

Cemeteries Bylaw 2017

This bylaw is made under the Burial and Cremation Act 1964 and the Local Government Act 2002.

1. Title

This bylaw is the **Marlborough District Council Cemeteries Bylaw 2017**.

2. Commencement

This bylaw comes into force on 25 May 2017.

3. Application

This bylaw applies to the management of all cemetery operations and activities for cemeteries administered by the Marlborough District Council within the Marlborough District.

Part 1—Preliminary provisions

4. Purpose

The purpose of this bylaw is to regulate:

- (a) the maintenance, preservation, protection and embellishment of cemeteries administered by Council within Marlborough:
- (b) burials & interment (including of ashes) in such cemeteries:
- (c) the conduct of persons using or frequenting such cemeteries: and
- (d) fees that may be charged.

5. Interpretation

- (1) In this bylaw, unless the context otherwise requires,—

Act means the Burial and Cremation Act 1964:

AS 4425: 1996 means the Australian Standard for above-ground interment structures:

beam means a concrete strip that marks plot row and number and in which a memorial or plaque is placed:

built structure includes a vault, a mausoleum and a memorial:

cemetery means any land vested in or under the control of Council from time to time and dedicated as a cemetery:

Council means the Marlborough District Council:

disability assist dog has the same meaning as in section 2 of the Dog Control Act 1996:

disinterment means the removal of any body or the remains of any body or ashes interred in any cemetery:

exclusive right of burial means a right that may be purchased from Council which grants the purchaser, and his or her assignee, the exclusive right of burial in a designated burial plot for a period of up to 60 years; and

- (a) does not create an ownership interest over the designated plot; and
- (b) lapses in accordance with section 10 of the Burial and Cremation Act 1964:

grave means the area where the body of a deceased person is, or their ashes are, buried:

interment means the burial or other interment of a body, remains or ashes:

lawn cemetery means a cemetery or part of a cemetery that Council has determined, by resolution publicly notified to be a lawn cemetery:

mausoleum means an above-ground burial structure for the deposit of a body, remains or ashes in a specially sealed casket or coffin:

memorial includes a tombstone, headstone, memorial, or other erection:

natural burial means a burial that has a low environmental impact, including the body not being treated with chemicals or oils that prevent or slow down the decay of the body:

NZS4242:1995 means the New Zealand Standard for headstones and cemetery monuments:

plot includes a burial, ashes or memorial plot:

vault means an underground burial chamber:

- (2) Unless the context requires another meaning, a term or expression that is defined in the Act and used, but not defined, in this bylaw has the meaning given by the Act.

Part 2—Interment

6. Burial

- (1) Council may, by resolution publicly notified, set aside portions of cemeteries for burials of different types.
- (2) A burial must take place:
 - (a) in a specific plot, where the exclusive right of burial has been purchased; or
 - (b) in a plot chosen by Council, if no exclusive right of burial has been purchased.

7. Natural Burials

- (1) Council may set aside, by resolution publicly notified, areas within a cemetery where natural burials may be undertaken.
- (2) A natural burial must:
 - (a) be single depth, with a minimum depth cover of 800mm;
 - (b) only use caskets or coffins made of biodegradable materials;
 - (c) use shrouds made of natural materials;
 - (d) use no chemical or embalming treatment of the body;
 - (e) contain only biodegradable accessories, including clothing;

- (f) use only temporary, untreated wooden markers, placed at the time or within the first week of burial, centrally located at the head of the plot; and
 - (g) be marked more permanently by a native tree or shrub chosen by Council, and planted at its discretion.
- (3) No memorials or adornments may be placed on or near the burial plot.

8. Ashes

- (1) Council may, by resolution publicly notified, set side areas within a cemetery for interment or for scattering of ashes.
- (2) Ashes may be only be interred or scattered in areas set aside for that purpose by Council.

