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Cc: Mr Mark Beasley

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Sent by email

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Dear Garrett (c.i. Mark)

Transport for London Consultation Lane Rental Scheme (TLRS)

I am writing on behalf of the National Joint Utilities Group Ltd. (NJUG), the UK's only trade association representing utilities and their contractors solely on street works matters.

As you know, our focus is on promoting best practice, self-regulation and constructive two-way relationships with Government and other key stakeholders such as Transport for London (TfL). We are also the utility arm of the national Highway Authorities and Utilities Committee (HAUC(UK)), which brings together local authorities and utilities from across the UK, together with the UK Government and Devolved Administrations, to raise standards of roads and street works..

NJUG has valued the opportunity to work closely with you and colleagues in the development of this proposal for a lane rental scheme for the critical pinchpoints of the Transport for London Road Network (TLRN), and we welcome the opportunity to comment further as part of this consultation.

After consulting our members, please find attached our response comments on the suite of consultation documents, including the Consultation Document, the Guidance, the Cost Benefit Analysis (CBA), and the Appendices, and follows their format. It comprises:

- This covering letter.
- Detailed Commentary - including Executive Summary and Detailed Points.
- Response to the specific consultation questions.
- Summary of NJUG's key recommendations.

As you know NJUG is yet to be convinced that lane rental will deliver substantial additional benefits over and above the myriad of existing legislation, regulation and voluntary initiatives already available to manage street works. NJUG's view is that greater consistency and effectiveness in implementing these existing measures would deliver the same objectives at much less cost to utilities and their customers.

Additionally, as recognised by the GLA Transport Committee, at a time when there is mounting consumer and political concern about the level of utility bills and the impact on hard pressed families and businesses, it is perverse for Government and the Mayor of London to be proposing policies that will inevitably result in increases in utility bills for little or no proven benefit.

However, if lane rental is to be introduced, NJUG is committed to continuing to work constructively with you / TfL colleagues to develop and implement a scheme that is fair, robust, workable and minimises the burden on utilities and their customers. NJUG believes that any lane rental scheme should be:

- **Fair and equitable** - NJUG welcomes TfL's commitment to apply lane rental charges equally to both utility and its own works on targeted streets at targeted times, but is concerned that a change of Mayor or senior personnel within TfL could potentially remove lane rental charges from TfL's own works. **We therefore believe that if Government is serious about reducing disruption then this should be a mandatory requirement, given that highway authority works account for around 60% of works in the street on the TLRN.**
- **Targeted** - NJUG welcomes the attempt to underpin the TLRN Cost Benefit Analysis (CBA) with an evidence-based approach, and the inclusion of '*volume of traffic-based*' criteria to determine which roads will be subject to lane rental charges (higher than, and distinct from the definition of traffic-sensitive streets), and which targets only those pinch points on strategic roads with very high traffic densities.
- **Operated on an incentive and avoidable basis** – NJUG supports TfL's overall approach of a scheme which incentivises works promoters to avoid the charge by either working out of hours or returning the road to service during the busiest times by use of innovative techniques such as plating. **However, avoiding the charge may not always be possible for a variety of reasons (see our Detailed Summary), and we urge TfL to ensure that these works are then exempt from the charge.**
- **3-tiered (as advocated by London First)** – With lane rental applying to the busiest streets; permit fees applying to other busy A roads; and the smaller B roads / backstreets not attracting any fees, thus allowing prioritisation on those roads where congestion is greatest. NJUG therefore supports TfL's confirmation that permit fees will not generally apply when lane rental charges do.
- **Avoiding disruption - Not Generating Revenue** – If the streets subject to lane rental are carefully selected, and small in number, NJUG believes a successful outcome would be that the lane rental scheme generates no or minimal revenue. However, any revenue raised should be ring-fenced and invested into the development of new approaches that reduce disruption. We therefore welcome TfL's intention to ring-fence any net revenues from the proposed lane rental scheme, and the commitment to work with NJUG and utilities to determine how best to allocate the funds.
- **Time Frames** - NJUG welcomes TfL's proposal to commence the monitoring of the "*proper full year period*" from October 2012 to September 2013, and **strongly recommends that whilst the shadow running period might commence earlier, the actual scheme also commences in October 2012 too.** This will enable a sensible period of time for TfL and all works promoters to continue to work together to resolve any differing interpretation issues, make the necessary changes to the ETON and work management systems, undertake training, and negotiate revised contracts, without the additional financial pressures that lane rental charges will bring.

But - there are several key areas of concern, which NJUG wants to highlight:

Health and Safety of Workforce and the Public

NJUG is very concerned that TfL's Cost Benefit Analysis shows a doubling of the risk of fatalities in respect of night-time working. Given that safety is NJUG and its members' first priority, we are duty bound to question the intention to bring forward a scheme that admits that it will increase risks to safety. There will be circumstances where it is not safe to work in the evenings / at night, and it is vital that the TfL scheme spells out that TfL will not place undue pressure on utilities to work out-of-hours if it would be unsafe to do so, and allows those works to be undertaken during the day, with an exemption from lane rental charges.

Environmental Health constraints and concerns

The whole premise of the TfL lane rental scheme is that works can be moved from the most traffic-sensitive times to evenings / overnight. However, the potential for Environmental Health Officers (EHO) to prevent or restrict out of hours working due to noise constraints could significantly hamper this objective.

The consultation makes an assumption that working before 8pm on targeted roads will generally incur a lane rental charge, yet also states that for environmental health reasons it is possible that working after 11pm may be precluded. In these instances, utilities would have just 3 hours per night to undertake work, which would have a significant impact on operational efficiency, extending durations and increasing costs.

NJUG therefore recommends that where an EHO prevents works taking place at night, there should be an exemption from lane rental charges, but a requirement for TfL and the works promoter will work together to minimise disruption.

Also, the Cost Benefit Analysis acknowledges a number of social costs that will impact on workers and the surrounding community as a result of night-time working. These include additional noise, lighting and traffic leading to higher CO2 emissions and a reduction in air quality, but none have been calculated or factored in to the costs / benefits analysis.

Additional Utility, Customer and Community Costs / Impacts

NJUG is concerned regarding the accuracy, complexity and the impact of the inter-relationship between a number of the key assumptions included within the current Cost Benefit Analysis (CBA) which:

- Seriously underestimate the significant additional costs that activity promoters will incur in avoiding lane rental
- **As recognised by the GLA Transport Committee, these additional costs will inevitably be passed on to the customer, which will further increase energy, water, communications bills.**
- **Considerably overestimate the number of works that can realistically be transferred from traffic- sensitive times to out-of-hours, or the number of jobs where the road can be returned to service by use of plating.**
- Fails to recognise the potential additional disturbance to residents / businesses of evening / night working (as also recognised by the GLA Transport Committee).
- Does not demonstrate how any additional costs will reduce through efficiency gains, particularly in respect of utility works, given the uplift in labour costs for out-of-hours

working or the impact on operational efficiency of laying and removing plates, which will continue.

It is also worth recognising that if lane rental delivers additional benefits in terms of reduced disruption, then this will benefit motorists who are usually passing through these thoroughfares, but the lane rental charges will be paid for by the residents / businesses who live in the communities where it applies, and who will potentially face additional disturbance / longer duration works through night-working or use of plating.

Reducing Disruption

NJUG strongly suggests that lane rental charges are generally not applied at weekends / bank holidays – to incentivise activity promoters to undertake works at quieter times e.g. workathons etc. For the few occasions where works at weekends or bank holidays would prove very disruptive, then TfL and activity promoters could discuss them, and TfL can use the existing NRSWA provisions to direct the timing of works to prevent weekend working on those specific occasions.

Double Jeopardy

Finally, NJUG is very concerned that as currently drafted, utilities could be faced with both lane rental and S74 overstay charges if a job unavoidably runs over. Applying both lane rental and S74 charges would disproportionately increase utility costs (particularly if S74 is increased still further), and NJUG strongly believes on roads where lane rental applies, then S74 (and permit fees) should not apply as the additional lane rental charge is deterrent enough.

Quantifying the benefits of existing and proposed regulations

The accurate quantification of relative benefits from all the various regulatory and voluntary measures, separate from the proposed benefits of lane rental is fundamental to justifying that any benefits will outweigh the very considerable costs that works promoters will incur in either paying or avoiding lane rental charges.

NJUG therefore strongly recommends that TfL have a robust analysis of both the additional costs and benefits that the proposed scheme is likely to bring when submitting to DfT. This is particularly important, given that the DfT proposals explicitly require a lane rental scheme promoter to demonstrate that they have exhausted all other means of tackling works related disruption before applying to operate a lane rental scheme.

We hope that the attached response is useful to TfL. NJUG remains committed to working with you and the DfT, and would welcome the opportunity to discuss our response further with you. In the meantime, if you have any specific queries regarding the attached, please do not hesitate to contact me, or in my absence Jane Smith on 020 7340 8737.

Yours sincerely



Les Guest

NJUG



CEO, National Joint Utilities Group Ltd

**Transport for London Consultation
Lane Rental Scheme (TLRS)
National Joint Utilities Group Ltd (NJUG) Detailed Commentary**

1.0 Introduction

This response is submitted on behalf of the National Joint Utilities Group Ltd. (NJUG), the only UK industry association representing utilities and their contractors solely on street works matters. NJUG's represents the vast majority of electricity, gas and water companies and two of the biggest communications companies, as well as most of the major contracting organisations who undertake street works. As you are aware, we are also the utility arm of HAUC(UK).

For ease of reference, this Detailed Summary document follows the format of the suite of TfL Lane Rental Consultation documents – the Consultation Document, the Cost Benefit Analysis (CBA), and the Appendices, and should be read in conjunction with NJUG's covering letter and response to the specific consultation questions.

2.0 Executive Summary

2.1 Overview

As you know, NJUG remains unconvinced that lane rental will deliver additional benefits over and above the myriad of legislation / regulation and the voluntary initiatives that already apply to street works, and, whilst welcoming the inclusion of evidence within TfL's CBA, NJUG does not believe that it totally reflects all the costs which utilities would incur.

NJUG believes that the suggested benefits arising from the proposed lane rental scheme could be better achieved at far less cost by everyone working together harder in using the existing regulatory and voluntary initiatives consistently and effectively. In particular, **NJUG believes that the benefits that the London Code of Conduct is delivering negate the need for further regulation. Equally, these benefits, and those from existing regulation, are not recognised within the CBA and therefore not expressly excluded from the estimated benefits for the proposed lane rental scheme.**

NJUG is concerned that at a time when there is mounting consumer and political concern about the level of utility bills and the impact on hard pressed families and businesses, it is perverse for Government and the Mayor of London to be proposing policies that will inevitably result in increases in utility bills for little or no proven benefit. Even the strongest advocates of lane rental recognise that it will increase utility bills, whether utilities pay the lane rental charges or incur additional costs (see below for detail) in avoiding the charge – and NJUG has real concerns that the true cost to hard pressed families has been seriously underestimated.

This has been highlighted by the GLA Transport Committee, who calls on Government to ensure that economic regulators have sufficient powers and that if bills go up the benefits of the scheme justify this. However, NJUG must emphasise that economic regulators' primary duty is to protect the consumer, but if lane rental charges, or the cost of avoiding them, become a cost of undertaking street works, regulators will allow efficiently incurred costs to be passed on to the customer.

Equally, domestic or business consumers requiring a new gas, water, electricity or communications connection within one of the lane rental pinchpoints or streets, will see a dramatic increase in the connection costs. This will create a large cost differential from those businesses / residents who live outside lane rental areas.

Additionally, whilst NJUG recognises the objectives of TfL's cap on works, we are concerned that further reductions in the level of the cap could prevent essential works taking place efficiently and effectively. In particular, the HSE require all cast-iron gas mains within 30 metres of a building to be replaced, and the Environment Agency have set water quality and leakage targets for water companies. Inevitably, the Government's economic growth agenda and the Olympics will, and already are, increasing the number of requests for customer connections or upgrades to services. Therefore the volume of works is not going to reduce for the foreseeable future, and so, whilst the existing cap is acting as an effective incentive to co-ordinate works, a lower level cap may not be achievable because it is not always possible to undertake works at the same time e.g. customer connections have to be undertaken within specified periods of time; gas and water mains replacements are nearly all undertaken using minimum-dig techniques; joint-working in the same trench is not always safe or operationally possible.

Recommendation: NJUG recommends that the current cap level is retained, and given that the Mayor is also introducing further changes to the London Code of Conduct, TfL and works promoters should focus on maximising the benefits from the Code, rather than TfL imposing a tighter cap on the level of works.

However, if lane rental is to be implemented, NJUG as always remains dedicated to working constructively with Transport for London and the DfT to seek to develop a targeted scheme in London that is fair, workable and minimises the burden on utilities or their customers. NJUG therefore believes that any scheme should be:

- **Fair and equitable** – and must apply to all works, including both utility and authority works if it is to be effective. We therefore welcome TfL's inclusion of all activity promoters, including their own works, however, we are concerned that a change of Mayor or TfL policy could result in TfL's own works being removed from the scheme. Given that on TfL's network over 60% of the works in the street are undertaken by TfL itself, and elsewhere the figure is around 50%, we believe that if Government is serious about reducing the disruption from works in the street, then any regulations that apply to utilities should also apply to highway authority works, **and so it should make it a mandatory requirement that any lane rental charges apply on an equal basis to all works promoters (similar to permit schemes).**
- **Targeted only at pinch points on strategic roads** - NJUG welcomes TfL's inclusion of a defined volume of traffic-based criteria to ensure that lane rental applies to only those streets where there are very high traffic densities, which in London equates to just 3% of roads, albeit it is still 50% of the TLRN.
- **Operated on an incentive basis** - Utilities and highway authorities should be incentivised to work outside traffic-sensitive times and to use techniques such as plating to return the road to service where safe and appropriate to do so, in return for avoiding a lane rental charge. Within the context of NJUG's overall views of lane rental, we welcome TfL's general approach to enabling works promoters to avoid the charge, however there are a number of circumstances when this may not be possible:

- Immediate works – including both urgent and emergency works.
- Works where it would be unsafe to work at night.
- Works where an EHO prevents night-working.
- Specific TfL / authority requirements, such as 7 day concrete curing.

