

Report of	Meeting	Date
Chief Executive	Council	12 April 2016

## LAND AND INFRASTRUCTURE PAYMENT POLICY: COMMUNITY INFRASTRUCTURE LEVY

### PURPOSE OF REPORT

- To inform Members of the Land and Infrastructure Payment Policy which gives notice that the Council is willing to accept payments in kind in the form of land and/ or infrastructure, instead of money to satisfy a charge arising from development which is subject to the Community Infrastructure Levy.

### RECOMMENDATION(S)

- To adopt the Land and Infrastructure Payment Policy

### EXECUTIVE SUMMARY OF REPORT

- The Community Infrastructure Levy (CIL) Regulations 2010 as amended, allows the Council to accept payment of CIL in the form of land and/or infrastructure in satisfaction of the whole or part of the Community Infrastructure Levy due in respect of a chargeable development. The Land and Infrastructure Payment Policy sets out the circumstances and conditions for paying a part or the entire CIL amount in the form of land and/or in the form of one or more items of infrastructure. It is at the Council's discretion whether to accept payments in kind for CIL rather than money. However where land is acquired to provide or facilitate the provision of infrastructure or where infrastructure is constructed by a developer this provision must be identified on the Council's Regulation 123 List. The Land and Infrastructure Payment Policy will be effective from 12 April 2016 and will be published on the Council's website.

Confidential report Please bold as appropriate	Yes	No

### CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all	x	A strong local economy	
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	x

### BACKGROUND

- The Community Infrastructure Levy (CIL) is a charge on some forms of development, for Chorley this is housing (although affordable housing is exempt) and retail (excluding neighbourhood convenience stores), which allows Local Authorities to raise funds from

developers to pay for strategic and local infrastructure that is needed as a result of development. CIL was adopted by the Council on 16 July 2013 and charging commenced from 1 September 2013

6. CIL is used to contribute to the infrastructure requirements identified in the list prepared under Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended). The Regulation 123 List specifies the infrastructure projects to be funded at least in part by CIL in Chorley and includes schemes such as transport improvements, health facilities and education provision.

## **LAND AND INFRASTRUCTURE PAYMENT POLICY**

7. The Community Infrastructure Levy (CIL) Regulations 2010 as amended, allows the Council to accept payment of CIL in the form of land and/or infrastructure in satisfaction of the whole or part of the Community Infrastructure Levy due in respect of a chargeable development. This is useful for example where an authority has already planned to invest levy receipts in a project and there may be time, cost and efficiency benefits in accepting land or completed infrastructure from the party liable for payment of the levy. Developers, where appropriate, can take responsibility for delivering infrastructure, offsetting the costs against their CIL liability. Payments in kind can also enable developers, users and authorities to have more certainty about the timescale over which certain infrastructure items will be delivered.
8. To consider such payments in kind the Council need to adopt and publish a Land and Infrastructure Payment Policy (as attached) in accordance with the CIL Regulations 73, 73A, 73B and 74 (as amended). With an adopted policy it is at the Council's discretion whether to accept payments in kind for CIL rather than money. A developer will need to discuss payments in kind in any CIL agreement with the Council as early as possible to establish if the principle would be appropriate. The Council is not obliged to accept any offer of payment in kind.
9. The Regulations only allow payments in kind if the land to be acquired is used for a relevant purpose to provide or facilitate the provision of infrastructure and/or where infrastructure is provided it will be used to support the development of its area and must be identified in the Council's Regulation 123 List of types of infrastructure to be funded through CIL. This means any agreement signed between the Council and a developer in regard to the payment in kind provisions of the Regulations must not form part of an agreement signed under S106 of the Town and Country Planning Act 1990.
10. The Payment Policy sets out the individual circumstances and conditions where the levy is to be paid as land or infrastructure. This includes:
  - Payments in kind can only be made with the agreement of the liable party, the charging authority (Chorley Council), and any other relevant authority that will need to assume a responsibility for the land or infrastructure;
  - Land acquired may contain existing buildings and structures but the chargeable amount payable under CIL must be greater than £50,000
  - Land or infrastructure must be valued by an independent valuer who, in the case of land, will ascertain its 'open market value', and in the case of infrastructure the cost (including related design cost) to the provider. This will determine how much liability the 'in-kind' payment will off-set.
  - An agreement must be entered into before development commences. It must state the value of the land to be transferred; the value of the infrastructure and the date the infrastructure must be provided;
  - In the case of providing the infrastructure by the time the CIL cash amount would be payable if it was being paid in money, an amount equal to the CIL amount must have been used to provide the infrastructure unless alternative arrangements are put in place.

11. The Regulations also cover where an agreement becomes void and the land/infrastructure payment in kind is not accepted as payment and the CIL liability will be due immediately in money. This occurs:
- In the event a liable party commences development having failed to submit a Commencement Notice to the Council;
  - Where an amount payable is not received in full on or before the day on which it is due.

## NEXT STEPS

12. The CIL Land and Infrastructure Payment Policy will be effective from 12 April 2015 and will be published on the Council's website.

## IMPLICATIONS OF REPORT

13. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	x	Customer Services	
Human Resources		Equality and Diversity	
Legal	x	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

## COMMENTS OF THE STATUTORY FINANCE OFFICER

14. There are no immediate financial implications associated with this report. The updated Policy allows assets to be taken in lieu of cash payments, which is allowable under the regulations and which may in some circumstances suit both the Council and/or the developer.

