

Kirklees Council

Highways Guidance Note – Private Works to Existing Highways (Section 184 and 278 Agreements)

April 2020 (Version 2)

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This guidance note

Introduction

1 This guidance note explains how to get private works done to existing publicly maintainable highways by using sections [184](#) or [278](#) of the [Highways Act 1980](#). It outlines what developers can expect from Kirklees Council and what we would expect from developers.

Previous version

2 This is the second version of this guidance note. It replaces the one issued in June 2017, which is withdrawn.

Implementation

3 This guidance note applies to all requests for works to existing publicly maintainable highways made on or after 1 April 2020.

Background

Publicly maintainable highways

4 If a road or path is a publicly maintainable highway, then:

- it is available for the public to use whenever they want, and it is an offence to obstruct anyone trying to use it

- Kirklees Council is responsible for its ongoing maintenance and repair
- doing any works in it or to it without the written permission of the council is a criminal offence

5 For convenience, this guidance note uses the term 'publicly maintainable highway' instead of the

more formal 'highway maintainable at the public expense', which the [Highways Act 1980](#) uses.

Further information

6 Kirklees Council has also prepared the highways guidance note [Introduction to Highways and Adoptions](#), which aims to give a simple introduction to the complexities of the legal side of highways.

Private works to existing highways

7 Many developments will include works to existing publicly maintainable highways. These

Warning!

Doing any works in or to a publicly maintainable highway without the written permission of Kirklees Council is a criminal offence

typically have the aim of reducing the impact of a development on the existing highway network or making sure that a development has suitable access. They are usually required by conditions imposed as part of the planning permission for the development.

Legal permission for private works to existing highways

Legal permission

8 The law does not allow Kirklees Council to give a developer general permission to do work to a publicly maintainable highway. However, different sections of the [Highways Act 1980](#) allow us to give one-off permission for specific types of work.

9 The three most widely used ways that we may give permission to developers to do work to an existing publicly maintainable highway are to use agreements made under the following sections of the act:

- [Section 38](#)
- [Section 184](#)
- [Section 278](#)

Section 38

10 Section 38 agreements are made between Kirklees Council and developers. Using them, the council and developers may agree that, if the developer builds roads and paths to the agreed layout and standard, we would adopt them as highways maintainable at the public expense. As they are made under [section 38](#) of the [Highways Act 1980](#), these agreements are legally enforceable.

11 Section 38 agreements may include works on existing publicly maintainable highways. Typically, these are to make the tie-ins of new roads or paths.

Further information

12 Section 38 agreements are not covered by this highways guidance note. Instead, we have prepared

a separate highways guidance note [Section 38 Agreements for Highway Adoptions](#), which explains how to use a section 38 agreement to get new roads and paths adopted by us as publicly maintainable highways.

Section 184

13 [Section 184](#) of the [Highways Act 1980](#) lets Kirklees Council give permission to developers or to the owners or occupiers of roadside properties to construct or modify accesses. It cannot be used to create new highway, so it is not suitable if the existing highway needs to be widened. However, it does offer a straightforward way to do work for private accesses.

