

Strategic Consultation – Works on Scottish Roads – Respondent list

	Respondent	Response
	Bristol Water	Not published
	Clancy Docwra	Not published
1	Conferderation of Passenger Transport	Published
2	East Dunbartonshire Council	Published
3	Midlothian Council	Published
4	Highland Council	Published
5	Angus Council	Published
8	Orkney Islands Council	Published
9	Aberdeenshire Council	Published
10	Clackmannanshire Council	Published
11	North Ayrshire Council	Published
12	Fife Council	Published
13	South Lanarkshire Council	Published
14	West Lothian Council	Published
15	East Renfrewshire Council	Published
16	Scottish Borders Council	Published

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
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Joanne.gray@transportscotland.gsi.gov.uk



Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response



appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available on the Transport Scotland web site.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Joanne Gray

Address: Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ

E-mail: WorksonRoads@transportscotland.gsi.gov.uk

Yours faithfully

Joanne Gray



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	<p>CPT agree that utility companies should contribute to the cost of repairing and maintaining the road network. It is clear that roadworks are detrimental to the service life of roads and that a good percentage of roadworks are not completed to a high enough standard.</p> <p>As such, it would appear common sense to introduce a system of contributions and to set the contribution tariffs at a level that properly reflects the cost of maintaining the carriage ways of local roads. If TRL research suggests that a 17% contribution is the figure that best reflects this then this is the figure that Transport Scotland should set.</p>

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	<p>It is worrying to learn that as many as 70% of all utility company works go uninspected. Additionally, a failure rate of 9% seems inordinately high.</p> <p>CPT would support a system whereby companies that have a higher failure rate incur more inspections as outlined in paragraph 1.19. It may also be worthwhile considering scaling charges to reflect the number of previous failures that the company has had – therefore punishing repeat offenders.</p>

04	Should the arrangements for inspection fees be changed, and could this include a performance element?

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>It appears to be the case that the current system for fining companies that are slow to complete roadworks does not work.</p> <p>1,198 instances of over-running utility works have been recorded, yet only 111 formal notices have been issued and none of these resulted in a fine. Not only is the current system failing as a deterrent, it also seems that a potential source of funding for road maintenance is being neglected. If each instance of over-running had resulted in the £5,000 maximum fine then local authorities would have raised almost £6m.</p> <p>However, the concern that utility companies will then request overly-long periods of time to complete works so as to avoid potential fines is understandable. As such, perhaps a system that charges for exceeding the period allotted for the work is not the correct one to pursue.</p>



Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	<p>The lack of fines issued by local authorities for unreasonably prolonged roadworks suggests that a permit system would not result in local authorities issuing fines either.</p> <p>As such the Commissioner's view that they are not currently worthwhile seems correct.</p>

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	<p>The Lane rental Scheme seems sensible. I understand that a similar system works for rail track maintenance. Charging utilities companies for access - but scaling the charge to the traffic sensitivity of the road - both encourages quick work and allows for local authorities to raise revenue to compensate for traffic disruption.</p> <p>CPT would like to see all bus routes regarded as highly traffic sensitive and lane rental charged to reflect this.</p> <p>One potential concern of such a scheme would be that utilities companies would rush work to minimise costs. To account for this possibility any lane rental scheme would need to be introduced in conjunction with an increase in roadworks inspections, particularly on traffic sensitive roads. This could be part-funded by the extra revenue that the lane rental scheme would generate.</p>

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>The evidence to date illustrates a reticence on the part of local authorities to seek prosecutions for roadworks offences. As such, a move towards fixed penalties would seem to be a better method to ensure that offences are met with suitable fines.</p>



Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>The consultation has identified a series of new offences which all seem to hinder the process of proper and expeditious road works and maintenance. It would seem appropriate for these offences to also warrant a fixed penalty.</p> <p>The current fixed penalty amount seems to be inordinately low considering that local authorities could issue a fine of up to £5,000.</p> <p>It is staggering that the cost of paying a fine may actually be less than acquiring the appropriate permits. It is important that fixed penalty amounts are set at a level that reflects the cost of roads maintenance and the disruption that can be generated through road works on traffic sensitive roads.</p> <p>Fixed penalty notices should be an effective deterrent. It may be that they should be set at a level greater than the suggested increase in line with inflation.</p> <p>Likewise, the Commissioner penalty limit should also be increased to enable the Commissioner, as well as local authorities, to be able to levy penalty notices and fines that are commensurate with the inconvenience, delays, and cost of improperly executed roadworks.</p>

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>

Views Sought	
12	<p>What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?</p>



Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	The legislation should also be revised to allow the Roadworks Commissioner a greater degree of flexibility when deciding what constitutes a failure to comply with regulations. As pointed out in paragraphs 3.17 and 3.18, the current legislation is too restrictive and does not properly reflect the intended role of the Roadworks Commissioner.

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	In the interests of best practice as well as fairness it would seem logical that the Code of Practice for Safety at Street Works should apply to both utility companies and roads authorities.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	<p>It is surprising to find out that utility companies and roads authorities are not already compelled to hold digital records of their apparatus and to provide this to the Roadworks Register.</p> <p>CPT strongly agrees that this should be made mandatory. The SRWR should be a comprehensive and accurate register of all utilities and roadworks, past, present and future. There are clear benefits to having records of the date and location of all works.</p>



Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Should accurate record keeping of apparatus require section 61 of the Roads (Scotland) Act 1984 to be repealed then CPT fully supports this.

Views Sought	
17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	<p>Advance notice of road works is vitally important for passenger transport operators. Operators with a registered bus service are duty bound to run that service punctually and reliably. There is a set window of tolerance for deviation from the scheduled running time and any external factor that impact upon a route need to be taken into consideration as early as possible.</p> <p>Retaining a 3-month notice period is one way to ensure that operators have long enough to request service changes and inform passengers, should such steps be necessary.</p>



19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?

Views Sought	
20	Should the early start procedure be a statutory requirement?
	<p>An early start procedure completely nullifies the benefit of giving advance notice to public transport operators of impending roadworks.</p> <p>Paragraph 5.8 states that works can be brought forward 'where there is no good reason for delaying them'.</p> <p>CPT would contend that a very good reason for delaying roadworks would be so that the actual start date coincides with the start date that operators and passengers have been planning for. There needs to be a better understanding that the impacts of roadworks go beyond the convenience for roads authorities and utility companies. Other stakeholders, such as local passenger transport authorities and their passengers have to be taken into account.</p> <p>Why should an operator go to the expense of paying to access the SRWR and to adjust its services according to planned roadworks when those plans can be altered at short notice to suit utility companies?</p>

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	<p>Urgent works are the exception to CPT's views regarding the start date of roadworks. Of course urgent works need to begin as quickly as possible.</p> <p>In those cases when an early start is required or regarded as a matter of urgency, it remains important that stakeholders such as local bus operators are notified as quickly as possible.</p> <p>If urgent work are being entered into the SRWR and then not started for days or weeks they are clearly not urgent. The term 'urgent works' needs defined so as to ensure it is not misused to allow non-urgent works to begin early or to avoid the full early notice period.</p>



Views Sought	
22	<p>Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?</p>
	<p>The purpose of the SRWR is to accurately map out details of all current and forthcoming roadworks. The duty to populate the register with full and correct information as quickly as possible should be placed on all those who have cause to enter data into the register.</p> <p>As such, both utility companies and roads authorities should have a statutory obligation to input detailed and up to date information.</p>

Views Sought	
23	<p>Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?</p>

Views Sought	
24	<p>Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?</p>



25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	<p>There should be a statutory obligation to for both roads authorities and utility companies to place notices on the road works register when works commence. However, there is little point to these start notices do not have to be submitted until the day after the works commence.</p> <p>Ideally start notices should match the previously inputted start dates that all stakeholders have been working towards. On those occasions when there is variance from the planned start date then it is imperative that all stakeholders are informed that work has begun as quickly as possible.</p> <p>Updating the SRWR is perhaps the least onerous aspect of carrying out roadworks. Given the relative ease of doing so it should not be beyond roads authorities or utility companies to update it before or at the same time as the actual start of the roadworks.</p> <p>As this consultation rightly points out in paragraph 5.20, day old information on roadworks is of no use to bus companies or their passengers. Routes will already have been disrupted. It is not acceptable to give notice potentially a day and a half late.</p>

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	<p>The same points apply for the closing of roadworks.</p> <p>If a bus company has built in a lot of extra time into a route because they're expecting to face congestion due to roadworks only to find out that the roadworks have unexpectedly closed early then the route will likely run faster than scheduled. This puts the bus company at risk of early running and could see them brought in front of the Traffic Commissioner to explain their failure to run to time.</p> <p>Given the relative ease in updating the SRWR and the fact that it will likely be possible for the utility company or local authority to gauge how ongoing works are progressing, CPT would like to see works closed notices lodged within at least half a day of works closing. However, as mentioned before, CPT's preference remains that utility companies and local authorities input accurate start and finish dates into the SRWR before roadworks commence and then keep to those predicted dates.</p>

Views Sought	
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27	<p>Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.</p>
	<p>As previously stated, when a bus company becomes aware of roadworks to be carried out on a road that will impact upon their routes, whether that be a road that a route travels on or a nearby road which will see traffic divert onto the bus route, they will take steps to minimise the impact of the roadworks on their services.</p> <p>This may take the form of a short notice registration change to building more time for services.</p> <p>Bus companies are expected by the Traffic Commissioner to run services within a six minutes window of tolerance.</p> <p>Allowing for roadworks to shift their start date - by giving utility companies and roads authorities a validity period of 7 days or even just one day - undoes all previous planning.</p> <p>The consultation should better consider the needs of the travelling public against the desire of utility companies and roads authorities to have the freedom to begin roadworks as and when they wish.</p> <p>I appreciate that there is a cost benefit to utility companies of being able to move onto the next job as soon as one set of roadworks has been completed but this causes a great degree of disruption to third parties. However, the cost to passengers of allowing utility companies to maximise their efficiency is perhaps even greater.</p> <p>The Scottish Government is committed to encouraging public transport use and generating modal shift from the car to bus and rail. Research indicates that one of the most important factors for potential bus passengers is reliability of the bus service.</p> <p>Allowing for different start and finish dates and validity periods greatly impinges on the likelihood of bus operators being able to run reliable services.</p> <p>It is clear from the consultation that there are existing issues with both the start times and finishing of roadworks in Scotland. It would appear as if not enough thought has gone into the planning of the works and their likely duration before they are being registered. Start and finish dates seem to be entered haphazardly with the utility companies safe in the knowledge that they have a great degree of leeway over the actual dates - and on those occasions when they are outwith validity periods they are still unlikely to be issued with a penalty notice.</p>

Views Sought	
28	<p>Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?</p> <p>To help curb the unacceptable margin of error seemingly built into the proposed duration of roadworks, CPT agrees that roads authorities should be able to question and limit utility company's estimates.</p> <p>However, as with other aspects of the relationship between roads authorities and utility companies, increasing the statutory powers of roads authorities will only be effective if there is a cultural shift towards better enforcement and application of penalties. While it is understandable that roads authorities wish to maintain a good working relationship with utility companies it appears that this has allowed utility companies to act with a degree of impunity.</p> <p>What action will be taken should roadworks extend beyond the maximum duration set by the roads authority?</p> <p>CPT suggests that the duration of road works should be decided through consultation between the utility company and the roads authority ideally three months in advance of the works taking place. The start and end dates should be inputted into the SRWR and circulated with relevant stakeholders. Should these dates then change, the utility company should be aware that this is likely to result in penalty notice unless there are good reasons for the change.</p>

Views Sought	
29	<p>Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?</p> <p>Likewise, if roads authorities are likely to apply any statutory powers to impose embargoes on works for reasons other than traffic disruption then CPT has no issue with these statutory powers being granted.</p> <p>It would seem common sense to channel non-essential roadworks into periods where traffic is likely to be reduced such as school holidays, or to ensure that not too many road works are taking place on a bus route at the same time.</p> <p>Conversely, roads authorities should exhibit the forethought to better coordinate works so that those affecting one particular section of a road can be carried out simultaneously, thereby minimising the occurrences of a road being repaired only for it to be excavated again for a different purpose soon after.</p>

Views Sought



30	Do you agree with the definition of a working day given above?
	<p>This definition of a working day suggests that roadworks could be started on a Friday morning, days before the planned start date, yet the utility company would not be compelled to inform stakeholders such as local bus companies until the Monday at any time before 4.30pm.</p> <p>It should be possible to give notice of works starting in advance of works actually beginning and not the next working day – as such it is moot as to whether we agree with this definition of a working day.</p>

Views Sought

31 Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.

The Scottish Road Works Register (SRWR) has the potential to be a fantastic tool to allow bus and coach operators to monitor roadworks that may affect their services and to take the necessary steps to minimise the disruption encountered by passengers.

However, it is clearly not working to its full potential.

As mentioned in this response, the first step towards improving the SRWR is to place a statutory responsibility on all those tasked with populating the SRWR to use the most up to date and accurate information available, to update it in a timely manner and to do their utmost to work to the dates inputted.

CPT is happy to work with the new Roadworks Commissioner to identify possible improvements to the SRWR to enable bus and coach operators to better make use of the information contained within it. Currently the Register is not designed to make it possible for a bus operator to easily receive updates of road works that may impact on their services, yet bus and coach operators are expected to pay for access to a system that has not been designed for their use.

CPT would like to see some pilot projects set up whereby bus operators receive free access to the SRWR in exchange for providing feedback to the areas where the SRWR needs to be updated or altered in order for it to become a useful tool for minimising disruption to public transport.

The policy regulating roadworks on Scottish roads should dovetail with the Scottish Government's wider strategic aims. As such, the aims of roadworks policy should look to allow for the upkeep of utilities and road surfaces while minimising disruption. The disruption element cannot be an afterthought.

National and local government, alongside bus and coach operators, are investing heavily in encouraging modal shift and making the bus a reliable alternative to the car. This work should not be undermined by a lax approach to regulating roadworks.

As with many other policy areas, it would seem that communication and cooperation is key to the process and should occur at the outset of planned roadworks. Stakeholders such as bus companies should be informed and be able to feed back their views on the potential impacts of planned works. It should not be regarded as acceptable for utility companies and roads authorities to operate within a silo. Doing so will only increase congestion and emissions levels and turn people away from public transport use.

Views Sought



32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

Views Sought	
33	Please outline the potential impact of any additional costs.



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

CPT Scotland

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

White

Forename

Paul

2. Postal Address

29 Drumsheugh Gardens, Edinburgh

Postcode EH3 7RN

Phone 01312722150

Email paulw@cpt-uk.org

3. Permissions - I am responding as...

Individual



/ Group/Organisation



Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation *will* be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your *response* to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONSE BY EAST DUNBARTONSHIRE COUNCIL

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
Ans.	<p>A contribution rate of 17% or £76 / square metre cost should be introduced.</p> <p>The upper limit contribution rate of 17% is viewed as appropriate as the TRL (Traffic Research Laboratory) report suggests a 17% reduction in the service life of roads affected by utility company road openings.</p>

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
Ans.	<p>Yes, the mandatory period of restriction following resurfacing should be changed from one to three years, as the three year restriction period is presently in operation on a voluntary basis and has worked well.</p> <p>A mandatory three year restriction period would also be more in keeping with the expectations of the public, in relation to the co-ordination of works on roads.</p>

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
Ans.	<p>The existing inspection regime where 30% of the total number of utility company works can be inspected and where a fee can be charged is an acceptable percentage, in circumstances where high quality reinstatements are completed to current specifications.</p> <p>However, where a specific utility company routinely underperforms in relation to quality reinstatements then the inspection regime percentage should be increased on an escalating scale to encourage reinstatement specification compliance by the utility company.</p>

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
Ans.	<p>The existing arrangements for inspection fees should be changed for a specific utility company that is known to be underperforming in relation to the quality of its reinstatements.</p> <p>Further guidance needs to be given regarding at what level a utility company should be considered to be performing poorly</p>

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
Ans.	<p>It is agreed that the guarantee periods for reinstatements for deeper excavations should be increased from 2 and 3 years to 5 and 6 years.</p> <p>It is known that settlement is a common failure of reinstatements particularly in deeper excavations and this proposed increase in the guarantee periods would encourage better compaction and would likely improve the quality and service life of reinstatements.</p>

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
Ans.	<p>There is some merit in this proposal. However, it is difficult for Roads Authorities to question situations where programmed utility company works are unreasonably prolonged. In most cases, utility companies are presently able to offer reasonable explanations as to why their works durations require to be extended.</p> <p>In situations where utility companies require to undertake urgent works, these are typically notified for a period of one week. Often the repairs are carried out within two to three days and there is then usually a period of a few days where no works are undertaken before the reinstatement is completed. It is considered that it is the period of time where no works are being carried out between completion of the repair and completion of the reinstatement should be addressed. Consideration should be given to measures to address this situation.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
Ans.	There is no need for permit schemes to be introduced in Scotland as the road works community already use the Scottish Road Works Register to notify and co-ordinate all road works. There is, therefore, no merit in the provision of an additional layer of bureaucracy to achieve outcomes which are already met by use of the Register.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
Ans.	<p>It is difficult to see what benefits lane rental schemes would achieve on roads within East Dunbartonshire Council's area. Lane rental schemes would likely lead to a proliferation of urgent utility company works being proposed to be undertaken, as a means of avoiding the proposed charge, which in turn would create further difficulties in terms of the co-ordination of works.</p> <p>Lane rental schemes may be appropriate on trunk roads and on city centre roads, due to the potential economic impact of works.</p>

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
Ans.	<p>There should be an extension of existing summary offences dischargeable by fixed penalty notice for Section 110 of the NRSWA (New Roads and Streetworks Act), for unauthorised works, as this measure would likely reduce the number of unauthorised works on roads and assist with the co-ordination of works.</p> <p>There should be an extension of existing summary offences dischargeable by fixed penalty notice for Section 124 of the NRSWA, for signing, lighting and guarding failure, as this measure would likely improve safety at road works.</p> <p>There should not be an extension of the existing summary offences dischargeable by fixed penalty notice for Section 130 of the NRSWA, for not reinstating excavations in accordance with the specification, as the present system for monitoring and reporting reinstatement failures is workable and the new proposal may prove difficult to implement in practice.</p>

Views Sought	
10	Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.
Ans.	<p>New summary offences should be created not noticing “actual start” notices by due time, for the failure to rectify defective reinstatement within a reasonable time period and for the failure to rectify defective utility company apparatus within a reasonable timescale, as these proposed measures would improve the co-ordination of road works and improve safety. The definition of the words “reasonable period and timescale” would require to be specified.</p> <p>In regard to creating a new summary offence for the misclassification of works as urgent or emergency to circumvent longer planned works notice periods, it is viewed that whilst there is merit in this proposal, it may prove difficult for Roads Authorities to prove that the proposed works have been misclassified.</p>

Views Sought	
11	Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?
Ans.	Yes.

