

Works to the Highway – Section 278 Process

A Legal agreement under section 278 of the Highways Act (1980) allows for improvements to be made to the adopted/public highway by a developer that the highway authority would consider acceptable to undertake.

The principles of the development and any requirements for highway works are established at the planning stage. The required s278 highway works might include for instance new junctions connecting onto the existing highway network or off-site external works that improve the accessibility, or mitigate the impact of the proposed development.

Prior to any works to the highway being carried out, the following must take place:

- A Section 278 agreement **must** be completed and signed;
- Technical Approval and Inspection Fees **must** be paid;
- A Bond or Surety **must** be approved and secured;
- The detailed design **must** be approved by the Highway Authority and a Technical Approval Certificate obtained from Transport Development Management (TDM) Engineering;
- Technical Approval **must** be obtained for structures within or abutting the highway.

The additional following considerations must also be taken into account:

- **Obtaining planning permission or any highway licence (e.g. hoarding licence) does not mean that you have approval to carry out works on the highway.**



- **It is illegal to carry out any works on public highway without permission of the Highway Authority. Bristol City Council (BCC) reserves the right to take any appropriate enforcement action against offenders.**

The process for delivering works to the highway under a section 278 agreement can be divided into the following six phases, the first being Planning Condition Discharge, covered in *TDMG Section 2.3.1*.

- 1) Planning Condition Discharge**
- 2) Legal Process and Payment of Bond and Fees**
- 3) Technical Approval**
- 4) Construction and Inspection**
- 5) Substantial Completion and Maintenance Period – Certificate 1**
- 6) Final Sign Off – Certificate 2**

Each highway works scheme will require close liaison between the TDM Planning Officer and the TDM Engineer, who will be appointed to assist you in progressing the highway engineering scheme forward through approval, inspection and certification.

Section 278 Process

- Developer submits for discharge of Planning Condition B1B
- Contact TransportDM@bristol.gov.uk to commence the S278 agreement

- General Arrangement Drawing approved
- TDM instructs BCC Legal Services, BCC Legal Services approach developer's solicitors with draft agreement

- Legal agreement signed
- Payment of bond and approval and inspection fees received

- Developer submits detailed design to DMEngineering@bristol.gov.uk
- Submission of RSA Stage 2 (Stage 1 during planning)
- TDM commences Technical Approval Process

- Details approved
- Traffic Regulation Order (TRO) process commences

- Initial Site Meeting between Developer and TDM Engineer
- TRO Sealed
- Start on site

- Four weeks prior to commencement, developer to advise DM Engineering and Network Management

- Inspections process

- Substantial Completion, up to 90% of bond returned
- Road Safety Audit Stage 3
- Certificate 1 issued

- End of 12 month maintenance period
- Defects identified

- Defects rectified by developer, remainder of bond returned
- Certificate 2 issued subject to receipt of as built drawings – liability returns to BCC
- As built drawings provided to TDM

Legal Process and Payment of Bond and Fees

TDM will only commence a S278 legal agreement when planning permission has been granted and we are satisfied with the Highway Works General Arrangement drawing see *TDMG Section 2.3.1*.

At this stage you will need to contact TDM to initiate the process. The information that TDM will require at this stage is included in the *Section 278 Application Form* which we require you to fill in and submit to us in order for us to accurately instruct our legal department, understand your build programme timescales and make the necessary contact with your civil engineering and design teams.

As well as legal costs, the developer is responsible for meeting all costs associated with the design and implementation of a Section 278 scheme. The developer will be required to pay fees to the council to cover the cost of both the technical approval of the design and the inspection and of the works as they progress, whilst securing a returnable highway bond (or surety) to safeguard the public asset, which is held against any potential default by the developer or contractor. Confirmation of these costs is set out in section D of BCC [Highways' Schedule of Fees and Charges](#).

The approval and inspection fees payable are related to the bond figure that BCC calculate based on the drawings associated with the agreement. TDM reserves the right to increase fees if a disproportionate number of site inspections are required for example due to poor workmanship or unforeseen site conditions.

Bond

Upon signing the S278 agreement, the developer will be required to deposit a Bond of Surety with BCC that will cover the full costs of the S278 works.

This will either be in the form of a bond with a recognised financial institution or the equivalent sum of monies lodged with BCC. The purpose of the bond deposit is to ensure that BCC will be able to complete the works to a satisfactory condition should the developer fail to do so, without consequently incurring any cost to the Local Authority, and is based on the estimated cost of constructing the proposed works to an adoptable standard plus BCC tender costs.

