

Friday 28 March 2025

Ms. Susan Shaw
Strategic Policy Lead, Roads
Roads Act Review Project Team
Transport for NSW
231 Elizabeth Street
Sydney NSW 2000

RE: Transport for NSW – Roads Act 1993 Review

Dear Ms. Shaw,

The Urban Development Institute of Australia NSW (UDIA) is the state's leading development industry body. We represent the leading participants in the industry and have more than 450 members across the entire spectrum of the industry including developers, financiers, builders, suppliers, architects, contractors, engineers, consultants, academics and state and local government bodies.

UDIA NSW invests in evidence-based research that informs our advocacy to state, federal and local government, so that development policies are developed to best meet user needs and ensure critical investment is directed to where they are needed the most. Together with our members, we shape the places where people will live for generations to come and in doing so, we are city shapers.

UDIA NSW welcomes the opportunity to make a submission on the review of the Roads Act 1993. UDIA NSW is supportive of the four key reform objectives the review aims to achieve:

1. More contemporary uses for roads and streets that are safe and responsive to community needs.
2. Faster local decision making with appropriate mitigation to manage network risk.
3. A streamlined and easy to use statute that keeps pace with change.
4. A more operationally effective statute.

The UDIA NSW submission has responded to the questions that have been raised by TfNSW in their February 2025 Issues Paper, directly responding to the request for the issues paper to guide feedback.

The following is a summary of common themes and recommendations that members have raised from their feedback on the Roads Act 1993 review:

1. Strengthen Movement and Place policy within the Act to support contemporary decision making in road related matters.
2. Ensure clarity and guidance is integrated into legislation to determine hierarchy of road users for decision-making.
3. Improve consistency in conditions imposed under the Roads Act and planning consents to avoid contradictions.
4. Provide statutory guidance to clarify when Section 138 approvals (consent from the relevant road authority before any works or activities can commence), are required and how they interact with DAs.
5. Integrate Section 138 approvals with planning approvals where the consent authority is also the roads authority, reducing the need for a separate process.
6. Provide clarity on roles and responsibilities between Councils and TfNSW to ensure no confusion and ensure Council has parameters for decisions making for their road responsibilities.
7. Provide an easy to access reference for road classifications (e.g. web platform).
8. Provide improved criteria for when matters are required to be reviewed by Traffic Committees to ensure projects are not reviewed multiple times, for minor amendments that align with supported strategic outcomes.
9. Increase transparency and accessibility of legal review processes for Roads Act approvals, including administrative and merits appeal options.
10. Adjust penalty provisions to better reflect the impact of non-compliance, ensuring enforcement mechanisms are proportionate to the authority granted (may involve removing or increasing penalties dependant on the intended statutory weight to be given to these provisions).

The following is consolidated feedback on each of the specific questions asked by TfNSW in their Issues Paper:

4.0 (a) What is currently working well?

The Roads Act 1993 is functioning well by providing a straightforward statutory framework for road-related approvals. This mechanism ensures that works impacting public roads are subject to necessary regulatory oversight. Although the scope of the Act can be quite extensive, it effectively establishes a clear process for managing road-related projects and their impacts on public infrastructure.

Section 138 of the Roads Act 1993 is also proving beneficial by granting councils and road authorities the ability to impose conditions that help mitigate potential adverse effects from roadworks. This provision allows for tailored conditions that can address specific concerns arising from such projects. However, it is important to note that these conditions sometimes extend into areas more appropriately addressed under other statutory frameworks, such as the Environmental Protection Act. Despite this, Section 138 contributes positively to ensuring that road-related works are carefully managed, and their potential impacts are minimised.

4.1 (a) How could the Act be changed to enable more community uses for roads and streets?

To enable more community uses for roads and streets, the Roads Act 1993 should be amended to provide greater clarity between Roads Act approvals and land use or development approvals. This distinction would help avoid confusion regarding the scope and intent of each type of approval, ensuring that the community can more easily understand how public spaces, including roads and streets, can be repurposed for a variety of uses beyond traditional transport functions.

Additionally, the inclusion of guidance notes or explanatory provisions within the Act will help clarify how Section 138 interacts with planning and development approvals. Clearer guidance on this interaction will facilitate better coordination between road authorities and local councils, ultimately supporting the creation of more flexible and community-friendly spaces.

4.1 (b) How can safety be better considered in the planning, administration, and management of roads?

