

## REPORT

**TO:** Chief Executive  
**FOR:** Council Meeting – 14 February 2018  
**FROM:** Asset Manager – Water Services  
**DATE:** 5 February 2018  
**SUBJECT:** Review of Water Race Bylaw 2008

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### 1. RECOMMENDATION

That the Council:

- (a) Approve the adoption, for the purposes of public consultation, the attached revised form of water race bylaw (the "Amended Bylaw") and corresponding statement of proposal.
- (b) Use the special consultative procedure in respect of the Amended Bylaw in accordance with section 156(1) of the Local Government Act 2002 (the "Act").
- (c) Appoint a sub-committee consisting of Councillors X and Y and supported by Council Staff ("Sub-Committee") to consider submissions on the Amended Bylaw and report back to Council at the 18 April 2018 Council meeting for adoption of the Amended Bylaw.

### 2. PURPOSE

The purpose of this report is to:

- a) Present the Amended Bylaw for consideration and seek Council approval of the special consultative procedure necessary to amend the Water Race Bylaw 2008 (the "**Existing Bylaw**") so that it is in the form of the Amended Bylaw.
- b) Recommend the appointment of the Sub-Committee supported by Council staff to hear and consider any submissions made on the Amended Bylaw.

### 3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

The intention to review the Existing Bylaw has been assessed against the Council's Significance and Engagement Policy. The Existing Bylaw and the Amended Bylaw are of significant interest to the public as they potentially affect a strategic asset (being the Council's water race network). It is therefore appropriate to adopt the special consultative procedure in relation to the review of the Existing Bylaw and the adoption of the Amended Bylaw.

#### **4. HISTORY/BACKGROUND**

Council adopted the Existing Bylaw on 13 September 2000 as the *Water Race Bylaw 2000*. The Existing Bylaw was reviewed and renamed the *Water Race Bylaw 2008* by the Council on 11 June 2008.

The Water Race Committee agreed to review the Water Race Bylaw 2008 on 12 June 2017.

The Asset Manager Water Services presented the form of Amended Bylaw to the Water Race Committee at the 14 August 2017 meeting. The Water Race Committee proposed a number of suggested amendments to the originally proposed form of Amended Bylaw. The Water Race Committee's requested changes were considered, and where appropriate, implemented as part of the legal review of the Amended Bylaw by Council's solicitors.

At the Water Race Committee meeting on 9 October 2017 the Water Race Committee supported the Amended Bylaw to go to Council.

#### **5. PROPOSAL**

Under section 159 of the Act, Council is required to review an existing bylaw within ten (10) years of its last review. The Council must therefore review the Existing Bylaw as a statutory requirement of the Act.

The Existing Bylaw has operated well and without major issue since 2008. Therefore, the Amended Bylaw is largely the same as the Existing Bylaw. However, Council staff considered the bylaw review process as an opportune time to address some minor issues that have arisen in respect of the water race network since 2008, and to make various general improvements to the Existing Bylaw where possible.

Both Council staff and the Water Race Committee considered the Existing Bylaw and made a number of suggested amendments. These proposed amendments included a range of technical amendments to terminology, references, definitions and the scope of the application of various provisions of the Existing Bylaw. These amendments were then considered by Council's solicitors, and where appropriate, included in the Amended Bylaw. The legal review process also included a review of the Amended Bylaw to ensure that it reflects current statutory requirements and that the controls included in the Existing Bylaw were still reasonable and necessary.

For ease of reference, a summary of the key changes from the Existing Bylaw is attached as Appendix Four to this Report.

#### **6. OPTIONS**

As part of the special consultative procedure, a Statement of Proposal and Summaries of Information for the Bylaw need to accompany the release of the Amended Bylaw detailing the nature, reasons, statutory requirements, benefits/costs, options, and the consultation and submissions process pertaining to the Amended Bylaw. This enables the public to be fully informed about the process

leading to the final adoption of the Amended Bylaw. The Statement of Proposal for the proposed form of Amended Bylaw is attached to this report (Appendix Five).

The Statement of Proposal details the options available to Council in reviewing the Existing Bylaw.

Options available to Council:

Option	Advantages	Disadvantages
<b>Option 1 – Do nothing / review but make no amendments to Existing Bylaw</b>	<ul style="list-style-type: none"> <li>• Failing to review the Existing Bylaw would breach the statutory requirement of a ten-year review.</li> <li>• A failure to review the current bylaw by 11 June 2018 will result in a lapse of the Existing Bylaw by 11 June 2020</li> <li>• Section 160(3) of the Act requires a special consultative procedure in respect of any Council proposal (following bylaw review) that a bylaw concerning a matter of significant interest to the public <u>not</u> be amended</li> <li>• Any operational issues and outdated practices arising from the Existing Bylaw that are adversely affecting the community will not be addressed</li> <li>• Not considered a reasonably practicable option in accordance with section 77(1)(a) of the Act</li> </ul>	
<b>Option 2 – Revoke the Existing Bylaw (and do nothing further)</b>	<ul style="list-style-type: none"> <li>• Reduces Council's enforcement requirements</li> </ul>	<ul style="list-style-type: none"> <li>• The Council will have reduced ability to protect and regulate the water race system</li> <li>• The bylaw review process has indicated that the Existing Bylaw is, by and large, working well (subject to some minor operational and technical changes)</li> <li>• Not considered a reasonably practicable option in accordance with section 77(1)(a) of the Act</li> </ul>
<b>Option 3 – Review and amend the Existing Bylaw</b>	<ul style="list-style-type: none"> <li>• Updates the Existing Bylaw for clarity and ensures that the Amended Bylaw addresses any key problems and complies with the relevant legislation</li> </ul>	<ul style="list-style-type: none"> <li>• New Bylaw provisions may cause confusion in the community (but given there are no substantive changes to the Existing Bylaw this issue may not arise)</li> </ul>

	<ul style="list-style-type: none"> <li>Ensures the Amended Bylaw is up to date in terms of current management and environmental best practice and legal requirements</li> </ul>	
<b>Option 4 – Revoke the Existing Bylaw replace with a new bylaw.</b>	<ul style="list-style-type: none"> <li>No advantages identified</li> </ul>	<ul style="list-style-type: none"> <li>Any issues that have arisen from the operation of the Existing Bylaw could also be addressed by a bylaw review</li> <li>The new bylaw would need to be reviewed in five years as it would be considered a "new" bylaw</li> </ul>

The Statement of Proposal has been prepared on the basis that Council wishes to proceed with **Option 3: Review and amend the Existing Bylaw.**

## Proposed Timeline for Consultation

Consultation on the Amended Bylaw will be carried out as follows:

<b>Timeline</b>	<b>Selwyn District Council Water Race Bylaw</b>
14 February 2018 (Council meeting)	Adoption of the Amended Bylaw for consultation.
21 February 2018 Bylaw advertised	Advertise for public submissions to the Amended Bylaw.
21 March 2018 Submissions close	Written submissions on Amended Bylaw close at 4:00pm at the Council's service centres.
2/3 April 2018 (to be confirmed) Submissions hearing	Hearings of submissions on the Amended Bylaw by the Sub-Committee at the Selwyn District Council Headquarters, Norman Kirk Drive, Rolleston
18 April 2018 (to be confirmed) (Council Meeting)	Adoption of the Amended Bylaw at its ordinary Council Meeting
25 April 2018 (to be confirmed)	Public notification of the adoption of the Amended Bylaw and its commencement date
1 May 2018	Commencement date of the Amended Bylaw.