We have provided more detail below regarding these particular circumstances, however, in these cases **NJUG urges TfL to exempt the works from lane rental charges, and to emphasise the importance of TfL and works promoters working closely together to minimise disruption.**

- **3-tiered approach (advocated by London First)** – With lane rental applying to the busiest streets; then permit fees applying to other busy A roads; and the smaller B roads or backstreets not attracting any fees at all – thus allowing prioritisation on those roads where congestion is greatest.
- **The intention of the scheme should be to avoid disruption on the busiest streets** – If the streets subject to lane rental are carefully selected and small in number, the a successful outcome would be no or minimal revenue from any lane rental scheme, and believe this should be emphasised. However, NJUG supports TfL’s approach which ring-fences any net revenue to be re-invested into the development of innovative techniques that reduce disruption, over and above normal highways budgets, and that this must be confirmed within the regulations.

We welcome TfL’s commitment to include utilities, on behalf of their customers who ultimately will bear the additional cost, in the decision on how funds are used. **NJUG strongly believes that part of any revenue should be used to undertake an independent review of all the various regulatory and voluntary measures to manage street works, including the lane rental trials, to provide once and for all, a proper analysis of the relative costs and benefits of each element of road and street works management, as well as making optimum use of the funds on innovative research & development to reduce disruption.**

Time Frames

NJUG welcomes TfL’s proposal to commence the monitoring of the “*proper full year period*” from October 2012 to September 2013, and **strongly recommends that whilst the shadow running period might commence earlier, the actual scheme also commences in October 2012 too.** This will enable a sensible period of time for TfL and all works promoters to continue to work together to iron out all issues, make the necessary changes to the EToN and work management systems, undertake training, negotiate revised contracts and resolve any differing interpretation issues, without the additional financial pressures that lane rental charges will bring. It also enables the Scheme to commence without the unique additional constraints imposed upon works promoters due to the 2012 London Olympics and Paralympics.

In addition, there are several major areas of concern, which NJUG wants to highlight:

2.2 Key Concerns

Health and Safety of the Workforce and the Public

NJUG has real concerns that TfL are considering introducing a scheme, which by its own admission, is expected to increase the potential risk of accidents and risk to the public / workforce.

There may be circumstances where working during evenings or at night may endanger operatives or the public (see our Wong Behaviours Section – Page 10) and in those cases it is vital that local authorities do not unduly pressurise utilities to undertake such works out-of-hours.

Recommendation: NJUG therefore recommends that the TfL scheme is amended to explicitly prevent TfL / Boroughs from exerting undue pressure on activity promoters to undertake work out-of-hours when to do so would be unsafe, and that if activity promoters can demonstrate working during the evening or at night would be unsafe, the works should be exempt from lane rental charges and every effort should be made by the local authority and the utility(s) to reduce disruption.

Environmental Health constraints

As proposed, the TfL lane rental scheme is designed to encourage the movement of works from peak times to evenings / overnight. Whilst TfL may wish works to take place outside normal hours, Local Borough Environmental Health Officers (EHOs) may well prevent or restrict works due to noise or other constraints, which will have a fundamental impact on works promoters' ability to avoid the lane rental charges.

This consultation makes an assumption that working before 8pm on targeted streets will generally incur a lane rental charge, yet also states that for environmental health reasons it is possible that working after 11pm may be precluded. Additionally, some streets are deemed traffic-sensitive on a 24 hour basis during the working week, with only limited access at weekends too. Both of these issues will have a significant impact on operational efficiency, costs, and duration of works, which would be extended considerably by only having 3 hours per night to undertake work.

Additionally, even where EHOs grant permission for works to take place through the night, there will still potentially be additional disturbance for residents and businesses, which is not currently recognised, nor is there any account taken of the financial / social benefit of utility works or of the impact of out-of-hours working on residents (issues of lost amenity; noise; light; increased traffic etc.)

Recommendation: Again, this has been highlighted by the GLA Transport Committee, and NJUG therefore recommends that in cases where an Environmental Health Officer prevents works taking place at night, there should be an exemption from lane rental charges, and utilities and local authorities should work together very closely to seek to minimise the disruption from the planned works.

Additional Utility, Customer and Community Costs

If lane rental is to be implemented, NJUG supports an incentivised avoidable scheme which applies to all works promoters who work in targeted streets during lane rental times. However, the current TfL CBA does not recognise:

- **That in avoiding the lane rental charge, all works promoters would incur significant additional costs (additional labour costs of out of hours working and**

the cost of purchasing, laying and removing plates), which will increase durations and impact on the efficiency of a job.

- It is inevitable that these additional costs will be passed on to consumers – either directly (customer connections – see below) or indirectly through utility bills. At a time of widespread concern over energy and other utility bills, NJUG is concerned that these proposals will further contribute towards increased costs for consumers.

Given the potential constraints to 3 hours per day, it is inevitable that utilities would in many cases have to incur lane rental charges. Equally, some processes will make avoidance of lane rental charges impossible e.g. 7 day concrete-curing. This will result in exponential increases to the prices of routine connections for domestic or business customers requiring gas, electricity, water or communications connections, which would turn a 3-day £800 connection job to potentially an £8,300 job. The current Cost Benefit Analysis (CBA) makes a number of assumptions which:

- Seriously underestimates the significant additional costs that activity promoters will incur in avoiding lane rental charges (additional labour costs of out of hours working and the cost of purchasing, laying and removing plates, which will eat into the efficiency of a job).
- As recognised by the GLA Transport Committee, these costs will inevitably be passed on to the customer, which will further increase energy, water, communications bills.
- Considerably overestimates the number of works that can realistically be transferred from traffic- sensitive times to out-of-hours, or the number of jobs where the road can be returned to service by use of plating.
- Fails to recognise the potential additional disturbance to residents / businesses of evening / night working (as also recognised by the GLA Transport Committee). No account has been taken of the financial / social benefit of utility works or of the impact of out-of-hours working on residents (lost amenity; noise; light; increased traffic etc.)
- Incorrectly suggests that 12% of activity promoters will try and dodge payment of the lane rental charge by submitting incorrect information on their permit or not submitting a permit at all. This is contrary to everything NJUG and utilities have been working to improve, and we do not believe that such a high proportion of activity promoters would deliberately fail to submit a correct permit or not submit a permit at all.

Cost Benefit Analysis (CBA)

NJUG wishes to highlight that the CBA:

- Does not adequately demonstrate that there will be substantial additional benefits, over and above the myriad of existing legislation / regulation that already exists to manage street works. Please see Section 6 for detailed comments.

- **Does not recognise the benefits delivered by the London Code of Conduct, which reported saving 2311 days of disruption in its first two years, nor the perceived and possible benefits delivered by permit schemes which need to be independently quantified and exhausted by TfL before considering submitting an application.**

Currently, NJUG believes, in the absence of an accurate assessment of the various existing street works provisions and voluntary measures and their impact / costs, there is a strong risk that it will be difficult to differentiate between any likely prospective benefits attributable to the proposed lane rental scheme and the existing regulatory and voluntary measures.

- Should not only recognise the potential benefits to road users, but should reflect:
 - **Overall public needs** – including for timely, reliable and affordable utility services.
 - **Disturbance** - The potential for increased disturbance to residents and businesses from night-working.
 - The additional financial / social costs to works promoters of night-time working / application of innovative methodologies to return the road to service, such as plating.

Quantifying the benefits of existing and proposed regulations

The accurate quantification of relative benefits from all the various regulatory and voluntary measures, separate from the proposed benefits of lane rental is fundamental to justifying that any benefits will outweigh the very considerable costs that works promoters will incur in either paying or avoiding lane rental charges.

NJUG therefore strongly recommends that it is necessary that TfL have a robust analysis of both the additional costs and benefits that the proposed scheme is likely to bring when submitting to DfT. This is particularly important, given that the DfT proposals explicitly require a lane rental scheme promoter to demonstrate that they have exhausted all other means of tackling works related disruption before applying to operate a lane rental scheme.

Fair and equitable

NJUG welcomes TfL's intention to apply lane rental charges on an equal basis, to its own highway works, however, as the draft DfT regulations do not require lane rental schemes to apply equally to both utilities and highway authorities, only encourage their inclusion, **we are concerned that a change of Mayor or senior TfL personnel could result in TfL works subsequently being taken out of the lane rental scheme.**

Recommendation: NJUG continues to urge Government to amend primary legislation to reflect that lane rental must apply to all works promoters equally, but in the absence of Government making it a mandatory requirement, we urge TfL to make a commitment that for as long as a lane rental scheme exists within London it will apply to all works promoters equally.

Finally, it is worth recognising that if lane rental delivers additional benefits in terms of reduced disruption, then this will benefit motorists who are usually passing through these thoroughfares, but that lane rental charges will be paid for by the residents and

businesses who live in the communities where it applies, who will also potentially face additional disturbance / longer duration works through night-working or using of plating.

Wrong Behaviours

NJUG is very concerned to ensure that the TfL lane rental scheme does not inadvertently encourage the wrong behaviours:

- Utilities have a statutory duty to respond to emergencies within specified times, for good safety and environmental reasons.
- Utilities also have a statutory duty to ensure the speedy restoration of customer supplies, following a network failure.
- Equally, the Network Management Duty places a duty on TfL / local authorities to do everything reasonably possible to ensure expeditious movement of traffic / pedestrians on their network. This includes responding in a timely way to any failures on the road network, due to accidents, incidents or failure of traffic management equipment.
- In an emergency situation the first priority must be to protect life, property and the utility infrastructure itself.
- Immediate emergency and immediate urgent works cannot therefore be planned to only be attended to out of hours, and so works promoters would be unable to avoid the charge.

Recommendation: NJUG therefore strongly believes and recommends that lane rental charges should not apply to immediate (emergency and urgent) works, or at the very least, that they should be exempt until the emergency has been made safe or service has been restored.

Double Jeopardy

NJUG is very concerned that as currently drafted, utilities could be faced with both lane rental and S74 overstay charges if a job unavoidably runs over.

Utilities are already incentivised by economic regulation or customer demands to undertake works as efficiently as possible. S74 has already been very effective in reducing durations of works, with TfL indicating that 98% of works on the TLRN are completed within the agreed timescales.

Recommendation: Applying both lane rental and S74 charges would disproportionately increase utility costs (particularly if S74 is increased still further), and NJUG strongly believes that if lane rental applies, then S74 and permit fees should not apply. We therefore urge TfL to amend the draft lane rental scheme accordingly.

2.4 Key Areas which NJUG supports

NJUG does not believe that lane rental will deliver substantial additional benefits over and above existing legislation / regulation. However, if TfL is intent on implementing lane rental, NJUG supports the following:

- The proposal for a **period of shadow running** before the scheme is implemented, which NJUG believes should ideally be a minimum of six months.
- NJUG generally welcomes **TfL's attempt to provide an evidence base and detailed Cost Benefit Analysis (CBA)**. However we have a number of key concerns regarding the figures, models and assumptions which underpin the CBA, and how they all inter-relate.
- **Post-Evaluation after One Year** - Although NJUG strongly believes that:
 - The first two schemes should be reviewed by DfT or an independent body to ensure that the respective total costs and benefits, including those relating to utility works are clearly identified.
 - The trials must produce factual data which assesses the total relative costs and benefits.
 - Criteria should be developed against which the lane rental trials will be assessed, and should include a) the number of days disruption saved, b) the level of revenue generated (with significant revenue being a sign of ineffectiveness) and c) the level of additional costs to works promoters in paying or avoiding lane rental charges, and d) the additional costs / disturbance to residents and businesses of increased night-time working.
 - NJUG would be very keen to work TfL on the development of such criteria.
- **TfL's substantiated proposal for only 3% of the London Network** - which reflects the objectives of the DfT's proposals to target only the most critical parts of the road network, albeit this still equates to over 50% of the Transport for London Road Network.

3.0 Detailed Commentary

The format of this commentary follows the headings and numbering of the suite of consultation documents, which we hope is helpful. Paragraph numbers follow the paragraphs within each section, not the whole document e.g. Introduction – Paragraph 2 / Objectives - Paragraph 3.

3.1 *Commentary on the Consultation Document*

3.1.1 Foreword (1.)

NJUG notes the wording in the foreword that indicates that the Transport for London Lane Rental Scheme (TLRS) is *“designed to operate in conjunction with Section 74 and the London Permit Scheme for Road Works and Street Works (LoPS), subject to certain exemptions on charges and fees contained within the TLRS.”*

The foreword then goes on to say that *“TfL has operated LoPS since January 2010 and all provisions of that scheme apply to the TLRS.”*

Whilst NJUG understands the need to apply for permits / send notices for all works that impact on the carriageway, **we fundamentally disagree with utilities being faced with lane rental charges, permit fees (even in very exceptional circumstances) and S74**

overstay charges for certain jobs. This will exponentially increase utility costs and ultimately consumers' bills (recognising that S74 charges cannot be passed on to the consumer.)

We recognise that the inclusion of the words "*subject to certain exemptions on charges and fees contained within the TLRs*" are clarified later on, but believe that a clearer confirmation at this stage would aid clarity.

3.1.2 Introduction (2.)

Second Paragraph - NJUG welcomes confirmation that "*the daily charge will however be disapplied or reduced if the works take place outside traffic sensitive times.*"

Third Paragraph – NJUG notes that the TLRs provides "*a mechanism for providing all activities with an incentive to change behaviour and minimise their occupation of the street at traffic sensitive times at the most traffic sensitive locations.*" However, it should be recognised that there is a substantial additional cost of either working out-of-hours or using innovative techniques such as plating to return the road to service during the busiest times. NJUG believes that the London Code of Conduct, coupled with effective and consistent use of existing regulatory mechanisms such as:

New Roads and Street Works Act 1991 (NRSWA)

- **S56 (Directions)** - where the authority can direct when (day and time) works can take place.
- **S59 (Duty to Co-ordinate)** – which requires the authority to proactively co-ordinate both utility and authority works, and where applied effectively is producing significant reductions in disruption.
- **S60 (Duty to Co-operate)** – utilities are required to co-operate with authorities, to help them co-ordinate works and reduce disruption.
- **S66 (Avoidance of unnecessary delay or obstruction)** – requires utilities to carry on and complete their works with all such dispatch as is reasonably practical.
- **Enhanced Noticing Provisions** – requiring earlier minimum notice of works, including a minimum of 3 months for major works.

Transport Act 2000

- **S74 Overstay Charges** – which at their current levels in this economic climate, remain a potent force to minimise durations of works. TfL itself reports a 98% compliance with agreed time periods on its TLRN, and Kent County Council report 96% compliance. This coupled with an increase in authorities challenging down estimated times for works has resulted in, and continues to drive down durations.

Traffic Management Act 2004 (TMA)

- **Network Management Duty** – requiring authorities to do everything reasonably possible to ensure the expeditious movement of traffic and pedestrians.

