

**Meeting: Cabinet**

**Date: 22 September 2020**

**Wards Affected: All Wards**

**Report Title: Introduction of Permit Scheme for Street Works in Torbay**

**Is the decision a key decision? No**

**When does the decision need to be implemented? November 2020**

**Cabinet Member Contact Details:** Cllr Mike Morey Cabinet Member for Infrastructure Environment and Culture.

**Supporting Officer Contact Details:** Ian Jones – Highways and Transport Service Manager

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## **1. Proposal and Introduction**

- 1.1 Permit Schemes provide a way to manage activities on the public highway and were introduced by Part 3 of the Traffic Management Act 2004 to improve authorities' ability to minimise disruption from street and road works.
- 1.2 It is not currently mandatory for Local Highway Authorities (LHA's) to operate Permit schemes, however the Parliamentary Secretary of State for the Department for Transport (DfT) has urged all LHA's to give serious consideration to the benefits of introducing a Permit Scheme.
- 1.3 Torbay Council currently operates street works under the more traditional Noticing Scheme. The DfT appear keen to move away from this form of street works management.
- 1.4 The DfT has commissioned the introduction of a dedicated web based software for the management of road and street works, 'Street Manager', which all LHA's have been directed to introduce and use from 1<sup>st</sup> July 2020. The software has been specifically developed for use with a Permit Scheme.
- 1.4 A permit scheme is deemed to provide an LHA the opportunity to better evaluate each proposed works upon its network to enable the authority to reject incorrect or incomplete Permit applications. Works promoters will effectively book occupation of the street for specific periods and purposes rather than the current system of informing the Torbay Council of its intention to occupy the street.
- 1.5 The majority of LHA's have already adopted a Permit Scheme or will be adopting them in 2020.

## **2. Reason for Proposal and associated financial commitments**

- 2.1 Torbay Council were directed by the Secretary of State for Transport in a letter sent to the Chief Executive in July 2018 to give consideration to the introduction of a Permit Scheme. The letter requested that consideration was given to moving to a permit scheme by March 2019. Torbay Council, like many other South West authorities were not in a position to make a judgement in that timescale, however a feasibility report was commissioned from our partner consultant Jacobs prior to this date. Members should however be mindful of the following statement from the Secretary of State in the letter:

*'I hope that the case for introducing a permit scheme is sufficiently strong for your authority to take this decision. I would much prefer this to be a change that is made willingly and done in a way that best suits your local area.'*

*I do have powers under section 3(2) of the 2004 Traffic Management Act to direct an authority to introduce such a scheme. I hope that it will not be necessary to use these powers. I will, however, be minded to consider this approach if your local authority continues with what I believe are out-dated and ineffective noticing arrangements.'*

It is therefore important that the authority makes a formal decision with respect to moving to a Permit Scheme.

- 2.2 The proposals contained in this report will commit the Council financially in respect of start-up costs, based on the estimated costs of ICT software and hardware, project management costs and the costs of the additional staff required to run the scheme during the start-up/shadowing period. Most of these costs are expected to be met from existing highways and transport capital funding.

The proposals will be expected to be self-financing following implementation with funding being provided by the income generated from the Permit charges. The proposed charges have been set using a DfT fee structure, as set out in their Statutory Guidance, and are included in 'Appendix 2'. The fee income is expected to be sufficient to cover all additional operating costs, including additional staff resources. The scheme is not however expected to produce income over and above the actual running costs and will therefore expected to be cost neutral.

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## **3. Recommendation(s) / Proposed Decision**

- (i) That Cabinet supports the implementation of a Permit scheme to manage road and street works in Torbay as detailed in this report, and:
- (ii) That Cabinet approves the proposed Policy for Torbay Council's Permit Scheme for Road and Street Works, as detailed in Appendix 1 and the proposed Fee Structure as detailed in Appendix 2 to manage the Highway Permit scheme, and:

- (iii) That Cabinet gives support to the Director of Corporate Services to make the Legal Order under Part 3 of the Traffic Management Act 2004 to provide the required legal powers for Torbay Council to operate a Highway Permit Scheme.

