

Submission

**Death, Funerals, Burial and Cremation – a Review
of the Burials and Cremations Act 1964 and other
related legislation**

April 2020

Death, Funerals, Burial and Cremations – a Review of the Burials and Cremation Act 1964 and other related legislation

By: Waipā District Council

Submission deadline: 31 July 2020

Introduction

Waipā District Council (Council) welcomes the opportunity to provide comment on the Ministry of Health's consultation document titled 'Death, Funerals, Burial and Cremation – a Review of the Burials and Cremation Act 1964 and other related legislation'.

Council currently manages ten public open cemeteries and provides interment services to two private cemeteries in the district.

Council provides all the following services internally:

- bookings (including council or private burials and interments, disinterments and monument installation, maintenance and renewal of monuments)
- burials and interments (including casket interment, ashes interment and eco/natural burials (Leamington cemetery only))
- disinterments and reinterments
- cemetery development
- cemetery maintenance (including mowing, vegetation, road and cemetery asset maintenance, litter removal and pest control)
- provision of cemetery [database](#) and mapping
- regular inspections of memorial headstones and other monuments, and repositioning or removals in accordance with the Waipā District Council Cemeteries Bylaw 2013 to ensure public safety if person entitled to maintain monument cannot be identified or doesn't undertake necessary works; and
- customer support for general enquiries and complaints.

Council's fees are set out on its [website](#) in order to be transparent to customers and have been set to cover costs associated with the provision of day to day services.

As with other cemeteries, memorial headstones, monuments and other structures are the responsibility in perpetuity of the burial right holder of the plot, their representatives or descendants in the first instance.

Council's cemeteries catered for 247 interments in 2019 (108 ash interments and 149 lawn interments); with the majority of these being in the Hautapu, Leamington and Te Awamutu cemeteries. Annual interments are slowly increasing at the majority of Council's cemeteries; with ash interment increasing at a faster rate than lawn burials. While there has been a significant increase in ash interments, lawn burials are still the preferred option at each cemetery.

In addition to direction from the Burial and Cremation Act 1964, the Reserves Act 1977, the Building Act 2005 and the Master Monumental Masons' Association Standards, Council has developed a [cemeteries bylaw](#) and a cemeteries asset management plan to guide the decisions related to cemetery management.

General Comments

1. Council supports amendments of the relevant legislation to create a modern and simplified framework for burial and cemetery management, as it agrees with the Law Commission's findings that the law is outdated, overly specific, difficult to understand and not flexible enough to respond to changing community aspirations, and burial and cremation innovations.
2. The current legislation requires local authorities to provide public cemeteries. This is a long-term commitment to care for the deceased. Council has accumulated extensive expertise, experience, resources and sector understanding in cemetery and burial management. It supports the proposed local authority duty to provide facilities for the disposal of bodies, rather than cemeteries specifically.
3. Council believes change is needed in the regulation of funeral directors in order to provide our community with greater clarity and protection when procuring services during times of grief and vulnerability.
4. Council notes concerns about the proposed increased role for Council particularly through the proposed devolution of decision making on new cemeteries, crematoria, disinterments and the proposed new compliance regime. It notes that this, together with the likely risk of community cemeteries eventually failing and reverting to councils to manage and maintain, will result in a significant increased financial burden on ratepayers. Additionally, it considers it inappropriate for some of these decisions to be devolved to council where there are potential conflicts with council's RMA role or gaps in expertise to assess all necessary matters.
5. Council notes that any amendments to the legislation must not duplicate or create overlap with the Resource Management Act 1991 (RMA).
6. It is noted that Council has had insufficient capacity, given resourcing constraints and existing work programmes, to consult mana whenua and the community on the review within the timeframes provided.

Specific Comments

Section 6 Proposed overarching duties regarding the disposal of bodies

7. Support proposition that there should be a general duty on everybody to 'treat any dead human body or human remains with respect'.
8. Agree there should be a requirement that the person who has the duty to dispose of the body must do so without undue delay, including considering the mourning needs of the bereaved, any ceremonies to be performed, tikanga or other cultural practices, and any other relevant considerations (such as police investigations). Note that care must be taken when deciding the timeframe as each religion and culture has its different rituals to undertake. The person responsible should be aware of the cultural and religious views of the deceased as well.
9. Support the proposition that there should be alternative punishments to imprisonment for range of behaviours viewed as serious enough for prosecution but not serious enough for conviction under s150 for both matters. The alternative punishment regime must be timely and convenient for prosecuting authorities and defendants. Imprisonment should remain for serious offences.

