



# STREET WORKS PERMIT SCHEME

TRAFFIC MANAGEMENT ACT 2004

## Annex A - Draft permit scheme for approval

City of York Council

November 2020

## Table of contents

1.	Introduction .....	3
1.1	Relationship to NRSWA 1991.....	3
1.2	The permit scheme .....	3
1.3	Street works register, Street Manager and technical specifications .....	4
2.	Scheme objectives .....	5
2.1	Primary objectives.....	5
2.2	Monitoring performance against the objectives .....	5
3.	Scope of the scheme.....	6
3.1	The register .....	6
3.2	Streets covered in the scheme.....	6
3.3	Street Gazetteer.....	6
3.4	Associated Street Data designations .....	7
3.5	Activities covered by the scheme .....	8
4.	Principles of permit applications and responses .....	9
4.1	General principles .....	9
4.2	Section 58 restrictions on further activities.....	9
4.3	Application types .....	9
4.4	Activity categories.....	10
4.5	Timing of applications and responses.....	11
4.6	Content of permit applications .....	12
4.7	Provisional Advance Authorisation (PAA).....	14
4.8	Phasing, interrupted and multiple activities.....	15
4.9	Illegitimate Phasing of Activities.....	17
4.10	Early start requests .....	17
5.	Conditions .....	18
5.1	General principles .....	18
5.2	Mandatory conditions.....	18
5.3	Conditions placed on immediate activities.....	18
6.	Permit responses and changes to the application prior to the permit being granted .....	19
6.1	Granting a permit application.....	19
6.2	Modifying a permit application.....	19
6.3	Refusing a permit application .....	20
6.4	Responding to an immediate application .....	20

6.5	Responding to a Provisional Advance Authorisation .....	21
7.	Permit variations and modifications .....	22
7.1	General principles .....	22
7.2	Variations initiated by the promoter .....	22
7.3	Changes initiated by the Authority .....	24
7.4	Suspension, postponement or cancellation of a permit.....	25
7.5	Cancelling a permit .....	25
8.	Permit charges .....	26
8.1	Fee levels.....	26
8.2	Waiving permit fees .....	26
8.3	Reduced permit fees .....	27
8.4	Other situations where a fee may be reduced .....	27
8.5	Invoicing .....	28
8.6	Fee review .....	28
9.	Permit offences and sanctions.....	29
9.1	Permit offences.....	29
9.2	Sanctions .....	29
9.3	Dispute procedures.....	30
9.4	Application of proceeds from sanctions .....	30
10.	Transitional Arrangements .....	31
11.	Monitoring the scheme.....	32
12.	Disapplication and modification of NRSWA.....	33
12.1	Regulations 36 and 37.....	33

## 1. Introduction

The City of York Council permit scheme (hereafter referred to as “the scheme”) has been developed and is in accordance with the powers provided in Part 3 of the Traffic Management Act 2004 (“TMA”) and the *Traffic Management Permit Scheme (England) Regulations 2007 Statutory Instrument 2007 No. 3372* made on 28 November 2007 (“the 2007 regulations”), as amended by the *Traffic Management Permit Scheme (England) (Amendment) Regulations 2015, Statutory Instrument 2015 No. 958* made on 26 March 2015 (“the Amendment regulations” or both together generally referred to as “the regulations”).

In preparing this permit scheme, City of York Council (“the Authority”) has had regard to the guidance issued by the Secretary of State and the Department for Transport contained in the *Statutory Guidance for Highway Authority Permit Schemes* (“statutory guidance”) and the *Statutory Guidance for Highway Authority Permit Schemes – Permit Scheme Conditions* (“permit conditions guidance”), and other guidance from the Highway Authorities and Utilities Committee (England) (“HAUC guidance”).

The Authority having prepared this scheme and prior to giving effect to this scheme has undertaken a full consultation in relation to the scheme as set out in Regulation 3.

### 1.1 Relationship to NRSWA 1991

The scheme replaces the current ‘noticing’ system under the New Roads and Street Works Act 1991 (“NRSWA”) and will operate in a non-discriminatory manner.

Provisions of NRSWA that have been dis-applied and modified are set out in statutory guidance and have been replaced by equivalent requirements under the TMA for the operation of a permit scheme. These are also set out in Section 12 of this document.

Activities licensed under Section 50 of NRSWA do not require permits and such activities will continue to be subject to those requirements of NRSWA as set out in *The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007* (“Noticing regulations”) and associated codes of practice.

### 1.2 The permit scheme

All current and future amendments of NRSWA and TMA legislation, regulation or statutory guidance applies to this scheme.

The permit scheme does not alter or reduce the duties to cooperate and coordinate activities on the public highway set out in sections 59 and 60 of NRSWA.

As required by Regulation 4(c), the Authority will operate in a manner that demonstrates parity between applicants at all times and those departments dealing with permits and coordination will be separated from other highways activities. Key performance indicators will be used to evaluate non-discrimination and permit scheme operation.

The Authority will operate the scheme in a manner that facilitates nationally significant infrastructure projects.

The scheme will come into force through the powers conferred by Section 33A (2) of the TMA by an Order made by the Authority. If approved, the scheme is intended to come into effect no later than April 2021.

The scheme and its operation will be reviewed in accordance with Regulation 16A.

### **1.3 Street works register, Street Manager and technical specifications**

In July 2020, the DfT introduced Street Manager, a new digital service which replaced the Electronic Transfer of Notices (EToN) technical specification. The Authority has implemented the move to Street Manager and complies with the system's requirements.

Throughout the document the term 'technical specification(s)' is used to refer to the latest Street Manager requirements, guidance, and processes.

The manner of communicating and service of notifications will also follow any guidance set out by the Street Manager system, HAUC, or within statutory guidance.

## **2. Scheme objectives**

### **2.1 Primary objectives**

The scheme's primary objectives are:

- Increase the efficient running of the highway network through proactive management of activities on the highway;
- Improve the quality and timeliness of information received from all promoters;
- Encourage a proactive approach to planning and undertaking of works on the highway;
- Protect the structure of the street and the integrity of apparatus in it;
- Ensure the safety of those using the street and those working on activities that fall under the scheme, with particular emphasis on people with disabilities; and
- Ensure parity of treatment for all promoters.

### **2.2 Monitoring performance against the objectives**

In accordance with Regulation 4(d), the Authority will provide metrics to show how the scheme is being operated and to measure whether the objectives are being met.

The performance metrics will be based in part upon Traffic Performance Indicators included in the statutory guidance, the monitoring and evaluation guidance developed by HAUC, and measures developed by the Authority to reflect their own local objectives and performance monitoring.

Performance indicators will be published quarterly by the Authority and will be made available at performance and coordination meetings.

As required by Regulation 16A an evaluation report will be produced by the Authority annually for the first three years, and thereafter at least every three years. The report will include:

- Analysis of performance indicators to show whether the scheme is meeting its objectives;
- Consideration of whether the fee structure needs to be changed in light of any surplus or deficit; and
- The costs and benefits of the scheme (whether financial or not).

The outcome of the evaluation shall be made available to the persons referred to in Regulation 3(1) within three months of the relevant anniversary.

### **3. Scope of the scheme**

#### **3.1 The register**

In accordance with Part 7 of The Regulations, the Authority will maintain a register of each street covered in their scheme, as well as a register under Section 53 of NRSWA for other street information, where these are not part of the permit scheme.

The register will be publicly accessible, in compliance with Regulation 34.

#### **3.2 Streets covered in the scheme**

The scheme will operate within the geographical area encompassed by the City of York boundary.