## **7. VIEWS OF THOSE AFFECTED/CONSULTATION**

### **a) Views of those affected**

The general public will be invited to make submissions on the Amended Bylaw. Specific groups and organisations who are identified by the Council as being directly impacted or relevant to the Amended Bylaw will be invited to make submissions directly to Council.

### **b) Consultation**

Public consultation on the Amended Bylaw will be undertaken between 21 February 2018 and 21 March 2018.

Public notification of the Amended Bylaw and calls for submissions will be advertised via:

- public notices in the Press;
- Council Call;
- The Council website;
- and other local community papers,

The above public notification measures are considered appropriate.

On receipt of submissions on the Amended Bylaw, the Sub-Committee consisting of Councillors X and Y (and supported by Council staff) will convene to consider and hear the submissions made on the Amended Bylaw. Based on these deliberations, the Amended Bylaw will be amended as necessary and reported to Council.

### **c) Maori implications**

A copy of the Amended Bylaw was provided to Te Taumutu Rūnanga on the 28 November 2017 to seek feedback and inform the Rūnanga of the bylaw review process prior to bringing this report to Council. The Council has not yet received any direct feedback from Te Taumutu Rūnanga on the Amended Bylaw.

The Council considers that the public notification and opportunity for submission process will provide appropriate opportunity for Māori contribution to the decision making process. Local Rūnanga will be directly notified of this consultative process.

## **8. RELEVANT POLICY/PLANS**

Council policies and plans have been considered as part of the review process and no inconsistencies have been identified.

## **9. COMMUNITY OUTCOMES**

The preparation of the Amended Bylaw promotes the following key community outcomes under the Council's Long Term 2015/2015 Plan:

- a clean environment;
- a prosperous community; and
- a rural district.

## **10. NEGATIVE IMPACTS**

The Amended Bylaw is unlikely to negatively impact on the community as a whole or on the Council's activities. Rather, the Amended Bylaw will assist in the long-term sustainable management of Council's wastewater schemes.

## **11. LEGAL IMPLICATIONS**

Under section 155 of the Act, a local authority must, commencing the process to review a bylaw, consider the following three questions:

*a) Is a bylaw still the most appropriate way to deal with the perceived problems arising from water races?*

Council staff consider that the bylaw is still the most appropriate way to deal with the perceived problems arising from water races because:

- The water race regime remains much the same as it was in 2008 when the Existing Bylaw was reviewed.
- The regulatory drivers remain the same as they were in 2008.

*b) Is the Amended Bylaw in the most appropriate form to deal with water races?*

Council staff consider that the Amended Bylaw is in the most appropriate form to deal with water races. The bylaw review process has provided Council Staff, the Water Race Committee and the Council's solicitors with an opportunity to identify the key issues arising from the operation of the Existing Bylaw and make the

appropriate amendments to the Amended Bylaw to address these issues appropriately.

c) *Does the Amended Bylaw give rise to any issues arise under the New Zealand Bill of Rights Act ("NZBORA")?*

- Section 155(2)(b) of the Act requires that the Amended Bylaw must not be inconsistent with NZBORA. Council has obtained legal advice which confirms that the Amended Bylaw is consistent with NZBORA.
- The Bylaw will be made in a democratic manner by Council by publicly notifying its intentions, the taking and hearing of submissions and the final decision upon whether to adopt the Amended Bylaw being made by elected members of Council.

## **12. FUNDING IMPLICATIONS**

There are not expected to be any operational or capital costs to the Council as a result of adopting the Amended Bylaw.

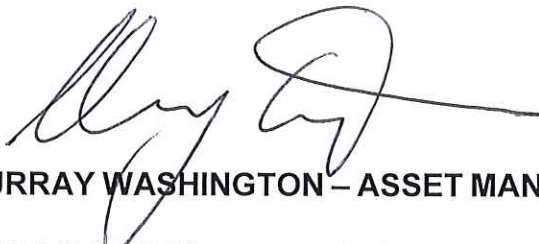
## **13. HAS THE INPUT/IMPACT FROM/ON OTHER DEPARTMENTS OR THIRD PARTIES BEEN CONSIDERED?**

The Amended Bylaw have been developed by the Asset Manager – Water Services in conjunction with other Council staff, the Water Race Committee and Council's Solicitors (Buddle Findlay).



**MURRAY ENGLAND – ASSET MANAGER – WATER SERVICES**

**ENDORSED FOR AGENDA**



**MURRAY WASHINGTON – ASSET MANAGER**

APPENDIX ONE  
APPENDIX TWO  
APPENDIX THREE  
APPENDIX FOUR  
APPENDIX FIVE

Selwyn District Council Water Race Bylaw 2008  
LGA provisions  
The Amended Bylaw  
Key changes to the original "Water Race Bylaw 2008"  
Statement of proposal

**APPENDIX ONE**

**Selwyn District Council Water Race Bylaw 2008**



## **SELWYN DISTRICT COUNCIL WATER RACE BYLAW 2008**

### **1 TITLE:**

- 1.1 This bylaw is made by the Selwyn District Council pursuant to the powers and authority vested in the Council by Section 146 (b)(i) of the Local Government Act 2002. This bylaw shall be known as the Selwyn District Council Water Race Bylaw 2008.

### **2. INTRODUCTION**

- 2.1 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 an untreated domestic water supply. Secondary purposes of the water race system are for irrigation (where permitted by the Council), fire fighting and enhancement of amenity 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.

- 2.2 The Council also has policies which it uses as part of the management of the water races; they do not form part of these bylaws but should be consulted by any person interested in the management of the water races.

### **3. DATE OF COMMENCEMENT**

- 3.1. This bylaw comes into force on the 1 July 2008

### **4. REPEALS**

- 4.1. The Selwyn District Council Water Race By-law 2000 is hereby repealed.

### **5. APPLICATION OF BYLAW**

- 5.1 This bylaw applies throughout Selwyn District and includes properties that are rated for stock water outside of the Selwyn District boundary.

### **6. DEFINITIONS**

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

**"Agreement"** means a written agreement between the landowner and the Council giving permission to do something within the water race system.

**"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 and whereby agreement Christchurch City Council.

**"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

Waimakariri 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

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 a lawfully established existing use, or
- (b) With the agreement 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.
- (e) The New Zealand Fire Service for the purposes of training and testing.

