

Section 38

Guidance for Developers

A guide detailing the S38 process in
North Yorkshire

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1_ Introduction

1.1_ Section 38 of the Highways Act (1980) enables North Yorkshire Council (NYC), as the Local Highway Authority (LHA), to take over and maintain at public expense (adopt) new roads, footways, footpaths, cycle lanes, cycle tracks and other areas constructed by developers or other third parties through a legal agreement process.

1.2_ This does not mean the road or street will automatically be adopted but ensures that such streets are fit for their purpose. Similarly, not all layouts approved by the Local Planning Authorities (LPA) will comply with adoptable highway standards or criteria. As such, if a developer chooses to offer their roads/streets for adoption and highway standards are not satisfied then modifications may be required which may have implications on the planning consent.

1.3_ A Section 38 (S38) Agreement between the Developer and the Local Highway Authority would need to be entered into to ensure the new roads are constructed to NYC standards and satisfactorily maintained for the duration of a maintenance period after the roads are built before NYC will adopt the road.

1.4_ No works may commence within any existing public highway without the written consent of the Local Highway Authority. Indeed, it is an offence to do so without an agreement being in place.

1.5_ Where the works require planning approval, or provide access to a development that requires planning approval, such approval is a pre-requisite to the Highway Authority completing Agreements under S38 of the Highways Act (1980).

1.6_ The developer must ensure that planning conditions are discharged accordingly prior to any works commencing on site. All works must be undertaken in strict accordance with the approved details.

1.7_ The completion of an Agreement under S38 of the Highways Act (1980) provides an exemption from the serving of a Notice under the Advance Payments Code, (Sections 219-225) of the Highways Act (1980), (APC) provided that the Agreement is completed prior to commencement of any associated plot building.

1.8_ In most cases, the construction of a new road or street will also involve the construction or alteration of a junction within an existing highway. In such cases a separate Agreement under S278 of the Highways Act (1980) would be required.

1.9_ The purpose of this guidance document is to provide developers and their consultants with all the information required to enable them to submit a complete S38 submission for design checking. It details the responsibilities and obligations of the Developer, Consultant and Highway Authority in the design, approval and supervision of proposed new highways. This document also details all the steps required to enable a start of works on site and the procedures for maintenance and final adoption of the completed works.

1.10_ Further information and guidance regarding the Advance Payment Code and other highway adoption mechanisms may be found in the Department for Transport's Advice Note 'Highway Adoptions' published 20th April 2017.

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

2_ Legislation

2.1_ Section 38 Agreements

2.1.1_ Applications to enter into a S38 Agreement should be made to NYC as soon as practicable and early engagement with the LHA is recommended. Where applicable, applications should be submitted at the same juncture as an application to the LPA to discharge any associated highway conditions recommended as part of the planning permission. The S38 Application Request form can be found in Appendix A (1). The development may be divided into a number of phases and an Agreement completed for each phase before construction works commence.

2.1.2_ Section 38(6) of the Act says:

“An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other related matters as the authority making the agreement think fit”.

2.1.3_ NYC may seek payment for future maintenance of the new or revised highway from the Developer, acquiring monies through “Commuted Sums” where necessary. Commuted Sums allow greater flexibility to adopt non-standard materials and other items when development increases future maintenance liability.

2.1.4_ The highway layout agreed when planning permission is granted will only be regarded as a general arrangement and may be subject to change as a consequence of the subsequent technical and statutory consultations and the detailed design. Any changes in the planning application so granted may require a variation, often in the form of a Section 73 application.

2.2_ Section 278 Agreements

2.2.1_ It may be necessary in some instances to alter the existing Adopted Highway. Where this is required, the works will be subject to a separate agreement under the provisions of Section 278 of the Highways Act 1980. Further information about Section 278 (S278) Agreements can be found in ‘A guide detailing the S278 process in North Yorkshire’.

2.2.2_ Works associated with the development will not be allowed to commence on any publicly maintained highway until a S278 Agreement is signed by both parties and a Bond of Surety is in place. Indeed, it is an offence to undertake works within the confines of the adopted public highway without an agreement.

2.3_ Advance Payment Code (APC)

2.3.1_ The Advance Payment Code (APC) requires developers and/or landowners of new development streets to secure a bond with the Local Highway Authority (LHA) to cover the costs of the proposed street works.

2.3.2_ Should the development streets not be completed to a satisfactory standard this bond protects NYC and the future residents of a development from the cost of having to complete or remedy unsatisfactory street works.

2.3.3_ However, it is NYC's position to actively encourage developers to put forward residential development estate roads for adoption, through the S38 process. Where a S38 Agreement is completed, an APC exemption will be granted.

2.3.4_ For further information on the Advance Payment Code (APC) process, please see Appendix B.

2.4_ Private Streets

2.4.1_ A developer may choose to keep the development private, as opposed to offering the street for adoption via S38, and in doing so arrange for a management company to maintain the street to an acceptable standard.

2.4.2_ In the case of a private street, the Developer has an obligation to inform prospective purchasers and mortgagees that the street will not be adopted by the Local Highway Authority.

2.4.3_ Should a Developer wish to keep the internal highway network of a new development private and have a management company appointed to maintain the street(s), then the Developer is requested to submit this information in writing to the Local Highway Authority at the point of the development being granted planning consent.

2.4.4_ The Local Highway Authority will inform its Land Searches team where it is known that works are at risk of commencing on-site without either a S38 Agreement or APC's being in place, or if engrossment of a S38 has stalled, to ensure Solicitors undertaking searches for prospective house buyers are duly informed.

3_ Client Responsibilities

3.1_ Design Requirements

3.1.1_ It is recommended that the developer duly appoints a competent consultant for the duration of the design, submission and review period. The consultant should also be retained during both the construction and the maintenance periods to address any issues that may arise within the duration including anything highlighted during the stages of Road Safety Audit, which may preclude the agreement being finalised.

3.1.2_ Designs shall be in accordance with North Yorkshire Council's specific requirements detailed in its Residential Design Guide and Specification for Housing, Industrial Estate Road and Private Street Works, or any document that may supersede this. In addition, Developers and their Consultants will be guided to follow the requirements of the Design Manual for Roads and Bridges (DMRB) and Manual for Streets (MfS).

3.1.3_ S38 Legal agreement Plan forming and detailing the S38 submission shall show the proposed adoptable highway areas with the colour coding / shading as detailed in Appendix A (1).

3.2_ Specification

3.2.1_ North Yorkshire Council's Specification for Housing, Industrial Estate Road and Private Street Works shall be used for S38 works, which is based on the 'Specification for Highway Works' (SHW) under the Manual of Contract Documents for Highway Works.

3.2.2_ Any proposed variation should be submitted to and be approved for use by a NYC Engineer through the Technical Review process.

3.2.3_ Technical Review comments on the specification will generally only be made with respect to certain key fundamental elements and it remains the Consultants and Contractors responsibility to ensure that S38 works are designed and constructed in accordance with North Yorkshire Council's Specification, or, in its absence the SHW.

3.3_ Construction (Design and Management) Regulations (2015)

3.3.1_ The Developer, Consultant and Contractor are required to adhere fully to The Construction (Design and Management) Regulations (CDM), these being the key governing health and safety legislation.

3.3.2_ For the avoidance of doubt, under the CDM Regulations, the Developer is the "Client" and therefore the key duty holder.

3.3.3_ In all S38 submissions, the CDM Client shall confirm that the 'Principal Designer' and ensure the 'Designer(s)' has the appropriate skills, knowledge and experience to fulfil their duties under the CDM Regulations and provide the contact details of the Principal Designer.

