

Our ref: SUB-574
Further contact: Elle Brunsdon –

6 June 2019

Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Submitted online at www.ipart.nsw.gov.au

Dear Tribunal members

Review of interment costs and pricing

Thank you for the opportunity to comment on the issues paper for the Independent Pricing and Regulatory Tribunal (IPART) review of interment costs and pricing.

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

This submission remains in draft form until endorsed by the LGNSW Board. Any revisions made by the Board will be forwarded to IPART.

The role of local government in cemetery ownership and operation

As noted in IPART's issues paper, councils provide most of the interments in regional areas outside of Sydney and manage more than 1,000 cemeteries across the state. However more than 80% of these cemeteries are closed or conduct fewer than 10 burials per year.¹

While most burials in metropolitan Sydney take place in Crown-trust operated cemeteries, across NSW more broadly councils have an important role in ensuring people are able to access affordable and respectful interment, within reasonable proximity to their homes.

All councils in NSW are required by section 8A of the Local Government Act 1993 to carry out their functions in a way that provides the best possible value for residents and ratepayers.

Notably, councils in NSW operate in a constrained financial environment as a result of rate-pegging, cost shifting onto local government and state and federal funding arrangements that are no longer fit for purpose.

¹ IPART, Review of interment costs and pricing in NSW issues paper, May 2019, p. 32.

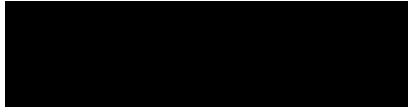
LGNSW would welcome recommendations that account for differing governance and ownership arrangements for cemetery operators and the differing circumstances and pressures on cemeteries in metropolitan, regional and rural areas.

As council-operated cemeteries provide such a significant proportion of interments across NSW, LGNSW would also welcome further engagement from IPART to ensure recommendations take into account the regulatory environment in which council cemeteries operate and to ensure the needs of all community members are met.

LGNSW's responses to key questions of the issues paper are at **Attachment A** to this letter.

If you would like to discuss this submission further, please contact Elle Brunsdon, Policy Officer on [REDACTED] or at elle.brunsdon@lgnsw.org.au.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Tara McCarthy
Chief Executive

Attachment A – Local Government NSW response IPART Issues Paper - Review of interment costs and pricing

1. Do you agree with our proposed pricing principles?

LGNSW agrees with the proposed pricing principles.

2. Are any principles more important than others? How can we manage trade-offs between conflicting principles?

All three are important but the principle of affordability and equity is paramount. Any trade-offs between conflicting principles would need to be addressed through government intervention.

3. What land is the most likely source of increased capacity?

LGNSW understands there is a shortage of capacity in Sydney and that identifying future supply is a strategic priority for Cemeteries and Crematoria NSW. LGNSW understands that in February 2019, the Premier requested the Greater Sydney Commission provide advice and recommendations on the strategic planning considerations for the provision of new cemeteries.

This request has been made under section 10(1)(a) of the *Greater Sydney Commission Act 2015* and the Commission's advice will inform the NSW Government on the key planning criteria to be considered in assessing cemetery proposals.

The Commission anticipates reporting to the Premier in the second half of 2019.

Crown lands should be investigated as a potential source of land for future supply, both in the Greater Sydney area and regional areas. In regional areas where councils are the primary provider, ownership of suitable Crown land sites should be transferred to councils where required.

LGNSW supports a coordinated strategic planned approach to identifying increased capacity that is undertaken in partnership with local councils.

Recommendation 1: That the NSW Government work in partnership with councils in a coordinated and strategic manner to identify land for interment.

4. Are there other costs involved in developing land for use as a cemetery?

In addition to the costs noted in the issues paper, there can be substantial demolition costs involved in developing land for cemeteries, along with survey and design, provision of parking and access, landscaping, amenities, drainage, utilities and tree removal.

A proportion of estimated costs are discretionary. These relate to the standard to which the cemetery is to be developed e.g. level of embellishment, landscaping chapels, reflection centres etc. This is an important consideration in determining efficient pricing.

LGNSW questions the application of the Weighted Average Cost of Capital (WACC) to essential public services and infrastructure like cemeteries. If it were to apply, it needs to differentiate between existing public land repurposed for cemetery use and land purchased on the open market. Further, land purchased for future use as a cemetery can continue to be used for existing or alternative purposes until it is redeveloped (e.g. agriculture grazing, horticulture, public open space, commercial, industrial or residential). This would provide income or other benefit streams that should be offset against holding costs.

6. Who should have responsibility for maintaining closed cemeteries in perpetuity?

It is reasonable for cemetery operators to retain responsibility for closed cemeteries in perpetuity where those maintenance costs were factored into initial fee structures.

IPART's issues paper questions whether closed cemeteries might be transferred to a council or Crown cemetery operator. Costs for perpetual maintenance must not be shifted to councils without council approval and sufficient corresponding funding or increase in revenue-raising capacity, particularly if future maintenance has not been adequately provided for.

