VEHICLE CROSSING BYLAW HEARING AND DELIBERATIONS

Tuesday 14 May 2019
Commencing at 10.00am

Waimakariri District Council Chamber
215 High Street
Rangiora

Hearing Panel Members:
Councillor John Meyer
Councillor Sandra Stewart
Councillor Paul Williams
Members,

VEHICLE CROSSING BYLAW 2007 REVIEW HEARING PANEL

The hearing and deliberations for the Vehicle Crossing Bylaw 2007 Review will be held in the WAIMAKARIRI DISTRICT COUNCIL CHAMBER, 215 HIGH STREET, RANGIORA on TUESDAY 14 MAY 2019 commencing at 10.00AM.

Adrienne Smith
GOVERNANCE COORDINATOR

BUSINESS

1. APPOINT A HEARING PANEL CHAIRPERSON

2. APOLOGIES

3. CONFLICTS OF INTEREST

Conflicts of interest (if any) to be reported for minuting.

4. STAFF REPORT

4.1. Recommendations of Vehicle Crossing Bylaw 2007 Review – Gina Maxwell (Policy Technician) and Joanne McBride (Roading Manager)

RECOMMENDATION

THAT the Hearing Panel:
(a) Receives report No 190430061339

BYLAW DOCUMENT

4.2. Draft Vehicle Crossing Bylaw 2019

5. HEARING PANEL DELIBERATIONS
WAIMAKARIRI DISTRICT COUNCIL

REPORT FOR DECISION

FILE NO and TRIM NO: BYL-36-02 / 190430061339

REPORT TO: Hearing Panel
Councillors: J Meyer, S Stewart and P Williams

DATE OF MEETING: 14 May 2019

FROM: Gina Maxwell, Policy Technician
      Joanne McBride, Roading Manager

SUBJECT: Recommendations of Vehicle Crossing Bylaw 2007 Review

SIGNED BY: (for Reports to Council, Committees or Boards)

1. SUMMARY
1.1. The purpose of this report is to update the Vehicle Crossing Bylaw review hearing panel on submissions received on the draft Waimakariri District Council Vehicle Crossing Bylaw 2019. Submissions closed on 1 May 2019 and no submissions were received.

1.1 Timings:
• 22 March 2019 – Summary of Proposal/ Public notice in Northern Outlook
• 29 March 2019 – Advertisement in Community Noticeboard
• 11 April 2019 – Email/Letters sent to all that have applied for a Vehicle Crossing Permit’s in the last 2 years.
• 14 May 2019 – Hearing & Deliberations
• 4 June 2019 – Sent to Council for adoption

Attachments:
   i. Statement of Proposal (Trim 190218018225)

2. RECOMMENDATION

THAT the Hearing Panel

(a) Receives report No. 190430061339.

3. BACKGROUND

3.1 The Local Government Act 2002 section 159 states “A local authority must review a bylaw made by it under this Act, the Maritime Transport Act 1994, or the Local Government Act
3.2 Vehicle crossings are an important part of the roading network as they provide legal access from the public road to private properties. As such they need to be constructed to the required standards so they are safe, don’t unduly affect the existing infrastructure and are cost effective to maintain.

3.3 The main areas of proposed change, prior to public consultation, between the current bylaw and the draft bylaw are summarised below:

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<td>Any removal or relocation of street trees must be done in accordance with the Street and Reserve Trees Policy 2017.</td>
<td>In discussion with the PIU it was noted that there was no reference to the Street and Reserve Trees Policy 2017 advising the public how to proceed with removing or relocating a tree to place a Vehicle Crossing.</td>
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| Any person who causes damage to the road reserve (including footpaths and berms) by not using the designated vehicle crossing commits an offence against this bylaw. | Any person who causes damage to the road reserve (including footpaths, street furniture, street trees and gardens, berms and drainage) by not using the designated vehicle crossing commits an offence against this bylaw. | Expanding the Council owned assets that are included. |

### 4. ISSUES AND OPTIONS

4.1. The Council is updating *The Vehicle Crossing Bylaw 2007* and is now reviewing results of public consultation on its revised *The Vehicle Crossing Bylaw 2019* using the Special Consultative Procedure. The Local Government Act 2002, Section 160, provides for the use of the Special Consultative Procedure outlined in Section 83 to review and amend the bylaw. Once consultation is complete the hearing panel will recommend the bylaw to the Council for approval. Once adopted by Council the 2019 version will replace *The Vehicle Crossing Bylaw 2007*.

