

**Supplementary Planning Document**

**Section 278 Agreements**

**Adopted November 2019**



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## Supplementary Planning Document: Section 278 Agreement

### 1. About This Guidance

- 1.1** The National Planning Policy Framework (NPPF) indicates that Local Development Documents form the framework for making decisions on applications for planning permission. Decisions have to be taken in accordance with the development plan unless other material considerations indicate otherwise. NPPF advises that a local planning authority may prepare Supplementary Planning Documents to provide greater detail on the policies in its Local Plan. Supplementary Planning Documents are a 'material' consideration when planning applications are decided.
- 1.2** As required by the Planning and Compulsory Purchase Act 2004 we have prepared a Statement of Community Involvement (SCI) which sets out how we will involve the community in preparing our Local Plan and consulting on planning applications. In accordance with the SCI we have involved people who may be interested in this Supplementary Planning Document and asked them for their comments. We have produced a consultation statement which summaries all the comments people made to us and our response. This is available on request.
- 1.3** This Supplementary Planning Document provides guidance on the Section 278 agreement process. This is linked to Local Plan policy T4 in respect of making sure development is carried out safely.

#### **Policy T4 New development and Transport Safety**

- 1.4** New development will be expected to be designed and built to provide all transport users within and surrounding the development with safe, secure and convenient access and movement.
- 1.5** If a development is not suitably served by the existing highway, or would create or add to problems of safety or the efficiency of the highway or any adjoining rail infrastructure for users, we will expect developers to take mitigating action or to make a financial contribution to make sure the necessary improvements go ahead. Any contributions will be secured through a planning obligation or planning condition.

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### 2. Introduction

**2.1** Section 278 of the Highways Act 1980 enables a highway authority to enter into an agreement (S278 Agreement) with a third party to deliver improvements to the existing public highway. A S278 Agreement is usually necessary where planning permission has been granted for a development that requires improvements, or changes, to the existing publicly maintained highway.

**2.2** Section 278 of the Highways Act 1980 (as amended by New Roads and Street Works Act 1991) can be found at <https://www.legislation.gov.uk/ukpga/1980/66/section/278> to contain the following:-

#### **278 — Agreements as to execution of works.**

- 1) A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person:
  - a) For the execution by the authority of any works which the authority are or may be authorised to execute, or
  - b) 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, on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.
- 2) Without prejudice to the generality of the reference in subsection (1) to the cost of the works, that reference shall be taken to include:
  - a) The whole of the costs incurred by the highway authority in or in connection with:
    - i) The making of the agreement,
    - ii) The making or confirmation of any scheme or order required for the purposes of the works,
    - iii) The granting of any authorisation, permission or consent required for the purposes of the works, and
    - iv) The acquisition by the authority of any land required for the purposes of the works; and
  - b) All relevant administrative expenses of the highway authority, including an appropriate sum in respect of general staff costs and overheads.

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- 3) 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 contain such incidental and consequential provisions as appear to the highway authority to be necessary or expedient for the purposes of the agreement.
- 4) The fact that works are to be executed in pursuance of an agreement under this section does not affect the power of the authority to acquire land, by agreement or compulsorily, for the purposes of the works.
- 5) If any amount due to a highway authority in pursuance of an agreement under this section is not paid in accordance with the agreement, the authority may:
  - a) Direct that any means of access or other facility afforded by the works to which the agreement relates shall not be used until that amount has been paid,
  - b) Recover that amount from any person having an estate or interest in any land for the benefit of which any such means of access or other facility is afforded, and
  - c) Declare that amount to be a charge on any such land (identifying it) and on all estates and interests therein.
- 6) If it appears to the highway authority that a direction under subsection (5)(a) is not being complied with, the authority may execute such works as are necessary to stop up the means of access or deny the facility, as the case may be, and may for that purpose enter any land.
- 7) Where a highway authority recovers an amount from a person by virtue of subsection (5)(b), he may in turn recover from any other person having an estate or interest in land for the benefit of which the means of access or other facility was afforded such contribution as may be found by the court to be just and equitable. This does not affect the right of any of those persons to recover from the person liable under the agreement the amount which they are made to pay.
- 8) (8) The Local Land Charges Act 1975 applies in relation to a charge under subsection (5)(c) in favour of the Secretary of State as in relation to a charge in favour of a local authority.