Views Sought	
12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
Ans.	No. The existing potential £50,000 penalty for Roads Authorities who fail to comply with their duties is considered to be set at the appropriate level. The penalty should be appropriate to the offence committed, bearing in mind that the purpose of the penalty is to improve future performance.

Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
Ans.	<p>No. The definitions of co-operate and co-ordinate should not be revised as proposed.</p> <p>The first Commissioner was of the view that the policy intent was to have power to penalise utility companies and roads authorities which were failing to suitably undertake any of their duties. It is considered that this approach encourages partnership working and co-operation based on common goals.</p> <p>The new legislative proposals would provide the Commissioner with unreasonable powers and could lead to an autocratic approach to the co-ordination of works on roads in Scotland.</p>

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
Ans.	Yes. This proposal would assist in the improvement of safety at road works.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
Ans.	<p>Yes. It is agreed that, in principle, it should be mandatory for utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR (Scottish Road Works Register). It would be useful if all apparatus was easily accessible and in digital format on a common database. Our records are presently being loaded into an RMMS(Road Maintenance Management System) database. Please note that East Dunbartonshire Council does not presently hold all required apparatus data sets to the quality which would be required. The Council would require significant investment and time to resource the activities required to create, cleanse and confidently share this data.</p>

Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
Ans.	<p>No. The responsibility for maintaining the records of apparatus in a road should lie with the owner of the apparatus.</p> <p>The responsibility should not lie with roads authorities for maintaining records of apparatus which it does not own.</p>

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
Ans.	Yes. It is agreed that the designation of "major road managers" be created. It is considered that it would be useful to be able to identify the party responsible for significant lengths of roads open to the public, such as major airport and seaport operators.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
Ans.	<p>In normal circumstances for major capital programmed works, the three month advance notice period is appropriate.</p> <p>However, the three month notice period lacks flexibility where a Roads Authority is required to accelerate financial spend on the ground during particular times of the year or when facing unforeseen events.</p>

19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
Ans.	No. The requirement to provide advance notice for works on non traffic sensitive roads is necessary for good co-ordination of works.

Views Sought	
20	Should the early start procedure be a statutory requirement?
Ans.	Yes. The current early start procedure works well at the moment allowing flexibility and better co-ordination of works.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
Ans.	<p>This proposal is acceptable and helps prove a level of urgency.</p> <p>However, it would be useful if another category of works could be established that would allow for works which have an urgency to be carried out, although which cannot be arranged immediately for various reasons (eg. lack of resources or complex traffic management requirements). This would allow for at least some advance notification of works and assist with co-ordination.</p>

Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
Ans.	Yes. Provided this proposal only applies to the notification periods as detailed in Annex C and that Roads Authorities would not be required to issue registration details for works

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
Ans.	Yes.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
Ans.	Yes.

Views Sought	
25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
Ans.	No. It would be beneficial to know on the proposed start date if works have commenced, particularly on traffic sensitive roads.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
Ans.	Yes. The current requirement for works closed notices to be lodged by the end of the next working day is reasonable and workable.

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
Ans.	Yes. It is considered that the validity period should be reduced to a maximum of two days and should apply to both utility companies and roads authorities.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
Ans.	Yes. This would appear to be a reasonable proposal and could be useful in certain circumstances. However, it would be difficult for roads authorities to challenge utility companies in relation to their works durations.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
Ans.	<p>Yes. Please note, however, that the existing voluntary embargo system works well.</p> <p>If this proposal is implemented, it would be useful if a facility could be provided on the Register to log embargoes.</p>

Views Sought	
30	Do you agree with the definition of a working day given above?
Ans.	Yes.

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
Ans.	<p>In situations where utility companies require to undertake urgent works, these are typically notified for a period of one week. Often the repairs are carried out within two to three days and there is then usually a period of a few days where no works are undertaken before the reinstatement is completed. It is considered that it is the period of time where no works are being carried out between completion of the repair and completion of the reinstatement that should be addressed. Consideration should be given to measures to address this situation.</p> <p>It would be useful if another category of works could be established that would allow for works which have an urgency to be carried out, although which cannot be arranged immediately for various reasons (eg. lack of resources or complex traffic management requirements). This would allow for at least some advance notification of works and assist with co-ordination.</p> <p>There is presently a requirement for works Information Boards to provide details of the name of the organisation carrying out the works and a telephone number which can be contacted in emergencies. It would be useful if there was a requirement for details of the works duration to be included on the Information Boards.</p>

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
Ans.	Incentives could be provide for utility companies to trench share.

Views Sought	
33	Please outline the potential impact of any additional costs.
Ans.	<p>If all the proposed measures are implemented it is anticipated it would require a potential staffing increase of 100% or three full time posts for East Dunbartonshire Council.</p> <p>There would also be technological implications in relation to IT facilities and database management.</p>

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

3

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	5%. The amount should be based on the actual costs to the Roads Authorities of repairing a utility reinstatement. An initial contribution of 5% would appear reasonable.

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	Yes. This would concentrate programming. Resurfacing works are costly and can cause major disruption. Public perception is often that roads are resurfaced then immediately dug up again. The main problem following resurfacing arises from emergency, urgent, and planned new connection / supply works. The introduction of a requirement for full panel reinstatement for these types of works of 2m panels for footways and 15m panels for carriageways during the restriction period would be welcomed.

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	20% per category. The amount of inspections should be increased overall and results showing a poor performance for a specific utility company should lead to a further prescribed increase and not reduced until improvement is proven over a set duration.



04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	Yes, to include a performance element.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Yes. The period is too short in comparison to the expected road reinstatement service life.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	Yes. There would have to be clear criteria for when this could be imposed and when exceptions could be granted. There may be operational issues which prohibit works being completed for which roads authorities' staff are not qualified to judge the legitimacy of the duration of the works.

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Not required. This would be an unnecessary additional administrative burden.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	This would be welcomed for use on traffic sensitive roads and for major projects to reduce disruption and time on site. Currently the working windows on standard and major works can mean no works on site for several days and there have been instances of major projects being mothballed whilst in progress for several weeks.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Yes. It is a more efficient method of dispensing offences and encourages better communication and working practices.



Views Sought	
10	Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.
	Yes. It would ensure reinstatement and apparatus defects are dealt with timeously and that accurate information is placed in the SRWR which would aid co-operation and co-ordination.

Views Sought	
11	Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?
	Yes.

Views Sought	
12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
	Yes. Increases should be in line with other bodies.



Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	<p>No.</p> <p>Unless point 3 'Failure to comply with practices as appear to the Scottish Road Works Commissioner to be desirable' was removed or clearly defined. This would give clarity and reinforce the meaning of S118 & S119.</p>

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	<p>Yes.</p> <p>Provides consistency.</p>

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	<p>Yes, but with a long lead in period. Suggest kept in line with SCOTS RAMP project. Businesses would require time and resources to enable them to ensure asset data is captured, recorded, checked for accuracy, and maintained. There is no merit in providing data which is out of date or inaccurate just to meet a mandatory requirement. An introduction similar to the introduction times used for the mandatory provision of the gazetteer would be welcomed. It enabled the gazetteer work package to be resourced, software issues to be addressed, and allowed time for existing data to be checked and amended if necessary.</p>



Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Yes. This would provide consistency and clarity when issuing consents / permissions.

Views Sought	
17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	Yes. This would facilitate better co-ordination.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	3 months notice gives ample time for anyone who has other planned works to be made aware of the proposals. There is sufficient time to contact the major works promoter and if necessary programme in works before the major works are due to take place. In conjunction with the early start procedure there is flexibility however, early starts on major works should be monitored separately.



19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	No.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	This should be made statutory as works now go straight to 'in progress' in the SRWR which causes confusion when attempting to carry out sample A inspections as the start date now has to be checked as well as the works status. This also creates confusion when trying to co-ordinate works. e.g. Urgent works on T/S road 'in progress' but works not due to start for several days.



Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	Yes.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	Yes.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Yes.



25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	<p>Yes.</p> <p>Emergency and Urgent works go straight to 'in progress' automatically therefore given that many large companies contract & sub-contract work it would be impractical to decrease the time allowed to enter information onto the SRWR and may lead to incorrect information being placed on the SRWR just to meet the timescale rather than inputting correct information.</p>

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	<p>Yes.</p> <p>Same reasons as given in 25.</p>

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	<p>No.</p>

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	Yes. Clear definition and criteria would be required.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes.

Views Sought	
30	Do you agree with the definition of a working day given above?
	Yes.



Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<ul style="list-style-type: none"> • S56 Roads (Scotland) Act 1984 should also be added into TSA05. It is currently missing from TSA05 and can be issued for significant road works which do not involve installation of apparatus e.g. new road junction or construction of roundabout • A Code of Practice similar to the Code of Practice for Well Maintained Highways for utilities to inspect their reinstatements up to the end of guarantee period and their apparatus on a regular basis would be welcomed. At present there appears no inspection regime other than a reliance on roads authorities to report defects to the utility. A formalised Code of Practice with inspection timescales would ensure reinstatements and apparatus was inspected and maintained therefore reducing defects and the necessity for urgent & emergency works.

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

Views Sought	
33	Please outline the potential impact of any additional costs.
	Most costs could be absorbed by practices and procedures already in place with the only the increased volume of similar work having a potential impact. The exceptions to this would be the introduction of 1. contribution costs, 7. permit schemes, & 8. Lane rental schemes which are new concepts which would require additional resourcing from both Roads Authorities and Utility Companies.





STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Midlothian Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Neil

Forename

Dougall

2. Postal Address

Midlothian Council, Road Services, Dundas Buildings, 62A Polton Street, Bonnyrigg

Postcode EH32 0TU

Phone 0131 561 5215

Email

neil.dougall@midlothian.gov.uk

3. Permissions - I am responding as...

Individual



Group/Organisation



Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No



Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



4

Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response



appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available on the Transport Scotland web site.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Joanne Gray

Address: Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ

E-mail: WorksonRoads@transportscotland.gsi.gov.uk

Yours faithfully

Joanne Gray



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p>
	<p>Highland Council does not consider it appropriate to suggest a level of contribution on the evidence available at present and would like to see more research. We agree that utility excavations reduce the life of the roads in which they take place but the proportion of the network affected has not been established with sufficient accuracy. Any value of contribution set at the present time would be an arbitrary figure.</p> <p>We note that the intention is to ring fence the contribution for use only on road resurfacing. We agree with this proposal because it links the contribution directly to the damage. Road authority budgets are insufficient to cover the cost of repairs to damage inflicted by others.</p> <p>There will be a cost to road authorities in administering and accounting for the contribution, which should be taken into account when the rate is set.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p>
	<p>Yes we would like to see the statutory period of restriction increased to three years in line with the voluntary period agreed within the roadworks community. Longer restrictions should encourage better forward planning of large scale works and do not prevent emergency and urgent work from taking place. Longer restrictions would reduce disruption to traffic and preserve the high ride quality of the new surface for longer, as well as delaying the long term damaging effect of excavations.</p>



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Views Sought	
03	<p>What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?</p> <p>It is important that utility companies retain a responsibility for the quality of their own reinstatements. There is a danger that an increase in inspections by the road authority will simply lead to utilities relying on the road authority to alert them to sub-standard work, instead of monitoring their own works. The present sample size should be sufficient to identify which companies are failing to perform adequately.</p>

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	<p>Of greater concern to the Highland Council is that the flat rate charged does not cover actual costs of inspection in an area with a long network length and a high proportion of rural roads, where travelling time is a significant factor in total cost. The charging regime for defect inspections should be increased rather than for sample inspections, so that a utility will only incur high inspection costs if it has a high rate of defects.</p>

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	<p>A longer guarantee period should encourage better backfill and higher quality but there are practical difficulties in identifying reinstatements after a long period, particularly in the busiest urban areas where there are numerous excavations. In order to enforce longer guarantee periods, consideration should be given to mandatory permanent on-site marking of reinstatements so that there can be no doubt as to who is responsible for a particular reinstatement, years after the event. Guarantee periods of 5 and 6 years would be welcome if steps are taken to improve records sufficiently to permit identification after these periods.</p>

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>It is difficult for a road authority to specify what is or is not a reasonable time period for a utility to complete its works. The road authority is not aware of the technical difficulty or constraints of the</p>



work, which can affect both the planned time taken and, if unexpected difficulties are encountered, the actual time. Nor will the road authority be aware (unless it inspects every day) whether the utility leaves the works unattended for a period of time. A better solution would be a lane rental approach, where the utility has to pay a daily rate for occupation of the road and so has a vested interest in ensuring works are completed as soon as possible. There are also issues of compatibility with the requirements of industry regulators. The issue needing control is trenches left open with no work going on but proving that this is the case when only 10% of works are inspected during the works phase is an unacceptable burden for road authorities.



Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Permit schemes appear to be an unnecessary layer of bureaucracy when utilities mostly have statutory rights to excavate. Lane rental is considered a better method of controlling access.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Highland Council strongly supports the introduction of lane rental, as indeed it did during consultation on the 2005 Act. Lane rental should not be confined to traffic sensitive areas under the strict definition of the act but should apply at least to all strategic roads. Delay on strategic roads can have a deterrent effect on tourist travel in particular, which is a critical economic factor in areas such as the Highlands. The introduction of lane rental is considered to be the best tool to encourage utilities to keep their occupation of the road to a minimum. We do not agree with the view that lane rental would only provide benefits on the most heavily trafficked parts of major Scottish cities.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Yes. The three offences in sections 110, 124 and 130 are considered to be more important than the more academic offences of failures in the noticing system. It seems ludicrous that there is no financial



penalty for sub-standard reinstatements, considering the long term damage to the road which can ensue. Similarly, inadequate signing, lighting and guarding have a road safety consequence which should be punishable.



Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>Yes. Failure to rectify defective reinstatements and apparatus, particularly street ironwork, is probably the biggest frustration felt by road authorities. Notices of defective ironwork seem to be routinely ignored. The legislation places an undue burden on the road authority to keep the road safe until such time as the utility takes action. Summary offences for failures to rectify defective reinstatements and apparatus are strongly supported.</p> <p>The definition of defective apparatus should include buried apparatus as well as surface ironwork. Our experience is that Scottish Water do not accept reports of leaking or surcharging sewers as being "defective apparatus", for example.</p> <p>A statutory period for response to a defective apparatus notice should be introduced. This should be monitored as a KPI as well as being subject to an FPN if the timescale was exceeded.</p>

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>
	<p>Yes, an increase in line with inflation would be logical. The level of penalty should be sufficient to deter lack of compliance and should exceed the cost of obtaining the appropriate permit or consent for Roads (Scotland) Act offences.</p>

Views Sought



Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	It is agreed that the definitions in section 118 and 119 are unduly restrictive. Failure to comply with any duty under the Act, Regulations and statutory codes of practice would be acceptable reasons for a penalty. However the suggested revision to include "such practice as appears to the SRWC to be desirable" is not acceptable. It is far too vague and does not, as claimed, add any clarity to the legislation. Both road authorities and utilities have a right to be able to interpret from the legislation itself the standard of conduct which is expected of them.

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	Whilst the Code of Practice is well intentioned there are practical difficulties in its interpretation on roads of sub-standard width. Strict application of the code would result in a far greater number of road closures where the specified safety zones are not achievable. Road closures in themselves increase the level of risk to road users when they are diverted onto diversionary routes which are often of an inferior standard to the road which is closed. Diversionary routes in the Highlands can add hundreds of miles to journeys and can have a devastating effect on the local economy. Road authorities should be able to undertake a risk assessment to balance the danger to road workers with the dangers to traffic using diversionary routes.



Views Sought	
15	<p>Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.</p>
	<p>This proposal would be a significant financial burden on road authorities, particularly if made retrospective. Mandatory recording of new installations only would be a lesser burden. If made mandatory there would need to be a sufficient time allowed to comply. Five years would be an absolute minimum. Whilst conversion of existing records from paper to digital can be achieved relatively straightforwardly, one should not underestimate the quantity of apparatus for which there is no record at all. Extensive site survey work would be required to form a complete record.</p>

Questions	
16	<p>Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.</p>
	<p>Yes. The two pieces of legislation effectively duplicate each other. Section 109 of NRSWA is superior because it requires record keeping. Any revision should take into account the need to record Sustainable Urban Drainage Scheme features such as swales as well as more traditional apparatus. Features such as swales are not always obvious to the untrained eye and their function could easily be impaired by installation of other apparatus.</p>

Views Sought



17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	This is not a big issue in the Highland area but the proposal appears sensible.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	The three month notice period should be retained for major works. This allows road authorities to have some influence over the timing of works which would be lost if only 7 days’ notice were given, for example it is often possible by negotiation to take into account of the economic effect of works on the local economy, avoiding disruptive works at the height of the tourist season.



19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	No. The definition of traffic sensitive applies to very few roads in the Highland area so the removal of the advance notice requirement on non-traffic sensitive roads would have a devastating effect on our ability to co-ordinate works.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes, for compatibility with the code of practice. It is detrimental to effective co-ordination if agreement to early starts where there is no good reason to delay, can put a utility in breach of the regulations.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	It is agreed that this proposal will deter the use of the "urgent works" category simply as a means of avoiding statutory notice periods.



Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	One has to ask, why is this required? It is the road authority which has the duty of managing co-ordination and by definition it already knows about its own works and their state of completion. These additional statutory notices will not add any value or assist or improve co-ordination of works.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	Yes. It is inappropriate to require road authorities to place notices for works with no or minimal excavation and it does not aid co-ordination in any way.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Yes. This would improve the road authorities knowledge of actual disruption to traffic and would help co-ordination. Mandatory actual start notices would greatly assist road authorities to carry out inspections during the works and would reduce the number of



	abortive site visits.
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25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	We would prefer notices to be lodged the same day, especially for traffic sensitive roads. It would permit better journey planning and is particularly relevant to bus operators.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	Yes, works closed is less critical than actual start because the effect is to reduce delay, not to increase it.

