

WANGANUI DISTRICT COUNCIL

CEMETERIES AND CREMATORIA BYLAW 2008

EXPLANATORY NOTE

This bylaw facilitates the management of Cemeteries and Crematoria under the Council's control. It covers matters such as the exclusive right of burial, burial warrants, interments, disinterment memorials, vehicle control, keeping of records, fees and regulating other activities in cemeteries.

The authority to make by-laws is provided by the Burial and Cremation Act 1964.

Terms used in this Part are defined in Part 1 By-law Administration.

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1. TITLE

- 1.1. This Bylaw, known as the Wanganui District Council Cemeteries and Crematoria Bylaw 2008, is made pursuant to section 146 of the Local Government Act 2002 and section 16 of the Burial and Cremation Act 1964.

2. COMMENCEMENT

- 2.1. This bylaw shall come into force on 17 March 2009.

3. REPEALS

- 3.1. This bylaw revokes Part 7 - Cemeteries and Crematoria - Wanganui Consolidated Bylaw 1996.

4. OBJECTIVES

- 2.1. The objectives of this bylaw include:
- 2.1.1. To enable Council to control and set standards for the operation of cemeteries and crematoria under its control and management;
 - 2.1.2. To ensure that the interment of human remains is carried out in an appropriate manner;
 - 2.1.3. To protect the land and structures associated with cemeteries.

5. DEFINITIONS AND INTERPRETATION

- 5.1. In this bylaw, except where inconsistent with the context:

Approved means approved by Council or by any authorised committee or an authorised officer;

Authorised Officer means any person delegated, appointed or authorised in writing by the Chief Executive or by the Council to act on its behalf and with its authority;

Berm or garden cemetery means a cemetery or part thereof where no fence, kerbings or monuments other than headstones shall be erected;

Burial Plot means a burial plot laid off in any Cemetery;

Burial Warrant means the warrant issued for burial by an authorised officer;

Cemetery means all Public Cemeteries of which the Wanganui District Council has the control and management of under the Burial and Cremation Act 1964;

Cemetery Register means the register to be kept by the Council pursuant to section 15;

Continuing Offence means the continuing existence of any work, thing or state of affairs in a state contrary to the provisions of this Bylaw;

Council means the Wanganui District Council;

Cremation Plot means a plot laid off in any Cemetery;

Interment includes the burial of a dead human body in a burial plot and the burial of cremated human remains in a cremation plot;

Lawn Cemetery means such part or parts of any Cemetery as the local authority shall from time to time resolve to be lawn cemetery;

Memorial means any tombstone, headstone, or monument, and includes walls and trees;

Owner means the person recorded as being entitled to the exclusive right of burial in a burial plot or cremation plot;

Prescribed Fee means the fee or fees as may be set by Council resolution from time to time;

Public Holiday shall include Christmas Day, Boxing Day, New Year's Day, the second day of January (or some other day in its place), Good Friday, Easter Monday, Anzac Day, Labour Day, the birthday of the reigning Sovereign, Waitangi Day and Wellington Anniversary Day;

Recorded means recorded in the Cemetery Register;

Sexton means the person authorised by the Council to perform the duties of a Sexton;

Singular words may be read as plural where necessary.

6. EXCLUSIVE RIGHT OF BURIAL

- 6.1. Any person may acquire the **exclusive right of burial** in a **burial plot** in a Council cemetery, by applying to Council on the prescribed form, paying the prescribed fee and complying with the terms and conditions imposed by Council.
- 6.2. Council may, by resolution, determine the terms and conditions of the sale of the exclusive right of burial, including price and size of a burial plot.
- 6.3. Evidence of a purchase of the exclusive right of burial shall be recorded on a certificate of purchase and shall include the size of the burial plot.
- 6.4. A duplicate certificate of purchase may be issued on payment of the prescribed fee as fixed by Council.
- 6.5. Each exclusive right of burial shall be valid in perpetuity from the date of sale or such other time as determined by resolution of Council.
- 6.6. An owner of the exclusive right of burial, in which no burial has taken place may, transfer that right to any other person or to Council, subject to the written consent of an authorised officer and on payment of a transfer fee fixed by Council.
- 6.7. Council may obtain, from the owner, the transfer of the exclusive right of burial at the cost of purchase minus an administrative fee or at such other cost as determined by resolution of Council.
- 6.8. No person shall be entitled to obtain an exclusive right of burial to more than two plots in a cemetery except with the prior written permission of an authorised officer.

