

Meeting: Council

Title: Cemetery Management
Walkerville Wesleyan Cemetery

Responsible Manager: Chief Executive Officer, Kiki Magro

Author: General Manager, Heather Barclay

Type of Report: **Decision Required**

Item No: 16.1.4

File No: 16.16.3.1

Date: 17 August 2015

Attachment: A, B & C

Recommendation

Pursuant to Section 83(5) of the Local Government Act 1999, the 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) (b) and (h) of the Act being:

information the disclosure of which -:

- i. could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - ii. would, on balance, be contrary to the public interest;
- or
- iii. pertains to legal advice

Recommendation (Public)

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 Magro, General Manager, Heather Barclay and Governance, Protocol & Compliance Officer, Deb Bria be excluded from attendance at the meeting for Agenda Item No.16.1.4 Cemetery Management, Walkerville Wesleyan Cemetery.

The Council is satisfied that, pursuant to section 90(3)(b) and (h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council, or pertains to legal advice.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. 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.

Recommendation (Confidential)

Moved:

Seconded:

1. Council receives and notes the content of the report presented to the Friends of the Wesleyan Cemetery at their Meeting held on 24 June 2015, regarding future management of the Wesleyan Cemetery.
2. Council receives and notes the content of the independent report, '*Hibernate No More*', by Russ Allison (November 2014).
3. Council receives and notes the Friends of the Wesleyan Cemetery Minutes from their Meeting held on 24 June 2015; in relation to this matter;

"That it be recommended to Council that:

1. *Council explores the feasibility of an alternative future operating model for the Walkerville Wesleyan Cemetery*
 2. *The recommendations contained within the 'Hibernate No More', by Russ Allison (November 2014) Report, including recommendation, 9, 7, 6, 5 and 4 be adopted, Viz;*
 4. *Conduct a formal risk assessment of the cemetery memorials.*
 5. *That a joint Cemetery Advisory Group be formed to consider, discuss and advise on certain management practices and works proposed in the Cemetery.*
 6. *That the Cemetery's Operating Policy be developed based upon the template provided by the CCASA.*
 7. *That the cemetery be surveyed.*
 9. *The Town of Walkerville should retain the Walkerville Wesleyan Cemetery.*
 3. *The steps 1 to 3 herein, be progressed to determine feasibility towards a new operating model for the cemetery, viz;*
 - Step 1 – Survey & Valuation*
 - Step 2 – Establish Cemetery Advisory Committee (CAG)*
 - Step 3 – Develop draft Policy, Service Plan and Procedures with CAG*
 4. *The FOWC, be formally appointed as the CAG (Cemetery Advisory Group), and the terms of the FOWC be amended to reflect that outcome.*
 5. *Further reports be presented to Council at critical points during the exploration of feasibility process"*
4. Council supports, "in principle", the recommendations of the Friends of the Wesleyan Cemetery (FOWC) Meeting held on 24 June 2015, and specifically endorses their resolutions No. 1, 3, 4 and 5 (above), and authorises the Administration to work with the FOWC, towards exploration of the feasibility of an alternative future operating model for the Walkerville Wesleyan Cemetery.
 5. A budget of \$40,000.00 be allocated at the first budget review in 2015/16, to progress *Step 1, Survey and Valuation* (above), towards determining potential for an alternative future operating model.

6. The Council authorises the Administration to provide a limited continuance to the current contract with DDC (in holding-over), to enable continuance of cemetery services during an interim period of investigations and scoping a new operating model for market consideration, but during the contract continuance period, negotiation an 'end-date' and the obligations that will apply to both parties upon cessation of the agreement.
7. The Council Administration, provide regular reports to Council on progress in relation to this matter.

Recommendation (Confidential)

Moved:

Seconded:

Pursuant _____ to
s.91(7)

That the Council, having considered the said information or matter in confidence under Part 3 of Chapter 6 of the Local Government Act 1999, orders, pursuant to Section 91(7) of the Local Government Act 1999, that Agenda Item No.16.1.4 Cemetery Managers, Walkerville Wesleyan Cemetery and any other documentation relative to the report to be retained in confidence including minutes in relation to this Agenda Item No.16.1.4 and minutes relating to this Agenda Item No.16.1.4 be kept confidential until the matter has been finalised and that pursuant to Section 91(9)(c) of the Local Government Act 1999 the Council delegates to the Chief Executive the review and power to revoke this Order.

Recommendation (Confidential)

Moved:

Seconded:

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

Purpose of Report

The purpose of the report is for Council to consider the status of the Agreement between the Town of Walkerville and Doug Dick & Co. PTY LTD (Life's Memories Memorials), associated with Management of the Walkerville Wesleyan Cemetery, prior to considering the content and recommendation of a report presented to Council on 20 July 2015, containing recommendations from the FOWC, from their Meeting held on 24 June 2015;

Relevance to Strategic Plan and / or Corporate Plans

Living in the Town of Walkerville

A Lively Local Culture

Objective 1

Encourage active community involvement in events, activities and places.

Objective 2

Promote and support diverse cultural values, heritage and identity.

