

Highway Development Agreements Guidance

An overview guide for Developers in Hampshire



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Introduction

Hampshire County Council's four strategic aims are:

- Hampshire maintains strong and sustainable economic growth and prosperity
- People in Hampshire live safe, healthy and independent lives
- People in Hampshire enjoy a rich and diverse environment
- People in Hampshire enjoy being part of strong, inclusive communities

There is currently a wide-ranging programme of housebuilding in Hampshire, which in turn supports economic growth and prosperity in the county. This reinforces the requirement for Hampshire County Council (HCC) to work effectively with both developers and Local Planning Authorities (LPAs) to enable construction on existing highways, adoption of new estate roads, ongoing maintenance and associated surety for residents.

Hampshire County Council is dedicated to working collaboratively with developers to assist with the delivery of development highway schemes and the adoption of new estate roads required as part of a development.

Purpose of This Document

This guide details the overarching processes and methodology for delivery of highways schemes being brought about by developments and the adoption of any associated development roads and infrastructure. The guide is for developers and their consultants and sets out the different highway agreements which are applicable to developments at different stages of delivery and points to other relevant policies. This document is split in to two sections; Section 1 relates to works to existing highway and Section 2 to on site works.

Context

This document is one of a set of five guidance documents developed by the Highway Development Team to assist developers deliver their highway schemes. Other documents to be aware of are:

- [The Advance Payments Code Guidance Note](#)
- [Section 38 Guidance for Developers](#)
- [Section 278 Guidance for Developers](#)
- [The Developer Portal User Guide](#)

The Team

The Highway Development Team is made up of Highway Development Planning (HDP), who undertake the statutory function of assessing planning submissions as the Highway Authority, Highway Development Client (HDC), who assist developers where required and provide a monitoring function of the Design Audit Service and Highway Development Agreements (HDA), who undertake the Design Audits for all Section 278 and 38 Agreements.

Section 1: Works to Existing Highway

Only the Highway Authority can carry out works to the public highway within its statutory control. It is an offence under Section 131 of the Highways Act 1980 if a person, without lawful authority or excuse causes damage to a highway or to certain highway equipment. Such an offence is punishable by a fine.

Section 278 of the Highways Act 1980, allows a Highway Authority, if they are satisfied that it is of benefit to the public, to enter into an agreement with any person for:

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

Through a Section 278 Agreement the Highway Authority can appoint a developer to undertake works to an existing Highway. The Agreement sets the standards by which the works must be constructed and provides for the collection of any fees associated with the approval of the works and commuted sums for their future maintenance.

In most situations a Section 278 Agreement will follow the granting of planning permission for a development that requires the works, to provide adequate access or other associated infrastructure to mitigate for the impact of the development.

In order that these works are carried out in a manner and to a standard that is acceptable to HCC it is necessary that these works undergo Technical Design Audit.

In certain situations, where the works to the public highway include public highway in the statutory control of Highways England (i.e. trunk roads or motorways) it will also be necessary for authority for such works to be given by them under Section 6 of the Highways Act 1980 or through a Section 278 Agreement direct with Highways England. Where developer works affect a Public Right of Way, a S278 Agreement with HCC's Countryside Service may be required.

It is possible for some minor works to be carried out under other sections of the Highways Act 1980 and legislation. The main sections of legislation by which a Highway Authority

can authorise works on the highways are Highways Act 1980, Section 171, Section 184 and New Roads and Street Works Act 1991 (NRSWA) Section 50.

1. Types of Agreements and Licences

The following agreements and licences are available to developers to undertake works on the highway. **Flowchart 1** sets out which licence or agreement is most **likely** to be appropriate, based on a series of questions. Developers should consult early with the Highway Development Client team if there is any uncertainty in what type of agreement or licence may be required. Additionally, HCC reserve the right to instruct another method to work on the highway, other than that indicated by the flowchart.

1.1. Section 171 Licence

This section regulates **only** the deposit of building materials and the making of **temporary** excavations in streets and **only applies to developer works in very limited instances** (eg trial pits to establish location/depth of utilities). This will be the appropriate licence for a temporary construction site access, where there is already an existing access and the geometry is not being amended (i.e. works to provide a temporary hardened surface within the footprint of an existing field access which is then reinstated as verge).

A Section 171 is only suitable for construction traffic only, it does not cover use for show homes, sales offices or staff working in sales offices.

All Section 171 Licence applications are reviewed and approved by the Highway Operation Centre. Further information can be found at the following link:

[Section 171 Licence](#)

1.2. Section 184 Licence and Section 171 Licence

A Section 184 Licence is suitable for new vehicle crossings over footway and verges, normally providing dropped kerbs and strengthening the footway and verge for vehicle use. A Section 171 Licence must also be applied for and allows a contractor to temporarily deposit materials or make an excavation in the public highway and therefore enables the delivery of permitted vehicle crossovers.

This type of licence is appropriate for minor highway works consisting of vehicle crossovers and sewer connections **not exceeding 10m** in width and does not allow for the removal of Highway features and infrastructure such as trees, hedges, street lighting, bollards etc, this can only be done via a Section 278 Agreement.

HCC reserve the right to require works to have a Section 278 Minor Works Agreement or full Section 278 Agreement if it is deemed that the works necessitate this.

HCC Highway Development Officers in liaison with the Highways Operation Centre will be able to advise whether the Section 171/184 Licences and processes are appropriate for the proposed works. Contact should be made early to establish the correct route to construction.

If the works are deemed appropriate for this type of licence, the technical review will be carried out by the Highways Operation Centre. Further information on gaining the relevant licence agreements and how to apply can be found on Hampshire County Council's website [Section 184 Licence](#) and [Section 171 Licence](#).

It should also be noted that the Highway Development Agreements team are consulted for information on all Section 171 and Section 184 applications. The final decision rests with the Highways Operation Centre and the granting of the Licence is not guaranteed.

