



**OUR
DISTRICT**

Proposed Vehicle Crossings Bylaw
Staff report on submissions and recommendations for consideration

CONTENTS

	Page number
1. Background	1
2. Summary of submissions	1
3. Analysis and recommendations	2
3.1 Clauses where no submissions were made	2
3.2 Staff recommendation for drafting clarification	2
3.3 Submissions on clauses in the draft bylaw	3
Appendix 1 – list of submissions received	20

1. Background

On 21 May 2020, the Council agreed a bylaw is the most appropriate way to regulate vehicle crossings in the Far North District. On 20 October 2020 the Strategy and Policy Committee agreed to release a proposal for a new Vehicle Crossings Bylaw for public consultation. The period for making written submissions on the proposal began on 2 November 2020 and ended on 28 November 2020. Twenty-one submissions were received and three of the people who made submissions asked to be given the opportunity to make an oral presentation of their submissions. The Strategy and Policy Committee heard those presentations on 23 March 2021.

This report analyses the submissions received and makes recommendations for amendments to the draft Vehicle Crossings Bylaw. A numbered list of people who made submissions is included in the Appendix and these numbers are used to refer to the individual submissions.

Staff from the following teams contributed to the analysis in this report:

- Strategy Development
- Northern Transport Alliance
- Environmental Services
- Infrastructure Programme Delivery.

2. Summary of submissions

From the 21 written submissions received, 3 submissions supported the proposed bylaw in full (3, 10 and 11), 15 did not fully support the draft bylaw and requested changes (2, 4, 5 to 9, and 12 to 19) while 3 had mixed views both positive and negative (1, 20 and 21). Those with mixed views tended to suggest changes reflecting their individual points of view, for example, submission 21 from a forestry company made suggestions relating to the particular needs of the forestry industry.

Examples of comments from the submissions that supported the draft bylaw are:

“Poor quality crossings in the District cause significant road damage and nuisance.”

“Important in more populated areas.”

A number of submissions discussed in section 3.2 of this report said that greater flexibility may be occasionally needed in the bylaw wording. One submission (20) referred to case law (*McCarthy v Madden* (1914) 33 NZLR 1251, 1268) that states bylaws must be reasonable and said, *“that anything other than a light-handed bylaw would be found to be unreasonable”*.

Staff analysis

Council staff agree flexibility and reasonableness need to be considered in creating legislation and over-regulation must be avoided. Staff also agree it is possible for the bylaw to provide more flexibility in the areas suggested in the submissions, without compromising its objectives: to protect the public from nuisance; to protect, promote and maintain public health and safety; and to protect council’s assets from damage.

Staff recommendations

To provide more flexibility, staff have recommended the following changes to the bylaw that are discussed in detail in section 3.2 of this report:

- the current engineering standards will apply to the design and construction of most vehicle crossings but, on occasion, other council-approved designs may be allowed (see clauses 7, 8 and 9)
- unformed crossings used to move stock will not need to be constructed to the standard required for vehicle access (see clause 5)

- temporary crossings used by the forestry industry will not need to be removed if they are required in the future (see clause 11)
- minor repairs and maintenance will not require approval from the council (see clause 8).

3. Analysis and recommendations

The following section lists specific submissions that relate to the clauses in the draft bylaw, analyses these submissions and makes recommendations regarding the bylaw wording.

3.1 Clauses where no submissions were made

No submissions were made about the following clauses in the draft bylaw and Council staff recommend no changes to these clauses:

- Clause 12. Withdrawing an application
- Clause 15. Suspending or cancelling an approval
- Clause 16. Other obligations not affected
- Clause 18. Construction requirements
- Clause 21. The council may improve a vehicle crossing
- Clause 22. Objections
- Clause 23. Compliance and enforcement.

3.2 Staff recommendation for drafting clarification

Council staff recommend a minor drafting change to describe what the “Related information” boxes in the bylaw do. This description is better placed at the start of the bylaw, rather than in Clause 5 (Interpretation) and could be worded more clearly.

Recommendation:

Delete subclause (2) in Clause 5 (Interpretation) and include a new Clause 2 as follows:

“2 Related information boxes

Boxes headed “Related information” in this bylaw are for information purposes only, and –

- (a) they do not form part of this bylaw; and
- (b) cannot be considered in the interpretation or application of a provision of this bylaw; and
- (c) may be inserted, amended or removed without any formality.”

