

# Porirua City Council (Pauatahanui Burial Ground) Bill

Local Bill

## Explanatory note

This Bill confirms the vesting in Porirua City Council (the **Council**), and provides for the status, control, and management, of the Pauatahanui Burial Ground (the **Burial Ground**). It also—

- dissolves certain trusts, established by deed in 1856, relating to the Burial Ground; and
- extinguishes certain interests of the Stace family in the Burial Ground; and
- provides for the maintenance, inspection, and records of the Burial Ground.

### *Background*

The Burial Ground is important in the European history of Pauatahanui and of the wider Porirua district. Plots in it were used for burials of members of many of the pioneer families from the period when Pauatahanui was a significant staging post and bustling township.

By a deed of trust dated 6 December 1856 (the **Deed of Trust**), Thomas Hollis Stace conveyed the land that is the Burial Ground to William Bromley, Edward Bolton, Thomas Hollis Stace, William Jones, and James Mitchell on specified trusts (the **Trusts**). The Trusts included trusts for the following purposes:

- to permit a chapel to be built on the land for the religious worship by the Protestant denomination; and
- to permit the chapel to be used as a schoolhouse for the education of the children of the neighbourhood; and
- to permit the land to be used as a public burial ground.

The Deed of Trust also reserved for Thomas Hollis Stace and his heirs and assigns the exclusive right to use part of the Burial Ground as a family plot (the **Stace plot**).

By a deed dated 9 July 1887, the trustees of the Burial Ground amended the Deed of Trust to correct the legal description of the Burial Ground and the Stace plot.

The Burial Ground was subject to enactments dealing with burial and cremation. Those enactments included the Cemeteries Act 1882 and the Cemeteries Act 1908.

The legal arrangements relating to the Burial Ground were created under the deeds system. The Torrens system of land registration was introduced into New Zealand by the Land Transfer Act 1870, and continued by later corresponding Acts. The Land Transfer (Compulsory Registration of Titles) Act 1924 required deeds land to be registered under the Land Transfer Act 1915 (a compilation of the Land Transfer Act 1908 and amendments to it, prepared under the Statutes Compilation Act 1908, and enacted by the Land Transfer Acts Compilation Act 1915).

On 11 May 1936, the District Land Registrar for the Wellington Land Registration District issued for the Burial Ground certificate of title 427/147 (the **Certificate of Title**), under which Frederick Bradey, Harold Richard Tregurtha, and Robert Lorimer Button were seised of an estate in fee simple as managers of the Burial Ground under section 57 of the Cemeteries Act 1908. The certificate of title was limited as to parcels and title, and subject to caveat number 12255 (the **Caveat**). The Caveat protected the interests of the Stace family in relation to the Stace plot.

Managers of the Burial Ground were later appointed by the Minister of Health under the Burial and Cremation Act 1964 (the **Act**), but legal ownership of the Burial Ground was not vested in those managers. The persons recorded on the Certificate of Title are all now deceased, and the land has not been conveyed to new trustees. The Deed of Trust does not contain the power to dispose of the land in any other way.

#### *Current situation*

The Burial Ground is now full for burials apart from certain plots that have been acquired but in which no burial has yet been made, and areas where burials are thought to have occurred, but for which there are no headstones or written records. A declaration under

section 41 of the Act closed the Burial Ground at the close of 3 December 2004 (the **closure**). The control and management of the Burial Ground has been vested in the Council under section 44 of the Act as from 4 June 2004. By virtue of the operation of section 53(2) of the Act, the Burial Ground is vested in the Council. However, despite the vesting of the Burial Ground in the Council, the Burial Ground remains subject to the Trusts, and the Certificate of Title remains subject to the Caveat.

In addition, the Burial Ground has no legal access. The entrance from the Paekakariki Hill Road was closed for reasons of road safety several years ago. Consequently, the only access is via the road leading to St Alban's Church. Although the Church allows its road to be used for access, all parties would prefer to have a legal agreement to this effect. However, because the legal title remains subject to the Caveat, and the land itself remains subject to the Trusts, it would be difficult for the Council to formalise access. Furthermore, because there are no more plots at the Burial Ground that are available for sale, there is no prospect of income with which to fund ongoing maintenance at the Burial Ground.

