

## REPORT TO CABINET

<b>Open</b>		Would any decisions proposed:			
<b>Any especially affected Wards</b>	Mandatory/	Be entirely within Cabinet's powers to decide		NO	
	Discretionary /	Need to be recommendations to Council		YES	
	Operational	Is it a Key Decision		NO	
Lead Member: Cllr Brian Long E-mail: <a href="mailto:cllr.brian.long@west-norfolk.gov.uk">cllr.brian.long@west-norfolk.gov.uk</a>			Other Cabinet Members consulted:		
			Other Members consulted:		
Lead Officer: Chris Black/Martin Chisholm E-mail: <a href="mailto:chris.black@west-norfolk.gov.uk">chris.black@west-norfolk.gov.uk</a> <a href="mailto:Martin.chisholm@west-norfolk.gov.uk">Martin.chisholm@west-norfolk.gov.uk</a> Direct Dial: 01553 616650			Other Officers consulted: Michelle Drewery - Assistant Director Resources/Section 151 Officer		
Financial Implications YES	Policy/ Personnel Implications YES	Statutory Implications YES	Equal Impact Assessment YES/NO If YES: Pre- screening/ Full Assessment	Risk Management Implications YES	Environmental Considerations NO

Date of meeting: 6 April 2022

### MEMORIAL SAFETY TESTING POLICY FOR CEMETERIES AND CLOSED CHURCHYARDS

#### Summary

The Borough Council of Kings Lynn and West Norfolk (BCKLWN) is responsible for the maintenance and operation of 5 cemeteries and 17 closed churchyards. All of the cemeteries and 16 of the 17 closed churchyards are adorned with a variety of headstones and burial memorials. As operators of these sites BCKLWN is also responsible for the safety of visitors, contractors and employees in these locations, and one of the key safety measures duly placed on the council is to ensure the safety of the grounds including memorials / headstones in these locations are safe, and not at risk of falling and injuring a person.

The purpose of this report is to set out the procedure for the ongoing testing memorials / headstones in these locations. as well as the policy and methodology for managing memorial safety.

#### Recommendation

- 1) That the Council to be invited to adopt the new policy for Memorial Safety Testing and subsequent methodology for dealing with unsafe memorials.
- 2) To agree an additional capital amount of £25,000 to test and inspect closed churchyards, with subsequent testing funding by an increase in the annual contributions to reserves.

#### Reason for Decision

- 1) To define a clear policy for the management and any resultant actions with results of memorial safety testing.
- 2) To ensure appropriate resources for the testing (ie financial resources).

## 1 Background

The BCKLWN have historically carried out memorial safety testing on a 5-year cyclical basis as recommended by Local Government Ombudsmen Public Services report in March 2006.

Similar to a number of authorities BCKLWN have historically only tested memorials in open / operational cemeteries.

In accordance with the LGO Report and Occupiers Liability Act – it is necessary to extend testing regime to include the closed churchyards we are responsible for.

Operational constraints have delayed the current round of testing but has afforded us the opportunity to ensure we have additional internal resources trained and qualified to respond to any one-off issues or concerns within our cemeteries / churchyards. It has become clear that the five yearly requirement, whilst an extensive task is not an element of work that could easily fit within the existing resources and as such it is proposed that the authority continues to tender this work in order to gain best value.

In order to ensure that there is a clear and transparent policy for any remedial works that may be identified through the testing regime the guidance recommends that the authority takes a number of steps to make sure the public are aware of the policy, aware in advance when the testing will take place and where records exist advised of any non-conformities. The first part of this is to establish a policy detailing the most likely actions that would be taken if the memorial was to be found unsafe.

In order to ensure a reasonable policy that is in keeping with the norm we have benchmarked our proposed policy against those of:

- Fenland District Council
- Peterborough City Council
- Reepham Town Council
- Institute of Cemetery and Crematorium Management (ICCM) – Management of Memorials document.
- National Association of Memorial Mason (NAMM) – Safety, Inspection and Assessment of Memorials (SIAM) training course – completed by Crematorium & Grounds team.

