

REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE
23 FEBRUARY 2004

REPORT ON: THE REGULATION OF UTILITY COMPANIES
ROADWORKS: A CONSULTATION

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 137-2004

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform Committee of the response to the consultation document "The Regulation of Utility Company Roadworks" issued by the Scottish Executive.
- 1.2 This report has been prepared by the Head of Transportation and it is proposed that it will be submitted to the Scottish Executive as the official response from Dundee City Council.

2 RECOMMENDATIONS

- 2.1 It is recommended that Committee note the contents of this report.
- 2.2 It is recommended that Committee homologate the decision of the Director/Convenor in submitting Appendix A of this report to the Scottish Executive as the official response from Dundee City Council.

3 FINANCIAL IMPLICATIONS

- 3.1 There may be financial implications depending on the outcome of the consultation which will be reported to Committee in a later report.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The quality of utilities reinstatements have a direct effect on the well being of the public travelling on Dundee's road network whether on foot or by vehicle.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 There are no equal opportunity implications of relevance to this report.

6 BACKGROUND

- 6.1 Utility companies have a statutory right to open roads to lay and maintain their apparatus, but they must notify their intentions to the local roads authority who in turn have a responsibility to co-ordinate all works on the public road network.
- 6.2 The utilities must reinstate the road to pre agreed specifications and the local roads authority have a right to inspect (but not supervise) a sample of those reinstatements.
- 6.3 Members will recall previous reports to this Committee regarding the performance of utilities in Dundee which have shown that the quality of their reinstatements are far from satisfactory.
- 6.4 The Scottish Executive believes that poorly managed utility company roadworks cause a range of problems and the Planning and Transportation Department would fully endorse this statement.

- 6.5 Utilities roadworks are currently regulated under The New Roads and Streetworks Act (NRSWA) and the Planning and Transportation Department agrees with the Scottish Executive that change is required as there has been two major changes since the introduction of the act. Firstly, most utility companies with the exception of Scottish Water are now private rather than in the public sector. Secondly rapid developments in new technology mean there are more utilities available to consumers.
- 6.6 The NRSWA which became law in 1991 is now a devolved piece of legislation and therefore it is the responsibility of the Scottish Parliament rather than Westminster .
- 6.7 A new Traffic Management Bill is under development for England and Wales however the Scottish Executive feel that a different approach is required for Scotland, hence this consultation.
- 6.8 Dundee City Council's response proposed by the Director of Planning and Transportation is attached as Appendix A.
- 6.9 An Executive summary of the response is at the beginning of Appendix A and a copy of the consultation document has been placed in the Members Lounge.

7 CONSULTATIONS

- 7.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), and Assistant Chief Executive (Community Planning) have not as yet been consulted on the contents of this report.

8 BACKGROUND PAPERS

- 8.1 Planning and Transportation Committee, 22 May 2000 – Statutory Undertakers Performance in Dundee 1999/2000 – Report Number 301/2000.
- 8.2 Planning and Transportation Committee, 25 June 2001 – Statutory Undertakers Performance in Dundee 2000/2001 – Report Number 338/2001.
- 8.3 Planning and Transportation Committee, 27 May 2002 – Statutory Undertakers Performance in Dundee 2002 – Report Number 319/2002.
- 8.4 Planning and Transportation Committee, 25 August 2003 – Statutory Undertakers Performance in Dundee 2003 – Report Number 509/2003.

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THE REGULATION OF UTILITY COMPANY ROADWORKS

CONSULTATION

Executive Summary of Dundee City Council's Proposal

- 1 Dundee City Council strongly believes that the only way to improve the regulation of utility company roadworks is through new primary legislation and the creation of a Network Manager within the Roads Authority who would have a wide ranging co-ordination role of all works on the road network.
- 2 All occupations/openings of the road would be by permit only (issued by the Network Manager). There would be a charge for the permit (occupation). The revenue from the permit would be top sliced to administer the system.
- 3 Certain offences under the statutory regulations should be dealt with by the "offenders" being issued with fixed penalty notices by the Roads Authority.
- 4 Additional powers to direct would be created which would allow Roads Authorities to issue directives to utilities/works for road purposes etc as to the dates of the works and under certain circumstances, to dictate the route.
- 5 The present electronic notification system would be extended to become an electronic permit system capable of registering and monitoring the charging system. Priority should also be given to developing the GIS co-ordination tool within the system.
- 6 Utilities would be required to provide adequate supervision of their works and/or Roads Authorities would have powers to carry out full or half width reinstatements requiring utilities to meet all or a proportion of the cost of this additional work. Also, increase the embargo on utilities opening a road after substantial roadworks have been carried out.