There may also be instances where works are undertaken under a Section 171/184 Licence where later Section 278 works will be implemented at the same location. For example, where a construction access is situated in the same location as the permanent access. In this instance, it is in the developers' interest to contact the HDA Officers and request the works are inspected by the Highway Development Agreements team to avoid issues during the permanent junction construction. A S171/S184 Licence at the location of the S278 Works will only be considered and inspected if the associated S278 design submission has been received by HDA.

N.B. Temporary site accesses may also be subject to a separate planning permission, advice and guidance should be sought from Highways Development Planning and the LPA.

1.3. Section 278 Agreement

The Agreement sets the standards by which the works must be constructed and provides for the collection of any fees associated with the approval of the works and commuted sums for their future maintenance.

The majority of developer works will be delivered through the S278 process. In order for works to commence on the highway, a Legal Agreement needs to be completed as well as the technical approval granted.

Drafting of the Legal Agreement can be done in parallel with progressing the Design Audit. Instruction to Hampshire Legal Services to start the draft Agreement will be given by HDC Officers. HDA will then liaise with Hampshire Legal Services during the drafting of the Agreement once all the required information has been received from the developer, their consultants and their solicitors. Final approval to enter into the Agreement is given by the HDC team.

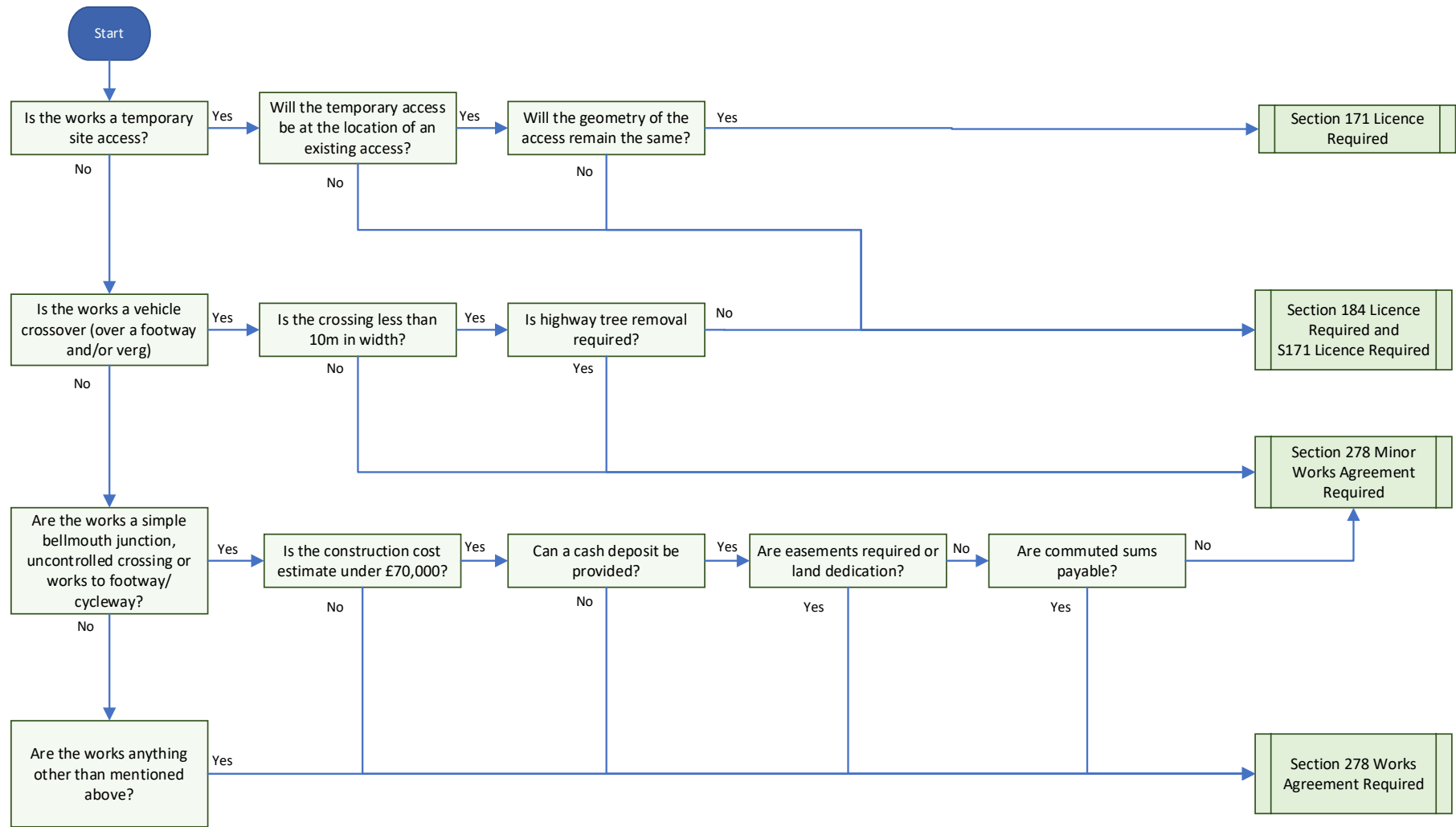
N.B. Instruction to Hampshire Legal Services **will not be given** until all the required information is in place. This enables all the required checks to be done at the same time, making the process more efficient.

There are two types of Agreement in Hampshire: A Section 278 Minor Works Agreement and a Section 278 Agreement.

A Section 278 Minor Works Agreement is applicable for simple bell mouth junctions, uncontrolled crossings or works to a footway or cycleway. The construction works cost needs to be under £70,000, with no easements or commuted sums payable. If any of these are required, then a full Section 278 Agreement will be required.

A Section 278 Agreement is applicable for all other forms of works to existing highway where one of the afore-mentioned licences or agreements is not applicable. It covers works where the works cost is over £70,000, where a cash deposit cannot be provided, land dedication or easement is required, and when commuted sums are payable.

