**ICOMOS New Zealand: submission to the Ministry of Health on:**

***Consultation Document: Death, Funerals, Burial and Cremation: A Review of the Burial and Cremations Act and related Legislation***

**30 October 2020**

**Introduction**

ICOMOS is an international non-governmental organisation of heritage professionals dedicated to the conservation of the world's historic monuments and sites. The organisation was founded in 1965 as a result of the international adoption of the Charter for the Conservation and Restoration of Monuments and Sites in Venice in the previous year. ICOMOS is UNESCO's principal advisor in matters concerning the conservation and protection of historic monuments and sites. The New Zealand National Committee was established in 1989 and incorporated in 1990.

In 1993, ICOMOS New Zealand published the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. A revised ICOMOS New Zealand Charter was published in September 2010 and is available on the ICOMOS New Zealand website. The heritage conservation principles outlined in the ICOMOS New Zealand Charter are based on a fundamental respect for significant heritage fabric and the intangible values of heritage places. Cemeteries come within the ICOMOS New Zealand Charter 2010 definition of ‘Heritage Place.’

ICOMOS New Zealand has 107 members made up of professionals with a particular interest and expertise in heritage issues, including architects, engineers, heritage advisers, archaeologists, lawyers, and planners. ICOMOS New Zealand members are experienced and qualified heritage professionals, many of whom have worked thousands of hours in New Zealand’s planning system. Many have also worked in heritage overseas.

**Our submission**

**Heritage significance of cemeteries**

Cemeteries and urupā are of heritage significance to New Zealand communities because of the way they connect people to their past, their culture, identity and spirituality.  Cemeteries connect communities to their ancestors and whakapapa and strengthen whānau.  Cemeteries provide educational opportunities – they can teach us about the past and those that came before us, and provide a vehicle for intergenerational storytelling. People of local, national and international significance for their life’s work and contributions are buried in our cemeteries.

Cemeteries can assist communities to celebrate their diversity, and build understanding and respect of different cultures. Cemeteries are often diverse cultural landscapes including designed open spaces, trees and plantings of historical, symbolic, and natural importance, flora and fauna, and built elements of aesthetic, technological and craftsmanship value.  The monuments illustrate past skills and different materials in their construction, and past beliefs in their design and symbolism. Some are artworks in their own right.  The archaeology of cemeteries (both above and below ground) can tell significant stories of development of communities and social changes.  Cemeteries make a valuable contribution to social, cultural and spiritual community wellbeing. Cemeteries also provide recreational values, and sensory experiences.

As well as local authorities and church owners, there are many active community groups in New Zealand who play an important role in caring for and maintaining the heritage values of cemeteries, often with guidance from Councils or heritage professionals on best practice heritage conservation.

**Heritage Protection and Management of Cemeteries**

The heritage significance of cemeteries to communities is recognised to some degree through heritage protection in District Plans (inconsistently across New Zealand) and in the Heritage New Zealand Pouhere Taonga Heritage List. For example, Christchurch City Council schedule a number of cemeteries as Protected Heritage and these are subject to controls for works including repairs, alterations, relocation and demolition.  There are many cemeteries of heritage significance which are not currently identified or protected in District Plans.

**Responses to proposed changes to the Act relevant to cemeteries with heritage values**

**C1.2 Maintenance**

Maintenance is a key heritage conservation process for heritage places, to prevent deterioration and retain cultural heritage values (ICOMOS New Zealand Charter 2010). Maintenance in cemeteries may include repair of grave furniture, new plantings, maintenance of existing plantings including removal and root removal, and locating broken and buried grave furniture.  However, maintenance must be undertaken carefully as it has the potential to damage archaeological features and heritage fabric, losing important information.

There has been significant social and generational change since the date of the Act (1964), which means descendants largely no longer take an active role in visiting and maintaining graves of their ancestors. For example, the Christchurch City Council receives only a handful of requests each year from people wishing to maintain their ancestors’ graves. Because of this societal change, coupled with the lack of clarity over responsibility for headstone maintenance, headstones and plots have deteriorated over time. Cemeteries have long been recognised by ICOMOS NZ as a nation-wide at risk type of heritage place as a result (Heritage At Risk ICOMOS World Report 2008-2010, p.128).

Consequently, ICOMOS NZ supports proposed changes to the Act to clearly confer responsibility for maintenance to Territorial Authorities (TAs).