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.



No. The existing validity periods allow a useful amount of flexibility for all parties. Knowing the actual start is more critical than narrowing down the window of the proposed start.



Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	No. The road authority does not possess the technical knowledge to assess whether utility works can reasonably be completed within an imposed duration. The duration of works would be better controlled by lane rental.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes. This would permit control over works which interfered with important local festivals, key tourist events such as the Scottish Open Golf or events such as the Olympic Torch, as well as the more obvious Christmas period.

Views Sought	
30	Do you agree with the definition of a working day given above?
	Yes.



Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>There should be compatibility between (or at least a recognition of the significance of the difference between) notice periods under NRSWA and the statutory notice periods for road closures, which may be longer. Works which require a road closure require significantly more planning for diversionary routes and their effect on public transport timings as well as the publication of temporary traffic orders. Suspension of one-way orders and other traffic control measures may also be required and it may be this which governs the practical earliest start date, rather than the NRSWA notice period. There should also be investigation of the compatibility between the requirements of industry regulators such as Offwat and Offcom who may impose time periods on provision of a service which cannot legally be achieved if NRSWA notice periods are to be achieved.</p> <p>The accuracy of identifying excavation locations on notices and the accuracy of reinstatement measurements is a long way short of ideal and can lead to problems in identifying who is responsible even for recent reinstatements as well as those approaching the end of the guarantee period. Accuracy in reinstatement measurements would become critical if they are to be used in the calculation of a fee for long term damage.</p>

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>Methods of permanently identifying the responsible utility for reinstatements on site.</p> <p>Acceptance by utilities of readily available instruments to non-destructively measure reinstatement thickness.</p> <p>Agreement on methods to measure the adequacy of trench backfill. Poor backfill rather than poor surface course reinstatement is responsible for the majority of cases of settlement and long term damage.</p>

Views Sought	
33	Please outline the potential impact of any additional costs.
	The most significant cost which the proposals would have on road



authorities would be the mandatory use of the Vault to record road authority apparatus such as drains and street lighting cables. This would be a pressure on roads budgets which are already stretched. Unlike utilities, road authorities do not have the option of passing costs on to their clients.



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

The Highland Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Guest

Forename

Richard

2. Postal Address

Highland Council, TEC Services, Glenurquhart Road, Inverness

Postcode IV3 5NX

Phone 01463 252922

Email

Richard.guest@highland.gov.uk

3. Permissions - I am responding as...

Individual

☐

Group/Organisation

☒

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (In Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (In the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

ANGUS COUNCIL'S RESPONSE TO STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

ANGUS COUNCIL

RESPONSE TO STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

01 What contribution do you consider should be introduced? What are your reasons for coming to this view?

The contribution level will need to be acceptable to both Road Authorities and Utilities but also needs to recognise the damage already done to the network, as Road Authorities would most likely prefer 10% but need to recognise impact on utilities and we would be content with a five year plan stating at 5% and rising annually to 10% by 1% per year.

02 Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?

Yes – Councils are resurfacing infrequently and plan/ programme works over 1 to 3 years. Utilities need to do likewise, although there needs to be more dialogue on future schemes to allow this. Our customers (utilities as well as councils) have a very negative view when they see new surfaces being dug up by utilities. Excavation leads to long term damage and any disincentive to excavate a new surface is to be supported. We would recognise that some unplanned/ emergency/ customer demand excavations may be inevitable and would seek a redress such as a requirement for whole width resurfacing by the utility.

03 What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?

The 10% of inspections during the works is insufficient. Other survey results such as the coring of reinstatements have repeatedly shown that utilities are unable to adequately perform/ manage their contractors. When the number of inspections during actual works is considered, taking into account where sites are not found, not working at the time of inspection etc the 10% supervision by the owner of the asset is far too low. This should be increased to at least 30%.

The inspection 6 months after reinstatement remains useful in identifying immediate defects and is at an acceptable level at 10%.

The inspections within 3 months of the guarantee period should be treated as the end of the warranty. Roads Authorities inspect all works undertaken by their own contractor or developers at the end of warranty and we consider this should be applicable to all utility works and would seek a 100% inspection ratio. We believe that this would focus utility companies on the impact that their works have on the

ANGUS COUNCIL'S RESPONSE TO STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

community asset of the road network. The utilities should remain responsible for the costs of these inspections.

04 Should the arrangements for inspection fees be changed, and could this include a performance element?

No – but we consider when utilities are shown to be failing to perform (noting that the level of performance is only 90%) on a number of repeated periods we consider that the number of inspections at each stage shall be correspondingly increased.

05 Do you agree that such increased periods be introduced? What are your reasons for coming to this view?

Yes we agree. Our experience is of a large number of reinstatements fail outwith the guarantee period but within the residual life of the carriageway requiring public money to be used to carry out often significant repairs. We believe that an extended guarantee will focus utility companies on ensuring adequate durable repairs.

06 Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.

Our experience is that over running utility works are usually as a result of unforeseen or unpredicted circumstances and therefore would not likely attract any charge. We consider such a scheme would require Road Authority resources to administer.

However we do have some concerns when utilities allow/ require others to undertake works which is then subject to inspection by the utilities. We understand that these works are part of market competition for works but such schemes often result in extended delays with works over runs. Whilst we have used Section 125 of the legislation in such instances we are concerned over the increase in such events.

07 Scottish Ministers would welcome views on the introduction of permit schemes.

We do not support the use of permits. Given the relative low number of utility and road works in our authority, there is seldom a problem of accessing the road network. We consider a permit system would add to the administrative burden of the council.

08 Scottish Ministers would welcome views on the introduction of lane rental schemes.

ANGUS COUNCIL'S RESPONSE TO STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

As such schemes would only be likely to provide benefits on schemes in the major Scottish cities, we have no comments.

09 Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?

Angus Council has not established a fixed penalty notice (FPN) process on the basis that the funding would not be sufficient to support the administrative burden placed on the council as a result. Whilst the addition of further opportunities to issue a FPN may make the financial costs of administration more beneficial we consider that our working relationship with utilities is normally sufficient to ensure compliance. However, if inspections were increased (as per question 3) we see the issuing of FPNs under Section 130 of the Act as a positive option for improving reinstatement quality.

10 Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.

As per 9) above

11 Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?

Irrespective of the council's position on FPN's we agree that FPN's be increased in line with inflation to cover the increasing costs in administering the system.

12 What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?

We agree that the current level of fines, given the turnover of utility companies is too low, the level of fines should be increased and any fines should be increased in time in line with inflation.

13 Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.

Clarity, as suggested, would be welcomed.

14 Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.

ANGUS COUNCIL'S RESPONSE TO STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

No - Road Authorities are also subject to compliance with Chapter 8 of the Traffic Signals Manual, whilst it is a guidance document, which continues to conflict with the Code of Practice for Safety at Street Works. Furthermore the Code of Practice is directed at works of an isolated excavation nature; it does not cover the type of work such as resurfacing/ reconstruction of roads (particularly in residential area) and therefore is insufficient in respect to road works in general.

15 Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the Scottish Road Works Register (SRWR)? Please provide reasons for your view.

The voluntary approach to holding digital records in the Scottish Community Apparatus Data Vault (VAULT) has been the correct way to introduce digital records. Like most Roads Authorities, Angus Council has limited records (in any format) of some of its assets. However, moving forward for VAULT to become a useable system within the community its use will have to become mandatory. At this stage we believe it is too early for this to be covered by legislation and suggest consideration for mandatory compliance of a timescale of at least 3-5 years.

The council does not hold records of all its apparatus, particularly drainage, and therefore can not provide digitalized records without considerable financial resources. We can not therefore support the mandatory requirement to hold digital records of all our apparatus in the road. We agree that this is desirable moving forwards.

16 Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of New Roads and Street Works Act (NRSWA) revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reason for your view.

Yes – Section 61 of the Roads (Scotland) Act 1984 should be repealed to avoid the ongoing confusion between this and Section 109 of NRSWA.

17 Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.

No comment.

18 What are your views on the 3 month advance notice period for major works?

The requirement for 3 months advance notice for works of duration in excess of 10 days may be appropriate on the main arterial routes within our major cities but would seem to be excessive even on

ANGUS COUNCIL'S RESPONSE TO STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

the most heavily trafficked routes within rural areas. Whilst the 3 months notice may be appropriate for routes such as the A90 in Angus, we believe that for even some of the busiest of our rural roads such as the A94 and A92 in Angus, the 3 month notice for works which may only last 10 days is excessive and leads to unnecessary bureaucracy and notice failures with difficulties of predicting actual start dates for works at a time when contractual arrangements have not been finalised and weather conditions can not be predicted. We believe a 6 week period to be adequate for such works.

19 Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?

We do not agree with the relaxation of notices for non-traffic sensitive routes as these works are often critical in the coordination role undertaken by councils, particularly in avoidance of works being undertaken by one organisation on the diversion route for other works.

20 Should the early start procedure be a statutory requirement?

No – we believe the voluntary use of the non-statutory advice note to be adequate and consider that the process of agreeing early starts is a good example of the Roads Authority/ utility companies cooperation to coordinate road works.

21 What are your views on making noon the following day a statutory requirement for commencing urgent works?

We would not agree that urgent works should be entered into the SRWR by noon the following day. At present urgent works must be 'registered' within 2 hours of starting whilst noon the following day would mean that there may be significant works and traffic management on going without the Roads Authorities knowledge.

22 Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales.

Road Authorities and Utilities should not have to operate in the same way on the Scottish Roads Work Register. Utilities are able to plan works or respond to urgent works for their individual customers, whilst Road Authorities are tasked with maintaining the public asset and ensuring public safety whilst using the road network. This includes fixing many thousands of potholes every year, alongside minor drainage works. Requiring roads authorities to enter such information would be bureaucratically burdensome for roads authorities.

23 Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?

Yes although works involving no excavation can cause disruption if it requires traffic management. The existing guidance on this matter is adequate and flexible.

24 Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?

Yes.

25 Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.

Yes – the current requirements are working satisfactorily.

26 Is the current requirement for works closed notices to be lodged by the end of the next working day as reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?

Yes; no further comment.

27 Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.

No – contractors are often moving from one job to the next and therefore a delay in the first scheme can result in a delay to the next. Add to this the weather conditions, particularly snow in the winter, resulting quickly in notices becoming problematic. No further comment.

28 Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?

No – Roads Authorities can not determine the actual time required for utility works and this may lead to health and safety issues, working longer hours, overnight working etc which would go against the principle of coordination and accountability.

29 Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?

Yes – major sporting events, visits by VIPs, long planned charity events, etc have the potential to be seriously disrupted by utility works. Such events also use the road asset and are an important part for the communities that we serve.

30 Do you agree with the definition of working day given above?

Yes.

31 Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.

Band sealing and step all joints would improve the longevity of utility reinstatements.

32 Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

We consider the proposals under Section 1 of this consultation to be very innovative, continuing the approach of the Scottish roads and utilities community in leading the way for others to follow. The principle of 'polluter pays' is now well established in other aspects of Scottish business (landfill tax, SEPA enforcement etc) and the idea that those causing damage to the public road network be responsible for that damage is a logical progression. We believe that the introduction of such charges will not only see an improvement in the re-investment into the Scottish road network, enabling economic growth in Scotland, but also be the catalyst for more innovative methods of working by utilities as they seek to undertake less excavation/ reinstatement of the road network.

33 Please outline the potential impact of any additional costs.

No further comments.

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ

T: 0131-244 7057

Joanne.gray@transportscotland.gsi.gov.uk



8

Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response



appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available on the Transport Scotland web site.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Joanne Gray

Address: Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ

E-mail: WorksonRoads@transportscotland.gsi.gov.uk

Yours faithfully

Joanne Gray



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	10% would be appropriate but it is appreciated the financial affect this could have on utility companies.

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	Yes, 3 years would be more appropriate as most roads authorities set programmes for surfacing and surface dressing works well in advance giving utilities ample time to plan works.

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	10% is not sufficient. It is understood that utilities have shown. Through the coring programme, that they are performing below standard. In order to maintain a high performance all works should be subject to an inspection in at least one category.

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	Yes.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Yes an increase should be introduced. Many reinstatements fail out with the guarantee period. Extending this period would encourage a better performance from utilities and contractors.

Views Sought	
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06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	In general it would be fair to say that works overrun due to unforeseen circumstances. If it could be proven that works were being held up unnecessarily then a potential charge or fine would help to discourage.

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	A permit scheme is not deemed necessary.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	It is not envisaged that this would bring any benefit to Orkney.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Orkney Islands Council (OIC) has not introduced FPN's. There are insufficient resources to administer this at present. However the introduction of further penalties may allow for funding or resources to be made available.

Views Sought	
10	Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.
	Same as for 9 above.

Views Sought	
11	Do you agree that the current fixed penalty notice amounts should be



	increased in line with inflation e.g. consumer price index?
	Yes FPN's as for all charges should be subject to annual review and increases to cover inflation and on-going ever increasing costs.

Views Sought	
12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
	Penalties should be set at a level to discourage circumvention of codes of practice and regulations. As mentioned at 11 above all charges should be subject to annual review and increases to cover inflation and on-going ever increasing costs.

Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	Yes, definitions should be revised as proposed to provide greater clarity and understanding.

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	Yes in some circumstances where utility type road works (street lighting, drainage, IT ducting) are being carried out.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	In the long term yes, however OIC does not have a complete digital record of all assets.

Questions



16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Yes. In order to avoid continuing confusion between the two sections of legislation. OIC no longer issue permission under section 61.

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	No comments.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	3 months advance notice is excessive on most roads in Orkney. A shorter period of between 4 or 6 weeks would be sufficient for our roads.

19	Do you consider that the requirement to provide advance notice for works on non-traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	No, advance notices help the roads authority in its coordination role.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	The current system is useful and assists in coordinating road works.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	Urgent works that have been notified should be required to commence within a set time period. Noon the following day is reasonable.

Views Sought	
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22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	OIC endeavours to notify all works in the same way utilities do. This assists in planning, programming and coordination with utilities. So yes, in particular for minor, standard and major works however problems arise for small repairs identified through safety inspections as these can be more difficult to plan and programme.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	Yes the existing guidance works well for all.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Yes.

25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	Yes, because this currently works well.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	Yes.

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike?



	If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	No, reducing the validity period to 2 days while having a potential benefit in programming and coordination could have a negative impact on staff resources and clog up the SRWR with potential changes required, where the current system allows this flexibility. However it is agreed that the current validity period could be reduced slightly.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	Yes where appropriate. However consideration should be given to the effect on health and safety, disruption to road users, inconvenience to businesses and residents and ensure that authorities full understand the extent of utilities works.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes in particular where the works will impinge on community and civic events etc.

Views Sought	
30	Do you agree with the definition of a working day given above?
	Yes.

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	No comments.



Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	No comments

Views Sought	
33	Please outline the potential impact of any additional costs.
	No comments



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Orkney Islands Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Roy

Forename

Kenneth

2. Postal Address

Council Offices, School Place, Kirkwall

Postcode KW15 1UR

Phone 01856 873535 x 2326

Email

Kenny.roy@orkney.gov.uk

3. Permissions - I am responding as...

Individual

☐

Group/Organisation

☒

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet: Aberdeenshire Council

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>Research has confirmed that excavation and reinstatement does cause long term damage to roads, even if the reinstatement is carried out properly. At present, the additional costs arising from this are borne by roads authorities. The introduction of a utility company contribution towards this cost would represent a transfer of part of the cost to the organisation causing the damage. However, it would not represent an increase in the total cost to society as a whole.</p> <p>The advantage of transferring part of the cost to the organisation causing the damage is that it would give an incentive for behaviour change that could reduce the total cost to society as a whole. There is considerable scope to reduce the amount of excavation necessary for utility company works. Greater use of ducts and access chambers would allow apparatus to be replaced without excavation. Innovative techniques such as the "microsurgery" excavation procedure being pioneered by SGN can increase precision, allowing repairs or connections to be made using a small core hole in the right place. Transferring some of the long term damage costs from the roads authorities to the utility companies would give a strong economic incentive for more widespread and rapid introduction of such innovations, to the benefit of society as a whole.</p> <p>Although on strictly economic grounds, the transfer of the entire cost of long term road damage to the utility companies would be the best strategy to ensure that costs were minimised for society as a whole, a more gradual approach may be preferable to reduce the risk of unintended side effects. A contribution of £38 per square metre of carriageway would represent half the estimated cost of the long term damage and could be regarded as a reasonable first step. This should be sufficient to start driving behaviour change but should be more manageable for the utility companies than the transfer of the entire cost in one go.</p> <p>Further research would be required to establish suitable contribution rates for long term damage caused by excavations in the footway and in the verge. The issues for footways are similar to those for carriageways, but a lower contribution rate would probably be appropriate. A lot of apparatus in rural roads is located in the verge, and although this practice reduces the damage and disruption arising from works, the reduction in lateral support following an excavation in the verge can still cause long term damage to the adjacent carriageway. As with footways, a lower contribution rate would probably be appropriate.</p>

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	<p>The current voluntary three year period of restriction adopted by the road works community in Scotland appears to be working reasonably well. Whilst adopting this into legislation would probably make little difference in practice, it would be desirable to do so in order to remove the current inconsistency between the legislation and the code of practice.</p>

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	<p>There are two distinct reasons for the inspection of utility company road works by roads authorities.</p> <p>The inspections during the works and within 6 months of reinstatement will provide early feedback on whether utility companies are meeting their obligations with respect to working practices and reinstatement standards. The beneficial outcome should be early intervention to identify and rectify any shortcomings.</p> <p>The inspections within three months of the end of the guarantee period provide confirmation that a reinstatement meets the required standard when responsibility passes from the utility company to the roads authority. The beneficial outcome is that defects are identified and rectified by those responsible rather than being passed on as liabilities to the roads authority at the end of the guarantee period.</p> <p>The wide variation of failure rates at the end of the guarantee period is of particular concern, varying from 1.9% to 29.2% among the major utility companies. Under the present inspection regime, where 10% of reinstatements are sampled at this stage this would suggest that over 26% of reinstatements are being passed on to the roads authority in a defective state at the end of the guarantee period by the worst performing utility company. This is not acceptable.</p> <p>This problem could be addressed by the introduction of a 100% inspection sample at the end of the guarantee period. This would bring the procedure in line with that applicable under the road construction consent legislation whereby a developer is required to pay the cost of an inspection prior to adoption of maintenance responsibility by the roads authority.</p>

