

	
COUNCIL MANAGEMENT TEAM	Date of meeting
Report of the Director of Economy and Place	XXXXXX

Street Works – Changing from noticing to a permitting scheme

Annex C - Statutory consultation summary

A public consultation on a draft permit scheme took place in August-October 2020, in compliance with Regulation 3 of the Traffic Management Permit Scheme (England) Regulations 2007¹.

Consultation process

A notice was published on City of York Council’s website at www.york.gov.uk/consultations and emails providing information on the consultation were sent to statutory consultees and key stakeholders as follows:

- Utilities and contractors, including: Barhale, BT Openreach, City Fibre, Fast Flow; GHD/Galliford Try; Global Surveys, IETG, Jacob Field Services, Mott MacDonald Bentley (MMB), Morrison Utility Services, Network Plus, NMCN, Northern Gas Networks, Northern Powergrid, O'Connor Utilities Limited, Peter Duffy Limited; RPS, Sapphire Utility Solutions Ltd, Virgin Media, Vodafone, Yorkshire Water;
- Local bus operators;
- Emergency services;
- The neighbouring local authorities of North Yorkshire and East Riding; and
- The Department for Transport.

¹ Regulation 3 states:

“Consultation for new permit schemes

3.—(1) Prior to submitting a permit scheme to the Secretary of State under section 33 of the 2004 Act, the Permit Authority shall consult—

(a) every person who carries out works in the proposed specified area from time to time, to the extent the Permit Authority is aware of them doing so;

(b) every local authority other than the Permit Authority in whose area is situated any street to which the proposed permit scheme relates;

(c) where any street to which the proposed permit scheme relates is in Greater London, Transport for London;

(d) where any street to which the proposed permit scheme relates is in the passenger transport area of a Passenger Transport Executive, the relevant Passenger Transport Executive;

(e) the emergency services which operate in the proposed specified area;

(f) the Secretary of State;

and such other persons as the Permit Authority considers appropriate.”

Consultation responses

Responses to the consultation were received from the following stakeholders, with comments and issues and CYC's response summarised in the table below:

- Northern Powergrid;
- BT Openreach; and
- Virgin Media.

Comments or issues	Raised by	CYC response/ amendments
General comments on the Street Works Permit Scheme issued for consultation		
There are several references to a Technical Specification. Please clarify which technical specification this is referring to.	Northern Powergrid	<i>Section 1.3 defines the term and has been updated to reflect the move to Street Manager.</i>
Please confirm where strategically significant streets are defined in regulations/guidance.	Northern Powergrid	Strategically significant streets (SSS) are defined as including streets which have been designated as traffic sensitive in accordance with the criteria set out in regulation 16 of The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007, as well as streets which fall into reinstatement categories 0, 1 or 2 as defined in the Specification for the Reinstatement of Openings in Highways. <i>Information added to Section 3.4 for clarity.</i>

Comments or issues	Raised by	CYC response/ amendments
<p>Openreach would also like further clarification/discussion around the volume of highway works compared to utility works.</p>	<p>BT Openreach</p>	<p>This information can be provided separately based on Street Manager records. <i>No amendment required.</i></p>
Comments on Section 1 Introduction		
<p>Section 1.2</p> <ul style="list-style-type: none"> • Virgin Media acknowledge that the proposed start date of the new Permit Scheme will be no later than April 2021 (pending outcome of consultation process) • Virgin Media acknowledge that City of York Council will operate the Scheme in a manner that facilitates infrastructure projects and asks if this includes the continued roll out of superfast broadband within their area? 	<p>Virgin Media</p>	<p>The Authority will operate the scheme in a manner that facilitates nationally important infrastructure projects. This includes the roll out of superfast broadband. <i>No amendment required.</i></p>
Comments on Section 2 Scheme objectives		
<p>Section 2.1</p> <p>Virgin Media agrees with the key factors highlighted regarding better planning, scheduling and management of activities to minimise disruption to any road user or pavement user. Virgin Media agrees that an overall drive to further improve the timing and duration of works to minimise disruption, where safe and practical to do so is a good thing however believe the current co-ordination process allows for this without the need for a Permit Scheme.</p>	<p>Virgin Media</p>	<p>The Department for Transport's Statutory Guidance for Highway Authority Permit Schemes states that "<i>the Department for Transport considers that well-designed, outcome-focused, and reasonably implemented permit schemes provide the best method of managing a highway authority's road network and the works that take place in or on the public highway</i>". City of York Council[s] approach is in line with this guidance. <i>No amendment required.</i></p>

