

## **Swindon Internal Audit Services**

### ***Chief Executive's***

***Strictly Private and Confidential***

## **Section 38 Agreements (Adoption by Agreement)**

**Report status: Final**

***Report date:*** 7<sup>th</sup> September 2010

***Report Reference:*** ER&C/S38/SH

***Auditor:*** Steve Hayward

***Issued by:*** Lorraine Sarson - Principal Auditor

<b>Contents</b>	<b>Page</b>
Section 1	Executive Summary
Section 2	Introduction
Section 3	Approach
Section 4	Risk Areas Examined
Section 5	Overall Opinion
Section 6	Secure Procedures
Section 7	Acknowledgement
Section 8	Action Plan

Appendices:

A: Standard Audit Opinions

---

**Report distribution:**

**Draft for discussion issued 25<sup>th</sup> June 2010:**

Claire Cornelius	Transport Development Manager
Gwillam Lloyd	Head of Highway Network Management

**Draft issued 4<sup>th</sup> August 2010:**

Claire Cornelius	Transport Development Manager
Gwillam Lloyd	Head of Highway Network Management

**Final issued 7<sup>th</sup> September 2010:**

Claire Cornelius	Transport Development Manager
Gwillam Lloyd	Head of Highway Network Management
Celia Carrington	Group Director of Environment, Regeneration and Community
Dave Potter	Director of Planning and Transport
Adrian Arnold	Head of Finance – Environment, Regeneration and Community

## 1 Executive Summary

- 1.1 This review was undertaken as part of Internal Audit's annual plan for 2010/11 in order to provide assurance to the Director of Planning and Transport that the risk and control environment around S38 Agreements work is effectively managed and delivered in accordance with the Highways Act 1980.
- 1.2 Section 38 (S38) Agreements is the statutory service provided for under the Highways Act 1980 Section 38. These agreements allow for roads built by developers, as part of a development on private land, to be adopted and maintained by the relevant local authority. Developers do not have to offer roads for adoption, but if they wish to do so they must enter into a S38 Agreement. Such agreements are legally binding.
- 1.3 All work is undertaken at the developers expense but the agreement sets out the agreed location and standards the road(s) need to be constructed to. This is achieved by including, as part of the agreement, approved technical drawings/specifications.
- 1.4 It is only in the last year or so that the service has returned fully in-house after a period when it was out sourced to a partner organisation. The audit found that the approach to S38 work was very task focussed i.e. managing individual agreements. In doing this the staff showed considerable knowledge of the process and individual agreements.
- 1.5 However, there was an absence of formalised management controls for the S38 service, although this does not appear to have compromised the statutory service provision. These included the absence of:
  - Monitoring the cost of the service.
  - Regular, formal management information.
  - Quality assurance activity.
  - Setting and monitoring performance indicators.
- 1.6 S38 Agreements are important in ensuring the Council adopts suitably constructed roads to ensure future maintenance costs are minimal. The process is therefore deemed to be of medium materiality and impact. This combined with mitigating controls concerning identified risks deemed satisfactory, gives an overall risk assessment to the Council of **moderate**.
- 1.7 The main recommendations from the audit work to improve the risk and control environment are:
  - To maintain the quality of record keeping and ensure due process is followed, a S38 quality assurance programme should be introduced. This will provide a systematic monitoring and evaluation process at the various stages and approvals required to successfully complete a S38 agreement.

- To ensure the fees received are realistic and fully cover the cost of the service provided, individual trading accounts should be introduced for the higher value jobs. This would include charging time against each project. Currently the section cannot demonstrate whether fees charged reflect the true cost of the work carried out i.e. break even.
- Regular management reporting should be introduced so that management can monitor overall service performance and address any significant issues that may need escalating on a timely basis i.e. agreements where developers are not undertaking remedial work promptly, quality standards are not achieved leading to re-inspections or lengthy delays in completing a S38 Agreement (4 current files reviewed during the audit were up to 10 years old). To facilitate this a set of S38 agreement performance indicators should be developed and periodically reported on. These should feed into the LPAR process to demonstrate how the S38 Team provides a cost effective service and meet the needs of their customers and communities.

