



Best Practice Guidelines for Stock Crossings

RCA FORUM - STOCK CROSSINGS WORKING GROUP

Fully Revised December 2013

Version 3.2 Sep. 2014

CONTENTS

BEST PRACTICE GUIDELINES FOR STOCK CROSSINGS	0
1 INTRODUCTION.....	1
1.2 Stock Crossings Working Group	1
1.3 Stock crossing: Extent of the Problem	1
1.4 Stock droving: Extent of the Problem	1
1.5 Needs of the Road User.....	2
1.6 Needs of the Farmer.....	2
1.7 Needs of the Road Controlling Authority (RCA).....	3
1.8 Needs of the Territorial Authorities as community representatives.....	3
2 LEGISLATIVE FRAMEWORK.....	3
2.1 Governing Legislation.....	3
2.2 Common Law	4
2.3 Bylaws	4
2.4 The advantages of bylaws include:	5
2.5 Disadvantages of bylaws include:.....	5
2.6 Resource Consents.....	5
3 OPTIONS FOR STOCK CROSSINGS CONTROL	6
3.2 Option 1: Monitor Only	6
3.3 Option 2: Permit Stock Crossing.....	6
3.4 Option 3: Prohibit Stock Crossing	6
3.5 Proposed Methodology for Determining Appropriate Treatment	7
4 ROAD TREATMENTS	7
4.2 Washing the Road after each Stock Crossing	7
4.3 Temporary protective covering at Stock Crossing.....	7
4.4 Seal Protection at Stock Crossing	7
5 TRAFFIC CONTROL.....	8
5.1 Temporary Traffic Management.....	8
5.2 Choice of Sign - Temporary or Permanent Warning	9
5.3 Deer Crossings	10
5.4 Additional Methods of Warning	10
5.5 Effectiveness of Traffic Management	10
6 STOCK UNDERPASSES.....	10
6.2 Development of stock underpasses	11
6.3 Amalgamation of Property (on opposite sides of the road).....	11
6.4 Ownership Issues	11
6.5 Administration Consistency	12
6.6 Structural Life	13
6.7 Safety Considerations in Stock Underpass Design	13
6.8 Best Practice for Underpasses	13

7 FINANCIAL INDUCEMENTS	14
7.2 Stock Crossings Safety Equipment Subsidies.....	14
7.3 Pavement Protection	14
7.4 Access Structures	14
APPENDIX 1: MODEL BYLAW COMMENTARY	15
Introduction.....	15
Procedure to be followed by Council.....	16
Comment on Model Bylaw	17
APPENDIX 2: MODEL COUNCIL BYLAW	20
SCHEDULE 1: LIMITS FOR LIVESTOCK MOVEMENTS	32
SCHEDULE 1: APPENDIX 1: Minimum distances for warning signs.....	34
SCHEDULE 1: CHART 1: Requirements for stock movement permits.....	35
SCHEDULE 1: APPENDIX 2: Calculating Average Seasonal Daily Cattle	36
SCHEDULE 2: FEES AND CHARGES	37
APPENDIX 3: RECOMMENDED CONDITIONS FOR A PERMIT.....	39
APPENDIX 4: SAMPLE STOCK MOVEMENT PERMIT.....	40
APPENDIX 5: SAMPLE STOCK DROVING PERMIT	42
APPENDIX 6: STOCK CROSSING LAYOUT	44
APPENDIX 7: STOCK DROVING LAYOUT.....	45
APPENDIX 8: FLOW-CHART FOR UNDERPASS	46
APPENDIX 9: SAMPLE FORM E ENCUMBRANCE INSTRUMENT	47
APPENDIX 10: FORM E ENCUMBRANCE INSTRUMENT.....	54
APPENDIX 11: FORM L ANNEXURE SCHEDULE	56
APPENDIX 12: NZTA STOCK CROSSINGS FUNDING POLICY	57

Version	Date	Authors	Revision Notes
1.0	Nov. 2004	G. Ridley, F. Knight	First version
2.1	18/08/09	W. Newman	First draft revision
2.2	25/11/09	M. Hasler	Second draft revision
2.3	2/02/10	W. Newman	Third draft revision
2.4	18/02/10	W. Newman	Final edit
2.5	23/02/10	B. Greenwood	Revised Appendix Seven
2.6	24/02/10	M. Hasler	Revised Appendix Two
2.7	26/02/10	W. Newman	Revised Appendix Five
2.8	7/04/10	W. Newman	Revised Appendix Four
2.9	13/08/13	W. Newman	Revised Appendix Four and Six
3.0	10/12/13	W. Newman	Full revision; new Appendices
3.1	16/01/14	B. Greenwood	Revised Chapter Five
3.2	6/09/14	W. Newman	Final edit

1 INTRODUCTION

- 1.1** These guidelines bring together all the existing issues, policies and practices used throughout New Zealand to deal with stock movements across and along roads. Included are the advantages and disadvantages of different options of managing such stock movements.

1.2 Stock Crossings Working Group

A stock crossings working group was established by the Road Controlling Authorities Forum in the late '90s and the members included George Ridley (convenor, from Matamata Piako District Council), Kevin Thompson (Rotorua District Council), Lester Barnes (New Plymouth District Council), Cr Alister Fiecken (Selwyn District Council), Ian Marshall (Southland District Council), Simon Underwood, Ian Cox (Transit NZ), Lyndon Hammond, Bill Greenwood (Land Transport Safety Authority), (both Land Transport Safety Authority and Transit NZ now NZ Transport Agency), Nicola Ekdahl and Gavin Forrest (Federated Farmers). The current convenor is Murray Hasler, from Gore District Council.

1.3 Stock crossing: Extent of the Problem

It is estimated that hundreds of herds of dairy cattle have to cross or travel alongside roads daily for milking and other farming functions. For example, in the Waikato District alone in 2004, there were 50 permanent stock crossings across roads with traffic counts of more than 500 vehicles a day, and many others on less heavily trafficked roads. The immediate problem for the road controlling authority (RCA) is the ensuing effluent left by the stock, which damages the road surface, leaves a slippery surface, and creates a nuisance for both drivers and neighbours alike. Southland District Council reported complaints about more than three-quarters of its permitted crossings. There can also be road safety problems when livestock are actually crossing the roads, especially when crossings are neither adequately signposted in advance nor supervised. The RCA must also consider the issue of efficient management of competing road user interests.

1.4 Stock droving: Extent of the Problem

In recent years there has been an increase in stock droving along roads, mainly as a result of expansions of farm holdings which are not always contiguous, but also reflecting economic circumstances. The problems for the RCA are road safety and nuisance. Some

drovers appear uninterested in road user concerns. There are difficulties in maintaining appropriate signage, as well as appropriate use of signage, and this can create a risk of surprise for the motorist. There is also a nuisance factor, to neighbours especially, with damage to grass verges and driveways.

1.5 Needs of the Road User

The motorist's, and other road user's, requirement is for a safe road which enables the driver to move from origin to destination without undue delay and in reasonable comfort. The scale of negative reaction of road users to delays caused by stock crossing the road and to effluent left on the road probably rises in proportion to the road user's expectations of an uninterrupted journey. In low traffic volume, rural areas where there is little through-traffic, the motorist may be more tolerant of this activity as they themselves are likely to be closely associated with the rural community in some way, either as a resident or supplier of goods and services. Conversely, on routes of moderate to high traffic volumes, which often carry a higher proportion of through-traffic with little interest in the economic activities of the immediate surroundings, motorists are less likely to be expecting, or tolerant of, on-road stock activity. Therefore, it is reasonable to assume that the higher the average daily traffic (ADT) on the road, the higher is the expectation of motorists for uninterrupted, clean and safe travel. There are also issues of cleanliness of vehicles and potential damage caused by the acidity of effluent, irrespective of the location.

1.6 Needs of the Farmer

For the purposes of this document, the activity of the "farmer" defines the responsibility, whether they are an individual landowner, stock-owner, share-milker or a corporate landowner. Farmers may have two needs: one to move stock across the road, and the other to drive stock along the road corridor. Where livestock are crossing roads, the person in charge has the responsibility for the stock; where dealing with stock droving, the stock-owner has the responsibility. Problems when stock are driven along the road from one part of a farm to another can be overcome in some situations by requiring farmers to move such stock within their own property boundaries. The need for the farmer to cross the road stems from a significant number of farmers with holdings that are across the road from each other, for example with paddocks on one side and the milking sheds on the other.

The farmer's preference is naturally for the most economic and least cost solution (which could be assumed to be that other road users should give way to the stock and that other effects are acceptable.)

This, in practice, does occur on low volume roads. As traffic volumes increase, however, there is likely to be less tolerance of stock crossings by other road users.

1.7 Needs of the Road Controlling Authority (RCA)

The major concern for the RCA from stock crossing a road is safety, whether of other road users, farm staff or the livestock. Secondary concerns include the shortened asset life of the pavement surface, delays to motorists (including commercial transporters with often tight scheduling) and nuisance to motorists from effluent splashing on to vehicles. RCAs are concerned to ensure that farmers, whether landowners or only stock owners, meet their responsibilities not to create public nuisances, which includes recognising that the road is not a continuation of the farmer's property, nor a race for the conduct of stock.

1.8 Needs of the Territorial Authorities as community representatives

The territorial local authority has a broad responsibility to its local community, which is quite separate and different from its functions as a road controlling authority. The community expects the local council to manage and maintain the local environment, and to fix issues as they arise. Accommodating stock is a standard use of land, but the council has an interest in the impact of this activity on road frontages. In the end, the council has the responsibility to require environmental compliance with the provisions of its district plan.

2 LEGISLATIVE FRAMEWORK

2.1 Governing Legislation

There is a raft of legislation that covers the different issues relating to stock movements on roads. These include:

- Local Government Act 2002;
- Health and Safety in Employment Act 1992;
- Transport Act 1962;
- Resource Management Act 1991;
- Animal Welfare Act 1999;
- Impounding Act 1955; and
- Land Transport Act 1998

There are several items of related requirements, such as Resource Management Plans and bylaws enacted by both Transit New Zealand (now the NZ Transport Agency) and territorial authorities. Particular powers of the latter come from s.72 of the Transport Act

1962 (which gives restricted powers to permit activities or, under s.72(1)(dd) introduced by the Transport Amendment Act 1970, to prohibit absolutely or conditionally the driving of livestock along any road) and s.22AB(1)(s) to (v) of the Land Transport Act 1998. Other restrictive powers are in ss33 - 35 of the Impounding Act 1955.

2.2 Common Law

The common law rights of road use are summarised here from Halsbury's Laws of England:

The right of the public is a right to pass along a highway for the purpose of legitimate travel, not to be on it, except so far as the public's presence is attributable to a reasonable and proper use of the highway as such.

At common law, an owner of land adjoining a highway is entitled to access to that highway at any point at which his land actually touches it, even though the soils of the highway is vested in another.

It is a nuisance at common law either to obstruct a highway or to render it dangerous.

New Zealand case law has since established that those who take animals on to a highway must exercise reasonable care (in accordance with the principles about negligence) to ensure that the animals do not cause damage. Important is the right of people to take the animals on to the highway, a right which is then limited by legislation or Court decisions, normally to balance the local circumstances and the competing or conflicting rights of inhabitants of the locality. Reliance on common law leads to a process of ongoing monitoring of situations.

