



**ROADS AUTHORITIES & UTILITIES COMMITTEE**  
**(SCOTLAND)**

**ADVICE NOTE 22**

**THE USE OF S109 OF THE NEW ROADS AND STREET**  
**WORKS ACT 1991, REPLACING S61 OF THE ROADS**  
**(SCOTLAND) ACT 1984**

**Version 1.00**

**December 2013**



**THE USE OF S109 OF THE NEW ROADS AND STREET  
WORKS ACT 1991, REPLACING S61 OF THE ROADS  
(SCOTLAND) ACT 1984**

**Version History**

| <b>Version</b> | <b>Date</b> | <b>Notes</b>     |
|----------------|-------------|------------------|
| 1.00           | 12/2013     | Initial version. |
|                |             |                  |

## 1. Introduction

This Advice Note is intended to provide guidance to the road works authorities in Scotland on the use of Section 109 of the New Roads and Street Works Act 1991 (NRSWA) to grant permission to execute road works. Since NRSWA was introduced there have been a similar provisions available under Section 61 of the Roads (Scotland) Act 1984 (R(S)A) to grant permission to place and maintain apparatus under a road.

The purpose of the guidance is to set out the advantages of Section 109 of NRSWA so that a voluntary transition occurs and it becomes the default position for road works authorities when issuing permissions to execute road works.

It is intended to recommend that Section 61 of the R(S)A will be revoked and it is fully expected that following the introduction of this guidance, the impact of such a revocation will be limited, given that all road works authorities shall only be utilising Section 109 of NRSWA.

## 2. Advantages of S109 of NRSWA

To build a case for this recommendation, it is important that the rationale for the change is understood. The reasons in support of the usage of S109 of NRSWA over S61 of R(S)A are as follows:

- **Accuracy of information** – Noticing requirement are set out in the Code of Practice for the Co-ordination of Works in Roads.
- **Improved control of works** - Inspection and Reinstatement of works are underpinned by the Inspections Code of Practice and the Specification for the Reinstatement of Openings in Roads respectively. This allows for charging of inspection fees and the guarantee of reinstatements in accordance with NRSWA.
- **Protocols through VAULT** - A record of all installed underground apparatus can be retained on the S109 of NRSWA layer on VAULT, the electronic repository of plant information, reducing any burden on road works authorities when keeping accurate records of permissions issued, and improving the visibility of such permissions.
- **Safety improved** - The keeping of accurate records through VAULT will reduce the number of strikes to undertaker apparatus.

### **3. Recommendation**

That all road works authorities utilise S109 of NRSWA when issuing permission to execute road works as defined under S107(3) of NRSWA.

## **Annex A**

### **Questions and Answers**

**Q.** Our roads authority prefers to use S61 of R(S)A which circumvents the need to keep records of apparatus. Why should use S109?

**A.** S61 of R(S)A duplicates that of S109 of NRSWA. S109 adds additional protection to the roads authority as the applicant becomes an undertaker once permission is granted. It is also deemed appropriate for a record of all installed underground apparatus to be kept, and that VAULT as an electronic repository of plant information, will provide a suitable solution.

**Q.** How should details of the apparatus installed be recorded on the SRWR; by whom and when?

**A.** The plant information should be recorded by the roads authority issuing the permission. This information is required of the applicant as a condition of giving the permission. The recording of the information on VAULT is not considered onerous for the roads authority.

**Q.** What plant information should be supplied by the applicant and in what format?

**A.** The SRWR Management Group is considering a specification for the data to be provided. Details of this specification will be included in this document once finalised.

**Q.** If apparatus is to be adopted by a statutory undertaker, when should they add the information to their records?

**A.** Since information will already have been added to VAULT by the roads authority prior to adoption it is important to ensure the data is not duplicated. It should be removed from the roads authority submission and added to the undertakers submission at the same time.

**Q.** Are there common inspection arrangements, including the amount of chargeable inspections that a roads authority can carry out?

**A.** Given most S109 permission applicants would have a limited track record, the roads authority will be able to carry out chargeable inspections on 100% of their works.

This decision is explained by inspections of road works undertaken under S109 of NRSWA pursuant to regulation 3(2) of the Road Works (Inspection Fees) (Scotland) Regulations 2003. This is based on the permission holder having a history of S109 permissions to determine how many chargeable inspections can be carried out, which is difficult to manage in situations where there is a limited history.

The legislation recognises S109 permission holders as statutory undertakers. Given that permission holders can often be small firms and may no experience in undertaking works, it was suggested that roads authorities to undertake a greater number of chargeable inspections.

**Q.** What should the approach be for dealing with service connections where permission to excavate under S109 permission had not been sought beforehand?

**A.** The issue of excavation without permission through S109 is covered through provisions contained under S110 of NRSWA.

