

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	17 <sup>th</sup> September 2013
<b>Report of:</b>	Head of Environmental Protection and Enhancement
<b>Subject/Title:</b>	Highways Permit Scheme for Cheshire East
<b>Portfolio Holder:</b>	David Topping, Environment

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### 1.0 Report Summary

- 1.1 The Traffic Management Act (TMA) 2004 makes provision for Highways Authorities to introduce a Permit Scheme in order for it to manage disruption on the network more effectively for all road users. Permit Schemes provide an alternative to the current notification system so, rather than a works promoter informing the Highway Authority of their intention to carry out works, a permit will be required in advance. There will be a charge to the external works promoter for the permit aimed at allowing the Authority to adequately resource the administration of the scheme. Cheshire East Highways currently has a small dedicated streetwork's team that pro-actively co-ordinates the Utility companies on the road network and has been successful in enforcing the current legislation and has effectively managed the road network to reduce delays and congestion to all road users.
- 1.2 The successful performance of the scheme will maximise the safe and efficient use of road space which will minimise inconvenience to all road users, improving safety of those using the highway network with particular emphasis on people with disabilities and cyclists
- 1.3 If it is agreed that a Permit Scheme should be implemented for Cheshire East, it is proposed to implement the Scheme on all streets within Cheshire East, a formal application will be made to the Department for Transport, for a Statutory Instrument to be made to enact the scheme.
- 1.4 It is proposed that Cheshire East would join the West and Shires Permit Scheme (WaSP) which is a common scheme thereby expediting the programme for implementation, with an anticipated start date of October 2014.

## **2.0 Recommendations**

- 2.1 It is recommended that Cabinet approve that the Council should implement a Permit Scheme, as described above, under Part 3 of the Traffic Management Act (TMA) 2004.
- 2.2 It is recommended that Cabinet approve that the Council works in partnership with Shropshire Council and join the common scheme being developed named West and Shire Permit (WaSP) Scheme.

## **3.0 Reasons for Recommendations**

- 3.1 All highways authorities have a duty under the New Roads and Street Works Act 1991(NRSWA) and the Traffic Management Act 2004 (TMA) to effectively coordinate all activities on the highway to ensure the safe and expeditious movement of traffic, pedestrians and vulnerable road users.
- 3.2 Permit Schemes were introduced by Part 3 of the TMA to improve the Local Highway Authority's (LHA) ability to minimise disruption from both street and highway works. The TMA broadens the coordination and cooperation duties under NRSWA and is intended to give the LHA more powers over how and when activities are carried out.
- 3.3 It is not currently mandatory for Local Highway Authorities (LHA) to run Permit Schemes; however the Parliamentary under Secretary of State for the Department of Transport (DfT) has urged LHA's to give serious consideration to the benefits of introducing a Permit Scheme, the Department for Transport (DfT) letter is attached (Appendix 1).
- 3.4 Sections 32 to 39 of Part 3 of the TMA outline the basic structure within which Permit Schemes operate and any scheme prepared by the LHA will not take effect until approved by the Secretary of State for Transport by Order, in the form of a Statutory Instrument.
- 3.5 The introduction of a Permit Scheme will provide a new way to manage activities on the public highway, providing a powerful tool for effective co-ordination, minimising the inconvenience to the travelling public, businesses and local residents, whilst allowing works promoters the necessary time and space to complete their work.
- 3.6 Under NRSWA works promoters currently inform Cheshire East of their intention to carry out works using the noticing system via Electronic Transfer of Notices (EToN). If notices are not challenged the works promoters can proceed with the works without further consultation.
- 3.7 The proposed Permit Scheme gives the Cheshire East the opportunity to better evaluate each proposed works and enable the Authority to reject incorrect or incomplete permit applications. Work promoters will effectively book occupation of the street for specific periods and

purposes rather than the current system of informing the Authority of its intention to occupy the street.

