

Bylaw

WATER RACES

TITLE:	Ashburton District Council Water Races Bylaw 2019
TEAMS:	Assets and Open Spaces
RESPONSIBILITY:	Assets/Open Spaces Managers
DATE ADOPTED:	26 September 2019
COMMENCEMENT:	27 September 2019
NEXT REVIEW DUE:	27 September 2024 (as required by LGA s.158 and 159)
RELATED DOCUMENTS:	Ashburton District Council Explanatory Bylaw 2016 Ashburton District Plan Ashburton District Surface Water Strategy 2018-2028 Health Act 1956 Health and Safety at Work Act 2015 Local Government Act 2002 Resource Management Act 1991

1. Title

The title of this bylaw is Ashburton District Council Water Races Bylaw 2019. This bylaw amends the Ashburton District Council Water Races Bylaw 2012.

2. Purpose

The purpose of this bylaw is to:

- a. Ensure the water race network is managed appropriately to maintain water quality and quantity for stockwater;
- b. Provide for the cultural and ecological values of identified parts of the network; and
- c. Provide for the safety of water race users and the public.

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4. Application

This bylaw applies to the water race network within Ashburton District managed by the Ashburton District Council. This bylaw is to be read in conjunction with the requirements of the Local Government Act 2002. Where a conflict occurs the provisions of that Act take precedence.

5. Definitions

Affected parties: means, in the context of an application to alter or close a section of race, the property owner or occupier who use that section of race or whose land the race channel runs through or is adjacent to a roadside race.

Animal: means stock, poultry and any other animal that is kept in a state of captivity or is dependent upon human beings for its care or sustenance and those that are not.

Appointed crossing: means any location at which there is a culvert or bridge to allow for animals to cross over the water race.

Authorised Person: means any person to whom authority is delegated by Council to take action in relation to this bylaw or to undertake the duties of a Council officer under this bylaw, including a contractor or agent of the local authority.

Bylaw: means the Ashburton District Council Water Races Bylaw 2019.

Council: means the Ashburton District Council or any Authorised Person

District: has the meaning provided in the Ashburton District Council Explanatory Bylaw 2016.

Local race: means a race that sources its water from a main race and is maintained by the occupiers/landowners whose land the race runs through or is adjacent to a roadside race.

Owner or occupier: means the person or persons who use/s the race or whose land the race channel runs through or is adjacent to and includes their agents.

Main race: means a race that sources its water directly from an intake point for distribution

through local races. Main races are operated and maintained by Council.

Maintenance: means ensuring channels and banks are maintained and kept clear from obstructions to allow water to flow freely.

Pollution: means the discharge, whether directly or indirectly into a water race, which will contaminate that water so as to change the physical condition in such a manner as to:

- a. Make the water unclean, noxious or impure; or
- b. Be detrimental to the health, safety or welfare of persons using the water; or
- c. Be poisonous or harmful to animals, birds or fish around or in the water; and

Includes any other action or inaction which renders the water in the water race to be classified as all or any of the points above.

Service: means a pipe, pond, trough, tank or reservoir or other service connected to the water race.

Stock: has the meaning provided in the Ashburton District Council Explanatory Bylaw 2016.

Water race: has the meaning given in the Local Government Act 2002, and in general means the land occupied by a constructed water channel, including its sides and banks, under the authority of a local authority to be used for farming purposes. It can include other waterworks, buildings and machinery relating to or used in connection with a water race. For the purposes of this bylaw it includes both local races and main races.

6. Use of water race network

- 6.1 The water race network's primary purpose is to supply water for stock consumption.
- 6.2 The water race network is not intended to supply water for drinking or domestic use.
- 6.3 The Council may prevent the use of any water from the water race network if the owner or occupier of the land receiving the water fails to comply with provisions of this bylaw or fails to pay the annual charges for the supply of water from the water race network.
- 6.4 No owner or occupier of any land or other person shall direct, consume or use any water from any water race without the permission in writing of the Council and without having first paid the appropriate charges.
- 6.5 No owner or occupier responsible for a local race shall cause or permit water to run to waste from any water race or service.
- 6.6 For the avoidance of doubt, water running to approved discharge points (including soak pits, drains and rivers) is not considered waste for the purposes of clause 6.5.

7. Responsibilities of owners or occupiers

- 7.1 The owners or occupiers are responsible for ensuring all necessary fees are paid and permissions obtained for any use of the water race network.
- 7.2 The owners or occupiers responsible for a local race shall, at their own cost, keep and maintain the local race in good condition to ensure a continuous flow and prevent any overflow, leakage or wastage of water to land or roads.

