

**REPORT TO:** CITY DEVELOPMENT COMMITTEE – 22 SEPTEMBER 2014

**REPORT ON:** STATUTORY UNDERTAKERS REINSTATEMENT PERFORMANCE  
IN DUNDEE – 2012/2013

**REPORT BY:** DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 1-2014

## **1 PURPOSE OF REPORT**

1.1 The purpose of this report is to:

- a provide a summary of the performance of Statutory Undertakers operating in Dundee during 2012/2013 based on inspections and coring of their reinstatements under the New Roads and Street Works Act 1991 (NRSWA); and
- b update the Committee on the status of the Transport (Scotland) Act 2005, Part 2 - Road Works.

## **2 RECOMMENDATION**

2.1 It is recommended that the Committee:

- a note the performance of Statutory Undertakers reinstatements in Dundee based on the visual sample inspection regime and the national coring results for the last year;
- b approves the continuation of the annual local coring programme and participation in the biannual national coring programme; and
- c notes the status of the Transport (Scotland) Act 2005, Part 2 - Road Works, different parts of which came into force on 1 April 2008 and 1 October 2008

## **3 FINANCIAL IMPLICATIONS**

3.1 Statutory Undertakers are responsible for carrying out their own reinstatements. They are charged the prescribed national fee of £33 for each visual sample inspection up to the prescribed chargeable level of 30% of an estimated annual workload. For coring purposes, Statutory Undertakers are charged for the actual cost of any failed cores plus a standard administration fee of £66. For failed reinstatements, discovered after sample or routine inspections or after coring, Statutory Undertakers are also charged for up to 3 further inspections of their remedial works at £33 each.

3.2 Implementation of the Transport (Scotland) Act - Part 2 - Road Works (in particular Fixed Penalty Notices). This is ongoing with costs being recovered from income generated by the Fixed Penalty Notices or within existing staff costs.

## **4 BACKGROUND**

4.1 There are 3 types of inspections carried out by the Roads Authority that are randomly selected from a sample of Statutory Undertakers' roadworks by:

- a Visual Sample Inspections - at 3 different stages ie during the works, after reinstatement and before the end of the 2 year guarantee period (or 3 years for trenches over 1.5 metres deep);
  - b Local Coring Programme - a physical core is taken through the bituminous layers (blacktop materials only) and the core can then be measured and assessed; and
  - c National Coring Programme - a biannual programme, by all Roads Authorities in Scotland, co-ordinated by the Roads Authorities and Utilities Committee (Scotland) - RAUC(S).
- 4.2 From the 3 separate methods, engineering staff identify problems and determine what they think is happening locally and compare it with previous results and national practices.
- 4.3 Full results are shown in Appendices 1, 2 and 3, however, the findings are summarised in Sections 5 to 8 below.

## **5 STATUTORY UNDERTAKERS REINSTATEMENT PERFORMANCE - BASED ON VISUAL SAMPLE INSPECTION REGIME (SEE APPENDIX 1)**

- 5.1 As in previous years, although the minimum required standard of performance of 90%, based on the random sample inspection regime, was achieved by all Statutory Undertakers (98% average achieved last year), it has been found that this regime alone does not accurately reflect the quality of reinstatements. Some of the reasons for this are that the sample inspections are visual, the majority of works are not witnessed by the Roads Authority due to the sample size being limited (30% of an estimated annual workload), Statutory Undertakers' contractors may only be on site for relatively short periods and sometimes work outwith normal office hours.
- 5.2 It is therefore only after coring the bituminous materials that the depth of layers, degree of compaction and type of materials used can be accurately assessed against the NRSWA Reinstatement Specification. Dundee City Council is continuing to participate in the biannual National Coring Programme detailed below. However, it should be noted that, as coring does not reveal what is below the bituminous layers, any defects in sub-base materials or its compaction will be rectified by Statutory Undertakers if reported within the guarantee period.

## **6 STATUTORY UNDERTAKERS REINSTATEMENT PERFORMANCE - BASED ON LOCAL CORING PROGRAMME (SEE APPENDIX 2)**

- 6.1 Due to a reduced number of reinstatements, the local coring programme was suspended in 2012 to ensure the Bi-annual National Coring Programme had sufficient numbers of reinstatements to proceed. The Local Coring Programme has resumed in 2014, with the results included in this report.

