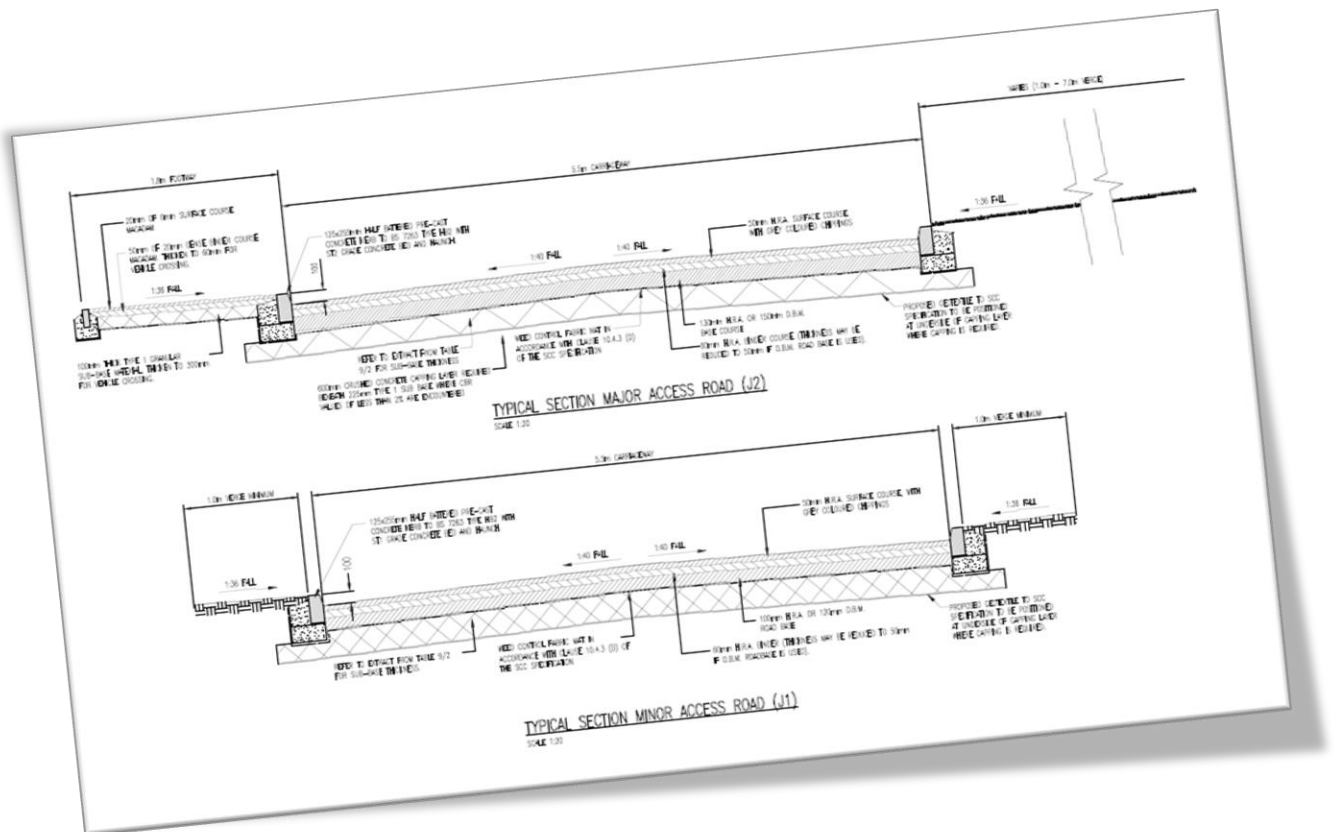


# Guidance for S38 Agreement

## Construction of Adopted Highway



## **A. Introduction**

This document is developed by the Technical Approval Team to provide more detail from initial application through to final adoption to assist developers deliver their S38 schemes for Developers and their Agents/Consultants.

- Section 38 of the Highways Act 1980 is used to adopt new estate roads and their associated features where the Developer would like the roads to become maintained at public expense.

Once an application has been made, a SCC Engineer from the Technical Approval Team will be assigned as the officer who will be the point of contact for the development.

## **B. Construction (Design and Management) Regulations 2015**

The Construction (Design and Management) Regulations 2015 (CDM) are to be adhered to on all S38 schemes. For avoidance of doubt, the Developer is the “Client” in terms of the CDM Regulations. In all Submissions, the CDM Client shall -

- appoint a Principal Designer who has the appropriate skills, knowledge and experience to fulfil their duties under CDM. The Design Consultant should be retained for the construction and the maintenance period to address any issues that arise during the construction or the Stage 3 Road Safety Audit.
- appoint a Principal Contractor’s skills, knowledge and experience are required. Confirmation that the HSE has been formally
- notify HSE by way of an ‘F10’ Notice will be required of the works.
- If ground investigation or other intrusive processes are required at an early stage of a construction project which meets the criteria for notification, then the ground investigation will require Part 3 of the Regulations to be applied (regardless of whether this small package meets the HSE notification criteria itself).
- SCC requires a copy of The Health and Safety File and as-built drawings at the end of the project.

