DRAFT Bylaw

CEMETERIES

TITLE:	Ashburton District Council Cemeteries Bylaw 2017
TEAM:	Open Spaces
RESPONSIBILITY:	Open Spaces Manager
DATE ADOPTED:	29 June 2017
COMMENCEMENT:	29 June 2017
NEXT REVIEW DUE:	29 June 2027

1. Title

The title of this bylaw is Ashburton District Council Cemeteries Bylaw 2017.

2. Purpose

The purpose of this bylaw is to:

- regulate the use of cemeteries in the Ashburton District,
- protect the public from nuisance, and
- protect, promote and maintain health and safety.

3. Related documents

- Ashburton District Council – Open Spaces Bylaw
- Burial and Cremation Act 1964
- Burial and Cremation Amendment Act 2016 (effective 7 November 2018)
- Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967
- Cremation Regulations 1973
- Dog Control Act 1996
- Health Act 1956
- Health (Burial) Regulations 1946
- Holidays Act 2003
- Local Government Act 2002
- Reserved Act 1977
- Resource Management Act 1991
- Transport Act 1998.

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5. Application

5.1 This bylaw applies to cemeteries under the control of Ashburton District Council.

6. Definitions

6.1 In this bylaw, unless the context otherwise requires:

Authorised Officer means any officer of the Council or any other person authorised under the Local Government Act 2002 and authorised by the Council to administer and enforce this bylaw.

Berm or Garden Cemetery means a cemetery or part thereof where no fence, kerbings or monuments other than headstones shall be erected.

Body has the same meaning as section 2 of the Burial and Cremation Act 1964, and means a dead human body and includes the body of a stillborn child.

Burial means to bury, or place the ashes of, a dead body. The word interment has the same meaning.

Burial Warrant means the warrant issued for burial by an Authorised Officer.

Bylaw means the Ashburton District Council Cemeteries Bylaw 2017.

Cemetery has the same meaning as in section 2 of the Burial and Cremation Act 1964 and generally means any public cemetery vested in or under the control of Ashburton District Council.

Certificate of cause of death has the same meaning as Doctors Certificate.

Closed Cemetery or Area means a cemetery which has been closed by a closing order as stated in part VI of the Burial and Cremation Act 1964.

Council means Ashburton District Council.

Cremation plot means a plot intended to only allow for the burial of ashes.

Cultural Burial means burial in accordance with particular cultural and/or religious beliefs, in particular Māori values and traditions.

Disinterment means the removal of human remains from a grave.

Disinterment Licence means a licence issued by the Ministry of Health under s. 51 of the Burial and Cremations Act 1964 for the disinterment of a body.

Doctors Certificate has the same meaning as defined in the Burial and Cremation Act 1964 and in relation to a death or a body, means a doctor's certificate referred to in section 46B or 46C relating

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to the cause of death or, as the case may require, the cause of death of the person whose body it is.

Exclusive Right of Burial has the same meaning as section 10 of the Burial and Cremation Act 1964 and generally means the right to be buried in a particular plot within a specific cemetery.

Funeral Director has the same meaning as section 2 of the Burial and Cremation Act 1964, and generally means a person whose business is or includes disposing of bodies.

Grave a plot that has or is about to have a burial.

Māori Burial means a burial carried out in accordance with Māori tradition and protocol.

Motor Vehicle shall have the meaning assigned to it from time to time by the Transport Act 1998 and its amendments and re-enactments.

Natural Burial means a burial that has a low environmental impact, including that the body has not been treated with chemicals or oils that will prevent or slow down the decay of the body by bacteria (such burials may also be known as 'green' or 'eco' burials). Also includes the burial of ashes where those ashes are contained in a biodegradable urn/container or not contained in an urn/container at all.

Nuisance shall include but not be limited to the meaning assigned to it by the Health Act 1956 Section 29 its amendments and/or re-enactments.

Person includes any individual, company or other commercial body.

Plot means a numbered lot shown on a cemetery plan held by the Council.

Sexton means any person appointed by the Council to manage the day to day activities of any cemetery and crematorium under its jurisdiction. Such activities include arranging for the provision of the plots for burials.

Single Interment means that there will be only a single grave dug which will hold no more than two bodies which are to be buried at the same time, before being refilled. No second interment can take place.

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7. Burials

7.1 Burials must take place in such plots as the Sexton determines in any cemetery (which is not closed) vested in the Council or under its control.

