

Highways Guidance Note

Section 38 Agreements for Highway Adoptions

March 2024 (Version 3)

This highways guidance note.....	1
Background information.....	3
Seven steps to highway adoption	6
Step 1 – Preliminary enquiry.....	10
Step 2 – Highways technical approval: Application and validation	10
Step 3 – Highways technical approval: Highways technical review	13
Step 4 – Section 38 agreement.....	17
Step 5 – Construction	22
Step 6 – Provisional certificate and maintenance period.....	24
Step 7 – Final certificate and adoption	26
Annex A – Summary of preconditions	27
Annex B – Preconditions for highways technical approval	30
Annex C – Applications for highways technical approval.....	36
Annex D – Section 38 agreements.....	47
Annex E – Provisional certificates.....	50
Annex F – Final certificates	52
Further information, comments, and queries.....	54

This highways guidance note

Introduction

1 In this highways guidance note **we** explain how to use a **section 38 agreement** to get new **streets** adopted by **us** as **publicly maintainable highways**. It tells you how to apply to **us** for a **section 38 agreement**, what information and documents you should include in your application, the fees **we** will charge you, and how long **we** expect it to take.

Technical requirements

2 **We** do not set out in this highways guidance note any technical requirements for new roads or paths.

Intended use and limitations

3 **We** wrote this highways guidance note mainly to help developers, but it will also be used by **our highways** teams.

4 The information **we** give here about the law is only an overview. It is based upon **our** understanding of the law and only applies within the Borough of Kirklees. You should not use it as an alternative to independent legal advice.

Implementation

5 This guidance note applies to all applications for **highways technical review** submitted on or after 1 April 2024.

In this highways guidance note we use these definitions

APC or Advance Payments Code

- The **APC** or **Advance Payments Code** is part of the law covering **highways** and other **streets**. It can be found in **sections 219 to 225** of the **Highways Act 1980**.

commuted sum

- A **commuted sum** is a sum of money paid to **us** at the time a **street** is adopted as **publicly maintainable highway** to cover the disproportionate future costs of managing and maintaining expensive or unusual features such as structures or soakaways.

CDM Regulations, the

- The **CDM Regulations** are **The Construction (Design and Management) Regulations 2015**.

highway

- A **highway** is a **street** over which the public has a right to travel, sometimes called a right to pass and repass.

highways technical approval

- **We** give **highways technical approval** to proposals if **we** have thoroughly reviewed them and consider that they are acceptable to **us**, as the local **highway** authority.

highways technical review

- A **highways technical review** is a formal, thorough review that **we** do when deciding whether to give **highways technical approval** to proposals for new roads and paths or for works to existing **highways**.

incumbent sewerage undertaker

- The **incumbent sewerage undertaker** is the company appointed by **Ofwat** as the sewerage undertaker for Kirklees, this is currently Yorkshire Water.

NAV or new appointment or variation

- A **NAV** or **new appointment or variation** is a company appointed by **Ofwat** as the sewerage undertaker for a defined area in place of the **incumbent sewerage undertaker**.

our/ours

- Kirklees Council's.

PROW or public right of way

- A **PROW** or **public right of way** is a footpath, cycle track, bridleway, or other **highway** that the public have a right to use providing that they don't use motor vehicles on it.

publicly maintainable highway

- A **publicly maintainable highway** is any **highway** that **we**, as the local **highway** authority, are legally obliged to maintain.

public sewer

- A **public sewer** is any sewer that either the **incumbent sewerage undertaker** or a **NAV**, is legally obliged to maintain.

RSA or road safety audit

- An **RSA** or **road safety audit** is a formal way of thoroughly assessing the road safety aspects of proposals for new **highways** or alterations to existing ones.

section 106 planning obligation

- **Section 106 planning obligations** are agreements or 'unilateral undertakings' (promises) made under **section 106** of the **Town and Country Planning Act 1990** in connection with planning permission for a proposed development. **We** say more about these in paragraphs **D14** to **D21**.

section 38 agreement

- **Section 38 agreements** are made between **us** and developers under **section 38** of the **Highways Act 1980**. Using them, **we** and developers agree that, if the developer builds the **streets** to the agreed layout and standard, **we** will adopt them as **publicly maintainable highways**.

street

- In normal use, a **street** is a road in a built-up area with, typically, houses or other buildings along it. However, **we** use the same definition as the **Highways Act 1980**. This says a **street** is the whole or part of any **highway**, road, lane, footway, alley, passage, square, court, or any other land laid out as a way, whether or not it is a thoroughfare and even if it is not made up as a **street**.

taking over costs

- **Our taking over costs** are the costs to **us** if **we** have to take over the construction of the **streets** within a development and have to pay for the administration, legal, design, and construction work required. **We** say more about these in paragraphs **48** to **51**.

we/us/ourselves

- Kirklees Council.

Definitions

6 In this highways guidance note **we** use the definitions given in the box on the previous page.

Previous version

7 This is the third version of this highways guidance note. It replaces the one **we** issued in March 2022, which **we** have withdrawn.

Changes from previous version

8 Wherever **we** have made a significant change from the previous version, **we** have highlighted it with a vertical line to the right of the affected text.

9 The main changes **we** have made are:

- **We** have introduced a new system of classifying structures to make it easier for you to see which ones will need to be approved by **us**.

- **We** have increased the non-refundable first instalment of **our** fee to £1,500 – the first increase in the five years since we introduced the system of instalments – to account for inflation and to better reflect the amount of work **we** now know is required during Step 2 (**Highways technical approval: Application and validation**).

- **We** have introduced a minimum amount of £2,500 for the second instalment of **our** fee to cover the amount of work **we** have to do on all developments regardless of their size during Step 3 (**Highways technical approval: Highways technical review**).

- **We** have changed how **we** determine whether a top-up fee is payable.

- **We** have clarified what it means to get **highways technical approval** and what then needs to be done to get a **section 38 agreement**.

Background information

Section 38 agreements and publicly maintainable highways

Section 38 agreements

10 **Section 38 agreements** are made between **us**, as the local **highway authority**, and you as a developer. Using them, **we** may agree with you that if you build a new **street** to an agreed layout and standard, **we** will adopt it as a **publicly maintainable highway**. As these agreements are made under **section 38** of the **Highways Act 1980**, they are legally enforceable.

11 **Our section 38 agreements** allow **us** to take over and complete the works required if you do not finish them within the time allowed. They include a bond or surety to cover **our** costs of doing this. **We** say more about how **we** calculate these **taking over costs** in paragraphs 48 to 52.

Publicly maintainable highway

12 When **we** adopt **streets** as **publicly maintainable highways**:

- the **streets** become available for the public to use whenever they want, and it becomes an offence to obstruct anyone trying to use them

- **we** take on liability for the safe operation of the **streets** and any associated drainage or **street lighting** and become responsible for their ongoing maintenance and repair

13 If **we** adopt a **street**, then neither you, as the developer, nor any frontagers would have any responsibility to maintain it. Obviously, this is very attractive to developers and to anyone wishing to buy a property on a new development.

Highways technical approval

14 When **we** adopt **streets** as **publicly maintainable highways**, **we** take on a very onerous responsibility. Accordingly, **we** need to be sure when agreeing to developers' proposals for new **streets**, works on existing **highways**, or developments that might affect existing or proposed **highways** that they would be fit for purpose for the years ahead.

15 To make sure that new **streets** in developments and related works to existing **highways** will be acceptable, **we** require them to have **highways technical approval**.

Highways technical review

16 Before **we** will give **highways technical approval** to proposals for new **streets** or related works to existing **highways**, **we** review them to make sure that they are acceptable. **We** call this review a **highways technical review**.

More information

17 **We** have prepared a highways guidance note *Highways Technical Approval*. In this **we** give more information about what the law obliges **us** to consider when **we** make decisions about proposals for new **publicly maintainable highways**, works to existing **publicly maintainable highways**, or developments that might affect existing or proposed **publicly maintainable highways**. It is available on [our highway adoptions webpage](#).

Streets that we will adopt

18 **We** will only adopt new **streets** if they have been suitably designed and constructed. In addition, if any features of a new **street** would be disproportionately expensive to maintain, **we** wouldn't adopt it unless **we** had been paid in advance a **commuted sum** to cover **our** extra maintenance costs.

19 In general, **we** will adopt:

- **Streets** serving more than five residential properties
- In some situations, **streets** within large industrial or commercial developments
- Parts of the accesses to large, individual properties – such as factories, supermarkets, or blocks of flats – where it is in the public interest for the entrance 'bellmouth' to be entirely within the **publicly maintainable highway**

20 **Our** highways guidance note *Highway Adoptions Criteria* explains what **we** will or will not adopt. This is available on [our highway adoptions webpage](#).

The Construction (Design and Management) Regulations 2015

Introduction

21 **The CDM Regulations** cover the way developments are designed and constructed. Their aim is to

make sure that construction projects are safe to build, use, and maintain while offering developers good value. They try to reduce dangers to employees and members of the public by designing out hazards and ensuring that construction projects are suitably managed and maintainable for the future.

22 Guidance on **the CDM Regulations** is available from the **Health and Safety Executive (HSE)** and the **Construction Industry Training Board (CITB)**. See:

- [HSE CDM guidance](#)
- [CITB CDM guidance](#)

Application to highway adoptions in Kirklees

23 **We** expect all proposals for new **publicly maintainable highways**, works to existing **publicly maintainable highways**, or developments that might affect existing or proposed **publicly maintainable highways** to be designed and built in accordance with **the CDM Regulations**. If, at any time, **we** thought that a developer wasn't complying with their legal obligations under **the CDM Regulations**, then **we** might decide that it would be unacceptable to have a **section 38 agreement** with them.

24 **We** have prepared a highways guidance note *Highway Adoptions and the CDM Regulations*, which gives more information on how **the CDM Regulations** affect **highway** adoptions in Kirklees. This is available on [our highway adoptions webpage](#).

Road user safety

25 As the local **highway** authority for Kirklees, **we** have to assess how new **streets** might affect the safety of users. **We** do this by requiring that **road safety audits (RSAs)** be done at various stages of a development's progress. In **RSAs**, the road safety implications are formally assessed or 'audited' by qualified and experienced experts who are not involved with the design and are independent of the designers.

26 **Our** requirements for **RSAs** are based upon those of National Highways (formerly Highways England) in the **Design Manual for Roads and Bridges** document **GG 119 – Road Safety Audit**.

27 **GG 119** covers **RSAs** at four different stages. **We** apply these as follows:

- **Stage 1** – ‘Completion of preliminary design’ (application for planning permission)
- **Stage 2** – ‘Completion of detailed design’ (application for **highways technical approval**)
- **Stage 3** – ‘Completion of construction’ (application for a ‘provisional certificate’)
- **Stage 4** – ‘Post-opening monitoring’ (application for a ‘final certificate’)

Stage 4 RSAs

28 Only some developments will require a stage 4 **RSA**; most won’t. **We** will require one if, during **our highways technical review**, it becomes clear that part of your proposal is so complex or unusual that it should be reassessed after it has been in use for a while.

29 It is unlikely that a residential development would include any features sufficiently complex or unusual to require one.

RSA documentation

30 In line with **GG 119**, **we** require that:

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

RSA audit teams

31 **We** insist that audit teams are independent of the design teams: they may not include anyone involved with the design.

Our RSA services

32 **Our** road safety team can do **RSAs** for you. If you wish to use this service, you should contact **our** highway adoptions team.

Review and feedback

33 When **we** liaise with you, **we** will often give advice or make suggestions. When **we** do this, **we** will aim to use reasonable, professional skill and care. In addition, **we** will often be a ‘designer’ for the purposes of **the CDM Regulations**. Therefore, **we** will comply with **our** legal duties and will pay careful attention to safety- and health-related matters. However, **we** will not usually consider aspects of the development unrelated to the proposed **highway** works. Neither will **we** usually know your proposed programme or methods of working.

Planning permission and highway adoptions

Implications of getting planning permission

34 As **we** take on such an onerous responsibility, when **we** review proposals for new **publicly maintainable highways**, **we** will look at them in much greater detail than when assessing an application for planning permission. Accordingly, if you get planning permission for a proposed **street**, it doesn’t mean that it will automatically be suitable for adoption as **publicly maintainable highway**.

Implications of highways technical approval

35 **We** do not insist that you get planning permission for proposed developments before **we** will give them **highways technical approval**. If you don’t, and **we** give your proposals **highways technical approval** first, then it doesn’t mean that they will automatically get planning permission.

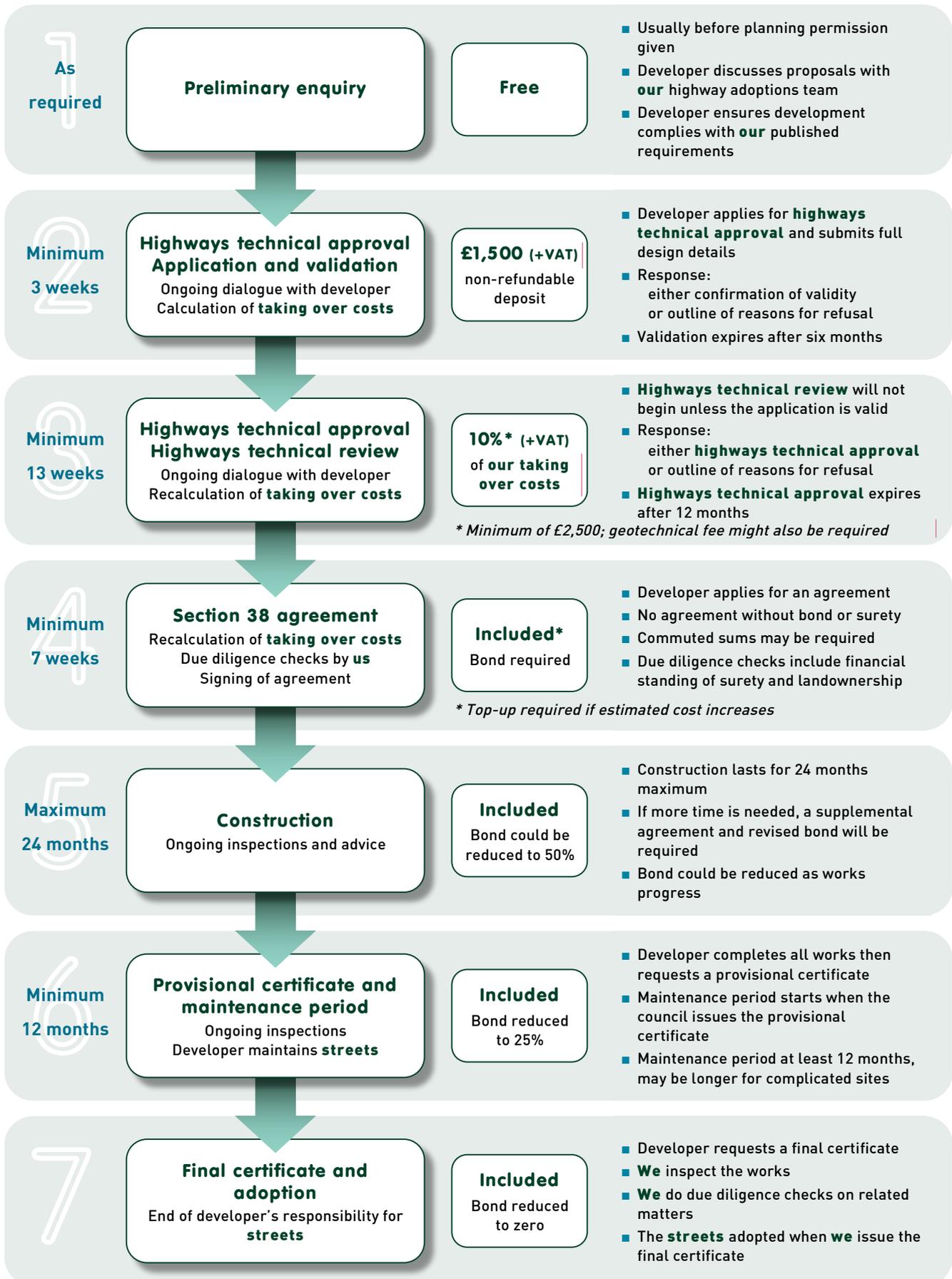
Your aim: planning permission and highways technical approval

36 When you design new **highways** that you would like **us** to adopt, you should bear in mind that you will have to get both planning permission and **highways technical approval**.

