

APPENDIX 1

INSTRUMENT OF DELEGATION UNDER THE BURIAL AND CREMATION ACT 2013 AND BURIAL AND CREMATION REGULATIONS 2014

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

Sub-delegation

In exercise of the power provided to me by the Council on the 21 February 2017 as above, I, Colin John Davies, Chief Executive Officer on this Twenty-First day of February 2017 hereby sub-delegate the following powers to the officer or officers of the Council as indicated in the column marked "Subdelegate" (including any person appointed to act in any such position).

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

	SUB-DELEGATE
1. Offence to Dispose of Bodily Remains Except in Cemetery or Natural Burial Ground	
1.1 The power pursuant to Section 8(2) of the Burial and Cremation Act 2013 (the Act) to grant approval to a person to inter bodily remains in a prescribed area on land within the Council's area outside a cemetery or natural burial ground.	
2. Opening of Interment Sites, Exhumation and Re-interment	
2.1 The power pursuant to Section 13(6) of the Act to consult with the Attorney-General in relation to an approval for the purposes of Section 13(1) of the Act where the Council is the relevant authority for the cemetery or natural burial ground.	

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3.	Disposal of Unclaimed Cremated Human Remains	
3.1	The power pursuant to Section 18(2) of the Act, to, if the cremated remains of a deceased person processed at a crematorium are not claimed within 6 months, to dispose of them as the delegate thinks fit where the Council is the relevant authority for the crematorium.	
4.	Establishment of Cemeteries, Natural Burial Grounds and Crematoria	
4.1	Subject to the Act, the power pursuant to Section 19 of the Act, to establish a cemetery, natural burial ground or crematorium.	
5.	Power of Councils to Establish and Manage Public Mortuaries	
5.1	The power pursuant to Section 20 of the Act, to establish and manage public mortuaries for the temporary repose of bodily remains prior to their disposal.	
6.	Establishment of Mausolea Within Cemeteries	
6.1	The power pursuant to Section 21 of the Act, to, on the delegate's own initiative or on application by any person, establish mausolea within the cemetery for which the Council is the relevant authority.	
7.	Designation of Natural Burial Grounds Within Cemeteries	
7.1	The power pursuant to Section 22 of the Act to set apart any part of a cemetery as a natural burial ground where the Council is the relevant authority for the cemetery.	
8.	Power to Set Apart Part of Cemetery or Natural Burial Ground for Particular Religions	
8.1	The power pursuant to Section 23 of the Act, to set apart any part of a cemetery or natural burial ground for the interment of human remains in accordance with the customs and	

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practices of a particular religion where the Council is the relevant authority for the cemetery or natural burial ground.	
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9.	Closure of Cemeteries and Natural Burial Grounds	
9.1	Subject to Section 24 of the Act, the power pursuant to Section 24(1) of the Act, where the Council is the relevant authority for a cemetery or natural burial ground, to close the cemetery or natural burial ground if:	
9.1.1	the cemetery or natural burial ground is or has become unsuitable for the disposal of human remains; or	
9.1.2	50 or more years have elapsed since human remains were last interred in the cemetery or natural burial ground.	
9.2	The power pursuant to Section 24(8) of the Act, if, when a cemetery or natural burial ground for which the Council is the relevant authority is closed under Section 24 of the Act, there are unexercised interment rights in force in relation to the cemetery or natural burial ground, to, by agreement with the holder of such an interment right:	
9.2.1	discharge the interment right and give the former holder a refund equal to the current fee payable for an interment right of the same kind; or	
9.2.2	discharge the interment right and issue to the former holder, free of charge:	
9.2.2.1	a new interment right in relation to another cemetery or natural burial ground administered by the Council	

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	as the relevant authority; or	
	9.2.2.2 if the closure relates only to part of the cemetery or natural burial ground - a new interment right in relation to another part of the cemetery or natural burial ground.	
9.3	The power pursuant to Section 24(9) of the Act, if, when a cemetery or natural burial ground for which the Council is the relevant authority is closed under Section 24 of the Act, there are interment rights in force in relation to the cemetery or natural burial ground pursuant to which human remains have been interred, to, by agreement with the holder of such an interment right:	
	9.3.1 discharge the interment right and issue to the former holder, free of charge:	
	9.3.1.1 a new interment right in relation to another cemetery or natural burial ground administered by the Council as the relevant authority; or	
	9.3.1.2 if the closure relates only to part of the cemetery or natural burial ground - a new interment right in relation to another part of the cemetery or natural burial ground; and	
	9.3.2 remove any human remains interred at the original interment site and re-inter the remains pursuant to the new interment right; and	
	9.3.3 remove any memorial erected at the original interment site and re-position the memorial at the new interment site.	
9.4	The power pursuant to Section 24(10) of the Act, if the Council as the relevant authority and the holder of an interment right cannot reach an	

