



# **Livestock Movements Bylaw 2014**

## **Explanatory Note**

Western Bay of Plenty District Council may make bylaws to regulate the movement of livestock on, across or along public roads under the control of the Council in accordance with the provisions of the Bylaws Act 1910, Land Transport Act 1998 and the Local Government Acts 1974 and 2002.



## Western Bay of Plenty District Council

# Livestock Movements Bylaw 2014

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## Title

This Bylaw is made under Section 145 of the Local Government Act 2002 and shall be known as the Western Bay of Plenty District Council Livestock Movements Bylaw 2014.

## Commencement and application

This Bylaw shall come into force on 18 December 2014 and applies to all parts of all roads under the control of the Western Bay of Plenty District Council.

## Revocation

The Western Bay of Plenty District Council Stock Crossing Bylaw 2008 is hereby revoked.

## Purpose of the Bylaw

The purpose of the Bylaw is to improve control of the movement of livestock on public roads:

- (a) to protect:
  - (i) the safety of all road users including those associated with moving livestock;
  - (ii) the structure and surface of the carriageway in the roads; and
  - (iii) public and private structures and utilities situated in the road.
- (b) to reduce inconvenience, nuisance and potential hazard for all road users; and
- (c) to minimise any loss of social value or environmental quality from use of the road.

## Scope

This Bylaw provides for the:

- (a) acceptance of long-term, intermittent, or temporary movement of livestock on, across or along public roads in the district;
- (b) establishment of a clear framework (including associated criteria) for determining whether a livestock movement is permitted, whether it requires a *consent* or whether it requires the investigation of alternative options.



- (c) setting of charges to cover the costs of administration and monitoring; and
- (d) administrative mechanisms for the operation of this Bylaw

## Compliance with other Acts

Nothing in this Bylaw shall derogate from any provision of the Health and Safety in Employment Act 1992, the Resource Management Act 1991, the Animal Welfare Act 1999, the Impounding Act 1955, or any statutory or regulatory requirement.

### 1. Definitions

For the purpose of this bylaw:

(NOTE: Words in *italics* are also defined.)

**Approval or approved** means approved in writing by an *authorised officer* of the *Council*.

**Authorised officer** means any person appointed by the Chief Executive of the *Council* for the purposes of acting as an *authorised officer* under this bylaw.

**Carriageway** means that part of a *road* constructed or made for use of vehicular traffic and includes any shoulder, edging, kerbing or channelling thereof.

**Competent person** means a *person* being over the age of 14 years and being able to provide reasonable care and supervision.

**Consent** means a consent in writing given by the *Council* authorising a *consent holder* to move *livestock* on, across or along a *road*.

**Consent holder** means a person who has obtained *consent* for the movement of *livestock* on, across or along a *road*.

**Council** means the Western Bay of Plenty District Council.

**District** means the area administered by the Western Bay of Plenty District Council.

**Hours of Daylight** means half an hour before sunrise to half an hour after sunset.

**Livestock** means any animal kept or normally kept for commercial purposes, whether so kept or not, and may include, but is not limited to, any hooved animal, domestic fowl or poultry.

**Livestock movement** means any single movement of a herd or mob of *livestock*, including movements of milking herds, across or along a *road* in a single direction where the animals move by their own efforts and are free of individual control, such



individual control being by means of being ridden or led or driven on a bridle, halter, collar or similar restraint.

**Milking herd crossing** means any single movement of a milking herd across a road during the milking season where the animals move by their own efforts and are free of individual control

**Person** means a legal person and includes a corporation sole and also a body of persons whether corporate or incorporate.

**Road** means a road as defined in section 315 of the Local Government Act 1974, being all the land under the control of Western Bay of Plenty District Council maintained for public use and being the full width of the legal road between adjacent property boundaries and including both the *carriageway* and any unformed parts to the sides of the *carriageway*, but excluding any unformed road.

**Traffic management plan** means a plan, drawing, sketch or map indicating the method or measures for ensuring the safety of the *livestock* and all other *road* users to be used by the *consent holder*, that is acceptable to the *Council*.

- 1.1. In this Bylaw one gender may include all genders, the singular may include the plural and the plural includes the singular.

## 2. Control of livestock movements

- 2.1. No person shall:

- a) Move, or cause or allow to be moved, any *livestock* to which the provisions of this Bylaw apply except in accordance with the provisions of this Bylaw; or
- b) Move, cause or allow to be moved, any *livestock* on a *road* restricted to the movement of livestock by this Bylaw.
- c) Move, or cause or allow to be moved, any *livestock* on a *road* within the Western Bay of Plenty District listed in Schedule 1, without first obtaining a *consent (where required)* in accordance with this Bylaw.

## 3. Council may restrict movement

- 3.1. In the event that an authorised officer considers it necessary to close or restrict access to any road as a result of obstruction from road works, flooding, landslide, civil emergency or any other event, the *authorised officer* shall have discretionary power to halt or divert any movement of livestock from the use of that *road* notwithstanding any prior *consent* for movement of *livestock* on that road.



## 4. Movements to comply with best practice

- 4.1. Any and every movement of *livestock* on a public *road* shall comply with the requirements of any applicable statute, regulation, code of practice, or similar directive relating to the safety, health and welfare of *livestock*.

## 5. Classification of livestock movements

- 5.1. *Livestock movements* on roads shall be classified as follows:
- a) Livestock Droving (along a *road*)
  - b) Livestock Crossing (across a *road*)
  - c) Milking Herd Crossing (across a *road*)
- 5.2. Chart 1 of this Bylaw describes the process for determining whether a proposal for Livestock Droving is permitted or whether a *consent* is required.
- 5.3. Where Chart 1 of this Bylaw indicates that a proposal for Livestock Droving is permitted, the owner of such *livestock* must conduct any operation on a public *road* in a safe and appropriate manner.
- 5.4. Chart 2 of this Bylaw describes the process for determining whether a proposal for Livestock Crossing is permitted or whether a *consent* is required.
- 5.5. Where Chart 2 of this Bylaw indicates that a proposal for Livestock Crossing is permitted, the owner of such *livestock* must conduct any operation on a public *road* in a safe and appropriate manner.
- 5.6. Chart 3 of this Bylaw describes the process for determining whether a proposal for a Milking Herd Crossing can be issued *consent* or whether alternative options need to be investigated.
- 5.7. Where Chart 3 confirms the need for alternative options to be investigated in relation to a Milking Herd Crossing Chart 4 and Chart 5 of this Bylaw shall apply.

## 6. Exemptions

- 6.1 *Livestock movements* on public *roads* that are the result of an emergency, such as flooding or fire, landslide and damage to fences, or similar, or for the purposes of returning wandering or



loose livestock to the owner's property or to a temporary pound, shall be exempt from clause 5.

- 6.2** *Livestock movements* shall be exempt from clause 5 where;
- a) *Livestock* are moved to graze the road verge adjacent to the livestock owner's property **and**;
  - b) The *livestock* are securely contained, by temporary fencing or a similar measure to ensure no animal intrudes onto or across the *carriageway* **and**;
  - c) The *road* is not restricted for *livestock movements* by this bylaw, **and**;
  - d) The *livestock* are within the *road* only during the *hours of daylight*.

## **7. Fee to accompany application**

- 7.1** Every application for *consent* or renewal shall be accompanied by the application fee in accordance with the Schedule 2 of this Bylaw and Council's operative Schedule of Fees and Charges.
- 7.2** The application for a *consent* will not be processed until the application fee is paid.

## **8. Council may require further material**

- 8.1.** On receipt of any application for a *consent* the Council may require the applicant to provide, if not already provided, further material necessary to assist consideration of the application, such as but not limited to:
- a) A *traffic management plan* appropriate to the location, timing and size of the *livestock movement*.

## **9. Application to be properly executed**

- 9.1.** The applicant shall be responsible for ensuring that the application and every document required for the proper consideration of the application shall be properly executed and any act done for or on behalf of the applicant in making the application shall be deemed to be an act of the applicant.





