



WHANGANUI
DISTRICT COUNCIL
Te Kaunihera a Rohe o Whanganui

Statement of Proposal

Review of Streets Infrastructure Bylaw 2015

1. SUMMARY OF INFORMATION

Whanganui District Council (“the Council”) is seeking feedback on the review of the Streets Infrastructure Bylaw 2015. Council is proposing to retain the existing bylaw with changes to the drafting to improve the clarity and usability (“the amended bylaw”).

Council has considered the amended bylaw and determined that the proposed bylaw:

- is the most appropriate way to address the problems identified, and
- is the most appropriate form of bylaw, and
- does not give rise to implications under the New Zealand Bill of Rights Act 1990

2. INTRODUCTION

The Streets Infrastructure Bylaw 2015 was made on 12 October 2015. The Council is required to review a bylaw no later than five years after the date on which it was made following the s155 tests of the Local Government Act 2002 (LGA 2002) which are used for making a bylaw.

The Council has reviewed the Streets Infrastructure Bylaw and considers that the rules covering the street infrastructure network and public places are working well however the drafting of the existing bylaw could be improved by:

- redrafting the bylaw to follow the Parliamentary Counsel Office Drafting Manual;
- updating the purpose section to the bylaw; and
- setting out assessment criteria Council uses when considering approvals.

3. REASONS FOR PROPOSAL

Background

The Streets Infrastructure Bylaw 2015 was made on 12 October 2015. Under s158 of the LGA 2002 Council must review a bylaw no later than five years after the date on which the bylaw was made.

In reviewing the bylaw Council must determine (s160(2) and s155) whether a bylaw is:

- the most appropriate method of addressing the perceived problem;
- the most appropriate form of a bylaw; and
- not inconsistent with the New Zealand Bill of Rights Act 1990.

Following the review of the bylaw Council must consult using the special consultative procedure and decide to either retain, amend or revoke the bylaw.

Appropriateness

In determining whether a bylaw is the most appropriate method for addressing the perceived problem one needs to first define the issue/or problem. The purpose of this bylaw is to protect the public from nuisance and to promote and maintain public health and safety by:

- managing and protecting Council street infrastructure;
- managing construction in public places; and
- controlling overhanging trees, property numbering, the erection of barbed wire, razor wire and electric fences.

In the absence of some form of street infrastructure network bylaw the Council could manage its streets infrastructure through landowner powers as the road controlling authority, and provisions under the Local Government Act 1974. While it is noted that this option may be partially effective, a bylaw allows for more certainty about the expectations and enables the existing system of bonds. A bylaw is therefore considered to continue to be the most efficient and effective method of managing Council's street infrastructure network and public places.

Form of the bylaw

The 'form of the bylaw' refers to the structure of the bylaw and the drafting of the individual clauses. As delegated legislation, Council has adopted the Parliamentary Counsel Office Drafting Manual as a best practice guide for drafting legislation.

Council has reviewed the Streets Infrastructure Bylaw 2015 and considers that while the rules applying to Council's street infrastructure network and public places are sound, the clarity of the drafting should be improved by:

- updating the purpose section to the bylaw; and
- setting out assessment criteria Council uses when considering approvals.

The proposed amended Streets Infrastructure Bylaw 2015 is attached as Attachment 1.

Consistency with the New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 guarantees a number of rights and freedoms including freedom from unreasonable search and seizure and discrimination; and freedom of expression, association, peaceful assembly and movement.

The existing bylaw is considered to be not inconsistent with the New Zealand Bill of Rights Act 1990. The amendments discussed above are also considered not to be inconsistent with the New Zealand Bill of Rights Act 1990.

Following the prescribed special consultative procedure set out in section 83 of the LGA 2002 the Council will consider the final draft of the proposed bylaw and its New Zealand Bill of Rights Act 1990 implications, if any.

