

1990 - No. 39

CROWN LANDS CONSOLIDATION ACT 1913 - BY-LAW

(Field of Mars Independent (Congregational)

Cemetery By-law 1989)

NEW SOUTH WALES



[Published in Gazette No. 14 of 25 January 1990]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Crown Lands Consolidation Act 1913, has been pleased to make the By-law set forth hereunder.

I. R. CAUSLEY,
Minister for Natural Resources.

PART 1 - PRELIMINARY

Citation

1. This By-law may be cited as the Field of Mars Independent (Congregational) Cemetery By-law 1989.

Definitions

2. (1) In this By-law:

"Officer-in-Charge" means:

- (a) the officer of the Trust employed under clause 6 as the Officer-in-Charge; or
- (b) any person for the time being acting as the Officer-in-Charge with the approval of the Trust;

"**Secretary**" means the Secretary to the Trust;

"**the Act**" means the Crown Lands Consolidation Act 1913;

"**the cemetery**" means the land situated within the County of Cumberland and Parish of Hunters Hill which was dedicated for a general cemetery by a notification published in the Gazette of 29 April 1884 (at page 2773) and which is known as the "Field of Mars Independent (Congregational) Cemetery";

"**the Trust**" means the trustees of the cemetery.

(2) A reference in this By-law to the trustees of the cemetery is a reference to the individuals appointed under section 37O of the Act to the Field of Mars Independent (Congregational) Cemetery Trust.

(3) A reference in this By-law to fees or charges is a reference to fees or charges determined and approved under clause 14.

(4) A reference in this By-law to a form is a reference to a form contained in Schedule 1.

Application

3. (1) This By-law applies to and in respect of the cemetery.

(2) Nothing in this By-law affects the operation of the Public Health (Funeral Industries) Regulation 1987 or Part 3 of Ordinance No. 68 under the Local Government Act 1919 with respect to the cemetery.

Repeals

4. All regulations made, or taken to have been made, under the Act and in force, in relation to the cemetery, immediately before the date of publication of this By-law in the Gazette, are repealed.

PART 2 - ADMINISTRATION

Managing trustee

5. The Trust may appoint a managing trustee who is to regulate, manage and decide any matters that the managing trustee may be authorised or required so to do, by the Trust or this By-law, in connection with the cemetery.

Officers and employees

6. (1) The Trust may appoint and employ a Secretary to the Trust, an Officer-in-Charge and such other officers and employees as may be necessary for the most efficient running of the cemetery.

(2) The Secretary and the Officer-in-Charge must report to the Trust from time to time as determined by the Trust.

Meetings of the Trust

7. (1) Meetings of the Trust must be held not less than once in each 2 months, at the places and times appointed by the Trust.

(2) Three trustees (or such greater number as may be required by section 37Z of the Act) form a quorum for a meeting of the Trust.

(3) Further meetings may be called by any 2 trustees, subject to 14 days' notice being given to the Secretary and the other trustees.

Common seal

8. (1) The Trust must provide for the safe custody of the common seal of the Trust, which must only be used by the authority of the Trust or a committee of the Trust.

(2) The affixing of the common seal of the Trust to an instrument must be attested by at least 2 trustees and the Secretary or a third trustee.

Accounts

9. The Trust must keep proper accounts of all money received and all money disbursed in connection with the cemetery.

Bank accounts

10. All money received in connection with the cemetery must be paid into a bank in New South Wales to the credit of an account in the name of the "Field of Mars Independent (Congregational) Cemetery Trust" and cheques drawn upon that account must be signed by at least 1 trustee and countersigned by the Secretary or another trustee.

Appropriation of funds

11. All money received in connection with the cemetery must be applied for the purposes of the cemetery as approved by the Trust.

PART 3 - MANAGEMENT OF THE CEMETERY

Planning of the cemetery

12. (1) The Trust is to cause the cemetery to be laid out in such manner as may be convenient for the burial of the dead or of the ashes of the dead.

(2) The Trust must cause a plan to be made showing the portions and sections of the cemetery, or of any part of it, to be set apart for any designated form of burial or for use with any type of monument.

(3) The plan of the cemetery referred to in subclause (2), or a copy of the plan, is to be kept in the office of the Secretary.

Improvement of the cemetery generally

13. The Trust may

- (a) establish and maintain walks, avenues, roads, trees, shrubs and gardens; and
- (b) erect fences, walls, gates and entrances; and
- (c) erect houses, offices and other buildings; and
- (d) lay drains and make other installations; and
- (e) maintain and restore any of the works referred to in paragraph (b), (c) or (d); and
- (f) do such things as may be required for the proper and efficient management, maintenance and improvement of the cemetery.

