



City of Rockingham

AGENDA

Special Meeting of Council

To be held on Monday 9 September 2024 at 5:00pm
City of Rockingham Council Chamber

**Note: This meeting will be subject to Council's
Recording and Streaming Meeting's policy**



Notice of Meeting



Dear Mayor and Council Members

A Special Meeting of the Council of the City of Rockingham will be held on Monday 9 September 2024 in the Council Chamber, Civic Boulevard, Rockingham. The meeting will commence at 5:00pm.

The purpose of the meeting is for Council to consider a revised closure order for the East Rockingham Pioneer Cemetery to resolve an urgent need to allow a specific burial.

A handwritten signature in black ink, appearing to be "M. Holland".

MICHAEL HOLLAND
on behalf of the CHIEF EXECUTIVE OFFICER

5 September 2024

DISCLAIMER

PLEASE READ THE FOLLOWING IMPORTANT DISCLAIMER BEFORE PROCEEDING:

Statements or decisions made at this meeting should not be relied or acted on by an applicant or any other person until they have received written notification from the City. Notice of all approvals, including planning and building approvals, will be given to applicants in writing. The City of Rockingham expressly disclaims liability for any loss or damages suffered by a person who relies or acts on statements or decisions made at a Council or Committee meeting before receiving written notification from the City.

City of Rockingham
Special Council Meeting
5:00pm Monday 9 September 2024



1.	Declaration of Opening																																						
	<p>Acknowledgement of Country</p> <p>The City of Rockingham acknowledges the Traditional Owners and Custodians of this land, the Binjareb and Whadjuk Nyoongar peoples and their continuing connection to the land, waters and community. We pay our respects to all members of Aboriginal communities and their cultures; and to Elders past and present.</p> <p>Recording and Live Streaming of proceedings</p> <p>In accordance with Council Policy this meeting is being live streamed on the City's website, with the exception of confidential items and periods of adjournment or as determined by the Presiding Member.</p> <p>By being present at this meeting, members of the public consent to the possibility that their image and voice may be live streamed to the public. Recordings are also made available on the City's website following the meeting.</p> <p>Please note that clause 8.5 of the City's <i>Standing Orders Local Law 2001</i> provides that "no person is to use any electronic, visual or audio recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council".</p> <p>If anyone breaches this Standing Order they will be asked to leave the Council Chamber.</p>																																						
2.	Record of Attendance/Apologies/Approved Leave of Absence																																						
	<p>2.1 Council Members</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Cr Lorna Buchan, Deputy Mayor</td> <td>Comet Bay Ward</td> </tr> <tr> <td>Cr Mike Crichton</td> <td>Baldivis Ward</td> </tr> <tr> <td>Cr Brett Wormall</td> <td>Baldivis Ward</td> </tr> <tr> <td>Cr Robert Schmidt</td> <td>Comet Bay Ward</td> </tr> <tr> <td>Cr Craig Buchanan, JP</td> <td>Rockingham/Safety Bay Ward</td> </tr> <tr> <td>Cr Peter Hudson</td> <td>Rockingham/Safety Bay Ward</td> </tr> <tr> <td>Cr Caroline Hume</td> <td>Rockingham/Safety Bay Ward</td> </tr> <tr> <td>Cr Dawn Jecks</td> <td>Rockingham/Safety Bay Ward</td> </tr> <tr> <td>Cr Mark Jones</td> <td>Rockingham/Safety Bay Ward</td> </tr> <tr> <td>Cr Leigh Liley</td> <td>Rockingham/Safety Bay Ward</td> </tr> </table> <p>2.2 Executive</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Mr Michael Holland</td> <td>Director Community Development</td> </tr> <tr> <td>Mr Sam Assaad</td> <td>Director Asset Services</td> </tr> <tr> <td>Mr Peter Doherty</td> <td>Director Legal Services and General Counsel</td> </tr> <tr> <td>Mr John Pearson</td> <td>Director Corporate Services</td> </tr> <tr> <td>Mr Peter Ricci</td> <td>Director Planning and Development Services</td> </tr> <tr> <td>Mr Jim Olynyk, JP</td> <td>Manager Governance and Councillor Support</td> </tr> </table> <p>2.3 Members of the Gallery:</p> <p>2.4 Apologies:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Mayor Deb Hamblin</td> <td></td> </tr> <tr> <td>Cr Kelly Middlecoat</td> <td>Baldivis Ward</td> </tr> <tr> <td>Mr Michael Parker</td> <td>Chief Executive Officer</td> </tr> </table>	Cr Lorna Buchan, Deputy Mayor	Comet Bay Ward	Cr Mike Crichton	Baldivis Ward	Cr Brett Wormall	Baldivis Ward	Cr Robert Schmidt	Comet Bay Ward	Cr Craig Buchanan, JP	Rockingham/Safety Bay Ward	Cr Peter Hudson	Rockingham/Safety Bay Ward	Cr Caroline Hume	Rockingham/Safety Bay Ward	Cr Dawn Jecks	Rockingham/Safety Bay Ward	Cr Mark Jones	Rockingham/Safety Bay Ward	Cr Leigh Liley	Rockingham/Safety Bay Ward	Mr Michael Holland	Director Community Development	Mr Sam Assaad	Director Asset Services	Mr Peter Doherty	Director Legal Services and General Counsel	Mr John Pearson	Director Corporate Services	Mr Peter Ricci	Director Planning and Development Services	Mr Jim Olynyk, JP	Manager Governance and Councillor Support	Mayor Deb Hamblin		Cr Kelly Middlecoat	Baldivis Ward	Mr Michael Parker	Chief Executive Officer
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	2.5 Approved Leave of Absence:	
3.	Public Question Time	
	Note: In accordance with regulation 7(4)(b) of the <i>Local Government (Administration) Regulations 1996</i> questions at a Special Council Meeting need to relate to the purpose of that meeting.	
4.	Declarations of Members and Officers Interests	
5.	Petitions/Deputations/Presentations/Submissions	
6.	Matters for which the Meeting may be Closed	
7.	Reports of Officers	
	Asset Services	5
	AS-028/24 Proposed Closure Order Amendment for the East Rockingham Pioneer Cemetery - Mr Donald Arthur Day	5
8.	Matters Behind Closed Doors	
9.	Closure	

