

National Transport Commission

Easy access to suitable routes - Issues paper

LGA Submission

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Introduction

About the LGASA

The Local Government Association of South Australia (LGASA) welcomes the National Transport Commission's Heavy Vehicle National Law (NHVL) review and appreciates the opportunity to provide a response to the *Easy access to suitable routes, Issues paper*.

The LGASA is the voice of local government in South Australia, representing all 68 individual councils across the state. We provide leadership, support, representation and advocacy on behalf of South Australian councils, for the benefit of the community.

The LGA is a strong advocate for legislation and policies that achieve better outcomes for councils and the communities they represent. Councils are a partner in government and, with appropriate opportunities, can be part of the solution in addressing the challenges Australia faces in ensuring liveable, vibrant and economically prosperous communities.

This submission is informed by consultation with our member councils.

Local government as a partner in supporting heavy vehicle access

Local roads play an essential role in the efficient movement of freight. As local roads managers, councils are the custodians of this critical infrastructure on behalf of all road users, including residents, visitors, business and industry.

Since it was introduced in 2014, the NHVL has required every road manager to consent to heavy vehicle access on its roads. This has been welcomed by South Australian councils, and as local road managers they should continue to be the decision-maker through a system that includes general access and restricted access (including by notice, pre-approval and permits).

The Issues Paper appropriately acknowledges that the intention of requiring certain heavy vehicles to obtain authorised access is to reduce risks to public safety, to minimise negative effects of noise, emissions or traffic congestion, and to manage the impacts on public infrastructure. It is this holistic view that councils as road managers give when considering access authorised by permit.

However, it needs to be recognised that the NHVL was a significant change for local government, and many councils feel that they have been *empowered* but not *supported* or sufficiently resourced to undertake their role.

There is a wealth of research and evidence, some of which is presented in the NTC's Issues Paper, to indicate that many of the barriers to local road access for higher productivity freight vehicles can be more effectively addressed through a targeted response via collaboration, increased transparency and data sharing, and by addressing knowledge gaps and resourcing issues in councils, rather than by increased regulation or introducing punitive arrangements.

While there may be competing priorities between councils and operators, stronger partnerships with each other, and through the National Heavy Vehicle Regulator (NHVR), has the potential to improve outcomes (through increased notices, pre-approvals, and reduced processing times) while protecting commonwealth, state and local government investment in public infrastructure.

By working together there is an opportunity to unlock productivity by improving access for freight vehicles and the connectivity between local roads and preferred state and national freight networks.

The need for evidence based reform

In order to identify appropriate solutions (via legislative changes or otherwise) to the perceived inefficiencies under the current heavy vehicle access arrangements, the NTC ought to give proper context to what is working and what could be done better.

Several of the key points highlighted in the 'Analysing access under the HVNL' section of the Issues Paper are severely drawn toward industry/operator views and do not fully reflect the information and data presented in the substance of the paper.

For example, the view that *'the current system results in too many permits, delays for operators and inconsistent outcomes'* is not qualified by the evidence provided, which shows that Australia-wide in 2017-18:

- 85% of heavy vehicle movements were 'general access', being low risk, with no permit or notice required;
- nearly half, 48%, of the 64,300 restricted access heavy vehicles were authorised by notice, whereby the NHVR and road managers have agreed as-of-right access for types of vehicles on roads; and
- the remaining 33,365 permit applications represent less than 8% of the total heavy vehicle movements. Of those permit applications;
 - the average time for local government road manager approval was 5 days if a decision was made within 28 days;
 - the average NHVR processing time was over 7 days; and
 - the average end-to-end processing time (NHVR and road manager decisions) was under 19 days. This has fallen from over 31 days in 2015-16.

This shows that the vast majority of heavy vehicle movements are operating without the need for a permit (either general access or by notice), and those dealt with by permit applications are processed in a timely manner for the most part. The NHVR processing of a permit application, on average, takes longer than the decision-making of local road manager, which indicates that NHVR processing times will also need to be addressed if there are to be meaningful improvements in the time it takes to deal with applications.

While there has already been a significant improvement in the time taken to make access decisions on permits, road managers, industry and the regulator need to work together to find improvements.

The NTC's key point that *'there are many opportunities for parties to lose sight of or delay a permit application'* (again drawn to an industry view point) contradicts its own acknowledgement that road manager responses may take longer than the prescribed 28 days, particularly for more complex vehicle movements (such as oversize/over mass).

The Issues Paper has not provided any analysis to differentiate decision-making times between 'simple' or 'lower risk' access requests or those where a route assessment needs to be undertaken. However, the data indicates that it is likely to be the case that there are a smaller proportion of applications that require further consideration by councils in their decision making.

