

Subject Determining Road Responsibility		Procedure PL 10.02.01	Page 1 of 9
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued February 22, 2007 Draft	
Replaces Directive Title n/a	Number n/a	Dated n/a	

1.0 BACKGROUND

Policy PL 10.02.00 Road Management and Responsibilities requires that the responsibility for roads and water crossings on Crown land be clearly defined so that there is certainty with respect to the obligations of the parties involved.

The first step in implementing the policy is addressing which party has responsibility for existing infrastructure. The *Forest Roads and Water Crossings Initiative: Task Team Report* (MNR 2003) concluded that there was wide uncertainty and in some cases disagreement between the forest industry and the MNR about road ownership and responsibility. Similar issues exist between MNR and other parties who built or maintained roads on Crown land. Much of this uncertainty results from the lack of historical records on road construction and the fact that the construction of many roads on Crown land was funded by a combination of government agencies and industry sectors.

Faced with this challenge, the joint MNR and forest industry task team developed a comprehensive procedure to determine whether current responsibility for a road is held by MNR, the forest industry or another party. This procedural approach was included in the *Forest Roads and Waters Crossings Initiative: Task Team Report* and is reproduced in this directive. For further information on this complex and sometime challenging process of determining road responsibility, while the reader may make use of this directive, the reader is also directed to the [Forest Roads and Waters Crossings Initiative: Task Team Report](#) from which this direction originates.

Roads determined to be the responsibility of the forest industry are documented in forest management plans, with subsequent transfers in responsibility tracked through the forest management planning process. Non-forestry roads are not the inventory and tracking responsibility of the forest management plans.

Roads determined to be the responsibility of MNR are managed by the Ministry for its own purposes and/or public use. MNR may enter into memorandums of understanding (MOU's) or issue land use permits (LUP's) with or to other parties or partners for these roads, thereby transferring some or all responsibilities for their maintenance and repair.

2.0 APPLICATION

This procedure may be applied to any road on Crown land that is under the control of MNR, except lands regulated under the Provincial Parks and Conservation Reserves Act. Responsibility for applying this procedure rests with the Ministry's Area Supervisor.

