

Submissions report - Exempt and complying development framework for cemeteries

This report summarises key themes raised by submissions to the Explanation of Intended Effect (EIE) for a proposed exempt and complying development framework for cemeteries.

The objectives of the framework are to:

- introduce fast-track planning approval pathways that allow cemetery operators to carry out low impact works essential to the operation of cemeteries and to meet their obligations under the *Cemeteries and Crematoria Act 2013*.
- deliver on the NSW Government's commitment to introduce the framework and address Greater Sydney's shortfall in burial supply.
- build on recent reforms that recognise cemeteries as essential social infrastructure within the NSW planning system by streamlining process and cutting red tape.

Exhibited framework

The EIE was publicly exhibited from 23 October 2023 to 19 November 2023, detailing a proposed amendment to the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (T&I SEPP). The proposed amendment will allow cemetery operators to undertake specified low impact works within existing cemeteries as exempt or complying development, without the need for a development application.

Public exhibition

The Department received 11 submissions in response to the exhibition. Submissions were received from local governments and industry groups including cemetery operators, all of which broadly supported the policy intent while providing a range of feedback on the merits of specific provisions.

This report summarises the most significant and frequently raised issues identified during exhibition. In addition to these key issues, other more minor issues were raised in the submissions. While these have been considered, they do not form part of this report.

In summary, we heard:

- Operators are facing significant challenges when undertaking works critical for the ongoing operation of cemeteries, including delivering new burial supply to address Greater Sydney's forecast shortfall in burial supply.
- Cemeteries are essential social infrastructure with unique operational requirements and should benefit from fast-track approval pathways as other forms of social infrastructure do.
- Many older cemeteries have exhausted burial supply in the most accessible areas of their landholdings and are now developing residual land that is often affected by a range of constraints such as flooding, acid sulphate soils, and groundwater.
- Cemeteries often also contain state and local heritage values which should be appropriately considered and protected when enabling fast-track approval pathways.
- The focus of the framework should be the core work of cemeteries, that is, the respectful interment of deceased members of our communities. Although ancillary commercial uses can contribute to the financial sustainability of cemeteries, these should not be the focus of a framework intended to support infrastructure delivery.

Summary of key issues

Burial supply

Industry stakeholders requested that the Department extend the exhibited framework to specify the creation of new burial areas or sections as complying development. Industry advised that timeframes, costs and regulatory ambiguity associated with existing planning pathways are a significant obstacle to the efficient delivery of new burial supply to address forecast demand. This is particularly the case for older cemeteries with landholdings subject to significant site constraints and whose establishment predates the contemporary NSW planning system.

Department response

Industry's request is consistent with the objectives of reducing regulatory burden to facilitate works essential to the ongoing operation of cemeteries and addressing burial supply pressures. Accordingly, the Department updated the exhibited framework to specify infill burials as exempt development and the creation of new burial areas or sections as complying development.

The Department considers that these changes will provide greater confidence and certainty to cemetery operators as they seek to meet burial supply demand. A number of environmental standards and conditions have been proposed to mitigate the potential impact of new burial areas.

Table 1: New development types included to facilitate new burial supply

Development type	Description	Pathway
Infill burials	Development for the purposes of the burial of human remains within an existing burial area.	Exempt development
Burial areas	Development for the purposes of a new area, within a cemetery, in which human remains are buried or are intended to be buried.	Complying development

Heritage

Many NSW cemeteries are affected by either local or State heritage listings, or both. Industry and local government submissions acknowledged the challenges presented by heritage listing, particularly where an entire cemetery site may be listed despite heritage values being found in only a small portion of the site.

Some local council submissions sought greater protection of heritage values for certain exempt development types such as demolition and building alterations. Other submissions highlighted practical challenges in satisfying proposed heritage standards such as seeking consultant input and identifying heritage ‘curtilage’.

Department response

In response to feedback, it is proposed that demolition will not be permitted on heritage items, certain structures must not be visible from a public road and conservation management plans must be adhered to (where available). References to heritage ‘curtilage’ in the exhibited framework have also been removed.

The Department has also proposed to simplify the exhibited heritage approach as outlined below.

Exempt development

Rather than providing a range of heritage standards that apply to some development types but not others, it is proposed that all exempt development will be strictly required to have ‘no more than a minimal impact’ on heritage values. This aligns with the existing

approach taken for comparable social infrastructure types under the T&I SEPP such as schools.

Complying development

Complying development will be permitted on heritage listed cemeteries where the relevant heritage authority advises the works will not adversely affect the significance of the heritage item. For state heritage items, this means approval or exemption under the *Heritage Act 1977*. For local heritage items, this will require written advice from the relevant council. If the approval or advice is not issued, the development will not be able to proceed as complying development.