2.3 Bylaws

Bylaws may be made under the authority of s.72 of the Transport Act 1962 or of s.22AB of the Land Transport Act 1998, using the procedure specified by the Local Government Act 2002. They cannot over-ride common law or statutes, nor impose unreasonable requirements on an activity. Bylaws can be prescriptive (by defining items such as numbers of supervisory personnel, numbers of stock and speed of movement) or output based (so that conditions can be tailored to each individual circumstance). Use of the bylaw process tends to lead to permit systems. Refer to Appendix 1 for further commentary and to Appendix 2 for a model bylaw.

2.4 The advantages of bylaws include:

- The requirements are very clear (with prescriptive bylaws);
- Requirements can be tailored to circumstances (with output-based bylaws);
- Bylaws recognise common law rights;
- The administrative costs are relatively low; and
- Community input is ensured through the requirement to use the special consultative procedure set out in the Local Government Act 2002.

2.5 Disadvantages of bylaws include:

- Requirements may be onerous in some situations;
- Their existence can act as an incentive to avoid compliance;
- Requirements are subject to scrutiny by the courts (and the Minister of Transport if made under the Transport Act);
- Output-based bylaws may lead to inconsistency of treatment or lowering of standards; and
- Permits issued under bylaws are restricted to a person and must be renewed if that person moves on.

2.6 Resource Consents

Activities may be managed through specific recognition in the district plan. Depending on its effects, an activity can be classified as permitted, discretionary or non-complying. Permitted activities tend to be one-off or regular activities that have low impact. Discretionary or non-complying activities tend to be ones with high on-going effects. The process of the district plan leads to the use of resource consents.

The advantages of this process include:

- The process is developed in a transparent way with community input;
- Those affected by the process have an input; and
- Consents are linked with the land title and thus remain in place in the event of a change of ownership of the land.

Disadvantages include:

- It can be a relatively expensive process;
- The process is at risk of capture by small groups or extra-communal interests strongly for or against the activity; and
- It can be a lengthy process gaining a resource consent.

3 OPTIONS FOR STOCK CROSSINGS CONTROL

3.1 There are basically three options for dealing with crossing stock:

- i) Do nothing, or monitor only;
- ii) Allow stock crossings by formal agreements with specified conditions to a permit, warrant or resource consent (normally under the provisions of a bylaw); this includes washing the road after use and/or modifying the road surface at the crossing; or
- iii) Prohibit any level crossing of roads by stock, therefore requiring provision of an underpass (or overpass in some circumstances).

These options and treatment types all have advantages and disadvantages for the three principal parties: the road user, the farmer and the road controlling authority.

3.2 Option 1: Monitor Only

No formal action is required other than maintaining a watching brief. This may be acceptable on unsealed, low volume roads that essentially serve as access roads only for the farms concerned.

3.3 Option 2: Permit Stock Crossing

The issue of permits or resource consents by a road controlling authority provides the opportunity to balance the needs of the road users and the farmers with the responsibilities of the RCA. It may be most appropriately applied to new crossing sites. Matters which need to be taken into account include the average daily traffic volume and the normal use of the road, the road surface, the number of crossings per day or week and the numbers of cattle involved, and the nature of the local environment.

Use of holding pens is also an option, although it should be noted that a double gate system is required; this enables the stock to drop their effluent when the first gate is opened, but before they start to cross the road. *Refer to Appendix 3 for recommended conditions for permits and to Appendix 4 for a sample permit for a stock crossing or to Appendix 5 for a sample permit for stock droving.*

3.4 Option 3: Prohibit Stock Crossing

This would be appropriate in exceptional circumstances where there are very high traffic volumes, problems of visibility at the site and a potentially significant amenity impact. The recommendation in this case would be to install an underpass (or overpass).

3.5 Proposed Methodology for Determining Appropriate Treatment

A method of deciding what form of treatment is required for a stock crossing or underpass can be determined from the graph in Schedule 1: Chart 1 in the Model District Bylaw in Appendix 2. Values may vary for individual councils.

4 ROAD TREATMENTS

- 4.1** Permit requirements will vary according to the daily traffic volumes, road surface, visibility of the stock crossing, and types of stock. Possible conditions for permits are included in Appendix 3 to assist RCA's in determining which conditions they should require as part of their permits.

4.2 Washing the Road after each Stock Crossing

There are several matters to be considered with respect to requiring washing of the road after each crossing. First, identify where the resulting liquid will go, as there may be problems with discharge to the adjacent stormwater drain and the local water table. Second, consider whether this is an appropriate or sustainable resource use. Water may not be in plentiful supply and therefore a treatment that uses little or no water needs to be found. In some cases, sweeping the road may be more effective. Alternatively, there are two options for seal protection at stock crossings: use a portable temporary protective covering or treat the surface with an epoxy sealant.

4.3 Temporary protective covering at Stock Crossing

Placement of some form of protective covering, such as a mat, across the road surface before the stock cross, and removal after crossing, is a suitable treatment for unsealed roads. A removable protective covering for road surfaces needs to be strong, but flexible, resistant to natural chemicals and non-absorbent. The principle followed is that the protective covering is rolled out over the road when cattle are due to cross, and rolled back again after use. Cleaning of the protective covering is required at regular intervals. This system has been used successfully for a number of years and is appreciated by RCAs and farmers alike, with the latter describing it as easy to operate and extremely convenient. This a relatively low-cost option compared to other systems.

4.4 Seal Protection at Stock Crossing

The other option for seal protection is to use an epoxy sealant, which is readily available and easily applied by any competent sealing contractor. Its only benefit is to maintain the life of the

road, as the surface still requires washing, with the consequent issue of disposal of the effluent and washing water. The initial cost of this option is slightly greater than for the road mat and the epoxy sealant must be re-applied after any maintenance work or resealing of the road at the crossing site.

5 TRAFFIC CONTROL

5.1 Temporary Traffic Management

A significant disparity often exists between the level of traffic control at a road-works site and that applied at a stock crossing, or to a stock droving situation causing a similar level of hazard. Traffic Control Devices Manual Part 8 Code of Practice for Temporary Traffic Management (CoPTTM) was developed to require nationally consistent traffic control wherever a static or mobile hazard is created on the road, eliminating the element of surprise to motorists. CoPTTM provides layout distances for low volume roads, defined as less than 500 AADT.

CoPTTM was developed to address traffic management of any “activity” which alters the normal day-to-day use of a road and includes stock droving and stock crossing in its definition of an “activity”. The degree of traffic management applied at road works differs for stock crossing and droving situations, however, the principles and direction of CoPTTM shall apply.

In essence the principles are:

- Traffic management must be consistent across the country;
- Activities should be carried out in accordance with an approved traffic management plan;
- The safety of other road users, the stock and those controlling the stock must be an integral part of the activities;
- Clear and positive guidance must be provided for traffic; and
- Activities should cause as little disruption, delay or inconvenience to traffic as possible without compromising safety.

The development of guidelines for stock crossings and droving has promoted national consistency of traffic control for these two activities. Having an RCA and farmer discuss and document the layout of crossing points through the permit process for stock crossings essentially forms the basis of a traffic management plan. The traffic control guidelines and layouts should ensure clear and

positive guidance. Other potential issues of disruption, delay and inconvenience are covered in other sections of this document (protective coverings, underpasses, etc).

5.2 Choice of Sign - Temporary or Permanent Warning

The Traffic Control Devices Manual allows the use of both temporary (fluorescent orange) and permanent (yellow) versions of stock warning signs. The distinction between where temporary or permanent versions of the sign are used should be not only the frequency of the activity, but also the degree of control over the stock.

In circumstances where stock are controlled while crossing a road and while droving, the temporary (fluorescent orange) warning sign shall be used. To maintain a high level of motorists' observance, it is essential that the sign is only displayed whilst the stock droving/crossing activity is occurring.

If the crossing activity occurs on a regular basis and at a fixed location, then the sign should be mounted permanently, but hinged such that it can be folded shut when not in use. If the crossing activity occurs infrequently or at changeable locations, then the sign should be supported on a moveable frame, with both sign and support removed following the activity. *Refer to Appendix 6 for a traffic management plan for a stock crossing.*

When droving, for optimum effect signs should be repeated at 2 km intervals, as well as being mounted on pilot vehicles preceding and following at suitable distances from the stock to ensure that both keep appropriate clear visibility and safe stopping distances for other traffic. *Refer to Appendix 7 for a traffic management plan for stock droving.*

The permanent (yellow) warning sign should only be used for sections of road which are unfenced and where an on-going wandering stock hazard exists, or in conditions such as where a lack of visibility coupled with a high frequency of driven stock movements (on a regular daily basis or several times a day) create a constant traffic hazard. For long sections of unfenced routes, repeater signs may be required at 8 km intervals (with a maximum of 15 km between signs). For any route length in excess of 2 km, it is recommended that supplementary advice of 'NEXT x km' is added beneath the initial warning sign. The location criteria are set out in the TCD Manual.

5.3 Deer Crossings

Farming of deer is now well-developed and with it a very occasional practice of deer being driven across roads. Due to their skittish nature, the requirements pertaining to deer differ from that for sheep or cattle. Deer movements should only involve direct crossings of a road and motorists must be at a complete stop. Deer crossings should be contained by adequate gates or barriers across the roadway to prevent stock escaping. Motorists must be provided with adequate advance warning of the road closure and the barriers should be clearly visible. Note, there is no unique warning sign specific to deer crossings; as Road Closed signage will normally be required.

5.4 Additional Methods of Warning

Additional warning devices should be discussed in the development of the traffic management plan. Use of a flashing light placed on the roof of a vehicle or on a pole mounted on a four-wheel motorbike is recommended. If signs are mounted on vehicles, these must have at least one flashing amber beacon. The light should be high enough to be seen above the stock from both directions, but should not be placed in such a position as to draw attention away from the activities on the roadway. Stock handlers should wear high-visibility road safety-vests when working within the roadway and this should be a standard condition of a stock crossing permit. A standard road-cone should be placed on the centre of the road level with the warning sign in each direction. *Refer to the diagram in Appendix 6.*

5.5 Effectiveness of Traffic Management

The effectiveness of warning devices is quickly reduced if road users see no apparent hazard associated with the warning. Flashing orange beacons (whether permanently mounted or vehicle-mounted) appear to be the most effective warning device in practice, as they seem to be the least likely to be misused. Folding temporary warning signs are more liable to misuse, through being left open after stock have finished crossing.

It is recommended that RCA's provide practical guidance to farmers to help them get their crossings operating correctly, rather than just covering the legal requirements.

6 STOCK UNDERPASSES

- 6.1** A stock underpass is a structure allowing the passage of stock beneath the road. While it is a relatively expensive option in

terms of initial capital outlay, once in place an underpass provides major benefits by removing the threat to road safety and travel delays for road users, while incurring the least on-going stock management costs associated with farming and roading, as the two activities are no longer in conflict. There are a range of options for shape, size and material of construction for underpasses, and they can be constructed to match the circumstances. Existing road bridges may also be used to provide passage for stock under the road. *Refer to Appendix 8 for a flow-chart for decisions for installing an underpass.*

6.2 Development of stock underpasses

In recent years more efficient and cost-effective construction techniques have enabled the movement of stock directly under roads to become more common. Farm amalgamation, conversions to dairying and corporate investment in farming have required a safer, more convenient method of stock movement than at-grade. Increased competition in the underpass construction market helps keep their construction cost down, making the option viable to more farmers.

