Supporting Development and Facilitating Growth

The Highways Agency is an Executive Agency of the Department for Transport, and is responsible for operating, maintaining and improving the strategic road network (SRN) in England on behalf of the Secretary of State for Transport. A map of the roads which are our responsibility is on our website at:


Within the planning system, we have an important role to make sure that developments close to or affecting the SRN can take place while making sure that it continues to operate safely and efficiently for all road users.

We have developed our protocol approach to provide clear information to local authorities and developers in relation how we will work with them to support development and facilitate growth. Each protocol is intended to stand alone and can be read without any prior knowledge of the other protocols.

By applying the protocol approach across all areas of our involvement in the planning and development process, we aim to play our part by making sure that we are efficient, consistent, and clear about our requirements and what can be expected of us. However, to engage effectively, we also rely on local planning authorities and developers to understand and use the published protocols. We collect information about our performance in relation to the protocols, and we use this and feedback from developers and local authorities to identify ways in which we can improve.

In some cases the relevant protocol may not fully address the particular circumstances of a development, in which case we encourage further discussions with our regional planning teams. All protocols include area-specific contact details which are also shown on the map at the back of this document.

We welcome comments or feedback in relation to any area of our planning and development performance, either to the regional contacts within the document or directly to Dave Parker, Asset Delivery Manager for Yorkshire and North East, at dave.parker@highways.gsi.gov.uk.
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The Highways Agency and the Local Plan process

A protocol for local authorities, developers and the Highways Agency
The Highways Agency and the Local Plan process
A protocol for local authorities, developers and the Highways Agency

The Highways Agency is an Executive Agency of the Department for Transport (DfT), and is responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport.

The Highways Agency acts on behalf of the Secretary of State for Transport as the highway authority for the strategic road network of motorways and strategic A-roads in England. A map of the roads which are our responsibility is on our website at: http://www.highways.gov.uk/our-road-network/our-network/.

As a statutory consultee we have a duty to co-operate with local authorities to support the preparation and implementation of their development plan documents. We have prepared this protocol to set out how we will work with local planning authorities and developers to support the preparation of sound documents which enable the delivery of sustainable development.

The protocol is intended to be a companion document to Protocol for Dealing with Planning Applications¹ published in December 2012 It should be read in conjunction with the National Planning Policy Framework and DfT Circular 02/2007 ‘Planning and the Strategic Road Network’.

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Summary
As the operator of the strategic road network in England, we have a duty to keep it operating safely and effectively. In planning for the future of the network, we need to be aware of the development aspirations of local communities so that we can ensure that the quality and capacity of infrastructure, and the need for new strategic infrastructure, is taken into account.

The National Planning Policy Framework (NPPF) advises that local plans are the key to delivering sustainable development that reflects the vision and aspiration of local communities. This includes positively planning for the development and infrastructure requires in the area to meet the objectives, principles and policies of NPPF.

The Localism Act 2011 obliges us to co-operate with local planning authorities, county councils and other specific stakeholders in relation to planning of sustainable development, including in the preparation of local plan documents.

The Agency is a key delivery partner for sustainable development promoted through the plan-led system and our support is critical to achieving the objectives of local plans. We encourage organisations preparing local plan documents to contact us at the earliest opportunity, so that we can help them take account of the quality and capacity of the strategic road network when developing and selecting options.

At each stage of the plan preparation process, we will respond formally to consultation. However, we will also actively seek to work with local authorities and plan-making bodies between consultation periods to ensure that the emerging documents take full account of the requirements of the strategic road network.

It is not our role to determine the soundness or otherwise of local plan documents. We will always work with local planning authorities to find ways to ensure that the needs of the strategic road network are adequately addressed in local plan documents while fulfilling our responsibilities in respect of the network.

We will follow the principles below when participating in the preparation of local plan documents:

- We will work openly with local planning authorities and developers to support the development of options and to ensure that infrastructure requirements are taken into account. We will engage early and at all stages in the process, to avoid the need to raise concerns about the soundness of documents at later stages of the process.
- We will support the development of a consistent and robust evidence base as it relates to the strategic road network, and we will provide access to our data and traffic models to support this.
- We will support the delivery of local plans by working with local planning authorities to identify what needs to be delivered on key routes, including improvements, to meet the needs of future network users. This will support greater local and regional involvement in planning for the network and informing future investment decisions.
• With the agreement of the planning inspectorate, we will participate at the examination in public of local plan documents in support of robust evidence-based policies.

Developing and sharing a robust evidence base

NPPF requires that the Local Plan is based on adequate, up-to-date and relevant evidence about the characteristics of the area. When looking at the existing infrastructure, local planning authorities are required to work with other authorities to assess its quality and capacity and consider the scope for additional capacity or improvements to meet the needs of the combined development aspirations.

In operating the strategic road network, we collect and analyse significant amounts of information about our network and how it interacts with local road networks. We encourage local authorities to use this information to support the development of a robust evidence base in relation to the impacts of development upon the strategic road network. This information includes:

• automated traffic count information, which is made available online through the TRADS database at http://trads.hatris.co.uk/.
• speed and flow information which is collected automatically which we will provide on request where it is available.
• in some cases, validated traffic models and/or land-use models which can be used where available by local authorities and developers to support decision making and forecast the impact of future development on the network.

We will provide access to models and information we hold about our network. We do not charge a fee for using our data, however where it costs us to provide access or information, we may charge this back to the user.

Planning for infrastructure delivery

We will support the principle of the NPPF by encouraging and supporting co-ordinated working across boundaries and with other infrastructure providers to establish the strategic priorities for the network we operate.

In the first instance, local planning authorities should do what they can to minimise the need for changes to the strategic road network by taking opportunities to reduce the need to travel, especially by private car, and by maximising access to development sites by public transport.

In many cases, it is likely that additional capacity to parts of the strategic road network will be identified as necessary to support the delivery of local plans. NPPF requires that there should be a reasonable prospect that planned infrastructure will be deliverable in a timely fashion. We will work with the relevant authorities to help develop sufficiently detailed policies and plans for the additional infrastructure and to ensure that these are reflected in planning for our network. Policies and plans should normally identify:

• what type of improvement is needed, and an early range estimate of the likely cost;
- at what point the improvement becomes necessary; and
- how the improvement is to be funded and delivered.

Highways Agency interest in specific documents

Within local plans we are most interested in the documents which set out strategic and development control policies, and allocation of sites. This will normally include the Core Strategy, Development Control Policies and Site Allocations. These policies have the greatest scope to impact on the strategic road network, so we will work most closely with local authorities while they are being prepared.

Other local plan documents such as waste & minerals plans, supplementary planning documents or area action plans may relate to policies or sites which would affect the strategic road network. In this case, we will also seek to influence the development of those documents.

Appendix A sets out in detail how we will participate in the preparation of the main development plan documents. Appendix B sets out how we will inform and help refine the detailed for any site allocations within any Local Plan document, including the Core Strategy and any document making allocations.

Local plans may include neighbourhood development plans which set development priorities and policies for designated neighbourhood areas. Where these have an impact on the strategic road network we will seek to influence the development of those documents. In producing neighbourhood plans, parish and town councils and neighbourhood forums must also consult with the local highway authority which is responsible for roads which are not motorway or trunk roads.

Review of specific Local Plan policies

Where a local planning authority identifies a need to review an adopted Local Plan which affects the strategic road network, we will liaise with the authority to agree revised details for the policy prior to its adoption.

Planning and operating our network

In planning and operating our network, we take into account the likely impacts of future development on its operation and safety. We will use the information within adopted local plans to inform our plans to renew and improve of the network.

Once local plan documents are adopted, we will continue to liaise with local authorities and other infrastructure providers to make sure they use up-to-date information about our network when reviewing policies and the progress of existing plans, and when developing new plans and strategies.
Appendix A Preparation of the development plan documents

Process Overview
The preparation of a Local Plan document can be divided into four distinct stages. These are as follows:

- Stage 1: Pre-Production (early stakeholder consultation, evidence gathering, scoping)
- Stage 2: Production (preparation and consultation on drafts)
- Stage 3: Examination (pre-examination hearing, exploratory meeting, hearing sessions)
- Stage 4: Adoption (adoption and monitoring)

The flowchart overleaf outlines the key stages in the preparation of a Local Plan document and indicates how we will seek to be involved continuously and at each stage in the process. The orange boxes identify the key stages in the plan preparation process from the perspective of the LPA; the green boxes identify actions for both parties and relate mainly to engagement between us and the LPA; and the blue boxes identify what we will do.

NPPF does not require that a specific process is followed when preparing a plan and encourages LPAs with the opportunity to tailor the process of plan preparation to their particular needs. This gives opportunities for cross-authority working, such as in the production of Joint Core Strategies. The greater flexibility in both process and the types of documents that can be produced makes it even more important to for local authorities be proactive and transparent when engaging with us and other key stakeholders.

Stage 1 – Pre-Production
We proactively seek to engage with local planning authorities directly through the officers responsible for developing local plan documents. Consultation during the pre-production stage allows us to advise on and influence the content of the plan and its supporting evidence as it affects the strategic road network. This should help to negate any conflicts or surprises which may arise at later stages in the process, during consultation on the Publication draft or at Examination in Public.

Through engaging in the preparation of spatial plans across the country, we have a lot of experience and ideas which we can share to support the development of the Local Plan and help ensure that it is robust and deliverable with sustainable and sound proposals based on technically robust and credible evidence.

As the operator of the strategic road network, we possess a significant amount of knowledge, information, data and traffic models regarding the network and how it operates and interacts with the local road network. We encourage local planning authorities to use this information when developing plans and the evidence base that underpins them. This will help guide and influence the size, type and location of development; advise spatial policy; and determine infrastructure requirements and mitigation measures.
By using the help and information we can provide, local planning authorities can reduce the level of costs and resources required to develop the evidence base. It will also help prevent abortive work on strategy and proposals which are later shown to be undeliverable or have undesirable consequences.
We will use our early discussions to start to exchange information about and agree the potential impact on the strategic road network. We also agree a clearly defined course of action, once a Local Plan document has been identified in the Local Development Scheme.

We will review and respond to supporting documentation such as Sustainability Appraisal scoping reports or topic papers published for consultation. We may comment on the proposed objectives or the issues identified and the appraisal of them against the local plan document’s options and policies.

**Stage 2 – Production**

Authorities can take a flexible approach to preparing local plan documents, so that single or multiple drafts of a document can be prepared and consulted on prior to publication. We monitor the progress authorities are making against timetables set out in Local Development Schemes. It is important therefore that we are advised of changes to the Local Development Scheme, especially where it relates to the Core Strategy, policies or site allocations.

Whilst the statutory consultation stages provides us with the opportunity to formally comment on a draft plan, will liaise with authorities between formal consultation stages so that we can advise as options and proposals are being developed.

During the first formal stages of consultation on a draft Local Plan document, we will review the document and any supporting documents, such as infrastructure delivery plans and sustainability appraisals. We will identify any issues regarding the proposed options, draft policy content, infrastructure and sustainable transport provisions, scale and location of new development and the provisions of supporting documents and evidence base.

At each formal consultation period we will comment within the six week consultation period. In some cases we or the authority may arrange a follow-up meeting to discuss our comments and to agree how identified issues will be dealt with.

In the case of a Core Strategy, we will review any proposed strategic sites and general areas for development and provide recommendations for taking forward options. This may include advice or suggestions for improving policy content, details of likely requirements for infrastructure and sustainable transport provisions, or further details about the operation of the strategic road network to add to the evidence base. We may not agree with all the options and proposals put forward at this stage, but we will aim to agree common ground and identify the elements of the plan that we can support and highlight the issues which are of particular concern.

The list below explains the questions we will consider to when formally responding to a draft Local Plan document and supporting evidence, and gives an indication of some of the key issues which are of particular concern to us:

- Has a robust evidence base been used in preparing development proposals?
- Has the sustainability of policies, specifically in relation to potential impacts on the strategic road network, been considered?
• How will the size, type and location of development proposals have an impact on the operation of the strategic road network? How has the impact been assessed?
• How have required amounts and locations of housing and employment development been determined?
• What improvements to the transport network, including to sustainable modes, are proposed? Can these improvements can be delivered and will they be sufficient to meet the needs of the development plan?
• Is the delivery and sustainability proposed development dependant on the delivery specific transport, infrastructure or junction improvements? If so will these improvements mitigate the impact of the proposed development and are they deliverable?
• Has the accessibility of proposed sites been considered?

NPPF recommends that infrastructure and development policies should be planned at the same time in the Local Plan. Therefore, we would expect the evidence base and any supporting delivery plans to be in development, and whilst some information or specific details may be lacking at this stage, we would expect the scope for preparing the documentation to have been identified. Any additional studies which may be required to feed into the evidence should be identified, along with a clear programme for completion, such that they timely inform the development of the local plan document.

For further drafts or options of local plan documents published for consultation prior to publication, we will follow same approach as for earlier drafts, taking into account earlier comments we have made. We will particularly look at where the policies, proposals or supporting evidence have been developed following our earlier input. Where policy and proposals have been amended or updated we may also update our previous assessment if necessary.

**Stage 3 – Publication**

When a publication draft Local Plan document is published for consultation we will use the same approach as for earlier drafts, taking into account previous comments. At this stage we would expect that any previous concerns or requirements have been addressed enabling us to provide full support to the submission for examination of the document in public.

