

Briefing for Nic on WCC proposal to install non-complying rainbow pedestrian crossing traffic control device

26 September, 2018

Purpose

The Purpose of this briefing is to seek your support as the delegated Director Safety and Environment to send the attached letter, which formally notifies Wellington City Council (WCC) that under clause 3.2(3) the Land Transport Rule: Traffic Control Devices 2004 (the Rule), the Agency prohibits the installation of the rainbow pedestrian crossing proposed at the intersection of Cuba Street and Dixon Street, as it may present a hazard to road safety and does not comply with the Rule.

Further, the letter signals that if WCC proceeds to install the markings in contravention of this prohibition, the Agency will direct their removal under clause 13.8(1) of the Rule, and ask the NZ Police to prevent their installation and remove the markings under clause 13.9(1) of the Rule.

Safety Risk

The Agency supports the celebration of diversity, but this must not compromise road safety or contravene the requirements of safety legislation.

WCC is describing the proposed device as a crossing and it is intended for pedestrians. The proposed rainbow pedestrian crossing is likely to be confused with, and interpreted as, a pedestrian crossing traffic control device. It is striped and painted on the road at a place designed for pedestrians to cross. The nature of the device and the associated publicity will send confused messages to road users.

Of greater significance, it is proposed to be located at a signalised intersection, which is expressly forbidden by the Rule. At locations controlled by traffic signals, the give way rules are different, and therefore in conflict, to those at a pedestrian crossing. In combination with the traffic signals, the rainbow pedestrian crossing markings would potentially send conflicting messages to both drivers and pedestrians who may not know which traffic control device prevails – the traffic signals, which must signal green before pedestrians can cross, or the rainbow pedestrian crossing where drivers must give way to pedestrians, and to riders of wheeled recreational devices or mobility devices on the pedestrian crossing or obviously waiting to cross it.

The Cuba precinct is a busy and diverse area in the city, with a wide range of ethnic groups and ages represented (Working Men's Club through to Early Years Leeds Street kindergarten – both vulnerable groups). Given this wide demographic, there is a high risk of confusion, together with a dazzling and distracting effect.

The crash record at the intersection already includes two minor injury pedestrian casualties in the last five years. s 9(2)(g)(i)

Background

- First contact from WCC was 18 August 2017 seeking advice on legality of rainbow crossings
- Agency advice was they did not comply with the Traffic Control Devices Rule (use of colours, and general prohibition on marking the road for advertising or other purpose not connected with the use of the road)
- WCC further advised on 27 November 2017 that they were pushing ahead with a crossing marked within the signalised crossing at Cuba and Dixon Streets
- The Agency's legal advice was sought, confirming the proposal to be a traffic control device
- Harry wrote to WCC on 11 December, advising Agency view that the proposal did not conform with the requirements of the TCD Rule, and that if WCC proceeded to install the markings, NZTA may consider action under clause 13.8 of the Rule
- WCC responded to Harry's letter on 9 February 2018 providing a plan of the proposed design and advising they intended to install it over the next 2-3 months
- Harry responded a second time, on 18 February 2018, confirming the proposal provided did not comply with the TCD Rule (note clause 8.5(2A) **"A road controlling authority may not mark a pedestrian crossing in an area controlled by traffic signals"**).
- On 9 March the Mayor of Wellington went public with WCC's proposal to install the crossing, stating in the release *"Our Urban Design team has worked extensively with NZTA to ensure the site is appropriate and that the use of colour is not disruptive to traffic flow and, most importantly, does not impact pedestrian safety"* - this statement was withdrawn at our request. Here is the graphic that has been used:

Wellington to create a 'pride precinct' with rainbow pedestrian crossing on Cuba St

Last updated 12:27, March 9 2018



An artist impression of the rainbow pedestrian crossing that will be unveiled on Wellington's Cuba St later this year. WCC

