



**TRAFFIC MANAGEMENT ACT 2004  
STREET WORKS AND ROAD WORKS**

**SURREY COUNTY COUNCIL'S LOCAL COMMITTEE  
(REIGATE AND BANSTEAD)**

**5<sup>TH</sup> MARCH 2007**

**KEY ISSUE**

To inform the Local Committee of the powers conferred by legislation on Surrey County Council (SCC) to manage Street Works and Road Works.

**SUMMARY**

The New Roads and Street Works Act 1991 (NRSWA) and the Traffic Management Act 2004 (TMA) indicate responsibilities for Local Transport Authorities, such as Surrey County Council. They also set out what sanctions can be applied for co-ordinating Street Works and Road Works across the County. The NRSWA gave powers in relation to Street Works Undertakers, which are companies authorised to execute works associated with apparatus in a street. The TMA extends the powers to be applied to Undertaker (Utility Companies) and Highway Works including the Surrey Highways Partnership. More parts of the TMA Legislation is likely to be passed this year and the new requirements will alter the way Surrey County Council co-ordinates works and manages congestion.

**OFFICER RECOMMENDATION**

The Local Committee is asked to:

- (i) Note this report for information, giving an overview of what is happening with regard to Undertaker (Utilities) works and Highway works under new legislation.

## 1 INTRODUCTION AND BACKGROUND

- 1.1 The New Roads and Street Works Act 1991 (NRSWA) puts a Duty on the Local Transport Authority (LTA) to co-ordinate all Road Works and Street Works. It also places a duty on the works undertakers to co-operate. The Traffic Management Act 2004 (TMA) goes a step further by applying the Network Management Duty (NMD) to each LTA and states:

“It is the duty of a local traffic authority to manage their road network with a view to achieving, so far as it may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives:

- a) Securing the expeditious movement of traffic on the authority’s road network; and,
  - b) Facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.”
- 1.2 The TMA has increased the sanctions which Surrey County Council (SCC) can use through the NRSWA. The LTA, whilst having the duty to co-ordinate, can now direct a Utility to work at specific times and in specific locations should there be such a need. Any party in breach of the NRSWA can be taken for prosecution and fines of up to £5,000 can be made.
- 1.3 A random sample selection of 30% of a Utility’s work programme is used to monitor the performance of each Utility. Whenever two consecutive quarter periods reveal an inspection failure rate of greater than 10% in either Signing, Lighting and Guarding or physical acceptability set against intervention limits, an Improvement Notice will be served and a tightly controlled inspection regime instigated. The costs of the Improvement Notice regime will be recharged to the Undertaker of the works.
- 1.4 The ‘office’ activities are to receive all notices or applications advising the LTA of proposed works, to co-ordinate these with all other highway related works and produce a Street Works Register. In this function the ‘office’ must pay due regard to any possible conflict of works whilst at the same time check that the details submitted allow an accurate assessment to be made of where and for how long these activities will last. Where conflict or duration of works are considered a problem, a ‘Challenge’ is made directing a change in the proposals. A failure to supply correct information may be treated as a breach of NRSWA.
- 1.5 If works require a Traffic Regulation Order for a road closure then the standard procedure for achieving these is processed by Surrey County Council staff.
- 1.6 When changes occur to the duration of works a Notice must be sent advising of this. The reason why the change is made may be challenged and agreement reached on the new duration. If unexpected problems occur and measures are taken to amend the programme of works then agreement cannot be withheld unreasonably.