## 10. Consideration of an application

10.1. In considering any application for a *consent* and in imposing any conditions on the *consent* the *Council* shall take into consideration the following:

- a) Limits and maximum values for characteristics specified in Charts 1, 2 and 3 of this Bylaw;
- b) Whether the stock crossing is on a 'No Exit' road;
- c) The timing of crossing movements;
- d) Traffic safety criteria, including traffic volume and sight distances;
- e) Frequency or scale of any potential traffic hazard or obstruction or nuisance;
- f) Social impact;
- g) Environmental impact;
- h) Potential damage to the road or structures in the *road*.

## 11. Decision on an application

11.1. The *Council* shall, within ten (10) working days of receiving all information necessary to process an application for *consent*:

- a) Grant the application for *consent*, and
- b) Notify the applicant of any conditions attached to the *consent*, or
- c) Decline the application for *consent* and advise the reasons why.

## 12. Conditions of Consent

12.1. Any *consent* may be granted subject to such conditions as the Council may impose, including but not limited to the:

- a) dimensions and surface of any entrance to the *road*;
- b) the potential for stock holding and priority crossing operations;
- c) the effective implementation of a *Traffic Management Plan* agreed between Council and the livestock owner;
- d) dimensions and placement of warning signs (Appendix 1);
- e) use, colour and placement of warning lights (Appendix 1);
- f) use, size and placement of road cones (Appendix 1);
- g) number of *competent persons* required to be present;



- h) length of time for which other road users might be halted;
- i) use of mats or similar devices to protect the *road*;
- j) the use of alternative *carriageway* surfaces for crossing points e.g. concrete;
- k) removal of excrement from the *carriageway* and entrances to the road;
- l) installation of appropriate excrement capture and disposal methods;
- m) specific routes to be used;
- n) specific times for movement;
- o) maximum number of *livestock*; or
- p) meeting of any other conditions reasonably necessary to achieve or ensure compliance with this bylaw.

### 13. Requirements for alternative mitigation and underpasses

- 13.1. If, after all reasonable alternative options for a *Milking Herd Crossing* have been investigated and discounted *Council* may either decline the application for *consent* or require a grade separated crossing by means of a *livestock* underpass or overpass (as per Chart 5) subject to section 341 of the Local Government Act 1974.

### 14. Availability of subsidy for underpasses

- 14.1. Where in accordance with clause 13 of this Bylaw and Charts 3 and 4 an underpass is required a *Council* funded subsidy for the building of an underpass will **only** be available:
- (i) where the New Zealand Transport Agency subsidy is applicable and available; and
  - (ii) where such underpass is considered by *Council* 'fit for purpose' in terms of the nature of *Milking Herd Crossing* proposed.

### 15. Variation of consent

- 15.1. The *Council* may at any time during the term of a *consent*, by written notice to the consent holder, vary any condition within the consent to address such issues as a change in the:
- a) Nature of the *livestock movement*;



- b) Traffic volume; or
- c) Legal requirements imposed on the *Council*.

**15.2.** Fair and reasonable fees may be charged to cover administration costs in processing the variation in accordance with Clause 22 and Clause 23 of this Bylaw.

## **16. Compliance with the consent**

**16.1.** The *consent holder* shall at all times comply with, and be responsible for compliance with, the conditions of the *consent*.

## **17. Term of Consent**

**17.1.** A livestock droving *consent* shall be specific to the livestock movement route for which it is issued.

**17.2.** A livestock crossing *consent* shall be valid, unless revoked under clause 18 or clause 19, for a term of five (5) years.

**17.3.** A *milking herd crossing* consent shall be valid, unless revoked under clause 18 or clause 19, for a term of five (5) years.

## **18. Suspension or cancellation of consent**

**18.1.** The *authorised officer* may suspend or cancel any *consent* by giving twenty (20) working days notice to the *consent holder* where it is in the public interest to do so or if the *consent holder* fails to comply with any conditions of the consent.

## **19. Summary cancellation**

**19.1.** An *authorised officer* may suspend or cancel any *consent* immediately by giving written notice to the *consent holder*, if:

- a) *Council* is lawfully directed to suspend or cancel the *consent*,
- b) the *consent holder* disregards any conditions of the *consent* in a manner which the *authorised officer* determines may endanger the health or safety of any person or damage any part of the *road* or cause environmental degradation, or
- c) the *Livestock movement* is not effectively controlled to be in accordance with the requirements of a consent.



## 20. Transfer or termination of consent

- 20.1. When the *consent holder* of any property from which livestock is moved subject to a *consent* ceases to occupy that property then the *consent* shall be at an end.
- 20.2. The *consent holder* shall not transfer the rights and responsibilities provided for under this Bylaw and under the *consent* to any other party.

## 21. Incidents to be reported

- 21.1. The *consent holder* shall inform the *Council* of any incident which may cause a breach of the *consent* or this bylaw within one day. Any incident causing or likely to cause a breach of a *consent* or of this bylaw shall be cause for the *Council* to review the conditions of the *consent*.

## 22. Council may recover costs

- 22.1. The *Council* may charge for the recovery of the reasonable costs incurred for the:
- a) unscheduled maintenance or repair of the *road* or any part of the *road* due to damage caused by the livestock movement, and
  - b) unscheduled maintenance to remove excessive *livestock* excrement from the *road carriageway* or any entrance to the *road* after the *livestock movement*, and
  - c) recovery of unpaid fees and charges.

## 23. Fees and charges

- 23.1. The *Council* may set fees and charges annually through the adoption of the Fees and Charges Schedule for the:
- a) application process, and
  - b) administration of the *consent*

## 24. Offences and penalties

- 24.1. Every person who fails to comply with this Bylaw or breaches any condition of a *consent* granted under this Bylaw or fails to comply with any notice served under this Bylaw commits an offence under section 239 of the Local Government Act 2002 and is liable to a fine not exceeding \$20,000 under section 242(4) of the Local Government Act 2002.



## 25. Review of decisions

- 25.1. If any person is dissatisfied with a decision of an *authorised officer*, that person may request the *Council* to review any such decision by notice to the Chief Executive Officer not later than twenty (20) working days after the decision of the *authorised officer* has been received.

## 26. Service of Documents

- 26.1. A person authorised by the *Council* shall sign any notice or document to be served or delivered to a *consent holder* and such notice or document may be left at a conspicuous place or handed to an employee of the *consent holder* at the *consent holder's* property or given or served by delivery or courier or sent by facsimile or electronic mail or registered post addressed to the:
- a) 'address for service' specified in a consent, or
  - b) *Consent holder's* last known place of residence, or
  - c) Registered office of an incorporated entity.

## 27. Date of service

- 27.1. Any notice or document sent by registered post shall be deemed to have been received on the third working day following posting. Any notice or document left at a conspicuous place at the property of or handed to an employee of the *consent holder* at that property or given or served by delivery or courier or sent by facsimile or electronic mail shall be deemed to have been received on the same day as the notice or document was despatched.