Asset Services

Asset Services Directorate and Support Services



Report number / title:	AS-028/24	Proposed Closure Order Amendment for the East Rockingham Pioneer Cemetery - Mr Donald Arthur Day
File number:	CPR/1413	
Applicant:		
Owner:		
Author:	Mr Sam Assaad, Director Asset Services	
Other Contributors:	Mr Michael Wilson, Senior Projects Officer	
Date of Special Council meeting:	9 September 2024	
Previously before Council:	26 August 2008 (CES-278/8/08); 26 May 2009 (CES-126/5/09); 23 April 2024 (AS-011/24)	
Disclosure of Interest:		
Nature of Council's role:	Executive	
Attachments:	1. Amendment to the Closure Order to allow the burial of Mr Donald Arthur Day at the East Rockingham Pioneer Cemetery	
Maps / Diagrams:		
Site:	East Rockingham Pioneer Cemetery, 243 Mandurah Road, East Rockingham	
Lot Area:		
LA Zoning:		
MRS Zoning:		

Purpose of Report

To request Council, as the Cemetery Board for the East Rockingham Pioneer Cemetery, to approve an amendment to the East Rockingham Pioneer Cemetery Closure Order to enable the interment of the recently deceased Mr Donald Arthur Day at the East Rockingham Pioneer Cemetery.

Background

The East Rockingham Pioneer Cemetery (**ERPC**) is located at 243 Mandurah Road, East Rockingham.

The City of Rockingham (**City**) has management responsibility for the ERPC under the *Cemeteries Act 1986 (Act)*. Under the Act, Council is the Cemetery Board for the ERPC.

The Governor of WA closed the ERPC from 30 June 2009. This was by a Closure Order published in the Government Gazette of 1 May 2009. The Closure Order included exceptions only for those people holding a valid Grant of Right of Burial at the time of the closure where that Grant had not subsequently expired, been renewed or been surrendered.

Over the same time period, Council approved a Council Policy that allowed for more burials than the Closure Order allows. This Council Policy was revoked by Council in April 2024 (AS-011/24).

Details

The recently deceased Mr Donald Arthur Day is a member of one of the principal Rockingham pioneering families. There are several Day's interred within the ERPC. The Day family had understood that Mr Donald Arthur Day could be interred into the same grave as his brothers. Although this was the case under the Council Policy, it is contrary to the Closure Order.

Under the Act and the Closure Order, the following situation exists:

1. People having an *active Grant of Right of Burial (Grant)* for the ERPC can still choose whom to have interred in their plot, up to its capacity.
2. Grants expire after 25 years.
3. The City cannot issue new Grants, renew grants, or allow transfer of Grants.
4. There doesn't appear to be any mechanism of appeal or way to seek special permission for burial at the ERPC if a deceased person doesn't hold a valid Grant.

