

HIGHWAYS AND TRAFFIC GUIDANCE NOTE

NO. HAT 40/4/12
SUBJECT COMMUTED SUMS FOR MAINTENANCE
EFFECTIVE FROM JANUARY 2012
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1 Introduction

- 1.1 When the Highway Authority takes on assets from other owners, it incurs maintenance costs for the life of the assets, as well as replacement costs at the end of their useful life.
- 1.2 Commuted sums to cover these costs can usually be recovered from the transferring owner, unless other specific sources of funding for these assets are available to the Highway Authority (for example the Revenue Support Grant – RSG).
- 1.3 There are three main ways in which the Highway Authority agrees to take on assets from other owners:
 - 1.3.1 S38 Agreement (of the Highways Act 1980), whereby the total length of adopted highway maintained by the Highway Authority is extended. This affects the formulae that govern the calculation of the RSG, which includes for general highway maintenance.
 - 1.3.2 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 affect the RSG.
 - 1.3.3 Other agreed transfers from third-parties. These may or may not extend the existing highway, depending on the specific circumstances.
- 1.4 The principles of this HAT follow the guidance produced for the Department for Transport by the then CSS (now ADEPT). This can be found at <http://www.adeptnet.org.uk/assets/userfiles/documents/000296.pdf>. This guidance is supported and applied on the whole by local authorities across the country.

2 Purpose

- 2.1 The purpose of this HAT is to ensure that, when accepting assets from other owners, the Highway 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 Highway Authority.

- 2.2 A standard Excel pro-forma is available in Appendix B, so that commuted sums can be calculated in a consistent manner across asset types, with allowance being made for the time period over which the sum is calculated depending on the permanence of the asset.

3 Application

- 3.1 In principle, commuted sums should be recovered from the transferring owner in all situations covered by section 4 Scope, below.
- 3.2 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 HAT
- 3.3 Exceptional circumstances may arise where the Development Control (DC) 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 HAT in an individual case outweighs the desire for a consistent approach.
- 3.4 In such a case, the relevant Officer shall consult with the budget manager who would benefit from the Commuted Sum.
- 3.5 The relevant Officer will then make a case in writing to the Executive Councillor for Highways, including the views of the budget manager, for an exception to the provisions of this HAT and detailing the alternative proposed. This will include, amongst other things, details of the asset, the current owner, the Commuted Sum that would have been payable and the alternative financial provisions – if any.
- 3.6 The Executive Councillor will then approve or otherwise the recommendations of the relevant Officer
- 3.7 A decision not to recover a commuted sum for an asset should be recorded in the appropriate attribute on Confirm (the asset management system) by the relevant asset management team.

4 Scope

4.1 Section 38 Agreements

Funding for ongoing maintenance for the added highway length from S38 schemes is provided for through the RSG. This funding is based on the provision of “standard” construction. Therefore, commuted sums should be charged for ‘extra over’ and ‘added value’ costs of exceptional items and specialist materials on S38 schemes:

4.1.1 Surface Water Drainage Systems including Soakaways and Sustainable Drainage Systems (SuDS)

Where a drainage system is approved and adopted under the provisions of the Flood and Water Management Act 2010, commuted sums cannot be recovered.

Otherwise, where the Highway Authority is to adopt surface water drainage infrastructure (including soakaways and SuDS), a commuted sum for maintenance of the entire system other than the gullies and connections will be recoverable from the developer.

4.1.2 Non-Standard Surfacing and alternative materials.

Where materials that are not within the current specification applied by the Highway Authority are used in surfaced areas, a commuted sum for maintenance will be recovered.

4.1.3 Structures and other 'extra over' items

Highway structures (retaining walls, culverts, bridges etc), public transport infrastructure, landscaping, trees and shrubs, and special features such as noise fencing are considered as 'extra over' standard adoptable works. Commuted sums for the maintenance costs of these items shall be recoverable.

4.1.4 Street lighting, street furniture, traffic signals and signs

Where the developer is responsible for installations, finishes, materials, features etc., which would incur additional maintenance or replacement costs (when compared with those required by the Highway Authority's current specification), a commuted sum for the additional maintenance costs will be recoverable.

4.1.5 'Additional' Areas

When areas of construction, grass etc which are not required in the opinion of the Highway Authority for the safe and satisfactory functioning of the highway are being adopted, a commuted sum for maintenance will be recoverable.

Examples include verge outside visibility splays, areas of construction outside a normal turning head etc.

4.2 Section 278 Agreements

Where an existing junction that is over-capacity (as demonstrated by a transport assessment validated by the Highway Authority) is expected to be brought back within capacity (on completion of the development) by the S278 works, then a commuted sum will not be recovered.

