

1. Nature of Bellbrae Cemetery Trust

The Bellbrae Public Cemetery (also known as Jan Juc & Puebla Cemetery) was approved by the Governor in Council in March 1864 (gazetted in September 1864).

The Bellbrae Cemetery Trust is classified as a Class B Cemetery Trust under the Cemeteries and Crematoria Act 2003 (Amended 2010). The powers of the Trust are specified in this Act.

A Cemetery Trust in Victoria is a body corporate, created by Regulations (introduced 1995 and updated 2015) under the *Cemeteries Act 1958* and updated within the *Cemeteries and Crematoria Act 2003 (Amended 2010)*, which is not at law a Trust. Neither is a member of a cemetery trust at law a trustee, with the correct title for incumbents being "Cemetery Trust Member".

2. Composition of Trust

The Cemeteries and Crematoria Act 2003 specifies that a Class B Cemetery Trust shall consist of no less than three (3) and no more than eleven (11) members.

Notwithstanding that, where the Trust has less than three (3) members from time to time, pending the appointment of more members, any actions and decisions taken by the Trust shall be as effective as if taken by the Trust with a fully constituted membership.

Trust Members have role to play in effectively managing the cemetery. The composition of the Trust shall reflect the skills base and expertise required for this purpose as well as the attitudes and expectations of the culturally diverse community it services.

3. The Functions of the Trust

The Trust Members of Bellbrae Cemetery Trust are entrusted by the Minister for Health with the operation and maintenance of the Bellbrae Public Cemetery. They collectively share the ultimate responsibility for the overall success of the Trust and the cemetery. Therefore, Trust Members have an individual responsibility to ensure that the Trust is undertaking its responsibilities as set out in its Trust functions. They need to ensure that the Trust is providing:

- A clear and appropriate strategic direction;
- Accountability to key stakeholders;
- Oversight of policies;
- Oversight of all control and accountability systems including all compliance, financial management and solvency and risk management; and
- Timely and effective guidance and decisions on all matters referred to it.

Section 12 of the Cemeteries and Crematoria Act 2003 provides a broad statement in relation to the functions of cemetery trusts:

1. The functions of a Cemetery Trust are:
 - a. to properly and efficiently manage and maintain a public cemetery for which it is responsible; and
 - b. to carry out any other function conferred on a Cemetery Trust by or under this Act or any other Act.
2. In exercising its functions, a Cemetery Trust must have regard to:
 - a. its obligations in relation to funding of the perpetual maintenance of the public cemetery for which it is responsible;
 - b. the cultural and religious values of the community; and
 - c. the heritage values (if any) of the public cemetery for which it is responsible.

The Trust's role is to govern the Bellbrae Cemetery Trust rather than to manage it. In governing the Bellbrae Cemetery Trust, the Trust Members must act in the best interests of the Trust in particular and the community as a whole. It is the role of the Chairperson to provide direction to the Secretary of the Trust, and it is the role of the Secretary to manage the general operations of the Trust in accordance with the direction and delegations of the Trust. It is the responsibility of the Trust to oversee the activities of the Secretary in carrying out these delegated duties.

The Trust has final responsibility for the successful operation of the Bellbrae Cemetery Trust. In general, it is responsible for, and has the authority to determine, all matters relating to the policies, practices, management and operations of the Bellbrae Cemetery and is also responsible for the care, control and management of the cemetery, including all improvements to the cemetery. It is required to do all things that may be necessary to be done in order to carry out the objectives of the Bellbrae Cemetery Trust.

A Cemetery Trust may sue and be sued in its corporate name. Individual Trust Members have protection against legal claims arising from the use and management of the cemetery. The exception is where Trust Members carry out their responsibilities in a fraudulent or illegal way.

In carrying out its governance role, the main task of the Trust is to drive the performance of the Bellbrae Cemetery Trust. The Trust must also ensure that the Bellbrae Cemetery Trust complies with all of its contractual, statutory and any other legal obligations, including the requirements of any relevant regulatory body.

The Trust may not delegate its responsibilities to any other Trust, Board or person. However, delegation of functions or powers to employees is possible under S. 15 of the Cemeteries and Crematoria Act 2003.

