

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 comply with, or obtain any consents required under, the Resource Management Act 1991, the Building Act 2004 or any other act, regulation or bylaw. Further, approval under this bylaw will not replace or add to existing resource consents, building consents or permitted activity status.

Use of Water Race water

The Council recognises that the use of water race water for domestic use is not best practice and proposes to work with the community to phase this out of the District in the medium to long term. The Council will not normally grant approval for domestic use of water race water particularly where there is a risk that such water will be used for human consumption.

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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 2008 and over the course of 2017 and 2018 and comes into effect in its amended form on 1 June 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;
 - (d) provide for the ecological enhancement of Water Races wherever possible and appropriate; and
 - (e) 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) **"Ecological Purposes"** means to enhance a Water Race or part of a Water Race for environmental and biodiversity benefit;
- (k) **"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;
- (l) **"Owner or Occupier"** means any Person, including the registered proprietor, who for the time being, is in control of the relevant land;
- (m) **"Person(s)"** means a natural person, corporation or body of persons whether corporate or otherwise;
- (n) **"Private Stock Water Race"** means a Water Race (other than a Council Water Race);
- (o) **"Water Race"** has the meaning given in the Local Government Act 2002;
- (p) **"Water Race Management Plan"** means the Selwyn District Council Water Race Management Plan (as amended from time to time);
- (q) **"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
- (r) **"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 without Council Approval;
- (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 without Council Approval;
- (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.

- 8.4 With prior Council Approval, 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 such Council Approval is given, and such a plan is implemented, that section of the Water Race will be listed by the Council in the Water Race Management Plan.

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.