



12 October 2021

OC210767

Hon Michael Wood

Minister of Transport

RESHAPING STREETS – PROPOSED APPROACH TO REGULATORY CHANGES

Purpose

1. Updates you on the key regulatory challenges and opportunities identified through our engagement with Road Controlling Authorities (RCAs) and other stakeholders on Reshaping Streets.
2. Advises you on our proposed approach to amending existing provisions for making street changes, with likely legislative changes and a new Land Transport Rule.

Key points

- We have been scoping regulatory changes to make it simpler and quicker for RCAs to make street changes to support public transport, active travel, and placemaking.
- Key barriers identified for RCAs are the process for making street changes via bylaws and traffic resolutions, consultation requirements, limited powers to close streets to traffic, regulations that stifle trials and innovation, unclear powers to make emergency street changes, and enforcement provisions.
- We propose amending existing regulatory provisions for making street changes to resolve these issues. This is likely to require changes to primary legislation and the development of a new Land Transport Rule. We seek your approval of this approach so that Waka Kotahi NZ Transport Agency can begin work on developing the rule while we continue work on the recommended legislative changes.
- RCAs have expressed strong support for regulatory changes to make it simpler and quicker to make street changes. A new/refreshed regulatory framework would improve their abilities to make street changes that prioritise the movement of people by public transport and active modes. This would support mode shift, emissions reduction, and urban intensification. Regulatory changes could also provide greater legal certainty and reduce operational inefficiencies and costs.

Recommendations

We recommend you:

- 1 **Agree** to our approach to amending existing provisions for making street changes, which is likely to involve legislative changes and a new Land Transport Rule Yes / No
- 2 **Indicate** if you would like to meet with officials to discuss the content of this briefing and our proposed approach to regulatory changes Yes / No



Angela Parker
**Acting Manager, Placemaking and
 Urban Development**
 12 / 10 / 2021

Hon Michael Wood
Minister of Transport

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Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

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RESHAPING STREETS - PROPOSED REGULATORY CHANGES

We have been scoping the key regulatory challenges and opportunities for Reshaping Streets

- 1 As you are aware, we have been scoping regulatory changes to make it simpler and quicker for Road Controlling Authorities (RCAs) to make street changes to support public transport, active travel, and placemaking. This is part of our Reshaping Streets work programme that we discussed with you on 18 June 2021 (OC210332 refers). You directed us to proceed with regulatory changes to streamline consultation processes for making street changes.
- 2 The draft Emissions Reduction Plan also includes an action to make it easier and quicker for local government to reallocate road/street space for public transport, walking, cycling and shared mobility in urban areas, and to create an expectation that this will occur.
- 3 To scope potential regulatory changes, we hosted a workshop with RCAs to discuss the difficulties they face when making street changes. Approximately 50 people from most city and district councils across New Zealand participated.
- 4 We followed this with a survey of RCAs to capture more detailed feedback. Representatives from 21 RCAs responded to the survey.
- 5 We have also met with representatives from Waka Kotahi NZ Transport Agency (Waka Kotahi), Auckland Transport, Kāinga Ora, and Eke Panuku Development Auckland (Eke Panuku) to understand their views in more depth.

The current regulatory system for making street changes often makes it unnecessarily difficult for RCAs to make changes

- 6 In the survey, we asked people how much the current regulatory system prevents, limits, or enables RCAs to make a range of street changes. Table 1 summarises how people responded to these questions, with the most common response shaded.

Table 1: Survey responses from RCAs (some totals exceed 100% due to rounding)

	How much the current regulatory system affects the ability of RCAs to make street changes				
	Prevents	Too difficult	Neutral	Enables	Empowers
Removing/repurposing on-street car parks	24%	59%	6%	12%	0%
Reallocating street space to bus lanes or bike lanes	35%	47%	6%	12%	0%
Reallocating street space to footpath improvements	27%	47%	13%	13%	0%
Traffic calming interventions	13%	50%	13%	25%	0%
Creating low-traffic neighbourhoods	27%	53%	13%	7%	0%

Creating temporary or permanent road closures	32%	42%	11%	16%	0%
Trialling experimental/innovative street changes	27%	60%	13%	0%	0%

- 7 The survey results show that most participants think the current regulatory system makes it unnecessarily difficult, or prevents, street changes that support public transport, active travel and placemaking.