## **2 Introduction**

- 2.1 This review was undertaken as part of Internal Audit's annual plan for 2010/11 in order to provide assurance to the Director of Planning and Transport that the risk and control environment around S38 Agreements work is effectively managed and delivered in accordance with the Highways Act 1980.
- 2.2 The Council's S38 service has had staffing issues in recent years with difficulty in recruiting suitable experienced and qualified staff and having no manager for a while. This led to work being outsourced to partner organisations, mainly Halcrow. It is only in the last year or so that the in-house position has stabilised with the appointment of a Transport Development Manager and support staff to deliver the S38 service.
- 2.3 At the time of the audit there were 89 formal S38 agreements in place, together with another 119 awaiting final agreement or in progress. Total income received in 2009/10 financial year was approximately £425k.
- 2.4 S38 activity is triggered as part of the planning application process. The developer is contacted (unless they have already contacted Swindon Borough Council) with a view to entering into a S38 agreement. If they wish to have a S38 Agreement, a fee is calculated based on the size of the development and agreed with the developer.
- 2.5 The developer is responsible for producing a set of technical drawings and specifications for the road proposed to be adopted under a section 38 agreement. Subject to Council approval, the developer builds the road(s) at their own expense and to the agreed standard. During road construction there are several staged inspections to ensure works are delivered as agreed i.e. at Part 1, Part 2 and Final stage. Between Part 2 and the Final certificate stage there is a 12-month maintenance period during which time the developer is responsible for maintaining the road. On satisfactory completion of the 12-month period the Final Certificate is issued. At this point, the road(s) is formally adopted and responsibility for conducting and funding future maintenance is passed to the Council with the road added to the Highways Asset Management Register.
- 2.6 The Council's costs of operating the S38 service are recovered through the fees charged. The service must break even as a minimum requirement.

## **3 Approach**

- 3.1 Managers determine the extent of internal control in their systems and are responsible for providing an environment that ensures that resources are properly applied, value for money is secured, fraud and other losses prevented, and the Council's Financial Regulations are complied with.
- 3.2 Internal Audit, as a service to the Directorate and the Council as a whole, contributes to internal control by examining and evaluating its adequacy and effectiveness. The

auditor's responsibility is to form an independent opinion, based on the audit work undertaken, on the reliability of the systems of internal control, risk management and governance, reviewed and report this to the Director of Planning and Transport and to other relevant Managers.

- 3.3 In accordance with best practice, a risk-based approach was adopted that identified the key risks to the business objectives and those mitigating actions/controls that should be in place. The auditor then assessed the effectiveness of the mitigating controls through examination of relevant documents, procedures and detailed testing.
- 3.4 The appropriate managers and senior staff in Transport Development were consulted during the course of the review and examination and testing of relevant documentation and procedures took place within departments.

## 4 Risk Areas Examined

- 4.1 The key risks to the achievement of the business objectives were discussed and agreed with the Director of Planning and Transport before the commencement of the audit. The table below summarises the Risk Areas examined during the review and provides an assessment of the adequacy of the mitigating controls in place for each area of risk examined:

Risk Area Examined	Audit Conclusion re mitigating controls
<ul style="list-style-type: none"><li>S38 Agreements, technical specifications and inspections are not satisfactorily completed. Unfit roads are adopted and the Council exposed to unnecessary road maintenance responsibilities and budget pressures.</li></ul>	<b>Satisfactory</b>
<ul style="list-style-type: none"><li>S38 income is not identified, charged, banked or accounted for in accordance with the Council's Financial Regulations.</li></ul>	<b>Satisfactory</b>
<ul style="list-style-type: none"><li>S38 Agreements are not monitored, managed and delivered in an efficient, effective and cost effective manner. Service performance is poor and the service is operated at a loss.</li></ul>	<b>Significant improvements required</b>

## 5 Overall Opinion

- 5.1 **Materiality and impact: Medium.** The work undertaken by the S38 Team is important to ensure roads are constructed to the Council's requirements and are fit for purpose; the cost and upkeep are the developers' responsibility until adoption. Once adopted it is Swindon Borough Council's responsibility, inline with Code of Practice for Highway Maintenance Management. The fees charged are intended to cover Swindon Borough Council's costs in providing the S38 Agreement service e.g. reviewing, commenting and agreed technical drawings, performing inspections and

issuing certificates. Last year, 2009/10, total fees received were approximately £400k.

