

Agenda Item	<b>12</b>
Report No	<b>ECI/9/21</b>

## THE HIGHLAND COUNCIL

**Committee:** Economy and Infrastructure

**Date:** 4 February 2020

**Report Title:** Review of Road Construction Consent Inspection Fees – Update

**Report By:** Executive Chief Officer – Infrastructure and Environment

### 1. Purpose/Executive Summary

1.1 This report provides an update following the trial (Nov 2018 – Feb 2020) of the revised scale for Road Construction Consent (RCC) fees that the Council set for inspecting roads which are constructed by developers under Section 21 of the Roads (Scotland) Act 1984.

1.2 The details of the revised fees are provided for agreement and Members should note that these can only cover the likely actual costs of delivering the service.

### 2. Recommendations

2.1 Members are asked to:

- i. approve the proposed revised scale of fees for Road Construction Consents, which in accordance with the original report of 16 August 2018 (**Appendix 1**) will be applied retrospectively from 1 April 2017; and
- ii. note that Highland Council's previous fees were subject to a legal challenge and the revised fee structure is a response to this challenge.

### 3. Implications

3.1 Resource – The management of inspections will be undertaken by a combination of the Project Design Unit and the Local Area Roads teams. The new charging regime will lead to a reduction in income that has been previously built into the service budget, so a budget pressure has been identified to accommodate the expected shortfall. This is expected to be in the region of about £170,000 although will be dependent on the levels of construction activity.

3.2 Legal –The Roads (Scotland) Act allows the Council to recover the expenses reasonably incurred in the undertaking of RCC activity. The legality of the current level of Council

fees has been challenged by way of judicial review and the proposed level of fees reflects the costs reasonably incurred by the Council.

- 3.3 Community (Equality, Poverty, Rural and Island) - There are no Community (equality, poverty, rural and island) implications.
- 3.4 Climate Change / Carbon Clever - There are no climate change or carbon clever implications.
- 3.5 Risk - There is a certainty of legal challenge and associated legal costs of a judicial review if the updated inspection fees are not introduced. It is expected that approval of the updated fees will remove the risk of other developers commencing legal challenge of the Council's RCC Inspection fees.
- 3.6 Gaelic - There are no Gaelic implications.

#### **4. Background**

- 4.1 Under Section 140(6) of the Roads (Scotland) Act 1984, the Council is entitled to recover expenses from the person to whom Road Construction Consent or authorisation has been granted. These are the costs related to supervising and inspecting the RCC works. It is reasonable that these costs should be borne by those parties wishing to construct a new road(s) or extension(s) of any existing road. No other costs can be recovered, and a developer may ask for evidence of costs incurred.
- 4.2 In 2016, a developer delivering RCC infrastructure questioned the Council's previous RCC inspection fee levels. Following meetings with the developer's representatives, they commenced judicial review proceedings challenging the legality of the fee levels. During 2017 and 2018, officers acting on legal advice and, after assessment, proposed the fees set out at paragraph 4.4 below with an agreed trial period identified per paragraph 4.5.
- 4.3 On 16 August 2018, the Environment, Development and Infrastructure Committee considered the report Ref EDI/58/18 Review of Road Construction Consent Inspection Fees (**Appendix 1**). The Committee approved the proposed fee scale recommendations, to be applied retrospectively from 1 April 2017. Members also noted that a 12-month trial would be undertaken with, if necessary, a further report being brought back to a future committee.
- 4.4 The proposed fees as reported in July 2018 were:

Small RCC works	Up to £100,000	Inspection fee of 5.0%
Medium RCC works	£100,101 to £400,000	Inspection fee of 4.5%
Large RCC works	£400,001 to £800,000	Inspection fee of 4.0%
Very Large RCC works	Over £800,000	Inspection fee of 3.5%

- 4.5 In September 2018, to enable the trial to be undertaken, the developer's legal representatives agreed to sist (freeze) the legal proceedings. The sist remains in place.
- 4.6 Between November 2018 and February 2020, the trial to monitor the actual costs of RCC inspections was undertaken by the Council's Project Design Unit (PDU). Using the PDU ensured availability of sufficient technical resources to undertake the inspections at each key stage whilst ensuring that all costs could be accurately recorded.