- Emma emailed **s 9(2)(a)** on 20 March suggesting some alternatives for WCC to consider:
 - A "shared space" across the Dixon St/Cuba St intersection, including a lowered speed limit, raised platform linking the pedestrianised sections of Cuba St, planters and other traffic calming devices;
 - Look at a rainbow crossing, with suitable safety measures on the shared space on lower Cuba St between Manners and Wakefield;
 - Identify an alternative location, possibly elsewhere in the Cuba St/Marion Square area, where a new crossing could be established, with suitable safety measures.
- Harry, Emma and Glenn met with **s 9(2)(a)** and WCC delegation, at WCC, 27 March 2018 – **s 9(2)(g)(i)**

s 9(2)(g)(i)

WCC contended that they have these crossings in Australia

- We have confirmed that the Australian Standard has the same requirements as NZ, and a summary from Australian States confirmed this, and that while a few had been marked on a temporary basis, they had been removed, sometimes forcibly by the Government (eg NSW) following evidence of the installation being a safety hazard

Mayor furious as Government removes rainbow crossing

Updated 11 Apr 2013, 11:27am



PHOTO: Sydney's rainbow crossing is covered in asphalt.

Sydney's Lord Mayor, Clover Moore, has hit out at the New South Wales Government after a controversial rainbow pedestrian crossing was torn up overnight.

RELATED STORY: Rainbow row in Taylor Square continues
RELATED STORY: Support grows to keep Sydney's rainbow crossing

- Notwithstanding the Australian Standard, the City of Sydney has come to an agreement with NSW Government for a rainbow crossing to be installed at an alternative location. The design includes traffic signals that are phased to prioritise pedestrians, the crossing is raised to create a slow speed environment, and there are only 2000vpd (vs 6000vpd along Dixon Street).
- We also understand the Wellington Mayor says that they do this in other cities around the world, eg San Francisco – it must be noted that the pedestrian priority culture (and supporting laws) in North America (and European cities) are different to New Zealand – zebra crossing type markings are variably mixed with vehicle traffic signals in the US and Canada, and pedestrians are absolutely sacrosanct in Canada, so cultures (and laws) are quite different around the world – there are many reasons why what may work elsewhere won't work in NZ.
- s 9(2)(a) (CCS Disability Association) has confirmed to Harry that *“people who are blind, or who have a significant visual impairment rely on standard pedestrian design to navigate their way around the city and safely cross roads. This is potentially very confusing for them as well as being unsafe”*
- Emma followed up with s 9(2)(a) on 11 April 2018 and 7 May 2018 stating *“we do want to work with you to identify a solution that we can assess to be safe and legal, and meets the Council's aspirations”*, and asking if WCC had considered the options the Agency had suggested, and for the letter from WCC detailing their legal position on the markings constituting a traffic control device
- s 9(2)(g)(i)

s 9(2)(g)(i) . Glenn confirmed to Emma that the Rule expressly forbids marking pedestrian crossing within a signalised intersection (clause 8.5(2A) “A road controlling authority may not mark a pedestrian crossing in an area controlled by traffic signals”.

- s 9(2)(h)

[REDACTED]

[REDACTED]

- The Police support the Agency approach:

“Whilst Police supports celebrations of diversity, our view is that this proposal poses risks of death and serious injury for road users – pedestrians in particular.

Having a pseudo pedestrian crossing on a traffic signalled controlled intersection is likely to lead to some pedestrians treating the site as a pedestrian crossing, stepping out on the road when motor vehicles have a green light to legally continue through the intersection. Wellington City already experiences serious outcome crashes involving pedestrians and motor vehicles in the CBD. This proposal, as it is described, is most likely to add to those safety risks.

While acknowledging the Police power pursuant to the Rule to cause the removal of traffic control devices in the interests of safety, our preference would be a negotiated resolution to this situation between the parties. Taking steps pursuant to clause 13.9(1) will be considered by Police if a negotiated resolution cannot be reached and there remains a safety risk that cannot otherwise be effectively resolved in a timely manner.” s 9(2)(a) , 16 May 2018)