6.3 Amalgamation of Property (on opposite sides of the road)

RCA consent is not required when a farmer purchases a property that is opposite his existing farm. An appropriate way to address this issue could be to include provision in the District Plan requiring that an underpass be installed if property is purchased on the opposite side of the road and it is intended that stock will cross from one side of the road to the other, subject to certain limits including average daily traffic, number of crossings and herd sizes.

6.4 Ownership Issues

The ownership of the structure is determined by two questions:

- Is it the RCA or farmer who wants to use the underpass?
- Is it to the RCA's benefit or the farmer's benefit that it is being installed?

If the RCA decides that it should own the structure, the inclusion in Asset Management plans, inspections and provision for depreciation follows. However, if the farmer is to be the "owner" then an agreement covering the life of the structure will need to be made, which will determine inspection, maintenance, administration and replacement requirements. An Encumbrance which ties ownership of the structure to the adjoining land before construction commences, or a Deed of Grant containing appropriate conditions, are methods which can be used. The NZ Transport Agency, Highway Network

Operations, prefers to retain ownership of the underpass and has an underpass-use agreement with each user.

The NZ Transport Agency, as distributor of the National Land Transport Fund, supports cyclic inspection and the use of a registered encumbrance for protection of the asset in both the RCA's and its own interest. It also recommends that RCA's include underpasses in their asset inventories and structural safety inspections. The NZ Transport Agency desires a consistent process of management for these structures, which will provide national consistency in construction, maintenance and ownership.

Since March 2000, Audit NZ's "Accounting classification of expenditure within Land Transport Categories" has required local authorities to fund stock underpasses as a renewal. This has significant implications for an RCA, as this expenditure could become substantial over time if underpasses are accepted into Council ownership.

If the RCA does not want to own underpasses, then its agreements must bind the structure to the adjoining land. Otherwise a change in ownership of that land from the signatory to the original agreement, by sale, inheritance or transfer to a trust for example, could leave the structure with the road provider anyway. Advice so far is that a registered encumbrance is the best type of agreement in use for private property.

6.5 Administration Consistency

While the older-style Memorandum of Encumbrance complies with current NZ Transport Agency criteria, Land Information NZ requires that an encumbrance on any title be set out within a Form E Encumbrance Instrument for registration of that encumbrance. A model Form E Encumbrance Instrument has been attached as Appendix 9.

While some councils retain older agreements made with landowners on the use and ownership of underpasses, there are benefits to all RCA's in having one simple, legal document which they can use with confidence, and which meets current requirements. This is not to decry any of the earlier agreements that RCA's around the country have each negotiated, but RCA's are recommended to check whether these comply with current criteria, however, if Crown funds are involved. *Refer to Appendix 9 for sample Encumbrance Instrument and to Appendix 10 for Form E and Appendix 11 for Form L (for annexure to Form E to record details of encumbrance).*

6.6 Structural Life

It is essential that the RCA has in place a process not only for installing underpass structures, but also for including them in inventories and cyclic inspections. To all intents and purposes a bridge has been constructed and the same system of inspections should apply. There may also be Building Act requirements. In many cases, however, the only action required is to add the underpass to the structural assets inspection list, with the fee paid by the underpass “owner”.

In the past, some underpasses have been designed and constructed “in house” by RCA’s, often for their own comfort in ensuring appropriate quality. This is less likely in the future with the increasing use of consultancy-based Network Managers and with this work largely undertaken by the private sector. This reinforces the need for accurate recording and inclusion on structural asset lists.

6.7 Safety Considerations in Stock Underpass Design

Underpasses should be treated as a bridge in their design. They should therefore provide the same level of protection to all using the underpass that a bridge would do for its users. This means that design parameters such as the length of the underpass should not be compromised when compared to other bridges on similar roads in the network. Underpasses should also be protected and marked exactly as any other bridge, with the use of effective guardrails and bridge end markers to indicate the safe trafficable width.

6.8 Best Practice for Underpasses

Best practice reported by authorities to date has included:

- Legal agreements covering construction, maintenance and removal of structures, including placing an Encumbrance on the titles of relevant land and ensuring that this is properly registered;
- Landowners owning the structures and maintaining them in accordance with maintenance requirements identified by council inspections;
- Stock underpasses included in councils’ bridge inventories and structural inspections;
- Minimum acceptable lengths of underpasses related to specific clearances from carriageways; and
- Requiring the same practices for the protection of road users as are applied to new bridges elsewhere on the network.

7 FINANCIAL INDUCEMENTS

- 7.1 Financial assistance for farmers from the RCA is available from the National Land Transport Fund in accordance with the formula for cost-sharing for stock underpasses or overpasses set out in the NZ Transport Agency's Planning and Investment Knowledge Base (PIKB) (previously the Planning, programming and funding manual. Refer to Appendix 12.

7.2 Stock Crossings Safety Equipment Subsidies

Some councils have partly or fully subsidised safety equipment (such as jackets, signs or lights) as part of a review or within the Permit or Consent process. This has had the effect of raising safety for both motorists and farmers. Generally, equipment is better used if some portion of its cost is paid for by the user. Any subsidy programme should be considered only as part of a total package for stock crossings, if crossings are a problem in an area.

7.3 Pavement Protection

If the least long-term maintenance cost is to use a protective covering over the road, whether a mat or epoxy sealant coating, then this cost is eligible for funding assistance for sealed pavement maintenance. Some manufacturers offer substantial cost reductions with bulk or ongoing commitment orders. A regional or multiple district scheme could thereby purchase pavement protection at reasonable cost.

7.4 Access Structures

Where existing and proposed stock movements on an existing road significantly affect road traffic, a proportion of the cost (including fees) of constructing a stock access structure under or over the road may be accepted as a roading cost using minor improvement funds in accordance with NZ Transport Agency's PIKB. Roads with a traffic volume of 500 AADT or greater will be eligible for the maximum RCA cost-share of 25% of the total cost.

Where a vehicle accident record exists for a stock crossing, the provision of an alternative access structure may be considered as a road reconstruction project. If such a project has an assessment profile equal to, or better than, the current funding threshold profile, then the total project cost may be accepted as a roading cost.

In every case, the form of the stock access structure selected should be determined by the needs of the farmer, subject to approval of the design by the RCA.

APPENDIX 1: MODEL BYLAW COMMENTARY

COMMENTARY ON MODEL COUNCIL BYLAW

“Livestock Movements”

Introduction

1. Under section 151 of the Local Government Act 2002 (LGA 02) a Council has general powers to make a bylaw to regulate or control any activity within its district. More specifically, under section 145, a Council may make a bylaw for the purpose of (a) protecting the public from nuisance or (b) protecting, promoting and maintaining public health and safety.
2. A Council may make a bylaw under section 72(1)(d) of the Transport Act 1962 prescribing the routes and times at which livestock might pass over or along any road in its control. Under section 72(1)(dd), which was added by the Transport Amendment Act 1970, a Council may make a bylaw that prohibits absolutely the passage of such livestock or permits such passage on condition as it sees fit.
3. Under section 22AB(1) of the Land Transport Act 1998 (LTA 98) a Council may make any bylaw that it thinks fit for purposes including prohibiting livestock from being driven along any road or over any bridge or culvert and prescribing the route by which and the times at which livestock may pass over any road.
4. A Council may not make a bylaw under section 22AB unless it has used the special consultative procedures set out in section 83 of the LGA 02. As well, the Council must give written notice to, and allow time for submissions from, the parties set out in section 22AD(2) of the LTA 98:
 - a. The occupiers of any properties adjoining the road to which the proposed bylaw would apply; and
 - b. Any affected road controlling authorities that are responsible for roads that join, or are located near, the road to which the proposed bylaw would apply; and
 - c. The territorial authority for the area where the road is located [this would only be the case where NZTA was making a bylaw]; and
 - d. Any affected local community; and
 - e. The Commissioner of Police; and
 - f. Any other organization or road user group that the Council considers affected; and
 - g. NZTA.

Procedure to be followed by Council

5. The process for making a bylaw must take the form of a consideration of the matters set out in section 155 of LGA 02, and it must use the special consultative procedure set out in section 83 of that Act.
6. Under section 155(1) of LGA 02, a local authority must determine whether a bylaw is the most appropriate way of addressing a perceived problem. Having made a determination, under section 155(2)(a) the local authority must then determine whether the bylaw is the most appropriate form of bylaw for the purpose.
7. No bylaw may be repugnant to the laws of New Zealand, under section 17 of the Bylaws Act 1910, but section 155(2)(b) of LGA 02 requires that a local authority specifically determine whether a bylaw gives rise to implications under the New Zealand Bill of Rights Act 1990.
8. The special consultative procedure set out in section 83 of LGA 02 requires a local authority to prepare a Statement of Proposal and a Summary of the Information in that Statement, and to adhere to a specified procedure for consultation with all affected and interested parties. The period within which submissions may be made must be not less than one month from the first publication of the public notice of the proposal.
9. Section 86 of LGA 02 requires that, where the special consultative procedure is used in relation to the revocation of a bylaw, the statement of proposal must include the reasons and a report of the review carried out under section 158 (which is a reconsideration of the process set out in section 155).
10. As any decision on the proposal must invoke section 77 of LGA 02, the Council must assess the reasonably practicable options available in considering any bylaw.
11. The Statement of Proposal is to be made available for public inspection at the Council offices, and public libraries. The Summary of Information must meet the requirements of section 89 of LGA 02. In particular, it must be distributed as widely as reasonably practicable and indicate where the Statement of Proposal may be inspected, how a copy may be obtained and what period has been provided for interested parties to make submissions.
12. Where a bylaw is made under section 72(1) of the Transport Act 1962, all charges and fees received by the Council as a result must, without any deduction except for the cost of collection, be expended on the maintenance of the affected road. Furthermore, within one week after being made, a

copy of the bylaw must be sent to the Minister of Transport, who may at any time disallow the bylaw wholly or partly under section 74 of the Act. A bylaw made under section 22AB of the LTA 98 may be amended, replaced or disallowed by the Minister of Transport if the bylaw is inconsistent with any statute or unreasonable or undesirable in so far as it relates to or may affect traffic.

Comment on Model Bylaw

General

13. A bylaw should be precise, prescriptive and general. Terms requiring extensive or special definition should be avoided. A bylaw cannot rely on an external reference or authority except a higher law or the District Plan of the relevant council. Guidelines or codes of practice might be referred to as appropriate references. Variables, such as the conditions that might apply or the scale of fees and charges, should be included in a schedule to the bylaw. Fees and charges must be set using the statutory procedure set out in section 83 of LGA 02, under section 150(3)(b) of LGA 02.
14. A bylaw establishes an offence that is punishable by law. The bylaw must, therefore, be clear and unambiguous to everyone who uses it. It must be capable of legal scrutiny and should avoid introducing concepts or usage unfamiliar to the courts.

