

CET/24/21

Corporate, Infrastructure and Regulatory Services Scrutiny Committee
28 March 2024

Performance of Utilities on the Highway and Changes to Regulations

Report of the Director of Climate Change, Environment and Transport

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

1) Recommendation

That the Scrutiny Committee be asked to note the following update report.

2) Background / Introduction

On 14 March 2022, the Committee received a 'Masterclass' presentation over MS Teams on the Coordination of Utility Companies Works and Reinstatements.

Alongside the County Council officers were representatives from two utility companies, Southwest Water and Wales & West who spoke about their activities and relationship with the County Council.

This report updates on that presentation providing an overview of the current position along with developments since.

3) Management and Coordination of Utility Activity on the Highway

The overall team structure as detailed in the 2022 Masterclass remains similar with some changes at a senior level within the Directorate.

The statutory Network Management Duty (Traffic Management Act 2004) remains at our core which is to secure, as far as reasonably practicable, the expeditious movement of traffic on our network and facilitate the same on other authority's networks.

The New Roads & Street Works Act 1991 (NRSWA) is the primary legislation followed and enforced. This legislation places a duty on the County Council to coordinate works on the highway and a requirement for works promoters to cooperate in that endeavour.

Works promoters who are 'Statutory Undertakers' (NRSWA) raise permit applications to occupy road space to perform 'street' works and those who are not apply for licences under Section 50 NRSWA. The activity promoted by the Council is permitted as 'road' works.

Devon faces some quite specific challenges in managing its network due to the size (almost 8,000 miles) and it being, in the main, rural. The corollary is that often diversion routes can be lengthy to achieve like-for-like and accommodate all traffic types.

The Network Operations Support Team (NOST) manages road space coordination for street works and has seen activity growth with permit volumes increasing. Similarly, enforcement activity has elevated with the continuing growth of fibre communication delivery.

There were just over 47,000 permit applications made in 2021 and almost 51,000 in 2022. In 2023 it rose to almost 54,000 representing a 14% increase in just 2 years.

Promoters submit permits for different works durations. Minor works permits are for 3 days or less, a standard permit is for 4 to 10 days. Major permits are for works exceeding 10 days and for works of any duration if they involve a road closure.

Another permit category is 'Immediate.' These are challenging to manage and are for either an 'Emergency' (to 'prevent danger to persons or property) or 'Urgent' (to prevent or put an end to an unplanned interruption in a supply or service) reason.

Immediate permits are reactive and require no advanced notice. Legally, the promoter is only required to inform the Council in the first 2 hours of commencing activity. The decision to use an immediate permit is for the promoter to make but this can be challenged.

Once the County Council is aware of immediate works, invariably they are already underway with an excavation commenced. Revoking or refusing the permit in such circumstances can be open to legal challenge where customers have a loss or degradation in a supply or service.

To mitigate issues, conditions can be imposed such as the manual control of any temporary traffic lights in use or, improvements to traffic management and signing if a road is closed. Instructing a utility to leave the highway is a significant step requiring cooperation and is only considered in the most extreme cases if immediate works are taking place.

Permits have strict time constraints for their assessment. This also applies to change and extension requests submitted with response time scales being as little as 48hrs. If a response timescale is not met, the permit or request will self-deem as approved at no cost to the promoter.

More recently there has been an increase in permit applications requiring road closures, defined as 'major' activity. In 2021 and 2022 there were just over 6,000 such applications annually however, in 2023 this rose to near 9,500 representing an increase of almost 60%. Applications continue to be scrutinised to verify the requirements and work continues with utilities to better understand their rationale to reduce closure requirements. There isn't a single rationale or clear pattern to this increase and seems to stem from a host of factors e.g. apparatus upgrades, fibre expansion, increased development etc. It is also worth noting that in verbal discussions with other authorities it appears Devon are not alone in experiencing this trend.

The 'firm but fair' approach in managing road space continues so, where feasible, activity is enabled rather than adopting a preventative approach. Access to road space is a requisite feature in street works and, while scrutiny is applied, working cooperatively is the aim.

While using this approach, Devon continues to hold the principal utilities to account at the bi-annual performance meetings. Data is analysed in terms of permits submitted and works undertaken with activity on the ground assessed through inspections and coring.

Works promoters can be managed by using a suite of statutory conditions which can be attached to the permit. These can include the manual control of temporary lights, restricting works timings to keep them outside peak hours or limit the size of a site for example.

