

Public Document Pack

Executive Member Decisions

Friday, 26th April, 2024
10.00 am

AGENDA

1. **EMD - Private Street Works Code of Practice**
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EIAChecklist
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Appendix 1 for EMD - Private Street Works Code of
Practice
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Practice

Date Published: 26th April 2024
Denise Park, Chief Executive

EXECUTIVE MEMBER DECISION



REPORT OF:	Executive Member for Growth and Development
LEAD OFFICERS:	Strategic Director of Environment & Operations
DATE:	25 April 2024

PORTFOLIO/S AFFECTED:	Growth and Development
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WARD/S AFFECTED:	(All Wards);
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SUBJECT: EMD - Private Street Works Code of Practice

1. EXECUTIVE SUMMARY

To seek approval for the introduction of an updated Code of Practice for dealing with Private Street Works schemes instigated by residents, usually of unmade roads.

Residents of unadopted streets are able to request that the council formally adopt their street in order that it becomes a 'highway maintainable at public expense'. This Code of Practice sets out the process by which this will be achieved including guidance as to how the costs of any scheme to bring the road up to adoptable standard are apportioned between the residents.

2. RECOMMENDATIONS

That the Executive Member approves the Private Street Works Code of Practice to be used when implementing schemes under the Private Streets Work Code contained in sections 205 to 218 of the Highways Act 1980.

3. BACKGROUND

On becoming a Unitary Authority in 1998, the council became the highway authority for the borough and, at that time, adopted all the highway policies and codes of practice that it inherited from the previous highway authority, Lancashire County Council.

Over the years these policies have been revised and updated in line with changing legislation and technological advances but also to reflect the council's own vision and priorities.

There are many unmade, unadopted streets across the borough, however it is rare for residents to come together in agreement to request the council to invoke the Private Street Works Code outlined in sections 205 to 218 of the Highways Act 1980. Indeed, in the 25 years since becoming a Unitary Authority there have only been two private street works schemes carried out within the borough, one in 2007 and one in 2014 and hence the updating of the Private Street Works Code of Practice has been of fairly low priority.

Whilst the two schemes above were both completed successfully, their implementation highlighted the inadequacy of the current brief Code of Practice with officers having to 'learn' the implications of the legislation during the scheme.

The proposed Code of Practice goes into much more detail on the procedure and the lengthy legal process that has to be followed. It provides clear direction to guide officers through the often difficult process.

4. KEY ISSUES

The current code of practice was produced at a time when the council were agents for the highway authority, Lancashire County Council. The code is therefore written in the terms of a two tier authority system rather than that of a unitary authority. This was also a time when highway budgets were not under pressure as much as they are currently.

It is under this background that a change is proposed in the code of practice as to how provisional and final apportionment of costs are determined. It is clear in the Private Street Works Code in the Highways Act 1980 that the overriding method of apportioning expenses should be according to the frontage of the liable premises along the street. The act does however allow the street works authority to consider the greater or less degree of benefit to be derived by any premises from the street works when settling the apportionment.

The current Code of Practice sets out various scenarios, mainly regarding 'flank frontages', whereby the apportionment to the premises may be reduced with the highway authority contributing the cost of the shortfall to the scheme. With increasing budget pressures across the authority, the council is no longer in a position to guarantee such contributions to these schemes and therefore the proposed code is written with this in mind.

The concept of effective length of frontage is introduced whereby the effective length of the majority of frontages equals the actual length of the frontage but any '*...greater or less degree of benefit...*' is catered for by adjusting the actual length to give an either increased or decreased effective length for the premises. The apportionment is then based on the effective lengths of all the frontages. Whilst the new code gives examples of the levels of adjustment for different scenarios, it should be noted that these are for guidance only and '*...the Council still needs to subsequently consider the greater or lesser degree of benefit to be derived by any premises from the street works in settling any apportionment ...*'

5. POLICY IMPLICATIONS

The new Code of Practice is largely based on the principles of the current code with the exception being the removal of the council's commitment to contributing to certain aspects of the scheme, unless of course the council is itself a 'frontage' to the street.

6. FINANCIAL IMPLICATIONS

Any request for Private Street Works approved by the Executive Board will require up front financing, with a prospect of recovering costs over several years.

7. LEGAL IMPLICATIONS

None – the Code of Practice is in line with the Private Streets Work Code contained in sections 205 to 218 of the Highways Act 1980.

8. RESOURCE IMPLICATIONS

None

9. EQUALITY AND HEALTH IMPLICATIONS**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)***10. CONSULTATIONS**

None

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

VERSION: 1**CONTACT OFFICER:** George Bell**DATE:** 26 February 2024

BACKGROUND PAPER: LCC's 1997 Code of Practice
Proposed updated Code of Practice

EQUALITY IMPACT ASSESSMENT CHECKLIST

This checklist is to be used when you are uncertain if your activity requires an EIA or not.

An Equality Impact Assessment (EIA) is a tool for identifying the potential impact of the organisation's policies, services and functions on its residents and staff. EIAs should be actively looking for negative or adverse impacts of policies, services and functions on any of the nine protected characteristics.

The checklist below contains a number of questions/prompts to assist officers and service managers to assess whether or not the activity proposed requires an EIA. Supporting literature and useful questions are supplied within the [EIA Guidance](#) to assist managers and team leaders to complete all EIAs.

Service area & dept.	Highways and Transportation Environment & Operations	Date the activity will be implemented	30/10/2023
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Brief description of activity	Private Street Works Code of Practice
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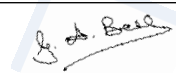
Answers favouring doing an EIA	Checklist question	Answers favouring not doing an EIA
<input checked="" type="checkbox"/> Yes	Does this activity involve any of the following: - Commissioning / decommissioning a service - Change to existing Council policy/strategy - Budget changes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	Does the activity impact negatively on any of the protected characteristics as stated within the Equality Act (2010)?	<input checked="" type="checkbox"/> No
<input type="checkbox"/> No <input type="checkbox"/> Not sure	Is there a sufficient information / intelligence with regards to service uptake and customer profiles to understand the activity's implications?	<input checked="" type="checkbox"/> Yes
<input type="checkbox"/> Yes <input type="checkbox"/> Not sure	Does this activity: Contribute towards unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act <i>(i.e. the activity creates or increases disadvantages suffered by people due to their protected characteristic)</i>	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> Not sure	Reduce equality of opportunity between those who share a protected characteristic and those who do not <i>(i.e. the activity fail to meet the needs of people from protected groups where these are different from the needs of other people)</i>	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> Not sure	Foster poor relations between people who share a protected characteristic and those who do not <i>(i.e. the function prevents people from protected groups to participate in public life or in other activities where their participation is disproportionately low)</i>	<input checked="" type="checkbox"/> No
FOR = 1	TOTAL	AGAINST = 5

Will you now be completing an EIA?