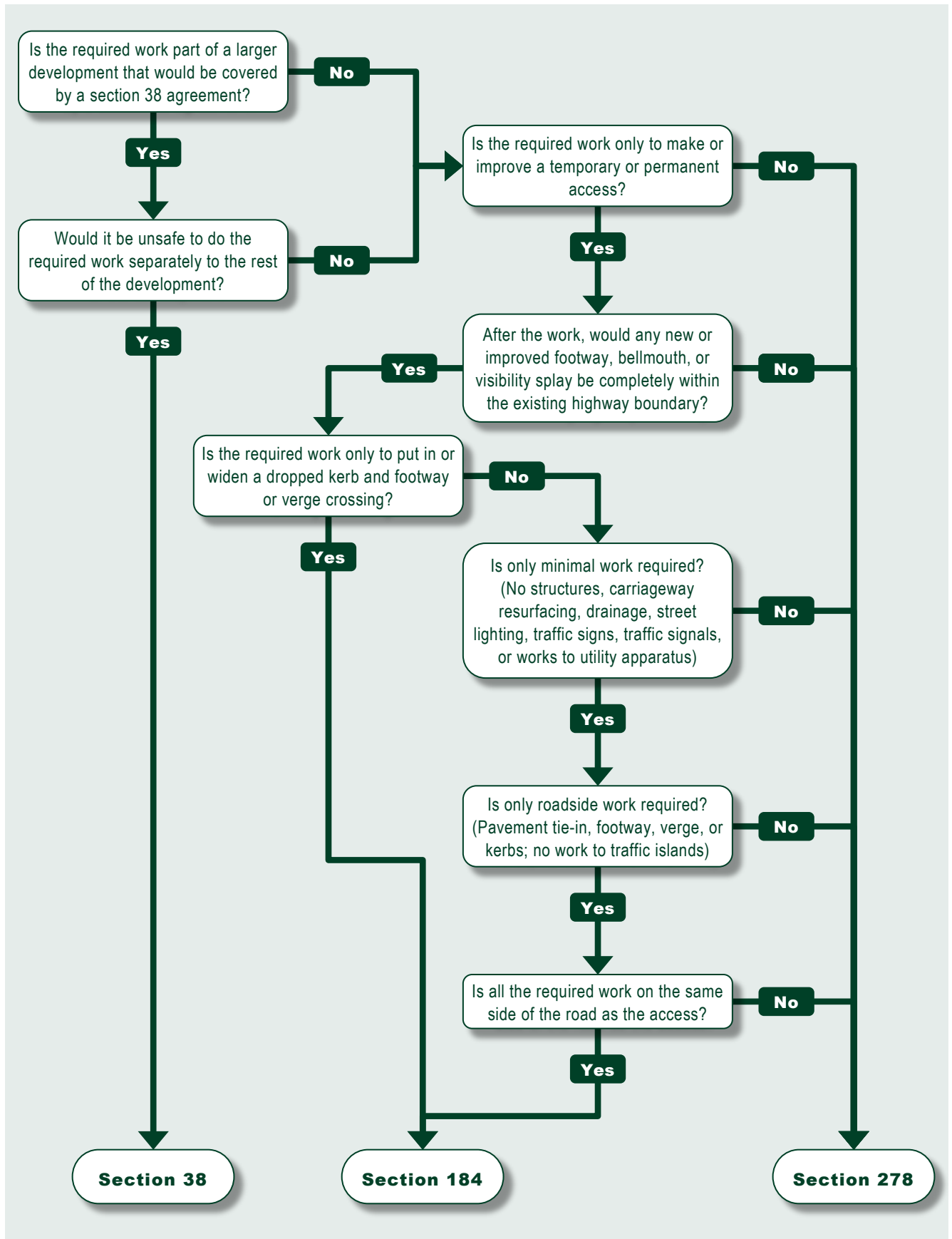
Section 278

14 Section 278 agreements are a way of allowing developers to pay for works to existing publicly maintainable highways. They are made between Kirklees Council, as the local highway authority, and developers. As they are made under [section 278](#) of the [Highways Act 1980](#), these agreements are legally enforceable. However, a section 278 agreement is not a contract to carry out work; it is just an agreement to pay for the cost of works carried out in the highway.

Choice of section

15 When deciding which section of the [Highways Act 1980](#) to use, Kirklees Council will usually assess the works required using [flow chart 1](#) (page 3).

Flow chart 1: Choice of section for works to existing publicly maintainable highway



More than one agreement

16 Often, more than one agreement using different sections of the [Highways Act 1980](#) is required. For instance, an agreement under [section 184](#) might be used to make a temporary site access, with the permanent one formed by a junction built using an agreement under [section 38](#) or [278](#).

Combined agreements

17 In some cases, it might be desirable to combine different agreements into a single legal document. Kirklees Council will say when this is the case.

Planning permission and changes to existing publicly maintainable highways

18 As Kirklees Council has very onerous responsibilities for managing and maintaining

publicly maintainable highways, we have to thoroughly assess all proposals for changes to them. These assessments are in much greater detail than when reviewing an application for planning permission.

19 Getting planning permission for proposed changes to existing publicly maintainable highways does not mean that they would be automatically acceptable. Therefore, developers should bear in mind that they need to both get planning permission and meet the council's technical requirements for publicly maintainable highways.

20 If developers follow the advice given by the council's highway engineers, then getting a section 184 or 278 agreement should follow on smoothly from getting planning permission.

Section 184 – New and altered accesses and dropped crossings

Introduction

Different access types

21 Agreements made under [section 184](#) can be used for a variety of different types of access, from a simple dropped crossing for a house to a new entrance bellmouth for a retail unit or factory.

22 To deal with this wide variation, the procedure Kirklees Council uses for getting works done under [section 184](#) depends upon the type and amount of work required.

Design and construction

23 Usually, developers will design and construct the required works themselves. However:

- We would have to approve the design.
- We would inspect the works.
- The developer would have to pay all our costs.

24 We can design and construct the access for the developer. If we were to do this, then we would estimate the cost of the works. The developer would have to pay this in advance before work could start. Once we had finished the work, any money left over would be refunded.

25 All design and construction work is required by law to comply with the [Construction \(Design and Management\) Regulations 2015](#) (the CDM

Regulations). More information about these is given in [Annex A](#) (page 16).

Other permission

26 All new accesses onto A or B roads need planning permission. Complex accesses, particularly ones that require a bellmouth onto the road or significant alterations within the property, might also require planning permission, regardless of the type of road.

27 New accesses for residential properties that Kirklees Council owns or used to own will also need permission from our local housing office.

Legal permits and notices

28 Within Kirklees, all construction work in the highway would require a legal permit and would not be allowed to start on site unless various legal notices had been given. The exact requirements would depend upon the location, size, scope, and duration of the proposed works.

29 We will advise applicants for a new or altered access what notices would have to be given.

30 [Annex B](#) (page 17) gives more information about the various legal permits and notices that might be required.

Simple domestic accesses

31 Kirklees Council has a simplified procedure for simple domestic accesses. We call access works 'simple' if:

- the access is for a single domestic property
- the access is a footway or verge crossing with dropped kerbs, not a bellmouth
- no drainage works are required, not even works to move gullies
- no works are required to traffic signs, traffic signals, street lighting, pedestrian guardrails, or other street furniture
- no changes to local traffic restrictions are required
- no utility apparatus works or diversions are required
- no trees need to be removed or trimmed
- there are no landownership issues
- there are no concerns about the legal status of the verge or footway

Procedure

32 The procedure for simple domestic accesses is described on Kirklees Council's website, see:

- www.kirklees.gov.uk > [Transport, roads and parking](#) (Roads) > [Dropped kerbs](#)

33 Anyone wanting a simple domestic access should choose a contractor to do the work and then apply by contacting the council using the link or phone number given in the box above for permission to have the work done.

34 Applicants will have to pay a fee and demonstrate that their chosen contractor has sufficient insurance and is appropriately qualified to do 'street works' in the highway. They will be given more information about this when they apply.

Further information

35 For more information about the simplified procedure for simple domestic accesses, please contact the council using the phone number given in the box above.

Other accesses

36 Kirklees Council uses a different procedure for accesses that are more complicated than just simple ones for single domestic properties.

Contact us about simple domestic accesses

- www.kirklees.gov.uk > [Contact us](#) (Contact a service or department) > [Contact roads and transport](#)
- Huddersfield (01484) 414 700

Early discussions

37 We strongly recommend that developers discuss their ideas for more complicated accesses with the council's highway design and development team before any detailed drawings are prepared. Developers who start design work before discussing their ideas with us usually waste time and money on unacceptable proposals.

Kirklees Council case engineer

38 Each proposal for a more complicated access will have a dedicated case engineer to work with the developer.

Road safety audit

39 Some proposed accesses might have a significant effect on the road. We need to assess whether these would affect the safety of road users. We do this by using 'road safety audits'. For more information about these, see [Annex C](#) (page 19).

Highways technical approval

40 Kirklees Council has very onerous responsibilities for managing and maintaining existing publicly maintainable highways. Therefore, as well as any likely effect on road safety, we have to consider whether proposed accesses would be fit for purpose for the years ahead. To make sure that this is the case, we technically review the proposals. If they are acceptable, we give them 'highways technical approval'.

