
TO Mayor and Councillors

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Appendix A: Statement of Proposal (2770895) and proposed
amendment to the Nuisances Bylaw (2770736)

PORTFOLIO HOLDER/S Mayor Toby Adams
Policy Portfolio

MEETING DATE Wednesday, 15 July 2020

SUBJECT **Nuisances Bylaw amendment – Statement of Proposal and
proposed amendment to the Nuisances Bylaw**

SUMMARY | TE WHAKAR POPOTANGA

- During the separation of the bylaws under the Hauraki District Council's consolidated bylaw in 2019 the clauses for Vehicles Crossings were revoked.
- Vehicle crossing is considered necessary by staff to be contained within a bylaw to ensure adequate controls are available to Council not currently covered elsewhere.
- The statement of proposal and proposed Nuisances bylaw amendment (**Appendix B**) been prepared for consideration by the Council and for potential consultation with the community.
- The recommended option is to undertake a special consultative procedure with the Statement of Proposal with proposed policy (**Appendix B**) from 17 July to 17 August 2020.

RECOMMENDATION | TE WHAIKUPU

THAT the report be received, and

THAT in accordance with section 155(1) of the Local Government Act 2002 the proposed amendment to the Nuisance Bylaw 2019 is the most appropriate way of addressing the perceived problems, and

THAT in accordance with section 155(2) of the Local Government Act 2002 the proposed amendment to the Nuisance Bylaw 2019 is the most appropriate form of bylaw and does not have any implications under the New Zealand Bill of Rights Act 1990, and

THAT in accordance with section 145 and section 159 of the Local Government Act 2002 the Council approves the proposed amendment to the Nuisance Bylaw 2019 (as contained in the Statement of Proposal attached) for public consultation, and

THAT the special consultative procedure is used for community engagement on the proposed amendment to the Nuisance Bylaw 2019 and will proceed from 17 July to 17 August 2020.

THAT in accordance with sections 156(1)(a) and 86 of the Local Government Act 2002 the Council adopt the attached Statement of Proposal for the proposed amendment to the Nuisance Bylaw 2019.

1 PURPOSE | TE ARONGA

To present the statement of proposal and proposed amendment to the Nuisances Bylaw to Council for adoption for consideration.

2 BACKGROUND | TE K RERO MUA

The Hauraki District Council's Consolidated Bylaw 2007 was split into ten Parts. The various Parts had different review deadlines, with several Parts due for review by 1 July and 1 November 2019. At its meeting of 29 August 2018 the Council resolved to form a councillor working party to work with staff on the review of the various Parts of the Consolidated Bylaw and passed the following resolution of the Council:

THAT during the review process the various Parts of the Hauraki District Council Consolidated Bylaw 2007 are separated into individual bylaws

The bylaw clauses in Part 2: Land Transport, with the exception of clause 5.0 Vehicle Crossings, are made in accordance with the Land Transport Act 1998.¹ Bylaws made under that Act do not have a review 'deadline'² so do not lapse. However, clause 5.0 Vehicle crossings was developed under the Local Government Act 2002 meaning it was revoked on 12 July 2019.

Clause 5.0 Vehicle crossings sets out the requirements for the construction, maintenance and use of vehicle crossings across footpaths, berms and water channels, including:

- No person is to use a motor vehicle across a footpath, berm or water channel unless using an approved crossing (e.g. access from the road to your driveway).
- A person must get the Council's permission to construct, repair or renew a crossing, except where it is being renewed to its original state.
- Application must be made in writing and the Council can apply standards; require that the Council undertakes the work; or refuse the application if the existence of the crossing causes or may cause any danger or obstruction.
- The Council may, after giving notice in writing, require the owner or occupier of the land to which the crossing gives access to, to remove or repair the crossing if it is in an unsafe state. The Council can undertake the work itself and charge the owner or occupier.

3 THE ISSUES | NG TAKE

The Council is required by law to consider the following questions before adopting a bylaw.

¹ Section Land Transport (Speed Limits Validation and Other Matters) Act 2015, Transport Act 1962, section 224B Land Transport Act 1998.

