

MOROA WATER RACE BYLAW 2007

Introduction

- A. This bylaw is made by the South Wairarapa District Council in exercise of its powers and authority vested in the Council by Section 146 (b) (i) of the Local Government Act 2002.
- B. This bylaw is enforceable throughout the Moroa Water Race District.
- C. This bylaw is intended to assist efforts to maintain and enhance the quality of the Moroa Water Race to help ensure the future of this resource.
- D. This bylaw compliments Greater Wellington Regional Council's resource consent(s) including the Code of Practice referred to therein for Moroa Water Race.

1. Interpretation

1.1 Defined terms

"The Council" means the South Wairarapa District Council.

"Bylaw" means this bylaw as altered, varied or amended from time to time.

"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.

"District" means lands through which the Moroa Water Race runs and any land within five (5) metres of any branch of the Moroa Water Race is deemed to be within the Moroa Water Race Area.

"Farming purposes" means the provision of water for stock to drink.

"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 the 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 at the commencement of this section; 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 the 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.

“Road” means a road as defined by the Local Government Act 1974.

“Required” means:

- (a) required by notice in writing under the seal of the Council; or
- (b) required by notice in writing signed by a duly Authorised Officer of the Council.

“Authorised Officer” means any person appointed by South Wairarapa District Council to be an authorised officer for the purpose of this bylaw.

“Stock” includes but is not limited to horses, sheep, dairy cows, and cattle.

2. Conditions of Use

2.1 Purpose

The primary purpose of the water race system is to supply water for stock watering purposes within the system area.

2.2 Permitted uses

Subject to the payment of the annual charges that may be determined from time to time by the Council, and without any further reference to the Council:

2.2.1 Water may be used for stock water purposes.

2.2.2 Water is allowed to enter the water race via the Greytown Storm Water system and Battersea Drainage Scheme.

- 2.2.3 In cases of extreme conditions the Council may impose further restrictions as it sees fit.

2.3 Prohibited Uses

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

- 2.3.1 Bathing or washing in a water race.
- 2.3.2 Any domestic fowl, be they water-fowl or otherwise, to stray into or upon the water race.
- 2.3.3 Contamination of the water race by chemicals, nutrients, or by any backflow from irrigation equipment such as pumping other than with the written consent of Council .
- 2.3.4 Any animal to linger in a water race and any stock to enter the water race.
- 2.3.5 Any activity carried out on land or in any building or yard to contaminate, to make less pure the water in the water race.
- 2.3.6 Obstruct the flow of water in the water race by any means whatsoever including undersized culverts, existing or new.
- 2.3.7 Ride, drive or lead any animals or propel, draw or convey any vehicle or chattels into, across, or through a water race except at the bridges, culverts or crossing places provided by the Council or constructed with the Council's written consent.
- 2.3.8 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 the water race.
- 2.3.9 Draw off water either by gravity or pumping, or divert any water from a water race other than for stock water without the written consent of the Council.
- 2.3.10 Allow, either wilfully or through neglect, any pipe or other apparatus on their property to be out of repair so that water supplied from a water race is obstructed or wasted.
- 2.3.11 Permit a person who does not pay water race rates to take water from the race.
- 2.3.12 Widen or deepen any water race or alter the course of any water race without the written consent of the Council.
- 2.3.13 Permit or allow any Statutory Nuisance as defined under Section 29 of the Health Act 1956.
- 2.3.14 Obstruct any crossing point over a water race.

- 2.3.15 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 without written consent of the Council.
- 2.3.16 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 consent of the Council.
- 2.3.17 Make any structure over, in, or under a water race unless approved by the Council in writing.
- 2.3.18 Pipe the water race without written approval of the Council.
- 2.3.19 Sow, plant, or permit to grow any tree, hedge, shrub or other plant of any kind, within a distance of 5 metres from centre of a water race on one side and one meter from the edge of water race on the other side (nearest to the property boundary), except that:
- (a) Crops and pasture are permitted; and
 - (b) Otherwise approved by the Council.
- 2.3.20 Erect any building or structures of any kind or any size within 5 metres of either side of any water race without the written authorisation of the Council.
- 2.3.21 Place any obstruction within a water race that would be a barrier to fish passage.

3. Council Responsibilities

Notwithstanding anything to the contrary that may appear in this bylaw the Council will ensure that the races are maintained at all times.

4. Cleaning

4.1 Owner and Occupier Obligations

Every owner or occupier of land through which a race runs 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. Any spraying of vegetation along the water race must comply with Rule 1 of the Regional Air Quality Management Plan, otherwise it will require a resource consent from the Greater Wellington Regional Council.
- 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 Allow any Council authorised person / contractor to have access to the water race for the purpose of gathering information for water quality audits of the water race.