The proposed policy is at appendix 1.

It should be noted whilst as detailed above BCKLWN are the responsible party for maintaining Closed Churchyards we do not have rights to interfere with historical memorials for which the permissions were initially granted by the dioceses of Norwich and Ely. To avoid any undue delay in responding to safety issues and concerns we have entered into a dialogue with both dioceses and early indications are that the ongoing testing and remedial interventions could be permitted under a single perpetual licence, whilst these discussions remain ongoing the published fees are £249.60 per licence.

## 2 Options Considered

- a) *Do nothing*: this is not an option.
- b) Consideration has been given to the ongoing use of external contractors to this work and the five yearly nature of this task along with operational

pressures indicate that it is best to remain as an external service tendered as appropriate, the presence of suitably qualified individuals within the service area giving us reassurance that any evolving immediate issues can be resolved without delay.

### **3 Policy Implications**

Create, endorse and publish the actions in the policy in appendix 1

### **4 Financial Implications**

- 1) Testing of existing operational cemeteries is financed from existing reserves and the budget of £4,000 annual contributions for this purpose is to remain.
- 2) Additional resource is required to initially inspect the closed churchyards, whilst subject to tender we estimate this to be £25,000. This has been set aside and can be met by reserves in the current year. However, it is proposed that revenue contributions annually thereafter be increased by £5,000 to meet ongoing commitments. This means that contributions to reserves will be increased to £9,000 per annum to allow for this from 2023/2024
- 3) Contribution of £600 for Diocese license fees will be met from reserves in the current year. However, we are awaiting a formal response to clarify any future costs.

### **5 Personnel Implications**

None

### **6 Environmental Considerations**

None

### **7 Statutory Considerations**

The requirement to test the stability and safety of memorial headstones in cemeteries and closed churchyards is detailed in the Local Ombudsmen Report 2006. The BCKLWN is also duty bound by the following pieces of legislation:

- Health and Safety at Work Act 1974.
- Occupiers Liability Act 1957.

Testing in Closed churchyards will require permissions from the respective Diocese.

### **8 Equality Impact Assessment (EIA)**

(Pre screening report template attached)

### **9 Risk Management Implications**

The testing and making safe of memorials can be highly emotive, and as detailed in the Local Government Ombudsman Report incorrect management of the process can create upset to bereaved families and potential “bad press”.

Equally not conducting safety testing could lead to potential accidents in the cemeteries and leave the authority exposed to litigation and subsequent fines / penalties.

The risks can be mitigated by:

- Robust communication process in advance of testing.
- Testing conducted by suitably appointed contractors working to a specification that is derived from policy – monitored by Cemetery Management Team
- Robust communication process following testing.

## **10 Declarations of Interest / Dispensations Granted**

None

## **11 Background Papers**

(Definition : Unpublished work relied on to a material extent in preparing the report that disclose facts or matters on which the report or an important part of the report is based. A copy of all background papers must be supplied to Democratic Services with the report for publishing with the agenda)

### **LGO Report 2006**

<https://www.iccm-uk.com/iccm/wp-content/uploads/2021/11/LGO-612-Special-Report-final-1.pdf>

### **ICCM Management of Memorials**

[https://www.iccm-uk.com/iccm/wp-content/library/iccm\\_MM%20Policy%20Final%2008%202019.pdf](https://www.iccm-uk.com/iccm/wp-content/library/iccm_MM%20Policy%20Final%2008%202019.pdf)

Appendix 1 – Proposed Memorial Safety Policy.

