



Burial on Private Land Policy

Strategic Reference	Provide leadership, good governance, and efficient, effective and responsive Council services
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Responsibility	Assets and Environment
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Applicable Legislation	Burial and Cremation Act 2013 Burial and Cremation Regulations 2014 Births, Deaths & Marriages Registration Regulations 2011 Heritage Places Act 1993 Local Government Act 1999 Planning, Development and Infrastructure Act 2016
Related Policies	Cemetery Management Policy Development Guidelines
Related Procedures / Documents	Application Form for Burial on Private Land Development Application Forms

1. Objective

- 1.1. This policy outlines the District Council of Yankalilla's (Council) requirements for people wishing to be buried on private land outside a designated cemetery within the Council area.
- 1.2. Council recognises that some families have a desire to bury a deceased relative on a privately owned property that has significance to the deceased person or their family.

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- 1.3. The Council acknowledges the need for requirements to ensure that a burial on privately owned land is;
- Undertaken with the permission of the land owner;
 - Undertaken in an appropriate location;
 - Minimises environmental impacts;
 - Ensures the long-term identification of the burial site to limit the likelihood of those buried remains being disturbed in the future; and
 - Done with families and loved ones being aware of and acknowledging that they are not entitled to ongoing visitation rights should there be a change of ownership of the private land where their loved one is buried.
- 1.4. This policy establishes how applications for burials outside of cemeteries are to be assessed and authorisation granted by the Council. The approval process is intended to guide how the interests of the deceased person, relatives and friends, landowners and Council are to be considered and protected.

2. Scope

The scope of this policy applies to:

- 2.1. All burials of bodily (non-cremated) remains undertaken on privately owned land outside designated cemeteries within the District Council of Yankalilla.
- 2.2. Private landowners wishing to have bodily (non-cremated) remains interred on their property.
- 2.3. Individuals, families and loved ones wishing to have bodily (non-cremated) remains interred on private property.
- 2.4. Funeral Directors and funeral celebrants who coordinate services for the interment of bodily (non-cremated) remains interred on private property.
- 2.5. All forms of burials of bodily (non-cremated) remains, including natural burials as defined in the Act.

Note: The interment or scattering of cremated remains, commonly referred to as 'ashes' on private land does not require Council approval.

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3. Definition

- 3.1. The words and phrases used in this policy have the same meaning as they do in the *Burial and Cremation Act 2013* and the *Burial and Cremation Regulations 2014*.

The key terms used in this policy are:

“*bodily remains*” means the whole or any part of the human body but does not include the whole or any part of a human body that has been cremated;

“*cemetery*” means a place set apart for the disposal and memorialisation of human remains;

“*Council*” means the District Council of Yankalilla;

“*cremated remains*” means bodily remains that have been reduced by cremation;

“*funeral director*” means a person who carries on the business of arranging for the disposal of human remains;

“*human remains*” means bodily remains and includes –

- (a) The remains of a still-born child; and
- (b) Bodily remains after they have been cremated;

“*interment*” of human remains means the burial in the earth of human remains (directly in the earth or in a container);

“*interment site*” means a site in which human remains are buried;

“*natural burial of human remains*” means burial in the grounds –

- (a) Without preparation of the remains using chemical preservatives; and
- (b) By containment of the remains only in a shroud or biodegradable coffin;

“*Registrar*” means –

- (a) The Registrar of Births, Deaths, and Marriages; or
- (b) A Deputy Registrar of Births, Deaths, and Marriages, under the *Births, Deaths, and Marriages Act 1996*;

“*Township*” has the same meaning as in the *Local Government Act 1999*.

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4. General Principles

- 4.1. In permitting burials to be undertaken on private land outside designated cemeteries, Council is committed to complying with the:
- *Burial and Cremation Act 2013 (SA);*
 - *Burial and Cremation Regulations 2014 (SA);*
 - *Births, Deaths and Marriages Registration Regulations 2011 (SA);*
 - *Planning, Development and Infrastructure 2016; and*
 - *Heritage Places Act 1993.*
- 4.2. Council is committed to supporting persons who wish to be buried on private land outside a designated cemetery in accordance with the Act and Regulations as above, and in accordance with this policy.
- 4.3. This policy provides a framework for Council to consider those applications to ensure that burials undertaken on private land are:
- Undertaken in accordance with the requirements of the relevant legislation;
 - In locations that limit the likelihood of disturbance of the remains in the future;
 - In locations that do not pose a threat to the pollution of waterways; and
 - Publicly recorded on the Certificate of Title on the land on which the burial occurs.
- 4.4. Council recommends that application for permission for burials on private land be lodged well in advance of the interment taking place. Hence, burials on private land are best undertaken as pre-planning for a persons' intended burial at a later date.

5. Policy Statement

- 5.1. Council is committed to the implementation of practices that will ensure the diligent management of our cemeteries in accordance with legislation and with regard to the environmental, social, cultural, historical significance and economic effects of our community.
- 5.2. In accordance with subsection 8(2) of the *Burial and Cremation Act 2013*, the Council will receive applications and may grant permission for a burial of bodily remains on private land outside 'metropolitan Adelaide' and outside the boundary of a township.