- **Permit Schemes** – the London Permit Scheme (LoPS) requires a fee for all works on all streets, whereas the Kent and Northamptonshire Schemes prioritise the major works on the busiest streets. It is NJUG’s view that these schemes provide the desired incentive that TfL are seeking, at much less cost. The payment of a fee, and more importantly the focus by the authorities, working closely with utilities to minimise occupation and plan and co-ordinate works, means that they have seen a reduction in the number of days disruption, and, in the case of Kent County Council, a 50% reduction in the number of customer complaints associated with street works.

Recommendation: NJUG therefore recommends that TfL works with London Boroughs, NJUG and utilities to revise the LoPS to focus on the busiest streets at the busiest times, thus enabling greater co-ordination and planning of the most disruptive works, as well as continuing to implement the London and HAUC(UK) Codes of Conduct. This will deliver greater benefits at far less cost.

Paragraphs 6 & 7 – NJUG welcomes the recognition of:

- The highway authorities’ duty to co-ordinate (Section 59 of NRSWA) – and
- The equally important duty for works promoters to co-operate (Section 60 of NRSWA).
- TfL’s Network Management Duty (Section 16 of the TMA).

More effective and consistent of these duties will deliver significant benefits for London, without recourse to yet more regulation and additional costs.

Paragraph 8 – Within the context of NJUG’s overall view that lane rental will not deliver significant additional benefits, we still support the TLRS’s objectives of contributing to journey time reliability, by encouraging works on targeted streets to be undertaken at least traffic-sensitive times, and an early completion of works. However, NJUG believes that this could be just as easily achieved at much less cost by using the various regulatory and voluntary initiatives highlighted above.

NJUG also strongly supports the suggested guiding principles:

- a) Safety must be ensured.
- b) Inconvenience to people using a street, including in particular people with a disability, must be minimised

In addition, NJUG suggests a third guiding principle:

- c) **To not place unnecessary burdens on activity promoters or their customers.**

3.1.3 Objectives (3.)

NJUG welcomes the objectives for the TLRS laid out in this section, including in particular the treatment of all activity promoters on an equal basis. We also support the objective of contributing to journey time reliability and the commitment of TfL to measure this. **However, despite the outline within the CBA, NJUG is keen to understand how this specific contribution will be measured, separated out from other factors which affect journey time reliability.**

Recommendation: NJUG therefore recommends that TfL clarify in the lane rental scheme application how they will measure the specific contribution that lane rental will make to improving journey time reliability, separate from all the other factors.

3.1.4 Scope of Scheme (4.)

Within the context of NJUG's overall views on lane rental, we welcome the design of the TLRs to only apply charges when works promoters occupy the highway at traffic-sensitive times, and to allow exemptions at other times to encourage promoters to adopt less disruptive working practices.

However, as outlined in our Executive Summary, NJUG believes certain works (immediate urgent and immediate emergency works) and certain circumstances when works take place, should be exempt from lane rental charges (such as when safety would be compromised or an EHO prevents works taking place at night).

Specified Works where charging will apply (4.1)

NJUG notes that it is proposed that the TLRs applies to *“all registerable activities that require a permit under Section 4 of LoPS...”* However, as above, NJUG strongly believes that a number of key exemptions should apply.

Recommendation: NJUG therefore recommends that the following works are exempted:

- **Immediate works – including both urgent and emergency works.**
- **Works where it would be unsafe to work at night.**
- **Works where an EHO prevents night-working.**
- **Works where specific requirements by TfL or a London Borough mean that occupation of the carriageway during traffic-sensitive times is unavoidable.**

Second Paragraph – However, the second paragraph states that *“unless covered by an exemption, any street works would be liable to lane rental charges (whether carried out by an undertaker by virtue of a specific statutory right to carry out such works, or under a section 50 licence.”* **NJUG is surprised and concerned that this paragraph does not clearly spell out that lane rental charges will also apply to TfL's own works.**

Recommendation: NJUG therefore recommends that the words in the second paragraph of Section 4.1 are amended to *“unless covered by an exemption, any street works or works for road purposes would be liable to lane rental charges.”*

Specified Locations where charging will apply (4.2)

First Paragraph - NJUG welcomes TfL's approach to not only specifying the locations at which lane rental charges, but also a) the times at those locations where the charges will apply and b) the inclusion of traffic flow, to allow charges to apply to traffic flowing in one direction only because of the nature of the peak traffic flow, which therefore allows works on the other side of the road to potentially take place without a charge being levied.

Second Paragraph – Again, NJUG is concerned that this paragraph talks of lane rental charges apply where “*disruption caused by street works has a significant impact...*” and not “*street and road works.*”

However, NJUG welcomes the clarity that TfL have provided in detailing the specified locations, days, times and lane rental charges that will apply, and that the locations will also be identified on TfL’s published Additional Street Data.

Specified days when lane rental will apply (4.3)

NJUG disagrees with the proposal that lane rental charges should “*apply whenever a street is designated as traffic sensitive, including on Saturdays, Sundays and Bank Holidays.*”

Firstly, those streets identified for inclusion within the lane rental scheme are not just designated as traffic-sensitive, but are those streets where the volume of traffic is the highest on the network. NJUG believes it is essential that the lane rental scheme must have a “*volume of traffic-based*” criteria, and that this should be highlighted here.

Secondly, in the majority of cases, the volume of congestion will be less at weekends and bank holidays, and given that TfL regularly encourage activity promoters to undertake works at weekends / bank holidays e.g. through workathons, not applying lane rental charges to these times will act as a further incentive.

On the occasions where weekend or bank holiday working would result in significant disruption, TfL can use its S56 powers to direct when works can take place, and can in any case work closely with the relevant activity promoter(s) to agree suitable timing of works.

Recommendation: NJUG therefore recommends TfL to not apply lane rental charges to targeted streets at weekends or bank holidays, but to highlight that they have the right, and will use S56 powers to direct the timing of works where necessary.

Highway Authority Works (4.4)

NJUG welcomes TfL’s commitment to apply “*comparable procedures to improve performance of its own highway works,*” and that “*TfL has made arrangements for charging to apply to TfL promoted works.*” However, NJUG is concerned that without a statutory requirement for equal application of any lane rental scheme to all works promoters, a change of Mayor or TfL policy could result in TfL’s own works being removed from any lane rental charging scheme.

NJUG will therefore continue to push DfT to amend primary legislation to allow lane rental charges to apply to all works promoters and not just utility works.

Recommendation: However, in the absence of a legislative requirement, NJUG asks that TfL provide some other form of enduring commitment that will prevent a withdrawal of TfL works from the scheme in the event of Mayoral or TfL policy change.

3.1.5 Lane Rental Charges (5.)

Calculation of charges (5.1)

Third Paragraph – Suggests the use of the permit variation process to identify when works transfer from one charging band to another. Whilst NJUG understands that the use of the permit variation process is a sensible way forward, it needs to be simple to operate based on EToN options and therefore some simplification is required to avoid associated disputes.

Fifth Paragraph – States that *“TfL may challenge the dates and duration using the application and response processes described in the appropriate sections of LoPS and the Section 74 Regulations.”*

NJUG notes this, and as is the case now with TfL, we urge TfL to continue to work with utilities to deliver agreed reasonable periods for works. **We also specifically ask that TfL recognise that safety or environmental health constraints may preclude the ability to avoid lane rental charges, in which case such works should be exempt.**

Sixth Paragraph – States that S74 Overstay Charges *“will apply from the day following the end of the reasonable period in addition to lane rental charges.”* **NJUG fundamentally disagrees with the application of both lane rental and S74 charges**, particularly if Government choose to increase them still further. This will disproportionately increase utility costs.

TfL’s own figures demonstrate that S74 charges at their current level, act as a potent deterrent to overrun works, with 98% of works on the TLRN being completed within their reasonable period, and therefore no further incentive is necessary to prevent overruns.

Recommendation: NJUG strongly recommends that if, for unforeseen / unavoidable circumstances beyond a utility’s reasonable control, works overrun their reasonable period, then S74 should apply, but lane rental charges should cease at that point.

Information required on permit applications (5.2)

First Paragraph – States that *“As the TLRS allows for works to avoid incurring a charge if undertaken during non-traffic-sensitive times, it is imperative that activity promoters inform TfL of the times during which works will take place.”*

It should be noted that this will require changes to EToN and activity promoters’ work management systems.

Third Paragraph – Makes it mandatory for activity promoters to state on all permit and provisional advance authorisation applications, *“where, on the footway, carriageway or verge, works and associated plant and materials will be.”*

This too will require changes to EToN and activity promoters’ work management systems.

Fourth Paragraph – States that *‘where only parts of works are undertaken during traffic-sensitive times or occupy lane rental chargeable areas, then this must be clearly identified on the permit application’*. There needs to be a facility for works promoters to continue

working across time-zones without incurring penalties when the nature of the works are justified i.e. water / gas leak detection, duct blockages due to cable pulling.

Variation of works (5.3)

Second Paragraph – States that *“The charging rules outlined in Section 5.3 will apply to permits that are varied”,* and that *“In order to avoid paying the higher rate charge once works are complete in higher rate sections, it is imperative that activity promoters indicate on permit applications and subsequent permit variations, that works will move or have moved onto a lower rate section..”*

This will create additional administration in the preparing of permits, and, given that undertaking road and street works is always subject to the need to adapt and accommodate unforeseen circumstances, this added complexity is likely to lead to an increase in the number of permits / permit variations, with activity promoters forced to split works up into smaller sections.

Recommendation: NJUG therefore recommends that TfL clarify beyond all doubt that permit fees / permit variation fees will not apply, and also asks that S74 charges do not also apply to works where lane rental charges do apply.

Remedial works (5.4)

NJUG is on record stressing that if a utility performs a defective reinstatement then they should return at an appropriate time to put right those works at their own expense. NJUG therefore believes that the right approach should be for TfL and the works promoter to work together to discuss the timing of remedial works to seek to plan them outside traffic-sensitive times wherever possible. If that is not possible and the utility is directed to work during a traffic-sensitive time, the works should be exempt from charges.

Notwithstanding this, please note that the application of the maximum charge for all remedial works will be an additional burden as utilities / contractors undertaking remedial works are already faced with Inspection Fees along with the additional permit fee, the cost of undertaking those works and the lost opportunity to undertake other productive work, and so the costs are already very significant.

3.1.6 Waiver and reduction of charges

Location and timing of activities (6.1)

NJUG welcomes confirmation that the lane rental charge will be waived where:

- There is no impact on the carriageway or a cycle track.
- Works are undertaken outside of Traffic Sensitive times at a location subject to lane rental charge.
- Works are undertaken at locations not subject to lane rental charges.

Permit fees (6.2)

NJUG's comments on Sections 5.2 and 5.3 apply. NJUG welcomes the confirmation that permit fees or permit variation fees will not apply when works are subject to lane rental charges. **However, NJUG, for the reasons above, also believes that S74 charges should not apply when lane rental charges apply.**

Collaborative works (6.3)

NJUG welcomes the confirmation that where, in the interests of allowing collaboration of works, TfL directs that some or all of those works take place in traffic-sensitive times, then the lane rental charges will be waived or proportionately reduced.

Single items (6.4)

First to Third Paragraphs - NJUG particularly welcomes TfL's positive approach to dealing with the situation where works have been completed within the reasonable period but a single item of signing, lighting or guarding remains on the highway. By committing to inform an activity promoter of the identity and location of the single item, and request the activity promoter to remove it, they give them an opportunity to rectify the situation and not incur either a lane rental or S74 overstay charge.

However, if S74 charges are to be levied (following TfL contacting the activity promoters requesting them to remove the single item) then NJUG strongly believes that lane rental charges should not also apply, as this would place a disproportionate additional cost on utilities, and either mechanism on its own will act as a potent incentive.

Recommendation: NJUG therefore urges TfL to confirm that they will not apply both S74 and lane rental charges.

3.1.7 Monitoring (7.)

Second Paragraph – NJUG agrees that if TfL finds evidence that works notified as being undertaken out of traffic-sensitive times are actually being undertaken / the carriageway is occupied during traffic-sensitive times, then lane rental charges and a permit fee will apply, subject to our strong belief that immediate works (urgent and emergency) should be exempt from all lane rental charges.

NJUG also welcomes TfL's positive approach that where appropriate, TfL will exercise discretion reasonably to exclude nominal or trivial breaches, and other breaches, depending on the reasons for the departure from the stated times.

Third Paragraph – NJUG agrees that it is fair that if a permit fee was applied because the works information provided by the promoter indicated that lane rental charges would not apply, but that evidence shows that lane rental charges should apply, then the permit fee will still be chargeable.

Sixth Paragraph – NJUG acknowledges that if incorrect information has been given in a notice and TfL considers an offence has been committed, it may give a fixed penalty notice (FPN) or consider taking a prosecution.

Recommendation: However, NJUG also believes that reference to the HAUC(UK) Advice Note on FPNs should be referenced, and in particular, highlighting of the sentence that indicates that in applying FPNs, authorities should only do so when the incorrect information led to increased disruption – JS to check the exact wording and insert.

3.1.8 Exempt Activities (8.)

NJUG welcomes the exemptions that have been listed in Section 8, however also:

Recommendation: NJUG strongly believes and recommends that works in the following circumstances should also be exempt:

- Immediate works – including both urgent and emergency works.
- Works where it is proven that it would be unsafe to work at night.
- Works where an EHO prevents night-working.
- Specific TfL / authority requirements, such as 7 day concrete curing, which mean that they are directed to be undertaken during traffic-sensitive times.

Recommendation: In addition, NJUG recommends that:

- TfL states that coring activities should not be undertaken on targeted streets during traffic-sensitive streets.
- This would minimise disruption and is clearly the most sensible choice. Otherwise, works promoters could be faced with numerous cores being undertaken, and as well as having to pay for the cores, they may also be faced with lane rental charges.
- If TfL does not preclude coring activities from taking place on targeted streets during traffic-sensitive times, then NJUG urges it to ensure that utilities are not liable to pay any lane rental charges undertaken by TfL, boroughs or their contractors on utility reinstatements.

Second Paragraph – This paragraph states that failure to record the appropriate charge exemption in the permit application and works clear / closed notices will result in “*appropriate action being taken.*” NJUG seeks clarification on what “*appropriate action*” is?

3.1.9 Transitional Arrangements (9.)

First and Fourth Paragraphs - NJUG strongly supports the intention to have a period of shadow running prior to the formal introduction of the scheme. This will enable EToN and works promoters’ works management systems to be tested, different interpretations of when and where charges should be applied to be smoothed out; testing of different working practices; negotiation of amended contract and getting the writing of permit applications right.

