



NOTICE OF MEETING

**Notice is hereby given of the Meeting of the
Performance, Policy and Partnerships Committee
to be held in the Council Chamber,
First Floor, Civic Administration Building,
101 Esk Street, Invercargill on
Tuesday 13 October 2020 at 3.00 pm**

Cr D J Ludlow (Chair)
Cr R R Amundsen (Deputy Chair)
Sir T R Shadbolt, KNZM JP
Cr R L Abbott
Cr A J Arnold
Cr T M Biddle
Cr W S Clark
Cr A H Crackett
Cr P W Kett
Cr G D Lewis
Cr I R Pottinger
Cr N D Skelt
Cr L F Soper

CLARE HADLEY
CHIEF EXECUTIVE

A G E N D A

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2. **APOLOGIES**
3. **PUBLIC FORUM**
4. **INTEREST REGISTER**
A2279220
5. **REPORT OF THE INVERCARGILL YOUTH COUNCIL**
A3129517
6. **MINUTES OF THE EXTRAORDINARY MEETING HELD ON 25 AUGUST 2020**
A3138367

To be moved:
That the Minutes of the Extraordinary Meeting held on 25 August 2020 be confirmed.
7. **MINUTES OF THE MEETING HELD ON 8 SEPTEMBER 2020**
A3159545

To be moved:
That the Minutes of the Meeting held on 8 September 2020 be confirmed.
8. **PARKING EXEMPTIONS POLICY FOR ELECTED REPRESENTATIVES, FORMER ELECTED REPRESENTATIVES AND SPECIAL CIRCUMSTANCES**
A3153217
9. **GREAT SOUTH LETTER OF EXPECTATION**
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11. **PROPOSAL FROM ARTS MURIHIKU FOR “CREATIVE 2021”
COLLABORATION**

A3196727

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OTHER) ASSISTANCE REQUEST**

A3167777

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13. **NOTICE OF MOTION – BUILDING CODE EARTHQUAKE
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A3194849

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A3183556

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A3183621

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15.2 [Appendix 2](#)

16. **PROVISIONAL REVENUE AND FINANCING POLICY**

A1323940

16. [Appendix 1](#)

17. **URGENT BUSINESS**

18. **PUBLIC EXCLUDED SESSION**

Moved, seconded that the public be excluded from the following parts of the proceedings of this meeting; namely

(a) *Confirmation of Extraordinary Minutes of the Meeting held on 25 August 2020.*

- (b) *Confirmation of the Minutes of the Meeting held on 8 September 2020.*

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
(a) Confirmation of Extraordinary Minutes – 25 August 2020	Section 7(2)(i) Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	Section 48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7
(b) Confirmation of Minutes – 8 September 2020	Section 7(2)(i) Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	Section 48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

A2279220

ELECTED MEMBERS			
NAME	ENTITY	INTERESTS	PROPERTY
RONALD LINDSAY ABBOTT	Invercargill City Council Kiwi-Pie Radio 88FM Invercargill	Councillor Director / Broadcaster	
REBECCA RAE AMUNDSEN	Invercargill City Council Arch Draught Ltd BP Orr Ltd Task Ltd Arts Murihiku Dan Davin Literary Foundation Heritage South Glengarry Community Action Group SMAG Board	Councillor Director Director Director Trustee Trustee/Chair Contractor Events Co-ordinator (Volunteer) Council Representative	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

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ALLAN JAMES ARNOLD	Invercargill City Council Ziff's Café Bar Ltd Buster Crabb Ltd Ziff's HR Ltd Ziff's Trust Southland Aero Club Invercargill Club Invercargill East Rotary	Councillor Executive Director Executive Director Executive Director Trustee Administrator Member Member Member	
TONI MARIE BIDDLE	Invercargill City Council Southland Museum and Art Gallery Trust Board McIntyre and Dick Regional Leadership Skills Group	Councillor Trustee Husband (Kris MacLellan) – Chief Executive Officer Member	
WILLIAM STUART CLARK	Invercargill City Council Invercargill Ratepayers Advocacy Group	Councillor Member	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

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ALEX HOLLY CRACKETT	Invercargill City Council Ride Southland Southland Youth Futures Advisory Board Sport Southland McIntyre Dick Zone 6 - National LGNZ Young Elected Members Committee	Councillor Chair Chair Trustee Marketing Manager Representative	High Street Invercargill
PETER WARREN KETT	Invercargill City Council Age Concern Southland Kite Investments Limited Invercargill Harness Racing Club Board Member Ascot Consortium	Councillor Board Member Director Vice President and Life Member Member	
GRAHAM DAVID LEWIS	Invercargill City Council Bluff 2024 Rejuvenation Hospice Southland City Centre Heritage Steering Group Southland Regional Heritage Trust	Councillor Officer Trustee Member Member	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

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DARREN JAMES LUDLOW	Invercargill City Council Radio Southland Healthy Families Invercargill Murihiku Maori Wardens Southland Community Law Centre Thrive Community Trust Environment Southland	Councillor Manager Board Member Board Member Board Member Trustee Lyndal Ludlow (wife) – Councillor	770 Queens Drive Invercargill
IAN REAY POTTINGER	Invercargill City Council Southland Electronics Limited Santa Parade Organiser	Councillor Director Alice Pottinger (Wife)	171 Terrace Street Invercargill 9810
TIMOTHY RICHARD SHADBOLT	Invercargill City Council Kiwi Speakers Limited SIT Ambassador	Mayor Director Member	
NIGEL DEAN SKELT	Invercargill City Council Badminton New Zealand Badminton Oceania Badminton World Federation ILT Stadium Southland Judicial Control Authority NZ Racing	Councillor Board Member Vice President Council Member (Chair of Communications and Media) General Manager Member	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

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LESLEY FRANCES SOPER	Invercargill City Council	Councillor	137 Morton Street
	Breathing Space Southland Trust (Emergency Housing)	Chair	Strathern
	Omaui Tracks Trust	Director	Invercargill
	National Council of Women (NCW)	Secretary / Treasurer	24 Margaret Street
	Citizens Advice Bureau	Member	Glengarry
	Southland ACC Advocacy Trust	Board Member	Invercargill
	Southern District Health Board	Employee	
	Southland Warm Homes Trust	Member	
	Southland Food Rescue Trust	Member	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS
INTEREST REGISTER**

A2279220

EXECUTIVE STAFF			
NAME	ENTITY	INTERESTS	PROPERTY
CLARE HADLEY	Invercargill City Council Hadley Family Trust	Chief Executive Trustee	
CAMERON MCINTOSH	Invercargill City Council	Group Manager – Strategy and Engagement	
DAVID FOSTER	Invercargill City Council	Interim Group Manager - Finance and Assurance Executive Director Foster and Associates Ltd	
DARREN EDWARDS	Invercargill City Council	Group Manager - Environmental and Planning Services Interim Group Manager – Leisure and Recreation	
JANE PARFITT	Invercargill City Council Dementia Canterbury Charitable Trust	Interim Group Manager – Infrastructure Board Member	

TO: PERFORMANCE, POLICY AND PARTNERSHIPS COMMITTEE

FROM: RHIANNON SUTER, MANAGER – STRATEGY AND POLICY

MEETING DATE: TUESDAY 13 OCTOBER 2020

INVERCARGILL YOUTH COUNCIL

SUMMARY

The Invercargill City Youth Council will have two representatives at the meeting. They will speak about their opinion on the voting system and LTP engagement ideas.

RECOMMENDATION

That the Performance, Policy and Partnerships Committee receive the report “Invercargill Youth Council”.

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> Yes
2.	<i>Is a budget amendment required?</i> No
3.	<i>Is this matter significant in terms of Council’s Policy on Significance?</i> No
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> N/A
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> N/A
6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> Yes

FINANCIAL IMPLICATIONS

No implications.

HE WAKA TUIA VISIT

As at the last meeting on 16 September, He Waka Tuia had only been open for 4 days and so no Youth Council members had seen the new interim museum and art gallery. Members were encouraged to attend and feedback will be reported at this meeting.

ICC VOTING SYSTEM

The Youth Council feel it is most relevant to provide comment on the local electoral system, rather than the national one, considering their position in local government. Single Transferrable Vote was voted in favour over First Past the Post.

LTP ENGAGEMENT IDEAS

The Youth Council enjoyed participating in a discussion with the Communications team about how to engage young people in the Long Term Plan process via Social Media. They had ideas on how Instagram could be utilised for this.

MINUTES OF A MEETING OF THE EXTRAORDINARY PERFORMANCE, POLICY AND PARTNERSHIPS HELD IN THE COUNCIL CHAMBER, FIRST FLOOR, CIVIC ADMINISTRATION BUILDING, 101 ESK STREET, INVERCARGILL ON TUESDAY 25 AUGUST 2020 AT 3.52 PM

PRESENT: Cr D J Ludlow (Chair)
Cr R R Amundsen (Deputy Chair)
Sir T R Shadbolt, KNZM JP
Cr R L Abbott
Cr A J Arnold
Cr T M Biddle
Cr W S Clark
Cr A H Crackett
Cr P W Kett
Cr G D Lewis
Cr I R Pottinger
Cr N D Skelt (via Zoom)
Cr L F Soper

IN ATTENDANCE: Mr N Peterson – Bluff Community Board
Mrs G Henderson – Bluff Community Board
Mrs C Hadley – Chief Executive
Mr C McIntosh – Group Manager – Strategy and Engagement
Mrs J Parfitt – Interim Group Manager – Infrastructure
Mr D Edwards – Group Manager – Customer and Environment
Mr A Cameron – Strategic Advisor
Ms J Conway – Manager Governance and Administration
Mr P Horner – Manager Building Assets
Ms M Frey – Interim Manager Parks
Ms H McLeod – Interim Team Leader Communications
Mrs T Amarasingha – Governance Advisor
Ms L Kuresa – Governance Officer

2. **APOLOGIES**

Nil.

3. **PUBLIC FORUM**

Nil.

4. **INTEREST REGISTER**

A2279220

Nil.

5. **URGENT BUSINESS**

Nil.

Note: The meeting adjourned at 3.55 pm and resumed at 4.51 pm.

6. PUBLIC EXCLUDED SESSION

Moved Cr Ludlow, seconded Cr Soper and **RESOLVED** that the public be excluded from the following parts of the proceedings of this meeting, namely:

- (a) *Appointment of Investigators for Code of Conduct Matters.*
- (b) *Appointment of Great South Board of Directors.*

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
(a) Appointment of Investigators for Code of Conduct Matters	Section 7(2)(a) To protect the privacy of natural persons, including that of deceased natural persons	Section 48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7
(b) Appointment of Great South Board of Directors	Section 7(2)(a) To protect the privacy of natural persons, including that of deceased natural persons	Section 48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7

There being no further business, the meeting finished at 5.09 pm.

**MINUTES OF A MEETING OF THE PERFORMANCE, POLICY AND PARTNERSHIPS
HELD IN THE COUNCIL CHAMBER, FIRST FLOOR, CIVIC ADMINISTRATION
BUILDING, 101 ESK STREET, INVERCARGILL ON TUESDAY 8 SEPTEMBER 2020
AT 3.00 PM**

PRESENT:

- Cr D J Ludlow (Chair)
- Cr R R Amundsen (Deputy Chair)
- Sir T R Shadbolt, KNZM JP (via Zoom)
- Cr A J Arnold
- Cr T M Biddle
- Cr W S Clark
- Cr A H Crackett
- Cr P W Kett
- Cr G D Lewis
- Cr I R Pottinger
- Cr N D Skelt
- Cr L F Soper

IN ATTENDANCE:

- Mr D Edwards - Group Manager – Customer and Environment
- Mrs J Parfitt – Interim Group Manger – Infrastructure
- Mr D Foster – Interim Group Manager – Finance and Assurance
- Mr C McIntosh – Group Manager – Strategy and Engagement
- Ms J Conway – Manager Governance and Administration
- Ms R Suter – Manager Strategy and Policy
- Mr M Morris – Legal Counsel
- Ms S Baxter – Policy Planner
- Ms G Crawford – Community Development
- Ms B Mager – Manager Digital and Communications
- Ms L Kuresa – Governance Officer

2. **APOLOGIES**

Cr R L Abbott.

Moved Cr Lewis, seconded Cr Soper and **RESOLVED** that the apology be accepted

3. **PUBLIC FORUM**

Nil.

4. **INTEREST REGISTER**

A2279220

Nil.

5. **REPORT OF THE INVERCARGILL YOUTH COUNCIL**
A3129517

Moved Cr Biddle, seconded Cr Kett that the report be received.

Ms Crawford took the meeting through the report and asked if there were any Council agenda items that the Committee wanted the Youth Council to comment on for the next Committee Meeting.

Councillors suggested that the Youth Council comment on their experience of the upcoming General Elections in relation to the length of term and the voting system used. It was also suggested that it would be interesting to receive feedback around the temporary Museum premises that was due to open on 12 September.

The motion, now being put, was **RESOLVED** in the **affirmative**.

6. **MINUTES OF THE MEETING OF THE PERFORMANCE, POLICY AND PARTNERSHIPS COMMITTEE HELD ON 11 AUGUST 2020**
A3121104

Moved Cr Amundsen, seconded Cr Skelt and **RESOLVED** that the minutes of the Performance, Policy and Partnerships Committee Meeting held on 11 August 2020 be confirmed.

7. **MINUTES OF THE EXTRAORDINARY MEETING HELD ON 4 AUGUST 2020**
A3152398

Moved Cr Skelt, seconded Cr Lewis and **RESOLVED** that the Extraordinary minutes of the Performance, Policy and Partnerships Committee Meeting held on 4 August 2020 be confirmed.

8. **MINUTES OF EXTRAORDINARY MEETING HELD ON 25 AUGUST 2020**
A3138367

Moved Cr Kett, seconded Cr Skelt and **RESOLVED** that the Extraordinary minutes of the Performance, Policy and Partnerships Committee Meeting held on 25 August 2020 be confirmed.

9. **DRAFT PRINCIPLES FOR NON-RATES REVENUE**
A1323940

Mr Foster took the meeting through the report.

Cr Crackett said she had been approached by a member of the public who was a midwife at the hospital as to whether parents have to pay to cremate their babies when they die at birth. She wanted to explore the Committee's appetite for absorbing these costs as there were several other costs that Council absorbed for the benefit of the community.

After discussion Mr Foster explained the report was talking about policy. It would come into play if it referred to particular charges where there was a generic approach as to how those fees and charges were set. That would be the point of which particular exclusions Council may waive and the conditions around it. It was agreed that this would be investigated further.

Moved Cr Lewis, seconded Cr Soper and **RESOLVED** that:

1. The report "Draft principles for non-rates revenue" be received; and
2. That Council endorse the "Provisional Policy for Funding Operating costs from Non Rates sources"; and
3. That Council finalises the draft revenue and Financing policy following consideration of the rates review; and
4. That Council notes that the particular wording may alter when the section for rates revenue is completed.

10. **DRAFT SMOKEFREE POLICY**
A3150986

Ms Suter took the meeting through the report.

Moved Cr Ludlow, seconded Cr Amundsen that the report, "Draft Smokefree Policy" be received; and the Smokefree Policy be adopted.

Councillors agreed that consultation not be undertaken as there were a lot of significant projects happening in the community and this was also a difficult time to be consulting.

Councillors spoke to and asked questions for clarity on this item.

The motion, now being put, was **RESOLVED** in the **affirmative**.

11. **CITY CENTRE HERITAGE STEERING GROUP – ONE YEAR REVIEW OF HERITAGE STRATEGY**
A3001434

Ms Baxter took the meeting through the report.

Councillors thanked Ms Baxter and her team for all the hard work they had undertaken to complete the Heritage Strategy document.

Moved Cr Amundsen, seconded Cr Lewis and **RESOLVED** that:

1. The report, "City Centre Heritage Steering Group – One-Year Review of Heritage Strategy", be received; and
2. The recommendations made by the City Centre Heritage Steering Group (Steering Group) for revisions to the Heritage Strategy be received.

12 **URGENT BUSINESS**

Nil.

13. **PUBLIC EXCLUDED SESSION**

Moved Cr Biddle, seconded Cr Lewis and **RESOLVED** that the public be excluded from the following parts of the proceedings of this meeting, namely:

- (a) *Confirmation of the Public Excluded Session Minutes of the Meeting held on 11 August 2020.*
- (b) *Confirmation of the Public Excluded Session Extraordinary Minutes of the Meeting held on 25 August 2020.*

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for the passing of this resolution
(a) Confirmation of Minutes – 11 August 2020	Section 7(2)(i) Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	Section 48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7
(b) Confirmation of Extraordinary Minutes – 25 August 2020	Section 7(2)(i) Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	Section 48(1)(a) That the public conduct of this item would be likely to result in the disclosure of information for which good reason for withholding would exist under Section 7

There being no further business, the meeting finished at 3.42 pm.

TO: PERFORMANCE, POLICY AND PARTNERSHIPS COMMITTEE

FROM: ELLE DICKSON – COMPLIANCE TEAM LEADER

MEETING DATE: TUESDAY 13 OCTOBER 2020

PARKING EXEMPTIONS POLICY FOR ELECTED REPRESENTATIVES, FORMER ELECTED REPRESENTATIVES AND SPECIAL CIRCUMSTANCES

SUMMARY

In May of this year the Committee of Council received a report entitled ‘Parking Exemptions Policy for Elected Representatives, Former Elected Representatives and Special Circumstances’. The report adopted the preferred option to provide parking exemptions for Elected Members.

After recent discussions with the Remuneration Authority it has been confirmed that the Policy does not meet the criteria in allowing for Elected Members entitlements and allowances that are not provided for in the determination, which includes parking exemptions.

RECOMMENDATIONS

1. **That the report, “Parking Exemptions Policy for Elected Representatives, Former Elected Representatives and Special Circumstances” be received**
- AND**
2. **That the Resolution contained in the “Parking Exemptions Policy Review for Elected Representatives, Former Elected Representatives and Special Circumstances” passed at the 25 May 2020 Committee of Council meeting, be revoked.**
- AND**
3. **Approve the use of ten carparks in Esk Street 1 carpark for Elected Members (Authorised) parking only.**

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> Parking Compliance is provided for in the Long Term Plan.
2.	<i>Is a budget amendment required?</i> No
3.	<i>Is this matter significant in terms of Council’s Policy on Significance?</i> No

4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> Nil
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> No public consultation proposed.
6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> No

In May of this year the Committee of Council received a report regarding the review of the Parking Exemption Policy with the view that it be updated to reflect the preferred option of the Elected Members.

After recent discussions with the Remuneration Authority it has been confirmed that the policy does not meet the criteria in allowing for Elected Members entitlements and allowances that are not provided for in the determination.

Therefore, Elected Members should not receive personal benefits that are not in the determination, which include exemptions from parking charges in their local town. (*Appendix 1*) This confirms that Elected Members are not entitled to parking exemptions.

With the exemption to be removed, we have considered how parking can be provided at the Civic Administration Building to cater for Elected Members conducting Council business.

There are currently two Councillor parking spaces outside the Civic Administration Building next to the Mayoral carpark behind the wall. To provide further parking for Elected Members we are suggesting an area in the leased park of Esk Street 1 carpark that could be used as Elected Members parking. (*Appendix 2*)

This would provide a total of thirteen spaces available for elected members to use when conducting Council business.

Appendix 1

From: Mike Kunz <Mike.Kunz@remauthority.govt.nz>
Sent: Thursday, 27 August 2020 11:49 AM
To: Betty Holden-Tzanoudakis <Betty.Holden-Tzanoudakis@icc.govt.nz>
Subject: RE: Enquiry relating to Local Authority Members Parking Exemptions [UNCLASSIFIED]

Mōrena Betty

As requested, I have read Dame Fran's reply below and it is sufficient for the purpose that you wish to use it.

Kia pai tō rā

Mike

--

Mike Kunz

Director - Office of the Remuneration Authority



mike.kunz@remauthority.govt.nz | 📞 +64 04 499 3068 | 📠 +64 04 896 5905 | 📱 M +64 021 831 636

✉ PO Box 10084, The Terrace, Wellington 6143 or

📍 Level 11, Midland Chambers, 45 Johnston Street, Wellington 6011, New Zealand

🌐 www.remauthority.govt.nz

----- Forwarded message -----

From: Fran WILDE <Fran.Wilde@remauthority.govt.nz>

Date: Thu, Jul 9, 2020 at 4:19 PM

Subject: RE: Enquiry relating to Local Authority Members Parking Exemptions [UNCLASSIFIED]

To:

Dear

Thank you for this email and apology for delay in replying.

The Remuneration Authority policy is that elected members entitlements, allowances etc are provided for in the determination. They should not receive personal benefits that are not in the determination. This would include exemption from parking charges in their local town.

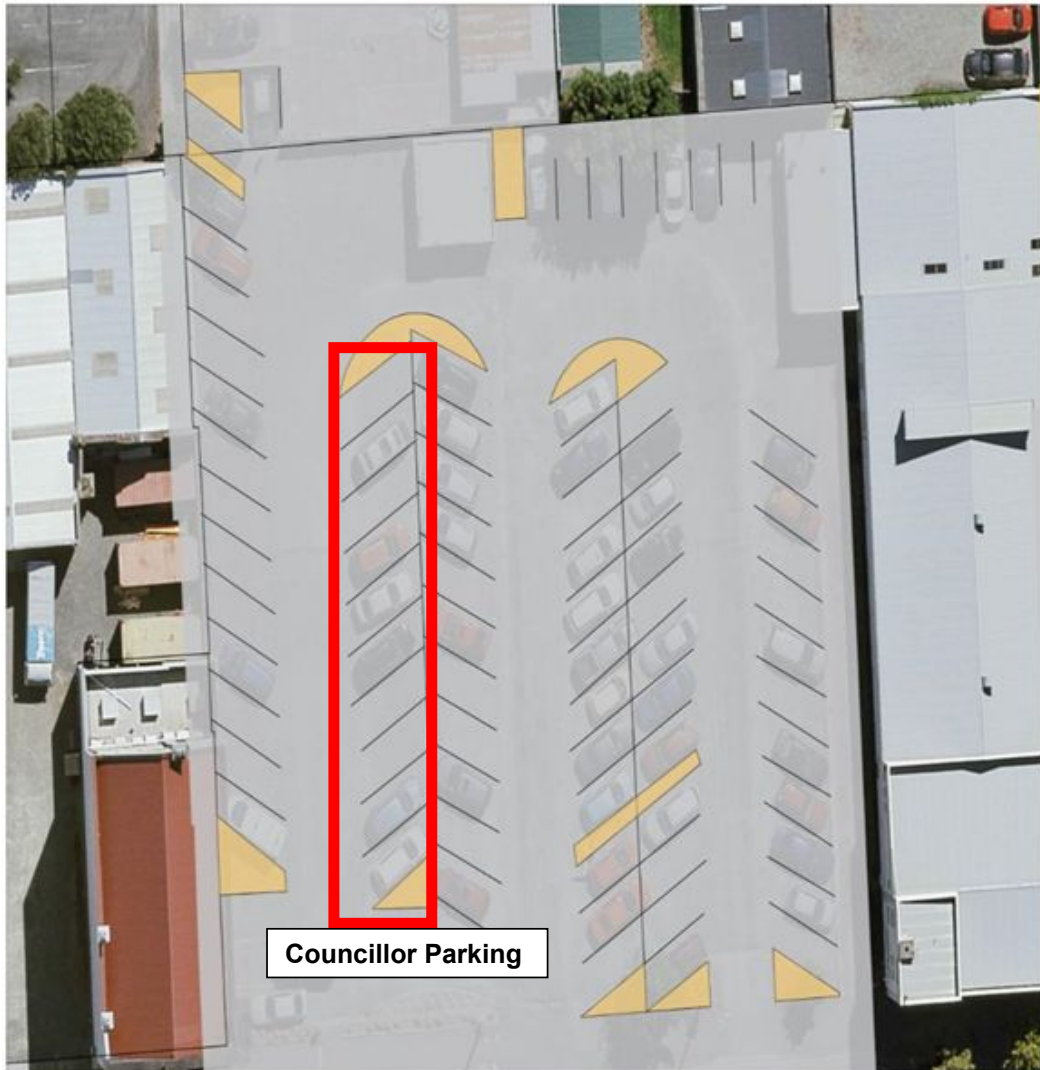
Regards

Fran

Dame Fran Wilde



Appendix 2



TO: PERFORMANCE, POLICY AND PARTNERSHIP

FROM: RHIANNON SUTER, MANAGER – STRATEGY AND POLICY

MEETING DATE: TUESDAY 13 OCTOBER 2020

GREAT SOUTH LETTER OF EXPECTATION
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SUMMARY

<p>Council is required to provide an indication to the Mayoral Forum of its requirements of Great South for the 2021/2022 year. This will form part of the Letter of Expectation which will be sent to Great South by 30 October. This will enable completion of the Statement of Intent by 1 December as required by the constitution.</p>

RECOMMENDATIONS

That Council

1. Receive the report “Great South Letter of Expectation”.
2. Note the areas of focus which Council expects Great South to consider for 2021/2022: including planning for transition for Tiwai, through supporting aquaculture and other diversification; support for domestic tourism, including through focus on events in the city and continued focus on housing.
3. Endorse the proposed budget allocations for 2021/2022 for inclusion in the Letter of Expectation and as part of the Long-term Plan budgeting process.

IMPLICATIONS

1.	<p><i>Has this been provided for in the Long Term Plan/Annual Plan?</i></p> <p>This will form part of the 2021-31 LTP (Year one)</p>
2.	<p><i>Is a budget amendment required?</i></p> <p>No</p>
3.	<p><i>Is this matter significant in terms of Council’s Policy on Significance?</i></p> <p>No – no budget change is proposed</p>
4.	<p><i>Implications in terms of other Council Strategic Documents or Council Policy?</i></p> <p>Yes – will form part of the 2021-2031 LTP (Year one)</p>
5.	<p><i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i></p> <p>Consultation on budget matters will take place as part of the 2021-2031 LTP process</p>

FINANCIAL IMPLICATIONS

The proposed budget allocation for Great South for 2021/2022 is unchanged at \$1.625 million, incorporating \$800,000 core funding and \$825,000 contract funding.

BACKGROUND

The Great South Constitution has been revised and amended, with changes approved at the Great South Annual General Meeting held 28 September 2020. The Constitution sets out the process for the Letter of Expectation and Statement of Intent, and requires the Statement of Intent to be received by 1 December each year. This is particularly important as Councils prepare for their Long-term Plans, however it brings forward the timeframe in which the Letter of Expectation can be provided by the Southland Mayoral Forum.

The following table sets out the proposed timeline for the Letter of Expectation process:

LOE process and dates shared with Southland Mayoral Forum	25 September 2020 <i>Complete</i>
Minor amendments to Great South Constitution and Shareholders Agreement presented for approval at Great South (SRDA) AGM, which confirm the 1 December date for the Statement of Intent	28 September 2020 <i>Complete</i>
Great South provide update to ICC, following which Council workshop their recommended priorities	1 October 2020 <i>Complete</i>
LOE review workshop held – Southland District Council	TBC
Extraordinary Mayoral Forum meeting to discuss Letter of Expectation	Week commencing 19 October
Letter of Expectation provided to Great South Board	30 October
Great South Board provide its draft Statement of Intent to the Joint Shareholders Committee	TBC
Individual Shareholders provide feedback to Great South Board by	TBC
Great South Board consider feedback on the draft Statement of Intent and deliver the completed Statement of Intent to the Shareholders on or before 1 December as per the Great South Constitution Clause 27.6(a).	Delivery of the final Statement of Intent on or before 1 December 2020
Council feedback on Statement of Intent to Great South	December/ January
Following this, the investment agreed for core and contract funding will be completed with Great South for the period 2021-2022, incorporating agreed Council priorities.	Prior to June 2021

COUNCIL PRIORITIES

The following priority areas are recommended for feedback to Great South:

- **Tiwai transition** - Dependent on the Government post-election, Tiwai faces a 3-5 year period for transition planning. Great South's focus has been on retaining jobs for Southlanders affected by the smelter's closure. Collaboration with Central Government on plan for transition, including how the local agencies will fit into/support/lead any transition plan is requested. Aquaculture, amongst other industries, presents important opportunities and should be prioritised.
- **Domestic tourism and events** - Invercargill is the Gateway to Southland for Tourism. As domestic travel is now possible, there are opportunities to showcase Southland tourism offerings through Invercargill as a destination and gateway. Events remain essential in supporting both resilience for the city and promoting domestic tourism. The Southland Murihiku Events Strategy will be published reflecting a focus on supporting the CBD activation and engagement. Council requests that Great South focus on development events within the city, as part of the wider strategy to attract domestic tourism.
- **Housing** – Housing remains a focus for Council. Council requests that Great South utilise the funding allocated to support the work of the Southland Housing Action Forum.

Council will work with the Mayoral Forum and Great South to formalise these requirements in service level agreement or similar document, incorporating key performance indicators as appropriate.

FUNDING BREAKDOWN

The following funding breakdown is proposed and, following confirmation, will be provided to the Southland Mayoral Forum for inclusion in the Letter of Expectation.

Area of Focus	2020 – 2021 (post-covid)	2021 – 2022
Core Funding – this funding supports the organisation's ability operate, including ability to pay overheads	\$800,000	\$800,000
Contract funding – this funding allows each funding shareholder to contribute to their key areas of focus	\$825,000	\$825,000
- Regional Economic Development	\$200,000	\$275,000
- Regional Business Development	\$225,000	\$150,000
- Regional Tourism Development	\$200,000	\$200,000
- Regional Events Delivery	\$150,000	\$150,000
- Regional Wellbeing	\$50,000	\$50,000
TOTAL	\$1,625,000	\$1,625,000

The following factors have been considered in proposing this breakdown:

- Maintaining the level of funding available for Great South at the same level
- Increasing the amount available for regional economic development, with a specific consideration of the importance of planning for diversification to support the transition of Tiwai point
- Reducing the amount available to business development, given the strong level of central Government support in this area

- Maintaining the level of tourism development funding noting that despite there being no international tourism, Invercargill primarily attracts domestic tourism and there is an opportunity to grow this market at a time when international trips are not possible.
- Maintaining the increased level of events funding, noting the continued importance of events to recovery post-Covid. Council requires that this funding is spent on development, capacity building and promotion of events within the city.
- Maintain funding for housing, noting that if the Southland Housing Action Forum continues this funding should support their work.

CONCLUSION

The proposed funding breakdown for 2021/2022 is provided here for Council consideration before being included in the 2021/2022 Mayoral Forum letter of expectation and utilised for the Long-term Plan budgeting process.

TO: PERFORMANCE, POLICY AND PARTNERSHIPS COMMITTEE

FROM: RHIANNON SUTER, MANAGER – STRATEGY AND POLICY

MEETING DATE: TUESDAY 13 OCTOBER 2020

GRANT FUNDING FRAMEWORK FOR ACHIEVEMENT OF STRATEGIC PRIORITIES AND COMMUNITY WELLBEINGS

SUMMARY

A revision to the contestable grant funding framework is proposed to enable Council to better support the community in line with strategic priorities and community wellbeings.

The immediate impact of Covid-19 has been seen in the local community, with reduced funding available from major community funders including the Community Trust of Southland and Invercargill Licensing Trust/ILT Foundation. Council can expect to see increased funding applications from groups as a result. The ongoing impact of Covid-19 is still evolving, as are other challenges including the possible closure of Tiwai Point Aluminium Smelter. It is not yet clear where and how the impact will be felt in the community.

RECOMMENDATIONS

That the Performance, Policy and Partnerships Committee

- 1. Receive the report “Grant Funding Framework for achievement of strategic priorities and community wellbeings”.**
- 2. Confirm the intention to implement a strategic approach to grants funding in alignment with the decision to take a strategic approach to capital projects funding agreed at the 14 July Performance, Policy and Partnerships Committee meeting.**
- 3. Adopt the draft strategic grants framework (Appendix C), noting any required changes to the weighting.**
- 4. Endorse retaining administration of the Creative Communities Invercargill Fund (Option 1).**
- 5. Endorse retaining administration of the Active Communities Fund (Option 1).**
- 6. Note no change is recommended to the administration of the following funds administered by the City Centre Heritage Steering Group:**
 - a. City Centre Built Heritage Fund**
 - b. City Centre Repainting Fund**
 - c. City Centre Seismic Strengthening Heritage Fund**
- 7. Disestablish the following funds, reallocating all the associated funding into one Community Wellbeing Fund to be overseen by a Community Wellbeing**

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Sub-Committee reporting to the Performance, Policy and Partnerships Committee (Option 2):

- a. Community Grants Fund (\$200,000)
 - b. Neighbourhood Fund (\$50,000)
 - c. ICC Event Development Fund (\$100,000)
 - d. ICC Iconic Events Fund (\$100,000)
8. Endorse the draft Terms of Reference (A3200609) for the proposed Community Wellbeing Sub-committee.
 9. Endorse a review of the criteria for funding and outcomes of funding after the 2020/2021 period to enable any unforeseen challenges to be managed.

