

**INFRASTRUCTURE PROGRAMMES GROUP**

**Somerset Technical Advice Note 14/18**

# Commuted Sums Protocol for Highway Infrastructure



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## Revision History

This document has the following history:

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3	June 2018	Approved by NSMP	
2	9 <sup>th</sup> May 2018	Appendices added	No
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## Approvals

This document has been approved by the Somerset County Council Network Standards Management Panel.

If you have any comments or observations or spot any errors please email the Development Engineering team at [developmentengineering@somerset.gov.uk](mailto:developmentengineering@somerset.gov.uk)

## Review Date

2 years from approval

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## 1 Introduction

- 1.1 For many years Somerset County Council, as highway authority, have secured commuted sums from developers as a financial contribution towards the future maintenance of new highway infrastructure delivered by them in the County and have done so with due regard to prevailing national best practice.
- 1.2 In recognition of the considerable variation in approach by local highway authorities to the collection and use of commuted sums, The Association of Directors of Environment, Economy, Planning & Transport's (ADEPT) published a guidance document on 'Commuted Sums for Maintaining Infrastructure Assets' in November 2009. This document has been widely adopted by local highway authorities and has been broadly accepted as national standard procedures and principles for the assessment and collection of commuted sums.
- 1.3 Further guidance by ADEPT in September 2014 reported that 'when authorities followed the process and principles (in their 2009 guidance document) and added local supplementary guidance, a robust, auditable methodology had been demonstrated'. Their summary recommendations to authorities were therefore to both adopt their 2009 guidance as best practice but to also consider producing a supplementary guidance document outlining local policy and/or procedures. Whilst Somerset County Council's current approach to commuted sums is closely aligned to ADEPT's 'accepted national standard,' the recognition of the benefits to all parties of introducing local guidance form the catalyst for this document.
- 1.4 As such this documents aims to provide a transparent and consistent approach to the seeking of and calculation of Commuted Sums for developer funded highway assets in Somerset. The guidance outlines the clarity of approach in order to:
- Remove uncertainty and risk for developers at an early stage in the process
  - Provide greater scrutiny for overstretched highway maintenance budgets
  - Enable developments to progress with much more certainty about the overall requirements and commitments for all parties involved
  - Provide a more flexible approach to the adoption of new and alternative 'non-standard' layouts without stifling innovation and the desire to create better places to live

## 2 Background

- 2.1 The highway authority has a statutory responsibility for the management and maintenance of the highway network which includes the need to keep the network safe for all road users.
- 2.2 Highway assets and infrastructure in Somerset delivered by developers are continually transferred to Somerset County Council, as the highway authority; through legal agreements securing 'adoption' whereby the highway authority then assumes responsibility for the future maintenance and upkeep at the public expense. These assets would typically consist of carriageways, footways, drainage systems, traffic signals, bridges, culverts and lighting systems and by accepting these assets a further financial burden is placed upon the authority for their management and upkeep.
- 2.3 The rationale for seeking commuted sums is to ensure that highway authorities have sufficient financial resources to fund the future maintenance, associated works and, where appropriate, replacement of these additional assets, for which any funding received from Government through the Revenue Support Grant is insufficient.
- 2.4 Regardless of the potential offer of a commuted sum payment, the highway authority will retain discretion as to what it is prepared to adopt, particularly where a proposal may not be acceptable in principle (e.g. on the grounds of highway safety) or where it would be inappropriate for it to do so (e.g. street art, play areas) or where materials are considered to be of an unacceptable or inappropriate specification.

## 3 What are commuted sums?

- 3.1 Commuted sums are 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 upkeep of an asset to be adopted or transferred.
- 3.2 A commuted sum does not need to be a single payment and can, by agreement with the relative authority, be a series of payments and may include issues other than maintenance such as planned and unplanned inspections, repair and relocation of the asset.
- 3.3 In the main, a commuted sum is expected to relate to a payment by a developer to the highway authority as a contribution towards the future capital maintenance of 'non-standard' and 'extra-over' features of that development.

- 3.4 The payment of a commuted sum discharges the responsibility of a developer of any obligations to the future maintenance of that asset following the issue of the final completion certificate (adoption). The obligation and associated risks then lie with the highway authority to maintain the asset.