## 28. Transitional provisions

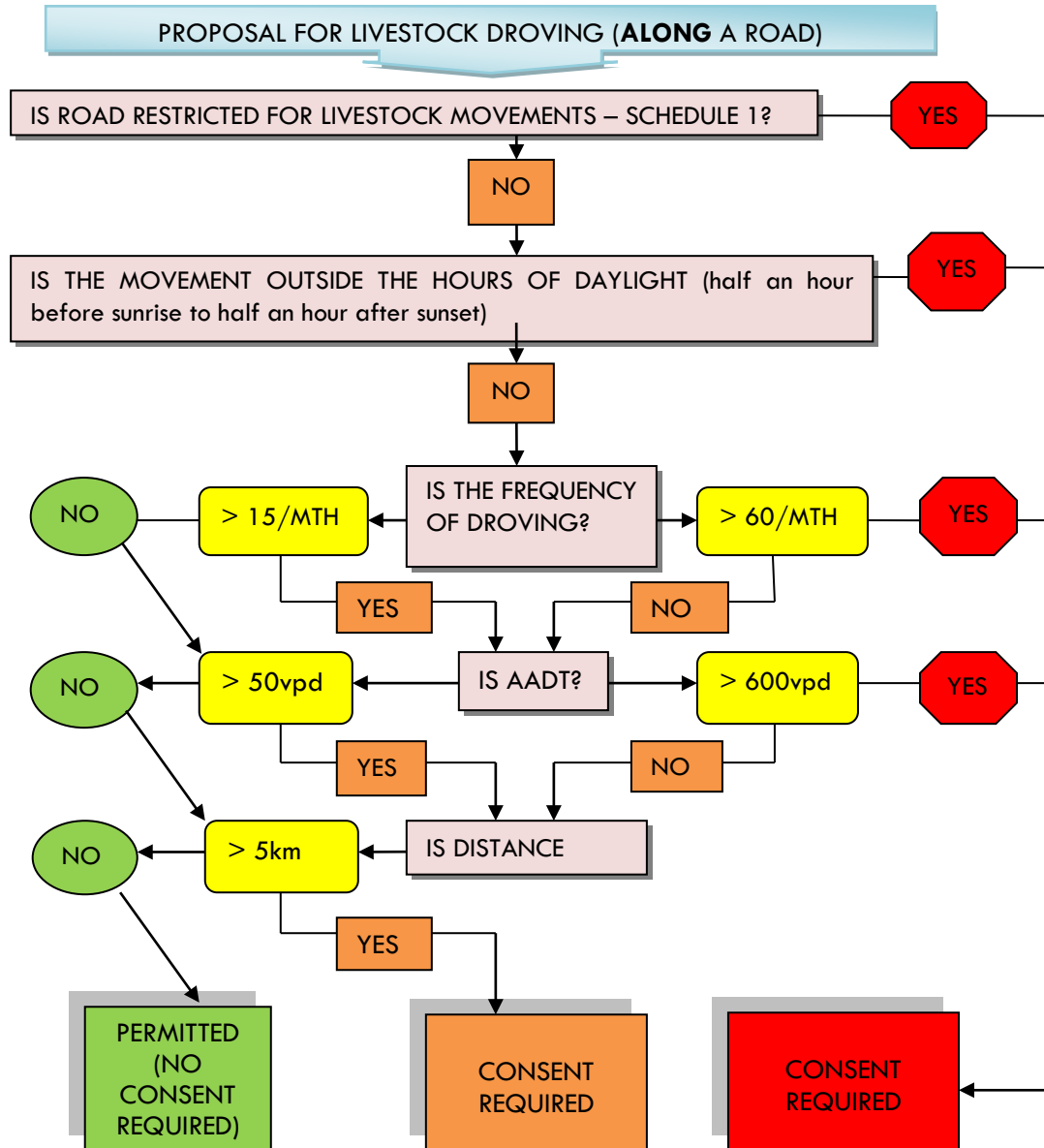
- 28.1. Every existing stock crossing permit shall continue in force as if it were a *consent* under this Bylaw until 30 June 2015 after which time it will expire and a new consent will need to be applied for under this Bylaw.



# Chart 1 - Process for assessing a proposal for livestock droving ALONG a road

## NOTES

1. Frequency of movements refers to number of movements by the herd or mob.
2. AADT is Average Annual Daily Traffic measured in vehicles per day.

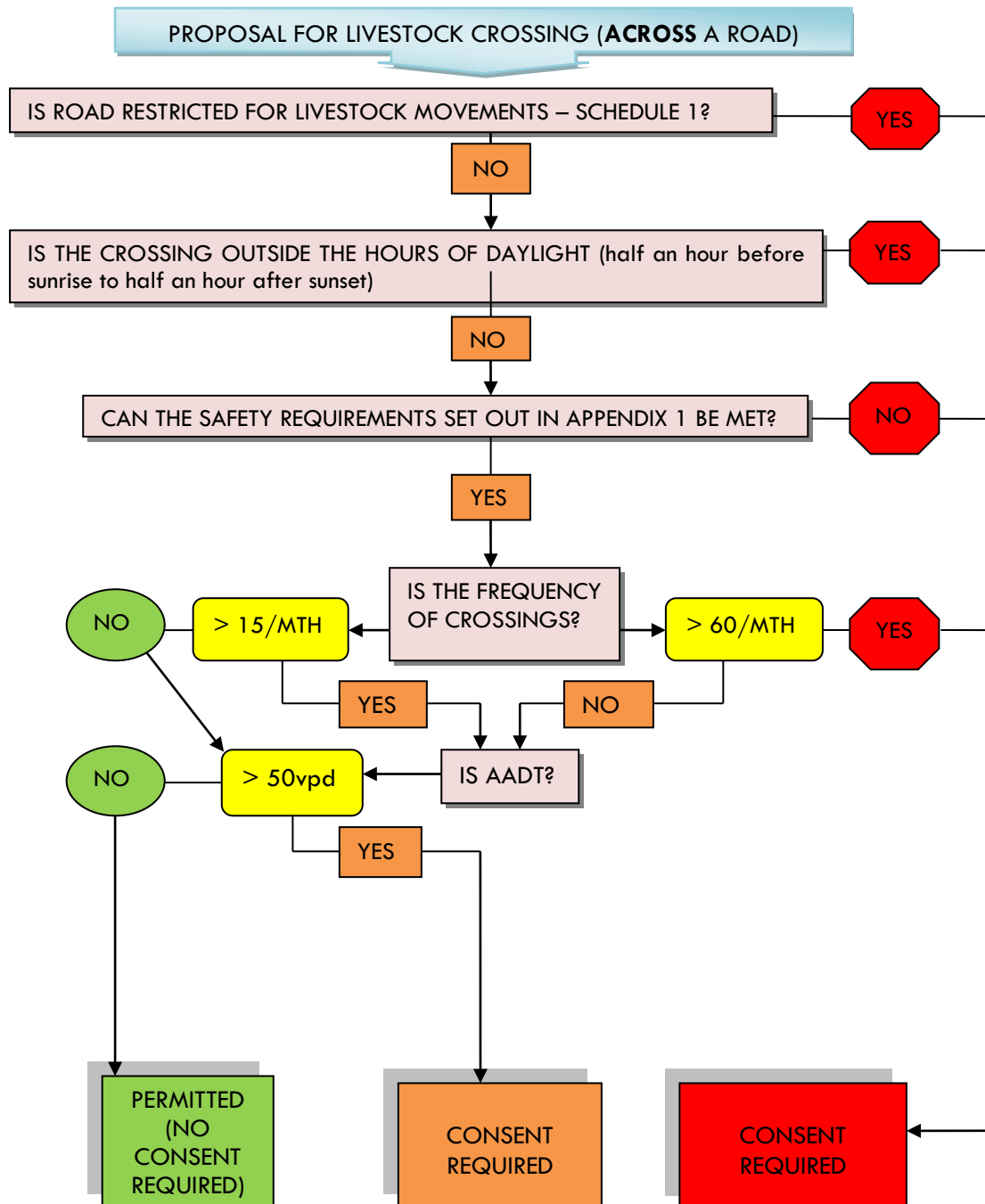




# Chart 2 - Process for assessing a proposal for livestock movement ACROSS a road

## NOTES

1. Frequency of movements refers to number of movements by the herd or mob.
2. The requirements of Appendix 1 are for more than 100m of unimpeded visibility between any approaching vehicle on the open road and any warning sign of any potential hazard and more than 150m of road is available between any such warning sign and that hazard or obstruction
3. AADT is Average Annual Daily Traffic measured in vehicles per day.

