

Transport for NSW
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Dear Sir/Madam

ROADS ACT 1993 REVIEW

Thank you for the opportunity to provide feedback to the Roads Act 1993 Review and specifically the Transport for NSW Issues Paper.

The broad range of issues discussed in the Issues Paper are of interest to Council, particularly to reduce confusion and inefficiency relating to the management of the local road network. The paper highlights the fact that this legislation, now more than 30 years old, is the central part of a complex web of related/subordinate legislation, regulations and Delegation to Councils. There has been a paradigm shift in transport management and planning over the past 30 years, from a more traditional vehicle-based approach to one that recognises a broader use of roads and streets, not only for movement but placemaking outcomes.

We feel that there is opportunity as part of this review to make positive changes to the Act, to better reflect the contemporary use of roads and streets, simplify its use, reduce inconsistency/uncertainty and to remove outdated references that no longer reflect current practice.

Council has compiled responses to the questions posed in the Issues Paper from across our various teams in the table attached. We look forward to opportunity for further engagement as the review progresses.

This letter is authorised by

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4.0	<p>a. What is currently working well?</p> <p>Please provide examples of what is currently working well when working under the Roads Act 1993</p>	<p>a. The Act does seek to clarify roles and responsibilities between TfNSW and other roads authorities (e.g., Councils). However, recent observations have seen responsibilities shift further to Councils with little to no notice and no additional resourcing support. The temporary delegations given in 2023 to Councils is a step in the right direction and seems to be working well – however, this is authority given by exception (under Part 8 Division 2) rather than embodied in the Act.</p>
4.1	<p>a. How could the Act be changed to enable more community uses for roads and streets? (select all that apply)</p> <ul style="list-style-type: none"> • Define the different objectives for roads and streets • Include outcomes for safety, public health and the environment in the objects of the Act • Simplify the types of roads and streets defined in the Act • Include desired outcomes for the design and operation of local streets and civic spaces • Other (please specify) 	<p>a. All of the above. In relation to simplifying the types of roads and streets, the classification of roads in Part 5, Div 1 is complex and doesn't readily relate to the functional use of roads/streets as outlined in the Movement & Place Framework. The legislative road classifications are also not well defined – even the Dictionary of the Act doesn't have a definition of exactly what the classifications mean. They also don't relate directly to the administrative classifications of State, Regional and Local.</p> <p>As an example, a classified main road may pass through a town centre, so would be a 'high street' category in the M&P framework. Council may wish to improve 'place' aspects by installing certain treatments on the road and verge, but TfNSW is the roads authority. Typically, TfNSW would be unlikely to take on placemaking work like this as their prime focus is movement efficiency – who would be responsible to initiate & deliver these outcomes? Councils interested in placemaking and connecting communities etc, but is it their responsibility to design and pay for treatments that improve place outcomes on these roads? It would be good if the Act covered not just traffic management but more broadly recognised the full movement as well as place functions that a road or street has.</p>
	<p>b. How can safety be better considered in the planning, administration and management of roads?</p>	<p>b. A lot comes down to funding for safety improvements. Historically Councils have applied to State/Federal Government for funds to deliver these (blackspot etc). Given the vast amount of roads Councils are responsible for (90%), they are only scratching the surface of safety without State assistance. Whilst it is understood that funding arrangements are out-of-scope for the review of the Roads Act, the Act essentially sets out road classifications and responsibilities between road managers and therefore</p>

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		indirectly the financial implications. There needs to be a re-think of the distribution of responsibility and how this impacts the ability to achieve desired safety outcomes on the network.
	c. How can the Act better recognise the public health and environmental benefits of roads and streets?	c. It would be good if the Act included the broader public health & environmental benefits of roads and streets in its Objects. Recognising the fact that streets are not just for traffic movement, but are in fact part of the environment and have value as a place, would be ideal.
	d. What other community issues would you like to raise in relation to the Act?	<p>d. Section 142 of the Road Act has been considered in the context of driveways and other 'crossings' that a resident utilises to access their own property. This section is often referred to in terms of the person who is benefitting of the crossing, being responsible for its maintenance and upkeep. Councils regularly receives claims about tips and falls on unmaintained or modified driveway surfaces, and while S142 (1) and (2) seems to imply that the person benefitting from the structure over the public road (say such as a driveway or set of stairs) is responsible for its maintenance and upkeep, subsection (3) undermines this by stating: <i>"Subsection (1) does not apply to a person whose right to the control, use or benefit of a structure or work consists merely of a right of passage that the person has as a member of the public or a right of access that the person has as the owner of adjoining land."</i> People only use the driveway or stairs as a right of passage. As Roads don't have private property 'restrictions' as utilised under the Conveyancing Act, the roads act only applies to roads, which makes this statement (sub clause 3) very open ended.</p> <p>Both Council's and TfNSW own lawyers have raised concern that S142 of the Roads Act is unclear in terms of responsibility. There are examples of development approvals on classified roads where TfNSW have requested Council's place restrictions on title (of a residential lot) to make sure the resident is aware that they are responsible for the driveway's maintenance. This should not be the outcome.</p> <p>It is requested that:</p>

