

12 BIGHT CEMETERY, WINGHAM - UPDATE 2

Report Author Paul De Szell, Director Liveable Communities
File No. / ECM Index Cemeteries General
Date of Meeting 27 November 2019
Authorising Director Paul De Szell, Director Liveable Communities

SUMMARY OF REPORT

This report provides both Council and the community with an information update in relation to the actions that have occurred and are proposed to occur at the Bight Cemetery, Wingham.

SUMMARY OF RECOMMENDATION

1. That the information provided in this report be noted; and
2. That Council liaise with “The Blight of the Bight” community group and affected families prior to the formal adoption of the Draft “The Bight Cemetery Restoration Action Plan”.

FINANCIAL/RESOURCE IMPLICATIONS

Preliminary estimates of the rectification work required to be undertaken at The Bight Cemetery are in the order of \$60,000.

Council’s insurers have advised that all rectification works at The Bight Cemetery will be covered under Council’s Insurance Policy.

Council will however be required to pay the excess on the policy which is \$12,500. The cost of the excess is proposed to be funded out of revoted unspent funds (2018/19) in the Cemetery Operations Budget meaning that there will be no decrease in the planned level of service in cemetery operations over 2019/20 as the current budget will not be affected.

LEGAL IMPLICATIONS

Nil

ATTACHMENTS

A: Draft “The Bight Cemetery Restoration Action Plan”

Attachment A has been circulated in hard copy to the Councillors and Senior Staff, and the attachment is also publicly available on Council’s website.

BACKGROUND

Council at its meeting of 11 September 2019 considered an initial update report in relation to the actions that have occurred and are proposed to occur at The Bight Cemetery, Wingham. At this meeting Council resolved:

1. *That the information provided in this report be noted; and*
 2. *That Council endorse the actions identified in Annexure A to this report.*
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The actions identified in Annexure A to the report presented to Council on 11 September 2019 were in a tabular form which has now been updated with additional columns to highlight at what stage the action will be undertaken and the status of the action.

This updated table is provided as **Annexure A** to this report.

DISCUSSION

Since the last update the actions undertaken in relation to The Bight Cemetery have been consolidated into four key areas:

1. The undertaking of an external independent investigation which was commissioned by the General Manager to establish how the events at The Bight Cemetery in July occurred.
2. Staff have continued to liaise with (ongoing) the Cemeteries Advisor from the National Trust of Australia (NSW). The National Trust of Australia (NSW) is a community-based, non-government organisation, committed to promoting and conserving Australia's indigenous, natural and historic heritage through its advocacy work and its custodianship of heritage places and objects.
3. Staff have continued to liaise with (ongoing) the Office of Environment and Heritage in relation to the presence of the Critically Endangered Yellow Donkey-Orchid. By way of background The Bight Cemetery contains an area of native and introduced vegetation and habitat for the Yellow Donkey-Orchid (*Diuris flavescens*) which only flowers for a few weeks a year in September-October.



Staff have submitted an application for a [Section 91 licence](#) under the *Biodiversity Conservation Act 2016* to the Department of Planning Industry and Environment.

On 31 October the Department of Planning, Industry and Environment (the Department) issued a Threatened Species Licence, (a class of Biodiversity Conservation Licence under Part 2 of the *Biodiversity Conservation Act 2016*), to enable council to undertake operations at The Bight Cemetery.

A copy of this licence is provided as **Annexure B** to this report.

4. Preparation of a draft “The Bight Cemetery Restoration Action Plan”

A copy of the draft “The Bight Cemetery Restoration Action Plan” is provided as **Attachment A** to this report.