This change will result in all subsequent clauses in the bylaw being renumbered. However, this report uses the clause numbers as they were in the draft bylaw that was published for consultation.

3.3 Submissions on clauses in the draft bylaw

Clause 4 Purpose

Clause 4 states the purpose of the bylaw is to protect the public from nuisance, promote public safety and protect public infrastructure by regulating the use, construction and repair of vehicle crossings by requiring compliance with the council's engineering standards for vehicle crossings.

Submissions received

Four submissions were received about clause 4 as follows:

- Clarification is needed that the bylaw applies to vehicular crossings only, not to moving stock (submission 20)
- Application of the engineering standards should reflect the condition of the road (submissions 1, 16 and 20)
- 'Repair' should be removed from the bylaw (submission 21).

Staff analysis

In the Interpretation clause of the draft bylaw (clause 5), vehicle crossings are defined as crossings used by motor vehicles accessing a property. These crossings apply to vehicles, not to stock movements. However, adding the word 'vehicular' in Clause 4, will make this distinction even clearer.

Council staff agree that on occasion council-approved designs other than the engineering standards may apply, for example, for some crossings on isolated rural roads. However, this would be the exception, not the rule.

The word 'repair' was included in clause 4 by mistake. The correct description of activities covered by the regulation is in clause 6, namely the "use, construction, reconstruction, upgrading and relocation" of vehicle crossings.

Staff recommendation

Amend clause 4 as follows:

1. Add the words "reconstruction, upgrading and relocation" after the word "construction"
2. Delete the words "and repair".
3. Insert the word "vehicular" after the words "vehicle crossings giving".
4. Add the words "or another design approved by the council" after "engineering standards for vehicle crossings".

"Tracked changes" to the clause as recommended to be amended

The purpose of the bylaw is to protect the public from nuisance, promote public safety and protect public infrastructure by regulating the use, construction, reconstruction, upgrading and relocation ~~and repair~~ of vehicle crossings giving vehicular access from roads to properties located within the Far North District by requiring compliance with the council's engineering standards for vehicle crossings or another design approved by the council.

Clause 5. Interpretation

Clause 5 contains definitions of the terms used in the bylaw.

Submissions received

Submission 20 commented on two of the definitions, “berm” and “vehicle crossing”, as follows:

- the word “road” would be better than “street” in the definition of “berm”
- the definition of “vehicle crossing” should be changed to exclude unformed crossing places such as where a farmer makes a gate out of fencing materials in order to occasionally move stock.

Staff analysis

The definition of berm was included by mistake. The word is not used in the bylaw.

Council staff agree that unformed occasionally-used crossings used to move stock do not need to be regulated. These crossings typically involve extremely light vehicle use such as a farmer riding a quad bike. Whangārei District Council refers to these crossings as “paddock entrances” and excludes them from its vehicle crossing regulation.

Council staff also consider the definition of vehicle crossing could be made clearer by including a diagram from the District Plan in a Schedule to the bylaw.

Staff recommendations

Amend clause 5 as follows:

1. Delete the definition of berm.
2. In the definition of vehicle crossing:
 - (a) add the words “, but does not include paddock entrances with less than ten stock movements per month”
 - (b) add a “related information box” referring to a new diagram in the Schedule that illustrates the definition

Related information

The terminology associated with vehicle crossings is illustrated in diagram 1 in the Schedule to this bylaw.

3. Add a new schedule including diagram 1.

“Tracked changes” to the clause as recommended to be amended

~~Berm is the area between a property boundary and the street; it can include both sides of a footpath.~~

Vehicle crossing means the area of driveway, whether temporary or permanent, between a **road** and a private property boundary, intended for use by **motor vehicles** accessing the property, but does not include paddock entrances with less than ten stock movements per month.

Related information

The terminology associated with vehicle crossings is illustrated in diagram 1 in the Schedule to this bylaw.