Flowchart 1 Agreements & Licences for Works to the Existing Highway



2. The Section 278 Process

Generally speaking, there are two elements to the S278 process: The Design Audit and Legal Agreement. The design submission via the Developer Portal initiates the whole process and allows audit of the design to commence and then the drafting of the Legal Agreement.

Both Technical Approval and Completion of the Agreement need to be achieved prior to works commencing on the highway. There are other requirements which also need to be in place prior to works commencing, with full details of these being contained within [Section 278 Guidance for Developers](#).

Flowchart 3 shows an overview of the full Section 278 process.

3. Section 278 Design Audits

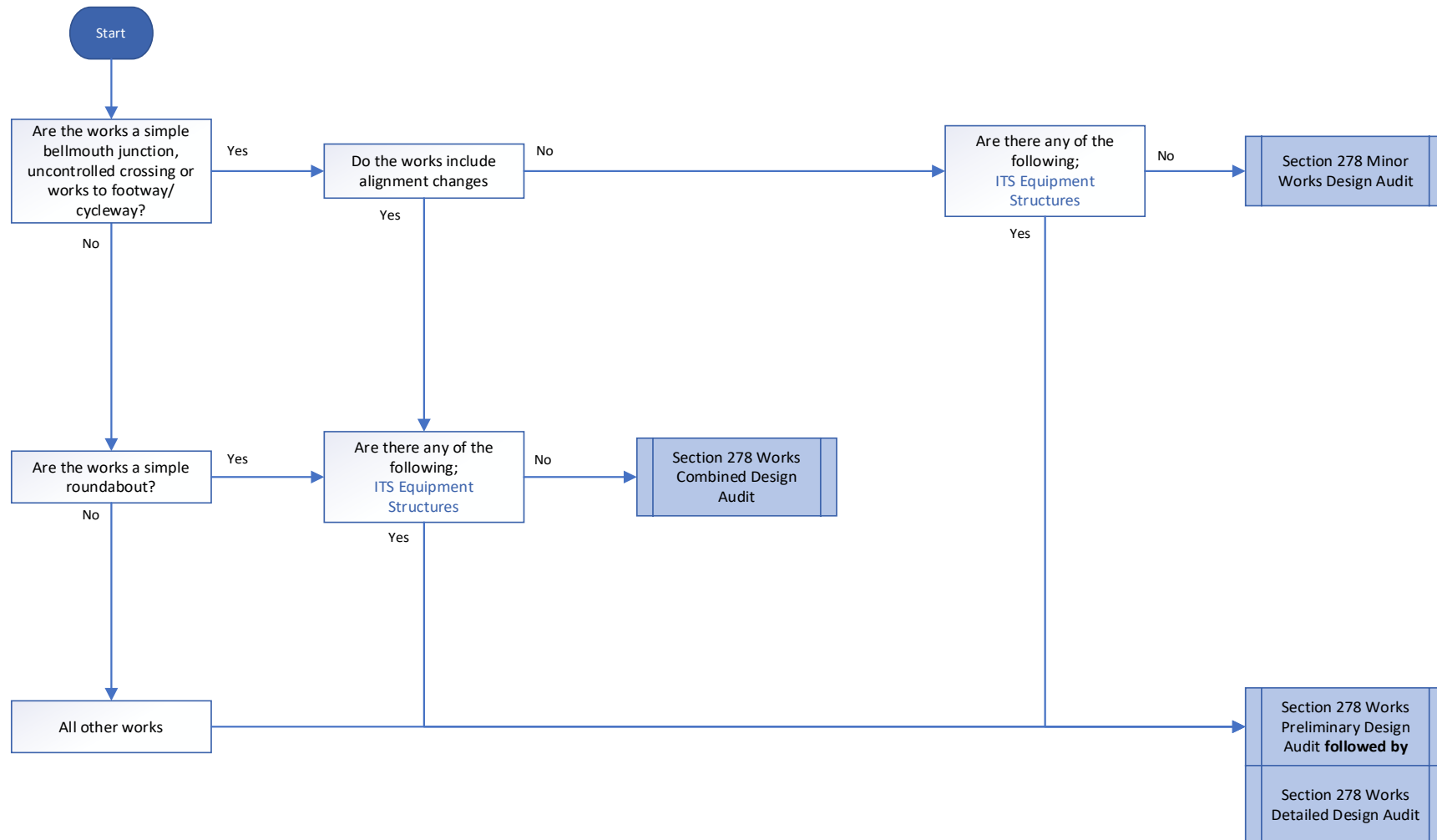
There are four types of Section 278 Design Audits available:

- Minor Works Design Audit
- Combined Design Audit
- Preliminary Design Audit
- Detailed Design Audit

For more information on the Design Audit process and the delivery of Section 278 Works, please refer to [Section 278 Guidance for Developers](#).

