

Transport for NSW

By email to: roadsactfeedback@transport.nsw.gov.au

Re: Roads Act 1993 Review

I am pleased to provide the comments below in response to the Issues Paper. I support the four key reform objectives, particularly the objective for more contemporary uses for roads and streets that are safe and responsive to community needs.

Transport for NSW is to be commended for the steps that have already been taken to meet changing community needs and expectations, including:

- Commitment to Vision Zero (NSW Road Safety Strategy 2012-2021)
- Movement and Place (2017)
- Providing for Walking and Cycling in Transport Projects policy (2021)
- Adoption of and updates to the Road User Space Allocation policy and the accompanying Road User Space Allocation Procedure (2021, 2024)
- Future Transport 2056 (2022)
- Active Transport Strategy (2023)
- Strategic Cycleway Corridors program (2023)
- Design of Roads and Streets manual (2023)

This review is an important opportunity to extend that work. I note that the review of the Roads Act is intended to continue until 2026, and I look forward to further opportunities to participate.

In summary, I make the following points:

1. The objects of the Roads Act and related legislation should be revised to reflect the importance of transport beyond simply providing passage and property access, with clear goals around social, economic and environmental sustainability. Passage and access must be provided in ways that maximise safety, efficiency and sustainability.
2. Provisions should be introduced to structure decision-making (including by Transport for NSW, roads authorities, Local Traffic Committees and the Minister) to ensure that objectives are met. Every decision must be made to achieve safety, efficiency and sustainability, prioritising mode shift. The road user hierarchy must be a core part of all decision-making.
3. Legislative targets should be introduced to accelerate progress on key policy goals around mode shift, safety and provision of safe infrastructure. This should include long term targets for reductions in the share of trips by private cars, reductions in deaths and serious injuries and increases in kilometres of cycleways and safe main

streets. There should also be requirements to set targets at regular intervals and to develop regulatory and policy measures to meet those targets.

4. Provisions should be introduced to integrate transport and land use planning, recognising the significant reforms to introduce lines of sight across the planning system.
5. Transport's current authority (e.g. under s 74(1)) to set standards must be used proactively to advance mode shift and safety.
6. Delegations facilitating infrastructure for active transport and street activations should be entrenched and extended.
7. Provisions should be introduced to provide meaningful opportunities for public participation in transport planning.
8. Language in the Roads Act must be updated in line with current evidence.

These are outlined in more detail below.

My expertise

I am Professor in the Faculty of Law and Justice at UNSW Sydney. I teach planning, property and environmental law, and in my research focus on urban governance and particularly governance for sustainable mobility. I have qualifications in Architecture and City Policy as well as Law. My book, *Owning the Street: The Everyday Life of Property* (MIT Press, 2020) examines changing attitudes to kerbside car parking, and I have led and contributed to multi-disciplinary research teams examining issues including food delivery cycling and electric vehicle charging.

My submission draws on professional experience including roles in planning and transport planning (including work on the award-winning Travel Smart program in WA), on state and local planning and design review panels (notably the Sydney Eastern City Planning Panel and the City of Sydney Local Planning Panel), as a member of the Independent Liquor and Gaming Authority (ILGA, exercising regulatory functions under legislation including the *Liquor Act 2007*), and as Acting (part time) Commissioner in the Land and Environment Court, determining matters under the *Environmental Planning and Assessment Act 1979* (EPA Act), the *Roads Act 1993*, and other related legislation. I make this submission in my capacity as Professor at UNSW, and do not purport to represent the Land and Environment Court or ILGA.

- 1. The objects of the Roads Act and related legislation should be revised to reflect the importance of transport beyond simply providing passage and property access, with clear goals around social, economic and environmental sustainability. Passage must be safe, efficient and sustainable.**

The objects of the Roads Act do not reflect the importance of roads as the foundation of our transport system. Passage and access can be provided in many ways; it is essential that choices between different options are made to further the interests of the NSW community now and into the future.

