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**CORPORATE AND BUSINESS SERVICES****AO133-19 DELEGATIONS TO THE GENERAL MANAGER - BURIAL AND CREMATION ACT 2002****FILE NO: 15/2/5****PREVIOUS MIN:**

MAKING BURNIE 2030 – CORPORATE PLAN REFERENCE:

Direction	7	AN ENGAGING AND ACCOUNTABLE LEADERSHIP FOCUSED ON A STRONG FUTURE
Objective	7.3	Council is compliant in all areas and carries out the role of regulatory enforcement in a fair and effective manner.
Strategy	7.3.1	Ensure Council remains compliant with all its statutory and regulatory obligations and contributes to the regulatory environment which affects our community.

**1.0 RECOMMENDATION:*****“THAT Council:***

- 1) Delegate all of its powers and functions as a Cemetery Manager under the Burial and Cremation Act 2002 and the Burial and Cremation Regulations 2018 to the General Manager with the exception of Part 2B (being Sections 27G to 27T inclusive), Sections 29, 30 and 31 of the Act; and that Section 20 of the Act be delegated with the condition that fees must be in accordance with Council’s annual Fees and Charges Schedule; and***
- 2) As of 22 May 2019 revoke its previous delegations to the General Manager Burial and Cremation Act 2002 and the Burial and Cremation (Cemetery) Regulations 2005 (as per Resolution Item AO161-18 dated 19 June 2018); and***
- 3) Authorise the General Manager to delegate the above powers and functions to an employee of Council with the appropriate qualifications, skills and experience.”***

**2.0 SUMMARY**

The *Burial and Cremation Amendment Act 2018* was gazetted on 26 December 2018 and brought about changes to the *Burial and Cremation Act 2002*. In addition, the former *Burial and Cremation (Cemetery) Regulations 2005* have expired and been included in the new *Burial and Cremation Regulations 2018*.

Therefore an updated delegation is required from Council to the General Manager in order for Council to delegate its powers as a Cemetery Manager under the Act. This is needed so that the various powers, functions and duties can be undertaken on a day to day basis as required.

### 3.0 BACKGROUND

All Councils delegate a large number of powers and duties to their General Manager in order to carry out all the Council's functions and powers as a corporate body on a day-to-day basis.

Many of the powers and functions require responsiveness within statutory time frames as well as practical expectations. For this reason, the system of delegations and authorisations provides for the officers of Council to execute the powers and functions of Council within a clearly defined framework of authority. Conditions may be placed upon any of the powers being delegated.

Legislation may give powers to the Council or directly to the General Manager. Where powers are given to a Council the Council may delegate them to the General Manager, subject to any conditions or restrictions it sees fit.

In most but not all cases, the General Manager may delegate both powers given by the Council, and powers that the General Manager has in his/her own right, directly to employees of Council according to their position requirements. Officers have no authority to delegate those powers further.



Council reviews its full delegations to the General Manager periodically, and updates specific delegations as required for legislative changes such as this one. The last full review occurred in June 2018.

This report is concerned only with the *Burial and Cremation Act 2002* and associated regulations.

The Council had delegated its powers and functions as a Cemetery Manager under the *Burial and Cremation Act 2002* and the former *Burial and Cremation (Cemetery) Regulations 2005*.

The Act and Regulations have since changed, requiring a new delegation to the General Manager in order for delegated powers to be lawful.

#### 4.0 LEGISLATIVE REQUIREMENTS

The *Burial and Cremation Act 2002* provides powers to a Cemetery Manager. Council is a Cemetery Manager for three cemeteries in the Burnie Municipality.

Section 22 of the *Local Government Act 1993* provides that Council may delegate its functions or powers under any Act to the General Manager. A decision to delegate must be made by resolution of the council.

Section 64 of the *Local Government Act 1993* provides that the General Manager may delegate to an employee of the council any functions or powers delegated by the council which the council has authorised the General Manager to delegate.

#### 5.0 POLICY CONSIDERATIONS

There are no relevant policy considerations impacting this report.

#### 6.0 FINANCIAL IMPACT

There are no financial impacts as a result of making this delegation.

#### 7.0 DISCUSSION

The delegation will provide powers under the following clauses to be undertaken by the General Manager, and for the General Manager to delegate certain powers as appropriate officers in positions required to carry out those duties and powers.

##### Burial and Cremation Act 2002

S.19	Duties and powers of cemetery managers
S.20	Monuments, &c.
S.21	Requirement to remove monuments
S.23	Exclusive right of burial
S.33	Cemetery manager to deal with closed cemetery
S.34	Conditions for removal of human remains
S.35	Land for re-interment to be made available
S.36	Exhumation and re-interment of human remains
S.39	Reopening of graves

##### Burial and Cremation Regulations 2015

Reg 27	Certificate of exclusive right of burial
Reg 28 (1)	Amendment of certificate of exclusive right of burial
Reg 30 (3) (4)	Permission to inter human remains
Reg 31 (2) (3)	Information required before permitting interment of human remains
Reg 33	Nameplate to be interred with human remains
Reg 34	Interment of human remains in the ground
Reg 36	Closing grave after interment
Reg 39	Plan of cemetery
Reg 40	Register of interments
Reg 41 (2) (3) (5)	Register of exclusive rights of burial

Reg 42 (2)	Dangerous driving
Reg 43 (1)	Prohibited activities
Reg 44 (1) (2)	Power of cemetery manager in relation to graves and plots
Reg 45	Power of cemetery manager to approve permanent items
Reg 46	Power of cemetery manager to remove persons
Reg 47 (2) (3) (4)	Duty of cemetery manager on removal of monument

The powers contained in each clause above can be found in the Act and Regulations online from <https://www.legislation.tas.gov.au/search>

There are a number of powers which are not recommended to be delegated by Council, and which is consistent with the previous delegation.

#### **Burial and Cremation Act 2002 (powers not included for delegation)**

Part 2B	Sale of cemeteries (S27G to S27T inclusive)
S29	Closure of cemeteries
S29B	Effect of closure of cemetery
S30	Closed cemeteries laid out as parks or gardens
S31	Land no longer required for cemetery

By excluding these powers above from the delegation, they continue to remain with Council only.

The new delegation is similar in effect to previous delegation but updates to current clause references.

## **8.0 RISK**

It is important that Council regularly review its delegations in order to ensure they are consistent with the relevant legislation conferring a power or function on a council. It is also important the nature and scope of each delegation is appropriate for the efficient operation of Council, and to minimise exposure to risk through inadequate or outdated delegations.

Granting a delegation for the powers and functions provided to a council under the Burial and Cremation Act and associated regulations will ensure continuity for administrative and operational tasks to be maintained.

Risks are always inherent in the performance of any function and the exercise of any power. The primary risk management purpose in making an instrument of delegation is to ensure that the person undertaking the task has the proper authority to lawfully take the action or to make a decision. Delegations by the General Manager to officers of Council are made to people with the appropriate qualifications, skills and experience to carry out those functions, and with appropriate conditions where necessary.

## **9.0 CONSULTATION**

This report has been prepared in consultation with the relevant officers of the Council.