Built Structures

9. Vaults and Mausolea

- (1) Council may, by resolution publicly notified, set side areas within a cemetery for the erection of vaults or mausolea.
- (2) A vault or mausoleum may not be erected in any cemetery unless:
 - (a) it is in a cemetery where vaults and mausolea are permitted; and
 - (b) the appropriate application is made and approved by Council; and
 - (c) the applicable fees have been paid to Council.
- (3) An application for the erection of a vault or mausoleum must include all information required by Council including—
 - (a) the plans and specifications for the vault or mausoleum; and
 - (b) the written permission from the owner of the exclusive right of burial for that plot.
- (4) All built structures must be installed to AS 4425:1996 or any standard replacing this standard.
- (5) Vaults and mausolea must be erected by a Monumental Mason or other person approved by Council.
- (6) Any vault or mausoleum must be kept in good repair by the holder of the exclusive right of interment, or their assignee.
- (7) Council may give notice, being no less than three (3) months, requiring the owner to repair any vault or mausoleum in accordance with clause 5 of the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967.
- (8) Failure to complete repairs may result in Council prohibiting further interments in the vault or mausoleum until such repairs have been made.
- (9) Where a vault or mausoleum may pose a danger to any person, Council may take it down or remove it in accordance with section 9 of the Burial and Cremations Act 1964.

10. Memorials

- (1) Council may, by resolution publicly notified, set aside an area in a cemetery where memorials may be erected.

- (2) A memorial may not be erected in any cemetery unless:
 - (a) the appropriate application is made and approved by Council; and
 - (b) the applicable fees have been paid to Council.
- (3) An application for the erection of a memorial must include all information required by Council including—
 - (a) the plans and specifications for the memorial; and
 - (b) the written permission from the owner of the Exclusive Right of Burial for that plot.
- (4) The memorial installed must comply with any resolution made by Council under sub-bylaw (1) and must comply with the following, unless prior approval from Council is obtained,—
 - (a) a memorial in a memorial beam area must not stand higher than 1200mm or be wider than 1000mm or be deeper than 850mm and the memorial must be set back 150mm from the front and 150mm from the back of the beam ;
 - (b) a memorial in an ashes memorial garden and children's ashes area must not stand higher than 1200mm or be wider than 800mm or deeper than 500mm;
 - (c) a flat plaque memorial in a tree ashes garden must be placed within the allocated garden kerbing plot area;
 - (d) an inclined memorial in a lawn burial beam area must not stand higher than 400mm or be wider than 1000mm or be deeper than 500mm;
 - (e) a memorial in a children's burial beam area must not stand higher than 600mm or be wider than 800mm or deeper than 350mm.
- (5) The base of a flat or inclined memorial must be pinned to the beam with a minimum of 12mm diameter glued fibreglass rods.
- (6) An upright memorial (headstone) must be pinned to it's base or the beam with a minimum of 12mm diameter glued fibreglass rods.
- (7) Flower receptacles may be incorporated into the base of the memorial.
- (8) A small plastic plaque, bearing the name of the interred, is permitted until a memorial or permanent plaque is installed. A white wooden cross is not permitted.
- (9) The memorial must:
 - (a) cover no more than two (2) plots;
 - (b) be installed wholly within the beam area or within the allocated garden space;
 - (c) limit inscriptions to the front for double plot areas; and
 - (d) be set in a way approved by the Council.
- (10) The memorial must be installed by a monumental mason or person approved by Council.
- (11) The memorial and the associated plot must be kept in good repair by the holder of the exclusive right of burial, or their assignee.
- (12) Subject to the provisions of the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967, Council may remove any installation that falls into a state of dilapidation or neglect or

poses a danger to the public. A photographic record of the memorial will be taken prior to removal and retained in cemetery records.

- (13) No above-ground memorial, including railing or fencing, is permitted in any Lawn Cemetery.
- (14) Removal of a memorial must not be undertaken without the prior written approval of Council. Application for approval must be accompanied by proof of exclusive right of burial for that plot and the relevant fee.
- (15) Council may remove and dispose of any unauthorised memorials from the cemetery. Council will retain the memorial for a reasonable period of time, after which the adornment may be disposed of without compensation to the owner of the adornment.

11. Memorial Ashes Walls

- (1) Council may set aside areas and erect memorial ashes walls in any cemetery to be used for the interment of ashes.
- (2) Ashes may not be interred in an ashes memorial wall unless:
 - (a) the appropriate application is made and approved by Council; and
 - (b) the applicable fees have been paid to Council.
- (2) A plaque proposed to be installed on a memorial ashes wall must be provided, inscribed and installed by a monumental mason or person approved by Council;
- (3) The plaque must, unless prior permission is given by Council,—
 - (a) be of black granite with a polished face and edges;
 - (b) have the dimensions 280mm width by 180mm height by 16mm depth;
 - (c) have 12mm fiberglass dowels set with megapoxy a depth of 10mm into the back of the plaque;
 - (d) be fixed to holes of a depth of 12mm in the memorial wall;
 - (e) be fixed with a plaster mix 2:1 of sand and cement;
 - (f) cleaned to a high standard after fixing; and
 - (g) together with the wall and the site, be left in a clean and tidy condition.

