



## OXFORDSHIRE COUNTY COUNCIL

### Procedure for Commuted Sums

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## Introduction

The aim of this document is to offer a transparent and consistent approach to commuted sums levied where new highway infrastructure is being adopted by Oxfordshire County Council. This should reduce uncertainty and risk for developers so that they can consider commuted sum requirements at an early stage in the development process.

The definition for the term 'commuted sum' and 'maintenance fee' in relation to the adoption of new infrastructure is:

*A payment of a capital sum by an individual, authority or company to the highway authority, local authority or other body, as a contribution towards the future maintenance and replacement of the asset to be provided, adopted or transferred.*

For highway infrastructure, commuted sums are secured by way of agreements made under the Highways Act 1980, using Section 38 for new roads constructed on private land and Section 278 for alterations made to existing publicly maintained highways and are paid to the highway authority.

## Scope of Commuted Sums

### Commuted Sums for Section 278 (Works within existing highway)

Section 278 Agreements will secure the delivery of everything required for the works to operate safely (e.g. everything that is required to deliver the junction such as vision splays, pedestrian crossings etc.) even if a Section 38 is anticipated. The commuted sum will cover the Section 278 area (and any new road area to be dedicated and adopted) and is calculated on the change to the existing maintenance regime. This would include new assets such as street lighting, traffic signals and signage as well as new areas for OCC to maintain. The change to the existing maintenance regime could be additional asset (i.e. dedication) but also assets being upgraded, for example verge changing to carriageway or over the edge drainage changing to gullies/ permeable paving which all alter the existing maintenance regime. Where areas are downgraded, or the maintenance is reduced, this is considered in the calculation. Commuted sums are applied as set out above for standard and non-standard materials, standard materials will likely attract lower commuted sums than non-standard.

### Commuted Sums for Section 38 (Works on private land)

Section 38 Agreements accommodate OCC adoption of new highway infrastructure to become highway maintained at the public expense. Commuted sums are calculated based on anything 'over and above' the Standard Highway Corridor funding from Central Government. Standard Highway Corridor is defined as standard width carriageway, footways/ cycleways constructed from standard materials, with traditional positive drainage (with the gullies and pipe connections adopted by OCC and the carrier pipe being adopted by a public utility), standard street lighting and narrow verges, all of the above is when used in a continuous corridor adjacent to the highway. Wide verges, landscaping, trees, non-standard road construction, non-standard drainage, non-standard street lighting, unallocated parking bays, boulevards or areas to be adopted remote from carriageway (such as footpaths) would all accrue commuted sums.

## Procedure Detail

### Payment Triggers

Where commuted sums are required, they will be calculated at the detailed design stage of Section 278/38 Agreements. The sums will be identified and included in the draft legal agreements that are circulated following technical approval.

For Section 278 Agreements (works within existing highway) the Commuted Sum is required prior to works commencing. For Section 38 Agreements (works on private land) the Commuted Sum is required prior to adoption.

Once the developer has complied with all of the agreement obligations, the County Council takes on the statutory responsibility for the maintenance of the assets constructed and the liability to defend any claims for breach of this statutory duty.

### Legal Status

The County Council, as the Highway Authority, has a statutory responsibility for the maintenance of adopted highways in Oxfordshire. This duty extends beyond the surface and includes the structure and fabric of the highway.

The statutory authority for commuted sum payments comes from Sections 38(6) and 278(3) of the Highways Act 1980.

There is a court of appeal decision from October 2014 that confirms that highway authorities may, when entering into agreements under section 38 of the Highways Act 1980, legitimately charge commuted sums for the future maintenance of highways after adoption.

### Methodology for Calculation of Commuted Sums

Formula Used to Calculate Present Value:  $Mp/(Dr)T$

Mp = Maintenance/ Replacement Cost based on current contract rates.

Dr =  $(1+D/100)$

D = Effective Annual Interest Rate of 2.2 - calculated as follows:  $2.2 = ((1.045/1.0225) - 1) \times 100$  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).

T = Time Period of 30 years for all assets apart from highway structures, which will be calculated using 120 years.

### Calculation Spreadsheet

OCC have a Commuted sum spreadsheet that is used for all Section 278 and 38 Commuted Sums within Oxfordshire that is updated periodically. This spreadsheet is not an exhaustive list and commuted sums will be calculated on a site-specific basis. A PDF version of this spreadsheet is sent on request. OCC can entertain adopting non-standard materials, but their suitability will be reviewed, this review will include assessing if OCC can maintain in perpetuity and at what cost.

When innovative solutions/ materials are being entertained or landscaped areas are proposed for adoption, it is recommended that discussions are had early with OCC to determine what is adoptable and what commuted sums are envisaged.

Implementation Schedule: June 2019  
Review Date: June 2020