

## COMMUNITY INFRASTRUCTURE LEVY (CIL)

### Guidance Note for 'Payment in Kind' – Provision of Land or Infrastructure

#### Introduction

The 'payment in kind' mechanism is offered at Shropshire Councils' discretion and we reserve the right to refuse any application.

'Payment in kind' is the mechanism introduced within the CIL Regulations that allows Shropshire Council to accept the payment of all or part of a CIL Liability through the **provision of land or infrastructure** to the Council, or a parties nominated by the Council.

Any land provided as 'payment in kind' must be used for the delivery of **infrastructure identified within the CIL Regulation 123 List as suitable for delivery through 'payment in kind'**. For the purposes of CIL, 'land' includes "existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land".

Any infrastructure provided as 'payment in kind' must be **identified within the CIL Regulation 123 List as suitable for delivery through 'payment in kind'**. It should also result in a financial and time saving, compared with the delivery of this same infrastructure by the Council and enable the Council to use it to support the development of the area. For the purposes of CIL, 'infrastructure' includes but is not limited to "roads and transport facilities, flood defences, educational facilities, medical facilities, sporting and recreational facilities, and open space".

An application for 'payment in kind' will only be considered acceptable where it demonstrates compliance with the national criteria within the CIL Regulations (2010) as amended, and any local criteria.

Before submission of an application liable parties are encouraged to discuss proposals with the local Town or Parish Council and Shropshire Council to establish if the principle of 'payment in kind' is acceptable.

This Guide provides:

- An overview of the circumstances and eligibility criteria for the 'payment in kind' procedure;
- Specify the information requirements for an application for 'payment in kind';
- Specify the procedure for reviewing an application for 'payment in kind'; and
- Specify the process for establishing payment in kind for a CIL liability.

#### When can 'payment in kind' occur?

##### National Requirements

The National CIL Regulations specify that 'payment in kind' can only occur where specific eligibility criteria is met. This is:

- The land and/or infrastructure provided as 'payment in kind' is to be acquired by the Council or a person(s) nominated by the Council (with that person's agreement).
- Where the land and/or infrastructure is to be acquired by a person(s) nominated by the Council, the Council must be satisfied that the person(s) intended to use the land for the delivery of infrastructure and/or will appropriately maintain and allow public access to the infrastructure.
- Any land provided as 'payment in kind' must be used for the delivery of infrastructure.
- Any infrastructure provided must represent a time and cost saving to the Council, compared to delivering the infrastructure itself and the Council must aim to ensure that it will support the development of its area.
- The person from whom the land will be acquired or that is responsible for the provision of the relevant infrastructure must have assumed liability to pay CIL for the development through completion of the assumption of liability within CIL Form 0: Determination of CIL Liability or CIL Form 1: Assumption of Liability.
- An agreement for 'payment in kind' has been entered into **before** the chargeable development has commenced.

- Any agreement for ‘payment in kind’ must be made in writing and state the value of the land and/or infrastructure to be provided, as identified by the independent assessor. The valuation of land and/or infrastructure must be performed in accordance with the National CIL Regulations.
- Any agreement for ‘payment in kind’ must specify the timescales for delivery (this must be in accordance with the Shropshire Council CIL Payment by Instalment Policy). This agreement will be in the form of a contract to transfer the land and/or provide the infrastructure.
- **This agreement cannot form part of a planning obligation within a S106 Agreement.**

The National CIL Regulations can be viewed at:

<http://www.legislation.gov.uk/all?title=Community%20Infrastructure%20Levy%20>

Regulations 73 and 74 of the National CIL Regulations (2010) introduced the land ‘payment in kind’ mechanism. Regulations 73A and 73B were added to the National CIL Regulations (2010) by amending the Regulations in 2014 and introduced the infrastructure ‘payment in kind’ mechanism.

### Local Eligibility Criteria

In addition to these national requirements for the acceptance of ‘payment in kind’, Shropshire Council has introduced further local criteria to ensure that the approval of ‘payment in kind’ will support the development of its area by contributing towards the delivery of identified infrastructure priorities and reflecting the Site Allocation and Planning Application process.