Third party statutory undertakers (i.e. other undertakers in the RAUC(S) community, not the S109 applicant) are not required to ensure proprietary processes had been complied with, such as obtaining permission, prior to providing a service connection. Despite this third party statutory undertakers are be encouraged to check a S109 permission has been granted before working in an excavation as good practice.

It is considered that the third party statutory undertaker making a connection is effectively a 'contractor' to the person instructing the unauthorised road works. That person is deemed to have committed a summary offence under S110 of NRSWA.

## **Annex B**

### **Letter Templates**

A suite of anonymised letters has been produced. Copies of these letters have been attached to this document, but electronic copies are available for download from the Scottish Road Works Commissioner's website under Legislation & Guidance.

Here is a list of the files:

- No 00 S109 Checklist 2013.xlsx
- No 01 NRSWA 109 APPLICATION 2013.xlsx
- No 02 NRSWA 109 CONTRACTOR PROFORMA 2013.xlsx
- No 03 Notes for GUIDANCE 2013.docx
- No 04 Acknowledgement Letter 2013.docx
- No 05 Acknowledge 2 NRSWA 109 2013.docx
- No 06 Interested RA or Undertaker Letter 2013.docx
- No 07 NRSWA 109 PERMISSION Letter 2013.docx
- No 08 NRSWA 109 CONDITIONS 2013.docx



TRANSPORTATION - ROAD NETWORK MANAGEMENT

NAME OF APPLICANT:-

PROCEDURE FOR ASSESSING AND ISSUING CONSENTS  
 CONSENT No  
 RECEIPT No

LOCATION OF WORKS:-

TYPE OF PERMIT:-

1 APPLICATION RECEIVED - DATE :

|   |  | YES | NO | COMMENTS |
|---|--|-----|----|----------|
| A | APPLICATION COMPLETED AND SIGNED   |     |    |          |
| B | CONTRACTORS PROFORMA COMPLETED AND SIGNED  |     |    |          |
| D | NOTES FOR GUIDANCE GIVEN TO APPLICANT WITH FORMS A and B   |     |    |          |
| E | ACKNOWLEDGEMENT FORM (1) TO BE FILLED IN/PROGRESSED BY ADMIN   |     |    |          |
| F | ACKNOWLEDGEMENT FORM (2) TO BE USED IF FURTHER INFO OR DOCUMENTATION IS STILL REQUIRED TO SUPPORT APPLICATION. |     |    |          |
| G | FEE INCLUDED   |     |    |          |
| H | PLANS ATTACHED (LOCATION, APPARATUS AND SPECIFICATIONS)  |     |    |          |
| I | COPY OF CURRENT CERTIFICATE OF PUBLIC LIABILITY INSURANCE  |     |    |          |
| J | COPY OF NRSWA ACCREDITATION CERTIFICATE FOR WORKS SUPERVISOR   |     |    |          |
| K | COPY OF NRSWA ACCREDITATION CERTIFICATE FOR WORKS OPERATIVE  |     |    |          |
| L | PROFORMA TO BE ISSUED/SENT TO POTENTIALLY AFFECTED UTILITIES. (FIREMASTER)                                     |     |    |          |

2 ASSESS APPLICATION

|   |   |  |  |  |
|---|---|--|--|--|
| A | APPROVED / REJECTED   |  |  |  |
| B | ISSUE LETTER OF REFUSAL   |  |  |  |
| C | PREPARE LETTER INDICATING THE GRANTING OF PERMISSION TO EXECUTE WORKS   |  |  |  |
| D | CONDITIONS OF PERMISSION TO EXECUTE WORKS   |  |  |  |
| E | NOTIFICATION OF REINSTATEMENT, TO BE SENT WITH DOCUMENTS 7 & 8 (to be filled in by the applicant upon completion of works.) |  |  |  |
| F | DETAILS OF APPARATUS/STRUCTURES NOT BELONGING TO STATUTORY UNDERTAKERS (IF APPLICABLE)                                      |  |  |  |

3 PROCESS APPLICATION

|   |  |  |  |  |
|---|--|--|--|--|
| A | RECORD INTO DATABASE                       |  |  |  |
| C | ATTACH DOCUMENTS (PLANS, CONDITIONS)       |  |  |  |
| D | RENEWAL - SPECIAL CONDITIONS FROM ORIGINAL |  |  |  |
| E | CONSENT COPIED & ATTACHED                  |  |  |  |

4 ISSUE CONSENT

|   |   |  |  |  |
|---|---|--|--|--|
| A | CONSENT TO AUTHORISED SIGNATORY FOR SIGNING |  |  |  |
| B | DATE ISSUED                                 |  |  |  |

5 CERTIFICATION OF REINSTATEMENT (OP3)

|   |  |  |  |  |
|---|--|--|--|--|
| A | CERTIFICATION OF REINSTATEMENT RECEIVED    |  |  |  |
| B | REINSTATEMENT CHECKED BY NETWORK INSPECTOR |  |  |  |
| C | ISSUE LETTER RE RECEIPT OF CERTIFICATION   |  |  |  |