Yes

No

The EIA toolkit can be found [here](#)

Assessment Lead Signature	
Checked by departmental E&D Lead	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date	19/10/2023

Name of the activity being assessed				
Directorate / Department		Service		Assessment Author
Is this a new or existing activity?	<input type="checkbox"/> New <input type="checkbox"/> Existing	Responsible manager / director for the assessment		
Date EIA started	Click here to enter a date.	Implementation date of the activity	Click here to enter a date.	

SECTION 1 - ABOUT YOUR ACTIVITY

How was the need for this activity identified? i.e. Why are we doing this activity?			
<input type="checkbox"/> What is the activity looking to achieve? <input type="checkbox"/> What are the aims and objectives?			
Services currently provided (if applicable)			
Type of activity	<input type="checkbox"/> Budget changes <input type="checkbox"/> Change to existing activity	<input type="checkbox"/> Decommissioning <input type="checkbox"/> Commissioning	<input type="checkbox"/> New activity <input type="checkbox"/> Other [please state here]

SECTION 2 - UNDERSTANDING YOUR CUSTOMER

What resources will support in undertaking the equality analysis and impact assessment?

Please identify additional sources of information you have used to complete the EIA, e.g. reports; journals; legislation etc.

Who are you consulting with? How are you consulting with them? *(Please insert any information around surveys and consultations undertaken)*

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Who does the activity impact upon?*	Service users	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	Members of staff	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	General public	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	Carers or families	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	Partner organisations	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Indirectly			
Does the activity impact positively or negatively on any of the protected characteristics as stated within the Equality Act (2010)?* The groups in blue are not protected characteristics (please refer to p. 3 of the guidance notes)	Positive impact	<input type="checkbox"/> Age	<input type="checkbox"/> Disability	<input type="checkbox"/> Gender reassignment	<input type="checkbox"/> Marriage & Civil Partnership	<input type="checkbox"/> Pregnancy & maternity	<input type="checkbox"/> Vulnerable groups
		<input type="checkbox"/> Race	<input type="checkbox"/> Religion or belief	<input type="checkbox"/> Sex	<input type="checkbox"/> Sexual orientation	<input type="checkbox"/> Deprived communities	<input type="checkbox"/> Carers
	Negative impact	<input type="checkbox"/> Age	<input type="checkbox"/> Disability	<input type="checkbox"/> Gender reassignment	<input type="checkbox"/> Marriage & Civil Partnership	<input type="checkbox"/> Pregnancy & maternity	<input type="checkbox"/> Vulnerable groups
		<input type="checkbox"/> Race	<input type="checkbox"/> Religion or belief	<input type="checkbox"/> Sex	<input type="checkbox"/> Sexual orientation	<input type="checkbox"/> Deprived communities	<input type="checkbox"/> Carers
	No impact	<input type="checkbox"/> Age	<input type="checkbox"/> Disability	<input type="checkbox"/> Gender reassignment	<input type="checkbox"/> Marriage & Civil Partnership	<input type="checkbox"/> Pregnancy & maternity	<input type="checkbox"/> Vulnerable groups
		<input type="checkbox"/> Race	<input type="checkbox"/> Religion or belief	<input type="checkbox"/> Sex	<input type="checkbox"/> Sexual orientation	<input type="checkbox"/> Deprived communities	<input type="checkbox"/> Carers

***If no impact is identified on any of the protected characteristics a full EIA may not be required. Please contact your departmental Corporate Equality & Diversity representative for further information.**

Does the activity contribute towards meeting the Equality Act's general Public Sector Equality Duty? *Refer to p.3 of the guidance for more information*
A public authority must have 'due regard' (i.e. consciously consider) to the following:

DUTY	DOES THE ACTIVITY MEET THIS DUTY? EXPLAIN
Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act <i>(i.e. the activity removes or minimises disadvantages suffered by people due to their protected characteristic)</i>	
Advance equality of opportunity between those who share a protected characteristic and those who do not <i>(i.e. the activity takes steps to meet the needs of people from protected groups where these are different from the needs of other people)</i>	
Foster good relations between people who share a protected characteristic and those who do not <i>(i.e. the function encourages people from protected groups to participate in public life or in other activities where their participation is disproportionately low)</i>	

ASSESSMENT	Is a full EIA required?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Please explain how you have reached your conclusion <i>(A lack of negative impacts must be justified with evidence and clear reasons, highlight how the activity negates or mitigates any possible negative impacts)</i>			

Author Signature		Date	Click here to enter a date.
Head of Service/Director Signature		Date	Click here to enter a date.
<i>The above signatures signify acceptance of the ownership of the Initial EIA and the responsibility to publish the completed Initial EIA as per the requirements of the Equality Act 2010.</i>			
Departmental E&D Lead Signature		Date	Click here to enter a date.

SECTION 3 – ANALYSIS OF IMPACT

Does the activity have the **potential** to:

- **positively** impact (benefit) any of the groups?
- **negatively** impact/exclude/discriminate against any group?
- **disproportionately** impact any of the groups?

Explain how this was identified – through evidence/consultation.

Any negative impacts that are identified within the analysis need to be captured within the action plan in **Section 4**

N.B. Marriage & Civil Partnership is only a protected characteristic in terms of work-related activities and NOT service provision

Characteristic	Positive	Negative	Don't know	Reasons for positive and/or negative impact Please include all the evidence you have considered as part of your analysis	Action No.
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Gender reassignment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Marriage & Civil Partnership	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Pregnancy & Maternity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Race	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Religion or Belief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Sex	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Vulnerable Groups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Deprived Communities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Carers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Other [please state]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

<p>Does the activity raise any issues for community cohesion?</p> <p>Does the activity contribute positively towards community cohesion?</p>	
<p>Does the activity raise any issues in relation to human rights as set out in the Human Rights Act 1998? Details of which can be found here</p>	
<p>Does the activity support / aggravate existing departmental and/or corporate risk?</p>	<p><i>Is the activity on the departmental risk register? If it is not, should it be?</i></p>

CONCLUSIONS OF THE ANALYSIS

<p>Action following completion of the impact assessment</p>			
<p><i>It is important that the correct option is chosen depending on the findings of the analysis. The action plan must be completed as required.</i></p>			
<input type="checkbox"/> No major change in the activity	<input type="checkbox"/> Adjust activity	<input type="checkbox"/> Continue with activity	<input type="checkbox"/> Stop and reconsider activity
<p>Please explain how you have reached your conclusion</p>			
<p></p>			

SECTION 4**ACTION PLAN**

Action No.	What is the negative / adverse impact identified?	Actions required to reduce / mitigate / eliminate the negative impact	Resources required	Responsible officer(s)	Target completion date

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MONITORING AND REVIEW

The responsibility for establishing and maintaining the monitoring arrangements of the EIA action plan lies with the service completing the EIA. These arrangements should be built into the performance management framework.

Monitoring arrangements for the completion of EIAs will be undertaken by the Corporate Equality & Diversity Group and the oversight of the action plans will be undertaken by the Management Accountability Framework.

If applicable, where will the EIA Action Plan be monitored?	<i>e.g. via Service Management Team; Service Leadership Team; Programme Area Meetings</i>
How often will the EIA Action Plan be reviewed?	<i>e.g. quarterly as part of the MAF process</i>
When will the EIA be reviewed?	<i>It should be reviewed at least every 3 years to meet legislative requirements</i>
Who is responsible for carrying out this review?	

Author Signature		Date	Click here to enter a date.
Head of Service/Director Signature		Date	Click here to enter a date.
<i>The above signatures signify acceptance of the ownership of the full EIA, the responsibility for the associated Action Plan (if applicable) and the responsibility to publish the completed full EIA as per the requirements of the Equality Act 2010.</i>			
Departmental E&D Lead Signature		Date	Click here to enter a date.



Private Street Works Code of Practice



**Blackburn with Darwen
Borough Council**

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Document control

Title: Private Street Works Code of Practice

Description:

This Code of Practice describes in detail how the council will implement the Private Street Works Code set out in sections 205 to 218 of the Highways Act 1980.

Version	Description	Author	Approver	Date
V 1.0	First Draft	George Bell	Carmel Foster-Devine	

The Private Street Works Code of Practice should be reviewed and updated every 5 years as a minimum.

Any major changes in high-level strategy, technologies or the development of new solutions or political changes that may alter the Councils philosophy, vision or views may trigger an earlier review to take place.

Comments and Feedback:

Blackburn with Darwen Borough Council welcome constructive comments and feedback on the content of this Code of Practice, which will enable us to revise the content improve and tailor our service to our customer's needs.

Comments can be emailed to highways@blackburn.gov.uk , please enter "Comments on Private Street Works Code of Practice" as your subject.

Glossary of terms and Key Points

Terms and Abbreviations

The Council Blackburn with Darwen Borough Council

CoP Private Street Works Code of Practice

The Act Highways Act 1980

Adopted Highway Highway maintainable at public expense

Private Street A street that is not maintainable at the public expense

PSWC Private Street Works Code set out in sections 205 to 218 of the Act

Key Points

Key Points will be points of importance that have a significant or direct effect on the Plans targets or outcomes

Key Points will be highlighted like this throughout the document.

Critical Items

Critical Items will be items that have a direct effect on meeting the targets or timescales set within the Plan. These Items will ultimately determine the scope and success of the Plan.

Critical Items will be highlighted like this throughout the document.

Financial Implications

£ Items that present potential financial implications will be highlighted like this throughout the document

Executive Summary

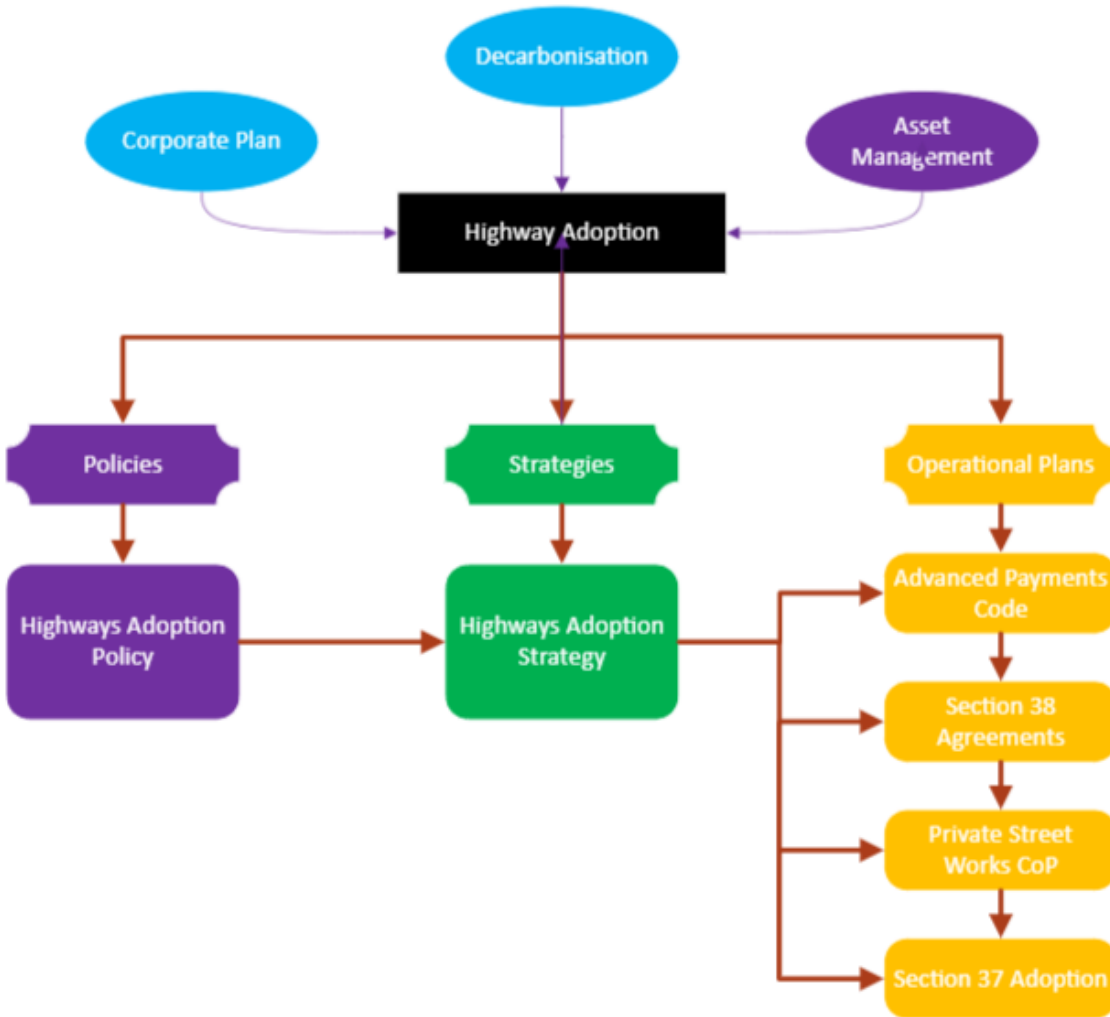
The Private Street Works Code set out in sections 205 to 218 of the Act provides the legal framework by which the council, as the Highway Authority, can resolve to make up a private street to 'adoptable standard' before carrying out the necessary procedures to adopt the street as a 'highway maintainable at the public expense'.

