

Kaipara District Council

Consolidated General Bylaw 2020

Made by Kaipara District Council by Resolution in Council: 28 October 2020

Commencement: 1 December 2020



Kaipara te Orangahui

**KAIPARA
DISTRICT**

Two Oceans Two Harbours

Consolidated General Bylaw 2020

Part 7 – Cemeteries and Crematoria

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1. Purpose

1.1 Cemeteries play a very important role in our community. Kaipara District Council administers six cemeteries in the Kaipara area. They are old Mt Wesley, new Mt Wesley, Dargaville (Mt Wesley) RSA, Redhill, Arapohue and Tokatoka. All of the cemeteries which Council administers have Historical Significance as they have been going for over a 100 years.

All other cemeteries are administered by Trustees - people who live within the area where the cemetery is located. They are open to the public seven days a week, 52 weeks a year.

1.2 The purpose of this Part of the Bylaw is to enable Council to control and set standards for the operation of cemeteries and crematoria within the district.

2. Interpretation

2.1 In this Part of the Bylaw, unless the context other requires:

Cemetery means any land vested in or under the control of Council from time to time that is held, taken, purchased, acquired, set apart, dedicated, or reserved, under the provisions of any Act, or before the commencement of the Burial and Cremation Act 1964, exclusively for the burial of the dead generally, and, where the context so permits, includes a closed cemetery.

Closed cemetery means a cemetery which has been closed by a closing order.

Concrete berm means a load bearing structure fabricated from concrete of prescribed dimensions, set flush with the ground and supplied by the Council, for the purpose of mounting monuments.

Crematorium means appliances and machinery and furnaces for the purpose of cremation that are under the control of Council, and includes any building in which any such appliances, machinery, or furnaces are fixed.

Removal means the removal of any body, or the remains of any body, from its burial place. Exhumation has the same meaning.

Exclusive right of burial means the exclusive right of burial referred to in Section 10 of the Burial and Cremation Act 1964

Authorised officer means any person appointed by Council to control or manage or to assist in the control and management of any cemetery and crematorium under the control of Council and to carry out burials and cremations as provided in this Part of the Bylaw.

2.2 Nothing in this Part of the Bylaw shall derogate from any provision of, or the necessity for, compliance with:

- a. Burial and Cremation Act 1964
- b. Health Act 1956
- c. Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967

- d. Cremation Regulations 1973
- e. Health (Burial) Regulations 1946.

3. Hours of burials

- 3.1 Burials at cemeteries administered by the Kaipara District Council may be held on such days and at such times as the Council shall determine.
- 3.2 Except to comply with the duties of the Council under Section 86 of the Health Act 1956 relating to the burial of people who have died of an infectious and/or notifiable disease, Council by resolution publicly notified the days and times to which burials may take place.
- 3.3 No burials shall take place on New Year's Day, ANZAC Day, Good Friday or Christmas Day.
- 3.4 The Authorised Officer will, after consultation with the funeral director or other person responsible for the management or control of the burial, determine the time of the burial.
- 3.5 Burials that occur during the weekend will incur additional fees/charges.
- 3.6 Burials may take place at other times than specified in clause 3.2 by special arrangement with the Council and on payment of the prescribed additional fee.

4. Notice of burial

- 4.1 The Authorised Officer shall be given at least two (2) working days' notice prior to any burial.
- 4.2 If such notice is not given, the burial may be delayed for such reasonable period of time as the Authorised Officer decides to enable the Authorised Officer to make the necessary arrangements.
- 4.3 Any extra expenses incurred because of late notice shall be the responsibility of the funeral director or other person responsible for the management or control of the burial.
- 4.4 An additional fee maybe charged where notice has been received less than two (2) working days prior to burial.

5. Burial of persons in financial need

- 5.1 Where an application is made to the Council for the interment of a deceased person in financial need, the applicant shall provide a declaration signed by a Justice of the Peace, certifying that:
 - a. the deceased person has not left sufficient means to pay all the prescribed fees
 - b. all the prescribed fees are not covered by an Accident Compensation or Government entitlement or subsidy
 - c. the deceased person's relatives are unable or unwilling to pay the prescribed fees.
- 5.2 Additional proof to confirm the declaration may be required by the Council.