Complaints are very occasionally received by the Council about site operatives' civility and behaviour. Public contact frequently occurs and the public can challenge site operatives. These are passed to the works promoter and taken seriously as operatives are often sub-contractors and the public face of the promoter. Operatives may be removed from sites or asked to leave the contractors employment. Equally, complaints can occasionally be received from promoters about not only public incivility but direct abuse of operatives while working.

Street Manager continues to evolve with relevant upgrades and enhancements in line with the most popular requests being made by both promoters and highway authorities. One Network remains the primary coordination tool used by Devon for managing activity and we continue to encourage all to use this (the demonstration of this software is available in the recording of the previous Masterclass).

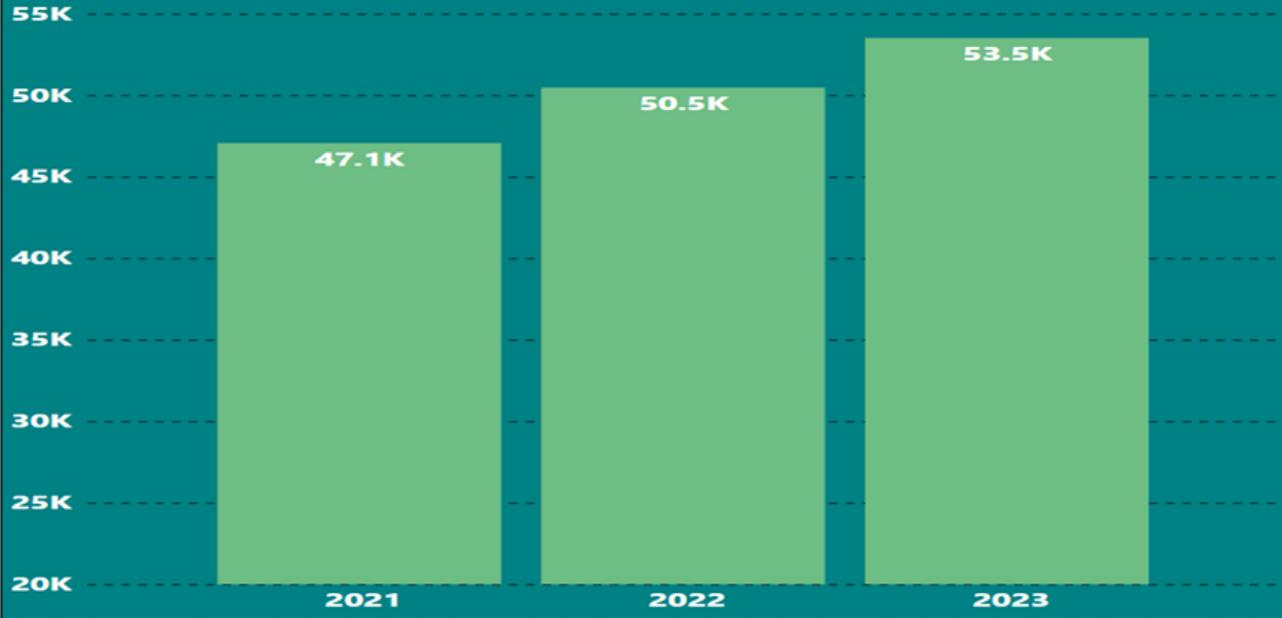
A significant update has been drafted for Devon's website on the pages dedicated to road works. The aim is to provide a greater wealth of information about works and FAQs for the public to enhance understanding. The draft text is included in Appendix 1 and it is anticipated this will go live during the first quarter of 2024.

During 2022/23, the Network Operations Support Team absorbed a large volume of new tasks involving all restrictions on the highway network, including those for new developments. Private street works licences have been added to street manager and One Network to aid in coordination.