ALIGNMENT WITH COMMUNITY PLAN/OPERATIONAL PLAN

This report addresses the following strategies and focus areas from the Community Strategic Plan and Delivery Plan:

- Our community strategic plan, *MidCoast 2030: Shared Vision, Shared Responsibility*, values of ‘unique, diverse and culturally rich communities’ and ‘a connected community’ and strategies:
 - *2.2 Support the preservation and uniqueness of our history and cultural heritage in towns, villages and significant places*
 - *6.1 Working together to promote and enhance community safety*
- Our delivery program three year focus areas of:
 - *2.2.3 Ensure our heritage is valued and conserved*
 - *6.1.7 Provide safe public areas*

RECOMMENDATION

1. That the information provided in this report be noted; and
 2. That Council liaise with “The Blight of the Bight” community group and affected families prior to the formal adoption of the Draft “The Bight Cemetery Restoration Action Plan”.
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ANNEXURES

A: Table 1 – The Community’s desired outcomes and Council’s response

Community’s desired outcomes	Council actions	Stage	Status
<p>1. <i>That Council provide a heartfelt apology for the hurt and distress caused to families and the community by the damage at The Bight Cemetery</i></p>	<p>Agreed – It was accepted that apologies had already been provided by the General Manager and Director of Liveable Communities. It was also agreed that personalised letters of apology would be sent to each affected family as they became known to Council. This process has commenced with letters sent from the Office of the Mayor.</p> <p>At its meeting of 28 August the Council also resolved to:</p> <p><i>“formally apologise to the Community and particularly to the families of those impacted by events at The Bight Cemetery, and that we as councillors are sincerely sorry for this outcome, and that we support all necessary measures commenced and to be undertaken to rectify the situation and to ensure that it doesn’t happen again”.</i></p>	<p>Stage 1</p>	<p>Completed</p> <ul style="list-style-type: none"> • Email from Mayor • Media release • Facebook apology • Indication of these on website page • Individual letters have gone to all affected family as they have become known to us
<p>2. <i>Council undertake the restitution of ALL damaged headstones in The Bight Cemetery regardless of their past reasoning or justifications, as a sign of goodwill and true apology to the community</i></p>	<p>It was agreed that the community expect the Council to restore and rectify all damaged headstones at the Bight cemetery.</p> <p>It is agreed that Council will restore and rectify all damaged headstones at The Bight Cemetery, where the damage has been either caused by Council or storm activity in November and December 2018.</p>	<p>Stage 2</p>	<p>In Progress</p> <p>To be addressed as part of the <i>Bight Cemetery Restoration Action Plan</i></p>
<p>3. <i>That council commit to a community education program to fully explain the Memorials Risk Assessment</i></p>	<p>Agreed – A commitment was given to develop an education program once a <i>Memorials Risk Assessment Program</i> is formally developed,</p>	<p>Stage 4</p>	<p>Stalled</p>

<p>issue is to be addressed moving forward.</p>			
<p>In Progress The independent external review has commenced and is in the process of being completed.</p>	<p>Stage 3</p>	<p>This update report has been provided within three months of the public meeting and further reporting and draft action plans will be provided within this timeframe.</p>	<p>7. The Monuments Risk Assessment and Management Program remain suspended until</p> <ul style="list-style-type: none"> the Council review is completed, a comprehensive Cemeteries Policy and set of processes and procedures is developed in consultation with community representatives, the Heritage Advisor, Heritage Reference group, National Trust and other stakeholders and subject matter experts The Cemeteries Policy, processes and procedures are tested under expert and community supervision The complete policy and potential impacts is presented at community meetings across the MidCoast allowing Council to explain why this is necessary and how it will be rolled out and for people have an opportunity to comment and ask questions about the policy Council workers are trained and/or experts brought in
<p>Stalled A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft <i>Bight Cemetery Restoration Action Plan</i>.</p>	<p>Stage 4</p>	<p>Agreed - All work in relation to the laying down of headstones in The Bight and other cemeteries was indefinitely suspended on 26 July and will not recommence until each point is addressed and satisfactorily completed</p>	<p>8. That the assessment program address ALL risks in a cemetery</p>
<p>Stalled</p>	<p>Stage 4</p>	<p>Agreed – Any new Memorials Risk Assessment Program formally developed,</p>	