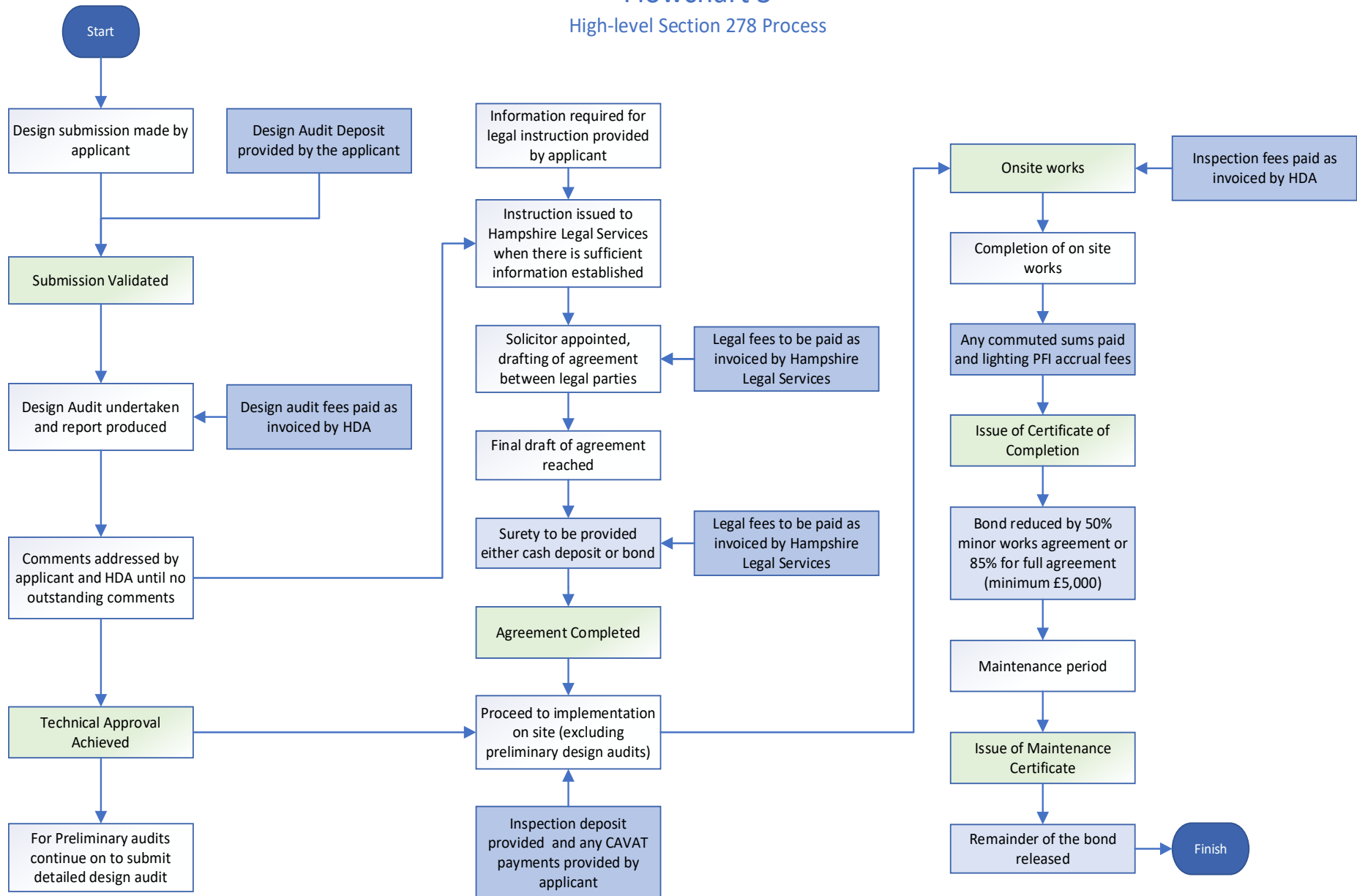
Flowchart 2 sets out the Design Audit which is likely to apply. However, HCC reserve the right to instruct another form of Design Audit, other than that indicated by the flowchart, if it is felt to be more appropriate.

Flowchart 2 Section 278 Design Audits



Flowchart 3

High-level Section 278 Process



3.1. Section 278 Design Audit Submissions

All Design Audit submissions are to be made through HCC's Developer Portal. You will be able to track your application and invite other users (such as the developer or other consultants) to each individual application so that you can all instantly see the latest status, share the progress and work together to progress the application promptly. It also enables communications and messages to be recorded in one location which is then accessible to all parties involved in the application. Refer to the following guides for further information:

[Developer Portal User Guide](#)

[Section 278 Guidance for Developers](#)

3.2. Section 278 Fees

The applicant is required to cover the costs of the fees incurred by HCC Officers in dealing with the submission, design audit and inspection of the works. The make-up of the Section 278 fees is as follows and specified for each type of Design Audit within the sections below.

Design Audit Deposit

Costs incurred during the Design Audit process are secured within the Section 278 Agreement, however as the Design Audit work is undertaken prior to signing of the Agreement a Design Audit Deposit is required. The value of the deposit changes depending upon the type of Design Audit being undertaken. Refer to sections 3.3, 3.4 and 3.5 for details.

An invoice for the deposit will be sent to the applicant following on from the Design Audit submission being made via the Developer Portal. The Design Audit submission cannot be validated until this deposit is paid.

Design Audit Fee

The Design Audit fee will be 'time charged' i.e. actual cost of undertaking the Design Audit. Any fees owed above the initial deposit value will be

invoiced as a minimum prior to instructing Legal to commence engrossment of the Agreement, and prior to issuing of any certificates pertaining to the works. Invoices will also be raised every quarter of the financial year and as necessary if outstanding fees reach £10,000 or above.

Inspection Deposit

A deposit to initiate inspection of the works will be payable at the time of instructing Legal to commence engrossment of the Agreement. The deposit will be 5% of the tender value of the works (excluding associated statutory undertaker works).

Inspection Fee

The inspection fee will be 'time charged' i.e. actual cost of undertaking inspections of the works. Any fees owed above the initial deposit value will be invoiced, as a minimum, prior to issuing of any certificate pertaining to the works. Invoices will also be raised every quarter of the financial year and as necessary if outstanding fees reach £10,000 or above.

3.3. Section 278 Minor Works Design Audit

A Section 278 Minor Works Design Audit is appropriate in most cases for the following works: Bellmouth Junction, Footway/Cycleways and Uncontrolled Crossing Facilities. This type of audit is not suitable where there are alignment changes, or for works containing any ITS equipment or structures. The information which is required to be submitted at the time of submission is detailed within the [S278 Minor Works Submission Checklist](#).

Minor Works Design Audit Timescales

A Design Audit report will be provided to the applicant within 4 weeks of the **validation** of the submission, refer to the [Developer Portal User Guide](#) and the [Section 278 Guidance for Developers](#) document for further information.

Each subsequent iteration of the report, where there are outstanding comments, will be issued within 2 weeks of return to the HDA Engineer via the Portal.