The bond will be incrementally released to the developer at specific stages within the construction; the proportion of the bond retained by BCC will be reduced as follows:

- **On issue of Certificate 1 (Substantial Completion Certificate):** up to 90% of bond returned
- **On completion of all defects and RSA recommendations and issue of Certificate 2:** remaining 10% of bond returned (i.e. full release of the bond)

TDM reserves the right to withhold the bond if works are not completed satisfactorily, noting that, if a commuted sum is due from the developer and this remains outstanding, the bond shall not be reduced to a value less than the commuted sum.



Technical Approval

Once the legal agreement has been signed, the bond secured and the technical approval and inspection fees have been received by BCC, the technical review of the package of drawings can be commenced by TDM.

The drawings required for the S278 will largely depend upon the scale and complexity of the scheme of works, but the following Technical Submission Documents and a Programme of highway works are likely to be required.

Technical Approval Submission Requirements

The drawings and documents should be submitted electronically in CAD and PDF format with one paper set (A1 format) for initial assessment. Our *Highway Design Checklist* provides a detailed list of drawing requirements and issues to be addressed when preparing section 278 drawings, for which the key headings are summarised below:

- Location Plan, including red line boundary
- General Arrangement Plan
- Highway Adoption and Stopping up (if necessary)
- Vehicle Swept Path Analysis
- Submission of Stage 1 and 2 Road Safety Audit (RSA)
- Kerbing Drawing
- Road Markings and Signs
- Materials and Surface Finishes
- Landscaping
- Long Sections and Cross Sections
- Engineering Details
- Existing and Proposed Levels
- Services Location Plan
- Traffic Regulation Order (TRO) drawing
- Street Lighting and Traffic Signal Design
- Drainage Drawing and evidence of Section 104 Agreement
- Highway Structures

Road Safety Audits (RSA)

An RSA is the staged evaluation of changes to the highway during design, construction and operation. The RSA considers the road safety implications of all measures and looks to identify potential safety hazards that may affect any road user, with particular attention paid to vulnerable groups.

The RSA is a four-stage process. Stages 1 and 2 involve the evaluation of the highway design. Stages 3 and 4 are conducted once the scheme is substantially complete or complete and these are considered later on.

The Stage 1 RSA will have been commissioned on completion of the preliminary design and we would normally expect a Stage 1 RSA to have been submitted as part of the associated planning application.

A final Stage 2 RSA should be undertaken on completion of detailed design i.e. when the design has been sufficiently developed that it could be used as a basis for construction. The Stage 2 RSA considers in detail the layout of junctions, position of signs, carriageway markings, lighting provision and other issues such as drainage, pavements, kerbing and landscaping. During the Stage 2 RSA the audit team will visit the site and examine the existing highway layout and consider where the new highway will tie in with existing. The Stage 2 RSA and any response reports must be submitted with the detailed plans for technical approval.

Road Safety Audits are to be undertaken to GG 119 Road Safety Audit. This outlines the roles each party plays. As the Design Organisation, you are responsible for arranging for the audit to be undertaken and writing the audit brief. However, at each stage of the safety audit process, you are required to agree the Brief for the RSA with us. You will need to agree with us, as the Overseeing Organisation, the audit brief, and the proposed audit team.

The scope of each RSA must be agreed with us in advance, taking into account our detailed knowledge of the areas and issues in question. A RSA will not be accepted if, in our opinion, it has not satisfactorily fulfilled the brief or taken into consideration specific local circumstances.

There is a road safety audit brief template in Appendix C of GG D119.

Our Road Safety Auditors should be invited to each audit at the cost to the Developer as set out in our [Highway Fees and Charges](#).