4.2. Adopting the draft Vehicle Crossing Bylaw for public consultation is the recommended option as the Bylaw provides a means to ensure that vehicle crossings can be controlled in an effective manner. The proposed minor amendments to the Bylaw will make it more robust and align with best practice.

4.3. The Management Team have reviewed this report and support the recommendations.

### 5. COMMUNITY VIEWS

5.1. **Groups and Organisations**

   All vehicle crossing permit applicants (applications received in the last 2 years) have received an emailed or letter advising them of the review including a copy of the Statement of Proposal, *The Vehicle Crossing Bylaw 2007* and a submission form.

5.2. **Wider Community**

5.3. Views of the community have been sought through public consultation in accordance with the Local Government Act 2002, using the Special Consultative Procedure. The public were notified of this proposal through a public notice in the Northern Outlook, and information on the Council’s website. A quarter page advertisement was also included in the Northern Outlook during the consultation period. Copies of the proposed revised bylaw and statement of proposal were also available at service centres, libraries and our website.

### 6. IMPLICATIONS AND RISKS

6.1. **Financial Implications**

   The cost of reviewing the *Vehicle Crossing Bylaw 2007*, is programmed and met from existing budgets and staff resources

6.2. **Community Implications**
The bylaw provides clarity around responsibilities for the safe operation and maintenance of access to properties. The consultation period allowed the public to express any views or possible implications.

6.3. Risk Management

The reviewed bylaw will decrease the risk of non-compliant behaviour because it is clearer and more applicable to today’s practices.

6.4. Health and Safety

The bylaw will ensure safe and appropriate controls are in place for access to properties and that safe operation of access is maintained.

7. CONTEXT

7.1. Policy

This matter is not a matter of significance in terms of the Council’s Significance and Engagement Policy.

7.2. Legislation (Local Government Act 2002 Section 145 & Section 159)

Section 145 of the Local Government Act 2002 empowers the Council to make a bylaw for its district to manage, regulate against, or protect from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with (vi) reserves, recreation grounds, or other land under the control of the territorial authority.

Section 159 of the Local Government Act 2002 states that this bylaw must be reviewed every 10 years.

7.3. Community Outcomes

There is a safe environment for all
- Harm to people from natural and man-made hazards is minimised.

7.4. Delegations

The Committee has the jurisdiction to administer bylaws within the committee’s fields of activity and to recommend to the Council any amendments. The full council must adopt the final bylaw following consultation.
Vehicle Crossing Bylaw 2019

Statement of Proposal
1 Introduction

2 Reasons for the proposal

2.1 Option (a) Revoke the Vehicle Crossing Bylaw 2007

2.2 Option (b) Retain the Current Vehicle Crossing Bylaw 2007

2.3 Option (c) Adopt the draft Vehicle Crossing Bylaw 2019

3 Summary of proposed changes

Objectives

4 Legislative requirements that Council must consider

4.1 Is a bylaw the appropriate means to deal with the problem?

4.2 Is the bylaw in the appropriate form?

4.3 Is the bylaw consistent with the New Zealand Bill of Rights Act 1990?
1 Introduction

The Waimakariri District Council’s Vehicle Crossing Bylaw has been in effect since 1997.

The purpose of the bylaw is to ensure that vehicle crossings (entranceways) provide safe and convenient access to property:

(a) Allowing for other traffic and pedestrians.
(b) Allowing for good drainage without damaging the roading asset.
(c) Are constructed and maintained in a timely and safe manner to the Council's specifications
(d) Protect future property owners

The options available to Council are:

(a) Revoke the Vehicle Crossing Bylaw 2007 (no longer need a permit for Vehicle crossings);
   or
(b) Retain the Current Bylaw (does not include all Council assets)
   or
(c) Adopt the draft Vehicle Crossing Bylaw with changes. The changes proposed are outlined below.

Council must follow the special consultative procedure to review or revoke an existing bylaw. This Statement of Proposal has been prepared in accordance with the Local Government Act 2002 (LGA).

A report on the relevant determinations made by Council under section 155 of the LGA is included in this Statement of Proposal, along with a draft of the proposed Bylaw.

