

Report by Director Infrastructure & Environment

SCOTTISH BORDERS COUNCIL

30th MARCH 2023

1 PURPOSE AND SUMMARY

- 1.1 This report proposes a review of the Headstone Safety programme and sets out the context, challenges and opportunities identified within the programme.
- 1.2 Scottish Borders Council manages 155 cemeteries and burial grounds across the region, of which 146 fall under a programme of routine Headstone Safety Inspection. While Government guidance states lairholders are responsible for maintenance and repair of their headstones and memorials, Scottish Borders Council as a Burial Authority has a legal obligation to ensure public safety and, as far as is reasonably practicable, that cemeteries are maintained in a safe condition. This paper sets out a range of proposals following a review of operations including trialling works to reerect any headstones laid flat.

2 **RECOMMENDATIONS**

- 2.1 I recommend that the Committee:-
- a) Notes the findings of the initial review into the headstone safety programme
- b) Approves the resumption of operations under the current Headstone Safety Inspection Programme
- c) Approves a trial scheme at Lennel cemetery to undertake reerection of headstones that have been laid flat
- d) Agrees to receive a further report detailing the findings of this trial

3 BACKGROUND

- 3.1 Scottish Borders Council manages 155 cemeteries and burial grounds across the region, of which 146 fall under a programme of routine headstone safety inspection. Although lairholders are responsible for the maintenance and repair of their headstones and memorials, Scottish Borders Council as a Burial Authority has legal obligations under the Health and Safety at Work etc. Act 1974 and the Occupiers Liability (Scotland) Act 1960 to ensure, as far as it reasonably practicable, that cemeteries are maintained in a safe condition. Burial authorities have a permanent responsibility for a programme of headstone safety, inspecting and making safe headstones in line with national guidance.
- 3.2 It is recognised that any work progressed within our cemeteries requires to be completed in a sensitive and respectful manner; this remains a priority for all staff.
- 3.3 Headstone safety testing has been ongoing for many years. The most recent programme of inspections has been informed by Government Guidance that was published in 2019. This followed the sad fatality of an eight year old boy in Glasgow in 2015 as a result of being hit by a falling headstone. The current recommended timescale for burial authorities is to undertake a 5 year cycle of headstone safety inspections. In order to achieve this timescale with the scale of headstones/resources within the Scottish Borders, a programme of workflow prioritisation has been deployed, utilising a Red/Amber Green (RAG) system. A programme of testing in all 'Red' high risk cemeteries or parts thereof (based on footfall, number of interments and places of active worship), has been undertaken, aiming to test and make safe within five years. To further accelerate this programme and meet Scottish Government timescales, the Council employed the services of an external contractor for a fixed period to complete testing across the 17 cemeteries classed as 'Red' in September 2018.
- 3.4 This 5 year programme of prioritised testing is nearing completion, with further testing of 'Amber' and 'Green' settings programmed against an extended time period spanning 10 and 20 years respectively. This approach was designed to manage risk in order of priority to ensure safety, working within scale and resource constraints.

Headstone Safety Inspection Programme 2018-2023			
Number of headstones under SBC inspection	46,435		
Number tested to date	38,742	No. laid flat to date	1856 (3.9% of total)
Number outstanding	7,693	No. estimated to be laid flat from outstanding inspections	1154*
		Total estimated laid flat:	3010 (6.6% of total)
*this number appears di headstones outstanding	sproportior	nately high; this is due to the r	nature of the