Minor Works Design Audit Fees

The relevant fees pertaining to a Section 278 Minor Design Audit are as follows:

Fee Type	Value
Design Audit Deposit	£2,000
Design Audit Fee	time charged basis
Inspection Deposit	5% of the tender value of the works, excluding services and statutory undertaker diversion costs (see section 3.2)
Inspection Fee	time charged basis

3.4. Section 278 Combined Design Audit

A Section 278 Combined Design Audit is applicable for works comprising simple roundabouts but is not suitable for works with structures or ITS equipment. The information which is required to be submitted at the time of submission is detailed in the [S278 Combined Design Submission Checklist](#)

Combined Design Audit Timescales

A Design Audit report will be provided to the applicant within 6 weeks of the **validation** of the submission, refer to the [Developer Portal User Guide](#) and the [Section 278 Guidance for Developers](#) document for further information.

Each subsequent iteration of the report, where there are outstanding comments, will be issued within 2 weeks of return to the HDA Engineer unless communicated otherwise.

Combined Design Audit Fees

The relevant fees pertaining to a Section 278 Combined Design Audit are as follows:

Fee Type	Value
Design Audit Deposit	£5,000
Design Audit Fee	time charged basis
Inspection Deposit	5% of the tender value of the works, excluding services and statutory undertaker diversion costs
Inspection Fee	time charged basis

3.5. Section 278 Preliminary Design Audit Followed by Detailed Design Audit

A two-stage Design Audit process is applicable for all other works not covered by a Minor or a Combined Design Audit. This is made up of a Section 278 Preliminary Design Audit followed by a Section 278 Detailed Design Audit. A Detailed Design submission **cannot** be made until the Preliminary Design is approved. The information which is required to be submitted at the time each submission is detailed within the [S278 Preliminary Design Submission Checklist](#) and the [S278 Detailed Design Submission Checklist](#).

Preliminary Design Audit Timescales

A Preliminary Design Audit report will be provided to the applicant within 6 weeks of the **validation** of the submission or 10 weeks if there are ITS or Structures involved. Each subsequent iteration of the report, where there are outstanding comments, will be issued within 2 weeks of return to the HDA Engineer unless communicated otherwise.

Preliminary Design Audit Fees

The relevant fees pertaining to a Section 278 Preliminary Design Audit are as follows:

Fee Type	Value
Design Audit Deposit	£5,000
Design Audit Fee	time charged basis
Inspection Deposit	N/A
Inspection Fee	N/A

Detailed Design Audit Timescales

A Design Audit report will be provided to the applicant within 6 weeks of the **validation** of the submission. Each subsequent iteration of the report, where there are outstanding comments, will be issued within 2 weeks of return to the HDA Engineer.

Refer to the [Developer Portal User Guide](#) and the [Section 278 Guidance for Developers](#) document for further information.

Detailed Design Audit Fees

The relevant fees pertaining to a Section 278 Detailed Design Audit are as follows:

Fee Type	Value
Design Audit Deposit	£5,000
Design Audit Fee	time charged basis
Inspection Deposit	5% of the tender value of the works, excluding services and statutory undertaker diversion costs
Inspection Fee	time charged basis

3.6. The Audit Outcome

A report will be drafted by an Engineer from the Highway Development Agreements team, which will then be uploaded onto the Developer Portal along with any subsequent iterations of the report. Once the design is approved, the Agreement can be signed and progress to implementation.

If the design is not approved, the scheme cannot be progressed in the proposed form. The report shall include details of why the request has been refused and whether any changes are possible to make the design acceptable to the Highway Authority. It is advised that the developer

engage with the Highway Authority on the required changes prior to re-submitting.

4. Section 278 Agreements

The Agreement secures the scope of works, the standard of construction and provides for the collection of any fees associated and commuted sums for their future maintenance.

When there is enough information to instruct Legal (at some point in parallel with the Design Audit process), a solicitor from Hampshire Legal Services will be appointed. They will then circulate a draft Agreement and communicate with the developer's solicitor until a final draft is prepared.

4.1. Section 278 Agreement Surety

Both forms of Agreement (see section 1.3), require either a cash deposit or bond to be deposited with HCC prior to the signing of the Agreement and the works commencing on site. This secures the ability of HCC as the Highway Authority to carry out the works and re-instate (or complete) the highway in the event that the developer defaults on the works.

The value of surety required is the works tender value plus the estimated cost of any commuted sums payable with the cost of any statutory undertakers works plus 10%.

Upon completion of the works and issue of the Certificate of Completion the Bond value will be able to be reduced by 85%. The issue of the Certificate of Completion triggers the start of the developer maintenance period. The remainder of the Bond is released upon issue of the Certificate of Maintenance.

Minor Works Agreement Surety

With a Section 278 Minor Works Agreement a **cash deposit** is required to be deposited with HCC prior to the signing of the Agreement and the works commencing on site. If a cash deposit cannot be provided, a Bond will have to be provided, meaning that a full S278 Agreement will be required. The

surety will be reduced by 50% or to £5,000 whichever is the greatest upon issue of the Certificate of Completion.

4.2. Section 278 Legal Fees

Fees incurred by Legal Services in the preparation and negotiation of the Section 278 Agreement will be charged at actual cost dependent upon the officer time spent on the Agreement. A solicitor's undertaking for the estimated legal costs involved will be required **before** the drafting of the Agreement commences. The actual legal fees incurred (including an allowance for post completion work) will be payable **prior** to the completion of the S278 Agreement. Further details of all fees are contained within the Legal Agreement.

4.3. Directors Fee (DP Management Fee)

There is a Directors Fee on all Section 278 Agreements, which is payable prior to engrossment of the Agreement. This cost contributes towards covering HCC Administrative and Management Officers time throughout the process. The value of the fee varies depending upon the type of Design Audit and value of the works, this will be confirmed during drafting of the Agreement.

