

# **Section 278 Agreements Developer Guidance**

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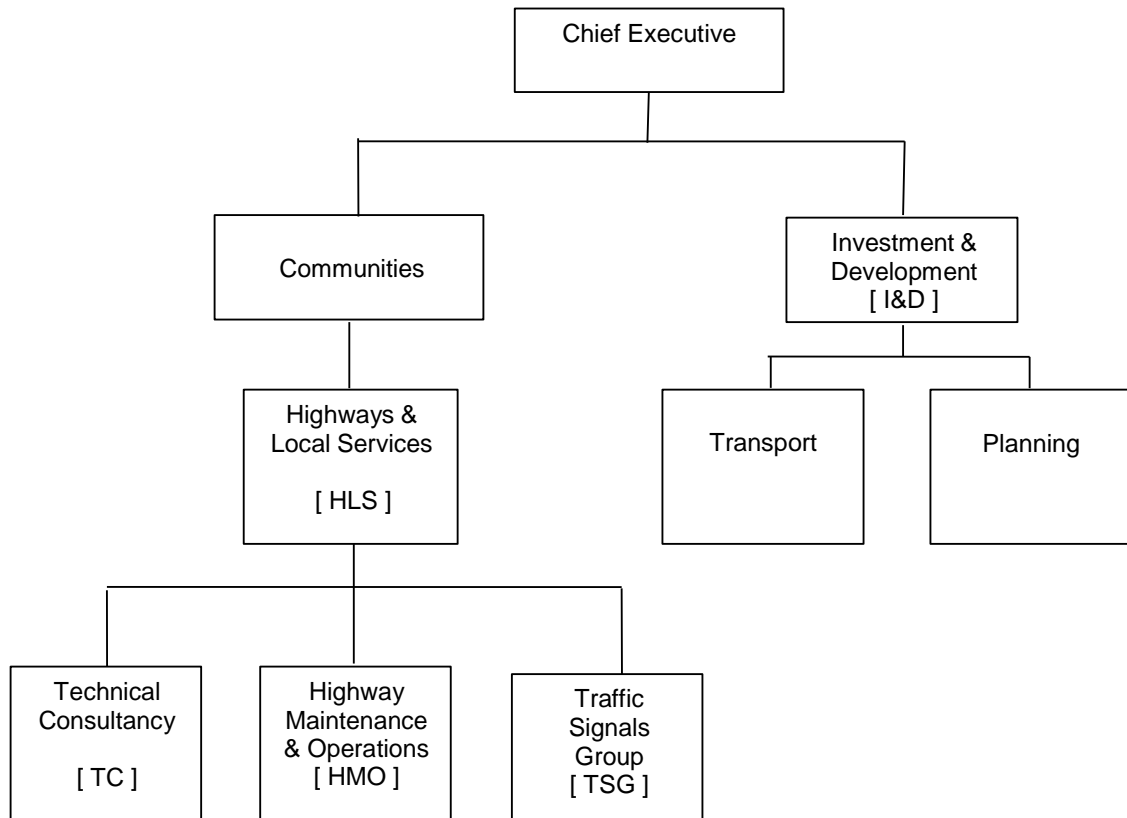
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## List of Abbreviations

CDM 2015	Construction (Design and Management) Regulations 2015
HSE	Health & Safety Executive
HLS	Highways & Local Services division (see “Governance”)
HMO	Highway Maintenance & Operations section (see “Governance”)
I&D	Investment & Development directorate (see “Governance”)
NCC	Newcastle City Council
PFI	Private Finance Initiative
RSA	Road Safety Audit
S38	Section 38 of the Highways Act 1980
S50	Section 50 of the New Roads & Street Works Act 1991
S58	Section 58 of the New Roads & Street Works Act 1991
S171	Section 171 of the Highways Act 1980
S184	Section 184 of the Highways Act 1980
S278	Section 278 of the Highways Act 1980
SSE	Southern and Scottish Electric Ltd
SUDS	Sustainable Urban Drainage System
TC	Technical Consultancy section (see “Governance”)
TRO	Traffic Regulation Order
TSG	Traffic Signals Group section (see “Governance”)
TD	Transport Developments division (see “Governance”)

# Newcastle City Council Governance



## **Section 1 – Purpose of Document**

Where a new development requires work to be carried out on the existing (publicly maintained) highway it will be necessary to enter in to an agreement with Newcastle City Council (NCC) under Section 278 of the Highways Act 1980.

The purpose of this document is to guide developers through the process of establishing a Section 278 Agreement (S278) with NCC, and ensure that highway works are delivered to the satisfaction of all parties. The guide outlines what Developers and NCC can expect from each other and the delivery options available to the Developer.

The Highways & Local Services division (HLS) support the process, and assist with delivery.

NCC is committed to working closely with Developers to achieve:

- The highest quality development possible;
- Efficient and effective delivery of projects for the benefit of all parties;
- Development that is not a financial burden or maintenance liability to NCC;
- The delivery of highway works constructed to adoptable standards;
- Minimal disruption to existing highways during construction;
- Delivery in accordance with relevant legislation; and
- Consistent use of acceptable materials on the publicly maintained highway.