Second Paragraph - TfL's basic rules of transition provide clarity over what will and won't be subject to the TLRS in the run-up to and immediately following its introduction.

Third Paragraph – NJUG welcomes confirmation that the TLRS will not apply to any activities which have started prior to the commencement date of the TLRS. NJUG welcomes the recognition that co-ordination of works in the run-up to the imposition of a restriction, might be affected by the TLRS rules. **It is therefore essential that, in order to encourage co-ordination, TfL and activity promoters work together, and TfL exempts any works, where in order to co-ordinate works with other promoters, an activity promoter delays works, thereby bringing them under the jurisdiction of the TLRS.**

3.1.10 Dispute Resolution (10.)

First Paragraph - NJUG welcomes the emphasis on informal resolution of any disputes which may arise from the TLRS. We also note that if informal resolution does not satisfactorily resolve a dispute, then an activity promoter should make a written representation to the TfL appeals officer specified as responsible for considering representations.

Second Paragraph - NJUG seeks confirmation that the TfL appeals officer is a) sufficiently knowledgeable and experienced to judge any dispute within both the legal and operational context of street and / or road works, b) separate from TfL's own highway team and of a sufficient level / grade to be able to make a decision independently, and c) will be required by the scheme to make any judgement fairly and on an equitable basis for all activity promoters.

Recommendation: NJUG therefore recommends that it is TfL confirm within their lane rental scheme application that the TfL appeals officer is a) sufficiently knowledgeable and experienced to judge any dispute within both the legal and operational context of street and / or road works, b) separate from TfL's own highway team and of a sufficient level / grade to be able to make a decision independently, and c) will be required by the scheme to make any judgement fairly and on an equitable basis for all activity promoters.

Third Paragraph – NJUG agrees that any dispute arising from the issuing of a Section 74A lane rental charges should be made and resolved as soon as possible.

Fourth Paragraph – NJUG welcomes TfL's confirmation that they will ensure that *“a fair and open system is in place for considering representation.”* However, our comments in respect of the Second Paragraph apply, regarding the need for any nominated TfL official to have sufficient independence, knowledge and impartiality to make consistent, fair and legally robust determinations.

Recommendation: Finally, NJUG believes that once the TfL appeals process has run its course, if the dispute has not been satisfactorily resolved, then there should be recourse to the HAUC(UK) Dispute Resolution Procedure detailed in Chapter 13 of the current Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters, reference to which should be included with the TLRS proposals submitted to the Secretary of State.

3.1.11 Keeping Accounts (11.)

First Paragraph - NJUG welcomes the confirmation that “*all costs incurred by TfL in operating the TLRS will be recovered from the charges received*” and “*net proceeds from Section 74A charges will, for accounting purposes, be identifiable and distinguishable from other street works related income.*” However, NJUG would like to stress that:

- The last sentence should be “*net proceeds from Section 74A charges will, for accounting purposes, be identifiable and distinguishable from other street **and road** works related income.*”
- **All costs incurred by TfL should be necessarily and efficiently incurred – and separate from the costs of their element of running the LoPS; performance of TfL’s Network Management Duty; application of other regulatory measures and the London / HAUC(UK) Codes of Conduct – to ensure there is no double counting of costs.**
- **If the streets subject to lane rental are carefully selected, and small in number, NJUG believes a successful outcome would be that any lane rental scheme generates no or minimal revenue, as the primary objective is to reduce disruption.**
- **Therefore TfL should budget for a contingency for the trial, in case the scheme is so successful in ‘*changing activity promoters’ behaviour*’ that insufficient lane rental charges are secured to cover TfL’s costs.**

Recommendation: NJUG therefore recommends that TfL includes a commitment to demonstrate, through openness and transparency around the estimated and actual costs of running the scheme, that all costs TfL incur in running the scheme, will be necessarily and efficiently incurred.

Second Paragraph – NJUG welcomes the confirmation that the application of charges and keeping of accounts will be in accordance with the DfT COH Regulations.

3.1.12 Minor variations to the TfL Lane Rental Scheme (12.)

First and Second Paragraphs - NJUG recognises that there may be a need to make minor changes to the TLRS, including to include or remove locations into / from the scheme; alter traffic sensitivity or move locations from one charge band to another as a result of new housing, retail, business or other developments that have a material effect on traffic flows.

We strongly welcome the commitment to consult on such proposed changes, which will be based on traffic data and will not vary the total road length or alter the overall ratio of charge bands covered by the scheme from the original by more than +/- 3%.

Recommendation: However in addition, NJUG strongly urges TfL to:

- **Commit to any consultation following the Government’s consultation guidelines i.e. a minimum of 12 weeks consultation to allow utilities and others affected to assess the implications of the proposed changes and provide meaningful and detailed commentary / feedback.**

- **Commit to ensuring that consecutive changes to the scheme do not over time lead to a significant change in charge bands, thereby increasing activity promoters' costs even more than proposed currently.**

3.2 Glossary

NJUG welcomes the clarity provided by the explanations provided within the Glossary.

Recommendation: However, NJUG recommends that the term “*working day*” is added to the Glossary, as defined in section 98 (2) of NRSWA. NJUG believes that this is essential to allow for lane rental charges to generally only apply to traffic-sensitive times on working days on targeted streets. A general rule that no lane rental charges will apply at weekends or on bank holidays (unless in exceptional circumstances) will incentivise activity promoters to work during these times, thereby reducing disruption.

3.3 Cost Benefit Analysis

3.3.1 Executive Summary

NJUG generally welcomes TfL's attempt to take an evidence-based approach and the detailed Cost Benefit Analysis (CBA). However we do have some key concerns regarding the figures and assumptions which underpin the CBA, and the inter-relationship between all the various models / assumptions. Therefore, NJUG's comments on the Executive Summary are as follows:

Paragraphs 2 & 3 – NJUG acknowledges the use of a behaviour change model in order to calculate the benefits of a lane rental scheme, however **disagrees with the assumption that works promoters will adapt their behaviour / be able to work out-of-hours for 80% of targeted works.** As highlighted previously there are a number of reasons when this will not be possible:

- Immediate works – including both urgent and emergency works – which for both TfL and utilities require an immediate response.
- Works where it would be unsafe to work at night.
- Works where a Borough Environmental Health Officer (EHO) prevents night-working.
- Specific TfL / authority requirements, such as 7 day concrete curing.
- Works where the use of plating would actually substantially increase the duration of works and where it would be impractical or unsafe to use them.

We therefore believe a more realistic view would be around 50% spread across all industry sectors.

Our Detailed Commentary Section 2.2 – Wrong Behaviours provides more information.

Paragraph 4 – We welcome the recognition of the cost to works promoters for avoiding lane rental charges but we would challenge the assumptions around the estimated costs and the respective percentages of who will bear these costs - 65% for utilities and 35% for

TfL, particularly given the respective proportions of works undertaken on the TLRN by TfL and utilities.

In addition to our comments above, regarding the validity of the assumption that behaviour will change for 80% of works, **NJUG is keen to know what proportion of works TfL currently estimates are undertaken within traffic-sensitive times, compared to out-of-hours. According to the London Code of Conduct Second Year Report indicates that 55% of works are already undertaken outside peak hours, and so we believe the benefits of introducing a lane rental scheme have been overestimated, and are being double-counted with the benefits of the London Code of Conduct and LoPS.**

Paragraph 5 – NJUG fails to understand why the costs of paying lane rental charges by utilities and TfL's own highways department are not included as part of the CBA (on the grounds they are simply transfer costs), given that they are real costs which will be incurred by utilities, their customers and by TfL's highways teams.

Moreover, the estimates of a total cost of £9.8m per annum, spread across both utility and TfL works appear very low, and, given that 60+% of works on the TfL TLRN are undertaken by TfL themselves and only around 35% by utilities, we do not understand how TfL consider that 62% of costs will be borne by utilities and only 38% by TfL.

Paragraph 6 – NJUG would welcome confirmation that the estimated net benefit figures for the TLRN (£97 million in its first year) are separate from the net benefit figures of the combination of improved Noticing provisions (April 2008); LoPS (January 2010); revised S74 Overstay Charges (April 2008); the London Code of Conduct (2009 to date); and the Enhanced London Code of Conduct currently being discussed.

Recommendation: It is vital that the benefits of all the above regulatory and voluntary initiatives are identified and separated out from the estimated benefits of the TLRN. Otherwise, the benefits are being double or even triple-counted. We therefore recommend that TfL provide these figures as part of their final TLRN application.

Paragraph 7 – The assumptions on benefits to business indicate that they are expected to rise to £50m per year. However, like all estimates of congestion, this assumes that every vehicle travelling and delayed by road or street works, is losing productive time, where in many cases this is not so.

Paragraph 10 – NJUG welcomes the recognition of the potential impacts on road safety, and health and safety in the industry, **however as recognised by the GLA Transport Committee, it is important to recognise within the CBA, the potential additional disturbance to residents / businesses of evening / night working. No account has been taken of the financial / social benefit of utility works or of the impact of out-of-hours working on residents (lost amenity; noise; light; increased traffic etc.)**

Paragraph 11 – the CBA makes an assumption that there will be an uptake of new technologies and a falling cost until 2015. **However, in undertaking out-of-hours working or extending the use of innovative techniques such as plating, where safe and practical to do so, utilities will incur additional costs – increased labour costs for out-of-hours working, and increased costs in the provision of plates, and a reduction in operational efficiency, with the laying and lifting of plates each day eating into operational working time. Additionally, the consultation highlights that**

works up to 8pm will generally incur a lane rental charge, and yet EHOs may well prevent works after 11pm – this would have a dramatic effect on operational efficiency, as well as elongating the duration of works, with utilities potentially faced with just 3 hours per night in which to undertake works.

Therefore NJUG does not believe that there will be a reduction in works promoters' costs, rather, we believe that in paying or avoiding the lane rental charges, utilities' costs, and ultimately consumers' bills will be increased.

Paragraph 12 – NJUG welcomes the proposal to undertake an evaluation report by January 2014, and strongly believes that such an evaluation should be undertaken as an independent assessment of the total costs and benefits of the trial TLRS, alongside any other lane rental scheme which is also trialled.

Recommendation: NJUG therefore suggests that an independent assessment is undertaken after one year of operation, and, as utilities, and ultimately their customers will bear much of the cost of implementing the scheme, through either paying or avoiding the charges, that NJUG and key should work closely with TfL to agree the scope of any review to ensure all costs are assessed and only the truly additional benefits attributable only to the TLRS / other lane rental scheme are included.

3.3.2 Introduction

Paragraph 1 – NJUG welcomes TfL's recognition that works in the street are necessary - to provide safe and secure essential utility services and to manage the road network to ensure safe and expeditious movement of traffic and pedestrians.

Paragraph 5 – States that *“while the permit scheme enables TfL to manage better some of this disruption through better spatial allocation for the works and by the imposition of conditions on such elements as timing and durations of works this is insufficient to control disruption caused by works in the most traffic sensitive times, i.e. rush-hour vs. off-peak times due to the lack of incentives to undertake works outside of the most sensitive times.”*

NJUG disagrees with this statement and asserts that there is a myriad of existing regulation and voluntary initiatives which TfL can and already do use to manage utility street works – these include:

- **London Code of Conduct** - There is no mention of the voluntary London Code of Conduct, which by TfL's own figures, has delivered substantial reductions in disruption (2311 days in first two years); substantial increases in out-of-hours working, with over 55% of works on the TLRN already undertaken out-of-hours; increased use of plating and increased first time permanent reinstatement.

With utilities willing to discuss TfL's proposed enhanced Code, and the existing Code already delivering significant benefits, NJUG believes this provides the best opportunity to work together to reduce disruption.

- **Duty to Co-ordinate (S59 of NRSWA) and Duty to Co-operate (Section 60 of NRSWA)** – TfL, along with all local authorities, has a duty to co-ordinate works in the street, and utilities have a statutory duty to co-operate.

- **S56 (Directions)** – TfL, and all highway authorities can direct the timing of works, and therefore there is no need to incentivise works promoters to work outside traffic-sensitive times, as they can simply direct them when to work.
- **S66 (Avoidance of unnecessary delay or obstruction)** – requires utilities to carry on and complete their works with all such dispatch as is reasonably practical. This section of NRSWA remarkably is rarely used, whereas it's enhancement, section 74 is.

Recommendation: NJUG therefore recommends that TfL's primary focus should be to be on continuing the constructive dialogue with NJUG and utilities within the context of improving the effectiveness of the various existing regulatory and voluntary measures, rather than introducing yet more regulation, resulting in additional costs for utilities and their customers.

Paragraph 7 – Within the context of NJUG's overall views on lane rental, NJUG supports the key objectives of TLRS.

Recommendation: However, in addition we recommend that key objective b) is amended to:

“minimise the duration of occupation of the street at the busiest locations on the network (subject to certain exemptions and ensuring that the highest standards of safety are maintained).”

Link to Previous Cost and Benefits established relating to Works on the TfL Road Network

Paragraphs 2 & 7 - NJUG notes that a key objective of the LoPS was to deliver a 10% reduction in works related disruption. We also note that within Paragraph 7 it states that the benefits *“in terms of the reduction in works related disruption have not been fully established”*, and goes on to say that due to not having a full set of journey time validation data for 2010 and beginning of 2011 *“it has not been possible to isolate the LoPS benefits from the potential benefits of lane rental”*.

Recommendation: The accurate quantification of relative benefits from all the various regulatory and voluntary measures, separate from the proposed benefits of lane rental is fundamental to justifying that any benefits will outweigh the very considerable costs that works promoters will incur in either paying or avoiding lane rental charges.

NJUG therefore strongly recommends that it is necessary that TfL have a robust analysis of both the additional costs and benefits that the proposed scheme is likely to bring when submitting to DfT. This is particularly important, given that the DfT proposals explicitly require a lane rental scheme promoter to demonstrate that they have exhausted all other means of tackling works related disruption before applying to operate a lane rental scheme.

Paragraph 6 – States that *“The disruption impact of works and network sensitivity has been calculated on data from October 2008 until May 2010.”* NJUG welcomes this measurement, but would like to stress that during that time the London Code of Conduct was introduced, which has had a demonstrable impact on disruption.

Paragraph 8 – NJUG is confused regarding the statement in Paragraph 8, which seems to indicate that ‘70% of congestion will be **“realised”** through the move of works outside traffic sensitive times in response to the establishment of a lane rental scheme’:

- We assume that TfL mean “released” and not realised?
- Secondly, we do not believe that a lane rental scheme will deliver a 70% reduction in congestion associated with works in the street, nor do we agree that there will be an 80% reduction in external costs if promoters have a permit and chose to clear the carriageway during traffic sensitive times.