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10. Support proposed alternative punishments, that is, infringement notices or by conviction, fines, but note that it appears this would be a new enforcement role for local councils which will, together with other proposed new management and enforcement roles, require additional resourcing and have a financial impact on ratepayers. Council only has two compliance officers who undertake compliance on everything from Resource Management Act to bylaw breaches. Local council compliance teams have no experience with dealing with these matters as they are well beyond the current breadth of its cemetery management remit. There would be training and other costs. Enforcement of this specific offence may better lie with another agency, such as Police.

Section B – Regulation of the funeral services sector

B3 Regulation of the funeral services sector

11. Council's Compliance Team currently manages the annual registration of funeral directors that operate in Waipā. Unlike other registration schemes that council administer, funeral directors need to be registered with each council they operate within the boundaries of. There is no assessment criteria or grounds to deny registration and no compliance regime. There is very minimal cost with this approach that is recovered entirely through fees. This is a very different regime to that for alcohol licences and food operators where operators must register with Local Authorities but must first demonstrate their suitability and ability to comply with the law.
12. Council currently has four funeral directors registered to operate in Waipā but there is no process to confirm all operators are registered. Issues observed within this sector include funeral directors leaving services early, poor communication with Councils Sextons regarding matters such as start times, and consumers being misinformed about Council's fees and charges. The level of service from funeral directors can be varied. We agree there should be greater protection or recourse available to consumers who purchase funeral services and are unhappy with the service they receive.
13. Note there are significant issues with family-led interments which are often chosen in an attempt to lessen costs. The lack of knowledge of processes by these families significantly increases the resource requirements on our Sextons in order to meet standards and manage health and safety risks. It would be preferable if burials were only permitted through registered funeral directors.
14. Oppose the Ministry's preferred option of maintaining the status quo as Council disagrees continued industry self-management is the best option.
15. Support option 4, that is, 3 yearly registration with the Register-General of Births, Deaths and Marriages, demonstration of adherence with registration requirements and specified duties that have a compliance regime. Council considers this will address current issues with poor quality or non-delivery of contracted funeral services and will provide a system that both protects the consumer and the treatment of the body of the deceased person in a nationally consistent manner. This level of regulation is warranted to ensure both consumer protection at a time of grief and significant vulnerability, and treatment of the body of the deceased person with respect. Alternatively, registration could remain with Council with the added requirements, as mortuaries and other activities are still registered by Council, but this is not the preferred option.

B4 Informing customers about the cost of funeral services

16. Agree high cost is one of the main issues people experience with funeral services and this is compounded by the fact full costs are not known until late in the transaction. Agree a lack of pricing information

together with time pressures, emotional stress and lack of familiarity with these kinds of services places our community in a vulnerable position when purchasing funeral director services. Anecdotally we know this is an issue for our community. Agree with the Law Commission's assessment that greater regulation is required to ensure greater transparency of the costs of services.

17. Note Council's fees for permits and interments are set out on its [website](#) in order to be transparent to customers. These have been set to cover the costs associated with the provision of day to day cemetery management services.
18. Oppose the Ministry's preferred option of maintaining the status quo.
19. Support option 2, that is, making it mandatory for funeral directors to disclose some component prices. There is a need to improve transparency of fees, for greater clarity on components and cost of funeral options, and for an itemised invoice. This is particularly important for residents with low financial literacy and those who speak English as a second language. Agree with suggestion that the impact of mandatory price disclosure may also incentivise funeral services to increase the quality of their service or to be more competitive.

