

Statement of Proposal

CEMETERIES AND CREMATORIA BYLAW 2018

Introduction

The Whakatāne District Council (the Council) has reviewed Part 9: Cemeteries and Crematoria of the Consolidated Bylaw 2008 that is due to expire in 2018.

The Whakatāne District Council seeks your views on the Draft Cemeteries and Crematoria Bylaw 2018.

Proposal

The Council proposes to revoke Part 9: Cemeteries and Crematoria of the Consolidated Bylaw and replace it with a stand-alone Cemeteries and Crematoria Bylaw. The Draft Cemeteries and Crematoria Bylaw 2018 is being released for consultation using the Special Consultative Procedure as outlined in section 86 of the Local Government Act 2002 (the Act).

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

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

The attached copy of the proposed Whakatāne District Council Draft Cemeteries and Crematoria Bylaw 2018 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.

Council staff have reviewed Part 9: Cemeteries and Crematoria Bylaw 2008 and consider that overall, the bylaw is fit for purpose. The key changes are:

- Individuals will no longer be able to pre-purchase plots, with the exception of the deceased's family having the option to purchase the adjacent plot at the time of burial;
- Extending the times when burials can take place to reflect current practice and meet the needs of a multicultural society;
- Aligning the bylaw with current practices relating to the procedures for burial and the issue of burial warrants;
- Setting out the procedure for disinterment – the current bylaw does not contain this information and legal advice suggested we should include it;
- Adding a section that links this bylaw to Fees and Charges Policy; and
- Adding a section relating to offences and penalties.

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 2018.

Section in existing bylaw	Reason for proposed change	Proposed Change	Outcome if change approved	Section in Draft Bylaw
New Sections	Current Bylaw is part of the Consolidated Bylaw and does not contain these sections.	Add new sections: - Short Title and Commencement - Revocation - Purpose	All relevant information is contained in a single document.	S1 Short Title and Commencement S2 Revocation S3 Purpose
S9.1 Interpretation	This section does not contain definitions.	Extend this section to include all definitions so this Bylaw is a stand-alone document.	All relevant information is included in a single document.	S4 Interpretation
S9.2 Right of Burial	Currently people can purchase more than 1 plot. Some individuals are land-banking, then not using the plots which is creating capacity issues in the cemetery.	Replace s 9.2.1 with: '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.'	Individuals will no longer be able to land-bank. Will manage capacity of cemetery better.	S5 Right of Burial
S9.4.3 Procedures for Burial	Bylaw is not aligned with current practice which requires a person to apply to Council for the right or burial in a plot in any cemetery and to pay the prescribed fee. Legal advice recommended including these two sections for completeness.	Add new clause: '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 authorization pursuant to section 46AA of the Act; and (c) Ground conditions are suitable for burial.' Add new sentence to clause (6): 'After completion of the burial, the sexton shall sign the certificate at the foot of the warrant.'	Adds relevant information around requirements for obtaining a burial warrant. This is in line with the contents of this bylaw in other Districts.	S7 Procedures for Burial
S9.5 Time of Burials and Unveiling Ceremonies	The times when burials in the current bylaw can take place is not aligned to current practice.	Change existing text to: '...no burial shall take place except between the hours of 8.00am and 5.00pm from Monday to Saturdays and 8.00am and 12.00 noon on public	Bylaw is aligned to current practice which reflects the multicultural	S8 Time of Burials and Unveiling Ceremonies

		holidays (excluding Christmas Day and Good Friday).	society we live in.	
S9.7 Disinterment	Current bylaw does not set out procedure for disinterment. Legal advice recommended that this should be added for completeness.	<p>Add new clauses:</p> <p>(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:</p> <p>(a) A licence from the Minister of Health under section 51 of the Act; and</p> <p>(b) Prior approval of the Council.</p> <p>(3) The removal of a body or remains of a body under this clause shall only take place in the presence of:</p> <p>(a) The relevant authorised officers; and</p> <p>(b) A funeral director and necessary staff; and</p> <p>(c) The relevant Ministry of Health inspectors; and</p> <p>(d) Any other person who has the prior approval of the Council to be present.</p> <p>(4) If a body or the remains of a body have been removed from a burial plot, the owner of the exclusive right of burial or their assignee or subsequent purchaser shall be made aware that the plot has previously been used for a burial.'</p>	Ensures bylaw contains all relevant information.	S10 Disinterment
S9.8 Memorials	<p>Current title does not accurately reflect the contents of this section.</p> <p>Bylaw requirements are not aligned with current practice.</p>	<p>Change title to 'Monuments.'</p> <p>Delete clause in S9.8.1: 'and the appropriate application form has been completed and approved.'</p> <p>Replace S9.8.2 with:</p> <p>(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 the proposed structure is in accordance with the Whakatane District Council Headstone Specifications, which stipulates the standards and specifications</p>	<p>More accurately describes contents of this section.</p> <p>Ensures requirements in the bylaw are aligned with current operational practice.</p>	S11 Monuments