7. BURIAL WARRANT

- 7.1. No burial shall be made in any Cemetery without a **burial warrant** first being obtained from an authorised officer.
- 7.2. For all burials, the Funeral Director or, where the services of a Funeral Director are not being used, the Executor of the Estate/appointed family member shall apply for the burial warrant on the Burial Application form issued by the Council, and shall provide appropriate evidence of the death and payment of the prescribed fee.

- 7.3. For avoidance of doubt the person signing the Burial Application is responsible for paying the prescribed fee.
- 7.4. The payment of the prescribed fee may be waived, or may be subject to agreement for it to be paid by instalments, at the discretion of an authorised officer.
- 7.5. No burial warrant shall be issued by an authorised officer unless:
 - 7.5.1. evidence of death has been provided;
 - 7.5.2. the exclusive right of burial has been purchased;
 - 7.5.3. the prescribed fee paid; or
 - 7.5.4. satisfactory arrangements have been made in writing for the payment of the prescribed fee.
- 7.6. A burial warrant may be issued for the burial of any urn, containing the ashes of any deceased person, in any burial plot provided the exclusive right of burial in that burial plot has been purchased and the burial plot has already been used or is intended to be used for the burial of a body.
- 7.7. Notification of an intended burial must be given to an authorised officer at least eight (8) working hours prior to the time fixed for the funeral, or at least twenty four (24) working hours prior to the time fixed for a funeral in a rural cemetery, or at least four (4) working hours for an ashes burial or at least eight (8) working hours prior to the time fixed for a ashes burial in a rural cemetery.
- 7.8. If the required notification is not given to the Sexton an additional fee may be payable to the Council.
- 7.9. No interment will be permitted until the burial warrant is delivered to the Sexton.
- 7.10. The burial warrant will be sufficient authority for the Sexton to carry out a burial and after the burial the Sexton will sign the burial warrant.

8. PROCEDURE FOR BURIAL

- 8.1. Subject to section 86 of the Health Act 1956 (the burial of people who have died from an infectious and/or notifiable disease) no burial shall take place on
 - 8.1.1. Christmas Day, Good Friday or Sundays; or
 - 8.1.2. outside the hours of 8.00am and 4.00pm on any weekday; or
 - 8.1.3. outside the hours of 8.00am and 1.00pm on Saturdays and Public Holidays;without the prior written consent of the Sexton.
- 8.2. No burial service shall commence after 11.30am on Saturdays; or after 3pm on any other day without the prior written consent of the Sexton.
- 8.3. Burials may take place outside the times specified in clause 8.1 and 8.2 but only by arrangement with an authorised officer and on payment of any prescribed additional fee.
- 8.4. No person other than a person authorised by the Sexton shall dig a grave.
- 8.5. The minimum depth of spoil cover over any casket shall be one (1) metre.
- 8.6. No burial shall take place in any plot without the prior written consent of the owner of the exclusive right of burial to that plot.
- 8.7. Where the prior written consent of the holder of the exclusive right of burial or their authorised representative cannot be obtained the Funeral Director responsible for the burial may proceed with the burial if the Funeral Director is satisfied that the burial is authorised.
- 8.8. An authorised officer may from time to time prescribe the requirements for and the form of the consent required pursuant to clause 8.7.
- 8.9. No grave may be reopened for a further burial except with the prior written consent of an authorised officer, and such consent shall permit only the burial of a person who is a relative of the person already buried in that grave.
- 8.10. Not more than three persons shall be buried in any one plot without the prior written consent of an authorised officer provided that there is at least 1.0 metres of spoil cover.

9. MEMORIALS

- 9.1. The Council may from time to time by resolution determine what memorials may or may not be erected in any portion of a cemetery and the terms and conditions on which they may be erected the provision for the payment of a bond.
- 9.2. No person shall erect a memorial in a cemetery without a memorial permit issued by the Sexton subject to any reasonable conditions imposed under clause 9.1.
- 9.3. No person shall erect any memorial or other structure in or on any plot in any cemetery, unless the exclusive right of burial in that plot has been purchased and the appropriate application form has been completed and approved and all the prescribed fees have been paid.
- 9.4. All memorials shall be kept in proper order and repair by the owner of the plot or his or her representatives.
- 9.5. Council may remove or restore to its original condition any memorial that is -
 - 9.5.1. erected or altered in breach of this Bylaw, or
 - 9.5.2. is in such disrepair that the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967 or their amendments apply;
 - 9.5.3. provided that, before removing or restoring any such memorial, Council shall take a photographic record of the plot and that photographic record shall be filed with the cemetery records.
- 9.6. No shrubs or trees shall be planted in any cemetery by any person without the written consent of an authorised officer.

