

Community & Services Committee

27 June 2023

Report for Agenda Item | Rīpoata moto e Rāraki take [1]

Department: Strategy & Policy

Title | Taitara : Consultation – draft Cemeteries Bylaw 2023

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to present the Community & Services Committee (the Committee) with proposed changes to the Cemeteries Bylaw 2017 and seek that the Committee recommend that Council endorse the proposed changes for formal consultation, via the Special Consultative Procedure.

Recommendation | Kā Tūtohuka

That the Community & Services Committee:

1. **Note** the contents of this report and;
2. **Recommend to Council** that it endorses the draft Cemeteries Bylaw 2023 / Kā Ture Urupā (**Attachment A**), to be presented to Council for formal consultation via the Special Consultative Procedure;
3. **Note** that the draft Cemeteries Bylaw 2023 and associated statement of proposal will be presented to the 10 August 2023 Council meeting.

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2 June 2023

Reviewed and Authorised



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Context | Horopaki

The bylaw review process

1. The Local Government Act 2002 (LGA) requires councils to review their bylaws every five years, and in some cases, every ten years. When a bylaw is first made, if it is reviewed by Council within five years, the subsequent review period is ten years. If a bylaw is not reviewed within five years of being made, there is a two-year grace period within which the bylaw is still valid, after which it automatically expires. A review done in the two-year grace period invokes a subsequent five-year review requirement.
2. The Cemeteries Bylaw 2017 (**Attachment B**) has been in place since 2017, is due for review and will expire if not reviewed prior to March 2024. Once reviewed, it will next have a five-year review requirement.
3. Preliminary engagement was undertaken on the bylaw during March 2023 to gather information as to what stakeholders view as the main issues in the bylaw. Targeted emails were sent to industry experts and stakeholder groups, inviting them to provide feedback.
4. The next stage in the process is for Council to endorse a draft bylaw and associated statement of proposal to go out for formal consultation. The current progress for the bylaw is set out in the diagram below.



5. Before commencing the process for making or reviewing a bylaw (including consultation), Council is required to make the determinations in section 155 of the LGA. This is to determine whether a bylaw is the most appropriate way of addressing the perceived problem, whether the proposed bylaw is in the most appropriate form, and if it gives rise to any implications under the New Zealand Bill of Rights Act 1990. These requirements are canvassed in this report and will be outlined as recommendations in the report to Council.
6. The purpose of the Cemeteries Bylaw 2017 is to set standards to maintain and preserve Council's cemeteries and meet local authority requirements for cemeteries operations under the Burial and Cremation Act 1964. This includes regulating activities that occur at cemeteries.
7. Four responses were received from stakeholders and industry experts, including the industry body association (New Zealand Master Monumental Masons' Association (NZMMA)) with predominantly positive feedback and appreciation for inclusion in the pre-engagement stage. There were comments around ensuring that Council monitors and enforces standards around headstones as well as ensuring clear communication of all standards relating to cemetery management.

Role of the Cemeteries Handbook

8. Council's Cemeteries Handbook is an important operational document that sits under the bylaw and covers subjects such as cultural or faith-based practices, fees and charges, how to apply for interment, purchasing burial rights, monument specifications, health and safety and behaviour in cemeteries. As a broader, higher-level instrument, the bylaw provides the ability for Council to regulate activities in cemeteries and enforcement provisions for non-compliance. The process for review of any bylaw is proscriptive and lengthy, whereas the handbook provides Council with more flexibility to review and make changes, in line with LGA consultation requirements and Council's Significance and Engagement Policy.
9. Officers are in the early stages of review of the handbook, and input regarding the draft bylaw will be useful to feed into the process for review of the handbook. Setting out requirements and rules in relation to topics such as natural burials and different cultural practices will be considered as part of the review of the handbook.