The Council has considerable discretion in exercising its powers to adopt highways under the Highways Act 1980. Under the legislation, the council has the power to instigate private street works, however in practice schemes are only progressed if the majority of frontagers on the street have requested the works and shown that they understand that they will be responsible for paying for the cost of this work upon completion.

This CoP describes how frontagers may request that a scheme be progressed on their street and the subsequent process and procedure that will take place.

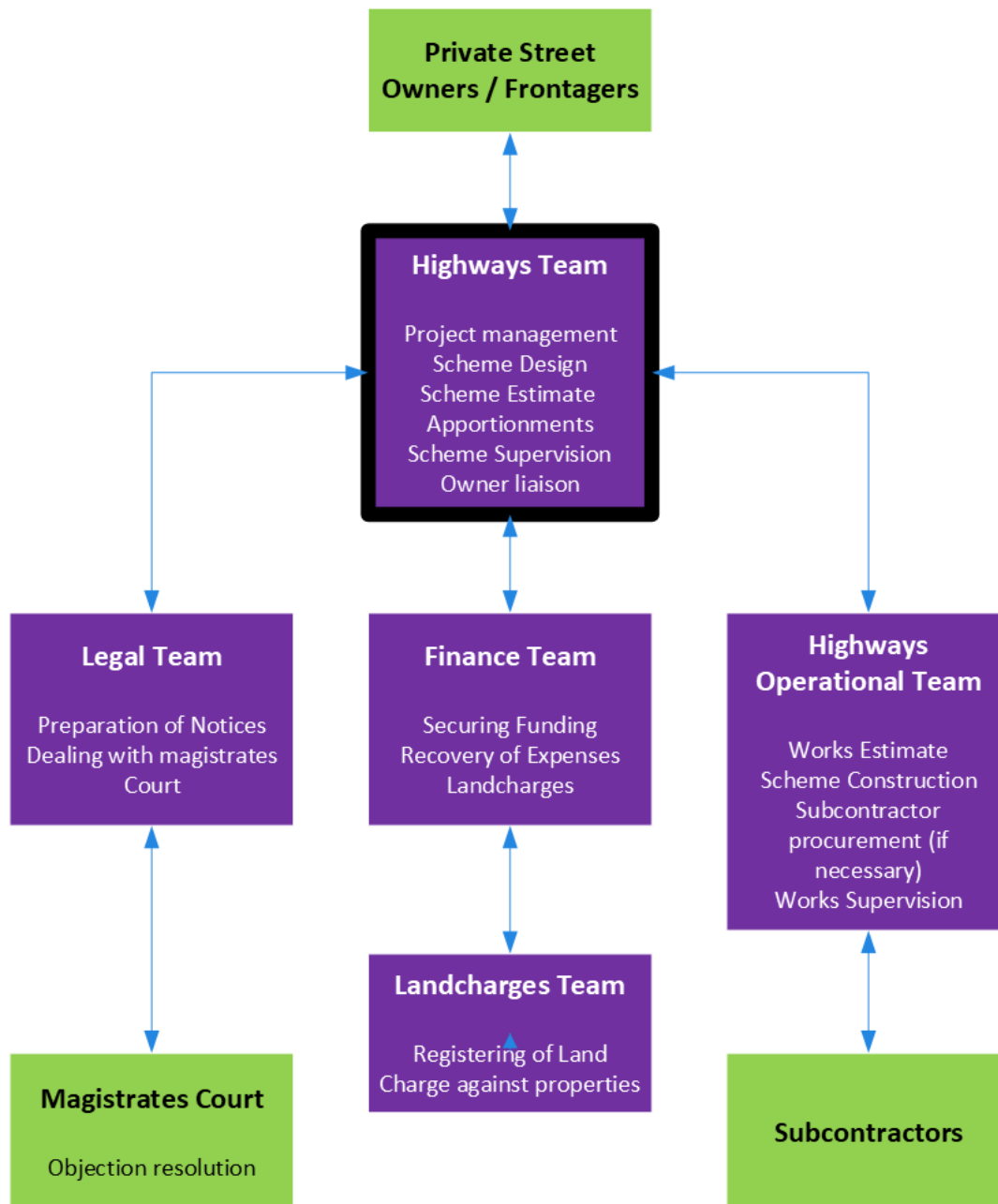
Document Hierarchy

Highway Adoption



Areas of Influence

Inter Departmental and Outside Bodies Links



Private Street Works Code

Introduction

Under the legislation, the council has the power to instigate private street works, however in practice schemes are only progressed if the majority of frontagers on the street have requested the works and shown that they understand that they will be responsible for paying for the cost of this work upon completion. This request is usually in the form of a petition to the council, a sample template of which is set out in [Appendix 1](#).

The council would expect a minimum of 80% of the frontagers on the street to request the works before they would consider progressing a scheme.

Irrespective of the desire of the majority of frontagers to progress a scheme, the council will not normally instigate private street works unless:

- The private street links directly to an existing adopted street
- The private street complies or can be made to comply, with the authority's layout and constructional adoptable standards
- Those seeking adoption have legal title to the land over which the private street runs, and the frontage property or property gaining benefit / access from the private street;
- The private street, if adopted, would provide sufficient wider public benefit.

Resolution to execute street works

Upon receipt of a request from the frontagers of a street to carry out private street works, a report will be prepared for submission to the Executive Board where a decision will be made as to whether to reject or accept the request.

Should the request be accepted, the council will pass a resolution in accordance with Section 205(1) of the Highways Act 1980, to execute street works on the named street and, subject to the Private Street Works Code, apportion the costs in undertaking the works between the premises fronting the street.

