

GORE HILL CEMETERY ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 19, 1974.

An Act to dedicate certain land at Gore Hill as a public park; to make provision for the appointment of trustees thereof; to confer and impose certain powers, authorities, duties and functions on those trustees and on the Minister; and for purposes connected therewith. [Assented to, 10th April, 1974.]

BE

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No. 19, 1974 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Gore Hill Cemetery Act, 1974".

Commencement. **2.** This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpretation. **3.** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Council" means the Council of the Municipality of Willoughby;

"former trustees" means the persons who, immediately before the commencement of this Act, were the trustees of the scheduled land;

"monument" means—

(a) a monument, headstone or other surface structure; or

(b) a vault;

"the scheduled land" means the land described in the Schedule.

Divesting of estate or interest in scheduled land held before commencement of Act. **4.** (1) Any estate or interest in the scheduled land which, immediately before the commencement of this Act, was vested in or held by the former trustees or by any other person or body of persons is hereby divested.

(2)

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(2) The former trustees or any other person or body of persons referred to in subsection (1) are hereby discharged from any duties, liabilities or obligations existing immediately before the commencement of this Act in respect of or in relation to the scheduled land. No. 19, 1974

(3) Any moneys, securities or assets held or received by the former trustees, whether before or after the commencement of this Act, in respect of the scheduled land or of any grave in the scheduled land, shall vest in and, as soon as practicable, be paid or transferred to the Council, and those moneys, securities or assets shall thereupon be freed from any conditions or trusts subject to or on which they were held immediately before they so vest.

(4) The Council shall use the moneys, securities or assets referred to in subsection (3) for or towards maintaining the graves or monuments preserved pursuant to the provisions of section 7 or for or towards maintaining the scheduled land as a rest park and garden.

(5) The burial registers and any other records held or received by the former trustees, whether before or after the commencement of this Act, in respect of persons who are buried in or whose ashes have been placed in or on the scheduled land shall vest in and, as soon as practicable, be transferred to the Council.

(6) Any trusts, conditions, encumbrances, dedications or reservations affecting the scheduled land immediately before the commencement of this Act are hereby revoked and annulled.

(7) Any Crown grants issued in respect of any part of, or in respect of any land including any part of, the scheduled land and subsisting immediately before the commencement of this Act are hereby cancelled in so far as they relate to the scheduled land.

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Dedication
of the
scheduled
land.

5. (1) The scheduled land is hereby dedicated as a public park, under the name of "Gore Hill Memorial Rest Park", and shall be deemed to be a public park within the meaning of the Public Parks Act, 1912.

(2) Subject to this Act, the Council shall be the trustees of the scheduled land for all purposes of the Public Parks Act, 1912, and shall be deemed to have been appointed pursuant to that Act to be the trustees of that land.

(3) The scheduled land shall be maintained by the Council as a rest park and garden and, notwithstanding anything in any other Act, but subject to the provisions of this Act, the Council shall not use the scheduled land or permit it to be used for any other purpose.

Powers and
duties of the
Council in
relation
to the
scheduled
land.

6. (1) The Council shall, as soon as practicable after the commencement of this Act—

- (a) deposit the burial registers and any other records referred to in section 4 (5) with the Mitchell Library, Sydney, where they shall be maintained so as to be available for inspection by any interested person from time to time;
- (b) plant the scheduled land with trees, lawns, shrubs and plants and otherwise improve it as a rest park and garden; and
- (c) erect a memorial in a suitable position on the scheduled land indicating the sacred nature of the area and stating that the burial registers and other records referred to in paragraph (a) may be inspected at the Mitchell Library, Sydney.

(2) The Council may grant to the Commonwealth War Graves Commission the right to erect and maintain, in or on the scheduled land, a memorial to any person who is buried in or whose ashes have been placed in or on the scheduled land and over whose grave that Commission has provided or maintained a monument.

(3) Subject to this Act, the Council may do all such other things as it may consider necessary to effect the conversion of the scheduled land into a rest park and garden.

7.

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7. (1) The Council shall, subject to the provisions of **No. 19, 1974** section 8, preserve in its existing position or remove and preserve in a new position on the scheduled land—

Preservation
of certain
monuments,
etc.

(a) any monument which—

- (i) is erected over any grave which, in the opinion of the Council, is of historical importance; and
- (ii) is, in the opinion of the Council, reasonably capable of being preserved; and

(b) any monument erected over any grave in respect of which the Council has notice that any moneys, securities or assets were, immediately before the commencement of this Act, held by any person or body of persons for the perpetual care of that grave.

(2) Subject to the provisions of section 8, the Council may remove all other monuments erected on the scheduled land, and dispose of them at the discretion of the Council.

(3) If any monument preserved in accordance with the provisions of subsection (1) ceases at any time after the expiration of the period of three months referred to in section 8 (3) by reason of its condition to be, in the opinion of the Council, reasonably capable of being preserved, the Council may dispose of it at the discretion of the Council.

