



Open Report on behalf of Andy Gutherson, Executive Director - Place

Report to:	Highways and Transport Scrutiny Committee
Date:	8 March 2021
Subject:	Commuted Sums for Maintenance of Adopted Highway Assets

Summary:

This report invites the Highways and Transport Scrutiny Committee to consider a decision report which recommends that a policy on *Commuted Sums for the Maintenance of Adopted Highways Assets* be approved by the Executive Councillor for Highways, Transport and IT between 9 and 12 March 2021. The views of the Committee will be reported to the Executive Councillor as part of his consideration of this item.

Actions Required:

The Committee is invited to:

- (1) Consider the attached report and determine whether the Committee supports the recommendation to the Executive Councillor; and
- (2) Make any comments to the Executive Councillor on the proposed policy on Commuted Sums for the Maintenance of Adopted Highways Assets.

1. Background

Between 9 and 12 March 2021 the Executive Councillor for Highways, Transport and IT is due to consider a report on the *Commuted Sums for the Maintenance of Adopted Highways Assets*. The decision report is attached as Appendix 1 and the proposed commuted sums policy as Appendix A to this report.

2. Conclusion

Following consideration of the attached report, the Committee is requested to consider whether it supports the recommendation in the report and whether it wishes to make any comments to the Executive Councillor.

3. Consultation

This Committee is being consulted on a proposed decision on Commuted Sums for the Maintenance of Adopted Highways Assets by the Executive Councillor for Highways, Transport and IT between 9 and 12 March 2021.

4. Appendices

These are listed below and attached at the back of the report	
Appendix 1	<p>Report to Executive Councillor for Highways, Transport and IT on Commuted Sums for the Maintenance of Adopted Highways Assets, including:</p> <ul style="list-style-type: none">• Appendix A Proposed Commuted Sums Policy• Appendix B HAT40 - Current Commuted Sums Policy and Process

5. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by John Monk, who can be contacted on 01522 552394 or john.monk@lincolnshire.gov.uk

Open Report on behalf of Andy Gutherson, Executive Director - Place

Report to:	Councillor R G Davies, Executive Councillor for Highways, Transport and IT
Date:	Between 09 and 12 March 2021
Subject:	Commuted Sums for Maintenance of Adopted Highway Assets
Decision Reference:	I021773
Key decision?	No

Summary:

In some circumstances, commuted sums can be charged for highway infrastructure assets taken on by the County Council as Highway Authority. Although there is an existing policy dating from 2008, guidance for which was updated in 2012, it is in need of being updated.

This report proposes a new, simpler policy be adopted through a decision by the Executive Councillor.

Recommendation(s):

- (1) That the Executive Councillor for Highways, Transport and IT approve the adoption of the Commuted Sums Policy Statement attached at Appendix A.
- (2) That the Executive Director – Place be delegated authority, in consultation with the Executive Councillor for Highways, Transport and IT, to make amendments to the processes supporting the policy.

Alternatives Considered:

- | | |
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| 1. | Keep the existing arrangements, although this would maintain a policy and process which is now outdated. |
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Reasons for Recommendation:

1. The existing policy is out of date and in need of being made more current and relevant.
2. This results in a lack of clarity when assessing the need for and approach to commuted sums being charged for asset adoption

3. Although some national guidance is under preparation, which Lincolnshire County Council officers are influencing, it is not expected that this will impact the policy itself.

1. Background

There are instances where commuted sums can be charged when the authority is taking on the maintenance of an asset, in order to cover future maintenance costs.

The charging of commuted sums is not intended to be profit making. Its purpose is to cover any additional maintenance costs that are incurred by the authority.

The existing Highways and Traffic guidance note (HAT) 40/4/12 came into effect in 2012, updating a process that was developed in parallel with the 2008 policy document that was prepared in line with national guidance available at the time, which is now also accepted as being outdated in the industry. For reference, a copy of HAT40 is included as Appendix B to this paper.

Although there is work under way nationally to update guidance, which Lincolnshire County Council officers are influencing, this has been awaited for a number of years and is still expected to be some time away from conclusion. Meanwhile, there is a void in current policy for when to charge commuted sums for adoption of assets.