## **7 STATUTORY UNDERTAKERS REINSTATEMENT PERFORMANCE - BASED ON NATIONAL (SCOTTISH) CORING PROGRAMME (SEE APPENDIX 3)**

- 7.1 Following the last five biannual National Coring Programmes (reported previously to Committee), the RAUC(S) had decided to repeat this programme during 2012/2013 until the level of performance was such that it provides the industry with confidence in

the quality of reinstatements throughout Scotland. Stirling Council is the lead authority for TayForth Area RAUC on behalf of Dundee City, Angus, Clackmannanshire, Falkirk, Fife and Perth & Kinross Councils.

- 7.2 The National Coring Programme cored 34 of the permanent reinstatements majority in carriageways as against footways reinstated between 1 July 2011 and 30 June 2012. The coring took place between September and November 2012. Out of 34 cores taken from Statutory Undertakers reinstatements in Dundee 2 cores failed to meet the Specification representing 94% average pass rate. This is to be compared against a national average of 83%.
- 7.3 The next National Coring Programme is to be undertaken in 2014-2015 and will again concentrate on carriageway reinstatements.

## **8 PROGRESS OF STATUTORY UNDERTAKERS SINCE THE ISSUE OF IMPROVEMENT NOTICES**

- 8.1 Since the issue of Improvement Notices by Dundee City Council on 25 June 2001 Statutory Undertakers have shown marked improvements in the quality of reinstatements in the city although there is still room for more improvement. The City Development Department as the local Roads Authority will, however, continue to monitor them as vigorously as possible and meet them individually on specific issues as and when required.
- 8.2 Quarterly Co-ordination meetings ie Dundee RAUC, will continue to be held with all Statutory Undertakers (together with representatives from other sections of City Development Department, BEAR Scotland Limited and Tayside Police) to discuss their planned major roadworks, to co-ordinate these with the Council's own planned roadworks and to monitor their performance.
- 8.3 Meetings and discussions are also ongoing with utility companies to ensure that lessons are continuing to be learned and improvement plans are monitored and implemented effectively.

## **9 TRANSPORT (SCOTLAND) ACT 2005**

- 9.1 The Transport (Scotland) Act 2005 received Royal Assent on 5 August 2005. The Act has 4 parts:

- Part 1 - Regional Transport (related to Regional Transport Partnerships);
- Part 2 - Road Works (see below);
- Part 3 - Miscellaneous (related to public transport); and
- Part 4 - General (related to secondary legislation).

Part 2 of the Act "Road Works" amends some sections of the New Roads and Street Works Act 1991 and Roads (Scotland) Act 1984, aiming to improve the quality and co-ordination of road works across Scotland by:

- establishing a Scottish Road Works Commissioner to monitor the quality of roadworks carried out on all roads (including trunk roads) by Roads Authorities

and Statutory Undertakers, driving and promoting improvements and imposing penalties for persistent poor performance of Statutory Undertakers as well as Roads Authorities for various notification and registration offences. Mrs Elspeth King was appointed in January 2013 as the Scottish Road Works Commissioner, replacing Mr John Gooday;

- improving the co-ordination of road works by making the Scottish Road Works Register (SRWR) a Statutory requirement, placing more stringent duties on both Statutory Undertakers and Roads Authorities to co-operate, co-ordinate, plan their roadworks and notify/register roadworks information timeously in the SRWR;
- introducing, during 2011/2012, new provisions in special cases on resurfacing parts of roads next to their tracks by Statutory Undertakers; and
- giving new powers to local Roads Authorities to issue fixed penalty notices for a limited number of notification and registration offences (see Appendix 4 for details).

9.2 To implement the provisions of Part 2 of the Act, new Regulations and Codes of Practice such as "Co-ordination of Road Works and Works for Road Purposes" and the "Penalties Code of Practice" came into force on 1 April and 1 October 2008 respectively.

9.3 The fixed penalties regime was introduced in Dundee during 2011, following the approval on 6 October 2010 by Personnel to appoint a new member of staff to assist with the implementation of FPNs. As a result of improving performance by the Statutory Undertakers, the post, which was to be self financing from the income generated by the FPNs, has not be renewed.

