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Section 278 Agreement:  
Notes for Guidance for  
Developers

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Development  
Management

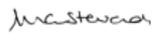
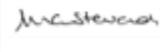
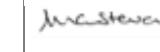
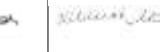
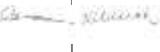
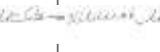
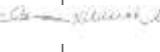
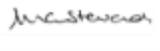
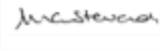
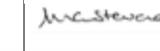
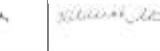
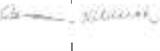
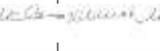
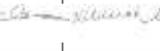
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August 2018

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# QM

Issue / revision	Issue 1	Revision 1	Revision 2	Revision 3	Revision 4	Revision 5	Revision 6
Remarks	As Draft	Rebrand, CDM update and refresh	TRO fees, NSW email updated	Safety Audit processes and fee structure updated	Minor update, Contacts revised NCC Countersign	Permit, fees and minor textural updates	Section 58 NRSWA protection Textural update
Date	1 <sup>st</sup> August 2014	1 <sup>st</sup> May 2015	1 <sup>st</sup> July 2015	1 <sup>st</sup> July 2016	November 2017	April 2018	August 2018
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File reference	S278	S278	S278	S278	S278	S278	S278

This guide represents Northamptonshire County Council's approach to Section 278 Agreements and reflects the County Council's current practice and policy.



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# 1 Introduction Scope

## 1.1 SECTION 278 OF THE HIGHWAYS ACT 1980

1.1.1 Section 278 of the Highways Act 1980 enables Highway Authorities to facilitate works, within an existing public highway, commissioned by Developers. Such works may range from minor works to facilitate a site access junction to new junctions, links and works remote from a site but identified as being required to mitigate the impacts of a development as defined by a planning consent.

1.1.2 If the Developer wishes Northamptonshire Highways to directly deliver the design and /or construction then this is possible but would still require a Section 278 Agreement. Such an approach may simplify some elements of the processes covered by this Guide with associated benefits. For further information on such an approach, please contact Northamptonshire Highways: [section278@kierwsp.co.uk](mailto:section278@kierwsp.co.uk)

1.1.3 Where the works require planning approval, or provide access to a development that requires planning approval, such approval is a pre-requisite to the Highway Authority completing a Section 278 Agreement. Without such an Agreement in place, a Developer may not undertake any work on the existing highway.

1.1.4 The Developer should obtain written confirmation from the planning authority that all pre-commencement planning conditions have been discharged and that the commencement of highway works would not breach any planning consent. If a planning condition requires planning authority approval of details associated with highway works then the Developer is reminded to obtain Technical Approval from Northamptonshire Highways before submitting such approved plans to the planning authority to discharge the associated condition.

**1.1.5 No works may commence within any existing public highway without the written consent of the Local Highway Authority. Northamptonshire Highways act for and on behalf of Northamptonshire County Council, the Local Highway Authority for Northamptonshire.**

1.1.6 Further information and guidance regarding the Advance Payments Code and other highway adoption mechanisms may be found in the Department for Transport's Advice Note – Highway Adoptions published 20<sup>th</sup> April 2017.

<https://www.gov.uk/government/publications/adoption-of-roads-by-highway-authorities>

1.1.7 It should be noted that the County Council operates a Permit booking system for any works within existing highways. Reference is made to “Road Works and Street Works Permit Scheme” in accordance with the Traffic Management Act 2004.

[http://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/licences-and-business-permits/Pages/permit-scheme.aspx#\\_ga=1.158944250.1121663759.1365589988](http://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/licences-and-business-permits/Pages/permit-scheme.aspx#_ga=1.158944250.1121663759.1365589988)

1.1.8 A Section 278 Agreement or a Section 38 Agreement with accommodation works must therefore be in place along with a permit for works in the highway under the permit scheme to gain appropriate “Road Space” before any work on the existing highway commences.

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## 1.2 S278 NOTES FOR GUIDANCE - SCOPE

1.2.1 These S278 Notes for Guidance for Developers supersede any previously published or issued information on such Agreements by the County Council or Northamptonshire Highways. They are intended to assist Developers and other parties in considering and completing a “**Section 278 Agreement - Application Form and Check List**”, (the Application Form), which is split into 3 sections as follows:-

**S278 Application Form: Part 1** - Required to initiate consideration of an application to undertake works on an existing highway under Section 278 of the Highways Act 1980

**S278 Application Form: Part 2** - Provides a list of drawings and documents which are mandatory (Part 2a) and site specific (Part 2b) and, where required for Traffic Regulation Orders and / or Traffic Regulation Notices (Part 2c) required to enable a Technical Audit to of a proposal to be undertaken; and

**S278 Application Form: Part 3** - Required after Technical Approval has been issued to enable the County Council’s Legal Representatives to be instructed and the Agreement itself to be drafted.

1.2.2 The **S278 Application Form(s)** includes mandatory information required in all cases and site specific information required where applicable.

1.2.3 The information, guidance and requirements in these S278 Notes for Guidance are issued on the understanding that planning permission has been granted or where the Local Planning Authority has confirmed in writing that planning consent for such works is not required.

1.2.4 These S278 Notes for Guidance also sets out the processes used to facilitate a Section 278 Agreement.

1.2.5 It is recommended that all Developers, Consultants and Contractors that may be involved in the consideration, design and implementation of works within the highway familiarise themselves with these S278 Notes for Guidance and its accompanying **S278 Application Form** to avoid delays.

1.2.6 Northamptonshire Highways encourages early dialogue and will consider pre-Technical Submissions to agree design parameters subject to the submission of the **S278 Application Form: Part 1 Form** and associated fee, (which is credited when an Agreement is completed).

1.2.7 Northamptonshire Highways reserve the right to amend these Notes for Guidance and associated **S278 Application Form(s)** and documents from time to time and without notification. Additional details not covered by these S278 Notes for Guidance may be required to enable Northamptonshire Highways to consider a Section 278 Agreement.

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## 1.3 PROCESS SUMMARY

1.3.1 Northamptonshire Highways works in a sequential manner such that each stage must be completed, to our satisfaction, before any subsequent stage commences.

1.3.2 The principal stages include, (these are not exhaustive but illustrative. Other elements within these are explained in these S278 Notes for Guidance):

- Initial submission and **S278 Application Form: Part 1** (including initial fee);
- Technical submission and **S278 Application Form: Part 2a** (and where applicable **S278 Application Form: Part 2b and Section 278 Application Form: Part 2c**);
- Technical Audit;
- Technical Approval;
- Legal Instruction and Agreement drafting (**S278 Application Form: Part 3**);
- Agreement completion;
- Pre-commencement processes, (Road and Street Works Permit, (“Road Space”), publicity etc.);
- Construction;
- Certificate of Practical Completion;
- Defects Correction Period; and
- Certificate of Final Completion;

## 1.4 DEVELOPER RESPONSIBILITIES UNDER A SECTION 278 AGREEMENT

1.4.1 The Developer agrees upon completion of an Agreement under Section 278 of the Highways Act 1980 to take over responsibility for the section of existing highway covered by the Agreement with the associated duties, responsibilities and liabilities.

1.4.2 For the avoidance of doubt these duties, responsibilities and liabilities include, (but not exhaustively):-

- The safety of highway users using the section of highway involved;
- The design, installation, management, maintenance and removal of any temporary traffic management and temporary signage;
- The integrity of the design, installation, management, maintenance, workmanship and materials used;
- Compliance with all planning permissions and planning obligations, discharge of planning conditions;
- Compliance with all other legislation, regulation, standards and codes of practice applicable to the construction of the Works and the development including (but not exclusively) associated with any environmental, ecological and drainage impacts of the development and associated works;
- The execution, at their expense, of the works in a timely and considerate manner;
- The costs of all utility works, obtaining licences, (including all appropriate licencing from the County Council) and testing as required by Northamptonshire Highways.
- Obtaining a Roads and Street Works Permit after the completion of the Section 278 agreement by submitting a request and receiving an approved permit under the Northamptonshire Permit Scheme For Road Works And Street Works;
- Obtaining all drainage discharge Consents and permissions, way-leaves, easements etc. from appropriate bodies, authorities or companies;

- Obtaining any temporary traffic regulation orders, (for road / lane closures, speed limit reductions etc.) required to facilitate any works within the existing highway. All anticipated Traffic Regulation Orders / Notices or Temporary Orders should be identified on **S278 Application Form: Part 2c**;
- All communications / press publicity required to ensure that those affected by works within the existing highway are suitably forewarned and informed of impending works. This must be undertaken in a timely manner to give reasonable advanced notice of the nature of the works and potential effect;
- Ensuring that all land to be dedicated as highway as defined by the S278 Agreement is not conveyed to any other party;
- All roles and responsibilities as set out in the Construction (Design and Management) Regulations 2015;
- The repair, reconstruction and rectification of any and all defects, imperfections and all other faults arising out of defective design, materials and workmanship or of any other nature whatsoever including damage to utility equipment and privately owned installations within the boundary of the Works (which for the avoidance of doubt shall include all vandalism and / or traffic damage whether accidental or otherwise);
- Safety Inspections on a minimum of a monthly basis of completed works to identify any defects, imperfections or other faults and take appropriate action in accordance with UK Roads Liaison Board's "*Well-Maintained Highways a Code of Practice*" <http://www.ukroadsliaisongroup.org/en/UKRLG-and-boards/uk-roads-board/wellmaintained-highways.cfm> or subsequent revisions thereof. Subject to an appropriate additional fee, Northamptonshire Highways can arrange for such Safety Inspections compliant with the Code of Practice to be undertaken. Any defects or issues identified would, however remain the developer's responsibility to address to the safety Inspector's satisfaction to be undertaken;
- Where affected by the works, the developer becomes responsible for all existing street lighting, illuminated signs, bollards and signals including energy costs from commencement of the works until the issue of a Certificate of Final Completion; and
- Any other matters as may be defined in the Agreement or Subsidiary Agreement or Licence;

1.4.3 The Developer becomes liable for the above and other related matters upon the date specified on the Commencement Notice until the issue of the Certificate of Final Completion, (excluding Land Compensation Act 1973 claims).

1.4.4 It is acknowledged that some functions such as winter maintenance, (gritting) may remain with Northamptonshire Highways unless otherwise specified in the Agreement. In addition Northamptonshire Highways retain all rights and powers to enter the works in fulfilment of obligations and duties to highway users should it chose to exercise such powers.

1.4.5 However, in some cases where such functions are transferred to the developer under the terms of the Agreement, Northamptonshire Highways may undertake such functions for an additional fee.

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## 1.5 SUBSIDIARY AGREEMENTS

1.5.1 Works that may directly affect the Strategic Road Network, also known as Trunk Roads or motorways require the permission of Highways England, who is the Highway Authority responsible for that network.

1.5.2 In some cases, separate legal agreements between the Developer and the Local Highway Authority and the Developer with Highways England may be required.

1.5.3 Where works affect two adjoining Local Highway Authority networks, and depending on the nature of the works, separate Section 278 Agreements between the Developer and each of the affected Local Highway Authorities may be required.

1.5.4 There are legal mechanisms to enable one authority to act on behalf of the other such that a single Agreement under Section 278 of the Highways Act 1980 is required between the Developer and just one of the authorities. However, to facilitate this, an additional, subsidiary agreement, under either Section 4 or Section 6 of the Highways Act 1980 will be required in respect of works affecting Trunk Roads or Section 8 where works affect adjoining Local Highway Authority networks

1.5.5 All costs and requirements of either Highways England or a neighbouring Local Highway Authority are borne by the Developer. Prior to the completion of subsidiary agreements, Highways England or neighbouring Local Highway Authority's requirements must also be met.

1.5.6 Early dialogue to establish how and on what legal basis highway works affecting Highways England or a neighbouring Local Highway Authority's networks are enabled is essential such that Developer expectations and Programmes can account for subsidiary agreements and procedures.

