

**BARNSLEY METROPOLITAN BOROUGH COUNCIL**

**REPORT OF: EXECUTIVE DIRECTOR GROWTH & SUSTAINABILITY**

**TITLE: COMMUTED SUMS FOR MAINTENANCE**

<b>REPORT TO:</b>	<b>CABINET</b>
<b>Date of Meeting</b>	<b>16 November 2022</b>
<b>Cabinet Member Portfolio</b>	<b>Regeneration &amp; Culture</b>
<b>Key Decision</b>	<b>Yes</b>
<b>Public or Private</b>	<b>Public</b>

**Purpose of report**

To seek approval for a proposed practice of securing commuted sums from developers through Section 38 / Section 278 Legal Agreements

**Council Plan priority**

Sustainable Barnsley

**Recommendations**

That Cabinet:-

1. Approve the Commuted Sum Policy as outlined in this report;
2. Approve that the implementation date for the commuted sums and new fees / charges is 1 December 2022;
3. Give delegated authority to the Executive Director (Growth & Sustainability), and Service Director Finance - (S151 Officer), in consultation with the Cabinet Member for Environment & Transport, to agree fees and charges which vary from the standard inflation clause, if the cost base changes or new services are introduced and that this can be done at 6 month intervals if external factors influence the cost base significantly throughout the financial year.

## 1. INTRODUCTION

- 1.1 To provide Cabinet with information for charging developers commuted sums to cover the future maintenance and replacement costs of all eligible infrastructure assets (not privately owned) offered for adoption for the lifetime of the development.

## 2. PROPOSAL

- 2.1 The rationale for seeking commuted sums for future maintenance and associated works is to ensure that the local authority has the financial resource to cover the upkeep and replacement of assets they adopt from developers.
- 2.2 A commuted sum is a one-off payment of capital as a contribution towards the future maintenance of eligible assets to be adopted for the lifetime of the development. This is usually 60 years for housing development infrastructure (roads, drainage etc) and 120 years for structures (bridges, culverted watercourses etc)
- 2.3 Commuted sums generally relate to payments made by developers through either s38 (Highways Act 1980), s278 (Highways Act 1980) or s106 Agreements (Town & Country Planning Act 1990) via a legal agreement with the developer. The payment of a commuted sum by a developer discharges them of any future maintenance responsibilities for the adopted assets upon formal adoption. The obligation and associated risk then lie with the adopting party to maintain the asset.
- 2.4 At present, the Council charges commuted sums for items such as drainage assets, however it is proposed that many other items should be included in this process if they are offered for adoption by the developer.
- 2.5 The need for paying commuted sums can be divided into four broad categories:
- The cost of maintaining areas and construction, which under our normal design guidance are not required for the safe and satisfactory functioning of the highway. Examples are additional areas of carriageway, such as a “square” surrounding a turning head, hard landscaping, grass verges and so on.
  - The cost of maintaining some features of the adoptable works which can be considered as Extra Over. Examples include highway structures, public transport infrastructure, landscaping, trees, shrubs etc, additional or non-usual street furniture and noise fencing. These costs represent an increase in our future maintenance liability which will be more than the anticipated normal funding generated by the development.
  - The additional cost of maintaining permitted alternative materials and features which are Extra Over. Examples include surfacing materials and street lighting equipment. These additional costs are in excess of what we would have incurred if the materials and features used had been to **standard** specification.

2.6 “**Standard**” highway construction in Barnsley is defined as follows:

- Carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates)
- Carriageways in shared surface roads, courtyards and housing squares surfaced in 200mm x 100mm x 60mm rectangular concrete block paving
- Footway surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates)
- Hard Margins adjacent to block paved carriageways also surfaced in 200mm x 100mm x 60mm rectangular concrete block paving
- Cycleways surfaced in concrete asphaltic materials
- Pre-cast concrete kerbing
- Gully drainage, connection pipes and gravity draining highway carrier drains.
- Galvanised pedestrian guard railing.
- Standard highway lighting layouts, columns and lanterns.
- Standard illuminated and non-illuminated highway signs.
- Passively safe signposts where required for road safety.
- Bollards and markers posts manufactured from Plastic derivatives or recycled plastic/rubber.
- Road markings.

2.7 “**Non-Standard**” is therefore defined as all construction types or materials that are not included in the definition of “standard” construction as above.