Options

Option 1 – Retain the Streets Infrastructure Bylaw 2015 (Status-quo)

Under this option Council would retain the existing Streets Infrastructure Bylaw 2015.

| Advantages | Disadvantages |
|---|--|
| <ul style="list-style-type: none">• A regulatory approach to the management of Council's Streets Infrastructure and public places is the most efficient and effective method. | <ul style="list-style-type: none">• The existing bylaw does not follow best practice for the drafting of legislation.• The clarity of the drafting of the existing bylaw can be improved. |

Option 2 – Amend the Streets Infrastructure Bylaw 2015 (Recommended)

Under this option Council would amend the Streets Infrastructure Bylaw 2015.

| Advantages | Disadvantages |
|---|--|
| <ul style="list-style-type: none"> • A regulatory approach to the management of Council’s Streets Infrastructure and public places is the most efficient and effective method. • The amendments to the drafting of the bylaw follow best practice and will increase the clarity and the usability of the bylaw. | <ul style="list-style-type: none"> • None |

Option 3 – Revoke the Streets Infrastructure Bylaw 2015

Under this option Council would revoke the Streets Infrastructure Bylaw 2015 and manage its streets infrastructure through landowner powers as the road controlling authority.

| Advantages | Disadvantages |
|--|---|
| <ul style="list-style-type: none"> • None | <ul style="list-style-type: none"> • A non-regulatory approach to the management of Council’s street infrastructure network is likely to be less efficient and effective than utilising a bylaw. |

4. CONSULTATION AND SUBMISSION

In making, amending, or revoking a bylaw, Council must use the Special Consultative Procedure set out in section 83 of the LGA 2002. Council has prepared and adopted the proposed bylaw for public consultation. Any person can make a submission on the proposed bylaw.

A copy of the Statement of Proposal, including the proposed bylaw and information about making a submission can be obtained from the Council website www.whanganui.govt.nz

Submissions can be made online at <http://www.whanganui.govt.nz/have-your-say> or alternatively submission forms are available from the Whanganui District Council Customer Service counter at the main municipal building located at 101 Guyton Street, the Davis Central City Library and Gonville Library. Submitters can indicate whether they would like to speak to their submission and include contact details. People who wish to be heard by Council will be given the opportunity to do so. The time and venue for the hearing of submissions is yet to be confirmed.

For any queries please contact Justin Walters, Policy Analyst on (06) 349 0001.

The period for making submissions is from **8 June until 17 July 2020**.

5. ATTACHMENTS

Attachment 1 – Proposed Amended Streets Infrastructure Bylaw 2015



~~Whanganui District Council~~ Street Infrastructure Bylaw 2015

As at ##/##/2020 (Resolution 20##/##)

Additions Double Underlined

Deletions ~~struck through~~

- 1 **Title**
(1) This **Bylaw** is the ~~Whanganui District Council~~ Street Infrastructure Bylaw 2015.

- 2 **Application**
(1) This **Bylaw** applies to the Whanganui District.

Part 1

Preliminary provisions

- 3 **Purpose**
(1) The purpose of this **Bylaw** is to protect the public from nuisance and to promote and maintain public health and safety by:
 (a) managing and protecting Council **Street Infrastructure**;
 (b) managing construction in **Public Places**; and
 (c) controlling overhanging trees, property numbering, the erection of barbed wire, razor wire and electric fences.

4 **Interpretation**

- (1) In this **Bylaw**, unless the context otherwise requires, -
Act means the Local Government Act 2002.

Approval means a licence, permit or other form of written approval granted under this Bylaw, and includes all conditions to which the approval is subject.

Approved Vehicle Crossing Installer means a person who has met the requirements of Council and who is listed as an approved installer.

Authorised Officer means any Person appointed by Council to act on its behalf and with its authority, and may include a police officer.

Bylaw means the ~~Whanganui District Council~~ Street Infrastructure Bylaw 2015.

~~**Consent** means a written authority from Council with or without prescribed conditions.~~

Council means the Whanganui District Council or any **Authorised Officer**.

~~“**Council**” means the Whanganui District Council or any Committee, Community Board or elected member of Council or Officer authorised to exercise the authority of Council.~~

District means the area within the territorial boundary of the Whanganui District Council.

Engineering Standards means the standards for design and construction of Council assets adopted by Council and published on Council’s website.

