



**PROPOSED QUEENSTOWN LAKES DISTRICT  
CEMETERIES BYLAW 2016**

**STATEMENT OF PROPOSAL**

## INTRODUCTION

- 1 The Queenstown Lakes District Council (**Council**) owns or operates 11 open cemeteries (together referred to as **Council cemeteries**) within the Queenstown Lakes District (**District**):
  - a. Queenstown Cemetery
  - b. Cardrona Cemetery
  - c. Lower Shotover Cemetery
  - d. Makarora Cemetery
  - e. Kingston Cemetery
  - f. Frankton Cemetery
  - g. Glenorchy Cemetery
  - h. Skippers Cemetery
  - i. Arrowtown Cemetery
  - j. Wanaka Cemetery
  - k. Hawea Cemetery
- 2 The Council currently regulates the operation of Council cemeteries within the District through the Council's Cemeteries Bylaw 2010 (**the current bylaw**). The current bylaw does not apply to cemeteries that are not Council owned or operated.
- 3 Section 146(b)(v) of the Local Government Act 2002 (**LGA**) enables the Council to make a bylaw for the purposes of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with cemeteries. The Council also has power under section 16 of the Burial and Cremation Act 1964 (**the Act**) to make a bylaw in respect of a cemetery under Council control for a variety of purposes, including specifications for graves and vaults; protection of buildings, monuments, lawns, shrubberies from damage; controlling or restricting the times for burials to be carried out; regulating the burial of ashes; and prescribing fees.
- 4 The Council has undertaken a review of the current bylaw to determine whether a replacement bylaw is required, and what regulatory / operational matters would be regulated. The review has involved Council staff attending operational meetings and discussions regarding the current bylaw, considering operational feedback from contractors, and researching how other local authorities operationally manage and share information regarding cemeteries in their districts.

## PROPOSAL

- 5 The Council has determined that the current bylaw should be revoked, and replaced with the proposed Queenstown Lakes District Council Cemeteries Bylaw 2016 (**the proposed bylaw**). Key objectives of the proposal include: to simplify and modernise the existing regulation of Council cemeteries, to improve public understanding of

services offered at Council cemeteries and the rules applicable to accessing those services, and to provide relevant information to the public in an accessible format.

- 6 Key components of the proposed bylaw include:
  - a. The power for the Council to adopt a Cemeteries Handbook detailing key information, including operational requirements and technical standards for Council cemeteries.
  - b. Prohibit certain potentially harmful activities within Council cemeteries (eg. preventing persons from carrying out unauthorised interments, interrupting funeral processions, or causing nuisances).
  - c. Require permission from Council to be sought to authorise particular activities in Council cemeteries, such as promotional activities or commercial photography of funeral processions.
  - d. Clarifying the role and appointment of sextons and cemetery administrators, who are involved in operating Council cemeteries.
  - e. Require permission from Council to be sought to authorise monumental masonry work at Council cemeteries.
  
- 7 During the review, Council officers have prepared a draft Cemeteries Handbook, which could be adopted by the Council if the proposed bylaw goes into effect. The Council is also seeking public feedback on a draft proposed Cemeteries Handbook as part of this consultation.
  
- 8 This Statement of Proposal has been prepared in accordance with the requirements of sections 83 and 86 of the LGA, and includes:
  - a. The reason for the proposal;
  - b. Consideration of whether a bylaw is the most appropriate way to address the perceived problem;
  - c. Consideration of whether the proposed bylaw is the most appropriate form of bylaw;
  - d. Consideration of any implications under the New Zealand Bill of Rights Act 1990;
  - e. A statement that the current bylaw is to be revoked;
  - f. A draft of the proposed bylaw; and
  - g. A draft of the proposed Cemeteries Handbook.

## **REASON FOR PROPOSAL**

- 9 The current bylaw is due to expire on 20 March 2017. The Council has undertaken a review of the current bylaw to consider the making of a replacement bylaw once the current bylaw expires. The review has involved Council staff attending operational meetings and discussions regarding the current bylaw, conversations with contractors, and research as to how other local authorities operationally manage and share information regarding cemeteries.