All streets maintained by, or on behalf of, the Authority are included within this scheme as set out in Regulation 8. These are identified within the Authority's Additional Street Data (ASD).

Privately maintained streets are not included in this scheme but will be added if they are subsequently adopted by the highway authority and will be shown as such within the local street gazetteer (Section 87 NRSWA).

Activities on privately maintained streets will be recorded on the Authority's street works register as required under Section 53 of NRSWA.

Trunk roads and motorways for which Highways England is the highway authority are not included in the scheme.

#### **3.3 Street Gazetteer**

For the purposes of the scheme the term "street" refers to a length of highway associated with a Unique Street Reference Number (USRN) as determined by the National Street Gazetteer Concessionaire.

The Authority will maintain and publish a gazetteer of all streets operating under the permit scheme to level 3 standard (as defined under BS7666) including the USRN and additional street data (ASD), which will contain the information required by, and defined in, the technical specification.

Where the ASD designations are revised by the Authority, the criteria and procedures detailed in the relevant Code of Practice or subsequent guidance will be followed.

### **3.4 Associated Street Data designations**

The categories of street subject to special controls under the City of York permit scheme are:

- Strategically significant streets (SSS);
- Streets with special engineering difficulties;
- Streets subject to early notification of immediate activities.

#### Strategically Significant Streets

Strategically Significant Streets (SSS) include:

- Traffic sensitive streets - designated in accordance with the criteria set out in Regulation 16 of The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007; and
- Streets which fall into reinstatement categories 0, 1 or 2 - defined in the Specification for the Reinstatement of Openings in Highways.

Designations for each street in the local street gazetteer are provided in the Authority's ASD.

#### Streets with special engineering difficulties

Under Section 63 of NRSWA, the term "special engineering difficulty" (SED) relates to streets or parts of streets associated with structures, or streets of extraordinary construction, where activities must be carefully planned and executed in order to avoid damage to, or failure of, the street itself or the associated structure with attendant danger to person or property.

Under Schedule 4 of NRSWA, plans and sections of proposed activities must be approved by each relevant authority with an interest in the structure concerned, i.e. the street authority, and/or the sewer, transport or bridge authority. This remains the case where streets are subject to this permit scheme

#### Early notification of immediate activities

Some streets or parts of a street can be identified as particularly vulnerable to traffic disruption. For these locations, the Authority may request the earliest possible information about an immediate activity to initiate traffic management arrangements, provide information to the public and reduce the impact of the activity. These streets will be indicated within the Authority's ASD as those where "early notification of immediate activities is required". Promoters carrying out such activities shall contact the Authority, in the manner specified in the ASD, immediately after the activity has commenced and before the application is made.

#### Other designations

Where works on a street or section of street require consultation with another organisation, for instance areas of archaeological or environmental importance or sensitivity, this will be recorded in the Authority's ASD and promoters must consult with the relevant authorities.

### **3.5 Activities covered by the scheme**

The term “specified works” is used generically in the permit regulations. For the purposes of the scheme, specified works are any activities falling within the definition of “registerable activities” as defined in the noticing regulations and any subsequent amendments. This applies equally to streets works as defined by Section 48(3) of NRSWA and works for road purposes as defined by Section 86(2) of NRSWA.

The term “activity” is used in this scheme to encompass any registerable activity that requires a permit, or any other activity affecting the public highway which may in turn affect the coordination and management of the road network.

All works carried out by, or on behalf of, the highway authority are “works for road purposes” and require a permit if they fall under the definition of registerable.

Registrable activities as listed in the NRSWA 1991 Code of Practice for the Co-ordination of Street Works and Works for Road Purposes is included in Appendix 1 (4<sup>th</sup> edition, October 2012).

#### **Criminal offence**

All registerable activities for which a Permit is required and has not been sought and granted cannot be carried out without committing an offence (see Section 9).

## 4. Principles of permit applications and responses

### 4.1 General principles

Any promoter of a registerable activity to be carried out on the public highway must obtain a permit from the Authority. The permit will allow the promoter to carry out the specified activity:

- At the specified location;
- Between the dates shown; and
- Subject to any conditions that may be attached.

The content of applications and notifications and communications relating to all aspects of the permit will be made using, and will comply with, the definitive format and content of the protocols as set out in the technical specification, which may change from time to time.

#### Failure of electronic systems

Where there is a failure of the Authority's or a promoter's electronic system, or where a promoter is not able to meet the requirements of an electronic transaction for any reason, the Authority will implement an interim alternative strategy for managing permit applications, variations, responses and other notifications to ensure that workflows are not unduly interrupted. This can be via email but the format and content must first be agreed with the Authority.

All applications and notifications must be resubmitted through the electronic street works register following recovery of the service. Promoters must ensure that all resent notices are sequenced correctly as detailed in the technical specification.

### 4.2 Section 58 restrictions on further activities

The powers to restrict further works in all or part of a street following substantial road or street works (NRSWA Section 58 and 58a respectively) apply to streets covered by the scheme.

The Authority will exercise its powers under these Sections in accordance with regulation 37(2) and statutory guidance.

### 4.3 Application types

The scheme provides for two forms of application:

- Provisional Advance Authorisations (PAA) - These are only used for major activities (as defined in the regulations) and provide advance notice but not necessarily with full details of the final activity. PAAs are similar to Section 54 notices under NRSWA; and
- Permit Applications (PA) - These contain accurate and timely details of the activity and are required for all registerable activities (for major activities a PA must also be submitted once a PAA has been applied for and approved). These are similar to Section 55 notices under NRSWA.

## 4.4 Activity categories

The scheme applies to the following works categories, as defined in the noticing regulations.

### Major activities

Major activities are those that:

- Have been identified in a promoter's annual operating programme or are normally planned or known about at least six months in advance of the proposed start date for the activity; or
- Require a temporary traffic regulation order (not a temporary traffic notice) under the Road Traffic Regulation Act 1984 for any registerable activities other than immediate activities; or
- Have a duration of 11 days or more, other than immediate activities.

For major activities, a PAA must be submitted at least three months in advance of the proposed date for the activity. Once this has been approved by the Authority, the promoter must submit a permit application in support of the PAA at least ten working days before the activity is due to commence.

The permit application should contain the final detailed information on the proposed activity. It may be that this differs from that provided in the PAA, in which case the promoter should provide additional details to support these changes. Approving a PAA does not mean that the Authority is under any obligation to grant a subsequent permit. The permit application will be assessed in the same manner as any other permit application.

### Standard activities

Standard activities are those activities, other than immediate or major activities, that have a planned duration of between four and ten days inclusive.

The permit application must be submitted at least ten working days in advance of the proposed commencement date of the activity.

### Minor activities

Minor activities are those activities, other than immediate or major activities, where the planned duration is three days or less.

The permit application must be submitted at least three working days in advance of the proposed commencement date of the activity.

### Immediate activities

Immediate activities are either emergency works or urgent activities.

Emergency works (defined in Section 52 of NRSWA), are works required to end, or prevent, circumstances, either existing or imminent, that might cause damage to people or property. This applies to both street works and works for road purposes which fall within the definition of registerable activities. The term also includes activities not falling within that definition but which cannot be severed from those that do – such as activities away from the emergency site that are necessary to shut off or divert a supply. Remedial works to dangerous defective reinstatements are classed as emergency works (but there will be a need to cross reference these to the permit given for the parent activity).