3.3.4_ In addition, prior to construction works commencing, confirmation of the Principal Contractor's skills, knowledge and experience shall also be provided together with their contact details and written confirmation that the 'Construction Phase Plan' is suitable for the works.

3.3.5_ Where applicable, written proof will be required that the Health and Safety Executive (HSE) has been formally notified of the project by way of an 'F10' Notification.

3.4_ Subsidiary Agreements

3.4.1_ Where works affect two adjoining Local Highway Authority networks, and depending on the nature of the works, separate S38 Agreements between the Developer and each of the affected Local Highway Authorities may be required.

3.4.2_ Early dialogue to establish how and on what legal basis highway works affecting National Highways or a neighbouring Local Highway Authority's networks are enabled is essential such that Developer expectations and Programmes can account for subsidiary agreements and procedures.

3.4.3_ If the Works affect, change or connect to drainage which is intended to be, but is not yet vested in a Water Company and is not "highway only" drainage (i.e., prospectively adoptable by the Local Highway Authority as part of the Works), then this work would need to be subject to an Agreement between the Developer and the adopting water company for its future maintenance and adoption.

3.4.4_ New structures, buildings, retaining walls etc. adjacent to, over or under an existing highway will also require specific consent and licensing or agreement. Please contact North Yorkshire council's Bridges and Structures Team.

3.5_ Exceptions

3.5.1_ If only minor works are required within an existing highway to form the bellmouth junction to a proposed estate street, (that is to be subject to a highway adoption agreement under S38 of the Highways Act (1980)), the S38 Agreement may be extended, at the discretion of NYC's Engineer and Legal Team, to incorporate and authorise such works within the existing highway as "Accommodation Works". Such agreements combine provisions of Section 278 of the Highways Act 1980 within a single Section 38/278 agreement.

3.5.2_ This is however at the sole discretion of NYC's Engineer and circumstances often make it inappropriate to grant this exception.

3.5.3_ Where works within the existing highway have been agreed to be authorised via a Section 38 Agreement with "Accommodation Works", No Works of any kind may commence on the existing public highway unless or until the Section 38 Agreement has been completed and appropriate pre-commencement processes regarding a Roads and Street Works Permit, site notifications etc., (as described in the S38/278 Notes for Guidance) have been completed.

3.5.4_ If the works within an existing highway are isolated from the site access junction and / or affect any existing road markings or signs, widen / realign carriageway, affect the highway opposite etc., then a S278 Agreement will be required.

3.5.5_ If the works within an existing highway are to connect to a new road or street, which is not subject to an agreement under S38 of the Highways Act (1980) and / or is to remain private, a S278 Agreement is required.

3.5.6_ A flowchart is provided in Appendix C to assist in the choosing the correct Agreement.

4_ Notices, Permits, Licences & Other Agreements

4.1_ General

4.1.1_ A S38 Agreement allows the works specified to be undertaken by the Developer. Other Licences, Notices and/or agreements may however also be required.

4.1.2_ Each Licence, Notice or Agreement has their own requirements, implications and time lines and whilst some can be incorporated into a Section 278 Agreement others cannot.

4.2_ Street Works Notifications/Permitting

4.2.1_ The Developer and/or Contractor will need to apply for a Street Works Permit from NYC to undertake any works on the adopted highway in advance of the works starting.

4.2.2_ This is required to ensure that NYC can identify causes, or potential causes, of road congestion or other disruption to the movement of traffic on their road network, including the management of its own works for road purposes.

[4.2.3](#) Further information on Street Works Notifications / Permitting is given in Appendix D.

4.3_ Section 171 Licence - Highways Act (1980)

[4.3.1](#) Before any works are carried out on or adjacent to the Adopted Highway, the Developer is required to obtain a S171 licence from NYC. This licence permits the Developer and his contractors to undertake works on or adjacent to the highway with the approval of NYC acting as the Highway Authority. A S171 Licence is typically required where a S278 Agreement or S184 licence would not be a suitable mechanism to enable excavation within the highway for example when undertaking trial holes.

[4.3.2](#) If the Adopted Highway has to be closed to vehicular traffic to undertake these works, then a separate application will have to be made for a Temporary Traffic Regulation Order (TTRO) to be implemented which will take 3 months to process.

[4.3.3](#) A company or contractor may apply on behalf of the land or property owner, but the licence will remain in the possession of the land or property owner.

4.4_ Section 184 Agreement - Highways Act (1980)

[4.4.1](#) The principal purpose of a S184 Licence is to facilitate works to a minor access for example the construction of a vehicular driveway over a footway or grassed verge to a single private dwelling.

[4.4.2](#) If a Developer requires the construction of a new site access or requires alterations to an existing site access that adjoins the adopted public highway then generally, a Section 278 Agreement will be required.

[4.4.3](#) At the discretion of the Engineer, a licence under S184 could be utilised for a Contractor to gain access to a site for the purpose of 'Enabling Works' for example setting up the Site Compound or constructing a temporary haul route in advance of the main works where the temporary access is separate from the proposed main site access(es). For this to happen, the LHA must be satisfied that the proposed temporary access is considered safe and suitable for its intended purpose and has all necessary planning consents secured. Additionally, all pre-commencement conditions must have been discharged and a S38 Agreement in place prior to any S184 licence being offered.

[4.4.4](#) For the avoidance of doubt, a field gate access whether on a classified road or unclassified road will not be deemed suitable to take access from/to the public highway without the permission of the LHA, as use of such access is likely to involve an intensification of use, and therefore would still be subject to a S184 licence being required, to permit construction of the access to a suitable standard, with the requirements listed in [4.4.3](#) having been satisfied.

[4.4.5](#) The scope of S184 works may in some instances, be extended to cover other minor works, for example the re-positioning of a road gully or a street lighting column, but in most cases a S171 License is a more suitable provision.

[4.4.6](#) Where the requirements for a S184 Agreement are satisfied, NYC will approve the Developer's design and inspect the S184 works. The Developer shall pay all NYC's appropriate fees for the administration of the agreement, legal services, technical approval, site inspections and issue of certificates.

4.4.7_ A flowchart is provided in Appendix C as a guide to choosing the correct Agreement.

4.5_ Section 50 Licence - New Roads and Street Works Act (1991)

4.5.1_ If a development requires works within the adopted highway to work on or install new apparatus, which requires it to be excavated, for works to break through it, the Developer will need to apply for a Section 50 Licence (NRSWA).

4.5.2_ When applying for a Section 50 Licence (S50) the Developer must be aware of the following:

- Those granted a S50 Licence become "works undertakers" (for the purposes of NRSWA), and because of that, they assume responsibility for carrying out the duties and responsibilities imposed by the Act and its associated Codes of Practice.
- If the Developer is unfamiliar with the NRSWA requirements they must appoint a contractor with the proper knowledge and accreditation, that can ensure that the works are conducted properly. An appointed contractor lacking the proper knowledge or accreditation will not be allowed to work within the Adopted Highway.
- Within NRSWA, the Developer as licence holder, may incur financial penalties if the necessary statutory duties and licence conditions are not met. This liability cannot be delegated to any other person or organisation.
- The requirement to receive a S50 Licence applies to any person or organisation (other than anyone acting under a statutory right) that wishes to place, retain and subsequently inspect, maintain, adjust, repair, alter, or renew apparatus or change its position, or remove it from the highway. This includes, but is not limited to, drains, cables, ducts, sewer pipes, water and gas pipes under, over, across, along, or upon the adopted highway.
- The Developer must apply for a S50 Licence prior to the proposed works start; and
- The guidance given here is to demonstrate requirements related to the S38 guidance and is to be read as such. It therefore does not describe all the requirements or go into all detail of the S50 licence.