² If a bylaw is made under the Local Government Act 2002 (LGA) it must be reviewed within five years after it was first adopted by the Council and then at intervals of no later than ten years after it was last reviewed. If a bylaw is not reviewed within these timeframes it is automatically revoked 2 years after the last date on which it should have been reviewed.

3.1 Is a bylaw the most appropriate way of addressing the problem?

Since the Vehicle Crossing clauses in the consolidated bylaw were revoked there have been limited options available to staff when managing service requests related to vehicle crossings. We need to define, by means of a Bylaw, what a properly constructed crossing is (LGA74 clause 335), otherwise we are unable to deal with maintenance issues on existing vehicles crossings which are substandard. There also needs to be a process for new vehicle entranceways, done by a permitting system, which would also be outlined in a Bylaw.

Vehicle crossings

- (1) *Where vehicles are being taken or, in the opinion of the council, are likely to be taken, on to or from any land across any footpath on any road or any water channel on or adjoining any road otherwise than by means of a crossing properly constructed under the provisions of any bylaw made by the council, the principal administrative officer or other officer authorised by the council may, by notice in writing, require the occupier or, in any case where there is no occupier, the owner of the land to pay to the council such sum of money as the council from time to time fixes as payment for the cost of the construction of a crossing by the council.*

The Council's District Plan contains standards for vehicle crossings.³ The various rules in the District Plan have been considered by staff to establish whether or not a bylaw empowering it to put controls on vehicle crossings, including the power to remove the works if the crossing is non-compliant, was the most appropriate way of addressing the matter. It is common for councils to control these matters via a council bylaw⁴, the controls in the District Plan are not considered sufficient.

The Council's Traffic and Parking Bylaw 2007 has controls in place for the parking of vehicles. The clauses of the Traffic and Parking Bylaw fall under the Land Transport Act 1998.

Therefore a bylaw is the most appropriate way of addressing the issues as without the enforcement powers enabled under the LGA Council would not be able to adequately resolve these issues related to vehicle crossings.

3.2 Is the proposed bylaw the most appropriate form of a bylaw?

Given that vehicle crossing sits under the Local Government Act 1974 it is considered appropriate that the Nuisances Bylaw is amended to include the vehicle crossing clauses. All clauses within the Nuisances Bylaw fall within the Local Government Act. The Nuisance Bylaw has control on what people can do and can't do in public places or on council land.

The proposed amendment to the Nuisance Bylaw is included as **Appendix A** of this report (amendments to the bylaw are shown in red). In summary the clauses allow:

- No new vehicle crossing or alternations to an existing vehicle crossing without a permit from the Council.
- Permits given will be subject to conditions (location, thickness, dimensions, reinforcements and materials) deemed appropriate by the Council.
- If a vehicle crossing is not maintained to an appropriate level and considered substandard by the Council, the Council may issues a notice in writing to the owner of the land and if the owner does not comply will be in breach of the bylaw.
- If any owner does not undertake the necessary repairs the Council have deemed necessary the Council can undertake the work themselves and seek costs from the owner of the land.

Fees and charges associated with permitting and inspections will be documented in the Council's Schedule of fees and charges. Any penalties associated with a breach of this bylaw will be enforced under the powers provided by the Local Government Act 2002.

³ Rule 8.4.3.3 of the Hauraki District Council District Plan

⁴ Section 335(1) of the Local Government Act 1974.

3.3 Are there any implications under the New Zealand Bill of Rights?

A bylaw that unreasonably interferes with the rights and freedoms in the NZ Bill of Rights Act 1990 will be held to be unreasonable and invalid by the Courts. However, a human right can be interfered with if the issue is critical and the bylaw to address the issue is proportionate and therefore reasonable. Thus justifying the interference.⁵ Rights likely affected by bylaws include freedom of expression, freedom of peaceful assembly, freedom of association and freedom of movement, and freedom from discrimination.

On review, staff believe the proposed amendment to the Nuisance Bylaw 2019 does not have any implications on the rights and freedoms contained in the Bill of Rights Act 1990. There are no bans or unjustified limitations on any of the rights and freedoms contained in the Act.

