FREQUENTLY ASKED QUESTIONS FOR S278/38 APPLICATIONS (HIGHWAY AGREEMENTS)  
HIGHWAYS ACT 1980 SECTION 278  

Frequently Asked Questions

1. What is a Section 278 Agreement?

A Section 278 Agreement is a legally binding document between the Local Highway Authority, ie the Council of the City of Manchester for the area of Manchester, and the developer who wish to make highway improvement works on any of the public highways which are situated in the area of Manchester. This agreement ensures that the works will be completed to the standards and satisfaction of the Highway Authority.

In accordance with s.278 of the Highways Act 1980:

“A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person -

- for the execution by the authority of any such works which the authority are or may be authorised to execute, or
- for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,

on terms that the person pays the whole or such part of the cost of the works as may be specified or determined in accordance with the agreement.”

The agreement is prepared by the Legal Services of the Council and issued to the other parties’ solicitors (usually the developers’ solicitors) in draft format. The details of the agreement are then agreed before the final document is completed and signed by all the parties before the commencement of the works.

In order to enter into a Section 278 Agreement, you need to fill in and submit the Application for Agreement under Section 278/38 of the Highways Act 1980.

2. What is a Simple Section 278 Agreement?

A Simple Section 278 Agreement is a binding agreement under section 278 of the Highways Act 1980, which has been created in order to simplify administrative procedures when smaller highway schemes are proposed.

An Application for a Simple Section 278 Agreement must only be submitted when the following conditions apply:

a) the value of the works is less than £40,000;
b) the applicant can and will offer a Cash Bond to guarantee the performance of the works;
c) all works, including visibility splays, are within the existing highway and there is no need to adopt or secure a covenant over third-party land;
d) the works do not involve structures or other items subject to Commuted Sum payments;
e) There is no requirement for a Traffic Regulation Order to support the works;
f) There are no alterations to traffic signals required;
g) There are no other matters that would in the opinion of Manchester City Council require works to be secured through an Application for Agreement under Section 278/38 of the Highways Act 1980.

Manchester City Council reserves the right to refuse an Application for Simple Section 278 Agreement and request an Application for Agreement under section 278/38 of the Highways Act 1980 on the above or any other grounds the Council thinks appropriate to do so.

A Simple Section 278 Agreement will be still made by way of a deed and will be subject to an Administrative and Legal Fee.

3. What is a Section 38 Agreement?
When a new road is constructed on land, which does not belong to the Council and that road has not been adopted by the Council, ie it has not been maintained or repaired by the Council, then that road can become a highway maintainable at public expense by way of a section 38 of the Highways Act 1980 agreement.

Under section 38 (3) of the Highways Act 1980:
*A local highway authority may agree with any person to undertake the maintenance of a way
a) which that person is willing and has the necessary power to dedicate as highway or
b) which is to be constructed by that person or by a highway authority on his behalf and which he proposes to dedicate as a highway;

and where an agreement is made under this subsection the way to which this agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at public expense*.

The agreement is prepared by the Legal Services of the Council and issued to the other parties’ solicitors (usually the developers’ solicitors) in draft format. The details of the agreement are then agreed before the final document is completed and signed by all the parties before the commencement of the works.

4. What is a Section 38/278 Agreement?
When as a result of a development there is a need for a combination of highway improvement works on existing public highways and a new road to be created and adopted, then a hybrid type of section 278 and section 38 Agreement is prepared by the Council’s Legal Services, a draft of which is issued to the other parties’ solicitors.

The Application for Agreement under Section 278/38 of the Highways Act 1980 has been drafted in order to request information for all types of the agreement mentioned above EXCEPT FOR Simple Section 278 Agreements.

5. What are other key elements of the section 278 and/or section 38 Agreement which I need to be aware of?

No works should commence without a section 278 or section 38 Agreement being completed, as otherwise any such works will have been made without permission and might
not be adopted by the Council as the Highway Authority. You also need to know that it is a criminal offence to start any section 278 works without the Council’s permission.