The proposed policy (see Appendix A) is written to bring new clarity, but in such a way that any eventual national guidance should not alter it, but only influence the process that sits behind it about how commuted sums are actually calculated. The policy will ensure that when the authority charges for commuted sums they are current, relevant and justified. The proposed policy was prepared as the output from a task and finish group led by the Assistant Director for Highways, Karen Cassar.

It is also proposed that future policy changes (i.e. which assets attract commuted sums) continue to be a matter for Executive Councillor decision, whilst process changes (predominantly how commuted sums are calculated and managed) are delegated to senior officers, in consultation with the Executive Councillor.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

Although a formal Equality Impact Analysis has not been carried out, there are no expected positive or adverse impacts on any of the protected characteristic groups.

Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

There is no expected impact of the proposals in this report on either the JSNA or the JHWS.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

There is no expected impact of the proposals in this report on the furtherance of the section 17 matters.

3. Conclusion

The County Council's current policy on Commuted Sums should be updated to that shown in Appendix A.

4. Legal Comments:

The Council has the power to adopt the Policy Statement proposed.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor

5. Resource Comments:

There are no direct resource implications arising from the adoption of the proposed policy. It does, however, set out guidance to avoid the Council being burdened by maintenance and replacement costs from accepting the transfer of assets.

6. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The Highways and Transport Scrutiny Committee is due to consider this report on 8 March 2021. The comments from the Committee will be reported to the Executive Councillor.

d) Risks and Impact Analysis

No impact

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Proposed Commuted Sums Policy
Appendix B	HAT40 - Current Commuted Sums Policy and Process

8. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by John Monk, who can be contacted on 01522 552394 or john.monk@lincolnshire.gov.uk.

Commuted Sum Policy Document:

Introduction

When Lincolnshire County Council takes on assets from other owners, commuted sums to cover maintenance and replacement costs can in some instances be recovered from the transferring owner, unless other specific sources of funding for these assets are available to the Authority (for example government grants).

There are three main ways in which the Authority agrees to take on assets from other owners:

- S38 Agreement (of the Highways Act 1980), whereby the total length of adopted highway maintained by the Authority is extended. This affects the formulae that govern the calculation for government grants, which includes for general highway maintenance.
- S278 Agreement (of the Highways Act 1980). As these works are on the existing maintainable highway, it is less likely that there will be an extension to the network and therefore it is unlikely to have an effect on the amount of government grants that the Authority will receive.
- Other agreed transfers from third-parties. These may or may not extend the existing highway, depending on the specific circumstances.

Policy Purpose

To ensure that when accepting assets from other owners the Authority is not unnecessarily burdened with maintenance and replacement costs. It does this by allowing for commuted sums for maintenance to be recovered through Section 38 Agreements, Section 278 Agreements and any other agreements that include for the transfer of assets to the Authority.

Application

Commuted sums will be charged in the following circumstances:

S.38's

- Any items that are not included in the Lincolnshire County Council Development Road and Sustainable Drainage Specification
- The extra over cost of maintenance and replacement of items that are included in Lincolnshire County Council Development Road and Sustainable Drainage Specification but which the developer installs to a higher specification

S.278's

- Where a new asset is considered to be over and above that which is included in existing LCC maintenance schedules.

Other agreed transfers

- Where an existing or new asset is being transferred to the Authority
- In cases where the asset being transferred to the Authority is in need of maintenance or replacement and it is not possible for the third party to procure and complete the works, the cost of the outstanding maintenance or replacement shall be included in the commuted sum.

In principle, commuted sums should be recovered from the transferring owner in all situations covered by this policy.

However, the budget manager(s) responsible for the asset(s) being taken over may consider that the future maintenance and replacement costs can be accommodated in their normal budget allocations. A decision on this should take into account the calculated magnitude of the commuted sum that would be recoverable under this policy.

Exceptional circumstances may arise where the Development Management (DM) Officer (in the case of S38 and S278 Agreements) or the lead Officer (in the case of other asset transfers) believes that recovery of a commuted sum would be counter-productive to inward investment in Lincolnshire; i.e. the overall benefit to the County Council of altering the provisions of this policy in an individual case outweighs the desire for a consistent approach.

In such a case, the DM Officer shall consult with the budget manager(s) Head of Service and the Head of Service for Development Management (in the case of S.38's and S.278's) to make a decision as to whether to charge a commuted sum or not.

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