We would expect that the evidence base will be comprehensive and robust with all supporting studies and technical assessments complete, and an outline of the key infrastructure required to support the document provided. This should include demonstrating a reasonable prospect for delivery as required by NPPF and include details of costs, sources of funding, timescales for delivery, gaps in funding and those responsible for delivery.

The following list highlights some of the key issues we will consider:

• Is there consistency between the policy approach promoted in the document and with any associated documents such as infrastructure plans?
• Have there been any significant policy amendments or additions, which either address or could impact on any previous comments or concerns raised?
• Have the key development targets, particularly for housing and employment changed and are there any implications of changes?
• Building on previous assessment and responses, what are the cumulative impacts of any known development sites within the plan area and in adjacent areas?
• What are the implications of specific significant growth areas on the strategic priorities which affect neighbouring authorities and the wider area as a whole?
• Has there has been any change in the national spatial planning policy context that would influence the spatial approach promoted in the document?
• Are there any gaps or deficiencies in the evidence base gaps that would need to be addressed in advance of examination in public?
• Are there any other concerns about the overall soundness of the document, and do we consider it to be justified, effective and in accordance with national policy?

Following our review at this stage, there may still be issues outstanding which cause us concerns about the soundness of parts of the document. Where there are still issues remaining we will highlight them through the submission of formal representations during the public consultation process.

Within any representation, we will explain which parts of the document we are concerned about and why we think consider these might affect the soundness of the document and the amendments that we consider are necessary to make the plan sound. Alternatively, we may request some amendments to the supporting text or other supporting documents such as delivery plans, or we may suggest further development of the evidence base.

**Stage 4 – Examination**

**Introduction**

The current rules for submission of local plan documents for examination require the authority to submit a summary of main issues raised in response to the publication version of the document. Where we have outstanding concerns, we expect that details of these will be included in the summary submitted by the local planning authority to the Inspector.

Following submission of a local plan document to the Secretary of State, we will continue to liaise with the local planning authority to address any outstanding concerns, to try and resolve them prior to the start of the examination hearings. We will do this by agreeing common ground and identifying key differences, and working with the local planning authority to agree a way forward.

Before the hearings commence, we will help local planning authorities to do any additional work needed to resolve our identified concerns, and we will seek to agree any amendments to policy or supporting information. If agreement cannot be reached or additional work cannot be completed prior to the hearing, we will agree a statement of common ground, to highlight which parts of the plan are still of concern to us.

If all our concerns are addressed prior to the examination in public then we will formally withdraw any outstanding objections. If any issues remain, we will ask the inspector to allow us to attend and discuss these at the examination in public so that the Inspector can understand and give due weight to them.
**Post Submission Amendments**
We will review and comment on any amendments proposed by the local planning authority that affect our network, except where we have already agreed them through earlier discussion.

**Exploratory and Pre-Examination Meetings and Written Statements**
If an exploratory meeting is required by the Inspector, we will take part where we are asked to do so, particularly where discussions include issues or matters we have raised. As required, we will provide information to the Inspector about those issues and update on any ongoing discussions or work which may be being undertaken to address them.

Where we, the local planning authority or the Inspector think we might need to participate in the examination in public we will attend the pre-examination meeting and take part in discussions as required.

If we or the Inspector have any outstanding concerns regarding any previous comments we have submitted or comments in relation to the strategic road network submitted by other parties, or if the Inspector wishes to explore a particular issue which may concern us, then we will prepare written statements to address them as required by the Inspector.

**Examination in Public hearing sessions**
We will not normally seek to attend at examination in public hearing sessions except with the agreement of the inspector where we have been unable to reach agreement on any issues of concern and where we think that it is important to verbally present our concerns. We will participate in the hearing sessions as required by the Inspector.

If a local planning authority requires our support at a hearing session and we are in a position to be able to provide support to the plan, then we will prepare for and attend such sessions in this capacity.

If the inspector requests that we attend a hearing session to discuss matters related to the strategic road network raised by a third party, we will discuss with the inspector and we may prepare for and attend such sessions in this capacity.

**Inspectors Report Published**
The local planning authority must publish the Inspector’s recommendations as soon as practicable after the day on which the plan is adopted by full council. We would wish to be advised of the publication date for the Inspectors Report so we can consider the implications of the recommendations proposed.

**Stage 4 – Adoption**
When a Local Plan document is adopted, as a consultee we would expect to receive a copy of the published adoption statement, including details of how changes recommended by the inspector have been taken into account.

Following the adoption of a Local Plan document we will maintain contact with the local planning authority to ensure early involvement in the preparation of any revisions to the policies and proposals in the document and the preparation of other local plan documents.
Appendix B  Analysis of Site Specific Allocations

Introduction
When a Local Plan document proposes site specific allocations within the Core Strategy document or in a standalone document such as an allocations document or area action plan, we will normally seek to ensure transport requirements are taken into account. This would be based on the available information including site location, development type and development scale. We will work with the local planning authority to shape the analysis, providing any available data and helping to undertake the analysis where necessary.

The following sets out what we consider to be an effective process for undertaking the site based analysis, consisting of two key stages:

- Stage 1: Site Identification (determining the impact of the proposed sites on the operation of the strategic road network)
- Stage 2: Infrastructure Identification (determining the infrastructure measures required to support the development proposals)

Site-specific information should ideally be analysed in parallel with and informing the preparation of the local plan document. The analysis feeds into and is informed by the
early and regular engagement and will influence the consultation responses that we submit.

Within the overall framework and through our consultation responses and regular engagement, we will already be in the process of considering the spatial and transport policies for the Local Plan, specifically in relation to how they promote sustainable and accessible development.

**Site Identification**

Identification of potential development sites is an ongoing process which local planning authorities undertake through regular housing and employment land availability assessments and reviews. We will work with local planning authorities to ensure that any required information is fed into these ongoing processes.

We will work with local planning authorities to agree an approach to assessing the likely impacts on the strategic road network of groups of sites and specific strategic sites. This will include looking at the trip generating potential, the ability of sites to be accessed by sustainable modes of transport, likely trip distribution patterns and consequential impacts on the strategic network.

We will use the assessed impacts to help inform local planning authority decision making in selecting a list of sites which meet the requirements of the area while achieving sustainable development.

**Infrastructure Identification**

We will work with local planning authorities to identify the infrastructure requirements of the overall allocation and for specific sites. We will assess the likely impacts of development trips from the selected sites on the strategic road network and the level of subsequent mitigation required, including looking at cross-authority issues where they exist.

Working with the local planning authority, we will investigate potential measures so that they can be sifted, prioritised and investigated to ensure they are reasonably deliverable, in terms of cost and feasibility, within the plan period. We will agree the approach to this, where available using detailed models of the locations to which the measures relate. We will take into account measures identified as necessary and deliverable when preparing our forward programme of network renewal and improvement. Where measures are unlikely to be feasible or deliverable within the plan period, we will work with the local planning authority to revise the site selection process taking account of such constraints.

Once a list of sites has been selected for which suitable and deliverable measures have been identified and agreed, we will work with the local planning authority to identify on a site-by-site basis where specific measures or contributions to wider area measures will be required, so that this can form part of the information within the allocation. This will include establishing the appropriate delivery methods, and identifying the trigger points at which specific measures are required.

Where the evidence base for the local plan document includes a plan for infrastructure delivery or a community infrastructure levy, this should include details of the infrastructure requirements which have been agreed.
Appendix C  Highways Agency Asset Development Teams and Contacts

Engaging with local planning authorities in respect of local plan documents is a function of the Asset Development Teams. For planning purposes the business operates as six teams that broadly cover the former local government regions. Enquiries should therefore be directed to the appropriate team.

Enquiries concerning HA models and their availability and terms of usage should be directed to the appropriate Asset Development Team unless a case officer has already been appointed. On these occasions, they will be the principal point of contact.

East of England
Catherine Brookes
Tel: 0121 678 6287
E: planningEE@highways.gsi.gov.uk

Midlands
Mark Clough
Tel: 0121 678 8284
E: planningEM@highways.gsi.gov.uk

North West
Ruth Moynihan
Tel: 0161 930 5775
E: planningNW@highways.gsi.gov.uk

South West
Andrew Page-Dove
Tel: 0117 372 8696
E: planningSW@highways.gsi.gov.uk

South East
South East – Angela Koenig
Tel: 0130 687 8251
E: planningSE@highways.gsi.gov.uk

M25 Region – Francis Cluett
Tel: 0130 687 8246
E: planningSE@highways.gsi.gov.uk

Yorkshire and North East
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The Highways Agency and the process for Local Development Orders and Neighbourhood Development Orders the Highways Agency and the Local Plan process

A protocol for local authorities, parish councils, neighbourhood forums and the Highways Agency
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We have prepared this protocol to assist Local Authorities, Parish Councils, Neighbourhood Forums and others responsible for preparing Local Development Orders or Neighbourhood Development Orders. The note outlines what the Orders are and how we will deal with them while Orders are prepared to ensure that the we are an effective delivery partner to growth. By working as described, all parties have the opportunity to avoid misunderstanding, abortive costs and minimise potential delays through the process.

This note is intended to complement Highways Agency policy and guidance on the planning process, set out in Department for Transport (DfT) Circular 02/2007 ‘Planning and the Strategic Road Network’.

The protocol is intended to be a companion document to Protocol for Dealing with Planning Applications published in August 2010 and is intended to complement the information set out in Department for Transport (DfT) Guidance on Agreements with the Secretary of State for Transport under Section 278 of the Highways Act 1980.

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1 DfT Circular 02/2007 Planning and the Strategic Road Network.
How the Highways Agency Deals with LDOs & NDOs

As the operator of the strategic road network in England, we have a duty to keep it operating safely and effectively. In planning for the future of the network, we need to be aware of the development aspirations of local communities so that we can ensure that the quality and capacity of infrastructure, and the need for new strategic infrastructure, is taken into account.

Local Development Orders (LDOs) and Neighbourhood Development Orders (NDOs) remove the need for developers to apply for planning permission by effectively granting permission for certain types of development as specified in the Order. There are specific rules which set out what can or cannot be included within a LDO or NDO and the process for making Orders. Further background and information relating to the legislation associated with LDOs and NDOs is contained within Appendix A.

Neighbourhood Development Orders (NDOs) act in a similar way to LDOs. However, the rules regarding which types of development can be covered by an NDO and how they are declared are more restrictive than for LDOs and are pursued by Parish Councils or, in their absence, Neighbourhood Forums formed by community groups.

We are committed to the delivery of the Government’s stated objective of developing a speedier and more efficient spatial planning system and we will support the use of LDOs and NDOs as part of this overall goal.

LDOs & NDOs and the Highways Agency

We will work with LPAs, emerging and functioning Local Enterprise Partnerships, Neighbourhood Forums and Community Groups who are promoting Orders in order to encourage partnership working and early discussion of delivery. Anyone promoting an Order is required to have pre-application consultations, and this should aim to agree the principles and details of development before formal consultation.

The legislation and guidance on LDOs and NDOs requires that we are consulted during the preparation of and the making of any Order which may affect the SRN. The LPA is required to specify a deadline for comments no less than 28 days after the date that the documents are sent. An LDO or NDO cannot be adopted before the specified deadline for comments and must take into account any representations received.

Local highway authorities are responsible for maintaining and operating roads which are not motorways or strategic A-roads. Anyone promoting a LDO or NDO must consult with the local highway authority as well as the Highways Agency.

For all consultations, we will make sure we respond within the required deadline and make appropriate arrangements to respond. We will treat consultations about LDOs and NDOs as we would consultations on specific planning applications as outlined in our protocol ‘The Highways Agency and the Planning Application Process – A Protocol for Dealing with Planning Applications’. This will include the need to understand the likely impacts on the SRN in terms of economy, safety, efficiency and environment, taking account of local...
needs and aspirations. The need for any mitigation requirements, including infrastructure provision, will be highlighted.

We will provide our response as a written representation letter. For LDOs and NDOs we, acting on behalf of the Secretary of State, do not have the power to make directions.

The processes also allows for conditions to be imposed by the body making the Order. Where we think conditions are necessary, we will work with the body making the Order to agree appropriate conditions to secure the implementation of restrictions on development or mitigation measures as appropriate.

Where insufficient information is provided to enable us to provide a full response to the consultation, or where we are not given sufficient time to consider the detail of the consultation, we may make representations to the Secretary of State seeking intervention. As with any other interventions in the planning process, this decision will be considered at the appropriate level within the regional Asset Development Team.

On publication, we will review LDOs and NDOs to ensure that our representations have been properly taken into account. If we are concerned that they have not been given due weight, we may consider making representations to the Secretary of State for Transport, in order that those views can be taken into account in the Secretary of State for Communities considering the final proposed Order (as outlined in Appendix A).