Introduction

15. The Model Bylaw is drafted to fit into the bylaw numbering of councils that use it. A revocation clause is included; where this is not required the clause will need to be deleted. This will involve consequent changes to clause numbers and references to clauses, and it may be appropriate to delete the transitional provisions clause, too.
16. The introductory clauses allow for the purpose and scope of the bylaw to be stated. They provide the statutory authority under which the bylaw is made and indicate other relevant legislation to be considered in the application of the bylaw.
17. The bylaw avoids references to farms, drovers, herds, mobs, races and terms likely to need definition in the Interpretation of the bylaw. The purpose is to extend the scope of the bylaw as generally as possible, regardless of the source of the livestock or the specifics of the animals involved.
18. The age for being a 'competent person' is derived from sections 2, 48, 116(1) and 453 of the Children, Young Persons and Their Families Act

1989, section 3 of the Citizenship Act 1977, sections 22(1) and 194(a) of the Crimes Act 1961 and section 10B of the Summary Offence Act 1981.

19. The bylaw uses the legally defined term 'road' throughout and avoids referring to road reserve or road verges, but uses 'carriageway' to define that part of the legal road that is commonly called a road.

Compliance with the bylaw

20. The compliance clauses establish the effect of the bylaw and the powers of the bylaw-making council under the provisions of the bylaw. A council has the power to control or restrict the movement of livestock on any road under its control. An authorised officer is able to exercise that power in situations where the conditions of any consent have been breached, either by the consent holder or by extraordinary events.
21. The insertion of a requirement to adopt best practice in compliance with the bylaw allows the council to reference codes of practice or guidelines for livestock movement within conditions imposed on any consent given under the bylaw.

Livestock movements and consents

22. The bylaw establishes that certain livestock movements that meet specified criteria can proceed without the need for consent. As it is now common usage to refer to an activity not requiring the consent of a local authority to proceed as being a permitted activity, this is the usage adopted in this bylaw. Where a livestock movement would require the consent of the council, but where no grounds exist to decline consent, the council may impose conditions on the consent and such a livestock movement is classed therefore as conditional.
23. Emergency livestock movements or the return or impounding of loose livestock are permitted. Movement of livestock to grazing within the road, not for the purpose of being moved across or along it, is also permitted and considered necessary for consistency with the purpose of the bylaw.
24. The permitted movements described in the preceding clause do not have an exemption from the provisions of the bylaw. Liability for any damage to the road or any structure within the road caused by moving livestock on to the road to graze will remain. The bylaw provides for consent holders to pay charges, but also for livestock owners who are not consent holders to pay where a permitted movement resulted in the council incurring costs for unscheduled maintenance.

Bylaw administration

25. The provision for incidents to be reported provides for councils to receive notice of events that might lead to complaints and establishes responsibility for reporting with the persons on site.
26. Fees or charges may be prescribed by bylaw under section 150(1) of LGA 02. Under section 150(4) of LGA 02 those fees or charges must not provide for the council to recover more than the reasonable costs incurred and by implication those fees and charges must be no more than reasonable.

Schedule 1

27. The limits for each criterion to be considered in determining that a livestock movement is permitted must be specified clearly, because these limits must be known to, and understood by, livestock owners and movers. Any uncertainty regarding these limits will result in unnecessary applications for consent, with consequent frustrations and administrative costs, or failures to apply for needed consents, with consequent costs to investigate and remedy the breach of the bylaw.
28. The minimum limits for determining that a livestock movement on a road is restricted must also be specified clearly. The inclusion of a schedule of roads or sections of road that are restricted to livestock movement is preferable to using imprecise references to 'urban areas' or 'suburban streets' or roads in 'limited speed zones'. The creation of a schedule of roads restricted to livestock movements would need to be publicly notified and consulted on using the statutory procedure set out in section 83 of LGA 02. If the bylaw is made under the LTA 98, consultation would need to satisfy section 22AD(2) as well as use the special consultative procedure.

Schedule 2

29. Fees and charges must be set using the special consultative procedure or prescribed in the bylaw. Provision has been made for the application fee to be set annually.

APPENDIX 2: MODEL COUNCIL BYLAW

MODEL COUNCIL BYLAW

LIVESTOCK MOVEMENTS BYLAW (20__)

BYLAW TO CONTROL THE MOVEMENT OF LIVESTOCK ACROSS AND ALONG PUBLIC ROADS

CONTENTS

INTRODUCTION

- XX.1 Title
- XX.2 Commencement and application
- XX.3 Revocation
- XX.4 Purpose of the bylaw
- XX.5 Scope of the bylaw
- XX.6 Compliance with other Acts
- XX.7 Interpretation

COMPLIANCE WITH THE BYLAW

- XX.8 Control of livestock movement
- XX.9 Council may restrict livestock movement
- XX.10 Movements to comply with best practice

LIVESTOCK MOVEMENTS AND CONSENTS

- XX.11 Classification of livestock movements
- XX.12 Livestock movements to require consent
- XX.13 Exemptions
- XX.14 Application for livestock movement consent
- XX.15 Fee to accompany application
- XX.16 Council may require further material
- XX.17 Application to be properly executed
- XX.18 Consideration of an application by the Council
- XX.19 Decision on an application
- XX.20 Conditions of consent
- XX.21 Variation of consent
- XX.22 Compliance with consent
- XX.23 Term of consent
- XX.24 Suspension or cancellation of consent
- XX.25 Summary cancellation

XX.26 Transfer or termination of consent

ADMINISTRATION

XX.27 Incidents to be reported

XX.28 Council may recover costs

XX.29 Fees and charges

XX.30 Offences and penalties

XX.31 Review of decisions

XX.32 Service of documents

XX.33 Date of service

XX.34 Transitional provisions

SCHEDULE 1: LIMITS FOR LIVESTOCK MOVEMENTS

S1.1 Introduction

S1.2 Permitted livestock movements

S1.3 Restricted livestock movements

SCHEDULE 2: FEES AND CHARGES

S2.1 Introduction

S2.2 Application fee

S2.3 Charges

S2.4 Determination of charges

S2.5 Payment of charges

S2.6 Appeals against charges

MODEL DISTRICT COUNCIL LIVESTOCK MOVEMENTS BYLAW (20__)

INTRODUCTION

Model District Council may make bylaws to regulate the movement of livestock on, across or along public roads under the control of the Council under the authority of and in accordance with the provisions of the Bylaws Act 1910, Transport Act 1962, Land Transport Act 1998 and the Local Government Act 2002.

XX.1 TITLE

XX.1.1 This bylaw is made under Section 145 of the Local Government Act 2002 [or Section 22AB of the Land Transport Act 1998] and shall be known as the Model District Council Livestock Movements Bylaw (20__).

XX.2 COMMENCEMENT AND APPLICATION

XX.2.1 This bylaw comes into force on _____ 20__ and applies to all parts of all roads [or the roads specified herein] under the control of Model District Council.

XX.3 REVOCATION

XX.3.1 The Model District Council ____ Bylaw 19__ is hereby revoked.

XX.4 PURPOSE OF THE BYLAW

XX.4.1 The purpose of the Bylaw is to improve the 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.

XX.5 SCOPE OF THE BYLAW

XX.5.1 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 three grades of livestock movement on roads: permitted, conditional and restricted;
- (c) evaluation of livestock movements on public roads to be against specified criteria;
- (d) establishment of three forms of consent for conditional livestock movements:
 - (i) a Livestock Crossing Consent for regular or frequent movement of livestock across a public road that is conditional for livestock movements in accordance with Chart 1 in Schedule 1;
 - (ii) a Livestock Droving Consent for a specific movement of livestock along any public road with an average annual daily traffic volume greater than 50 vehicles for a distance greater than 5 km;
 - (iii) a Livestock Moving Consent for irregular or infrequent movement of livestock across a public road or along a public road for a distance less than 5 km where average annual daily traffic exceeds 50 vehicles;
- (e) setting of charges to cover the costs of administration and monitoring; and
- (f) administrative mechanisms for the operation of this bylaw.

XX.6 COMPLIANCE WITH OTHER ACTS

XX.6.1 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.

XX.7 INTERPRETATION

XX.7.1 For the purposes 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.

‘Characteristic’ means any of the features of a *road* or *livestock movement* described in Schedule 1 of this bylaw.

‘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 Model District Council.

‘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 hoofed animal, domestic fowl or poultry.

‘Livestock movement’ means any movement of *livestock* on, across or along a *road* where the animals move by their own efforts and are free of individual control, such individual control being by means of being ridden or lead or driven on a bridle, halter, collar or similar restraint.

‘Road’ means a road as defined in section 315 of the Local Government Act 1974, being all the land under the control of Model District Council maintained for public use as a highway 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 the ensuring the safety of the *livestock* and all other *road* users to be used by the *consent holder*, that is acceptable to the *Council*.

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

XX.7.2 In this bylaw one gender may include all genders, the singular may include the plural and the plural includes the singular.

COMPLIANCE WITH THE BYLAW

XX.8 CONTROL OF LIVESTOCK MOVEMENTS

XX.8.1 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, or cause or allow to be moved, any livestock on a road restricted to the movement of livestock by this bylaw.

XX.9 COUNCIL MAY RESTRICT MOVEMENT

XX.9.1 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.

XX.10 MOVEMENTS TO COMPLY WITH BEST PRACTICE

XX.10.1 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.

LIVESTOCK MOVEMENTS AND CONSENTS

XX.11 CLASSIFICATION OF LIVESTOCK MOVEMENTS

XX.11.1 Livestock movements on roads shall be classified as one of the following types:

- (a) **permitted** - movement which does not exceed any individual limit or combination of limits set out in Schedule 1 as the minimum requirement for a conditional livestock movement consent;
- (b) **conditional** - movement that exceeds the minimum requirements for a conditional livestock movement consent but does not exceed any individual limit or combination of limits set out in Schedule 1 as the maximum limit of a livestock movement that is not restricted;
- (c) **restricted** - movement that exceeds or is likely to exceed the maximum limits for livestock movements on or across or along public roads as set out in Schedule 1.

XX.12 LIVESTOCK MOVEMENTS TO REQUIRE CONSENT

XX.12.1 A livestock movement that is permitted within the terms of this bylaw shall not require any livestock movement consent.

XX.12.2 Any livestock movement that is conditional within the terms of this bylaw shall require a current and valid livestock movement consent specific to the location, timing and size of the livestock movement.

XX.12.3 The Council shall, where it deems necessary, apply appropriate specific conditions to livestock movement consents issued for a livestock movement that is restricted within the terms of this bylaw.

XX.13 EXEMPTIONS

XX.13.1 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 XX.12.2.

XX.13.2 Where livestock are moved on to a road to graze it and are securely contained by temporary fencing or similar measure to ensure that no animal intrudes onto or across the carriageway while grazing within the road adjacent to the livestock owner's property, and such road is not restricted for livestock movements by this bylaw, and the livestock are within the road only during the hours of daylight, such livestock movement shall be exempt from clause XX.12.2.

XX.14 APPLICATION FOR LIVESTOCK MOVEMENT CONSENT

XX.14.1 Every person who wishes to:

- (a) move livestock across a road regularly or frequently, or
- (b) move livestock along a road occasionally, or
- (c) move livestock along a road with average annual daily traffic greater than 50 vehicles for a distance greater than 5 km,

on a road where livestock movement is conditional under Schedule 1 shall make an application to the Council for a livestock movement consent using the prescribed application form obtainable from the Council no less than ten (10) working days prior to the first intended movement of livestock.