3.4 Our progress to date is set out as follows;

- 3.5 Standard procedure follows that every headstone is assessed for stability and either a) passes the inspection with no action necessary, b) passes the inspection and is recorded with a deadline for further re-inspection applied based on the condition or c) fails the inspection and measures are taken to make safe in accordance with Government guidance. This programme of assessment and recording informs future phasing of Headstone Safety within the next cycle, targeting those in most urgent need first.
- 3.6 To date, the approach has been to test all headstones regardless of shape or size. Following testing any unsafe headstones are addressed by either socketing (setting into the ground to provide stability), laying flat or cordoning off. With the exception of 123 which were pinned/fixed by an external contractor in 2018/19, in fulfilling its legal duties to make safe Headstones the Council does not routinely undertake repairs to headstones which have been laid flat, due to the resource, budgetary and risk constraints of doing so. Scottish Borders Council only lays flat headstones where they present an immediate risk to public safety and are either too small to be, or would be illegible if, socketed into the ground.
- 3.7 Once laid flat or socketed, headstones can at any time be reinstated by lairholders/families working with their own monumental masons, as has been undertaken by individual families across cemeteries where testing has been carried out.
- 3.8 The laying flat of headstones is only carried out where it is deemed essential to immediate public safety. The laying flat of headstones can be distressing to families and communities. Timely and appropriate communications are critical, and the Council deploys various means of communication as set out at 6.7 below. While it would be desirable to do so, due to the nature of historic record keeping it is unfortunately not currently possible to contact lairholders regarding any headstones that fail the safety testing (a proposed scheme outlined at 6.4 below seeks to address this for modern/future installations)

4 CURRENT SITUATION

- 4.1 Nationally, and locally, the practice of making safe headstones by laying flat has been subject to representations made via elected members. In response to a recent complaint at Lennel cemetery, Coldstream, Scottish Borders Council has paused the current Headstone Safety Inspection Programme and undertaken a review of practices, as set out in this paper.
- 4.2 There has also been a separate petition to Scottish Government concerning the practice of making headstones safe, from a Councillor in Dumfries and Galloway. In response to this there has been a call for evidence from Burial Authorities regarding the practice of contacting lairholders to notify them of headstone testing.
- 4.3 The SPSO has investigated a complaint into Scottish Borders Council's approach to Headstone Safety in recent years and found no fault in our procedures. It is also noted that since the programme began in 2018, during which time 38,742 headstones have been tested and 1856 laid flat, a total of 7 individuals have submitted a formal complaint to the Council.

4.4 Headstone testing and managing public safety in burial grounds is a very emotive issue; the Council recognises this and, as for all Burial Authorities, strives to manage risk in burial grounds sensitively and safely.

5 POLICY AND BENCHMARKING

- 5.1 The programme of Headstone Safety Inspections has been ongoing for many years. Through benchmarking with other local authorities and working groups, we continue to monitor and review best practice.
- 5.2 Work undertaken within cemeteries by Local Authorities is informed by the Scottish Government's Guidance, 'Burial Ground Memorial Safety'. The guidance advises that;

"Local authority burial authorities are responsible for ensuring the safety of those visiting and working in their burial grounds. This means that regular memorial inspections should be carried out to achieve this. However, inspecting and taking action to make safe does not confer ownership. This guidance notes that the responsibility for the full and complete repair of memorials remains the duty of the lair owner."

- 5.3 This distinction between works undertaken to ensure public safety and repair of private headstones is key to understanding the role of each party as set out in Government guidance. While the guidance is not definitive, each Local Authority has developed their own approach to headstone safety, based on their individual resources, risks and scale of operations. Benchmarking has highlighted a range of responses. Burial Authorities across Scotland follow similar methodologies to ensure compliance with the guidance. Due to the complexities around risk to private property, liability and resourcing, the majority do not undertake in-house reinstatement of headstones that have been made safe.
- 5.4 Scottish Borders Council notes that better regulation of memorial installation and stonemason industries will be considered as part of the ongoing implementation plan for the Burial and Cremation (Scotland) Act 2016. This will seek to address ongoing headstone safety by ensuring installation standards are maintained and incidences of headstones failing safety testing are minimised going forward.
- 5.5 In response to the call for evidence by the Scottish Government, Scottish Borders Council submitted that "subject to funding and clarifications of some legal matters regarding future liabilities" we would be exploring an approach to re-erecting headstones going forward. The following submissions were also made by local authorities which highlight some aspects of the challenges around safety management and re-erection of headstones;

Local Authority	Summary of response
Glasgow City Council	" In terms of moving towards a maintenance
	and repair model, we would be concerned at
	the use of public monies to make repairs to
	privately owned property however, it is likely
	that the better regulation of the memorial