ADDITIONAL COMMENTS:-

INSERT COUNCIL NAME & LOGO

NEW ROADS AND STREETWORKS ACT 1991 PART IV SECTION 109

**APPLICATION FOR PERMISSION TO EXECUTE WORKS**

FOR THE PURPOSE OF  
PLACING, MAINTAINING, ADJUSTING OR REMOVING APPARATUS IN, OR UNDER A ROAD  
( INCLUDING EXCAVATING IN OR BORING UNDER THE ROAD )

Official use only  
REF NO.

*APPLICATION DETAILS*

**1. NAME & ADDRESS OF APPLICANT(S)**

I/We.....  
Of.....Tel.....

**2. PURPOSE OF PROPOSED WORKS**

Under the terms of the above Act, apply for permission to.....  
.....

**3. LOCATION OF PROPOSED WORKS**

At.....

**4. COMMENCEMENT DATE AND DURATION**

Commencing on.....For an expected duration of.....

**5. DETAILS OF PROPOSED WORKS**

In conformity with the enclosed plan(s) (3 copies) Drawing Nos.....

**6. DECLARATION**

I/we have read the Notes for Guidance.

I/we confirm enclosure of the Basic Inspection Fee and understand that additional inspection fees and costs may become due, as explained in the Notes for Guidance.

I/we confirm I/we will pay any such additional inspection fees and costs in the timescales specified subject to the undertaking of any additional inspections by the Roads Authority being in compliance with the New Roads and Street Works Act 1991.

I/we accept that any permission granted will be subject to the Standard Conditions and any Special Conditions which may be imposed and that I/we must accept and abide by those conditions for permission to remain valid.

I/we accept that by signing this declaration I/we will burden the successor to the Title of the property with the conditions of any permission which may be granted and I/we will subsequently record the conditions as part of that Title.

.....DATE.....  
SIGNATURE OF APPLICANT(S)

.....DATE.....

*ADDITIONAL INFORMATION*

**A. NAME AND ADDRESS OF AGENT**

Name.....Tel.....Fax.....  
Address.....

**B. CONTRACTORS DETAILS ( SEE ATTACHED PROFORMA )**

Your application cannot be processed until the attached proforma is completed and returned (with the requested information).

**C. WHERE TO SEND THIS APPLICATION**

INSERT OFFICE NAME AND ADDRESS AND CONTACT DETAILS

NEW ROADS AND STREET WORKS ACT 1991 PART IV SECTION 109

**INTENTION TO EXECUTE ROADWORKS - CONTRACTOR PROFORMA**

FOR THE PURPOSE OF  
PLACING, MAINTAINING, ADJUSTING OR REMOVING APPARATUS IN, OR UNDER A ROAD  
( INCLUDING EXCAVATING IN OR BORING UNDER THE ROAD )

Official use only  
REF NO.

*CONTRACTORS CONTACT DETAILS*

NAME.....  
ADDRESS.....  
TEL ( DAY ).....TEL ( EMERGENCY ).....FAX.....

*INFORMATION TO BE PROVIDED*

- |   |                          |
|---|--------------------------|
|   | ENCLOSED (TICK)          |
| 1. COPY OF CURRENT CERTIFICATE OF PUBLIC LIABILITY INSURANCE    | <input type="checkbox"/> |
| 2. COPY OF NRSWA ACCREDITATION CERTIFICATE FOR WORKS SUPERVISOR | <input type="checkbox"/> |
| 3. COPY OF NRSWA ACCREDITATION CERTIFICATE FOR WORKS OPERATIVE  | <input type="checkbox"/> |

*WHERE TO SEND THIS PROFORMA*

SEND THIS COMPLETED PROFORMA WITH THE REQUIRED INFORMATION, ALONG WITH THE APPLICATION FORM, TO:

INSERT COUNCIL NAME ADDRESS AND CONTACT DETAILS

**NOTE:**

THE APPLICATION FOR PERMISSION TO EXECUTE ROADWORKS CANNOT BE PROCESSED UNTIL THIS COMPLETED PROFORMA (WITH THE REQUIRED INFORMATION) IS RETURNED.

**[INSERT COUNCIL NAME & LOGO]**

**NEW ROADS AND STREET WORKS ACT 1991 PART IV SECTION 109**

**APPLICATION FOR PERMISSION TO EXECUTE WORKS  
FOR THE PURPOSE OF**

**PLACING, MAINTAINING, ADJUSTING, OR REMOVING APPARATUS IN, OR UNDER, A ROAD  
(INCLUDING EXCAVATING IN OR BORING UNDER THE ROAD)**

**NOTES FOR GUIDANCE TO APPLICANTS**

(Paragraph numbers relate to the application form)

**1 NAME AND ADDRESS OF APPLICANTS**

The applicant must either be the owner of the property/premises to which the apparatus relates, or the owners representative. (If the owner is also the Agent or Contractor for the proposed works, then they must still complete Sections A or B of the application form)

**2 PURPOSE OF PROPOSED WORKS**

Please state the purpose of the proposed works eg lay sewer service connection, lay irrigation pipe etc.