### **4 What is the legislation under which commuted sums are charged?**

- 4.1 Highway Authorities can agree to adopt new roads and secure improvements to existing roads by entering into agreements with developers under Sections 38 and 278 of the Highways Act 1980.
- 4.2 Section 38 Agreements relate to the adoption of private internal estate roads built on the developer's own land which the developer, upon completion, wishes to be adopted by the highway authority as highway maintainable at the public expense.
- 4.3 Section 278 Agreements provide developers with a mechanism to either fund works, or undertake works themselves, to the existing public highway. The works are often termed 'off site works' as they are usually separate from the developer's site and the works are necessary to provide improved access to, or mitigate the effects of, the new development.

### **5 Commuted sums in relation to Section 38 agreements**

- 5.1 Section 38 Highways Act 1980 sub-section (6) provides the power to seek commuted sums for the maintenance of any highway, road, bridge or viaduct covered by an agreement made under that section. The clause allows for payment to be sought by the highway authority, not only for maintenance prior to adoption but also other relevant matters as the authority making the agreement sees fit, which may include a commuted sum for the future maintenance following adoption. With the increased application of Sustainable Urban Drainage Systems (SuDS) the additional costs of maintaining different and less well known forms of highway drainage systems can be included within the definition.
- 5.2 Section 38 (6) Highways Act 1980 states:  
*“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 thinks fit.”*

## 6 Commuted sums in relation to Section 278 agreements

- 6.1 Section 278 Highway Act 1980 provides that if a highway authority is satisfied that it would be of benefit to the public for them to enter into an agreement under this section with any person then they may do so. The agreement would be for carrying out, on the existing public highway, works that would be of benefit to the public, and the cost of those works are to be borne by the developer. The majority of the time, the work to be undertaken is carried out by the developer as they will usually have some effect on his development.
- 6.2 There is an express provision in S278 (3) for payments for the maintenance of the works, and this may be applied by the highway authority if it chooses to do so: “An agreement under this section may provide for the making to the highway authority by the other party to the agreement of payments in respect of the maintenance of 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.

## 7 What principles are applied when exercising the provisions in these legal agreements relating to the securing of commuted sums?

- 7.1 The principles that Somerset County Council apply when exercising the provisions in these legal agreements that relate to commuted sums are:
- This guidance is equally applicable to both Section 278 and Section 38 agreements, albeit that they are different situations, as detailed above.
  - For newly constructed infrastructure commuted sums are not generally considered appropriate where there are other sources of funding to cover on-going maintenance.
  - Commuted sums are generally payable for ‘extra over’ costs which are deemed, by the highway authority, to be placing an extra burden on the maintenance budget.
  - As far as possible, all assets should be treated on the same basis for commuted sum calculation purposes.
  - Where new lengths of road and/or footway/cycleway are created the premise of this guidance is that the Revenue Support Grant system recognises increased highway length in its grant allocation to local highway authorities and that, as such, commuted sums for ‘standard’ network adoptions are not appropriate to be charged. However, they

should be applied for the 'extra over' areas and 'extra over' costs of exceptional items and specialist materials etc.