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	installation and stonemason industries would go a considerable distance to reducing the problem in the future. GCC Recognises that this better regulation will be considered as part of the on-going implementation plan for the Burial and Cremation (Scotland) Act 2016."
East Renfrewshire Council	"Other than the requirement from Council's to undertake inspections and apply solutions from a health and safety perspective, the Council does not have the resources or public funds available to "restore" headstones. Headstones which have "failed" inspections will have a safety solution applied by the Council only. Said solution being in line with Scottish Government Guidance. Responsibility for Headstones rests with the lair owner and unfortunately with council budgets being under increasing pressures we would not in a position to support a significant number of headstone repairs with a view to restoration."
East Dunbartonshire Council	" the Bereavement Team do have a modest budget for Headstone Repairs and have occasionally undertaken repairs if the ownership cannot be confirmed and if the headstone/memorial is deemed as historically significant or relevant to the location.
East Ayrshire Council	The memorial owner is responsible for any repairs to the memorial or to have the memorial re-erected this includes the foundation if not installed by EAC pre 1998. The council started to install memorial foundations in 1998. Prior to 1998 foundations were installed by memorial masons but we have found that many of these are not fit for purpose and require to be replaced. New foundations will be paid for by memorial owners unless the foundation was installed after 1998 and the council has made a charge for the foundation.
Dundee City Council	"contractual terms are issued by the Council to a proprietor on the purchase of a lair. Council consent is required to erect a memorial which has to be to approved standards and it is the proprietor's responsibility to ensure any memorial is in a safe condition at all times. A fee is paid to cover 30 years of inspection which is to happen at least once every 5 years. If a memorial fails an inspection, in terms of the contractual conditions the Council contacts the proprietor to request work to be done to make it secure. Further, in terms of the

contractual conditions the Council may require to take immediate action to ensure the memorial is safe and the Council are entitled to remove such structures as are damaged or dilapidated."

5.6 The above highlights the complex and sensitive nature of headstone safety management; at the time of writing the Scottish Government petition committee is awaiting further information to complete their consideration of the petition.

6 PROPOSAL

- 6.1 Officers have been reviewing the approach taken through the current programme of headstone safety management. A set of proposed recommendations is set out below for consideration;
 - 1. Develop a new Headstone Safety Policy
 - 2. Devise a refreshed Communications Strategy
 - 3. Explore re-erection of Headstones that have been made safe by laying flat through a pilot study

6.2 **Proposal 1 - New Headstone Safety Policy**

It is proposed that a new Headstone Safety Policy is developed for adoption by Council, setting clearly our service standards, risk management and rationale for future Headstone safety inspections. This gives members, communities and officers a clear, mandated, point of reference against which progress, issues and mitigations can be reported. As well as setting out the cyclical programme of Headstone Safety Testing, proposed actions that will be contained within the Headstone Safety Policy are outlined below.

6.3 Monumental Masons Registration Scheme

It is proposed that the Council will build in new procedures and checks to ensure quality of external workmanship can be improved, for future Headstone safety management and the challenge of future legacy issues around current installations. It is proposed that the Policy includes the development of a Monumental Mason Registration Scheme requiring all new headstones to be pinned in. Enforcement of this would need to be explored further as compliance with pre-existing guidelines is already presenting issues.

6.4 Transfer of Rights Scheme

To ensure lairholder communications can be managed more effectively and where possible reach those most directly in need of information at the right time, it is proposed that the Council will develop a Transfer of Rights scheme to assist in future communications around family lairs and to ensure, where possible, up to date lairholder details are retained.

6.5 Strip foundation installation

In order to address future legacy issues around workmanship of modern installations, it is proposed that, where feasible, to install strip foundations for future headstones, to ensure a consistent approach to new installations being pinned in; the strip foundations would form a consistent basis for this.

6.6 <u>Future Headstone Testing programme</u>

It is proposed that the new Headstone Safety Policy will also consider the future rationale for headstone testing and risk management, balancing risk and resources and deploying these where appropriate. This would consider possible measures such as only testing memorials/headstones that stand over 600mm tall (rather than the current approach of testing every memorial or headstone), an approach that has been identified through benchmarking and professional peer review as a balanced approach to managing risk appropriately. A 'common sense' approach would be deployed, in that small headstones under 600 mm high would not be subjected to a manual inspection unless other factors increase the level of risk (e.g. ground conditions, slopes, width and thickness and overall mass of stone). This may present an opportunity to balance risk and resource while ensuring safety and continued compliance with the guidelines.

