

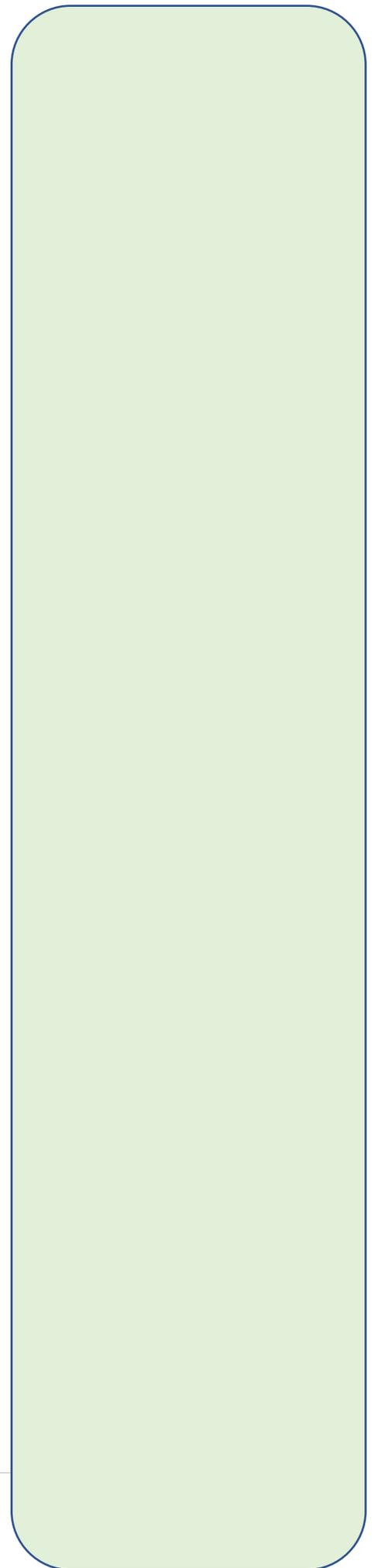


**Rutland**  
County Council

## POLICY FOR THE ADOPTION & MANAGEMENT OF CLOSED CEMETERIES & CHURCHYARDS

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Guardian	Property Services
Accountable Director	Director of Places
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Approved By	
Approved By	
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**Document Control:**

Date	Version	Action	Amendments

## **Executive Summary**

In compliance with Local Government Ombudsman directions (Local Government Ombudsmen 2006) the following new document titled Policy for the Adoption and Management of Closed Cemeteries and Churchyards has been devised.

The purpose of this policy is to define Rutland County Council's regulatory responsibilities and inform a holistic response to its duties to receive and maintain closed cemeteries and churchyards for which it retains an obligation to keep in a safe and compliant manner in accordance statutory regulation and the Council's corporate strategic aims of:

### **Safeguarding:**

- Protection of our rural environment in accordance with our local plan
- Safeguarding the most vulnerable and support the health and wellbeing needs of our community
- Explore and work in partnership within the public, private, voluntary and community / faith sectors where this contributes to the achievement of strategic objectives

### **Sound Financial Planning:**

- Resources are focused on priority areas
- Value for money / best value is achieved

This Policy therefore is applicable to the following departments:

- Property Services
- Environmental Services

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**Appendix B – Schedule of Closed Cemeteries and Churchyards**

## Introduction

Cemeteries and churchyards in which burials have been discontinued due to insufficient space are routinely subject to a formal 'closure order' administered by the Ministry of Justice.

A closed cemetery or churchyard remains the responsibility of the Parochial Church Council until a formal transfer of responsibility, by giving notice under Section 215 of the Local Government Act 1972, occurs. Such a notice requires the Parish Council for the area to take over legal responsibility for maintenance of the facility after a minimum 3 month notice period has been served, however the Parish Council may elect to further serve a reciprocal notice transferring its future obligations for maintenance and inspection of the walls, gates, fences, grass, trees, memorials testing, etc. on the District Council.