6.2 Any person who wishes to take water from a water race may apply to the Council for permission 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 agreement of the owner or occupier of the land on which the water race is located.
- 6.5 Within 15 working days of receipt of a complete application the Council will, in writing, either:
- (a) Grant the application, with or without conditions, or
  - (b) Decline or defer the application, and give the reasons for its decision.
- 6.6 Notwithstanding Clause 6.5, if the water is required urgently and no other sources of water supply are accessible to the applicant, the application will be assessed and given priority by the Council.
- 6.7 When granting an application subject to conditions, those conditions may include, but are not limited to the following,
- (a) Approval of the construction practices or specifications in accordance with Council requirements;
  - (b) Requiring the supervision of construction works by the Council with the cost of such supervision to be met by the applicant;
  - (c) Requiring the use of contractors approved by the Council, at the applicant's expense, in respect of any work affecting a public road or other utility services
  - (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 relevant to the application 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 An agreement 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 **Commercial Irrigation**  
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.
- 6.10 **Non Commercial Irrigation**  
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. EMERGENCY**

- 7.1 In the case of a fire emergency, water may be taken from water races for fire fighting purposes without the need to first obtain permission from the Council.



## **8. PROHIBITED USES**

The following uses of a water race are prohibited:

- 8.1 No person(s) may bathe or wash clothing or other things in a water race.
- 8.2 Allowing domestic fowl, be they water-fowl or otherwise, into or on a water race.
- 8.3 Allowing detergents, chemicals or nutrients to enter a water race
- 8.4 Allowing backflow from irrigation equipment to enter a water race
- 8.5 Allowing animals to enter a water race, except that a drinking station may be provided outside the water race.
- 8.6 Carrying out any activity on land or in any building or yard which contaminates the water in the water race.
- 8.7 Obstructing the flow of water in the water race by any means whatsoever.
- 8.8 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.
- 8.9 Allowing or causing any part of any fence to remain in a water race.
- 8.10 Taking or diverting water from a water race without the prior written agreement of the Council.
- 8.11 Allowing water from a water race to be wasted by failing to adequately maintain or repair any pipe or other apparatus.
- 8.12 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 approval of the Council.
- 8.13 Permitting a person who does not pay water race rates to take water from a water race.
- 8.14 Widening or deepening any water race or altering the course of any water race without the written approval of the Council.
- 8.15 Permitting or causing any Statutory Nuisance as defined under Section 29 of the Health Act 1956.
- 8.16 Obstructing any crossing point over a water race.
- 8.17 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.
- 8.18 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.

- 8.19 Making any structure over, in, or under a water race unless approved by the Council.
- 8.20 Sowing, planting, or allowing to grow any tree, hedge, shrub or other plant of any kind, within a distance of 3 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 6 metres wide, must be left unplanted adjacent to one side of the water race to enable access to the water race for machinery used for cleaning.
  - (d) As otherwise approved by the Council.
- 8.21 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.
- 8.22 Discharging effluent into a water race.

## **9. COUNCIL RESPONSIBILITIES**

- 9.1 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 – 006/000/WR (Malvern), 007/000/WR (Paparua), 008/000/WR (Ellesmere);
  - (b) Accessories located within any of the water races listed in Plan 002/000/WR (Malvern), 003/000/WR (Paparua) and 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.
- 9.2 Except as provided in clause 9.1, 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.



9.3 The person(s) nominated in 9.2 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.

## **10. CLEANING**

### **10.1 Farm Stockwater Race Cleaning**

- (a) In addition to Clauses 9.2 and 9.3 the owners or occupiers of land through which a farm stockwater race runs must, at their own cost keep and maintain the water race in good order including the sides and banks in such a condition to ensure a continuous flow preventing any overflow, leakage, or wastage of water to property or roads.

### **10.2 Other Water Race Cleaning**

- (a) Council water races are cleaned by the Council.

### **10.3 Removal of Matter and Debris**

- (a) All matter or debris deposited as part of the cleaning of a water race must be removed by the owner or occupier of the land through which that water race runs, at the time that cleaning is undertaken, or as soon as practicable thereafter; and
- (b) The cost of the removal of that matter and debris will be borne by the owner or occupier of the land through which that water race runs; and
- (c) The owner or occupier will take all reasonable steps to prevent any matter or debris removed from the water race from re-entering the water race; and
- (d) Allow access to the water race by machinery used to clean the water race.
- (e) When working within road reserve a traffic management plan will be required. The person undertaking the work will obtain this approval prior to any work being carried out.

### **10.4 Maintaining, Cleaning and/or Improving the Races**

- (a) 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.



- (b) When working within road reserve a traffic management plan will be required. The person undertaking the work will obtain this approval prior to any work being carried out.
- (c) All such matter or debris 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.
- (d) 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,
- (e) 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.
- (f) With the prior agreement of the Council, the owners or occupiers of land through which a water race runs may develop or implement a management plan to enhance that water race for ecological purposes. Where the Council gives its approval, and such a plan is implemented, that section of the water race will be listed by the Council in the Water Race Management Plan.

## **11 FAILURE TO REPAIR OR CLEAN A WATER RACE**

- 11.1 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.
- 11.2 Notwithstanding 11.1, 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:
  - (a) No person may divert water from a water race unless the Council has issued an agreement to do so in writing. Such an agreement may be

revoked by the Council after giving three months notice of its intention to do so.

- (b) The pond or reservoir must be watertight and lined with impervious material.
- (c) 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.
- (d) 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.
- (e) The Council may impose conditions restricting the area, volume or depth of any pond or reservoir.
- (f) No pond or reservoir may cause any reduction in water flow in the water race from which water is diverted.
- (g) 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
- (c) If, in the opinion of the Council, any such obstruction interferes with the flow of the water or creates excessive maintenance issues in any water race, the Council may;

Require the owner or occupier of the land on which the obstruction is located to remove that obstruction by giving notice accordingly.

13.2 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.

13.3 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.

13.4 If, after an objection has been heard and the Council has given notice in accordance with Clause 13.3, an owner or occupier fails to remove an obstruction within a reasonable timeframe the Council may take action pursuant to these bylaws and in particular Clause 11.1.



#### **14. EXTRA OR ABNORMAL SUPPLIES**

- 14.1 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 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.
- 15.5 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.
- 15.6 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.
- 15.7 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
- 16.5 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 accordance  
with the Special Order made by the  
Council on 11th June 2008  
in the presence of:



[Signature] Mayor

[Signature] Chief Executive

## APPENDIX TWO

### LGA provisions

#### *Procedure for making bylaws*

##### **155 Determination whether bylaw made under this Act is appropriate**

(1AA) This section applies to a bylaw only if it is made under this Act or the [Maritime Transport Act 1994](#).

- (1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.
- (2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—
  - (a) is the most appropriate form of bylaw; and
  - (b) gives rise to any implications under the [New Zealand Bill of Rights Act 1990](#).
- (3) No bylaw may be made which is inconsistent with the [New Zealand Bill of Rights Act 1990](#), notwithstanding [section 4](#) of that Act.

Section 155 heading: amended, on 28 June 2006, by [section 16\(1\)](#) of the Local Government Act 2002 Amendment Act 2006 (2006 No 26).

Section 155(1AA): inserted, on 28 June 2006, by [section 16\(2\)](#) of the Local Government Act 2002 Amendment Act 2006 (2006 No 26).