Current legislation is outdated and often leads RCAs to take a risk averse approach to street changes

- 8 Waka Kotahi has provided us with case studies of RCAs that have faced difficulties making street changes due to the limitations of existing legislation. These examples strengthen the case for change.
- 9 For example, RCAs are increasingly relying on provisions in the Local Government Act 1974 and the Transport (Vehicular Traffic Road Closures) Regulations 1965 to make street changes that involve reallocating road space. This approach to making street changes requires less time and resources than the process of making a bylaw that would have the same effect.
- 10 However, the provisions were written in the 1960s and 1970s, and were created to support closing the road when road maintenance, construction, short term public events, or natural disasters occur. They were not created to support permanent road space reallocation, as this was not a consideration for lawmakers at the time.
- 11 While RCAs can implement street changes using these provisions, they often need to sense check plans with Waka Kotahi because they perceive that there is no clear legislative framework to support changes in their local areas. This can sometimes push councils to take a more risk averse approach to very minor street changes (which means a small change can take over a year to implement) or deter them from adopting projects altogether (like those funded by the Innovating Streets Pilot Fund) because they are concerned about potential legal and political risks.
- 12 This suggests that provisions need to be updated to give councils greater confidence to make street changes.

There is very strong support for regulatory changes

- 13 RCAs, Kāinga Ora, and Eke Panuku have all expressed high levels of support for regulatory changes that make it simpler and quicker for RCAs to trial street changes and to reallocate road space.
- 14 At our workshop, RCAs agreed that this would support goals for mode shift, emissions reductions, and urban intensification. Simpler processes would also reduce operational inefficiencies and costs for making street changes.

- 15 Most respondents to the survey also supported a new regulatory tool such as Experimental Traffic Orders (as used in the United Kingdom) in New Zealand. They indicated that they would be very likely to use this tool if it was available.

This scoping has enabled us to identify key issues to address through regulatory changes

- 16 Based on our engagement with RCAs and collaboration with Waka Kotahi, we have identified the key regulatory obstacles, challenges, and opportunities that we recommend addressing through regulatory changes. These are summarised below, with more detail provided in Annex 1.
- 16.1 **The regulatory process for making street changes:** Small-scale and large-scale street changes usually need to follow the same process of making/using bylaws and traffic resolutions. This process does not account for the scale of different changes. For example, removing a car park can require the same level of consultation as a full street change. This adds unnecessary complexity, costs, and inefficiencies for making relatively minor changes. The current legal framework is also unclear on whether some street changes require a bylaw/resolution. This has led to inconsistencies in the ways that different RCAs interpret legislation and make decisions.
- 16.2 **Consultation requirements:** In the absence of clearly defined consultation requirements for different kinds of street changes, RCAs risk being legally challenged if they make a change that a member of the public objects to and challenges on the grounds of insufficient consultation. The effect of this is that RCAs often consult broadly, and sometimes repeatedly on street changes. This hampers the ability of RCAs to make widespread changes, such as bike networks and bus priority lanes, as resources are spent on consultation for each individual change, with various rounds of consultation from a city/neighbourhood/network level to a street level. The consultation process can also give undue weight to some voices that have a vested interest in retaining streets the way they are, at the expense of public good outcomes.
- 16.3 **The ability to close streets to some/all vehicles on a permanent or temporary basis:** Current legislation significantly limits the ability for RCAs to close roads, or sections of the road. This restricts the ability of RCAs to create low traffic neighbourhoods. It also limits their ability to create or pilot other initiatives such as Play Streets (i.e. short, resident-led road closures at designated times/days) and School Streets (i.e. temporary road closures around schools when students are arriving at the start of the school day and leaving at the end of the day).
- 16.4 **Piloting experimental/innovative street changes:** Most regulations are geared towards permanent change. This makes trialling street changes unnecessarily difficult and expensive and inhibits innovative and low-cost improvements.
- 16.5 **Making emergency street changes:** There is a lack of legal clarity on the ability of RCAs to rapidly make street changes in emergency situations such as during pandemics or when major disruptions to the energy/transport system occur.

- 16.6 **Enforcement provisions:** There are inadequate enforcement measures to deter people from disobeying temporary street changes, altering or damaging devices used to create experimental street changes, or for driving/parking private vehicles in pedestrian malls. This can create safety hazards for other road users and negatively impact communities' perceptions of tactical street projects.