- 5.2 **Opinion on system controls: Satisfactory** (see Appendix A) i.e. the auditor completing the review concluded that most of the significant controls are in place and operating satisfactorily although some non-compliance was identified and therefore there is scope for improvement.
- 5.3 **Overall assessment of risk:** the combination of the medium impact of the system, along with the opinion on the system controls gives an overall risk assessment to the Council as being **moderate**:

		<b>MATERIALITY AND IMPACT</b>		
<b>SYSTEM CONTROL</b>		<b>High</b>	<b>Medium</b>	<b>Low</b>
<b>1</b>	<b>High standard</b>	<b>Moderate</b>	<b>Minimal</b>	<b>Minimal</b>
<b>2</b>	<b>Satisfactory</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Minimal</b>
<b>3</b>	<b>Significant Improvements required</b>	<b>Of Concern</b>	<b>Moderate</b>	<b>Moderate</b>
<b>4</b>	<b>Fundamental weaknesses identified</b>	<b>Significant</b>	<b>Of Concern</b>	<b>Moderate</b>

- 5.4 The following recommendations should be implemented in order to achieve the improvements required:
- To maintain the quality of record keeping and ensure due process is followed, a quality assurance programme should be introduced. This will provide a systematic monitoring and evaluation process at the various stages and approvals required to successfully complete a S38 agreement.
  - To ensure the fees received are realistic and fully cover the cost of the service provided, individual trading accounts should be introduced for the higher value jobs. This would include charging time against each project. Currently the section cannot demonstrate whether fees charged reflect the true cost of the work carried out i.e. break even.
  - Regular management reporting should be introduced so that management can monitor overall service performance and address any significant issues that may need escalating on a timely basis i.e. agreements where developers are not undertaking remedial work promptly, quality standards are not achieved leading to re-inspections or lengthy delays in completing a S38 Agreement (4 current files reviewed during the audit were up to 10 years old). To facilitate this a set of S38 agreement performance indicators should be developed and periodically reported on. These should feed into the LPAR process to demonstrate how the

S38 Team provides a cost effective service and meet the needs of their customers and communities.

- 5.5 Management's response to the Internal Audit recommendations is included in the action plan at section 8 of the report on completion of the audit.
- 5.6 All of the matters arising are detailed in the action plan, together with suitable recommendations, together with an indication as to whether the matters arising are of a high, medium or low priority. The action plan provides a checklist of the findings of the review, potential consequences, and identifies officers responsible for implementing the recommendations and appropriate time-scales.

## **6 Secure Procedures**

- 6.1 It was noted that the following secure procedures are now an integral part of the S38 Agreements system:
- The Team is very tasked focussed on individual agreement work and have a high degree of understanding and awareness of S38 Agreements.
  - Based on the evidence seen from the cases tested the raising and collection of fees was satisfactory.
  - From the cases tested the use of the Agreement Co-ordination (used to monitor the key stages of the process), budget code allocation and fees spreadsheets was satisfactory.
  - All files seen had the file checklist in place and it was evident that it was being used.
  - There have been no significant insurance claims following adoption of new highways.

## **7 Acknowledgement**

- 7.1. Internal Audit would like to acknowledge and thank the following Officers who contributed to the review:

<b>Name</b>	<b>Job title</b>
Claire Cornelius	Transport Development Manager
Dave Weston	S38 and Highways Agreement Technician
Gwillam Lloyd	Head of Highway Network Management
Mike Witts	Deputy Group Finance Manager (ER&C)



**Section 8: Action Plan**

The purpose of this action plan is to provide a summary of the matters arising during the audit of S38 Agreements together with the recommendations to mitigate risks, the manager's response to the recommendations, along with the officer responsible and timescale for implementation. In order for you to identify the most significant matters arising, which affect the reliance that can be placed on the controls reviewed, the recommendations have been prioritised.