Background

A report (in confidence) was presented to Council on 20 July 2015 (refer **Attachment A**), containing the following recommendations;

"1. Council receives and notes the content of the report presented to the Friends of the Wesleyan Cemetery at their Meeting held on 24 June 2015, regarding future management of the Wesleyan Cemetery.

2. Council receives and notes the content of the independent report, 'Hibernate No More', by Russ Allison (November 2014).

3. Council receives and notes the Friends of the Wesleyan Cemetery Minutes from their Meeting held on 24 June 2015; in relation to this matter;

"That it be recommended to Council that:

5. Council explores the feasibility of an alternative future operating model for the Walkerville Wesleyan Cemetery

6. The recommendations contained within the 'Hibernate No More', by Russ Allison (November 2014) Report, including recommendation, 9, 7, 6, 5 and 4 be adopted, Viz;

8. Conduct a formal risk assessment of the cemetery memorials.

9. That a joint Cemetery Advisory Group be formed to consider, discuss and advise on certain management practices and works proposed in the Cemetery.

10. That the Cemetery's Operating Policy be developed based upon the template provided by the CCASA.

11. That the cemetery be surveyed.

9. The Town of Walkerville should retain the Walkerville Wesleyan Cemetery.

7. The steps 1 to 3 herein, be progressed to determine feasibility towards a new operating model for the cemetery, viz;

Step 1 – Survey & Valuation

Step 2 – Establish Cemetery Advisory Committee (CAG)

Step 3 – Develop draft Policy, Service Plan and Procedures with CAG

8. The FOWC, be formally appointed as the CAG (Cemetery Advisory Group), and the terms of the FOWC be amended to reflect that outcome.

5. Further reports be presented to Council at critical points during the exploration of feasibility process"

4. Council supports, "in principle", the recommendations of the Friends of the Wesleyan Cemetery (FOWC) Meeting held on 24 June 2015, and specifically endorses their resolutions No. 1, 3, 4 and 5 (above), and authorises the Administration to work with the FOWC, towards exploration of the feasibility of an alternative future operating model for the Walkerville Wesleyan Cemetery.

5. A budget of \$40,000.00 be allocated at the first budget review in 2015/16, to progress Step 1, Survey and Valuation (above), towards determining potential for an alternative future operating model.

6. *The Council authorises the Administration to retain the current contract (in holding-over), with the current Cemetery Managers, but commences negotiation towards an 'end-date', subject to the outcomes of Step 1, Survey and Valuation (above).*
7. *The Council Administration, provide regular reports to Council on progress in relation to this matter.*
8. *The FOWC Minutes from the Meeting held on 24 June 2015, be received in entirety”.*

Council (on 20 July 2015), subsequently resolved the following;

“That the matter be deferred until the next Ordinary Meeting of the Council pending the provision of further details of the Life Memories contractual agreement and relationship with Doug Dick & Co. Pty Ltd.”

Councils position on 20 July 2015, was such that, prior to considering any background work including survey and valuation of the site and determination/feasibility of potential future operating models for the Walkerville Wesleyan Cemetery it needed to consider the current agreement with the Cemetery Managers, Doug Dick & Co. Pty Ltd.

As indicated in the FOWC report (24 June 2015), part of progressing work towards a revised or alternate operating model would require that a resolution be reached in relation to the existing Management Agreement (which is expired and in holding-over) for the site, with Life Memories Pty Ltd (formerly Doug Dick & Co Pty Ltd) the Cemetery Managers.

Council received legal advice regarding the Agreement (**Attachment B**) between the Town of Walkerville and Doug Dick & Co. Pty Ltd (DDC) in 2014, **refer Attachment C**. The advice refers (in summary);

- The Agreement commenced on 1st June 2014
- The Agreement is for a 10 year term with expiry being on 1 June 2014, subject to a right of renewal for a further 5 years, invoked only by notice in writing by 1 December 2013.
- The renewal was not invoked within the timeframe envisaged by the Agreement
- The Agreement is in 'Holding Over', but continuance needs to be managed
- The Agreement sets out obligation for DDC, whom are tasked with managing “the business of the cemetery”, including the selling of licences for the interment of ashes and the sale and erection of various personal memorials within the cemetery
- Council has a general obligation to maintain the cemetery
- Clause 12 of the Agreement sets out actions to be taken at the expiration or termination of the Agreement; viz;

“12.3 On expiration or termination of this Agreement Walkerville Council will purchase from Doug Dick & Co. any unsold memorials owned by Doug Dick & Co at the Cemetery for a price agreed between the parties or, in default of agreement, determined by an independent value appointed at the joint cost of the parties.”