Mr Donald Arthur Day's circumstance has come to light since the revocation of the Council Policy as:

1. The Grant for the family plot was issued prior to 1986 and hence expired in 2011.
2. People with relatives already interred in the ERPC do not have an automatic right to be interred in the ERPC. They must still have a valid Grant.

There is urgency to resolve the Day family's request for Mr Donald Arthur Day's burial at the ERPC. Therefore the City and Department of Local Government Sports and Cultural Industries (**DLGSC**) have identified that a specific resolution by the Cemetery Board is required to fast-track the approval for this individual burial.

This will be through Council approval to the amendment to the Closure Order provided in Attachment 1.

Implications to Consider

a. Consultation with the Community

Nil

b. Consultation with Government Agencies

The DLGSC and the Metropolitan Cemeteries Board (**MCB**) have been consulted regarding the right of burial for Mr Donald Day. DLGSC has suggested the proposed action as the only way to achieve a positive outcome for the Day family within the timeframes available.

c. Strategic

Community Plan

This item addresses the Community's Vision for the future and specifically the following Aspiration and Strategic Objective(s) contained in the Strategic Community Plan 2023-2033:

Aspiration: 1. **Social - A family-friendly, safe and connected community**

Outcome/Objective: Community health and wellbeing - Strengthen community health and wellbeing

Aspiration: 5. **Leadership Aspiration - Transparent and accountable leadership and governance**

Outcome/Objective: Quality Leadership - Active advocacy for the community

d. Policy

Nil

e. Financial

Nil

f. Legal and Statutory

Cemeteries Act 1986 - s42 and s4 provide the mechanism for allowing burials in a closed cemetery including ministerial discretion for special cases and applications.

East Rockingham Pioneer Cemetery Closure Order, 1 May 2009.

g. Risk

Nil

Comments

The need to inter Mr Donald Arthur Day has fallen between the revocation of the Council Policy on burials at the ERPC, and the City working with MCB and the DLGSC to find a more sympathetic and lasting solution to future interments at the ERPC.

The Day family has strong pioneering links with the Rockingham area. There are many family members already interred within the ERPC, including immediate relatives of Mr Donald Arthur Day.

It is anticipated that Mr Donald Arthur Day would be granted special permission for burial at the ERPC based upon these circumstances.

The proposed solution is to approve an amendment to the Closure Order that provides approval for burial of Mr Donald Arthur Day. If approved by Council (acting as the Cemetery Board), the amendment to the Closure Order will be actioned by DLGSC for approval by the Governor.

The amended Closure Order will read as follows:

East Rockingham Pioneer Cemetery closure order amended

4. Closure of Cemetery

- (1) The cemetery is closed on 1 July 2009.
- (2) Burials in the cemetery are to be discontinued from 1 July 2009, except for the burial of Mr Donald Arthur Day, and right of burials under a right of burial which—
 - (a) was in force on 1 July 2009; and
 - (b) has not, at any time since 1 July 2009—
 - (i) expired; or
 - (ii) been renewed; or
 - (iii) been surrendered.

The outcome of this matter will be provided to the DLGSC who have been contacted by the Funeral Director to advise of the outcome and next steps to allow the burial to proceed.

Voting Requirements

Simple Majority

Officer Recommendation

That Council:

1. **APPROVES** the amendment to the Closure Order as provided in Attachment 1 which provides for the burial of Mr Donald Arthur Day at the East Rockingham Pioneer Cemetery.
2. **DIRECTS** the Chief Executive Officer to take all reasonable actions to facilitate this occurring.

Cemeteries Act 1986

Cemeteries (East Rockingham Pioneer Cemetery Closure Amendment) Order 2024

Made by the Governor in Executive Council under section 4(2) of the Act.

1. Citation

This order is the *Cemeteries (East Rockingham Pioneer Cemetery Closure Amendment) Order 2024*.

2. Commencement

This order comes into operation as follows —

- (a) clauses 1 and 2 — on the day on which this order is published in the *Gazette*;
- (b) the rest of the order — on the day after that day.

3. Terms used

In this order —

closure order means the *Cemeteries (East Rockingham Pioneer Cemetery Closure Order 2009)* published in the *Gazette* dated 1 May 2009.

4. Cemetery closure order amended

In clause 4(2) of the closure order after “except for” insert:
the burial of Mr Donald Arthur Day, and

Clerk of the Executive Council.