Comments or issues	Raised by	CYC response/ amendments
Comments on Section 3 Scope of the Scheme		
<p>Section 3.2 Virgin Media recommend as per the DfT that only CAT1&2 or traffic sensitive streets have fees attached.</p>	Virgin Media	See “Comments on Proposed Permit Scheme Fee Levels” below.
<p>Section 3.5 Activities covered by the scheme - To future proof your scheme, we suggest you remove this as it will no longer be in the code of practice for coordination which is currently HAUC guidance</p>	BT Openreach	<i>List from Code of Practice moved to Appendix 1.</i>
Comments on Section 4 Principles of permit applications and responses		
<p>Section 4.6 Reference is made to March 2015 statutory guidance should be 2020</p>	Northern Powergrid	The guidance was updated in 2019 and the updated guidance came into force in July 2020. <i>This has been amended in the document, also in Sections 1, and 5.1.</i>
<p>Section 4.8 Clarity of phases on application may not always be possible. Virgin Media recommend revising the word ‘must’ to ‘should’</p>	Virgin Media	A variation can be submitted if phases change. <i>No amendment required.</i>

Comments or issues	Raised by	CYC response/ amendments
<p>Section 4.8 Interrupted Works: Virgin Media would not be expected to pay for another Permit if City of York Council directs Virgin Media to close down works and reinstate if Virgin Media are not at fault.</p>	Virgin Media	<p>This is included in the scheme: Section 7.3 states <i>“No fee is payable for permit variations initiated by the Authority, unless at the same time the promoter seeks variations which are not the result of the circumstances causing the Authority action”</i>. Section 7.4 states <i>“Where a new permit or permit variation is required to resume an activity, a fee will be payable in line with the permit charges set by the Authority, unless it is revoked by the Authority through no fault of the promoter, in which case there will be no charge for a replacement application.”</i> No amendment required.</p>
<p>Section 4.8 Third party damage - It is the 3rd Party's responsibility to submit a permit application</p>	Northern Powergrid	<p>NRSWA Code of Practice for the Co-ordination of Street Works, paragraph 2.10 states: <i>“If works are interrupted because the undertaker, or his contractor, has caused third party damage, then it is the undertaker’s responsibility to notify the authority of a revised estimated end date, taking into account the likely duration of the repair works. The works remain the responsibility of the original undertaker until it is able to issue a Works Clear or Works Closed notice”</i>. No amendment required.</p>
<p>Section 4.10 Clarity as to what specifically would constitute ‘ongoing performance issues that are not being addressed’?</p>	Virgin Media	<p><i>Text added to define in line with Section 4.10: “such as poor works planning and/or management”</i>.</p>

Comments or issues	Raised by	CYC response/ amendments
Comments on Section 5 Conditions		
<p>Section 5.3 Conditions placed on immediate activities - Manual control of PTS cannot be imposed as a blanket condition. The requirement is site specific and must be agreed.</p>	Northern Powergrid	<i>Wording of Section 5.3 revised to make clear that the Authority will require manual control of traffic management for immediate activities taking place on Strategically Significant Streets.</i>
<p>Section 5.3 Conditions placed on immediate activities - Road closures - if this notification is required the streets should be identified in the gazetteer.</p>	Northern Powergrid	Section 3.4 states “Designations for each street in the local street gazetteer are provided in the Authority’s ASD”. <i>No amendment required.</i>
Comments on Section 6 Permit responses and changes to the application prior to the permit being granted		
<p>Section 6.4 Please explain where the 2 hr response requirement is supported in regulations/guidance.</p>	Northern Powergrid	<i>This has now been amended to describe the use of Imposed Change Notifications as per HAUC Guidance. An Imposed Change Notification will generally be used when needing to amend an immediate permit and once issued, the permit includes the amendments stated on the imposed change notification.</i>
<p>Section 6.4 Guidance states that immediate permits should not be refused</p>	Northern Powergrid	Modification requests cannot be used for immediate works (HAUC guidance section 5.3). HAUC guidance states “any required changes to immediate permits should be requested via the issue of the HA Imposed changes notification after a Grant response has been issued”. However, the authority reserves the right to refuse an immediate works permit if it includes significant errors. The authority would then request a new permit to be submitted. <i>No amendment required.</i>

Comments or issues	Raised by	CYC response/ amendments
Comments on Section 8 Permit charges		
Section 8.1 Typo "Feel Levels"	Northern Powergrid	<i>Typo corrected and document title updated.</i>
Section 8.1 Virgin Media acknowledges a PAA will only be charged on receipt of an associated Permit application	Virgin Media	
Section 8.3 Virgin Media acknowledges reduction of fees when working collaboratively	Virgin Media	
Section 8.4 Other situations where a fee may be reduced - Please define what respective response times are.	Northern Powergrid	<i>Example of five working days for non-emergency defects added in Section 8.4 for clarity.</i>
Section 8.4 Other situations where a fee may be reduced - If Immediate works stop notifications have been sent prior to approval there is no charge. Currently HAUC Guidance says Immediate works completed wholly within a weekend: It is recommended that no fee should apply.	Northern Powergrid BT Openreach	<i>Immediate works completed wholly within a weekend added to Section 8.2 Waiving permit fee (in line with HAUC guidance).</i>
Comments on Section 9 Permit offences and sanctions		
Section 9.2 Prosecution - incorrect non-payment timescale stipulated	Northern Powergrid	<i>Changed to 36 days.</i>
Section 9.3 Virgin Media acknowledges that any dispute of a Permit should be resolved locally. As Virgin Media works often have tight deadlines waiting for review from HAUC can often cause customer led timescales to be missed.	Virgin Media	<i>As stated in Section 9.3. No amendment required.</i>