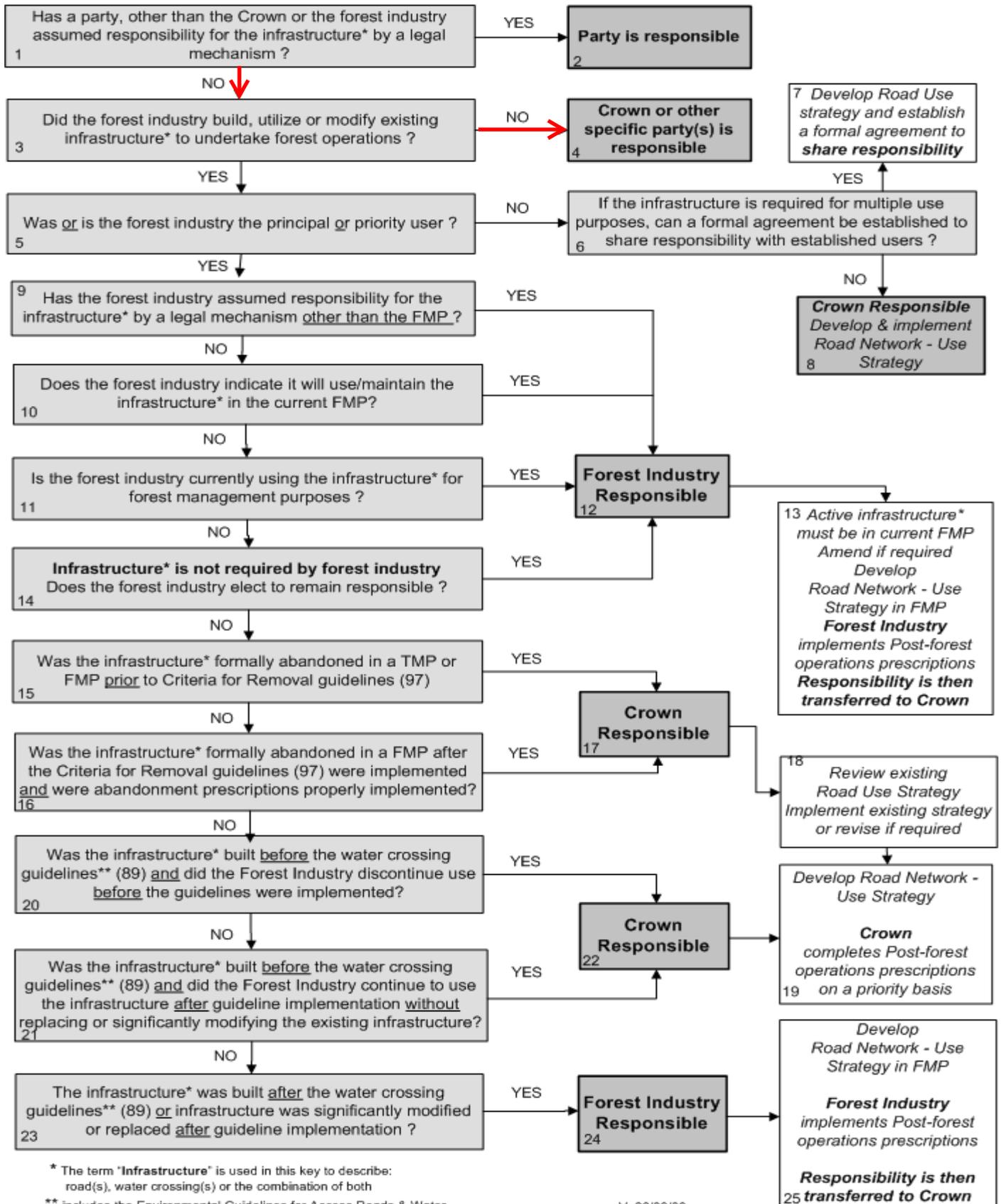
The two responsibility determination keys provided in this directive are based on the MNR's historical approach to the management of provincial forests. Responsibility for forestry roads can be determined using the keys provided in this procedure. All non-forestry roads are the responsibility of MNR, unless formal responsibility has been transferred to another party through an MOU or LUP.

3.0 REFERENCES

- Forest Roads and Water Crossings Initiative: Task Team Report (MNR 2003)
- Environmental Guidelines for Access Roads and Water Crossings (MNR April 1989)
- Crown Land Bridge Management Report (MNR April 1989)
- PL 10.02.00 Road Management and Responsibility (Policy)

Figure 1

Responsibility Determination Key - Former Company Management Unit



* The term "Infrastructure" is used in this key to describe: road(s), water crossing(s) or the combination of both

