

HEADSTONE SAFETY

Report by Director - Infrastructure & Environment

EXECUTIVE COMMITTEE

14 November 2023

1 PURPOSE AND SUMMARY

- 1.1 **The purpose of this report is to provide an update on Headstone Safety, as agreed at Council in March, reporting findings from the Headstone Reinstatement Pilot Study that was undertaken at Lennel Cemetery. It also sets out proposed options and a recommendation in considering next steps.**
- 1.2 A report to Council in March on Headstone Safety included a range of proposals aimed at improving outcomes for communities in the future management of Headstone Safety;
 - **Proposal 1: New Headstone Safety Policy** - encompassing the development of a Monumental Masons Registration Scheme, a Transfer of Rights Scheme, a programme of strip foundation installations and a refresh of standards for future headstone testing programmes
 - **Proposal 2: Communications Refresh** – including an overhaul of communications to members, communities and social media around Headstone safety works aimed at raising awareness and education
 - **Proposal 3 – Headstone Reinstatement Pilot Study** – to trial the re-erection of any headstones that have been laid flat by Scottish Borders Council, enabling further analysis of risk, resource and cost implications.
- 1.3 It was agreed to bring a subsequent update back to members on Proposal 3, which is the focus of this paper. The purpose of this is to inform members on the findings, to enable subsequent decision making.

2 RECOMMENDATIONS

2.1 I recommend that the Executive Committee:

- (a) notes the findings of the Headstone Reinstatement Pilot.**
- (b) approves the implementation of option 5, set out in section 7 of the report, as a preferred option as part of the 24/25 financial planning process.**
- (c) agrees to the preparation of a new Headstone Safety Policy.**

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 involving 46,435 headstones. Lairholders, as memorial owners, 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 is 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 legislation and national guidance.
- 3.2 As part of these statutory safety works, Scottish Borders Council undertakes a cyclical programme of safety inspections and making safe headstones. This involves making safe by either socketing, laying flat or cordoning off any headstone that fails the safety inspection and that requires to be immediately made safe. The decision around the method of making safe any headstone is based on individual assessment of each headstone by our trained Officers. Headstones are only laid flat where it is deemed essential to immediate public safety and there are no alternative methods of making safe. The following table illustrates the status of the programme to date;

Headstone Safety Inspection Programme 2018-2023			
No. headstones under inspection	46,435		
No. tested to date	38,827	No. laid flat to date	1861 (4.9% of total)
No. outstanding	7,608	No. remaining estimated to be laid flat	1149
		Total estimated laid flat:	3010*
*6.6% of total - this number appears disproportionately high; this is due to the nature/ condition of the outstanding headstones			

- 3.3 In response to a complaint received at Lennel Cemetery, Coldstream, regarding the practice of laying headstones flat, Scottish Borders Council agreed to undertake a Pilot Study at Lennel Cemetery whereby any such headstones would be re-erected by the local authority. The aim of the study, referred to as the Headstone Reinstatement Pilot Study, was to enable further analysis of the risk, resource and cost implications of carrying out works to re-erect any headstones that have been, or will require to be, laid flat by Scottish Borders Council in order to be made safe as part of the Local Authority's duties as Burial Authority.
- 3.4 Work in cemeteries and around memorials is an emotive issue and all staff seek to work in a sensitive matter at all times. All the measures being

discussed in this paper seek to improve support for memorial owners, with the ultimate aim of improving outcomes for communities.

4 HEADSTONE REINSTATEMENT PILOT

- 4.1 In considering any future works to re-erect headstones that have been made safe by laying flat, it was identified that further analysis was required of the risk, resource and cost implications to the Burial Authority (Scottish Borders Council) of carrying out this work. This was the aim of the Pilot.
- 4.2 The Pilot commenced at Lennel Cemetery on 8th May 2023 and took place over an 8 week period, completing on 30th June 2023. Each headstone that had been laid flat by Scottish Borders Council was revisited and assessed on their suitability for re-erection. A 28 day notice period preceded the reinstatement works, and communications were issued to the local community, Members and stakeholders such as the local congregation. Signage was installed during the 28 day notice period, throughout and after the trial.
- 4.3 In Lennel Cemetery, 52 headstones were assessed as being suitable to be re-erected. Within the cemetery there were seven headstones that had already been re-erected privately by memorial owners using independent monumental masons, as has been done across the region. Two of the headstones which were re-erected required specialist core drilling works which had to be outsourced.
- 4.4 The process involved laying of concrete foundations in preparation for re-erecting the headstones; this was left to cure for 28 days. Once cured, the headstone was revisited and re-erected. This involved drilling and pinning the headstone and base into the new foundation.
- 4.5 The pilot was managed and recorded on site using handheld devices, with the aim of streamlining the data management processes. There were some remote connectivity challenges but this provided useful intelligence in developing our digital systems.