## Section 2 – Legislation

### 2.1 Section 278 Works

Works funded or executed by any party other than NCC on the publicly maintained highway as a result of planning permission being granted are carried out under Section 278 of the Highways Act 1980.

Section 278 (1) of the Act (amended by New Roads and Street Works Act 1991) states:

***“A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person – on terms that that person pays the whole or such part of the costs of the works as may be specified or determined in accordance with the agreement.***

- ***For the execution by the authority of any works which the authority are or may be authorised to execute, or***
- ***For the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner.”***

Developers can procure the design and construction of work from NCC, who retain the right to design and arrange construction of any works on the publicly maintained highway.

In some instances a different approach may be more appropriate and options available to developers are described later in this document.

Section 278 (3) of the Act, states:

***“The agreement may also provide for the making to the highway authority of payments in respect of the maintenance of the works to which the agreement relates and may concern such incidental and consequential provisions as to appear to the highway authority to be necessary or expedient for the purpose of the works.”***

NCC may seek payment for future maintenance of the new or revised highway from the Developer, acquiring monies through “Commutated Sums” where necessary. Commuted Sums allow greater flexibility to adopt non-standard materials and other items when development increases future maintenance liability.

An example of a S278 Agreement can be found in Appendix A. The agreement will set out:

- Details of the improvements;
- Circumstances where the highway layout will change;
- Any programming considerations;
- The Developers commitment to meet the costs for the highway works;
- Procurement routes for the design and construction stages;
- NCC fees and charges;

- Arrangements for dealing with statutory undertakers, traffic regulation orders, consultation, street lighting, traffic signals and road safety audits;
- Arrangements for dealing with all necessary notices to allow works to be undertaken on the adopted highway;
- Approach to dealing with the Construction (Design and Management) Regulations 2015 (CDM 2015);
- The need and value of the financial Bond of Surety required at inception of the S278 Agreement;
- Arrangements for design checks and technical approvals (where necessary);
- Approach to reporting (time, cost and completion).

The highway layout agreed when planning permission is granted will only be regarded as a general arrangement and may be subject to change as a consequence of the subsequent technical and statutory consultations and the detailed design.

Works associated with a development will not be allowed to commence on the publicly maintained highway until the S278 Agreement is signed by both parties and a Bond of Surety is in place.

## **2.2 Section 38 Works**

It may be necessary in some instances to create new highway for adoption. Where this is required, the works will be subject to a separate agreement under the provisions of Section 38 of the Highways Act 1980. Further information about Section 38 Agreements can be found in Newcastle City Council's "Section 38 Agreements – Developer Guidance" document.

## **2.3 Client Responsibility**

Before the S278 Agreement can be signed, the Developer must provide written proof to Technical Consultancy (TC) that the Health and Safety Executive (HSE) has been informed that they are the Client for the highway works in accordance with the Construction (Design and Management) Regulations 2015 (CDM 2015) for all notifiable works.

The Developer must inform TC when they have appointed a Principal Designer for the project.

The Developer must commission an external Road Safety Auditor, whose competence must be demonstrated to TC, and the same auditor should be retained for all subsequent audit stages.

## **2.4 Notices, Permits, Licences & Other Agreements**

When any work is undertaken on the existing Adopted Highway it will be necessary to provide several notices to allow these works to take place, namely:



### **(a) Permit Scheme Notice (Traffic Management Act 2004 – Part 3) [TMA]**

The Developer will need to apply for a permit from NCC to undertake any works on the Adopted Highway in advance of the works starting.

This is required to ensure that NCC can identify causes, or potential causes, of road congestion or other disruption to the movement of traffic on their road network, including the management of its own works for road purposes.

The advance notice period varies due to the size, scope and duration of the activities being undertaken.

The main activity designations are:

- Major Activities
  - activity duration (11 days or more);
  - initial notice period (3 months for Provisional Advance Authorisation); and
  - permit application (10 days before starting on site).
- Standard Activities
  - activity duration (4 to 10 days); and
  - notice period (10 days before starting on site).
- Minor Activities
  - activity duration (3 days or less); and
  - notice period (3 days before starting on site).
- Immediate Activities
  - activity definition – emergency; and
  - notice period (within 2 hours with explanation why).

### **(b) Section 171 Licence (Highways Act 1980) [S171]**

Before any works are carried out on or adjacent to the Adopted Highway the Developer is required to obtain a licence from NCC. This licence permits the Developer and his contractors to undertake works on or adjacent to the highway with the approval of NCC acting as the Highway Authority.

The licence is commonly referred to as a Section 171 Licence (S171) and is issued under Section 171 of the Highways Act 1980.

If the Adopted Highway has to be closed to vehicular traffic to undertake these works then a separate application will have to be made for a Temporary Traffic Regulation Order (TTRO) to be implemented which will take 3 months to process.

A company or contractor may apply on behalf of the land or property owner, but the licence will remain in the possession of the land or property owner.