To better consider safety in the planning, administration, and management of roads, the Roads Act 1993 should be amended to provide clearer guidance on the conditions imposed under Section 138 approvals. Ensuring that these conditions are specifically related to safety, rather than being overly broad or unrelated to the actual impacts on the road, would help focus efforts on improving road safety and minimising potential hazards. This targeted approach would enhance the overall effectiveness of safety measures in roadworks projects.

Additionally, streamlining the approval process for road safety measures across different planning frameworks could significantly reduce delays and inconsistencies. By creating a more cohesive system for addressing road safety, multiple regulatory bodies could work in tandem to implement timely and coordinated safety interventions. This would ensure that safety considerations are integrated more efficiently throughout the planning and management of roads, ultimately leading to safer and more accessible road environments for all users.

The feedback in relation to safety must be specifically called out for all road users, with consideration not just for vehicle movements, but rather be related back to the key objectives of Movement and Place. Considerations should be broad, with examples such as timing of traffic signals in highly pedestrianised urban settings, supporting longer, more frequent pedestrian crossing times, over prioritised vehicle movements.

4.1 (c) How can the Act better recognise the public health and environmental benefits of roads and streets?

To better recognize the public health and environmental benefits of roads and streets, the Roads Act 1993 could be amended to incorporate considerations that align with broader public health and environmental objectives. This approach would be consistent with the Environmental Planning and Assessment Act 1979 (EPA Act), ensuring that road-related works are evaluated not only in terms of their infrastructure impact but also in relation to their broader implications for public health and the environment. For example,

the inclusion of requirements to provide shade and street trees would be a key consideration.

Incorporating such requirements would facilitate the integration of environmental and public health factors into roadworks projects, ensuring that these benefits are prioritized alongside traditional considerations such as traffic flow and road safety. Specifically, the role of street trees and shade must be carefully considered, as public spaces within streets can absorb significant urban heat. Street trees offer valuable opportunities for shade and cooling, contributing to healthier, more sustainable urban environments. Moreover, they support a range of environmental benefits, from enhancing biodiversity to improving urban stormwater management. By aligning the Roads Act with these objectives, roadworks could contribute to more sustainable, health-conscious urban planning.

<p>4.2 (a) How can the Act be improved to ensure that it considers each category of road user?</p>

The Act can be improved to ensure that it considers each category of road user by expanding its scope to specifically address the needs of pedestrians, cyclists, motorists, and public transport users. Currently, the Act does not adequately recognise the diverse requirements of all road users, especially those who are vulnerable, such as pedestrians and cyclists. By integrating provisions that prioritize safety for all categories of users, the Act can encourage the development of more inclusive road infrastructure and supporting Movement and Place.

The Act could also state how approvals under Section 138 relate to the broader planning framework, including land use approvals, traffic planning, and environmental considerations. Section 138, which pertains to the approval of works on or near public roads, could be enhanced by ensuring that its provisions align with other regulatory processes. By clarifying that roadworks, developments, or infrastructure projects must consider land use and traffic planning policies, the Act can help streamline the integration of transport projects into broader urban and regional planning goals.

4.3 (a) What issues have you experienced due to overlapping classification systems to determine roles and responsibilities for NSW roads?

One of the key issues arising from the overlapping classification systems for determining roles and responsibilities for NSW roads, is confusion between Roads Act approvals and other statutory schemes. This has led to misunderstandings about which works require approval and from which authority. The lack of clarity can create challenges for both road authorities and developers, as it becomes difficult to navigate the various regulatory requirements, often resulting in delays or unintentional non-compliance.

Another significant issue is the lack of transparency regarding the classification of roads. Currently, there is no centralised system that clearly outlines who is responsible for each road, creating further confusion and inefficiencies. Without a clear understanding of road classifications and ownership, it becomes challenging for stakeholders to know who to approach for approvals and who is accountable for the maintenance and management of different roads.

Additionally, the lack of integration between the Roads Act and planning approvals creates administrative inefficiencies and duplication. This is particularly problematic when a roads authority also functions as the consent authority for a Development Application. The overlapping responsibilities lead to redundant processes and may cause unnecessary delays in both roadworks and planning decisions, further complicating the approval process. A more streamlined approach would enhance efficiency and reduce administrative burdens for all involved.

4.4 (a) What issues have you experienced with parallel approval processes under the NSW planning system and the Act?

A significant challenge within the NSW planning system and the Roads Act lies in the separate treatment of Section 138 approvals, which are not considered "integrated development" when the roads authority also acts as the consent authority. This creates confusion for applicants, who often attempt to apply for both approvals simultaneously

as part of a single Development Application (DA). However, the lack of integration between these processes leads to unnecessary duplication, delays, and a fragmented approval pathway, even when both approvals relate to the same project.