Section C – Burial and Cemetery Management

Proposed types of burial lands

20. Neutral on the Ministry's preferred option to reduce current 6 types ((cemetery (local authority), cemetery (trustee), denominational burial ground, private burial ground, private burial place and special place)) to the following 4 types of burial land:
 - Local authority cemetery
 - Denominational burial ground
 - Burial on private land
 - Community cemetery (previously called a trustee cemetery)
21. Support not making provision for any new independent cemeteries as Council agrees there is a risk this could be challenging and administratively burdensome for local authorities to monitor and enforce compliance, and there is a high likelihood Council would have to assume responsibility for a failing cemetery given the costs of managing the land in perpetuity, with attendant consequences for ratepayers.
22. Note Councils should not be prevented from establishing a Council Controlled Organisation or contracting cemetery services to a private provider. CCOs or outsourcing allows Councils to retain overall management control.
23. Note Council continues to be of a view that titles of community cemeteries should be with the Local Authorities only. Council does not support vesting in a charitable trust unless the trust has a national profile and an operational history e.g. Natural Burials NZ.
24. Note concerns with burials on private land which have historically been held in multi-generational farm ownership given Waipā's population projections and associated land use changes which are seeing many multi-generational farm holdings sold and subdivided. These changes to rural zones are likely to create challenges in terms of ongoing access and future development of the land. If continued to be an approved type of burial land, it is recommended the location and nature of the burials on private land be required to be on the certificate of title and land information memo.

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25. Note Council's preference is that territorial authorities, potentially in collaboration with neighbouring councils, be the primary provider of cemeteries for the majority of residents and that together, at a regional level, councils should provide for different sectors of the community. For this reason, Council agrees with the proposition that councils must consider requests for separate sections for any group of people with common burial needs but notes this should be able to be assessed in terms of the wider cemetery network rather than at an individual cemetery level.
 26. Agree with the Ministry's assertion, the requirement for local authority cemeteries to consider applications for separate sections for any group of people with common burial needs, as well as the provisions made for new community cemeteries or denominational burial grounds, would be sufficient in allowing for choice and meeting the burial demands for New Zealand.
 27. Support requirement for local authorities to create and maintain a cemetery policy to enable the community to have an opportunity to have a say on matters such as agreed maintenance standards, provision of special areas, and for there to be greater clarity and transparency on these matters.

Maintaining monuments

28. Support amendments to clarify the power of cemetery managers to maintain graves, despite any concurrent power or duty of maintenance falling on other people, including the relatives of the buried deceased to ensure Council can remove potential hazards to meet Health and Safety Act requirements. Note this would be a general power, not limited to when the grave is dangerous and non-cemetery manager powers could be conferred by virtue of a contract or bylaw and agreed as part of creating the cemetery policy.
29. Support proposal to provide an exception to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014, giving cemetery managers the power to work on a heritage gravesite where there are safety concerns.
30. Support continuation of similar powers for clearing closed cemeteries (removing monuments and tablets, etc) as are currently in section 45 of the Act in order to enable effective management of older cemeteries in some limited circumstances.

Approval of new cemeteries

31. Support requirement for any cemetery or burial place established before the new statute commenced and recognised under the current Act to be registered with the local authority and these would then be considered an approved cemetery. Council's Compliance Team already maintains registers of numerous premises under the Health Act 1956 and related regulations.
32. Oppose making approval for burial on private land (up to five bodies) the discretion of local authorities, who must approve such an application if certain criteria¹ are met. This would conflict with the RMA in terms of potential adverse effects from land uses (human remains, odour), cultural issues relating section 8 and tikanga and potential discharge of contaminants (e.g. contamination of water supply and soil contamination from pathogens, release of mercury from amalgum fillings, and embalming fluid containing formaldehyde, methanol, solvents and glutaraldehyde) into the environment. Burial of human remains should continue be managed under the RMA as a land use activity and discharge of a contaminant.
33. Support not exempting burials on private land from the resource consent process. This process provides for the assessment of adverse effects which as noted, is particularly relevant in considering tikanga Māori

¹ Criteria are: there is unlikely to be an adverse impact on any neighbouring land owners; the land is suitable for use as a cemetery; there is unlikely to be any adverse impact on surrounding land and waterways; the applicant has a strong family connection with the site and there is an adequate plan for the perpetual maintenance of the site as a cemetery.

and other cultural beliefs and consultation with affected parties. It would also be seen as inconsistent with the management of other land use activities and contaminants.

Unlawful burial

34. Support removal of outdated distance exemption described in C.1.4 of the consultation document. Note Waipā has a wide distribution of cemeteries across the district and good transport networks throughout the district.