The resolution will:

- Recognise that the street is not constructed to a standard suitable for adoption as a publicly maintained highway.
- Authorise the execution of a Private Street Works Scheme.
- Instruct the appropriate Director ('proper officer of the council') to design the scheme, (drawings/specifications etc) and prepare an estimate of the cost of the works and Provisional Apportionment's in accordance with Section 205(3) of the Highways Act 1980.

The procedure following the passing of the resolution is as outlined in the flowchart in the next section.

Scheme Design and Costs

Schemes will be designed in accordance with the current Specification for Estate Roads together with any other relevant specifications, British Standards and Codes of Practice in force at the time.

The overall scheme cost will include the provision where necessary of any drainage and new street lighting works. The council will meet the cost of any upgrading of any existing street lighting that is already adopted. The costs of any necessary diversion works of statutory undertakers apparatus will be added to the overall scheme cost.

A standard fee of £1,500 will be charged and added to the overall scheme cost for administrative and legal costs only. Disbursements e.g. advertising costs, etc, will be added to the administrative/legal charge at cost.

Design, supervision and contract administration will be charged as follows and added to the overall scheme cost:

Tender Value (£,000)	Fee (%age of tender value)
10 – 50	10
50 – 60	9.5
60 – 70	9.0
70 – 80	8.5
80 – 90	8.0
Over 90	7.5

Resolution of Approval

Once the scheme has been designed and an estimate of the cost of the works and Provisional Apportionment's has been prepared, a report will be submitted to the appropriate Executive Member seeking approval. In accordance with Section 205(3) and paras. 1 to 4 of Schedule 16 of the Act, the report will contain the specification, plans, sections, estimate and provisional apportionments.

The approval of the Executive Member, with or without any modifications or additions, is referred to as 'the resolution of approval'.

Notices

Following the 'resolution of approval', Notices shall be published once in each of 2 successive weeks in a local newspaper circulating in the area of the street works authority and at least once in each of 3 successive weeks shall be posted in a prominent position, in or near to the street to which the resolution relates.

In addition, within 7 days of the first Notice being published in the local newspaper, notice shall be served on the owners shown to be liable to be charged in the provisional apportionment.

A sample notice can be found at [Appendix 2](#)

Provisional Apportionment

The overriding consideration when calculating the provisional apportionments shall, in accordance with Section 207 (1) of the Act, be the frontage of the respective premises.

Section 207 (2) of the Act allows the street works authority to consider ‘*the greater or less degree of benefit to be derived by premises from the street works*’ when settling the apportionment. In this respect, the council will designate an ‘effective length’ for each frontage as follows:

Type of Frontage	Level of Access to Private Street	Effective Length	
Normal Frontage	Main Access	100% of Frontage Length	or the average effective length of Normal Frontages (whichever is least)
Flank Frontage (Domestic) Or Rear Frontage	Vehicular Access	66% of Frontage Length	
	Pedestrian Access Only	50% of Frontage Length	
	No Access	33% of Frontage Length	
Flank Frontage (Industrial / Business)	n/a	100% of Frontage Length	
Premises not fronting the street	Access through a court, passage, or otherwise,	To be determined individually depending upon circumstances but not to exceed 25% of the average effective length of Normal Frontages	

Provisional apportionments will be based on this ‘effective length’ of frontage for each parcel of land although the Council still needs to subsequently consider the greater or lesser degree of benefit to be derived by any premises from the street works in settling any apportionment..

Sample provisional apportionment letters and notice are set out in [Appendix 3](#).

Final Apportionment

£ In accordance with Section 211 of the Act, once the street works have been completed and expenses and costs of the scheme have been finalised, notice of the final apportionment will be served on the owners in the same proportions, either original or amended, as per the provisional apportionment.

A sample notice and covering letter can be found at [Appendix 4](#)

Objections to Apportionments

An owner of premises that has been served a notice of apportionment, either provisional or final, may, during one month from the date of the notice, on certain grounds object to their proposals by serving notice on the council.

Provisional Apportionment

Under Section 208 of the Act the grounds on which objection may be made by owners with regard to the provisional apportionment are:

- that the alleged private street is not a private street or as the case may be that the alleged part of a private street is not a part of a private street,
- that there has been some material informality defect or error in or in respect of the resolution notice plans sections or estimate,
- that the proposed works are insufficient or unreasonable,
- that the estimated expenses of the proposed works are excessive,
- that any premises ought to be excluded from or inserted in the provisional apportionment,
- that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or, where the provisional apportionment is made with regard to other considerations than frontage in respect of the degree of benefit to be derived by any premises or the amount or value of any work already done by the owner or occupier of premises.

Final Apportionment

Under Section 211 of the Act the grounds on which objection may be made by owners with regard to the provisional apportionment are:

- that there has been an unreasonable departure from the specification, plans and sections;
- that the actual expenses have without sufficient reason exceeded the estimated expenses by more than 15 per cent.;
- that the apportionment has not been made in accordance with this section

Recovery of Expenses

On completion of the objection period individual invoices should be raised for each property and sent to each owner together with a covering letter, a sample of which can be found at [Appendix 5](#).

Every attempt should be made to recover the costs in full within the invoice timescales; however, should this not be possible, the Council may have to allow payment over a period which should not normally exceed 10 years but this may, in cases of undue hardship, be extended up to a maximum period of 30 years. In these cases, interest is chargeable on the debt from the date of the final apportionment (Section 212 (2) of the Act). The appropriate interest rate should be obtained from the Council's finance officers and included in the covering letter sent out with the invoices.

Adoption

At the end of any maintenance period on the works and on the completion of any remedial works required, notices should be displayed in a prominent position on the street declaring the council's intention to adopt the street as a highway maintainable at the public expense.