Fees and charges payable to the Trust

14. (1) The fees and charges for the services provided in respect of the cemetery are as from time to time determined by the Trust and approved by the Minister.

(2) The fees and charges must be paid in advance to the Trust.

(3) The Trust may, in any particular case that it considers to be one of hardship, waive payment of, or accept part payment as sufficient for, any fee or charge.

Certificate of burial rights

15. (1) The Trust may issue a certificate of exclusive right of burial in or to the effect of Form 1 on payment of the appropriate fee or charge.

(2) The Secretary must keep a register in which is to be recorded particulars of all certificates and transfers of certificates.

(3) A certificate may be issued to 1 person, or to 2 or more persons as joint holders.

(4) A certificate entitles a person named in the certificate to the exclusive right of burial in the grave lot of the cemetery specified in the certificate in respect of that person.

(5) The Trust must refuse to issue a certificate under this clause or to grant its consent to a transfer under clause 16 if, in its opinion, the issue of the certificate or the transfer, as the case may be, would tend to create a monopoly or encourage the dealing in such certificates as a business.

Transfer of certificates

16. (1) A certificate of exclusive right of burial may be transferred from the person to whom it was issued to another person with the consent of the Trust.

(2) Subject to clause 15 (5), the Trust may grant or refuse to grant its consent to a transfer of a certificate of exclusive right of burial.

(3) A transfer of a certificate of exclusive right of burial must:

- (a)** be made in or to the effect of Form 2; and
- (b)** be signed by the transferor and the transferee; and
- (c)** be lodged with the Secretary, together with the relevant certificate of exclusive right of burial and the appropriate transfer fee.

(4) On receipt of a form of transfer lodged in accordance with subclause (3), the Secretary, subject to clause 15 (5), is to register the transfer and endorse the name of the transferee on the certificate of exclusive right of burial and reissue the certificate to the transferee.

(5) No transfer of a certificate of exclusive right of burial must be effected, or be taken to be in order, unless the name of the transferee

has been endorsed on the certificate by the Secretary as required by subclause (4).

Transmission of certificates

17. In the case of the death of the holder of a certificate of exclusive right of burial:

- (a) where the deceased was a joint holder the survivor or survivors; or
- (b) where the deceased was a sole holder the deceased's legal personal representative,

are to be the only persons recognised by the Trust as having any title to any remaining exclusive right of burial secured by the certificate.

Burial in grave lots in respect of which exclusive rights have been granted

18. (1) A burial, other than of a body of a person in whose name the certificate is held, may take place in any grave lot in respect of which a certificate of exclusive right of burial has been issued if the consent in writing of:

- (a) the holder of the certificate; or
- (b) a person who has satisfied the Trust that the person is authorised to give such a consent on behalf of the holder,

is produced to the Secretary or the Officer-in-Charge.

(2) Despite subclause (1), on the death of a spouse or child of the holder of a certificate of exclusive right of burial, the body of the spouse or child may be buried in the grave lot in respect of which the certificate was issued if the Trust is satisfied that:

- (a) the holder is not, due to the holder's absence or any other reason, available to give consent as referred to in subclause (1); and
- (b) if the holder were available - such consent would have been given.

Register of burials

19. (1) The Trust must (in addition to the register required to be kept under clause 32 (1) of Ordinance No. 68 under the Local Government

Act 1919) cause a register of burials to be kept in respect of all ashes buried or preserved in the cemetery.

(2) Immediately after each burial or preservation, the Trust must cause to be entered in the register:

- (a) the name of the person whose ashes have been buried or preserved; and
- (b) the last address of that person; and
- (c) the date of the burial or preservation; and
- (d) any other details that will enable ready identification of the grave or place where the ashes are buried or preserved.

Order for burial

20. (1) Except as provided by subclause (4), a funeral director or other person who wishes to arrange for a burial to be carried out in the cemetery must apply to the Officer-in-Charge for an order authorising the burial.

(2) An application for such an order must be forwarded to the Officer-in-Charge at least 8 hours before the time fixed for the burial.

(3) The Officer-in-Charge may issue an order authorising the burial mentioned in the order after:

- (a) the document that relates to the deceased person or the still-born child, as the case may be, referred to in section 19 or 27 of the Registration of Births, Deaths and Marriages Act 1973; and
- (b) particulars of the dimensions of the coffin or container,

are delivered to the Officer-in-Charge and all appropriate fees and charges are paid.

(4) In a case of emergency, a body may be received and buried without a burial order if:

- (a) the document that relates to the deceased person or the still-born child, as the case may be, referred to in section 19 or 27 of the Registration of Births, Deaths and Marriages Act 1973; and

(b) a receipt for all appropriate fees and charges, are produced to the Officer-in-Charge.

