

Peer Reviewed Papers

Views of the Verge: Roadside Memorials and Local Government Policies

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Abstract

When road deaths occur it is common for those who mourn to erect roadside memorials. This development challenges the traditional view of the verge as merely a peripheral space adjacent to the transit way. In response, some local government authorities have formally considered their position on roadside memorials and developed policies to regulate the erection, maintenance and removal of roadside memorials. This paper examines local council policies to detect trends, concerns and perceptions about the presence of roadside memorials in local government areas.

Introduction

The erection, maintenance and removal of roadside memorials can be highly contentious and emotive. Local government authorities have administrative control over the road reserve but these areas are increasingly targeted as sites of grief and mourning in the aftermath of traffic crash fatalities. With legal and administrative responsibility over public health and safety comes an obligation to consider a response to any changes taking place in the way the community views the verge. This is not always an easy task nor a simple one, but increasingly some local government authorities are deciding that it is necessary.

The area from property line to property line, which includes the carriageway and the verges, falls under the jurisdiction of local or state government depending on the classification of the road. The Roads Act of 1993, Section 138 in New South Wales, for example, specifically states that ‘ A person must not: (a) erect a structure or carry out a work in, or over a public road, or (b) dig up or disturb

the surface of a public road, or (c) remove or interfere with a structure, work or tree on a public road . . . otherwise than with the consent of the appropriate roads authority’ (1). Although this Act and others like it across Australia, clearly gives power to regulate the verges to government, public attitude towards these areas is becoming increasingly complicated and contested and the demands for access and control of certain sections of the verge can be strident. This development has come about because of the increasingly frequent desire of some grieving families and friends to build roadside memorials at the sites of fatal traffic crashes.

The idea of marking the side of the road, of course, is not new. A variety of roadside markers are recorded in the ancient world as well as throughout the American Southwest and Europe dating from the 17th and 18th centuries. They identified burial sites, murder sites, prayer places for safe travel and routes that had been blessed by a priest. Journeying then, as now, was inherently dangerous. However, in the twentieth century, roadside markers are almost exclusively associated with traffic deaths. There is evidence that certain parts of the United States in the 1940s were dotted with roadside memorials (2), so much so that Kenneth E. Foote argues that ‘ particularly dangerous stretches came to resemble small cemeteries, with rows of crosses marking dozens of fatalities’ (3). Foote suggests that as the interstate highway system was developed in the 1950s and 1960s the memorials began to disappear. ‘ The remedy for a crash’ , he suggested ‘ was a new guard rail, a wider shoulder, or a banked turn, not a small cross’ (3). Clearly the engineering solutions as suggested by Foote have not eliminated road death, although they have contributed significantly to the falling road toll, but some road users have reverted to more traditional, personal and symbolic ways to respond to danger and loss. In the last 15 years or so the concept of roadside memorialisation has grown in popularity so that a revival of this age-old tradition has occurred, in Australia, as much as it has overseas. Hartig and Dunn, examining memorials in the Greater Newcastle region of New South Wales, estimate that some 20% of all traffic fatalities occurring there were marked with a roadside memorial (4).

It is impossible to say conclusively why those who grieve now see memorialisation by the roadside as a desirable way to respond to sudden and tragic loss. It may be, as Haney, Leimer and Lowery suggest, that death has been sanitised and removed from everyday life so that when it occurs tragically, suddenly and violently our current mechanisms for dealing with the





associated grief seem inadequate and barren (5). They suggest that spontaneous memorialisation, of which the erection of roadside memorials is a part, is one way to respond more actively and immediately to such loss. Gerri Excell, studying roadside memorials in Britain, suggests that perhaps the renewed interest in roadside memorialisation is simply a return to the more involved, more elaborate and participatory mourning of the past (6). Majella Franzmann and I have argued in turn that roadside memorials may in fact reflect an inadequacy on the part of the state and the church in mediating grief and mourning and, that roadside memorials actually represent an authority taking by the mourners, an assumption of control over both the process of grief and the place of death (7). If there is some truth to any or all of these interpretations, then what we have is a pattern of assumption of the public verge for private use and a reclamation of the roadside for a different purpose from that of simply facilitating mobility.