Motor Vehicle has the meaning given by s2 of Land Transport Act 1998:

“(a) means a vehicle drawn or propelled by mechanical power; and

(b) includes a trailer; but

(c) does not include—

(i) a vehicle running on rails; or

(ii)[Repealed]

(iii) a trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force; or

(iv) a trailer running on 1 wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres; or

(v) a vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles; or

(vi) a pedestrian-controlled machine; or

(vii) a vehicle that the Agency has declared under section 168A is not a motor vehicle; or

(viii) a mobility device”

Person includes a corporation sole, a body corporate, and an unincorporated body.

Premises means all land and buildings within a single rating unit.

Public Place means a place that, at any material time, is under the control of **Council** and is open to or being used by the public, whether free or on payment of a charge, and includes any **Road** whether or not it is under the control of **Council**.

~~**Reserve** means land vested in or administered by the **Council** under the provisions of the Reserves Act 1977; or any park, domain or recreational area under the control or ownership of the **Council**~~

Road has the meaning given by s2 of Land Transport Act 1998

“includes—

(a) a street; and

(b) a motorway; and

(c) a beach; and

(d) a place to which the public have access, whether as of right or not; and

(e) all bridges, culverts, ferries, and fords forming part of a road or street or

(f) motorway, or a place referred to in paragraph (d); and

(g) all sites at which vehicles may be weighed for the purposes of this Act or any other enactment”

Street Damage means damage to any **Street Infrastructure**, or other **Council** property sustained during building or land development operations and includes the undermining of any **Road** due to excavation on adjacent property and collapse of any adjacent property onto a **Road**.

Street Infrastructure means any **Road** carriageway, planted or sealed berm, cycle path, footpath, lighting standard, street furniture or reticulated infrastructure.

~~**Temporary Vehicle Crossing** means a temporary form of vehicle crossing designed to protect the road berm, footpath, and entrance to the road carriageway from damage associated with building or land development operations prior to the installation of a vehicle crossing.~~

Urban Area means any area of the **District** zoned residential, commercial or manufacturing in the Whanganui District Plan.

Vehicle has the meaning given by s 2(1) of the Land Transport Act 1998

“vehicle—

- (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and*
- (b) includes a hovercraft, a skateboard, in-line skates, and roller skates; but*
- (c) does not include—*
 - (i) a perambulator or pushchair:*
 - (ii) a shopping or sporting trundler not propelled by mechanical power:*
 - (iii) a wheelbarrow or hand-trolley:*
 - (iv) [Repealed]*
 - (v) a pedestrian-controlled lawnmower:*
 - (vi) a pedestrian-controlled agricultural machine not propelled by mechanical power:*
 - (vii) an article of furniture:*
 - (viii) a wheelchair not propelled by mechanical power:*
 - (ix) any other contrivance specified by the rules not to be a vehicle for the purposes of this definition:*
 - (x) any rail vehicle “*

Vehicle Crossing means a vehicular entrance providing access between any **Premises** and the carriageway of the **Road** fronting those **Premises**, constructed over a footpath, kerb, berm, water channel or drain.

Vehicle Crossing Construction Standard means the standard for **Vehicle Crossings** adopted by Council and published on Council’s website.

- (2) Any undefined words, phrases or expressions used in this **Bylaw** have the same meaning as in the Act unless the context plainly requires a different meaning.
- (3) Explanatory notes and additional information attached at the end of this **Bylaw** are for information purposes only, do not form part of this **Bylaw**, and may be made, amended, revoked or replaced by the **Council** at any time.
- (4) The Interpretation Act 1999 applies to this **Bylaw** as if it were an enactment.