## Appendices

**Appendix 1:** Draft Policy For Torbay Council's Permit Scheme for Road and Street Works

**Appendix 2:** Proposed Fee Structure for Torbay Council's Permit Scheme for Road and Street Works 2020/21.

## Background Documents

Statutory Guidance for Highways Permit Schemes produced by the Department for Transport:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/465803/statutory-guide-for-permit-schemes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/465803/statutory-guide-for-permit-schemes.pdf)

## Report Clearance

*When you have submitted your draft report by the deadline provided by Governance Support, it will be sent to the people listed below for clearance. Reports not submitted by the deadline and not cleared will be delayed until the next meeting.*

<b>Report clearance:</b>	<b>This report has been reviewed and approved by:</b>	<b>Date:</b>
Chief Executive	Anne Marie Bond	
Monitoring Officer	Amanda Barlow	
Chief Finance Officer	Martin Phillips	
Relevant Director/Assistant Director	Kevin Mowat	

## Section 1: Background Information

### 1. What is the proposal / issue?

It is proposed the Torbay Council as the Local Highway Authority introduces a Street Works Permit Scheme to replace the existing Noticing process. The benefits of such a scheme would be to provide Highways Officers with increased control over works undertaken on its highway network, with the potential to reduce disruption to road users and residents.

In July 2018 the Secretary of State for Transport wrote to all South West Highway Authorities to request that serious consideration was given to the introduction of Highways Permit Schemes in their respective areas, stating that he may consider using his powers to direct authorities to introduce such a scheme.

Most South West LHA's have now either introduced a Permit Scheme, or are due to introduce a scheme during 2020. The introduction of a scheme in Torbay requires a significant amount of officer time to fully implement, however it may be possible to implement a scheme in late 2020/early 2021, subject to Officer and Member approvals for the set up costs, additional staff and the required Legal Order.

A permit scheme requires Statutory undertakers to book time to work on the highway, which is then agreed by the LHA by the issue of a Permit or refused.

Under a Permit Scheme activities undertaken by the LHA, its partners or agents are also treated in the same manner as a statutory undertaker.

The Permit Authority may apply conditions, attached to Permits, which impose constraints on the dates and times of activities and the way that the work is carried out.

The Permit allows the LHA control over variations to Permit conditions, particularly time extensions, giving a greater incentive to complete activities within timescales.

The costs of providing and operating a Permit Scheme is expected to be fully recovered from the chargeable permit fees, which are set in line with DfT guidance. The costs incurred for setting up a Permit Scheme cannot however be recovered through the fee charges.

### 2. What is the current situation?

Torbay Council's existing Street Works Operations road bookings process is set out in the New Roads and Street Works Act 1991. Statutory Undertakers are required to give notice of any works they propose to carry out, the Notice periods are dependent on the category of work. The works are recorded on a Street Works Register.

	<p>Torbay Council has a 'Traffic Sensitive Streets' Strategy, which outlines key traffic routes and the requirements to avoid working on these routes during key periods and holiday periods. In general Statutory Undertakers have adhered to this strategy in Torbay.</p> <p>Permit schemes provide an alternative to the Noticing Process as instead of informing an authority about its intention to carry out works on the highway, a statutory undertaker has to book time on the highway by obtaining a Permit and paying the appropriate fee.</p> <p>A Permit Scheme for Torbay will require additional resources to operate and it is anticipated that 2 additional members of staff will be required, who have the required level of knowledge and skills to control and supervise street works and the associated traffic management requirements. These costs are expected to be fully recovered from the fee income. This ensures that more control and enforcement can be carried out to Statutory Undertakers works on the highway than can currently be provided from existing staff levels.</p> <p>It should however be noted that without the additional resources, Torbay Council would be unable to operate a compliant permit scheme and would be unable to justify charging the permit fees. It is also likely that the posts may be of interest to internal candidates, who may have already acquired the level of knowledge and skills required.</p>
<p><b>3.</b></p>	<p><b>What options have been considered?</b></p> <p>There is no statutory requirement to implement a Permit Scheme, however a clear directive from the former Secretary of State for Transport suggests that there is an expectation that all LHA's will operate a permit scheme. There is a case to argue that the current Noticing scheme in Torbay has worked well to date and may choose not to implement a Permit scheme. The directive has indicated that such a stance may not be accepted by the DfT and the Secretary of State may consider instructing the implementation of a Permit Scheme. In view of this, retaining the current process is not recommended.</p> <p>A Permit scheme may cover all or some of the roads under the LHA's control. As Torbay has a relatively small network, mainly consisting of urban roads, it is recommended that a scheme should cover all of its roads, however consideration may be given to some elements, such as Skip and Scaffold licences, which may benefit from being kept outside of a Permit scheme, at least in the initial period of the scheme operation.</p>
<p><b>4.</b></p>	<p><b>What is the relationship with the priorities within the Partnership Memorandum and the Council's Principles?</b></p> <p>The introduction of a Permit scheme contributes to the priorities of a 'Thriving Economy' and a 'Council Fit for The Future' by managing works on Torbay's highway network to ensure that disruption is kept to a minimum and that works are completed to the required standard making use of web based IT applications.</p>

