



Cemeteries Bylaw 2019

Explanatory Note

This Bylaw promotes the orderly and efficient management of cemeteries under the Council's control.

It should be read in conjunction with any policy or Code of Practice which Council has adopted and publicly notified in relation to cemeteries under its control.



Western Bay of Plenty District Council

Cemeteries Bylaw 2019

Contents

Definitions.....4

1. Council Cemetery Policy6

2. Related Legislation.....6

3. Rights of Burial6

4. Fees and Charges7

5. Burial.....7

6. Headstones and Monuments8

7. Control of Activities8

8. Exhumation 10

9. Offences and Breaches 10

10. Penalties 11

11. Right of Appeal 11



Authority

Pursuant to the powers vested in it under section 146(b)(v) the Local Government Act 2002, the Western Bay of Plenty District Council makes this Bylaw.

Title

This Bylaw is the Western Bay of Plenty District Cemeteries Bylaw 2019 and shall come into force on 30 September 2019.

Repeal

Chapter 3 of the Western Bay of Plenty District General Bylaw 2008 is repealed.

Bylaw Structure

This Bylaw comprises the document.

Scope

This Bylaw applies to the whole of the district administered by Western Bay of Plenty District Council, and other locations that are controlled by Western Bay of Plenty District Council, now and in the future.

Validation

The Western Bay of Plenty District Council Cemeteries Bylaw 2019 was duly made at a meeting of the Western Bay of Plenty District Council held on 29 August 2019, after completion of the Special Consultative Procedure, and will come into force on 30 August 2019.

Savings

All approvals, permits, and other acts of authority (including any resolutions of the Council) which originated under Chapter 3 of the Western Bay of Plenty District Council General Bylaw 2008, and all applications, and other acts of parties and generally all documents, matters, acts, and things which so originated and are continuing at the commencement of this Bylaw, continue for the purposes of this Bylaw to have full force and effect.

The revocation of Chapter 3 of the Western Bay of Plenty District Council General Bylaw 2008 does not prevent any legal proceedings, criminal or civil, being taken to enforce that bylaw and such proceedings continue to be dealt with and completed as if that bylaw had not been revoked.



Western Bay of Plenty District Council

Cemeteries Bylaw 2019

Pursuant to the powers vested in it under sections 16 and 40 of the Burial and Cremation Act 1964 and section 146 of the Local Government Act 2002, the Western Bay of Plenty makes this Bylaw.

Definitions

Act means The Local Government Act 2002.

Animal means any living stage of any member of the animal kingdom except human beings and in the case of any mammal, bird, fish, or reptile includes the carcass.

Approved means approved by the Council or by an Officer of the Council authorised in that behalf, and "approval" has a corresponding meaning.

Bylaw means a Bylaw of the Council for the time being in force, made under the provisions of any enactment enabling the Council to make Bylaws.

Cemetery means any land for the time being vested in the Council or under its control and dedicated and opened as a cemetery.

Consent means the Consent in writing given by the Council under this Bylaw authorising the person to whom the Consent is given to carry out any action or activity which is controlled by the provisions of this Bylaw or of any statutory enactment.

District means the area administered by the Western Bay of Plenty District Council

Driver in relation to any motor vehicle, means any person who uses or drives the motor vehicle on any Road, or causes or Permits it to be on any Road or to be driven on any Road, whether or not the person is present with the motor vehicle and includes any person apparently in charge of the motor vehicle.

Footpath has the meaning as in section 315(1) of the Local Government Act 1974.

Nuisance has the meaning as in the Health Act 1956, and includes anything obnoxious, offensive or injurious to the community or any member of it.

Offence includes any act or omission in relation to this Bylaw or any part of this Bylaw for which any person can be punished either on indictment or by summary process.

Ornaments are any object which is not structurally part of a headstone or concrete berm/beam provided. This includes, but is not limited to a flower, wreath, pottery, vase, figurine, decoration, art, memorabilia, tribute and adornment.



Person includes any individual person, or group of individual persons bound together by common purpose, and includes a body corporate or body sole

Plot means a grave plot in a cemetery laid off and shown upon the plan and, unless otherwise expressly stated, having the dimensions of 2.4m in length by 1.2m in width.

Road has the meaning as in the Land Transport Act 1998. It also means all land lying between the borders of a road including footpaths and berms.

Section means a property contained on one Certificate of Title and includes a cross-lease property.

Sexton means the person appointed by the Council as Sexton of the Cemetery.

Vehicle has the meaning as in the Land Transport Act 1998.



1. Council Cemetery Policy

- 1.1 The Council may from time to time by resolution adopt a policy or Code of Practice for the purpose of maintaining, preserving, or developing the amenities or facilities of any Cemetery or Cemeteries or crematoria under its control, or for any other purpose which the Council considers necessary for the proper and lawful operation of Cemeteries or crematoria under the Council control.