We propose amending existing provisions for making street changes, which is likely to require legislative changes and a new Land Transport Rule (a new rule)

- 17 To resolve the key issues identified above, RCAs need clearer direction and powers for making street changes. A new framework could replace the process for making street changes through bylaws and traffic resolutions, whilst making it easier to implement street changes that support mode shift and emissions reduction.
- 18 To enable this, primary legislation will need amending. This will require introducing a Bill to the House of Representatives. There is also an opportunity for regulatory stewardship to update and amend legislation in more minor matters to modernise it.
- 19 Reasonably significant changes are required to the legal provisions regulating the road. This may include transferring part of the Local Government Act 1974 into the Government Rounding Powers Act 1989.¹
- 20 We are currently clarifying specific changes that we would recommend making to legislation. As not all relevant legislation is administered by the Ministry of Transport, we will need to engage with other agencies during this process, including the Department of Internal Affairs for changes to the Local Government Act 1974.

A new rule for road management and street changes could play an important role in this new framework

- 21 You have the power to make ordinary rules ("Land Transport Rules") for various purposes under section 152 of the Land Transport Act 1998. These purposes include improving access and mobility, protecting and promoting public health, ensuring environmental sustainability, and assisting land transport safety. A new rule for managing roads and streets could clearly contribute to these outcomes.
- 22 To give greater clarity and direction to RCAs for making street changes, a new rule could:
- set the criteria and decision-making processes that RCAs need to follow to make street changes, and to manage roads within their jurisdictions
 - establish specific consultation requirements for different types of street changes (with low/no consultation required for relatively minor changes)
 - include powers to make emergency street changes, close streets (or parts of streets), and to trial experimental street changes

¹ This has the additional benefit of bringing these provisions into an Act that is administered by the Ministry of Transport, as opposed to the Department of Internal Affairs (DIA). This will make future changes easier and effective. DIA have been consulted and are supportive of this transfer of provisions.

- provide a clear pathway to make temporary or experimental changes permanent.

- 23 While most people from RCAs we have engaged with support simpler consultation requirements, some people raised concerns about the intention to 'streamline' consultation. They noted that it is essential to engage early, widely, and well with communities to co-design major changes and build community buy-in. This particularly applies to placemaking initiatives, and to other street changes that can significantly impact on the function of a street, such as low traffic neighbourhoods.
- 24 While the new rule could set consultation requirements for various kinds of street changes, it would not necessarily prevent RCAs from engaging and consulting with communities beyond these requirements. This would mean that RCAs could still choose to do more community engagement when appropriate, but there would be no legal grounds for challenging RCAs on the consultation process if the minimum requirements are met.

We also recommend including provisions in the new rule to improve on-street parking management

- 25 Many on-street car parks will need to be removed and reallocated to higher value purposes to deliver more bus lanes, connected cycle networks, and walking improvements. On-street car parking is therefore likely to decline in many areas while the demand for parking increases due to urban intensification and the removal of minimum car-parking requirements for new buildings (as mandated through the National Policy Statement on Urban Development). This will grow pressures to manage car parking effectively.
- 26 To support effective parking management, effective enforcement measures are needed to deter people from parking in bus lanes, bikes lanes, and pedestrian malls, and to penalise people for infringements.
- 27 On 3 September 2021, we updated you on our parking review and work to update the legislative framework governing parking (OC210623 refers). Some of the regulatory issues identified through that review are well suited for inclusion in the legislative changes being made through Reshaping Streets.

Waka Kotahi supports our proposed approach

- 28 We have been working closely with Waka Kotahi on understanding the challenges that RCAs face in making street changes and investigating potential regulatory changes. They are supportive of legislative changes and creating a new rule if the policy development process leads to this.

Risks

- 29 The timing for delivering a new regulatory framework will depend on how quickly a new bill can be introduced to Parliament and then passed through the House (including the Select Committee stage). This timing will partly depend on how much priority is given to this bill in the legislation programme.

