



Cemeteries and Crematoria Bylaw 2020

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Part 1: Introduction

The Whakatane District Council makes this bylaw pursuant to Sections 145 and 146 of the Local Government Act 2002, section 22AB of the Land Transport Act 1998 and the Burial and Cremation Act 1964.

1 Short title and commencement

This bylaw shall be known as the Whakatāne District Council Cemeteries and Crematoria Bylaw 2020. This bylaw comes into force on 03 September 2020.

2 Revocation

The Whakatāne District Council Cemeteries and Crematoria Bylaw 2018 is hereby revoked from the day this bylaw comes into force.

3 Purpose

The purpose of the Cemeteries and Crematoria Bylaw 2020 is to regulate the use of cemeteries and crematoria, and in particular to provide for the purchase of plots, interment, erection of structures and the maintenance of cemeteries and crematoria.

The bylaw provides the regulatory context for enforcing appropriate behaviour of the public in cemeteries, to make activities and places safer for residents, workers and visitors.

The Cemeteries and Crematoria Bylaw 2020 applies to all cemeteries and crematoria within Whakatane District Council's control, but excludes Urupa (Māori burial grounds) in line with the Burial and Cremation Act 1964.

4 Interpretation

Unless the context supports an alternative meaning as specified in the Burial and Cremations Act 1964, then:

ACT means the Burial and Cremations Act 1964.

APPROVED means by Council or an Authorised Officer.

AUTHORISED OFFICER means any person authorised by Council to carry out or exercise any powers, duties or functions under this Bylaw or any part thereof and includes any Police Officer.

BODY means a dead human body and includes the body of a stillborn child.

BYLAW means the Whakatane District Council Cemeteries and Crematoria Bylaw 2020.

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.

BURIAL WARRANT means a warrant issued for burial by an Authorised Officer of the Whakatāne District Council.

CEMETERY means any public cemetery vested in or under the control of the Whakatane District Council.

CEMETERY REGISTER means the register to be kept by the Council pursuant to section 50 of the Burial and Cremations Act 1964.

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.

COUNCIL means the Whakatane District Council or an Authorised Officer.

CREMATORIUM means the Hillcrest Cemetery Crematorium.

CREMATION PLOT means a plot laid off in any cemetery for the interment of cremated human remains.

DISTRICT means the area within the territorial boundary of the Whakatane District Council.

FUNERAL DIRECTOR means a person whose business is or includes disposing of bodies.

INTERMENT means the burial of a dead human body in a burial plot or the burial of cremated human remains in a cremation or burial plot.

LAWN CEMETERY means such part or parts of any Cemetery as the Council shall from time to time resolve to be a lawn cemetery, and where no fence, kerbings or monuments other than headstones shall be erected.

LOCAL GOVERNMENT ACT means section 146 of the Local Government Act 2002.

MONUMENTS includes any tombstone, headstone, memorial, kerbing, or other erection.

NATURAL BURIALS AREA means a cemetery, or part of a cemetery, specially set aside for natural burials.

NOTIFIABLE DISEASE means any notifiable infectious disease, and any disease for the time being specified in Schedule 2 of the Health Act 1956.

OWNER means the person recorded as being entitled to the exclusive right of burial in a burial plot or cremation plot.

PLOT means the same as BURIAL PLOT.

PRESCRIBED FEE means the fee or fees as may be set by Council from time to time.

PUBLIC HOLIDAY means Christmas Day, Boxing Day, New Year's Day, the second of January (or some other day in its place), Good Friday, Easter Monday, Anzac Day, Labour Day, the birthday of the reigning Sovereign, Waitangi Day and Bay of Plenty Anniversary Day.

RECORD means the Cemetery Register.

SEXTON means any person appointed by the Council to manage the day to day activities of any cemetery and crematorium under its jurisdiction. Such activities include arranging for the provision of plots for burials.

