

Subject: COMMUTED SUM ADOPTED PRACTICE FOR ADDITIONAL HIGHWAY MAINTENANCE LIABILITIES**Report of:** Director of Built Environment**Wards Affected:** All**Is this a Key Decision?** Yes**Is it included in the Forward Plan?**
Yes**Exempt/Confidential**No

Purpose/Summary

To seek approval for a proposed adopted practice of securing commuted sums from developers through Section 38/278 legal agreements to fund future highway maintenance liabilities that result from the impact of new developments.

Recommendation(s)

It is recommended that Cabinet approves a proposed adopted practice of securing commuted sums from developers through Section 38/278 legal agreements to fund future highway maintenance liabilities that result from the impact of new developments. It is also recommended that this is carried out in line with the advice and principles set out in the ADEPT guidance document "Commuted sums for maintaining infrastructure assets" with information provided by the Sefton TAMP used to justify commuted sum charges.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Jobs and Prosperity	√		
3	Environmental Sustainability	√		
4	Health and Well-Being	√		
5	Children and Young People		√	
6	Creating Safe Communities	√		
7	Creating Inclusive Communities	√		
8	Improving the Quality of Council Services and Strengthening Local Democracy		√	

Reasons for the Recommendation:

The recommendation will ensure the Council’s future maintenance liability will not increase as a result of new developments.

What will it cost and how will it be financed?

- (A) Revenue Costs** No financial implications for the Council
- (B) Capital Costs** Increases in future maintenance liabilities as a result of new developments will be funded by developers

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	
The statutory provisions (Sections 38 and 278 Highways Act 1980) are set out in section 2.0 of the report	
Human Resources	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

None

What consultations have taken place on the proposals and when?

The Head of Corporate Legal Services (LD 973/12) has been consulted and any comments have been incorporated into the report.

The Head of Corporate Finance and ICT (FD1639) has been consulted and has made no comments on this report.

Are there any other options available for consideration? No

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet

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Background Papers:

ADEPT (formerly County Surveyors Society or CSS) guidance document “Commuted sums for maintaining infrastructure assets” 2009

A copy of the ADEPT guidance document can be viewed by accessing the Council’s Document Library using the following link:

<http://modgov.sefton.gov.uk/moderngov/ecSDDisplay.aspx?NAME=SD977&ID=977&RPID=4588613&sch=doc&cat=13375&path=13374%2c13375>

1.0 INTRODUCTION

1.1 The purpose of this report is to seek formal approval for the proposed adopted practice of securing commuted sums from developers through Section 38/278 legal agreements to fund future highway maintenance liabilities that result from the impact of new developments. Typical circumstances where this may occur as identified in the ADEPT guidance include:

- **ADDITIONAL AREAS NOT REQUIRED FOR NORMAL HIGHWAY PURPOSES** - Maintenance costs for construction not required for the safe and satisfactory functioning of the highway (including alterations to existing highway only required to serve the development) with no general benefits
- **‘EXTRA-OVER’ ITEMS** – In relation to Section 38 works, maintenance costs for additional features which may be considered as ‘extra-over’ the normal design, such as highway structures, additional street lighting, traffic signal installations, non-essential street furniture/fencing, public transport infrastructure and landscaping
- **ALTERNATIVE MATERIALS** - Additional maintenance costs for permitted non-standard or alternative materials and features for example, bespoke street furniture exceeding standard specification
- **SUDS** - Provision of Sustainable Urban Drainage Systems (SUDS) such as flow-attenuation devices, swales and storage areas

1.2 The use of non-standard materials in highway construction, adoption of additional areas of highway over and above the minimum requirements for the safe functioning of the highway, structures, including bridges and culverts, SUDS, street furniture and special features not forming standard highway features, all result in a future maintenance liability for the Council as Highway Authority. This additional liability, in respect to new developments, is not covered by the Relative Needs Formula (RNF) used when calculating the Revenue Support Grant (RSG) for highway maintenance within the Borough. Failure to charge commuted sums in respect to new developments would, over time, result in a further deterioration of the highway network throughout the Borough, thus placing pressure on existing highway maintenance and other Council budgets.