**3 LOCATION OF PROPOSED WORKS**

Please be as precise as possible giving road name and route number (if known) including town or village name and adjacent house names or numbers. In the case of new roads give as much information as possible about adjacent or nearby roads. Please also state whether excavations will affect the verge, service strip, footway, carriageway or a combination of these.

Please note that if the road in which the works are proposed to be carried out is not a public road, (ie not the responsibility of [XXXX] Council for maintenance purposes) then permission will be required from the road manager or the persons responsible for that road.

**4 COMMENCEMENT DATE AND DURATION**

Under the terms of the New Roads and Street Works Act 1991 Part IV Section 109, the Roads Authority has a duty to give not less than 10 working days notice to any other Authority or person who may be responsible for a structure in the road, or have plant or equipment in or under the road, that could be affected by your proposed works. In consideration of this, the time required to process your application, and since you will be required to liaise with undertakers before commencing work, please apply **[at least 15 working days]** (excluding Public Holidays) prior to the intended commencement date for the works. However you must be aware of the implications of **standard conditions** 4, 6, 7, 8 & 9 on the proposed commencement date where these conditions apply. See overleaf.

Certain roads are classified as Traffic Sensitive, or having Special Engineering Difficulties, under the terms of the Act. If your proposed works are on one of these roads it will be necessary to extend the minimum time between receipt of your application and the intended commencement date. It may also be necessary to agree alternative construction methods or specifications with you. You will be advised if these circumstances will apply and you must bear this in mind when planning your works. It is essential that, well in advance of making an application, you make yourself aware of all these details and other details relating to traffic management, etc. It is therefore essential to discuss all aspects of the proposed works by contacting the Roads Authority.

## 5 DETAILS OF PROPOSED WORKS

Since the Roads Authority has a duty to record the location of any apparatus laid in or under the road pursuant to Section 109, you must provide plans to support the application preferably in an electronic format (CAD / GIS) otherwise 3 hard copies of such plans to a scale, (ideally 1/500). These will be retained by the Roads Authority and one copy may be returned to show the location of the Roads Authority apparatus if applicable. They must show accurately where the apparatus will be laid in relation to the existing road layout and road features eg street lighting columns, pelican crossings etc.

## 6 DECLARATION

### BASIC INSPECTION FEE

Under the terms of Section 107 and 134 of the Act, the Roads Authority has a right to charge for inspections of the works, which have been given permission under Section 109. Inspections can be done at defined stages of the works as follows:

|            |   |
|------------|---|
| CATEGORY A | Inspection undertaken during progress of the works  |
| CATEGORY B | Inspections undertaken within 6 months following interim or permanent reinstatement   |
| CATEGORY C | Inspections undertaken within 3 months preceding the end of guarantee period (24 months or 36 months for excavations deeper than 1.5 m) |

The basic inspection fee of £[XX] covers all 3 categories. The fee, or any part thereof, is non refundable once works have commenced where permission has been granted. Should the works not commence for any good reason where permission has been granted or if permission is refused, then the inspection fee will be refunded in full.

### ADDITIONAL INSPECTION FEES AND COSTS

Please note that under Section 131 of the Act, the Roads Authority may undertake Investigatory works as appears to them to be necessary to ascertain whether or not the works comply with the appropriate requirements of the Act and its various Codes of Practice and Specifications. Should these investigations reveal that the works do not comply, then the Roads Authority may charge for these works and for additional inspections at the following stages:

- a) at a joint inspection to determine the nature of the failure and agree remedial works
- b) at an inspection of the remedial works in progress
- c) at an inspection when the remedial works are complete

These additional inspections are currently charged at £[XX] per inspection and where appropriate, the applicant will be invoiced for any such additional fee(s). The cost of any Investigatory works will be the Roads Authorities reasonable costs to undertake such things as coring or trial-holes etc. These reasonable costs will be invoiced to the applicant and will include general staff costs and overheads.

Also under the terms of Section 131 of the Act, should agreed remedial works not be undertaken within a reasonable timescale as defined by the Roads Authority, and indicated on a "Notice of Failure", then the Roads Authority may carry out the necessary works and recover the costs reasonably incurred in doing so from the applicant. Similarly, the reasonable costs incurred by the Roads Authority in attending to dangers associated with the works may be recovered from the applicant. In exceptional circumstances, this can be done without giving notice of intent to the applicant, agent or contractor and could extend to instructing the contractor to leave the site.