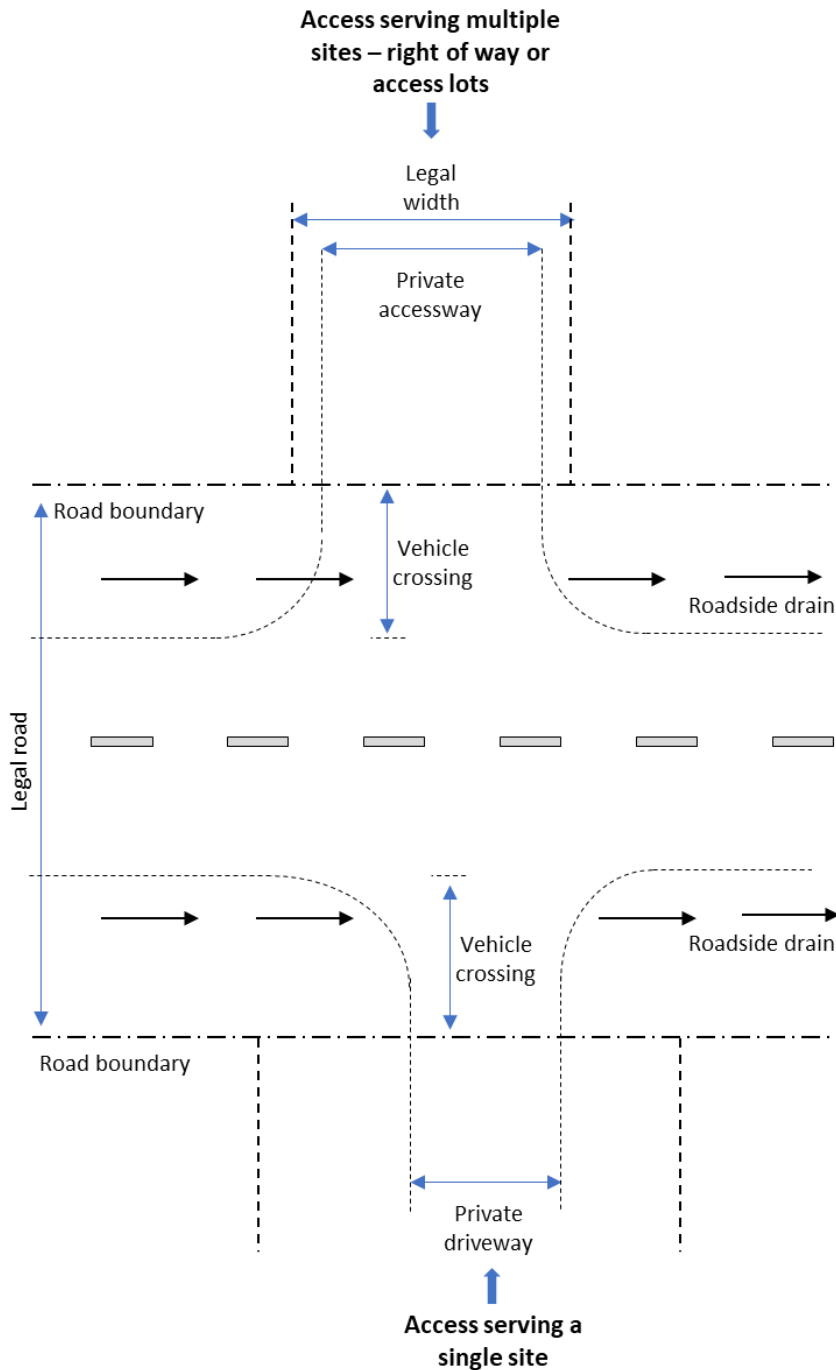
Schedule

Part 1

Clause 5 Interpretation

Diagram 1

Access Standards Terminology
Appendix 3F. FNDC Operational District Plan



Clause 6. An approval is required for a vehicle crossing

This clause says that people wishing to construct, reconstruct, widen or relocate a vehicle crossing, whether for a permanent or a temporary crossing, must have an approval from the council. This does not apply where a resource consent for a subdivision has been granted for this work.

Submissions received

Three submissions were made regarding this clause:

- The bylaw should better define construct and reconstruct (submission 20)
- Maintenance should be excluded from the bylaw (submissions 16 and 21). Submission 21 referred to maintenance as the reconstruction of a crossing before it will be used for harvesting a forestry block.
- Submission 21 said that the application process should be streamlined, using an online approach.

