

Statement of Proposal
Cemeteries and Crematoria Bylaw
and
Amend Part 7
Consolidated General Bylaw



Proposal

Council is proposing to make a Cemeteries and Crematoria Bylaw (Bylaw) and amend our Consolidated General Bylaw 2020 (CGB) by removing Part 7 – Cemeteries and Crematoria (Part 7) that currently regulates cemeteries and crematoria activities within the District.

The proposed Bylaw will regulate activities associated with Council-owned or controlled cemeteries and crematoria within the District to minimise public safety risks, distress caused by nuisance, and protect Council owned or controlled cemeteries and crematoria from misuse.

This document includes further information about the proposal, including the reasons for the proposal, a table of the amendments proposed to the CGB, and the proposed draft of the Bylaw including some statutory background information.

Have your say

Before making any final decisions, Council would like to know your views. You can tell us what you think of this proposal between Monday 2 October – Thursday 2 November 2023.

Further information on how to let us know what you think about the proposal is included in this document.

Key dates

Feedback period: Monday 2 October – Thursday 2 November 2023

Chat with a Councillor: Begins the week of 24 October 2023

Deliberations: 5 December 2023

Decision of Council: February 2024

Consultation Document Table of Contents:

Proposal	i
Introduction	ii
Reasons for the proposal	iii
Legislative Framework	iii
Proposed amendments to the Consolidated General Bylaw	iii
Proposed draft Cemeteries and Crematoria Bylaw	1

Introduction

There are 10 topic specific bylaws under Parts that make up Council's Consolidated General Bylaw (CGB). The rules for Council owned, controlled, or managed cemeteries and crematoria within the Kaipara District are currently located in the CGB under Part 7 – Cemeteries and Crematoria (Part 7).

This proposal aligns with the Council direction given after the CGBs statutory 10-year review in 2020 and addresses the issues that public and staff identified at that time.

After reviewing Part 7 of the CGB Council are proposing to:

- make a separate Cemeteries and Crematoria Bylaw to regulate Council-owned or controlled cemeteries and crematoria within the district; and
- amend the CGB by removing Part 7 – Cemeteries and Crematoria.

Before finalising the proposed Bylaw and amending the CGB, Council wants to hear your views.

This Statement of Proposal provides you with the reasons for the proposed amendments and the statutory issues that Council must consider when making and amending a bylaw. It includes the proposed amendments of the CGB and a copy of the draft Bylaw.

Reasons for the proposal

After the statutory review of the CGB in 2020 Council directed staff to start the work programme to investigate and review the CGB with the aim to split the 10 Parts into individual bylaws. Part 7 is the third Part of the CGB to undergo this process.

The Part 7 review identified the following issues:

- Bylaw form
 - Rules for cemeteries and crematoria were hard to find because Part 7 was bunched with the other Parts in the CGB
 - The current bylaw framework is not appropriate for the type of bylaw that Part 7 is - for any amendments required to be made to Part 7 in response to societal need or legislative changes would require Council to review the whole CGB under the Local Government Act 2002 (LGA). This statutory process is not efficient for any minor changes that Part 7 would require
 - There are no specific provisions to help monitor and enforce bylaw effectiveness
 - Wording and structure need to be clarified.
- Bylaw content -
 - Cannot withstand legislative changes or respond effectively to changes in societal needs. Most of the rules and content in Part 7 affect the management and operations of Council owned, operated, or managed cemeteries and crematoria. Part 7 currently holds all of the technical requirements (grave depth, width, headstone height etc) and administrative processes (how to secure a plot, record keeping etc) that can and will change between the current statutory 10-year review period of the CGB, which in turn will force a statutory review.

Council agreed that the proposed Bylaw is the best way to address the issues identified and regulate Council-

owned or controlled cemeteries within the district.