The road verge, as Rebecca Kennerley suggests is a 'between space', that is, it sits between the roadway and the property lines of shops, houses, businesses or farms (8). On the one hand this makes the verge an empty space, a passing through space and on the other hand its very emptiness offers itself to interpretation and assumption. When road trauma occurs that claims a life it is the place where death was caused which takes on a new significance. A piece of roadside, a tree or a stretch of fencing can then be seen as a sacred place separate from the unclaimed surrounding space. It is there that a memorial is built, rituals performed, and communication with the deceased undertaken. This site then becomes special, an identified place on a placeless roadway. As poet Graeme Miles writes, 'The road in the rear-view mirror at night/ is sad as an abandoned toy,/ is transit distilled/ with no claim to placehood/ except the ad hoc shrines where the cars squealed' (9).

This between space, the verge, is now a place of multiple meanings. To the bereaved it is a special place where life was lost. In some cases that place becomes so significant that it is specifically claimed by friends and family for the deceased alone. By the Kakahu River in the South Island of New Zealand, for example, where Conor and Adam were killed, their friends have left messages, including one by Possum which reads 'This will always be your spot'. That claiming of 'the spot' can become quite insistent. When Kristopher was killed by Loch

Glascarnoch in Scotland, his mother wanted to build a memorial as close as possible to the scene of the tragedy. She complained when the local council 'didn't want us to put it on the actual spot, but on a boggy area well off the road. We kicked up a fuss', she explained 'and they eventually gave us permission to put it near where he was killed' (10).

It is not uncommon for arguments to ensue over rights to the verge. In the United States of America some states have banned the erection of roadside memorials altogether, locking out multiple uses of the verge and retaining the primacy of purposeful modernity that highway travel represents (11). Some local areas have brought down restrictions on the length of time memorials can remain, their size and their construction materials. On the freeway into Atlantic City, for example, the lifetime of a memorial is limited to 10 days (12). Local government authorities operate legalistically while the grieving families and friends often demand accommodation. In California, one grieving father was ordered to remove a large and growing memorial site or else face a fine of \$1000 and six months in gaol. The County Deputy Director of Public Works explained his position: 'We're not in the memorial business', he said, 'we're in the road business. I'm not insensitive but I have got to enforce whatever the rules and regulations are' (13). In the United States, the verge has become a battleground with adversaries even resorting to the courts for settlement. It is not inconceivable that such a development could occur in Australia as well.

Locally, government authorities are beginning to realise that the verge can become disputed territory, between opposing parties involved in a traffic incident as much as between council and the bereaved. It may not always be possible or wise simply to advise disagreeing parties to discuss memorialisation amongst themselves. A growing number of local councils in Australia believe they need to formulate policies to deal systematically, consistently and sensitively with the growing trend to claim pieces of the verge for private mourning.

Methodology

In 2003 I surveyed 217 local government authorities across Australia, chosen at random, to investigate whether or not they had formulated a roadside memorial policy and if so, what form it took and upon what principles it was based. All sampled councils were contacted in writing and asked whether council had formally considered the issue of roadside memorials and if so, could they supply their council policy documents on roadside memorials. I wanted to know what were the determining factors in developing the policy? What directions did the councils take? Was there a pattern in the responses to the roadside memorial issue across local government areas and of course, the extent of the trends. This study is based on an examination of publicly available council policy documents formulated in response to growing concern over the issue of roadside memorials. This study does not include discussion of roadside marker post programs which are

⁹ Although policy documents are publicly available I have decided not to identify the policies of individual councils but rather to focus on patterns and trends illustrated by relevant examples from the documents.

used in South Australia and available for local councils to use in Tasmania.

Of the 217 surveyed councils, 31% of all councils in Australia, 158 replied giving a response rate of 73%. 119 or 75% were from rural authorities and 39 or 25% were from urban authorities. 33 of those that replied or 21% were in Queensland, 63 or 40% were in New South Wales, 20 or 13% were in Victoria, 4 or 2% were in Tasmania, 14 or 9% were in South Australia, 22 or 14% were in Western Australia and 2 or 1% were in the Northern Territory.

Of the 158 councils surveyed 122 or 77% had not considered roadside memorials in any formal way. 36 councils or 23% had considered the issue of roadside memorials and their response to it in some form. The outcomes were quite mixed. In some cases a formal policy was adopted, either purposely formulated or adapted from their state's policy. Other councils considered the issues and then simply agreed to permit roadside memorials if they were requested without developing any formal policy. In that sense council would deal with each application on its merits. Other councils discussed the issue but were not prepared to make any lasting decisions about it.

