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Further contact: Damian Thomas – 02 9242 4063

6 May 2021

The Hon. Melinda Pavey MP
Minister for Water, Property and Housing

By email: office@pavey.minister.nsw.gov.au

Dear Minister

Proposed reforms to cemetery and crematoria sector

I understand that you are now considering the recommendations of the Statutory Review of the *Cemeteries and Crematoria Act 2013*, as well as the recommendations of IPART's review of interment costs and pricing.

I write to you raising serious concerns of local government with cemetery and crematoria sector reforms proposed as part of these reviews.

Local government has a key role in cemetery management and operation. Council-run cemeteries undertake almost 50 per cent of burials in NSW, more than any other operator category (Crown, private, community and church operators). In rural and regional NSW councils perform almost 85 per cent of burials.

Across NSW, councils have an important role in ensuring people are able to access affordable and respectful interment, within reasonable proximity to their homes.

It is LGNSW's view that proposed reforms do not appropriately account for the differing governance and ownership arrangements for cemetery operators and the differing circumstances and pressures on cemeteries in metropolitan, regional and rural areas.

In many ways the proposed reforms are also duplicative and unnecessary, given the extensive regulatory arrangements that already apply to local government, including oversight and regulation by the Office of Local Government, the NSW Auditor General and associated legislation. Other cemetery managers do not operate under these arrangements.

As council-operated cemeteries provide such a significant proportion of interments across NSW, it is critical that any reforms are undertaken in close consultation with local government and take into account the unique regulatory environment in which council cemeteries operate.

Attached to this letter I have set out some of the key concerns of the local government sector with the proposed reforms the NSW Government is considering. In summary, these concerns include:

- **Cemetery reform taskforce** – It is critical that local government is represented on the taskforce proposed in the statutory review report, given the prominence of council-run cemeteries. The taskforce should also undertake thorough consultation and consideration of any reform proposals, including potential unintended consequences, and a regulatory impact statement must be prepared in advance of any reforms.
- **Cemeteries & Crematoria NSW Board** – The NSW Government must ensure the voice of local government remains represented on the CCNSW Board given the important role of council-operated cemeteries, particularly in regional and rural NSW.
- **Development of an industry interment scheme** – The proposed industry scheme appears to seek to impose a one size fits all approach to cemetery regulation in the absence of supporting evidence. Increased costs of compliance would likely result in higher interment prices, particularly in regional areas, for no demonstrable benefit. The scheme would uniquely disadvantage council-operated cemeteries, which would find themselves subject to duplicative and burdensome regulation, reporting and oversight. Mandatory codes of maintenance should not impose unreasonable standards, particularly on smaller or simpler, rural and regional cemeteries.
- **Perpetual maintenance obligations** – Councils do not support recommendations that would impose a 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.
- **Land for new cemeteries** – Councils do not support any process for identifying and acquiring land for new cemeteries that overrides local government consultation and consent powers.
- **Mandating renewable tenure for new cemeteries** – Offering renewable tenure should not be mandated, but rather should be optional for cemetery operators, and optional for burials.

Certainly, councils support sensible reforms to the interment sector. A preferable approach would involve less onerous regulatory requirements for council-operated cemeteries, increased provision of best practice guidance materials and an opt-in approach that takes into account the existing regulation of councils.

Such measures could involve setting pricing principles, establishing benchmarks and only investigating cemetery operators where there is a clearly evidenced need for such oversight (i.e. intervention by exception). This approach could retain the place of model Codes of Practice and increased transparency and comparison measures for cemetery operators.

Could you please respond confirming that the NSW Government will:

- **Ensure councils remain represented on the CCNSW Board and any other key decision-making bodies for interment sector reforms,**

- **Not impose a one-size-fits-all industry interment scheme, licensing or perpetual maintenance obligations on council-run cemeteries in recognition of existing governance and oversight arrangements for local government, and**
- **Seek the concurrence of local government in any process for identifying and acquiring land for new cemeteries?**

I would also welcome an opportunity to meet with you to discuss this further. For further information or to arrange a meeting, please have your staff contact Mr Damian Thomas, LGNSW Strategy Manager at damian.thomas@lgnsw.org.au or on 02 9242 4063.

Yours sincerely

A handwritten signature in black ink that reads "Linda Scott". The signature is written in a cursive, flowing style.

Cr Linda Scott
President

Attachment: LGNSW position on proposed reforms to interment sector

Attachment – LGNSW position on proposed reforms to interment sector

Cemetery reform taskforce

The statutory review report recommends the establishment of a cemetery reform taskforce. Local government cemeteries undertake almost 50 per cent of burials in NSW, more than any other operator category (Crown, private, community and church operators). In rural and regional NSW councils perform almost 85 per cent of burials. Given the prominent role of councils in cemetery ownership and management across the State, it is entirely appropriate that local government is represented on this taskforce.

It is further critical that the taskforce undertake thorough consultation and consideration of any reform proposals, including consideration of unintended consequences, and that a regulatory impact statement be prepared in advance of any reforms.

CCNSW Board

The statutory review report proposes removing all non-voting members of the CCNSW Board, including the representative required to have knowledge and experience of local government.

As for the reform taskforce, it is critical that the NSW Government ensure the voice of local government remains represented on the CCNSW Board given the important role of council-operated cemeteries, particularly in regional and rural NSW.

Development of an interment industry scheme

The statutory review report and IPART's draft report recommend the development of an industry interment scheme, incorporating the assessment, reporting, provisioning and auditing of perpetual maintenance and the development of a licence framework.

