

Full Council

16 November 2023

Report for Agenda Item | Rīpoata moto e Rāraki take [5]

Department: Strategy & Policy

Title | Taitara: Adoption of QLDC Cemeteries Bylaw 2023

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to provide information and present options to Council, so that it can make decisions on the draft Cemeteries Bylaw 2023/Kā Ture Urupā (the draft bylaw, **Attachment A**), and to present the draft bylaw for adoption.

Executive Summary | Whakarāpopototaka Matua

Officers commenced the process to review the bylaw by undertaking preliminary engagement in March 2023. On 10 August 2023, Council adopted and released a statement of proposal (**Attachment B**), which included the draft bylaw for consultation in accordance with the special consultative procedure, with consultation occurring between 11 August and 11 September 2023.

Nine submissions were received, all supporting the bylaw. The Hearings Panel received written and oral submissions at its meeting on 6 October 2023. The Hearings Panel recommended minor changes proposed in the draft bylaw that went out for public consultation. These changes include:

- clarification of the legal rights that are acquired by those who acquire plots from Council by changing the wording in the title in section 14 from “Sale of Plots” to “Exclusive right to inter”; and
- alignment with the Queenstown Lakes District Council (QLDC) Cemeteries Handbook by including the phrase “as amended from time to time” in section 14.1.

Council is now being asked to deliberate on the proposed bylaw and make the determinations required prior to adopting the draft bylaw.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;

2. **Note** that on 10 August 2023, Council determined, pursuant to section 155(1) of the Local Government Act 2002, that a bylaw is the most appropriate way of addressing the issues related to activities in QLDC administered cemeteries;
3. **Determine** prior to making the bylaw, pursuant to section 155(2)(a) of the Local Government Act 2002, that the draft Cemeteries Bylaw 2023 / Kā Ture Urupā is the most appropriate form of bylaw;
4. **Determine** prior to making the bylaw, pursuant to section 155(2)(b) of the Local Government Act 2002, that the draft Cemeteries Bylaw 2023 / Kā Ture Urupā does not give rise to any implications under the New Zealand Bill of Rights Act 1990;
5. **Adopt** the draft Cemeteries Bylaw 2023 / Kā Ture Urupā, with the following changes recommended by the Hearings Panel from the draft bylaw that went out for consultation:
 - i. Section 14. “**Exclusive Right to Inter**” (emphasis added to wording change);
 - ii. Clause 14.1 “All plots sold by Council shall be sold upon the terms and conditions as decided by Council, **as amended from time to time**, and the exclusive right to inter may be granted for such limited period as Council decides” (emphasis added to wording change);
6. **Resolve** that the draft Cemeteries Bylaw 2023 / Kā Ture Urupā will come into effect on 1 December 2023 and that the Cemeteries Bylaw 2017 is revoked on 1 December 2023;
7. **Note** that in accordance with section 157 of the Local Government Act 2002, public notice be given of the review of the draft Cemeteries Bylaw 2023 / Kā Ture Urupā, advising:
 - i. that the bylaw will come into force on 1 December 2023; and
 - ii. that copies of the bylaw may be inspected, without fee, at all Council offices.

Prepared by:



Name: Erin Auchterlonie
Title: Policy Advisor
26 October 2023

Reviewed and Authorised by:



Name: Michelle Morss
Title: GM – Strategy & Policy
26 October 2023

Context | Horopaki

1. The Cemeteries Bylaw 2017 has been in place since March 2017, and is due for review. The bylaw will expire if not reviewed prior to March 2024. Once reviewed, it will have a five-year review requirement.
2. The bylaw has now reached the stage in the process for deliberations and adoption. The current progress of the bylaw is set out in the diagram below.



3. The review process and key milestones for this bylaw review are summarised below.

Date	Milestone
March 2023	Preliminary engagement – targeted emails to stakeholder groups, inviting them to provide feedback via email, or speak with Council officers.
27 June 2023	Community & Services Committee recommended that Council endorse the draft bylaw for consultation.
10 August 2023	Council resolved to review the draft Cemeteries Bylaw 2023 / Kā Ture Urupā in accordance with the special consultative procedure and appointed a Hearings Panel to receive submissions.
11 August – 11 September 2023	Formal consultation period
6 October 2023	Hearings and consideration of options by the Hearings Panel.
16 November 2023	Council deliberates and adopts the bylaw

The current Cemeteries Bylaw 2017

4. The purpose of the Cemeteries Bylaw 2017 (current bylaw) is to set standards to maintain and preserve Council’s cemeteries and meet local authority requirements for the operation of cemeteries in accordance with the Burial and Cremation Act 1964.