Our advice

37 If you follow the advice given by **our** highway adoptions team, then getting **highways technical approval** should follow on smoothly from getting planning permission.

Flow chart 1 – The seven steps to highway adoption



Seven steps to highway adoption

Introduction

38 If you want to get a **highway** adopted by **us** using a **section 38 agreement**, then there are seven steps that you need to complete. **We** show these in **Flow chart 1** (previous page) and outline them in the following paragraphs.

Our fees

39 **We** charge a fee for adopting new **streets** using a **section 38 agreement**. This is to cover **our** costs of doing the **highways technical review**, preparing the **section 38 agreement**, inspecting your works on site, and giving general support to you as the developer.

Our fees and our taking over costs

40 **Our** fees are based on **our** estimated **taking over costs**, which are **our** costs if **we** have to take over the construction of the proposed **streets**. **We** say more about **our taking over costs** in paragraphs **48** to **51**.

Instalments

41 As **we** show in **Table 1** (page **8**), **we** usually charge **our** fee in two instalments:

- **First** – a non-refundable deposit of £1,500, payable at the start of step 2 (**Highways technical approval**: Application and validation)
- **Second** – a main payment of 10% of **our** estimated **taking over costs**, payable at the start of Step 3 (**Highways technical approval**: **Highways technical review**)

However, if 10% of **our** estimated **taking over costs** is less than £2,500, **we** will charge you a minimum of £2,500.

Third instalment: Top-up

42 Occasionally, **we** will require a third instalment as a top-up. This is because **we** calculate **our** fee before **our highways technical review**. During **our highways technical review**, the design of

the proposed development can change. These changes can then increase **our taking over costs**.

43 At the end of **our highways technical review**, **we** will recalculate **our** estimated **taking over costs**. If they have increased, then **we** will charge a top-up instalment of 10% of the increase, which will have to be paid before **we** will prepare the **section 38 agreement**. However, if they have decreased, **we** won't pay a refund.

Risk-based geotechnical fees

44 In some cases, **we** need to get specialist advice before **we** can assess the risks to **us** from the geotechnical elements of your proposals. **We** usually get this from colleagues in Leeds City Council. However, they are currently reviewing the service they can provide, so **we** might have to change to using different advisors. When we use specialist advisors, they usually charge **us** a risk-based fee. When they do, **we** pass it on to you. **We** say more about this in paragraphs **74** to **78**.

Telling us you've paid an instalment

45 As soon as you've paid **us** an instalment of **our** fee, you should phone **our** highway adoptions team and tell them. (See the back page for **our** phone number.) If you don't tell **our** highway adoptions team, it might delay **us** starting work on your proposals. Once you've phoned **our** highway adoptions team, they will check with **our** finance team whether **we** have received your payment.

Payment dates and timings

46 When **we** work out how long it takes to deal with applications, **we** usually take the days on which **we** receive your payments as the starting points. If you don't phone **us** straight away to tell **us** you've paid, **we** might have to take the date on which you do phone **us** as the starting point.

Value added tax

47 Value added tax (VAT) is payable on **our** fees.

Table 1: Fee instalments

Instalment	Step	Amount ^A
First – Non-refundable deposit	■ 2 – Highways technical approval : Application and validation	■ £1.500
Second – Application for highways technical review	■ 3 – Highways technical approval: Highways technical review	■ 10% of our estimated taking over costs ^B
Third – Top-up ^C	■ 4 – Section 38 agreement	■ 10% of the increase in our estimated taking over costs

^A VAT is payable on the fee.

^B **Our** minimum fee is £2,500; see paragraph 41.

In some cases, you will have to pay an additional risk-based geotechnical fee; see paragraph 44.

^C Only payable if **our** estimated **taking over costs** have increased since step 2; see paragraphs 42 and 43.

Our taking over costs

Introduction

48 If **we** have to take over the works from a developer, it is highly unlikely it would be a seamless handover. The most common reason for **us** to complete proposed **streets** is the bankruptcy of the developer.

Coverage

49 If a developer goes bankrupt, the appointed administrators will first try to find someone to take over the development. If they are successful, **we** will encourage the new developer to complete the works. However, if the administrators cannot find someone, then **we** might end up taking over the construction of the **streets** in a partly finished development that has been neglected for some time.

50 If **we** have to take over the construction of the **streets** in a partly finished development, it is unlikely that **we** would only have to pay to finish the outstanding work. Briefly, **we** might have to pay for the following:

- Negotiation with the administrators
- Negotiation with the surety provider or bond holder
- Legal work to enforce the **section 38 agreement**

- Making safe any partly constructed **streets**
- Providing safe, temporary access to any already occupied properties
- Survey, inspection, and assessment of any works already undertaken
- Design of any remedial and outstanding works required
- Preparation of a construction contract
- Selection and appointment of a new contractor
- Removal or repair of damaged or dilapidated works
- Construction of the outstanding works
- Supervision of the new contractor
- Inspection of the new works

This means that **our** estimated **taking over costs** are usually much higher than developers' expected construction costs.

Calculation

51 **We** calculate **our** estimated **taking over costs** using standard rates for different types of **streets**. This ensures that **we** treat all developers in the same way.

Fees, bonds, and sureties

52 As **we** say in paragraph 40, **we** use **our** estimated **taking over costs** when calculating **our**

fees. In addition, in **our section 38 agreements**, the value of the bond or surety **we** require is **our** estimated **taking over cost**.

Preconditions

53 For some of the seven steps, you or your development have to meet various preconditions before they can be completed. **We** summarize these in **0** and discuss them in more detail in the paragraphs about each step.

Applications for next steps

54 If you apply for **highways technical approval** or a **section 38 agreement** or request a provisional or final certificate, you should do so by email. **We** insist that you use email as it is quicker, easier, and cheaper to monitor, share, and file digital documents. **We** will not accept printed applications.

Submitted documents

General requirements

55 Some of the seven steps require you to send **us** documents. All of these – including drawings, reports, calculation sheets, field notes, and test results – should comply with **our** requirements, which **we** have set out in **our** highways guidance note *Requirements of Submitted Documents*. This is available on **our highway adoptions webpage**.

56 When you send **us** documents, these should be in portable document format (PDF) and should be sent to **us** by email or a suitable file transfer service. **We** will not accept printed documents. Neither will **we** accept digital documents submitted on compact discs (CDs), external flash drives, memory cards, or similar.

Copyright

57 To make it easier for **us** to share documents with those who need to see them, you should ensure that the copyright holder of any document you send **us** will allow **us** to reproduce or distribute it – including to third parties – as **we** see fit.

Designated contacts and document control

58 As they progress through the seven steps, most proposed developments will change and evolve. In addition, most developments will involve a variety of different organizations. Even on small developments, it is quite common, for example, for the developers, architects, **highway** engineers, and drainage engineers to be separate organizations. This means that there is a serious risk that **we** could end up making decisions on incorrect or out-of-date information.

Single points of contact

59 To help prevent **us** making decisions on incorrect or out-of-date information:

- You should designate a single point of contact for all **highway** adoption matters and should ensure that they are informed of any changes.
- **We** will only consider those documents that you specifically send **us** for **highway** adoption purposes.
- You should make sure that all the documents you send **us**, including drawings, are dated and bear a unique identifying reference number or similar.

60 Once you have sent **us** an application for **highways technical approval** for a development, **we** will allocate a named case engineer, who will be **our** single point of contact for all **highway** adoption matters relating to the development.

Personal data

61 You should not send to **us** any 'personal data' – as defined in the **General Data Protection Regulation** (GDPR) – unless:

- **we** require it for one of the steps; and
- you can prove that you have the consent of the subject of that data.

62 Personal data includes such things as:

- Home phone numbers
- Names of the residents of specific properties
- Personal email addresses

63 Information about the GDPR is available from the **Information Commissioner's Office** (ICO). See

the ICO's [Guide to the General Data Protection Regulation](#).

Step 1 – Preliminary enquiry

Early discussion

64 If you are thinking of getting a **street** adopted by **us** as **publicly maintainable highway**, then you should start discussions with **our** highway adoptions team as early as possible, even before planning permission has been applied for or land has been acquired.

65 Early discussions can make it easier for you to get a **section 38 agreement**, for your proposed **streets** to be adopted, and for you to avoid abortive work.

Pre-application enquiries

66 As part of **our** development control work, **we** offer a pre-application planning advice service. This allows you to get advice from **our** planning officers

about a proposed development without having to apply for planning permission. **Our** aim when offering this service is to make it easier for you to address any potential problems early on, reducing the likelihood of you submitting invalid planning applications.

67 **Our** planning officers will consult **our** highway adoptions team about any proposed developments that include new **highways** or works to existing ones.

Design

68 If you are looking to get new **streets** adopted by **us** as **publicly maintainable highways**, you should ensure that the new **streets** – and the layout of the rest of your proposed development – conform to good practice and **our** requirements, which **we** have set out in **our** highways guidance note *Requirements of New and Improved Roads and Paths*. This is available on [our highway adoptions webpage](#).

Step 2 – Highways technical approval: Application and validation

Highways technical approval

69 **We** have a formal process for granting **highways technical approval** to proposed developments. This comprises two of the seven steps:

- **Step 2 – Application and validation**
- **Step 3 – Highways technical review**

Our preconditions for highways technical approval

70 Your proposals have to meet certain preconditions before **we** will give them **highways technical approval**. **We** give a summary of these in **0** and explain them in more detail in [Annex B](#).

Planning permission

71 Further to what **we** say in paragraph **35**, **we** do not insist that you get planning permission for proposed developments before **we** will give them **highways technical approval**. But, if **we** give your proposals **highways technical approval** and later on you change them to get planning permission, the existing **highways technical approval** might not still be appropriate. If this is the case, you might have to make a fresh application for **highways technical approval**.

Existing planning permission

72 Usually, development proposals will get planning permission before **highways technical approval** is applied for. If this is the case with your proposals but you then change them to get **highways technical approval**, you should check that

your changed proposals still comply with the planning permission.

Advice on planning permission and highways technical approval

73 Our highway adoptions team cannot give advice on how changes to proposed developments might affect existing planning permission. Likewise, our planning officers cannot give advice on whether changes to a proposed development might affect an existing **highways technical approval**.

Geotechnical risk

Assessment

74 Our **highways technical review** will include an assessment of the risks to us from the geotechnical elements of your proposals. In some cases, we need to get specialist advice before we can do this. As we say in paragraph 44, we usually get this advice from our colleagues in Leeds City Council but we might have to change to using different advisors.

Risk classes and fees

75 Currently, Leeds City Council charge us a fee for the work they do. This fee is based upon the 'risk class' that we give to proposals. We use three risk classes: 'high', 'medium', and 'low'. We give the fees for each of these in **Table 2** (above right). If we change to using different advisors, then we might have to change the risk classes we use and the related risk-based fees for each class.

76 We will tell you the geotechnical risk class for your proposals and the appropriate risk-based fee when we tell you whether your application is successfully validated.

77 Although our advisors will bill us for the fee, you will have to pay it. We do not expect you to do this during our validation of your proposals. Instead, you will have to pay it before we do our **highways technical review** in step 3.

Validation

78 We say more about our validation of your proposals in paragraph 86.

Table 2: Risk-based geotechnical fees

Risk class	Fee
Low	■ None
Medium	■ £2,500
High	■ £6,000

Structures

Risks

79 As part of our **highways technical review**, we will assess the risks to us from the structures on your proposed development. Even if you are not proposing that we adopt any new structures, there might be structures which, if they failed, could damage a **highway** or affect the safety of **highway** users.

Our classification

80 So that we can assess the risks to us from the structures on your proposed development, we divide proposed structures into four types. These are:

- Adoptable **highway** structures
- Retaining walls covered by **section 167** of the **Highways Act 1980** (we say more about these in paragraphs **B35** and **B36**)
- Structures that span, oversail, or overhang a **publicly maintainable highway** (we say more about these in paragraph **B38**)
- Other critical structures that – if they fail – could damage a **highway** or affect the safety of **highway** users

81 Before you apply for **highways technical approval**, you should review the structures on your proposed development and work out whether any of them are of the above types. If any are, then you should list them in your application for **highways technical approval** and say which type each one is.

Highway structures approval

82 If your proposals include any structures of the types described in paragraph 80, then they will require formal **highway** structures approval (usually known as approval in principle or AIP) from our

highway structures team. **We** say more about this in paragraphs **B33** to **B46**.

Fees

83 **We** usually charge a fee for assessing structures.

How to apply for highways technical approval

84 If you want to get new **streets** adopted by **us** as **publicly maintainable highways**, then, once you have designed them to conform to good practice and **our** highways guidance note *Requirements of New and Improved Roads and Paths* (available on [our highway adoptions webpage](#)) and you have made sure the other the preconditions have been met, you should apply to **us** for **highways technical approval**.

85 To apply for **highways technical approval**, you should:

- email your application – which should comply with **Annex C** – to **our** highway adoptions team
- pay **us** the non-refundable, first instalment of the fee
- phone **our** highway adoptions team to say that you have paid the fee and have applied for **highways technical approval**

Once you've phoned **our** highway adoptions team, they will check with **our** finance team whether **we** have received your payment.