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<p>agreement to discharge the interment right, to refer the matter to an independent party for mediation in accordance with guidelines approved by the Minister subject to Section 24(11) of the Act.</p>	
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9.5	The power pursuant to Section 24(12) of the Act, to, if a cemetery or natural burial ground closed under Section 24 of the Act has been lawfully consecrated according to the rites or practices of a particular religious or ethnic group and the Council is the owner of the land, offer the closed cemetery or natural burial ground as a gift to that group.	
10.	Dedication of Closed Council Cemeteries as Park Lands	
10.1	Subject to Sections 24 and 25(7) of the Act, the power pursuant to Section 25(4) of the Act, if a closed cemetery for which the Council is the relevant authority is dedicated as park lands, to do any of the following:	
10.1.1	remove memorials to deceased persons;	
10.1.2	relocate memorials to deceased persons in the park lands;	
10.1.3	replace memorials to deceased persons with some other form of memorial in the park lands.	
11.	Conversion of Closed Cemeteries into Public Parks or Gardens	
11.1	The power pursuant to Section 26(2) of the Act, subject to Sections 26(1), (3), (4) and (8) of the Act, where the Council is the relevant authority for a closed cemetery, to convert the cemetery into a public park or garden.	
11.2	Subject to Sections 24 and 26(8) of the Act, the power pursuant to Section 26(6) of the Act, if a closed cemetery for which the Council is the relevant authority, is converted into a public park or garden to:	

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11.1.1	remove memorials to deceased persons;	
11.1.2	relocate memorials to deceased persons in the park or garden;	
11.1.3	replace memorials to deceased persons with some other form of memorial in the park or garden.	
12.	Powers of Relevant Authorities in Relation to Closed Cemeteries	
12.1	The power pursuant to Section 27(1) of the Act, where the Council is the relevant authority for a closed cemetery to, for the purpose of converting the cemetery into park lands or a public park or garden:	
12.1.1	construct roads and pathways on the land; and	
12.1.2	erect or construct buildings or structures on the land; and	
12.1.3	construct on or under the land any vault or other structure as a repository for human remains that are not to be removed from the cemetery for interment elsewhere; and	
12.1.4	erect lighting, seating and any other infrastructure or public amenity; and	
12.1.5	take such other action as the delegate thinks fit for laying out the land as park lands or a public place or garden.	

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13. Issue of Interment Rights	
13.1 Subject to Section 30 of the Act, the power pursuant to Section 30(1) of the Act, where the Council is the relevant authority for a cemetery or natural burial ground, to agree to the interment of human remains in the cemetery or natural burial ground, and issue an interment right that:	
13.1.1 identifies the person to whom the interment right is issued; and	
13.1.2 identifies the person or persons whose remains may be interred pursuant to the interment right or provides that a specified person or person of a specified class may, at some future time, nominate the person or persons whose remains may be interred pursuant to the interment right; and	
13.1.3 identifies the site at which remains may be interred pursuant to the interment right or provides for determination, in a manner set out in the interment right, of the site at which the remains may be interred pursuant to the interment right; and	
13.1.4 specifies the period for which the interment right is granted; and	
13.1.5 sets out the rights to renewal of the interment right; and	
13.1.6 specifies whether the interment right may be cancelled or transferred and sets out the conditions (if any) governing its cancellation or transfer.	