12. Adornments

- (1) Adornments may be placed on a plot for up to one month following an interment.
- (2) After one month following the interment, adornments must be placed in approved receptacles and be within the confines of the beam.
- (3) Adornments may not inhibit the proper maintenance of the cemetery or other graves.
- (4) Glass, pottery, metal or other breakable items or items that may pose a danger must not be used or placed on the memorial, plaque, beam or the grassed area of the plot.
- (5) Council may remove the adornments described in sub-bylaw (4) or any other adornment that may pose a danger at any time. Council will either place these adornments on the memorial or within the confines of the beam, or in a designated place for collection by the owner. Council will retain the adornment for

a reasonable period of time, after which the adornment may be disposed of without compensation to the owner of the adornment.

13. Amendment of built structures requirements

Council may, by resolution, publicly notified, determine the location, style and dimensions of any memorial, adornment, vault or mausolea, memorial ashes wall, or other built structure and may amend the provisions of this bylaw to that effect.

Part 3—General conditions for interments & built structures

14. Application for Interment or installation of a built structure

- (1) An interment may only take place and a built structure may only be installed in a cemetery once:
 - (a) the appropriate application is made and approved by Council;
 - (b) all relevant information has been provided with the application; and
 - (c) the applicable fees have been paid to Council.
- (2) An application for an interment must include all information required by Council including—
 - (a) a Medical or a Death Certificate or Coroner's Authorisation; and
 - (b) the written permission from the owner of the Exclusive Right of Burial for that plot.
- (3) No interment may take place other than in an appropriate part of the cemetery set aside by Council for that purpose.
- (4) No built structure may be installed other than in an appropriate part of the cemetery set aside by Council for that purpose.

15. Interment Hours

- (1) An interment must be undertaken after 9.00 am and before 4.00 pm on any weekday and between 9.00 am and 1.00 pm on Saturdays. An interment may not be undertaken on Sundays or public holidays.
- (2) An interment may take place outside these times only with prior approval of Council.
- (3) Notification of an intended interment must be given to Council no later than 10.00am of the day before the intended time of interment. If this notice is not given, an extra charge may be imposed by Council.

16. Exclusive Right of Burial

- (1) The exclusive right of burial may be sold by Council in accordance with section 10 of the Act in those cemeteries where Council has, by resolution, publicly notified, determined that the exclusive right will be offered.
- (2) The right may only be held for a period of up to sixty (60) years as determined by Council, by resolution, publicly notified. A right will lapse if that period passes without an interment taking place in the plot subject to the right. The original holder of the right or their heir may have first right of refusal for re-purchase of the exclusive right of burial if the right expires without an interment having taken place in the plot.
- (3) Council and the holder of the right may agree to rescind the sale. Council will pay an agreed price for the right to be rescinded, which will be calculated as the proportion of the amount paid for the right.

- (4) No person may purchase the exclusive right of burial for more than two (2) plots unless approved by Council.
- (5) Council will not sell the exclusive right of burial in respect of any plot in those portions of a cemetery reserved exclusively for the interment of the bodies of persons who have served in Her Majesty's Forces or for natural interments.

17. Plots and Graves

- (1) Only a person authorised by Council may dig a grave, unless the prior written permission of Council has been obtained.
- (2) The grave must be dug at a depth to allow a second interment unless the Council directs otherwise.
- (3) The minimum depth of cover for any casket or coffin must be no less than 800mm.
- (4) A maximum of two (2) people may be buried in any one burial plot, except where prior permission is given by Council.
- (5) A grave may be reopened for subsequent interment(s) where prior permission is given by the Council and by the owner of the exclusive right of burial, or their assignee, and the relevant application is made and fee is paid.

Part 4 - Cemetery Maintenance

18. Plot Maintenance

- (1) The holder of the exclusive right of burial, the owner of a plot or their successors must ensure:
 - (a) the plot is maintained;
 - (b) any memorials associated with the plot are safe and secure;
 - (c) any kerbs, enclosures, tombstones, headstones, other monuments and their base structures, are kept in good order; and
 - (d) memorials do not inhibit regular maintenance of the cemetery.
- (2) No person may plant any tree, shrub, plant or other vegetation without prior permission from Council.
- (3) Council may cut or remove any vegetation planted in the cemetery, at its discretion.
- (4) Any person undertaking any work or otherwise present in a cemetery must withdraw for the duration of a nearby interment or service or at the direction of a person authorised by Council.
- (5) Services cemeteries will be maintained by Council in accordance with the Standard of Care set by NZ Veterans' Affairs.