**Summary**

LDOs and NDOs effectively constitute outline consent for development across a defined area and are subject to the specific limitations defined in the Order. In this regard we will:

- positively engage with those making Orders to ensure that we are an effective delivery partner;
- ensure delivery partners are aware that early engagement is necessary and of the risks to proposals being delivered in a timely manner if it does not take place;
- treat consultations regarding development Orders as if they were specific planning applications, using the same evidence base and criteria;
- consider the implications for the SRN in terms of economy, safety, efficiency and environment, as well as local needs and aspirations;
- consider mitigation requirements, including infrastructure provisions; and identify any conditions that we think need to be contained in the Order to safeguard the safe and efficient operation of the SRN;
- adhere to the deadline for representations and make appropriate arrangements to respond within the identified timescale (no less than 28 days after the date that the documents are sent;
- respond by letter, rather than by TR110; but give consideration to making representations to the Secretary of State for Transport seeking intervention should insufficient information be provided or insufficient time is afforded to enable the volume of information provided to be considered fully; and
- review the Order on publication to ensure that proper account has been taken of the Highways Agency’s representations, again with consideration being given to
the need to making representations to the Secretary of State for Transport if this is not the case.
By working as described, all parties have the opportunity to avoid misunderstanding, abortive costs and to minimise potential delays through the process.
Appendix A Further Background

Limitations

Under the provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (DMPO), LDOs cannot be made in respect of:

- development affecting a listed building;

NDOs can relate to all land within the area specified in the Order or specified sites within it. A NDO may relate to a neighbourhood area that is located in two or more different planning authorities.

Under the provisions of the Localism Act 2011, NDOs cannot be made in respect of:

- development which is a county matter (mining, minerals, waste etc);
- development covered by Schedule 1 of The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 requiring an EIA;
- development consisting wholly or partly of a Nationally Significant Infrastructure Project as defined in the 2008 Act; or
- any development that is prescribed or development in a prescribed area.

Making LDOs and NDOs

The Localism Act 2011 amends the Town and Country Planning Act (T&CPA) 1990 to require those promoting an Order to have pre-application consultations, in the same way as that of consultation at the formal stage.

Further, the principles of current and emerging planning policy encourage and require pre-application consultation, to agree the principle and details of development before formal consultation where possible. It may be helpful to inform delivery partners about plans for early engagement and of the risks to proposals being delivered in a timely manner if that early engagement is not forthcoming.

The DMPO sets out a list of persons to be consulted if the LPA considers their interests would be affected by the Order if made, and this includes the Highways Agency. The LPA is also required to consult any person with whom they would have been required to consult on an application for planning permission for the development proposed to be permitted by the Order. The Highways Agency should, therefore, be consulted either way.

Neighbourhood planning can be taken forward by Parish Councils, or where none exists, community groups known as Neighbourhood Forums. They must meet criteria set down in legislation, and can apply to their Local Authority to be recognised and allowed to act within the same scope as Parish Councils under the Localism Act to create Plans and Orders in their area.
Neighbourhood Plans and Orders are submitted to the Local Authority and independently scrutinised to make sure that they meet conformity requirements before being subject to a Local Referendum. If the majority of those voting in that referendum accept the proposals then the Local Authority is under legal obligation to adopt the plan or make the Order. NDOs, as a form of LDO, have the same safeguards in terms of the requirement to consult and to have regard to representations as set out above when discussing LDOs.

In the majority of cases, NDOs are unlikely to cover development with the potential for significant adverse impact on the SRN. However, there may be particular circumstances in which there could be such an undesirable outcome. For that reason, the Highways Agency will need to give consideration to the proposals contained in any NDO on which it is consulted.

Following the close of the consultation, after making any amendments and on deciding to proceed with the making of the Order, the LPA must submit the Order and statement of reasons to the Secretary of State who has 21 days to decide whether to issue a direction. The Secretary of State can issue a direction approving or rejecting the LDO or for the LDO to be modified. The LDO can then be adopted in accordance with the Secretary of State’s recommendations.

The power to issue a direction approving, rejecting or requiring the LDO to be modified rests with the Secretary of State for Communities and Local Government. Powers to make this direction under article 61b of the amended 1990 Act do not apply to the Secretary of State for Transport and, therefore, cannot be exercised on his behalf by the Highways Agency. Further, the HA is not able to direct on behalf of the SoSfT under Article 25 of the DMPO and may only offer advice in respect of any Order consultation.

**Legislation**

Sections 59 to 61 of the T&CPA 1990 granted the Secretary of State power to make development orders; this legislation has been rarely exercised.

The legislative basis for LPAs to make LDOs was set out in Sections 40 and 41 and Schedule 1 of the Planning and Compulsory Purchase Act 2004 (which inserted new sections 61A to 61D and schedule 4A into the T&CPA 1990. On 23 June 2009 S188 of the Planning Act 2008 came into effect along with associated GDPO changes. This removes the requirement that LDOs must implement policies in LDDs. These have now been consolidated in the DMPO. Section 34 covers local development orders.

The community infrastructure levy regulations came into force on 6 April 2010. These cover development permitted under a LDO. There will be a three year transitional period to 6 April 2013 before CIL will be charged on development enabled through permitted development orders (General Permitted Development Order, Local Development Orders, Enterprise Zones) (regulation 128).

The legislative basis for relevant bodies to make NDOs was set out in Section 116 and Schedules 9 and 10 of the Localism Act 2011 (which inserted new sections 61E to 61Q, 38A and 38B and schedule 4B into the T&CPA 1990.
Appendix B  Highways Agency Asset Development Teams and Contacts

Engaging with local planning authorities in respect of LDOs and NDOs is a function of the Asset Development Teams. For planning purposes the business operates as six teams that broadly cover the former local government regions. Enquiries should therefore be directed to the appropriate team.

Enquiries concerning HA models and their availability and terms of usage should be directed to the appropriate Asset Development Team unless a case officer has already been appointed. On these occasions, they will be the principal point of contact.

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This note will be updated as experience is gained and best practice emerges. For any queries related to development orders, or if you have any suggestions for amendment to this document, please contact planningqueries@highways.gsi.gov.uk.
### Appendix C Abbreviations

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>LDO</td>
<td>Local Development Order</td>
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<tr>
<td>NDO</td>
<td>Neighbourhood Development Order</td>
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<td>Order</td>
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<td>DfT</td>
<td>Department for Transport</td>
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<td>Agency</td>
<td>Highways Agency</td>
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<td>LPA</td>
<td>Local Planning Authority</td>
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<td>SRN</td>
<td>Strategic Road Network</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>T&amp;CPA</td>
<td>Town and Country Planning Act 1990</td>
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<td>SoST</td>
<td>Secretary of State for Transport</td>
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<td>LDD</td>
<td>Local Development Document</td>
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<td>CIL</td>
<td>Community Infrastructure Levy</td>
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<td>LDF</td>
<td>Local Development Framework</td>
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Approvals

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The Highways Agency and the Planning Application Process

A protocol for dealing with planning applications
The Highways Agency and the Planning Application Process

A protocol for dealing with planning applications

We have prepared this protocol to assist developers and their representatives in working alongside us when submitting planning applications for development which could have an impact on the strategic road network. It is also to assist Local Planning Authorities and Local Highway Authorities and our own planning teams in the review of planning proposals, to enable prompt and consistent responses. By working in this way, all parties have the opportunity to avoid abortive costs and to minimise potential delays through the process.

The protocol is intended to complement Highways Agency policy and guidance on the planning process, set out in Department for Transport (DfT) Circular 02/2007 ‘Planning and the Strategic Road Network’

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Summary

What is the Highways Agency interested in?

As the operator of the strategic road network in England, the Highways Agency has a duty to keep it operating safely and effectively. Therefore, we must respond to specific development proposals in respect of the potential impact on the capability of the strategic road network².

The Highways Agency on behalf of the Secretary of State for Transport may give directions restricting the grant of planning permission by local planning authorities, where permission would adversely impact the current network or on the route of a proposed future strategic road³.

*It is not our role to determine planning applications. We will always work with developers and local planning authorities to find ways to overcome our objections while fulfilling our responsibilities in respect of the network.*

How can we help?

As the operator of the network, we have a large amount of information about the operation of the network which is available to developers to help them when preparing planning applications. We also have a strong knowledge of the strategic road network and how it interacts with local roads, and can provide advice and guidance on the issues which may occur and how they can be resolved.

How do we approach planning discussions?

We adopt an open, collaborative and solution focused approach. We work with all relevant interested parties, which may include:

- The developer and the developer’s representatives (transport and planning consultants);
- The local planning authority;
- The local highway authority;
- Other teams within the Highways Agency; and
- Other stakeholders where it is appropriate to do so.

We welcome and encourage early discussion of all relevant matters prior to the submission of formal planning applications.

In dealing with development proposals, we will liaise directly with the developer and local authorities to ensure consistency and to make sure that applications progress as they should. We will maintain clear and accurate records of discussions and agreements which will be distributed to all the relevant parties.

For the purposes of this document, references to the developer include the developer’s representatives and consultants, and references to the Highways Agency include our consultants and contractors.

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Overview of the Process

Description
From our perspective, the planning process can be divided into two distinct stages. These are:

- Stage 1: Pre-application discussions about specific development proposals
- Stage 2: Response to formal consultation by the local planning authority

The flowchart below outlines the key stages in the planning application process where we are involved and indicates a desired maximum duration for these to be completed – unless longer timescales are agreed beforehand by the relevant parties, such as for large or complex applications. The boxes in orange indicate actions for developers; the boxes in blue are actions for us; and the boxes in green for both parties.

![Flowchart](image)

Figure 1: Highways Agency process for planning applications
Stage 1: Pre-application discussions

Introduction
The pre-application stage offers an opportunity for all parties to resolve any issues which may occur throughout the planning period.

We have a wealth of information and knowledge about the operation of the strategic road network and its interaction with local roads. Therefore, we are in a strong position to provide advice to developers considering whether or not to develop and what form development may take.

Whether or not previous discussions have taken place, formal pre-application discussions are an opportunity for us to advise the developer of our concerns and requirements and to explore potential solutions to issues related to the strategic road network which may delay or prevent the grant of planning permission. We normally recommend that the local planning authority and the local highway authority are also closely involved in these discussions to ensure consistency of approach.

A copy of the pre-application template is available from our website at http://www.highways.gov.uk/our-road-network/planning/.

Pre-application discussions
We welcome pre-application discussions with developers. These provide the opportunity to resolve as many issues as possible prior to the submission of a planning application. Initially, we will deal with pre-application consultations in accordance with the timescales shown in Figure 1. On initial receipt of a pre-application enquiry, we will respond within seven days of receiving the enquiry, with the contact details of a nominated Case Officer.

While Figure 1 sets out an indicative timescale for pre-application discussions, we seek to respond flexibly to suit developers’ requirements. We encourage discussions and work at the pre-application stage to agree the methodology to be used in developing and submitting the necessary documents (such as travel plans, transport assessments or statements and environmental impact assessments).

When contacted in respect of any development proposal, we will:

- Respond to an initial request for discussions within seven days.
- Provide a named contact for discussions, which will be someone with knowledge and experience of the area.
- Advise the developer whether the development proposal is likely to be of interest to the Highways Agency.
- Advise the developer of known and identified potential constraints to the development proposal.
- If required, provide access for the developer to all relevant data and models. Where this is readily available, we will provide access to this to the developer at no cost.
- If required, review, comment on and agree where acceptable the methodology for assessing the impact of development.
- If required, review, comment on and agree where acceptable the principles of the scale and nature of necessary mitigation.
• Liaise with other relevant parties within the Highways Agency and externally as required by the developer.

It should be noted that where proposals are directly contrary to government policy or guidance, require land within the ownership of the Highways Agency which has not been declared surplus to requirements, or which raise direct and irresolvable safety issues, we will generally consider them unacceptable in principle.

Should an application be submitted for such a proposal, an indefinite direction of non-approval of the application would be issued to the local planning authority.

We will provide an unprejudiced view on the acceptability of any proposal during pre-application discussions. Where it is likely that a planning application may be considered unacceptable in principle, we will provide guidance as to what steps would need to be taken to resolve any potential objection.

Formal pre-application scoping

Depending on the nature of the site and the proposed development, the developer may submit a written scoping report or arrange a meeting with us. Where a meeting is arranged, the case officer will encourage developers to invite other relevant parties to attend the meeting if it is considered necessary. However, meetings will be chaired by the Highways Agency and remain focused on meeting the needs of the developer and the Highways Agency.

Where a scoping report is submitted, the developer should normally provide the following information:

• Details of the development, such as location, access arrangements, use class, size or number of units, and maximum number of parking spaces and any other relevant information.
• Proposed methodology for estimating the vehicular trip generation and distribution on the strategic road network, and resulting trip generation figures.
• Proposed methodology for assessing the impact of trip generation on the strategic road network.

The methodology used within the scoping report should normally be consistent with the approach set out in DfT’s ‘Guidance on transport assessment’ unless the characteristics of the proposed development necessitate an alternative approach.

We will then check and agree with the local highway authority that the baseline assumptions are accurate, thus enabling a more productive meeting and minimising potential abortive work by the developer.

Both parties should seek to engage in open and ongoing discussions throughout the pre-application period. However, they should also seek to rationalise the submission of and requests for further information, to enable issues to be dealt with concurrently.

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Stage 2: Formal consultation by the Local Planning Authority

Introduction
Following submission of the planning application to the local planning authority, we will be notified of the consultation period and asked to respond to them within 21 days\(^5\). There is a duty on local planning authorities to notify the Highways Agency in respect of any development which may materially affect the strategic road network.

The Agency will continue to provide access for the developer to all relevant data and models, where this readily available at no cost. Usage of data and models may be prescribed at this stage by the need to respond within 21 days.

Submission of planning application
When submitting a planning application, we expect the developer to provide all the information necessary to enable us to fully consider the impact of the development on the strategic road network, and the suitability of any proposed mitigation.

