

Report to: Lead Member for Transport and Environment

Date of meeting: 11 March 2024

By: Director of Communities, Economy and Transport

Title: The development of “Minor Works Agreements” under Section 278 of the Highways Act for developer led or third-party highway works

Purpose: To seek approval of the use of a new legal agreement format and accompanying guidance notes

RECOMMENDATION: The Lead Member is recommended to approve the use of the “Minor Works Agreements under Section 278 legal agreement process for development related highway works.

1. Background Information

1.1 The Transport Development Control (TDC) team at East Sussex County Council (ESCC) currently uses Section 278 (S278) Agreements under the Highways Act 1980 in order to manage development related highway works. The proposal in this report advocates an enhancement to this existing process.

1.2 S278 Agreements are regularly used by TDC to manage development related highway works that are undertaken by a third party. These will often be highway works that have been secured through a planning permission and can consist of measures such as new access roads, improvements to junctions, footway works, pedestrian crossings, bus stops, etc.

2. Supporting information

2.1 Section 278 Agreements ensure that third party highway works are undertaken to the appropriate standard and do not place any increased maintenance liability on the County Council. Such Agreements are also used to secure bonds from those undertaking the works, which can then be utilised in the event that the Council has to step in and complete the works.

2.2 An alternative for more modest works is a Section 171 licence, this is appropriate and currently used for proposals such as footway crossovers on classified roads, temporary construction accesses and the digging of trial holes to verify the position of statutory undertaker’s equipment.

2.3 For anything beyond Section 171 works a full S278 Agreement is currently required. The time taken to prepare and agree a S278 agreement is often lengthy and can be disproportionate for the scale of works being undertaken.

2.4 To address the issue, the option of a “Minor Works S278” has been developed and proposed to be used in lieu of a full S278 in appropriate circumstances. The use of a Minor Works S278 would be considered where land is not required to be dedicated as highway and where a refundable cash deposit is payable to the County Council instead of a separate legally binding guarantee (a bond provided by a surety).

2.5 The Minor Works S278 process is used successfully by numerous other Highway Authorities across the Country and negates the need for third parties to instruct legal representation. It is a simpler and less onerous version of a full S278.

2.6 Minor Works S278 agreements will largely be appropriate for works such as formation of a new access to a small (generally unadopted) new development with no significant additional off-site highway works and where there are no new highway areas created. The Minor Works S278 could also be used when appropriate for proposals being promoted by Town and Parish Councils, such as those utilising Community Match. In such cases works would be minor and, as the County Council are working with a fellow public body, the County Council would not usually require such stringent financial guarantees as those for a private developer.

2.7 The appropriate use of the Minor Works S278 will be considered by TDC Officers on a case-by-case basis and in the best interests of ESCC as Highway Authority. All other requirements such as public liability insurance levels will remain the same and there will be no increased risk introduced to ESCC.

2.8 From a financial perspective, TDC receives a fee income of 10% of the value of development related highway works regardless of whether they are undertaken under licence, Minor Works S278 or a full S278. TDC's income levels will therefore be unaffected. There will however be administrative and time savings for all parties, including ESCC's TDC and Legal Officers, Developers and Town and Parish Councils. There will also be cost savings for third parties as they will not need legal representation. The Minor Works S278 process is more straightforward and will require less guidance and support from ESCC Officers to third parties who do not regularly deal with highway works.

2.9 A draft Minor Works S278 Agreement, which can be found at Appendix 1, has been produced in liaison with ESCC's Legal Services team and has been deemed appropriate and fit for purpose. Accompanying Developer Guidance Notes are provided at Appendix 2.

3. Conclusion and Reasons for Recommendations

3.1 In order to provide an improved service to customers and to most efficiently and effectively manage development related highway works, the Lead Member is recommended to approve the use of Minor Works S278 Highway Works Agreements and associated Developer Guidance Notes with immediate effect.

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LOCAL MEMBERS

ALL

BACKGROUND DOCUMENTS

None