## 2 ANALYSIS AND COMMENTARY

- 2.1 The NRSWA and associated Codes of Practice detail how works are to be carried out from preliminary notification to final registration of completed works. The TMA has increased the power for the LTA enabling a direction as to when and where, if applicable, works may be carried out (January 2005). New Regulations will be introduced this year under TMA Parts 3 and 4 taking further the actions required in managing all works on the highway network.
- 2.2 These latest parts of the TMA enactment will offer SCC a choice of either Part 3 (Permits) or Part 4 Notices. This can be summarised as Part 3 the Undertaker/Highway Authority has to ASK permission to carry out the works while Part 4 retains the option of TELLING SCC by notification when the works will take place.
- 2.3 Co-ordination will come under closer scrutiny and Key Performance Indicators (KPI) will be set in agreement with the Department for Transport (DfT) as to how SCC will be judged. All of this will be a challenge to SCC in the year ahead.
- 2.4 Additionally, whichever option SCC choose, there is a requirement to collect the same KPIs for both Undertakers and Highway works. SCC must demonstrate parity in applying the TMA in assessing performance and compliance with the new regulations.
- 2.5 Under NRSWA there will still be a limited number sanctions that can be applied against poor compliance, typically for incorrect Noticing, unsafe traffic management, failure to co-operate, undue delay and unreasonably prolonged works. Sanctions applied to date against Utilities' non-performance has been limited to the application of NRSWA Section 74. This provides for a charge to be applied for prolonged occupation of the highway. This also allows challenges to works durations when excessive time is requested or non-productive sites are discovered. Breaches of NRSWA and defects above a predetermined figure will incur financial penalties against the Undertaker.
- 2.6 The challenge from the TMA is that the same performance sanctions will need to be shown to be applied to highway works. The collection of data and what sanctions could be applied will need recording although there cannot be the same financial penalties at the moment.
- 2.7 For Undertakers, the quality of the final reinstatements has been monitored through a countywide coring investigation programme, which has revealed a poor level of compliance (currently 52%). For highway works the Key Performance Indicators (KPIs) derived from Surrey Highways Partnership (ShiP) may need adjusting to see if a similar measure of performance is possible. It is recommended that by increasing the inspections at the time reinstatement works are taking place this should see a reduction in non-compliances.

- 2.8 The DfT have published consultation documents last year outlining Intervention Criteria enabling the assessment of how well the LTA is meeting its Duty under TMA Part 2 NMD; Part 4 Notices, how do LTAs think these can be introduced and Part 3 Permits, how these may be applied. A failure by the LTA to meet the strict requirements of any one of the KPIs from the Intervention Criteria may cause the Secretary of State (SoS) to issue an Intervention Notice against that LTA. The SoS may also appoint a Traffic Director to 'improve' the LTA. All costs incurred would be recovered from that LTA.
- 2.9 If at a future date, SCC consider they wish to operate a Permit Scheme this must be submitted to the SoS with full reasons why and what charges are to be applied in issuing a permit. DfT have set a maximum for each permit type and any costs incurred are only allowed to be applied to the additional work involving Undertakers. No offsetting of costs for highway works is allowed.
- 2.10 A full report will be made to the SCC Transportation Select Committee on the options available in the future.

### 3 CONCLUSIONS

- 3.1 Additional TMA Regulations (Part 3 and 4) are expected to be enacted this year (2007). Further developments in managing the Street Works and Road Works in Surrey, in relation to these, will be determined after a full analysis of the options available and the implications to the highway service.
- 3.2 The implications of the TMA are that whichever option the Service chooses to apply, Part 3 or 4, then compliance is expected to be 'cost neutral' for a Local Highway Authority. Only those costs that can be attributed to administering a Permit for Undertakers can be recharged through agreed predetermined permit fees approved by the Secretary of State. All 'other costs' incurred will be assumed necessary to comply with the TMA.
- 3.3 The Impact on highway works will effectively ensure these works are properly co-ordinated and managed to minimise delay and disruption, not allowing works by different contractors to be continuous on a stretch of highway. It may mean some works having to be reprogrammed if Carillion cannot meet the original start dates.
- 3.4 The decision of how to proceed with the TMA requirements will be taken to Select Committee at a future date. The DfT have yet to confirm the Regulations and although a draft report has been prepared for TMT there has not been an agreed date to take to full committee yet.
- 3.5 The Local Committee is asked to:
- (i) Note this report for information, giving an overview of what is happening with regard to Undertaker (Utilities) works and Highway works under new legislation.

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<b>BACKGROUND PAPERS:</b>	New Roads and Street Works Act 1991, Associated Codes of Practice, Traffic Management Act 2004, Network Management Duty 2005

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