4) Technical Data

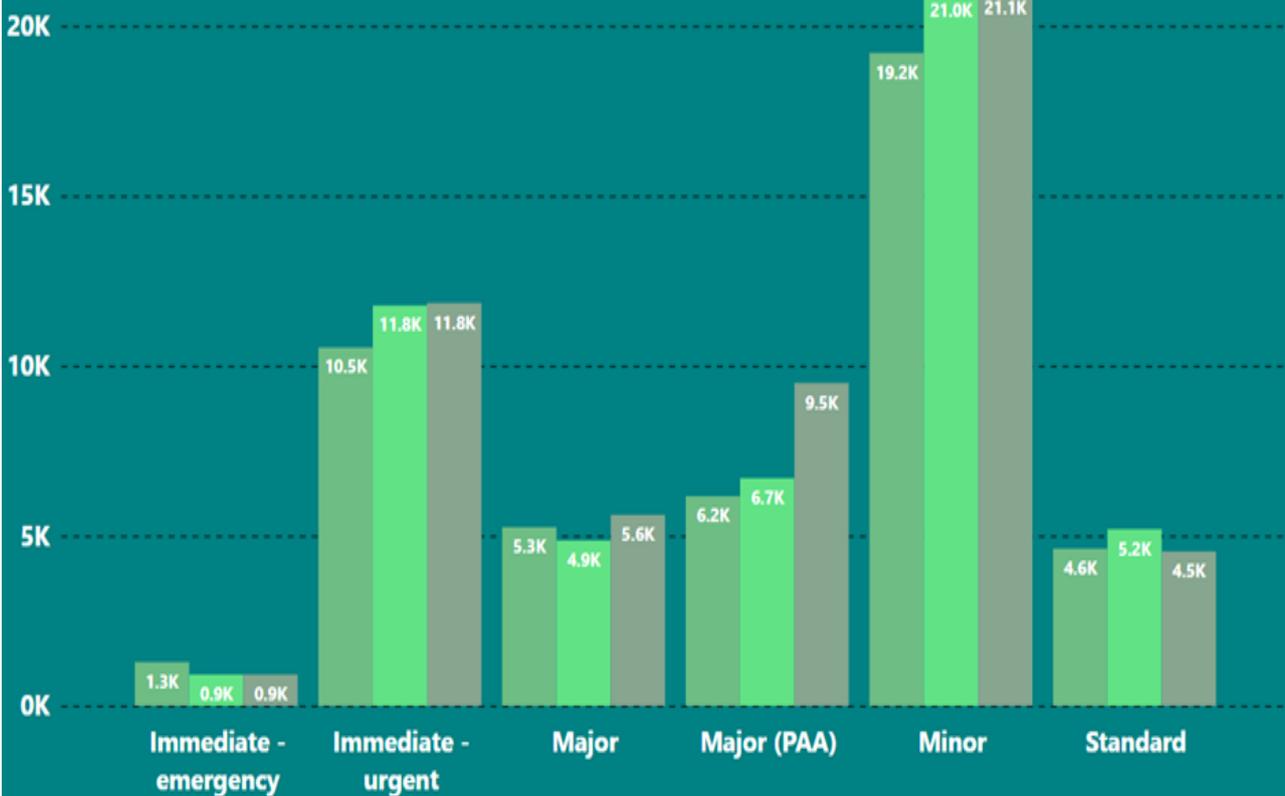
Below is some data relating to permit submissions, enforcement and coring performance:

Number of Permit Submissions in Calendar Year

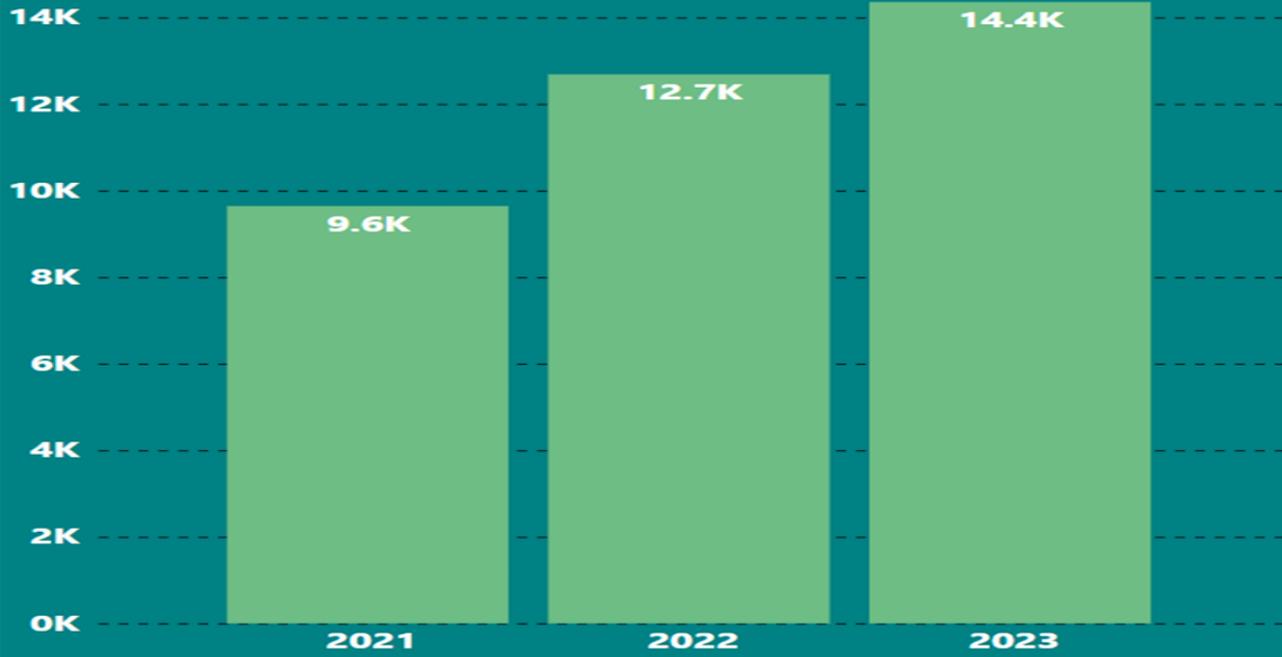


Works category breakdown

Year ● 2021 ● 2022 ● 2023

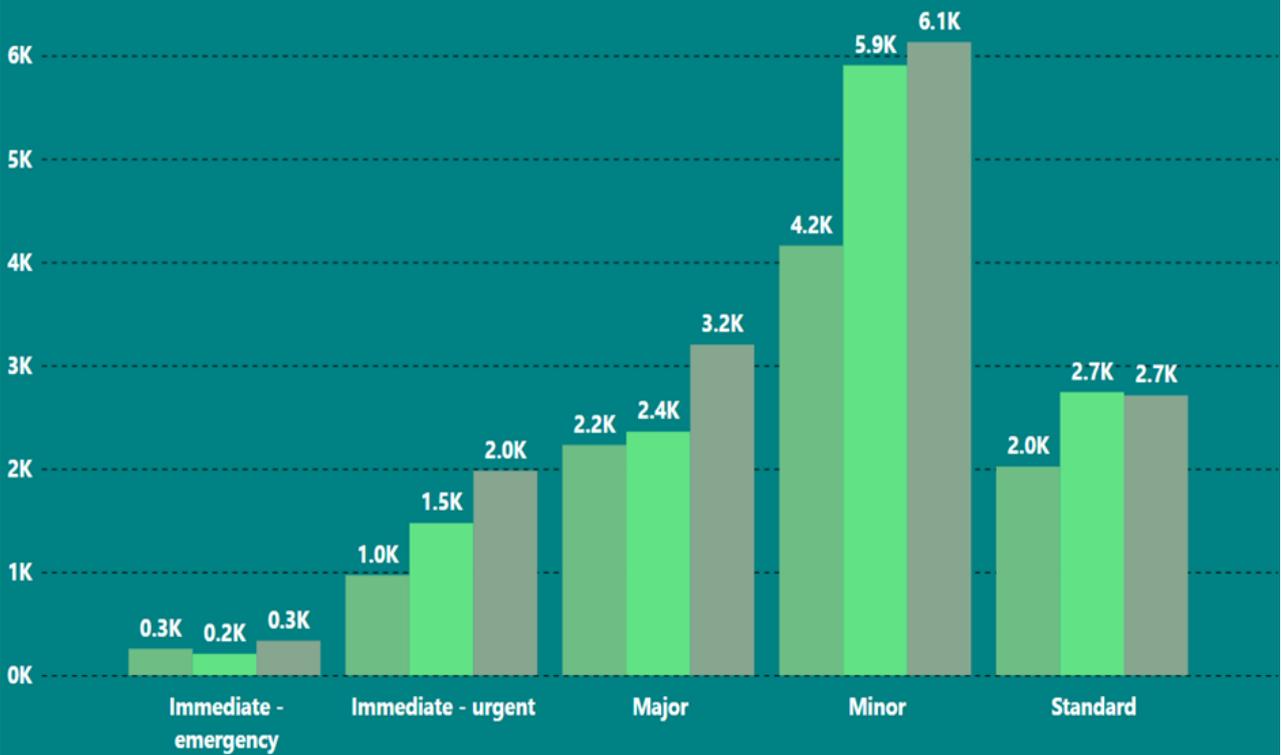


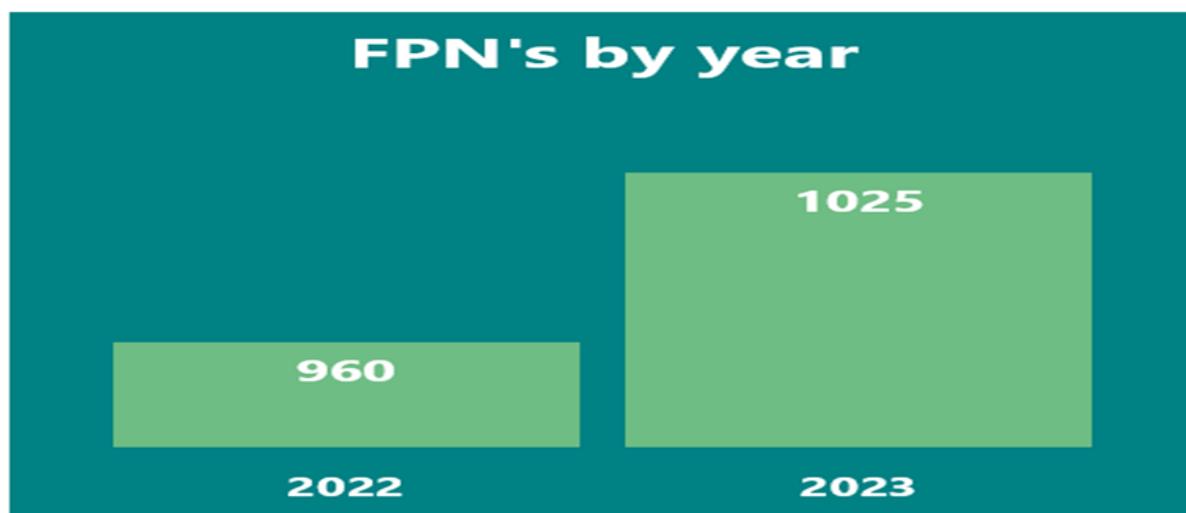
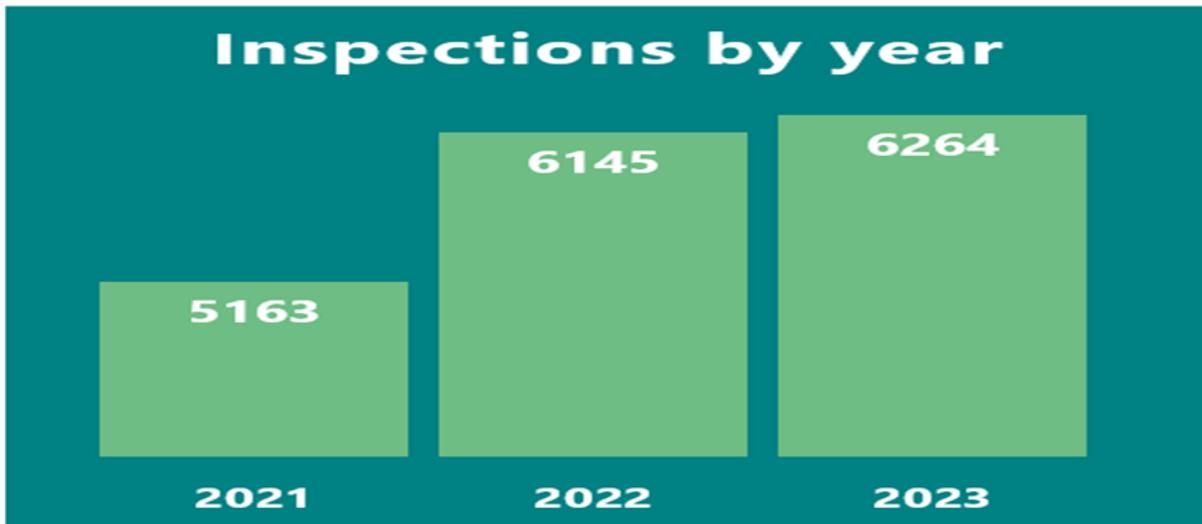
Number of Change Requests in Calendar Year



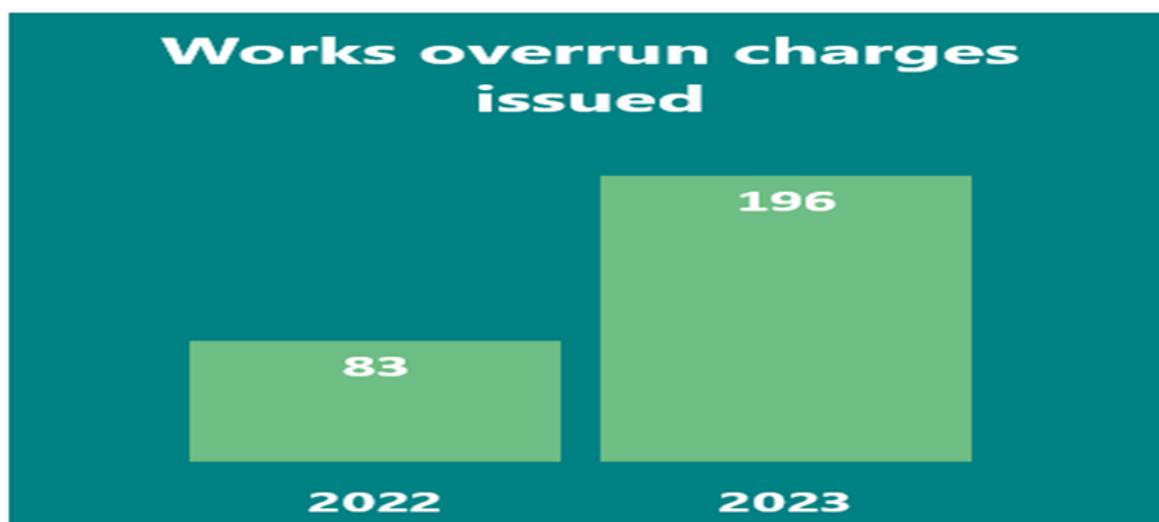
Change Request Submissions by Works Category

Year ● 2021 ● 2022 ● 2023





Nb: FPN stands for Fixed Penalty Notice. This graph refers to the number of FPN's issued by DCC by year.



Nb: The requirements for overrun charges are set out in the regulations made under Section 74 of New Roads Street Works Act. Locations where overruns have occurred are identified in a number of ways e.g. desktop study through to site visits.

Coring Performance: Reinstatement pass rates for the main four utilities:

YEAR	SWW	W&WU	BT	WPD / NG
2019	93%	88.9%	74%	81%
2020	CORING NOT UNDERTAKEN			
2021	82.4%	91.7%	71.4%	83.3%
2022	83.1%	86.6%	68.8%	86.9%

The utility companies are held to account regarding these results via regular performance meetings.

Fixed penalty fines are set in legislation. The fine for unauthorised works is £500 (£300 if paid within 29 days). Otherwise, all fixed penalty fines are set at £120 (£80 if paid within 29 days). The Government is currently consulting on increasing these fine levels.

5) Strategic Plan

Asides from being a statutory function, DCC fulfilling our Network Management Duty clearly aligns with the vision and priorities in the Council's Best Place strategic plan which covers 2021 – 2025. This includes, but is not limited to:

- Respond to the climate emergency
 - Effectively managing utility works is key to reducing congestion and thus directly contributes to the climate emergency
- Be ambitious for children and young people
 - Schools and educational facilities are a key consideration in permitting utility works. For example, we often require works to be undertaken in school holidays and/or outside drop off/pick times
- Support sustainable economic recovery
 - Well-coordinated highway activities minimise disruption to businesses and traders alike, and factors such as tourism are key considerations when considering when works should be undertaken
- Help communities be safe, connected and resilient
 - Fundamentally, a well-managed highway network is critical to the quality of life of Devon's residents and visitors alike, it's how they access education and healthcare, how they get to work or visit friends and families and is critical to businesses trading. For the vast majority of the circa 50,000 permits the team grant each year, the works go unnoticed due to having been correctly coordinated. However, communities would not be connected or resilient without this.

6) Financial Considerations

As explained in the Masterclass in 2022, the permit scheme is self-funding from the permit fees charged to works promoters.

In 2023, the Council reached the end of its first 3 years working as a permitting authority. Material was submitted to the DfT identifying the required break-even point was attained.

Works overrun charges have significantly elevated in 2023 due to specific challenges faced by National Grid on changing their principal contractor leading to notification failures.

7) Legal Considerations

In 2022, several new guidance documents were published by the DfT. These included updated permit scheme statutory guidance and permit conditions alongside updated Codes of Practice for both coordination and inspections.

8) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

This report focuses on the current performance of Statutory Undertakers when interacting with the highway network, along with any implications from any foreseen changes in legislation. As such, it is difficult to cite any specific environmental impacts, whether they be positive, negative, or neutral.

That said, increased levels of coordination and performance of Statutory Undertakers should not represent a detriment to the environment. By Devon County Council performing its network management duty and working closely with works promoters to improve performance the net result should be improved operation of the highway network, which brings about environmental benefits (albeit they are difficult to quantify).

9) Equality Considerations

The Streetworks sector is heavily regulated by legislation.

Section 119 NRSWA 1991 stipulates the duty of a Statutory Undertaker while executing works shall minimise the inconvenience to persons using the road having regard to the needs of people with a disability.

Careful consideration is given in the aspects of traffic management related to works to all protected characteristics and elements of need, not solely disability.

