

SELWYN DISTRICT COUNCIL BY-LAW RELATING TO WATER RACES

TITLE: this bylaw is known as the Selwyn District Council Water Race Bylaw 2008

1. INTRODUCTION

1.1 This bylaw is made by the Selwyn District Council in exercise of the powers and authority vested in the Council by Section 146 (b)(i) of the Local Government Act 2002.

1.2 The primary purpose of the water race system is to provide drinking water for farm animals. Some properties also use the water race system as a drinking water supply. Secondary purposes of the water race system are for irrigation (when permitted by the Council), fire fighting, and enhancement of landscape and ecological values.

The activities governed by this Bylaw, including the taking, use, damming and diversion of water, may also be subject to regional rules in the Waimakariri River Regional Plan and the Proposed Natural Resources Regional Plan for Canterbury. Compliance with this Bylaw does not imply compliance with regional rules, and a resource consent may be required.

Land use close to water races that may contaminate water quality and other activities involving discharges into water races are subject to rules in the Proposed Natural Resources Regional Plan for Canterbury, and the Selwyn District Plan. Resource consent may be required for those activities.

2. COMMENCEMENT

2.1. This bylaw comes into force on the xx day of xx 2008

3. REPEAL

3.1. From the day this bylaw comes into force, The Selwyn District Council Water Race By-law 2000 is hereby repealed.

4. APPLICATION OF BYLAW

This bylaw applies throughout Selwyn District.

5. INTERPRETATION

References to a repealed enactment include its replacement.

For the purpose of this bylaw, unless the context otherwise requires;

‘Agent’ means any person or body authorised by the Council to maintain and administer the water race system

“Accessories” means all objects used in conjunction with a Water Race and includes, where the context so requires, all weirs, gates and valves used for regulating flow, and flow metering equipment

“Bylaw” means this bylaw as altered, varied or amended from time to time

“Commercial irrigation” means irrigation using water supplied from a water race for a fee paid to the Council

“Council” means the Selwyn District Council or any person authorised to exercise the authority of the Council, or its agent

“Council water race” means a water race that is on land under the control of the Council

“District” means the Selwyn District

“Existing Use” means any right to take water from a Water Race where;

(a) that right was lawfully established at the commencement of this bylaw; and

(b) the quantity of water taken and use of the water is the same or similar to that which existed before the commencement of this bylaw.

“Farm stock water race” means a water race on land that is not under control of the Council.

“Maintenance” means cleaning and maintaining the water race system in accordance with the Water Race Management Plan

“Non commercial irrigation” means watering a residential garden or shelter belt of trees using water from a water race

“Owner or Occupier” means the owner or occupier of land recorded as such in the valuation roll of the district

“Rural agricultural drinking-water supply” has the same meaning as in the Health [Drinking Water] Amendment Act 2008

“Water race” has the same meaning as in the Local Government Act 2002

“Water Race Management Plan” means the Water Race Management Plan authorised by the Council and altered or amended by the Council from time to time. It is available from the Council on request

“Water Race Policy” means the policies set out in the Water Race Management Plan

“Water Race System” means the system of water races having its origins at;

Earlys Intake on the Rakaia River, grid reference NZMS 260 L35:2413 -5732, and

Lower Rakaia Intake on the Rakaia River, grid reference NZMS 260 L35: 2436-5717, and

Paparua Intake located on the Waimakariri River, grid reference NZMS 260 L35: 2453-5748, and

Lower Kowai Intake located on the Kowai River, grid reference NZMS 260 L35: 1781-6347, and

Upper Kowai Intake located on the Kowai River, grid reference NZMS 260 L35: 1687-6299, and

Waimakairi Gorge Intake located on the Waimakariri River, grid reference NZMS 260 L35: 3297-6054, and

Glentunnel Intake located on the Selwyn River, grid reference NZMS 260 L35: 2479-6478, and

Haldon Intake, located on the Hororata River, grid reference NZMS 260 L35: 2429-5737, and

Selwyn Intake located on the Selwyn River, grid reference NZMS 260 L35: 2425-5746,

and any other source of supply from which the Council may take water for water races, including water races and any tail race, branch, artificial or natural channel connected to a water race and channels which are wholly or partially supplied with water from a water race, other than those channels into which water is spilled when that water is no longer required for operation of the water race system.

