

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

28 June, 2018

- 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is not disruptive to traffic flow and, most importantly, does not impact pedestrian safety*" - this statement was withdrawn at our request.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)

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

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

To s 9(2)(a) [REDACTED], General Manager, Wellington City Council

**Re Rainbow pedestrian crossing**

Dear s 9(2) [REDACTED]

Thank you for meeting with Emma, Glenn and me on Tuesday 27 March to discuss the rainbow crossing proposal.

Our understanding of the Council’s position is that:

- you intend to mark the rainbow pedestrian crossing between the existing pairs of signalised pedestrian crossing road markings,

- the purpose of the markings is to celebrate LGBT diversity
- you do not agree that the markings constitute a traffic control device
- the Council has undertaken a risk assessment and is comfortable that risks have been adequately mitigated by the proposal, which now includes a speed cushion on Dixon Street prior to the intersection,
- you have suggested that the Agency considers approving a trial under clause 3.4 of the Traffic Control Devices (TCD) Rule
- you do not consider the alternative proposal of a raised shared zone 'courtesy' type crossing, designed to reduce vehicle speeds to 10km/h right through the intersection, suitable as it would be different to the intersection controls at the other Cuba Street intersections and traffic signals are the best way to control vehicle traffic.

The Agency has further assessed the proposal shown on your UD81-LGBT-CD-100 revision C and notes that it does 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 call boxes, 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 clearly not valid.

The Agency's view is that placing the rainbow pedestrian crossing, as is proposed, 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". This is because of the confusion in messages that this sends to road users. At locations controlled by traffic signals the give way rules are different to those at a pedestrian crossing, and therefore conflict. The Rule requires a TCD to convey a clear and consistent message to Road Users (clause 3.1). Specifically:

- in combination with the traffic signals in that location, the markings would potentially send conflicting messages to both driver 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 (in relation to the latter, the elderly patrons of the Working Men's Club at one end of the scale and the pre-schoolers at the Early Years Leeds Street kindergarten at the other end – both vulnerable groups). Given this wide demographic, there is a high risk of confusion and a dazzling and distracting effect; and
- the crash record at the intersection already includes two minor injury pedestrian casualties in the last five years.

Markings on the road for the purpose of celebrating LGBT diversity conflicts with clause 5.5 of the TCD 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 looks like a traffic control device and could well be mistaken for one (being striped and painted on the road at a place designed for pedestrians to cross, very similar to a pedestrian crossing), which also breaches clause 3.2(5) of the TCD Rule. This is reinforced by the duty in 13.7(c) of the TCD Rule which links to the Land Transport (Offences and Penalties) Regulations 1998.

The suggestion at the meeting to put markings across the road rather than along the road (which wouldn't then form a 'pedestrian crossing' under the TCD Rule) would still breach the provisions cited above.

As discussed at the meeting, 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.

As detailed above, and in Emma's email to you dated 20 March, the Agency has suggested Council consider 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.

This letter is formal notification to the Wellington City Council that under clause 3.2(3) of the TCD Rule, the Agency prohibits the installation of the proposed rainbow pedestrian crossing as detailed on the Council's plan UD81-LGBT-CD-100. Should the Council proceed to install the markings, the Agency will direct their removal, ask the NZ Police to prevent their installation and/or remove the markings (clause 13.9(1)), and proceed to prosecution under clause 13.7(c) of the TCD Rule.

Yours sincerely

Harry Wilson