(4) Before determining which of the monuments the Council will preserve, or remove and preserve, pursuant to subsection (1), or remove pursuant to subsection (2), the Council shall take into consideration any views of—

- (a) the Royal Australian Historical Society relating to the historical importance of each or any monument; and

(b)

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(b) the Commonwealth War Graves Commission relating to any monument provided or maintained by it,

which are furnished to the Council within three months after the commencement of this Act.

Advertisement to be published before removal of monuments, etc.

8. (1) At least three months before any monuments are removed by the Council pursuant to section 7 (1) or (2), an advertisement of the intention to remove them and drawing attention to the right conferred by subsection (3) on the representatives or persons claiming to be representatives referred to in subsection (3) shall be inserted twice at an interval of not less than two weeks in a newspaper or newspapers published and circulating in the locality, and twice at an interval of not less than two weeks in a newspaper or newspapers published in Sydney and circulating widely throughout New South Wales.

(2) The Council shall send a copy of the advertisement referred to in subsection (1) to the Commonwealth War Graves Commission within one week after the date of publication of the first advertisement referred to in subsection (1).

(3) At any time after the publication of the first advertisement referred to in subsection (1) and before the expiration of three months after the publication of the last of those advertisements—

(a) the representatives or any persons claiming to be representatives of any person who is buried in or whose ashes have been placed in or on the scheduled land; or

(b) subject to subsection (4), the Commonwealth War Graves Commission,

may at their or its own expense, and with the permission of the Council, remove the monument erected over the grave of or in respect of that person, whether or not that monument is one which is referred to in section 7 (1), and may, at their or its own expense, and with the permission of the

Health

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Health Commission of New South Wales, remove the remains of that person to another cemetery for burial or to a crematorium for cremation. No. 19, 1974

(4) Subsection (3) does not authorise the Commonwealth War Graves Commission—

- (a) to remove a monument unless that Commission has provided or maintained the monument; or
- (b) to remove the remains of a person unless that Commission has provided or maintained a monument over the grave of or in respect of that person in or on the scheduled land.

9. (1) The Council or any person or body of persons shall take due care not to unearth or disturb the remains of any person who is buried in, or the ashes of any person which have been placed in or on, the scheduled land. Remains not to be disturbed.

(2) If any such remains or ashes are unearthed or disturbed, the Council shall cause the remains or ashes to be reverently interred anywhere in the scheduled land.

(3) Nothing in this section prevents the removing of any remains pursuant to section 8 (3).

10. Any person who immediately before the commencement of this Act was the holder of, or who was entitled to be the holder (either at law or in equity) of, any exclusive right to burial within the scheduled land may, within a period of six months after that commencement, apply in writing to the Minister to be granted a fresh exclusive right to burial and the Minister shall, as soon as practicable after any application has been so made, arrange for the provision to that person of a new burial site in another cemetery selected at the discretion of the Minister. Exclusive rights to burial.

11.

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No. 19, 1974 **11.** (1) The Council may maintain the dwelling erected on the scheduled land at the commencement of this Act, and may, from time to time, repair, rebuild or replace it.

Caretaker's dwelling.

(2) The dwelling may, with the approval of the Council, be used as a residence for a caretaker or groundsman of the scheduled land, upon such terms and conditions as may be agreed upon from time to time between the Council and the caretaker or groundsman, as the case may be.

(3) So long as the land on which the dwelling is erected is so used for the purposes of a residence for a caretaker or groundsman of the scheduled land, the public shall not be entitled to enter upon or use it, or any land which is within the curtilage of the dwelling and is bounded by a substantial fence, as a public park.

(4) Notwithstanding the provisions of subsections (2) and (3), the Council may use the dwelling, and the land within the curtilage of the dwelling and bounded by a substantial fence, for such other purposes and subject to such terms and conditions as the Minister may approve in writing.

(5) A reference in this section to the dwelling erected on the scheduled land at the commencement of this Act includes a reference to that dwelling as repaired, rebuilt or replaced from time to time under the provisions of this section.

Contribution from Closer Settlement and Public Reserves Fund.

12. Without affecting the operation of section 6 of the Closer Settlement and Public Reserves Fund Act, 1970, there may be paid out of the moneys in the Closer Settlement and Public Reserves Fund established under that Act—

- (a) such amounts as the Minister thinks fit, by way of grants to the Council, as contributions towards the costs which, in the opinion of the Minister, have been reasonably incurred by the Council in the exercise or performance of any of its powers, authorities, duties or functions under this Act; and
- (b) the cost of arranging for the provision to a person referred to in section 10 of a new burial site in another cemetery.

13.

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13. Except where otherwise in this Act expressly provided, no compensation shall be payable to any person or body of persons in respect of the divesting of any estate or interest by this Act or in respect of the performance of any act authorised by this Act. No compensation payable.

SCHEDULE.

Sec. 3.

ALL that piece or parcel of land situated in the Municipality of Willoughby, County Cumberland, Parish Willoughby containing 5.784 hectares being land in two parts dedicated on 19th May, 1868 and 9th September, 1908 for General Cemetery, comprising in part Crown Grants Volume 460 Folio 32 and Volume 461 Folio 79 and being bounded by the Pacific Highway, Westbourne Street, portion 868 and Reserve 29836 from Sale for Public Recreation notified 28th October, 1899.

LOCAL