** includes the Environmental Guidelines for Access Roads & Water Crossings and Crown Land Bridge Management Report

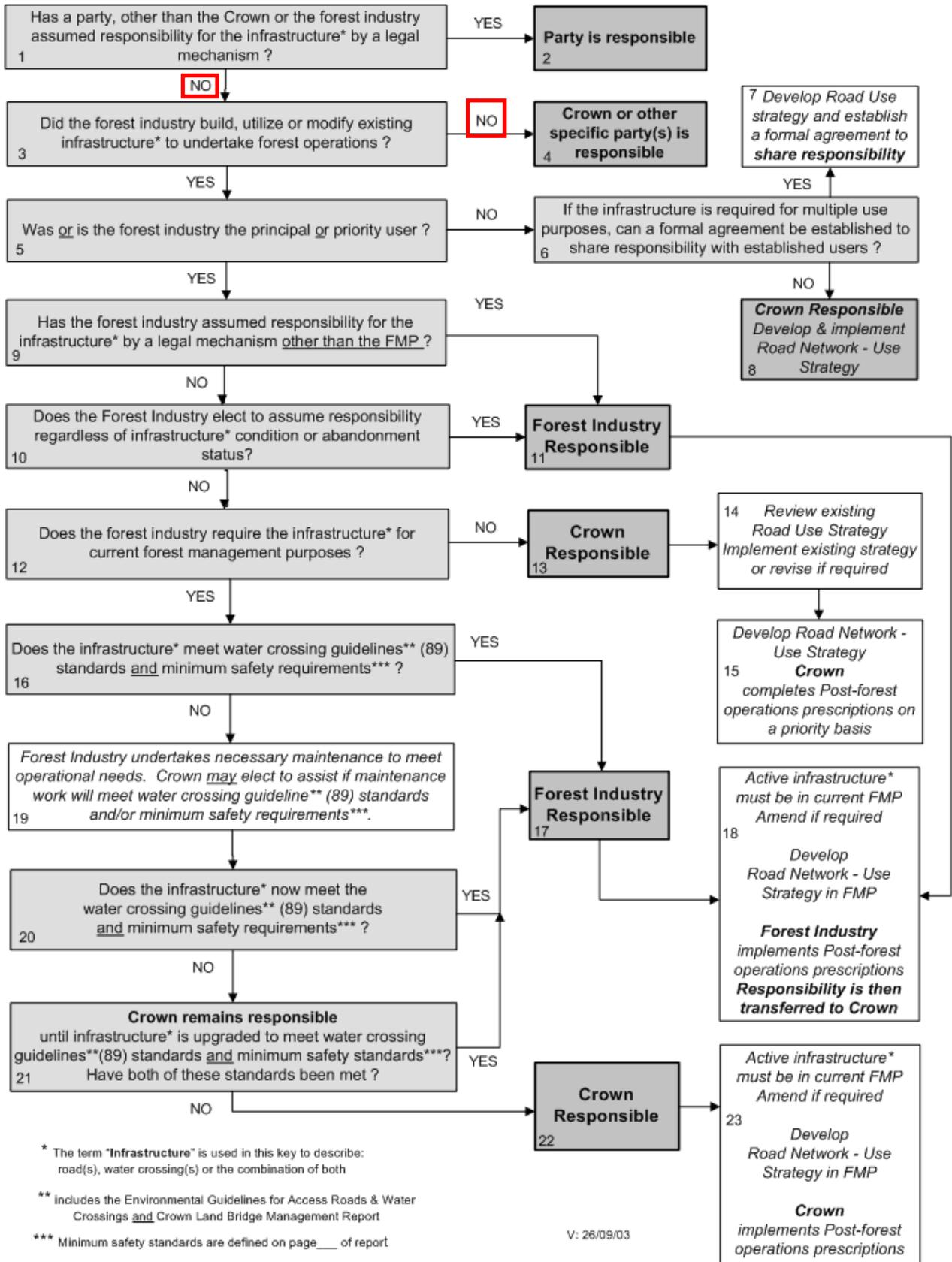
Key Box No.	Rationale
1-2	Determine if responsibility is already assumed by a party other than the Crown or the forest industry. There is a need to be aware of existing obligations and ensure that the party responsible understands the liabilities and responsibilities associated with the formal arrangement.
3-4	Determine if/when the infrastructure was utilized by the forest industry and to what extent. If the infrastructure was not built or used by the forest industry there would be no rationale to expect the industry to assume any responsibility. Another party or the Crown would be responsible. On former company management units (MU's), it is likely that most of the infrastructure was built by the forest industry.
5	Determine if the forest industry is the main user of the infrastructure and if industry needs dictate infrastructure standards and maintenance requirements; this is likely the situation on former company MU's. If the forest industry is not the principal user of the infrastructure and if the needs of other permanent users have an equal or greater influence on road use strategies, infrastructure standards and maintenance regimes, it is not reasonable to expect the forest industry to assume full responsibility nor cover all or most maintenance costs. If the forest industry is the primary user and forest operations are determinative of the construction standards and maintenance levels then it is appropriate for the forest industry to shoulder most/all responsibility when infrastructure is being used for forest management purposes.
6-8	If there are multiple permanent established users then a formal mechanism should be considered to share responsibility and obligations. Other industrial users and permanent established users should rightfully contribute to the upkeep of the infrastructure especially if these parties desire to have influence or if their activities cause damage to the infrastructure. A formal agreement is required to outline individual obligations and secure commitment. MNR and forest industry would play the lead in assembling partners and developing a road use strategy and partnership agreement. If a partnership arrangement cannot be established, the Crown would determine if the infrastructure would be decommissioned or maintained.
9	Determine if the forest industry has assumed responsibility for infrastructure by a legal mechanism other than the current forest management plan (FMP). Mechanisms may include: outcome of sustainable forest licence (SFL) negotiations, land use permit (LUP), memorandum of agreement (MOA), maintenance agreements or private road designation under the Public Lands Act. There is a need to be aware of existing obligations to ensure the forest industry and the Crown each understands the liabilities and responsibilities associated with the existing formal arrangement. Conclusion 6 speaks to the situation where existing arrangements are possibly now redundant or irrelevant, and revision or retirement should be considered.
10-12	Determine if the infrastructure appears in the current FMP and confirm that the forest industry intends to either construct, reconstruct or maintain the infrastructure. The forest industry will be responsible for any infrastructure that is actively being used for forest management purposes, not including tending (go to Box 12). It may be determined that all infrastructure currently being used for forest operations is not properly included in the current FMP. If it is active, it must appear in the FMP and the forest industry will assume responsibility (go to Box 12).