Explanatory Note: Council will work with family or undertaker as appropriate to arrange burial under mutually satisfactory conditions.

6. Fees

- 6.1 The Council may by resolution, publicly notified, set fees for all services provided for the operation and maintenance of cemeteries and crematoria.
- 6.2 Except as provided for in clause 5.1, burials will only be carried out on payment of all the prescribed fees or suitable financial arrangement acceptable to the Council have been made.
- 6.3 Out of district fees:
- a. An out of district fee shall be payable under the following circumstances:
 - i. where the burial is of a deceased person not permanently residing within the boundaries of the Kaipara District for at least twelve months prior to date of death or
 - ii. where the deceased person is a child of less than twelve months of age, including stillborn children, unless one of whose parents was a resident or ratepayer of the district for at least six months prior to date of death.
 - b. Temporary absences of short duration from the district will not detract from the permanency of residence.
 - c. The Council will determine if payment of the out of district fees are required.

7. Maintenance of memorials

- 7.1 All memorials, including laminated photographs, shall be kept in proper order and repair by the owner of the plot or their representatives.
- 7.2 Should a memorial fall into a state of decay or disrepair, it may be at any time be dealt with by Council pursuant to the Burial and Crematorium (Removal of Monuments and Tablets) Regulations 1967.

Explanatory Note: A photographic record of the memorial will be taken prior to any removal and retained in Cemetery records.

8. Physical works associated with plots or other work in any cemetery

- 8.1 Maintenance or other work, including digging and/or filling any grave in a cemetery, may only be carried out by an employee of the Council, or a person authorised by the Council.
- 8.2 Any Authorised person undertaking physical works within any cemetery must:
- a. obtain prior approval from the Council for the works
 - b. pay all applicable fees
 - c. adequately protect the surrounding plots, memorial and cemetery infrastructure
 - d. not use any footpaths or other part of the cemetery for placing or depositing any tools, planks or materials for longer than is reasonably necessary to complete that work.

9. Soliciting trade

- 9.1 With the exception of the transactions of the Authorised Officer and their staff undertaken in the course of running the cemetery and crematorium, no person may solicit trade or accept orders or goods or services within a cemetery.

10. Display of manufacturer's name

- 10.1 Notwithstanding clause 9.1 of this Bylaw, the manufacturer of a monument, other than a tablet, may display their name on the monument in a space no larger than 50mm by 100mm, with the consent of the person entitled to maintain the monument and of the Council.
- 10.2 The display of the manufacturer's name must be unobtrusive and meet the aesthetic requirements of the Council.

11. Photography

- 11.1 No person shall take any photograph or make video recordings for commercial or editorial purposes, or for the purpose of publication, at a funeral without prior approval of the funeral director or other person responsible for the management or control of the funeral.
- 11.2 No person shall take any photograph or make video recordings for commercial or editorial purposes, or for the purposes of publication, of a grave without prior approval from the person entitled to maintain the monument.

12. Tributes

12.1 Flowers placed at time of interment

- a. Only flowers, wreathes, and floral tributes may be placed on graves at the time of interment. After seven days from the date of interment, the Council may remove from any grave any flowers, wreaths, or floral tributes placed there at the time of interment, and level-off the surface of the grave to be sown down in grass.
- b. In the case of a designated natural burial area, the grave shall be levelled and the area mulched to encourage the planned native vegetation.
- c. A temporary grave marker made from timber or plastic, not exceeding 800mm in height, may be placed on the concrete berm in a secure manner for up to 12 months following burial.

12.2 Permitted floral tributes

- a. After a grave has been levelled and sown as described in clause 12.1a. artificial or natural cut flowers may only be placed in the container set in recess in the base of the memorial. Containers may not be placed on the concrete berm or the grave.
- b. In natural burial areas tributes must be limited to natural cut flowers only and no containers of any kind are to be placed on or near graves.