Part 2: Cemeteries and Crematoria

5 Right of Burial

- (1) Plots can only be purchased as part of an interment. Pre-purchasing of plots is not permitted, with the exception of the deceased's family having the option to purchase the adjacent plot at the time of burial. Plot purchase requests can be made directly with the Council or through a funeral director.
- (2) The right of burial is valid for 15 years from the date of acquisition or longer as the Council may determine by resolution, unless within that period the plot is occupied or a monument erected to the memory of the right holder.
- (3) No person shall be permitted to hold more than one right of burial at any one time.
- (4) The Council, upon receipt of the prescribed fees for any exclusive right of burial, will issue a certificate of purchase to the applicant. On request and payment of any additional fee, the Council may issue a duplicate certificate to replace any lost certificate of purchase.

6 Transfer of Right of Burial

No person who has purchased the right of burial in any plot shall transfer or assign such right to any person other than a parent, spouse, partner or child of such purchaser and then only subject to the approval of the Council and on payment of the transfer fee, provided that the Council may accept the transfer to it of any unused plot and in consideration of such transfer may refund up to 50% of the current prescribed fee for similar plots.

7 Procedures for Burial

- (1) No person other than the sexton or his or her assistants shall dig any grave or open the ground for any burial in any part of a cemetery.
- (2) No burial shall take place in any cemetery without the production of a burial warrant obtained from the Council.
- (3) Every person requiring a burial warrant shall apply to the Council on the approved form of application for a burial warrant as issued by the Council and pay the prescribed fee.
- (4) No burial warrant may be issued unless:
 - (a) the right of burial in respect of the plot concerned has been purchased; and
 - (b) the Council has received written certification or authorisation pursuant to section 46AA of the Act; and
 - (c) ground conditions are suitable for burial.

- (5) The burial warrant obtained for any burial shall be delivered to the sexton no less than eight working hours before the time fixed for the burial.
- (6) The burial warrant, when received by the sexton, shall be sufficient authority for him or her to proceed with the burial of the person named therein. After completion of the burial, the sexton shall sign the certificate at the foot of the warrant.

8 Time of Burials and Unveiling Ceremonies

- (1) Except pursuant to Section 86 of the Health Act 1956 which relates to the burial of people who have died from an infectious and/or notifiable disease, no burial shall take place except between the hours of 8:00 am and 5:00 pm on a weekday, weekend day or public holiday (excluding Christmas Day and Good Friday).
- (2) Unveiling ceremonies shall take place only with the express permission of the Council and shall take place between the hours of 8.00 am and 5.00 pm any weekday, weekend day or public holiday.

9 Burial depth (excludes natural burials)

- (1) All graves for the burial of children shall be not less than 1.5 metres deep and all other graves shall be no less than 1.8 metres deep.
- (2) A second body may be buried in the same plot if requested by the holder of the right of burial or the immediate family provided that there shall be at least 1.2 metres of covering at the average surface level of the ground over the last coffin buried.
- (3) A burial warrant may be issued to authorise the burial of any urn, containing the ashes of any deceased person, in any plot provided the right to burial in that plot has been purchased and the plot has already been used or is intended to be used for the burial of a body.

10 Disinterment

- (1) Where an application for a disinterment is received by the Council, the disinterment shall be conducted in accordance with section 51 of the Act or any other applicable legislation, subject to the payment of such fees as contained within the Council's fees and charges.
- (2) Before a body or the remains of any body may be removed from its burial place in a cemetery, the person wishing to remove the body or remains shall obtain:
 - (a) Approval from the Minister of Health under section 51 of the Act; and
 - (b) Prior approval of the Council.
- (3) The removal of a body or remains of a body under this clause shall only take place in the presence of:
 - (a) The relevant authorised officers; and
 - (b) A funeral director and necessary staff; and

- (c) The relevant Ministry of Health inspectors; and
 - (d) Any other person who has the prior approval of the Council to be present.
- (4) If a body or the remains of a body have been removed from a burial plot, no further burial shall occur at that plot.

