

REPORT TO: PLANNING & TRANSPORT COMMITTEE - 12 MAY 2008

REPORT ON: STATUTORY UNDERTAKERS REINSTATEMENT PERFORMANCE IN DUNDEE - 2007-2008

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 247-2008

1 PURPOSE OF REPORT

1.1 The purpose of this report is to:

- a provide a report on the performance of Statutory Undertakers operating in Dundee during 2007-2008 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 note the performance of Statutory Undertakers reinstatements in Dundee based on the visual sample inspection regime and the local coring results for the last year.

2.2 It is recommended that the Committee note the status of the Transport (Scotland) Act 2005, Part 2 - Road Works, different parts of which are implemented 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 £24.00 (£25 from 1 April 2008) 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 only for the actual cost of any failed cores plus a standard administration fee of £48.00 (£50 from 1 April 2008). For failed cores they are also charged for 2 further inspections, at £48.00 each (£50 from 1 April 2008), during an additional 2 year guarantee period.

3.2 There are some minor financial implications arising from the implementation of the Transport (Scotland) Act - Part 2 - Road Works, which will be monitored during this financial year and reported to Committee at a later date.

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 road works by:

- 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);

- 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
- National Coring Programme - a biannual programme, by all Roads Authorities in Scotland, co-ordinated by the Roads Authorities and Utilities Committee (Scotland) - RAUC(S).

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.

- 4.2 Full results are shown in Appendices 1 and 2, however, the findings are summarised in Sections 5 to 8 below.

5 STATUTORY UNDERTAKERS PERFORMANCE BASED ON VISUAL SAMPLE INSPECTION REGIME (SEE APPENDIX 1 FOR DETAILS)

- 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), 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 has therefore continued its own local coring programme and is also continuing to participate in the biannual National Coring Programme detailed below. However, it should be noted that coring does not reveal what is below the bituminous layers.

6 STATUTORY UNDERTAKERS PERFORMANCE BASED ON LOCAL CORING PROGRAMME (SEE APPENDIX 2 FOR DETAILS)

- 6.1 All cores were selected randomly from permanent reinstatements, completed between March and December 2007, with the majority in carriageways as against footways.
- 6.2 Out of 95 cores taken, from all Statutory Undertakers' reinstatements last year, 15 cores failed to meet the Specification. However, only 5 reinstatements (ie 5% of total) require replacement of the blacktop materials by the appropriate utility companies and 10 reinstatements have minor defects which do not require replacement but we will monitor them for 2 years for their performance.
- 6.3 To continue to monitor the performance of Statutory Undertakers, and to impress on them the requirement to achieve the target of 90% pass rate, it is intended to continue with local coring programmes during 2008/2009.

7 STATUTORY UNDERTAKERS PERFORMANCE BASED ON NATIONAL (SCOTTISH) CORING PROGRAMME

- 7.1 Following the last four bi-annual National Coring Programmes (reported previously to Committee), the RAUC(S) decided to repeat this programme during 2008/09 until the level of performance is such that it provides the industry with confidence in the quality of reinstatements. Falkirk Council will be leading this programme for TayForth Area RAUC on behalf of Dundee City, Angus, Clackmannanshire, Fife, Perth & Kinross and Stirling Councils.
- 7.2 The National Coring Programme will core up to 2% random sample of permanent reinstatements completed between 1 July 2007 to 30 June 2008. The coring will take place during October and November 2008. The results, after agreement with all Statutory Undertakers, will be reported to the RAUC(S) Coring Group and then their National Coring Report will have to be approved by RAUC(S) in June 2009, before wider publication and report to Planning and Transport Committee later in 2009.

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 improvements in the quality of reinstatements in Dundee. The 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 Planning and Transportation Department, Leisure and Communities, City Centre Management, BEAR(S) and Tayside Police) to discuss their planned major works, to co-ordinate these with the Council's own planned works and to monitor their performance.

9 TRANSPORT (SCOTLAND) ACT 2005

- 9.1 Committee will recall their approval on 23 February 2004 of the report "The Regulation of Utility Companies Roadwork's: A Consultation" which included Dundee City Councils response to the consultation on the Transport (Scotland) Bill.
- 9.2 The Transport (Scotland) Act 2005 received Royal Assent on 5 August 2005.