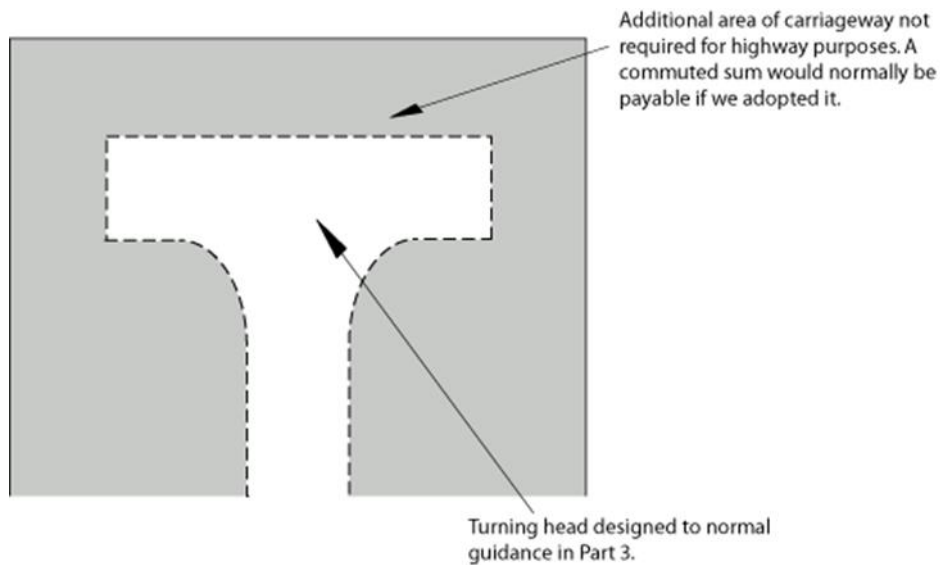
- All new works that do not entail the creation of a new length of road and/or footway/cycleway, including SUDS, carried out as part of a Section 278 Agreement, are appropriate for the application of commuted sums.
- There should not be any requirement to calculate any 'degree of benefit' to the local authority in respect of commuted sums for Section 278 works, even where such works are considered to provide some benefit to the general public (e.g. an improved junction layout with enhanced pedestrian facilities being provided).
- Under Section 278, commuted sums are not applicable to additional works, required by the highway authority, which are merely for aesthetic rather than for design reasons (e.g. full width resurfacing where only part width would be necessary to accommodate a new junction).
- If there is a net reduction in any asset type, this will have no reducing effect on the total of the commuted sums being calculated.
- For older existing infrastructure, adoption or transfer of ownership of any asset may require substantial pre-adoption remedial work, or for the impaired condition to be reflected in the commuted sum calculation (if appropriate).
- The historic acceptance of the basis of application of commuted sums in respect of adoption of bridges and structures should remain.
- Although there is not any legal requirement to provide lighting, the provision of 'standard' street lighting along new lengths of road or footway/cycleway will not generally be subject to commuted sums.

## 8 What infrastructure assets will potentially be subject to a commuted sum payment?

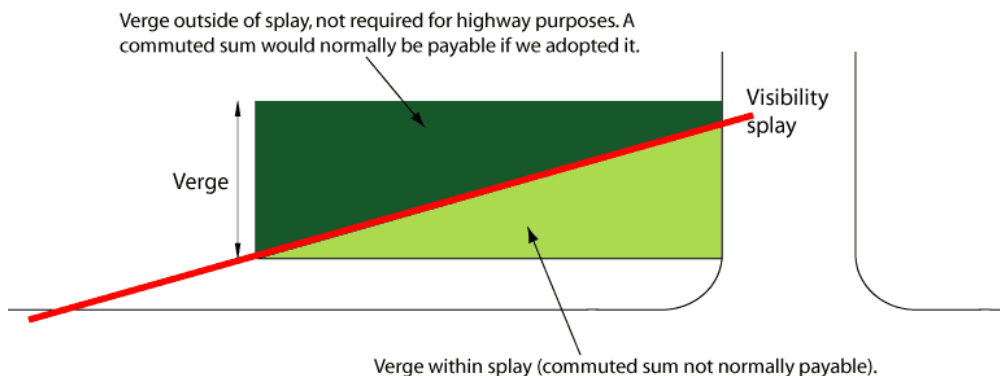
8.1 The circumstances relating to the seeking of commuted sums for future maintenance can generally be divided into four broad situations as summarised below. This is not an exhaustive, detailed list but is intended to illustrate the basic principles.

- (a) 'Additional' areas of carriageway, footway, landscaping etc. over and above the minimum requirements required, in the opinion of the highway authority,

for the safe functioning and operation of the highway. Examples can include additional areas of carriageway, such as a square surrounding a turning head.



**Figure 1a Example of turning head within a square**



**Figure 1b Example of additional area of grass verge adopted under a commuted sum**

(b) 'Extra over' items such as:

- Any street furniture not required for road safety purposes (as would normally be the situation on residential streets.)
- Proprietary or coloured surfacing materials not required for highway safety purposes but specified for aesthetic reasons only such as coloured high friction surfacing
- Any culvert, bridge, retaining wall or other structure