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	As noted in the response to question 3 above, there is a case for considering an increase in the sample for which an inspection fee can be charged at the end of the guarantee period. Bearing in mind the wide range of failure rates at this stage, varying from 1.9% to 29.2% for the major utility companies, a performance element may be appropriate. A pass rate of 90% is regarded as the minimum standard below which an improvement notice should be considered. It is, therefore, suggested that any utility company with a failure rate greater than 10% at this inspection stage in a full inspection year should be required to pay for a 100% sample of inspections at this stage in the following inspection year.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Reinstatements should have a service life of 20 years or more, so an increase from the current levels of 2 years and 3 years for deep excavations to 5 years and 6 years for deep excavations would not be unreasonable. However, there is limited evidence that many reinstatements fail during the three years following the end of the current guarantee period. It may be that most reinstatements either fail fairly quickly or stoke up long term damage problems that emerge years later.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>The problem with the introduction of a charge for occupation of the road where work is unreasonably prolonged is that the administration costs of such a scheme are likely to be considerable. The long standing scheme in England appears to involve substantial administrative burdens and has led to numerous intractable disputes which have resulted in further additional costs for both highway authorities and utility companies.</p> <p>If it were possible to develop a process with a light touch administratively, then a scheme of this nature might help to reduce disruption by speeding up works. However, the experience from England is not promising and it is suggested that other measures might be more cost effective in improving performance. The wider use of section 125 notices might give the Commissioner the opportunity to consider issuing a penalty against an undertaker with a consistently poor performance in completing works within a reasonable time. This could be achieved within existing legislation with minimal additional administrative costs.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Permit schemes would have the potential to impose considerable additional administrative costs on the road works community as a whole. There is no obvious need for such a scheme in Scotland at present.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Lane rental schemes would have the potential to impose considerable additional administrative costs on the road works community as a whole. There is no obvious need for such a scheme in Scotland at present.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>The current scope of the fixed penalty scheme leaves a bit of a gap in the enforcement regime. Fixed penalties are generally available for the lowest level of offence, whilst prosecution is a viable option for the highest level of offence. This leaves many offences in the middle that are outwith the scope of the current fixed penalty scheme but not sufficiently serious to justify the cost of a prosecution. An extension of the fixed penalty system would help to address this.</p> <p>As an example, if a third party applies for and is granted permission to place apparatus in the road but fails to give the correct notice of start date, they can be issued with a fixed penalty notice under Section 114. However, if they do not bother to apply in the first place and just go ahead without permission, then they can not be issued with a fixed penalty as their offence comes under Section 110 which is outwith the fixed penalty scheme. There are many other examples, and a comprehensive review of possible extensions to the scheme would be worthwhile.</p> <p>Specific comments in relation to the three potential fixed penalty offences listed in the consultation are as follows:</p> <ul style="list-style-type: none"> • Section 110 – This would meet all the requirements for a new fixed penalty offence and address the current anomaly described above. • Section 124 – Although there would be occasions when it would be beneficial for a fixed penalty to be issued by a roads authority for a minor signing, lighting and guarding offence by a utility company, a possible complication is that this would prevent subsequent prosecution by the police or the Health and Safety Executive if the offence were to have serious consequences. • Section 130 – When the provisions of the New Roads and Street Works Act were first introduced, it was agreed by both roads

	<p>authorities and utility companies that defect inspections should be charged at double the rate for other inspections. Subsequent reviews reduced this to the same rate as for other inspections. The introduction of a fixed penalty for not reinstating excavations in accordance with the specification would reinstate the original intention of a disincentive for poor reinstatement performance.</p>
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Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>Comments on the proposed new summary offences are as follows:</p> <ul style="list-style-type: none"> • <i>Misclassification of works as urgent or emergency to circumvent longer planned work notice periods.</i> This would already be a fixed penalty offence under section 114 as it would involve starting work without giving the prescribed notice. There would, therefore, appear to be little purpose in creating a new offence. • <i>Not noticing "actual start" notices by the due time (should actual start notices become a legal requirement.</i> If actual start notices were to become a legal requirement then it would be consistent with comparable existing requirements if failure to issue the notice by the due time were to be a fixed penalty offence. • <i>Failure to rectify a defective reinstatement within a reasonable period.</i> This is a particular area where stronger enforcement powers would assist roads authorities. It is in the public interest for defects to be rectified promptly and under the present regime roads authorities sometimes have difficulty in getting utility companies to respond within a reasonable time. The introduction of a new fixed penalty would, therefore, be welcomed. • <i>Failure to rectify defective utility company apparatus within a reasonable timescale.</i> This is another particular area where stronger enforcement powers would assist roads authorities. It is in the public interest for defects to be rectified promptly and under the present regime roads authorities sometimes have difficulty in getting utility companies to respond within a reasonable time. The introduction of a new fixed penalty would, therefore, be welcomed.

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>
	<p>A fixed penalty is an alternative to a prosecution. If it is to retain the same deterrent effect, it would be logical for the fixed penalty level to be linked to the maximum fine for a summary offence. It is, therefore, suggested that whenever the scale of maximum penalties for summary offences is reviewed, fixed penalty levels should be increased or reduced by a comparable proportion.</p>

Views Sought	
12	<p>What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?</p>
	<p>Most large utility companies and roads authorities would probably regard the reputational damage of receiving a penalty from the Scottish Road Works Commissioner as more serious than the financial loss. However, it is agreed that an increase in the current maximum of £50,000 might be useful as a potential escalation if an organisation were to be seen to ignore an initial penalty. The Commissioner's recommendation of an increase in the maximum penalty to £200,000 would appear to be reasonable.</p>

Views Sought	
13	<p>Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.</p>
	<p>The commissioner's proposal is that the definitions should be revised as follows:</p> <p><i>"Failure to comply with</i></p> <ul style="list-style-type: none"> <i>• any duty under NRSWA and supporting regulations; or</i> <i>• any requirement in a statutory code of practice; or</i> <i>• such practice as appears to the Scottish Road Works Commissioner to be desirable</i> <p><i>shall be deemed to be a failure to comply with sections 118 and 119 of the NRSWA."</i></p> <p>The first two provisions would undoubtedly remove any doubt about the extent of the Commissioner's powers to deal with failures to comply with statutory requirements. However, although it is accepted that the credibility of the Commissioner depends on being seen to act reasonably, the third provision may be seen as too open ended to be brought into legislation. There are certainly occasions where problems are caused by organisations refusing to comply with voluntary arrangements agreed by both sides of RAUCS. However, these could be argued to fall within the everyday meaning of co-operation and so it should be possible for the Commissioner to deal with them within the existing legislation.</p>

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	The Code of Practice for Safety at Street Works and Road Works is equally applicable to utility company works and roads authority works. Making it a statutory code for roads authority works would remove the current anomaly whereby utility companies can be prosecuted for a minor breach under the New Roads and Street Works Act whereas roads authorities can only be prosecuted under the much more Draconian provisions of the Health and Safety at Work Act.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	<p>There would certainly be an overall public benefit in reducing the risk of damage if all utility companies and roads authorities were to hold digital records of their underground apparatus and make these available to the roads and utilities community through the SRWR. For an organisation already holding digital records, there is little additional cost incurred in providing them to the SRWR through the VAULT system. It is, therefore, recommended that this should be made mandatory in the short term.</p> <p>Creating digital records where they do not currently exist is a much more onerous task. Whilst it might be desirable to make this mandatory over the longer term, a transition period of around five years would be necessary to give organisations time to digitise their records.</p>

Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Section 61 of the Roads (Scotland) Act 1984 and section 109 of the New Roads and Street Works Act 1991 cover virtually the same circumstances and have operated in parallel for over twenty years. The existence of two alternative ways for roads authorities to give permission for apparatus in the road is unnecessary and confusing. It is, therefore, agreed that section 61 of the Roads (Scotland) Act should be repealed with respect to new permissions although it should remain in force for existing permissions.

Views Sought	
17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	It is agreed that organisations such as major airport and seaport operators managing significant lengths of road open to the public should be designated as “major road managers” and required to place notices of their works on the SRWR. This would assist in the overall co-ordination of works.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	<p>In principle, it is beneficial for details of the location of planned major works to be placed on the register as early as possible in order to maximise the opportunity for co-ordination. The three month advance notice period is generally helpful in achieving this. However, the following issues can cause problems:</p> <ul style="list-style-type: none"> • The advance notice should be placed before the works have been firmly scheduled in order to allow flexibility to co-ordinate with any other major works at the same location. An advance notice should not, therefore, have a restricted validity period. • The current definition of “major works” is rather wide and can include some works that are rather minor in nature. A revision to narrow the criteria might be beneficial.

19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	Roads may only be designated as “traffic sensitive” if they carry particularly high traffic flows. Works on such roads have the potential to cause substantial disruption and so it is appropriate that advance notice should be required. However, substantial disruption can also be caused on roads that do not qualify as “traffic sensitive” if they involve a closure with a lengthy diversion route. It is, therefore, appropriate to retain the advance notice requirement to cover such cases. If the criteria for “major works” could be narrowed to more accurately identify works liable to cause significant disruption, fewer works would require advance notice and there would be an increase in flexibility of programming for other works.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	The current voluntary early start procedure has been working well so it would be appropriate to place it on a statutory footing.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	<p>As a general principle, works should be noticed on the SRWR as soon as it is known that they are required. Urgent works are those that should be undertaken at the earliest opportunity. However, where specialist resources are required, the earliest opportunity might not be straight away. The proposed new mandatory requirement to start urgent works by noon the day after placing the notice would give a perverse incentive to hold back on placing the notice for known urgent works until the start date. This would undermine the potential for co-ordination and so it is not recommended.</p> <p>Experience suggests that abuse of the "urgent" classification is most likely to occur if a works promoter fails to issue the prescribed notice of start date and seeks to avoid a breach of noticing requirements by misclassifying standard works as urgent. The new requirement would do nothing to tackle this problem as such works would invariably start by noon the following day. A more effective new measure might be the introduction of a mandatory requirement to state the reason for works qualifying as urgent on the notice. This could be by selection from a pick list of the prescribed valid reasons.</p>

Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	There are two reasons for requiring information on works to be placed on the SRWR. One is to facilitate the co-ordination of works and the other is to provide roads authorities with information on excavations and reinstatements in roads by utility companies. Where information relates to co-ordination, for example timing and location of works, then roads authorities and utility companies should be required to place the same information on the register and to the same timescale. Where information relates to excavations and reinstatements, for example areas, locations and dates of reinstatements then it should only be required from the utility companies.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	It is agreed that regulations should be introduced to bring a statutory footing to the current advisory arrangements giving roads authorities the same flexibility as utility companies around the placing of notices for works involving no or minimal excavation on non traffic sensitive roads.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Actual start dates on the SRWR provide a number of benefits including a full audit trail of the dates of road occupations and it is agreed that regulations should be introduced requiring them to be entered.

25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	The current requirement is adequate for most purposes. However, there could be a benefit in requiring a higher level of precision in information relating to the most disruptive works. This might involve earlier registration of the actual start but an alternative might be a notice of proposed start to be placed the previous day.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	The current requirement is adequate for most purposes. However, there could be a benefit in requiring a higher level of precision in information relating to the most disruptive works. Registering "works closed", i.e. road open, on the day of completion of such works might be appropriate.

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	Roads authorities and utility companies both require a degree of flexibility in scheduling works in order to deploy their resources effectively. Works involving investigating and correcting a problem are often unpredictable in duration and some works are weather dependent. The current validity periods allow for this flexibility and should be retained for most works. However, there could be a benefit in requiring a higher level of precision for the most disruptive works. As noted in the answer to question 25 above, this could take the form of a requirement to input a firm start date one day in advance of the works.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	It is agreed that there might be merit in giving roads authorities the power to issue a direction to a utility company on the maximum duration of works. However, very few directions have been issued under current powers relating to the timing of works, so it is likely that such matters will continue to be resolved by agreement in most cases.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	It would be difficult to set down in statute a definitive list of circumstances where embargoes on works would be appropriate. The present voluntary system gives more flexibility than would be practicable with a statutory system and so it is not considered that any new regulations are required.

Views Sought	
30	Do you agree with the definition of a working day given above?
	The definition of a "working day" agreed by the road works community in Scotland reflects Scottish circumstances and the regulations should be revised accordingly.

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	The current consultation is very comprehensive and no further issues have been identified.

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	There would be potential to minimise the future disruption from utility works when planning new developments. The recent trend towards infrastructure being installed in new developments by utility infrastructure providers can make this more difficult to achieve as initial installation cost for the provider is likely to take precedence over whole life cost to the community thereafter. There may be potential to address this under planning or road construction consent legislation.

Views Sought	
33	Please outline the potential impact of any additional costs.
	The main cost implication arising from the proposals would be the transfer of some of the cost of the long term damage to roads arising from utility excavations. Transferring this from the roads authorities to the utility companies should give an economic benefit to society as a whole as it would drive the innovations necessary to reduce the need for future excavations.

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Aberdeenshire Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Armitage

Forename

David

2. Postal Address

Gordon House, Blackhall Road, Inverurie

Postcode AB51 3WA

Phone 01467 628483

Email

3. Permissions - I am responding as...

Individual

☐

Group/Organisation

☒

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will** be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



10

Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response



appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available on the Transport Scotland web site.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Joanne Gray

Address: Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ

E-mail: WorksonRoads@transportscotland.gsi.gov.uk

Yours faithfully

Joanne Gray



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>Additional funds for road maintenance would be embraced and could lead to more innovative methods of working by the SU's in the future. However such contributions for long term damage will have no positive effects on the quality of SU works in the short term. You could argue they may in fact cause detriment.</p> <p>The focus must be geared towards improving the quality of undertakers works. The TRL report suggests 'a 17% reduction in the service life of road affected by utility company trenches', but these works were carried out to the SROH. Certain sections within the current Standards (SROH) are not fit for purpose. This can be verified by comparing certain recommendations from the TRL and URS reports and also proven through evidence supplied during the SROR Consultation (See response to 31(f)).</p> <p>Unfortunately the results of the consultation exercise on the revised SROR are not yet available. However it would appear that the process has proven challenging, given the joint governing arrangements in place (equal representation). The Working Group seem unable to agree to a number of reasonable and justified proposals, ultimately for financial reasons.</p> <p>If the standards (in SROR) are not changed and the Undertakers continue to impede improvement, then contributions should be based on the actual cost of long term damage as observed by the TRL report. However the implementation and supervision of such as scheme will prove challenging and furthermore the suggestions put forward have no provisions for encouraging good performance / practice.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p> <p>The 3 year restriction period should be adopted into legislation as the Community are working to this period at present and it works well.</p> <p>Further, RAUCS produced a Code of Practice for Restrictions on Works following Substantial Works for Roads Purposes in 2011 which was partially incorporated into the CoP for Coordination. However the criteria for reinstating only apply when the restriction is breached by agreement, not by exemption (as per legislation). The reinstatement criteria should apply to all works regardless whether customer driven or due to emergency (this could be seen as rewarding a SU for the lack of planned maintenance).</p>



Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	If the guarantee period remains at 2 years, there should be opportunity for a higher percentage of Cat C chargeable inspections (perhaps using existing levels but with an additional chargeable inspection for each failure - rewarding good performance). However there should be specified levels of additional inspections for those Undertakers served with Improvement Plans.

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	The suggestion within clause 1.19 of the consultation paper would seem an appropriate solution and could be tied in with the suggestion in 3 above.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	The extended guarantee period is essential if the quality of SU's road works are to improve (thereby preserving the integrity of the network and reducing inconvenience to users). See Clacks Council response to SROR Consultation where evidence was provided showing those reinstatements which passed a Cat C inspection but failed between years 3 - 5. Unsurprisingly the SU with the best quality supervisory procedures (working in the Clacks area) had by far the best results. Similarly our results highlighted that (attempted) delegation of responsibility to contractors does not work.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	The hierarchical nature of this scheme could lead to delays for works completion in residential areas. At present SU's tend to contact the RA's to discuss problem sites in advance and the works durations for these sites tend to be realistic. It tends to be the smaller works that have unrealistic durations as the SU's use them as stop-gaps. Appreciated that this may be more of an issue in the larger cities.

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.



	Not appropriate.
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Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Not required

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Para's 3.4 & 3.5 in the consultation effectively highlight the current issues with prosecutions. Therefore allowing the discharge of other offences by fixed penalty notice would be a major step forward, particularly in relation to safety. In addition SU's are not penalised effectively where works are not carried out to specification therefore the ability to issue an FPN under S130 would be welcomed.

Views Sought	
10	Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.
	<p>In general yes - the extension of the FPN scheme would assist with driving coordination, safety and improvements to the quality of the network.</p> <p>If actual start notices are to become a legal requirement then they must become offences dischargeable by FPN</p> <p>There should also be a penalty for failing to reinstate in accordance with the specification or failing to rectify a defective reinstatement or apparatus (including ironwork and bursts) within a reasonable timescale. Currently at least one SU blatantly disregards the response timescales within the CoP. These FPN's should also be repeatable if the SU fail to attend within an appropriate period after the first FPN notice.</p>

Views Sought	
11	Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?
	Yes - the FPN amount should rise in accordance with the CPI (similar to the inspection fee).

Views Sought	
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12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
	<p>This issue has been highlighted within the 2012/13 national coring programme. At least one of the SU's who received a Commissioner Penalty after the last Coring Programme has been focusing it's resources on ensuring achieving a high pass rate whereas the largest organisation has not been so proactive. This would highlight that the current level of penalty is not much of a deterrent.</p> <p>A maximum penalty in line with the Information Commissioner would be more appropriate, even if simply to make senior management in some of these organisations aware of the issues affecting the community. However there should also be a link between the size of the organisation and the maximum penalty that can be levied upon them.</p>

Views Sought

13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	<p>No. This could allow the Commissioner to introduce procedures that organisations are not resourced to carry out, particularly where these procedures would not fall in line with the priorities of the Roads Authorities. An example is that procedures that may be required in large cities may not be appropriate in semi-rural / rural areas where traffic flows are significantly lower. While the Commissioner's focus is on coordination and reducing disruption (appropriate in many locations), the focus of many of the 'non city' Authorities is geared towards the quality of their road network.</p> <p>This objection relates to the third bullet point in the consultation paper in particular. Many of the issues which require to be resolved could be handled through this consultation process, although this would require legislative change.</p>

Views Sought

14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	No objections provided that the new version caters for works on all types of roads (and traffic volumes) and does not place unreasonable demands on those undertaking works.