- 7.3 Where the local race is located on or about the common boundary between lands in different ownership, the responsibilities of owners or occupiers lie between them in equal shares.
- 7.4 The owners or occupiers shall clean and maintain the local race in good order and repair and allow easy access to race cleaning machinery.
- 7.5 The owner or occupier shall ensure that any damage to the local race bank is promptly and properly repaired and ensure that the local race is maintained in its original condition in relation to its depth and width following any maintenance and or repair, unless otherwise authorised.
- 7.6 The owner or occupier may, at the written direction of an Authorised Person, be required to erect an appropriate fence to allow animal access to the water race for drinking purposes only.
- 7.7 The owner or occupier shall maintain and keep all on-farm local race bridges and culverts in proper repair and condition.
- 7.8 The owner or occupier of the land through which any local race runs shall remove or dispose of all matter or debris dislodged as part of cleaning and/or maintenance of that local race, and shall:
 - 7.8.1 Ensure that removal or disposal occurs at the time that cleaning and/or maintenance occurs or as soon as practicable thereafter.
 - 7.8.2 Bear the cost of the removal and disposal of that matter and debris.
- 7.9 The owner or occupier will allow access to machinery used for race cleaning and take all reasonable steps to prevent any matter or debris removed from the local race from re-entering the race.
- 7.10 The owner or occupier must make a Corridor Access Request in writing to the relevant road controlling authority for any work within a road reserve. The person undertaking the work shall then comply with all the requirements of the subsequent Works Access Permits.

8. Powers and responsibilities of Council

- 8.1 Council sets annual rates under the Local Government (Rating) Act 2002 and may impose fees and charges under the Local Government Act 2002 for the ability to use the water race network on all properties with a water race running through or adjacent to it.
- 8.2 Rates are levied on a property served by the water race network regardless of whether the water is used or not.
- 8.3 Fees and charges shall be set in accordance with the provisions of the Local Government Act 2002 and this bylaw.
- 8.4 Nothing contained in this bylaw shall restrict Council's ability to manage its water race network and infrastructure associated with it.
- 8.5 Council is responsible for the cost of network operation and the management and maintenance of main water races, control structures, flow measurement facilities and road crossings (including associated culverts).
- 8.6 Where a water race has been altered, diverted or closed, Authorised Persons and/or Council's appointed agents shall have rights of unrestricted access to the water race and other occupied land for the purposes of construction, maintenance, alteration and inspection of water races, associated structures and closure works.

- 8.7 Council may impose restrictions on taking water from the water race network from time to time.
- 8.8 Council does not guarantee an uninterrupted or constant supply of water to any property or its quality.
- 8.9 Council is not responsible or liable to any person or body for the total or partial failure of any part of the water race network.
- 8.10 Council may stop the flow of water in any water race for the purposes of:
 - 8.10.1 Carrying out repairs, maintenance, alterations, or any other purpose deemed necessary by the Council;
 - 8.10.2 Managing the distribution of water; and/or
 - 8.10.3 Permanently closing the race (see Schedule 1)
- 8.11 Council may carry out fencing, cleaning, maintenance or repair of a local race in the event that the owner or occupier fails to do so satisfactorily.
- 8.12 Council may recover the cost of works carried out under clause 8.11 of this bylaw from the owner or occupier. Where the work involves two or more owners or occupiers, Council shall recover its costs **either**:
 - 8.12.1 By equal shares; **or**
 - 8.12.2 By allocating each owner or occupier a fair and just proportion of the total costs of the work where this will produce a fairer outcome than equal shares.

9. Alterations to the water race network

- 9.1 Alterations to the water race network include:
 - 9.1.1 Diverting an existing section of water race;
 - 9.1.2 Constructing a water race in a road reserve or under carriageways;
 - 9.1.3 Installing a pipe service, pump service or pond service as described in Schedule 2 to this bylaw; or
 - 9.1.4 Permanent closure of a water race.
- 9.2 Assessment of an alteration to the water race network is triggered by application in writing to Council from
 - 9.2.1 Any owner or occupier; or
 - 9.2.2 An Authorised Person
- 9.3 An application under clause 9.2 shall include:
 - 9.3.1 Any applicable fees and charges
 - 9.3.2 A completed “Application for Alterations to Water Race” form, and
 - 9.3.3 “Affected Parties Consent” form signed by affected parties
 - 9.3.4 The information necessary to enable assessment under the criteria in Schedule 1
- 9.4 Council will assess the application against the criteria in Schedule 1.
- 9.5 Council has the right to decline any application.
- 9.6 Council may grant permission for any application subject to conditions.
- 9.7 Works cannot begin until Council has provided written permission.

10. Non-permitted uses of the water race network

Explanatory Note: Clause 10.1.15 is intended to enable efficient and effective maintenance of the water race network and to prevent inappropriate plantings that reduce the efficiency of that work. In particular, Council notes that riparian plantings may occur within 3 metres of the sides of a water race and may provide ecological benefits without constraining race maintenance.

