

Infrastructure Services Committee – 20 June 2013

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

1 Recommendations

The committee is recommended to:

- 1.1 **approve the attached Aberdeenshire Council response to the current Transport Scotland strategic consultation on works on Scottish roads.**

2 Background / Discussion

- 2.1 Road works in Scotland are regulated by part IV of the New Roads and Street Works Act 1991. The last major review of the legislation was carried out in 2004 and resulted in substantial amendments being enacted as part of the Transport (Scotland) Act 2005.
- 2.2 A National Road Maintenance Review was initiated by the Minister for Housing and Transport in February 2011 following the publication by Audit Scotland of their follow up report on Maintaining Scotland's Roads. The following two options arising from this review would involve changes to the current road works legislation:
 - Review Scottish Road Works Commissioner Reports with regard to potential charges for overrunning
 - Potential contributions from utility companies to the costs of making good long term damage to roads arising from reinstatements.
- 2.3 The Scottish Government has an advisory Road Works Policy Group tasked with reviewing road works legislation and advising on future amendments. This includes a balanced mixture of representatives from roads authorities and utility companies. This group has drawn up a list of possible improvements to road works procedures to be considered when the Scottish Government wishes to review the legislation. Aberdeenshire Council's Roads Policy and Asset Manager is currently a member of this group.
- 2.4 Transport Scotland, working with the Office of the Scottish Road Works Commissioner, has brought together the output from the National Road Maintenance Review and the Road Works Policy Group into the current strategic consultation paper on works on Scottish Roads. It is intended that the outcome from this consultation will be used in the preparation of a future Scottish Government Bill on road works in Scotland.
- 2.5 The most significant issue arising from the consultation paper is the possible introduction of a contribution from utility companies towards the cost of making good long term damage to roads arising from excavation and reinstatement. Primary legislation enabling this has been in place since 1991 but has not yet been implemented. The proposed response recommends that a contribution should be introduced on the basis that this would not be a new

cost but merely a reallocation of an existing cost to the responsible party, thereby giving an incentive to utility companies to minimise future excavations.

- 2.6 The Head of Finance and Monitoring Officer within Corporate Services have been consulted in the preparation of this report and are content with its contents.

3 Equalities, Staffing and Financial Implications

- 3.1 An equality impact assessment is not required because this consultation response has no equalities impacts for Aberdeenshire Council and any future Scottish Government legislation would be subject to Scottish Government equalities procedures.

Stephen Archer
Director of Infrastructure Services

Report prepared by David Armitage
7 June 2013

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet: Aberdeenshire Council

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	<p>Research has confirmed that excavation and reinstatement does cause long term damage to roads, even if the reinstatement is carried out properly. At present, the additional costs arising from this are borne by roads authorities. The introduction of a utility company contribution towards this cost would represent a transfer of part of the cost to the organisation causing the damage. However, it would not represent an increase in the total cost to society as a whole.</p> <p>The advantage of transferring part of the cost to the organisation causing the damage is that it would give an incentive for behaviour change that could reduce the total cost to society as a whole. There is considerable scope to reduce the amount of excavation necessary for utility company works. Greater use of ducts and access chambers would allow apparatus to be replaced without excavation. Innovative techniques such as the “microsurgery” excavation procedure being pioneered by SGN can increase precision, allowing repairs or connections to be made using a small core hole in the right place. Transferring some of the long term damage costs from the roads authorities to the utility companies would give a strong economic incentive for more widespread and rapid introduction of such innovations, to the benefit of society as a whole.</p> <p>Although on strictly economic grounds, the transfer of the entire cost of long term road damage to the utility companies would be the best strategy to ensure that costs were minimised for society as a whole, a more gradual approach may be preferable to reduce the risk of unintended side effects. A contribution of £38 per square metre of carriageway would represent half the estimated cost of the long term damage and could be regarded as a reasonable first step. This should be sufficient to start driving behaviour change but should be more manageable for the utility companies than the transfer of the entire cost in one go.</p> <p>Further research would be required to establish suitable contribution rates for long term damage caused by excavations in the footway and in the verge. The issues for footways are similar to those for carriageways, but a lower contribution rate would probably be appropriate. A lot of apparatus in rural roads is located in the verge, and although this practice reduces the damage and disruption arising from works, the reduction in lateral support following an excavation in the verge can still cause long term damage to the adjacent carriageway. As with footways, a lower contribution rate would probably be appropriate.</p>