Validation

86 Once **our** finance team has confirmed that **we** have received your payment, **we** will start to 'validate' your application. In other words, **we** will check whether it includes all the information and documents that **we** usually need to do a **highways technical review** of your proposals. However, **we** won't start **our highways technical review** at this stage.

If your application is successfully validated

Calculation of our estimated taking over costs

87 If your application is valid, **we** will calculate **our taking over costs**. **We** say more about **our taking over costs** in paragraphs **48** to **51**.

Formal notification

88 **We** will formally tell you by email that **we** have validated your application. In this email **we** will also tell you:

- How much you will have to pay as the second instalment of the fee
- **Our estimated taking over costs**
- The geotechnical risk class for your proposals and the appropriate risk-based fee that you will have to pay

89 You should not rely on any purported validation given verbally or informally.

Meaning of validation

90 Validation means that you have given **us** all the information and documents that **we** usually need to do **our highways technical review** of your proposals. It does not mean that:

- **we** will not have to ask you for any additional information or documents
- your proposals are acceptable

Expiry

91 The validation of your application will expire six months from when **we** send you the formal notification email. After this time, if you still want to continue with your proposals, you should get in touch with **our** highway adoptions team. Usually, you will have to pay a new fee to get your application revalidated.

If your application is not validated because it's incomplete

What will happen next

92 If your application is not validated because it's incomplete:

- **We** will tell you what additional information or documents are required.
- **We** will continue to help you submit the required information or documents.
- You should supply any additional information or documents within three weeks of being asked.
- **We** will aim to check any additional information or documents within three weeks of receiving them.
- **We** will not check any additional information or documents received later than 12 weeks after you paid **us** the first instalment of the fee.

If your application is still not valid

93 If your application is still not valid 12 weeks after you paid **us** the first instalment of the fee, **we** will reject it. If **we** do this, **we** will not refund your fee.

Formal notification

94 **We** will formally tell you by email if **we** reject your application because it is not valid.

New application

95 If **we** reject your application but you want to continue with your proposals, you will have to make a new application.

96 Before making any new application, you should try to meet **our** highway adoptions team to find out what was wrong with your rejected one and how to make your new one acceptable.

Total time taken

97 From when you pay **us** the first instalment of the fee, **we** will aim to formally tell you by email whether your application is valid:

- within three weeks, if your application is valid
- within 15 weeks, if **we** are rejecting your application because it is incomplete and additional information or documents are still required

Step 3 – Highways technical approval: Highways technical review

Validation and fees

98 **We** will not do **our** highways technical review of your proposals unless:

- your application has been successfully validated
- you have paid **us** the second instalment of the fee
- you have paid **us** the appropriate risk-based geotechnical fee

99 If you do not pay both the second instalment of the fee and the appropriate risk-based geotechnical fee before the validation expires, then, as **we** say in paragraph 91, you might have to pay a new fee to get your application revalidated.

100 Once you have paid **us** the second instalment of the fee and the appropriate risk-based geotechnical fee, you should phone **our** highway adoptions team and tell them. If you don't tell **our** highway adoptions team, it will delay your application. Once you have phoned, **our** highway adoptions team will

check with **our** finance team whether **we** have received your payment.

The Advance Payments Code (APC)

101 The **APC** is part of the law covering **highways**. It is set out in **sections 219 to 225** of the **Highways Act 1980**. It mainly covers 'private **streets**', that is **streets** that aren't **publicly maintainable highways**.

102 The purpose of the **APC** is to make sure that, where buildings are built on an unmade or private **street**, **we** will have the money **we** will need if **we** have to step in and make the **street** up to a suitable standard. This is to ensure that residents or occupiers can get to their premises, that the fire, police, or ambulance services can get access in emergencies, and that the premises can be serviced.

APC notices and deposits

103 If a proposed building in Kirklees is given building regulations approval and it will be on a private **street**, then, for most types of building, **we** are legally obliged under the **APC** to issue an '**APC** notice' to the person or body that was given the building regulations approval.

104 The **APC** notice is the official way that **we** say how much money has to be paid to **us** as an **APC** deposit so that **we** will have the money needed if **we** step in to make the **street** up to a suitable standard.

105 Once **we** have issued an **APC** notice, it is a criminal offence for anyone to start work erecting the **building** – or even making the site ready for it – unless the landowner of the site first of all does one of the following:

- makes sure that someone pays **us** the **APC** deposit
- makes sure that someone gives a security to cover the amount of the **APC** deposit
- enters into a **section 38 agreement** with **us** for the private **street**

Section 38 agreements and the APC

106 If a **section 38 agreement** is signed after **we** have issued an **APC** notice for a **street**, **we** will cancel the **APC** notice. **We** will then refund any **APC** deposit paid or release any security given.

107 When **we** refund an **APC** deposit, **we** will give it to the landowner of the site of the **building** that was given the building regulations approval, even if they didn't pay the **APC** deposit, and even if the land has been sold since the **APC** deposit was paid.

108 When **we** release a security given to **us** instead of an **APC** deposit, it gets complicated and depends upon whether you have sold the site or not. **We** explain this in more detail in **our** highways guidance note *Private Streets and the Advance Payments Code*.

More information

109 **We** give more information about the **APC** in **our** highways guidance note *Private Streets and the Advance Payments Code*. This is available on [our highway adoptions webpage](#).

Our case engineer

110 Once **our** finance team has confirmed that **we** have received your payment, **we** will assign a case engineer to your proposals.

111 **Our** case engineer will:

- do **our highways technical review** of your proposals
- be **our** single point of contact for all **highway** adoption matters relating to the proposals

112 The first task of **our** case engineer will be to introduce themselves to you.

Geotechnical risk assessment

113 As **we** say in paragraphs **74** to **78**, sometimes **we** ask external advisors to assess the risks to **us** from the geotechnical elements of your proposals. If **we** do, then they might contact you during **our highways technical review**. If they do, you should cooperate with them and give them any drawings or other information that they need. If you do not, then **we** might be unable to complete **our highways technical review** of your proposals.

Structures assessment

114 As **we** say in paragraphs **79** to **83**, some proposed structures – even some that aren't going to be adopted – will require formal **highway** structures approval (usually known as approval in principle or AIP) from **our highway** structures team.

115 As part of your application for **highways technical approval**, you should have sent **us** a list of structures requiring separate **highway** structures approval. If you didn't, or if you sent **us** an incomplete or incorrect list, then you might delay **our highways technical review** of your proposals.

Highways technical review

116 **We** aim to complete **our highways technical review** of your proposals within 13 weeks of you paying **us** the second instalment of the fee.

117 As part of **our highways technical review**, **we** will decide:

- the length of the contract period for the **section 38 agreement**
- the minimum length of the maintenance period required for the **section 38 agreement**
- whether the complexity of your proposals means that a stage 4 **RSA** is needed
- which features of your proposals, if any, will require **commuted sums** to cover their ongoing management and maintenance and how much these will be
- which features of your proposals, if any, will require operation and maintenance manuals

Commuted sums and operation and maintenance manuals

118 **We** usually require **commuted sums** and operation and maintenance manuals for any of the following that are to be adopted as part of the **publicly maintainable highway**:

- Drainage flow control devices
- Flooding or water level monitoring or warning systems
- Ground gas monitoring, venting, or control systems
- Infiltration ponds
- Soakaways
- Structures
- Swales

119 **We** say more about **commuted sums** in paragraphs **167** to **173**.

Acceptable proposals: highways technical approval

120 If your proposals are acceptable, **we** will give them **highways technical approval**. **We** will then recalculate **our** estimated **taking over costs**. This will be the value of the bond or surety required for the **section 38 agreement**.

Third instalment of the fee

121 As **we** say in paragraphs **42** and **43**, if **our** estimated **taking over costs** have increased since **we** calculated them at validation, then you will have to

pay **us** a third instalment of the fee before **we** will enter into a **section 38 agreement**.

Formal notification

122 When **we** give your proposals **highways technical approval**, **we** will formally tell you by email.

123 You should not rely on any purported approval given verbally or informally.

Your approved proposals

124 Your approved proposals will be those described in the drawings and other documents you submitted for **highways technical approval**. **We** will list these in your notification email.

Meaning of highways technical approval

125 Getting **highways technical approval** for your proposals means that **we** think that their design is suitable for **us** to enter into a **section 38 agreement** for them. However, there will still be some matters that will have to be dealt with before **we** could enter into a **section 38 agreement**. **We** give a summary of these in **0** and explain them in more detail in **Annex D**.

Expiry

126 Technical standards and good practice relating to **highway** design are constantly evolving. Accordingly, your **highways technical approval** will expire after 12 months. After this time, if you still wish to continue with your proposals, you should get in touch with **our** highway adoptions team. Usually, you will have to get another **highways technical review** of your proposals.

Unacceptable proposals

What will happen next

127 If your proposals are unacceptable, then:

- **we** will tell you that your proposals are unacceptable
- **we** will suggest what you need to do to make them acceptable
- **we** will continue to try to help you make your proposals acceptable

- you should supply any additional information or documents within six weeks of being asked
- **we** will aim to check any additional information or documents within six weeks of receiving them
- **we** will not check any additional information or documents received later than 31 weeks after **our** finance team confirms that **we** have received your payment

If your proposals are still unacceptable

128 If 31 weeks after you paid **us** the second instalment of the fee your proposals are still unacceptable, **we** will not give them **highways technical approval** and the fee paid will not be refunded.

Formal notification

129 **We** will formally tell you by email if **we** do not give your proposals **highways technical approval** because they are unacceptable.

New application

130 If **we** reject your proposals and do not give them **highways technical approval** but you want to continue with them, you will have to make a new application.

131 Before making any new application, you should try to meet **our** highway adoptions team to find out what was wrong with your rejected proposals and how to make the new ones acceptable.

Total time taken

132 From when you pay **us** the second instalment of the fee, **we** will aim to formally tell you by email whether your proposals are acceptable:

- within 13 weeks, if your proposals were acceptable when you first sent them to **us**
- within 37 weeks, if your proposals were unacceptable when you first sent them to **us** and additional information or documents were required

Changes to approved proposals

133 If **we** give your proposals **highways technical approval** but you then change them, **we** will have to re-review them. How **we** re-review them will

depend upon the nature and extent of the changes you make:

- Minor changes: **we** will re-review them without charging you anything extra
- Moderate changes: **we** will re-review them but **we** will charge you a supplementary fee to do so
- Major changes: **we** will treat them as new proposals and you will have to make a new application

134 Obviously, the time it will take **us** to re-review changed proposals will depend upon the nature and extent of your changes.

135 If you are thinking of changing your proposals after **we** have given them **highways technical approval**, you should discuss this with **our** highway adoptions team as soon as you can.

Cancellation of highways technical approval

Reasons for cancellation

136 After **we** have given **highways technical approval** but before a **section 38 agreement** is signed, **we** might find out that there is an issue with your proposals that, if **we** had known about it earlier, would have stopped **us** giving them **highways technical approval**. In these cases, **we** may cancel the **highways technical approval** already given.

137 **We** will not cancel **highways technical approval** already given without first trying to work with you to revise your proposals.

Formal notification

138 **We** will formally tell you by email if **we** cancel the **highways technical approval** **we** have given to your proposals.

Likelihood of cancellation

139 It is unlikely that **we** will cancel your **highways technical approval**. Examples of the sort of things that might cause **us** to cancel it are unexpected problems with landownership, watercourses, or ground conditions.

Planning permission and building control

140 **Highways technical approval** is different to both planning permission and building control. Getting it does not mean that a proposed development has planning permission, that any planning conditions have been discharged, or that any proposed building has been given building control approval.

Changed proposals

141 As **we** say in paragraph **71**, **we** do not insist that you get planning permission before **we** will give them **highways technical approval**. Neither do **we** insist that you get building control approval for your proposals. But, if **we** give your proposals **highways technical approval** and later on you change them to get planning permission or building control approval, the existing **highways technical approval** might not still be appropriate. If this is the case, you might have to make a fresh application for **highways technical approval**.

Existing planning permission or building control approval

142 If you have planning permission or building control approval for your proposals but then change them to get **highways technical approval**, you should check whether your proposals still comply with the requirements of the relevant planning permission or building control approval.

Advice on planning permission, building control approval, and highways technical approval

143 As **we** say in paragraph **73**, **our** highway adoptions team cannot give advice on how changes to proposed developments might affect existing planning permission or building control approval. Likewise, **our** planning and building control teams cannot give advice on how changes might affect existing **highways technical approval**.

Step 4 – Section 38 agreement

Section 38 agreements

144 **We** have a formal process for entering into **section 38 agreements**. These are prepared by **our** legal team, who will only prepare one if instructed to do so by **our** highway adoptions team.

145 **Our** highway adoptions team will not instruct **our** legal team to prepare a **section 38 agreement** for your proposals unless:

- they have **highways technical approval**, which has not expired
- where one is required, you have paid **us** the third instalment of the fee
- you have formally applied for a **section 38 agreement** and had given **our** highway adoptions team the extra information that **we** require
- you and your proposals meet **our** other preconditions (see paragraph **147**)

Your approved proposals

146 **Our section 38 agreements** are for your approved proposals. As **we** say in paragraph **124**, these

are the ones described in the drawings and other supporting documents that **we** listed in your notification email.

Our preconditions for section 38 agreements

147 In addition to getting **highways technical approval**, your proposals have to meet certain preconditions before **we** will enter into a **section 38 agreement** for them. **We** give a summary of these in **0** and explain them in more detail in **Annex D**.

Bonds and sureties

148 As **we** say in paragraph **11**, **our section 38 agreements** require a bond or surety. This is to give **us** access to the funds needed to finish the **streets** in your proposals should this be necessary.

149 As **we** say in paragraphs **48** to **52**, **we** require that the bond or surety will cover **our** estimated **taking over costs**.

150 We don't insist that you have a bond or surety in place before you apply for a **section 38 agreement**, but we will not sign the agreement until one is in place.

More information

151 If you would like more information about bonds or sureties, then please contact our highway adoptions team.

Contract periods and phased construction

Contract periods

152 Our **section 38 agreements** include a 'contract period'. This is the length of time the agreement allows for you to complete the works.

Contract period lengths

153 We will usually base the length of the contract period required on the amount of work to be done and your intended programme. However, it may not exceed 24 months. If it lasts longer, then the assumptions we make when estimating our **taking over costs** will become increasingly out of date.

154 We will usually tell you the length of the contract period required when we give **highways technical approval**.

Phased construction

155 Some developers find it useful to split the construction of their proposals into different phases – with each phase having a separate **section 38 agreement** – to reduce bond or surety values or to help with cash flow. We are usually happy to do this providing that it can be done in a practicable way.