The nature of the information will vary by development, but as a guide the following information may be required:

- For developments generating more than 30 two-way trips to the network during any peak period, a transport assessment and travel plan prepared in accordance with DfT and DCLG’s ‘Guidance on transport assessment’\(^6\) and meeting the requirements of DfT Circular 02/2007\(^7\).
- For developments falling any of the categories of Appendix B of ‘Guidance on transport assessment’ requiring a travel plan, a travel plan that has been prepared in accordance with DfT guidelines should be provided.\(^8\)
- For developments where construction traffic may adversely impact on the operation of the network for a limited period, a construction management plan should set out the management measures which will be used to minimise the impact.
- For developments within or close to air quality management areas affecting the strategic road network, an assessment of the air quality impacts of the development.
- For developments which may lead to issues of visual distraction, an assessment of the visual impacts of the development.
- Certain types of development have particular considerations. These considerations are addressed in the Agency Spatial Planning Advice Notes (SPANs see Appendix D for reference).

A summary of the key requirements of DfT’s ‘Guidance on transport assessment’ and on travel plans is provided in Appendix B.

For outline planning applications where a travel plan would be required, a framework travel plan must be prepared by the developer prior to determination of the application. The travel plan forms an integral part of the assumptions that are made and agreed regarding

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travel patterns and hence the basis on which the application is determined. Therefore, the framework document will still need to include the key elements described in Appendix B.

**Our Consideration of the Planning Application**

We will consider the planning application documentation, and provide an initial response to the local planning authority within 21 days.

The response will take one of the following forms, with reasons given as appropriate:

a) We offer no objection to the development.
b) We recommend that the application should be refused, or granted only subject to conditions.
c) We direct the local planning authority to impose specified conditions on any permission which may be granted.
d) We direct that planning permission is not granted for a specified period.
e) We direct that planning permission is not granted for an indefinite period.

Where we are not satisfied that the information provided is sufficient to fully assess the impact of the development and the suitability of mitigation proposals, we will direct under point d) above. This is not a step that we will ever take lightly and in all cases we will clearly set out what needs to be done in order for us to provide a view on the application. Where our concerns relate to assumptions made by the developer, we will review all the relevant documents and provide comments in a single review.

We will only make requests for further information or assessment where the information is material to the consideration of the impact of a development on the strategic road network. It shall not be used as a negotiating tactic or to unduly prevent or delay the issue of a decision.

Where we need to issue advice or a direction under b) to e) above, we will continue to engage proactively with the developer and other authorities to resolve as many matters as quickly as possible, and ideally prior to the target planning committee date.

Formal requests for further information will be sent electronically to the planning officer and copied to the local highway authority and to the developer, to enable prompt action. Information that the developer provides directly to us should also be copied to the local planning authority and local highway authority as necessary.

**Identification and agreement of mitigation**

Identification of the scale and nature of mitigation required for a particular development is the responsibility of the developer. If required, we will help to identify options for mitigation and ensure that the developer is given the information necessary to make informed decisions about mitigation to be secured. The mitigation proposed must be sufficient to offset the detriment to the strategic road network. If the necessary mitigation is unaffordable we will have no option but to recommend refusal and, where appropriate, direct indefinite non approval of the application.

Our strong preference is that all mitigation measures should be secured through the use of planning conditions. Negative or ‘Grampian-style’ conditions should be used where mitigation measures can only be delivered by third parties or have financial implications. The scale and nature of necessary mitigation must be agreed with us before we can send our final response to the local planning authority.
Appendix C provides a non-exhaustive checklist of the criteria that must be met before we can ‘sign-off’ mitigation proposals requiring works to the highway network. Mitigation proposals need to be in an agreed form and should normally be to general arrangement level of detail prior to determination of the application. We may require more detail where the adequacy of the developer’s control of land is an issue. Assessment and agreement of mitigation proposals (including Stage 1 Road Safety Audits and consideration of whether any departures from standard are acceptable) can be a lengthy process, and all parties should seek to progress them as soon as possible.

We will consider acceptable mitigation of impacts based on the following hierarchy:

1) All reasonable steps shall be taken to minimise the level of physical mitigation required, through the use of measures such as travel plans, development phasing, heavy goods vehicle booking systems and encouraging flexible working.

2) Physical measures on the local road network to minimise the impact on the strategic road network shall be utilised as far as is reasonably possible.

3) Once all reasonable minimisation and off-network mitigation has been implemented, we will consider capacity improvements on the strategic road network. We will not accept local capacity improvements where they would overload the wider network

Mitigation measures on the strategic road network will be subject to approval by the appropriate Highways Agency operational team. All proposals for physical mitigation to the strategic road network must be subject to a Stage 1 Road Safety Audit carried out in accordance with the standard current at the time.

Proposals for physical mitigation to the strategic road network must be fully consistent with the relevant standards set out in Design Manual for Roads and Bridges (DMRB) current at the time. Where proposals are not fully consistent with DMRB our Departures procedure must be followed. As part of this the developer will be required to demonstrate:

- that a design that complies with standards cannot be reasonably achieved; and
- that the proposed design is safe and fit for purpose

Developers should not assume that a departure will be acceptable. This information will need to satisfy the Agency’s appropriate operational and technical teams who will be required to agree to the principle of any necessary departures from standards before the application can be granted. Full approval for departures from standard can only be given following the completion of detailed design.

Where works are required on the strategic road network, Circular 02/2007 requires that these are paid for by the developer through an agreement under Section 278 of the Highways Act 1980. Guidance on our process for S278 agreements is provided in our Protocol ‘The Highways Agency and the Section 278 Agreement Process’.

The full cost of any works carried out under Section 278, including the Agency’s administration costs, must be paid by the developer. These costs will include the future cost of maintenance, which must be paid as a commuted lump sum. Commuted lump sums can be substantial; on request our Case Officer will provide the calculation method for the lump sum current at the time. In line with paragraph 36 of DOE Circular 11/95 ‘Use
of conditions in planning permission\(^9\) we will avoid securing mitigation which is undeliverable, unaffordable or not viable.

Where it is considered that the mitigation measures identified are unaffordable or not viable, the developer will be entitled to identify alternative methods of mitigation at any of the three steps in the hierarchy above. If no alternative viable mitigation can be identified, an indefinite holding direction will be issued.

**Confidentiality**

Developers should be aware that, as in common with other public authorities, the Agency must comply with the relevant Code of Practice under the Freedom of Information Act. Therefore, it would be helpful if developers could explain to us why any information they are providing, particularly during the Pre-application stage, is viewed as confidential. If we receive a request for disclosure of the information we will take full account of this explanation, but we cannot give any assurance that confidentiality can be maintained in all circumstances.

**Resolution of disputes and delays**

If either party is concerned that matters are unlikely to be resolved within the timescales indicated above or the timescales agreed at pre-application stage, they should pro-actively escalate the problem in order to try and resolve the issues. In such instances, we will contact the developer's lead representative and/or the developer should contact the appropriate Planning Manager, whose details can be found in Appendix A.

**Monitoring and Review of this Protocol**

This protocol is a live document that will be updated as and when changes in policy relevant to the above processes occur. Feedback on both the contents and application of the document is very much welcomed from all parties and this should be forwarded to Dave Parker, Yorkshire and North East Regional Asset Development Manager by email to dave.parker@highways.gsi.gov.uk.

All comments received will form part of an ongoing review process on the anniversary of issue and will be taken into account when preparing updated an updated version, as appropriate.

Appendix A: Highways Agency Asset Development Teams and Contacts

Planning

Planning is a function of the Asset Development Teams. For planning purposes the business operates as seven teams that broadly cover the former local government regions. Planning enquiries should therefore be directed to the appropriate team. Where a development is located across local authority boundaries, in the first instance, the contact should be the Asset Development Team for the lead authority.

Asset Development Teams

Pre-application enquiries should be directed to the appropriate Asset Development Team to enable the appointment of a case officer.

Enquiries concerning HA models and their availability and terms of usage should be directed to the appropriate Asset Development Team unless a case officer has already been appointed. On these occasions, they will be the principal point of contact.

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Appendix B – Summary of requirements for transport statements, transport assessments and travel plans

The transport statement or assessment should be prepared in accordance with the DfT and DCLG’s ‘Guidance on transport assessment’\textsuperscript{10}. However, in brief, a transport assessment should include:

- Existing conditions – accessibility, traffic flows, accident analysis, committed developments and highway works.
- Development details – use class, size / number of units, access arrangements, number of parking spaces.
- Predicted person trip generation and mode splits (and full details of how these have been calculated).
- Predicted residual vehicular trip generation based on proposed travel plan measures (and full details of how these have been derived).
- Distribution of residual vehicular trips (and full details of how these have been calculated).
- Junction capacity assessments and merge / diverge assessments at opening year and ten years after registration of application (if more than 30 two-way trips on any strategic road network junction or slip road).
- Details of proposed mitigation measures (in addition to travel plan), if appropriate.

Whilst the transport assessment and travel plan should form separate documents, they are inextricably linked. Most crucially, the residual vehicular trip generation used for the capacity assessments in the transport assessment should be based on the proposed travel plan measures and along with the predicted mode splits should form the initial travel plan targets.

The travel plan should be prepared in accordance with the DfT’s ‘Good Practice Guidelines: Delivering travel plans through the Planning System’\textsuperscript{11}. However, in brief, a travel plan should include:

- Details of existing accessibility.
- Firm commitment to appoint a travel plan co-ordinator. For commercial developments this should be for the lifetime of the development and for residential developments this should be for a minimum of five years post full build out.
- Firm commitment to implementation of or provision of funding for Travel Plan measures.
- Initial vehicular trip generation and mode split targets as used for the capacity assessments in the transport assessment and realistic ongoing targets to reduce single occupancy car trips over time.
- Comprehensive monitoring regime to ensure that targets are being met and an agreed fallback position should they fail to do so. These may include alternative mitigation measures, restrictions on subsequent

\textsuperscript{10} DfT and DCLG Guidance on transport assessment. \url{http://bit.ly/bLHQa7}

\textsuperscript{11} DfT Good Practice Guidelines: Delivering travel plans through the planning system. \url{http://bit.ly/cu6wd9}
phases of the development, or a commitment to reviewing the measures in consultation with the local planning authority and Highways Agency.

Depending on the nature of the development, other documents may also be required (as agreed at pre-application stage). For example:

- Construction management plan
- Car park management plan

Appendix C – Securing satisfactory and deliverable mitigation measures

Any mitigation proposals that require works to the strategic road network or that would fall to be constructed by us must obtain our ‘sign-off’, we expect that they shall be:

- Assessed using the traffic generation based on any agreed transport assessment or statement and travel plan to ensure that they meet their objectives. This should be included in the transport assessment or statement, checked by the Highways Agency and, where appropriate, agreed with the local highway authority.
- Checked to ensure that they do not have an unacceptable adverse impact on existing environmental management areas, such as Air Quality Management Areas, or that suitable mitigation for such impacts is provided.
- In conformity with current standards as set out in the Design Manual for Roads and Bridges. Where a departure from standards is needed, we will check that the principles of the departure can be agreed to prior to the resolution of the planning application. However, a departure cannot be approved until detailed design is complete and developers should not assume that proposals for departures will be accepted. We will ensure that any conditions we impose will give flexibility to amend schemes where departures from standards identified prior to grant of planning permission cannot be approved for construction.
- Subjected to a Stage 1 Road Safety Audit, commissioned by the developer and carried out fully in accordance with the standard current at the time\textsuperscript{12}. The Audit Team and Audit Brief must be approved in advance by the Agency’s nominated Project Sponsor. The Highways Agency’s Case Officer will advise the developer who the Project Sponsor is. The Audit Team will report directly to the Project Sponsor. The Audit Team must be independent of the Design Team and direct contact between the Audit Team and the Design Team is not permitted except with the prior written approval of the Project Sponsor. Any Exceptions sought to the recommendations of the Audit require approval at Director level within the Agency.

\textsuperscript{12} DMRB Volume 5 Part 2 Road Safety Audit (HD 19/03). \url{http://bit.ly/ckZc3R}
• Checked and approved by the relevant operational team, to be co-ordinated by the Highway Agency case officer.

All of the above need to be completed prior to determination of the application and, as they can potentially be lengthy processes, all parties should seek to progress them as soon as possible.

Appendix D – Spatial Planning Advice Notes
If require access to the Spatial Planning Advice Notes please contact the Agency’s Planning Inquiries In-Box (planningqueries@highways.gsi.gov.uk). Alternatively you can call the Spatial Planning Policy Team on 0121 678 8271.

• SPAN 01/09 Applications for Telecoms Masts
• SPAN 01/10 Guidance for the Highways Agency as Consultee to Third Party Nationally Significant Infrastructure Projects
• SPAN 03/11 Travel Plans
• SPAN 04/11 The Advertisement Control Regime Good Practice Guidance
• SPAN 10/09 Noise Barriers
• SPAN 11/09 Re-use of Roadside Facilities Sites
• SPAN 12/09 Wind Turbines

Appendix E – Pre-application Meeting Check List and Agenda.
The pre-application stage offers an opportunity for all parties to resolve any issues which may occur throughout the planning period. We have a wealth of information and knowledge about the operation of the Strategic Road Network and its interactions with local roads. Therefore we are in a strong position to provide advice to Developers considering whether or not to develop and what form development may take.

For detailed on pre-application discussions please refer to ‘The Highways Agency and the Planning Application Process’ (Highways Agency Developer Protocol) which is available as a link on the Highways Agency website.

This check list will help you to identify what areas maybe discussed in the initial pre-application meeting.