4 ENGAGING WITH OUR COMMUNITIES | KIA UIA TE HAPORI WH NUI

Staff consider that the Council does not have enough of an understanding of **community views and preferences** on this matter. The level of engagement considered appropriate for this matter, at this point in time, is to consult (i.e. two-way communication to obtain public feedback).

A bylaw made, reviewed or revoked under the Local Government Act 2002 must be publicly consulted on before the decision is made. If it is deemed significant or the local authority considers that there is a significant impact on the public due to changes or proposals, then the more prescriptive 'special consultative procedure' must be followed (section 83) in addition to the general consultation approach (section 82).

The special consultative procedure requires that a statement of proposal is adopted by the Council and people must be given a period of at least one month to provide their views to the Council. This can be done by written or verbal feedback. Any person who wishes to present their views must be given a reasonable opportunity to do so.

The alternative engagement approach (if these significance 'triggers' do not apply) is to solely use section 82 'principles of consultation' in the LGA which still requires that anyone who is affected or has an interest in a matter should be provided with clear information and encouraged to provide feedback to the Council, however the required one month feedback period is not mandatory. In reality, these two approaches can be quite similar when put into practice.

Therefore, a special consultative procedure is recommended as the most appropriate way of obtaining the communities feedback and is proposed to be included as a package of community engagement undertaken from 17 July to 17 August 2020.

5 OUR OPTIONS | NG K WHIRINGA A M TOU

Staff have identified the following options for the Council to consider:

- Retaining the status quo, providing no formal process or bylaw for vehicle crossings to be managed.
- Undertake the special consultative procedure on the statement of proposal and proposed amendment to the Nuisance Bylaw as attached.
- Make further changes to the proposed bylaw and undertake the special consultative procedure as legally required amending a bylaw.

These options and their advantages and disadvantages are outlined below.

⁵ Section 5 New Zealand Bill of Rights Act 1990.

5.1 OPTION 1: Retain Status Quo

<p>ABOUT THIS OPTION Council could choose not have a bylaw in place for vehicle crossings, with limited ability to manage vehicle crossings within the district.</p>	
<p>ADVANTAGES</p> <ul style="list-style-type: none"> • Nothing further required. 	<p>DISADVANTAGES</p> <ul style="list-style-type: none"> • There is no mechanism/process available for Council to manage substandard vehicle crossings within the district. • There is no mechanism/process available to Council to manage applications for new vehicle crossings within the district.
<p>FINANCIAL COSTS</p>	
Whole of life costs	<p>Variable costs associated with this option dependent on the process.</p> <p>Potentially the only method of managing substandard vehicle crossing where the landowner was unwilling would be pursuing costs in the court under the District Plan.</p>
Budget source	Unknown
Changes to budgets	Unknown
Impact on the Council's debt	Unknown
Potential impact on rates	Unknown

5.2 OPTION 2: Consult on the proposed SOP and Bylaw amendment

<p>ABOUT THIS OPTION Undertaking the special consultative procedure on the Statement of Proposal and proposed amendment to the Nuisance Bylaw as attached.</p>	
<p>ADVANTAGES</p> <ul style="list-style-type: none"> • Council would have the mechanism/process in place to enable managing of substandard vehicle crossings within the district. • Council would have the mechanism/process in place to enable managing of vehicle crossings within the district. • Community are engaged through their preferred option. • Community feedback can be considered and reflected in the bylaw amendment where appropriate. 	<p>DISADVANTAGES</p> <ul style="list-style-type: none"> • No disadvantages identified.
<p>FINANCIAL COSTS</p>	
Whole of life costs	<p>One off operating cost:</p> <ul style="list-style-type: none"> • Approximately \$250 for combined public notification with the other SOP's being proposed for as part of this Council agenda (responsible freedom camping, nuisance bylaw

	<p>(vehicle crossings) dangerous and insanitary buildings policy and gambling policy.</p> <ul style="list-style-type: none"> • document publication costs which would be met from existing printing budgets, • staff time for implementing consultation process and the collating public feedback for the consideration of the Council.
Budget source	Existing Strategic Planning budget
Changes to budgets	In order to accommodate these costs there will not need to be changes to budgets.
Impact on the Council's debt	There is no impact on the Council's debt.
Potential impact on rates	There will be no impact on rates because this comes out of existing budgets.