Long works programmes

156 If you think that it will take longer than 24 months to construct your proposals, then you should think about splitting them into different phases, with each phase having a separate **section 38 agreement**.

Early consultation

157 If you are thinking about constructing your proposals in phases, then please discuss this with

our highway adoptions team as soon as you can, particularly if we have already given **highways technical approval** to the development as a whole.

Unconnected highways and phased construction

158 We will not adopt any **street** as **publicly maintainable highway** unless it connects directly to another **publicly maintainable highway**. Therefore, we will not usually enter into a **section 38 agreement** that would create an unconnected **publicly maintainable highway**.

159 We appreciate that the above could create difficulties with phased developments, where **streets** in the later phases might require those in the early ones to provide the direct connection. However, we will only consider entering into a **section 38 agreement** that relied on another one to provide the direct connection if both agreements were with the same developer.

Maintenance periods

160 Our **section 38 agreements** include a 'maintenance period' between finishing the works and adoption. This gives time to see whether the completed works would perform as required.

161 Our maintenance periods are usually a minimum of 12 months long, as this covers four seasons of weather. However, sometimes we might require longer periods to see whether unusual features perform satisfactorily. If your proposed **publicly maintainable highways** contain any of the following, we will usually require a longer maintenance period:

- Features not covered by standards
- Flooding or water level monitoring or warning systems
- Ground gas monitoring, venting, or control systems
- Ground improvement or land remediation measures
- **Highway** drains that discharge into a private drainage system
- Novel drainage features, such as soakaways, infiltration ponds, or swales
- Permeable pavements
- Proprietary drainage features

- Proprietary geotechnical or earth improvement systems
- Significant earthworks
- Treatment of old mineshafts or other old mining features

162 We will usually tell you the minimum required length of the maintenance period when we give **highways technical approval**.

Start of maintenance period

163 The maintenance period will not start until we issue you with a 'provisional certificate'.

164 We say more about provisional certificates and the inspection and checks that we do before we will issue one in paragraphs **233** to **238**.

End of maintenance period

165 The maintenance period will not end until we issue you with a 'final certificate'. You will have to satisfy various preconditions – some of which might require you to do works on site – before we will issue you with a final certificate. Therefore, the actual maintenance period might be longer than the minimum length set out in the **section 38 agreement**.

166 We say more about final certificates in paragraphs **242** to **249**.

Commuted sums

167 Our **section 38 agreements** require **commuted sums** to cover the ongoing management and maintenance of expensive items such as structures and soakaways.

168 The **commuted sums** are paid to us when the **section 38 agreement** is signed. We then hold them on account until they are transferred to our own funds at the time the new **highways** are adopted.

169 We will usually tell you which features of your proposals, if any, require **commuted sums** and how much these will be when we give **highways technical approval**.

Background

170 When we adopt a **street** as **publicly maintainable highway**, we take on responsibility for its ongoing management and maintenance. The costs of these are usually borne by us but some features, such as structures and soakaways, are disproportionately expensive to manage and maintain. Instead of expecting the public at large to pay for these, we require developers to cover them. These costs are consolidated or 'commuted' into one-off payments at the time of adoption.

171 Because **commuted sums** are paid at the time the **streets** are adopted – not when the maintenance works are due – they are reduced by being discounted. By the time any works are required, the **commuted sums** paid should have earned enough interest to cover the expected costs.

Calculation

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

More information

173 If you would like more information about **commuted sums**, then please contact our highway adoptions team.

Landownership and dedication as highway

174 You do not have to own a development site to enter into a **section 38 agreement**. However, for a private **street** to become a **publicly maintainable highway**, it has to be dedicated as **highway**. Only the landowner has the legal power to do this. This means that, where a developer does not own all the land required, the owners of the rest of the land also have to sign the **section 38 agreement**.

175 If you don't own all the land you wish to include in a **section 38 agreement**, then you should make exhaustive enquiries to try to find out who owns the rest.

Proof of ownership

176 We will not enter into a **section 38 agreement** with a landowner who cannot prove their claim to ownership.

Unknown or unproven ownership

177 Where the landowner for part of a site is unknown or unproven, **we** might be able to declare that part **highway** using **our** legal powers as the **highway** authority. However, this could be subject to legal challenge and **we** cannot guarantee that **we** would be successful.

178 It can be extremely difficult and expensive for you if the identity of a previously unknown landowner becomes known once the works covered by a **section 38 agreement** are underway.

Application for a section 38 agreement

179 If you want to apply for a **section 38 agreement**, you should:

- email the application to **our** highway adoptions team
- pay **us** the third instalment of the fee if one is required
- phone **our** highway adoptions team to say that you have applied for a **section 38 agreement** and – where one is required – paid **us** the third instalment of the fee

180 Your application should comply with [Annex D](#).

Checks

181 Once **our** highway adoptions team receive your application, they will check whether:

- the **highways technical approval** for the proposals has expired
- the application contains all the information necessary for **our** legal team to prepare a **section 38 agreement**
- a third instalment of the fee is required

182 When a third instalment of the fee is required, **our** highway adoptions team will check with **our** finance team whether it has been paid.

Late applications

183 If you wait until the **highways technical approval** has expired before you apply for a **section 38 agreement**, then:

- **we** will reject your application
- **we** will not check your application
- if you have paid **us** a third instalment of the fee, **we** will refund it but **we** won't refund any other fees

Formal notification

184 We will formally tell you by email if **we** reject your application because the **highways technical approval** has expired. We will aim to do this within three weeks of receiving your application.

If your application contains all the necessary information

185 If the **highways technical approval** for your proposals has not expired, then, once **we** receive all the necessary information, **our** highway adoptions team will formally instruct **our** legal team to prepare a **section 38 agreement**. We will aim to instruct **our** legal team within three weeks of receiving your application.

Six-week grace period

186 If the **highways technical approval** for your proposals is close to expiring, **we** will allow a six-week grace period. If **we** receive all the necessary information within six weeks of receiving your application and during that time the **highways technical approval** expires, then **our** highway adoptions team will still formally instruct **our** legal team to prepare a **section 38 agreement**.

Formal notification

187 We will formally tell you by email that **our** highway adoptions team has formally instructed **our** legal team to prepare a **section 38 agreement**. We will aim to do this within three weeks of receiving all the necessary information.

If your application does not contain all the necessary information

What will happen next

188 If your application for a **section 38 agreement** does not contain all the information necessary for **our** legal team to prepare the agreement, then:

- **we** tell you what additional information is required
- **we** will continue to help you submit the required information
- you should supply any additional information within three weeks of being asked
- **we** will aim to check any additional information you supply **us** within three weeks of receiving it
- **we** will not check any additional information received after expiry of the **highways technical approval** unless **we** receive it within the six-week grace period

Expiry of highways technical approval

189 If by the end of the six-week grace period you have still not sent **us** all the information necessary for **our** legal team to prepare the **section 38 agreement**, then:

- **we** will reject your application
- **we** will not check your application any further
- **we** will not enter into a **section 38 agreement** for your proposals
- **we** will not refund your fee

Formal notification

190 **We** will formally tell you by email if **we** reject your application because it does not contain all the necessary information.

Legal work and signing

191 Once **our** legal team receive the instruction from **our** highway adoptions team, they will start to

prepare the **section 38 agreement**. This work will include due diligence checks on landownership and any surety.

Expiry of highways technical approval

192 You should sign the **section 38 agreement** no later than 12 months after the **highways technical approval** for your proposals expires. After this time, the assumptions **we** make when estimating **our taking over costs** will become increasingly out of date.

193 As technical standards and good practice relating to **highway** design are constantly evolving, if you do not sign the **section 38 agreement** in time, **we** might have to reconsider **our** decision to give your proposals **highways technical approval**. If **we** did decide to reconsider **our** decision, **we** might have to charge you an additional fee to cover **our** additional costs.

Signing

194 The **section 38 agreement** will be signed on **our** behalf by **our** legal team.

Timing

195 For straightforward agreements, where there are no issues relating to landownership or the surety, **our** legal team will aim to do the due diligence checks and send a final draft (sometimes called an 'engrossed' copy) of the **section 38 agreement** to you by seven weeks after they have been instructed by **our** highway adoptions team.

APC deposits

196 As **we** say in paragraphs 101 to 109, once you sign a **section 38 agreement**, any **APC** deposit already paid for a **street** covered by the **section 38 agreement** will be refunded. Similarly, any security given to **us** instead of an **APC** deposit will be released.

Step 5 – Construction

Start of works

197 We recommend that you do not start construction work before getting **highways technical approval** or signing a **section 38 agreement**. We do not insist on this, but you should be very wary about starting work too soon.

198 If your proposals do not have **highways technical approval** and you do not have a signed **section 38 agreement**, then any construction work you do might turn out to be unacceptable. If it does, then you might have to replace it at your own expense, otherwise **we** might decide not to adopt your new **streets**.

Dilapidation surveys and pre-works photographs

199 Before starting work, you should contact **our** highway adoptions team to arrange a 'dilapidation survey' (a joint inspection) of the neighbouring **highways**. In addition, you should take lots of pre-works photographs of neighbouring **highways**.

Works in existing publicly maintainable highways

Site accesses

200 Our **section 38 agreements** usually include written permission for you to construct permanent accesses but not any temporary ones. If you will need a temporary site access, then you will have to get separate written permission under **section 184** of the **Highways Act 1980**.

201 If **we** agree to give you permission under **section 184**, then:

- the works will have to be done by a contractor who is approved by **us**
- your contractor will have to comply with **our** requirements for public liability insurance
- your works will have to be supervised and undertaken by workers with qualifications approved under the **New Roads and Street Works Act 1991**

Warning!

It is a criminal offence to do any works in or to a **publicly maintainable highway** without **our** written permission

- the timing of your works will have to comply with **our** system of 'road space booking'

202 If you will need a temporary access to a **publicly maintainable highway**, you should discuss this with **our** highway adoptions team as soon as you can.

Highway inspections

Purpose of highway inspections

203 We need to inspect your works as they are built but **we** cannot do this unless you tell **our** highway adoptions team in time of the specific operations taking place.

204 If **we** do not inspect your works at the right time, then any work you do might turn out to be unacceptable and you might have to replace it at your own expense, otherwise **we** might decide not to adopt your new **streets**.

Limitations of highway inspections

205 We inspect your works to protect **our** interests, because **we** will take on liability for your new **streets** if **we** adopt them as **publicly maintainable highways**. We do not inspect your works to check that they conform to your requirements.

206 Our **highway** inspectors will work with you and offer you advice, but they will not:

- approve construction work
- do any design work
- consider the way their advice might affect your budget or programme

Other inspections by us

207 As well as the local **highway** authority, **we** are also the lead local flood authority, local building

control authority, and local planning authority. All these different roles require **us** to inspect development sites. This can sometimes be confusing for developers.

208 **Our highway** adoption inspections are different to those **we** do in **our** other roles. **Our highway** adoption inspectors cannot give advice on matters relating to flooding, building control, or planning. Likewise, **our** flooding, building control, and planning inspectors cannot give advice on matters relating to **highway** adoptions.

209 In addition:

- **our highway** adoption inspectors do not inspect utility works governed by the **New Roads and Street Works Act 1991** (NRSWA)
- **our** NRSWA inspectors do not inspect **highway** adoption-related works

Construction safety and health

210 Under **the CDM Regulations**, construction clients – such as developers – have a legal obligation to appoint a ‘CDM principal contractor’ before any work starts on site.

CDM principal contractor’s legal obligations

CDM construction-phase plan

211 The CDM principal contractor is legally obliged to prepare a ‘construction-phase plan’. A copy of this should be emailed to **our** highway adoptions team before the start of works on site. **Our** highway adoptions team should then be emailed any updates or revisions of the plan.

Other obligations

212 If at any time **we** thought that a CDM principal contractor was not complying with their legal obligations under **the CDM Regulations**, then **we** might decide that it would be unsafe to allow **our** inspectors onto the development site.

213 As **we** say in paragraph **204**, if **we** do not inspect your works at the right time, then it may cost you money or even stop **us** adopting your new **streets** as **publicly maintainable highways**.

Changes to approved proposals after signing a section 38 agreement

214 Sometimes, developers wish to change their approved proposals after signing a **section 38 agreement**. If you wish to do this, then **we** are usually happy to go along with you. However, if **we** do not approve your proposed changes, then your works will not conform to the approved proposals in the **section 38 agreement**. Accordingly:

- **we** will have no obligation to adopt them
- **we** may use the bond or surety to remove the changes and complete the works to your originally approved proposals

215 If you are thinking of changing your approved proposals after signing a **section 38 agreement**, then you should discuss them with **our** highway adoptions team as soon as you can.

Major changes

216 If you propose major changes to your approved proposals, then **we** may treat the proposed changes as entirely new proposals. If **we** do, then **we** will require:

- A new application for **highways technical approval**
- A new **highways technical review**
- A new **highways technical approval**
- A new **section 38 agreement**

Minor changes

217 If you propose minor changes to your approved proposals, then **we** will still have to make sure that they will be acceptable. To do this, **we** will usually need you to send **us** drawings showing what you are proposing to change.

Formal notification of decisions

218 **We** will formally tell you by email if:

- **we** decide that your proposed changes are major changes that have to be treated as a new development proposal
- **we** approve your proposed minor changes

219 You should not rely on any purported approval given verbally or informally.

Fees and Timing

Major changes

220 If **we** decide that your proposed changes are major changes that have to be treated as a new development proposal, then you will have to start again with the seven steps, which will determine **our** fees and how long it will take **us** to deal with your new application.

Minor changes

221 **We** do not charge for assessing proposed minor changes to approved proposals.

222 The length of time it will take **us** to assess your proposed minor changes will depend upon their nature and complexity.

Potential delays

223 If you do not request approval for any proposed changes as soon as you can, then you might delay **us** issuing you the provisional or final certificates.

Supplemental agreements

224 **We** appreciate that, regardless of intentions at the start of works, developments can be delayed for all sorts of reasons outside the control of the developer. Sometimes, after starting works under a **section 38 agreement**, it becomes clear that the contract period is too short. If this is the case, then **we** might agree to extend the contract period by using a supplemental agreement.

225 **We** will not agree to a supplemental agreement that extends the contract period by more than 24 months.

226 Before **we** will sign a supplemental agreement, **we** will recalculate **our taking over costs** to take into account any inflation since **we** gave your proposals **highways technical approval**.

Fees

227 **We** do not charge for preparing supplemental agreements.

Bond and surety reductions

228 If you have done a significant amount of the works covered by a **section 38 agreement**, **we** may agree to reduce the bond or surety.