Key Box No.	Rationale
13	Actively used infrastructure must be detailed in the current FMP. If a suitable road use strategy does not exist, one must be prepared and introduced into the FMP by an amendment. The road network use strategy approach proposed by this report would be implemented. Operations following the conclusion of forest management activities would be developed. The forest industry would be responsible to undertake the necessary work. When operations are fully completed, responsibility for the infrastructure will be transferred to the Crown.
14	Identify existing infrastructure that is not required by the forest industry to undertake current operations or operations in the immediate foreseeable future (i.e. use not expected during next 10 year FMP planning period). The forest industry would make this determination. The forest industry also must decide if it wishes to assume responsibility for inactive infrastructure. Some SFL holders have indicated they may prefer to retain responsibility as a means of maintaining maximum influence. Any infrastructure that is assumed by the forest industry must be detailed in the current FMP. If the forest industry does not wish to assume responsibility it is necessary to determine additional information about the history and status of the infrastructure (go to Box 15).
15	Determine if infrastructure was formally abandoned in a previous timber or forest management plan prior to implementation of the Criteria for Removal Guidelines (MNR 1997). Any infrastructure that was declared in this manner would likely have been declared as natural abandonment with minimal continuing obligations. At this point responsibility would shift to the Crown (go to Box 17).
16-17	Determine if infrastructure was formally abandoned in an FMP after the implementation of the Criteria for Removal Guidelines (MNR 1997). These guidelines were to be applied retroactively to all water crossings on primary and secondary (i.e. branch) roads and any water crossings on tertiary (i.e. operational) roads that were to be removed, that had previously not been formally abandoned. Determine if the guidelines were properly applied and confirm that abandonment prescriptions were fully implemented. If the above items were satisfactorily completed, responsibility would shift to the Crown (go to Box 17). If the infrastructure was not formally abandoned or abandonment prescriptions were not completed satisfactorily, it is necessary to determine additional information about the history and status of the infrastructure (go to Box 20).
18-19	Determine if the existing road use strategy is appropriate or if revision is warranted. There may or may not be a suitable road use strategy in the current FMP. If one does not exist or it is deemed to be unsuitable it will be necessary to develop one. The road network use strategy approach proposed by this report would be implemented. Operations following the conclusion of forest management activities would be developed. The Crown would be responsible to undertake the necessary work. Work would be prioritized based on inventory results to ensure that the most urgent safety and environmental problems were dealt with first.
20	Determine if the infrastructure was built <u>before</u> the implementation of water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) and if forest industry use was discontinued <u>before</u> the guidelines came into force. The 1989 guidelines provided the first specific direction regarding acceptable practices for water crossing construction, maintenance and abandonment. Infrastructure that was built <u>prior</u> to this date was not required to meet any specific standards other than appropriate opening size as determined by flow calculations. If use was discontinued <u>prior</u> to the guideline implementation it can be assumed that no upgrading took place after the guidelines were in force. It is appropriate to conclude that the forest industry would have no lingering obligations or responsibility for infrastructure of this vintage. The Crown would assume responsibility “as is”.

