

Frequently Asked Questions

Deed of Grant - Private Level Crossings

● WHAT IS A DEED OF GRANT?

A Deed of Grant is a legal agreement between parties when one party wants to place an asset or structure on someone else's land. Where rail land is involved, KiwiRail is the 'Grantor' with the private land owners or local Road Controlling Authorities (RCA) being the 'Grantee'.

A Deed of Grant agreement sets out the responsibilities of each party and identifies the location where the Grantee is permitted to either cross rail land or have an asset on rail land.

These rights are granted under Section 35 NZ Railways Corporation Act 1981, which empowers the Railways Corporation through KiwiRail to grant rights over, or under, any railway land subject to such conditions and payments as the Railways Corporation thinks fit.

● WHAT IS A PRIVATE LEVEL CROSSING?

A private level crossing is usually where a driveway, rural access track or farm track passes over the railway line and is used by those wishing to access a property and/or farm land.

Generally private level crossings allow vehicles, pedestrians or animals to move across the railway line to land that is privately owned.

Private level crossings also can be access to industrial and commercial properties such as factories and quarries, retail properties such as shops and tourist activities, and public facilities such as parks, rivers and beaches.

● WHAT IS A PUBLIC LEVEL CROSSING?

A public level crossing is most commonly a local authority, (also known as the Road Controlling Authority (RCA)) 'owned' road, street, and footpath and/or cycleway that passes over the railway line allowing access from one side to the other. Usually the land on each side of the public level crossing is owned by the RCA (Councils or the Crown (through NZTA)) for Road.

Deeds of Grant for public level crossings are agreements usually between KiwiRail and the local RCA. Public level crossings can include vehicular, pedestrian and cycleway crossings.

● DO ALL PRIVATE AND PUBLIC LEVEL CROSSINGS NEED TO HAVE A DEED OF GRANT AGREEMENT?

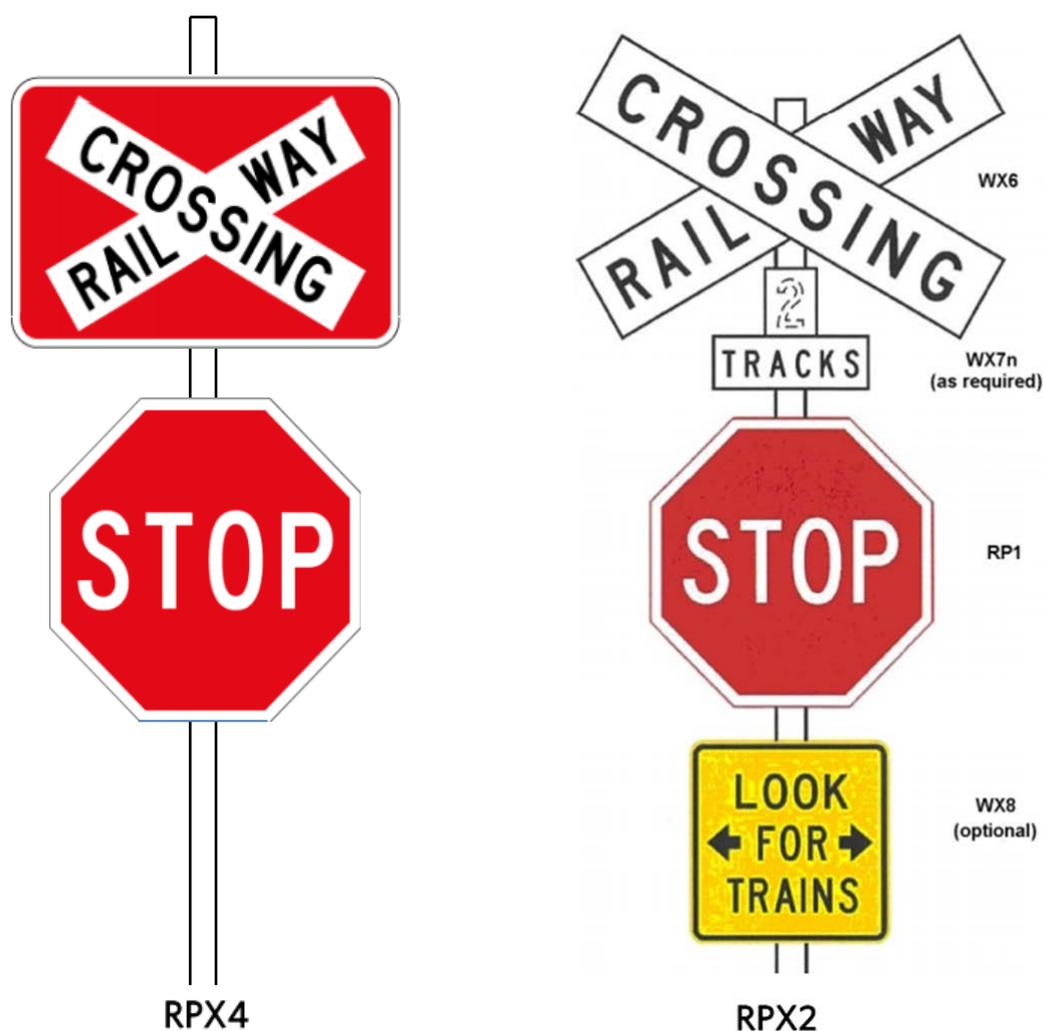
Yes. All level crossings private and public, new and existing require a current and valid Deed of Grant to be in place to allow access across the rail corridor.