1.5.7 If the Works affect or change or connects to drainage which is intended to be, but is not yet, vested in a Water Company, (such as Anglian Water Services, Severn Trent Water or Thames Water) that lies in/beneath the Works and is not "highway only" drainage (i.e. prospectively adoptable by the Local Highway Authority as part of the Works) would need to be subject to an Agreement between the Developer and the adopting water company for its future maintenance and adoption.

1.5.8 New structures, buildings, retaining walls etc. adjacent to, over or under an existing highway will also require specific consent and licensing or agreement. Please contact Northamptonshire Highways [section278@kierwsp.co.uk](mailto:section278@kierwsp.co.uk) or [highwayadoptions@kierwsp.co.uk](mailto:highwayadoptions@kierwsp.co.uk)

## 1.6 EXCEPTIONS

1.6.1 If the only works within an existing highway form the bell mouth junction to a proposed estate street, (that is to be subject to a highway adoption agreement under Section 38 of the Highways Act 1980), the Section 38 Agreement can be extended to incorporate and authorise such works within the existing highway as "Accommodation Works". Such agreements combine provisions of Section 278 of the Highways Act 1980 within a single Section 38/278 agreement.

1.6.2 However, this is at the discretion of Northamptonshire Highways and there may be circumstances where it is not the appropriate form of agreement.

**1.6.3 Where works within the existing highway have been agreed to be authorised via a Section 38 Agreement with “Accommodation Works”, No Works of any kind may commence on the existing public highway unless or until the Section 38 Agreement has been completed and appropriate pre-commencement processes regarding a Roads and Street Works Permit, site notifications etc., (and as described in these S278 Notes for Guidance) have been completed.**

1.6.4 However, if the works within an existing highway are isolated from the site access junction and / or affect any existing road markings or signs, widen / realign carriageway, affect the highway opposite etc., then a Section 278 Agreement will be required.

1.6.5 If the works within an existing highway are to connect to a new road or street, which is not subject to an agreement under Section 38 of the Highways Act 1980 and / or is to remain private, a Section 278 Agreement is required.

## **1.7 CONSENTS, LICENCES, NOTICES AND OTHER AGREEMENTS**

1.7.1 A Section 278 Agreement allows the works specified to be undertaken by the Developer. However other Licences, Notices and / or agreements may also be required.

1.7.2 Each Licence, Notice or Agreement has their own requirements, implications and time lines. Some can be incorporated into a Section 278 Agreement others cannot. Common additional Licences, Notices and Agreements are set out in **Table 1** below.

1.7.3 Where drainage discharge consent is required, copies of such consent are required at the Technical Submission stage along with proof of title and copies of appropriate way-leaves and permissions.

<b>TABLE 1</b>		
<b>Subject</b>	<b>Licence / Agreement</b>	<b>Legislation</b>
Works within an existing highway	Section 278 Agreement	Highways Act 1980
Soft Landscaping maintenance	Section 142 Licence	Highways Act 1980
Drainage Adoption (Non Highway Drainage) Copy required for Technical Audit Stage	Section 104 Agreement	Water Industry Act 1991
Private Apparatus Installation and Maintenance (excluding drainage adopted by a Water Company or that is subject to a Section 104 Agreement under the Water Industry Act 1991)	Section 50 Licence	New Roads and Street Works Act 1991
Private Structure (Over a highway or overhanging a highway)	Section 176 or 177 Licence	Highways Act 1980
Drainage discharge consent (into Ordinary Water Courses)	Lead Local Flood Authority Consent	Flood and Water Management Act 2010 and Environmental Permitting (England and Wales) Regulations 2016
Drainage discharge consent (into Main River)	Environment Agency Discharge Consent	Flood and Water Management Act 2010 and Environmental Permitting (England and Wales) Regulations 2016
Working in, near or over a watercourse (Ordinary Watercourse)	Lead Local Flood Authority Consent	Flood and Water Management Act 2010
Working in, near or over a watercourse (Main River)	Environment Agency	Environmental Permitting (England and Wales) Regulations 2010
Transporting waste	Environment Agency Waste Carriers Licence	The Waste (England and Wales) Regulations 2011
Disposing of waste	Environment Agency Environmental Permit	The Environmental Permitting (England and Wales) Regulations 2016
Works affecting protected sites and/or species	Natural England Licence	Wildlife and Countryside Act 1981
Working on protected trees and/or hedgerows	Local Authority Planning Department	Town and Country Planning (England) Regulations 2012

## **1.8 LAND COMPENSATION ACT 1973**

1.8.1 Under the Land Compensation Act 1973, (LCA) claims for compensation can be made for losses or consideration of losses or issues that may arise from the undertaking of works on a highway that may affect a third party, resident, and business or organisations.

1.8.2 Under the terms of the Section 278 Agreement the Developer indemnifies the County Council against such claims as may arise from the works

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1.8.3 The developer is advised to become familiar with the LCA and the nature and extent of claims that can be made.

## 1.9 SEQUENTIAL PROCESS

1.9.1 Northamptonshire Highways considers and processes Section 278 Agreements in a sequential order; only when we have received sufficient and adequate information do we commence each stage. The next stage will not commence until its predecessor is completed to the satisfaction of Northamptonshire Highways.

1.9.2 Northamptonshire Highways is prepared to consider pre submission proposals subject to the receipt of the **S278 Application Form: Part 1** being completed and submitted along with the associated Initial Fee and documentation.

1.9.3 The following detailed sequence and milestones should be noted. Developers should consider and programme sufficient time for each stage to ensure that unrealistic expectations are not built into programmes.

1.9.4 The Submission Stage (see Sections 2 and 3);

- Initial Pre-Section 278 Application discussion / submission (**S278 Application Form: Part 1** required at this stage) along with initial fee paid and abortive Costs Undertaking provided; and
- Full Technical and Detailed Submission, (**S278 Application Form: Part 2a** and, (where applicable) **Part 2b** required at this stage);
- TRO / Notice Applications should also be made at this stage if identified with submission of **S278 Application Form: Part 2c**

1.9.5 Technical Audit Stage, (see Section 4);

- The Technical Submission is considered against local and national standards. Please allow a minimum of 3 weeks from confirmation that the drawings and documents have been sent to Audit for initial response, 2 weeks after second submission and subsequent submissions / iterations;
- Structural assessment of Technical Submission – Where applicable;
- Traffic Regulation Orders / Notices – Where applicable; (Please note the processing of such Orders or Notices, (subject to a separate and additional fee) can considerably delay Technical Approval);
- Stage 1 and 2 Road Safety Audit (Presume these are required unless otherwise agreed with Northamptonshire Highways and completion of any resulting changes to design as necessary)
- Technical Approval; and
- Comprehensive submission of drawings and documents when Technical Approval has been issued;

1.9.6 Agreement Stage, (See Section 5) (**S278 Application Form: Part 3** required for this stage);

- Legal instructions issued to the County Council's legal representatives;
- Agreement drafting and issue;
- Title checks where land is to be dedicated – (Where applicable); and
- Agreement completion including payment of outstanding fees;

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### 1.9.7 Construction Stage

- Submit a request for a Roads and Street Works Permit (also known as “Road Space”) to [nrswa@kierwsp.co.uk](mailto:nrswa@kierwsp.co.uk) (minimum 3 month Notice Period applies (see also Section 6 below);
- Pre Commencement meeting, traffic management and publicity agreed;
- “Commencement Notice” served;
- Works Commencement;
- Completion of works, (including any remedial works);
- Stage 3 Safety Audit (and completion of any identified works);
- “Certificate of Practical Completion” issued (Financial Security reduced);
- Commencement of “Defects Correction Period” (minimum 2 years);
- Stage 4 Safety Audit (and completion of any works identified);
- Final Completion of works, (including any remedial works);
- Commuted sums paid, (where applicable);
- Health and Safety File submission;
- As Built plans submitted;
- Post Completion Inventory submitted;
- Certificate of Final Completion issued; and
- Remaining Financial Security released. (Land Compensation Act 1973 liability continues beyond this point)

**1.9.8 At no stage does Northamptonshire County Council or Northamptonshire Highways become responsible for the integrity of the design and construction of the Works under the CDM Regulations 2015.**

**1.9.9 At no stage does Northamptonshire County Council or Northamptonshire Highways become liable for any costs or delays incurred by the Developer in the completion of the Technical Audit, Legal Agreement, Roads and Street Works Permit duration or contractor over runs.**

### 1.10 CONCURRENT DEVELOPMENTS AFFECTING THE SAME HIGHWAY

1.10.1 On occasion multiple developments may affect the same section of highway.

1.10.2 In such cases, a single agreement incorporating all works will be promoted with the multiple parties concerned. This will require appropriate side agreements and arrangements between the Developers affected and agreement by them to appoint a single consultant to design the comprehensive works and a single contractor to construct the works.

1.10.3 Whilst Northamptonshire Highways will endeavour to coordinate and seek agreement between multiple developers it is recognised this may not always be possible. As such, if a single agreement approach cannot be agreed between the developers involved, Northamptonshire Highways will work on a first come - first served basis and whilst Audits and agreements may run in parallel a decision will be made based on how advanced / complete each element may be, when one of the parties has reached the agreement stage.

1.10.4 In such circumstances a sequential approach will then be taken such that the first developer to gain a completed agreement will be allowed to complete their works and the associated maintenance period. The second developer will not be permitted to commence their works until the Certificate of Final Completion for the first developer has been issued.

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## 1.11 CONTACTS AND FURTHER INFORMATION

1.11.1 If you have any general questions or queries regarding these S278 Notes for Guidance or the Section 278 Process, please contact [section278@kierwsp.co.uk](mailto:section278@kierwsp.co.uk).

1.11.2 If you have yet to submit a planning application or have not yet received the highway authority's view on an application please contact [developmentmanagement@kierwsp.co.uk](mailto:developmentmanagement@kierwsp.co.uk).

1.11.3 For general advice regarding highway adoptions please contact [highwayadoptions@kierwsp.co.uk](mailto:highwayadoptions@kierwsp.co.uk)

August 2018

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## 2 Submission of Information and Technical Details

### 2.1 FEES

2.1.1 Northamptonshire Highways will not work or review submissions at financial risk.

2.1.2 Northamptonshire Highways charges fees that ensure that its reasonable costs are covered. Our current fee structure includes a requirement for an Initial Fee. This is not refundable. Please refer to **Table 2** below for Northamptonshire Highways Fee Structure.

2.1.3 Cheques should be payable to Northamptonshire County Council and sent with an appropriate cover letter confirming the development and form of agreement to: -

Development Management  
Northamptonshire Highways  
One Angel Square  
Angel Street  
Northampton  
NN1 1ED

2.1.4 Electronic (BACS payments) are acceptable. As all BACS payments are processed centrally by the County Council, it is essential that it is clear from the reference used for the transaction that it relates to Northamptonshire Highways, (NH) and to which form of agreement (S278) as well as the scheme it relates to (scheme title). As such please start your reference with NH-S278-scheme-title such that we can identify the payment expediently.

2.1.5 When paying by the following BACS details:

<b>Bank</b>	Barclays Bank PLC
<b>Account Name</b>	Northamptonshire County Council County Funds
<b>Account No.</b>	03538028
<b>Sort Code</b>	20-17-68
<b>Address</b>	9-11 St Andrew Street Cambridge CB3 2AA
<b>Reference</b>	NH-278-scheme-title
<b>VAT Number</b>	GB 121 480 409

2.1.6 It is also essential when paying by BACS that a comprehensive remittance advice detailing your Customer Number and the Invoice Number and that the payment is for "Highways" with the Scheme title forwarded at the same time to [Income.Processing@cambridgeshire.gov.uk](mailto:Income.Processing@cambridgeshire.gov.uk) and [section278@kierwsp.co.uk](mailto:section278@kierwsp.co.uk)

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2.1.7 Please note that the value of the Initial Fee is subject to review and may change without notification. Site specific elements and requirements such as any structures, signals, and street lighting, environmental and geotechnical considerations will incur additional fees prior to the review of such details.