(5) A person must not bury any body in the cemetery or cause any body to be so buried except in accordance with this By-law.

Requirements for graves

21. (1) The dimensions of a grave must be 915 mm x 2439 mm, or such other dimensions as the Trust may from time to time determine.

(2) Not more than 2 adults are to be buried in any 1 grave.

(3) If a coffin containing deceased remains is buried in a grave, the upper surface of the coffin must be at a depth of not less than 915 mm from the natural surface of the soil surrounding the grave.

(4) For the purposes of subclause (2), 2 infants are to be treated as 1 adult.

Monuments and inscriptions

22. (1) A person must not, in the cemetery

(a) construct or install any monument, memorial, foundation, tablet, headstone, gravestone, kerbing, railing or other structure, unless it is of a material and design approved by the Trust and carried out to a standard of workmanship approved by the Trust; or

(b) make any inscription or carry out any adornment, unless it is approved by the Trust and made or carried out to a standard of workmanship approved by the Trust.

(2) Application for the approval of the Trust under this clause must:

(a) be made to the Trust in writing; and

(b) be accompanied by sketches, drawings and such other particulars as may be required by the Trust; and

(c) if the application relates to an inscription - be accompanied by a copy of the proposed inscription.

(3) No trade inscription is to be allowed on any masonry work.

Foundations

23. (1) No monument is to be constructed or erected unless it is constructed or erected on foundations of a type and design approved by the Trust.

(2) The construction and erection of the foundations of a monument are to be carried out under the direction and supervision of the Officer-in-Charge or an employee or officer of the Trust.

Supervision by offices

24. All work in connection with any monument or other erection is to be carried out under the direction and supervision of the Officer-in-Charge or an employee or officer of the Trust and is to be carried on to completion without unnecessary delay.

Monumental masons

25. (1) Except as provided by subclause (7), a person must not carry out any work as a monumental mason within the cemetery unless the Trust has issued a permit authorising the person to carry out work as a monumental mason.

(2) The Trust may issue a permit to carry out work as a monumental mason to any person it considers to be suitably qualified who applies for a permit.

(3) Every permit issued under this clause is:

- (a) to be the property of the Trust; and
- (b) to be held by the person subject to the provisions of this By-law; and
- (c) to be delivered up to the Trust on demand.

(4) The Trust may suspend or cancel any permit issued under this clause.

(5) If the Trust suspends or cancels a permit issued under this clause, it may reissue the permit or a substitute permit subject to such conditions as the Trust thinks fit.

(6) A person holding a permit under this clause must, when so required by the Trust, furnish to the Secretary in writing true and

accurate information regarding all works carried out by the person in the cemetery during any period specified by the Trust.

(7) This clause does not apply to employees of the Trust while engaged in their employment under the instructions of the Trust.

Security deposit

26. (1) A monumental mason, or any person employed by the mason, is not permitted to carry out, or to commence to carry out, any work within the cemetery unless a sum of \$200, or such other sum as the Trust may from time to time determine, has been deposited with the Secretary or Officer-in-Charge by or on behalf of the mason.

(2) The deposit referred to in subclause (1) is to be lodged before commencement of the work and remains deposited while the monumental mason or the employee carries out the work.

(3) In the event of a monumental mason or employee not removing refuse or rubbish from the cemetery to the satisfaction of the Trust, the deposit is to be forfeited, as the case requires, in whole or to the extent necessary for the Trust to pay for removing the refuse or rubbish or repairing any damage done by the mason or employee.

(4) When the monumental mason or employee ceases work on a project, the deposit or the amount of the deposit remaining (if any) after the Trust has expended money for the purposes of the removal of refuse or rubbish or the repair of any damage is to be repaid by the Secretary to the person who lodged that deposit.

(5) This clause does not apply to or in respect of a person employed by the Trust.

Removal of structures

27. (1) Subject to subclause (3), the Trust may:

- (a) remove, demolish or alter, or require the removal, demolition or alteration of, any structure of a kind referred to in clause 22 (1) or any adornment; or
- (b) erase or correct, or require the erasure or correction of, the wording of any inscription,

that has been constructed, installed, made or carried out without the approval of the Trust or in contravention of any provision of this By-law.

(2) If any work

- (a) that has been approved to be carried out in the cemetery under clause 22 (1) has been constructed, installed, made or carried out otherwise than in accordance with that approval; or
- (b) has not been completed within a reasonable time,

the Trust may, subject to subclause (3), remove or demolish such part of the work as has been constructed, installed, made or carried out.