The NTC may like to consider how any future changes to legislation can support all parties to address actual challenges and barriers to increasing timeliness of timely approvals, rather than being drawn to individual cases where a decision has taken longer than expected.

For example, the NHVR data shows that if the local road manager permit decision takes longer than 28 days, then the average processing time is 60 days. Figure 18 in the Issues Paper shows that 60 out of South Australia's 68 councils were considered by the NHVR to be 'consistently good performers' in the 12 months to March 2019. It is evident therefore that the case study on page 50 of the Issues Paper, which describes a South Australian application decision that took 200 days, is clearly an outlier rather than the norm.

The LGASA refers the NTC to the Austroads Research Report; *Local Road Access for High Productivity Freight Vehicles*¹, (Austroads 2018), which was compiled following broad consultation and provides a comprehensive outline of the many challenges load road managers face when assessing heavy vehicle access. It provides recommendations towards addressing the contemporary barriers to local road access. This submission draws on the research and recommendations as relevant to the South Australian perspective.

Also, the LGASA is aware of the Tasmanian government's Heavy Vehicle Access Management System², which provides an indication of the opportunities available to industry operators and road managers with the appropriate support from federal and state governments.

South Australian councils are ready to work together, and with the state and federal government, to undertake regional planning to provide the basic building blocks for project identification, prioritisation and investment. This will unlock local and regional productivity through investment that improves access for freight vehicles and connectivity between local roads and preferred state and national freight networks.

¹ <https://austroads.com.au/publications/freight/ap-r559-18>

² <https://hvat.stategrowth.tas.gov.au/spv>

ALGA's Freight Strategy

ALGA has prepared a freight strategy³ in response to the need for productivity reforms and the need to address 'first and last' mile issues.

The Local Government Higher Productivity Investment Plan proposes Commonwealth Government investment of \$200 million over 5 years aimed at addressing the following gaps to realise the productive potential of Australia's freight routes:

System Gaps

- Currently, the system for managing Australia's total road network is not appropriately linked, and access consent is difficult to coordinate. A key enabler of timely access to local roads is a fully interoperable system between the National Heavy Vehicle Regulator (NHVR), jurisdictions and industry.

Planning Gaps

- The current system of planning, including freight route identification to meet industry needs, is ad hoc. Local government is committed to regional transport planning, including route identification and prioritisation in consultation with jurisdictions and industry to improve the alignment of needs and priorities – subject to resources.
- ALGA proposes that the Commonwealth incentivise councils to undertake regional transport plans, including demand forecasting on key freight routes.

Knowledge Gaps

- Currently, the system for consenting to access on local roads requires councils to make decisions on the capacity of roads and other key assets such as bridges in order to undertake the task.
- These decisions take into consideration engineering conditions, asset management plans and financial management plans. Where councils have limited, inadequate, or no current data on the engineering conditions of such assets, formal assessments may be required.
- However, councils need adequate funds to undertake appropriate engineering assessments of key strategic assets on key freight routes.

Funding Gaps

- The current system of funding of local roads is designed primarily to meet property access needs in line with local community expectations and councils' long-term financial management plans.
- External funding for road reconstruction and maintenance has not increased to keep pace with industry and community needs.
- Councils are struggling to maintain the status quo and generally have very limited capability to self-fund demand for improvements flowing from advanced safety technologies or higher productivity freight configuration.

³ <https://d2n3eh1td3vwdm.cloudfront.net/agendas-minutes/attachments/H.11-Australian-Local-Government-Association-Federal-Election-Advocacy-19-December-2018.pdf?mtime=20190312104922> page 10

While working within the scope of the NTC review, consideration needs to be given to ensure that any changes to the Heavy Vehicle National Law holistically address these issues.

Response to specific questions of the Issues Paper

Question 1: Why do access decision timeframes vary so significantly? To what extent does the HVNL cause or allow access decision delays.

NTC's analysis shows that decision timeframes are not necessarily influenced by the volume of permit applications or the population/size of the council. However, the reality is that there will be different levels of capacity within individual councils experiencing various levels of permit applications.

Acknowledging that New South Wales, Victoria, Queensland, South Australia and Tasmania all fall within the arrangements (and limitations) of the HVNL and its processes, it is evident that decision making timeframes are equally influenced by lack of resources, tools, and variances in the knowledge of local road managers.

There appears to be an assumption in the Issues Paper that all permit applications are high quality. However, councils tell us that this is not the case. Where applications are properly researched and presented then it makes it easier for councils to decide within the timeframes. When applications do not fully present the details and are not researched or presented well by the operator, this in-turn increases the timeframe for a decision making.