## **C. Design and Specification**

The Design of developments are to be to Suffolk Streets Design, Standard Drawings and SCC Specification for Estate Roads (which is based on the ‘Specification for Highway Works’ (SHW) published by The Stationery Office as Volume 1 of the Manual of Contract Documents for Highway Works). Technical Approval Team’s comments on the Specification will make comments in respect to layout, testing, drainage, earthworks, pavement, kerbs, traffic signs and lighting. It should not be assumed that a ‘no comment’ implies that SCC have assessed / approved other elements of the Specification. It is the Consultant’s responsibility to ensure that the Specification for S38 Works are in accordance with SCC’s Design and Specification.

## **D. Roadspace Booking**

For S38 schemes that affect the existing highway, a NRSWA permit (Road Space Booking) must be applied for. Occupation of the highway can be booked prior to the sealing of the agreement. However, if the agreement is not completed by the start date, these dates will be cancelled (or changed if allowed by Network Assurance).

- The Contractor must have -
  - current Public Liability Insurance of £10 million (proof will be requested when applying for Road Space)

- hold the appropriate certification under the New Roads and Street Works Act 1991 – both operatives and supervisor (proof will be requested when applying for Road Space)
- no unresolved HSE enforcement notices
- SCC reserve 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.
- To book roadspace, the TMA form is to be completed which can be found by going to the following link <https://www.suffolk.gov.uk/roads-and-transport/roadworks/road-space-booking/> and contact [DeveloperNoticing@suffolkhighways.org](mailto:DeveloperNoticing@suffolkhighways.org) for your permit to work.

## **E. Damage and Danger to Highways**

The Developer shall, prior to implementation of the development, submit to the Council for its approval a Highway Condition Survey, which will identify the current condition of the Highway in the vicinity of the site. Prior to adoption, the Developer shall secure the repairs, in line with the Councils quality standards and works specification, to rectify any damage caused to the highway during the development period.

The Highway Condition Survey shall include:

- A plan which identifies the area covered by the survey.
- A photographic overview of the roads and footways in the vicinity of the site Highway showing any defects prior to implementation of the development.
- An estimate of the size, types and level of construction traffic expected to service the site, during the development period.

The Developer shall not

- allow materials or equipment to be deposited on the highway so as to cause damage or obstruction or to cause the creation of nuisance or danger.
- keep highways including drains and ditches free from mud, debris or dust arising from the works.
- Allow any materials, plant, apparatus or equipment be stored on existing or new highways (including verges).

## **F. Construction**

An agreement for S38 is unlikely to be signed and sealed prior to the start of the works so if the Developer wishes to proceed, any works completed without inspection are done so at developer's risk. Retrospective testing at the developer's cost may be required by SCC to confirm adoptable construction standards.

A Construction Pre-Start meeting is essential with the Technical Acceptance and Inspecting Engineers in attendance - it is the responsibility of the Developer/Consultant to organise, arrange attendance, chair and take minutes of the meeting. This is normally once the Development has received Technical Acceptance.

At least five working days prior to the meeting the following information is to be submitted to SCC –

- CDM information; Names and contacts of The Designer(s), Principal Designer and Principal Contractor
- Means of access for construction (see Guidance for Minor Works Licence)
- Traffic Management Plan \*
- Programme of works including any advance works such as Utility diversions/supplies (with critical path, Show Home opening date and NRSWA notice periods)
- Construction Management Plan

- Method Statements
- Copy of F10 \*
- Contractors Insurance Certificates
- A full set of the Construction Issue drawings and specification
- Traffic Regulation Orders\*
- Temporary Traffic Regulation Orders\*
- Approval for temporary traffic signals\*
- Licences for private apparatus in the highway (NRSWA S50)\*
- S38 Agreement
- Proof that all works have planning permission and all relevant planning conditions have been discharged

\* When applicable

## **G. Inspections**

It is emphasised that the SCC Inspecting Engineer acts solely for the County Council as the Highway Authority and must not be regarded as a Clerk of Works for the Developer. 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 by the SCC Engineer to conform to the approved detailed design, specification or programme. Any changes from the approved design must be agreed in writing by SCC.

As part of S38 Agreements, a supervisor is to be provided by the Developer who is not the Contractor.

The Developer/Contractor will give the Inspecting Engineer a minimum of 2 working days' notice on the following activities:

- Intention to commence works on site
- Completion of setting-out highway elements
- Inspection of subsoil & formation
- Commencement of laying of kerbing
- All courses of road construction from Subbase to surface course
- Laying of drainage for all stages from excavation to backfilling (tests where applicable)

Where construction starts before a S38 agreement is sealed SCC will expect the Developer to provide all necessary information to demonstrate that any highway proposed for adoption has been constructed in accordance with SCC's specifications. Retrospective testing, including opening up of the pavements may be required. All such works will be at the cost of the Developer. If SCC is not satisfied that the highway has been constructed to its satisfaction it may terminate the agreement and refuse to adopt it as public highway.