4. Trust Member Appointment

Schedule 1 of the Cemeteries and Crematoria Act 2003 establishes the terms of appointment of Class B Cemetery Trust Members as:

- A Member of a Class B Cemetery Trust holds office for the period, not exceeding 5 years, specified in the instrument of his or her appointment.
- A Member of a Class B Cemetery Trust is eligible for re-appointment
- A Member of a Class B Cemetery Trust is appointed on the terms and conditions specified in the instrument of appointment
- The Public Administration Act 2004 (other than Part 3 of that Act) applies to a Member in respect of the office of member.

Appointment of Trust Members is conducted through a process administered by the Department of Health and Human Services. The Trust in partnership with the Department identifies when a vacancy needs filling and advertises this. The Trust Chair is to arrange interviews and nominates potential members. When appraising potential members the Chair will be cognisant of the need for members to be able to exhibit good governance.

5. Trust Member Skills and Attributes

The role of individual members of the Bellbrae Cemetery Trust remains a key element in the success of the cemetery operations. The need for individual Trust Members to apply a range of appropriate skills and attributes remains an essential component in the ability of the Trust to deliver the required outputs and operate in an ethical and appropriate way.

Skills

- Strategic planning
- Understanding of governance processes
- Business experience
- Risk management and audit
- Financial management and accounting
- Legal
- Facility development and management
- Community representation
- Document/ record keeping
- Understanding of government and government enterprises and
- Industry-specific skills and knowledge

Attributes

- Empathy
- Strong relationship skills
- Analytical skills
- Community skills
- Ability to commit time
- Leadership
- Ability to act as a mentor
- Sound reputation and
- No conflict of interest

Experience

- Working on a Board
- In management or business
- Professional
- Community and Government

6. Conduct of Trust Members

Trust Members undertake to meet a set of standards consistent with the Code of Conduct for Victorian public entities issued by the Public Sector Standards Commissioner. Under such standards all Trust Members must:

- **Act with honesty and integrity.** Be open and transparent in their dealings; use power responsibly; do not place themselves in a position of Conflict of Interest; strive to earn and sustain public trust of a high level.
- **Act in good faith in the best interests of the Trust.** Demonstrate accountability for their actions; accept responsibility for their decisions; do not engage in activities that may bring them or the trust into disrepute.
- **Act fairly and impartially.** Avoid bias, discrimination, caprice or self-interest; demonstrate respect for others by acting in a professional and courteous manner.
- **Use information appropriately.** Ensure information gained as a Trust Member is only applied to proper purposes and is kept confidential.
- **Use their position appropriately.** Do not use their position as a Trust Member to seek an undue advantage for themselves, family members or associates, or to cause detriment to the Trust and ensure that they decline gifts or favours that may cast doubt on their ability to apply independent judgement as a Trust Member of the Trust.
- **Act in a financially responsible manner.** Understand financial reports, audit reports and financial material that comes before the Trust; actively inquire into this material.

- **Exercise due care, diligence and skill.** Ascertain all relevant information; make reasonable enquiries; understand financial, strategic and implications of decisions.
- **Comply with the established legislation.** Act within the powers and for the functions set out in the Trust's established legislation.
- **Demonstrate leadership and stewardship.** Promote and support the application of the Victorian public sector values.

7. Trust Roles

The Trust is entrusted by the Minister of Health to steer the Bellbrae Cemetery. This involves the strategic role of setting an overall operational direction of the cemetery and a stewardship role that ensures governance arrangements are in place to meet its statutory obligations and the activities of the cemetery to take account of community expectations.

The functions of a Class B Cemetery Trust are specified under the Cemeteries and Crematoria Act 2003, Section 12;

- Properly and efficiently manage and maintain the cemetery for which the trust is responsible;
- Carry out any other function that may be required by legislation.

In exercising its functions, a trust must have regard to: -

- Its obligations in relation to funding of the perpetual maintenance of the Bellbrae Cemetery for which it is responsible;
- The cultural and religious values of the community;
- The heritage values of the Bellbrae Public Cemetery.

8. Trust Chair

The Chairperson of a Class B Cemetery Trust-

- Holds that office for the period not exceeding five (5) years; and is eligible for re-appointment.

