

Decision maker:	Cabinet member Infrastructure and transport
Decision date:	Monday, 5 October 2020
Title of report:	Public Realm Commuted Sums – Spend Allocation
Report by:	Engineering manager

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose

Commuted sums are collected by the council to maintain new assets when adopted within the public realm. This commuted sum is intended to ensure the costs of maintaining the new highway and public open space asset, when adopted, is funded.

This report sets out the process for allocating monies collected to date, over the previous five year period, which have not yet been spent to date to be allocated towards the public realm contract for maintenance purposes for which they were required. The intention is to invest the

current commuted sums into the public realm over the next 5 year period which is broadly the period over which they have been collected as set out in the recommendation and report.

Recommendation(s)

That:

- (a) Invest £290,677.94 in 2020/21 and four subsequent years to fund the maintenance of the newly adopted infrastructure and maintenance of the existing assets.**

Alternative options

1. A number of options have been considered around the factor of the split of the current fund. Different permutations would allow for the investment with different diminishing annual amounts depending on the amount of years. . It is recommended that the monies previously collected which have not been allocated to maintenance are allocated to maintenance of the highway asset / public realm over a period of five years which is in line with the timescale over which they have been collected but not allocated to maintenance activities. This rate of investment will be a reasonable spread of monies collected to date but not invested and in future year's allocation of new commuted sums will form part of the annual plan governance reports..

Key considerations

2. In 2009 the County Surveyors Society (now known as the Association of Directors of Environment, Economy, Planning & Transport (ADEPT)) published best practice guidance for the collection of commuted sums to maintain what it referred to as 'non-standard' asset features. The guidance states 'commuted sums are expected, in the main, to relate to payment made by developers as a contribution towards the future capital maintenance of non-standard and extra over features in development.'
3. As a result of the income generated by newly adopted public realm assets, it is important that these funds are invested appropriately in the public realm asset as was the original intention.
4. Historically the council has received small contributions, this has been due to relative minor changes to the network through development. The investment has been ad-hoc due to the relatively low sums involved. This piecemeal approach is not efficient as set out in the ADEPT commuted sums guidance.
5. The commuted sum contributions over the last 5 years have been due to the introduction of the ADEPT guidance supporting the need and the relatively significant developments in the county.
6. The current build-up of £1,453,389.69 is due to the growth of the asset over the previous 5 years. (See Appendix 1) The collected commuted sums require appropriate governance to invest in the public realm service.
7. The income is broadly highways and public open space adoptions, the larger amount has been gathered for the maintenance of public open spaces. The calculation of the values are fundamentally different (or have been in the past) which has resulted in different values and maintenance periods being applied. In order to normalise this, this fund and

the principles around it have been considered as payments to maintain the asset growth in the 'public realm'.

8. The ADEPT commuted sums best practice guidance states that:

"All monies received in respect of commuted sums should ideally be spent on the purpose for which they were intended (i.e. on the maintenance of the specific assets), but in reality this is considered impractical unless it is for a specific asset such as a bridge or public art. It is considered essential that, in general, commuted monies are re-invested into maintenance of the network, and 'ring-fenced' for that purpose."

During consideration of the above guidance, it was determined that the recommendations of this report are in line with this best practice guidance. It is recommended that the monies previously collected which have not been allocated to maintenance are allocated to maintenance of the highway asset / public realm over a period of five years, (2020/21 annual investment until 2025/26) which is in line with the timescale over which they have been collected but not allocated to maintenance activities. This rate of investment will be a reasonable spread of monies collected to date but not invested and in future year's allocation of new commuted sums will form part of the annual plan governance reports.

9. Investment over the five year period will maintain the asset and the other Public Real assets which will release funds for future years as set out in paragraph 8. The asset is part of the Public Real, adopted open space or public highway and will be maintained as such throughout the contract and the life of the asset.

Community impact

10. In accordance with the adopted code of governance, Herefordshire council achieves its intended outcomes by providing a mixture of legal, regulatory and practical interventions. Determining the right mix of these is an important strategic choice to make sure outcomes are achieved. The council needs robust decision making mechanisms to ensure our outcomes can be achieved in a way that provides the best use of resources whilst still enabling efficient and effective operations that recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development and review.
11. The recommendations contribute to the following priorities as set out in the current county plan: support economic growth and connectivity (including broadband, local infrastructure, transport and economic development) and deliver the local transport plan programme which will provide an enhanced, accessible, safe and integrated transport network supporting economic growth.