5 OUTCOMES

- 5.1 Using the data collated during the Pilot we have been able to estimate the wider cost, resource and risk implications of any potential wholesale reinstatement of headstones across cemeteries and burial grounds.
- 5.2 Staff time, materials, fuel and one-off costs were recorded throughout the Pilot. In total 405 hours of operational staff time were recorded against the Pilot (this excludes IT, business support and management time).
- 5.3 Some additional costs/potential costs were incurred – for example, two headstones required specialist core drilling works which cost £560. Three memorial owners in Lennel approached the Council seeking reimbursement for private restoration, at a total cost of £1128. They were advised of the status of the Pilot and that any such decision around retrospective compensation would be subject to further consideration.

- 5.4 Retrospective compensation is likely to be a factor across the region, where memorial owners who have already paid for private reinstatement works may seek reimbursement for these costs following any policy shift.
- 5.5 During the pilot no complaints were received. Some enquiries were received around other headstones in the cemetery which had been made safe by socketing, or had fallen flat naturally. Both of these were not within the scope of the Pilot.
- 5.6 Based on the Pilot data, we ran basic calculations on the staff time deployed. Projecting this forward, and factoring in the other statutory activities undertaken by Bereavement Services, we estimate that, for SBC to provide Headstone Reinstatement works across the region, this could be delivered over a 5 year programme.
- 5.7 A wholesale reinstatement programme delivered in-house by SBC would require adequate resourcing with recurring revenue budget, equipment, and staff time across this programme.

6 RISK LIABILITY AND STATUTORY DUTY

- 6.1 While the Council is considering our approach to Headstone Safety, our aim is to continue to ensure public safety while improving outcomes for communities in ways that are both compassionate and sustainable. The guidance around Headstone safety is complex and the Council strives to balance public safety with public interest, within the resources available. This paper recognises that we can do more to support communities and seeks to find a sustainable solution.
- 6.2 **Roles and responsibilities** - Headstones are private property and Lairholders, as memorial owners, are by law responsible for maintenance and repair. Burial Authorities have a legal responsibility for public safety. That is, Burial Authorities are required to take measures to protect public safety through works to make the headstones safe, while following government guidance. This acknowledges that all parties have a role to play and, in undertaking works to private properties without prior agreement, Burial Authorities begin to act beyond their statutory role.
- 6.3 **Liability in perpetuity** - when a Burial Authority undertakes non-statutory works to private property there is an increased burden of risk and liability, in perpetuity, to the Authority for any structures they have (re)erected.
- 6.4 **Financial risk** - there are financial risks of the Council undertaking non-statutory work to re-erect headstones. A recent statement from the Scottish Government advises that "We do not intend to require burial authorities to repair, conserve and restore headstones and memorials, beyond making them safe" as it was acknowledged that this would cause Burial Authorities to "incur a significant financial outlay... which they may not be able to viably fund". At this time, we currently have a pressure to make significant permanent savings within the Service.
- 6.5 **Benchmarking** – Officers issued an information request to other Local Authorities. 72% of Authorities who replied do not routinely reinstate headstones. Of those that do, most deliver this activity utilising external

contractors for some, or all, of the activity. This could be based on risk, resources and specialist skills needed. Where they do reinstate headstones, 30% of Authorities who replied seek to recover the costs of doing so.

7 REINSTATEMENT OPTIONS APPRAISAL

7.1 Informed by the Pilot, and further benchmarking and risk analysis, Officers have considered 5 possible options for delivering future Headstone Safety and Reinstatement measures, which are set out below;

Option	Summary
1	Provide Headstone Reinstatement: Consider options for prioritising revenue funding to provide in-house Headstone Reinstatement works across the Scottish Borders.
2	Outsource Headstone Reinstatement: Explore provision of Headstone Reinstatement works via independent contractor, supported by adequate revenue funding.
3	Provide via a cost-recovery business model: provide discretionary reinstatement services for a set fee based on cost data analysis.
4	Do nothing/revert to Proposals 1 and 2: Develop Proposals 1 and 2 as outlined previously, and leave lairholders/families to undertake private reinstatements where desired.
5	Explore a partnership approach with private contractors: The Council, as facilitator for Headstone reinstatement, supports memorial owners to undertake reinstatement themselves through developing an approach, and some certainty around fee scale(s), in partnership with the local private sector.

7.2 A full analysis of the costs, benefits and risks identified for each has been undertaken and is set out in Appendix 1.