For the Initial meeting we recommend you consider and bring details of:
• Information about the Development: Size, location, uses, characteristics,
• Information about the timescales you are working to: Date for submission, key dates for any external funding sources, dates for formal consultation periods (IPC, LDOs etc)
• Details of who will be involved: Main developer contact, details of planning and transport advisers, Planning and Highway Authority contacts,

At the initial meeting, you can expect from us:

• Information about our network: current and future operation, key concerns, schemes
• Details of the technical information we may be able to provide to assist you in developing your scheme: traffic information, modelling, etc
• Details of who will be involved: Main point of contact, technical support
• Commercial confidentiality as far as is permitted under the Freedom of Information Act.

Overleaf is a draft meeting agenda for an initial pre-application meeting. As part of the meeting, further actions can be set to ensure that the pre-application process meets your and our needs.
Pre-application meeting agenda

Suggested meeting duration: 1 hr 30 minutes
Meeting actions to be recorded by the Highways Agency, circulated to and agreed by all parties.

1) Introductions

2) About the development
   a. Size, location, types of use
   b. Planning history, allocations
   c. Special site characteristics or allocations
   d. Any other relevant information

3) About the network
   a. Current and future operational conditions
   b. Committed development
   c. Future schemes
   d. Anything related to the network which might affect the development

4) Who will be involved
   a. Developer:
      Main contacts, technical specialists, planning consultant and any other agents.
   b. Highways Agency:
      Case officer, technical support, other areas within the Agency which may be affected
   c. Local Authority:
      Highway contact, planning officer, any technical support

5) Dates and timescales
   a. Intended submission dates
   b. Key dates for the developer
   c. Key dates for any external funding sources
   d. Dates for formal consultation periods

6) Introduction to the Highways Agency Developer Protocol

7) Actions and next steps
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Reviewer List

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<tr>
<td>Ian Askew</td>
<td>Senior Policy Advisor – Spatial Planning</td>
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<td>Dave Parker</td>
<td>NDD Yorkshire and North East Regional Planning Manager</td>
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<td>Vanessa Gilbert</td>
<td>NDD Yorkshire and North East Regional Director</td>
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<td>Tim Harbot</td>
<td>NDD Midlands Regional Director</td>
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Approvals

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<td>Director Network Delivery and Development</td>
<td>Nov 2012</td>
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The Highways Agency and the section 278 agreement process

A protocol for developers and the Highways Agency
The Highways Agency and the section 278 agreement process

A protocol for developers and the Highways Agency

The Highways Agency is an Executive Agency of the Department for Transport (DfT), and is responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport.

We have prepared this protocol to assist developers in working alongside us to deliver works on the strategic road network through section 278 agreements. The protocol is also intended to assist Local Highway Authorities, and our own internal teams and agents, to provide an efficient and consistent approach to undertaking s278 agreements with works promoters. By working in this way, all parties have the opportunity to avoid abortive costs and to minimise potential delays throughout the process.

The protocol is intended to be a companion document to The Highways Agency and the Planning Application Process: A Protocol for Developers published in December 2012 and is intended to complement the information set out in Department for Transport (DfT) Guidance on agreements with the Secretary of State for Transport under Section 278 of the Highways Act 1980.

This protocol is not intended for use as a guide on very small schemes with a works cost of less than £25,000. For such schemes, reference should be made to our advice sheet on mini Section 278 agreements available from our website at: http://www.highways.gov.uk/our-road-network/planning/.

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Appendices
1 Overview of section 278 agreements

1.1. The Highways Agency acts on behalf of the Secretary of State for Transport as the highway authority for the strategic road network (SRN) of motorways and strategic A roads in England. A map of the roads which are our responsibility is on our website at: http://www.highways.gov.uk/our-road-network/our-network/.

1.2. Where a landowner or developer seeks to make changes to the road network in order to serve a particular development or to implement a planning consent, they are usually required to enter into an agreement with the highway authority make changes. Where it applies to the SRN, this is usually in the form of an agreement as defined in Section 278 of the Highways Act 1980 (as amended), referred to as a s278 agreement.

1.3. Schemes completed under a s278 agreement may be promoted by a single developer or several developers working together. For clarity, we refer in this document to the ‘works promoter’ which may apply to either scenario. References to the works promoter include the works promoter’s advisors, representatives and consultants. References to the Highways Agency include our service providers, agents, contractors and consultants.

1.4. Works promoters may enter into s278 agreements with local highway authorities for schemes on local roads or with the Secretary of State for schemes on the SRN. If a scheme is to be carried out on both the SRN and local highway network, the two authorities may need to enter into a separate agreement. This protocol does not address agreements between highway authorities as the works promoter is not party to them, although it is beneficial for the agreements to be drawn up to work together. We will advise the works promoter if such an agreement is necessary.

1.5. By definition, all s278 agreements are different and will relate to a number of our other processes. This protocol does not aim to comprehensively detail each process, but rather to set out our general process and what the works promoter can expect from us. Our service delivery managers are experienced in delivering s278 agreements and will be able to advise on the specific requirements of a particular scheme.

1.6. Local authorities may enter into agreements with the Secretary of State to contribute to the cost of schemes on the SRN under Section 274 of the Highways Act 1980 (as amended), referred to as a s274 agreement. Although most of the principles of this protocol apply to s274 agreements, it is not intended to be used for this purpose and any authority wanting to use a s274 agreement should contact us for further advice.

1.7. For s278 agreements entered into for schemes on the SRN we must ensure that the full cost of administering, designing and implementing the scheme is covered by the works promoter. If the scheme includes new network or new equipment in
the existing network with will need to be maintained in future, there is also likely to be a commuted lump sum payment towards the cost of future maintenance.

2 Principles of section 278 agreements

2.1. Before a s278 agreement can be entered into, the development must either benefit from either a valid planning consent, a Development Consent Order or be an existing premises. Except for existing premises, the principle of any identified mitigation scheme will have been agreed in the process of considering the planning application or Development Consent Order application.

2.2. Before proposing a scheme as physical mitigation for likely development impacts, we recommend that works promoters take account of any likely payments towards future maintenance and how they affect the deliverability of their scheme. We will maintain and provide access to a calculator for works promoters to use to get an indication at the planning application stage of the amount that is likely to be payable as a sum towards the cost of future and provide advice on its use.

2.3. Mitigation schemes should normally be designed in accordance with our design standards set out in Design Manual for Roads and Bridges (DMRB). Where a scheme cannot be delivered fully in accordance with DMRB, departures from our design standards must be approved at the appropriate stage. This will normally be during the process of preparing the detailed design. However, where departures are identified prior to the planning consent being granted, we will check to ensure that we agree to the principle of them, and they may be approved in principle where there is sufficient detail to do so.

2.4. The principle of any identified mitigation scheme will be valid for the duration of the planning consent. Where an application to extend the time limit for implementation of an extant consent is made, we will review any proposed mitigation scheme to ensure it is still suitable and where necessary we will seek to secure an amended scheme to meet current standards and network requirements.

2.5. Works promoters are encouraged to engage in an early dialogue with us in order to ensure a smooth transition from planning the scheme to implementation. We will seek to be an effective business partner and provide value for money in our business dealings with the development community. We are committed to ensuring that preparatory work is undertaken in a timely manner, thus ensuring the process progresses as efficiently as possible.

2.6. The primary role of service delivery manager will be filled by a named individual who will be the works promoter’s main point of contact for all matters related to the delivery of the scheme.

2.7. It is important that both we and the works promoter are aware of how an agreement is progressing at all stages, both in terms of time and cost. We will manage agreements against an agreed programme and on an ‘open book’ basis with costs based on the actual costs of implementing the scheme. Our administrative costs will be based on the published schedule.
2.8. Depending on the form of agreement and the likely cost of the scheme, money may be paid to us in stages or via a lump sum. DfT rules do not allow us to go into deficit against a particular project, and therefore we will not undertake work in any stage after the pre-agreement meeting until either:

- we have either received money from the works promoter to cover the costs of that work; or
- an abortive cost undertaking (ACU) backed by a financial undertaking has been entered into by the works promoter.

Money left over at the end of each task or stage can be rolled over to meet costs of the next stage or repaid to the works promoter. Any money which has been paid to us and has not been spent in delivering the scheme will be repaid to the works promoter once the scheme is complete or abandoned without undue delay.

3 Securing a section 278 agreement

A flow chart showing the four key steps in the process is included at Section 10.

3.1. Once planning consent has been secured, there are four steps in the implementation of highways mitigation schemes:

- Step 1: Pre-agreement discussions and establishing the type of agreement to be used [see Appendix A, 3.2 and 3.3 below];
- Step 2: Detailed design and drafting the s278 agreement [see Appendix B and 3.4, 3.5, 3.6 and 3.7 below];
- Step 3: Procurement of works and finalising the s278 agreement [see Appendix C and 3.8 below];
- Step 4: Construction, post construction and final accounts [see Appendix D].

3.2. Once planning consent has been granted, the scheme will be managed to delivery by our nominated service delivery manager. When we are contacted by the works promoter to being the process, we will give the name and contact details of the service delivery manager. We will also issue a questionnaire to seek relevant information.

3.3. At the works promoter’s request we will hold a pre-agreement meeting to discuss the scheme. The meeting will be led by our service delivery manager for the s278 scheme and include technical support as necessary. At the meeting, some or all of the following may be discussed:

- the form of agreement to be used
- how the scheme is to be procured
- the timescale which the works promoter is working to
- who will undertake the detailed design of the scheme
- who will undertake the construction of the scheme.

3.4. Before the s278 agreement can be signed and procurement of works can begin information will need to be prepared, checked and approved. This will include but is not limited to:
- Contact information for the works promoter’s agents, consultants, legal and financial representatives
- A description of the works to be undertaken
- A detailed design including general arrangement drawings of the works
- Details of any works to protect or move utility company equipment
- A cost estimate to complete the scheme (including utility company costs) based on suitable professional advice or obtained through an open tender exercise, to allow the amount payable to us be calculated
- The level of commuted lump sum payment towards future maintenance costs of additional highways assets created through the scheme, calculated in accordance with current guidance
- Relevant road safety and non-motorised user audits completed in accordance with Design Manual for Roads and Bridges guidance set out in HD19/03 Road Safety Audit.
- Approval and confirmation of all departures from standards including any identified during detailed design and those which we previously approved or agreed to the principle of prior to grant of planning consent.
- Land requirements for proposed new highway works that are outside the ownership of the Secretary of State

The design and cost estimates may be prepared by us or by the works promoter and checked by us. However, whichever approach is taken our actual costs of preparing or checking the information will need to be met by the works promoter before we can undertake or commission any work, in line with the principles set out in 2.8 above.

3.5. Design of all schemes must be in accordance with Design Manual for Roads and Bridges standards except where we have given technical approval in writing for specific departures from standards.

3.6. While it is unusual for a scheme delivered under a s278 agreement to require the submission of a detailed environmental statement, there will often be a need to address particular environmental impacts as part of the scheme preparation. Where we think this may apply, the service delivery manager will advise the works promoter and it will need to be resolved prior to the s278 agreement being entered into.

3.7. Drafting of the s278 can commence while the items in 3.4 above are being prepared. Before drafting commences, the form of agreement for the s278 will need to be agreed between us and the works promoter. We and the works promoter will work together to draft the agreement and once both parties are satisfied with the draft it will be sent for checking and approval by the Department for Transport’s solicitor who will liaise with the works promoter’s solicitor to finalise and approve the agreement.

3.8. An explanation of the options for the procurement of the scheme is given in Appendix C and the procedures for building the scheme and payment of accounts
are described in Appendix D. The appointed contractor will build the scheme and it will be supervised by us or by an agent appointed to do so on our behalf.

4 Roles of parties to the section 278 process

4.1. The main parties to the agreement are the works promoter and us acting on behalf of the Secretary of State for Transport. We will seek technical and legal input from our other teams and DfT respectively as required.

4.2. In locations where the SRN is managed on our behalf by Design, Build, Finance and Operate (DBFO) companies they will be involved in the delivery of works. The service delivery manager will explain if there are any specific requirements for the scheme as a result of a DBFO company’s involvement, which may include a different method of calculating any commuted lump sum for maintenance that may be payable.

Role of the works promoter

4.3. It is the responsibility of the works promoter to provide information required by the service delivery manager in order to ensure the scheme is developed and implemented effectively. The works promoter should also ensure that they have in place the capacity to prepare or check the technical and legal information which will be prepared through the process.

4.4. The works promoter and their consultants must ensure compliance with all aspects of the Construction (Design & Management) Regulations 2007 (CDM) as they apply to the works promoter. Where a five-part or four-part agreement is used and depending on the details of the works, for the purposes of CDM we may agree for the works promoter to fulfil the role of client and to fulfil all the responsibilities of that role.

4.5. The works promoter must pay funds in accordance with the agreement, and ensure that all land required to deliver the scheme is conveyed to the Secretary of State. Subsequent payments of funds where applicable will be made in accordance with the agreement.

Role of the Highways Agency

4.6. Our role in the process will be to take all reasonable steps to ensure the efficient delivery of the scheme so as to support the delivery of the associated development. We will do this by managing our work and that of our advisors to ensure that they support the delivery of the scheme to the agreed method and timescale. We will provide as much information as is necessary for the works promoter to make informed decisions.

4.7. We are responsible for providing all technical approvals, including departures from DMRB standards and supervision and approval of work carried out. We may appoint a consultant or contractor to act on our advice, but the ultimate authority to issue approvals remains with our service delivery manager.