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
<b>1</b>	<b>Risk: S38 agreements, technical specifications and inspections are not satisfactorily completed. Unfit roads are adopted and the Council exposed to unnecessary road maintenance responsibilities and budget pressures.</b>			
1.1	<p><b>Evidence of Sign Offs</b></p> <p>Prior to the issue of the various certificates involved in the S38 process (Part 1, 2 and Final), inspections and approvals are required to ensure standards are met and achieved at each stage. This includes other areas within the Council i.e. lighting, highways, parks, structures, drainage, and traffic signals. For the Final certificate evidence that Thames water is adopting the sewers is required.</p> <p>This is to ensure that work is completed to the agreed and specified standard. Agreement is needed before certificates can be issued.</p> <p>From the testing it was not possible to find all sign offs/returns. The above applied to 4 files reviewed. They were Agreement numbers 8115, 8128, 3041 and 2696.</p> <p>If they are not received it may lead to certificates being issued but with work outstanding. This could become a cost to the Council, as the developer would have a signed certificate indicating they had achieved the standard for that inspection.</p>	<p>All sign offs for Part 1 and 2 and Final certificates to be obtained and filed/stapled together with a copy of the relevant certificate. They should also be provided as evidence to the person who authorises the certificate.</p> <p>The quality assurance program mentioned in 3.2 below, should included sign off stages as trigger points for reviews.</p> <p><b>Priority: Medium</b></p>	<p><b>Transport Development Manager</b></p> <p>October 2010</p>	<p><b>Recommendation agreed.</b></p> <p>This recommendation will prove useful especially for anyone reviewing the file who is unfamiliar with the project.</p>

**Final Internal Audit Report – Section 38 Agreements**

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
1	<b>Risk: S38 agreements, technical specifications and inspections are not satisfactorily completed. Unfit roads are adopted and the Council exposed to unnecessary road maintenance responsibilities and budget pressures.</b>			
1.2	<p><b>Authorised Personnel</b></p> <p>There was no list of authorised personnel/specimen signatures or email addresses authorised to approve drawings, input from other council areas, inspections and certificates.</p> <p>The key phases covered here include:</p> <ul style="list-style-type: none"> <li>• Technical Approval (agreement to the drawings/specifications).</li> <li>• Part 1 and 2 Certificates</li> <li>• Final Certificate</li> </ul> <p>Whilst all certificates seen had been signed it was difficult to tell by whom, as they did not include a printed name. Although all had a job designation. One Part 2 certificate seen (Agreement 8128) had a “pp” signature on behalf of the Director of Transport.</p> <p>Key documents may not have been authorised. If issues about the quality of a road come to light later the Council could find itself facing repairs if an unfit road is adopted.</p>	<p>A list of all authorised signatories should be produced; identifying the role that each play in the S38 process and setting out what they can authorise. This should include specimen signature/initials and email address. This list should be maintained and updated accordingly.</p> <p>All forms/certificates (Part 1 and 2 and Final) should include a line for the authorised officer to sign and print their name.</p> <p><b>Priority: Medium</b></p>	<p><b>Transport Development Manager</b></p> <p>October 2010</p>	<p><b>Recommendation agreed.</b></p>

**Final Internal Audit Report – Section 38 Agreements**

<b>Ref.</b>	<b>Finding</b>	<b>Recommendations Priority (High/Medium/Low)</b>	<b>Responsible Officer and Timescale</b>	<b>Management Response</b>
<b>1</b>	<b>Risk: S38 agreements, technical specifications and inspections are not satisfactorily completed. Unfit roads are adopted and the Council exposed to unnecessary road maintenance responsibilities and budget pressures.</b>			
1.3	<p><b>Planning Approval</b></p> <p>Part of the S38 procedure includes checking that planning permission had been granted. However this action is not evidenced on the S38 file checklist.</p> <p>Unnecessary work and costs may be incurred if planning permission is not granted prior to initiating a S38 agreement.</p>	<p>The S38 file checklist should be updated to include a specific line stating that planning consent has been checked. Thereafter the check that planning permission has been granted should be evidenced through signing and dating the checklist. The planning agreement number should also be recorded.</p> <p><b>Priority: Low</b></p>	<p><b>Transport Development Manager</b></p> <p>October 2010</p>	<p><b>Recommendation agreed.</b></p> <p>Checks are currently performed but not always evidenced.</p>

