

**To the Chair and Members of the Cabinet**

**Commuted Sums for Highway Drainage Assets Policy**

<b>Relevant Member(s)</b>	<b>Cabinet</b>	<b>Wards Affected</b>	<b>Key Decision</b>
Councillor Blackham	Joe	All	Yes

**EXECUTIVE SUMMARY**

1. Any highway constructed as part of a new development can be adopted by Doncaster MBC under Section 38 or 278 of the Highways Act 1980. The adoption agreement would also include any drainage asset which serves the public highway.
2. Sustainable Drainage Systems (SuDS) are being used more frequently by developers to facilitate the drainage of new public highways (eg permeable paving, soakways etc) and as such, require more regular and specialist maintenance, which will be undertaken by Doncaster MBC.
3. The commuted sum, paid by the developer through a Section 38/278 agreement (Highways Act 1980), will ensure the authority has sufficient monies available to maintain that Highway Drainage Asset to an acceptable standard, for the lifetime of the public highway.
4. Doncaster Metropolitan Borough Council under a Section 38 Highways agreement, adopts all associated highway drainage assets, and any commuted sums requested by a Highway Authority under a section 38 agreement, have been deemed to be lawful. *[Case Law - The application of Redrow Homes Ltd v Knowsley MBC (The Redrow case) 2013 EWHC 3734]*. It also states in the South Yorkshire Residential Design Guide 2011 (adopted by Doncaster Council as a Supplementary Planning Document in July 2015), that for any SuDS system the authority considers adopting, a commuted sum will be required.

**EXEMPT REPORT**

5. N/A

## **RECOMMENDATIONS**

6. It is recommended that Cabinet support the adoption of Appendix A Commuted Sums for Highway Drainage Assets Policy.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

7. Supporting the adoption of a Commuted Sums for Highway Drainage Assets Policy, would allow the council to maintain the drainage assets on new developments to an acceptable standard, not only reducing the flood risk to both the public highway and properties, but also minimising the impact on the council's existing Highway drainage revenue budget, so this can be spent on areas in need of improvement, in terms of mitigating flood risk across the borough.

## **BACKGROUND**

8. In April 2015 the government introduced a new planning policy for Sustainable Drainage Systems on major developments (10 or more dwellings). The purpose of this policy was to lessen the likelihood and impact of surface water flooding from new developments by encouraging the use of SuDS. Developers are encouraged to consider using SuDS for all new major developments, and must provide suitable evidence to demonstrate that SuDS are not suitable, should they not choose this method of drainage for their development.
9. The National Planning Policy Framework (NPPF) and its associated Planning Practice Guidance (that replaced Planning Policy Statement 25 (PPS25) in 2012) states that priority should be given to sustainable drainage and discusses the impact of new development on flood risk.
10. Although Sustainable Drainage Systems have been around for the past 10 to 15 years, the uptake in developers using these systems had been somewhat slow. Now it is entrenched in Planning Policy, the uptake in developers using these systems has increased significantly, and this trend will continue. Now they are becoming more frequently used, the cost to maintain these assets needs to be accounted for.
11. Historically, no commuted sums have been collected for Highway Drainage Assets under a Section 38 Highway adoption agreement. However with the inevitable increase in the use of SuDS systems to facilitate the Highway drainage network, and the fact that these systems require more frequent and specialist maintenance, this will undoubtedly increase the pressure on existing revenue budgets. These types of SuDS systems are also subject to deterioration in performance over time (compared with conventional highway drainage systems) if not maintained to the required standard. Therefore, by collecting commuted sums for Highway Drainage SuDS systems, the council will ensure that these systems are maintained properly, and will not impact upon the current maintenance regimes on existing Highway Drainage Assets.