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		<ul style="list-style-type: none"> - Section 142 of the Roads Act be improved to clearly indicate that those that benefit from any structure to access their property from a public road is responsible for its upkeep and maintenance, particularly where they are the only ones benefitting from it (not the broader community). Subsection 3 needs to be removed or updated so it no longer is ambiguous nor undermines the intent of points 1 and 2. - That the amended clause provide the Road Authority a mechanism to compel the property owner to affect repairs when a driveway is considered unsafe. - That the amended clause provide the Road Authority a mechanism to recoup costs from the property owner should the owner not comply with a direction to make repairs, or should the matter be an emergency and require immediate intervention.
4.2	a. How can The Act be improved to ensure that it considers each category of road user?	<p>a. The Act, whilst recognising ‘all road users’, historically focusses on vehicular traffic. It doesn’t mean that best practice approaches of designing/implementing roads & streets to best cater for all users (including active transport) can’t be achieved, but it indirectly steers practitioners to favour motorised vehicles through the language used. It would be preferred if the Act could include references to walking, cycling & staying eg sitting, playing, outdoor eating etc. There are also emerging technologies & travel modes that are not reflected in the legislation, eg e-scooters and e-bikes – perhaps this is something that could be better addressed through ARR 2014 updates.</p> <p>In terms of public transport planning, there seems to be a mismatch between the responsibilities of TfNSW versus Council in non-classified roads. In an urban release area context, how can Councils effectively plan local roads for bus access, when management of routes & service planning are the domain of State Government? Council has no power to accelerate the delivery of public transport service planning or infrastructure (eg bus priority measures etc). This results in a road being constructed, but then later down the track having to potentially be retrofitted by Councils to improve public transport. TfNSW should have more input/control over road design/management from the get-go, even though it may be a local (non-classified) road and Council is the roads authority as per the Act.</p>

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		<p>The Bus Industry Taskforce has made recommendations highlighting the responsibilities of Councils and their role as a roads authority in supporting bus operations on local roads. Whilst Councils can provide input into planning for bus operations on local roads, they have traditionally not been resourced or skilled to plan/manage public transport. The concern here would be that additional responsibility is thrown onto local Councils in this regard, with already very significant resource/workloads in managing the 90% of the road network. It would appear that the issues relating to Transport's oversight of local roads and engagement with Councils relating to bus operations is something that should be investigated & improved, such that the management & planning of public transport is centralised under TfNSW, with Councils providing input as required.</p> <p>In terms of freight, agree that the Act should ideally call out the road authority to consider identified/planned HV routes in regulating traffic. Whilst this is already a requirement (due diligence), it is not obvious and could be strengthened via the Act.</p>
	b. Share your personal experience in navigating the Act to provide for a specific group of road users.	<p>b. Cycling is only mentioned once in the Act regarding footpath use. Cycling is part of the vast majority of road/streets nowadays and the Act could be more inclusive of this mode. In Part 1(5) (right of passage) it states by 'foot, vehicle or otherwise'. The Dictionary doesn't include a definition of vehicle which should include bicycle. Does 'otherwise' include wheeled recreational vehicles? It is assumed so but is not clear. For disabled users, how does the Act cater for right of access along a public road? For example, if a road/footpath is too steep to allow for wheelchair access. How does the Disability Discrimination Act align with the Roads Act in this sense? Would this be covered by Part 1 section 5 (2)?</p>
	c. What other issues would you like to raise for accommodating all road users?	
4.3	a. What issues have you experienced due to overlapping classification systems to determine	a. All of the suggested issues

