

QLDC Council

10 August 2023

Report for Agenda Item | Rīpoata moto e Rāraki take [4]

Department: Strategy & Policy

Title | Taitara : Approval of draft Cemeteries Bylaw 2023 for consultation

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to present Council with the draft Cemeteries Bylaw 2023 / Kā Ture Urupā and seek that Council endorse the proposed changes for formal consultation, via the special consultative procedure.

Executive Summary | Whakarāpopototaka Matua

The Cemeteries Bylaw 2017 is due for review and will automatically expire if not reviewed prior to March 2024. For Council to have a bylaw relating to cemeteries past this date, it will need to adopt a new bylaw.

Officers commenced the review in early 2023 and undertook preliminary engagement with stakeholders in March 2023. Officers consider that the changes proposed are minor.

If Council endorses the draft bylaw and adopts the statement of proposal for consultation, staff will undertake formal consultation in accordance with the special consultative procedure from 8.00am 11 August 2023 to 5.00pm 12 September 2023.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Note** that the Community and Services Committee recommended that Council endorse the draft Cemeteries Bylaw 2023 / Kā Ture Urupā for consultation;
3. **Determine** pursuant to section 155(1) of the Local Government Act 2002 that a bylaw is the most appropriate way of addressing the issues related to activities in cemeteries;
4. **Determine** pursuant to section 155(2)(a) of the Local Government Act 2002 that the draft Cemeteries Bylaw 2023 / Kā Ture Urupā is the most appropriate form of bylaw;

5. **Determine** pursuant to section 155(2)(b) of the Local Government Act 2002, that the draft Cemeteries Bylaw 2023 / Kā Ture Urupā does not give rise to any implications under the New Zealand Bill of Rights Act 1990;
6. **Endorse** the draft Cemeteries Bylaw 2023 / Kā Ture Urupā (Attachment A);
7. **Adopt** the statement of proposal (Attachment C) for consultation in accordance with the special consultative procedure outlined in sections 83 and 86 of the Local Government Act 2002, from 8.00am 11 August 2023 to 5.00pm 12 September 2023; and
8. **Appoint** four councillors (to be named) of which three are required to form a hearings panel to hear and consider the submissions on the proposal and make recommendations to Council on adoption of the draft bylaw.

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20 July 2023

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20 July 2023

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 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. 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 includes whether a bylaw is the most appropriate way of addressing the perceived problem, whether the proposed bylaw is 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.
3. The bylaw has now reached the stage in the process for public consultation. The current progress of the bylaw is set out in the diagram below.



4. Preliminary engagement was undertaken March 2023 to gather information from stakeholders over the main issue or gaps in the bylaw. Targeted emails were sent to stakeholders, inviting them to provide feedback via email.
5. Generally, the feedback received was positive, and that the current bylaw and regulations are working well. 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 an appreciation for including the association in the pre-engagement stage. There were comments around ensuring that Council monitors and enforces standards around headstones, and about ensuring that communication of all standards relating to cemetery management is clear.
6. The draft bylaw was presented to the Community and Services Committee at its 27 June 2023 meeting. The committee recommended that Council endorse the draft bylaw for consultation.

The Cemeteries Bylaw 2017

7. The purpose of the Cemeteries Bylaw 2017 is to set standards to maintain and preserve Council's cemeteries and meet local authority requirements for the operation of cemeteries in accordance with the Burial and Cremation Act 1964. The requirements include regulating activities that occur at cemeteries.

Role of the Cemeteries Handbook

8. Council's Cemeteries Handbook is an important operational document that sits under the bylaw and provides operational guidance on issues 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 Council with the powers to regulate activities in cemeteries and enforce against non-compliance. The process for review of any bylaw is prescriptive and lengthy, so 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 reviewing the handbook, and input on the draft bylaw will feed into the review. 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 definitions, improvements to the readability and flow of the bylaw document coupled with an alignment to industry best practices. 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 will receive feedback from the formal consultation process and has the ability to consider changes to the draft bylaw based on this feedback, as long these 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 further consultation.
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 Council endorses the draft Cemeteries Bylaw 2023 / Kā Ture Urupā for consultation in accordance with the special consultative procedure requirements under the Local Government Act. Note that it is open to the Council to recommend changes to the draft bylaw as part of this option.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • There are no known disadvantages to this option.

15. **Option 2:** That Council does not endorse the draft Cemeteries Bylaw 2023 / Kā Ture Urupā for consultation in accordance with the requirements of special consultative procedure under the Local Government Act.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Changes to the draft bylaw would ensure that the draft bylaw reflects Council's feedback. • There would be reduced time and cost associated with consultation and implementation of the bylaw. 	<ul style="list-style-type: none"> • The bylaw review process would not be continued and the bylaw would lapse. • Council would not retain the ability to regulate activities in cemeteries and legislative requirements in relation to cemeteries may not be met.

16. This report recommends **Option 1** as it will enable Council to continue to the timely review of the bylaw, continue to regulate activities in cemeteries and ensures that legislative requirements in relation to cemeteries are met.

Next steps

17. If Council endorses the recommendations at its meeting on 10 August 2023, the draft bylaw and statement of proposal will be notified in accordance with a public consultation process on 11 August 2023.
18. It is intended that the written submissions received will be presented and a hearing on this matter for those members of the public who would like to present their submissions orally will be able to do so on 10 October 2023.
19. Officers will then present the draft bylaw to Council for deliberation and adoption on 16 November 2023 at its Council meeting, and if adopted, the bylaw will come into effect from December 2023 or 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 the 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 be understand community views.

Māori Consultation | Iwi Rūnaka

23. The Council will seek input on the draft bylaw from Te Ao Marama and Aukaha through the formal consultation process. In order to continue to education 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 Queenstown Lakes District Council (QLDC) Risk Register. This risk has been assessed as having a low inherent risk rating.

25. 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

26. The costs associated with reviewing the bylaw 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

27. 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.

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

29. Provision for review of bylaws is included in the Ten Year Plan/Annual Plan.

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

30. Council is bound by the 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 has been legally reviewed.

Special Consultative Procedure

31. 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.

32. 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

33. 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

34. 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

35. 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.

36. The issues that the draft bylaw addresses relate to ensuring that activities in cemeteries respect and protect the rights and interests of deceased, 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 and 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.

37. 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

38. Council is also required to determine whether the proposed bylaw is the most appropriate form of bylaw before it makes its decision.

39. 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

40. 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'.

41. 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

42. The recommended option:

- Section 10 of the Local Government Act 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
C	Statement of proposal