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> Yes
2.	<i>Is a budget amendment required?</i> No
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> No
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> This proposed grants framework is intended to align with the 2021-2031 Long-term Plan.
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> Any long-term increase in grant funding should be consulted on as part of the Long-term Plan process.

FINANCIAL IMPLICATIONS**BACKGROUND**

Council administers a number of contestable grants funds with the purpose of providing grant funding to support community wellbeing. Contestable Grants Funds are defined as pools of funding to which members of the community can apply in line with publicly available criteria, with decisions on allocations of grants made by a committee. Some are rates funded and some funded through provision from Trusts or other organisations. A full description of the funds is provided in Appendix A.

Challenges to the existing structure, changing community need as a result of Covid-19, as well as opportunities for achieving greater impact have been identified.

The current structure of funds is complex, with small amounts of funding administered by multiple committees. Council has received feedback from the public that it can be confusing to know which fund to apply to. There is little strategic direction provided to decision makers which results in a largely reactive decision making process. The small amount of funding in

different funds limits impact and reduces Council's ability to respond flexibly to community innovation.

The immediate impact of Covid-19 has been seen in the local community, with reduced funding available from major community funders including the Community Trust South and Invercargill Licensing Trust/ILT Foundation. Council can expect to see increased funding applications from groups as a result.

The ongoing impact of Covid-19 is still evolving, as are other challenges including the possible closure of Tiwai Point Aluminium Smelter. It is not yet clear where and how the impact will be felt in the community.

Decision making on funding applications will become harder if community need increases at the same time that Council determines it needs to manage rates increases.

Implementing changes to the grants funding framework now will enable Council to better respond to fast changing community need, as we move into what is anticipated to be an extremely challenging period for the community. Council will be enabled to better align its community support through grants funding to the strategic goals being developed into a *roadmap to renewal*, which it will lay out in the forthcoming Long-term Plan. It will also enable Council to align with the four community wellbeings which have been reintroduced into the Local Government Act: social, cultural, economic and environment.

Council held a workshop on 18 August 2020 to review the funds it administers and discuss possible improvements. This paper incorporates advice from consultant Steve Bramley, a public sector investment specialist who has been working with Council on developing a strategic approach to project development and funding strategy.

THE EXISTING GRANTS FUNDING STRUCTURE

There are at present nine contestable grants funds administered by six committees. Full details of each fund, including the members of the committees can be found in Appendix A.

- Community Grants Fund (currently on hold while best approach to support communities post COVID-19 is developed)
- Neighbourhood Fund (currently on hold while best approach to support communities post COVID-19 is developed)
- ICC Iconic Events Fund
- ICC Event Development Fund
- Active Communities
- Creative Communities Invercargill
- City Centre Built Heritage Fund
- City Centre Repainting Fund
- City Centre Seismic Strengthening Heritage Fund

THE PROPOSED STRATEGIC FRAMEWORK FOR ASSESSING APPLICATIONS FOR GRANTS FUNDING

On 14 July 2020 the Performance, Policy and Partnerships Committee adopted a strategic framework for assessing strategic projects. Steve Bramley has utilised the same structure to develop a framework for assisting with assessments of applications for grants funding (appendix C). Note this framework would not be used for funds which have criteria set by external bodies or governed by the recently updated Invercargill City Centre Heritage Strategy 2019. It can be used whether Council determines to retain the grants funding structure unchanged or adopts the recommended changes.

The proposed framework establishes the following process:

Step 1: Projects are reviewed for the extent to which they have:

- A Clearly Defined Application Purpose
- A Clearly Defined Project – What Will Be Delivered and How
- Capability, Capacity and Experience to Deliver Project
- On-Going Projects Must Demonstrate Evaluation and Development
- Community-Led/Genuine Community Ownership

Step 2: Projects are assessed and given a weighting in line with the Council's strategic priorities:

- Vision and priority alignment
- Demonstrated need
- Effectiveness of grant spend

Further specific weighting would be given to events applications based on the following factors: city promotion, council venue use and contribution to the events calendar of Invercargill. Events which have a largely community focus would be weighted on the same basis as community projects.

The proposed framework would have the benefit of providing an impartial and consistent method of assessing applications for grants funding for projects with a range of community wellbeing outcomes: social and cultural (described in the framework as liveability), economic and environmental.

The framework is intended to support the decision making of the committee(s) not to replace it. This is not a "computer says no" situation! There is also the opportunity to make refinement to the weighting given to the different elements within the framework.

Initial analysis of applications would be undertaken by Council officers supporting the committee. It is anticipated that some additional resource would be required to support this process which has been planned for in the organisational realignment. Application form(s) would need to be redesigned to assist this process and make it as efficient as possible.

It is recommended that the Strategic Framework is adopted, following any feedback on suggested changes to the proposed weighting, and that the framework be reviewed at the end of the first year of implementation to identify any improvements to be made.

THE PROPOSED GRANTS FUNDING STRUCTURE

Proposed Community Wellbeing Fund

It is proposed to combine the Community Grants Fund, Neighbourhood Fund, Iconic Events and Events Development grants funds into one new fund, to be called the Community Wellbeing Fund. This proposal is outlined in detail in the next section of the report.

Active Communities and Creative Communities Invercargill Funds

The Active Communities and Creative Communities Invercargill funds are administered on behalf of the Invercargill Community Recreation and Sports Trust and Creative New Zealand respectively. They are not funded through rates, include a range of different community members on the decision making body and have established criteria linked to the source of the funding.

Council has been considering opportunities for partnership and collaboration, including opportunities for passing administration of these funds to other bodies, for example Arts Murihiku or Sport Southland. The options are laid out below. On balance it is proposed that Council retain the administration of these funds in order to support the community in line with the four wellbeings. A particularly important benefit would be to better support applicants who may be eligible for funds other than the proposed Community Wellbeing Fund to apply to other sources of local funding.

Option 1: Retain administration of the Creative Communities Invercargill Fund	Option 2: Work with Creative New Zealand to pass administration of the fund to Arts Murihiku
<i>Opportunities</i> Benefit would be to better support applicants who may be eligible for funds other than the proposed Community Wellbeing Fund to apply to other sources of funding.	<i>Opportunities</i> Arts Murihiku may be able to better support applicants who may be eligible to apply to other sources of national or international funding.
<i>Risks</i> Council may not have the connections to raise awareness of the fund most effectively.	<i>Risks</i> Council may have reduced capability to support applicants who may be eligible for proposed Community Wellbeing Fund where other funding may not be available.

Option 1: Retain administration of the Active Communities Fund	Option 2: Explore opportunities to work with the Invercargill Community Recreation and Sport Trust to pass administration of the fund to Sport Southland or another sport related body.
<i>Opportunities</i> Benefit would be to better support applicants who may be eligible for funds other than the proposed Community Wellbeing Fund to apply to other sources of funding.	<i>Opportunities</i> A sport related body may better support applicants who may be eligible to apply to other sources of national or international funding.
<i>Risks</i> Council may not have the connections to raise awareness of the fund most effectively.	<i>Risks</i> Council may have reduced capability to support applicants who may be eligible for proposed Community Wellbeing Fund where other funding may not be available.

City Centre Built Heritage, City Centre Repainting and City Centre Seismic Strengthening Heritage Funds

These funds are all administered by the City Centre Heritage Steering Group, which was established in August 2018. At the 8 September 2020 Performance, Policy and Partnerships Committee the Invercargill City Centre Heritage Strategy 2019 was updated and it was noted how well this committee is functioning. Some elements of these funds are legacy funds given or allocated for a specific purpose, which on allocation of all the funds will be closed. To make any changes to this funding structure at the point would be unnecessarily disruptive.

Proposal to extend the repainting funds to non-heritage buildings

During workshops a proposal to extend the façade enhancement or repainting funds from heritage to non-heritage buildings was discussed. The criteria of the funds and the City Centre Heritage Strategy 2019 do not allow for this. To extend to non-heritage buildings would require additional funds to be allocated specifically for this purpose. An informal review undertaken by a Councillor has identified a number of buildings which could be enhanced.

There are significant challenges to extending either of these funds:

- The proposal conflicts with the purpose of the Invercargill City Centre Heritage Strategy 2019 which is to protect Invercargill's built heritage.
- Maintenance of privately owned buildings is the responsibility of the building owners. Allocating ratepayer funding to providing support to private building owners, where there is no specific heritage value to the public, falls outside the purpose of Local Government laid out in the Local Government Act.
- To understand the quantum of funding which would be required to enhance non-heritage buildings within the city would require a full study, which it is estimated would cost \$25,000.
- All buildings within the identified City centre area would be eligible – the quantum of funding required would be potentially significant and the development of criteria for access to the funding challenging.
- Administering the funding would be resource intensive as inspections of every building applying would be required.
- Public consultation would be required before this proposal could be implemented.

As a result, it is not recommended that Council progress this proposal.

No changes are recommended to any of the funds administered by the City Centre Heritage Steering Group.

PROPOSED COMMUNITY WELLBEING FUND

It is proposed to disestablish the Community Grants Fund, Neighbourhood Fund, Iconic Events and Events Development grants funds and reallocated the associated funding into one new fund, to be called the Community Wellbeing Fund.

This fund would be administered by a new sub-committee, the Community Wellbeing Sub-Committee, which would replace the Community Grants Committee, the Neighbourhood Grants Committee and the Events Committee. The sub-committee would report to the Performance, Policy and Partnerships Committee.

Nomination of the Chair and Council representatives would be made in line with standard practice outlined in the standing orders. It is also recommended that nominations are sought from external funding agencies, including Invercargill Licensing Trust/ILT Foundation and Community Trust South.

The Committee would be supported by the Strategy and Policy team which would provide analysis of project applications and advice, and the Governance team which would provide secretarial support.

This proposal is recommended for the following reasons:

- To position the Council to respond most effectively and flexibly to the fast changing needs of the community in the post-Covid-19 environment, where need is anticipated to increase as the available local funding in the community decreases.
- To enable Council to support a wide range of community projects which have benefits across the four wellbeings: social, cultural, economic and environment.
- To support consistent and impartial decision making in line with Council's strategic priorities for the 2021 – 2031 Long-term Plan: Support for projects which have economic, liveability and environment outcomes and which contribute to the Council's vision: Our City with Heart/ He Ngākau Aroha and its roadmap for renewal.
- To create closer collaboration and alignment with other key city funders through inviting them to participate by nominating members to the committee.
- To increase awareness of available funding and make it simpler for the community to apply for grants and make these easier to promote and administer, through reducing the number and complexity of contestable grants funds.
- To support innovation through making applications easier for projects that fit across a number of categories (e.g. activations which incorporate, but are not solely, events). This is in line with guidance on what will be required to support vibrancy in the city centre as well as changing style of projects undertaken by community groups.
- To provide flexibility by allowing for applications for both operational and capital projects.
- There will be communication benefits of launching a new fund which will make promotion of the funding opportunities to the community easier.

Effective management of the implementation of the proposed new fund will be key to its success. Any change can be challenging for people, including in this case applicants, decision makers and supporting staff. The reasons for the change will need to be clearly communicated and effective processes implemented to support the new process. It is important that the option the Council determines is implemented in a timely fashion, as the community and neighbourhood funds have been on hold for the previous four months.

It is proposed that the new Committee meet every two months and that a regular schedule for applications is created. Sufficient resource will be required to support the committee. Resource is planned for in the organisational structure. A communications strategy will be developed. It is proposed to launch the fund on the 1 December with the first applications due in mid January and the first committee meeting in late January/ early February.

Analysis has been undertaken in putting together the framework to ensure that projects similar to those which applied to the existing funds would be eligible to apply. Nevertheless, there will be some projects which would not score strongly in the proposed new framework. There are some projects which have been funded year after year which the committee may determine are no longer sustainable or where the demonstrated impact is low. The focus of the new framework is intended to support effective decision making when decisions are likely to become harder as need increases and available community funding decreases.

Decision makers may want to assist groups through the transition to a new system in a number of ways, for example by providing a reduced level rather than no funding and through support to apply for additional sources of funding.

In line with the Significance and Engagement Policy, no consultation is recommended as the proposed new fund does not substantially change either the impact on ratepayers or the

support provided to the community – it is rather a new vehicle to achieve the same outcomes in a more effective way.

However consultation is recommended for any future additional funding which Council may consider. Covid-19 is a significant and unusual event. As yet, neither the community nor Council, nor indeed Treasury, can anticipate the impact. The Long-term Plan consultation is already planned for March 2021. The results of this consultation can be utilised to aid Council decision making in this area.

<p>Option 1: Retain the Community Grants Fund, Neighbourhood Fund, Events – Iconic and Events – Development Funds, utilising the proposed Strategic Framework to support improved outcomes</p>	<p>Option 2: Create the proposed Community Wellbeing Fund, administered by a new Community Wellbeing Committee and utilising the proposed Strategic Framework to support improved outcomes</p>
<p><i>Opportunities</i></p> <p>New framework will support effective decision making when decisions are likely to become harder as need increases and available community funding decreases.</p> <p>Overall increased awareness of available funding.</p> <p>Supports consistent and impartial decision making in line with Council’s strategic priorities for the 2021 – 2031 Long-term Plan.</p> <p>Support for projects which have economic, liveability and environment outcomes and which contribute to the Council’s vision: Our City with Heart/ He Ngākau Aroha and its roadmap for renewal.</p> <p>Council is positioned to respond effectively and flexibly to the fast changing needs of the community in the post-Covid-19 environment.</p> <p>Council is enabled to support a wide range of community projects with benefits across the four wellbeings: social, cultural, economic and environment.</p>	<p><i>Opportunities</i></p> <p>New framework will support effective decision making when decisions are likely to become harder as need increases and available community funding decreases.</p> <p>Overall increased awareness of available funding.</p> <p>Support consistent and impartial decision making in line with Council’s strategic priorities for the 2021 – 2031 Long-term Plan.</p> <p>Support for projects which have economic, liveability and environment outcomes and which contribute to the Council’s vision: Our City with Heart/ He Ngākau Aroha and its roadmap for renewal.</p> <p>Council is positioned to respond effectively and flexibly to the fast changing needs of the community in the post-Covid-19 environment.</p> <p>Council is enabled to support a wide range of community projects with benefits across the four wellbeings: social, cultural, economic and environment.</p> <p>Grant dollars used effectively – not having “leftovers” in separate grants that can’t be redistributed due to criteria limitations.</p> <p>Creates closer collaboration and alignment with other key city funders through inviting them to participate by nominating members to the committee.</p> <p>Simpler for the community to apply for grants</p>

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	<p>and make these easier to promote and administer, through reducing the number and complexity of contestable grants funds.</p> <p>Supports innovation through making applications easier for projects that fit across a number of categories (e.g. activations which incorporate, but are not solely, events). This is in line with guidance on what will be required to support vibrancy in the city centre as well as changing style of projects undertaken by community groups.</p> <p>Communication benefits of launching a new fund which will make promotion of the funding opportunities to the community easier.</p>
<p><i>Risks</i> Some projects which have been funded year after year may no longer be determined sustainable or have low demonstrated impact – this will impact on those seeking funding but negative outcomes could be mitigated by supporting applicants to apply for additional sources of funding.</p>	<p><i>Risks</i> Some projects which have been funded year after year may no longer be determined sustainable or have low demonstrated impact – this will impact on those seeking funding but negative outcomes could be mitigated by supporting applicants to apply for additional sources of funding.</p> <p>Potential for public misunderstanding by removing specific Neighbourhood Grant – this would be mitigated through an effective communications strategy surrounding announcement of the funding launch.</p>

CONCLUSION

The community is facing significant challenges and a time of uncertainty and change. Council has determined that it intends to implement a strategic approach to its own projects in developing a roadmap to renewal and achieving its vision: Our City with Heart, He Ngākau Aroha. Applying a strategic approach and creating greater collaboration with other key funders will lead to improved outcomes, and greater impact for the significant funding Council is investing in the community through contestable grants. Reducing the complexity of the grants funding structure now will put Council in a stronger position to be ready to support the community as anticipated need increases and other sources of community funding decreases.

Appendix A: Existing Grants Funding Structure

Contestable Grant Fund	Funding allocation <i>(Note totals are annual except where indicated)</i>	Source of Funds	Decision making Committee	Current Committee Members
Community Grants Fund <i>(currently on hold while best approach to support communities post COVID-19 is developed)</i>	\$200,000	Rates	Community Grants Fund Committee	Cr T M Biddle (Chair) His Worship the Mayor, Mr T Shadbolt, KNZM, JP Cr R L Abbott Cr R R Amundsen Cr A H Crackett Cr N D Skelt
Neighbourhood Fund <i>(currently on hold while best approach to support communities post COVID-19 is developed)</i>	\$50,000	Rates	Neighbourhood Fund Committee	Cr R L Abbott (Chair) Cr R R Amundsen Cr A J Arnold
ICC Iconic Events Fund	\$100,000	Rates	Events Committee	Cr G Lewis (Chair) His Worship the Mayor, Mr T Shadbolt, KNZM, JP Cr L Abbott Cr A Crackett Cr D Ludlow Cr N Skelt
ICC Event Development Fund	\$100,000	Rates	Events Committee	Cr G Lewis (Chair) His Worship the Mayor, Mr T Shadbolt, KNZM, JP Cr L Abbott Cr A Crackett Cr D Ludlow Cr N Skelt

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Active Communities	\$34,000	Invercargill Community Recreation and Sport Trust	Active Communities Funding Committee	Cr L Soper (Chair) Cr A Crackett Cr P Kett Non-Council Members: L Garcia C Jenkins A Beaton G Crombie M Booth
Creative Communities Invercargill	\$50,000	Creative New Zealand	Creative Communities Invercargill Assessment Committee	Cr G Lewis (Chair) Cr P Kett Iwi representatives: P Peek E Cook Non-Council Members: D Pottinger J Donaldson T Daley W Ludlow B Ford G Clearwater L Barnes
City Centre Built Heritage Fund	\$250,000		City Centre Heritage Steering Group	Cr R Amundsen Cr A Crackett Cr L Soper Cr P Kett
Façade Enhancement Fund (One year fund, now closed)	\$50,000 (one off)	<i>One-off payment from ILT related to the construction of the new hotel</i>	City Centre Heritage Steering Group	Cr R Amundsen Cr A Crackett Cr L Soper Cr P Kett

City Centre Repainting Fund	<i>No limit publicised</i>	District Plan non-regulatory methods	City Centre Heritage Steering Group	Cr R Amundsen Cr A Crackett Cr L Soper Cr P Kett
City Centre Seismic Strengthening Heritage Fund	\$30,000		City Centre Heritage Steering Group	Cr R Amundsen Cr A Crackett Cr L Soper Cr P Kett

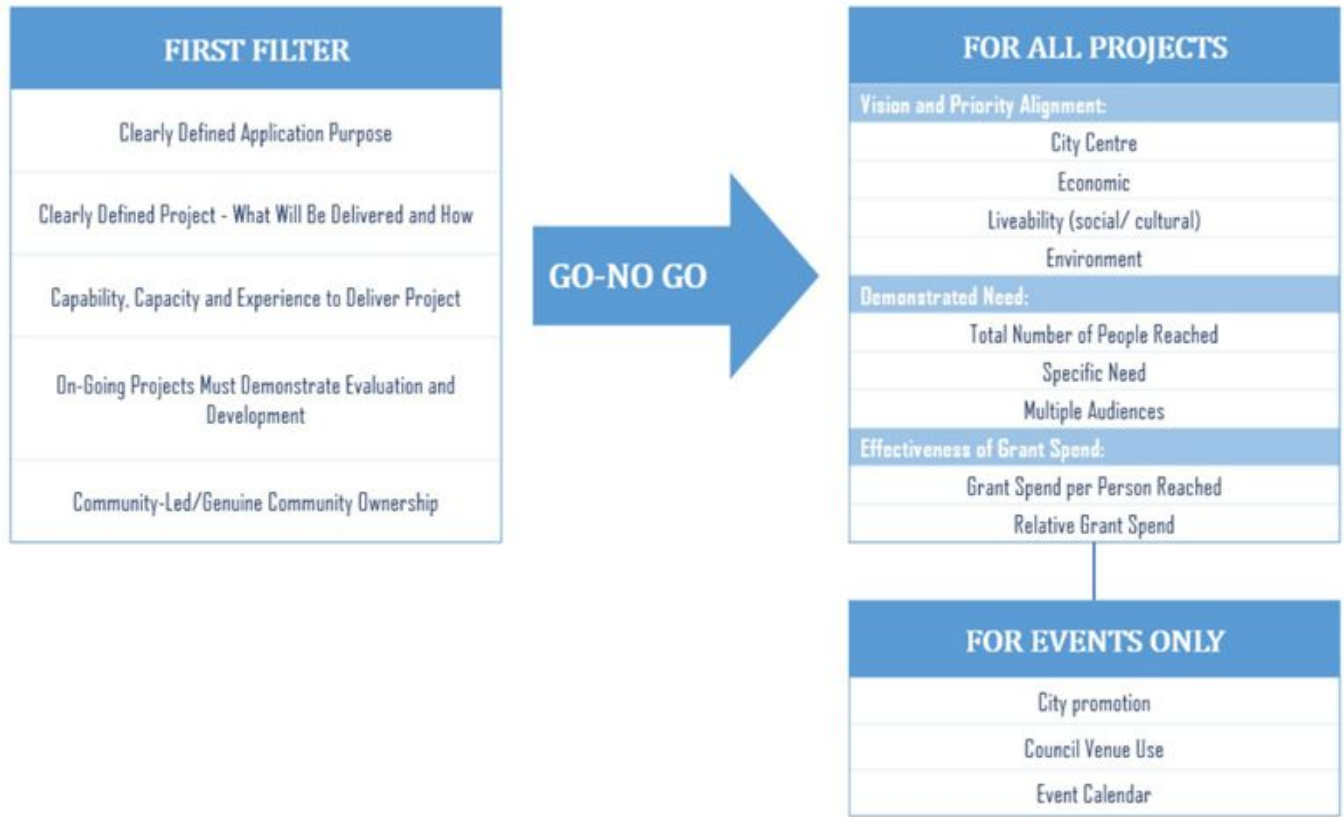
Appendix B: Proposed Grants Funding Structure

Contestable Grant Fund	Funding allocation <i>(Note totals are annual except where indicated)</i>	Source of Funds	Decision making Committee	Current Committee Members
Community Wellbeing Fund	\$550,000	Rates	Community Wellbeing Committee	TBC
Active Communities	\$34,000	Invercargill Community Recreation and Sport Trust	Active Communities Funding Committee	Cr L Soper (Chair) Cr A Crackett Cr P Kett Non-Council Members: L Garcia C Jenkins A Beaton G Crombie M Booth
Creative Communities Invercargill	\$50,000	Creative New Zealand	Creative Communities Invercargill Assessment Committee	Cr G Lewis (Chair) Cr P Kett Iwi representatives: P Peek E Cook Non-Council Members: D Pottinger J Donaldson T Daley W Ludlow B Ford G Clearwater L Barnes

City Centre Built Heritage Fund	\$250,000		City Centre Heritage Steering Group	Cr R Amundsen Cr A Crackett Cr L Soper Cr P Kett
City Centre Repainting Fund	<i>No limit publicised</i>	District Plan non-regulatory methods	City Centre Heritage Steering Group	Cr R Amundsen Cr A Crackett Cr L Soper Cr P Kett
City Centre Seismic Strengthening Heritage Fund	\$30,000		City Centre Heritage Steering Group	Cr R Amundsen Cr A Crackett Cr L Soper Cr P Kett

Appendix C: Proposed Strategic Grants Framework for the proposed Community Wellbeing Fund

PROPOSED CRITERIA FOR COMMUNITY WELLBEING FUND



PROJECT ASSESSMENT SHEET FOR COMMUNITY WELLBEING FUND		
PROJECT NAME –		
CRITERIA	MAXIMUM SCORE	PROJECT SCORE
FOR ALL PROJECTS		
Vision and Priority Alignment		
City Centre	10	
Economic – events only: 10 if 2,000 bed nights or more. Calculate by dividing projected bed nights/200	10	
Liveability	10	
Environmental	5	
Sub-Total	35	
Demonstrated Need		
Total Numbers of People Reached: 10 if 10,000 or more. Calculate by dividing projected numbers of people reached/1,000	10	
Specific Need	5	
Multiple Audiences	5	
Sub-Total	20	
Effectiveness of Grant Spend		
Grant Spend per person reached (to ICC): Calculate by 20 - Grant spend/per person reached. Note negative numbers apply	20	
Relative Grant Spend: (Funds Available - Grant/Funds Available) x (Non-ICC Proportion of Project Budget/Project Budget), x 10	10	
Sub-Total	30	
TOTAL 1	85	
FOR EVENTS ONLY		
City promotion (City Profile and Media Coverage)	20	
Council Venue Use	5	
Event Calendar	5	
Sub-Total	30	
TOTAL 2	115	

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Community Wellbeing Committee**Draft Terms of References**

Type of Committee	Sub-committee
Responsible to	Performance, Policy and Partnership Committee
Legislative Basis	Committee constituted by Council as per Clause 30 (1) (a) Schedule 7 of the Local Government Act 2002 Committee delegated powers by Council as per Clause 32 Schedule 7 of the Local Government Act 2002
Membership	Four members, including the Chair to be elected Councillors of Invercargill City Council Up to three additional members to be nominated from the community, via recognised community groups. Membership to be determined in line with the standing orders of Council.
Quorum	A quorum shall be half of the members (including vacancies) if the number of members is even, and a majority (including vacancies) if the number of members is odd. In either case, a majority of members present must be Invercargill City Councillors.
Frequency of Meetings	Every two months
Administration	The Strategy and Policy team would provide analysis of project applications and advice, and the Governance and Administration team would provide secretarial support.
Scope of Activities	<ul style="list-style-type: none"> ➤ Responsible for considering applications, determining and approving funding for projects promoting community wellbeing within the Invercargill City District ➤ Responsible for considering applications, determining and approving funding for the applications in line with Council's Strategic Grant Framework (criteria for the Community Wellbeing Fund).

	<ul style="list-style-type: none"> ➤ Council approves \$450,000 per annum to be available for allocation to projects that: ➤ Generate city centre, economic, liveability (social/cultural) or environmental benefits to Invercargill and/or Bluff ➤ Have a demonstrated need, assessed through numbers of people reached, specific need met by the project and the extent to which multiple audiences are reached. ➤ Demonstrate effectiveness of grant spend, assessed through grant spend per person reached and relative grant spend. <p>Further to this, for commercial events, the following criteria will also apply:</p> <ul style="list-style-type: none"> ➤ The extent to which the event results in promotion of the city ➤ Utilisation of Council venues ➤ Support for a full calendar of events within the City ➤ Iconic events are to be reviewed on a five yearly basis to allow security of funding decisions ➤ Applications may be for operational or capital expenditure. ➤ Projects are not able to be fundraisers for charities ➤ Retrospective funding is not available.
Delegations	To determine and decide applications from the Community Wellbeing Fund budget.
Accountability and Reporting	<p>As the Community Wellbeing Committee distributes funds on behalf of the community it is important to ensure accountability for the use of these funds.</p> <p>Therefore, all organisation and individuals who are receive funding will need to complete an accountability report at the end of their funding activity.</p>

	<p>The committee requires to the following areas to be covered off in accountability report:</p> <ul style="list-style-type: none">➤ The financial costs of the project; include where appropriate full audited accounts for the project;➤ How the fund contributed to the outcomes of the project;➤ The benefits achieved for the City and Community;➤ How the delivery of the project differed from the original plans that accompanied your initial request? <p>The committee may require any un-used funds to be returned to the Community Wellbeing Fund.</p>
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TO: PERFORMANCE, POLICY AND PARTNERSHIPS COMMITTEE

FROM: RHIANNON SUTER, MANAGER – STRATEGY AND POLICY

MEETING DATE: TUESDAY 13 OCTOBER 2020

PROPOSAL FROM ARTS MURIHIKU FOR “CREATIVE 2021” COLLABORATION

SUMMARY

Arts Murihiku are approaching Council with a proposal for a collaboration project to deliver a range of arts events and activations within the City, in partnership with Arts Murihiku, Invercargill City Council, Great South and Creative New Zealand.

RECOMMENDATIONS

That the Performance, Policy and Partnerships Committee

- 1. Receive the Report “Proposal from Arts Murihiku for “Creative 2021” Collaboration”**
- 2. Note the appended proposal received from Arts Murihiku (A200501)**
- 3. Note the timing of the proposed application to Creative New Zealand which must be completed by 30 October 2020.**
- 4. Determine to support the proposed collaboration through strategic support and support in-kind, including alignment with City council supported initiatives, including the city centre coordinator and He Waka Tuia, as appropriate.**
- 5. Determine to support the proposed collaboration through funding of \$50,000 to be reallocated from the proposed Community Wellbeing Fund, noting this would only effect the 2020/2021 and 2021/2022 periods. (Option 2).**
- 6. That Council request Great South indicate the nature and the in-kind value of support they will provide to the collaboration when the application is made to Creative New Zealand.**

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> No
2.	<i>Is a budget amendment required?</i> No

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3.	<p><i>Is this matter significant in terms of Council's Policy on Significance?</i></p> <p>The matter is significant as it is an opportunity for Council to collaborate with other organisations to achieve outcomes for the city. The amount of proposed funding is not of significant enough level to require consultation.</p>
4.	<p><i>Implications in terms of other Council Strategic Documents or Council Policy?</i></p> <p>This proposal aligns with the Council's strategic vision "Our city with heart" and supports Council's community outcomes to enhance our city and embrace innovation and change.</p>
5.	<p><i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i></p> <p>Consultation would not be required under the Significance and engagement policy, as to consult would remove the possibility to participate as a result of timing.</p>

FINANCIAL IMPLICATIONS

The proposal includes a request to Invercargill City Council of funding of \$50,000. The proposal coincides in timing with the proposed change to the grants funding framework which the committee is also considering. One option Council may wish to consider, if it wishes to support this application, is reducing the level of funding in the proposed Community Wellbeing Fund by \$50,000 in order to support this proposal. If Council chooses to support this proposal and not to reduce the Community Wellbeing Fund, \$50,000 of unbudgeted funds will be required.

BACKGROUND

This proposal outlines a possible collaboration between Arts Murihiku, Great South, Invercargill City Council and Creative New Zealand.

Arts Murihiku is a charitable trust with a Board consisting of 7 trustees. It was established in 2018 as a result of funding support from Creative New Zealand as a pilot programme. Its goal is to support and connect the arts in Southland and its vision is "Celebrating the distinctive raw beauty of Murihiku's identity through arts and culture".

Great South has a role to build capacity within the events sector and to promote events, and thereby the region. They have indicated that they support this proposal from Arts Murihiku.

It is proposed to apply to Creative New Zealand for funding through the new fund available to fund the "Arts in Regions – "Ngā Toi ā Rohe". The closing date for applications to this fund is 30 October 2020 and up to \$150,000 can be applied for, to be used between November 2020 and November 2021.

The proposal is focused on delivering a programme of arts events and activities for 2021 within the Invercargill City. Arts Murihiku are proposing they would work with the collaborating partners to agree the number and focus of activities, in order to align with partners' vision and goals.

ALIGNMENT WITH COUNCIL STRATEGIC GOALS

Council adopted the vision statement "Our city with heart" in July 2020 in preparation for the 2021 – 2031 Long-term Plan.

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Since then it has received a te reo vision from Waihōpai Runanga: He Ngākau Aroha. Council confirmed that its community outcomes remain unchanged and that inner city revitalisation is one of its most significant strategic challenges for the Long-term Plan.

In its Letter of Expectation to Great South (Southland Regional Development Agency) Council reiterated the importance it places on events for achieving its vision of a city with heart and inner city revitalisation. As a result of Covid-19 a number of significant arts and culture events which have been previously funded through its events grants did not take place, including the Arts Festival which usually takes place in April. In 2019/2020 \$10,000 funding was provided by Council to these two events through the events fund. The future of the arts festival and another long-running event, the Buskers Festival, is uncertain. The Buskers Festival has previously received \$24,000 in funding. While Great South has a regional events strategy which has the goal of growing existing events, it has been identified that developing new events is required in the area of arts and culture within the city.

Council would have the opportunity to work with Arts Murihiku to agree the outcomes which it would want to see for the events and activities. This opportunity could be utilised to ensure activities aligned with and supported Council’s existing programmes and collaborations including He Waka Tuia, the work of the City centre coordinator and the City centre gap filler initiative.

There is strong alignment between this proposal and the strategic vision, community outcomes and challenges Council is working to address. Through collaboration, there is the opportunity to leverage Council commitment to achieve greater outcomes than could be achieved alone.