4.4. Commuted Sums

In many cases highway works required as part of a development constitute an increased maintenance liability on the County Council that would not have been present without the construction of these works. It is therefore required that the developer pay commuted sums for these elements of works prior to them becoming maintainable at public expense in accordance with HCC's adopted [Commuted Sums Policy](#). The commuted sums are payable prior to issue of the Certificate of Completion.

4.5. Payments for Loss of Highway Trees

HCC recognises trees on highway land as public capital assets, playing a key role in the conservation of Hampshire's biodiversity as well as enhancing the environment for residents. Where tree removal is necessary, HCC requires

compensating for the loss of this asset, with [policy](#) in place covering how this compensation is to be calculated. The CAVAT (Capital Asset Value of Amenity Trees) payment is due upon completion of the Section 278 Agreement and should be payed **prior** to any highway tree removal. Further information on this can be found within [Technical Guidance Note TG15](#).

4.6. Streetlighting and Illuminated Signs

HCC's streetlighting is managed by SSE under a PFI Contract lasting 25 years (from April 2010). A flat rate charge per illuminated unit added to the inventory will be payable by the developer prior to the issue of the Certificate of Completion and is likely to be in the order of £150. Further information on streetlighting can be found within [Technical Guidance Note TG13](#).

5. Other Items to Note

There are other processes and costs which may be incurred during the S278 process which are not taken within the S278 Agreement itself but may still need to be paid by the developer. These are separate regulatory processes and it is strongly recommended that these are pursued **early**.

5.1. Traffic Regulation Orders

In some cases, the highway works proposed necessitate the production of a Traffic Regulation Order (either permanent or temporary). In such circumstances the full cost to the County Council in the progression of this Order will need to be recovered from the developer. Further information is found within [Technical Guidance Note TG21](#).

These are to be applied for separately via traffic.management@hants.gov.uk but should only be done when advised by HDA.

5.2. Ordinary Watercourse Consent

An Ordinary Watercourse is 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 sewers (other than public sewers). HCC as Lead Local Flood Authority, is responsible for consenting works (**including temporary works**) that affect the flow of an ordinary watercourse, further information can be found at [make changes to a watercourse](#).

Main Rivers are typically larger streams and rivers, but some are smaller watercourse of local significance. Main Rivers are managed by the Environment Agency (EA). To identify whether your watercourse is a Main River visit the EA's website and view their flood maps at www.environment-agency.gov.uk.

6. Additional Services

A Pre-Application Review is an optional review of a high-level scheme of works to establish if the principle of a scheme is acceptable. The Pre-Application Review will often be undertaken before Planning Permission is granted and will consider whether a particular scheme is likely to be both achievable and acceptable. A Pre-Application Review may also be undertaken to consider a range of different works options.

6.1. Pre-Application Review Required Information

The [Pre-Application Review Checklist](#) details the preferred amount of information to be submitted with the application. However, it is acknowledged, this is dependent on the type of works being checked and the HDA team may request additional information. It is advised that prior to any initial request for a Pre-Application Review the applicant discusses the proposals with the relevant HDP Officer.

If the HDP officer is unknown submissions should be made electronically to highways.development.control@hants.gov.uk.

6.2. Pre-Application Review Timescales

We aim to complete a Pre-Application Review within two weeks of the date of confirmed receipt of the request. Confirmation will be provided in writing that the submission is appropriate for a design review and that the information provided is sufficient. This confirmation will also set out the

expected date for issuing the report. If the design review cannot be undertaken due to insufficient information provided then this letter will specify the required additional information.

6.3. Pre-Application Review Outcome

There are two possible outcomes of the Pre-Application Review process. The works can be determined to be acceptable 'in principle' subject to future Design Audits either through the Section 278 Minor Works Agreement or through a full Section 278 Agreement. The engineer will be able to advise the next required level of Design Audit. Alternatively, the proposals may be deemed unacceptable. In this case it is advised that the applicant/developer liaise with the HDP officer with respect as to how the Highway Authority advise the proposals are taken forward and the type of works which would be deemed to be appropriate. Further fees may be payable for any subsequent iterations/submission of the report until an acceptable outcome is achieved.

6.4. Pre-Application Review Fees

Undertaking works through this process will require the applicant to cover the costs of the fees incurred by HCC Officers in dealing with the request. A job number will be issued to HDA with any instructions for design checking so that officer time can be properly designated against the particular scheme within our finance systems. This allows us to accurately calculate the actual costs of the design check process that applicants will be required to cover.

A Pre-Submission Review Deposit of £1,000 is payable at the time of the submission to allow HDA to commence the design review.

The final fee will be on a time charge basis, any fees spent in producing the report above the deposit will be invoiced prior to issue of the report, and any unspent fees will be returned upon request.

Section 2: Onsite Highway Works

New estate roads and their associated drainage features have long been considered for adoption via the Highways Act (1980), most commonly through agreements under Section 38, which are reached by consensus between the developer and the Council.

For Hampshire County Council, working with developers to agree the adoption of new estate roads (subject to adherence to required technical standards) is the preferred option, unless there is a specific desire for the development to remain private. Adoption of new estate roads offers certainty to residents that roads will be kept in acceptable condition in the long term. The wide-ranging programme of housebuilding in Hampshire through to 2030 and beyond, which in turn supports economic growth and prosperity in the county, reinforces a need to work effectively with both developers and Local Planning Authorities (LPAs) to enable adoption, ongoing maintenance and associated surety for residents, for the numerous developments that are coming forward. Further policy guidance is available at [Road Agreements Supplementary Policy Guidance](#).

7. The Advance Payments Code

Hampshire County Council are required to serve notice of Advance Payments Code (APC) under Section 220 of the Highway Act 1980 within six weeks of formal notification of Building Regulations being approved and/or the Initial Notice being served. This applies to **all developments**, those which roads are to remain private and those which are to later be adopted by HCC. HCC's policy is to only issue the APC Notice for developments with ten dwellings or more. Further information is contained within [The Advance Payments Code Guidance Note](#).