Views Sought



15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	It should become mandatory for all to hold their data on VAULT. Distinction has to be made with data which is currently available and that which is desired. While many RA's are working on capturing data, driven by the SCOTS asset management project, budgetary pressures are affecting the resources available to capture this data.

Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Agreed S109 should be adopted as the way forward (if the issue of provision of a road bond can be resolved). However the responsibility for record keeping should lie with the SU in cases where they plan to adopt the apparatus on completion of the works. In the majority of cases the SU are consulted at works planning stage and are aware of what they will be adopting. RA's should be responsible for record keeping in other cases.

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	No objections

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	Agreed that the 3 month advance notice assists coordination. The SU's provide various reasons for failing to bring details of possible works to the table at Local Coordination Meetings. This requirement forces them to provide details of their planned works at an earlier stage. Removal of this requirement would be regressive.



19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	No - refer to 18 above. Roads Authorities generally cooperate and grant early start requests if required and appropriate. 3 month period useful for coordinating and consulting with affected residents & stakeholders for major schemes.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	No objections

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	Agreed. Also further investigation is required into defects that can be left untouched for weeks / months then suddenly become urgent.

Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	No objections in principle with the exception of having to record details of individual reinstatements. Any requirement for RA's to record reinstatement details would lead to a huge volume of additional work for very little benefit (for example patching along a rural road could easily result in 20-30 different sites).

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	Yes - this is obviously required to level the playing field.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?



	Actual start notices should be a statutory requirement and any offence should be dischargeable by a FPN.
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25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	The current requirements are practical. All organisations involved would struggle to provide accurate information to a shorter timescale.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	Existing is acceptable

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	Validity periods are adequate at present.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	Yes - this would control the practice of booking road space for weeks for effectively minor works although this can be controlled at present by a S115 direction.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes - provided it is reasonable and justified.

Views Sought	
30	Do you agree with the definition of a working day given above?
	No objections



Views Sought	
31	<p>Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.</p>
	<p>a) The legislation requires amended to clarify that the definition of apparatus within all CoP's includes all underground plant such as pipes, cables and ducts (not just surface ironwork and access chambers).</p> <p>b) The Courts have decided that SU's do not require to inspect their apparatus under S.140 as they can rely on RA safety inspections to notify them of defects. However due to the lack of inspections by SU's, RA's are also having to respond to third party reports. Currently the CoP only allows inspections fees to be charged should the RA encounter a high risk defect on site. Legislation should be changed to allow a fee for any defects discovered. Furthermore the defect inspection process for apparatus should mirror that for reinstatements and allow further chargeable inspections to be undertaken to ensure remedial work is carried out within a reasonable timescale.</p> <p>c) With regards to signing lighting and guarding of road works, the SU's should be required to carry out daily checks on open sites. Some SU's already undertake this practice but others can leave sites unchecked for weeks at a time. Similarly follow-up inspections to signing, lighting & guarding failures should be chargeable for obvious reasons.</p> <p>d) SU's continually change contractors to maintain lower costs. It falls to the RA's to supervise these contractors on site with a number of SU's paying no attention to quality at the time of the works. While most SU's now carry out internal coring - failures discovered by this process lead to further disruption on the network. All SU's must be required to carry out some monitoring of their contractors on site AND record the results of these inspections on the SRWR. They have to be given some responsibility to properly supervise the quality of works that are undertaken (with regards to SLG and the ability of the contractors / individual squads). This is seen as a key requirement given the evidence supplied under item 5 above.</p> <p>e) Further control is required over the works periods. Expected End Dates need to be tightened up and failures to meet these dates (without agreed extensions) should be offences dischargeable by FPN.</p> <p>f) In the response to item1 above, it was suggested that the current version of SROH is in part, not fit for purpose. The following list outlines our main concerns (it is unknown whether any of these items will be resolved after the recent consultation on the SROH/SROR Cop):-</p> <ul style="list-style-type: none"> ● Conflict between SROR and the DDA guidance with regards to tolerances for trips on footways ● Any report published that relates to roadworks stresses the importance of sealing the joints to prevent the ingress of water into



	<p>the construction layers. However the Interface cracking tolerances within the current SROH permits cracking of up to 2.5mm open width. This is incomprehensible.</p> <ul style="list-style-type: none"> • Stepped joints should be required as standard and not just on type 1 & 2 roads (as proposed in the SROR Consultation). The vast majority of Roads Authorities local networks are comprised of type 3 and 4 roads. <p>h) Code of Practice for Diversionary Works. Where an SU install's apparatus in an existing structure, it is obvious that the structure has a limited lifespan. Why therefore should the RA be responsible for the majority of the diversionary costs for the SU's apparatus when this structure is eventually replaced? Furthermore the RA's have to pay for the SU's detailed diversion scheme cost and estimates. This is a major change but requires to be investigated as the balance of costs is completely in favour of the undertakers.</p>
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Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

Views Sought	
33	Please outline the potential impact of any additional costs.



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Clackmannanshire Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Walker

Forename

Scott

2. Postal Address

Kilncraigs, Alloa

Postcode FK10 1EB

Phone 01259 452612

Email swalker@clacks.gov.uk

3. Permissions - I am responding as...

Individual

☐

Group/Organisation

☐

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☒ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☒

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



11

Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response



appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available on the Transport Scotland web site.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Joanne Gray

Address: Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ

E-mail: WorksonRoads@transportscotland.gsi.gov.uk

Yours faithfully

Joanne Gray



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	<p>The works of public utilities damages the public road network reducing the roads lifespan therefore they should contribute to the cost of long term damage.</p> <p>Based on TRL's research I would suggest the rate should be set at 17% based on the carriageway area reinstated each year by the utility ie £76 / sq.m. An additional charge should also be introduced for works on footways.</p>

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	<p>The period of restriction following resurfacing should be increased to a mandatory 3 years for programmed works.</p> <p>This will encourage utilities to identify any planned works at an earlier stage and prior to any resurfacing being carried out by the road authorities.</p>

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	<p>Currently utilities largely employ contractors to carry out their work with very little supervision being undertaken by the actual utility company. It should be mandatory for the Utilities to inspect their works and record their inspections on the SRWR. Most roads authorities do not have the resources to undertake increased inspections of utility works.</p>



04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	It should be mandatory for Utility companies to inspect their works and the works of their contractors and record these results on the SRWR.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	<p>Yes, guarantee periods should be increased.</p> <p>Currently the majority of defects in reinstatement materialise long after the 2 or 3 year period.</p> <p>An increased guarantee period should assist in driving improvement in utility reinstatements.</p>

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	The implementation of charging may be appropriate on traffic sensitive routes.



Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	The introduction of a permit scheme is not necessary as there are powers within the existing legislation to give directions to the utility companies. The introduction of a permit scheme would also introduce an additional administrative burden.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Lane rental charges may be appropriate on major routes which are traffic sensitive providing the administration of such a scheme did not create an unreasonable administrative burden.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>Yes.</p> <p>Existing FPN's only targets noticing offences, there needs to be penalties for poor performance on the ground. Poor signing lighting and guarding is a safety concern and should be liable to an FPN for poor performance.</p>



Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>Yes.</p> <p>The existing FPN's do not target some of the main issues that roads authorities have with Public Utilities. FPN's need to be extended to target failure by Utilities to respond to instructions to rectify defects, whether these are with reinstatements or apparatus, within a reasonable timescale. Failure to respond to direction notices within a reasonable period should also be subject to FPN's.</p>

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>
	<p>Yes</p>

Views Sought	
12	<p>What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?</p>
	<p>The Commissioner should have the power to impose a penalty as considered reasonable in the circumstances of the offence.</p>

Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	<p>No,</p> <p>Further revisions to the powers of the Commissioner to issue penalties should only be considered following further consultation on the specific nature of the undertaking.</p>

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	<p>Yes.</p> <p>All works within the road should be carried out to the same safety standard.</p>

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	<p>Yes.</p> <p>This will have resource implications and therefore a reasonable timescale would be necessary before it was made mandatory.</p>



Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	<p>Yes.</p> <p>Permission to install private apparatus should be granted under NRSWA providing the permission does not place an administrative burden on roads authorities to record and advise other parties of this apparatus. An appropriate method of maintaining records of this apparatus must be in place prior to repealing section 61 of the RSA.</p>

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	<p>Yes.</p> <p>As the road manager can range for major organisations to individuals who frontage a private road, it is sensible to designate the main parties as "major road manager".</p>

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	The 3 month notice period on major roads is reasonable given there is the flexibility of the early start procedure.



19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	<p>No, however a reduced period of 1 month would be sufficient on minor roads and residential streets.</p> <p>To aid good co-ordination as much advance notice as possible should be given to all major works projects.</p>

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	This is reasonable.



Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	<p>No.</p> <p>Road authorities as the manager of the road space should have greater flexibility than public utilities.</p>

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	<p>Yes.</p>

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	<p>Yes.</p>



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25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	<p>Yes.</p> <p>This gives adequate time for recording actual start dates.</p>

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	<p>Existing arrangements are reasonable.</p>

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	<p>Existing arrangements are reasonable.</p>



Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	Yes

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes, providing there is a reasonable justification.

Views Sought	
30	Do you agree with the definition of a working day given above?
	Yes

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>Utility companies should be required to inspect their works and the works of their contractors and record these inspections on the SRWR.</p> <p>Utility companies should be required to carry out coring programmes to demonstrate compliance with the SROR. This would drive improvements in the quality of utility reinstatements.</p>

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

Views Sought	
33	Please outline the potential impact of any additional costs.



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

North Ayrshire Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Smith

Forename

Joe

2. Postal Address

Perceton House Irvine

Postcode KA11 2EL

Phone 01294 225223

Email joesmith@north-ayrshire.gov.uk

3. Permissions - I am responding as...

Individual



Group/Organisation



Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes ☒

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

X Yes ☒

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



12

Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

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Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Joanne Gray

Address: Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ

E-mail: WorksonRoads@transportscotland.gsi.gov.uk

Yours faithfully

Joanne Gray



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	What contribution do you consider should be introduced? What are your reasons for coming to this view?
	It is recognised that openings within the road create a weakness and have a long term detrimental effect. The contribution level should be set at a minimum of 5% rising to 10% over a five year period.

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	The period should be extended to 3 years. However, such a review should also consider the exceptions as they could be open to abuse to negate a restriction period.

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	For during the works and for 6months after the 10% limit is acceptable. For the 3 months of the guarantee period this should be 100% This would ass it identifying issues that will have along term affect on the condition of a road and also help SU's focus on the long term affect of their works and produce a good reinstatement. I would also suggest that the minmium level of inspection of during works and before the 6months set at 50% for SU's .



04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	With a 100% inspection within 3 months of the guarantee period there could be an opportunity for a reduced fee where the inspection passes, but also an increased fee if it fails.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Agree warranty should periods extend. This will help focus on durable reinstatements.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	Many delays to works are caused by lack of programming and resources to complete the works. Many companies employ different teams to carry out the various elements of the work i.e. excavation, repair / installation of new apparatus and reinstatement of the opening. The major delays are where insufficient resources or lack of programming causes a delay to one of the elements. Using a section 125 notice could require a RA to reinstate an opening directly over apparatus creating unacceptable hazards to the RA personnel. Therefore it is suggested that such delays should be subject to a FPN type offence provided significant penalties are available to ensure compliance.



Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	The current method for coordinating and directing works is adequate provided SU's liaise with RA's in advance at the planning stage

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Due to the traffic volumes lane rental charges would not be beneficial and lead to additional administration costs.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Should a SU carry out work without issuing a notice, which does occur ,if a notice is not raised retrospectively then a FPN can not be issued for the breach. This needs to be addressed.



Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p>
	<p>Additional offences would be of assistance in ensuring defects are rectified to the benefit of the travelling public.</p> <p>Misclassification would be an issue for the Commissioner to ask for evidence and if breached takes appropriate action.</p>

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p>
	<p>Yes , also consideration be given to fines being set at a level to that of summary offences.</p>

Views Sought	
12	<p>What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?</p>
	<p>Yes.</p>



Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	Greater clarity would be beneficial.

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	No. The code of practice does not reflect any of the activities carried out by RA's such as resurfacing / reconstruction.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	The Council could support a move to record new works on digital format from 2014 but not existing apparatus. For existing this would be desirable that would have to be phased in over a 5 to 10 year period. To complete such a task.

Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Yes

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.
	This has not been an issue to date.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	No need to extend beyond 3 month period. However, the criteria for major works needs to be reviewed as many smaller projects away from busy arterial routes get pulled into the category because they are on a programme and early starts are required to facilitate the works promptly to the benefit of the public.

19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	Do not agree – advanced notification allows good co ordination / co operation.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Agree – this formalise the issue of early starts as part of ongoing co ordination and stop abuse of the system.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	Agree – However, it should be a mandatory requirement of include reason for the works.



Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	No – Roads Authorities are tasked with maintaining the asset whilst in use and many emergency works such repairing potholes etc would create an administrative burden that could not be managed.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	Yes

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Yes



25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	Yes – working satisfactorily

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	Yes – working satisfactorily

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	No – given the nature of many works delays due to weather etc do occur and flexibility is required.



Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	No- this should be part of the initial discussion with an SU as part of coordination / cooperation.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes – sporting & local events / VIP visits etc

Views Sought	
30	Do you agree with the definition of a working day given above?
	No – does not take account of local public holidays are not recognised by the register and cause issues with recoding notices.



Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	Review of the specification for vertical joints and sealing of joints

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	Need for SU's to review time spent supervising reinstatements

Views Sought	
33	Please outline the potential impact of any additional costs.
	Any additional costs will be incurred by the public as a consumer or rate payer.



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

FIFE COUNCIL

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as...

Individual

Group/Organisation

☐

Please tick as appropriate

☐

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate ☐ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☐ Yes

☐ No

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

13

Response Sheet: South Lanarkshire Council

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>We consider that there should be a contribution which includes the lateral zone of influence around the reinstated area, which includes damage to the reinstatement surround. Given that utility reinstatements are generally trench or patch formation, the damage should be tied into the running lane affected. A half carriageway width of 3.65m per length of reinstatement (half width of a new distributor road) at the £76 per square meter value should therefore be adopted.</p> <p>The evidence shows that the roads service life is being reduced in service by the actions of third parties, it is reasonable to require those third parties to make a contribution to the upkeep of the opening and the area surrounding their reinstatement. We believe that the 17% figure should be used, as the independent study showed a 17% reduction in the design life of the road.</p> <p>There are some issues which need to be resolved related to this proposal, which are detailed in section 31 of this document.</p> <p>Notwithstanding the above we would query the figure of £122.5M quoted as annual road maintenance expenditure for Scottish councils. We note the recent publish Audit Scotland report entitled "Maintaining Scotland's roads – An audit update on council's progress" quotes annual expenditure of £492M in 2009/10 (refer p4, para 3, 2nd bullet).</p>

Views Sought	
02	Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?
	We believe that the RAUCS agreed timescale of three years (carriageway) and one year (footway) should be brought into primary legislation. This has worked well in practice and safeguards newly surfaced areas in return for a three month co-ordination period.

Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	We believe that the current sample regime of 30% over samples A, B and C is adequate. However, in addition we would like the additional inspections required following the issuing of an improvement plan to be supported by legislation. At the moment the inspection code of practice requires the undertaker and roads authority to mutually agree a level of additional inspection and fees. We would support the duration and level of these extra inspections being set at 20% for one additional year through legislation.

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	Every inspection undertaken should have a charge, as these inspections would not be required if there were no utility apparatus (both above and below ground) in the public road. This could include a performance element.

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Yes, our own findings, submitted to the OSRWC and the TRL report both support this.

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>We do not believe that Roads Authorities have the technical expertise or knowledge to dictate or be involved in the setting of reasonable time periods beyond that which already exists for New Roads and Street Works Act (NRSWA) Section 115 timing directions.</p> <p><i>Justification</i></p> <p>NRSWA section 133 allows for a charge to be applied where works are not completed in reasonable period, and defines a reasonable period as being one 'agreed by the authority and undertaker to be reasonable'. However, directions under NRSWA section 125, which relate to the works occurring with 'all such dispatch as is reasonably practicable' which can be competently monitored by the authority, and can be recorded by use of formal (NRSWA) Section 125 directions. As such we would support the introduction of a charge where works are unreasonably prolonged, where the definition of unreasonably prolonged specifically means that a (NRSWA) Section 125 direction has not been met or that works have been extended without any agreement or discussion with the RA and Advice note 17/the Code of practice for co-ordination has not been followed. If the undertaker and authority are in discussion e.g. where a valid reason for the run on exists, or where a (NRSWA) section 125 direction is given and is met, there should be no charge in the interests of co-operation.</p> <p>In the interests of co-ordination, a sliding scale for offence level per road would be particularly useful. This would be more stringent than say, traffic sensitivity which excludes certain types of traffic. Under these rules someone who was given a formal direction to reinstate a site on an A class road would pay a higher fee than someone who failed to meet a direction given for a cul-de-sac. This would target the specific individuals who create disruption by deliberate inaction.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	At this stage we see no benefit to a permit scheme, the existing suite of penalties and provisions adequately covers the same issues.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	There should be a charge for the occupation of road network to compensate road users for the delays and loss of use incurred. This should be reinvested in to the road network to the benefit of road users.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	Each of the sections listed should also have fixed penalties attached. In addition, working in contravention of a New Roads And Street Works Act (NRSWA) Section 115 direction should also be a dischargeable offence. (NRSWA) section 130 could also be used where a joint inspection is not held and no agreement is in place to forgo one. Section 124 could be used for items such as failing to apply for a permit for traffic signals, rather than individual cases of blown over barriers.