OPTIONS FOR SUPPORTING THE PROPOSAL

Two factors are relevant to the timing of this application:

- The closing date of the new Creative New Zealand “Arts in Regions – “Ngā Toi ā Rohe” fund, which is 30 October.
- The coincidence of this application at the same time that Council is determining whether to disestablish existing funds and form a new Community Wellbeing Fund.

Covid-19 is creating high levels of uncertainty and a faster pace of change within the funding environment than normally seen. New sources of Central Government support are becoming available and this is one example of where greater flexibility may assist Council to most effectively leverage opportunities.

Option 1 – In kind support only	Option 2 – Reallocation of \$50,000 from the proposed Community Wellbeing Fund (Recommended option)	Option 3 - \$50,000 new funding
Council could support the collaboration in principle and through providing alignment with initiatives such as He Waka Tuia, the city centre coordinator and gap filler. There is a risk that this could damage the success of the application with Creative New Zealand	Council could provide in-kind support and also a level of funding through reallocating \$50,000 funding the proposed Community Wellbeing Fund (\$25,000 in the 2020/2021 period and \$25,000 in the 2021/2022 period).	Council could allocate the total \$50,000 requested from unbudgeted funds. This would have the benefit of not reducing the amount available in the proposed new Community Wellbeing Fund at a time when need for community support is anticipated to rise. However this amount is unbudgeted.

Option 2 is the recommended option. It is recommended that Council support the proposal through reallocation of funding from the proposed Community Wellbeing Fund (\$25,000 from the 2020/2021 period and \$25,000 from the 2021/2022 period). It should be noted that this would not affect the quantum of funding in the proposed Community Wellbeing Fund over the longer period.

If Council chooses to support this proposal, in line with the significance and engagement policy, consultation would not be required as the amount of funding requested is not material.

It is also recommended that Council request Great South indicate the nature and the in-kind value of support they will provide to the collaboration when the application is made to Creative New Zealand.

CONCLUSION

There is strong alignment between this proposal and the strategic vision, community outcomes and challenges Council is working to address. Through collaboration, there is the opportunity to leverage Council commitment to achieve greater outcomes than could be achieved alone. As a result it is recommended that Council support this proposal through reallocating \$50,000 from the proposed Community Wellbeing Fund (Option 2).



Arts Murihiku

“Celebrating the distinctive raw beauty of Murihiku’s identity through arts and culture.”

The purpose of this brief is to detail a proposal to celebrate arts and culture in Murihiku Southland through the delivery of events coordinated by Arts Murihiku. This proposal reflects a partnership approach between multi stakeholders including Arts Murihiku, Great South, ICC and Creative New Zealand. It presents a unique opportunity to showcase arts and culture at a transformational time for the city and region. We are not only providing quality of life events reflecting who we are as a region, but also building capability and capacity which equates to investing for the future.

1. Background

Arts Murihiku is a charitable trust with a Board consisting of 7 trustees. We were established in 2018 as a result of funding support from Creative NZ as a pilot programme. Our goal is to support and connect the arts in Southland.

In 2019 our organisation facilitated the development of an Arts Strategy. The vision from that strategy is “Celebrating the distinctive raw beauty of Murihiku’s identity through arts and culture.” Arts and creativity were described as needing to be visible, valued and vibrant and a collaborative approach seen as vital. The themes or areas of focus were identified as: celebrate our identity; strengthen creative connections; arts and culture values are supported and at the centre; and building today for a thriving creative future.

Arts Murihiku is also partnering with Great South regarding the Southland Murihiku Events Strategy which details a desired outcome for Southland arts, culture and heritage to be represented and celebrated through events. With this in mind, the Strategy suggests that the delivery of cultural and arts event opportunities for Southland are explored alongside local stakeholders and communities, with a particular focus on creative arts. Our organisation is specifically mentioned as a key driver of this outcome.

2. Creative New Zealand Funding

Creative NZ has a new fund available to fund the “Arts in Regions – “Nga Toi a Rohe”. Closing date for applications to this fund is 30 October 2020 and up to \$150,000 can be applied for, to be used between November 2020 and November 2021. Councils and organisations like Great South are not eligible to apply to this fund, but an organisation like Arts Murihiku can.

Over the COVID-19 period, Creative NZ has had another fund available, the “Arts Continuity Grant”, and they have reported that uptake from Southland has been very low. This is disappointing for the region. Arts Murihiku would like to see our region access some of this new government money which will assist in delivering cultural and arts event opportunities and benefit for our communities.

Arts Murihiku understands from a recent council report that the ICC has a new vision “Our City with Heart” – and two priorities identified – the CBD and the arts, culture and heritage sector.



The new Creative NZ fund includes the following focuses:

- Key creative personnel must live in and/or whakapapa to the locality in which the project will take place/ Exceptions to this can include non-local creative personnel working collaboratively with local arts practitioners to build the capability of the local arts ecosystem.
- The project must be a new activity
- The project must be collaborative
- The project must be by, with and/or for the local community
- Investment in this project from local stakeholders must be new

The original intention of this fund was that it needed to be match funded (equal share from the community/council and Creative NZ). However in light of COVID-19, this is no longer a requirement. While some financial contribution is required, support in kind can also be considered and it does not need to be matched 50/50.

Arts Murihiku has been considering how best to support the arts in our community and believe this fund provides an opportunity for us to start to strengthen the sector in a way that also aligns with the council's vision and priorities, supports the Southland Murihiku Events Strategy and contributes to making Invercargill a vibrant city to live in and visit which is highlighted as significant on the Southland Regional Development Strategy (SORDS).

3. The Proposal

The following details our proposal:

1. Arts Murihiku establish a subcommittee "Creative 2021" – a mix of Arts Murihiku Trustees and enthusiastic arts people from the community who are seconded to the Trust.
2. "Creative 2021" develops a programme of arts events and activities for 2021 that involves collaboration with a range of local organisations including council related ones like He Waka Tuia and the CBD coordinator. This programme would include a focus on activity in the CBD and would account for existing activity and events that occur such as Shakespeare in the Park, Matariki, Multicultural Food Festival, Heritage Month and a range of other events that happen throughout the year. The programme would also align with the focuses of the Arts in Regions – Nga Toi a Rohe fund as above.
3. Using this programme Arts Murihiku will apply to the Creative NZ fund – Arts in Regions – Nga Toi a Rohe for funding support for the programme.
4. If successful, "Creative 2021" would undertake an expression of interest process in order to contract a range of existing organisations and people to undertake activities in the programme. This would provide an opportunity for capacity building. It would also align with the Arts in Region fund requirements.

4. Role of ICC



In order for the Arts in Invercargill to be developed and thrive, a sustainable financial approach needs to occur. Councils all around NZ fund various arts events and activities such as festivals and community events in an ongoing and sustainable way. This funding opportunity through Creative NZ provides our arts community with a unique opportunity to build capacity within the city and the region and if successful starts the process of creating sustainable support for the arts in the city.

This funding application requires some financial support from council to be successful. Creative NZ normally require 50/50 co-funding from Councils but recognise that in these challenging times this may not be possible.

Arts Murihiku respectfully requests a financial commitment from ICC to contribute towards this programme. This contribution would then be leveraged to gain Creative NZ funding through the Arts in Regions – Nga Toi a Rohe fund that would be used to support a range of Invercargill based events and activities – that align with the council’s vision and priorities as well as the Murihiku Regional Arts Strategy and the Southland Murihiku Events Strategy. Other local funders would be approached to contribute also.

Arts Murihiku is aware that several of previously funded events such as the Southland Festival of the Arts are no longer occurring. With that in mind we would suggest that a \$50,000 contribution from ICC would provide a solid base for a funding application to the Creative NZ fund for \$150,000. ICC could also consider support in kind such as the opportunity to work collaboratively with the city centre co-ordinator and opportunities for free or discounted venue use of ICC venues such as the Civic Theatre and Scottish Hall.

It is important to note that the event programme we will develop will occur over a calendar year (Nov 2020 to Nov 2021) which covers part of two of the council’s financial years.

If ICC was able to make this commitment, a service agreement between Arts Murihiku and ICC with clear expectations/deliverables and funding would be put in place.

These deliverables could include:

1. X number of events focused on city centre activation
2. X number of partnerships with He Waka Tuia
3. X number of events working with the city centre co-ordinator
4. Any other opportunities to work together that Arts Murihiku is unaware of

Arts Murihiku would welcome the opportunity for this funding to be ongoing (annual). This consideration could be contingent on the success of this first year of activations and events.

5. Project Deliverables and Goals

The following will be achieved if this suggested proposal, approach and funding is successful:



1. Local money is leveraged to bring in further money from the government/Creative NZ and some of this funding could be for He Waka Tuia to undertake arts activities outside their walls
2. Council illustrates its intent to support and grow its involvement in supporting the arts in the city
3. A substantial programme of arts activity occurs in the city, to help develop Invercargill into a vibrant place to live
4. The SORDS strategy highlighted that Invercargill needs to be seen as a liveable city and that is vital to the success of attracting people to the region and this project reflects this.
5. It supports council’s focuses on the CBD and arts activation and events in the city
6. It aligns with the Arts Strategy themes and focuses as well as the Southland Murihiku Events Strategy 2020-2025
7. It creates collaboration opportunities across the city and in the wider region
8. The programme of events and activations engage the local community and their active participation and this will ultimately grow participation in the arts
9. It supports an integrated arts and events sector including local artists, event organisers, suppliers and venue providers.
6. It reflects a meaningful partnership with Great South who are focused on delivering the vision for events in the region: “A supported, dynamic and sustainable event sector that encourages community participation and drives visitation to the region by building on unique points of difference”. This will be achieved by not only building capability and capacity in events delivery, but also maximising the benefits of events for the community (considering social, economic, environmental and cultural considerations).
7. City Centre Co-ordinator who is currently based at Great South and the events they organise could make up part of this programme.

6. Notes

Creative NZ funding is for the arts and so heritage is not accounted for

While the focus would be on Invercargill based events, some activity would still occur in the wider region and artists from the wider region would participate as practitioners and project leads as well as people from the wider region participating in the events and activities.

If a commitment can be made by council before the funding application is due on 30 October, this will significantly strengthen the application.

TO: PERFORMANCE, POLICY AND PARTNERSHIP

**FROM: MICHELE FREY – INTERIM PARKS AND RECREATION
MANAGER**

MEETING DATE: TUESDAY 13 OCTOBER 2020

**NZ NATIVE FOREST RESTORATION TRUST – FUNDING (AND OTHER)
ASSISTANCE REQUEST**

SUMMARY

On 12 March 2020, Council received a request from the NZ Native Forest Restoration Trust (NFRT or the Trust) for funding assistance to purchase land containing significant natural vegetation and natural features in Otatara. A contribution of \$300,000 (plus GST if necessary) towards purchase of the land, a donation of native plants, amenities and in-house design / planning expertise has been requested.

On 8 June 2020, Council received further correspondence to advise that the land had been purchased but emphasising the significance of securing \$300,000 for the Trust. Impacts of Covid-19 on the Trust are significant with a reduction in funding avenues becoming immediately apparent.

Council now needs to decide whether to grant the funding request. This has been considered against the draft Project Assessment Framework, developed as part of the City Strategic Projects and Investment Review 2020. Consideration has also been given to the request alongside Council’s approach to the Funding and Grants Framework.

RECOMMENDATIONS

That the Infrastructural Services Committee receive the report “NZ Native Forest Restoration Trust – Funding (and other) Assistance Request”

AND THAT

The Committee does not grant the \$300,000 funding request to the NZ Native Forest Restoration Trust, but instead determines that support be given to the Trust in the form of resource commitment, such as design and advisory support, from time to time as resources allow.

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> No
2.	<i>Is a budget amendment required?</i> No
3.	<i>Is this matter significant in terms of Council’s Policy on Significance?</i> No

4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> This has not been considered in Council Strategic Documents.
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> Yes
6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> N/A

FINANCIAL IMPLICATIONS

\$300,000 upfront funding request, which is unbudgeted and would have implications for delivery of existing work programmes. The Trust does not expect to apply to Council for ongoing funding.

Council has completed the first round of project prioritisation for this financial year and the first five years of the Long-term Plan. Funding this allocation would require a reduction in funding available to other strategic projects and / or a reduction in the allocation of funding to the Parks budget.

NZ NATIVE FORESTS RESTORATION TRUST – REQUEST

Funding

On 12 March 2020, a request was made from the NZ Native Forests Restoration Trust (NFRT or the Trust) for funding assistance to purchase land containing significant natural vegetation and natural features in Otatara to the order of \$300,000 being Council's proposed contribution (refer to **Appendix 1**).

A further letter was received on 8 June 2020 (refer to **Appendix 2**) advising that NFRT has settled the purchase of the property, however the funding request is more relevant than ever due to the impacts of Covid-19, and a significant downturn in the Trust's ability to secure funds through other fundraising avenues. NFRT relies on invested donations and some carbon income, and receives no Government support beyond the benefits of continued charitable registration.

Other Requests and Council Contribution to Date

In addition to a funding request, requests have been made for the following (also noting Council's contribution to the project so far):

- Donation of native plants – *NFRT has involvement in the Plant our Population initiative. Donation of 1,000 plants agreed to following receipt and acceptance of maintenance plan for care of plants.*
- Donation of a public toilet – *Council is not in a position to donate a public toilet. However, consideration of the requirement for a public toilet will be given through Public Convenience Strategy (development of this plan is about to commence).*
- Assistance in track / carpark / shelter design and construction – *Design expertise offered. Assistance with concept plan for carpark area, and advice on consenting /*

configuration requirements. Providing standard design documentation for shelter facility.

- Peer review of Reserve Management Plan – *Peer review advice given.*
- Request for waiver of fees for a subdivision consent - *Request for waiver will be made at the time of resource consent lodgement, and the Group Manager of Environmental and Planning Services will consider the request at that time.*

THE PROPERTY, IT'S VALUES AND PROPOSED FUTURE

The Knight Estate, Oreti Road, Otatara contains 81 hectares – approximately 30 hectares of significant native forest, 35-40 hectares of unmodified sand dunes, and approximately 10 hectares of other areas that have been modified over time.

The forest and sand dunes that form part of the Knight Estate are considered to be a 'High Value Area' as reported in the Ecological Assessment Report Produced for Site ID: SDPL70 by Peter Knight (February 2015) accentuating its importance as a valuable ecological area for the district.

Purchase of this property by NFRT makes a significant contribution to the protection and enhancement of indigenous biodiversity within the City boundaries. The area will eventually be open to the public for walking access and NFRT intends to develop walking tracks and interpretation boards. NFRT hopes to restore old huts with stories about the use of the area in the past, including Ngāi Tahu history.

Work in the future will also include forming car parking areas off the road, track maintenance, boundary fence repair, pest and weed control, and some restoration planting.

The ecological values of the retained property are proposed to be retained in perpetuity through a QEII covenant.

In order to fund the project / repay loans, some subdivision may be necessary and currently 7 x one hectare lots are proposed along the southwestern boundary beside Oreti Road where there is no forest or dunes.

RATIONALE FOR FUNDING REQUEST

In a letter to Council from the Chair of NFRT dated 8 June 2020, the Chair states that 'had the decision been 2-3 weeks later than it was, and with the hindsight of world events (Covid-19), we would likely have said "Sorry, but we can't do it". While NFRT felt they made the right decision, it has left the Trust's finances and operations in a challenged position. Attempting a public fundraising through private donations and community grant applications during this time has been difficult.

NFRT has requested that Council take the changed circumstances into account. The Trust would also be happy to receive the requested grant spread over three years if that would assist the Council's decision and cash flow. This is a one-off request, and NFRT does not intend to apply to Council for ongoing funding.

APPLICATION OF PROJECT ASSESSMENT FRAMEWORK

As part of the City Strategic Projects and Investment Review 2020, a Project Assessment Framework was developed that enables Council to consider the relative merits of key project investments against a series of factors.

A316777

This funding request of \$300,000 has been considered against the Project Assessment Framework as shown in **Appendix 3**. Note that as not all information is available it has not been possible to undertake all analysis but that nevertheless it provides a useful guide.

The Project Assessment Framework considers the funding request against the following factors:

- Vision and Priority Alignment (City Centre, Economic, Liveability, Environmental)
- Demonstrated Need
- Achievability and Sustainability (can we afford it)

We acknowledge that the area is of high ecological value and commend the Trust for purchasing the land for future protection. It has the potential to connect into the regional network of ecological areas into the future. With this said, the area was not factored into any future land acquisition planning at the time the funding request was made, nor was there any Long-term Plan funding identified for supporting the project. Any investment by Council at this stage would be at the expense of other Council work / investment.

OPTIONS

The following section provides an overview of the options when considering the \$300,000 funding request:

1. No funding and no support – Confirm that Council is not in a position to assist with the funding request, or support with resourcing in any way.
2. No funding and some support – Confirm that Council is not in a position to assist with the funding request, noting that Council has already committed resource to supporting the Trust in other ways.
3. Council Funds – A \$300,000 one-off grant from Council which would come from existing budgets and therefore other work could not proceed. It is worth noting that \$300,000 is equivalent to a 0.5% increase in rates (the total rates increase for 2020 / 2021 was 2%).

CONCLUSION

NZ Native Forest Restoration Trust is operating in a funding constrained environment, now even more constrained by the purchase of the Knight Estate just prior to Covid-19 lockdown. The Trust's request for \$300,000 would support their endeavour to protect 81 hectares of land in Otatara containing significant natural vegetation and natural features.

Having considered the funding request against Council's Project Assessment Framework, we confirm that it does not align with the current strategic priorities of Council and therefore we are not in a position to recommend funding the project to the value of \$300,000. Any funding commitment would be at the expense of other projects / project work.

Council does however see value in the work being undertaken by NFRT and can commit other resource support, as outlined above.



APPENDIX 1

A3167934

12 March, 2020

Clare Hadley
Chief Executive Officer
Invercargill City Council
101 Esk Street, Invercargill 9810
Private Bag 90104

Dear Clare,

Re: Request from the NZ Native Forests Restoration Trust for assistance for funding to purchase land containing significant natural vegetation and natural features in Otago

Thank you for allowing Trustee Geoff Davidson and myself to present a case to the Council requesting assistance with the purchase of this 81ha property in SW Otago with a 1,200m boundary along the Oreti River. As indicated to the Council we were required to increase our offer to purchase by \$300,000 above GV to secure the sale. We understand that the property was attractive to developers as it is near other recent subdivisions in Otago and it would make ideal sites for housing on lifestyle blocks. The vendors were however keen to sell to us at a lower price than others were willing to pay. It was the wish of the vendor's recently deceased brother that the forest be protected so it gave us the edge over developers who were looking to pay a lot more.



The property contains about 30ha of significant native forest, and about 35-40ha of unmodified sand dunes, in addition to about 10ha of other areas that have been modified – trees and dunes removed in the past.

An 1865 map (opposite) shows the whole of Otago covered in native forest, including a single Reserve of over 1,000ha. Unfortunately, with pressures for totara timber to build a growing Invercargill and associated local development, only a small

remnant of this reserved area now remains. Within our adjacent purchase property, drained wetlands of about 5ha are suitable for restoration. Generally, the whole area is ideal for forest,

wetland and dune restoration and protection. A developer would have further modified this landscape, even with the protections provided by the ICC District Plan. Such modification would have compromised the overall intactness of the property and severely limited the restoration we propose.

A High Value Area report has been produced by Southland Regional Council for the property and it is a Recommended Area for Protection in the Southland Plains Ecological District Protected Natural Areas survey report. Purchase of this property by the Trust will make a significant contribution to the protection and enhancement of indigenous biodiversity within the City boundaries.

The area will be open to the public for walking access and the Trust intends to develop walking tracks and interpretation boards. We hope to restore old huts with stories about the use of the area in the past including of course Ngāi Tahu history. We have made initial contacts with local residents with a knowledge of past owners of the site and representatives of the Waihōpai



Location of the proposed new reserve in SW Otatara outlined in red.

Rūnaka to work on this project. Work in the future will also include forming car parking areas off the road, track maintenance, boundary fence repair, pest and weed control, and some restoration planting. Because of the size of the property, much of the vegetation restoration will be by using techniques that encourage natural regeneration; allowing nurse plants such as lupins and gorse to provide shelter and suppression of grasses which will allow native trees to become established. We have access to restoration expertise to ensure this occurs without adversely affecting neighbours and ensuring it is done in the most economically efficient way possible.

We anticipate that the future costs will be funded by means independent of the Council

although we would like to work with your Parks and Reserves department to source plants suitable for revegetation of the area and assistance with some facilities such as self-contained toilets for visitors to the area and utilising their acknowledged skill in track design and construction. We do not expect to apply to ICC for ongoing funding.

We do have the option of doing some subdivision – which we propose to limit to only 7 one ha lots along the southwestern boundary beside Oreti Road where there is no forest or dunes. There is already a house on the property. We have a local person who is interested in purchasing it along with a 1ha lot subdivided off the main block. Subdivision of a small part of the larger block would mean some compromise to the overall goal of restoring the whole site.

Future sale of some of these sections may be necessary to repay loans required to meet purchase obligations, and to continue with restoration.

We believe a partnership contribution from Council would be well supported by the local community and we feel this is justified as we are assisting the Council in achieving its biodiversity goals as expressed in the District Plan.

We are seeking a contribution of \$300,000 (+GST if necessary) for this purpose and ask you to consider this request. We also ask if you could indicate if we would be able to obtain complimentary native plants and at least one self-contained toilet from the Parks and Reserves Department for the site, as noted above.

We intend to protect the ecological values of the retained property in perpetuity through a QEII covenant.

If you need more information, please contact us. We look forward to hearing from you.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'T. Oliver', written in a cursive style.

Tim Oliver
Chairman, NZNFRT

Hello Jodi,

Thank you for your correspondence regarding the NFRT grant application to ICC early in March this year and recent structural changes within ICC. This letter is in support of the 12 March letter addressed to Clare Hadley (also attached) and to bring ICC up to date with progress on this project and the implications for NFRT. Please direct it to the appropriate person or group within Council.

NFRT has now settled the purchase of the 81 ha Knight Estate on Oreti Rd in Otatara. The rare forest type will be protected for the benefit of the public of Invercargill and NZ and, progressively, will be restored ecologically and opened for public access. There are times when opportunity knocks only once and you don't get a second chance to answer it. The Knight estate sale was precisely one of these times and, under great urgency, Trustees chose to answer that challenge and ensure that the land was purchased, protected and restored where possible. Had the decision been 2-3 weeks later, and with the hindsight of world events, we would likely have said "Sorry, but we can't do it". Personally, I still believe that we made the right decision, although that has left the Trust finances and operations in a challenged position. However, together with other Trustees and many Otatara locals, I am committed to making the project a success.

The financial reality has changed hugely since our 3 March presentation to Council. To paraphrase the famous Lenin quote from a century ago – "There are decades when nothing happens, and weeks where decades happen". We have all just lived through a couple of those weeks of profound and irreversible economic change, compounded by the Covid-19 pressures in your community. The timing for attempting a public fundraising through private donations and community grant applications has, as you would well appreciate, been absolutely disastrous and had to go on hold during the lockdown. Now many individuals and small businesses may have lost their livelihoods, and there is little likelihood of donations increasing in the near future. Our other community grant application has, unsurprisingly, been declined.

The extra \$300 k required, to achieve the purchase, and the urgency, are really what tipped us over the edge. The purchase has been large relative to the financial base of the Trust and as a result we have had to defer capex and reduce operational expenditure on some of our 30 other reserves. NFRT relies on invested donations, plus some carbon income, and receives no Government support, beyond the very real benefits of continued charitable registration. Our performance is audited annually against stated objectives and we do not want to risk breaching any Charities Commission regulations through completing this purchase. The whole Oreti Rd project does support the ICC District Plan, which specifically seeks to protect such sand dunes and totara forests.

When the ICC considers our March application for \$300 k support towards the purchase deficit, could they please take these changed circumstances into account. We would also be

happy to receive the requested grant spread over three years if that would help the Council's decision and cash flow. This is a one-off request, and NFRT does not intend to apply to ICC for ongoing funding. We can manage the progressive and smaller funding required for future restoration. NFRT now must apply for subdivision consent beside Oreti Rd, as explained in our March presentation to Council, but would prefer not to have houses built there in the foreseeable future. Where it is necessary to sell titles, some funds will be retained for restoration on the property and some for replacing capital "borrowed" to complete this urgent purchase.

The purchase, with subsequent restoration, arose from an Invercargill community request. The community support to date has been amazing and we sincerely appreciate that, having to operate from a distance. Local resident Maurice Rodway has generously undertaken the role of Honorary Ranger (all work, no pay!) and is now managing all the day-to-day details on site. A local advisory committee supports Maurice and reports to both NFRT and the Otatara Landcare Group.

Kind regards,

Tim Oliver
Chair, NFRT

PROJECT ASSESSMENT SHEET

PROJECT NAME – NZ FOREST RESTORATION TRUST GRANT
Option Description – Requested Option of \$300,000 Grant Only

INPUTS

Capital Costs

Total Capital Cost	1,500,000
Potential External Funding (Proportion)	0
Requested ICC Contribution	\$300,000
ICC Net Capital Cost (based on annualised 50 year loan costs @ 3%)	N/A

Operating Costs

Annual Net Opex (including Current Building Depreciation if applicable)	\$N/A (one off grant)
Extra Depreciation due to New Build (2% of total cost)	\$N/A (one off grant)

Summary Inputs

Total Net Capital Cost and 50 Year Net Operating Cost including Depreciation for ICC	\$N/A (one off grant)
Total Net Capital Cost and 50 Year Net Operating Cost including Depreciation for ICC/Year	\$N/A (one off grant)
Annual Estimated Visitation	20,800 (average 400 visits per week)
Average Net Cost/Per Visit	\$.29/visit

PROJECT ASSESSMENT SHEET

PROJECT NAME - NZ FOREST RESTORATION TRUST GRANT Option Description - Requested Option of \$300,000 Grant Only		
CRITERIA	MAXIMUM SCORE	PROJECT SCORE
Vision and Priority Alignment		
City Centre	10	0
Priorities:		
* Economic	4	1
* Liveability	4	1
* Environmental	2	2
Sub-Total	20	4
Demonstrated Need		
Total Visitation: 10 if 100,000/year or more, i.e. <u>Calculate</u> by dividing projected annual visitation/10,000	10	2.1
Specific Need	5	2.5
Multiple Audiences	5	2
Sub-Total	20	6.6
Achievability and Sustainability		
Cost Per Visit: Calculate by \$20/visit - estimated cost per visit. Note negative numbers apply	20	19.7
Net Expenditure Impact: Calculate by \$100M - (Net capital cost + 50 year net operating cost including depreciation for ICC)/\$10M. Note, negative numbers apply	10	5
Sub-Total	30	24.7
TOTAL	70	35.31

TO: PERFORMANCE, POLICY and PARTNERSHIPS COMMITTEE

FROM: DARREN EDWARDS, GROUP MANAGER - CUSTOMER AND ENVIRONMENT

MEETING DATE: TUESDAY 13 OCTOBER 2020

NOTICE OF MOTION – BUILDING CODE EARTHQUAKE PRONE BUILDING (EPB) STATUS

SUMMARY

The notice of motion has been correctly submitted and the CEO has accepted it, the Committee now have the opportunity to debate whether or not to receive the NoM and if received, confirm what advice it requires from Officers in order to make a decision on the substance of the NoM.

RECOMMENDATIONS

That the Committee

1. **Receive the report – “Notice of Motion Building Code EPB Building Status”**

AND

2. **Resolve to accept the Notice of Motion Building Code EPB Building Status; and request a report on the substance of the Notice of Motion Building Code EPB Building Status**

OR

3. **Receive the report – Notice of Motion Building Code EPB Building Status; and decline to receive the Notice of Motion Building Code EPB Building Status**

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> N/A
2.	<i>Is a budget amendment required?</i> No
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> No
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> Nil

5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> N/A
6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> N/A

BACKGROUND

The Notice of Motion (Appendix 1) was received by the Chief Executive who explained to Cr Clark that the relevant Committee who should be asked to deal with it was the PPP (in full) Committee. Cr Clark confirmed that he was happy for the matter to be dealt with at the PPP committee.

In the interests of good governance, staff have taken the opportunity to review Section 27 – Notices of motion of the Standing Orders (Appendix 2) to ensure we are dealing with the NoM in accordance with the Standing Orders.

In respect of S27.1, the Notice of Motion has been correctly submitted by Cr Clark.

The Chief Executive has accepted the Notice of Motion as required by S27.2.

Sections 27.3 – 27.7 guide how the Committee must deal with the Notice at the meeting.

Notice of Motion - to 6 October 2020 Infrastructure Committee meeting

That the Chief Executive ensures that a Building Code Earthquake Prone Building status declaration be applied to the following ICC properties by 30 March 2021:

- **Anderson House**
 - **Rugby Park**
 - **Museum**
-

Background

These 3 properties are in ICC ownership, including ICCT, for 5 years +.

Each property also has a seismic report for 5 years+ that suggests part of the property may be a EPB.

The process for dealing with these seismic issues, as a territorial authority is:

- Territorial Authority advises building owner that ICC suspects that the building may not meet the minimum level under the Building Code and NBS (New Building Standard).
- The building owner has 12 months to obtain a seismic report from a Registered Structural Engineer.
- The Territorial Authority then considers the report and if the seismic issues are present, an EPB status declaration is declared
- The building is categorised class 1 or class 2 - class 1 requires remedial action within 12.5 years and class 2 within 25 years.

Issues for ICC

- Private sector landlords (building owners) feel that ICC is “dragging it’s feet on it’s own properties, priority facilities, while concentrating on other buildings”. The ICC CE has previously stated in the media that knowing a building is earthquake prone, is the main issues, while designation is just a process.
- That ICC in applying a zone around the CBD and designating this whole zone as class 1, it is in breach of the expectations of MBIE which expects each building is

designated on it's own merits.

Applying a class 1 designation, implies greater risk across the whole zone, as opposed to an 'on merit' individualised approach.

- That the CBD zone includes Gala Street, that is primarily residential properties - to include the museum, which is not actually in but beyond Gala Street.

Please note that Gore District Council has designated it's own administration building and adjoining library as class 2 - which is one block off the main street.

The notice on the access doors states that GoreDC has designated the building and has until 2043 to do the remedial work.

Most importantly, both admin and library building remains open to staff and the public for services.

Landlords in Invercargill also reflect, in relation to facilities that ICC has closed, while not designated, that most of the buildings (including high rise buildings) in Wellingtons' Lambton Quay, are designated and open for business.



Cr Clark

10 September 2020

27. Notices of motion

Notice of intended motions must be in writing signed by the mover, stating the meeting at which it is proposed that the intended motion be considered, and must be delivered to the chief executive at least 5 clear working days before such meeting. [Notice of an

27.1 Notice of intended motion to be in writing

Intended motion can be sent via email and include the scanned electronic signature of the mover].

Once the motion is received the chief executive must give members notice in writing of the intended motion at least 2 clear working days' notice of the date of the meeting at which it will be considered.

27.2 Refusal of notice of motion

The Chairperson may direct the chief executive to refuse to accept any notice of motion which:

- (a) Is disrespectful or which contains offensive language or statements made with malice; or
- (b) Is not related to the role or functions of the local authority or meeting concerned; or
- (c) Contains an ambiguity or a statement of fact or opinion which cannot properly form part of an effective resolution, and where the mover has declined to comply with such requirements as the chief executive officer may make; or
- (d) Is concerned with matters which are already the subject of reports or recommendations from a committee to the meeting concerned; or
- (e) Fails to include sufficient information as to satisfy the decision-making provisions of s.77-82 LGA 2002; or
- (f) Concerns a matter where decision-making authority has been delegated to a subordinate body or a local or community board.

Reasons for refusing a notice of motion should be provided to the mover. Where the refusal is due to (f) the notice of motion may be referred to the appropriate committee or board.

TO: PERFORMANCE, POLICY AND PARTNERSHIP COMMITTEE

FROM: CASSIE HORTON – PARKS AND RECREATION PLANNER

MEETING DATE: TUESDAY 13 OCTOBER 2020

CAMPING POLICY AMENDMENT IN RESERVE MANAGEMENT PLANS

SUMMARY

The purpose of this report is to propose an amendment to Council's reserve management plans regarding delegations for approving camping activities on Council reserves.

RECOMMENDATIONS

That the Performance, Policy and Partnership Committee receive the report “Camping Policy Amendment in Reserve Management Plans”

AND THAT

The Parks and Recreation Manager is delegated on behalf of Council to approve camping on Council reserve land for one off events.

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> N/A
2.	<i>Is a budget amendment required?</i> N/A
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> N/A
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> This policy will be within new and reviewed Reserve Management Plans
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> Public Consultation is required via the Reserve Management Plan consultation process
6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> N/A

FINANCIAL IMPLICATIONS

Nil.