Urgent activities are defined in the Regulations as activities (not being emergency works) required (or which the person responsible for the works believes on reasonable grounds to be required):

- (i) To prevent or put an end to an unplanned interruption of any supply or service provided by the promoter; or
- (ii) To avoid substantial loss to the promoter in relation to an existing service; or
- (iii) To reconnect supplies or services where the promoter would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period; and
- (iv) Includes works that cannot reasonably be severed from such works.

Where a promoter considers that their activity is classed as immediate they may proceed with the activity required without having a permit in place. However, an immediate permit should be applied for within two hours of works commencing on site, or by 10am on the next working day where the activity commences out of normal weekday working hours (or the 'noticing' hours specified in the technical specification).

#### 4.5 Timing of applications and responses

The following table summarises the time periods of applications for permits and variations, and the time limits for the Authority to respond.

*Table 1: Application and response periods*

ACTIVITY TYPE	Minimum application periods ahead of proposed start date		Minimum period before permit expires for application for variation (including extension)	Response time for issuing a permit or seeking further information or discussion		Response time for responding to applications for permit variations
	PAA	PA		PAA	PA	
<b>Major</b>	3 months	10 days	2 days or 20% of the original duration whichever is the longest	1 calendar month	5 days	2 days
<b>Standard</b>	N/A	10 days		N/A	5 days	
<b>Minor</b>	N/A	3 days		N/A	2 days	
<b>Immediate</b>	N/A	2 hours after		N/A	2 days	
<p>Notes: "days" in the above table refer to working days, as defined in NRSWA and the permit regulations.</p> <p>These timescales may be subject to amendment by legislation or by the technical specification (noting that current Street Manager specification states 28 calendar days response for a PAA)</p>						

The proposed permit start and end dates (in calendar days) will clearly define the time period an activity will take up road space.

Where the street is non-strategically significant the permit start and end dates will allow for flexibility in the start of the activity. The starting window will be 5 working days for major and

standard activities and 2 working days for minor activities. Once the activity is started it must be completed within the duration period specified in the permit.

Where the street is strategically significant, the permit will not be valid before the start date stated on the permit and will cease to be valid once the end date has passed unless a variation is granted. If the activity start date is logged as starting later than the proposed start date then the activity will effectively have a shorter duration in which to be completed.

Further details must be provided where the promoter proposes to undertake activity on weekends or Bank Holidays to speed up the activity or reduce disruption.

These constraints on the activity will be submitted as conditions (see Section 5) and will be taken into consideration by the Authority.

#### **4.6 Content of permit applications**

The information required for a permit application will include full details of the work to be carried out to enable the Authority to fully understand the scope of the activity being planned and to assess the impact on the road network, road users, residents and other nearby activities.

A permit application may only contain one street or USRN.

Some of the information listed below will be in the form of permit conditions (see Section 5). The requirements are set out in statutory guidance and HAUC guidance.

A permit application must include the following elements.

*Reference number* - Each application should include a unique reference number. Details of the numbering system is given in the technical specification.

*Description of activity* - A detailed description of the activity should be provided in plain English to enable the Authority to assess its likely impact. This must include:

- Details of the works being undertaken;
- Description of methodologies employed;
- Estimate of the excavation depth;
- A description of the layout and impact of the activity (for example traffic management);
- Details of any collaborative working, such as details of the other promoters and brief descriptions of the activities being undertaken; and
- Any other information pertinent to that activity.

*Location* - Promoters should give the USRN together with a textual location, and an accurate location based on National Grid References (NGRs). The minimum location that should be provided is one NGR in the centre of the excavation for small excavations or a polyline, where there is a long trench, as set out in the technical specification or other guidance. Where necessary, information about the space taken up by the activity in the street should also be provided. The textual description should match the NGR provided or the application risks being rejected.

*Timing and duration* – Durations need to accurately reflect the works to be undertaken. Each application for a permit should include proposed start and end dates, and to indicate whether the permit should allow for work at weekends and on bank holidays (where applicable). Additional information which might be required includes:

- For Strategically Significant Streets, details of the times of day the activity is to be carried out, including any proposal to work at night. If the promoter proposes to undertake activity on weekends or Bank Holidays to speed up the activity and reduce disruption, this should also be provided. All this information will be taken into account when determining permit durations and conditions; and
- For a major activity, where the dates on a permit application differ from those on the preceding PAA, the promoter should explain the reason(s) for the change.

*Illustration* - Works promoters may need to provide an illustration of the works where the activity is significant in terms of potential disruption. The Authority will be mindful of the added burden this may place on the promoter, and will only request an illustration where the additional information is necessary. This requirement may apply to any works type and may include details of the activity (plans, traffic management drawings, digital photographs, disruption calculations, etc.) and may be transmitted according to the technical specification or through email as agreed by the Authority.

Works on streets, or parts of a street, which are subject to a Special Engineering Difficulty (SED) designation, will require a plan and section or other specified information. Approvals for SEDs should be obtained before a full permit application is made.

*Methodology for works* - Details of the planned techniques, such as open cut, trench share, minimum dig technique or no dig should be provided.

*Traffic Management* - Details of the traffic management proposed will be required. This includes:

- Any requirement for action by the highway authority such as the need for Temporary Traffic Regulation Orders (TTROs/TTRNs), lifting of parking restrictions, and approval for portable light signals must be included, or referred to, in the permit application or PAA application ; and
- A TTRO will require a separate application and additional time to administer outside the permitting processes.

*Depth* – In general it will be assumed that the excavation depth will be less than 1.5 metre. Where the depth is expected to vary significantly, or where it will be greater than 1.5 metre, promoters should provide their best estimate of the excavation depth. While this may be expressed as a range, it should nonetheless provide a meaningful indication of the nature and extent of activity involved.

*Reinstatement type* - The application should wherever possible indicate whether the activity is intended to be completed with interim or permanent reinstatement or a mixture of both.

*Inspection units* - The application should state the number of estimated inspection units appropriate to the activity, in accordance with the rules laid down in the current Inspections Code of Practice and associated regulations and guidance. Where there is trench sharing, only the primary promoter is required to give the inspection units.

*Contact person* - The application must include the name and contact details of the person appointed by the promoter to deal with any problems that may occur during the activity, including any provision made by the promoter for out-of-hours contact. The application should include the name of the main contractor carrying out the activity to help with consideration of the application and any discussions that need to take place before the permit is granted.

*Proposed Conditions* - Where there are constraints in the permit application, it must include conditions to support the application. This is provided for within Regulation 10. These conditions are based on the *Statutory Guidance for Highway Authority Permit Schemes – Permit scheme conditions*.

Permit conditions might be applicable to any activity and should be applied following due consideration.

Where necessary, the Authority will request that certain conditions be added to, or removed from, the application before issuing the permit.

Where the wording enables discretion (for times etc.), these should be reasonable, deliverable, and aimed at effective network management and the effective monitoring and management of activities.

The Authority must respond to a permit application as set out in the timing rules. The response may either grant the permit or refuse it, giving reasons (see Section 6).

#### **4.7 Provisional Advance Authorisation (PAA)**

Provisional Advance Authorisations (PAAs) provide a mechanism to plan in advance for major activities.

Unless the activity is to undertake remedial works (see Section 4.8), PAA enable promoters to provisionally 'book' road space prior to further planning and discussion with the Authority. A PAA must be followed-up by a full permit application within the required timeframes (see Section 4.5).

A PAA may only contain one street or USRN.

The PAA must be applied for at least three months in advance of the proposed commencement date of the works or as agreed with the Authority. An application for a PAA must specify proposed start and end dates. However, as it may be difficult to be certain of the start date three months before the event, the proposed start date is regarded as provisional and may be amended in the application for a final permit.