Discussion of roadside memorials in the sampled councils took place between 1995 and 2003. The peak year for discussion was 1999 (7 councils) followed by 2001 (5 councils). No council appeared to have considered the issue before 1995. Even with an early start the process could still take some years to see through. Dumaresq Shire Council in North Western New South Wales was the earliest in my sample to consider roadside memorials, which it did in 1995, in response to a request from a local service club to erect crosses as part of their service to road safety. The council decided against the proposal. The adjoining Armidale City Council considered the issue in 1999. After amalgamation of the two councils a policy was finally adopted in September 2000. At the broader state level, for example, the Roads and Traffic Authority in NSW and VicRoads did not bring down their policies until 1998, Main Roads Western Australia in 2003 and ACT in 2004.

In 2006, I surveyed the same councils to see if they changed their policies or introduced policies where they had not existed before. Six councils had introduced new policies since 2003, three indicated an intention to introduce a new policy and two, one in Queensland and one in Western Australia had made amendments to old policies. Only one Queensland council in the original sample prohibited the erection of roadside memorials, established in their 1997 policy which was direct and to the point: 'That Council not authorise the erection of roadside memorials, including temporary crosses, in the road reserves under the control of Council in the Shire as it considers that, on balance, it is not appropriate given the legal, safety and maintenance issues involved'. By 2004 that council had softened its position to allow 'a simple white cross' for no longer than 6 months.

This amendment to the policy occurred simply in response to public demand. The community serviced by the council expected to be able to erect roadside memorials and the council received several requests to do so. It is clear from the 2006 data that councils are continuing to consider roadside memorials as an issue needing policy direction, albeit at a slow pace, resulting in a total of 27% of surveyed councils developing policies on roadside memorials, an increase of 4% since 2003. This emerging pattern reached a new administrative level in March 2006 when members of the Local Government Association of South Australia passed a resolution calling on the association to develop a policy on roadside memorials that could guide individual local councils trying to deal with this issue (14).

Principles found in the policies

When councils did develop a policy to guide their decision making they usually acknowledged the sensitivity of the issue for families and friends in the opening paragraphs, saying quite specifically, for example, that the 'Shire will deal sensitively with requests for the establishment of roadside memorials' or 'the Policy recognises and respects the wishes of a bereaved family and friends to place Roadside Tributes at the location of a fatal accident site'. At the same time councils recognised their duty both to manage public space for the whole community and to work towards the pursuit of road safety. This dualism gives the roadside memorial policies an inherent tension. One council in Western Australia, for example, made these three elements immediately explicit in its policy where the objective was 'to be sensitive to people's grief and maintain road safety' but also to consider 'the concerns of other road users and nearby residents.' It is not always possible to satisfy all of these purposes but calling for sensitivity is a way of ensuring the council is alive to the heavy emotional investment in building a roadside memorial. Sensitivity is given such priority in policies that the Roads and Traffic Authority's Corporate Policy Statement No 37 on Roadside Tributes, Revised 21 October 1998, specifically stated that before any action was taken on removing a roadside memorial 'in all cases, the Manager, Media Unit must be advised' (15).

Legal, safety and maintenance issues vex councils deciding to implement policies. The legal ramifications have been addressed by one Western Australian council by including a clause in the policy that 'the applicant indemnifies Council against any action or damage claim arising from the installation of the markers'. Although this council is the only one in the sample with an indemnity clause, councils that have formulated policies are concerned about their duty of care to the public regarding roadside memorials. This involves a number of separate areas. Most obviously councils are concerned that roadside memorials will form a safety hazard either because they are too close to the carriageway or built of materials that will cause injury on impact or because visitors attending to the memorial may themselves be hit by passing traffic. Memorials

may become a distraction for drivers. Poorly maintained memorials could also become a safety and drainage hazard. Personal items could blow away and become roadside litter. Memorials have become hazards for road maintenance crews who either have to work around the memorials or sometimes damage them in the course of their operations. One council undertook an annual review of memorial sites in order to ensure they had not become hazards. All of these reasons present councils with public liability concerns. It may seem easier to ban roadside memorials altogether and yet the one council that did that rescinded its policy. The next best thing is to regulate the substance, duration and of course location of memorials in order to balance sensitivity with concerns for public liability.