BACKGROUND

Camping is only allowed at designated camping sites¹ and on leased spaces with prior approval by the Parks and Recreation Manager.

Our Reserve Management Plan Policy (example from the draft Environmental Reserves Omnibus Management Plan as per **Appendix 1**) currently states:

“In special circumstances, camping on environmental reserves for one off events may be approved by Council Resolution.”

In 2014 Council resolution recommended “that delegated authority be given to the Parks Manager to approve requests from Lessees on Reserve land to allow overnight stays for special events associated with their activity.”

This however only covers leased land. There are other reserves not leased that we are now seeking to have included into the Parks and Recreation Manager’s delegation to approve or decline as appropriate. This would be done through an amendment of the pertinent camping policy of reserve management plans as and when these are developed or reviewed.

REASONING BEHIND REQUEST

From time to time, a request may be received relating to staying overnight for a special one-off event. This request is made for various reasons such as security of equipment or to care for animals that are on site for example.

This can also occur when the New Zealand Defence Force is carrying out exercises on one of our Reserves. Extending the delegation to the Parks and Recreation Manager enables a more streamlined decision making process, and is considered appropriate for the risk and consequence of the decision.

ICC’S POSITION ON RESPONSIBLE CAMPING

ICC’s position on responsible camping has not been contemplated through this proposed amendment. Currently Council does not have a responsible camping policy.

CONCLUSION

A policy in reserve management plans delegating authority to the Parks and Recreation Manager for these minor events would enable Council to respond to the request more efficiently.

We therefore recommend the following policy be included in new or reviewed management plans, which will go out for public consultation and be required for Council approval:

“In special circumstances, camping on reserves for one off events may be approved by the Parks and Recreation Manager.”

¹ At present, only Argyle Camping Ground in Bluff allows for camping.

Camping Policy Extract from Reserve Management Plan

Camping is only permitted on reserves administered under the Reserves Act 1977 in the Invercargill District in camping grounds specific to that purpose. Potential problems resulting from freedom campers on reserves include toilet waste disposal, rubbish and damage to reserves.

There is a registered camping ground on a reserve at Bluff, as well as other private facilities, that provide adequate camping grounds for visitors to the City.

Freedom camping is not permitted on environmental reserves given their importance as reserves with significant natural values, and the potential damage that freedom campers may have on these natural values.

Objectives:

- *To conserve the public health, well being and safety of the public while on reserves.*
- *To ensure the public have equity of use over reserves under the Council's control.*
- *To prohibit camping in reserves.*

Policies:

4.24.1 Camping is not permitted on environmental reserves.

4.24.2 In special circumstances, camping on environmental reserves for one off events may be approved by Council resolution.

TO: PERFORMANCE, POLICY AND PARTNERSHIP COMMITTEE

FROM: CASSIE HORTON – PARKS AND RECREATION PLANNER

MEETING DATE: TUESDAY 13 OCTOBER 2020

BURIAL AND CREMATIONS ACT 1964 - SUBMISSION
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SUMMARY

ICC Parks and Recreation staff have prepared a submission in response to a review of the Burial and Cremation Act 1964 and related legislation (see Appendix 1 for consultation document). Please see the attached submission that needs to be submitted prior to 31 October 2020 (refer to Appendix 2).

RECOMMENDATIONS

That the Performance, Policy and Partnership Committee accept the report “Burial and Cremations Act 1964 – Submission”

AND THAT

The Committee support and approve ICC’s submission in response to the review of the Burial and Cremation Act 1964 and related legislation.

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> N/A
2.	<i>Is a budget amendment required?</i> N/A
3.	<i>Is this matter significant in terms of Council’s Policy on Significance?</i> N/A
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> Once the Act has been finalised, it will affect the Cemetery and Crematorium Bylaw and any Management Plans for Cemeteries and Crematorium in the District.
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> Parks and Recreation staff have collaborated with Environmental Planning staff and approached Southland District Council, Gore District Council and NZ Cemeteries and Crematoria Collective. This is also a nationwide consultation.

6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> N/A
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FINANCIAL IMPLICATIONS

Nil.

BURIAL AND CREMATIONS ACT 1964 - SUBMISSION

This legislation is being reviewed for the following reasons:

- Modernising the legislation relating to death, burial, cremation and funerals in New Zealand, including the Burial and Cremation Act 1964, Cremation Regulations 1973 and the Health (Burial) Regulations 1946.
- Urupā (Māori burial grounds), registration of mortuaries, burial at sea and international transportation of bodies are out of scope of this review.
- This consultation will help inform the development of a modern, fit-for-purpose legislation for death, burial, cremation and funerals.
- They now want to seek the views of stakeholders to inform further policy development.

Given the range and complexity of the issues involved in updating the legislation, this consultation document is split into five sections:

- A. Death certification and auditing
- B. Regulation of the funeral services sector
- C. Burial and cemetery management
- D. Cremation regulations and the medical referee system
- E. New methods of body disposal

Key points raised through our submission include:

1. ICC supports the review of the Burial and Cremations Act 1964.
2. Increased auditing would ensure an accurate, consistent approach to burials and cremations, especially when certifying the cause of death.
3. ICC agrees funeral directors should be registered with the associated Local Authority, with registration being overseen so Local Authorities and funeral directors are operating consistently. Would be overseen by the relevant Local Authority as part of Council Officer existing roles.
4. Advocating for transparency of funeral costs (funeral directors do not currently disclose breakdown of costs).
5. ICC advocates for clear guidance from Government regarding cremations and burial processes.
6. Better access to medical referees is required – especially during busy periods / holiday periods. An improved centralized online system will likely assist with this.
7. ICC is open to other methods of body disposal as suggested in the consultation document as it allows for flexibility with burial options and responds to global trends.

ICC Parks and Recreation staff have collaborated with ICC Environmental Planning staff and approached Southland District Council (SDC) and Gore District Council (GDC), as well as the NZ Cemeteries and Crematoria Collective (NZCCC) Organisation. SDC have not returned our enquiry, GDC are leaving it to NZCCC to respond on behalf of members, and NZCCC have said it would be good if we submit as their submission will be following what other Councils are saying and anticipate their submission to be last minute.

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This consultation has also been shared with iwi and Environment Southland, and we have heard nothing further from them.

CONCLUSION

ICC supports the review of the Burial and Cremations Act 1964 and hopes for a positive outcome once the new Act is finalised. Submissions will be collated by the Minister of Health.



Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation

Consultation document

2019

Citation: Ministry of Health. 2019. *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation*. Wellington: Ministry of Health.

Published in November 2019 by the Ministry of Health
PO Box 5013, Wellington 6140, New Zealand

ISBN 978-1-98-856881-2 (online)
HP 7121



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Introduction

1 Purpose

This consultation document sets out a range of options for modernising the legislation relating to death, burial, cremation and funerals in New Zealand, including the Burial and Cremation Act 1964 (the Act), Cremation Regulations 1973 and the Health (Burial) Regulations 1946.

Urupā (Māori burial grounds), registration of mortuaries, burial at sea and international transportation of bodies are out of scope of this review.¹

The Ministry of Health (the Ministry) is seeking feedback on the options from industry and other interested stakeholders, including the general public. This consultation will help inform the development of a modern, fit-for-purpose legislation for death, burial, cremation and funerals.

Given the range and complexity of the issues involved in updating the legislation, this consultation document is split into five sections:

- A. Death certification and auditing
- B. Regulation of the funeral services sector
- C. Burial and cemetery management
- D. Cremation regulations and the medical referee system
- E. New methods of body disposal.

Each section proposes a range of options to modernise the law in relation to the topic. The Ministry has indicated its preferred option in each section. We now want to seek the views of stakeholders to inform further policy development.

2 How do I make a submission?

There are two options for submitting feedback around this consultation document.

- a. You can complete the online survey on the Ministry's Health Consultation Hub at <https://consult.health.govt.nz/environmental-and-border-health/death-funerals-burial-and-cremation>. This is our preferred way of receiving feedback

¹ Urupā are regulated by the Te Ture Whenua Act 1993, and burials at sea within the territorial sea or terrestrial water bodies are dealt with by regional councils; the scattering of ashes within the Exclusive Economic Zone is dealt with under the Exclusive Economic Zone and Continental Shelf (Environmental Effects —Burial at Sea) Regulations 2015.

as it allows the information to be collected in a single, safe place and provides fill-in fields that ensures respondents provide all necessary information.

In this method, you can complete your submission over a number of sessions and save it as you go. If you select 'Save and come back later', you will be sent an email with a unique link that will let you return to your submission to edit and submit it. You can share the link with your colleagues if you require their contribution or wish them to review your submission.

Once you have submitted your completed submission, you will be sent a pdf copy for your records.

- b. You can send a separate email submission to **burialandcremation@health.govt.nz**

If you decide to send your submission via email, please ensure your email includes a completed submitter profile form. You can find this form on the Ministry's website at: **www.health.govt.nz/publication/death-funerals-burial-and-cremation-review-burial-and-cremation-act-1964-and-related-legislation**

Submissions have been extended until **5 pm on Friday 31 July 2019**, and we will continue to review the situation in light of the COVID-19 pandemic

Your feedback is important because it will help influence the selection and design of final policy proposals. We appreciate you taking the time to make a submission.

2.1 Submissions are public information

Your submission and any correspondence you send to the Ministry may be requested by a third party under the Official Information Act 1982 (OIA).

If somebody requests information from your submission under the OIA, we are obliged by law to handle such information in accordance with the OIA. In many cases, this means that we will release your submission and supporting information to the person who requested it unless there is a justifiable reason for withholding this information under the OIA.

If you consider that any part of your submission could be withheld under the OIA, please make this clear in your submission, noting the reasons why you think the information ought to be withheld (eg, you may consider some information to be commercially sensitive).

2.2 Declaration of interest

We ask all submitters to declare any financial or other interests they may have in businesses that may be affected, positively or negatively, as a result of the proposals contained within this document. We ask other stakeholders to provide a short statement or explanation of the purpose or focus of any organisations they represent that have an interest in these proposals.

3 Background

3.1 Death, Burial and Cremation: A new law for contemporary New Zealand

In 2015, the New Zealand Law Commission (the Law Commission) published its report *Death, Burial and Cremation: A new law for contemporary New Zealand* (Law Commission 2015). The report made 127 recommendations to modernise the law that governs death, burial, cremation and funerals in New Zealand.

The Law Commission found that the law is outdated, overly specific and difficult to understand. For example, the penalties for offences are still stated in the monetary unit of the New Zealand pound, which was abolished in 1967. Further, the Law Commission noted that the law has not always kept pace with other legislative developments, such as the New Zealand Bill of Rights Act 1990, the Resource Management Act 1991 and the Local Government Act 2002 and is incompatible with, or duplicates, provisions in those Acts.

The Law Commission also found that the wording of the Burial and Cremation Act 1964 (the Act) makes it difficult to respond to general trends in society, such as the growth in sexuality and gender diversity and the evolving nature of family relationships. These are all things that are changing how New Zealanders view post-death decisions about such things as burials and cremations, etc. The Act is not designed to deal with:

- the increasing use of cremation instead of burial (approximately 70 percent of our dead are now cremated)
- the increasing demand for eco-burial or other non-traditional body disposal mechanisms
- the increasing demand for alternatives to traditional funeral arrangements (such as new methods of body disposal like alkaline hydrolysis or do-it-yourself funerals).

3.2 The Government response to the Law Commission report

In 2016, the then Government accepted almost all of the Law Commission's recommendations but directed officials to undertake further policy work and consultation on specific elements of the recommendations. The aim was to establish the scope and severity of the issues identified by the Law Commission before making any final decisions around the recommendations.

3.3 Inquiry into whānau access to and management of tūpāpaku²

In August 2017, the Māori Affairs Select Committee released its report *Te uiuinga ki te āhei atu me te whakahaere a te whānau i te tūpāpaku* (Te Komiti o Ngā Take Māori 2017).

In that report, the committee recommended that the Government consider implementing the recommendations suggested by the Law Commission.

The Government accepted this recommendation in its response to the Select Committee report released in February 2018.

3.4 Consultation document

This consultation document responds to the Government's direction and response to the Law Commission report outlined above. The options for change outlined in this document are based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry of Health.³

This consultation document directly responds to 100 (out of 127) of the Law Commission recommendations.⁴

The document does not analyse the Law Commission's recommendations 104–127, which recommend the creation of a legal framework to give effect to a person's wishes once they pass away. The Ministry of Justice will consider this policy work independently of the Ministry of Health as priorities allow.

The Ministry of Health is the lead agency undertaking policy work to implement the Government's decisions. Due to the broad scope of the proposed reforms, the Ministry is working with relevant agencies, including the Department of Internal Affairs (DIA) and the Ministry of Justice.

4 Objectives in updating the law relating to death, burial,

² Tūpāpaku is te reo for a deceased person's body.

³ For further detail, including the full list of recommendations, please see Law Commission 2015.

⁴ Recommendations 7–9 have already been adopted by the Government. Recommendations 7 and 8 are included in the Births, Deaths, Marriages and Relationships Registration Bill (currently deferred pending further public consultation). Recommendation 9 was enacted by the Burial and Cremation Amendment Act 2016.

cremation and funerals in New Zealand

We selected four criteria to assess the policy options outlined in this document ('assessment criteria'). This ensured we used a consistent approach when selecting our preferred option in each discussion area. We applied equal weighting to the four criteria when considering the options.

The primary objective is to modernise the law relating to death, burial, cremation, and funerals in New Zealand to ensure it is fit for purpose and meets the needs of New Zealanders.

The four criteria are as follows.

- **Criterion 1:** Any changes to the law should be proportionate and effective in addressing identified problems (including risks to the public and environment).
- **Criterion 2:** Any changes to the law should not impose unnecessary or unjustified compliance costs.
- **Criterion 3:** Any change to the law must be flexible and able to respond to future shifts in technology and consumer preferences as far as possible.
- **Criterion 4:** Any changes to the law must consider tikanga Māori, other cultural or religious practices, as well as the dignity of the deceased and those who remain.

5 A guide to existing legislation and proposed changes

The current legislation governing death, burial, cremation and funerals is set out primarily in the Burial and Cremation Act 1964 (the Act). Additional provisions are also set out in the Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967; Cremation Regulations 1973; Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995 and Health (Burial) Regulations 1946.⁵

Most of this legislation is administered by the Ministry. The exception is the Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations, which is administered by the DIA. Table 1 below outlines the current legislation governing each area discussed in this consultation document.

⁵ Although out of the scope of this review, urupā are regulated by the Te Ture Whenua Act 1993, and burials at sea are regulated by the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Burial at Sea) Regulations 2015.

Table 1: Guide to current legislation for death certification, burial, cremation, and the funeral services sector

Policy area	Current legislation	Current administering department
Death certification and auditing	Burial and Cremation Act 1964 – ss 46AA–46D and 54AA.	Ministry of Health
	Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995 – regs 5B, 6A and 7.	Department of Internal Affairs
Regulation of the funeral services sector	Health (Burial) Regulations 1946–Part 2 and 3.	Ministry of Health
Burial and cemetery management	Burial and Cremation Act 1964 – Part 1, Part 2, Part 3, Part 4, Part 6 and ss 47–53, 54–55 and 57. Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967.	Ministry of Health
Cremation and the medical referee system	Burial and Cremation Act 1964 – Part 5, s 45D and 56. Cremation Regulations 1973.	Ministry of Health

5.1 Administration of the new statutory framework

The Law Commission recommended that the Burial and Cremation Act 1964 be replaced by a new statute for burial, cremation and funerals to be administered by the DIA, with most of the operational functions being delivered by local government.⁶ Local governments already register funeral directors and, consider land use issues arising in the establishment of new cemeteries and crematoria.

Policy relating to the death certification and auditing of death certification would remain with the Ministry of Health as it is primarily a health issue.

6 Proposed overarching duties regarding the disposal of bodies

It is proposed that the new law have two general duties that would apply to members of the public.

⁶ Recommendation 1.

6.1 Treating remains with respect

Currently, it is an offence under section 150 of the Crimes Act 1961 to improperly or indecently interfere with or offer any indignity to any dead human body or human remains. A breach of that provision may make a person liable to imprisonment for a term not exceeding two years.

The Law Commission found, however, that there are a range of behaviours that should justify prosecutorial action but might not be prosecuted under section 150 because the only punishment available is imprisonment. Behaviour that the Law Commission viewed as serious enough for prosecution, but not serious enough for conviction under section 150, includes:

- storing dead bodies inappropriately
- failing to properly embalm a body
- treating a body in a way that is designed to cause significant cultural offence
- stealing an item from a coffin.

The Law Commission, therefore, proposed that the new law would include a general duty on everybody to 'treat any dead human body or human remains with respect'.⁷ The breach of this duty would be an offence punishable by infringement notice, or, on conviction, by a fine.

- 1 Do you agree that there should be a general duty on everybody to 'treat any dead human body or human remains with respect'? If not, why not?**
- 2 Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine? If not, why not?**

6.2 Disposing of a body within a reasonable time

Currently the Act requires that a person who has charge of a body must, within a reasonable time of taking charge of it:

- dispose of it
- cause it to be disposed of
- transfer it to another person for disposal.⁸

The Law Commission proposed that this duty continue in the new law but be clarified to provide guidance as to what is a reasonable time and who is the person responsible for disposing of the body.⁹

⁷ Recommendation 79.

⁸ Burial and Cremation Act 1964, section 46E.

⁹ Recommendation 80.

Therefore, it is proposed that the new law should provide that the person who has the duty to dispose of the body must do so without undue delay, including considering the mourning needs of the bereaved, any ceremonies to be performed, tikanga or other cultural practices, and any other relevant considerations (such as police investigations). Which person has the duty to dispose of the body will depend on the circumstances of every case. It could be one person, for example the executor or administrator of an estate, or it could extend to multiple people, for example, where a funeral director has been engaged. The breach this duty would be an offence punishable by infringement notice, or, on conviction, by a fine.

There is a public interest in this duty falling on the person who actually has custody of a body. For example, a body could remain in a mortuary for some time either because no family member had been identified as appropriate for taking responsibility or the funeral director has received instructions but is failing to act on them.

- 3 Do you agree that there should be a requirement that the person who has the duty to dispose of the body must do so without undue delay, including considering the mourning needs of the bereaved, any ceremonies to be performed, tikanga or other cultural practices, and any other relevant considerations (such as police investigations)? If not, why not?**
- 4 Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine? If not, why not?**

Section A:

Death certification and auditing

A1 The current system of death certification and auditing in New Zealand

A1.1 What is death certification?

Death certification is a term that describes the process of a medical practitioner or nurse practitioner (collectively referred to as certifying practitioners in this document) determining the cause of death of a deceased person and issuing a Medical Certificate of Cause of Death (MCCD). The MCCD records the medical findings as to the cause of a person's death. The Ministry of Health prescribes the content of the MCCD form, which incorporates the Cause of Death section prescribed by the World Health Organisation (WHO). The MCCD should not be confused with a death certificate issued by the Registrar-General of Births, Deaths and Marriages after the death has been registered. The death certificate records the details of the death from the statutory register of deaths.

The primary purposes of the MCCD, as identified by the Law Commission, are threefold.

1. It establishes the fact of death. This is important for a range of functions, including maintaining accurate population data and preventing fraud.
2. It informs the development of and resource allocation to public health policies and programmes in the health sector. For example, the MCCD is used to measure life expectancy and determine the incidence of death from specific causes.
3. It aids in detecting wrongful and preventable death. Cause of death information is also vital in identifying which deaths are from natural causes and which are not (possibly requiring further investigation).

Death certification also helps in finalising probate, settlement on estates and life insurance claims; investigating and prosecuting crimes; reducing identity theft; determining succession in the Māori Land Court; researching genealogy and

understanding family medical histories. As a member state of the WHO the New Zealand Government is required to report national cause of death statistics to the WHO each year.

The death certification process operates in conjunction with a number of other systems, including:

- the coronial system, which investigates unexpected and avoidable deaths
- the justice system in terms of investigating and prosecuting wrongful deaths
- the death notification system, which is administered by the Registrar-General of Births, Deaths and Marriages and deals with the registration of deaths, population statistics, preventing fraud and the issuing of death certificates
- the cremation medical referee system, which approves bodies for cremation and duplicates the MCCD but includes additional crime prevention questions.¹⁰

A1.2 The death certification system

The system for death certification is set out in the Burial and Cremation Act 1964 (the Act). It is one of two processes the law provides to determine cause of death in New Zealand.¹¹

The system comprises a number of statutory and non-statutory documents and applies to all 'natural' or 'expected' deaths (including stillbirths) but not deaths that fit the categories of 'reportable deaths' as set out in the Coroners Act 2006.

In 2017/2018, approximately 89 percent of all deaths in New Zealand were certified through the death certification process, with the remaining 11 percent being investigated by the coroner (Office of the Chief Coroner of New Zealand, 2018).¹²

Currently, no agency has statutory oversight of the entire death certification system: there is no national MCCD audit system.¹³ Some district health boards (DHBs) (eg, Canterbury DHB) have established mortality review committees, which conduct internal reviews of MCCD forms and provide feedback to the certifying practitioners.

¹⁰ See Cremation regulations and the medical referee system for more information.

¹¹ Burial and Cremation Act 1964, sections 46AA–46F.

¹² In the 2016/17 year, Statistics New Zealand estimated that 33,573 people died in the same period (Stats NZ 2018).

¹³ The Health Quality and Safety Commission New Zealand has oversight of mortality and runs five mortality review committees. Mortality review committees are statutory committees that review particular deaths, or the deaths of particular people, in order to learn how to best prevent future similar deaths. There are currently five ongoing committees dedicated to reviewing the deaths of: children and young people, babies and mothers (where death is caused by pregnancy or childbirth), deaths resulting from family violence and associated with surgery, and deaths resulting from suicide.

A1.3 Statutory duties in certifying cause of death

When a person dies, the certifying practitioner who attended the person during their illness is required to give an MCCD for the person's death immediately after learning of that person's death if the practitioner is satisfied that the person's death was a natural consequence of the illness. The Act does not provide a definition for 'immediately'. The certifying practitioner is not required to view the body.

The Act provides for a certifying practitioner, other than the practitioner who attended the person during the illness, to issue an MCCD where:

- a medical practitioner or nurse practitioner who attended the person during the person's illness is unavailable;¹⁴ or
- less than 24 hours has passed since the death, and a medical practitioner or nurse practitioner who attended the person during the person's illness is unlikely to be able to give an MCCD for the person's death within 24 hours of the death; or
- at least 24 hours have passed since the person's death, and a medical practitioner or nurse practitioner who attended the person during the person's illness has not given an MCCD for the person's death.

Where an MCCD is not issued by a certifying practitioner, for whatever reason, the police must refer the death to the coroner for investigation.

If the certifying practitioner was not attending the person during the person's illness, the Act requires that the practitioner must not give an MCCD unless they have:

- had regard to the medical records relating to the person concerned from the health practitioner who last attended the person during the person's illness
- had regard to the circumstances of the person's death
- examined the person's body.¹⁵

Following the completion of the MCCD, the person responsible for disposing of the body, usually the funeral director, sends the MCCD to the Ministry of Health. The Ministry receives monthly notifications of deaths from the Registrar-General of Births, Deaths and Marriages and uses that information, together with the MCCDs and, at times, coroner's findings, post-mortem reports and other sources of information, to assign a code to the death that describes the 'underlying cause of death' in accordance with the World Health Organization (WHO) Rules and Guidelines for Mortality Coding (WHO 2004). The resulting coded cause of death information is used to inform the development of public health policy and programmes within New Zealand and is sent annually to WHO for its international datasets.

¹⁴ The term 'unavailable' is defined in section 2 of the Act to mean 'dead, unknown, missing, of unsound mind, or unable to act by virtue of a medical condition'.

¹⁵ Burial and Cremation Act 1964, section 46B.

In 2017-2018, DIA and the Ministry developed and launched Death Documents,¹⁶ a digital tool for certifying practitioners to complete death certification documentation online. When a death is certified through Death Documents, the Ministry can access completed MCCD forms, removing the need for sending through a paper copy of the MCCD.

A1.4 Cremation medical referee system

Before a body can be cremated, the Cremation Regulations 1973 require the permission of a medical referee.¹⁷ This system provides an additional check on cause of death to ensure that the death had not occurred because of any criminal wrongdoing before the body is irreversibly destroyed. There are no comparable 'medical referee' systems for other forms of body disposal, such as burials or burials at sea.

Under this process, certifying practitioners are asked to complete a Cremation Certificate, which duplicates much of the cause of death information from the MCCD and contains questions designed to test whether there were any circumstances surrounding the death that may require further investigation before the body is cremated. The Cremation Certificate requires the certifying practitioner to see and identify the body. In comparison, MCCDs do not require this.

Although this process has not been established as an effective audit for death certification, anecdotal evidence from the funeral sector suggests that some medical referees vet and provide feedback to certifying practitioners about the quality of their death certification form completion (eg, alerting practitioners if questions are left blank).

¹⁶ See <https://deathdocs.services.govt.nz>

¹⁷ Cremation Regulations 1973, regs 5–7.

A2 Issues with the current system of death certification and auditing

There are several issues with the current systems for certifying the cause of death and auditing cause of death certification.

A2.1 Errors in certifying cause of death

Ensuring that certifying practitioners determine and record the cause of death accurately is important for a number of reasons. Inaccuracy can result in over- or under-reporting of deaths to the coroner and inaccurate population health statistics.

The lack of a comprehensive system for auditing the death certification means there is an absence of empirical data on certification errors. This presents an immediate challenge when attempting to determine whether or not there is a problem, and if there is, in defining the magnitude of the problem.

There is some evidence that errors in determining cause of death are fairly common, both internationally and in New Zealand. A 2005 Australian study found error rates of 24–37 percent for doctors certifying death (Pritt et al 2005).

The types of errors found in recording the cause of death can include:

- incomplete forms
- illegible handwriting
- inattention to detail
- inaccurate causes of death.

A 1998 study found that inaccurate causes of death can include errors such as listing the mode of death (for example, cardiac failure) without an underlying cause, failing to note recent major surgery or failing to specify the site or organism of infection (McKelvie 1993).

There has been no comprehensive study of the likely rate of error in death certification in New Zealand. A 'mini-audit' of 1,331 MCCDs submitted to the Ministry during the 2009/10 year identified an error rate of 24 percent. The errors included listing non-specific causes of death; failing to correctly differentiate between underlying, proximate and contributory causes of death; and failing to provide critical information, such as the primary site of cancer. In 2010, the Canterbury DHB's mortality review committee detected errors in 105 (9.5 percent) of the 1102 MCCDs it reviewed from its five hospitals. Again, these errors ranged from a failure to correctly identify or specify the primary cause of death to errors in how the secondary and contributory causes were recorded. As the MCCD has to be provided to the person in charge of the body without delay to allow the funeral arrangements to proceed, there is no ability for

errors identified by the mortality review committee to be corrected before the certificate is used for its official purposes.

The Law Commission reported anecdotal evidence that myocardial infarction (heart attack) was often the default diagnosis of the cause of death where there are no indications of other causes. Further, submissions from doctors during the Law Commission's review were very clear that determining the cause of death in the absence of an autopsy is never definite and is often a view taken on the balance of probabilities.

There are many factors that can contribute to errors in recording the cause of death. These include:

- limitations in the experience of certifying practitioners
- the task of death certification being given a low priority
- a lack of education around death certification requirements
- fatigue
- time constraints
- unfamiliarity with the deceased's medical history
- frustration with the forms (including questions that are difficult to answer and are duplicated across different forms)
- only one certifying practitioner completing all the documentation
- certifying practitioners not viewing the body before certifying cause of death.

Further, the purposes of the death certification system and the importance of accurately recording the cause of death are not always clear to certifying practitioners. This may result in other interests or considerations influencing how certifying practitioners record cause of death. For example, doctors may feel some duty to the bereaved family when determining the cause of death. That may lead them to hide or minimise certain factors that contributed to the death, for example, alcoholism or where the death was a result of HIV/AIDS infection. It may also lead them to determine too easily that the person died of natural causes so that the family can have the body for funeral preparations, avoiding the wait for the coronial process.

Although there is no evidence that certifying practitioners in New Zealand are hiding their own wrongful actions, for example, negligent or criminal acts that led to the patient's death, there are limited safeguards in place to stop such practices.

A2.2 Inefficiencies in the statutory death certification process

New Zealand's current death certification legislation is somewhat inconsistent with current good medical practice, which can create issues affecting compliance. The system was designed at a time where the model of end-of-life care was different. Historically, most people passed away in their homes, and their health needs were provided by the family doctor. Over the years, this has changed with an increase in the number of people dying in hospital, hospices or aged residential care facilities. The current legislative

requirements are not necessarily consistent with modern good health practice, which creates issues affecting compliance. For example, not completing the MCCD immediately as required by the Act.

Anecdotal evidence presented by the Law Commission noted that, despite the current requirement to examine the body in particular circumstances, it is common for certifying practitioners to only view the deceased person's face and not remove clothing. There may be good reasons for this. For example, practitioners may be already satisfied as to the cause of death and feel that an examination will not reveal any further useful information, or they may believe that a request to examine the body in more detail could overly distress the bereaved family.

A2.3 Time limits to certify cause of death

The current death certification system includes some outdated processes that can cause unnecessary delays and duplicated effort for certifying practitioners, as well as unnecessary delays for the bereaved families (such as the process for a different certifying practitioner completing the MCCD). Section 46B(2) of the Act requires certifying practitioners to complete the MCCD immediately after they learn of the death. If a practitioner learns of the death of a patient over the weekend or during holidays, it can sometimes be very difficult to comply with this statutory requirement.

The Law Commission reported that there are ongoing difficulties in some regions in locating appropriate people to certify death, even when the death is a natural consequence of illness. This can lead to an increase in over-reporting of deaths to the coroner (because all deaths where there has been no MCCD issued must be referred to the coroner), and delays in returning the deceased body to families and whānau.¹⁸

The Māori Affairs Select Committee identified the impact that over referral to the coroner had on Māori (Te Komiti o Ngā Take Māori 2017). The committee noted that tikanga Māori requires that immediate whānau remain with the tūpāpaku until burial. Unnecessary referral of a death into the coronial system can restrict whānau access and management of tūpāpaku. This can interfere with cultural practices and cause unnecessary distress to whānau.

A2.4 Level of certainty required to certify cause of death

Certifying the cause of death is complex, and it can often be impossible for a certifying practitioner to be absolutely certain of a cause of death determination. In many cases, signs of the actual cause of death are only discoverable after a full toxicology report and autopsy. Those procedures are expensive, take time and are usually not justifiable for the majority of deaths. This may be the case where the deceased person was elderly and had a variety of pre-existing health and medical problems.

¹⁸ Coroners Act 2006, section 14(f).

Currently, the Act does not provide any guidance as to the level of certainty required when determining the cause of death. The MCCD asks the certifying practitioner to certify that the cause of death given is true 'to the best of my knowledge and belief and that no relevant detail has been omitted'. In contrast, the Cremation Regulations 1973 place a duty on medical referees to not permit cremation unless they are satisfied that the cause of death has been 'definitely ascertained'. This can lead to confusion as to the standard of certainty that practitioners must have before certifying cause of death and obtaining this certainty on a routine basis can be difficult, even with an autopsy.

A2.5 Problems with death certification forms

Certifying practitioners who submitted to the Law Commission review reported frustration at the nature of the documents that they have to complete after a death. Concerns included the number of different forms, the duplication of questions across some of those forms and the lack of national consistency in the forms being used. Combined, the MCCD and the Cremation Certificate, which are most commonly completed by the same certifying practitioner, involve the practitioner answering 51 separate questions, many of which cover the same ground and 10 of which are duplicated.

Further, some of the language used in the forms is outdated and some questions are difficult to answer. For example, the Cremation Certificate asks for the 'mode of death'. The Law Commission found that not all certifying practitioners understood what the term 'mode of death' means, and this term is often confused with the cause of death.¹⁹ This makes it difficult for certifying practitioners to complete the forms and is likely leading to inconsistent form completion practices across practitioners, resulting in potential flow-on implications. For example, the Law Commission found that medical referees have sometimes delayed authorising cremations due to incomplete or inconsistent paperwork.

Funeral directors must transcribe the cause of death from the MCCD in order to complete the notification to the Registrar-General of Births, Deaths and Marriages. There have been reported difficulties for funeral directors in deciphering certifying practitioners' handwritten cause of death statements on MCCDs. Certifying practitioners often use abbreviations and non-standardised language, which can create risks to accurately transcribing the cause of death.