In the event that a S278 Agreement extends the highway network, the length of the extension should be treated using the same approach as for S38 schemes (section 4.1 above) for the purposes of commuted sums for maintenance.

For the remaining length on the existing highway, and for S278 schemes that are within the existing highway, commuted sums for maintenance should be recovered for all net increases in highway assets resulting from the agreed works.

If there is a net reduction in any asset type, this will have no reducing effect on the total of the commuted sums being calculated.

4.2.1 Surface Water Drainage Systems including Soakaways and Sustainable Drainage Systems (SuDS)

Where a drainage system is approved and adopted under the provisions of the Flood and Water Management Act 2010, commuted sums cannot be recovered.

Otherwise, where there is no drainage within the existing highway, a commuted sum for maintenance of all drainage, soakaways and SuDS being adopted by the Highway Authority through the S278 scheme will be recoverable. If the existing highway already benefits from drainage, soakaways or SuDS, the Highway Authority will assess the difference between its existing and new maintenance responsibilities. This difference will need to be expressed as an outline asset list, for which a commuted sum for maintenance will be recoverable.

4.2.2 Surfacing – Area and Materials

Where the plan area of constructed surface is increased and / or the new surface is constructed using non-standard materials (not within the current specification adopted by the Highway Authority) a commuted sum for the additional maintenance cost compared with the maintenance cost of the existing surface area and / or standard materials will be recoverable.

4.2.3 Structures and other ‘extra over’ items

Committed sums for the maintenance costs of new highway structures (retaining walls, culverts, bridges etc), public transport infrastructure, landscaping, trees and shrubs, and special features such as noise fencing will be recoverable.

4.2.4 Street lighting, street furniture, traffic signals and signs

Where there is no provision within the existing highway of any or all of street lighting, street furniture, traffic signals and signs, all such assets being adopted by the Highway Authority through the S278 Agreement will require a commuted sum for maintenance.

If the existing highway already benefits from any or all of these types of asset, the Highway Authority will assess the difference between its existing and new maintenance responsibilities. This difference will need to be expressed as an outline asset list, for which a commuted sum for maintenance will be recoverable.

4.3 Other Agreed Transfers

When the Highway Authority agrees with a third party to accept an asset that is not covered by either a Section 38 or Section 278 Agreement, the relevant principles from 4.1 and 4.2 above shall be applied, with the following exception.

New or additional street lights that are installed on the existing highway at the expense of another Lincolnshire public authority will be accepted without a commuted sum if they have prior approval and are designed and installed to the Highway Authority's specification.

4.4 Energy-consuming assets / Communications system

Where energy-consuming assets (eg street lights, illuminated signs and bollards, traffic signals etc.) or assets requiring communications systems (eg some traffic signals) are being considered for transfer in any situation, then the commuted sum calculated may include for ongoing energy and communication system costs, according to the following:

4.4.1 S38 Schemes

For S38 schemes there may be additional costs associated with any 'extra over' equipment and these additional costs can be included in the commuted sum calculation. Otherwise, these costs are the responsibility of the Highway Authority, once adopted.

4.4.2 S278 Schemes and other agreed transfers

For S278 schemes and other agreed transfers, the responsibility for ongoing energy and communication system costs should be clearly stated in the calculation of the commuted sum.

The relevant Officer (DC Officer or the Officer leading on the negotiations with the third party) will be responsible for deciding, with the budget manager normally responsible for paying such costs, whether they should be taken on by the Highway Authority or remain with the developer or third party.

If the energy or communication system costs are taken on by the Highway Authority, then the relevant Officer and budget manager will also need to decide whether a commuted sum for such costs should be payable.

In making these decisions, Officers should take into account the ongoing relationship of the third party with the asset(s) being transferred, the administration costs of any arrangement, the magnitude and robustness of existing budgets, the ongoing relationship between the Highway Authority and the third party etc.

4.5 Transfer of assets requiring maintenance or replacement

On occasions it may be the case that the asset proposed for transfer to the Highway Authority is in need of maintenance or replacement to bring it up to a standard acceptable to the Highway Authority. In this case, the preferred course of

action will be for the developer or third party to procure and complete these maintenance works or replacement in advance of the transfer.

Where this is not possible, the cost of the outstanding maintenance works or replacement should be included in the commuted sum. This should be done by bringing forward the first instance of this type of maintenance or replacement in the commuted sum period being considered, to the year in which the works will be procured by the Highway Authority.

5 Process

5.1 S38 and S278 Agreements

On schemes covered by S38 and S278 Agreements the relevant Development Control (DC) officer will be responsible for liaising with the relevant specialist teams in Division, TSP, Highways Client and Transportation to establish whether commuted sum(s) will be required.

If commuted sum(s) are required, the developer shall be informed by the DC Officer.