Disinterment

35. Oppose devolution of decision making from the Minister of Health to local authorities for disinterments on local authority and non-local authority cemeteries. Typically, disinterments are a result of family disagreements and issues, and Council doesn't see itself having a role in adjudicating on such matters. This is particularly relevant in small rural councils where staff and councillors are generally residents within the district and widely connected within local communities. Agree with the Ministry's position that the Environment Court isn't the appropriate body to make decisions on multiple disinterments from local authority cemeteries and note that the Department of Internal Affairs may be the more appropriate organisation to make these and other disinterment decisions.
36. Support proposal the Ministry would provide detailed guidance about what the relevant decision-making bodies must consider in applications for disinterment and the procedures to be followed when disinterring a body.
37. Support an enabling pathway linked to the RMA for disinterment of private graves where the burial is causing adverse effects (e.g. contamination of soil or water supply), for cultural reasons, or for relocations to enable land development where this is agreed by whanau and authorities.

Section D Cremation regulations and the current medical referee system D3

Reform of cremation and crematorium management

38. Oppose the Ministry's preferred option of removing the role of the Minister of Health in consenting the construction of a crematorium, operating the cremator and making this the sole responsibility of local authorities under the processes of the RMA. The Minister of Health and Council have different and distinctive functions. It would be appropriate to better clarify these functions, so the Minister continues to approve crematorium for meeting Health Act requirements, and Councils continue to manage crematorium in respect of adverse effects on the environment (building bulk and location, traffic, noise, and discharges etc). Note one issue that has arisen in respect of crematorium is "perceived" effects of being located nearby. Crematorium can operate very discretely and successfully in residential areas (e.g. Motueka) but where new ones are proposed they can involve a perception element. We would suggest an amendment to the RMA section 3 definition of "effect" such that perceived effects are not able to be taken into account, and only actual or potential effects may be considered.
39. Neutral on the proposal a local authority would regulate permission to cremate or otherwise dispose of a deceased person's body other than in a crematorium. "Permission" to cremate needs to be sufficiently separate from "approval" of any resource consent. The criteria proposed would over-lap with RMA functions local authorities are responsible for anyway. To avoid a duplicate permission system, it is suggested local authorities could "license" private cremations (rather than permit) with licenses dealing with administrative issues such as safety, public health and fire risk, and the RMA continuing to apply for contaminant discharges. A license could be issued subject to any necessary resource consents being first

obtained. Note there could still be a role for the Minister in terms of considering matters under the Health Act.

40. Support with caveat, the proposal that the scattering of ashes (on land) will be managed by local authorities under the Resource Management Act 1991 and regional councils or unitary authorities would deal with consents for discharges to air. Ashes of any type fall under the RMA definition of “contaminant” so it is appropriate to manage these as discharges under the RMA (discharge to air, and also discharge to water and land where it may affect water). The complication comes about because of cultural sensitivities of iwi around scattering of ashes, particularly into waterways and on sites of significance. The RMA is poorly equipped to deal with cultural sensitivity. The caveat for support is the Burial and Cremations Act should clearly deal with the issue of cultural sensitivity, which would clarify the RMA is only concerned with discharge effects, not cultural sensitivity. The suggestion is the Burials and Cremations Act requires consultation with mana whenua for any scattering of ashes in culturally sensitive areas, as defined through publicly available resources such as Treaty Settlements, iwi management plans, or RMA plans and local authorities be required to develop a policy setting out where scattering of ashes is permitted and/or prohibited.

Section E New methods of body disposal

41. Agree with the Ministry’s preferred option of requiring every deceased person to have their body disposed of by an approved disposal method.

42. Support, in principle, the ability for new alternative methods to burial and cremation to be permitted by regulation with a clear criterion rather than leaving it to the resource consent process as is currently the case. This will create an adaptive framework that still ensures there are protections for the dignity of the deceased and any relevant cultural considerations, including tikanga Māori. However, we note the RMA should continue to manage effects on the environment (discharges, contamination, odour, land use effects etc) from any new methods permitted by regulation. There may be more efficient ways of approving new methods other than regulations such as notices issued by the Ministry of Primary Industries under The Food Act. There also needs to be clarification around disposal of remains, as opposed to storage or preparation e.g. the water cremation example is not disposal, that happens after the cremation process.



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