

**REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE - 22 MAY 2000**  
**REPORT ON: STATUTORY UNDERTAKERS' PERFORMANCE IN DUNDEE 1999/2000**  
**REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION**  
**REPORT NO: 301-2000**

## **1 PURPOSE OF REPORT**

1.1 The purpose of this report is to:-

- advise members of the performance of Statutory Undertakers (hereafter referred to as Undertakers) operating in Dundee in 1999/2000.
- update the Committee of the progress of the National Coring Programme of Undertakers' reinstatements.
- report on a test case in England, in relation to the landmark interpretation of the New Roads and Street Works Act 1991 by the High Court on responsibility for defective reinstatements.

## **2 RECOMMENDATIONS**

2.1 It is recommended that the Committee:-

- I note the performance of Undertakers in Dundee for the year 1 April 1999 - 31 March 2000;
- II note the timetable for the National Coring Programme, the results of which will be published early in year 2001 and incorporated in future annual reports of Undertakers' performance in Dundee; and
- III note the outcome of the House of Lords ruling placing full responsibility on the Undertakers to carry out reinstatements to the prescribed standard.

## **3 FINANCIAL IMPLICATIONS**

3.1 Undertakers are charged the prescribed national fees for each sample inspection (at £14.50) up to 6% of estimated inspection units at five stages of Undertakers' works and in respect of each additional inspection (at £29.00) if a defect is found. Undertakers are also charged the actual cost of defective cores including associated staff and administration costs and are responsible for carrying out remedial works.

3.2 The income from Undertakers for sample and defect inspections over the last three years was as follows:-

1997/98	£15,322
1998/99	£17,814
1999/00	£21,718

## **4 LOCAL AGENDA 21 IMPLICATIONS**

4.1 The contents of this report have no implications on Local Agenda 21 matters.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 The contents of this report have no implications on equal opportunity matters.

## 6 STATUTORY UNDERTAKERS' PERFORMANCE 1999/2000

6.1 The summary performance of each Undertaker in Dundee between 1 April 1999 and 31 March 2000 is shown on Appendix 1.

6.2 The sample inspection regime allows Roads Authorities throughout the UK to regularly establish the overall performance of each Undertaker operating in their area. This involves sample inspections of normally up to 6% of Undertaker's works selected randomly at five different stages. These stages are during excavation and reinstatement (including inspection of signing, lighting and guarding), within one month then 6 to 9 months after permanent reinstatement and at the end of the guarantee period. The summary performance results also give the number of other defects found during routine inspections outside the sample regime, for information only.

6.3 In general terms, the sample results indicate that all Undertakers have improved their performance throughout the year. The five Undertakers listed below achieved the national recommended minimum standard of performance set at 90%, that is the number of sample inspections passed divided by the total number of sample inspections carried out:-

- Thus (formerly Scottish Telecom) 100% (annual average)
- Cable & Wireless (formerly Mercury) 100%
- Transco 97%
- Scottish Hydro Electric 95%
- North of Scotland Water Authority 92%

Atlantic Telecom carried out no reinstatements during 1999/2000.

6.4 The following two Undertakers have failed to achieve the minimum standard during two or three quarters of the year but the trend is improving:-

- Telewest Communications 89% (annual average)
- British Telecom 87%

6.5 The New Roads and Street Works Act 1991 has introduced an Improvement Notice which may be served by the Roads Authority if more than 10% of the sample inspections of an Undertaker reveals defects over any three month period. The Planning and Transportation Department has not yet issued any Improvement Notices but may use this power to ensure that action is taken by any poorly performing Undertakers.

6.6 The New Roads and Street Works Act 1991 also specifies that the Roads Authority may make a written report to the Undertakers whenever inadequate signing, lighting or guarding is discovered and the information will then form part of the performance report. In Dundee, all signing, lighting or guarding inadequacies have been treated as dangerous or potentially dangerous and were therefore reported verbally either to the contractor if present on site or by phoning the Undertaker to rectify. The enclosed performance results do not include these failures as they were not reported in writing. From 1 April 2000, a defect report for signing, lighting and guarding inadequacies will be presented in writing and will be included in 2000/2001 performance results. It is hoped that the Undertakers continuing improvement regarding quality of reinstatements will offset any recorded failures of signing, lighting and guarding defects.