- 3.8 The Permit Scheme when brought into effect will replace parts of NRWSA, specifically notices relating to S54 (advanced notice of certain works), S55 (notice of start of works) and S57 (notice of emergency works). Other aspects of NRSWA are Disapplied, (S53 S56,& S66) or Modified (S58, S58A, S64, S69, S74, S88, S89, S90 & S93).
- 3.9 All permit applications will need to be responded to within a given response time as per the regulations and should the time limit elapse without comment the Permit is deemed to have been approved and the works can proceed.
- 3.10 Permit Schemes differ from existing LHA powers for network management in a number of ways and will apply to our own works as well as those of Utility Companies and parity will be demonstrated through annual Key Performance indicators.
- 3.11 Works promoters will have to apply for a permit before commencing the work on the street with the exception of emergency and urgent works.
- 3.12 Emergency works are defined as works that are required to end, or prevent circumstances, either existing or imminent that might cause damage to people or property. Within two hours of the works starting, the Utility must contact the Council, apply for a permit and provide details of the activity.
- 3.13 Urgent activities are defined as, to prevent or put an end to an unplanned interruption of any supply, to avoid substantial loss to the Utility in relation to an existing service, to reconnect supplies or services where the Utility would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period. Again within two hours of the works starting, the Utility must contact the Council, apply for a permit and provide details of the activity.
- 3.14 Certain conditions can be attached to a permit, such as timing of activities and the way works are carried out, with more punitive fines for either working without a permit or in breach of permit conditions.
- 3.15 The Traffic Management Act, section 37(7), enables fees for permits to be charged to Utilities as follows:
  - Applications for permits
  - Issuing of permits
  - Applications for variations to permits or conditions attached
  - Variations to permits or conditions attached e.g. extending the duration of works or changes to the traffic management.

- 3.16 There are no charges applied to the current Noticing system and it should be noted that Permit Schemes are not intended to generate revenue income; however the Authority may cover its costs in delivering the scheme.
- 3.17 A Permit Scheme's primary function is to reduce disruption on the network and the regulations state that Permit income is to be only applied to the prescribed cost of operating the Scheme.
- 3.18 All other aspects of NRSWA remain unchanged and run in conjunction with Permit Schemes, including Section 74 overstay charges for unreasonable or prolonged occupation of the street. Section 74 overstay charges will also apply to works requiring a permit.
- 3.19 As part of the Local Transport Plan and Council's Three Year Plan, Cheshire East Council aims to deliver effective and efficient transportation services. The introduction of a Permit Scheme will aid Cheshire East to better facilitate a reduction in congestion on the network and be better able to coordinate and manage all works, working together with utility companies.
- 3.20 The Authority can ensure works are being carried to ensure the impact on the network efficiency is kept at a minimum wherever possible particularly on Traffic Sensitive and Strategic routes, thus helping to keep the traffic moving. By improving co-ordination Public and School Transport will be improved as the delays will be kept to a minimum. Carbon dioxide emissions will also be reduced as traffic will spend less time idling in traffic queues.
- 3.21 The additional resources put in place to operate the Permit Scheme will allow an increased inspection regime ensuring any works being carried out are completed to the correct standards and this will support maintaining of the condition of the network.

#### **4.0 Wards Affected**

- 4.1 All Wards

#### **5.0 Local Ward Members**

- 5.1 All Ward Members

#### **6.0 Policy Implications**

- 6.1 Existing policies will not be affected

#### **7.0 Financial Implications**

- 7.1 As part of the business case to support the Permit Scheme a full Value for Money self assessment needs to be undertaken to form part of the

formal DfT application process. The cost of managing the external works via the permit scheme is being analysed using the DfT matrix as part of the cost benefit analysis in order to show that there will be no cost to Cheshire East.

- 7.2 Subject to approval of the scheme, the calculation of set-up and operating costs and determination of permit fees, the expenditure and income budget implications will be included in the budget proposals for 2014/15 and subsequent years (reflecting overall cost neutrality).
- 7.3 Whilst the overall management of the scheme is designed to be cost neutral in line with the DfT guidelines, there are a number of local economic efficiencies including:
- Reduced congestion
  - Improvements to the current process, with a greater level of scrutiny of proposals for works to be undertaken
  - The potential to minimise reductions in the condition of the Network due to repeated works breaking the surface of the asset
  - Support economic growth by minimising the disruption to businesses caused by traffic delay.
- 7.4 The business case will substantiate that the permit scheme will result in an improved performance of the network in line with the LHA Network Management Duty.
- 7.5 The maximum fees that can be charged, as set out in the TMA Permit Fees Guidance document are as follows:

<b>Maximum Fee Levels</b> per Provisional Advance Authorisation, Permit and Permit Variation		
	Road Category 0-2 or Traffic Sensitive	Road Category 3-4 and non-Traffic Sensitive
<b>Provisional Advance</b> (It is suggested this fee applies only where value has been added in processing the works)	£105	£75
<b>Major works</b> – over 10 days and all major works requiring a traffic regulation order.	£240	£150
<b>Major works</b> – 4 to 10 days	£130	£75
<b>Major works</b> – up to 3 days	£65	£45
<b>Activity Standard</b>	£130	£75
<b>Activity Minor</b>	£65	£45
<b>Immediate Activity</b>	£60	£40
<b>Permit Variation</b>	£45	£35