## 10 POLICY IMPLICATIONS

10.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. The major issues identified are:

a Sustainability

The principle of first time, high quality reinstatement of road material by Statutory Undertakers accords with the Council's sustainability policy, in particular "Energy and Water", "Built Environment" and "Minimising and Remediating Pollution".

b Strategic Environmental Assessment

There are no implications relating to this report.

c Anti-Poverty

There are no implications relating to this report.

d Equality Impact Assessment

There are no implications relating to this report.

e Risk Management

The monitoring and maintenance of road reinstatement procedures by Statutory Undertakers ensures that the road network is protected and the need reduced for early maintenance by Dundee City Council after satisfactory completion of the guarantee period of reinstatements.

**11 CONSULTATIONS**

- 11.1 The Chief Executive, the Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

**12 BACKGROUND PAPERS**

- 12.1 None

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11 September 2014

Dundee City Council  
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**APPENDIX 1****SAMPLE INSPECTION RESULTS (VISUAL) OF STATUTORY UNDERTAKERS REINSTATEMENTS IN DUNDEE**

Appendix 1 shows the results of the visual random sample inspections of each Statutory Undertaker's roadworks in Dundee, together with annual figures from previous years for comparison.

Statutory Undertaker	Sample Inspection 2011/2012		
	Agreed Units of Inspections (estimated annual workload)	No of Passes/Total No of Inspections	Pass Rate
Openreach (BT)	135	51/54	94%
Cable & Wireless/Thus	Minimal Works	-	-
Scottish Water	309	124/124	100%
Scottish & Southern Energy	264	105/105	100%
Virgin Media (ex Telewest)	144	58/59	98%
Scotland Gas Networks	375	150/151	99%
<b>Average Pass Rate</b>			<b>98%</b>

Note

The number of sample inspections carried out annually is 30%, ie 10% of the Agreed Units of Inspections (based on estimated annual workload) at each of three different stages, eg for BT,  $3 \times 10\% \times 215 = 65$  inspections.

Statutory Undertaker	Annual Sample Inspection Pass Rate (%)						
	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Openreach (BT)	90	93	100	95	97	96	94
Cable & Wireless/Thus (Minimal Works)	-	-	-	-	-	-	-
Scottish Water	97	98	96	99	100	99	100
Scottish & Southern Energy	99	99	97	98	100	100	100
Virgin Media (ex Telewest)	95	98	98	93	97	100	98
Scotland Gas Networks	99	99	99	99	100	99	99
<b>Average Pass Rate (%)</b>	<b>97</b>	<b>98</b>	<b>98</b>	<b>98</b>	<b>99</b>	<b>99</b>	<b>98</b>

## APPENDIX 2 – LOCAL CORING PROGRAMME 2014

Appendix 2 shows the results of the National Coring Programme in the Tayforth RAUC area during last year with figures from previous five years for comparison. All cores were selected randomly (5% of estimated annual workload) from permanent reinstatements in carriageways and footways completed between April 2013 and March 2014.

Statutory Undertaker	Core Description	Core No	Pass		Fail						
			No	%	Com- paction	Layers	Material	Bond	Others	TOTAL	
										No	%
Openreach (BT)	Randomly Selected	6	4	67%	0	2	0	0	0	0	33%
Scottish Water	Randomly Selected	13	13	100%	0	0	0	0	0	0	0
Scottish & Southern Energy	Randomly Selected	8	8	100%	0	0	0	0	0	0	0
Virgin Media (ex Telewest)	Randomly Selected	7	7	100%	0	0	0	0	0	0	0
Scotland Gas Networks	Randomly Selected	15	15	100%	0	0	0	0	0	0	0
<b>TOTAL 2014</b>	Randomly Selected	<b>49</b>	<b>47</b>	<b>96%</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

### Notes

Pass = Reinstatement in compliance with NRSWA Reinstatement Specification

Fail = Outwith NRSWA Reinstatement Specification, requiring replacement of bituminous layers and a further two year guarantee period. In previous years, cores that failed were recorded in categories of "Fail/Monitor" and "Fail/Replace". Cores recorded as "Fail/Monitor" were still fails. Both sides agreed, for the 2010/2011 programme there would be no "Fail/Monitor" results. It had previously been agreed these cores be monitored over a two year period and would not be replaced immediately (unless necessary due to rapid deterioration or other unforeseen circumstances). In the above table "Fail/Monitor" and "Fail/Replace" have been grouped together and recorded as fail.