- Special features such as noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails and fences, gates, traffic signals, intelligent warning signs or traffic systems etc.
  - Landscaping features such as planting, trees, hedging etc.
- (c) Permitted alternative materials or equipment to those specified in the definition of standard construction such as:
- The installation of specialist or 'non-standard' equipment (e.g. street lighting equipment) that is not of the authority's standard type, and/or such items as decorative luminaires, or columns with embellishments applied etc.
  - The additional columns (and equipment) from the provision of street lighting to a standard above that which is normally provided by the authority (and indicated in its lighting policy).
  - The use of any materials (e.g. surfacing materials), which whilst being approved will result in maintenance or replacement costs over and above the authority's 'standard' highway construction (as specified in Section 9 below).
  - Any other 'non-standard' construction types or materials.
- (d) Sustainable Drainage Systems (SuDS) or non-standard highway drainage features such as:
- Flow control devices and attenuation storage
  - Sustainable drainage systems (SuDS) including maintenance of any landscaping
  - Oil or petrol interceptors including the disposal of contaminated waste
  - Pumping stations and their energy charges
  - Watercourses and swales

When proposing SUDS the developer must hold early discussions with all relevant parties (and certainly before any planning application) to agree ownership and responsibility for the infrastructure proposed.

## 9 What is ‘standard’ highway construction?

9.1 ‘Standard’ highway construction in Somerset is defined as follows:

- Carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates).
- Carriageways in shared surface roads, courtyards and housing squares surfaced in 200mm x 100mm x 80mm rectangular concrete block paving (optional).
- Footway surfaced in concrete asphaltic materials (non-pigmented binder or coloured aggregates).
- Footways adjacent to block paved carriageways also surfaced in 200mm x 100mm x 65mm thick concrete block paving (optional).
- Cycleways surfaced in concrete asphaltic materials (red pigmented binders and/or aggregates).
- Pre-cast concrete kerbing.
- Gully drainage, connection pipes and gravity draining highway carrier drains.
- Galvanised pedestrian guard railing.
- Standard highway lighting layouts, columns and lanterns.
- Standard illuminated and non-illuminated highway signs.
- Passively safe sign posts where required for road safety.
- Bollards and markers posts manufactured from Plastic derivatives or recycled plastic/rubber.
- Road markings.
- Grass verges.

9.2 ‘Non-standard’ is defined as all construction types or materials that are not included in the definition of ‘standard’ construction as above.

9.3 With the national trend towards innovation, and higher quality design the highway authority are flexible in their approach to asset specification and may reduce, or waive, any commuted sums requirements if it can be proven, or experience has shown, that the specified asset will not present an undue maintenance burden when compared to the ‘standard’ highway defined above.

9.4 The designer is encouraged to consider minimising the future maintenance liability of the asset as part of the design process. This could include enhanced construction (i.e. to reduce any maintenance requirements) or for the provision of higher quality materials, which could then offset all or part of the need for any commuted sum requirement.

## 10 What is the process to secure the commuted sum payments?

- 10.1 The legal Agreement will include conditions requiring the payment of commuted sums and specify when such payments will need to be made. However, as it is unlikely that the full cost implications of the site will be known by the authority at the time that the legal Agreement is entered into the amounts specified may be 'provisional'.
- 10.2 The Agreement will therefore contain provision for recalculating the 'provisional' commuted sums based on the final infrastructure design, actual quantities, revised time periods to maintenance operations if appropriate, and a price fluctuation factor to adjust current costs and maintenance operations specified in the Agreement.
- 10.3 The time period between the Agreement and completion of the development can be quite long. As such, recalculation of the sum calculated at the time of the Agreement will be necessary to arrive at the commuted sum payable prior to the issue of the Final Certificate.
- 10.4 To secure the provision of commuted sums in default, they should be included in the Bond required under the Agreement, unless payment is made prior to engrossment. This should be based on the 'provisional' commuted sums calculated when the Agreement is completed, and the security will be released following satisfactory completion of the maintenance period and payment of the actual commuted sum due.
- 10.5 In the case of specialist landscaping materials, lighting columns and signs, where finding replacements in future years could prove to be difficult, an alternative option could be for the highway authority to request a stockpile of material and adjust the commuted sum payment requirement accordingly. This option would allow for any replacement specialist paving type materials to 'weather' on the same basis as the original, but may be a problem with storage.

## 11 How are commuted sum values calculated?

### Principles of calculating commuted sums

- 11.1 All commuted sums secured are discounted to allow for the fact that they will be earning interest which will make up part of the maintenance payment when it is required. It is therefore necessary to determine the net present value of a future expense, and the following formula is used to calculate the maintenance obligation:

Net present value =  $\sum Mp / (1 + D/100)^T$  , where:

Mp = Estimated future maintenance cost T years from now

D = Discount rate (effective annual interest rate) (%)

T = Time period before expenditure will be incurred (years)

Commuted sum = summation of all net present values for appropriate future costs.