- 7.6 It will be necessary that additional specialist staff and software will be needed to manage the Permit Scheme.
- 7.7 Please note that the actual fees have yet to be calculated as the number of Traffic Sensitive Streets is subject to change following a review which is currently being undertaken.
- 7.8 The fees that will be applied to the Cheshire East Permit Scheme will be calculated using the Department for Transport's template (DfT cost matrix) which is an essential part of the application for the scheme.

## **8.0 Legal Implications**

- 8.1 All highways authorities have a duty under the New Roads and Street Works Act 1991 (NRSWA) and the Traffic Management Act 2004 (TMA) to effectively coordinate all activities on the highway to ensure the safe and expeditious movement of traffic, pedestrians and vulnerable road users.
- 8.2 Permit Schemes were introduced by Part 3 of the TMA to improve the Local Highway Authority's (LHA) ability to minimise disruption from both street and highway works. The TMA broadens the coordination and cooperation duties under NRSWA and is intended to give the LHA more powers over how and when activities are carried out.
- 8.3 Sections 32 to 39 of Part 3 of the TMA outline the basic structure within which Permit Schemes operate and any scheme prepared by the LHA will not take effect until approved by the Secretary of State for Transport by Order, in the form of a Statutory Instrument.
- 8.4 The Secretary of State for Transport has the power to vary or revoke a Permit Scheme under Section 36 of the TMA and can use this power to make any changes to the scheme considered appropriate (following consultation).

## **9.0 Risk Management**

- 9.1 The risk is mainly financial, that is the Department for Transport may reject the business case, and the costs incurred are then not recoverable.
- 9.2 Under the legislation Statutory Undertakers (Utility Companies) are able to pass on the costs of permit fees to their customers via their Utility charges.
- 9.3 The permit scheme requires approval by the Secretary of State which can take 6 months if approved.

9.4 Staff levels need to be increased to deliver the additional administration required for a permit scheme.

## **10.0 Background and Options**

10.1 Permit schemes have been seen by Central Government as an important progression for Highway Authorities. We have been urged (April 2011) by the Parliamentary under Secretary of State for the Department of Transport, Norman Baker, to consider the use of permit schemes that help to reduce the disruption caused by road works.

10.2 The Ministerial urging is based on the success of the authorities already running Permit Schemes including Kent, Northamptonshire, St Helens, London boroughs. In their public document entitled "Measuring the Success of the Kent Permit Scheme, Annual Report (February 2010-January 2011)", Kent Highway Services state that:

- "the total number of congestion and co-ordination complaints and street works enquiries has reduced by 26% since the start of the Kent Permit Scheme"
- "the total number of working days saved on full permit treatment roads as a result of collaborative working arrangements since the commencement of the scheme is equivalent to a saving of 5 years and 7 months"

10.3 There are two main pieces of legislation which require us to work with the utility companies in a co-operative manner, to maintain a record of all their works and to monitor them; at the same time they give us some powers of enforcement. The legislation is the:

- New Roads and Street Works Act , 1991 (NRSWA)
- Traffic Management Act, 2004 (TMA), Part 3 Permit Schemes

10.4 Under the NRSWA the utility companies have to send in an electronic notice for their works with their intended location and duration. They are letting us know where they are going to work and we then have to consider their durations and challenge down those we believe to be unreasonable

10.5 Cheshire East receives approximately 45,000 notices per annum, these are managed and enforced by a team of 4 fte officers.