Before applying for agreements under section 38 and section 278 of the Highways Act 1980, the developers/applicants should also have considered:

- **Planning permission**; which is normally required for such works. You should contact the Planning Department for informal discussions by visiting [www.manchester.gov.uk](http://www.manchester.gov.uk);
- The extent of the improvement works on existing highways; these should be shown on plans (please see Technical Guidance for details); you should also consider whether the works need to be divided in two parts, usually referred to as Part 1 and Part 2 Works;
- The consent of the owner of the freehold of the land; this is required before any road constructed on private land can be dedicated and adopted by the Council as a highway maintainable at public expense;
- The Administration/Inspection Fee and Legal fees; these should be borne by the applicants;
- A Surety or a Cash Bond; this will be required by the Council to guarantee the performance of the works;
- The Statutory Undertakers’ consent; this is normally required if any of Statutory Undertakers’ plants or apparatus is affected by the works;
- Street lighting and Illuminated Equipment;
- Other Structures to be placed on the highways, ie boundary walls;
- Commuted Sums; these may be required for the future maintenance of the works;
- Traffic Regulation Order(s); to enable the traffic management before, during or after the works are completed.
- Drains and Sewers’ adoption agreements; these may be required especially when new roads are constructed;
- Safety Audits 1 and 2;
- Insurance Policy for Public Liability.
- Notifying GMRAPS, before commencing any works.

**6. Administration/Inspection Fee**

The Administration/Inspection Fee includes all the fees and charges to be incurred by the Council's officers in connection with the works, from the time an application for works is submitted to the Council until those works are constructed and adopted by the Council and a final certificate is issued. This fee mainly covers time spent for;

- Checking and approving the design of the highway works, including any associated structures and any highway drainage;
- Inspecting the works on site whilst they are under construction until completion and adoption;
- Designing, drafting and processing of any Traffic Regulation Orders which may be required as a result of the works.

Before any Application for Agreement under Section 278/38 of the Highways Act 1980 can be processed by the Council’s officers, a non refundable fee (Deposit) must be paid to Manchester City Council by the Applicant/Developer. The same fee will be applicable to single Section 38 and 278 Agreements. The non-refundable deposit for a Section 278,
Section 38 or a hybrid agreement is £3000. An application of a simple Section 278 Agreement is £1500.

The non-refundable deposit must be paid ahead of any commencement of work by MCC. All costs incurred by the Highway Delivery Team associated with the commission will be ‘drawn-down’ against the non-refundable deposit.

Once the expenditure reaches 80% of the paid deposit the Applicant will be advised and clarification sought that they wish to proceed with an estimate of remaining highway fees provided. Once clarification is received of the Applicant’s wish to proceed any project expenditure will be recharged to the Client via a monthly invoice. Legal Fees will be invoiced separately and must be paid prior to issue of the Completion Certificate, see section 7 below.

7. Council’s Legal Services and the Legal Fee

Once you submit your Application for Agreement under Section 278/38 of the Highways Act 1980, the Council’s Legal Services will draft and provide your legal representatives with a draft Agreement under sections 38 and/or 278 of the Highways Act 1980. Once the draft agreement is agreed by all the parties, Legal Services will produce engrossments and arrange for the completion and execution of the agreement by affixing the Council’s seal.

Before completing the agreement on behalf of the Council, Legal Services will request the payment of their fees and disbursements, which are referred to as the Legal Fee.

In relation to Simple Section 278 agreements, Legal Services will require a standard fee of £… for checking and sealing such agreements on the Council’s behalf, which is calculated on the basis that two hours officer’s time has been spent. If for any unforeseen circumstances more than two hours legal officer’s time has been spent, Legal Services reserve the right to request the additional amount of Legal Fee which has been incurred.

8. Surety/Cash Bond

Following any Application for Agreement under Section 278/38 of the Highways Act 1980, the Council will require either the involvement of a Surety or the payment of a Cash Bond to guarantee the performance of all the works subject to an Agreement under sections 38 and/or 278 of the Highways Act 1980 or a Simple Section 278 Agreement.

Sureties should be members of the Institute of British Insurers. The Council may request further evidence in relation to Sureties’ turnover, liabilities, income, expenditure figures etc and may decline to accept any proposed Surety in case of doubt of the Surety’s credibility and performance of the terms and conditions of any Agreement under sections 38 and/or 278 of the Highways Act 1980.