Role of the Cemeteries Handbook

5. The current bylaw provides for Council to adopt a Cemeteries Handbook that sets out rules and conditions for activities relating to cemeteries.
6. Council’s existing Cemeteries Handbook (the handbook) is an important operational document that sits under the bylaw and provides operational guidance on issues such as cultural or faith-based practices, fees and charges, how to apply for interment, purchasing burial rights,

monument specifications, health and safety, and behaviour in cemeteries. As a broader, high-level instrument, the bylaw provides Council with the powers to regulate activities in cemeteries and enforce against non-compliance.

7. The current bylaw allows Council to amend the handbook via Council resolution.
8. Officers are currently reviewing the handbook, and input received on the draft bylaw will feed into the handbook review. Setting out requirements and rules in relation to topics such as natural burials and different cultural practices will be considered as part of the review of the handbook. It is highly likely that the content of the handbook will be influenced by the impacts of the recent weather event on the Queenstown Cemetery and learnings from across the country in relation to climate change adaptation and resilience at cemeteries and urupā.

The draft bylaw

9. The changes proposed in the draft the draft bylaw are not substantive and include amendments to definitions, improvements to the readability and flow of the bylaw document coupled with an alignment to industry best practices. All amendments are identified in the draft bylaw at Attachment A by way of tracked changed text.
10. The proposed changes include:
 - using the terms “inter” or “interment” instead of “burial”, as “inter” is the more commonly used industry practice. For the purpose of the draft bylaw, a “burial” is a type of interment, so interment is a broader, more inclusive term. The definitions of ‘memorial’ and ‘monument’ have also been clarified
 - clarification on the restrictions and regulation of promotional activities within cemeteries
 - additional wording around the regulation of vehicle use within cemeteries
 - further detail around the appointment and function of the Cemeteries Administrator, the sale of plots, the interment of persons without means, and the installation and maintenance of monuments and grave structures.
11. The Hearings Panel recommended minor changes proposed in the draft bylaw that went out for public consultation. These changes include:
 - clarification of the legal rights that are acquired by those who acquire plots from Council by changing the wording in the title in section 14 from “Sale of Plots” to “Exclusive right to inter”; and
 - alignment with the Queenstown Lakes District Council (QLDC) Cemeteries Handbook by including the phrase “as amended from time to time” in section 14.1.

Analysis and Advice | Tatāritaka me kā Tohutohu

Local Government Act requirements for implementing the draft bylaw

12. Section 145 of the Local Government Act 2002 (LGA) sets out the general bylaw-making power for territorial authorities. It permits Councils to make bylaws for one or more of the following purposes:
- protecting the public from nuisance;
 - protecting, promoting, and maintaining public health and safety; and/or
 - minimising the potential for offensive behaviour in public places.
13. Council is responsible for ensuring that the bylaw exists for one (or more) of these three purposes. In implementing a bylaw, Council also needs to ensure the requirements of section 155 LGA are met, which include:
- that the bylaw is the most appropriate way of addressing the perceived problem; and
 - that the proposed bylaw is the most appropriate form of bylaw; and
 - that the proposed bylaw does not give rise to any implications under New Zealand Bill of Rights Act 1990 (NZBORA).
14. Council previously made the determinations required under section 155 of the LGA before commencing the process of reviewing this bylaw.

Summary of submissions received

15. Council received nine submissions on the draft bylaw. All submitters supported the draft bylaw, and there was feedback supporting particular changes that are discussed below, including recommendations made by the Hearings Panel.