Pauatahanui residents, descendants and living relatives of people buried in the Burial Ground, the descendants of the original Trustees, the Porirua City Council as controller and manager, and the general community would like to see the Burial Ground cared for and maintained in perpetuity.

The Council has undertaken extensive consultation on the nature and consequences of the ownership of the Burial Ground. The Council, the descendants of the original owners, the living relatives of people buried in the Burial Ground, a significant body of Pauatahanui residents, the former Burial Ground managers, and the general community, all support the purposes of this Bill.

Legislation is the most efficient and effective way to confirm the Council's ownership of the Burial Ground, dissolve the Trusts, extinguish the interests protected by, and require the removal of, the Caveat, and achieve the related objectives of the Council and the community.

The main reasons for promoting this Bill are as follows:

- it is doubtful whether and, if so, how, the interests of the Stace family in relation to the Stace plot could be modified or extinguished on an application to the High Court under the

Charitable Trusts Act 1956, or in the exercise of its inherent jurisdiction; and

- it is desirable to dissolve the Trusts because the Burial Ground is now closed, and control and management of it have been vested in the Council.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill will, if enacted, come into force on the day after the date on which it receives the Royal assent.

### **Part 1 Preliminary provisions**

*Clause 3* states the Bill's purposes.

*Clause 4* is the interpretation clause. It defines various terms used in the Bill.

### **Part 2 Burial Ground**

#### **Subpart 1—Status, control, and management**

*Clause 5* confirms the vesting in the Council of the Burial Ground. It also ensures that if the Minister of Health under section 44 of the Act vests control and management of the Burial Ground in any other individual or body corporate in lieu of the Council,—

- (a) section 53(2) of the Act does not apply; and
- (b) the legal ownership of the Burial Ground remains vested in the Council.

*Clause 6(1)* makes clear how the general provisions on closed burial grounds (as defined by *clause 4*) apply to the Burial Ground. *Clause 6(2)* gives examples of those provisions.

*Clause 7* dissolves the Trusts.

*Clause 8* extinguishes certain interests of the Stace family. Under the Trusts, the Stace family effectively had their own family plot at the Burial Ground. Their interests were protected by the Caveat. However, because the ownership of the Burial Ground has been vested in the Council, and because the Stace family plot is now full

with respect to the burial of bodies, it is desirable to extinguish the interests protected by the Caveat. Extinguishing the interests protected by the Caveat will not prevent the Stace family, after obtaining consent to do so from the controller and manager of the Burial Ground, from interring in the Stace plot ashes of the Stace heirs and assigns.

*Clause 9* preserves the entitlements, etc, of persons of the following kinds:

- (a) any person who purchased before the closure a burial plot—
  - (i) in the Burial Ground; and
  - (ii) in which no burial has yet been made; and
- (b) any person referred to in section 42(1) of the Act; and
- (c) survivors referred to in section 42(2) of the Act.

*Clause 10* ensures that the Burial Ground continues to be called the Pauatahanui Burial Ground.

## Subpart 2—Maintenance, inspection, and records

*Clause 11* ensures that *clauses 12 and 13* apply only while the Council is the controller and manager of the Burial Ground (either alone, or with another individual or body corporate).

*Clause 12* empowers and requires the Council to maintain the Burial Ground. Among other things, the clause requires the Council to—

- meet any maintenance costs associated with the Burial Ground; and
- take all reasonably practicable steps to foster community involvement in the upkeep and beautification of the Burial Ground.

*Clause 13* ensures that section 52 of the Act, dealing with the inspection of cemeteries, applies to the Council in respect of the Burial Ground as if it were a cemetery. This extension of the application of section 52 enables an employee of the Public Service appointed for the purpose by the Minister of Health, or any person designated as a Health Protection Officer under the Health Act 1956, to—

- inspect the Burial Ground and ascertain its condition, examine the accounts of receipts and expenditure in relation to it, and ascertain whether any regulations or bylaws made in relation to it are being complied with; and

- serve a written notice on the Council requiring it to remedy, at its own expense, any specified condition of neglect or want of repair in the Burial Ground; and
- report neglect or want of repair in the Burial Ground to the Minister of Health, so as to enable that Minister to take steps to prevent desecration.