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	The current voluntary three year period of restriction adopted by the road works community in Scotland appears to be working reasonably well. Whilst adopting this into legislation would probably make little difference in practice, it would be desirable to do so in order to remove the current inconsistency between the legislation and the code of practice.

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	<p>There are two distinct reasons for the inspection of utility company road works by roads authorities.</p> <p>The inspections during the works and within 6 months of reinstatement will provide early feedback on whether utility companies are meeting their obligations with respect to working practices and reinstatement standards. The beneficial outcome should be early intervention to identify and rectify any shortcomings.</p> <p>The inspections within three months of the end of the guarantee period provide confirmation that a reinstatement meets the required standard when responsibility passes from the utility company to the roads authority. The beneficial outcome is that defects are identified and rectified by those responsible rather than being passed on as liabilities to the roads authority at the end of the guarantee period.</p> <p>The wide variation of failure rates at the end of the guarantee period is of particular concern, varying from 1.9% to 29.2% among the major utility companies. Under the present inspection regime, where 10% of reinstatements are sampled at this stage this would suggest that over 26% of reinstatements are being passed on to the roads authority in a defective state at the end of the guarantee period by the worst performing utility company. This is not acceptable.</p> <p>This problem could be addressed by the introduction of a 100% inspection sample at the end of the guarantee period. This would bring the procedure in line with that applicable under the road construction consent legislation whereby a developer is required to pay the cost of an inspection prior to adoption of maintenance responsibility by the roads authority.</p>

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	<p>As noted in the response to question 3 above, there is a case for considering an increase in the sample for which an inspection fee can be charged at the end of the guarantee period. Bearing in mind the wide range of failure rates at this stage, varying from 1.9% to 29.2% for the major utility companies, a performance element may be appropriate. A pass rate of 90% is regarded as the minimum standard below which an improvement notice should be considered. It is, therefore, suggested that any utility company with a failure rate greater than 10% at this inspection stage in a full inspection year should be required to pay for a 100% sample of inspections at this stage in the following inspection year.</p>

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	<p>Reinstatements should have a service life of 20 years or more, so an increase from the current levels of 2 years and 3 years for deep excavations to 5 years and 6 years for deep excavations would not be unreasonable. However, there is limited evidence that many reinstatements fail during the three years following the end of the current guarantee period. It may be that most reinstatements either fail fairly quickly or stoke up long term damage problems that emerge years later.</p>