Vehicle use in cemeteries

16. Two submissions related to the use of vehicles in cemeteries. These submissions supported the inclusion of vehicle restrictions within the draft bylaw that are in accordance with Council's Traffic and Parking Bylaw 2018.
17. One submitter requested that Council consider that these restrictions be applied specifically to properties that are adjacent to the cemeteries in the district so that they are not able to use the cemetery land for permanent parking of cars, trailers, boats, etc.
18. No changes to the draft bylaw were recommended to the Hearings Panel as an outcome of these submissions because the existing vehicle use provisions within the draft bylaw will address this issue and allow for enforcement as required. The Hearings Panel considered that this is the best approach and that any physical vehicle restrictions for a cemetery, such as the Wānaka cemetery,

which was given as the example by the submitter in the hearing, would be subject to specific management plans for that location.

Installation and preservation of memorials

19. The draft bylaw contains the addition of a section on the installation and maintenance of monuments, grave structures, tributary items, plantings, etc. that was specifically supported by an industry stakeholder.

Sale of plots

20. The draft bylaw contains provisions relating to the sale of plots and how “out of District” fees apply. One submitter considered that individuals from outside the District should not be able to purchase a plot in District cemeteries and viewed that plots should be kept for District residents only. They also are of the view that members of the public (within the District) should be able to purchase plots in advance for peace of mind and be able to pay the cost at its current price.
21. Based on officers’ recommendation, the Hearings Panel do not recommend that changes to the draft bylaw include criteria on who should be able to purchase a plot. As it stands, anyone may purchase a plot, regardless of whether they are currently a resident of the District, which is consistent with industry best practice.
22. Based on officers’ recommendation, the Hearings Panel recommend changing the section title from “Sale of Plots” to “Exclusive Right to Inter” in section 14. This provides clarity on the nature of legal rights that are acquired by those who acquire plots from Council. Officers also recommend adding the words “as amended from time to time” to section 14.1 in order for the bylaw to align with the handbook. The Hearings Panel support these proposed changes.

Interment of persons without means

23. An addition to the Cemeteries Bylaw 2023 / Kā Ture Urupā is the provision for the interment of persons without means. This section enables people to apply to Council to allow for the interment of persons without means. While this provision is outlined in the handbook, it has been elevated to the bylaw level in order to add weight to the provision and support the legislation more distinctly. This provision was supported by a submitter.

Feedback on the Cemeteries Handbook

24. Several submissions reference the handbook. One submitter raised the concern that the public would not have the same oversight and opportunity to comment on the review of the handbook and any proposed changes. Feedback received to the draft bylaw that is relevant to the handbook will inform changes that may be made to the handbook. It is likely that the handbook will go out for public consultation due to the significant impact that the proposed changes are likely to have on the community.
25. The Ministry for Culture and Heritage submitted that the handbook specifies that the Ministry has the ability to work within cemeteries for the purpose of managing the heritage assets in their jurisdiction such as Commonwealth War Graves. Another submitter suggested that Council

include provision for an arboretum as a type of natural burial within the handbook. The submission went on to recommend a specific area in which an arboretum could be located that is part of the districts’ reforestation efforts. These comments will be considered by Council officers as part of the review of the handbook, separate from the review of the bylaw.

26. Following officers’ advice, the Hearings Panel recommend that all feedback received would be included in the review of the handbook, and that the document is of high significance to the community.

Summary of the recommendations from the Hearings Panel

27. The recommendations as a result of the consultation and Hearings Panel process are:

- that Council approve of the change to the section 14 heading from “Sale of Plots” to “Exclusive Right to Inter” in the draft bylaw;
- that Council approve of the inclusion of the words “as amended from time to time” in section 14.1 of the draft bylaw; and
- that no changes be made to the draft bylaw provisions regarding vehicle use in council-operated cemeteries in the district.

Options and Analysis

28. This report identifies and assesses the following reasonably practicable options for assessing this matter as required by section 77 of the LGA.