2. Related Legislation

- 2.1 Nothing in this Chapter of the Bylaw derogates from any provision of, or the necessity for compliance with –
- a) Burial and Cremation Act 1964;
 - b) Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967;
 - c) Cremation Regulations 1973;
 - d) Health (Burial) Regulations 1946.

3. Rights of Burial

- 3.1 Subject to the provisions of the Burial and Cremation Act 1964, every Cemetery must be open for the interment of all deceased Persons, to be buried with such religious or other ceremony, or without any ceremony, as the family and friends of the deceased think proper.
- 3.2 Burials may be made in any Cemetery in the District, which has not been lawfully closed, subject, in the case of Cemeteries under the control of the Council, to the provisions of this Bylaw.
- 3.3 The Council may sell Burial Plots according to the Council's normal terms and conditions, and where the exclusive right of burial has been granted in terms of section 10 of the Burial and Cremation Act 1964, that right may be subject to such terms and conditions as Council may prescribe.
- 3.4 Where a person has agreed to purchase the exclusive right of burial in any Plot or ground where no previous interment has taken place, such agreement shall lapse six months after the agreement date if the fee remains unpaid.



4. Fees and Charges

- 4.1 The fees and charges mentioned in this Bylaw do not include payment for any work required to be done beyond the actual digging of an ordinary grave and after burial, back-filling of the grave.
- 4.2 The Council may set fees and charges for all services provided for the operation and maintenance of Cemeteries and crematoria under its control.
- 4.3 The fees and charges payable in accordance with the provisions of this Bylaw may from time to time be amended or increased by the Council.

5. Burial

- 5.1 No interment may be made in any Cemetery without a burial warrant for that purpose, obtained from the Council by the person having the management or control of the burial, being presented to the Sexton as authority for burial.
- 5.2 The Council will not issue a burial warrant unless the fee for interment has been paid except that in the case of an interment under the control of a registered funeral director the Council may waive the need for prior payment and charge the cost directly to that registered funeral director.
- 5.3 Any burial must take place in the Plot as determined by the Council, and no headstone or monument may be erected unless all interment and other fees incurred at that time have been paid.
- 5.4 The minimum depth of a grave for a single interment must not be less than 1.6 metres and if more than one interment is to be made in the same Plot then a further 400mm must be dug to form an extra depth grave of 2 metres. The minimum depth of ground cover over any casket must not be less than one metre.
- 5.5 No person other than the Sexton or his or her assistant, or any person approved by the Council and working under the direct supervision of the Sexton, may dig any grave or open the ground for burial in any part of the Cemetery. Any grave dug by any "person approved by Council" will still incur the appropriate burial fee.
- 5.6 Notification of an intended burial must be given to the Sexton at least eight working hours prior to the time fixed for the funeral, except in cases of emergency, when, on the certificate of a medical practitioner or Coroner's order, a shorter notice will be accepted.
- 5.7 Every person who fills in any Plot after a burial must do all levelling and reinstatement work at his or her own cost and under the direct supervision of the Sexton.



- 5.8 Upon written application to the Council and payment of the prescribed fees, the urn containing the ashes of any deceased person may be buried in the appropriate part of the Cemetery set aside for that purpose, or in any Plot subject to an exclusive right of burial.

6. Headstones and Monuments

- 6.1 All above-ground grave structures, enclosures, ornaments, memorial headstones and other monuments may be installed only in accordance with a Consent issued by the Council and must be kept in good order and repair indefinitely by the purchasers of the Plots or their representatives.

Note: Headstone/monument maximum dimensions are available on the Council website at www.westernbay.govt.nz within the Memorial Headstone Application form.

- 6.2 All ornaments must be confined to the bounds of the concrete berm/beam located within the designated plot. Any ornament located outside of the concrete berm/beam may be removed and disposed of by the Sexton or Council's Maintenance Contractors.
- 6.3 The Council may carry out regular inspections of memorial headstones and other monuments to ensure that they present no danger or inconvenience to both the public and the Council's Maintenance Contractors.
- 6.4 Subject to the provisions of the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967, the Council –
- a) may remove any installation of any kind that has fallen into a state of decay or disrepair; and
 - b) may remove any item that did not receive consent under clause 6.1; and
 - c) must take a photographic record of the installation before it is removed and the photographic record must be retained in the Council's Cemetery records.
- 6.5 Before any monumental work commences a drawing and specification of the proposed monument must be submitted to the Council for approval.
- 6.6 Where the Council designates land for a Cemetery, Memorial Park or memorial feature, headstones and other monuments may only be erected subject to conditions specified by the Council.