<p>9. The Assessment program treat assessment and Action/management as separate events. In short:</p> <ul style="list-style-type: none"> • Notification of family • Assessment/Testing (including documentation) • Consultation • Agreed Actions (what agreed actions, by when, by whom) • Supervised Action. 	<p>reviewed, publicly exhibited and adopted by Council must address all risks in a cemetery.</p> <p>Agreed - Any new Memorials Risk Assessment Program formally developed, reviewed, publicly exhibited and adopted by Council will separately address Assessment and Action/Management as separate events.</p>	<p>Stage 4</p>	<p>A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft Bight Cemetery Restoration Action Plan.</p> <p>Stalled</p> <p>A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft Bight Cemetery Restoration Action Plan.</p>
<p>10. That consideration be given to other options to secure headstones at imminent risk of falling such as:</p> <ul style="list-style-type: none"> • to tag at risk headstones, • to support the headstone or exclude people from the immediate area, until family can be contacted and repairs carried out. (Council would retain the right to lay the headstone down if the family cannot be found or repairs not be carried out within an agreed time (timeframe to be agreed). <p>Such an approach, with appropriate consultation with community and Heritage experts, could be considered if the "Assessment only"</p>	<p>Any new Memorials Risk Assessment Program formally developed, reviewed, publicly exhibited and adopted by Council will need to look at a range of options to secure headstones at imminent risk of falling.</p>	<p>Stage 4</p>	<p>Stalled</p> <p>A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft Bight Cemetery Restoration Action Plan.</p>

<p>part of the Program needs to proceed in parallel with the work in (7) above</p>	<p>11. That full documentation, including photos, be created for each monument assessed and these be made available through the Council website</p>	<p>Agreed – This information is currently provided on Council's website in relation to the work undertaken at the Bight Cemetery. A formal process for documenting headstones will need to be incorporated into any new Memorials Risk Assessment Program formally developed, reviewed, publicly exhibited and adopted by Council.</p>	<p>Stage 4</p>	<p>Stalled A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft Bight Cemetery Restoration Action Plan.</p>
<p>12. That any work carried out by Council as a result of an adverse risk assessment be done in accordance with National Trust Guidelines with expert supervision</p>	<p>Agreed – A commitment was given that any work carried out by Council as a result of an adverse risk assessment would be done in accordance with National Trust Guidelines with expert supervision for monuments over 50 years in age.</p>	<p>Stage 2</p>	<p>Stage 4</p>	<p>In Progress To be addressed as part of the Bight Cemetery Restoration Action Plan – draft to be presented to Council on 27/11/19</p> <p>Stalled A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft Bight Cemetery Restoration Action Plan.</p>
<p>13. That the assessment framework and criteria be made available so families may make their own proactive, amateur, assessments of family headstone and take corrective action if they feel warranted without prejudice to the Council program</p>	<p>Any new Memorials Risk Assessment Program formally developed, reviewed, publicly exhibited and adopted by Council will identify a clear assessment framework and criteria for decision making. These will be freely available online for all interested parties.</p>	<p>Stage 4</p>	<p>Stage 4</p>	<p>Stalled A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft Bight Cemetery Restoration Action Plan.</p>

<p>14. That there be wider promotion and longer notification periods be used because many families are outside the area and consideration be given to large notices being posted on cemetery gates</p>	<p>Any new Memorials Risk Assessment Program formally developed, reviewed, publicly exhibited and adopted by Council will identify appropriate notification periods for families that are located outside the area.</p>	<p>Stage 4</p>	<p>Stalled A Memorials Risk Assessment Program will be developed following the formal endorsement of the draft Bight Cemetery Restoration Action Plan.</p>
<p>15. That the Council modify their system used to manage Council Cemeteries to include a "Register of Family Interests in Graves in the Municipality".</p>	<p>This concept was generally agreed however the timing is uncertain as the intent is to utilise the Property and Rating Phase (Phase 2) of MC1 Implementation to develop a new system for cemetery management.</p>	<p>Stage 5</p>	<p>Stalled Completion of this action requires the Property and Rating Phase (Phase 2) of MC1 Implementation to be completed. As part of this implementation, a new system for cemetery management will be developed.</p>
<p>16. That a Beautification program be developed for the Bight cemetery</p>	<p>Agreed – It was generally agreed that Beautification program should be developed for the Bight cemetery. It was accepted however that this was the third priority following the development of separate action plans for: 1. Restoration of headstones at the Bight Cemetery; and 2. A Memorials Risk Assessment Program</p>	<p>Stage 6</p>	<p>Stalled A Beautification Program for the Bight Cemetery will be developed following the development and formal endorsement of the Bight Cemetery Restoration Action Plan and a Memorials Risk Assessment Program that covers the entire MidCoast Council area.</p>