Moreover, there is no clear statutory pathway to streamline the approval process between Roads Act approvals and planning consents. While applicants often seek to align these two processes, the imposition of standard conditions typically results in the need for a separate approval under the Roads Act. This disjointed approach further complicates the approval process, leading to inefficiencies, increased administrative burdens, and delays in project delivery.

Additionally, there is a pressing need for better alignment between land use planning and transport planning. This issue is compounded by the varying approaches taken by State and Local Governments, creating inconsistencies and a lack of clear frameworks. As a result, developers face significant uncertainty and a lack of clarity, leading to delayed housing delivery, extended project timelines, and increased costs for the industry. A more integrated and cohesive approach would reduce these challenges, enabling a smoother and more efficient approval process for both developers and road authorities.

<p>4.4 (b) Can you provide further information on the issues you have experienced?</p>

A significant issue that members have encountered is that developers and councils often do not fully understand the interaction between Section 138 approvals and planning approvals. This lack of understanding can lead to confusion, particularly in cases where a roads authority is also the consent authority. In these situations, Roads Act approvals are not processed as part of the Development Application, which can result in unnecessary delays and administrative complexities when road-related approvals need to be pursued separately.

Applicants also face uncertainty regarding the correct order of approvals. Many mistakenly assume that a DA approval automatically includes road works approvals, only to later discover that separate approvals are required, including those obtained

through the Local Traffic Committee. This misalignment leads to frustration and potential delays as applicants are forced to seek additional approvals after they believed the process was complete.

Furthermore, there is a lack of consistency in how roads authorities apply conditions to approvals, or sometimes no conditions are imposed at all. This inconsistency can create uncertainty for developers, as they are unsure what requirements will apply to their projects and can complicate the management and implementation of road works. Addressing these issues by clarifying the process and ensuring a more standardised approach to approvals would help reduce confusion and improve the efficiency of the approval process.

4.4 (c) If you've experienced differences in approach to road network planning and land use planning, how have these affected your work?

The lack of integration between road network planning and land use planning has had a significant impact on our members. Greater integration between these two areas, such as including road network planning in Local Strategic Planning Statements and ensuring that desired outcomes are reflected in Local Environmental Plans (LEPs), local policies, and planning decisions, would create much needed certainty for both applicants and decision makers. When road network planning is not adequately integrated with land use planning, it can lead to misalignments between proposed developments and the existing or planned road infrastructure, causing delays, confusion, and inefficiencies.

By incorporating road network planning into broader strategic and land use planning frameworks, stakeholders would be better equipped to anticipate and address potential issues early in the planning process. This would allow for more coordinated decision making, reduce the risk of conflicts between land use and transportation priorities, and ultimately streamline the approval process for projects. For applicants, this integration would provide clearer guidance on the relationship between land use proposals and the road network, improving both the efficiency of the planning process and the quality of the outcomes.

4.5 (a) How could the Act make roles and responsibilities clearer for decision-making?

To make roles and responsibilities clearer for decision-making, the Roads Act 1993 could be amended to better clarify how Section 138 approvals fit within the broader planning approval process. Specifically, the Act should explicitly outline the relationship between Roads Act approvals and planning approvals, ensuring that stakeholders understand the necessary steps and requirements for each type of approval.

The Act should allow for greater integration between development approvals and Roads Act approvals, particularly in cases where the consent authority is also the roads authority. This integration would streamline the process, reduce duplication, and provide more clarity for applicants, ultimately improving the efficiency of decision-making.

Additionally, the Act should include the development guidance materials for councils and applicants. These resources would help clarify how the various approvals interact, offering practical advice and examples to ensure that all parties are aware of their responsibilities and the proper procedures to follow. By providing clear, accessible guidance, the Act would help eliminate confusion and promote more consistent and informed decision-making across all levels of government and planning.

4.5 (b) Describe your experience of using the Delegation to Councils and any improvements which could be made.

The delegation of power to councils under the Act is generally useful, but it would significantly benefit from clearer and more consistent guidelines. There is often confusion surrounding the scope of the delegated power, including a lack of clarity regarding what the power entails and how it intersects with other relevant legislation, such as the Road Transport Act. A notable example of this confusion can be seen in *James v Inner West Council [2023] NSWLEC 1314*, where the application of these powers raised questions about their boundaries and relationships with other legislative frameworks. To improve the delegation process, a more detailed and consistent explanation of the powers, along with clearer guidance on their interaction with related

laws, would help reduce ambiguity and ensure smoother implementation at the council level.