We note that this would not require Councils to maintain the cemeteries to a specific standard, or to increase funding for maintenance work.  The maintenance standard and resources would be agreed with the community, through processes such as the Annual Plan.

Having responsibility for maintenance sitting clearly with TAs would resolve the situation for some cemeteries of heritage value where currently no one takes responsibility for this key conservation process.  Within the resources available to local councils and communities (eg volunteer labour), the many community wellbeing benefits provided by heritage cemeteries would be able to be maintained or enhanced.

**C1.6 Ministerial Power**

ICOMOS NZ does not consider it appropriate for TAs to approve wholesale removal of headstones in closed cemeteries as this could potentially result in significant loss of irreplaceable heritage and archaeological fabric, values and information for communities - this is particularly the case for those many cemeteries around the country which are not currently protected in District Plans. Instead we consider it would be an appropriate matter for the Environment Court to address as this court has lengthy experience in considering heritage and environmental impacts impartially.

Further, ICOMOS NZ seeks clarification of the proposed process and whether it would include public notification and potentially override relevant District Plan and Heritage New Zealand Pouhere Taonga Act (HNZPT Act) provisions. We consider public notification would be a positive attribute as it would enable community views and values associated with cemeteries to be considered. Conversely, we consider it would be inappropriate for District Plan and HNZPT Act provisions to be overridden as this would not enable adverse impacts on community heritage values and archaeological values to be given proper consideration. The unintended consequence of this could be a severe reduction in many of the community wellbeing benefits that cemeteries currently provide.

**C1.7 Heritage New Zealand Pouhere Taonga Archaeological Provisions**

Cemetery archaeology is a specific area of interest to archaeologists.  The layout and physical fabric of cemeteries and the gravemarkers and furniture in them can tell fascinating stories of development of communities and social changes through health, wealth or events.  The work of the Southern Cemeteries Archaeology project, and the Friends of the Mount Street Cemetery in Wellington, are examples of the role that archaeology plays in telling significant stories and adding data to the knowledge base of these places. In cemeteries, archaeology includes both in-ground elements (including human remains) and above ground elements that predate 1900AD.

ICOMOS NZ notes that the number of pre 1900 graves is comparatively small relative to all burials, therefore limiting the number of plots affected by this requirement.  As outlined above, headstones and plots hold potentially valuable archaeological information and heritage fabric. Without recourse to the authority process under the HNZPT Act there is great risk of damage or loss of archaeological evidence as well as no requirement to record or document archaeological information.

For scheduled or listed heritage items in District Plans, presumably consenting requirements would remain in place and would provide some protection – clarification on this is required.  However, as noted above, there are many cemeteries of heritage value which are not yet protected in District Plans. Additionally, as recording to an archaeological standard (as required through the archaeological authority) is not a common requirement of heritage provisions in District Plans there is an increased likelihood that valuable archaeological information would be lost.

Although removal of the authority requirement would reduce processing times and costs, ICOMOS NZ considers this would not outweigh the reduction in community wellbeing benefits gained by the archaeological recording and information, particularly given the comparatively small number of pre 1900 graves.

In our view the statutory requirements of the HNZPT Act (most notably those in Part 3 around acquiring authorities) should not be seen as a disincentive to engaging archaeologists to help manage historic cemeteries, particularly as Heritage New Zealand can and do issue authorities for the general purposes of managing and maintaining the heritage values of such places (also noting that these have a 5 year lifespan).  This enables cemetery managers to undertake necessary maintenance of cemeteries, including the grave furniture and landscaping, with an archaeologist monitoring the work and recording historic information.  As the authorisation covers all work within the 5 year time period, additional authorities for individual elements of work over this time are not required.

In light of this ICOMOS NZ considers that removing the Heritage New Zealand authority process from the management of historic cemeteries is an unacceptable option due to the valuable and unique heritage information that will inevitably be lost.

**Conclusion**

Changes to the Burial and Cremation Act 1964 are needed to meet the modern demands and issues in the burial and cremation sector, to reflect the increasing cultural diversity of New Zealand communities, and to ensure that our burial and cremation practices become more environmentally sustainable.

However, as outlined in this submission, ICOMOS NZ does not support some of the widespread changes proposed to the Act.  Although changes to clearly confer maintenance responsibility to Territorial Local Authorities are supported, those which would enable TAs to approve wholesale removal of headstones in closed cemeteries or to remove authority requirements are considered to be totally inappropriate. Our reasons and explanation are outlined above.

ICOMOS New Zealand

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