7.2 No burial shall be made in any cemetery without a burial warrant.

7.3 An application for burial shall be applied for by:
- 7.3.1 The Funeral Director, or
- 7.3.2 The executor of the estate/appointed family member.

7.4 An application for burial shall be accompanied by:
- 7.4.1 The doctor's certificate for the deceased person; and
- 7.4.2 Payment of the prescribed fees.

7.5 Any person may purchase one or more plots. The number of plots which may be sold at any time and to any applicant shall be determined by the Council and will consider factors such as number of plots already purchased by that person and the availability of plots at that time.

7.6 No person other than the Sexton or Council Officers duly authorised by the Council, shall dig any grave in, or open the ground for burial in any part of any cemetery.

7.7 Notification of the intended burial shall be given to the Sexton at least eight working hours prior to the time fixed or proposed for the funeral. Should a public holiday not make this period of notice possible, arrangements may be made with the Sexton, at his/her discretion, for the burial to take place as early as possible but no later than 1 working day later.

7.8 The maximum number of interments in Council administered cemeteries, subject to ground conditions permitting, is as follows:
- 7.8.1 Up to one casket and two ashes urns interred in one grave plot
- 7.8.2 Up to two caskets interred in one grave plot, and no ashes urns unless under exceptional circumstances
- 7.8.3 Up to four ashes urns interred in one grave plot
- 7.8.4 Up to two ashes urns interred in one cremation plot
- 7.8.5 All Natural Burial plots are for single interment.

8. Exclusive right of burial

8.1 Any person may acquire the exclusive right of burial in a 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.

8.2 Plots shall be sold upon such terms and conditions as may be decided by the Council and the exclusive right of burial may be granted in perpetuity.

8.3 Note that plots for Natural Burials cannot be reserved or pre-purchased (see below in that section).

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8.4 Evidence of a purchase of the exclusive right of burial shall be recorded on a certificate of purchase.

8.5 Where an exclusive right of burial has been granted by Council, the fees must be paid in full to Council (or an exemption granted under this bylaw) before the burial shall take place.

8.6 Any owner of the exclusive right of burial in any plot in which no burial shall have taken place may, with the consent of the Council, transfer his/her interest in such plot to any other person.

8.7 Any application for the purchase of the exclusive right of burial in any plot not previously used for interment shall lapse unless the purchase is completed by payment within 6 calendar months from the date of the application.

9. Natural Burials

9.1 Council may set aside an area of a cemetery specifically for the purpose of accepting Natural Burials.

9.2 Natural Burials will be carried out in accordance with the procedures set out in this bylaw and are subject to approval from an Authorised Officer or the Sexton.

9.3 Only Natural Burials may be permitted in the Natural Burials section of any cemetery containing such a section.

9.4 Plot reservations are not guaranteed for Natural Burials.

9.5 While people who have died with an infectious or notifiable disease are still eligible for a Natural Burial; there may be some instances where a Medical Officer of Health advises against this because of potential risk to public health. In all instances where the deceased has died as a result of an infectious or notifiable disease, or had such a disease at the time of their death, the Authorised Officer must be informed.

9.6 The burial of ashes in a Natural Burial area in a cemetery is permitted as long as those ashes are contained in a biodegradable urn/container or not contained in an urn/container at all.

9.7 In areas of cemeteries set aside for Natural Burials, the following provisions shall apply (and such other provisions as the Authorised Officer may require):

9.7.1 All plots are for single interment;
9.7.2 Embalming of a body to be buried in any Natural Burial plot is not permitted;
9.7.3 Either a casket or shroud is permitted;
9.7.4 Caskets and shrouds must be made of materials which are completely biodegradable;
9.7.5 Any parts of the casket (including handles) that are not biodegradable will be removed prior to burial;
9.7.6 No material that is not biodegradable, including clothing and accessories, is to

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remain in the grave once refilled;

9.7.7 Memorials, including containers for flowers or other items, are not permitted on a Natural Burial grave. Shrubs or trees shall mark the site of a Natural Burial and will be provided by Council and planted by (or under the supervision of) an Authorised Officer or the Sexton;

9.7.8 Markers/plaques are not permitted; and

9.7.9 Disinterment is discouraged due to the likely condition of the body after interment.

10. Cultural Burials

10.1 Because cultural diversity in Ashburton District is changing and New Zealand European burials are not the only type of burial that people living in the district require, the Council is committed to providing for Cultural Burials of other types, including:

10.1.1 Māori Burials; and

10.1.2 of deceased people of differing ethnicities, religions and/or cultural affiliations (other than Māori or New Zealand European).