The following items within the Barnsley borough that incur a requirement for commuted sums are:

Traffic Signals	Commuted Sum
Traffic signal junction / Pedestrian Crossing	Actual sum depend upon detail
CCTV camera infrastructure	Actual sum depend upon detail.
Traffic Counting device	Actual sum depend upon detail.
Traffic and Road Safety	Commuted Sum
Gateway features	To be determined on a site by site basis
Raised Tables	To be determined on a site by site basis
Chicane	To be determined on a site by site basis
Speed cushion	To be determined on a site by site basis
Over-run areas to roundabout (granite setts)	To be determined on a site by site basis
Over-run areas to speed control bends	To be determined on a site by site basis
Mini roundabouts	To be determined on a site by site basis
Illuminated Traffic Signs	To be determined on a site by site basis
Non Illuminated Traffic Signs	To be determined on a site by site basis
Vehicle Activated Signs	Whole life costs including replacement

<b>Drainage</b>	<b>Commuted Sum</b>
Gullies	Annual maintenance costs over a 60 year period
Soakaways	Annual maintenance costs over a 60 year period
Retention ponds	Annual maintenance costs over a 60 year period
Hydrobrakes	Annual maintenance costs over a 60 year period
Petrol & Oil Interceptors	Annual maintenance costs over a 60 year period
Other SuDs features (subject to adoption)	Annual maintenance costs over a 60 year period
Connection to highway drains	Additional annual maintenance costs to reflect increased liability
Jetting	To be determined on a site by site basis
Gully Emptying	To be determined on a site by site basis
Combined Kerb Drainage	To be determined on a site by site basis
<b>Green Landscaping</b>	<b>Commuted Sum</b>
Tree	To cover cost of pruning per tree *for a defined period
Hedges	Annual maintenance cost per sqm
Soft Landscaping	Annual maintenance cost per sqm
Verge Maintenance	Annual maintenance cost per sqm
Weed Spraying	To be determined on a site by site basis
Tree Grills	To be determined on a site by site basis
Planters and Raised Beds	Annual maintenance cost per sqm
Earthwork Environmental Bunds	Annual maintenance cost per sqm
<b>Bridges &amp; Structures</b>	<b>Commuted Sum</b>
Attenuated highway drainage system	Whole life costs including replacement after 120 years
Bridges	Whole life costs including replacement after 120 years
Culverts & trash screens	Whole life costs including replacement after 120 years
Retaining Walls	Whole life costs including replacement after 120 years
Head walls	Whole life costs including replacement after 120 years
Sign/signal gantries & cantilever road signs	60 year life – maintenance and replacement
<b>Street Lighting</b>	<b>Commuted Sum</b>
Non-standard columns	Dependent upon type
Non-standard fixings	Dependent upon type
Illuminated street furniture	Dependent upon type
High lighting mast	Dependent upon type
Street Lighting Bulk Lamp Cycle	Dependent upon type
<b>Surfacing</b>	<b>Commuted Sum</b>
Surface Dressing	Overlay per sqm

Hot or cold applied coloured surfacing and high friction surfacing	Overlay per sqm
Modular/Tegula paving	To be determined on a site by site basis
<b>Footways / Cycleways inc PRow</b>	<b>Commuted Sum</b>
Hot or cold applied coloured surfacing and high friction surfacing	Overlay per sqm
Pigmented / Decorative surfacing	To be determined on a site by site basis
Modular/Tegula paving	To be determined on a site by site basis
Conservation kerbs / slabs	To be determined on a site by site basis
Tactile Paving	To be determined on a site by site basis
<b>Kerbs</b>	<b>Commuted Sum</b>
Conservation type kerbs	To be determined on a site by site basis
<b>Fencing &amp; barriers</b>	<b>Commuted Sum</b>
Vehicle Restraint System (VRS)	Replacement
Acoustic Fencing	Dependent on type
Non-standard pedestrian guard railing	Dependent on type
Knee rail fencing	Replacement
Boundary fencing	Dependent on type
<b>Street furniture</b>	<b>Commuted Sum</b>
Bollards	Dependent on type
Retro reflective bollards	Dependent on type
Marker posts	Dependent on type
Cycle Stand	Dependent on type
Litter Bin	Dependent on type
Seating	Dependent on type
<b>Public Transport</b>	<b>Commuted Sum</b>
Bus Shelters	To be determined on a site by site basis
Real Time Information	To be determined on a site by site basis

### Agreement, Bond and Timing

- 2.8 The legal Agreement will include conditions requiring the payment of commuted sums and specify when such payments will need to be made. Any commuted sums payable will be included in the bond required under the Section 38 or Section 278 agreement. The commuted sum will be payable before we issue the adoption / final certificate.
- 2.9 For Section 278 works, we will not normally apply commuted sums for the existing area of carriageway unless replaced with a non-standard material (in that case, the commuted sum would be the difference between the commuted sum for the standard and non-standard material). A full commuted sum would be required for any additional carriageway created (e.g a right turn lane) or any

new feature (e.g. refuge / splitter island, additional lighting, bollards etc). This is because the additional carriageway and features created above those already existing are only required to provide the access for the new development and therefore it is reasonable to require a commuted sum to maintain them in the future.