26- "To what extent do you think disruption from utility roadworks is causing problems for Scotland's transport network?"

- 1 Congestion is not only a reality but a perception. In real terms congestion due to roadworks (utility works and works for road purposes) in Dundee is relatively less than, say, the central belt, however, the travelling public of Dundee, when delayed by roadworks feel as frustrated as travellers in other areas who are subjected to longer periods of delay.
- 2 Whilst it is interesting to note the results of the Scottish Executive research into the extent and impact of utility company roadworks in Scotland ie in 2001, 92% of all roadworks in Scotland were completed by utility companies, it is important to note that the travelling public and for that matter the local press are more concerned at the extent of the delay and not the origin of the delay. The local press headlines will be the same whether the work was carried out by a utility company, the local roads authority or the Scottish Executive!

26.1 and 26.2– “What are the most common types of problem and what do you think is causing the problem?”

Unfortunately, disruption, however relative, is inevitable if you are to occupy or open a road but it can be minimised through co-ordination.

Co-ordination is currently the responsibility of the roads authority and is achieved through quarterly local meetings with utility companies and daily as and when notices of works are received in between meetings. This is relatively successful as far as most works for road purposes are concerned, but relies on the local utility company representative having programme information available at the meeting. It is not uncommon for programmes to be unavailable locally, since most utility companies are customer led and, as part of their company resource rationalisation, centralise their planning functions, remote from local area offices. Very often programmes are not available at the local meetings or they have insufficient detail to allow effective co-ordination.

Lack of programme information does hinder effective co-ordination and both roads authorities and utility companies should have a statutory responsibility to prepare at least annual programmes for each quarterly co-ordination meeting, that must include an initial assessment of the effect of their works on the road network.

26.3– “Are there ways in which the current electronic notification system could be improved? If so, what are they?”

The current electronic notification scheme (Moleseye) should be extended to become an electronic permit system.

Anyone wishing to carry out activities in the road (occupation and openings) such as utilities, roads authorities and any other private organisation would be required to obtain a permit before doing so.

There should be a charge for the permit and the income from the permit scheme would be held by the Roads Authority to contribute to the management of the scheme.

The present system should also be extended to give Roads Authorities more Powers to Direct than are available under the existing legislation. This would allow Roads Authorities to issue directions to utilities as to the timing (date) on which works can be carried out and in certain circumstances to dictate the route of the work.

There are plans to include utility work locations on a geographical information system to aid co-ordination within the current electronic notification system although the timescale for this is unclear.

This should be developed as a matter of urgency and extended to include all works on the road network. This will produce a powerful tool which will be extremely beneficial to the roads authority in its co-ordination role.

Utility companies and roads authorities are required to notify their works via the electronic notification system as soon as possible and not just comply with the minimum notification period.

They should both have a statutory responsibility to notify all major works a minimum of three months in advance which, with the development of the GIS tool mentioned above will improve roadworks co-ordination and thus minimise disruption.

Proposal 1 – The Community Planning Approach

27.1 – “Do you see Community Planning as an effective route for addressing the roadworks issue?”

1 The Local Government Act provides a statutory basis for community planning to ensure long term commitment to effective partnerships. This approach appears to be similar to the existing NRSWA legislation, and may therefore suffer the same limitation. For example:

- i The Scottish Executive considers (in paragraph 17) that the effective co-ordination of roadworks, to ensure good quality roads are provided for Scotland’s people, is an example of the type of public service which could be improved through the Community Planning process.

The present NRSWA (Section 118) legislation gives roads authorities a statutory duty to co-ordinate roadworks, which it does with some degree of success.

It is not clear how using the new community planning process will improve the situation.

- ii Paragraph 18 states that the Act requires local authorities to work in partnership with what could be utility companies and to bring forward their joint vision in the form of a Community Plan.

The present NRSWA (Section 118) states that there should be a “general duty of undertakers to co-operate” and whilst a failure to comply with this duty constitutes an offence it could be argued that whenever there is a conflict between market forces and co-operation the general duty to co-operate appears to lose out and has not always been fully discharged by undertakers.