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13.2	The power pursuant to Section 30(3) of the Act to make provision in an interment right for the interment of such number of deceased persons at the site in which remains are to be interred pursuant to the interment right as the delegate considers to be within the capacity of the site to hold.	
13.3	Subject to the Act, the power pursuant to Section 30(4) of the Act, to, in relation to an interment right, permit a memorial to the deceased person to be erected at the site.	
13.4	The power pursuant to Section 30(5) of the Act where the Council is the relevant authority to, at the request of the holder of an interment right, carry out a lift and deepen procedure at the site to which the interment right relates for the purpose of interring additional human remains there.	
14. Duration of Interment Rights		
14.1	The power pursuant to Section 31 of the Act where the Council is the relevant authority to issue an interment right:	
	14.1.1 for the period specified in the interment right; or	
	14.1.2 in perpetuity.	
15. Renewal of Interment Rights		
15.1	The power pursuant to Section 32(1) of the Act where the Council is the relevant authority to, on application by the holder of an interment right and payment of the renewal fee fixed by the Council as the relevant authority, renew the interment right for a period of not less than 5 years.	
15.2	The power pursuant to Section 32(1) of the Act where the Council is the relevant authority to fix a renewal fee.	

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16. Transfer of Interment Rights	
16.1 The power pursuant to Section 33(1) of the Act to transfer an interment right.	
17. Re-use of Internment Sites	
17.1 Subject to the Act, the power pursuant to Section 38(1) of the Act, if an interment right expires, to, where the Council is the relevant authority:	
17.1.1 re-use the internment site to which the interment right related; and	
17.1.2 remove any memorial to a deceased person erected on or at the site.	
18. Ownership of Memorial	
18.1 The power pursuant to Section 39(2) of the Act, to, where the Council is the relevant authority for a cemetery or natural burial ground in which a memorial is situated, deal with and dispose of the memorial in accordance with the Act.	
19. Duty to Maintain Memorial	
19.1 The power pursuant to Section 40 of the Act to enter into an agreement with the holder of an interment right in respect of an interment site in a cemetery or natural burial ground for which the Council is the relevant authority for the maintenance of a memorial at that site.	
20. Power to Require Repair, Removal or Reinstatement of Memorial	
20.1 The power pursuant to Section 41(1) of the Act, if a memorial to a deceased person in a cemetery for which the Council is the relevant authority becomes unsafe, to, by notice in a form approved by the Minister given personally or by post to the owner of the memorial, require repair, removal or reinstatement of the memorial within the period specified in the	

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	notice	
20.2	The power pursuant to Section 41(2) of the Act, if the required work is not carried out within the time allowed in the notice, to have the work carried out and recover the cost of doing so as a debt from the owner of the memorial.	
20.3	The power pursuant to Section 41(3) of the Act, subject to Sections 41(4) and (5) of the Act, if:	
20.3.1	a memorial to a deceased person in a cemetery for which the Council is the relevant authority becomes unsafe; and	
20.3.2	urgent action to repair, remove or reinstate the memorial is considered necessary by the delegate, to, instead of giving a notice under Section 42(1) of the Act, have the work carried out and recover the cost of doing so as a debt from the owner of the memorial.	
21.	Power of Relevant Authority to Dispose of Unclaimed Memorial	
21.1	The power pursuant to Section 42(1) of the Act, if:	
21.1.1	2 years or more have elapsed:	
	21.1.1.1 since an interment site in a cemetery or natural burial ground for which the Council is the relevant authority, has expired; or	
	21.1.1.2 since a cemetery for which the Council is the relevant authority was dedicated as park lands or converted into a public park or garden; and	
21.1.2	a memorial to a deceased person interred in the cemetery or natural burial ground is situated at the	

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	interment site or elsewhere in the cemetery or natural burial ground; and	
21.1.3	the Council as the relevant authority for the cemetery or natural burial ground has given notice of its intention to remove and dispose of the memorial:	
	21.1.3.1 by public advertisement in a newspaper circulating throughout the State; and	
	21.1.3.2 by written notice affixed to the memorial; and	
21.1.4	the Council as the relevant authority has taken reasonable steps to give written notice to the owner of the memorial of its intention to remove and dispose of the memorial; and	
21.1.5	6 months have elapsed since the cemetery authority gave notice under this subsection and no person has claimed the memorial within that period,	
	to remove the memorial from the cemetery or natural burial ground and dispose of it as the delegate thinks fit.	
22.	General Powers of Relevant Authority	
22.1	The power pursuant to Section 43 of the Act where the Council is the relevant authority for a cemetery, natural burial ground or crematorium to:	
22.1.1	enlarge the cemetery, natural burial ground or crematorium; and	
22.1.2	improve or embellish the cemetery, natural burial ground or crematorium; and	

