

## Cabinet

28 August 2008



## NRSWA Fixed Penalty Notices

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**Joint report of Roger Elphick, Acting Corporate Director, Environment and Lesley Davies, Acting Director of Corporate Services (Cabinet Portfolio Member for Environment – Councillor Bob Young and Cabinet Portfolio Member for Corporate Resources – Councillor Michele Hodgson)**

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### Purpose of the Report

- 1 To establish a new delegated authority to issue Fixed Penalty Notices under the Traffic Management Act 2004 and the New Roads and Street Works Act 1991.

### Background

- 2 New provisions under Section 41 of the Traffic Management Act 2004 [TMA] which amends Section 95A of the New Roads and Street Works Act 1991 [NRSWA] came into force on 12 May 2008. The provisions enable the Street Authority to give Fixed Penalty Notices [FPNs] to Statutory Undertakers [SUs] who fail to issue correct notices to carry out works on our road network.
- 3 The objective of the provisions is to encourage accurate and timely notice data; to improve the co-ordination of works; to improve data quality; and to contribute towards the TMA Network Management Duty objectives to minimise unnecessary disruption to traffic arising from road and street works.
- 4 There are no new offences introduced by the provisions. The existing offences relating to noticing can be prosecuted in the Magistrates' Courts. However the FPN gives the SU the opportunity to discharge any liability to conviction by the payment of a £120 penalty payable within 36 days. If the payment is made within 29 days, a discounted penalty of £80 is payable.
- 5 Cabinet gave their approval to operate the Fixed Penalty Notice scheme in County Durham on 23 December 2004.
- 6 Fixed Penalty Notices will normally be issued to the SU electronically through the Council's Street Works Manager software system, the vehicle for all communication with the SUs on noticing, registration of works etc. The form of FPN is set down in Schedule 1 of The Street Works (Fixed Penalty) (England) Regulations 2007 SI No. 1952. Each FPN requires the Authorised Officer to be named on the form.

- 7 Under current delegations (Constitution of the County Council Table 3) the Director of Corporate Services is able to sign any document on behalf of the Council in connection with legal or enforcement proceedings relating to (inter alia) the New Roads and Street Works Act 1991. However, in view of the possible volume of FPNs that might be issued; the specific and technical nature of the FPN; and the electronic means of serving the FPN, it is considered that the delegation for FPNs would be more appropriately placed with the Corporate Director, Environment.
- 8 Under this arrangement, regular reports on the issue of FPNs under NRSWA will be provided to the Director of Corporate Services.

### **Recommendation and Reasons**

- 9 I recommend that for Fixed Penalty Notices issued in accordance with Section 95A of the New Roads and Street Works Act 1991, the Authorised Officer named on the Fixed Penalty Notice is the Corporate Director, Environment.

### **Background Papers**

Traffic Management Act 2004  
New Roads and Street Works Act 1991  
The Street Works (Fixed Penalty) (England) Regulations 2007 SI No. 1952  
Constitution of the Council December 2007  
Cabinet report dated 23 December 2004 Item A7

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**Appendix 1: Implications**

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**Local Government Reorganisation**

(Does the decision impact upon a future Unitary Council?)

None

**Finance**

None

**Staffing**

None

**Equality and Diversity**

None

**Accommodation**

None

**Crime and Disorder**

None

**Sustainability**

None

**Human Rights**

None

**Localities and Rurality**

None

**Young people**

None

**Consultation**

None

**Health**

None