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	<p>roles and responsibilities for NSW roads? (select all that apply)</p> <ul style="list-style-type: none"> • Confusion between legal, functional and administrative systems • Hard to find which legal classification applies to which road segment • Confusion about who has authority for which segment of road • Too many legal classifications • Other (please specify) 	
	<p>b. How could the system of road classification in the Act be improved?</p>	<p>b. Road classification needs to be simplified and streamlined. Currently there are too many classifications and too much inconsistency (for example, Gardiners Rd as highlighted in the issue paper). Do we really need all of the classifications in the Act, eg 'secondary road' – can this just be a 'main road' or one of the other classifications? Better defining the legal classifications and aligning them with administrative & functional categories would help. The Roads Regulation 2018 should also be updated to ensure that there are no 'special cases' eg Gardiners Rd and simplify State versus Local accountabilities.</p> <p>Movement & Place framework sets out the functional classifications of roads and streets. It would be difficult to identify exactly what functional categories relate to the legal classifications in the Act – as an example, a main road may actually have different M&P functions along its length, it may be a 'high street' through a town centre but then become more of a movement corridor outside of the town centre. The functional classifications are used separately to help plan and design roads to best fit the environment and desired outcomes. It is unclear how the Act could better align with M&P, other than to allow for Councils to more easily regulate traffic to achieve</p>

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		placemaking objectives on local roads (already largely addressed through the temporary delegations).
4.4	<p>a. What issues have you experienced with parallel approval processes under the NSW planning system and the Act?</p> <ul style="list-style-type: none"> • Extra time/cost associated with parallel Roads Act 1993 approvals • Confusion with different processes for the Roads Act 1993 and land use related approvals • Conflicting advice from roads and land use agencies or areas of council • Other (please specify) 	a. N/A – relying on City Strategy/Legal etc for comments on this section
	b. Can you provide further information on the issues you have experienced?	b. N/A – relying on City Strategy/Legal etc for comments on this section
	c. If you've experienced differences in approach to road network planning and land use planning, how have these affected your work?	c. N/A – relying on City Strategy/Legal etc for comments on this section
4.5	<p>a. How could the Act make roles and responsibilities clearer for decision making? (select all that apply)</p> <ul style="list-style-type: none"> • Agree to how the network is operated between road authorities • Less focus on individual regulatory signs and lines on local neighbourhood streets with low traffic volume • Codify 30-year-old practices that work in the Delegation into the Act 	<p>a. All of the suggested issues are agreed with. In addition, more clarity on the road work TfNSW can carry out on "unclassified roads" and "local access roads". There is no information on the process involved in collaborating with Council concerning adjoining local road layouts. Does this mean that TfNSW can realign kerb/gutter and build stormwater infrastructure on local roads with no consultation and handover? If TfNSW wish to build a new roundabout on a state road, what is the approval process for the associated legs of the local Council road (eg proposed new drainage infrastructure, kerbs, paths etc)?</p> <p>As an example, recently as part of the TfNSW Bulli Town Centre Improvements project, new infrastructure such as raised pedestrian crossings are proposed on local Council</p>

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	<ul style="list-style-type: none"> • Align network plans with decision making roles based on risk and network implications • Other (please specify) 	<p>roads. We would like to understand better how the Act provides for consultation, delivery and handover of assets to Council in this case. The s138 provisions state that consent of the ‘appropriate roads authority’ is required – in this case, is TfNSW required to seek approval/agreement from Council (being the local road authority), or can they just complete the works regardless of Council’s input? Is s138 the relevant part of the Act that would apply in this scenario?</p> <p>Schedule 2, Part 2, section (5) states “Section 138 does not require a public authority, or a network operator under the Gas Supply Act 1996 or the Electricity Supply Act 1995, to obtain a roads authority’s consent to the exercise of the public authority’s or network operator’s functions in, on or over an unclassified road other than a Crown road”. In practice, we have seen s138 applications come through from the gas network operator concerning traffic implications (TGS). How can we ensure the quality of the Traffic Guidance Scheme (TGS) being implemented on local roads?</p>
	<p>b. Describe your experience of using the Delegation to Councils and any improvements which could be made.</p>	<p>b. As part of Development Assessment, developers need to get Local Traffic Committee approval for certain roadworks proposed as part of their development. Problems can arise once the applicant has their approval with conditions applied including that LTC approval is required for the works on road, but then LTC doesn’t approve the item. Sometimes changes can be made and LTC approval ultimately sought, but this adds time and delays to the development. Worst case being that they can’t reasonably modify the plans to satisfy requirements for LTC approval. Where does this leave the DA? The alternative is that DA’s are held up whilst the plan is prepared and put to LTC for approval before the DA is determined – this can add 6 weeks or more to the approval process and LTC approval is not necessarily guaranteed. This has flow on implications to mandate DA turnaround times and community/developer expectations. There is a genuine need for fast more efficient road closures approvals from event organisers. The state government is pushing for faster approvals but has fallen behind with the Roads Act, the document does not reflect today’s environment and desired outcomes.</p>

