

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

November 2018

Effective from 1<sup>st</sup> 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 ninety S278/38 Agreements each year with developers. Once the developer has complied with all of 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 =  $EM_p / (1 + D/100)^T$ , where

$M_p$  = 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.

<b>Category</b>	<b>Asset</b>
Carriageway Surfacing	<ul style="list-style-type: none"> <li>• Hot Rolled Asphalt</li> <li>• Asphalt Concrete</li> <li>• Thin Coat Surfacing</li> <li>• Block Paving</li> </ul>
Carriageway Ancillaries	<ul style="list-style-type: none"> <li>• Pre cast concrete Kerbs</li> <li>• Granite Kerbs</li> <li>• Granite setts for demarcation of highway boundary</li> <li>• PCC Channels</li> <li>• Road Markings</li> <li>• Road studs</li> </ul>
Footways, Cycleway & Paved Areas (including PROW)	<ul style="list-style-type: none"> <li>• Hot Rolled Asphalt</li> <li>• Asphalt Concrete</li> <li>• Block Paving</li> <li>• Modular Paving</li> <li>• Tactile Paving</li> </ul>
Footway Ancillaries	<ul style="list-style-type: none"> <li>• Vehicle Crossovers</li> <li>• Tactile Paving</li> <li>• PCC Edgings</li> <li>• Timber Edgings</li> <li>• Markings</li> <li>• Bollards</li> </ul>
Fences & Barriers	<ul style="list-style-type: none"> <li>• Steel Safety barriers</li> <li>• Pedestrian Guardrail</li> </ul>
Street Lighting	<ul style="list-style-type: none"> <li>• Standard Street Lighting as per WSCC PFI contract specification.</li> </ul>
Traffic / Pedestrian Management	<ul style="list-style-type: none"> <li>• Illuminated Traffic Signs</li> <li>• Non-illuminated Traffic Signs</li> <li>• Illuminated Pedestrian Signs</li> <li>• Non-illuminated Pedestrian Signs</li> <li>• Illuminated Bollards</li> <li>• Non-illuminated Bollards</li> </ul>

	<ul style="list-style-type: none"> <li>• Illuminated Beacons</li> </ul>
Drainage	<ul style="list-style-type: none"> <li>• Gullies</li> <li>• Catchpits</li> <li>• 225mm pipework</li> <li>• Combined kerb and drainage units</li> </ul>
Verges / Landscaping	<ul style="list-style-type: none"> <li>• Grass Verge – Required for highway purposes</li> </ul>

### **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).

<b>Category</b>	<b>Asset</b>
Carriageway Surfacing	<ul style="list-style-type: none"> <li>• High Friction Surfacing</li> <li>• Pigmented / Decorative Surfacing</li> <li>• Granite sett / Block paving to overrun areas</li> </ul>
Footways, Cycleway & Paved Areas (including PROW)	<ul style="list-style-type: none"> <li>• Pigmented / Decorative Surfacing</li> </ul>
Fences & Barriers	<ul style="list-style-type: none"> <li>• Acoustic Fences</li> </ul>
Street Lighting	<ul style="list-style-type: none"> <li>• Street Lighting units not compliant with the WSCC PFI specification.</li> </ul>
Drainage	<ul style="list-style-type: none"> <li>• Oversized Pipes &gt;225mm</li> <li>• Hydro-brakes</li> <li>• Petrol Interceptors</li> <li>• Permeable Paving</li> <li>• Storage Crates</li> <li>• Conventional Soakaways</li> <li>• Bag Work Headwalls</li> <li>• Ditches</li> <li>• Swales</li> <li>• Dry and wet Ponds</li> </ul>
Traffic Signals	<ul style="list-style-type: none"> <li>• Signal Controlled Junctions</li> <li>• Signal Controlled Crossings</li> </ul>
Traffic / Pedestrian Management	<ul style="list-style-type: none"> <li>• Gateway Signs</li> <li>• Raised Tables</li> <li>• Speed Cushions</li> <li>• Chicanes</li> <li>• Wig Wag Signs</li> <li>• Vehicle Activated Signs</li> </ul>
Highway Structures	<ul style="list-style-type: none"> <li>• Bridge, buried structure, subway,</li> </ul>

	underpass, culvert and any other structure supporting the highway with a clear span or internal span or internal diameter of 0.9m or greater. <ul style="list-style-type: none"> <li>Retaining wall (including pipe headwalls) with a retained height of greater than 1.0m.</li> </ul>
Verges / Landscaped Areas	<ul style="list-style-type: none"> <li>Trees</li> <li>Soft Landscaping</li> <li>Hedges</li> </ul>
Other	<ul style="list-style-type: none"> <li>Real Time Bus Information</li> <li>Automated Rising Bollard Systems</li> </ul>

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

	<b>Asset</b>	<b>Unit</b>	<b>Commuted Sum</b>
Carriageway	High Friction Surfacing	SQ.M	£100
	Pigmented / Decorative Surfacing	SQ.M	Calculated on a case by case basis depending on the specification of material proposed
	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 the material proposed
Street Lighting	Street Lighting	Item	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
	Petrol Interceptor	Item	£14,500
	Concrete Bag Work Headwalls	Item	£2,400
	Conventional Soakaway	Item	£11,400
	Permeable Paving	SQ.M	£100
	Crate Storage System	CU.M	£200
	Swales	SQ.M	£10
	Ditches	Lin. M	£16
	Infiltration Trenches	Lin. M	£50
	Hydro-brake	Item	£13,500
	Dry Detention Basin	SQ.M	£5
	Wet Detention Basin	SQ.M	£140
Structures	Highway Bridges & Structures	Item	Calculated on a case by case basis using ADEPT National Bridges Group Guidance
Traffic Management	Chicane	Item	£10,600
	Gateway Signs	Item	£12,100
	Raised Table	Item	£13,900
	Speed cushion	Item	£4,100

	Wig Wag Signs	Item	£7,700
	Automated Rising Bollard System	Item	£115,000
Landscaping	Tree	Item	£700
	Hedges	Lin.M	£10
	Soft Landscaping	SQ.M	£28
Traffic Signals	Signal Controlled Junction	Item	Calculated on a case by case basis
	Signal Controlled Crossings	Item	£61,800
	Vehicle Activated Signs	Item	£33,300
Other	Real Time Passenger Information – Shelter Mounted	Item	£29,100
	Real Time Passenger Information – Post Mounted	Item	£16,700