

## Options Assessment – Commuted Sums and Adoption

## Implications and RAG assessment

Option	Policy 'fit' Strategic Plan, Asset management, LTP4, Network Management, CaWS	Legal	Stakeholder views including Members	Resource	Financial	Deliverability	Certainty of assessment
1 – Do Nothing	<p><b>Comments:</b></p> <p>To retain the existing policy and the rates and items that attract commuted sums.</p> <p><b>Risks:</b></p> <p>In the longer term there is increased risk to the outcome of “Strong Economy, Transport and Infrastructure” due to further negative impacts on maintenance budgets and therefore condition of assets.</p> <p>Additional work will be required to find the savings needed to resolve the budgetary issues.</p> <p>Potential impacts on asset condition due to insufficient ability to invest could impact aspirations of CaWS and HAMP</p> <p><b>Benefits:</b></p> <p>Should not impact development viability and thereby discourage development and impact on Strategic Plan policy to encourage growth.</p>	<p><b>RAG</b></p> <p><b>Risk:</b></p> <p>Impacts on road condition due to limited investment because commuted sums do not meet true cost – impact on insurance and liability</p> <p>Q - Are there opportunities to secure alternative funding sources that could mitigate this risk?</p> <p><b>Benefit:</b></p> <p>Low risk of developers using S37 to bypass the S38 agreement</p>	<p><b>Risk:</b></p> <p>Members:</p> <p>Does not offer solutions re managing the maintenance budget issues</p> <p>Potential decline in condition of local assets due to increased gap between true costs and income could be of future concern to districts/parishes and road users.</p> <p><b>Benefits:</b></p> <p>District/parishes/Road users:</p> <p>Unlikely to be an issue that will trouble stakeholders in the short term.</p> <p>Developers:</p> <p>Neutral impact or positively viewed when in relation to other options</p>	<p><b>Risk:</b></p> <p>Resource may need to be dedicated to finding other opportunities for cost savings</p> <p><b>Benefit:</b></p> <p>Reduced workload is beneficial to business as usual.</p> <p>Limited requirement for Legal input.</p> <p>Timescales for the option have not been calculated but potentially shorter than the current programme, which presumes that significant policy changes will be required and therefore extensive consultation and engagement and Member approvals</p>	<p><b>Risk:</b></p> <p>Does not manage maintenance budget issues.</p> <p>No indexation.</p> <p>rates are a number of years old and don't reflect current costs.</p> <p>The gap between true cost and commuted sums rates is likely to be increase further due to inflation.</p> <p>Impacts on road condition due to low investment because commuted sums do not meet true cost – impact on insurance and liability</p> <p>Q - Are there possible secure alternative funding sources that could mitigate declining budgets?</p> <p><b>ACTION – review the funding gap</b></p> <p><b>Benefits:</b></p> <p>Cost savings as there would be reduced short- term workload compared to other Options</p> <p>Negligible risk of developers using S37 to bypass the S38 agreement</p>	<p><b>Risk:</b></p> <p>Longer term impacts on asset condition and consequential complaints from residents putting pressure on Members and therefore the Department to find ways to increase investment.</p> <p>Discussion with Members about consequences of lack of investment in assets.</p> <p><b>Benefit:</b></p> <p>Except for the initial assessment work there is minimal input required to deliver.</p> <p>Limited requirement for Legal input.</p>	<p><b>Benefit:</b></p> <p>Can be assessed in terms of comparison of current applied rates with updated costs.</p> <p>As a “Do Nothing” option we can calculate the likely income from a hypothetical or real scenario.</p>

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<p><b>1 (a) do minimum - review rates to reflect current prices</b></p>	<p><b>Risk:</b> Unless it is decided that we produce a standard palette of materials as part of this option then opportunities for influencing the durability/maintenance levels required and quality of materials is limited and therefore:</p> <ul style="list-style-type: none"> <li>• Impact on future condition of assets and ambition for “Strong Economy, Transport and Infrastructure” and HAMP policy “maintaining the county’s highway assets for the benefit of current and future stakeholders.”</li> <li>• Impacts on LTP s Goal for a resilient transport system</li> <li>• Future Asset Management aspirations</li> </ul> <p><b>Benefits:</b> Limited impact on developer costs in comparison to Option 2. Lower risk of an impact on future development that might undermine Strategic Plan policy to encourage growth</p>	<p><b>Risk:</b> Low-medium risk of developers using S37 to bypass the S38 agreement</p> <p><b>Benefits:</b> In terms of deliverability of this option there are unlikely to be legal concerns. An approach that is less likely to be challenged May partially mitigate the legal/insurance concerns raised in Option 1.