

Cemeteries Bylaw Review

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| TO | Thames-Coromandel District Council |
| FROM | Greg Hampton – Area Manager, Thames and Coromandel |
| DATE | 9 January 2015 |
| SUBJECT | Cemeteries Bylaw Review |

1 Purpose of Report

For the Council to consider the revised cemeteries bylaw and endorse the revised cemeteries bylaw for consultation.

2 Background

The current Part 18 Cemeteries 2007 forms a part of the Council's Consolidated Bylaw 2004 and was made on 26 September 2007 and became operative from 1 October 2007.

A review date for this bylaw is required within five years of its last review, which was due in 2012. This review is therefore overdue and the bylaw for cemeteries has technically lapsed.

It is a legislative requirement that when developing a bylaw the Council must follow the two step bylaw making process set out in the Local Government Act 2002 section 155. This process involves identifying the problem(s), the outcome sought, and determining that a bylaw is the most appropriate mechanism to achieve the outcome sought, including considering the appropriateness of other mechanisms to achieve the desired outcome. The process also includes addressing whether the proposed bylaw is the most appropriate form of bylaw and whether it will give rise to any implications under the NZ Bill of Rights Act 1990.

This report serves to meet Council's requirements in a bylaw review and setting process.

Until recently, the Special Consultative Procedure was a mandatory requirement for reviewing a bylaw, however, changes made to the Local Government Act last year now mean that the Council has more discretion with regards to consultation for bylaw reviews. For this particular bylaw, the requirement is that the Council now give effect to the principles of consultation outlined in section 82 of the Local Government Act.

The Council has a number of policies to review at this time which require use of the Special Consultative Procedure, and the recommendation is that this bylaw is included within this consultation process.

It is intended therefore that the draft cemeteries bylaw (once endorsed by Council) will be approved for public notification on 9 February 2015, with submissions being received until 9 March 2015. Submissions on the draft bylaw will be considered and heard by Council at its meetings on 15 and 17 April. The cemeteries bylaw is scheduled to be confirmed by Council at a meeting to be held on 13 May 2015.

3 Issue

The Council has a role in ensuring that there are adequate burial facilities throughout our district and ensuring that all Council cemeteries are well presented as a mark of respect. The Council is not the only provider of cemeteries as the district has a number of Maori

urupa and private cemeteries. Council's bylaw only applies to Council-owned and operated cemeteries.

The Council handles approximately 120 interments per year, with approximately 80% of these interments located at the Totara Memorial Park Cemetery in Thames.

In conjunction with this bylaw review, the Council has been reviewing its operational procedures for its cemeteries activity and has prepared an operations manual which will remain a work in progress until the new bylaw comes into effect.

The Council also has a cemeteries activity plan which documents planning and service matters relating to this activity and commencing from 2015 will be undertaking master planning for each of its cemeteries.

The Council has not actively sought feedback from the community in preparing for the review of its cemeteries bylaw and operational procedures, however, feedback has been sought from staff who work with the cemeteries activity; the Smart Environmental contractors who perform the sexton function at Council's cemeteries; and funeral directors and monumental masons who work in the Council's cemeteries.

Throughout this review a number of issues were identified which are matters that need to be addressed through the bylaw. The table below provides a summary of the issues identified and how these have been addressed (or otherwise) in the proposed bylaw.

| Identified Issue | Proposed response in the bylaw |
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| 1. The current bylaw does not prescribe depth of graves and there is currently a lack of clarity amongst those working in Council's cemeteries regarding standard depth of graves. | The proposed bylaw includes a standard depth of grave at 1.9m. The Thames Community Board took a decision in 1991 that all first interments were to be dug to 1.8m. Staff and the funeral industry spoken with are in agreement that the standard depth of <u>1.9m</u> is appropriate. |
| 2. Greater clarity is required regarding standard size of caskets and standard ashes caskets. The bylaw is currently silent on ashes caskets. | Standard casket and ashes casket sizes are now included in the proposed bylaw. |
| 3. For health and safety reasons, staff would like to see a reduction in burial hours, particularly in winter so that staff are not back-filling graves in low light and/or darkness. The hours for burials in the current bylaw permit burials until 4:00pm. | Schedule 1 of the bylaw outlines the proposed, reduced burial hours and provides greater clarity about departure times from cemeteries for the funeral cortege. The hours proposed are: <i>Summer Period - 1 October to 31 March, from 8:00am - 3:30pm. The latest funeral cortege arrival time for casket burials at the cemetery is 3:30pm. The cemetery must be cleared by the funeral cortege no later than 5:00pm.</i> |