- 10.1 The owner or occupier or any other person shall not:
 - 10.1.1 Allow any pollutant to enter a water race.
 - 10.1.2 Do anything that will increase or decrease the flow of water in the water race without the consent of the Council
 - 10.1.3 Obstruct the flow of water in any water race by any means whatsoever
 - 10.1.4 Remove, displace, alter or interfere with any gauge, meter, weir, dam, reservoir, crossing, culvert, pipe, headworks, gate, screen, building or other structures which form part of the water race network.
 - 10.1.5 Obstruct or interfere with any person employed by Council in connection with the water races in the discharge of their duties.
 - 10.1.6 Widen or deepen any water race or alter its course without the consent of the Council
 - 10.1.7 Allow any animals to enter a water race, except that a drinking station may be provided outside the water race.
 - 10.1.8 Wash or cleanse any vehicle, plant, equipment, animal carcass, hide or skin or any other substances in any water race, or place or allow to remain, any animal dead or alive in any water race or on the bank of the water race.
 - 10.1.9 Obstruct any crossing over a water race.
 - 10.1.10 Ride, drive or lead any animal into or through any water race other than at an appointed crossing.
 - 10.1.11 Ride or drive any vehicle or machine across or through any water race other than at an appointed crossing.
 - 10.1.12 Allow any person to bathe in any water race, reservoir or pond.
 - 10.1.13 Allow domesticated ducks, geese or exotic fish access to the water race.
 - 10.1.14 Allow the disposal of cuttings or clippings from any plant or hedge to remain in a water race, culvert, channel or within 3 metres of the banks of any water race, culvert or channel.
 - 10.1.15 Sow, plant or allow 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 for:
 - 10.1.15.1 Crops and pasture are permitted; and
 - 10.1.15.2 Shrubs or plants forming a live fence are permitted provided that :
 - a. They are maintained to less than 1.5 metres in height;
 - b. They are sown or planted on one side of a water race only;
 - c. They are at a distance of not less than 1 metre from the edge of the water race; and
 - d. A strip of not less than 6 metres wide (adjacent to one side of the water race) is left unplanted to enable access to the water race for machinery used for cleaning; or
 - 10.1.15.3 As otherwise approved by Council.

- 10.1.16 Direct, divert or cause or permit direction or diversion of the water of any stream, water course, pond, swamp or stormwater runoff from its natural flow into any water race, associated structure or piece of equipment without written permission of the Council.
- 10.1.17 Permit a person who does not pay any water race rates to take water from a water race.
- 10.1.18 Pitch or erect, or cause to be pitched or erected, any tent, building or other structure, whether of a permanent or temporary nature, or shall tether or fasten any animal, or shall drive or fix any post, stake, hurdle or other thing, within the limits of a water race.
- 10.1.19 Place any boat, or other craft, in the water or any water race.
- 10.1.20 Use a water race in any other manner contrary to the provisions of this bylaw or of the Local Government Act 2002 and any regulations.

11. Amendment by resolution

Council may, by resolution publicly notified, amend any matter relating to Schedules 1 and 2 of this bylaw.

12. Offences and penalties

Every person who breaches this bylaw commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 or such other amount as may be provided for under the Local Government Act 2002.

Schedule 1 – Criteria to assess proposals and/or applications or proposals for alterations to water races (including closures)

The criteria below will be used to assess proposals and/or applications to make alterations to water races (including closures). Council will consider all relevant criteria. The final decision will reflect the overall merits of the application as a whole.

1. Criteria to be considered
 - a. Length and location of section of race to be altered or closed
 - b. Number of properties that will be affected
 - c. Current use of the section of race proposed to be altered or closed
 - d. Percentage of landowners/occupiers in support of closure
 - e. Economic analysis of race closures and alterations, including the operating and capital costs and benefits for all affected parties, and the equitable distribution of those costs and benefits.
 - f. Cost-effective alternative water sources available to properties, including costs of in-farm infrastructure, such as wells, pumps, tanks and reticulation
 - g. Whether the race is a main race or a local race
 - h. Cultural values affected by the alteration or closure
 - i. Ecological values affected by the alteration or closure
 - j. Land/stormwater drainage values affected by the alteration or closure
 - k. Fire-fighting values affected by the alteration or closure, such as the availability of water within that section of race to provide a source for fire-fighting
 - l. Physical effects of closure on other network infrastructure
 - m. Impacts of mitigation measures that may reduce the effects of race closures or alterations
 - n. Achievement of the objectives of the Surface Water Strategy, the Ashburton Water Zone Implementation Programme, and the Canterbury Water Management Strategy and the Council meeting its obligations under the Canterbury Land and Water Regional Plan

Schedule 2 – Specification for services

An application to Council is required for the installation of the following permitted services:

1. Pipe service consists of a pipe of internal diameter less than or equal to 40mm used to convey water under gravity flow from a water race via a standard “take off” to a storage tank or trough.
2. Pump service consists of a suction pipe fitted to the outlet of a standard “take off” cylinder. The cylinder is fed from the water race via a 40 mm internal diameter pipe with the cylinder capacity sufficient to match the pump performance. The suction pump may be used to convey water from the cylinder to a storage tank. Dwellings, outbuildings or water troughs may be supplied from the storage tank.
3. Pond service consisting of a pond of:
 - a. A maximum depth of 0.6 m
 - b. A maximum surface area of 35 m²
 - c. A maximum capacity of 21 m³
4. The pond is to be constructed of impervious material and connected to a water race via a small loop race having adjustable control gates fitted at the intakes and outlet at the junctions with the principal race. The supply of water to any pond service may be temporarily closed during drought or be terminated in writing by the Council at any time.
5. Extension services apply to pipe and pump services and require the approval of the Council. Where approved each extension service shall permit the supply of water to one additional trough.