</p>	<p><b>Risk:</b> Possible future complaints about road condition from road users, compared to an option that allows for the development of a standard palette.</p> <p><b>Benefits:</b> Less like to be challenged by developers than Option 2, as it meets a key principle of “Commuted Sums for Maintaining Infrastructure Assets” of only charging for standard infrastructure. Should broadly be uncontentious for Members or Road Users</p>	<p><b>Risk:</b></p> <p><b>Benefits:</b> Work required to review the rates within the current commuted sums schedule but otherwise less complex than other options, requiring less officer input.</p>	<p><b>Risks:</b> With less ability to influence the future materials durability/maintenance levels required then there are potentially less longer-term benefits to budget. Low-medium risk of developers using S37 to bypass the S38 agreement It is feasible that a review of rates could result in a reduction in charges for some items within the list. It is also possible that decisions may need to be taken to remove existing items from the list of commuted sums</p> <p><b>Benefits:</b> Adjusts income payment according to the effects of inflation or other influencing factors on costs.</p> <p><b>ACTION – review the funding gap</b></p>	<p><b>Risks:</b> At this early stage there are questions over the ease with which certain materials/labour costs can be indexed/assessed accurately</p> <p><b>Benefits:</b> Overall likelihood of deliverability is high.</p>	<p><b>Benefits:</b> Assessing this option should be relatively straight forward. Items from the list can be selected for cost review/indexation and comparison, allowing general conclusions about financial benefits Legal matters are less of a consideration for this Option.</p>

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<p><b>2 charge C.S for all adoptable asset</b></p>	<p><b>Risk:</b> This option is potentially contentious with developers and does not align with the general approach taken by most highway authorities who follow the principle of not charging for “standard materials”</p> <p>Therefore, this could influence decisions by developers as to whether they choose to continue to build in Leicestershire. This may conflict with the Strategic Plan’s ambition for “Strong Economy, Transport and Infrastructure”</p> <p><b>Benefits:</b> If it is considered that it would not influence developers’ decisions to invest in Leicestershire then the additional commuted sums raised would contribute to maintaining well maintained highways, in line our asset management policies and LTP.</p>	<p><b>Risk:</b> The legal position regarding this Option would need to be checked with LCC Legal.</p> <p>There is Case Law relating to this issue (Redrow vs Knowsley)</p> <p>The Court of Appeal considered Section 38(6) in a recent Redrow case, ruling it is a <b>wide and unqualified power permitting HA to secure commuted sums for ALL FUTURE maintenance costs</b> associate with the highway works in questions. A key consequence of the case is its recognition that there are no limitations contained in Section 38(6) as to how the amount of the commuted sum should be calculated.</p> <p>Setting this aside, there is a strong possibility that this approach could open the LCC up to challenge by developers.</p> <p>Would need to relook at S219 and APC policy</p>	<p><b>Risk:</b> It is highly likely that this will be contentious with developers and may impact on their willingness to engage with the LHDG and on future collaborative working.</p> <p>If this Option impacts negatively on future development coming forward and willingness to engage positively with the planning process, then it may be unpopular with LPAs.</p> <p>To approve this Option for consultation, Members would need to be convinced of the financial benefits and LCC’s Legal position.</p> <p><b>Benefit:</b> The potential for increased income for highway maintenance would be popular with road users and residents.</p>	<p><b>Comment:</b> If LCC wants to influence durability, maintainability and/or sustainability, then a palette of materials would be required. This would increase pressures on staff resource</p> <p><b>Risk:</b> Establishing Commuted Sums for all adoptable assets would be a significant exercise.</p> <p>Considerable Legal input required.</p> <p><b>Benefit:</b></p>	<p><b>Comment:</b> If LCC wants to influence material quality and/or sustainability, then a palette of materials would be required.</p> <p>Unless delivered internally then there would be an increase in project cost to deliver this work.