

Statement of Proposal

CEMETERIES AND CREMATORIA BYLAW 2020

Introduction

The Whakatāne District Council (the Council) has reviewed the Cemeteries and Crematoria Bylaw 2018 as a result of a request for natural burials to be allowed in the Whakatāne District.

The Whakatāne District Council seeks your views on the Draft Cemeteries and Crematoria Bylaw 2020.

Proposal

The Council proposes to revoke the Cemeteries and Crematoria Bylaw 2018 and replace it with an updated Cemeteries and Crematoria Bylaw 2020. The Draft Cemeteries and Crematoria Bylaw 2020 is being released for consultation in accordance with section 82 of the Local Government Act 2002 (the Act).

In accordance with section 86 (2) of the Act, the Council is required to include the following in a Statement of Proposal:

- a draft of the proposed bylaw
- the reasons for the proposal
- a report on any relevant determinations by the Council under section 155 of the Act.

The attached copy of the proposed Whakatāne District Council Draft Cemeteries and Crematoria Bylaw 2020 forms part of this Statement of Proposal.

Reasons for the Proposal

Under sections 158 to 160 of the Act, the Council is required to review all bylaws within five years of their adoption and every ten years thereafter. However, a Council may review a bylaw at any time if it deems it appropriate.

The Council has received a request that natural burials be allowed within the Whakatāne District. As a result of this request, Council staff have reviewed the Cemeteries and Crematoria Bylaw 2018 and consider that overall, the bylaw is fit for purpose. The key changes are:

- The addition of a section relating to natural burial areas including associated definitions.
- The extension of the days on which a burial may take place to include Sundays.
- Clarification of the requirement for Council approval for memorials prior to installation.
- Minor grammatical changes to improve the clarity of the bylaw.

Specific changes made in the Draft Cemeteries and Crematoria Bylaw 2018

The Table below shows the specific changes that have been made to the Draft Cemeteries and Crematoria Bylaw 2020.

Section in existing bylaw	Reason for proposed change	Proposed Change	Outcome if change approved	Section in Draft Bylaw
4 Interpretation	Clarify definition	Amend definition BURIAL PLOT means a lot in a cemetery, laid out and shown on a plan of the cemetery prepared by Council, to be used as a grave means a plot laid off in any cemetery for the burial of human remains.	Definition is more clearly understood	4 Interpretation
4 Interpretation	To facilitate the inclusion of natural burials	Add a definition for Compostable: COMPOSTABLE means capable of disintegrating into carbon dioxide, water, inorganic compounds, and biomass in a non-commercial compost environment, leaving no toxicity in the soil.	Definition is more clearly understood	4 Interpretation
4 Interpretation	Clarify definition	Amend definition to include 'or burial' (see italics below). INTERMENT means the burial of a dead human body in a burial plot or the burial of cremated human remains in a cremation <i>or burial</i> plot.	Definition is more clearly understood	4 Interpretation
4 Interpretation	Clarify definition	Amend definition to clarify that 'Plot' means the same as 'Burial plot' PLOT means the same as BURIAL PLOT a lot in a cemetery, laid out and shown on a plan of the cemetery prepared by Council, to be used as a grave.	Definition is more clearly understood	4 Interpretation
8 (1) Time of burials and unveiling ceremonies	Extend the range of days a burial or unveiling can occur	Include Sundays	Burials and unveilings will be allowed to occur on Sundays	8 (1) Time of burials and unveiling ceremonies
10 (4) Disinterment	Change clause to clarify plot using after disinterment	If a body or the remains of a body have been removed from a burial plot, no further burial shall occur at that plot. This reflects current practice. The change has been made as the existing Bylaw appears to suggest the right to exclusive	Allowable practice is more clearly understood	10 (4) Disinterment

		use of a plot may be sold after a disinterment has occurred.		
11 (2) Monuments	Clarify that Council approval is required for monuments	Add clauses to ensure the design, artwork and text on any monument is appropriate for public display and will not wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person; and clarify that written approval must be obtained from Council or an Authorised Officer prior to installation.	Clarify the requirements for monuments	11 (2) b and c Monuments
16 (i) New sub-clause	Clarify where articles, memorials or tributes can be placed	Add sub-clause No person shall, in or near any part of any cemetery or crematoria: (i) Place any article, memorial or tribute in any part of the cemetery other than on the berm of a grave.	Clarify the requirements for articles, memorials or tributes.	16 (i)
19 New clause	Include a section on natural burials	Include a section setting out the provisions and restrictions around natural burial areas and plots.	Natural burials will be allowed in certain designated areas.	19 Designated Natural Burial Areas

Other options to the proposed bylaw considered

In preparing this report, staff considered two other options:

- Keeping the existing bylaw
- Having no bylaw at all.

Staff considers that the proposed bylaw is the most appropriate method to address all issues relating to the management of cemeteries and crematoria in the District.

Without a bylaw, the Council would be unable to fulfil its responsibilities under section 145 of the Act to protect the public from nuisance, protect, promote, and maintain public health and safety and to minimise the potential for offensive behaviour in public places.

Council's ability to make a Cemeteries and Crematoria Bylaw

The Act sets out the procedure for making a bylaw. The Council is required under section 155 of the Act to determine whether a bylaw is the most appropriate way to address perceived problems. Section 155 (1) of the Act requires the Council to determine whether a bylaw is the most appropriate way to address perceived problems and section 155(2) requires the Council to determine whether the proposed bylaw:

- Is the most appropriate form of bylaw
- Gives rise to any implications under the New Zealand Bill of Rights Act 1990.

The proposed bylaw is the most appropriate form to protect the public from nuisance, manage public health issues and minimise the potential for offensive behaviour in the use of cemeteries and crematoria because it meets the following tests:

- The bylaw is authorised by statutory authority under the Local Government Act 2002;
- The bylaw is not repugnant to the general laws of New Zealand
- The proposed bylaw is certain and provides clear direction
- The bylaw is reasonable
- The bylaw is not overly restrictive, onerous on any one person, or impractical.

There are no implications of contravention of the New Zealand Bill of Rights Act. The draft bylaw does not place any limits on freedom of movement, expression or association, and does not isolate any particular social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

Consultation process and submissions

The Council will invite the community to give feedback on the proposed bylaw to assist it in the decision-making process.

The formal consultation process will take place between 25 June 2020 and 25 July 2020. Any person or organisation is welcome to make a submission on the Draft Cemeteries and Crematoria Bylaw 2020. The Council will take into account all submissions when it decides on the final content of the bylaw.

Copies of the Statement of Proposal are available on Whakatāne District Council's website <http://www.whakatane.govt.nz>

Hard copies are available from:

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| • Whakatāne District Council | 14 Commerce Street, Whakatāne |
| • Whakatāne Library | 49 Kakahoroa Drive, Whakatāne |
| • Edgecumbe Library | 38 College Road, Edgecumbe |
| • Ōhope Library | 4 Harbour Road, Ōhope, |
| • Murupara Library / Service Centre | Civic Square, 48 Pine Drive, Murupara |

Formal submissions may be made:

Online: koreromai.whakatane.govt.nz

Post to: Cemeteries and Crematoria Bylaw 2020, Private Bag 1002, Whakatāne 3158.

Deliver to: Cemeteries and Crematoria Bylaw 2020, Whakatāne District Council, 14 Commerce Street, Whakatāne.

Email to: submissions@whakatane.govt.nz Attention Bylaw Review

Informal submissions can be made by commenting on our Facebook page at facebook.com/WhakataneDistrictCouncil

Submissions close at 5pm on the 25 July 2020.

Submitters should note that their submission will be copied and made available to the public after the submission period closes.