As recognised throughout the Issues Paper, roads are crucial for social, economic and environmental sustainability. For too long, roads have been allocated and regulated to prioritise travel in private cars. This creates threats that are: *extreme* (traffic crashes are the

leading killer of Australian children, and cause over 1.35 million deaths globally every year¹); *existential* (transport is the second biggest emitter of greenhouse gases (23% globally and predicted to double by 2050, with 72% from road vehicles²)); and *everyday* (congestion is predicted to cost Australia \$53 billion by 2031³). Vulnerable and marginalized communities bear a disproportionate share of these burdens, locally and globally.⁴ While electric vehicles (EVs) may address some concerns, many will remain: congestion, crashes, health impacts from sedentary lifestyles, particulate pollution (tyres, brakes), and vast areas of land dedicated to cars, escalating costs of housing, infrastructure and services.⁵

The urgent need for change in the allocation and regulation of road space (how much is shared or allocated to particular uses, how this is enforced) is recognised locally and globally, detailed in approaches like Vision Zero, Safe System and Movement & Place. Internationally, Sustainable Development Goal 11 commits to “safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons” (11.2).

Roads are significant not only for transport, but as a vital form of public space.⁶ Worldwide, a third of all developed urban land is devoted to roads;⁷ the Issues Paper notes that roads form 80 percent of public spaces in NSW. Roads define and direct our lives, extending far beyond the journey to provide access to employment, education, health and activities fundamental to our quality of life. As recognised in the Issues Paper, roads consume an enormous share of government budgets: \$6.1 billion by the NSW government in 2022-23, \$1.7 billion by the Commonwealth in NSW in 2021-22. To maximise the benefit of this public investment – and avoid expensive mistakes – new objects are essential.

New objects must ensure that all decisions are made to advance *safety*, *efficiency* and *sustainability*, prioritising *mode shift*.

Within the overarching goals of safety, efficiency and sustainability, the objectives should also ensure that the following are prioritised:

- **Mode shift.** All decision-making needs to contribute to achieving a shift away from private cars toward active and public transport.
- The **road user hierarchy** set out in the Road User Hierarchy and Transport for NSW Road User Space Allocation Procedure: 1) people spending time; 2) walking; 3)

¹ WHO, *Global Status Report on Road Safety 2018* (World Health Organization, 2019) <https://www.who.int/violence_injury_prevention/road_safety_status/2018/en/>; Australian Institute of Health and Welfare, *Deaths in Australia* (Australian Institute of Health and Welfare, 2021) <<https://www.aihw.gov.au/getmedia/743dd325-7e96-4674-bb87-9f77420a7ef5/Deaths-in-Australia.pdf.aspx?inline=true>>.

² UN Environment Programme, ‘Sustainable Transport and Air Pollution’ (2020) <<https://www.unenvironment.org/explore-topics/resource-efficiency/what-we-do/cities/sustainable-transport-and-air-pollution>>.

³ Infrastructure Australia, *Australian Infrastructure Plan* (2016) 6.

⁴ Graham Currie, Janet Stanley and John Stanley (eds), *No Way to Go: Transport and Social Disadvantage in Australian Communities* (Monash University ePress, 2007) (‘No Way to Go’); Mimi Sheller, *Mobility Justice: The Politics of Movement in the Age of Extremes* (Verso, 2018) (‘Mobility Justice’).

⁵ Jason Henderson, ‘EVs Are Not the Answer: A Mobility Justice Critique of Electric Vehicle Transitions’ [2020] (110) *Annals of the American Association of Geographers* 1993 (‘EVs Are Not the Answer’).

⁶ Amelia Thorpe, *Owning the Street: The Everyday Life of Property* (The MIT Press, 2020) (‘Everyday Ownership’); Amelia Thorpe, ‘Reclaiming the Streets? Possibilities for Post-Pandemic Public Space’ (2021) 92(1) *Town Planning Review* 75.

⁷ Michael Southworth and Eran Ben-Joseph, *Streets and the Shaping of Towns and Cities* (Island Press, 2013) 5 <<http://www.vlebooks.com/vleweb/product/openreader?id=LeedsUni&isbn=9781610911092>>.

cycling; 4) public transport; 5) freight and services; 6) private vehicles and point to point.