XX.14.2 The Council may determine the nature and content of the application form, which may be altered or amended at any time.

XX.15 FEE TO ACCOMPANY APPLICATION

XX.15.1 Every application for a livestock movement consent shall be accompanied by the application fee in accordance with the Schedule of Charges.

XX.15.2 The application for consent will not be processed until the application fee is paid.

XX.16 COUNCIL MAY REQUIRE FURTHER MATERIAL

XX.16.1 On receipt of any application for a livestock movement consent the Council may require the applicant to provide, if not already provided, further material necessary to 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.

XX.17 APPLICATION TO BE PROPERLY EXECUTED

XX.17.1 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.

XX.18 CONSIDERATION OF AN APPLICATION

XX.18.1 In considering any application for a consent and in imposing any conditions in the consent the Council shall take into consideration the:

- (a) limits and maximum values for characteristics specified in Schedule 1 of this bylaw;
- (b) traffic safety criteria, including traffic volume and sight distances;
- (c) frequency or scale of any potential traffic hazard or obstruction or nuisance;
- (d) social impact;
- (e) environmental impact; and
- (f) potential damage to the road or structures in the road.

XX.19 DECISION ON AN APPLICATION

XX.19.1 The Council shall, within ten (10) working days of receiving all information necessary to process an application, after considering the application:

- (a) grant the application as a livestock crossing consent; or
- (b) grant the application as a livestock moving consent; or
- (c) grant the application as a livestock droving consent; or
- (d) grant the application as a restricted livestock movement; and
- (e) notify the applicant of any conditions attached to the consent.

XX.20 CONDITIONS OF CONSENT

XX.20.1 Any livestock movement 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) dimensions and placement of warning signs;
- (c) use, colour and placement of warning lights;
- (d) use, size and placement of road cones;
- (e) number of competent persons required to be present;
- (f) length of time for which other road users might be halted;
- (g) use of mats or similar devices to protect the road;
- (h) removal of excrement from the carriageway and entrances to the road;
- (i) specific routes to be used;
- (j) specific times for movement;
- (k) maximum number of livestock; or
- (l) meeting of any other conditions reasonably necessary to achieve or ensure compliance with this bylaw.

XX.21 VARIATION OF CONSENT

XX.21.1 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.

XX.22 COMPLIANCE WITH THE CONSENT

XX.22.1 The consent holder shall at all times comply with, and be responsible for compliance with, the conditions of the consent.

XX.23 TERM OF CONSENT

XX.23.1 A livestock crossing consent shall be valid, unless revoked under clause XX.24 or XX.25, for a term of two (2) years.

XX.23.2 A livestock moving consent may be issued for a term of one (1) year to five (5) years. The term shall be determined on the basis of the specific livestock movement characteristics and traffic safety criteria.

XX.23.3 A livestock droving consent shall be specific to the livestock movement for which it is issued.

XX.24 SUSPENSION OR CANCELLATION OF CONSENT

XX.24.1 The Council may suspend or cancel any consent by giving twenty (20) working-days written-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 condition of the consent.

XX.25 SUMMARY CANCELLATION

XX.25.1 An authorised officer may suspend or cancel any consent immediately by giving written notice to the consent holder, if the:

- (a) Council is lawfully directed to suspend or cancel the consent;
- (b) 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) livestock movement is not effectively controlled to be in accordance with the requirements of a consent.

XX.26 TRANSFER OR TERMINATION OF CONSENT

XX.26.1 When the consent holder of any property from which livestock is moved subject to a livestock movement consent ceases to occupy that property then this consent shall be at an end.

XX.26.2 The consent holder shall not transfer the rights and responsibilities provided for under this bylaw and under the consent to any other party.

BYLAW ADMINISTRATION

XX.27 INCIDENTS TO BE REPORTED

XX.27.1 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.

XX.28 COUNCIL MAY RECOVER COSTS

XX.28.1 The Council may set fees and charges for the recovery of the reasonable costs incurred for the:

- (a) application process;
- (b) administration of the consent;
- (c) unscheduled maintenance or repair of the road or any part of the road due to damage caused by the livestock movement; and
- (d) unscheduled maintenance to remove excessive livestock excrement from the road carriageway or any entrance to the road after the livestock movement.

XX.29 FEES AND CHARGES

XX.29.1 The consent holder shall pay all fees and charges payable to the Council for the reasonable costs of the administration of the consent and for any unscheduled maintenance arising from the consent, as set out in Schedule 2 of this bylaw.

XX.29.2 Where a permitted livestock movement gives rise to any unscheduled maintenance to repair the road or any part of the road due to damage caused by the livestock movement or to remove excessive livestock excrement from the road carriageway or any entrance to the road after the livestock movement the livestock owner shall pay to the Council the charges payable for such unscheduled maintenance.

XX.30 OFFENCES AND PENALTIES

XX.30.1 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.

XX.31 REVIEW OF DECISIONS

XX.31.1 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.

XX.32 SERVICE OF DOCUMENTS

XX.32.1 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.

XX.33 DATE OF SERVICE

XX.33.1 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.

XX.34 TRANSITIONAL PROVISIONS

XX.34.1 Every existing consent shall continue in force as if it were a consent under this bylaw until it reaches its expiry date and any application for a consent to move livestock made under the Model District Council _____ Bylaw (19__) shall be deemed to be an application made under this bylaw.

SCHEDULE 1: LIMITS FOR LIVESTOCK MOVEMENTS

S1.1 INTRODUCTION

S1.1.1 A permitted livestock movement is one of low livestock numbers and low traffic volume, and any one characteristic that exceeds the limits indicated in this Schedule may be cause for control under a conditional livestock movement consent.

S1.1.2 A conditional livestock movement is one where at least one characteristic of the number of animals or the traffic volume or the number of movements in any month, or a characteristic specific to the location or timing of the movement, exceeds the limits for a permitted livestock movement but where no characteristic exceeds the limits for a restricted livestock movement.

S1.1.3 A restricted livestock movement is one where at least one characteristic of the number of animals or the traffic volume or the number of movements in any month, or a characteristic specific to the location or timing of the movement, exceeds the limits for a conditional consent.

S1.1.4 Where a livestock movement across a road is restricted or identified as becoming likely to be restricted, the Council and livestock owner may agree to provide an alternative to an at-level crossing by means of a livestock underpass or overpass subject to section 341 of the Local Government Act 2002.

S1.2 PERMITTED LIVESTOCK MOVEMENT

S1.2.1 To be classed as a permitted livestock movement under this bylaw the nature and characteristics of the movement shall comply with the following:

- (a) number of animals being moved not to exceed the permitted maximum appropriate to the average daily traffic volume at the site of the movement as indicated on Chart 1; and
- (b) number of livestock movements not to exceed 15 in any month; and
- (c) no livestock movement to begin or continue outside the hours of daylight; and
- (d) minimum of 300m of unimpeded visibility to be present between any approaching vehicle on the open road and any warning sign of potential hazard or obstruction and a minimum of 300m from such sign to the potential hazard or obstruction, or less in accordance with the posted speed limit and the table given in Appendix 1 to Schedule 1 (based on calculation of safe vehicle stopping distance and the provisions for Stock crossing road in poor visibility given in 15 of the Traffic Control Devices Manual Part 8: Code of Practice for Temporary Traffic Management).

S1.3 RESTRICTED LIVESTOCK MOVEMENT

S1.3.1 A livestock movement shall be classed as restricted under this bylaw where the characteristics of the movement are as follows:

- (a) number of animals being moved exceeds the maximum appropriate to the average daily traffic volume at the site of the movement as indicated on Chart 1; or
- (b) number of livestock movements exceeds 60 in any month; or
- (c) less than 300m of unimpeded visibility present between any approaching vehicle on the open road and any warning sign of potential hazard or obstruction and/or less than 300m from such sign to the potential hazard or obstruction, or less in accordance with the posted speed limit and the table given in Appendix 1 to Schedule 1 (based on calculation of safe vehicle stopping distance and the provisions for Stock crossing road in poor visibility given in I5 of the Traffic Control Devices Manual Part 8: Code of Practice for Temporary Traffic Management).

S1.3.2 The following roads or parts thereof here specified shall be restricted to livestock movements:

- (a) [insert names as necessary]

SCHEDULE 1: APPENDIX 1: Minimum distances for warning signs

Minimum distances for warning signs

Calculation of vehicle braking distance (d) is dependent on the vehicle speed (v) and the coefficient of static friction (f) between the vehicle's tyres and the road surface. For normally driven and normally worn tyres on an average vehicle on a normal dry road an appropriate value for (f) is 0.6. For normally driven and worn tyres on a wet road surface an appropriate value for (f) is 0.4. Therefore:

If (v) = 100 km/h and (f) = 0.6, (d) = 169.93 m.

If (v) = 100 km/h and (f) = 0.4, (d) = 254.90 m.

Where the vehicle is a heavier motor vehicle, the braking distance can be significantly longer. On a level, dry road the minimum stopping distance for a truck travelling at 100 km/h is 210 m. As heavy vehicles tend to make up proportionately more of the traffic on many rural roads, the safe braking distance provision needs to allow for this, and for the likelihood that visibility will not be good, or the road surface dry, on every occasion.