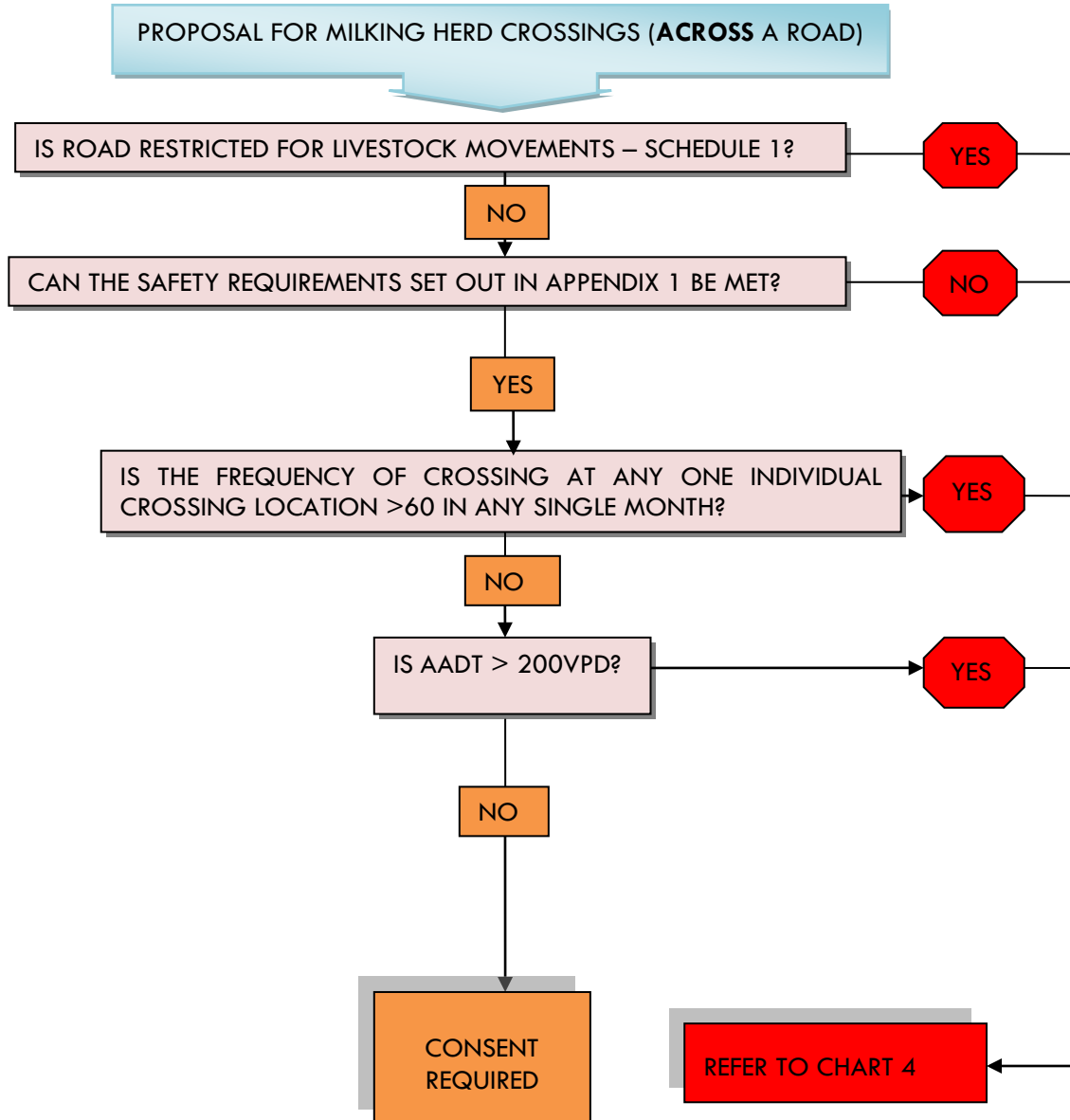




# Chart 3 - Process for assessing a proposal for milking herd crossings (ACROSS a road)

## NOTES

1. Frequency of movements refers to number of movements by the herd or mob.
2. The requirements of Schedule 2 are for more than 100m of unimpeded visibility between any approaching vehicle on the open road and any warning sign of any potential hazard and more than 150m of road is available between any such warning sign and that hazard or obstruction
3. AADT is Average Annual Daily Traffic measured in vehicles per day.

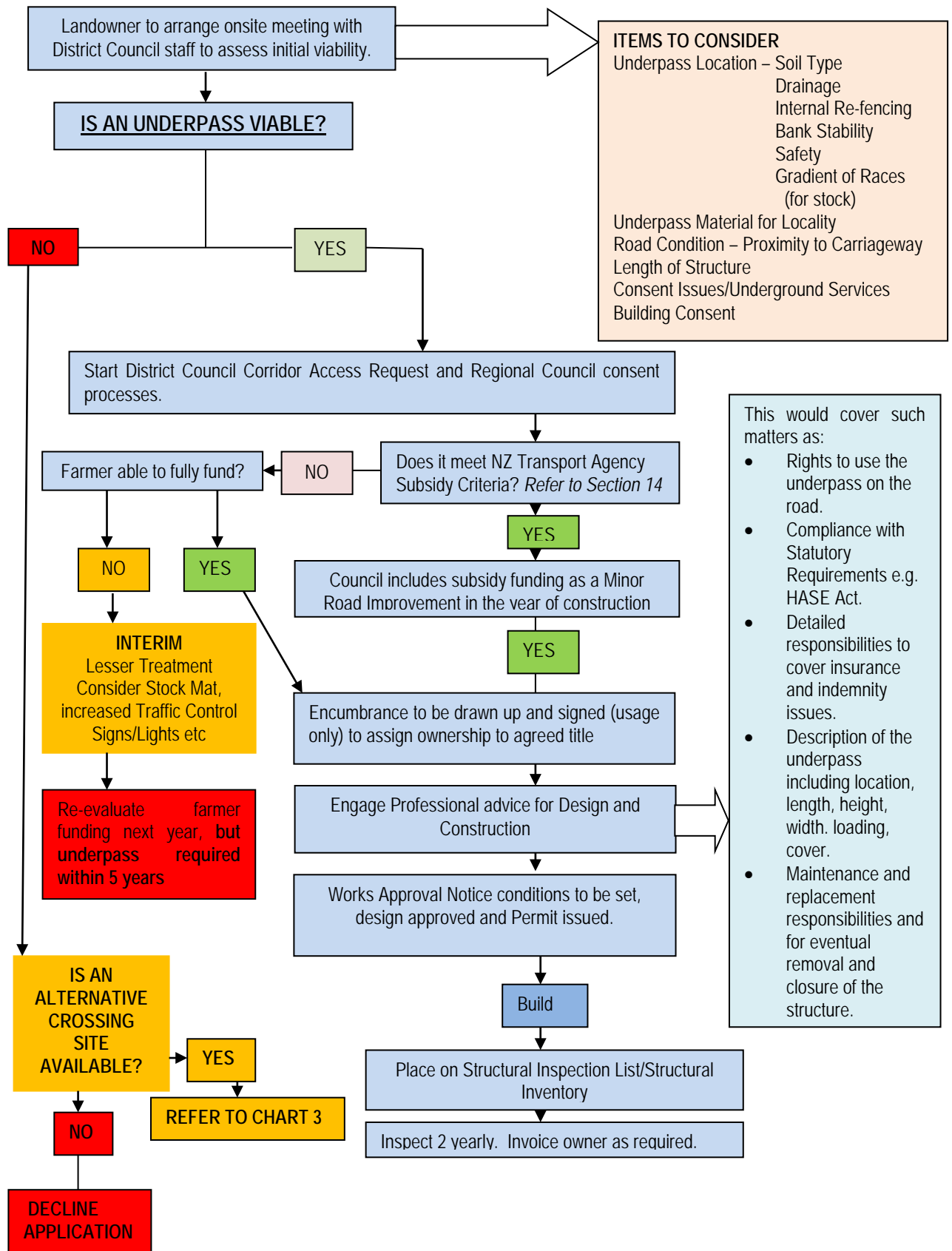








# Chart 5 – Process for assessing installation of an underpass





## Schedule 1: Local roads where Livestock Movements are restricted

The following roads or parts thereof here specified shall be restricted to livestock movements and livestock may not be driven without first obtaining a consent from Council in accordance with this Bylaw.

