

**QLDC Council
15 December 2016**

Report for Agenda Item: 4

Department: Property & Infrastructure

Cemeteries Bylaw 2016

Purpose

To consider the proposed Queenstown Lakes Cemeteries Bylaw 2016 for public consultation using the special consultative procedure.

Recommendation

That Council:

1. **Note** the contents of this report.
2. **Approve** the proposed Queenstown Lakes District Cemeteries Bylaw 2016 for public consultation using the special consultative procedure.
3. **Appoint** Councillors Clark, Ferguson and McRobie to participate in a hearing panel to consider and hear submissions on the proposed Queenstown Lakes District Cemeteries Bylaw 2016.

Prepared by:



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25/11/2016

Reviewed and Authorised by:



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25/11/2016

Background

- 1 Council regulates the operation of Council cemeteries within the District through the Queenstown Lakes District Cemeteries Bylaw 2010. The current Bylaw does not apply to cemeteries that are not Council owned or operated.
- 2 The current Bylaw is due to expire 20 March 2017 and the proposed Queenstown Lakes District Council Cemeteries Bylaw 2016 would replace this.
- 3 Key objectives of the new Bylaw are:
 - To simplify and modernise the existing regulation of Council cemeteries.

- Implementation of the Cemeteries Handbook. This document would be adopted by the Council if the bylaw goes to effect.
- This document will improve public understanding of services offered at Council cemeteries and the rules applicable to accessing those services.
- Provide relevant information to the public in an accessible format.
- To retain corporate knowledge, provide simple information for customers at a difficult time and to ensure Council can rely less on institutional knowledge which is a potential risk.

Comment

- 4 Section 146(b)(v) of the Local Government Act 2002 enables the Council to make a Bylaw for the purposes of managing cemeteries. The Council also has power under section 16 of the Burial and Cremation Act 1964 to make a Bylaw in respect of a cemetery under Council control for the following:
- a) Set standards to maintain and preserve Council owned or operated cemeteries;
 - b) Prohibit and regulate the interment and disinterment of burial and ash remains in any grave.
 - c) Regulate and control the use of, and any activities undertaken at Council owned or operated cemeteries; in order to protect land, structures and infrastructure associated with cemeteries from damage, misuse, or loss.

Options

- 5 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.

Option 1: Do nothing

Advantages:

- 6 If the Council does nothing the current Bylaw will expire in March 2017, with no replacement. The Council would have to rely on legal property rights as the owner / occupier of Council cemeteries, and the Council's powers under the Burial and Cremation Act 1964, which relate to the management, maintenance and preservation of cemeteries. Some members of the public may approve of less regulation by the Council.

Disadvantages:

- 7 In the absence of a Bylaw, the Council will be more limited in its ability to enforce prohibitions on potentially harmful activities in Council cemeteries (for example, unauthorised use of burial equipment), and rules and conditions for the use and

access to Council cemeteries. The lack of legal protections could undermine the effective management and operation of Council cemeteries.

Option 2 Re-adopt the current Bylaw (status quo)

Advantages:

- 8 This would provide continuity of the regulation of Council cemeteries, which is already known to the public. The Council would not have to update any internal systems or staff training to continue implementing the existing Bylaw.

Disadvantages:

- 9 The current Bylaw would continue to regulate Council cemeteries through a combination of documents, which are less user friendly compared with consolidating key information in a single document. Existing requirements within the current Bylaw will require modernisation and updating to meet procedural changes. The current Bylaw regulates crematoriums owned by the Council, even though there are none in existence.

Option 3 Revoke the current Bylaw, and replace with the proposed Bylaw

Advantages:

- 10 A Bylaw that meets our community needs. Adopting the proposed Bylaw will allow Council to implement a Cemeteries Handbook which will consolidate key information regarding the rules and conditions applicable to Council cemeteries. The Cemeteries Handbook can also be amended by Council resolution, from time to time, to implement operational changes.

Disadvantages:

- 11 Council will need use resources to update its internal systems and train staff to give effect to the proposed Bylaw and Cemeteries Handbook. Some members of the public may prefer some existing rules and specifications under the current Bylaw that are not continued in the Cemeteries Handbook.
- 12 This report recommends Option 3 for addressing the matter as this provides a more appropriate Bylaw that meets our community needs, along with information to assist the community in a difficult and sensitive time

Significance and Engagement

- 13 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because of the nature and sensitivity of this topic and the impacts on our community if not addressed appropriately.

Risk

- 14 **SR1** - Current and future development needs of the community (including environmental protection) as documented in the Council's risk register. The risk is classed as high. This matter relates to this risk because the provision of cemeteries and their operation is a critical need of the community.

15 Management practice - working within legislation as documented in the Council's risk register. The risk is classed as high. This matter relates to this risk because cemeteries are required to be operational in accordance with legislation including The Bill of Rights Act 1990 and the Burial and Cremation Act 1964.

16 The recommended option considered above mitigates the risk by treating the risk – putting measures in place which directly impact the risk.

Financial Implications

17 There are minimal operational cost implications resulting from the decision regarding the review of the Bylaw, which will be met through existing budgets.

Council Policies, Strategies and Bylaws

18 The following Council policies, strategies and bylaws were considered:

- Current QLDC Cemeteries Bylaw 2010
- Current Cemetery Operating Procedures
- QLDC Dog Control Bylaw 2014
- QLDC Significance and Engagement Policy

19 The recommended option is consistent with the principles set out in the named policy/policies.

20 This matter is included in the 10-Year Plan/Annual Plan as budget is included for growth of cemeteries and cemetery operations.

Local Government Act 2002 Purpose Provisions

21 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by continuing to prohibit harmful activities (such as unauthorised interments) in Council cemeteries through the proposed Bylaw.
- The Council considers that the proposed Bylaw should clarify the role of sextons and cemetery administrators who are responsible for key functions associated with the operation of Council cemeteries, and to identify what activities require permission from Council. Council will continue to require an application for permission to undertake monumental masonry work, with technical specifications to be set out in the Cemeteries Handbook.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of Council, or transfer the ownership or control of a strategic asset to or from Council.

Consultation: Community Views and Preferences

- 22 The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes District community as a whole.
- 23 Council has a proposed timeline to undertake public consultation between December and January 2017.

Legal Considerations and Statutory Responsibilities

- 24 The New Zealand Bill of Rights Act 1990 (NZBORA) has been considered and the proposed Bylaw is not inconsistent with the NZBORA 1990. The proposed controls are considered reasonable limits as allowed for in section 5 of the NZBORA:

Subject to section 4, the rights and freedoms contained in this 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.

- 25 The Council has power under section 16 of the Burial and Cremation Act 1964 to make a Bylaw in respect of a cemetery under Council control.

Attachments

- A Cemeteries Bylaw 2010
- B Cemeteries Bylaw 2016
- C Statement of Proposal
- D Summary of Statement of Proposal
- E Proposed Cemeteries Handbook