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22.1.3	restrict interments in any part of the cemetery or natural burial ground, except as may be required by interment rights granted before the commencement of the Act; and	
22.1.4	take any other action that the delegate considers necessary or desirable for the proper management and maintenance of the cemetery, natural burial ground or crematorium.	
23.	Power to Restrict Interments in any Part of Cemetery or Natural Burial Ground	
23.1	The power pursuant to Section 45(1) of the Act, subject to Section 45(2) of the Act, where the Council is the relevant authority for a cemetery or natural burial ground to restrict interments in any part of the cemetery or natural burial ground.	
24.	Neglected Cemeteries and Natural Burial Grounds	
24.1	The power pursuant to Section 46(1) of the Act, subject to Section 46(2) of the Act, if:	
24.1.1	the delegate is of the opinion that a cemetery or natural burial ground within its area:	
	24.1.1.1 is in a neglected condition; or	
	24.1.1.2 fails in any manner to comply with the requirements of this Act;	
	to by notice in writing to the relevant authority, require the relevant authority to carry out specified work for the purpose of remedying the condition of neglect or complying with that requirement.	
24.2	The power pursuant to Section 46(3) of the Act, if:	

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24.2.1	the work required by a notice under Section 46(1) of the Act is not carried out within the time specified in the notice; and	
24.2.2	no application for review of the decision to give the notice is made within 14 days after the notice is given, to have the work carried out.	
24.3	The power pursuant to Section 46(4) of the Act, if:	
24.3.1	the work required by a notice under Section 46(1) of the Act is not carried out within the time specified in the notice; and	
24.3.2	an application for review of the decision to give the notice is determined in favour of the Council to, within 14 days after the determination of the review, have the work carried out.	
24.4	The power pursuant to Section 46(5) of the Act to recover the costs incurred by the Council in carrying out works required by a notice given under Section 46 of the Act as a debt from the relevant authority to whom the notice was given.	
25.	Right of Review	
25.1	The power pursuant to Section 47(1) of the Act where the Council is the relevant authority to which a notice is given under Section 46 of the Act, to within 14 days after receipt of the notice, apply to the District Court for a review of the decision of the council or designated Minister (as the case may be) to give the notice to the relevant authority.	
26.	Power of Councils to Accept Conveyance of Cemetery or Natural Burial Ground Land from Trustees	

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26.1	The power pursuant to Section 48(1) of the Act, subject to Section 48(4) of the Act, to accept a trust from the trustees of land in the Council's area held on trust for a cemetery or natural burial ground.	
27.	Power of Councils to Assume Administration of Cemeteries and Natural Burial Grounds	
27.1	Subject to Section 49 of the Act, the power pursuant to Section 49(1) of the Act to assume the administration of a cemetery or natural burial ground within the Council's area if:	
27.1.1	there is no existing relevant authority for the cemetery or natural burial ground; or	
27.1.2	the relevant authority for the cemetery or natural burial ground is unknown and is not reasonably ascertainable; or	
27.1.3	the relevant authority for the cemetery or natural burial ground agrees to transfer it to the Council.	
28.	Public Access to Cemeteries, Natural Burial Grounds and Crematoria	
28.1	The power pursuant to Section 50(2) of the Act where the Council is the relevant authority for a cemetery, natural burial ground or crematorium, to, if the delegate has reason to suspect that a person has committed, is committing or is about to commit an offence in the cemetery, natural burial ground or crematorium, require the person to leave the cemetery, natural burial ground or crematorium.	
29.	Disposal of Surplus Cemetery Land, etc	
29.1	Subject to Section 51(2) of the Act, the power pursuant to Section 51(1) of the Act to deal with land that comprises or forms part of a cemetery or natural burial ground that has not been used for the interment of human remains in the	