12.3 Removal and disposal of floral tributes

- a. Any object, or artificial or natural cut flowers, placed or remaining on any grave in contravention of clause 12.2 or which have become unsightly, or any receptacle which has been broken or damaged, may be removed and disposed of by the Authorised Officer.
- b. The Council shall be under no liability to any person in respect of such removal, destruction or disposal.
- c. Any fences and rails; any glass, plastic, ceramic or terracotta items; any rocks, stones or pebbles; any wire or other metal-based items may be removed from any

grave by the Manager and may be destroyed or disposed of by the Council as it shall see fit.

13. Vegetation

- 13.1 No vegetation shall be planted on any grave or within the cemetery boundaries without the prior consent of the Council.
- 13.2 Vegetation planted in any portion of the cemetery may at any time be trimmed, removed or cut down at the discretion of the Council without notice.
- 13.3 No person shall disturb, damage, take or pick any cutting or flower from any tree, shrub, plant or other vegetation in any cemetery without the consent of the Council.
- 13.4 No person shall plant, cut down or destroy any tree or shrub in any cemetery without the consent of the Council.

14. Vehicles

- 14.1 Unless authorised by the Council, no person shall take any vehicle of any kind into any cemetery except during the hours of daylight or during such times stipulated by a publicly notified resolution of Council.
- 14.2 Within cemeteries, vehicles may only be driven on formed roads which are open to vehicular traffic and may only be parked in designated parking areas.
- 14.3 All vehicles (other than hearses) shall yield unconditional right of way to any funeral procession.
- 14.4 Any person driving a vehicle in a cemetery shall stop or move that vehicle as directed by the Authorised Officer or any other Authorised Officer.
- 14.5 Any person driving a vehicle in a cemetery shall obey all signs or notices concerning traffic movement and parking displayed in that cemetery.
- 14.6 No vehicle shall be driven faster than the speed limit indicated by a sign or notice on any road within the cemetery, and in any direction other than that indicated on a sign or notice.
- 14.7 In the absence of a speed limit sign or notice, no vehicle may be driven at a speed greater than 10 km/h in any cemetery.
- 14.8 Clause 14.1 to 14.7 do not apply to an emergency vehicle used at the time to save or protect life or health or prevent injury or serious damage to property.

15. Animals

- 15.1 No person shall take any animal into, or allow to remain in, any open cemetery other than during the hours of daylight, subject to the provisions of other Bylaws.
- 15.2 Any animal in a cemetery must be under the control of the owner at all times.

16. General conduct

- 16.1 No person shall:
 - a. damage, paint, write or carve on any building or monument within a cemetery or crematorium or damage property within any cemetery

- b. unlawfully or improperly interfere with, interrupt or delay the carrying out of any burial, cremation, funeral service or ceremony within any cemetery or crematorium
- c. behave in a manner that creates a nuisance or is offensive or is likely to create a nuisance or be offensive to any other person
- d. bring into or exhibit in any cemetery or crematorium any article that is a nuisance or offensive
- e. enter or remain in the cemetery between the hours of sunset and sunrise without prior permission
- f. conduct themselves in a manner that is unlawful, violent, or improper
- g. remove, interfere, or take from any grave in any cemetery, any vase, wreath, plant, flower, shrub or other object, except for the purpose of tidying the grave and surrounding area
- h. disturb, damage, or take any cutting or flower from any plant or tree in the cemetery
- i. light or allow any fire to be lit in the cemetery
- j. discard household waste in cemetery bins.

***Explanatory Note:** In administering and enforcing this clause the Council will, where appropriate, take into account the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.*

17. Burials

17.1 Burial warrants

- a. No burial shall be made in any cemetery without a burial warrant for that purpose, obtained by the funeral director or other person having the management or control of the burial from the Council and presented to the Authorised Officer as authority for burial.
- b. A person requiring a burial warrant shall apply to the Council on the approved application form.
- c. No burial warrant may be issued unless ground conditions are suitable for burial or before suitable financial arrangements acceptable to the Council have been made, for the exclusive right of burial.