229 If **we** agree to reduce the bond or surety, **we** will:

- take into account how much work is left to do
- not reduce it to less than 50% of how much it was at the start of the contract period

230 **We** will not reduce the bond or surety unless you have completed the following:

- **Highway** drainage
- Carriageway and path binder courses
- **Street** lighting
- Adoptable sewers
- Other utility apparatus

Step 6 – Provisional certificate and maintenance period

Maintenance periods

231 As **we** say in paragraphs **160** to **166**, **we** do not adopt **streets** straight away after they have been finished. Instead, **we** require you to look after them for the duration of the maintenance period, which starts as soon as **we** issue you with a provisional certificate.

Provisional certificates

Our preconditions for issue

232 Your works have to meet certain preconditions before **we** will issue a provisional certificate for them. **We** give a summary of these in **0** and explain them in more detail in **Annex E**.

How to request a provisional certificate

233 As soon as you think that you have finished all the works covered by a **section 38 agreement** and the stage 3 **RSA** has been satisfactorily closed out, you should:

- email **our** highway adoptions team and formally request a provisional certificate
- phone **our** highway adoptions team to tell them that you have requested a provisional certificate

234 **We** won't issue you with a provisional certificate unless you request one.

235 Your formal email request should comply with **Annex E**.

Inspections and checks

236 Once **we** have received your request for a provisional certificate, **we** will inspect your new **streets** covered by the **section 38 agreement** and start the due diligence checks on related matters. **We** aim to do this within three weeks of receiving your request.

Satisfactory inspection and checks

237 If your new **streets** are acceptable and the due diligence checks are completed satisfactorily, **our** highway adoptions team will instruct **our** legal team to issue a provisional certificate and to reduce the value of the bond or surety to 25% of what it was at the start of the contract period. **Our** highway adoptions team aim to do this within six weeks of the inspection.

Unsatisfactory inspection or checks

238 If your new **streets** are not acceptable or the due diligence checks are not completed satisfactorily, then **we** will tell you what needs to be done to sort things out. **We** aim to do this within six weeks of the inspection.

Stage 4 RSAs

239 Where **we** have said a stage 4 **RSA** is required, then you should do it no sooner than 12 months after **we** issue you with the provisional certificate.

240 If a stage 4 **RSA** finds any matters of concern, then you should make sure that these are closed out satisfactorily during the maintenance period. Obviously, this might lengthen the maintenance period.

Developer responsibility

241 During the maintenance period, you will remain responsible for your new **streets**. Your responsibilities will include:

- Making sure that your new **streets** are safe to use
- Repairing any damage that your new **streets** might suffer
- Keeping your new **streets** clean and free of mud and construction debris
- Maintaining the drains in your new **streets** and keeping them clean and free of mud and construction debris
- Supplying electricity for the **street** lighting and any other adoptable electrical equipment on your new **streets**
- Mowing any grassed areas and maintaining any other areas of 'soft' landscaping – including trees, tree belts, and hedgerows – that form part of your new **streets**

Step 7 – Final certificate and adoption

Adoption

242 Adoption is triggered by **us** issuing you with a final certificate: the new **streets** covered by the **section 38 agreement** become **publicly maintainable highways** at the time **we** issue the final certificate.

Final certificates

Our preconditions for issue

243 Your works have to meet certain preconditions before **we** will issue a final certificate for them. **We** give a summary of these in **0** and explain them in more detail in **Annex F**.

How to request a final certificate

244 At the end of the maintenance period, you should:

- email **our** highway adoptions team and formally request a final certificate
- phone **our** highway adoptions team to tell them that you have requested a final certificate

We won't issue you with a final certificate unless you request one. Your formal request email should comply with **Annex F**.

Inspections and checks

245 Once **we** have received your request for a final certificate, **we** will inspect the new **streets** covered

by the **section 38 agreement** and start the due diligence checks on related matters. **We** aim to do this within three weeks of receiving your request.

Satisfactory inspection and checks

246 If your new **streets** are still acceptable and the due diligence checks are completed satisfactorily, **our** highway adoptions team will instruct **our** legal team to issue a final certificate and to reduce the value of the bond or surety to zero. **Our** highway adoptions team aim to do this within six weeks of the inspection.

Unsatisfactory inspection or checks

247 If your new **streets** are not still acceptable or the due diligence checks are not completed satisfactorily, then **we** will tell you what needs to be done to sort things out. **We** aim to do this within six weeks of the inspection.

Commuted sums

248 At the time **we** issue the final certificate and adopt your new **streets**, **we** will transfer the **commuted sums** that **we** have held on account for you to **our** own funds.

Adoption: end of your responsibilities for your new streets

249 Once your new **streets** are adopted by **us** as **publicly maintainable highways**, you will cease to have any responsibility for them.

Annex A – Summary of preconditions

Summary of preconditions	
Step 3 – Highways technical approval	
Precondition	Paragraph reference
The proposed highways have been designed in detail, including the street lighting, drainage, and flood management systems	B1
The strategy for works to existing streets is acceptable to us as the local highway authority	B3
The proposed highways and any proposed changes to existing highways are the subject of a satisfactorily closed-out stage 2 RSA	B5
A thorough geoenvironmental and geotechnical site investigation – including, as appropriate, a coal mining risk assessment – has been undertaken	B9
All proposed geoenvironmental or geotechnical works are acceptable to us as the local highway authority	B12
The maximum permitted rate of discharge, whether into public sewers or neighbouring watercourses, has been set by us as the lead local flood authority	B20
The proposed drainage and flood management strategy is acceptable to us as the lead local flood authority	B24
Any proposed public sewers in proposed publicly maintainable highways are approved by either the incumbent sewerage undertaker or the NAV that would adopt them	B30
All proposed works to watercourses – for example new outfalls, realignment works, and new culverts – have been approved by both the landowner and the appropriate regulator	B31
All adoptable highway structures, section 167 retaining walls, structures that span, oversail, or overhang a publicly maintainable highway , and other critical structures have been given formal highway structures approval	B33
The street lighting proposed for the new streets has been approved by us as the local highway authority	B47
The treatment of any PROWs potentially affected by a development and any proposed alterations to the network of PROWs has been approved by us as the local highway authority	B54
Any proposals to change local traffic restrictions, including ones on parking, have been approved by us as the local highway authority	B62

Precondition	Paragraph reference
All proposed changes to bus stops have been approved by us as the local highway authority	B68
All the appropriate fees have been paid	B71

Step 4 – Section 38 agreement

Precondition	Paragraph reference
You prove to us who owns the roads and paths that will be dedicated as publicly maintainable highways	D1
If you propose to use a surety instead of giving us a cash bond, then you prove to us that it would be suitable	D2
The proposed highways and associated drainage, ground improvement or land remediation measures, and treatment of mining features have full planning permission and are not subject to reserved matters or undischarged conditions	D3
Any proposed public sewers in proposed publicly maintainable highways are covered by a signed adoption agreement with either the incumbent sewerage undertaker or a NAV	D6
Any proposals to install private utility apparatus in a proposed highway are acceptable to us as the local highway authority	D8
Where any of the following are included in a proposed development, suitable section 106 planning obligations are in place to secure their long-term care: <ul style="list-style-type: none"> ■ Critical structures that – if they fail – could damage a highway or affect the safety of highway users ■ Discharge of highway drains into private drainage systems ■ Private drainage apparatus in publicly maintainable highways ■ High-risk private drainage features near publicly maintainable highways 	D14–D21

Step 6 – Provisional certificate and maintenance period

Precondition	Paragraph reference
The prospective highways and associated works have been constructed to the design that was given highways technical approval	E1
All remedial works have been completed	E2
The prospective highways and associated drains have been cleaned of accumulated debris and construction waste	E3

Precondition	Paragraph reference
All adoptable highway drains have been satisfactorily constructed and surveyed by CCTV	E4
Any new or altered street lighting is safe, connected, undamaged, and in working order and any adoptable electrical installations have been tested and certified by an electrician	E6
Any retained or newly planted trees are viable and in good condition and have been inspected and certified by an arboriculturist	E7
Either the incumbent sewerage undertaker or a NAV has certified that all the sewers in the prospective publicly maintainable highways have been constructed to an adoptable standard and that they would adopt them as long as they performed satisfactorily during a defined maintenance period or similar	E8
All the required utility apparatus has been installed and tested and any associated works, including reinstatements, have been satisfactorily completed	E10
The prospective publicly maintainable highways and any proposed changes to existing highways are the subject of a stage 3 RSA , which has been satisfactorily closed out, with any works required in response to the RSA completed	E12

Step 7 – Final certificate and adoption

Precondition	Paragraph reference
The developer has paid us any outstanding fees or charges for any work carried out by us in connection with the development	F1
Where a stage 4 RSA was required, this has been done and satisfactorily closed out, with any works required in response to the RSA completed	F2
Any sewers in the prospective publicly maintainable highways have been adopted by either the incumbent sewerage undertaker or a NAV	F3
The developer has emailed to us the up-to-date health and safety file – as required by the CDM regulations	F4
The developer has emailed to us as-built drawings and drainage schedules for the completed works	F6
The developer has emailed to us the required operation and maintenance manuals	F7

Annex B – Preconditions for highways technical approval

Detailed design

B1 Your proposed **highways** shall have been designed in detail, including the **street** lighting, drainage, and flood management systems.

B2 The layouts of the proposed development and any **streets** that form part of your proposals shall be well-designed and well-constructed and shall conform to current best practice. In addition, they shall be designed in accordance with **our** highways guidance note *Requirements of New and Improved Roads and Paths*. This is available on [our highway adoptions webpage](#).

Your proposals for existing streets

B3 Your proposals for works to existing **streets** shall be acceptable to **us** as the local **highway** authority.

B4 Most developments will affect the **streets** they gain access from or front onto. If yours will, then you should send **us** a written strategy for works to the existing **streets** to mitigate these effects. This shall conform to **our** highways guidance note *Existing Roads and Paths Affected by New Developments*, which is available on [our highway adoptions webpage](#).

Stage 2 RSAs

B5 Your proposed **publicly maintainable highways** and proposed changes to existing **publicly maintainable highways** shall be the subject of a satisfactorily closed-out stage 2 **RSA**.

Combined stage 1 and stage 2 RSAs

B6 If your proposals include the creation of new **publicly maintainable highways** or works to existing ones, then they should have been subjected to a stage 1 **RSA** before the application for planning permission. However:

- **We** do not require that you get planning permission before **highways technical approval**.

- **We** sometimes grant planning permission without a stage 1 **RSA** being undertaken.

In these cases, it will be acceptable to undertake a combined stage 1 and stage 2 **RSA**.

Relevance of RSAs

B7 Your **RSAs** have to be relevant to your proposals and the surrounding area. Therefore, they shall have been done in the previous three years. In addition, they shall be repeated if, since they were done:

- your proposals have changed significantly; or
- there have been several different minor changes to your proposals which together could impact on road user safety; or
- the surrounding road layout or environment has changed significantly, even if your proposals have not changed.

Planning permission and building control approval

B8 If you revise your proposals in response to comments made in an **RSA**, then you should check whether those revised proposals still comply with the requirements of any relevant planning permission or building control approval.

Geoenvironmental and geotechnical site investigation

B9 You shall have carried out a thorough geoenvironmental and geotechnical site investigation. This should include, as appropriate, a coal mining risk assessment.

B10 Your geoenvironmental and geotechnical site investigation should include both fieldwork and a desk study. The coverage of your investigation should be determined by the nature of the site and the proposed development, but your report should cover the following:

- A review of historical mapping and other records
- The existing site conditions – including existing watercourses and other water bodies, areas of made ground, and areas of contaminated ground

- The likely presence of coal mining features, such as coal workings, mineshafts, and adits
- Consultations with, as appropriate, the **Environment Agency** and the **Coal Authority**, including any conditions imposed
- The locations of trial pits, boreholes, and tests, and the results obtained – including preliminary CBR (California bearing ratio) results, which would need to be reassessed during construction of the **streets**, and percolation tests where soakaways are being considered

Coal mining risk assessment

B11 Where your proposals are within an area classified by the **Coal Authority** as a 'development high risk area', you should prepare a 'coal mining risk assessment report'. For more information, see the **Coal Authority** publication **Risk-Based Approach to Development Management – Guidance for Developers**.

Geoenvironmental and geotechnical works

B12 All your proposed geoenvironmental or geotechnical works, including the following, have to be acceptable to **us** as the local **highway** authority:

- Ground improvement works
- Land remediation measures
- Significant earthworks
- Treatment of existing mining features

B13 Most brownfield development sites will require some kind of ground improvement works or land remediation measures. Some will require significant earthworks, and some will require existing mining features to be dealt with. Before **we** decide whether your proposals for these are acceptable, **our** highway adoptions team will, as appropriate, consult with planning and environmental health colleagues and with the **Environment Agency** and the **Coal Authority**.

Specialist geoenvironmental or geotechnical advice

B14 As **we** say in paragraphs **74** to **78**, in some situations **we** will ask external advisors to assess the geotechnical elements of your proposals. If **we** do,

then it might increase the time it takes **us** to complete **our highways technical review**.

B15 If **we** ask external advisors for assistance, then **we** will consider any geotechnical advice they give **us** to be final.

Geoenvironmental or geotechnical works as structures

B16 **We** count some geoenvironmental or geotechnical works (for example caps to disused mineshafts) as structures. Even if they are not to be adopted, **we** insist that your geoenvironmental or geotechnical works have formal **highway** structures approval (usually known as approval in principle or AIP) from **our highway** structures team if:

- they will support part of a proposed or existing **highway**; or
- their failure could endanger a proposed or existing **highway**.

Design and approval of geoenvironmental or geotechnical works

B17 If you are thinking of including significant geoenvironmental or geotechnical works in your proposals, then, to avoid potential delays or abortive work, you should discuss them with **our** highway adoptions team as soon as you can. **We** can then agree the design parameters and confirm what additional approvals you will need.

Planning permission

B18 When **we** grant planning permission for developments that require ground improvement works or land remediation measures, **we** usually impose a condition that a strategy for these is approved by **us** as the local planning authority before work starts.

B19 If you are required to submit a strategy for planning permission, then, to avoid doing abortive work or delaying your development, you should make sure that it is compatible with the proposals you submit for **highways technical approval**.

Surface water discharge rates

B20 You have to make sure that the maximum permitted rate of discharge of surface water from your

development, whether into **public sewers** or neighbouring watercourses, is agreed with **us** as the lead local flood authority.

B21 The maximum permitted rate of discharge is a fundamental constraint on the design of surface water drainage systems. If this is not agreed, then there is no point in **us** approving your proposals.

Planning permission

B22 Planning permissions for developments usually contain conditions limiting the rate of discharge of surface water.

B23 To avoid doing abortive work or delaying your development, you should make sure the proposals you submit for **highways technical approval** and those you submit for planning permission are compatible.

Surface water drainage and flood management strategy

B24 Your proposed drainage and flood management strategy has to be acceptable to **us** as the lead local flood authority.