As closed cemeteries and churchyards are seen to contribute to the green space and wildlife conservation in our communities, as well as providing protected space for visitors to enjoy quiet reflection whilst paying respect to interred family or friends, it is important for the managing agency to maintain these environments in a safe and secure manner.

The purpose of this policy is to define a formalised approach that ensures Rutland County Councils' obligations and responsibilities are directed through formalised process of acceptance and controlled transition of closed cemeteries and churchyards ensuring regular effective maintenance, inspection and testing regimes are properly accommodated.

## Background

Rutland County Council currently retains two key areas of responsibility regarding burial grounds:

- The management and maintenance of Oakham Open Cemetery (Kilburn Road), where RCC is the Burial Authority and maintains both closed and open sections of this amenity.
- The management and maintenance of 18 no. Closed Churchyards and Cemeteries (appendix a), all previously understood to have been transferred under Section 215 of the Local Government Act 1972.<sup>1</sup>

Rutland County Council is not obliged to undertake additional improvements or enhancements to these assets. It receives no designated funding to deliver maintenance or cyclical inspections / testing required to ensure these spaces are safe

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<sup>1</sup> Subject to qualification of closure notices & section 215 transfer notification.( 4 No. additional sites require qualification)

and secure for visitors or operatives. Additionally, various regulatory changes culminating in the most recent release of British Standard 8415 31<sup>st</sup> July 2018 have placed enhanced duties of care on burial authorities and other agencies responsible for maintaining such assets; obliging them to undertake physical stability testing of memorials, headstones and kerb sets following a national spate of accidental deaths resultant of collapse or failure of such items.

In 2006 the Local Government Ombudsman issued a special report called '*Memorial Safety in Local Authority Cemeteries*', in response to historic problems faced by burial authorities caused by poor installation methods, and including ways of dealing with unstable or hazardous memorials. This document provided guidance on how burial authorities could ensure actions taken to maintain a safe environment do not constitute maladministration and specifies that the managing agency should ensure it retains active policies and procedures pertinent to its cemetery obligations.

## Responsibilities & Regulation

Responsibility for the overall safety (duty of care) within a burial ground lies with the burial authority (Local Authorities Cemeteries Order 1977, n.d.) or in the case of closed cemeteries with the local town, parish or county council where formalised transfer has occurred. (Local Government Act 1972, s.215, n.d.).<sup>2</sup>

Specific legislation and relevant guidance applicable to this subject matter are:

- The Management of Memorials (ICCM, 2019)
- Occupiers Liability Act 1957
- Health & Safety at Work Act etc. 1974 S2 (staff) and S3 (visitors)
- Management of Health and Safety at Work Regulations 1999
- BS 8415 (British Standards Institution, 2018)
- Local Authorities Cemeteries Order 1977 as amended by Local Authorities (amended) Order 1986
- Managing the Safety of Burial Ground Memorials (Ministry of Justice, 2009)
- Guide for Burial Ground Managers (Department for Constitutional Affairs, 2005)
- Planning (**Listed Buildings** and Conservation Areas) **Act** 1990

They require that, as far as reasonably practicable, all sites are maintained in a safe condition. This requirement is extended not only to visitors but also staff and contractors required to undertake works in a safe manner such that no other person(s) are placed at risk. Additionally, specific responsibilities for memorials are to be retained by the owner of the memorial, their successor in title and the memorial mason who installed it originally.<sup>3</sup>

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<sup>2</sup> Obligation to maintain closed cemeteries only. No requirement to improve or enhance exists. No dedicated funding grant available to support assets.

