

Policy on Commuted Sums for Maintaining Infrastructure Assets in Association with Section 278 and Section 38 Highway Agreements

November 2018, effective from 1 April 2019.

Introduction

The aim of this policy is to offer a transparent and consistent approach to commuted sums levied where new highway infrastructure is being adopted by West Sussex County Council. This should reduce uncertainty and risk for developers so that they can consider commuted sum requirements at an early stage in the development process.

The legal definition for the term 'commuted sum' in relation to the adoption of new infrastructure is:

A payment of a capital sum by an individual, authority, or company to the highway authority, local authority, or other body as a contribution towards the future maintenance of the asset to be adopted or transferred.

For highway infrastructure, commuted sums are secured by way of agreements made under the Highways Act 1980, using Section 38 for new roads constructed on private land and Section 278 for alterations made to existing publicly maintained highways.

Background

The County Council, as the Highway Authority, has a statutory responsibility for the maintenance and management of adopted highways in West Sussex. This duty extends beyond the surface and includes the structure and fabric of the highway.

The County Council enters into approximately 90 S278/38 Agreements each year with developers. Once the developer has complied with all the agreement obligations, the County Council takes on the full responsibility for the maintenance of the assets constructed and the liability to defend any claims for breach of this statutory duty.

The County Council has secured commuted sums in association with Section 278 and Section 38 Agreements for many years. The approach that has historically been taken is that commuted sums are sought for all 'non-standard' assets and items that place additional burdens on maintenance budgets.

The purpose of this policy is to set out which assets are defined as 'standard' and, as such, would not attract commuted sums and which assets would be classed as 'non-standard' and would attract commuted sum payment for future maintenance.

In producing this policy, weight has been given to the guidance document 'Commuted sums for maintaining infrastructure assets' produced by the County Surveyors' Society Association, now known as Directors of Environment, Economy, Planning, and Transport (ADEPT). This guide sets out best practice approach for the application of commuted sums including understanding whole life costs to ensure undue burdens are not placed on maintenance budgets and the public purse. However, it stresses that commuted sums should be applied in a reasonable manner that does not stifle innovation and is fair to all parties.

Legal Status

Both Sections 38 and 278 contain powers enabling authorities to secure contributions (commuted sums) from third parties for the future maintenance of highway assets.

The statutory authority for commuted sum payments comes from Sections 38(6) and 278(3) of the Highways Act 1980.

There is a court of appeal decision from October 2014 that confirms that highway authorities may, when entering into agreements under Section 38 of the Highways Act 1980, legitimately charge commuted sums for the future maintenance of highways after adoption.

Calculation and Timing of Commuted Sum Payments

Where commuted sums are required, they will be calculated at the detailed design stage of Section 278/38 Agreement. The sums will be identified and included in the draft legal agreements that are circulated following technical approval. The commuted sum will be payable on execution of the S278/38 Agreement.

Methodology for Calculation of Commuted Sums

The commuted sum paid needs to be discounted to allow for the fact that it will be earning interest that will make up part of the maintenance payment when it is required. It is, therefore, necessary to determine the net present value of a future expense. The following formula is used to calculate the maintenance obligation:

Net present value = $EMp/(1+D/100)^T$, where

Mp = Estimated future maintenance cost T years from now

D = Discount rate (effective annual interest rate) (%)

T = Time period before expenditure will be incurred (years)

Maintenance Cost (MP)

This has been calculated using current contract rates. The maintenance regime has been based on a 'whole life costing' approach with frequency of treatment and/or the intervals of replacement, based on planned frequencies and historic information.

Periodic Discount Rate

The County Council uses the discount rate (effective annual interest rate) of 2.2%, which is recommended in the ADEPT guidance document.

Time Period (T)

The period of 60 years is conventionally used as the life of housing and highway assets. A figure of 60 years represents a reasonable compromise between covering future costs and the uncertainties over how far into the future the assets will be required. Therefore, 60 years has been adopted as the time period for all assets apart from highway structures, which will be calculated using 120 years as recommended by the [Bridge Management Code](#) produced by the ADEPT National Bridges Group.

‘Standard’ Construction Assets (not liable for commuted sum payments)

The following assets are defined as ‘standard’ construction. These assets will not attract a commuted sum payment where they are in compliance with the County Council’s standard construction details, which are available on the [Road Agreements](#) page of the authority’s website.

Category	Asset
Carriageway Surfacing	<ul style="list-style-type: none"> ▪ Hot Rolled Asphalt ▪ Asphalt Concrete ▪ Thin Coast Surfacing ▪ Block Paving
Carriageway Ancillaries	<ul style="list-style-type: none"> ▪ Pre cast concrete Kerbs ▪ Granite Kerbs ▪ Granite setts for demarcation of highway boundary ▪ PCC Channels ▪ Road Markings ▪ Road studs
Footways, Cycleways, and Paved Areas (including PROW)	<ul style="list-style-type: none"> ▪ Hot Rolled Asphalt ▪ Asphalt Concrete ▪ Block Paving ▪ Modular Paving ▪ Tactile Paving
Footway Ancillaries	<ul style="list-style-type: none"> ▪ Vehicle Crossovers ▪ Tactile Paving ▪ PCC Edgings ▪ Timber Edgings ▪ Markings ▪ Bollards
Street Lighting	<ul style="list-style-type: none"> ▪ Standard Street Lighting as per WSCC PFI contract specification
Traffic/Pedestrian Management	<ul style="list-style-type: none"> ▪ Illuminated Traffic Signs ▪ Non-illuminated Traffic Signs ▪ Illuminated Pedestrian Signs ▪ Non-illuminated Pedestrian Signs ▪ Illuminated Bollards ▪ Non-illuminated Bollards ▪ Illuminated Beacons
Drainage	<ul style="list-style-type: none"> ▪ Gullies ▪ Catchpits ▪ 225mm pipework ▪ Combined kerb and drainage units
Verges/Landscaping	<ul style="list-style-type: none"> ▪ Grass Verge – required for highway purposes

