# Guidelines for applying for a burial in a special place

# Introduction

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 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 2 members of the governing body of the territorial authority is obtained.”*

In summary, the Act specifically excludes the establishment of private burial grounds; however, it does allow for a body to be buried in a special place in exceptional circumstances (section 48). In practice, this is when the Director of Public Health, acting under delegation from the Minister of Health, is 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, these guidelines have been developed.

# Other options

In addition to burials in special places, there are some other options available.

1. Section 46 of the 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.
2. A denominational burial ground can be set up under section 31 of the Act. This requires at least 25 adult members (aged 20 years or over) of the same religious faith to desire land to be set-aside for this purpose.
3. There is provision under the Te Ture Whenua Māori Act 1993 for the establishment of an urupā. Te Puni Kōkiri, is the government agency to contact for such an application.
4. Cremation: there are no legislative requirements administered by the Ministry of Health relating to the disposal of cremated human ashes so these may be interred or scattered at the site. However, permission should always be sought from the landowners before disposing of ashes. Consultation with the appropriate local iwi and/or hāpu representatives should be undertaken before any disposal into waterways. The local council may also have bylaws.

# Requirements for an application

Applicants should submit their applications to their local office of National Public Health Service. Each application for burial in a special place is considered on its own merits based on the information provided in the application, and the accompanying report provided by a local health protection officer.

When providing the application for burial in a special place, the health protection officer should ensure the following information is provided either in the application or in their accompanying report. A clear recommendation on the application should also be included by the health protection officer.

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| ***Evidence of exceptional circumstances*** | The application must clearly state the applicant’s association with the land and demonstrate the exceptional circumstances which make the burial particularly appropriate at that site.  ‘Exceptional’ is defined as unusual, not typical, unusually good, outstanding *(Concise Oxford Dictionary 1990).*  Section 48 of the Act is intended to provide for the burial of public notables whose deeds are of national significance. Therefore, an association with the land and/or activities which are of national significance will demonstrate exceptional circumstances.  Where applications relate to an association with the land, the deceased should have had a lengthy, specific, and personal association with the proposed burial site. The association 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 in its own right, and must be accompanied by other circumstances that make the association with the land being exceptional. |
| 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, it must be obtained before the application can be considered. |
| 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, arrangements such as gifting the land to a 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 (i.e., 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 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. |
| ***Consultation with Māori and Iwi*** | 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:   1. trustee/s appointed by the Māori Land Court – most likely ahu whenua trustee 2. an agent appointed by the Māori Land Court 3. 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. |