## **5. Legal position**

- 5.1 The outcome of the trial was reported to the developer's legal representatives.
- 5.2 In October 2020, after having considered the Council's evidence gathered during the trial period, the developer's legal representative intimated that the fees appeared to be generating income beyond the level of costs reasonably incurred by the Council and submitted a counter proposal following examination of the detailed figures.
- 5.3 An assessment of the Council's costs (PDU, Area Roads Team and Transportation Planning Team) was undertaken in Autumn 2020. Officers also assessed the developer's calculations which had been relied upon to support the counter proposal.
- 5.4 The monitoring trial has enabled the actual costs of RCC inspection incurred by the Council to be used to prepare a revised fee structure. It is anticipated that the proposed fee level will be acceptable to the developer and, if agreed, will allow the current legal proceedings to be resolved.

## **6. Proposed updated RCC Inspection Fee Structure**

- 6.1 The proposed revised RCC Inspection Fee Structure is:

Small RCC works	Less than £100,000	Inspection fee of £2,500
Medium RCC works	£100,001 to £250,000	Inspection fee of 2.5%
Large RCC works	£250,001 to £500,000	Inspection fee of 2.0%
Very large RCC works	Over £500,000	Inspection fee of 1.5%

- 6.2 The value of the RCC works will be increased annually on 1 April in accordance with any increase in the Office for National Statistics Construction Output Price Indices.
- 6.3 As mentioned in the previous report (para 5.3) other developers have been awaiting the outcome of the legal challenge and as such fee changes were applied as from 1 April 2017. It is intended that this is the case with the updated fees.

Designation: Executive Chief Officer – Infrastructure and Environment

Date: 12 January 2021

Author: Robin Pope, Policy and Programmes Manager

Background Papers: EDI/58/18 Review of Road Construction Consent Inspection Fees

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Report No	<b>EDI/58/18</b>

**HIGHLAND COUNCIL**

**Committee:** Environment, Development and Infrastructure

**Date:** 16 August 2018

**Report Title:** Review of Road Construction Consent Inspection Fees

**Report By:** Director of Community Services

**1 Purpose/Executive Summary**

- 1.1 This report provides details of the revision to the Road Construction Consent Inspection fee that the Council sets for inspecting roads which are constructed by developers under Section 21 of the Roads (Scotland) Act 1984.
- 1.2 The details of the revised fees are provided, along with the requirement to undertake a validation trial to determine if further amendments are required.

**2 Recommendations**

- 2.1 Members are invited to:
  - i. approve the proposed revised scale of fees for Road Construction Consent Inspections, which will be applied retrospectively from 1 April 2017; and
  - ii. note that a 12 month validation trial will be undertaken to assess the appropriateness of the new fees and that a subsequent report will be presented to this committee in November 2019.

### 3 Background

- 3.1 Under Section 21 of The Roads (Scotland) Act 1984, any person other than a Roads Authority, who wishes to construct a new road or extend an existing road, must, before commencing construction, obtain Road Construction Consent (RCC).
- 3.2 Under Section 140(6) of the Roads (Scotland) Act 1984, the Council is entitled to recover expenses from the person to whom Road Construction Consent or authorisation has been granted. There are costs related to inspecting the Road Construction Consent works. It is reasonable that these costs should be borne by those parties wishing to construct a new road(s) or extension(s) of any existing road.
- 3.3 On 27 May 2004 report TEC39/04 was approved by the Transport, Environmental and Community Services Committee. The report recommended that an annual increase to the charges in Appendix 3, including RCC's, be applied in line with the rate of inflation. All these charges except RCC's were a monetary sum. RCC's were a percentage fee based on the cost of the construction works, the percentage fee has therefore been increased annually.
- 3.4 Inspection fees are administered under the requirements of the Roads (Scotland) Act 1984 Section 21 and Highland Council currently have them set at the following rates:
  - 6.9% (works > £100k)
  - 9.6% (works £20k - £100k)
  - 10.6% (works < £20k)
- 3.5 There are two methods available to recover the cost of undertaking inspections. Either a set fee based upon the agreed cost of the works, or to charge the actual costs incurred ('time and line').
- 3.6 A set fee is considered a fair and reasonable approach but it is accepted requires an explanation to justify how the fee is calculated. Such an approach is endorsed by the Society of Chief Officers of Transportation in Scotland (SCOTS).
- 3.7 The fee process used for RCC inspections is to apply a percentage based upon an agreed road construction works value.
- 3.8 The number of inspections undertaken is derived from the Key Construction Stages (site visits) identified in the Road Construction Consent Compliance and Notification Plan (**Appendix 1**).
- 3.9 The size and complexity of a scheme also affects the number of inspections required along with the time required for each inspection (pre-visit preparation, site inspection work and post-site follow up would be included).
- 3.10 Historically and at present, RCC inspections are undertaken by the Roads Service Area-based technical staff. Discussions are underway to also use the Council's Project Design Unit (PDU) to ensure sufficient technical resources are available for inspections of increasing numbers of new developments.