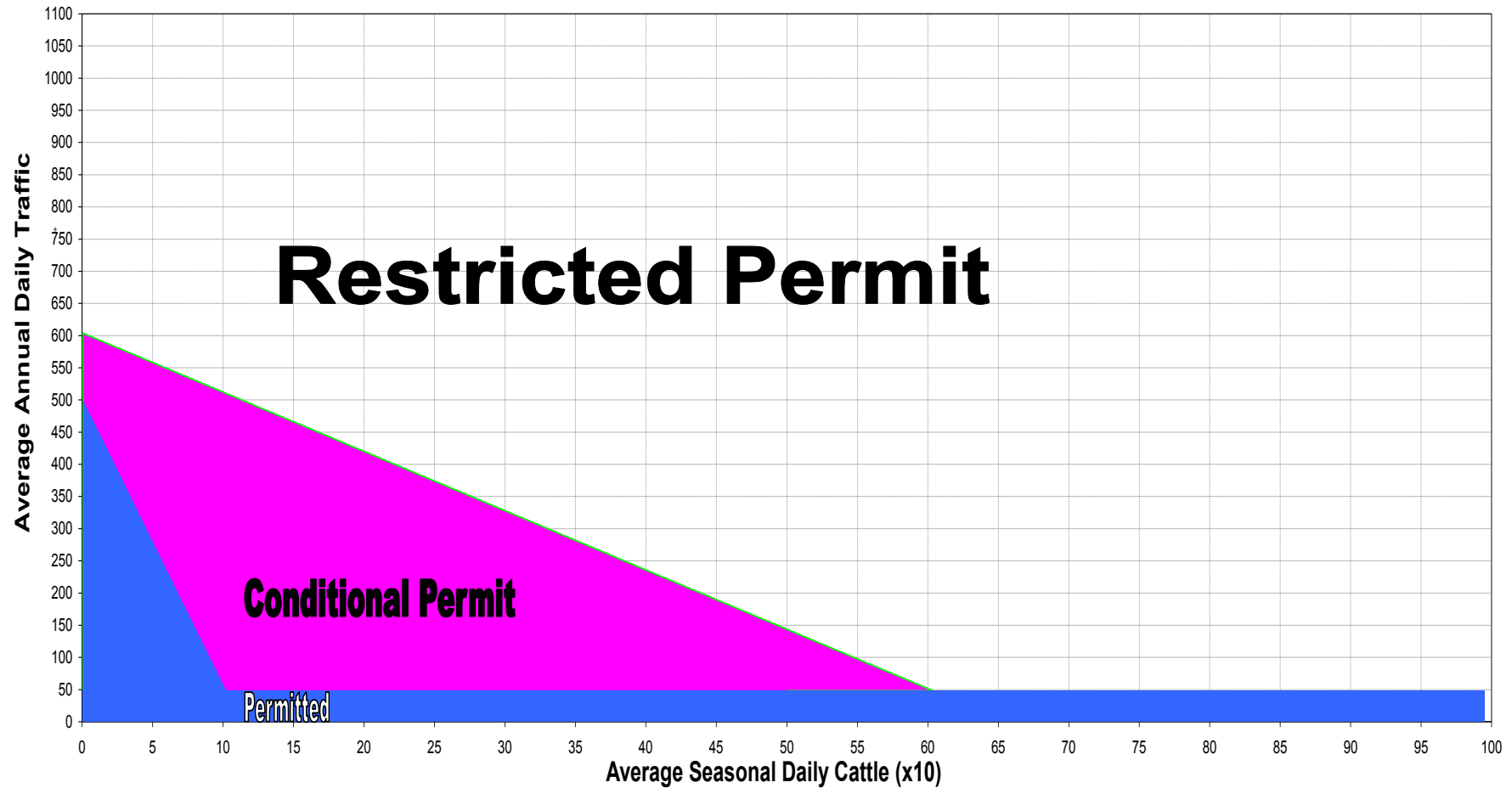
The minimum distances for the visibility of the warning sign of a crossing for approaching traffic and from the sign to the potential hazard of the stock crossing are set to provide adequate braking distances in wet conditions and poor visibility. A simple means of calculating these distances has been adopted: the distance in each case is $3 \times$ the posted speed limit.

The table of minimum visibility distances for sign (A) and warning distance (B) from sign to stock crossing at varying posted speed limits is as follows:

Km/h	A (m)	B (m)	A+B (m)
50	150	150	300
60	180	180	360
70	210	210	420
80	240	240	480
90	270	270	540
100	300	300	600

SCHEDULE 1: CHART 1: Requirements for stock movement permits

Requirements for Stock Movement Permits



SCHEDULE 1: APPENDIX 2: Calculating Average Seasonal Daily Cattle

Average Seasonal Daily Cattle for Schedule 1: Chart 1

Calculation of the average seasonal daily cattle (ASDC) value for Chart 1 requires values for the length of the season (in days), the size of the herd and the frequency of crossings. It is preferable to have an opening and a closing date for the season to provide an exact season length.

Frequency of crossing is usually the significant variable. A herd might cross the road four times each day or four times in a week or four times in a month for example. Frequency is calculated by the number of crossings per unit of measure (week or month) multiplied by the number of units in the season. For example:

For a herd of 200 crossing a road twice each morning and twice each evening seven days a week for a season of 26 weeks, ASDC is calculated:

$$(200 \times ((2 + 2) \times 7) \times 26) / 182 = 800$$

For the same herd size crossing a road once four times each week for the same season, ASDC is calculated:

$$(200 \times ((1 \times 4) \times 26)) / 182 = 114.3$$

If the same herd size crosses a road only once four times each month for the same season (six months), ASDC is calculated:

$$(200 \times ((1 \times 4) \times 6)) / 182 = 26.4$$

If the same herd size crosses a road only once each morning and once each evening seven days a week for a season of 26 weeks, ASDC is calculated:

$$(200 \times ((1 + 1) \times 7) \times 26) / 182 = 400$$

If a farmer ran two herds of similar size, the first crossing the road each morning and each evening, while the second crossed about every five days, or six times in a month, ASDC is calculated:

$$((200 \times ((1 + 1) \times 7) \times 26)) + (200 \times ((1 \times 6) \times 6)) / 182 = 439.6$$

For two herds of similar size each crossing a road about every five days, or six times in a month, ASDC is calculated:

$$(((200 + 200) \times 1) \times 6) \times 6 / 182 = 79.1$$

The examples here show each stage in the calculation for clarity, although some stages would normally be omitted (such as multiplying by one).

SCHEDULE 2: FEES AND CHARGES

S2.1 INTRODUCTION

S2.1.1 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:

- (a) application process for granting a consent;
- (b) administration of the consent;
- (c) 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
- (d) 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.

S2.2 APPLICATION FEE

S2.2.1 An application fee shall be payable to the Council with each application for a consent to move livestock on, across or along any public road.

S2.2.2 The application fee shall be set annually by the Council.

S2.2.2 The application fee for the year beginning 1 July 20__ shall be \$_____

S2.3 CHARGES

S2.3.1 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.

S2.3.2 The charges may comprise one or more of:

- (a) a charge for the administration of the consent where the Council has received a complaint and compliance monitoring of the consent is necessary;
- (b) 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
- (c) 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.

S2.4 DETERMINATION OF CHARGES

S2.4.1 The calculation of charges shall be based on recovery of reasonable costs incurred by the Council as a result of the livestock movement consent.

S2.5 PAYMENT OF CHARGES

S2.5.1 Charges shall be payable to the Council within 30 days of the date of the notice of the charges levied.

S2.6 APPEALS AGAINST CHARGES

S2.6.1 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 3: RECOMMENDED CONDITIONS FOR A PERMIT

The following conditions are recommended for use by RCA's when issuing a stock crossing permit:

- ensure ownership of the permit lies with the owner of the stock using the crossing, but is linked to the actual land adjacent to the road where the stock will cross;
- have a finite term for the permit;
- require a traffic management plan to be submitted and approved;
- ensure visibility distances and stopping distances are appropriate for the speed environment and comply with the TCD Manual Part 8;
- require temporary warning signs in advance of the crossing and an amber flashing light at the crossing as appropriate for the site, the number of stock and road traffic volumes;
- require dimension and placement of warning signs to comply with TCD Manual;
- require temporary warning signs to be closed and secured, removed or covered at all times when stock are not crossing;
- require appropriate construction for stock access to roads;
- require appropriate use of a mat or other surface protection on gravel road crossings to ensure that the road surface is clear of effluent after each stock crossing.
- require effluent to be cleaned off sealed road surfaces after each stock crossing;
- require that any changes to personnel named in the permit must be notified to the Council or the permit becomes void. Personnel includes the owner of the land and the owner of the stock, if these are different;
- require a minimum number of competent persons to be present during crossings;
- require a maximum permitted time for the operation of the crossing to interrupt normal traffic;
- include a clear statement that the permit will be revoked if the conditions are not met.

APPENDIX 4: SAMPLE STOCK MOVEMENT PERMIT

STOCK MOVEMENT PERMIT

REGULAR STOCK CROSSING - MILKING HERDS

Name of Land Owner:

Address:

Telephone No. _____ **Mobile No.:** _____

Pursuant to the District Council Stock Movement
Bylaw 20__ you are authorised to move stock as follows:

PARTICULARS

Maximum number of stock permitted to cross the road:

Maximum number of days per month stock may use crossing:

Crossing from (*Shed location*):

_____ **Road.**

(**Ha Grazed** _____) **Valuation Reference No.:** _____

Crossing to (*Grazing location*)

_____ **Road.**

(**Ha Grazed** _____) **Valuation Reference No.:** _____

Average Daily Traffic: _____ **VPD in** _____.

This stock crossing **will/will not** require stock underpass construction on or before
the expiry of this permit.

This permit will expire on: _____

CONDITONS

1. If any of the following increase during the term of this permit a new application must be made:- maximum number of stock crossing the road, frequency of crossing the road, the area grazed on either side of the road.
2. A traffic management plan for the stock crossing must be provided and approved.
3. If the stock crossing or its management are deemed to be inadequate in terms of the permit conditions Council may suspend the permit until those conditions are satisfied or cancel the permit if the inadequacies are not rectified.

I hereby confirm that I have read the District Council Stock Movement Bylaw and I hereby agree to comply with its conditions and any additional conditions contained in this permit.

Signed: (*Land owner*) _____

Date: _____

Signed for and on behalf of the District Council

Date: _____

APPENDIX 5: SAMPLE STOCK DROVING PERMIT

STOCK DROVING PERMIT

Name of Applicant:

Address:

Telephone No. _____ **Mobile No.:** _____

Pursuant to the..... District Council Stock Movement Bylaw 20__ you are authorised to move stock as follows and the permit shall only apply to the date(s) contained in this permit:

Particulars

Number and type of stock:

Moving from *(location on road)*:

Road

Valuation Reference No.: _____

Moving to *(location on road)*

Road

Valuation Reference No.: _____

Route to be taken:

Time and Date of Departure:

Date of Return:

CONDITIONS

1. A traffic management plan must be submitted and approved.
2. During droves that extend more than one day the stock will be held during the hours of darkness in an area completely clear of any road reserve.
3. The applicant will be liable for the cost of any repair required to private or public property caused by the passage of stock under this permit.