The purpose of this document is to guide developers through the S278 Agreement process and ensure that highway works are delivered to the satisfaction of all parties. The guide outlines what Developers and the Council can expect from each other.

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**2.3** A S278 agreement typically deals with things such as:

- new junctions, with or without traffic lights;
- roundabouts;
- right turn lanes
- improved facilities for pedestrians and cyclists;
- improvements to existing junctions;
- traffic calming measures;
- widened carriageway and/or footway
- changes to existing or introduction of new traffic restrictions

**2.4** The public highway is an asset which is maintained at the public expense. The Council, as the Highway Authority, has a statutory duty to ensure the highway is in a safe condition for the public to use. Therefore any works which interfere with the highway must be properly regulated. The developer will be responsible for funding the full costs of the works, including the design, commissioning any required safety audits, the costs of any land acquisitions, site inspections by the Highways Officer, the Council's legal fees, a contribution towards the increased maintenance liability of the Council as a consequence of the works, all statutory undertakers notifications, and the costs of any works to stats apparatus. The developer will also need to provide a bond to guarantee the carrying out of the developers obligations, have suitable public liability insurance and indemnify the Council against any costs claims or actions against it as a consequence of the works.

**2.5** There are 2 ways in which the s278 works can be carried out:

1. The Council elects and authorizes the developer to carry the works out itself via an approved contractor, or
2. The Developer requests the Council to carry out the works for the Developer

### **3. Section 278 Agreement Procedure**

- 3.1** The Developer is to notify the Council of a requirement for work in the existing highway as part of the planning conditions for a development.
- 3.2** The Council will check the planning conditions and provisionally advise the Developer if works are required under a S278 Agreement.
- 3.3** The council undertake the construction of the S278 works unless they offer the developer the option to use a contractor of their choice. This will be discussed at application stage.
- 3.4** The Developer will be issued with an application form requesting information necessary for the drafting of a S278 Agreement. (Copy of the application form is attached at Appendix 1).
- 3.5** The Developer is to fill in the forms as far as possible and return them to the Council.
- 3.6** An application fee of £2,500 is payable when submitting the application form. This fee will be not be returned if the scheme is aborted.

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- 3.7** The Council will send a draft of the S278 Agreement to the developer's solicitor for approval.
- 3.8** The Developer shall notify the Council of the identity of the Designer they propose to appoint for the works. The Council shall approve the Designer prior to the commencement of any design work. In order to obtain approval, the Designer shall provide three satisfactory references for works of a similar nature to that proposed.
- 3.9** The Council can (in some circumstances) design the works for the Developer. The Council can provide details of fee charges on request.
- 3.10** The Developer is to submit drawings and specifications for the Section 278 works. These drawings and specifications should provide all the technical information necessary to construct the works. The Council shall check the details provided and inform the Designer and Developer as to whether or not they are satisfactory. In the event of the design being unsatisfactory, the Council shall notify the Developer of any additional information required along with advice with regards to details that require revision, amplification or deletion. The process of design submission and checking shall continue until the Council is satisfied that the design satisfies the requirements of the relevant planning conditions and provides sufficient technical information to allow the works to be constructed.
- 3.11** The Developer shall also submit a plan showing the extent of land in his ownership. This plan should ideally be a copy of a Land Registry drawing. The Developer shall also submit a plan showing the development site with the planning consent boundary edged in red and the extent of any land to be dedicated as highway edged in blue.
- 3.12** Upon approval of the drawings and specifications, the Developer shall submit a cost estimate for the section 278 works for the Council's approval. The Council shall assess and approve the estimate once it is satisfied that the estimate accurately reflects the cost of the works.
- 3.13** The approved estimate shall form the basis of the calculation of the Council's design checking and supervision fee for the works. The design checking and supervision fee will be 8.5% of the bond required for the scheme. In the event of the supervision fee being exceeded, the Council will notify the Developer and will request payment of any additional costs that it incurs.
- 3.14** The Council will advise the Developer as to the requirements for safety audits for each scheme. The Developer is responsible for ordering and paying for the audits. The Developer shall supply copies of the Audit reports to the Council and ensure that any recommendations re incorporated into the design except when instructed not to do so by the Council.
- 3.15** In the event of Traffic Regulation Orders (TROs) being required for the scheme, the Council shall carry out the necessary procedures and the Developer shall pay for the services provided. The cost of a Traffic Regulation order varies but it is generally in the order of £4000. The Council's Traffic Engineer will set the exact figure for the TRO. The TRO costs must be paid on completion of the S278 Agreement. Please note the contact the traffic team as early as possible to establish timescales due to workload and consultation for all TRO's.