A sample notice can be found at [Appendix 6](#)

Appendix 2 – Advertising and Street Notice

Blackburn with Darwen Borough Council

(Insert street name)

s205 Highways Act 1980 (Private Street Works Code)

NOTICE is given that:

- 1 Blackburn with Darwen Borough Council being the street works authority, having resolved to execute street works in the Private Street known as *(insert street name)* under the provisions of the Highways Act 1980, on *(insert date)* duly passed the further resolution on *(insert date)* by the Executive Member for *(insert portfolio name)* of the Council (known as the Resolution of Approval).
2. For a period of one month from *(insert date)* copies certified by the Council's proper officer of the specification, plans, sections, estimate and provisional apportionment referred to in such resolution will be kept deposited at the offices of the Information Desks, Town Hall, Blackburn and Town Hall, Darwen on Mondays to Fridays inclusive between the hours of 10.00 a.m. and 4.00 p.m. (excluding Bank Holidays).
3. During one month from *(insert date)* an owner of premises liable to be charged with any part of the expenses of executing the street works may object to the proposal to execute the works.
4. The grounds on which objection may be made by you are:
 - 4.1 that the alleged private street is not a private street or as the case may be that the alleged part of a private street is not a part of a private street,
 - 4.2 that there has been some material informality defect or error in or in respect of the resolution notice plans sections or estimate,
 - 4.3 that the proposed works are insufficient or unreasonable,
 - 4.4 that the estimated expenses of the proposed works are excessive,
 - 4.5 that any premises ought to be excluded from or inserted in the provisional apportionment,
 - 4.6 that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or, where the provisional apportionment is made with regard to other considerations than frontage in respect of the degree of benefit to be derived by any premises or the amount or value of any work already done by the owner or occupier of premises.
- 5 Where premises are owned jointly by two or more persons, a notice of objection may be given on behalf of those persons by one of their number if he is authorised in writing by a majority of them to do so.

Dated *(insert date)*

(insert designated officer's name and title)

Blackburn with Darwen Borough Council
Town Hall, Blackburn BB1 7DY

Appendix 3 – Provisional Apportionment

Sample Letter

Name

Date:

Address Line 1

My Ref:

Address Line 2

Please ask for:

Town

Tel.No.:

Postcode

Dear (*insert owners name*),

**Re: (*insert street name*) – s205 Highways Act 1980 (Private Street Works)
Provisional Apportionment - (*insert property address*)**

I hereby give notice that Blackburn with Darwen Borough Council being the street works authority, having resolved to execute street works in the Private Street known as (*insert street name*) under the provisions of the Highways Act 1980, on (*insert date*) duly passed the further resolution on (*insert date*) by the Executive Member for (*insert portfolio name*) of the Council (known as the Resolution of Approval).

I attach an official notice of works which has been advertised in the local newspaper and posted on site at (*insert street name*) and which you can now consider as having been served on you.

The provisional apportionment of costs between the premises liable to be charged with them under the private street works code has been carried out in accordance with the Council's Code of Practice on Private Street Works and is based on each property's linear frontage to the street, but with some discounts for flank frontagers. The total scheme cost has been estimated at £(*insert cost*) which includes a cost of £(*insert cost*) to upgrade the existing street lighting. The street lighting costs are the responsibility of the council and therefore the actual cost to be apportioned to the frontagers is £(*insert cost*). The total effective frontage length of (*insert street name*) has been measured at (*insert length*) metres which means that the cost apportioned to each linear metre of frontage equates to £(*insert cost*) (not including VAT).

I am writing to you as the owners of the above premises to inform you that the sum apportioned to your premises by the provisional apportionment is £(*insert owners share pre VAT*) excluding VAT (£(*insert owners share inc VAT*) incl. VAT).

As explained in the attached notice, within one month from (*insert date*), owners who are liable to be charged with any part of the expenses of executing the street works may, by notice to the street authority, object to the proposals on specific grounds. The grounds for objection are outlined in s4 of the attached notice served on you or alternatively can be found in Section 208(1) of the Highways Act 1980. Any objection made under Section 208(1) which is not withdrawn may be referred to a magistrate's court to be resolved.

Yours sincerely

Sample Notice

Blackburn with Darwen Borough Council

(Insert street name)

s205 Highways Act 1980 (Private Street Works Code)

NOTICE is given that:

1. Blackburn with Darwen Borough Council being the street works authority, having resolved to execute street works in the Private Street known as *(insert street name)* under the provisions of the Highways Act 1980, on *(insert date)* duly passed the further resolution on *(insert date)* by the Executive Member for *(insert portfolio name)* of the Council (known as the Resolution of Approval).
2. For a period of one month from *(insert date)* copies certified by the Council's proper officer of the specification, plans, sections, estimate and provisional apportionment referred to in such resolution will be kept deposited at the offices of the Information Desks, Town Hall, Blackburn and Town Hall, Darwen on Mondays to Fridays inclusive between the hours of 10.00 a.m. and 4.00 p.m. (excluding Bank Holidays).
3. During one month from *(insert date)* an owner of premises liable to be charged with any part of the expenses of executing the street works may object to the proposal to execute the works.
4. The grounds on which objection may be made by you are:
 - 4.1. that the alleged private street is not a private street or as the case may be that the alleged part of a private street is not a part of a private street,
 - 4.2. that there has been some material informality defect or error in or in respect of the resolution notice plans sections or estimate,
 - 4.3. that the proposed works are insufficient or unreasonable,
 - 4.4. that the estimated expenses of the proposed works are excessive,
 - 4.5. that any premises ought to be excluded from or inserted in the provisional apportionment,
 - 4.6. that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or, where the provisional apportionment is made with regard to other considerations than frontage in respect of the degree of benefit to be derived by any premises or the amount or value of any work already done by the owner or occupier of premises.
5. The amount of the estimated expenses of the street works apportioned in the provisional apportionment against the premises known as *(insert property address)* of which you are the owner or reputed owner is £*(insert owners share pre VAT)* excluding VAT (£*(insert owners share inc VAT)* incl. VAT).
6. Where premises are owned jointly by two or more persons, a notice of objection may be given on behalf of those persons by one of their number if he is authorised in writing by a majority of them to do so.

Dated *(insert date)*

(insert designated officer's name and title)

Blackburn with Darwen Borough Council
Town Hall, Blackburn **BB1 7DY**

Appendix 4 - Final Apportionment

Sample Letter

Name	Date:
Address Line 1	My Ref:
Address Line 2	Please ask
Town	for:
Postcode	Tel.No.:

Dear (*insert owners name*),

**Re: (*insert street name*) – s205 Highways Act 1980 (Private Street Works)
Final Apportionment – (*insert property address*)**

Blackburn with Darwen Borough Council being the street works authority, have completed the street works in the Private Street known as (*insert street name*) under the provisions of the Highways Act 1980, as outlined in the Resolution of Approval passed on (*insert date*) by the Executive Member for (*insert portfolio name*) of the Council.

The final apportionment of costs between the premises liable to be charged with them under the private street works code has been carried out in accordance with the Council's Code of Practice on Private Street Works and is based on each property's linear frontage to the street, but with some discounts for flank frontagers. The estimated cost used for the provisional apportionment to the frontagers was (*insert estimated cost used for provisional apportionment*) however, I can now inform you that the final cost to be apportioned is (*insert final scheme cost*).

