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| Authorised By | Ray Montgomery         |
| Designation   | Head of Infrastructure |
| Date          | 12/10/17               |

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**REPORT TO:** Members Library

**MEETING DATE:** 31<sup>st</sup> of Oct 2017

**BY:** Head of Infrastructure

**SUBJECT:** Consultation on Improving Road works in Scotland

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## **1 PURPOSE**

- 1.1 This report provides a response to the Transport Scotland consultation “Raising Standards and Improving the Quality of Road Works in Scotland”.

## **2 RECOMMENDATIONS**

- 2.1 To note the officers responses to Transport Scotland’s consultation “Improving the Quality of Road Works”, as shown in **Appendix 1**.

## **3 BACKGROUND**

- 3.1 In 2015 the Minister for Transport and the Islands commissioned an independent review of the Scottish Road Works Commissioner’s Office and functions. Whilst Scotland leads the UK in the planning and coordination of road works, it is considered there is still scope for improvement, especially in how road works are managed. In order to stop up a road under Section 68 (1) of the Roads (Scotland) Act 1984 the Council has to be satisfied that either it is unnecessary or it has become dangerous to the public.
- 3.2 The resultant ‘Barton Report’ made several recommendations, including improvements in availability of information, measures to support improvements in the quality of road work reinstatement, improving enforcement and strengthening the existing powers available to the Scottish Road Works Commissioner and to Roads Authorities.

- 3.3 Transport Scotland's consultation seeks views on proposals for improvements to the regulation of road works in Scotland which included taking forward the accepted recommendations for the 'Barton report'.
- 3.4 The consultation, closed on 12 October 2017.
- 3.5 The majority of road works in East Lothian are either:
- utility company works to place, repair, renew or improve service pipes and cables; or
  - Roads authority works to repair, renew or improve roads (includes footways).
- 3.6 The legislation under which works in the road are undertaken in Scotland is the New Roads and Street Works Act 1991 (NRSWA), or the Roads (Scotland) Act 1984 (RSA). The NRSWA was revised and updated by the Transport (Scotland) Act 2005. Under NRSWA roads authorities have a duty to coordinate their own works and those of utility companies, who are in turn obliged to cooperate with the roads authority.
- 3.7 Utility companies have statutory rights which allow them to place, repair, renew or improve their pipes or cables in roads, subject to meeting certain duties.
- 3.8 In East Lothian Council, Senior Officers from Roads Services attend the Roads and Utilities Committee Scotland (RAUCS) meetings, and the South East of Scotland meetings (SERAUC). These play an important part in the planning and coordination of road works.
- 3.9 Internal consultation has been undertaken with the appropriate Roads officers and senior management within Infrastructure. The consultation response includes comments from relevant and competent persons and is considered to be comprehensive and representative.
- 3.10 Transport Scotland will review the consultation and subsequently publish their proposals and implementation plan, with the majority of changes introduced through primary or secondary legislation.

#### **4 EQUALITIES IMPACT ASSESSMENT**

- 4.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

## **5 RESOURCE IMPLICATIONS**

5.1 There are no resource implications at this time. However, some of the proposed changes may have an impact on resources and there maybe increased cost associated with implementing some of the proposals. While it is hoped that any increase will be offset by improved efficiencies and longevity of road pavement reinstatements this is an unknown quantity at this time

5.2 Personnel - None

5.3 Other - None

## **6 BACKGROUND PAPERS**

6.1 None

|                      |                                    |
|----------------------|------------------------------------|
| <b>AUTHOR'S NAME</b> | Ray Montgomery                     |
| <b>DESIGNATION</b>   | Head of Infrastructure             |
| <b>CONTACT INFO</b>  | Alan Stubbs- Service Manager Roads |
| <b>DATE</b>          | 12-10-17                           |

## Appendix 1

### East Lothian Council response to Transport Scotland consultation “Raising Standards and Improving the Quality of Road Works in Scotland”

#### Question 1

**Should utility companies be required to produce quality plans for proposed road works?**

**YES**

East Lothian Council (ELC) would welcome this. At the moment there is too much emphasis on the inspection work undertaken by roads authorities to check that road openings have been properly reinstated. Any organisation undertaking this work should have full responsibility and accountability for the quality of the works they deliver. They should not be able to use inspections by other parties as a means of transferring responsibility and risk for quality of workmanship and materials.