7. Control of Activities

- 7.1 No person may remove from the Cemetery or from any Plot within the Cemetery, any monument, tablet, vase, wreath, plant, flower, or any other thing without first obtaining the Consent of the Council.



- 7.2 No person may do any work in any Plot in the Cemetery unless specifically authorised by the Sexton to do so.
- 7.3 No tree or shrub may be planted in any part of any Cemetery by any person without first obtaining the Consent of the Council.
- 7.4 No person may in or near any part of the Cemetery prevent, interrupt, or delay the decent and solemn burial of any body, or remains of any body.
- 7.5 No person may, in or near any part of the Cemetery, so conduct himself or herself as to be offensive, to be a nuisance, or to cause annoyance to Persons lawfully within the Cemetery.
- 7.6 Any person installing any memorial, or carrying out any other work in a Cemetery, within sight or sound of a funeral service must cease that activity and withdraw for the duration of the funeral service.
- 7.7 Any wreath or other floral tribute may be placed on a Plot but the Sexton may at any time remove receptacles which are damaged or of a type not approved by the Council, or any material that in his or her opinion is neglected, unsafe or broken, and may also remove at any time dead flowers and dead foliage.
- 7.8 No person may allow any animal within the Cemetery grounds without the Consent of the Sexton, with the exception of dogs.
- 7.9 Dogs are required to be restrained on a leash at all times within the Cemetery grounds.
- 7.10 Except at the specific request of the purchaser of a Plot or their representatives no person may, in any Cemetery, accept or solicit any custom from any other person for any work to be done in any Cemetery.
- 7.11 No person may take any photographs or moving images at a funeral without the consent of the funeral director or the family of the deceased.
- 7.12 No person may –
- a) drive or propel any vehicle of any kind in any Cemetery at a greater speed than 15km/h, or at a speed greater than that indicated on any road or sign within any Cemetery; and
 - b) unless authorised by the Council, drive or allow that vehicle to be on any part of any Cemetery except the roads open for vehicular traffic and in the direction indicated by traffic notices.
- 7.13 Vehicles may only be driven within the Cemetery grounds between the hours of 6.00am and sunset on the same day, unless prior arrangements have been made with the Sexton.



- 7.14 The Driver of any vehicle within the limits of a Cemetery must yield unconditional right of way to any funeral procession and must stop or move that vehicle as directed by the Sexton or his or her assistant.

8. Exhumation

- 8.1 Where an application for an exhumation is received by the Council, the exhumation must be conducted under section 51 of the Burial and Cremation Act 1964 and subject to payment of such fees as the Council prescribes.

9. Offences and Breaches

- 9.1 Every person commits a breach of this Bylaw who:
- (i) Does, or causes to be done, or permits anything to be done that is contrary to this Bylaw; or
 - (ii) Omits, or neglects to do, or permits to remain undone, anything which ought to be done by him or her at the time and in the manner provided in this bylaw; or
 - (iii) Does not cease any action which the person is required to cease under this Bylaw; or
 - (iv) Knowingly permits or allows any condition of things to exist or continue to exist contrary to this Bylaw; or
 - (v) Fails, refuses or neglects to comply with any notice duly given to that person under this Bylaw; or
 - (vi) Obstructs or hinders any Officer of the Council or other person appointed by the Council in the exercise of any power conferred on that officer or other person by this Bylaw;
 - (vii) Fails to comply with any notice, or direction, or conditions contained in any licence granted by the Council.
- 9.2 If a person fails to comply with a lawful notice, request, or order, given by an Authorised Officer or Enforcement Officer under this Bylaw the failure, whether wilful or otherwise, to comply with that notice, request, or order is a separate Offence on each day that such person so fails to comply.
- 9.3 Clause 9.2 does not relieve any person from any penalty which he or she may have incurred before receiving that notice, request, or order.



9.4 Subject to any Act, any person (including a member of the Police) may lay any information for an Offence against this Bylaw.

10. Penalties

10.1 Every person who commits an offence against this bylaw is liable to –

- (i) The penalty set out in section 242(4) of the Act, in relation to the provisions of the bylaw that are made under Part 8 of the Act; or
- (ii) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty in relation to the provisions of this bylaw that are made under that other enactment.

11. Right of Appeal

11.1 Any person who claims to be unfairly or adversely affected by any decision, order, or direction, given by an Authorised Officer of Council has the right of Appeal to the Council.

11.2 The Appeal must be in writing setting out the reasons for the Appeal and must be lodged within fourteen (14) days of the date on which the decision, order, or direction was given.

11.3 The Council may appoint any standing committee of Council to consider the Appeal and to hear Written or personal submissions from the appellant if the committee so decides.

11.4 The committee, after considering such evidence as it thinks necessary, may revoke, confirm, or modify the decision, order, or direction giving rise to the Appeal.