- It was reported in the media on 28 June 2018 that WCC are just waiting for fine weather to mark the rainbow crossing. However s 9(2)(a) confirmed with Emma on 9 June that works are unlikely to occur until Sept at earliest.
- Harry, Glenn and Emma met with Fergus Gammie on 8 August – Fergus agreed what was proposed didn’t seem to be safe, and that an exemption could be considered for an agreed design, conditional on an independent safety assessment confirming the safety performance post installation was no worse than the safety performance and non-compliance at the intersection currently
- Emma communicated this with s 9(2)(a) both verbally and by emails on 8 and 23 August
- s 9(2)(a) responded to Emma on 25 September that WCC would not be agreeing to an independent audit, and that “*the expertise and experience when it comes to matters pertaining to transport in an urban environment lies with Road Controlling Authorities. As an RCA Wellington City Council has considerable technical and professional expertise within our own organisation and as such we do not see the need for any further analysis of the project*”.

- It should be noted that a number of RCAs are watching progress on this matter in anticipation of their own versions.
- The attached letter has been drafted and checked by legal for Harry to send to WCC

Recommendation

It is recommended that you send the attached letter to WCC with urgency.

Attachment – letter to WCC (wording to be confirmed by Legal)

To s 9(2)(a), Wellington City Council

Re Rainbow pedestrian crossing

Dear s 9(2)

Thank you for your email to Emma Speight dated 25 September 2018 regarding the rainbow pedestrian crossing project.

The Agency supports the celebration of LGBT diversity, but not at the expense of road safety. Despite correspondence and meetings over the past 14 months between the Agency and Wellington City Council, we understand the Council intends to progress with the installation the pedestrian crossing at the signalised intersection of Cuba and Dixon Streets.

This letter is notification to the Wellington City Council that under the Land Transport Rule: Traffic Control Devices 2004 (the Rule) clause 3.2(3), the Agency prohibits the installation of the proposed rainbow pedestrian crossing at the intersection of Cuba Street and Dixon Streets, Wellington.

Should the Council proceed to install the markings, the Agency will direct their removal under clause 13.8(1) of the Rule, and ask the NZ Police to prevent their installation and remove the markings under clause 13.9(1) of the Rule.

The Agency considers the installation of the proposed rainbow pedestrian crossing a road safety risk for the following reasons:

- The proposed rainbow pedestrian crossing looks like a pedestrian crossing traffic control device. It is striped and painted on the road at a place designed for pedestrians to cross, and is likely to be interpreted as one. The nature of the device and the associated publicity describing it as a pedestrian crossing will send confused messages to road users.
- Of greater significance, it is proposed to be located at a large, signalised intersection furnished with three sets of pedestrian call boxes and displays on each side of the crossing. At locations controlled by traffic signals, the give way rules are different, and therefore in conflict, to those at a pedestrian crossing. In combination with the traffic signals, the rainbow pedestrian crossing markings would potentially send conflicting messages to both drivers and pedestrians who may not know which traffic control device prevails, either the traffic signals, which must signal green before pedestrians can cross, or the rainbow pedestrian crossing where drivers must give way to pedestrians, and to riders of wheeled recreational devices or mobility devices on the pedestrian crossing or obviously waiting to cross it.
- The Cuba precinct is a busy and diverse area in the city, with a wide range of ethnic groups and ages represented (Working Men's Club through to Early Years Leeds Street kindergarten, both vulnerable groups). Given this wide demographic, there is a high risk of confusion, together with a dazzling and distracting effect.
- The crash record at the intersection already includes two minor injury pedestrian casualties in the last five years. If there is confusion with the precedence or legality of traffic control devices, Police will be unable to take action against at fault parties should an incident causing injury or death occur

Further, the Agency considers the proposed rainbow pedestrian crossing conflicting with the following parts of the Rule:

- placing the rainbow pedestrian crossing in a location that is controlled by traffic signals is strictly forbidden by the TCD Rule clause 8.5(2A) *“A road controlling authority may not mark a pedestrian crossing in an area controlled by traffic signals”*;
- markings on the road for the purpose of celebrating LGBT diversity conflicts with clause 5.5 of the Rule which prohibits a person from installing a marking on a roadway that is intended to be used for *“advertising or other purpose not connected with the use of the road”*.
- The rainbow pedestrian crossing, being striped and painted on the road at a place designed for pedestrians to cross, breaches clause 3.2(5) of the Rule *“A person must not install on a road, or in or on a place visible from a road, a sign, device or object that is not a traffic control device, but that:*
 - (a) may be mistaken for a traffic control device; or*
 - (b) may prevent the traffic control device from complying with 3.1(a) to (d).*