A person appointed as Chairperson ceases to hold that office on ceasing to be a member of the Class B Cemetery Trust. The Role of the Chair will include but not be limited to:

- Build an effective Trust with the necessary skills and capabilities;
- Lead the Trust Members and developing them as a cohesive and effective team;
- Assist Trust Members' understand their role, responsibilities and accountability;
- Inform members about developments in Government policy, priorities and financial reporting;
- Set the Trust's agenda and ensuring key issues are discussed and there are no potential conflicts of interest or duty;
- Encourage interactive participation by all Trust Members;
- Arrange adequate support for members;
- Welcome new members and lead the process for their induction;
- Manage the evaluation of the performance of the Secretary and the Trust; and
- Represent the Trust to external parties as an official spokesperson for the Trust.

9. Expectations of Trust Members in Trust Process and Code of Conduct

Since the Trust needs to work together as a group, Trust Members need to establish a set of standards for Trust meetings. At the Bellbrae Cemetery Trust, it is expected that Trust Members shall, in good faith, behave in a manner that is consistent with generally accepted procedures for the conduct of meetings at all meetings of the Trust. This will include, but not be limited to:

- behaving in a manner that is fair and respectful;
- acting in a businesslike manner;
- acting in accordance with the Act and Trust policies;
- regularly attend meetings and be active in Trust affairs;
- addressing issues in a confident, firm and friendly manner;
- preparing thoroughly for each Trust or Committee event;
- using judgment, common sense and tact when discussing issues;
- minimising irrelevant conversation and remarks;
- ensuring that others are given a reasonable opportunity to put forward their views;
- refraining from interruption or interjection when a speaker has the floor; and
- being particularly sensitive in interpreting any request or direction from the Chair that aims to ensure the orderly and good-spirited conduct of the meeting.

Trust Members are expected to be forthright in Trust meetings and have a duty to question, request information, raise any issue, and fully canvas all aspects of any issue confronting the Bellbrae Cemetery Trust, and cast their vote on any resolution according to their own judgment.

Outside the boardroom, however, Trust Members will support the letter and spirit of Trust decisions in discussions with all stakeholders including any government representative, special interest groups, customers, staff, suppliers and any other parties.

Trust Members will keep confidential all Trust discussions and deliberations. Similarly, all confidential information received by a Trust Member in the course of the exercise of the Trust Member's duties remains the property of the Bellbrae Cemetery Trust and is not to be discussed outside the boardroom. It is improper to disclose it, or allow it to be disclosed, without appropriate authorisation.

10. Trust Members Performance of Duties

The responsibilities of a Cemetery Trust Member can be likened to those of a company director, such as:

- acting diligently and prudently in regard to the business of the incorporated entity;
- not profiting from the Trust;
- avoidance of conflicts between interest and duty; and
- keeping and rendering proper accounts and giving full information when required.

In performance of their duties members of the Trust must:

- act honestly, in good faith and in the best interest of the Trust as a whole.
- exhibit a duty to use care and diligence in fulfilling the functions of office and exercising the powers attached to that office.
- use the powers of office for a proper purpose, in the best interests of the Bellbrae Cemetery Trust as a whole.
- recognise that the primary responsibility is to the community as a whole but should, where appropriate, have regard for the interests of all stakeholders of the cemetery entrusted to its care.
- not make improper use of information acquired as a member.
- not take improper advantage of the position.
- not allow personal interests, or the interests of any associated person, to conflict with the interests of the Bellbrae Cemetery Trust.
- accept that they have an obligation to be independent in judgment and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Trust.
- treat confidential information appropriately. Such information received by a member in

the course of the exercise of Trust duties remains the property of the company from which it was obtained and it is improper to disclose it or to allow it to be disclosed unless that disclosure has been authorised by that company, or the person from whom the information is provided, or is required by law.

- not engage in conduct likely to bring discredit upon the Bellbrae Cemetery Trust.
- recognise their obligation, at all times, to comply with the spirit, as well as the letter of the law and with the principles of this Code.

11. Conflicts of Interest

A Conflict of Interest is a real, perceived or potential conflict between the personal or business interests of a member of a Trust to act in the interests of the Trust.

On appointment, Trust Members will have an opportunity to declare any such interests and they will be entered into the Bellbrae Cemetery Trust's Register of Pecuniary Interests.

Trust Members should update this disclosure by notifying the Bellbrae Cemetery Trust's Secretary in writing as soon as they become aware of any conflicts. Trust Members are also expected to indicate to the Chair any actual or potential conflict of interest situation as soon as it arises.