Section 155(1AA): amended, on 23 October 2013, by [section 90](#) of the Maritime Transport Amendment Act 2013 (2013 No 84).

##### **156 Consultation requirements when making, amending, or revoking bylaws made under this Act**

- (1) When making a bylaw under this Act or amending or revoking a bylaw made under this Act, a local authority must—
  - (a) use the special consultative procedure (as modified by [section 86](#)) if—
    - (i) the bylaw concerns a matter identified in the local authority's policy under [section 76AA](#) as being of significant interest to the public; or
    - (ii) the local authority considers that there is, or is likely to be, a significant impact on the public due to the proposed bylaw or changes to, or revocation of, the bylaw; and
  - (b) in any case in which paragraph (a) does not apply, consult in a manner that gives effect to the requirements of [section 82](#).
- (2) Despite subsection (1), a local authority may, by resolution publicly notified,—
  - (a) make minor changes to, or correct errors in, a bylaw, but only if the changes or corrections do not affect—
    - (i) an existing right, interest, title, immunity, or duty of any person to whom the bylaw applies; or
    - (ii) an existing status or capacity of any person to whom the bylaw applies;
  - (b) convert an imperial weight or measure specified in a bylaw into its metric equivalent or near metric equivalent.

Section 156: substituted, on 28 June 2006, by [section 17](#) of the Local Government Act 2002 Amendment Act 2006 (2006 No 26).

Section 156 heading: replaced, on 8 August 2014, by [section 48\(1\)](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 156(1): replaced, on 8 August 2014, by [section 48\(2\)](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 156(2): amended, on 8 August 2014, by [section 48\(3\)](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

## 159 Further reviews of bylaws every 10 years

A local authority must review a bylaw made by it under this Act, the [Maritime Transport Act 1994](#), or the [Local Government Act 1974](#) no later than 10 years after it was last reviewed as required by [section 158](#) or this section.

Section 159: substituted, on 28 June 2006, by [section 19](#) of the Local Government Act 2002 Amendment Act 2006 (2006 No 26).

Section 159: amended, on 23 October 2013, by [section 90](#) of the Maritime Transport Amendment Act 2013 (2013 No 84).

## 160 Procedure for and nature of review

- (1) A local authority must review a bylaw to which [section 158](#) or [159](#) applies by making the determinations required by [section 155](#).
- (2) For the purposes of subsection (1), [section 155](#) applies with all necessary modifications.
- (3) If, after the review, the local authority considers that the bylaw—
  - (a) should be amended, revoked, or revoked and replaced, it must act under [section 156](#);
  - (b) should continue without amendment, it must—
    - (i) consult on the proposal using the special consultative procedure if—
      - (A) the bylaw concerns a matter identified in the local authority's policy under [section 76AA](#) as being of significant interest to the public; or
      - (B) the local authority considers that there is, or is likely to be, a significant impact on the public due to the proposed continuation of the bylaw; and
    - (ii) in any other case, consult on the proposed continuation of the bylaw in a manner that gives effect to the requirements of [section 82](#).
- (4) For the purpose of the consultation required under subsection (3)(b), the local authority must make available—
  - (a) a copy of the bylaw to be continued; and
  - (b) the reasons for the proposal; and
  - (c) a report of any relevant determinations by the local authority under [section 155](#).
- (5) This section does not apply to any bylaw to which [section 10AA](#) of the Dog Control Act 1996 applies.

Section 160: substituted, on 28 June 2006, by [section 19](#) of the Local Government Act 2002 Amendment Act 2006 (2006 No 26).

Section 160(3)(b): replaced, on 8 August 2014, by [section 49\(1\)](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 160(4): amended, on 8 August 2014, by [section 49\(2\)](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**APPENDIX THREE**

**The Amended Bylaw**



## **SELWYN DISTRICT COUNCIL WATER RACE BYLAW 2008**

*The Selwyn District Council makes the following bylaw pursuant to section 146 (b)(i) of the Local Government Act 2002*

### **Explanatory Note**

#### **Objectives**

*This explanatory note does not form part of this bylaw, but is intended to indicate the general effect of the provisions contained in the bylaw.*

*The primary objective of the water race network is to supply drinking water to stock animals*

*The secondary objectives of the water race network are to:*

- *provide water for firefighting services;*
- *provide water for commercial and non-commercial irrigation; and*
- *the enhancement of amenity and ecological values of the Selwyn district.*

#### **Scope**

*This bylaw is in addition to the policies and controls on water races imposed by the Canterbury Regional Council (Environment Canterbury) and the Selwyn District Council. Obtaining the Selwyn District Council's approval under this bylaw does not remove the need to obtain any consents required under the Resource Management Act 1991 or any other act, regulation or bylaw. Further, approval under this bylaw will not replace or add to existing resource consents or permitted activity status.*



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## **1. TITLE AND COMMENCEMENT**

- 1.1 This bylaw is the Selwyn District Council Water Race Bylaw 2008.
- 1.2 This bylaw was reviewed and amended in 2017 and 2018 and comes into effect in its amended form on 1 May 2018.

## **2. PURPOSE**

- 2.1 The purposes of this bylaw are to:
  - (a) control the taking, use, damming and diversion of water from the Water Race Network;
  - (b) define the obligations of the Council and Owners and Occupiers to protect the Water Race Network so as to minimise damage to the Water Race Network and prevent adverse impacts on water quality;
  - (c) provide for the health and safety of the public and minimise disruptions to the supply of water from the Water Race Network; and
  - (d) protect the land, structures and infrastructure associated with Council's Water Race Network.

## **3. APPLICATION OF BYLAW**

- 3.1 This bylaw applies to Water Races within the District, and where applicable, to Water Races located on parcels of land outside of the District that are rated for stock water by the Council.
- 3.2 Nothing in this bylaw shall limit the application of any other Act, rules or regulations made under any other Act. If there any inconsistency between this bylaw and any other Act, rule or regulation, the more stringent applies.

## **4. DEFINITIONS**

- 4.1 For the purpose of this bylaw, unless the context otherwise requires:
  - (a) **"Accessories"** means all objects used in conjunction with a Water Race including all weirs, gates and valves used for regulating flow and flow metering equipment;
  - (b) **"Annual Charge(s)"** means a charge or rate levied by the Council on an annual basis (or as amended from time to time) in accordance with the Local Government Act 2002;
  - (c) **"Application Fee(s)"** means a fee accompanying an application under this bylaw as set by the Council from time to time in accordance with the Local Government Act 2002;
  - (d) **"Commercial Irrigation"** means the use of water from a Water Race for irrigation purposes (other than for Non-commercial Irrigation);
  - (e) **"Council"** means the Selwyn District Council or any Person authorised or delegated to act on its behalf;

- (f) **"Council Approval"** means approval in writing by the Council, either by resolution of the Council or by any officer of the Council authorised for that purpose;
- (g) **"Council Water Race"** means a Water Race maintained by the Council;
- (h) **"District"** means the Selwyn District, and where agreed with the Christchurch City Council, the district administered by that council;
- (i) **"Domestic Use"** means the use of any water in a residential household for domestic purposes;
- (j) **"Non-commercial Irrigation"** means watering a residential garden or shelter belt of trees using water from a Water Race:
  - (i) taking no more than 4,000 litres of water is taken per day; and
  - (ii) taken in accordance with the requirement for Non-commercial Irrigation imposed by the Water Race Policy;
- (k) **"Owner or Occupier"** means any Person, including the registered proprietor, who for the time being, is in control of the relevant land;
- (l) **"Person(s)"** means a natural person, corporation or body of persons whether corporate or otherwise;
- (m) **"Private Stock Water Race"** means a Water Race (other than a Council Water Race);
- (n) **"Water Race"** has the meaning given in the Local Government Act 2002;
- (o) **"Water Race Management Plan"** means the Selwyn District Council Water Race Management Plan (as amended from time to time);
- (p) **"Water Race Policy"** means the Council's policies which relate to Water Races as set out in the Selwyn District Council Policy Manual (as amended from time to time); and
- (q) **"Water Race Network"** means the system of Water Races.

