

Our ref: R96/0085-03

17 November 2023

**Mr Ben Lusher**

**Director Systems and Productivity Policy**

Department of Planning and Environment

Submitted via NSW Planning Portal

## **Re: Exempt and Complying development within existing cemeteries**

As the peak body for local government in NSW, representing NSW general purpose councils and related entities, Local Government NSW (LGNSW) welcomes the opportunity to comment on the proposed new exempt and complying development framework for maintenance and other minor works within existing cemeteries.

This submission is informed by the policy positions of LGNSW and consultation with councils. The submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

In reading the Explanation of Intended Effect (EIE) and the frequently asked questions, LGNSW supports use of new planning pathways to carry out minor ancillary works, as specified, within an existing cemetery to streamline low-impact development.

### **Defining cemeteries as social infrastructure**

LGNSW accepts the idea that cemeteries are regarded as critical social infrastructure, with the same status in the planning system as other forms of social infrastructure such as schools and hospitals. Without this elevation as a use with a community wide public purpose, the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) may otherwise be the more appropriate planning pathway for minor ancillary works within cemeteries.

### **Maintaining the integrity of the SEPP (Transport and Infrastructure) 2021**

The Transport and Infrastructure (T&I) SEPP has its origin as a tool for public authorities on Crown lands, or agents on their behalf, to use exclusively. This sits

comfortably with those public authorities usually also holding the responsible authority status to determine environmental assessments and is already an alternative pathway to a development assessment. With the EIE proposal to allow cemetery operators, which are not necessarily public authorities, to access new provisions in the T&I SEPP for minor works, an important principle should be that the use of this SEPP is preserved for its core purpose. Without the details of the proposed amendments to the T&I SEPP, LGNSW seeks assurance that the integrity of the T&I SEPP is maintained for necessary works of public purpose and not eroded for use by private business interests as commercial development.

### **Ensuring works are for maintenance**

The proposed schedule in the EIE (Table 1) of qualifying 'low-impact' exempt works includes new structures, such as sheds, decks and pergolas which can be used as a place of gathering in the cemetery. LGNSW seeks assurance that these works are only for approved uses as they could be associated with a new or expanded café, restaurant or catering facilities which need to be approved via a separate development assessment process. The proposed SEPP amendments should make clear that the T&I SEPP pathway should not be used for change or intensification of use for commercial development by private operators.

### **Asbestos**

The EIE notes that relevant standards would apply where removal of asbestos is involved. It has been estimated that [6.4 million tonnes of asbestos](#) are still in the built environment around Australia, and vast amounts of asbestos will continue to remain in the built environment for decades to come. The ultimate goal is to eliminate asbestos-related disease. LGNSW therefore supports including provisions in the amended T&I SEPP that draw attention to asbestos requirements under all relevant Acts<sup>1</sup> and which compel building and maintenance work to comply with existing requirements under these Acts.

### **Minimal impact on heritage**

The EIE clarifies that more than one quarter of cemeteries in NSW are heritage listed and potential impacts on these values need to be carefully managed. Many of these would be of State significant listing but not all heritage listed cemeteries would have up-to-date Conservation Management Plans to help guide an assessment of heritage impact. The heritage impact of the proposed exempt structures such as signs and

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<sup>1</sup> Work Health and Safety Act 2011; Protection of the Environment Operations Act 1997; Contaminated Land Management Act 1997; and Environmental Planning and Assessment Act 1979

fences up to 3m and monuments up to 6m could impact the visual sightlines and integrity of the cemetery layout as intended. LGNSW would like to see more regard to heritage criteria given in relation to ancillary items such as fencing and signage, whilst still enabling the construction, alterations and additions of vaults, crypts, sculptures and the like.

### **Aboriginal cultural heritage**

Aboriginal cultural heritage is regulated by the *National Parks and Wildlife Act 1974*. Consideration should be made specifically for Aboriginal cultural heritage in cemeteries. Graves and unmarked graves of Aboriginal people are sometimes found in formal cemeteries. Page 69-76 of this report [A Grave Responsibility to Honour Our Ancestors](#) discusses this issue, particularly the use of technologies such as Ground Penetrating Radar (GPR) in established cemeteries to identify remains before any development takes place. Impacts on Aboriginal cultural heritage in cemeteries in the new standards should be considered and best practice encouraged to identify and protect this heritage prior to any development.

Thank you again for the opportunity to comment on the proposed introduction of an exempt and complying development framework for maintenance and other minor ancillary works within existing cemeteries by amending the State Environmental Planning Policy (Transport and Infrastructure) 2021. For further information on LGNSW's position, please contact Jane Partridge, Strategy Manager, Planning on 02 9242 4093 or [jane.partridge@lgnsw.org.au](mailto:jane.partridge@lgnsw.org.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Thomas', with a stylized flourish at the end.

Damian Thomas  
**Director Advocacy**