This is reinforced by the duty in 13.7(c) of the Rule *“A person must not...mark or install, or allow to be marked or installed, on a road, or in or on a place that is visible from a road, a sign, device or object that appears to be a traffic control device but is not”*

- Placing the rainbow markings across the road, rather than along the road, would breach the requirements of clause 3.2(5) of the Rule cited above.

The Agency maintains its willingness to work with Council to find alternative options that celebrates LGBT diversity, as long as they don't contravene the requirements and intent of the TCD Rule.

Yours sincerely

Harry Wilson

Addendum to letter – technical analysis of proposals

The Agency has assessed the most recent proposals provided to it, as shown on Wellington City Council plans UD81-LGBT-CD-100 revisions E, F, E3 and E4. It is noted that the plans still do not show the three sets of signal displays and pedestrian call boxes. While there are two sets of parallel pedestrian crossing lines as shown on the plans, the three sets of signals and callboxes, one at each end and one in the middle, means that signalised intersection to all intent and purpose operates as just one large signalised pedestrian crossing, with the two 'internal' pedestrian crossing lines being fundamentally redundant.

Alternatively, if the two internal pedestrian crossing lines are considered functional, there are three signalised pedestrian crossings operating together, each with their own pedestrian crossing displays and pedestrian call boxes.

Either way, considering the three signal displays and pedestrian call boxes, particularly the centrally located set available for pedestrians to use in the middle of the intersection, the Council's contention that the proposed rainbow pedestrian crossing markings are outside of the signalised pedestrian crossing areas is not valid.

WCC have added a speed cushion on the approach to the crossing, and a cycle box beyond the traffic signals limit line. The cycle box is interesting as it does not align with WCC's policy for these (provided at intersections to facilitate cycle turning – there is no turning available here so the need for the cycle box is not clear), and has the effect of pushing the vehicle limit line further away from the intersection. The consequence of the limit line being further away from the intersection is that travel speeds through the intersection, across the rainbow crossing, will be higher subsequent to start up from the green signal, effectively reducing the safety of the original design.

WCC have also added extra signs, including for a 'safe selfie' spot on the footpath – providing signage within an already cluttered, central city environment, is not a safe system solution to the novelty effect and distraction of a rainbow crossing.

The Agency has suggested Council consider locating the rainbow markings elsewhere in the pedestrian area along Cuba Street, which was rejected. If the crossing is to be installed at the intersection, we have recommended creating a low speed, shared zone environment for road users. This would remove the traffic signal conflict within the TCD Rule (clause 8.5(2A)) and, in the Agency's view, better meet the fundamental intent of clause 3.1 of the Rule, as the consequences of a mistake by pedestrians or drivers would be far better mitigated. These suggestions were also rejected, primarily due to concerns with the traffic volumes along Dixon Street (6000vpd – cf 2000vpd for the Sydney site), which of course is why the Agency does not consider the proposal safe.

As discussed at the meeting with WCC, the Agency would not approve a trial of markings that add no road safety value, which is the fundamental intent of the TCD Rule and the intent of trials provision and the delegations the Agency has for trials under the Rule.

The Agency has offered to provide an exemption for an agreed rainbow crossing design, subject to CCTV monitoring and an independent safety assessment confirming the safety and level of non-compliance after the installation is no worse than the current signalised crossing. This offer has not been accepted by WCC, who have responded: *"The nature of the site which has been selected, combined with the additional safety features we have incorporated, means that we are entirely comfortable with the appropriateness of the site from a health and safety perspective. Thank you for*

your input to this point and we certainly encourage NZTA to look more specifically at the existing legislative framework to ensure that we are able to create the liveable urban environments that we aspire to, which of course includes creating safe environments for all users of public space."