## 5. RIGHT TO TAKE WATER

5.1 No Person may, whether directly or indirectly, take, divert or use any water in or from a Water Race except:

- (a) with Council Approval granted under this bylaw or any other bylaw and then only in accordance with the terms of such Council Approval including but not limited to any requirement to pay any Application Fee and Annual Charges;
- (b) for firefighting purposes (in the case of an emergency); or
- (c) for training and testing by Fire and Emergency New Zealand.

## **6. APPLICATION TO TAKE WATER**

6.1 Any Person who wishes to take water from a Water Race may apply for Council Approval. An application for Council Approval must:

- (a) be in writing;
- (b) be accompanied by the prescribed Application Fee;
- (c) describe with sufficient particularity:
  - (i) the applicant;
  - (ii) the land to be served by the water taken;
  - (iii) the Water Race from which the water will be taken;
  - (iv) the purpose or purposes for which the water will be taken;
  - (v) the method by which the water will be:
    - (1) taken (such as pipe, open drain or other method); and
    - (2) stored (in ponds, troughs, stock drinking stations or otherwise);
  - (vi) the location from which the water will be taken from the Water Race; and
  - (vii) the proposed treatment of the water.

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

6.3 If the Water Race is not located on the applicant's land, the application must be accompanied by written evidence of the agreement of the Owner or Occupier of the land on which the Water Race is located.

6.4 Following the receipt of a complete application under clause 6.1, the Council will, in writing, either:

- (a) grant Council Approval in relation to the application (with or without conditions); or
- (b) decline to grant Council Approval or defer the application (together with the Council's reasons for its decision).

6.5 If the Council grants Council Approval subject to conditions under clause 6.4, those conditions may include, but are not limited to, the requirement for:

- (a) approval of the construction practices or specifications in accordance with Council requirements;
- (b) supervision of construction works by the Council (at the applicant's sole cost);
- (c) use of contractors approved by the Council in respect of any work affecting a public road or other utility services (at the applicant's sole cost);

- (d) 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) limitation of the quantity of water which may be taken, rate of take and/or the times at which water may be taken;
- (f) limitation of the purposes for which water may be taken;
- (g) specification of the place or places from which water may be taken;
- (h) means by which water may be taken;
- (i) the installation of Accessories at the applicant's sole cost;
- (j) where the water taken is to be used for Commercial Irrigation, the installation of telemetry recording and transmitting abstraction data to the Council;
- (k) payment of any applicable fee;
- (l) suitable and effective treatment of water including the specification of the parameters and frequency of water quality testing suitable for the proposed use of the water in question; and
- (m) regular reporting to the Council in respect of compliance with any conditions imposed by the Council Approval.

6.6 The applicant may object to any decision of the Council made under this bylaw by giving written notice to the Council. Such notice must set out the grounds of the objection. Following receipt of a notice of objection, the Council will convene a hearing at which the objection will be heard. 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 its original decision;
- (b) reverse its original decision; or
- (c) impose new or varied conditions in respect of Council Approval.

6.7 If Council Approval is granted to take water from a Water Race, the Council Approval runs with the land described in the application and binds successors in title to that land.

## **7. PROHIBITED USES**

7.1 In addition to the offences set out in section 228 of the Local Government 2002, the following activities are prohibited in or near a Water Race:

- (a) recreational activities that may cross-contaminate the water including bathing or washing clothes in a Water Race;
- (b) allowing domestic fowl, be they water-fowl or otherwise, into or on a Water Race;
- (c) allowing detergents, chemicals or nutrients to enter a Water Race;
- (d) allowing back-flow from irrigation equipment to enter a Water Race;

- (e) allowing animals to enter a Water Race, except that a drinking station may be provided outside the Water Race;
- (f) carrying out any activity on land or in any building or yard which contaminates the water in the Water Race;
- (g) obstructing the flow of water in the Water Race by any means whatsoever;
- (h) 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 Approval;
- (i) allowing or causing any part of any fence to remain in a Water Race;
- (j) taking or diverting water from a Water Race without Council Approval;
- (k) taking or diverting water from a Water Race in a manner which causes operational issues or interferes with the continuity of supply and free flow of water to downstream waters or upstream occupiers;
- (l) allowing water from a Water Race to be wasted by failing to adequately maintain or repair any pipe or other apparatus;
- (m) interfering with Accessories, including 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 Council Approval;
- (n) permitting a Person who does not pay Water Race rates to take water from a Water Race;
- (o) widening or deepening any Water Race or altering the course of any Water Race without Council Approval;
- (p) permitting, allowing or causing any statutory nuisance as defined under Section 29 of the Health Act 1956;
- (q) obstructing any crossing point over a Water Race;
- (r) 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;
- (s) disturbing the ground so as to uncover any culverts belonging to any Water Race or lengthening or decreasing the length of any culvert without Council Approval;
- (t) making any structure over, in, or under a Water Race without Council Approval;
- (u) sowing, planting, or allowing to grow any tree, hedge, shrub or other plant of any kind, within a distance of 3 metres of either side of a Water Race except:
  - (i) crops and pasture;
  - (ii) shrubs or plants forming any part of a live fence which are:

- (1) maintained to less than 1.5 metres in height;
  - (2) sown or planted on one side of a Water Race only;
  - (3) at a distance of not less than 1 metre from the edge of the Water Race; and
  - (4) a strip of not less than 6 metres wide (adjacent to one side of the Water Race) must be left unplanted,
- to enable access to the Water Race by machinery or for cleaning and maintenance purposes; or
- (iii) as otherwise permitted by the terms of a Council Approval;
  - (v) erecting any building or structure of any kind or size within five (5) metres of either side of any Water Race without Council Approval; and
  - (w) discharging effluent into a Water Race.