Analysis and Advice | Tatāritaka me kā Tohutohu

Proposed changes to the Cemeteries Bylaw 2017

10. The changes proposed in the draft Cemeteries Bylaw 2023 / Kā Ture Urupā (the draft bylaw) are not substantive, and include amendments to bylaw definitions, improvements to the readability and flow of the bylaw document, and alignment with industry best practice. All amendments are identified in the draft bylaw at **Attachment A** by way of tracked changed text.
11. The proposed changes include:
 - using the terms "inter" or "interment" instead of "burial", as "inter" is the more commonly used industry practice. For the purpose of the draft bylaw, a "burial" is a type of interment, so interment is a broader, more inclusive term. The definitions of 'memorial' and 'monument' have also been clarified
 - clarification on the restrictions and regulation of promotional activities within cemeteries
 - additional wording around the regulation of vehicle use within cemeteries
 - further detail around the appointment and function of the Cemeteries Administrator, the sale of plots, the interment of persons without means and the installation and maintenance of monuments and grave structures.

Options analysis

12. Council has the ability to make changes to the draft bylaw as an outcome of formal consultation in response to feedback received, as long as the changes are within the scope of the statement of proposal. Material changes to the draft bylaw proposed after consultation that are not contemplated in the statement of proposal may require Council to consult again.

13. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

14. **Option 1:** That the Community & Services Committee recommends that Council endorses the draft Cemeteries Bylaw 2023 / Kā Ture Urupā for consultation following the Special Consultative Procedure. Note that it is open to the Committee to recommend changes to the draft bylaw as part of this option.

Advantages:

- Initiates a compliant bylaw review process in a timely fashion.
- Council retains the ability to regulate activities in cemeteries and ensures that legislative requirements in relation to cemeteries are met.

Disadvantages:

- There is time and costs associated with consultation and implementation.

15. **Option 2:** That the Community & Services Committee does not recommend that Council endorse the draft Cemeteries Bylaw 2023 / Kā Ture Urupā for consultation following the Special Consultative Procedure. This option could include the Committee recommending substantial changes to the draft bylaw.

Advantages:

- If the Committee instructed officers to make substantial changes to the draft bylaw, this would ensure that the draft bylaw reflects the Committee's feedback.
- If the Committee recommend that Council not endorse the draft bylaw in its entirety, there would be reduced time and cost associated with consultation and implementation of the bylaw.

Disadvantages:

- If the Committee instructed officers to make substantial changes to the draft bylaw, this may mean the bylaw review is not completed prior to lapse of the current bylaw.
- If the Committee recommend that Council not endorse the draft bylaw in its entirety, the bylaw review

16. This report recommends **Option 1** for addressing the matter because it will ensure the bylaw is reviewed in a timely manner and enables Council to continue to regulate activities in cemeteries and ensures that legislative requirements in relation to cemeteries are met.

Next steps

17. If endorsed by Council at its 10 August 2023 meeting, the draft bylaw and statement of proposal will go out for public consultation mid-August 2023.
18. It is intended that the written submissions received will be presented and a hearing on this matter for those that would like to present their submission orally will take place in October 2023.
19. Staff would then present the draft bylaw to Council for deliberation and adoption in November or December 2023, to come into effect from January 2024.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

20. This matter is of low significance, as determined by reference to the [Council's Significance and Engagement Policy](#) because
 - the matters have minimal to moderate impact on the community
 - the proposal will not change the level of services provided by Council, or Council's capacity
 - there is a low level of financial consequence as a result of adopting the recommended option.
21. The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes district community and industry stakeholders.
22. Officers have sought early feedback from stakeholders of this bylaw. If Council endorses the draft bylaw and adopts the statement of proposal for public consultation, the public will be formally consulted using the Special Consultative Procedure. This will enable Council to better understand community views.

Māori Consultation | Iwi Rūnaka

23. Input will be sought on the draft bylaws from Te Ao Marama and Aukaha through the formal consultation process. In order to continue to educate and socialise the use of te reo Māori in the community, the title of the bylaw has been translated.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

24. This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK00009 ineffective management of community assets and RISK00038 lack of alignment - strategies and policies within the [QLDC Risk Register](#). This risk has been assessed as having a low inherent risk rating.

The approval of the recommended option will support the Council by allowing it to retain the risk at its current level. This shall be achieved by review of this bylaw to ensure that it responds appropriately to the issues in the district regarding cemeteries.