The detail supplied in, or in support of, a PAA is the same as required on a permit application. Although comprehensive information may not be available at this early stage, as much detail should be provided as possible to enable the Authority to adequately assess the submission.

The Authority must respond to an application for a PAA within one calendar month from the date the application is received by the Permit Authority (noting that this time limit might be reviewed in guidance or through the implementation of Street Manager which only allows for 28 calendar days). The response may either grant the PAA or refuse it, giving reasons (see Section 6).

The information contained within the PAA will provide confirmation as to whether the proposed activity has the potential to be especially disruptive to local residents, businesses or road users. In such circumstances, the Authority will require the promoter to provide advance publicity as the Authority deems necessary.

Where the Permit Authority decides that the promoter needs to provide additional information (such as traffic management drawings or plans), or undertake a publicity exercise prior to submission of the follow-up permit application, they will inform the promoter. This will be part of the ongoing planning and agreement process between the approval of the

PAA and the submission of the permit application. The promoter should provide this information or provide evidence or confirmation of the publicity exercises undertaken as part of the conditions of the full permit application.

Where a TTRO is required, the promoter may commit to apply for one as part of the PAA submission. If the promoter has not correctly applied for the required TTRO in advance of the permit application, the application might be refused.

It is recognised that the dates and the detail of the PAA should be considered as provisional. The promoter must inform the Authority as soon as possible if these details change significantly. As a PAA cannot be varied, only resubmitted, the Authority may decide that a new PAA is required if the changes are significant. Alternatively, the Authority may accept changes made as part of the full permit application at a later stage.

In accordance with Regulation 11(5), the granting of the PAA does not guarantee that a permit will be subsequently issued, particularly if the promoter has not provided suitable details or where dates have changed so significantly that they clash with another activity.

#### **4.8 Phasing, interrupted and multiple activities**

A phase of an activity is defined as a period of continuous occupation of the street (whether or not work is taking place for the whole time) between the start and completion of the works.

One permit can only contain one phase and the dates given in a permit application will denote the dates for that phase. A phase can end only when all the plant, equipment and materials, including any signing, lighting and guarding have been removed from the site.

Phased activities must relate to the same works. These could be single or multiple-but-linked excavations, or a trench dug progressively along the street as part of a continuous operation, or where a permanent reinstatement or remedial works are undertaken at a later date.

Linked activities carried out at separate locations in a street must be treated as belonging to the same set of works. However, unconnected activities carried out by the same promoter in one street should not be treated as parts, or phases, of a single set of works.

The promoter must clarify that an activity is to be carried out in more than one phase on the application. Each phase will require a permit and the same activity reference must be used for all phases, or cross-referenced to the other phases. If the works are classed as major, they will also require a Provisional Advance Authorisation, except in the case of remedial works. Each phase will be classed as a separate activity or works, for the purposes of NRSWA (for instance Section 74, reinstatement guarantee periods, etc).

##### Cross Boundary Activities

Where an activity or project crosses the boundary between authorities, or where it is anticipated that an activity may impact the network of a neighbouring authority, the promoter should take this into consideration when planning the activity and ensure that the neighbouring authority is also engaged early on in the planning process.

Early discussion with both authorities will help avoid conflicting requirements. A separate permit may be required for each authority.

## Projects

Activities involving more than one street could form part of one project in management and contractual terms but separate permits and Provisional Advance Authorisations will be required for each street.

## Interim to permanent reinstatements

When an activity is completed with an interim reinstatement then the activity will be regarded as having more than one phase and a new permit must be obtained for the permanent reinstatement phase. The same works reference number should be used. (“cross referenced” to the original activity).

## Remedial works

Remedial works will require a new permit to be obtained for the remedial phase. The same works reference number should be used as the original activity (“cross referenced” to the original activity).

Where remedial works fall within the definition of major works, a PAA will not be required.

Where remedial works fall within the definition of ‘emergency’ or ‘urgent’ works or are required to remedy dangerous defects, the activity will be categorised as immediate.

## Severable works

The definition of emergency works in Section 52 of NRSWA provides that items of work which “cannot be reasonably severed” from the emergency works are regarded as part of them. The same test applies to urgent works.

Typically, immediate activities shall consist only of a repair to end the emergency, or restore the service, and complete the necessary reinstatement. Follow-up activities undertaken to provide a permanent solution are “severed” and subject to a separate permit application, using the same works reference as the original activity (“cross referenced” to the original activity).

## Interrupted activities

There may be circumstances where a promoter is unable to complete their activity in one phase as originally intended. This may be due to difficulties that could not have been reasonably foreseen, for instance adverse weather conditions or an engineering complication. The promoter should contact the Authority as soon as this becomes apparent.

If the Authority is content for the excavation to remain open, a permit variation will be required to extend the current permit. It should be noted that the Authority may not consider the reason for the extension to be acceptable and may not extend the ‘reasonable period’. In this case, the activity would be subject to Section 74 overrun charges.

If the Authority requires the excavation to be closed down, reinstated, and returned to use, then agreement should be sought from the Authority on the timing of the subsequent permit to complete works at a later date.

Whenever an activity is interrupted, the promoter must first agree a way forward with the Authority before starting any of the processes above. Failure to do so may result in the Authority treating the subsequent application as an illegitimate use of activity phases.

### Third Party Damage

If the activity is interrupted because the promoter or contractor has caused third party damage, then it is the promoter's responsibility to seek the Authority's approval for a permit variation to allow the damage to be repaired.

In the interest of good practice, a permit is required by the third party while they are undertaking these works, to enable the Authority to identify that another party is working at this location. This permit will not be chargeable and nor will Section 74 charges apply to the third party.

The normal notifications and timing rules apply to the third party permit application although in the interests of expediency an 'early start' should be requested for the subsequent permit application and the promoter is expected to complete the repairs without unreasonable delay.

The activity site and the reinstatement remains the responsibility of the original promoter until it is able to clear site and issue a Works Stop notification, unless otherwise agreed between all promoters and the Authority.

### **4.9 Illegitimate Phasing of Activities**

The Authority may grant a subsequent permit with start and finish dates to allow the initial activity to be completed, where the Authority can establish to its reasonable satisfaction that a subsequent permit application has been made at any given location as a result of:

- The closure of works following a refusal by the Authority to grant an extension to the duration of a previous permit; or
- The premature closure of the works by the promoter, before all those works specified in the works description given by the promoter are completed, to avoid an overrun under Section 74 occurring.

The duration for this subsequent permit will reflect the illegitimate phasing of activities for these works and overrun charges will be applied in accordance with the current Section 74 regulations.

### **4.10 Early start requests**

An activity must not start before the expiry of the application period except where an early start (a reduction to the minimum notice period as set out in Table 1) has been agreed with the Authority.

The Authority will allow an early start to a permit providing that:

- It does not conflict with other activities;
- There is a legitimate reason for the request and it is not a result of poor works planning by the promoter; and
- Promoters do not use early starts regularly to conceal poor works management.

The Authority will generally follow the advice set out in HAUC guidance or the technical specification, unless it is reasonable to amend this policy due to promoter disregarding their obligations or due to ongoing performance issues that are not being addressed, such as poor works planning and/or management.

## 5. Conditions

### 5.1 General principles

The scheme uses standardised conditions issued as *Statutory Guidance for Highway Authority Permit Schemes – Permit Scheme Conditions*. The scheme will adhere to any future changes introduced through statutory guidance.

Permit conditions might be applicable to any activity and it is for the promoter to supply the required conditions as part of their permit application or permit variation.