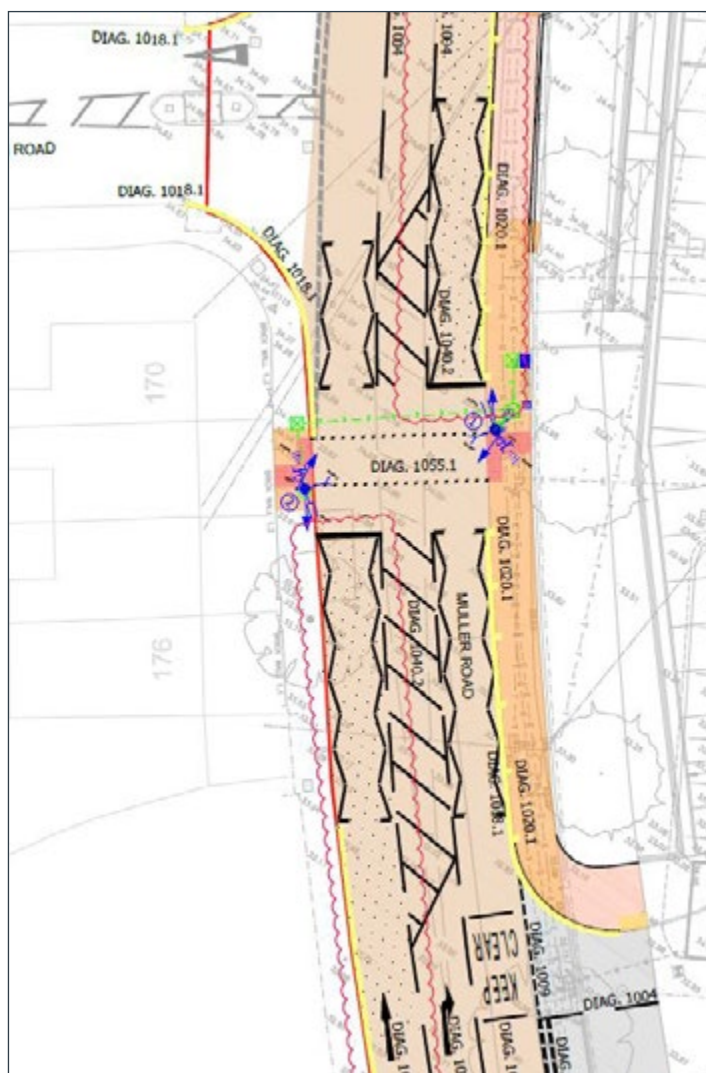
Assessment of Technical Submissions

The design checking required for S278 Technical Approval is an iterative, two-way process, which can take a number of months, given the level of input TDM requires from other teams within the transport and highway department, as referenced in *TDMG Section 2.1*.

It will also be necessary to agree a construction programme with the developer that considers the needs of all stakeholders, including local businesses and residents and takes into account the local highway network capacity.

The timescale for technical approval is largely dependent on the quality and detail of the technical submission and also the timeliness and appropriateness of the designer's responses to queries, concerns and required amendments. As referenced elsewhere in TDMG, the earlier that detail is addressed (including at planning) the more likely it is that a swift technical approval process will be realised.

Upon receipt of the initial technical submission package, BCC TDM Engineers will review the drawings/documents and aim to respond to the designer via a Design Review document within 21 days of the initial submission and each subsequent submission thereafter, depending upon the level of detail provided. The Design Review document will include a list of each drawing within the technical submission together with the TDM Engineer's required amendments to each drawing.



Once the designer has received the Design Review document, it is his/her responsibility to amend the drawings as required and update the Design Review document by briefly outlining the amendments that have been made directly below each comment made by the TDM Engineer. The Design Review document, amended drawings and an updated drawing issue sheet must then be returned to the TDM for a further review.

A Final Stage 2 RSA will be required to consider any fixing of geometry / horizontal and vertical alignment / acceptance of tracking.

Issuing of Technical Approval

The issuing of technical approval can only be given once the TDM Engineer is satisfied that the designer has addressed each of our concerns and that the revised scheme is acceptable to move forward to the construction stage. We will require confirmation of each of the following, where applicable:

- The receipt of any further Road Safety Audits (RSAs) that satisfy all outstanding matters;
- All statutory and non-statutory procedures have been undertaken;
- Written confirmation from the Developer agreeing to pay commuted sums;
- Written confirmation that the Developer has contacted the Health & Safety Executive (where applicable).

BCC will take enforcement action against any developer who commences work on the adopted highway without a signed legal agreement and Technical Approval of the scheme. Please note that Planning Approval does not equate to Technical Approval.



Construction and Inspection

Pre-commencement

It is strongly advised that a pre-commencement meeting takes place between TDM Engineering and the appointed project managers, consulting engineers and contractors.

This meeting will help to foster a sound working relationship whilst allowing for an understanding of identified timescales and forecasted project milestones as well as establishing other relevant highway requirements, which could include, but not be limited to:

- Further issuing and approval of drawings;
- Testing procedures;
- Inspecting works;
- Reserving road space;
- Site access arrangements;
- Traffic management/ control;
- Temporary Traffic Regulation Orders (TTROs)

Inspection

The developer and/or their appointed representative will be responsible for the day-to-day supervision of the highway construction works. However, TDM should be approached to inspect the works at specific trigger points during in the build. These trigger points will be determined by the scale and complexity of the scheme and should therefore be discussed at the pre-commencement meeting.