Question 2: Most road managers can grant consent within seven days. Given this is the case, should we reduce the 28 day timeframe currently in the HVNL? Should we introduce a mechanism to deal with a nil response?

As highlighted in the Issues Paper, the average decision timeframe currently sits at an average of 5 days for local road managers (if less than 28 days), the average NHVR processing time is over 7 days, and the average end-to-end permit application process takes under 19 days.

However, there are examples where the road manager will need more time, sometimes longer than 28 days, when access requests are complicated, require more information from operators, and/or route assessments need to be carried out.

There is no evidence to suggest that reducing the statutory timeframe to 7 days will drive efficiencies for consenting to simple access requests, address NHVR processing times, or assist councils to undertake the more complex assessments. To the contrary, local road managers tell us that they need the right information within applications, and better tools and knowledge to perform their roles.

While industry may support a penalty mechanism for failing to resolve access within a statutory timeframe, introducing punitive measures will not address the challenges road managers face in making access decision on those more complex applications.

The consultation within the *Austroads 2018* report notes that some local road managers believe that such a proposal may result in unintended approvals that risk public safety. Others have experienced bureaucratic errors within NHVR indicating that the regulator's function needs to be more robust to ensure that approvals would not be mistakenly given under a regime with shorter statutory timeframes and penalties for nil response.

Question 3: Is vehicle classification useful? Does the new HVNL need a vehicle classification system and, if so, should it be different from the current system?

A vehicle classification system is fundamental to ensuring that low risk heavy vehicles have general access to the road network without needing an authorisation via a notice or permit. It also provides a framework that enables access for larger or heavier vehicles with lower-risk on specified networks or with limited conditions, and enables road managers to give particular consideration to managing higher-risks presented by over-size/over-mass vehicles, or non-performance based standard (PBS) vehicles.

Complication arises from the many different heavy vehicle combinations and their classifications to the access being sought and the road networks. While there may be an opportunity to simplify the classification system, it is evident that supporting local road managers to work with the NHVR to build their experience and understanding of the PBS Scheme will unlock potential and efficiencies in the current permit system.

Austroroads 2018 found that a lack of high-quality education about high productivity freight vehicles and the PBS Scheme to be the greatest barrier to road access. The report considers misunderstanding of the PBS Scheme at some length and recommends nationally co-ordinated education campaigns and supporting tools to facilitate better knowledge and understanding of the PBS Scheme by road managers. *Austroroads* found that *accessible tools coupled with education have the potential to break down most barriers to local road access for high-productivity freight vehicles.*

Question 4: What are the challenges road managers face under the HVNL access decision-making framework? Which road managers do it well, and why? Why are some road managers struggling with access?

The NTC's Issues Paper appropriately acknowledges that *road managers have to go back to the NHVR to seek extra information from an operator through the NHVR Portal. Having to work through third parties means the process is complex and not well controlled.*

Other challenges local road managers face in decision-making include:

- balancing infrastructure capacity with the access request – potential for failure of infrastructure and appropriate asset management;
- unknown capacity of infrastructure – exposes potential for poor decision-making;
- increased responsibility of decision-making in local road managers may have led to fear of unintended liability and increase of professional indemnity insurance costs;
- Section 156(3) of the HVNL, regarding reasons for refusing access, is open to interpretation and requires clarifications to improve transparency of decision making;
- lack of support from NHVR and appropriate tools/technology to inform decision making;
- lack of funding to support human resources - under the HVNL, operators pay an access permit fee of \$73 to the NHVR, while local road managers remain unfunded in their role;
- lack of ability to delegate their role or recoup money spent on investigations, route assessments or internal training; and
- staff changes result in lack of corporate knowledge.

Question 5: Should the law allow for external review of access decisions?

The data presented in the NTC Issues Paper shows that 94% of permit applications are approved. As such, there is little evidence to suggest the introduction of an external review process would be the most efficient method to increasing heavy vehicle access.

Rather, implementing mechanisms to reduce the risk of improper access decisions will in turn reduce the need for, and call on, an independent review process. Therefore, funding and resources should first and foremost be directed towards supporting the quality of operator applications and addressing road managers' planning and knowledge gaps.

Secondly, as the NTC's Issues Paper has highlighted, despite having the authority to seek a review of local council access decisions by a state road authority (s 163 of the HVNL), the NHVR has not once used this power. Further consideration ought to be given to testing this process within the current HVNL, noting that state and local government spheres are quite independent in this regard.

Consideration of options for implementing an external appeals process ought to be motivated by improving confidence in decision-making and due process. Any independent review should still give full and proper consideration to infrastructure capacity, public safety, amenity and appropriate conditions to reducing risks. Councils should not bear any future responsibility for consequences (such as liability for road safety and damage to infrastructure) when their access decisions have been overturned by a third party.