6.7 **Proposal 2 – Communications Refresh**

It is recognised that effective and timely communications are critical to the dialogue with communities around headstone safety management, given the emotive subject matter and both the personal and community interest. Due to the nature of lairholder information records, it is not possible in the Scottish Borders to contact those families directly affected by headstone safety measures – family lair records are not updated over time. Primary communication therefore has to be via public promotion, liaison with communities and congregations, and on-site signage (in conjunction with the Transfer of Rights Scheme outlined above, which will seek to enable lairholder communication in the future).

- 6.8 The programme to date has involved the following communications;
 - Member briefings and press advertisements in advance of Inspection works
 - Press releases and awareness raising across all communities at the commencement of the programme, including producing leaflets and using signage at Council call centres and buildings where the public came into contact with the Council
 - Community Councils and congregations notified of Inspection works in their area
 - Signage mounted at cemeteries 28 days in advance of any works explaining the programme
 - Updated webpages with Frequently Asked Questions (FAQs) containing details and information to enable lair holders to be able to liaise with the Council should they have any concerns observations or feedback (https://www.scotborders.gov.uk/headstonetesting)
 - Explanatory videos on YouTube. (April 2019 update headstone testing programme making our cemeteries safe YouTube)
 - Social media updates notifying the community of Headstone Safety programme works
 - Headstone safety demonstrations on-site these had been arranged by the department to promote awareness for elected members and community councils, however to date have been poorly attended
- 6.9 The above measures have sought to promote awareness around the Inspection works. Officers have explored means by which the Council could go even further in community and member outreach work, within the

resource capacity available. To that end we propose a refresh of communications through a comprehensive communications plan which will seek to explain, raise awareness, and support individuals to understand the role of the Headstone Inspection works and how we can help them with any next steps. This would include;

- Community engagement and outreach work in advance of testing works hosting in-person community sessions at relevant burial grounds/ cemeteries to share information.
- Refresh signage around cemeteries, and leave in-situ for 3 months once any Inspection and remediation works are complete
- Introduce labelling to all headstones laid flat or socketed explaining sensitively why the Council has had to intervene and directing families/next of kin to support for next steps
- Regular contact with relevant community councils and congregations during Inspection programmes
- Regular updates to press enhanced media coverage, expressing the sensitive but critical nature of the works, and offering up assistance to those who may wish to arrange their own works to headstones made safe
- Further promotion of safety demonstrations for elected members, aiming to increase attendance
- New video content for web/social media coverage with relevant member involvement where possible
- Exploration of press coverage both on local radio and newspapers to further raise awareness within groups that may not access online/social media information
- Work with Community Councils to distribute information amongst local groups known to them that may have an interest
- 6.10 The refreshed Communications Strategy will seek to be focussed on reassuring, informing and building a compassionate dialogue with communities.

6.11 Proposal 3 – Headstone Reinstatement Pilot Study

In considering a programme of re-erecting headstones that have been made safe by laying flat, further analysis is required of the risk, resource and cost implications of carrying out works to permanently make safe any headstones that have been, or will require to be, laid flat.

- 6.12 In order to develop a better understanding of some of the costs, complexities and mitigations involved, it is proposed to undertake a Headstone Reinstatement Pilot Study at Lennel cemetery to re-erect 81 headstones that have been laid flat. In Lennel Cemetery 717 were tested overall with 94 failures. Of these 13 headstones were socketed and 81 have been laid flat. To date we have been advised that 7 of those laid flat are in the process of being re-erected privately by families using independent reputable monumental masons as has been done at cemeteries across the region. Any headstones that are socketed into the ground will be left as they are; the repair works will focus only on those headstones that have had to be laid flat to make safe.
- 6.13 Prior to any works, officers will assess each headstone to ascertain if repair is both appropriate and viable. If a headstone is deemed too fragile to

withstand repair works, or is of designated heritage value, this will be recorded and no further action taken.

