

Part 10 Construction and Delivery

10.1 Introduction

This Chapter covers the various steps and processes WCC require when a technically approved scheme is ready to be constructed. As discussed in Part 2 of this Guide, WCC insist that Category 2 or 3a Roads (refer to Table 1.1 in Part 1 of this guide) are constructed using WCC approved Framework Contractors.

However, this Part may be applicable for other improvements which connect onto the existing highway network as well as works on the strategic and main distributor roads in the County network which are deemed large and/or complex enough that WCC consider that it needs to be constructed by a WCC Framework Contractor.

10.2 Scheme delivery outline

As previous described in Part 2 paragraph 2.2 the general process for scheme delivery is as follows;

- i. Developer to apply to enter into a S278 Agreement ([LINK QF019](#)) or S38 Agreement ([Form](#)). Further information on legal agreements is included in Part 10 and Annex 10.1
- ii. Developer to supply a preliminary general arrangement which corresponds to the planning consent
- iii. WCC to supply a fee estimate which will cover the fees relating to Technical Review process and procurement of a Contractor from the current WCC Contractors Framework. All these will be based on the scope of the works shown on the preliminary general arrangement and the estimated programme for construction. The fee estimate will also outline the details of what information is required for Technical Review which is also included in Annex 2.1. **Prospective Developers should note - If relevant information is not supplied then this will increase the time for Technical Review and additional fees may have to be charged for the additional reviews.**
- iv. When Technical Review and procurement phase fees are paid and works information submitted, WCC will commence Technical Review. If departures from standards are required then these should be applied for and resolved at an early stage.
- v. The Developer will be responsible for liaising with utilities, placing and paying for any orders for any necessary diversion works. The Developer must provide proof of payment for the diversion works prior to the start of the tendering process.
- vi. When Technical Review is approaching its conclusion, the Developer's consultant will supply an updated scheme estimate which will be used to add the scheme to WCC's capital programme. At this point, site supervision fees will be estimated now that the full extents of the works are confirmed.

- vii. After consultation with the Developer, WCC will book the road space for construction. The timings will be agreed with the Developer but if these change because of any delay to the following processes then this could mean a new notice has to be given and the scheme delayed accordingly.
- viii. When Technical Review is completed and the necessary certificates certified (including, if necessary, any structural compliance checks as described in Part 7 paragraph 7.5) then WCC will prepare the construction contract document and invite tenders from WCC Framework Contractors. The list of Contractors will be available upon request. The contract will be let using the NEC conditions of contract.
- ix. When quotes are received the Developer will agree in writing for the contract to be awarded.
- x. **The construction contract will only be awarded when the legal agreement (eg. S278 or S38 etc.) has been signed, a bond is in place and appropriate fees paid.**
- xi. During the construction phase WCC will pay the Contractor's invoices and invoice the Developer in arrears.

This Part provides more details of WCC's expectations and requirements to complete the scheme delivery and in particular the points (vi) to (xi) above.

10.3 Updated Scheme Estimate

WCC will expect a Developer to appoint a competent Consultant to carry out the design and prepare the works information for inclusion in the NEC contract documents.

When Technical Review is approaching its conclusion, the Developer's consultant will supply an updated scheme estimate which will be used to add the scheme to WCC's capital programme. This needs to be done because during construction WCC will pay the Contractor's invoices and then retrospectively reclaim those monies from the Developer. As WCC is initially using its own money, then WCC processes insist that this is reflected in the capital programme.

A more robust scheme estimate also allows for the procurement to be targeted at the appropriate lot on the Construction Framework.

At this point, site supervision fees will be estimated now that the full extents of the works are confirmed. They will be based on the anticipated construction programme and will be included in Appendix A of the S278 Legal Agreement.

10.4 Highway Works Permits/ Booking Road Space

When the anticipated construction programme has been developed and details of the S278 have been confirmed, if all parties agree, the necessary road space can be booked.

There is always a risk booking road space as any changes often mean that a new notice has to be given and other projects may "jump ahead" of the original project and actually delay the start of the works.

Conversely, if WCC wait until after a Contractor is appointed this could mean that there might be 3 months delay before construction begins following the appointment of the contractor.