41 Kirklees Council has prepared a highways guidance note [Highways Technical Approval](#), which gives an overview of the subject and the matters that our highway engineers consider when deciding whether to approve proposals for works to existing highways.

Estimated costs and payments

42 We require an initial payment of £1,800 before we will do any work on the highways technical review of proposals for more complicated accesses.

As well as the review, this allows for consultations with other officers of the council and – where one was considered necessary – a road safety audit.

43 Sometimes, complicated accesses require us to do more work than that covered by the initial payment of £1,800. If we think that this will be the case, then we will estimate the additional work required and how much it will cost. The developer will then have to pay these additional costs before we would continue with the work.

44 We calculate our costs using time charges. When we work out time charges, we use the officers'

hourly charge-out rates, which include salaries and overheads.

45 Once we have given highways technical approval for the proposals, any money left over will be refunded.

Timings

46 We can usually give highways technical approval for well-designed proposals within two weeks of receiving an application. However, it might take us longer at busy times of the year or when a road safety audit is required.

Section 278 agreements – Arrangements in Kirklees

Overview

47 When a section 278 agreement is to be used for works, then:

- Either Kirklees Council or the developer's consultant will design the required works.
- The works will be constructed by either the council or a suitably qualified and experienced contractor – which could be nominated by the developer.
- If a contractor is used, the contract will be let by us, not the developer.
- We will manage and supervise the construction works.
- The developer will pay for the required works, including our costs.
- We may take over and complete the works required if the developer did not finish them within the time allowed.
- The developer will give us a bond or surety to cover our costs of taking over and completing the works, should this be necessary.

Management and administration

48 Our highway design and development team manages and administers section 278 agreements as well as designing works and supervising construction.

49 Each proposal for a section 278 agreement will have a dedicated case engineer to work with the developer.

Developer-nominated contractors

50 Before we will agree to use a developer-nominated contractor, we have to make sure that the contractor is acceptable. To do this, we assess the contractor in the same way we would if we were selecting one for our own work. More information about this is given in the section headed '[Section 278 agreements – Construction](#)' (page 14).

Legal permits and notices

51 Within Kirklees, all construction work in the highway would require a legal permit and would not be allowed to start on site unless various legal notices had been given. The exact requirements would depend upon the location, size, scope, and duration of the proposed works.

52 We will tell developers what notices have to be given.

53 [Annex B](#) (page 17) gives more information about the various legal permits and notices that might be required.

Consultation

54 For some proposed works and for proposed changes to local traffic restrictions, we would have to consult with those people who might be affected.

55 Local traffic restrictions are usually made using 'traffic regulation orders' (TROs). We would have to consult about proposals for changes to existing TROs, for new permanent TROs, or for new temporary TROs (for example for road closures or temporary speed limits).

56 [Annex D](#) (page 21) gives more information about consultations.

Written section 278 agreements

57 With the developer's agreement recorded in an exchange of letters, we will usually do the initial administration and design. However, a formal section 278 agreement between the council and the developer would have to be signed before a contractor could be appointed.

58 Works to existing publicly maintainable highways would not be allowed to start unless:

- the section 278 agreement had been signed by both the developer and the council
- the developer had put in place a bond or surety
- all the necessary legal permits had been confirmed
- any new TROs or changes to existing TROs that were required had been approved

Kirklees Council's commitment

59 Kirklees Council is committed to working closely with developers to achieve:

- The delivery of highway works constructed to appropriate standards

- Consistent use of acceptable materials on the publicly maintainable highway
- Minimal disruption during construction
- The highest quality development possible
- Efficient and effective delivery of projects for the benefit of all parties

Early discussion

60 Developers should start discussions with Kirklees Council's highway design and development team as early as possible, even before land has been acquired or planning permission has been applied for, ideally during pre-planning application discussions.

61 Early discussions can make it easier to get an agreement for the proposed works. In addition, meeting the highway design and development team early on would give developers the opportunity to discuss the best way to deliver the proposed works. In particular, it would allow the council and developers to agree how the works would be designed and built.

Section 278 agreements – Finance

Introduction

Summary

62 All the costs Kirklees Council runs up while arranging or managing a section 278 agreement – including legal work, design, and construction – shall be paid by the developer. We will try to recover from the developer all the costs reasonably incurred. However, we will try to minimize them.

63 We would not do any work towards a proposed section 278 agreement unless we had been paid in advance.

64 As part of a section 278 agreement, developers have to provide a bond or surety. This is to give us access to the funds needed to finish off the works should this be necessary.

65 Where the finished works would be disproportionately expensive to manage or maintain, we will require the developer to pay a 'commuted sum' to cover the extra cost.

66 If we do not both design and construct the works, then the developer will be required to indemnify us against any claims by third parties arising from any work included in the section 278 agreement.

Costs and charges

Preparatory work and initial payments

67 Before we can sign a section 278 agreement, we will have to do some preparatory work. To allow us to get on with this, we will require an initial payment.

68 The amount of preparatory work needed will depend upon all sorts of things and will be different for each agreement. Accordingly, we will not know in advance how much it will cost. Therefore, we charge a standard initial payment of two weeks of officer time plus some associated costs. This is currently £3,700.

Additional preparatory work and payments

69 As we do the preparatory work, we will get a better idea of how long it will take. If we think that it will then cost more than the £3,700 paid, we will estimate the additional work required and how much it would cost. The developer will then have to pay these additional costs before we would continue with the work.

70 We will estimate the additional costs using time charges to cover the expected amount of officer time required.

Signed section 278 agreements

71 When a signed section 278 agreement is in place, we will work and be paid in accordance with its terms. Likewise, the developer would be legally obliged to pay in accordance with the agreement.

72 Our section 278 agreements use time charges to calculate the amount we have to be paid for the work we do.

Time charges

73 When we work out time charges, we use the officers' hourly charge-out rates, which include salaries and overheads.

Estimates and quotations

74 Although we will estimate the payments required, we cannot give quotations.

Overpayment

75 If, by the end of a section 278 agreement, the developer had paid us in advance more than it had cost us, then the extra would be refunded. This would be without interest.