The APC makes it a legal requirement that the developer and/or landowner pay a lump sum or provide a financial surety to HCC's satisfaction before works for the purposes of erecting the new buildings / dwellings can commence on site.

Starting works where no security has been provided in accordance with an APC notice is a criminal offence, and HCC will instigate prosecution proceedings, where appropriate.

Where an APC Bond, in the form of a lump sum or financial security has been paid and thereafter an exemption notice is served, the Council shall refund that sum or shall release the security, as the case may be.

8. Section 38 Process

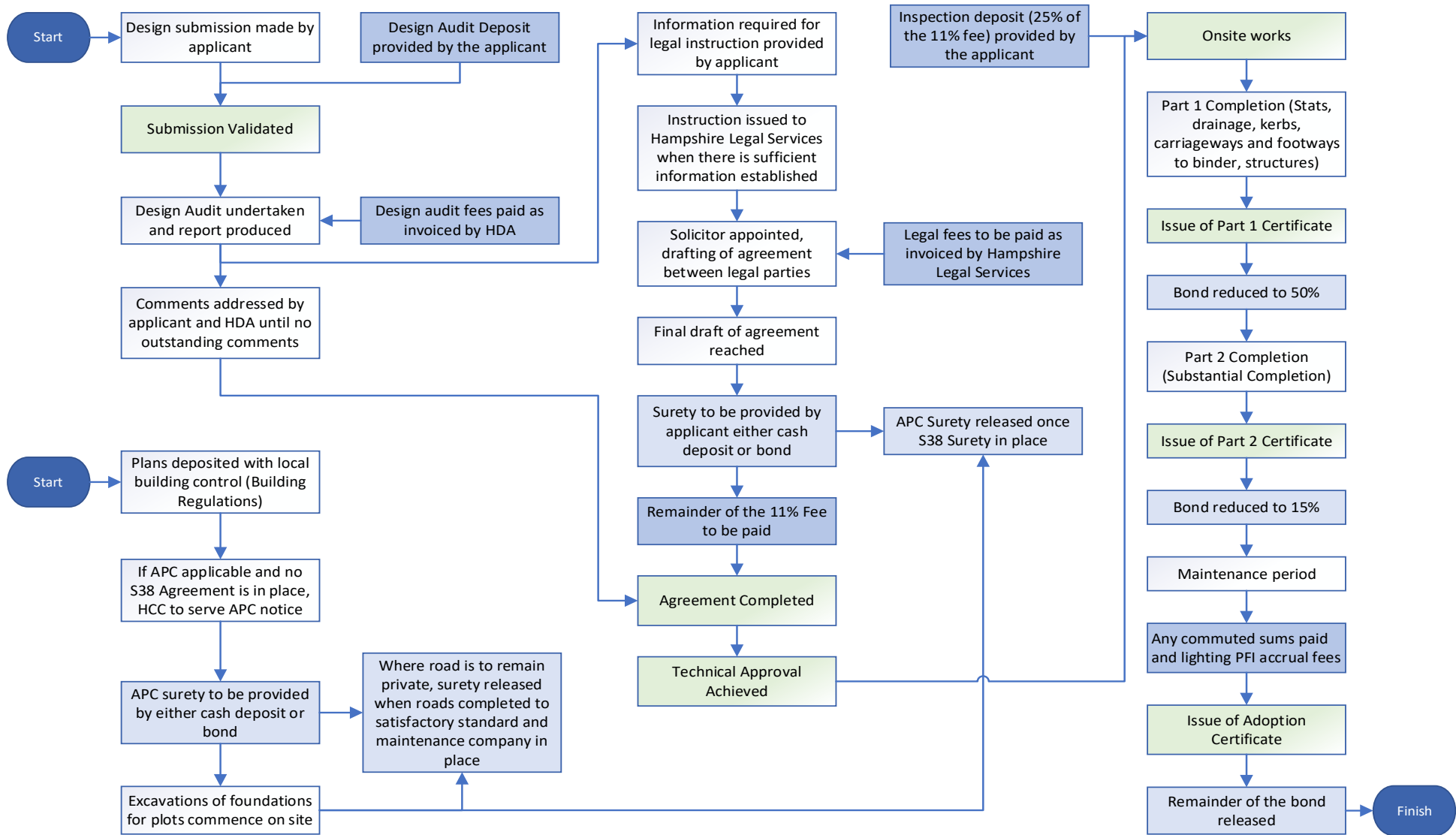
The Section 38 Agreement secures the standard of the works and allows them to be secured by an appropriate Surety, which ensures that the road works can be completed in the event of the developer defaulting. The technical details and specifications for the works must be in accordance with HCC's [Technical Guidance Notes](#), Model Specification, [Construction Standard Details](#) and associated [Section 38 Guidance for Developers](#).

A Section 38 Agreement can be entered into at any time; however, it is strongly advised that a Design Audit submission is made as early as possible, prior to construction commencing to allow for early engagement and discussion. This will reduce the risk of abortive works on site and ensure that estate roads are of an adoptable standard to HCC.

HCC are open to early engagement and in theory an Agreement could be entered into prior to planning approval, with the design agreed in principal, but subject to further design approvals to allow for final adoption. It should be noted that if a Section 38 Agreement has been entered into the development will be exempted from the requirements of the Advanced Payments Code (see section 7).

Flowchart 4 provides further information on the S38 process and how APC's apply.

Flowchart 4
High-level APC and Section 38 Process



9. Section 38 Design Audit

There are two elements to the Section 38 process: The Legal Agreement and the Design Audit. The design submission via the Developer Portal initiates the whole process and allows audit of the design to commence and then the drafting of the Legal Agreement. Both items can be progressed in parallel to ensure timely adoption but the Agreement must be completed **before** technical approval being given.