This problem has been somewhat alleviated by the online death certification service, Death Documents, which requires that mandatory questions be answered to complete the form, does not repeat questions and is easily legible for accurate transcription. It also has help sections for certain questions including mode of death. However, this service is still in the process of being widely adopted by the sector, and transcription problems persist. Current legislation for certifying cause of death, especially the

¹⁹ 'Mode of death' refers to how the person died, such as heart failure or respiratory failure, without identifying the underlying cause of the heart failure or respiratory failure (ie, hypertensive cardiomyopathy).

requirement for the Cremation Form to be printed out, is an impediment to a user-friendly online 'cause of death' system.

- 5 **What do you think are the key problems with the current system for certifying the cause of death and existing auditing systems?**
- 6 **Can you provide any evidence about the size or extent of the problems with the current cause of death certification and auditing systems?**

A3 Modernising the death certification system

A3.1 Options

The Ministry has considered three options for modernising the death certification system, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Implementing a package of changes to the current system based on most of the Law Commission's recommendations (recommendations 2, 6 and 10–14)
- **Option 3:** Implementing a package of changes to the current system based on all of the Law Commission's recommendations (recommendations 2, 4–6 and 10–14).

A3.1.1 Option 1

There would be no changes to the Burial and Cremation Act 1964 (and supporting regulations) regarding the existing death certification system.

A3.1.2 Option 2

Under this option, the Ministry would be responsible for overseeing the quality of outputs and outcomes from the death certification system. The content and method for completing MCCDs would be set out in guidance published by the Ministry to provide certainty and enable greater flexibility to update/revise the MCCD form and content if there is a good reason to in the future.

The timeframe for certifying practitioners to provide cause of death certification would be made explicit. It would be within 24 hours of learning of the person's death if the certifying practitioner is satisfied that the person's death was a natural consequence of an illness.

Original certifying practitioners would be able to use their discretion to decide whether viewing the body in each case is necessary.

An alternative medical or nurse practitioner (who was not the practitioner who attended the person during their illness) would be able to certify cause of death where the original medical or nurse practitioner was 'unavailable'. The term 'unavailable' would be better defined. For example, it could be defined as 'not being free to do something or being otherwise occupied'.

Alternative medical or nurse practitioners would not be able to certify cause of death unless they have:

- considered the medical records relating to the person who has died from the medical or nurse practitioner who last attended the person during their illness
- considered the circumstances of the person's death
- viewed the person's body.

When certifying the cause of death, the certifying practitioner would be required to determine the cause of death to the best of their knowledge and belief.

Permission for a body to be embalmed or disposed of would not be granted unless a medical or nurse practitioner has certified cause of death or the coroner had authorised the embalming/disposal.

There would be no changes to the existing statutory restrictions around transferring charge of a body before cause of death has been determined.

A3.1.3 Option 3

This option would include the components described under Option 2 above but with two further requirements. First, MCCDs would contain a section for verifying the identity of the body and including the evidence for such verification. And second, deceased bodies would not be able to be disposed of unless a certifying practitioner (or another authorised person) has certified that the identity of the deceased has been adequately determined. If the certifying practitioner or authorised person considers the body is not adequately identified, then they would be required to refer the death to the police.

7 What do you think about the options identified for modernising the death certification system? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

A3.2 Impact analysis

This section identifies potential impacts from implementing any of the options to modernise the death certification system.

A3.2.1 Option 1

All issues outlined in section A2 remain.

A3.2.2 Option 2

The Ministry's oversight of the outputs quality for the death certification system (MCCDs) would help promote quality assurance and improvements in the quality of death certification determinations. Ministry guidance would also support accuracy, efficiency and consistency of practice across New Zealand.

A reformed death certification system based on this option would better reflect existing medical care models and processes within the health sector. Option 2 modernises and clarifies certification timeframes, the level of certainty required to certify and requirements around viewing the body. This reduces the statutory burden when the certifying practitioner is the original doctor/nurse practitioner, as well as empowering practitioners to use their professional judgement and discretion when certifying cause of death.

Option 2 also increases the efficiency of MCCD completion, when the certifying practitioner is unavailable, and clarifies when a body can be moved or dealt with.

Further it is expected that Option 2 will reduce the number of deaths being unnecessarily referred to the coroner because no MCCD has been issued. This is because streamlining who can certify cause of death and in what circumstances will expand the pool of available certifying practitioners who can complete MCCDs.

There would be some administrative costs to the Ministry from its increased oversight of the death certification system's quality of outputs. The full impact of this increased role has not been established, however, it is possible it may be able to be managed within existing Ministry baselines.'

Option 2 is not expected to have significant compliance cost implications because the changes reflect some existing practices in the sector. There will be some short-term implementation and training costs for the Ministry, DHB's and certifying practitioners. However, these are not expected to be significant.

Certification processes will be more flexible and sustainable, particularly as this option will better enable other certifying practitioners to complete MCCDs when the original certifying practitioner is unavailable.

Option 2 allows further changes to be made to the form and content of the MCCD without requiring legislative changes.

Although Option 2 does not include a mandatory requirement to identify the deceased, existing administrative processes continue to provide checks on the risk of misidentification (eg, medical notes, hospital processes, professional discretion and family oversight).

A3.2.3 Option 3

Option 3 would have similar impacts to Option 2, with some exceptions.

The additional identity verification requirements may make identification of the deceased more accurate. However, it is questionable whether they are needed for the death certification system as there is also no real evidence of misidentification being a problem for deaths certified by certifying practitioners.

The additional identity verification elements will take more time for certifying practitioners to complete.

Option 3 also introduces additional compliance costs on certifying all deaths due to proposed requirements for the certifying practitioner to also verify the identity of the deceased and meet any additional obligations to report unidentified deceased persons to the police.

- 8 Do you agree with the presented impacts of the options identified for modernising the death certification system? Why/why not? Can you suggest other likely impacts from the three options?**
- 9 Can you provide any information to help the Ministry gauge the size of any potential impacts, costs or benefits that could affect you?**

A3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Implementing a package of changes to the current system based on most of the Law Commission's recommendations* (excluding recommendations around statutory provisions for the verification of the identity of the deceased).

Options 2 and 3 are substantively better than Option 1 for death certification in New Zealand as they address the issues laid out in section A2: Issues with the current system. However, the Ministry does not consider it necessary to implement additional statutory requirements on certifying practitioners to certify the identity of the deceased (as included in Option 3). The Ministry considers that there is a low level of risk of certifying practitioners misidentifying a deceased person and that any risk is outweighed by the additional administrative burden on all certifying practitioners to formally verify the identity of all deceased persons in New Zealand.

The Ministry considers that the existing administrative processes (eg, medical notes, hospital processes, professional discretion and family oversight) are sufficient and provide an adequate check on the risk of misidentification.

10 What is your preferred option to modernise the death certification system? Please provide the reasons for your view.

A4 Auditing death certification

A4.1 Options

The Ministry has considered three options regarding audit of the death certification decisions, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Establishing a death certification auditing committee system
- **Option 3:** Implementing the Law Commission's related recommendations around auditing of death documentation, including creating a statutory 'cause of death reviewer' (recommendations 15–19).

A4.1.1 Option 1

There would continue to be no statutory requirement to audit death certification decisions. Non-statutory checks would continue where systems currently exist.

A4.1.2 Option 2

Death certification auditing committees could be established to peer review cause of death determinations made within each area (district). The peer-review system would need to review a random sample of death certifications and include a mechanism for providing feedback to the certifier when errors were identified. The establishment of the committees would be mandated by law and committees could be implemented by DHBs.

The Ministry would oversee (and guide) peer-review systems to ensure they produced quality outcomes and that the trends and lessons learned from such reviews were shared between hospitals and used to train and inform practitioners responsible for death certification.

A4.1.3 Option 3

A new statutory 'cause of death reviewer' role/function could be created, with appointments made by the Minister of Health. The function of a cause of death reviewer would be to review a random sample of all death determinations (excluding deaths that occurred in hospital or deaths that had been referred to the coroner).

Alongside this process, hospitals would be required to establish their own systems to peer review their own cause of death determinations. Such peer-review systems would need to review a random sample of deaths and include a mechanism for providing feedback to the certifier when likely errors are identified. The Ministry would also establish a national committee to support hospitals.

The reviews undertaken by cause of death reviewers and hospital committees would aim to:

- detect errors in the determination of cause of death
- detect deaths that should have been referred to the coroner
- provide education and support to certifying practitioners who certify the cause of death.

The review would need to take place before the body was disposed of.

Additional functions of a cause of death reviewer would be to:

- review deaths referred to them by members of the public or the health profession
- undertake targeted reviews of deaths (ie, review certification of all deaths from myocardial infarction across a certain period or from a particular region). This would ensure deaths of a like cause were being accurately certified.

Where a cause of death reviewer / hospital committee identified a likely error in the death certification, this would be discussed with the certifying practitioner with a view to reaching agreement (if necessary) about amending the cause of death certification. If agreement could not be reached, the matter would be referred to the coroner or to another authorised person for adjudication.

If a reviewer detected evidence of criminal activity, they would be required to report the death to the police.

11 What do you think about the options identified regarding the auditing of death certification? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

A5 Impact analysis

This section identifies potential impacts from implementing any of the options for auditing the death certification system.

A5.1 Option 1

All issues outlined in section A2 remain.

A5.2 Option 2

Death documentation would be regularly reviewed and the lessons from audits would be shared across and within committee districts and other committees. Audit outcomes would inform continuing professional development of certifying practitioners.

There is a risk of not detecting wrongful or inaccurate certification for individual MCCDs that are not included in the audited sample. However, new sector guidance on completing MCCDs would help improve certifying practitioners' decision-making, including improved guidance regarding the types of deaths that should be referred to the coroner. Additionally, this information could be used to help inform and educate future certifying practitioners. This would reduce the number of deaths wrongly referred to the coroner, which can impede tikanga Māori or other cultural practices.

Option 2 would result in establishment and administration costs to establish peer review committees, for both the Ministry and the organisation that establishes them (potentially DHBs). There will also be a cost to the Ministry to administer new controls and to support committees to share learnings (producing guidance etc).

A5.3 Option 3

Option 3 has similar impacts to Option 2. The creation of specific statutory powers to review enables additional checks where there is doubt over the validity of cause of death for individual deaths. However, Option 3 creates a large administrative cost to the Ministry in appointing and supporting a substantial death certification audit function. This is in addition to the administration costs on DHBs who would be required to establish peer-review committees.

There are also significant administrative challenges in being able to review the MCCD before the body is disposed of. This especially impacts on Māori and other cultural minorities.

- 12 Do you agree with the impacts of the options regarding the auditing of death certification? Why/why not? Can you suggest other likely impacts from the three options?**
- 13 Can you provide any information to help the Ministry gauge the size of any potential impacts, costs or benefits that would affect you?**

A6 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Establishing a death certification auditing committee system*.

Options 2 and 3 provide substantively better outcomes than Option 1 (maintaining the status quo) when assessed against the assessment criteria. However, Option 2 is preferable as it presents lower administrative and compliance costs for both the Ministry and DHBs while still delivering a fit-for-purpose and robust system for auditing death documentation.

- 14 What is your preferred option for auditing death documentation? Please provide the reasons for your view.**

Section B: Regulation of the funeral services sector

B1 New Zealand's funeral services sector today²⁰

B1.1 What happens after you die?

For most natural deaths, following certification of cause of death by a doctor or nurse practitioner, the deceased's body is released to their family for preparation for a funeral, tangi or other rite. In New Zealand, there is no legal obligation to have a funeral. However, there is a cross-cultural expectation that the deceased person will be treated with respect, and funeral services should be delivered in a culturally appropriate way, for example tangihanga.²¹ There is also a legal obligation that the deceased person will be laid to rest in a dignified way and their death registered with the Registrar-General of Births, Deaths and Marriages.

In New Zealand, most funerals are held within one to two weeks of a person's death, and traditionally it is the responsibility of the deceased's family to organise the funeral. However, due to the emotional and administrative burden of organising a funeral, families can pay a funeral director to prepare a body for burial as well as organising a funeral service. Most funeral services in New Zealand are carried out by professional funeral directors or embalmers.

²⁰ Note that changes to the Health (Burial) Regulations 1946, Parts 4, 5, and 7, concerning the construction, maintenance and registration requirements for mortuaries, and transport and handling of dead bodies, are out of scope of this review.

²¹ A traditional Māori funeral rite held on a marae.

B1.2 The funeral services sector

The funeral services sector is an umbrella term for businesses and individuals that provide professional funeral services for payment. A funeral director is the public face of the funeral sector and their tasks include:

- transporting the body
- embalming or otherwise preparing the body for disposal
- providing a coffin or casket
- arranging a ceremony or committal
- obtaining medical certificates and registering the death with the Registrar-General of Births, Deaths and Marriages
- paying other costs such as clergy fees, flowers, notices and cemetery/crematoria fees
- organising a memorial service.

Currently, there are around 500 funeral directors in New Zealand.

Embalmers carry out processes that preserve the body by injecting disinfecting and preserving liquids into the arteries, which slows the decomposition of the body. Although there is no legal requirement to embalm a body, it is estimated that around 90 percent of deceased bodies in New Zealand are embalmed.²²

Funeral service firms vary in size and one firm can employ more than one funeral director, as well as other people such as embalmers and administrative staff. In the past, funeral services firms have only operated one funeral home serving one community. Over the last 10 years, however, larger corporate models, where one company operates multiple funeral homes in multiple locations, and smaller firms that provide niche funeral services (ie, eco-burials) have become more common.

B1.3 Current regulation of the funeral services sector

B1.3.1 Registration

A funeral director must be registered with the local council.²³ Registration of funeral directors is for record-keeping purposes, and there are no grounds for refusing a registration application. Each premises that a funeral director operates within the same district must have a separate certificate of registration. Further, a funeral director who opens an additional premise in another local council district will also have to register with the relevant local authority.²⁴

²² Airlines generally require a body to be embalmed if it is going to be repatriated to another country.

²³ Health (Burial) Regulations 1946, reg 4.

²⁴ For more information on registration requirements, see the Health (Burial) Regulations 1946; www.legislation.govt.nz/regulation/public/1946/0132/latest/DLM2944.html

B1.3.2 Voluntary self-regulation

Beyond registration, the conduct of the funeral services profession is voluntarily self-regulated. Three main industry organisations exist: Funeral Directors Association of New Zealand (FDANZ), New Zealand Independent Funeral Homes (NZIFH) and New Zealand Embalmers Association Inc (NZEA). Although membership of these organisations is voluntary, it is estimated that over 80 percent of funeral service providers are a member of at least one industry organisation.

To become a member of these organisations, funeral directors and embalmers must fulfil certain requirements under the relevant codes of ethics.²⁵ FDANZ members must have a nationally recognised qualification in funeral directing and undergo mandatory ongoing training in order to remain an FDANZ member. NZIFH is a membership of funeral homes, rather than individual funeral directors. To be a member, a funeral home must be independent, New Zealand family-owned and operated and have employees who are well-trained, professional and experienced. To become a member of NZEA, an embalmer must undergo an examination or hold a relevant qualification, as well as a current practising certificate.

B1.4 Price disclosure

A funeral is often the third most expensive purchase that many people will ever make (after a house and car) (Lino 2006, as cited in Law Commission 2015). The average cost of a funeral is estimated to be between \$8,000–\$10,000.

There are no legal requirements to disclose funeral pricing information with consumers before entering into a contract to provide funeral services,²⁶ and funeral directors do not always advertise funeral prices. Instead, they will provide a quote, with the full cost only being disclosed after the funeral.²⁷ Further, many funeral directors charge a significant amount as a generic service or professional service fee, which makes it difficult for customers to clearly understand the breakdown of costs. FDANZ encourages members to provide pricing information upfront.

B1.5 Consumer protection and disputes

In New Zealand, there are limited mechanisms for dealing with disputes arising from the lack of pricing transparency or issues with running a funeral. The Fair Trading Act 1986 makes it illegal for funeral directors to mislead consumers or engage in deceptive conduct in the course of trade. This provides consumers some protections against

²⁵ For more information on these organisations and their entry requirements, see www.fdanz.co.nz, www.nzifh.org.nz, and www.nzembalmers.org.nz

²⁶ However, this is not the case in other jurisdictions, for example, the United States and New South Wales, Australia.

²⁷ There is an implied guarantee in all contracts for services that (such as funeral services) that the consumer is not liable to pay to a supplier more than a reasonable price for the service where the price for the service is not specified in the contract or is to be determined at a later date (s 31, Consumer Guarantees Act 1993).

misleading funeral quotes, despite having limited recourse to amend a situation where this occurs.

There is no formal body that deals with funeral director complaints. If a person is unhappy with the standard of service received or disputes a price, they can make a claim to the Disputes Tribunal of New Zealand.²⁸ The tribunal can award damages for breach of contract and consumer protection legislation but cannot make orders restricting a funeral director from practising.²⁹

FDANZ has a formal complaints resolution procedure to resolve complaints about FDANZ funeral directors who have breached the FDANZ code of ethics. FDANZ does not consider complaints about price disagreements or complaints about non-FDANZ funeral directors.

NZIFH and NZEA do not have publicised formal complaints processes, but they do provide their contact details, which allows consumers to voice their concerns.

B2 Issues with the current system

Although respect for the body of the deceased person is a key principle of most funeral directors' practices occasional issues do arise.

B2.1 Lack of consumer protection mechanisms

There is limited protection or recourse available to consumers who purchase funeral services and are unhappy with the service they receive. The nature of things that can go wrong can mean that traditional legal avenues are not appropriate to address the harm. The Law Commission found that there is a common misconception by the general public that funeral directors are licensed or regulated by the government. The Law Commission concluded that the current legislative protections provide very limited assurance around the quality of standards in the industry.

Two main types of disputes can occur due to this lack of protection for consumers: disputes around a poorly run funeral and/or disputes around unexpectedly high bills for funeral services. The government does not hold any data about the number of disputes, but anecdotal evidence and the Law Commission's report confirm that they occur.

The Law Commission concluded that respect for the body of the deceased person is a key principle of most funeral directors' practices. However, problems can still

²⁸ The Disputes Tribunal of New Zealand is quicker, cheaper and less formal than a court and can be used to settle small claims up to \$15,000, or \$20,000, if everyone agrees. More information on the tribunal can be found at: www.disputestribunal.govt.nz

²⁹ The District Court can make a management banning order where an individual has committed certain offences under the Fair Trading Act 1986 on at least 2 separate occasions within 10 years (s 46C, Fair Trading Act 1986). A management banning order stops a person from being a director of, or being in any way (whether directly or indirectly) concerned in or taking part in the management of business in New Zealand.

occasionally arise due to a funeral service provider's lack of knowledge or experience. It is possible that, when problems arise, they can go undetected because a lot of services occur out of sight of the consumer. Additionally, when consumers do discover issues, they may not report them, as there is often no clear avenue for making complaints. This means that providers' actions that offer an indignity to the deceased could be underreported (Law Commission 2015).

FDANZ stated in January 2019 that it received no complaints in 2018 regarding the practices of its members but had received a small number of complaints about non-FDANZ members. These complaints related to poor service and lack of good process and transparency.

B2.2 Poor quality or non-delivery of contracted funeral services

When providing funeral services, there are always risks of:

- funerals being conducted in a way that diminishes the dignity of the dead or causes stress to the family
- the consumer lacking enough general knowledge about what is required to plan a funeral and the necessary experience and qualifications of providers.

Although most funeral service providers do a good job and leave families feeling good about their funeral experience, there are still reports of things going wrong.³⁰ There is a lot of spiritual and emotional sentiment attached to the process of disposing of a body, and a poorly run funeral or incorrect embalming can make the trauma of losing a loved one much worse. When a funeral is run poorly, there are limited avenues of recourse for the family. The harm suffered cannot be repaired – a funeral cannot be run again and a distressing experience for friends and family of the deceased cannot be reversed.

There have also been instances where funeral service businesses have taken pre-payments from customers but then gone into liquidation and have not been able to refund the prepayment. In some such instances, other funeral directors have stepped in to provide services for free, or at a discounted rate, to protect the dignity of the dead and the reputation of the profession as a whole.

There is also a lack of choice in the more regional areas, meaning that one funeral director may control the market in the area, and consumers do not have the opportunity to shop around and choose the best option.

³⁰ For example, allegations against funeral directors for failing to correctly embalm the deceased, failing to inter the ashes of an elderly couple and mix ups resulting in the wrong body being cremated and farewelled at a Hamilton funeral service.

B2.3 Lack of pricing information and bill shock

When purchasing funeral services, consumers sometimes lack adequate information to make informed decisions because of the time pressures, emotional stress and lack of a familiarity with these kinds of services. Over their lifetime, an average New Zealander will most likely arrange only one or two funerals. Funeral directors are therefore a source of expertise around how a body can be disposed of, how to arrange the funeral service and the legal requirements for registering a death. Consumers rely on a certain level of competence and professionalism from funeral service providers.

Purchasing funeral services has been described as a classic “distress purchase” (United Kingdom Office of Fair Trading 2001, cited in Law Commission 2015). If funeral directors do not publish pricing information (which they are not required to do), it can be hard to find out how much things will cost, especially when under time-pressure and other constraints. Those for whom English is a second language are especially disadvantaged.

Funeral directors hold information about what is required for a funeral, and so there is the potential to oversell (sell extra unnecessary elements) or to not make the consumer aware of the parts of the funeral that they can choose for themselves. For example, consumers may not know that they have a choice of whether to embalm the body, to dispose of the body before a service, or other options that can be taken to keep the cost of the funeral down.

Conversely, the Ministry understands that it can be very hard for funeral services to raise or discuss issues such as funerals prices at such a sensitive time.

Regardless of these contextual factors, not discussing indicative costs at the outset can contribute to consumers making uninformed decisions and ending up with an unexpectedly high bill, which in the worst-case scenario can put families into financial difficulties.

In 2018, FDANZ received some complaints from consumers relating to the costs of funerals. However, these could not be dealt with under the complaints process, as the funeral directors in question had followed the processes required.

15 Do you agree that there are issues that could be improved with the funeral services sector? Are you aware of any other problems?

16 Can you provide any evidence about the size or extent of the problems in the funeral service sector?

B3 Regulating the funeral services sector

B3.1 Options

The Ministry has considered four options to regulate the provision funeral services, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.³¹

- **Option 1:** Maintaining the status quo
- **Option 2:** Removing registration requirements
- **Option 3:** Providing central Government registration (recommendations 81, 82, 87)
- **Option 4:** Providing central regulation for funeral directors (recommendations 81–91, 94, 95).

B3.1.1 Option 1

Funeral directors would continue to be registered with the relevant territorial authorities for those areas in which they operate. The industry would continue to regulate itself through voluntary membership of industry organisations.

B3.1.2 Option 2

Current requirements to register as a funeral director with territorial authorities would be removed and an industry self-regulation model apply.

B3.1.3 Option 3

No changes would be made to the eligibility for funeral directors' registration, except that the registration function would be centralised and undertaken by the Registrar-General of Births, Deaths and Marriages. This would be a similar process as used for marriage celebrants.

Funeral directors would only need to be registered once every three years, and the registration would allow funeral directors to practice nationally. The cost of operating the system would be recovered through registration fees.

³¹ For further detail, including the full list of recommendations, please see Law Commission 2015.

B3.1.4 Option 4

Option 4 would mean adopting all of the Law Commission's recommendations regarding the funeral services sector. People providing funeral services to the public (funeral directors and embalmers) must be registered to operate or be acting under the direct supervision of a registered person. It would be an offence to carry out the business of providing funeral services to the public (funeral directors and embalmers) without being registered or being supervised.

The Registrar-General of Births, Deaths and Marriages would oversee the registration process and recover the cost of operating the system through registration fees.

An applicant for registration would need to pay the prescribed fee and demonstrate:

- they have no criminal convictions for offences under the Act, section 150 of the Crimes Act 1961, any crimes involving dishonesty and any convictions for offences relating to unfair conduct under the Fair Trading Act 1986
- they:
 - are not under 18 years of age
 - an undischarged bankrupt
 - had a previous cancelled registration
 - are prohibited from being a director, promoter or manager of a company
 - are subject to a property order under the Protection of Personal and Property Rights Act 1988
- they hold a relevant qualification or have passed an approved examination that demonstrates they have the relevant knowledge to deliver funeral services competently to the public.

Registration would need to be renewed every three years. The Registrar-General of Births, Deaths and Marriages would have the power to investigate and prosecute any breach of the registration requirements and to cancel a person's registration if one of the conditions for registration ceases to exist. A person may appeal any decision of the registration authority, on matters of law, to the District Court.

As a transitional measure, funeral directors who have been practicing continuously for the previous three years before any new legislation came into force would be deemed to have achieved the training requirements and would not be required to gain additional qualifications.

All registered funeral service providers would have duties to ensure that:

- records are kept in respect to every human dead body in its custody
- the identity of a body is maintained while it is in the custody of the business
- all unregistered employees are directly supervised.

It would be an offence to breach any of the duties.

17 What do you think about the options identified for regulating the funeral services sector? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

B3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for regulating the provision of funeral services. For all options, all funeral directors who operate a mortuary would still be required to comply with the construction and maintenance standards for mortuaries and register the mortuary with the territorial authority in which they operate.³²

B3.2.1 Option 1

All issues outlined in section B2 remain.

B3.2.2 Option 2

Option 2 repeals local government oversight of the funeral services sector, which reduces the administrative burden of regulation for funeral service providers and territorial authorities. There would be decreased administrative costs for funeral directors as they would no longer pay the registration fee or fill out the application form and decreased administrative costs for territorial authorities, as they would no longer need to keep a record of funeral director registrations or process registration applications.

There would be a potential increase in administrative cost for government, as it would lose access to a cost-effective means for identifying funeral directors and where deceased bodies are stored in the community, information that may be required during a civil defence emergency or during a pandemic response.

Option 2 is not effective in addressing the identified problems in B2. The current registration requirements serve as a small barrier to entry given that there are currently no grounds for declining a registration.

B3.2.3 Option 3

The impacts of Option 3 are substantially similar to the status quo, as the option does not address any of the identified problems.

³² See footnote 20.

Option 3 presents benefits to funeral service providers as it requires funeral service providers to register, every three years, with the Registrar-General of Births Deaths and Marriages, as opposed to registering with the territorial authorities where they operate. This reduces the compliance costs for funeral directors because they only need to register every three years (as opposed to every year) and, if they operate across multiple districts, only register once. Central registration aligns funeral directors with similar regulated groups, such as marriage celebrants.

There would be decreased administrative costs for territorial authorities as responsibility for registration would transfer to central government. There would be costs to develop a central registry, however, the Registrar-General may be able to partly leverage off experiences or adapt infrastructure from its current register of marriage celebrants. The registry could be funded out of registration fees.

B3.2.4 Option 4

Option 4 restricts the provision of funeral services to those who are registered. Registration requirements would be strengthened to ensure that those who provide funeral services are adequately trained and are of good character. These new requirements create a higher standard of practice for those delivering funeral services by implementing entry and disqualification criteria. Increasing the competence of funeral directors will reduce the risk of mishandled funerals.

Training requirements guarantee that new registrants have the knowledge to provide appropriate funeral services. Additionally, the requirement for re-registration and the ability for the Registrar-General of Births, Deaths and Marriages to deregister funeral service providers increases the likelihood that all funeral directors, who are registered, continue to be of good character after their initial registration.

Further, a central registry body with investigatory powers creates an alternative complaint pathway to the Disputes Tribunal. Deregistration would prevent future issues arising with particular directors, although the registry body could not provide any other remedy for the aggrieved consumers other than moral vindication. Hence the Disputes Tribunal would remain an essential element of recourse for consumers.

Option 4 creates increased administrative costs for new funeral directors to meet training requirements or for existing funeral directors to show that they meet the requirements for registration. Further, there will be costs to funeral directors to make sure they do not breach any of their legislative duties. Funeral directors would also have to pay a registration fee, which would most likely be greater than the current registration fee. Additionally, there would be an increased administrative cost for central government to establish and maintain a registration body that would be responsible for compliance and enforcement.

These costs to individual funeral directors and the government would be greater than the costs outlined in Options 1 and 2. As the cost of the operating the regulatory system would be recovered from registration fees, such costs may well be passed on to consumers through increases in services fees. Consumer prices might also increase due

to decreased competition among funeral providers, as a result of increase barriers to entry.

Finally, Option 4 would also mean decreased costs for territorial authorities as they would no longer have a role in regulating the funeral services sector.

18 Do you agree with the impacts of the options identified for regulating the funeral services sector? Why/why not? Can you suggest other likely impacts from the four options?

19 Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

B3.3 The Ministry's preferred option

At this stage the Ministry prefers Option 1: *Maintaining the status quo*. Although there is a theoretical justification to increase regulatory protections for consumers (as outlined by the Law Commission) and Option 4 would most likely confer some benefits on consumers, we do not consider there is enough of a case to warrant government regulatory intervention. We are not aware of any conclusive and compelling evidence that there is general lack of competency in the funeral services sector or any significant risk to the public that requires immediate intervention. While 'botched' funerals issues can be potentially traumatising, in general, the funeral services sector is respectful of the deceased and seems to be doing a good job.

We wish to test this position with stakeholders and request feedback about the potential nature and scale of the problem.

Following the completion of this process and depending on the nature of the submissions and the evidence received from them, we are open to revising our position.

20 What is your preferred option for regulating (or not) the funeral services sector? Please provide the reasons for your view.

B4 Informing consumers about the costs of funeral services

B4.1 Options

The Ministry has considered three options to better inform consumers about the costs of funeral services, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.³³

- **Option 1:** Maintaining the status quo
- **Option 2:** Making it mandatory to disclose some component prices
- **Option 3:** Making it mandatory to disclose all component prices as per the Law Commission's recommendations (recommendations 96–103).

B4.1.1 Option 1

There would continue to be no legislative requirement for funeral directors to disclose indicative funeral pricing before entering into a contract for funeral services.

B4.1.2 Option 2

Funeral directors could be required to specify whether they provide basic or non-basic funerals.

A basic funeral would be defined as a package of funeral services provided at a set price. It would consist of a single funeral service (that is, memorial service), conducted at the funeral director's premises or the burial or cremation site. It would take place on a weekday between 8 am and 5 pm and would include only the following elements:

- arrangement and conduct of the funeral
- transportation of the body to the funeral director's premises, mortuary and burial or cremation site, where each individual journey is no more than 30 km
- storage of the body at a mortuary or holding room
- preparation of the body for burial or cremation (does not include preparation for viewing or embalming)
- the least expensive coffin available
- completion of compulsory medical certificates or permits, and
- burial or cremation of the body.

Any funeral director who provided the basic funeral option would have to inform all prospective consumers about this option by giving them a written 'basic funeral notice' before entering into any funeral arrangement.

³³ For further detail, including the full list of recommendations, please see Law Commission 2015.

It would not be compulsory for a funeral director to provide basic funeral packages, but if they did provide a package that met the criteria of a basic funeral, regardless of what they called it (eg, an 'economy funeral'), then the obligation to provide a written "basic funeral notice" would apply.

If a customer wanted to arrange a non-basic funeral, the funeral director would have to give them an itemised written quote, specifying each of the goods and services that would be provided and the costs for each, including the estimated costs of the necessary disbursements.

Before accepting the final payment, all funeral directors would be required to give the customer a written statement itemising each of the goods and services provided and their costs, including the costs of disbursements. This would apply to basic and non-basic funerals.

B4.1.3 Option 3

Option 3 involves adopting all of the Law Commission's recommendations relating to mandatory disclosure of component prices.

Under this option, funeral directors would be required to publish a price list of all the funeral goods and services that they offer, either on a website and in a written form to be provided to anyone who asks for it. At a minimum, the price list should include:

- a description and total price of funeral goods and services offered
- a list of any service fees charged by the funeral services provider
- the maximum price that a funeral service provider charges for funeral goods and services
- any other particular items required by regulations made under the new statute.

Before entering into an agreement for the supply of funeral goods or services, the funeral service provider would need to give the consumer a statement of the costs of the funeral, including:

- the cost of each of the goods and services to be supplied
- the cost of any disbursement
- the cost of any services fees
- the description of each item in the package if relevant, and a total cost of the package
- a description of how to make a complaint about costs and pricing if a consumer wishes to do so.

Each item on the statement of costs (except disbursements) would need to correspond with an item on the published price list.

If the exact cost of the disbursements was unknown at the time of providing the initial statement, the funeral service provider would need to provide a reasonable estimate and an actual disbursement cost with the final invoice. The service fee could only cover services for which the cost was unable to be determined at the time of providing the initial statement.

It would be an offence not to comply with any of the above price disclosure requirements.

A website could be developed and maintained providing information to assist consumers in making decisions after a death, in particular decisions about purchasing funeral services.

21 What do you think about the options identified for better informing consumers about the cost of funeral services? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

B4.2 Impact analysis

This section identifies potential impacts from implementing any of the options for informing consumers about the cost of funeral services.

B4.2.1 Option 1

All issues outlined in section B2 remain.

