



THE OPOTIKI DISTRICT COUNCIL CEMETERIES BYLAW 2008

EXPLANATORY NOTE

The Opotiki District Council Cemeteries Bylaw 2008 was made in accordance with the Local Government Act 2002 and the Burial and Cremations Act 1964. The purpose of the Opotiki District Council Cemeteries Bylaw 2008 is to regulate the use of cemeteries and in particular to provide for the purchase of plots, interment, erection of structures and the maintenance of cemeteries. The Opotiki District Council Cemeteries Bylaw 2008 applies to all cemeteries within the Opotiki District Council's control but excludes Urupa (Maori Burial Grounds) and is consistent with the provisions of the Burial and Cremations Act 1964.

Nothing in this Bylaw shall derogate from any provisions of or the necessity for compliance with the:

- (a) Burial and Cremations Act 1964;
- (b) Burial and Cremations (Removal of Monuments and Tablets) Regulations 1967
- (c) Health (Burial) Regulations 1964

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The Opotiki District Council

Cemeteries Bylaw 2008

This Bylaw is made in accordance with the Local Government Act 2002 and the Burial and Cremations Act 1964.

1. Title

This Bylaw shall be known as "The Opotiki District Council Cemeteries Bylaw 2008."

2. Commencement

This Bylaw shall come into force on the 1st day of July 2008.

3. Repeals

As from the date that this Bylaw comes into force the Opotiki District Council Bylaw 1990 Chapter 14 1972 Cemeteries and Crematories shall be repealed.

4. Interpretations

The interpretations given in the Burial and Cremations Act 1964 will apply to this Bylaw.

Authorised Officer means any person appointed by the Council to control or manager or to assist in the control and management of any cemetery under the jurisdiction of the Council and to carryout burials as provided for in this Bylaw.

5. Right of Burial

- 5.1 Any person may acquire the right of burial in a plot in any cemetery, by applying to the Council, paying the prescribed fee and complying with all conditions imposed by the Council.
- 5.2 The right of burial is valid for 15 years from the date of acquisition or longer as the Council may determine, unless within that period the plot is occupied or a monument erected to the memory of the right holder.
- 5.3 No person shall be permitted to hold more than one right of burial at any one time.
- 5.4 The Council upon receipt of the prescribed fees for any exclusive right of burial, will issue a certificate of purchase to the applicant. On request and payment of any additional fee, the Council may issue a duplicate certificate to replace any lost certificate of purchase.

6. Transfer of Right of Burial

- 6.1 No person who has purchased the right of burial in any plot shall transfer or assign such right to any person other than a parent, spouse, partner or child of such purchaser and then only subject to the approval of the Council and on payment of the transfer fee, provided that the Council may accept the

transfer to it of any unused plot and in consideration of such transfer may refund up to 50% of the current prescribed fee for similar plots.

7. Procedures of Burial

- 7.1 No person other than the sexton or his or her assistants shall dig any grave or open the ground for any burial in any part of a cemetery.
- 7.2 No burial shall take place in any cemetery without the production of a burial warrant obtained from the Council.
- 7.3 Every person desiring to obtain a burial warrant shall make application to the Council in the form required and upon payment of the prescribed fee shall receive a burial warrant. No warrant shall be issued unless the right of burial in respect of the plot concerned has been purchased.
- 7.4 The burial warrant obtained for any burial shall be delivered to the sexton no less than eight working hours before the time fixed for the burial.
- 7.5 The burial warrant, when received by the sexton, shall be sufficient authority for him or her to proceed with the burial of the person named therein.

8. Time of Burials and Unveiling Ceremonies

- 8.1 Except pursuant to Section 86 of the Health Act 1956 which relates to the burial of people who have died from an infectious and/or notifiable disease, no burial shall take place except between the hours of 8:00 am and 4:00 pm on any weekday and 8:00 am and 12:00 noon on Saturdays and public holidays (excluding Christmas Day and Good Friday). Provided that a burial may take place after 12:00 noon on Saturday or any public holiday where a special permit has been obtained from the Council.
- 8.2 Unveiling ceremonies shall take place only with the express permission of the Opotiki District Council and shall take place between the hours of 8:00 am and 4.00 pm any weekday, weekend day or public holiday.