While LGNSW acknowledges the importance for consistency within the interment sector, LGNSW considers the proposed regulatory framework to be unnecessarily heavy handed and costly to administer, particularly when applied to council-operated cemeteries. Ultimately, these added costs will be passed on to consumers, which would seem to conflict with the objective of IPART's review in reducing costs.

Unlike the rest of the interment sector, council-operated cemeteries (along with all other council operations) are strictly regulated under the provisions of the Local Government Act.

It is LGNSW's view that the reform proposals have not made the case as to why an interment industry scheme imposing new regulatory and reporting obligations is warranted for council cemeteries, which provide almost half of interments across NSW. In regional areas (where council cemeteries predominate) IPART has found that a lack of competition has not generally led to higher prices. This does not therefore support the case for costly regulation.

The proposed industry scheme appears to impose a one-size-fits-all approach to cemetery regulation in the absence of supporting evidence. Increased costs of compliance would likely

result in higher interment prices, particularly in regional areas, for no demonstrable benefit. Further, by recommending that the more onerous interment industry scheme and operating licence be imposed on all operators (rather than just Crown-operated cemeteries), IPART's draft recommendations would uniquely disadvantage council-operated cemeteries, which would find themselves subject to duplicative and burdensome regulation, reporting and oversight, breaching the principle of competitive neutrality.

A preferable approach would involve less onerous regulatory requirements for council-operated cemeteries, increased provision of best practice guidance materials and an opt-in approach that takes into account the existing regulation of councils. Such measures could involve setting pricing principles, establishing benchmarks and only investigating cemetery operators where there is a clearly evidenced need for such oversight (i.e. intervention by exception). This approach could retain the place of model Codes of Practice and increased transparency and comparison measures for cemetery operators.

It is also important that mandatory codes of maintenance do not impose unreasonable standards, particularly on smaller or simpler, rural and regional cemeteries, and that cemeteries are not unreasonably required to maintain monuments or headstones where they cannot find a family member or friend who is responsible. This would represent an unreasonable burden on operators and likely lead to higher costs for the public.

Perpetual maintenance

The statutory review report proposes that cemetery operators over a certain interment threshold be required to maintain and contribute to a reserve fund to provide for the perpetual maintenance of each of their cemeteries.

LGNSW does not support recommendations that would impose a 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.

Councils are already heavily regulated in terms of their financial administration and service delivery to their communities as provided by the Local Government Act, and its financial and annual reporting obligations. Councils already also have existing requirements to submit long term financial plans and asset management plans as part of the Integrated Planning & Reporting (IP&R) Framework. In addition, section 8B of the Local Government Act sets out the principles of sound financial management which apply to all councils.

Further, it is neither appropriate nor necessary for perpetual maintenance reserve funds for council cemeteries to be independently managed (as recommended by IPART, but opposed by the statutory review report).

Land for new cemeteries

The statutory review report and IPART's draft report have recommended new cemeteries and crematoria be recognised as State Significant Development.

LGNSW submissions have recommended that the NSW Government work in partnership with councils in a coordinated and strategic manner to identify land for interment.

It is disappointing that in listing bodies to be involved in a coordinated approach to identifying land, IPART's draft report names CCNSW, Department of Planning, Industry and Environment (and its Office of Strategic Lands) and the Greater Sydney Commission, but does not mention local government.

Any whole-of-government process must include council consultation and consent. LGNSW's Policy Platform is clear that local government must retain control over the determination of locally appropriate development and that local planning powers must not be overridden by State plans and policies or misuse of State Significant Development provisions.

The role and voice of local government are vital in ensuring the liveability and sustainability of our communities and therefore local government must be treated as a partner in planning and delivery of infrastructure to support communities.

LGNSW does not support any process for identifying and acquiring land for new cemeteries that overrides local government consultation and consent powers.

Mandating renewable tenure for new cemeteries

The statutory review report recommends that with exceptions for certain religious and cultural groups, the NSW Government should mandate all new cemeteries to offer renewable tenure interments only.

LGNSW's position remains that offering renewable tenure should not be mandated, but rather should be optional for cemetery operators, and optional for burials. Certainly, in parts of NSW there is no shortage of interment capacity that would make necessitate renewable interment.

The previous, limited introduction of optional renewable interment rights in 2018 resulted in significant community distress as families and friends misunderstood the intent of the reforms. Any further introduction of the option for renewable interment should be accompanied by a NSW Government communications campaign that makes clear that renewable interment remains optional and not mandatory.

Interment service levy

The statutory review report and IPART both proposed an interment service levy be extended to non-Crown operators (including councils) to fund the costs of CCNSW as regulator, with slightly different timings and mechanisms for implementation.

LGNSW submissions to the statutory review and IPART have opposed a levy on council-operated cemeteries. It is LGNSW's view that no argument has been put forward that the Office of Local Government is failing in its role as regulator of council operations to the extent that a second regulator is required, funded through a levy on interment in council cemeteries.

All cemetery-operators (council and non-council alike) would likely pass a levy onto consumers, and the costs each operator incurs administering the levy would also likely be added to the costs of interment.

It is also likely that for smaller operators (including many council cemetery operators in rural NSW), the costs of administering the levy on behalf of CCNSW would outweigh the revenue collected through the levy for those operators. This kind of inefficient regulation would likely increase the costs of interment across NSW and in particular for communities in rural and regional NSW.

Extending the levy (and industry scheme and operating licence) to council-operated cemeteries would also harm the principle of competitive neutrality, distorting the market as it would impose on council-operated cemeteries alone duplicative and unnecessary oversight and reporting (to both the Office of Local Government and CCNSW), and associated administrative costs. The levy would entrench higher administrative and regulatory costs that council-operated cemeteries face as they deal with two regulators. Conversely, all other cemetery operators would benefit from a single regulator model.

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