Section 8(2) of this Act states:

"8 – Offence to dispose of bodily remains except in cemetery or natural burial ground.

(2) A person may inter bodily remains in a prescribed area on land outside a cemetery or natural burial ground with the permission of the owner of the land and –

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(a) *in the case of land within a council area –*

- (i) *with the approval of the Council for the area in which the land is situated; and*
- (ii) *in accordance with the regulations; or*

(b) *in any other case – in accordance with the regulations.”*

Regulation 4 of the *Burial and Cremation Regulations 2014 (SA)* provides some requirements for burials on land outside a cemetery. It states:

“4—Interment of bodily remains in prescribed area outside cemetery or natural burial ground (section 8(2)(a)(ii) and (b) of Act)

(1) A person who interrs bodily remains in a prescribed area on land outside a cemetery or natural burial ground must ensure that the remains are interred—

- (a) *at a depth of at least 1 metre from the surface of the ground; and*
- (b) *at a distance of at least 20 metres from any building, structure, or water well on the land.”*

Regulation 9 of the *Birth, Death and Marriages Registration Regulations 2011 (SA)* stipulates that under section 9 (ma) concerning the particulars essential for notification by funeral director, there is a mandate for recording burials on land outside of designated cemetery areas. It states:

“(ma) if the deceased's remains were interred in a prescribed area outside a cemetery or natural burial ground—

- (i) *the address of the property where the deceased's remains were interred; and*
- (ii) *the certificate of title reference for the property; and*
- (iii) *the GPS coordinates of the interment site.”*

6. Policy

6.1. Application and Criteria for Assessment

- 6.1.1. Applicants are encouraged to submit request for burials on private land outside designated cemeteries well in advance of the interment date. Seeking approval from the Council as part of one's pre-planning for end-of-life arrangements ensure smoother processing. It's important to note that applications for private land burials are a lengthy process and burials may face delays if submitted only at the time of the deceased's passing.

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- 6.1.2. Applicants must complete Council's Application for Approval for Burial on Private Land available on the Council's website and submit the Application with the application fee as published annually in the Council's Fees and Charges Schedule.
- 6.1.3. The Application must be accompanied by the following;
- Evidence that the Applicant is seeking to have permission for themselves to be buried on their own land at some time in the future.
 - Evidence that the Applicant is the personal representative of or relative of the Deceased. The 'personal representative' of the Deceased is defined in the *Burial and Cremation Act 2013 (SA)* as:
 "a person aged 18 years or more who is –
 (a) *The executor of the estate of the deceased person or, if there is more than 1 executor, 1 of the executors acting with the permission of all the other executors; or*
 (b) *The administrator of the estate of the deceased person"*
 - Written approval of the owner of the land on which the burial is to occur.
 - Plan of the property detailing the exact location of the burial.
 - A copy of the Certificate of Title for the land on which the burial is to occur.
 - Written consent of anyone with an interest in the land on which the burial is to occur (i.e. mortgagee or easement holder).
- 6.1.4. Approval will not be granted to Applications where the burial is to occur:
- Within townships
 - In areas where there is a likelihood of contamination of water supplies.
 - On land where the landowner or persons with interests in the land have not provided their written consent.
 - On land or in a location that the Council deems, in its absolute discretion, unsuitable for the burial of bodily remains.
 - Where the burial would result in more than one burial site or grave on the land.

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6.2. Conditions of Approval

If the Council approves the burial of bodily remains on private land outside the designated cemeteries, Council may impose conditions on the approval including, but not limited to, the following:

- 6.2.1. The burial must be undertaken by a funeral director.
- 6.2.2. Written confirmation from the Applicant and the funeral director that they understand and will comply with the requirements of the *Burial and Cremation Act 2013*, the *Burial and Cremation Regulations 2014*, and the *Births, Deaths, and Marriages Registration Regulations 2011 (SA)*.
- 6.2.3. The address of the property, the certificate of title reference of the property and the GPS coordinates of the burials site (exact location of the grave) must be submitted to the Registrar of Births, Deaths and Marriages and Council.
- 6.2.4. A Land Management Agreement, pursuant to Section 192 of the Planning, Development and Infrastructure Act 2016, be entered into between Council and the owner of the land and noted on the Certificate of Title of the property detailing the exact location of the burial as evidenced by map and GPS coordinates.

7. Implementation / Delegations

The Chief Executive Officers is delegated authority to implement this Policy and to sub-delegate to other officers under Section 101 of the *Local Government Act 1999*.

8. Further Information

This policy will be available for inspection at the Council office listed below during ordinary business hours and provided to interested parties as per Council's Fees and Charges Register. Copies are available to be downloaded, free of charge, from Council's website: www.yankalilla.sa.gov.au/policies

District Council of Yankalilla
1 Charles Street
Yankalilla 5203

Phone: (08) 8558 0200

Fax: (08) 8558 2022

Email: council@yankalilla.sa.gov.au

Office hours: Monday to Friday, 9.00am to 5.00pm (except public holidays)

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9. Grievances

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

10. Review Cycle

This document is subject to review in 3 years from the date of adoption or more frequently if legislation or Council requires.

11. Document History

Date	Version	Council Resolution No.	Description of changes
July 2024	1.0	C24148	Adoption of Policy

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