It is our view that quality assurance should be built in to the process and this could be achieved through quality plans for planned road works. If not, this could contribute to problems of unsafe traffic management and poor quality reinstatements. Quality plans for reinstatement should be clear, concise and take into consideration the different types of roads with different approaches for engineered and non-engineered roads such as single track rural roads, where reinstatement is often directed by the construction found and condition of sub-grade.

Any quality plan should be the responsibility of the Utility Company and they need to ensure that this is disseminated to any of their sub-contractors working on their behalf. If there is any breach it should not simply be the sub-contractor that is to blame. The successful use of quality plans needs to be legally binding and will require inclusion as part of the formal site processes undertaken by the site supervisor/manager.

#### Question 2

**Should there be a single guarantee period offered on utility reinstatements of 6 years regardless of the depth of excavation?**

**YES**

For a reinstatement to be truly what it says, the intervention should leave the road authority in no worse a situation than it was prior to the road works. When we as the road authority undertake a permanent repair on our Road Network we are expecting this to last up to 20 years without any further treatment or attention. ELC would like to see a 10 year maintenance period. If this is not feasible then an 8 or a minimum of a 6 year guarantee is better than what is currently in place. Any extended period would encourage all organisations to ensure that reinstatements were correctly undertaken to the full depth of excavation.

We would recommend as part of this change that there is an interim inspection regime incorporated in the guarantee to ensure compliance and this would be in addition to normal inspections. It is not clear how this would work at this stage and this requires further discussion and scrutiny.

### Question 3

**If introduced, should the impact of quality plans be reviewed after a suitable period (perhaps 6 years), and the necessity of the latent defect process be assessed?**

**YES**

If the introduction of Quality Plans, after 6 years, has led to an overall improvement in the quality of reinstatements across Scotland then it is felt this addresses the issue. ELC would support the amendment.

### Question 4

**Should we clarify that the scope for a code of practice on reinstatement (currently the Specification for the Reinstatement of Openings in Roads) includes all activity relating to the execution of road works e.g. signing lighting guarding, excavation, reinstatement, and guarantee period?**

**YES**

Some of the issues that we find are not necessarily associated with the large utilities companies but smaller lower tier sub-contractors. Some appear to lack the knowledge and competence we expect in regards to Traffic management (TM) and reinstatement requirements. This would clarify the position and have industry standards for TM and reinstatements. This would be welcomed and supported by ELC.

### Question 5a

**Should actual start, works cleared, and works closed notices be notified within 2 hours, or within 2 hours of the start of the next business day if out with office hours?**

**No**

Having this within 2hrs would be challenging to administer. We would welcome the period being reduced to say 4hrs in the working day and then 2hrs at the start of the next working day. So, for example if we are made aware by 11am, this should be changed on the system within that working day. However, if the change is made at 2pm or later there should be allowances to put details on the system 2hrs after the start of the next working day. Revised notification periods would improve the accuracy of the information available, which would allow more efficient utilisation of a road inspector's time and avoid abortive site visits. However, this will have an impact on Council resources. As a minimum any proposals implemented need to be cost neutral for roads authorities.

There also needs to be some flexibility with Local Authorities especially during their winter Maintenance period when staff working on roadworks are also engaged on gritting the network. During this period, weather conditions can affect programming/carrying out works more than normal, this needs to be taken into account and can be recorded on the notice.

**Question 5b**

**Should the validity period for notices placed onto the Scottish Road Works Register in relation to planned works be reduced, the proposal being that they be set at 4 days or 2 days depending on the traffic sensitivity of the road?**

NO

We would consider that the current periods are workable and appropriate and see no benefit in shortening the validity period for notices placed onto the SRWR.

