



**MASTERTON  
DISTRICT COUNCIL**

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**CONSOLIDATED  
BYLAW 2008**

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**PART TEN  
WATER RACES**

The Consolidated Bylaw 2008  
comprising parts one to eleven  
and thirteen to sixteen  
were adopted at the Council Meeting  
held on Wednesday 28<sup>th</sup> May 2008.

The Consolidated Bylaw 2008 came into force  
throughout the district on the 1<sup>st</sup> July 2008

# MASTERTON DISTRICT COUNCIL CONSOLIDATED BYLAW 2008

## Part 10 – WATER RACES

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### REFERENCED DOCUMENT

Local Government Act 2002

## FOREWORD

This is a new proposed Bylaw and references a number of other Council Bylaws. It is intended to assist efforts to maintain flows and enhance the water quality of the Masterton District water races. Local authorities are empowered under the Local Government Act 2002 to make Bylaws.

Reference should be made to Masterton District Council Consolidated Bylaw 2008: Part 1 *Introductory* and to the legislation referenced under New Zealand Legislation for any other definitions not included in this part.

## 1 INTRODUCTION

This Bylaw is made by the Masterton District Council in exercise of its powers and authority vested in the Council by section 146 (b) (i) of the Local Government Act 2002.

## 2 INTERPRETATION

### 2.1 Definitions

|                           |  |
|---------------------------|--|
| <b>AUTHORISED OFFICER</b> | Any person appointed by Masterton District Council to be an authorised officer for the purpose of this Bylaw.  |
| <b>BYLAW</b>              | This Bylaw as altered, varied or amended from time to time.  |
| <b>COUNCIL</b>            | The Masterton District Council.  |
| <b>DISTRICT</b>           | Lands through which the Opaki Water Race and Te ore Ore Water race run and any land within five metres of any branch of the Opaki Water Race and Te Ore Ore Water Race is deemed to be within the Opaki Water Race and Te Ore Ore Water Race Area. |
| <b>FARMING PURPOSES</b>   | The provision of water for stock to drink.   |
| <b>OWNER or OCCUPIER</b>  | The owner or occupier of land in the supply area as recorded as such in the valuation roll of the district.  |
| <b>REQUIRED</b>           | Is required by notice in writing under the seal of the Council; or in writing signed by an authorised officer.   |
| <b>ROAD</b>               | A road as defined by the Local Government Act 1974.  |
| <b>STOCK</b>              | Includes but is not limited to horses, sheep, dairy cows, and cattle.  |

## **WATER RACE**

A water race as defined in the Local Government Act 2002, Part 1, section 5 (1) and includes the Opaki Water race and the Te Ore Ore Water race as schematically shown in the First Schedule.

This includes 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.

### **3 CONDITIONS OF USE**

#### **3.1 Purpose**

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

#### **3.2 Permitted uses**

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

##### **3.2.1**

Water may be used for stock water purposes.

##### **3.2.2**

Rain water is allowed to enter the water race

##### **3.2.3**

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

#### **3.3 Prohibited Uses**

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

- a) Bathing or washing in a water race.
- b) Any domestic fowl, be they water-fowl or otherwise, to stray into or upon the water race.
- c) Contamination of the water race by chemicals, nutrients, or by any backflow from irrigation equipment other than with authorisation from Greater Wellington Regional Council.
- d) Any activity carried out on land or in any building or yard to contaminate, to make less pure the water in the water race.
- e) Obstruct the flow of water in the water race by any means whatsoever including undersized culverts, existing or new.
- f) 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 authorisation.
- g) 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.

- h) Draw off water either by gravity or pumping, or divert any water from a water race without the authorisation of the Council and the obtaining of such consents or approvals as may be required.
- i) 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.
- j) Permit a person who does not pay water race rates to take water from the race.
- k) Widen or deepen any water race or alter the course of any water race without the authorisation of the Council.
- l) Permit or allow any Statutory Nuisance as defined under Section 29 of the Health Act 1956.
- m) Obstruct any crossing point over a water race.
- n) 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.
- o) 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 authorisation of the Council.
- p) Make any structure over, in, or under a water race unless it is authorised by the Council.
- q) Pipe the water race without the authorisation of the Council.
- r) Sow, plant, or permit to grow any tree, hedge, shrub or other plant of any kind, within a distance of 5 metres from either side of a water race, except that: crops and pasture are permitted; and otherwise authorised by the Council.
- s) 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 and Resource Consent.
- t) Alter the course of a water race without the consent of the Greater Wellington Regional Council.

#### **4 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.

## **5 CLEANING**

### **5.1 Owner and Occupier Obligations**

Every owner or occupier of land through which a water race runs shall:

- a) 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.
- b) 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.
- c) 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.
- d) 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.

### **5.2 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:

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

### **5.3 Maintaining, Cleaning and/or Improving the Races**

#### **5.3.1**

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.

#### **5.3.2**

All such material deposited by the Council is to be placed in accordance with clauses 5.2 a) and 5.2 b) of this Bylaw.

## **5.4 Failure to Repair or Clean the Race and Failure to Renew Existing Damaged or Undersized Culverts**

### **5.4.1**

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.

### **5.4.2**

Any expense incurred by the Council complying with clause 5.4 of this Bylaw is a debt recoverable in a Court of competent jurisdiction.

### **5.4.3**

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.

## **6 EXISTING USES**

### **6.1**

If, at the date this Bylaw comes into force there exist:

- a) Undersized or damaged culverts;
- b) 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 3.3 q) and 3.3 r) of this Bylaw and irrespective of how, when or by what means they came to be there;
- c) Structures, buildings or yards of any kind or ponds impounding water which are situated contrary to provisions of Clause 3.3 s);

And if in the reasonable opinion of the Council any of the things referred to above are interfering with the flow of the water in any water race 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. The owner or occupier shall be given an opportunity to be heard by the Council before any final decision is made under this clause.

## **7 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.

## **8 POWERS OF COUNCIL**

### **8.1**

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. These charges or rates apply to every owner or occupier of land within the water race district or through, along, abutting upon or adjacent to which any water race or water channel shall pass.

### **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.

## **9 BREACHES OF THIS BYLAW**

Where any person:

- a) Defaults in payment of any rate imposed on their land in respect of the supply of water;  
or,
- b) Breaches any terms and conditions of clauses 4 and 5 of this Bylaw; or,
- c) Fails to do or perform any act, or thing, that he or she is required to do by these Bylaws;  
or
- d) Engages in any prohibited activity specified in clause 3; or,
- e) Commits any other breaches of the terms and conditions of this Bylaw;

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 but not limited 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 SAVINGS**

### **11.1**

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.

### **11.2**

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.

## **12 POWER TO AMEND BY RESOLUTION**

The Council may from time to time by resolution publicly notified:

- a) Add schedules
- b) Make additions or deletions from the schedules
- c) Substitute new schedules

**FIRST SCHEDULE – Water Race Plan**