## ADVICE ON CONDITIONS RELATING TO ANY PERMISSION THAT MAY BE GRANTED

If the application is approved and permission granted, such permission will be subject to various conditions set by the Roads Authority. The conditions will be standard, but may include specific requirements in relation to the particular Road Works Permission being sought. Should the applicant wish to read or discuss the standard conditions before making a formal application, then please telephone.

**Please note the following conditions, extracted from the list of standard conditions, which the applicant should be particularly aware of before making application.**

### **Condition No 4**

Permission to execute works will remain valid for a period of 7 working days from the intended commencement date for the works, unless withdrawn by the Roads Authority where deemed appropriate. Further application must be made if the works do not commence within the 7 day period. (It may not be necessary to pay an additional basic inspection fee where the Roads Authority has not refunded the initial payment)

### **Condition No 6**

Permission under Section 109 of the Act does not extend to other ancillary activities such as depositing a skip, occupying the road with building materials, erecting a scaffold, erecting temporary traffic lights or Stop/Go boards, forming a footway crossing, etc. Further advice and permissions must be sought from the Roads Authority.

### **Condition No 7**

Permission under Section 109 of the Act does not exempt the applicant from obtaining any other permission which may be required eg Planning Permission, permission to connect to sewerage drainage/water systems, etc.

### **Condition No 8**

It is essential that, well in advance of making any application, you discuss with the Roads Authority any requirement for a temporary Notice/Order to close or restrict traffic in a road (at least 6 weeks for a closure **order** before commencement of the works). Separate formal application will be required.

### **Condition No 9**

It is essential that, well in advance of making any application, you discuss with the Roads Authority any requirement for temporary restriction to traffic by means of portable traffic signals. Separate formal application may be required.

### **Condition No 10(a) Safety, Signing, Lighting and Guarding**

Under the terms of Section 124 of NRSWA 1991, the applicant must ensure that all excavations or obstructions in the road are adequately guarded and lit and that such traffic signs are placed, maintained and where necessary operated, as are reasonably required for the guidance or direction of road users in accordance with Section 120 of the Roads (Scotland) Act 1984 (duty to have regard to the needs of people with a disability). Failure to comply with Section 124 of NRSWA 1991 is an offence and is liable on summary conviction to a fine not exceeding level **[XX]** on the standard scale.

If the applicant fails to comply with these requirements, the Roads Authority may take any steps as necessary and recover reasonable costs from the applicant.

Legal requirements in relation to Safety, Signing, Lighting and Guarding are contained in "Safety at Street Works and Road Works - A Code of Practice", and Chapter 8 of the Traffic Signs Manual.

**Condition 10(b) Qualifications of Operatives and Supervisors**

Under the terms of Section 126 of NRSWA 1991, the applicant must ensure, except as otherwise prescribed, that road works involving excavation in, or boring under, a road are supervised by a person having a prescribed qualification as a supervisor, and that there is on site at all times, when the works are in progress, at least one person having a prescribed qualification as a trained operative.

Our Ref :  
Your Ref :  
Direct Line :  
Fax No. :  
E-Mail :

Date: [XX/XX/XXXX]

[INSERT NAME AND ADDRESS OF APPLICANT]

Dear Sirs

**NEW ROADS AND STREET WORKS ACT 1991, PART IV, SECTION 109  
APPLICATION FOR PERMISSION TO EXECUTE WORKS:**

I acknowledge receipt of your application dated [XX/XX/XXXX] for permission to execute works at [LOCATION] for the purpose of [WORK DESCRIPTION]. This permission relates to works within the public road only, which is currently being processed.

Please note the following (where applicable):

| <u>Required Information</u>                  | <u>Received</u> | <u>Not Received</u> |
|--|-----------------|---------------------|
| Basic Inspection Fee                         | √               |                     |
| Plans(s) - To be of contract drawing quality | √               |                     |
| Contractors Proforma                         | √               |                     |
| Contractors Insurance Information            | √               |                     |
| Contractors NRSWA Accreditation Information  | √               |                     |

Other

Any information not received must be forwarded as soon as possible before your application can be fully processed.

I will be notifying the appropriate Statutory Undertakers, and any other affected party, of your proposals as necessary once your application has been fully processed. It is possible they may own, or be responsible for, apparatus in the road at the location of your works.

As defined in the NRSWA 1991, it is also your duty to liaise with Statutory Undertakers as appropriate. You must secure information on the location of their apparatus and how your works may affect that apparatus. You must do this by telephoning the "Dial before you dig" one call centre (08000 231 251) where your enquiry details will be passed on to the various Undertakers who, in turn, will furnish you with the necessary information.