Similarly, an external review process will without doubt take time and funding to properly implement. These costs should not be borne by local government road managers.

Question 6: Have we covered the issues with access under the current HVNL accurately and comprehensively? If not, what else should we consider?

No. As described so far in this submission, the NTC Issues Paper appears to be severely drawn toward industry/operator views. Many of the NTC's findings and key points are not substantiated by the, somewhat limited, evidence presented.

Question 7: How can the new HVNL work, most likely with other reforms, to best support optimised use of our transport assets and vehicles?

There is limited scope in the NHVL review to deal with the perceived barriers to unlocking further access to heavy vehicles. Just as local government is part of the solution, so too is legislative reform. While working within the scope of the NTC review, consideration needs to be given to ensure that any changes to NHVL need to give broad consideration to how the legislation can in some way support the system, planning, knowledge and funding gaps highlighted in ALGA's freight strategy.

Question 8: How can the new HVNL expand as-of-right access and generalise access authorisations? Can we remove time limits for notices, for example?

The challenge for the NTC is to consider how the new HNVL can support access for operators, without diminishing efforts to address safety, noise, emissions or traffic congestion, and impacts on public infrastructure. These principles should continue to be reflected in the future NHVL.

The overwhelming majority of permit applications are approved, which suggests that any assertion that local road managers' decision making as asset protection at all costs misses the point – and the opportunity to unlock future improvements.

One of the benefits of restricted access by notice or by permit is that local road managers maintain a line-of-sight to the movements of heavier and oversize/over mass vehicles on local roads. Any shift

towards expanding as-of-right access, generalised authorisations of notices and pre-approved permits needs to be matched with increased transparency and data sharing from operators.

Many councils have the desire to reduce permit load and work with NHVR and industry to move to pre-approval and notices. When this is the case, there may be a role for the NHVL to support all parties are working together to do that.

Question 9: Do we have the right tools to implement access decisions? How can we modernise the tools for access authorisations?

It is essential that road managers have the appropriate tools and information in front of them to make informed and timely access decisions. There is need for

- a nationally co-ordinated source of reliable, accessible information and guidelines to support local road managers in their decision making;
- the NHVR Portal to provide for increased levels of communication and information sharing between local road managers and the operator making an access decision. In addition to technical and vehicle specifications, information about the intended operation, vehicle trips saved and benefits to local community, would enable councils to more readily approve or propose alternative options and communicate benefits to elected members and the community; and
- increased functionality and sustainable funding/accessibility to the Restricted Access Vehicle Route Assessment Tool (RAVRAT) software. To date, local government associations, with support from the NHVR, have been funding access to this tool on behalf of our member councils.

Question 10: How can the new HVNL accelerate access decisions? Is a proactive approach possible?

Within the scope of the new HVNL, access decision timeframes could be improved by providing the regulations, guidelines and tools that support and enable road managers, the NHVR and operators to work together collaboratively. For example, providing minimum standards and levels of information required from operators when making an application would enable a proactive approach to the decision making process.

Question 11: How should the new HVNL implement access decision-making? Should it specify process and roles? What role is there for the operator? What improvements to access decision-making can be made?

The NHVL should specify the roles and process in decision-making, while supporting flexibility in the system. The responsibility for the operator ought to be able to ensure that they apply for appropriate access in a timely manner and provide sufficient information to the road manager to make an informed decision that takes into account the reduce risks to public safety, to minimise negative effects of noise, emissions or traffic congestion, and the effects on public infrastructure.

Question 12: How do we reach consistent and predictable risk-based access decision-making? How can we make sure decision-making is transparent and fair?

Significant improvements can be made by increasing the quality of information provided to road managers at the time the application is made, and by increasing transparency and broader access to data sharing between operators and councils.

Question 13: How do we best share the risk management responsibilities between parties with a role in heavy vehicle access?

As already highlighted in this submission, the NHVL provides a role for local government as decision makers in heavy vehicle access, however many councils feel that they have been *empowered* but not *supported* or sufficiently resourced to undertake their role.

If the intention of the NHVL in requiring certain heavy vehicles to obtain authorised access to reduce risks to public safety, to minimise negative effects of noise, emissions or traffic congestion, and to manage the effects on public infrastructure; then the issues highlighted need to be addressed through targeted interventions and supports, rather than a blanket, one-size-fits-all approach via legislative change and/or punitive arrangements.

Question 14: How do we manage the accountability of parties with a role in heavy vehicle access?

A well-resourced and enabled national regulator would significantly improve the accountability of parties in the heavy vehicle process, either from the perspective of operators providing quality applications and transparency of their data, or by local government making further improvements on the timeframe of their decision making.