Signed for and on behalf of theDistrict Council

Date: _____

APPENDIX 6: STOCK CROSSING LAYOUT

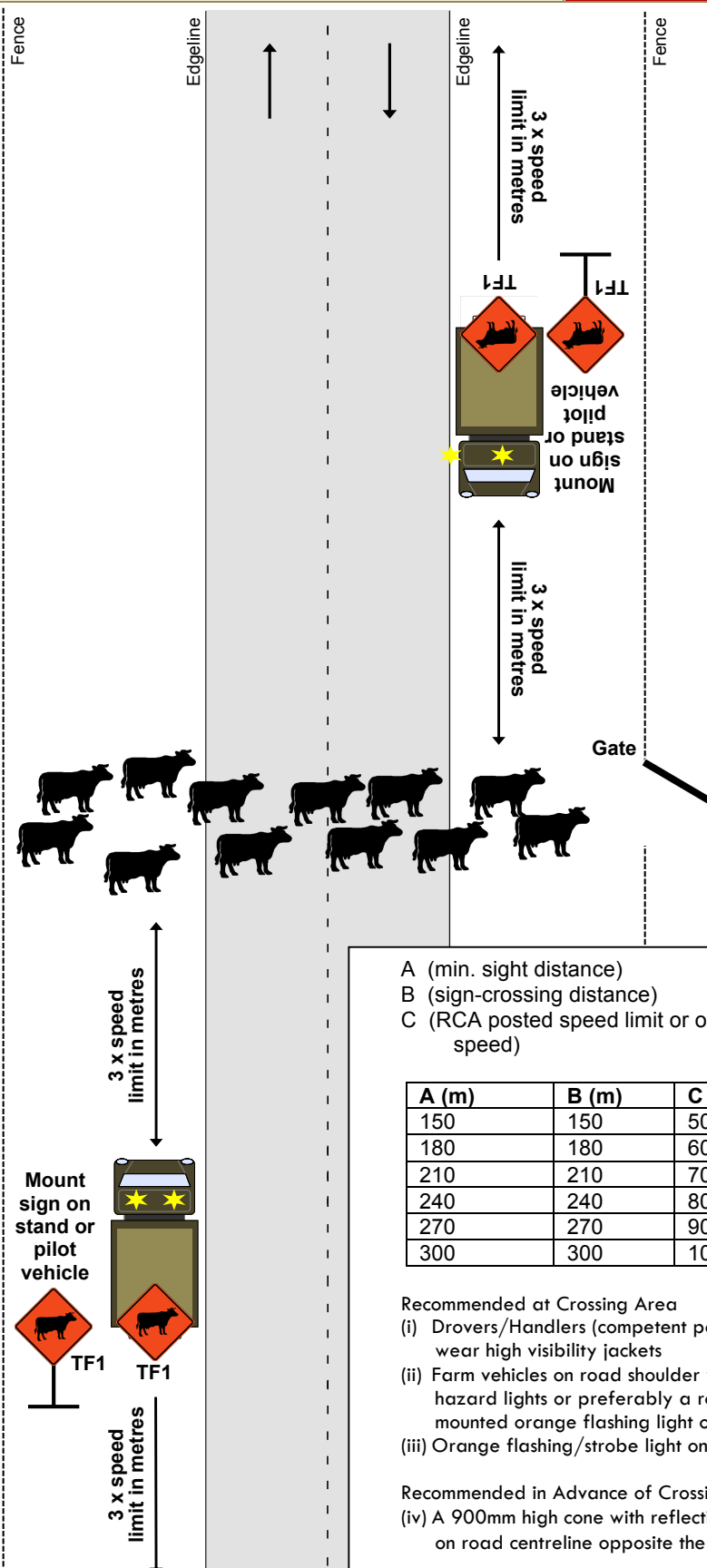
TWO-WAY TWO-LANE ROAD Stock crossing road

15.2
Level 1

Notes

1. The signs can be mounted on a pilot vehicle or placed on a stand on the side of the road
2. The signs must be visible from 3 x the speed limit in metres (eg 3 x 100 = 300m)
3. If pilot vehicles are used, they must have flashing amber beacon(s)
4. Distance from the sign to the stock should be 3 x speed limit in metres

This traffic management diagram may be used as part of a TMP where the RCA permits (refer section A5.3.1)



- A (min. sight distance)
B (sign-crossing distance)
C (RCA posted speed limit or operating speed)

A (m)	B (m)	C (kph)
150	150	50
180	180	60
210	210	70
240	240	80
270	270	90
300	300	100

Recommended at Crossing Area

- (i) Drivers/Handlers (competent persons) to wear high visibility jackets
- (ii) Farm vehicles on road shoulder with hazard lights or preferably a roof mounted orange flashing light operating
- (iii) Orange flashing/strobe light on fence.

Recommended in Advance of Crossing Area

- (iv) A 900mm high cone with reflective strips on road centreline opposite the sign.

APPENDIX 7: STOCK DROVING LAYOUT

TWO-WAY TWO-LANE ROAD

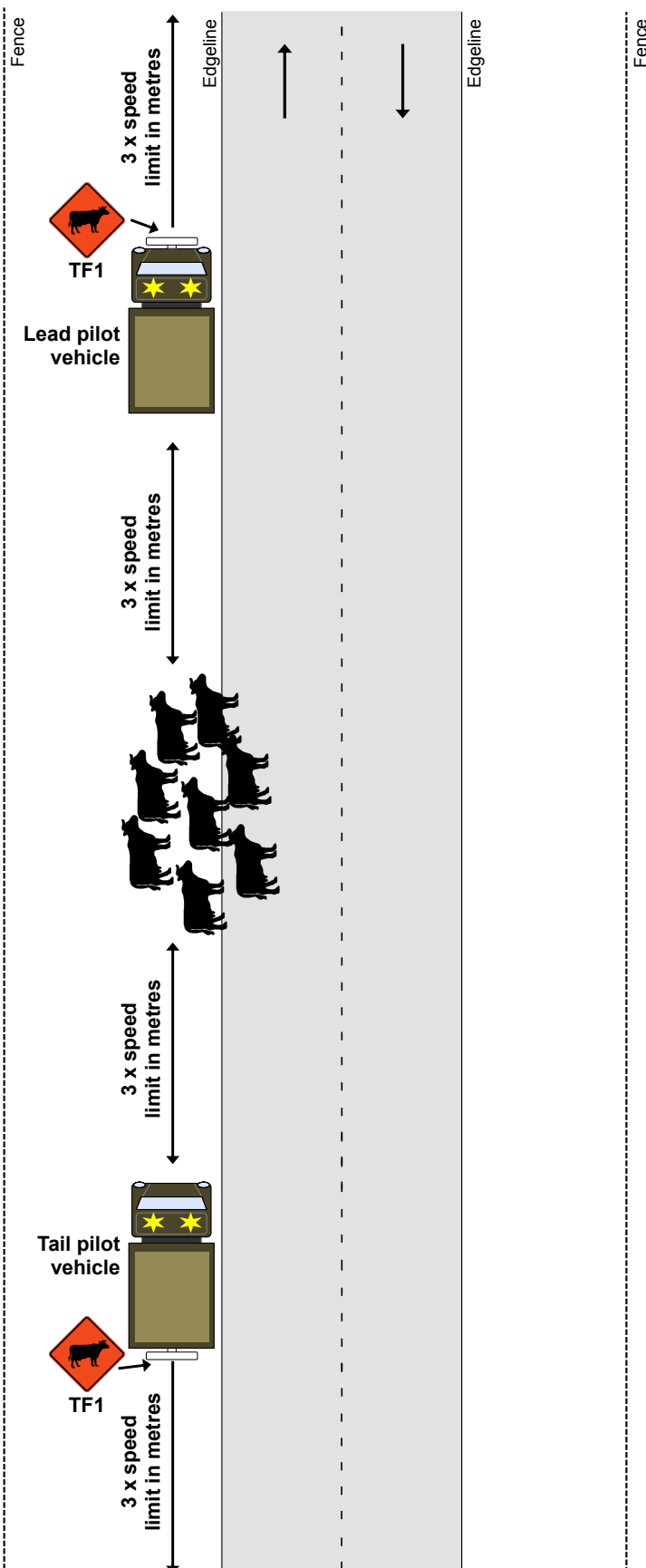
Stock driving on left hand side of road

I5.1
Level 1

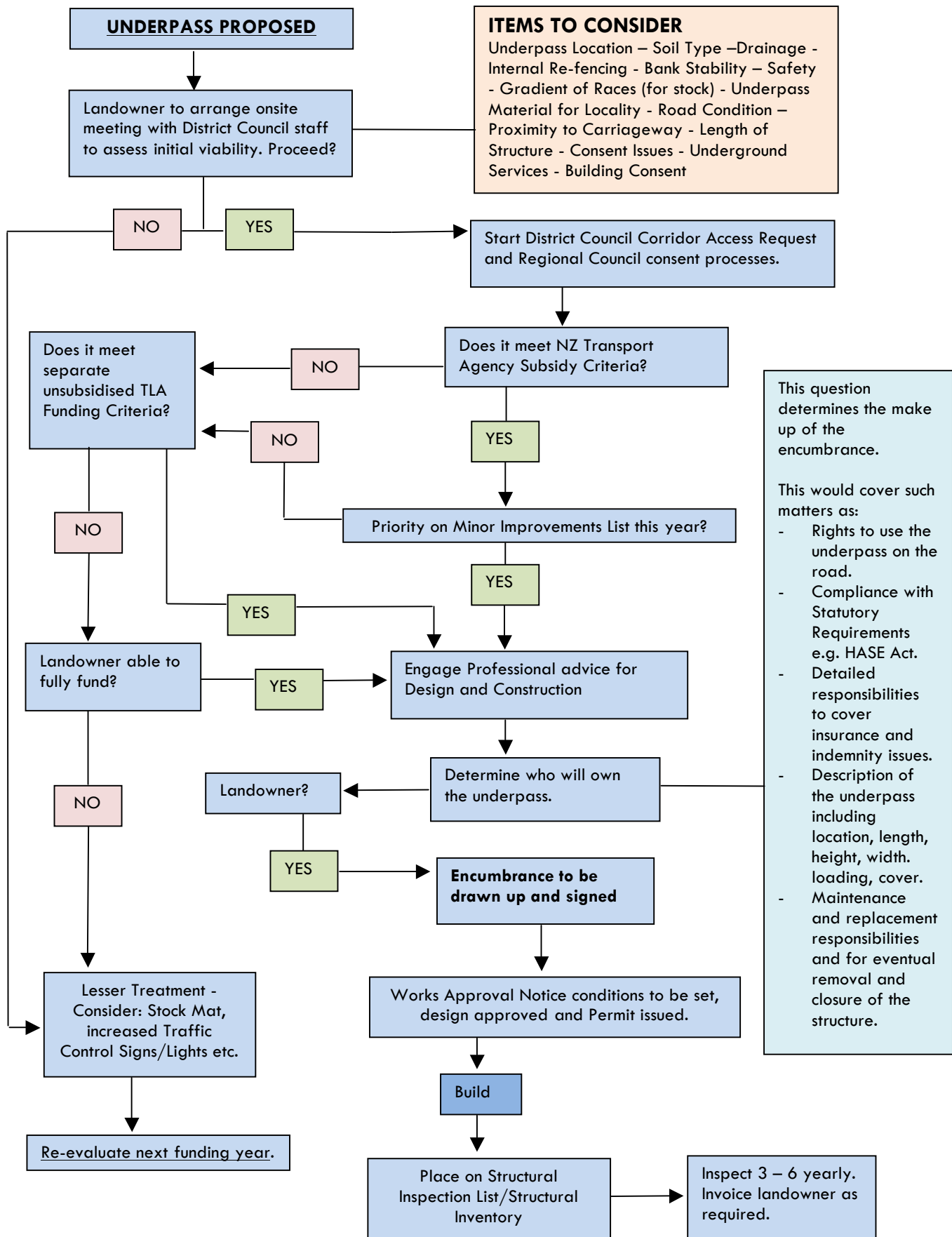
Notes

1. The signs and pilot vehicles must be visible from 3 x the speed limit in metres (eg 3 x 100 = 300m)
2. All pilot vehicles must have flashing amber beacon(s)
3. Distance from the pilot vehicles to the stock should be 3 x speed limit in metres

This traffic management diagram may be used as part of a TMP where the RCA permits (refer section A5.3.1)



APPENDIX 8: FLOW-CHART FOR UNDERPASS



APPENDIX 9: SAMPLE FORM E ENCUMBRANCE INSTRUMENT

Form E

Encumbrance instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier
and type (if applicable)

All/part

Area/Description of part or stratum

SL 139/36

All

Encumbrancer

KNAPDALE FARMS LIMITED

Encumbrancee

GORE DISTRICT COUNCIL

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

Fee simple

Encumbrance Memorandum Number

Nature of security

State whether sum of money, annuity or rentcharge and amount

Annual Rentcharge of \$100 together with all money owing by the Encumbrancer to the Encumbrancee under or arising from the covenants and conditions of this Encumbrance; including any consequential damages, claims, costs and liabilities.