Paragraph 9 – We note that TfL acknowledges that the lane rental cost base case incorporates some of the initial benefits of the London Permit Scheme on the TLRN, however, again there is no mention of the benefits which the London Code of Conduct has delivered during the period.

Costs

Paragraph 3 – NJUG welcomes the recognition that *“the largest element of the costs will be related to the change in new working practices.”* **However, NJUG does not agree that these costs will be only short-term, as the uplift in labour costs for out-of-hours working will continue for every job that is undertaken out of hours. Similarly, whilst the purchase of plates is a ‘one-off’ cost, their ongoing use – laying down and taking up of plates to return the road to service during traffic-sensitive times will have a continuing impact on the operational efficiency of every job – with less time each day to undertake the works – which increases both the durations and costs of jobs where they are used.**

Benefits

NJUG agrees with the benefits listed as measurable tangible benefits against which the lane rental trial can be measured. **However:**

- **NJUG continues to believe that these benefits can all be achieved using a combination of existing regulatory and voluntary mechanisms, and at far less cost to utilities and their customers.**
- **It is vital that any measured benefits must be assessed against the total additional costs incurred, including those by utilities, and we would welcome the opportunity to work with TfL in identifying them during the trial.**

Other Impacts

NJUG welcomes the acknowledgement of the additional significant impacts that introducing a lane rental scheme will have. However, we would like to highlight:

- As identified by the GLA Transport Committee – these include the added disturbance to residents and business of night-time working, including additional noise (already recognised by TfL), light and traffic, and extended durations of works.
- If lane rental delivers additional benefits in terms of reduced disruption, then this will benefit motorists who are usually passing through these thoroughfares, but the lane

rental charges will be paid for by the residents / businesses who live in the communities where it applies, and who will potentially face additional disturbance / longer duration works through night-working or use of plating.

- The volume of works is not likely to reduce for the foreseeable future due to the long-term asset replacement / investment programmes being undertaken by utilities, and other key initiatives like the roll-out of superfast broadband. Greater co-ordination of works to enable works to be undertaken at the same time or sequentially will reduce the number of days occupation of the street, but will deliver a reduction in essential utility works.

Paragraph 5 – sensitivity testing – NJUG welcomes the sensitivity testing that has been conducted based on a number of scenarios, including the specific tests listed.

Overview of works undertaken on the TfL Road Network

Paragraphs 1 to 3 - We welcome the information provided in this section

Table of works on the TLRN - NJUG welcomes the breakdown of works in the table, which demonstrates that TfL and utility works account for approximately 50% each of works undertaken on the TLRN.

External cost of works undertaken on the TfL Network

NJUG supports TfL's objective of identifying the most sensitive parts of the network and to compare the impact of different works categories.

Principles, Vehicle-hours spent on the network and network sensitivity

Whilst NJUG welcomes the evidential approach that underpins TfL's lane rental proposals, the numerous different models and different analyses makes understanding the overall results difficult. However, NJUG generally recognises the identified pinchpoints, part of streets or streets as the busiest parts of the TLRN.

Annual cost of externalities

NJUG notes that the latest evaluation analysis of permits has confirmed that the LoPS has reduced the external costs by 10%, **and would welcome sight of the detailed analysis which justifies this statement.**

Again, there is no recognition of the acknowledged benefits that the London Code of Conduct has delivered, and this is therefore not stripped out of the calculations.

Traffic-sensitive times

NJUG appreciates that there is both morning and evening peaks of vehicle and pedestrian traffic flowing in and out of London, but that this is further complicated by local traffic flows.

NJUG therefore welcomes the proposed flexibility to allow for the inward flowing lane of a key dual carriageway road to be subject to lane rental charges in the morning peak, with the outward flowing lane being exempt from charges, and a

reversal for the afternoon / early evening peak. This will allow activity promoters to undertake essential works on key roads whilst not adversely affecting traffic flows, and therefore not incurring additional charges.

Recommendation: However, in order to avoid confusion and inadvertent non-compliance, all necessary information must be included in the NSG – including the traffic-sensitive times for each location and the direction of travel, and therefore when lane rental charges will or won't apply.

Congestion Savings

NJUG does not agree with TfL's assumption that *“works previously occupying the carriageway over traffic-sensitive times could have their external costs (i.e. delays, diversions, journey time variability and casualties) cut be 70% if they adopted new working practices (night / weekend, plating, no-dig, etc”*, because:

- There are a number of constraints that will affect the ability of activity promoters to undertake works out-of-hours – emergency works; works which would be unsafe to undertake out-of hours; refusal of an EHO to allow works to take place at night; a requirement by TfL or borough requiring specific reinstatement methods, e.g. 7 day concrete curing.
- The additional costs of activity promoters in avoiding the charge need to be taken into account – uplift in labour costs; cost of purchasing plates and a big impact on the operational efficiency of jobs when removing and laying plates each day. NJUG believes these are seriously underestimated.
- TfL's own Code of Conduct indicates that there has already been an increase of 55% of works being undertaken out-of hours as a result of the London Code of Conduct.
- The benefits delivered by the London Code of Conduct have not been taken into account, which should be factored into the lane rental calculations and which will further reduce the amount of external costs that can be reduced.
- TfL acknowledges that an overnight work phase would be counted as 2 days, the same as a full time two-day work phase, and that *“this is a limitation of this dataset we are fully aware of.”* Yet TfL do not say what, if anything, they have done to seek to address this limitation.
- **NJUG does not agree that** *“one could argue that a lane rental scheme would reduce this level of demand. It could deter utilities from developing their networks underneath the CMAs.”* Gas, Water and Electricity companies have a statutory duty to connect customers where and when they wish to be connected, once contracted to do so, and are funded through their five-year regulatory settlements to invest in their networks to meet customer demand for safe, reliable and affordable essential utility services. Communication companies are being driven by Government to provide Broadband service to UK plc. Therefore, utilities will still be required to undertake works in lane rental areas, but the costs of doing so will be greatly increased.

For customer connections a typical 3 day residential or small commercial connection normally costing around £800 would be increased to up to £8300, either by the payment of the lane rental charge or the cost of avoiding it. A communications customer connection costing £60 could cost up to £2,560. For general investment by those utilities operating within TfL's lane rental area (and the other lane rental trial scheme), the economic regulators will allow efficiently incurred costs to be passed on to the consumer – but the works will still take place regardless.

- TfL also suggest that that the lane rental scheme *“could also reduce the number of TfL works by making new schemes appear more expensive.”* However, NJUG would challenge that surely all TfL works are equally essential, and so by slowing down the level of investment in the TLRN, this will in turn affect the effectiveness of the TLRN?
- The only true way of reducing the volume of works is by consistent, proactive and frequent co-ordination of works, with TfL, boroughs, utilities and contractors all working together.
- NJUG does not agree with the statement that the Olympic and Paralympic Games will ban works *“over several weeks.”* The main period of embargo of works on the Olympic Road Network (ORN) and the Alternative Olympic Road Network (AORN) commences in March 2012 and all other A and B roads commences in July and runs through to October. This is a period of several months, and will have a significant impact on activity promoters' volume of works within London and specifically on TfL's TLRN, much of which is included in the ORN. This shows the current flexibility and agreements between authorities and utilities under existing regulations.

Behaviour change modelling

Paragraph 1 - As before, NJUG does not believe that the assumptions for behaviour change modelling are realistic, particularly given the afore-mentioned constraints which will prevent activity promoters from working out-of-hours in many more instances than TfL have allowed for.

Additionally, whilst we welcome the inclusion of an estimate of costs of either paying the lane rental charges or the cost of avoiding them by implementing new working practices, NJUG believes those costs have been seriously underestimated.

Exemptions

Paragraph 2 - NJUG welcomes the confirmation of the exemption criteria and that some works could be exempt although they are causing an obstruction on the carriageway at traffic sensitivity. This provides the necessary flexibility for TfL and activity promoters to work together to deliver the best solution for society as a whole.

For the reasons previously outlined, NJUG therefore strongly urges TfL to exempt:

- Immediate works – including both urgent and emergency works.
- Works where it would be unsafe to work at night.

- Works where an EHO prevents night-working.
- Specific TfL / authority requirements, such as 7 day concrete curing.

In addition, we also urge TfL to preclude coring works from being undertaken during traffic sensitive times on targeted roads, or if that is not possible, to exempt them from charges to avoid utilities being faced with numerous lane rental charges incurred as a result of TfL or their contractors undertaking cores of utility reinstatements.

Paragraph 3 – NJUG notes that TfL anticipates that 4% of works will benefit from exemptions, which, based on the current list of exemptions may well be an accurate estimate. However, as above, we believe a range of other works should be exempt.

Behaviour change

NJUG notes that TfL have identified three behaviours with activity promoters may want to adopt when facing the risk of lane rental charges:

1. **Avoiding a rental charge by clearing the CW at TS times (but works may last longer)** – it is important to note that this will likely to be utilities preferable option, but:
 - In doing so – either by working out-of-hours or using innovative techniques such as plating to return the road to service during traffic-sensitive times, utilities will incur considerable additional costs / be impacted by a drop in efficiency levels due to the reduction in operational time arising from the laying and lifting of plates where safe and appropriate. Durations will also increase dramatically due to the restricted working hours.
 - The ability to avoid lane rental charges by working out-of-hours or using plating may not be possible for safety, operational or environmental health reasons, or because to do so would cause greater disturbance to local residents / businesses (light, noise and service disruptions out-of-hours).
 - As above – utilities are required to respond to emergencies within statutory periods and therefore will have no option but to attend the emergency to make safe, thereby incurring a charge. This will also apply to TfL highways personnel / contractors who will need to respond speedily to emergencies on the TLRN, such as failed traffic lights etc. **In both cases this makes the incurring of lane rental charges unavoidable, and so immediate works should be exempt.**
2. **Paying the rental charge and probably working faster** – Clearly, utilities for a variety of reasons, may opt to pay the lane rental charge and work during the day including at traffic-sensitive times. **However, where this is required due to TfL / local borough requirements, or to deal with an emergency, NJUG strong believes that such works should be exempt.** If utilities have to work during traffic-sensitive times and thereby incur lane rental charges, these costs (provided they are efficiently incurred) are very likely to be allowed by the economic regulators and passed through to consumer bills – either directly in the case of a connection, or indirectly through utilities' regulatory settlements.

NJUG remains very concerned that at a time of growing public and political concern about energy bills and other utility bills, the Mayor and Government are proposing to introduce a charge which will further add to rising prices – either by utilities paying or avoiding the charge.

3. **Infringing their permit, working faster and risking a daily penalty** – NJUG is very disappointed that TfL are even suggesting this as a possible way of acting. It is not in anyone's interest to even countenance activity promoters infringing their permits and risking a daily penalty. To do so is likely to lead to considerable additional disruption, and would be detrimental to TfL and utility sector relationships and would damage a utility's / the whole sector's reputation. NJUG would not condone or advocate such behaviour.

Recommendation: NJUG strongly urges TfL to change the wording in this draft CBA to indicate that any activity promoter who infringes their permit will be subject to the various regulatory charges / penalties, and that in the light of the very high levels of traffic-sensitivity on the targeted streets TfL would expect all activity promoters to work hard (with TfL) to minimise disruption.

Paragraph 3 – NJUG challenges the 'logit' discrete choice model, which TfL admits *"cannot be calibrated and will be simply based on a set of assumptions on the internal costs in the industry"*. This model ignores the sustained campaign by the London Mayor and NJUG to raise standards in London. It also doesn't recognise the impact of the Mayor's media campaign and close working relationships between TfL, NJUG and utilities, and how that continues to drive improvements.

Paragraph 4 – NJUG is disappointed that TfL suggest that the behaviour model anticipates that:

- **Where lower charges apply:**
 - **12% of promoters will try and dodge lane rental charges by providing incorrect information on their permit or not applying for a permit at all.**
 - 26% would pay the lane rental charge – and work faster.
 - 62% will clear the carriageway during traffic sensitive times by changing working practices.
- **Where higher charges apply – 95% of promoters will clear the carriageway and 4% will chose to pay the rental charge.**

NJUG strongly disagrees that activity promoters will try and avoid lane rental charges by not complying with the permit regulations. This goes totally against the whole ethos of NJUG and individual utilities / contractors in committing to the NJUG Vision for Street Works and the London, NJUG and now HAUC(UK) Codes of Conduct. Utility and contractor companies have done much to improve the timeliness and quality of notices / permits, with many utilities report in excess of 95% compliance.

Recommendation: We therefore strongly recommend that these assumptions are removed from the CBA.

Equally, as detailed previously, we are very concerned that there is an expectation that nearly all works can simply be moved to out-of-hours or that plating can be used to return

the road to service. There are many reasons why this may not be possible, or even desirable:

- Immediate works – including both urgent and emergency works.
- Works where it would be unsafe to work at night.
- Works where an EHO prevents night-working.
- Works where operationally it would be difficult / impossible to achieve the required project timescales or design.
- Works where in order to co-ordinate works with another activity promoter and in doing so reduce durations, where it may be necessary to undertake works during traffic-sensitive times.
- Works requiring 24 hour working to restore supply or when requested by TfL / London Borough.
- Connection works where access to properties is needed during the working day e.g. business premises.
- Specific TfL / authority requirements, such as 7 day concrete curing and / or directions from TfL to work during traffic-sensitive times.

Recommendation: Therefore, NJUG recommends that TfL revisits its assumption of the likely percentage of works that will be able to be transferred from traffic-sensitive times to out-of hours, or where the use of plating will return the road to service.

Paragraph 4 – highlights a number of assumptions, which NJUG challenges as follows:

1. *“Changing behaviour and clearing the carriageway during traffic sensitive times costs £500 on average per day to the works promoter in the case of works usually involving a carriageway reinstatement, but £200 per day in other cases.”*

“Our internal research suggests that plating would actually cost much less than £500 per day. Therefore the risk of underestimating the cost of behaviour change to the industry is minimal.”

NJUG asserts that the cost of transferring works from traffic-sensitive times to out-of-hours has been significantly underestimated – and will result in an average uplift of between 35 to 42% in labour costs, provision of lighting, generators, and potentially ‘hot-boxes’ or renegotiation with aggregates providers to facilitate 24 hour availability of materials to allow for out-of-hours reinstatement, and renegotiation with contractors to facilitate changes in working practices, the sum of which will far exceed £500 per day per job.