6. RIGHT TO TAKE WATER

6.1 No person may, whether directly or indirectly, take, divert or use any water in or from a Water Race except;

(a) Pursuant to an existing use, or

(b) with the written consent of the Council, granted under this bylaw or any other bylaw; and

(c) Upon the payment of annual charges that may be determined from time to time by the Council: or

(d) In the case of an emergency, for fire fighting.

6.2 Any person who wishes to take water from a water race may apply to the Council for a permit to take water. Such application;

(a) Must be in writing, and be accompanied by the prescribed application fee.

(b) Must describe with sufficient particularity:

(i) The applicant

- (ii) The land to be served by the water taken
- (ii) The Water Race from which water will be taken
- (iii) The purpose or purposes for which water will be taken
- (iv) The method (such as pipe, open drain or other method) by which water will be taken
- (v) The place or places in the Water Race from which water will be taken.

6.3 Where construction works are proposed to enable water to be taken, the application must be accompanied by plans and specifications which adequately describe the proposed work.

6.4 If the Water Race from which water is to be taken is not located on the applicant's land, the application must be accompanied by written evidence of the consent of the owner or occupier of the land on which the water race is located.

6.5 Within 15 working days of receipt of an application the Council will, in writing, either:

- (a) Decline or defer the application, and give reasons for its decision, or
- (b) Grant the application, with or without conditions.

6.6 Conditions may include, but are not limited to, conditions:

- (a) Requiring the supervision of construction works by the Council with the cost of such supervision to met by the applicant;
- (b) Imposing construction practices or specifications;
- (c) Requiring the use of contractors approved by the Council, at the applicant's expense, in respect of any work affecting a public road;
- (d) Requiring additional work to be undertaken if the Council considers such work necessary for the protection of the Water Race, other water race users, or members of the public;
- (e) Limiting the quantity of water which may be taken and/or the times at which water may be taken;
- (f) Limiting the purposes for which water may be taken;
- (g) Specifying the place or places from which water may be taken;
- (h) Requiring the installation of Accessories, at the applicant's expense, or

- (i) Requiring payment of fees.
- 6.7 The applicant may object to any decision of the Council made under this bylaw by giving notice in writing to the Council. Such notice must set out the grounds of the objection. Within 20 working days of receiving a notice of objection, the Council will convene a hearing at which the objection will be heard. Not less than 5 working days notice in writing of the time and place of the hearing will be given to the objector. After hearing the objection the Council may:
- (a) Confirm the original decision; or
 - (b) Reverse the original decision; and/or
 - (c) Impose new or varied conditions.
- 6.8 A Consent to take water from a water race, when granted, runs with the land described in the application and binds successors in title to that land.
- 6.9 **Irrigation**
- 6.10 Upon written approval of the Council, water may be taken from water races for non-commercial irrigation of domestic gardens, provided;
- (a) no more than 4,000 litres of water is taken per day,
 - (b) water is taken in accordance with the water race policy, and
 - (c) the application fee as determined from time to time is paid.
- 6.11 Upon written approval of the Council, water may be taken from water races for non-commercial irrigation of shelter belts, provided;
- (a) no more than 4,000 litres of water is taken per day,
 - (b) water is taken in accordance with the water race policy, and
 - (c) the application fee as determined from time to time is paid.
- 7.3 Upon written approval of the Council, water may be taken for commercial irrigation from water races in the Paparua Scheme that have been designated as irrigation water races or combined stock water and irrigation water races.

8. **Emergency**

- 8.1 In the case of a fire emergency, water may be taken from water races for fire fighting purposes.