Part 1

Vehicle Crossings

5 Vehicle Crossing

- (1) No **Person** shall:
 - (a) drive or propel any **Motor Vehicle** along or across any kerb, footpath, grass plot, flower bed, access way, walkway or cycle track except over a **Vehicle Crossing** constructed in accordance with this **Bylaw** or a **Vehicle Crossing** installed prior to this **Bylaw**.
 - (b) damage or interfere with a **Vehicle Crossing** without the **Approval** of **Council**.
- (2) No **Person** shall, except with the **Approval** of **Council**, construct, repair, remove or widen any **Vehicle Crossing**.
- (3) **Council** may require a **Person** who undertakes building or development work on **Premises** to install a **Vehicle Crossing**.
- (4) If, in the opinion of **Council**, a **Vehicle Crossing** is unsafe, or in a state of disrepair, or fails to meet **Council's Vehicle Crossing Construction Standard**, **Council** may require the owner or occupier of the **Premises** to which the **Vehicle Crossing** provides access:
 - (a) to repair the **Vehicle Crossing**; or
 - (b) to remove and reconstruct the **Vehicle Crossing**.
 - ~~(c) to pay to **Council** such sum of money as shall be necessary to repair or remove and reconstruct the vehicle crossing.~~
- (5) All works associated with the construction, repair, removal or widening of any **Vehicle Crossing** shall be undertaken by an **Approved Vehicle Crossing Installer**.
- ~~(6) If, in the opinion of **Council**, vehicles are being driven or are likely to be driven from the formed road across the road reserve to adjoining land in a manner that causes or is likely to cause damage to the road reserve, **Council** may either require the owner of the adjoining land to pay to the **Council** within 30 days of receipt of the notice the cost of construction of a vehicle crossing or have installed a vehicle crossing by an approved vehicle crossing installer.~~

6 Infrastructure Bond

- (1) Except with the **Approval of Council**, no **Person** shall undertake any building or development work which will or is likely to cause **Street Damage** without having first paid to the **Council**:
 - (a) an Infrastructure Bond; and
 - (b) a pre-work Infrastructure Inspection Fee; and
 - (c) a post-work Infrastructure Inspection Fee.
- (2) Following the completion of works under clause 6(1) that **Person**:
 - (a) must repair any **Street Damage** or damage to **Council** property resulting from or ancillary to the works and reinstate the asset in accordance with the **Council's Engineering Standards**;
 - (b) may then apply for the return of outstanding bond monies.
- (3) **Council** may repair any **Street Damage** or damage to **Council** property arising from any building or development work and may deduct from the Infrastructure Bond unpaid inspection fees and costs incurred by **Council**, including any reasonable administrative costs.
- (4) For the purposes of determining any damage resulting from works under clause 6(2), **Council's** Street Infrastructure is deemed to meet **Council's Engineering Standards** unless the **Person** referred to under clause 6(1) has provided evidence to the contrary prior to the commencement of building or development work.

Part 2

Street Numbering

7 Street Numbering

- (1) **Council** may allocate a street number to any area of land or building or part of a building within the **District** and may change the street number allocated to any such area of land or building for electoral, postal, and other purposes.
- (2) The owner or occupier of every property which has been allocated a number under clause 7(1) shall display that street number so that it is clearly visible from the carriageway of the **Road** fronting those **Premises**. ~~providing emergency services with easy location of the property in an emergency.~~

Part 3

Public Places

8 Overhanging Tree

- (1) No owner or occupier of any land shall allow trees, shrubs or vegetation growing thereon to overhang or encroach by their roots or branches onto any public area where it is likely to impede, obstruct, or endanger pedestrians or traffic; or cause **Street Damage** or impair views from a **Public Place**.
- (2) **Council** may partly or fully remove or trim back to the property boundary all trees or shrubs overhanging or encroaching. ~~at the discretion of the **Authorised Officer**.~~

9 Barbed / Razor wire / Electric Fence Projections

- (1) Within an **Urban Area**, no **Person** shall erect or maintain any fence:
 - (a) composed wholly or partly of barbed or razor wire or any similar wire where the fence fronts or abuts any **Road**, footpath, right-of-way, accessway, whether public or private, unless the barbed or razor wire is attached greater than two (2) metres above ground level.
 - (b) containing any electrified component as a boundary fence unless the electrified component is attached greater than 2 metres above ground level and the electrified component is at least 600mm inside the boundary fence.
- (2) No **Person** shall attach to any building or property any object or material which could cause injury to persons in a **Public Place**.