Regulating roadside memorials in council policies:

Limiting the duration of memorials

Councils recognise that the desire to erect a roadside memorial stems from grief, however, grief mediation is not the business of council. Council manages assets and it is with that in mind that roadside memorial policies take on a regulatory role. One council in New South Wales, for example, makes regulation the primary objective of its policy, which is ‘ To develop appropriate standards for the installation and maintenance of roadside memorials.’ One of the most common regulations imposed by councils is to limit the amount of time a memorial can remain on the verge. The length of time deemed appropriate is quite diverse and, superficially, quite arbitrary from three months in one case in the Northern Territory, to a six month period ‘ subject to review’ in Western Australia, to 12 months for a council in New South Wales. Another NSW council also suggests a period of 12 months or ‘ until such time as a Coronial Inquest has taken place (whichever is longer)’ . One Council in Victoria and one in Queensland allow a period of 2 years, a draft policy in one NSW council proposes a two year limit whereas another in NSW does not impose a time limit at all. One Victorian council acknowledged that ‘ The length of the grieving period will vary with each situation. In general, a time limit of up to twelve months will be allowed for memorials of a temporary nature’ . There seems to be no justification offered for any of these chosen time limits except for the one where the memorialisation process is linked with the possible waiting period for a Coronial enquiry.

Those who erect memorials however, do not always accept the largely arbitrary limitations of council decisions regarding time limits. When memorial makers were interviewed in 2004 about their memorialisation practices, and keeping in mind that these interviews were drawn from different local government jurisdictions, still 81% said they intended to leave the memorial there until the council said to take it down.^b There is a strong sense in written testimony as well that memorial makers believe they should have control over the memorial process including the length of time a roadside memorial remains. In Ormeau, in Queensland, for example, Daniel’ s memorial was

repeatedly vandalised. The perpetrator left a note to explain his reasons: ‘ The Community of Ormeau have endured this memorial site for one year and two months and we felt that is by far long enough’ Daniel’ s parents replied that ‘ it’ s not always going to be there, but it should be up to us take it down when we’ re ready’ (16). The memorial site can take on enormous significance that may override any government ordinance. In the United States, for example, the father of a boy killed on the road said he would chain himself to the memorial he built rather than take it down after asked to do so by the local government authority. The boy’ s mother responded by saying ‘ This memorial is so important to us, it’ s just not right to remove it’ (17).

Majella Franzmann and I have argued elsewhere that memorial makers assume an authority to erect roadside memorials sometimes in defiance of local government regulations because of an empowerment of purpose gained through the experience of deep grief, the sense they have of the significance of the place where death was caused and a belief in the presence of the dead at the memorial sites (7). Memorial makers can feel strongly motivated to attach a symbolic structure to a section of the roadside and to imbue that place with lasting and substantial meaning. When memorial makers were surveyed 62% said they felt as strongly about the memorial as when it was first built.

Limiting the type of memorial

The second most common area of regulation found in council policies is the type of memorial to be permitted. One urban council in NSW restricts memorials to trees planted by council staff, a regional council in New South Wales, among others, follows the policy of the Roads and Traffic Authority in allowing nothing more than flowers or a lightweight wooden cross of a similar size to flowers. A Western Australian shire council allows white crosses and an urban council in Victoria is even less prescriptive simply saying that memorials ‘ must be constructed of materials or installed in a way that will not cause injury if struck by a vehicle’ . One Western Australian shire council specifies that white crosses are ‘ no more than 450mm in width and to be less than 600mm in height.’ A draft NSW policy sets a maximum dimension of 0.5 metre. A Western Australian shire council was the most prescriptive of all specifying white, non-reflective wooden crosses 40mm x 20mm and no larger than ‘ 850mm long (600mm out of ground) and 400mm wide’ or plants native to the local area, or a decal 160mm x 130mm to attach to a street light column or a power pole. Additionally, no memorial should consist of loose mementos of any kind nor be encircled with rock or brick borders, kerbs or edges.

Restrictive regulations exist in the policies of only 8% of councils. Most local government areas have no regulations on the nature of the memorial tributes at the roadside. As a consequence there is a vast array of memorial designs on Australian roads, including everything from small white crosses and floral tributes to large, permanent structures and those that grow with the addition of mementos, flowers, cards and letters. When memorial makers were interviewed 56% said the

^b Interviews were undertaken with 16 memorial makers in 2004. University of New England. Human Ethics Approval number: HEO4/104.