

STOCKWATER RACE BYLAW

2021

Adopted at a Council meeting held on
01 February 2022



Chief Executive



Governance Manager



WAIMAKARIRI DISTRICT COUNCIL STOCK WATER RACE BYLAW 2021

1 INTRODUCTION

This bylaw is made by the Waimakariri District Council in exercise of its powers and authority vested in the Council by Section 146 (b) (i) of the *Local Government Act 2002*. The bylaw is enforceable throughout the Waimakariri District Water Race area which is described on map no. 1140.

2 INTERPRETATION

- 2.1 The Council means the Waimakariri District Council or any authorised staff member.
- 2.2 Bylaw means this bylaw as altered, varied or amended from time to time.
- 2.3 Owner or occupier means the owner or occupier of land in the supply area as recorded as such in the valuation roll of the district.
- 2.4 'Holding' means any property of any area or value separately valued in the valuation roll of the district.
- 2.5 The supply area means the area over which stock and/or irrigation water is supplied and specifically includes and means the Browns Rock Subdivision as defined by Special Order made by the Waimakariri Ashley Water Supply Board on 20 September 1894, and as set forth and named as such in the Special Resolution published in the New Zealand Gazette 1894 at pages 1653 and 1654, and includes any alterations to the area which may be made by the Council in exercise of its powers under the *Local Government Act 2002* in consultation with affected parties.
- 2.6 Water race has the meaning prescribed in the *Local Government Act 2002*, Part 1, Section 5 (1), and means the land occupied by a water channel (other than a main river)
- (a) constructed -
- (i) by or under the authority of a local authority
 - (ii) in, upon, or through land for supply of water; **and**
- (b) to be used -
- (i) solely or principally for farming purposes; or
 - (ii) in the case of an existing water race, for any other purpose for which water from that water race may be used, **and**
- (c) includes -
- (i) a branch of a water race taken or made through land for the purpose of supplying water as referred to in paragraph (b); **and**
 - (ii) an alteration, extension, or widening of a water race or branch water race, whether done by local authority or by any person with the approval of the local authority; **and**
 - (iii) a flood or other bank, or a dam, sluice, flume, bridge, gauge, meter, reservoir, or other waterworks relating to, or forming part of, a water race; **and**

- (iv) buildings and machinery, pipes, and other materials on the land and within the limits of a water race or relating to, or used in connection with, a water race.
- 2.7 Grid References refer to points shown on map Sheet L35 "WAIMAKARIRI" Edition 1 of NZMS 260, 1:50,000; Edition 1 and Sheet M35 "CHRISTCHURCH" Edition 1, of the same map series. The method used for locating these points is that shown in the marginal notes on each sheet.
- 2.8 Water Races are of the following type: (See Map 1140, on Council's website):
- (a) Combined stockwater and irrigation races as shown coloured red on Map No 1140; and used for both irrigation and stock water.
 - (b) Council stockwater races as shown coloured green on Map No 1140; are mainly roadside races and end of races.
 - (c) Irrigation races as shown coloured yellow on Map No 1140, are new races built for irrigation supply only.
 - (d) Farm stockwater races as shown coloured blue on Map No 1140, and used for on farm stock water purposes.
- 2.9 The reference Map No 1140 refers to the latest Water Race map issued by the Council on its website.
- 2.10 The Browns Rock Water Race System means that system of water races having its origin at Browns Rock on the Waimakariri River, grid reference 360 584, and from any other sources of supply from which the Council and/or its agent may take water, and includes any tail race, branch, artificial or natural channel within the water race area, or any enlargements or alterations made to the system from time to time. It also includes all of those channels which are wholly or partially supplied with water from the said water race other than those channels into which water is spilled by the Council and/or its agent as no longer required by the water race system.
- 2.11 Words in the singular include plural and vice versa.
- 2.12 The words **shall** and **will** are imperative.
- 2.13 The word **may** is optional.
- 2.14 Maintenance means cleaning and maintaining the water race system in accordance with the Stock Water Race Scheme - Activity Management Plan.
- 2.15 Commercial irrigation, which in this case is exclusive to Waimakariri Irrigation Limited, means where a water supply agreement has been entered into and irrigation water (by means of spraying or flooding the land with water) is supplied for agreed fees. This does not include aquaculture.
- 2.16 Domestic irrigation means the watering of a residential garden by pumping from the race.