4.8. We and our consultants will ensure compliance with all aspects of the CDM Regulations as they apply to us. Where a five-part or four-part agreement is used
and depending on the details of the works, for the purposes of CDM we may agree for the works promoter to fulfil the role of client subject to our satisfaction that the works promoter is competent to do so. In a standard two-party agreement, we will fulfil the role of client.

4.9. We will provide a regular account of spending and work undertaken on the scheme and future forecasts as required by the works promoter.

5 Commuted lump sum for maintenance

5.1. The commuted lump sum for maintenance is calculated based on the cost of maintaining network created or improved as a result of the works for a period of 60 years. This occurs either where a new area of network is created, such as a widened carriageway, or where equipment such as new signs or signals is installed on the existing network. However, commuted lump sum for maintenance is not payable where the cost of maintaining the improved asset would be the same as or less than the cost of maintaining the existing asset.

5.2. The amount of commuted lump sum payable is calculated based on current maintenance requirements and will be set out in the s278 agreement. The works promoter will pay the funds to us in accordance with the s278 agreement.

6 Costs under Part I of the Land and Compensation Act 1973

6.1. Under Part I of the Land Compensation Act 1973 (LCA), compensation can be claimed by people who own and also occupy property that has been reduced in value by more than £50 by physical factors caused by the use of a new or altered road. All costs arising from claims under Part I LCA are the responsibility of the works promoter.

6.2. Prior to the s278 agreement being signed and where we think there may be scope for claims to be made, we will appoint a valuer and work with the works promoter to provide information so that they can assess the likelihood of claims being made. We have a dedicated team responsible for administering claims made under Part I of LCA who will support the service delivery manager.

6.3. Claims made under Part I of LCA must be settled within seven years of the relevant date, which is usually the opening of the works to traffic. Depending on the potential for claims identified by the valuer, we may retain some or all of the bond or cash deposit provided by the works promoter to cover the cost of paying claims.

7 Resolution of disputes and delays

7.1. If either party is concerned that matters are unlikely to be resolved within the timescales indicated in this protocol or the timescales agreed at the pre-agreement meeting, they should escalate the problem in order to try and resolve the issues. In such instances the service delivery manager should contact the works promoter or the works promoter should contact our Regional Asset Development Manager, whose details can be found in Appendix G.
8 Monitoring and review of the process

8.1. This is a live document that will be updated as and when changes in policy relevant to the above process occur. Feedback on both the contents and application of the document is very much welcomed from works promoters and their representatives and should be forwarded to Dave Parker, Yorkshire and North East Regional Asset Development Manager (dave.parker@highways.gsi.gov.uk)

8.2. All comments received will form part of a regular review process and will be taken into account when preparing an updated version, as appropriate.

9 Time considerations

9.1. If a planning consent lapses before a development commences and the works promoter seeks to renew the consent, the requirements of *The Highways Agency and the Planning Application Process: A Protocol for Developers* will re-apply. Depending on the time lapse and any changes in local circumstances we may require a new Transport Assessment to be submitted by the works promoter. Thus the scheme of works required to mitigate the impact of the development may be different to that identified under the original consent.
10 Four Step Flow Chart of the section 278 agreement Process

Step one
- Planning consent granted
- Contact HA
- Details of Consent to Service Delivery Manager
- Complete s278 Questionnaire

- Pre-agreement Meeting
- Inform Works Promoter of Fee Estimate
- Fee Deposit or ACU
- Re-evaluate Scheme and Form of agreement

Step two
- Design and Contract Documents
- Draft agreement
- Orders
- DfT Check and confirm agreement

Step three
- Procure Works and Finalise s278

Step four
- Carry out Works
- Defects Maintenance, Stage 4 RSA and Final Account

Delivery responsibility:
- **Blue**: HA
- **Orange**: Works promoter
- **Green**: HA and works promoter
- **Red**: Third party

Contact HA
Appendices

Appendices A to D inclusive provide the details of a particular step in the s278 process as illustrated in the preceding flow chart and how we will work with works promoters to deliver their objectives. The steps are:

Appendix A - Step 1: Pre-agreement discussions and establishing the type of agreement to be used. The topics include: hand-over from planning phase, the pre-agreement meeting, initial discussions on costs estimates and timescales, reimbursement of our costs, types of s278 agreement and decisions regarding the detailed design step.

Appendix B - Step 2: Detailed design and drafting the s278 agreement. The topics include: detailed design of the works, stage 2 road safety audit, development consent and traffic regulation orders, temporary traffic management, drafting the agreement, costs to be paid by the works promoter, and surety / bond for the construction works.

Appendix C - Step 3: Procurement of works and finalising the s278 agreement.
The topics include: procurement, OJEU threshold, finalising the cost and signing the agreement.

Appendix D - Step 4: Construction and final accounts. The topics include: Construction Design and Management Regulations, construction pre-start meeting, substantial completion, stage 3 and 4 road safety audits, defects correction, contract final account and s278 agreement final account.

The remaining appendices provide some of the tools or information which will assist the works promoter to understand and participate in the process.

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Appendix B  Step Two: Detailed design and drafting the agreement 15
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Appendix F  Acronyms and Glossary 30
Appendix G  Contact Details 32
Appendix A Step One: Pre-agreement stage

**Hand-over from planning phase**

A.1. During the planning phase we will ensure that the principle of the scheme has been approved (see section 2). This will establish the acceptability in principle of any identified departures from our design standards\(^1\). We may approve departures from standard during the planning phase where it is appropriate and we have sufficient information to do so.

A.2. Once the related development and associated mitigation has received planning consent and we are contacted by the works promoter to begin the preparation of the agreement, the service delivery manager will take over from the planning case officer to oversee the delivery of the scheme. As a minimum the handover from the case officer to the service delivery manager will comprise the following:

- A drawing of the works agreed
- Details of any discussions regarding departures from standards and any principles we have agreed or approvals we have given prior to planning consent
- Details of conditions imposed relating to the implementation of the works
- Contact details for the works promoter

A.3. Major infrastructure projects which have been subject to determination by the Infrastructure Planning Commission (to 1 April 2012) or the Planning Inspectorate

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\(^1\) Technical Design Documents and Advice Notes contained in the Design Manual for Roads and Bridges
(1 April 2012 onwards) in accordance with the Planning Act 2008 as amended will benefit from a Development Consent Order (DCO). In these cases we will progress the s278 agreement in the same way it would if the planning consent had been granted by a local planning authority.

A.4. In some cases, in order to enable the scheme to be delivered very quickly following the grant of planning consent, the works promoter may seek to progress the detailed design and draft s278 agreement in parallel with the planning process. In this case we will follow this protocol as though planning consent has been granted, although the s278 agreement cannot be entered into and works cannot commence until planning consent for the development is in place. If the scheme is developed in this way, it will be without prejudice to any decision which we or the local planning authority may make in respect of the planning application. All our costs after the pre-agreement meeting will be required to be met by the works promoter as for any other s278 agreement.

**Section 278 questionnaire**

A.5. In order to inform the pre-agreement meeting, we need certain basic information regarding the proposed scheme. A questionnaire is issued by the service delivery manager and completed by the works promoter to inform the pre-agreement meeting. A copy of this questionnaire is provided at Appendix E.

**Pre-agreement meeting**

A.6. The pre-agreement meeting is intended to ensure that we and the works promoter understand the requirements of the scheme and the other party. This will help establish clear and open lines of communication; clearly define roles, responsibilities and obligations; and identify timescales and options that may affect the form of agreement chosen and how it progresses.

A.7. We need to clearly understand the works promoter’s requirements and key drivers for the delivery of the scheme, so that we can help deliver the scheme to those requirements. Depending on the works promoter’s requirements we may suggest that one of the forms of agreement as set out in A.15 is more suitable than the others to meet the requirements. The decision as to which form to use will be made by agreement between the works promoter and us.

A.8. At the pre-agreement meeting it will also help us to provide useful advice if we understand the assumptions that the works promoter is working to. This includes any cost estimate or schedule of works which the works promoter has prepared, and any information obtained from third parties or statutory undertakers. During the discussions at the pre-agreement stage, we are unlikely to be able to give assurances regarding costs and timescales.

A.9. At the pre-agreement stage we will ensure that the works promoter is aware of the full range of costs which may be associated with the scheme. The cost estimate that the works promoter has prepared may not cover all the potential costs associated with the scheme, such as our administrative and legal costs, the cost of securing traffic regulation orders or other orders under the Highways Act 1980,
statutory undertakers costs, traffic management costs and future maintenance costs. The financial liabilities for the works promoter in the s278 are set out in detail in Appendix C.

A.10. Topics to be discussed at a pre-agreement meeting are set out in Table 1 below.

Table 1: Pre-agreement meeting discussion topics

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<th>Process Options</th>
<th>Other Parties</th>
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<td>- Fee Deposit or ACU</td>
<td>- s4 / s6 (see section 1.4)</td>
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<td>- Responsibilities (including CDM)</td>
<td>- Design and checking Fees</td>
<td>- Type of agreement</td>
<td>- Orders</td>
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<td>- Communications</td>
<td>- Supervision Fees</td>
<td>- Who to design</td>
<td>- RSAs</td>
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<tr>
<td>- Constraints</td>
<td>- Works Cost Estimate</td>
<td>- Procurement method</td>
<td>- DfT Legal</td>
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<tr>
<td>- Timescales</td>
<td>- Defects Maintenance</td>
<td>- Who to build</td>
<td>- Valuer</td>
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<td>- Environmental requirements</td>
<td>- Commuted Lump Sum</td>
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<tr>
<td></td>
<td>- Part I LCA Claims</td>
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</table>

Reimbursement of Highways Agency costs of preparing the agreement

A.11. The pre-agreement meeting will be held at no cost to the works promoter. However, funding will be required to progress the s278 process from this point as DfT rules do not allow us to incur any further cost without prior payment from the works promoter.

A.12. Payments towards our costs of preparing the agreement can be made in full up-front or in stages as agreed between us and the works promoter. However, the works promoter account must remain in credit at all times in order for work to continue. Where money deposited is unlikely to cover a particular task or stage, we will advise the works promoter so that further funds can be provided. We will not start work on any specific task until we have money in place to fund it.

A.13. Any money deposited prior to the signing of the s278 agreement and not used will normally be returned to the works promoter. On the works promoter’s instruction, deposited money may be retained and transferred to the next stage. We will provide regular statements of account to the works promoter as required.

Forms of section 278 agreement

A.14. For the purposes of this document, there are two forms of s278 agreement which would normally be considered. For agreements of very low value with a works cost of less than £25,000, reference should be made to our advice sheet on mini Section 278 agreements.

A.15. Under all forms of agreement covered by this protocol, the Secretary of State remains the employer. The service delivery manager may recommend a particular form of agreement based on our requirements or those of the works promoter, the nature of the scheme, or the anticipated cost or saving of one form of agreement.
compared to another. The decision on which form to use will be made by agreement between us and the works promoter. The agreement types are:

- **Standard (two-party) agreements**: under this form of agreement, we directly appoint the contractor who will undertake the work. VAT is not recoverable by either us or the works promoter. *The standard (two-party) agreement is often quicker to implement, and savings on the costs of administration, procurement and supervision may off-set the additional cost of the VAT which cannot be recovered. The majority of agreements take this form.*

- **Five-part agreement**: under this form of agreement, we appoint the works promoter as the contractor, who then appoints an approved sub-contractor to undertake the works. VAT may be recoverable by the works promoter. *The Highways Agency cannot advise on rules regarding VAT and works promoters should take professional advice to establish whether this is relevant. Where we are the designer, a designer's deed of warranty is not required and so this would become a four-part agreement with no part e) below.*

The five parts are:

- a) **s278 five-part pro-forma**
  - Main s278 agreement document

- b) **Building contract deed**
  - Agreement between the Secretary of State and works promoter whereby the works promoter will be appointed as contractor.

- c) **Sub-contract deed**
  - Agreement between the Secretary of State and works promoter whereby the works promoter will appoint a named sub-contractor to undertake the works.

- d) **Sub-contract deed of warranty**
  - Warranty given by the sub-contractor and the works promoter to the Secretary of State for all the works that they undertake.

- e) **Designer’s deed warranty**
  - Warranty given by designer to the Secretary of State

**Preparation of the detailed design**

A.16. The detailed design can either be prepared and checked by us, or prepared by the works promoter and checked by us. The works promoter may use any competent designer to complete the design. Whichever approach is taken the works promoter will be required to meet our costs before we can do any design or checking work. We will provide a reasonable estimate of our costs either to preparing the design, or to check the works promoter’s design as well as an initial estimate of our administration costs which will provide the basis for the initial payment.
Appendix B  Step Two: Detailed design and drafting the agreement

B.1. Once funding is in place in accordance with section A.12 above the agreement can be drafted and the background information prepared. We would typically expect the preparation of the agreement and the information required to complete it to take up to three months, although for larger or more complex schemes this may take substantially longer.

B.2. Drafting of the agreement and completing the detailed design are separate processes which can run concurrently, as shown in the below Protocol flowchart. The s278 agreement cannot be finalised until the detailed design is complete.

B.3. Detailed design will be carried out either by us or by the works promoter as agreed. Where we are the designer we will complete the design within the agreed timescales, or where we are carrying out the design check we will check submitted designs and provide comments or feedback within an agreed timescale.

B.4. Where we are the designer and we are delayed by matters outside our control such as waiting for third-party provided information, we will tell the works promoter as soon as we are aware of the delay.