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| | <p><i>Winter Period - 1 April to 30 September - 9:00am -- 2:00pm. The latest funeral cortege arrival time for casket burials at the cemetery is 2:00pm. The cemetery must be cleared by the funeral cortege no later than 3:30pm.</i></p> <p>Feedback from the industry was supportive of this approach and suggested the introduction of late fees or penalties as a disincentive. Fees can be outlined in the Long Term Plan fees and charges schedule and are therefore not detailed in the bylaw.</p> |
| 4. Greater clarity is required regarding out of district fees as the current wording in the bylaw is not clear and too much is being left to discretion of staff. | This wording in the bylaw has been clarified and processes regarding this fee have been clarified amongst staff. |
| 5. There is currently confusion about what Council provides for 'natural or eco burials'. | This has been set out more clearly in the bylaw with respect to what is able to be provided at this time. |
| 6. The current bylaw prevents pre-purchase of plots at the Mercury Bay (Ferry Landing) cemetery, however, staff believe that there is adequate room for pre-purchase of ashes plots. | <p>The proposed bylaw has removed the restriction on the pre-purchase of plots at Mercury Bay which will enable the pre-purchase of ashes plots.</p> <p>The proposed bylaw intentionally does not list a restriction on pre-purchase as the pre-purchase is, as is set out by statute, at the discretion of the Council. Staff will still uphold the restriction on pre-purchase of casket plots at Mercury Bay (Ferry Landing) and may from time to time need to limit or cease pre-purchase of plots in other cemeteries for operational reasons.</p> |
| 7. The current bylaw does not expressly prevent the pre-purchase of more than one plot at a time and this matter has been subject to interpretation by staff. | This has been clarified in the proposed bylaw so that pre-purchase of only one plot at a time can occur. Requests for multiple plot purchase are at the discretion of the Council (to be approved by the Cemeteries Activity Manager). |
| 8. There is a greater requirement being placed on staff for evidence of perpetuity entitlement for plots. | Additional guidelines have been included in the bylaw as to what Council will accept as evidence. |
| 9. The current prescription around monuments, memorials and types of cemeteries is dated and doesn't reflect current cemetery practice or needs. | This has been updated to current practice. |
| 10. There is no guidance in the current bylaw as to whether the Council permits the burial of animals in its cemeteries. | The bylaw has been updated to clearly state that unless interred in the casket at the time of burial, animal burials cannot be accommodated. |

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| <p>11. The current bylaw does not permit any animals in the cemetery unless prior consent has been obtained from Council. This clause is not consistent with the Council's current approach to disability and needs to be updated to reflect that visibility dogs are permitted.</p> | <p>This has been appropriately adjusted in the bylaw.</p> |
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In addition, the bylaw has been restructured to improve readability.

Feedback from industry also noted strong concern regarding the placement of plants on graves and fixed ornaments in front of the berms which cause problems and safety issues. The current bylaw is clear that the placement of vegetation in cemeteries is not permitted, and this has been strengthened in the proposed bylaw. However, the bylaw is not the issue here and this matter is being dealt with through other means. Staff have been actively (but sensitively) trying to address the issue of gardens on grave sites however a greater level of attention may be required. This matter is being further considered by the Cemeteries Activity Manager.

4 Discussion

The Burial and Cremations Act 1964 (s.16) enables the Council to make bylaws for all or any of the following purposes:

- maintaining, preserving, and embellishing the cemetery or closed cemetery:
- directing the positions of all graves and vaults in the cemetery, the depths of the graves, and the construction of coffins to be admitted into vaults, and the covering of vaults so as to prevent the escape of any noxious exhalation in the cemetery:
- protecting buildings, monuments, lawns, shrubberies, plantations, and enclosures in the cemetery or closed cemetery from destruction or damage:
- prohibiting the burial in any grave of more than 1 body or prescribing conditions subject to which more than 1 body may be buried in any grave:
- controlling or restricting the times at which or between which burials may be carried out:
- regulating the burial in the cemetery of the ashes of the dead:
- regulating and restricting the disinterment and removal of bodies:
- fixing a scale of fees payable in respect of any grave or vault dug or made, and any monument or tablet erected or placed, in the cemetery, and in respect of any agreements to maintain graves:

The Burial and Cremations Act 1964 provides for a bylaw to be created to address all of the issues noted in Section 3 above.

There are no other mechanisms through which the Council can determine the majority of the above issues, in particular depth of graves, hours of burial and prescription on monument sizes.

Alternative management options and non-regulatory tools are not adequate for setting the rules for burials as this activity needs to be guided by statute.

The bylaw also enables the Council to enforce should it need to take action against inappropriate conduct or activity in a Council cemetery.

5 Suggested Resolution(s)

That the Thames-Coromandel District Council

1. Receives the 'Cemeteries Bylaw Review' report, dated 9 January 2015.
2. Notes the assessment of issues and implications outlined in the determination report (Attachment A).
3. Agrees that a bylaw is still the most appropriate and cost-effective way to appropriately control the cemeteries activity in the Thames-Coromandel District.
4. Endorses the Proposed Cemeteries Bylaw 2015, Statement of Proposal and Summary for release as the basis for a public consultation.
5. Approves the Proposed Cemeteries Bylaw 2015, Statement of Proposal and Summary to be public notified for consultation.
6. As part of this consultation, agrees that the current bylaw will be revoked and replaced by the revised bylaw.

References- Attachments

- Attachment A** Determination report - assessment of options
Attachment B Part 18 Cemeteries – Part of the Consolidated Bylaw 2007
Attachment C Proposed Cemeteries Bylaw 2015
Attachment D Statement of Proposal and Summary

Attachment A - Cemeteries bylaw determination report

Attachment B - Current Cemeteries bylaw

Attachment C - Draft Cemeteries Bylaw

Attachment D

Attachment D - Cemeteries Bylaw - text for Statement of Proposal and S...