

Cabinet Member for City Services

8<sup>th</sup> April 2019

**Name of Cabinet Member:**

Cabinet Member for City Services – Councillor P Hetherton

**Director Approving Submission of the report:**

Deputy Chief Executive (Place)

**Ward(s) affected:**

City Wide

**Title:**

**Section 278 and Section 38 Fees**

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**Is this a key decision?**

No

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**Executive Summary:**

In accordance with the City Council's procedure for dealing with fees and charges, those relating to highway adoptions, are heard by the Cabinet Member for City Services. It is standard practice to review each of the fees and charges and increase in line with current inflation levels on an annual basis. This year however, it is proposed to uplift and amend our existing Section 278 (S.278) and Section 38 (S.38) fees above the current rate of inflation such that the fees are aligned with the level of fees charged by our neighbouring Authorities. It is also intended that the increase in fees will provide sufficient additional revenue to provide continuing flood risk and drainage work in connection with S.278 and S.38 process.

**Recommendation:**

- 1) Cabinet Member for City Services is recommended to approve the uplift and amendment to fees in connection with the Technical Approvals of S.278 & S.38 works as contained within Appendix A to the report.

**List of Appendices included:**

Appendix A - Schedule of proposed S.38 and S.278 Fees

**Background Papers**

None

**Other useful documents**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## **Report title: Section 278 and Section 38 Fees**

### **1. Context (or background)**

- 1.1 Highway Development Management annually review the fees for the preparation of S.278 and S.38 Agreements under The Highways Act 1980, which includes all the necessary technical approvals relating to proposed highway development works. This is standard practice and typically the increases are in line with the current inflation rates. For clarity S.278 agreements are required for any works on the existing adopted highway and S.38 agreements are used as the legal mechanism for new highway to be adopted by the Highway Authority.
- 1.2 The main reasons for this review and proposed changes in S.278 and S.38 fees are set out below:
  - The current fee structure is not aligned with neighbouring local authorities. This is resulting in unrecovered costs for the Council including the inability to provide funds for business critical flood risk advice to support S.278 & S.38 agreements. It is proposed that fees are increased in line with neighbouring authorities to rectify this issue.
  - The current fee structure results in unrecoverable expenditure if there are delays in developments. It is proposed that new fees are introduced to mitigate this risk.
- 1.3 However, through a process of understanding how Coventry's fees compare with neighbouring authorities, it is highlighted that the current fees are not wholly aligned with other highway authorities. It is therefore intended that the current fee levels are increased to bring the fees more into line with our neighbours and this does result in the suggested increase to be above the current rate of inflation. On average the fees charged by other authorities fall between 7% and 10.25%, the proposed uplift equates to an average rate of 9.6%, this equates to an average increase in fees of 19.6%.
- 1.4 It is also intended to introduce an additional level of fee charges for developments that continue beyond a 2 year construction phasing programme. Currently the Authority only applies the fee to the cost estimate of the works, which is based on the highway operational charge out rates. However on larger scale developments it more than often that officer time and input can be required over a significant length of time due to developer delays etc. Therefore the introduction of the additional fee regime will not only assist in recovering costs for extended officer time, it is also the intention to encourage developers to complete their developments in a timely manner. This in turn should see the adoption of new highways coming forward more efficiently to the benefit of the residents of the new estates.
- 1.5 In addition to aligning the fees, the proposed uplift will assist in providing increased revenue to continue to support flood risk and drainage works in connection with S.278 and S.38 process. This works entails Coventry as Lead Local Flood Authority to review and audit the technical approval of any proposed highway drainage, flood risk alleviation/mitigation proposal and ensuring our existing infrastructure can accommodate the increased capacity and demand from the proposed development.

### **2 Options considered and recommended proposal**

- 2.1 The recommended option is set out in Appendix A to the report.

### 3. Results of consultation undertaken

3.1 No consultation has been undertaken.

### 4. Timetable for implementing this decision

4.1 The new fee structure will be implemented with immediate effect if approved

### 5. Comments from Director of Finance and Corporate Services

5.1 Financial implications

S.278 and S.38 fees are set to recover the cost to the Council of technical approval process of the highway schemes that form part the legal agreements. It is therefore important to ensure that the fees are set correctly so that the Council does not make a loss from this activity.