Where the Authority considers it necessary and appropriate to apply conditions that differ from the proposals in the application, the Authority will either refuse the permit or request a modification stating the reasons for the request.

### 5.2 Mandatory conditions

Certain conditions apply to all permits, or permits for certain kinds of activity in all cases. The scheme does not require these conditions to be formally attached to individual permit applications or granted permits as they are taken as being contained in either form on all permits or applications.

The following conditions apply to all permits:

- NCT 11a: It is a requirement of the scheme that the unique works reference number will be displayed on the site at all times. The works reference number is as described in the technical specification or set out in statutory guidance relating to permit conditions; and
- NCT 1a and 1b (covering strategically significant streets and non-strategically significant streets). It is a requirement of the scheme that the permit will specify the start and end dates of the permit, which may include weekends or bank holidays.

### 5.3 Conditions placed on immediate activities

Immediate activities are by definition emergency or urgent and therefore may commence without a permit being in place. Regulation 13 provides for the Authority to impose conditions on an activity that is not yet the subject of a permit.

City of York Council will require any immediate activity using temporary traffic signals on streets identified as Strategically Significant (as identified in the local street gazetteer) to be manually controlled during the period identified as traffic sensitive. This requirement will be addressed through national condition “NCT08b Manual control of traffic management”.

Should a promoter require a road closure, the scheme requires that the promoter contacts the Authority by telephone prior to, or within two hours, of works starting on site, in addition to the normal permit notification. This should be referenced as “Authority has been contacted to advise of road closure”.

Conditions can be discussed and agreed between the promoter and the Authority within the two-hour period between an immediate activity starting on site and the issuing of the immediate permit application. Alternatively, conditions may be requested or applied following the permit being issued, using the necessary responses set out in the technical specification. This may be as a result of the permit assessment or following a site inspection.

Failure to comply with conditions may leave the promoter liable to a criminal offence.

## **6. Permit responses and changes to the application prior to the permit being granted**

The scheme will follow the communications protocols set out in the technical specification for requesting modifications to permit applications. Third parties who have an interest in a particular street (as defined within the ASD) will be copied into responses.

### **6.1 Granting a permit application**

#### Issuing a permit

If the Authority is content that all the information contained in the application meets an acceptable standard of detail to enable it to consider fully the impact of the activity and the suitability of the timing and methodology and any conditions attached to the application, it will issue a permit by way of a “Grant Permit” notification. The timescales for responding to a PA or PAA are set out in Table 1 and given in statutory guidance.

Each permit issued will be given a unique reference number. Details of the numbering system are given in the technical specification.

#### Deemed permits

When the Authority fails to respond within the required timescales, or where for technical reasons the response does not reach the promoter within the required timescales, that permit is deemed to be granted.

In these situations, the promoter is at liberty to continue to undertake their activity in line with their original permit application. However, the activity should not take place in a manner different to that intended by the original application and indicated by the permit content and proposed conditions.

When it becomes apparent to the Authority that a permit has deemed, then it is good practice for the Authority to consider the permit as it stands and contact the relevant promoter if it becomes clear that the activity should not proceed as detailed. This might be because the conditions or the contents of the application itself are insufficient, or where a conflict between activities is likely, or where the activity is likely to cause considerable disruption that could be mitigated through discussion and changes.

In these cases, the promoter should discuss and agree any changes required by the Authority. The fee for the variation, or cancellation and resubmission, to that original deemed permit will be waived by the Authority.

### **6.2 Modifying a permit application**

A promoter may submit a modified application at any point before the previous version has been assessed and responded to by the Authority.

If further information is required, the Authority will endeavour to resolve this within the mandatory response times so that the estimated start date and duration of the original application remains.

If a modification application is not subsequently submitted within the required timeframes then in accordance with Regulation 16(3) the Authority will consider the application refused.

The technical specification and HAUC guidance sets out the requirements in more detail.

### **6.3 Refusing a permit application**

The Authority cannot refuse legitimate activities. However, if the application does not contain the required information, and a request for a modification (section 6.1) is not suitable, the Authority will refuse the permit.

The reasons for refusal will be stated clearly so that the promoter is able to amend their subsequent application. The scheme will follow the HAUC guidance and the technical specification on permit responses where practical.

Where an application has been refused and the promoter is able to submit a suitably amended application that requires an early start to maintain the original requested time slot, the Authority will endeavour to agree the same start date. However, this is at the discretion of the Authority.

Where other activities are scheduled to take place in the same street, or other streets affected by the proposed activity at the same time, the Authority may refuse a permit for the period requested but propose to grant it for a different period. The refusal should clearly state a suitable timeframe, or invite the promoter to contact the Authority to discuss acceptable options before applying for a new permit.

### **6.4 Responding to an immediate application**

Immediate works will have started on site prior to the application being received or assessed. An immediate application should not be refused outright, as this might lead to a situation where the promoter is forced to work illegally.

Promoters should endeavour to make sure that all immediate permits are as accurate as possible with as much detail as possible including any conditions that they feel are pertinent to the works (noting those required and set out in Section 5.3).

If an application does not provide the required information to the satisfaction of the Authority the Authority will seek to discuss the problems with the promoter in the first instance, and if necessary follow this up by granting the permit and submitting an imposed change notification once suitable corrective action to the permit has been agreed. The permit will remain valid and now include the amendments stated on the imposed change notification.

The Authority will treat immediate permits as high priority to ensure that any required permit changes can be made by the promoter before the works are completed, thus not creating any coordination or administration issues at a later date.

The fee for any modified application submitted because of an Authority imposed variation will be waived.

If the information contained in the immediate application has significant errors and the Authority feels it is not possible to request or impose a change, the Authority will contact the promoter. The Authority will then refuse the application and request that a new permit application to be submitted without delay. Typically, this situation might arise where the technical specification does not allow certain changes to an application.

## **6.5 Responding to a Provisional Advance Authorisation**

A PAA is not a permit application. However, the process for the submission and assessment of a PAA closely follows that of a permit application. The Authority will follow the process detailed above, and may either grant the PAA or refuse it, giving reasons.

In accordance with Regulation 11(5), the granting of the PAA does not guarantee that a Permit will be subsequently issued, particularly if the promoter has not provided suitable details or where dates have changed so significantly that they clash with another activity.

## 7. Permit variations and modifications

### 7.1 General principles

In accordance with Regulation 15, the scheme allows for permits to be varied by both the promoter and the Authority. The method and content of applying for a variation notification are summarised below with more detailed information available in the technical specification or in other guidance. A permit variation needs to be agreed before the permit expires or passes its end date. There is a fee for a permit variation.

A PAA cannot be varied. In circumstances where the details of a PAA have changed but a full Permit has not yet been issued, the promoter must inform the Authority of the proposed changes and the Authority will indicate whether a new PAA is required or the new information can be included in the permit application.

### 7.2 Variations initiated by the promoter

From time to time a promoter will need to apply for a justifiable variation to a permit and/or its conditions. Situations where a variation may be needed include:

- Information included in the original application was inaccurate or unrealistic;
- The location or the method of working has changed; or
- The promoter requires an extension to the agreed duration.

The Authority recognises that it should not prevent necessary activity, so the variation is likely to be granted, notwithstanding the principles set out in NRSWA Section 74 and the quality of the amended information. The Authority may also require the conditions attached to the original permit to be varied or new conditions added if the changes to the permit warrant it.

#### Applying for a variation

The promoter should make a request to vary the permit as soon as it becomes clear that the activity might require a change or may overrun, so that the Authority can check that the proposed variation is appropriate and reasonable.