B25 Most development sites will require surface water drainage, and some might be susceptible to flooding. You should prepare a written strategy for the required surface water drainage and flood management.

Planning permission

B26 Usually, when **we** give planning permission for developments that include new **highways**, **we** impose a condition that the strategy for the required surface water drainage and flood management is approved by **us**, as the local planning authority, before work starts.

B27 As **we** say paragraph **B23**, to avoid doing abortive work or delaying your development, you should make sure the proposals you submit for **highways technical approval** and those you submit for planning permission are compatible.

More information

B28 More information is available on **our** website. See **Flooding and drainage: Guidance for new developments**.

Contacts

B29 **Our** drainage and flood management team can be contacted through **our** highway adoptions team.

Public sewers

B30 If you are proposing any new **public sewers** in your proposed **publicly maintainable highways**, then your proposals have to have technical approval from either the **incumbent sewerage undertaker** or the **NAV** that would adopt them.

New outfalls and other works to watercourses

B31 All proposed works to watercourses – for example new outfalls, realignment works, and new culverts – have to have been approved by both the landowner and the appropriate regulator. For ‘main rivers’ the appropriate regulator is the **Environment Agency**. For ‘ordinary watercourses’, it is **us** as the lead local flood authority.

Main rivers and ordinary watercourses

B32 Main rivers are those designated by the **Environment Agency**. All other watercourses are ordinary watercourses.

Structures

Highway structures approval

B33 All adoptable **highway** structures have to have formal **highway** structures approval (usually known as approval in principle or AIP) from **our highway** structures team.

B34 As **we** say in paragraphs **79** to **83**, **we** also require some proposed structures that aren’t going to

be adopted to have formal **highway** structures approval. These are:

- Retaining walls covered by [section 167](#) of the [Highways Act 1980](#) (we say more about these in paragraphs [B35](#) and [B37](#))
- Structures that span, oversail, or overhang a **publicly maintainable highway** (we say more about these in paragraph [B38](#))
- Other critical structures, that is structures that – if they fail – could damage a **highway** or affect the safety of **highway** users

Section 167 approval of retaining walls

B35 [Section 167](#) of the [Highways Act 1980](#) makes it a criminal offence to construct certain types of retaining walls without the written approval of the local **highway** authority.

B36 The retaining walls covered by [section 167](#) are any that will be within four yards (3.66 m) of an existing **street** and more than four feet and six inches (1.37 m) above the level of that **street** at any point. It does not matter whether the wall is going to be adopted by **us**. However, [section 167](#) does not apply to retaining walls that will form part of a permanent building.

Proposed streets

B37 Where developments contain both new **streets** and retaining walls, the retaining walls are often built first. In these cases, the retaining walls are not be covered by [section 167](#), even if they would if the **streets** were built first. However, **we** treat all new retaining walls that will be more than 1.37 m above and within 3.66 m of a proposed **publicly maintainable highway** as if they were covered by [section 167](#) and require them to have **our** written approval.

Structures that span, oversail, or overhang a highway

B38 The [Highways Act 1980](#) makes it a criminal offence to construct structures that span, oversail, or overhang a **publicly maintainable highway** without the written approval of the local **highway** authority:

- [Section 176](#) covers the construction of bridges over **highways**.

- [Section 177](#) covers the construction of buildings and other structures that span, oversail, or overhang **highways**.

Other critical structures

B39 **We** will assess the risks from other critical structures, that is structures that – if they fail – could damage a **highway** or affect the safety of **highway** users, even if they aren't going to be adopted and even if they aren't in a **highway**. In the past, such structures have included attenuation tanks and caps to disused mineworkings.

B40 Depending upon **our** assessment, **we** might insist that the maintenance and management of other critical structures on your proposed development are guaranteed by a [section 106 planning obligation](#).

Attenuation tanks and oversized pipes

B41 **We** do not allow in proposed **publicly maintainable highways** any of the following – even if they are to be adopted by the **incumbent sewerage undertaker** or a **NAV** or even if their maintenance and management are covered by [section 106 planning obligations](#):

- Pipes or attenuation tanks with diameters or widths over 900 mm
- Combinations of pipes or tanks laid alongside each other where the sum of the nominal internal diameters of individual pipes and the widths of individual tanks (ignoring ones with a diameter or width of 375 mm or less) is over 900 mm

Fees and timing

B42 **We** currently charge a fee for assessing proposed **highway** structures.

B43 It usually requires a lot of detailed, time-consuming work to get **highway** structures approval. But this can be speeded up and abortive work avoided if you discuss your proposals with **our** highway adoptions team as soon as you can.

More information

B44 **We** have prepared a guidance document, *Highway Structures: Structural Procedures: Procedure Guidelines for the Design and Construction of Highway Structures Requiring the Consent*

of *Highway Authority*, which explains what **we** consider to be **highway** structures and the appropriate approval process. This is available on [our highway adoptions webpage](#).

Section 106 planning obligations

B45 **We** say more about **section 106 planning obligations** in paragraphs **D14** to **D21**.

Contacts

B46 **Our highway** structures team can be contacted through **our** highway adoptions team.

Street lighting

B47 Your proposals to light your new **publicly maintainable highways** have to have been approved by **us** as the local **highway** authority.

Design

B48 The works required to light your new **publicly maintainable highways** can be designed by either **our street** lighting team or an external design consultant.

Approval

B49 If an external consultant designs your proposed **street** lighting, then **we** have to assess it and approve it.

Fees and timing

B50 **We** currently charge a fee for assessing **street** lighting proposals. In addition, electricity network operators usually charge for making connections to or disconnections from their networks.

B51 When preparing your development programme, you should allow for the time needed to get your proposed **street** lighting assessed and approved and to arrange for connections or disconnections.

Our lighting design service

B52 As **we** say in paragraph **B48**, **our street** lighting team can design any new lighting required and any required changes to the existing lighting. However, **our street** lighting team will not do the design

unless the general layout of the development, including the locations and widths of the proposed **streets**, had been agreed in principle with **our** highway adoptions team.

Contacts

B53 **Our street** lighting team can be contacted through **our** highway adoptions team.

Public rights of way (PROWs)

B54 The treatment of any **public rights of way (PROWs)** potentially affected by a development and any proposed alterations to the **PROWs** network have to have been approved by **us** as the local **highway** authority.

Background

B55 Kirklees has an extensive network of **PROWs**: public footpaths, public bridleways, and public byways. Some of these have paved surfaces and are easy to see on site. These might have been created using legal orders, with plans showing their exact locations. Others might be shown on the 'definitive map' for Kirklees – a document that the law obliges **us** to prepare. However, **PROWs** can become established through prolonged public use – though they do not lapse through lack of it. This means that there might be **PROWs** on your development site that are neither visible on the ground nor recorded in any legal document.

Potential effects

B56 If your new development includes an existing **PROW**, then it might require improvement works – such as surfacing – to make it more suitable for the new surroundings and for changes in the way it is used.

B57 Developments can also significantly affect nearby **PROWs**, even if these do not run across a development site. For example, areas of new housing can radically change the way neighbouring **PROWs** are used.

Developer actions

B58 You should contact **our PROWs** team to establish whether any **PROWs** might be affected by

your proposals – regardless of what was said in response to any local land searches when you purchased the land or whether there appears to be any paths or tracks on the land.

B59 If there are **PROWs** on your development site, then you have to have agreed with **our PROWs** team how you will treat them.

Contacts

B60 **Our PROWs** team can be contacted through **our** highway adoptions team.

More information

B61 **We** have prepared a highways guidance note *Introduction to Highways and Adoptions*, which aims to give a simple introduction to the complexities of the legal side of **highways** and how they are created. This is available on [our highway adoptions webpage](#).

Local traffic restrictions and traffic regulation orders (TROs)

B62 Any changes to local traffic restrictions, including ones on parking, have to have been approved by **us** as the local **highway** authority.

B63 Local traffic restrictions, including ones on parking, are usually imposed by ‘traffic regulation orders’ (TROs) and traffic signs. TROs are made by **us**, as the local **highway** authority. When **we** do this, **we** have to comply with various legal procedures that are set out in law.

Changes to local traffic restrictions

B64 Proposals to change local traffic restrictions, particularly parking ones, can be very contentious. Before **we** will make new TROs or change existing ones, **we** will consult widely. The bodies that **we**

consult will include user groups, West Yorkshire Police, and other emergency services. In addition, **we** advertise proposed TROs and proposed changes to existing TROs in the local press.

B65 **We** cannot guarantee that any proposed changes to local traffic restrictions will be made.

Costs

B66 As well as the costs of changing the associated traffic signs, **we** currently charge a fee for changing local traffic restrictions. In addition, if any pay-to-use parking places are removed, **we** charge for the resulting loss of income.

B67 If **we** try to make a new TRO or change an existing one for you, then you will have to pay **our** costs even if, following consultation, **we** decide not to go ahead with the proposed changes.

Changes to bus stops

B68 If you propose changes to bus stops, then they have to have been approved by **us** as the local **highway** authority.

B69 Proposed changes to bus stops can be very contentious. **We** will only agree to them after consulting the [West Yorkshire Combined Authority](#).

B70 Where bus stops are to be moved, the new facilities usually have to be in place before the old ones are taken out of use. This can be a significant constraint on your development programme.

Fees and payments

B71 You have to have paid all **our** appropriate fees. These include **our** fees for **street** lighting design work, **highway** structures approvals, changes to local traffic restrictions, and loss of income from the removal of pay-to-use parking places.

Annex C – Applications for highways technical approval

Your application email

Declaration

C1 In your application email you should state explicitly that you:

- apply for **highways technical approval**
- understand that **we** will not start **our highways technical review** of your proposals until the submission has been validated by **us** and you have paid the appropriate fee
- believe that the procedures and processes described in this guidance note are suitable and acceptable
- believe that the information you have submitted is complete, correct, and up to date
- believe that you have given to **us** all the information you have relating to the existing condition of the site
- will tell **us** if you receive any additional information relating to the existing condition of the site
- confirm that the copyright holder of any document submitted will allow **us** to reproduce or distribute it – including to third parties – as **we** see fit
- have not submitted any ‘personal data’, as defined in the **General Data Protection Regulation (GDPR)**, without the consent of the subject of that data
- are complying with your duties under **the CDM Regulations**

The developer’s team

C2 In your application email, you should tell **us** the business names and full legal names, addresses, phone numbers, and email addresses of the following:

- Yourself as the developer and CDM client
- Your single point of contact for matters relating to the application for **highways technical approval**
- Your CDM principal designer
- Your other CDM designers
- Your CDM principal contractor (if known)

- Your other CDM contractors (if known)
- Your site-based contact for arranging inspections (if known)

Other CDM designers

C3 Your other CDM designers should include those responsible for the design, preparation, or specification of the following features of your proposals:

- Buildings
- Earthworks, ground improvement or land remediation measures, treatment of mining features
- Flood routing and flood protection or mitigation works
- Foul and surface water drainage
- Landscaping or public open space
- Master planning
- Proposed **highways** – including associated **highway** drainage and **street** lighting
- Structures
- Utility apparatus – including broadband, electricity, gas, telecoms, and water

Missing information

C4 **We** appreciate that, at the time you apply for **highways technical approval**, you might not be able to tell **us** all the information **we** require about your CDM contractors, your site-based contact for arranging inspections, or other members of your team. If this is the case, you should state explicitly in your application email that you will give this information as soon as you have it.

The proposed development

C5 In your application email, you should tell **us** the following information about your proposed development:

- Its location
- The names of the existing **streets** from which your proposed development will be accessed

- Any marketing names that you are using for the development
- Your anticipated works start date
- The anticipated duration of your works

Related planning applications

C6 If the **highways** aspects of a proposed development are considered without regard to the planning aspects, then disruption and delay can result. Accordingly, in your application email, you should tell **us** the following for each related planning application:

- The planning reference
- The date of the application
- The name of the applicant
- The location
- A brief description of the development
- The outcome

Phasing and future development

Phased developments

C7 Where you propose to construct a development in different phases, your application email

should include information on the extent and composition of your different phases.

C8 Telling **us** about your intentions for future phases will not commit you to carrying them out as described or stop you changing them later on. However, it will be easier for **us** to assess the suitability of your proposals if **we** have a thorough understanding of them. In addition, the advice and comments that **we** give will be more relevant. It will also help to minimize the chance of you doing abortive work or inadvertently land-locking sites.

Future development

C9 Where your development site is next to undeveloped areas or areas for potential future development, then your application email should include information about your intentions for these.

C10 Telling **us** about your intentions for future development sites will not commit you to carrying them out as described or stop you changing them later on. However, it will make it easier for **us** to assess and comment on your current proposals and will help to reduce your chances of doing abortive work or inadvertently land-locking sites.

Supporting documents

Documents required

C11 In your application for **highways technical approval** you should include the following supporting documents:

Drawings

- **Highway** adoption drawing
- Detailed design drawings

Planning assessments, statements, and plans

- Design and access statement
- Drainage strategy and flood risk assessment
- Transport statement and transport assessment or travel plan

Existing streets

- Strategy for works to existing **streets**

RSAs

- Stage 1 and stage 2 **RSA** briefs (except where these are reproduced in the **RSA** reports)
- Stage 1 and stage 2 **RSA** reports
- Stage 1 and stage 2 **RSA** response reports
- Exception reports

Geoenvironmental or geotechnical features and earthworks

- Report of the geoenvironmental and geotechnical site investigation, including the interpretation of the findings
- Coal mining risk assessment report
- Ground improvement and contaminated land remediation strategy

- Design details – including supporting calculations – of any significant earthworks or ground improvement works
- Correspondence with the [Environment Agency](#) and the [Coal Authority](#)

Structures

- List of structures requiring separate **highway** structures approval (**we** say more about what this should cover in paragraph 81)

Drawings

Highway adoption drawing

C12 Your **highway** adoption drawing shall comply with **our** highways guidance note *Highway Adoption Drawings* (available on [our highway adoptions webpage](#)) and shall show the information listed in the box on the right.

Detailed design drawings

C13 In your application for **highways technical approval**, you should include drawings covering the detailed design information **we** describe in the table below and on the next few pages. If you do not, then you will delay **our** technical assessment of your proposals.

C14 For convenience, **we** have grouped the detailed design information that **we** need into different ‘drawings’. In practice, the number of drawings that you need to send **us** and the coverage of individual drawings will depend upon the size and complexity of your proposals. For example, you might be able to

Highway adoption drawing coverage

- Extent of area to be adopted as **publicly maintainable highway**
- Adoptable carriageways, including road humps and ramps
- Adoptable footways, footpaths, and cycle tracks, including steps and vehicle crossings
- Adoptable paved verges or margins, including vehicle crossings
- Adoptable soft verges
- Areas of adoptable **highway** landscaping
- Adoptable **highway** structures
- Adoptable **street** lighting
- Adoptable **highway** drainage
- Off-**highway** easements for **highway** drainage or similar
- Works to existing **publicly maintainable highways**
- Existing and prospective **public sewers** and lateral drains
- Private drains in the **streets** to be adopted as **publicly maintainable highways**

fit all the information required for a very small, simple development onto a single drawing but a more extensive, complex one might require some of the individual ‘drawings’ to be split into several different sheets.

