



**Somerset West and Taunton Council**  
**Community Infrastructure Levy**  
**Discretionary Payment in Kind Policy**

1. In accordance with Regulations 73, 73A, 73B and 74 of the Community Infrastructure Levy Regulations 2010 (as amended), Somerset West and Taunton Council, as the charging authority for the area, will at its discretion allow in appropriate cases the payment of CIL by land payments or infrastructure payments.
2. This policy is effective from 12 April 2016.
3. The CIL Regulations 2010 (as amended) allow the Council to accept full or part payment of a CIL liability by way of the transfer of land to the Council or the provision of infrastructure. Such arrangements are known collectively as "payments in kind".
4. Any land provided as a payment in kind must be used for the delivery of infrastructure identified within the Council's regulation 123 list. Any infrastructure proposed as a payment in kind must be identified within the Council's Regulation 123 list in order to be regarded as suitable for delivery via a payment in kind
5. The acceptance by the Council of proposals for payments in kind is entirely discretionary. The Council is not obliged to accept any offer of payment in kind by land or infrastructure.
6. Where the Council accepts payment in kind, the equivalent meaningful proportion payment will still be paid to the parish council as a financial payment, unless it has been agreed with the relevant body that the fund is to be included in the value of the land. Alternatively it could be agreed that the community will utilise the meaningful proportion payment to contribute to the delivery of necessary infrastructure on the land or to contribute to associated infrastructure needs.

## **Eligibility Criteria**

7. The CIL Regulations specify that payments in kind can only take place where specific eligibility criteria are met. These criteria are as follows.
8. Any application for 'payment in kind' will only be considered acceptable where it demonstrates compliance with the CIL Regulations (as amended) and the Council's adopted Payment in Kind policy.

9. The land or infrastructure proposed as payment in kind is to be acquired either by the Council or by a person nominated by the Council
10. Where the land offered as a payment in kind is to be acquired by a person nominated by the Council, the Council must be satisfied that the person intends to use the land for the delivery of infrastructure and that the infrastructure will be appropriately maintained (and will be publicly accessible).
11. Any land provided as a payment in kind must be used for the delivery of infrastructure
12. The person from whom the land will be acquired, or the person who will be responsible for the provision of the infrastructure, must have assumed liability to pay CIL for the development through completion of the assumption of liability form
13. The amount of CIL payable in respect of the chargeable development must be greater than £50,000.00 in order for a Charging Authority to accept a land payment.
14. In accordance with Regulation 59(A)(3) where Somerset West and Taunton Council accepts land and/or infrastructure as 'payment in kind', the equivalent meaningful proportion must still be paid to the parish council as a financial payment.

### **Process for proposal and securing of a payment in kind**

#### *Pre submission discussions*

15. Prior to any formal submission of a proposal for a payment in kind, parties will be expected to discuss such proposals with the Council's CIL officer and the relevant policy officer, in order establish whether a payment in kind is an acceptable means of proceeding in principle.

#### *Formal application*

16. If it is agreed that the payment in kind mechanism may be suitable in a particular case, the liable party shall be responsible for submitting a formal application for payment in kind. This application should be submitted on the Council's application form prior to commencement of the development and should demonstrate that the land or infrastructure offered as payment in kind complies with the eligibility criteria set out in this Policy.

#### *Review by the Council*

17. Once an application for payment in kind has been received, the Council will determine whether it has been demonstrated that the proposal complies with the eligibility criteria and delivers infrastructure identified within the Regulation 123 list as suitable for delivery via payment in kind.

18. Any applications for Payment in Kind will be considered by the CIL Board and will require agreement from Full Council.

#### *Valuation*

19. Any application for a payment in kind must be accompanied by a detailed independent valuation of the land or infrastructure offered as payment in kind. This valuation should be provided by a suitably qualified, experienced and independent person agreed by the Council.

20. The valuation of land shall 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. There shall be no hope value included in the valuation. The price of the land should not be assumed to be reduced on the ground that the whole of the land is to be placed on the open market at the same time.

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

22. In the event that the cost of provided infrastructure is less than anticipated, the provider/applicant shall notify the Council, following which the value of the payment in kind shall be reduced by the same amount, thereby potentially requiring (or increasing) a financial CIL payment in relation to the development.

23. In the event that the cost of provided infrastructure is greater than anticipated, it shall be the responsibility of the provider/applicant to bear these additional costs.

#### *Formal agreement and procedural issues*

24. It will be necessary for a formal agreement in respect of the proposed payment in kind to be entered into before the chargeable development has been commenced. The agreement must be in writing, must state the value of the land or infrastructure to be provided (as identified via a process of independent assessment in compliance with the CIL Regulations) and cannot form part of a planning obligation entered into under Section 106 of TCPA 1990.

25. All costs in connection with the preparation and completion of the agreement will normally be borne by the applicant.

26. In the event that the required agreement is not completed within the Council's timescales, the Council reserves the right to withdraw the payment in kind arrangement and require the relevant CIL liability to be paid in money.

27. In addition, if the Council does not receive a completed commencement notice for the development, such notice to be received no later than the day

prior to the date on which the development is commenced, the payment in kind as previously agreed will not be accepted, and payment in money will be required

### **Further Guidance**

28. Further guidance on the CIL and the payment in kind provisions are available on the Government's Planning Practice Guidance website:

<http://www.legislation.gov.uk/ukxi/2010/948/regulation/73/made>

### **Further Information**

Further information on CIL is available on the Councils website at:

<https://www.somersetwestandtaunton.gov.uk/planning-policy/cil/>

If you have any questions relating to CIL at Somerset West and Taunton Council please contact:

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