



SOUTH WAIRARAPA DISTRICT COUNCIL PROPOSED BYLAW FOR LONGWOOD AND MOROA WATER RACES

SUMMARY OF INFORMATION CONTAINED IN STATEMENT OF PROPOSAL

The purpose of the proposed bylaw is to administer the Moroa and Longwood water race systems in a single document. The primary purpose of the race systems is to supply water for stock watering purposes within the system areas. The bylaw establishes both permitted and prohibited uses, details when an offence may be committed, and enables optimisation project works.

The creation of the bylaw has been drafted alongside parallel processes including:

- an engineering study that concentrates on the state of the systems and possible optimisation works,
- the resource consents required for the use of the systems,
- investigations into public/private programmes that use the water race network for improved efficiency and effectiveness of water use, and
- the Wairarapa Valley Irrigation investigations.

South Wairarapa District Council has reviewed the bulk of its bylaws and has implemented a suite of combined bylaws with Masterton District Council. This bylaw has been drafted specifically for the Moroa and Longwood race systems. The bylaw has been established as the best practicable option for specifically managing the unique problems and issues associated with the networks, including pollution threats, safety concerns, and misuse.

The bylaw is consistent with the objectives and policies of the Wairarapa Combined District Plan.

Key changes that have been made to the existing Water Race Bylaws are as follows:

- The individual Moroa and Longwood bylaws have been combined into a single document
- The bylaw is updated to be appropriate for today's issues
- The bylaw is more flexible in accommodating alternative use proposals and wider water use opportunities

The Council is interested in the opinions of the community and interested individuals and groups and invites feedback through the submission process. The full Statement of Proposal for the proposed bylaw is attached to this summary along with a submission form. It is also available for inspection, and copies may be obtained at the following Council office, libraries and online:

- SWDC Council Office, 19 Kitchener Street, Martinborough
- Featherston Library, 70-72 Fitzherbert Street, Featherston
- Greytown Library, Greytown Town Centre, 89 Main Street, Greytown
- Martinborough Library, 6 Kitchener Street (Behind the Village Café), Martinborough
- www.swdc.govt.nz/draft-water-races-bylaw-review-2014

Submissions may be made between 30 April and 11 June 2014.



SOUTH WAIRARAPA DISTRICT COUNCIL PROPOSED BYLAW FOR LONGWOOD AND MOROA WATER RACES

STATEMENT OF PROPOSAL

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1. Background and Nature of Proposal

In 2008 South Wairarapa District Council (SWDC) adopted the Moroa Water Race bylaw. A process to implement a similar intended bylaw for the Longwood Water Race was abandoned due to some procedural issues.

SWDC is proposing a new combined water race bylaw that addresses both race systems in a single document.

After reassessing all aspects of the water races, the reasons for Council's proposed directions on this are;

- A singular common bylaw is preferred
- There are significant differences between the content and status of the existing bylaws. The Longwood bylaw is significantly dated, having been adopted in 1936.
- Future opportunities and optimisation options can be examined and appropriately provided for in the document, including alternative strategies for drawing and storing water and cooperative private/public works.
- The original rationale and intended use of the water races can be revisited, which includes any use or change of use associated with the water races.
- The bylaw can be developed keeping in mind the future opportunities and potential associated activities associated with the Wairarapa Valley Irrigation project.
- Rationalisation and optimisation of the existing network flow paths.
- Ensure consistency with other bylaws, plans and documents.

2. Implementation measures

If the proposed bylaw is adopted, SWDC intends to:

- Revise the current Code of Practice to align it with the contents of the new bylaw; and,
- Re-establish a Water Race Committee to manage day to day operational matters.

3. Revocations

The Moroa Water Race Bylaw 2007 and the Featherston Longwood Water Race Bylaw 1936 will be revoked by the adoption of this new bylaw.

4. Statutory context

4.1 Section 155 of the Local Government Act 2002

Section 155 of the Local Government Act 2002 (**LGA 2002**) prescribes that before commencing the process to make a bylaw the Council must determine whether:

1. A bylaw is the most appropriate way to address the perceived problem.
2. The proposed bylaw is the most appropriate form of bylaw.
3. The proposed bylaw gives rise to any applications under the New Zealand Bill of Rights Act 1990.

