

Open Report on behalf of Paul Coathup, Assistant Director, Highways and Transport

Report to:	Councillor William Webb
Date:	02 November 2010
Subject:	Standard S278 Agreement to be confirmed as non-negotiable
Decision Reference:	01807
Key decision?	No

Summary:

The standard S278 Agreement is currently open to negotiation with developers. It is proposed that it is confirmed as being non-negotiable, with exceptions as described below.

Recommendation(s):

It is recommended that the S278 Agreement is confirmed as being non-negotiable, except when:

- updated routinely by the County Council or
- amendments proposed by developers are submitted in writing and accompanied by full and detailed justification for consideration by the Council's officers at the developer's expense; no more than one such submission shall be considered for each Agreement being entered into and Council Officers response shall itself be non-negotiable.
- only in exceptional circumstances will more than one submission be considered depending upon the particular individual circumstances appertaining to the development.

Alternatives Considered:

1. Keeping the standard S278 Agreement as negotiable has been considered, as discussed below

Reasons for Recommendation:

It is in the best interests of the County Council to keep the standard S278 Agreement as non-negotiable as possible. It has been prepared to be a consistent and holistic document and amendments to it may reduce its effectiveness.

1. Background

- 1.1 The current, standard S278 Agreement was prepared as a result of the revision to the S278 process and fees arrangement as proposed to the then Highways Policy Development Group on 2 March 2009, and which was then agreed by the Executive Councillor for Highways on 9 April 2009.

- 1.2 It has been carefully prepared by Legal Services Lincolnshire with input from other relevant officers over a period of several months. The Agreement presents a consistent and holistic approach for the preparation and implementation of S278 schemes. It lays out the roles and responsibilities of the parties involved and describes the process to be followed. It has been prepared to ensure that, whilst the parties are treated fairly, the interests of the County Council are protected.
- 1.3 Keeping the standard S278 Agreement as negotiable risks reducing its effectiveness in delivering these aims. Allowing it to be non-negotiable protects them.
- 1.4 It is accepted that in some circumstances amendments may be put forward by either the County Council or the developer. In the first instance, it is proposed that these should be implemented during routine updates of the standard Agreement. In the second, given the aims of the standard Agreement, it is suggested that developers should be required to give full and detailed justification of any proposed amendments; there should be no more than one such submission for any Agreement being entered into. This submission would then be considered by County Council officers (at the developer's expense), whose response would itself then be non-negotiable. This is to avoid protracted and delaying negotiations taking place and to ensure that any requests for amendments are focussed and complete. Only in exceptional circumstances will this procedure be departed from.

2. Conclusion

- 2.1 The standard S278 Agreement should be confirmed as being non-negotiable with the exceptions as described.

3. Legal Comments:

The Executive is authorised in the Council's Constitution to make agreements for the execution of highway works. This decision is therefore lawful and within the remit of the Executive Councillor provided he has the delegated authority of the Leader.

4. Resource Comments:

Approval of this report will confirm S278 agreements as being non-negotiable and as such does not commit the Council to any expenditure. Council costs arising from S278 agreements are funded from the payment made by the Developer.

5. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

n/a

c) Scrutiny Comments

n/a

d) Policy Proofing Actions Required

n/a

6. Background Papers

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

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