- 6.14 The repair methodology will depend on the nature of each individual headstone failure – headstones can fail at the foundation, the plinth or both. During the works, all elements of a headstone must be pinned - i.e. base to foundation and plinth to headstone base - and in most cases a new concrete foundation will be installed. Once this has cured holes are drilled into it (or into existing plinth if useable). The headstone is then also drilled and rods/pins installed, and cement or resin applied to bind the pins to the stone, which then anchors the stone into the foundation. The same pinning process is applied if the plate is loose and needs to be pinned into the base. There are a number of variables pertaining to the re-erection of headstones due to the complexity and unknown elements of the work, such as age/condition/extent of failure within each individual headstone. Specialist or complex works (e.g. headstones over 2m tall) will require to be outsourced to specialist contractors, at a scale and cost not yet known. There are risk implications pertaining to works to private property, both long and short term which are examined below.
- 6.15 The Pilot Study will be fully monitored and audited to inform future decision making with data on manpower time, resources and costs involved to undertake re-erection works in-house. A full risk assessment and method statement would be prepared in advance. Appropriate engagement will be carried out with the community.
- 6.16 Following the pilot there may be further considerations included in any subsequent report to Council regarding future works such as those highlighted through benchmarking, e.g.;
 - Sharing/charging out costs with lairholders (following the Transfer of Rights scheme outlined above) for any future re-erection works
 - Incorporating a maintenance fee at the point of lair purchase
 - Maintaining a modest annual budget to cover all repair works
 - Outsourcing repair works to registered monumental stonemasons
- 6.17 Once the Pilot Study is completed and full analysis undertaken it is proposed that a further paper is brought back to Council reporting on findings with fully audited costs and projected whole-life budgetary and risk implications.

7 NEXT STEPS

- 7.1 Officers are seeking authorisation to resume completion of current testing programme deploying the regime set out above to avoid further delay and address most immediate risk. This would be completed by Autumn 2023, allowing for appropriate engagement and a 28 day notice period prior to works at each site. This will enable the Council to address current risk liability, complete the 5 year cycle of inspections and form the basis for a consistent starting point for the next cycle, under a new Headstone Safety Policy. This would be done in conjunction with a first phase of revamped communications, as proposed above.
- 7.2 Should all three proposals above be taken forward, the following provides an indicative timeline for the next steps;

Date	Action	Rationale
April – Autumn 2023	 Testing programme: resume completion of current testing programme (to avoid further delay and address most immediate risk), with refreshed signage and communications. 	Addresses current risk liability, completes the 5 year cycle of inspections and enables a consistent starting point for the next cycle, under a new policy.
April-June	 Communications: develop and deliver a new Communications Plan as outlined; Promote pilot as trial study. 	Provides clear communication and reassurance to communities around the inspection programme and the forthcoming reinstatement works
Summer 2023	 Trial Study: commence pilot study trialling in- house repair works at Lennel cemetery. 	Enables an informed approach to future policy direction and considerations for new risk assessments, method statements and resourcing implications within Parks & Environment Service.
Autumn 2023	 Policy Development: develop a Headstone Safety Policy for council approval, embedding findings of Pilot study programme within clear parameters and reporting. 	Informed by Action 3 above, enables the Council's new approach to be clearly communicated and ratified by members

8 IMPLICATIONS

8.1 Financial

There are no additional costs associated with the proposals outlined at 6.2 and 6.7, these will be resourced within existing budgets but will need to be managed alongside other priorities within the service. The proposed pilot outlined at 6.11 will be funded from existing budgets within Parks & Environment. Information from this pilot will be used to cost future implications of carrying out works to permanently re-erect any headstones that have been, or will require to be, laid flat.

If the proposals outlined are taken forward there will be longer term financial implications that will also need to be detailed in a further report.

8.2 Risk and Mitigations

The proposals outlines at 6.2 and 6.6 present some risks, particularly around the resource intensive work involved in establishing a Transfer of Rights Scheme and a Monumental Masons Registration Scheme. This will be mitigated against by programming the work in around high priority work within the Burials team, depending on interment levels.