4.2 Sections 156 and 83 of the Local Government Act 2002

Pursuant to Section 156 of the LGA 2002, a local authority must use the special consultative process detailed in Section 83 of the LGA 2002 when making, amending or revoking a bylaw under the Act. The prescribed process in s83, as modified by s86, has been followed. This includes the preparation of this statement of proposal and a summary of the information contained in it, and of a draft of the proposed bylaw; and the completion of all of the required assessments and of the consultation and submission process.

The Statement of Proposal and Summary of Information, along with a submission form, will be available to the public at the Council office, libraries and online at www.swdc.govt.nz/draft-water-bylaw-review-2014. It will also be directly sent to key stakeholders.

5. Power to make a Water Race Bylaw

This section follows the LGA 2002 framework that enables Council to decide whether it is appropriate to implement a Water Race Bylaw.

The provisions that give Council the power to make a bylaw are:

- Section 145(a) and (b) of the Act, which authorise Council to make bylaws to protect the public from nuisance and to protect, promote and maintain public health and safety respectively.
- Section 146(b) (i) of the Act, which authorises Council to make bylaws on water races for specific purposes protecting them from damage, misuse, or loss.

6. Perceived problem

The Moroa and Longwood Water Race systems supply water for stock watering purposes and as such are a pivotal component of primary production activities in the district. It is imperative that Council ensures not only that the network is available, but also that the adverse effects generated by any activity are addressed. In addition, the networks should be available for enhancement measures and innovations that increase availability, efficiency and quality of water.

There are currently 2 bylaws in place, one for each of the respective networks. This is not considered the most efficient mechanism for the administration of the water races. Whilst the Moroa Bylaw is relatively recent, having been adopted in 2008, the Longwood Water Race Bylaw is significantly older, dated 1936. The Longwood document is obviously dated and has considerable gaps in terms of its information and relevance to today's environment. Having two separate bylaws also creates considerable inconsistency in the administration of the 2 water race networks.

As increasing demand is placed on water, and an anticipated reduction in its availability is recognised, there is a potential threat to the very existence of the water race networks. It is therefore crucial that appropriate management tools be put in place and applied to ensure the availability of water for stock purposes remains for both today's and tomorrow's communities.

The current bylaws have also been developed in isolation from any other initiatives or studies. This has limited the effectiveness of the current bylaw by making activities such as alternative drawing methods and onsite dam storage for a specific property prohibited. Although unintentional, the bylaws have had a constraining effect.

Pollution from stormwater outfalls, runoff from pasture, and stock within the channels are the predominant threats to the actual quality of the water resource. Whilst the Moroa bylaw addresses these issues in a reasonably robust manner, the Longwood document addresses the threats of 76 years ago. Associated with water quality, is the fact that these artificial man made water course have become valuable ecosystems in their own rights, and also significant positive contributors to the wider surface water environment in the lower Wairarapa valley catchment area.

7. Most appropriate way to address the perceived problem

A bylaw is, and historically has been, the most appropriate way of dealing with the problem of pollution, obstructions to efficiency of operation, improper use, safety, and ultimately ensuring the provision of water race networks that cross public land, and numerous private land parcels.

There are other statutory mechanisms that address single aspects of the water races but no one piece of legislation is able to provide a holistic management tool other than a bylaw. Bylaws provide a framework to prohibit unwanted activities, permit acceptable activities, and implement penalties in instances when an offence has occurred. They can also be used to create a management framework that can enable and accommodate associated water provision activities.

The Council has identified three main options for managing the water races:

1. Status Quo
2. Revoke the bylaws and rely on alternative methods
3. Revoke the existing bylaws and replace with a single revised bylaw

Option	Advantages	Disadvantages
Status Quo	<ul style="list-style-type: none"> • Avoids the financial and other costs to the Council and stakeholders which are involved in the change process 	<ul style="list-style-type: none"> • Inconsistencies between the 2 bylaws • Longwood bylaw is out-dated
Revoke the bylaws and rely on alternative measures	<ul style="list-style-type: none"> • Initially a simpler process for Council 	<ul style="list-style-type: none"> • Ineffective regulatory mechanism • Any action taken could be more costly and take longer • Artificial watercourses are not adequately covered by the RMA or any other legislation.