4.6_ Ordinary Watercourse Consents and Main River Permitting:

4.6.1_ An ordinary watercourse is defined as any passage through which water flows, which is not part of a main river. This includes rivers, streams, ditches, drains, cuts, culverts, dikes, sluices and non-public sewers. NYC as the Lead Local Flood Authority, is responsible for consenting works (including temporary works) that affect the flow of an ordinary watercourse.

4.6.2_ A main river is typically defined as larger streams and rivers, but some smaller watercourses of local significance may also be enmained. Main rivers are managed by the Environment Agency (EA) or Local Drainage Boards. Works within 8 metres of a main river or 16 metres of a flood defence typically require an EA permit. The EA's website can be used to help identify main rivers and view their flood maps (www.environment-agency.gov.uk).

4.6.3_ If works are going to impact on either ordinary watercourses or main rivers it is strongly recommended that matters are pursued early by the Developer and their Consultant due to the regulatory processes that will need to be fulfilled that rest outside of S38 Agreements.

4.7_ Traffic Regulation Orders

4.7.1_ For information on Traffic Regulation Orders, both temporary and permanent and how to request them please contact Development Control.

4.8_ Other Agreements & Licences

4.8.1_ Other common licences and agreements are referred to in the table below:

Subject	Licence / Agreement	Legislation
Scaffold & Hoarding Licence	Section 169,172,173	Highways Act (1980)
Soft Landscaping Maintenance	Section 142 Licence	Highways Act (1980)
Drainage Adoption (Non-Highway Drainage) i.e., sewers	Section 104 Agreement	Water Industry Act ((1991))
Private Structure (over or overhanging a highway)	Section 176 or 177 Licence	Highways Act (1980)
Transporting Waste	Environment Agency Waste Carriers Licence	The Waste (England and Wales) Regulations (2011)
Disposing of Waste	Environment Agency Environmental Permit	The Environmental Permitting (England and Wales) Regulations (2016)
Works affecting protected sites and/or species	Natural England Licence	Wildlife and Countryside Act (1981)
Working on protected trees and/or hedgerows	Local Authority Planning Dept	Town and Country Planning (England) Regulations (2012)

5_ Construction Procurement

5.1_ General – Design

5.1.1_ The design of the S38 highway works must be in accordance with NYC's Residential Design Guide and Specification for Housing, Industrial Estate Road and Private Street Works or any documents that supersedes it. In addition, Developers and their Consultants will be guided to follow the requirements of the Design Manual for Roads and Bridges (DMRB) and Manual for Streets (MfS).

5.1.2_ Once planning permission is granted, and at an early stage in the process, it is recommended that the Developer or Consultant makes contact NYC's Development and Adoption Team who will then guide the applicant through the S38 process.

5.2_ Highway Design – By External Consultants

5.2.1_ The Developer must provide their external designer's details to NYC's Engineer to determine the external consultant's relevant experience and capability. The information provided must be detailed enough to allow designer competency to be assessed. Where this is not acceptable, NYC will inform the Developer.

5.2.2_ The Developer will be responsible for all consultation, but where statutory consultation is required for example with Traffic Regulation Orders, the Developer/Consultant must provide sufficient information to NYC to enable consultation to commence within the required

timescales. NYC will not be responsible should consultation and any outcomes delay the overall works programme.

5.2.3_ On the completion of the detailed design the Developer shall provide the information to NYC, who will undertake a formal Design Check often referred to as 'Technical Review'. The submission must include information detailed in the S38 Submission Tracker ([hyper link](#)). The LHA will not accept incomplete submissions.

5.2.4_ The Developer must liaise with NYC's Engineer to commission an independent Stage 2 Road Safety Audit in accordance with GG119, and in doing so, agree the appointment of a suitably qualified Auditor and then subsequently agree an Audit Brief with North Yorkshire Council acting in the capacity of Overseeing Organisation. NYC Traffic Engineering Team must be given the opportunity to tender for this work

5.2.5_ The Design Check can take up to 4 weeks, NYC's Engineer will advise on timescales early in the design check process if the usual 4 weeks turn-around time is insufficient. Details of design amendments/modifications required by NYC's Engineer will be provided to the Consultant. Once all comments/amendments have been addressed, NYC's Engineer will issue in writing a letter of no objection to the Detailed Submission pack.

5.2.5_ Please note it is advisable for Design Checks to be undertaken at the same time as planning conditions pertaining to 'detailed highway layout' are submitted to be discharged to avoid duplication of resources and delays in commencement.

5.3_ Highway Structures Design

5.3.1_ If the development includes a structure where any of the following apply:

- Structure will be offered up for adoption;
- Structure supports the Adopted Highway;
- Structure supported by the Adopted Highway.

5.3.2_ Then structural details must be submitted to NYC Bridges and Structures Team for Technical Approval.

5.4_ Street Lighting Design

5.4.1_ The street lighting works required to illuminate the adopted highway must be designed in accordance with North Yorkshire Council's Design Guide and Street Lighting Specification.

5.4.2_ NYC Street Lighting Team has its own in-house Design Team who may be able to undertake this work on a rechargeable basis to the Developer.

5.4.3_ Alternatively, Street Lighting designs may be submitted by a competent Street Lighting Designer and be subject to an In-house Design Check Audit being undertaken.

5.4.4_ The procurement and installation of Street Lighting apparatus within the adopted public highway must be undertaken by a competent Street Lighting installer approved by NYC.

5.5_ Traffic Signal Design

5.5.1_ Traffic Signal Designs must be designed in accordance with North Yorkshire Council's approved details which will be subject to internal Design Check Audit as part of the overall S38 Technical Review process.

5.5.2_ The procurement and installation of Traffic Signal installations must be undertaken by a competent Traffic Signals installer that is approved to operate on NYC's highway network. A list of approved installers can be provided on request.

6_ Finance

6.1_ Bond of Surety

6.1.1_ The Developer is required to deposit a Bond of Surety or a Cash Deposit with NYC to cover the cost of the adoptable highway works, NYC's associated fees and charges, and Commuted Sums. This Bond/Deposit ensures that NYC does not incur any costs if the highway works are stalled, changed or aborted by the Developer.

6.1.2_ If the Developer fails to perform or observe any of the Agreement's conditions, NYC can default the agreement and use the Bond/Deposit to complete the S38 highway works and in doing so recover NYC fees and charges, and retain Commuted Sums to cover future maintenance costs.

6.1.3_ The NYC fees and charges element of the Bond must be deposited with NYC prior to any works commencing on site.

6.1.4_ NYC may require an advance fee to be paid as part of the S38 request application. This fee if applied will be deducted from the superintendence fee prior to any instruction to the legal team. Therefore, the superintendence fee in any agreement is final.

6.1.5_ The legal cost incurred administering the S38 will be invoiced separately.

6.1.6_ Cheques should be made payable to North Yorkshire Council and sent with an appropriate cover letter confirming the development details and form of agreement to:

**North Yorkshire Council
Highway Development and Adoption
County Hall, Racecourse Lane
Northallerton
North Yorkshire
DL7 8AD**

6.1.6_ Electronic (BACS payments) are acceptable. As all BACS payments are processed centrally, it is essential that it is clear from the reference used for the transaction that it relates to a scheme (scheme title) and the form of agreement (S38). As such, please state your reference as 'S38-Scheme Title' such that we can identify the payment expediently.