- The **safe system** approach, recognising that people make mistakes and the transport system must allow for this. The responsibility for safety is shared, and should not be individualised. Roads authorities must lead to ensure that the road network is safe and equitable.
- **Climate resilience and ecological sustainability**, recognising the vital roles the road network can play in climate mitigation and adaptation, urban heat, biodiversity protection and flood planning.
- **Equity and accessibility**, including compliance with standards for universal design and gender-sensitive planning.
- **Public health**, including reducing vehicle-related pollution as well as encouraging healthy, active lifestyles to avoid the significant health burdens associated with excessive car use.

The objects of the Road Transport Act 2013 and Transport Administration Act 1988 should be similarly updated. Alternatively, and preferably, the three Acts should be revised and replaced with a single, integrated Act.

2. Provisions should be introduced to structure decision-making (including by Transport for NSW, roads authorities, Local Traffic Committees and the Minister) to ensure that objectives are met. Every decision must be made to advance safety, efficiency and sustainability.

To support the objects of safety, efficiency and sustainability, more guidance is needed to structure decision-making under the Roads Act and related legislation. This must also embed the road user hierarchy, safe system, climate resilience and ecological sustainability, equity and accessibility, and public health.

The **Avoid-Shift-Improve** framework should be central to all decision-making.⁸ For any project involving road building or widening, the four tests used by the Welsh Government should be applied so that road investment will be considered only if the project will:

- Reduce carbon emissions and support a shift to public transport, walking and cycling
- Improve safety through small-scale change
- Help the government adapt to the impacts of climate change
- Provide connections to jobs and areas of economic activity in a way that maximises the use of public transport, walking and cycling.⁹

Section 59 of the Roads Act specifies matters for consideration by Transport for NSW in making recommendations to the Minister regarding the making of orders for the classification of roads and other matters. These are very brief in contrast to similar provisions in other legislation: the matters for consideration by consent authorities under s 4.15 of the EPA Act, for example, give much more weight to issues needing consideration to ensure good decision making on planning matters. The Roads Act needs to provide much more guidance to ensure that safety, efficiency and sustainability are prioritised and

⁸ Transformative Urban Mobility Institute, 'Sustainable Urban Transport: Avoid-Shift-Improve (A-S-I)' (2023) <https://www.transformative-mobility.org/wp-content/uploads/2023/03/ASL_TUMI_SUTP_iNUA_No-9_April-2019-Mykme0.pdf>.

⁹ Welsh Government, 'Putting the Brakes on Carbon Emissions, Steering towards Alternative Solutions and Driving towards Net Zero by 2050' <<https://www.gov.wales/putting-brakes-carbon-emissions-steering-towards-alternative-solutions-and-driving-towards-net-zero>>.

achieved. Similar guidance is necessary also for the many decision-making powers under the Roads Act and related legislation for which no guidance is provided at all.

The Transport Administration Act sets out, *inter alia*, the functions and objectives of Transport for NSW and other agencies. The objectives of TfNSW in section 3D can be strengthened significantly to provide much clearer guidance. For example, instead of promoting integration between different modes of public transport (3D(c)), there should be integration of all modes across the transport system. Instead of promotion efficiency in the delivery of transport infrastructure projects (3D(d)), the goal should be for an efficient transport system overall. Similarly, instead of safe public transport and freight services (3D(e)), safety of the transport system as a whole. There should be an over-arching objective for a safe, efficient and sustainable transport system. The functions for Transport for NSW in Schedule 1 should also be more prescriptive, setting more ambitious goals to achieve a safe, reliable and efficient transport system rather than simply promote aspects of this.

The need to structure decision-making extends beyond the Roads Act, Road Transport Act and Transportation Administration Act: Transport for NSW, the Minister and Roads Authorities also make important decisions under other legislation, including the EPA Act, the Environmental Planning and Assessment Regulation 2021 (EPA Regulation) and environmental planning instruments. For example, Transport makes decisions with significant impacts on transport and land use more generally under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*. Clearer criteria for decision-making by Transport for NSW under the Roads Act could play an important role in guiding those decisions to advance the interests of the NSW community.