29. **Option 1:** Accept recommendations from the Hearings Panel and adopt the draft Cemeteries Bylaw 2023 / Kā Ture Urupā.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Responds to information received in submissions. • Provides clarification and updates the current bylaw. • Council retains the ability to regulate activities in cemeteries and ensures that legislative requirements in relation to cemeteries and the LGA are met. • Adopting the draft bylaw facilitates the timely completion of the bylaw review process. 	<ul style="list-style-type: none"> • The draft bylaw may not align with some community views contained in the submissions outlined above. However, some of these views may be considered as part of the review of the Cemeteries Handbook that is underway

30. **Option 2:** That Council does not adopt the Cemeteries Bylaw 2023 / Kā Ture Urupā or propose a different way forward.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> There would be reduced time and cost associated with implementation of the bylaw. 	<ul style="list-style-type: none"> The bylaw would lapse. Council would lose the ability to regulate activities in cemeteries and legislative requirements in relation to cemeteries may not be met.

31. This report recommends **Option 1**, which enables Council to:

- continue to regulate activities in cemeteries;
- ensure that legislative requirements in relation to cemeteries (and the LGA) are met;
- comply with the special consultative procedure requirements in the LGA; and
- meet local authority requirements for the operation of cemeteries in accordance with the Burial and Cremation Act 1964.

Next steps

32. If Council adopts the draft bylaw, it is proposed that it would be implemented on 1 December 2023. There will be public notification of the outcome of the review, and submitters will be notified.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

33. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because;

- the matters have minimal to moderate impact on the community
- the proposal will not change the level of services provided by Council, or Council's capacity
- there is a low level of financial consequence as a result of adopting the recommended option.

34. The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes District community, people who use and visit cemeteries located within the District and industry stakeholders.

35. Officers have sought feedback from the community and industry stakeholders and consulted on the draft bylaw in line with the Special Consultative Procedure.
36. The statement of proposal and draft bylaw were publicly notified by advertisement on QLDC's website and in local newspapers, including the Otago Daily Times, the Mountain Scene, and the Wānaka Sun, as well as on Council's Facebook page, and through a local radio interview with the Cemeteries and Heritage Officer. The number of submissions received is relatively low, which could indicate that the current bylaw is working effectively, and that the community is amenable to the current bylaw as well as the proposed changes in the draft bylaw.
37. The draft bylaw, the statement of proposal and other supporting documents were made available on Council's website, at the Council offices at 10 Gorge Road, Queenstown, and 47 Ardmore Street, Wānaka.

Māori Consultation | Iwi Rūnaka

38. Council contacted Te Ao Marama and Aukaha to invite any feedback through the formal consultation stage of the review of this bylaw.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

39. This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK10026 Ineffective enforcement within the QLDC Risk Register. This risk has been assessed as having a low residual risk rating.
40. The approval of the recommended option will support the Council by allowing it to retain the risk at its current level. This shall be achieved by review of this bylaw to ensure that it responds appropriately to the issues regarding cemeteries in the district.

Financial Implications | Kā Riteka ā-Pūtea

41. Costs associated with this work, such as staff time and advertising, are proposed to be met within current budgets. There are no proposed changes in the draft bylaw to current operational practice.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

42. The following Council policies, strategies and bylaws were considered:

- The QLDC Cemeteries Handbook 2019
- The QLDC Traffic and Parking Bylaw 2018
- The outcomes and principles of Vision Beyond 2050
- The QLDC Annual Plan
- The QLDC Ten Year Plan 2021-31.

43. The recommended option is consistent with the principles set out in the named instruments.

44. This matter is included in the Long Term Plan/Annual Plan

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

45. Council is bound by the LGA when making or reviewing bylaws. The base determination, notification, and consultation procedures set out under sections 155, 156 and 157 of the LGA apply. The draft bylaw and statement of proposal has been legally reviewed.

46. Council has made the determinations required under s.155 of the LGA before commencing the process of reviewing the current bylaw.

47. Consultation on the draft bylaw is following the requirements of the special consultative procedure outlined in sections 83 and 86 of the LGA.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka

48. Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The issues that the draft bylaw addresses relate to ensuring that activities in cemeteries respect and protect the rights and interests of deceased and their whānau and friends. As such, the recommendation in this report is appropriate and within the ambit of section 10 of the LGA.

49. The recommended option:

- can be implemented through current funding under the Long Term Plan and Annual Plan;
- is consistent with the Council's plans and policies; and
- would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

Attachments | Kā Tāpirihaka

A	Draft Cemeteries Bylaw 2023 / Kā Ture Urupā
B	Statement of Proposal
C	Cemeteries Bylaw 2017