9.1. Section 38 Design Audit Submissions

All Design Audit submissions are to be made through HCC's Developer Portal. You will be able to track your application and invite other users (such as the developer or other consultants) to each individual application so that you can all instantly see the latest status, share the progress and work together to progress the application promptly. It also enables communications and messages to be recorded in one location which is then accessible to all parties involved in the application. Refer to the [Developer Portal User Guide](#) and [Section 38 Guidance for Developers](#).

9.2. Section 38 Design Audit Fees

Section 38 Design Audit and inspection costs are covered by a fixed fee of 11% of the construction estimate (based on HCC's maintenance term service contract rates). Any deposits, as described below, are deductible against the total fee. Developers can opt to pay the 11% fee in full in advance of the below milestone payments if they so wish.

Design Audit Deposit

A deposit is required to be paid at the time of making the Design Audit submission, this is **£5,000** for all Section 38 design checks.

Inspection Deposit

A second deposit is required to initiate inspection of the works, this will be payable at the time works commence on site. If works have already

commenced, or even been completed at the time of submission, these will be due to be paid at time of submission. The inspection deposit will be **25% of the 11%** total fee.

Remainder of the Fee

The remainder of the 11% fee will be due upon signing of the Section 38 Agreement. i.e. the total 11% fee minus the already paid Design Audit Deposit and Inspection Deposit. Where the Section 38 Agreement hasn't been entered into within 6 months of submission, HCC reserve to right to invoice for further interim fee payments to cover the ongoing costs incurred due to the Design Audit and Inspection.

Fee Type	Value
Design Audit Deposit	£5,000
Total S38 Fee	11% of the construction estimate including all commuted sums
Inspection Fee Deposit	25% of the 11%
11% minus any previous payments made	Remainder of the total fee.

9.3. Section 38 Design Audit Timescales

A Design Audit report will be provided to the applicant within 8 weeks of the **validation** of the submission, refer to [Developer Portal User Guide](#) and [Section 38 Guidance for Developers](#) document for further information. Each subsequent iteration of the report, where there are outstanding comments, will be issued within 4 weeks of return to the HDA Engineer, unless communicated otherwise.

9.4. The Section 38 Design Audit Outcome

A report will be drafted by HDA which will then be uploaded onto the Developer Portal along with any subsequent iterations of the report. Technical approval cannot be given until the Agreement is completed.

10. Section 38 Agreement

The Agreement secures the scope of works, the standard of construction and provides for the collection of any associated fees and commuted sums for their future maintenance.

When there is enough information to instruct Legal (at some point in parallel with the Design Audit process), a solicitor from Hampshire Legal Services will be appointed. They will then circulate a draft Agreement and communicate with the developer's solicitor until a final draft is prepared.

10.1. Section 38 Agreement Surety

A cash deposit or Bond is required to be deposited with HCC prior to the signing of the Agreement. This secures the ability of HCC as the Highway Authority to carry out the works in the event that the developer defaults on the works. This Bond would secure the release of the APC Bond which is in place.

The Bond value will be the **total estimated cost** of the proposed adoptable highway infrastructure, including road works, highway drainage, structures, street lighting, street furniture, trees and landscaping. Estimated Commuted Sums are also included within this figure. The Bond may be reduced at the discretion of HDA and will normally apply when a Part 1 or Part 2 Certificate is issued.

Generally, the Bond figure will be reduced to 50% upon issue of the Part 1 Certificate and to 15% at Part 2 Certificate and fully released upon issue of the Adoption Certificate.

10.2. Section 38 Legal Fees

Fees incurred by Hampshire Legal Services in the preparation and negotiation of the Section 38 Agreement will be charged at actual cost dependent upon the officer time spent on the Agreement. A solicitor's undertaking for the estimated legal costs involved will be required **before** the drafting of the Agreement commences. The actual legal fees incurred, including an allowance for post completion work, will be payable **prior** to the completion of the S38 Agreement.

10.3. Commuted Sums

In many cases highway works required as part of a development constitute an increased maintenance liability on the County Council that would not have been present without the construction of these works. It is therefore required that the developer pay commuted sums for these elements of works prior to them becoming maintainable at public expense in accordance with HCC's adopted [Commuted Sums Policy](#). The commuted sums are payable prior to issue of the Adoption Certificate.

10.4. Streetlighting and Illuminated Signs

HCC's streetlighting is managed by SSE under a PFI Contract lasting 25 years (from April 2010). A flat rate charge per illuminated unit added to the inventory will be payable by the developer prior to the issue of the Adoption Certificate and is likely to be in the order of £150. Further information on streetlighting can be found within [Technical Guidance Note TG13](#).

11. Other Items to Note

There are other processes and costs which may be incurred during the S38 process which are not taken within the S38 Agreement itself but may still need to be paid by the developer. These are separate regulatory processes and it is strongly recommended that these are pursued **early**.

11.1. Traffic Regulation Orders

In some cases, the highway works proposed necessitate the production of a Traffic Regulation Order (either permanent or temporary). In such circumstances the full cost to the County Council in the progression of this Order will need to be recovered from the developer. Further information is found within [Technical Guidance Note TG21](#).

These are to be applied for separately via traffic.management@hants.gov.uk but should only be done when advised by HDA.

11.2. Ordinary Watercourse Consent

An Ordinary Watercourse is 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 sewers (other than public sewers). HCC as Lead Local Flood Authority, is responsible for consenting works (**including temporary works**) that affect the flow of an ordinary watercourse, further information can be found at [make changes to a watercourse](#).

Main Rivers are typically larger streams and rivers, but some are smaller watercourse of local significance. Main Rivers are managed by the Environment Agency (EA). To identify whether your watercourse is a Main River visit the EA's website and view their flood maps at www.environment-agency.gov.uk.

Note: These are separate regulatory process from the S38 Design Audit process and it is strongly recommended that these are pursued **early** by the developer's consultant if the works are going to impact on either Ordinary Watercourses or Main Rivers.