

09 January 2020**Agenda Item:9**

REPORT OF THE CORPORATE DIRECTOR, PLACE

STREETWORKS PERMIT SCHEME: CONSULTATION UPDATE

Purpose of the Report

1. A follow-up to the July 2019 report (agenda item 7) to seek approval to legally introduce a streetworks permit scheme in Nottinghamshire following a regulatory consultation process.

Information

2. Members approved at the July 2019 Committee the commencement of a formal consultation with the statutory utilities and other interested parties for the introduction of a permit scheme for streetworks in Nottinghamshire. The report detailed the changes and benefits that would be expected from adopting the powers available under Traffic Management Act (2004). Briefly these are:
 - i. All organisations wishing to carry out works on the highway must under a permit scheme apply for permission to work and pay a fee if required. Under the current system, such organisations only have to notify the Council of proposed works with no fee.
 - ii. The income from the fees paid is allocated to the additional costs that arise from exercising the powers. These primarily are for the costs of additional staff to receive and approve all requests and for the increased capacity to check works on site.
 - iii. The permit application process ensures that the Council is able to check all proposed works (with the exception of emergency works) as well as all variations of agreed work.
 - iv. Standard national conditions will be applied to ensure that works are managed as efficiently as possible. Additional inspectors will be employed from the fee income to check the compliance of works and Fixed Penalty Notices can be issued to any organisations that are considered to have failed to adhere to the stated conditions.

- v. All works including those of our own Highways promoters within VIA will be treated with parity. Although charges are not applied by legislation for our own works, the permit scheme requires all organisations to apply for a permit before commencing work to ensure that coordination and communication is as efficient as possible.
3. Utility companies have the legal right to place and maintain their apparatus in the public highway and must do so in accordance with national codes of practice. This work inevitably causes some disruption at times to road users. The introduction of a permit scheme to manage streetworks does not prevent this work taking place but it does provide a framework to improve our ability to control and check the work. This ensures that the network is managed more efficiently for the benefit of all road users in accordance with our network management duty (as referred to in Section 4.1.1 of the LTP).
4. Over 70% of the English Councils have now introduced a permit scheme to manage streetworks. In 2017 The Department for Transport commissioned a report into the effectiveness of schemes introduced since 2010. This evaluation determined that permit schemes typically reduced the duration of works and therefore any congestion and disruption caused by these works. Subsequent to this, the DfT wrote to all Councils not operating a permit scheme (including Nottinghamshire County Council) requesting that they introduce one and that, should they not do so, the DfT would consider using its powers of direction.
5. Further to the July 2019 Committee, the Council developed a draft permit scheme that detailed the scope of the scheme and the proposed fees. It is intended to apply a fee for works on all roads within the Council's administrative area but this will be on a sliding scale depending on the nature of the works and the type of road directly affected. The charges reflect the amount of additional management and control required to minimise disruption from works. Discounted permit charges will also be applied where utilities work collaboratively or phase works so as to lessen inconvenience to road users.
6. In accordance with the Traffic Management Permit Scheme (England) Regulations 2007 (as amended) a formal consultation of the draft scheme was undertaken between 27th September 2019 to 8th November 2019. The consultation was undertaken with utility companies and other key stakeholders.
7. The consultation resulted in 62 comments from the following organisations:
 - i. Network Rail
 - ii. Nottinghamshire County Council – Transport and Travel Services
 - iii. Severn Trent Water;
 - iv. Stagecoach East Midland
 - v. Western Power Distribution
 - vi. Virgin Media
 - vii. Openreach
 - viii. Anglian Water

8. All comments received are detailed in **Appendix A** together with a response from the Authority and a note of whether the comment requires a change to the Permit Scheme document. Overall the responses received were either relatively minor comments on the permit scheme design, positive support or questions relating to the operation of the scheme. A number of comments have led to minor changes to the draft permit scheme and these are shown in **Appendix A**. Such changes include for example, accepting where content could potentially cause confusion with the prevailing legislation and increasing clarity as to where fees will not be levied.
9. The final proposed Permit scheme is attached in **Appendix B**. The scheme is designed to deliver the anticipated benefits from administering a permit scheme with the following outcomes:
 - To proactively manage the highway network in order to maximise the efficient use of road space and to reduce congestion
 - To improve the quality of works information
 - To improve the reliability and accuracy of works activity information to the public
 - To protect the right of the public to use the highway in a lawful manner
 - To protect the structure of the street and the utility apparatus
 - To ensure parity for all works promoters
 - To support and improve public transport reliability
10. Operationally, the team responsible for delivering the permit scheme would be based within Via East Midlands as an extension to the existing streetworks coordination team. There will be a form of Service Level Agreement between NCC and VIA detailing expected performance indicators from the operation of the permit scheme that will be subject to regular monitoring.

Next Steps

11. If Members approve the recommendations to this Report, the next stage will be to complete the process to bring a permit scheme into legal effect, thereby signing a legal order made under powers conferred by Section 33A of the Traffic Management Act 2004 and undertake the necessary changes to operate the permit scheme. The scheme appended in **Appendix B** will form the appendix to the legal order. Members are requested below to also approve the delegation to the Service Director of Place and Communities the power to make minor amendments to the permit scheme in future. For clarity, such amendments would not affect the substantive content of the scheme.
12. Formal notice will be issued to all affected parties and will be sent at least 4 weeks prior to the legal introduction of the permit scheme.
13. Work with VIA to undertake the necessary steps to both introduce the permit scheme to process permit applications and to submit permits for the Council's own works.
14. It is intended to commence the permit scheme in April 2020. Prior to the introduction of the scheme the Council will undertake a trial, effectively operating the scheme as if it were in legal effect albeit without applying the fees and charges.