To ensure Trust Members have an opportunity to disclose new conflicts of interest, the second agenda item (after Apologies) for each Trust meeting will be the disclosure and nature of any conflicts of interest. Any amendments to disclosures are to be tabled at this time and entered into the Register of Pecuniary Interests. The Trust can request a Trust Member to take reasonable steps to remove a conflict of interest.

If a Trust Member cannot or is unwilling to remove a conflict of interest then the Trust Member must absent himself / herself from the room when discussion and voting occur on matters to which the conflict relates. The entry and exit of the Trust Member concerned will be minuted by the Bellbrae Cemetery Trust's Secretary. Trust Members do not have to absent themselves when either:

- conflict of interest relates to an interest common to all Trust Members/officers or
- the Trust passes a resolution that identifies the Trust Member, the nature and extent of the Trust Member's interest and clearly states that the other members of the Trust are satisfied that the interest should not disqualify the Trust Member concerned from discussion and/or voting on the matter.

In the event that a conflict of interest may compromise the Chair's ability to be impartial in the discharge of his or her duties, a declaration of such a conflict must be made to the full Trust at the time it arises and an appropriate management approach agreed.

12. Related Party Transactions

Related party transactions include any financial transaction between the Trust and:

- A Trust Member or an officer;
- A spouse or de facto spouse of Trust Member or officer;
- A parent, son or daughter of the Trust Member or officer or their spouse or de facto spouse; and
- An entity over which a related party defined in the above has a controlling interest.

Related party transactions should be reported to and approved by the Trust. In making a decision the Trust shall consider:

- The benefits derived by the Trust by entering into a related party transaction in comparison to non-related party transaction;

- The possible and reasonable community perception of a transaction of related party nature; and
- Whether the transaction is “at arm’s length”. Trust Members must disclose to the Trust actual or potential conflicts that may, or might reasonably be thought to, exist between the interests of the Trust Member and the interests of the Bellbrae Cemetery Trust.

In determining whether an interest is material or not Trust Members should consider:

- Not only the amount of the contractual consideration involved and
- The nature of the relationship but also
- What the community perception of the matter might reasonably be anticipated to be.

The disclosure may be that the member belongs to, or is employed by, a specified company or other body, is a partner, or is employed by, a person or has some other interest relating to a company or person.

Related party transactions include financial transaction between a Trust Member or officer and the Bellbrae Cemetery Trust and will be reported in writing to each Trust meeting.

Related party transactions should be approved by the Trust before a contractual commitment is entered into. In making that decision the Trust should consider:

- whether there is a significant benefit derived by the Trust from entering into the transaction as compared to allocating to a non related party;
- what reasonable community perception of the proposed transaction would be; and
- whether the financial benefit is given on arm’s length terms.

To assist the Trust in showing that a financial benefit, such as the awarding of a contract to a company in which a Trust Member is a partner, is given on arm’s length terms, the process outlined below (Potential Related Party Transaction) will be followed. The Trust has also resolved that where applications are made by a related party to a Trust Member or officer of the Bellbrae Cemetery Trust, then the Trust Member or officer shall exclude himself/herself from the approval process.

Related party for this process (as defined in AASB 124 Related Party Disclosures) means:

- A person or entity that is related to the entity that is preparing its financial statements (referred to as the reporting entity)

A person or a close member of that person’s family is related to a reporting entity if that person:

- has control or joint control of the reporting entity;
- has significant influence over the reporting entity; or
- is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

The Bellbrae Cemetery Trust Secretary will maintain a Register of Related Party Transactions as well as the Register of Pecuniary Interests.

13. Financial Viability

Trust Members have a responsibility to monitor the financial viability of the Trust, which includes:

- reviewing financial information presented to each meeting;
- inspecting the cash book and supporting documents where necessary; and,
- reviewing and approving the Abstract of Accounts.

14. Trust Business

a. Meetings

Quorum

A meeting of the Trust may not take place without a quorum. This is one more than half the number of the Trust unless a greater number is fixed by a by-law.

Voting

All Trust Members are entitled to one vote. In the event of a tied vote, the Chairperson has a casting vote. A decision supported by a majority at a meeting when a quorum is present, is the decision of the Trust.

Frequency of Meeting

Trust meetings are scheduled bi-monthly unless the Trust, by agreement, adds or deletes a meeting to the normal schedule.

Use of the Common Seal of Bellbrae Cemetery Trust

The common seal is only to be used upon a resolution of the Trust and is to be accompanied by two Trust Member's signatures.