B4.2.2 Option 2

Option 2 creates a number of benefits for consumers. Primarily, higher transparency around funeral pricing enables consumers to make more informed choices when choosing funeral services. Consumers would be able to clearly view indicative pricing lists without having to contact different funeral service providers. Second, an itemised quote, given before the delivery of services, provides clarity before entering into contractual arrangements about the likely costs that would be involved and creates certainty around pricing and service. Finally, Option 2 ensures that consumers are informed about the elements included in a basic dignified funeral and provides an external reference point to enable easy comparison of the different providers' services. This would be an especially beneficial reform for those with low financial literacy and those who speak English as a second language.

Option 2 would have impacts for funeral service providers, as they would be required to develop a basic funeral notice (if offered), to develop processes to provide a full itemised quote before entering into a contract for services and to set up a system for providing a full itemised invoice before payment.

The impact of mandatory price disclosure may also incentivise funeral services to increase the quality of their service or to be more competitive. There are risks, however, that mandatory disclosure of information may facilitate coordination among firms. Also, in areas where there is already limited competition for funeral services, the competition effects may be more limited.

B4.2.3 Option 3

Option 3 has substantially similar impacts to Option 2, however, it would involve an increased administrative cost for funeral service providers to publish price lists for all services, as well as providing quotes for all funerals. There would be additional ongoing costs in keeping the price lists up to date. We do not expect that these costs will be significant.

Option 3 provides increased price transparency for all consumers and potentially lessens the possibility of bill shock. However, consumers may have less certainty around what is considered a 'basic dignified funeral' as this label would no longer be an external guide to making it easier to compare different providers.

Finally, Option 3 increases costs for the government in terms of monitoring and enforcing the price disclosure requirements and maintaining the funeral pricing website.

22 Do you agree with the presented impacts of the options regarding better informing consumers about the cost of funeral services? Why/why not? Can you suggest other likely impacts from the three options?

23 Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

B4.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 1: *Maintaining the status quo*. The industry would continue to self-regulate pricing disclosure requirements through organisations such as FDANZ.

We recognise that Options 2 and 3 would both likely create benefits for consumers, we do not consider there is enough of a case to warrant government regulatory intervention. We are keen to seek additional feedback from the public about the nature and scale of the problem of bill shock and from the wider funeral sector on the impacts of mandatory price disclosure.

Following the completion of this process and depending on the nature of the submissions and the evidence received from them, we are open to revising our position.

24 What is your preferred option for ensuring that consumers are fully informed of the component prices of funeral services? Please provide the reasons for your view.

Section C: Burial and cemetery management

C1 The current framework for burial and cemetery management in New Zealand³⁴

C1.1 Existing types of burial land and their management

New Zealand had no national burial legislation until well after the arrival of British settlers. The first legislation was passed in 1877, then again in 1882 with the Cemeteries Act, which sought to impose some order on the disparate places of burial that had emerged to serve the colonial communities. Since then, legislative change has been piecemeal, addressing the immediate burial demands of New Zealanders as they arose. Even current legislation, the Burial and Cremation Act 1964 (the Act), retains many of the original provisions of the 1882 Act.

Because of its historic development, the Act recognises a variety of different types of burial land. It also contains a number of specific provisions around controlling and managing these places and outlines the statutory restrictions that apply. While the main thrust of the burial provisions is that cemeteries should be provided by local government, five additional types of burial place are recognised. These are summarised in Table 2 below. Table 2 also includes the management provisions and statutory restrictions that apply to closed cemeteries and burial grounds.

³⁴ Urupā and burials at sea are out of scope of this review.

Table 2: Types of burial land recognised by the Act and management responsibilities

Type of burial land recognised by the Act	Defining features	Responsible manager	Summary of management responsibilities (rights, duties and powers)	Statutory restrictions
Cemetery (local authority)	<p>For burying deceased persons</p> <p>Open to all</p> <p>Established on land that the local authority holds title for or administers</p> <p>Can contain denominational sections at the discretion of the local authority</p> <p>Must permit the bodies of any poor person to be buried free of charge</p> <p>Local authority cemeteries account for 70–80% of cemeteries in New Zealand</p> <p>New cemeteries can be established by local councils (s 4).</p>	Local authority	<ul style="list-style-type: none"> • Build fences, lay out and ornament the cemetery, make drains • Maintain and landscape the cemetery, including graves and monuments • Permit graves and vaults to be dug and monuments to be erected • Sell the exclusive right for burial • Permanently set aside portions for burial of members of a religious denomination or members of Her Majesty's Forces who have eligible operational service • Make bylaws • Appoint officers to assist in the execution of the Act • Spend money to clear, clean or repair any closed, disused or derelict cemetery or place of burial • Grant leases of any unused portion of the cemetery for a term not exceeding five years • Keep money received in a separate account and apply it to the management of cemeteries. 	<p>Cemetery land may not be used for other purposes or mortgaged or sold except as provided by the Act.</p> <p>This includes any land that has been set aside for use as a cemetery, including land that does not have bodies buried in it.</p> <p>Cemetery land that is not required for cemetery purposes may be disposed of with the permission of the Minister of Health. If it is disposed of, it ceases to be a cemetery, and the statutory restrictions no longer apply.</p>
Cemetery (trustee)	<p>Established by community-based groups before the Act commenced</p> <p>For burying deceased humans</p> <p>Open to all</p> <p>No new trustee cemeteries can be established.</p>	Trustees	As above	As above

Type of burial land recognised by the Act	Defining features	Responsible manager	Summary of management responsibilities (rights, duties and powers)	Statutory restrictions
Denominational burial ground	Established by a religious denomination, for burying adherents of that group Historically formed to serve needs of small rural parishes New denominational burial grounds can be established (s 31(1)).	Land owner or delegated manager	Some of the rights, powers and duties as above 'so far as they are applicable' ³⁵	As above
Private burial ground	Established by groups other than religious denominations, eg, the Seddon Family Burial Ground, Wellington No new private burial grounds can be established.	Body corporate of trustees	As above	As above
Private burial place	For individual cases of burial in a place that was used for private burial before the Act commenced ³⁶ No new private burial places can be established.	None appointed	No provisions for management	None

³⁵ Burial and Cremation Act 1964, section 36(1).

³⁶ Not being a private burial ground.

Type of burial land recognised by the Act	Defining features	Responsible manager	Summary of management responsibilities (rights, duties and powers)	Statutory restrictions
Special place	For individual cases of burial in any place under 'exceptional circumstances' ³⁷ Usually for burial in special places of honour, eg, Burial of the unknown soldier at the National War Memorial in Buckle Street, Wellington	None appointed	No provisions for management	None

³⁷ Burial and Cremation Act 1964, section 48.

Type of burial land recognised by the Act	Defining features	Responsible manager	Summary of management responsibilities (rights, duties and powers)	Statutory restrictions
Closed cemeteries (local authority and/or trustee)	The Minister of Health may close a cemetery and direct that no further burials take place there	Whoever was the cemetery manager at the time of closure However, the Minister may vest the control and management of a closed cemetery in any individual, body corporate or local authority	Subject to the Minister’s notice of closure, the cemetery manager will continue to have management responsibilities for the site, as above, except for future burials. ‘A closed cemetery shall be maintained in good condition.’ ³⁸ Upon closure, a cemetery manager may apply to the Minister of Health to remove any or all of the monuments and tablets, level the ground and plant the cleared area with trees. The Act does not stipulate any ongoing management expectations for such an area.	Cannot be sold, leased or otherwise disposed of or diverted to any other purpose.

³⁸ Burial and Cremation Act 1964, section 43(1).

Type of burial land recognised by the Act	Defining features	Responsible manager	Summary of management responsibilities (rights, duties and powers)	Statutory restrictions
Closed burial grounds	The Minister of Health may close a burial ground and direct that no further burials take place there	Whoever was the manager at the time of closure However, the Minister may vest the control and management of a closed burial ground in any individual or body corporate	Subject to the Minister's notice of closure, the existing manager will continue to have management responsibilities for the site, as above, except for future burials. The Minister may also provide for the future maintenance of a closed burial ground and all related matters. Upon closure, a burial ground manager may apply to the Minister of Health to remove any or all of the monuments and tablets, level the ground and plant the cleared area with trees. The Act does not stipulate any ongoing management expectations for such an area.	As above, however the Minister of Health may exempt a burial ground from this restriction.

C1.2 Maintenance of monuments

There is some legislative uncertainty about the power to maintain monuments, specifically, who holds this responsibility. The Act provides for cemetery managers to maintain all monuments in a safe, clean and orderly condition and confers upon them a power to repair or remove broken or unsafe monuments. The Act also provides for the successors of the deceased to maintain a monument or tablet in perpetuity. The Act is unclear about the division of such maintenance.

C1.3 Approval of new cemeteries and burial grounds

While the Act recognises a range of different types of burial land, it only provides for the establishment of new local authority cemeteries and denominational burial grounds. A new denominational burial ground must be approved by the Minister of Health. A new local authority cemetery does not require the same approval. For burial in a private burial place or special burial place, strict criteria apply and must be approved by a District Court Judge or the Minister of Health respectively. Where appropriate, the Minister may also reopen a closed cemetery or burial ground.

Today, establishing a new cemetery, burial ground or place of burial also requires resource consent. While this is not reflected in the Act, it is currently Ministry policy to alert anyone who want to open a denominational burial ground or apply for burial in a special place of the need for resource consent.

C1.4 Unlawful burial

Currently, it is illegal to bury a deceased person on any land other than those places of burial outlined in Table 2³⁹ if there is such a place within 32 kilometres of the place of death or the place where the body has been taken for burial.⁴⁰ If there is no such place, any subsequent burial must be notified to the nearest District Court Judge within three days. It is also illegal to bury a deceased person in a cemetery or burial ground that has been closed.

³⁹ Not including a closed cemetery or burial ground.

⁴⁰ Burial and Cremation Act 1964, section 46(1).

C1.5 Disinterment

Disinterment is the process of digging up human remains. There are some instances where it is appropriate to disinter remains from a place of burial. For example, families may wish to disinter remains to relocate them to be closer to other family members. Alternatively, multiple graves may be disinterred so that land may be used for alternative purposes. Under the Act, any person wishing to do so must first obtain a licence from the Minister of Health. To disinter a deceased person without a licence is a statutory offence.

The Act does not provide guidance in terms of the Minister's power to approve applications for disinterment. However, it is Ministry policy to consider the death certificate and assess whether next of kin have been notified (or a broader kinship group where the deceased person is Māori) and, if so, whether they have provided written consent to the disinterment. Most applications are granted unless there is a lack of consensus among relatives. Ministry policy also requires the disinterment itself to be supervised by a health protection officer, and the licence itself has a standard condition to this effect, although this is not required by the Act.

C1.6 Ministerial powers relating to burial and cemetery management

The Act provides for a great deal of control over burial and cemetery management by the Ministry and Minister of Health. Ministerial powers include:

- approving the change of a cemetery's name⁴¹
- approving the declaration of a denominational burial ground⁴²
- licencing a body's disinterment⁴³
- closing a cemetery or burial ground and directing that no further burials take place there⁴⁴
- authorising the removal of monuments from any closed cemetery⁴⁵
- approving burial in a special place.

The Act also gives power to health protection officers, or other employees of the public service appointed by the Minister, to inspect any cemetery to ascertain its state and condition, examine the accounts and ascertain whether bylaws and regulations are being complied with.

⁴¹ Burial and Cremation Act 1964, section 7.

⁴² Burial and Cremation Act 1964, section 31.

⁴³ Burial and Cremation Act 1964, section 51.

⁴⁴ Burial and Cremation Act 1964, section 41.

⁴⁵ Burial and Cremation Act 1964, section 45.

C1.7 Heritage New Zealand Pouhere Taonga Act 2014

In some cases, other statutes must be considered in relation to burial and cemetery management. The Heritage New Zealand Pouhere Taonga Act 2014, for example, protects 'archaeological sites', which are defined as any place that was associated with human activity before 1900. Many cemeteries and burial grounds are therefore archaeological sites under this Act and may not be modified or destroyed under the New Zealand Heritage List / Rārangi Kōrero or the Landmarks list.⁴⁶ This can pose difficulties for cemetery managers where monuments have fallen into a state of disrepair and pose a safety risk. Currently, they cannot repair hazardous monuments without first applying to Heritage New Zealand.

C2 Issues with the current system

There are several issues with the current legislative framework for burial and cemetery management. The problems tend to fit into two broad categories. First, the Act has not aged well. Many of its provisions are overly prescriptive; it is often difficult for people to understand their respective powers and obligations; and much of its content is outdated and no longer relevant. Second, the Act does not reflect some of the more modern values and principles that New Zealanders consider are important in this area. These issues are discussed further below.

C2.1 A confused framework for burial

Distinctions in the Act between the six different types of burial land can be confusing, are unnecessary and are often of historical interest only. Any area where deceased people are buried demands some form of consistent management and protection, regardless of its formal legal status.

The Act recognises six different types of burial land and subjects each to different rules. Today, however, it is sometimes impossible to state with certainty whether a particular place of burial is a denominational burial ground, a trustee cemetery or some other category (see Table 2 above). This ambiguity arises for a number of reasons, including:

- loss of historical data needed for classification purposes
- limited awareness of the distinction between types of burial places, leading to misclassification of burial land
- the close alignment of some otherwise defining features of different types of burial land
- practical instances of burial land having defining features from a variety of the categories outlined above.

⁴⁶ Heritage New Zealand Pouhere Taonga Act 2014, section 42.

These ambiguities create further challenges, including legal difficulties that arise around the classification of burial land and issues relating to the proper management of burial land.

Classification of burial land is important in a legal sense, noting that the powers, duties and statutory restrictions differ depending on the type of burial land under question. For example, a closed cemetery cannot be used for another purpose, nor can a closed burial ground, unless exempted from the restriction by the Minister of Health. Such an exemption is not provided for in the case of a closed cemetery. There have been instances where the Ministry has been required to obtain legal advice, which can be a costly and time-consuming process.

The ability to correctly classify burial land has further implications for its management. As outlined in Table 2, each type of burial land is managed by a different person or group who have different rights, powers and duties. In the case of private burial places and special burial places, no provisions for management are given at all. The ambiguities inherent within the current framework make it very difficult for the managers of cemeteries and burial grounds to ascertain their rights and obligations. While instances of cemetery mismanagement are not widespread, legislation should provide clarity and certainty in these areas.

C2.2 Misaligned with modern legislation

Despite the major reforms in New Zealand's local government and resource management law over the last 25 years, the Act has not been updated to reflect a modern approach to land management and the role of local government.

As outlined in Table 2 above, the Act confers a range of highly prescriptive obligations on cemetery managers, as well as a range of very specific powers for local authorities. This level of detail is out of step with modern thinking in a number of areas.

First, it does not reflect that people who own land, including local authorities, automatically have broad powers to manage and deal with that land as they see fit, except as is specifically circumscribed by the law. The law should only interfere with the rights of land owners to use their property where there is strong public interest in doing so. While there is undoubtedly a public interest with regard to decisions about burial and cemetery management, the extent to which this translates in the current Act is overly prescriptive. Section 8(a) of the Act, for example, provides for local authorities to erect fences, a redundant provision according to a modern understanding of the rights of land owners.

On a similar note, the Act does not reflect the passing of the Resource Management Act 1991 and its resource consent framework. While it is currently Ministry policy to alert those who want to open a denominational burial ground or apply for burial in a special place of the need for resource consent, the Act does not discuss this aspect.

The Act also fails to recognise the passing of the Local Government Act 2002, which conferred a power of general competence on local authorities, giving them full capacity to do acts or enter into transactions in order to fulfil the purpose of local government. This contrasts with the Burial and Cremation Act, which includes very specific powers for local authorities.

C2.3 Lack of clarity and detail in legislation

The Legislation Advisory Committee Guidelines (2014) state that good legislation should set out the matters that should, may or must be considered when exercising statutory power, in what circumstances it can be exercised and for what purposes. The Act falls short in this regard, resulting in legal ambiguities in several areas.

Section C1.6 above outlines a number of Ministerial powers relating to burial and cremation. The Act, however, fails to provide adequate guidance for carrying out these powers. While the Minister may approve a disinterment, for example, the Act fails to provide guiding criteria for making that decision.

The same lack of detail is evident in respect of the statutory powers of those who have control and management of cemeteries. For example, a local authority or trustee can determine whether it will provide a separate area within its cemetery for the burial of adherents of a particular denomination, but the Act does not establish guiding criteria for how that decision should be made. In practice, the Law Commission found significant discrepancies in how different councils were deciding such matters.

The Ministry has developed policy guidance to support interpretation and application of the law, but there is a need to provide more direction in the legislation itself.

Ambiguities also exist around who must consent to an application to disinter a body from a burial plot, who is responsible for the basic duties of upkeeping monuments and how to sell unused burial land. Such ambiguities have further implications for compliance, which can be difficult to enforce.

C2.4 Generally archaic provisions

The Act is not well placed to serve modern New Zealand with many of the original provisions of the 1882 Act still incorporated. Fines for offences, for example, are denoted in the monetary unit of New Zealand pounds. Much of the Act's content is outdated and no longer relevant. Two examples are discussed further below.

The Act provides for a great deal of control over burial and cremation by the Ministry and Minister of Health. This is unsurprising given nineteenth century ideas surrounding death and burial. Historically, dead bodies were treated as hazardous to public health and burial was considered to be a way of dealing with this risk. More modern thinking, however, recognises that there are limited health concerns in this regard. The primary hazards are now recognised as relating to land use.

The Act states that it is illegal to bury a body in any land other than an approved place of burial if there is such a place within 32 kilometres of the place of death or the place where the body has been taken for burial. The 32-kilometre exception was implemented at a time when transportation was less efficient and there were many more isolated areas around the country.

C2.5 Lack of recognition of diverse needs

New Zealanders have increasingly diverse ethnic, cultural and religious needs in relation to burial. Our multi-cultural society means that there is a range of beliefs, values and practices that need to be accommodated by legislation in this area. Compounding this, different methods of burial are becoming increasingly popular and available in New Zealand and internationally, including a rise in the popularity of natural burials.⁴⁷

The Act only goes so far in providing for these alternatives. In most cases, groups that wish to adopt particular burial customs or practices must work with local authorities to have those customs and practices accommodated. Local authorities are under no legal obligations to oblige requests, and the Law Commission found that responses to requests were inconsistent.

Additional questions have been raised as to the appropriateness of using religion as the sole discretionary factor in relation to establishing new burial grounds. While the Act provides for the ongoing establishment of denominational burial grounds and requires local authorities to set aside denominational areas within a cemetery, it does not provide for other ethnic groups or those with other beliefs or cultural requirements. Nor does it provide for the establishment of new private burial grounds on the basis of any factor other than religion. As such, the Act is out of step with contemporary views of many people.

The Law Commission also found the Act to be too restrictive towards deceased people being buried on private land, noting that strict criteria must be met before the Ministry can approve such an application. Since 1982, the Ministry has received approximately 60 applications for burial in a special place, with few being approved, despite applicants having significant ties to private rural land. During public consultation, the Law Commission found that burial on private land had overwhelming support from the general public. The reasons for support ranged from the psychological benefits of permitting burial on land that has significance to the deceased person and their family to the need for increased choice.

⁴⁷ A natural burial typically involves burying an un-embalmed body in a biodegradable casket or shroud in a relatively shallow plot to promote rapid aerobic decomposition of the body. Usually, the plots are marked by plants rather than headstones.

- 25 Do you agree that there are issues that could be improved with the current framework for burials and cemetery management? Why/why not? Are you aware of any other problems?**
- 26 Can you provide any evidence about the size or extent of such problems outlined about the current framework for burials and cemetery management?**

C3 A new burial and cemetery management framework

C3.1 Options

The Ministry has considered three options for a new burial and cemetery management framework, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.⁴⁸

- **Option 1:** Maintaining the status quo
- **Option 2:** Implementing a package of changes to the current system based on all of the Law Commission's recommendations (recommendations 20–72)
- **Option 3:** Implementing a package of changes to the current system based on most of the Law Commission's recommendations (as above but excluding recommendations 20, 21, 28, 29, 37, 41, 55, 69–72).

C3.1.1 Option 1

There would be no changes to the Burial and Cremation Act 1964 in relation to the burial and cemetery provisions, and the issues outlined in section C2 would remain.

C3.1.2 Option 2

C3.1.2.1 Proposed types of burial land and their management

Key features of the proposed cemetery management framework for Option 2 are outlined in Table 3 below. As a general rule, Option 2 denotes any land with a deceased person buried on it as a cemetery and designates the owner of that land as the cemetery manager, who is then subject to the management obligations described below.

⁴⁸ For further detail, including the full list of recommendations, please see Law Commission Report 134, *Death, Burial and Cremation: A New Law for Contemporary New Zealand*.

Table 3: Types of burial land included in the proposed cemetery management framework

Type of burial land recognised by a new statute	Defining features	Cemetery manager	Management obligations	Statutory restrictions
Local authority cemetery	<p>Open to all deceased persons⁴⁹</p> <p>May include separate sections for any group of people with common burial requirements, not limited to religion</p> <p>May include separate sections for members of Her Majesty's Forces who have eligible operational service⁵⁰</p>	Local authority (as the land owner)	<p>Maintain the land in a reasonable condition⁵¹</p> <p>Maintain a record of burials⁵²</p> <p>Not use the land for other purposes⁵³</p> <p>* Three additional duties for local authority cemeteries only would include:</p> <p>Be open for the burial of any deceased person⁵⁴</p> <p>Consider applications for separate areas⁵⁵</p> <p>Create and maintain a cemetery policy⁵⁶</p>	<p>Cemetery land must not be used for alternative purposes, except as provided for in the new statute.</p> <p>If all bodies are disinterred from a place of burial, it ceases to be cemetery land.⁵⁷</p> <p>If there are no deceased people buried in land set aside for cemetery purposes, it is not a cemetery.</p> <p>* Note that statutory restrictions on selling and leasing cemetery land outlined in Table 2 would not apply.</p>
Independent cemetery	Established by a private person or entity with similar burial needs (not limited to religion)	Land owner (with provisions to delegate responsibility to another entity in certain circumstances – usually to the local authority)	As above	As above

⁴⁹ This obligation would not extend to cemeteries where the local authority has taken over the management from another entity that was not originally bound by this provision.

⁵⁰ This would be a specific statutory power to recognise this special category and a mark of respect.

⁵¹ This obligation should extend to the land, the landscaping and graves, including any monument or tablet on the graves. Specific maintenance standards are to be agreed in consultation with the local community and recorded in a unique cemetery policy.

⁵² Records must be sent to local authorities at least once a year.

⁵³ This obligation requires that the land owner does not use the land for purposes 'inconsistent with its use as a cemetery', a concept that will be defined by the land owner and the local authority based on community needs, priorities and cultural expectations and recorded in a covenant. If a local authority agrees to vary or remove a covenant, this must be noted on the certificate of land.

⁵⁴ This obligation is provided for in existing legislation and would be carried over.

⁵⁵ This obligation would make the existing optional requirement for local authorities to consider applications for separate areas into a legal requirement.

⁵⁶ To be agreed in consultation with the community and to include, at a minimum, agreed maintenance standards and the provision of special areas.

⁵⁷ This would be recorded by the Registrar-General of Land.

Type of burial land recognised by a new statute	Defining features	Cemetery manager	Management obligations	Statutory restrictions
Burial on private land	Burial on private land, usually rural, of no more than five bodies	As above	As above	As above
Community cemetery ⁵⁸	A place of burial that was defined as a trustee cemetery under the Burial and Cremation Act 1964 ⁵⁹	Community manager, ie, whoever was running it effectively before the new Act	Current effective management systems to remain, with a range of basic default provisions. For the full list of provisions see the Law Commission report, Annex A.	As above

⁵⁸ Community cemeteries would be the term used to refer to current trustee cemeteries, which is a confusing term, given that some of the management arrangements currently falling into that category are not trusts in the legal sense of that word. We prefer the term 'community cemeteries' because that better reflects their public nature.

⁵⁹ Ongoing provision for community cemeteries acknowledges the fact that many current trustee cemeteries are functioning well. Any legislative changes are not intended to disrupt current effective management systems.

C3.1.2.2 Maintaining monuments

A new statute under Option 2 would clarify the power of cemetery managers to maintain graves, despite any concurrent power or duty of maintenance falling on other people, including the relatives of the buried deceased person. This would be a general power, not limited to when the grave is dangerous. Non-cemetery manager powers could be conferred by virtue of a contract or bylaw and agreed as part of creating the cemetery policy as described in Table 3 above.

Option 2 would also provide an exception to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014, giving cemetery managers the power to work on a heritage gravesite where there are safety concerns.

Option 2 would continue to provide similar powers for clearing closed cemeteries (removing monuments and tablets, etc) as are currently in section 45 of the Act. This would continue to be a legitimate method for managing older cemeteries in some limited circumstances. The local authority or Environment Court of New Zealand (the Environment Court) would grant permission to the cemetery manager to do so.⁶⁰

C3.1.2.3 Approval of new cemeteries

Any cemetery or burial place established before the new statute commenced and recognised under the current Act would need to be registered with the local authority and would then be considered an approved cemetery. This requirement would extend to the owner of any land who has reasonable grounds to believe that a body or bodies are buried on that land. Any burial outside those places would be subject to the process for approval of new cemeteries described below.

As with current legislation, a new statute under Option 2 would continue to require local authorities to provide cemeteries. Unlike current legislation, Option 2 would also provide for the establishment of independent cemeteries and more relaxed provisions for burial on private land.

Approval for the establishment of independent cemeteries would be at the discretion of the local authority, who would be legally bound to consider any such application. Guidance would be provided within the statute to aid local authorities in decision-making, and applications could be rejected for good reasons.

With regards to burial on private land, Option 2 would contain more relaxed provisions than current legislation. Specifically, burial on private rural land where the total number of burials is fewer than five could be approved solely under a process in the new statute and without deference to the Resource Management Act 1991. Approval for this would be at the discretion of the local authority, who must approve such an application if certain criteria are met.⁶¹

⁶⁰ In doing so, they must consider the projected costs for maintaining the cemetery, the availability of resources to perform the maintenance and any community opinions either supporting or objecting to the removal of the monuments.

⁶¹ Criteria are: there is unlikely to be an adverse impact on any neighbouring land owners; the land is suitable for use as a cemetery; there is unlikely to be any adverse impact on surrounding land and waterways; the applicant has a strong family connection with the site and there is an adequate plan for the perpetual maintenance of the site as a cemetery.

C3.1.2.4 Unlawful burial

A new statute under Option 2 would continue to prohibit burial in places that are not approved cemeteries, as outlined in Table 3. The distance exception described in C1.4, however, would not be continued. That means, if a person could show that it was impractical to transport a body to an approved cemetery and that the body was buried respectfully in another place, a body may be buried outside of an approved cemetery.

C3.1.2.5 Disinterment

The main changes regarding disinterment under Option 2, as compared with current legislation, are mainly to do with the power of approval, which currently resides with the Minister of Health. Under Option 2, the power of approving applications for disinterment would be distributed as follows:

- Cemetery managers would be responsible for approving applications for disinterment of single graves.⁶²
- In the case of burial on private land, the local authority would be responsible for approving applications for disinterment of single graves.
- The local authority would be responsible for approving disinterment of multiple graves in non-local authority cemeteries.
- The Environment Court would be responsible for approving disinterment of multiple graves in local authority cemeteries.

Option 2 would also provide detailed guidance about what the relevant decision-making bodies must consider in applications for disinterment. It would also include a regulatory-making power for the purpose of providing procedures to be followed when disinterring a body.

C3.1.3 Local government's role in relation to all cemeteries

In addition to their duties as cemetery managers, Option 2 would confer a number of general obligations on local authorities in relation to all cemeteries within their district. The first two points described below represent obligations posing minimal to no change as compared with current legislation, while the remaining six points represent what would essentially be modified or additional obligations on local authorities.

Minimal to no change

- Duty to dispose of the body in the unlikely event that there is no executor, personal representative or family member to do so⁶³
- Duty to keep records of cemeteries and burials within the district, to be accessible by the general public.

⁶² Alternatively, applicants applying for disinterment of a single grave may apply directly to the courts. This would be a more complicated and expensive process but may be warranted where the applicant believes that the cemetery manager may not be impartial.

⁶³ Payment would be covered either from the deceased person's estate or the funeral grant from Work and Income.

Modified or new obligations on local authorities

- Duty to provide facilities for the disposal of bodies, rather than cemeteries specifically.⁶⁴
- Duty of inspection and oversight, limited to an obligation to enter and inspect cemeteries to determine whether the requirements of the statute are being met, in response to information or complaints received.
- Obligation to assume responsibility for failing non-local authority cemeteries, or where a designated cemetery manager renounces their role.
- Duty to consider applications from non-local authority cemeteries for permission to remove monuments or tablets from a cemetery.
- Power to approve new independent cemeteries.
- Power to approve burial on private land.

C3.1.3.1 Role of the Environment Court

Option 2 would see a new role for the Environment Court in decisions relating to burial and cemetery management. The Environment Court's role would include:

- considering applications from local authority cemetery managers to use cemetery land for alternative purposes
- considering applications from local authorities to remove monuments or tablets from a cemetery
- approving multiple disinterments from local authority cemeteries.

The Environment Court role would essentially introduce a tiered system of enforcement and legislative oversight. Where the local authority was granted powers in relation to non-local authority cemeteries, the Environment Court would hold those powers in relation to local authority cemeteries.

C3.1.3.2 Exception to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014

A new statute under Option 2 would provide an exception to section 42 of the Heritage New Zealand Pouhere Taonga Act 2014, giving cemetery managers the power to do work on a heritage gravesite where there were safety concerns.

C3.1.4 Option 3

Option 3 is essentially the same as Option 2, with five major exceptions:

- There would be no additional role for the Environment Court.
- Burial on private land would not be exempt from resource consent.
- There would be no provision for independent cemeteries.
- There would be ongoing provision for denominational burial grounds.
- There would be provision for new community cemeteries.

⁶⁴ This would mean, where appropriate, local authorities may only provide crematoria, or facilities to accommodate another approved method of body disposal, rather than a cemetery.

The very broad definition of a cemetery as being any land with a deceased person's body buried on it would not apply under Option 3.

These exceptions have been determined based on the Government's response to the Law Commission report and further policy work undertaken by the Ministry. The Government's response noted that they did not fully agree that the Environment Court is the appropriate body to make land use, disinterment and other decisions in the case of local authority cemeteries. It also noted concerns around the exemption of burial on private land from the resource consent process.

C3.1.4.1 No additional role for the Environment Court

Instead of giving a special role to the Environment Court, the functions outlined in section C3.1.3.1 would come under a single framework of management provisions, administered by the local authority. Local authority cemeteries would be bound to the same principles of management as non-local authority cemeteries, which would be determined in agreement with the community for which a cemetery serves.

C3.1.4.2 Burial on private land and resource consent

Option 3 does not exempt applications for burial on private land from the resource consent process. Decisions would be considered on a case-by-case basis according to the Resource Management Act 1991.

C3.1.4.3 No provision for independent cemeteries

Option 3 has no provision for establishing independent cemeteries, as outlined in Option 2 (see C3.1.2.3 above).

C3.1.4.4 Ongoing provision for denominational cemeteries

Option 3 would continue to recognise not-for-profit denominational cemeteries. The simplified list of management obligations would apply.

C3.1.4.5 Provision for new community cemeteries

Option 3 would include an approval mechanism for new community cemeteries as outlined in Option 2. Any such cemetery would be established on land recognised as appropriate burial land in the relevant district plan. These would be not-for-profit and with strict controls for managing the land in perpetuity. The simplified list of management obligations would apply.

27 What do you think about the options identified regarding a new framework for burial and cemetery management? Do you want to suggest any additional options?

C3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for a new burial and cemetery management framework.

C3.2.1 Option 1

All issues outlined in section C2 remain.

C3.2.2 Option 2

Option 2 modernises the law relating to burial and cemetery management. It offers a simplified framework for providing places for burial and streamlines and clarifies obligations on cemetery managers. This would address the issues discussed in section C2 around the legal and management challenges that exist within current legislation. The reduced list of obligations on cemetery managers also recognises the general rights of land owners and would be developed in parallel with modern local government and resource management legislation.

Option 2 provides greater choice to New Zealanders in terms of options for burial, particularly in relation to providing independent cemeteries and the obligation for local authority cemeteries to consider any application for a separate section within a local authority cemetery (not limited to religion). The more relaxed provisions for burial on private land also cater to stated needs based on the Law Commission's findings.