The other possible difficulty is the preparation of the Community Plan. Some (if not all) of the privately owned utility companies may be reluctant to put forward/make available publicly sensitive information that may have been taken from their long term business plan that their competitors could make use of.

In addition, it maybe that local communities would find the performance of utility company roadworks to be a major issue and would support its inclusion in their community plan but considerable experience and resources not presently available would have to be provided to each local community to manage the issue.

It is also highly likely that each community would have their own views and priorities which would lead to numerous different devolved powers throughout the country.

Dundee City Council supports the concept of community planning but has reservations over its use in the regulation of utility company roadworks.

The examples used by the Scottish Executive are, in theory, commendable ie trench/duct sharing and forward planning but experience has shown that unless this is reinforced by statute these do not always work. There have been some examples of trench/duct sharing but these are very few, reasons given by utilities range from timing, commercial confidentiality, practical difficulties (closeness of electricity and telecoms cables) and failure to agree cost sharing.

Similarly, the principle of Forward Plans is fully endorsed but the reality is that it is very difficult to obtain annual programmes, never mind over a 5/10 year period. Again, commercial confidentiality as well as customer driven markets, financial constraints and the changing condition of utilities apparatus would be the major limiting reasons.

Dundee City Council welcomes and supports the principle of reporting to communities but feels this should be in addition to and not as the prime legislative leader in regulating utility company roadworks.

27.2 – “Would further guidance on the Local Government in Scotland Act and how its powers can be used to address roadworks be useful? If so, what form should this take?”

Obviously, the Local Government in Scotland Act is a fairly new piece of legislation and there will be little experience of its use. If the Scottish Executive decide to introduce Proposal 1 – The Community Planning Approach then further guidance would be required.

27.3 – “Would strengthening existing NRSWA Codes of Practice be sufficient to improve matters?”

Dundee City Council believe that the current codes of practice are robust enough as the working documents behind the primary legislation and the recently introduced principle of bi-annual reviews of codes will take into account the views of the wider community.

We would support the proposal to make all codes statutory, however, without the introduction of new primary legislation to support the codes, this statutory proposal would be ineffectual.

27.4 – “What are your views on Forward Plans for Roadworks?”

Please see the comments/answers under 27.1.

Proposal 2 – New Primary Legislation

27.5 – “Do you think new primary legislation is required, and if so, why?”

Dundee City Council strongly believe that the only way to improve the regulation of utility company roadworks is through new primary legislation.

As mentioned earlier in the consultation document, two major changes have occurred since NRSWA became law in 1991 (and came into force in 1992), namely privatisation and new technologies.

This has lead to market forces rationalising human resources, resulting in NRSWA responsibilities possibly receiving less priority within these organisations than they should.

The rationalisation of human resources has given rise to a considerable reduction in utility works supervisors, relying on quality clauses in their term contracts or relying on roads authority inspectors as part of their sample inspection regime to draw defects to the utilities attention.

This is borne out by the results of three national coring programmes that have seen very little improvement in performance since the introduction of the NRSWA in 1992/1993.

As stated by the Scottish Executive, 92% of all roadworks in Scotland were completed by utility companies and recent research has confirmed that utility reinstatements seriously limit the life of a road.

Roads Authorities should have a statutory power therefore to carry out full or half width reinstatement of a road and to require utilities to meet all or a proportion of the cost of this additional work. In addition, changes to Section 117 should be considered to extend the period for which roads authorities can restrict the carrying out of utilities works following substantial roadworks.

Whilst trench/duct sharing as mentioned earlier has had limited success the principle is sound. Roads Authorities should therefore be given statutory powers to require:

- 1 utilities to install spare ducts as part of the works they are carrying out;
- 2 to make use of existing spare duct space rather than carry out fresh excavation to install new apparatus; and
- 3 make surplus duct space owned by them available to other utilities for them to place their apparatus.

The rationalisation of human resources again results in a lack of quality input by utilities into the electronic notification system. Centralisation at different locations of various functions is not conducive to accurate and comprehensive input by an operator at possibly a different location.

27.6 – “Are these existing powers under NRSWA which are underused, or could be strengthened?”

There are existing powers in the NRSWA to prosecute offending utility companies, however, Dundee City Council are not aware of any utility company having been prosecuted in Scotland.