- 3. Legislative targets should be introduced to accelerate progress on key policy goals around mode shift, safety and provision of safe infrastructure. This should include long term targets for reductions in the share of trips by private cars, reductions in deaths and serious injuries and increases in kilometres of cycleways and safe main streets. There should also be requirements to set targets at regular intervals and to develop regulatory and policy measures to meet those targets.**

It is widely recognised that our transport system is currently unsustainable, and requires a reduction in the share of trips made by private car. This is reflected in multiple plans and policies across all levels of government, yet progress has been slow. The failure to reduce the share of trips made by private cars results in a series of related failures: most significantly, we are failing to reduce road trauma and to reduce greenhouse gas emissions.

To achieve these goals – and the significant social, environmental and economic benefits that mode shift would bring – provisions should be introduced into the Roads Act setting targets for mode shift. This should include an ambitious long term target as well as short term targets, which should be prepared by all roads authorities. Just as road network plans should be consistent with land use plans and include local plans that give effect to higher level strategic plans, there should be local targets made by local roads authorities that reflect local opportunities for mode shift. There must be requirements at regular intervals to review and strengthen interim targets, and there must be requirements for Transport for NSW and other roads authorities to develop regulatory and policy measures to achieve the interim targets. This should involve a rate of at least 5% per year, in line with the Climate Council’s Shifting Gears recommendation. Mode shift should also include freight. In Europe,

substantial progress has been made in shifting to cargo bicycles for last mile delivery;¹⁰ there are significant opportunities to make similar shifts in NSW.

Targets with a similar nested model of long term and interim, overall and local, should also be introduced to reduce the number of people killed and seriously injured on our roads and to increase the provision of infrastructure for cycling and walking. This should include an interim goal for a reduction of at least a 50% in deaths and 30% serious injuries on NSW roads, in accordance with the 2026 Road Safety Action Plan. On active transport infrastructure, this should include at least 1000km of new cycleways and 50km of safe main streets by 2028 in line with the NSW Active Transport Strategy. Targets and progress against them must be published regularly.

4. Provisions should be introduced to integrate transport and land use planning, recognising the significant reforms to introduce lines of sight across the planning system.

The Issues Paper recognises that there is no legislative basis or framework for roads authorities to plan road networks, resulting in an approach that is reactive rather than strategic (p. 14). This is a very significant gap.

The Roads Act should be reformed to introduce a strategic approach, and to ensure that this strategic approach in transport planning is integrated with land use planning. There is an extensive literature emphasising the crucial importance of transport and land use integration for social, economic and environmental sustainability. This is also recognised in policies and programs including Movement and Place, the Transport Oriented Development Program and goals for 15-minute neighbourhoods.

Extensive work has been undertaken to make planning in NSW more strategic. A series of reforms over the past two decades have created clear lines of sight between district, regional and local planning under the EPA Act. For example, section 3.3 provides for the making of district strategic plans, s 3.8 provides for the making of regional strategic plans which give effect to these, and s 3.9 in turn provides for the making of local strategic planning statements which set priorities consistent with regional plans. The EPA Act also requires consideration of strategic planning by other parts of government in those strategic planning processes (e.g. sections 3.3, 3.4).

The Roads Act should be reformed so that transport planning is contained within these lines of sight, with requirements for road networks to be planned and operated consistently with strategic plans prepared under the EPA Act.

Other reforms to planning practice can also strengthen this. For example, the NSW Planning Portal – which is an excellent resource bringing a range of planning tools together in one place – should include road classifications. The ability to see transport and land use planning together will make it much easier to ensure that decision-making is complementary and advances strategic objectives in the public interest.

¹⁰ Techane Bosona, 'Urban Freight Last Mile Logistics—Challenges and Opportunities to Improve Sustainability: A Literature Review' (2020) 12(21) *Sustainability* 8769 ('Urban Freight Last Mile Logistics—Challenges and Opportunities to Improve Sustainability').

5. Transport's current authority (e.g. under s 74(1)) to set standards must be used proactively to advance mode shift and safety.

