

Open Meeting

To	Waikato District Council
From	Clive Morgan General Manager Community Growth
Date	20 June 2019
Prepared by	Melissa Russo Corporate Planning Team Leader
Chief Executive Approved	Y
Reference #	GOV1301 / 2311315
Report Title	Cemeteries Bylaw approval for Consultation

I. EXECUTIVE SUMMARY

This report seeks approval to consult on the proposed amendments to the Cemeteries Bylaw 2016 ("Bylaw") in accordance with section 82 of the Local Government Act 2002 ("Act").

Following a review of the Bylaw in 2016, Council received feedback from the community regarding the pre purchase of burial plots (clause 6.2). Clause 6.2 limits the pre purchase of a maximum of two plots at the time of burial only. No feedback was received on any other clauses of the Bylaw.

As a result of that feedback, Council is now proposing to amend clause 6.2 of the Bylaw to allow the pre purchase of a maximum of two plots to occur at any time.

In order to determine what type of public consultation on the proposed amendment, should occur, Council is required to determine:

- I. Under section 156 of the Act, whether:
 - a. the bylaw concerns a matter identified in the Significance and Engagement Policy as being of significance interest to the public; or
 - b. there is or likely to be, a significant impact on the public due to the proposed changes to the bylaw.

The proposed amendment does not concern a matter identified in the Significance and Engagement Policy. Further, on the basis that the proposed amendment is a result of public feedback, staff do not consider the amendment to the Bylaw is likely to have a significant impact on the public. As such, it is recommended that the public consultation on the proposed amendment be carried out in accordance with section 82 of the Act instead of the special consultative procedure as required under section 83.

Section 82 is a less prescribed form of consultation than section 83 requirements, as the provision for opportunities for verbal submissions are not required and a Statement of Proposal does not need to be adopted by Council.

It is proposed that public consultation will be carried out between 21 August and 22 September 2019. In doing so, funeral directors and monumental masons will be targeted directly inviting feedback on the proposed amendments. Feedback will be able to be received from the general public through an online feedback form via our website.

2. RECOMMENDATION

THAT the report from the General Manager Community Growth be received;

AND THAT, as required under section 156 of the Local Government Act 2002, Council determine that the proposed amendment to the Cemeteries Bylaw 2016:

- (a) does not concern a matter identified in the Significance and Engagement Policy as being of significance interest to the public; or**
- (b) is not or is not likely to be a significant impact on the public;**

AND FURTHER THAT, under section 82 of the Local Government Act 2002, Council approves the commencement of public consultation on the proposed amendments the Cemeteries Bylaw 2016 between 21 August and 22 September 2019.

3. BACKGROUND

The Bylaw includes clause 6.2 which restricts the pre-purchasing of plots to be able to occur the time of burial only. A review of the Bylaw took place in 2016 and, as a result, feedback was received from the public regarding this clause.

A workshop with Council was held in late 2018 whereby the issue was discussed and amendments to clause 6.2 were suggested, allowing the pre purchasing of plots at any time up to a maximum of two plots. The proposed amendments to clause 6.2 are shown in the paragraph below.

6.2 Any person is entitled to purchase an exclusive right of burial for no more than two plots. ~~Any relative of a person who has bought such right may purchase two adjacent plots at the time of burial only.~~

4. DISCUSSION AND ANALYSIS OF OPTIONS

4.1 DISCUSSION

Approval is being sought from Council to consult with the public on the proposal to amend clause 6.2 of the Bylaw.

Under the Act, public consultation can occur either in accordance with section 82 or section 83. The decision as to which section should apply must be made by Council through consideration as to the significance of the proposal.

If public consultation is approved, submissions would be received between 21 August and 22 September 2019.

4.2 OPTIONS

1. Determine the proposed amendment to the Bylaw:
 - (a) does not concern a matter identified in the Significance and Engagement Policy as being of significance interest to the public; or
 - (b) will not have a significant impact on the public;

And approve public consultation to take place in accordance with section 82 of the Act as proposed.

This option is recommended as the proposed amendment is not considered to be significant.

2. Determine the proposed amendment to the Bylaw:
 - (a) concerns a matter identified in the Significance and Engagement Policy as being of significance interest to the public; or
 - (b) will have a significant impact on the public;

And approve consultation to occur by way of special consultative procedure to take place in accordance with section 83 of the Act and adopt the Statement of Proposal as appended to this report.

This option is not recommended as the proposed amendment is not considered to be significant.

5. CONSIDERATION

5.1 FINANCIAL

There are no financial implications of the proposed amendments to the bylaw as consultation resourcing will be funded through existing budgets however consultation under section 83 requires more resourcing by way of staff time than that of consultation under section 82. This additional resourcing would be required to organise and facilitate the hearing of verbal submissions.

5.2 LEGAL

Determination of Significance

In order to determine whether public consultation of the proposed amendment should occur under section 82 or section 83 of the Act, Council must establish (in accordance with s156) whether:

- a. the bylaw concerns a matter identified in the Significance and Engagement Policy as being of significance interest to the public; or
- b. there is or likely to be, a significant impact on the public due to the proposed changes to the bylaw.