B.5. The detailed design will either need to be fully consistent with our design standards, or have all identified departures from standards approved in writing before incorporation into the final detailed design.

Construction (Design and Management) Regulations 2007 (CDM)

B.6. Depending on the form of agreement to be used and the details of the scheme, the role of ‘Client’ for CDM purposes may be fulfilled by us or by the works promoter. The CDM Client will appoint the client’s CDM Co-ordinator (CDM-C) and the principal contractor, ensure that both are competent and adequately resourced for the project, and ensure that all other client duties under CDM are properly discharged. The client’s CDM-C will need to be appointed before detailed design can start.

B.7. The responsibilities of the client include:

- Notification to the Health and Safety Executive of the scheme via the Client’s CDM-C.
• Appointing competent people to ensure that construction works can be carried out reasonably safely, and that the network will be safe to use following construction.
• Ensuring that there are suitable management arrangements for the project works, including the provision of welfare facilities on site.
• Allowing sufficient time for each stage of the project to be carried out.
• Where there is an existing Health and Safety File, providing it prior to the start of works, and hand over the completed file to the service delivery manager at the end of the works.
• Providing and distributing pre-construction information to all the relevant parties.

B.8. In carrying out the design, the designer will need to comply with all the relevant requirements of the CDM Regulations. This includes:

• Ensuring that they are competent and adequately resourced to undertake the design.
• Checking that the client is aware of their duties under the regulations.
• Avoiding foreseeable risks so far as is reasonably practicable taking account of other relevant design considerations.
• Providing adequate information about any significant risks associated with the design, including those which may occur during construction and those relevant to road users.
• Ensure that they do not start design work beyond initial design unless the client has appointed a CDM-C.
• Co-operating and co-ordinate their work with the client, client’s CDM-C and other designers and contractors.

Road safety audit
B.9. Once the detailed design has been completed, it will be subject to a Stage 2 Road Safety Audit carried out in accordance with DMRB HD 19/03 ‘Road Safety Audit’ standard. Recommendations arising from the audit and accepted by the service delivery manager will usually need to be incorporated in a revised design. In the very few circumstances where a valid recommendation cannot reasonably be addressed through a revised design, the director overseeing the service delivery manager may approve an exception in writing.

Departures from standard
B.10. Before the detailed design can be finalised, all departures from design standards must be approved. We will take into account any departures we have previously agreed in principle or formally approved and any amendments following the completion of the Stage 2 Road Safety Audit when assessing and approving departures from standard in line with our published procedures. The service delivery manager will advise the works promoter on the process for obtaining such approval.
Schedule of works

B.11. Once we have checked and agreed the detailed design and approved all necessary departures from standard, we will notify the works promoter in writing so that the schedule of works can be finalised. Where the completion of detailed design is required to discharge a planning condition associated with the scheme, we will on request notify the local planning authority of the requirement being complied with to our satisfaction.

B.12. For a standard two-party agreement, we will prepare the schedule of works and a cost estimate. For a five-part or four-part agreement the schedule of works and cost estimate may be prepared either by us or by the works promoter. Where a cash deposit or bond is required, the estimated works cost will form the basis for this.

Drafting the agreement

B.13. We and the works promoter will draft the agreement in liaison based on one of a number of standard templates which we can provide. Once both parties are satisfied with the draft it will be sent for checking and approval by the DfT’s solicitor who will liaise with the works promoter’s solicitor to finalise and approve the agreement. In exceptional circumstances and with the agreement of the DfT’s solicitor a bespoke agreement may be written by the works promoter in discussion with us and approval from the DfT. Where a works promoter wishes to use a bespoke agreement, they should advise the service delivery manager at the earliest opportunity. Use of a bespoke agreement may substantially increase the time taken to approve the form of agreement.

Costs under Part I of the Land and Compensation Act 1973

B.14. During the preparation of the agreement documents, the service delivery manager supported by our Part I LCA claims team will appoint a valuer to assess whether there may be claims arising. The service delivery manager and the works promoter will provide the valuer with as much information as is necessary to make the assessment.

B.15. Based on the valuer’s judgement, the agreement will specify how much is to be retained following completion of construction to pay potential claims as and when they arise. The retention period will be for seven years following the opening of the scheme to traffic. Where in the valuer’s judgement all likely claimants can be specifically identified, the agreement may specify that money retained to pay claims is released once all such claimants have been paid.

B.16. While taking account of the judgement of the valuer, it is the responsibility of the works promoter to pay all valid Part I LCA claims resulting from the works.

Highways Orders and Traffic Regulation Orders

B.18. In many cases the works will be ones which the Secretary of State is authorised to carry out under general powers in Part V of the Highways Act 1980. However, in some cases the detailed design process may identify the need for any of the following Orders:

- Development Consent Order (DCO): changes to the SRN and its junctions or accesses or the provision of a new access to the SRN are legally processed through an application to the Planning Inspectorate for a DCO. This will require public advertisement of draft Orders and could result in a Public Inquiry if there are objections to the draft Orders.
- Other orders under the Highways Act 1980: orders which do not require application to the Planning Inspectorate must still be processed in accordance with the Act.
- Traffic Regulation Orders under the Traffic Regulation Act 1984: the means of formally regulating traffic to ensure the safe and efficient operation of the SRN.

B.19. The need for any type of Order could have implications for the scheme timescale as draft Orders have to be advertised in accordance with statutory procedures. We will advise the promoter as soon as we become aware of the potential need for Orders.

B.20. The construction of the scheme may require the introduction of temporary traffic management procedures. The layout of traffic management can begin to be planned during the detailed design phase once the required level of detail is known. Where applicable, traffic regulation orders, other orders required under the Highways Act 1980 and Trunk and road-space bookings are needed before any construction work can start on site. The procedures associated with these requirements could take up to six months to process and hence may delay the commencement of construction.

B.21. Where a development has been considered and approved by the Planning Inspectorate under the Planning Act 2008 the development will have been granted a Development Consent Order (DCO). The consent may require changes to SRN and its junctions or accesses, including where appropriate the provision of a new access to the SRN. The DCO will not include approval of Traffic Regulation Orders.

Road-space booking

B.22. We manage works on our network according to rules set down by government and to make sure we can maintain it effectively. We will only allow works on the SRN to take place at specific times depending on the level of traffic use and maintenance schedules. It is important to book road-space for works well in advance, based on a realistic timetable. We will aim to fit s278 schemes into our programme according to the works promoter’s requirements, but road-space bookings for works may be delayed if other works are under way or already planned within the vicinity. Timetable slippage in the preparation of a scheme
could result in the need to rearrange a road-space booking and may result in a delay to the scheme.

**Press notices**

B.23. We will draft and publish any required press and site notices prior to any works commencing as required. We will draft these as early as possible to give us time to get all necessary internal clearance in good time so we do not unduly delay progress of the scheme.

**Costs to be paid by the works promoter**

B.24. The total amount to be paid by the works promoter in accordance with the s278 agreement will be reviewed and refined during the drafting of the agreement and preparation of the detailed design, along with a schedule of payment. The breakdown of these costs is as follows:

- **Administration Fee** – to cover our internal costs of administering the implementation of the s278 agreement. This will be according to the published schedule based on a percentage of the estimated works cost.
- **Costs of design or design check** – to cover our actual costs of preparing or checking the detailed design and associated documents such as schedule of works and any orders.
- **Legal costs involving the transfer of land.**
- **Costs of any agreements with local authorities under s4 or s6 of the highways Act 1980.**
- **Costs of securing any traffic regulation orders or other orders required by the Highways Act 1980** – may include Order advertising and hearing costs.
- **Construction works cost (Standard (two-party) agreements)** – the current tender value including appropriate allowance for contingencies and amendments following Stage 3 RSA.
- **Supervision cost** – to cover our actual costs of supervising the works, including fulfilling our roles under CDM.
- **Stage 3 Road Safety Audit** – to cover the costs of undertaking the Stage 3 audit once construction is complete and prior to use. For larger or multi-stage works, a number of separate interim Stage 3 RSAs may be undertaken.
- **Stage 4 Road Safety Audits** – to cover the costs of undertaking Stage 4a and 4b RSAs which are accident reviews following opening to traffic undertaken at 12 months and 36 months respectively.
- **Road safety audit remedial works** – to cover the cost of taking action to address issues raised in Road safety Audits.
- **Contractual Claims** – the works promoter will pay for all valid contractual claims arising from the implementation of the works.
- **Commuted Lump Sum (CLS)** – The estimated cost of renewing the additional asset created through the scheme for a period of 60 years, calculated in accordance with HM Treasury guidelines.
• **Contract Specific Items** – these may be identified and / or confirmed during the detailed design, such as statutory undertaker’s works costs.

• **Part I Claims** – an additional amount deposited to cover the settlement of legitimate Part I LCA claims arising from the works.

**Schedule of payments**

B.25. We have several standard payment schedules for s278 agreements. The service delivery manager will discuss in detail with the works promoter at this stage the schedule of payments appropriate to the type of agreement selected, to ensure that the above sums are paid in a timely manner.

B.26. We usually hold works promoters funds in our general account for the purpose of receiving and making payments. In certain circumstances it may be possible to set up an interest bearing escrow account for the depositing of funds at the specific request of the works promoter, subject to the agreement of a nominated bank, but this may involve additional time and costs.

B.27. The standard payment schedules are:

- Standard two-party s278 – the estimated works costs, our construction phase administrative and legal and contractual costs paid to us in two tranches of 50% on signing the s278 agreement, and 50% when we enter into a contract for the works.
- Five Part s278 – on signing the agreement, a sum to cover our estimated costs of the construction phase all including administrative, legal and contractual costs, along with a cash deposit or bond as set out in B.30 below.

B.28. The commuted lump sum for maintenance and amounts to cover anticipated Part I LCA claims and for carrying out Stage 4 Road Safety Audits are paid to us upon completion in accordance with the agreement.

B.29. In the event of the works promoter failing to complete the scheme in accordance with the s278 agreement under a five-part or four-part agreement, the DfT requires us to be able to ensure that works begun can be completed. Therefore, in addition to paying our actual costs of actioning the agreement and supervising the works the works promoter is required to provide a cash deposit or bond sufficient to allow us to complete the works should this occur.

B.30. The amount of cash deposit or bond will be based on an assessment of the risk to us of the scheme. Typically, it will be either:

- A cash deposit of 100% of the estimated cost of the works, or
- A bond backed by a financial institution approved by our Financial Services of 100% to 200% of the estimated construction cost, depending on the assessed level of risk.

A higher level of cash deposit or bond may be required to take account of higher risks we may have identified, for instance where significant Part I LCA claims are anticipated.
B.31. We recognise that there is a cost to the works promoter of depositing money or maintaining a bond during construction and beyond completion of the works. For large projects the schedule for release of the cash deposit or bond may permit a reduction during the construction process provided that the remaining amount is sufficient to protect the Agency against any residual risk. Any such cash deposit or bond release schedule will be detailed in the s278 agreement.

B.32. Details of the contract and agreement final accounts are set out in Appendix D.
Appendix C Step Three: Procurement of works and finalising the agreement

C.1. Once the detailed design is complete and approved the formal procurement stage can begin. Our service delivery manager will be supported by a specialist procurement team who provide advice and oversee the procurement process to ensure that we are consistent and meet statutory requirements. The time taken to complete the procurement process may depend on the value and complexity of the works and the form of agreement to be used. We will advise the works promoter of the likely timescales for the procurement process.

C.2. The service delivery manager will confirm the appropriate delivery method and agree it with the works promoter. This would have been discussed during Step Two. The procurement strategy will depend on the type of agreement. The options are:

- For works up to a certain threshold, to use our framework suppliers to deliver the works.
- To procure the works through open competitive tender.
- To procure the works from the works promoter’s nominated preferred contractor for the works in a one-off direct award or multiple tender.

C.3. The works promoter may invite unofficial tenders in advance of this process in order to select a preferred contractor to go through the formal tender procedure. If this approach is taken, we recommend that the developer should consult with our procurement team to make sure that it meets our requirements.

C.4. Our procurement team will supervise the tender process and review all tender documentation, whichever procurement route is followed. The service delivery manager will ensure that the works promoter understands the process and programme for the invitation of the tenders, the evaluation of tenders and the validity of the tender period.

C.5. We will not normally invite tenders unless the works promoter has demonstrated to a sufficient degree of detail that funding for the scheme is in place. Any shortfall in funds may delay contract award, and where tenders have expired before contract award then the works may have to be re-tendered.

C.6. Unless we prepare the design it will be the works promoter’s responsibility to provide the contract documentation, specification and design details to us for
checking. Once the contract documentation is checked and accepted by the service delivery manager it will be submitted to our procurement team for review. When they are satisfied with the tender documentation and the tender list, they will invite tenders.

C.7. The most recent Highways Agency approved version of the NEC Engineering and Construction Contract (or the short form if appropriate) will be used for the construction contract. The exact form of the contract will be agreed with the works promoter prior to the tender documents being drafted.

**OJEU threshold**

C.8. Where the works value is near to or in excess of the current Official Journal European Union (OJEU) threshold one option is for a works promoter to request that the works are priced through an available Highways Agency Framework Contract. The alternative for works promoters in this position is to request us to separately advertise their scheme through the OJEU process. This could add a further nine months to the time to secure a contractor.