11 Monuments

- (1) No person shall erect any monument in or on any plot in any cemetery, unless the right of burial in such plot has been purchased
- (2) No person shall in any cemetery construct, erect or place any monument, including memorials, fences and kerbs, vaults or other coverings, and the foundations of the same, unless:
 - a. the proposed structure is in accordance with the Whakatane District Council Headstone Specifications, which stipulate the standards and specifications of monuments in Council owned cemeteries; and
 - b. the design, artwork and text on the proposed structure 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
 - c. written approval has been obtained from Council or an Authorised Officer.
- (3) All monuments, including memorials, fences and kerbs, vaults or other coverings, and the foundations of the same, shall be kept in proper order and repair by the owner of the plot or his or her representatives and any which have fallen into a state of decay or disrepair may be dealt with by the Council in accordance with the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967.

12 Records

- (1) Every plot in each cemetery shall be identified by a number which shall be recorded on plans kept in the Council office.
- (2) A permanent Cemetery Register shall be kept of all plots for which rights of burial or ashes internment have been purchased, together with the name of the purchaser, the date of purchase, the amount paid for such purchase, and the names and dates of interment of any persons buried in such plots. Duplicates of the plans shall be kept by the sexton.
- (3) The plans and Cemetery Register shall be open for inspection during ordinary working hours.
- (4) The Council will endeavour to give the correct boundaries of any plot or plots when selling the right of burial therein, but shall not be liable to the purchaser for any error subsequently found, whether as to survey or otherwise; and the Council shall not be bound to point out the limits of any plot for which the Right of Burial has been so purchased.

13 Interference with Monuments or Vegetation

- (1) No person shall, without the written authority of the Council:

- (a) remove from any cemetery, or from any grave, any monument, including memorials, fences and kerbs, vaults or other coverings, and the foundations of the same; or
 - (b) remove or take from any cemetery or from any grave, except for the purpose of tidying the same, any vase, wreath, plant, flower or any other article; or
 - (c) disturb or damage any vegetation including flowers, trees, shrubs, or plants in the cemetery; or
 - (d) plant, cut down or destroy any tree or shrub in any cemetery; or
 - (e) suspend or attach ornaments to any vegetation or other structure in any cemetery.
- (2) Clause 13(1)(a) does not apply to headstones that are removed for the purposes of re-inscription.

14 Maintenance of Plots

- (1) The Council will maintain any plot or grave in any cemetery for such period as the Council may determine to be the useful life of the cemetery for cemetery purposes.
- (2) The fee for the purchase of a plot in any cemetery shall include an amount as prescribed by the Council for the maintenance of such plot for the period as determined by the Council in accordance with clause 14 (1).

15 Use of Vehicles

- (1) No person shall, except with the prior permission of the Council or an authorised officer:
 - (a) take any vehicle into any cemetery or allow the vehicle to remain in a cemetery during the hours of darkness. The hours of darkness means those hours commencing half an hour after sunset and finishing half an hour before sunrise the next day;
 - (b) drive any vehicle on any part of the cemetery except on the roads open for vehicular traffic;
 - (d) drive or conduct any vehicle in any cemetery at any speed greater than 10 kilometres per hour;
 - (e) drive or conduct any vehicle in any cemetery except in the direction indicated by traffic notices;
 - (f) park any vehicle in any cemetery except in conformity with the directions of any sexton, police officer or Authorised Officer or in accordance with the terms of any traffic sign or notice exhibited in the cemetery.
- (2) Every person driving or conducting any vehicle in any cemetery shall stop or move such vehicle in accordance with the directions of any sexton, police officer or Authorised Officer.

- (3) All vehicles shall yield unconditional right of way to any funeral procession in any cemetery.