## COMMENTS OF THE MONITORING OFFICER

15. In order for the Council to accept infrastructure or land in lieu of a CIL contribution we are obliged to have a policy which allows this. The benefit of accepting land or infrastructure is that the contribution is instantly spent with an immediate benefit which often supports the development and affected community directly. Such an arrangement will not always be appropriate but should be considered whenever possible.

GARY HALL  
CHIEF EXECUTIVE

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Alison Marland	5281	22 March 2016	***

**Chorley Council**  
**Land and Infrastructure Payment Policy**  
**Community Infrastructure Levy Regulations 2010 (as amended)**

The Community Infrastructure Levy (CIL) Regulations 2010 as amended, allows the Council to accept payment of CIL in the form of land or infrastructure in satisfaction of the whole or part of the CIL due in respect of a chargeable development.

Chorley Council will allow the payment of CIL by the provision of land and /or by infrastructure payments in accordance with Regulations 73, 73A, 73B and 74.

It is recommended that if you wish to include the transfer of land and /or infrastructure in payments in any CIL agreement that you discuss this with the Council as early as possible to establish if the principle would be appropriate in this instance.

The Council is not obliged to accept any offer of payment in kind by land or infrastructure

Any agreement signed between the Council and a developer in regard to the payment in kind provisions of the Regulations must not form part of an agreement signed under S106 of the Town and Country Planning Act 1990.

This policy is effective from 12 April 2015.

**Paying CIL in the form of Land**

In certain circumstances you may be able to pay a part or the entire CIL amount in the form of land. This depends on the following conditions:

- The chargeable amount payable under CIL must be greater than £50,000;
- The Council as charging authority must agree either to acquire the land or to nominate another person (with their agreement) to acquire the land;
- The Council must aim to ensure the acquired land is used for a relevant purpose to provide or facilitate the provision of infrastructure which is identified in the Council's Regulation 123 list to support the development of its area;
- The person who wishes the Council or nominated person to acquire the land must have assumed liability to pay CIL beforehand;
- The land to be acquired must have been independently valued by a suitably qualified person agreed by the Council. The valuation must be the price that the land might reasonably be expected to obtain if sold on the open market on the day it is valued. The price is not to 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;
- Development on the site must not have commenced before a written agreement with the Council has been made. The agreement must state the value of the land to be transferred.
- In accordance with Regulation 75(2)(b) the Council is not required to repay overpayment where it is a result of a land payment.

By agreement with the Council land can be transferred by instalments as long as it is in line with the payment proportions and due dates laid out in the Councils Charging Schedule..

In the event a liable party commences development having failed to submit a Commencement Notice to the Council, any agreement regarding a land payment for that liable development will be void and the land will not be accepted as payment. Instead the full value of the CIL liability will be due immediately in money.

Where a land payment is not received in full on or before the day on which it is due, the unpaid balance of the CIL payment becomes payable in full immediately in money.

Any outstanding CIL amounts left after the transfer of land in the form of money will be paid in line with the payment due dates laid out in the Demand Notice.

### **Paying CIL in the form of Infrastructure**

In certain circumstances you may be able to pay a part or the entire CIL amount in the form of one or more items of infrastructure. This depends on the following conditions:

- The Council as charging authority must agree to the infrastructure payment;
- The infrastructure provided to the Council through an infrastructure payment will be used to support the development of its area and must be in accordance with the Council's Regulation 123 List;
- The person providing the infrastructure to the Council as payment must have assumed liability to pay CIL beforehand;
- The person providing the infrastructure to the Council is required to demonstrate that they have, or are likely to have, sufficient control over the land on which the infrastructure is to be constructed to enable them to provide the infrastructure; and that they have obtained, or are likely to obtain, any relevant statutory authorisations that are necessary to enable the infrastructure to be constructed;
- Development on the site must not have commenced before a written agreement with the Council has been made;
- The value of any infrastructure offered by way of payment has to be determined by a suitably qualified independent person, with any costs associated with this assessment paid for by the liable party.
- The valuation of infrastructure must be based on the actual construction cost of the proposed infrastructure and fees relating to the design of the infrastructure. These costs and fees must be realistic and agreed with the Council;
- The agreement must state the value of the infrastructure; state the date by which the infrastructure is to be provided and provide for payment to the Council of the CIL cash amount and interest, in money if the infrastructure is not provided by that date, or in accordance with an agreed extension to that date.
- The agreement must ensure that by the time the CIL cash amount would be payable if it was being paid in money, an amount equal to the CIL amount must either have been used to provide the infrastructure or be subject to the arrangement in Regulation 73A9(b).
- In accordance with Regulation 75(2) (b) the Council is not required to repay overpayment where it is a result of an infrastructure payment.

In the event a liable party commences development having failed to submit a Commencement Notice to the Council, any agreement regarding an infrastructure payment for that liable development will be void and the infrastructure will not be accepted as payment. Instead the full value of the CIL liability will be due immediately in money.

Where an amount payable is not received in full on or before the day on which it is due, the unpaid balance of the CIL payment becomes payable in full immediately in money.