2.1.8 The value of additional fees will be advised following a review of submitted details. Northamptonshire Highways reserves the right to require further fees prior to the completion of an agreement should it consider that deposited sums will be expended prior to completion.

2.1.9 The Initial Fee, (which is not refundable) should be submitted with a completed **S278 Application Form: Part 1** and covers initial expenditure on administration, initial Technical Audit review and general procedural and technical advice. The Initial Fee is credited against the Final Fee.

2.1.10 For the avoidance of doubt, the Initial Fee **does not** include: -

- More than the initial Technical Audit review;
- Safety Audits;
- Consideration of specialist features such including, (but not exhaustibly) retaining walls, bridges, culverts and other supporting structures that may abut any existing or prospectively adoptable street;
- Consideration of traffic signal design and installation for signal controlled pedestrian (Puffin), cycle (Toucan) or equestrian (Pegasus) crossings or signal controlled junctions and any other feature such as rising bollards or other such electrical or remotely controlled features;
- Street Lighting, illuminated signs and Bollard design, on-site inspection, sign off accrual fees;
- Consideration of Deeds of Variation to any existing agreement;
- Legal fees incurred in completing a Section 278 Agreement or Deed of Variation;
- Costs of any Traffic Regulation Order or Notice required to ensure any restrictions or facilities are legally enforceable; or
- Any Site Inspections.

2.1.11 An initial Legal Fee may also be required with the **S278 Application Form: Part 3** submission at the Technical Approval stage to facilitate such instructions.

2.1.12 The Final Fee is calculated based on the value of the Financial Security and incorporates the remaining technical and administrative costs and functions together with Site Inspection. However, for large or complex schemes interim additional fees may be required and charged accordingly.

2.1.13 Please note that legal fees for the actual drafting of the Agreement itself are charged separately on a time spent basis.

2.1.14 The following **Table 2** outlines the current fee structure (excluding legal fees). Such fees are subject to change without Notice. Contact Northamptonshire Highways to ensure the appropriate fee is submitted with the Application.

Table 2		
Initial Fee (Non-refundable)	£3,250	
Financial Security Value (FSV)	Engineering services and administration (minimums)	Technical Audit (exclude Safety Audit) and site inspections
£0-£15,000	£1500	£1750
£15,001 – £100,000	£1750	10% FSV
£100,001 - £250,000	£2500	9% FSV
£250,001 - £500,000	£2750	8% FSV
£500,001 – £1 million	£3000	7% FSV
£1 million	Negotiable but % based	Included

## 2.2 DETAILS AND DOCUMENTS TO BE SUBMITTED

2.2.1 The **S278 Application Form: Part 2a** and (where applicable) **Part 2b** should be completed by the Developer / promoter and submitted along with all details, documents and plans required. **S278 Application Form: Part 2c** should also be submitted at the submission stage to cover all Traffic Regulation Orders or Notices known at that stage. If other such Orders or Notices come to light during the Audit process revisions to the **S278 Application Form: Part 2c** will be required.

2.2.2 If all such details are available this can be submitted with such details with the **S278 Application Form: Part 1**.

2.2.3 The **S278 Application Form: Part 2a** and (where applicable) **Part 2b** is set out as a check list, to aid all parties in understanding what has, and what has not been submitted. It lists the information that Northamptonshire Highways require to consider a submission.

**2.2.4 Failure to complete the S278 Application Forms: Parts 1 and 2a and (where applicable) Part 2b and / or 2c will result in rejection of the submission, and delay to the consideration of the proposed scheme.**

## 2.3 PLANNING PERMISSION / PLANNING OBLIGATION

2.3.1 This ensures that:

- The proposals have consent in principle;
- Any planning or other restrictions are identified;
- All required works within the highway required to facilitate a development are identified, (as the works package may be referenced or secured with multiple conditions or obligations);
- Minimises the need for subsequent agreements or modification to an existing agreement due to the omission by the Developer of works that could have been included in the initial submission; and
- Conditions / Obligations are highlighted. Submitted documentation should be highlighted / annotated to ensure all works are covered by a technical submission.
- In the case where works are not related to any planning consent, written confirmation from the local planning authority to that effect is required.

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## 2.4 ABORTIVE COSTS UNDERTAKING.

2.4.1 This is a letter of undertaking from the Developer guaranteeing to meet all costs reasonably and properly incurred by Northamptonshire County Council or Northamptonshire Highways in the preparation of the Section 278 Agreement in any event. Such an undertaking would also cover the event of default by the Developer or if the Agreement process is abandoned or fails to be completed for whatever reason, to ensure that all reasonable costs incurred by the County Council and Northamptonshire Highways suffer no financial loss.

## 2.5 NOMINATED SOLICITOR

2.5.1 This is the legal representative(s) of the Developer and any other party to the Agreement, (land owner, surety, authority etc.).

2.5.2 In respect of drafting the Section 278 Agreement itself, the County Council's legal representatives, will only communicate, liaise and negotiate with the Developer's Nominated Solicitor. As such, any communication with the Developer's Nominated Solicitor is deemed to be communication with all other parties to the Agreement on the Developer's side.

2.5.3 Internal, civil or other matters between the Developer and / or any other related parties to the Agreement are for the Developer and their Nominated Solicitor to liaise, negotiate and agree.

2.5.4 In addition where developments involve multiple Developers, then those parties should nominate which of them will be the point of contact and will liaise with others to agree matters on their behalf.

## 2.6 WORKS COST ESTIMATES

2.6.1 An initial Works Cost Estimate can be submitted with **S278 Application Form: Parts 1 and 2** but a tendered Works Cost Estimate may only be available after Technical Approval.

2.6.2 Works Cost Estimates should be supported by, (preferably) tendered cost summaries, but in any event by sufficient breakdown to enable scrutiny and consideration.

2.6.3 It should be noted that Northamptonshire Highways will review the Works Cost Estimate(s) against its own rates and considerations to ensure that, in the event of a default by the Developer, it can complete the works without financial risk to the County Council.

2.6.4 An agreed Works Cost Estimate is then used to determine the Financial Security required to be secured by cash deposit or paper Bond against the Section 278 Agreement.

2.6.5 The value of the works and Financial Security directly affects the risks incurred; the scale of Inspections etc. and as such affects the Final Fee applicable to the completion of the Section 278 Agreement itself.

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## 3 Drawings and Details Required

### 3.1 DESIGN STANDARDS

3.1.1 Unless otherwise agreed with Northamptonshire Highways all new works within the existing highway or forming new highway shall comply with Design Manual for Roads and Bridges design criteria.

3.1.2 All works should be designed to “Desirable” standards. Any proposals to use one or two steps below such standards, (where available) must be fully justified and may be considered as departures from standard. See also “Departures from Standard” below. The exception being that of visibility splays within residential areas subject to 30mph speed restrictions in which Manual for Streets visibility splay criteria would be applicable.

3.1.3 Northamptonshire Highways have a set of standard details that are available on request. Clearly site specific modification to the standard details, where options are shown, would be required to ensure it is clear what is being proposed. Any departures to such details should be confirmed and justified but may be seen as departures from standard.

3.1.4 Planting within or adjacent to the highway should conform to the “**Guidance Note for Highway Cultivation in Northamptonshire**”. A copy is available on request.

3.1.5 It is presumed that all designs submitted are also fully compliant with requirements and principles of the Equalities Act 2010. Failure to do so may result in designs being rejected.

### 3.2 TECHNICAL DETAILS AND DRAWINGS

3.2.1 Technical plans and drawings are required to ensure that any party can know what is to be constructed. Once approved these plans will be the basis for site inspections and non-compliance will require remedial work.

3.2.2 The Developer is required to submit electronic, (.pdf only) versions of technical drawings and associated details as listed below and on the **S278 Application Form: Part 2a** and (where applicable) **Part 2b**. Hard copy versions may be requested.

3.2.3 The drawings must be at 1:500 scale, or as agreed with Northamptonshire Highways, and must include:

- **General Arrangement;**

This drawing should indicate the scope and type of work to be carried out. This also ensures the scope and scale of the works can be seen in context

- **Site Clearance;**

Landscaping, signs, lines, street lighting, kerbing, surfacing to be removed etc.;

- **Typical Construction Details;**

Copies of Northamptonshire Highways Standard Details are available in electronic format on request;

- 
- **Drainage;**

Including drainage calculations, interaction with any existing highway or utility adopted system, SuDs and who has agreed to manage and maintain them, (do not assume this will be the County Council), Drainage details to Outfall including relevant drainage agreements (S104), Consent and permissions also required.
  - **Geotechnical Information and Earthworks;**

Including Geotechnical Reports and Earthworks Design

Where works involve significant carriageway widening or as requested by Northamptonshire Highways, Developers are required to undertake a soil survey to establish the soil and ground water sulphate content and pH values at various locations within the site and at the depths of the deepest sewers.

A copy of the geotechnical report is to be submitted for consideration at the earliest opportunity. Concrete classes and types cannot be approved until this information is made available and work should not commence below ground level until such approval has been granted.

Roads and Street Works Permit and a licence under Section 171 of the Highways Act 1980 will be required for trial holes.
  - **Public Utility Plant;**

Including proposed Diversions. All existing plant should be located and proven by trial holes to confirm location, route and depth etc. a Roads and Street Works Permit and a licence under Section 171 of the Highways Act 1980 will be required for trial holes;
  - **Traffic Signs and Road Markings;**

Including diagram numbers, sign and post design details
  - **Traffic Signals;** (where applicable)

Including LINSIG modelling and TR2500 Controller specification;
  - **Street Lighting;**

(where applicable see Section 3.3 below)
  - **Cross sections;**

Including typical cross sections with full constructional details as well as cross sections at reasonable intervals, (or as agreed with Northamptonshire Highways) Sections to clearly show the limit of proposed adoption where the works will increase the extent of highway. See also **Figure 1** in Section 5 below;
  - **Long Section; and**

should include vertical and horizontal alignment information as well as existing ground profile; and
  - **Structural drawings,**

Including calculations and “Approval In Principle” (AIP) documentation, (see Section 3.5 below)

3.2.4 In agreement with Northamptonshire Highways some of the above drawings may be combined. If works are covered on multiple drawings then the same cut lines and boundaries must be used for each drawing. Please also ensure that the appropriate drawing number is added to the relevant field on the **S278 Application Form: Part 2a** (and where appropriate **2b**).

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3.2.5 Northamptonshire Highways also reserves the right to require further / additional information and detail to that listed on a site by site basis.

3.2.6 Please note that in respect of embankments additional land is required to be dedicated as highway and way-leaves will be required in most cases for access purposes. Please see **Figure 1** in Section 5 below.

3.2.7 Where works extend beyond the existing highway boundary and land dedication is required, the extent of proposed adoption shall also be clearly shown on the typical cross sections and edged Blue on the General Arrangement Plan.

3.2.8 Northamptonshire Highways also reserves the right to require further / additional information and detail to that listed on a site by site basis.

### **3.3 STREET LIGHTING, ILLUMINATED SIGNS AND BOLLARDS.**

3.3.1 All street lighting, illuminated signs or bollards for which Northamptonshire County Council is the Lighting Authority are managed and maintained by Balfour Beatty Living Places for and on behalf of the County Council under a Private Finance Initiative, (PFI) Contract.

3.3.2 Not all street lighting on the local highway network is managed and maintained by the County Council as Lighting Authority. In many cases, street lighting within rural villages, (and some towns), are managed and maintained by the local Parish, Town or in some cases District / Borough Councils. A list of Lighting Authorities, other than the County Council, is available on request.

3.3.3 There are some cases where the County Council is Lighting Authority for a corridor through a town or village for which the local Parish, Town or District Council is Lighting Authority for the rest of the area. For the avoidance of doubt whilst any alterations to lighting within the corridor would need to be agreed with the County Council, any new side street from such corridors would be a matter for the Lighting Authority responsible for all other side roads in that area.

3.3.4 If works affect a highway for which the County Council is the Lighting Authority, and those works affect such equipment, then the Developer is encouraged to discuss and agree their proposed Street Lighting amendments with Balfour Beatty Living Places. ([www.bblivingplaces.com](http://www.bblivingplaces.com)).