9 **PROHIBITED USES**

The following uses of a water race are prohibited:

- 9.1 Bathing or washing in a water race.

- 9.2 Allowing domestic fowl, be they water-fowl or otherwise, into or on a water race.
- 9.3 Allowing chemicals, nutrients, or backflow from irrigation equipment to enter a water race
- 9.4 Allowing animals to enter a water race, except that a drinking station may be provided outside the water race.
- 9.5 Carrying out any activity on land or in any building or yard which contaminates or the water in the water race.
- 9.6 Obstructing the flow of water in the water race by any means whatsoever.
- 9.7 Allowing or causing any animal or vehicle to enter or cross a water race except at bridges, culverts or crossing places provided by the Council or constructed with the Council's written approval.
- 9.8 Allowing or causing any part of any tree or plant or fence to fall into or remain in a water race.
- 9.9 Taking or diverting water from a water race without the prior written consent of the Council.
- 9.10 Allowing to water from a water race to be wasted by failing to adequately maintain or repair any pipe or other apparatus.
- 9.11 Interfering with any regulating gate or other apparatus or doing anything which may cause the supply of water from a water race to be increased or decreased without the written authorisation of the Council.
- 9.12 Permitting a person who does not pay water race rates to take water from a water race.
- 9.13 Widening or deepening any water race or altering the course of any water race without the written consent of the Council.
- 9.14 Permitting or causing any Statutory Nuisance as defined under Section 29 of the Health Act 1956.
- 9.15 Obstructing any crossing point over a water race.
- 9.16 Removing, displacing, altering, damaging or interfering with any bank, dam, sluice, flume, bridge, gauge, meter, reservoir, pipe, or other work or thing used in supplying or distributing water from any water race.
- 9.17 Disturbing the ground so as to uncover any culverts belonging to any water race or lengthening or decreasing the length of any culvert without the written authority of the Council.
- 9.18 Making any structure over, in, or under a water race unless approved by the Council.

- 9.19 Sowing, planting, or allowing to grow any tree, hedge, shrub or other plant of any kind, within a distance of 5 metres of either side of a water race except:
- (a) Crops and pasture are permitted; and
 - (b) Shrubs or plants forming any part of a live fence and maintained to less than 1.5 metres in height may be sown or planted on one side of a water race only, at a distance of not less than 1 metre from the edge of the water race.
 - (c) A strip, at least 5 metres wide, must be left unplanted adjacent to one edge of the water race to enable access to the water race for machinery used for cleaning.
 - (d) As otherwise approved by the Council.
- 9.20 Erecting any building or structure of any kind or size within ten metres of either side of any water race without the written authorisation of the Council.
- 9.21 Discharging animal effluent or agricultural fertiliser within 10 metres of a water race.

10. COUNCIL RESPONSIBILITIES

- 10.1 Notwithstanding anything to the contrary in this bylaw, the Council is responsible for the maintenance and repair of:
- (a) The Water Races classified as Council water races and listed in Plan 005/000/WR (Selwyn), 006/000/WR (Malvern), 007/000/WR (Paparua), 008/000/WR (Ellesmere),
 - (b) Accessories located within any of the water races listed in Plans 001/000/WR (Selwyn), 002/000/WR (Malvern), 003/000/WR (Paparua), 004/000/WR (Ellesmere),
 - (c) Any weir, gate, or valve located in any water race where more than one property is served by the water race downstream of that weir, gate or valve.
- 10.2 Except as provided in clause 10.1, the cost of maintaining and repairing any water race or accessory is the responsibility, as the circumstances require, of either:
- (a) the owner or occupier of the land within which the water race or accessory is located; or
 - (b) where the water race or accessory is located within a road or a reserve, the owner or occupier of the land which is contiguous to that road or reserve; or
 - (c) where the water race or accessory is located on or about the common boundary between land in different ownership, the owners of the land in equal shares.

