

**REPORT TO:** CITY DEVELOPMENT COMMITTEE - 31 OCTOBER 2011

**REPORT ON:** STATUTORY UNDERTAKERS REINSTATEMENT PERFORMANCE IN DUNDEE - 2010/2011

**REPORT BY:** DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 433-2011

## **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 2010/2011 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 approves the continuation of the annual local coring programme and participation in the biannual national coring programme.
- 2.3 It is recommended that the Committee note 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 £32 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 £64. For failed reinstatements, discovered after sample or routine inspections or after coring, Statutory Undertakers are also charged for up to three further inspections of their remedial works at £32 each.
- 3.2 To implement the Transport (Scotland) Act - Part 2 - Road Works (in particular Fixed Penalty Notices) additional staff resources were required. It was anticipated that the income from these FPNs would cover these staff costs. The Department had reviewed the additional work, arising from the implementation of the new legislation and manage the new Statutory Undertaker called Fibrecity (H2O Networks), and a report was submitted to the Policy and Resources Committee.

## **4 BACKGROUND**

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

- Visual Sample Inspections - at three different stages ie during the works, after reinstatement and before the end of the two year guarantee period (or three 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 three 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, 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 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 (99% 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 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, 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 FOR DETAILS)**

6.1 All cores were selected randomly from permanent reinstatements, completed between April 2010 and March 2011, with 75% of all cores in carriageways and 25% in footways. The sample size was 5% of estimated annual workload for each utility.

- 6.2 Out of 48 cores taken from Statutory Undertakers' reinstatements last year in Dundee, 7 cores failed to meet the Specification representing 85% average pass rate, compared to 88%, 85%, 84% and 92% in the previous four years respectively. These seven reinstatements (ie 15% of total) require replacement of the blacktop materials by the utility companies.
- 6.3 To continue to monitor the performance of Statutory Undertakers' reinstatements, and to impress on them the requirement to achieve the minimum target of 90% pass rate, it is intended to continue with local coring programmes during 2011/2012.

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

- 7.1 Following the last five biannual National Coring Programmes (reported previously to Committee), the RAUC(S) had decided to repeat this programme during 2010/2011 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 37 of the permanent reinstatements majority in carriageways as against footways reinstated between 1 July 2009 and 30 June 2010. The coring took place between September and November 2010. Out of 37 cores taken from Statutory Undertakers reinstatements in Dundee 5 cores failed to meet the Specification representing 86% average pass rate. This is to be compared against a national average of 74%.

## **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) 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 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 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. Mr John Gooday was appointed in May 2007 as the Scottish Road Works Commissioner with 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 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 on a 1 year fixed term contract.

## 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 are set out below:

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, Depute Chief Executive (Support Services) and Director of Finance 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 Reinstatement Performance 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.
- 12.9 Report No 247/2008 - Statutory Undertakers Reinstatement Performance in Dundee - 2007/2008 was presented to Planning and Transport Committee on 12 May 2008.
- 12.10 Report No 234/2009 - Statutory Undertakers Reinstatement Performance in Dundee - 2008/2009 was presented to City Development Committee on 8 June 2009.
- 12.11 Report No 281/2010 - Statutory Undertakers Reinstatement Performance in Dundee - 2009/2010 was presented to City Development Committee on 23 August 2010.

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15 September 2011

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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 2010/2011		
	Agreed Units of Inspections (estimated annual workload)	No of Passes/Total No of Inspections	Pass Rate
Openreach (BT)	198	57/59	97%
Cable & Wireless/Thus	Minimal Works	-	-
Scottish Water	437	131/131	100%
Scottish & Southern Energy	389	116/116	100%
Virgin Media (ex Telewest)	194	56/58	97%
Scotland Gas Networks	493	148/148	100%
<b>Average Pass Rate</b>			<b>99%</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 (%)					
	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Openreach (BT)	93	90	93	100	95	97
Cable & Wireless/Thus (Minimal Works)	100	-	-	-	-	-
Scottish Water	93	97	98	96	99	100
Scottish & Southern Energy	96	99	99	97	98	100
Virgin Media (ex Telewest)	83	95	98	98	93	97
Scotland Gas Networks	96	99	99	99	99	100
<b>Average Pass Rate (%)</b>	<b>94</b>	<b>97</b>	<b>98</b>	<b>98</b>	<b>98</b>	<b>99</b>

## APPENDIX 2 - LOCAL DUNDEE CORING PROGRAMME 2010/2011

Appendix 2 shows the results of the local Dundee Coring Programme 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 2010 and March 2011.

Statutory Undertaker	Core Description	Core No	Pass		Fail											
			No	%	Com- paction	Layers	Material	Others	TOTAL							
									No	%						
Openreach (BT)	Randomly Selected	6	5	83%	1					1	17%					
Cable & Wireless/Thus	No Works															
Scottish Water	Randomly Selected	11	7	64%	1	1	2			4	36%					
Scottish & Southern Energy	Randomly Selected	11	10	91%	1					1	9%					
Virgin Media (ex Telewest)	Randomly Selected	6	5	83%		1				1	17%					
Scotland Gas Networks	Randomly Selected	14	14	100%												
<b>TOTAL 2010/2011</b>	Randomly Selected	<b>48</b>	<b>41</b>	<b>85%</b>	<b>3</b>	<b>2</b>				<b>7</b>	<b>15%</b>					
<b>TOTAL 2009/2010</b>	<b>Randomly Selected</b>	<b>98</b>	<b>86</b>	<b>88%</b>	<b>2</b>	<b>9</b>	<b>1</b>			<b>12</b>	<b>12%</b>					
Totals 2008/2009	Randomly Selected	96	82	85%	3	11				14	15%					
Totals 2007/2008	Randomly Selected	95	80	84%	8	7				15	16%					
Totals 2006/2007	Randomly Selected	100	92	92%	4	6	1			11	8%					
Totals 2005/2006	Randomly Selected	25	17	68%	3	2	1			8	32%					

### 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 2010

Appendix 3 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 2010 and March 2011.

Statutory Undertaker	Core Description	Core No	Pass		Fail						
			No	%	Com-paction	Layers	Materia l	Bond	Others	TOTAL No	%
Openreach (BT)	Randomly Selected	47	21	45%	1	14	4	7	0	26	55%
Scottish Power	Randomly Selected	33	26	79%	1	6	0	0	0	7	21
Scottish Water	Randomly Selected	86	63	73%	0	17	3	3	0	23	27%
Scottish & Southern Energy	Randomly Selected	26	23	88%	1	0	1	1	0	3	12%
Virgin Media (ex Telewest)	Randomly Selected	23	18	78%	0	3	1	1		5	17%
Scotland Gas Networks	Randomly Selected	60	53	88%	0	6	1	0	0	7	12%
<b>TOTAL 2010/2011</b>	Randomly Selected	<b>275</b>	<b>204</b>	<b>74%</b>	<b>3</b>	<b>46</b>	<b>10</b>	<b>12</b>	<b>0</b>	<b>71</b>	<b>26 %</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 3**

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.