(3) Before taking action under subclause (1) or (2), the Trust is to cause a notice of the action proposed to be taken by the Trust to be sent by post to the residential address last known to the Trust of:

- (a) the holder of a certificate of exclusive right of burial issued by the Trust with respect to the grave over which any such structure is or is being erected; or
- (b) the legal personal representative of any such holder who is deceased,

requiring that holder or legal personal representative to rectify or complete the work, as the case may be, in accordance with the Trust's approval within the period specified in the notice.

Removal and replacement of structures on request

28. (1) If reasonable notice has been given to the Trust requiring the opening of a grave for any lawful purpose, the Trust may undertake to cause (after payment of the charges and expenses in respect of the opening) any head or foot stones, gravestones, kerbing, slabs, monuments or other structures to be moved or replaced for the purpose of opening or reclosing the grave.

(2) The Trust is not liable in respect of any damage resulting from any work carried out under this clause.

(3) Except as provided by subclause (1), the Trust is not to carry out work for the purpose of opening or reclosing a grave.

Maintenance of structures

29. (1) Subject to the terms of any agreement entered into by the Trust with respect to the maintenance of any structure of a kind referred to in clause 22 (1), the maintenance of the structure is to be the responsibility of the holder of a certificate of exclusive right of burial issued by the Trust with respect to the grave over which that structure is erected (or of that person's legal personal representative).

(2) Subject to subclause (3), the Trust may remove, demolish or alter, or cause the removal, demolition or alteration of, any such structure:

- (a) if, in its opinion, the structure is or may become dangerous, dilapidated or unsightly, or
- (b) if, in its opinion, it is in the interests of the cemetery to do so.

(3) Before taking action under subclause (2), the Trust is to cause a notice of the action proposed to be taken by the Trust to be sent by post to the residential address last known to the Trust of:

- (a) the holder of a certificate of exclusive right of burial issued by the Trust with respect to the grave over which the structure is erected; or
- (b) the legal personal representative of any such holder who is deceased,

requiring that holder or legal personal representative to take such action in relation to the structure as is specified by the Trust in the notice within the period specified in the notice.

(4) The Trust is not required to account for the materials from the structure if it carries out any work under subclause (2).

(5) The Trust may remove any trees, shrubs, plants of any kind or other vegetation from the cemetery if, in its opinion, it is in the interests of the cemetery to do so.

Lawn Section

30. (1) This clause applies in respect only of the part of the cemetery designated by the Trust as the "Lawn Section".

(2) The Trust is to ensure that:

- (a) graves in the Lawn Section are not enclosed with any railing or kerbing; and
- (b) except as provided by subclause (3), no structure of a kind referred to in clause 22 (1) is placed on or otherwise erected on a grave in the Lawn Section; and
- (c) a wreath or floral tribute is not placed and does not remain on a grave in the Lawn Section except on the day on which a burial is made in that grave; and
- (d) no tree, shrub or plant of any kind is placed or planted on any grave in the Lawn Section otherwise than by the Trust.

(3) The Trust is to place on each grave in the Lawn Section, as soon as practicable after a burial has taken place in that grave, a memorial tablet supplied by the Trust of a standard size and type as determined by the Trust.

(4) The Trust may authorise an inscription to be made on a tablet placed on a grave by it under subclause (3).

(5) The Trust must care for any grave within the Lawn Section without further charge.

Monumental Section

31. (1) This clause applies in respect only of the part of the cemetery designated by the Trust as the "Monumental Section".

(2) The Trust is to ensure that:

- (a) a wreath or floral tribute is not placed and does not remain on a grave in the Monumental Section except on the day on which a burial is made in that grave; and
- (b) no tree, shrub or plant of any kind is placed or planted on any grave in the Monumental Section otherwise than by the Trust.

(3) The holder of a certificate of exclusive right of burial which relates to a grave in the Monumental Section (or that person's legal personal representative) may erect, in the space provided by the Trust, a monument at no cost to the Trust, to a design and with an inscription approved by the Trust.

(4) Subject to subclause (6), the Trust is not to be responsible for the maintenance of a grave in the Monumental Section unless the appropriate fees and charges have been paid under clause 32 for the care of the grave.

(5) Fees and charges paid under clause 32 for the care of a grave in the Monumental Section do not extend to the care of any monument erected on the grave.

(6) The Trust, when cleaning and clearing pathways, may spray and eradicate overgrown weeds on unkept graves without charge.

Perpetual and annual care

32. (1) The Trust may undertake to provide in perpetuity, or for such other period that it may determine, the care of any place of burial upon receiving from the holder of a certificate of exclusive right of burial for

that place (or from that person's legal personal representative) such sum of money, for the general purposes of the cemetery, as may be determined by the Trust.