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ordinary course of commerce.	
30. Disposal of Land After Closure of Cemetery Etc	
30.1 The power pursuant to Section 52(1) of the Act, if:	
30.1.1 a cemetery or natural burial ground has been closed in accordance with this Act; and	
30.1.2 all human remains interred in the cemetery or natural burial ground, and all memorials to deceased persons erected in the cemetery or natural burial ground, have been removed from the cemetery or natural burial ground,	
to deal with the land comprising that cemetery or natural burial ground in the ordinary course of commerce.	
31. Power of Public Trustee to Act on Behalf of Holder of Interment Right etc	
31.1 The power pursuant to Section 56(1) of the Act, if reasonable attempts by the Council as the relevant authority for a cemetery or natural burial ground to ascertain or locate:	
31.1.1 the holder of an interment right in relation to the cemetery or natural burial ground; or	
31.1.2 the owner of a memorial erected in a cemetery or natural burial ground, fail, to request the Public Trustee act on behalf of the holder or owner.	
32. Authorised Officers	
32.1 The power pursuant to Section 58(2) of the Act to appoint as an authorised officer a specified officer or employee of the Council, or an officer or employee of the Council of a specified class.	

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32.2	The power pursuant to Section 58(3) of the Act to make an appointment under Section 58 of the Act subject to conditions limiting the period during which, the area within which or the purposes for which the appointee may exercise the powers of an authorised officer.	
32.3	The power pursuant to Section 58(7) of the Act to, at any time, revoke an appointment made under Section 58 of the Act, to vary or revoke a condition of such an appointment or impose a further such condition.	

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33.	Filling of Sunken Interment Sites	
33.1	The power pursuant to Regulation 16 of the Burial and Cremation Regulations 2014 (the Regulations), if the surface of an interment site in a cemetery or natural burial ground for which the Council is the relevant authority, sinks below the level of the natural surface of the ground, to cause the site to be filled up to that level.	
34.	Powers of Relevant Authority in Relation to Mausolea and Vaults	
34.1	The power pursuant to Regulation 19(1) of the Regulations, where the Council is the relevant authority for a cemetery to, if the delegate suspects on reasonable grounds that:	
34.1.1	a mausoleum or vault in the cemetery does not comply with the Regulations; or	
34.1.2	offensive odours or noxious gases or fluids have escaped or are escaping from a mausoleum or vault in the cemetery, open the	

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	mausoleum or vault and inspect it.	
34.2	The power pursuant to Regulation 19(2) of the Regulations, if, after inspecting a mausoleum or vault, the delegate is satisfied that:	
34.2.1	the mausoleum or vault does not comply with the Regulations; or	
34.2.2	offensive odours or noxious gases or fluids have escaped or are escaping from a mausoleum or vault, to, by notice in writing to a person who holds an interment right in force in relation to that mausoleum or vault or who is, under such an interment right, entitled to have his or her remains interred in that mausoleum or vault, require the person to take specified remedial action within a reasonable period specified in the notice.	
34.3	The power pursuant to Regulation 19(3) of the Regulations to, if a person refuses or fails to comply with a notice under Regulation 19(2) of the Regulations, cause the work to be carried out and recover the costs as a debt from the person.	
35.	Removal and Disposal of Name Plate etc from Coffin Before Cremation	
35.1	The power pursuant to Regulation 21 of the Regulations, subject to Regulation 21(2) of the Regulations, where the Council is the relevant authority for a crematorium to dispose of:	
35.1.1	a name plate, metal or plastic fitting or any other object removed before cremation from the exterior of a coffin containing	

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	the bodily remains of a deceased person; or	
	35.1.2 any other thing that comes into the possession of the Council as a result of a cremation.	
36.	Power of Relevant Authority in Relation to Things on Interment Sites	
36.1	The power pursuant to Regulation 26 of the Regulations where the Council is the relevant authority for a cemetery or natural burial ground to:	
36.1.1	cause to be removed from an interment site in the cemetery or natural burial ground any unattached ornament, empty flower container, broken masonry, decayed or broken wreath or dead flowers; and	
36.1.2	cause to be pruned, cut down or removed any plant on an interment site in the cemetery or natural burial ground that is, in the opinion of the delegate, unsightly or overgrown.	
37.	Power of Relevant Authority to Require Persons to Leave Cemetery or Natural Burial Ground.	
37.1	The power pursuant to Regulation 27(1) of the Regulations, where the Council is the relevant authority for a cemetery or natural burial ground to, if the delegate has reason to suspect that a person has committed, is committing or is about to commit an offence in the cemetery or natural burial ground, require the person to leave the cemetery or natural burial ground.	

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SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

[Instructions for use: any conditions or limitations which apply to delegations under this Act should be inserted here – DELETE this note once conditions/limitations are entered. If no conditions apply insert 'NIL']

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
Nil	Nil