***Explanatory Note:** Physical works within any cemetery must do so in accordance with clause 8.2.*

18. Burials and sale of plots

- 18.1** Burials may be made in any plot in any cemetery vested in the Council or under its control that is not closed, and in accordance with the terms and conditions determined by the Council and this Part of the Bylaw.
- 18.2** The Council shall determine the size and location of the plots that may be sold and the allocation of the sold plots.
- 18.3** Burial plots shall be sold upon the terms and conditions as may be determined by the Council and the exclusive right of burial may be granted for such limited period as the Council determines.
- 18.4** The Council, upon receipt of the prescribed fees for any exclusive right of burial, shall issue a Certificate of Title to Plot to the applicant, and on request and payment of the

prescribed fee the Council may issue a duplicate Certificate of Title to Plot to replace any lost Certificate of Title to Plot.

18.5 Unless the exclusive right of burial has been obtained, a burial shall take place in a plot and in a cemetery determined by the Council.

18.6 No person shall place any monument on a grave until all the prescribed fees have been paid.

19. Exclusive right of burial

19.1 The exclusive right of burial shall be granted to the purchaser of a plot once the Council has received the prescribed fees or suitable financial arrangements acceptable to the Council have been made.

19.2 The purchase of the exclusive right of burial excludes the digging and closing of a grave or the opening and closing of the ground for burial.

19.3 The holder of an exclusive right of burial must comply with any conditions imposed by the Council before a burial may take place.

19.4 Burial of any other person than the owner of the exclusive right to be buried within a plot will only take place with the express prior consent of the holder of the right.

20. Physical works associated with plots or other work in any cemetery

20.1 Maintenance or other work, including digging and/or filling any grave in a cemetery, may only be carried out by an employee of the Council, or a person authorised by the Council.

Explanatory Note: Physical works within any cemetery must do so in accordance with clause 8.2.

21. Transfer of exclusive right

21.1 The holder of the exclusive right to be buried in a plot in which no burial has yet taken place may sell or transfer that right to any other person with the consent of the Council, subject to the payment of the prescribed fee to the Council.

21.2 The holder of the exclusive right of burial in a plot in which no burial has yet taken place may, if able to prove to Council that they are suffering significant financial hardship or experiencing extraordinary circumstances, sell or transfer that right to the Council on such terms and conditions as the Council may determine, subject to the payment of the prescribed fee to the Council. Plots that have been bought back may be resold by the Council.

22. Burial plots and graves

22.1 Digging plots and graves

- a. No person other than the Authorised Officer or assistants of the Authorised Officer or any other person authorised by the Council shall dig or fill any grave in or open the ground for burial in any part of a cemetery.
- b. Extra-depth burials can only occur if the water table permits and ground conditions are suitable.
- c. A maximum of two (2) people may be buried in any one plot, except if prior consent is given by the Council to bury more than two (2) people.

- d. No grave may be re-opened for a further burial except with the consent of the person entitled to maintain the monument and consent is given by Council.
- e. If a casket for a child is too large for a child burial plot, it shall be buried in an adult burial plot subject to the payment of the prescribed fees.

23. Burial of ashes

- 23.1 With the prior approval of the Council any person may scatter the ashes of a deceased person in a cemetery, as directed by an Authorised Officer.
- 23.2 With the prior approval of the Council and on payment of the prescribed fees any person may bury a container holding the ashes of a deceased person in any plot, subject to the exclusive right of burial.

Explanatory Note: Clause 23 also applies to burial of ashes.

24. Removal

- 24.1 Where a request for a removal is received by the Council, the removal shall be conducted pursuant to section 51 of the Burial and Cremation Act 1964 and subject to the payment of the prescribed fees.
- 24.2 The removal and/or reinternment of a body must be conducted with the prior approval of the Council and must take place in the presence of:
 - a. the Authorised Officer and
 - b. a funeral director and staff and
 - c. an inspector of the Ministry of Health and
 - d. any other person with prior approval of the Council.
- 24.3 It will be the responsibility of the Council to open the grave only to the extent of exposing the lid of the casket. Removal of the casket from the grave will be the responsibility of the funeral director present.
- 24.4 No plot from which a removal has taken place will be used for any subsequent burial of another person and no refund of the cost of the original burial or any part of that cost will be made.