2 Reasons for the proposal

Under section 158 of the Local Government Act 2002 (the Act), the Council is required to review its bylaws at 5 and then 10 yearly intervals. This bylaw has not been formally reviewed since 2007 and therefore needs to be reviewed to comply with the legislative requirements and bring it into line with current operating practices.

2.1 Option (a) Revoke the Vehicle Crossing Bylaw 2007

Council has the option of revoking the Bylaw if it is considered the bylaw is not achieving the results outlined above and is considered an unreasonable restriction on individual rights and freedom. This option will not address identified issues, resulting in financial loss to the council, and potentially jeopardising the safety of the roading network.

2.2 Option (b) Retain the Current Vehicle Crossing Bylaw 2007

Council has the option of retaining the current bylaw. This is not preferred as the current bylaw does not include all assets and is missing detail of the maintenance period.
2.3 Option (c) Adopt the draft Vehicle Crossing Bylaw 2019

Adopting the draft Vehicle Crossing Bylaw for public consultation is the preferred option as the threat of a prosecution has been effective in most instances, even though the Council has limited enforcement powers. A few minor amendments to the Bylaw will make it more robust.

3 Summary of proposed changes

The main areas of proposed change, prior to public consultation, between the current bylaw and the draft bylaw are summarised below:

- Amend date references to reflect that this is a new bylaw;
- Correct minor formatting and consistency errors.

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The Council will accept responsibility for the ongoing maintenance of that portion of the vehicle crossing that crosses a footpath, after the 12 month maintenance period as detailed in the vehicle crossing permit has expired.

The Roading Department wish to clarify the maintenance period within the Vehicle Crossing Bylaw.

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To clarify to landowners that upgrades of footpaths bear no cost to the landowner.

### 3.6
Any person who causes damage to the road reserve (including footpaths and berms) by not using the designated vehicle crossing commits an offence against this bylaw.

Any person who causes damage to the road reserve (including footpaths, street furniture, street trees and gardens, berms and drainage) by not using the designated vehicle crossing commits an offence against this bylaw.

Expanding the Council owned assets that are included.

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As the proposed Bylaw is intended to replace the existing Bylaw it is proposed the existing Bylaw be revoked at the same time as the proposed Bylaw comes into force.

### 4 Legislative requirements that Council must consider

The LGA\(^1\) empowers Council to make bylaws for its district for one or more of the following purposes:

(a) Protect the public from nuisance
(b) Protect, promote and maintain public health and safety
(c) Minimise the potential for offensive behaviour in public places.

However, before it makes such a bylaw, Council must be satisfied that:

- A bylaw is the most appropriate way of addressing a perceived problem or issue; and

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\(^1\) Section 145 of the *Local Government Act 2002*
• If the Council decides that a bylaw is (still) appropriate, whether the bylaw is the most appropriate form of bylaw; and
• Whether or not the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA).

4.1 Is a bylaw the appropriate means to deal with the problem?

The Waimakariri District has had a Vehicle Crossing Bylaw in effect since 1997. The purpose of the bylaw is to regulate and control the installation of vehicle crossings to ensure the vehicle crossings provide safe and convenient access to property, allowing for other traffic and pedestrians and good drainage without damaging the roading asset.

Vehicle crossings are an important part of the roading network as they provide legal access from the public road to private properties. As such they need to be constructed to the required standards so they are safe, don’t negatively impact on existing infrastructure and are cost effective to maintain.

It is considered that the bylaw provides the most appropriate mechanism to effectively deal with Vehicle Crossings, after consultation with the Roading, Subdivision and Planning Department representatives it has been decided the best approach is for the Council to update the Vehicle Crossing Bylaw (2007).

4.2 Is the bylaw in the appropriate form?

Section 155(2)(a) of the LGA requires an assessment as to whether the bylaw is the most appropriate form of bylaw. The Council can make general bylaws for public health and safety, and specific bylaws for alcohol control in public places. The draft bylaw is consistent with Council document standards and has been written in plain English. In this case the Vehicle Crossing 2007 is being reviewed, so the form of bylaw is appropriate.