6.1.7_ When paying by BACS the following details apply:

Bank	Barclays Bank Plc
Account Name	North Yorkshire Council County Fund New

Account Number	70208671
Sort Code	20-61-53
Address	193 High Street, Northallerton DL7 8LJ
Reference	S38 – “Insert Scheme Title”
VAT Number	259107749

6.1.8_ It is also essential when paying by BACS that an email detailing the remittance advice to include your contact details, invoice number (if paying by invoice), scheme title, amount of remittance and the purpose of the remittance is forwarded at the same time to development.control@northyorks.gov.uk

6.2_ Fees

6.2.1_ NYC can charge different types of fees as detailed in the table below:

Advance Fee	An advance fee of £5,000 may be required upon application for a S38 agreement. This fee will be deducted from the total superintendence fee detailed below and the agreement will be instructed based upon the amended fee value.
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Legal Fee	A fee is required by NYC's Legal Services team to cover the legal costs for dealing with each agreement, plus disbursements. The fee is recovered on a time related basis and this cost will vary subject to the complexity of the agreement and any negotiations relating to it.
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Percentage Fees	<p>Percentage fees are used to estimate the Surety Bond/Deposit value as part of any S38 Agreement. Based upon 110% of the submitted and approved Tender Estimate value, rebased against NYC's own rates and considerations to ensure that, in the event of a default by the Developer, the works can be completed without financial risk to the Council.</p> <p>A percentage superintendence fee (as detailed in Appendix A (1)) will be levied to cover general administration, technical reviews, site inspections and the progression of certificates through to eventual bond/deposit release.</p>
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Design Fees	<p>Design fees are not included within the percentage fees and these works are charged separately by the various design organisations undertaking them on behalf of NYC.</p> <ul style="list-style-type: none"> • Street Lighting • Bridges / Structures • Soft Landscaping • Streetworks • Traffic Regulation Orders (Temporary & Permanent) • Traffic Signals • Road Safety Audits • Conducting Surveys for inventory information • Traffic Surveys • Works associated with Flood Risk Management, Lead Local Flood Authority, SuDS checking and associated approvals.
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Time Charge Fees	<p>Time charges are based on hourly charge rates (salary and overheads) in addition to the superintendence fee and will be used for any works pertaining to:</p> <ul style="list-style-type: none"> • Advisory work, including development of project options; • Development of Project Briefs; • Where project cost at tender/order stage is below £50,000, including administering • Street Lighting, Soft Landscaping and Traffic Signals; • Topographical surveys of site; • Undertaking Design Check(s) on external/third party designs i.e., structures; • Undertaking formal technical and statutory consultations; • Preparing Permanent and Temporary Traffic Regulation Orders (TRO); • Payment of additional site staff employed by NYC; • Additional Site inspection and monitoring of works (resting outside of basic superintendence fee coverage and agreement timescales); • Undertaking Road Safety Audits; • Dealing with Statutory Undertakers (not preliminary enquiries); • Administering input of others contributing to the works; and <p>Additional Services</p>
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6.2.2_ The value of additional fees will be advised following a review of submitted details. NYC reserves the right to require further fees prior to the completion of an agreement should it consider, that deposited sums will not cover expenditure prior to completion.

6.2.3_ If more than 2 years elapses after the issue of the Part 1 Certificate, without a Part 2 Certificate being issued, then NYC reserve the right to apply a further fixed fee (currently a minimum of £500) for additional administration and inspection work.

6.3_ Commuted Sums

6.3.1_ Commuted Sums are necessary when any development increases NYC's future maintenance liability. Typical circumstances where this may occur are:

- Maintenance costs for any construction that is not required for the safe and satisfactory functioning of the Adopted Highway (including alterations to the existing highway which are only required to serve the development) with no general benefits;
- Maintenance costs for additional features, such as highway structures, additional street lighting, traffic signal installations, non-essential street furniture/fencing/walls, public transport infrastructure and landscaping;
- Additional maintenance costs for permitted alternative materials and features, for example, higher quality paving materials, bespoke street furniture, exceeding NYC's standard specification, and
- Provision of SUDS (such as flow-attenuation devices, swales and storage areas).

6.3.2_ Developers should discuss their requirements with NYC, ideally during pre-planning application discussions, in advance of a formal Planning Application being submitted.

6.3.3_ Commuted Sum schedules for additional features, alternative surfaces and specifications can be found in [Interim Guidance Note 28 - Commuted Sums](#). The Commuted Sums schedules will have been calculated on the date shown and shall be index linked to the date of the S38 Agreement and the associated payment date.

6.3.4_ Where items, materials or features are not covered in Chapter 28, then Commuted Sums will need to be calculated on a site-by-site basis by NYC's Engineer.

6.4_ Insurance Liabilities

Design

6.4.1_ If NYC is not appointed to design the S38 highway works, the Developer must indemnify NYC against any claims by third parties arising from any work included in the S38 Agreement.

6.4.2_ Written evidence must be provided that the Developer's Designer for the S38 highway works has a minimum of £5 million of professional indemnity insurance, with no limit on the number of claims.

Construction

6.4.4_ The Developer must also indemnify NYC against any claims by third parties arising from any work included in the S38 Agreement.

6.4.5_ Written evidence must be provided that the Developer's Contractor undertaking the S38 highway works has a minimum of £5 million of public liability insurance, with no limit on the number of claims.

7_ Process Summary

7.1_ Outline S38 Process

7.1.1_ NYC works in a sequential manner such that each stage of the process must be completed, before any subsequent stage commences. Post planning consent, the principal stages include for illustrative purposes the following elements:

Submission Stage

(Section 8)

- Initial submission including S38 Application form is submitted and validated;
- Full Technical and Detailed Submission
- TRO/Notice Applications should also be made at this stage

Technical Review Stage

(Section 9)

- The Technical Submission is considered against local and national standards. Please allow a minimum of 4 weeks from confirmation that the drawings
- Structural assessment of Technical Submission – where applicable;
- Traffic Regulation Orders / Notices
- Stage 1 & 2 RSA will be required unless otherwise agreed with NYC and completion of any resulting changes as necessary.
- Approval in Principle (no technical objections to proposals).

Agreement Stage

(Section 10)

- Legal Instructions issued to the Council's legal representative's;
- Agreement drafting and issue (this can take 6 to 8 weeks depending upon complexity and workloads.
- HM Land Registry title checks where land is to be dedicated (where applicable)
- All pre-commencement highway planning conditions discharged.
- Agreement completion including payment of outstanding fees.

Pre-Construction Stage

(Section 11)

- Where a S278 Agreement is in place, submit a request for a Roads and Street Works Permit (also known as "Road Space") minimum 3-month Notice Period applies for major works.
- Pre-Commencement meeting, traffic management and publicity agreed;
- NYC will agree "Commencement" enabling works to commence on site.

Construction Stage

(Section 12)

- Works Commencement;
- Completion of works, (including any remedial works);
- Stage 3 Road Safety Audit (and completion of any identified works);
- "Part 1 Certificate" issued (Financial surety/bond reduced);
- Commencement of "Defects Correction Period";
- "Part 2 Certificate" issued i.e. Final Completion of works, (including any remedial works);
- Commuted sums paid, (where applicable);
- Health and Safety File submission;
- Post Completion Inventory submitted including As-Built drawings
- Certificate of Final Completion issued; and
- Remaining Financial Security released.

At no stage does North Yorkshire Council become liable for any costs or delays incurred by the Developer in the completion of the Technical Review, Legal Agreement, Roads and Street Works Permit duration or contractor over runs.

7.1.3 The bond will be released back to the Developer incrementally, generally in accordance with the table below, but at the discretion of NYC's Engineer. Additionally, if payment of Commuted Sums remains outstanding then the bond will not be reduced to a value less than the Commuted Sum.

Stage	Bond Value Reduced to “x” of Original Value
Part 1 Certificate	50%
Part 2 Certificate	20%
Final Certificate	0%

Bond of Surety – Percentage Retained

8_ The Submission Stage

8.1_ All S38 Application requests shall be made using the Standard Application Request Form in Appendix A (1) and sent to development.control@northyorks.gov.uk. Initially, as a minimum, this application form shall be submitted with a S38 Legal agreement drawing colour coded and shaded as referenced in the form.