The DC officer shall ensure that the requirement for payment of the commuted sum(s) is written into the relevant Agreement by Policy & Orders. This shall be that all commuted sum(s) will be payable in advance of placing any of the works on maintenance.

The total of the commuted sum(s) shall be added into the Bond figure in the Agreement in order that it can be obtained via the Bond Guarantors if, for any reason, the developer fails to pay. Any interim requests for the reduction in the Bond will take into account any outstanding commuted sum payments.

The commuted sum(s) will be calculated – using the method shown in Appendix A – by the relevant specialist teams (or asset manager) once requested by the DC Officer; a pro-forma Excel spreadsheet using this method is available at Appendix B.

The commuted sum will be collected from the developer by Policy and Orders (for S278s) or the DC Officer (for S38s) prior to the Highway Authority accepting any maintenance liability for the works.

5.2 Other Asset Transfers

The Officer leading on the negotiations with the third party will decide whether a commuted sum is required, based on the principles in 4.1 and 4.2 above and inform the third party as part of the negotiations.

The Officer must ensure that any documented agreement for the asset transfer includes details of the commuted sum, including the monetary value and the point at which it must be paid. This must be in advance of the Highway Authority accepting transfer of the asset.

The commuted sum will be calculated – using the method shown in Appendix A – by the relevant specialist team once requested by the leading Officer; a pro-forma Excel spreadsheet using this method is available at Appendix B.

5.3 Maintenance Costs to be used in the calculation

Relevant teams responsible for maintenance of assets should establish their own library of costs for periodic maintenance activities for assets types likely to attract commuted sums. These should take into consideration current maintenance rates, historic information and the cost of design and supervision of any maintenance. They should be equitable across the County and co-ordinated by the Asset Manager in Client Services.

6 Finance

- 6.1 Separate general ledger accounts shall be held by finance for each of the following areas and for each different discount period: structures, street lighting, signals, drainage and general highway maintenance. The last of these shall receive any commuted sums not relevant to the first four. These accounts shall be interest bearing where financial rules permit.
- 6.2 Monies shall be drawn down from the relevant accounts into the relevant budgets at the start of the financial year, at a rate related to the length of the discount period, e.g. $1/60^{\text{th}}$ of the balance of the account holding monies from commuted sums calculated with a 60 year discount period.
- 6.3 This money will show as an income to the County Council enabling the gross County Roads Maintenance budget to be increased by the same amount, but will be ring-fenced to the budget area related to the account in which it was held.
- 6.4 For example, commuted sums received for street lighting shall be drawn down to the street lighting revenue budget and commuted sums received for surfaces will be drawn down to the general maintenance revenue budget.
- 6.5 Monies drawn down into the overall general maintenance revenue budget shall be distributed between different areas according to normal budget distribution processes.
- 6.6 Early drawn down from the relevant account may be arranged where the assets accepted are in need of major maintenance or replacement within three years of the transfer of the asset. Major maintenance or replacement after that period should be funded from within normal budget allocation.

7 Transition Arrangements

Any accounts or budgets holding commuted sums which pre-date this HAT will have no further commuted sums credited to them. They will continue to be available to the relevant budget manager to use within the existing rules that apply to that budget or account.

This HAT is next due for review January 2014.

CALCULATION OF COMMUTED SUM

The following formula should be used to calculate the sum payable. An Excel spreadsheet (Appendix B) to aid in the calculation has been prepared by the author and is available for modification to specific situations.

Commuted sum = $\Sigma Mp / (1 + D/100)^T$, where:

Mp = Estimated periodic maintenance cost (£)

Each asset type will have a number of different periodic maintenance activities, as well as periodic replacement where necessary. The current cost of each activity (or replacement) should be based on current contract rates or historic information where more appropriate. The cost should include elements for design and supervision. The frequency of periodic maintenance (or replacement) should be in accordance with current Highway Authority policy, or where there is none, national best practice and guidance.

D = Discount rate (effective annual interest rate) (%)

This is calculated to ensure that both the interest earned on the commuted sum, and the effects of inflation are taken into account. The calculation is:

$$D = (1.045/1.0225) - 1 = 2.2\%$$

where 1.045 is the interest rate (4.5% based on long-term neutral base rate) and 1.0225 is the inflation rate (2.25% based on RPI-X that is RPI excluding mortgage payments).

The rates used in the calculation of 'D' are subject to change over time and a check against current Department for Transport guidance on current values should be made before calculating the commuted sum.

T = Time period before expenditure will be incurred (years)

Where the Highway Authority is adopting assets that are permanent features integral to the highway network, such as structures or road construction, the commuted sum should be calculated over a time period of 120 years.

For other assets, commuted sums should be calculated over a period of 60 years. This period represents a reasonable compromise between covering future costs and the uncertainties over whether they will be required in the future.