Equally, with plating, whilst the initial capital cost of purchase of plates can be spread over a period of time, the impact of removing and laying plates at the beginning and start of each day takes a significant time out of each working

day, which significantly impacts on productivity, increasing costs and potentially increasing the duration of works.

2. *“The uncertainty on the industry’s internal costs is of the order of £600 per day.”*

NJUG would welcome sight of how this figure is calculated please.

3. *“The duration of works is expected to be influenced, being cut by 5% when a £800 lane rental charge is paid or by 23% when a £2500 rent is paid. Duration should also be reduced according to the statistical cost of offending.”*

NJUG would like to understand how the reductions of 5% and 23% have been derived, given that there have been many reductions in durations already, for example, since the introduction of the prescribed period, many minor works have already reduced from 3 days to 2 days.

For works choosing to clear the carriageway, TfL suggest that *“a 20% increase in duration is expected on bands 2 and 3 due to smaller amount of non-sensitive times. Another 20% increase in duration is also expected if works would normally involve a carriageway excavation.”*

NJUG believes that the laying and removing of plates during the morning and evening peak times increases durations, which could be well in excess of 20%.

Paragraph 5 – Suggests that in the longer term, from 2015 onwards, it will cost 30% less to clear the carriageway.

NJUG recognises that there may be technological innovations that allow quicker and easier return of the carriageway to service, but the need to lay and remove plates at the beginning and end of each day, will still have a serious impact on operational efficiency and we do not therefore see how a reduction in costs of the magnitude of 30%.

Paragraph 6 – Again NJUG strongly objects to the inference that activity promoters will seek to *“dodge”* lane rental charges, and in addition do not understand how the percentages of *“dodgers”* and *“payers”* and those that will clear the carriageway are calculated, albeit an assumption of 65% choosing to clear the carriageway is more realistic than the higher figures of 80%.

Cost to the Industry

Paragraph 1 – NJUG agrees with the statement that *“there is no doubt the lane rental scheme will increase the cost of carrying out works on the TLRN”*, but must stress that increased costs will continue for the foreseeable future (as explained above).

Paragraph 2 – NJUG recognises what TfL means when it states that *“Charges and penalties will not take part of the cost-benefit analysis because they are a transfer. They would be a cost to works promoters and a benefit for TfL and be cancelled out when calculating the net social benefit.”* However, the costs to utilities in either paying or avoiding lane rental charges will increase utility consumers’ bills and therefore these costs are a direct additional burden on the utility industry, including UK plc who all rely on gas, water, electricity and communications to operate effectively.

Paragraph 3 – NJUG welcomes the recognition that there will be an additional cost to industry in adopting new working practices to avoid the scheme, but believes that the figure of £12m is considerably lower than the likely amount.

Paragraph 4 – NJUG would welcome a detailed discussion on what this paragraph actually means please, as we are confused as the choices of certain models / rules at the expense of others

Paragraph 5 – NJUG does not agree that the cost of new working practices would substantially reduce. Whilst clearly there will be some efficiency gains as the new working practices bed in, and the capital cost of purchasing plates etc. is absorbed, but the residual uplift in labour costs and impact on efficiency of the laying and lifting of plates, will continue.

Road works carried out by TfL

NJUG welcomes this section, including the confirmation of the highway maintenance and works expenditure, and the likely financial impact of lane rental on TfL's works. **However, we are surprised that there is an assumption that 49% of works will still incur lane rental charges, which is a much lower percentage than utility works being spent on innovative and new working practices.**

Utility works

TfL suggests that the financial impact of lane rental on utilities would be an additional cost of £14.1m per year in the short term, falling to £11.6m per annum in the long term. **This figure seems low to NJUG, as our preliminary estimates indicate costs exceeding £40 million a year just for TfL lane rental scheme.**

NJUG notes that there is a high level of uncertainty on utility costs arising from lane rental, **and therefore would welcome sight of the calculations forming the suggested figures please.**

TfL administration and enforcement costs

Inspections

Paragraph 1 - NJUG acknowledges the use of CCTV cameras and existing CCTV enforcement teams to minimise the need for a large number of additional inspectors to inspect activity promoters' works which will help keep operating costs down. However, those teams operating CCTVs should be suitably trained in street works procedures and legislation.

Paragraphs 3 & 4 – Suggests a projected cost of £950,000 per year for patrolling and inspection of works, and the view that it could drop by 30% in the long term due to productivity. **NJUG understands that a number of enforcement officers are already in place and working on the TLRN, and we would ask TfL to confirm how many additional staff they will be recruiting and at what cost per enforcement officer, that justifies nearly £1m in cost for reporting and controlling the occupation of the carriageway during traffic sensitive times**

Paragraph 2 – NJUG questions on what basis the assumption that TfL will find 60 cases per day, where presumably there is a variance between the permit and the actual works?

Paragraphs 3 & 4 – NJUG would welcome sight on how the calculation of £400,000 as the cost of assessing evidence has been made, and how this would be expected to drop by 34%, given our previous comments above. Would additional staff be recruited?

Administration of charges and penalties

Paragraph 1 – As per the commitments given in respect of permits during the passage of the TMA through Parliament, NJUG expects that any costs incurred by TfL must be efficiently and necessarily incurred, and based on the norm for the relevant type of works in London.

Recommendation: NJUG recommends that this information is made available and submitted as part of the lane rental scheme application. Regardless of NJUG's overall views on lane rental, this is essential to comply with Government's commitment to not imposing unnecessary additional burdens on business.

Paragraphs 3 & 4 – Our comments regarding the need to demonstrate efficiency are key, and NJUG would welcome sight of the detail that leads to the estimate of £125,000 for front-office costs, and the assumption that these costs will drop by 32%, given our previous comments.

Monetised Costs and Benefits Analysis

Base 2012 scenario – Annual Costs and Benefits

NJUG welcomes the Base 2012 scenario – Annual Costs and Benefits table, however, as before, NJUG is concerned over the validity of the assumptions regarding a) the level of works which will avoid the charge by either moving works to out-of-hours or clearing the carriageway, b) the number of works for which lane rental will be paid, c) the number of works where promoters will attempt to avoid the charge and d) the low level of exemptions, and the need to exempt other types of works.

Base 2015 scenario – Annual Costs and Benefits

Our comments regarding the level of assumed efficiency apply.

Sensitivity analysis

Paragraph 2 – NJUG believes that the baseline demand for works on the TLRN can be reasonably well established, considering the volume of planned asset replacement works, with a direct correlation in the reduction of emergency works. NJUG assumes that by using the Government's economic growth modelling it may also be possible to show likely estimated impact on demand for customer connections.

Paragraph 3 – any views – NJUG is unsure what this paragraph is seeking to say and therefore would welcome clarification from TfL.

Paragraph 4 – the cost of new working practices – as before, NJUG believes that the cost of new working practices has been considerably underestimated, and the assumption of a significant reduction in those costs is an incorrect one.

Paragraph 6 - The negative publicity – our previous comments regarding the virtual cost of negative publicity apply.

Paragraphs 7 to 9 – NJUG’s previous comments apply, but in particular we do not agree with the assumption that works previously occupying the carriageway during traffic sensitive time could have their external costs cut by 70% if they adopted new working practices. This is because those costs have been considerably underestimated, and there is little recognition factored in that these costs will ultimately end up in consumers’ bills, which affects the net social cost.

Non monetised Costs and Benefits

The induction phenomenon

Paragraph 1 – NJUG welcomes the recognition of the risk that by reducing disruption from road and street works this might make the TLRN more attractive and thereby increase the volume of vehicles, resulting in no perceived change in the volume of congestion. **NJUG is very concerned that this could result in consideration by Government and the Mayor of yet more regulation and additional costs for utility street works.**

Paragraphs 4 & 5 – NJUG welcomes the recognition that induction arising from the introduction of lane rental, is likely to increase the volume of traffic, and therefore offset a part of the assumed benefits.

Paragraphs 6 & 7– Whilst we acknowledge Dr Robert B Noland’s summary of case studies, NJUG is confused as to why generally drivers in London would “*fully re-invest their journey-time savings into additional kilometres*”? The vast majority of drivers in London either commute from A to B or are drivers undertaking trips on behalf of businesses, with specific delivery points / places to visit. Whilst potentially they might be able to make more individual deliveries / site visits, the many commuters who choose to drive to work will not increase the length of their journeys. **We therefore question the inclusion of this assumption.**

Road Structure

NJUG welcomes the recognition of the potential impact on the road structure of a change in working practices, and in particular, we would like to highlight the need to use hot-boxes to enable out-of-hours reinstatement, given that the materials / aggregates suppliers do not normally operate a 24 hour service.

Additionally, it is important to recognise that any increase in the volume of traffic (as per the induction model) will lead to an increase in the degradation / the speed of degradation of TLRN and other roads.

Road Safety

NJUG welcomes TfL’s emphasis on road safety.

Table 5 – However, NJUG is very concerned that Table 5 shows that there is a doubling of the risk of death between works undertaken during the day and those taken at night. In this case, adding to this risk by incentivising large numbers of works to be undertaken at night, could increase the fatalities still further. This is of very significant concern

Paragraph 6 – NJUG is surprised that this paragraph states that *“the volume of works currently undertaken at night is unknown due to limitation in the quality of data in the local register and permit conditions,”* given TfL’s own London Code of Conduct report indicates a significant increase in out of hours working (55%).

Paragraphs 7 & 8 – This CBA a) recognises that *“During night time, the increased level of activity caused by the lane rental scheme **may** lead to an increased number of casualties”*, but b) that there will be a consequent reduction in works-related casualties during the day time due to less works, **and then concludes that the effect of lane rental on road safety is uncertain.**

NJUG remains concerned that an increase in night-time working is likely to lead to an increase in works-related traffic / pedestrian accidents, and could also lead to increase safety risks for the workforce, and challenges how the Mayor and TfL can introduce any scheme that is likely to increase the number of facilities / risks to safety..

Recommendation: NJUG therefore reiterates its recommendation that TfL, boroughs and utilities must work together in planning works, and where there is any risk to road or public / operatives’ safety if works are undertaken out-of-hours, then TfL / Boroughs should agree to works being undertaken during the day, exempt of lane rental charges. It is also vital that TfL stress within their lane rental scheme application, that no undue pressure will be put on activity promoters to work at night when it would be unsafe to do so.

Health and safety in the industry

Paragraph 1 – NJUG agrees with TfL’s assumption that an increased volume of works in the evenings / night-time would increase the number of accidents, either due to occupational hazards or due to the exposure to faster traffic with poor visibility and with some drivers having their poorest level of attention.

As above, NJUG has real concern that TfL are considering introducing a scheme that is expected to increase the potential risk to the public / workforce and our comments regarding exemption of works where working at night would be unsafe, and the explicit forbidding of undue pressure being brought to bear on activity promoters who demonstrate that it would be unsafe to do so.

Air quality and climate change

NJUG welcomes the recognition of the impact on carbon production and possible impact on air quality and Londoners’ health brought about by the need for additional lighting and diesel generators if works are to be undertaken at night.

Given the UK and EU carbon reduction targets, and utility / contractors’ programmes and targets to reduce carbon emissions, NJUG is very concerned that

there will be likely be a significant increase in the level of carbon emissions arising from night-time working.

Noise

NJUG welcomes the recognition of the increased noise working at night-time would bring to potentially almost half a million Londoners.

Paragraphs 3 to 5 – Suggests that lane rental would add circa 10,000 days of work every year into evenings and night-time, with an assumption this would affect an average 200 people each time within a 100 metre radius. The result would be 2 million nights of sleep deprivation per year if works were not curtailed before 11pm.

Based on the assumption that working before 8pm on targeted streets would incur a lane rental charge, this would reduce utilities average working ‘day’ from 8 to 10 hours per day to just 3 hours per day to undertake works. This would significantly increase the durations of works – typically making them three times as long, and therefore result in longer periods of disruption for local businesses / residents and also significant impact on utilities’ operational efficiency and thereby increase costs.

Recommendation: Our comments regarding Environmental Health Officers (EHOs) apply and NJUG recommends the exemption of works from lane rental charges if an EHO prevents works from taking place during the night.

Paragraph 6 – This paragraph recognises the likely increased cost for Boroughs to handle an increased number of night works and residents’ correspondence, which will be a definite increased cost which needs to be factored in.

Long term reduction in the number of works on the TLRN

Paragraph 1 - NJUG believes that the assumption that utilities would be able to reduce their use of the TLRN for the location of apparatus is a false one, as the integrated gas, electricity, water and communications networks supply services to businesses and residents along the TLRN. Therefore, TfL should not assume that this prospect is realistically achievable.

Cycling and walking

Paragraph 1 – States that *“in the first instance, the London Lane Rental Scheme would not impose any charge on works occupying the pavement only”*, which would be regulated only through permitting.

NJUG, whilst welcoming the exclusion of works in the pavement, **is concerned about the use of the words “in the first instance” as the premise of any lane rental scheme must be to deliver significant reductions in disruption, given the cost to TfL’s highways team, utilities and their customers.**

Paragraph 2 – Makes an assumption that *“there is a risk that works promoters will shift some level of activity (i.e. pipework and network development) from the carriageway to the pavements in order to save on charges,”* and that *“TfL will clearly state the implementation timeframe of a pavement rental scheme.”*

NJUG would like to stress that:

- The large-scale movement of utility networks from the carriageway to the pavement is impractical and will not happen, as the level of investment in the gas, water and electricity networks is limited by their regulatory settlements. Therefore, utilities will not have the funding or the operational capacity for a wholesale move of infrastructure from the carriageway to the footway / verge which are already heavily congested with subterranean apparatus.
- As above, NJUG would be very concerned if lane rental charges were then applied to works in footways (pavements), as this would further increase works promoters' costs with far less benefit in terms of reduced disruption and must not be considered.

Recommendation: NJUG therefore recommends that TfL remove all reference to the intention to introduce lane rental charges for footways (pavements) and / or verges.