(2) An agreement to provide perpetual care of any grave site is to be evidenced in writing.

(3) The Trust may, at its absolute discretion, limit the expenditure in each case to the amount receivable on the sum of money referred to in subclause (1) at the current rate of bank interest.

(4) All work must be in good order and repair prior to the Trust's accepting responsibility for such maintenance.

(5) All money contributed is to become the absolute property of the Trust.

(6) The Trust, upon a request in writing, is to undertake the annual care of graves on payment of the appropriate fees and charges.

PART 4 - MISCELLANEOUS

Exhumations

33. Subject to any order of a court, removal of the remains of any person is not to be permitted until after the expiration of any period required, after burial, by the Regional Director of the Department of Health, whose written permission must be first obtained.

Removal of trespassers

34. The Trust may, by its authorised officers, remove from the cemetery any person trespassing or causing annoyance, interference or nuisance or otherwise committing a breach of this By-law.

Hours of burial

35. The hours of burial are from 9 a.m. to 11 a.m. and from 1 p.m. to 3 p.m. on Mondays to Fridays and at any other times the Trust may allow on payment of the appropriate fee or charge.

Offences

36. It is a breach of this By-law for any person within the cemetery

- (a) to sell, or attempt to sell, without the consent of the Trust, any article or thing; or

- (b) to distribute any bill, card, circular, advertisement, paper or other printed, drawn, written or photographic matter; or
- (c) to take part in any gathering, meeting, assembly or group, otherwise than for the purposes of a proper religious ceremony of burial or commemoration; or
- (d) to disturb, interfere with or interrupt any authorised service, procession or cortege; or
- (e) to discharge any firearm, except at a military funeral; or
- (f) to wilfully damage, remove or disturb any flowers, tokens or tributes on any grave or any property; or
- (g) to commit any nuisance, disturbance or annoyance, or to behave in an offensive, indecent or improper manner; or
- (h) to ride or drive any animal or vehicle over the paths or roads of the cemetery without the permission of the Trust, the Secretary or the Officer-in-Charge; or
- (i) to drive or cause to be driven any motor vehicle at a speed in excess of 15 kilometres per hour; or
- (j) to interfere in any way with any grave or portion without the written authority of the Trust or the Secretary or
- (k) to plant any tree, shrub or plant of any kind except as directed by the Trust, the Secretary or the Officer-in-Charge; or
- (l) to allow any animal under that person's control to enter or remain in the cemetery.

Penalty

37. A person who contravenes this By-law is liable to a penalty not exceeding \$500.

SCHEDULE 1 - FORMS

Form 1

(Cl. 15)

CERTIFICATE OF EXCLUSIVE RIGHT OF BURIAL

**FIELD OF MARS CEMETERY - INDEPENDENT
(CONGREGATIONAL) PORTION**

Certificate No.(s):

.....
.....

This is to certify that

.....
of

.....
has paid to the Field of Mars Independent (Congregational) Cemetery
Trust the sum of \$ and in consideration of this payment the
Trust grants to the abovenamed person(s) exclusive right of burial in
Grave(s) No.(s) Section No. of the
..... Portion, including all title and interest therein,
subject to the Field of Mars Independent (Congregational) Cemetery
By-law 1989.

Dated this day of 19 ..

.....

Secretary, for the Trust. _____

Form 2

(Cl. 16)

**TRANSFER OF CERTIFICATE OF EXCLUSIVE
RIGHT OF BURIAL**

**FIELD OF MARS CEMETERY - INDEPENDENT
(CONGREGATIONAL) PORTION**

I/We
.....
of.....
the holder(s) of Certificate No.(s) transfer to
.....
of
the exclusive right of burial in Grave(s) No.(s) Section No.
..... of the Portion, including all title and interest
therein, subject to the Field of Mars Independent (Congregational)
Cemetery By-law 1989.

Signature of Transferor:
Witness:
Date:
Signature of Transferee:
Witness:
Date:
Transfer recorded:

.....
Secretary, for the Trust.

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SCHEDULE 1 - FORMS

EXPLANATORY NOTE

The object of this By-law is to repeal the existing Regulations for the management of the Independent (Congregational) Portion of the Field of Mars Cemetery ("the Cemetery Portion") and to replace them with this By-law.

This By-law provides for:

- (a) the powers and duties of the Field of Mars Independent (Congregational) Cemetery Trust; and
 - (b) the maintenance of the Cemetery Portion; and
 - (c) various matters relating to burials within the Cemetery Portion.
-