Comments or issues	Raised by	CYC response/ amendments
Comments on Section 10 Transitional Arrangements		
The transition arrangements should allow minor, standard works notified prior to scheme commencement and starting within the first month of the permit scheme to be completed under noticing. Likewise Major works starting within 3 months should also continue under noticing. see Sec 9.7 of the Stat guidance for HA permit schemes	Northern Powergrid	<i>Section 10 text amended in line with statutory guidance.</i>
Virgin Media acknowledges Permits will be waived for the first month of operation of the new Scheme.	Virgin Media	Permit fees will be waived but permits will be required. <i>No amendment required.</i>
Virgin Media requests Fixed Penalty Notices (FPNs) be suspended for the first month of operation of the new Scheme in the spirit of the waived Permits to not penalise genuine mistakes.	Virgin Media	Request rejected as FPNs are imposed for offences and these are similar to offences under the noticing regime. <i>No amendment required.</i>
Comments on Section 11 Monitoring the scheme		
Isn't TPI - traffic management performance Indicators	Northern Powergrid	KPIs listed in the Statutory Guidance (Annex A) are identified as TPIs. <i>Sections 2.2 and 11 updated to clarify.</i>

Comments or issues	Raised by	CYC response/ amendments
Comments on Proposed Permit Scheme Fee Levels		
<p>As you are aware all new permit schemes now have to follow the Statutory Guidance for Highway Authority Permit Schemes issued October 2015. Within this document it outlines a more rigorous approach to the assessment of category 0, 1 and 2, and traffic-sensitive locations than those categorised as 3 and 4. This approach enables lower fees to be applied (or waived). Permit authorities must encourage works promoters to work wholly outside of traffic-sensitive times by offering discounted fees. By following DfT advice both the Council and works promoters will be able to focus on working together to plan those works likely to cause the most disruption, rather than a blanket approach including streets that are not traffic-sensitive.</p>	<p>Virgin Media</p>	<p>The fee levels have been set in line with statutory guidance, generally below the set maximum levels. The fees also distinguish between road categories, with lower fees set for non-strategically significant streets. <i>No amendment required.</i></p>

Comments or issues	Raised by	CYC response/ amendments
<p>Para 3.3 of the DfT Advice Note for local highway authorities developing new or varying existing permit schemes states “unless there is a very strong benefit case otherwise; it is strongly recommended that permit fees are only applied to the more strategically significant roads: Category 1, 2 roads and Traffic Sensitive Street roads. This will mean that although permits would still be required for works on non-strategic routes, it should be very unlikely that these works would attract a permit fee. These permit applications would receive only ‘notice’ equivalent treatment by the authority.”</p> <p>By setting the fees to the proposed levels Openreach would have to consider future projects for G-Fast and Superfast Broadband rollout in York to be not commercially viable. An alternative is for consumer prices to be increased to cover the increase in permit fees.</p> <p>Openreach therefore do not support York’s proposal to charge for all permits. Openreach believe whilst permits may still be applied for and agreed on category 3, 4 and non TS routes; the equivalent of noticing treatment should be given to these permits.</p> <p>As a balanced view Openreach would support higher fees on strategically significant streets i.e. cat 0 -2 and traffic sensitive streets if this will help the authority cover the costs of running a permit scheme. Openreach, however, do not support the introduction of fees on the lower category of streets</p>	<p>BT Openreach</p>	<p>This advice was included in the DfT Advice Note published in 2016 but has not been included in the most up to date statutory guidance, which provides the maximum fee structure for (a) Road Category 0, 1 & 2 or Traffic Sensitive and (b) Road Category 3 & 4 and non-Traffic-sensitive.</p> <p>The authority aims to control activities on all streets and believes that activities on type 3 & 4 roads are as important to residents and roads users as those on 0-2 and Traffic Sensitive Streets. The permit scheme should be cost neutral and tis would not be achievable without charges for permits on category 3 and 4 streets. The annual evaluations will determine whether the costs of running a scheme have been covered and fees may be adjusted either up or down to ensure the scheme remains cost neutral.</p> <p><i>No amendment required.</i></p>

Comments or issues	Raised by	CYC response/ amendments
Virgin Media are pleased that City of York Council are not charging maximum fees on all roads within their proposed permit Scheme, but would prefer no charges on category 3 and 4 roads	Virgin Media	See response above.