Part 5 - Disinterment

19. Disinterment

- (1) The disinterment of a body, or remains of a body, must be conducted in accordance with section 51 of the Burial and Cremation Act 1964.

- (2) The disinterment must be conducted in the presence of:
 - (a) a Council officer; or
 - (b) a Funeral Director; or
 - (c) Health Protection Officer designated under the Health Act 1956, as part of disinterment approval conditions; or
 - (d) any other person with prior approval of the council.
- (3) A fee must be paid to Council before the disinterment may occur.
- (4) If a grave is rendered empty due to disinterment, and where there is no valid Exclusive Right of Burial, the plot will revert back to Council and Council will not be liable to make any refund of the cost of that interment plot. Council may then sell or use the plot for future interments.

Part 6 - Conduct of persons using or frequenting a cemetery

20. Conduct

- (1) A person using or frequenting a cemetery may not—
 - (a) Dig any ground or disturb any vegetation;
 - (b) Damage any grave, vault, monument or other thing present at the cemetery;
 - (c) Disturb any funeral service;
 - (d) Drive any vehicle other than on the paved areas intended for vehicles;
 - (e) Enter the cemetery for purposes unrelated to the cemetery or other approved uses of the cemetery.
- (2) No person may permit any animal not being a disability assist dog to enter a cemetery, without prior approval of Council.
- (3) Nothing in sub-bylaw (1) applies to—
 - i. Council;
 - ii. any person who is complying with these bylaws;
 - iii. any person who has the prior written permission of Council; or
 - iv. any person who has been required by Council to remove any thing from the cemetery.

Part 7- Administration, Enforcement & Miscellaneous Matters

21. Permission or approval of Council

- (1) Where, in this bylaw, the permission or approval of Council is required, a person must apply to Council in writing, providing all of the information identified by Council as necessary and paying the required fee.
- (2) Council will consider the application and may grant, with conditions, or decline the permission.
- (3) Where Council has determined (whether by resolution or otherwise) that a specified activity at a specified place at specified times is permitted, any person who would otherwise require prior written

permission under these bylaws need not obtain that permission if they comply with the determination and any controls imposed by Council in relation to that determination.

22. Fees

- (1) Council may, by resolution, fix a scale of fees, for any—
 - (a) plot purchase or reservation;
 - (b) interment or burial including a fee for interment or burial out of hours or for an out of district interment or burial;
 - (c) grave or vault dig services;
 - (d) approval of any monument or plaque;
 - (e) agreement to maintain or administer any cemetery plot or memorial or area;
 - (f) disinterment;
 - (g) genealogy or other search or enquiries;
 - (h) any application for permission or approval under these bylaws.
- (2) The fees may be reviewed and amended from time to time.
- (3) Council may set different fees and charges for different services, facilities, activities and the types of plot and for the approval of any monument or tablet or miscellaneous item to be on or within the plot confines.

23. Non-compliance

- (1) Any person who does not comply with the these bylaws may be:
 - (a) denied entry to the cemetery;
 - (b) required to leave the cemetery;
 - (c) required to remedy the breach; or
 - (d) issued a trespass notice for that cemetery and other Council land.
- (2) Council may require any person by written notice to remedy any breach of this bylaw.
- (3) If any person fails to remedy a breach of the Act, these bylaws or the controls, Council may undertake the remedial work and recover the costs from the person who committed the breach.

24. Removal of construction

- (1) Council may, pursuant to section 163 of the Local Government Act 2002, remove or alter a work or thing that has been constructed in breach of this bylaw and may recover any costs of removal or alteration from the person who committed the breach.

25. Offences and penalties

A person who fails to comply with this bylaw commits a breach of this bylaw and is liable to a penalty under the Local Government Act 2002 and / or the Burial and Cremation Act 1964.

26. Bylaws not to affect other enactments

This bylaw does not limit or affect the requirements in or under any other enactment.

Part 8—Revocation & Savings

27. Revocation

Chapter 6 of the Marlborough District Council General Bylaws 2010 are revoked.

28. Savings

Any permission, approval or other authorisation given under Chapter 6 of the Marlborough District Council General Bylaws 2010 continues in force in accordance with their terms.