Staff analysis

Council staff consider that legal definitions of the activities relating to vehicle crossings are not needed, as these are commonly used words. However, it may help people to understand what the activities are if some examples are given of these activities. Staff also consider the word “upgrade” should be used instead of “widen” because it is a broader term involving a variety of changes to the crossing, including widening.

Maintenance is not referred to in clause 6. Giving examples of what maintenance involves will clarify that this does not refer to the reconstruction of a crossing as indicated in submission 21.

Staff also consider the bylaw should make it clear an approval is not required where permission is granted by the council relating to a private road or private right-of-way under section 348 of the Local Government Act 1974.

The application process, including online options, will be addressed in the implementation of the new bylaw.

Staff recommendations

Amend clause 6 as follows:

1. In subclause (1), replace the word “widen” with “upgrade”.
2. In subclause (2), replace the word “widened” with “upgraded” and add the words: “, or permission has been granted by the council for a private road or right-of-way under section 348 of the Local Government Act 1974” after “for this work”.
3. Add a new subclause (3): “An approval is not required for minor repairs or to maintain a vehicle crossing.”
4. Add the following text to the “related information” box:

Approvals are required for:

- Construction i.e. building a new vehicle crossing
- Reconstruction i.e. rebuilding a crossing which is broken and/or not fit for purpose
- Upgrading e.g. widening a crossing, replacing metal with tarseal, replacing a culvert, or making safety improvements to a crossing
- Relocating i.e. moving a crossing from one place to another.

Approvals are not required for:

- Minor repairs i.e. refurbishing a crossing that is showing signs of wear and tear but is not broken (such as repairing a pothole)
- Maintenance e.g. resealing the surface of the crossing with existing seal material or cleaning a culvert.

“Tracked changes” to the clause as recommended to be amended

- (1) Every person wishing to construct, reconstruct, widen upgrade or relocate a **vehicle crossing**, whether for a permanent or a temporary crossing, must have an **approval** from the council.
- (2) An **approval** is not required for a **vehicle crossing** constructed, reconstructed, widened upgraded or relocated as part of a subdivision or land use consent, where a resource consent has been granted for this work, or permission has been provided by the council relating to a private road or private right-of-way under section 348 of the Local Government Act 1974.
- (3) An approval is not required for minor repairs or to maintain a vehicle crossing.
- (34) Every application for an **approval** must be made by a person who has the legal authority to deal with the property accessed by the vehicle crossing (“**the applicant**”) and:
- be in the form required by the council; and
 - include all the information required by the form; and
 - be accompanied by the applicable fee listed in the council’s Fees and Charges Schedule.

Related information

Forms for applying for a permit can be found on the council’s website at [Vehicle Crossing Application Form](#) or picked up at any Council office.

The current [Fees and Charges Schedule](#) can be found on the council’s website or a copy can be viewed at any Council office.

Approvals are required for:

- Construction i.e. building a new vehicle crossing
- Reconstruction i.e. rebuilding a crossing which is broken and/or not fit for purpose
- Upgrading e.g. widening a crossing, replacing metal with tarseal, replacing a culvert, or making safety improvements to a crossing
- Relocating i.e. moving a crossing from one place to another.

Approvals are not required for:

- Minor repairs i.e. refurbishing a crossing that is showing signs of wear and tear but is not broken (such as repairing a pothole)
- Maintenance e.g. resealing the surface of the crossing with existing seal material or cleaning a culvert.

Clause 7. Assessment of an application

Clause 7 states the council will assess the information provided in an application to determine the appropriate engineering standard that should apply to the crossing.

Submissions received

Two submissions were received regarding this clause as follows:

- The engineering standards will be too stringent in some cases *“the standard should be applied proportionally, depending on the standard of the relevant public road”* (submission 20).
- The bylaw should state how long it will take for council to respond to the application (submission 12).

Staff analysis

Council staff agree that some flexibility should be allowed in determining the design and specifications for a particular crossing.

Staff also agree that it is fair to applicants to state how long the response will take. A time of up to 30 working days is recommended to allow for assessing complex applications. This timing is built into the council’s current arrangement with Haigh Workman to process these applications; however, in many instances the response is faster than 30 days. Currently, in order to keep costs down for the council, Haigh Workman try to be efficient and conduct vehicle crossings inspections when they have other work to do in an area, and, reducing this timeframe would mean Haigh Workman would need to spend more hours doing this work at significantly more cost to council.