Financial Implications | Kā Riteka ā-Pūtea

25. The costs associated with reviewing the bylaws including staff time and advertising will be met within current Council budgets. Costs will include staff time and advertising. The draft bylaw does not propose any changes to Council operations that would require additional funding.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

26. The following Council policies, strategies and bylaws were considered:

- the QLDC Cemeteries Handbook 2019
- the QLDC Traffic and Parking Bylaw 2018
- the outcomes and principles of Vision Beyond 2050
- the QLDC Annual Plan
- the QLDC Ten Year Plan 2021-31

27. The recommended option is consistent with the principles set out in the named instruments.

28. Review of bylaws are included in the Ten Year Plan/Annual Plan.

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

29. Council is bound by the Local Government Act (LGA) when making or reviewing bylaws. The base determination, notification and consultation procedures set out under sections 155, 156 and 157 of the LGA apply. The draft bylaw and statement of proposal will be legally reviewed prior to being presented to Council.

Special Consultative Procedure

30. It is proposed to consult on the draft bylaw using the Special Consultative Procedure outlined in sections 83 and 86 of the LGA. The Special Consultative Procedure requires that Council adopts a formal statement of proposal, has a consultation period of not less than one month, and allows people to present their views to Council in a manner that enables spoken interaction, such as by having a hearing.
31. It is proposed that Council will make the statement of proposal as widely available as is reasonably practicable (in accordance with section 83 of the LGA), and encourage people to give feedback, by:

- placing advertisements in local newspapers
- promoting the consultation on Council's social media pages
- having the statement of proposal accessible on Council's Let's Talk website.

Revocation of the Cemeteries Bylaw 2017

32. Section 160A of the LGA automatically revokes any bylaw two years after the last date it was eligible for review. For the Cemeteries Bylaw 2017, section 158 required review before March 2022. As this was not undertaken, revocation is scheduled to occur in March 2024. Council cannot avoid the revocation of the current bylaw, although it may elect to revoke it early and make another new bylaw, subject to completing formal public consultation process.

Determinations

33. Before making or reviewing a bylaw, Council must make the determinations required under section 155 of the LGA. Set out below is the assessment for each required determination.

Most appropriate way of addressing the perceived problem

34. Council must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem or issue.
35. The issues that the draft bylaw addresses relate to ensuring that activities in cemeteries respect and protect the rights and interests of deceased and their whānau and friends. Regulation via a bylaw also ensures that the legislative requirements specified for local authorities under the Burial and Cremations Act 1964 as well as the Health (Burial) Regulations 1946 are both complied with and enforceable by Council. Additionally, due to the sensitive nature of the services provided within a cemeteries context, providing controls through bylaw restrictions leads both to better public communication and support outcomes, and reduces the potential for reputational risk to Council.
36. For these reasons, officers consider that a bylaw to address these issues is the most appropriate option, due to the need for enforcement measures should the provisions set out in the bylaw not be followed. Alternative measures such as engagement and education may be appropriate in conjunction with the bylaw mechanism, that enables Council to take enforcement action if indicated.

Most appropriate form of bylaw

37. Council is also required to determine whether the proposed bylaw is the most appropriate form of bylaw before it makes its decision.
38. The draft bylaw enables Council to regulate activities relating to cemeteries. Operational conditions may be added through the Cemeteries Handbook, which may be amended to

respond to emerging requirements more efficiently than the bylaw review process. The draft bylaw has also been amended to improve flow and readability, and to meet industry best practice standards in relation to cemeteries and crematoria regulations. Officers consider that the draft bylaw is the most appropriate form of bylaw.

New Zealand Bill of Rights Act 1990

39. Council is required to determine whether the draft bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA), which grants certain civil and political rights to people in New Zealand Aotearoa. In accordance with section 5 of the NZBORA, ‘the rights and freedoms contained in the Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society’.
40. The draft bylaw regulates behaviour and activities within Council operated cemeteries, to protect and promote safety and respectful behaviour in these spaces. Officers do not consider that the scope of the draft bylaw unreasonably restricts any of the rights in the NZBORA.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka

41. The recommended option:

- Section 10 of the LGA 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The issues that the draft bylaw addresses relate to ensuring that activities in cemeteries respect and protect the rights and interests of deceased and their whānau and friends. As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act;
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

Attachments | Kā Tāpirihaka

A	Draft Cemeteries Bylaw 2023 / Kā Ture Urupā
B	Current Cemeteries Bylaw 2017