*Clause 14(1) to (3)* specify the Council's obligations in respect of records relating to the Burial Ground. *Clause 14(4)* requires records of that kind to be transferred to the Council.

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*Hon Luamanuvao Winnie Laban*

## **Porirua City Council (Pauatahanui Burial Ground) Bill**

Local Bill

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<b>Pauatahanui Burial Ground</b>	

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Porirua City Council (Pauatahanui Burial Ground) Act **2007**.
- 2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.
- Part 1**  
**Preliminary provisions**
- 3 Purposes of this Act** 10  
The purposes of this Act are to—
- (a) confirm the vesting of the Burial Ground in the Council; and
  - (b) dissolve certain Trusts relating to the Burial Ground; and 15
  - (c) extinguish certain interests of the Stace family in the Burial Ground; and
  - (d) preserve specified entitlements, including the rights of persons who have purchased before the closure of the Burial Ground plots of land— 20
    - (i) in the Burial Ground; and
    - (ii) in which no burial has yet been made; and
  - (e) provide for the maintenance, inspection, and records of the Burial Ground.
- 4 Interpretation** 25  
In this Act, unless the context otherwise requires,—
- Act** means the Burial and Cremation Act 1964
- Burial Ground** means the burial ground that is—
- (a) known as, and under **section 10** continues to be called, the Pauatahanui Burial Ground; and 30
  - (b) the land described in the **Schedule**; and
  - (c) a closed burial ground
- Burial Ground closing order** means the notice published—
- (a) in respect of the Burial Ground; and
  - (b) under sections 41(1)(a) and 44 of the Act; and 35



- (c) on page 1534 of the *Gazette* of 3 June 2004
- closure**, in relation to the Burial Ground, means the time (namely the close of 3 December 2004) at which that ground was closed by the Burial Ground closing order
- controller and manager**, in relation to the Burial Ground, means— 5
- (a) the Council, by virtue of the Burial Ground closing order:
- (b) any other individual or body corporate in lieu of or in addition to the Council, or any other individual or body corporate, in which control and management is vested under section 44 of the Act 10
- Council** means the Porirua City Council
- Deed of Trust** means the Deed of Trust dated 6 December 1856 under which Thomas Hollis Stace conveyed the land that is the Burial Ground, on the Trusts set out in that Deed, to William Bromley, Edward Bolton, Thomas Hollis Stace, William Jones, and James Mitchell 15
- general provisions on closed burial grounds** means the provisions of the Act, and of any regulations made under the Act, that relate to closed burial grounds 20
- Minister** means the Minister of Health
- Registrar** means the Registrar-General of Land
- Stace heirs and assigns** means the heirs and assigns of Thomas Hollis Stace 25
- Trusts** means the trusts established by, and modified by amendments to, the Deed of Trust.

## Part 2 Burial Ground

- Subpart 1—Status, control, and management 30
- 5 Confirmation of vesting of Burial Ground in Council**
- (1) The vesting of the Burial Ground in the Council, effected by section 53(2) of the Act and the Burial Ground closing order, is confirmed.

- (2) If the Minister under section 44 of the Act vests the control and management of the Burial Ground in any individual or body corporate in lieu of the Council,—
- (a) section 53(2) of the Act does not apply; and
  - (b) the Burial Ground remains vested in the Council. 5
- (3) Section 99A of the Land Transfer Act 1952 applies to the vesting confirmed by this section of the Burial Ground in the Council and, in complying with that section by making entries in the register (as defined in section 2 of that Act) and otherwise giving effect to section 53(2) of the Act, the Registrar must— 10
- (a) remove caveat number 12255 (interests protected by which are extinguished by **section 8**) from the register (as so defined) relating to the Burial Ground; and
  - (b) issue a computer freehold register for the land that is the Burial Ground. 15