Detailed design drawings required

Drawing	Coverage	Comments
1. General arrangement	<ul style="list-style-type: none"> ■ Any entrance works ■ Existing streets the development would gain access from or front onto – including road numbers and street names ■ Road centrelines and chainages ■ Proposed road numbers/references ■ Proposed buildings and plots, with plot numbers ■ Any proposed phasing of the development 	<ul style="list-style-type: none"> ■ The drawing shall show the entire development, preferably on one sheet

Drawing	Coverage	Comments
<p>2. Phasing and future development</p>	<ul style="list-style-type: none"> ■ Phasing – the development areas and the streets and associated features in each phase ■ Any interim arrangements between phases ■ Current intentions for undeveloped areas and other areas for future development 	<ul style="list-style-type: none"> ■ Any interim arrangements should be explained ■ The anticipated timing of the various phases should be stated
<p>3. Existing site topography</p>	<ul style="list-style-type: none"> ■ Existing site topography 	<ul style="list-style-type: none"> ■ This should show the situation before proposed site clearance ■ The date of the survey should be stated
<p>4. Existing site conditions</p>	<ul style="list-style-type: none"> ■ Locations of trial pits, boreholes, percolation tests, and other ground investigation works ■ Existing watercourses and other water bodies ■ Areas of made ground ■ Areas of contaminated ground ■ Mining features – coal workings, mineshafts, and adits 	<ul style="list-style-type: none"> ■ The date the information was obtained should be stated
<p>5. Existing highways</p>	<ul style="list-style-type: none"> ■ Boundaries of existing all-purpose roads on or near the site ■ PROWs on or near the site ■ The status of any road, track, or path that crosses or accesses the site 	<ul style="list-style-type: none"> ■ Information on the boundaries of existing all-purpose roads can be obtained from our highways registry ■ Information on existing PROWs can be obtained from our PROWs team ■ Our highways registry and PROWs team can be contacted through our highway adoptions team ■ The date the information was obtained should be stated
<p>6. Existing utility apparatus</p>	<ul style="list-style-type: none"> ■ Existing utility apparatus in the site or in highways near the site – including above-ground cabinets, broadband cables, drains or sewers, electricity cables, gas pipes, telecoms cables, and water supply pipes 	<ul style="list-style-type: none"> ■ Only 'mains' are required to be shown; it is not necessary to show individual service connections ■ The date the information was obtained should be stated
<p>7. Planning approved site layout</p>	<ul style="list-style-type: none"> ■ The layout of the proposed streets that has been given planning permission 	<ul style="list-style-type: none"> ■ If the layout is covered by more than one planning permission, the coverage of each should be clearly shown ■ The planning reference(s) should be shown

Drawing	Coverage	Comments
8. Site clearance	<ul style="list-style-type: none"> ■ Significant items of site clearance: <ul style="list-style-type: none"> – Buildings to be demolished – Plant to be removed – Foundations to be removed – Concrete slabs to be broken up – Paved areas to be broken up or otherwise treated – Drains or utility apparatus to be abandoned, grouted up, or removed – Trees to be removed 	<ul style="list-style-type: none"> ■ None
9. Works to existing highways	<ul style="list-style-type: none"> ■ Entrance works ■ Frontage works – new kerblines, footways, and similar ■ Repositioned gullies and other drainage works ■ Haunching and resurfacing ■ New traffic islands ■ Alterations to traffic signs, including road markings ■ Utility apparatus connections or diversions 	<ul style="list-style-type: none"> ■ None
10. Road and path layouts	<ul style="list-style-type: none"> ■ Layouts of proposed streets – including centrelines, chainages, carriageway widths, footway/footpath/cycle track widths, widths of verges and hard margins, visibility splays ■ Speed control features – speed control bends, horizontal deflections, chicanes, road humps, speed cushions, junction speed tables ■ Private streets and private accesses, including: <ul style="list-style-type: none"> – Shared private drives – Vehicle crossings of footways and verges – Accesses to back gardens ■ Accesses to adjoining sites or developments and to existing properties 	<ul style="list-style-type: none"> ■ Streets should be labelled; plots should be numbered ■ Design speeds for individual roads or sections of road should be stated

Drawing	Coverage	Comments
<p>11. Vehicle swept paths and parking</p>	<ul style="list-style-type: none"> ■ Swept paths for the full length of all roads for: <ul style="list-style-type: none"> – Light vehicles – Delivery vehicles – Refuse collection vehicles – Fire service vehicles – Commercial vehicles (on industrial or commercial developments) – Agricultural vehicles (where there would be access to agricultural land or facilities) ■ Resident, visitor, staff, and customer parking provision, including Informal on-carriageway parking places and parking places on private drives and in garages ■ Expected in-highway parking, whether or not in designated parking places 	<ul style="list-style-type: none"> ■ The dimensions and other relevant characteristics of the design vehicles used for the swept path analyses should be stated ■ The swept path analyses should be made with all on-carriageway parking places – both formal and informal – occupied ■ Parking spaces for different vehicle types should be differentiated ■ Informal on-carriageway parking places and parking places on private drives and in garages should be clearly identified
<p>12. Long sections</p>	<ul style="list-style-type: none"> ■ Long sections of streets on independent alignments ■ Levels, gradients, vertical curves, and chainages ■ Profiles of existing ground ■ Locations of junctions, speed control ramps or humps, and other significant features ■ Surface water drains – including prospective highway drains, prospective public sewers, and private drains – that cross or run along streets 	<ul style="list-style-type: none"> ■ Levels and chainages shall be shown at the beginnings and ends of long sections and intervals of no more than 5 m ■ Levels and chainages shall also be shown at the ends of vertical curves and straight grades, locations where gradients change using transverse crown lines, ramps, and other significant features, whether proposed or existing
<p>13. Cross sections</p>	<ul style="list-style-type: none"> ■ Cross sections of streets on independent alignments ■ Proposed earthworks, carriageways, footways, hard margins, retaining walls or similar ■ Existing ground 	<ul style="list-style-type: none"> ■ Cross sections should be at 10 m intervals except where it would be more appropriate to locate them at specific features, in which case they shall be no more than 15 m apart
<p>14. Proposed surface contours</p>	<ul style="list-style-type: none"> ■ Proposed contours of carriageways, footways, footpaths, cycle tracks, hard margins, verges, and areas of adoptable highway landscaping 	<ul style="list-style-type: none"> ■ Contours shall be at intervals of not less than 0.1 m ■ Contours shall be labelled with the labels orientated so that they are read up the slope
<p>15. Proposed surface finishes</p>	<ul style="list-style-type: none"> ■ Proposed surface finishes of carriageways, footways, footpaths, cycle tracks, hard margins, and verges 	<ul style="list-style-type: none"> ■ All permeable surfaces shall be shown and identified

Drawing	Coverage	Comments
16. Proposed kerbs, channels, and edgings	<ul style="list-style-type: none"> ■ Kerb, channel, and edging locations, types, and upstands ■ Combined kerb and drainage blocks, grated channels, and other linear drainage inlets 	<ul style="list-style-type: none"> ■ None
17. Highway construction details	<ul style="list-style-type: none"> ■ Pavements and other paved areas – including footways and hard margins ■ Kerbs and channels ■ Road humps and ramps ■ Drainage ■ Street furniture 	<ul style="list-style-type: none"> ■ None
18. Geo-environmental and geo-technical features and earthworks	<ul style="list-style-type: none"> ■ Ground improvement or land remediation measures ■ Significant earthworks ■ Treatment of mining features 	<ul style="list-style-type: none"> ■ None
19. Structures – layout and location	<ul style="list-style-type: none"> ■ Structures for adoption ■ Burr walls and similar not offered for adoption but which support the highway ■ Other retaining walls alongside or near proposed or existing highways ■ Bridges and culverts not offered for adoption but alongside or near proposed or existing highways ■ Attenuation pipes, tanks, and drains with diameters or spans over 900 mm ■ Any retaining walls requiring section 167 approval 	<ul style="list-style-type: none"> ■ The drawing should clarify the status of the structures shown ■ Section 167 approval is explained in paragraph B35
20. Structures – General arrangement	<ul style="list-style-type: none"> ■ General arrangement of each structure 	<ul style="list-style-type: none"> ■ None
21. Structures – Construction details	<ul style="list-style-type: none"> ■ Construction details for each structure 	<ul style="list-style-type: none"> ■ The construction details required will depend upon the structure offered for adoption and should be confirmed with our highway adoptions team

Drawing	Coverage	Comments
<p>22. Proposed drainage, flood routing and, flood management</p>	<ul style="list-style-type: none"> ■ Proposed drainage – including: <ul style="list-style-type: none"> – Prospective highway drains and gullies – Prospective public sewers (surface water, foul, or combined) – Private drains located in or alongside highways – Attenuation tanks and pipes – Culverts – Swales and ponds – Soakaways – Outfalls, headwalls, and tail walls – Pumping stations – Private drains ■ Connections between proposed drains and existing drains and between prospective highway drains and other drains ■ Easements for highway drains ■ Access arrangements and facilities for attenuation tanks and pipes, culverts, swales, ponds, soakaways, pumping stations, outfalls, headwalls, and tail walls ■ Areas of permeable paving ■ Catchment areas for each gulley ■ Impermeable areas ■ Low points, high points, and flood routing ■ Features to divert or control flooding, such as road humps, dropped kerbs, or extra-high kerbs ■ Private paved areas adjoining highways 	<ul style="list-style-type: none"> ■ The drawing should clarify the status and use of the different types of existing or proposed drains ■ Each manhole/chamber shall have a unique reference
<p>23. Proposed adoptable sewers</p>	<ul style="list-style-type: none"> ■ The layout of the sewers proposed for adoption by either the incumbent sewerage undertaker or a NAV 	<ul style="list-style-type: none"> ■ None

Drawing	Coverage	Comments
24. Manhole/ chamber schedule	<ul style="list-style-type: none"> ■ Manholes, catchpits, soakaways, attenuation tanks, and other chambers ■ Outfalls, headwalls, tail walls, and connections to existing drainage ■ Proposed drainage – including: <ul style="list-style-type: none"> – Prospective highway drains and gullies – Prospective public sewers (surface water, foul, or combined) – Private drains located in or alongside highways 	<ul style="list-style-type: none"> ■ Each manhole/chamber shall have a unique reference ■ The schedule should show: <ul style="list-style-type: none"> – Manhole/chamber reference – Cover level – Invert level – Outgoing pipe size – Depth to invert – Depth to soffit – Manhole type – Chamber diameter – Cover type ■ It is not necessary to include gullies
25. Drainage construction details	<ul style="list-style-type: none"> ■ Pipes, manholes, outfalls, cover slabs, attenuation tanks and pipes, culverts, swales 	<ul style="list-style-type: none"> ■ None
26. Street lighting, including construction details	<ul style="list-style-type: none"> ■ New street lighting, feeder pillars, and illuminated traffic signs ■ Existing street lighting, feeder pillars, and illuminated traffic signs to be upgraded ■ Existing street lighting, feeder pillars, and illuminated traffic signs to be removed ■ Cabling – new or upgraded ■ Ducting – including size, type, and material ■ Connections to the public electricity supply ■ Construction details for columns, feeder pillars, illuminated traffic signs, and ducts 	<ul style="list-style-type: none"> ■ None
27. Traffic signs, including road markings and construction details	<ul style="list-style-type: none"> ■ Proposed new signs, changes to existing signs, and existing signs to be removed ■ Construction details for signposts and sign support structures 	<ul style="list-style-type: none"> ■ None
28. Refuse storage and collection	<ul style="list-style-type: none"> ■ Location and design of in-curtilage or communal storage points for refuse and recycling bins and other containers ■ Location and design of roadside ‘presentation points’ for refuse and recycling bins and other containers awaiting emptying 	<ul style="list-style-type: none"> ■ The drawing should state who would be responsible for the long-term care of any communal or shared facilities and any facilities that are not within the curtilage of an individual property

Drawing	Coverage	Comments
<p>29. Boundary treatments</p>	<ul style="list-style-type: none"> ■ Walls, fences, hedges, and similar alongside highways ■ The heights of walls, fences, and similar ■ The composition and expected heights and spreads of hedges 	<ul style="list-style-type: none"> ■ The composition of hedges determines the expected height and spread, which can affect visibility and illumination and the likelihood of the hedges obstructing footways or similar
<p>30. Landscaping, areas of open space, conservation, and wildlife</p>	<ul style="list-style-type: none"> ■ Areas to be grassed ■ Proposed trees – location, type, size, and type of staking ■ Other areas of planting, including species, size, and planting density ■ Areas of existing trees and hedgerows to be retained ■ Root protection areas for existing trees and hedgerows that are to be retained ■ Areas designated as public open space ■ Areas with play equipment and areas of playable space – including access points ■ Paths and tracks within areas of public open space ■ Non-planted ornamental features ■ Landscaping areas and features that would remain the responsibility of the developer or become the responsibility of a management company or similar ■ Access facilities for maintenance, including watering and mowing ■ Measures to protect wildlife or promote conservation – including: <ul style="list-style-type: none"> – Across road tunnels for amphibians or similar – Wildlife guide walls or fences – ‘Wildlife kerbs’ – Wildlife refuges 	<ul style="list-style-type: none"> ■ The drawing should state who would be responsible for the long-term care of any proposed landscaping feature or area of open space ■ Tree root protection areas shall be determined in accordance with BS 5837:2012 – Trees in Relation to Design, Demolition and Construction
<p>31. Tree planting, landscaping, conservation, and wildlife construction details</p>	<ul style="list-style-type: none"> ■ Tree pits, tree grilles, tree guards, tree stakes, root guards/barriers, irrigation systems ■ Raised planters ■ Measures to protect wildlife 	<ul style="list-style-type: none"> ■ None

Drawing	Coverage	Comments
<p>32. Public and private utility apparatus in highways</p>	<ul style="list-style-type: none"> ■ 'Service strips' – areas of carriageway or other paved areas allocated for underground apparatus ■ Proposed public utility apparatus in existing or proposed highway – including above-ground cabinets, broadband cables, drains or sewers, electricity cables, gas pipes, telecoms cables, and water supply pipes ■ Fire hydrants ■ Highway drainage and street lighting ■ Private utility apparatus – including private drainage – in existing or proposed highway 	<ul style="list-style-type: none"> ■ Only 'mains' are required to be shown; it is not necessary to show individual service connections ■ Private apparatus in a highway – including private drainage – would require a street works licence (see paragraphs D8 to D13) ■ Private drainage might also require a section 106 planning obligation (see paragraphs D14 to D21)

Annex D – Section 38 agreements

Preconditions

Proof of landownership

D1 As **we** say in paragraphs **174** to **178**, only landowners have the legal power to dedicate roads and paths as **publicly maintainable highways**. Therefore, you will have to prove to **us** who owns the land before **we** can enter into a **section 38 agreement**.