Recommendation 2: That responsibility for maintaining closed cemeteries must not be transferred to councils without council approval and without sufficient corresponding funding or increase in revenue-raising capacity.

It is difficult to provide substantial comment on the issues raised in questions 6 and 7 without clear definitions of 'perpetuity' and an accepted/expected level of maintenance. Contrary to the Issues Paper, it is not unheard of for long-closed cemeteries to be effectively abandoned after long periods of declining maintenance.

7. Should there be a legal obligation on all cemetery operators to make financial provision for the perpetual maintenance of their cemeteries? What form should this financial provision take?

Cemetery operators should make financial provision for the perpetual maintenance of their cemeteries. However, the definition and extent of perpetual maintenance would need to be considered as it could vary greatly across NSW. The efficient management of a cemetery will be different depending whether it is open, partially closed or closed.

However, for local government cemetery operators, any further legal obligation to make financial provision for perpetual maintenance of cemeteries is unnecessary, as councils are already heavily regulated in terms of their financial administration and service delivery to their communities as provided by the *Local Government Act 1993*, and its financial and annual reporting obligations. In addition, section 8B of this Act sets out the principles of sound financial management by which all councils must apply:

8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.*
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.*
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,*
 - (ii) asset maintenance and enhancement,*
 - (iii) funding decisions,*
 - (iv) risk management practices.**
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,*
 - (ii) the current generation funds the cost of its services.**

Cemeteries and Crematoria NSW has acknowledged the existing oversight on councils, exempting cemeteries operated by councils from reporting requirements under the *Cemeteries and Crematoria Act 2013* on the basis that councils already comply with separate and existing reporting obligations under the *Local Government Act 1993* and related legislation.²

IPART's issues paper notes that there have not been any instances of NSW cemeteries finding themselves unable to provide for perpetual maintenance as a result of inappropriate planning for costs, and that given the high level of government management (including for councils) it is unclear whether cemetery abandonment is likely to occur in NSW.

In the absence of a demonstrated problem, introducing prescriptive legal obligations for perpetual maintenance for council-operated cemeteries would be duplicative, unnecessary and potentially burdensome, increasing the costs of maintaining and administering each cemetery.

Recommendation 3: That there should be no new legal obligation for financial provision for perpetual maintenance on council-operated cemeteries, in recognition of existing regulatory and financial oversight of local government in NSW.

² Department of Industry, Planning & reporting – Crown Land in NSW, [available at: www.industry.nsw.gov.au/lands/what-we-do/crown-land/cemeteries-crematoria/reporting](http://www.industry.nsw.gov.au/lands/what-we-do/crown-land/cemeteries-crematoria/reporting) [accessed 31 May 2019]

8. Should more guidance or oversight be given to cemetery operators regarding investing and managing funds for perpetual maintenance? If so, by whom?

Guidance on investing and managing funds for the perpetual maintenance of cemeteries that is tailored to the cemetery sector would be beneficial. However as noted above, councils are heavily regulated in terms of financial management and restricted in their investment options and ability to generate revenue. As such, any guidance would need to consider these restrictions for it to be beneficial for council-operated cemeteries. Imposition of duplicative oversight on council investment and fund management would be unnecessary and burdensome for council-operated cemeteries.

Many councils have closed or partially closed cemeteries that have ongoing maintenance liabilities. Guidance on when and how councils may use perpetual maintenance funds raised from operational cemeteries to help fund closed or partially closed cemeteries in perpetuity may be useful.

10. Can the variation in interment prices be explained by cost differences (such as higher labour costs for weekend interments)?

NSW councils usually operate their cemeteries on a cost-recovery basis in order to offer a reasonably priced service to the community. Section 8A of the *Local Government Act 1993* sets out the guiding principles for councils in NSW, including that:

Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

Section 608 of the Act notes that a council may charge and recover a fee for services, products or commodities it provides under the Local Government Act or any other Act.

Section 610D of the *Local Government Act 1993* sets out how a council determines its fees for services (such as interment) as follows:

610D How does a council determine the amount of a fee for a service?

- (1) A council, if it determines the amount of a fee for a service, must take into consideration the following factors:
 - (a) the cost to the council of providing the service,
 - (b) the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department,
 - (c) the importance of the service to the community,
 - (d) any factors specified in the regulations.
- (2) The cost to the council of providing a service in connection with the exercise of a regulatory function need not be the only basis for determining the approved fee for that service.
- (3) A higher fee or an additional fee may be charged for an expedited service provided, for example, in a case of urgency.

Section 610E of the Act allows for a council to waive or reduce payment of a fee for particular cases of hardship.