Environmental Impact

12. Investing the commuted sums in the proposed plan will ensure the assets are maintained during the life and will minimise the need for additional maintenance which will reduce the need for excessive interventions, this will reduce the maintenance carbon footprint in materials and vehicle resources.
13. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability,

achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

The environmental impact of this proposal has been considered through the service specification and includes appropriate requirements on the contractor/delivery partner to minimise waste, reduce energy and carbon emissions and to consider opportunities to enhance biodiversity. This will be managed and reported through the ongoing contract management.

Equality duty

14. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
15. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

16. The total value from the current collected commuted sums income fund to be invested into the public realm contract for the maintenance of assets is to be £290,677.94 per annum for the next 5 years. It is recommended that these monies previously collected which have not been allocated to maintenance are allocated to maintenance of the highway asset / public realm over a period of five years which is in line with the timescale over which they have been collected but not allocated to maintenance activities. This rate of investment will be a reasonable spread of monies collected to date but not invested and in future year's allocation of any new commuted sums will form part of the future annual plan governance reports.
17. There are no additional cost implications in the acceptance of these recommendations.

Legal implications

18. This is an Executive function under the Council's Constitution Part 3 Section 3 and is a key decision because it is likely to be significant having regard to the strategic nature of the decision; and/ or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards in Herefordshire) affected. It is also likely to result in the council incurring expenditure which is, or the making

or savings which are, significant having regard to the Council's budget for the service or function concerned. The leader has delegated this key decision to the Cabinet Member Infrastructure and Transport as it relates to their portfolio.

19. Section 41 of the Highways Act 1980 confers statutory obligations on Herefordshire Council as the highway authority for the administrative area of Herefordshire to maintain the highway maintainable at the public expense.
20. There are no legal problems with the Cabinet member doing what is proposed

Risk management

21. Maintenance risks are managed through the risk provisions of the public realm contract and the annual plan arrangements.
22. The utilisation of the funds will support and manage the legal, financial, reputational and safety risks associated with the management of an extensive and varied highway and open space assets that make up the public realm assets and the delivery of the works to those assets. The primary risks associated to the use of these funds are set out below:

Risk	Mitigation
The fund is not utilised on public realm assets. This would be contrary to the guidance that it was generated under.	This recommendation is the first step in developing a consistent approach to the more timely investment of these funds in the public realm.
Failure to utilise the fund places additional resource burden on the public realm budgets, and in turn diminishing the amount of future works	Investing the commuted sums maximises the investment to the asset management approach that is vital in delivering a minimised whole life cost to the maintenance of the public realm assets.
Ensuring value for money is achieved.	Value for money is tested at various stages of the annual commissioning process within the public realm contract.
Good quality effective service is continuously delivered.	The continuous improvement group are constantly looking at ways to improve value for the council and residents of Herefordshire that will further enhance the benefit of this investment. The contract model incentivises good quality performance.

Table 2 – Risks associated with the recommendation

Consultees

23. Councillors and Political group leaders were consulted on the 7th July 2020, the consultation ended on the 17th July 2020. Three responses were received, they were from Cllr Summers, Cllr Hewitt and Cllr Shaw, the responses have been collated and are attached to the report in Appendix 2.

24. In summary, the councillors responses were as follows:

Cllr Shaw stated that the larger commuted sum contribution was for open spaces, the majority of open space is outside of the public realm, can we expect an allocation of the sum to the benefit of that land?

Cllr Summers identified a number of concerns in his area and asked for clarification on what the monies could be used for?

Cllr Hewitt asked for clarification on the funding, how the contributions were accrued, what are we to spend it on and what are e proposing to spend on?

A response was provided to each of these members which are appended to this report in Appendix 2.

All comments received have been considered by the decision maker in making this decision.

Appendices

Appendix 1 Public Realm Commuted Sums Income

Appendix 2 Consultation Responses

Background papers

None

Glossary

Term	Definition
Commutated Sum	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 of the asset to be adopted, or transferred.
Public Realm	The Area Network together with all properties, public open spaces and the associated buildings, infrastructure and amenities for which Herefordshire Council is responsible within the area boundaries identified in the Public Realm Asset Information.
CSS	County Surveyors Society
ADEPT	Association of Directors of Environment, Economy, Planning & Transport