Views Sought	
10	Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.
	<p>Yes. The initial introduction of fixed penalties also highlighted some unintentional loop holes as well as clarifying that certain aspects of co-ordination and reinstatement were on a 'best practice' basis rather than a statutory one.</p> <p><i>Justification for removing these loopholes are as follows:</i></p> <ul style="list-style-type: none"> • misclassification of works as urgent or emergency to circumvent longer planned work notice periods; <p>This is already a FPN. The required notice period for minor or standard works is 24 hours or 7 days. If you submit the notice as 'urgent' when the works in reality are not urgent, you have failed to give 24 hours or 7 days notice as appropriate. If what exists on site is a minor works that was given only 2 hours notice period rather than 24 hours, that is a valid FPN under (NRSWA) section 114. Although you have given the correct notice period for an urgent works, what is on site is not urgent works and therefore has insufficient notice period. If there were to be made two FPNS, one for failing to give 24 hours notice, and one for the specific offence of deliberately misclassifying works, it would reduce the instances where that occurs.</p>

	<ul style="list-style-type: none"> • not noticing "actual start" notices by the due time (should actual start notices become a legal requirement); <p>Actual starts should absolutely be a dischargeable offence. Co-ordination is impossible when actual start information is viewed as 'voluntary'. It is impossible for us to carry out our statutory duties when such a key piece of information can be withheld without penalty.</p> <ul style="list-style-type: none"> • failure to rectify a defective reinstatement within a reasonable period; and, • failure to rectify defective utility company apparatus within a reasonable timescale. <p>We would also welcome this as an expansion of the current range of FPNs. In addition we would like to see the following introduced:</p> <ul style="list-style-type: none"> • Provision of reinstatement information (See response 1) • Extending a notice without discussion or agreement • Starting a major works notice without having traffic management discussed or agreed. This could be managed through responses to New Roads and Street works Act (NRSWA) Section 115 directions. • An FPN for remaining on site after your proposed end date has passed <p>To explain bullet point 4: Closure information is required within 24 hours of physically leaving the site. This means that even if your notice has expired without extension several days ago, you cannot be given an FPN for the period between the notice expiry and the closure information being submitted, as no specific offence has occurred. You have met your only obligation which was to provide the information within 24 hours of physically leaving site. Even though in reality you've had an occupation over the past few days which had no valid notice in place to cover it, there is no FPN for that occurring. Remaining on site after your notice expires should be a specific FPN. This has been discussed at RAUCs in 2009 and was considered an 'unfortunate loophole'.</p>
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Views Sought	
11	Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?
	<p>Yes. Fixed penalties are a financial deterrent for incorrect behaviour. As such there is no valid reason to have that deterrent lessen each year with inflation. We would ask that FPNS be linked to construction inflation in line with other community costs. They should be rounded up to the nearest £10 to avoid administratively difficult FPNS levels such as £82.32 per offence.</p> <p>We would also like to consider the possibility of different levels of fine for different types of offence. For instance someone who is late with a notice should not be equivalent to someone who simply worked without one</p>

Views Sought	
12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
	<p>The current maximum level of fine of £50000 is acceptable; however this should be reviewed periodically.</p>

Views Sought	
13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	We would support this change.

Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	Not at this time. The code of Practice for Safety at Street Works and Road Works is not detailed enough to cover the full range of activities carried out by roads authorities, and refers heavily to chapter 8 which roads authorities are already obliged to comply with.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	Not for existing apparatus. Much of the apparatus in the road has no known owner or is historic and no electronic records exist for the apparatus. In the current financial climate it is not reasonable to expect a large scale asset management information gathering exercise to be carried out to provide this information. Some apparatus types are a low health and safety risk in any case (such as verge drainage) and there is no immediate need to provide details of those types of networks electronically.

Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Yes, this section should be repealed. S109 supersedes it and gives clearer direction.

Views Sought	
17	Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.
	We can understand the reasons behind this request, however we would like the designation to be available only to Seaport, Airport and bridge authorities.

Views Sought	
18	What are your views on the 3 month advance notice period for major works?
	<p>The three month notice period for major works is an absolute minimum.</p> <p><i>Justification</i></p> <p>Major works were initially a one month notice period but this was increased in 2006 as it simply wasn't working. It is absolutely critical for our ability to co-ordinate road works and our ability to meet our statutory obligations that the three month notice period remains. Taken in isolation, three months may seem excessive, however each organisation has more than one major project planned for any given year, and each of those major projects will generally take in more than one street. Considering that there are also several different departments per organisaion each with it's own suite of major projects, and that there are also literally hundreds of minor and reactive works from the same organisations in that time and that there actually several organisations, it is clear that three months is the absolute minimum time that is required to meet and agree traffic management and duration for major works.</p> <p>There is already an early start procedure where works are discussed and agreed, so no one should be unnecessarily held up once agreements are in place. No one who co-operates with the roads authority is disadvantaged by a three month notice period. Major capital spends are not approved without detailed pre-planning. Notification is a valid part of that pre-planning. Shortening the notice period would send the message that you keep your pre-planning in house, and then notify at the stage where a contractor is appointed and a final design agreed. Normally at that point it is costly to the undertaker to make changes to the work, co-ordination must happen early and jointly.</p> <p>It would be impossible to read, respond to, request meetings for, and agree traffic management/ timing for several projects over several months if each one can start in any less than three months from your initial notification of it. It would require roads authorities to concentrate on nothing but issuing directions against new requests each day to the detriment of any other duties. We have had several cases where the suggested traffic management is to use lights, but in practice a road closure is required. You could have the situation where the notice period is shorter than the time required to promote the closure, meaning that the undertaker either incurs a delay, or proceeds without a closure regardless and the works need to be stopped on site. This would be untenable in the long term.</p>

19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	No, traffic sensitivity is a very narrowly defined concept, which does not reflect the true nature of some roads. Proximity to major routes, local businesses (e.g. haulage depots that increase the levels of long vehicles) Local disruptions such as event arenas with intermittent sensitivity can all impact on the network without achieving the traffic count required for traffic sensitivity. Some routes are not traffic sensitive because there are a variety of alternate routes available. Should those routes be closed off or restricted due to

road works, it increases the traffic on the remaining roads and can heavily impact on major routes. In order to manage the network efficiently, prior discussion on all long running works needs to be discussed. They do not occur in isolation, nearby works, or even distant works can all impact on what appears to be a non traffic sensitive road. Removing the period for discussion to happen in will only increase disruption. Traffic sensitive routes are approximately 10% of the network. Roads authorities will not be able to manage their networks if there is no advance notice for 90% of the network, and will be forced into sending formal directions to agree traffic management for each notified work. Disruption is not solely tied to the traffic sensitivity of a street; it is more closely to the length of the works. Works are not only disruptive if they occur on a traffic sensitive street, nor are they automatically of no consequence if they occur on a non traffic sensitive street.

Views Sought	
20	Should the early start procedure be a statutory requirement?
	Yes, this currently works well and would allow for FPNS if not followed

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	Yes, however we would also like it to be established that if works have not started by noon the following day that works cannot be considered urgent. Although at present this is generally accepted by the community, it is not supported by legislation.

Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	We support this for starts, urgent, and emergency works. However we do not see a benefit to requiring roads authorities to give registration information (site dimensions). As the purpose of this information is currently for the purposes of inspection, there is no benefit to roads authorities supplying this information to themselves about their own asset.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	The disruption is the same regardless of who causes it. We therefore support this, however for both roads authorities and undertakers there should be guidance on what constitutes 'minimal'. We suggest no greater than 0.5x0.5m of reinstatement

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	Yes, we believe both organisation types should be required to enter this information

25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
	Yes, in practice it would not be possible to enter it any earlier, and for co-ordination purposes it shouldn't be issued any later. The current timescales work well and are achievable.

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	Yes, as for (25) the current timescales are achievable and work well.

Views Sought	
27	<p>Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.</p> <p>The same validity period should apply to roads authorities and utilities; however the standard two day validity is too restrictive in some cases, and too lenient in others. The current validity periods work well with one exception.</p> <p><i>Justification</i></p> <p>Validity periods are complex and have changed in the recent code of practice. Minor works have recently had their validity changed from the first day on the notice to by 12:00pm on day two of the notice. This has introduced a sliding scale which did not exist previously where one undertaker can validly over run another undertakers notice, allowing the situation where two undertakers have notices which meet all the rules of the co-ordination code, and both have a right to be on the same road at the same time. (Notice one is programmed for Mon – Wed, notice two starts on Thurs – Fri. If notice one starts on Tuesday, its new end date is Thursday which conflicts with pre-existing notice two)</p> <p>Minor Works – worked well at one day, should remain at the current 12:00pm on day two or be reduced. To increase it further increases the issues related to the 'sliding scale' problem</p> <p>Standard Works – The current 7 day validity is 70% of the maximum duration (10 days) this could be considered too loose. For normal standard works, a validity period of 2 -3 days would be sufficient, however when acting as a follow up notice, the 7 day validity is completely appropriate (see major works below). If it isn't possible to have follow ups on a different validity, then the 7 day validity must remain in place.</p> <p>Major works and resurfacing notices often involve the co-ordination of major elements such as the arrival of specialist parts or materials. As such some flexibility is required in starting, as two days of rain could effectively completely scrap a three month notice which has been waited out, then a follow up issued, or force the use of Late starts which have been monitored in the past and can falsely indicate a lack of co-ordination. In particular primary legislation already allows for surfacing notices to start within one month of the completion of any utility works which have to be done (by agreement) before surfacing starts. As there is no way for the system to accommodate this, RAs already have to use late starts when this occurs.</p> <p>In all cases the end date is far more important than the start. Extensions should only be used for unforeseeable circumstances such as weather or breakdown delays, not as a means to start after the validity period and then work to a completely separate set of dates. As such you should have some flexibility over when you start, but you should be forced to work to the end date you gave.</p>

Views Sought	
28	<p>Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?</p> <p>Yes – however New Roads and Street Works Act (NRSWA) Section 115 already adequately covers this issue. Greater penalties should exist for ignoring New Roads and Street Works Act (NRSWA) Section 115 directions rather than allowing roads authorities to dictate the duration of undertaker's works.</p>

Views Sought

29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	Yes, there should be a formal process to signify embargoes.

Views Sought	
30	Do you agree with the definition of a working day given above?
	This definition of a working day works well.

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>1) FPN for specific instances of non compliance are required. As identified above, actual starts, late or no extensions (where the notice expires before being closed) and registration information should all be FPNS. This would drive the provision of this information by providing an incentive to do so.</p> <p>2) There should also be a specific penalty for failing to repair defective work within a reasonable time in addition to the current system where the reinstatement is repaired by the roads authority on a rechargeable basis.</p> <p>3) As the requirement to enter site dimensions is not supported in legislation (best practice only) any scheme where the RA is compensated on a m² basis is subject to the provision of that information by the utility. There is no method for an RA to provide that information on behalf of the utility, therefore the information must be provided, accurately, by the utility. As there is no legal requirement to do so, nor any penalty for not doing so, it could be considered that there is a financial benefit to not providing the information, even if dealt with as a commissioner penalty. Therefore providing registration information must be backed in legislation, and must have a suitable penalty for non-provision.</p>

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>1) FPN for specific instances of non compliance are required. As identified above, actual starts, late or no extensions (where the notice expires before being closed) and registration information should all be FPNS. This would drive the provision of this information by providing an incentive to do so.</p> <p>2) There should also be a specific penalty for failing to repair defective work within a reasonable time in addition to the current system where the reinstatement is repaired by the roads authority on a rechargeable basis.</p> <p>3) As the requirement to enter site dimensions is not supported in legislation (best practice only) any scheme where the RA is compensated on a m² basis is subject to the provision of that information by the utility. There is no method for an RA to provide that information on behalf of the utility, therefore the information must be provided, accurately, by the utility. As there is no legal requirement to do so, nor any penalty for not doing so, it could be considered that there is a financial benefit to not providing the information, even if dealt with as a commissioner penalty. Therefore providing registration information must be backed in legislation, and must have a suitable penalty for non-provision.</p>

Views Sought	
33	Please outline the potential impact of any additional costs.
	If brought in subject to the conditions above there should be modest administrative costs for the roads authorities in administrating the scheme.

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STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

South Lanarkshire Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

MacKay

Forename

Gordon

2. Postal Address

Montrose House, 154 Montrose Crescent, Hamilton

Postcode M13 6LB Phone 01698 45 4484 Email gordon.Mackay@southlanarkshire.gov.uk

3. Permissions - I am responding as...

Individual

☐

Please tick as appropriate

Group/Organisation

☒

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

Bus and Local Transport Policy
Transport Policy

Victoria Quay, Edinburgh EH6 6QQ
T: 0131-244 7057
Joanne.gray@transportscotland.gsi.gov.uk



14

Roads Authorities and Utility Companies
operating in Scotland and other interested parties

Your ref:

Our ref:

5 April 2013

Dear Sir/Madam,

STRATEGIC CONSULTATION ON WORKS IN ROADS

Responding to this consultation paper

We are inviting written responses to this consultation paper by Friday 5 July 2013

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

WorksonRoads@transportscotland.gsi.gov.uk

or

Strategic Consultation on Works on Scottish Roads
Transport Scotland
Area 2D North
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries contact Raymond Elliot in the Scottish Road Works Commissioner's office on 0131 244 9938.

We would be grateful if could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response



appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available on the Transport Scotland web site.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach various decision. We aim to issue a report on this consultation process within 3 months after the closing date for the consultation.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Name: Joanne Gray

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Yours faithfully

Joanne Gray



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>Following independent and internal investigation, officers are of the opinion reinstatements in the existing road shorten the design life of a road. This is the case even when reinstatements are carried out to specification. We are of the opinion it is reasonable to expect the party, or parties, responsible for shortening life expectancy of the road, to compensate the Road Works Authority for the loss.</p> <p>However, the council has identified issues that may impact on the effectiveness of introducing a standard fee.</p> <p>Information regarding m² reinstatements obtained from the SRWR, allows the system to estimate the cost to individual organizations, based on their information entered on to the SRWR. Statutory Undertakers may not register all, or part, of their reinstatements. An example could be where a Statutory Undertaker reinstates a 4m² patch and should contribute £304 at 17% or £44 at 2.5%. Not registering these types of reinstatements would save a substantial sum over the years.</p> <p>Reinstatement details should be a statutory requirement. Fines for not reporting reinstatement areas need to be greater than the cost of the contribution; otherwise Statutory Undertakers would just endure any fines. Therefore, the penalty for not entering reinstatement details should be more than a Fixed Penalty Notice.</p> <p>Evidence shows, the assets Roads Authority maintain are being reduced in service by the actions of third parties. These third parties should therefore contribute to the upkeep of the asset. The council are of the opinion the highest contribution of 17% should be the contribution from Statutory Undertakers. This contribution is based on an independent study showing a 17% reduction in the design life of the road.</p> <p>The reduction in design life is based on all reinstatements regardless of their quality. The council would back any measure encouraging Statutory Undertakers to increase their rate of performance. Statutory Undertakers regularly exceeding a 90% reinstatement pass rate in the sample regime should pay less than a Statutory Undertaker, regularly performing poorly. Poor performers should pay the maximum 17% per m². This incentive for good performance would ensure reinstatements causing problems are targeted.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p> <p>The council is of the opinion that the informal RAUC(S) agreement to the timescale of three years (carriageway) and one year (footway) should be incorporated into primary legislation. The informal agreement works; however, the informality of it is open to interpretation and requires legislative support.</p> <p>Further, the three year period should be increased to 5 years for both footway and carriageway. The previously accepted exemptions for service connections etc are</p>



	acceptable; however, full panel, 15m c/way reinstatements and 2m full panel, f/way reinstatements should be carried out by Statutory Undertakers on surfacing less than 5 years old.
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Views Sought	
03	What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?
	<p>The council is of the opinion that the existing 30% sample regime is inadequate. There should be an increase to 20% for sample "A" and "C" inspections. Category "B" inspections should be inspected around the midpoint of any extended guarantee period.</p> <p>In addition, any additional inspections, required following the issuing of an improvement plan, should be supported by legislation. At this time the Inspections Code of Practice requires Statutory Undertakers and Roads Authorities to agree a level of additional inspection. Both parties agree these inspections are paid for by the Statutory Undertakers. This optional best practice has no support in legislation, and could be refused. Legislation is required to ensure these additional inspection costs are borne by the Statutory Undertakers.</p>

04	Should the arrangements for inspection fees be changed, and could this include a performance element?
	<p>Apparatus failures are required to be repaired within two hours (or made safe within 2 hours with the permanent repair carried-out within 7 days), 10 days or one month. The council is of the opinion that the initial inspection should have no charge. This initial inspection is not an inspection of workmanship; the purpose of the inspection is to pass a report of wear and tear on the apparatus.</p> <p>However, after the agreed time period in the Code of Practice has elapsed, further Roads Authority inspections are outwith the inspection duty of the Roads Authority, as the problem apparatus has already been passed to the Standard Undertakers responsible for its' upkeep. Defective apparatus inspection follow ups, should be payable at the sample inspection rate.</p>

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	Increased guarantee periods of 5 and 6 years should be introduced. The council has submitted information to the OSRWC to support the increased time periods.



Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>Under Section 133 a charge can be applied where works are not completed in reasonable period. A reasonable period is defined as being 'agreed by the authority and undertaker to be reasonable'. The council is of the opinion that Road Authorities do not have the technical expertise or knowledge to dictate or be involved in the setting of reasonable time periods beyond that which already exists for Section 115 timing directions. We support the introduction of a charge where works are unreasonably prolonged. The definition of unreasonably prolonged should mean a Section 125 direction has not been met; or works have been extended without any agreement; or discussion with the Roads Authority and Advice Note 17 or the Code of Practice for Co-ordination has not been adhered to. When the Statutory Undertakers / Roads Authority are in discussion and a valid reason for the over-run exists, or where a Section 125 direction is given and met, in the interests of co-operation there should be no charge.</p> <p>For co-ordination purposes, a sliding scale of offence, per road type, would be particularly useful. The scale would be more severe for traffic sensitive roads. Statutory Undertakers given a formal direction to reinstate a site on an "A" road would pay more than when they failed to meet a direction given for a "C" or "U" class road. This would target specific situations when disruption is caused by inaction, rather than "one off" plant break downs etc.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	There is no benefit to a permit scheme. Existing penalties/provisions, properly used, are adequate.

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	There would be benefits to West Lothian Council through the introduction of a lane rental scheme.

Views Sought	
09	Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?
	<p>Sections listed here should have Fixed Penalty Notices:</p> <ul style="list-style-type: none"> Section 110 offences would rectify a situation where a Roads (Scotland) Act offence is committed when leaving mono-blocks on a pallet on a footway, not for excavating and reinstating those same mono-blocks.