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- 3.16** The Developer shall pay the Council's legal fees for drawing up the S278 Agreements currently £1,000.00 unless the matter is particularly complex, in which case the Council will notify the Developer of the fee to be charged.
- 3.17** If the scheme involves the installation of traffic signals, signalised pedestrian crossings, zebra crossings, retaining walls, flow control devices, flow attenuation tanks or soakaways, the Developer will be required to pay a commuted sum for future maintenance of the installations for an agreed number of years. Other facilities and installations may attract commuted sum if they were only required as a result of the Developers' works. Requirements for commuted sums shall be set out in the S278 Agreement.
- 3.18** The Developer (or Designer) shall liaise with the Council's Street Lighting section with regard to any lighting issues associated with the Section 278 works.
- 3.19** The Developer is responsible for liaising with Statutory Undertakers and shall make all arrangements and pay for all service diversions or protective measures that are required for the Section 278 works. All statutory undertakers' protection and diversion costs are to be identified prior to the completion of the S278 Agreement.
- 3.20** The Developer will be required to provide a bond in the sum of 100% of the estimated cost of the section 278 works plus the cost of any necessary diversion and/or protection works required by statutory undertakers. The bond and any commuted sums is to be provided prior to the commencement of the works. A bond is not required if the works are constructed by the Council's Engineering Services. The bond may be a cash bond or it may be provided by a reputable bank or other financial institution which has been approved by the Council.
- 3.21** The Developer shall supply details of the Contractor they propose to use to construct the works. The Contractor will be required to be accredited under the Contractors Health and Safety Assessment Scheme (CHAS). Details of CHAS can be obtained at <https://www.chas.co.uk/>. The Contractor will also be required to produce three acceptable technical references (preferably from other local authorities) for work carried out in live highways. The Contractor shall be approved by the Council if these conditions are met.
- 3.22** No section 278 work is to commence in the public highway until the S278 Agreement is completed. The Developer must pay the supervision fee to the Council before the commencement of any work.
- 3.23** The S278 Agreement may also include provisions relating to the approval of contractors, programmes and traffic management arrangements. Any such requirements shall also be met prior to the commencement of any work.
- 3.24** The Developer or his contractor should keep any local residents or businesses, affected by the Section 278 works, informed of his proposals by carrying out a letter drop before works commence
- 3.25** The Developer should be aware that entering into a S278 Agreement does not relieve him of any obligations under the Traffic Management Act.

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- 3.26** The Council shall supervise the quality of the on-site work. It should be emphasised that the Council is only concerned that the works are built in accordance with the details in the S278 Agreement or such variations as may be agreed. The Council shall communicate only with the Developer (or appointed agent) and will not instruct the Contractor.
- 3.27** Upon the satisfactory completion of the work, the Council shall issue a completion certificate to the Developer. The effect of the completion certificate will be to reduce the bond sum to 10% of its original value. The Developer should notify the bond provider. If a cash bond has been provided 90 % of the original value will be refunded to the Developer.
- 3.28** A maintenance period of one year will commence from the date of the completion certificate. Shortly before the expiration of the maintenance period, the Developer should request an inspection of the works. The Councils Highways Officer will arrange an inspection and give the Developer a list of any defects to be rectified. Upon the satisfactory completion of any remedial works, the Council shall issue a final certificate. The remaining 10% of the bond shall be released at this stage. The Developer shall not discharge the Contractor from his obligations until the Council issues the final certificate.
- 3.29** The Developer must pay the costs which the Council incurs in the preparation, completion and administration of the S278 Agreement, which will include the following:
- Preparing, executing and managing the Agreement;
  - Design Checks;
  - Technical Approval including Structures; and
  - Inspecting the works on site.
- 3.30** Separate charges by third parties undertaking design, will be submitted to the Developer by the Council, including:
- Traffic Regulation Orders;
  - Street Lighting;
  - Soft Landscaping;
  - Traffic Signals.
- 3.31** The Highways England's Guide, which establishes the general approach to the S278 process and the most common mechanism for procuring works associated with the Strategic Road Network. in particular, Paragraphs 131 – 142 cover third party funding agreements including S278 Agreements. Where possible, in situations where the S278 involves both Highways England and the Local Highway authority, a single agreement will be proposed with both bodies working collaboratively on the agreed mitigation. As such, it is recommended that developers contact the relevant Highways England regional planning team for further information regarding third party funding for highways mitigation.