10. INTERFERENCE WITH MEMORIALS

- 10.1. No person shall, without the written authority of an authorised officer;
 - 10.1.1. remove from any cemetery, or from any grave, any headstone, monument or tablet; or
 - 10.1.2. remove or take from any cemetery or from any grave, except for the purpose of tidying the same, any vase, wreath, plant, flower or any other article; or
 - 10.1.3. disturb or damage or take or pick any cutting or flower from any tree, shrub, plant or other growth in the cemetery; or

- 10.1.4. plant, cut down or destroy any tree or shrub in any cemetery; or
- 10.1.5. except at the time of interment, place on any plot any wreath or floral tribute, whether natural or artificial, *provided however* that natural cut flowers or artificial imitations thereof may at any time be placed on any plot, in a receptacle, approved and located to the satisfaction of the Council.

11. MAINTENANCE OF PLOTS

- 11.1. The Council will maintain any plot in any cemetery for such period as the Council may determine to be the useful life of the cemetery for cemetery purposes.
- 11.2. The fee for the purchase of a plot in any cemetery shall include an amount as prescribed by the Council for the maintenance of such plot for the period as determined by the Council.
- 11.3. For the avoidance of doubt maintenance of a plot does not include the maintenance of any memorial.

12. DISINTERMENT

- 12.1. The disinterment of a body must be conducted pursuant to sections 51 and 55 of the Burial and Cremation Act 1964.
- 12.2. No disinterment shall take place without an application being made to and granted by the Sexton.
- 12.3. The disinterment of a body must be conducted only with the prior written consent of the Sexton or his/her authorised representative, and must take place only in the presence of:
 - 12.3.1. the Sexton or his/her authorised representative; and
 - 12.3.2. a Funeral Director and staff; and
 - 12.3.3. Ministry of Health Inspectors; and
 - 12.3.4. any other person with prior written consent of an authorised officer.
- 12.4. Every application shall be accompanied by a licence to disinter issued pursuant to section 51 of the Burial and Cremation Act 1964 and the prescribed fee.
- 12.5. The Council shall be responsible for the opening of the grave only to the extent of exposing the lid of the casket. Removal of the casket from the burial plot shall be the responsibility of the Funeral Director present.

- 12.6. Every disinterment shall be carried out by the Sexton or his/her authorised representative.

13. CREMATION

- 13.1. All cremations must comply with the Cremation Regulations 1973 or amending or substituting regulations.
- 13.2. An application for cremation, in the form prescribed in the Cremation Regulations 1973, shall be made to the Council and accompanied by the prescribed fee.
- 13.3. Bookings for cremations must be received, with all required documentation completed, eight (8) working hours before the committal time booked.
- 13.4. Before a body will be accepted for cremation, a certificate must be produced confirming that enquiries have been made by the Funeral Director or, where the services of a Funeral Director are not being used, the Executor of the Estate/appointed family member, of the family or medical practitioner whether the deceased has been subject to any treatment (such as strontium-89 for bone metastases, or iodine-125 for prostate cancer) which may cause an unnecessary risk to the health or equipment of the Cremator or Crematoria staff and the immediate surrounds.
 - 13.4.1. If the enquiries produce an answer in the affirmative, the safety of cremation must be confirmed by the medical practitioner licensed under the Radiation Protection Act 1965 who prescribed the treatment before the cremation is permitted to proceed.
- 13.5. The casket containing the deceased person intended for cremation shall be made of a combustible material approved by the Council, shall be sturdy in nature, and shall be of a size that will be accepted by the incineration process.
- 13.6. The casket shall have a smooth flat exterior base and all lead, iron or zinc linings must be removed prior to presentation for cremation.
- 13.7. No casket shall be opened after admission to the crematorium without the consent of the Sexton.
- 13.8. Two persons properly concerned with the cremation of the deceased may see the casket placed in the incinerating hall.
- 13.9. No person shall be entitled to inspect the actual process of incineration.

- 13.10. All cremations shall be held between the hours of 8.00am and 5.00pm Monday to Friday, or 8.00am to 1.00pm on Saturday or such other time as the Sexton may permit.
- 13.11. No ashes of a deceased person shall be buried in any cemetery without an application being made to and accepted by the Sexton.
- 13.12. An application for burial of the ashes of any deceased person shall be accompanied by the prescribed fee or satisfactory arrangements have been made in writing for the payment of the prescribed fee.
- 13.13. The Council shall act in accordance with the instructions on the 'Register of Cremations' form authorised by the applicant for the disposal of ashes provided that ashes shall be held in the crematorium for only fifteen (15) working days after the cremation and then returned to the Funeral Director handling the cremation.
- 13.14. The Funeral Director will ensure proper delivery of the casket directly on the bier or on the catafalque. Once the casket has entered the crematorium, it is the responsibility of Council and cannot be removed from the premises.