### **(c) Section 184 Agreement (Highways Act 1980) [S184]**

If a Developer requires the construction of a new site access, or requires alterations to an existing site access in advance of the main works under a S278

or S38 Agreement, then the Developer will be required to enter into a Section 184 Agreement to do so.

The scope of these works may, in some instances, be extended to cover other minor works like re-positioning a road gully or a street lighting column.

NCC will approve the Developer's design and inspect the S184 works.

The Developer will pay all NCC's appropriate fees for the administration of the agreement, legal services, technical approval, site inspections and issue of certificates.

A S184 Agreement is appropriate where a developer intends to construct an access on to the Adopted Highway of a higher specification than a simple dropped footway or verge crossing, such as "bell mouth" junctions or heavy duty industrial types of access - and that such works are the only works required within the highway to enable a development.

#### **(d) Section 50 Licence (New Roads & Street Works Act 1991) [NRASWA]**

If a development requires works within the Adopted Highway to excavate, or break through it to work on or install new apparatus, the Developer will need to apply for a Section 50 Licence (NRSWA).

When applying for a Section 50 Licence (S50) the Developer must be aware of the following:

- Those granted a S50 Licence become "works undertakers" (for the purposes of NRSWA), and because of that take on responsibility for carrying out the duties and responsibilities imposed by the Act and its associated Codes of Practice.
- If the Developer is unfamiliar with the NRASWA requirements they must appoint a contractor with the proper knowledge and accreditation, who can ensure that the works are conducted properly. An appointed contractor lacking the proper knowledge or accreditation will not be allowed to work within the Adopted Highway.
- Within NRASWA, as the licence holder the Developer may incur financial penalties if they do not meet the necessary statutory duties and licence conditions. This liability cannot be delegated to any other person or organisation.
- The requirement to get a S50 Licence applies to any person or organisation (other than anyone acting under a statutory right) who wishes to place, retain and subsequently inspect, maintain, adjust, repair, alter, or renew apparatus or change its position, or remove it from the highway. This includes drains, cables, ducts, sewer pipes, water and gas pipes under, over, across, along, or upon the Adopted Highway.
- The Developer must apply for a S50 Licence prior to the proposed works start.
- The guidance given here does not describe all the requirements of the licence.

#### **(e) Section 58 Notice (New Roads & Street Works Act 1991) [S58, NRASWA]**

This notice is required to ensure that:

- recently resurfaced or reconstructed streets will not be affected by subsequent activities and works undertaken by others; and,
- activities in the same street or immediate area which may conflict are not carried out at or within a short period time of each other.

The notice should be submitted by NCC on behalf of the Developer in advance of any proposed works on the Adopted Highway. The notice will inform all Statutory Undertakers in advance of any proposed works on particular streets. Notification should be submitted as soon as the scope of the required S278 works are known. The longer the notice period the more likely any programmed SU works can be accommodated to suit the Developer's programme of delivery.

The period of time from the completion of the works when other works cannot be undertaken depends upon the classification of the street and its traffic sensitivity designation.

## Section 3 – Finance

### 3.1 Bond of Surety

The Developer is required to deposit a Bond of Surety with NCC to cover the cost of the S278 highway works, NCC’s associated fees and charges, and Commuted Sums. This Bond ensures that NCC does not incur any costs if the highway works are stalled, changed or aborted by the Developer.

If the Developer fails to perform or observe any of the Agreement’s conditions, NCC can use the Bond to complete the S278 highway works, recover NCC fees and charges, and retain the Commuted Sums to cover future maintenance costs.

The NCC fees and charges element of the Bond must be deposited with NCC prior to any design works being undertaken by Highways & Local Services. The cost of the S278 highway works and Commuted Sums must be deposited with NCC prior to any works commencing on site.

The Bond will be released back to the Developer incrementally in accordance with Table 3.1, except where a Commuted Sum is due from the Developer as part of the S278 Agreement – if this remains outstanding, the Bond shall not be reduced to a value less than the Commuted Sum.

		Construction Procurement Option		
		HLS Framework Contract	Developer Let Contract (to HLS)	Developer Let Contract (External Contractor)
<b>Bond Reduced to:</b>	On issue of Practical Completion Certificate	10%	10%	20%
	On issue of Final Completion Certificate	5%	5%	10%
	On payment of final costs by developer	0%	0%	0%

**Table 3.1 Bond of Surety – Percentage Retained**

Section 7 details the construction procurement options.

## 3.2 Fees and Charges

TC costs incurred administering the S278 role will be paid by the Developer. Further detail regarding costs is given in TC's Fees and Charges document (see Appendix B) and is summarised below.

A cost schedule will be included in the S278 Agreement. If the Developer requires TC's technical involvement prior to the agreement being signed, then they must provide a written undertaking to pay all reasonable costs incurred.

TC can charge two different types of fee:

- Percentage Fee – for work easy to quantify or value; and
- Time Related Fee – for work difficult to quantify or value.

### Percentage Fees

Percentage fees are based upon the Schedule of Services defined in TC's Fees and Charges document (see Appendix B).

Percentage fees for design are charged where the highway construction costs at tender/order stage can be determined.