10.3 The person nominated in 10.2 is responsible for the regular inspection, repair, maintenance, and cleaning of the relevant section of the water race to a standard sufficient to ensure that:

- (a) Any obstruction to the free flow of water along the water race is removed as soon as is reasonably practicable;
- (b) As far as is practicable, no water is wasted by seepage or otherwise;
- (c) Continuity of supply and free flow of water downstream is maintained at all times.

11. CLEANING

11.1 Farm Stockwater Race Cleaning

Owners or Occupiers of land through which a farm stockwater race runs must, at their own cost:

- (a) Keep the water race and its banks and sides in good order and condition and free from silt, weeds, vegetation of all kinds, and all other rubbish and obstructions of all kinds, and
- (b) Keep and maintain the water race and its sides and banks in such a condition as to prevent any overflow, leak, or wastage of water.

11.2 Other Water Race Cleaning

Council water races are cleaned by the Council.

11.3 Removal of Debris

11.4 After a water race is cleaned, owners or occupiers of land through which that water race runs or land adjacent to the water race must, without delay, and at their own cost, remove from both sides of the water race all matter cleaned from the water race, in such a manner and to such a distance as necessary to:

- (a) prevent the matter from re-entering the water race; and
- (b) allow access to the water race by machinery used to clean the water race.

11.5 Maintaining, Cleaning and/or Improving the Races

11.6 When the Council clears, cleans, renovates or improves any part of a water race or any land adjoining a water race, it may deposit any matter removed on any part of the land adjacent to the water race, except where the land is a formed public road.

11.7 All such matter deposited by the Council must be placed in such a manner as to prevent the matter re-entering the water race and to allow access to the water race by machinery used for maintenance.

- 11.8 If material cleaned from a water race is to be deposited in an area where grass is regularly mown, the Council will notify the owner or occupier of the land 48 hours prior to cleaning work being commenced,
- 11.9 Material cleaned from Council water races adjacent to a road and deposited in an area of the road verge which is regularly mown will be removed for a length of 50 metres. Removal of any additional material is at the cost of the owner or occupier of the land.

11.10 Failure to Repair or Clean a Water Race

- 11.11 Pursuant to s.182 of the Local Government Act 2002, if an owner or occupier of land fails to comply with any provision of this bylaw, having been required to do so in writing by the Council, the Council may enter onto the land, make good such failure, and charge the owner or occupier for any costs incurred.
- 11.12 Notwithstanding 11.11, if following a complaint of lack of water or flooding, the Council discovers an obstruction which is capable of an immediate remedy, the Council may, without notice to the owner or occupier of the land upon which the obstruction is located:
- (a) Forthwith remove that obstruction; and
 - (b) Require the owner or occupier of that land to pay an "obstruction removal fee" the amount of which may be prescribed by the Council from time to time.
 - (c) An obstruction removal fee when charged is a debt due from the owner or occupier of the land and the Council may take action to recover such debt without further notice, if the debt remains unpaid after 1 calendar month.

12. DIVERTING WATER

- 12.1 The Council may grant permission to divert water from a water race to a pond or reservoir, provided that:
- 12.2 No person may divert water from a water race unless the Council has issued a permit to do so in writing. Such a permit may be revoked by the Council after giving three months notice of its intention to do so.
- 12.3 The bottom and edges of the pond or reservoir must be watertight and lined with impervious material.
- 12.4 The intake and outlet of the pond or reservoir must be able to be shut off as required to ensure compliance with water restrictions or resource consent conditions.
- 12.5 An outfall must be provided from the pond or reservoir such that any overflow flows back to the water race, at the same water level as the water race.

- 12.6 The Council may impose conditions restricting the area, volume or depth of any pond or reservoir.
- 12.7 No pond or reservoir may cause any reduction in water flow in the water race from which water is diverted.
- 12.8 No person may construct a dam to raise the water level in the water race for the purpose of creating a pond or reservoir.

