

Chapter 16: Water Races

Scope

The purpose of this chapter of the bylaw is to:

- (a) Define Council's requirements for water races and to provide for the protection of water races.
- (b) Prescribe the conditions that shall apply to water races.
- (c) Empower Council to carry out remedial works in cases where the owner or occupier of land defaults in his / her obligations to water races, and to recover the cost from any owner or occupier as a debt.

1600. Interpretation

1600.1. This Chapter to be read in conjunction with Chapter 1 – Interpretation.

1601. Application for water supply

1601.1. Every person who proposes to:

- (a) draw water from a water race supply; or
- (b) vary the conditions of an approval that has previously been granted; or
- (c) vary the location of the point of supply that has previously been granted; or
- (d) install any piped services or extensions from a water race supply; or
- (e) disconnect from any water race supply.

shall complete an application on an approved form for the supply of such service (or the disconnection from any such service), together with payment of any prescribed charges, and the provision of all other information required by Council.

1602. Water race application approvals

1602.1. If Council approves an application in relation to a water race, it may impose any terms or conditions considered appropriate to the application.

1602.2. Terms and conditions may include, but shall not be limited to:

- (a) The applicant shall be responsible for the payment of all costs associated with the application, construction, alteration and extension of the water race supply.
- (b) Council may determine the quantity of water to be supplied to the applicant, the point at which the water shall enter the applicant's land, the direction it shall take through such land and the use of any water supplied.

- (c) Council may charge the applicant a special charge for the water supplied;
- 1602.3. The following conditions shall be imposed in respect of every application in relation to a water race:
 - (a) The applicant shall grant to Council a perpetual right-of-way, at least 10 metres wide (i.e. 8 metres on one side and 2 metres on the opposite side, measured from the centre of the water race) over their lands for all purposes connected with the construction, maintenance, repair, and inspection of the proposed water race, with a right of entry over all other parts of the said property for the same purposes;
 - (b) The water race and all associated works shall be constructed to Council's standards and as required by, or under the direction and supervision of Council.
 - (c) The supply of water to any piped service may be terminated in writing by Council at any time.

1603. Water use

- 1603.1. The principle use of water from a water race is stock drinking water.
- 1603.2. Water may be used for commercial irrigation from water races (existing or future) that have been specifically designated as irrigation races or combined stock water and irrigation races.
- 1603.3. Council may at its discretion grant an extra supply of water from the water races for special purposes, the cost to be agreed upon between Council and the person applying for the same.

1604. Gateway access

- 1604.1. At all fences on any property intersected by a water race, the owner or occupier of property through, over, under, upon or along which a water race has been constructed, shall or otherwise, within 28 days of being served a notice in writing by Council to do so, erect on the water race a gateway not less than 3.6m width or put into good order or repair any such gateway. Council may, upon application by the owner or occupier in writing, within ten days of being served such a notice, permit the gateway to be erected within 20 metres of the centre of the water race.
- 1604.2. Electric fences shall not be erected over water races unless they can be switched off at the water race and opened as a gateway.
- 1604.3. The owner or occupier shall permit such gateway to be used by Council at all times and for all purposes connected with the water race. Gates shall not be locked unless a Council padlock is purchased and installed.

1605. Passage of water

1605.1. In all cases, each owner or occupier shall permit the water that shall flow into their land (over and above the portion that they shall be entitled to consume) to flow through their land, and into the adjoining land. Owner or occupier of adjoining land is entitled to receive the same, without obstruction, diminution (except such as shall occur through ordinary use) and without pollution. Council shall not be responsible to any owner or occupier for any loss, diminution, or pollution of water from any cause whatever.

1605.2. The owner or occupier of any property through which a water race is constructed shall ensure that any part of the water race damaged is promptly and properly repaired and all material obstructing or polluting the flow of water is removed from the water race and disposed of in such a way as not to cause further pollution or obstruction.

1606. Water race crossings

1606.1. Every owner or occupier of land through which a water race shall pass, or adjacent to any water race upon any road or reserve, shall construct and maintain proper and substantial water race crossings in such places as may be required by Council. All water race crossings shall be constructed and maintained in accordance with Council requirements.

1607. Right of entry on land

1607.1. Council or its agent shall have and shall exercise the power to enter upon any lands through or on which any water race or reservoir for water is constructed to inspect, cleanse, repair and maintain such water races and reservoirs and any other associated works.

1608. Charge for use of water

1608.1. Council may from time to time by resolution fix an annual charge to be paid by every owner or occupier of land within the water race area through, along, abutting upon, or adjacent to which any water race shall pass, and the water of which they shall be at liberty to use. The occupier of any such land shall be liable for the payments of the annual charge, but if there is no occupier, then the owner of the land shall be liable.