The following risks and mitigation have been identified pertaining to the proposal outlined at 6.11 and any future wholesale shift towards the Council undertaking repair to headstones:

It has to be noted that by undertaking any reinstatement works as referenced at 6.11, SBC is probably accepting additional legal liabilities for itself. Firstly, if those works contain any defect and that results in harm, SBC will be liable for any harm caused. Secondly, if the headstone deteriorates again, there will undoubtedly be a debate as to whether that deterioration is simply caused by the passage of time, or if the works contributed to that deterioration. In effect, therefore, SBC may find itself having to undertake all future repairs (even if it decides at some point not to continue with reinstatement work). Thirdly, it may also find it is under pressure to repair headstones which are not yet dangerous, but where it is considered that works undertaken have contributed to deterioration. These risks would be mitigated by the fact that the first additional liability is certainly insurable, and the others may be. They could be further mitigated by engaging contractors to carry out the work on its behalf and in turn rely on the contractors insurance.

The Council has increasing budget pressures which may be further impacted upon by undertaking these works to private property – there is a risk that this has knock on effects on priority frontline services. There is a risk of increasing unanticipated costs should the Council adopt a wholesale programme of re-erection. While the pilot study will identify the operational costs for a small sample of headstones, there are costs that cannot be fully ascertained in advance pertaining to the level of longer term liability, the scale of specialist reinstatement works that may need to be outsourced, and any future compensation claims for works undertaken privately. Mitigation could include measure such as those identified through benchmarking such as working with lairholders to recoup costs of re-erection following inspection; incorporating a maintenance fee at the point of lair purchase; or identifying recurring revenue budget for re-erection and other costs.

The deployment of staff to undertake additional works such as the headstone re-erection works being considered in this paper will impact on other activities undertaken within the Service, such as burial ground maintenance activities and other operational agile working activities. Similarly due to the unpredictable nature of other priority workloads such as interments, the programming of any headstone re-erection works would need to be flexible to accommodate other higher priority works. This would need to be mitigated against through appropriate resourcing and flexibility in workflow management.

8.3 Integrated Impact Assessment

(a) The Council has a statutory obligation to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between people who share a characteristic (age, disability, gender re-assignment, trans/transgender identity, marriage or civil partnership, pregnancy and maternity, race groups, religion or belief, sex-gender identity, and sexual orientation) and those who do not; and foster good relations between people who share a characteristic and those who do not. This involves tackling prejudice and building understanding. Additionally, where proposals are "strategic", the Fairer Scotland Duty requires us to show that we have actively considered how we can reduce socio-economic inequalities in the decisions that we make and to publish a short written assessment on how we have done this.

(b) The IIA indicates that a full IIA is not needed at this stage for the proposals contained in this report. However a full IIA will be undertaken as part of the preparation of any proposed revised Policy and/or any future reinstatement programme, by which time the full detailed nature of same will have been prepared and therefore any IIA implications will be measurable.

8.4 Sustainable Development Goals

The proposals contained in this report are considered as having impact on the Council's commitment to the UN Sustainable Development Goals, in the following regard;

8.5 Climate Change

The proposals contained in this report have been assessed against the Climate Change checklist. They do not contribute to reducing energy use, minimising car journeys, circular economy principles, minimisation of water use, climate resilience or biodiversity protection. In terms of Infrastructure and Land Use they do contribute to the provision of local amenities in the safe management of cemeteries for public access.

8.6 Rural Proofing

A full Rural Proofing assessment will be undertaken as part of any new policy preparation.

8.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

8.8 **Changes to Scheme of Administration or Scheme of Delegation**

There are changes required to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

9 CONSULTATION

9.1 [insert details of your consultees (see consultation sheet] You <u>must</u> consult the Director (Finance & Corporate Governance), the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications and any comments received will need to be incorporated into the final report.

- 6.2 Others to be consulted if required are -
 - Corporate Equalities and Diversity Officer for any new or revised policies/strategies to assure Equality Impact Assessment.
 - Procurement Officer if you are buying any goods or services.

Approved by

Name John Curry Title Director Environment & Infrastructure

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Background Papers: [insert list of background papers used in compiling report] **Previous Minute Reference:** [insert last Minute reference (if any)]

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