**Land and/or infrastructure will only be accepted as ‘payment in kind’ where the proposed use of the land or the infrastructure offered is identified within the CIL Regulation 123 List as suitable for delivery through ‘payment in kind’.**

Land and/or infrastructure will not be accepted as ‘payment in kind’ where it is considered necessary to:

- Meet Planning Policy standards - *this includes open space standards as specified in Policy MD2 and Appendix 2 of the Developer Contributions Supplementary Planning Document (SPD)*;
- Make the application suitable in planning terms; or
- Represents an intrinsic element of the design of the scheme.

Furthermore, Land and/or infrastructure will not normally be accepted as ‘payment in kind’ where:

- It has been promoted as part of the scheme in addition to any CIL contribution to the local community, unless negotiated with the Council in order to meet an agreed community-wide infrastructure need; or
- It represents one of the reasons that the community supported the scheme during the planning allocation/application process, unless proposed instead of CIL or negotiated with the Council in order to meet an agreed community-wide infrastructure need.

### Preparation for an Application

Before submission of an application liable parties are encouraged to discuss proposals with the local Town or Parish Council and Shropshire Council to establish if the principle of ‘payment in kind’ is suitable **before** any application is submitted.

If it is agreed that the ‘payment in kind’ mechanism may be suitable in the particular circumstances, the liable parties are responsible for submitting a formal application for ‘payment in kind’. This application should be submitted on the ‘payment in kind’ application form and must demonstrate that the land and/or infrastructure offered as ‘payment in kind’ complies with the national and local eligibility criteria.

### Valuation of Land or Infrastructure

**Where CIL is paid by way of an infrastructure payment the amount of CIL paid is an amount equal to the value of the infrastructure provided. Therefore, any application for ‘payment in kind’ must be supported by a detailed valuation of the land and/or infrastructure offered as ‘payment in kind’. This should be performed by a suitably qualified, experienced and independent person(s) agreed by Shropshire Council and any other liable parties.**

The valuation of land must be based on the price that the land might reasonably be expected to obtain if sold on the open market on the day of the valuation.

- No ‘hope value’ should be reflected within this valuation.

- The price should not be assumed to be reduced on the ground that the whole of the acquired land is to be placed on the open market at the same time.

The valuation of infrastructure must be based on the actual construction cost of the proposed infrastructure and fees related to the design of the infrastructure. These costs and fees must be realistic and agreed with Shropshire Council.

- If the cost of the provision of this infrastructure is less than anticipated, the infrastructure provider/applicant must notify Shropshire Council. The value of the ‘payment in kind’ will then be reduced by the same amount, therefore increasing or requiring a financial CIL payment for the development.
- If the cost of the provision of this infrastructure is greater than that agreed, it is the responsibility of the infrastructure provider/applicant to bear these additional costs.

## Reviewing an application for ‘payment in kind’?

Once an application for ‘payment in kind’ is received, Shropshire Council will determine whether it has been demonstrated that the proposal is:

- Compliant with the National Requirements;
- Compliant with the Local Eligibility Criteria;
- Delivers infrastructure identified within the CIL Regulation 123 List as suitable for delivery through ‘payment in kind’; and
- Represents a more cost and time effective method of delivering the necessary infrastructure and supports the development of the area.

**Ultimately, Shropshire Council has discretion as to whether or not it wishes to accept land and/or infrastructure as ‘payment in kind’.**

Therefore it is strongly recommended that **before** any application is submitted, discussions between the liable parties, the Town or Parish Council and Shropshire Council are undertaken, to establish if the principle of ‘payment in kind’ is suitable in this instance.

## Checklist

This checklist is for internal use only. It can be used to ensure that the relevant information has been provided when reviewing an application for ‘Payment in Kind’.

| <b>Initial Eligibility</b>   |   |
|--|---|
| 1. Have details of the Planning Application been provided?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| 2. Has the CIL liability been identified – at least in draft?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| 3. Has the applicant confirmed that the land and/or infrastructure offered as ‘payment in kind’ could not be considered necessary in order to make the development acceptable in planning terms; meet planning policy standards; or to represent an intrinsic element of the scheme? | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| 4. Having considered the nature of the application, do you agree with this assessment?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| 5. Has the applicant confirmed that the land and/or infrastructure has not been presented to the community as a benefit in addition to any CIL contribution, or represents a key reason the community supported the scheme during the planning process?                              | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| 6. Having considered the nature of the application, do you agree with this assessment?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| 7. Has the value of the proposed land and/or infrastructure offered as payment in kind been provided? If yes, do these initially appear suitable and realistic?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| 8. Have timescales for the delivery of the land and/or infrastructure been suggested? If yes, are these appropriate?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |

| <b>Payment in Kind: Land</b>   |   |   |
|--|---|---|
| 9. Have appropriate details of the land offered as 'payment in kind' been provided?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/>   |   |
| 10. Have ownership details of this land been provided?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/>   |   |
| 11. Have appropriate uses of this land for infrastructure delivery been suggested?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/>   |   |
| 12. Infrastructure priorities:   | <p style="text-align: center;"><b>Yes:<br/>Infrastructure suitable for<br/>'payment in kind'</b></p> <p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;"><b>Yes:<br/>Exception –<br/>critical infrastructure<br/>not yet identified</b></p> <p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;"><b>No: Cannot support application</b></p> <p style="text-align: center;"><input type="checkbox"/></p> |   |
| a. Are these infrastructure uses identified within the CIL Regulation 123 List as suitable for delivery through 'payment in kind'?<br><i>If yes, please confirm the proposed use is suitable for use of the 'payment in kind' mechanism. If no, please proceed to 12b.</i>   |   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| b. Are there any alternative infrastructure priorities to those suggested within the application that could be delivered on the relevant land and are identified within the CIL Regulation 123 List as suitable for delivery through 'payment in kind'?<br><i>If yes, please confirm the proposed use is suitable for use of the 'payment in kind' mechanism. If no, please proceed to 12c.</i>  |   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| c. Has sufficient justification been provided as to why an exception should be made for the proposed infrastructure use on this land? Please note: this is only likely to apply to major developments (50 or more dwellings) and it must be agreed that the in kind contribution provides the most efficient means of delivering a prioritised community benefit which has been agreed locally and is in accordance with Policy CS9. This justification should include:<br>- Explanation of the importance of the proposed infrastructure need within the area;<br>- Identification of community support for the project;<br>- Explanation of the unique opportunity that the proposed land represents for this particular infrastructure proposal; and<br>- Summary of the cost and/or time savings that will result from the use of the 'payment in kind' mechanism.<br><i>If yes, please specify the reasons for this decision and confirm that sufficient justification has been provided. If no, the application cannot be supported.</i> |   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| d. Justification for exceptional use of the 'payment in kind' mechanism:   |   |   |

| <b>Payment in Kind: Infrastructure</b>  |   |   |
|---|---|---|
| 13. Have appropriate details of the infrastructure offered as 'payment in kind' been provided?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/>   |   |
| 14. Has the land upon which this infrastructure will be delivered been specified?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/>   |   |
| 15. Have ownership details of the land upon which the proposed infrastructure will be delivered been provided? If yes, has the landowner confirmed that this proposal is acceptable?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/>   |   |
| 16. Infrastructure priorities:  | <p style="text-align: center;"><b>Yes:<br/>Infrastructure suitable for<br/>'payment in kind'</b></p> <p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;"><b>No: Cannot support application</b></p> <p style="text-align: center;"><input type="checkbox"/></p> |   |
| a. Is the proposed infrastructure identified within the CIL Regulation 123 List as suitable for delivery through 'payment in kind'?<br><i>If yes, please confirm the proposed use is critical infrastructure that is suitable for use of the 'payment in kind' mechanism. If no, please proceed to 16b.</i>   |   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| b. Has sufficient justification been provided as to why an exception should be made for the proposed infrastructure? Please note: this is only likely to apply to major developments (50 or more dwellings) and it must be agreed that the in kind contribution provides the most efficient means of delivering a prioritised community benefit which has been agreed locally and is in accordance with Policy CS9. This justification should include:<br>- Explanation of the importance of the proposed infrastructure need within the area;<br>- Identification of community support for the project;<br>- Explanation of the unique opportunity that the proposed land represents for this particular infrastructure proposal; and<br>- Summary of the cost and/or time savings that will result from the use of the 'payment in kind' mechanism.<br><i>If yes, please specify the reasons for this decision and confirm that sufficient justification has been provided. If no, the application cannot be supported.</i> |   | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
| c. Justification for exceptional use of the 'payment in kind' mechanism:  |   |   |

## How do we establish an agreement for ‘payment in kind’ for a CIL liability?

An agreement for ‘payment in kind’ must be entered into **before** commencement of the chargeable development. If chargeable development commences before such an agreement, ‘payment in kind’ **cannot be accepted**.