</p> <p><b>Risk:</b> Medium-high risk of developers using S37 to bypass the S38 agreement, leaving LCC with maintenance of adopted highway without commuted sums</p> <p>It is feasible that a review of rates could result in a reduction in charges for some items within the list. It is also possible that decisions may need to be taken to remove existing items from the list of commuted sums</p> <p><b>Benefit:</b> Broadens the opportunities for securing income through Commuted Sums</p>	<p><b>Risk:</b> Despite the existence of Case Law in relation to the legality of applying commuted sum charges to all adoptable assets it is expected that an LCC Legal assessment would be required. Until this work is undertaken then deliverability is uncertain.</p> <p>At this early stage there are questions over the ease with which certain materials/labour costs can be indexed/assessed accurately</p> <p><b>Benefit:</b> Although potentially time consuming in terms of review of costs (and putting legal issues to one side), the work required is clear.</p>	<p><b>Risk:</b> Resource requirements are currently uncertain.</p> <p>Discussions with other authorities who have adopted this approach may help.</p> <p><b>Benefit:</b> Assessing this option should be relatively straight forward. Items from the list can be selected for cost review/indexation and comparison, allowing general conclusions about financial benefits.</p> <p>This Option would indisputably bring in additional income to the Department, setting aside the stakeholder and legal risks.</p>

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		<b>Benefit:</b> May partially mitigate the legal/insurance concerns raised in Option 1.					
<b>3. Create an updated palette of standard materials – these will not be charged. All other materials will be charged</b>	<b>Risk:</b> Needs to be in conjunction with Option 1b to more fully tackle the financial aspect so that the authority can ensure a resilient highway infrastructure in line with key policies.  <b>Benefit:</b> Enables the opportunity to influence quality and consider sustainability (including carbon) of standard materials in line with asset management policy, carbon and environmental strategies	<b>Risk:</b> Q – Does HA take more responsibility for materials used and therefore risk?  <b>Benefit:</b>	<b>Risk:</b> There may be push back from developers on limiting the standard palette of materials available.  LPAs may take a view that this approach negatively impacts local distinctiveness if developers' preferred option is to use "cheaper" standard materials.  <b>Benefit:</b> Less contentious with Members and road users  Allows flexibility and ability for bespoke design, through open ended choice of materials that attract commuted sums. This may be viewed positively by LPAs  Could take the broad proposal to developers/LPA for initial thoughts without too much controversy.	<b>Comment:</b> Opportunity to use commercial services/business support to help develop the palette with engineering services.  <b>Risk:</b> The work involved in development of palettes of material is likely to be significant and require additional consultation with borough and district councils.  How can we assess the resource availability for internal delivery?  <b>Benefit:</b> Delivering internally will help to retain expertise within the department and ensure us of current knowledge of local issues	<b>Risk:</b> If it is decided that we don't have the internal resource to deliver this work, then there would be a currently unknown cost for engaging consultants to undertake.  Allows potential free reign to use any materials that may not be available in the future and without assessing the CS rates alongside this work adds financial risk for the dept.  <b>Benefit:</b> Allows opportunity to influence the durability and maintenance costs involved of standard materials.  Low risk of developers using S37 to bypass the S38 agreement.  A brief could be developed to present to consultants to ascertain cost of delivering externally or find the cost of similar work at other authorities	<b>Risk:</b> The biggest unknown at this stage is whether this is capable of being delivered internally with existing work pressures.  Delivering externally introduces risk that consultants do not deliver a result that is in the best interests of the Dept due to lack of investment or full understanding of the issues.  <b>Benefit:</b> The work itself is deliverable subject to sufficient resource being made available.  Expertise and knowledge are available internally.  We know that other authorities have standard palettes; we could learn from them	<b>Risk:</b> Is it possible to understand the benefits of a standard palette without doing considerable work to start developing it?  <b>Benefit:</b> Could look to other authorities to gauge whether benefits have been delivered.  Could do focused work on developing one aspect of the palette. It is questionable whether this would give sufficient information to assess full benefits.