Key Box No.	Rationale
21-22	<p>The situation may exist where the Forest Industry continued to utilize pre-1989 infrastructure <u>after</u> the water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) were introduced without significantly modifying or replacing the original structures. If this is the case, the same logic in Box 20 would apply and the Crown would assume responsibility “as is”. If the infrastructure was significantly altered or replaced <u>after</u> the guidelines were implemented, improvements should have been done according to the prescribed standard (go to Box 23).</p>
23-24	<p>Determine if the infrastructure was built <u>after</u> the water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) were introduced or if pre-1989 infrastructure was significantly altered or replaced <u>after</u> the guidelines were implemented. It would be expected that this infrastructure was built to the prescribed standard and maintained to this standard until formally abandoned utilizing the Criteria for Removal Guidelines (MNR 1997). As it has been determined in Box 15 & 16 that formal abandonment has not yet occurred this infrastructure would continue to be the forest industry’s responsibility.</p>
25	<p>Determine if a road use strategy exists and if revision is warranted. It is most likely that the infrastructure has “dropped out” of the FMP process and no strategy exists in the current FMP. It is possible that a strategy was prepared in a previous timber or forest management plan and was not carried forward. If one does not exist in the current FMP or it is deemed to be unsuitable it will be necessary to develop one. The road network use strategy approach proposed by this report would be implemented. Operations following the conclusion of forest management activities would be developed. The forest industry would be responsible to complete the operations following the conclusion of forest management activities (retained, modified, removed, controlled) as detailed in the Transfer Plan. When operations are fully implemented, responsibility would transfer to the Crown.</p>

Figure 2

Responsibility Determination Key - Former Crown Management Unit



* The term "Infrastructure" is used in this key to describe: road(s), water crossing(s) or the combination of both

** Includes the Environmental Guidelines for Access Roads & Water Crossings and Crown Land Bridge Management Report

*** Minimum safety standards are defined on page ___ of report

Key Box No.	Rationale
1-2	Determine if responsibility is already assumed by a party other than the Crown or the forest industry. There is a need to be aware of existing obligations and ensure that the party responsible understands the liabilities and responsibilities associated with the formal arrangement.
3-4	Determine if/when the infrastructure was utilized by the forest industry and to what extent. If the infrastructure was not built or used by the forest industry there would be no rationale to expect the industry to assume any responsibility. Another party or the Crown would be responsible. On former Crown MU's, it is likely that much of the infrastructure was developed by the Crown to enable forest management activities.
5	Determine if the forest industry is the main user of the infrastructure and if industry needs dictate infrastructure standards and maintenance requirements. If the forest industry is not the principal user of the infrastructure and if the needs of other permanent users have an equal or greater influence on road use strategies, infrastructure standards and maintenance regimes, it is not reasonable to expect the forest industry to assume full responsibility nor cover all or most maintenance costs. If the forest industry is the primary user and forest operations are determinative of the construction standards and maintenance levels then it is appropriate for the forest industry to shoulder most/all responsibility when infrastructure is being used for forest management purposes.
6-8	If there are multiple permanent established users then a formal mechanism should be considered to share responsibility and obligations. Other industrial users and permanent established users should rightfully contribute to the upkeep of the infrastructure, especially if these parties desire to have influence or if their activities cause damage to the infrastructure. A formal agreement is required to outline individual obligations and secure commitment. MNR and forest industry would play the lead in assembling partners and developing a road use strategy and partnership agreement. If a partnership arrangement cannot be established, the Crown would determine if the infrastructure would be decommissioned or maintained.
9	Determine if the forest industry has assumed responsibility for infrastructure by a legal mechanism other than the current FMP. Mechanisms may include: outcome of SFL negotiations, LUP, MOA, maintenance agreements or private road designation under the Public Lands Act. There is a need to be aware of existing obligations to ensure the forest industry and the Crown each understands the liabilities and responsibilities associated with the existing formal arrangement. Conclusion 6 speaks to the situation where existing arrangements are possibly now redundant or irrelevant, and revision or retirement should be considered.
10-11	The forest industry may elect to assume responsibility for the former Crown MU infrastructure regardless of its present status. On former Crown MU's, the Crown managed and controlled infrastructure development and maintenance of primary and secondary (i.e. branch) roads. Forest licencees usually constructed/maintained tertiary (i.e. operational) roads. New SFL holders "inherited" this infrastructure when Crown MU's were converted to SFL's. It would be inappropriate to expect the SFL holder to accept responsibility for infrastructure that is no longer required for forest management purposes or sub-standard infrastructure that is unsafe or did not meet the standards of the day when constructed. Some SFL holders have indicated they may prefer to assume responsibility as a means of maintaining maximum influence. Any infrastructure that is assumed by the forest industry must be detailed in the current FMP.
12-13	Determine if the infrastructure is needed for current forest management purposes. The forest industry would make this determination. If the infrastructure is not required and the forest industry does not elect to assume responsibility, the Crown would retain responsibility for the infrastructure in its current condition. If infrastructure is required for current forest operations go to Box 16. Active infrastructure must appear in the current FMP.