7.3 Upon completing this analysis of the options developed, Option 5 appears to provide the optimal balance between facilitating improved outcomes and managing financial sustainability and risk. In recognising that (even with significant resource pressures) the Local Authority has a role as a stakeholder in this process, we can seek to work in partnership with the private sector to provide a service to memorial owners, ensuring we communicate this timeously during the Headstone Safety Programme.

7.4 This would be developed through undertaking initial engagement with suitably qualified independent monumental masons across the region. Through this engagement we would seek to develop a partnership approach, whereby a fee/fee scale is agreed for any headstone repair works. The Local Authority would then be able to signpost memorial owners to these contractors immediately at the point of making a headstone safe. This gives the memorial owners certainty over next steps and over costs for any repair works, mitigating any unnecessary distress. We will also explore financial support that may be offered where affordability remains a possible barrier (through appropriate revenue budget). By doing so, we would seek

to work more collaboratively with communities and memorial owners, as facilitator for remedial works.

8 NEXT STEPS

8.1 Officers will continue to develop the Headstone Safety Policy, taking into account the development of Proposals 1 and 2 outlined at 1.2 above, considering our:

- Policy approach – developing installation quality standards (through a Monumental Masons Registration Scheme), reviewing future headstone testing thresholds and developing a lairholder transfer of burial rights scheme (supported by digital systems).
- Communications – ensuring these are effective in both raising awareness and education and minimising any distress to our communities around what is a sensitive and emotive issue.

This would be prepared ahead of the 2024/25 financial year.

The current cycle of the Headstone Safety Programme will also be progressed towards completion.

8.2 We are also developing a stream of work seeking to improve standards of cemetery upkeep across the region. We are at the early stages of devising a cemetery audit programme to improve our asset management across the cemetery estate which will consider sunken lairs, general maintenance and any defects detected.

9 IMPLICATIONS

9.1 Financial

The financial implications of each option are summarised in appendix 1.

- (a) Should Members approve the recommendation to develop Option 5, the only financial implication will be any potential financial support that the Council may wish to offer through a hardship scheme.
- (b) Option 1 - In-house reinstatement of Headstones with no cost recovery - would require an estimated £143,680 of revenue funding (not including any manpower costs) across the whole 5 year programme, i.e. £28,736 per annum.
- (c) Option 2 - Outsourcing of headstone reinstatement to an independent contractor - would cost significantly more due to labour costs; this would be determined through a tendering exercise, however would be expected to be in the region of double the internal cost estimated at Option 1
- (d) Option 3 - Cost-recovery models of reinstatement - whereby the Council undertake reinstatement works for memorial owners for a fee, would incur minimal costs to cover any potential financial support the Council may wish to offer through a hardship scheme.

- (e) Option 4 – Do nothing/revert to Proposals 1 and 2 – would not incur any costs.
- (f) Option 5 - Explore a partnership approach with private contractors – would incur minimal costs, for signage and also for any potential hardship scheme the Council may wish to consider

9.2 **Risk and Mitigations**

The risks associated with the options considered in this paper have been set out in the table at Appendix 1. There are potential financial, reputational and liability risks and mitigations which are explored in the table. The outcomes of the pilot and wider benchmarking have informed this risk appraisal and the recommended approach seeks to deliver a balanced approach to risk management, across these three areas of financial sustainability, community impact and liability.

9.3 **Integrated Impact Assessment**

Stage 1 and 2 IIAs have been completed and will be published. Potential impacts were identified to groups on the basis of low/no wealth or socioeconomic background, where costs for re-erection may be a barrier. Mitigation has been built in to address this potential impact, through the proposal to consider a possible 'hardship fund' which would directly address any impacts, provided adequate revenue funding is identified to support this with a partnership approach with private contractors, provides the optimal balance between facilitating improved outcomes and managing financial sustainability and risk. In recognising that (even with significant resource pressures) the Local Authority has a role as a stakeholder in this process, we can seek to work in partnership with the private sector to provide a service to memorial owners, ensuring we communicate this timeously during the Headstone Safety Programme.

9.4 **Sustainable Development Goals**

Further to undertaking the checklist, the submitted proposal has no impact on these goals.

9.5 **Climate Change**

Further to undertaking the checklist, the submitted proposal has no impact.

9.6 **Rural Proofing**

There are no known impacts on the grounds of rural proofing from the proposals outlined in this paper.

9.7 **Data Protection Impact Statement**

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

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

There are no changes required to either the Scheme of Administration or the Scheme of Delegation as a result of these proposals.

10 **CONSULTATION**

10.1 Director (Finance & Procurement), the Director (Corporate Governance), the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications have been consulted and any comments received have been incorporated into the final report.