### Section 38 Works

- 3.32** It may be necessary in some instances to create new highway for adoption. Where this is required, the works will be subject to a either (a) a separate agreement under the provisions of Section 38 of the Highways Act 1980, or (b) a combined Section 278 and Section 38 Agreement depending on the scale and nature of the works involved. Further information

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about Section 38 Agreements can be found in the Planning Advice Note “Section 38 Agreements – Developer Guidance” document.

### Developer Responsibility

**3.33** Before the S278 Agreement can be signed, the Developer must provide written proof to the Council 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 the Council when they have appointed a Principal Designer for the project. The Developer must commission an external Road Safety Auditor, whose competence shall be demonstrated to the Council, and the same auditor should be retained for all subsequent audit stages.

### Notices, Permits, Licences & Other Agreements

**3.34** Where it is proposed to carry out any work on the public highway the Developer may need a number of other consents, namely:

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

**3.35** The Developer will need to apply to the Council for a permit to undertake any works on the Adopted Highway in advance of the works starting. This is required to ensure that the Council 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.

**3.36** 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).

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

- 3.37** Before any works are carried out on or adjacent to the Adopted Highway the Developer is required to obtain a licence from the Council (section 171 Licence) This licence permits the Developer and his contractors to undertake works on or adjacent to the highway with the approval of the Council acting as the Highway Authority. [add a link to the form of licence application form and fees – contact number]

#### Temporary Traffic Restrictions

- 3.38** If it is necessary to close the Adopted Highway or introduce a speed limit or other restriction temporarily to enable the works to be carried out safely the Developer must make a separate application to the Council for a Temporary Traffic Regulation Order (TTRO). Note the traffic team need a minimum of 6 weeks' notice. For further information regarding the form and fee, visit the following address: <https://www.barnsley.gov.uk/services/roads-travel-and-parking/roadworks-and-road-maintenance/apply-to-close-a-road/>.

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

- 3.39** 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, the Developer must obtain prior approval of the Council under section 184 of the Highways Act 1980. 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.
- 3.40** The Council will check the Developer's design and inspect the S184 works. The Developer will pay the Council costs for the administration of the agreement, legal services, technical approval, site inspections and issue of certificate.
- 3.41** 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]

- 3.42** If a development requires works within the Adopted Highway to excavate, or break through it to work on or install new apparatus, the Developer must apply to the Council for a Section 50 Licence (NRSWA).
- 3.43** 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

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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.

**3.44** The Council will on behalf of the Developer in advance of any proposed works on the Adopted Highway give the relevant notice to 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 is known. The longer the notice period the more likely any programmed statutory undertakers works can be accommodated to suit the Developer's programme of delivery.

**3.45** 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.

### **Finance**

#### **Bond**

**3.46** The Developer is required to provide a bond in favour of the Council which is sufficient to cover the cost of the S278 highway works, and any Commuted sums. This Bond ensures that the Council (the public purse) does not incur any costs in the event the Developer defaults on their obligations.

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- 3.47** In the event of default the Council can call-in bond and use the monies to complete the works itself recover it fees and charges and any commuted sums to cover future maintenance costs.
- 3.48** The bond usually forms part of the standard form of S38 Agreement. In cases where it is done as a separate document, this must be completed at the same time as the Section 38 Agreement.
- 3.49** The S278 Agreement and bond must be completed and the relevant fees paid to the Council prior to any works commencing on site.