12. To date the Council has not received any commuted sums for Highway Drainage Assets and therefore have no history or projections of the anticipated numbers or sums of money involved. It is estimated in the region of 20 to 25 Section 38 applications are made per year, which gives an indication of the anticipated numbers of commuted sums we may request. However, each SuDS solution and associated sum will be based on a case by case basis, and the sums applied as per policy. The income will offset the costs to maintain these systems (Soakaways, Permeable Paving, Oil Interceptors etc) and any additional resources/equipment will be procured, as the number of SuDS Installations increase.
13. The costs associated with Highway Drainage Assets, as proposed through the policy, are not considered to have a general impact on development viability given they are commensurate to the development proposal and, when considered in the context of the total gross development costs of a scheme, not considered excessive or unreasonable. Any site specific viability challenges can be addressed through a viability appraisal as part of the planning application stage as permitted through both national and local planning policy. The Council has protocols in place for such appraisals to be independently assessed and, depending on the outcome, negotiations on policy requirements have and will continue to ensue in the interests of ensuring development viability. Future development sites identified through the Council's emerging Local Plan (2015-2032) will have independent viability testing undertaken as part of the process to demonstrate that all policy costs, including SuDS (although the SuDS element is deemed insignificant compared to other policy areas including Affordable Housing, Transport, Open Space, Education, Contaminated land and remediation etc) , have been accounted for and tested before deriving at a decision as to whether they are deliverable and viable sites to allocate.
14. A Typical small development of say 20 houses with 3 soakaways serving the public highway (the number of soakaways is all dependant on the area of carriageway it serves and the ground conditions, so the number of soakaways is only a very rough estimate) would attract £23,400 in commuted sums, which would equate to £1170 per property.
15. The commuted sum figures are estimates at today's prices and do not account for inflation, but the sum collected will accrue interest over the lifetime of the asset, which will negate the rise in inflation.
16. The South Yorkshire Interim Local Standards for SuDS, was adopted by all South Yorkshire Local Authorities (Doncaster MBC, Barnsley MBC, Sheffield CC and Rotherham MBC in May 2015) to promote the use of SuDS systems and provide guidance to developers on SuDS systems, which also includes SuDS systems from Highway Drainage. Many other Local Authorities already have a commuted sums policy in place, which includes Highway Drainage Assets e.g. Derbyshire County Council, Lincolnshire County Council, Calderdale Council and Leeds City Council to name a few.
17. Just to reiterate one of the policies in Appendix A, Doncaster MBC will only allow connection to the existing highway drain if all other options have been exhausted or alternative surface water discharge points are deemed unfeasible (includes discharging into existing watercourses).

## OPTIONS CONSIDERED

18. It is considered there are 2 main options at this stage.
- Option 1 – Support and adopt the commuted sums for highway drainage policy (Recommended) : or,
  - Option 2 - Do not support and adopt the commuted sums for highway drainage policy.

## REASONS FOR RECOMMENDED OPTION

19. Option 1 – This will allow the Council to continue fulfilling its statutory duty (Highways Act 1980), ensuring all highway drainage assets are maintained properly, therefore ensuring the flood risk to both the public highway and properties are kept to a minimum.

## IMPACT ON THE COUNCIL’S KEY OUTCOMES

20.

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Creating Jobs and Housing</i></li> <li>• <i>Mayoral Priority: Be a strong voice for our veterans</i></li> <li>• <i>Mayoral Priority: Protecting Doncaster’s vital services</i></li> </ul>	N/A
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Safeguarding our Communities</i></li> <li>• <i>Mayoral Priority: Bringing down the cost of living</i></li> </ul>	The funding from Commuted Sums will help to mitigate and reduce the risk from flooding which has devastating effects on communities at risk.
	<p>People in Doncaster benefit from a high quality built and natural environment.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Creating Jobs and Housing</i></li> <li>• <i>Mayoral Priority: Safeguarding our Communities</i></li> <li>• <i>Mayoral Priority: Bringing down the cost of living</i></li> </ul>	By adopting Highway drainage SuDS assets, DMBC will ensure a high standard of quality within drainage construction and they will be maintained effectively throughout their lifetime.

	All families thrive.  • <i>Mayoral Priority: Protecting Doncaster's vital services</i>	N/A
	Council services are modern and value for money.	N/A
	Working with our partners we will provide strong leadership and governance.	N/A

## **RISKS AND ASSUMPTIONS**

21. Future risks are that without sufficient funding to maintain the Highway drainage network (both SuDS and traditional highway drainage), this will increase the flood risk to the public highway and properties. Inadequate maintenance on the public highway drainage system, could also pose a health and safety risk on the carriageway.
22. Doncaster MBC has a statutory duty under the Highway Act 1980 and the Flood and Water Management Act 2010 to manage the risk of flooding from surface water. Insufficient funding to maintain Highway drainage SuDS systems, may lead to those statutory duties not being fulfilled.

## **LEGAL IMPLICATIONS**

23. As noted in the report, the Council has a statutory duty under the Highway Act 1980 and the Flood and Water Management Act 2010 to manage the risk of flooding from surface water. The decision in Redrow Homes confirms that ongoing costs of maintenance (and costs of construction or improvement) after adoption of the highway, can lawfully be included within a Section 38 Highways Agreement. Developers should be advised at an early stage within the planning application process of the intention to seek a commuted sum for Highway Drainage Assets within the section 38 agreement.

## **FINANCIAL IMPLICATIONS**

24. There are no direct financial implications associated with implementing the decision of this report.

## **HUMAN RESOURCES IMPLICATIONS**

25. There are no HR Imps related to this Corporate Report and the recommended Option 1.

## **EQUALITY IMPLICATIONS**

26. There were no specific due regard issues for this policy. Ensuring sufficient funding is in place to manage these assets, to ensure any flood risk is managed and mitigated, does not take into account any of the protected characteristics. Therefore it is difficult to show evidence in how the policy has been developed taking into consideration equality.

## **CONSULTATION**

27. This document has been scrutinised by Barry Roughley, (Highway Asset Maintenance Manager) Malcolm Lucas (Highways and Street Lighting Design Manager) and Portfolio Holder, Cllr Joe Blackham.

## **BACKGROUND PAPERS**

None

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