Other council charges

Street lighting and highway structures

76 Kirklees Council currently charges separately the fees for assessing street lighting proposals and proposed structural works.

Other fees and charges

77 On most developments, there will be other fees or charges payable to the council which are not covered in this guidance note.

Bonds and sureties

78 Kirklees Council's section 278 agreements require a bond or surety. These are to ensure that we would not incur any costs if we completed the highway works after they had been delayed, changed, or cancelled by the developer.

79 The bond or surety required would cover:

- The fees
- The costs of any works to utility apparatus
- The costs of any private works required to allow the highway works or to make them easier, such as adjoining earthworks or rebuilding private walls
- Any commuted sums
- Any other costs to the council that would result from the agreement

80 Bonds and sureties would be reduced as the works progressed. However, they would not be reduced so much that they would no longer cover any commuted sums required.

Committed sums

81 Kirklees Council will require the developer to pay a commuted sum to cover the extra costs where a development would disproportionately increase our future maintenance liability. Commuted sums are usually required for any of the following that would be incorporated into a publicly maintainable highway:

- Attenuation tanks and flow control devices
- Infiltration ponds
- Soakaways
- Structures, including burr walls and retaining walls
- Swales
- Traffic signal installations

82 In addition, we would usually require commuted sums for more expensive permitted alternative materials or features, for example, higher quality paving materials or bespoke street furniture.

83 Developers should discuss their requirements with the highway design and development team before applying for planning permission, ideally during pre-planning application discussions.

84 Any commuted sums required and their values would be stated in the section 278 agreement.

Calculation

85 We calculate commuted sums using guidance issued by the Association of Directors of Environment, Economy, Planning, and Transport (ADEPT). See [Commuted Sums for the Relief of Maintenance and Reconstruction of Bridges](#).

Further information

86 For more information about commuted sums, please contact the highway design and development team.

Indemnities and insurance

Design

87 When Kirklees Council is not the designer of the section 278 agreement works, the developer

shall indemnify us against any claims by third parties arising from the design.

Construction

88 If we do not construct the section 278 agreement works using our in-house resources, then the developer shall indemnify us against any claims by third parties arising from the works.

89 Before a developer-nominated contractor may be used, the developer shall provide written evidence that the contractor has a minimum of £10 million of public liability and employer's liability insurance, with no limit on the number of claims.

90 If we were chosen to construct the section 278 agreement works, no evidence of public liability or employer's liability insurance would be required.

Section 278 agreements – Design

General

Designers

91 Kirklees Council will decide who will design the required works. This might be the council or – for major works – we might agree to the use of an external consultant.

Fees

92 If we are to design the proposed works, but a section 278 agreement has not been signed before design work needs to start, then the developer shall pay us in advance the forecast costs of the design work. This may be paid in stages as the design work progresses. Likewise, if we are to check designs prepared by an external consultant, the developer shall pay our forecast costs in advance.

Existing planning permission

93 Proposals for works to existing publicly maintainable highways are usually required by conditions imposed as part of the planning permission for a development.

94 During the design of the proposed works, they might have to be changed to satisfy the council's highway requirements. If this is the case, then they might no longer comply with the requirements of the relevant planning permission. Accordingly, it is the developer's responsibility to check that, if the proposed works change during design, they would still comply.

95 The highway design and development team cannot advise whether changes to proposed works would affect compliance with planning permission or whether planning conditions could be discharged.

Design principles

96 Regardless of who designs them, the proposed works shall comply with good practice and with Kirklees Council's highways guidance note [Requirements of New and Improved Roads and Paths](#).

The Construction (Design and Management) Regulations 2015

97 All design work is required by law to comply with the [Construction \(Design and Management\) Regulations 2015](#) (the CDM Regulations). More information about these is given in [Annex A](#) (page 16).

Road safety audit

98 Some proposed works to existing publicly maintainable highways might have a significant effect on the road. We need to assess whether these would affect the safety of road users. We do this by using 'road safety audits' (RSAs). Our procedures require RSAs at various stages as the proposals evolve. [Annex C](#) (page 19) gives more information about how we use RSAs.

Site investigation

99 Depending upon the size, location, and complexity of the proposed works, a geoenvironmental and geotechnical site investigation might be required. In some locations, this might have to include a coal mining risk assessment.

100 Kirklees Council's case engineer will advise on the need for and the requirements of a site investigation.

Highways approvals

101 Kirklees Council has very onerous responsibilities for managing and maintaining existing publicly maintainable highways. Therefore, when agreeing to developers' proposals for works on existing highways, we need to be sure that they would be fit for purpose for the years ahead. To make sure that this is the case, we require them to have 'highways technical approval'.

102 Kirklees Council has prepared a highways guidance note [Highways Technical Approval](#), which gives an overview of the subject and the matters that our highway engineers consider when deciding whether to approve proposals for works to existing highways.

Highways approval in principle

103 Once our case engineer is satisfied with the detailed design of the proposals, they will give the proposals 'highways approval in principle'. This doesn't mean that the proposals may be built. Instead, it means that our case engineer thinks it is worthwhile spending money on the RSA.

104 The developer shall then arrange the stage 2 RSA – or a combined stage 1 and stage 2 audit if a stage 1 audit had not been done previously.

Highways technical approval

105 Once any matters raised by the RSA have been satisfactorily resolved, our case engineer will give the proposals 'highways technical approval'.

Detailed design and construction drawings

Timing

106 We will not do or agree to any work on the detailed design of the proposals or the preparation of construction drawings until we have given highways technical approval.

Highway design by Kirklees Council

Kirklees Council designs

107 If Kirklees Council designs the required works, then we know that they will satisfy our requirements. Therefore, the proposed design would not have to be checked as thoroughly as designs prepared by external consultants are.

Developer-supplied information

108 Before we start any design work, the developer should give us the following:

- The topographical survey
- The report of the geoenvironmental and geotechnical site investigation, including the interpretation of the findings
- The stage 1 RSA brief (except where this is reproduced in the RSA report)
- The stage 1 RSA report
- The stage 1 RSA response report
- The RSA exception report
- The planning permission decision notice and the relevant approved plans
- The design and access statement
- The transport assessment or statement and travel plan, where these were required for planning permission

109 If the above documents are not available when we start, then the design could take longer and we could end up doing abortive work.