The percentage is applied to the detailed works estimate at tender/order stage, for the following:

- Civil Engineering works;
- Surfacing works; and
- Traffic Signals (Civil Engineering) works.

The TC percentage is not applied to the following:

- Street Lighting;
- Soft Landscaping;
- Statutory Undertakers diversions; and
- Traffic Signals (Electrical) works.

The design related fees for these works are charged separately by the various design organisations undertaking them on behalf of TC (see "Other Charges" below).

### Time Charge Fees

Time Charge fees will be used for:

- Advisory work, including development of project options;
- Brief Development process;
- Project cost at tender/order stage is below £50,000, including administering Street Lighting, Soft Landscaping and Traffic Signals;
- Topographical surveys of site;

- Undertaking Design Check(s) on external/third party designs;
- Undertaking formal technical and statutory consultations;
- Preparing Permanent and Temporary Traffic Regulation Orders (TRO);
- Payment of site staff employed by Technical Consultancy;
- Site inspection and monitoring of works;
- Undertaking Road Safety Audits;
- Dealing with Statutory Undertakers (not preliminary enquiries);
- Additional design due to revision in formal scope of S278 works;
- Administering input of others contributing to the works; and
- Additional Services identified in TC's Fees and Charges document (Appendix B).

Time charges are based on hourly charge rates (salary and overheads) set out in Appendix B.

### **Other Charges**

Separate charges by third parties undertaking design, will be submitted to the Developer by TC, including:

- NCC Consultant Framework Partners;
- Street Lighting PFI Provider;
- Soft Landscaping; and
- Traffic Signals Group.

### **3.3 Commuted Sums**

Commuted Sums are necessary when any development increases NCC's future maintenance liability. Typical circumstances where this may occur are:

- Maintenance costs for any construction that is not required for the safe and satisfactory functioning of the Adopted Highway (including alterations to the existing highway which are only required to serve the development) with no general benefits;
- Maintenance costs for additional features, such as highway structures, additional street lighting, traffic signal installations, non-essential street furniture/fencing/walls, public transport infrastructure and landscaping;
- Additional maintenance costs for permitted alternative materials and features, for example, higher quality paving materials, bespoke street furniture, exceeding NCC's standard specification, and
- Provision of SUDS (such as flow-attenuation devices, swales and storage areas).

Developers should discuss their requirements with NCC, ideally during pre-planning application discussions, in advance of a formal Planning Application being submitted.

Commuted Sum schedules for additional features, alternative surfaces and specifications can be found in Appendix C. The Commuted Sums schedules have

been calculated on the date shown and need to be index linked to the date of the S278 Agreement.

Where items, materials or features are not covered by Appendix C, Commuted Sums will need to be calculated on a site-by-site basis by NCC and the Developer.

Commuted Sum values stated in the S278 Agreement are provisional, as development will be assessed on a case by case basis. A recalculation mechanism, based on actual quantities, and the price fluctuation factor specified in the S278 Agreement, will be used to determine the actual Commuted Sum values.

### **3.4 Insurance Liabilities**

#### **Design**

If NCC are not appointed to design the S278 highway works, the Developer must indemnify NCC against any claims by third parties arising from any work included in the S278 Agreement.

Written evidence must be provided that the Developer's designer for the S278 highway works has a minimum of £5 million of professional indemnity insurance, with no limit on the number of claims.

When NCC are appointed to design the S278 highway works then no evidence of public indemnity insurance will be required.

#### **Construction**

If NCC are not appointed to construct the S278 highway works, the Developer must indemnify NCC against any claims by third parties arising from any work included in the S278 Agreement.

Written evidence must be provided that the Developer's contractor undertaking the S278 highway works has a minimum of £5 million of public liability insurance, with no limit on the number of claims.

When NCC are appointed to construct the S278 highway works, no evidence of public liability insurance will be required.

## **Section 4 – Consultation**

### **4.1 Informal Consultation**

Informal consultation with Councillors (Ward Members and Cabinet Member “Portfolio” Holders) may occur during pre-application discussions and may cover the S278 highway works.

### **4.2 Formal Consultation**

Formal consultation with Members will happen once the planning application is submitted. Outcomes of the consultation will be discussed internally in NCC and with the Developer, and will inform the planning decision and subsequent planning conditions or legal agreements.

TC will undertake the necessary consultation regarding the S278 highway works with all interested parties, including residents, in accordance with NCC’s standard policies and procedures. This process is undertaken in two distinct stages; a third stage may be required if objections are received at either stage which NCC are unable to resolve.

#### **Stage 1 – Technical Consultation**

Once planning permission is granted, and the developer seeks to implement their permission, TC will carry out a 4 week formal technical consultation, which may require the scheme to be re-appraised, with:

- Bus operators;
- Emergency services;
- Taxi operators;
- Haulage companies;
- Cyclists; and
- Any other interested parties.

TC will undertake a further 4 week formal consultation with local businesses and residents, and TC will analyse the responses and give to the outcomes to the Developer.

The Developer will pay all consultation costs regardless of the outcome. Please note that abortive work may result as a consequence of consultation.