## **8. OCCUPIER OR OWNER RESPONSIBILITIES**

- 8.1 The cost of maintaining and repairing any Private Stock Water Race and any Accessories located within the Private Stock Water Race is the responsibility of:
- (a) the Owner or Occupier of the land within which the Private Stock Water Race or Accessories are located;
  - (b) where the Private Stock Water Race or Accessories are 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 Stock Water Race or Accessories are located on or about the common boundary between land in different ownership, the Owner or Occupiers of the land in equal shares.
- 8.2 The Person(s) responsible for the cost of maintaining or repairing any Private Stock Water Race or Accessories in clause 8.1 above, is responsible for the regular inspection, repair, and maintenance and cleaning of the relevant section of the Private Stock Water Race in accordance with the Water Race Management Plan and 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) no water is wasted by seepage or otherwise as far as is practicable; and
  - (c) continuity of supply and free flow of water downstream is maintained at all times.
- 8.3 Where water is taken for Domestic Use, the Owner, Occupier or Person(s) taking water for Domestic Use is responsible for ensuring:
- (a) all necessary and appropriate treatment of the water is carried out; and
  - (b) the conditions imposed pursuant to clause 6.1(c)(vii) are complied with,
- before such water is used for those purposes.

## **9. PRIVATE STOCK WATER RACE CLEANING**

9.1 In addition to their obligations in clause 8, the Owners or Occupiers of land through which a Private Stock Water Race runs must, at their own cost, keep and maintain the Private Stock Water Race, including the sides and the banks, in such a condition to ensure a continuous flow preventing any overflow, leakage, or wastage of water to property or roads and, without limiting the generality of the foregoing, shall, remove:

- (a) any vegetation on the banks of the Private Stock Water Race; and
- (b) silt, sand and weed that has been deposited in the bottom of the Private Stock Water Race, which may otherwise reduce the waterway area, inhibit the free flow of water downstream or cause the water velocity to slow.

## **10. REMOVAL OF MATTER AND DEBRIS**

10.1 All matter or debris deposited as part of the cleaning of a Water Race must be removed by the Owner or Occupier of the land through which that Water Race runs, at the time that cleaning is undertaken, or as soon as practicable thereafter.

10.2 The cost of the removal of that matter and debris will be borne by the Owner or Occupier of the land through which that Water Race runs.

10.3 The Owner or Occupier shall:

- (a) take all reasonable steps to prevent any matter or debris removed from the Water race from re-entering the Private Stock Water Race;
- (b) allow access to the Private Stock Water Race by machinery used to clean the Private Stock Water Race; and
- (c) enforce a traffic management plan which has been approved by the Council in advance where cleaning or maintenance of the Private Stock Water Race requires working within a road reserve.

## **11. DIVERTING WATER**

11.1 No Person may divert water from a Water Race to keep a pond or reservoir on their land filled unless Council Approval has been granted.

11.2 If Council Approval is granted to divert water from a Water Race for the purposes of filling a pond or reservoir, the person carrying out the diversion and the Owner or Occupier of the land on which the pond or reservoir is situated must ensure that:

- (a) the pond or reservoir is watertight and lined with impervious material;
- (b) the intake and outlet of the pond or reservoir is able to be shut off as required to ensure compliance with water restrictions or resource consent conditions;



- (c) an outfall is 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; and
- (d) the water level of the Water Race is not reduced for the purpose of creating a pond or reservoir.

11.3 No Person may construct a dam to raise the water level in the Water Race for the purpose of creating a pond or reservoir without Council Approval.

## **12. OBSTRUCTIONS**

12.1 If, at any time there are obstructions, including but not limited to:

- (a) trees, hedges, plants or shrubs of any kind, growing or dead and in the form of nature, 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, pipes, pumps, buildings, yards or ponds which are situated contrary to the provisions of this bylaw,

and, in the opinion of the Council, such obstructions interfere with the flow of the water, adversely impact downstream users or upstream occupiers or create excessive maintenance issues in any Water Race, the Council may require the Owner or Occupier of the land on which the obstructions are located to remove those obstructions by giving notice accordingly.

12.2 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.

12.3 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.

12.4 If, after an objection has been heard and the Council has given notice in accordance with clause 12.1, an owner or occupier fails to remove an obstruction within a reasonable timeframe the Council may take action pursuant to these bylaws.

## **13. EXTRA OR ABNORMAL SUPPLIES**

13.1 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.

## **14. POWERS OF THE COUNCIL**

14.1 The Council may, pursuant to the powers vested in it under the Local Government Rating Act 2002 and the Local Government Act 2002, vary or remove Annual Charges levied for the maintenance and operation of the Water Race System.

- 14.2 The Council may alter the basis or manner or scale on which any or all such Annual Charges are to be assessed as it sees fit in accordance with the powers vested in it.
- 14.3 The Council may impose restrictions on taking water from time to time.
- 14.4 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.
- 14.5 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.
- 14.6 The Council may perform its obligations and exercise its rights under these bylaws or otherwise in relation to the Water Race Network through its nominated agents, employees or contractors, or the Agent, as the Council determines from time to time.

## **15. BREACHES OF THIS BYLAW**

- 15.1 Every Person commits an offence who -
- (a) defaults in payment of any rate imposed on their land in respect of the supply of stock water or irrigation water;
  - (b) fails to do or perform any act, or thing, that he or she is required to do by these bylaws;
  - (c) permits, allows, or does, any of the acts that are prohibited in this bylaw;
  - (d) fails to comply with his or her water supply agreement with the Council; or
  - (e) breaches this bylaw.

## **16. PENALTIES**

- 16.1 Every Person who contravenes this bylaw is liable to a penalty not exceeding \$20,000 or other such amount as may be provided for under sections 239 and 242 of the Local Government Act and is liable to enforcement action by the Council.
- 16.2 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.

## **17. SAVINGS**

- 17.1 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.
- 17.2 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.

## **APPENDIX FOUR**

### **Key changes to the original “Water Race Bylaw 2008”**

SELWYN DISTRICT COUNCIL WATER RACE BYLAW 2008 - SUMMARY OF THE KEY CHANGES

Clause	Provision	Notes – summary of change
	<b>Formatting</b>	We have made a number of changes to the general layout and format of the bylaw. This includes the insertion of automatic numbering and cross-references, avoiding duplication, use of appropriate section headings, and using consistent defined terms.
	<b>Explanatory note</b>	We have removed any background information in relation to water races from the body of the bylaw and placed this in an explanatory note at the beginning of the bylaw. The explanatory note sets the context of the bylaw and consolidates the operative provisions of the bylaw.
	<b>Key objectives of the bylaw</b>	We have removed the supply of untreated water to domestic households as a secondary objective of the bylaw.
2.1	<b>Purpose section</b>	We have inserted a purpose section. The benefit of a purpose section is that it forms an operative provision of the bylaw and allows the Council to assess a person's compliance with the bylaw against the degree to which their activities are compliant with the stated purposes of the bylaw.
4.1	<b>Definitions</b>	<ul style="list-style-type: none"> <li>We have removed a number of redundant definitions.</li> <li><i>Clause 4.1(e) - Council:</i> we have expanded the definition of <i>Council</i> to include authorised officers of the Council. This will allow Council members who have delegated authority under the Council's delegation manual to review, enforce and/or make decisions under the bylaw.</li> <li><i>Clause 4.1(i) - Domestic use:</i> we have inserted a definition of domestic use to include the use of any water in a residential home for domestic purposes.</li> <li><i>Clause 4.1(j) - Non-commercial irrigation:</i> we have expanded this definition to ensure it is consistent with how this term is defined in the Water Race Policy (W118).</li> </ul> <p><i>Clause 4.1(m) - Private Stock Water Race:</i> We have amended this from "<i>Farm Stock Water Race</i>."</p>
5	<b>Right to take water</b>	We have removed the ability for a person to take water in, or from a water race, pursuant to a lawfully established existing use. A person cannot rely on a pre-existing right to take water prior to the bylaws enactment in 2008.