Paragraph 3 – Assumes that *“it is unavoidable that the occupation of the pavements will increase as a result of the lane rental scheme, during peak times, for the parking of vehicles and the storage of materials.”*

NJUG's understanding is that the parking and storing materials on footways is generally not allowed, due at least in part to the inconvenience and risks it poses to disabled people. **As part of the permit conditions that TfL applies, it can forbid the use of footways (pavements) for parking or materials storage, and so this assumption is not valid and should therefore be removed.**

This paragraphs also recognises that the effecting of laying down and taking up plates will increase the durations of works, **yet this does not appear to be factored into the overall calculation of the likely reduction (or not) in disruption.**

Paragraph 4 – Goes on to say that as a consequence, *“there is a high probability for the lane rental to deter walking along the congestion management areas.”* **However:**

- **Provided that the NJUG Vision for Street Works; the London and HAUC(UK) Codes of Conduct and the Safety Code of Practice deliver continued improvements in signing, lighting and guarding, there is no reason to believe that pedestrians will not do what they do now, and follow the alternative suggested routes.**
- **Our comments apply regarding use of permit conditions to prevent works deterring waling along the congestion management areas.**

Paragraph 5 – Highlights the potential increased risks to cyclists and consequent reduction of attractiveness of cycling, of increased traffic flows during the day. **Clearly, this impact, and the Mayor's desire to increase the number of people cycling in London, needs to be weighed up against the potential benefits of a lane rental scheme, and factored in to the modelling.**

Distribution Effects

Paragraph 1 – States that costs to utilities, and therefore consumers’ bills are estimated at £12m per year. **NJUG believes, following feedback from its members, that the costs of either paying or avoiding lane rental charges will be considerably more than TfL’s estimate. At a time when Government is facing growing political and public concern over increasing energy and utility bills, any measure that will increase utility bill costs should be very carefully considered in the light of Government’s commitment to not adding additional burden to businesses and hard pressed consumers.**

Paragraph 2 – Lays out two key benefits that the lane rental scheme will deliver to Londoners in terms of congestion relief:

- *“By supporting the economy (cheaper and more reliable deliveries, wider job markets.”*
- *By improving reliability for bus services...”*

NJUG would reiterate that there is generally held assumption that all journeys are being undertaken for business purposes and that any delays are therefore *“lost productivity”* time. Whereas, in practice many drivers choose to leave home early and any delays do not affect their working time.

Equally, whilst an improvement in congestion will lead to cheaper and more reliable deliveries, **the induction model already indicates that it is likely that any increased space on London’s roads will inevitably lead to an increase in vehicles. Equally, given that TfL’s own statistics show that road and street works only account for 37% of disruption on London’s streets, without significant effort to reduce the volume of vehicles and the numbers of accidents and incidents, the overall effect on congestion is still likely to be perceived as extremely limited.**

Paragraph 4 – NJUG welcomes recognition that some people living or having businesses along the TLRN *“may lose out”* and *“will bear the noise of evening and night works and could see an increase in traffic near their homes.”*

The GLA Transport Committee recognises this impact, and raises major concerns over the impact on local residents and businesses, who will also ultimately see an increase in their utility (and potentially council tax) bills.

Effects on businesses

Paragraph 1 - NJUG would welcome sight of the assumptions and calculations that lead TfL to state that *“business users and transport providers are expected to take advantage of the majority of the gross social benefit related to lane rental. On the basis of London specific figures for traffic composition, trip purposes and occupancy, TfL estimates that businesses will benefit from 51% of the external cost savings. This equates to £57m p.a. from 2015 onward.”*

Paragraph 2 – Indicates a cost to utility companies of £11.6m p.a. in lane rental charges, penalties and new working practices. Our previous comments apply, but:

- These figures are deemed by utilities to be substantially underestimated.
- The costs to utilities, when efficiently incurred, will increase utility bills.

Paragraph 3 – For the reasons above, NJUG does not agree that “the ratio of benefits to costs can be estimated at 5.1 from the point of view of businesses.”

Appraisal Summary Table

Our detailed comments apply regarding noise, safety (accidents), affordability (increased utility, and therefore consumer, costs), and increased TfL costs.

NJUG remains very concerned about the:

- **Increased risks to safety – both road safety and workforce / public safety.**
- **Increased disturbance to local residents and businesses, including in particular, noise, additional lighting, increased CO2 emissions and traffic at night.**
- **Increased prices to utilities and their customers, leading to higher utility bills.**

Monitoring and Evaluation

Challenges

NJUG supports the extensive analysis of the traffic volumes leading to the identification of the key pinchpoints on the TLRN. **However, we are concerned about the lack of meaningful evaluation of the wider changes accruing from the implementation of the lane rental scheme. This, combined with the increased risks, disturbance and consumer prices, really challenges whether the benefits to drivers of reduced disruption, outweigh the very real negative impacts on local businesses and residents and utility consumers.**

Outcomes

Paragraph 1 - NJUG does however recognise the work TfL has done in establishing the baseline for the level of vehicle numbers per hour on the TLRN, which underpins the proposals for the pinchpoints, part-streets and streets included in the TLRN.

Tools and Key Monitoring Indicators

We also recognise the validity of most of the proposed tools and monitoring techniques that will measure any improvements the lane rental scheme might bring.

Recommendation: NJUG therefore recommends that TfL, activity promoters and stakeholders continue to work together to refine the proposals further to ensure they comply with the final lane rental regulations, in order to implement the shadow period of running once the exact regulatory requirements are clarified beyond doubt.

Second Bullet Point (c) – NJUG welcomes the inclusion of the charges paid by operators for avoidance of lane rental charges including all prosecution proceeds, and recommends that the additional costs incurred by utilities in avoiding the lane rental charge should also be included (e.g. uplift in labour costs, capital cost of

purchasing plates and the operational impact of laying and lifting plates during traffic-sensitive times).

Recommendation: NJUG therefore recommends, and is committed to supporting, the gathering of information on utility costs that arise from utilities / contractors avoiding the lane rental charges.

Third Bullet Point – NJUG welcomes the user satisfaction survey undertaken by TfL. However, there is much emphasis is on the public who travel along the TLRN, rather than businesses and residents who have been the beneficiary of new utility connections or safe, secure and enhanced utility supplies. **NJUG recommends that residents and businesses who reside on TLRN routes are also surveyed**

Time Frames

Recommendation: NJUG welcomes TfL's proposal to commence the monitoring of the "proper full year period" from October 2012 to September 2013, and strongly recommends that whilst the shadow running period might commence earlier, the actual scheme also commences in October 2012 too. This will enable a sensible period of time for TfL and all works promoters to continue to work together to iron out all issues, make the necessary changes to the EToN and work management systems, undertake training, negotiate revised contracts and resolve any differing interpretation issues, without the additional financial pressures that lane rental charges will bring.

3.4 Appendix – Locations where charging will apply

NJUG welcomes the evidence-based approach that TfL have applied in identifying the proposed pinchpoints, part of streets or streets to which lane rental charges will apply when occupation of the street occurs during traffic-sensitive times.

Additionally it is vital that the lane rental times are included within the National Street Gazetteer, as well as the NSG street names (as already proposed).

4.0 NJUG Response to the TfL Lane Rental Consultation Questions

Question 1: What is your name?

Les Guest, Chief Executive

Question 2: What is your email address?

info@njug.org.uk

Question 3: What is your organisation?

The National Joint Utilities Group Ltd. (NJUG), the UK's only trade association representing utilities and their contractors solely on street works matters

Question 4: Do you agree with the suggested scope of the scheme set out in section 4?

Yes and No

Yes - Within our overall comments about the likely effectiveness of any lane rental scheme, NJUG generally welcomes the targeted and incentivised nature of TfL's proposals.

No - However, NJUG does not believe that lane rental charges should apply to:

- Immediate works – including both urgent and emergency works.
- Works where it would be unsafe to work at night.
- Works where an EHO prevents night-working.
- Specific TfL / authority requirements, such as 7 day concrete curing.

Equally, NJUG strongly urges TfL to prevent any cores being taken during traffic-sensitive times on targeted streets, or if this is not possible, to exempt coring activities from lane rental charges, to avoid activity promoters being potentially liable for both the coring and lane rental charges.

Question 5: Do you agree that TfL should apply the same lane rental charges to their own highway works?

Yes – subject to these comments:

NJUG does not accept that there is a sound economic case for Lane Rental when the costs to society as a whole are factored in. NJUG strongly believes that working together to more effectively and consistently use the existing legislation, regulation and voluntary initiatives, such as the London and HAUC(UK) Codes of Conduct, the Performance Scorecard and the NJUG Vision for Street Works, will deliver greater benefits at much less costs to TfL, utilities and their customers.

However, if lane rental is to be implemented, we welcome TfL's approach of a targeted, incentivised and avoidable scheme, and NJUG especially welcomes TfL's commitment to applying lane rental charges on an equal basis to its own highway teams and contractors, and other activity promoters. This is essential if the lane rental scheme is to deliver any additional benefits over and above the myriad of existing legislation, regulation and voluntary initiatives, particularly given that over 60% of works undertaken on the TLRN are by TfL.

However, NJUG is concerned that without a legal requirement for any lane rental scheme to apply equally to all works promoters (unlike permit schemes), there is always a risk that a change of Mayor or TfL policy might result in TfL's own works being removed at a subsequent time. NJUG therefore continues to call on the Government to change primary legislation to make it a requirement of any lane rental permit scheme application, for it to apply equally to all works promoters on the targeted streets and when occupation of the carriageway occurs during traffic-sensitive times.

Question 6: Is it clear when charges will apply?

Yes – NJUG welcomes TfL's approach and the clarity on where and when lane rental charges will apply.

Question 7: Are the calculation of charges clear?

No – NJUG would welcome a simpler explanation of how the charges are developed. Whilst NJUG supports the level of analysis TfL have undertaken to establish a base line of the causes of congestion on the TLRN and where lane rental charges may be appropriate, the complexity of the various models, combined with some of the assumptions made, mean that it is unclear exactly how the charges are calculated and some of the conclusions are reached.

Also, the additional cost burden of activity promoters avoiding the charge is seriously underestimated, and the impact of increased evening and night-time works on local residents, businesses, utilities and their customers is recognised, but not satisfactorily quantified.

Finally, there is recognition of the '*potential*' risk of increased utility bills but no explicit reference to the massive increases in the price of customer connections e.g. a simple customer connection to deliver a new telephone line, which might normally cost around £50, could cost over £2500 if lane rental charges were applied. Equally, a three-day gas or water connection of around £800 could cost up to £8300 under lane rental charges. This is particularly true if the connection is being provided for a business who operates during the day, and therefore requires the works to be undertaken during the daytime.

Clearly this cost is disproportionate to the level of activity and will preclude many residents or businesses from applying for a connection within the TLRN targeted streets. It will create a big cost differential between businesses / domestic consumers who live / run businesses within the targeted areas and those that don't.

Finally, NJUG is very concerned that TfL are proposing an £80 penalty in addition to the already very substantial lane rental charges, and asks TfL:

- To clarify the legal basis on which these proposed penalties are based.

- The justification for why they should apply in addition to the lane rental charges.
- To therefore consider abandonment of this particular proposal.

Recommendation: Therefore NJUG recommends the removal of the proposal for an £80 penalty.

Question 8: is it clear what additional information is required on permit applications?

No – Whilst NJUG recognises that this may be the only way of dealing with this issue, NJUG would welcome greater clarity on the need for separate permits for different working windows, and we would be happy to work with TfL to provide greater clarification that is easy to understand for activity promoters.

Question 9: do you agree with the proposed exemptions from lane rental charges as detailed in section 8?

Yes and No

Yes – NJUG welcomes the list of exemptions provided so far, but strongly believes that the following works should also be exempt, as they are outwith activity promoters' control and therefore not avoidable:

- Immediate works – including both urgent and emergency works.
- Works where it would be unsafe to work at night.
- Works where an EHO prevents night-working.
- Specific TfL / authority requirements, such as 7 day concrete curing.

No - Additionally, NJUG strongly recommends that coring activities should be prevented from taking place during traffic-sensitive times to avoid further disruption. However, if this is not possible, we urge coring activities to be exempted from lane rental charges, to ensure that activity promoters are not faced with not only coring charges but also potentially lane rental charges for works over which they have no control.

Immediate Works

NJUG fundamentally disagrees with lane rental charges being applied to immediate works (either immediate urgent or immediate emergency works). NJUG is very concerned to ensure that the TfL lane rental scheme does not inadvertently encourage the wrong behaviours:

- Utilities have a statutory duty to respond to emergencies within specified times, for good safety and environmental reasons.
- Equally, the Network Management Duty places a duty on TfL / local authorities to do everything reasonably possible to ensure expeditious movement of traffic / pedestrians on their network. This includes responding in a timely way to any failures on the road network, due to accidents, incidents or failure of traffic management equipment.

- Immediate emergency and immediate urgent works cannot therefore be planned to only be attended to out of hours, and so works promoters would be unable to avoid the charge.

Recommendation: NJUG therefore strongly recommends that Immediate Works are exempt from lane rental charges.

Works where it would be unsafe to work at night

NJUG is very concerned that TfL's Cost Benefit Analysis shows a doubling of the risk of fatalities from day to night-time working. There will be circumstances where it is not safe to work in the evenings / at night, and it is vital that the TfL scheme spells out that TfL will not place undue pressure on utilities to work out-of-hours if it would be unsafe to do so, and allows those works to be undertaken during the day, with an exemption from lane rental charges.

Environmental Health Officer Constraints

The whole premise of the TfL lane rental scheme is that works can be moved from the most traffic-sensitive times to evenings / overnight. However, the potential for Environmental Health Officers (EHO) to prevent or restrict out of hours working due to noise constraints could significantly hamper this objective.

The consultation makes an assumption that working before 8pm on targeted roads will generally incur a lane rental charge, yet also states that for environmental health reasons it is possible that working after 11pm may be precluded. In these instances, utilities would have just 3 hours per night to undertake work, which would have a significant impact on operational efficiency, extending durations and increasing costs.

Specific TfL / authority requirements, such as 7 day concrete curing.

When TfL decide that there is a valid reason for works on a targeted street to be taken during traffic-sensitive times then these should be exempt, because the charges then become unavoidable. These could include:

- A requirement for 7 day concrete-curing.
- The opportunity to co-ordinate works, including in particular trench-sharing or workathons, which could only safely be undertaken during the daytime.

Question 10: Do you agree with the arrangements for remedial works?

Yes and no – NJUG is on record stressing that if a utility performs a defective reinstatement then they should return at an appropriate time to put right those works at their own expense. NJUG therefore believes that the right approach should be for TfL and the works promoter to work together to discuss the timing of remedial works to seek to plan them outside traffic-sensitive times wherever possible. If that is not possible and the utility is directed to work during a traffic-sensitive time, these works should be exempt from charges.

Notwithstanding this, please note that the application of the maximum charge for all remedial works will be an additional burden as utilities / contractors undertaking remedial

works are already faced with Inspection Fees along with the additional permit fee and the cost of undertaking those works and the lost opportunity to undertake other productive work, and so the costs are already very significant.

Question 11: Do you agree that information about lane rental charges should be made available via the National Street Gazetteer?