		<p>of monuments in Council owned cemeteries.'</p> <p>Delete S9.8.3.</p> <p>Replace S9.8.4 with: '(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 Tables) Regulations 1967.'</p>		
S9.10 Interference with Memorials	<p>Current heading does not accurately describe content of this section.</p> <p>Clause 9.10.1(e) is poorly written and difficult to understand.</p> <p>Current bylaw does not prohibit the placing or ornaments in vegetation or on other structures.</p>	<p>Change heading to: Interference with Monuments or Vegetation.</p> <p>Delete current clause (e) and replace with: 'suspend or attach ornaments to any vegetation or other structure in any cemetery.</p>	<p>Improves accuracy of this section and prohibits activities that can create waste and damage vegetation or structures in cemeteries.</p>	S13 Interference with Monuments or Vegetation
S9.13 Conduct in Cemeteries and Crematoria	<p>S9.13.1 (c) Title of Council officer has changed and could change again in the future.</p> <p>S9.13.2 Prohibits touting for business in a cemetery. This practice does not occur which makes this clause unnecessary.</p> <p>S19.3.3 and S19.3.4: These clauses are covered in a new section in the</p>	<p>Replace term: 'Manager-Community Facilities' with 'Authorised Officer.'</p> <p>Delete this clause.</p> <p>Delete these two clauses.</p>	<p>Ensures Bylaw remains current when specific job titles change.</p> <p>Removes unnecessary and irrelevant restriction.</p> <p>Removes duplication and streamlines the Bylaw.</p>	S16 Conduct in Cemeteries and Crematoria

	Draft Bylaw 'Offences'.			
S9.14 General Conditions of Cremation	Clause (d): Clause unnecessary as it duplicates legislative requirements.	Delete this clause.	Streamlines bylaw and removes unnecessary clauses.	
S9.16 Ash Disposal: Garden of Remembrance	S9.16.1 (c) Clause refers to how plaques and receptacles should be affixed to the kerb. There is no provision for this to occur in a Garden of Remembrance.	Delete this clause.	Streamlines bylaw and removes unnecessary clauses.	
New Section	Fees: Current bylaw makes no reference to how fees and charges are set.	Add new section linking bylaw to Fees and Charges Policy. ‘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. <i>Explanatory note: The following note is explanatory and is not part of this Bylaw.</i> <i>Fees relevant to cemeteries are set out in the Council’s Fees and Charges Schedule which is available on the Council’s website:</i> http://www.whakatane.govt.nz/ ’	Includes all relevant information in the new Bylaw.	S22 Fees and Charges
New Section	Current bylaw does not provide information on	Add new section: (1) Every person commits a breach of this Bylaw who:	Ensures all relevant information is in the Bylaw.	S23 Offences

	what constitutes an offence	<p>(a) Commits, or causes to be committed, any act contrary to this Bylaw, or</p> <p>(b) Omits, or knowingly permits to remain undone, any act required by this Bylaw, or</p> <p>(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</p> <p>(d) Obstructs or hinders any Authorised Officer in the performance of any power, or duty conferred upon him or her by this Bylaw.</p> <p>(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.</p>		
New Section	Current bylaw does not provide information about the penalties for breaching the bylaw.	Add new section: ‘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.’	Ensures all relevant information is in the Bylaw.	S24 Penalties for Breach of Bylaw

Other options to the proposed bylaw considered

Council considered two other options:

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

Council 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, 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 Council to determine whether the proposed bylaw:

- Is the most appropriate form of bylaw; and
- 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; and
- The bylaw is not overly restrictive, onerous on any one person, or impractical.

There are no implications under 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.

Section 156 of the Act requires the Council to use the Special Consultative Procedure set out in section 83 of the bylaw and continues to apply.

Consultation and Submissions

Council invites the community to give us feedback on the proposed Bylaw to assist it in the decision-making process.

The formal consultation process will take place between **12 March and 12 April 2018**. Council will hold a hearing in May 2018. Any person or organisation is welcome to make a submission on the Draft Cemeteries and Crematoria Bylaw 2018. 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 Whakatane District Council's website <http://www.whakatane.govt.nz>

Hard copies are available from:

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

Formal submissions may be made:

Online: <http://www.whakatane.govt.nz>

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

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

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

Informal submissions can be made by commenting on our Facebook page at <http://www.facebook.com/WhakataneDistrictCouncil>

Submissions close at 5pm on Friday 12 April 2018.

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

Your submission should include your name, address, telephone number and email address and should state if you wish to speak to Council in support of your submission. The Council will contact in writing, all submitters who wish to be heard to advise the confirmed time, date and venue of the hearing.