There are varied interment and overhead costs associated with the provision of interment services. The Issues Paper notes several costs that can affect the differing interment costs across NSW:

- Varied labour costs depending on weekend or penalty rates
- Type of soil
- Spread of capital service costs associated with services (including machinery) across multiple interments

Further, the fees can also vary based on the number and size of cemeteries operated, numbers of employees, equipment required and distance to transport equipment. Council-operated cemeteries often provide a full range of interment rights to reflect the needs of their communities but will often have access to fewer facilities such as chapels, café rooms and crematoriums, resulting in lower fees.

Difficult soil conditions can also incur an added expense for some cemeteries, including the removal of excessive rock. It is important to note that renewable interment may not be feasible in some soil types which may mean that remains may not have decomposed after 25 years. In these cases, removal would mean exhumation, an expensive process involving the coordination of a number of agencies. This process would greatly add to the cost of a burial site.

14. Should private and local government cemetery operators also pay the Crown Cemetery Levy to fund the operations of CCNSW?

Council-operated cemeteries should not be required to pay the Crown Cemetery Levy to fund the operations of CCNSW. As noted in response to question 7, in contrast to other cemetery operators councils are already heavily regulated under the *Local Government Act 1993*. This regulation pertains to financial sustainability, oversight, reporting and transparency.

The Cemeteries and Crematoria NSW 2017-18 annual report notes that part 5 of the *Cemeteries and Crematoria Act 2013* places responsibility on CCNSW for the oversight of the performance of Crown cemetery trusts:

The governance framework imposes annual reporting requirements for all Crown cemetery trusts including independently audited financial statements. Annual reports must include a report on trust operations including the trust's strategic plan and any plans of management.

During 2017–18 CCNSW received and evaluated annual reports, financial statements and proposed fees and charges for the metropolitan Crown cemetery trusts, and completed follow-up enquiries as appropriate.³

³ Cemeteries and Crematoria NSW, Annual Report 2017-18, p. 12.

Councils are already required under the *Local Government Act 1993* to provide annual reports to the Minister for Local Government along with independently audited financial statements, and as noted in response to question 10 above have a clear framework in the Act for setting fees and charges.

As a result, many potential aspects of CCNSW regulation and oversight of council-operated cemeteries would be duplicative and potentially redundant. As such, it would not be appropriate for local government cemetery operators to pay the Crown Cemetery Levy to fund the operations of CCNSW.

Further, cemeteries operated by Crown land managers are already effectively subsidised by the councils in which they are located through the operation of s556 of the Local Government Act. Section 556 provides that land used for a public cemetery and vested in the Crown, a public body or trustees is exempt from all rates, other than water supply special rates and sewerage special rates. This rate exemption for substantial tracts of metropolitan land should be considered a council contribution which supports cemeteries operated by Crown land managers to fund CCNSW.

Recommendation 4: That local government cemetery operators not be required to pay the Crown Cemetery Levy to fund the operations of CCNSW, in recognition of councils' existing regulation under the *Local Government Act 1933*.

16. Should the forms of recommendation from this review vary depending on the ownership/management of the cemetery to which they apply? If so, how?

Inflexible, prescriptive regulatory arrangements could result in higher costs and be an administrative burden for council-operated cemeteries which, as noted above, already have adequate regulatory oversight guidance in terms cost setting under the *Local Government Act 1993*.

The form of recommendations from the review could differ across cemeteries, so that, for example, a pricing methodology is provided for Crown cemeteries and pricing guidelines are provided for local councils. LGNSW recommends the unique circumstances of local government operated cemeteries and their existing regulation be considered in the development of any recommendations.

Recommendation 5: That IPART considers the unique circumstances and existing regulation of local government in development of any recommendations.

24. Which community impacts should we consider as part of this review?

Changes to interment pricing can impact the affordability and choice for community members including those on a low income, or religious or cultural groups that have specific burial practices.

Changes to affordability of interment services may increase reliance on charitable organisations, further stretching these organisations that have a heavy reliance on funding.

Communities may also be impacted where they are no longer able to afford an interment allotment in area they may have lived for generations, due to the overflowing demand from neighbouring areas and limited options for interment allotments.

The NSW Government must ensure people from varying community and religious groups are not unduly impacted by any potential pricing changes to interment services.

Summary of recommendations

Recommendation 1: That the NSW Government work in partnership with councils in a coordinated and strategic manner to identify land for interment.

Recommendation 2: That responsibility for maintaining closed cemeteries must not be transferred to councils without council approval and without sufficient corresponding funding or increase in revenue-raising capacity.

Recommendation 3: That there should be no new legal obligation for financial provision for perpetual maintenance on council-operated cemeteries, in recognition of existing regulatory and financial oversight of local government in NSW.

Recommendation 4: That local government cemetery operators not be required to pay the Crown Cemetery Levy to fund the operations of CCNSW, in recognition of councils' existing regulation under the *Local Government Act 1933*.

Recommendation 5: That IPART consider the unique circumstances and existing regulation of local government in development of any recommendations.