**Final Internal Audit Report – Section 38 Agreements**

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
<b>1</b>	<b>Risk: S38 agreements, technical specifications and inspections are not satisfactorily completed. Unfit roads are adopted and the Council exposed to unnecessary road maintenance responsibilities and budget pressures.</b>			
1.4	<b>Spreadsheets</b> The S38 Team use several spreadsheets to track the progress of all agreements, one for budget code allocation and another for fees. One person builds these and the section may find it difficult to maintain if that person left.	Evaluate whether tracking S38 agreements, fees and budget information can be more effectively recorded on the service IT management information system, CAPS Uniform.  Following the above, if the spreadsheets are still required they should be assessed as to how critical they are to the business process being managed, in this case the S38 process. Based on this a decision should be made as to if they need to be tested and documented.  Going forward, new spreadsheet development should be risk assessed as to the importance to the Team's work and how complex they will be e.g. use of formulas, filters, macros etc. Depending on the result the level of testing and documentation should be agreed, to ensure they work as anticipated and can be supported in the future. Spreadsheets identified as high risk should be formally tested and documented and the evidence of testing retained.  <b>Priority: Low</b>	<b>Transport Development Manager</b>  July 2012	<b>Recommendation agreed.</b> CAPS is still being fully developed for the highways module and the full extent of its capabilities are being investigated. It is likely that it has the potential to replace the role of S38 spreadsheets but will require further officer time to develop and funding.

**Final Internal Audit Report – Section 38 Agreements**

<b>Ref.</b>	<b>Finding</b>	<b>Recommendations Priority (High/Medium/Low)</b>	<b>Responsible Officer and Timescale</b>	<b>Management Response</b>
<b>1</b>	<b>Risk: S38 agreements, technical specifications and inspections are not satisfactorily completed. Unfit roads are adopted and the Council exposed to unnecessary road maintenance responsibilities and budget pressures.</b>			
1.5	<b>File Structure</b> There is no standard file structure for the S38 paper files maintained. This makes it difficult to identify and find important documentation on each file.  Key evidence may be lost or mislaid.	Introduce a standard file structure and indexing system to be used. Suggested sections to be included would be fees, legal, technical approvals, inspections and certificates.  <b>Priority: Low</b>	<b>Transport Development Manager</b>  November 2010	<b>Recommendation agreed.</b>

**Final Internal Audit Report – Section 38 Agreements**

<b>Ref.</b>	<b>Finding</b>	<b>Recommendations Priority (High/Medium/Low)</b>	<b>Responsible Officer and Timescale</b>	<b>Management Response</b>
<b>2</b>	<b>Risk: S38 income is not identified, charged, banked or accounted for in accordance with the Council's Financial Regulations.</b>			
2.1	<p><b>Calculation of Fees</b> All files examined had evidence of fees being calculated and applied. However, there was no evidence of who had undertaken this or of any secondary check to ensure they were correct.</p> <p>Fees may be incorrectly charged leading to a loss of income to the authority.</p>	<p>All fee calculations to be printed and signed by the person who produced it. For projects where the estimated cost of works exceeds £500k they should be checked and authorised by a second person. They should then be filed in the fees section of the file.</p> <p>The fee calculation sheet should be maintained along with all the evidence that the fees have been received as the case progresses.</p> <p><b>Priority: Medium</b></p>	<p><b>Transport Development Manager</b></p> <p>October 2010</p>	<p><b>Recommendation agreed.</b></p>

**Final Internal Audit Report – Section 38 Agreements**

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
<b>2</b>	<b>Risk: S38 income is not identified, charged, banked or accounted for in accordance with the Council's Financial Regulations.</b>			
2.2	<p><b>Benchmarking</b> Benchmarking of the fees applied is undertaken, the last time was in Oct 2008, however there is nothing covering other aspects of service and performance such as staffing levels, qualifications, time taken per S38 Agreement and quality of product.</p> <p>Best practice and efficiencies may not be identified.</p>	<p>Besides benchmarking fees the following other areas should be considered:</p> <ul style="list-style-type: none"> <li>• Staffing levels</li> <li>• Qualifications and experience</li> <li>• Average length of time taken to complete up to adoption</li> <li>• Average length of S38 agreements</li> <li>• Relationship management between Local Authorities and developers</li> <li>• Poor developer behaviour, can further fees be charged</li> <li>• Use of external consultants</li> </ul> <p>This will ensure the Council adopts best practice.</p> <p><b>Priority: Medium</b></p>	<p><b>Transport Development Manager</b></p> <p>April 2011</p>	<p><b>Recommendation agreed.</b> We currently participate in sharing S38 information with other highway authorities in the South West. At present none of the authorities we liaise with have indicated they collate this type of information.</p> <p>Setting up the comprehensive benchmarking suggested will require other authorities cooperation and resources.</p> <p>We will endeavour to lead in this area of benchmarking.</p>