8.2_ Upon receipt, the submission will be nominated to a named NYC Engineer working under the supervision of a Senior/Principal Engineer within the Development and Adoption Team. The Engineer will guide the Applicant through the process and also request further supporting documentation that they consider necessary for the size and scale of the application to enable validation of the application and review of the proposed design.

8.3_ To enable NYC’s Engineer to assess the S38 submission as efficiently as possible, a S38 Submission Tracker can be found in Appendix A (2) which will assist with the collation of information / documents that are typically required as part of the overall validation process. Upon validation, if the submission package is incomplete or key information is missing the application process is likely to be delayed.

8.4_ The validation process will ensure that a full suite of documentation has been provided and the proposals align with any previous planning requirements/conditions/S106 Obligations.

8.5_ It is recommended that any TRO/Notice Applications are submitted at this stage in the process for validation and distribution to the in-house team who will lead on the TRO and associated consultation work. *Note - the costs of this will be invoiced outside of the S38 Agreement process.* The developer with the assistance of NYC Engineer will complete a Project Brief for all permanent and temporary Traffic Order work.

8.6_ If the Agreement process is abandoned or fails to be completed for whatever reason prior to the S38 Agreement being signed and payments being made, NYC will suffer no financial loss and the Developer will be invoiced for the costs incurred on a time-charge basis.

9_ Technical Review Stage

9.1_ Technical Review Process

9.1.1_ The Technical Review process can take up to 4 weeks, depending upon whether there is a requirement to consult the various asset owners and specialist design teams within NYC to seek their views on the submitted proposals. Extensions to this timescale may be necessary for particularly complex issues, or where overall workload within the respective teams dictates.

9.1.2_ The appointed NYC Engineer will provide initial Technical Review comments detailing amendments that need to be addressed and 2 weeks should be allowed for the review of any

subsequent submission and iterations; however, this is subject to the timescales between submissions.

9.1.3_ Technical plans and drawings are required to ensure that any party is aware of what is to be constructed. Once approved, these plans will be the basis for site inspections and any non-compliance will require remedial work. It should be noted that the 'Specification' will always take precedent over any detail shown on a drawing, with construction work identified as being non-conforming requiring rectification in accordance with the Specification and to the satisfaction of the Engineer.

9.1.4_ The Developer will be required to submit pdf technical drawings and associated details, although hard copy paper versions or AutoCAD drawing format files may be requested at the discretion of the Engineer.

9.1.5_ Submissions must include documents stipulated within the S38 Submission Tracker (Appendix A (2)). Drawings should be a suitable scale, preferably 1:500 scale.

9.1.6_ NYC reserves the right to require further / additional information and details to those listed on a site-by-site basis.

9.1.7_ Please note that in respect of embankments additional land is required to be dedicated as highway and way-leaves will be required in most cases for access purposes.

9.1.8_ The appointed NYC Engineer will draft an initial design check audit detailing any issues / comments on the proposals that need to be addressed before progressing the agreement.

9.1.9_ It is hoped that if the Developer / Consultant has followed the planning application process and the fundamental details have been subject to Discharge of Conditions then there should not be the need for many major iterations within the Technical Review and with the help of the NYC Engineer it should be possible to achieve a design that is acceptable for construction. However, in some cases, there may be the requirement for the applicant to apply for Section 73 variation to the planning layout to satisfy the technical review process.

9.2_ Design Review Meeting

9.2.1_ A Review Meeting may be requested by any of the parties following issue of the initial Technical Review. This could be to:

- Help clarify comments in the review and what will be required in any subsequent response submission;
- To discuss design principles and potential options that could be incorporated in the design to overcome any issues identified or;
- To have a general discussion regarding progress, next steps or public communication strategies (for large schemes).

10_ Agreement Stage

10.1_ Legal Agreement

10.1.1_ Once the Technical Review has been undertaken and a letter of no objections received, undertaken the NYC Engineer will instruct and further liaise with the Council's Legal Team to progress the S38 Agreement. This process can take 6 to 8 weeks subject to overall workloads, developers solicitor engagement and the requirement for information to pass back and forth between signatories.

10.1.2_ The Agreement can only be instructed upon:

- Confirmation from NYC's Engineer that the drawings accurately reflect the principle of the works;
- An approved Land Plan from HM Land Registry showing title has been supplied where land is being dedicated to the Highway Authority.

10.1.3_ The S38 Agreement will not be legally binding until the Developer, Landowner(s), Bondsman and NYC have all signed the Agreement and it has been sealed.

10.1.4_ Once the Agreement has been sealed, it does not afford Developer's approval to commence any work within the highway until the information in Section "Pre-Commencement Stage" have been provided and agreed.

10.1.5_ Please note at the time of writing NYC Legal Services seal agreements on Tuesday and Friday. Payment of fees must be received prior to any agreements being sealed.

11_ Pre-Commencement Stage

11.1_ Appointing a Contractor

11.1.1_ The following guidance is given to assist the Developer when appointing a Contractor to undertake works on the Highway. North Yorkshire Council reserves the right to refuse any contractor that does not hold the relevant insurance, operative certifications and licences or if there are any unresolved HSE enforcement notices issued to the contractor. NYC will also take into consideration the past performance of Contractors working on its highway network.

- a) The contractors Health & Safety Policy should be checked by the Developer to ensure that it is suitable.
- b) The Developer must ensure that there are currently no unresolved HSE enforcement notices issued to the contractor.
- c) The Developer should obtain two technical references from the contractor of previous work carried out of a similar nature and size to the proposed works.
- d) The Contractor must have current Public Liability Insurance of £10 million (minimum).
- e) The Contractor must have current Employees Liability Insurance of £5 million (minimum).
- f) The Developer must ensure that any operatives undertaking works within the Highway hold the appropriate operative's certification under the New Roads and Street Works Act (1991).

- g) The Developer must ensure that all works within the Highway are supervised by a person holding the qualification of Supervisor under the New Roads and Street Works Act (1991).

11.1.2_ All the above must be held on file by the Developer for reference and be available for NYC to review during the S38 agreement period. Furthermore, items d, e, f and g must be submitted to North Yorkshire Council for review prior to the Construction Pre-Start Meeting and any work being undertaken on the Highway.

11.1.3_ A list of proposed sub-contractors shall be provided a minimum of seven days prior to commencement of construction. Sub-contractors employed to undertake any landscaping or arboriculture works shall have the required professional qualifications for the scope of the work.

11.1.4_ Proof of insurance for all contractors including sub-contractors will be required for the duration of the Works; and insurances must also be valid when remedial works leading to adoption are being carried out.

11.2_ Pre-Commencement Meeting

11.2.1_ A Pre-Commencement meeting shall be arranged once the Developer / Contractor has a firm commitment to proceed.

11.2.2_ Meetings may be held, at the earliest, following the design check stage and initial drafting of the Agreement as long as the design is suitably developed to enable a meaningful meeting to take place, including having a detailed works programme. The developer must have pre-construction details as noted below.

11.2.3_ It is expected that the Developer / Contractor arranges this meeting and to assist, the NYC Engineer will provide a list of NYC attendees required at the meeting together with their email addresses to enable coordinating the meeting based on availability.

11.2.4_ The meeting should be held on-site or nearby i.e., at one of NYC's Area Highway Offices. The NYC Engineer will assist the Developer in chairing the meeting, with the Developer/Consultant taking the minutes of the meeting. A typical Pre-Start Agenda is included in Appendix E.