	<p>The scheme contributes to the principle of 'Reduce demand through prevention and innovation' by managing works on the highway network using technology and increased enforcement and coordination to modernise the way in which works are carried out on the public highway.</p>
5.	<p><b>How does this proposal/issue contribute towards the Council's responsibilities as corporate parents?</b></p> <p>The proposal does not directly contribute towards the Council's responsibilities as Corporate Parents.</p>
6.	<p><b>How does this proposal/issue tackle poverty, deprivation and vulnerability?</b></p> <p>The proposal does not directly tackle poverty. Deprivation and vulnerability</p>
7.	<p><b>How does the proposal/issue impact on people with learning disabilities?</b></p> <p>The proposal does not directly impact on people with learning disabilities.</p>
8.	<p><b>Who will be affected by this proposal and who do you need to consult with? How will the Council engage with the community? How can the Council empower the community?</b></p> <p>The public highway provides essential services and accessibility to all sectors of the community. The impacts of this proposal will however affect any organisation, which carries out works or provides utility services on or within the public highway network. The current statutory rights of these organisations to undertake maintenance to their apparatus will be reduced as a result of a permit scheme.</p> <p>Consultation with statutory undertakers will be therefore be undertaken prior to implementation of a Permit Scheme. There is however no requirement to consult with the wider community. It should be noted that similar consultations by other LHA's in the South West do not appear to have resulted in significant objections from utility companies.</p>

## Section 2: Implications and Impact Assessment

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### What are the financial and legal implications?

#### Financial

There will be costs associated with setting up a Permit Scheme. A commissioned pre-feasibility report in 2019 suggested significant costs in setting up the system, however subsequent investigations and confirmation from the DfT on software costs have reduced these expected costs and current estimates are detailed below:

ICT software and Hardware - £10,000  
Staff Costs for Shadowing Period - £9,000  
Project Management Fees - £5,000  
Training - £1,000

Total Estimated Start Up Costs - £25,000

It should be noted that the ICT software costs are related to the DfT's 'Street Manager' on-line Street Works Management tool. The DfT have directed that all LHA's must adopt this system for managing works on their networks from 1<sup>st</sup> July 2020 and therefore these costs will be incurred, whether or not a Permit scheme is implemented. The ongoing operating costs of this software can be recovered from Permit fees.

The estimated costs include for a shadowing period for 2 additional members of staff to ensure they are in place and are competent with the process in time for the system to 'go live'. This is expected to be a 2 month lead in period.

The Project Management costs and training costs are provisional and yet to be fully determined and are likely to be less than the figure above.

Permit schemes will allow the authority to charge fees, in line with DfT guidance, which are expected to fully recover the ongoing costs of operating a permit scheme, including the additional resources proposed, so there is expected to be a cost neutral impact of operating the scheme. The scheme will not however allow for fees to recover any start-up costs.

The expected fee income is based on a normal annual level of street works applications, therefore actual income could be below or exceed this amount, dependent on the level of utility and other third party permit applications. A financial assessment of the likely income and expected operating costs has been undertaken and this concurs that the level of fees proposed in appendix 2 are appropriate to recover the costs in full. The level of fees are also at a similar level to neighbouring LHA's fees and therefore likely to be acceptable to the DfT and the Utility Companies.

The costs of IT software and hardware, project management and training will be funded from the authority's Highways and Transport capital allocations, however the remaining fees would need to be found from Revenue funding.

	<p>Flexibility around a current vacant post in the highways team should enable the majority of the staff costs for the shadowing period to be covered within existing budget provision, therefore the amount of Revenue required for the expected set up fees is relatively low.</p> <p>The additional resources that can be provided from the fees will however enable additional enforcement of utility works in Torbay and this is likely to result in an increase in financial penalties being issued to utilities for defective works or breach of permit conditions. This is likely to provide some additional income, however more importantly, this will reduce the likelihood of defective street works resulting in a future maintenance liability to the authority.</p> <p><u>Legal</u></p> <p>The Traffic Management Act 2004 was amended in 2015 to enable LHA's in England to make their own Permit Schemes and to vary or revoke existing schemes.</p> <p>Torbay Council will be required to make a Legal Order under Section 33A(2) and Part 3 of the Traffic Management Act 2004 to ensure that they have the authority to operate a Road and Street Works Permit Scheme.</p>
<p><b>10.</b></p>	<p><b>What are the risks?</b></p> <p>A risk that the Secretary of State for Transport may exercise powers to instruct its introduction. This is likely to affect the relationship between the authority and the DfT and this could impact on future funding bids.</p> <p>If a Permit scheme is not introduced in Torbay, it is likely that Torbay Council will be the only highway authority in the South West, which does not manage works on its network in this manner within the next year.</p> <p>If a Permit scheme is not introduced in Torbay, the authority will remain subject to a DfT directive to operate their 'Street manager' software as the management tool for Road and Streetworks, however there will be no opportunity to recover the annual costs of operating the system.</p> <p>The introduction of a Permit Scheme will however provide little flexibility to amend the timings of works once a Permit has been granted. There may currently be expectations from Elected Members and the Community that the highway authority can vary timings and notice periods of works planned by Statutory Undertakers or other occupiers of the highway space in some instances, however under a Permit Scheme, occupation of the highway will be fixed by the permit as issued and the notice periods that apply to the issue of a permit.</p> <p>If a Permit scheme is introduced without the required additional resources in place, it is highly likely that applications will not be considered within required timescales. If Permit applications do not have official responses within required timescales, then legislation states that a permit is 'deemed', i.e. a Permit would be granted by default and no fee would be chargeable,</p>