### APPENDIX 3 - NATIONAL CORING PROGRAMME 2012

Appendix 2 shows the results of the National Coring Programme in the Tayforth RAUC area during last year with figures from previous five years for comparison. All cores were selected randomly (5% of estimated annual workload) from permanent reinstatements in carriageways and footways completed between April 2011 and March 2012.

Statutory Undertaker	Core Description	Core No	Pass		Fail						
			No	%	Com-paction	Layers	Material	Bond	Others	TOTAL	
										No	%
Openreach (BT)	Randomly Selected	5	5	100%	0	0	0	0	0	0	0
Scottish Water	Randomly Selected	8	8	100%	0	0	0	0	0	0	0
Scottish & Southern Energy	Randomly Selected	7	7	100%	0	0	0	0	0	0	0
Virgin Media (ex Telewest)	Randomly Selected	5	5	100%	0	0	0	0	0	0	0
Scotland Gas Networks	Randomly Selected	10	8	80%	0	2	0	0	0	2	20%
<b>TOTAL 2011/2013</b>	Randomly Selected	<b>35</b>	<b>33</b>	<b>94%</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	
TOTAL 2008	Randomly Selected	44	40	91	1	2	1	0	0	4	9%
Totals 2006	Randomly Selected	43	24	56	5	10	4	0	0	19	44%
Totals 2004	Randomly Selected	44	36	82	0	4	0	0	4	8	19%
Totals 2002	Randomly Selected	60	19	32	14	8	17	0	2	41	68%

#### Notes

Pass = Reinstatement in compliance with NRSWA Reinstatement Specification

Fail = Outwith NRSWA Reinstatement Specification, requiring replacement of bituminous layers and a further two year guarantee period. In previous years, cores that failed were recorded in categories of "Fail/Monitor" and "Fail/Replace". Cores recorded as "Fail/Monitor" were still fails. Both sides agreed, for the 2010/2011 programme there would be no "Fail/Monitor" results. It had previously been agreed these cores be monitored over a two year period and would not be replaced immediately (unless necessary due to rapid deterioration or other unforeseen circumstances). In the above table "Fail/Monitor" and "Fail/Replace" have been grouped together and recorded as fail.



**APPENDIX 4**

Transport (Scotland) Act 2005, amending the New Roads and Street Works Act 1981, introduced the following Fixed Penalties for only certain notification and registration offences applicable from 1 October 2008. The fixed penalties are £120 if paid within 36 calendar days but discounted at £80 if paid within 29 calendar days.

**Schedule 6A to the New Roads and Street Works Act 1991**Fixed Penalty Offences (applicable to Statutory Undertakers)Imposition by the Roads Authority

<b>Offence</b>	<b>Brief Description</b>
An offence under Section 113(5)	Failure to comply with duties under Section 113 (advance notice of certain works etc).
An offence under Section 114(5)	Beginning to execute works in contravention of Section 114 (notice of starting date).
An offence under Section 116(4)	Failure to give notice in accordance with Section 116 (notice of emergency works).
An offence under Section 129(6) consisting of a failure to comply with sub-section (3) or (4)	Failure to comply with requirements to give notice of completion of reinstatement.

**Schedule 8A to the Roads (Scotland) Act 1984**Fixed Penalty Offences (applicable to persons other than Statutory Undertakers)Imposition by the Roads Authority

<b>Offence</b>	<b>Brief Description</b>
An offence under Section 58(1)	Deposit of building materials in or erection of scaffolding over road without or other than in accordance with permission.
An offence under Section 85(3) as read with (4)	Deposit of builder's skip on road without permission of roads authority. Failure of owner of skip or other person to ensure conditions of permission are complied with.

**Section 119A of the New Roads and Street Works Act 1991**

The imposition of penalties by the Scottish Road Works Commissioner is applicable to Roads Authorities as well as Statutory Undertakers who are regularly and continually failing in their respective duties to co-ordinate and co-operate, eg notification/registration of Council's own roadworks on the Scottish Road Works Register system. It is not intended that a one off failure in duty, would lead to the imposition of a penalty by the Commissioner. The level of this penalty is to be determined by the Commissioner but the Regulations have provided that this cannot exceed a maximum of £50,000.