11.2.5_ It is recommended that **at least five working days prior to the meeting** the following information (where applicable) shall be submitted to the NYC Engineer to enable circulation to other NYC attendees in advance of the meeting.

The Detailed Tender Sum including all Statutory Utility Costs
Traffic Management Plan (where S278 element)
Programme of works including any advance works such as Utility diversions/supplies (with critical path and NRSWA Streetworks noticing periods)
Contact Details for Principal Designer and Designer(s)
Contact Details for the Principal Contractor
Contractor's insurance certificates
Emergency Contact details (24 hour) for the Contractor
Construction Phase Plan
Risk Assessment and Method Statements

CDM Regulations - F10 Notification Form to HSE (if Works deemed notifiable).
List of the sub-contractors undertaking any works in the highway (incl. Street Lighting and Traffic Signal installations).
A full set of the Construction issue drawings and specification
Traffic Regulation Orders (TRO) / Temporary Traffic Regulation Orders (TTRO)
Evidence of formal notice having been given to public transport service operators where diversions or timetable changes are required (minimum notice of 8 weeks required)
Highway Condition Survey
Noise Survey (in accordance with The Calculation of Road Traffic Noise and Land Compensation Act)
Ordinary Watercourse Consents

11.2.6_ Failure to supply the information may result in the meeting being postponed until the information has been provided.

11.2.7_ The Consultant/Contractor shall confirm that all outstanding planning permissions, discharges of conditions and obligations in relation to the S38 works have been satisfied.

11.3_ Pre-Construction

11.3.1_ It shall be the responsibility of the Developer and/or Contractor to ensure that ALL issues regarding the programming of the Works are covered to achieve the proposed contract start date.

11.3.2_ If any of the required documents/details are not in place one month prior to the proposed start of works, the Local Highway Authority retains the right to cancel the start date leading to new Streetworks notifications being required.

11.3.3_ The required information/documents that shall be in place and approved are:

- Written confirmation from the CDM 'Client' (i.e., the Developer) verifying that:
 - The Principal Designer(s) and the Principal Contractor have suitable skills, experience, training and knowledge to undertake their duties under the CDM Regulations.
 - The Construction Phase Plan is suitably developed to enable a start on site and that adequate welfare facilities will be provided on site from the start of the Works.
 - The HSE (F10) notification has been submitted to the HSE if the whole works are deemed to be 'notifiable' under CDM.
- Method Statements including details of the measures to be taken during construction works to prevent earth and subsoil on vehicles leaving the site being deposited on the public highway.
- Traffic management plan agreed with police, local Highway Unit and Streetworks Co-ordinator, and any temporary traffic regulation orders required to undertake the works (Refer to Pre-Start Meeting section 11.1).
- An agreed programme of works (with critical path and NRSWA Street Works permit request/notice periods taken into consideration).
- Road Space booked with Street Work permits approved (including any associated TTRO's)

- Licences are in place e.g., temporary traffic signals, scaffolding & hoarding licences, S184 licences).
- Ordinary Watercourse consents (if any temporary or permanent works impact on an Ordinary Watercourse).
- The advanced information letters to residents have been delivered and the advanced works information signs have been placed on site (2 weeks prior to the start of works). Content of letters shall be agreed with NYC Engineer in advance.
- The Legal Agreement has been signed by all parties and the Bond is in place.
- Evidence of the Contractors insurances and qualifications to work on the public highway.
- Stage 1 / 2 Road Safety Audits have been completed and agreed by NYC as the Overseeing Organisation.
- Walking, Cycling and Horse-Riding Assessment and Review Audit and its associated recommendations have been completed
- Permanent Traffic Regulation Orders have been signed, approved and sealed (*).

(*) Construction schemes reliant upon TRO's will not be permitted to commence until the relevant Orders have been 'approved and sealed', as there is a risk due to the requirements of consultation to consider objections which risks TRO not being approved leaving a scheme undeliverable.

11.4_ Programming the Works and Road Space Permits

This section is applicable where the S38 works include work on the public highway.

11.4.1_ Once technical review is concluded and pre-construction information has been provided, programming of the Works can be finalised by the Developer/Consultant. Critical to this programming will be the statutory periods for booking road space as detailed under the Traffic Management Act (2004) and New Roads & Street Works Act (1991) (NRSWA).

11.4.2_ It is the responsibility of the Developer/Consultant/Contractor to submit Street Works permit notification applications in a timely manner. These permit notifications have a formal request period with the timeframes dictated by the legislation.

11.4.3_ Street Works Permit notification requests must be submitted to NYC's Area Highway Office with a copy to NYC's Engineer in accordance with these timescales. Typically, for major works, which will generally encompass most S278 works, a 3-month advance notice should be submitted. This will be followed up by the submission of a 10-day notice prior to the start of the permit request period. Works Start and Works Clear notices are then required upon commencement of the works and completion of the works. For further information about NYC Streetworks processes, please refer to Appendix D.

11.5_ Works Programme

11.5.1_ When drafting the Works Programme, the Developer/Contractor shall ensure the following are fully considered and coordinated:

- Utility diversions and/or supply of services to the development;
- Temporary traffic management (together with any temporary Traffic Regulation Orders that may be required for which a minimum six weeks' notice is required);
- restricted working hours (via letter from Environmental Health Officer);
- noise levels (via letter from Environmental Health Officer);

- the Statutory periods for Road Space permits.

11.5.2_ NYC's Engineer will advise on any specific requirements arising from the Technical Review and following liaison with the Streetworks Co-ordinator.

11.6_ Public Communications

This section is applicable where S38 works include work on the public highway.

11.6.1_ The Developer/Contractor will be responsible for a letter drop to local residents, businesses and properties 7 days before the commencement of any works. All wording shall be agreed with NYC's Engineer prior to its issue.

11.6.2_ In addition, advanced warning boards advising of the start date and duration shall be erected a minimum of 2 weeks prior to the works commencing.

11.6.3_ Major works and schemes taking place on the main road network that are likely to lead to delays and disruption to residents, businesses and the motoring public will generally require a Comms plan. Typically, a Comms Plan will help to notify Councillors, Parish Councils and the wider community through the use of press releases and in some cases, the creation of a webpage or web-link which may require periodic updating as the Works progress.

11.6.4_ NYC's Engineer will liaise with the Developer/Contractor and NYC's Area Highways Office Communications Officer should a Comms Plan be required to ensure this is in place early in the process and in advance of other public communications.

11.6.5_ Throughout the duration of the Works, Street Works Permit Information Boards shall be displayed and maintained by the Contractor, ensuring that the current permit number is clearly visible together with the Contractors emergency contact number.

11.7_ Conditions of Contract

11.7.1_ It is highly recommended that major works are undertaken under conditions of contract issued by The Institution of Civil Engineers which allow for the direction of an Engineer and provides good control for programme management.

11.7.2_ Other Contracts will be permitted providing allowance has been made within that Contract for a person with appropriate powers of direction. Works procured under a Joint Contracts Tribunal (JCT) will be acceptable providing Third Party Insurance criteria are met and the NYC Specification is detailed fully on the scheme drawings and contract specification.

11.7.3_ Other contracts will need to designate a Chartered Civil Engineer with appropriate powers. The Engineer or appointed person must be able to accept instructions from NYC on behalf of the Developer, where matters of health and safety are of reasonable concern to NYC; and pass those instructions on to the Contractor.

11.7.4_ The installation of permanent traffic signal equipment shall be undertaken by a signal installer (third-party traffic signal contractor) who must be approved by NYC Traffic Signals Team to work on NYC's traffic signals assets.

12_ Construction Stage

12.1_ Commencement

12.1.1_ Enables works including the setting up of the site compound shall not commence until the Council has approved in writing the start date of the Highway Works. It is an offence to undertake any work within the Highway that has not been approved by the Highway Authority.