A Cash Bond can be offered instead of a Surety, when:

a) A Simple Section 278 Agreement is concerned;

b) The applicant, with the Council’s approval, opts to do so or

c) The Council is declining to accept a proposed Surety in case of doubt or lack of evidence of the Surety’s credibility or ability to perform the terms and conditions of any Agreement under sections 38 and/or 278 of the Highways Act 1980.
Any **Cash Bond** should be at minimum the amount of the estimated value of the proposed works, as approved by the Council, unless the Council requires a higher amount, subject to providing reasons for doing so. **Cash Bonds** will be kept by the Council on separate accounts and will be refunded in full, only when the Council is satisfied that all the works have been completed in accordance with the approved design, specification and the terms and conditions of the applicable **Agreement under sections 38 and/or 278 of the Highways Act 1980 or the Simple Section 278 Agreement**.

**9. Statutory Undertaker’s Consent**

The Applicant/Developer must notify all of the Statutory Undertakers of the proposed works on the public highways which are maintainable at public expense and obtain from them written confirmation whether or not their plant and apparatus is affected by the proposal. Details of their requirements, including costs for altering the apparatus affected by the proposed works must be submitted to the Council, together with copies of the Undertakers’ correspondence and marked up plans.

If your search shows that your scheme is in the vicinity of 33kV cable please contact cable watch for site advice before excavation commences.

On some occasions, when drainage or sewer is concerned, you will need to have **Drains and/or Sewers’ adoption agreements** in place before an **Agreement under sections 38 and/or 278 of the Highways Act 1980 or Simple Section 278 Agreements** can be completed and works can commence. Please see paragraph 13 below.

**10. Street lighting and Illuminated Equipment**

Street lighting in Manchester is been maintained under a PFI contract by AMEY. Developers have two choices for getting their Street Lighting Design approved.

1. You can commission Amey to complete the street lighting design for you. They will complete the necessary checks as part of that design which means the lighting will automatically be accrued into the PFI contract and be maintained as part of the highway authority’s asset. You must contact AMEY direct in this case and there will be a design fee directly payable to AMEY. AMEY’s contact details are shown below:

   **Steve Hewitson**
   Principal Operations Manager | Highways
   Amey

   t: 0161 2776786 | m: 07876145080 | e: steve.hewitson@amey.co.uk
   Factory Lane | Harpurhey | Manchester | M9 8AB

2. You can provide your own street lighting design which must be approved by AMEY. You can submit your design with the rest of your information when completing your application form. AMEY will calculate a checking fee based on the number of light units of which you will be notified and will be charged as part of the overall Statutory Approval Fee. For each commission AMEY will check each and comment on each design twice. If the third submission does not meet their standards, you will be required to start again and pay for a new design check.

Inspection fees are separate to the above. Again you can commission AMEY to install the street lighting on your behalf which means the inspection fee is included within the
commission. Or you can procure your own contractor to install the street lighting which AMEY will need to check. An inspection fee will be calculated on a per unit basis and you will be advised what this will fee will be once the design has been approved. Again this checking fee will be included in the overall Statutory Approval fee.

11. Structures
Subject to submission of an Application for Agreement under Section 278/38 of the Highways Act 1980, if a new structure is required in connection with the works, the developer/applicant is advised to consult as early as possible the Council's Highways Services together with the Planning Department, in order to agree the form of the new structure, the materials to be used and the proposed locations. An Approval in Principle Document is likely to be required in this respect and needs to be submitted for approval.

12. Commuted Sums
A commuted sum payment may be required by the Council in connection with the future maintenance of newly adopted highways or newly adopted works on existing highways, which require higher than normal standards of maintenance, for example infiltration drainage systems, structures, ornamental street lighting columns, soft landscaping etc. Precise details in this respect, including current costs can be obtained once an Application for Agreement under Section 278/38 of the Highways Act 1980 is submitted.

13. Traffic Regulation Orders (TROs)
These include any temporary or permanent orders which may be required in order to manage the traffic in the area or the vicinity of the area where the works will take place and after the works are completed.

The Council’s Highway Services will advise you on any TROs and that may be required after you have submitted your Application for Agreement under Section 278/38 of the Highways Act 1980. The cost for the making of TROs will be part of the Administration/Inspection Fee, about which see above at 5.