The proposed Cemeteries and Crematoria Bylaw:

- addresses the issues identified.
- provides a better opportunity to educate the public regarding Council-owned and or managed cemeteries within the district
- supports better community engagement through developing, and later reviewing a topic specific bylaw
- better monitoring of bylaw effectiveness and ensure staff and Council can provide sufficient attention to the review processes in the future
- enables Council to make the Cemeteries and Crematoria Bylaw supporting Cemeteries and Crematoria Code of Practice.

Legislative Framework

As part of the bylaw making process Council must consider whether our bylaws are effective, efficient, and still necessary. This also includes making sure that the bylaw is consistent with the [New Zealand Bill of Rights Act 1990](#).

Council considered the research and analysis completed by staff, and decided a bylaw is still the most appropriate way to regulate Council controlled, owned, or managed cemeteries and crematoria within the District, but that Part 7 of the CGB form was no longer fit for purpose. Council decided that a separate Cemeteries and Crematoria Bylaw be made and that that Part 7 of the CGB would have to be removed to avoid regulation duplication. This was decided at the [31 May 2023 Council meeting](#).

Following this, at the Council meeting on 27 September 2023 Council decided to consult on this proposal with the community to gain feedback.

For further details on this decision, see the agenda report for the 27 September 2023 meeting, either on our website at www.kaipara.govt.nz or at Council offices and libraries.

Proposed amendments to the Consolidated General Bylaw

Consolidated General Bylaw	Proposed amendments
Contents Page	Remove 'Part 7- Cemeteries and Crematoria' heading
Part 7 – Public Places	Remove whole part

Proposed Draft Cemeteries and Crematoria Bylaw



Kaipara te Oranganui • Two Oceans Two Harbours

draft

**This Bylaw is made under sections 145 and 146 of the Local Government Act 2002 and
sections 16 and 40 of the Burial and Crematoria Act 1964**

Contents

1. Title	2
2. Commencement	2
3. Application	2
4. Purpose.....	2
5. Interpretation.....	2
6. A person must comply with any cemeteries and crematoria Code of Practice	3
7. Council may make a cemeteries and crematoria code of practice.....	3
8. Fees	3
9. Council can use statutory powers and other methods to enforce this Bylaw	4
10. Removal of material or things	4
11. A person can be penalised for not complying with this Bylaw	4
12. Existing resolutions, approvals and other decisions continue to apply	4
13. Existing inquiries to be completed under this Bylaw.....	4

Part A

Preliminary provisions

1. Title

This Bylaw is the Cemeteries and Crematoria Bylaw.

2. Commencement

This Bylaw comes into force on XX Month 2023.

3. Application

This Bylaw applies to all Council-owned and controlled cemeteries and crematoria within the Kaipara district.

4. Purpose

The purpose of this Bylaw is to minimise public safety risks, distress, nuisance, damage to property, and interference with ground maintenance and operational activities from the use of Council cemeteries and crematoria by the public and contractors.

5. Interpretation

In this Bylaw, unless the context otherwise requires means:

Approval	Council permission to carry out an activity. May require a permit and may be subject to conditions.
Authorised Officer	a. a person authorised by Council to perform duties under this Bylaw; or b. a person appointed by Council as an Enforcement Officer under section 177 of the Local Government Act 2002 ;
Bylaw	The Cemeteries and Crematoria Bylaw.
Code of Practice	The Kaipara Cemeteries and Crematoria Code of Practice document.
Council	The Kaipara District Council or any person delegated or authorised to act on its behalf.
Person	An individual human, a corporation, a body corporate and an unincorporated body.

- 5.1 Words implying the singular include the plural and vice versa.
- 5.2 The [Interpretation Act 1999](#) applies to this Bylaw.
- 5.3 Any explanatory notes and attachments are for information purposes, and do not form part of this Bylaw, and may be inserted, amended, or revoked without formality. Explanatory notes are provided within the boxes throughout this Bylaw.