Finance and progress

110 Once we have received the advance design fee from the developer, we will provide the developer with a budget estimate of the costs of the section 278 agreement works and other associated costs. The budget estimate will also give the value of the bond or surety required for the section 278 agreement.

111 We are unable to give quotations. However, we will try to minimize the costs of the section 278 agreement scheme wherever possible.

112 We will provide the developer with regular progress updates and financial statements. In

addition, when we consult on design issues, we will provide the developer with:

- A consultation programme
- Outcomes of the consultation
- An assessment of the impacts of the consultation on the scope of the section 278 agreement works

Highway design by external consultants

Developer-nominated consultants

113 Kirklees Council would carefully assess the suitability of developer-nominated consultants. The nominated consultant might have to provide satisfactory references and give examples of similar work that they have satisfactorily completed.

114 When a developer-nominated consultant is used, the developer will be responsible for ensuring that the section 278 agreement works comply with the requirements of this guidance note.

Design checks

115 We will do the required design checks at times agreed with the developer. We will then tell the developer what changes, if any, are needed to the external consultant's design.

Street lighting

Design

116 The works required to light the publicly maintainable highway can be designed by either Kirklees Council's street lighting team or an external design consultant.

Approval

117 If the proposed street lighting is designed by an external consultant, then it will need to be assessed and approved by us.

Fees and timing

118 We currently charge a fee for assessing street lighting proposals. In addition, electricity network operators usually charge for making connections to or disconnections from their networks.

119 Developers should allow for the time needed to get street lighting approval and to arrange for connections or disconnections when preparing their development programmes.

Contacts

120 The council's street lighting team can be contacted through the highway design and development team.

Traffic signals

Design

121 Where new traffic signals or changes to existing ones are required, the design will be undertaken by Kirklees Council's urban traffic control team.

Fees

122 We would charge for assessing the suitability of existing traffic signal installations and for designing new installations or changes to existing ones.

Contacts

123 The council's urban traffic control team can be contacted through the highway design and development team.

Highway structures

Approval

124 Any new highway structure or changes to an existing one will have to be approved by Kirklees Council's highway structures team. To help guide developers, the highway structures team has prepared [Highway Structures – Structural Procedures – Procedure Guidelines for the Design and Construction of Highway Structures Requiring the Consent of Highway Authority](#). This explains what we consider to be highway structures and the appropriate approval process.

Fees and timing

125 We currently charge a fee for assessing proposed structural works.

126 Developers should allow for the time needed to get highway structures approval when preparing their development programmes.

Contacts

127 The council's highway structures team can be contacted through the highway design and development team.

Section 278 agreements – Legal documents

Section 278 agreement drawings

128 Kirklees Council will not sign a formal section 278 agreement unless the detailed design drawings have been approved. In addition:

- Where the section 278 agreement includes the creation of new publicly maintainable highway, a ‘highway adoption drawing’ shall be required.
- Where the developer would have to do specified private works before the section 278 agreement works could be done, a drawing showing those private works shall be required.

129 The approved detailed design drawings and any required highway adoption or private works drawings shall be included in the agreement.

Detailed design drawings

130 The detailed design drawings typically include the ones listed in [table 1](#) (page 13), though others might also be required. In practice, the number of drawings required and the coverage of individual drawings will depend upon the size and complexity of the proposed works.

Highway adoption drawing

131 The required highway adoption drawings shall comply with our highways guidance note [Highway Adoption Drawings](#) and shall show the following:

- Extent of area to be adopted
- Adoptable carriageways, including road humps and ramps
- Adoptable footways, footpaths, and cycle tracks, including steps and vehicle crossings
- Adoptable paved verges or margins, including vehicle crossings
- Adoptable soft verges
- Areas of adoptable highway landscaping
- Adoptable highway structures
- Adoptable street lighting
- Adoptable highway drainage
- Off-highway easements for highway drainage or similar
- Works to existing publicly maintainable highways

- Existing and prospective public sewers and lateral drains

Special features

132 Some schemes might include highway structures or significant works to utility apparatus, have difficult ground conditions, or require easements or discharge consents. On such schemes, these matters shall be covered by the section 278 agreement.

Highway structures

133 The section 278 agreement shall include details of any bridges, culverts, headwalls, retaining walls, or other highway structures, which shall be shown on separate drawings. In addition:

- The section 278 agreement shall include the appropriate highway structures ‘approval in principle’ (AIP) document along with the associated calculations for any highway structure where approval has been given.
- Where approval in principle for a particular highway structure has not been given, the section 278 agreement shall include the appropriate application for approval.

Utility apparatus

134 Where it would be necessary for existing utility apparatus to be moved out of the way, the section 278 agreement shall include details of the responses from the relevant utility companies and drawings showing the proposed diversions. These shall be in addition to the approved utility apparatus drawing.

Geoenvironmental and geotechnical site investigation

135 Where a scheme has difficult ground conditions, the section 278 agreement shall include the report of the geoenvironmental and geotechnical site investigation, including the interpretation of the findings. This report shall also:

- include details of CBR (California bearing ratio) test results at the proposed formation level
- state whether the ground water level – taking into account the time of year – is likely to be within 600 mm of the proposed formation level

Table 1: Drawings typically required

	Drawing	Coverage	Comments
1	Existing site topography	<ul style="list-style-type: none"> ▪ Existing site topography 	<ul style="list-style-type: none"> ▪ This shall show the situation before any proposed site clearance ▪ The date of the survey shall be stated
2	General arrangement	<ul style="list-style-type: none"> ▪ Site clearance ▪ Layout roads and paths ▪ Fencing and barriers ▪ Highway surface water drainage and ducting ▪ Pavement design, haunching, and resurfacing ▪ Alterations to traffic signs, including road markings ▪ Proposed surface finishes of carriageways, footways, footpaths, cycle tracks, hard margins, and verges ▪ Kerb, channel, and edging locations, types, and upstands ▪ Combined kerb and drainage blocks, grated channels, and other linear drainage inlets ▪ Street lighting proposals ▪ Highway structures ▪ Accesses to adjoining properties 	<ul style="list-style-type: none"> ▪ This shall include, where appropriate: <ul style="list-style-type: none"> – Centrelines – Chainages – Carriageway widths – Footway/footpath/cycle track widths – Widths of verges and hard margins – Visibility splays ▪ This shall also include any safety or health information required by the CDM Regulations
3	Long sections	<ul style="list-style-type: none"> ▪ Long sections of roads, paths, and tracks on independent alignments ▪ Proposed centreline and channel levels ▪ Gradients, vertical curves, and chainages ▪ Profiles of existing ground ▪ Horizontal alignment details ▪ Locations of junctions and other significant features ▪ Where appropriate, foul and surface water drains 	<ul style="list-style-type: none"> ▪ Long sections shall normally be drawn at 10 to 1 vertical to horizontal exaggeration ▪ Levels and chainages shall be shown at the beginnings and ends of long sections and at intervals of no more than 5 m ▪ Levels and chainages shall also be shown at the ends of vertical curves and straight grades and other significant features, whether proposed or existing ▪ Long sections of drains shall show pipe sizes, gradients, and the positions of manholes
4	Cross sections	<ul style="list-style-type: none"> ▪ Cross sections of roads, paths, and tracks on independent alignments ▪ Proposed earthworks, carriageways, footways, hard margins, retaining walls, or similar ▪ Existing ground ▪ Existing utility apparatus 	<ul style="list-style-type: none"> ▪ Cross sections shall be at 10 m intervals except where it would be more appropriate to locate them at specific features, in which case they shall be no more than 15 m apart
5	Utility apparatus	<ul style="list-style-type: none"> ▪ Existing utility apparatus – including above-ground cabinets, broadband cables, drains or sewers, electricity cables, gas pipes, telecoms cables, and water supply pipes ▪ Highway drainage and street lighting ▪ Proposed utility apparatus in existing or proposed highway – including above-ground cabinets, broadband cables, drains or sewers, electricity cables, gas pipes, telecoms cables, and water supply pipes ▪ Proposed statutory diversions 	<ul style="list-style-type: none"> ▪ Only 'mains' are required to be shown; it is not necessary to show individual service connections ▪ The date the information was obtained shall be stated ▪ This shall also include any safety or health information required by the CDM Regulations

Easements and discharge consents

136 The section 278 agreement shall include details of any easements or discharge consents that had been obtained for the proposed works.

Section 278 agreements – Construction

Getting the works built

General

137 Regardless of who designs the section 278 agreement works, they would be built by either Kirklees Council or a contractor under contract to the council. We will not allow developers to build the works or to employ their own contractor to build the works. However, we will consider using a contractor nominated by the developer.

138 During the development of a section 278 agreement, our case engineer will discuss with the developer the available options for getting the works built. These are:

- The council using either our in-house resources or one of our framework contractors
- A contractor selected using [YORtender](#) – the online purchasing system used by local authorities in Yorkshire
- A contractor nominated by the developer

Traffic signal work

139 If new traffic signals or changes to existing ones are required, then this work shall be done by one of our framework contractors.

Developer approval

140 As the developer would pay for the works, we would not award any contract without their approval.

Kirklees Council highway works

141 There are many advantages in choosing the council to construct the section 278 agreement works. Choosing us can save time and money as it:

- does not require tender documents, avoiding the costs of preparing them
- requires no formal tender process, allowing work to start sooner
- removes the need for us to assess the contractor's suitability

- reduces the amount of site supervision required
- allows more flexibility in the contract programme, as we have a variety of other works we can do while waiting for the developer

Kirklees Council preferred form of contract

142 Our preferred form of construction contract is currently the [Engineering and Construction Contract](#) (often called the *NEC* or *ECC*), published by Thomas Telford Ltd, the commercial arm of the Institution of Civil Engineers.

Construction – Preconditions

143 Kirklees Council will not allow any works to start in a publicly maintainable highway unless:

- the section 278 agreement has been signed
- any changes to existing 'traffic regulation orders' (TROs), new TROs, or new temporary TROs that were required have been approved
- all other statutory procedures have been completed
- all required fees and other payments to the council have been made
- any non-statutory consultations have been completed
- the proposed works are the subject of a satisfactorily closed out stage 2 road safety audit (or a combined stage 1 and 2 audit)
- highways technical approval has been given for all new or altered structures within or adjoining the highway
- highways technical approval has been given for all non-council designs

Construction – Contractors

144 Kirklees Council would not allow any contractor – whether chosen by us or nominated by a developer – to carry out works to existing publicly maintainable highways unless they had first been

carefully assessed. This would involve the use of a 'pre-qualification questionnaire', also known as a PQQ. To complete this, the contractor would have to provide satisfactory references and give examples of similar work that they have satisfactorily completed.

Construction – Management and supervision

General

145 Kirklees Council will undertake the formal management and supervision of the construction works. The level of supervision will vary depending on the scale and nature of the works.

146 We will aim to agree a construction programme – including the works start date – with the developer that balances the needs of residents, local businesses, and other stakeholders. We will then notify the developer of when we intend to start construction.

147 We can update the developer on progress and costs at agreed times to suit their requirements.

Contract certificates and timing

148 When using the *NEC*, we would issue a 'completion certificate' to the contractor once the highway construction works had been completed. There would then be a 52-week 'defects period'. During this time, the contractor would have to maintain the works and rectify any defects. If all the defects have been rectified, then we would issue a 'defects certificate' to the contractor.

Stage 3 RSA findings

149 If the stage 3 RSA recommends any works, then these shall be done during the defects period.

Works completion and final accounts

150 We will endeavour to agree the final account for the highway works within 12 weeks of the defects certificate being issued.

151 Our section 278 agreements include a 'final certificate'. We will issue this to the developer once we are happy that the developer has done everything that the agreement requires them to do.

152 Once we have issued the final certificate, the developer shall make sure that any surety is cancelled and any bond is returned.

Construction – Traffic signals

153 Kirklees Council's framework contractor will install, configure, and commission any new traffic signals or changes to existing ones. However, any civils works shall be undertaken by the main contractor. In addition, the main contractor shall coordinate the traffic signal supply and installation work.

