

Appendix 2- Making of the Ashburton District Council Water Races Bylaw 2025- Section 155 Report

Bylaw review requirements – section 155 determinations

1. Council must follow the process set by section 160 of the Act when it makes a bylaw. Part of this process requires the Council to make three determinations required by section 155 of the Act.
2. The three determinations are:
 - a. Whether or not a bylaw is the most appropriate way of addressing a perceived problem or issue; and
 - b. If the Council decides that a bylaw is (still) appropriate, whether the bylaw is the most appropriate form of bylaw; and
 - c. Whether or not the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA).

What are the perceived and actual problems?

3. Officers note the following issues where Council could improve its performance in managing the water race network. These include:
 - a. Ensuring that adjoining landowners fulfil their obligations for local race maintenance; and
 - b. Ensuring that Council enjoys access to undertake maintenance of local races if required; and
 - c. Ensuring that council can recover the costs of local race maintenance; and
 - d. Ensuring that Council can hold landowners accountable for wasting water.
4. The staff analysis identifies the following specific problems and issues with the current bylaws which need to be addressed (in an amended bylaw):
 - a. Update of Bylaw title, staff titles, adoption date, commencement date, and next review date.
 - b. Addition of three waters bylaws to list of related documents
 - c. Need to revoke the current bylaw with the adoption of the new Bylaw.
 - d. Update definition of “Service” for changes in Council funding and rating policies.
 - e. Fixing of minor grammar errors.
 - f. Addition of a diagram to clarify access requirements for water race cleaning and cross reference to clause 10.1.15.2.
 - g. A need to clarify how the Bylaw interfaces with stock exclusion rules.
 - h. An error in clause 10.1.17 where the word “not” is omitted.
 - i. Clumsy expression in clause 10.1.19

Is a bylaw the most appropriate way of addressing the perceived problems?

5. The Council is required by legislation to determine (what are) the best options for addressing perceived problems. This requires consideration as to whether, or not, a bylaw is the most appropriate way of addressing the perceived problems. The options considered are:
 - a. Amend the current bylaw: This Option is unavailable as the statutory review was not completed in time and the current bylaw will expire. Bylaw powers will not be available to support important elements of water race network management after September 2026.
 - b. Revoke the current bylaw and not replace them: This is not the preferred option as Bylaw powers will not be available to support water race network management after September 2026.
 - c. Revoke the current bylaw and replace with a new bylaw: This is the preferred option. It will address the perceived problems.

- d. Status quo – retain the current bylaws: This is not preferred as the current bylaw will expire in September 2026.
- 6. The analysis suggests that the best approach is for the Council to revoke the current bylaw and replace with a new bylaw, i.e. the draft Water Races Bylaw 2025.

Are there any NZBORA implications?

- 7. In reviewing the current bylaw and proposing an amended bylaw, the Council is required to consider whether or not the proposed amendment to the bylaw gives rise to any implications under the NZBORA. Section 155(3) of the Act states that no bylaw may be made which is inconsistent with the NZBORA.
- 8. The NZBORA specifically identifies 22 specific rights under four broad headings, namely life and security of the person; democratic and civil rights; non-discrimination and minority rights; and search, arrest, and detention. The proposed amendment to the Bylaw does not give rise to any implications under the NZBORA.

Conclusion

- 9. Having carried out the review of the Bylaw in terms of section 155 of the Act:
 - a. The proposed amendment to the Bylaw is the most appropriate way of addressing the perceived problems; and
 - b. The proposed amendment to the Bylaw is the most appropriate form of bylaw; and
 - c. The proposed amendment to the Bylaw does not give rise to implications under the NZBORA and is not considered to be inconsistent with the NZBORA.

Appendix 3- Review of the Ashburton District Council Water Races Bylaw 2019 – Clause-by-Clause Analysis

1. As the making of a new bylaw is considered to be the most appropriate approach, staff have prepared a clause by clause analysis of the proposed draft Ashburton District Water Races Bylaw 2025.
2. In undertaking this analysis, two main options were identified with respect to most bylaw clauses: retaining the provision stated in the 2019 Bylaw, or making a provision that improves water race network management. In considering which of the options is the most appropriate, the following questions were asked:
 - Does the clause address an identified problem or is it necessary for the efficient management of water race services?
 - Does it provide an appropriate level of control?
 - Is it consistent with other Council bylaws?
 - Is it specific and easy to interpret for the public and Council officers?
 - Is this provision enforceable?
 - Does the provision materially affect the rights and duties of the public and/or water consumers?
3. The following table describes the changes proposed in the making of the new Water Races Bylaw 2025.

CLAUSE-BY-CLAUSE ANALYSIS	
BYLAW CLAUSE	COMMENT/ REASON FOR AMENDMENT OR NEW CLAUSE
Title Headings	<ul style="list-style-type: none"> Responsible Manager information changed to reflect structural changes and job title changes. Date adopted changed to date that new bylaw is proposed to be adopted. Commencement date changed to date that new Bylaw is expected to become effective. Next review date changed to five years after new Bylaw is expected to be adopted. List of related documents updated to include three waters bylaws.
1. Title	<ul style="list-style-type: none"> Title updated and Bylaw notes that the 2019 Bylaw will be revoked.
3. Contents	<ul style="list-style-type: none"> Schedule 3 added which contains Figure 1 – Diagram showing access for race cleaning machinery
5. Definitions	<ul style="list-style-type: none"> Bylaw definition amended to reflect date of new Bylaw Service definition expanded to note relevant change in rating policy Water race definition corrected for grammatical error. Comma added after “bylaw’ in final sentence.
7. Responsibilities of owners and occupiers	<ul style="list-style-type: none"> Clause 7.9 amended to add reference to clause 10.1.15.2d. and Figure 1 – a diagram clarifying access for race cleaning machinery
10. Non-permitted uses of the water race network	<ul style="list-style-type: none"> Addition of an explanatory note clarifying that the intent of clause 10.1.7 is to reinforce the regional stock exclusion rules. Addition of reference to figure 1 in clause 10.1.15.2d. Correction of clause 10.1.17 by including the word “not” which was omitted in error from the 2019 Bylaw. This change can be said to directly impact on the rights and obligations of the public and water consumers. The clause should read that: <i>The owner or occupier or any other person shall not: Permit a person who does not pay any water race rates to take water from a water race.</i> This correction is consistent with Council’s revenue and financing policy, rating policies and operational practice over many years. While the wording change reverses the meaning of the clause, the current meaning was completely unintended and has never been applied. For these reasons, officers see this change as minor. Correction of clause 10.1.19, to read that an owner or occupier shall not “Place any boat, or other craft, in any water race”. Existing word reads “Place any boat, or other craft, in the water or any water race. That wording seems to expand the application of the Bylaw beyond the Water race network which is inconsistent with the purpose of the Bylaw.
Schedule 3 – Access for Race Cleaning Machinery	<ul style="list-style-type: none"> Schedule 3 added which contains Figure 1 – Diagram showing access for race cleaning machinery