16 Conduct in Cemeteries and Crematoria

No person shall, in or near any part of any cemetery or crematoria:

- (a) by any violent, improper or objectionable behaviour prevent, interrupt, delay or disturb any funeral or burial service or proceedings;
- (b) behave in a manner which creates a nuisance or is offensive to any other person;
- (c) remain in the cemetery or crematoria during the hours of darkness except with the prior written approval of an Authorised Officer;
- (d) allow any animal, other than any disability assist dog, to accompany him or her into any cemetery or crematoria;
- (e) take any photograph or video recording at any funeral for the purposes of sale or publication, without the permission of the funeral party concerned;
- (f) advertise or solicit any order or custom from any other person for any work whatsoever to be done in or in connection with any cemetery or crematoria, or for the sale, preparation, or supply of any article, to be set up, affixed, placed, or used in any cemetery or crematoria;
- (g) Allow any alcohol to be brought into, placed in or consumed in any cemetery or crematoria;
- (h) Deface, damage or interfere with any grave or monument;
- (i) Place any article, memorial or tribute in any part of the cemetery other than on the berm of a grave.
- (j) Take part in any gathering other than for the purpose of a religious or other ceremony of a burial, cremation or memorial unveiling.

17 General Conditions of Cremation

Any person may be cremated, provided that:

- (a) an application for cremation, together with all necessary certificates required by the Cremation Regulations 1973 have been submitted to and approved by the Council;
- (b) the body and casket complies with any conditions prescribed by the Council;
and
- (c) all applicable fees have been paid.

Part 3: Particular Cemeteries

18 Designated Lawn Cemetery Areas

(1) Plot Size

Plots in the Lawn Cemetery areas shall be 3 metres by 1.2 metres if intended for an adult burial and 2 metres by 1 metre if intended for a child burial.

(2) Fees

The Council will grant the right of burial in plots set aside within the cemetery for such purpose as described in the Council's Fees and Charges Policy.

(3) Permitted Memorials and Floral Tributes

In those parts of any cemetery designated as lawn cemetery, the following provisions shall apply:

- (a) No grave shall be enclosed with any railing or kerbing.
- (b) No headstone, monument, cross, marker or memorial shall be placed on any grave except a memorial plaque or tablet which complies fully with the Council specifications for plaques in lawn cemeteries.
- (c) Fourteen (14) days after the date of interment, the Council may remove from any grave any article, including flowers and wreaths, and cause the surface of the grave to be levelled off and sown down in grass.
- (d) After any grave has been levelled and sown, artificial or natural cut flowers or foliage may be placed on the berm.
- (e) The Council or an Authorised Officer has the discretion to remove and destroy
 - a. any artificial or natural cut flowers or foliage that has become unsightly; or
 - b. any receptacle that has been damaged; or
 - c. any thing or item on any grave, if the thing or item contravenes any section of this Bylaw.
- (f) Any other article removed by the Council or an Authorised Officer shall be retained by the Council for a period of one month to await the disposal instructions of the next of kin or representative of the deceased. If no instructions for the disposal of the article are received by the Council within the time limit prescribed, the article may be destroyed or disposed of by an Authorised Officer of the Council, and the Council and its officers shall be under no liability to any person in respect of such removal, destruction or disposal.

(4) Maintenance

No person other than a Council employee or a person authorised in writing by the Council shall carry out any maintenance or other work in the designated lawn cemetery area.

All plaques or tablets intended to be placed on any grave in the designated lawn cemetery area shall,

with the appropriate base, be supplied and delivered at the graveside by and at the cost of the owner and will be placed in position as approved by the Council.

19 Designated Natural Burial Areas

A natural burial involves the body being buried with no embalming and with minimal impact to the environment. This means there are certain restrictions on both the deceased and caskets, along with the method of burial. For natural burial sites the following provisions shall apply:

- a) Plots in natural burial areas shall be of a size determined by Council to allow regeneration of trees.
- b) Burial plots shall be 800mm depth and shall ensure the body is accessible to plant roots and soil organisms.
- c) There shall be no embalming of the body.
- d) Caskets, coffins or body coverings must be compostable, made of untreated material and not contain any chemical or substances that prevent breakdown of the materials used.
- e) Caskets, coffin handles and ornamentation are to be removed before burial if not compostable.
- f) Body coverings or shrouds, including clothes and fastenings, and any personal items or keepsakes to be buried with the body, must be non-toxic and compostable.
- g) Body coverings or shrouds must be placed on a solid base of natural untreated timber for burial and firmly fastened to the base to prevent movement of the body when transferring and lowering. The fastenings should be removed once lowered or be compostable.
- h) No planting is to be undertaken by anyone other than the Council or its contractors. Approval from Council is required if family or friends want to supply a particular plant/s for the planting ceremony.
- i) No monument may be erected, including memorials, fences and kerbs, vaults or other coverings, and the foundations of the same, without the written approval of Council or and Authorised Officer.