Option 2 would see a number of burial and cemetery management functions shift from central government to local government. Local government would take on a more significant role in the provision and oversight of cemeteries, in a manner consistent with modern understandings around public health and land-use issues. A key theme for providing a new framework for burial and cemetery management is that decisions about important aspects of managing cemeteries should be decided in consultation with the community that the cemeteries serve. This fits with the principles of consultation underlying the reforms in the Local Government Act 2002. Given the existing role that local authorities have in managing cemeteries, we consider the added responsibilities conferred by Option 2 to be a natural extension of this role. While this would decrease resource cost for the Ministry, local government would have increased resource costs. We do not expect there to be overly significant impacts or burdens on local authorities, but there will be some need to develop new systems and processes in order to implement the proposals. However, we do assess some risk about the proposed obligation on local authorities to assume responsibility for failing non-local authority cemeteries, or where a designated cemetery manager renounces their role. This may become overly burdensome should non-local authority cemetery managers either fail to comply or renounce their role as manager.

Option 2 would see a new role for the Environment Court in relation to burial and cemetery management, conferring a range of new statutory powers on it. This would result in additional resource costs for the Environment Court. We do not anticipate this would create much additional burden as the obligations relate solely to approving various applications relating to burial and cemetery management, and clear guiding criteria to make those decisions would be provided in the new statute.

Option 2's very broad definition of a cemetery could introduce some risks, particularly where non-local authority cemetery managers cannot or do not meet their obligations. In the case of a failed cemetery, local authorities would assume responsibility for ongoing management of it, which may have consequences for local rate payers.

The provision for independent cemeteries would open up burial to privatisation. This may see the introduction of short-term business ventures with insufficient controls for land to be managed in perpetuity.

C3.2.3 Option 3

Option 3 has similar impacts to Option 2 in terms of providing a modern and simplified framework for burial and cemetery management and increasing choice with regards to decisions around burial. Option 3 would similarly align well with other relevant modern statutes.

Option 3 would see a similar shift in functions from central government to local government, with the associated resourcing impacts.

28 Do you agree with the impacts of the options identified regarding a new framework for burial and cemetery management? Why/why not? Can you suggest other likely impacts from the three options?

29 Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

C3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 3: *Implementing a package of changes to the current system based on most of the Law Commission's recommendations.*

Both Options 2 and 3 provide substantively better outcomes than Option 1: *Maintaining the status quo* when assessed against assessment criteria. However, Option 3 is preferred over Option 2 for several reasons, outlined below.

The Ministry considered that the broad definition of a 'cemetery' in Option 2 could be problematic, particularly where non-local authority cemetery managers cannot or do not meet their obligations. If such cemeteries are established on private land, it could be challenging or administratively burdensome for local authorities to monitor and enforce compliance or assume responsibility for a failing cemetery, with attendant consequences for ratepayers. Such issues would be compounded with independent cemeteries opening burial up to privatisation and increasing the risk of short-term business ventures with insufficient controls for land to be managed in perpetuity.

The Ministry considers that the obligation for local authority cemeteries to consider applications for separate sections for any group of people with common burial needs, as well as the provisions made for new community cemeteries or denominational burial grounds, would be sufficient in allowing for choice and meeting the burial demands for New Zealand.

Option 2 exempts burial on private land from the resource consent process. The Ministry considers that this unfairly removes the issue from public consideration, which is particularly relevant in considering tikanga Māori and other cultural beliefs. Resource consent is required for land uses of much lower public interest, such as building fencing or decking on a private property. The exemption of decisions relating to burial cannot be justified.

As discussed in section C3.1.4 above, Option 3 confers additional responsibilities on local authorities in relation to burial and cemetery management. While it is proposed that local government would have an expanded role for such functions, this consultation document is seeking feedback from local government on the practicalities and implications of this proposal.

30 What is your preferred option for a new framework for burial and cemetery management? Please provide the reasons for your view.

Section D: Cremation regulations and the medical referee system

D1 Cremation in New Zealand

Cremation is a process where a deceased person's body is burnt and reduced to cremains (larger pieces of bone that do not fully burn), through a high-temperature combustion process within a cremator. Bodies are cremated one at a time, with the process taking between two and four hours. The cremains are gathered and ground into ashes using a cremulator. The ashes are given to family members or held by the cremator operator and then interred or scattered if unclaimed within a reasonable period.

Cremation currently accounts for about 70 percent of body disposal in New Zealand. It is regulated through the Cremation Regulations 1973 (the Regulations). The Regulations set out the processes for opening, closing and operating crematoria, as well as the process for an individual cremation.

D1.1 Cremating a body

In order to legally cremate a body, permission must be obtained from a medical referee.⁶⁵ Medical referees are health professionals, with no less than 5 years' experience,⁶⁶ who perform a statutory role of reviewing cause of death documentation and cremation forms and making decisions as to whether to approve or decline applications for cremation.

Medical referees are appointed by cremator operators (crematorium authorities) with the approval of the Director-General of Health. Many medical referees are either practising GPs or retired or semi-retired hospital clinicians. Although the Ministry must approve any doctor or nurse practitioner appointed to act as a medical referee, it has no role in training or monitoring their work. In effect, medical referees are contracted by, and act for, one or more crematoria on a fee-for-service basis.

⁶⁵ Cremation Regulations 1973, regulations 5–7.

⁶⁶ Cremation Regulations, reg 6(2).

Medical referees act as an additional check on cause of death determination to assure 'that the cause of death has been definitely ascertained' before the body is irreversibly destroyed through cremation.⁶⁷ This is a crime prevention purpose, ensuring that any deceased person who is to be cremated did not die as result of criminal wrongdoing.⁶⁸

A medical referee's review occurs after a health practitioner has issued a Medical Certificate of Cause of Death (MCCD), indicating that they considered the deceased person died of natural causes, or after the coroner has examined the body following a referral from the certifying health practitioner. Although the medical referee has the power to order a post-mortem of a deceased person in instances where the referee is not assured that the death has been 'definitely ascertained', we do not know how often this power has been used, and most approvals for cremation occur with reference to the MCCD and the cremation forms (discussed below) and without seeing the deceased.

The Ministry does not hold data on how many cremations have been declined by medical referees since the introduction of the regulations, but we understand that it would be extremely rare for a cremation to be declined.

D1.1.1 Completing the cremation forms

The Regulations set out the process that all parties must follow and prescribe a number of forms that must be completed. They require paper forms to be completed by the certifying practitioner, placed in an envelope and sent to the medical referee. Once the process is completed, the cremation can proceed. Table 4 provides a summary of the current forms required.

⁶⁷ Cremation Regulations 1973, Form F.

⁶⁸ The medical referee also performs a de facto auditing role of the completeness of the Medical Certificate of Cause of Death to ensure that all death certification documentation is accurately completed before a body is cremated. See Section A: for more details about death certification auditing, including options to improve the auditing system.

Table 4: Current cremation forms

Form	Who completes the form	Purpose
Application for Cremation (Form A)	Applicant for the cremation (ie, executor or family member)	The form asks the applicant for information about the deceased, including identifying information, whether the executor and near relatives have been informed of the cremation, whether the person applying for the cremation thinks there may be a need for the body to be examined and whether the applicant has any reason to suspect the death was due to a crime.
Certificate in Relation to Pacemakers and Other Biomechanical Aids (Biohazards Certificate) (Form AB) ⁶⁹	Certifying practitioner	The form asks a certifying practitioner to certify that the body no longer contains any pacemakers and other biomechanical aids. This requirement exists due to the potential hazards that incineration of such aids can create (ie, explosions or toxic fumes). The form requires that the certifying practitioner has examined the body before completing the form.
Certificate of Medical Practitioner or Nurse Practitioner (Cremation Certificate) (Form B)	Certifying practitioner	This form duplicates much of the cause of death information from the MCCD. It also contains questions designed to test whether there were any circumstances surrounding the death that may require further investigation before the body is cremated. This certificate requires the certifying practitioner to see and identify the body, while the MCCD does not.
Coroner's Certificate (Form C)	Coroner (if death is referred to the coroner)	If the death is a coroner's case, this form provides the coroner's permission to allow cremation. In such cases, this form replaces Form B.
Certificate after Postmortem Examination (Form E)	Person completing the post-mortem	This form is completed by the person undertaking the postmortem examination, if a medical referee orders one using their powers in the Regulations. The form details the findings of the postmortem and supplements Form B.
Permission to Cremate (Form F)	Medical referee	This form requires medical referees to be satisfied that the Act and Regulations have been complied with, that the cause of death has been definitely ascertained (or the death has been referred to the coroner) and that no reason exists for any further inquiry or examination. Once this form has been completed, the cremation can proceed legally.

⁶⁹ The NZEA has developed an additional non-statutory form that embalmers can complete and give to the medical referee, which certifies that they removed any pacemakers or other biomechanical aids during embalming.

The crematorium is required to maintain a register of cremations that records demographic information, dates of permission to cremate, the cremation date and how the ashes were dealt with post-cremation, including information about the person who received the ashes and that person's relationship to the deceased.

D1.2 Dealing with ashes

Under the current legal framework there is a great deal of flexibility and freedom about scattering ashes, although under tikanga Māori, as human remains are tapu, there are cultural restrictions as to the places where it is permitted. Otherwise, there is currently no legal restriction on the disposal of human ashes.

Where ashes are unclaimed, the Regulations allow the crematorium manager to: deliver the ashes to the person who applied for the cremation, retain them or decently inter them. If the ashes have been temporarily left with the crematorium and are not collected within a reasonable time, they may be interred after giving a fortnight's notice by sending a registered letter to the person who applied for the cremation.

If a different person applies for custody of the ashes or there is an objection to the ashes being delivered to the person who applied for cremation, the crematorium must satisfy itself of the propriety of delivering the ashes and act accordingly. In instances of a dispute between family members, the crematorium manager must determine who the ashes should be given to.

D1.3 Operating a crematorium

Crematoria are sites that are approved to legally undertake disposal of bodies by cremation.

Both local authorities and funeral directors own and operate crematoria. In 2015, it was estimated that for every crematorium owned by a local authority, there were three to four crematoria that were privately owned and operated.

D1.3.1 Opening a crematorium

To establish a crematorium, a person must comply with the Burials and Cremation Act and the Cremations Regulations, which require that before construction on a crematorium can begin, the plans and specifications must be submitted to the Minister of Health for their approval. Further, a separate approval is required from the Minister of Health under the Regulations to begin using a crematorium. Generally, this involves a health protection officer observing a test firing of the cremator.

Additionally, a person must consider the Resource Management Act 1991 and ensure that they have received the required resource consents. Whether or not a proposed crematorium requires resource consent depends on the rules in the relevant district plan. In some instances, resource consent is not required if operating a crematorium is a permitted activity in the proposed location.

D1.3.2 Operating a crematorium

In addition to complying with the resource consent conditions and other legislative obligations,⁷⁰ the regulations require that every crematorium must be maintained in good working order and in a clean and orderly condition and shall have competent attendants as necessary.

The Regulations also allow any medical officer of health, any health protection officer or any other person authorised in writing by the medical officer of health to inspect any crematorium at any reasonable time.

The Act provides for the creation of bylaws in relation to aspects of crematoria operation. These bylaws may be made for a range of purposes set out in the Act, relating to the maintenance and protection of the crematorium, the manner and time cremations are carried out, the extent of public access and fixing fees. The existence and content of such bylaws differ between local authorities.

D1.3.3 Closing a crematorium

If a crematorium plans to close, it must give notice of the closure to the Minister of Health in writing. The Minister is also empowered to direct the closure of a crematorium and can do so if:

- the crematorium authority or any 'member, servant, or agent thereof' has been convicted of an offence under section 56 of the Act in relation to that crematorium⁷¹
- the local authority within whose area the crematorium is situated requests closure and the Minister is satisfied that it is 'expedient in the interests of health or by reason of a change in the character of the locality'.⁷²

Once a crematorium is closed, it can no longer be used as a crematorium until it is reopened following the process described at D1.3.1 above.

D1.4 Cremation elsewhere than in a crematorium

The Regulations allow cremations to take place in a place other than in an approved crematorium, such as an outdoor funeral if the deceased belonged to a religious denomination whose tenets require the body to be burned as a religious rite. For example, this is the traditional method of cremation in some forms of the Buddhist faith and some other religions.

⁷⁰ Other relevant legislation includes: Health and Safety at Work Act 2015, Health Act 1956 (Part 3 and 3A) and Health (Burial) Regulations 1946 (if the crematorium is storing bodies before cremation).

⁷¹ See section D1.5 below.

⁷² Cremation Regulations 1973, regulation 3(3).

Applications for these types of cremation can be made to a medical officer of health, who can approve the cremation and apply any conditions that they may deem necessary in the interests of health and decency with regard to the time of the cremation, the circumstances attending the cremation and the subsequent disposal of the ashes and other material connected with the cremation. In assessing an application, medical officers of health currently use guidelines drafted by the Ministry that are designed to determine whether the proposed cremation adequately mitigates the risks. Such risks could include:

- offence to any members of the public that might see it
- the effect of smoke or smells on neighbours
- injury from fire to any person present
- damage to the surrounding area through the spread of the fire
- inadequate heat to incinerate the body
- explosion of devices within the body
- failure to reconstruct the site adequately after cremation.

The medical referee system does not apply to cremations undertaken elsewhere than in a crematorium. When approving a cremation elsewhere than in a crematorium, the medical officer of health must complete the form Permission to Cremate Elsewhere than in an Approved Crematorium (Form G), which mirrors Permission to Cremate (Form F) in relation to certainty of cause of death and details the place of and conditions for the outdoor cremation.

D1.5 Offences concerning cremation

Section 56 of the Act contains a number of offences in relation to cremation (penalties are still expressed in the monetary unit of the New Zealand Pound):

- burning a body other than in accordance with the Regulations (maximum penalty of £500 or imprisonment for a term of 12 months)
- breaching the Regulations (maximum penalty of £500 or imprisonment for a term of 12 months)
- giving a false certificate to procure cremation (maximum penalty of imprisonment for a term of two years)
- procuring a cremation or giving a certificate with intent to conceal the commission of an offence or impede the prosecution of an offence (maximum penalty of imprisonment for a term of five years).

31 Do you agree that there are issues that could be improved with the current cremation or medical referee systems? Are you aware of any other problems?

32 Can you provide any evidence about the size or extent of such problems outlined with the cremation or the medical referee systems?

D2 Issues with the current system

D2.1 Issues with the medical referee system

The Regulations place a duty on medical referees to not permit cremation unless they are satisfied that the cause of death has been 'definitely ascertained'. A requirement to 'definitely ascertain' cause of death can cause confusion as to the standard of certainty that practitioners must have before certifying cause of death. Obtaining this certainty on a routine basis can sometimes be difficult even with an autopsy.

If a body is to be cremated, the death certification documentation has to be reviewed by a medical referee (see section D1.4). This auditing/checking requirement does not apply to other forms of deceased body disposal, such as burials, so there is an inherent inconsistency between different body disposal methods that could be resulting in potential MCCD errors (or even potential wrongdoing) going undetected.

A number of other problems exist with this system.

- The Regulations prescribe that the Cremation Certificate must be handed to or sent in a closed envelope by the medical practitioner to the medical referee. This means that legally parts of the death certification system must be completed in paper form.
- Audits undertaken by medical referees depend on the accuracy of the information provided by the single certifying practitioner. A single practitioner can complete both the MCCD and the Cremation Certificate if there is no opportunity for independent verification of the deceased's identity or the cause of death.
- The medical referee system is not designed to measure the quality of the outputs from the death certification process generally. It is also not set up to use the information and experience practitioners gain to help inform and educate other certifying practitioners.
- It is questionable whether the role of a medical referee is set up to enable medical referees to fulfil their statutory requirement to 'definitely' establish the cause of death. Medical referees work in isolation, typically receive minimal payment, are contracted by the crematoria and in most cases do not have access to the deceased's medical records.
- There is no monitoring, training or support for medical referees, and the practice of medical referees likely varies between regions and crematoria.

The Ministry holds no data as to how many wrongful deaths have been discovered or referred to the coroner/police by medical referees. Therefore, we cannot assess the effectiveness of the system. Anecdotal evidence from the funeral sector suggests that some medical referees do vet and provide feedback to certifying practitioners about the quality of their death certification form completion (such as alerting practitioners if questions are left blank). The importance of this function will decrease, however, as the online system of death certification is adopted more widely. The online system Death Documents requires all questions to be completed before generating MCCDs or Cremation Certificates.

D2.2 Duplicated approvals required to establish new crematoria

The establishment of a crematorium requires:

- resource consent under the Resource Management Act 1991 (unless operating crematoria is a permitted activity under the district plan)
- the Minister of Health's consent to begin construction of the crematorium
- the Minister of Health's consent to begin operating the cremator.

In practice, the Minister's consents provide little or no extra protection to the Resource Management Act. Further, the Minister of Health has limited public health interest in the construction, design, or operation of a crematoria. These requirements create additional compliance costs for people who want to open a crematorium.

D2.3 Lack of clarity of duties to hold and dispose of ashes

Unclaimed ashes can become a significant problem for some crematoria. The Regulations outline a process that enables cremator operators to deal with unclaimed ashes. The current system is unclear about the time the ashes need to be left with the cremator operator before they can dispose of them, with differences in the process of disposing of the ashes depending on whether the ashes were not able to be delivered or were temporarily left with the cremator operator. This provides uncertainty as to how long crematorium authorities should retain ashes.

The process does not reflect modern business practices. In the case of ashes left temporarily with a cremator operator, the operator is required to send a 'registered letter' to the person who applied for cremation.

Finally, in the case of a dispute over who should receive the ashes, the Regulations require the cremator authority to satisfy itself of the 'propriety of any delivery of the ashes required of it and shall act accordingly'. This means that, in these cases, cremator operators could be required to adjudicate family disputes or hold the ashes until any dispute is resolved.

D3 Reform of cremation and crematorium management

D3.1 Options

The Ministry has considered two options for reforming cremation and crematorium management, including dealing with ashes, based on the Law Commission's recommendations, the Government's response to those recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.⁷³

- **Option 1:** Maintaining the status quo
- **Option 2:** Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes (recommendations 73–79, 92 and 93).

D3.1.1 Option 1

There would be no changes to the Cremation Regulations or the Act regarding the establishment and operation of crematoria, cremation elsewhere than in a crematorium or dealing with ashes.

D3.1.2 Option 2

Permission to establish and operate crematoria would be managed under the processes of the Resource Management Act 1991. Approval for establishing new crematoria would be managed by local authorities only.

A local authority would regulate permission to cremate or otherwise dispose of a deceased person's body other than in a crematorium. When determining whether to grant permission to cremate or otherwise dispose of a body other than in an approved cremator unit or approved other device, the local authority may consider any matter it considers appropriate, but it must consider:

- the reasons for the application
- any risks posed to public health or to the health of any individual
- any risks to the environment (including any fire bans or the need for resource consent)
- the views of any neighbours who might be adversely affected.

The local authority may grant permission, subject to any conditions it considers appropriate, if it is satisfied that any risks from the cremation are small or can be adequately mitigated. Unless the permission of the local authority is obtained before the cremation, it will be an offence to knowingly cremate or otherwise dispose of a deceased person's body except in an approved crematorium.

⁷³ For more details, including the full list of recommendations, see Law Commission 2015.

A cremator/funeral service business should have a power to inter or scatter ashes in an appropriate location if all of the following criteria are met.

- At least five years have elapsed since cremation.
- The ashes remain unclaimed.
- Notice has been sent to the last known address of the applicant for cremation.
- The ashes remain unclaimed or in dispute six months after the date of the notice.

If a deceased person nominated a person in their will to deal with their ashes post-cremation, then that nominated person has the right to custody of the ashes after the body has been cremated and to decide how the ashes will be dealt with. If no person has been nominated, then the right to the ashes will fall to their next of kin.

The scattering of ashes (on land) will be managed by local authorities under the Resource Management Act 1991. Regional councils or unitary authorities would deal with consents for discharges to air.

33 What do you think about the options identified regarding the reform of cremation and crematorium management? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

D3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for reforming cremation and crematorium management.

D3.2.1 Option 1

All issues outlined in section D2 remain.

D3.2.2 Option 2

Option 2 removes duplicated requirements to obtain permissions from the Minister of Health to build and operate a crematorium. The removal of this requirement decreases compliance costs for those looking to establish crematoria and reduce an administrative burden for the Ministry and DHB staff. There would be no additional costs to local authorities from Option 2 as the existing Resource Management Act process would continue.

The reliance on local councils to regulate crematoria creates a flexible and sustainable regulatory model when compared with the current law and will lead to outcomes that are suitable for each district. Treating the establishment and management of crematoria as resource management issues means that the regulatory system will evolve as resource management and planning legislation evolves.

Option 2 moves the responsibility for approving cremation places other than in a crematorium from the medical officer of health to local authorities. This means that the administrative burden will transfer from public health units to local councils. This impact is not expected to be large as applications for cremations other than in a crematorium have been rare.

Option 2 clarifies how to deal with unclaimed ashes. This reduces the uncertainty about the length of time unclaimed ashes must be stored before being disposed of. It provides protection for funeral directors and crematorium operators. Option 2 also removes the burden of determining rights to ashes where there is a dispute. This will further reduce compliance costs on cremation providers.

Finally, Option 2 clarifies the criteria for permissible cremations not in crematoriums. This allows cultural and religious groups that have outdoor cremations as part of their cultural or religious practices to work with local councils to ensure a flexible approach to approving cremations that do not take place in crematoriums. This creates greater certainty about the legality and cost of such cremations while mitigating against the risk to the environment or public health from such practices.

34 Do you agree with the impacts of the options identified regarding the reform of cremation and crematorium management? Why/why not? Can you suggest other likely impacts from the two options?

35 Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

D3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes.*

This is primarily because Option 2, when compared with Option 1, better aligns with the assessment criteria. Specifically, it removes duplication in the approvals process for establishing crematoria and cremations not in a crematorium. Further, it ensures a locally responsive and sustainable approach to regulation.

36 What is your preferred option to modernise the regulations for cremation in New Zealand? Please provide the reasons for your view.

D4 Reform of the medical referee system

D4.1 Options

The Ministry has considered four policy options for reforming the medical referee system, based on the Law Commission's recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Repealing the medical referee system
- **Option 3:** Reforming the medical referee system
- **Option 4:** Reforming and expanding the medical referee system.

D4.1.1 Option 1

There would be no changes to the existing cremation medical referee system.

D4.1.2 Option 2

Under this option, the medical referee system would be disestablished and not replaced. Existing death certification and coronial systems would continue to provide assurance as to the accuracy in assessing cause of death and crime prevention.

The substance of Form AB (Certificate in Relation to Pacemakers and Other Biomechanical Aids, Biohazards Certificate) would be incorporated into the MCCD.⁷⁴

D4.1.3 Option 3

The medical referee's role could be reformed to solely have a crime prevention focus. The referee would be responsible for determining, before the deceased person's body was cremated, whether there was potential criminal wrongdoing in the person's death. Where criminal wrongdoing was suspected, the referee would then refer the death to a coroner (regardless of if an MCCD has been previously issued by a certifying practitioner).

The referee would not be a health practitioner but instead an appropriate person from the Justice sector not appointed by a crematorium (eg, a Justice of the Peace, a High Court registrar, an independent solicitor or a senior police officer, or another appointed person).

The coroner would give authority to release the deceased person's body whose death had been referred to them for further investigation, either by the certifying practitioner

⁷⁴ Where the death is referred to the coroner, this would be included in the Coroner's Certificate (Form C).

or the referee. Once approved for release by a coroner, there would be an exemption from the requirements of a secondary check by a referee. The referee would not have the power to order post-mortem examinations.

Under this option, the Ministry of Justice would have oversight of the reformed referee system. Death certification auditing would remain the responsibility of the Ministry of Health and would be managed using the options being considered under Section A: Death certification and auditing. The substance of Form AB would be incorporated as part of the MCCD.

D4.1.4 Option 4

The medical referee system would be reformed as stated in Option 3. However, a mandatory referee check would be required before any body was disposed of, regardless of the method of disposal.

37 What do you think about the options identified regarding the reform of the medical referee system? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

D4.2 Impact analysis

This section identifies potential impacts from implementing any of the options for reforming the medical referee system.

D4.2.1 Option 1

All issues outlined in section D2 remain.

D4.2.2 Option 2

Option 2 repeals the medical referee system entirely. This could mean that potential misconduct that is missed by the certifying practitioner or the coroner could go undetected. However, as the medical referee system duplicates both the death certification and coronial system, the risk of this happening is expected to be incredibly low. Further, nothing in this option limits the police's powers to investigate or prosecute wrongful death.

The burden on families of the deceased would be removed, reducing the cost of compliance completely. Also, certifying practitioners would no longer have to complete cremation forms.

The costs for crematoria would reduce as they would no longer be required to appoint medical referees. Existing medical referees would be impacted as their roles would be

disestablished. Further, costs would reduce for the Ministry as it would no longer be required to support the appointment of medical referees.

D4.2.3 Option 3

The purpose of Option 3 is crime prevention: it would reform the medical referee system to focus solely on crime prevention. This would shift the burden of appointing referees from the Ministry and crematoria to the justice sector.

Option 3 would continue to duplicate the already existing death certification and coronial systems. As the Ministry does not have data about the level of wrongful death detected by the current medical referee, the benefits of this system, in terms of crime prevention, are not known. Option 3 would have limited effectiveness as a crime detection mechanism if cremation decreased in popularity as a disposal method.

Greater oversight from the Ministry of Justice could enable consistency across referees, as well as providing centralised monitoring of the system. However, referees would still be limited in their ability to detect errors in cause of death because of the lack of formal access to medical notes. This will have financial impacts for the justice system.

As for Option 2, costs would reduce for crematoria as they would no longer be required to appoint medical referees. Existing medical referees would be impacted as their roles would be disestablished.

The burden on the families of the deceased would be unlikely to change as the requirement to obtain independent verification of the MCCD would continue. Additionally, the impact of Option 3 on certifying practitioners would be similar to maintaining the status quo as they would still be required to complete cremation forms.

D4.2.4 Option 4

Option 4 has similar impacts to Option 3, however, this option expands the medical referee system to all deaths regardless of disposal method. The potential benefits of the current system (despite its limitations) would be applied to certification of other forms of body disposal, increasing the likelihood that wrongdoing would be detected. The limitations of the current system would continue but would be expanded to all deaths. This would completely duplicate the existing death certification and coronial systems.

Option 4 would remove the distinction between cremation and other modes of disposal, ensuring that all deaths have a secondary check to determine if criminal wrongdoing occurred. This would align with other disposal methods where disposal could destroy any evidence of criminal wrongdoing (if suspected), such as burial at sea.

Option 4 increases consistency between disposal methods. However, this creates additional compliance costs for families wishing to use non-cremation disposal methods. Option 4 also increases the administrative burden on burials of tūpāpaku, especially given the cultural significance of burial in urupā. Further, Option 4 creates impediments for other cultural practices, such as Islamic burial.

Additionally, Option 4 increases the workload for certifying practitioners and doctors as a result of the increased number of deaths subject to this requirement.

38 Do you agree with the impacts of the options regarding medical referee system? Why/why not? Can you suggest other likely impacts from the four options?

39 Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

D4.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Repealing the medical referee system*. This is because the Ministry considers that the policy justification for a separate and duplicated process to detect potential criminal wrongdoing is limited. Option 2 provides some benefits to consumers as it will lessen the costs passed on to them and removes administrative impediments to disposal.

Options 1, 3 and 4 may result in a very small increase in the detection of wrongful death. However, the Ministry considers that negative aspect of additional costs to consumers outweighs the very small risk of criminal wrongdoing going undetected. Moreover, the Ministry considers that any deficiencies (if any) in the existing protections against detection of wrongful death from both certifying practitioner and the Coroners Act 2006 are not large enough to warrant change, especially where potential benefits of such changes are unknown.

40 What is your preferred option for changes to the medical referee system? Please provide the reasons for your view.

Section E: New methods of body disposal

E1 New methods of body disposal

E1.1 Current legislation for methods of body disposal

As technology advances and consumer preferences change, alternative options to burial (in a cemetery or at sea) or cremation may seek to enter the New Zealand market. One example is alkaline hydrolysis or 'water cremation', which involves placing the deceased person's body in an alkaline solution that, when heated, dissolves the body leaving behind bone fragments and a liquid.

The law is unclear about whether other body disposal methods are legal. The Burial and Cremation Act 1964 (the Act) defines 'disposal' as '*including* burial and cremation' but otherwise is silent on this issue and does not explicitly provide for or prohibit other methods of body disposal. Regulation-making powers set out in the Act only allow regulations related to managing cemeteries and burial grounds and cremation.⁷⁵

The medical referee system (discussed in section D) would not apply to such methods of body disposal, even though the outcome may be substantively similar. This is because the medical referee system only applies to cremation, which is defined in the Act as 'the reduction to ashes of dead bodies by burning'.

The Crimes Act 1961 prohibits improperly or indecently interfering with or offering any indignity to any dead human body or human remains, whether buried or not.⁷⁶

Before a provider can begin offering a new method of body disposal, they need to obtain the necessary resource consents to operate as required by the Resource Management Act 1991. This is currently managed by the relevant local authority.

41 Are you aware of any particular new methods of body disposal that could be made available in New Zealand? Please describe the process and the risks and benefits you see with the process.

⁷⁵ Burial and Cremation Act 1964, sections 37 and 59.

⁷⁶ Crimes Act 1961, section 150.

E2 Issues with the current system

E2.1 Legislation does not provide for new methods of body disposal

The current legislative framework does not explicitly provide for the regulation of new body disposal methods that may enter the New Zealand market.

Although it is currently possible to apply for a resource consent to operate a business that offers a new body disposal method, the legality of these disposal methods is unclear as the Act does not regulate them. If a provider was ever to enter the market, this situation creates risks and uncertainty for providers and for people who may be considering using a new disposal method (in advance of their own death or for a loved one who has recently passed away).

For potential providers, there are no established systems to assess the safety of the disposal method and to prescribe operating standards as is the case with burials and cremations. Further, there are currently no protections designed to preserve the dignity of the deceased whilst they are being disposed of and to protect the public from experiencing a mishandled disposal.

Further, it is a crime to improperly or indecently interfere with, or offer any indignity to, any dead human body or human remains. There is limited case law interpreting such terms, which leaves questions as to whether providers of new methods of body disposal could potentially be liable for criminal prosecution.

Further, providers would also have no legal protection in relation to dealing with any remains in the event of a dispute between family members or if remains go unclaimed.

42 Do you agree with the issues outlined regarding new methods of body disposal? Are you aware of any other problems?

43 Can you provide any evidence about the size or extent of the problems regarding new methods of body disposal?

E3 Regulating new methods of body disposal

E3.1 Options

The Ministry has considered two options for regulating new methods of body disposal, based on the Law Commission's recommendations and subsequent policy work undertaken by the Ministry. A high-level summary of these options is provided below.

- **Option 1:** Maintaining the status quo
- **Option 2:** Regulating new methods of body disposal.

E3.1.1 Option 1

There would be no changes to the law in relation to regulating new methods of body disposal. Future regulatory change may be considered as and when new body disposal methods enter the New Zealand market.

E3.1.2 Option 2

Option 2 requires every deceased person to have their body disposed of by an approved disposal method.

Approved methods of disposal would be those that exist now such as burial (either in land or at sea) and cremation or new methods of body disposal prescribed in regulation (at a future date).

Powers to approve new methods of body disposal, would include powers to regulate all matters in relation to the establishment and operation of any new method of body disposal and dealing with remains. If approving a new form of body disposal, a decision-maker must consider how the new method of disposal:

- ensures the integrity and safety of the disposal method for the provider, consumer, the public and the environment
- protects the dignity of the deceased, tikanga Māori or any other cultural consideration.

Under Option 2, it would be an offence to dispose of a body using a non-approved method.

44 What do you think about the options identified for regulating new methods of body disposal? Do you want to suggest any additional options?

E3.2 Impact analysis

This section identifies potential impacts from implementing any of the options for regulating new methods of body disposal.

E3.2.1 Option 1

All issues outlined in section E2 remain.

E3.2.2 Option 2

Option 2 resolves the issues around legality of new methods of body disposal by legislating that new methods are illegal until permitted by regulation. Further, this option creates a more flexible regulatory framework for human body disposal in New Zealand that will be able to respond to any new body disposal methods as they arise, without the need to amend legislation.

The ability to control market access to new methods of body disposal would allow the decision-maker responsible to ensure that any methods are safe for the provider, consumer, the public and the environment, as well as ensuring that there are protections for the dignity of the deceased and any relevant cultural considerations, including tikanga Māori. This would ensure that any risks from an unregulated method of body disposal would not eventuate.

Option 2 would not impose any immediate compliance costs on any person, as it only creates powers to regulate new methods of body disposal in the future. As no provider currently offers a disposal service as an alternative to burial or cremation in New Zealand, no one will be significantly affected by Option 2 in the short term. The potential compliance costs for any new method of body disposal that is approved will need to be considered during the approval process.