#### **Stage 2 – Statutory Consultation**

Where a development requires changes to an existing Traffic Regulation Order (TRO), creation of a new TRO, or provision of a temporary TRO to facilitate the works, the Developer shall pay all associated costs, including consultation. TROs are subject to statutory procedures and the formal consultation stage can be protracted. The outcome cannot be guaranteed.



### **Stage 3 – Unresolved Objections to Consultation**

Where either consultation stage receives objections to the proposals which NCC are unable to resolve, then these objections are formally submitted to NCC's Regulatory Appeals Sub-Committee (RASC) for further review and consideration. The RASC panel will make recommendations on how the objections must be dealt with. This may or may not uphold the development's proposals.

Advice regarding the need, timescales, and likely cost of consultation can be obtained from TC. The Developer needs to consider the implications of consultation when developing a project programme.

## Section 5 - Design

### 5.1 General

The design of the S278 highway works must be in accordance with NCC's "Design and Construction of Roads and Accesses to Adoptable Standards" document.

Once planning permission is granted, TC will provide the Developer with a letter/e-mail and information to guide them through the S278 process. The Developer shall contact TC at the earliest opportunity to arrange a meeting to discuss the delivery of the highway works, within the context of the following NCC policy.

NCC's Corporate Procurement Strategy states:

#### **"5.1 Services**

***Where services (e.g. legal, financial consultancy, technical/design), are provided in house, and where services of that type are required for a particular project or purpose, then provided that:***

- (a) There is capacity to provide those services in-house;***
- (b) There is the capability/competence to provide those services in-house;***  
***and***
- (c) There is no other project specific reason why those services should be provided externally,***

***We are committed to providing those services from in-house resources."***

Most S278 projects will be designed by TC. Where Developers want the design carried out by others, alternative requirements can be discussed with TC's representative, who will decide on the approach that will deliver the best outcomes for NCC and the Developer.

The S278 Agreement must be signed before TC commence the design. If this is not practicable, the Developer must formally agree to pay all reasonable TC costs for developing the project (see Section 3).

The proposed development must relate to the existing Adopted Highway boundary, NCC design standards and take into account the highway requirements. The Developer is responsible for ensuring that the development's horizontal and vertical alignments tie back in to the existing Adoptable Highway boundaries which they impact upon.

TC will undertake all highway-related consultations in accordance with the S278 Agreement timescales (see Section 4).

A Road Safety Audit (RSA) Stage 1 must be procured by the Developer prior to the start of the detailed design (see Section 10).

The Developer must commission an external Road Safety Auditor, whose competence must be demonstrated to NCC, and the same auditor should be retained for all subsequent audit stages.

TC must consider the recommendations in the RSA report and determine the need for further consultation and information required from the Designer.

## **5.2 Highway Design – By Technical Consultancy (TC)**

TC undertake the design of the S278 highway works to timescales stipulated in the S278 Agreement; the Developer pays for the highway works design in accordance with TC's Fees and Charges document (see Section 4.2 and Appendix B).

The Developer must provide the following information prior to design start:

- General Arrangement drawing(s);
- Development programme;
- Proposed tie-in levels at the interface with the Adopted Highway;
- Outcomes from Road Safety Audit(s) on the draft S278 proposals;
- Outcomes from Traffic Assessment(s) or studies relating to development.

TC will provide the Developer with regular progress reports, comparing progress against programme, and cost monitoring. Progress meetings to be held as stated in S278 Agreement. Additional meetings will be convened by TC or the Developer as required, however this may generate additional TC charges.

When TC consults on design issues, they will provide the Developer with:

- Consultation Programme;
- Consultation Outcomes; and
- Consultation impacts on scope of S278 works.

TC provides the Developer with the Budget Estimate for S278 project costs after the receipt of the advance design fee from the Developer. The budget estimate figure will determine the Bond of Surety value prior to the S278 Agreement being signed.

On the completion of the detailed design the Developer must commission a Road Safety Audit Stage 2 in accordance with S278 Agreement.

If the design needs modification to accommodate the Audit recommendations, then TC will provide the Developer with the impact upon the programme and cost implications of the required modifications.

## **5.3 Highway Design – By External Consultants**

Developers have access to NCC's "Design and Construction of Roads and Accesses to Adoptable Standards" document. The Developer shall ensure that S278 highway works are designed in accordance with this document to ensure proposals are acceptable to NCC.

The Developer must provide their external designer's details to TC to determine the external consultant's relevant experience and capability. The information provided must be detailed enough to allow designer competency to be assessed. TC will write to the Developer confirming the external consultant's acceptability.

TC will meet with the Developer's designer to determine whether consultation will be necessary and the information required from the Designer to allow this to happen. The Designer must provide sufficient information to TC to allow the consultation to commence.

The design must be carried out in accordance with the S278 Agreement timescales.

Where TC consults on design issues, the Developer will be provided with:

- Consultation Programme;
- Consultation Outcomes; and
- Consultation impacts on scope of S278 works.

On the completion of the detailed design the Developer must commission a Road Safety Audit Stage 2 in accordance with S278 Agreement.