### Commuted Sums

- 3.50** Commuted Sums are necessary when any development increases the Council'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 the Council's standard specification, and
  - Provision of SUDS (such as flow-attenuation devices, swales and storage areas). Developers should discuss their requirements with the Council, ideally during pre-planning application discussions, in advance of a formal Planning Application being submitted. The Commuted Sums schedules have been calculated on the date shown and need to be index linked to the date of the S278 Agreement.

### Highway Design – By External Consultants

- 3.51** Developers have access to the Council's "South Yorkshire Residential Design Guidance" document and our 'Specification of Construction Materials and Standard Construction Details' document. The Developer shall ensure that S278 highway works are designed in accordance with this document to ensure proposals are acceptable to the Council.
- 3.52** The Developer must provide their external designer's details to the Council to determine the external consultant's relevant experience and capability. The information provided must be detailed enough to allow designer competency to be assessed. The Council will write to the Developer confirming the external consultant's acceptability. The Council 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 the Council to allow the consultation to commence. The design

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must be carried out in accordance with the S278 Agreement timescales. Where the Council consults on design issues, the Developer will be provided with:

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

**3.53** 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 the Council who will undertake a formal Design Check. Details of design modifications required by the Council will be provided to the Designer. Once all modifications have been addressed, the Council will write to the Designer accepting the Detailed Design.

### Highway Structures Design

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

- Where the structure will be offered up for adoption;
- Where the structure supports or is supported by the Adopted Highway.

Then structural details must be submitted to the Council for Technical Approval.

### Street Lighting Design

**3.55** The street lighting works required to illuminate the Adopted Highway must be designed, installed and commissioned by the Council.

**3.56** This delivery mechanism will be included within the S278 Agreement. The Council will undertake the street lighting design and liaise with the developer during this process.

### Traffic Signals Design

**3.57** Where traffic signals are required, the design will be undertaken by the Council's Traffic Signals Group.

### Construction

#### General

**3.58** **The Council will not permit** 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);

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- Road Safety Audits (reports submitted up to and including Stage 2);
- All necessary fees/payments made to the Council;
- Section 278 Agreement signed;
- Bond has been provided;
- Written confirmation that Developer has contacted the Health and Safety Executive where applicable;
- All pre-construction details required.

**3.59** The Council will give the Developer approval to commence the highway works, and agree a construction programme with the Developer that balances the needs of stakeholders, local businesses and residents. The Council will issue a Completion Certificate to the Developer's Contractor on agreement that highway construction works are substantially complete. The Completion Certificate will not be issued if the actual tie-in levels between the development and the publicly maintained highway result in the Council's highway design standards being compromised. The Developer is responsible for any remedial works. The 12 Month Maintenance Period starts from date of issue of the Completion Certificate. The Council will issue a Final Certificate to the Contractor at the end of the maintenance period subject to the Contractor correcting any outstanding defects. The issue of the Completion Certificate and the Final Certificate has implications for the Developer with regard to maintenance and fulfilling their planning obligations. The implications vary depending upon the procurement route adopted.

**3.581** Any resurfacing of the existing highway must be the minimum width to the centre line. No patches or shorts strips will be accepted. The extent of the sur be agreed at application stage.

### Construction – Street Lighting

**3.60** All Traffic Signal works will be designed, installed, configured and commissioned by The Council'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.

**3.61** BMBC 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.

### Construction – Road Safety Audit

**3.62** 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 the Council. Any modification to the highway works must be undertaken as part of the remedial ("snagging") works within the 12 Month Maintenance Period.

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

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### Highway Planning Obligations

- 3.64** 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 T3 of the Local Plan”

### Health and Safety

- 3.65** Before the S278 Agreement can be signed, the Developer must provide written proof to the Council 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).
- 3.66** The Developer must ensure compliance with the CDM Regulations and indemnify the Council against claims, liabilities and actions.
- 3.67** The Developer must provide the Council with an electronic copy of the Health and Safety File on completion of the highway works. This must comply with CDM 2015 requirements.
- 3.68** The Bond will not be released until the Health and Safety File has been provided to the Council.