**Final Internal Audit Report – Section 38 Agreements**

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
<b>3</b>	<b>Risk: S38 agreements are not monitored, managed or delivered in an efficient, effective and cost effective manner. Service performance is poor and the service operating at a loss.</b>			
3.1	<p><b>Management Information</b></p> <p>The Team does not produce formal, regular management information, nor have they been asked to, on S38 work or issues. They may be occasionally asked for ad hoc information or to respond to inquiries from officers or members.</p> <p>Management may be unaware of workload and significant issues and not able to make informed business decisions.</p>	<p>Regular management information to be developed. It should be issued and reviewed regularly and include:</p> <ul style="list-style-type: none"> <li>• Reporting on performance indicators with reasons for variations.</li> <li>• Agreements still current after 3 years along with management action/reasons.</li> <li>• Issues with developers' e.g. poor responses to request to undertake remedial action, refusal to take actions.</li> <li>• Budget position together with income received/expected</li> </ul> <p>This will enable performance, especially of developers, to be managed more effectively.</p> <p>The CAPS system is used to record most aspects of a S38 Agreement as work progresses. It should be ascertained if queries can be written to produce the management information required. This will ensure the information can be quickly and efficiently produced.</p> <p>Furthermore the reporting process and performance indicators should be integrated into the Local Performance Action Review process.</p> <p><b>Priority: High</b></p>	<p><b>Transport Development Manager</b></p> <p>November 2010</p>	<p><b>Recommendation agreed.</b></p>



**Final Internal Audit Report – Section 38 Agreements**

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
<b>3</b>	<b>Risk: S38 agreements are not monitored, managed or delivered in an efficient, effective and cost effective manner. Service performance is poor and the service operating at a loss.</b>			
3.2	<p><b>Quality Assurance</b></p> <p>There is no quality assurance (QA) activity undertaken, either by peers level or management, to ensure the quality and accuracy of work undertaken on a S38 Agreement. The work and recording of information is down to the officer allocated the case. See also the earlier findings report at 1.3 and 1.6 in this section.</p> <p>Key activity may not take place or relevant information/evidence logged leading to disputes and financial costs for the Council.</p>	<p>An evidenced based Quality Assurance (QA) system should be introduced. At key trigger points in the S38 process QA should be undertaken:</p> <ul style="list-style-type: none"> <li>• Technical Approval.</li> <li>• Part 1 certificate.</li> <li>• Part 2 certificate.</li> <li>• Final certificate.</li> <li>• Hand over to Asset Management on adoption.</li> </ul> <p>Each S38 file should be reviewed to ensure everything has occurred and is on file before issue of any authorised documentation appropriate at each trigger stage. This activity should be evidenced on the checklist.</p> <p>This will provide a systematic monitoring and evaluation process at the various stages and approvals required to successfully complete a S38 agreement</p> <p><b>Priority: High</b></p>	<p><b>Transport Development Manager</b></p> <p>October 2010</p>	<p><b>Recommendation Agreed</b></p> <p>Agree to file review at critical stages by senior officer.</p>