Non-Standard Construction Assets (liable for commuted sum payments)

The following assets are 'non-standard' and would attract a commuted sum payment for their future maintenance (see 'Appendix 1: Schedule of Commuted Sums').

Category	Asset
Carriageway Surfacing	<ul style="list-style-type: none"> ▪ High Friction Surfacing ▪ Pigmented/Decorative Surfacing ▪ Granite sett/block paving to overrun areas
Footways, Cycleways, and Paved Areas (including PROW)	<ul style="list-style-type: none"> ▪ Pigmented/Decorative Surfacing
Fences and Barriers	<ul style="list-style-type: none"> ▪ Acoustic Fences
Street Lighting	<ul style="list-style-type: none"> ▪ Street lighting units not compliant with the WSCC PFI specification
Drainage	<ul style="list-style-type: none"> ▪ Oversized Pipes >225mm ▪ Hydro-brakes ▪ Petrol Interceptors ▪ Permeable Paving ▪ Storage Crates ▪ Conventional Soakaways ▪ Bag Work Headwalls ▪ Ditches ▪ Swales ▪ Dry and wet Ponds
Traffic Signals	<ul style="list-style-type: none"> ▪ Bridge, buried structure, subway, underpass, culvert, and any other structure supporting the highway with a clear span or internal span or internal diameter of 0.9m or greater ▪ Retaining wall (including pipe headwalls) with a retained height of greater than 1.9m
Verges/Landscaped Areas	<ul style="list-style-type: none"> ▪ Trees ▪ Soft Landscaping ▪ Hedges
Other	<ul style="list-style-type: none"> ▪ Real Time Bus Information ▪ Automated Rising Bollard Systems

The above list is not exhaustive but is based on experience of the type of assets that most frequently come forward for adoption in association with S278/38 Agreements.

Ring Fencing of Funds

Commuted sums paid will be ring fenced and re-invested into the maintenance of the highways network.

Review of Commuted Sums

The sums will be reviewed on a biennial basis and, where appropriate, uplifted to take account of any increases in maintenance costs.

Appendix 1: Schedule of Commuted Sums

Category	Asset	Unit	Commuted Sum
Carriageway	High Friction Surfacing	SQ. M	£100
Carriageway	Pigmented/Decorative Surfacing	SQ. M	Calculated on a case-by-case basis depending on the specification of material proposed
Carriageway	C/WAY Granite Sett/Block Paving Overrun Area	SQ. M	£100
Footway	F/WAY Pigmented/Decorative Surfacing	SQ. M	Calculated on a case-by-case basis depending on the specification of material proposed
Street Lighting	Street Lighting	SQ. M	Calculated on a case-by-case basis where street lighting units are not compliant with the WSCC PFI specification
Drainage	Oversized Pipe >225mm	Lin. M	£200
Drainage	Petrol Interceptor	Item	£14,500
Drainage	Concrete Bag Work Headwalls	Item	£2,400
Drainage	Conventional Soakaway	Item	£11,400
Drainage	Permeable Paving	SQ. M	£100
Drainage	Crate Storage System	CU. M	£200
Drainage	Swales	SQ. M	£10
Drainage	Ditches	Lin. M	£16
Drainage	Infiltration Trenches	Lin. M	£50
Drainage	Hydro-brake	Item	£13,500
Drainage	Dry Detention Basin	SQ. M	£5
Drainage	Wet Detention Basin	SQ. M	£140
Structures	Highway Bridges and Structures	Item	Calculated on a case-by-case basis using ADEPT National Bridges Group Guidance
Traffic Management	Chicane	Item	£10,600
Traffic Management	Gateway Signs	Item	£12,100
Traffic Management	Raised Table	Item	£13,900
Traffic Management	Speed Cushion	Item	£4,100
Traffic Management	Wig Wag Signs	Item	£7,700
Traffic Management	Automated Rising Bollard System	Item	£115,000
Landscaping	Trees	Item	£700

Policy on Commuted Sums

Category	Asset	Unit	Commuted Sum
Landscaping	Hedges	Lin. M	£10
Landscaping	Soft Landscaping	SQ. M	£28
Traffic Signals	Signal Controlled Junction	Item	Calculated on a case-by-case basis
Traffic Signals	Signal Controlled Crossings	Item	£61,800
Traffic Signals	Vehicle Activated Signs	Item	£33,300
Other	Real Time Passenger Information: Shelter Mounted	Item	£29,100
Other	Real Time Passenger Information: Post Mounted	Item	£16,700