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<p><b>3 a) Create an updated palette of standard materials – these will not be charged</b>  <b>In addition, create a 'beautiful places' acceptable palette which will be charged at a lower rate than all other commuted sums.</b></p>	<p><b>Risk:</b> Needs to be in conjunction with Option 1b to more fully tackle the financial aspect so that the authority can ensure a resilient highway infrastructure in line with key policies.  Reduces the income that would otherwise be attracted</p> <p><b>Benefit:</b> Enables the opportunity to influence quality and consider sustainability (including carbon) of standard materials in line with asset management policy, carbon and environmental strategies</p>	<p><b>Risk:</b> Q – Does HA take more responsibility for materials used and therefore risk?  The palette would need to be assessed against robust criteria to ensure the Department was happy with its durability/safety etc...</p> <p><b>Benefit:</b></p>	<p><b>Risk:</b> LPAs may take a view that this approach negatively impacts local distinctiveness if developers' preferred option is to use "cheaper" materials.  Would need to spend considerable time developing "beautiful" palette with LPAs and other stakeholders (difficulties in pleasing all parties)  Will bespoke be able to be replaced like for like in the future? And if it can't, will it look worse than as standard material?</p> <p><b>Benefit:</b> Less contentious with Members and road users and potentially positively viewed by environmental groups and residents where beautiful/sustainable materials are used.  Could take the broad proposal to developers/LPA for initial thoughts without too much controversy.</p>	<p><b>Comment:</b> Opportunity to use commercial services/business support to help develop the palette with engineering services.</p> <p><b>Risk:</b> The work involved in development of palettes of material is likely to be significant and require additional consultation with borough and district councils.  How can we assess the resource availability for internal delivery?</p> <p><b>Benefit:</b> Delivering internally will help to retain expertise within the department and ensure us of current knowledge of local issues</p>	<p><b>Risk:</b> LCC currently has the flexibility to charge an additional 10% for bespoke materials so if we're proposing to charge less then there is a twofold negative financial impact.  Negates some of the financial benefit of introducing the standard palette  Uncertainty around whether some beautiful / sustainable materials have been fully tested or around long enough to understand their performance / durability</p> <p><b>Benefit:</b> Retains the benefit of creating a standard palette  Low risk of developers using S37 to bypass the S38 agreement.  A brief could be developed to present to consultants to ascertain cost of delivering externally or find the cost of similar work at other authorities.</p>	<p><b>Risk:</b> Who decides what is beautiful? Is it the role of the Guide to define this?  In-house expertise re sustainable materials? The palette would need to be assessed against robust criteria to ensure the Department was happy with its durability/safety etc...</p> <p>Would need to spend considerable time developing "beautiful" palette with LPAs and other stakeholders (difficulties in pleasing all parties)</p> <p><b>Benefit:</b> The work itself is deliverable subject to sufficient resource being made available.  We know that other authorities have standard palettes; we could learn from them. It is not known at this stage whether authorities have looked at beautiful material palettes.</p>	<p><b>Risk:</b> Considerable work would be needed to define what to include in a sustainable palette before being able to test.  Uncertainty around the level of testing materials have undergone (product maturity)</p> <p><b>Benefit:</b> Could look to other authorities to gauge whether benefits have been delivered.  Could do focused work on developing one aspect of the palette. It is questionable whether this would give sufficient information to assess full benefits.</p>