- 2.17 Agent means Waimakariri Irrigation Ltd or any other person or body appointed or authorised by the Council and employed as a contractor to maintain and administer the balance of the water race system either inside and/or outside of the defined irrigation area and empowered by a separate agreement.
- 2.18 Access to water races for rating purposes – defined as where a race, whether piped or open, is situated on a property or along the boundary including immediately on the other side of a boundary fence.
- 2.19 Irrigation is the replacement or supplementation of rainfall with water from another source in order to grow trees, grasses, crops or plants.

3 CONDITIONS OF USE

3.1 Purpose

The primary purpose of the water race system is to supply water for stock consumption, and/or commercial irrigation within the system area. Subject to written approval by the Council, it may also be used for domestic irrigation as defined in Clause 2.16.

3.2 Other Considerations

- 3.2.1 The activities covered by this Bylaw, including the taking, use, damming and diversion of water, may be subject to regional rules contained in the Canterbury Land and Water Regional Plan. Compliance with this Bylaw does not necessarily imply compliance with regional rules and a resource consent may be required.
- 3.2.2 Activities including discharge into water races and land use close to water races that may contaminate water quality are also subject to rules in the Canterbury Land and Water Regional Plan under which a resource consent may be required.

3.3 Permitted Uses

Subject to the payment of the annual charges determined by the Council, and without any further reference to the Council:

- 3.3.1 Water may be used for stock water purposes.
- 3.3.2 Water may be used for domestic irrigation provided that only one connection per dwelling may draw through an exposed pipe of no more than 20mm internal diameter, for no more than two hours per day and provided written approval from the Council is received.
- 3.3.3 Water may be used for commercial irrigation from races (existing or future) that have been specifically designated as irrigation races or combined stockwater and irrigation races (as respectively defined in clauses 2.8(a) and 2.8 (c)) in accordance with Waimakariri Irrigation Limited as applicable.

Prohibited Uses

No one is to permit, allow or do any of the following:

- 3.3.4 Bathing or washing in a water race.
- 3.3.5 Any domestic fowl, be they water-fowl or otherwise, to stray into or upon the water race.
- 3.3.6 Contamination of the water race by chemicals, hazardous substances and unwanted organisms, nutrients, or by any backflow from irrigation equipment.
- 3.3.7 Use or disturb a water race (including the banks) by any farmed cattle, farmed deer or farmed pigs. Drinking stations located outside the race are the preferred method to avoid damage to the water race.

Explanatory note: The Canterbury Land and Water Regional Plan sets out livestock exclusion rules for artificial watercourses, including water supply races, which also need to be complied with.

- 3.3.8 Any activity carried out on land or in any building or yard to contaminate or have a detrimental effect on the water race.
- 3.3.9 Obstruct the flow of water in the water race by any means whatsoever.
- 3.3.10 Cross through a water race leading any animal or using any mode of transport **except** at the bridges, culverts or crossing places provided by the Council and/or its agent or constructed with the Council's and/or its agents written permission.
- 3.3.11 Any cuttings, clippings, twigs, branches or any other part of any tree or plant or any part of any fence to fall into or remain in a water race.
- 3.3.12 Draw off water from a water race or divert any water belonging to a water race without prior written permission of the Council.
- 3.3.13 Either willfully or through neglect allow any pipe or other apparatus on their property to be out of repair so that water supplied from a water race is wasted.
- 3.3.14 Alter or interfere with any regulating gate or other apparatus or do anything else whereby the supply of water from a water race is improperly increased or decreased.
- 3.3.15 Permit a person who does not pay water race rates to take water from the race.
- 3.3.16 Widen or deepen any water race or alter the course of any water race without the written permission of the Council.
- 3.3.17 Permit or allow any Statutory Nuisance as defined under Section 29 of the *Health Act 1956*.

