

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Lead Member for Universal Services
Date:	15 May 2023
Title:	Commuted Sums Policy Guidance
Report From:	Director of Universal Services

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Purpose of this Report

1. The purpose of this report is to update the Executive Lead Member for Universal Services on the development of a new Commuted Sums Policy Guidance and Commuted Sums Calculator and seeks formal approval to implement the proposed approach for the application of commuted sums to highways and transport infrastructure.

Recommendations

2. That the Executive Lead Member for Universal Services notes the previous recommendations and approvals in the Commuted Sums Policy Guidance Executive Member Decision Day Report and Record on 16 July 2019.
3. That the Executive Lead Member for Universal Services notes the work undertaken to engage with developers and the local planning authorities in Hampshire, and the amendments made to the Commuted Sums Policy Guidance and Calculator to address the issues raised in the engagement process.
4. That the Executive Lead Member for Universal Services approves the proposed Commuted Sums Policy Guidance and Calculator.
5. That the Executive Lead Member for Universal Services approves the proposed timescales and transitional arrangements for the implementation of the Commuted Sums Policy Guidance and Calculator.
6. That authority is delegated to the Director of Universal Services to make future minor amendments and additions to the Commuted Sums Policy Guidance and Calculator in consultation with the Executive Lead Member for Universal Services as appropriate.

Executive Summary

7. Hampshire County Council's existing Commuted Sum Policy precedes current national guidance. It was therefore deemed necessary to update the County Council's approach to ensure it reflects national best practice and to mitigate the

challenges being faced by increasingly constrained and complex developments, and the increased focus on quality of place.

8. The proposed Commuted Sums Policy Guidance and Calculator (Appendices A and B) were developed to provide developers (and other stakeholders responsible for delivering new highway infrastructure) with a transparent and consistent approach for the application and calculation of commuted sums and to ensure that Hampshire County Council receives the appropriate level of funding to maintain the new highway infrastructure to the required standards.
9. The proposed Commuted Sums Policy Guidance and Calculator were approved in principle by the Executive Member for Economy, Transport and Environment in July 2019 subject to engagement and consultation with the relevant local planning authorities and developers.
10. Engagement with the relevant local planning authorities and developers was deemed necessary and important due to the potentially significant impact the proposed Commuted Sums Policy Guidance could have on prospective development in the county and the costs to developers.
11. This report outlines the work undertaken to engage with the identified key stakeholders. It highlights the key issues raised and the subsequent amendments made to the Commuted Sum Policy Guidance and Calculator in response to the stakeholder feedback received.

Contextual information

12. The adoption of new highway infrastructure from new developments result in the County Council, as the Highway Authority, incurring increased maintenance costs for those assets in perpetuity.
13. In recent years there has been a significant shift towards quality of place and the use of enhanced materials in new developments, often in locations that are more constrained and challenging. These combined factors often result in increased maintenance requirements at a time when there is a significant pressure on highway maintenance budgets.
14. To ensure that appropriate levels of funding are received from developers to enable the new infrastructure to be maintained to the required standards, and to ensure that Hampshire County Council's Commuted Sum Policy reflects current national guidance, a new approach to the application of commuted sums was developed for (but not limited to) Section 38 and Section 278 agreements.
15. The proposed Commuted Sums Policy Guidance and Calculator were approved in principle by the Executive Member for Economy, Transport and Environment in July 2019 subject to engagement and consultation with developers and the relevant local planning authorities in Hampshire.
16. Commuted sums are defined as financial contributions made by third parties to Highway Authorities as compensation for taking on the future maintenance responsibility for newly created highways or highway improvements. They are typically, although not invariably, secured through Section 38 and/or Section 278 legal agreements made with developers and landowners.

Stakeholder Engagement Process

17. A comprehensive engagement process with the relevant key stakeholders was undertaken to provide a successful transition to the new approach to the application of commuted sums.
18. Informal discussions with the relevant local planning authorities in Hampshire were initiated during the initial phases of developing the Commuted Sums Policy Guidance and helped shape the draft policy guidance.
19. The local planning authorities and relevant National Parks were then invited to feedback on the draft document. Those that responded attended follow up meetings and workshops with Hampshire County Council to discuss their feedback in more detail.
20. A developer workshop was also held to ensure that viewpoints from all relevant stakeholders were considered and reflected in the Commuted Sums Policy Guidance where appropriate. The seven developers invited represented a range of national and local developers and were selected due to their active involvement and previous engagement in an industry focus group and other workshops hosted by Hampshire County Council.
21. It should be noted that the stakeholder engagement process was significantly delayed due to the Covid 19 pandemic and the subsequent wider issues it caused with additional workstreams and resource pressures both in Hampshire and the District Councils. Once the Covid restrictions and capacity issues eased the follow up meetings and workshops were undertaken.