3.11 If sufficient resources are not available to undertake the required number of site inspections, there is a risk that the quality of works adopted cannot always be guaranteed. This results in an increased risk for the Roads Authority, which becomes responsible for the cost of any corrective works where defects occur after the defect or maintenance correction period of a road scheme which is adopted.

3.12 The entire Road Construction Consent process has been redesigned using LEAN principles. This has involved a significant amount of work by officers in Development and Infrastructure and Community Services. Systems have been developed to record information and a pilot option for applicants with major or large developments to have a Street Engineering Review is available. The Council's website has also been updated to reflect the changes and provide developers with more information regarding the whole process:

[https://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/767/road\\_construction\\_consent](https://www.highland.gov.uk/info/20005/roads_and_pavements/767/road_construction_consent)

#### **4 Challenge to Council's RCC Inspection Fee**

4.1 In 2016 a developer delivering infrastructure and housing questioned the level of HC's RCC Inspection fee when compared with the rest of Scotland.

4.2 A bench marking assessment was undertaken with other Scottish Roads Authorities which resulted in a review of the fee being undertaken. The inspection fee banding used was out of date since its inception due to rises in construction costs.

4.3 Agreement with the developer who challenged the fee structure includes that Highland Council will secure formal approval of the revised RCC Inspection fees and that a 12 month validation trial would be undertaken from September 2018.

4.4 Following the validation process, if amendments to the fees are required a subsequent report will be presented to a future EDI committee.

#### **5 Proposed RCC Inspection Fee Structure**

5.1 From the key stages identified in **Appendix 1**, the staff resource requirement has been estimated for four different sizes of RCC construction costs:

Small	Up to £100,000	Inspection fee of 5.0%
Average	£100,001 to £400,000	Inspection fee of 4.5%
Large	£400,001 to £800,000	Inspection fee of 4.0%
Very Large	Over £800,000	Inspection fee of 3.5%

5.2 Fees at band interfaces would never be less than that due under the lower band, e.g. Works cost £100,000, RCC Inspection fee at 5% is £5,000. Works cost £108,000, RCC Inspection fee percentage is 4.5%, sum would be £4,860, and therefore the RCC Inspection fee would be £5,000. The existing and revised tables of RCC Inspection fees are shown in **Appendix 2**.

5.3 Several other developers have been awaiting resolution of the challenge and have entered into RCC agreements but made part payment knowing that changes were probable. To prevent further challenges it is intended that the revised fees would be introduced retrospectively from the point at which the Council became aware of the nature of the issue with the level of its RCC Inspection fees. This was during the spring of 2017 and therefore a commencement date of 1 April 2017 is proposed.

## 6 Implications

- 6.1 Resource – It is intended to utilise the Project Design Unit’s site supervision team to undertake the validation exercise. The cost is to be funded from the fees secured. The revised fee structure will have an impact on income levels for the service.
- 6.2 There are future legal implications if the recommended RCC Inspection fees are not approved and associated validation exercise is not undertaken.
- 6.3 There are no community (equality, poverty and rural) implications.
- 6.4 There are no climate change or carbon clever implications.
- 6.5 There is a risk of legal challenge if the validation exercise is not completed and reported to a future EDI committee.
- 6.6 There are no Gaelic implications.