20 Ash Disposal: Garden of Remembrance

The Garden of Remembrance shall be used only for the scattering of the ashes of cremated human bodies. There are two options for the disposal of ashes: a Garden of Remembrance and Ash Gardens. In area designated as a Garden of Remembrance or an Ash Garden, the following provisions shall apply:

- (a) Ashes may be scattered in the areas so defined or as permitted by an Authorised Officer of the Council and an appropriate record may be entered in the Book of Remembrance.
- (b) Ashes may be interred around the kerbed perimeter of the Ash Garden. A plaque and receptacle for flowers may be affixed to the face of the kerb and the receptacle to the rear of the ash plaque, at the direction of the Council.
- (c) Flowers may be placed only in the receptacle installed to the rear of the ash plaque.
- (d) Any flowers which may have become unsightly may be removed and destroyed by the sexton and the Council is not liable to any person in respect of such removal and destruction.
- (e) The planting of shrubs is not permitted inside the Garden of Remembrance or any Ash Garden.

21 Memorial Cemetery Areas

(1) Erection of Memorials

- (a) No fences, kerbings or monuments other than headstones shall be erected, or trees, shrubs or flowers planted in any area of the cemetery designated as a memorial cemetery area.
- (b) The Council shall construct or cause to be constructed a continuous concrete platform or berm at or near ground level, of a width suitable to maintain stability, on which base or platform the foundation work for all memorials will be placed. The cost of the platform shall be included in the purchase price of the plot.
- (c) No memorial shall, at the head of any plot, be higher than 1.50m. The memorial shall comply with sound engineering principles, and shall be in keeping with the cemetery environment. The memorial shall be in keeping with the Council specifications and be of granite, or similar suitable material.

(2) Vaults and Brick or Walled-in Graves

No vaults or brick or walled-in graves above ground shall be constructed in any cemetery except in such position as may be set aside for that purpose by the Council subject to the engineering and aesthetic specifications of the Council.

22 Domain Road Cemetery

- (1) The Domain Road Cemetery means the cemetery established by the Council on Allotment 267 of the Parish of Waimana and situated on Domain Road.
- (2) The Domain Road cemetery is now closed and only ash burials for existing plot holders will be permitted in the cemetery.

Part 4: Other Matters

23 Fees

The Council may from time to time by resolution review fees and charges for all services provided for in this Bylaw for the maintenance and operation of its cemeteries of crematoria.

Explanatory note: The following note is explanatory and is not part of this Bylaw.

Fees relevant to cemeteries are set out in the Council's Fees and Charges Schedule which is available on the Council's website: <http://www.whakatane.govt.nz/>.

24 Offences

- (1) Every person commits a breach of this Bylaw who:
 - (a) Commits, or causes to be committed, any act contrary to this Bylaw, or
 - (b) Omits, or knowingly permits to remain undone, any act required by this Bylaw, or
 - (c) Refuses or neglects to comply with any notice, or any condition in any such notice, whether public or private, given pursuant to this Bylaw, or
 - (d) Obstructs or hinders any Authorised Officer in the performance of any power, or duty conferred upon him or her by this Bylaw.
- (2) Where it is suspected that any person has committed a breach of this Bylaw, that person shall, on the direction of an Authorised Officer, provide their full name and address.

25 Penalties for Breach Of Bylaw

Pursuant to section 16(1)(i) of the Act, any person breaching this Bylaw will be liable for a fine of \$100 in any case, and where the breach is a continuing one, \$10 a day for every day or part of a day during which the breach has continued.