It is difficult to accurately predict the financial implications of the proposed fee changes as S.278 and S.38 income and expenditure varies depending on the volume and nature of development works. However the table below sets out the estimated impact of the proposals:

|  | £ 000      |
|--|------------|
| <b>S.278/S.38 Income</b>   |            |
| Average annual income received in the last 3 years   | 343        |
| Additional income based on proposed average 19% increase in fees (see paragraph 1.3 for further information) | 65         |
| <b>Total Estimated Average Annual Income</b>   | <b>408</b> |
|  |            |
| <b>S.278/S.38 Expenditure</b>  |            |
| <b>Total Estimated Cost 2019-20</b>  | <b>408</b> |
|  |            |
| <b>Net Cost of Providing Service</b>   | <b>0</b>   |

This shows that the proposed increases are necessary in order to ensure that the service remains cost neutral to the Council.

There is a financial risk that the number and type of developments differ from the estimates above and the amount of income received does not cover the costs of operating the service. In order to mitigate this risk:

- The financial position of the service will have to be carefully monitored and action taken to control costs if necessary.
- The fees and charges structure will be reviewed on an annual basis to establish if there is a need to increase fees to cover any potential shortfalls.

5.2 Legal implications

None

**6. Other implications**

**6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

Not applicable

**6.2 How is risk being managed?**

None

**6.3 What is the impact on the organisation?**

None

**6.4 Equalities / EIA**

No specific equalities impact assessment has been carried out.

**6.5 Implications for (or impact on) the environment**

None

**6.6 Implications for partner organisations?**

None

**Report author(s)****Name and job title:**

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Place

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| <b>Contributors:</b>                              |   |                                    |                          |   |
| Martin Yardley                                    | Deputy Chief Executive (Place)                    | Place                              | 15 March 2019            |   |
| Colin Knight                                      | Director (Transportation and Highways)            | Place                              | 15 March 2019            |   |
| Karen Seager                                      | Strategic Lead, Transport and Highways Operations | Place                              | 13 March 2019            | 14 March 2019                             |
| Michelle Salmon/Liz Knight                        | Governance Services Officers                      | Place                              | 15 March 2019            | 18 March 2019                             |
| <b>Names of approvers: (Officers and Members)</b> |   |                                    |                          |   |
| Graham Clark                                      | Lead Accountant                                   | Place                              | 13 March 2019            | 13 March 2019                             |
| Rob Parkes  | Commercial Lawyer                                 | Place                              | 13 March 2019            | 14 March 2019                             |
| Jane Simpson                                      | Business Support Manager                          | Place                              | 13 March 2019            | 14 March 2019                             |
| Councillor P Hetherton                            | Cabinet Member for City Services                  | -                                  | 25 March 2019            | 25 March 2019                             |

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## Appendix A – Schedule of proposed S.278 – S.38 Fees

| Form of Agreement   | Cost Estimate Threshold  | Current Fee level | Proposed Fee level |
|---|--|-------------------|--------------------|
| Minor S.278 Agreement   | up to £20k   | £1,200            | £1,300             |
| S.38 Agreement  | £20k to £50k   | 11%               | 13%                |
|   | £50k to £100k  | 10%               | 12%                |
|   | £100k to £250k   | 9%                | 11%                |
|   | £250k to £400k   | 8%                | 10%                |
|   | £400k to £600k   | 6%                | 7%                 |
|   | £600k to £1mil   | 6%                | 7%                 |
|   | £1mil and above  | 6%                | 7%                 |
| S.278 Agreement   | £20k to £50k   | 11%               | 13%                |
|   | £50k to £100k  | 10%               | 12%                |
|   | £100k to £250k   | 9%                | 11%                |
|   | £250k to £400k   | 8%                | 10%                |
|   | £400k to £600k   | 6%                | 7%                 |
|   | £600k to £1mil   | 6%                | 7%                 |
|   | £1mil and above  | 6%                | 7%                 |
| Site works commenced prior to Agreement. Applicable to S.38 Works only. | This fee is charged in addition to the corresponding % for cost estimate | 2%                | 2.5%               |

All S.38 Agreements anticipate that developer works will be completed within 2 years.

- in the event that works associated with a S.38 Agreement have not been completed within 2 years then a further fee of 4.25% will be levied to cover inspection and administration between years 2 and 4
- if incomplete after 4 years – levy a further charge of 4.25% is proposed
- if incomplete after 6 years – call in the bond and complete the works using the bond sum
- where agreements have not previously been extended at the end of 2 years we will seek the reasonable reimbursement of any additional costs that have been incurred with reference to the Council's Schedule of Fees and Charges
- in the event the developers ongoing development works cause damage to highways already adopted and maintained by us and within the development, action will be taken to recover the costs of correcting the damage under Section 59 of the Highways Act 1980 – Recovery of expenses due to extraordinary traffic