9. Burial Depth

- 9.1 All graves for the burial of children shall be not less than 1.5 metres deep and all other graves shall be no less than 1.8 metres deep.
- 9.2 A second body may be buried in the same plot if requested by the holder of the right of burial or the immediate family provided that there shall be at least 1.2 metres of covering at the average surface level of the ground over the last coffin buried.
- 9.3 A burial warrant may be issued to authorise the burial of any urn, containing the ashes of any deceased person, in any plot provided the right to burial in that plot has been purchased and the plot has already been used or is intended to be used for the burial of a body.

10. Disinterment

- 10.1 Where an application for a disinterment is received by the Council, the disinterment shall be conducted in accordance with sections 51 and 55 of the Burial and Cremation Act 1964 or any other

applicable legislation, subject to the payment of such fees as contained within the Council's fees and charges.

11. Memorials

- 11.1 No person shall erect any memorial or other structure in or on any plot in any cemetery, unless the right of burial in such plot has been purchased and the appropriate application form has been completed and approved.
- 11.2 No person shall in any cemetery construct, erect, or place any tombstone, headstone, tablet, plaque or other monument or any fence, kerb, or other enclosure, or any vault, or other covering over a grave or plot unless:
 - (a) the proposed structure is in keeping with the specification provided by the Council; and
 - (b) a headstone permit has been issued and the prescribed ground purchase and other fees have been paid.
- 11.3 All foundations for tombstones, headstones, monuments, fences and kerbs shall be placed and laid to the satisfaction of the Council.
- 11.4 All tombstones, headstones, monuments, fences and kerbs shall be kept in proper order and repair by the owner of the plot or his or her representatives and any which have fallen into a state of decay or disrepair may be dealt with by the Council in accordance with the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967.

12. Records

- 12.1 Every plot in each cemetery shall be identified by a number which shall be recorded on plans kept in the Council offices.
- 12.2 A permanent Cemetery Register shall be kept of all plots for which Rights of Burial or ashes interment have been purchased, together with the name of the purchaser, the date of purchase, the amount paid for such purchase, and the names and dates of interment of any persons buried in such plots. Duplicates of the plans shall be kept by the sexton.
- 12.3 The plans and Cemetery Register shall be open for inspection during ordinary working hours, upon payment of any fee prescribed for inspection or the production of a certified extract from the Cemetery Register.
- 12.4 The Council will endeavour to give the correct boundaries of any plot or plots when selling the Right of Burial therein, 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 Right of Burial has been so purchased.

13. Interference with Memorials

- 13.1 No person shall, without the written authority of the Council;
 - (a) remove from any cemetery, or from any grave, any headstone, kerb, monument or tablet; or
 - (b) 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

- (c) disturb or damage or take or pick any cutting or flower from any tree, shrub, plant or other growth in the cemetery; or
- (d) plant, cut down or destroy any tree or shrub in any cemetery; or
- (e) 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.

14. Maintenance of Plots

- 14.1 The Council will maintain any plot or grave in any cemetery for such period as the Council may determine to be the useful life of the cemetery for cemetery purposes.
- 14.2 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 in accordance with clause 14.1.

15. Use of Vehicles

- 15.1 No person shall, except with the prior permission of the Council or authorised officer:
 - (a) 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;
 - (b) permit any vehicle under his or her control to remain in any cemetery during the hours of darkness;
 - (c) drive any vehicle on any part of the cemetery except on the roads open for vehicular traffic;
 - (d) drive or conduct any vehicle in any cemetery at any speed greater than 20 kilometres an hour;
 - (e) drive or conduct any vehicle in any cemetery except in the direction indicated by traffic notices;
 - (f) park any vehicle in any cemetery except in conformity with the directions of any sexton, traffic officer, police officer or other authorised officer or in accordance with the terms of any traffic sign or notice exhibited in the cemetery .
- 15.2 Every person driving or conducting any vehicle in any cemetery shall stop or move such vehicle in accordance with the directions of any sexton, traffic officer, police officer or other authorised officer.
- 15.3 All vehicles shall yield unconditional right of way to any funeral procession in any cemetery.