Key Box No.	Rationale
14	Determine if the existing road use strategy is appropriate or if revision is warranted. There may or may not be a suitable road use strategy in the current FMP. If one does not exist or it is deemed to be unsuitable, it will be necessary to develop one.
15	The road network use strategy approach proposed by this report would be implemented. Operations following the conclusion of forest management activities would be developed. The Crown would be responsible to undertake the necessary work. Work would be prioritized based on inventory results to ensure that the most urgent safety and environmental problems were dealt with first.
16	Determine if the infrastructure currently meets the water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) standards and if it meets safety standards. Infrastructure that is required for current forest operations and meets water crossing guideline (MNR 1989) standards and also meets minimum safety requirements can appropriately be transferred to the Forest Industry. Unlike the Former Company Management Unit Key, it is irrelevant when the infrastructure was constructed or modified.
17	Forest industry accepts responsibility for active infrastructure that currently meets water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) standards and safety requirements (Box 16) or infrastructure that is upgraded to standard by industry (Box 19-20) or by the Crown (Box 21).
18	Actively used infrastructure must be detailed in the current FMP. If a suitable road use strategy does not exist, one must be prepared and introduced into the FMP by an amendment. The road network use strategy approach proposed by this report would be implemented. Operations following the conclusion of forest management activities would be developed. The forest industry would be responsible to undertake the necessary work. When operations are fully completed, responsibility for the infrastructure will be transferred to the Crown.
19	The forest industry may elect to complete necessary improvements in order to safely and efficiently carry out forest operations. It may be necessary to undertake various levels of maintenance on failing infrastructure even though responsibility rests with the Crown. The forest industry may not be able to wait for the Crown to do this work and may need to complete these improvements in order to continue operations. If the proposed work will upgrade the infrastructure to satisfy water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) and safety requirements, the Crown <u>may</u> offer to assist with remedial costs so that responsibility can be transferred to the forest industry.
20	If the remedial work performed by the forest industry satisfies water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) and safety standards, the forest industry would assume responsibility for the active infrastructure. If the remedial work performed by the forest industry meets their immediate operational needs but falls short of meeting water crossing guidelines or safety standards, responsibility remains with the Crown.

Key Box No.	Rationale
21	<p>Determine if the Crown has undertaken remedial work and if it was sufficient to achieve water crossing guidelines and safety standards. Crown will complete remedial work on a priority basis. If upgrades meet standards, the forest industry would assume responsibility for the active infrastructure (Box 17). The Crown will remain responsible if it is unable to undertake remedial work on the active infrastructure that will satisfy the water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) or safety standards (Box 22).</p>
22-23	<p>Crown remains responsible for former Crown MU infrastructure that does not meet the water crossing guidelines (<i>Environmental Guidelines for Access Roads and Water Crossings</i> (MNR April 1989) <u>and</u> the <i>Crown Land Bridge Management Report</i> (MNR April 1989)) and safety standards. If the forest industry was able to undertake operations without fully upgrading deficient company management unit infrastructure, the Crown will remain responsible. Active infrastructure must appear in current FMP. The road network use strategy approach proposed by this report would be implemented. Active forest operation prescriptions and/or operations following the conclusion of forest management activities would be developed. The Crown would be responsible to complete the operations following the conclusion of forest management activities (retained, modified, removed, controlled) as detailed in the Transfer Plan. Work would be prioritized based on inventory results to ensure that the most urgent safety and environmental problems were dealt with first. If remedial work is completed while the infrastructure is actively being used, responsibility would be transferred to the forest industry.</p>