The TDM Engineer may also carry out more general and adhoc inspections periodically to ensure that those elements to be adopted by the Highway Authority are constructed in accordance with the approved drawings.

In the event of engineering problems arising on-site, TDM are prepared to discuss appropriate solutions. However, it is the responsibility of the developer and

their representatives to ensure that the works are completed satisfactorily.

TDM Engineer inspections will be required at the following stages of construction. We require that engineers are given 72 hours' notice prior to any inspection request.

- **Formation level***
- **Highway drainage before covering over**
- **Capping material†**
- **Top of capping material***
- **Services (depth and spacing)**
- **All trenches prior to back filling**
- **Type 1 prior to laying of sub-base†**
- **Kerbs, back edging**
- **Base course*†**
- **Binder and surface course*†**

If TDM Engineering has not been requested to inspect at the trigger points shown above, we reserve the right to request that the areas of concern are uncovered so that full construction can be inspected.

Testing of materials may be requested by TDM Engineering, the costs of which must be borne by the developer.

Substantial Completion and Maintenance Period – Certificate 1

Part 1 Certificate (Substantial Completion)

At the point where you consider the highway works to be substantially complete, we ask that you make contact with us to arrange a final inspection.

The works will be inspected by the appointed TDM Engineer and if necessary, a defects report will be issued. All defects will need to be rectified by the developer before the Practical Completion Certificate (Part 1 Certificate) can be issued.

In the majority of cases the issuing of a Practical Completion Certificate will allow a reduction in the bond (surety) secured against the works by up to 90%, subject to our agreement. The issue of the Practical Completion Certificate triggers the start of the developers 12 month maintenance period.

Stage 3 Road Safety Audit

The Stage 3 RSA should be undertaken when the highway scheme is complete, or substantially complete, just before the issue of Certificate 1 (Practical Completion Certificate). All new and altered highway schemes should be subjected to a Stage 3 RSA within one month of opening.

In some instances it may be necessary to undertake the Stage 3 RSA prior to opening, so that any identified issues can be addressed in advance. The Stage 3 RSA will consider the scheme from the point of view of all road users and the auditors may decide to drive, walk and/or cycle through the scheme. At Stage 3, the scheme is visited during daylight hours and during the hours of darkness, so that hazards particular to night operation can be identified.

* Dip sheets will be required

† Copies of delivery notes/tickets shall be provided including certificates of conformity if crushed on site, to ensure compliance (recycled clay, tarmac, timber etc. are not accepted as suitable fill in carriageways or shared surface developments and will be rejected).

Bond Return

The bond is released back to the developer incrementally, with the level of reduction normally established as follows:

- **On issue of Part 1 Certificate (Substantial Completion) – 10% retained by BCC**
- **On issue of Final certificate (after 12 months maintenance) – Full release of bond.**

NB: The bond will not be reduced below the estimated value of the remaining works, plus commuted sums, plus 12% to prevent any liability to BCC.

Maintenance Period

The Maintenance Period commences when the Practical Completion Certificate is issued. During this period the developer will be responsible for maintenance of the adopted highway and any remedial works necessary. The maintenance period is normally 12 months, although this may be extended in some instances.

Any highway works defects that are highlighted during the Maintenance Period must be rectified by the developer within three weeks of the date of notification unless another time period is agreed with the council. The developer will be liable for all costs associated with the rectification of defects during this period.

During the first year a highway scheme is open to traffic, we expect developers to monitor the number of personal injury accidents that occur, so that any serious problems can be identified and rectified immediately.

Final Sign Off – Certificate 2

At the end of the Maintenance Period, the developer must contact TDM to arrange a detailed inspection of the works to identify any remedial works to be undertaken prior to the issue of the Final Completion Certificate. The certificate cannot be issued until all defects have been rectified and all outstanding fees paid.

A Stage 4 RSA should be undertaken in accordance with *GG 119 Road Safety Audit* and any required remedial works arising from the RSA should be undertaken prior to the issue of the Final Completion Certificate.

The issue of the Final Completion Certificate provides confirmation that the works are acceptable and that the Highway Authority has agreed that future maintenance will be the responsibility of BCC.

The issue of the Final Completion Certificate triggers the release of the remainder of the bond surety, subject to payment of all outstanding fees and commuted sums that are required.