3.3.5 Please note that where the County Council is Lighting Authority and lighting is affected or proposed, and it is prepared to adopt such lighting, all cabling must be provided by a Distribution Network Operator. In Northamptonshire this is Western Power Distribution. Private cabling is not acceptable and will result in the rejection of a design or installation.

3.3.6 A "Northamptonshire Street Lighting Specification" is available on request.

3.3.7 The County Council charges commuted sums for new street lighting assets within areas where it is the Lighting Authority. These are however calculated on a net gain basis. A net gain of street lighting will attract commuted sums a net loss will not.

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3.3.8 Please note that on the date specified on the Commencement Notice any existing street lighting, illuminated signs and bollards affected by the works, (on highways where the County Council is Lighting Authority) cease to be managed and maintained by the County Council or Balfour Beatty Living Places. At that point the Developer becomes responsible for the lighting and all energy costs associated with the illuminated equipment.

3.3.9 Such existing assets are removed (de-accrued) from the PFI Contract at that point. All energy costs associated with de-accrued street lighting, illuminated signs or bollards become the Developer's responsibility as of that date.

3.3.10 Upon issue of the Certificate of Final Completion, the revised street lighting, illuminated signs and bollards will be accrued back into the PFI Contract and become the responsibility of the County Council.

3.3.11 If the proposed works reduce the number of street lights, illuminated signs or bollards, this will be considered when the commuted sums for such features are calculated.

3.3.12 Please note that Heritage Style and Building Mounted luminaires are available for which additional commuted sums are required. Non-standard or bespoke lighting may also be considered, subject to Balfour Beatty Living Places confirmation that such proposals meet illumination standards and any additional sums that may be required to ensure long-term management and maintenance of such units.

3.3.13 If the works affect a highway for which the County Council is not Lighting Authority, the Developer must liaise and agree any changes, new or removed street lighting, illuminated signs or bollards with the relevant Lighting Authority.

3.3.14 Written confirmation from the relevant Lighting Authority is required to confirm that they will accept responsibility / adopt the installations when complete. The completion of the Section 278 Agreement will not occur until such written confirmation is submitted.

3.3.15 The Certificate of Final Completion will not be issued unless or until the street lighting, illuminated signs and / or bollards has been adopted / vested with the Lighting Authority where the County Council is not that Authority.

3.3.16 Balfour Beatty Living Places can undertake street lighting design subject to direct engagement from the Development. If this is the case then a statement from Balfour Beatty Living Places is required to confirm that they have designed the lighting in accordance with the Northamptonshire Street Lighting Specification and would accrue such lighting into the contract if the County Council is Lighting Authority and subject to appropriate commuted sums.

3.3.17 Where lighting is proposed it must be identified clearly on submitted plans making it clear who the adopting Lighting Authority is with appropriate legend and key.

3.3.18 Irrespective of who may be adopting any lighting, all cabling must also be clearly identified on appropriate plans and protected on site with appropriate records kept for as-built purposes.

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### 3.4 SUSTAINABLE URBAN DRAINAGE (SUDS)

3.4.1 Reference is made to the County Council's "Local Standards and Guidance for Surface Water Drainage In Northamptonshire" <https://www.floodtoolkit.com/planning/flood-management/> and subsequent publication

3.4.2 The location of SuDs for new developments in relation to existing highways or where such features may be proposed to drain works covered by a prospective Section 278 Agreement should be discussed and agreed with Northamptonshire Highways before promoting such a solution as part of a planning application.

3.4.3 The location of SuDs in relation to existing highways depends, (amongst other matters) on: -

- The nature of the features proposed, (Soak-away, swale, pond etc);
- The source of water they will take, (highway only, private only, private and highway);
- The geology of the location if infiltration is proposed, (Permeability, infiltration, water table etc);
- Flood Risk, (water table, ground water flooding risks, surface water flooding risks);
- The depth and side slope details, for water bodies, (balancing ponds etc) as they affect vehicle and pedestrian protection requirements as well as geological and constructional impact.

3.4.4 The use of highway-only SuDS features should in general be avoided as this may create the duplication of systems with similar facilities for private water and inefficient use of available land. Such an approach may, therefore, be limited to sites where surface water sewerage is only required for highway runoff, or for highway-only development such as bypasses.

3.4.5 Where private water and / or private and prospective highway water are to outfall into a SuD feature, where such a feature is water bearing or water holding, in general this should be located at least 5.0m from the operational (back of footway etc) / existing highway limits,. Clearances less than 5.0m for soak away features may be acceptable subject to site specific considerations related to geological testing, water table assessment and infiltration assessments.

3.4.6 Highway only water bearing / holding features to be offered for adoption, should also have a minimum 5.0m clearance although this can be reviewed on a feature by feature / site by site basis. Such features may be adopted subject to an appropriate commuted sum calculated by Northamptonshire Highways and the inclusion of the area associated with the feature along with access and maintenance forming part of the area of land to be dedicated as highway.

### 3.5 STRUCTURES

3.5.1 Northamptonshire Highways act as Technical Approver (TA) for new structures that may abut, over sail or support or traverse the highway. As such Northamptonshire Highway's structures team are responsible for agreeing the Approval in Principle. The County Council are the Technical Approval Authority (TAA) who will subsequently accept the relevant certificates.

3.5.2 Proposals for highway structures shall follow the procedure set out in BD 2/12 "Technical Approval of Highway Structures". Highway structures are defined as a Structure or installation coming within the scope of BD 2/12 and situated under, over or adjacent/within 4.0m of a street. Structures that do not meet the criteria set out in BD 2/12, but are within 4.0m of a street will require technical approval.

3.5.3 The technical approval process shall be followed whether the structure is to be adopted or not. The process for agreeing technical approval is an iterative one and therefore should be started as early as possible to avoid any hold up to the construction phase.

3.5.4 As described in BD 2 proposals must be placed in one of four Categories: 0, 1, 2 or 3 and agreed by the TA prior to submission. Documents shall be submitted to the TA as in **Table 3** below:

Table 3	
Category	Requirement
0	General Arrangement drawing detailing structure location, cross sections, long sections and plans
	Design and Check Certification
1, 2 and 3	General Arrangement drawing detailing structure location, cross sections, long sections and plans
	Approval in Principal (AIP)
	Design and Check Certification

3.5.5 Once agreed two sets of documents (AIP and Certificates) with original manuscript signatures must be submitted to the TA for signature, one set of documents will be returned to the developer.

3.5.6 Commuted sums shall be calculated using the method in the ADEPT Bridges Group Guidance Notes.

3.5.7 Upon completion of the structure an Inspection of Acceptance is be required by Northamptonshire Highway's structures team, any defects identified to be rectified before the structure can be adopted (or not).

3.5.8 See **Appendix 1** for a flow chart of Structural Approval processes.

3.5.9 Where structures supporting the highway are located outside the existing highway boundary such structures may be adopted by the County Council. Easements and way-leaves to facilitate maintenance of structures to be adopted will be required where such access would be via land not proposed to be dedicated. Access to such easements will be required. Each site will be considered on its merits and easement width and access requirements will vary and should be discussed and agreed with Northamptonshire Highways.

### 3.6 CONSTRUCTION DESIGN AND MANAGEMENT (CDM) REGULATIONS 2015

3.6.1 At Technical Audit stage the information that has been sent to the Health and Safety Executive (HSE), usually contained within the HSE's F10 form, will be required. This information shall confirm the contact details of those with the specific CDM responsibilities of Client, Principal Designer and Designer etc, together with a signed declaration that the Client is aware of their duties under the CDM Regulations 2015.

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### 3.7 WALKING, CYCLING AND HORSE-RIDING ASSESSMENT AND REVIEW

3.7.1 Copies of Walking, Cycling and Horse-Riding Assessments or previous Non-Motorised User Audits undertaken previously for a proposal must be submitted along with any associated Designer's Response(s). Drawings submitted for consideration should accord with all recommendations made within such Assessments / Audits unless otherwise discussed and agreed with Northamptonshire Highways.

3.7.2 The drawings should comply with guidelines for:

- Walking, Cycling And Horse-Riding Assessment And Review compliant with HD 42/17;
- Cycle Audit and Cycle Review as published by Institute of Highway and Transportation if undertaken before May 2017; and
- Independent Stage 2 Road Safety Audit and Designers Response. Please note that as a default Northamptonshire Highways will commission its own independent Safety Auditors to undertake a Stage 2 Safety Audit. (See also Safety Audits noted below).

### 3.8 SAFETY AUDIT(S)

3.8.1 Safety Audits must comply with HD 19/15 (or subsequent revision) and are required to ensure designs are safe and appropriate for the intended use by all highway users including pedestrians and cyclists.

3.8.2 In accordance with HD 19/15, the Safety Audit Scope and Safety Audit team should be submitted to Northamptonshire County Council as "Project Sponsor". A standard "**Road Safety Audit Brief**" form is available on request. Subject to County Council approval of the Safety Audit Team and Brief, as and when the Audit is undertaken a draft should be sent to the Project Sponsor before it goes to either the Developer or Designer.

3.8.3 A Stage 2 Safety Audit must be submitted with the Technical Submission as required and set out in the **S278 Application Form: Part 2a**.

3.8.4 As a default in the absence of the submission of a Safety Audit with the Technical Submission (**S278 Application Form: Part 2a**), Northamptonshire Highways can undertake a Safety Audit, (using an independent team) for which an additional fee is required before such an Audit is undertaken and before the Technical Submission is submitted to Technical Audit.

3.8.5 If the Developer wishes Northamptonshire Highways to undertake the Safety Audit(s) then these should be commissioned and acted upon prior to full Technical Submission and **S278 Application Form: Part 2a**.

3.8.6 Please note that Northamptonshire Highways Safety Audit Teams are already approved by the Project Sponsor but the Developer should still complete the Road Safety Audit Brief.

3.8.7 Combined Stage 1 and 2 Safety Audits are acceptable. However audits should not be combined purely for cost saving purposes and should only be combined where the scope of the works is deemed inappropriate to undertake a Stage 1 Road Safety Audit.

3.8.8 If a Designer's response to any Safety Audit does not address the issue raised or no amendments are proposed, it should not be assumed that the County Council as Project Sponsor will accept such exceptions. As such, it is recommended that all matters raised are addressed in full.

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3.8.9 If alternatives to Safety Audit recommendations are proposed that, in the Designer's view would address the same issues, full justifications should be submitted with the Designer's Response.

3.8.10 Stage 3 Safety Audits are required upon completion / pre-opening of the works. Any issues identified shall be corrected by the Developer as soon as possible, along with any other remedial works that may have been identified.

3.8.11 The completion of such works is a pre-requisite (along with other elements referenced in these S278 Notes for Guidance) to the issue of the Certificate of Practical Completion and the commencement of the Defects Correction Period.

3.8.12 It should also be noted that at the discretion of Northamptonshire Highways interim or additional Stage 3 Safety Audits may be required where a new road layout is to be opened to the public for the first time in advance of the completion of the Works or where intermediate or interim changes to the public's route through the works may warrant such a review. Such requirements should be discussed in general at the Pre-Commencement meeting.

3.8.13 A further Stage 4 Safety Audit is also required at the end of the Defects Correction Period. Again any issues identified shall be corrected prior to the issue of the Certificate of Final Completion.

3.8.14 As such, the Defects Correction Period may be extended enable such works and any other remedial works to be completed. Other matters referenced elsewhere in these S278 Notes for Guidance will influence when the Certificate of Final Completion will be issued.

### 3.9 DEPARTURES FROM STANDARD

3.9.1 Any Departures from Standards, from those within the Design Manual for Roads and Bridges, (DMRB) must be identified, and justified by the submitting design organisation. **S278 Application Form; Part 2a** requires confirmation that either there are no Departures from Standard or, if there are, they are identified and a supporting statement is also submitted.

3.9.2 Northamptonshire Highways may identify any further Departures from Standard during the Technical Audit process. It should be noted that, in general, all Departures from Standard are resisted and consequently all submissions should be fully compliant.