25. Construction and Installation

- 25.1 Minimum structural design, installation and renovation for all monuments shall be those specified in New Zealand Standard for Headstones and Cemetery Monuments NZS4242:2018.
- 25.2 Only one tablet or monument will be allowed on any one grave, including extra-depth burial graves, and it shall be placed on the grave in a position approved by the Council. A tablet may be attached to an existing monument. Monuments may cover no more than two plots.
- 25.3 All monuments shall be constructed of permanent materials. The Council may from time to time by resolution publicly notified determine a list of permanent materials that may be used in the construction of monuments.
- 25.4 All monuments will be constructed in accordance with sound engineering principles and will meet the aesthetic requirements of the Council.

- 25.5 Delivery and installation of monuments will be at the expense of the owner and will be carried out at times agreed with the Authorised Officer.
- 25.6 Any rubble and earth not required in the filling in of the grave or in connection with the levelling will immediately be removed either from the cemetery or to a place within the cemetery approved by the Authorised Officer.
- 25.7 All monuments must be consistent with the Kaipara District Council Cemeteries and Crematoria Policy.

***Explanatory Note:** In administering and enforcing this clause the Council will, where appropriate, take into account the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.*

26. Work practices

- 26.1 No person erecting or repairing any monument or carrying out other work in any cemetery shall use any footpaths or other part of the cemetery for placing or depositing there any tools, planks or materials for a longer time than is reasonably necessary to complete the work.
- 26.2 Any person mixing cement or mortar within a cemetery shall do so on a proper mixing board approved by the Council. Residue shall be removed from the cemetery.
- 26.3 Any person installing or tending to a monument or carrying out any other work in a cemetery shall withdraw for the duration of an adjoining funeral service. Such person shall also remove tools, planks and other materials which may obstruct access to an adjoining service for the duration of the service.

27. Safety

- 27.1 The Council may carry out regular audits of all monuments to ensure the health and safety of any persons or property within the cemetery boundaries.
- 27.2 Any headstone that an Authorised Officer considers to be unsafe may be removed in accordance with clause 8.2.

28. Monumental and upright memorial cemeteries

- 28.1 Any person wishing to install a monument in any part of a cemetery must apply for Council approval to carry out such work. The applicant must submit details of the monument design, including materials and dimensions, and details of all inscriptions and their positions on the monument and pay the prescribed fee.
- 28.2 Monumental cemeteries may inter either ashes or full body remains.
- 28.3 The following criteria are applicable to the construction of monuments in monumental cemeteries:
- a. the holder of an exclusive right to burial may enclose the plot or plots allotted to him or her with kerbing. Where the allocated plots are next to each other they may be enclosed as a single unit
 - b. the kerbing of the plots in a monumental area will be constructed out of permanent materials approved by the Council and shall not exceed a maximum height of 950mm above ground level
 - c. monuments may be erected within the plot boundary

- d. it is preferred that the design of the memorial include one or two recesses for flower vases within the memorial dimensions
- e. once a memorial has been installed, artificial or natural cut flowers may only be placed in the container set in vase recess in the memorial. Containers may not be placed on the concrete berm or the grave.

29. Removal of monuments

- 29.1 No person will be allowed to remove from a grave or plot any monument without obtaining the prior written permission of the Authorised Officer.

30. Authorisation

- 30.1 Maintenance and any other work in a cemetery may only be carried out by a person duly authorised by the Council, or under the supervision of a Council employee.

Explanatory Note: This excludes monuments which are the responsibility of the exclusive rights person representative in accordance with clause 8.2.

31. Types of cemetery

- 31.1 Council may, by Council resolution publicly notified, declare any part of a Council Cemetery to be of a particular kind.

