

Guidelines for Burial in a special place

Section 48 of the Burial and Cremation Act 1964 (the Act) states that:

Notwithstanding anything in this Act, a body may be buried in any place, even though that place was not used for burials before the date of the commencement of this Act, if the Minister first certifies in writing that he is satisfied that there are exceptional circumstances which make the burial of that body in that place particularly appropriate and if, where the proposed place of burial is within [a borough or part of the district of a district council which was formerly a borough or part of a borough, the sanction of the Mayor or Chairman, as the case may be] or 2 councillors is obtained.

Essentially this section allows a body to be buried in a special place where the Director of Public Health, acting under delegation from the Minister of Health, is first satisfied that *exceptional circumstances* make the burial in *that place particularly* appropriate. The Act gives no direction as to what circumstances may be considered 'exceptional'. To assist with the determination of such applications and to provide transparency and consistency, the Ministry of Health has formulated these guidelines.

The Burial and Cremation Act specifically excludes the establishment of private burial grounds. Burials in a special place are not available as a means of establishing a private burial ground.

Each application is considered on its own merits based on the material supplied in the application and the health protection officer's report. In submitting an application for burial in a special place, the health protection officer should ensure the required information is provided, either in the application or in the officer's report. The health protection officer should provide advice as to whether, in their view, the application meets the requirements of the Act and a recommendation on whether it should be approved or declined.

Other options

The criteria for a burial in a special place are very strict. Potential applicants should be encouraged to consider other options before proceeding with their application.

1. Burial in an existing cemetery, denominational burial ground, or urupā.
2. Cremated human ashes may be interred or scattered at the site with no requirement for approval from the Ministry of Health. Consultation with appropriate local iwi and/or hāpu representatives may be appropriate as well as consideration of any territorial authority bylaws.
3. Section 46 of the Burial and Cremation Act allows for the burial of any person more than 32 kilometres (in a direct line of sight) away from the nearest cemetery. The person burying the body must give the nearest District Court Judge notice of the burial, specifying the name of the deceased, the supposed cause of death, and the place of burial.
4. A denominational burial ground can be set up under section 31 of the Act. This requires 25 adult members (aged 20 years or over) of the same religious faith to desire land to be set-aside for this purpose.
5. There is provision under the Te Ture Whenua Māori Act 1993 for the establishment of an urupā. Te Puni Kōkiri, the Ministry of Māori Development, is the agency to contact for such an application.

REQUIREMENTS FOR AN APPLICATION

Evidence of exceptional circumstances

The application must clearly demonstrate the exceptional circumstances which make the person eligible for a burial in a special place. 'Exceptional' is defined as 'unusual, not typical, unusually good'. (*Concise Oxford Dictionary 11th edition (revised) 2008*).

The Ministry of Health believes that section 48 of the Act was intended to provide for the burial of public notables whose deeds were of national significance. Therefore, activities which are of national significance may demonstrate exceptional circumstances. An association with the land and related matters must be so special that they equate to exceptional circumstances.

Precedents have included persons that have lived and worked virtually their entire life on the land. However, a long association with the land by itself is not enough, and must be accompanied by other circumstances that make the association with the proposed site exceptional.

Evidence that the place is particularly appropriate

The applications must also show why the proposed burial site is particularly appropriate. This may show a special relationship with the site, that the site is particularly important to the individual or for the burial.

Resource Management Act

The applicant must show that there has been consultation with the territorial authority as to whether a resource consent is required for the burial in terms of the district plan, and assurance that any bylaws and Council policies have been complied with. If a resource consent is required the Ministry will not consider the application until it has evidence that a resource consent has been issued.

Certificate of Title and the Land Information Memorandum

The applicant must show evidence that the proposed burial site will be included in the Certificate of Title by way of caveat as well as the territorial authority's Land Information Memorandum.

Ownership

A history of ownership and written assurances that the family will retain the property is required, for example by placing the land in trust.

Council approvals

If the proposed place of burial is within a city or part of the district of a territorial authority which was formerly a city or borough or part of a city or borough, the sanction of the Mayor or two members of the governing body of the territorial authority (ie the Council) must be obtained.

Referees

An explanation of the deceased's or applicant's exceptional circumstances and special association with the proposed burial site, should be verified by written submissions from family, friends and persons of standing in the community who know or knew the applicant well.

Neighbours

The applicant should demonstrate that there has been consultation with the neighbours whose outlook might be affected by the proposed burial place.

Māori consultation

Evidence of consultation with the appropriate local iwi and/or hāpu

should be provided to confirm there are no unresolved issues for Māori with the proposed burial site.

If the proposed burial site is on Māori land then the views, in writing, must be obtained of any occupier, such as a lessee, and the person or group responsible for administering the Māori land who may be:

- trustee/s appointed by the Māori Land Court – most likely ahu whenua trustee
- agent appointed by the Māori Land Court
- a Māori Land Incorporation.

If there is no person appointed to administer the Māori land then written views must be obtained from owners of the land who can be traced.

Site assessment

1. There must be a description of the proposed burial site as well as accurate plans showing the location of the property and the proposed location of the grave site. Aerial photographs with relevant features marked in permanent ink are very useful.
2. The site should be non-urban.
3. The site should ideally be in a relatively secluded part of a sizeable property.
4. Information on how the grave will be marked and secured should also be given.
5. Access routes for visitors to the site should be indicated.
6. There should be no risk to underground water, no likelihood of inundation, erosion, ground instability or other events that may compromise the integrity of the grave.
7. The assessment should advise whether the proposed burial could cause adverse effect to the health of persons in the vicinity of the proposed burial site.
8. Arrangements for the maintenance of the site should be detailed.
9. A site assessment report from a health protection officer, employed by the local public health unit must confirm the suitability of the proposed site for burial.