10) Risk Management Considerations

DCC Officers continue to actively engage with local, regional and national groups related to network management. This ensures we are aware of future changes in legislation whilst

also providing background/understand of how other authorities operate and perform. Our expectation is that the current increase in permit volumes will continue until circa 2030 at least and we are therefore reviewing whether our current team is adequately resourced to continue proactively managing the network.

11) Summary

Despite the increased work volumes and changes in legislation detailed in this report, DCC continue to fulfil our statutory network management function whilst remaining abreast of wider developments across the profession and ensuring we're ready for future challenges.

Meg Booth

Director of Climate Change, Environment and Transport

Electoral Divisions: All

Cabinet Member for Highway Management: Councillor Stuart Hughes

Local Government Act 1972: List of background papers

Nil

Contact for enquiries:

Name: Alex Crump

Telephone: 01392 383000

Address: Great Moor House, Exeter

Performance of Utilities on the Highway and Changes to Regulations - Final

Appendix 1 to CET/24/21– Draft Update for DCC Webpage

- **Definitions**

'Street works' are carried out by 'statutory undertakers' using equipment and machinery on or under the road. Statutory undertakers include utility companies, licensees (Section 50 New Roads & Street Works Act 1991) and their contractors. Street works are necessary to provide and maintain utility supplies and services.

'Road works' are different from street works. These are works carried out by the 'street authority' (Devon County Council) to repair or improve the highway including footways, pavements and street lighting. This type of activity can also be called 'works for road purposes'.

- **Devon County Council Works**

As the street authority, the County Council is responsible for works which range from planned activities to emergency works. These works can entail large scale road improvements, routine or cyclical maintenance (e.g. gully emptying, grass cutting) and carriageway or footpath surface treatments.

- **Other Works**

Other works are generally performed by statutory undertakers (utilities), developers or private companies. Each may have their own separate contractors or sub-contractors which may separately deal with the excavation, the work required to the apparatus in the road, the traffic management or the reinstatement of the excavation. Some utilities can use their own 'direct labour' instead of contractors or a combination of contractors and direct labour.

- **Works Regulation & Coordination**

The New Roads & Street Works Act 1991 is the primary legislation governing road and street works activity. Just as the street authority wants to ensure its network is maintained and improved, utility companies wish to ensure the provision of reliable, safe and efficient utility supplies and services (gas, water, electricity and telecommunications).

Maintenance and improvement work is required on utility infrastructure to ensure reliability of a service or supply. Most utility apparatus is located in the public highway and while efforts are made to limit disruption when works occur, it is inevitable there will be some disruption even with the best managed works when there is encroachment into the carriageway.

To enable utility companies to ensure the continuous supply of services or supplies, they have certain legal rights to work on their apparatus. As the street authority must coordinate activity, the utilities are required to cooperate with the authority when planning their works and then seek permits to access the road network.

Statutory undertakers do not always need the street authority's permission to perform works as this is given by licence from Government, enabling them to comply with their own governance legislation and requirements of their regulator (Ofwat, Ofgem and Ofcom). If

the works are reactive or 'Immediate', the promoter can set traffic management, enter the road and work while only being required to notify the street authority within 2 hours of starting.

As such, utility providers are ultimately responsible for the delivery of their own works and ensuring effective traffic management. For this reason, public feedback is actively encouraged to be directed to the promoter responsible for the works, if any local problems occur. Every utility site is required to permanently display a permit board on the site with the specific works reference number and contact information.

Devon County Council receives in excess of 50,000 applications from works promoters and private contractors to access the network and perform works each year. In addition, activity surrounding new developments and special events which occur on or near the network add other layers of complexity in coordinating all that takes place. Often, uncompromising and quite challenging decisions need to be taken when performing the network coordination function.

Frequently Asked Questions

- ***Where are road and street works published?***

Information can be found on the Devon County Council website at [Live roadworks information - Roads and transport \(devon.gov.uk\)](https://www.devon.gov.uk/live-roadworks) or [Planned works and roadworks - Roads and transport \(devon.gov.uk\)](https://www.devon.gov.uk/planned-works)

Further information both locally and nationally can be found on line at one.network/tm

- ***Why are street works just allowed to happen?***

Pre-planned works must be notified and will be subject of an assessment before being permitted or licenced. Unplanned or reactive 'Immediate' works occur due to potential danger or damage (Emergency) or a service or supply has failed or been compromised (Urgent).

This type of reactive works can create frustration in communities and with road users. Once aware, the street authority works with the promoter in an effort to improve the situation if possible to mitigate problems. Refusing such work is challenging however, the street authority works hard to ensure it can be delivered promptly and effectively in the interest of the wider public.