32. Lawn cemetery

- 32.1 Lawn area cemeteries may inter either ashes or full body remains.
- 32.2 The Council may provide a continuous concrete berm at ground level approximately 500mm wide for a single row or approximately 1 metre wide for a double row for monuments to be placed on.
- 32.3 The following conditions and criteria are applicable to lawn cemeteries:
- a. plaque/tablet bases will not stand higher than 100mm above the berm and will be a maximum depth front to back of 400mm and 600mm in length (left to right)
 - b. the base will maintain clear space of 100mm at the front of the berm
 - c. plaque/tablet bases may allow for inserts for flower containers where this is required. Flower containers should be embedded below the ground level
 - d. no plaque shall be enclosed with any railing or kerbing or similar and no monument except a tablet shall be placed on any concrete berm
 - e. no person shall place on any plot any memorabilia except flowers and foliage which shall be placed in the flower containers inserted in the headstone
 - f. no grave shall be enclosed with any railing or kerbing or similar and no headstone, memorial, cross, marker or memorial shall be placed on any grave except a memorial plaque, which complies with the stated dimensions.

33. Ash berm and ash garden berm areas

- 33.1 An authorised officer may approve the scattering of ashes within specified designated areas. This may be within a cemetery or on other public land.

33.2 Plaques may be placed on a memorial wall or in the ground after being approved by an authorised officer.

34. RSA and services cemeteries

34.1 Eligibility for RSA and Service Cemeteries are as follows:

- a. areas of cemeteries may be laid out as Services Cemeteries
- b. those eligible for burial there are as defined in the most recent version of the Office of Veterans' Affairs publication, "War Graves and Services Cemeteries Handbook"
- c. notwithstanding clause 34.1 (b) the body or ashes of the spouse or partner of a returned service person may at the request of the surviving returned services partner be interred in an extra-depth plot in the Services Cemetery.

34.2 Commemoration shall be as described in the above-mentioned publication, or by other means as agreed with the Office of Veteran's Affairs.

34.3 The Council may waive the prescribed fee payable for the exclusive right of burial in the Services Cemeteries. Other prescribed fees shall be payable.

35. Closed cemeteries

35.1 As deemed appropriate, the Council may apply to officially close cemeteries under Part 6 of the Burial and Cremation Act 1964.

35.2 The Council shall maintain such cemeteries in perpetuity, subject to conditions as set under Part 6 of the Act.

36. Natural burial areas

36.1 In areas that are set aside for natural burials in Council cemeteries, the following conditions shall apply:

- a. Memorials:
 - i. no permanent memorials are permitted. Temporary biodegradable markers supplied by the Council will be installed at the time of interment
 - ii. a cemetery tracking system will be used to find burial plots once the area has returned to native vegetation, otherwise the burial plot will not be identifiable
 - iii. trees will be selected and planted to be generally in keeping with the cemetery native vegetation restoration plan. In general, there shall be one tree for every few graves.
- b. General:
 - i. natural burials must comply with all legislative and regulatory requirements
 - ii. there is no embalming of the deceased. Certified organic sanitisers are allowable.
- c. Acceptable caskets:
 - i. caskets must be made of biodegradable, chemically untreated material. Pine, macrocarpa, wicker or willow is deemed acceptable. Casket linings and fittings must be biodegradable. Calico, wool and hemp are deemed acceptable
 - ii. all items or contents in the casket (including clothing) must be of biodegradable material

- d. Acceptable shrouds:
 - i. shrouds must be made of natural fibre. Wool, silk or calico are deemed acceptable
 - ii. shrouds must be fastened to a solid base for lowering purposes and made of biodegradable, chemically untreated material.

37. Crematoria

- 37.1 The Cremations Regulations 1973 are applicable to all crematoria within the District.
- 37.2 Subject to clause 39.3 of this Bylaw access to any crematorium and any cremation process within the District is restricted and general entrance by members of the public is not allowed.
- 37.3 Where a cremation takes place in accordance with a religious ceremony that traditionally practices cremation, persons directly concerned with the deceased may at the manager of the crematorium's discretion attend the placing of the coffin in the incineration hall.

38. Records

- 38.1 The Council will keep plans of the cemeteries it controls, records of all rights of burial granted, and a record of all burials in the cemeteries. Plans and records will be open for inspection by the public at the offices of the Council during normal office hours.