Yours faithfully

[INSERT SIGNATORY]

Letter: Ackn 1



Our Ref :  
Your Ref :  
Direct Line :  
Fax No. :  
E-Mail :

Date: [XX/XX/XXXX]

[INSERT NAME AND ADDRESS OF APPLICANT]

Dear Sir/Madam

**NEW ROADS AND STREET WORKS ACT 1991, PART IV, SECTION 109  
APPLICATION FOR PERMISSION TO EXECUTE WORKS**

I refer to your application dated [XX/XX/XXXX] for permission to execute works at [LOCATION] for the purpose of [WORK DESCRIPTION].

Further to my acknowledgement dated I now confirm the following (where applicable):

| <u>Required Information</u>                 | <u>Received</u>          | <u>Still Awaited</u> |
|---|--------------------------|----------------------|
| Basic Inspection Fee                        | <input type="checkbox"/> | √                    |
| Plan(s) – To be of contract drawing quality | <input type="checkbox"/> | √                    |
| Contractors Proforma                        | <input type="checkbox"/> | √                    |
| Contractors Insurance Information           | <input type="checkbox"/> | √                    |
| Contractors NRSWA Accreditation Information | <input type="checkbox"/> | √                    |

Other

I cannot fully process your application if any of the required information is still awaited.

Yours faithfully

[INSERT SIGNATORY]

Our Ref :  
Your Ref :  
Direct Line :  
Fax No. :  
E-Mail :

Date: [XX/XX/XXXX]

[INSERT NAME AND ADDRESS OF APPLICANT]

Dear Sirs

**NEW ROADS AND STREET WORKS ACT 1991, PART IV, SECTION 109  
NOTICE OF INTENTION TO GRANT PERMISSION TO EXECUTE WORKS FOR THE  
PURPOSE OF PLACING, MAINTAINING, ADJUSTING OR REMOVING APPARATUS IN,  
OR UNDER, A ROAD. [APPLICATION REF]**

I intend to grant the above permission for the above works to commence on to the applicant detailed below. Under the terms of Section 109 of the Act, I hereby serve you with this Notice of Intent since you may have apparatus or structures in the road that could be affected.

I will be providing the applicant with details of your apparatus/structures, from my records, when I grant permission.

Name and Address of Applicant

[XXXXXX]

Name and Address of Contractor

[XXXXXX]

Purpose of Proposed Roadworks

[XXXXXX]

Location of Proposed Roadworks

[XXXXXX]

Yours faithfully

[INSERT SIGNATORY]

Letter: Notice 1

Our Ref :  
Your Ref :  
Direct Line :  
Fax No. :  
E-Mail :

Date: [XX/XX/XXXX]

[INSERT NAME AND ADDRESS OF APPLICANT]

Dear Sirs

**NEW ROADS & STREET WORKS ACT 1991, PART IV, SECTION 109  
PERMISSION TO EXECUTE WORKS  
APPLICATION REF NO:- [XXXXXX]**

I refer to your application dated [XX/XX/XXXX] for permission to execute works at [LOCATION] for the purpose of [WORK DESCRIPTION]. This consent relates only to works carried out on the public road.

I am pleased to advise you that permission has been granted, subject to you adhering to the attached conditions. The agreed date for commencement is [XX/XX/XXXX]. You must advise me as soon as possible if you propose to change the start date and if there are any other alterations to the nature or programming of the works.

This permission will lapse on [INSERT DATE (7DAYS AFTER INTENDED COMMENCEMENT DATE)] if the works have not commenced by that date.

Please note that the road at the location of your proposed works has been categorised as Type [XX] in accordance with the "Specification for the Reinstatement of Openings in Roads – A code of Practice". If any restrictions apply to your works at this location, you will find details in the condition of permission. If I am aware of any apparatus or structures belonging to parties other than Statutory Undertakers, which may be affected by your works, you will find details enclosed.

Also enclosed is a "Notification of Reinstatement" proforma, which must be completed as appropriate within 1 day of making a reinstatement.

Yours faithfully

[INSERT SIGNATORY]

Encs.

Conditions of Permission and Restrictions  
Details of apparatus/structures not belonging to Statutory Undertakers (if applicable)-Plans  
Notification of Reinstatement

NEW ROADS AND STREET WORKS ACT 1991 PART IV SECTION 109

**CONDITIONS OF PERMISSION TO EXECUTE WORKS**

**FOR THE PURPOSE OF**

**PLACING, MAINTAINING, ADJUSTING, OR REMOVING APPARATUS IN, OR UNDER, A ROAD  
(INCLUDING EXCAVATING IN, OR BORING UNDER THE ROAD)**