Surety: proof of suitability

D2 As **we** say in paragraph **11**, **our section 38 agreements** include a bond or surety to cover **our taking over costs**. If you propose to use a surety instead of giving **us** a cash bond, then you will have to prove to **us** that it would be suitable.

Planning permission

D3 Your proposed **highways** and associated drainage, ground improvement or land remediation measures, and treatment of mining features have to have full planning permission and not be subject to reserved matters or undischarged conditions.

D4 **We** will not enter into a **section 38 agreement** that could be seen to encourage unlawful development. Accordingly, **we** will not enter into a **section 38 agreement** for a development where there were reserved matters or undischarged conditions that related to the following:

- The layout of the **streets**
- The connections of new **streets** to the existing **highway** network and the treatment of any other existing **streets** that would be affected by the development
- The ground improvement or land remediation measures or strategy, if any
- The treatment of mining features
- The treatment of any existing **PROW** that would be affected by the development
- The surface water drainage and flood management strategy

- The treatment of any existing watercourses that would be affected by the development

Unrelated aspects of developments

D5 **We** do not require those aspects of your development that are unrelated to the proposed **highways** to have full planning permission before **we** will enter into a **section 38 agreement**.

Public sewers

D6 If you are proposing to have any new **public sewers** in your proposed **publicly maintainable highways**, then all of them have to be covered by a signed adoption agreement with either the **incumbent sewerage undertaker** or a **NAV**. If you don't, then **we** will treat your proposed sewers as private utility apparatus.

D7 Sewers in new developments are usually adopted using agreements under **section 104** of the **Water Industry Act 1991**.

Private utility apparatus in highways

D8 Any proposals to install private utility apparatus in a proposed **highway** have to be acceptable to **us** as the local **highway** authority.

Terminology

D9 To help you understand the issues surrounding private utility apparatus in the **highway**, it is useful if **we** clarify what **we** mean by public and private utility apparatus. In this guidance note, **we** use the following definitions:

- **utility apparatus** – such things as drains or sewers, electricity cables, gas pipes, telecoms cables, and water pipes
- **public utility apparatus** – apparatus used by utility companies, such as Yorkshire Water or National Grid, that supply the public
- **private utility apparatus** – apparatus used only by householders or other private bodies, such as management companies or factory owners

Street works licences

D10 It is unlawful for you to install any private utility apparatus in, over, under, along, or across a **highway** unless:

- the apparatus is covered by a suitable 'street works licence' granted by **us** under **section 50** of the **New Roads and Street Works Act 1991**; or
- the apparatus is permitted under the very limited exceptions allowed by **section 108** of the **Water Industry Act 1991**.

D11 If **we** agree to issue a **street** works licence, then **we** will usually:

- issue the licence to the owners of the properties that will be served by the apparatus; and
- legally 'attach' the licence to those properties so that the rights and obligations given by it will transfer to the new owners when the properties are later sold.

D12 **We** will not issue a **street** works licence to someone unless **we** are reasonably confident that they will have the ability to manage, maintain, and repair the apparatus and to safely excavate, work in, and afterwards reinstate the **highway**.

Public utility apparatus

D13 Public utility apparatus is allowed in **highways** by different legislation that is specific to each type of utility company.

Section 106 planning obligations: critical structures, and private drainage

Private drainage

D14 Where any of the following are included in a proposed development, then suitable **section 106 planning obligations** have to be in place to ensure their long-term care:

- The discharge of **highway** drains into a private drainage system
- Private drainage apparatus in **publicly maintainable highways**
- High-risk private drainage features near **publicly maintainable highways**

Critical structures

D15 **We** say in paragraph **B40** that **we** might require a **section 106 planning obligation** to guarantee the maintenance and management of critical structures on your proposed development. If **we** require one, then it has to be in place before **we** enter into the **section 38 agreement**.

Section 106 planning obligations

D16 **Section 106 planning obligations** are special agreements or 'unilateral undertakings' (promises) made under **section 106** of the **Town and Country Planning Act 1990** in connection with planning permission for a proposed development. They are legally enforceable and remain so even after a development has been sold.

D17 **Section 106 planning obligations** can be used during the planning process to address specific likely impacts of proposed developments by imposing legally enforceable obligations on a development. They can be made either by agreement between developers and **us**, as the local planning authority, or by developers acting on their own.

D18 **Section 106 planning obligations** are usually signed by the developer, but they are legally attached to the land being developed. This means that any future owners of the land would have to comply with them, even if they did not sign them. As they are registered as local land charges, they should show up during local authority searches.

D19 As **section 106 planning obligations** are usually more effective when they are agreed between **us** and developers, they are often called section 106 agreements.

Long-term care of infrastructure and amenities

D20 **Section 106 planning obligations** may be written to require property owners to provide, then manage and maintain, infrastructure or amenities. They may also require property owners to pay for any necessary works and then allow **us** to step in if the right works are not done at the right time and to recover **our** costs from the property owners. For this reason, they are widely used to make sure that facilities that will not be adopted by **us** or some other responsible body will be properly looked after.

More information

D21 Our highways guidance note *Highways, SuDS, and Private Drainage* gives more information

about **section 106 planning obligations** and explains our requirements for them in relation to the long-term care of private drainage features. This is available on our [highway adoptions webpage](#).

Your application email

Declaration

D22 In your application email you should state explicitly that you:

- apply for a **section 38 agreement**
- understand that **we** will not start to prepare a **section 38 agreement** until you have paid the appropriate fee
- believe that the procedures and processes described in this guidance note are suitable and acceptable
- believe that the information you have submitted is complete, correct, and up to date
- believe that you have given to **us** all the information you have relating to the existing condition of the site
- will tell **us** if you receive any additional information relating to the existing condition of the site
- confirm that the copyright holder of any document submitted will allow **us** to reproduce or distribute it – including to third parties – as **we** see fit
- have not submitted any ‘personal data’, as defined in the [General Data Protection Regulation \(GDPR\)](#), without the consent of the subject of that data
- are complying with your duties under [the CDM Regulations](#)

The information required to prepare a section 38 agreement

D23 In your application email, you should tell **us** the business names and full legal names, addresses, phone numbers, and email addresses of the following:

- Yourself as the developer

- Your solicitors
- Your surety provider
- The owners of any land that will be dedicated as new **highway**

Supporting documents

The approved proposals

D24 As our **section 38 agreements** are for your ‘approved proposals’, the drawings and other supporting documents to which **we** gave **highways technical approval** will be incorporated into the agreement. Therefore, you should list them in your application email and attach copies of them to it.

Highway adoption drawings

D25 We require our **section 38 agreements** to include ‘**highway** adoption drawings’ to define precisely and unambiguously what will be adopted as **publicly maintainable highways**. These drawings shall comply with our highways guidance note *Highway Adoption Drawings*. This is available on our [highway adoptions webpage](#).

D26 You should list the **highway** adoption drawings in your application email and attach copies of them to it.

Hard copies

D27 You have to send **us** four paper copies, printed in colour and at the correct scale, of the **highway** adoption drawings and, likewise, two paper copies of all the other drawings that will be incorporated into the agreement.

Annex E – Provisional certificates

Preconditions

Construction

E1 Your proposed **publicly maintainable highways** and associated works shall have been constructed to the design that given **highways technical approval** or subsequently changed with **our** approval as the **highway** authority.

Remedial works

E2 All remedial works shall have been completed.

Cleaning of adoptable streets and associated drains

E3 Your proposed **highways** and associated drains shall have been cleaned of accumulated debris and construction waste. In particular:

- your proposed **highways** shall have been swept to ensure that they are clear of mud
- the associated drains shall have been jetted
- any trapped gullies and catchpits shall have been emptied.

The drains shall be jetted, and the gullies and catchpits emptied after your proposed **highways** have been swept.

CCTV surveys of highway drainage works

E4 All adoptable **highway** drains shall have been satisfactorily constructed and surveyed by CCTV.

E5 You shall demonstrate to **us** that any drains – including any gulley leads – that would be adopted as part of the **publicly maintainable highway** have been constructed satisfactorily. To do this, you shall arrange for the drains to be surveyed by CCTV, and then send **us** recordings of the survey. These shall be emailed to **us** and shall be in a format agreed with **our** highway adoptions team.

Street lighting and electrical installations

E6 Any new or altered **street** lighting has to be safe, connected, undamaged, and in working order; any adoptable electrical installations shall have been tested and certified by a suitably qualified electrician.

Trees

E7 Any retained or newly planted trees have to be viable and in good condition and shall have been inspected and certified by a suitably qualified and experience arboriculturist.

Public sewers

E8 Either the **incumbent sewerage undertaker** or a **NAV** shall have certified that all the sewers in the prospective **publicly maintainable highways** are constructed to an adoptable standard and that they will adopt them as long as they perform satisfactorily during a defined maintenance period or similar.

E9 You should bear in mind that Yorkshire Water – the current **incumbent sewerage undertaker** – does not usually issue provisional certificates for new sewers in developments unless over 50% of the premises served by those sewers are occupied.

Utility apparatus

E10 All the utility apparatus required in your proposed **highways** shall have been installed and tested and any associated works, including reinstatements, shall have been satisfactorily completed.

Late installation: reinstatement works

E11 If you did install any apparatus during the maintenance period, then **we** will usually require extensive reinstatement works, including, for example, the complete replacement of any surface course affected. **We** will then extend the maintenance period to ensure there is enough time to demonstrate that your reinstatements perform satisfactorily.

Stage 3 RSAs

E12 Your proposed **publicly maintainable highways** and proposed changes to existing **publicly maintainable highways** shall be the subject of a satisfactorily closed-out stage 3 **RSA**. In addition, any works required in response to the **RSA** shall have been completed.

E13 If **we** have to do significant works to close out the stage 3 **RSA**, then **we** will extend the maintenance period to ensure there is enough time to demonstrate that your new works perform satisfactorily.

Your request email

Declaration

E14 In your request email you should state explicitly that you request a provisional certificate and confirm that:

- your proposed **publicly maintainable highways** and associated works have been constructed to the design that given **highways technical approval** or subsequently changed with **our** approval
- all your remedial works have been completed
- you have completed all works required in response to the stage 3 **RSA**
- your proposed **publicly maintainable highways** and associated drains have been cleaned of accumulated debris and construction waste
- all adoptable **highway** drains have been satisfactorily constructed and surveyed by CCTV
- any new or altered **street** lighting is safe, connected, and in working order and any adoptable electrical installations have been tested
- either the **incumbent sewerage undertaker** or a **NAV** have certified that all the sewers in the prospective **publicly maintainable highways** are constructed to an adoptable standard and that they

will adopt them as long as they perform satisfactorily during a defined maintenance period or similar

- all the required utility apparatus has been installed and tested and any associated works, including reinstatements, have been satisfactorily completed

Supporting documents

E15 In your request email you should list and include copies of the following:

- Test certificates for all new or altered electrical installations
- Written certification from either the **incumbent sewerage undertaker** or a **NAV** that all the sewers in the prospective **publicly maintainable highways** are constructed to an adoptable standard and that they will adopt them as long as they perform satisfactorily during a defined maintenance period or similar
- The stage 3 **RSA** brief (except where this is reproduced in the **RSA** reports)
- The stage 3 **RSA** audit report
- The stage 3 **RSA** response report
- Any stage 3 **RSA** exception report

Annex F – Final certificates

Preconditions

Payments of outstanding fees and charges

F1 You have to pay **us** any outstanding fees or charges for any work carried out by **us** in connection with your development. This includes **our** fees or charges for the following:

- **Street** lighting design or installation
- Changes to local traffic restrictions, including ones on parking
- Works to existing **highways**
- **RSA**

Stage 4 RSAs

F2 Where a stage 4 **RSA** was required, this shall have been and satisfactorily closed out, with any works required in response to the **RSA** completed.

Public sewers

F3 Any sewers in the prospective **highways** shall have been adopted by either the **incumbent sewerage undertaker** or a **NAV**. **We** will not issue a final certificate for any **street** containing prospective **public sewers**.

CDM health and safety file

F4 You have to email to **us** the up-to-date health and safety file – as required by **the CDM Regulations**.

F5 The purpose of the CDM health and safety file is to ensure that, once you have finished your works and your new **streets** have been adopted as **publicly maintainable highways**, **we** have the information **we** need to maintain or repair the new **highways** or to do any work to them safely and without risks to health.

As-built drawings, drainage schedules, and operation and maintenance manuals

F6 You have to email **us** as-built drawings and the drainage schedules for your completed works.

Operation and maintenance manuals

F7 You have to email **us** the required operation and maintenance manuals. **We** should have told you which features of the proposed development required them when **we** gave your proposals **highways technical approval**.

F8 Your operation and maintenance manuals shall conform to the requirements **we** set it in **our** highways guidance note *Operation and Maintenance Manuals for Adopted Highways*. This is available on **our highway adoptions webpage**.

Your request email

Declaration

F9 In your request email you should state explicitly that you request a final certificate and confirm that you have paid any fees or charges for any work carried out by **us** in connection your development.

Supporting documents

F10 In your request email you should list and include copies of the following:

- The adoption certificate issued by either the **incumbent sewerage undertaker** or a **NAV** for the sewers in the prospective **highways**

- The CDM health and safety file
- The as-built drawings and drainage schedules
- The required operation and maintenance manuals

Stage 4 RSAs

F11 Where a stage 4 **RSA** was required, you should list and include in your request email copies of the following:

- The stage 4 brief (except where this is reproduced in the **RSA** reports)
 - The stage 4 **RSA** audit report
 - The stage 4 **RSA** response report
 - Any exception report
-

Further information, comments, and queries

Kirklees Council highways standards and guidance

Highways guidance notes

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

Other highways documents

- The Advance Payments Code and You: Help and Advice if You Have Just Been Given an Advance Payments Code Notice
- Kirklees Highways Standard Details
- Highway Structures: Structural Procedures

Comments and queries

Kirklees Council welcomes comments and queries about this highways guidance note

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

- Huddersfield (01484) 22 1000 – ask for 'Highway Adoptions'
- Highways.Section38@kirklees.gov.uk
- www.kirklees.gov.uk/highwayadoptions
- Kirklees Council
Highways Service
PO Box 1720
Huddersfield
HD1 9EL



www.kirklees.gov.uk/highwayadoptions