- 30 As you are aware, the Government is currently progressing major reforms that will require legislative changes, including changes to the resource management system, health system, and water management. There is a risk that a new bill to support street changes (linked with broader emissions reduction work) could make slow progress through the House if there are higher priorities.
- 31 While a new regulatory framework would make it simpler and easier for RCAs to make changes, and better empower them to do so, it would not resolve some of the major challenges that RCAs face when reallocating street space. RCAs will still face resistance from some parts of the community when making street changes, and sometimes this will continue to deter RCAs from actively making changes. This reinforces the importance of the government providing clear communication and guidance on why street changes are needed in many urban areas, and to align funding and investment settings to incentivise changes.

Next steps

- 32 If you agree with our proposed approach of making legislative changes and a new rule, we will continue working with Waka Kotahi to progress a new regulatory framework. The Ministry will take the lead in developing legislative changes (along with the Parliamentary Counsel Office further down the track), while Waka Kotahi will take the lead in developing a new rule.
- 33 We previously advised you via the Weekly Report that we would provide you with a draft Cabinet Paper in October 2021, to advise Cabinet at a high level of our proposed regulatory changes and to seek Cabinet agreement to delegate authority to you for developing and releasing a consultation document.
- 34 We now recommend taking a paper to Cabinet after a public consultation document is completed. This will enable us to provide Cabinet with more specific details on the proposed changes, and what is being consulted on. This shift in approach will not cause any delays to overall timeframes. However, there are other external pressures on our Regulatory Work Programme that may affect the timing of this work, such as Covid-19 response issues and the potential for delays from linked work, such as finalising the Government's Emission Reduction Plan.
- 35 We will report back to you when we have completed our analysis of specific legislative changes to recommend. If you approve of those recommended changes, we will then develop a combined public consultation document for the legislative changes and a new rule, along with Regulatory Impact Assessments.
- 36 We will keep you updated on timeframes and progress via the Weekly Report.

ANNEX 1: KEY REGULATORY ISSUES FOR RESHAPING STREETS

This Annex summarises key regulatory issues already identified through scoping. We are currently conducting further analysis of the legislative changes we recommend making.

The process for making many street changes through bylaws and traffic resolutions

- RCAs make many street changes through a combination of bylaws (i.e. laws created by councils to manage or restrict behaviour, including street layouts) and traffic resolutions (i.e. decisions made collectively by councillors or delegated committees, which give effect to the bylaws).²
- Street changes that usually require a bylaw/resolution include removing car parks, implementing bus lanes, and implementing bike lanes.³
- The bylaw/resolution making process is rigid and does not account for the scale of proposed changes. Small-scale and large-scale street changes all need to follow a similar process. Staff from councils gave the example of removing just a single car park. This requires community consultation and formal designation by the required Committee. This process requires significant resources and can take around 12 weeks which adds unnecessary complexity, costs, and inefficiencies for making relatively minor changes.
- The current legal framework is also unclear on whether some street changes require a bylaw/resolution. This has led to inconsistencies in the ways that different RCAs interpret legislation and make decisions about street changes.

Consultation requirements

- RCAs have some discretion in how they consult with communities, and to what level. For matters that they deem to be of significant public interest, or matters that are likely to significantly impact on the public, RCAs are required to follow the special consultative procedure of the Local Government Act (2002) (LGA (2002)).
- In practice, RCAs consult on most street changes, including relatively minor changes. In the absence of clearly defined consultation requirements for different kinds of street changes, RCAs risk being legally challenged if they make a change that a member of the public objects to and challenges on the grounds of insufficient consultation.
- The effect of this is that RCAs often consult broadly, and sometimes repeatedly on street changes.
- This hampers the ability of RCAs to make widespread changes, such as bike networks and bus priority lanes, as resources are drained on consultation for each individual change, with various rounds of consultation from a city/neighbourhood/network level to a street level.

² RCAs have powers to make bylaws under the Land Transport Act 1998 (LTA(1998)) and under the LGA (1974).

³ Section 22AB of the LTA(1998) and Schedule 10 of the LGA(1974) set out which road management restrictions require bylaws.