Encumbrance

Delete words in [], as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the ~~[above Encumbrance Memorandum]~~ [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the ~~[above Encumbrance Memorandum]~~ [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Form E *continued*

Terms

- | | |
|---|---|
| 1 Length of term | 999 years commencing on 1 June 2011 subject to earlier determination under clause |
| 2 Payment date(s) | 1 July each year commencing on 1 July 2011 |
| 3 Rate(s) of interest | In accordance with the Covenants and Conditions |
| 4 Event(s) in which the sum, annuity or rentcharge becomes payable | Payable annually on 1 July |
| 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable | Upon the Encumbrancee being satisfied that the Covenants contained in the Fourth Schedule of the Encumbrance Memorandum have been duly performed. |

Covenants and conditions

Continue in Annexure Schedule(s), if required

Terms and Conditions

1. The covenants contained in paragraphs 6 to 18 of this Encumbrance 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.
2. In the event of the Encumbrancer wishing to enter into a mortgage or mortgages of the land to have priority to this Encumbrance the Encumbrancer shall be entitled at his own cost in all things to a Memorandum of Priority granted by the Encumbrancee 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 Encumbrance for the purposes of Section 105 of the Land Transfer Act 1952.
3. The Encumbrancer shall further pay to the Encumbrancee forthwith upon demand an amount equal to any output tax payable by the Encumbrancee under the Goods and Services Tax Act 1985 or any Act in amendment or substitution thereof in respect of taxable supplies made to the Encumbrancer directly or indirectly attributable to matters referred to in, or arising from, this Encumbrance.

Continued in Annexure Schedule.

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

Section 203 of the Property Law Act 2007 applies to this Encumbrance but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee):

- a) The Encumbrancee shall be entitled to none of the powers and remedies given to Encumbrancees by the Land Transfer Act 1952 and the Property Law Act 2007; and
- b) No covenants on the part of the Encumbrancer and his successors in title are implied in this Encumbrance other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.

Insert instrument type

Encumbrance

Continue in additional Annexure Schedule, if required

4. In this Encumbrance:-
- a) "the Land" means 76.4654 hectares more or less described as Section 11 Block XII Chatton Survey District contained in certificate of title SL139/36 and any part of it.
 - b) "the Licence" is that for construction of a stock underpass on and under the road between the Land and a property leased by the Encumbrancer.
 - c) "the Works" refers to those described in paragraphs 20 and 21 of this Encumbrance and any part of it.
5. Words importing the singular number of plural number shall include the plural number and singular number respectively and words importing the masculine gender shall include the feminine or neuter gender.

Covenants

6. The Encumbrancer shall duly and punctually, to the Encumbrancee's reasonable satisfaction, comply with all these Covenants.
7. 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.
8. 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 Encumbrancee and to the reasonable satisfaction of the Encumbrancee.
9. 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 Encumbrancee's road or the underpass.
10. The Encumbrancer shall maintain the Works until all the Works have been completed to the reasonable satisfaction of the Encumbrancee, 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 Encumbrancee, together with Certificate of Due Performance of the Works acceptable to the Encumbrancee given by adequately qualified persons as requested from time to time by the Encumbrancee, including upon completion of the works.

Continued in Annexure Schedule.

Insert instrument type

Encumbrance

Continue in additional Annexure Schedule, if required

11. The Encumbrancer permits the Encumbrancee 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 undertake the Works or any of them should the Encumbrancee consider it necessary to do so on account of the Encumbrancer failing, or failing to make such progress as the Encumbrancee reasonably requires as being necessary, to complete or fulfil any of the Covenants strictly in accordance with this Encumbrance.
 - (b) To issue instructions to the Encumbrancer, or any servant, contractor, or workman of the Encumbrancer for any remedial works as the Encumbrancee reasonable 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 as the Encumbrancee reasonably thinks fit.
12. 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 Encumbrancee, 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 Encumbrancee 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 Encumbrancee in accordance with this Encumbrance.
13. 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 Encumbrancee may reasonably direct, with the Encumbrancee named as principal, fully insuring the Encumbrancee 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 Encumbrancee, arising from or caused by the execution of the Works whether by or for the Encumbrancee, the Encumbrancer or others. The total amount payable under each such insurance in respect of any one claim shall be as directed by the Encumbrancee.

Continued in Annexure Schedule.

Insert instrument type

Encumbrance

Continue in additional Annexure Schedule, if required

14. 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 Encumbrancee to do so, satisfy the Encumbrancee as to the Encumbrancer's due performance of the obligation in the preceding paragraph and,
 - (c) Indemnify the Encumbrancee 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.
15. The Encumbrancer shall at all times indemnify the Encumbrancee 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 Encumbrancee granting the Licence, or imposing conditions or requirements on the issue of the Licence.
16. The Encumbrancer authorises the Encumbrancee to recover the cost of Encumbrancee undertaking any Works, exercising any of the Encumbrancee's powers, or satisfying any of the Covenants of the Encumbrancer under this Encumbrance from the Encumbrancer as a debt owing by the Encumbrancer to the Encumbrancee payable forthwith upon demand and, if not so paid, such sum or sums, together with interest thereon from the date of expenditure by the Encumbrancee until refunded by the Encumbrancer at the rate of 15 per cent per annum, shall constitute and be recoverable by the Encumbrancee as additional rent charge.
17. 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 Encumbrancee or by any failure or neglect of the Encumbrancee to enforce the Encumbrancee's rights or powers or any obligation of the Encumbrancer under these Covenants.
18. The Encumbrancer shall forthwith upon demand pay the Encumbrancee'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.

Continued in Annexure Schedule.

Insert instrument type

Encumbrance

Continue in additional Annexure Schedule, if required

Events for Termination

19. Upon the Encumbrancee being satisfied that the Covenants of contained in paragraphs 6 to 18 of this Encumbrance have been duly performed.

The Works

20. The provision, performance and operation to the Encumbrancee's reasonable satisfaction and in accordance with the Covenants of the following:-

A. A stock underpass as follows:-

i) Material, ie concrete, steel, etc. _____

ii) Type, ie precast box, pipe, etc. _____

iii) External Dimensions height _____ span _____

length _____

iv) Depth of cover _____

v) Design Loading _____

B. Located at:-

vi) Ward _____

vii) Road _____

viii) Location in terms of Rapid Numbering System _____

C. All equipment required for the efficient operation of the underpass including any dewatering pumps, switching systems or other plant.

D. Cleaning, maintenance, dewatering, de-sludging, repair, restoration and ultimate closure (including removal of any Works and the filling of any void and portals) of the underpass.

Continued in Annexure Schedule.

Insert instrument type

Encumbrance

Continue in additional Annexure Schedule, if required

E. Together with:

- i) All necessary or desirable works associated with the works described above, including on any road (including road repairs) or property adjoining or near the Land affected by the Works.
- ii) The provision to the Encumbrancee as and when requested, of such reports, plans, specifications, documentation and certificates reasonably required by the Encumbrancee
- iii) The securing, maintenance and due performance of any consent, licence, right or authority which may be necessary or desirable for the performance of the Works by or for the Encumbrancer or the Encumbrancee, and compliance with any conditions applying to any such consent, licence, right or authority,

21. And the performance of the Works shall require at all times the highest practicable standards of performance with regard to (without limitation) environmental, visual and aural impact and the safety and convenience of all persons directly affected by the Works.

APPENDIX 10: FORM E ENCUMBRANCE INSTRUMENT

Form E

Encumbrance instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier
and type (if applicable)

All/part

Area/Description of part or stratum

--	--	--

Encumbrancer

--

Encumbrancee

--

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease No. etc.

--

Encumbrance Memorandum Number

--

Nature of security

State whether sum of money, annuity or rentcharge and amount

--

Encumbrance

Delete words in [], as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the [above Encumbrance Memorandum] [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the [above Encumbrance Memorandum] [and] [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Form E *continued*

Terms

- 1 Length of term
- 2 Payment date(s)
- 3 Rate(s) of interest
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable

Covenants and conditions

Continue in Annexure Schedule(s), if required

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

APPENDIX 11: FORM L ANNEXURE SCHEDULE

Form L

Annexure Schedule

Page of Pages

Insert instrument type

Continue in additional Annexure Schedule, if required

APPENDIX 12: NZTA STOCK CROSSINGS FUNDING POLICY

Chapter F10: Other road-related funding policies

F10.6 Stock crossings

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

The RCA should also consider an encumbrance to be registered against the title of the property affected by the under or overpass. For a template of an encumbrance, refer to the Road Controlling Authority Forum's Guidelines for stock crossings.

Approvals

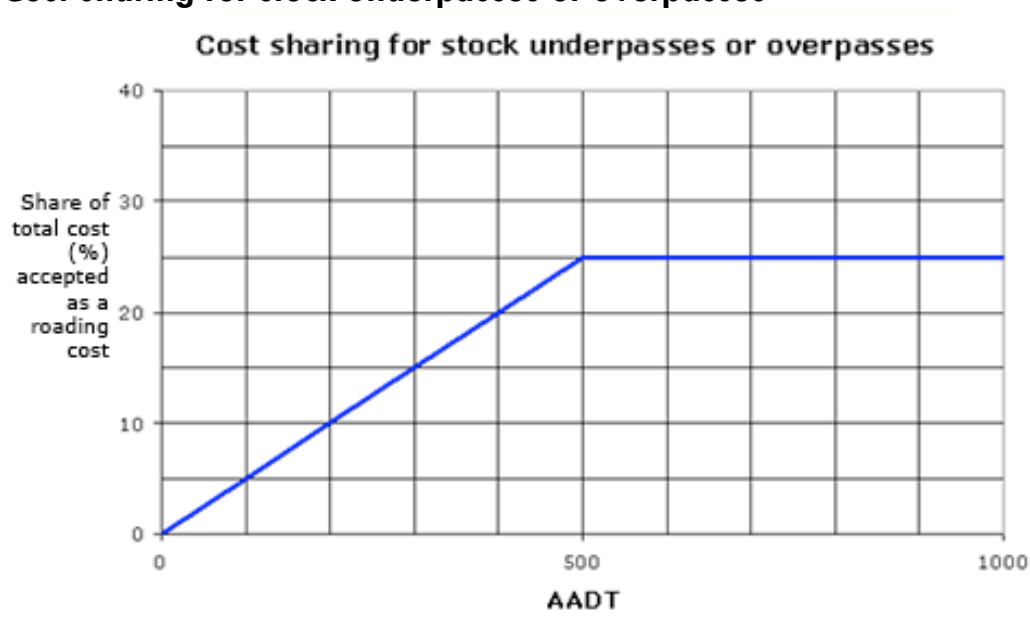
The RCA can approve applications for projects that conform to this policy. Proposals not complying with this policy shall be referred to the NZTA for a decision.

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
- 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 = RCA's contribution to the total construction cost of an access structure on an existing road (in percent)

(AADT = traffic volume)

From NZTA *Planning, programming and funding manual*, first edition, amendment 0, effective from 1 August 2008. Although the Planning, programming and funding manual is now known as the Planning & Investment Knowledge Base, the stock crossings funding policy set out above remains current as at December 2013.