154 These works shall be paid for by the developer.

Construction safety

The Construction (Design and Management) Regulations 2015

155 All construction work is required by law to comply with the [Construction \(Design and Management\) Regulations 2015](#). More information about these is given in [Annex A](#) (page 16).

Annex A – Design and construction safety

The Construction (Design and Management) Regulations 2015

Introduction

A1 The [Construction \(Design and Management\) Regulations 2015](#) (the CDM Regulations) cover the way developments are designed and constructed. Their aim is to make sure that construction projects are safe to build, use, and maintain while offering developers good value. They try to reduce dangers to employees and members of the public by designing out hazards and ensuring that construction projects are suitably managed and maintainable for the future.

A2 If, at any time, Kirklees Council thought that a developer was not complying with their legal duties under the [CDM Regulations](#), then we may decide that it would be unacceptable to have an agreement with them under the Highways Act 1980.

Notifiable construction work

A3 The [CDM Regulations](#) require the [Health and Safety Executive](#) (HSE) to be told about ‘notifiable’ construction projects. A construction project is ‘notifiable’ if either of the following is true:

- The work is planned to last longer than 30 working days and involve more than 20 workers at any one time.
- The work is planned to exceed 500 individual worker days.

The developer’s roles and duties

A4 The developer would be the CDM client for the section 278 agreement works. Accordingly, the developer shall:

- appoint a CDM principal designer and a CDM principal contractor
- cooperate with the council’s designers
- make sure that the CDM principal contractor prepares a ‘construction-phase plan’

- make sure that the CDM principal designer prepares a ‘health and safety file’
- where the works are notifiable, give the required notice to the HSE

Application to works to existing highways in Kirklees

A5 We require all works to existing publicly maintainable highways to be designed and built in accordance with the [CDM Regulations](#).

A6 In addition, we require the developer to:

- tell us who has been appointed as CDM principal designer and CDM principal contractor
- give us written proof that – where the works are notifiable – they have given the required notice to the HSE
- email us copies of the construction-phase plan and the health and safety file

End of construction – Health and safety files and bonds and sureties

A7 At the end of construction, we would not release any remaining bond or surety unless the developer has given us a copy of the health and safety file.

More information

A8 Guidance on the [CDM Regulations](#) is available from the HSE and the [Construction Industry Training Board](#) (CITB). See:

- HSE – [Construction \(Design and Management\) Regulations 2015](#)
- CITB – [Construction \(Design and Management\) Regulations 2015](#)

A9 Kirklees Council has prepared a highways guidance note [Highway Adoptions and the CDM Regulations](#). Although this explains how the regulations affect highway adoptions in Kirklees, much of the guidance also applies to works in existing highways.

Annex B – Legal permits and notices

Background

B1 Works in existing publicly maintainable highways can be disruptive to local neighbourhoods – particularly to residents and local businesses – and can cause or worsen traffic jams. In addition, when works close to each other are done by different bodies, the different work crews can get in each other's way. This can make it more difficult to work safely and to stick to programmes and budgets. It can also lead to recently completed works being damaged or even removed.

B2 To try to avoid the above problems, Kirklees Council has legal duties to coordinate and control works taking place in existing publicly maintainable highways. Anyone planning or doing works also has legal duties. These include telling us and other bodies what they are planning to do and cooperating with us and anyone who might be planning or doing works. The bodies who have to comply with these requirements include the council, utility companies, and developers.

Costs

B3 Some of the legal duties require developers to get permits or give legal notices. The costs of arranging these are payable by the developer.

Road space booking and Kirklees Council's permit scheme

Road space booking

B4 Part of the way that Kirklees Council coordinates and controls works taking place in existing publicly maintainable highways is by requiring anyone wanting to do works to book the 'road space' with us. We do this using a statutory 'permit scheme'.

The Kirklees Council permit scheme

B5 The Kirklees Council permit scheme has been introduced using our powers under the [Traffic Management Act 2004](#). The scheme imposes various legal duties on developers.

B6 All works in existing publicly maintainable highways require a permit and are not allowed to start on site unless various legal notices have been given. The exact requirements depend upon the

location, size, scope, and duration of the proposed works.

B7 Our case engineer will advise what notices would have to be given. To reduce the likelihood of delays or unexpected costs, developers should discuss their proposals with our case engineer as soon as they can.

New Roads and Street Works Act 1991

Utility apparatus diversion works

B8 Most roads in Kirklees contain utility apparatus. Some works for developers would require existing apparatus to be moved out of the way. The procedures for doing this are laid down in the [New Roads and Street Works Act 1991](#) (NRSWA). These procedures are supported by legal codes of practice issued by the Secretary of State for Transport.

B9 The [NRSWA](#) and associated codes of practice require us to coordinate street works within Kirklees. To allow us to do this, they also require anyone planning street works within Kirklees to give us formal notice in advance. It is criminal offence to do street works without giving us the correct formal notice.

B10 The codes of practice, along with some background information, are available from the Department for Transport, see:

■ www.gov.uk > [Street works and road works](#)

Section 50 'street works licences'

B11 [Section 50](#) of the [NRSWA](#) allows the council to give 'street works licences' to developers to allow them to install utility apparatus in existing highways. Typically, these are used to allow developers to construct sewers which would be then adopted by Yorkshire Water. Street works licences cannot give anyone permission to do works to a highway or to dig one up for other reasons, for example to make a new access or to move a kerb line.

Section 58 restrictions

B12 [Section 58](#) of the [NRSWA](#) aims to minimize disruption to residents and road users by giving the council the power to coordinate and restrict certain works. The restrictions apply to works in publicly maintainable highway following 'substantial' road

works, such as resurfacing or reconstruction. The period of restriction depends on the type of work being carried out and the nature of the road.

B13 The restriction period will not come into effect unless the relevant public utilities are given the right legal notice under [section 58](#) of the [NRSWA](#).

B14 Our case engineer would arrange the section 58 notice for the developer before the start of the proposed works.

B15 The notice should be given as soon as the scope of the required works in existing publicly maintainable highways is known: the longer the

notice period, the more likely that the public utilities could fit in with the developer's intended programme.

Further information

B16 For more information about Kirklees Council's permit scheme, the [NRSWA](#), and the legal permits and notices required, please contact Kirklees Council's street works team.