- 3.3.18 Obstruct any crossing point over a water race.
- 3.3.19 Remove, displace, alter, damage or interfere 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.
- 3.3.20 Open the ground so as to uncover any culverts belonging to any water race or to lengthen or decrease the length of any such culvert without the written permission of the Council.
- 3.3.21 Make any structure over, in, or under a water race without written permission of the Council.
- 3.3.22 Sow, plant, or permit to grow any tree, hedge, shrub or other plant of any kind, within a distance of 10 metres from either side of a water race, except that:
- (a) Crops and pasture are permitted; **and**
 - (b) Shrubs or plants to form any part of a live fence and maintained less than 1.5 metres in height may be sown or planted by an owner or occupier of land on one side of the race only, and then only at a distance of more than one metre from the edge of the race.
 - (c) Otherwise approved by the Council.
- 3.3.23 Erect any building or structures of any kind or any size within 10 metres of either side of any water race, whether piped or open, without the written permission of the Council.
- 3.3.24 Any animal effluent or agricultural fertiliser to be discharged within 10 metres of a stockwater race.
- 3.3.25 Any chemical/herbicide or action, to be used on a water race in such a way as to destabilise the bank structure or detrimentally affect aquatic organisms.

4 COUNCIL RESPONSIBILITIES

Notwithstanding anything to the contrary that may appear in this bylaw the Council or its agent will:

- 4.1 Ensure that the races are maintained at all times.
- 4.2 Ensure maintenance provisions of any agreement between the Council and its agent are met.

CLEANING

4.1 Farm Stockwater Race Cleaning

Every owner or occupier of land through which a farm stockwater race runs or where a farm stockwater race runs adjacent to the land in road reserve (coloured blue on Map 1140) as identified in Clause 2.8 (d), shall:

- 4.1.1 Keep the water race, banks, and sides of the race in good order and condition and free from all silt, weeds, vegetation of all kinds, and from all other rubbish and obstructions of all kinds at their own cost.
- 4.1.2 Keep and maintain the sides, banks, and other earthworks of the water race in such a condition as to prevent or mitigate any overflow, leakage, or waste of water.
- 4.1.3 Keep all culverts and pipes clear of silt and blockages.
- 4.1.4 Where there is access, farm stockwater races adjacent to a road should be maintained by the landowner from within the property boundary.
- 4.1.5 When a landowner is required to undertake maintenance of a farm stockwater race from within the road reserve the property owner or its contractor is required to comply with Traffic Management requirements which may include applying for a TMP using the application form available on the Council's website.

4.2 Other Race Cleaning

The provisions of Clause 5.1 do not apply where that race is a combined stockwater and irrigation race, or an irrigation race, or a stockwater race as identified in Clause 2.8(a), 2.8(b) or 2.8(c). These races will be cleaned by the Council and/or its agent.

4.3 Removal of Debris

After cleaning a water race or clearing or removing any debris from a water race or from the banks or sides of a race the owner or occupier of the land is to without delay, at their own cost and expense, remove any and all clearings and cleanings and other obstructions from both sides of the race in such a manner and to such a distance from the race as may be necessary to:

- 5.3.1 Prevent the materials from re-entering the race;
- 5.3.2 Prevent blockage or alteration of any secondary overland flow path; **and**
- 5.3.3 To allow access to the race by any plant and machinery necessary to clean the race.