4.6 (a) What improvements can be made to the Act to increase flexibility in response to natural disasters?

To increase flexibility in response to natural disasters, the following two ideas will help facilitate improvements in the Act and associated processes:

1. **Streamlined Processes for Emergency Road-Related Works:** Implement a more efficient and expedited process for authorising and completing road-related works during emergency situations. This would ensure that necessary infrastructure repairs or modifications can be carried out quickly to support disaster recovery efforts.
2. **Automatic Approval for Low-Risk Works:** Introduce automatic approval provisions for low-risk works, potentially modelled on the "development standards" framework used for exempt and complying development. This would allow for a faster response to urgent needs while maintaining safety and regulatory compliance, particularly for works with minimal impact on the environment or public safety.

These changes would help ensure a more agile and responsive system in times of crisis, allowing for critical infrastructure repairs and recovery efforts to proceed without unnecessary delays.

4.6 (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?

The introduction of a standardised approval process across all road authorities would provide much-needed consistency for applicants. Currently, the application process can vary significantly between different road authorities, leading to confusion and

uncertainty for those seeking approvals. A unified, streamlined process would allow applicants to better understand the steps involved, the necessary documentation, and the timeline for approval, ensuring a smoother and more predictable experience.

The Roads Act should include clear guidance on when approvals can be streamlined with planning consents. In many cases, approvals for road works or activities are already considered as part of broader planning processes. By providing guidance on when these approvals can be integrated or expedited, the Act could help reduce duplication of efforts and foster greater efficiency in processing applications. This would not only save time but also ensure that approvals are granted in a more coordinated and timely manner.

There should be further guidance on the conditions attached to such approvals. Currently, the conditions placed on permits can sometimes be unclear or inconsistent across different authorities. Clearer, more uniform guidance on what conditions is typically required would help applicants understand their obligations upfront, ensuring that there is less room for confusion or non-compliance. It would also allow road authorities to apply conditions more consistently, improving overall regulatory certainty.

4.6 (c) How could compliance and penalty frameworks be changed to address environmental and safety compliance?

The current penalty framework for non-compliance with Section 138 approvals is insufficient, as the penalties do not adequately reflect the significance of the approval or the potential consequences of non-compliance. Given the power of these approvals and the importance of ensuring safety and environmental protection, the penalties should be reviewed and adjusted to better align with the severity of the impact of non-compliance. In particular, penalties should be more closely tied to the specific risks associated with breaches, especially in instances where conditions have been imposed to safeguard public safety or the environment. A more robust penalty framework would serve as a stronger deterrent, ensuring that compliance is prioritised and that any violations are addressed in a manner commensurate with their potential harm.

4.7 (b) Which provisions in the Act and the Environmental Planning and Assessment Act could benefit from regulatory experimentation?

To enhance compliance and penalty frameworks with respect to environmental and safety considerations, several improvements could be made. Introduction of an administrative review or merits appeal mechanism for Section 138 approvals, similar to the appeals process under the Environmental Planning and Assessment (EPA) Act, would provide a transparent and accessible means of challenging decisions. This process should be expedited and affordable, as these approvals are often sought shortly before work is set to commence, requiring swift resolution.

The Act should establish a clearer framework for dispute resolution outside of the Supreme Court would improve both accessibility and fairness in decision-making. A more efficient alternative to lengthy court proceedings would allow stakeholders to resolve conflicts more effectively, reducing delays and ensuring more timely outcomes.

Consideration should also be given to automatic or deemed approvals, particularly for low-risk or low-impact matters. This would streamline the approval process, reducing unnecessary bureaucratic hurdles for minor works while still maintaining adequate oversight for more significant projects. These changes would foster a more efficient and equitable compliance and penalty framework, better aligning with both safety and environmental protection goals.

UDIA NSW welcomes the opportunity to provide this submission and is thankful for being invited for our ongoing role at workshops on both 28 March 2025 and 9 April 2025. UDIA NSW provides a further offer to TfNSW for ongoing meetings to collaborate as this important piece of work as it progresses in 2025. In the meantime, if you require further information about the contents of this submission, please contact David Petrie, Director Infrastructure at dpetrie@udiansw.com.au or on 0447 646 202.

Kind regards,



Hon. Stuart Ayres
Chief Executive Officer, UDIA NSW