### Waihi Beach/Athenree/Pios Beach

|                                       |                           |                            |
|---------------------------------------|---------------------------|----------------------------|
| Adela Stewart Drive                   | Hillary Street            | Scarborough Road           |
| Albacore Avenue                       | Hillview Road             | Scott Street               |
| Angus Lane                            | Hinemoa Road              | Sea Crest Place            |
| Athenree Road (East of Koutunui Road) | Jenkinson Street          | Sea Vista                  |
| Ayr Street                            | Kauri Point Road          | Seaforth Road              |
| Beach Road, Waihi Beach               | Koutunui Road             | Seaview Road               |
| Bonito Avenue                         | Leo Street                | Shaw Road, Waihi Beach     |
| Bowentown Boulevard                   | Mako Avenue               | Snell Crescent             |
| Brighton Road                         | Marina Way                | Tatai Road                 |
| Broadway Road                         | Marine Avenue             | Te Kanawa Place            |
| Browns Drive                          | Marlin Avenue             | The Crescent               |
| Citrus Avenue                         | Mayor View Terrace        | The Esplanade, Waihi Beach |
| Denby Close                           | Nathan Place              | The Loop                   |
| Didsbury Drive                        | Ocean View Road           | The Terrace                |
| Dillon Street                         | Otto Road                 | Tuhua Place                |
| Dolphin Avenue                        | Pacific Road              | Tuna Avenue                |
| Edinburgh Street                      | Papaunahi road            | Waiiti Avenue              |
| Edwards Street                        | Park Avenue               | Waione Avenue              |
| Elizabeth Street                      | Patterson Place           | Wakanoi Place              |
| Farm Road                             | Pio Road                  | Walnut aVenue              |
| Fyfe Road                             | Pohutukawa Drive          | West Street                |
| Glen Isla Place                       | Queen Street, Waihi Beach | Wilson Road, Waihi Beach   |
| Hanlen Avenue                         | Roretana Drive            |                            |
| Hereford Place                        | Savage Avenue             |                            |

**Tanners Point/Tuapiro/Ongare Point/Kauri Point**

|                                     |
|-------------------------------------|
| Baigent Place                       |
| Chelmsford Street                   |
| Esplanade Road (Kauri Point)        |
| Esplanade Road (Ongare Point)       |
| Giles Way                           |
| Harbour View Road (Ongare Point)    |
| Moana Drive                         |
| Noble Lane                          |
| Ongare Point Road (East of No 254)  |
| Potu Road                           |
| Princes Street                      |
| Stanley Street                      |
| Tanners Point Road (East of No 133) |
| Tuapiro Road (North of No 354)      |
| Victoria Street                     |

**Katikati**

|                                   |  |
|-----------------------------------|--|
| Alexander Street                  | Hyde Street                                    |
| Atlanta Court                     | Irwin Court                                    |
| Beach Road, Katikati              | Jocelyn Street, Katikati                       |
| Belmont Rise                      | Johnston Street                                |
| Binnie Road                       | Katterns Street                                |
| Blundell Place                    | Kea Street                                     |
| Boyd Street                       | Kowhai Court                                   |
| Busby Road                        | Leyley Lane                                    |
| Carisbrooke Street                | MacMillan Street                               |
| Church Street                     | Major Street                                   |
| Clive Road                        | Marshall Road                                  |
| Crossley Street                   | Mulgan Street                                  |
| Donegal Place                     | Park Road, Katikati                            |
| Earl Drive                        | Philip Walter Drive                            |
| Fairview Road                     | Polley Crescent                                |
| Fencourt Crescent                 | Riverlea Drive                                 |
| Francis Drive                     | Robinson Street                                |
| Gilfillan Drive                   | Rosemary Place                                 |
| Gledstane Road                    | Sheffield Street                               |
| Gordet Drive                      | Station Road, Katikati                         |
| Gray Street                       | Stewart Street                                 |
| Grosvenor Place                   | Tui Street                                     |
| Hansen Place                      | Twickenham Close                               |
| Henry Road (East of Rawaka Drive) | Waterford Downs                                |
| Heron Crescent                    | Wedgewood Street                               |
| Highfields Drive                  | Wills Road (North of Sewerage Screening Plant) |

**Omokoroa/Te Puna**

|                   |  |
|-------------------|--|
| Anderley Avenue   | Margaret Place                         |
| Ashwood Grove     | Matahiwi Road                          |
| Astelia Drive     | McDonnell Street                       |
| Beach Road        | Myrtle Drive                           |
| Branley Drive     | Omokoroa Road (North of Railway Line)  |
| Colleen Place     | Owen Place                             |
| Coppelia Avenue   | Ruamoana Place                         |
| Farnell Court     | Snodgrass Road (north of Borrell Road) |
| Gane Place        | The Esplanade                          |
| Gellibrand Place  | Tinopai Drive                          |
| Gerald Place      | Tralee Street                          |
| Hamurana Road     | Vivian Drive                           |
| Harbour View Road | Wallace Road                           |
| Kaharoa Avenue    | Walnut Grove                           |
| Kayelene Place    | Waterview Terrace                      |
| Kowhai Grove      | Western Avenue                         |
| Links View Avenue |  |

**Te Puke**

|                     |                         |                                       |
|---------------------|-------------------------|---------------------------------------|
| Aran Place          | George Street           | Nettlingham Place                     |
| Atuaroa Avenue      | Gilmore Street          | No 1 Road (North of No 79)            |
| Barnett Place       | Gisborne Road           | No 2 Road (North of No 15)            |
| Barrow Place        | Glen Terrace            | No 3 Road (North of Whitehead Avenue) |
| Bayview Street      | Gordon Street           | Norrie Street                         |
| Beatty Avenue       | Gray Avenue             | Oroua Street                          |
| Velvedere Street    | Harris Street           | Otawa Street                          |
| Ben Keys Street     | Hastings Street         | Oxford Street                         |
| Bishoprick Crescent | Hayward Court           | Palmer Place                          |
| Boucher Avenue      | Herbert Street          | Princess Street                       |
| Brown Terrace       | Hookey Drive            | Puriri Avenue                         |
| Cameron Road        | Jocelyn Street, Te Puke | Queen Street                          |
| Carberry Crescent   | Killarney Street        | Randell Street                        |
| Chaytor Street      | King Street             | Raymond Avenue                        |
| Clifden Terrace     | Kowhai Avenue           | Saunders Place                        |
| Clydesburn Avenue   | Kylemore Place          | Seddon Street (South of Ben Keys St)  |
| Collins Lane        | Landscape Road          | Slater Place                          |
| Commerce Lane       | Lee Street              | Stapleton Place                       |
| Conifer Place       | Lenihan Drive           | Station Road, Te Puke                 |



|                     |                   |                            |
|---------------------|-------------------|----------------------------|
| Cooney Street       | Lowry Road        | Stewart Street,<br>Te Puke |
| Donovan Street      | Macloughlin Drive | Strathaven Way             |
| Dudley Vercoe Drive | Magnolia Place    | Tui Street                 |
| Dunlop Road         | Malyon Street     | Tynan Street               |
| Edgehill Place      | McBeth Drive      | Valley Road                |
| Fairview Place      | Milsom Place      | Washer Place               |
| Fenton Terrace      | Moehau Street     | Whitehead Avenue           |
| Fenton Terrace East | Mountbatten Place | Williams Drive             |
| Galway Place        | Muir Place        | Wiltshire Place            |

### **Maketu/Paengaroa/Pukehina**

|                              |   |
|------------------------------|---|
| Beach Road, Maketu           | Ngaroma Lane                                  |
| Black Road (West of No 39)   | Otimi Street                                  |
| Bledisloe Park Avenue        | Park Road, Maketu                             |
| Church Road                  | Pukehina Parade                               |
| Conway Road                  | Rauporoa Road                                 |
| Costello Crescent            | School Road                                   |
| Gardner Road                 | Spencer Avenue                                |
| Hall Road                    | Taupata Street                                |
| Hapimana Road                | Te Awhe Road                                  |
| Kauri Place                  | Town Point road                               |
| Kiokio Place                 | Walter Street                                 |
| Lemon Road                   | Whenuariri Place                              |
| Little Waihi Road            | Williams Crescent                             |
| Maketu Road (North of no 58) | Wilson Road North (North of<br>Arawa Ave)     |
| Ngaparoa Drive               | Wilson Road North (South of<br>McKenzie Road) |



## Schedule 2: Fees and Charges

### 1. INTRODUCTION

- 1.1. Under section 150 of the Local Government Act 2002 the Council may set fees and charges for the recovery of the reasonable costs incurred for the:
- application process for granting a consent;
  - administration of the consent;
  - unscheduled maintenance or repair of the road or any part of the road due to damage caused by livestock movement subject to a consent; and
  - unscheduled maintenance to remove excessive livestock excrement from the road *carriageway* or any entrance to the road after any livestock movement subject to a consent.