## **H. Certification**

S38 Part 1 Certificate - prior to the issue of the Part 1 Certificate, a site inspection shall be carried out with the Developer/Contractor's representative and the Inspecting Engineer. This may be issued on the satisfactory completion of the works as set out in the S38 Agreement. Items required include:

- all highway drainage including outfall (may request a CCTV survey to ensure it is in good working order and clear of debris)
- 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 (if applicable)

The bond will be reduced 50% upon the issue of the Part 1.

S38 Part 2 Certificate - prior to the issue of the Part 2 Certificate, the following works shall be completed:

- Street lighting (tested and certificates issued) and any snags picked up by SCC Street Lighting Engineer completed
- Evidence that any sewers constructed under the S104 Agreement have been vested with the water company (including Certificate and the extents of the S104)
- Boundary markers
- Road signs & road markings
- Edge up footways
- Clean out outfall ditches
- Cut grassed areas
- Empty gullies, catchpits and soakaways
- Sweep footways and carriageways
- Bandseal any cracks and reinstatements
- Clean lighting installation
- Any other remedial works required by the Inspecting Engineer.

The bond will be reduced a further 40% upon the issue of the Part 2 (leaving 10% of the bond to be held for the maintenance period).

Any outstanding remedial works identified at the inspection shall be agreed in writing and completed to the satisfaction of the SCC. 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.

#### **I. Maintenance Period (S38)**

The maintenance period is as set out in the Agreement. The Developer shall be responsible for the areas contained within the Works extent during the Maintenance Period. NOTE - the Maintenance Period is made in reference to S38 Works and not the contractual arrangements between the Developer and their Contractor which are often on differing dates.

The works shall be maintained in a safe and neat condition with particular attention being paid to :

- 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 street lighting/traffic signals
- maintenance of landscaping and trees
- maintenance, including cleaning and clearing, of structures
- repairing any defects that occur that may be considered unsafe to the public including any damage from use or road traffic accidents.
- Check block paving for ponding, loose blocks, undersized blocks and open joints and the areas made good as necessary

#### **J. Final Inspection & Completion**

The Developer/Contractor shall arrange a Final Inspection of the Works with the Inspecting Engineer at the end of the Maintenance Period. Any outstanding remedial works identified at the inspection shall be agreed in writing and completed to the satisfaction of the SCC. 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.

The Developer will also be required to complete to the following prior to adoption -

- pressure cleaned the highway drainage system to the outfall or to the previously adopted drainage system
- Final cut of grassed areas
- Sweep footways and carriageways
- Bandseal any cracks and reinstatements
- All drainage ironwork shall be lifted for inspection and any damaged covers/gratings shall be replaced and reset any iron that is necessary
- Any damaged and/or displaced kerbs replaced and/or realigned (footway defects resulting from kerb replacements may result in reinstatements for the full width of the footway)
- Any road markings that have faded/damaged to be remarked

The Developer will also be required to provide the following before the adoption certificate is issued:

- Evidence that the sewers constructed under the S104 Agreement have been vested with the water company (including Certificate and the extents of the S104)
- submit Highway Drainage report, which either certifies the drainage as satisfactory or lists any defects NOTE - further inspection by means of CCTV may be instructed.
- Health and Safety File (see below)

Subject to all remedial works identified at the end of the maintenance period being completed to SCCs satisfaction the Certificate of Completion will usually be issued at the conclusion of the Maintenance Period for the Works. However, exceptions may occur where there are items with extended maintenance periods such as landscaping or arboriculture and a proportion of the Bond will be retained as per the Legal Agreement. Schemes that include such works will be subject to a further inspection with SCC to agree handover of these aspects after the landscaping Maintenance Period.

The issue of the Certificate of Completion provides final confirmation that the works are acceptable, and all remaining Bonds will be released. SCC will arrange for the Land Charges Register to be updated accordingly.

## **K. Health and Safety File**

The Health and Safety File shall be provided in electronic format and shall contain the following information:

- Description of the works undertaken
- Dates of commencement and completion of works
- Contact details of Contractor, CDM Co-ordinator and any Sub Contractor(s)
- Identification of hazards arising from construction materials and locations
- As-built information of all adoptable highway infrastructure, drainage, plant and apparatus, including maintenance and cleansing regime, condition and inspection regime of structures to date, lighting column and signage specifications, details of any hardstandings for the purpose of maintenance, details of any traffic management requirements for future maintenance (width restrictions etc.) etc.
- Schedule of materials used in the construction of the proposed adoptable highway (surfacing, earthworks, structures, drainage, etc.), including specification (type, size, colour), manufacturer details and supplier details
- All changes of surfacing construction or material (inc. as a result of Statutory Undertaker utilities) should be indicated on a separate As-built drawing for inclusion

within the CDM and Health and Safety File. All changes of surfacing construction or material should be indicated with coordinates shown at the start and end of the extent of the surfacing. This will assist in the identification of materials and construction methods for designation within the National Streetworks Gazetteer.

- 'As-built' drawings (including any structures)