45 Do you agree with the impacts of the options identified for regulating new methods of body disposal? Why/why not? Can you suggest other likely impacts from the two options?

46 Can you provide any information to help the Ministry gauge the size of any potential impact, cost, or benefit that would affect you?

E3.3 The Ministry's preferred option

At this stage, the Ministry prefers Option 2: *Regulating new methods of body disposal*.

This is because Option 2 better meets the assessment criteria better than the status quo. The option proportionately addresses the issue in relation to the current uncertainty and lack of legal clarity and would help future-proof our system to enable appropriate new methods of body disposal to be offered to the market, as well as ensuring that the new methods of body disposal operate in a way that protects the dignity of the dead, is consistent with tikanga Māori and other cultural considerations, and does not have any other adverse consequences.

Furthermore, Option 2 would not impose any immediate compliance costs on any person.

47 What is your preferred option to regulate new methods of body disposal? Please provide the reasons for your view.

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BURIAL AND CREMATION ACT SUBMISSION

INTRODUCTION: PROPOSED OVERARCHING DUTIES REGARDING THE DISPOSAL OF BODIES

1. Do you agree that there should be a general duty on everybody to 'treat any dead human body or human remains with respect?

Yes

~~No~~

2. Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine?

Yes

~~No~~

3. Do you agree that there should be a requirement that the person who has the duty to dispose of the body must do so without undue delay, including considering the mourning needs of the bereaved, any ceremonies to be performed, tikanga or other cultural practices, and any other relevant considerations (such as police investigations)?

Yes

~~No~~

4. Do you agree that any breach of this duty should be an offence punishable by infringement notice, or, on conviction, by a fine?

Yes

~~No~~

SECTION A: DEATH CERTIFICATION AND AUDITING

5. What do you think are the key problems with the current system for certifying the cause of death and existing auditing systems?

Comments

Under the current Government system:

- *Currently paper copies of documentation are required to be filled by the relevant medical practitioner, and held by the respective local council. Paper copies and inaccurate completion of paperwork lead to potential errors and inconsistencies.*
- *There is no system for auditing of paperwork so it is up to the funeral director or local authority to find faults.*
- *Coroner cases have to go to Dunedin or CHCH for autopsy as autopsies cannot be undertaken in Invercargill. This leads to a time delay in processing and returning of the deceased to the families.*

6. Can you provide any evidence about the size or extent of the problems with the current cause of death certification and auditing systems?

Comments

- *No follow ups*
- *Families are unable to plan funerals due to delay in processes as mentioned above in Q5*
- *Not documented when find mistakes*
- *Inaccuracies with spelling of names and dates*
- *Inaccuracies are occurring weekly.*

7. What do you think about the options identified for modernising the death certification system? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

Comments

- *Option A3 auditing of the consultation document is required.*

8. Do you agree with the presented impacts of the options identified for modernising the death certification system? Why/why not? Can you suggest other likely impacts from the three options?

Comments

- *Yes – need a streamlined process that is verified and ensures people all follow consistent good practice*

9. Can you provide any information to help the Ministry gauge the size of any potential impacts, costs or benefits that could affect you?

Comments

- *No*

10. What is your preferred option to modernise the death certification system? Please provide the reasons for your view.

Option 1: ~~_____ Maintaining the status quo~~

Option 2: ~~_____ Implementing a package of changes to the current system based on most of the Law Commission's recommendations~~

Option 3: _____ Implementing a package of changes to the current system based on all of the Law Commission's recommendations

Comments

- *Streamlined approach with better documentation and auditing processes.*

11. What do you think about the options identified regarding the auditing of death certification? Do you want to suggest any additional options? If so, please provide the reasons for your alternative options.

Comments

- *We like option A3 on this consultation document because currently under the Government system we don't get audits on death certification and this will allow for documents to be consistently processed accurately.*

12. Do you agree with the impacts of the options regarding the auditing of death certification? Why/why not? Can you suggest other likely impacts from the three options?

Yes

~~No~~

Comments

-

13. Can you provide any information to help the Ministry gauge the size of any potential impacts, costs or benefits that would affect you?

Comments

- *If people know they are going to be audited they may take more care when completing documentation, therefore providing accurate dates and spelling of names.*

14. What is your preferred option for auditing death documentation? Please provide the reasons for your view.

~~Option 1: Maintaining the status quo~~

~~Option 2: Establishing a death certification auditing committee system~~

Option 3: Implementing the Law Commission's related recommendations around auditing of death documentation, including creating a statutory 'cause of death reviewer'

Comments

- *Making a position to check documents are correct.*

SECTION B: REGULATIONS OF THE FUNERAL SERVICES SECTOR

15. Do you agree that there are issues that could be improved with the funeral services sector? Are you aware of any other problems?

Yes

~~No~~

Comments

- *Funeral directors should be registered at a central location locally (perhaps with Local Authority) to ensure consistency across providers. Funeral Directors are currently registered through environmental services and Environmental Health Officers inspecting annually, as well as checking new registration premises when applications are received.*

16. Can you provide any evidence about the size or extent of the problems in the funeral services sector?

Comments

-

17. What do you think about the options identified for regulating the funeral services sector? Do you want to suggest any additional options?

Comments

- *Don't like options B1 and B2 of the consultation document*
- *Like registration being overseen*
- *Don't believe industry regulation works*

18. Do you agree with the impacts of the options identified for regulating the funeral services sector? Why/why not? Can you suggest the likely impacts from the four options?

Yes
~~No~~

Comments

- *Option 3 of the consultation document suggests that there would be a centralised system managed through a central registry for funeral directors and decreased administrative costs for Councils. Option 4 would be an increase for funeral directors, some (smaller operators) may not be sustainable in the long term. There would still be decreased administrative costs for Councils meaning no change for us across option 3 and 4 however some companies may suffer under option 4, hence why we support option 3.*

19. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

Comments

-

20. What is your preferred option for regulating (or not) the funeral services sector? Please provide the reasons for your view.

Option 1: ~~_____ Maintaining the status quo~~
Option 2: ~~_____ Removing registration requirements~~
Option 3: Providing central Government registration
Option 4: ~~_____ Providing central regulation for funeral directors~~

Comments

- *We support option 3 because there would be extra cost for funeral directors with option 4 – see Q18 for reasoning*

21. What do you think about the options identified for better informing consumers about the cost of funeral services? Do you want to suggest any additional options?

Comments

- *Territorial Authority costs are openly advertised but funeral director costs should also be advertised. People need to better understand that they have options; eg use a funeral director, or plan their own funeral independently and without a funeral director.*

22. Do you agree with the presented impacts of the options regarding better informing consumers about the cost of funeral services? Why/why not? Can you suggest other likely impacts from the three options?

Yes
~~No~~

Comments

- *Funeral directors should show costs as people are having to pay hidden costs. It's all about getting the same information out to people.*
- *Sometimes it appears people think the Territorial Authority costs are really high as they are included in the total funeral director costs and they are unaware what the breakdown is.*

23. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

Comments

- *No*

24. What is your preferred option for ensuring that consumers are fully informed of the component prices of funeral services? Please provide the reasons for your view.

Option 1: ~~_____ Maintaining the status quo~~

Option 2: ~~_____ Making it mandatory to disclose component prices~~

Option 3: Making it mandatory to disclose all component prices as per the Law Commission's recommendations

Comments

- *Would like itemised prices for families so there are no surprises.*
- *It also proves Territorial Authority prices are reasonable as well as providing options so people can organise their own burials and ceremonies.*

SECTION C: BURIAL AND CEMETERY MANAGEMENT

25. Do you agree that there are issues that could be improved with the current framework for burials and cemetery management? Are you aware of any other problems?

Yes

~~No~~

Comments

- *Current framework can be confusing.*

26. Can you provide any evidence about the size or extent of such problems outlined about the current framework for burials and cemetery management?

Comments

- *As an example, burials on private land – it is hard to find details of the framework/legislation around this.*

27. What do you think about the options identified regarding a new framework for burial and cemetery management? Do you want to suggest any additional options?

Comments

-

28. Do you agree with the impacts of the options identified regarding a new framework for burial and cemetery management? Why/why not?

Can you suggest other likely impacts from the three options?

Yes

~~No~~

Comments

-

29. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

Comments

-

30. What is your preferred option for a new framework for burial and cemetery management? Please provide the reasons for your view.

Option 1: ~~_____ Maintaining the status quo~~

Option 2: ~~_____ Implementing a package of changes to the current system based on all the Law Commission's recommendations~~

Option 3: _____ Implementing a package of changes to the current system based on most of the Law Commission's recommendations

Comments

- *Agree with preferred option in the consultation document and reasoning behind it*
- *It will be good for Territorial Authorities to have extra responsibilities/powers and decision making ability around burial and cemetery management.*

SECTION D: CREMATION REGULATIONS AND THE MEDICAL REFEREE SYSTEM

31. Do you agree that there are issues that could be improved with the current cremation or medical referee systems? Are you aware of any other problems?

Yes

~~No~~

Comments

- *ICC currently only has two medical referees to sign off cremations in Invercargill – availability is limited. Funeral directors are having to get signoff from an outside district medical referee.*
- *Need to maintain referees for all cremation cases, apart from those approved by the coroner.*

32. Can you provide any evidence about the size or extent of such problems outlined with the cremation or the medical referee systems?

Comments

- *Over Christmas the local medical referees may be on leave and can be hard to contact to approve the paperwork in order to process cremations.*

33. What do you think about the options identified regarding the reform of cremation and crematorium management? Do you want to suggest any additional options?

Comments

- *May cause flow on effects for Territorial Authorities and funeral directors, where families are having to wait due to a delay in funerals as a result of delayed signoff from medical referees not being available.*
- *Will be good having an online centralised system where all NZ referees can approve any documents that are required to be approved by referees in any location.*

34. Do you agree with the impacts of the options identified regarding the reform of cremation and crematorium management? Why/why not? Can you suggest other likely impacts from the two options?

Yes

~~No~~

Comments

- *Unclaimed ashes should not be scattered after five years but instead interred and recorded. These can then have the opportunity to be traced at a later date.*

35. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

Comments

- *Don't want to make it too easy to establish new crematoriums as currently under the Government system they may not all meet the same standards (as long as you get a resource consent you can do what you like) for service, which may result with different public perceptions of what is involved to cremate a body, and with there being no auditing or regulations to follow they may not be initiating the same best practise and levels of service as what we would expect. Operators should be licensed and inspected to maintain services of care to the deceased.*
- *NZ has a disproportionate number of cremators than other countries eg Auckland and Melbourne have the same number of cremators but significantly different populations. Southland has enough cremators to service the current population.*
- *With regards to administration burden for Territorial Authorities and allowing cremations outdoors noted in the consultation document – these are things we expect clear direction from Government when implementing them.*

36. What is your preferred option to modernise the regulations for cremation in New Zealand? Please provide the reasons for your view.

Option 1: ~~_____~~ Maintaining the status quo

Option 2: Adopting all the Law Commission's recommendations relating to cremation and dealing with ashes.

Comments

- *As noted above with outdoor cremations and Territorial Authority responsibilities – we would expect clear guidelines from MOH (eg permits/consents required). With outdoor cremations – would require appropriate heat and conditions for this to work. One thing we would expect as a Territorial Authority is the necessary permits so we know people are permitted to undertake this activity.*

37. What do you think about the options identified regarding the reform of the medical referee system? Do you want to suggest any additional options?

Comments

-

38. Do you agree with the impacts of the options regarding medical referee system? Why/why not? Can you suggest other likely impacts from the four options?

Yes

~~No~~

Comments

- *Always have implications at Christmas time due to lack of availability – need better access to medical referees for funeral directors.*

39. Can you provide any information to help the Ministry gauge the size of any potential impact, cost or benefit that would affect you?

Comments

- *Would improve services.*

40. What is your preferred option for changes to the medical referee system? Please provide the reasons for your view.

~~Option 1: — Maintaining the status quo~~

~~Option 2: — Repealing the medical referee~~

Option 3: Reforming the medical referee system

~~Option 4: — Reforming and expanding the medical referee system~~

Comments

- *Need to make this process as easy as possible to get documentation referred particularly around Christmas time. Paperwork process needs to be quick and efficient as possible with correct evidence.*

SECTION E: NEW METHODS OF BODY DISPOSAL

41. Are you aware of any particular new methods of body disposal that could be made available in New Zealand?

Comments

- *Resomation (Alkaline hydrolysis/liquid cremation process)*
- *Promession is an idea of how to dispose human remains by way of freeze drying.*
- *Sky burial eg Tibet*

42. Do you agree with the issues outlined regarding new methods of body disposal? Are you aware of any other problems?

Yes

~~No~~

Comments

-

43. Can you provide any evidence about the size or extent of the problems regarding new methods of body disposal?

Comments

- *Invercargill currently has adequate burial space (into the foreseeable future).*

44. What do you think about the options identified for regulating new methods of body disposal? Do you want to suggest any additional options?

Comments

45. Do you agree with the impacts of the options identified for regulating new methods of body disposal? Why/why not? Can you suggest other likely impacts from the two options?

Yes

~~No~~

Comments

-

46. Can you provide any information to help the Ministry gauge the size of any potential impact, cost, or benefit that would affect you?

Comments

-

47. What is your preferred option to regulate new methods of body disposal? Please provide the reasons for your view.

~~Option 1: Maintaining the status quo~~

Option 2: Regulating new methods of body disposal

Comments

- *Allows flexibility and keeps us open to changes in global trends.*
- *Would need some good wording to explain these options in a sensitive way to the public to help them understand.*

TO: PERFORMANCE POLICY AND PARTNERSHIPS COMMITTEE

FROM: DAVE FOSTER – ACTING GROUP MANAGER FINANCE AND ASSURANCE

MEETING DATE: TUESDAY 13 OCTOBER 2020

PROVISIONAL REVENUE AND FINANCING POLICY

SUMMARY

<p>This paper outlines funding principles and picks up on benefit analysis that has been undertaken for the preparation of the Revenue and Financing policy for inclusion in the 2021-31 Long-term plan.</p> <p>The paper covers all of Council's revenue in light of considerations at Council's Revenue and Financing workshops.</p> <p>The provisional policy identifies the proposed mechanisms for funding Council's operational and capital costs by activity for inclusion in the Long Term Plan.</p>
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RECOMMENDATIONS

- 1. That the report “Provisional Revenue and Financing Policy” be received.**
- 2. That the Committee endorse the Provisional Revenue and Financing Policy; and**
- 3. That the Committee will complete draft revenue and Financing policy will be completed after consideration of detailed rates modelling and preparation of the Rating policy.**
- 4. That the Committee notes policy wording may change as the process continues.**

IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan? This is the first stage of policy consideration, the draft revenue and financing policy will be included in the LTP Consultation document.</i>
2.	<i>Is a budget amendment required? No</i>
3.	<i>Is this matter significant in terms of Council's Policy on Significance? Yes, but not at this stage.</i>
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy? This will be included in the LTP consultation document where all significant implications will be outlined.</i>
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required? Will be included in the LTP consultation.</i>

Background

This paper picks up Revenue and Financing policy preparation from the meeting of 8 September. At that meeting Council accepted the portion of the policy that covered Non-Rates revenue. This paper picks up Rates Revenue and Borrowing plus asset sales as funding sources. In doing so it puts us in the position of having a Provisional Revenue and Financing policy. This will need to be tested through rates modelling to check whether policy provisions need minor modification.

Adoption of a revenue and financing policy is a requirement for a Long Term Plan. The process for adoption is a lengthy one, involving consultation. The consultation occurs within the Long Term Plan Consultation document. Therefore the matters outlined in this report are only draft and will be supporting information for the Long term Plan consultation document.

The requirements for consideration and development of a Revenue and Financing policy are contained in the Local Government Act in sections 101, 102 and 103.

Section 101(3) states:

The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,

- (a) *in relation to each activity to be funded,*
 - (i) *the community outcomes to which the activity primarily contributes; and*
 - (ii) *the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and*
 - (iii) *the period in or over which those benefits are expected to occur; and*
 - (iv) *the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and*
 - (v) *the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and*
- (b) *the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural wellbeing of the community.*

Council has undertaken a workshop to consider benefits and community outcomes from services, and this will be further developed through the iterations of considering rates policy. However, the consideration of benefits for user charges is at a stage where the points in this paper have been considered and prepared “following consideration” of the legislative framework.

Section 102 (in part) states:

1. *A local authority must, in order to provide predictability and certainty about sources and levels of funding, adopt the funding and financial policies listed in subsection (2).*

Section 102 then goes on to list the policies that are required, one of those is the Revenue and Financing policy. A key point to note is that one of the purposes is predictability and certainty about sources and level of funding. Part of the predictability is for the ratepayers.

Components of rates revenue

Section 103 lists the sources of revenue as,

Funding sources	Included in this paper
General rates, including—	Yes
i) choice of valuation system; and	
ii) differential rating	
iii) Uniform Annual general charges	
Targeted rates:	Yes
Lump sum contributions:	Yes
Fees and charges:	No
Interest and dividends from investments:	No
Borrowing:	Yes
Proceeds from asset sales:	Yes
Development contributions:	No
Financial contributions under the Resource Management Act 1991:	No
Grants and subsidies:	No
Regional fuel taxes under the Land Transport Management Act 2003:	No

This paper covers the items identified above.

The provisional policy reduces the number of targeted rates down to 3 being:

- Water
- Sewage
- Solid waste collection

Council currently has a range of other targeted rates that are set on a similar basis to the General rate being use of a Rate on the value of the property and a uniform charge. These separate rates create a high level of additional work and make little if any difference to the ratepayer other than showing on the face of the rates notice. There is some advantage to some transparency in the targeted rates but it is questionable whether the additional administration and complexity is worthwhile. Historically targeted rates were to be kept separate and only used for the purpose set. This is no longer a legal requirement. The nature of the benefits for the services currently covered by targeted rates and now proposed to be the General rate are similar to the nature of benefits of the other services in the general rate. This is also supported by the fact they were set using the same rating factors as the general rate.

The provisional policy continues to use Capital value basis for general rates and allows the option for differential rates to be set. It also provides that the Uniform Annual General Charge (UAGC) will be set on the basis of separately used or inhabited parts of a property (SUIPs). This means that if a property has more than one user it will pay more than one charge.

Consideration of benefits

The funding principles generally speaking follow economic principles for the efficient allocation of scarce resources. The main scarce resource is the funding available within the community. The Act identifies benefits to the community as a whole, compared to groups within the community and individuals.

Where benefits are for the whole community then they should be funded collectively by the community. Where the benefit is narrower the funding should be from the group that gains the benefit. This mechanism relates to user charges and fees. However, if we need to be mindful that the services provided by Councils are typically a response to market failure.

Market failure occurs when for whatever reason the market being the sum of all individuals do not provide the services or the level of service that a community desires. Economic theory suggests that an efficient market will work to provide all the needs that a community will buy. But it is also recognised that because of impediments for the market to efficiently trade, some services are not provided at an optimum level. This occurs for the following reasons;

- 1 The service has a level of “externalities”. That means that some of the benefits or costs are not directly related or included in the price at which the goods would trade. AN example of a positive externality would be the benefit that a wider community including non-users get from an open green sports ground. An example of a negative externality is in solid waste. Solid waste disposal is a by-product of a market efficiency for retail packaging that pushes the cost away from the vendor and away from the purchaser onto the wider community.
- 2 Some services have no practical way of being paid for by a user. Examples of this are parks, and roads.
- 3 Some services are desired by a community and the community is prepared to pay a cost for use, but are not prepared to meet the costs for the facility sitting idle waiting for use. In these cases the users pay a share but full funding by the users could mean that the service would fail. Examples of these are swimming pools, libraries, community halls and venues among others. Typically in these cases the community expects the user to pay a fair price for the service, but also acknowledge that full user recovery would result in the loss of service and so are prepared pay a portion of cost to allow for the “option” that they may use the service in future. In some cases the community also recognises that these are services that are part of the fabric of a community and so the community should meet a collective share.

Another consideration in regard to benefit is the period of benefit. This in some ways distinguishes between long life assets that provide a benefit for a long period of time and so should be funded by mechanism that recognise that the benefits will be over multiple years. Also some items have costs for a significant period of time, and delivery of the service to a user today can have on-going costs. Examples of this are cemetery plots. A cemetery plot is sold with the expectation that the cemetery will continue to be maintained. It is possible for the sale of the plot to factor in an allowance for on-going maintenance of the cemetery.

In discussion about benefits it was apparent that our services do not only have a single item or type of benefit, many of our services have multiple benefits and these diverse benefits are a major reason why Council provides the service.

Next steps

Staff are now preparing rates modelling to pick up on the detailed modelling for all properties under the proposed policy.

This may lead to further evaluation of some activities in relation to use of a targeted rate. The provisional policy provides the framework and principles for rating and charges it does not establish the level or use of a particular mechanism, but outlines the nature of the consideration and our over-arching policy.

A rating policy will follow after modelling is complete. This will cover:

- Definition of separately used or inhabited parts of a property.
- The level of the general rate and differentials to be used.
- The level of the UAGC
- Details for each targeted rate.

I would remind Council that this year is a revaluation year. The results of the revaluation will not be available until mid-November, which is why the Rates modelling has not been finalised. When revaluations occur there is often, but not always, significant shifts in rates for particular rate payer sectors. We do not know whether this will occur this revaluation but many of you will be aware that there have been significant increases in the property market over the past 3 years.

Our modelling will identify the extent to which a change in rates is due to policy or revaluation.

Provisional Revenue and Financing Policy

The requirements for a Revenue and Financing policy are in the Local Government Act 2002. Section 103 requires that the Revenue and Financing Policy must state its policies for:

- funding operating expenditure and
- funding capital expenditure.

A local authority must manage its finances, and financial dealings in a way that promotes the current and future interests of the community.

*“The funding needs... must be met from those sources that the local authority considers to be appropriate, **following** consideration of:*

- a) *in relation to each activity to be funded,-*
 - i) *the community outcomes to which the activity primarily contributes; and*
 - ii) *the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and*
 - iii) *the period in or over which those benefits are expected to occur; and*
 - iv) *the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and*
 - v) *the costs and benefits, including consequences for transparency and accountability of the activity distinctly from other activities; and*
- b) *the overall impact of any allocation of liability for revenue needs on the community. (Section 101(3))*

Council has considered the above before establishing this policy.

Policy for funding operating expenses

Funding Sources Per Section 103(2)	Application by Invercargill City Council
General rates, including: - choice of the valuation system - differential rating - Uniform Annual General Charge	Applied to activities delivering wider community benefits using capital value base. The capital value rate is applied on the same basis to all properties. Rating values are revised every three years. Invercargill City Council will apply differentials where there is a significant difference in the level of service available to properties relative to the collective values of the properties within a group. If differentials are to be applied the groups will be Commercial/Industrial, Farming, Tiwai point smelter and residential. Council will analyse the effect of the UAGC on the incidence of rates between groups, in determining whether or not a differential will apply. A uniform Annual General charge is set based on separately used or inhabited parts of the property. It is part of the total general rate and set at a level that Council considers appropriate. The level of the charge is subject to some legal limitations and Council will not breach that limit. In setting the UAGC Council will analyse the effect that any UAGC has in shifting the incidence of rates away from Farming and Commercial onto residential.
Targeted rates	Council has a preference for rates to be within the General rate unless the services which have a specific area of benefit, which is not as wide as the entire district, and where the amount of the separate rate is substantial enough to warrant the additional administration required for a separate targeted rate.

Funding Sources Per Section 103(2)	Application by Invercargill City Council
	<p>Targeted rates are not a user charge as there is no provision for a user to opt out. They are levied for separate services where the Rate is a proxy for a uniform user fee. Those services are Sewgae disposal, Water supply and refuse collection.</p> <p>They allow Council to assist communities to collectively fund services that can only be delivered without collective funding. Due to the administration of separate targeted rates Council will try to avoid setting a targeted rate for less than \$100k for the total value of the rate. If a targeted rate is set for a lower revenue level Council will identify the special circumstances that warrant an additional rate.</p> <p>Targeted rates are set for transparency purposes rather than to create an on-going pool of funds separately managed. Therefore any unspent targeted rates will become part of Council general funds.</p>
Lump sum contributions	Available for capital project funding under the Local Government (Rating) Act 2002. It is a complex mechanism which is not considered to provide any advantage to our ratepayers and so is not used.
Fees and charges	<p>Fees and charges are a preferred funding option for services where they are practicable. They reflect that a choice has been made to utilise community resources. That choice gives benefit to the individual and may impose costs on the wider community. Charges are set to recover the costs Council incurs in delivering that activity. Council recognises that some services it provides are for facilities which are available for community and private benefit. If that service attempted to recover full costs it is likely they would be too expensive for users. If the charges are set too high, it could lead to reducing use, and this may mean the net cost of the service increases.</p> <p>Council believes the community wishes these services to be made available so that individuals have the option to use them if they choose. There the general rate meets a level of cost to provide the option for the community use. In these cases, Council uses its judgement to set the fees at a level it believes is at an acceptable market level.</p>
Interest and dividends from investments	Interest and dividends are treated as part of general funds and support the services which are general rate funded. An exception to this is where reserves have been established for targeted rates which cover the long-term needs of a service area. Rates set for that purpose are used for that purpose, and funds not used in a particular year are invested, and interest on those funds are used for that service.
Borrowing	<p>The financial strategy identifies that Council operates a net debt policy. This means that we measure our debt based on Total external borrowings less funds invested in term deposits. So borrowing and use of invested cash are treated in the same manner being part of our “balance sheet” funding. Our goal with borrowing is for borrowing to be used primarily for capital spending, however borrowing may also be used to level out highs and lows that can occur in services that have cyclic funding needs.</p> <p>Borrowing is used to recognise issues of inter-generational equity for assets that have a long life and will benefit the community for a long time.</p> <p>Borrowing will not be used to fund long term operational shortfalls but may be used as part of a strategy to get to long run sustainable rates level without large one-off rates rises. However, Council recognises that staggering necessary rates rises inevitably comes at the cost of higher rates.</p>
Proceeds from asset sales	Proceeds from asset sales will not be used to fund operational costs.
Development contributions	Invercargill is forecasting little if any growth. As Council desires growth, it considers that Financial contributions are likely to be an impediment to growth. Also the asset base for service delivery is large enough to cope with some growth, without

Funding Sources Per Section 103(2)	Application by Invercargill City Council
	requiring significant growth related investment. Not applied
Financial contributions under the Resource Management Act 1991	Invercargill is forecasting little if any growth. As Council desires growth, it considers that Financial contributions are likely to be an impediment to growth. Also the asset base for service delivery is large enough to cope with some growth, without requiring significant growth related investment.
Grants and subsidies	Other organisations determine the availability of Grants and subsidies. Where grants and subsidies are available, Council will apply when it is considered efficient to do so. Where funding applications are successful or where long-term contracts have grants and subsidy the funds are used for that purpose. The biggest part of subsidy comes from NZTA for roading works. The level of the subsidy is set by NZTA.
Any other source. Special purpose investments (reserves)	Over many years of operations, Council has established a number of Special fund reserves. These reserves are backed by cash investments. Where funds are available in those reserves, they will be used only for the purpose that the reserve was established. When that occurs, the funds in the reserve will be used to meet either a capital cost or operating cost. These funded reserves are a way for the council to manage expenditure and revenue so that the requirements from the community are more even and predictable. Special funds invested will earn interest on the funds and reduce the borrowing needs in higher expenditure years.

Capital expenditure funding sources

Council provides activities which have a long life and long-term benefits. The level of capital expenditure over the period of a long-term plan is relatively minor compared to operating expenses. Council takes a long-term view to funding its services and assets on a sustainable basis. Funding of capital works is from:

- General and Targeted rates: Rates will be used to fund capital work. Rates are set based on long term projections, to enable sustainable levels of service, which includes renewal of assets. Typically, rates will fund renewal of assets, but there will be years where rates will fund a portion of new capital items, and years when rates will be repaying loans. Rates and debt are the primary funding sources for Councils planned capital work and these two items need to have an equilibrium identified with the Financial Strategy.
- Borrowing: Borrowing will be used to fund capital expenditure when the level of renewal is above the average renewal funded in the plan. It is also used to major level of service improvement for assets. This reflects that those assets will have a long life and so the cost of the asset should be shared a longer period of time.
- Subsidy and grants: A reasonable amount of capital expenditure in the Roading activity is funded from NZTA subsidy. Council seeks to maximise the amount of NZTA subsidy available. For some community facilities, it is possible to get grants from specific organisations. Where this is possible Council will use these grants to lower the capital requirement from the community.
- Proceeds from Asset sales: Council owns a number of properties that have been purchased for operational and strategic reasons. Where capital assets are sold the funds from those sales will be used to fund capital items. This will occur through the repayment of loans which will enable increased borrowing capacity for the capital items. This ensures that debt is attributed to the appropriate group of activities.
- Development contributions: Council does not charge development contributions or financial contributions. Growth is not significant in Invercargill and Infrastructure is able to cope with population growth in the foreseeable future.

Consideration of overall effect of funding allocations

When considering the revenue requirements and funding mechanisms used Council is mindful of the impact that both fees and rates can have on individuals in the community. Charges are set to recover the costs that individuals impose on the community and the benefit they receive from the activity. Rates are also set to reflect the ongoing costs of Council activities. Regional Council rates are a small component of total rates paid by property; Council does not believe Council rates levels impose any hardship.

Summary of funding mechanisms used in Activities

Mechanisms selected to fund a particular activity are based on a regular assessment of the efficiency of imposing multiple small charges compared to funding from a larger funding source such as general funds. However, there is a preference for individuals benefiting and causing costs to pay for the costs they impose. This means that individuals can become more aware of the impact their resource use choices have on the sustainability of our activities.

Activity	User fees	Subsidy/ Petrol tax	Investment income Dividends and Interest	General Rate	Targeted rate
Roads		Subsidy/ Petrol tax		Majority	
Sewerage disposal	Marginal				Majority
Water supply	Marginal				Majority
Solid waste	Marginal			Marginal*	Majority
Regulatory	Majority			Marginal	
Stormwater				Full	
Cemeteries and Crematorium	Majority			Marginal	
Libraries and Archives	Availability			Majority	
Museum	Availability			Majority	
Parks	Availability			Majority	
Pools	Availability			Majority	
Public transport	Residual	Subsidy		Majority	
Parking	Majority			Marginal	
Democratic Services				Full	
Housing care	Full				
Investments			Full		
Public toilets				Full	
Economic Development		Minor		Majority	
Halls and Theatre	Market			Majority	

*Solid waste is predominantly funded from a uniform charge targeted rate per Bin, but a portion of the activity for Waste minimisation and part of the contract rate is attributed to City wide public benefit.

User charges are used for services where there is a benefit to an individual. If it is possible to efficiently impose a charge, the council does so, on the basis of either recovering the full cost of the service, the marginal cost added by users, or a rate that the market will pay. The market rate becomes an issue to limit the potential for

charging. It applies in circumstances where the council believes that a charge set too high will reduce use and therefore, diminish the value of the facility to the community, and impose a greater cost on ratepayers. In selecting market rate the council has made a judgement that the community values the existence of the facility and would rather fund it from rates than for it to close.

Explanation of notations in the above table (Still under consideration, will be completed when rates are included)

1. **Full** means that all, or almost all, of the cost of the activity is funded from that particular source.
2. **Availability** means that the cost of having the service available is met from that funding source. For these services council believes that charges can be a major barrier to access for some members of the community. Revenue in these services reflects revenue from programmes, hire of the facility and added value services.
3. **Subsidy** means that a portion of the activity is funded from a government subsidy. In some instances the subsidy makes a relatively minor contribution, but in others, such as roading, the subsidy is a substantial contributor to the cost of the activity. Those subsidies are identified within the individual plan of the activity.
4. **Petrol Tax** is a local government share of the petrol tax levied by central government. It is used to contribute to the costs of road maintenance.
5. **Majority** means the majority of the service is funded from this source. When used in the fees and charges column it reflects the view that the services should be recovered from users but that legislation imposes some constraints which may mean that full recovery is not possible.
6. **Marginal** reflects that the service has a level of public benefit but also recognises that the level of the service required is influenced by the actions or inactions of others. The revenue reflects a contribution to the cost from those parties.
7. **Market** means that the council attempts to set its charges at a level that is affordable for the users and competitive with similar services either within the city or outside the city. It is used where market rates are not sufficient to meet the full costs of the service. The balance is funded from rates.
8. **Residual** indicates that a portion of funds comes from this source. It reflects that in some circumstances there are constraints on council charges, or that the alternative revenue source may include enforcement revenue which is imposed to achieve compliance and may not always cover the costs of enforcement.
9. Licence and enforcement fees can be charged for some services. Licence fees may be set by the council or by regulation, and may not always cover the full costs of the service. Enforcement fees are charged to achieve compliance and do not necessarily meet the full costs of the enforcement activity.