10 Construction in a Public Place

- (1) No **Person** shall, without the **Approval** of **Council**:
 - (a) place or leave, or cause or permit to be placed or left in, on or under a **Public Place** any building material, rubbish, debris, soil or other thing associated with or arising from any building activity;
 - (b) make or dig, or cause or permit to be made or dug, in a **Public Place** any hole or excavation; or
 - (c) blast any rock, stone, earth, timber, or other such material in, on, or near a **Public Place**.

Part 4

1 Administration and Enforcement

11 Approvals

- (1) The **Council** may grant, (with or without conditions) or refuse any application for **Approval**, at its discretion.
- (2) In deciding to grant or decline an application for **Approval** the **Council** will consider the following general matters for all applications:
 - (a) compliance with the relevant standards;
 - (b) reasonableness or practicality of compliance with the general and specific conditions;
 - (c) the location of the activity and whether it is likely to cause a nuisance, obstruction or a hazard;
 - (d) impacts on stormwater;
 - (e) traffic safety and the efficient operation of the traffic network;
 - (f) appropriate traffic management plans;
 - (g) ongoing maintenance costs to utility network providers;
 - (h) site reinstatement;
 - (i) whether the **Person** to undertake the works is an **Approved Vehicle Crossing Installer**;
 - (j) payment of prescribed fees, charges or bonds;
 - (k) public liability insurance;
 - (l) whether the activity is consistent with **Council** policies and plans; and
 - (m) any other matters **Council** considers necessary.

(3) In deciding to grant or decline an application to waive the requirement for the payment of an Infrastructure Bond for **Street Damage Council** will consider the following additional matters:

- (a) whether or not the building work, site work or excavation work proposed is likely to cause damage to the **Road** reserve.
- (b) the suitability of a **Person** to hold an **Approval** taking into account any known past operational issues and the applicant's experience and track record.

(4) Any **Person** who has an application declined or revoked by the **Council** may apply in writing for a review of the decision and the **Council** may review it accordingly.

12 **Approved installers**

(1) The **Council** may grant, (with or without conditions) or refuse any application for approval for a **Person** to become an approved installer and will consider the following matters:

- (a) ability to continuously demonstrate the following competencies:
 - (i) producing and implementing TMP's, including the availability of TC and STMS qualified individuals;
 - (ii) the ability to apply for and comply with Corridor Access Requests by electronic submission;
 - (iii) sustainable ongoing workload;
 - (iv) physical works skill for the required activities;
 - (v) management of the crossing site and construction related activities;
 - (vi) knowledge of and compliance with relevant standards and specifications;
 - (vii) the ability to work collaboratively with other contractors, utility network operators and **Council** officers;
 - (viii) the ability to comply with relevant health and safety requirements; and
 - (ix) required insurance cover.
- (b) the suitability of a **Person** to hold an **Approval** taking into account any known past operational issues and the applicant's experience and track record.
- (c) any other matters **Council** considers necessary.

(2) **Council** shall maintain a list of **Approved Vehicle Crossing Installers** and may, at its discretion, review and remove installers.

13 **Non-compliance with this Bylaw**

- (1) The **Council** may use its powers under the **Act** to enforce this **Bylaw**.
- (2) A **Person** who fails to comply with any control, restriction, limitation or prohibitions made pursuant to this **Bylaw** commits an offence under the **Act** and is liable to the penalties set out in that **Act**.
- (3) Every **Person** commits an offence under this **Bylaw** who:
 - (a) Obstructs or hinders an Authorised **Council** Officer in the performance of any duty or power conferred by this **Bylaw**; or
 - (b) Fails to comply with a written instruction issued by an Authorised **Council** Officer in the performance of any duty or power conferred by this **Bylaw**; or
 - (c) Damages, destroys or defaces (or has in his or her possession, without authority from the **Council**) any property, article or thing belonging to **Council** or under **Council**'s control.
- (4) ~~Where it is suspected that any **Person** has committed a breach of this **Bylaw** that **Person** must, on the direction of an Authorised **Council** Officer provide the Authorised **Council** Officer their full name, address and date of birth.~~
- (5) ~~Any person who fails to carry out any action required to be carried out by an Authorised **Council** Officer, in respect of non-compliance, commits an offence and on summary conviction is liable to a fine up to \$20,000 under section 242(4) of the **Act**.~~
- (6) ~~The penalties outlined in clauses 20.1 and 20.3 above are in addition to, and not in substitution of, any action **Council** might take pursuant to any other legislation to address breaches of this **Bylaw**.~~

14 **Removal of works**

- (1) The **Council** may:
 - (a) remove or alter any work or thing that is, or has been, constructed in breach of this **Bylaw**;
 - (b) may seize and impound property if it is materially involved in the commission of an offence; and
 - (c) recover on demand the full costs of removal or alteration from the **Person** who committed the breach.