Regulation 15 (2) and statutory guidance provides the following ways of applying for a permit variation:

- Where the existing permit has more than 20% of its duration or more than two days to run, whichever is the longest, the promoter must apply for a variation electronically. This is to ensure that the variation is captured within the Authority's mandatory response time;
- In any other case, the promoter should first telephone the Authority, to ascertain whether the Authority is prepared to grant the variation. If the Authority agrees, the variation must then be applied for electronically.

It must be noted that a permit cannot be varied after it has expired (the permit end date has passed). In these cases, a new permit must be applied for. The promoter may be working illegally during this period.

Any USRN-related data (i.e. street name, area, highway authority, works reference number) cannot be changed, therefore a new permit will be required if these details change.

If the Authority is content that all the information contained in the variation application meets an acceptable standard of detail to enable it to consider fully the impact of the activity and the suitability of the timing and methodology and any conditions attached to the application, it will issue a permit by way of a “Grant Permit” response.

The Permit Authority will respond to a variation request within the required timeframes (see Table 1).

#### Duration extension request

Extending a permit duration is a specific form of permit variation.

In certain situations, a promoter may not be able to complete the works within the original permit duration and an extension to the permit may be required.

Where the Authority considers the proposed extension to be reasonable and where the activity does not conflict with other planned activities, the Authority will not unreasonably withhold the extension.

There may be occasions where the Authority does not consider the proposed extension to be reasonable. For instance, this might be due to poor works management by the promoter or an issue on site that the Authority considers should have been dealt with more expediently. In these cases, the Authority will grant a variation but issue a duration challenge to the NRSWA ‘reasonable period’. This will ensure that the promoter is operating with a valid permit in place, but allow the Authority to use its powers provided under Section 74 NRSWA.

Although the Authority may grant a permit extension to minimise the disruption of a return visit in some cases, in other cases, it may be necessary for the promoter to vacate the street to allow another activity to take place or to open up space for traffic. In these situations, the Authority will work with the promoter to clear the site as soon as possible, and the promoter must submit a new application to complete the activity at a later date.

An extension request must follow the rules set out above. Duration variations submitted electronically where there is less than 20% or two days of the activity duration remaining, may lead to a duration challenge outright.

Where a variation to extend a permit takes that permit into a higher works category, the promoter will be required to pay the difference between the permit fees for the two categories, as well as the permit variation fees.

#### Multiple excavations

Immediate activities may require the promoter to make several registerable openings in a street, for instance to locate a fault or a leak. The promoter must submit the first permit application detailing the location of the initial excavation within two hours of starting work.

The promoter must telephone the Authority within two hours and give the location for further excavations on the same street within 50 metres of this initial excavation. No permit variation will be required and therefore no charge will be applied.

Where the additional excavations are more than 50 metres from the first, a permit variation application will be required. The Authority may opt to waive the variation charge if the activity and notifications are managed well.

Further excavations will be dealt with in the same way as these two examples, in 50-metre bands.

If additional excavations are carried out in different streets (different USRN), or at a location that is substantially separate from the previous excavations, a separate permit should be applied for.

If the promoter has made all reasonable efforts to contact the Authority by telephone and cannot, they should record that and send the message electronically.

Although the above examples relate to immediate works, there may be scenarios where such a process may be followed for other activity types. The promoter should contact the Authority first to gain approval before initiating this process.

It should be noted that all excavations must be accurately recorded upon registration of the works (section 70 NRSWA).

### **7.3 Changes initiated by the Authority**

Once a permit is issued, the promoter should have reasonable confidence that the road space will be available to them. Nevertheless, there may be circumstances that necessitate a change in either the permit or its conditions. For example, a requirement to change the traffic management, or amend some conditions because of safety issues or extra traffic being diverted onto the road, etc.

The Authority will contact the promoter as soon as it becomes aware of a potential problem to discuss the best way to deal with the situation. It is vital that both parties work together to ensure the circumstances on the ground can be properly coordinated and managed, while ensuring the promoter can best control their changing situation to minimise further inconvenience and disruption and expedite the works swiftly.

If changes to the activity are required and agreed, a permit variation detailing the new terms should be applied for by the promoter which can then be granted. It may be necessary for the Authority to first send a comment to clarify the changes required or to confirm the outcome of other communications.

It is possible for the Authority to impose a change to the permit conditions of a permit directly but this should only take place if the request is reasonable and the site or the promoter has already been informed.

It may be that instead of a permit variation, a new permit is required, particularly if the promoter is required to suspend their operation or leave site. This should be agreed first between the Authority and promoter.

The Authority recognises that requesting a variation to a permit may cause substantial disruption to the promoter. However, where agreement cannot be reached, the Authority may take other steps as necessary, including revoking the permit or sanctions under NRSWA. The promoter should comply with reasonable requests made by the Authority however may invoke dispute resolution procedures after the event.

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.

## **7.4 Suspension, postponement or cancellation of a permit**

There is no mechanism in the regulations to formally suspend or postpone a permit, only for varying or revoking it.

If the Authority has to suspend or postpone an activity which has already been granted a permit, the Authority will use the permit variation provisions as described above to enforce the change of dates. No fee will be charged where this has been initiated by the Authority.

### Suspension or revoking a permit

Regulation 10(4) allows the Authority to revoke a permit, where it considers that a promoter is failing to comply with the terms of that permit and its conditions.

The Authority will inform the promoter immediately if it becomes necessary to do so and allow a reasonable timeframe for the promoter to either, suspend its activities pending an agreement to continue working, or to make the site safe and leave site. Where necessary the Authority may use its powers under Regulation 18 to clear the street or take any other action necessary.

The Authority should consider whether other sanctions are more suitable than, or necessary in addition to, the revoking of a permit.

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.

Where a permit was granted but subsequently revoked by the Authority prior to commencement of the specified works, the Authority will refund the permit fee in full, where the revocation is no fault of the permit holder.

## **7.5 Cancelling a permit**

If works have not started and the permit is no longer required, it is essential that the permit is cancelled as soon as possible to allow the road space to be made available for other works promoters and to maintain up to date accurate information within the street works register. The method of cancelling an application or permit is set out in the technical specification.

The scheme encourages promoters to cancel unwanted permits to help free up road space and improve the management of the network.

If possible, promoters should contact the Authority in advance when cancelling an activity on a strategically significant street where active traffic management was proposed or where a TTRO is in place. This contact should be as far in advance as possible of the proposed permit start date, so that the Authority can put in place any mitigating action it considers necessary.

There is no fee for cancelling a permit, although the charge for issuing the permit originally will remain payable.

Any activity that takes place after a permit is cancelled may constitute a criminal offence.

A permit that is 'in progress', or one for immediate activities, should not be cancelled unless that works status has been submitted in error. The technical specification details how these situations should be dealt with.

## 8. Permit charges

Under Regulation 30, statutory undertakers can be charge a fee in the following circumstances:

- The submission of an application for a Provisional Advance Authorisation (see below for specific circumstances);
- The issue of a permit;
- The variation of a permit or of the conditions of a permit; and
- The difference between fees for an activity when it moves from one works category to another.

### 8.1 Fee levels

Fee levels adopted by City of York Council are presented in **the separate Fee Levels document**. The fees are considered proportionate to the significance of the streets where works are planned and the likely amount of work required for the Authority to effectively coordinate and manage activities.

In accordance with the statutory guidance, major activity permit fees are split into three bands depending on the duration of the works.

A PAA will only be charged on receipt of an associated permit application (i.e. where it is received and a subsequent permit application is also received) irrespective of the outcome of the assessment of either of these applications.