	<p>irrespective of whether or not this conflicts with other works on the highway network. This would pose a serious risk to disruption and congestion on the highway network and reduce the level of fee income to the authority.</p> <p>There is a risk that the level of income from the Permit fees will not cover the operating costs in full if the amount of street works applications are lower than expected in any annual period. Fees may however be reviewed annually in accordance with DfT guidance.</p>
<p><b>11.</b></p>	<p><b>Public Services Value (Social Value) Act 2012</b></p> <p>LHA's are required to purchase and operate the DfT 'Street Manager' software. Whilst this is a requirement for processing a Permit Scheme, LHA's are required to use this system to publish road and street works, whether they operate a permit scheme or not, therefore the purchase cost and ongoing running costs of this system are already being incurred by the authority irrespective of the decision to proceed with a Permit scheme. The software went live on 1<sup>st</sup> July 2020 and is now in use by the authority</p> <p>In setting up the scheme it is likely that some further assistance will be required from either from Torbay's partner consultant Jacobs, under the Residual Services arrangement with the previous Transportation and Engineering Consultancy Services Contract or with Yotta, as the provider of the authority's internal street works management system. This may incur additional costs, however these are shown above within the allowance for Project Management and Training.</p>
<p><b>12.</b></p>	<p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <p>Torbay Council is a member of the South West Highways Alliance and has attendance on its programme Board and Traffic Managers Group. As the directive for the DfT was aimed at all South West LHAs, the Alliance has been collectively working to share information between authorities and provide a further link to the DfT.</p> <p>There is little data to evidence whether a Permit scheme would be advantageous to Torbay, however feedback from authorities in other parts of the Country is that such schemes have been considered successful. It should however be noted that Torbay Council has for many years successfully operated a Traffic Sensitive Streets arrangement with Statutory Undertakers and therefore a Permit Scheme may not offer the same level of improvements that have been seen in areas where such arrangements have not been in place to manage their Street Works.</p> <p>Authorities which have introduced permit schemes have confirmed that their scheme costs have generally been fully recovered from the permit fees.</p>
<p><b>13.</b></p>	<p><b>What are key findings from the consultation you have carried out?</b></p>

	<p>Initial consultation with Utility Companies has been carried out through meetings of the South West Highway Authorities and Utilities Committee through their recent meetings, however a period of formal consultation is currently in operation.</p> <p>Initial findings are that Utilities accept that LHA's are required to implement a Permit scheme.</p> <p>Initial feedback from South West LHA's who have implemented Permit schemes recently indicates that the systems have worked well and have not been met with opposition.</p> <p>Should any issues be raised by Utility companies during the formal consultation period, then these will be raised with the Cabinet Member for Infrastructure, Environment and Culture for direction.</p>
<b>14.</b>	<p><b>Amendments to Proposal / Mitigating Actions</b></p> <p>No amendments have been made to the proposal as a result of initial feedback.</p>

## Equality Impacts

15.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people			There is no differential impact
	People with caring Responsibilities			There is no differential impact
	People with a disability			There is no differential impact
	Women or men			There is no differential impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			There is no differential impact
	Religion or belief (including lack of belief)			There is no differential impact
	People who are lesbian, gay or bisexual			There is no differential impact
	People who are transgendered			There is no differential impact
	People who are in a marriage or civil partnership			There is no differential impact
	Women who are pregnant / on maternity leave			There is no differential impact

	Socio-economic impacts (Including impact on child poverty issues and deprivation)		There is no differential impact
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		There is no differential impact
<b>16.</b>	<b>Cumulative Impacts – Council wide</b> (proposed changes elsewhere which might worsen the impacts identified above)	There is no differential impact	
<b>17.</b>	<b>Cumulative Impacts – Other public services</b> (proposed changes elsewhere which might worsen the impacts identified above)	Public Utilities will be legally bound by the conditions set out in the Policy For Torbay Council's Permit Scheme for Road and Street Works and this may have implications on their future works programming and provision of services.	