The Act has four 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 Part IV 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 road works 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. Mr John Gooday was appointed in May 2007 as the Scottish Road Works Commissioner and has now 3 staff and an office in Edinburgh;
- 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 works and notify/register works information in the SRWR;
- introducing stricter requirements for reinstating roads and new provisions on resurfacing parts of roads by Statutory Undertakers in special cases; and
- giving new powers to the Roads Authorities to issue fixed penalty notices for a limited number of offences (see Appendix 3 for details).

9.3 To implement the provisions of Part 2 of the Act, new Codes of Practice and Regulations were drafted by various working groups, with members representing Scottish Parliament, Roads Authorities and Statutory Undertakers. The Co-ordination of Roadworks Code of Practice came into force from 1 April 2008 and the Penalties Code of Practice is expected to come into force from 1 October 2008.

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.

There are no major issues.

11 CONSULTATIONS

11.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

12 BACKGROUND PAPERS

12.1 Report No 301/2000 - Statutory Undertakers Performance in Dundee 1999/2000 was presented to Planning and Transportation Committee on 22 May 2000.

12.2 Report No 338/2001 - Statutory Undertakers Performance in Dundee 2000/2001 was presented to Planning and Transportation Committee on 25 June 2001.

12.3 Report No 319/2002 - Statutory Undertakers Performance in Dundee 2001/2002 was presented to Planning and Transportation Committee on 27 May 2002.

12.4 Report No 509/2003 - Statutory Undertakers Performance in Dundee 2002/2003 was presented to Planning and Transportation Committee on 25 August 2003.

- 12.5 Report No 137/2004 - The Regulation of Utility Companies Roadworks: A Consultation was presented to Planning and Transportation Committee on 23 February 2004.
- 12.6 Report No 279/2005 - Statutory Undertakers Reinstatement Performance in Dundee 2003/2005 was presented to Planning and Transportation Committee on 16 May 2005.
- 12.7 Report No 227/2006 - Statutory Undertakers Reinstatements in Dundee - 2005/2006 was presented to Planning and Transportation Committee on 8 May 2006.
- 12.8 Report No 267/2007 - Statutory Undertakers Reinstatement Performance in Dundee - 2006/2007 was presented to Planning and Transport committee on 11 June 2007.

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APPENDIX 1**SAMPLE INSPECTION RESULTS (VISUAL) OF STATUTORY UNDERTAKERS REINSTATEMENTS IN DUNDEE****SUMMARY OF 2007/2008 ANNUAL PASS RATES**

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

| Statutory Undertaker | 2007/2008 | |
|----------------------------|-----------------------------|----------------------|
| | Agreed Units of Inspections | Pass Rate |
| Openreach (BT) | 200 | 93% (56/60) |
| Cable & Wireless | No Works | - |
| Scottish Water | 557 | 98% (163/167) |
| Scottish & Southern Energy | 274 | 99% (81/82) |
| Virgin Media (Telewest) | 147 | 98% (43/44) |
| Thus | No Works | |
| Scotland Gas Networks | 719 | 99% (214/216) |
| Average Pass Rate | | 98% (557/569) |

Notes

- 1 Inspection figures in brackets, eg (56/60) represent number of passes divided by the total number of inspections for that undertaker.
- 2 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 3 different stages, eg for BT 3 X 10% X 200 = 60

| Statutory Undertaker | Annual Sample Inspection Pass Rate (%) | | | | | | |
|------------------------------|--|-----------|-----------|-----------|-----------|-----------|-----------|
| | 2001/02 | 2002/03 | 2003/04 | 2004/05 | 2005/06 | 2006/07 | 2007/08 |
| Openreach (BT) | 90 | 94 | 99 | 93 | 93 | 90 | 93 |
| Cable & Wireless | - | - | - | - | - | - | - |
| Scottish Water | 90 | 94 | 96 | 98 | 93 | 97 | 98 |
| Scottish & Southern Energy | 91 | 98 | 99 | 100 | 96 | 99 | 99 |
| Virgin Media (Telewest) | 90 | 97 | 100 | 100 | 83 | 95 | 98 |
| Thus | 100 | 91 | 100 | - | 100 | - | - |
| Scotland Gas Networks | 95 | 99 | 99 | 100 | 96 | 99 | 99 |
| Average Pass Rate (%) | 91 | 96 | 98 | 99 | 94 | 97 | 98 |