### Road Safety Audit

#### Definition

- 3.69** 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.
- 3.70** 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.

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- 3.71** 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.
- 3.72** 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.
- 3.73** 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.

### Audit Stages

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

#### Stage 1

- 3.75** 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 the Council with the Stage 1 report prior to the start of detailed design.

#### Stage 2

- 3.76** 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 the Council with the Stage 2 report, the detailed design can be completed in line with recommendations.

#### Stage 3

- 3.77** 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.
- 3.78** 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.

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### Stage 4

**3.79** 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.

- A. Model S278 Agreement
- B. TC Fees and Charges
- C. Commuted Sums
- D. Conditions of Completion
- E. Client Roles & Responsibilities Under CDM 2015

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## Appendix 1. S278 Application Form



**BARNSELY**  
Metropolitan Borough Council

Please complete using black ink in BLOCK capitals or type.

It is important that all sections of this form are completed as incorrect or missing information will delay the processing of your application. Please refer to the guidance notes for advice.

Before you can apply to enter into a Section 278 Agreement you must obtain full planning permission for the development from the Local Planning Authority this **must include** approval of all reserved matters relating to the highway works.

## FOR OFFICE USE ONLY

Officer:		Rec'd Date:	
Validated:			
TCO/SAP	Bond Calc	TCO Fee	Legal

**1 Your Details**

Applicant Name:	Agent Name:
Registered Address:  Postcode:	Agent Address:  Postcode:
Email:	Email:
Daytime Tel No:	Daytime Tel No:

**2 Solicitor and Surety Details**

Solicitor Name:	Surety Name:
Solicitor Address:  Postcode:	Registered Address:  Postcode:
Contact Name:	Contact Name:
Daytime Tel No:	Reference:
Email:	(or)
Reference:	<input type="checkbox"/> Tick (✓) here if <b>No Surety is required</b> as a Cash Deposit will be placed with the Council.

**3 Planning Application Details**

Please note that until a valid planning permission has been obtained the Council will not be able to process an application for a Section 278 Agreement. If you are currently awaiting a decision on your planning application please contact the Transportation Development Manager on the telephone number at the end of this form.

Planning Application Reference:	Decision Date:
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### 4 Description of the Highway Works

Please provide an accurate, detailed description of the proposed highway works required as a result of the planning permission. (continue on a separate sheet of paper if necessary)

### 5 Off-site Highway Works Ancillary Items

In addition to the schedule of principal quantities to be provided for the off-site highway works (see guidance notes) please indicate in the following section if your proposals involve any of the following matters:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Waiting/Loading Restrictions | <input type="checkbox"/> Resident's Permit Parking Zones | <input type="checkbox"/> Vehicular Access Restrictions |
| <input type="checkbox"/> Speed Limit modifications    | <input type="checkbox"/> Creation of New Highway         | <input type="checkbox"/> Widening of Existing Highway  |
| <input type="checkbox"/> Bus Shelters/Canopies        |  |  |

### 6 Statutory Undertakers' Diversions

Please indicate below if the Highway Works will require diversion of any statutory undertakers' plant or equipment. Please also indicate if these costs are Preliminary Estimated values and whether or not the costs have been paid to the respective body.

	Affected?	Diversion Cost	Tick (✓) to indicate		
Virgin Media / Cable Company	<input type="checkbox"/>	£ <input type="text"/>	Estimated <input type="checkbox"/>	Final <input type="checkbox"/>	Paid <input type="checkbox"/>
British Telecom	<input type="checkbox"/>	£ <input type="text"/>	Estimated <input type="checkbox"/>	Final <input type="checkbox"/>	Paid: <input type="checkbox"/>
Yorkshire Electricity	<input type="checkbox"/>	£ <input type="text"/>	Estimated <input type="checkbox"/>	Final <input type="checkbox"/>	Paid: <input type="checkbox"/>
Yorkshire Water (Mains)	<input type="checkbox"/>	£ <input type="text"/>	Estimated <input type="checkbox"/>	Final <input type="checkbox"/>	Paid: <input type="checkbox"/>
Yorkshire Water (Foul)	<input type="checkbox"/>	£ <input type="text"/>	Estimated <input type="checkbox"/>	Final <input type="checkbox"/>	Paid: <input type="checkbox"/>
Northern Gas Networks	<input type="checkbox"/>	£ <input type="text"/>	Estimated <input type="checkbox"/>	Final <input type="checkbox"/>	Paid: <input type="checkbox"/>
Other (specify _____)	<input type="checkbox"/>	£ <input type="text"/>	Estimated <input type="checkbox"/>	Final <input type="checkbox"/>	Paid: <input type="checkbox"/>