12.1.2_ Following the commencement of construction, NYC's Engineer will notify key NYC Officers that the works have started. NYC's Engineer will remain the key point of contact from the start of construction through to final adoption.

12.2_ Inspections

12.2.1_ NYC's Engineer will appoint a Development Management Officer (DMO) to periodically inspect the work, and in doing so shall solely act for the Highway Authority and must not be regarded as a Clerk of Works for the Developer.

12.2.2_ During the construction of the Works, the Council reserves the right to inspect any part of the Works and materials used or to be used. The Contractor / Developer shall give effect to any directions or requests made by the Council's Inspecting DMO to conform to the approved detailed design, specification or programme. Any changes from the approved design must be agreed in writing by NYC's Engineer and in some cases may require a Departure from Standard.

12.2.3_ During construction, the Developer shall supervise the Works and shall carry out any necessary testing of materials. In addition, the Developer shall give NYC's Engineer, the Inspecting DMO and any other NYC specialist team access to the site for the purposes of inspecting the works and any necessary testing of materials as works progress. All testing shall be paid for by the Developer.

12.2.4_ The Developer/Contractor shall not cover up any works without the prior approval of the Inspecting DMO and shall allow the Inspecting DMO to examine and measure any works or foundations which will be covered up with permanent works. The Developer / Contractor shall submit weekly diary sheets to the Inspecting DMO identifying work that is to undertaken in the preceding week, and in doing so, give the Inspecting DMO **at least 3 working days' notice** to allow for an inspection to take place.

12.2.5_ Any works that are deemed not to be in accordance with specification or the approved scheme details or are faulty or deemed unsafe shall be rectified as per the Inspecting DMO's instruction and within the time limits suggested.

12.3_ Progress Meetings

12.3.1_ If the Works are to last more than one month then progress meetings will be required. These meetings will be held at the discretion of the NYC Engineer and will generally be on-site or at a suitable nearby location with easy access to site or at the discretion of the Engineer via a MS Teams call.

12.3.2_ The progress meetings shall be agreed between the NYC Engineer and the Developer/Contractor, the latter of which will be responsible for taking and circulating the

minutes. Attendance will typically include the NYC Engineer, the Inspecting DMO, a representative from any NYC Specialist Team(s) e.g., Traffic Signals, the Developer, Consultant and Contractor.

12.4_ Time Extensions

12.4.1_ The Developer/Contractor shall notify NYC's Engineer **at least 1 month (or for smaller works, where at least 10% of the original programme is impacted)** prior to any foreseen overruns to the dates agreed with NYC for the completion of the Works.

12.4.2_ The Developer/Contractor shall submit in writing to NYC Development Control Team the request for any extension, fully detailing the reasons for the request and the anticipated completion date.

12.4.3_ Where the requested extension conflicts with other permitted street works or programmed events, the Streetworks Co-ordinator is likely to refuse the extension. In such cases, NYC's Engineer will require the Contractor to 'make safe' the Works at the Contractor's expense and agree a future time for the Works to be completed.

12.4.4_ NYC reserve the right to apply additional fees on a time-charge basis (minimum charge £500) where the Developer / Contractor has failed to contact NYC and formally agree and Extension of Time. This fee is to cover additional administration, inspection work and time associated with reviewing and agreeing to a revised works programme.

12.4.5_ Note - should the Engineer believe that works progress is not being made to his/her satisfaction and works are stalling on site, then NYC reserve the right to withhold an Extension of Time and following further discussion with the Developer, seek to default the surety/bond, in doing so NYC will undertake any outstanding work itself on a rechargeable full recovery of costs basis.

12.5_ Temporary Traffic Management and Highway Safety

12.5.1_ NYC reserve the right to close a site if it is deemed to be unsafe; is causing a major disruption to the highway network or at locations where street works notifications have lapsed or have not been secured.

12.5.2_ All costs incurred associated with the suspension/closure of Works or making the site safe will be recharged in full to the Developer where this action has to be undertaken by operatives appointed by NYC.

12.5.3_ If working practices are deemed to be unsafe then NYC's Engineer or the Inspecting DMO will record the incident on NYC's Health and Safety Incident system and may also report findings to the Health and Safety Executive regarding the practices being undertaken. This potentially puts at risk the Contractor undertaking further work on the public highway within North Yorkshire Council's administrative area.

13_ Post Construction

13.1_ Part 1 (Substantial Certificate)

13.1.1_ The Developer shall complete the Part 1 works within an agreed timescale stated in the Agreement. If deemed necessary, the Developer can ask for the completion timescale to be varied with good reason through an 'Extension of Time' request, but this must be acceptable to NYC's Engineer. See Section **12.4_** as charges apply.

13.1.2_ Prior to the issue of the Part 1 Certificate, a site inspection shall be carried out with the Developer/Contractors representative and NYC's Engineer and NYC DM Inspector. Payment of any Commuted Sums will also be required.

13.1.3_ The Part 1 Certificate may be issued on the satisfactory completion of the works as set out in the S38 Agreement. Items required include:

- Signed S38 agreement in place;
- Stage 3 Road Safety Audit completed;
- All earthworks and ground improvement works completed;
- Application to Water Company for Section 104 in place and details/plans provided;
- CCTV of all drainage to prove that it is in good working order and clear of debris
- all highway drainage including outfall and any SuDs installed;
- street lighting operational;
- completion of all utility works including connections to properties;
- all kerbing, kerb foundations and where appropriate dropped kerbs for vehicle and pedestrian crossings;
- carriageways, footways and footpaths to binder course;
- demarcation of sight lines and clearance of visibility splays;
- highway structures;
- Street nameplates installed

13.1.4_ The bond may be reduced upon the issue of the Part 1 Certificate at the discretion of NYC's Engineer.

13.1.5_ If more than 2 years elapses after the issue of the Part 1 Certificate, without a Part 2 Certificate being issued, then NYC reserve the right to apply additional fees on a time-charge basis (minimum charge £500) to cover additional administration and inspection work.

13.2_ Part 2 (Provisional Certificate in full)

13.2.1_ The Developer shall complete the Part 2 works within an agreed timescale stated in the Agreement. If deemed necessary, the Developer can ask for the completion timescale to be varied with good reason through an 'Extension of Time' request, but this must be acceptable to NYC's Engineer. See Section **12.4_** as charges apply.

13.2.2_ The Developer/Contractor shall notify the NYC's Engineer **within one working day** of the completion of the Highway Works and opening to traffic – **this is a requirement under the Traffic Management Act**. This may only be done following the completion of the Defects Inspection, Stage 3 Road Safety Audit and completion of all items arising from both of these (unless it has been agreed with NYC's Engineer that particular items may be undertaken at a later agreed date).

13.2.3_ It should be noted that the use of terms ‘Substantial Completion’ and ‘Maintenance Period’ in this document are made in reference to the S38 Works and not the contractual arrangements between the Developer and their Contractor which are often on differing dates.

13.3_ Part 1 / Part 2 Inspections

13.3.1_ The Developer/Contractor shall arrange to carry out a detailed inspection of the works **with** the NYC’s Engineer, NYC’s DMO, NYC’s Area Highway Office Engineer and any other NYC Specialist to identify all remedial works/snagging that need to be undertaken.

13.3.2_ The defects/snags must be corrected before the Part 2 Substantial Completion Certificate can be issued. As with any remedial works, the agreed list is only valid for a maximum period of 3 months and shall be subject to re-inspection, amendment or addition if further damage or deterioration becomes evident after those 3 months.

13.3.3_ NYC will charge a fee on a time-charge basis (minimum charge £500) to return to site for additional inspections where defects/snags have not been rectified with the 3-month period referred above.