<p>Revoke the existing bylaws and replace with a single revised bylaw</p>	<ul style="list-style-type: none"> • Ease of implementation • Application of rules and penalties are in context to the issue • Provides targeted management of the specific issues pertaining to the water races • Consistency with Council Policies • Relatively cost efficient and avoids lengthy legal processes during regulatory process 	<ul style="list-style-type: none"> • May give rise to confusion with regards to overlapping rules, including in terms of the hierarchy between them • Financial and other costs to the Council and stakeholders which are involved in the change process
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8. Most appropriate form of bylaw

This Water Race Bylaw clearly identifies which activities are permitted and what constitutes a breach and is therefore an offence. It also provides flexibility so that Council can consider a proposal or activity that is related to, or complementary to, the race system, and specifies criteria that any such proposal will be assessed against. As such, it represents a comprehensive tool for managing the water races, which will enable the Council to meet the current and future needs of communities for good-quality local infrastructure in a cost-effective way. The bylaw is also consistent with all of the applicable legislation, and Council's policies. In Council's view, the proposed bylaw is the most appropriate form of bylaw for managing the water races.

9. New Zealand Bill of Rights Acts 1990

Section 155(2)(b) of the LGA 2002 requires Council to determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (the **BORA**), and section 155(3) directs that no bylaw can be made which is inconsistent with that Act.

The BORA prescribes a series of rights and freedoms that include such matters as the right to life, avoiding torture or cruel treatment, avoiding medical or scientific experimentation, refusing medical treatment, electoral rights, freedom of thought, conscience and religion, expression, peaceful assembly, association, movement and discrimination. The Council has assessed the proposed bylaw against these rights, and does not consider any of them to be compromised by this proposed bylaw. Even if any of these rights are potentially affected, the Council considers that the proposed bylaw represents a reasonable limit in terms of section 5 of the BORA.

This bylaw will be developed in accordance with the special consultative process and as such the public will be offered full opportunity to submit and have input. All submitters who request to be heard will be extended the opportunity to do so.

10. Proposed timeline

The proposed timeline for the process is;

Date	Action
23 April 2014	Adoption of the Statement of Proposal for the Draft Combined Moroa Longwood Water Race Bylaw 2014
30 April 2014	Commence consultative process by publicly advertising the bylaw and inviting submissions
11 June 2014	Period for making written submissions closes at 4pm.
August 2014	Hearing of submissions by Council. (Date to be confirmed)
September 2014	Incorporate any necessary changes/ alterations to the bylaw/ code of practice. (Date to be confirmed)
October 2014	Adoption of the Combined Moroa - Longwood Water Race Bylaw 2014. (Date to be confirmed)
November 2014	Public notification on the adoption of the bylaw and the commencement date. (Date to be confirmed)
December 2014	Commencement of the Combined Moroa Longwood Water Race Bylaw 2014. (Date to be confirmed)

11. Submissions

At the Council meeting on Wednesday 23 of April 2014 the Council passed a resolution approving public consultation on the proposed Combined Moroa/Longwood Water Race Bylaw 2014 in accordance with the special consultative procedure prescribed in the LGA 2002.

The Council is interested in the opinions of the community and interested groups and invites feedback through the submission process. The Statement of Proposal and draft bylaw can be viewed online at www.swdc.govt.nz/draft-water-bylaw-review-2014 and downloaded as a PDF, along with a submission form.

The proposed bylaw can also be viewed at the main Council office in Martinborough and also the Featherston Library, the Martinborough Library and the Greytown Town Centre. Submission forms can be collected from, and returned once completed to these sites.

Please send submissions via the post to:

Draft Water Bylaw Review Submission
South Wairarapa District Council
PO Box 6
Martinborough

Or hand deliver to:

The Council Office
19 Kitchener Street
Martinborough

Submissions may also be emailed to infrastructure.team@swdc.govt.nz

Submissions close 11 June 2014