14. FLORAL TRIBUTES

- 14.1. Floral tributes may be placed on the soil of a plot following a burial within the lawn cemetery, but shall be removed within the two month period following burial.
- 14.2. In all other cases floral tributes will be restricted to containers that can be housed on the memorial or the concrete berm.
- 14.3. Non complying vases or planters or neglected, unsafe or broken containers may be removed by Council staff.

15. RECORDS

- 15.1. Every plot in each cemetery shall be identified by a number which shall be recorded on plans kept in the Council offices.
- 15.2. A permanent cemetery register shall be kept of all plots for which exclusive rights of burial or ashes interment have been purchased, together with names and dates of interment of any persons buried in such plots. Duplicates of the plans shall be kept by the sexton.

- 15.3. The plans and cemetery register shall be open for inspection during ordinary working hours, upon payment of any prescribed fee for inspection or the production of a certified extract from the cemetery register.
- 15.4. The Council will endeavour to give the correct boundaries of any plot or plots when selling an exclusive right of burial, but shall not be liable to the purchaser for any error subsequently found, whether as to survey or otherwise; and the Council shall not be bound to point out the limits of any plot for which the exclusive right of burial has been so purchased.

16. NOTICES

- 16.1. The Council may give notice to any person in breach of this Bylaw to carry out any remedial action in order to comply with the provisions of this Bylaw and every such notice shall state the time within which the remedial action is to be carried out, and may be extended from time to time.

17. REMOVAL OF WORKS

- 17.1. Where the notice served under clause 16 has not been complied with, the Council or any authorised officer or agent of the Council, may pull down, remove or alter any work, material or thing erected or being in contravention of this Bylaw.
- 17.2. The Council may recover from any person responsible for the breach of any part of this Bylaw, all expenses incurred by it in connection with such pulling down, removal or alteration. This includes the cost of debt collecting and legal fees.
- 17.3. The exercise of this authority does not relieve any such person from liability for any penalty for erecting or permitting the continued existence of any such work, material or thing.
- 17.4. If however the breach is such that public health, or safety considerations or risk of consequential damage to Council assets is such that delay would create unacceptable results, the Council may take immediate action to rectify the defect and recover all reasonable costs (as set out in).
- 17.5. On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under.

- 17.6. If not claimed within a reasonable time the Council may dispose of any object, material or thing as it sees fit and apply the proceeds to meet any outstanding costs. The lawful owner shall be entitled to claim any residual sum.

18. VEHICLES

- 18.1. No person shall bring any vehicle into any cemetery other than for the purpose of attendance at a funeral, visiting a burial place or in respect of any authorised officer undertaking their normal duties, or at the express permission of Council.
- 18.2. No person shall, without the prior written permission of an authorised officer:
- 18.2.1. take any vehicle into any cemetery during the hours of darkness. The hours of darkness means those hours commencing half an hour after sunset and finishing half an hour before sunrise the next day;
 - 18.2.2. permit any vehicle under his or her control to remain in any cemetery during the hours of darkness;
 - 18.2.3. drive any vehicle on any part of the cemetery except on the roads provided for vehicular traffic;
 - 18.2.4. drive any vehicle in any cemetery except in the direction indicated by traffic notices;
 - 18.2.5. park any vehicle in any cemetery except in conformity with the directions of an authorised officer or in accordance with the terms of any displayed traffic sign or notice.
- 18.3. Every person driving any vehicle in any cemetery shall stop or move such vehicle in accordance with the directions of an authorised officer.
- 18.4. All vehicles shall yield unconditional right of way to any funeral procession in any cemetery.

19. GENERAL

- 19.1. The Council may from time to time by resolution determine conditions of use of any cemetery and any crematorium.
- 19.2. The Sexton in his or her sole discretion, at any time, may trim, cut down or remove any plant in any portion of the cemetery;
- 19.3. The Sexton in his or her sole discretion, at any time, may remove dead flowers, foliage or any other items.

