

Bylaw Review - Options Analysis

Vehicle Crossings

Context and Situation

A vehicle crossing is a vehicular entrance formed to provide access to any premise from the public road fronting the premise. Vehicle crossings may be constructed over footpaths, kerbs, berms, water channels or drains.

These crossings are part of the road reserve and are owned and regulated by the relevant authority i.e. vehicle crossings from State Highways are regulated by the New Zealand Transport Agency, whereas vehicle crossings from all other roads are regulated by territorial authorities. This report therefore only deals with vehicle crossings from roads that are not State Highways.

Vehicle crossings are typically formed when dwellings are being constructed and the property owner requires access onto the road. Although the road reserve is owned by the territorial authority, vehicle crossings are installed at the property owner's expense.

To be fit for purpose and safe, vehicle crossings should be constructed to meet appropriate engineering standards. These standards are technical in nature e.g. with different dimensions and materials specified for rural and urban areas depending on the number and size of vehicles using the crossing. For example, standards for a crossing onto a dairy farm where a milk tanker visits daily are different from a residential property where light vehicles normally access the property.

Relevant Legislation and Regulation

The Land Development and Subdivision Standard (NZS 4404) includes standards for vehicle crossings. These standards are modified by the Council's roading engineers to set Council standards that reflect the unique characteristics of the District and the requirements of the District Plan. The modified standards are published on Council's website. NB: Council's standards are currently being reviewed by Council's engineers.

The Control of Vehicles Bylaw 2010 was automatically revoked on 26 May 2017, two years from the required review date of 26 May 2015 as per section 160A of the Local Government Act 2002. In the absence of a bylaw, vehicle crossings are regulated by:

- Section 17 of the Resource Management Act 1991 which provides that every person has a duty to avoid, remedy, or mitigate adverse effects on the environment. An abatement notice can require that an activity cease if it is having adverse effects and is noxious, dangerous, offensive, or objectionable
- Section 335(9) of the Local Government Act 1974 which gives a territorial authority the power to remove a redundant vehicle crossing at the expense of the territorial authority
- Section 12 of the Local Government Act 1974 which sets out the general status and powers of local authorities to undertake business for the benefits of its district
- Chapter 15.1.16C of the operative District Plan which covers standards for the placement and construction of accessways including vehicle crossings.

Problem Definition

Vehicle crossings that do not comply with appropriate standards can cause health and safety hazards to road users (e.g. if a poorly constructed or maintained crossing collapses) and/or damage to adjacent council assets (such as roads and drains). Non-compliance can occur either:

- (a) when a vehicle crossing is not built in accordance with appropriate standards; or
- (b) when a vehicle crossing is not adequately maintained.

Scope of the problem

The problem is a District-wide one and has no particular implications for Māori compared with other members of the community.

Objectives

Under sections 145 and 146 of the Local Government Act 2002 the Council's objectives are to:

- protect the public from nuisance
- protect, promote and maintain public health and safety
- protect its assets from damage.
- ensure that the public has confidence that Council's regulations are suitable and appropriate¹.

These objectives will be met by ensuring that vehicle crossings are constructed and maintained to meet appropriate construction and maintenance standards.

Options

1. Do-nothing/status quo

Under this option the Council would take a "hands off" or reactive approach and only address hazards or damage caused by poorly constructed or maintained vehicle crossings when a complaint is made or an accident or mishap occurs. The Council could either remove a redundant crossing under section 335 (9) of the Local Government Act 1974 or prosecute the property owner under section 17 of the Resource Management Act 1991. Current legislation does not proactively deal with the maintenance of vehicle crossings.

This option does not meet the objectives or address the problem for two main reasons:

- compliance with the Council's vehicle crossing standards would be voluntary so there is a risk that crossings could be poorly constructed or inadequately maintained by the property owner and create more hazards or damage
- existing legislation Council does not have the power to deal with new vehicle crossings or the maintenance of existing crossings, so building a new crossing or maintaining a crossing to the correct standards would not be covered with a do-nothing approach.

2. Provide information and education (non-regulatory options)

Under this option, the Council would provide online and printed material about vehicle crossing construction and maintenance to encourage property owners to observe the standards. This would include basic information e.g. an

¹ Ensuring public confidence falls under Section 10 (b) of the Local Government Act 2002 which states that the purpose of local government is to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

explanation and diagram of what is meant by a vehicle crossing, an explanation that constructing a crossing is not a DIY task and should be conducted by an experienced and qualified contractor etc.

Providing good information and education will partly address the problem by helping property owners understand how to construct and maintain vehicle crossings in a manner that avoids health and safety hazards and/or damage to adjacent council assets. It is also likely to encourage voluntary compliance with standards set by the Council because under the VADE model² of intervention, most people will be willing to do the right thing if they are given the right information

However, relying solely on information and education does not fully meet the objectives to protect the public from nuisance; to protect, promote and maintain public health and safety; and protect Council's assets from damage, for the following reasons:

- this approach does not allow for inspection of crossings to ensure they meet proper technical standards
- it does not include enforcement provisions to deal with vehicle crossings that are not safe
- it does not address the problems caused by the minority of people who wish to cut corners or ignore the standards

Therefore, this option cannot fully ensure that vehicle crossings will be safe and properly maintained.

3. Make a bylaw

Under this option, to ensure public safety and the protection of council's assets, a bylaw would be made under section 145 of the Local Government Act 2002. The bylaw would require that vehicle crossings are constructed in accordance with the Council's engineering standards and would give Council the power to check the work meets these standards and also to inspect the work during and after construction.

If a bylaw is made, section 335(1) of the Local Government Act 1974 empowers the Council, if an existing vehicle crossing does not meet the Council's standards for its proper construction, to construct the crossing and require the occupier or landowner to pay Council for this work, subject to an appeal process.

This option also gives Council the power to enforce its requirements under section 143 of the Local Government Act 2002 by prosecuting offenders with penalties of up to \$20,000 for those who breach the bylaw.

Enacting a bylaw will meet the objectives and fully address the problem because:

- It will set in place appropriate standards for vehicle crossings to protect the public from health and safety issues and protect the Council's assets from damage
- A bylaw will ensure public confidence that vehicle crossings will be safe and properly maintained
- An inspection process is an appropriate way to detect and remedy non-complying construction and ensure technical standards are met
- Those who do not comply with the standards can be prosecuted.

Conclusion and Recommendation

A combination of making a bylaw (Option 3) and providing information and education (Option 2) is recommended.

Making a bylaw is recommended as the most appropriate method of addressing the problem because it fully meets the objectives. Information for property owners would complement the bylaw but would not be a stand-alone option.