10.6 There have been three possible options explored which are available to Cheshire East Council, these are:

1. Creating a Cheshire East Scheme
2. Joining a common scheme
3. Do not implement a Permit Scheme

- 10.7 The first option is to create a new scheme for Cheshire East, this process could possibly take up to 24 months to implement. There is a greater degree of challenge from utilities which can drag out the process. This option did not fall into the required time frame for the earliest possible implementation date of late 2014.
- 10.8 With a 24 month time scale to implement a new scheme, additional funding would be required, the preferred time scale is to implement a scheme in the 3rd quarter of 2014, this option would over run the implementation date by a year and could possibly double the projected costs.
- 10.9 The next option is to join a Common Scheme currently there are two such schemes either in development or in operation in the region.
- 10.10 The West and Shires Permit Scheme (WaSPs) is currently being developed by Shropshire for similar shire Authorities to join, Shropshire as our neighbouring authority has a similar road network and a number of historic towns similar to Cheshire East. The scheme conditions have been modelled on the national guidelines set out by DfT in conjunction with the regional joint Highway Authority and Utility Committee. Shropshire has had a year's dialogue with Utilities and DfT to develop the scheme, and will be submitting their scheme in October 2013 for approval.
- 10.11 The Merseyside Authority Permit Scheme (MAPS) developed by St Helens Metropolitan Borough Council has been operating for over 12 months and was designed as a Common Scheme. However the enacted Statutory Instrument for the scheme encompassed St Helens fee structure thereby blocking any other authority from joining. There is currently uncertainty when this will be amended. Therefore this scheme has been discounted.
- 10.12 The "Do nothing" option has been explored which would mean maintaining the status quo with regard to street works noticing and inspections. This option is not the recommended course of action.
- 10.13 As part of the LHA's Network Management Duty (NMD) under Section 16, Part 2 of the TMA, the traffic authority must as far as reasonably practicable ensure that they identify causes, or potential causes of road congestion or other disruption to the movement of traffic on their road network this includes pedestrians and vulnerable road users. Also that they consider any possible action that could be taken in response to or in anticipation of such causes.
- 10.14 If Cheshire East is not using the powers granted under the TMA to manage its network effectively and ensure appropriate action is taken to reduce congestions and unnecessary delay, it is not fully undertaking its NMD and its reputation may be at risk. In the extreme, where the NMD under the TMA is not being well managed, the TMA Intervention

Criteria could result in a Statutory Instrument being raised for an unelected Traffic Director to take over relevant functions and charge the cost to Cheshire East Council.

- 10.15 It is therefore proposed that the Authority continue to work with Shropshire and to join the WaSP Scheme which will meet our target implementation date of late 2014.
- 10.16 The scheme would apply to all roads across the network as it is felt that a dual system of noticing and permits would be counterproductive and result in confusion by both utility companies and our own works promoters.
- 10.17 The benefits of a Permit Scheme are:
- We would have to set out detailed conditions which suit the local environment and community, when we grant each permit, which would help to ensure greater control over the use of the road network. We could for example promote working outside peak hours; instruct where the materials can be stored and what traffic management is appropriate for the site.
  - Developing, introducing and operating a 'permit scheme', which applies to works both carried out on behalf of utility companies and on behalf of ourselves, enables us much greater scope to manage and coordinate works; so as to reduce disruption and protect one our most valuable assets more effectively.
  - Anyone who breaks the terms of their permit or works without a permit could be prosecuted and face a fine of up to £5,000. It is also an offence to not meet a permit condition, for which the maximum fine is £2,500. This would encourage good compliance with the conditions set in the Permit. The fixed penalty notices generated by the permit scheme can be used for "implementing policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services within the specified area" as stated in The Traffic Management Permit Scheme Regulations 2007 part 5, 28, hence the Council can use the funds from fines levied to support the Highways and Transportation services.
  - It would enable us to more easily direct joint working with utilities when appropriate and hopefully achieve a better standard of work.
  - We would be better able to manage occupancy of the highway; therefore durations of works would be reduced. Southwark have observed that their works durations have fallen by 7% since beginning their scheme.
  - A permit scheme would also further reduce highway occupation as return visits to a site would be minimised.
  - Better quality of information from utilities which would enable us to inspect more of their works.
  - Improved co-ordination through a reduction in cancellations.

- Charges for permits can be utilised to support scheme costs including staff, IT, monitoring, co-ordination and training; all costs that are currently borne by the authority.
- The successful performance of the scheme will maximise the safe and efficient use of road space which will minimise inconvenience to all road users, improving safety of those using the highway network with particular emphasis on people with disabilities and cyclists.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

### **Appendix 1 – DfT Letter Proposing Permit Schemes**

Traffic Management Act 2004 – Part 3

<http://www.legislation.gov.uk/ukpga/2004/18/part/3>

Statutory Instrument 2007 No. 3372 – The Traffic Management Permit Scheme (England) Regulations 2007

<http://www.legislation.gov.uk/uksi/2007/3372/contents/made>

Traffic Management Act 2004 – Code of Practice for Permits

<https://www.gov.uk/government/organisations/department-for-transport/series/traffic-management-act-tma-part-3-permit-schemes>

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