**Final Internal Audit Report – Section 38 Agreements**

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
<b>3</b>	<b>Risk: S38 agreements are not monitored, managed or delivered in an efficient, effective and cost effective manner. Service performance is poor and the service operating at a loss.</b>			
3.3	<p><b>Performance Indicators</b></p> <p>There are no performance indicators set for the S38 work by Management. A comment made to Audit, by the Transport Development Manager, was that the Team have to carry out rework and chase up of developers especially to ensure remedial work is completed promptly. This will obviously have time and cost implications, but without indicators in place and management information being available, this statement and its implications cannot be proved.</p> <p>The Council may be incurring unnecessary cost and the service may not be financially viable.</p>	<p>Develop a set of performance indicators. They could include:</p> <ul style="list-style-type: none"> <li>length of time taken for various stages to complete e.g. to give Technical Approval, issue part 1 and 2 certificates,</li> <li>number of times remedial action requested,</li> <li>hours spent per agreement,</li> <li>costs of work per agreement etc.</li> <li>fees to be collected per quarter.</li> </ul> <p>These should be reviewed in light of benchmarking exercises.</p> <p><b>Priority: High</b></p>	<p><b>Transport Development Manager</b></p> <p>November 2010</p>	<p><b>Recommendation agreed.</b></p> <p>In relation to commentary on rework by developers then this has already been identified by the team as an issue. As a result adjustments to our model legal agreements are taking place to ensure that poor developer performance i.e. excessive inspections, repeated remedial requests are covered by an additional cost passed on to the Developer. It is anticipated that this will encourage the Developer to undertake their duties in a more timely fashion or at least not incur the Council unnecessary costs.</p>

**Final Internal Audit Report – Section 38 Agreements**

Ref.	Finding	Recommendations Priority (High/Medium/Low)	Responsible Officer and Timescale	Management Response
<b>3</b>	<b>Risk: S38 agreements are not monitored, managed or delivered in an efficient, effective and cost effective manner. Service performance is poor and the service operating at a loss.</b>			
3.4	<p><b>Costs</b></p> <p>The income received from S38 work can be easily identified but the cost of providing the work undertaken by the Council cannot. This is because S38 activity is not run on a project basis and the staff hours are not costed and reconciled against the income received.</p> <p>Whilst the fees charged are benchmarked the Team do not know if they are an accurate reflection of their time costs. This could lead to a risk that the service provided could actually be costing the Council money and not breaking even.</p>	<p>For work-incurring fees say over £40k (i.e. the minimum fee charged for a project estimated to cost £0.5m), the S38 Team should allocate time (hours by officer/service area) budgets for larger pieces of work and record their actual time. The time costs should be reconciled against income received. Effectively creating individual trading accounts for such pieces of work.</p> <p>Work under the agreed level should have an overall resource budget set for the financial year and record time used against this, then compare it to income received.</p> <p>Depending on the results the fees charged might need to be amended.</p> <p><b>Priority: High</b></p>	<p><b>Transport Development Manager</b></p> <p>January - December 2011</p>	<p><b>Recommendation noted.</b></p> <p>As this recommendation is likely to have a number of resource implications it is proposed to test a sample of agreements to closely examine whether the fees cover the level of officer input. This will need to be undertaken over the course of several agreements, which may take time to complete to enable an accurate representation to be considered.</p> <p><b>Internal Audit Comment</b></p> <p>Agree to the trial assessment and review of the results over the period suggested. The Transport Development Manager should ensure that whatever process goes forward following the trial it should demonstrate financial break even of service provided.</p>

## Standard Audit Opinions

1. The audit opinion is based on two different criteria the first is the materiality of the system and it's impact on the Council if there was a system failure. This has been spilt into High, Medium or Low.
2. The second criteria, is the standard of control found within the system audited. This has been categorised into 4 different levels i.e. high; satisfactory; significant improvements required and, fundamental weakness. Each of these categories has a standard opinion (see below).

### Standard Audit Opinions on System Control

#### **Audit Opinion 1. *High Standard***

The auditor completing the review concluded the significant system controls are in place and operating effectively and only minor recommendations have been made.

#### **Audit Opinion 2. *Satisfactory Standard***

The auditor completing the review concluded that most of the significant controls are in place and operating satisfactorily although some non-compliance was identified and therefore there is scope for improvement.

#### **Audit Opinion 3. *Significant Improvements Required***

The auditor completing the review concluded that existing procedures needed to be improved to ensure that they are fully reliable. A number of significant recommendations have been made to improve missing or failing controls.

#### **Audit Opinion 4. *Fundamental Weaknesses Identified***

The auditor completing the review concluded that the matters arising from the review are sufficiently significant to place doubt on the reliability of the procedures reviewed. Implementation of the recommendations made is a priority to ensure that reliance can be placed on the system.

3. The combination of these two factors gives an overall risk assessment to the Council of one of four scores i.e. significant, of concern, moderate or minimal (see section 4 of the main report).