5.3 Make changes to the proposed bylaw amendment and SOP before consultation

<p>ABOUT THIS OPTION Council may wish to make amendments to the proposed bylaw amendment and statement of proposal before it is consulted on.</p>	
<p>ADVANTAGES</p> <ul style="list-style-type: none"> • Council would have the mechanism/process in place to enable managing of substandard vehicle crossings within the district. • Council would have the mechanism/process in place to enable managing of vehicle crossings within the district. • Community are engaged through their preferred option. • Community feedback can be considered and reflected in the bylaw amendment where appropriate. • The policy reflects changes the Council considers appropriate 	<p>DISADVANTAGES</p> <ul style="list-style-type: none"> • May add a small delay in consultation to allow staff time to make changes to proposed bylaw amendment and statement of proposal for consultation.
<p>FINANCIAL COSTS</p>	
Whole of life costs	<p>One off operating cost:</p> <ul style="list-style-type: none"> • Approximately \$250 for combined public notification with the other SOP's being proposed for as part of this Council agenda (responsible freedom camping, nuisance bylaw (vehicle crossings) dangerous and insanitary buildings policy and gambling policy. • document publication costs which would be met from existing printing budgets, • staff time for implementing consultation process and the collating public feedback for the consideration of the Council.
Budget source	Existing Strategic Planning budget
Changes to budgets	In order to accommodate these costs there will not need to be changes to budgets.

Impact on the Council's debt	There is no impact on the Council's debt.
Potential impact on rates	There will be no impact on rates because this comes out of existing budgets.

6 PREFERRED OPTION | TE K WHIRINGA MATUA

Staff recommend proceeding with option 2 – Consult on proposed SOP and bylaw amendment.

6.1 LINKAGES

STRATEGIC DIRECTION	The preferred option IS consistent with the Council's strategic direction , including community outcomes.	<ul style="list-style-type: none"> • Progress Hauraki We are a proactive council that provides leadership and communicates effectively with all sectors of our district. • Kotahitanga Hauraki We take a collaborative approach with both Mana Whenua and Tangata Whenua in our district. • Interactive Hauraki We have a positive climate that encourages balanced and sustained economic growth throughout the district. • Lifestyle Hauraki We provide an environment that encourages vibrant communities and an enhanced quality of life. • <i>Please note, as at the drafting of this report staff were in the process of being advised of the new Community Outcomes as adopted at 24 June 2020 Council meeting.</i>
LONG TERM PLAN / ANNUAL PLAN ALIGNMENT	The preferred option IS consistent with the long term plan and/or annual plan programmes and budgets .	This options meets out legal obligations and fits within existing programmes and budgets.
POLICIES, BYLAWS AND PLANS ALIGNMENT	The preferred option IS consistent with the Council's other strategies, policies, bylaws and plans .	This option does not contradict any other strategies, policies, bylaws or plans.
SIGNIFICANCE ASSESSMENT	The decision IS considered significant under the Council's Significance and Engagement Policy 2017.	This decision is significant as a review of a bylaw triggers the requirement for a special consultative procedure under the Local Government Act 2002.

IMPLICATIONS FOR M ORI	The decision DOES NOT involve a significant decision in relation to land or a body of water.	
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6.2 ASSESSING THE RISKS

Staff have not identified any risks associated with the preferred option.

7 NEXT STEPS | TE ARA KI MUA

Timeframe	Action	Comments
17 Jul – 17 Aug 2020	Special Consultative Procedure (Consultation)	
9 Sep 2020	Council hearings and deliberations	
30 Sep 2020	Council adoption of the bylaw amendment	

Approval

Prepared by	Michelle Clive Strategic Planner
Approved by	Peter Thom Group Manager Planning & Environmental Services