1608.2. Any person who, by agreement with Council, has withdrawn their right to access any water race, shall still be liable to the annual water charge described in clause 1608.1 hereof.

1608.3. If the occupier of any land fails to pay any such charge or any instalment thereof within one calendar month after the due date for payment, Council may recover such charge from the owner of the land but its right to recover from the owner shall not release the occupier from his liability to pay the charge.

1608.4. A minimum of 21 days notice shall be given in writing before legal proceedings are taken against the owner of any land, to recover any outstanding charge or instalment.

1608.5. All moneys received by Council from charges, shall be expended in connection with the waterworks as Council may determine, provided always that this does not prejudice or affect any covenant or agreement made between Council and the owner or occupier of any land relating to the maintenance and repair of waterworks.

1609. Rights of Council representatives

1609.1. It shall be lawful for Council, or its agents, to inspect, construct, maintain and repair the water race, and for these purposes any vehicles, machines and all such things may enter upon, pass and repass, over any private lands in execution of Council's duties, and to remain there for such time as the performance of Council's duties shall require.

1610. Council's right of management

1610.1. Nothing contained in this chapter of the bylaw shall restrict or interfere with the power and control of Council over water races, formed or made with its consent, or under its authority. Council shall at all times have and retain full and complete control over such water races and the water therein, and over all works connected with those water races. Council may from time to time, whenever it shall think fit, stop the flow of water in any water race for any purpose whatsoever, and no owner or occupier shall be entitled to compensation for the resulting loss or deprivation of water or otherwise. In every case where any person commits a frequent or persistent breach of this chapter of the bylaw, or the regulations, agreements or conditions of Council affecting water races, Council may stop the supply of water to the land of that owner or occupier either permanently, or for such period as Council shall think fit.

1610.2. Upon the default of any person to comply with this chapter of the bylaw Council shall have the power to do the work and recover all associated costs from such person as a debt due to Council.

1611. Council does not guarantee water supply

1611.1. Nothing contained in this chapter of the bylaw shall be construed to be an undertaking or a guarantee by or on the part of Council, or to bind or oblige Council to provide or supply water in any water race to any definite or specific quantity, or to render Council responsible to any person for the total or partial failure of any water supply from whatever cause that may arise. Council may also permanently close any water race or other waterworks subject to the provisions of the Local Government Act 2002 without being responsible for any loss or damage that may be sustained by, or occasioned to, any person.

1612. Interference, obstructions and injuries

1612.1. The following offences with respect to water races include and extend those described in Section 228 of the Local Government Act 2002.

1612.2. No person shall do, permit or suffer to be done any of the following:

- (a) Allow water to be wasted or run to waste without written permission from Council;
- (b) Do anything that will increase or decrease the flow of the water in the water race without the consent of Council.
- (c) Where Council permits lands adjacent to water races or other waterworks, to be used or occupied, no person shall damage the water race or water race banks or shall plant or sow any tree, gorse, broom, thorn or shrub or plant within the space of 3 metres from the edge or bank of any water race or waterworks, or in any case within the perpetual right-of-way granted pursuant to clause 1602.3(a) hereof.
- (d) 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;
- (e) Obstruct or impede by any means the free flow of water in or through any water race, or place any timber, stones, earth, other material or anything whatsoever in, upon, or across any water race. The free passage of water within, and any machinery and apparatus used in respect of any water race, shall be maintained in condition satisfactory to Council;
- (f) Take or convey any animal, vehicle, or anything whatsoever through, or across any water race, except at the crossing places appointed by Council;
- (g) Damage or destroy any fence, gate, tree, bush or shrub erected, made, planted or kept for the protection of, or otherwise, in conjunction with the management of any water race;
- (h) Allow any animal to trespass, stray or be in or upon any water race;
- (i) Allow any animal to damage, destroy or pollute any water race, or to damage or trespass upon any works in connection with the management of the water race. Council shall have the right to enforce any person not complying with this clause to fence the water race to Council's satisfaction;
- (j) Obstruct, resist or interfere with any person whomsoever employed by Council, in connection with any water race while such person is in the execution of their duty;
- (k) Be in or upon any water race without lawful excuse;
- (l) Cause, permit, allow to run, or be brought in, the water of any noxious drainage whatsoever, whereby any water race or water therein shall be fouled, polluted or damaged;
- (m) Place any boat, or other craft, in the water of any water race;

1613. Enforcement

- 1613.1. In addition to any penalties imposed by this chapter of the bylaw or the Courts for any breach of this chapter of the bylaw, Council may sue for and recover from any person the amount of damage done or caused to any works constructed by Council for the purpose of water supply, or in respect of water unlawfully taken or diverted from such works.