RCAs are required to have Deed of Grant agreements with KiwiRail for public level crossings and private land owners who access their property over a private level crossing need to have a Deed of Grant in place giving them a right to pass over the railway line. The Deed of Grant also ensures that there are correct safety measures in place and an ongoing maintenance plan to keep those using the private level crossing, other users of the rail network and our staff safe.

● HOW DO YOU KNOW A LEVEL CROSSING IS SAFE?

NZTA's 'Traffic Control Devices Manual Part 9 – Level Crossings' provides industry standards and guidance that applies for all public and private level crossing types. It notes:

- A Private level crossing should have clear unobstructed views up and down the rail corridor from 5 metres back from the track centre line on either side of the level crossing. The view line distance at each level crossing is variable due to the curves and topography of the adjacent land; therefore minimum distances are determined on a case by case basis.
- The level crossing should be sloped away from the railway so that surface water from adjacent roadways cannot run onto the railway lines. Water ponding causes damage to railway lines and can cause vehicles to get stuck. All water runoff must be diverted away from the crossing.
- See details below in relation to the different types of level crossing surfaces.
- Trains can be quiet and can arrive at any time from either direction. All Private level crossings should have a 'Cross Buck' and 'Stop' sign placed on each side of the level crossing, and a 'Look for Trains' sign on heavily used level crossings.
- KiwiRail is currently funding a project to ensure that correct safety signage is installed at all private level crossings.



NZTA's 'Traffic Control Devices Manual Part 9 – Level Crossings' is located at the following website: <http://nzta.govt.nz/resources/traffic-control-devices-manual/part-09-level-crossings/>



Clear signage on either side of the level crossing

Approaches to the level crossing should slope away from the railway so surface water cannot run onto the railway lines



Unobstructed views up and down the rail corridor from 5 metres back from the railway track on either side of the level crossing

● **WHAT ARE THE DIFFERENT TYPES OF LEVEL CROSSINGS?**

In many instances, private level crossings consist of 'Gravel surfaces' over a level crossing. These level crossings usually consist of 'AP40' aggregate. Gravel surface level crossings have high maintenance requirements and are generally not fit for purpose.



To ensure that adjoining owners have a level crossing that is best suited to their property type and usage KiwiRail now requires the use of 'timber panel', 'asphalt' or 'concrete slab' private level crossings surfaces which have lower maintenance requirements than gravel surfaces and help to prevent vehicles causing damage to the railway.