16. Conduct in Cemeteries

- 16.1 No person shall, in or near any part of any cemetery.
 - (a) By any violent, improper or objectionable behaviour prevent, interrupt, delay or disturb any funeral or burial service or proceedings;
 - (b) behave in a manner which creates a nuisance or is offensive to any other person;
 - (c) remain in the cemetery during the hours of darkness except with the prior written approval of the sexton or any other authorised officer;
 - (d) allow any animal, other than any Guide Dog, to accompany him or her into any cemetery;

- (e) take any photograph or video recording at any funeral for the purposes of sale or publication, without the permission of the funeral party concerned;
 - (f) 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.
 - (g) Allow any alcohol to be brought into, placed in or consumed in any cemetery
 - (h) Deface, damage or interfere with any memorial or grave;
 - (i) Take part in any gathering other than for the purpose of a religious or other ceremony of a burial or memorial unveiling.
- 16.2 Except at the specific request of a purchaser of plots or their representatives, no person shall, in any cemetery accept or take any such order or custom as referred to in clause 16.1 (f).
- 16.3 Any 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.
- 16.4 The continuing existence of any work, thing or state of affairs in a state contrary to the provisions of this Bylaw shall be deemed a continuing offence within the meaning of this Bylaw.

17. Particular Cemeteries

17.1 **DESIGNATED LAWN CEMETERY AREAS**

17.2 **Plot Size**

- 17.2.1 Plots in the Lawn Cemetery areas shall be 2.7 metres by 1.2 metres if intended for an adult burial and 1.9 metres by 1 metre if intended for a child burial.

17.3 **Fees**

- 17.3.1 The Council will grant the right of burial in plots set aside within the cemetery for such purpose on payment of the Council's adopted fee. Payment of the fee for such right shall confer on the purchaser or his approved transferee the exclusive right of burial in such plot subject to the provisions of this Bylaw.

17.4 **Permitted Memorials and Floral Tributes**

- 17.4.1 In those parts of any cemetery designated as lawn cemetery, the following provisions shall apply:
- (a) No grave shall be enclosed with any railing or kerbing.
 - (b) No headstone, monument, cross, marker or memorial shall be placed on any grave except a memorial plaque or tablet which complies fully with the Council specifications for plaques in lawn cemeteries.
 - (c) Fourteen (14) days after the date of interment, the Council may remove from any grave any article, including flowers and wreaths, and cause the surface of the grave to be levelled off and sown down in grass.
 - (d) After any grave has been levelled and sown, artificial or natural cut flowers or foliage may be placed thereon in the receptacle provided by the Council. The receptacle shall be placed in the space provided on the berm to one side of the plaque or tablet as shall be approved by the Council. Only one receptacle shall be placed on each grave.

- (e) The Council or an authorised officer has the discretion to remove and destroy any thing or item on any grave, if the thing or item contravenes clause 17.4.1 (d) or any artificial or natural cut flowers or foliage have become unsightly, or any receptacle has been damaged;
- (f) Any other article removed by the Council or an authorised officer shall be retained by the Council for a period of one month to await the disposal instructions of the next of kin or representative of the deceased. If no instructions for the disposal of the article are received by the Council within the time limit prescribed, the article may be destroyed or disposed of by an authorised officer of the Council, and the Council and its officers shall be under no liability to any person in respect of such removal destruction or disposal.

17.5 **Maintenance**

17.5.1 No person other than a Council employee or a person authorised in writing by the Council shall carry out any maintenance or other work in the designated lawn cemetery area.

17.5.2 All plaques or tablets intended to be placed on any grave in the designated lawn cemetery area shall, with the appropriate base, be supplied and delivered at the graveside by and at the cost of the owner and will be placed in position as approved by the Council.