13 EXISTING USES

- 13.1 If, at the date this bylaw comes into force there are obstructions, including but not limited to;
- (a) Trees, hedges, other plants or shrubs of any kind, growing or dead, in the form or nature of stumps or otherwise, situated contrary to the provisions of this bylaw and irrespective of how, when or by what means they came to be there, or
 - (b) Structures, buildings, yards or ponds which are situated contrary to the provisions of this bylaw, and
- 13.2 If, in the opinion of the Council, any such obstruction interferes with the flow of the water in any water race, the Council may require the owner or occupier of the land on which the obstruction is located to remove such obstruction by giving notice in writing of such requirement.
- 13.3 An owner or occupier who objects to a requirement to remove an obstruction will be given an opportunity to be heard by the Council regarding that objection.
- 13.4 If, having heard the objection, the Council confirms its opinion that the obstruction must be removed, it will notify the owner or occupier accordingly and will consider whether compensation is payable to the owner or occupier.
- 13.5 If, after an objection has been heard and the Council has given notice in accordance with 13.4, an owner or occupier fails to remove an obstruction within a reasonable timeframe, 11.11 applies.

14. EXTRA OR ABNORMAL SUPPLIES

The Council may, at its discretion, grant an extra supply of water from a water race for special purposes, including fire fighting, or for purposes not otherwise authorised by this bylaw, at a cost to be established by the Council at the time of an application for such extra supply. Such cost may be varied from time to time.

15. POWERS OF THE COUNCIL

- 15.1 The Council may, pursuant to the powers vested in it under the Local Government Rating Act 2002, the Local Government Act 1974 and the Local Government Act 2002, vary, alter, reduce,

increase or remove charges and rates levied for the maintenance and operation of the water race system.

- 15.2 The Council may alter the basis or manner or scale on which any or all such charges or rates are to be assessed as it sees fit in accordance with the powers vested in it.
- 15.3 The Council may impose restrictions on taking water from time to time.
- 15.4 A person lawfully entitled to take water from a water race is not required to pay any charge for taking the water for stock drinking water purposes.
- 15.5 Where a person is lawfully entitled to take water from a water race for any purpose other than for stock drinking water, including but not limited to irrigation, the Council may impose a charge.
- 15.6 Nothing in this bylaw limits the entitlement of the Council to levy a rate to recover the cost incurred in maintaining and operating any water race.
- 15.7 The Council may, at any time and from time to time, set or vary by ordinary resolution, application fees, obstruction removal fees, and charges for taking water for purposes other than stock drinking water.
- 15.8 The Council may perform its obligations and exercise its rights under these bylaws or otherwise in relation to the water race system through its nominated agents, employees or contractors, or the Agent, as the Council determines from time to time.

16. BREACHES OF THIS BYLAW

Every person commits an offence who -

- 16.1 Defaults in payment of any rate imposed on their land in respect of the supply of stock water or irrigation water
- 16.2 Fails to do or perform any act, or thing, that he or she is required to do by these bylaws
- 16.3 Permits, allows, or does, any of the acts that are prohibited in this bylaw
- 16.4 Fails to comply with his or her water supply agreement with the Council
- 16.6 Breaches this bylaw.

17. PENALTIES

- 17.1 Every person who contravenes this bylaw is liable to a fine not exceeding \$20,000 or other such amount as may be provided for under the Local Government Act 2002.
- 17.2 In addition to any penalty imposed by any court for a breach of this bylaw, the Council may sue for and recover from any person, the cost of damage done or caused to a water race or associated works, or in respect of any water unlawfully taken or diverted or wasted or lost due to any failure to comply with this bylaw.

18. SAVINGS

- 18.1 Nothing in this bylaw is an undertaking or guarantee by the Council that it will provide water in any water race either at all, or to any quantity or to any specified quality.
- 18.2 Nothing in this bylaw renders the Council responsible or liable to any person or body for the total or partial failure of any water supply from whatever cause such failure may arise.

The common seal of the

SELWYN DISTRICT COUNCIL

Was hereunto affixed in

The presence of:

Mayor

Chief Executive