### 8.2 Waiving permit fees

Regulation 30 also provides a mechanism for discounting or waiving the normal permit fee. Under the City of York scheme a promoter will not be charged a fee in the following cases:

- The promoter is a highway authority or is carrying out works for road purposes;
- A permit is deemed to be granted because the Authority had failed to respond to an application in the time required;
- Immediate works completed wholly within a weekend, only if the works stop notice has been received prior to the Authority assessing the permit;
- A permit variation is initiated by the Authority;
- The Authority has to revoke a permit through no fault of the promoter (no charge for a replacement permit or the revoked permit charge shall be refunded);
- The works are diversionary works as a result of a major highway or bridge works, initiated by the Highway Authority, as described in Section 86 of NRSWA; and
- A permit application is submitted 'for information only' or for coordination purposes and does not fall under the definition of a registerable activity, or specifically in the case of a permit application submitted to identify signal heads on a junction that is not part of the main works area.

### **8.3 Reduced permit fees**

A discount of 30% will be applied in the following situations.

#### Collaborative works

Regulation 31(4) provides for a permit fee discount where promoters are collaborating, either in timing or extent of the programmed activity, to reduce the impact of their works. This includes where statutory undertakers are collaborating with Highway Authority works, or any other activity on the highway that the Authority sees fit to include.

#### Multiple applications for single activity

A discount will be applied where a promoter submits multiple permit applications where an activity is part of a project that involves working on more than one adjacent streets. For example, if repairs on a pipe need to go round a corner from one street into another. It is not intended to cover area wide projects in a single permit.

#### Working only outside traffic-sensitive times

The scheme offers a 30% discount for works in traffic-sensitive streets where those works take place wholly outside traffic-sensitive times, in accordance with Amendment Regulation 12 (b) which amends Regulation 30.

In general, this is only applicable on works that are less than one-day duration since these can fall between or after peak periods. However, at the discretion of the Authority this discount may also be applied to works where carriageway impact is minimised for peak or traffic-sensitive periods, for instance opening-up the carriageway by using plating, or a significant change of traffic management/control, when operatives are not working on site.

Suitable permit conditions must be attached and it will be necessary to gather evidence from site (for instance photos or inspection records) to show that this condition is being maintained for the duration of the activity or as agreed. These instances will need to be agreed with the Authority in advance of the activity taking place i.e. within the permit application itself or by other means.

### **8.4 Other situations where a fee may be reduced**

The Authority may reduce a permit charge at its discretion where it feels it is reasonable to do so. Some example of such situations might include:

- Where a permit that is granted and subsequently cancelled due to circumstances beyond the promoter's control, where no works have taken place;
- Immediate works that are completed (i.e. a Works Stop notification has been received) before the Authority has had the opportunity to assess the permit application. For instance where the activity took place outside of normal working hours. It should be noted that there are still a series of task assessments undertaken on such a PA and subsequent notifications and so any discount may take into account the work required to ensure accuracy and timeliness of the submission;
- Where a permanent first time reinstatement is carried out on a Section 81 defect within the response time of that specific Section 81 defect (e.g. five working days for non-emergency defects), City of York Council will waive the permit fee following a successful reinstatement inspection, and

- Planned works where the promoter has identified a failure to send a permit application and wishes to remedy this. It should be noted that if this situation occurs often then the Authority may charge the full fee, and may also consider other sanctions.

The Authority will take into account HAUC guidance on the matter of discounts and consider any discounts or requests in a reasonable manner.

## **8.5 Invoicing**

The Authority will provide a schedule of charges to each promoter each month in the form of a 'draft invoice', for review and reconciliation with their own systems.

Following this submission, the promoter will have a two-week period to respond with any query or dispute.

Following agreement with the promoter or after the end of the two-week period, the Authority will submit a final invoice under its normal terms of payment.

## **8.6 Fee review**

In accordance with Regulation 16A, the Authority will review its level of fees to ensure that the overall fee income does not exceed the allowable costs set out in Regulation 29. The outcome of the fee review will be published on the Authority's website.

If a sustained surplus or deficit occurs over a number of years, the fee levels will be adjusted accordingly.

## 9. Permit offences and sanctions

### 9.1 Permit offences

The Regulations create two offences for statutory undertakers:

- Regulation 19 - Carrying out activities on the street without a permit, or, in the case of immediate works, not applying for a permit within two hours of the works starting; and
- Regulation 20 - Carrying out activities on the street or highway in a way that contravenes the conditions attached to a permit, or the conditions that are applied to an immediate activity before a permit is issued for those activities.

Permit offences do not apply to the Authority's activities. The Authority will however monitor these activities in the same way as those of statutory undertakers to ensure a consistent approach.

### 9.2 Sanctions

Where possible the Authority will seek to resolve problems informally to achieve compliance with the permit scheme. Where this fails, or where a promoter persistently offends, or the Authority considers that an informal resolution is not appropriate, then the Authority may use on the following three sanctions:

- Issue a notice to take remedial action;
- Issue a Fixed Penalty Notice (FPN); or
- Prosecution.

#### Remedial action

Where a promoter is working without a permit or in breach of a permit condition, Regulation 18 allows the Authority to issue a notice requiring remedial action within a set timeframe.

Where a promoter does not take the remedial action within the set timeframe, the Authority may take such steps as it considers appropriate to achieve the outcome required in the notice, and may recover any costs of doing so from the undertaker.

#### Fixed Penalty Notice (FPN)

Regulations 21 to 28 (and the Schedules set out in the Regulations) enable the Authority to issue FPNs in respect of the criminal offences. FPNs may be issued in the format provided by the technical specification.

FPNs offer the offender an opportunity to discharge liability for an offence by paying a penalty and Regulation 25 provides for a discount for early payment. The penalty amount is £500 for working without a permit, but a discounted amount of £300 is available if payment is made within 29 days. For working in breach of a permit condition, the penalty is £120 and the discounted amount £80.

FPNs may not be given more than 91 calendar days after the offence, beginning on the day on which the offence is committed.

## Prosecution

Where a FPN has been issued for an offence and has not been paid after 36 days, or the Authority forms the view that it would be more appropriate to prosecute the offender, the Authority must withdraw the Notice under Regulation 27 before bringing the proceedings. Once the FPN has been paid, no prosecution can be brought in relation to the offence.

The Authority may prosecute the offence through the courts following the usual processes. This option will be invoked where an undertaker is persistently offending on an issue that the Authority considers serious.

### **9.3 Dispute procedures**

The Authority and promoters will use their best endeavours to resolve disputes without having to refer them to a formal appeals procedure. However, it is recognised that occasionally this may not be possible.

If an agreement cannot be reached locally on any matter arising under this permit scheme or the associated HAUC guidance or regulations, the dispute will be addressed as set out in the Code of Practice for Co-ordination of Street Works and Works for Road Purposes and Related Matters.

### **9.4 Application of proceeds from sanctions**

Regulation 28 states that the authority may deduct the costs of operating the FPN scheme from the fixed penalties received under section 37 (6) of the TMA. The authority must then apply the net proceeds to promoting and encouraging safe, integrated, efficient, and economic transport facilities and services to, from, and within the area covered by the scheme.

## 10. Transitional Arrangements

As required in Regulation 3, the Authority will give a minimum of four weeks' notice of the commencement of the scheme (changeover date), following the Order being made, to all those previously consulted on the permit scheme.

City of York Council intends to commence the permit scheme no later than April 2021.