3.9.3 In the event that the design organisation considers that a Departure(s) from Standard is unavoidable they should engage with Northamptonshire Highways. A full technical justification for each and every Departure involved, must be submitted.

3.9.4 Please note that the acceptance of any Departure(s) from Standard rest with Northamptonshire County Council. The granting of Departure(s) from Standard should not be assumed. The Developer should therefore, prepare an alternative or altered design fully compliant with the associated standards to enable comparisons to be made. This should be submitted as part of the justification statement.

3.9.5 Northamptonshire Highways will consider the justification made with the presumption against acceptance, before making recommendations to Northamptonshire County Council who may, at their sole discretion accept or reject such proposals. Positive recommendation by Northamptonshire Highways should not, therefore be taken as approval.

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### 3.10 TRAFFIC REGULATION ORDERS, (TROs) AND NOTICES

3.10.1 Some works within an existing highway, (and in some cases restrictions on new un-adopted roads) are reliant upon the confirmation of associated Traffic Regulation Orders, (TROs) or Traffic Regulation Notices.

3.10.2 Such TROs and Notices are subject to their own statutory consultation and legal processes. The County Council is the determining Authority. Such consultation is exclusive of any previous planning consultations.

3.10.3 Northamptonshire Highways will not commence consideration of, or processing of, TROs or Notices without a separate fee being paid. Please see **Table 4** below for fees charged along with typical time durations required to process such TROs or Notices. Fees quoted are subject to change without notice.

3.10.4 The Developer is responsible for completing **S278 Application Form; Part 2c** and providing all required plans, (see below) and initial Statement of Reasons to enable Northamptonshire Highways to draft the legal Orders, adverts and Site Notices.

3.10.5 Pre Public Consultations are undertaken on all proposed TROs and / or Notices by Northamptonshire Highways. Such Pre-consultation with key stakeholders including the Police, the local District and / or town / parish Council and local County Council member may identify modifications to the extent or location of a feature or restriction prior to full public consultation.

3.10.6 The success of a TRO or Notice is not guaranteed. The potential time taken to determine a TRO or Notice is indicative only. In practice controversial TROs or Notices can be protracted as Northamptonshire Highways will work with the Developer and key parties to endeavour to address any issues raised during the public consultation process.

3.10.7 If multiple TROs and Notices are required each should be identified on **S278 Application Form: Part 2c. Each** is considered on their merits. As such there are risks that some may fail while others may not.

3.10.8 The County Council considers both TROs and Notices the same in regard to representations / objections received.

3.10.9 The Developer is responsible for the preparation of plans to be used for TROs and Notices. Drawings to be submitted shall be Ordnance Survey (or other recognised mapping) base mapping, each drawing to be **maximum A3 size, to scale, with scale bar, north point, user mapping licence information**. Base map information should extend sufficiently to allow the proposal to be easily located by members of the public. Such plans, to show nearby road junctions, road names etc.

3.10.10 For new features such as controlled pedestrian crossings, (Puffin, Toucan, Pegasus, Zebra) all associated road markings to be shown. Please note the County Council will not accept "Pelican" style crossings.

3.10.11 **Table 4** indicates common TROs or Notices, (This may not be exhaustive and fees may be revised without notice).

Table 4		
Item		TRO/Notice
Bus Lanes		TRO
Changes to speed limit (see also below)		TRO
Clearway		TRO
Controlled pedestrian crossings (Zebra, Toucan, Puffin)		Notice
Pedestrian Zones		TRO
Prohibited movements, No Right Turn, No Entry etc.		TRO
Road humps / tables		Notice
Shared pedestrian / cycle tracks		Notice
Temporary Orders (as for permanent Orders)		Temporary TRO
Weight Restrictions		TRO
Yellow lines / parking restriction changes / Residents Parking Order		TRO
Minimum Time to process items:		<b>Fee (Exclusive of S278 Fees)</b>
TRO`s	4 months	£3,650
Notices	6 weeks	£1,825
Temporary TROs	3 months	£1,825

3.10.12 If for constructional purposes any temporary restriction is proposed, please engage with Northamptonshire Highways who can provide specific advice. Temporary Traffic Regulation Orders for constructional purposes including for speed restrictions, road closures or temporary closures or diversions of Public Rights of Way (PRoW) are also subject to fees, (see **Table 4** above) appropriate Notice and representation periods. If such restrictions are anticipated each one should be identified on **S278 Application Form: Part 2c**

3.10.13 Please contact [Defmap@kierwsp.co.uk](mailto:Defmap@kierwsp.co.uk) regarding the process, procedures, requirements, restrictions and criteria associated with temporary and permanent diversions of PRoWs and temporary PRoW closures. For further information see the following links:

[www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/rights-of-way/Documents/Definitive%20Map%20Team%20Charges%20from%201st%20April%202017.pdf](http://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/rights-of-way/Documents/Definitive%20Map%20Team%20Charges%20from%201st%20April%202017.pdf)

[www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/rights-of-way/Pages/temporary-traffic-regulation-orders.aspx](http://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/rights-of-way/Pages/temporary-traffic-regulation-orders.aspx)

3.10.14 **Please note** and ensure that any mapping used for such plans must have a relevant publication licence that allows unrestricted, free of all charge, reproduction by Northamptonshire County Council and for the mapping to be used for public advertisements and freely made available on demand by the public. No copy write restrictions shall similarly apply to any data added to the base mapping to produce the drawings required for TRO and Notice purposes.

3.10.15 Any existing TROs affecting a section of highway that is associated with the Works should be noted. Such restrictions may be any noted above, (but may be others not listed).

3.10.16 The most common restrictions affected are speed restrictions and parking restrictions but any existing Order may be affected. In such cases, it is probable that such existing TROs may need to be modified, removed or changed in some manner to facilitate the works. As such whilst the new Works may not need a new TRO, they may still need a TRO with their own fee and timescale requirements to modify or remove an existing restriction with the associated consultation processes and risks that the Order may fail.

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## Speed Restrictions

3.10.17 In respect of changes to Speed Limits, these are subject to additional scrutiny by the Speed Limit Review Panel, (“the Panel”). Posted speed limits on the highway account for one of the greatest causes for public complaint. Northamptonshire Highways undertakes a formal review of each speed limit request or amendment which involves the Panel of relevant officers from Northamptonshire Highways including road safety specialists and the Safer Roads Team Leader for Northamptonshire Police. He has delegated authority from the Chief Constable in speed limit consultations.

3.10.18 The Panel therefore provides a consensus response from both the Police and County Council prior to any wider public consultation on proposals to change speed limits.

3.10.19 The Panel is independent of the planning authority and provides objective advice on proposals so that inappropriate limits are not proposed and that appropriate design speeds can be agreed.

3.10.20 Speed limits should be appropriate for the layout and environment and encourage self-compliance such that the design reinforces a drivers’ assessment of what is a safe speed for that particular section of road, whilst taking account of the function, characteristics and surrounding environment. As such, the provision of speed limit signs on their own will not necessarily change driver behaviour, may inappropriately criminalise motorists, raise inappropriate expectations of enforcement and may result in retrospective modifications at the developer’s expense.

3.10.21 In some cases an interim higher speed limit should be designed for with implemented works reviewed when development has progressed sufficiently to influence vehicle speeds in an evidenced way at which point a self-enforcing lower limit may then be considered.

3.10.22 The Panel’s decision on such proposals is final and is required before progressing to installation of such associated signage to display a new speed restriction and in any event prior to the issue of a Certificate of Practical Completion.

### 3.11 STOPPING UP ORDERS

3.11.1 Where a section of existing highway is to be permanently closed then it will require a “Stopping Up” order. If that is as a result of a planning permission then it would be carried out in accordance with Section 247 of the Town & Country Planning Act 1990 (as amended).

3.11.2 It should be noted that the Section 278 Agreement will not be completed until the Stopping Up has been confirmed. In addition, once a section of existing highway is stopped up, control over the land reverts to the original land owner who may not be the adjacent or riparian land owner and may not necessarily be in the gift of the County Council as land owner.

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## 4 Technical Audit and Technical Approval

### 4.1 TECHNICAL AUDITS

4.1.1 Audits of technical submissions are undertaken to ensure compliance with National, (DMRB and DfT) and local Northamptonshire Highways standards, these S278 Notes for Guidance, County Council Policies and Northamptonshire Highways guidance and procedures / documentation.

4.1.2 Northamptonshire Highways encourages early engagement to ensure all parties are aware of our requirements and timescales. Northamptonshire Highways is, therefore, prepared to consider and comment on a non-prejudicial basis on Pre Application submissions by agreement. However, this is subject to receipt of the Initial Fee.

4.1.3 Technical Audits rely on having quality, complete and comprehensive information including a Stage 2 Safety Audit and Designer's Response (or Stage 1 / 2 Safety Audit with Designer's Response if a Stage 1 Audit has not previously been undertaken or submitted).

4.1.4 It is the developer's responsibility to ensure that complete and comprehensive submissions are made by their consultants as failure to do so will delay the Audit process and consideration of the Agreement.

4.1.5 In general, a minimum of three weeks, (from when Northamptonshire Highways confirm the drawings and documents have been submitted to Audit) should be allowed for consideration of Initial or Pre-Application technical submissions. Thereafter, allow a minimum of two weeks from receipt of subsequent submission(s) for each such submission.

4.1.6 The number of iterations of Technical Audits directly relates to the number and quality of submissions made to address matters raised in the Audit. Incomplete re-submissions or submissions that do not address all issues raised in the Technical or Safety Audits will delay the process. Multiple iterations, typically above 3 may incur additional fee to be paid before they are considered.

4.1.7 Specialist third party advice may be required to complete an Audit. Northamptonshire Highways reserves the right to require additional fees to cover specialist advice but will inform the Developer if this is required.

### 4.2 TECHNICAL APPROVAL

4.2.1 Technical Approval will not be confirmed until all matters raised by the Technical and other Audits and considerations have been fully addressed to the satisfaction of Northamptonshire Highways. This includes any considerations or requirements of other parties associated with subsidiary agreements.

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4.2.2 Technical Approval may be delayed whilst Developers obtain written confirmation of agreements or approvals from other authorities and organisations including, (but not exclusively): -

- Water Authorities;
- Drainage Consents;
- Environment Agency approval;
- Lighting Authority, (if not the County Council);
- Ecclesiastical Faculty Consent (See below); and
- Traffic Regulation Order / Notice confirmation
- Environmental licences and permissions

4.2.3 It is recommended that all such permissions and approvals are obtained in writing prior to submission of **S278 Application Form: Part 2**.

4.2.4 It is recognised that some such approvals and agreements may require refreshing / updating as a result of any amendments to a scheme resulting from the Technical Audit process. Updated / refreshed written confirmations may, therefore be required prior to the issue of Technical Approval.

4.2.5 Upon issue of a Technical Approval, the Developer shall submit a full and complete set of approved drawings and documents, (in .pdf format) for reference within the Agreement when drafted, for the record and for Site Inspection purposes.

4.2.1 It should be noted that during the preparation of the legal agreement and associated consideration of legal matters, it may be necessary to modify some drawings and details that may have received a Technical Approval. As such any Technical Approval is always issued subject to such modifications and amendments.

4.2.2 Technical Approvals remain valid for no more than 1 year after which time details will require a review to accommodate any changes in standards, specifications or legislation.

4.2.3 It remains the Developer's responsibility to ensure that their site team and Contractor are issued with copies of plans and documentation which have received Technical Approval (including any subsequent updates agreed with Northamptonshire Highways) and to provide the Northamptonshire Highways Inspector with a copy on request be that hard or electronic copy.

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# 5 Legal Instructions

## 5.1 GENERAL

5.1.1 As noted in Section 1 above, Northamptonshire Highways works sequentially and legal instructions to commence the actual drafting of the Section 278 Agreement will not be issued, unless or until: -

- Technical Approval has been issued;
- The required number of drawings received, (see below;
- **S278 Application Form: Part 3**; and
- All appropriate legal documentation, (title and associated conveyance documents where dedication and easements are required etc.)