If the design needs modification to accommodate the recommendations set out in the Audit, then the Designer will provide the Developer with the impact upon the programme and cost implications of the required modifications.

On completion of the detailed design the Designer shall provide the information to TC, who will undertake a formal Design Check (see Appendix E for design information required).

The Design Check is undertaken to the timescales stated in S278 Agreement. Details of design modifications required by TC will be provided to the Designer. Once all modifications have been addressed, TC will write to the Designer accepting the Detailed Design.

#### **5.4 Highway Structures Design**

If the development includes a structure where any of the following apply:

- Structure will be offered up for adoption;
- Structure supports the Adopted Highway;
- Structure supported by the Adopted Highway.

Then structural details must be submitted to TC for Technical Approval. The approval will be undertaken in the timescales stated in the S278 Agreement.

The Developer must provide the information set out in Appendix D as required.

## **5.5 Street Lighting Design**

The street lighting works required to illuminate the Adopted Highway must be designed, installed and commissioned by Scottish and Southern Electric Contracting Ltd (SSE), NCC's Street Lighting PFI service provider.

SSE must be procured by TC, on behalf of the Developer, through the PFI Contract between NCC and SSE.

This delivery mechanism will be included within the S278 Agreement.

SSE will undertake the street lighting design in 20 working days (4 weeks) from the date of receipt of all drawings and documents in an agreed format.

## **5.6 Traffic Signals Design**

Where traffic signals are required, the design will be undertaken by NCC's Traffic Signals Group (TSG) to meet timescales stated in the S278 Agreement.

## **Section 6 – Procurement**

### **6.1 General**

The Developer has two options for procuring the construction of the highway works (excluding Traffic Signals and Street Lighting works):

- Highways & Local Services Framework Contract, and
- Developer Let Contract.

As part of the development of a S278 Agreement, TC shall discuss the procurement mechanisms with the Developer to determine the option to be included in the S278 Agreement.

The first option has significant benefits for the Developer. The Developer will generally have no maintenance responsibility or public liability after substantial completion of the highway works, and the value of the Bond reduces more quickly.

### **6.2 Highways & Local Services Framework Contracts**

HLS can use their Highway Works Framework Contracts (HWFC) to procure the S278 highway works. Using the HWFC saves time as it removes the need for a formal tender process and provides added confidence in the competence of the contractors.

### **6.3 Developer Let Contract**

If the Developer lets a tender for the S278 highway works, then HLS's Highway Maintenance & Operations section (HMO) must be given the opportunity to tender for the works.

The Developer's contract documentation must include the outcomes from the consultation processes, and any NCC specific contractual clauses that TC deem necessary.

This can have two possible outcomes - HMO or an external contractor is awarded the contract by the Developer.

## **Section 7 – Construction**

### **7.1 General**

NCC will not allow any works to commence on the Adopted Highway until the following processes and procedures have been completed:

- All Statutory Procedures;
- All non-statutory consultation processes completed;
- Technical Approval given for structure(s) within/abutting highway works;
- All Design Checks satisfactorily completed (for designs by others);
- Road Safety Audits (reports submitted up to and including Stage 2);
- All necessary fees/payments made to NCC;
- Section 278 Agreement signed;
- Confirmation that an adequate Bond of Surety has been provided;
- Written confirmation from Developer agreeing to pay Commuted Sums;
- Written confirmation that Developer has contacted the Health and Safety Executive where applicable (see Section 9);
- All pre-construction details required in Items 7.7 or 7.8.

NCC gives the Developer approval to commence the highway works, and TC agree a construction programme with the Developer that balances the needs of stakeholders, local businesses and residents.

TC will issue a Practical Completion Certificate to the Developer's Contractor on agreement that highway construction works are substantially complete.

The Practical Completion Certificate will not be issued if the actual tie-in levels between the development and the publicly maintained highway result in NCC's highway design standards being compromised. The Developer is responsible for any remedial works.

The 12 Month Maintenance Period starts from the Practical Completion Certificate date.

TC will issue a Final Completion Certificate to the Contractor at the end of the maintenance period subject to the Contractor correcting any outstanding defects.

The issue of the Practical Completion Certificate and the Final Completion Certificate has implications for the Developer with regard to maintenance and fulfilling their planning obligations. The implications vary depending upon the procurement route adopted.

### **7.2 Highways & Local Services' Framework Contracts**

TC will undertake the formal supervision of the construction works. The level of supervision will vary depending on the scale and nature of the works, determined by TC in conjunction with the Developer and included within the S278 Agreement.

TC will give the Developer 4 weeks' notice of the intention to commence construction of the highway works. TC will invite the Developer to monthly construction progress meetings and update the developer on progress and costs on a monthly basis.

TC will issue the Contractor with the original Practical Completion Certificate on substantial completion of the highway works in accordance with the conditions of contract. The Developer will receive a copy of the certificate.

The 12 Month Maintenance Period starts from the Practical Completion Certificate date.

On Practical Completion, TC will provide the Developer with the cost of the works to date, and an estimate of any additional costs that may be expended up to the end of the 12 Month Maintenance Period.