### Maintenance Cost (Mp)

- 11.2 The maintenance regime applied to the asset are generally based on a 'whole life costing' approach with the frequency of inspection, treatment, and/or the intervals of replacement, based on planned frequencies or historic information. It may also be appropriate to add an agreed percentage to the works costs to cover the highway authority design and supervision costs.
- 11.3 Therefore the associated activities/functions that may be included in the calculation of commuted sums are as follows:
- Inspections and surveys
  - Routine and cyclic maintenance
  - Winter maintenance
  - Energy charges
  - Design and supervision fees
  - Asset replacement
- 11.4 The maintenance unit costs are based on term maintenance contract rates and staff hourly rates as the time of calculation.

### Discount Rate (D)

- 11.5 The discount rate (effective annual interest rate) is 2.2%, and is worked out as follows:

$$D = ((1.045/1.0225) - 1) \times 100 = 2.2\%$$

Where:

1.045 is the interest rate (4.5% based on long-term neutral base rate)  
1.0225 is the inflation rate (2.25% based on RPI-X that is RPI excluding mortgage payments).

- 11.6 This formula ensures that both the interest earned on the commuted sum, and the effect of inflation in increasing the cash sums eventually required, are taken into account.

### Time Period (T)

- 11.7 A time period of 60 years is used as the default period for calculating commuted sums for future maintenance with the exception of highway structures when a 120-year period will apply, in accordance with the standard design life requirement.

## 12 Early advice to developers

- 12.1 It is acknowledged that many of the current problems experienced by developers in respect of commuted sums, and other procedures, are as a result of inadequate knowledge of the highway authority's requirements, leading to the potential burden of costs at a very late stage in the design process.
- 12.2 Somerset County Council actively encourage developers to establish an early dialogue with both the Estate Roads team and the Development Engineering team as well as the Planning Liaison team at the earliest possible stage in the process and should preferably be before a planning application is submitted. While commuted sums relate to the final scheme design and that design may not be decided on until after land has been purchased, early dialogue can remove many uncertainties. Continuous dialogue throughout the design process ensures that, as the scheme evolves, the financial implications are clearly understood.

## 13 Bibliography

- Whole Life costing for Option Appraisal of Maintenance Schemes for Local Highway Authorities – Atkins – June 2011
- Commuted Sums for Maintaining Infrastructure Assets – ADEPT – November 2009
- Commuted Sums Levied for Traffic Signals – ADEPT – September 2014

## **APPENDIX A**

### **Typical Section 38 and 278 Agreement clauses**

## Typical References to Commuted Sums in agreements under Section 38 and 278 Highways Act 1980

### Section 278 Clauses

#### Definitions

"Commuted Sum(s)" means the sum to be paid by the Developer to the County Council for the future maintenance of an asset which will be adopted by the Council

#### Financial Provisions

Pay to the County Council the Traffic Signals Commuted Sum prior to the date on which the traffic signals forming part of the Highway Works are commissioned by the County Council's Traffic Management Group and become operative or within 7 days of the issue of the Certificate of Completion, if earlier

Pay to the County Council within 7 days of receipt of a demand in writing from the County Council its reasonable and proper costs for maintenance of the traffic signals forming part of the Highway Works for the period commencing on the date on which the signals are commissioned by the County Council's Traffic Management Group to the date immediately prior to the date on which the Final Certificate for the Highway Works is issued

Pay the Commuted Sum(s) to the County Council prior to [insert timing provision] and not to permit cause or allow [insert timing provision] unless and until the Commuted Sum has been paid to the County Council

### Section 38 Clauses

#### Definitions

"Commuted Sum(s)" means the sum of POUNDS (£ ) being the amount which the Developer has agreed to contribute towards the costs likely to be incurred by the Council following adoption of the road or roads for the maintenance of the (item in question)

#### Developer's Liability

"THE Developer shall pay the Commuted Sum to the Council on the date hereof" (hereof being the date the s.38 is signed although sometimes payment has been required on issue of Final Certificate)

## STAN 14/18 – Commuted Sums

Alternatively we will add a Clause and Schedule, example as follows:

**(Clause No.) Commuted Sum:**

On the date hereof the developer shall pay to the Council the sum specified in the second column of Part 3 of the Schedule in respect of the future maintenance of the corresponding item described in the first column of Part 3 of the Schedule

**Part 3**

Item	Commuted Sum
Description of the highway elements attracting the commuted sum	£(Value)

**APPENDIX B**  
**Commuted Sums Schedule of Items and Charges**

## STAN 14/18 – Commuted Sums

### Commuted Sums Schedule of Items and Charges – as at 01 April 2018

Asset Type – Carriageway Surfacing			
Element	Unit	Rate	Basis of calculation/Notes
Surface Dressing	sq.m	£10	Overlay
Hot or cold applied coloured surfacing (resin system) and High Friction Surfacing	sq.m	£70	Overlay
Modular/Tegula paving	sq.m	site specific	Dependent upon type

Asset Type – Footways, Cycleways and Paved Areas			
Element	Unit	Rate	Basis of calculation/Notes
Modular/Tegula paving	sq.m	site specific	Dependent upon type

Asset Type – Fencing and Barriers			
Element	Unit	Rate	Basis of calculation/Notes
Vehicle Restraint System	lin.m	£46	Replacement
Non-standard pedestrian guard railing	lin.m	site specific	Dependent upon type
Knee rail fencing	lin.m	£25	Replacement
Boundary fencing	lin.m	site specific	Dependent upon type

Asset Type – Structures			
Element	Unit	Rate	Basis of calculation/Notes
Bridges	item	site specific	Whole life costs including replacement after 120 years
Culverts and trash screens	item	site specific	Whole life costs including replacement after 120 years
Subways	item	site specific	Whole life costs including replacement after 120 years
Retaining Walls	item	site specific	Whole life costs including replacement after 120 years
Head walls	item	site specific	Whole life costs including replacement after 120 years
Sign/signal gantries and cantilever road signs	item	site specific	60 year life – maintenance and replacement

Asset Type – Highway Lighting			
Element	Unit	Rate	Basis of calculation/Notes
Non-standard columns	number	site specific	Dependent upon type
Non-standard fixings	number	site specific	Dependent upon type
Illuminated street furniture	number	site specific	Dependent upon type
High lighting mast	number	site specific	Dependent upon type

Asset Type – Street Furniture			
Element	Unit	Rate	Basis of calculation/Notes
Bollards	number	site specific	Dependent upon type
Retro-reflective bollards and marker posts	number	site specific	Dependent upon type

Asset Type – Verges and Landscaped Areas			
Element	Unit	Rate	Basis of calculation/Notes
Trees	number	£300	Pruning
Shrubs/ground cover planting	sq.m	site specific	Annual maintenance costs.
Planters/raised beds	sq.m	site specific	Annual maintenance costs.

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Asset Type – Traffic and Pedestrian Management			
Element	Unit	Rate	Basis of calculation/Notes
Puffin/Toucan Crossing	item	site specific	Actual sum depend upon detail but will be based upon 50% of the annual maintenance cost over a 20 year life together with a full refurbishment after 15 years. A provisional estimate of £37,000 can be used for budget purposes.
3 Way Traffic Controlled junction with no pedestrian crossing facilities	item	site specific	Actual sum depend upon detail but will be based upon 50% of the annual maintenance cost over a 20 year life together with a full refurbishment after 15 years. A provisional estimate of £42,000 can be used for budget purposes.
4 Way Traffic Controlled junction with pedestrian crossing facilities	item	site specific	Actual sum depend upon detail but will be based upon 50% of the annual maintenance cost over a 20 year life together with a full refurbishment after 15 years. A provisional estimate of £117,000 can be used for budget purposes.
Vehicle Actuated Signs	item	site specific	Whole life costs including replacement.
Bus gate	item	site specific	Whole life costs including refurbishment.

Asset Type – Drainage			
Element	Unit	Rate	Basis of calculation/Notes
Attenuated highway drainage system	item	site specific	Annual maintenance costs over a 60 year period
Soakaways	item	site specific	Annual maintenance costs over a 60 year period including rebuild
Retention ponds	item	site specific	Annual maintenance costs over a 60 year period
Other SuDS features	item	site specific	Annual maintenance costs over a 60 year period
Connections to highway drains	item	site specific	Additional annual maintenance costs to reflect increased liability.