10.2 The Council may set aside areas of a cemetery specifically for the purpose of accepting Cultural Burials.

10.3 The Authorised Officer has discretion to determine, in consultation with those people seeking to carry out a Cultural Burial, if any additional requirements are necessary in order to ensure that Cultural Burials can be carried out in a manner that is both culturally sensitive and in compliance with this bylaw and any other relevant regulation or statute. These requirements will be assessed on a case by case basis.

11. Hours of operation

11.1 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 service, except with the approval of the Authorised Officer, shall take place on:

11.1.1 Christmas Day or Good Friday, or

11.1.2 outside the hours of 8.00am and 4.00pm on any day.

12. Burial of ashes in urns

12.1 An application for burial 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 not been purchased, and that the burial plot is not currently being used.

13. Fees

13.1 For avoidance of doubt the person signing the application for burial is responsible for paying the prescribed fees.

13.2 In the case of an interment under the management or control of a funeral director, the Council may render an account.

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13.3 All fees payable in respect of cemetery usage shall be fixed by resolution of the Council.

13.4 Council's Schedule of Fees and Charges may be amended from time to time in accordance with section 150 of the Local Government Act 2002.

13.5 Additional fees may be required for burials that occur:
- 13.5.1 between the hours of 8.00am and 1.00pm on Saturdays,
- 13.5.2 past the hours of 1.00pm on Saturday,
- 13.5.3 at any time on a Sunday, or
- 13.5.4 on any statutory holiday as set out in the Holidays Act 2003.

13.6 Additional fees may also be charged where less than one days' notice of a burial is provided to the Sexton. The requirement to charge additional fees will be at the discretion of the Sexton.

13.7 When plots are pre-purchased, the fee payable covers only the cost of that plot. Additional reasonable fees may be payable before interment can take place. These fees will be determined by the Sexton or Authorised Officer, and a receipt provided.

13.8 **Out of district fees:**
- 13.8.1 An out of district fee shall be payable where the burial is of a deceased person not permanently residing within the boundaries of Ashburton District for at least two years prior to the date of death.
- 13.8.2 Temporary absences of short duration from the district will not detract from the permanency of residence.
- 13.8.3 The Authorised Officer will determine if such fees in clause 13.8.1 are applicable.

13.9 **Interment fees:**
- 13.9.1 Where application is made to the Council for the interment at reduced charges of any deceased person, the applicant shall, on making such application, furnish to the Council a certificate duly signed by him/her certifying that such deceased person has not left sufficient means to pay the ordinary charge of interment, and that his/her relatives and friends are unable to pay the same.

14. Erection and maintenance of monuments, headstones and other structures

14.1 Council will maintain any plot in any cemetery for such period as the Council determine to be the useful life of the cemetery for cemetery purposes.

14.2 Council shall construct a continuous concrete platform or berm at ground level or below as required, of a width suitable to maintain stability. The cost of the platform shall be included in the purchase price of the plot.

14.3 Concrete based work for all memorials shall not stand higher than 500mm above the highest

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point of the concrete berm or ground level, whichever is the higher, and shall, where required, allow insets for flower containers.

14.4 On surface berms (or platforms) a space of 50mm clear of such memorial foundation base shall be maintained, both front and back.

14.5 In the course of constructing bases and erecting memorials, the adjoining roads, paths or allotments shall not be damaged. However, if any such damage is caused it shall be immediately repaired at the sole cost of the person constructing the base or erecting a memorial during the course of which works the damage occurred.

14.6 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.

14.7 For the avoidance of doubt, the maintenance of a plot does not include the maintenance of any memorial.

14.8 All kerbs, headstones and other monuments shall be kept in proper repair by the purchaser of the plot in the first instance and (if that purchaser shall be deceased) then by the immediate family of the deceased person who is buried in the plot.

14.9 If after reasonable enquiry no such person as detailed in clause 14.8 can be located then Council will undertake the necessary maintenance.

14.10 All above ground enclosures, memorial headstones, monuments and other structures shall not exceed 1.5 metres in height unless written approval from the Authorised Officer is obtained prior to erection of the same.

