

## **TRUST CHARTER**

### **Nature of Bellbrae Cemetery Trust**

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

A cemetery Trust is established under s. 5 of the Cemeteries and Crematoria Act 2003 as a body corporate entity with perpetual succession and is also defined as a “public entity”.

The Cemetery Trust board is collectively responsible for the operations and governance of the Cemetery Trust entity.

Individual Cemetery Trust Members are responsible for carrying out their duties in the best interests of the Trust entity and the community.

If the Trust Board determines not to appoint a Secretary, then the roles and responsibilities outlined in the Trust Charter for this position will be undertaken by the Trust Members and / or an Administrator.

If the Trust Board determines to appoint a Trust Member as Treasurer, then the roles and responsibilities outlined in the Financial Management section are assigned to this position.

In line with s. 18J of the Cemeteries Act, Class A Cemetery Trusts may provide assistance and advice to Class B Cemetery Trusts upon request from a Class B Trust or the Department of Health (the Department). Where a Class A Trust does not feel it can provide the assistance being sought, it should refer the Class B Trust to the Department.

### **Composition of Trust**

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

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.

### **The Functions of the Trust**

BCT rust Members are entrusted by the Minister for Health with the operation and maintenance of the Bellbrae 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:

The functions of a Cemetery Trust are:

- to properly and efficiently manage and maintain a public cemetery for which it is responsible; and
- to carry out any other function conferred on a Cemetery Trust by or under this Act or any other Act.

In exercising its functions, a Cemetery Trust must have regard to:

- its obligations in relation to funding of the perpetual maintenance of the public cemetery for which it is responsible;
- the cultural and religious values of the community; and
- the heritage values (if any) of the public cemetery for which it is responsible.

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 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 carry out the objectives of the BCT.

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 BCT. The Trust must also ensure that BCT 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, where appropriate, under S. 15 of the Cemeteries and Crematoria Act 2003.

## **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. The Trust, in partnership with the Department, identifies when a vacancy needs filling and advertises this. The Trust Chair arranges 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.

## Trust Member Skills and Attributes

The role of individual Members of the 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

## Conduct of Trust Members

There is an expectation that Cemetery Trust Members will act in good faith, fair and impartially, with honesty and integrity, and in the best interests of the Trust and its community.

As Members of a public entity, cemetery Trust Members:

- Must comply with the BCT policies, procedures and guidelines.
- Are subject to the public sector values outlined in s. 7 of the Public Administration Act, which include responsiveness, integrity, impartiality, accountability, respect and leadership.
- Must comply with the Victorian Charter of Human Rights and Responsibilities Act 2006
- Must comply with the Director's code of conduct <<https://vpsc.vic.gov.au/>> issued by the Victorian Standards Commissioner.

## Trust Roles

The Trust is entrusted by the Minister of Health to steer the BCT. The function of the Trust is defined in Section 3 above.

## Trust Chair

The Chair of a Class B Cemetery Trust

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

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

- Build an effective Trust with the necessary skills and capabilities;
- Lead Trust Members and develop 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 Administrator and the Trust; and
- Represent the Trust to external parties as an official spokesperson for the Trust.

## Code of Conduct

As the Trust needs to work together as a group, Trust Members need to establish a set of standards for Trust meetings. At Bellbrae, 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 includes, but is 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 meetings and have a duty to question, request information, raise any issue, and fully canvas all aspects of any issue confronting the Trust and cast their vote on any resolution according to their own judgment.

Outside the boardroom 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 their duties remains the property of the BCT and is not to be discussed outside the boardroom. It is improper to disclose it, or allow it to be disclosed, without appropriate authorisation.

## **Trust Members Performance of Duties**

Responsibilities of Trust Members 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 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.
- 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 Trust.
- accept the obligation to be independent in judgment / actions and 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 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 Charter.

## **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 recorded by the Trust.

Trust Members should update a disclosure by notifying the Trust's Administrator 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 recorded by the Trust. 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 Trust's Administrator. 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.

## **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 BCT 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 Trust Administrator will maintain a Register of Related Party Transactions as well as the Register of Pecuniary Interests.

## **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.

## **Trust Business - 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 Chair 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

The Department recommends that Trusts meet at least four times a year including:

- an open meeting with Members of the public invited to attend, as required by the Chairperson.
- a budget and planning meeting, usually held in April or May.

If a cemetery receives very few or no interments in a year, the Trust may decide to meet less frequently.

- Under the Act, meetings of a Trust are determined by the Trust Chair. The Trust Chair may at any time convene a meeting and must do so when requested by at least two Trust Members. Trust meetings should be scheduled in advance to ensure Trust Members have sufficient notice.

## Agenda for Meetings

The Chair is responsible for the orderly conduct of a meeting. An agenda and supporting documents is circulated by the Administrator 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
- Chair'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 Administrator (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 14 days after the meeting as a draft, for approval at the following Meeting.

## 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.

## **Financial Management**

### Accounting Records

The Accounting Records are based on original documents:

- Receipts;
- Invoices;
- Bank deposit slips (copies);
- Bank Statements;
- General Ledger.

### Trust Approval of Expenditure

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

### 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.

### 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.

### 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.



## Financial Audit

Trusts with income or expenditure<sup>1</sup> of between \$250,000 and \$1 million must also ensure their abstract:

- Is prepared in line with the Australian Accounting Standards
- Has a 'review statement' prepared in line with the Australian Auditing Standards on Review Engagement by a professionally recognised accountant (who is a Member of the Institute of Chartered Accountants of Australia, or of CPA Australia, or of the National Institute of Accountants).

Trusts with earnings or expenditure above \$1 million must ensure their abstract:

- Is prepared in line with the Australian Accounting Standards
- Has an 'audit report' prepared in line with the Australian Auditing Standards by a registered auditor or professionally recognised accountant (a Member of the Institute of Chartered Accountants of Australia, or of CPA Australia, or of the National Institute of Accountants).

## **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).

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

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

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

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<sup>1</sup> Excludes funds in the bank, funds in investment accounts and grants.

## **Other Matters:**

### **1. Policies and Procedures**

The Trust develops appropriate policies and procedures that are relevant to its operations, governance, and financials. The aim is to review these documents every two years.

### **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 Chairperson to the Trust for discussion and approval or otherwise.

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

Trust Members must sign all cheques or authorise EFT's in accordance with the delegated authorities.

### **4. Delegations**

Action required on Trust decisions recorded in the minutes of a Trust meeting are delegated to the 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 Chair 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 Chair only (or their delegate) who will be required to inform Trust Members at the next Trust meeting.

### **Other References**

- Cemeteries and Crematoria Act 2003 (as Amended).
- Manual for Victorian Class B Cemetery Trusts (Victorian State Government)