

<b>Mr Elkins, Cabinet Member for Highways &amp; Infrastructure</b>	<b>Ref No: HI19 (18/19)</b>
<b>December 2018</b>	<b>Key Decision: Yes</b>
<b>Adoption of the new policy on commuted sums for maintaining infrastructure in association with S278 and S38 Highway Agreements</b>	<b>Part I</b>
<b>Report by Lee Harris, Executive Director Economy, Infrastructure and Environment and Matt Davey Director of Highways &amp; Transport</b>	<b>Electoral Division(s): All</b>
<p><b>Summary</b></p> <p>In association with development proposals, third parties enter into agreements with the County Council under Sections 278 and 38 of the Highways Act 1980. These agreements enable them to make modifications to the existing publicly maintainable highway and also to offer up new highways for adoption by the County Council.</p> <p>Where this infrastructure will create an additional maintenance burden on the authority, commuted sums are secured for the future maintenance of the asset that is being adopted.</p> <p>To provide clarity on the authority's approach to commuted sums and the assets that will attract commuted sums, a new policy has been produced (see Appendix A). The new policy applies current contractor rates to ensure that the full cost of maintaining the asset is identified.</p> <p>The Cabinet Member for Highways and Infrastructure will be recommended to adopt the new policy on commuted sums as the County Council's approach to securing contributions for the future maintenance of assets adopted under S278 and S38 Highway Agreements.</p>	
<p><b>West Sussex Plan: Policy Impact and Context</b></p> <p>WSCC is seeking to work with developers to achieve high quality new development to achieve a prosperous place to live and work. In the formulation of the policy, it has been necessary to strike a balance between encouraging high quality development in West Sussex and ensuring that funding is secured to maintain the assets.</p>	
<p><b>Financial Impact</b></p> <p>The new commuted sum policy reflects current rates for maintenance of assets to be adopted and seeks to minimise the financial burden associated with new development and the adoption of new infrastructure. The sums will be reviewed on a biennial basis and, where appropriate, uplifted to take account of any increases in maintenance costs.</p>	
<p><b>Recommendations</b></p> <p>That the Cabinet Member for Highways and Infrastructure:</p> <p>(a) approves the Commuted Sums Policy attached as Appendix A to this report to be effective from 1<sup>st</sup> April 2019; and</p>	

- (b) delegates authority to the Director of Highways and Transport to review the sums in Appendix 1 of the Policy on a biennial basis and, where appropriate, to uplift them to take account of any increases in maintenance costs.

## **PROPOSAL**

### **1. Background and Context**

- 1.1 One of the County Council's roles as local highway authority is to enter into agreements with third parties under Sections 278 and 38 of the Highways Act 1980. The majority of these agreements are associated with development proposals where developers are required to provide new infrastructure to support their development. This can be in the form of modifications to the existing highway, for example, the construction of a new junction, or construction of new roads, which are then offered for adoption as publicly maintainable highway.
- 1.2 In conjunction with S278 and S38 agreements, commuted sums are secured to cover the on-going maintenance of the adopted infrastructure, ensuring that no additional maintenance burdens are placed on the County Council.
- 1.3 Currently commuted sums are secured based on outdated protocols and the sums being secured do not reflect current maintenance contract costs. Therefore, a review has been undertaken to identify which assets should be supported by a commuted sum payment. A review of current maintenance regimes and contract rates has been undertaken in order to formulate the commuted sum calculations.

### **2. Proposal Details**

- 2.1 The Policy is attached as an Appendix to this report. The key principles are that:
- It will become effective from 1<sup>st</sup> April 2019.
  - Non-standard construction assets that will be liable for a commuted sum payment are identified.
  - Standard construction assets that will not be liable for commuted sum payments are identified.
  - The method of calculating the commuted sum is set out.
  - The timing of payment of the commuted sum is set out.
  - A schedule of commuted sums is included.
- 2.2 The Policy will be made available on the 'Road Agreements' pages of the WSCC website where all information for developers is provided. This will allow transparency and ensure that developers are aware of potential commuted sum requirements in association with their development proposal.

## **FACTORS TAKEN INTO ACCOUNT**

### **3. Consultation**

- 3.1 Officers within Planning Services and the Highways and Transport Directorate have been consulted on the draft policy and have provided input into the formulation of the updated commuted sums.

### **4. Financial Implications**

- 4.1 The new commuted sum policy reflects current rates for maintenance of assets to be adopted and seeks to minimise the financial burden associated with new development and the adoption of new infrastructure.
- 4.2 The total value of commuted sums secured each year will be dependent on the quantum of development and type of assets that are being put forward for adoption. The value of commuted sums received in recent years is shown in the table below:

Commuted Sums	2015/16 £'000	2016/17 £'000	2017/18 £'000	2018/19 £'000
Amounts Received (estimated for 2018/19)	536	561	393	500

- 4.3 Income received is paid into the Commuted Sums Reserve each year. It is then drawn down into the annual maintenance budget, with income from each developer set against expenditure over the following thirty years. Increased income arising from the revised charge rates will fund a higher maintenance contribution over the life of the relevant commuted sums agreement.

Commuted Sums Forecast	2019/20 £'000	2020/21 £'000	2021/22 £'000	2022/23 £'000
Estimated Receipts: (Transfer to Reserve)	1,000	1,000	1,000	1,000

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

### **5. Legal Implications**

- 5.1 The statutory authority for commuted sum payments appears in Sections 38(6) and 278(3) of the Highways Act 1980. Such payments are considered lawful and there is case law that supports the collection of commuted sums to maintain assets that are being adopted. However, the approach taken to the setting and collection of commuted sums must be fair to all parties and it must not be used as a mechanism to generate income.

## **6. Risk Assessment Implications and Mitigations**

- 6.1 There are no identified risks to the County Council in adopting the new policy. The adoption of the policy will provide a clear and transparent process for securing commuted sums. It will ensure consistency in our approach and provide clear guidance to developers by setting out which assets will be subject to commuted sum payments.

## **7. Other Options Considered**

- 7.1 The only other option is to not prepare a new policy. However, this will mean that the County Council does not have an up-to-date, clear and transparent policy and it will continue to collect commuted sums that do not reflect current maintenance contract costs.

## **8. Equality and Human Rights Assessment**

There are no equality and human rights implications.

## **9. Social Value and Sustainability Assessment**

There are no social value and sustainability implications.

## **10. Crime and Disorder Reduction Assessment**

There are no crime and disorder reduction assessment implications.

### **Contact Officer:**

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### **Appendix**

West Sussex County Council Policy on Commuted Sums for Maintaining Infrastructure Assets in Association with Section 278 and Section 38 Highway Agreements.

### **Background papers**

CSS Guidance Document Commuted Sums For Maintaining Infrastructure Assets - [http://www2.westsussex.gov.uk/ds/edd/hi/hi19a\\_18-19.pdf](http://www2.westsussex.gov.uk/ds/edd/hi/hi19a_18-19.pdf)