Stakeholder Feedback

22. All feedback from the engagement process was reviewed to ensure that the comments, suggestions, issues, and concerns raised could be considered and addressed wherever feasible and appropriate.
23. All stakeholders welcomed the new approach's overarching aims of providing a transparent and consistent approach to the application of commuted sums that encourages the adoption of new roads and expedites the adoption process. However, a number of common issues and concerns emerged from the stakeholder engagement process. These have been summarised below along with the actions taken by Hampshire County Council to mitigate them.

Materials and Design

24. There was a general concern that the proposed approach would lead to the use of poor-quality materials, lower design standards, and a reduced palette of materials that would result in aesthetically bland developments.
25. It was clearly demonstrated in the workshops by Hampshire County Council that the new Commuted Sums Policy Guidance promotes the use of the most durable, high-quality materials, with optimum whole life costs, whilst still providing the flexibility to use a wide range of materials and asset types that are often required to enhance quality of place.

Commuted Sum Categories

26. The commuted sum categories outline the highway authority's material and asset preferences and the levels of consultation required for their approval. All stakeholders considered the terminology for commuted sum categories 3 and 4

(the least preferred of the 4 options) to be too negative and restrictive. In addition, it was requested that several materials and asset types were moved into lower categories to avoid the need for robust justification and consultation with the highway authority for their use.

27. The commuted sum category terminology has now been amended and the overall stance on the use of category 3 and 4 options has been significantly softened to allow greater flexibility. In most cases, the requests to move material and asset types to lower categories have been agreed.

Green Infrastructure

28. Concerns were raised by all stakeholders regarding the application of commuted sums for highway trees. The main issues were due to the costs being applied and the designated commuted sum category (category 3). Assets listed in this category are not considered to be the highway authority's preferred materials or assets. It should be noted that the commuted sum categorisation was undertaken before Hampshire County Council's declaration of a climate emergency and the publication of the County Council's Tree Strategy (2020).
29. The commuted sum category has now been amended to a category 2 to ensure that highway trees are considered an acceptable design choice. The commuted sum costs for highway trees have also been reduced and cover routine maintenance and inspections at a significantly subsidised rate.
30. Commuted sums are currently applied to all grass verges in the current Commuted Sums Policy and this was the intention going forward in the new approach. This was questioned by numerous stakeholders as they considered commuted sum costs for assets that enhance biodiversity should be reduced.
31. It was agreed that commuted sums would now only apply to areas of grass verge that are above the standard two metre width.

Sustainable Urban Drainage Systems (SUDs)

32. The limited number of SUDs options included in the Commuted Sums Calculator was a concern for several stakeholders. At the time of consultation materials and assets (including SUDs) not included in the Commuted Sums Calculator would by default automatically be categorised as a commuted sum category 4 and considered an unacceptable design choice.
33. To include every potential material or asset type in the Commuted Sums Calculator is simply not possible due to a constantly evolving palette of materials, products, and specifications. To ensure that items not included in the calculator are given fair consideration, commuted sum category 4 options are no longer considered unacceptable.
34. Category 4 design choices are now allowed if sufficient justification for their use can be provided, as per the criteria set out in the Commuted Sums Policy Guidance. For example, where it can be demonstrated that they reduce the carbon footprint of construction works, future maintenance operations, or where they have a significant positive impact on biodiversity.
35. An interim Technical Guidance Note for permeable paving has now been published by Hampshire County Council and permeable paving has been included in the Commuted Sums Calculator. Other SUDs options have also subsequently been added such as swales, filter, and fin drains. As the Technical

Guidance Notes continue to be published and updated, other SUDs options will be included within the Commuted Sum Calculator where appropriate.

National Parks

36. The South Downs National Park (SDNP) Authority was concerned that the policy was written as a 'one size fits all' approach. It requested greater flexibility in the use of enhanced design options within the SDNP boundary to avoid conflict between achieving adoption and meeting the design standards that are applied within the SDNP.
37. A section has now been included in the Commuted Sums Policy Guidance which states that special consideration and potentially greater flexibility will be given for the use of enhanced materials and asset types if they are located within national parks, conservation areas and heritage areas.