- 19.4. No person shall, without the prior written consent of the Sexton:
 - 19.4.1. remove any plant or memorial from any cemetery;
 - 19.4.2. remain in the cemetery during the hours of darkness
- 19.5. No person shall:
 - 19.5.1. breach the conditions of use of a cemetery or crematoria;
 - 19.5.2. unlawfully or improperly interfere with or interrupt any burial, cremation, funeral service, memorial service or unveiling service;
 - 19.5.3. behave in a manner which is likely to create a nuisance or an offense to any other person;
 - 19.5.4. unlawfully or improperly interfere with any vase, wreath, plant, flower, or any other thing placed on or about a grave;
 - 19.5.5. allow any animal, other than any Guide Dog, to accompany him or her into any cemetery;
 - 19.5.6. take any photograph or video recording at any funeral for the purposes of sale or publication, without the written permission of the funeral party concerned;
 - 19.5.7. advertise or solicit any order or custom from any other person for any work whatsoever to be done in or in connection with any cemetery, or for the sale, preparation, or supply of any article, to be set up, affixed, placed, or used in any cemetery;
 - 19.5.8. allow any alcohol to be brought into, placed in or consumed in any cemetery;
 - 19.5.9. deface, damage or interfere with any memorial or grave;
 - 19.5.10. take part in any gathering other than for the purpose of a religious or other ceremony of a burial or memorial unveiling.

20. POWERS

Dispensing Powers

- 20.1. An authorised officer may, on the special application of any person, dispense with the full compliance with any of the provisions of this Bylaw where full compliance would cause undue hardship to a member of the deceased's family without any corresponding benefit to the community; provided that the authorised officer may impose any other appropriate term or condition that shall be complied with by that family member.

Resolution of Council

- 20.2. Council may, from time to time, by resolution of Council fix fees; charges; terms and conditions for the payment of fees; and make minor changes to, or correct errors in, this Bylaw, but only if the changes or corrections do not affect an existing right, interest, title, immunity, or duty of any person to whom the Bylaw applies; or an existing status or capacity of any person to whom the Bylaw applies:

21. FEES

- 21.1. Council may from time to time by resolution fix fees and charges payable for:
- 21.1.1. An application for a burial warrant;
 - 21.1.2. Reservation of a burial plot
 - 21.1.3. Exclusive right of burial;
 - 21.1.4. The transfer of an exclusive right of burial;
 - 21.1.5. Obtaining a memorial permit;
 - 21.1.6. Headstones and Memorials;
 - 21.1.7. The disinterment of a body;
 - 21.1.8. An application for cremation;
 - 21.1.9. Cremation outside normal hours;
 - 21.1.10. Burial outside normal hours;
 - 21.1.11. The maintenance of graves;
 - 21.1.12. The burial of the ashes of a deceased person;
 - 21.1.13. The use of any building provided for the preservation of the ashes of a deceased person;
 - 21.1.14. Records search; and
 - 21.1.15. Any other service in the cemetery.
- 21.2. The Council may from time to time by resolution set any terms and conditions for the payment of any fee, including payment on an instalment basis.
- 21.3. The scale of fees and charges will be available from the Customer Services Manager of the Council, the Sexton or the Council website.

22. OFFENCES

- 22.1. Every person commits a breach of this bylaw who:

- 22.1.1. commits, or causes to be committed, any act contrary to this Bylaw, or
 - 22.1.2. omits, or knowingly permits to remain undone, any act required by this bylaw, or
 - 22.1.3. refuses or neglects to comply with any notice, or any condition in any such notice, whether public or private, given pursuant to this bylaw, or
 - 22.1.4. obstructs or hinders any Council officer in the performance of any power, or duty conferred upon him or her by this bylaw.
- 22.2. Every person who commits a breach of any of the provisions of this Bylaw shall be liable to a fine and where the offence is a continuing one then to a further fine for every day or part day during which the offence has continued.
- 22.3. Where it is suspected that any person has committed a breach of this Bylaw, that person shall, on the direction of an authorised officer, provide their full name and address.

23. PENALTIES FOR BREACH OF BYLAW

- 23.1. Pursuant to section 16(1(i)) of the Burial and Cremation Act 1964, any person breaching this Bylaw will be liable for a fine of \$100 in any case, and, where the breach is a continuing one, \$10 a day for every day or part of a day during which the breach has continued.

The maximum penalty on summary conviction is \$20,000.00.

This By-law was confirmed at an Ordinary Meeting of the Council held on the 16th day of March 2009, when it was ordered to come into force on the 17th day of March 2009.

**THE COMMON SEAL OF THE
MAYOR, COUNCILLORS AND
CITIZENS OF THE DISTRICT
OF WANGANUI** was affixed
hereto in the presence of:

.....
Mayor

.....
Chief Executive Officer