- Operation of the Agreement and performance of DDC has been disappointing and few sales have been made and reporting has been unsatisfactory
- There is a question regarding compliance with 12.3, as it is not clear what is meant by unsold memorials owned by DDC, and the term memorial is unclear, but would appear to be an actual physical item such as a headstone or plaque.
- In advice from DDC in March 2013 (Reconfiguration Initiative), they note 216 memorials were created by DDC
- DDC assert they have expended \$118,000 in establishing cremation allotments, and upon expiration of the Agreement may assert that Council has to purchase the gazebo and any items of masonry

- Should Council wish to cease the Agreement it is likely that DDC will rely on Clause 12.3 of the Agreement and seek payment for the “unsold memorials”
- Valuation would be required
- DDC may be requested to provide advice on unsold memorials which are owned by DDC, as the basis for flushing out DDC position on the matter of Clause 12.3
- It may be desirable to get advice from a surveyor and valuer to determine what actual work was done by DDC in 2004
- Council is concerned re: compliance with the Burial and Cremation Act 2013

In line with the legal advice, the change of legislation in 2013, the expiration of the management agreement (currently in holding-over, for continuity purposes), and the demand for local cemetery services, it is timely for Council to consider a more sustainable operating model for the Wesleyan Cemetery that provides a better value community service for Walkerville and its residents.

The FOWC have considered overarching objectives for the program towards any future operating state, ie:

1. Determine future operating state of the *Walkerville Wesleyan Cemetery* (the Cemetery)
 - what is the feasibility for re-use of grave sites and/or for use of remaining sites for cremated remains or burials, and or feasibility for new sites.
2. Conservation management.
3. Appropriate management regime for management of the cemetery
4. Potential for “income stream”
5. Compliance with relevant legislation.

The FOWC have also proposed broad steps towards determining any future operating state, as identified in the 20 July 2014, Council report (Attachment A).

In particular, the FOWC has recommended as a first step, that **Survey and Valuation** be undertaken to;

- Verify current and expired leases and licences (for all memorials)
- Verify Cemetery Register.
- Verify valuation of unsold memorials as per clause 12 of the Management Agreement, and;
- Determine potential renewal sites and leasing value

FOWC have specifically recommended that regular reporting occur to both FOWC and Council.

Issues for Consideration

The FOWC recommendations were presented to Council on 20 July 2014.

The recommendations seek Council support to undertake preliminary work as the basis for confirming the layout and current site leases and licences, but also to determine the status of the DDC Agreement and the potential implication of Clause 12.3, prior to entering into any final negotiations regarding any potential cessation of the Agreement with DDC.

Notwithstanding the above, the Council Administration, would concurrently commence discussion with DDC regarding their understanding of the Agreement and collaboratively seek an outcome.

Accordingly, the recommendations presented to the 20 July 2015, regarding this matter are recommended for adoption, together with a recommendation that the Administration be authorised to;

- Commence discussion with DDC, towards determination of an end date for the Agreement, and in the interim period;
- Negotiate a short term continuance (in holding-over) agreement with DDC;
 - to apply until Council is ready to go to the market for Cemetery Services, following the work proposed by FOWC (initial for no longer than 12 months)
 - to enable cemetery services to be provided in any interim period, and;
 - to allow time to determine and negotiate and outcome re: Clause 12 of the DDC Agreement; and

That Council be kept abreast of negotiations with DDC, via regular reports to Council.

Options for Consideration

Option 1

It is recommended that;

1. Council receives and notes the content of the report presented to the Friends of the Wesleyan Cemetery at their Meeting held on 24 June 2015, regarding future management of the Wesleyan Cemetery.
2. Council receives and notes the content of the independent report, *'Hibernate No More'*, by Russ Allison (November 2014).
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7. The Council Administration, provide regular reports to Council on progress in relation to this matter.

The proposed recommendations (above), would support the proposed actions by the FOWC and commit Council resources to collaboratively commence the process of determining feasibility of a new operating model.

In addition, the Council Administration would take steps towards resolution of the current Cemetery Management Agreement, and the FOWC Terms of Reference would be reviewed to incorporate the responsibility of the CAG, per the Allison report.

Option 2

Council retains the existing operating model and creates a new agreement for the current Manager to enter into, with clearer protocols and terms. This may still include either the establishment of CAG or amending FOWC's terms of reference.

Analysis of Options

Option 1, allows Council to test the feasibility or otherwise of an alternative operating model for the cemetery. Should the desirable future state be feasible, Council can essentially start 'afresh' and provide more holistic services to its community.

Option 2, even though Council will have clearer protocols and terms regarding the management, it does not allow for Council to experience other organisations in this space, and what other potential 'value-adds' they may have.

Financial and / or Risk Implications

Financial

Council would have better use of its assets and generate more revenue, and ideally the fees earned from burials/cremation memorials, can assist with maintenance and up keep costs associated with the Cemetery.

Social

Allows residents the opportunity, upon their passing to be buried in a place close to family and friends.

Governance

Must ensure compliance with BC Act and BC Regs.

FOWC's terms of reference will need to be amended to capture the scope of their duties as per the Allison report.

Preferred Option & Reasoning

Option 1, allows Council to test the feasibility or otherwise of an alternative operating model for the cemetery. Should the desirable future state be feasible, Council can start 'afresh' and provide more holistic services to its community.

Attachment A	Confidential Report to Council 20 July 2015
Attachment B	Copy of Agreement between Town of Walkerville and Doug Dick & Co Pty Ltd
Attachment C	Legal Advice, re: Doug Dick & Co. 2014 from Mellor Olsson