Developers

38. Transparency in commuted sum costs at an early stage and clarity of process and approach to help expedite the adoption process were considered by some developers as being more important than the actual commuted costs. However, some costs and replacement lifecycles for specific asset types and material options in the Commuted Sum Calculator were considered high and were questioned.
39. In response, several asset lifecycles have been reduced and all commuted sum costs have been changed to cover only the 'extra over' costs between maintaining the 'standard' and 'non-standard' assets where appropriate and feasible to do so. This approach aligns more closely with current national guidance.

Finance

40. As detailed in the Commuted Sums Policy Guidance Executive Member Decision Day Report on 16 July 2019, it is expected that commuted sum costs for Section 38 and Section 278 agreements will increase where enhanced materials and assets are proposed. However, the increase to cover these additional maintenance costs is considered fair and appropriate and will enable the new highway infrastructure to be maintained to the required levels of service.
41. It should be noted that as a direct result of the stakeholder engagement process the commuted sum costs for several asset types have been reduced. In addition, the costs for all assets have now been reduced, where feasible and appropriate, to cover the difference in the costs between maintaining the 'standard' and 'enhanced' assets.
42. Where developers opt to use the highway authority's preferred durable materials, asset and design choices no commuted sums will be applied to the development.
43. However, it is expected that the overall level of commuted sums applied to new Section 38 and Section 278 agreements will increase. The anticipated increase will be a more accurate representation of future maintenance requirements compared to the current Commuted Sum Policy and is deemed necessary to

protect the County Council's assets and liabilities and ensure that future maintenance and financial needs can be mitigated.

44. The revised versions of the Commuted Sums Policy Guidance and Calculator are now considered to strike a sensible balance between limiting future maintenance liabilities, securing appropriate levels of funding, and meeting local planning authority and developer requirements.
45. If the implementation of the proposed Commuted Sum Policy Guidance and Calculator, especially for enhanced designs, is proven to deter development in Hampshire, there are various options that could be considered to reduce the commuted sum costs. These include reducing the timeframes the commuted sums are calculated over, reducing the individual asset lifecycles, or subsidising the material and asset rates. It is recommended that authority be delegated to the Director of Universal Service to make changes such as these.
46. All commuted sums received will be collected and managed by the Hampshire Highways Service. They will be recorded and held in a single account, split by generic asset type, and ringfenced for maintenance purposes. All commuted sums will be re-invested into maintenance of the highway network using asset management principles to ensure that the highway infrastructure is maintained to the appropriate standards.

Performance

47. The new Commuted Sum Policy Guidance and Calculator will continue to evolve as new materials, products emerge, and national guidance, planning regulations and legislation change. Hampshire County Council will continue to work collaboratively with all stakeholders to ensure the new approach remains up to date and fit for purpose.
48. The Highways Asset Management Team will continue to liaise closely with the Highways Development Planning and Delivery teams, to ensure all feedback from developers is routinely considered and processes adjusted if necessary.
49. All assets, materials, design options, lifecycle calculations, and commuted sum costs relating to the Commuted Sum Calculator will be reviewed on an annual basis and adjusted as appropriate.

Consultation and Equalities

50. Early-stage informal discussions with local planning authorities in Hampshire were undertaken during the initial phases of developing the Commuted Sum Policy Guidance and helped shape the draft document. The local planning authorities and relevant National Parks were then invited to feedback on the draft document. Those that responded attended follow up meetings and workshops with Hampshire County Council to discuss their feedback in more detail. A developer workshop was also held to ensure that viewpoints from all relevant stakeholders were considered and reflected in the Commuted Sums Policy Guidance where appropriate.
51. All feedback from the engagement process was reviewed to ensure that the comments, suggestions, issues, and concerns raised could be considered and addressed wherever feasible and appropriate. It was not possible to fully

address and mitigate all the issues raised, but as a result of the engagement process numerous concessions, amendments, and improvements have been made to the Commuted Sums Policy Guidance and it is now more closely aligned with the aspirations of local planning authorities and developers.

52. The proposed Commuted Sum Policy Guidance is an amendment to an existing policy and will not change the services provided. All commuted sums received from developers will be re-invested into the maintenance of the network using asset management principles to ensure that the highway infrastructure is maintained to the appropriate standards for all highway users. The implementation of this policy guidance has therefore been assessed as having a neutral impact on groups with protected characteristics.

Climate Change Impact Assessments

53. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.
54. The carbon mitigation tool and climate change adaptation tool could not be applied because the decision relates to a strategic policy and process that determines the level of funding received by developers for new highway infrastructure and developments.