**Pre-Screening Equality Impact Assessment**

Borough Council of  
**King's Lynn & West Norfolk**



Name of policy/service/function	Memorial Safety Testing Policy				
Is this a new or existing policy/service/function?	New / <del>Existing</del> (delete as appropriate)				
<p>Brief summary/description of the main aims of the policy/service/function being screened.</p> <p>Please state if this policy/service is rigidly constrained by statutory obligations</p>	<p>New policy to confirm the rationale and process for conducting Memorial Safety Testing in Borough Council Cemeteries and Closed Churchyards.</p> <p>The requirement to test memorials for safety is directed by the Local Government Ombudsman report 2006</p>				
<b>Question</b>	<b>Answer</b>				
<p><b>1. Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups <b>according to their different protected characteristic</b>, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</b></p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
	Age			√	
	Disability			√	
	Gender			√	
	Gender Re-assignment			√	
	Marriage/civil partnership			√	
	Pregnancy & maternity			√	
	Race			√	
	Religion or belief			√	
	Sexual orientation			√	
	Other (eg low income)		√		



## **APPENDIX 1: PROPOSED MEMORIAL SAFETY POLICY**

### **Memorial safety policy – Borough Council of King’s Lynn & West Norfolk**

#### **1.0 Background**

The Council has an overriding duty under the Health and Safety at Work Act to ensure as far as is reasonably practicable the safety of the Cemeteries and Closed Churchyards for which it has responsibility, this includes the identification and control of hazards from unstable memorials.

Through this policy and its actions, the Council will seek to balance the risk of injury from unstable memorials with the sensitivities of carrying out works in the cemeteries and closed churchyards.

This policy has been written having regard to the Special Report on ‘Memorial Safety in Local Authority Cemeteries’ written by the Local Government Ombudsman published in March 2006 which gives advice and guidance to local authorities on this sensitive subject.

#### **2.0 Local Government Ombudsman Report**

The report was commissioned following a series of high-profile occurrences of burial authorities undertaking memorial safety testing without clear policy, training of staff, community engagement or a clear strategy for making safe of memorials deemed high risk, resulting in large numbers of memorials being laid down on graves or removed unnecessarily.

The report forms the foundation for current training providers regarding Memorial Safety Testing training, as well as underpinning policies adopted by Burial Authorities nationwide.

<https://www.iccm-uk.com/iccm/wp-content/uploads/2021/11/LGO-612-Special-Report-final-1.pdf>

#### **3.0 Requirements of BCKLWN**

All cemeteries are required, under existing laws and responsibilities to assess the stability of memorials to ensure that unstable memorials do not pose a risk to employees, contractors, friends’ groups, volunteers or members of the public. Operators of cemeteries/memorial grounds are required to do all that is reasonably practicable to ensure people are not exposed to risks to their health and safety.

The recommended period for the testing of memorials is on a rolling five year basis.

The most up-to-date guidance with regards to the assessment of the stability of existing memorials within cemeteries is provided in the following documents:

- Ministry of Justice – Managing the Safety of Burial Grounds Memorial, Practical advice for dealing with unstable memorials.
- BSI Standards Publication ref 8415:2018 – Memorials within burial grounds and memorial sites – Specification.

In addition, the following legislation is applicable to the safe management of cemeteries:

- Health and Safety at Work Act 1974
- Occupiers Liability Act 1957
- Local Authority Cemetery Order 1977

#### **4.0 Locations:**

The Borough Council is responsible for 5 operational cemeteries, and 16 closed churchyards, of which 15 have memorials situated.

The locations are as follows:

#### **4.1 Cemeteries**

- Gayton Road, King's Lynn
- Hardwick Road, King's Lynn
- Alexandra Road, Hunstanton
- Police Road, Walpole St Andrew
- Smeeth Road, Marshland St James

#### **4.2 Closed Churchyards**

- St Clements – Terrington St Clement
- St Edmunds Church - Downham Market
- All Saints Church - Hilgay
- St Mary's the Virgin Church - Southery
- St Clement's Church - Outwell
- St Peter's Church - Upwell
- St Mary Magdalene Church - Wiggenhall St Mary Magdalene
- St Peters Church - St Peters Road, West Lynn
- All Saint's Church - North Wootton
- St John's Church - Blackfriars Street, King's Lynn
- All Saints Church - King's Lynn
- St Margaret's Church - Church Street, King's Lynn
- St Nicholas Chapel - St Anns Street, King's Lynn
- Gaywood Cemetery (adjoins St Faiths) - Gaywood Road, King's Lynn
- St James Memorials [St Johns Church] - Country Court Road, King's Lynn

#### **5.0 Pre-testing communication**

The Local Government Ombudsman (LGO) highlighted the necessity for clear and advance communication of the testing process in all cemeteries and closed churchyards – failure to do so is considered maladministration by the LGO.