- 4.1.4 Allow any Council authorised person / contractor to have access (with or without machinery) to the water race for the purpose of maintaining cleaning or improving the water.

4.2 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 both:

- 4.2.1 Prevent the materials from re-entering the race; and
- 4.2.2 To allow access to the race by any plant and machinery necessary to clean the race.

4.3 Maintaining, Cleaning and/or Improving the Races

- 4.3.1 When the Council, whether using its employees, contractors or otherwise, clears, cleans, renovates or improves any part of a water race or any land adjoining any part of the race, 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.
- 4.3.2 All such material deposited by the Council is to be placed in accordance with clauses 4.2.1 and 4.2.2 of this bylaw.

4.4 Failure to Repair or Clean the Race and Failure to Renew Existing Damaged or Undersized Culverts

- 4.4.1 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 or authorised Council officer within the specified time, the Council may enter onto the land and, using its employees, servants, contractors, or any other persons and any plant that may be deemed to be necessary by Council, make good such failure, neglect or refusal and charge the owner or occupier with the cost and expense of the work, provided however that the provisions of Section 182 of the Local Government Act 2002 shall not be abrogated by the provisions of this bylaw.
- 4.4.2 Any expense incurred by the Council complying with clause 4.4 of this bylaw is a debt recoverable in a Court of competent jurisdiction.
- 4.4.3 Any remedy given by such Court shall in no way affect the liability of the owner or occupier to any penalty provided for the breach of this bylaw.

5. Existing Uses

5.1 If, at the date this bylaw comes into force there are existing:

5.1.1 Undersized or damaged culverts;

5.1.2 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 2.3.18 and 2.3.19 of this bylaw and irrespective of how, when or by what means they came to be there;

or

5.1.3 Structures, buildings or yards of any kind or ponds impounding water which are situated contrary to provisions of Clause 2.3.20;

and

5.1.4 If in the reasonable opinion of the Council any of the things referred to in clause 5.1.2 and 5.1.3 are interfering with the flow of the water in any water race;

5.1.5 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, culvert, building and/ or yard;

and

5.1.6 The owner or occupier who objects to a requirements to remove an obstruction shall be given an opportunity to be heard by the Council before any final decision is made under this clause.

5.1.7 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.

5.1.8 If, after an objection has been heard and the Council has given notice in accordance with 5.1.7 an owner or occupier fails to remove an obstruction within a reasonable timeframe, 4.4.1 applies.

6. Extra or Abnormal Supplies

The Council may, at its own 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.

7. Powers of Council

- 7.1 The Council may under powers given to it under the Local Government (Rating) Act 2002 and the Local Government Act 2002 and their Amendments establish, vary, alter, reduce, increase or remove charges and rates for the provision of the water race system.
- 7.2 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.
- 7.3 The Council may impose restrictions on the draw off of water from time to time.

8. Breaches of This Bylaw

Where any person:

- 8.1 Defaults in payment of any rate imposed on their land in respect of the supply of water; or,
- 8.2 Breaches any terms and conditions of clauses 3 and 4 of this bylaw; or,
- 8.3 Fails to do or perform any act, or thing, that he or she is required to do by these bylaws; or
- 8.4 Engages in any prohibited activity specified in clause 2; or,
- 8.5 Commits any other breaches of the terms and conditions of this bylaw;

Then they are in breach of this bylaw.

9 Penalties

- 9.1 Every person who commits a breach of any part of this bylaw is liable to a fine not exceeding \$20,000 as provided for but not limited by section 242 of the Local Government Act 2002.
- 9.2 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.

10 Savings

- 10.1 Nothing in this bylaw shall be construed to be an undertaking or guarantee by, or oblige the Council to provide water in any water race either at all, or to any quantity or to any specified quality.
- 10.2 Nothing in this bylaw shall be construed to render the Council 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.

11 Bylaws to be Repealed

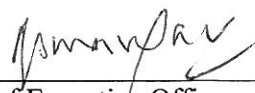
All bylaws concerning the water race system in force made by the Council or its predecessors are hereby repealed. This repeal shall not affect the past operation of any such repealed bylaws or the validity or invalidity of anything done or suffered, or any right required, or duty or liability incurred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

12 Commencement

- 12.1 This bylaw shall come into force on the 1 day of August 2008 being the day so fixed at a meeting of the South Wairarapa District Council at which the resolution reviewing this bylaw was confirmed.
- 12.2 The resolution to approve the proposed bylaw for notification was passed by the South Wairarapa District Council held on 23 day of July 2008



The Common Seal of the
South Wairarapa District Council
was affixed here
in the presence of



Chief Executive Officer



MAYOR