## **CONSIDERATION BY COUNCIL UNDER SECTION 155 OF THE LGA2002**

### **Problem definition**

- 10 Council staff have concluded that the publicly available information regarding Council cemeteries is not comprehensive and is distributed between several sources (eg. Council cemetery operating procedures, cemetery application forms, and other information posted on the Council's website). The information that is available does not contain sufficient detail to fully inform members of the public regarding the services offered, and lacks information regarding important operational matters. At present, Council staff are required to explain detailed information on sensitive topics with family and friends of the deceased, which can be difficult to deliver at a time when people are grieving. The Council's reliance on the institutional knowledge of staff and contractors as the only source of key information can also cause operational challenges when there are personnel changes at Council.
- 11 The current bylaw also contains a number of technical specifications (eg grave depth), which may require updating from time to time, without necessitating an amendment to the bylaw. The Council considers that it is preferable to present key information regarding Council cemeteries in a single document, which is straightforward to interpret and amend where necessary to implement operational changes.
- 12 Under the proposed bylaw the Council has the power to adopt a Cemeteries Handbook, which is intended to consolidate the key information and rules affecting the operation of Council cemeteries into a user friendly document. It is anticipated that the Cemeteries Handbook will contain basic operational information (eg. opening hours), rules and conditions for use of Council cemeteries, and technical requirements (eg. specifications for monument installation and burials). A key objective of the development of the Handbook is to allow important information to be accessed at the convenience of members of the public, with less reliance on Council staff to provide that information over the phone, or by email.
- 13 The Council will continue 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. The Council will continue to require an application for permission for certain activities, such as to undertaking monumental masonry work, with technical specifications to be set out in the Cemeteries Handbook.

#### **IS THE PROPOSED BYLAW THE MOST APPROPRIATE BYLAW?**

- 14 The Council has considered the most appropriate way of addressing the issues described in the problem definition section above, the options available, and determined that the proposed bylaw is the most appropriate means for addressing the issues.
- 15 In considering whether a bylaw is the most appropriate, Council has considered the following options:
  - a. Option 1 - Do nothing.
  - b. Option 2 – Re-adopt the current bylaw.
  - c. Option 3 – Revoke the current bylaw, and replace with the proposed bylaw.

#### **Option 1 – Do nothing**

- 16 If the Council does nothing the currently bylaw will expire in March 2017, with no replacement. The Council would have to instead 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.
- 17 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 (eg. 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**

- 18 The advantage of this option is that it would continue the same system of regulation of Council cemeteries that 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.
- 19 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 that are out of date would remain in effect. Council staff would also be relied on to maintain up to date knowledge of Council cemetery operational requirements from the different sources of operational information, and to provide detailed responses to requests for information from members of the public.

### **Option 3 – Adopt proposed bylaw**

- 20 Adopting the proposed bylaw will allow the Council to adopt a Cemeteries Handbook which will consolidate key information regarding the rules and conditions applicable to Council cemeteries. The development of a Cemeteries Handbook, following consultation with the public, will create greater certainty as to the rules and conditions for using Council cemeteries (eg. current procedures for interments and purchasing burial plots), and technical standards. The Cemeteries Handbook can also be amended by Council resolution, from time to time, to implement operational changes.
- 21 The proposed bylaw will also improve certainty by clarifying the responsibilities of sextons and cemetery administrators for key functions associated with the operation of Council cemeteries, and to identify what activities require permission from the Council. The 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.
- 22 The Council will need to use some resources to update its internal systems and train staff to give effect to the proposed bylaw and Cemeteries Handbook, if they are adopted by the Council. Some members of the public may prefer certain existing rules and specifications under the current bylaw that are not continued or changed in the Cemeteries Handbook.