**Question 6**

**Should the provision of plant information to the Scottish Road Works Register be made mandatory?**

It would be desirable. However, it should be noted that ELC only has readily available records for apparatus in new roads built with construction consents. Gathering/making available other data would be an expensive and time consuming task and a risk managed approach to gathering data for apparatus likely to cause harm or damage may be more cost effective. For future construction consents it would be desirable for these to be submitted in an electronic format to allow direct uploading of information. This would ideally be a consistent requirement across Scotland and should be incorporated into the planned new guidance for developments. Whilst it might be desirable to make this mandatory over the longer term, a transition period of around five years would be necessary and fair to give organisations time to digitise all their records.

**Question 7a**

**Should the obligation on the Scottish Road Works Commissioner to make the Scottish Road Works Register available for inspection be repealed?**

Telecom companies have been notably reluctant to add their information to this due to claims of security concerns. If there are real security risks and concerns about the availability of information and how this could be used by third parties the obligation should be repealed. However, we would welcome that as a minimum the information on the system should include contact information of the specific utility/contractor and the Traffic management they have in place. Currently as the licence holder it is ELC details that are on the notice but it's not necessarily work ELC are undertaking. We would welcome a change to ensure the information on the system is that of the actual company undertaking the works.

**Question 7b**

**Should the duty to make the Scottish Road Works Register available for inspection be replaced with a duty on the Scottish Road Works Commissioner to actively publish information relating to the location of planned and actual road works?**

YES

Publication of details relating to the location of planned and actual roadworks would improve the provision of good information.

**Question 8**

**Should “the Safety at Street Works and Road Works A Code of Practice” apply equally to roads authority and utility road work sites?**

YES

ELC is responsible for the co-ordination of road works on our public road network by third parties and any in house work undertaken by our Road Services Teams. ELC currently complies with the “Safety at Street Works and Road Works - A Code of Practice” (The Red Book) when executing roads works. Within ELC our Road Services teams have sufficient personnel trained to operative and supervisory level in “Signing, Lighting and Guarding” and the “Location and Avoidance of Underground Apparatus”. ELC would welcome that the minimum standard is the “red book”. However, the Roads Authority should reserve the right to apply an enhanced standard (Traffic Signs Manual, Chapter 8) if circumstances dictate.

**Question 9**

**Should utility and roads authority workers be required to be qualified in the “Signing Lighting and Guarding” of a site, and also in the “Location and Avoidance of Underground Apparatus”?**

YES

There should be sufficient personnel trained that are involved in this work, either to operative or supervisor level. The greater the number of people trained will increase the overall awareness of a team, improve Health and safety and result in an overall improvement in standards. We would note that 10 years ago you could get up to 10 people trained per day to operative level in Signing Lighting and Guarding. ELC had all is operatives trained to this level. However, in recent years the numbers allowed to be trained at once has reduced to a maximum of 5. This has had an impact on budget and service delivery.

**Question 10**

**Should the minimum legal requirement for at least ‘one’ operative to be qualified be increased to ensure that more operatives at each road work site hold formal qualifications for the particular work they are undertaking?**

No

We would consider that the current arrangement works well. If there is a situation where there is no trained person on site then works should stop and we would like to see this being monitored and enforced with utilities, especially the smaller lower tier sub-contractors.

**Question 11**



**Do you agree with our policy proposals to revise and improve the enforcement of road works in Scotland by the Scottish Road Works Commissioner (SRWC)?**

No

The current arrangement works well. The SRWC can currently impose financial penalties to roads authorities and utility companies who regularly and continually fail in their duties to co-ordinate and co-operate under sections 118 or 119 of NRSWA. In addition if for example a member of the public contacts the SRWC regarding unsafe Traffic management, the SRWC can make contact with the relevant Authority to investigate and action if appropriate. It is felt that this works very well.