	<ul style="list-style-type: none"> Working in contravention of a Section 115 direction should be a dischargeable offence. No R(S)A offence is committed when working without a valid permit. However, there is for occupying the road with building materials. Section 130 should be on a case by case basis - as is already the case for interim reinstatements over 6 months old. It is both an inspection and a Fixed Penalty Notice in the penalties of the Code of Practice. It should also be used where a joint inspection is not held and no agreement is in place to forgo one. Section 124 should be used for failing to apply for a permit for traffic signals, rather than cases of blown over barriers. <p>Roads Authorities can use a considerable amount of resource in the following up of defective apparatus. To encourage Statutory Undertakers to repair their apparatus timeously, the introduction of a Fixed Penalty Notice, when defective apparatus is not repaired within the agreed timescales, should be introduced.</p>
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Views Sought	
10	<p>Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.</p> <p>Wrong notification types are better than no notification. It can be onerous on the Roads Authority to prove the wrong notice has been used. However, if it can be proved, the Fixed Penalty Notice is an option that could be expanded. The actual starts are crucial to the co-ordination process. An actual start notice ensures Statutory Undertakers are fully co-operating in the co-ordination process. Legislation is crucial in this instance. Failure to rectify defects, apparatus or reinstatements, must be addressed. Fixed Penalty Notices should be issued if the agreed timescales are not met.</p> <p>Misclassification of works as urgent or emergency to circumvent longer planned work notice periods;</p> <p>A Fixed Penalty Notice can already be issued in these instances. Submitting the notice as 'urgent' when the work is another type, means the Statutory Undertakers has failed to give appropriate notice. If the reality is "on site works" are "minor works", giving only 2 hours notice rather than 24 hours, then a valid Fixed Penalty Notice can be issued under Section 114. If Roads Authorities were able to issue two Fixed Penalty Notices - one for failing to give 24 hours notice, one for deliberately misclassifying works; this would reduce the instances where these types of offences occur.</p> <p>Not noticing "actual start" notices by the due time (should actual start notices become a legal requirement);</p> <p>It's essential that "Actual Start" notices should be a Fixed Penalty Notice offence. Proper Co-ordination is impossible when "Actual Start" information is discretionary. Roads Authorities are in an impossible situation and cannot carry out their statutory duties when an essential element of co-ordination information is perceived as optional.</p> <p>Failure to rectify a defective reinstatement within a reasonable period; and, failure to rectify defective utility company apparatus within a reasonable timescale.</p> <p>An expansion of the current range of Fixed Penalty Notices is essential.</p> <p>We are of the opinion that the following be introduced:</p> <ul style="list-style-type: none"> Provision of reinstatement information (See response to Item 1)



	<ul style="list-style-type: none"> • Extensions to notices, without discussion or agreement with the Roads Authority • Major works notices starting without traffic management arrangements being discussed or agreed. • Closure information is essential for co-ordination purposes. At this time it's required within 24 hours of physically leaving the site. If a notice expires without extension, as no specific offence has occurred, Statutory Undertakers cannot be given Fixed Penalty Notices for the period between when the notice expires and the closure information being submitted. Even although an occupation of the road has no valid notice. Remaining on site after a notice expires, should be a specific Fixed Penalty Notice.
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Views Sought

11	Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?
	<p>As Fixed Penalty Notices are a financial deterrent, there is no reason why inflation should decrease the deterrent. The amount of a Fixed Penalty Notice should be linked to inflation. There should be a rounding-up increase to the nearest £5 and there should be no increase of less than £5. If the inflationary increase is less than £5, it should be deferred to the following year, adding both years together.</p> <p>Different levels of Fixed Penalty Notices should be levied for different types of offence. A Fixed Penalty Notice issued to the Statutory Undertakers when late recording a notice should differ to the Statutory Undertakers working without notifying their works.</p>

Views Sought

12	What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?
	<p>This fine should be determined by the SRWC. It should however reflect the action (or otherwise) of the Roads Authority/Statutory Undertaker. Fines should be relevant to the offence. Again, we are of the opinion the SRWC is best placed to determine the necessary action.</p> <p>To ensure the financial deterrent is not eroded over time, whatever level is set should increase in line with a recognised inflation index.</p>

Views Sought

13	Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.
	<p>We would not support this change as it stands. However, if the wording at bullet point 3 – "such practice as appears to the Scottish Road Works Commissioner to be desirable shall be deemed to be a failure to comply with sections 118 and 119 of the NRSWA", was removed, or clearly defined, this definition would be acceptable.</p>



Views Sought	
14	Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.
	Yes; however, "The Code of Practice for Safety at Street Works and Road Works" is not detailed enough to cover the full range of activities carried out by Road Authorities, and refers heavily to Chapter 8 with which Road Authorities are already obliged to comply. This anomaly would have to be fully addressed prior to implementation.

Views Sought	
15	Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.
	<p>The recording of underground apparatus should be compulsory. However, safeguards must be in place. It is unreasonable to expect any organisation to be responsible for providing plans for apparatus that was placed by unknown third parties; or, for apparatus where the owner is no longer in business. An example could be, an unknown private water main may lie until it is accidentally exposed by new ongoing works. It is not reasonable to hold Scottish Water or the Road Authority responsible for providing those plans, when both parties were unaware of the apparatus.</p> <p>In addition, Roads Authorities may reasonably be expected to have details of more recent installations such as traffic signals loops; however, much of the drainage network is historical. Drainage pipes are virtually impossible to detect without excavating, although, camera surveys could be used; however, whatever method is used to confirm the location of the drainage system, logging the information onto GIS is labour intensive, time consuming and therefore costly. Additional funding would be required by each Roads Authority if required to submit electronic plans of such networks.</p>

Questions	
16	Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.
	Yes, this section should be repealed. Section 109 supersedes and gives a clear direction. However, any part of Section 61 that defines or clarifies matters should be transferred to Section 109.

Views Sought	
17	Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.



	The rationale of this is understood and the principle agreed.
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Views Sought

18	What are your views on the 3 month advance notice period for major works?
	<p>Three months notice period for Major Works is an absolute minimum. It is crucial for co-ordination of road works and the ability to meet statutory obligations that the three month notice period remains. Taken in isolation, three months may seem excessive, however each organisation will have more than one major project planned for any given year, and each of those major projects will generally take in more than one road. Considering there are several different departments per organisation with its own Major Works, and literally hundreds of minor and reactive works from these organisations, it is clear that three months is the absolute minimum time that is required to meet and agree traffic management and duration for Major Works.</p> <p>No organisation that co-operates with the Road Authority is disadvantaged by a three month notice period. Major capital spends should not be approved without detailed pre-planning. Notification is an obvious element of any pre-planning.</p> <p>Should the timescale be reduced, Roads Authorities would be in the impossible position of having to read, respond to, request meetings, agree traffic management, agree timing for several projects over several months. Allowing each Major Project to start in any less than three months from the initial notification of it, would require Road Authorities to only concentrate on issuing directions, to the detriment of any other duties. The council has had several cases where the suggested traffic management is to use traffic lights; however, in practice a road closure is required. This leads to the situation where the notice period is shorter than the timescale required for promoting the closure. The Statutory Undertakers will either incur a delay, or proceed without a road closure, which could lead to Roads Authorities stopping on-going work.</p>

19	Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?
	<p>No, local disruption can occur when an event with intermittent sensitivity can impact the network without achieving the traffic count required to class the road as traffic sensitive. Routes may not be traffic sensitive because of the variety of alternate available routes. Should any of these alternate routes be closed or restricted, it may increase the volume of traffic on the surrounding roads. To ensure the Roads Authority is able to manage the network efficiently, prior discussion on all Major Works requires discussion. Disruption does not occur in isolation; nearby, or even distant works can all impact on what appears to be a non-traffic sensitive road. Removing the period for discussion can only increase disruption. Traffic sensitive routes are approximately 10% of the road network. Road Authorities will not be able to manage that network if there is no advance notice for around 90% of the network. This may lead to formal directions to agree traffic management for notified work.</p>

Views Sought



20	Should the early start procedure be a statutory requirement?
	This is essential for co-ordination purposes.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	If works have not started by noon the following day, the work cannot be considered urgent.

Views Sought	
22	Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?
	Urgent and emergency works should have the same notification periods as at present. There is no gain in requiring Roads Authorities registering reinstatements. The road asset is maintained by the Roads Authority. Defective reinstatements belonging to the Roads Authority are the sole responsibility of the Roads Authority. If all works by third parties are correctly registered, the remaining works can only belong to Roads Authorities, making the need for Roads Authority reinstatement details redundant.

Views Sought	
23	Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?
	For co-ordination purposes works should be notified by all works promoters. Any disruption is caused by the works, regardless of the promoter. All promoters should notify all works, on all occasions.

Views Sought	
24	Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?
	For co-ordination purposes all works promoters should be required to enter this information.

25	Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.
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	For co-ordination purposes this information should not be issued any later and, in practice, may be impossible to achieve any earlier. The current timescales are practicable and realistic.
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Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	For co-ordination purposes this information should not be issued any later and, in practice, may be impossible to achieve any earlier. The current timescales are practicable and realistic.

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	Validity should be kept at the timescales in place at this time. The works promoter should be targeting works to start on the first available date. The built-in flexibility that can cause Roads Authorities co-ordination issues should be redundant if "actual start" notices are compulsory.

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	Subject to clarification, S115 Penalties should reflect a works promoter ignoring the direction. Durations dictated by Roads Authorities would only be suitable for a specific reason; works created in conflict with other works; over-run conflicting with an event like a parade; over-run conflicting with Roads (Scotland) Act occupation.

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	As stated in response to Q28, above, any additional powers should be clarified.

Views Sought	
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30	Do you agree with the definition of a working day given above?
	The definition of a working day is clearly defined and is acceptable.

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>When works are not registered at the time of completion, it should be the Statutory Undertakers duty to prove the date of the reinstatement. A photograph, taken at the time of the reinstatement, could be deemed sufficient. It would have to be date stamped and show a near-by landmark. If evidence of the date is not available, the reinstatement date, for guarantee purposes, should be the date it's entered into the SRWR.</p> <p>Stepped joints for all reinstatements should be mandatory.</p> <p>Section 56 Roads (Scotland) Act 1984 should also be added into TSA05. It is currently missing from TSA05 and can be issued for significant road works which do not involve installation of apparatus e.g. new road junctions or roundabout construction.</p> <p>A Code of Practice, similar to the Code of Practice for Well Maintained Highways, for utilities to inspect their reinstatements up to the end of guarantee period and their apparatus on a regular basis is essential. Presently there appears to be no SU inspection regime other than a reliance on RAs to report defects to SUs. A formalised Code of Practice for SUs, with inspection timescales, would ensure SU reinstatements and apparatus were inspected and maintained, with the potential of reducing defect inspections and the necessity for urgent & emergency works.</p>

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	Perhaps not an "innovation" but stepped joints for all reinstatements should be mandatory.



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Views Sought

33	Please outline the potential impact of any additional costs.
	<p>Stepped joints, within a reinstatement that conforms to specification, would have little or no additional costs. Remedials would be reduced, leading to savings in time and disruption.</p> <p>Most costs could be absorbed by practices and procedures already in place with the only increased volume of similar work having a potential impact. The exceptions to this would be the introduction of:</p> <ul style="list-style-type: none"> Item 1 - contribution costs; Item 7 - permit schemes, Item 8 - lane rental schemes. <p>These are all are new concepts which would require additional resourcing from both Roads Authorities and Utility Companies.</p>



STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

West Lothian Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Forbes

Forename

Jim

2. Postal Address

Guildiehaugh Depot, Blackburn Road, Bathgate

Postcode EH48 2EB

Phone 01506 776545

Email

jim.forbes@westlothian.gov.uk

3. Permissions - I am responding as...

Individual



Group/Organisation



Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation *will* be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your *response* to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response by East Renfrewshire Council

Views Sought	
01	<p>What contribution do you consider should be introduced? What are your reasons for coming to this view?</p> <p>Research has confirmed that excavation and reinstatement does cause long term damage to roads, even if the reinstatement is carried out properly.</p> <p>At present, the additional costs arising from this are borne by roads authorities.</p> <p>The introduction of a utility company contribution towards this cost would represent a transfer of part of the cost to the organisation causing the damage but unfortunately not the responsibility.</p> <p>However, it would not represent an increase in the total cost to society as a whole.</p> <p>The advantage of transferring part of the cost to the organisation causing the damage is that it would give an incentive for behaviour change that could reduce the total cost to society as a whole.</p> <p>There is considerable scope to reduce the amount of excavation necessary for utility company works with the greater use of ducts and access chambers. This would allow apparatus to be replaced without major excavation.</p> <p>Although on strictly economic grounds, the transfer of the entire cost of long term road damage to the utility companies would be the best strategy to ensure that costs were minimised for society as a whole, a more gradual approach may be preferable to reduce the risk of unintended side effects. A 10% contribution of £45 per square metre of carriageway could be regarded as a reasonable first step.</p> <p>An extra contribution should be made to locations where the road is classed as "Traffic Sensitive" as the costs to repair these locales will be higher and more complex ie traffic management, restricted times etc</p> <p>The issues for footways and verges are similar to those for carriageways, but a lower contribution rate would probably be appropriate.</p> <p>A lot of apparatus in rural roads is located in the verge, and although this practice partially reduces the damage and disruption arising from works, the reduction in lateral support to the carriageway following an excavation in the verge can still cause long term damage.</p> <p>As with footways, a lower contribution rate would probably be appropriate for works within the road verge.</p>

Views Sought	
02	<p>Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?</p> <p>Incorporating the current voluntary three year period of restriction, which has been adopted by the road works community in Scotland, into legislation would be of assistance as it would remove the current inconsistency between the legislation and the code of practice.</p> <p>Thought should be given to extending the period of restriction to 5 years.</p> <p>Guidance should be given to confirm what exceptions there are to the restriction period ie what is covered by "Emergency / Urgent Works". Also the extent of consequential damage to the road structure after the above mentioned works have been completed requires clarification.</p> <p>There should be a mandatory minimum area of reinstatement of the road surface once the works have taken place ie half carriageway and a length of 5 metres for Emergency and / or Urgent Works and half carriageway and a length of 15 metres machine surface for consequential damage.</p> <p>Members of the public do not realise that Utilities can "access" a newly laid carriageway and this would allow the members of the public to see that the Roads Authority are looking after their asset and not allowing the Utilities to come in and "rip up" a newly laid surface</p>

Views Sought

03 **What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?**

The inspections during the works and within 6 months of reinstatement will provide early feedback on whether utility companies are meeting their obligations with respect to working practices and reinstatement standards.

It should be ensured that this is also carried out by the Utilities own Inspectors and that they are not relying on the Roads Authority to be their Inspectors.

The beneficial outcome will be early intervention to identify and rectify any shortcomings by their own Contractors.

The inspections within three months of the end of the guarantee period provide confirmation that a reinstatement meets the required standard when responsibility passes from the utility company to the roads authority. The beneficial outcome is that defects are identified and rectified by those responsible rather than being passed on as liabilities to the roads authority at the end of the guarantee period.

It is not acceptable that under the present inspection regime, where 10% of reinstatements are sampled at this stage, that over 26% of reinstatements are being passed on to the roads authority in a defective state at the end of the guarantee period by the worst performing utility company.

This problem could be addressed by the introduction of a 100% inspection sample at the end of the guarantee period. This would bring the procedure in line with that applicable under the road construction consent legislation whereby a developer is required to pay the cost of an inspection prior to adoption of maintenance responsibility by the roads authority.

04.	Should the arrangements for inspection fees be changed, and could this include a performance element?
	<p>There is a case for considering an increase in the number of samples for which an inspection fee can be charged at the end of the guarantee period.</p> <p>Bearing in mind the wide range of failure rates at this stage, varying from 1.9% to 29.2% for the major utility companies, a performance element may be appropriate.</p> <p>The pass rate of 90% is regarded as the minimum standard below which an improvement notice should be considered.</p> <p>It is suggested that any utility company with a failure rate greater than 10% at this inspection stage in a full inspection year should be required to pay for a 100% sample of inspections at this stage in the following inspection year.</p> <p>There should also a fee for an abortive inspection</p>

Views Sought	
05	Do you agree that such increased periods be introduced? What are your reasons for coming to this view?
	<p>An increase from the current levels of 2 years and 3 years for deep excavations to 5 years and 6 years for deep excavations would not be unreasonable.</p> <p>Problems can occur, out with the present time frame, due to insufficient compaction of the reinstatement thus leaving the Roads Authority with a problem of a failed reinstatement</p>

Views Sought	
06	Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.
	<p>The problem with the introduction of a charge for occupation of the road where work is unreasonably prolonged is that the administration costs of such a scheme are likely to be considerable. .</p> <p>If it were possible to develop a process with low administration time and charges then a scheme of this nature might help to reduce disruption by speeding up works.</p> <p>The problem may occur in the definition of "unreasonably prolonged" and guidance should be given on this</p> <p>The wider use of section 125 notices might give the Commissioner the opportunity to consider issuing a penalty against an undertaker with a consistently poor performance in completing works within a reasonable time.</p> <p>This could be achieved within existing legislation with minimal additional administrative costs.</p>

Views Sought	
07	Scottish Ministers would welcome views on the introduction of permit schemes.
	Whilst Permit schemes would have the potential to impose considerable additional administrative and financial costs on the whole of the road works community not to mention the Roads Authorities there is significant merit in this if it is introduced with a manageable system

Views Sought	
08	Scottish Ministers would welcome views on the introduction of lane rental schemes.
	Whilst Lane Rental schemes would have the potential to impose considerable additional administrative and financial costs on the whole of the road works community not to mention the Roads Authorities there is significant merit in this if it is introduced with a manageable system

Views Sought	
09	<p>Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?</p>
	<p>The current scope of the fixed penalty scheme leaves a bit of a gap in the enforcement regime.</p> <p>Fixed penalties are generally available for the lowest level of offence, whilst prosecution is a viable option for the highest level of offence.</p> <p>This leaves many offences in the middle that are out with the scope of the current fixed penalty scheme but not sufficiently serious to justify the cost of a prosecution.</p> <p>An extension of the fixed penalty system would help to address this.</p> <p>As an example, if a third party applies for and is granted permission to place apparatus in the road but fails to give the correct notice of start date, they can be issued with a fixed penalty notice under Section 114. However, if they do not bother to apply in the first place and just go ahead without permission, then they cannot be issued with a fixed penalty as their offence comes under Section 110 which is out with the fixed penalty scheme.</p> <p>There are many other examples, and a comprehensive review of possible extensions to the scheme would be worthwhile.</p> <p>Specific comments in relation to the three potential fixed penalty offences listed in the consultation are as follows:</p> <ul style="list-style-type: none"> • Section 110 – This would meet all the requirements for a new fixed penalty offence and address the current anomaly described above. • Section 124 – Although there would be occasions when it would be beneficial for a fixed penalty to be issued by a roads authority for a minor signing, lighting and guarding offence by a utility company, a possible complication is that this would prevent subsequent prosecution by the police or the Health and Safety Executive if the offence were to have serious consequences. • Section 130 – When the provisions of the New Roads and Street Works Act were first introduced, it was agreed by both roads authorities and utility companies that defect inspections should be charged at double the rate for other inspections. Subsequent reviews reduced this to the same rate as for other inspections. The introduction of a fixed penalty for not reinstating excavations in accordance with the specification would reinstate the original intention of a disincentive for poor reinstatement performance.