Climate Change Adaptation

55. Higher summer temperatures and wetter winters will lead to higher rates of deterioration and more frequent planned, routine, and reactive maintenance works. The cost of maintaining highway assets to the required levels of service and be more resilient to the impacts of climate change is therefore expected to increase.
56. One of the overarching aims of the Commuted Sum Policy Guidance is to promote the use of the most durable, sustainable, and maintainable materials and assets which will reduce whole life costs, limit future maintenance requirements, and increase network resilience.
57. The Commuted Sum Policy Guidance also aims to secure appropriate levels of funding from developers to ensure that new highway infrastructure can be maintained to the required standards and be more resilient to the impacts of climate change.

Carbon Mitigation

58. The proposed policy guidance has been developed to encourage and facilitate the adoption of more sustainable highway developments by promoting the use of durable and sustainable materials and assets that will reduce the carbon footprint of construction works. The use of more durable materials will also

reduce the frequency of future maintenance requirements and lower the carbon emissions associated with maintenance operations.

59. The commuted sum costs applied to highway trees have been reduced from the costs within the current Commuted Sum Policy. This has been done to encourage tree planting and increase carbon sequestration and biodiversity in new highway developments. Trees also provide resilience to climate change impacts, through cooling, shading and flood alleviation, and have proven benefits in tackling poor air quality.

Other Key Issues

60. The proposed Commuted Sum Policy Guidance is a revised approach to the current policy. The processes associated with the collection of commuted sums and how they are reinvested into maintenance of the highway network remain the same.
61. The most significant change is to the types of materials and assets included within the Commuted Sum Calculator and the methodology for calculating the commuted sums applicable to each material and asset type.
62. As outlined in the Finance section of this report it is expected that the commuted sums costs will increase for many material and asset types. This is generally, but not in all cases, due to the increase in time periods that commuted sums will be applied. The time periods have been applied in line with current national guidance.
63. It is deemed appropriate that Hampshire County Council provide all relevant stakeholders with advanced warning of the upcoming changes to the application of commuted sums in order to achieve a smoother transition to the new approach.
64. It is proposed that the new Commuted Sums Policy Guidance and Calculator will be applied to all planning consents (outline and reserved matters) from 1 July 2023 where new Section 38 and Section 278 agreements are required.
65. Where planning consent is granted for a Section 38 or Section 278 agreement **prior** to 1 July 2023, commuted sums will be applied in accordance with the **previous** Commuted Sum Policy. However, if the Section 38 or Section 278 legal agreements are not signed within 2 years of 1 July 2023, the new Commuted Sum Policy Guidance and Calculator will be applied.
66. Developers base the financial implications of a new development's design on the commuted sum policy in place at the time. If the policy is changed without a lead in period, it does not allow Developers to take the new commuted sum costs into consideration when assessing a development's viability. A two-year transition period has therefore been provided where planning consent has already been granted, as outlined above.

Conclusions

67. The feedback from the stakeholder engagement process summarised in this report provides an overview of the most common and important issues raised and the actions taken to mitigate them.

68. Due to the various competing demands and priorities between stakeholders it was not possible to take on board all the comments and suggestions, or fully address and mitigate all the issues raised. However, as a result of the engagement process numerous concessions, amendments, and improvements have been made to the Commuted Sum Policy Guidance and Calculator.
69. The overall proposed approach to the application of commuted sums has not been altered, but the Commuted Sum Policy Guidance and Calculator have been aligned more closely with the aspirations of local planning authorities and developers.
70. The revised versions of the Commuted Sums Policy Guidance and Calculator are now considered to strike a sensible balance and compromise between limiting future maintenance liabilities, securing appropriate levels of funding to cover the additional costs, and meeting local planning authority and developer requirements.
71. Discussions with several stakeholders continued after the workshops to resolve subsequent issues that were raised. Hampshire County Council will continue to work collaboratively with all stakeholders to ensure the new approach remains up to date and fit for purpose.
72. It is expected that the new Commuted Sums Policy Guidance and Calculator will continue to evolve as new materials and products are developed, and national guidance, planning regulations and legislation change.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
<u>Title:</u> Commuted Sums Policy Guidance <i>Decision - Commuted Sums Policy Guidance About the Council Hampshire County Council (hants.gov.uk)</i>	<u>Date</u> 16 July 2019
Direct links to specific legislation or Government Directives	
	<u>Date</u>

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

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

2. Equalities Impact Assessment:

The proposed Commuted Sum Policy guidance is an amendment to an existing policy and will not change the services provided. All commuted sums received from developers will be re-invested into the maintenance of the network using asset management principles to ensure that the highway infrastructure is maintained to the appropriate standards for all highway users. The implementation of this policy guidance has therefore been assessed as having a neutral impact on groups with protected characteristics.