4.3 Is the bylaw consistent with the New Zealand Bill of Rights Act 1990?

Section (155(2)(b) requires that any bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990. This Act states:

s5 “subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

• The Local Government Act 2002 provides for Councils to introduce bylaws for the purpose of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with (vi) reserves, recreation grounds, or other land under the control of the territorial authority.
• The review of this Bylaw is being processed in an autonomous manner as the Council is publicly notifying its intentions, the taking and hearing of submissions and the final consideration being made by an elected Council.
5 What happens next?

The Council is inviting public submissions on the Draft Vehicle Crossing Bylaw from 1 April until 1 May 2019.

Anonymous submissions will be considered at the Council’s discretion.

Submissions may be entered online through the Council’s website waimakariri.govt.nz/your_council/lets-talk.

by using the submission form or any other written form and posted to:

Vehicle Crossing Bylaw Submission
Waimakariri District Council
Private Bag 1005
Rangiora 7440

or, by delivering to:

(a) Rangiora Service Centre, 215 High Street, Rangiora
(b) Ruataniwha Kaiapoi Civic Centre, cnr Raven Quay/Williams Street, Kaiapoi
(c) Oxford Service Centre and Library, 34 Main Street, Oxford

A copy of the full statements of proposal and supporting documents are available for public inspection during ordinary office hours at the Waimakariri District Council Service Centres and Libraries. They may also be viewed on, and downloaded from, the Council’s website, waimakariri.govt.nz/your_council/lets-talk.

If you would like to talk to someone about the draft Vehicle Crossing Bylaw, or the consultation process, please contact: Gina Maxwell, Policy Technician, 03 266 9247.

Anyone making a submission has the opportunity to be heard by the Council’s Hearing Panel at public hearings to be held during May 2019 and should make that request in their submission.
DRAFT VEHICLE CROSSING BYLAW 2019

This Vehicle Crossing Bylaw 2019 was adopted at a Council meeting held on

Chief Executive

Governance Manager

June 2019
General

Introduction

This Bylaw may be cited as the Waimakariri District Vehicle Crossing Bylaw 2019.

This Bylaw supersedes the Waimakariri District Vehicle Crossing Bylaw 2007 and comes into force on 4th June 2019.

This Bylaw is made by the Waimakariri District Council in exercise of the powers and authority vested in the Council by section 145 of the Local Government Act 2002.

Before making this Bylaw, Council was satisfied that those matters listed in section 147A(3) of the Local Government Act 2002 apply.

Objectives

The objective of the Bylaw is to ensure that vehicle crossings (entranceways) provide safe and convenient access to property:

(a) allowing for other traffic and pedestrians.
(b) allowing for good drainage without damaging the roading asset.
(c) are constructed and maintained in a timely and safe manner to the Council's specifications
(d) Protect future property owners

Definitions

For the purposes of this Bylaw the following definitions shall apply:

Berm has the meaning a grassed, soil or metal area between the road carriageway and the property boundary, and includes road verges in rural areas.

Bylaw means this bylaw as altered, varied or amended from time to time.

Council means the Waimakariri District Council.

Footpath means so much of any road as is laid out or constructed by authority of the Council primarily for pedestrians, and includes the edging but excludes the kerb and channel

Significant Building means any building; or any other structure with a floor area to, or greater than, 10 m² (ten square metres) that requires a building consent under the Building Act 2004; or that requires the use of more than 3 m³ (three cubic metres) of concrete.

Vehicle Crossing means the area within public road or other public land from a road carriageway to a property boundary intended for use by vehicles accessing the property.

Vehicle Crossing Permit means the written approval issued by the council detailing the standards and conditions that are required to install the Vehicle Crossing.
Words implying the singular include the plural and vice versa.

2 Vehicle Crossings

2.1 All properties for which it is anticipated that vehicle access will occur directly from the roadway will require a vehicle crossing.

2.2 Where an application is made to construct a significant building, then an application for a vehicle crossing permit must be made before the vehicles begin to access the property, unless a complying vehicle crossing already exists.

2.3 Where an application for a vehicle crossing permit must be made, it shall be made using the standard Council application form and shall include all necessary details as requested.

2.4 The Council may from time to time set either deposits or inspection fees to be paid. These must be paid at time of application for a vehicle crossing permit.

2.5 Except for emergency services vehicle access, vehicles must not access the property until the vehicle crossing permit has been approved by the Council, and then only in a manner approved by the vehicle crossing permit.