Please note that the TRO process can take longer than the technical approval and may also be subject to statutory consultation where objections can be submitted. The Council will consider any objections objectively, notwithstanding the provisions of any Agreement under sections 38 and/or 278 of the Highways Act 1980.

14. Road Safety Audits
A Road Safety Audit is certifying that the new road works are safe to be used by the public and is prepared in accordance with the Department for Transport Road Traffic Audit Standard HD 19/15 or any other modification or replacement of the same.

Unless the Council agrees in writing otherwise, Stage 3 (after completion of construction of works) and Stage 4 (before adoption of works) Road Safety Audit are required for all works subject to Agreement under sections 38 and/or 278 of the Highways Act 1980.
Under certain circumstances, especially when larger and more complicated schemes are involved, the Council may require a Stage 1 and/or Stage 2 Road Safety audits, which certify that the works are designed safely and to approved standards.

15. Connection to Existing Highway Drains

The Developer must obtain permission from the Council before an existing highway drain is utilised for the disposal of highway surface water from the development site. Private surface water will not be allowed to discharge into an existing highway drain under any circumstances.

16. Public Liability Insurance

Evidence of a public liability insurance policy of a minimum 10 million pounds will be required on submission of any Application for Agreement under Section 278/38 of the Highways Act 1980 or Application for a Simple Section 278 Agreement. This is to ensure that any claim that will arise during the time or as result of the execution of the road works will be honoured and paid.

17. What type of works are referred to as Part 1 and Part 2 Works?

The terms Part 1 and Part 2 Works are normally used in combined Section 278 and 38 Agreements. Part 1 Works usually refer to all the highway works required up to a base court level. Part 2 Works usually describe all the remaining works required for completion of the highway works.

18. What is GMRAPS and what are my obligations in that respect?

GMRAPS stands for Greater Manchester Road Activities Permit Scheme which has been operative in the area of Greater Manchester since 29th April 2013. This is a Joint Permit Scheme established for the purposes of Part 3 of the Traffic Management Act 2004 and other relative legislation with the aim to control the carrying out of highway works in the area of Greater Manchester in order to ensure that no major delays or disruptions are caused to road users because of such works.

Under this scheme (which is managed by Transport for Greater Manchester (TfGM)), all activity promoters, including the participating local authorities, must notify the system before they start any works on the public highway network.

Because under section 278 agreements, you will be acting as an agent of the Council in undertaking all the necessary highway works on the Council’s public highways, you will need to submit permits under GMRAPS before you commence any works, during the works and on completion.

Manchester City Council can submit these permits on your behalf as part of the administration fee. On the application form you will need to provide the state date for the works to enable MCC to submit the initial 3 month Notice. This is required for the purposes of coordination of works on the highway. You will also need to supply your temporary traffic management plans. If any temporary road or lane closures are required to facilitate the works these will need to be agreed in advance through MCC’s Network Management Team and there is more detail on our website at http://www.manchester.gov.uk/directory_record/72631/works_on_the_highway_and_or_use_of_temporary_traffic_lights/category/355/highways_and_pavements
You will then need to provide MCC with the exact start date on site at least a month in advance of the month when works are due to begin. This will enable us to submit the ten day notice, the three day notice and the actual start date, which is required as part of GMRAPS. It is the Applicant/Developer’s responsibility to ensure these dates are provided to MCC. None compliance with GMRAPS results in Fixed Penalty Notices (FPN) or fines being issued all of which will be passed onto the Applicant/Developer should any such FPN’s be incurred. There is more information available on the GMRAPS website [www.gmraps.org](http://www.gmraps.org).

19. **What is the Council’s approach to any application for agreements under sections 278 and 38 of the Highways Act 1980?**

The Council will proceed with any matter once:

1. an **Application for Agreement under Section 278/38 of the Highways Act 1980 or an Application for a Simple Section 278 Agreement** has been submitted with all the required information provided
2. the applicable Deposit has been paid in full (please refer to question 6 of FAQs)
3. evidence of Public Liability Insurance has been submitted (please refer to question 16 of the FAQs).

On receipt of the above, the Council’s officers will start the technical approval of all the proposals as these will be shown on the drawings that will have been submitted by the applicants.