Yes – NJUG strongly agrees that all relevant data, information, dates, times etc are recorded and viewable on the National Street Gazetteer (NSG) to assist planning and accurate noticing / permit applications. It is imperative that this includes the specific co-ordinates of the pinchpoints on specified strategic roads that will be subject to lane rental and also exactly when charges apply. In order to co-ordinate and execute planned works most efficiently, activity promoters will need to be able to calculate the charges that may be passed on to customers – and this information will be needed at the time of providing a quote to those customers who have requested a connection / enhanced service. Therefore, the information must be available on the NSG to enable its availability ‘on demand.’

Question 12: Do you agree with the proposed Dispute Resolution process?

Yes and No

Yes - NJUG welcomes the emphasis on informal resolution of any disputes which may arise from the TLRs. We also note that if informal resolution does not satisfactorily resolve a dispute, then an activity promoter should make a written representation to the TfL appeals officer specified as responsible for considering representations.

No – NJUG is concerned to ensure that the TfL Appeals Officer is able to hear appeals effectively, independently and fairly.

Recommendation: However, NJUG seeks confirmation and also recommends that the TfL appeals officer is:

- **Sufficiently knowledgeable and experienced to judge any dispute within both the legal and operational context of street and / or road works.**
- **Separate from TfL’s own highway team and of a sufficient level / grade to be able to make a decision independently.**
- **Will be required by the scheme to make any judgement fairly and on an equitable basis for all activity promoters.**

NJUG agrees that any formal dispute arising from the issuing of Section 74A lane rental charges should be made as soon as possible.

We welcome TfL’s confirmation that they will ensure that “a fair and open system is in place for considering representation.” However, we would reiterate the need for any nominated TfL official to have sufficient independence, knowledge and impartiality to make consistent, fair and legally robust determinations.

Recommendation; Finally, NJUG believes that once the TfL appeals process has run its course, if the dispute has not been satisfactorily resolved, then there must be recourse to the HAUC(UK) Dispute Resolution Procedure detailed in Chapter 13

of the current Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters, reference to which should be included with the TLRs proposals submitted to the Secretary of State.

Question 13: Are the parameters (that the total road length will remain within + / - 3% of the original) for minor variations to the scheme clear?

Yes and No

Yes - NJUG welcomes the general principle of limiting the total road length, but recognises that there may be a need to make minor changes to the TLRs, including to include or remove locations into / from the scheme; alter traffic sensitivity or move locations from one charge band to another as a result of new housing, retail, business or other developments that have a material effect on traffic flows.

We strongly welcome the commitment to consult on such proposed changes, which will be based on traffic data and will not vary the total road length or alter the overall ratio of charge bands covered by the scheme from the original by more than +/- 3%.

No – It is important that numerous consecutive minor changes in quick succession, extending the road length of the scheme by less than 3%, do not lead to a considerable increase in the overall length of the scheme. Additionally, many changes in quick session, will lead to inaccuracies in the NSG and therefore consequent non-compliance and risk of inadvertently incurring lane rental charges through not knowing a particular pinchpoint had been added to the scheme.

Recommendation: Therefore, NJUG strongly urges TfL to:

- **Commit to any consultation following the Government’s consultation guidelines i.e. a minimum of 12 weeks consultation to allow utilities and others affected to assess the implications of the proposed changes and provide meaningful and detailed commentary / feedback.**
- **Commit to ensuring that consecutive changes to the scheme do not over time lead to a significant change in charge bands, thereby increasing activity promoters’ costs even more than proposed currently.**
- **Ensure that any changes are included within the NSG and highlighted to all activity promoters before lane rental charges apply.**

Question 14: Do you have any other comments on the draft TfL Lane Rental Scheme?

NJUG’s Covering Letter, Executive Summary, Detailed Summary and our Summary of Key Recommendations make a number of points which we hope are helpful to TfL. However, in particular NJUG would like to emphasise the following key points:

- Within the context of NJUG’s overall view that lane rental is unlikely to deliver substantial additional benefits over and above the existing legislation, regulation and voluntary initiatives, NJUG generally welcomes TfL’s approach to developing a targeted, incentivised, avoidable and equitable scheme.

- NJUG wishes to continue to work with TfL, activity promoters and stakeholders to further refine the scheme before it is submitted to the Secretary of State for scrutiny.
- In particular, NJUG would like to emphasise our strong recommendations on:
 - Increasing the circumstances where exemptions should apply. These include for immediate works; those works where an EHO prevents working taking place at night; those works where it would be unsafe to work out-of-hours; and works where the need for specific requirements by TfL / Boroughs which prevent works being undertaken in non traffic-sensitive times.
 - In those cases NJUG recommends the works are exempt and the normal permit fee would apply.
 - Currently lane rental charges apply for all days that are worked, including weekends and bank holidays. The economic case for charges at weekends will be generally much lower, because the additional costs to activity promoters will generally not be matched by a major benefit, given the reduced level of traffic at weekends.
 - NJUG therefore strongly suggests that lane rental charges are generally not applied at weekends / bank holidays – to incentivise activity promoters to undertake works at quieter times e.g. workathons etc. For the few occasions where works at weekends or bank holidays would prove very disruptive, then TfL and activity promoters could discuss them, and TfL can use the existing NRSWA provisions to direct the timing of works to prevent weekend working on those specific occasions.

Two final points:

- **Works durations** – NJUG and its members believe that in practice, with restrictions from EHOs and the restrictions from lengthy traffic-sensitive times, mean that in some of the non traffic-sensitive periods are too short to carry out any meaningful amount of work (in some cases as short as 3 hours). This will significantly extend the durations of works, increasing the disturbance to local residents and businesses, and the costs to utilities and their customers.
- **Accidents** – The Cost Benefit Analysis anticipates an increase in the number of accidents, with a doubling of the risk of fatalities as a result of night-timing working. NJUG is very concerned about the increased safety risk, especially as the safety of utility and contractor workforces and the public are NJUG's number one priority.

NJUG therefore questions whether any scheme that admits that safety may be compromised can be acceptable to society as a whole?

Appendix A

TfL Lane Rental (TLRS) Consultation NJUG Summary of Recommendations

Introduction

This summary should be read in conjunction with NJUG's covering letter, Executive Summary, Detailed Summary and Answers to the Consultation Questions.

Key Recommendations

NJUG recommends:

General Points

1) The current cap on the level of works is retained, and given that the Mayor is also introducing further changes to the London Code of Conduct, TfL and works promoters should focus on maximising the benefits from the Code, rather than TfL imposing a tighter cap on the level of works.

2) TfL should work with London Boroughs, NJUG and utilities to revise the LoPS to focus on the busiest streets at the busiest times, thus enabling greater co-ordination and planning of the most disruptive works, as well as continuing to implement the London and HAUC(UK) Codes of Conduct. This will deliver greater benefits at far less cost.

3) TfL should focus on continuing the constructive dialogue with NJUG and utilities within the context of improving the effectiveness of the various existing regulatory and voluntary measures, rather than introducing yet more regulation, resulting in additional costs for utilities and their customers.

4) Key objective b) should be amended to:

"minimise the duration of occupation of the street at the busiest locations on the network (subject to certain exemptions and ensuring that the highest standards of safety are maintained)."

5) In order to avoid confusion and inadvertent non-compliance, all necessary information must be included in the NSG – including the traffic-sensitive times for each location and the direction of travel, and therefore when lane rental charges will or won't apply.

6) TfL, activity promoters and stakeholders should continue to work together to refine the proposals further to ensure they comply with the final lane rental regulations, in order to implement the shadow period of running once the exact regulatory requirements are clarified beyond doubt.

Safety

7) The TfL scheme is amended to explicitly prevent TfL / Boroughs from exerting undue pressure on activity promoters to undertake work out-of-hours, when to do so would be unsafe, and

8) Explicitly - if activity promoters can demonstrate working during the evening or at night would be unsafe, the works should be exempt from lane rental charges and every effort should be made by the local authority and the utility(s) to reduce disruption.

Environmental Health Constraints

9) In cases where an Environmental Health Officer prevents works taking place at night, there should be an exemption from lane rental charges, and utilities and local authorities should work together very closely to seek to minimise the disruption from the planned works.

10) Lane rental charges should not apply to immediate (emergency and urgent) works, or at the very least, that they should be exempt until the emergency has been made safe or services are restored.

Overview of recommended exemptions

11) The following works should be exempted from lane rental charges:

- Immediate works – including both urgent and emergency works.
- Works where it would be unsafe to work at night.
- Works where an EHO prevents night-working.
- Works where specific requirements by TfL or a London Borough mean that occupation of the carriageway during traffic-sensitive times is unavoidable.

Fairness and Equality

12) In order to give confidence to activity promoters, and in the absence of a legislative requirement for lane rental schemes to apply equally to all works promoters, NJUG urges TfL to make a commitment that for as long as a lane rental scheme exists within London it will apply to all works promoters equally.

13) The words in the second paragraph of Section 4.1 are amended to *“unless covered by an exemption, any street works or works for road purposes would be liable to lane rental charges.”*

Double Jeopardy

14) Applying both lane rental and S74 charges would disproportionately increase utility costs (particularly if S74 is increased still further), and so, if lane rental applies, then S74 and permit fees should not apply and the draft lane rental scheme should be amended accordingly.

15) If, for unforeseen / unavoidable circumstances beyond a utility's reasonable control, works overrun their reasonable period, then S74 should apply, but lane rental charges should cease at that point.

16) The proposals for an £80 penalty in addition to the already very substantial lane rental charges should be withdrawn.

17) In addition, NJUG request TfL:

- To clarify the legal basis on which these proposed penalties are based.
- The justification for why they should apply in addition to the lane rental charges.
- To therefore consider abandonment of this particular proposal.

Measurement / CBA Assumptions

18) TfL should clarify in the lane rental scheme application how they will measure the specific contribution that lane rental will make to improving journey time reliability, separate from all the other factors.

19) It is vital that the benefits of all the above regulatory and voluntary initiatives are identified and separated out from the estimated benefits of the TLRS. Otherwise, the benefits are being double or even triple-counted. We therefore recommend that TfL provide these figures as part of their final TLRS application to justify that any benefits will outweigh the very considerable costs that works promoters will incur in either paying or avoiding lane rental charges.

NJUG therefore strongly recommends that it is necessary that TfL have a robust analysis of both the additional costs and benefits that the proposed scheme is likely to bring when submitting to DfT. This is particularly important, given that the DfT proposals explicitly require a lane rental scheme promoter to demonstrate that they have exhausted all other means of tackling works related disruption before applying to operate a lane rental scheme.

20) An independent assessment should be undertaken after one year of operation, funded from the net revenues of the scheme. As utilities, and ultimately their customers will bear much of the cost of implementing the scheme, through either paying or avoiding the charges, NJUG and key should work closely with TfL to agree the scope of any review to ensure all costs are assessed and only the truly additional benefits attributable only to the TLRS / other lane rental scheme are included.

21) NJUG strongly urges TfL to change the wording in this draft CBA to indicate that any activity promoter who infringes their permit will be subject to the various regulatory charges / penalties, and that in the light of the very high levels of traffic-sensitivity on the targeted streets TfL would expect all activity promoters to work hard (with TfL) to minimise disruption.

22) NJUG recommends that TfL revisits its assumption of the likely percentage of works that will be able to be transferred from traffic-sensitive times to out-of hours, or where the use of plating will return the road to service.

23) NJUG recommends, and is committed to supporting, the gathering of information on utility costs that arise from utilities / contractors avoiding the lane rental charges, to feed into the independent one year review..

Traffic-sensitivity – Timings

24) TfL should not apply lane rental charges to targeted streets at weekends or bank holidays, but should highlight that they have the right, and will use S56 powers to direct the timing of works where necessary.

25) On that basis, the term “*working day*” is added to the Glossary, as defined within Section 98 (2) of NRSWA. This is essential to allow for lane rental charges to generally only apply to traffic-sensitive times on working days on targeted streets. A general rule that no lane rental charges will apply at weekends or on bank holidays (unless in exceptional circumstances) will incentivise activity promoters to work during these times, thereby reducing disruption.

Noticing / Permitting

26) The HAUC(UK) Advice Note on FPNs should be referenced, and in particular, highlighting of the sentence that indicates that in applying FPNs, authorities should only do so when the incorrect information led to increased disruption.

Minimising Disruption

27) NJUG recommends that:

- TfL states that coring activities should not be undertaken on targeted streets during traffic-sensitive streets.
- This would minimise disruption and is clearly the most sensible choice. Otherwise, works promoters could be faced with numerous cores being undertaken, and as well as having to pay for the cores, they may also be faced with lane rental charges.
- If TfL does not preclude coring activities from taking place on targeted streets during traffic-sensitive times, then NJUG urges it to ensure that utilities are not liable to pay any lane rental charges undertaken by TfL, boroughs or their contractors on utility reinstatements.

Appeals Process

28) TfL should confirm within their lane rental scheme application that the TfL appeals officer is a) sufficiently knowledgeable and experienced to judge any dispute within both the legal and operational context of street and / or road works, b) separate from TfL’s own highway team and of a sufficient level / grade to be able to make a decision independently, and c) will be required by the scheme to make any judgement fairly and on an equitable basis for all activity promoters.

29) Once the TfL appeals process has run its course, if the dispute has not been satisfactorily resolved, then there should be recourse to the HAUC(UK) Dispute Resolution Procedure **detailed in Chapter 13 of the current Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters**, reference to which should be included with the TLRS proposals submitted to the Secretary of State.

Costs of Running the Scheme

30) TfL should include a commitment to demonstrate, through openness and transparency around the estimated and actual costs of running the scheme, that all costs TfL incur in running the scheme, will be necessarily and efficiently incurred.

Changes to the TLRs

31) TfL is strongly urged to:

- Commit to any consultation following the Government's consultation guidelines i.e. a minimum of 12 weeks consultation to allow utilities and others affected to assess the implications of the proposed changes and provide meaningful and detailed commentary / feedback.
- Commit to ensuring that consecutive changes to the scheme do not over time lead to a significant change in charge bands, thereby increasing activity promoters' costs even more than proposed currently.
- Ensure that any changes are included within the NSG and highlighted to all activity promoters before lane rental charges apply.

32) All reference to the intention to introduce lane rental charges for pavements, footways or verges should be removed.

Time Frames

33) NJUG welcomes TfL's proposal to commence the monitoring of the "*proper full year period*" from October 2012 to September 2013, and strongly recommends that whilst the shadow running period might commence earlier, the actual scheme also commences in October 2012 too.