The total effective frontage length of (*insert street name*) has been measured at (*insert length*) metres which means that the final cost apportioned to each linear metre of frontage equates to £(*insert cost*) (not including VAT).

I am writing to you as the owners of (*insert property address*) and hereby give notice that the sum apportioned to your premises by the final apportionment is £(*insert owners share excl. VAT*) excluding VAT (£(*insert owners share inc VAT*) incl. VAT).

As explained in the attached notice, within one month from the date of the notice, owners who are liable to be charged with any part of the expenses of executing the street works may, by notice to the street authority, object to their final apportionment on specific grounds. The grounds for objection are outlined in s2 of the attached notice served on you or alternatively can be found in Section 211(2) of the Highways Act 1980. Any objection made under Section 211(2) that is not withdrawn may be referred to a magistrate's court to be resolved.

Yours sincerely,

Sample Notice

Blackburn with Darwen Borough Council

(insert street name)

s205 Highways Act 1980 (Private Street Works Code)

NOTICE is given that:

- 1 Blackburn with Darwen Borough Council being the street works authority, having resolved to execute street works in the Private Street known as *(insert street name)* under the provisions of the Highways Act 1980, on 9th February 2012 and having passed the further resolution on 23 August 2013 by the Executive Member for Regeneration of the Council (known as the Resolution of Approval).
5. During one month from the date of this notice, an owner of premises shown in the apportionment as liable to be charged may, by notice to the authority, object to the apportionment on the following grounds contained in Section 211 of the Highways Act 1980, or any of them:-
 - a) that there has been an unreasonable departure from the specification, plans and sections;
 - b) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than 15 per cent.;
 - c) That the apportionment has not been made in accordance with this section
6. The amount of the final costs of the street works apportioned in the final apportionment against the premises known as «Number» «Street», Blackburn, «Postcode» of which you are the owner or reputed owner is £«Owners_Share_pre_VAT» excluding VAT (£«Owners_Share_inc_VAT».00 incl. VAT).
- 6 Where premises are owned jointly by two or more persons, a notice of objection may be given on behalf of those persons by one of their number if he is authorised in writing by a majority of them to do so.

Dated *(insert date)*

(insert designated officer's name and title)

Blackburn with Darwen Borough Council
Town Hall, Blackburn **BB1 7DY**

Blackburn with Darwen Borough Council

(insert street name)

s205 Highways Act 1980 (Private Street Works Code)

Final Apportionment of Ascertained Expenses of Street Works Executed in *(insert street name)* Pursuant to Resolution of the Council dated *(insert date)*

Scheme Details (all sums pre VAT):

Estimated expenses£
To be contributed by council under section 236£
Total amount provisionally apportioned£
Total ascertained expenses.....£
To be contributed by council under section 236£
Amount to be finally apportioned£

Property Details:

Property.....*(insert property address)*
Owner(s).....*(insert owners name and address)*

Provisional Apportionment (pre VAT).....£
Gross Final Apportionment (pre VAT).....£
Contribution by council under section 236.....£
To be borne by council under section 215.....£
Net final apportionment (pre VAT).....£

Total Final Apportionment (incl VAT)£

Dated: *(insert notice date)*

(insert designated officer's name and title)

Blackburn with Darwen Borough Council
Town Hall, Blackburn **BB1 7DY**

Appendix 5 – Recovery of Expenses

Sample Letter

Name

Date:

Address Line 1

My Ref:

Address Line 2

Please ask

Town

for:

Postcode

Tel.No.:

Dear (*insert owners name*),

**Re: (*insert street name*) – s205 Highways Act 1980 (Private Street Works)
Request for Payment - (*insert property address*)**

I refer to the final apportionment letter of the (*insert date*) sent to all owners of property fronting onto (*insert street name*). I can confirm that any objections received to this notice have now been resolved and I now enclose for your attention the invoice for your section of the works.

As indicated in the final apportionment letter, the sum invoiced to your premises is £(*insert owners share excl. VAT*) excluding VAT (£(*insert owners share inc VAT*) incl. VAT). The Council expects this invoice to be paid in full within the timescales outlined on the invoice. If you need to arrange finance terms then this preferably should be with a conventional lending institution e.g. Banks and Building Societies. In the event that you are not able to obtain finance through these institutions then the Council might act as 'lender of last resort'. Should this be the case then you may be allowed to extend your payments over a period not exceeding 10 years with interest charged at Base Rate plus (*insert rate*)% on the date of serving the Final Apportionment's. In exceptional circumstances, where the Council is satisfied that undue hardship will be caused, this period may be extended but not exceeding 30 years

Should you have any queries regarding your payment, please see the invoice for the appropriate contact details to use.

Yours sincerely

Appendix 6 - Adoption

Sample Notice

Blackburn with Darwen Borough Council

Adoption of (*insert street name*) following Private Street Works

Notice Pursuant to Section 228 Highways Act 1980

NOTICE is given that:

- (1). Pursuant to Section 228 of the Highways Act 1980, and following the execution of street works, Blackburn with Darwen Borough Council as street works authority DECLARE the section of (*insert street name*) defined in the schedule below to be a highway which, for the purposes of the Highways Act 1980 is a highway maintainable at the public expense and on the expiration of one month from the date of this Notice shall, subject to (2) below, become such a highway.

Schedule

the private street known as (insert street name) between (insert description of length of works).

- (2). An owner of any part of the street defined in the schedule above may object to the declaration of the Council that the street is a highway maintainable at the public expense by making such objection in writing to the address set out below within one month from the date of this Notice.

Dated (*insert date*)

(insert designated officer's name and title)

Blackburn with Darwen Borough Council

Town Hall, Blackburn, **BB1 7DY**

**CODE OF
PRACTICE ON
PRIVATE STREET
WORKS**

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Revised June 1996

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1. INTRODUCTION

- 1.1 The following Code of Practice approved by the Highways and Transportation Committee in June 1993 replaces an earlier code which was approved in 1975.

The new Code of Practice has been formulated following discussions with District Council Engineers and consultations with District Councils.

- 1.2 The Code covers the following subjects all of which are delegated to District Councils under the Highways Agency Agreement:-

- i) Making up of streets by a District Council under the Private Street Works Code of 1892.
- ii) Advance Payments Code- deposits and Section 38 Agreements (Highways Act 1980).
- iii) Adoption procedures in respect of new estate roads constructed by developers.