## **6 Application to Burial Ground of general provisions on closed burial grounds**

- (1) The general provisions on closed burial grounds apply to the Burial Ground subject to— 20
- (a) **section 5(2)(a)** (which in specified circumstances prevents the application to the Burial Ground of section 53(2) of the Act); and
  - (b) any other provision of this Act that limits or affects their application to it. 25
- (2) Examples of the general provisions on closed burial grounds include the provisions of the following enactments:
- (a) sections 20, 42, 44, 45 to 45C, and 51 of the Act; and
  - (b) Burial and Cremation (Removal of Monuments and Tablets) Regulations 1967. 30
- (3) This section does not limit or affect the application to the Burial Ground, in accordance with **sections 12(1), 13, and 14(2)**, of sections 8, 9, 50, and 52 of the Act (which relate to cemeteries).

## **7 Dissolution of Trusts** 35

The Trusts are dissolved.

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- 8 Interests of Stace heirs and assigns under caveat extinguished**
- (1) The interests of the Stace heirs and assigns protected by caveat number 12255 are extinguished.
- (2) Nothing in this Act affects existing burials in the Burial Ground in relation to the Stace heirs and assigns. 5
- (3) The Stace heirs and assigns may, after obtaining the controller and manager’s consent for them to do so, inter ashes of the Stace heirs and assigns in that part of the Burial Ground where existing burials of those heirs and assigns have already been made. 10
- (4) The controller and manager must not unreasonably withhold consent of that kind.
- (5) **Subsection (3)** overrides **subsection (1)**.
- 9 Entitlements of purchasers, survivors, etc, saved** 15
- (1) Nothing in this Act affects any entitlement, interest, right, or title—
- (a) of a person of a kind specified in **subsection (2)**; and
- (b) recognised or protected by the Act, the Burial Ground closing order, or both. 20
- (2) The kinds of persons referred to in **subsection (1)(a)** are—
- (a) any person who purchased before the closure a burial plot—
- (i) in the Burial Ground; and
- (ii) in which no burial has yet been made; and 25
- (b) any person referred to in section 42(1) of the Act; and
- (c) survivors referred to in section 42(2) of the Act.
- 10 Burial Ground continues to be called Pauatahanui Burial Ground**
- The Burial Ground continues to be called the Pauatahanui Burial Ground. 30

Subpart 2—Maintenance, inspection, and records

- 11 Sections 12 and 13 apply only while Council is controller and manager**  
**Sections 12 and 13** apply only while the control and management of the Burial Ground is vested in the Council (either alone, or with any other individual or body corporate). 5
- 12 Maintenance of Burial Ground**
- (1) Sections 8 and 9 of the Act (which relate to a local authority managing, and digging, making, erecting, placing, and maintaining graves, vaults, monuments, and tablets in, a cemetery) apply in respect of the Burial Ground as if it were a cemetery. 10
- (2) The Council must meet any maintenance costs associated with the Burial Ground.
- (3) The Council must take all reasonably practicable steps to foster community involvement in the upkeep and beautification of the Burial Ground. 15
- (4) The Council must consult with the New Zealand Historic Places Trust before the Council undertakes any major repairs or major earthworks at the Burial Ground.
- 13 Inspection of Burial Ground** 20  
Section 52 of the Act (which relates to the inspection of cemeteries) applies to the Council in respect of the Burial Ground as if it were a cemetery.
- 14 Records relating to Burial Ground**
- (1) The Council is responsible for the safe custody of all records relating to the history and management of the Burial Ground. 25
- (2) Section 50 of the Act (which relates to the registration of burials within a cemetery) applies to the Council in respect of the Burial Ground as if it were a cemetery.
- (3) As soon as practicable after this Act comes into force, the Council must cause to be compiled and maintained as complete a record as practicable of the names and other identifying details of all persons known to be persons who have purchased, before the closure, burial plots in the Burial Ground in which no burials have been made. 30 35

- (4) As soon as reasonably practicable after the commencement of this Act, all records relating to the Burial Ground (including the Deed of Trust, amendments to the Deed of Trust, financial records, and burial records) must be transferred to the Council.
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**Schedule  
Pauatahanui Burial Ground**

All that piece of land containing 3179 square metres more or less  
being section 1 on SO Plan 336355 Wellington Registry