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>The problem with the introduction of a charge for occupation of the road where work is unreasonably prolonged is that the administration costs of such a scheme are likely to be considerable. The long standing scheme in England appears to involve substantial administrative burdens and has led to numerous intractable disputes which have resulted in further additional costs for both highway authorities and utility companies.</p> <p>If it were possible to develop a process with a light touch administratively, then a scheme of this nature might help to reduce disruption by speeding up works. However, the experience from England is not promising and it is suggested that other measures might be more cost effective in improving performance. The wider use of section 125 notices might give the Commissioner the opportunity to consider issuing a penalty against an undertaker with a consistently poor performance in completing works within a reasonable time. This could be achieved within existing legislation with minimal additional administrative costs.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Permit schemes would have the potential to impose considerable additional administrative costs on the road works community as a whole. There is no obvious need for such a scheme in Scotland at present.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Lane rental schemes would have the potential to impose considerable additional administrative costs on the road works community as a whole. There is no obvious need for such a scheme in Scotland at present.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>The current scope of the fixed penalty scheme leaves a bit of a gap in the enforcement regime. Fixed penalties are generally available for the lowest level of offence, whilst prosecution is a viable option for the highest level of offence. This leaves many offences in the middle that are outwith the scope of the current fixed penalty scheme but not sufficiently serious to justify the cost of a prosecution. An extension of the fixed penalty system would help to address this.</p> <p>As an example, if a third party applies for and is granted permission to place apparatus in the road but fails to give the correct notice of start date, they can be issued with a fixed penalty notice under Section 114. However, if they do not bother to apply in the first place and just go ahead without permission, then they can not be issued with a fixed penalty as their offence comes under Section 110 which is outwith the fixed penalty scheme. There are many other examples, and a comprehensive review of possible extensions to the scheme would be worthwhile.</p> <p>Specific comments in relation to the three potential fixed penalty offences listed in the consultation are as follows:</p> <ul style="list-style-type: none"> • Section 110 – This would meet all the requirements for a new fixed penalty offence and address the current anomaly described above. • Section 124 – Although there would be occasions when it would be beneficial for a fixed penalty to be issued by a roads authority for a minor signing, lighting and guarding offence by a utility company, a possible complication is that this would prevent subsequent prosecution by the police or the Health and Safety Executive if the offence were to have serious consequences. • Section 130 – When the provisions of the New Roads and Street Works Act were first introduced, it was agreed by both roads

	<p>authorities and utility companies that defect inspections should be charged at double the rate for other inspections. Subsequent reviews reduced this to the same rate as for other inspections. The introduction of a fixed penalty for not reinstating excavations in accordance with the specification would reinstate the original intention of a disincentive for poor reinstatement performance.</p>
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Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>Comments on the proposed new summary offences are as follows:</p> <ul style="list-style-type: none"> • <i>Misclassification of works as urgent or emergency to circumvent longer planned work notice periods.</i> This would already be a fixed penalty offence under section 114 as it would involve starting work without giving the prescribed notice. There would, therefore, appear to be little purpose in creating a new offence. • <i>Not noticing “actual start” notices by the due time (should actual start notices become a legal requirement).</i> If actual start notices were to become a legal requirement then it would be consistent with comparable existing requirements if failure to issue the notice by the due time were to be a fixed penalty offence. • <i>Failure to rectify a defective reinstatement within a reasonable period.</i> This is a particular area where stronger enforcement powers would assist roads authorities. It is in the public interest for defects to be rectified promptly and under the present regime roads authorities sometimes have difficulty in getting utility companies to respond within a reasonable time. The introduction of a new fixed penalty would, therefore, be welcomed. • <i>Failure to rectify defective utility company apparatus within a reasonable timescale.</i> This is another particular area where stronger enforcement powers would assist roads authorities. It is in the public interest for defects to be rectified promptly and under the present regime roads authorities sometimes have difficulty in getting utility companies to respond within a reasonable time. The introduction of a new fixed penalty would, therefore, be welcomed.

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>
	<p>A fixed penalty is an alternative to a prosecution. If it is to retain the same deterrent effect, it would be logical for the fixed penalty level to be linked to the maximum fine for a summary offence. It is, therefore, suggested that whenever the scale of maximum penalties for summary offences is reviewed, fixed penalty levels should be increased or reduced by a comparable proportion.</p>

Views Sought	
12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
	Most large utility companies and roads authorities would probably regard the reputational damage of receiving a penalty from the Scottish Road Works Commissioner as more serious than the financial loss. However, it is agreed that an increase in the current maximum of £50,000 might be useful as a potential escalation if an organisation were to be seen to ignore an initial penalty. The Commissioner's recommendation of an increase in the maximum penalty to £200,000 would appear to be reasonable.

Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	<p>The commissioner's proposal is that the definitions should be revised as follows:</p> <p><i>"Failure to comply with</i></p> <ul style="list-style-type: none"> • <i>any duty under NRSWA and supporting regulations; or</i> • <i>any requirement in a statutory code of practice; or</i> • <i>such practice as appears to the Scottish Road Works Commissioner to be desirable</i> <p><i>shall be deemed to be a failure to comply with sections 118 and 119 of the NRSWA."</i></p> <p>The first two provisions would undoubtedly remove any doubt about the extent of the Commissioner's powers to deal with failures to comply with statutory requirements. However, although it is accepted that the credibility of the Commissioner depends on being seen to act reasonably, the third provision may be seen as too open ended to be brought into legislation. There are certainly occasions where problems are caused by organisations refusing to comply with voluntary arrangements agreed by both sides of RAUCS. However, these could be argued to fall within the everyday meaning of co-operation and so it should be possible for the Commissioner to deal with them within the existing legislation.</p>

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	The Code of Practice for Safety at Street Works and Road Works is equally applicable to utility company works and roads authority works. Making it a statutory code for roads authority works would remove the current anomaly whereby utility companies can be prosecuted for a minor breach under the New Roads and Street Works Act whereas roads authorities can only be prosecuted under the much more Draconian provisions of the Health and Safety at Work Act.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	<p>There would certainly be an overall public benefit in reducing the risk of damage if all utility companies and roads authorities were to hold digital records of their underground apparatus and make these available to the roads and utilities community through the SRWR. For an organisation already holding digital records, there is little additional cost incurred in providing them to the SRWR through the VAULT system. It is, therefore, recommended that this should be made mandatory in the short term.</p> <p>Creating digital records where they do not currently exist is a much more onerous task. Whilst it might be desirable to make this mandatory over the longer term, a transition period of around five years would be necessary to give organisations time to digitise their records.</p>

Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Section 61 of the Roads (Scotland) Act 1984 and section 109 of the New Roads and Street Works Act 1991 cover virtually the same circumstances and have operated in parallel for over twenty years. The existence of two alternative ways for roads authorities to give permission for apparatus in the road is unnecessary and confusing. It is, therefore, agreed that section 61 of the Roads (Scotland) Act should be repealed with respect to new permissions although it should remain in force for existing permissions.

Views Sought	
17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	It is agreed that organisations such as major airport and seaport operators managing significant lengths of road open to the public should be designated as “major road managers” and required to place notices of their works on the SRWR. This would assist in the overall co-ordination of works.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	<p>In principle, it is beneficial for details of the location of planned major works to be placed on the register as early as possible in order to maximise the opportunity for co-ordination. The three month advance notice period is generally helpful in achieving this. However, the following issues can cause problems:</p> <ul style="list-style-type: none"> • The advance notice should be placed before the works have been firmly scheduled in order to allow flexibility to co-ordinate with any other major works at the same location. An advance notice should not, therefore, have a restricted validity period. • The current definition of “major works” is rather wide and can include some works that are rather minor in nature. A revision to narrow the criteria might be beneficial.

19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	Roads may only be designated as “traffic sensitive” if they carry particularly high traffic flows. Works on such roads have the potential to cause substantial disruption and so it is appropriate that advance notice should be required. However, substantial disruption can also be caused on roads that do not qualify as “traffic sensitive” if they involve a closure with a lengthy diversion route. It is, therefore, appropriate to retain the advance notice requirement to cover such cases. If the criteria for “major works” could be narrowed to more accurately identify works liable to cause significant disruption, fewer works would require advance notice and there would be an increase in flexibility of programming for other works.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	The current voluntary early start procedure has been working well so it would be appropriate to place it on a statutory footing.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	<p>As a general principle, works should be noticed on the SRWR as soon as it is known that they are required. Urgent works are those that should be undertaken at the earliest opportunity. However, where specialist resources are required, the earliest opportunity might not be straight away. The proposed new mandatory requirement to start urgent works by noon the day after placing the notice would give a perverse incentive to hold back on placing the notice for known urgent works until the start date. This would undermine the potential for co-ordination and so it is not recommended.</p> <p>Experience suggests that abuse of the “urgent” classification is most likely to occur if a works promoter fails to issue the prescribed notice of start date and seeks to avoid a breach of noticing requirements by misclassifying standard works as urgent. The new requirement would do nothing to tackle this problem as such works would invariably start by noon the following day. A more effective new measure might be the introduction of a mandatory requirement to state the reason for works qualifying as urgent on the notice. This could be by selection from a pick list of the prescribed valid reasons.</p>

Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	There are two reasons for requiring information on works to be placed on the SRWR. One is to facilitate the co-ordination of works and the other is to provide roads authorities with information on excavations and reinstatements in roads by utility companies. Where information relates to co-ordination, for example timing and location of works, then roads authorities and utility companies should be required to place the same information on the register and to the same timescale. Where information relates to excavations and reinstatements, for example areas, locations and dates of reinstatements then it should only be required from the utility companies.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	It is agreed that regulations should be introduced to bring a statutory footing to the current advisory arrangements giving roads authorities the same flexibility as utility companies around the placing of notices for works involving no or minimal excavation on non traffic sensitive roads.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Actual start dates on the SRWR provide a number of benefits including a full audit trail of the dates of road occupations and it is agreed that regulations should be introduced requiring them to be entered.

25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	The current requirement is adequate for most purposes. However, there could be a benefit in requiring a higher level of precision in information relating to the most disruptive works. This might involve earlier registration of the actual start but an alternative might be a notice of proposed start to be placed the previous day.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	The current requirement is adequate for most purposes. However, there could be a benefit in requiring a higher level of precision in information relating to the most disruptive works. Registering “works closed”, i.e. road open, on the day of completion of such works might be appropriate.

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	Roads authorities and utility companies both require a degree of flexibility in scheduling works in order to deploy their resources effectively. Works involving investigating and correcting a problem are often unpredictable in duration and some works are weather dependent. The current validity periods allow for this flexibility and should be retained for most works. However, there could be a benefit in requiring a higher level of precision for the most disruptive works. As noted in the answer to question 25 above, this could take the form of a requirement to input a firm start date one day in advance of the works.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	It is agreed that there might be merit in giving roads authorities the power to issue a direction to a utility company on the maximum duration of works. However, very few directions have been issued under current powers relating to the timing of works, so it is likely that such matters will continue to be resolved by agreement in most cases.

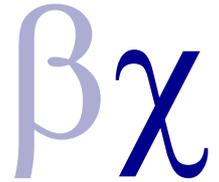
Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	It would be difficult to set down in statute a definitive list of circumstances where embargoes on works would be appropriate. The present voluntary system gives more flexibility than would be practicable with a statutory system and so it is not considered that any new regulations are required.

Views Sought	
30	Do you agree with the definition of a working day given above?
	The definition of a “working day” agreed by the road works community in Scotland reflects Scottish circumstances and the regulations should be revised accordingly.

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	The current consultation is very comprehensive and no further issues have been identified.

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	There would be potential to minimise the future disruption from utility works when planning new developments. The recent trend towards infrastructure being installed in new developments by utility infrastructure providers can make this more difficult to achieve as initial installation cost for the provider is likely to take precedence over whole life cost to the community thereafter. There may be potential to address this under planning or road construction consent legislation.

Views Sought	
33	Please outline the potential impact of any additional costs.
	The main cost implication arising from the proposals would be the transfer of some of the cost of the long term damage to roads arising from utility excavations. Transferring this from the roads authorities to the utility companies should give an economic benefit to society as a whole as it would drive the innovations necessary to reduce the need for future excavations.



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Aberdeenshire Council

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Armitage

Forename

David

2. Postal Address

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Phone 01467 628483

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No