<sup>3</sup> Poor workmanship restricted to 6yrs post installation (5yrs Scotland)

In accordance with its duty to ensure a safe environment, the managing agency is also required to undertake regular inspections of existing memorials at least once every five years. Where a hazard or unsafe structure is identified, a responsibility to ensure no visitor, employee or contractor is placed in danger arises. Where possible, every effort must be made to notify the owner of the memorial to request it be made permanently safe with supplementary arrangements undertaken by the managing agency to highlight the enhanced risk to visitors and make temporarily safe as deemed appropriate. Where no action is undertaken by the owner of the memorial within 18 months of notification then the managing agency is obliged to make the memorial permanently safe by any reasonable means.

Where burial grounds have been subject to consecration in accordance with the rites of the Church of England, the Church retains jurisdiction over such ground and a faculty has to be obtained from the church diocese giving permission to undertake inspection and any making safe works.

Commonwealth War Grave memorials are the responsibility of the War Graves Commission and should not be tested. Any observable defects should be reported immediately to the War Graves Commission for further action.

## **Management Plan**

Future requests by Rutland Parish Councils to transfer additional closed cemeteries or churchyards will be subject to a strict process of control in accordance with Section 215 of the Local Government Act 1972 such that the following criteria must be met before formalised acceptance of the asset is achieved:

- Copy of formal closure order to be provided by Parish Council.
- 12 month advance written request to transfer obligation from Parish Council to District / County Council.
- Copies of existing memorial inspection and testing certification (no greater than 5 years old).
- Current Stock Condition Inspection appraisal (RCC approved no less than 2 years old)
- Parish Council affirmation to attain minimum transfer standard to be agreed with RCC in respect of grounds, paths, boundary treatments, trees, etc. at their own cost.

Cyclical stock condition surveys will be undertaken of all assets which the County Council control and / or manage thereby forming part of its future asset management plan and associated budgetary needs.

The Council currently maintains all buildings (except churches), trees, paths, roads, site boundaries / structures, drainage, water services, waste management and grounds

maintenance including grass cutting, contained within demised cemetery and churchyard land that has been understood to have been formally closed and transferred over the years, through custom and practice activity or audited and evidenced documentation.

These obligations will be subject to a programme of cyclical activity as follows:

- **Risk Assessment**

Corporate Health and Safety policy has been followed to determine a two stage risk assessment strategy to be utilised in determining types of risk and control associated with memorial inspection and testing regimes:

Stage one - Generic risk assessments developed for different types of memorials utilize hazard and frequency ratings to establish appropriate levels of risk.

Frequency informs the likelihood of a memorial incident causing injury to a third party whereas hazard informs the nature of injury likely to be incurred. Generic risk assessments will be utilised as part of an overall baseline desktop review of RCC closed cemeteries and churchyards.

Stage two - A mandatory inspection of all sites will be undertaken to inform site specific risk assessments defining type, location, condition and age of the memorials contained within the cemetery or churchyard curtilage. These results will enable detailed records to be produced and evidence of stability to be accurately monitored.

- **Inspection Programme / Records**

A 5 year rolling programme of inspection will be undertaken within all closed cemetery and churchyard assets to affirm stock condition status of all buildings, trees, paths, roads, site boundary treatments and drainage, in addition to formal stability testing of all memorials, headstones and kerb sets contained within, unless the site specific risk assessment identifies a requirement for increased frequency of inspection. Grounds maintenance will be subject to a more routine maintenance approach (see below).

Any observable variation(s) will be updated on Business World Property module knowledge management system and monitored in accordance with standard procedure (SoRP01).

- **Memorial Testing**

Subject to heightened risk assessment outturns, each individual memorial, headstone and / or kerbstone within the control of the managing agency will be subject to a 5 year rolling programme of physical and visual stability testing that will incorporate a 'hand test'. These tests will be outsourced and undertaken by 'competent persons' trained in completing such tasks.

Prior to commencement of inspection activity, formal notification as defined under the Local Authorities Cemeteries Order (LACO) 1974 will be undertaken including local publications, Church of England and War Graves Commission notices, where appropriate.