Environmental impacts

Some local government submissions highlighted the importance of protecting environmentally sensitive areas, such as coastal management areas and scenic foreshore areas, as well as remnant vegetation.

Industry requested tree removal and pruning be permitted where the tree poses a risk to person or property or it impedes cemetery expansion, if supported by an arborist.

Department response

Sensitive land

The exhibited framework will not apply within the coastal wetlands or littoral rainforest coastal management area. Since exhibition, the framework has been updated to ensure both exempt and complying development will be subject to a range of general requirements that exclude sensitive lands such as wilderness areas, critical habitat, and wetlands.

Further, exempt development cannot be carried out on land that is in an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*. Complying development cannot be carried out on land subject to a biobanking agreement, a property vegetation plan, or land identified by an environmental planning instrument as being within a buffer area, river front area, ecologically sensitive area or protected area, or as being environmentally sensitive land.

In response to feedback, the Department has also updated the exhibited framework to manage certain development types. For example, car parks, rainwater tanks, sheds, earthworks and retaining walls may be undertaken as exempt development, however, these cannot be located on land within a foreshore or environmentally sensitive area. Similarly, although new burial sections may be undertaken as complying development,

they are required to be separated from sensitive areas including natural waterways and flood prone land.

Tree removal

The framework has been updated to permit tree removal in limited circumstances, in line with the approach taken for comparable infrastructure under the T&I SEPP. For exempt development, tree removal is permitted where the tree has been assessed by an arborist as posing a risk to safety or infrastructure, and a replacement tree is planted within the site. The removal of trees that impede the expansion of cemeteries is not supported as exempt development.

For complying development, a tree within 3 metres of a building can be removed if it is not listed as a significant tree on a register kept by the local council, has a height less than 8 metres and (if a tree is removed) a replacement tree is provided within the site. A maximum of 250 square metres of native vegetation removal is permitted.

Design and scale

Some local government submissions recommended the scale of works permitted under the exhibited framework be reduced to manage impacts while industry generally sought greater flexibility to address the unique operational needs of cemeteries. In the case of crypts and vaults, one industry submission sought to increase the maximum footprint from 25 sqm to 200 sqm while one local government submission identified the exhibited height and footprint excessive.

Department response

The Department has reviewed the exhibited development types and updated these to allow better tailoring of numeric standards. Above ground burial structures (vaults, crypts and columbariums) are no longer specified alongside lower impact structures such as sculptures and grave markers.

This allows the framework to enable greater flexibility and greater impact mitigation as appropriate. Sculptures, for example, are now able to be carried out as exempt development and numeric standards for aboveground burial structures better reflect the likely requirements of this development type with a reduced height and increased footprint from what was exhibited.

Development assessment has been retained where the impacts cannot be adequately managed through fast-track pathways. This includes larger, transformative or infrequent development that requires merit assessment or substantial engineering oversight.

Ancillary commercial uses

One industry stakeholder requested the Department extend the framework to provide fast-track approval pathways for ancillary uses such as function centres, food and drink premises and shops. Conversely, a local government stakeholder sought assurances that the framework would be limited to supporting the core work of cemeteries, in keeping with the focus of the T&I SEPP, which is to deliver essential public infrastructure.

Department response

Regulatory updates to facilitate the intensification of commercial uses within cemeteries do not align with the objectives of the framework and are beyond the scope of the current project.

Groundwater impacts

Industry stakeholders raised concerns regarding development standards proposed to ensure burials do not occur directly into groundwater. Industry cited time, costs and other challenges in accurately locating groundwater, for example, in environments where significant fluctuations arise as a result of clay soils. Industry further advised its preference was to rely on the technical expertise of cemetery operators, their consultants and methods such as pumping on a case-by-case basis.

Department response

The Department considered engineering advice and available research on the risks associated with burials undertaken directly into groundwater in determining the appropriate development standards for new burial areas.

To be complying development, complying development certificate conditions will apply to new burial areas to require that burials are undertaken with a depth of no more than 2.8 metres below ground level and achieve a separation distance between grave floor and highest seasonal water table of at least 1m.

Acid sulfate soils

One industry stakeholder asked that complying development not be excluded from land identified as acid sulfate soils, if supported by an appropriately qualified consultant and the preparation of an acid sulfate soils management plan.

Department response

In response, the Department has made complying development available on land identified as class 2 land on by Acid Sulfate Soils Map where operators can demonstrate that:

- acid sulfate soils will not be disturbed by a development, or
- disturbance will remain below the threshold requirement for an acid sulfate soils management plan under the *NSW Acid Sulfate Soil Manual 1998*.

The proposal to rely on an acid sulphate soils management plan to manage impacts is not supported. The proposal to allow complying development on class 1 lands is also not supported.

More information

For more information about the proposed framework please review our frequently asked questions or email the [Assessments & Systems Policy team](#).