#### **Question 12**

**Do you agree with our policy proposals to reform the use of Fixed Penalty Notices for the enforcement of road works in Scotland?**

YES

Currently Local Authorities cannot impose a fixed penalty notices (FPN's) for category A failures. ELC would like to be able to issue FPN's for current summary offences under NRSWA, including:

- Section 110 –prohibition of unauthorised road works.
- Section 124 - signing, lighting and guarding failure.
- Section 130 - not reinstating excavations in accordance with the specification.

Expansion of the activities for which FPN's could be issued would assist the co-ordination of roadworks and improve the responsiveness of utility companies.

A roads authority should also have the power to refer repeated failure of utility companies or other parties to the SRWC rather than continue to issue FPN's. The SRWC could then issue a higher sanction/penalty.

#### **Question 13**

**Do you agree with our policy proposals to enhance the role of the Scottish Road Works Commissioner?**

YES

The SRWC should have the ability to undertake inspections in their own right and review the activities of all organisations involved in the delivery of road works. However, we suggest that this be a co-ordinated approach with Local authorities. This would avoid any duplication of inspections and in a time of extremely tight budgets this would offer best value to the public.

**Question 14**

**Should there be flexibility to prescribe the restricted period following substantial works through secondary legislation?**

YES

Where significant investment has been made to improve and enhance a public road there should be a means to enforce a longer period of protection of that road under a restricted period. Flexibility would need to be supported by clear definitions, including a process to enable roads authorities to designate the period of restriction as part of a scheme's preplanning. Notice periods will need to be sufficient to enable utilities to reprogram renewal/replacement works in advance of road works to comply with a restricted period. Prior consultation with utilities is an important part of this process.

**Question 15**

**Should we clarify that a roads authority is included within those to be notified under Section 114 of the New Roads and Street Works Act 1991?**

YES

For consistency and to ensure roads authorities can discharge their statutory duties to coordinate works on a road, a roads authority must be formally notified.

**Question 16**

**Should roads authorities be one of the parties that must be notified under statute to help formalise the use of early and late start consents?**

YES

For consistency and to ensure roads authorities can discharge their statutory duties to coordinate works on a road, a roads authority must be formally notified.

**Question 17**

**Should Section 132 of NRSWA be repealed?**

YES

There is concern among RAUCS working groups that section 132 of NRSWA is difficult to enforce and that it should be repealed and replaced with a workable alternative. It is felt that the introduction of mandatory quality plans would address this issue. However, there will remain a requirement for a roads authority, or persons working on their behalf to be able to undertake repairs directly on grounds of public safety and protection of property.

**Question 18**

**Should noticing requirements for roads authorities and utility companies be exactly the same in order to facilitate coordination and cooperation?**

YES

For the sake of fairness and consistency this is supported.

**Question 19**

**Should Section 61 of the Roads (Scotland) Act 1984 be revoked with savings provisions for existing agreements?**

YES

ELC only use Section 109 of the New Roads and Street Works Act 1991 and therefore we would support the removal of Section 61.

**Business and Regulation**

**Question 20**

**Are there any likely impacts the proposals contained within this consultation may have on particular groups of people, with reference to the 'protected characteristics' listed above?**

NO

**Question 21**

**Do you think the proposals contained within this consultation may have any additional implications on the safety of children and young people?**

NO

**Question 22**

**Do you think the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any sector?**

YES

Some of the proposed changes would have an impact on resources and there would be an increased cost associated with implementing some of the proposals. In particular issues raised in questions 5a, 6 and 10 would result in increased costs associated with training and staffing. While it is hoped that any increase will be offset by improved efficiencies and longevity of road pavement reinstatements this is an unknown quantity at this time.

**Privacy**

**Question 23**

**Are there any likely impacts the proposals contained in this consultation may have upon the privacy of individuals?**

NO

**Environmental**

**Question 24**

**Are there any likely impacts the proposals contained in this consultation may have upon the environment?**

NO