When inspection and testing affirms an increasing level of risk from a memorial, the following actions will be undertaken:

- Minimal instability (low risk) – warning sign issued.
- Heightened risk of instability (Medium risk) – warning sign and structural support application and / or containment cordoning.
- Strong likelihood of instability or collapse (High risk) – warning sign and laying down of memorial.

Every reasonable effort will be made to contact memorial owners or their heirs <sup>4</sup> to facilitate proper and timely repairs. When a period of 18 months passes without response, the Council will take undertake a permanent solution to secure the memorial either by partial burial, by laying it flat or relocation to perimeter boundary

Where memorials provide a heritage / amenity value the option to repair it will be considered as appropriate.

#### ▪ Planned Maintenance

Current responsive maintenance or project based activity to remediate dilapidation within closed cemeteries and churchyards is identified following ad-hoc inspection and funded through responsive maintenance budgets or prior sought cabinet approval for more substantial reinstatement projects.

In response to this Policy, a forward programme of externally procured planned maintenance activity will be implemented incorporating memorial testing works, grounds<sup>5</sup> and preventative maintenance in respect of boundary treatments, drainage and waste management activities.

#### • Historic & Listed Structures

A number of closed cemeteries and churchyards currently maintained by Rutland County Council are subject to variable elements of conservation or historical listing. As a consequence any works required to maintain these are subject to the controls imposed by Planning (Listed Buildings and Conservation Areas) Act 1990.

Due to the management and regulatory constraints associated with such activities there may be restrictions of the location and types of work undertaken to maintain

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<sup>4</sup> Parish Councils as burial authority holders of memorial / grave owners

<sup>5</sup> Regular grass cutting contract already operating 7 – 10 times per growing season

these items for which we have minimal influence. Additionally extended periods of time will often be applicable to the planning and delivery of remediation and management activities necessitating the isolation / segregation of limited areas on health & safety grounds.

- **Grounds Maintenance**

Environmental Services are responsible for a commissioned grounds maintenance contract which encompasses routine maintenance that will ensure the space is kept in a decent and fitting manner, clear of all rubbish, muck, thorns, briars etc. in accordance with Prideaux's Churchwardens Guide (Prideaux, 1848).

## **Dissemination and Implementation**

The communications team will arrange for the ratified policy to be added to the staff intranet pages and all staff will be notified of policy activity through the internal communication systems.

All staff will be supported to access policies and reference to the Equalities Act 2010 will ensure they are maintained in formats that meet specific needs.

Formal dissemination notifications will also be issued to town / parish councils, church diocese and neighbourhood community groups affected by the closed cemeteries and churchyards scheduled in Appendix B.

Further supporting documentation relating to the implementation of this policy, in particular Standards of Required Practice (SoRP01) will be made available to the following key stakeholders:

- RCC Property Services Team
- RCC Environmental Services Team
- RCC Customer Services Centre
- Church of England Diocese
- Local Town / Parish Councils

## **Consultation:**

A process of consultation has been undertaken to ensure policy content is suitable and sufficient to meet the Councils statutory and regulatory obligations and that the expertise and experience of all relevant parties has been considered as deemed appropriate.

The following is a list of staff and stakeholders who have participated or been party to consultation activity during the drafting of this policy:

**Property Services Team:**

Building Surveyor  
D Senior Building Surveyor  
Estates Surveyor (projects)  
Property Services Manager

**Environmental Services Team:**

Senior Environmental Services Manager  
Street scene Services Manager

**Health & Safety:**

Health and Safety Advisor

**Corporate management**

Finance Manager  
Legal Representation

**Elected officials:**

Cllr Gordon Brown – Portfolio Holder for environment, planning, property and finance

**Review:**

This Policy will be subject to a specific minimum review period of 24 months.

Where this policy becomes subject to a partial review due to legislative or national guidance variation but the majority of the content remains unchanged, the whole document will be subjected to the formal review process within a period of 3 months to ensure suitability and sufficiency criteria are maintained and changes highlighted accordingly.