### 2. APPLICATION FEE

- 2.1. An application fee shall be payable to the Council with each application for a consent or renewal of a consent to move livestock on, across or along any public road.
- 2.2. The application fee shall be set annually by the Council.

### 3. CHARGES

- 3.1. Charges shall be payable to the Council by every holder of a livestock movement consent to recover the reasonable costs incurred by the Council arising from the consent
- 3.2. The charges may comprise one or more of:
- a charge for the administration of the consent where the Council has received a complaint and compliance monitoring of the consent is necessary;
  - a charge for the unscheduled maintenance or repair of the road or any part of the road due to damage caused by livestock movement subject to the consent; and
  - a charge for unscheduled maintenance to remove excessive livestock excrement from the road *carriageway* or any entrance to the road after any livestock movement subject to the consent.
  - Costs for unpaid fees and charges.

### 4. DETERMINATION OF CHARGES

- 4.1. The calculation of charges shall be based on recovery of reasonable costs incurred by the Council as a result of the livestock movement consent.

### 5. PAYMENT OF CHARGES

- 5.1. Charges shall be payable to the Council within 30 days of the date of the notice of the charges levied.

### 6. APPEALS AGAINST CHARGES

- 6.1. Any person wishing to object to any assessment of charges levied by the Council in respect of a livestock movement consent has the right to appeal in accordance with the provisions of the Local Government Act 2002

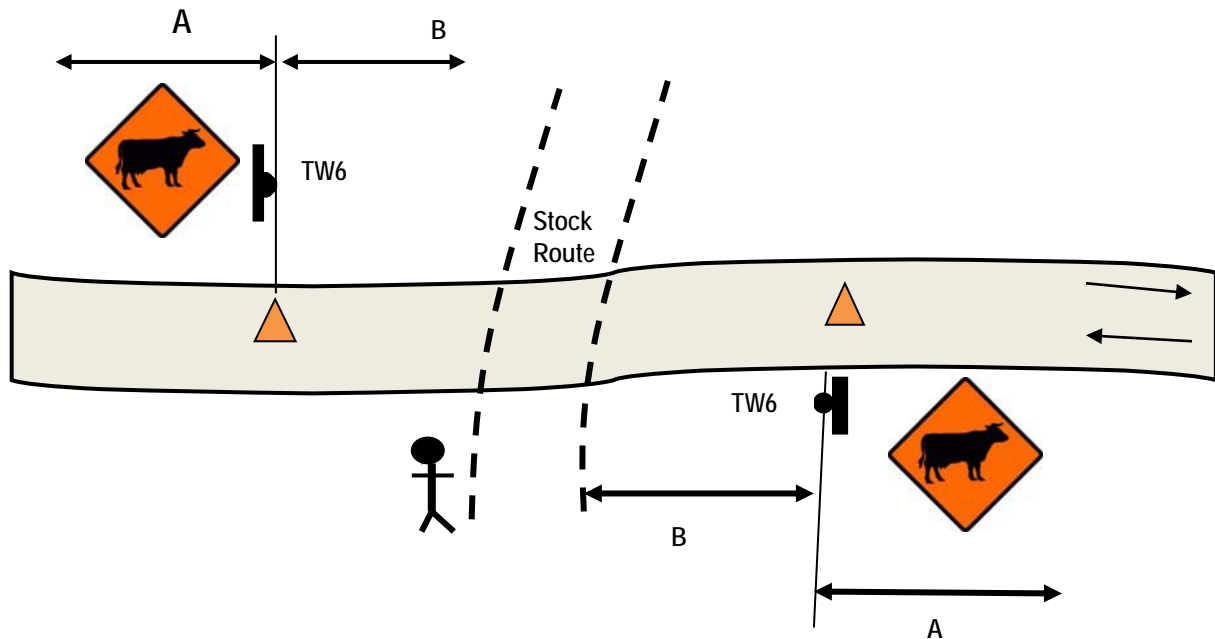


# Appendix 1: Stock Crossing Layout

## Minimum distances for warning signs

STOCK CROSSING: GOOD VISIBILITY

Diagram 200-other activities: Local Road Supplement-September 2005



Not to scale

Notes:

1. All TW6 signs to be folded or removed when not required.
2. Visibility **A** and warning **B** distances are:

| A    | B    | Speed limit |
|------|------|-------------|
| 50m  | 30m  | 50km/h      |
| 60m  | 80m  | 60km/h      |
| 70m  | 105m | 70km/h      |
| 80m  | 120m | 80km/h      |
| 90m  | 135m | 90km/h      |
| 100m | 150m | 100km/h     |

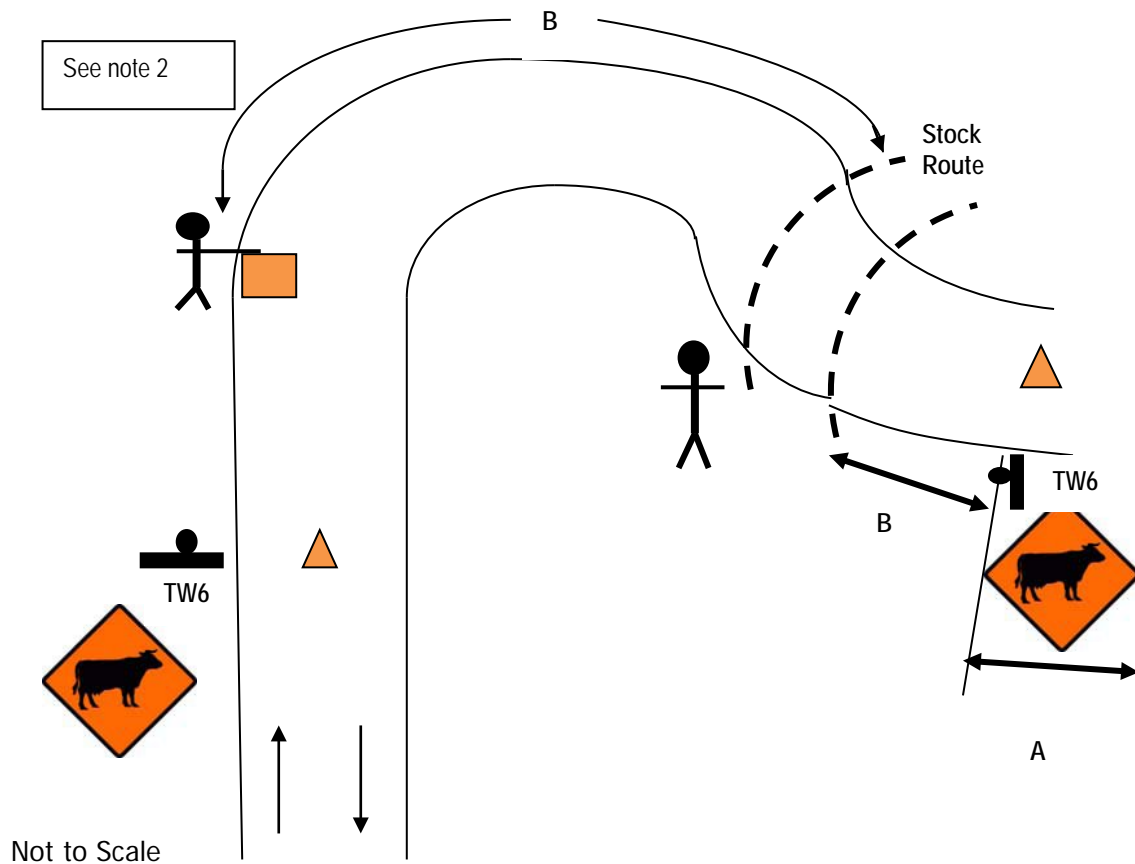
3. Speed limit is posted speed limit or normal operating speed of RCA.
4. Cones placed on the centre line of the road are optional.