A 'TIMBER PANEL' LEVEL CROSSING

consists of timber sleepers running parallel to the railway line. Timber panel level crossings require minimal maintenance and can last up to 20 years before needing to be reviewed. Timber panel level crossings are ideal for residential, lifestyle and rural properties.



AN 'ASPHALT' LEVEL CROSSING consists of a base being prepared and asphalt laid over the level crossing to around 1.5 metres from the railway centre line. Asphalt level crossings require minimal maintenance and can last a long time before needing to be renewed depending on usage and topography of the land. Asphalt level crossings are also ideal for residential, lifestyle and some rural properties.



A 'CONCRETE (EDILON) SLAB' LEVEL CROSSING

consists of concrete slab with inserted railway lines over the vehicle crossing. Concrete slab level crossings require minimal maintenance and can last a long time before needing to be reviewed. Concrete slab level crossings are ideal for level crossings with high vehicle usage, particularly by heavy-axle vehicles, and are suited to commercial and industrial type properties.

● WHO IS RESPONSIBLE FOR LEVEL CROSSING MAINTENANCE AND SAFETY?

The Deed of Grant will outline maintenance roles and responsibilities for each party. In most cases the Deed of Grant holder (grantee) is responsible for funding the ongoing maintenance of their level crossing. This generally includes the removal of vegetation to ensure adequate view lines, paying to maintain the road/track surface, and any other works required to meet current safety standards and prevent damage to the railway.

For safety reasons KiwiRail, as the rail access provider, is responsible for the formation and maintenance of the road/track surface 5 metres either side from the centre of the railway line. This means that any maintenance or upgrade works on a level crossing must be completed by KiwiRail or a KiwiRail approved contractor. Where appropriate these maintenance costs will be invoiced to the Deed of Grant holder (grantee).

If a KiwiRail-approved contractor is going to be used, they must have a minimum Tier 2 Rail Certification with any works approved by KiwiRail and a Permit to Enter issued.

For the current list of Tier 2 Rail Certified contractors please contact: grants@kiwirail.co.nz or phone 04 498 3253.

● WHAT ARE THE LIKELY INSPECTION AND MAINTENANCE COSTS?

Under the Deed of Grant agreement, the Grantee will need to pay for any future detailed safety inspections completed and for any ongoing maintenance required to make the private level crossing safe for use.

- **Safety inspections:** A detailed level crossing safety inspection for most private level crossings are completed by KiwiRail every 2 years and can cost between \$50 and \$100.

KiwiRail inspect the rail corridor on a weekly basis and these inspections can also identify if there are any works required to a level crossing.

- **Maintenance costs:** The maintenance costs for a private level crossing can vary depending on the level crossing surface, contour of the land, drainage, approaches to the crossing and view lines.

● WHAT IF I DO NOT AGREE TO ENTER INTO A DEED OF GRANT AGREEMENT WITH KIWIRAIL?

To pass across the rail network you must have KiwiRail's permission. A Deed of Grant agreement with KiwiRail provides this permission. It is both unsafe and illegal to pass over the railway corridor without KiwiRail's consent or having an appropriate Deed of Grant in place.

If a private level crossing is unauthorised or unsafe KiwiRail may have to close the level crossing until the crossing is brought up to a safe standard for those using it. If an agreement cannot be reached and a private level crossing needs to be closed, KiwiRail will work with you and keep you informed about what is happening.

● WHAT IS KIWIRAIL' S POLICY ON THE CREATION OF NEW LEVEL CROSSINGS?

KiwiRail is always looking for ways to reduce risk around the rail network and so our policy is that we will not agree to the creation of any new level crossings.

New access from one side of the rail network to another must be grade separated (underpass or over bridge) or owners should consider if an alternative route, which does not cross the rail corridor, can be secured.

● WHAT IF I CAN'T HAVE A LEVEL CROSSING?

We may consider an overpass or underpass. Either of these types of crossings require a Deed of Grant.