### **ARE THERE ANY IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990?**

- 23 The proposed bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (**NZBORA**). 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.*

- 24 The controls within the proposed bylaw potentially engage the following right to freedom of expression under section 14 of NZBORA.
- 25 The proposed bylaw prohibits anyone from interrupting a burial of a deceased person, or causing a nuisance or annoyance to persons lawfully within a Council cemetery. This could affect freedom of expression to the extent that individuals would be limited in their ability to protest or otherwise express opinions in a Council cemetery while a burial is taking place. The Council considers this is a reasonable limit to impose to protect persons involved in a funeral ceremony from harmful interference.
- 26 It is also a requirement under the proposed bylaw that persons who wish to carry out promotional activities or commercial photography within a Council cemetery must obtain Council permission. The Council may grant permission after consulting with the Funeral Director who is managing the interment in question. These are modest limits that a majority of the public would consider reasonable and appropriate.

#### **TIMETABLE FOR CONSULTATION**

- 27 The following dates represent the key times in the consultation programme:
- a. Council resolves to undertake public consultation regarding the proposed bylaw– 15 December 2016.
  - b. Advertisement in Otago Daily Times, Southland Times, Mirror and Wanaka Sun – between 21 and 24 December 2016.
  - c. Submissions close on at 5pm on 3 February 2017.
  - d. Submissions heard by a subcommittee of Councillors and a copy of the bylaw sent to the Minister of Health in accordance with s17(1) of the Act (between 13-17 February 2017).
  - e. Council considers outcome of consultation process. Adoption of Queenstown Lakes District Cemeteries Bylaw 2016 – 9 March 2017.
  - f. Public notice of final decision (if Council resolves to adopt the bylaw) – 15 March 2017

- 28 The Bylaw comes into effect subject to the above.

#### **INSPECTION OF DOCUMENTS AND OBTAINING COPIES**

- 29 Copies of this Statement of Proposal and the proposed Bylaw may be inspected, and a copy obtained, at no cost, from:
- a. either of the Council offices at 10 Gorge Road, Queenstown or the Wanaka Service Centre, 47 Ardmore Street, Wanaka;

- b. any Council library within the Queenstown Lakes District; or
- c. the Council website – [www.qldc.govt.nz](http://www.qldc.govt.nz)

### **RIGHT TO MAKE A SUBMISSION AND BE HEARD**

- 30 Any person or organisation has a right to be heard in regard to this proposal and the Council encourages everyone with an interest to do so.
- 31 The Council would prefer that all parties intending to make a submission:
- a. go to the Queenstown Lakes District Council Website: [www.qldc.govt.nz](http://www.qldc.govt.nz) or
  - b. post their submission to: Regulatory Department, Queenstown Lakes District Council, Private Bag 50072, Queenstown 9348.
- 32 Submissions must be received by **5pm on Friday 3 February**. The Council will then convene a hearing, which it intends to hold between **Monday 13 February and Friday 17 February 2017** at which any party who wishes to do so can present their submission in person. The Council will give equal consideration to written and oral submissions.
- 33 The Council will permit parties to make oral submissions (without prior written material) or to make a late submission, only where it considers that special circumstances apply.
- 34 Every submission made to the Council will be acknowledged in accordance with the LGA 2002, will be copied and made available to the public, and every submission will be heard in a meeting that is open to the public.
- 35 Section 82 of the LGA 2002 sets out the obligations of the Council in regard to consultation and the Council will take all steps necessary to meet the spirit and intent of the law.

### **MAKING AN EFFECTIVE SUBMISSION**

- 36 Written submissions can take any form (e.g. Email, letter). An effective submission references the clause(s) of the draft Bylaw you wish to submit on, states why the clause is supported or not supported and states what change to the clause is sought.
- 37 Submissions on matters outside the scope of the Bylaw cannot be considered by the Hearings Panel.

Mike Theelen  
CHIEF EXECUTIVE

**APPENDIX 1** - Proposed Queenstown Lakes District Council Cemeteries Bylaw 2016

**APPENDIX 2** - Proposed Cemeteries Handbook

**APPENDIX 3** - Current Queenstown Lakes District Council Cemeteries Bylaw 2010