The Significance and Engagement Policy (“Policy”) provides guidance on how to determine the level of significance of an issue and the appropriate levels of public engagement. Generally, the greater the significance of an issue, the greater the need for community engagement.

The Policy sets out the matters which must be taken into account when assessing the degree of significance of a proposal or decision and includes:

- Whether there is a legal requirement for engagement with the community;
- Whether the proposal or decision will affect a large portion of the community;
- The likely impact on present and future interests of the community, recognising Maori culture values and their relationship to land and water;
- Whether community interest is high;
- Whether the likely consequences are controversial;
- Whether the community views are already known, including the communities preferences about the form of engagement; and
- The form of engagement used in the past for similar proposals and decisions

The proposed amendment is not considered to be significant under the Policy as the amendment itself is minor and is a direct result of feedback from the community which was received during the review of the Bylaw. Members of the community indicated that they wished to be able to pre purchase burial plots at any time, rather than be limited to only the time when a person is to be buried.

If Council determines that the proposed amendment is not of significance, standard public consultation under section 82 of the Act can occur. Under section 82, Council is not required to provide opportunities for oral submissions, or adopt a Statement of Proposal.

If Council determine the proposal to be of a higher significance (either in accordance with the Policy or simply because the amendment is or is likely to have a significant impact on the public), consultation must be carried out in accordance with section 83 of the Act. Consultation under the Special Consultative Procedure (section 83) requires Council to:

- Adopt a Statement of Proposal including information regarding Council’s consideration of the matters referred to in section 155 of the LGA.
- Provide an opportunity for people to make oral submissions (this will require Council to facilitate a public hearing).
- Consultation be for no less than one month

Requirements for Special Consultative Procedure (section 83 of the Act)

If Council considers that the proposed amendment to the Bylaw should be subject to the special consultative procedure under section 83 of the Act, section 86 of the Act provides that additional information must be included in the Statement of Proposal. The additional information required is a report on any determinations made by Council under section 155 of the Act.

Section 155 of the Act requires Council to determine whether the proposed bylaw:

- a. is the most appropriate way of addressing the problem or perceived problem;
- b. is the most appropriate form of bylaw; and
- c. gives rise to any implications under the New Zealand Bill of Rights Act 1990.

a. Most appropriate way to addressing the problem or perceived problem

This will have been considered and determined at the time the Bylaw was adopted by Council and is not required to be reconsidered when making amendments.

b. Most appropriate form of bylaw

The proposed amendments to the Bylaw align with the feedback received from the community in response to the review of the Bylaw and are therefore considered to be the most appropriate form.

c. Implications under the New Zealand Bill of Rights Act 1990

Section 155(2) of the Act requires the Council to determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990. No bylaw may be inconsistent with this legislation.

The New Zealand Bill of Rights Act 1990 details a number of rights and freedoms in relation to life and security of people.

It is considered that the proposed amendment to the Bylaw is not in conflict with, or gives rise to any implications under the New Zealand Bill of Rights Act 1990. The proposed amendment will simply allow the pre purchase of plots at any time, not limit it to when a person is to be buried.

The amendment has been proposed in response to feedback received from our communities.

5.3 STRATEGY, PLANS, POLICY AND PARTNERSHIP ALIGNMENT

Nil.

5.4 ASSESSMENT OF SIGNIFICANCE AND ENGAGEMENT POLICY AND OF EXTERNAL STAKEHOLDERS

Highest levels of engagement	Inform	Consult	Involve	Collaborate	Empower
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the Council determines the proposal is not significant in relation to the Significance and Engagement Policy, consultation under section 82 of the Act will follow.					

	<p>Contact will be made with funeral director and monumental masons within the district inviting them to make a submission. Contact will also be made with those who have provided feedback on clause 6.2.</p> <p>Notices will be placed in local papers and information will be available on Council's website inviting those interested to make a submission.</p>
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State below which external stakeholders have been or will be engaged with:

Planned	In Progress	Complete	
		Y	Internal
Y			Community Boards/Community Committees
			Waikato-Tainui/Local iwi
			Households
Y			Business
Y			Other: Funeral directors/monumental masons

6. CONCLUSION

Approval is sought from Council to commence public consultation on the proposed amendment to clause 6.2 of the Cemeteries Bylaw.

The amendment proposed enables members of the public to pre-purchase a maximum of two plots at any time instead of the current arrangement which limits purchasing of plots to occur only at the time of burial.

The amendment arises from feedback received from the public as a result of a review of the Cemeteries Bylaw and is considered to be minor.

It is recommended that public consultation under section 82 of the LGA commence on 21 August.

7. ATTACHMENTS

Appendix 1 – Statement of Proposal including the Proposed Cemeteries Bylaw 2016 (NOTE: only required if consultation undertaken under section 83 of the Act (Option 2 above)).
Appendix 2 – Submission form