



Operational Officer Decision Record

1. Subject and details of the matter (to include reasons for the decision)

NELC Section 278 and Section 38

Proposal to Increase Associated Construction Rates

The increase in associated construction rates for Section 278 and Section 38 Agreements was approved by NELC Full Cabinet in February 2021. This Cabinet decision was taken as part of The Finance and Commissioning Report which outlines how the Council plans to deliver its agreed financial strategy over the coming three-year period.

Section 38 (technical approval and supervision) is a requirement of the Highways Act of 1980, and provides a mechanism for developers to enter into a formal agreement with the Highway Authority to secure the adoption of new highway built within developments, which meet adoptable standards and to enable the Council to maintain them thereafter. Highway adoption is one of the biggest assets acquired year on year by the authority, and once adopted, the costs of maintenance and upkeep of the new piece of road, pavement, or cycleway etc. become the responsibility of the authority.

Section 278 (technical approval and supervision) is also a requirement in the Highways Act of 1980 and provides a mechanism for developers to enter into a formal agreement with the Highway Authority to allow works to be carried out on the adopted highway. These works are usually a requirement of the planning approval in relation to a development, to carry out improvements to the existing highway infrastructure (e.g. junction improvement / road widening / traffic signals/etc.).

The rates used for bond calculation on behalf of North East Lincolnshire for developers for Sections 38 of the Highways Act of 1980, have remained constant since 1998. Neither the Council nor EQUANS have had occasion to increase the rate. Developers also meet the costs of legal fees and a bond or cash deposit which can be called upon if the developer goes into liquidation or otherwise defaults on their responsibilities. Bond calculations for Section 278 bonds are based on a construction cost provided by the developer.

EQUANS manage the technical approval and site based supervision of Section 38 and 278 works and NELC progress legal aspect. EQUANS, working with NELC Legal, have worked to manage and subsequently reduce a historical backlog of applications over the last few years, this momentum should be maintained.

As Section 38 and 278 Agreements are by nature linked to the economic climate, it is difficult to predict, longer term, the number of applications the authority will receive in the coming years. Whilst it is difficult to predict the impact of recent political events on the future economic climate, presently, reduced restrictions in planning policy and incentives for developers indicate that agreements (and accordingly income) will continue to rise. This will increase the impact upon Partnership resource owing to the increase in applications.

It is proposed that the rates identified in the schedule will be reviewed on an annual basis with any increase no greater than the Construction Output Price Indices which is published by the Office for National Statistics, to ensure that NELC rates remain current and do not fall behind as they have done. It will be the responsibility of the S38/S278 Officer to ensure rates applied are kept updated. Keeping the rates updated would also lessen the potential liability from the Council and the public's purse.

2. Is it a Key Decision as defined in the Constitution?

No

3. Details of Decision

Approval is sought to increase the rates applied to Section 278 and Section 38 Agreements, in line with other Local Authorities, with effect from October 1st 2022.

Head of Highways and Transport, Martin Lear, has been consulted with regards to the decision and is in agreement that the rate uplift is required.

4. Is it an Urgent Decision? If yes, specify the reasons for urgency Urgent decisions will require sign off by the relevant scrutiny chair(s) as not subject to call in.

No – although it is proposed to apply to the uplift in rates from October 1st 2022.

5. Anticipated outcome(s)

That the decision is approved swiftly, and the Section 278 and Section 38 rates are increased as proposed with effect from October 1st 2022.

6. Details of any alternative options considered and rejected by the officer when making the decision

Alternative Option: No increase to Section 278 and Section 38 Rates.

This is not recommended as The Manual for Streets (Department for Transport, March 2007) and other national guidance, has over a number of years led to more complex highway design and construction being promoted for sites, which in turn has increased the level of input into technical approvals and site supervision for Section 38 and 278 works (e.g. the encouragement of the use of non-conventional materials).

The additional time spent by EQUANS on both design checks and on-site supervision is essential to ensure that new roads are built to the appropriate standards and do not result in a higher level of maintenance and liability for the Highway Authority. Additionally, Engineers must ensure that the bond values (based upon a percentage of the estimated cost of highway infrastructure construction) are suitable and account for the cost of completing said highway works should developments default on their responsibilities.

7. Background documents considered

See benchmarking exercise with other Local Authorities and comparison of rates using existing and proposed rate uplift as an example (attached).

8. Does the taking of the decision include consideration of Exempt information? If yes, specify the relevant paragraph of Schedule 12A and the reasons

No

9. Details of any conflict of interest declared by any Cabinet Member who was consulted by the officer which relates to the decision (in respect of any declared conflict of interest, please provide a note of dispensation granted by the Council's Chief Executive)

There are no known conflicts of interest.

10. Monitoring Officer Comments (Monitoring Officer or Deputy Monitoring Officer)

An increase in associated construction rates as highlighted above was approved by Cabinet as part of the Finance and Commissioning Report.

The Council has the discretion to set its own fees in relation to section 38 and s278 agreements. The fees must be reasonable and proportionate.

It is considered best practice to regularly review fees to ensure a robust and transparent cost recovery basis for such fees.

11. Section 151 Officer Comments (Deputy S151 Officer or nominee)

The recommendation, when approved at Cabinet, estimated increased income generation of £80k per annum.

12. Human Resource Comments (Strategic Workforce Lead or nominee)

There are no direct HR implications

13. Risk Assessment (in accordance with the Report Writing Guide)

If the decision is not approved, Section 278 and Section 38 rates will remain as existing. The unit rates for the construction of new roads have not been revised since 1998 and as such the Bonds which we are requesting the developers to provide as surety should the developer default on the agreement or go in to liquidation are not sufficient to cover the cost of constructing the roads to an adoptable standard. This would then lead to the council having to fund any short fall

in the funding. Should funding not be available there is significant risk that the highways elements of the development would not be able to be brought up to an adoptable standard thus potentially defaulting on Section 38 Agreements.

14. Decision Maker(s):

Name: Sharon Wroot

Title: Executive Director Environment
Economy and Resources

Signed:

Dated: 24th November 2022

**15. Consultation carried out with
Portfolio Holder(s):**

Name: Councillor Stewart Swinburn

Title: Portfolio Holder for Environment
and Transport

Signed:

Dated: 24th November 2022

**16. If the decision is urgent then
consultation should be carried out
with the relevant Scrutiny
Chair/Mayor/Deputy Mayor**

Name:

Title:

Signed:

Dated: