

CABINET

MEMORIAL SAFETY PROGRAMME 20 January 2009

Report of Corporate Director (Community Services)

PURPOSE OF REPORT			
This report informs Cabinet of the options for the future of the Council's Memorial Safety Programme.			
Key Decision	<input checked="" type="checkbox"/>	Non-Key Decision	Referral from Cabinet Member
Date Included in Forward Plan	6 October 2008		
This report is public.			

RECOMMENDATIONS OF COUNCILLOR DAVID KERR

- (1) That Cabinet support an in-house memorial safety team comprising 2 posts for 2009/10 and on a permanent basis.

1. Introduction

- 1.1 Cabinet agreed on 17 January 2006 to support the development of an in-house team to implement the Council's Memorial Safety Programme (min. 124(2) refers).
- 1.2 They also agreed that previously staked and banded memorials be left in that condition for a further 12 months subject to a review (min. 124(1) refers).
- 1.3 An Individual Cabinet Member Decision Notice dated 22 February 2007 agreed that previously staked and banded memorials be left in that condition for a further 2 years.
- 1.4 A sum of £55k was agreed at Council on 27 February 2008 as a one-off cost for continuation of the Memorial Safety Programme in 2009/10

2. Future of the Memorial Safety Programme

- 2.1 A memorial safety programme is essential in order to deliver the Council's legal responsibilities.

2.2 Resources are required to:-

- implement a rolling programme of memorial testing;
- extend the testing programme to Closed Churchyards;
- make a permanent repair to previously staked and banded memorials;
- monitor the work of private masons under the Council's Memorial Masons Registration Scheme;
- re-fix headstones to preserve the historical and social interest within the cemetery;
- provide the necessary operational flexibility to deliver essential services required at the time of burial.

2.3 It is believed that the staff resources required to undertake the work outlined in this report by an in-house team can be delivered by 2 operatives and, therefore, it is recommended that the current team be reduced by one post.

2.4 £55K has already been allocated for 2009/10 for memorial safety team, but as a one-off only.

3. Ongoing Testing Programme

3.1 HSE, the Local Government Ombudsman and the professional Associations, e.g. ICCM, ABA, NAMM, recommend a rolling programme of testing/re-inspection. The Ombudsman in his *Special Report on Memorial Safety In Local Authority Cemeteries*, stated that the frequency of re-inspection under a rolling programme will be a matter for each Council to determine. However, the maximum period between inspections should be no more than 5 years and further stated that it is maladministration for Councils not to have a testing policy, not to keep proper records of safety tests carried out and the condition of individual memorials where defects are discovered.

3.2 The Burials and Cemeteries Advisory Group (BCAG) are in the process of preparing new guidance. BCAG was established in December 2001 following the report on cemeteries by the Environment, Transport and Regional Affairs Committee. The group was established to use the collective expertise of the industry and to provide advice and information for burial authorities, the public and government, including in connection with the review of burial law. The Ministry of Justice is now responsible for this group. The HSE's representative on the sub group has made it abundantly clear that, in the event of an accident involving an unstable memorial, HSE Inspectors will be looking to establish that the burial authority concerned has followed their guidance.

3.3 A testing programme was started in Lancaster District in 2004/5 and memorials in all cemeteries, except closed churchyards, have now had an initial test. Memorials found to be safe have been given a next inspection date between 1 and 5 years, dependant upon the type of material, condition, amount of lean, ground conditions, etc.

The Council has responsibility for the following closed churchyards:

- Morecambe Parish Church
- Bolton le Sands Parish Church
- St Wilfrid's Church, Halton
- St John's Church, North Road, Lancaster
- Lancaster Priory

- 3.4 The majority of memorials will be due a re-test commencing 2009/10. It must also be noted that those memorials, where a next inspection date was less than 5 years have not been subject to a re-test due to insufficient resources.

The number of memorials requiring re-testing are as follows:

2007/08	600 (overdue)
2008/09	2153 (overdue)
2009/10	6921
2010/11	4195

Therefore, the number requiring re-testing plus the overdue in 2009/10 is 9,674

- 3.5 There is no spare capacity to undertake the rolling programme within the current cemeteries team (ie, excluding the memorial safety team). Options available for consideration are to use a private contractor or retain the in-house memorial safety team.
- 3.6 A number of private contractors have been approached and costs are in the region of £2.50-2.80/memorial. The in-house costs would be 48p/memorial.
- 3.7 An Internal Audit Report on the Cemeteries Service was published on 21 September 2007. At that point Internal Audit issued a "Limited" assurance opinion reflecting the need for arrangements to be strengthened in a number of areas.

Amongst the conclusions were:

- The authority is at risk of substantial losses should an accident occur in a closed churchyard.
- To continue to protect public safety funding is needed to extend the Memorial Safety Programme beyond the two years currently funded (ie, beyond 31 March 2009).

A follow up report by Internal Audit, dated 10 April 2008 acknowledged that action had been taken to secure funding until March 2010 and that the Service would continue to seek additional funding to extend the programme further. Taken alongside improvements made in other areas, Internal Audit were able to raise their assurance opinion to "Reasonable" (i.e. that sufficient reliance could be placed on arrangements). Whilst acknowledging the action taken to improve memorial safety, the follow-up did not involve an in-depth re-assessment of the risk posed by potentially unsafe memorials.

- 3.8 The risk posed by closed churchyards is still valid as a testing programme is yet to be commenced. If the Memorial Safety Programme was to cease then there would be a risk that was not controlled. Whether this risk would materialise into a serious accident or death is very difficult to quantify and prioritise against the many other risks the Council face.

Unfortunately, cemeteries are places where children and youths play, congregate and cause vandalism and this inevitably increases the risk of an accident.

4. Previously staked and banded memorials.

- 4.1 In the period 2004-2006, the Council's cemeteries, excluding Lancaster Cemetery, were subject to a memorial safety programme which resulted in unsafe memorials being staked and banded or, as a last resort, laid flat.
- 4.2 Despite much publicity, notices requesting owners to contact the Cemeteries team, fastened to each headstone, and writing to the last known address of the owner where possible or relative, approximately 70% of unsafe memorials have yet to be re-fixed in accordance with current standards.
- 4.3 It is evident that no further contact is likely, given the elapsed period of time and therefore no prospect of the unsafe memorials being re-fixed by the Deed of Grant owner or one of their relatives.

The stake and banding provides a temporary fix. Cabinet has on 2 previous occasions agreed to extend the time period that the memorials remain staked and banded and this will end on 31 March 2009.

The integrity of this temporary fixing must now be questioned due to:

- Potential rotting of the wooden stakes as many have been in situ for 4-5 years.
- Over the years a number have been removed/vandalised (evidence found strewn around the cemetery).

The major contributing factor to the time extension was the lack of available resources to effect a permanent repair due to the teams ongoing work in Lancaster Cemetery which was the priority.

- 4.5 The Ombudsman stated that large scale laying down of memorials without due need, will be maladministration and it is therefore considered that to potentially lay flat 1,704 memorials would be contrary to best practice and lead to widespread criticism and cause distress to the public.

Cemetery records indicate that 1,704 would require re-fixing to current NAMM standards. The costs of a permanent repair to a typical lawn section memorial carried out by an external contractor would be in the range of £125-150 per memorial whereas the cost of a permanent repair by the in house memorial safety team would be £55/per memorial.

- 4.6 In view of this, it is recommended that the memorial safety team be tasked with making a permanent repair/fixing to all those memorials that were previously staked and banded. It is estimated this would take 2-3 years to complete.

Options and Options Analysis

	Options	Advantages	Disadvantages	Risk Assessment	Financial
1	To make the Memorial Safety Team (reduced to 2 posts), permanent.	Retains expertise to allow: <ul style="list-style-type: none"> ▪ Implementation of rolling testing programme. ▪ Ability to repair unsafe and vandalised memorials. ▪ Ability to monitor work of private masons to ensure future compliance with standards. ▪ Provide the necessary operational resources to deliver essential services required at the time of burial. ▪ To carry out permanent repair to previously staked and banded memorials. ▪ Provides extra resilience for business continuity in the event of a major incident. 	<ul style="list-style-type: none"> ▪ Ongoing revenue costs as outlined in financial implications section. ▪ One post made redundant 	Ensures Council is complying with legal responsibilities and cemeteries good management.	<ul style="list-style-type: none"> ▪ 2-man team including equipment, tools and vehicle approximately £55k/year. ▪ In 2009/10 up to £6,000 redundancy costs required

	Options	Advantages	Disadvantages	Risk Assessment	Financial
2	To cease the Memorial Safety Programme.	<ul style="list-style-type: none"> ▪ Approved budget of £55K in 2009/10 would result in savings to the Council minus redundancy costs. <p>Approximate saving of £45K</p>	<ul style="list-style-type: none"> ▪ Council will be failing its statutory duties under Health & Safety at Work Act 1974 and Owner Occupiers Liability responsibilities. ▪ No testing programme in place. The Council would run the risk of being found guilty of maladministration should a complaint be made. ▪ Closed churchyards not tested yet.. ▪ Council will not be following established guidance. ▪ Temporarily staked and banded memorials left indefinitely and thereby will present an ever increasing risk as time elapses. ▪ Unable to monitor work of private masons. 	<ul style="list-style-type: none"> ▪ Could lead to bad PR for Service and Council ▪ Potential for unsafe memorials. ▪ No defence in future litigation or claims following an accident, as recognised by Cemeteries Internal Audit Report dated 21 September 2007. ▪ Council risks prosecution under Health & Safety and/or Corporate Manslaughter legislation. 	<p>Redundancy costs estimated as follows:</p> <ul style="list-style-type: none"> ▪ Costs for enhanced package = £9,799.83 ▪ Costs for statutory package = £6,584.44 <p>All employees with more than 2 years service are entitled, in the appropriate circumstances, to redundancy payments.</p>

	Options	Advantages	Disadvantages	Risk Assessment	Financial
2 Cont.			<ul style="list-style-type: none"> ▪ Cemeteries team's operational flexibility will be lost leading to reduced service delivery. 		
3	Support a memorial safety programme using an external contractor	<ul style="list-style-type: none"> ▪ Testing programme would be carried out quicker. ▪ Opportunity for Council to assess benefits of using external contractors/ partnership working to deliver part of service. 	<ul style="list-style-type: none"> ▪ Would need to engage each year to carry out testing. Also need to engage contractor to carry out any temporary re-fix. ▪ Much more expensive than in house team option. 	<ul style="list-style-type: none"> ▪ Would need to take up references re competency. ▪ Less control over contractor costs leading to increased cost of test and repair programme. 	Cost of permanently repairing unsafe memorials and carrying out testing using an external contractor is approximately 40% more expensive than an in-house team.
4	To retain the Memorial Safety Team (reduced to 2 posts) for a further 12 months until 31 March 2010 subject to a review of the Memorial Safety Programme for future years.	<ul style="list-style-type: none"> ▪ Uses the budget already approved for 2009/10 and does not commit the Council to further costs. ▪ Enables testing programme to be implemented including closed churchyards. ▪ A limited amount of repair work could be undertaken. 	<ul style="list-style-type: none"> ▪ Delays decision on long term future of temporarily staked and banded memorials and testing programme for future years. 	<ul style="list-style-type: none"> ▪ Protects Council's interests re testing programme for further 12 months. 	£55K approved for 2009/10 and is sufficient for a further 12 months.

6. Officer Preferred Option (and comments)

6.1 Option 1 is recommended for approval.

This option is recommended based on the operational experience gained over the last 2½ years and being the most cost effective way of delivering the memorial safety programme to ensure the Council meets its legal obligations

6.2 Option 2 is not recommended and has only been included in the report at the request of Members following the Star Chamber budget exercise.

6.3 Option 4 is a “stop gap” measure which would allow continuation of the Memorial Safety Programme and protect the Council’s legal responsibilities for a further 12 months.

7. Conclusion

Approval of recommendation 1 ensures the Council is complying with its legal responsibilities and is able to deliver an effective burial service to the public.

RELATIONSHIP TO POLICY FRAMEWORK

Improving on a continuing basis the Services that the Council provides.

Meeting medium term objectives of:

- Cost effective services that give good value for money.
- Make our district a cleaner and healthier place.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

There are no implications

FINANCIAL IMPLICATIONS

The Memorial Safety Programme has £55,000 approved by Council on the 27th February 2008. This will fund the Memorial Team for the first year, but leave a funding requirement for redundancy payment and for costs for future years. Under option 3, the External Contractors costs will be part funded in the first year and leave a funding requirement in future years.