The permit regime has been designed to follow closely the processes and timescales of the NRSWA noticing regime. The basic rules of transition from noticing to permitting will apply on all roads where the permit scheme operates.

The permit scheme will apply to all activities where the administrative processes, such as application for a permit (PA) or Provisional Advance Authorisation (PAA), starts after the changeover date.

Activities which are planned to start on site more than one month after the changeover date (for standard, minor and immediate activities) or three months (for major activities as required) shall operate under the permit scheme. This means that, even if the relevant section 54, section 55 or section 57 NRSWA notice has been sent before the changeover, the promoter will have to apply for a permit.

The Authority will proactively examine the street works register in advance of implementation to help identify those notices that may need to be amended in this way in advance of the scheme commencement and throughout the first month of operation.

Any other activities which started under the notices regime will continue under that regime until completion.

### Waiving of fees during transition

The Authority proposes to operate the first calendar month under the permit scheme with no charge for permits issued.

This bedding-in period will allow a transition that will not penalise genuine mistakes and allow both the Authority and promoters to work closely together to ensure the first month of the permit scheme implementation concentrates on the important aspects of the scheme and provides an opportunity for concerted dialogue.

## 11. Monitoring the scheme

Regulation 4(d) requires the Authority to describe how they will evaluate the scheme.

A set of key performance indicators has been developed by the HAUC (England) Permit Forum to demonstrate the effectiveness of the scheme in meeting the stated objectives. These Traffic Performance Indicators (TPIs) are included in Annex A of the statutory guidance and listed below. They may be redeveloped by the DfT and/or HAUC (England) and may be subject to change from time to time. The scheme will include the latest TPI requirements. Current TPIS include:

- TPI 1 - Work phases started (base data);
- TPI 2 - Works phases completed (base data);
- TPI 3 - Days of occupancy phases completed;
- TPI 4 - Average duration of works;
- TPI 5 - Phases completed involving overrun;
- TPI 6 - Number of deemed permit applications; and
- TPI 7 - Number of phase one permanent registrations.

TPIs and any other performance measures that the Authority intends to use, will be published monthly by the Authority and will be made available on the Authority's website and at performance and coordination meetings.

As required by Regulation 16A, an annual report will be produced by the Authority, where the measures will be analysed more fully to evaluate the scheme. The scheme will be evaluated every twelve months for the first three years and then every three years thereafter.

## 12. Disapplication and modification of NRSWA

### 12.1 Regulations 36 and 37

The permit regulations disapply or modify certain sections of NRSWA.

Table 2 presents an overview of these changes, listing the duties of promoters and street authorities under NRSWA which are replaced by equivalent duties imposed under Part 3 of the TMA and the regulations, or have been modified to accommodate the issuing of permits rather than the exchange of notices. Detailed descriptions of the NRSWA sections and revisions under TMA are provided in statutory guidance.

*Table 2: Parts of NWSRA modified by the permit scheme*

NRSWA sections		Change	Permit Regulations – revised arrangements
S53	The street works register	Disapplied	Permit regulations prescribe similar provisions for permit registers
S54	Advance notice of certain works	Disapplied	Replaced by applications for provisional advance authorisation.
S55	Notice of starting works	Disapplied	Replaced by applications for permits
S56	Power to direct timing of street works	Disapplied	Replaced by permit conditions and variations, including those initiated by the permit authority.
S57	Notice of emergency works	Disapplied	Replaced by applications for immediate activities.
S66	Avoidance of unnecessary delay or obstruction	Disapplied	Replaced by equivalent provisions for permit authorities to require promoters in breach of the permit requirements to take remedial action and failing that for the authority to act.  24-hour compliance period to be replaced with a requirement for promoters to comply within a reasonable specified period determined by the circumstances.
S58	Restriction on works following substantial road works	Modified	The authority's ability to issue permits with start and end dates replaces directions to start work covered in S 58(5) to (78).  The regulations provide the equivalent of S 58A powers by allowing authorities to take into account whether promoters responded to the S 58 notice by submitting an application for their planned activities
S58A	Restriction on works following substantial street works	Modified	Schedule 3A is modified to work in conjunction with permits.
S64	Traffic-sensitive streets	Modified	Permit regulations provide that permit applicant are notified of proposals to designate streets as traffic-sensitive streets.

<b>NRSWA sections</b>		<b>Change</b>	<b>Permit Regulations – revised arrangements</b>
S69	Works likely to affect other apparatus in the street	Effectively extended	Permit regulations create an equivalent requirement on highway authority promoters.
S74	Charge for occupation of the highway where works are unreasonably prolonged	Modified	Permit regulations make provision to operate in parallel with permits.
S88	Bridge, bridge authorities and related matters	Modified	Modified to work in conjunction with permits.
S89	Public sewers, sewer authorities and related matters	Modified	Modified to work in conjunction with permits.
S90	Provisions as to reinstatement of sewers, drains or tunnels	Modified	Modified to work in conjunction with permits.
S93	Works affecting level crossings or tramways	Modified	Modified to work in conjunction with permits.
S105	Minor definitions	Modified	Modified to work in conjunction with permits

It should also be noted that the wording for paragraph 7(a) of the Schedule to the *Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007* has been modified by Regulation 38.

# Appendix 1 – Registrable activities

Registrable activities as listed in the NRSWA 1991 Code of Practice for the Co-ordination of Street Works and Works for Road Purposes (4<sup>th</sup> edition, October 2012).

## Registerable activities

The following works are registerable and therefore specified works for all promoters. Information related to them has to be recorded on the register and may only take place with a valid permit.

1. All activities that involve the breaking up or resurfacing of any street, (but see below for pole testing involving excavation);
2. All activities that involve the opening of the carriageway or cycleway of traffic-sensitive streets at traffic-sensitive times;
3. All activities that require the use of any form of temporary traffic management as defined in the Code of Practice for Safety at Street Works and Road Works;
4. All activities that reduce the number of lanes available on a carriageway of three or more lanes;
5. All activities that require a Temporary Traffic Regulation Order or notice, or the suspension of pedestrian crossing facilities; and
6. All activities that require a reduction in width of the existing carriageway of a traffic-sensitive street at a traffic-sensitive time.

It is for promoters to ensure that permit applications for such activities are made and that a permit has been subsequently approved in order for the activity to be carried out.

## Non-registerable activities

The following works are not classed as registerable:

- Traffic census surveys have deliberately not been included, as disclosure of this information prior to a census taking place can result in changes to the normal pattern of traffic flow;
- Pole testing which involves excavation only requires a permit if rules 2 to 6 for registerable works apply. In all circumstances, a registration notice under Section 70 (3) of NRSWA should be sent within 10 days of completion;
- Testing of fire hydrants by fire service vehicles, provided the work is done outside traffic-sensitive periods;
- Road marking works that are not part of other works, unless one or more of the rules 2 to 6 for registerable works apply;
- Core holes not exceeding 150 mm in diameter, unless one or more of the rules 2 to 6 for registerable works apply;
- When bar holes are carried out to detect and monitor gas leaks, and it is known that no further activity in the street is required. A registration notice under Section 70 (3) of NRSWA should be sent within 10 days, once final monitoring checks have been

established. The bar holes will count as a single excavation and reinstatement for registration purposes. However, an immediate permit must be sent in accordance with the timing rules (see Section 4) where any further activities associated with the bar holes take place that are registerable; and

- Licences for executing works in the public highway to install or maintain apparatus (where the promoter is not a Statutory Undertaker) do not require a permit, however a licence will be issued under Section 50 NRSWA, in line with the permitting requirements of the scheme, and the activity will be entered onto the street works register to aid coordination.