**STANDARD CONDITIONS**

- 1 The applicant must have signed and accepted the terms of the declaration contained within the application form and accepts the terms of the declaration and notes for guidance.
- 2 The applicant shall indemnify the Roads Authority from and against all actions, claims, demands, costs, charges, damages, losses and expenses of whatever kind or nature which may be brought or made against them or incurred by them in respect of the negligence, omission or default of the holder of the consent or those for whom the holder is responsible arising in respect of any operation authorised by his/her consent unless due to the negligence or other breach of legal duty on the part of the Roads Authority or of any person for whom the Roads Authority is responsible.
- 3 Consent can be withdrawn by the Roads Authority.
- 4 Permission to execute works will remain valid for a period of 7 working days from the intended commencement date for the works. unless withdrawn by the Roads Authority where deemed appropriate. Further application must be made if the works do not commence within the 7 day period. (It may not be necessary to pay an additional basic inspection fee where the Roads Authority has not refunded the initial payment)
- 5 Work shall not commence until the commencement date agreed with the Roads Authority, and not before the applicant has advised the Roads Authority of his/her intention to commence. The Roads Authority must be advised of any alterations to the commencement date at least 10 days, (excluding public holidays) before the revised start date.
- 6 Permission under Section 109 of the Act does not extend to other ancillary activities such as depositing a skip or erecting a scaffold etc. Further advice and permissions must be sought from the Roads Authority.
- 7 Permission under Section 109 of the Act does not exempt the applicant from obtaining any other permissions which may be required e.g. planning permission, permission to connect to sewerage, drainage/water supplies etc.
- 8 It is essential that as part of any application, you discuss with the Roads Authority any requirement for a temporary Notice/Order to close or restrict traffic in a road (at least 6 weeks for a **Road Closure Order** before commencement of the works). A separate formal application will be required.
- 9 It is essential that as part of the application, you identify any temporary restrictions to traffic by means of portable traffic signals. Separate formal application is required from the Roads Authority, and a fee may be payable.
- 10 Works shall be carried out in accordance with the New Roads and Street Works Act 1991, related regulations, and the following (where applicable) including amendments.
  - Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and related Matters.
  - Measures necessary where apparatus is affected by major works (Diversionary Works) - a Code of Practice.
  - Specification for the Reinstatement of Openings in Highways - a Code of Practice.

- Code of Practice for Inspections.
- Safety at Street Works and Road Works - a Code of Practice. Chapter 8 of the Traffic Signs Manual.
- Any other Act, Regulation or Code of Practice, which is introduced by reference in any of the above. (Where applicable).

These documents are available from the website of The Scottish Roadworks Commissioner (<http://www.roadworksscotland.gov.uk>), under Legislation and Guidance.

Under the terms of the "Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters", the Roads Authority should ensure the applicant is made aware of his/her obligations under the New Roads and Street Works Act 1991. For this reason, the applicant's attention is especially drawn to the following requirements which form part of these conditions and which are embodied in the Act, Regulations or Codes of Practice. (Note - this is not an exhaustive list of the applicant's obligations under the Act but only those, which the above Code of Practice suggests, should be drawn to the attention of the applicant).

10(a) **Safety, Signing, Lighting and Guarding**

Under the terms of Section 124 of NRSWA 1991, the applicant must ensure that all excavations or obstructions in the road are adequately guarded and lit and that such traffic signs are placed, maintained, and where necessary operated, as are reasonably required for the guidance or direction of road users in accordance with Section 120 of the Roads (Scotland) Act 1984 (duty to have regard to the needs of people with a disability). Failure to comply with Section 124 of the NRSWA 1991 is an offence and is liable on summary conviction to a fine not exceeding level [XX] on the standard scale.

If the applicant fails to comply with these requirements, the Roads Authority may take any steps as necessary and recover reasonable costs from the applicant.

Legal requirements in relation to Safety, Signing, Lighting and Guarding are contained in "Safety at Street Works and Road Works - a Code of Practice".

10(b) **Qualifications of Operatives and Supervisors**

Under the terms of Section 126 of NRSWA 1991, the applicant must ensure, except as otherwise prescribed, that works involving excavation in, or boring under, a road are supervised by a person having a prescribed qualification as a supervisor, and that there is on site at all times, when the works are in progress, at least one person having a prescribed qualification as a trained operative.

10(c) **Delays and Obstructions**

Under the terms of Section 125 of NRSWA 1991, the applicant must ensure that all works involving excavation in, or boring under, a road are completed with all such dispatch as is reasonably practicable. Failure to do so is an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Where the applicant creates an obstruction in a road to a greater extent or for a longer period than is reasonably necessary, the Roads Authority may by notice require them to mitigate or remove the obstruction. If the applicant fails to comply with such a notice within 24 hours of receiving it, or such longer period as the Roads Authority may specify, the Roads Authority may take reasonable steps to mitigate or remove the obstruction and recover the costs from the applicant.