5.4 Maintaining Cleaning and/or Improving the Races

- 5.4.1 When the Council and/or its agent clears, cleans or renovates any part of a stock water race, a combined stock water and irrigation race or an irrigation race, as identified in Clause 2.8 (a), 2.8 (b) or 2.8(c) or any land adjoining any part of these races, it may deposit all or part of the materials removed by or in the course of the work onto any part of the land contiguous or adjacent to the race, except where that land is a formed public road.

Explanatory note: The above excludes works to increase the capacity of the water race to convey additional irrigation flows. The deposition of material from such works onto private land requires approval of the landowner.

- 5.4.2 All such material deposited by the Council and/or its agent is to be placed in accordance with Clauses 5.3.1, 5.3.2 and 5.3.3 of this bylaw.
- 5.4.3 When the Council and/or its agent require such material to be removed, this will be arranged by the Council and/or its agent as a charge against maintenance of the water race system.

5.5 Fencing Requirements

- 5.5.1 Any fencing necessary to meet the requirements of the Canterbury Land and Water Regional Plan shall ensure that access to the race for maintenance purposes is not compromised.

Explanatory note: The Canterbury Land and Water Regional Plan sets out livestock exclusion rules for artificial watercourses, including water supply races, which also need to be complied with.

5.6 Failure To Repair or Clean the Race

- 5.6.1 If the owner or occupier fails, neglects or refuses to comply with any provision of this bylaw after having been required to do so in writing by the Council, the Council and/or its agent may enter onto the land, make good such failure, neglect or refusal and charge the owner or occupier with cost and expense of the work.

Explanatory Note: Council will comply with Section 182 of the Local Government Act when exercising powers under clause 5.6.1.

- 5.6.2 Any debt incurred by the Council complying with Clause 5.6.15.6.1 of the bylaw is a debt recoverable in a court of competent jurisdiction.

5 DIVERTING OF WATER

- 5.1 The Council may grant written permission to any person through whose land a water race runs to divert as much water from the race as is necessary to keep a pond or other reservoir on their land to be filled or constantly filled with water, provided that:
- 5.1.1 No such diverting shall be undertaken until the Council has granted a permit to do so in writing. Such a permit may be revoked by the Council after giving three months notice of its intention to do so if the requirements of clauses 6.1.2 – 6.1.7 are not met.
 - 5.1.2 The pond or reservoir shall be completely watertight and lined with impervious materials.
 - 5.1.3 The intake and outlet of any pond must be able to be shut off to ensure compliance with water restrictions or resource consent conditions.
 - 5.1.4 An adequate outfall is provided from the pond or reservoir to allow the overflow to return to the water race, at the same water level as the race.
 - 5.1.5 No such pond or reservoir exceeds the area volume or depth that may be specified by the Council when granting such permission.
 - 5.1.6 No pond or reservoir shall cause any downstream reduction in water flow in the race the water is diverted from.
 - 5.1.7 No pond or reservoir shall be created by installing a dam to raise the water level of the race.

6 EXISTING USES

- 6.1 If, at the date the original bylaw came into force (1999) there are existing:
- 6.1.1 Trees, hedges, other plants or shrubs of any kind either growing or dead, in the form or nature of stumps or otherwise, in or on land and situated contrary to the provisions of Clause 3.4.19 of this bylaw and irrespective of how, when or by what means they came to be there;
- Or**
- 6.1.2 Structures, buildings or yards of any kind or ponds impounding water which are situated contrary to provisions of Clause 3.4.20 and Clause 6 of this bylaw;
- And**
- 6.1.3 If in the reasonable opinion of the Council any of the obstructions referred to in clause 6.1.1 or clause 6.1.2 are interfering with the flow of the water in any water race;
- Then**

6.1.4 The Council shall notify the owner or occupier in writing of its intent to require the removal of such tree, hedge, other plants, shrub, structure, ponds, building and/or yard;

And

6.1.5 The owner or occupier shall be given an opportunity to be heard by the Council before any final decision is made under this clause.

6.1.6 The Council shall make a final decision at a formal meeting, taking in to account any information provided by the owner or occupier.