15 **Recovery in the event of damage or other loss**

- (1) Where any breach of this **Bylaw** destroys, damages, stops, obstructs, or otherwise interferes with any works or property owned, constructed, acquired, or used by **Council**, the **Council** may recover the cost of repairing the damage and/or the full extent of its loss from the **Person** responsible for the breach.

16 **Exceptions**

- (1) A Person is not in breach of this Bylaw if that Person proves that the act or omission took place in compliance with the directions of an Authorised Officer.

17 **Savings**

- (1) Any Approvals or controls in force at the commencement of this Bylaw remains in force until revoked or replaced by an equivalent resolution, Approval or decision made by the Council under this Bylaw.

18 ~~Notices~~

- ~~(1) Any notice issued pursuant to this Bylaw must be in writing and may be served by:~~
- ~~(a) Delivering it personally to the person to who it is addressed to; or~~
 - ~~(b) Sending it by post in a letter addressed to the intended recipient, or leaving it at his or her usual or last known place of residence.~~
- ~~(2) If a notice is sent to the intended recipient by way of post then for the purposes of clause 18(1) the notice shall be deemed for the purposes of this Bylaw to have been received by the intended recipient at the time at which the letter would have been delivered in the ordinary course of postal delivery.~~
- ~~(3) Every notice to which clause 18(1) applies shall:~~
- ~~(a) Specify:~~
 - ~~(i) The purpose of the notice;~~
 - ~~(ii) Actions which Authorised Council Officers require the recipient to undertake in order to abate the nuisance;~~
 - ~~(iii) The rights of appeal (if any) to the matters referred to in the notice; and~~
 - ~~(iv) The name and address of the Officer to whom enquiries in respect of the notice may be made; and~~
 - ~~(v) If entry on land or Premises is intended, the statutory authority for the entry; and~~
 - ~~(vi) In the case of notice that an Animal has been seized, a statement that the Animal may be sold, humanely destroyed or otherwise disposed of unless the Animal is claimed and all fees paid within 7 days after receipt of the notice.~~

19 — **Appeal Process**

- (1) — Any person who is dissatisfied with a decision made by an Authorised Council Officer may appeal in writing against that decision or conditions to Council within fourteen (14) days of receiving written notice of the decision or conditions.
- (2) — On hearing the appeal brought under this **Bylaw**, Council or its delegated Committee of Council may confirm, reverse, or modify the decision or conditions made by the Authorised Council Officer and the decision of Council or its delegated Committee of Council shall be final.
- (3) — The right of appeal is in addition to any other statutory right made available to the owner or occupier.

20 — **Fees**

- (4) — The Council may prescribe fees or charges payable for a certificate, authority, approval, permit, or consent from, or inspection by, the Council in respect of a matter provided for in this bylaw or under any other enactment, if the relevant provision does not authorise the Council to charge a fee or provide that the certificate, authority, approval, permit, consent, or inspection is to be given or made free of charge.
- (5) — Such fees and charges prescribed by the Council shall be no more than the reasonable costs incurred by Council in respect of the matter for which the fees and charges are prescribed.
- (6) — The Council must publicly notify the fees and charges so prescribed not less than 28 days prior to the fees and charges becoming effective.
- (7) — The public notification shall specify how the fees and charges are assessed, to what matter they apply, the date when the fees and charges will come into force, and the duration of their application.
- (8) — An authorised officer may provide for the refund, remission, or waiver of a fee or a charge in specified situations or in situations determined by the Council.
- (9) — The fees or charges will either be prescribed by this Bylaw or following consultation in a manner that gives effect to the requirements of section 82 of the Act.