Once the drawings and all the details submitted with an application have been approved by the Council’s engineers, the Council’s Legal Services will be instructed to draft and prepare the relevant draft agreement, which will be sent within 3 weeks to the applicant’s solicitors for approval.

Only when the agreements are duly executed can the applicants/developers commence the proposed works, as otherwise any work without the Council’s approval will be unlawful and subject to criminal offences.

Once the works commence, the Council’s engineers will inspect the works on a number of occasions, but more often when the construction of the works has been completed and before the works are adopted and be part of the Council’s highway network. A number of additional inspections might be carried out when certain events take place, for example when the works need to be rectified to meet the agreed standards and design, or when a default notice is issued (please see below at Q…).

20. **What happens when the construction of works is completed?**

The Council’s engineers will normally inspect the works and will issue a certificate of practical completion of the works (referred to in the agreements as “Completion Certificate”), subject to them being satisfied that the works have been constructed in accordance with the approved design and specification and/or agreed standards. The purpose of the Completion Certificate is twofold:

a) It certifies the completion of construction of the works to approved standards and design/specification and any new road is opened for use by the public (but without having become a highway maintainable at public expense)

b) It triggers the beginning of the Maintenance Period.
21. What is the Maintenance Period?

Maintenance Period is usually called the period which follows the completion of construction of the works, during which the applicant/developer is responsible for maintaining the works in general and may be responsible for a number of actions such as:

a) the supply of energy and all associated costs with any street furniture, if applicable,

b) remedying and making good of any defect in or damage to the works arising from any cause whatsoever or

c) carrying out routine maintenance of the road including sweeping, gullying, emptying, snow clearing etc.

The Maintenance Period normally lasts for 12 months if there are no works on landscaping and tree planning, in which case Maintenance Period will be required to be a minimum of 24 months. On larger or more complex projects where a Stage Safety Audit Stage 4 is required (please see Q….) a minimum of 28 months will be required as Maintenance Period.

22. What happens if the works have not been constructed in accordance with the approved designs, specification and agreed standards?

If the construction of works is completed and the Council’s engineers, after inspection, find out that additional works or amendments to the completed works need to be carried out in order for the works to comply with the approved design/Specification and agreed standards, they will notify the developer/applicant accordingly with the timetable and a list of additional works/amendments still required before a Completion Certificate can be issued. Otherwise, the Completion Certificate won’t be issued and the Maintenance Period won’t be triggered (please refer to Q.21).

Once the Maintenance Period expires, the developer/applicant must notify the Council in writing. If after inspection, the Council’s engineers find out that there are additional works/amendments that need to be carried out to remedy and/or make good any defects or damages that have arisen during the Maintenance Period (which works are called “Further Works”), they will provide the developer/applicant with a timetable and a list of Further Works, which are required before the Council can issue a Final Certificate. The Final Certificate certifies that the works:

a) have been constructed and maintained by the developer/applicant in accordance with the approved design, specification and agreed standards; and

b) can now become part of highways network which is maintained by the Council at public expense (adoption).

If a Final Certificate is not issued, the works will still be at the developer’s/applicant’s responsibility.

23. When a developer/applicant defaults?

A developer/applicant is considered to have defaulted when:

a) at any time they fail to perform or observe any of the conditions or obligations contained within an agreement under sections 38 and or 278 of the Highways Act 1980; or

b) a receiving order in bankruptcy is made in respect of the developer’s/applicant’s estate; or

c) the developer/applicant is being wound up or

d) the developer/applicant enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)

24. What usually happens when a developer/applicant defaults?

When the developer/applicant defaults and a Surety is in place (please refer to Q.8), the Council may serve a default notice to the Surety, asking the latter either to complete the
works in accordance with the agreement and the agreed standards or to pay the money still required for completion of the works by the Council.

If a Cash bond is in place (please refer to Q.8), the Council may be entitled to execute or complete the works in default and to recover from the Cash Bond the cost thereof as certified by the Council’s engineers.

25. Timescales

For Applications for Agreement under Section 278/38 of the Highways Act 1980 we recommend that you allow a minimum of 6 months prior to construction works commencing on site to allow sufficient time to get technical approval and the Agreement approved and signed by all parties.

For Applications for a Simple Section 278 Agreement, please allow at least 3 months before any works are scheduled to take place on site.