Views Sought

10 **Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.**

Comments on the proposed new summary offences are as follows:

- *Misclassification of works as urgent or emergency to circumvent longer planned work notice periods.*

This would already be a fixed penalty offence under section 114 as it would involve starting work without giving the prescribed notice.

There would, therefore, appear to be little purpose in creating a new offence.

- *Not noticing "actual start" notices by the due time
(should actual start notices become a legal requirement.*

If actual start notices were to become a legal requirement then it would be consistent with comparable existing requirements if failure to issue the notice by the due time were to be a fixed penalty offence.

- *Failure to rectify a defective reinstatement within a reasonable period.*

This is a particular area where stronger enforcement powers would assist roads authorities.

It is in the public interest for defects to be rectified promptly and under the present regime roads authorities sometimes have difficulty in getting utility companies to respond within a reasonable time.

The introduction of a new fixed penalty would, therefore, be welcomed.

- *Failure to rectify defective utility company apparatus within a reasonable timescale.*

This is an area where stronger enforcement powers would assist roads authorities.

It is in the public interest for defects to be rectified promptly and under the present regime roads authorities have difficulty in getting utility companies to respond within a reasonable time.

The introduction of a new fixed penalty would, therefore, be welcomed.

Views Sought	
11	<p>Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?</p> <p>A fixed penalty is an alternative to a prosecution. If it is to retain the same deterrent effect, it would be logical for the fixed penalty level to be linked to the maximum fine for a summary offence. It is, therefore, suggested that whenever the scale of maximum penalties for summary offences is reviewed, fixed penalty levels should be increased or reduced by a comparable proportion.</p>

Views Sought	
12	<p>What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?</p> <p>Most large utility companies and roads authorities would probably regard the reputational damage of receiving a penalty from the Scottish Road Works Commissioner as more serious than the financial loss.</p> <p>However, it is agreed that an increase in the current maximum of £50,000 might be useful as a potential escalation if an organisation were to be seen to ignore an initial penalty.</p> <p>The Commissioner's recommendation of an increase in the maximum penalty to £200,000 would appear to be reasonable.</p>

Views Sought

13 Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.

The commissioner's proposal is that the definitions should be revised as follows:

"Failure to comply with

- *any duty under NRSWA and supporting regulations; or*
- *any requirement in a statutory code of practice; or*
- *such practice as appears to the Scottish Road Works Commissioner to be desirable*

shall be deemed to be a failure to comply with sections 118 and 119 of the NRSWA."

The first two provisions would undoubtedly remove any doubt about the extent of the Commissioner's powers to deal with failures to comply with statutory requirements.

Although it is accepted that the credibility of the Commissioner depends on being seen to act reasonably, the third provision may be seen as too open ended to be brought into legislation and it would require clarification as to the type of "practice" the Commissioner thinks to be not desirable.

There are certainly occasions where problems are caused by organisations refusing to comply with voluntary arrangements agreed by both sides of RAUCS.

However, these could be argued to fall within the everyday meaning of co-operation and so it should be possible for the Commissioner to deal with them within the existing legislation.

Views Sought	
14	<p>Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.</p>
	<p>The Code of Practice for Safety at Street Works and Road Works is equally applicable to utility company works and roads authority works.</p> <p>Making it a statutory code for roads authority works would remove the current anomaly whereby utility companies can be prosecuted for a minor breach under the New Roads and Street Works Act whereas roads authorities can only be prosecuted under the much more Draconian provisions of the Health and Safety at Work Act.</p>

Views Sought	
15	<p>Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.</p>
	<p>There would certainly be an overall benefit in reducing the risk of damage if all utility companies and roads authorities were to hold digital records of their underground apparatus and make these available to the roads and utilities community through the SRWR.</p> <p>The accuracy of the present records can be called in to question once the physical works starts on site</p> <p>For any organisation, be it roads authority or utilities, who already hold digital records, there is little additional cost incurred in providing them to the SRWR through the VAULT system.</p> <p>Creating digital records where they do not currently exist is a much more onerous task both physically and financially.</p> <p>Whilst it might be desirable to make the holding of digital records mandatory over the longer term, a transition period of around five years would be necessary to give organisations time to digitise their present records.</p> <p>Extra time must be given with regards to the collating and surveying of the apparatus details that are, at present, not held by the roads authorities and utilise</p>

Questions	
16	<p>Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.</p>
	<p>Section 61 of the Roads (Scotland) Act 1984 and section 109 of the New Roads and Street Works Act 1991 cover virtually the same circumstances and have operated in parallel for over twenty years.</p> <p>The existence of two alternative ways for roads authorities to give permission for apparatus in the road is unnecessary and confusing. It is, therefore, agreed that section 61 of the Roads (Scotland) Act should be repealed with respect to new permissions although it should remain in force for existing permissions.</p>

Views Sought	
17	<p>Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.</p>
	<p>Organisations such as major airport and seaport operators managing significant lengths of road open to the public should be designated as “major road managers” and required to place notices of their works on the SRWR.</p> <p>This may assist in the overall co-ordination of works</p> <p>There may be ambiguity as to their definition of their “Road” that is “open” to the public</p>

Views Sought	
18	<p>What are your views on the 3 month advance notice period for major works?</p> <p>It is beneficial for details of the location of planned / proposed major works to be placed on the register as early as possible in order to maximise the opportunity for co-ordination.</p> <p>The three month advance notice period is generally helpful in achieving this.</p> <p>However, the following issues can cause problems:</p> <ul style="list-style-type: none"> Any advance notice should be placed before the works have been firmly scheduled in order to allow flexibility to co-ordinate with any other major works at the same location. The current definition of "major works" is rather wide and can include some works that are rather minor in nature. A revision to narrow the criteria might be beneficial. <p>For example if any works require a road closure, for even the shortest time then the SRWR automatically sets the works to Major Works.</p> <p>It should be the case that if works require a Temporary Traffic Regulation Order (TTRO) then the Major Works heading would suffice but if the works only require a Temporary Restriction Notice (TRN) then the works should be set as "standard works".</p>

19	<p>Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?</p> <p>Roads may only be designated as "traffic sensitive" if they carry particularly high traffic flows.</p> <p>Works on such roads have the potential to cause substantial disruption and so it is appropriate that advance notice should be required.</p> <p>Substantial disruption can also be caused on roads that do not qualify as "traffic sensitive" if they involve a closure with a lengthy diversion route.</p> <p>Therefore it is appropriate to retain the advance notice requirement to cover such cases.</p>
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Views Sought	
20	Should the early start procedure be a statutory requirement?
	As the current voluntary early start procedure has been working well it would be appropriate to place it on a statutory footing.

Views Sought	
21	What are your views on making noon the following day a statutory requirement for commencing urgent works?
	<p>As a general principle, works should be noticed on the SRWR as soon as it is known that they are required.</p> <p>Urgent works are those that should be undertaken at the earliest opportunity but where specialist resources are required, the earliest opportunity might not be straight away.</p> <p>The proposed new mandatory requirement to start urgent works by noon the day after placing the notice would give a perverse incentive to hold back on placing the notice for known urgent works until the start date.</p> <p>This would undermine the potential for co-ordination and so it is not recommended.</p> <p>Experience suggests that abuse of the "urgent" classification is most likely to occur if a works promoter fails to issue the prescribed notice of start date and seeks to avoid a breach of noticing requirements by misclassifying standard works as urgent.</p> <p>The new requirement would do nothing to tackle this problem as such works would invariably start by noon the following day.</p> <p>One measure that might assist would be the introduction of a mandatory requirement to state the reason for works qualifying as urgent on the notice.</p> <p>This could be by selection from a pick list of the prescribed valid reasons.</p>

Views Sought	
22	<p>Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?</p>
	<p>There are two main reasons for requiring information on works to be placed on the SRWR.</p> <p>Firstly to facilitate the co-ordination of works</p> <p>Secondly to provide roads authorities with information on excavations and reinstatements in roads by utility companies.</p> <p>Where the information relates to co-ordination, for example timing and location of works, then roads authorities and utility companies should be required to place the same information on the register and to the same timescale.</p> <p>Where the information relates to excavations and reinstatements, for example areas, locations and dates of reinstatements then it should only be required from the utility companies.</p>

Views Sought	
23	<p>Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?</p>
	<p>It is agreed that regulations should be introduced to bring a statutory footing to the current advisory arrangements giving roads authorities the same flexibility as utility companies around the placing of notices for works involving no or minimal excavation on non traffic sensitive roads.</p>

Views Sought	
24	<p>Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?</p>
	<p>Actual start dates on the SRWR provide a number of benefits including a full audit trail of the dates of road occupations and it is agreed that regulations should be introduced requiring them to be entered.</p>

25	<p>Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.</p>
	<p>The current requirement is adequate for most purposes.</p> <p>There may be a benefit in requiring a higher level of precision of information on the SRWR and this might involve earlier registration of the actual start say by the close of the actual start day.</p>

Views Sought	
26	Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?
	The current requirement is adequate.

Views Sought	
27	Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.
	<p>Roads authorities and utility companies both require a degree of flexibility in scheduling works in order to deploy their resources effectively but reducing the validity period from 7 days to 2 days would assist in coordination.</p> <p>Works involving investigating and correcting a problem are often unpredictable in duration and some works can be and are weather dependent.</p>

Views Sought	
28	Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?
	<p>It is agreed that there might be merit in giving Roads Authorities the power to issue a direction to a utility company on the maximum duration of works.</p> <p>The problem is that Roads Authorities are not skilled in the works procedures of the various utilities and it would be difficult for RA to assess the utilities work content.</p> <p>However there are circumstances where for road management purposes this would be very worthwhile</p>

Views Sought	
29	Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?
	The present voluntary system is working and gives more flexibility than would be practicable with a statutory system therefore it is not considered that any new regulations are required.

Views Sought	
30	Do you agree with the definition of a working day given above?
	The definition of a "working day" agreed by the road works community in Scotland reflects Scottish circumstances and the regulations should be revised accordingly but cognisance should be taken regarding "local trade" holidays

Views Sought	
31	Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.
	<p>The lack of Utility Inspectors "on the ground" is a great concern for Roads Authorities.</p> <p>There should be guidance issued to the Utilities as to the Inspection regimes that should be carried out to monitor their own contractors.</p> <p>At present it seems that the Utilities are relying on the general public or the Roads Authorities to bring substandard reinstatement / traffic control etc to their attention.</p>

Views Sought	
32	Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.
	There would be potential to minimise the future disruption from utility works when planning new developments. The recent trend towards infrastructure being installed in new developments by utility infrastructure providers can make this more difficult to achieve as initial installation cost for the provider is likely to take precedence over whole life cost to the community thereafter. There may be potential to address this under planning or road construction consent legislation.

Views Sought	
33	Please outline the potential impact of any additional costs.
	<p>The main cost implication arising from the proposals would be the transfer of some of the cost of the long term damage to roads arising from utility excavations.</p> <p>Transferring this from the roads authorities to the utility companies should give an economic benefit to society as a whole as it would drive the innovations necessary to reduce the need for future excavations.</p>

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

East Renfrewshire Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Armstrong

Forename

Charles

2. Postal Address

2 Spiersbridge Way, Spiersbridge Business Park, Thornliebank, Glasgow

Postcode G46 8NG

Phone 0141 577 3440

Email

charles.armstrong@eastrenfrewshire.gov.uk

3. Permissions - I am responding as...

Individual

☐

Group/Organisation

☒

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will** be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate ☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

16

STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS

Response Sheet: Scottish Borders Council

Views Sought

01

What contribution do you consider should be introduced? What are your reasons for coming to this view?

It is widely accepted that reinstatement works shorten the lifespan of the existing road asset and Scottish Borders Council (SBC) believe utility companies should shoulder some of the cost of maintaining the asset. There is a need for behavioural change within the road works industry and an initial step could be to introduce a 7.5% contribution to incentivise companies to improve their works. Introducing this contribution would further encourage utility companies to seek out new technology and improved techniques for road work purposes.

Views Sought

02

Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?

Yes, it should be extended. With better forward planning by both utility companies and roads authorities and better partnership working the need to re-open roads would reduce. The public perception of the same stretch of road being repeatedly dug up may not be real, but perception is reality to many.

Views Sought

03

What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?

We do not believe the existing 10% of 'A' inspections to be sufficient. As it stands in the Scottish Borders we aim for a much greater percentage of inspections. Depending upon the guarantee period we would suggest increasing 'A' inspections to 100%, remove 'B' inspections and increase 'C' inspections to 100%.

04

Should the arrangements for inspection fees be changed, and could this include a performance element?

If 100% inspections is not taken forward then SBC would anticipate an increase in inspections if a utility company fails to meet the 90% performance 'rating', perhaps with a 100% inspection in future years.

Views Sought

05

Do you agree that such increased periods be introduced? What are your reasons for coming to this view?

SBC believe guarantee periods should be increased. It is widely accepted that reinstatements affect the road asset long term and a 3 year guarantee period is not enough. An extended warranty or guarantee period would hopefully drive up standards within the industry.

Views Sought

06

Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.

This is could be difficult as the administration of such a scheme could outweigh the benefits. More extensive use of Section 125 notices could be sufficient to 'encourage' companies in the right direction to ensure any sub-contractors operate timeously and efficiently. There are instances where delays are due to unforeseen circumstances and the balance between work being done properly first time as opposed to a quick job and a second or third road opening can be tricky.

Views Sought

07

Scottish Ministers would welcome views on the introduction of permit schemes.

We do not believe permit schemes are necessary at this time.

Views Sought

08

Scottish Ministers would welcome views on the introduction of lane rental schemes.

SBC do not believe lane rental schemes would be appropriate for a rural authority such as the Scottish Borders.

Views Sought

09

Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?

Yes, with the aim of encouraging a positive increase in the quality of reinstatement works, as well as an improvement in the health, safety and well being of workers if signing, lighting and guarding were to be discharged by Fixed Penalty Notices for delinquent practices. Failure to properly notify Councils of start dates and failure to reinstate within reasonable timescales should also be subject to a FPN.

Views Sought

10

Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.

Included in answer to question 9

Views Sought

11

Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?

For a penalty to be a sufficient deterrent it needs to be sufficiently severe to make any sort of impact on a utility undertaker. Possibly 'stepped' fines for persistent offenders could be considered as well as an initial inflationary increase. The ability to recharge utility companies for corrective works would be welcomed.

Views Sought

12

What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?

SBC will leave this to the Commissioner to determine a maximum level of penalty.

Views Sought

13

Do you agree that the definitions of co-operate and co-ordinate in sections 118 and 119 be revised as proposed? Please provide the reasons for your view.

SBC suggest that clarity be provided as to what is meant by co-operate and co-ordinate as these are open to interpretation at present.

Views Sought

14

Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.

Yes, Roads Authorities should lead by example and this would create a consistent approach for all.

Views Sought

15

Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.

SBC agree that it should be mandatory for digital records to be held in VAULT. This would be useful for asset management planning as well as in general planning and design. Implementation of this has to be over a reasonable and agreeable timeframe, however.

Questions

16

Do you agree that section 61 of the Roads (Scotland) Act 1984 be repealed and section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.

Yes, SBC agree with the proposal, to reduce confusion between both sections of legislation.

Views Sought

17

Do you agree that the designation of "major road managers" be created? Please provide the reasons for your view.

Yes, by designating organisations such as airport and harbour operators as major road managers then SBC consider this would assist in general traffic management with the public as they would be required to adhere to the same regulations as others,

Views Sought

18

What are your views on the 3 month advance notice period for major works?

Generally, the 3 month notice is helpful for major works planning, although the definition of major works can be vague. SBC consider that this needs to be addressed.

19

Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?

We do not believe that advanced notices for works on non traffic sensitive roads should be removed. Although a route may not be defined as 'traffic sensitive' it still may be an important rural route.

Views Sought

20

Should the early start procedure be a statutory requirement?

SBC believe the existing voluntary early start procedure should be formalised to a statutory requirement.

Views Sought

21

What are your views on making noon the following day a statutory requirement for commencing urgent works?

SBC agree that noon the following day should be a statutory requirement as the latest notification time for commencing urgent works. SBC also consider that it would be helpful if more clarity is provided as to what urgent works actually are.

Views Sought

22

Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?

SBC would agree that planned works should be placed on the register, but not reinstatements, as this would become too much of an administrative burden.

Views Sought

23

Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?

Yes, we would like the current advisory set up formalised.

Views Sought

24

Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?

SBC consider regulation should be introduced, and agree noon the following day is sensible.

25

Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.

SBC consider regulation should be introduced, and agree noon the following day is sensible.

Views Sought

26

Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?

SBC believe the current requirement is reasonable.

Views Sought

27

Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.

No, SBC consider a level of flexibility is sensible and practical as inclement weather can delay works.

Views Sought

28

Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?

BC consider possibly, however it could be difficult for a Council to dictate how long utility works should take.

Views Sought

29

Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?

SBC have found the present voluntary system to work where the Council and utilities can work together to avoid special events.

Views Sought

30

Do you agree with the definition of a working day given above?

Yes.

Views Sought

31

Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.

Stepped joints for reinstatements should be mandatory.

Views Sought

32

Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.

Better use of mobile IT kit would be useful when considering the inspection and registration process. A multi-platform national system (ie windows, android, linux, mac) or secure app for inspection that would fully integrate with the register would provide real time information to all users.

Views Sought

33

Please outline the potential impact of any additional costs.

If the contributions in question 1 were introduced there is the possibility that this stream of funding could be used to make better use of technology and staff time.