14.11 Monuments, vaults, tablets or other structures that exceed the dimensions specified in clause 14.10 may be permitted at the sole discretion of the Authorised Officer.

14.12 Authorised Officers may carry out regular inspections of monuments, headstones and other structures to ensure compliance with this bylaw.

15. Vegetation

15.1 No person shall plant any vegetation in any cemetery except with the written permission of the Authorised Officer.

15.2 Vegetation planted in any portion of any cemetery may only be trimmed, or removed, with the written permission or by order of the Authorised Officer.

16. Motor Vehicles

16.1 Where there is no vehicle access road within a cemetery, no person shall take any motor vehicle of any kind into any cemetery unless prior approval has been granted by an Authorised Officer.

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16.2 No person, having obtained approval under 16.1 above, will exceed any sign posted speed limit within any cemetery. Where no speed limit has been signposted, no person will drive in any cemetery at a speed greater than 20 km/h.

16.3 All vehicles (other than hearses) shall yield unconditional right of way to any funeral procession.

16.4 Every person driving or conducting any motor vehicle in any cemetery shall stop or move such vehicle as directed by the Sexton. For the avoidance of doubt, the Sexton or Authorised Officer may, at their discretion, require the driver of any motor vehicle to immediately remove the vehicle from any cemetery.

16.5 No person shall drive or conduct any motor vehicle in any cemetery except in accordance with and in the direction indicated by traffic notices displayed in the cemetery.

17. Misconduct and soliciting

17.1 No person shall:

17.1.1 breach the conditions of use of a cemetery as set out in this bylaw;

17.1.2 prevent, interrupt, or delay a funeral service;

17.1.3 advertise or solicit for any work to be done in (or in connection with) any cemetery; and

17.1.4 allow any animal, other than a dog on a leash, to accompany them into any cemetery.

17.2 No person shall, in any cemetery, perform any tasks in relation to any plot except at the specific request of a purchaser of plots or their representatives.

17.3 No commercial photographers shall attend any cemetery service for the purpose of taking photographs or other images, unless consent has been granted by the Funeral Director or the executor of the estate/appointed family member.

17.4 No person shall operate a drone or unmanned vehicle (as defined in the Council's Open Spaces Bylaw) within the confines of any cemetery at any time, regardless of if a funeral is taking place or not without having first obtained the written approval of the Sexton or Authorised Officer.

18. Disinterment

18.1 Any person seeking to disinter a body from a Council operated cemetery must first apply for a Disinterment License form the Ministry of Health under s. 51 of the Burial and Cremation Act 1964.

18.2 Once a Disinterment License has been issued and provided to the Council, arrangements can be made with the Council for the disinterment to take place, subject to the payment of such fee or fees as the Council shall determine and the below considerations:

18.2.1 Where a Disinterment License has been obtained and the intention is not to remove

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the body and reinter it in a different cemetery, there is no requirement that further family approval be obtained before disinterment can take place.

18.2.2 Where the reason for disinterment is for the removal of the body from its current resting place and reburial in a different cemetery, the Council requires that in addition to a Disinterment License that the applicant provide the written consent of the spouse/partner and children of the deceased. Where the deceased has been buried for in excess of 50 years the approval of the deceased's spouse/partner and children, is not required.

18.2.3 Where the reason for disinterment is for the removal of the body from its current resting place and reburial in a different cemetery, and written approval is not provided and the deceased has been buried for less than 50 years, the applicant must apply to the High Court for an order authorising the disinterment, regardless of if a Disinterment License has been obtained for not. No burial plot may be reopened to allow for a second interment except with the prior written consent of an Authorised Officer.

19. Tributes

19.1 All vases or containers for flowers shall be housed in insets set into the base or kerb on which the memorial is placed.

19.2 The Council reserves the right to remove, and dispose of any adornments or tributes not contained within insets (or otherwise controlled so they will not leave the plot) after a reasonable period.

19.3 Where adornments or tributes have been left in a manner that may impact on the use and/or operation of the Cemetery in any way, the Council may remove them immediately.

20. Offences and penalties

20.1 Every person who breaches this bylaw commits an offence and is liable on summary conviction to a fine not exceeding $20,000.

21. Revocations

21.1 This bylaw revokes and replaces the Ashburton District Council Cemeteries Bylaw 2008.

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