2.10 There has previously been variation in the methodology/use of the calculation of commuted sums across internal council departments. In order for consistency and reasonable best practice, it is proposed that the industry standard guidance “commuted sums for maintaining infrastructure assets” prepared by CSS (County Surveyors Society) now ADEPT, is used to calculate sums for all assets being adopted by the Council.

2.11 There are a number of variations in the formulae that have been used for calculating commuted sums. The essential feature is that the commuted sum paid is discounted to allow for the fact that it will be earning interest and costs will be increasing due to inflation, which will make up part of the maintenance payment required.

It is therefore necessary to determine the net present value of a future expense and the following formula is recommended to be used to calculate the maintenance obligations:

- $\Sigma Mp/(1 + D/100)^T$ , where
- $Mp$  = Estimated future maintenance cost  $T$  years from now
- $D$  = Discount rate (effective annual interest rate) (%)
- Commuted sum = Summation of all net present values for appropriate future costs.

### **Maintenance cost (Mp)**

2.12 The local authority will use its current contract rates. The maintenance regime is based on ‘whole life costing’ with the frequency of treatment and or the intervals of replacement, based on planned frequencies, historic information and industry guidance. For non-maintenance items it is also appropriate to add a percentage to the works costs to cover the design and supervision costs, considered to be 12.5%.

### **Periodic Discount Rate (D)**

2.13 The recommended discount rate (effective annual interest rate) is 2.0 - 2.2% based on the interest rate and rate of inflation. CCBC utilise a discount rate of 2.0% that is reviewed in accordance with revised CSS (County Surveyors Society) guidance. The use of the discount rate ensures that both the interest earned on the commuted sum, and the effect of inflation in increasing the cash sums eventually required, are taken into account.

### **Time Period (T)**

2.14 Where the life of a development is 60 years or more, it is recommended that a period of 60 years is used as the default period for calculating commuted sums

for future maintenance. The period of 60 years is conventionally used as the minimum life of housing and assets. The period of 60 years for commuted sums represents a reasonable compromise between covering future costs and the uncertainties over whether they will be required in the future. Commuted sums will need to include for the replacement of assets with a shorter life than the expected time period.

2.15 The exception to the use of this time period is where the local authority would be adopting a substantial structural asset e.g. bridge, culvert. In such cases a time period of 120 years is to be utilised.

2.16 Summary of calculation of commuted sums:

- The estimated periodic maintenance cost of the asset to be adopted e.g. maintenance at six monthly intervals.
- Its future cost of renewal or replacement.
- The duration over which the sum is required. The Association of Directors of Planning and Transport (ADEPT) recommends commuted sums for structures should be calculated to cover a 120 year period and that the period for other items should be 60 years (the whole life of the development).
- The effective annual interest rate that will provide a return on the sum invested prior to its expenditure after the effects of inflation have been taken into account (called the discount rate approx. 2.0 – 2.2%). It is recommended that BMBC use 2.0%.

2.17 As an example, a zebra crossing provides a useful illustration of the type of costs to be incurred, from day 1 the flasher units will consume electricity each day, the unit will require cleaning every 2 years, electrical testing is required every sixth year. The flasher unit and globe will require replacement every 10 years whilst the supporting posts will need to be replaced after 25 years. The electricity costs are based on annual cost of the unit and consumption. White lining replaced every 5 years and anti-skid surfacing every 10 years. All these costs and time periods will need to be accommodated within the commuted sum calculation.

### **3. IMPLICATIONS OF THE DECISION**

#### **3.1 Financial and Risk**

3.1.1 Consultations have taken place with representatives of the Service Director – Finance (S151 Officer).

3.1.2 A commuted sum is a one-off payment of capital as a contribution towards the future maintenance of eligible assets to be adopted for the lifetime of the development. This is usually 60 years for housing development infrastructure (roads, drainage etc) and 120 years for structures (bridges, culverted watercourses etc)

3.1.3 The lack of a formal policy means that the Council only currently charges commuted sums for items such as drainage assets, however it is proposed that

many other items should be included in this process if they are offered for adoption by the developer. The commuted sums are currently collected through S38 and S278 legislation and will continue to be collected in this way.