15. The permit scheme will be evaluated annually for the first 3 years of operation (and thereafter every 3 years) and a report will be presented to Members accordingly and made available to stakeholders.

Other Options Considered

16. The DfT have sent a clear indication to the Council that it is expected to introduce a permit scheme and therefore we are considering its introduction as per their request. Various financial models have been considered to calculate the level of charges necessary to deliver a service that will deliver the tangible benefits of a permit scheme whilst remaining commensurate with the level of works within the County. The figures shown within the permit scheme document in Appendix B reflect this and are considered reasonable and justified.

Reason/s for Recommendation/s

17. The Council has been asked by DfT to consider the introduction of a permit scheme. Our initial work suggests the scheme proposed in Nottinghamshire should deliver the benefits of enhanced streetworks management described above that have been evidenced by other Authorities that have already adopted these powers and will support and advance the Council's transport goals (as referred to below). The costs of issuing permits to utilities can be met fully from charges applied to applicants wishing to undertake works in the highway.

Statutory and Policy Implications

18. The County Council's long-term transport strategy is set out within the Local Transport Plan 2011-2026 (LTP). The LTP identifies three transport goals, two of which the proposed permit scheme will help deliver (the third being to improve access to key services):
 - i. Provide a reliable, resilient transport system which supports a thriving economy and growth whilst encouraging sustainable and healthy travel
 - ii. Minimise the impacts of transport on people's lives, maximise opportunities to improve the environment and help tackle carbon emissions.
19. 'Making best use of the existing transport networks' is one of the key elements of the Council's strategy contained within the LTP to deliver the above transport goals. With regards to managing disruption on the network caused by street works, incidents and other activities, the LTP specifically states that "The County Council will also explore the opportunity to introduce measures to control activities in a more prescriptive manner than has been possible in the past, such asexamining the provisions relating to permit schemes, including whether to introduce such a scheme".
20. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

21. The introduction of a permit scheme would require an increase in current resources to administer the permit regime as detailed in Human Resources Implications below. In addition, additional ICT hardware and software would also be required. All of these additional direct costs together with a proportion of overheads including pensions, accommodation, central services, monitoring of the scheme, KPIs and invoicing would be met by the income from the permit fees.
22. In addition to income from the permit fees, a permit scheme also creates a new potential source of income from two new sanctions: (1) working without a permit with a £500 fixed penalty notice; and (2) working in breach of a permit condition with a £300 fixed penalty notice. Net proceeds received from Fixed Penalty Notices are ringfenced by the Permit Regulations to be applied to promoting and encouraging safe, integrated, efficient and economic transport facilities and services within the area covered by the permit scheme.

Human Resources Implications

23. The introduction of a permit scheme would require an increase in the current staff resources to administer the permit regime, primarily for the coordination and inspection of works. The costs of this would be met from the permit fees. In the main these additional staff will be placed within VIA. The impact within the client side at the County Council is currently under consideration and will be subject to a subsequent report to Committee.

Implications for Service Users

24. The introduction of a permit scheme is anticipated to reduce the disruption and impact of roadworks for all Service Users.

Implications for Sustainability and the Environment

25. Reduced traffic congestion will subsequently reduce emissions from queuing vehicles.

RECOMMENDATION/S

- 1) That Members approve the making of the legal order required to implement the introduction of the proposed permit scheme for streetworks in Nottinghamshire as set out in Appendix B and delegates authority to the Group Manager (Legal, Democratic & Complaints) to draft and finalise the form of that Order.
- 2) That Members delegate to the Service Director, Place and Communities the authority to make minor changes to the permit scheme in the future.

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Constitutional Comments (SJE – 04/12/2019)

26. Communities & Place Committee is the appropriate body to consider the content of this report.

Financial Comments (SES – 20/12/2019)

27. The report proposes the implementation of a permit scheme for street works with effect from 1st April 2020. The implementation of the scheme will incur additional costs for the council which it is able to offset through additional income from charging for permits.
28. Prior to the commencement of the scheme, and experience of operating the scheme, it is difficult to fully quantify the additional costs. However, these will include additional payments to VIA to employ staff to operate the scheme, additional staff employed by the County Council, which will be subject of a future report to committee, the acquisition and running of vehicles, additional ICT hardware and software, and administration costs in raising bills for permits and in collecting the income.
29. The Council is proposing to set fees initially at the levels as set out in section 10.2.2 of the final draft of the Nottinghamshire County Council Permit Scheme which forms Appendix B to the report to recover the costs of operating the permit scheme. It is difficult to accurately forecast the level of income which will be received from the permit scheme as this will depend upon the number and mix of permits issued. However, it is estimated that the income received will be in the region of £1 million to £1.5 million per annum.
30. In order to ensure that the Council is recovering its costs in operating the permit scheme but not receiving income in excess of those costs, and thus operating within the regulations and guidance for permit schemes, the permit scheme will be evaluated annually for the first 3 years of operation and thereafter every 3 years. Reports on these evaluations will be presented to Members and made available to stakeholders.
31. Under the terms of the scheme the Council will also be able to issue fixed penalty notices. There will be 2 types of penalty notices set at £500 and £300. Any income from these penalties does not have to be applied to any specific areas. Again, it is difficult at this stage to estimate the level of income that will be obtained from penalty notices and an initial figure of £50,000 will be included in the 2020/21 budget.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All