### 7 Creation, or modification of Highway Assets

Please indicate if your off-site highway works will require **modification**, or **creation** of a new highways assets by ticking (✓) below.

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Modification of Street Lighting   | <input type="checkbox"/> Modification of Traffic Signals                                 | <input type="checkbox"/> Modification of Highway Structures |
| <input type="checkbox"/> New Street lighting equipment   | <input type="checkbox"/> New Traffic Signals   | <input type="checkbox"/> New Highway Structures             |
| <input type="checkbox"/> Modification of Road Signing (other than TRO signing) (e.g. ADS, VMS Signs) | <input type="checkbox"/> New Road Signing (other than TRO signing) (e.g. ADS, VMS Signs) |   |

Please provide details of the proposals indicated above

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<input type="checkbox"/> Sustainable Urban Drainage Solution	Please give details of your SUDS solution:
--	--



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**Plans and supporting information**

Please specify plans/details that have been submitted in support of this application. Failure to include information in the following section may result in your application not being validated for processing and a request for additional information being issued by the Council. **If you are submitting electronic PDF copies of the plans/details please indicate this by ticking (✓) the electronic submission box below.**

- I am making an **electronic submission** and PDF versions of the supporting information have been supplied.
- \*  A BLUE line boundary plan showing areas of private land to be dedicated to the Highway Authority as highway maintainable at public expense (not less than 1:500)
- \*  A RED line site boundary (not less than 1:500) showing the area of the development.
- \*  Indicative layout of the off-site Highway Works to be delivered as part of the Section 278 Agreement (not less than 1:500)
- Existing ground model survey and predicted traffic flows (only required if BMBC undertaking design)
- \*  Proof of land title. (and address of landowner if different to applicant)
- \*  A schedule of principal quantities/estimate for the works in accordance with the Method of Measurement for Highway Works
- \*  Application Fee £2,500

**PLEASE NOTE:**

\* indicates mandatory attachments to ensure validation of application. Failure to submit these items will invalidate your application and this will be returned to you unprocessed.

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**Programme Information**

Please provide details of any programming constraints or deadlines which you are aware of at this time.

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**11 Declaration Undertaking**

In recognition that an Agreement under Section 278 of the Highways Act 1980 ("the 1980 Act") will be required by the Council to facilitate works in the existing highway for the special benefit of the Applicant or his/her adjacent development ("the Section 278 Agreement") the Applicant is required to pay the Council's legal costs in connection with the Agreement.

In consideration of the agreement by the Council to negotiate the Section 278 Agreement I/we undertake to pay the Council's reasonable costs in preparation and negotiation of the Section 278 Agreement whether or not the Section 278 Agreement is completed by me/us. If I/we withdraw from the planning permission for the above development I/we shall pay the reasonable costs of the Council incurred to the date of that withdrawal as notified by the Council. If the Section 278 Agreement has not been completed by a date 3 months after the date of this Undertaking I/we will be deemed to have withdrawn from negotiations and upon a request in writing I/we shall pay to the Council their reasonable legal costs incurred up to and including that date.

I/we understand that any agreement as the payment of legal costs contained in the completed Section 278 Agreement will take precedence over this Undertaking.

Signed (Applicant):	Signed (witness):
Name:	Name:
Address:	Address:
Date:	Date:

**Please return two copies of the completed form, plans and supporting information to (or submit electronically via email):**  
 Highway Development Control, Regeneration and Property, Place Directorate, 1 Westgate, Barnsley, S70 2DR  
 Tel: (01226) 772078  
[highwaysS278@barnsley.gov.uk](mailto:highwaysS278@barnsley.gov.uk)