## 7 NATIONAL CORING PROGRAMME

7.1 Further to the previous report presented to the Committee on 28 February (Report No 60/2000 refers), the following paragraphs give a brief progress of and timetable for the National Coring Programme:-

- I WEEKS Technical Services confirmed their final price being the same as their original indicative tender price per core.
- II Dundee City Council, as the lead authority for Tay-Forth Coring Programme during the Year 2000, awarded the contract to WEEKS on behalf of all the seven Councils comprising the Tay-Forth Area RAUC (Roads Authorities and Utilities Committee).
- III The national timetable for Year 2000 Coring Programme is as follows:-
  - Coring to be completed throughout Scotland by end of May.
  - Coring reports to be sent to all Councils by end of June.
  - Local scrutiny and agreement of results with each Undertaker by August.
  - Report of local areas to Area RAUCs (eg Tay-Forth Area RAUC) by October.
  - Area RAUC reports to RAUC (Scotland) Coring Working Group by October.
  - RAUC(Scotland) Coring Working Group prepare National Report by November.
  - National Report to RAUC (Scotland) for approval by December and subsequent publication early 2001.
  - Start of next year's Coring Programme by April 2001.

## **8 RESPONSIBILITY FOR DEFECTIVE REINSTATEMENTS**

- 8.1 Under the New Roads and Street Works Act 1991, Undertakers are responsible for reinstatements normally for a period of 2 years, or for 3 years in the case of deep openings, following the completion of permanent reinstatements.
- 8.2 A test case by an English Council against British Telecom was won in the High Court in 1998 making BT responsible for defective reinstatements discovered after the end of the guarantee period.
- 8.3 In May 1999, the House of Lords refused BT's petition for leave to appeal against the High Court ruling which confirmed the earlier Magistrates Court's decision that the Undertaker is responsible for defective reinstatements even if they were found to have failed after the guarantee period had expired.
- 8.4 This decision is interpreted to mean that Undertakers' guarantee period starts from the 'satisfactory' completion of permanent reinstatements. If Councils could prove that reinstatements are not carried out to the standards laid down in the New Roads and Street Works Act 1991, the Undertaker is responsible for future remedial repairs. This ruling should make some contribution towards higher reinstatement standards by Undertakers and should reduce the long term damage to roads and the consequent maintenance liabilities which are inherited by the Roads Authorities upon completion of the guarantee period of a defective reinstatement.

## **9 CONSULTATIONS**

- 9.1 The Chief Executive, Director of Finance, Director of Support Services and Director of Corporate Planning have been consulted and are in agreement with the contents of this report.

## **10 BACKGROUND PAPERS**

- 10.1 Report No 60/2000; Tenders for Sample Testing of Statutory Undertakers Reinstatements, was presented to Planning and Transportation Committee on 28 February 2000.
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5 May 2000

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**APPENDIX 1 - NEW ROADS AND STREET WORKS ACT 1991 - SAMPLE INSPECTIONS AND OTHER REPORTED DEFECTS  
SUMMARY OF 1999/2000 PERFORMANCE OF STATUTORY UNDERTAKERS IN DUNDEE**

Undertaker	Estimated Units of Inspection	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual Average % Pass
		Sample % Pass	Other Defects	Sample % Pass	Other Defects	Sample % Pass	Other Defects	Sample % Pass	Other Defects	
<b>Telewest Communications</b>	654*	<b>67%</b> (6/9)	4	<b>85%</b> (11/13)	4	<b>89%</b> (16/18)	3	95% (37/39)	3	<b>89%</b>
<b>British Telecom</b>	174	92% (12/13)	0	<b>86%</b> (12/14)	0	<b>69%</b> (9/13)	2	100% (12/12)	4	<b>87%</b>
<b>Thus</b> (formerly Scottish Telecom)	218*	100% (2/2)	0	-	0	-	0	100% (7/7)	0	100%
<b>Atlantic Telecom</b>	No Works	-	-	-	-	-	-	-	-	-
<b>Cable &amp; Wireless</b> (formerly Mercury)	No Units Agreed	-	0	100% (23/23)	0	-	0	-	1	100%
<b>Transco</b>	430	93% (27/29)	0	97% (31/32)	0	100% (36/36)	0	97% (31/32)	2	97%
<b>North of Scotland Water Authority</b>	480	<b>85%</b> (29/34)	1	92% (22/24)	0	92% (36/39)	5	98% (46/47)	4	92%
<b>Scottish Hydro Electric</b>	505	<b>88%</b> (29/33)	4	98% (39/40)	2	97% (38/39)	4	95% (36/38)	0	95%

**Notes:** Inspection figures in brackets eg (6/9) represent no. of passes/no. of sample inspections.

\* For Telewest and Thus, local agreements were in operation for sample inspections.