### STOCK CROSSING: POOR VISIBILITY

Diagram 201-other activities: Local Road Supplement-September 2005



Notes:

1. All TW6 signs to be folded or removed when not required.
2. A yellow flashing beacon or a person waving an orange flag is required in situations or during times of poor visibility.
3. Visibility **A** and warning **B** distances are:

| A    | B    | Speed limit |
|------|------|-------------|
| 50m  | 30m  | 50km/h      |
| 60m  | 80m  | 60km/h      |
| 70m  | 105m | 70km/h      |
| 80m  | 120m | 80km/h      |
| 90m  | 135m | 90km/h      |
| 100m | 150m | 100km/h     |

4. Speed limit is the posted speed limit or normal operating speed of RCA.
5. Cones placed on the centre line of the road are optional.



# Appendix 2: Sample Memorandum of Encumbrance

## MEMORANDUM OF ENCUMBRANCE

Encumbrancer:

(in this Memorandum called "the Encumbrancer")

Council:

..... **DISTRICT COUNCIL**  
(in this Memorandum called "the Council")

WHEREAS:

1. The Encumbrancer is registered as proprietor of an estate in fee simple in the land described in the *Second Schedule*.
2. The land is situated in the district of the Council.
3. As a result of the circumstances disclosed in the *Third Schedule* the Encumbrancer has agreed:
  - a) to grant and make the rent charge with the Council as set out, and subject to the conditions expressed, in the *First Schedule*; and
  - b) to enter into the covenants in the Council's favour as set out in the *Fourth Schedule*.

NOW THIS MEMORANDUM WITNESSES that the Encumbrancer ENCUMBERS the land for the benefit of the Council as set out in the *First Schedule* AND COVENANTS with the Council as set out in the *Fourth Schedule*.

IN WITNESS WHEREOF this Memorandum has been executed this \_\_\_\_\_ day of \_\_\_\_\_ 20.....

**SIGNED** by \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )



## FIRST SCHEDULE

### (Terms and Conditions of Encumbrance)

1. The term of the Encumbrance is 999 years commencing from the date hereof subject to earlier determination in the events provided in the *Fifth Schedule*.
2. The annual charge that covers rent of the structure, administration and engineering inspection fees is determined through the setting of the Schedule of Annual Fees & Charges in the Annual Plan process.

The annual charge, along with the Inspection Fee set out in the Fourth Schedule, and any such further sum as may be owing by the Encumbrancer to the Council under the Covenants of this Encumbrance is to be paid to the Council on the 1<sup>st</sup> business day of July 20\_\_ and on the 1<sup>st</sup> business day of July in every year thereafter.

3. The covenants of the *Fourth Schedule* shall be enforceable only against the owners and occupiers for the time being of the land and not otherwise against the Encumbrancer and his successors in title.
4. Section 104 of the Property Law Act 1952 applies to this Memorandum of Encumbrance but otherwise (and without prejudice to the Council's rights of action at common law as a rent-chargee):
  - a) The Council shall be entitled to none of the powers and remedies given to Encumbrancees by the Land Transfer Act 1952 and the Property Law Act 1952; and
  - b) No covenants on the part of the Encumbrancer and his successors in title are implied in this Memorandum other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.
5. The underpass is the property and responsibility of the Encumbrancer and remains within the road at Council's pleasure.
6. In the event of the Encumbrancer wishing to enter into a mortgage or mortgages of the land to have priority to this Memorandum the Encumbrancer shall be entitled at his own cost in all things to a Memorandum of Priority granted by the Council in favour of any such mortgage or mortgages PROVIDED that the mortgagee thereunder consents to and acknowledges that it is bound by the covenants of this Memorandum for the purposes of Section 105 of the Land Transfer Act 1952.
7. The Encumbrancer shall further pay to the Council forthwith upon demand an amount equal to any output tax payable by the Council under the Goods and Services Tax Act 1985 or any Act in amendment or substitution therefor in respect of taxable supplies



made to the Encumbrancer directly or indirectly attributable to matters referred to in, or arising from, this Memorandum of Encumbrance.

8. In this Memorandum and its Schedules:
  - a) "the Land" refers to that described in the Second Schedule and any part of it;
  - b) "the Licence" is that for a stock underpass referred to in the Third Schedule;
  - c) "Schedule" refers to the several Schedules attached to this Memorandum;
  - d) "the Works" refers to those described in the Sixth Schedule and any part of it.

### **SECOND SCHEDULE** (the Land)

An estate in fee simple in all those parcels of land containing:

### **THIRD SCHEDULE** (the Circumstances)

1. The Encumbrancer has applied to the Council for a Licence to have constructed on and under the road between the separate parcels of the Land a stock underpass ("the underpass").
2. That application has been approved by the Council on the condition, amongst others, that the Encumbrancer enters into this charge and the covenants of the Fourth Schedule in the Council's favour.

### **FOURTH SCHEDULE** (the Covenants)

1. That the Encumbrancer shall duly and punctually, to the Council's reasonable satisfaction, comply with all these Covenants.
2. Nothing expressed or implied in this Encumbrance shall constitute either party as the partner, agent, employee or officer of, or as a joint venturer with, the other party, and neither party shall make any contrary representation to any other person.
3. The Encumbrancer shall have the Works carried out and completed in strict accordance with plans and specifications and any timetable or programme of performance first *approved* by the Council and to the reasonable satisfaction of the Council.
4. The Encumbrancer shall not do, nor permit, anything with regard to the underpass or Works which might directly or indirectly prejudice the structural integrity of the works, the Council's road or the underpass.



5. The Encumbrancer shall construct and maintain the Works until all the Works have been completed to the reasonable satisfaction of the Council, including the provision of satisfactory as-built plans and records of such of the Works as may be required from time to time by the Council, together with Certificate of Due Performance of the Works acceptable to the Council given by adequately qualified persons as requested from time to time by the Council, including upon completion of the works.
6. The Encumbrancer shall visually inspect the underpass on a regular basis and carry out any necessary maintenance from time to time to ensure the underpass remains in a satisfactory and safe condition.
7. The Encumbrancer agrees to pay the Council's costs in carrying out regular structural inspections of the underpass at intervals specified by the Council ("the Inspection Fee"). This will include a minimum of an annual visual inspection, and a structural engineering inspection every two years or after any event that may cause damage to the underpass.
8. The Encumbrancer agrees to immediately carry out at their sole cost any Works, maintenance, or remedial works that the Council deems necessary. This includes repairing any damage caused to Council's utilities or road pavement.
9. The Encumbrancer permits the Council without hindrance at any time and from time to time, and without the need for notice, by its servants, agents, contractors or workmen:
  - a) To inspect the underpass and to undertake the Works or any of them at the Encumbrancer's cost should the Council consider it necessary to do so on account of the Encumbrancer failing, or failing to make such progress as the Council reasonably requires as being necessary, to complete or fulfil any of the Covenants strictly in accordance with this schedule;
  - b) To issue instructions to the Encumbrancer, or any servant, contractor, or workman of the Encumbrancer for any remedial works as the Council reasonably thinks necessary for the due maintenance or better performance of the Works;
  - c) As reasonably required to audit the performance of the Works by examination of all relative records of the Encumbrancer, or any servant, contractor or workman of the Encumbrancer;
  - d) To undertake any remediation of the Works at the Encumbrancer's cost as the Council reasonably thinks fit.
10. The Encumbrancer shall not take any proceedings, make any claim, join any proceedings or claim, or charge, account for, seek payment,



or set-off of any kind, against the Council, whether in respect of any costs, charges or expenses incurred, or losses or damages suffered, for compensation or other relief whatsoever, directly or indirectly arising from:

- a) The exercise by the Council of any rights, remedies or powers under this Encumbrance, or as territorial local authority for the district within which the Land is situated; or
  - b) The Encumbrancer or any servant, contractor or workman of the Encumbrancer complying with orders or instructions given by, or for the Council in accordance with this Schedule.
11. Without limiting the Encumbrancer's obligations and liabilities under this Encumbrance, the Encumbrancer shall effect and maintain in respect of the Works policies of public liability, professional and contract works insurance and personal injury and loss of life insurance, or any of them, as the Council may reasonably direct, with the Council named as principal, fully insuring the Council and the Encumbrancer against all claims and liabilities whether under statute or at common law in respect of damage to or loss of any real or personal property of any description, and loss of life or personal injury, if reasonably required by the Council, arising from or caused by the execution of the Works whether by or for the Council, the Encumbrancer or others. The total amount payable under each such insurance in respect of any one claim shall be as directed by the Council.
12. In undertaking the Works the Encumbrancer shall:
- a) Comply with all relative legislation including, but not in limitation, the Health and Safety in Employment Act 1992 (the HSE Act); and
  - b) When called upon by the Council to do so, satisfy the Council as to the Encumbrancer's due performance of the obligation in the preceding paragraph; and
  - c) Indemnify the Council to the full extent permitted by the laws against liability or loss arising directly or indirectly to the Owner under or by virtue of the HSE Act as a consequence of the works or any thing undertaken by any person pursuant, or relative to this Encumbrance.
13. In the event that the underpass fails or becomes redundant or the Council requires the underpass to be removed for reasons of health and safety, the Encumbrancer shall pay all costs of decommissioning and removal of the underpass and reinstatement of the road.
14. The Encumbrancer shall at all times indemnify the Council in respect of any loss, damage or cost (including consequential loss or damage and legal costs on a solicitor and own client basis) suffered or incurred



by it as a direct or indirect result of the Council granting the Licence, or imposing conditions or requirements on the issue of the Licence.

15. The Encumbrancer authorises the Council to recover the cost of Council undertaking any Works, exercising any of the Council's powers, or satisfying any of the Covenants of the Encumbrancer under this Memorandum from the Encumbrancer as a debt owing by the Encumbrancer to the Council payable forthwith upon demand and, if not so paid, such sum or sums, together with interest thereon from the date of expenditure by the Council until refunded by the Encumbrancer at the rate of 15 per cent per annum, shall constitute and be recoverable by the Council as additional rent charge.
16. The Encumbrancer's liability under these Covenants shall not be released, varied or affected in any way by any delay, extension of time or other indulgence to the Encumbrancer of suffered or permitted by the Council or by any failure or neglect of the Council to enforce the Council's rights or powers or any obligation of the Encumbrancer under these Covenants.
17. The Encumbrancer shall forthwith upon demand pay the Council's legal and engineering costs on a professional and own client basis in respect of settling the terms and conditions, and the preparation, execution, operation, enforcement, any variation and the ultimate release of this Encumbrance and of any action of proceedings relating to it.

#### **FIFTH SCHEDULE** (Events for Termination)

Upon the Council being satisfied that the Covenants of the Fourth Schedule have been duly performed.

#### **SIXTH SCHEDULE** (the Works)

The provision, performance and operation to the Council's reasonable satisfaction and in accordance with the Fourth Schedule covenants of the following:

1. A stock underpass as follows:
  - a) Material, ie concrete, steel,  
etc. \_\_\_\_\_
  - b) Type, ie precast box, pipe, etc.  
\_\_\_\_\_







## Appendix 3: NZTA Stock Crossing Funding Policy

### Introduction

The following policy applies where provision of a stock crossing across, under or over a road has been requested to connect two parts of a property.

### Road protection where stock cross *at grade*

If the least long-term maintenance cost is to use a protective covering over the road (eg road/stock mats or a specialised seal coating), then this cost is eligible for funding assistance under work category 111: sealed pavement maintenance.

### New road alignment

When a new road alignment severs a rural property, the roading portion of an access structure may be included as part of the total road construction cost.

Cost sharing is to be considered on the following basis:

- Where provision of a stock access structure can be made at a cost less than that involved in acquiring the severed area of land, the full cost of the access structure will be accepted as a charge to the roading improvement. This includes the value of any improvements;
- Where the cost of providing an access structure exceeds the value of the severed land, no stock access structure shall be provided. This is where the value of improvements is included and the landowner is not prepared to sell the severed land.

**Note:** Other options to be considered include:

- the resale or exchange of the severed land;
- purchase and resale of both portions.

### Existing road alignment

Where existing and proposed stock movements on an existing road significantly affects road traffic, a proportion of the cost of constructing a stock access structure (including fees) will be accepted as a roading cost.

This roading cost may be included in the programme under work category 341: minor improvements.

### Existing roads: proportion of cost

The figure below illustrates the proportion of an access structure's cost that will be accepted as a roading cost, where the structure is to be built on an existing road alignment.

**Note:** *Where a vehicle accident record exists, the project should be considered as a road reconstruction project. If the project has an*



*assessment profile better or equal to the prevailing funding threshold profile, the **total cost** should be accepted as a roading cost.*

### Form of structure

The form of the stock access structure should be determined by the needs of the farmer, subject to approval of the design by the RCA

### Agreements with landowner

The NZTA requires that the Approved Organisation obtains a written undertaking from the farmer that any *at grade* stock crossing will be eliminated immediately on completion of the access structure.

The Approved Organisation should also consider an encumbrance to be registered against the title of the property affected by the under or overpass. For a sample of an encumbrance refer Appendix 4.

### Approvals

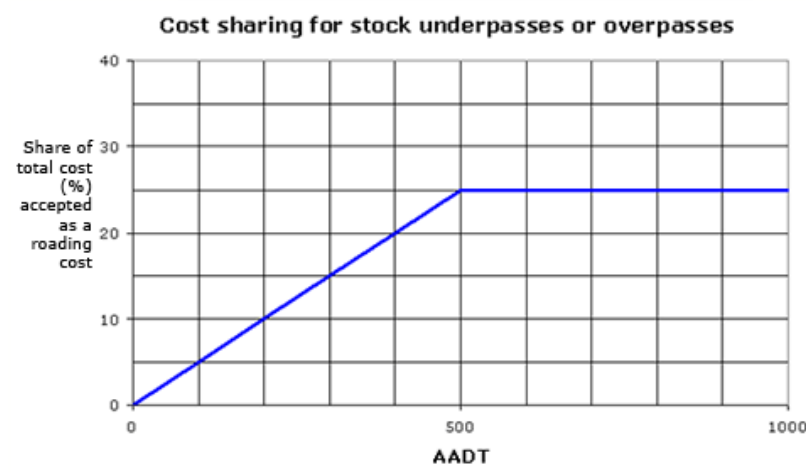
The Approved Organisation can approve applications for projects that conform to this policy. Proposals not complying with this policy shall be referred to the NZTA for a decision.

### Maintenance

Any repairs to the stock access structure may be included in work category 114: structures maintenance. However, at a minimum, the landowner will be responsible for the cost of:

- maintenance of the track through the structure;
- associated drainage and fencing; and
- the repair of any damage to the structure caused by the farmer's use or activity.

### Cost sharing for stock underpasses or overpasses





**Formula for cost sharing for stock underpasses or overpasses**

CS =  $0.05 \times \text{AADT}$  (on roads having less than 500 AADT) in percent

CS = 25 percent (on roads having greater than or equal to 500 AADT)

CS = Approved Organisation contribution to the total construction cost of an access structure on an existing road (in percent)  
(AADT = traffic volume)