

QLDC Council
9 March 2017

Report for Agenda Item: 5

Department: Property & Infrastructure

Queenstown Lakes District Council Cemeteries Bylaw 2017

Purpose

To consider the adoption of the proposed Queenstown Lakes District Council Cemeteries Bylaw 2017.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Accept** the recommendation from the Cemeteries 2017 Bylaw hearing panel and to adopt the Bylaw and formalise the Cemeteries Handbook;
3. **Adopt** the proposed Queenstown Lakes District Council Cemeteries Bylaw 2017, to be implemented on Monday 13 March, 2017 and direct officers to publicly notify the Council's decision; and
4. **Agree** that \$15,000 funding be included as an internal submission to the 2017/18 Annual Plan to investigate offering a natural burial service in the District.

Prepared by:



Maddy Jones
Parks Officer (Projects)

20/02/2017

Reviewed and Authorised by:



Stephen Quin
Parks Planning Manager

20/02/2017

Background

- 1 On 15 December 2016, Council approved the Proposed Cemeteries Bylaw 2017 for public consultation, following a review of the Cemeteries Bylaw 2010 <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Full-Council-Agendas/2016/15-December-2016/Item-4-Cemeteries-Bylaw-2016/4-Cemeteries-Bylaw-covering-report.pdf>

- 2 Formal consultation was conducted from 21 December 2016 – 27 January 2017 with 2 submissions received during this period. Both individuals indicated that they did wish to be heard at the hearing. (Attachment C – Summary of Submissions).
- 3 Since only two submissions were received, QLDC Parks Officer met with both submitters on separate occasions to talk through the points they had raised in their submissions. Both submitters were very happy to have the opportunity to meet and later sent an email advising they no longer wished to be heard at a formal hearing. Accordingly, no formal hearing took place.
- 4 A meeting was held on Friday 17 February 2017 with a hearing panel consisting of Councillors Clark, Ferguson and McRobie to consider the submissions on the proposed Queenstown Lakes District Cemeteries Bylaw 2017.

Comment

- 5 Section 146(b)(v) of the Local Government Act 2002 (“LGA 2002”), enables Council to make a Bylaw for the purposes of managing cemeteries. The Council also has the 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.

Natural Burials

- 6 On Monday, 13 February 2017 six submissions were received, all seeking natural burial areas to be enabled in QLDC cemeteries, along with requests to speak at a hearing. [Attachment D]. The hearing panel agreed that these late submissions not be accepted as they were received more than two weeks after the submission period had closed. However, the hearing panel acknowledged these submissions and recommended that Council allocate funding in the 2017/18 Annual Plan to investigate offering a natural burial in the District.
- 7 Including information on natural burials will require changing the handbook and not the bylaw itself.
- 8 Changes to the handbook can be added at the time and upon Council resolution. Adding information now is not recommended as it is important if QLDC is going to progress with natural burials to adopt best practice and ensure certified compliance with Natural Burials NZ rather than ‘uncertified’ burials.
- 9 Further background information about natural burial areas and a general response to these submissions is provided in Attachment E.

Options and Amendments

- 10 Minor changes to the publicly notified version of the bylaw (Attachment A) and handbook (Attachment B) have been carried out upon final document proofing. These changes are principally typographical corrections and consistency updates to tighten drafting. In addition, two changes are recommended to the handbook text in response to submissions received and these are discussed below.
- a. Comment '1.g.' as per the summary of submissions has been considered a valid point. A paragraph regarding the Pembroke Cemetery has been added for consideration to the 'introduction' section of the handbook, page 4, under 'Other Cemeteries'.
 - b. Comment '2.c.' as per the summary of submissions is not applicable to bylaw enforcement. However, a sentence has been added for consideration to section 5 under 'Monuments' in the handbook, page 12. This is to inform that the QLDC cemeteries administrator can provide further information regarding local monumental masons in order to prompt customers, offer reassurance and help ease any uncertainties.
- 11 Additions relevant to submission comments 1.g & 2.c as per above, have been included in red to the new version of the handbook' (Attachment B) for consideration.

Options

- 12 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.

13 Option 1 No Bylaw

Advantages:

- 14 If the Council does not adopt the new Bylaw, the current Bylaw will expire in March 2017, with no replacement. Without a Bylaw 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:

- 15 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.

16 Option 2 Adopt Proposed Bylaw

Advantages:

17 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 as needed from time to time, to implement operational changes.

Disadvantages:

18 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.

19 This report recommends **Option 2** 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

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 the decision regarding the review of the Bylaw, which will be met through existing budgets.

25 Operational expenditure will be required if Council agrees to allocate budget in the 2017/18 Annual Plan to investigate offering a natural burial service in the district. It is estimated that an investigation report will cost \$15,000.

Council Policies, Strategies and Bylaws

26 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

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

28 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

29 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

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

31 The Council has conducted formal consultation, by notifying the draft Bylaw and receiving submissions.

32 A meeting with the two submitters who gave submissions on time was held by the Parks Officer.

33 All submissions including those received late were acknowledged or considered by the hearing panel.

Legal Considerations and Statutory Responsibilities

34 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.

35 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 [Presented separately]

- A Proposed Queenstown Lakes District Council Cemeteries Bylaw 2017
- B Proposed Queenstown Lakes District Council Cemeteries Handbook 2017
- C Summary of submissions and officer recommendations on each submission point
- D Summary of late submissions received re natural burial areas
- E Comment on the current status of natural burial in the Queenstown Lakes District Cemeteries