6.1.7 Should the Council decide that any obstructions referred to need removing, it shall notify the owner or occupier of the requirement for the owner or occupier to remove them, including any consideration for compensation.

6.1.8 In any instances where there is failure to comply, Clause 5.6.1 will apply.

7 EXTRA OR ABNORMAL SUPPLIES

The Council may, at its discretion, grant an extra supply of water from the 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 its application. Such cost may be varied from time to time in accordance with the provisions of these bylaws.

8 POWERS OF COUNCIL

8.1 The Council may under powers given to it under the *Local Government Rating Act* and the *Local Government Act* and their Amendments establish, vary, alter, reduce, increase or remove charges and rates for the provision of the water race system. The Council may also set charges or fees to recover the cost of processing the assessment of any other approval, consent, or any other monitoring, investigation, sampling or analysis charge that is required under any part of this bylaw.

8.2 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 delegated.

8.3 The Council may impose restrictions on the draw off of water from time to time.

8.4 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 agent being Waimakariri Irrigation Limited.

8.5 Council can issue land owners with a temporary notice to exclude access which denies use (i.e. extraction, stock drinking of water and discharge of water) of the stockwater race network if there is reason to believe there could be spread of a hazardous substance or new organism (as defined under the Hazardous Substances and New Organisms Act 1996), or stock could spread contamination or an Unwanted Organism (as defined under the Biosecurity Act 1993). This notice must be written, delivered to the landowner, and contain a date of expiry.

9 BREACHES OF THIS BYLAW

Where any person:

- 9.1 Defaults in payment of any rate imposed on their land in respect of the supply of water; **or**,
- 9.2 Fails to do or perform any act, or thing, that he or she is required to do by these bylaws; **or**,
- 9.3 Permits, allows, or does, any of the acts that are prohibited in Clause 3.4, **or**
- 9.4 Breaches any of terms and conditions of clauses 5 and 6 of this bylaw; **or**,
- 9.5 Fails to carry out anything that they have agreed to as part of their water supply agreement with the Waimakariri District Council or its agent; **or**,
- 9.6 Commits any other breaches of the terms and conditions of this bylaw;

then they are in breach of this bylaw.

10 PENALTIES

- 10.1 Every person who commits a breach of any part of this bylaw is liable to a fine not exceeding \$20,000 as provided for by Section 242 of the *Local Government Act 2002*.
- 10.2 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 amount of damage done or caused to a water race or any works constructed by or under the control or jurisdiction of the Council in relation to the water race, or in respect of any water unlawfully taken or diverted or wasted or lost due to any non observance or performance of any of this bylaw.

11 REMEDIES

- 11.1 In the event of a breach of the statutory and other legal requirements including this bylaw, the Council may serve notice on the owner/occupier advising the nature of the breach and the steps to be taken within a specified period to remedy it. If after the specified period, the owner/occupier has not remedied the breach, the Council may charge a re-inspection fee.

12 SAVINGS

- 12.1 Nothing in this bylaw shall be construed to be an undertaking or guarantee by, or oblige the Council and/or its agent to provide water in any water race either at all, or to any quantity or to any specified quality.
- 12.2 Nothing in this bylaw shall be construed to render the Council and/or its agent responsible or liable to any person or corporate body for the total or partial failure of any water supply from whatever cause such failure may arise.

13 BYLAWS TO BE REPEALED

All bylaws concerning the water race system in force made by the Council or its predecessors are hereby repealed. This repeal shall not affect the past operation of any such repealed bylaws or the validity or invalidity of anything done or suffered, or any right required, or duty or liability incurred under those bylaws.

14 COMMENCEMENT

14.1 This bylaw shall come into force on the being the day so fixed at a meeting of the Waimakariri District Council at which the resolution reviewing this bylaw was confirmed.

14.2 The resolution to approve the proposed bylaw for notification was passed by the Waimakariri District Council on the 1st day of February 2022.