



## West Lothian Council

### COMMUNITY SAFETY COMMITTEE

#### MATERIALS ON ROADS

#### REPORT BY DEVELOPMENT & BUILDING CONTROL MANAGER, HIGHWAYS MANAGER AND ROADS & GROUNDS MAINTENANCE MANAGER

##### A. PURPOSE OF REPORT

The purpose of this report is to highlight the problem of developers' and contractors' vehicles depositing mud, blaes and other materials on public roads during construction or extraction works. The report goes on to identify the resources available to the council and to recommend an action plan to address the issue.

##### B. RECOMMENDATION

It is recommended that committee notes the terms of the report and approves the action plan.

##### C. SUMMARY OF IMPLICATIONS

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| <b>I Council Values</b>                                   | Focusing on our customers' needs; making best use of our resources; and working in partnership.   |
| <b>II Policy and Legal</b>                                | The action plan is based on the powers available to the council specified in the Town and Country Planning (Scotland) Act 1997 and the Road (Scotland) Act 1984.  |
| <b>III Resources - (Financial, Staffing and Property)</b> | The action plan co-ordinates the existing resources available to the council and its partners. There maybe a financial commitment if the council is required to take direct action but there are mechanisms available to recover costs. |
| <b>IV Consultations</b>                                   | The police and the Scottish Environmental Protection Agency have been consulted on the action plan.   |

## **D. TERMS OF REPORT**

### **Background**

Over the last winter and spring there has been a distinct problem of heavy vehicles leaving development and operational sites, depositing mud and other materials on the public highway. This has resulted in numerous complaints from residents in the locality who are concerned about the dirty condition of roads and footpaths with a resultant loss of amenity, a problem in the cleanliness of other vehicles and problems with highway safety as these materials can lead to an increased risk of skidding and accident. In the winter months, the problem is a deposition of mud and shale and in the summer, one of dust and windblown pollution.

There are other problems for the council as these materials can lead to blocked drains and gullies which can result in a problem of localised flooding and an increased maintenance burden in clearing the blockages.

These problems are mainly generated by heavy vehicles leaving:

- larger scale construction sites;
- coal and shale extraction sites;
- waste tipping sites; and
- farm fields.

The council must also be aware that there can be a cumulative impact if there are a number of construction sites in close proximity. This will be an important consideration when dealing with larger scale development in the core development areas to be identified in the forthcoming local plan. In essence, the problem occurs where developers are in breach of conditions attached to planning permissions which require the provision of:

- a stretch of tarmac road to loosen dirt from wheels;
- adequate, well maintained wheel washing facilities or bowsers;
- grids at exit points; and
- brushes available for regular road sweeping.

### **Powers available to the council**

In addressing the problems caused by the deposit of materials on the highway and footpath network the committee will be aware of the powers at its disposal through both the Roads (Scotland) Act 1984 and the Town and Country Planning (Scotland) Act 1997 as follows:

- conditioning of a planning permission to ensure that there are adequate wheel washing and cleaning facilities at exit points in development and extraction sites.

- issuing of breach of condition or enforcement notices if these conditions are not adhered to. Non-compliance can result in referral to the procurator fiscal for prosecution. It should be noted that there is no right of appeal against a breach of condition notice.
- entering into a financial bond with the developer / operator to ensure that monies are available for road cleaning if the council needs to be compensated for direct action. This is a more common tool for ensuring a "quick clean" in respect of major development sites or where a number of sites may lie in close proximity to each other.
- issuing of a 48 hour notice to ensure the cleaning of the road. Failure to comply with this would result in an offence and referral to the procurator fiscal for prosecution. This could result in:
  - direct and more immediate action by the Highways unit to clean the road with the powers to recover costs.
  - the issue of a stop notice by the Development Control unit. It should be noted that, despite the implication, this does not have immediate effect and if the notice is successfully challenged then the council could be liable to compensation which could be substantial.

SEPA has powers to pursue this problem if it results in the pollution of a water course. The police have powers to prosecute if lorries are not satisfactorily hopped and material is being deposited on the highway.

### **Resources for monitoring**

The council has a number of staff that are available to monitor construction or operational sites. Development control enforcement staff are responsible for ensuring that conditions on planning permissions are properly imposed, monitored and enforced. The case officers processing applications are also responsible for negotiating bonds with developers.

The Highways unit is responsible for the road system within a development site and the Roads Maintenance team within Operational Services is responsible for the condition of the public highway outwith development sites. The NETS and Land Services teams are available to take more immediate direct action if necessary.

As mentioned above, SEPA and the police have powers and they should be called upon to implement these if required.

### **Regime for addressing the deposit of material on roads**

In identifying a mechanism to address the problem, it is essential that the relevant staff within the council liaise effectively to maximise resources and deliver the most effective corporate service. There must be an understanding of the role of each unit within the process and the clarification of trigger mechanisms to respond quickly and effectively.

The development control team will inevitably be the initiators of action and it is to review the standardisation and wording of conditions to be applied to planning permissions to avoid ambiguity and ensure consistency of approach. Once that has been completed, it is recommended that the following regime be put in place:

- Development Control imposes conditions on planning permissions. Where appropriate i.e. for large development/operation sites or areas of cumulative development, it agrees bonds with applicants.
- The development control officer will alert Highways, Roads Maintenance and the enforcement officer that development has commenced. The enforcement officer will establish and maintain a list of operational sites.
- If mud or material is deposited on the public highway, development control enforcement staff will approach the developer/operator to have the material removed and the roads and footpaths cleaned that day. The cleaning equipment at the site will be inspected and if it has not been provided or is inadequate a breach of condition notice will be served. This will specify what equipment should be installed or maintained and the (short) time period for installation. SEPA will be notified if a watercourse has been affected.
- If the developer does not respond, Roads Maintenance will serve a 48 hour notice and if not responded to will take direct action to clean the highway and footpath and recover the costs, if necessary, by claiming against any bond in place. NETS and Land Services staff may also be involved in this process. If there is no planning permission in place, this would be the procedure adopted to rectify the problem.
- If the problem recurs, the enforcement officer will refer the failure to comply with the breach of condition notice to the procurator fiscal for prosecution.
- It is imperative that development control staff negotiate with the developer to put things right, but notwithstanding the subsequent provision of the cleaning equipment, the failure to comply with the breach of condition notice will be pursued to the courts as a punitive measure.
- The Development Control Sub-Committee and the local member will be advised of any breach of condition notice served by the Development and Building Control Manager.
- Highways will monitor the condition of the road within the site to ensure that it is maintained in a clean state.
- Any vehicles leaving or arriving at an operational extraction site without being hopped will be reported to the police for prosecution.
- An advice note specifying this process will be sent to all developers/operators as part of a publicity campaign and with each planning permission.
- This process should be recognised in the forthcoming West Lothian Local Plan.

It should be noted that where operational sites, i.e., for mineral extraction and waste disposal, are located outwith communities, then the development control team will often negotiate the routing of heavy vehicles to and from the site. While this routing will ensure that heavy vehicles avoid urban areas, any problems with the deposit of materials on roads will be subject to the regime of control above.

**E. CONCLUSION**

The deposition of material, whether it be mud or blaes, can have a significant impact on a local community. It can also be extremely dangerous as vehicles can skid on the resultant treacherous surfaces. It is therefore important that the council has a mechanism in place to ensure that this problem does not arise, and if it does, to have staff and procedures identified to respond quickly and effectively.

**F. BACKGROUND REFERENCES**

Nil.

Appendices/Attachments: None.

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8 June 2004

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