5.1.2 If **S278 Application Form: Part 3** has previously been submitted by the Developer, it may need to be updated and refreshed.

5.1.3 Final Legal costs associated with the drawing up of the Agreement are charged separately upon completion of the Agreement.

5.1.4 The County Council will not accept agreements drafted by others.

## 5.2 EXTENT OF WORKS PLAN

5.2.1 This plan is required for all Agreements and identifies on an Ordnance Survey 1:2500 base the full extent of the existing highway affected by the works.

5.2.2 The area of affected highway should be clearly edged green and cover the full width and length of the existing highway from boundary to boundary.

5.2.3 If the works include signage divorced from the main works, then inset plans may be used to identify the area of highway affected. However this should be discussed and agreed with Northamptonshire Highways first.

5.2.4 The extent of works plan identifies the extent of existing highway, (excluding any lengths required for traffic management) that the Developer becomes responsible and liable for, as noted above in these S278 Notes for Guidance.

## 5.3 FINANCIAL SECURITIES

5.3.1 Developers are required to put up Financial Securities, (also known as Bonds) such that in the event of default of the agreement the County Council can, and at its discretion, exercise its rights under the Section 278 Agreement to call on the Financial Security to make safe or complete the works at no cost to the public.

5.3.2 A Financial Security may be provided by way of cash deposit; where the developer transfers the required sum to the County Council who holds it for the life of the agreement or by paper Bond provided by a Surety, usually a financial institution agreed with the County Council.

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5.3.3 The value of the Financial Security required to be deposited or provided to the County Council will be calculated and confirmed after Technical Approval has been issued and will consist of the value of the Works plus the value of any Commuted Sum.

5.3.4 It should be noted that any estimated works costs provided by the Developer would be reviewed. The actual Financial Security value required would, however, reflect the estimated costs that Northamptonshire Highways consider it may incur in the event that it has to complete the works after developer default.

5.3.5 The Financial Security value will include elements of risk and contingency, (including utility works) and may be greater than the tendered sum or estimate provided by a Contractor to the Developer.

5.3.6 The type of Financial Security should be confirmed on the **S278 Application Form: Part 3** required after Technical Approval has been confirmed.

5.3.7 The value of the Financial Security is reduced upon issue of the Certificate of Practical Completion such that 25% of the full Financial Security value is retained for the duration of the Defects Correction Period.

5.3.8 The Financial Security is discharged or returned, (in the event of a cash deposit) in full upon issue of the Certificate of Final Completion.

5.3.9 Please note that there is a charge to cover legal costs incurred to reduce or cancel Financial Securities. This currently stands at £250 per transaction.

5.3.10 Exemptions from providing such a Financial Security are available, only to local authorities, (Borough or District Councils, Parish Councils and Town Councils or neighbouring County, Borough, District, Town or Parish Councils) or Government departments / organisations and the Crown, provided that the respective authority is acting as “Developer” for the purposes of the Agreement.

#### **5.4 LAND DEDICATION PLAN (WHERE APPLICABLE)**

5.4.1 This is not relevant to Agreements where the works fall fully within existing adopted highway. However, if any works on land outside the existing highway boundary are required, the additional area of land required must be identified such that the owner, (be that the Developer or other party to the Agreement) can “dedicate” the land as highway.

5.4.2 Only the land owner can dedicate land for highway purposes. As such, if the land owner is different to the Developer then they must become party to the Agreement.

5.4.3 The extent of land to be dedicated should be clearly identified on a Land Dedication drawing that complies with the following:-

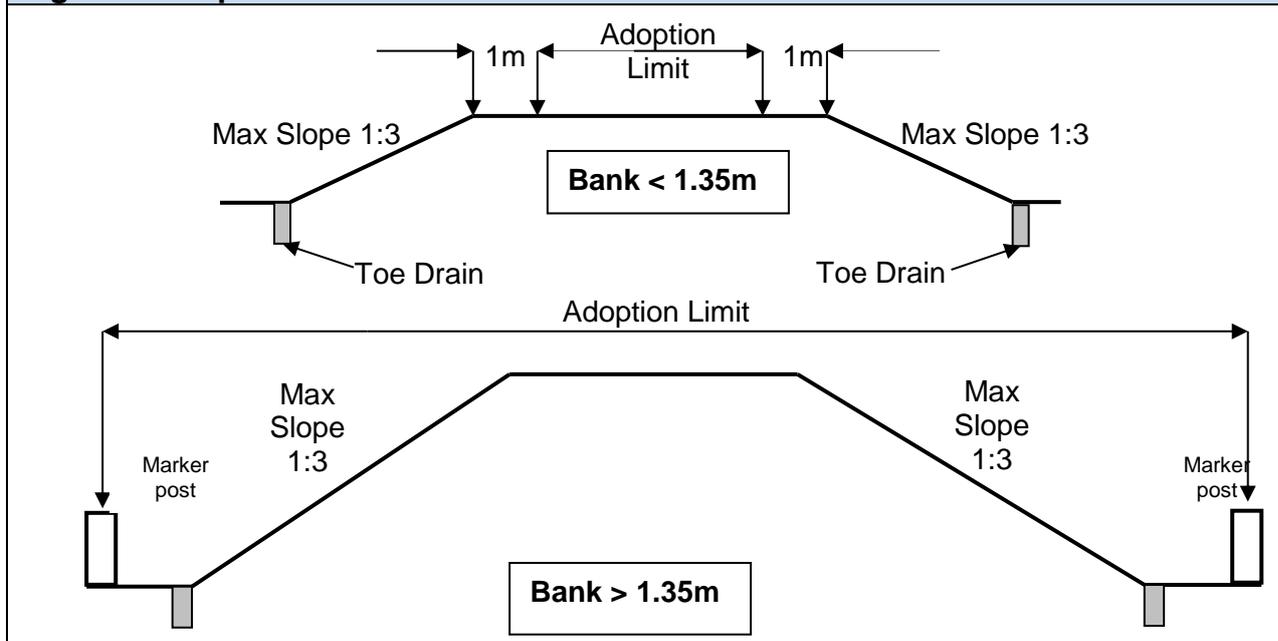
- **The land to be dedicated must be edged red and shaded pink;**
- The existing highway shall not be shaded or coloured on this plan;
- The plan should be Ordnance Survey based at 1:2500 scale. Subsidiary or larger scale plans may be required in some cases. These should be discussed with Northamptonshire Highways prior to preparation; and
- The plan should be entitled “Land to be Dedicated as Highway”.

5.4.4 Please contact [landsearches@kierwsp.co.uk](mailto:landsearches@kierwsp.co.uk) for existing highway extents. Please note there is a charge for this service.

5.4.5 In the case of works that include embankments that may fall outside the existing highway boundary, please note **Figure 1** below.

5.4.6 Where embankments are to be adopted appropriate margins at the toe of the embankment slopes are required for maintenance purposes. Access to such areas should also be agreed with Northamptonshire Highways and where appropriate additional land will need to be adopted.

**Figure 1 Adoption Limits of Embankments**



## 5.5 PROOF OF TITLE, (IN THE EVENT OF LAND DEDICATION)

5.5.1 If dedication is required, the Developer must prove they have title to any land to be dedicated. If they do not, the legal owner of the land must also become a party to the Agreement. The dedication of the land required as highway occurs in accordance with the Agreement.

5.5.2 It is acknowledged that a Developer may still be negotiating land title to facilitate the development and dedication. In such cases, either the current owner becomes party to the Agreement or the completion of the Agreement will be delayed until the Developer gains title.

5.5.3 If there any charges on the land, the chargee will also need to be included as a party to the Agreement.

5.5.4 The Developer and / or the land owner (if different) must demonstrate there are no restrictive covenants or other adverse entries which affect the land to be dedicated as public highway. In the event that a restrictive covenant or other adverse entry exists this will need to be removed or resolved by the Developer to the County Council's satisfaction.

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5.5.5 The Developer or land owner if different must ensure that they retain title to all land to be dedicated and should ensure that no areas or elements are conveyed to any other party as such land would need to be recovered prior to the adoption of the road / streets concerned.

## 5.6 COMMUTED SUMS

5.6.1 Commuted Sums are required where infrastructure or features, materials or additional areas are proposed that are not compliant with the County Council's adoptable standards and requirements or where features would add a significant burden on the public purse such as structures and bridges. Where developers propose to use or specify such materials or features the additional maintenance costs predicted to be incurred by the County Council are calculated and secured as Commuted sums within the Section 38 Agreement.

5.6.2 For the avoidance of doubt this includes features or materials that may be required to comply with planning conditions or Design Code criteria that do not form part of the County Council's limited constructional pallet of features and materials.

5.6.3 The commuted sums are intended to cover the additional / extra –over costs incurred by the County Council in managing and maintaining such features. Northamptonshire Highways apply the ADEPT principles when calculating commuted sum values. Such sums are secured over a 60 year period and take into account: -

- Annual maintenance costs
- Routine maintenance costs and frequency
- Reactive maintenance considerations
- Replacement costs, should such replacement(s) be required within 60 years.
- Energy costs for electrical installations

5.6.4 Sums are calculated using a spread sheet, (a copy of which is available on request)

5.6.5 Commuted sums are charged for (but not exclusively):

- Street lighting, (where the County Council is Lighting Authority) on a net gain basis;
- Illuminated signs;
- Bollards, (including illuminated bollards);
- Belisha beacons;
- Traffic signals and controllers;
- Public transport infrastructure, (shelters and real-time installations);
- Other street furniture to be adopted by the County Council, (bins, benches, planters);
- Landscaping, (including trees);
- Non-standard materials;
- Additional, (extra over standard layout) highway areas, (including paving, verge, landscaping);
- Highway only Sustainable Drainage Systems; and
- Structures, (bridges, culverts over 0.9m diameter, under-passes etc.) (see 5.6.8 below).

5.6.6 Northamptonshire Highways has also worked with Regional Local Highway Authorities and currently refers to the schedule originally developed by the 6Cs (Nottinghamshire, Leicestershire and Derbyshire County Councils and their respective City Councils).

<https://www.leicestershire.gov.uk/environment-and-planning/planning/6cs-design-guide>

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5.6.7 Whilst a schedule of typical commuted sums charged by Northamptonshire Highways can be found on the 6Cs web site, this is, subject to review and Northamptonshire highways reserve the right to confirm appropriate commuted sums as and when Technical Approval has been issued which may deviate from those listed by 6Cs.

5.6.8 Please note that Commuted Sums for Bridges and Structures are calculated based on the ADEPT "*Committed Sums for the Relief of Maintenance and Reconstruction of Bridges*" or subsequent publication.

5.6.9 Bespoke features not covered by the 6Cs Design Guide section on commuted sums should be discussed and agreed with Northamptonshire Highways who apply the ADEPT guidance on such matters.

5.6.10 In some cases the guaranteed supply of non-standard materials (at nil cost to Northamptonshire Highways) may be considered in part offset to a Commuted Sum.

5.6.11 In the case that a subsidiary agreement, (see Section 1 above) is involved, any Commuted Sums required by neighbouring Local Highway Authorities and / or Highways England must be agreed with those parties. Northamptonshire Highways will add those requirements into the Section 278 Agreement and reference them in the subsidiary agreement.

## **5.7 INDEMNITY**

5.7.1 The Agreement provides for the County Council to be indemnified by the Developer in respect of various matters, including claims under the Land Compensation Act 1973, (LCA).

5.7.2 Please note that the Developer's liability under the indemnity relating to LCA claims will continue after the Certificate of Final Completion has been issued until the period within which such claims may be validly made has expired and all claims have been settled or otherwise resolved.

## **5.8 ECCLESIASTICAL FACULTY CONSENT**

5.8.1 In some (albeit rare) cases if any works affect a Church, its curtilage or ecclesiastical building, the County Council requires the written confirmation by the Ecclesiastical Faculty that the works are acceptable to them.

