

QLDC Council
24 March 2017

Report for Agenda Item: 4

Department: Property & Infrastructure

Queenstown Lakes District Council Cemeteries Bylaw 2017

Purpose

To formally adopt and state a commencement date for the Queenstown Lakes District Council Cemeteries Handbook 2017 (**Cemeteries Handbook**), and to specify the commencement date of the recently adopted Queenstown Lakes District Council Cemeteries Bylaw 2017.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Note** that on 9 March 2017 the Queenstown Lakes District Council:
 - a. accepted the recommendation from the Cemeteries 2017 Bylaw **hearing panel to adopt the Bylaw and formalise the Cemeteries Handbook**;
 - b. adopted the Cemeteries Bylaw 2017, and to publicly notify the Council's decision; and
 - c. agreed that approximately \$15,000 funding be allocated in the 2017/18 Annual Plan to investigate offering a natural burial service in the District.
3. **Note** that the Queenstown Lakes District Council Cemeteries Bylaw 2017 requires that the following is to be specified by publicly notified resolution:
 - a. the date for the commencement of the Queenstown Lakes District Council Cemeteries Bylaw 2017; and
 - b. the adoption of the proposed Queenstown Lakes District Council Cemeteries Handbook 2017.
4. **Agree** that the recently adopted Queenstown Lakes District Council Cemeteries Bylaw 2017 will take effect immediately;
5. **Adopt** the Queenstown Lakes District Council Cemeteries Handbook 2017 to take effect immediately; and
6. **Direct** officers to publicly notify the Council's decision.

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16/03/2017

Reviewed and Authorised by:



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16/03/2017

Background

- 1 On 9 March 2017, the Council accepted the recommendation from the Cemeteries 2017 Bylaw Hearing Panel (**Hearing Panel**) to adopt the Queenstown Lakes District Council Cemeteries Bylaw 2017 (**Cemeteries Bylaw 2017**) and formalise the Cemeteries Handbook. The Council adopted the Cemeteries Bylaw 2017, and specified that its decision was to be implemented on Monday 13 March 2017, and further directed officers to formally notify the Council's decision.
- 2 During the meeting of 9 March 2017 it was noted that the Cemeteries Bylaw 2017 was intended to commence on 20 March 2017. However, the Cemeteries Bylaw 2017 states that commencement must be specified in a publicly notified resolution of the Council.
- 3 The Council has accepted the recommendations of the Hearing Panel to formalise the Cemeteries Handbook. The Cemeteries Bylaw 2017 specifies that the Council may adopt a Cemeteries Handbook by publicly notified resolution. Formal adoption of the Cemeteries Handbook is also a necessary step to give effect to this document.
- 4 The Council's decision of 9 March 2017 is to be notified in the *Otago Daily Times* and the *Southland Times* on 18 March 2017.
- 5 It is proposed that the above matters are clarified at the Council's meeting of 24 March 2017, by adopting the resolutions recommended in this report.

Comment

- 6 The Cemeteries Bylaw 2017 has been formally adopted by the Council, but will not have legal effect until a commencement date is specified through Council resolution. Council staff note that the previous Cemeteries Bylaw 2010 will expire on 20 March 2017, and it is therefore important that the Cemeteries Bylaw 2017 commences as soon as possible.
- 7 The Cemeteries Handbook contains the rules and conditions that apply to provision of services, operational requirements, and acceptable conduct in cemeteries owned by, or operated by the Council. These matters are fundamental to the day to day operation of Council cemeteries and supplement the matters regulated in the Cemeteries Bylaw 2017. Therefore, Council staff

recommend that the Cemeteries Handbook is formally adopted by the Council, and commences as soon as possible.

- 8 Section 157 of the Local Government Act 2002 states that the Council must give public notice of the making of a bylaw, which includes specifying the date on which the bylaw will come into operation. The Council has publicly notified its decision to adopt the Cemeteries Bylaw 2017, and indicated that this bylaw will go into effect on a date to be specified by Council.
- 9 To ensure the commencement dates for the new Cemeteries Bylaw 2017 and Cemeteries Handbook (if adopted) are brought to the public's attention, we recommend that the Council's decision regarding these matters is publicly notified.

Options and Amendments

Options

- 10 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.
- 11 The Cemeteries Bylaw 2017 and Cemeteries Handbook meet our community needs. Council staff recommend that the Cemeteries Handbook is adopted and that both are commenced immediately (refer Option 2 below).
- 12 Option 1 Do nothing
Advantages:
- 13 If the Council does not commence the Cemeteries Bylaw 2017, the current bylaw will expire on 20 March 2017 without a replacement. Some members of the community may prefer less regulation of Council owned or operated cemeteries.
Disadvantages:
- 14 The Burial and Cremation Act 1964 does not provide a comprehensive framework for Council cemeteries, and contemplates that a number of matters are to be regulated through bylaws. In the absence of a bylaw, the Council will be 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.
- 15 There would be less transparency around the Council's procedures, and rules applicable to the operation of Council cemeteries. The Council would not benefit from the improvements to cemetery regulation developed following the bylaw review and public consultation process.

- 16 Option 2 Adopt the Cemeteries Handbook and resolve that the Cemeteries Bylaw 2017 and Cemeteries Handbook commence immediately.

Advantages:

- 17 The Council has already decided to adopt the Cemeteries Bylaw 2017. The reasons for the adoption of this bylaw are set out in the Officer's report submitted prior to the meeting of 9 March 2016. To give effect to the Council's decision, a commencement date must be set by publicly notified resolution. Once the Council sets a commencement date it will resolve any uncertainty about when the changes will take effect.
- 18 The Cemeteries Handbook consolidates the key information regarding the rules and conditions applicable to Council cemeteries in a user friendly format, and supplements the matters regulated in the Cemeteries Bylaw 2017. The Cemeteries Handbook creates greater certainty as to the rules and conditions for using Council cemeteries (eg. current procedures for interments and purchasing burial plots), and technical standards. It can be amended by Council resolution, from time to time, to implement operational changes.

Disadvantages:

- 19 The Council will need use resources to update its internal systems and train staff to give effect to the Cemeteries Bylaw 2017 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.

Significance and Engagement

- 20 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

- 21 **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.
- 22 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.
- 23 The recommended option considered above mitigates the risk by 'Treating the risk - putting measures in place which directly impact the risk.'

Financial Implications

- 24 There are minimal operational cost implications resulting from this decision, which will be met through existing budgets.

Council Policies, Strategies and Bylaws

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

- QLDC Cemeteries Bylaw 2017
- QLDC Significance and Engagement Policy

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

27 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

28 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 proposed Bylaw will 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

29 The persons who are affected by or interested in this matter are the residents/ratepayers of the Queenstown Lakes District community as a whole.

Legal Considerations and Statutory Responsibilities

30 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.

- 31 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.