6.1	<b>Application to take water</b>	<p><b><i>Applications to take water from a Water Race</i></b></p> <p>We have inserted that an applicant must provide the Council with specific details regarding:</p> <ul style="list-style-type: none"> <li>the method by which water will be taken, including where it will be stored (such as a pond, trough, stock drinking station) and how it will be taken (such as by pipe, open drain or other method); and</li> <li>the proposed treatment of the water (if any)</li> </ul>
6.5	<b><i>Council conditions where approval is granted to take water from a Water Race</i></b>	<p>We have inserted that, where approval has been granted to allow a person to take water from the water race, the Council may impose additional conditions on an applicant including:</p> <ul style="list-style-type: none"> <li>where water is to be taken for commercial irrigation, a requirement for the applicant to install telemetry recording and transmitting abstraction data to the Council; and</li> </ul> <p>a requirement for the applicant to undertake suitable and effective treatment of the water (where necessary).</p>
Previously 6.10  6.11	<b>Taking water for commercial and non-commercial irrigation</b>	<p>We have deleted clause 6.10 and 6.11 of the bylaw (which allows the Council to grant approval for commercial and non-commercial irrigation). We suggest that these provisions are not necessary as the Council's already has the discretion whether or not to grant approval for such purposes under clause 6 of the bylaw.</p>
Previously  6. 12	<b>Taking water for emergency services</b>	<p>We have deleted clause 6.12 of the bylaw (which allows water to be taken for emergency services). Council approval is not required to take water for emergency services. It is therefore not an operative provision that needs to be set out in the bylaw. We note that the explanatory note covers that water may be taken for such emergency services.</p>
7.0	<b>Prohibited uses</b>	<p>Section 228 of the Local Government Act 2002 sets out a number of offences relating to the use of water races. We have therefore inserted that the prohibited uses stated under the bylaw, are in addition to any prohibited uses that are set out under the Local Government Act.</p>
Previously clause 9.1	<b>Council responsibilities to maintain and clean Council Water Races</b>	<p>We have deleted clause 9.1 of the bylaw (which provided that Council is responsible for the maintaining and cleaning any Council Water Races). This is because we do not see that it is necessary or desirable for the bylaw to constrain the Council. Rather, such matters might be better dealt with in Council policies with less risk to the Council and more flexibility for the Council to change its approach should that be</p>

		desirable.
8.3	<b>Owner or Occupier Responsibilities</b>	<p>We have inserted that, where water is being taken from either a Private Water Race or a Council Water Race for domestic use, the owner, occupier or person(s) taking the water is responsible for ensuring that:</p> <ul style="list-style-type: none"> <li>• all necessary and appropriate treatment of the water is carried out (so as to ensure the water is safe for domestic consumption); and</li> <li>• any conditions imposed by the Council to test and treat the water are complied with.</li> </ul>
Previously 10.4	<b>Council maintenance and cleaning of Water Races</b>	<p>We have deleted clause 10.4 which sets out the Council's obligation to clean and maintain Council Water Races. As discussed above, we do not think it is desirable it is necessary or desirable for the bylaw to constrain the Council. Rather, this matter might be better dealt with in Council's policies with less risk to the Council and more flexibility for the Council to change its approach should that be desirable.</p>
Previously 11.0	<b>Failure to repair or clean a Water Race</b>	<p>We have deleted clause 11.0, which sets out the repercussions for a failure to clean or repair a water race. We do not think it is necessary to repeat the powers in section 186 of the Local Government Act 2002 for the Council to carry out the work itself. This is a matter of statute law and there is no need to repeat these provisions in the bylaw.</p>

**APPENDIX Five**

**Statement of proposal**



## **STATEMENT OF PROPOSAL FOR THE REVIEW OF THE SELWYN DISTRICT COUNCIL WATER RACE BYLAW** (This statement is made for the purposes of sections 83 and 86 of the Local Government Act 2002)

### **Nature of the Proposal:**

This is a statement of proposal by the Selwyn District Council (the "**Council**") to review the Selwyn District Council Water Race Bylaw 2008.

### **Reasons for this Proposal:**

All bylaws made under the Local Government Act 2002 (the "**Act**") must be reviewed every 10 years. The Selwyn District Council Water Race Bylaw 2008 (the "**Existing Bylaw**") is due for review by June 2018.

The Proposal is that the Existing Bylaw should be reviewed and amended by June 2018.

The Existing Bylaw is made under the Act and allows the Council to set controls and restrictions on the use of Council's water race network. The primary objective of the water race network is to provide drinking water to stock animals within the district. Secondary objectives include providing water for firefighting services, commercial and non-commercial irrigation and the enhancement of amenity and ecological values of the Selwyn District.

Council considers that there is a need to ensure that the water race network is managed in a way that is appropriate for both the community and the wider environment and to provide regulatory powers to the Council. Council therefore considers that the bylaw review process as an opportune time to amend the Existing Bylaw to address any issues that have arisen in respect of the water race network since 2008 and to make various general improvements to the Existing Bylaw where possible.

It is considered that the attached draft Selwyn District Council Water Race Bylaw (incorporating a number of amendments to the Existing Bylaw) (the "**Amended Bylaw**") is the most appropriate form of bylaw, and that the Amended Bylaw is consistent with the New Zealand Bill of Rights Act 1990.

### **Statutory requirements for reviewing a bylaw:**

#### **(a) Appropriateness**

A review of the Existing Bylaw has been undertaken.

The Amended Bylaw has been determined to be the most appropriate mechanism to control the Water Race network within the Selwyn District. The Amended Bylaw will:

- ensure that the water race network is managed in a way that is appropriate for both the community and the wider environment;
- set clear guidelines and provide information to the public;
- remedy any issues with the Existing Bylaw which have arisen since it was last reviewed in 2008;
- ensure consistency and clarity for water race users; and
- protect Council infrastructure from damage and misuse.



**(b) NZ Bill of Rights:**

Section 155(2)(b) of the Act requires that any new or reviewed bylaw must be consistent with the NZ Bill of Rights Act 1990. Council has obtained legal advice to ensure that the Amended Bylaw is consistent with the NZ Bill of Rights Act 1990.

The Amended Bylaw is being processed in a democratic manner by the Council by publicly notifying its intentions, the taking and hearing of submissions from the public and the final consideration of the Amended Bylaw being made by elected members of the Council.