Communication to include, but not limited to:

- Notices on entrances to cemeteries and within prominent locations within cemeteries.
- Notices in local press / social media / council website.
- Communication with Church Councils / Parish Councils / Town Councils.
- Communication with Church ministers / Memorial Masons / Funeral Directors.

It is not practical, nor achievable to write to every memorial owner due to the sheer number of memorials in the cemeteries and churchyards – furthermore many of the historical details may either be incorrect due to people moving on or passing away, or never collected initially.

#### **6.0 Conducting the testing / Training of staff**

The testing will be carried out by suitably trained personnel. The five yearly requirements to conduct the testing will be conducted by a suitable contractor, appointed following a full tender process via the Borough Council's procurement team, in line with a detailed specification for testing derived from the information contained within this policy.

Adhoc testing or follow up can be actioned by Borough Council staff who will be trained by NAMM (National Association of Memorial Masons) and accredited with the appropriate training qualification to conduct the testing.

#### **6.1 Testing Techniques**



The use of mechanical testing is now seen as a potentially destructive method of testing and it is now recognized by the Ministry of Justice and the BSI that a hand test, where appropriate, is a fair and practical assessment of risk.

Testing in Accordance with BS 8415:2018 recommends the following procedures:

- Memorials less than 625mm in height are unlikely to cause injury if they fall and may therefore be excluded from detailed assessment or application of load.
- Memorials not exceeding 1.5m in height (nominal shoulder height) shall be tested by hand, applying a firm but steady pressure in both directions.
- Memorials exceeding 1.5m in height are deemed unsafe to apply a load to and shall be visually assessed by a competent person to assess whether the memorial poses a risk. If a risk is deemed present, the memorial will need to be assessed by a qualified structural engineer/stone mason.

### **6.2 Collecting data**

It is recommended that data collection follows the Ministry of Justice recommended model of recording only those memorials that are deemed to be unsafe.

For example, if a section comprises 450 qualifying memorials, all memorials will be tested, but only those that fail will be recorded. All other memorials will be deemed to be safe, therefore other than the total number of memorials tested per section there is no requirement to record details of those that pass.

### **6.3 Identifying Risks**

Memorials will be categorised as following:

- High – Where the memorial is an immediate danger to life or severe injury and is in a position accessible to the public or in an area frequently used.
- Medium – Where the memorial poses a risk of light to moderate injury or where the memorial is situated in the grounds.
- Low – Where the memorial fails the test but is considered of low risk to injury due to size or position.
- Safe – No risk at the time of testing.

### **6.4 Managing Risks / Exit Strategy**

It is vital that there is a clear strategy for managing the risk identified through the testing process – immediate action might be required during the testing process if a risk is found – it would be negligent to leave a known risk.

Immediate actions that should be taken when a risk is identified:

- Stake and band memorial
  - This involves positioning two wooden stakes in the ground behind the memorial, and heavy-duty plastic banding used to secure memorial to the stakes.
- Laying down
  - If staking is not viable, the memorial should be safely laid down within the grave space.
- Cordon area off
  - Tall memorials, or monument might not be viable for the above actions of staking or laying down, and the only option to ensure all visitors and workers within the cemetery remain safe is to cordon off the area.

### **7.0 Post-test communication**

Following any Memorial Safety Testing where a risk has been identified, the memorial owner will be contacted via letter where information is held on the burial database informing them that their memorial has failed a safety test and that they are required to arrange for a qualified stonemason to make it safe within a 6 month period. In addition to writing to the grave owner or in the absence of contact details, a notice will be placed carefully at the memorial to mitigate the risk that the grave owner lives at a different address to the one held or is now deceased – therefore allowing other family members the opportunity to contact the burial team.