Designation: Director of Community Services

Date: 24 July 2018

Author: Robin Pope, Policy and Programmes Manager  
Elizabeth Maciver, Senior Engineer (Asset Management)

Background Papers: TEC39/04 Local Roads Functions – Charges and Permissions  
Highland Council – [Roads & Transport Guidelines](#) for New Developments

## ROAD CONSTRUCTION CONSENT COMPLIANCE AND NOTIFICATION PLAN

### PROJECT PLAN

<b>RCC Reference:</b>	
<b>Location of development (including stage/ phase details if applicable):</b>	
<b>Applicant details:</b>	
<b>Agent details:</b>	
<b>Contractor details:</b>	
<b>Type of development:</b>	
Residential <input type="checkbox"/>	Commercial <input type="checkbox"/>
Other <input type="checkbox"/>	Industrial <input type="checkbox"/>
Please Specify:	
<b>Council's Representative Details:</b>	
<b>Name:</b>	
<b>Office Tel. No.:</b>	
<b>Mobile No.:</b>	
<b>E-mail:</b>	

Key Construction Stages (Site visit)	Status*	Road Authority Notes for Applicant (See notes 1 and 2)	Appropriate Alternative Evidence (Non-site visit)	Fulfilled Y/N
Pre-commencement Meeting	M	Developer to arrange with relevant parties and provide construction programme at meeting.		
Start of Works	M	Developer to notify Council Representative (min 4 weeks' notice).		
Completion of Formation	M			
Laying of Road Drainage	M			
SuDS	M			
Final Road Drainage	M	CCTV survey report required.		

<b>Key Construction Stages (Site visit)</b>	<b>Status*</b>	<b>Road Authority Notes for Applicant (See notes 1 and 2)</b>	<b>Appropriate Alternative Evidence (Non-site visit)</b>	<b>Fulfilled Y/N</b>
Covering of Kerb Log	M			
<b>Carriageway Layers</b>				
Sub-base commencement	M			
Base Course commencement	M			
Binder Course commencement	M			
Surface Course (Modular Blocks only) commencement	M			
<b>Footway/ path Layers</b>				
Sub-base commencement	M			
Base Course commencement	M			
Binder Course commencement	M			
Surface Course (Modular Blocks only) commencement	M			
<b>Cycle Track Layers</b>				
Sub-base Commencement	M			
Base Course Commencement	M			
Binder Course Commencement	M			
Surface Course (Modular Blocks only) Commencement	M			
<b>Street Lighting</b>				
Setting out Plant Positions (cable, columns, boxes, etc.)	M			
Backfilling of Cable Trenches	M			
Painting of Plant (if applicable)	M			
<b>Structures</b>				

Key Construction Stages (Site visit)	Status*	Road Authority Notes for Applicant (See notes 1 and 2)	Appropriate Alternative Evidence (Non-site visit)	Fulfilled Y/N
Commencement of Steel fixing	M			
Each Concrete Pour (incl. blinding)	M			
Formwork Striking	M			
Partial Completion	M			
Street Lighting (commissioning)	M			
Carriageway Layers				
Surface Course Commencement	M			
Footway/ path Layers				
Surface Course Commencement	M			
Cycle Track Layers				
Surface Course Commencement	M			
Road markings Commencement	M			
Substantial Completion	M	Submit substantial completion application and relevant supporting documentation.		
Stage 3 Road Safety Audit				
Landscaping/ planting complete and established				
Full Completion	M	Submit relevant supporting documentation. (All defects are rectified and the Health and Safety File has been accepted by the Roads Authority.)		
Request for adoption (if required)				

Key Construction Stages (Site visit)	Status*	Road Authority Notes for Applicant (See notes 1 and 2)	Appropriate Alternative Evidence (Non-site visit)	Fulfilled Y/N

Status \*

- M Mandatory
- N Notify

**Notes to Applicant/Developer:**

1. The Owner or Developer should notify the Council's Representative at the target key construction stages listed above, to allow the Council's Representative to check compliance with Road Construction Consent.
2. Notification should allow sufficient time for the Council's Representative to respond. The Applicant/ Developer should discuss notification with the Representative as early as possible to allow for other work commitments, annual leave, etc. A minimum of 48 hours' notice is required unless otherwise stated.
3. Failure to notify and ensure a response is received can result in the Council's Representative requiring that work is exposed for inspection at the Developer's cost. It may also result in delays to adoption or the Roads Authority refusing to adopt.
4. Once the applicant or developer is satisfied the project is fully complete and complies with the approved Road Construction Consent, they should apply for Full Completion. When Full Completion is granted, if required, the Developer must also apply to have the road adopted.