- 1.3 Documents to be referred to in conjunction with this Code of Practice are:-

- i) The Specification for the Construction of Estate Roads 1992.
- ii) Model Agreement under Section 38 of the Highways Act 1980.

- 1.4 District Councils require no authority from the County Council to initiate primary consideration and preparation of private street works schemes, but are advised to consult the County Surveyor as to the availability of resources from the Private Street Works Capital Programme before inviting tenders for a scheme.

- 2. MAKING-UP OF PRIVATE STREETS IN ACCORDANCE WITH THE CODE OF 1892**
- 2.1 a) The payment by the street works authority in respect of domestic flank frontages shall be one third of the expenses apportioned on the premises where the flank frontager has a garage access to the street being made up.
- b) The payment by the street works authority in respect of domestic flank frontages shall be one half of the expenses apportioned on the premises where the flank frontage has a pedestrian access only to the street being made up.
- c) The payment by the street works authority in respect of domestic flank frontages shall be two-thirds of the expenses apportioned on the premises where the flank frontage has no access of any kind to the street being made up.
- d) Notwithstanding a), b) and c) above, the charge on a domestic flank frontage of any description shall not exceed the average charge on the principal frontages to the street being made up.
- e) Where a flank frontage is associated with a business use of premises, there shall be no contribution towards the flank frontage costs by the street works authority.
- f) The contribution towards the cost of rear frontages to a street being made up to adoption standards shall be one third of the frontage costs.
- g) The County Council will meet all costs which are extra commercium.
- 2.2 Where it is necessary, in order to drain the street, to provide a surface water sewer where none exists, the cost within the limits of the street to be met by the frontagers as part of the overall street works charges.
- 2.3 Vehicle crossings, in all cases, to be provided as part of the overall street works costs.
- 2.4 Only where it is established after consultation with the Statutory Undertaker concerned that the cost of diversion of services is to be met by the street works authority, will this cost be met by the County Council?
- 2.5 The District Council shall approve the street lighting design in accordance with the County Surveyor's street lighting specification. Where no lighting exists, then the cost shall be met by the frontagers as part of the overall street works costs.
- 2.6 All schemes to be prepared on a frontage basis. If a District Council desires to use the degree of benefit provisions then the prior approval of the County Council shall be obtained. The apportionments on frontagers shall include an administration fee in accordance with the following scale:-
- a) Where all the Private Street Works procedures are involved in a scheme there shall be a minimum administration fee of £1,000. Otherwise the rule of "no scheme, no fee" applies.
- b) For schemes costing between £10,000 and £50,000, the administration fee shall be 10% of the tender figure.

- c) For schemes costing over £50,000 and up to a maximum of £90,000, the administration fee shall be based on the following scale. Above £90,000, the administration fee shall be 7.5% of the tender figure.

£50,001 - £60,000	-	£5,225
£60,001 - £70,000	-	£5,850
£70,001 - £80,000	-	£6,675
£80,001 - £90,000	-	£6,800
£90,001 and over	-	7.5%

- 2.7 The District Council shall determine objections to the making up of private streets under Section 209 of the Highways Act 1980, except for those under Sub-Section 1(a). Objections claiming the private street is not a private street shall not be accepted or referred to the Magistrates' Court without the prior approval of the County Council.
- 2.8 A copy of the plan, estimate and provisional apportionment shall be sent to the County Surveyor for his information.
- 2.9 The County Council shall be advised when adoption is operative.
- 2.10 Where under the relevant statutory provisions notices are required to be served or posted, these notices should, when appropriate, indicate any right of appeal and or objection even when this is not a statutory requirement.

3. ARRANGEMENTS FOR REIMBURSEMENT OF EXPENDITURE AND COLLECTION OF INCOME

- 3.1 The District Council shall apply to the County Council for reimbursement of all costs in accordance with the Financial Memorandum on Highways Agency Arrangements.
- 3.2 The costs to be reimbursed to District Councils shall include the total contract figure, the cost of street lighting, the appropriate administration fee and the cost of any land purchases.
- 3.3 The District Council shall collect the amount of the final apportionment, including the appropriate administration charge, plus interest where appropriate from the frontagers and shall pay all private street works income collected to the County Treasurer at monthly intervals.
- 3.4 Arrangements shall be made for frontagers where requested to repay the amount of the final apportionment by installments over a period of not normally exceeding 10 years. This limit should only be exceeded in exceptional circumstances, where the District Council are satisfied that undue hardship will be caused and in this event the maximum period must not exceed 30 years.
- 3.5 If the full amount of the final apportionment is paid within three calendar months from the date of the Notice, no interest should be charged. However, should the frontager wish to discharge the full sum, a condition of the acceptance of payment by installments should be that, should the frontager fail to make payment of any installment by the due date, or should any transfer of ownership of the property referred to in the Notice occur, the outstanding balance of the principal sum apportioned to the premises, plus interest thereon, would at once become payable. Under the installment arrangements, the frontager should be required to pay an initial sum forthwith (if paid within three months of the date of the notice, no interest should be charged upon this initial sum) followed by a number of annual payments depending upon the period over which the frontager wishes the payments to be spread, the first of which will become due on the anniversary of the date of the Notice.

4.1 Deposits

The District Council will administer the Advance Payments Code entirely, subject to the use of an agreed specification and a calculation for the deposit figure. Where deposits are made and the street is subsequently made up by the Developer and accepted for adoption on completion of the maintenance period, a 90% repayment may be made to the developer, after consultation with the frontagers in accordance with Section 221 of the Highways Act 1980.

4.2 Section 38 Agreements

1. the Agreement to be supported by a Surety or cash Deposit;
2. a maintenance period of 12 months;
3. the bond figure to be reduced by 90% at the commencement of the maintenance period, the remaining 10% being retained until after all the streets have been adopted;
4. the cost of street lighting to be met by the developer;
5. where the developer has produced a layout and, in the opinion of the District Council it would present unusual maintenance problems, then before entering into an agreement, they shall discuss the layout with the County Surveyor.

5. ADOPTION PROCEDURE

5.1 Developers to supply the District Council with street works details, to include a plan, longitudinal section, typical cross-section, gully positions and surface water details. The District Council shall supply the County Surveyor with a copy of the finally approved plan before work commences on site.

5.2 The District Council shall supervise the construction of all new streets, in liaison with the County Council's Divisional Surveyor. A final joint inspection to take place after a request for adoption has been made by the developer.

The formal adoption procedure to be carried out by the District Council. When adoption is operative, the District Council shall supply the County Council with a copy of a plan showing street names and house numbers and length of adopted highway indicated in colour.