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# 6 Construction

## 6.1 PRE COMMENCEMENT

### Pre-Commencement Information and Meeting

6.1.1 Prior to the commencement of works upon site the Developer and / or their representatives, i.e. the Contractor must submit:

- Principal Contractor name, address and Site personnel information;
- A Health and Safety plan (required under the Construction (Design and Management) Regulations 2015, (CDM15));
- A copy of their HSE Form F10 and CDM15 undertakings information;
- Principal Contractor Insurance details;
- Details and contacts for any key sub-contractors (including traffic management supplier);
- Utility apparatus details and contacts;
- Method statement;
- Programme of works, (including when any traffic management or lane usage restrictions may be required);
- Traffic Management proposals (including any TTROs) and emergency contact information;
- Pre-Commencement Notification and Publicity strategy, (see also below);
- Proposals to control dust, mud or surface water, etc. entering the existing highway or in the case of an extension of an existing development which is not yet adopted migrating from the new site into the pre-existing site;
- Confirmation that pre-commencement planning conditions have been discharged; and
- A plan identifying any site specific hazards, risks or issues that may have been identified that may affect the construction process and programme. Such a plan may include technical, environmental or legal constraints, risks and considerations.

6.1.2 Submission of the above is not agreement to such details.

6.1.3 A Pre-Commencement meeting must be undertaken to ensure that the Developer, their Design organisation, Principal Contractor (and key sub-contractors) and Site Supervisory / Project Management staff, (including the Principal Designer) can meet and discuss the works and submissions with Northamptonshire Highways, Site Inspection staff / team.

6.1.4 A protocol and attendees for joint Inspection site meetings should also be agreed at the Pre-Commencement meeting along with key stages in the works where such Inspections are required. Such stages may include, (but not exhaustively) where: -

- Pre-Condition Survey
- All or part of any temporary traffic management is to be removed or substantially altered to allow the public to use a new road layout in part or in full;
- Temporary traffic management is substantially altered affecting the free flow of traffic;
- The opening of a temporarily closed or new road link etc..

6.1.5 The pre-commencement meeting should also identify when Interim Safety Audits will be required.

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## Pre-Commencement Notification and Publicity

6.1.6 The Developer is required to serve a Commencement Notice a minimum of 20 working days prior to the date stated on the Commencement Notice.

6.1.7 Liaison with all public transport operators and school transport operators is required where bus routes are affected by works. In the case of bus routes information can be found on the County Council's website:

[www.northamptonshire.gov.uk/en/councilservices/transport/pubtrans/pages/default.aspx](http://www.northamptonshire.gov.uk/en/councilservices/transport/pubtrans/pages/default.aspx)

6.1.8 A minimum formal notice of 8 weeks is required for any public transport service diversions or timetable changes to be implemented, once such changes have been agreed.

**6.1.9 A minimum of two weeks' notice to affected properties is required. Failure to comply will delay the commencement of works, which may affect the Roads and Street Works Permit.**

6.1.10 Details of pre-start and site signage which shall include Developer details including a contact number shall be agreed at the Pre-Commencement meeting and installed on site for a minimum of two weeks prior to the agreed works start date.

6.1.11 In addition, direct letters from the Developer / Contractor to all properties fronting or accessed from affected road(s) must be hand delivered to each such affected properties. The scope of such a letter drop and content of the letters shall be agreed at the Pre-Commencement meeting.

6.1.12 All local Parish, Town and District / Borough Councils must also be notified at the same time as all affected properties. A copy of the notification letter must also be submitted to Northamptonshire Highways and local County Council Member.

6.1.13 Notification letters must include the following details:

- Who the Developer is, (with associated contact details);
- What the Development is and its Planning Permission reference;
- The Contractor's details;
- The works proposed, including any phasing, (a plan may assist); and
- The emergency contact number of someone with responsibilities for the works, who is in a position to address any issues, no matter what time of day, or night.

6.1.14 For works that may affect the access to a private or other premises additional letters and communication is required to ensure that access to such premises is available at all times. If a temporary closure of such an access is required for the safe completion of the works such closures must first be agreed with those affected.

6.1.15 Appropriate signage with Developer details shall be maintained for the duration of the works and Defects Correction Period such that any defects or incidents can be reported directly to the Developer who should rectify such defects or issues expediently.

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## 6.2 ROADS AND STREET WORKS PERMIT, (“ROAD SPACE BOOKING”)

6.2.1 The County Council operates a Permit booking system for any works within existing highways. Reference is made to “Northamptonshire Road Works and Street Works Permit Scheme” in accordance with the Traffic Management Act 2004.

[http://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/licences-and-business-permits/Pages/permit-scheme.aspx#\\_ga=1.158944250.1121663759.1365589988](http://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/licences-and-business-permits/Pages/permit-scheme.aspx#_ga=1.158944250.1121663759.1365589988)

**6.2.2 The completion of an Agreement under Section 278 of the Highways Act 1980 does not give permission to commence any works within the existing highway.**

**6.2.3 If a contractor starts works on the existing highway without the Section 278 Agreement being completed and a New Roads and Street Works Act 1991 and a valid Roads and Street Works Permit, works will be stopped and legal action against the developer and / or the contractor may be taken.**

**6.2.4 It must be noted that for works in the public highway exceeding a 10-day period (Major Works), a minimum notice period of 3 months is required prior to the commencement of any works in accordance with the New Roads and Street Works Act 1991, (as amended).**

**6.2.5 Roads and Street Works Permits cannot be booked unless or until the Section 278 Agreement has been legally completed by the County Council.**

**6.2.6 Separate Roads and Street Works Permits are required for each USRN (Unique Street Reference Number) road affected. A USRN is a length of road / street, often between junctions.**

6.2.7 All pre-commencement processes must also be completed as required under the New Roads and Street Works Act 1991, (as amended) and Traffic Management Act 2004. For Roads and Street Works Permit forms and submissions email: [nrswa@kierwsp.co.uk](mailto:nrswa@kierwsp.co.uk)

6.2.8 A minimum notice period of 3 months is required to enable the County Council as Street Works Authority to coordinate the commencement and duration of works with any other activities on the highway in the area or vicinity.

### **Protection of Works (Section 58 New Roads and Street Works Act 1991 (as amended))**

6.2.9 It is possible that following the completion of Section 278 Works that other parties including Utilities may need to access the highway to undertake their own works. There is a mechanism available to give some protection for the Section 278 Works during the life of the agreement under Section 58 of the New Roads and Street Works Act 1991, (as amended).

6.2.10 However, a 3-months clear advanced notice of the Section 278 Works is required. This can only be applied for once the Section 278 Agreement is in place and can be submitted at the same time as the Roads and Street Works Permit application.

6.2.11 If a Section 58 protection is requested an early start of the Section 278 Works is not possible.

6.2.12 If a Section 58 protection is requested this needs to be done on the Section 278 Road Space Booking Form. A Section 58 restriction will place certain restrictions on other works taking place after the Section 278 works have started and works as follows:

- Once applied for, the NRSWA Coordination Team in Northamptonshire Highways will issue the notice on the street works system and Utility companies have 20 days to provide details of any works in their schedules of works, or of which they may be aware, at any time until the proposed end of the restriction period.
- The NRSWA Coordination Team may decide to allow street works planned to be carried out before the Section 278 works can take place. As such, the programme for such works will be brought forward so that they start early. The programme for such works may extend beyond the start date requested for the Section 278 Works and, therefore delay them.
- If a number of different works are to be completed before the Section 58 protection commences, the Section 278 Works may also be delayed to facilitate those advance works.
- At all times, the NRSWA Coordination Team will liaise with the Section 278 works promoter, (the Developer)
- A Section 58 restriction can provide the following protections dependant on the type of works undertaken and subsequent works that a Utility Company may wish to undertake:

**Table 6.1 Maximum durations of restrictions**

Works type	Category of carriageway in street	
	Traffic-sensitive or reinstatement category 0, 1 or 2	Reinstatement category 3 or 4
1: Reconstructed	5 years	5 years
2: Resurfaced with or without level change	3 years	3 years
3: Other substantial road or street works	1 year	6 months
Combination of 1 or 2 plus 3	Higher of figures	Higher of figures
Customer connections	20 days	
<b>Definitions used:</b>		
<i>Reconstruction is the removal and replacement of some or all of the various layers that make up a road pavement. It is used to strengthen the road pavement.</i>		
<i>Resurfacing is the removal of the running surface and its replacement to restore surface integrity and skid resistance.</i>		
<i>"Other substantial road or street works" refers to the effects of substantial street works and substantial road works, such as drainage provision, which leave similar reinstatements to those after undertakers' works.</i>		

(extract from New Roads and Street Works Act 1991 Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters)

6.2.13 Any queries relating to Section 58 restrictions should be directed to the NRSWA Coordination Team ([NRSWA@kierwsp.co.uk](mailto:NRSWA@kierwsp.co.uk)) or the New Roads and Street Works Act 1991 Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters.

6.2.14 Due to the time restrictions that a Section 58 restriction may impose on when a the Section 278 Works can start and as, in the main Utility works are in the vicinity of a development are directly related to that development, it incumbent upon the developer to coordinate their own utility connections and works with the restricted period in mind.

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## Early Starts

6.2.15 Requests for an early start may be considered in some cases if requested but no sooner than the day after the Roads and Street Works Permit Application has been submitted. However, requests for an early start cannot be considered when a Section 58 restriction is also being applied for.

6.2.16 If the early start is absolutely necessary and may be facilitated from a NRSWA Coordination point of view, this can still be approved but any Section 58 cannot then be applied.

6.2.17 In determining a works start and duration the NRSWA Coordination Team on behalf of the County Council's "Traffic Manager" may at their sole discretion:

- Accelerate the commencement of works, (unless a Section 58 restriction applies to the road or has been applied for the Section 278 Works);
- Reduce the duration of works;
- Restrict when works may be undertaken;
- Instruct the suspension of works on safety, capacity or if there are special circumstances affecting the highway concerned, (emergencies, planned major events etc);
- Require off peak working only;
- Insist on night working only;
- Require that any traffic signals are manually controlled for all or part of the period that they are in operation;
- Require the suspension of works to facilitate emergency works or the use of the highway affected as a diversion for other works; and
- Defer works beyond the 3 month notice period to enable other works to be completed that may affect a highway involved, (even if a Section 58 restriction is not in place).

6.2.18 Any restrictions on which days or times the works may be active or affect the free flow of traffic, (including pedestrians, cyclists and equestrians) will normally be stated in the Agreement. However, local circumstances may arise as determined by the Traffic Manager that may relax or tighten such restrictions after the completion of the Agreement.

6.2.19 In the event that a Roads and Street Works Permit is issued but not used, then fresh application for a new Roads and Street Works Permit is required which may delay commencement of works given the minimum the minimum notice period required to obtain such a Permit.

6.2.20 Further notification is required as follows: - (a "Day" is a working day excluding weekends and bank holidays):

- Submit a Provisional Advance Authorisation (PAA) for **Major Activities (Durations exceeding 10 Days)** a minimum of 3 months in advance of the proposed start date;
- Submit an Application for a **Major Activities Permit** at least 10 working days before proposed start date;
- Submit **Actual Start Date Notice** when work has started, latest submission by the end of the next working day;
- Submit **Works Stop Notice** once the works are completed, latest submission by the end of the next working day; and
- Submit **Full Registration Notice** within 10 Days of Works Stop detailing measurements for all excavations.

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6.2.21 For further information on Street Works Noticing and associated legislation please see refer to “Roadworks Permit Scheme” on the County Council’s website and specifically the document titled “2016 Permit Scheme”

<https://www3.northamptonshire.gov.uk/councilservices/northamptonshire-highways/licences-and-business-permits/Pages/permit-scheme.aspx> ).

6.2.22 Works cannot start until the Roads and Street Works Permit Start Date.

6.2.23 The Developer shall bear all costs associated with restrictions imposed by the County Council on the availability or use of the public highway.

6.2.24 Utility enabling works associated with the Development may start before any Agreement is in place, (unless an existing Section 58 restriction is in place) but the Utility will also be required to have a valid Roads and Street Works Permit in accordance with its own statutory powers.