<p><b>Option 4 – Consider options to amend policy so that the</b></p>	<p><b>Risk:</b> Would need to be managed in line with</p>	<p><b>Risk:</b></p>	<p><b>Comment:</b> It was discussed that any reduction in road</p>	<p><b>Risk:</b> There would be considerable work</p>	<p><b>Comments:</b> Does the application of a risk-based</p>	<p><b>Comment:</b> This approach has been implemented elsewhere</p>	<p><b>Risk:</b> Assessing the financial benefits of reduced</p>

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<p><b>County Council adopts less highway in future.</b></p> <p>(To be considered in conjunction with above options)</p>	<p>developing risk-based approach and we would need to monitor timescales.</p> <p>Reduced ability to control the quality (except through highway observations) and reliability of future maintenance of highway assets, potentially impacting on</p> <ul style="list-style-type: none"> <li>• Future condition of assets and ambition for “Strong Economy, Transport and Infrastructure” and HAMP policy “maintaining the county’s highway assets for the benefit of current and future stakeholders.”</li> <li>• LTP s Goal for a resilient transport system</li> <li>• Ability to influence Asset Management aspirations</li> </ul> <p><b>Benefit:</b></p>	<p>Would require LCC legal assessment of risks.</p> <p>A “number of homes” based approach could be viewed as being biased against smaller housing scheme developments and might result in future challenges.</p> <p>A robust rationale would be required to defend this position against such future challenges. From workshop discussions it was not clear as to whether such an evidence base was feasible.</p> <p>Could developers force adoption through S37?</p> <p><b>Benefit:</b></p> <p>Reduced liability for future maintenance and therefore risk.</p>	<p>adoption should be based more around wider community benefit and utility (emergency services) than arbitrary numbers.</p> <p><b>Risk:</b></p> <p>A “number of homes served” based approach might be viewed as being biased against smaller housing scheme developments and might result in legal challenge.</p> <p>Nevertheless, there would need to be robust criteria, considering all factors to avoid future challenge</p> <p>A reduction in scope is likely to be controversial, both politically and among key stakeholders, including future residents. Members will have concerns that frontagers’ interests will no longer to be protected. Residents may object if they feel that they have future financial and legal responsibilities for maintenance of highway assets.</p> <p><b>Benefit:</b></p>	<p>required to develop robust criteria, considering all factors to avoid future challenge.</p> <p>If to be considered in conjunction with other Options, then this would be additional workload on top of the above Options.</p> <p>Considerable Legal input required.</p> <p><b>Benefit:</b></p>	<p>maintenance approach (currently under development) partially deliver some of the financially benefits of this Option but with less project risk and conflict with policy?</p> <p><b>Risk:</b></p> <p>Would the savings outweigh the commuted sums losses? Potential reduction of income would need to be assessed.</p> <p>The approach may not significantly resolve shorter-term budgetary pressures and would reduce levels of income from commuted sums and Government.</p> <p><b>Benefit:</b></p> <p>A reduction in the number of roads adopted in the future and therefore maintainable at the Council’s expense.</p> <p>Possibly reduced insurance claims due to reduced scope for liability for future maintenance.</p>	<p>and is theoretically deliverable subject to assessment</p> <p>Could developers force adoption through S37?</p> <p><b>Risk:</b></p> <p>Of all Options, this is potentially open to the highest risk of legal challenge and stakeholder objection</p> <p><b>Benefit:</b></p> <p>Could contact other authorities to discuss how they managed risk and delivered this approach.</p>	<p>maintenance across the network against loss of income through commuted sums is more complex than other Options.</p> <p><b>Benefit:</b></p> <p>Could look to other authorities to gauge whether benefits have been delivered.</p>