This is probably due to lack of roads authority resources available to prepare prosecution papers and the uncertainty that a decision to prosecute would not be taken up by the procurator fiscal on the basis that it may not possibly be in the public interest.

There are therefore existing powers that are underused for the reasons mentioned above which could be strengthened by increasing the level of offences. However, should the Scottish Executive support the introduction of new primary legislation then Dundee City Council believe that consideration should be given to “offenders” being issued with fixed penalty notices by Roads Authorities rather than via criminal prosecution for certain offences.

27.8 – “What would be the most effective way of applying charges for roadworks? For example, would charges for overstaying simply lead to over-estimated timescales for completing roadworks?”

Because of the specialist knowledge not available to roads authorities it is unlikely that estimated time of utilities roadworks would ever be confidently challenged.

This, therefore, makes charging for overstay ineffectual and it is also an administrative burden to both roads authorities and utilities.

The charging for occupation therefore is the most effective way of limiting occupation of the road. However, means of ensuring these charges are not passed onto the customer must be assured.

27.9 – “Do you think making all NRSWA Codes of Practice statutory would be helpful? If so, what type of sanction do you think should apply for non-compliance with the Codes?”

All NRSWA Codes of Practice should be made statutory and any non-compliance should be dealt with by financial penalties. However, to make this effective certain offences should be dealt with by fixed penalties that are issued and managed by the roads authority.

All income from these penalties should be top sliced to fund the management of the scheme.

27.10 – “How do you think training for all those involved in roadworks could be improved?”

Since August 1994 it has been a requirement that a supervisor must have a prescribed qualification and from August 1997 it has been a requirement that at least one qualified operative is present on site during the works.

It is clear, however, from the three national coring results that this training/accreditation procedure is not having the desired effect.

As has been mentioned earlier, Dundee City Council strongly believes that the steady decline in utility supervisory staff has had a strong influence on the quality of reinstatements and until this decline is reversed lack of quality reinstatements will continue to be an issue unless additional statutory powers are given to roads authorities.

27.11 – “Do you see any adverse indirect impacts in what is proposed? For example, would increased charges simply lead to increased administrative workloads for roads authorities?”

To ensure any statutory penalty system is effective certain offences should be fixed penalties and managed by the roads authority. The cost of resourcing this would be top sliced from the charges.

27.12 – “In what ways do you think an independent arbitrator would be helpful? Do you have any suggestions for the extent of his/her role?”

The introduction of an independent arbitrator external to the roads authority organisation would have an adverse indirect impact since considerable resources would have to be used in the preparation and submission of case material. This would create a similar outcome to

the present situation whereby statutory powers already exist but roads authorities lack the resources to pursue through the courts, assuming of course that these cases are taken up by the procurator fiscal office.

Dundee City Council believes that this role should be within the roads authority's organisation and should have a remit to co-ordinate all works on the road network. This should include not only utilities but works for road purposes and any requirement to occupy/open the road for other purposes. He/she would have the authority to ensure all works would have to be pre-booked by issuing permits and would authorise suitable slots to ensure effective co-ordination. Dundee City Council also strongly believes that the utilities should be charged for the whole time they occupy the road through the permit scheme.

His/her role should be at a sufficient level of management to influence and ensure compliance.

"If you favour one of these proposals over the other, please tell us why"

Dundee City Council favours the introduction of new primary legislation with the creation of a Network Manager within the roads authority having a wide ranging co-ordination role of all works on the road network.

28 – "How do you think successful co-ordination and quality control in roadworks should be measured?"

It is very difficult to measure co-ordination successfully. Quality Control is already measured by sample inspections (mainly visual), coring and investigatory inspections of works, but this is not satisfactory within the present Code of Practice.

28.1 – "Are the suggested performance indicators set out in paragraph 22 the right ones?"

No.

28.2 – "Would you suggest any others?"

Please see the comments under 28 above namely that the sample inspection regime should be expanded sufficiently to provide statutory performance indicators. This should take into account visual, coring and trial pits so that the full depth of the reinstatement can be assessed.

28.3 – "How should roads authorities be asked to report on performance indicators"?

By the Council's annual Committee Reports, copied to the Scottish Executive and the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)).

29 – "Do you have any other suggestions for reducing problems caused by roadworks?"

No.