	2009/2010	2010/2011	2011/2012
	£	£	£
Option 1			
<u>Memorial Team</u>			
Staff Costs	45,500	46,600	47,800
Vehicle Lease costs	6,000	6,100	6,300
Administration and Running costs	3,500	3,600	3,700
Memorial Team Costs	55,000	56,300	57,800
Existing Approved Funding	(55,000)	-	-
Potential Redundancy Costs	6,000	-	-

Additional Funding Requirement	6,000	56,300	57,800
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Option 2

Cease Memorial Safety Programme

Potential Redundancy Costs	9,800	-	-
Existing Approved Funding	(55,000)	-	-
Potential Saving	(45,200)	-	-

Option 3

External Contractor

Memorial Testing @ c£2.50 each	24,200	10,800	7,500
Memorial Fixing @ c£150.00 each	85,200	85,200	85,200
External Contractor Costs	109,400	96,000	92,700
Existing Approved Funding	(55,000)	-	-
Potential Redundancy Costs	9,800	-	-
Additional Funding Requirement	64,200	96,000	92,700

Option 4

Retain Memorial Safety Team until 31 March 2010 subject to review of Memorial Safety Programme for Future Years

There would be no additional financial implications to option 4, as it would utilise only the existing funding available

There is currently no specific budgetary provision to meet any additional funding requirements and in order for the proposals to progress either savings would have to be identified or a growth bid would have to be formulated and approved by Full Council.

SECTION 151 OFFICER'S COMMENTS

Any potential growth bids should be considered in context of Cabinet's proposed priorities (and non-priorities), any relevant statutory requirements and the Council's financial prospects, i.e. the need to make budget savings. Any proposal for budget growth will increase the savings needed.

Should Members wish to support an extended memorial safety and supporting programme, whilst the in-house service provision would cost less over the 3 years, it is uncertain whether this would be the case in the longer term, given that the need for repair etc. should reduce in later years, once any backlog is cleared. Members may wish to take this into account when considering the permanency of any growth bid.

LEGAL IMPLICATIONS

Health and safety in cemeteries managed by the Council is enforced by the HSE. The City Council as a burial authority has duties under the Health and Safety at Work Act 1974 Section 2 towards its staff and Section 3 responsibilities towards members of the public and other contractors who visit the cemetery.

The Management of Health and Safety at Work Regulations 1999 require all employers to assess the risks to employees and non-employees which arise out of the employer's undertaking. Therefore, the City Council is under a legal duty to assess the risk from all cemetery structures (including memorials) and work activities in their cemeteries and ensure that the risk is controlled.

Guidance issued by HSE in August 2001 stated:

- a. Burial authorities should have clear safety policies in place which set out their standards for management of memorial safety.
- b. Staff are trained to carry out inspections of unstable memorials.
- c. An initial inspection is carried out to identify any memorials posing an immediate danger to the public. Memorials identified as falling into this category must be dealt with. A fuller inspection is then carried out to ensure that memorials in cemeteries are safe and that actions taken are properly recorded and maintained.
- d. An ongoing inspection programme is drawn up and implemented, ie, an inspection every 5 years or a rolling programme seems to be a reasonable approach. The frequency of inspection will depend upon the age, size and condition of the memorial and this is for burial authorities to decide as part of their assessment and review procedures.

If memorials are in immediate danger of falling, then cemetery management should take immediate action

Under the Corporate Manslaughter and Corporate Homicide Act 2007 an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death.

The Council owns the land within the cemeteries and gives a right to erect a memorial subject to seeking the Council's permission. The responsibility for the memorial and its future maintenance and safety rests with the Deed of Grant Owner or other family relative who has been assigned the right or is willing to accept responsibility for the memorial. The Council does not have any responsibility for individual memorials other than that implied through Health & Safety at Work Act 1974 as stated above and our owner occupier liability responsibilities.

DEPUTY MONITORING OFFICER'S COMMENTS

Deputy Monitoring Officer has been consulted and has no comments to add.

BACKGROUND PAPERS

Cabinet Report on Memorial Safety Programme 17 January 2006.

Individual Cabinet Member Decision 22 February 2007

The Local Government Ombudsman Special Report – Memorial Safety in Local Authority Cemeteries March 2006

Institute of Directors and Health & Safety Commission

'Leading Health & Safety at Work' October 2007.

Cemeteries Internal Audit Report 21 September 2007 and Post Audit Review 30 April 2008.

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