Staff recommendations

Amend clause 7 as follows:

1. Insert, after the word “standard”, the words “or other council-approved design”.
2. Add the words “The council will respond to the applicant in 30 working days or less”.

“Tracked changes” to the clause as recommended to be amended

The council will assess the information provided in an application to determine the appropriate engineering standard or other council-approved design that should apply to the proposed vehicle crossing. The council will respond to the applicant in 30 working days or less.

Clause 8. Granting an approval

This clause says the council may grant an approval if the information provided in the application is sufficient to determine the appropriate engineering standard.

Submissions received

No submissions referred specifically to this clause; however, submissions 1, 16 and 20 suggested the bylaw could be more flexible regarding the application of the engineering standards.

Staff analysis

Council staff agree more flexibility may be allowed regarding the design specifications of vehicle crossings, but this should be the exception, not the rule.

Legal advice was received that this clause should state that granting an approval is at council's sole discretion and mention should be made of other considerations such as road safety and negative impacts on the environment.

Staff recommendation

Amend clause 8 by adding the words "in its sole discretion" after "may grant an approval";

Amend paragraph (a) by inserting, the words "or other design approved by the Council" after the words "engineering standard";

Include a new paragraph (b): "the council is satisfied that the proposed vehicle crossing will not cause undue impacts involving road safety or negative impacts on the environment; and".

"Tracked changes" to the clause as recommended to be amended

The council may grant an approval in its sole discretion if:

- (a) the information provided in the application is sufficient to determine the appropriate engineering standard or other design approved by the Council for the vehicle crossing; and
- (b) the council is satisfied that the proposed vehicle crossing will not cause undue impacts involving road safety or negative impacts on the environment; and
- (c) the applicable fee has been paid to the council.

Clause 9. Content of an approval

Clause 9 says that an approval will state: a) the appropriate engineering standard applicable for the vehicle crossing, b) that the council will inspect the vehicle crossing, c) that a Work Access Permit is required to work on the road corridor (see clause 17).

Submissions received

Three submissions (1, 16 and 20) asked for the Council to use its discretion in applying the current engineering standards in some circumstances, such as a crossing on a little-used unsealed road.

Staff analysis

Council staff agree more discretion and flexibility should be allowed in the bylaw. A minor drafting change is also recommended in paragraph (b).

Staff recommendations

1. Amend paragraphs (a) and (b) by inserting, after the word “standard”, the words “or other design approved by the council”.
2. Replace the word “mention” with “notice” in paragraph (b).

“Tracked changes” to the clause as recommended to be amended

An approval will include:

(a) a statement as to the appropriate engineering standard or other design approved by the council applicable for the **vehicle crossing** which must be followed in the design and construction of the **vehicle crossing**;

Related information

The council’s current engineering standards are published on the council’s website at [Engineering Standards and Guidelines](#) or can be picked up at any Council office.

(b) ~~mention~~ notice that the council will inspect the **vehicle crossing** to make sure it meets the specified engineering standard or other design approved by the council and any other conditions included in the **approval**;

(c) information on how to obtain a Work Access Permit which is required to access the road corridor and commence construction (see clause 17).

Clause 10. Additional approval conditions

Clause 10 says that the council may include additional condition/s in an approval, including:

- relevant provisions from Chapter 15 (Transportation) of the Far North District Plan
- other relevant conditions applying to the vehicle crossing e.g. placement of the crossing to avoid a sump or utility connection
- conditions relating to a temporary vehicle crossing.

Submissions received

Two submissions (8 and 21) said the Council should be more specific regarding subclauses (1) and (2) because they are too broad or vague and therefore could result in the Council putting onerous conditions on approvals.

Staff analysis

Council staff agree that these provisions could be seen as too broad. However, staff note that there is an objection process described in clause 22 of the bylaw if an applicant thinks a condition is unreasonable. Secondly, they note that this is the flip-side of the flexibility that people want - if there is going to be broader scope for how crossings can be designed, then the Council needs the ability to apply appropriate conditions regarding the design.

However, staff recommend explaining what Chapter 15 of the District Plan covers and providing more examples of other conditions that may be covered by paragraph (b) to demonstrate that such conditions will be relevant and reasonable.