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	c. Describe your experience of using the Temporary Delegation to Councils and if this approach is more streamlined to regulate traffic and deliver local street and place improvements.	c. The new Temporary Delegations to Councils are helpful in that they reduce the time and resources to deliver important works and to regulate traffic on the local road network. We no longer have to wait for the General Manager to sign off on traffic committee minutes and can send out works orders straight away to have works undertaken. This allows us to make decisions on our local network more freely and we believe that the temporary delegation should be retained permanently. The temporary delegation doesn't include in the schedule of functions anything relating to road closures for events or filming etc. There is some uncertainty around approvals for road closures in these cases – currently it would appear that Division 2 of Part 8 of the Roads Act would apply, thereby requiring consideration by LTC and Council approval, which can be a time consuming process. It would be beneficial if the temporary delegation considered inclusion of road closures on local roads to simplify the process in approving events on roads, which are becoming more popular since Covid to increase community & placemaking outcomes.
4.6	a. What improvements can be made to the Act to increase flexibility in response to natural disasters?	a. To improve flexibility in response to natural disasters, the ambiguity in wording used in the Act should be addressed. The reference to “along or near the line of the road” is vague and there would be some uncertainty as to how far from the line of the road a temporary alternate road could be provided. Section 175 (5) outlines when a roads authority does not need to issue a notice to the adjoining occupier of the land in cases of emergency or urgency. This is often the case with natural disasters where transport connectivity to cut off areas needs to be re-established as soon as possible. However, the reference in 175 (5) (a) to ‘reconstructing or repairing a particular road’ isn't clear that it includes construction of a temporary access road. If the natural disaster involves failure of a road that is closer than 15m from a dwelling house (eg retaining wall collapse or embankment failure), then the roads authority is not able to urgently enter the land to make necessary repairs – it has to seek written approval from the occupier or if not given, seek Ministerial authority. This may impact response times in emergency situations.

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	<p>b. How can the permit approval process for installing works and structures, undertaking road works, events and activities be made clearer and more consistent across all Road Authorities?</p>	<p>b. Permits such as ROL's and s138 approvals issued by Councils are made under the provisions of s138 of the Roads Act 1993. The Act is clear that a person must obtain consent prior to doing works on a public road. Whilst the act does not specifically recognise ROL's (for example), it is unclear how this is resulting in legal ambiguity. As part of the issue of an ROL by TfNSW, surely the permit to the applicant must state that the ROL permit is issued as a consent under Section 138 of the Roads Act? Should the Act therefore need to specifically call out the name of the permit? What if it changes in the future and no longer referred to as an ROL? The issues raised regarding transparency and consistency of the ROL process appear to be a concern that is outside the realms of the Act and something that TfNSW needs to formalise across their organisation.</p> <p>In terms of WADs, it is understood that these generally relate to the installation of traffic signals and works on State Roads. Perhaps an additional section could be inserted under s138 that specifies under what circumstances an applicant needs to apply to TfNSW for a WAD, as opposed to just getting more general consent for works in the road (ROL).</p> <p>Generally, most people do not understand the Roads Act 1993 although it is the primary reference of how and when you can close a road (eg for an event, roadwork etc). The Roads Act needs pull together all the mechanisms of closing a road so it easy to reference and understand. Currently they are in different sections/legislation, delegation to councils etc and hard to follow. It needs to incorporate how this is done on a local and state level, clearly stating the mechanism and not in vague terms.</p> <p>Section 115 of the Act allows for Council, as a local road authority, to regulate traffic for the purpose of enabling a public road to be used for an activity in respect of which a permit is in force under Division 4 of Part 9 (ie for a 'Road Event'). The definition of 'Road Event' refers to the Road Regulations definition, which states that it is either a filming project or a neighbourhood activity. Whilst the latter is well defined through the <i>Neighbourhood Activity Guidelines (TfNSW, 2022)</i>, filming projects can involve a broad range of activities on roads, so there is some room for some different</p>