Therefore, there is no set rules about booking road space but it is recommended that it is not undertaken until all parties have confidence in the dates to be booked.

10.5 Procurement of the Contractor using the WCC Construction Framework

When Technical Review is completed and the [Technical Approval certificate \(LINK\)](#) issued then WCC will prepare the construction contract document and invite tenders from WCC Framework Contractors. **Contractors who are not currently on the Framework will not be allowed to carry out the works.**

The contract will be let using the NEC conditions of contract.

Tender periods are typically 6 weeks but can be reduced slightly for smaller, less complex schemes and, similarly, could be increased for larger schemes.

WCC will carefully review the returned tenders before recommending a preferred contractor to the Developer. **The contract will only be awarded when the Developer has issued a "Notice to Accept" for the contract to be awarded and the S278 or other appropriate Legal Agreement has been signed and all fees due have been paid.**

10.6 Legal Agreements

The process of drawing-up the Legal Agreement will take place in parallel with the technical approval of the scheme. However, some drawings necessary for the Agreement can only be finalised once design and technical approval is completed so the completion of the Legal Agreement will often be just prior to construction.

WCC currently have different S278 Legal Agreement templates for:-

- Tendered contract with 200% initial bond; (used when a formal Agreement is needed early)
- Tendered contract, developer appointed to act as NEC Project Manager;
- Direct award with 150% bond;
- Direct award, developer appointed to act as NEC Project Manager;
- HMC contract.

It is important that Developers note that the Legal Agreement contains details relating to the Bond for the scheme. The value of the bond is calculated using the preferred contractor's quotation (unless a 200% initial bond template is used).

$$\text{Bond value} = \text{Quotation} \times 1.5 \text{ (i.e 150\%)}$$

During construction the value of the bond can be reduced as contractor's invoices are paid and monies reclaimed by WCC up to a limit of 50% of the Quotation Total.

This remaining value of the bond is retained for 5 years following completion of the scheme.

Furthermore, the legal agreement will also contain reference to commuted sums relating to the new infrastructure which will be payable on signing of the Agreement. Commuted sums are a contribution to the future maintenance costs of the new asset.

The most common requirement for a commuted sum is for traffic signal junctions, pedestrian crossings facilities and for Intelligent Transport System. This charge will cover four main areas, these areas are maintenance, routine inspections, operational costs and end of life cycle replacement of the asset.

More details of Legal Agreements and the costs associated with them are contained in Annex 10.1 and [Warwickshire County Council's S278 Developer Guidance Document](#).

10.7 Statutory Undertakers

The Developer will be responsible for liaising with utilities, placing and paying for any orders for any necessary diversion works. The Developer must provide proof of payment for the diversion works prior to the start of the tendering process.

The responsibility of supervising the utility companies carrying out their works will be outlined in the contract documents.

10.8 Construction Supervision and Contract Management

WCC will allow various supervision options during the construction phase of the scheme.

The options available depend on the ability of the Developer to be able to provide a suitably qualified NEC Project Manager. However, if WCC do not believe that the PM is acting in an impartial manner as required under the NEC then they can be removed.

WCC will always retain the right to have some level of supervision capacity on site to ensure the works comply with the specification and are undertaken in a manner which is considerate to the motorists, residents and businesses in the area. The costs of this resource will be met by the Developer.

The exact form of supervision for each contract will be agreed between the Developer and WCC before the S278 agreement is signed as the agreement will need to reflect the options chosen.

As the contract to carry out the works is between WCC and the Contractor, WCC will pay any certified invoices to the Contractor directly. and reclaim the monies from the Developer in arrears. WCC will supply the Developer regular statements relating to the current project spend.

10.9 Land Compensation Act 1973 (Part 1)

On occasion, neighbouring properties can depreciate in value due to the works and property owners and occupiers may be entitled to claim compensation. This is known as a 'Part 1 claim'.

More information can be found at <https://www.gov.uk/compensation-road-property-value>

"Part 1" claims can only be made 12 months after the works have opened to traffic.

It is for this reason that WCC will retain the proportion of the bond for 5 years to insure that it is protected against the costs of any claims. Claims will be assessed by WCC property services, paid by WCC and then the costs reclaimed from the Developer in arrears.

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