2.6 The vehicle crossing must be installed to the standards and conditions as detailed in the vehicle crossing permit, and all costs shall be borne by the landowner whose land is accessed via the vehicle crossing.

2.7 Any removal or relocation of street trees must be done in accordance with the Street and Reserve Trees Policy 2017.

2.8 The Council will accept responsibility for the ongoing maintenance of that portion of the vehicle crossing that crosses a footpath, after the 12 month maintenance period as detailed in the vehicle crossing permit has expired.

2.9 The landowner will be responsible for the maintenance of all other portions of the vehicle crossing. However where the Council are replacing the kerb and channel for asset renewal purposes or upgrading footpaths, Council may, at its discretion replace the vehicle crossing at no cost to the landowner whose land is accessed.

2.10 Notwithstanding clause 2.1, existing properties that do not have a vehicle crossing do not require one to be installed unless Council determines there is a traffic or pedestrian safety issue, or there is impediment to good drainage, or damage to the roadway is likely.
Existing vehicle crossings do not require an application for a vehicle crossing permit to be made unless the scale and nature of the use of the crossing is likely to change, or unless landowners are advised by the Council that it determines there is a traffic or pedestrian safety issue, impediment to good drainage, or damage to the roadway is likely. Upon receiving this advice, the vehicle crossing is deemed to be non-complying and is required to be upgraded to current standards by the landowner whose property is accessed by such vehicle crossing.

3 Offences

3.1 Subject to the provisions of 2.10 and 2.11, any person who knowingly operates a vehicle that accesses a property for which a vehicle crossing permit has not been issued, or doesn't use the vehicle crossing for access or accesses the property not in accordance with the vehicle crossing permit, commits an offence against this bylaw, except when access is required by emergency service vehicles.

3.2 Subject to the provisions of 2.10 and 2.11, any landowner or occupier who allows access (other than for emergency service vehicles) on to their property in situations where a vehicle crossing permit has not been issued, or the access is not occurring over a vehicle crossing, or the vehicle crossing is not in accordance with the vehicle crossing permit, commits an offence against this bylaw.

3.3 Any person who applies for a vehicle crossing permit and then starts work and doesn’t complete the works in the time noted on the vehicle crossing permit, or doesn’t complete the works within 30 days of the Code Compliance Certificate for the building, or doesn't carry out the works in accordance with the standards and conditions on the vehicle crossing permit, or doesn't pay the appropriate fees, commits an offence against this bylaw.

3.4 Any person who begins work on a vehicle crossing without first receiving a vehicle crossing permit from the Council commits an offence against this bylaw.

3.5 Any person who fails to comply with a notice given under Section 335 of the Local Government 2002 commits an offence against this bylaw.

3.6 Any person who causes damage to the road reserve (including footpaths, street furniture, street trees and gardens, berms and drainage) by not using the designated vehicle crossing commits an offence against this bylaw.

3.7 Any landowner who does not maintain the vehicle crossing to their property to a proper standard commits an offence against this bylaw. A proper standard is defined as a crossing that provides safe and comfortable access to properties, does not impede any stormwater channels or stormwater flow, and is not a hazard to traffic or pedestrians.
4 Penalties/Remedies

4.1 Any person who commits an offence against this bylaw shall be liable for fines as provided in Section 242 of the Local Government Act 2002.

4.2 The Council may remove or alter any vehicle crossing that has not been constructed in accordance with the standards and conditions of the vehicle crossing permit, and recover the costs of removal or alteration from the person who committed the breach, as provided in Section 163 of the Local Government Act 2002.

4.3 Any person who breaches clause 3.6 above shall be liable to pay the costs of remedying any damage caused in the course of committing the offence, as provided in Section 176 of the Local Government Act 2002.

5 Bylaw to be Repealed

5.1 All bylaws concerning vehicle crossings in force made by the Council or its predecessors are hereby repealed, provided that this repeal shall not affect the past operation of any such repealed bylaws, or the validity or invalidity of anything done or suffered, or any right required, or duty or liability incurred under those bylaws.

6 Revocation

The following Bylaw is hereby revoked: Vehicle Crossing Bylaw 2007 (June 2007)

7 Review of Bylaw

This Bylaw shall be reviewed by 4th June 2029.

This Bylaw can be reviewed at any other time before that date at the discretion of the Council.