Staff recommendations

Amend clause 10 by:

1. Adding a “related information box” after paragraph (a) as follows:

Related information

Chapter 15 of the District Plan (‘Transportation’) covers areas such as parking and access to private properties including where access is permitted and not permitted. It lists the criteria that will be used to assess road access such as traffic safety and congestion, foreseeable future changes to traffic patterns in the area, and the safety of pedestrians, disabled persons and cyclists, etc.

2. In paragraph (b) insert after the word “connection”, the words “the positioning of grates, and compliance with any covenants relating to the site”.

“Tracked changes” to the clause as recommended to be amended

The council may include additional condition/s applying to an approval:

- (a) regarding any relevant provisions from [Chapter 15 \(Transportation\) of the Far North District Plan](#);

Related information

Chapter 15 of the District Plan (‘Transportation’) covers areas such as parking and access to private properties including where access is permitted and not permitted. It lists the criteria that will be used to assess road access such as traffic safety and congestion, foreseeable future changes to traffic patterns in the area, and the safety of pedestrians, disabled persons and cyclists, etc.

- (b) any other relevant conditions applying to the vehicle crossing e.g. placement of the crossing to avoid a sump or utility connection, the positioning of grates, and compliance with any covenants relating to the site etc;
- (c) a temporary vehicle crossing may be subject to additional conditions relating to where the crossing is situated, the purpose of the crossing, how long the temporary crossing will be in place; the effects of the crossing on normal usage of the road; and the design and materials used in its construction.

Clause 11. Temporary vehicle crossings

Clause 11 states that approval is needed for a temporary vehicle crossing, defined as a crossing that will be needed for no longer than twelve months. Once the temporary vehicle crossing has fulfilled its purpose, it must be removed within three months to the council's satisfaction at the expense of the owner or occupier.

Submission received

Submission 21 suggested three changes to how temporary crossings are handled in the bylaw:

- Notification of a temporary vehicle crossing to council should be satisfactory in itself and approval (including the fee) for a temporary vehicle crossing should be unnecessary
- Council should list standard criteria or standards for temporary crossings so they can be constructed without approval and without incurring a fee
- In the forestry sector, a crossing may be used once every five to fifteen years, and this should be allowed for.

Staff analysis

Although a crossing may be temporary, it could still cause safety issues and potential damage to drains and the road during heavy rain if not constructed to suitable standards. Therefore, an approval from the council with relevant conditions is necessary for temporary crossings. Many factors go into determining the design specifications for temporary crossings, including:

- The purpose of the crossing and how long it will be in place
- The type/s of vehicles that will use the crossing
- Safety considerations such as the amount of traffic on the road involved and the sight lines for the crossing
- The surface of the road concerned and the nature of the adjacent drains
- The proximity of the crossing to utility lines etc

Because of the number of factors involved, allowing these crossings to be constructed with no approval needed based on a set of standard designs is not practical.

Council staff agree the bylaw should allow for the long rotation use of temporary crossings, for example by the forestry sector.

Staff recommendations

Amend clause 11 as follows:

1. In subclause (1), insert, after the word "months", the words "at a time".
2. Add a "related information box" after subclause (2) as follows:

Related information

If a temporary crossing is not being used currently but will be used again in many years' time, as is common in the forestry industry, it will not have fulfilled its purpose and there is no need to remove the crossing unless it is unsafe or is causing damage to the road or drainage system.

"Tracked changes" to the clause as recommended to be amended

- (1) An approval is required for a vehicle crossing needed for a purpose, such as forestry harvesting or building construction, where activity will occur for no longer than twelve (12) months at a time ("temporary vehicle crossing").
- (2) Once a temporary vehicle crossing has fulfilled its purpose, it must be removed within three (3) months. Removing this crossing and any reinstatement work must be conducted to the council's satisfaction at the expense of the owner or occupier.

Related information

If a temporary crossing is not being used currently but will be used again in many years' time, as is common in the forestry industry, it will not have fulfilled its purpose and there is no need to remove the crossing unless it is unsafe or is causing damage to the road or drainage system.

Clause 13. Duration of an approval

Clause 13 states approvals granted under the bylaw have a duration of twelve months and during this time the work must be completed to the satisfaction of the Council. If the work is not completed within this period, the owner or occupier must apply for a new approval before work can continue.

Submission received

Submission 9 suggested making approvals indefinite in duration to be flexible and agile.