TC will issue the Contractor with the original Final Completion Certificate at the end of the 12 Month Maintenance Period in accordance with the conditions of contract. The Developer will receive a copy of the certificate.

TC will endeavour to agree the final cost of the highway works within 13 weeks after the issue of the Final Completion Certificate.

### **7.3 Developer Let Contract using Highways & Local Services**

For tenders awarded by the Developer to HLS's Highway Maintenance & Operations section (HMO), the Developer will supervise the works. TC will inspect and monitor the works; the Developer must give reasonable access to the works at all times.

TC will give approval to commence the construction works on receipt of the following pre-construction information previously identified in Item 7.1:

- Notification to Start – Minimum 4 week notice in writing.
- Pre-Start Meeting – Minimum 2 weeks prior to construction start. Agenda, attendees and format will vary depending upon the development.

The Developer's Contract Supervisor must be competent, with experience commensurate with the nature and scale of the works, approved by TC.

Status, attendees and frequency of site meetings will be determined at the Pre-Start Meeting.

The S278 highway works must be completed within the timescales stipulated in the S278 Agreement to minimise disruption to highway users.

If timescales are not achieved due to the Developer's own actions, then they must agree with TC the additional time required to complete the highway works. Additional TC administration and inspection costs will be charged for this period. If



additional time is not allowed, then NCC can use the Bond of Surety to complete the works.

Once the highway works are deemed to be substantially complete (Appendix D), a Practical Completion Certificate will be issued by TC.

The 12 Month Maintenance Period starts from the date of the Practical Completion Certificate.

The Developer must provide TC with “as-built” drawings at the end of the maintenance period (see Appendix D for content and format), and all defects have been corrected. The Final Completion Certificate will not be issued until both of these have been completed.

#### **7.4 Developer Let Contract using External Contractor**

For tenders awarded to an External Contractor, the Developer supervises the works. TC will inspect and monitor the works; the Developer must give reasonable access to the works at all times.

TC will approve the start of the construction works on receipt of the following pre-construction information previously set out in item 7.1:

- Notification to Start – Minimum 4 week notice in writing.
- Pre-Start Meeting – Minimum 2 weeks prior to construction start. Agenda, attendees and format will vary depending upon work type.
- Contractors’ Insurance – NCC must be indemnified against third party claims arising from the highway works. The Developer must provide written evidence that the Contractor has a minimum of £5 million Public Liability Insurance with no limit on the number of claims.

The Developer’s Contract Supervisor must be competent, with experience commensurate with the nature and scale of the works, approved by TC.

Status, attendees and frequency of site meetings will be determined at Pre-Start Meeting.

The highway works must be completed within the timescales stipulated in the S278 Agreement to minimise disruption to highway users.

If timescales are not achieved due to the Developer’s own actions, then they must agree with TC the additional time required to complete the highway works. Additional TC administration and inspection costs will be charged for this period. If additional time is not allowed, then NCC can use the Bond of Surety to complete the works.

Once the highway works are deemed to be substantially complete (see Appendix D), a Practical Completion Certificate will be issued by TC.

The 12 Month Maintenance Period starts from the date of the Practical Completion Certificate.

The Developer must provide TC with “as-built” drawings at the end of the maintenance period (see Appendix D for content and format), and all defects have been corrected. The Final Completion Certificate will not be issued until both of these have been completed.

## **7.6 Construction – Street Lighting**

All Street Lighting works within the Adopted Highway or to be subsequently adopted as part of the highway works, will be designed, supplied, installed and commissioned by NCC’s street lighting PFI service provider, Southern and Scottish Electric Ltd (SSE), in accordance with the timescales stated in the S278 Agreement.

SSE shall be given a minimum of 4 weeks’ notice requesting the installation of any permanent standard equipment. The notice period for non-standard equipment is likely to be longer and will necessitate more detailed discussions. The Developer will pay all the costs associated with the street lighting works.

SSE must be allowed access to the site when necessary at all reasonable times to install cables, ducts, columns or other apparatus associated with the installation.

## **7.7 Construction – Traffic Signals**

All Traffic Signal works will be designed, installed, configured and commissioned by NCC’s Traffic Signals Group (TSG) and paid for by the Developer. The supply and installation of the traffic signals works will be undertaken to fit in with the development’s construction programme.

TSG shall be given a minimum of 4 weeks notice requesting the installation of any permanent standard equipment. The notice period for non-standard equipment is likely to be longer and will necessitate more detailed discussions.

TSG must be allowed access to the site when necessary at all reasonable times to install cables, ducts, poles or other apparatus associated with the installation.

## **7.8 Construction – Road Safety Audit**

On completion of the highway works the Developer must commission a Road Safety Audit Stage 3, and the report’s recommendations must be considered by the Developer, Designer and TC (see Section 10). Any modification to the highway works must be undertaken as part of the remedial (“snagging”) works within the 12 Month Maintenance Period.

On completion of the 12 Month Maintenance Period the Developer must commission a Road Safety Audit Stage 4, and the report’s recommendations must be considered

by the Developer, Designer and TC (see Section 10). Modification to the highway works must be undertaken prior to the issue of the Final Completion Certificate.

