

Report title: Cambridgeshire County Council Commuted Sum Proposals

To: Highways and Transport Committee

Meeting Date: 19 January 2021

From: Steve Cox, Executive Director - Place and Economy

Electoral division(s): All

Forward Plan ref: 2021/11

Key decision: Yes

Outcome: For the Council to ultimately introduce a commuted sums policy to enable maintenance costs for new highway infrastructure to be covered.

Recommendation: (a) To approve the principle of the Council levying commuted sums on new highway schemes; and

(b) To delegate to the Executive Director – Place and Economy, in consultation with the Chair and Vice Chair of the Committee the preparation of a consultation document for commuted sums and to report the findings and a proposed policy back to Committee following that consultation.

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1. BACKGROUND

- 1.1 Highway assets and infrastructure projects undertaken in Cambridgeshire by third parties including the Greater Cambridge Partnership (GCP), the combined Authority (CPCA) and private developers once completed, are transferred to Cambridgeshire County Council (CCC) through agreements securing adoption. The highway authority (CCC) then assumes responsibility for the future maintenance and upkeep at public expense. By accepting these highway assets, a financial burden is placed upon CCC for their ongoing maintenance in perpetuity.
- 1.2 Commuted sums policy and practice across England has varied but with highway authority maintenance budgets increasingly under pressure, there is a growing trend to minimise financial exposure by securing full recompense for future liabilities arising out of new or improved highways infrastructure.
- 1.3 CCC currently does not collect contributions for the ongoing maintenance costs of new infrastructure, unless 'non-standard' items are included, for example construction which utilises specialist materials or exceptional items.
- 1.4 CCC welcomes improvements to its highway assets but considers that all public bodies, and third party developers, as part of any development they lead, need to identify and set aside budgets to maintain the enhanced assets as part of forward planning.
- 1.5 Typically, the collection of commuted sums is the subject of agreements usually with developers arising from s106 obligations or planning consents. These works are usually undertaken by developers under sections 38 and/or 278 of the Highways Act 1980. The legal mechanism for securing these contributions from public bodies will be different and will be developed as part of this process.
- 1.6 Section 38 is a power allowing highway authorities to adopt newly constructed roads by agreement with landowners and developers. Section 38(6) states as follows:

“An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, 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 think fit”.
- 1.7 Section 278 of the 1980 Act is a power allowing highway authorities to secure improvements to existing roads by agreement with landowners and developers. Section 278(3) states as follows:

“The agreement may also provide for the making to the highway authority of payments in respect of the maintenance of the 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”.
- 1.8 Section 278 is therefore drafted in the same wide and unqualified terms as Section 38 of the 1980 Act. It follows that the same interpretation can be placed on Section 278(3) as for Section 38(6), namely that there are no limitations as to how the amount of the commuted sum should be calculated. Section 278 commuted sums need not therefore be limited to non-standard costs but can be calculated by reference to all future maintenance costs.
- 1.9 This would be a proposed change to existing procedures as CCC will require commuted sums for all highway assets which are amended, improved or increased in number or area, whether they are standard or non-standard assets resulting in increased maintenance costs

and liabilities.

2. MAIN ISSUES

- 2.1 Consultants have been commissioned to develop a protocol for Cambridgeshire Commuted Sums. This work has been based upon the nationally recognised guidance contained in 'Commuted Sums for Maintaining Infrastructure Assets' produced by the County Surveyors Society, now known as the Directors of Environment, Economy, Planning and Transport (ADEPT), which sets out what commuted sums will apply and how they should be calculated. There are descriptions of assets and construction types within this document that form a minimum basis for standard construction. There is also an allowance for local highway authorities to set out their own definition of standard assets.
- 2.2 The detailed policy for the County Council will be developed based on the work of the consultants. However, prior to that, it is proposed that a consultation be undertaken with stakeholders, including the Greater Cambridge Partnership and the Combined Authority on the principle of commuted sums and outline proposals for how they could be applied.
- 2.3 The purpose of any policy will be to provide confidence as to CCC's requirements, as well as a consistent approach to all works promoters, and more certainty as to what those involved in early development of infrastructure provision will be expected to contribute towards.
- 2.4 To determine what commuted sums are required for development that requires changes or additions to highway assets, it is likely that a simple calculator tool will be prepared that a developer can populate to calculate commuted sums payable. The principle of this will be tested in the consultation.
- 2.5 Consideration will be made as to when to apply the commuted sum charges from, as these sums need to be applied to projects and schemes early in their lifecycle, to ensure the early project budgets have catered for the commuted sum payments prior to the project budgets being approved.
- 2.6 Where the scheme improves the existing highway asset, such as resurfacing an existing carriageway, this will reduce the existing maintenance burden on CCC. Therefore it is proposed the principle of a "maintenance spend foregone" sum will also be tested as part of the consultation.
- 2.7 Subject to the views of this Committee on the principle of commuted sums, a consultation document will be prepared and issued as soon as possible and following that, a final proposed way forward will be presented to Committee.

3. Alignment with corporate priorities

- 3.1 A good quality of life for everyone
There are no significant implications for this priority.
- 3.2 Thriving places for people to live
There are no significant implications for this priority.
- 3.3 The best start for Cambridgeshire's children
There are no significant implications for this priority.

- 3.4 Net zero carbon emissions for Cambridgeshire by 2050
There are no significant implications for this priority.

4. Significant Implications

- 4.1 Resource Implications
With significant amounts of new infrastructure planned across Cambridgeshire for which conventional maintenance funding mechanisms will be insufficient, a new approach is needed if deterioration of the highway asset as a whole across the county is to be avoided. The proposed policy has been adopted by a number of authorities as a means of achieving that.
- 4.2 Procurement/Contractual/Council Contract Procedure Rules Implications
There are no significant implications for this priority.
- 4.3 Statutory, Legal and Risk Implications
Maintaining the value of the contribution with inflation is difficult. Therefore, the Commuted Sums generated need to be maintained financially, so that they attract inflation.
- 4.4 Equality and Diversity Implications
There are no significant implications for this priority.
- 4.5 Engagement and Communications Implications
Consultation with interested parties could produce further unforeseen issues
- 4.6 Localism and Local Member Involvement
There are no significant implications for this priority.
- 4.7 Public Health Implications
There are no significant implications for this priority.

Have the resource implications been cleared by Finance? Yes

Name of Financial Officer: Sarah Heywood

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement? Yes

Name of Officer: Gus de Silva

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or LGSS Law? Yes

Name of Legal Officer: Fiona McMillan

Have the equality and diversity implications been cleared by your Service Contact?

Yes

Name of Officer: Elsa Evans

Have any engagement and communication implications been cleared by Communications? Yes

Name of Officer: Sarah Silk

Have any localism and Local Member involvement issues been cleared by your Service Contact? Yes

Name of Officer: Graham Hughes

Have any Public Health implications been cleared by Public Health Yes

Name of Officer: Kate Parker