Please contact us if you would like a copy of our 'New Rail Crossings Guidance for Applicants' document.

● WHAT SHOULD I DO IF I'M GOING TO SELL MY PROPERTY?

Unlike a property right which can be passed with the land (for example a right of way or easement registered on a title) a Deed of Grant is a personal right and so does not transfer to any new owner.

You will need to contact KiwiRail to inform us that you intend to sell your property or your land for which you require access across the rail network. Once we have this information KiwiRail will cancel your Deed of Grant. You will also need to tell the new purchaser to contact KiwiRail to secure their own Deed of Grant.

● WHAT IF I WANT TO SUBDIVIDE MY LAND AND CREATE ACCESS TO NEW PROPERTIES VIA A PRIVATE LEVEL CROSSING?

Access over the rail corridor is not considered a permanent access right (known as a property right). The Deed of Grant document is personal to you and your access across the rail network.

Section 106(1) of the Resource Management Act 1991, states that sufficient provisions need to be made to secure legal access to each allotment as part of any subdivision and section 169(2) of the Public Works Act 1981 states that no access needs to be provided over the rail corridor for land that is landlocked because of subdivision that has occurred following the construction of the railway. That means, any subdivision design should allow for access via a legal road or right of way that does not pass over the rail corridor.

KiwiRail does not want to permit an increase in the intensity of use of any private level crossings because of the increased risk of incidents for both users and rail staff. If a Council or private owner approaches KiwiRail for approval for a subdivision which relies solely on access via a level crossing, it is likely to be declined.

The construction of an overpass or underpasses may be considered in some circumstances.

● WHAT IF I HAVE AN ALTERNATIVE ACCESS AND DON'T NEED THE LEVEL CROSSING?

If you do not use the level crossing, or have another means of access and want to stop using the level crossing, then please inform us by completing the response form.

Where possible KiwiRail wants to reduce the number of level crossings throughout the network for safety reasons. If there are no other adjoining owners using the level crossing KiwiRail will arrange for and fund permanent closure of the level crossing and we will cancel any existing agreement you may have with us.

● CAN MULTIPLE OWNERS SHARE A LEVEL CROSSING?

Yes. However, KiwiRail require an individual Deed of Grant for each land owner. This makes managing the Deed of Grant more straightforward particularly if an owner sells their property or no longer wants to use the level crossing and wishes to cancel their Deed of Grant.

If you and your neighbours are sharing a private level crossing, any maintenance costs that may be charged will be apportioned between each Deed of Grant holder. Please let us know if another party uses the level crossing so that we can ensure that each user has a Deed of Grant.

● WHO CAN I CONTACT IF I THINK THAT MY LEVEL CROSSING IS UNSAFE OR NEEDS MAINTENANCE?

KiwiRail is currently undertaking a nationwide review of all private level crossings to ensure that each level crossing has the appropriate signage and sufficient sight lines. This process will take some time due to the large number of private level crossings across the rail network.

If you think that there is a safety concern at your private level crossing that needs urgent attention, please notify us using the contact details below.

● WHAT IS THE PROCESS FOR MOVING LIVESTOCK ACROSS A LEVEL CROSSING?

Train timetables often change, so you must contact KiwiRail's Train Control office before moving livestock over a level crossing. The Train Control office will be able to advise you of any train movements in your vicinity and confirm an appropriate time for you to safely move your livestock. Please have your Deed of Grant available so that you can provide your specific railway kilometrage found in Schedule 1.

The Train Control office should also be notified if livestock get loose in the rail corridor.

Train Control Emergency Phone Number: 0800 808 400

● WHO CAN I CONTACT AT KIWIRAIL TO TALK FURTHER ABOUT LEVEL CROSSINGS?

A dedicated email address has been established for all enquiries. A member of the KiwiRail property team will answer your questions.

Please email your full name, contact details, address, grant number (if you have one) and any questions to: grants@kiwirail.co.nz, or phone 04 498 3253.