1.3 Provisions within Section 38 and Section 278 of the Highways Act 1980 enable the future maintenance liability associated with new developments to be covered by securing commuted sum payments.

1.4 Whilst Sefton Council already uses the 1980 Highways Act to secure commuted sums from developers, formal approval of a proposed adopted practice will ensure that the process is justifiable and better equipped to withstand scrutiny.

2.0 HIGHWAYS ACT 1980

- 2.1 Highway infrastructure works are generally covered by agreements entered into under Section 38 and Section 278 of the Highways Act 1980, which provide discretionary powers to the Highway Authority to enter into an agreement with a developer to adopt new highways (Section 38) or improve the existing highway (Section 278).
- 2.2 Section 38(6) of the Act provides the power to seek commuted sums for the maintenance of the adopted highway: 'An agreement under this section may contain such provisions as to the dedication as a Highway Authority of any road or way to which the agreement relates, the bearing of the expenses, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the Authority making the agreement thinks fit.' This relates not only to maintenance prior to adoption, but also to 'relevant matters as the authority making the agreement thinks fit', which may include a commuted sum for future maintenance following adoption by the Council acting in its formal capacity as the Highway Authority.
- 2.3 Section 278(3) of the Act includes the provision for payments for maintenance of the works on the existing highway, and this may be applied by the Highway Authority if it chooses to do so: 'An agreement under this section may provide for the making to the Highway Authority by the other party to the agreement of payments in respect of the maintenance of works to which the agreement relates and may contain such incidental and consequential provisions as appear to the Highway Authority to be necessary or expedient for the purposes of the agreement.'

3.0 ADEPT GUIDANCE – COMMUTED SUMS FOR MAINTAINING INFRASTRUCTURE ASSETS

- 3.1 In 2009, ADEPT (formerly the CSS or County Surveyors Society) issued national guidance for Local Authorities in respect to the use of commuted sums for future maintenance: 'Commuted sums for maintaining infrastructure assets.' Since that time many Local Authorities charge commuted sums in accordance with the advice and principles given in the guidance. Such Local Authorities include Surrey County Council, Cambridgeshire County Council, Lincolnshire County Council and East Sussex County Council.
- 3.2 The guidance provides a transparent and consistent approach both in the seeking of and the calculation of commuted sums. The guidance outlines a clarity of approach in order to:
- remove uncertainty and risk for developers at an early stage in the process
 - provide greater security for overstretched highway maintenance budgets
 - enable developments to progress with much more certainty about the overall requirements and commitments for all parties involved
- 3.3 The guidance recommends that Highway Authorities should use a discounted rate of 2.2% and a life time period of 60 years for highway maintenance calculation purposes. However, it also states that if a Highway Authority considers that a different rate or time period should be used, then the reasons for doing so and the calculations used must be made explicit.
- 3.4 The development of the Transport Asset Management Plan (TAMP) for Sefton will be an invaluable tool in providing the information required to determine justifiable

commuted sum charges for each type of highway asset and all materials used in respect to new developments throughout the Borough. Charges calculated in this manner will better withstand scrutiny and the possibility of being legally challenged.

- 3.5 The development of the Developers Pack for Sefton has highlighted the need to ensure that commuted sum charges are justified and reflect the true cost of future maintenance liabilities. Where a developer uses materials or construction methods that are proven to reduce the need for future maintenance, then the commuted sum charge will need to be reduced accordingly.

4.0 CONCLUSIONS

- 4.1 The approval of a proposed adopted practice of securing commuted sums from developers through sections 38 and 278 legal agreements to fund future highway maintenance liabilities that result from the impact of new developments in line with the advice and principles set out in the ADEPT guidance will formalise the process and provide a justifiable system better equipped to withstand scrutiny and the possibility of being legally challenged. It will also ensure an additional source of income to fund future highway maintenance liabilities that result from the impact of new developments and so reduce pressure on existing highway maintenance and other Council budgets.