39. Offences and breaches

- 39.1 No person shall do anything or cause any condition to exist for which prior approval from the Council is required under this Bylaw without first obtaining that approval and the failure to do so shall constitute a breach of this Bylaw.
- 39.2 No application for a prior approval from the Council, and no payment of or receipt for any fee paid in connection with such application or approval, shall confer any right, authority, or immunity on the person making such application or payment.
- 39.3 Any person commits a breach of this Bylaw who:
- a. does, or causes to be done, or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided by this Bylaw
 - b. omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this Bylaw, ought to be done by them at the time and in the manner therein provided
 - c. does not refrain from doing anything which under this Bylaw they are required to abstain from doing
 - d. knowingly permits or suffers any condition of or things to exist contrary to any provision contained in this Bylaw
 - e. refuses or neglects to comply with any notice duly given to him/her under the Bylaw
 - f. obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon them by this Bylaw
 - g. fails to comply with any notice or direction given under this Bylaw.

39.4 Any person commits a breach of this Bylaw who:

- a. has constructed, affixed or provided, or caused to be constructed, affixed, or provided, any monument or any work or material of any description whatsoever, contrary to, or otherwise than in accordance with the provision of this Bylaw; or
- b. has omitted to construct, affix, or provide any work or materials as required thereby, and who does not within a reasonable time after notice in writing has been given to them by the Council or any authorised officer of the Council, fails to carry out the remedial action specified in that notice.

39.5 A notice issued under clause 40.3 or 40.4 shall state the time within which the remedial action is to be carried out and may be extended from time to time by the Council.

40. Penalties for breach of Bylaw

40.1 Every person who fails to comply with this Bylaw commits an offence and shall be liable for the relevant penalty as provided for under this Bylaw or in applicable legislation.

40.2 Any person who breaches the following clauses of this Bylaw, will be liable to the maximum fine available in accordance with section 16(i) of the Burial and Cremation Act 1964:

- a. Clause 9 offences relating to soliciting trade
- b. Clause 14 offences relating to vehicles
- c. Clause 15 offences relating to animals and dogs
- d. Clause 16 offences relating to misconduct
- e. Clauses 24, 25 and 26 offences relating to authorised reopening of graves
- f. Clauses 28, 29 and 30 offences relating to memorials.

40.3 The continued existence of any work or object in a state contrary to this Bylaw shall be deemed a continuing offence.

40.4 The Council may in accordance with Section 162 of the Local Government Act 2002 apply for an injunction restraining a person from committing a breach of this Bylaw.

40.5 The Council may in accordance with the Trespass Act 1980, serve a Trespass Notice after warning a person to leave or warning to stay off its premises.

41. Removal of works

41.1 The Council may remove or alter any work or thing that is, or has been, constructed in breach of this Bylaw.

41.2 The Council may recover the costs of removal or alteration under clause 39.4 from the person who committed the breach.

41.3 The exercise of this authority shall not relieve any such person from any other liability for breach of the Bylaw.

42. Officers to continue in office

42.1 All officers appointed by the Council under or for the purpose of the repealed Kaipara District Council Cemeteries and Crematoria Bylaw 2008 and holding office at the time of

the coming into operation of this Bylaw, shall be deemed to have been appointed under this Bylaw.

43. Dispensing power

- 43.1 Where in the opinion of the Council full compliance with any of the provisions of this Bylaw would needlessly or injuriously affect any person, or the operation of any business, or be attended with loss or inconvenience to any person without any corresponding benefit to the community, the Council may, on the application of that person, dispense with the full compliance with the provisions of this Bylaw; provided that any other terms or conditions (if any) that Council may deem fit to impose shall be complied with by that person.
- 43.2 The Council may, after consideration of any representation by affected persons and if in its opinion it is justified, extend, withdraw or amend a dispensation granted under clause 43.1.
- 43.3 Except if expressly granted otherwise, a dispensation by the Council under clause 43.1 shall only be applicable to the person it is granted to and shall be restricted to the particular issue considered by the Council and such dispensation will not constitute a justification for the breach of the provisions of this Bylaw outside the expressed terms of the dispensation.