### **8.0 Repair Costs**

The grave owner is ultimately responsible for the safe upkeep of a memorial placed upon the grave space; therefore, it is the grave owner that is responsible for any costs incurred in making the memorial safe. Grave owners are encouraged to take out insurance on their memorial (similar to house insurance) for instances such as the memorial becoming unsafe.

If the grave owner refuses to undertake the appropriate actions to make the memorial safe, then the Burial Authority has the right to either lay the memorial flat on the grave space (with the inscription facing up) or to remove the memorial from the grave space if laying flat poses a Health and Safety concern. The removed memorial shall be retained safely for the duration of the Exclusive Right of Burial on the grave space.

***Any remedial work should take place within 6 months of testing.***

If the grave owner cannot be traced, the Burial Authority remains responsible for the overall safety of the cemetery, therefore appropriate actions must be taken – the laying down of memorials is a permanent solution to eliminate further risks. It may be deemed appropriate to remove the memorial from the grave space completely if there is an apparent trip risk in a lawned cemetery or if it prevents safe grounds maintenance.

***The Borough Council will not fund nor make repairs to memorials.***

### **9.0 Closed Churchyards**

The Borough Council is responsible for the maintenance and therefore safety of a number of churchyards throughout the district. The Burial Act 1853 and Local Government Act 1972 (Section 215) details the procedure for closure of Church of England grounds and to have responsibility for their upkeep to be passed to the local authority. The Health and Safety at Work Act 1974, and Occupiers Liability Act 1957 are applicable, but so is Ecclesiastical Law and any works on memorials (including testing) within the boundary of the church site are subject to the grant of a Faculty issued by the relevant Diocese.

The Crematorium and Cemeteries Manager will liaise with the relevant Diocese to apply for the Faculties to ensure the testing can go ahead. Any conditions placed on the issued Faculty will be reviewed by the Crematorium and Cemeteries Manager, where conditions are deemed appropriate these will be detailed in the contractor's specification at the time of conducting the tender process via the procurement team.

Pre-testing communication will follow that as detailed within **section 5.0**.

Testing will be managed consistently with the procedure outlined for Borough Council owned municipal cemeteries, with the agreed exit strategy employed for memorials posing an identified risk. **(Ref: Section 6.4)**

Throughout the testing process in all cemeteries and churchyards, the council is not responsible for restoring memorials, the responsibility of the council is to ensure memorials are safe, or the area in which the memorial is located is safe for visitors, employees, and contractors.

As the Borough Council does not hold contact details for memorial owners within closed churchyards a detailed list of unsafe memorials will be provided to the respective church diocese, and decret notifications will be placed on unsafe headstones / memorials.

***The Borough Council will not fund nor make repairs to memorials.***

The guidance issued by the Institute of Cemetery and Crematorium Managers (ICCM) within their Management of Memorials document acknowledges the requirements to obtain a Faculty from the Diocese and states:

***“Where the ground has been consecrated in accordance with the rites of the Church of England the Church, through the local diocesan Consistory Court, has jurisdiction over such ground. A faculty has to be obtained from the church diocese giving permission to carry out inspection and making safe work and the church may wish to place their own restrictions on such work. This must be taken into account by the burial authority. It is suggested that all parties co-operate to ensure work is carried out to comply with current health and safety legislation. Where a faculty is not forthcoming a burial authority may have little option than to fence off the consecrated areas to prevent access and refer all enquiries to the relevant diocese.”***

[https://www.iccm-uk.com/iccm/wp-content/library/iccm\\_MM%20Policy%20Final%2008%202019.pdf](https://www.iccm-uk.com/iccm/wp-content/library/iccm_MM%20Policy%20Final%2008%202019.pdf)

#### **10.0 Client Feedback / Complaints**

Initial communications should be fed through the cemetery team based at Mintlyn Crematorium and dealt with in line with the Councils policies and procedures for customer service. It is envisaged that by conducting the pre-testing communication programme thoroughly in advance of testing, that many of the concerns can be managed prior to testing commencing.