Staff analysis

An indefinite approval is not practicable because circumstances may change that make the approval inappropriate, for example, changes to the engineering standards. However, Council staff consider the duration could be up to three years because work on a crossing can be delayed for many reasons.

Staff recommendation

Amend clause 13(1) and (2) by omitting the words “twelve (12) months” and substituting the words “3 years”.

“Tracked changes” to the clause as recommended to be amended

- (1) All approvals granted under this bylaw have a duration of ~~twelve (12) months~~ 3 years, during which time the work shall have been completed to the satisfaction of the council.
- (2) If the work is not completed to the satisfaction of the council within ~~twelve (12) months~~ 3 years, the owner or occupier must apply for a new approval before work can continue. The re-application fee is listed in the council’s current [Fees and Charges Schedule](#).

Clause 14. Amending or transferring an approval

Clause 14 states approvals are not transferable.

Submission received

Submission 9 suggested transfers should be allowed from one owner to the next owner of the same property.

Staff analysis

Council staff agree approvals should be able to be transferred from one owner to the next owner of the property. However, transfer from an approved site on the property to another site on the same property should be prevented.

Staff recommendation

Amend clause (2) by:

1. Deleting the words “to another person or”.
2. Adding the words “or to a different location at the property concerned”.

Add a new clause (3): “Approvals may be transferred to another person at the same property, such as a new property owner, if the council has been notified in writing of this transfer”.

“Tracked changes” to the clause as recommended to be amended

- (1) A person granted an approval may, at any time within the duration of the approval, apply to the council to amend the approval or its conditions. An application for amendment must be made in the same manner as an application for an approval, with any necessary modifications specified. In this instance, council may require, at its sole discretion, a new fee to be paid depending on the nature of the amendment sought.
- (2) Approvals are not transferable ~~to another person or~~ to another property or to a different location at the property concerned.
- (3) Approvals may be transferred to another person at the same property, such as a new property owner, if the council has been notified in writing of this transfer.

Clause 19. Vehicle crossings that are unsafe or in disrepair

Clause 19 states the council may give notice to the owner or occupier of a property to remove, repair or reconstruct a crossing at the expense of the owner if it is unsafe or in disrepair.

Submissions received

Four submissions were received regarding clause 19. One (submission 4) supports the clause, but another (submission 13) said the clause is not needed, because the Council or Waka Kotahi should repair the crossing. Submission 6 also said the clause was not needed because the Council can already inspect a crossing and require an upgrade without a bylaw. Submission 21 requested the council recognise the special needs of the forestry sector such as long periods of up to 15 years between use of a crossing and suggested that before the Council issues a notice it should consult with the owner or occupier.

Staff analysis

To be consistent with the change made to clause 4 (purpose) and the definitions included in clause 6 (related information) the word “repair” should be deleted from clause 19(1).

Submission 6 is correct; the council can already inspect a vehicle crossing and require an upgrade without a new bylaw. This is possible, for example, under section 17 of the Resource Management Act 1991 (duty to avoid, remedy and mitigate adverse effects) or under section 11A of the Local Government Act 2002 (core services) which says that a local authority must have particular regard to the contribution that network infrastructure including roading, makes to its communities. However, the council has received legal advice that including this provision in a bylaw will provide an easier and more direct mechanism to require remedial work.

The bylaw only covers vehicle crossings on council’s roads and does not apply to crossings on the state highways administered by Waka Kotahi. Although vehicle crossings are part of the road corridor, the property owner gets the benefit of their use in providing access to and from their property, so it is reasonable for the property owner to pay for their reconstruction or removal, rather than the council.

Council staff agree that requiring removal of a crossing that will be used again in many years’ time by the forestry industry would be unfair. Therefore, staff are in favour of introducing criteria such as consulting with the owner or occupier regarding the intended use of the crossing before issuing a notice to remove a crossing.

Staff recommendations

Amend clause 19 by:

1. In subclause (1) deleting the word “repair”.
2. Inserting a new subclause (2):

“(2) Before issuing a written notice, the council will consult with the property owner regarding the best course of action. This discussion will cover observed issues with the vehicle crossing such as safety concerns, and what is the crossing’s current and intended future use.”