Approved by

Name

John Curry

Title

Director – Infrastructure & Environment

Author(s)

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Background Papers:

Previous Minute Reference: [insert last Minute reference (if any)]

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. [Carol Cooke](#) can also give information on other language translations as well as providing additional copies.

Contact us at Carol.Cooke@scotborders.gov.uk

APPENDIX 1 – OPTIONS APPRAISAL

Option	Benefits	Risk	Cost
<p>1. Provide Headstone Reinstatement in-house: Consider options for prioritising revenue funding to provide in-house Headstone Reinstatement works across the Scottish Borders.</p>	<ul style="list-style-type: none"> All headstones reinstated 	<ul style="list-style-type: none"> Incurs additional revenue pressure on Service - need to identify funding within financial planning process or consider what we will stop doing. Liability in perpetuity for the work done to headstones; risk of claims for any accidental damage to private property Risk of retrospective claims for compensation from privately re-erected headstones Risk of being unable to deliver outstanding financial plan savings Risk of being unable to deliver key statutory and community services unless adequately resourced 	<p>£28,736 per annum + deployment of existing staff time from other duties</p> <p>(estimated value of staff time is £98,450 per annum)</p>
<p>2. Outsource Headstone Reinstatement: Explore provision of Headstone Reinstatement works via independent contractor, supported by adequate revenue funding</p>	<ul style="list-style-type: none"> All headstones reinstated Current manpower capacity unchanged, service delivery unaffected and opportunities to enhance cemetery management Risk/Liability covered through independent works under 3rd party warranty 	<ul style="list-style-type: none"> Incurs additional budgetary pressure on Service to fund external service Risk of retrospective claims for compensation from privately re-erected headstones Risk of being unable to deliver outstanding financial plan savings 	<p>>£28,736 per annum; depending on outcome of any procurement exercise</p>
<p>3. Provide via a cost-recovery business model: provide discretionary reinstatement services for a set fee</p>	<ul style="list-style-type: none"> Memorial owners offered a service: can request the Council to undertake reinstatement works (or can undertake privately); providing a direct resolution. 	<ul style="list-style-type: none"> Risk of damage to public trust; perception of SBC profiteering from undertaking their statutory duties to make cemeteries safe. 	<ul style="list-style-type: none"> £minimal

	<ul style="list-style-type: none"> • Works/liability scaled in proportion to public demand. • Cost neutral; 'pay at the point of use'; risk of historic compensation claims reduced 	<ul style="list-style-type: none"> • Undercutting the private sector; possible relationship damage between SBC and private sector. • Risk of affordability for some; addressed through a concession/hardship scheme • Liability in perpetuity for work done to headstones and ongoing future works. 	
<p>4. Enable private memorial owners to undertake Reinstatement: supported by improved communications and contact details through Proposals 1 and 2 as outlined previously, namely;</p> <ul style="list-style-type: none"> ▪ Proposal 1: New Headstone Safety Policy Monumental Masons Registration Scheme, Transfer of Rights Scheme, strip foundation installations & a refresh of standards for future headstone testing thresholds ▪ Proposal 2: Communications Refresh overhaul of comms to Members & communities aimed at raising awareness and education; including monthly updates to ward Members 	<ul style="list-style-type: none"> • No liability risk • Current manpower capacity sustained, opportunities to enhance cemetery management • The Council can support Memorial owners to arrange reinstatement at their own discretion privately. 	<ul style="list-style-type: none"> • Reputational risk of being perceived as not proactive in this space; could be addressed through better engagement and comms 	£ 0

<p>5. Explore a partnership approach with private contractors: through this, the Council would be facilitator for Headstone reinstatement – supporting memorial owners to undertake reinstatement themselves through developing a best value approach with the local private sector. Initial market testing will identify the optimal operating model.</p>	<ul style="list-style-type: none"> • Council acting as enabler/facilitator – providing a more solutions-focussed approach than currently • Memorial owners offered a service supported by SBC • Cost neutral; ‘pay at the point of use’; less risk of compensation claims • Devolved delivery would reduce SBC’s risk and liability to in perpetuity for works to private memorials • Improved partnership working with private sector already involved in headstone and monumental masonry installation • Current manpower capacity unchanged, service delivery unaffected and opportunities to enhance cemetery management 	<ul style="list-style-type: none"> • Possible reputational risk of memorial owners being required to pay for works to their headstones/memorials (though not paying SBC) • Risk of affordability for some; addressed through a concession/hardship scheme 	<p>£ depending on uptake of any agreed hardship fund - the Council may wish to cover costs for those whom affordability is an issue.</p>
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