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		<p>interpretation/requirements for different Councils. As an example, a filming project may require the closure of a significant length of road (eg for vehicle advertisements) – in this case, or when the location is close to traffic signals, on a bus route etc, traffic committee consideration and council approval should be required (similar to the delegation to Councils for regulation of traffic under Division 2 of Part 8 (Sections 116 to 119) of the Roads Act). There does not appear to be any relevant and contemporary guidance regarding what is required in terms of approvals for regulating traffic for filming on roads. Each Council may have its own filming protocol, with potentially varying requirements for road use approvals. A document similar to the Neighbourhood Activity Guidelines would be beneficial to help clarify this across road authorities.</p> <p>There is also some uncertainty regarding process for approval of road races, speed records and other speed trials as defined under the Road Transport Act 2013. This Act requires written approval of the Commissioner for Police for such events – generally these types of events require closure of some part of the road – does the commissioner’s approval mean that Council can then issue a permit to the race organiser? If a road closure is required, it is assumed that traffic committee/council approval is required? More explanation/clarification on this aspect would be beneficial.</p> <p>It would be ideal to have the Act updated and modernised for clarity on some of the sections our Property Team deal with mainly being part 9 and 10. At what point does it change from a s138 (construct) to a s153 (lease)? Assuming once the structure is completed and the road disturbance is complete.</p> <p>Legal advice we obtained includes:</p> <p><i>‘Section 138 of the Roads Act 1993 (the Act) requires a person to obtain Council’s consent to carry out the work or erect the structure etc on a public road.</i></p> <p><i>Section 153 of the Act allows a lease to be granted of “...land comprised a public road to the owner or lessee of land adjoining the public road...”.</i></p>

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		<p><i>No structure can be erected on the land the subject of the lease without consent. Consent can only be given if "...the roads authority is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can be easily be demolished or removed."</i></p> <p>Additional advice is as follows:</p> <p><i>'Section 138 is only relevant at the time of approving a structure, or other disturbance to a public road. Following construction of that structure, if it is not varied in any way then s138 no longer is relevant and s153 would be the mechanism to approve the lease of the particular section of road reserve, including any approved structures in that portion of road reserve.'</i></p> <p>Service authorities have the power to undertake works within the road reserve and other lands, subject to notification requirements and other clauses within their acts, regs and codes of practice. Within this legislation is typically the ability for Council's to recoup costs for repair works not completed by service authorities, but without any explicit mechanism to do so.</p> <p>It is recommended that the Roads Act be modified to include one or all of the following to allow Councils to better manage impacts to their assets:</p> <ul style="list-style-type: none"> - the ability to require a bond from the service authority or their contractor. This is a simple mechanism that allows Council to affect repairs should the service authority or contractor not undertake permanent restorations in a timely manner, or not affect them in accordance with Council's standards or industry codes of practice, or if the work is not fit for purpose. - The requirement to submit Traffic Guidance Scheme (TGS) to Council for comment.

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		the conflict between the provisions of the modified clause and the existing gas Supply Act, Water Supply Act and Power Supply Acts, specifically which act prevails.
	c. How could compliance and penalty frameworks be changed to address environment and safety compliance?	c. Part 14 of the Act deals with enforcement – nothing is explicitly mentioned regarding environmental matters in the Road Regulations 2018. As an example, Division 2 & 4 of the Roads Regulation 2018 refer to protection of the road (from vehicles/animals) and from neighbouring land, however, doesn't consider matters like removal of street trees. There could be more emphasis given to cases where the road environment is impacted or put at risk by actions either on or adjacent to the road. Possibly a multi-tiered approach similar to the Crown Lands management Act 2016 would be worthwhile – the 'civil' category may cover breaches requiring remediation where the environment has been impacted.
4.7	<p>a. What regulatory features should be tested to ensure the Act can accommodate emerging technologies and new approaches? (select all that apply)</p> <ul style="list-style-type: none"> • Ability to change the primary intended function or use of a street at different times of day or days of the year • Area wide speed zone reduction on local neighbourhood streets delegated to councils • Regulation of traffic on local neighbourhood streets and civic spaces delegated to councils • Other (please specify) 	a. All of the suggested approaches are agreed with. In addition, do we need legislation to inform the installation / approvals required for electric vehicle charging? There is no reference in the Roads Act 1993 to my knowledge, but it seems relevant.
	b. Which provisions in the Act and the Environmental Planning and Assessment Act could benefit from regulatory experimentation?	b. N/A – comments from City Strategy or Legal most relevant

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	c. How could these Acts better support new developments in sustainability?	c. N/A – comments from City Strategy or Legal most relevant

General Comment: references in the Act are outdated – there are a number of parts of the Act that require advertising in newspapers. As an example, in Part 8, Division 2, it states that the “roads authority must cause notice of the application to be published in a local **newspaper**”. These days newspapers are not the most efficient way to reach the public, it would be via internet, social media etc. In any case, this section of the Act is rendered not applicable for Council by virtue of the Delegation to Councils. It is suggested that these outdated references be removed from the Act and replaced by appropriate contemporary notification methods where relevant.