“Tracked changes” to the clause as recommended to be amended

(1) If at any time, in the opinion of the council, a vehicle crossing does not comply with the engineering standards, the council may, by written notice addressed to the owner or occupier of the property to which the crossing gives access, require the owner or occupier to remove, ~~repair~~ or reconstruct the crossing within the time period specified in the notice to the satisfaction of the council.

(2) Before issuing a written notice, the council will consult with the property owner regarding the best course of action. This discussion will cover observed issues with the vehicle crossing such as safety concerns, and what is the crossing's current and intended future use.

~~(2)~~ (3) If the recipient of such a notice fails to comply with that notice within the prescribed time, the council may arrange for such removal, repair or reconstruction to be carried out and may charge the owner or occupier for the full costs of such work, including reasonable administration costs.

Clause 20. Redundant or excessive vehicle crossings

Clause 20 allows the council to remove a vehicle crossing that is redundant or is in excess of the reasonable requirements of the owner or occupier of the property, at the expense of the council.

Submission received

Submission 21 requested the council recognise the special long rotation needs of the forestry industry before removing a crossing.

Staff analysis

Exceptions for long rotation forestry use of a crossing seem sensible as a crossing that may appear to be redundant to Council staff may indeed be used many years later for forest harvesting. As recommended for clause 19, staff suggest adding a subclause to say that before serving notice, the council will consult with the owner or occupier.

Staff recommendation

Amend clause 20 by adding a new subclause (2):

“(2) Before issuing a written notice, the council will consult with the property owner regarding the best course of action. This discussion will cover why the council considers the vehicle crossing is redundant or in excess of the reasonable requirements of the owner or occupier, and will ascertain what is the crossing’s current and intended future use, if any.”

“Tracked changes” to the clause as recommended to be amended

(1) Where the council is satisfied that a **vehicle crossing** is redundant or is in excess of the reasonable requirements of the owner or occupier of the property, the council may serve notice upon the owner or occupier that the council will remove this crossing at the expense of the council.

Related information

This clause is made under [section 335\(9\) of the Local Government Act 1974](#)

(2) Before issuing a written notice, the council will consult with the property owner regarding the best course of action. This discussion will cover why the council considers the vehicle crossing is redundant or in excess of the reasonable requirements of the owner or occupier, and will ascertain what is the crossing’s current and intended future use, if any.

Clause 24. Offences and penalties

Clause 24 lists possible penalties a) under the Local Government Act 2002 of a fine not exceeding \$20,000 and b) under the Land Transport Act 1998, of a fine not exceeding \$1,000.

Submissions received

Two submissions were received about clause 24. Submission 16 said that large fines of up to \$20,000 are not warranted and that *“The bylaw is worded in a punitive way which is not conducive to council and ratepayers working together to come up with realistic and flexible solutions”*. Submission 13 said that *“Council is supposed to help ratepayers not force compliance”*.

Staff analysis

In general, any fines imposed would be much less than \$20,000. However, as an extreme example, if a faulty vehicle crossing led to a road accident and serious injury or death, then a large fine may be warranted.

The Council follows the VADE principle to ensure compliance with the bylaw i.e. starting with helping property owners do the right thing via advice and education rather than “forcing compliance”. However, as serious safety risks and damage to council’s assets could arise from poorly constructed vehicle crossings, it is important the council has the regulatory authority to prosecute if necessary.

Staff recommendation

No change.

APPENDIX 1 – LIST OF SUBMISSIONS RECEIVED

Number	Full name	Organisation
1	Ranald MacLeod	Individual submission
2	Missy Heta	Individual submission
3	Marianna Fenn	Individual submission
4	Rob Sintes	Individual submission
5	Nathanael Payne	Individual submission
6	Terence Brocx	Individual submission
7	Jacqueline Te Huia	Individual submission
8	Randall Cork	Individual submission
9	John Kensington	Individual submission
10	Whati Rameka	Individual submission
11	Susan Dunn	Individual submission
12	Ian Harris	Individual submission
13	Carl Mather	Individual submission
14	Vanessa McKay	Individual submission
15	Helen Linssen	Farmside.co.nz
16	Robert Adams	Individual submission
17	Gail Woodall	Individual submission
18	Douglas Mansill	Individual submission
19	Sheryl Wikaire	Individual submission
20	Richard Gardner	Federated Farmers
21	Ursula Buckingham	Hancock Forest Management (NZ) Ltd