18 **ASH DISPOSAL: GARDEN OF REMEMBRANCE**

18.1 Any garden of remembrance shall be used only for the scattering of the ashes of cremated human remains. In such part of any cemetery designated as a Garden of Remembrance the following provisions shall apply:

- (a) Ashes may be scattered in the areas so defined or as permitted by an authorised officer of the Council and an appropriate record may be entered in the Book of Remembrance..
- (b) Ashes may be interred around the kerbed perimeter of the garden. A plaque and receptacle for flowers may be affixed.
- (c) The plaque shall be affixed to the face of the kerb and the receptacle to the rear of the ash plaque, at the direction of the Council.
- (d) Flowers may be placed only in the receptacle installed to the rear of the ash plaque.
- (e) Any flowers which may have become unsightly may be removed and destroyed by the sexton and the Council and its officers are not liable to any person in respect of such removal and destruction.
- (f) The planting of shrubs is not permitted inside the Garden of Remembrance.

19 **MEMORIAL CEMETERY AREAS**

19.1 **Erection of Memorials**

19.1.1 No fences, kerbings or monuments other than headstones shall be erected, or trees, shrubs or flowers planted. No ornaments shall be suspended or attached to any vegetation or other structure in any cemetery.

19.1.2 The Council shall construct or cause to be constructed a continuous concrete platform or berm at or near ground level, of a width suitable to maintain stability, on which base or platform the foundation work for all memorials will be placed. The cost of the platform shall be included in the purchase price of the plot.

19.1.3 No memorial shall, at the head of any plot, be higher than 1.50m. The memorial shall comply with sound engineering principles, and shall be in keeping with the cemetery environment. The memorial shall be in keeping with the Council specifications and be of granite, or similar suitable material.

19.2 **Vaults and Brick or Walled-in Graves**

19.2.1 No vaults or brick or walled-in graves above ground shall be constructed in any cemetery except in such position as may be set aside for that purpose by the Council subject to the engineering and aesthetic specifications of the Council.

20 Serving of Orders and Notices

20.1 Except as otherwise provided for in any other enactment, where any notice, order, or other document is required to be served on any person for the purposes of this Bylaw, service may be effected by delivering it personally to the person or by sending it by registered post to that person's last known residential or business address.

20.2 If the person is absent from New Zealand, the order, notice, or other document may be served on the person's agent in the manner referred to in 20.1.

20.3 Where an order or notice is sent by registered post, the order or notice shall be sent so as to arrive no later than the latest time on which such order or notice is required to be served.

20.4 Any order or notice issued shall state the time within which the remedial action is to be carried out, and may be extended from time to time by written authority of an authorised officer.

21. Offences And Breaches

21.1 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 that person at the time and in the manner provided by this Bylaw;
- (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 given to that person under this 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 that officer under this Bylaw; or
- (g) Fails to comply with any notice or direction given under this Bylaw.

21.2 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.

22 Removal of Works

- 22.1 Where the notice served under Section 20 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.
- 22.2 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.
- 22.3 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.
- 22.4 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 22.2).
- 22.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under 22.1.
- 22.6 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.

23 Penalties for Breach of Bylaw

- 23.1 Every person who commits an offence against this Bylaw is liable to:
- (a) The penalty set out in the Local Government Act 2002.
 - (b) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty.
- 23.2 In accordance with the Local Government Act 2002 the Council may apply to the District Court for an injunction to restrain a person from committing a breach of this Bylaw.

24 Notices

- 24.1 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.

25 Dispensing Powers

- 25.1 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 course of operations of the business of, or bring loss or inconvenience to any person without any corresponding benefit to the community, the Council may, on the special 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 the Council may deem fit to impose shall be complied with by that person.

This Bylaw was duly made by the Opotiki District Council by a resolution passed on the 11th day of March 2008 and was confirmed following consideration of community submissions received during a special consultative procedure by a resolution {No 461} passed on the 17th day of June 2008.

The common Seal of the Opotiki District Council was here to affixed in the presence of

_____ Mayor

_____ Chief Executive