

# KELLEHERS

## AUSTRALIA

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### In-House Memorandum

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#### Crossovers

Although a vehicle crossing (or 'crossover') is not specifically defined, it is described as "a bridge or crossing over any footpath or channel next to a road to enable a person using the road to have access to land on the other side of the footpath or channel"<sup>1</sup>. It forms a legal right of access to property. Despite being commonplace, crossovers impact roads, footpaths, nature strips and street trees alike and, as a result, are tightly regulated at a local government level.

As for most rights of way, it is important to use and maintain a crossover to ensure the right is protected. From a commercial perspective, crossovers are often critical to ensure a right of access for staff and customers to a place of business but it is critical to residential use, particularly multi-unit buildings. Maintaining and ensuring local compliance on a long term basis can become critical to the use of a new development or to the conduct of trade and the success of commercial premises.

Crossovers are generally regulated in two ways. First, all Councils have powers with respect to crossovers under s206, *Local Government Act 1989* (Vic)<sup>2</sup>. Second, most Councils have provisions for vehicle crossings in their Local Laws and many also have municipal crossover policies.

Crossovers generally occur on Council land. As such, any alteration, repair or construction of a vehicle crossing undertaken by an abutting landowner requires a Council permit. Often Council will require a person carrying out such works to be supervised by a Council officer, to ensure the crossover is constructed to Council's satisfaction. A failure to carefully understand relevant regulations and specific municipal crossover policy can leave a crossover user vulnerable to a Council requirement to remove a redundant vehicle crossing<sup>3</sup> or its refusal to permit a crossover and thus preventing site access.

The placement of crossovers is frequently affected by existing nature strip trees. The ability to construct a crossover in close proximity to such a tree will depend on the type of tree, whether it is protected under Local Laws and the proximity of the crossover to the tree, its roots and its canopy. A crossover construction can be indefinitely stopped by a failure to adequately account for such trees, or a tree root or canopy buffer area specified in a Council street tree or crossover policy. Many Kafkaesque situations have arisen surrounding planning approvals taking access from a point near an overlooked street tree and where neither Council's planner, engineer or tree officers will co-ordinate or compromise.

Crossovers can appear mundane, and may be easily overlooked until late in the construction phase, but, as they provide a vital access point, it is critical they are properly planned from the outset. Sensible maintenance of crossovers is also important to ensure that creation, alteration or removal of crossovers meets all Council requirements and policies.

Cameron Algie, 18 June 2014

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<sup>1</sup> s12(a), Schedule 10, *Local Government Act 1989* (Vic)

<sup>2</sup> (a) make a bridge or crossing over any footpath or channel next to a road to enable a person using the road to have access to land on the other side of the footpath or channel; (b) maintain, repair or reconstruct the bridge or crossing; (c) permit a person to do anything the Council may do under paragraph (a) or (b); (d) require a person to do anything the Council may do under paragraph (a) or (b).

<sup>3</sup> "(1) If a person fails to carry out any work which he or she is required to carry out by a Council under any Act, regulation or local law— (a) any other person may with the approval of the Council cause the work to be carried out; or (b) the Council may carry out the work. (2) Any other person who carries out the work may recover the cost of carrying out the work from the person who failed to do it. (3) If the Council carries out the work the Council may recover the cost of carrying out the work from the person who failed to do it."; s225, *Local Government Act 1989*