that purpose.

Seconded Cr Brown
and carried

11.3 Manager Engineering Services Report**TRAFFIC MATTERS****(a) James Street/Northcote Terrace Junction (4.4.1)**

The Manager Engineering Services tabled further traffic counts in relation to the proposal to modify the junction of James Street and Northcote Terrace so that exit is only possible from James Street into Northcote Terrace.

Councillor Brown moved that Mr Stefani be advised that further traffic counts do not confirm that James Street should be closed to traffic travelling south off Northcote Terrace, and the modification of the James Street/Northcote Terrace junction will not proceed.

Seconded Cr Millington
and carried

(b) No U-Turn Signs, North East Road (4.4.1)

Scott Reardon

From: Janine Carroll <jcarroll@molawyers.com.au>
Sent: Wednesday, 9 September 2020 3:12 PM
To: Scott Reardon
Subject: Re: Wesleyan Cemetery
Attachments: ca19o25a26v1862206.pdf; ca676o60a61v1897206.pdf; 0286_001.pdf; 0288_001.pdf; 0288_001.pdf; 0289_001.pdf

Hi Scott

I refer to our discussion on Monday. I attach the following:

1. An Act for the Regulation of Cemeteries (No. 19 of 1862)
2. An Act for the Regulation of Cemeteries 1897
3. extract from the Local Government Act 1934 (about the repealed legislation on commencement of that Act)
4. extract from the Lands Titles Office register about the cemetery land
5. extract of the Limited Certificate of Title for the cemetery land (this is not a full copy of the Limited Title)
6. Plan F251310

You will see from the attachments that:

- the 1862 Act set out the historical process for closing a cemetery.
- the Local Government Act 1934 replaced the 1862 and 1897 Acts.
- the land is now comprised on a Limited Certificate of Title Volume 5874 Folio 230

A **Limited Certificate of Title** is one that has been converted from the old land system, but either the survey data or proof of ownership is insufficient to issue a Certificate of Title. I have requested more information from the Lands Titles Office about this, and will let you know once I hear from them. I suspect it is a chain of ownership issue, but we will see.... I can then let you know the complexity involved to obtain a Certificate of Title for the land.

As discussed, I cannot see any Council resolution that resolves to close the cemetery. On your research, there is no Proclamation that closed the cemetery in 1882 (as thought) or any other year. On this basis, the cemetery has not been closed.

I am aware that the Council has recently put in place a management agreement for the burial of ashes on the land. This would be inconsistent with the closing of the cemetery. But, as the cemetery does not seem to have been closed, this is obviously not an issue.

The current process to close a cemetery is contained in s.24 of the Burial and Cremation Act 2013.

Whilst I am waiting to hear from the Lands Titles Office about the Limited Certificate of Title, please let me know if you have any queries.

Kind regards

Janine Carroll

Partner



Pirie House
Level 6, 89 Pirie Street
Adelaide SA 5000

P [08 8414 3411](tel:0884143411)
E jcarroll@molawyers.com.au
W www.molawyers.com.au

We have Moved

From Monday the 24th of August, our Adelaide office is operating from:
Pirie House, Level 6, 89 Pirie Street, Adelaide 5000.

This e-mail (including any attachments) is confidential and may be protected by legal professional privilege. If you are not the intended recipient of this e-mail you are advised that any use, reproduction, disclosure or distribution of the information contained in the e-mail is prohibited. If you have received this e-mail in error please reply to us immediately and delete the e-mail. No warranty is made that this e-mail is free from computer virus or other defect. Any loss/damage incurred by using this e-mail is not the senders responsibility.

CONFIDENTIAL

TOWN OF WALKERVILLE WESLEYAN CEMETERY SITE LAYOUT PLAN



Legend

Cemetery Plots

- Known Interment
- Unknown Interment
- Archaeometry Multiple Indistinguishable Interments



IMPORTANT NOTE: This plan was prepared for Town of Walkerville for the purpose of mapping current cemetery plot usage and should only be used for this purpose.

Prior to this plan being used for any demolition, excavation or construction on the site, the relevant authority should be contacted for possible location of further underground services and detailed locations of all services.