### 6.3 CONSTRUCTION AND VARIATIONS

**6.3.1 The Developer remains responsible for the works and the safety of all those who travel through the works and are affected by the works until the Certificate of Final Completion is issued.**

6.3.2 Upon commencement of the works, Northamptonshire Highways will make regular Inspections of the works.

6.3.3 In the case of very large developments this may require a dedicated site based Northamptonshire Highways Inspector and / or Construction Manager for which appropriate accommodation / desk space may be required. These requirements are to be discussed and agreed, at the Pre-Commencement meeting. The Northamptonshire Highways Inspector and / or Construction Manager will act as the County Council’s Engineer as referenced in the Agreement.

**6.3.4 The length of public highway under the developer’s temporary traffic management control shall be maintained by the developer to ensure that any defects which present a safety concern are attended to and repaired during the period that temporary traffic management is in place.**

6.3.5 Northamptonshire Highways do not “supervise” the works. That role, including its liabilities, rest with the Developer or their appointed Engineers.

6.3.6 The Northamptonshire Highways Inspector and / or Construction Manager will identify and inform the Developer and / or their appointed representative of any works that in their opinion fall short of the standards required or deviate from the approved plans.

6.3.7 Under the terms of the agreement the Northamptonshire Highways Inspector and / or Construction Manager may require testing of materials, including invasive testing at their discretion. Such tests must be undertaken by an independent accredited laboratory / testing organisation. The costs of all testing and interpretive work are borne by the Developer.

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6.3.8 It may be necessary for amendments or alterations to the works due to unforeseen site circumstances or conditions. Such alterations and circumstances must be brought to the attention of Northamptonshire Highways Inspector and / or Construction Manager in the first instance who may seek advice from others prior to decisions or instructions being given.

6.3.9 Upon completion of the works, a joint inspection is undertaken with the Northamptonshire Highways Inspector and / or Construction Manager (supported by whomever they require) to identify any remedial works required to bring the works up to an acceptable standard. Such works should be undertaken as soon as possible.

**6.3.10 The Developer is responsible for any decision to remove temporary traffic management or to allow the public to use a new road or new road layout in part or in full.**

6.3.11 An Interim Safety Audit and an appropriate risk assessment and consideration of the extent, significance and nature of outstanding works and above all the safety of the public and workforce should be undertaken prior to such decisions.

6.3.12 An Interim Safety Audit shall include the Safety Audit Team, (as approved by the Project Sponsor) and the review shall be attended by appropriate representatives of the Developer, the Contractor, Principal Designer and the Northamptonshire Highways Inspector and / or Construction Manager.

6.3.13 The presence of the Police may be necessary in such cases where substantial changes to a junction or road layout will be opened to public use prior to formal completion of all works. The outcome of the joint Inspection shall be recorded.

#### **6.4 STAGE 3 SAFETY AUDIT**

6.4.1 As with Stage 1 and Stage 2 Safety Audits, under HD 19/15 the County Council has the role of Project Sponsor. As such prior to the appointment of the Safety Audit team the Developer should first submit the proposed Safety Audit team details and safety Audit Brief to the County Council for approval. To facilitate this, please complete the appropriate Road safety Audit Brief form.

6.4.2 Safety Audit site meetings will be attended by the Northamptonshire Highways Inspector and / or Construction Manager (along with whomever they consider appropriate), the Police and other persons as may be agreed with Northamptonshire Highways. It is the developer's responsibility to commission the Safety Audit and organise the site visit with all of the appropriate personnel present.

6.4.3 As and when the works are considered complete by the Developer, the Developer shall notify Northamptonshire Highways and commission a Stage 3 Safety Audit. The Stage 3 Safety Audit shall be undertaken in two stages such that there is an Interim Safety Audit when the Developer considers the works are complete but before the works are opened in their final form for public use and the Developer's decision to remove temporary traffic management to "open the works".

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6.4.4 The County Council as Project Sponsor will consider the Interim Safety Audit and subsequent Designer's Response in liaison with Northamptonshire Highways and confirm what measures or works, (if any) are required to address matters raised. Such works as may be identified must be completed as soon as is practically possible as such works would be safety related.

6.4.5 Any works that may be identified by the Interim Safety Audit shall be undertaken expediently and be completed before the Developer's decision to remove temporary traffic management to "open the works" to public use.

6.4.6 This element may delay the Developer's decision to remove remaining traffic management and may extend the duration of the works. This stage should be built into the Developer's programme to avoid overrunning the duration stated on the Roads and Street Works Permit which may incur penalties

6.4.7 The Main Stage 3 Safety Audit will occur as soon as is practically possible after the works have been opened for public use. In any event such an Audit shall occur within one month of such opening.

6.4.8 The completion of all works (including any Interim Safety Audit Works and Main Stage 3 Safety Audit Works are pre-requisites (along with other matters noted in the Section 278 Agreement and these S278 Notes for Guidance) for the consideration of the issue of the Certificate of Practical Completion.

## **6.5 PRACTICAL COMPLETION**

6.5.1 The Certificate of Practical Completion will not be issued unless or until:

- All constructional works and any works identified by the Interim Stage 3 Safety Audit and Main Stage 3 Safety Audit have been completed in accordance with the agreed details;
- Where land dedication occurs that all boundaries are accurate and that Title remains with the parties dedicating the land as land is generally dedicated at this stage;
- Written confirmation from Water Companies that their infrastructure is serving its maintenance period;
- Written confirmation that any discharge consents / permissions have been complied with; and
- Street Lighting Test Certificates, (where lighting is installed); and
- Written confirmation that the Lighting Authority, (if other than the County Council) is content to adopt the lighting actually installed at the end of the Defects Correction Period.

6.5.2 The Financial Security will be reduced to 25% of the original Financial Security value upon issue of the Certificate of Practical Completion.

6.5.3 Upon issue of the Certificate of Practical Completion the works commence their Defects Correction Period.

## **6.6 DEFECTS CORRECTION PERIOD**

6.6.1 This period, also known as the "maintenance period" of no less than 24 months ensures that any latent or other constructional defects can be identified as the works would have gone through a full cycle of seasons.

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6.6.2 The Developer remains fully responsible for the length of highway affected by the works until the issue of the Certificate of Final Completion.

6.6.3 The Developer shall at its own expense execute all such works of repair reconstruction and rectification of any and all defects and imperfections and of any and all other faults arising out of defective design materials or workmanship or of any other nature whatsoever (which for the avoidance of doubt shall include all traffic damage whether accidental or otherwise) that may be required.

6.6.4 In addition, the Developer remains responsible for meeting any management and maintenance costs, for any landscaping, signals, street lighting etc. and remains responsible for all energy costs where the works have directly affected or added such equipment.

6.6.5 If any damage occurs to the works, howsoever caused, the Developer must correct / repair such damage expediently to the satisfaction of Northamptonshire Highways.

6.6.6 The developer will also be responsible for and undertake Safety Inspections on the section(s) of highway they are responsible for at a minimum frequency of monthly to identify any defects, imperfections or other faults and take appropriate action in accordance with UK Roads Liaison Board's "*Well-Maintained Highways a Code of Practice*" <http://www.ukroadsliasongroup.org/en/UKRLG-and-boards/uk-roads-board/wellmaintained-highways.cfm> ;

## **6.7 REMEDIAL, SAFETY AND EMERGENCY WORKS**

6.7.1 If during the Defects Correction Period defective works are identified of a safety or structural nature that, in the view of Northamptonshire Highways are Urgent, such works should be undertaken as a matter of urgency by the Developer. In such cases, the Developer should arrange for any temporary traffic management / signage to be erected within 24 hrs of the issue being raised and the issue be rectified to Northamptonshire Highways satisfaction within five working days or other such timescale as may be agreed in writing with Northamptonshire Highways.

6.7.2 In emergency situations where there is immediate danger to highway users or potential for the interruption of the free flow of traffic, Northamptonshire Highways will notify the Developer but will undertake remedial / safety works as may be required to make the works safe and available for use. Any costs incurred undertaking such works will be charged to the Developer.

6.7.3 Such works will be to avoid immediate danger to the public or property and would be undertaken on a non-prejudicial basis. Permanent repair / rectification to the satisfaction of Northamptonshire Highways shall then be undertaken by the Developer / Developer's Contractor within 5 working days of the incident or other such time period as may be agreed in writing with Northamptonshire Highways.

6.7.4 Failure to adhere to agreed timescales could result in appropriate legal action against the Developer and other parties to the Agreement and in extreme circumstances determination of the Agreement with all costs recovered.

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## 6.8 STAGE 4 SAFETY AUDIT

6.8.1 As and when the Defects Correction Period has expired, the Developer shall arrange for a Stage 4 Safety Audit to be undertaken with an associated Designer's response. As before the County Council as Project Sponsor will be involved in approving the Safety Audit team and Safety Audit Brief.

6.8.2 The Stage 4 Safety Audit shall also include the review of a minimum of 12 months accident data. Such data is available from Northamptonshire Highways. Please note that it may take up to 3 to 4 months for data to be recorded by Northamptonshire Highways after an accident.

6.8.3 The Stage 4 Safety Audit site meeting will include the Northamptonshire Highways Inspector and / or Construction Manager (along with whomever they consider appropriate), the Police and other persons, as may be agreed with Northamptonshire Highways.

6.8.4 Such an Audit reviews the operation and safety record of the works during the Defects Correction Period. The County Council as Project Sponsor will consider the Stage 4 Safety Audit and subsequent Designer's Response and confirm what measures or works, (if any) are required to address matters raised. Such works as may be identified must be completed, as soon as is practically possible as such works would be of a safety related.

## 6.9 FINAL COMPLETION

6.9.1 Upon completion of the Defects Correction Period, a joint inspection is undertaken with the Northamptonshire Highways Inspector and / or Construction Manager, (supported by whomever they require) to identify any remedial works that may be required to ensure the works are up to an acceptable standard. Such works should be undertaken as soon as possible. (Works identified by a Stage 4 Safety Audit must also be undertaken as soon as is possible after they are identified).

6.9.2 The Certificate of Final Completion will not be considered unless or until all constructional works and any works identified by the Safety Audit(s) have been completed in accordance with the agreed details. A further joint meeting may be required to confirm that all required works are complete.

6.9.3 In addition, and for the avoidance of doubt, the Certificate of Final Completion will not be issued unless or until the following documentation / work has been submitted and accepted by Northamptonshire Highways: -

- As Built Drawings, (the original Approved drawings updated to reflect as constructed works);
- Health and Safety File and completed CDM forms;

Such files are a legal requirement for such works and should be updated with a copy submitted when all works have been completed and just prior to the issue of the Certificate of Final Completion. A standard Health and Safety File Pro-Forma is available on request;

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- Post Construction Inventory;

Northamptonshire Highways collects asset inventory data for all new developments for highway maintenance purposes. This survey will be undertaken after all works and any required corrective works have been completed. A separate fee is chargeable for this.

As an alternative, the Developer may choose to undertake this inventory survey at its own cost and to provide data to meet the specification requirements of Northamptonshire Highways. A Section 278 Agreement - Post Completion Inventory Pro-Forma is available on request;

- Certificates of Vesting, (for drainage or street lighting where Northamptonshire County Council is not the adopting Authority);
- Up to date Street Lighting Test Certificates, (where Street Lighting is proposed irrespective of adopting authority);
- Balfour Beatty Living Places approval, (for where street lighting is proposed and the County Council is Lighting Authority and has agreed to adopt);
- Lighting Authority Approval and letter of adoption, (where the County Council is not the Lighting Authority);
- All temporary signage indicating "New Road Layout Ahead" etc. including any supporting posts, (where such posts only support such signage) have been removed with appropriate reinstatements; and
- Commuted Sums paid

6.9.4 Upon issue of the Certificate of Final Completion, the developer has no further obligations or liabilities under the Agreement apart from the on-going liability to indemnify the County Council regarding Land Compensation Act 1973 claims.

Structural Approval Process