Agenda for Meetings

The Chairperson is responsible for the orderly conduct of a meeting. An agenda and supporting documents is circulated by the Secretary to members prior to the meeting. A sample agenda may take the following form:

- Record of attendance of members and accept apologies from absent members
- Declarations of conflicts of interest
- Confirm the minutes of the previous meeting
- Business arising from the minutes
- Chairman's Report
- Report of Operations
- Administration Report – including Correspondence
- Accounts for payment
- General Business
- Other matters for discussion
- Confirm date for next meeting
- Close meeting – time

Minutes of Meeting

The minutes of the meeting are recorded by the Secretary (or delegate) who is responsible for following up any decisions. The meetings will be minuted to reflect the discussions and resolutions at the Trust meeting and are to be provided to the Trust, via email, hardcopy or other agreed method, no longer than seven days after the meeting as a draft, for approval at the following Meeting.

15. Financial Management

1. Accounting Records

The Accounting Records are based on original documents:

- Cheque butts;
- Receipts;
- Invoices;
- Bank deposit slips (copies);

- Bank Statements;
- General Ledger.

2. Trust Approval of Expenditure

All decisions and approvals of expenditure are incorporated in the minutes of Trust Meetings.

3. Petty Cash – (N.B. – not currently used at Bellbrae Cemetery Trust)

A record is maintained for the payment of small cash expenditure items. The total amount paid and reimbursed to Petty Cash is reported in the accounts for payment.

4. Plant & Asset Register

The original and current written down value of plant and other assets is maintained in the Trust's accounting package and presented in the annual Abstract of Accounts.

5. Financial Trends

Income, expenditure, asset value and liability totals are compared monthly/annually against the previous year and presented in the annual Abstract of Accounts.

6. Financial Audit

An abstract detailing financial transactions will be done for each financial year and signed as correct by three Trust Members, witnessed and lodged with the Department by September 1st, accompanied by copies of bank statements with balances and investments for that year.

If income is between \$50,000 and \$100,000, the Abstract of Accounts will be audited by either an independent registered company auditor or an accountant with CPA qualifications (or equivalent)

If income is over \$100,001, then the Abstract of Accounts will be audited by an independent registered company auditor, who is to submit a separate report along with the abstract.

16. Risk Management:

The Trust is required to ensure appropriate insurances are in place as required by law. These will include – but not necessarily limited to:

- Public & Products Liability;
- Travel/Journey Insurance;
- Directors and Officers Liability;
- Plant and property insurance;
- Workers compensation (WorkCover).

1. The Trust is required to maintain their knowledge of the cemetery property through regular inspections.

2. The Trust is required to support and fund all measures required to identify hazards and minimise risks to maintain a safe and healthy workplace.

3. The Trust Members are required to observe normal procedures if an incident occurs.

17. Other Matters:

1. Policies and Procedures

The Trust develops appropriate policies and procedures that are relevant to its operations, governance, and financials. These documents are reviewed on an annual basis or as per their ratified review date.

2. Purchasing

Delegations of Authority are approved by the Trust, which allows planned expenditure within the approved budget to be incurred. Major items above the delegated limits are to be presented by the Secretary to the Trust for discussion and approval or otherwise.

3. Cheque Payments and Electronic Funds Transfers (EFT's)

The Secretary is not to sign cheques. Trust Members must sign all cheques or authorise EFT's. The Secretary is to prepare a list of invoices for payment for Trust approval, prior to having cheques drawn and signed by delegated Trust Members.

4. Delegations

Action required on Trust decisions recorded in the minutes of a Trust meeting are delegated to the Secretary or Trust sub-committee as determined by resolution of the Trust, as per the Instrument of Delegations Functions and Powers document of the Trust

5. Leave of Absence

A Trust Member may, on application to the Chairman in writing, seek the approval of the Trust to be absent from up to three consecutive meetings.

6. Media Comment

Any comment to be made, (about the Trust, its decisions and its cemetery) to the media will be made by the Trust Chairperson only (or their delegate) who will be required to inform Trust Members at the next Trust meeting.

Other References

- Cemeteries and Crematoria Act 2003 (Amended 2010).

VERSION CONTROL

No.	Date	Comments	Next Review
1	August 2018	Initial Charter developed by the Trust	August 2019