The street authority is keen to 'empower' utilities to work professionally with the legal rights held but, this also means they must answer to communities directly. The authority has a role in coordinating activity on the network, the utilities need to cooperate in that endeavour. if you have concerns about any activities being conducted on the network you should contact the company responsible and take relevant information from the permit board displayed on site.

- ***Why is the road closed (or traffic management in place) but no work is taking place with no operatives on site?***

When planned works are proposed on a road, a permit or licence must be applied for and obtained by the promoter. The permit or licence will have a proposed start and end date, during which period traffic management such as temporary traffic signals or lane closures maybe present. This can be set up just before the arrival of the workforce or remain in situ immediately following completion of the work.

A site may be unoccupied as time is required to allow materials such as glues or sealants to properly cure. Excavation reinstatements can be carried out by an alternative contractor and again, materials used for the top coat must adequately cure before vehicles can traverse over its surface. Occasionally, the whole works site may be both in a road and elsewhere on private land and out of sight in which location the operatives may be temporarily working.

In all cases, if residents or road users have concerns about works on the highway, contact can be made with the promoter as they are ultimately responsible for the delivery of their works and ensuring effective traffic management. Detailed information about the promoter can be found on the permit board which must be displayed at every operational site.

- ***Road works are affecting my business, how do I claim for compensation?***

There is currently no statutory compensation for businesses affected by road works. Successive governments have taken the view that businesses should not have the right in law to any particular level of passing trade and that traders must take the risk of loss due to temporary disruption of traffic along with all the other risks of running a business. It is a matter for the business owner whether or not compensation is sought via the works promoter.

Therefore, there is no statutory provision for compensation from the street authority if a business is affected by roadworks. [Claims we will not process - Roads and transport \(devon.gov.uk\)](#)

- ***I am unhappy with the diversion route being used for a road which is closed.***

Diversion routes are proposed by works promoters when applying to close a road and this is reviewed by the street authority. Any diversion route used must be of a category equal to or higher than the one closed. The diversion must be able to accommodate all the traffic which would normally use the closed road. If this is not possible, the most appropriate route will be used.

At times, local alternative roads may be identified and used by some traffic. It is rarely feasible to sign multiple diversion routes to suit various vehicle types by size for a temporary road closure. While a diversion route is signed, it does not mandate every vehicle to use it. If alternatives are known a driver must be mindful that the law requires a driver to use a road suitable for the vehicle being driven.

- ***Can I report vehicles which are not following a diversion route for a road closure and rat-running?***

Diversion routes are provided for all vehicles which normally use the closed road. All vehicles are not mandated to use the signed diversion route. Ultimately, it is a matter for the driver of a vehicle to decide, within the bounds of the law, which routes to use on any journey.

- ***Why are road works not properly coordinated to prevent disruptions on the road and in local communities?***

Applications to carry out works on Devon's roads are assessed and coordinated to avoid direct clashes. The street authority receives in excess of 50,000 applications annually from those wishing to access its road network. In some cases there may be multiple works taking place in one locality which does not mean a lack of coordination. If there is no clash between the works, they may go ahead, while considering the potential for disruption.

In the coordination process an overview is taken of works in a locality. In some cases, depending on the nature of the works and the road network in that locality, multiple works may go ahead in an effort to gain collaboration where possible and pull necessary works together in an area so they occur over a shorter timescale rather than happening individually over a longer period with each set of works causing disruption time after time.

Planned works may be taking place when another utility must immediately respond to a local loss of service or supply. A utility operating under an 'immediate' reactive permit only needs to inform the street authority within 2 hours of commencing their activity. Outwardly, this may give the appearance of uncoordinated activity.

While every effort is made to limit disruption, street works will inevitably lead to this at some level. The utility companies (statutory undertakers) have legal rights to access, repair, install, remove and maintain their apparatus with regulatory obligations to fulfil. The street authority aims to enable works where it is possible to do so while using conditions on permits when applicable to try and mitigate disruption.

- ***How do I report a problem with road works to the County Council?***

While the street authority is answerable to the public for activities it carries out on the network equally, the utilities should be answerable for its activities and respond to complaints made as the responsible party for the impacts. If the street authority is managing complaints over third party activities, time is taken away from its co-ordinating responsibilities. Every works site must have a permit board displaying the promoter's name, contact information and site reference number.

If necessary, information can be found about planned works activity on line via one.network/tm. Information can be provided to the street authority either through our [report a problem page](#), by speaking to a live chat adviser or by contacting our Customer Service Centre on 0345 155 1004.

- ***I want to complain to the utility company who are performing works in my road, how can I do that?***

Every works site is required to have a permit board displaying the site reference number, the promoter's name and contact information.