B: Threatened Species Licence to Operate Wingham Bight Cemetery



**Planning,
Industry &
Environment**

Tanya Cross

Natural Assets Coordinator
Mid Coast Council
44 961 208 161
PO Box 450 Forster 2428

Our ref: DOC19/728173-1

Your ref:

Licence number: C0005220

Contact: Vanessa Owen, ph: 4927 3116

31 October 2019

Dear Ms Cross

Threatened Species Licence to Operate Wingham Bight Cemetery

I refer to your application to the Department of Planning, Industry and Environment (the Department) dated 23 August 2019 for a Threatened Species Licence, a class of Biodiversity Conservation Licence under Part 2 of the *Biodiversity Conservation Act 2016* (BC Act), to operate Wingham Bight Cemetery.

The Department understands that operation of Wingham Bight Cemetery includes burials and maintenance activities such as mowing and headstone repair in accordance with '*Management Plan for Wingham Bight Cemetery and surrounding Crown Lands to conserve the Pale Yellow Doubletail (Diuris flavescens)*' (prepared by Paget 2010 and updated August 2019).

I have assessed your application in accordance with the provisions of the BC Act and the *Biodiversity Conservation Regulation 2017* and have decided to grant a threatened species licence for the proposed activity.

A copy of your new Threatened Species Licence is enclosed. Please note that your licence is subject to conditions. These conditions are outlined in the licence. It is an offence under s2.14(4) of the BC Act to breach a condition of a licence.

A public register of all biodiversity conservation licences and all decisions made to vary, suspend or cancel those licences can be viewed at

<https://www.environment.nsw.gov.au/threatenedspecies/S91TscRegisterByDate.htm>

If you have any further questions regarding this matter, please contact Steven Cox on 4927 3140 or via email at rog.hcc@environment.nsw.gov.au

Yours sincerely,

A handwritten signature in black ink that reads 'Nicole Davis'.

NICOLE DAVIS
A/Senior Team Leader Planning
Hunter Central Coast Branch
Biodiversity and Conservation Division

Threatened Species Licence

Biodiversity Conservation Act 2016



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Threatened Species Licence, a class of Biodiversity Conservation Licence under Part 2 of the *Biodiversity Conservation Act 2016*, to:

- harm or pick a threatened species, threatened ecological community or protected plant or animal
- damage habitat of a threatened species or threatened ecological community

Licence number: C0005220
Date granted: October 2019
Date of expiry: October 2024

Granted To:

Tanya Cross
Natural Assets Coordinator
Mid Coast Council
44 961 208 161
PO Box 450 Forster 2428

Description of proposed works:

The proposed works would be undertaken on Lot 1 DP 1155351, Lot 7015 DP 1001487, Lot 269 DP 753202, Lot 7001 DP 10011488, Lot 7002 DP1027058, Lot 7003 DP 1027058, Lot 7004 DP 1001486, Lot 7301 DP 1156555, at Wingham Bight Cemetery in Mid Coast Local Government Area. Approximately 0.5 ha will be affected by the actions in the Management Plan (Figure 1).