13.3.4_ The Council’s Arboricultural Officer may wish to attend the joint inspection where tree or shrub vegetation is included.

13.3.5_ Where proposals include street lighting or any illuminated signs, all necessary supporting electrical test certification will be required in advance of any inspection by NYC Road Lighting Team. The S38 Works will not be accepted for maintenance or Bond / Surety reduction until all lighting issues have been addressed to the satisfaction of NYC’s Road Lighting Engineer.

13.3.6_ Where the works include the installation of a traffic system, then a representative from NYC’s Traffic Signals Team shall attend the inspection. The Consultant shall inform the NYC’s Traffic Signals Team representative of the proposed commissioning date no later than 5 working days in advance. Before the signals are commissioned an interim Stage 3 Road Safety Audit shall be arranged.

13.4_ Road Safety Audits

13.4.1_ The Developer/Consultant shall arrange to carry out a Stage 3 Road Safety Audit in accordance with NYC Audit protocol and GG119 and must invite NYC’s Engineer giving at least 7 days advance notice of the event. **ALL** outstanding works identified from the Stage 3 RSA shall be remedied before the Maintenance Period commences.

13.4.2_ A Stage 4 Road Safety Audit may at the discretion of the Engineer be requested prior to issuing a Part 2 Substantial Completion Certification if during the maintenance period there is evidence of road traffic collisions or anecdotal evidence linked to road safety risks, with all matters remediated to the satisfaction of the Engineer prior to Part 2 Substantial Certification being issued.

13.5_ Part 2 Certification

13.5.1_ The Council shall not issue the Developer a Part 2 Certificate until the post construction documents detailed within S38 Submission Tracker (Appendix A (2)) and Post-Construction Checklist (Appendix F) have been supplied and the Works have been signed off by the NYC's Engineer and Inspecting DMO.

13.5.2_ Most importantly confirmation will be required from the relevant statutory body that the S104 sewers and any SuDs which impact on the S38 works are either adopted and/or have been placed on maintenance.

13.5.3_ In most cases, the issue of a Part 2 Certificate will allow a reduction in the Bond value secured against the Works, usually to the value in the S38 agreement, but at the overall discretion of NYC's Engineer. The issue of the Certificate of Completion triggers the start of the S38 Maintenance Period.

14_ The Maintenance Period

14.1_ General

14.1.1_ The Developer shall be responsible for the areas contained within the S38 Works extent during the Maintenance Period and in particular the following:

- sweeping the roads of debris etc particularly the channels;
- cleansing of the highway surface water drainage system including gullies, manholes and soakaways and any sustainable drainage features taking highway water e.g., swales, balancing ponds etc.;
- maintenance of the street lighting system;
- maintenance of landscaping and trees;
- maintenance, including cleaning and clearing, of structures;
- repairing any defects that occur;
- carry out any other repairs which become necessary or directed by NYC's Engineer or Inspecting DMO including any damage from use or as a result of road traffic collisions.

14.1.2_ During the Maintenance Period as the road is deemed to be subject to highway rights, the LHA reserve the right to enter the works without notice in fulfilment of obligations and duties to highway users should it be necessary to exercise such powers in the interest of highway safety and the expeditious movement of traffic. The costs incurred by the LHA will be fully recharged to the Developer.

14.2_ Traffic Signal Equipment

14.2.1_ Where the S38 Works include the provision of traffic signals, either at junctions or controlled crossing facilities, then the equipment shall be excluded from the S38 Maintenance Period.

14.2.2_ Following commissioning of the traffic control equipment and payment of any Commuted Sums due, responsibility for maintaining the equipment will pass to NYC's Traffic Signal's Term Maintenance Contractor. Relevant 'As-Built' records shall be supplied within two weeks of commissioning of the signals.

14.2.3_ Where the S38 Works includes provision of ancillary traffic systems such as variable message signs and enforcement devices, then this equipment shall be included in the S38 Maintenance Period unless otherwise specified by NYC. The supplier of that equipment shall provide on-site maintenance. The elapsed time between reporting faults and attending site, and elapsed time to affecting a full repair, shall be agreed with NYC's Traffic Signals Team prior to tendering the installation, and shall be written into the contract.

14.2.4_ In all cases, the twelve-month warranty period shall not commence until the installation has been successfully commissioned to the acceptance of NYC's Traffic Signals Team. All site acceptance testing, including electrical certification shall be completed prior to commissioning the installation. All installation defects and omissions shall be rectified prior to the traffic signal equipment being accepted as having been commissioned. Switching on the traffic system shall not indicate commissioning, as non-safety critical defects and omissions may not prevent a system being switched on.

14.3_ Traffic Calming/Speed Limit Changes

14.3.1_ In order to assess the effect of any traffic calming schemes within the proposed Public Highway, in addition to "pre-scheme" measurements, three months after opening to traffic and once all signs advising of new / changed layout have been removed (removed by the Developer/Contractor at their expense), vehicle speeds shall be checked in locations agreed with NYC's Engineer.

14.4_ Landscaping

14.4.1_ Where the S38 civil works are completed, but landscaping planting remains outstanding, NYC's Engineer may confirm that the civil works are accepted for Maintenance subject to this outstanding landscaping work being completed later. On completion of the landscaping works, a separate Maintenance Period shall commence to include planting maintenance and tree condition deterioration due to works. This will normally be 5 years but may be reduced for minor landscaping works.

14.5_ Surfacing

14.5.1_ All surfacing shall be covered by a maintenance period of 12 months and High Friction Surfacing shall have a 3-year manufacturer's guarantee from the date of installation. Should any defect or failures be identified within the maintenance period then the LHA reserve the right to extent the maintenance period following repairs.

14.6_ Final Inspection

14.6.1_ The Developer/Contractor shall arrange a Final Inspection of the Works with NYC's Engineer, NYC's DM Inspector and NYC's Area Highway Office Engineer at the end of the Maintenance Period.

14.6.2_ Any outstanding remedial works identified at the inspection shall be agreed in writing and completed to the satisfaction of NYC's Engineer. As with any remedial works, the agreed list is only valid for a maximum period of 3 months and shall be subject to amendment or addition if further damage or deterioration becomes evident after those 3 months. See section **12.4_** as charges apply.

14.6.3_ The As-Built drawings (as detailed in Appendix F) shall be updated by the Developer, with any changes that have occurred during the Maintenance Period.

14.6.4_ At this stage, the results of any Stage 4 Road Safety Audit Monitoring (12 months post opening) deemed necessary are to be provided and any remediation work associated with the Stage 4 RSA undertaken to the satisfaction of NYC's Engineer.

14.6.5_ It should be noted that the term 'Maintenance Period' is made in reference to the S38 Works and not the contractual arrangements between the Developer and their Contractor which are often on differing dates.

14.6.6_ The Council will supply final written confirmation that the works are complete and acceptable for adoption upon which any retained Bond will be released in full. However, where there are items with extended maintenance periods, the Bond will be reduced accordingly at the discretion of NYC's Engineer.

14.6.7_ Schemes that include any landscaping or arboriculture works will be subject to a further inspection with NYC to agree handover of these aspects after the landscaping Maintenance Period.

14.6.8_ The Certificate of Adoption will be issued at the conclusion of the Maintenance Period for the Works and only once all necessary remedial works and any outstanding fees have been paid.

14.6.9_ The Certificate of Adoption will be issued at the conclusion of the Maintenance Period for the Works and only once all necessary remedial works and any outstanding fees have been paid. The issue of the Certificate of Adoption provides final confirmation that the works are acceptable and have become maintainable at public expense. NYC will arrange for the Land Charges Register to be updated accordingly.