The ability to close streets to some/all vehicles on a permanent or temporary basis

- There is no clear and simple legislative framework for RCAs to close sections of the road to motor traffic with exceptions (i.e. to allow access for emergency vehicles). There is also no framework for local authorities to trial road closures.
- Under current legislation, traffic can only be restricted on a road if doing so would not “impede traffic unreasonably.”⁴
- Current legislation enables temporary road closures, but only for less than 12 hours within one 24-hour period⁵, or for up to 30 days per year for an event.⁶ There is also no definition of ‘temporary’ in the LGA74, which creates legal uncertainty for councils.
- Regulations, processes, and costs for closing streets are also onerous. For example, a one-off resident supported Play Street (i.e. a short, resident-led road closure to encourage neighbours to play safely and freely outside their homes) would go through the same process as closing city streets for a large-scale marathon (e.g. 20-day notification, newspaper advertising, full council sign off).
- This significantly limits the ability of RCAs to create low traffic neighbourhoods, Play Streets, School Streets (i.e. temporary road closures around schools when students are arriving at the start of the school day and leaving at the end of the day) and to create or trial other temporary road closures on an ongoing/frequent basis (e.g. for weekly/monthly markets and events).

Trialling experimental/innovative street changes

- Most regulations are geared towards permanent change, which makes trialling street changes difficult. For example, traffic resolutions undermine the purpose of trialling changes and seeking community feedback, as they require initial public consultation and decisions before embarking on a trial. Councils then need to seek another traffic resolution if they wish to modify the plans.
- This limits RCAs’ ability to be responsive to public feedback and to adapt designs.
- RCAs often use Traffic Management Plans (TMP) for temporary street changes, but these are primarily designed to keep road workers safe during road work construction. It can be time-consuming to get approval for a TMP, and ongoing traffic management is expensive (see also notes on the Code of Practice for Temporary Traffic Management below).

Making emergency street changes

- In response to COVID-19, many transport authorities around the world quickly responded by making rapid street changes to enable safe physical distancing, and to give people better transport options (e.g. improving options for cycling, to avoid needing to travel by car and/or public transport).
- In New Zealand, there is a lack of legal clarity on the ability of RCAs to rapidly make street changes in emergency situations such as pandemics or major disruptions to the energy/transport system.

⁴ LGA(1974)

⁵ Transport (Vehicular Traffic Road Closure) Regulations 1965

⁶ LGA(1974)

- There is an opportunity to give RCAs clear powers to make rapid street changes in emergency situations.

Enforcement

- There are inadequate enforcement measures to deter people from disobeying temporary street changes, altering or damaging devices used to create experimental street changes, or driving/parking private vehicles in pedestrian malls. This can create safety hazards for other road users and negatively impact communities' perceptions of tactical street projects.
- Enforcement requires police prosecution, and a lengthy and expensive process through the courts.⁷

In addition to these significant issues, RCAs also noted that current regulations make it unnecessarily difficult to create pedestrian malls⁸ and to install bus shelters⁹. Current traffic flow regulations can also prevent road space from being reallocated to Special Vehicles Lanes (SVLs) such as bus lanes, and RCAs cannot enforce SVLs on stretches less than 50 metres long.

Broader issue: The Code of Practice for Temporary Traffic Management (CoPTTM),

- Many RCAs have also raised issues with the CoPTTM, which advises councils what safety measures on the road need to be taken before, during and after installing a street/road change.
- While the CoPTTM only provides guidance (so regulatory change is not needed to amend it), RCAs rely heavily on this document because it sets detailed requirements for temporary traffic management. RCAs raised many concerns with the CoPTTM, with some viewing it as a substantial barrier to tactical urbanism and placemaking projects.
- Waka Kotahi is currently reviewing the CoPTTM and is working to produce a New Zealand guide to temporary traffic management. Waka Kotahi has brought the CoPTTM team into the wider project team working on Reshaping Streets to ensure any changes are well-aligned with the future regulatory framework.

⁷ For example, Section 336(7) of the LGA(1974) only provides for enforcement of pedestrian mall breaches by way of prosecution, which makes them impractical and cumbersome to enforce. Similarly, people cannot be issued with an infringement notice or fined a penalty if they damage devices used for temporary/experimental street changes.

⁸ The powers for RCAs to create pedestrian malls are contained in the LGA(1974). This requires local authorities to use the special consultative procedure outlined in section 83 of the LGA(2002). It also allows any person to appeal that decision to the Environment Court within one month of a local authority deciding to create a pedestrian mall.

⁹ Installing a bus shelter requires a high degree of consultation under the LGA1974, Part 21, Section 339.