The proposed work is the operation of Wingham Bight Cemetery and includes burials and maintenance activities such as mowing and headstone repair in accordance with '*Management Plan for Wingham Bight Cemetery and surrounding Crown Lands to conserve the Pale Yellow Doubletail (Diuris flavescens)*' (prepared by Paget 2010 and updated August 2019).

The actions in the management plan, such as mowing outside the flowering season and controlling soil disturbance, are designed to minimise disturbance to the species. Other management actions are intended to restore habitat through weed control and strategic mowing to promote more suitable habitat for recruitment of the orchid.

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Threatened Species Licence

Biodiversity Conservation Act 2016



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Figure 1 Wingham Bight Cemetery and surrounding Crown Lands

Licence conditions:

1. The works must be carried out in accordance with the information provided in the application provided to the Department of Planning Industry and Environment on 23 August 2019, including 'Management Plan for Wingham Bight Cemetery and surrounding Crown Lands to conserve the Pale Yellow Doubletail (*Diuris flavescens*)' (prepared by Paget 2010 and updated August 2019), unless otherwise stated in the following conditions.
2. Council employees and contractors working at Wingham Bight Cemetery must be inducted and familiar with *Diuris flavescens* and the requirements of the 'Management Plan for Wingham Bight Cemetery and surrounding Crown Lands to conserve the Pale Yellow Doubletail (*Diuris*

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Threatened Species Licence

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flavescens)' (prepared by Paget 2010 and updated August 2019). Induction is to include the need to avoid impacts to *Diuris flavescens* plants and habitat via vehicle access and soil compaction.

3. Mowing and maintenance works such as weed removal, spraying and headstone replacement must not be carried out during the months of September, October or November each year, outside *Diuris flavescens* flowering and seed set period, so as not to impact on the species' ability to reproduce.
4. Pre-booked sites which would destroy *Diuris flavescens* must be relocated to alternate locations where no impact to *Diuris flavescens* would occur.
5. All new un-booked sites must not harm, impact or encroach on any known locations of the orchid by referring to maps of all previously known locations of *Diuris flavescens*.
6. The mower blade level must be set minimum five centimetres above the ground to protect any orchid leaves.
7. No spoil, mulch or waste is permitted within *Diuris flavescens* habitat. Any spoil, mulch and other waste must be removed from adjoining woodland habitat outside the months of September, October and November.
8. A monitoring program must be established to determine if rabbits or other feral herbivores are impacting *Diuris flavescens*. A control plan must be developed in consultation with Local Land Services if required.
9. An annual report must be submitted by 1 March each year to the Senior Team Leader Planning, Hunter Central Coast via email to rog.hcc@environment.nsw.gov.au. The annual report must include:
 - a. 'Table 1 Management Actions' from *Management Plan for Wingham Bight Cemetery and surrounding Crown Lands to conserve the Pale Yellow Doubletail (Diuris flavescens)*' (prepared by Paget 2010 and updated August 2019), with additional columns ('achieved' and 'comments') that detail if each management action was achieved and any relevant comments for that year.
 - b. Additional rows that detail each of the conditions of this Threatened Species Licence.
 - c. A report from a suitably qualified and experienced ecologist detailing and assessing the performance of the proposed works on the population dynamics and ongoing viability of *Diuris flavescens*, including updated mapping and counts of *Diuris flavescens* over the site.The results of these reports will be used to recommend further action or amendments to the management plan.
10. Mowing and maintenance activities must not occur during wet weather or result in wheel ruts or soil compaction.
11. Mid Coast Council must apply for a new Threatened Species Licence prior to the expiry date of this licence if Council wish to continue with the activities. The new Threatened Species Licence will need to include an evaluation of the success of the management actions shown in Table 1 management plan and an update of the management plan where required.

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Threatened Species Licence

Biodiversity Conservation Act 2016



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Note it is an offence under s2.14(4) of the *Biodiversity Conservation Act 2016* to breach a condition of a licence.

N⁹¹ Davis

NICOLE DAVIS
A/ Senior Team Leader Planning
Hunter Central Coast
Biodiversity and Conservation Division
(by Delegation)

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