APPENDIX 2 - LOCAL DUNDEE CORING PROGRAMME 2007/2008

Appendix 2 shows the results of the local Dundee Coring Programme during 2007/2008 with figures from previous 7 years for comparison. All cores were selected randomly from permanent reinstatements in carriageways and footways completed between March and December 2007.

| Statutory Undertaker | Core Description | Core No | Pass | | Fail-Monitor | | | | | | Fail-Replace | | | | | |
|----------------------------|--------------------------|-----------|-----------|------------|--------------|----------|-----------|----------|-----------|------------|--------------|----------|----------|----------|----------|-----------|
| | | | No | % | Com-paction | Layers | Materials | Others | TOTAL | | Com-paction | Layers | Material | Others | TOTAL | |
| | | | | | | | | | No | % | | | | | No | % |
| Openreach (BT) | Randomly Selected | 11 | 9 | 82% | 1 | - | - | - | 1 | 9% | - | 1 | - | - | 1 | 9% |
| Cable & Wireless | No Works | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Scottish Water | Randomly Selected | 27 | 23 | 85% | 2 | - | - | - | 2 | 7% | - | 2 | - | - | 2 | 7% |
| Scottish & Southern Energy | Randomly Selected | 13 | 11 | 85% | 1 | - | - | - | 1 | 8% | - | 1 | - | - | 1 | 8% |
| Virgin Media (Telewest) | Randomly Selected | 8 | 7 | 88% | - | 1 | - | - | 1 | 13% | - | - | - | - | - | - |
| Thus | No works | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Scotland Gas Networks | Randomly Selected | 36 | 30 | 83% | 4 | 1 | - | - | 5 | 14% | - | 1 | - | - | 1 | 3% |
| TOTAL 2007/2008 | Randomly Selected | 95 | 80 | 84% | 8 | 2 | - | - | 10 | 11% | - | 5 | - | - | 5 | 5% |

| | | | | | | | | | | | | | | | | |
|------------------|-------------------|-----|----|-----|---|----|---|--|----|-----|---|----|----|---|----|-----|
| Totals 2006/2007 | Randomly Selected | 100 | 92 | 92% | 3 | 2 | 1 | | 8 | 3% | 1 | 4 | | | 5 | 5% |
| Totals 2005/2006 | Randomly Selected | 25 | 17 | 68% | 3 | 2 | 1 | | 8 | 32% | | | | | 0 | - |
| Totals 2004/2005 | Randomly Selected | 29 | 24 | 83% | 1 | | 1 | | 2 | 7% | | 3 | | | 3 | 10% |
| Totals 2003/2004 | Randomly Selected | 54 | 27 | 50% | | | | | 0 | - | 9 | 10 | 5 | 3 | 27 | 50% |
| Totals 2002/2003 | Randomly Selected | 102 | 45 | 44% | | | | | 0 | - | 6 | 13 | 37 | 1 | 57 | 56% |
| Totals 2001/2002 | Randomly Selected | 56 | 26 | 46% | 6 | 3 | | | 9 | 16% | 9 | 11 | 1 | | 21 | 38% |
| Totals 2000/2001 | Random & Targeted | 97 | 24 | 25% | 3 | 17 | | | 20 | 21% | 8 | 45 | | | 53 | 54% |

Notes

- Pass = Reinstatement in compliance with NRSWA Reinstatement Specification.
- Fail-Monitor = Defects of minor nature, requiring further 2-year monitoring.
- Fail-Replace = Outwith NRSWA Reinstatement Specification, requiring replacement of bituminous layers and a further 2 year guarantee period

APPENDIX 3

Transport (Scotland) Act - Sections 34 and 37 introduces the following Fixed Penalties for certain offences expected to come into force from 1 October 2008. The fixed penalties are proposed by the Scottish Parliament at £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

| Offence | Brief Description |
|---|--|
| 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

| Offence | Brief Description |
|---|--|
| 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. 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 will provide that this cannot exceed a maximum of £50,000.