There is an urgent need to reshape road infrastructure in NSW to make better provision for pedestrians and cyclists. Significant action is necessary to achieve the goal set out in the Active Transport Strategy to double walking and cycling trips by 2044.

Active transport infrastructure must be mandated as part of all road works. A similar policy was introduced by public vote in Los Angeles, and has been widely praised as a significant initiative to shift transport planning in one of the world's car dominated-cities:

<https://yesonhla.com/>. All NSW road projects must align with goals for safety, equity and efficiency, all of which require must greater progress in achieving mode shift. Walking and cycling infrastructure must meet clear minimum standards, and must be designed to be separated and intuitive. The need for intuitive infrastructure is a key finding in my research with food delivery cyclists: infrastructure must make it clear what is required and easy to follow road rules.¹¹

6. Delegations facilitating infrastructure for active transport and street activations should be entrenched and extended.

The current temporary delegations enabling councils to quickly introduce improvements for walking, cycling, safety and public amenity should be made permanent and extended.

New provisions should allow councils to lower speed limits where aligned with movement and place objectives.

New provisions should also be introduced to allow temporary road closures for a wider range of community purposes beyond commercial dining spaces and street vending (as provided under ss 125 and 139A of the Roads Act), and the definition of roads events should be broadened to enable permits for temporary road closures (s 144) for community uses. During my research in California, I saw many community events on public roads. Permits were available through a very simple and cheap process (approximately \$10 and taking only a few days), and were frequently used for events as small as children's birthday parties. These kinds of activations could provide very significant benefits to NSW and should be encouraged.

7. Provisions should be introduced to provide meaningful opportunities for public participation in transport planning.

In moving to a more strategic and integrated approach to transport planning, the Roads Act should also be revised to incorporate meaningful opportunities for public participation. There is already an emphasis on community needs and expectations in the existing Roads Act and the Issues Paper, provisions for public participation would enable community views to be incorporated in a responsive way. For example, instead of requiring landowners affected by a potential road widening to be notified, there should be a requirement for a much broader notification of people potentially impacted. There should also be wider provision for appeals, including merit appeals and open standing. Similar provisions for

¹¹ Amelia Thorpe et al, 'Infrastructure, Regulation and the Experiences of Delivery Cyclists in Australian Cities' [2024] (1) *Nature Cities* 760.

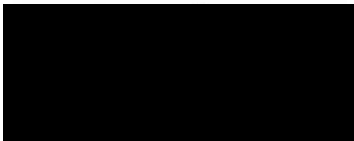
notification and appeals are widely recognised as important to the EPA Act,¹² and could significantly strengthen transport planning in NSW. Public participation is widely recognised as essential to good planning.¹³

8. Language in the Roads Act must be updated in line with current evidence.

Finally, I note that the language of the Roads Act must be updated to reflect current. For example, references to “accidents” must be replaced with “crashes”. The notion of accidents is inconsistent with the safe system approach and with the positive duty that Transport for NSW and all roads authorities must bear to create a safe road network. Section 50 provides for the declaration as a secondary road of “any public road that, by carrying a substantial amount of through traffic, relieves a neighbouring main road of traffic”. This is also inconsistent with current evidence, which shows that road building does not relieve traffic but instead *increases* it through what is known as “induced demand”.¹⁴

I would welcome the opportunity to discuss any of these recommendations in more detail, and can be contacted at a.thorpe@unsw.edu.au.

Yours faithfully,



Professor Amelia Thorpe
Faculty of Law and Justice

¹² Amelia Thorpe, ‘Participation in Planning: Lessons from the Green Bans’ (2013) 30(2) *Environmental and Planning Law Journal* 93.

¹³ Sherry R Arnstein, ‘A Ladder Of Citizen Participation’ (1969) 35(4) *Journal of the American Institute of Planners* 216; Amelia Thorpe, ‘Rethinking Participation, Rethinking Planning’ (2017) 18(4) *Planning Theory & Practice* 566.

¹⁴ Robert Cervero, ‘Induced Travel Demand: Research Design, Empirical Evidence, and Normative Policies’ (2002) 17(1) *Journal of Planning Literature* 3 (‘Induced Travel Demand’).