### 7.9 Construction – Maintenance Responsibilities

The Developer's maintenance responsibility for the highway works depends on the procurement option used, detail of which can be found in the Table 7.1 below:

		Maintenance Responsibility	
		On Issue of Practical Completion Certificate	On Issue of Final Completion Certificate
<b>Procurement Route</b>	<b>HLS Framework Contract</b>	HLS	HLS
	<b>Developer Let Contract - using HLS</b>	Developer or HLS (on a project by project basis)	HLS
	<b>Developer Let Contract - using External Contractor</b>	Developer	HLS

**Table 7.1 Procurement of highway works and maintenance responsibility**

## **Section 8 – Fulfilling Highway Planning Obligations**

A Developer may have highway-related Planning Conditions on their Decision Notice that need to be discharged by the Local Planning Authority.

A Planning Condition for example may say:

***“Notwithstanding the submitted plans, the development shall not commence until details of traffic calming measures along West Avenue have been submitted to and approved by the Local Planning Authority. Thereafter the development shall not be occupied until these works have been implemented in accordance with the approved details.*”**

***Reason: In the interests of highway safety, in accordance with Policy T7.1 of the Unitary Development Plan.”***

Where design and construction is undertaken by HLS for the S278 the Planning Conditions will be more easily discharged.

## **Section 9 – Health and Safety**

Before the S278 Agreement can be signed, the Developer must provide written proof to TC that the Developer has informed the Health and Safety Executive (HSE) that they are the Client for the highway works if the works are notifiable in accordance with the Construction (Design & Management) Regulations 2015 (CDM 2015).

The Client's roles and responsibilities are laid out in Appendix F.

The Developer must ensure compliance with the CDM Regulations and indemnify NCC against claims, liabilities and actions.

The Developer must provide NCC with an electronic copy of the Health and Safety File on completion of the highway works. This must comply with CDM 2015 requirements.

Consideration cannot be given to the release of the remaining Bond of Surety on completion of the construction until the Health and Safety File has been provided.

## **Section 10 – Road Safety Audit**

### **10.1 Definition**

A Road Safety Audit (RSA) is the staged evaluation of changes to the highway during design, construction and operation. It looks to identify potential safety hazards that may affect any road user.

- Stages 1 and 2 evaluate the design;
- Stage 3 is carried out as soon as possible after measures become operational; and
- Stage 4 is carried out approximately 12 months after the measures became operational.

A RSA considers the road safety implications of all measures and their impact on the highway network – the effects on all road users are considered. Particular attention is paid to the effects on vulnerable groups, for example the very young, the elderly, people with a disability and more generally pedestrians, cyclists and riders of powered two-wheeled vehicles.

A RSA may be applicable to a particular junction or section of the network. However, it is important that the road safety implications of the measures being proposed are considered, along with any impact on adjacent or other parts of the network.

A RSA does not consider non-road safety related issues and is not a technical check. However, in order to clearly explain a safety problem or make a recommendation to resolve a problem, the audit may make reference to a design standard.

A RSA is not to be used:

- As a means of selecting between various design options under consideration;
- To query why other measures are not being proposed; nor
- To comment on the effectiveness of the proposals where there are no adverse safety implications.

### **10.2 Audit Stages**

A RSA shall be undertaken after the completion of four specific stages of project development, which are:

#### **Stage 1**

A Stage 1 RSA must be commissioned by the Developer as soon as possible after completion of the preliminary design. The design should be sufficiently progressed so that all significant features are clearly shown. This is likely to have been

undertaken prior to defining the scope of the S278 works. The Developer will provide TC with the Stage 1 report prior to the start of detailed design.

## **Stage 2**

The Developer must commission a Stage 2 RSA upon substantial completion of the detailed design and before the preparation of works orders or tender documents. The design should be sufficiently progressed so that it could be constructed with the information produced to that point. Once the Developer has provided TC with the Stage 2 report, the detailed design can be completed in line with recommendations.

## **Stage 3**

A Stage 3 RSA must be commissioned by the Developer just before or just after the issue of the Practical Completion Certificate depending upon what is most appropriate. The timing will be dictated by the earliest opportunity to observe actual road user behaviour.

On occasions it may be necessary to carry out an RSA before the road is (re)opened to traffic, so that any identified issues can be addressed prior to (re)opening. The need for this will be discussed with the Developer and should be included in the Section 278 Agreement where possible.

## **Stage 4**

The Developer must commission a Stage 4 RSA just before or just after the issue of the Final Completion Certificate depending upon what is most appropriate. The RSA should take account of actual road user behaviour and the following data will be analysed:

- Locations at which personal injury collisions occurred;
- Personal injury collisions that appear to have similar causes or show common factors;
- How the scheme may have affected collision patterns and rates.

## **Section 11 – Appendices**

A - Model S278 Agreement

B - TC Fees and Charges

C - Commuted Sums

| D - Conditions of Completion

E - Client Roles & Responsibilities Under CDM 2015