10(d) **Undertaker's Apparatus which might be affected**

Under the terms of Section 128 of NRSWA 1991, the applicant must take all reasonably practicable steps to give any undertaker, who may have apparatus in the road likely to be affected by the road works, reasonable facility for monitoring the execution of the works and the applicant must comply with any requirement made by the undertaker which is necessary for protecting or securing the apparatus. Failure to comply is an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Applicants must, therefore, take all reasonable steps to establish if apparatus will be affected by the road works and where such apparatus is likely to be positioned in the road. Further advice regarding this is contained in the letter of acknowledgement of receipt of application.

10(e) **Reinstatement**

Under the terms of Section 129 item 4: of NRSWA 1991, the applicant must begin the reinstatement with all dispatch. Before the end of the next working day after the day on which the reinstatement is completed (whether interim or permanent) the applicant must inform the Roads Authority on the form provided within one day of making the reinstatement. Any interim reinstatement must be made permanent as soon as reasonably practicable and in any event within 6 months from the date on which it was completed. Failure to comply with Section 129 is an offence and is liable on summary conviction to a fine not exceeding level [XX] on the standard scale.

Under the terms of Section 130 of NRSWA 1991, the applicant must comply with the specification of materials to be used and the standards of workmanship to be observed. The applicant will be responsible for maintaining the reinstatement, whether interim or permanent. The guarantee period for the permanent reinstatement will normally be 2 years for openings less than 1.5m deep and normally 3 years for openings greater than 1.5m deep. Failure to comply with Section 130 is an offence and is liable on summary conviction to a fine not exceeding level [XX] on the standard scale.

Under the terms of Section 131 of NRSWA 1991, the Roads Authority may carry out such Investigatory works as appear to be necessary to ascertain whether an applicant has complied with their duties under Part IV of the NRSWA 1991. If such a failure is disclosed, the applicant shall bear the cost of the Investigatory works, if no failure is disclosed the Roads Authority shall bear the cost of the investigatory works. Where the applicant has failed to comply with their duties in relation to reinstatement, they shall bear the cost of

- a) a joint inspection to determine the nature of the failure and what remedial work is required
- b) an inspection by the Roads Authority of the remedial work in progress
- c) an inspection by the Roads Authority when remedial works have been completed

When a carriageway or footway is disturbed unless the Roads Authority is notified in writing of any paving defects, including any kerb defects, before the excavation is carried out, it will be assumed that the same is in good order and the holder of the consent shall be held responsible for any defects found after the restoration of the opening.

Where the applicant has failed to comply with their duties under the Act, the Roads Authority may serve Notice requiring remedial works to be undertaken within such a reasonable period as may be specified in the Notice. If the applicant fails to comply with the Notice, the Roads Authority may carry out the necessary work and recover costs from the applicant. If it appears to the Roads Authority that the reinstatement is causing a danger to road users and the applicant, agent, or contractor cannot be contacted or fails to offset the danger immediately, then the Authority may carry out works without notice to the applicant and may recover costs from the applicant.

10(f) **Records of Apparatus**

Under the terms of the "Code of Practice for the Co-ordination of Street Works for Road Purposes and Related Matters", the Roads Authority is responsible for holding records of apparatus laid which is not subsequently adopted by a Statutory Undertaker e.g. gas, water, electricity etc. Where such apparatus is subsequently adopted by a Statutory Undertaker, then that Undertaker will be responsible for holding records of the apparatus from the date of adoption. The applicant must provide the Roads Authority with 2 copies of "as built" drawings of the apparatus as laid showing detailed information of its depth, location, purpose etc. This information should be provided in an electronic format (CAD/GIS) required within [XX] weeks of reinstatement.

10(g) **The Needs of People with Disabilities**

The applicant must bear in mind the special needs of people with disabilities when undertaking the works in relation to safe passage/access. Special precautions are required to cater for people with impaired vision or mobility. Legal requirements can be found in "Safety at Street Works and Road Works - a Code of Practice" and in Chapter 8 of the Traffic Signs Manual.

10(h) **Laying of Apparatus**

Whenever possible, apparatus should be laid in accordance with NJUG (the National Joint Utilities Group) guidance available from their website - <http://www.njug.org.uk>.

- 11 Work shall be in accordance with all documents submitted with the application and as subsequently agreed with the Roads Authority.
- 12 No existing apparatus e.g. culverts, pipes, drains, ducts, cables, roadside ditches, road gullies, manholes, catch pits or other chambers or other property shall be altered without the consent of the proprietor or authority concerned.
- 13 In no case shall surface boxes, chambers or other fittings be placed within the road pavement layers, footway construction layers or roadside verge without the consent of the Roads Authority.

**ADDITIONAL SITE SPECIFIC CONDITIONS AND RESTRICTIONS (IF APPLICABLE) ARE SET OUT ON THE FOLLOWING PAGE**

**ADDITIONAL SPECIFIC CONDITIONS AND RESTRICTIONS**

**[INPUT SITE SPECIFIC CONDITIONS HERE]**