- 3.1.4 There has previously been variation in the methodology/use of the calculation of commuted sums across internal council departments. In order for consistency and reasonable best practice, it is proposed that the industry standard guidance “commuted sums for maintaining infrastructure assets” prepared by CSS (County Surveyors Society) now ADEPT, is used to calculate sums for all assets being adopted by the Council.
- 3.1.5 This 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 every year and where appropriate rates amended to take into account any increase in maintenance costs / materials.
- 3.1.6 The commuted sum amount will be calculated on non-standard items at the rates detailed earlier in the report.
- 3.1.7 The Council will face significant budgetary pressures now and in the foreseeable future. If new highway infrastructure that requires relatively high or excessive maintenance works continues to be added to the network, with no appropriate additional funding made available, then this pressure will increase.
- 3.1.8 The funding secured from the commuted sums is expected to cover all future maintenance costs of all infrastructure assets where adopted, for the lifetime of the development.
- 3.1.9 The total value of commuted sums secured each year will be dependent on how much development and the type of assets that are being put forward for adoption. Contributions will go towards the highways maintenance capital programme as part of the Medium-Term Financial Strategy. No Appendix A is required for this report.

## **3.2 Legal**

- 3.2.1 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.
- 3.2.2 It should be noted that Section 37 of the Highways Act 1980 provides an alternative mechanism whereby a developer / owner of a private road can unilaterally dedicate a road for adoption which can only be resisted where the Council can demonstrate the road will not be of sufficient public utility to justify it being maintained at the public expense. Where a developer elects to use this route, there is no requirement for him to offer up any commuted sum nor can

the Council require one, so it is far more advantageous to avoid this route where possible.

### 3.3 Equality

3.3.1 An Equality Impact Assessment (EIA) pre-screening has been completed in accordance with the Council's EIA policy. No potential for unlawful discrimination and / or low level or minor negative impact has been identified therefore a full EIA has not been carried out.

### 3.4 Sustainability



3.4.1 By applying commuted sums in accordance with the recommendations of this report, the Council will be ensuring that the maintenance costs of future schemes on the highway are taken account of at an early stage of the planning process. This will prevent future difficulties in relation to the funding of additional maintenance.

3.4.2 These proposals may give rise to some private developers (and potentially some Council promoted schemes) having to reduce the provision of planting and other street scene features, to accommodate the commuted sum payment within their available budget.

3.4.3 The introduction of some additional commuted sum payments may lead to the simplification of some schemes to save money. This will be resisted as the Council brings forward new design guidance, which is intended to lift design quality. Commuted sum costs associated with planting and enhanced materials are relatively low. Commuted sums for more expensive elements of schemes such as sustainable drainage are already being collected.

### **3.5 Employee**

3.5.1 There are no direct personnel implications

### **3.6 Communications**

3.6.1 The Policy will be made available on the Council's website where all information for developers is provided. We will communicate the new policy to all developers currently working in Barnsley either through email or letter. This will allow transparency and ensure that developers are aware of the potential commuted sum requirements in association with their development proposal.

## **4. CONSULTATION**

4.1 Officers within Planning Services, Highways and Environment Services and Strategic Transport team have been consulted on the draft policy and have provided input into the formulation of the updated commuted sums.

## **5. ALTERNATIVE OPTIONS CONSIDERED**

5.1 The only other option is for the Council not to have a Commuted Sums Policy. This will mean that the Council does not have an up to date, clear and transparent policy and it will continue to collect commuted sums on an ad-hoc basis that do not reflect current maintenance contract costs.

## **6. REASONS FOR RECOMMENDATIONS**

6.1 The Commuted Sum Policy will create clear guidance for calculating commuted sums payments from the promoters of new schemes affecting the highway.

6.2 It will help protect the Council's finances in the future, from additional claims due to increased highway maintenance requirements on new infrastructure.

## **8. LIST OF APPENDICES**

Appendix 1: Commuted Sum Policy

## **9. BACKGROUND PAPERS**

None

## **10. REPORT SIGN OFF**

<b>Financial consultation &amp; sign off</b>	<i>Maq Ahmed 10 May 2022 Mark Bell Steve Loach</i>
<b>Legal consultation &amp; sign off</b>	<i>Jason Field / Cheryl Radford 10 May 2022</i>

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**Date: 16 August 2022**