B17 The council's street works team can be contacted through the highway design and development team.

Annex C – Road user safety

Road safety audits

C1 Kirklees Council, as the local highway authority, has a responsibility to assess how new roads and paths might affect the safety of users. We do this by requiring that ‘road safety audits’ (RSAs) be done at various stages of a development’s progress. In RSAs, the road safety implications are formally assessed or ‘audited’ by qualified and experienced experts who are not involved with the design and are independent of the designers.

C2 Our requirements for RSAs are based upon those of Highways England in the [Design Manual for Roads and Bridges](#) document [GG 119 – Road Safety Audit](#).

RSA documentation

C3 In line with [GG 119](#), we require that:

- the developer writes an ‘audit brief’
- the auditors state their findings in an ‘audit report’
- the designers review the audit report and write a formal audit ‘response report’ covering any problems and recommendations raised
- where the designers and auditors disagree about the findings, the designer writes an audit ‘exception report’ covering the contentious items

RSA stages

C4 [GG 119](#) covers RSAs at four different stages. We apply these as follows:

- **Stage 1** – ‘Completion of preliminary design’ (application for planning permission)
- **Stage 2** – ‘Completion of detailed design’
- **Stage 3** – ‘Completion of construction’
- **Stage 4** – ‘Post-opening monitoring’ (about 12 months after the completed works are brought into use)

Stage 1 RSAs

C5 Proposed developments which would involve works to existing highways should be checked using a stage 1 RSA before the application for planning permission. Where a satisfactorily closed out stage 1 RSA is required by a condition in the planning permission, then the audit brief should be agreed

with the council’s highways development management team.

C6 The council’s highways development management team can be contacted through the highway design and development team.

Stage 2 RSAs and combined stage 1 and stage 2 RSAs

C7 Once the detailed design has finished, the developer shall arrange a stage 2 RSA – or a combined stage 1 and stage 2 RSA if a stage 1 RSA had not been done. Proposed works may not be given highways technical approval unless they are the subject of a satisfactorily closed out stage 2 RSA or combined stage 1 and stage 2 RSA.

C8 Construction may not start unless the proposed works have been given highways technical approval.

Stage 3 RSAs

C9 Unless we agree otherwise, once the construction works have been completed, the developer shall arrange a stage 3 RSA before a completion certificate would be issued. If we agree that it may be done later, then this shall be within 12 weeks of the completion certificate being issued.

Stage 4 RSAs

C10 We might require some developments to have a stage 4 RSA. If one were required, then the developer shall arrange it so that it is done 12 months after the completed works are brought into use.

Audit teams

C11 Audit teams shall be independent of the design teams: they may not include anyone involved with the design.

Timing

C12 When preparing their development programmes, developers should allow for the time needed for RSAs – including sorting out any contentious matters.

Kirklees Council RSA service

C13 Kirklees Council’s road safety team can safety-audit proposed works for developers.

Developers who wish to use this service should contact the highway design and development team.

C14 The road safety team can normally do RSAs for straightforward proposals within four weeks of receiving the request to start. RSAs for more complex proposals usually take longer.

Annex D – Consultation

Introduction

D1 For some proposed works in existing highways, Kirklees Council has to consult with those people who might be affected. Which people would have to be consulted would depend upon the type of works proposed, their size, and the impact they might have. However, the following would typically have to be consulted:

- Bus operators
- Cycling groups
- Emergency services
- Haulage companies
- Taxi operators

D2 In addition, for some proposed works, other affected parties might also have to be consulted.

D3 We will usually carry out the consultations required. However, the developer will have to pay for them.

D4 We will carry out the consultation in accordance with our standard policies and procedures.

Stage 1 – Informal consultation

D5 When planning permission has been granted and the developer then seeks to build the development allowed, Kirklees Council might have to carry out an informal consultation. The findings of this might require the proposed highway works to be reviewed and redesigned.

D6 Reviewing or redesigning the proposed highway works might result in abortive work.

Regardless of this or the other outcomes of the consultation, the developer shall pay all the associated costs.

Stage 2 – Statutory consultation

D7 Some developments might require changes to an existing 'traffic regulation order' (TRO), a new TRO, a temporary TRO (for example for a road closure or temporary speed limit), or other legal notices. The developer shall pay all the associated costs of these, including consultation.

D8 The law sets out how Kirklees Council may make or change TROs and who we have to consult about them. These procedures can take a long time. In addition, the outcome cannot be guaranteed.

D9 If we receive an objection to a proposed TRO which we are unable to resolve with the objector, then the objection would be formally reviewed by a committee of councillors. They would decide whether the objection was reasonable and whether the proposals should be changed.

D10 It typically takes about six months to make or change a permanent TRO and up to 12 weeks to make a temporary one.

Further advice

D11 Our case engineer can advise on the need for and the timescales and likely costs of consultation.

Effects on development programmes

D12 Developers should carefully consider the potential implications of consultations when preparing their programmes.

Further information, comments, and queries

Kirklees Council highways standards and guidance

Highways guidance notes

- Emergency Access, Waste Management, Servicing, and Deliveries
- Existing Roads and Paths Affected by New Developments
- Gradients
- Highway Adoption Drawings
- Highway Adoptions and the CDM Regulations
- Highway Adoptions Criteria
- Highways Technical Approval
- Highways, SuDS, and Private Drainage
- Introduction to Highways and Adoptions
- Operation and Maintenance Manuals for Adopted Highways
- Private Works to Existing Highways (Section 184 and 278 Agreements)
- Requirements of New and Improved Roads and Paths
- Requirements of Submitted Documents
- Section 38 Agreements for Highway Adoptions
- Soakaways

Other highways documents

- Kirklees Highways Standard Details

Comments and queries

Kirklees Council welcomes comments and queries about this guidance note

Although Kirklees Council is not responsible for the content of external websites, please report any broken links

- Huddersfield (01484) 22 1000 – ask for ‘Highway Adoptions’
- Highways.Section38@kirklees.gov.uk
- www.kirklees.gov.uk/highwayadoptions
- Kirklees Council
Highway Adoptions
Flint Street Depot
Flint Street
Fartown
Huddersfield
HD1 6LG