The agreement for ‘payment in kind’ must be made in writing and state the value of the land and/or infrastructure to be provided. It should also specify the relevant timescales for transfer of the land and/or delivery of infrastructure – this must be in accordance with the Shropshire Council CIL Payment by Instalment Policy. This Policy is available to view at: [www.shropshire.gov.uk/CIL](http://www.shropshire.gov.uk/CIL).

This agreement will be in the form of a legal contract made between the liable parties, and Shropshire Council, or a parties nominated by the Council as the receiving body. The cost of establishing this legal agreement must be borne by the liable parties.

If the agreed timescales within this legal agreement are not complied with, the agreement must require that the CIL cash amount and interest must be paid.

Where the provision of land and/or infrastructure as ‘payment in kind’ is agreed, payments must take place in accordance with the timescales agreed within the relevant legal agreement, which must reflect the Shropshire Council CIL Payment by Instalment Policy. The resultant CIL Demand Notice will therefore specify two categories of CIL instalments:

- The first will address the timescales for the provision of the land and/or infrastructure as ‘payment in kind’.
- The second will address the timescales for the provision of any financial payments associated with the development.

*Both of these instalment categories must be in accordance with the Shropshire Council CIL Payment by Instalment Policy. However they are separated in order to reflect the increased complexity of providing land and/or infrastructure as ‘payment in kind’.*

**Please Note: This agreement cannot form part of a planning obligation within a S106 Agreement.**

## How are payments made?

‘Payment in kind’ must take place in accordance with the timescales agreed within the relevant legal agreement. These timescales must be in accordance with the Shropshire Council CIL Payment by Instalment Policy and will be referenced within the relevant CIL Demand Notice.

If the agreed timescales are not complied with, the equivalent CIL liability and interest will have to be paid in money.

The provision of land and/or infrastructure as ‘payment in kind’ is deemed to have been received on the day on which the land which is the subject of the payment is acquired or investment in delivery the infrastructure occurs.

*Please Note: If the liable parties overpay the CIL liability associated with the development, the Council is not required to refund this payment if it is as a result of a land and/or infrastructure payment.*

If Shropshire Council does not receive a completed **CIL Form 6: Commencement Notice** for the development at least the day before development commences, any agreed ‘payment in kind’ cannot be accepted, and the full liability must be paid through a financial payment (money). Furthermore, the CIL liability will be subject to a surcharge of 20% up to a maximum of £2,500.00 and payment will be required immediately and in full – instalments may no longer be offered.

## Requirements for any land received as ‘payment in kind’

Any land acquired as ‘payment in kind’ must be used for the provision or to facilitate (in any way) the provision of infrastructure to support the development of the area. Land will only be accepted as ‘payment in kind’ where the infrastructure to be delivered upon it is identified within the CIL Regulation 123 List as suitable for delivery through ‘payment in kind’, apart from in exceptional circumstances.

If any of the land provided as ‘payment in kind’ is not used for the provision or to facilitate (in any way) the provision of infrastructure to support the development of the area, the Council must pay the equivalent CIL liability. Where a proportion of the land is not used for the provision of infrastructure, the equivalent proportion of the CIL liability must be paid.

### **Requirements for any infrastructure received as ‘payment in kind’**

Infrastructure will only be accepted as ‘payment in kind’ where it is identified within the CIL Regulation 123 List as suitable for delivery through ‘payment in kind’.

### **General Requirements**

This mechanism is used at the discretion of the Council. It is **not** a requirement that we accept the provision of land as ‘payment in kind’. It should only be utilised where the land and/or infrastructure is identified within the CIL Regulation 123 List as suitable for delivery through ‘payment in kind’.

Where the Council accepts land and/or infrastructure as ‘payment in kind’ the equivalent Neighbourhood Fund (25% where there is a formal Neighbourhood Plan or within a Neighbourhood Development Order; or 15% where there is no Neighbourhood Plan, capped at a maximum of £100 per council tax dwelling) must still be paid to the local community as a financial payment. This is unless it has been agreed with the community that the Neighbourhood Fund is to be included within the value of the land. Alternatively it could be agreed that the community will utilise the Neighbourhood Fund to contribute to delivery of necessary infrastructure on the land or contribute to associated infrastructure needs.