Related information

Relationship between this Bylaw and Acts, regulations, bylaws and Council's District Plan

Compliance with the Bylaw does not remove the need to comply with all other applicable Acts, regulations, bylaws, the Kaipara District Plan and the Regional Plan for Northland. Where there is any conflict between this Bylaw and any Act or Regulation, the Act or Regulation will take precedence.

Part B

Activities in Council cemeteries and crematoria

6. A person must comply with any cemeteries and crematoria Code of Practice

- 6.1 A person must comply with any Code of Practice that regulates a Council owned or operated cemetery or crematoria made in accordance with clause 7
- 6.2 Clause 6.1 does not apply to any person acting in compliance with a lawful direction of an Authorised Officer.

Related information about Council's code of practice

Any code of practice applies to both open and closed Council-owned or operated cemeteries and crematoria. Council owns and operates 10 open cemeteries and 1 closed cemetery. A full list of these cemeteries as well as other relevant information about Council-owned and operated cemeteries and crematoria including the code of practice can be found on Council's website.

Part C

Controls

7. Council may make a cemeteries and crematoria code of practice

- 7.1 Council may make a Code of Practice to regulate the activities in a Council-owned or operated cemetery and crematoria.
- 7.2 Any Code of Practice made under clause 7.1 may prescribe rules for one or more of the following purposes:
- 7.2.1 interment;
 - 7.2.2 disinterment;
 - 7.2.3 built structures;
 - 7.2.4 ground maintenance;
 - 7.2.5 records; and
 - 7.2.6 any other matters Council considers relevant and reasonably necessary to achieve the purpose of the Bylaw.

Related information

Council may approve and amend the Code of Practice document by resolution.

To make a decision, Council must comply with the decision-making requirements under [Subpart 1 of Part 6 of the Local Government Act 2002](#).

8. Fees

- 8.1 Council may by resolution, and in accordance with the Local Government Act 2002 and the Burial and Crematoria Act 1964 set fees for permits and other provided matters.
- 8.2 Council reserves the right to determine situations when fees may be remitted, refunded or waived on a case-by-case basis.

Part D

Enforcement powers, offences, and penalties

9. Council can use statutory powers and other methods to enforce this Bylaw

- 9.1 Council may use its powers under the [Burial and Cremation Act 1964](#) and [Local Government Act 2002](#) to enforce this Bylaw.

Related information about enforcement

Council powers under the [Burial and Cremation Act 1964](#) and [Local Government Act 2002](#) include court injunctions (s162), removal of works (s163), seizure and disposal of property (ss 164, 165, 168), powers of entry (ss 171, 172, 173), cost recovery for damage (ss 175,176) and power to request name and address (s 178).

Council can also use other methods as a service provider to encourage compliance, for example providing advice, information, or warnings, or trespassing a person.

10. Removal of material or things

- 10.1 Council may under section 163 of the Local Government Act 2002, remove or alter any material or thing in breach of this Bylaw and may recover any costs of removal or alteration from the person who committed the breach.

11. A person can be penalised for not complying with this Bylaw

- 11.1 A person who fails to comply with this Bylaw commits an offence and is liability to a penalty under the Burial and Cremation Act 1964 or the Local Government Act 2002.

Related information about penalties

A person who is convicted of an offence against a bylaw is liability to a fine not exceeding \$20,000.00 under section 242 of the [Local Government Act 2002](#).

Council has chosen not to set fines in this Bylaw at this time under the Burials and Cremation Act 1964.

Part E

Exemptions and savings

12. Existing resolutions, approvals and other decisions continue to apply

- 12.1 Any approvals or other authorisations issued under Part 7 of the Consolidated General Bylaw 2020 continue to be in force in accordance with their terms, unless re-negotiated, renewed or cancelled by Council.

13. Existing inquiries to be completed under this Bylaw

- 13.1 Any compliance or enforcement action by Council under the Bylaw that was not completed prior to amendments in clause 2 coming into force will continue to be actioned under this Bylaw.