**Finalising the cost profile and signing the s278 agreement**

C.9. Once tender prices have been received and a preferred bidder identified, the service delivery manager will advise the promoter of the proposed contract sum. The service delivery manager will then finalise as far as possible those costs identified in B.24 which could not previously be calculated. We will provide details of the schedule and amount of payments required to progress the scheme and also the amount of the cash deposit or bond to be provided.

C.10. The contract can be let provided the service delivery manager is satisfied the following have been undertaken:

- The s278 agreement has been signed;
- The relevant payments due under the agreement have been received and cash deposit or bond is in place;
- The s4 agreement has been signed (if applicable);
- The land has been transferred to the Secretary of State (if applicable);
- Any required Development Consent Orders have been secured;
- Any required traffic regulation orders or other orders required under the Highways Act 1980 have been secured;
- Road-space has been booked and temporary Traffic Regulation Orders approved;
- Any necessary pre-award work permits have been approved;
- A press notice has been published; and
- The tender price has been accepted.

C.11. The contract award letter will then be sent out. In the case of five-part and four-part s278 agreements the contract award will be conditional on the works promoter immediately entering into a subcontract with the approved subcontractor.
Appendix D Step Four: Construction and Final Accounts

D.1. In common with previous stages, no works can commence on the network unless the necessary funding as set out in the s278 agreement has been paid to us, which includes any cash or bond surety.

D.2. Before construction starts, we will agree with the works promoter a communications plan which meets the works promoter’s requirements for the construction and post-construction periods.

D.3. Under a standard (two-party) agreement, we will supervise and contract manage the construction works, which will be carried out on behalf of the service delivery manager who will liaise with the works promoter in line with the communications plan. Under this type of agreement the works promoter cannot issue instructions to a contractor.

D.4. Under a five-part or four-part agreement, contract management and supervision of sub-contractors may be undertaken by the works promoter and in such cases we will maintain a watching brief. Under this type of agreement the service delivery manager cannot issue instructions to the sub-contractor undertaking the works, but instead may provide advice to the works promoter who will instruct the sub-contractor.

Construction

D.5. We will arrange a construction pre-start meeting which will be attended by us, the works promoter and the contractor. At this meeting, the parties will discuss and agree the lead-in time to the start of works and the contractor’s programme of works.

D.6. Construction will take place in accordance with the s278 agreement and the contractor’s agreed programme of works. Throughout the construction period we will monitor the works to ensure their effective delivery and manage the risks to completion in liaison with the works promoter.

D.7. For standard two-party agreements, we will monitor the costs, contractual payments and the remaining funds, and provide a regular statement showing the amount certified to date and the forecast construction outturn cost as required by
the works promoter. Where we identify a potential shortfall in funds we will advise
the works promoter as soon as possible of the amount of likely shortfall and the
reason. Any shortfall identified will need to be provided for by the works promoter,
in accordance with the agreement.

Completion
D.8. Upon completion, we will issue a Completion Certificate for the scheme. At this
stage, in discussion with the works promoter we will arrange for a Stage 3 Road
Safety Audit (RSA) to be undertaken which will identify any necessary
amendments to the works which must be completed unless otherwise approved.

D.9. Where completion of the scheme is required to discharge a planning condition
associated with the scheme, we will on request notify the local planning authority
that the works are complete.

D.10. Through the process of construction the Health and Safety File should be
developed. On completion of the works the Health and Safety File will be
prepared and submitted by the appointed CDM-C to the service delivery manager.

D.11. The timescale for Step Four will be dictated by the size and nature of the works
and the defects correction period.

Road safety audits
D.12. A Stage 3 RSA is undertaken in accordance with the HD 19/03 ‘Road Safety
Audit’ standard on completion of construction. For larger or multi-stage works, a
number of interim Stage 3 RSAs may be undertaken.

D.13. Stage 4 RSAs are undertaken in accordance with HD19/03 at 12 months and 36
months following the opening of the route to traffic. The costs of undertaking
stage 4a and 4b RSAs will be included within the s278 agreement.

D.14. Where a RSA identifies any safety issues with the scheme as implemented the
service delivery manager will discuss them with the designer, the contractor and
the works promoter to agree remedial action to be taken at the works promoter’s
expense.

D.15. In very rare circumstances, the service delivery manager in discussion with the
designer, contractor and works promoter may agree that a problem raised in a
RSA is insignificant or outside the terms of reference, or that no reasonable
solution can be found. In these cases, the service delivery manager will prepare an
exception report, which the director overseeing the service delivery manager may
approve in writing.

Defects correction period
D.16. Following the issue of the Completion Certificate the works promoter is
responsible for the correction of any defects of the scheme. This period is usually
twelve months, but may be longer for planting, landscaping or certain types of

2 HD 19/03 Road Safety Audit. Design Manual for Roads and Bridges Volume 5 Section 2 Part 2.
surfacing which may be subject to a defects correction period of three to five years.

D.17. Following the defects correction period and rectification of any defects, we will issue a Defects Certificate. The works and the liability for correction of defects are handed over to us, subject to warranties provided by the works promoter and sub-contractor being provided as required.

**Contract final account**

D.18. The contractual final account is prepared in accordance with the construction contract and is usually completed following completion of the works under the contract and handover to us. This will be in discussion with the works promoter and the contractor.

**Section 278 agreement final account**

D.19. The final account for the s278 agreement may be some time after the contract final account as we may need to retain sums agreed with the works promoter from the cash surety or bond to cover costs expected to be associated with the correction of defects, Part I LCA claims and remedial works following Stage 4 RSA.

D.20. The amount of cash or bond surety to be reduced or released pending the above eventualities will be agreed with the works promoter based on the principles set out in the s278 agreement.
## Appendix E Section 278 Questionnaire

(This form may also be used by local authorities for providing information in support of applications for agreements under Section 274)

Department for Transport 2007 Guidance on agreements for Developers can be found at www.highways.gov.uk or from the Highways Agency contact shown at the end of this form

<table>
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<th>Developer Name</th>
<th>Registered Address, telephone and fax number</th>
<th>Company Registration Number</th>
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<tr>
<th>Person dealing with this matter</th>
<th>Telephone</th>
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<th>Name and address of Developers Solicitors</th>
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After reading the Guidance Notes please indicate which form of Abortive Costs Undertaking (ACU) option is preferred

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<th>Surety/Bond</th>
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If a financial deposit is to be made then Highways Agency may arrange for an ESCROW account to be set up. For further advice please speak to the HA contact shown at the end of this form.

Please provide a suggested Account Name (usually Developer’s name and any other identifying name) and the address to which the paperwork should be sent.

<table>
<thead>
<tr>
<th>Is Developer arranging for detailed design to be carried out? If yes, give name and address of Company/Consultant/Agent carrying out Design work</th>
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<th>Nature of Development giving rise to the proposed S278 agreement.</th>
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<th>Has planning permission been granted to the Developer? Status</th>
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<th>Full</th>
<th>Outline</th>
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<th>Estimated date</th>
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<th>Estimated date</th>
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Planning Reference number

Please give a brief description of the Highways works, including name and location of Trunk road to be improved.

Latest estimated costs of the highway works

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<th>£</th>
<th>VAT</th>
<th>Total</th>
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Developers proportion of Costs (100%) unless costs sharing has been agreed

%

Estimated timescales for start of works and proposed Contract period

Any relevant information

**Contractual arrangements for the S278 works** After reading the Guidance please state preferred Option

**Option A** Secretary of State employer for the S278 works affecting only the Strategic Road Network under a standard agreement

**Option B(i)** Secretary of State employer for the S278 works via a S4 Highways Act 1980 agreement with LTA/LHA

**Option B(ii)** LTA/LHA employer for the S278 works via a S6 Highways Act 1980 agreement with the Secretary of State

**Option C** The Developer may be the employer under a five part agreement

It is usual for the Highways Agency to design a scheme but sometimes the Developer may decide to employ their own designer (in such cases the costs to be charged would be for the checking of the design only). Please indicate which option you are taking.

Completed by

Date

Company Position

Telephone number

E mail

Address
**PLEASE SUBMIT THE FOLLOWING WHEN RETURNING THIS FORM**  
*Failure to do so may result in delay*

<table>
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<tr>
<th>Item</th>
<th>Submitted</th>
<th>Yes / No</th>
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<tbody>
<tr>
<td>A copy of the relevant Planning Permission</td>
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<td>A general layout plan of the works</td>
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A full detailed description of the trunk road works that will form one Schedule to the agreement. The Schedule should include items such as earthworks (excavation or fill), pavement (footway) construction, alterations to or provision of drainage, alterations to statutory undertakers equipment, provision of kerbing, traffic signs, street lights, cabling, fencing safety barriers etc. The Schedule should contain sufficient detail. Reference should be made to the current Specification for Road and Bridgeworks if appropriate.

| A full detailed description of any land that needs to be conveyed or transferred to the Secretary of State by the Developer, together with a Plan (size A3 Scale 1:1250) showing the land to be conveyed coloured PINK. If an easement will be needed to maintain any of the works (eg: bridge or drain) this should be described and shown on the Plan coloured BLUE. The Highways Agency will later seek proof of Title to the land. | Submitted | Yes / No |

Before submitting the completed form please ensure you have read the DfT Guidance Notes on agreements for Developers and then send the completed form and all associated paperwork to the Highways Agency contact shown below.

**HIGHWAYS AGENCY TO COMPLETE**
*(insert S278 regional office contact details and Project Sponsor contact details)*

Direct Telephone Number  
Email Address
Appendix F  Acronyms and Glossary

ACU – Abortive Cost Undertaking. This is a commitment from a works promoter to pay all Highways Agency costs in preparing a s278 agreement, backed by a financial guarantee (cash or bond).

CDM – Construction (Design & Management) Regulations 2007. All works must fully comply with all relevant aspects of the CDM regulations.

CLS – Commuted lump sum. Money collected by the Highways Agency and remitted to the Treasury to cover the cost of maintaining additional network asset created under a s278 agreement.

DfT – Department for Transport

DBFO – Design Build Finance and Operate. These are roads which make up part of the strategic road network which have been built or improved under private finance initiative contracts. For any s278 involving a DBFO road, the DBFO company as the operator of the road must be involved from the outset.

DCO – Development consent order.

DMRB – Design Manual for Roads and Bridges. This sets out our design standards for new and improved parts of the strategic road network.


NEC Engineering and Construction Contract – Standard construction contracts formalised by the Institution of Civil Engineers. All Highways Agency construction contracts use an approved form of the NEC contract.

OJEU – Official Journal of the European Union. Invitations to tender for public works over a certain value are required to be published in OJEU.

RSA – Road Safety Audit. These are a check on the safety of a design or scheme carried out qualified people independent from the designer and contractor. They are undertaken at 4 stages:
  - Stage 1: Inception
  - Stage 2: Completion of design
  - Stage 3: Completion of works
  - Stage 4: Once the works have been operational for a period

Our standard for road safety audits is set out in DMRB HD 19/03 'Road Safety Audit'.

S4 agreement – An agreement under Section 4 of the Highways Act 1980 (as amended). This is an agreement between us and a local highway authority to enable us to undertake works on network which is the operational and maintenance responsibility of the local authority.

S6 agreement – An agreement under Section 6 of the Highways Act 1980 (as amended). This is an agreement between us and a local highway authority to enable the local
highway authority to undertake works on network which is our operational and maintenance responsibility. New asset created under a s6 agreement is subject to the same requirements for the payment of commuted lump sum for maintenance as for s278 agreements.

SRN – Strategic Road Network. The SRN is the network of motorways and roads operated and managed by the Highways Agency on behalf of the Secretary of State for Transport.
Appendix G Contact Details

Planning

Delivery of schemes on the network is a function of the Network Delivery and Development directorate. Operationally the business operates in six regions along with a specialist M25 division. Enquiries about potential s278 schemes should therefore be directed to the appropriate team. Where a development is located across local authority boundaries, in the first instance, the contact should be the Asset Development Team covering the main local planning authority for the scheme.

East of England
Catherine Brookes
Tel: 0121 678 6287
E: planningEE@highways.gsi.gov.uk

Midlands
Mark Clough
Tel: 0121 678 8284
E: planningEM@highways.gsi.gov.uk

North West
Ruth Moynihan
Tel: 0161 930 5775
E: planningNW@highways.gsi.gov.uk

South West
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Tel: 0117 372 8696
E: planningSW@highways.gsi.gov.uk

South East
South East – Angela Koenig
Tel: 0130 687 8251
E: planningSE@highways.gsi.gov.uk

M25 Region – Francis Cluett
Tel: 0130 687 8246
E: planningSE@highways.gsi.gov.uk

Yorkshire and North East
Dave Parker
Tel: 0113 283 6545
E: planningYNE@highways.gsi.gov.uk
Document Control

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<td>Daniel Gaunt</td>
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<tr>
<td>Owner</td>
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Revision History

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<td>5 November 2012</td>
<td>Final Version</td>
<td>Daniel Gaunt</td>
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Reviewer List

| Name            | Role                                                      |
|---|---|---|
| Ian Askew       | Senior Policy Advisor – Spatial Planning                  |
| Dave Parker     | NDD Yorkshire and North East Regional Planning Manager    |
| Vanessa Gilbert | NDD Yorkshire and North East Regional Director            |
| Tim Harbot      | NDD Midlands Regional Director                            |

Approvals

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<th>Signature</th>
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<th>Date of Issue</th>
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<tr>
<td>Derek Turner</td>
<td>[Signature]</td>
<td>Director, Network Delivery and Development</td>
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