

Developers Guide to Requesting a Variation to a S104 Agreement

April 2024



YorkshireWater

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Document control

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Created Date	November 2017
Last Updated	March 2024
Document Ref	Developers Guide to Requesting a Variation to a S104 Agreement
Version	Final
Reviewed By	Wendy Mullaney / Nicola Hewitt
Date Reviewed	March 2024
Review Comments	Final
Signature	N A Drake

General

The purpose of this document is to provide developers with a guide on how to request a variation to their existing signed Agreement under Section 104 (S104) of the Water Industry Act 1991 and in accordance with the Code for Adoption.

A S104 Agreement is entered into by the relevant parties and once signed is legally binding until the system has been formally vested by Yorkshire Water. The site layout drawing incorporated within the S104 Agreement shows the sewers and associated assets proposed for adoption by Yorkshire Water.

Should a developer wish to amend the proposed adoptable sewers and associated assets included within the S104 Agreement, a variation can be requested and Yorkshire Water shall determine whether this can be done by correspondence, by a Deed of Variation or whether the S104 Agreement needs to be terminated and a new Agreement put in place.

Methods of Variation

1. Correspondence

When a developer wishes to make minor alterations to the sewer layout, a request to do so should be made to Yorkshire Water. Yorkshire Water shall determine whether the alterations are acceptable. If the alterations are deemed to be minor and are acceptable, the alteration to the S104 Agreement may be done by correspondence. All parties to the S104 Agreement must agree to the alteration in writing. Yorkshire Water shall then issue a side letter to the S104 Agreement confirming that the site layout drawing has been replaced.

2. Deed of Variation

When a developer wishes to have several sections of the system removed or added to/from the site layout drawing incorporated within the S104

Agreement, a Deed of Variation may be required. All parties to the existing S104 Agreement will need to be party to any Deed of Variation.

3. Termination of Agreement

If the variation requested is a complete change to the existing S104 Agreement and site layout drawing, it may be determined that the Agreement cannot be continued in its current form. In that case, the S104 Agreement may be (with agreement from all of the parties) terminated and a new S104 Agreement entered into.

Yorkshire Water shall determine which method of variation is required on a case by case basis and has the right to refuse any variation request received.

Contact Us



Email

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Visit

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Call 0345 1 20 84 82

Monday to Friday 8am-5pm.



Write to us

Yorkshire Water,
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Bradford BD3 7AY

Method of Variation

Request Process

To allow a variation to be made, the following information needs to be submitted to the Sewer Adoption, Diversion and Requisition Team of Developer Services for review:

- a written request from the developer asking for a variation to the existing S104 Agreement
- copies of the approved site layout drawings incorporated in to the S104 Agreement clearly showing all the minor alterations proposed or a set of revised drawings where the alteration cannot be shown on the existing drawings (for major or complete changes)
- written confirmation from the developer and all parties to the existing S104 Agreement that they agree to the changes together with written confirmation that the developer shall be responsible for paying the associated legal and administrative fees.

We will firstly acknowledge receipt of your written request.

Once the technical team are in receipt of all required information, it will be reviewed for completeness.

The team will review the request in terms of viability. Once it has been determined that the variation(s) is viable, the team shall determine which method will be utilised to vary the Agreement and provide confirmation of this.

The team will undertake a 'Variation Assessment' to ensure the proposals are in accordance with the Design and Construction Guidance, Local Practices and Technical Standards contained within the Codes for Adoption.

If a Deed of Variation is required the technical team shall instruct Yorkshire Water's Legal Services team to prepare the necessary documentation.

It is the developers responsibility to ensure that all parties subject to the S104 Agreement sign the Deed of Variation and the incorporated site layout drawings.

It is then the developers responsibility to return all signed copies of the Deed of Variation and incorporated site layout drawings to Yorkshire Water for signing.

The developer shall also be responsible for any fees incurred which must be paid at the time of returning the signed documents to Yorkshire Water.

Once the variation has been accepted and satisfactory correspondence has been concluded (minor variation), or the Deed of Variation documents have been signed by all parties and completed by Yorkshire Water, we will update our records to reflect the changes made.

We will retain the correspondence or one copy of the Deed of Variation (whichever applies), alongside the original S104 Agreement for the named development site for our records. Likewise, the developer shall be required to keep the correspondence or Deed of Variation with their copy of the Agreement.

In the event that the existing S104 Agreement cannot be fulfilled as the site layout is in need of major or complete changes, it may be determined that the most suitable and, in some cases, the only option is to terminate the existing Agreement and all parties enter into a new S104 Agreement based on the new site layout. If this appears to be the case, the technical team shall discuss this option with the developer.

This process is in accordance with: 'Stage 7: Variation of New Sewerage System' Code for Adoption.

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