**(c) Options Available to Council**

Option	Advantages	Disadvantages
<b>Option 1 – Do nothing / review but make no amendments to Existing Bylaw</b>	<ul style="list-style-type: none"><li>• Failing to review the Existing Bylaw would breach the statutory requirement of a ten-year review.</li><li>• A failure to review the current bylaw by 11 June 2018 will result in a lapse of the Existing Bylaw by 11 June 2020</li><li>• Section 160(3) of the Act requires a special consultative procedure in respect of any Council proposal (following bylaw review) that a bylaw concerning a matter of significant interest to the public <u>not</u> be amended</li><li>• Any operational issues and outdated practices arising from the Existing Bylaw that are adversely affecting the community will not be addressed</li><li>• Not considered a reasonably practicable option in accordance with section 77(1)(a) of the Act</li></ul>	
<b>Option 2 – Revoke the Existing Bylaw (and do nothing further)</b>	<ul style="list-style-type: none"><li>• Reduces Council's enforcement requirements</li></ul>	<ul style="list-style-type: none"><li>• The Council will have reduced ability to protect and regulate the water race system</li><li>• The bylaw review process has indicated that the Existing Bylaw is, by and large, working well (subject to some minor operational and technical changes)</li><li>• Not considered a reasonably practicable option in accordance with section 77(1)(a) of the Act</li></ul>
<b>Option 3 – Review and amend the</b>	<ul style="list-style-type: none"><li>• Updates the Existing Bylaw for clarity and</li></ul>	<ul style="list-style-type: none"><li>• New Bylaw provisions may cause confusion in the community (but</li></ul>

<b>Existing Bylaw</b>	<p>ensures that the Amended Bylaw addresses any key problems and complies with the relevant legislation</p> <ul style="list-style-type: none"> <li>• Ensures the Amended Bylaw is up to date in terms of current management and environmental best practice and legal requirements</li> </ul>	<p>given there are no substantive changes to the Existing Bylaw this issue may not arise)</p>
<b>Option 4 – Revoke the Existing Bylaw replace with a new bylaw.</b>	<ul style="list-style-type: none"> <li>• No advantages identified</li> </ul>	<ul style="list-style-type: none"> <li>• Any issues that have arisen from the operation of the Existing Bylaw could also be addressed by a bylaw review</li> <li>• The new bylaw would need to be reviewed in five years as it would be considered a "new" bylaw</li> </ul>

This statement of proposal has been prepared on the basis that Council wishes to proceed with **Option 3: Review and amend the Existing Bylaw.**

### **Benefits and Costs of the Amended Bylaw:**

Benefits of the Amended Bylaw include:

- operation of the Amended Bylaw under current legislation and management practices;
- protection of the Council's staff and contractors and the general public;
- addressing all aspects of the Water Race network including issues arising from legislation and amendments thereto;
- protection of infrastructure from damage and misuse; and

- clarification and simplification of the Amended Bylaw to make it more easily understood by the general public, and to assist Council staff in achieving compliance in a fair and straight forward manner.

Costs of the Amended Bylaw:

- The cost of non-compliance with the bylaw (i.e. the cost of a breach of the Amended Bylaw, will be met by those who damage or misuse the asset).

### **Consultation:**

The following groups and organisations (both internal and external stakeholders) will also be consulted on the Amended Bylaw:

- Council Elected Members and Committees;
- Te Taumutu Rununga;
- Adjoining Local Authorities (Christchurch, Waimakariri, Ashburton); and
- Environment Canterbury.

Council staff and the Water Race Sub-Committee have provided feedback on the direction of the Amended Bylaw and the matters considered. The views of the public will be sought through the special consultative procedure.

### **Provide Māori the opportunity to contribute:**

The Council considers that the public notification and opportunity for submission process will provide appropriate opportunity for Māori contribution to the decision making process. Local Rūnunga will be directly notified of the consultation process.

Submissions at meetings may also be made in Māori as prescribed under the Act.

### **The proposed timeline for the introduction of the bylaw is:**

The consultation for the proposed Selwyn District Council Water Race Bylaw is being carried out in conjunction with the proposed Selwyn District Council Stormwater and Drainage Bylaw and the Water Supply Bylaw.

<b>Timeline</b>	<b>Selwyn District Council Water Race Bylaw</b>
14 February 2018 (Council meeting)	Adoption of the Amended Bylaw for consultation.
21 February 2018 Bylaw advertised	Advertise for public submissions to the Amended Bylaw.
21 March 2018 Submissions close	Written submissions on Amended Bylaw close at 4:00pm at the Council's service centres.
2/3 April 2018 (to be confirmed) Submissions hearing	Hearings of submissions on the Amended Bylaw by the Water Race Bylaw Sub-Committee at the Selwyn District Council Headquarters, Norman Kirk Drive, Rolleston
18 April 2018 (to be confirmed) (Council Meeting)	Adoption of the Amended Bylaw at its ordinary Council Meeting

Timeline	Selwyn District Council Water Race Bylaw
25 April 2018 (to be confirmed)	Public notification of the adoption of the Amended Bylaw and its commencement date
1 May 2018	Commencement date of the Amended Bylaw.

## Submissions:

Submissions are invited on the Amended Bylaw to be called the "**Selwyn District Council Water Race Bylaw 2008.**"

At its meeting on 14 February 2018 the Council passed a resolution approving the Amended Bylaw for the purposes of public consultation through the special consultative procedure prescribed in the Act.

The Amended Bylaw can be viewed (and is downloadable in PDF format) on our website [www.selwyn.govt.nz](http://www.selwyn.govt.nz). Hard copies are also available during ordinary office hours at the Selwyn District Council Service Centres in Darfield (Darfield Service Centre, South Terrace), Leeston (Leeston Library, High Street), Lincoln (Lincoln Service Centre, Gerald Street) and Rolleston (Norman Kirk Drive, Rolleston).

Copies can also be requested by phoning 347 2800.

Submissions on this proposal may be made until **4:00pm, 21 March 2018.**

Submissions on this proposal can be made either via the online submission form on the Council website [www.selwyn.govt.nz](http://www.selwyn.govt.nz), or in writing. In order for a submission to be accepted it must state:

- your name, postal address, phone or fax and e-mail address;
- whether you support or oppose the proposal or particular aspects of it;
- your reasons;
- any changes that you wish us to make;
- whether you wish to speak at a hearing; and
- signed (if posted or faxed) and dated.

Submissions in writing shall be addressed to:

**Alicia Paulsen**  
**Amended Water Race Bylaw 2008**  
**Selwyn District Council**  
**P O Box 90**  
**ROLLESTON 7643**

Or similarly faxed to (03) 347 2799.

On receipt of your submission, Council will send an acknowledgement that your submission has been received.

Any person making a submission may request to be heard in person in support of their submission. If required, the **hearing will be held on 2 and 3 April 2018 at 9 am** in the Rolleston Service Centre, Norman Kirk Drive, Rolleston. These details will be further confirmed in advance of any hearing as required.

For more information please contact Alicia Paulsen, Water Services Support Planner, 03 347 2800.

**Related documents:**

- Draft Selwyn District Council Water Race Bylaw
- Report to Council