

**CYNGOR SIR POWYS COUNTY COUNCIL**

**AUDIT COMMITTEE**

**10<sup>th</sup> January 2013**

**REPORT AUTHOR: County Councillor Dai Davies  
Portfolio Holder for Finance**

**SUBJECT: Risk Management & Insurance Report**

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**REPORT FOR: Information & Decision**

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**1. Summary**

Audit Committee is responsible for reviewing the effectiveness of internal control. The Financial Regulations state that it is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the authority.

**2. Risk Management**

**2.1 Responses Received From Services**

A list of the high risks that featured on the corporate risk register was presented to Audit Committee on 12<sup>th</sup> October. It was requested that information be sought from a number of services relating to the risks they had on the register.

Below are the responses received from these services in relation to the issues raised.

**2.1.1 Free Transport to Schools Policy**

An update was requested in relation to the above policy.

**Response from Schools Service:**

Following the consultation undertaken in the summer term on the proposed changes to the Home to School Transport policy the following action is being undertaken on a high school by high school catchment basis.

- Identification of the number and home location of pupils currently being transported to a school other than their closest.
- The number of learners, if any, being transported from these areas to the closest schools, resulting in two routes.
- Any geographical factors that need to be taken into consideration.
- The nature and class of road being used to calculate the closest school

- Any other relevant factors that need to be considered from the consultation meetings.

This information will be drawn together into a report for the portfolio holders consideration, before submitting a report to cabinet. Local consultation will be undertaken on a rolling programme on any impacts of these reviews.

### **2.1.2 Adults Social Care Overspend (Risk 12.86)**

Commentary in relation to this can be found with the Financial Overview and Forecast Report for Quarter 2.

### **2.1.3 High Schools Deficits (Risk 12.88)**

#### **Response from Finance:**

Audit Committee requested sight of the documents being proposed for schools (Schools Strategic and Financial Management and Scheme for the Financing of Schools). These documents were distributed on 25<sup>th</sup> October. Details of the deficits will be provided by the Financial Overview and Forecast Report for Quarter 2.

### **2.1.4 Liabilities Arising From Closed Landfill Sites (Risk 12.85)**

#### **Response from Local & Environmental Services:**

The Council has direct or indirect liability for environmental pollution as well as health & safety hazards on 80 sites across Powys. Of these 30 have been graded at the higher end of the risk scale. At five of the sites the council has discharge consents issued by the Environment Agency with leachate treatment plants installed to manage discharge within the prescribed limits. A further plant has been installed at one site which is not currently covered by an Environment Agency discharge consent but is likely to be shortly. Significant incidents since 2009 are shown below.

Jan-09	The culvert at Rhosforlo partially collapsed and was relined Aug 2009
Mar-09	Culvert replaced at Tregynon due to major failure of previous pipe
Apr-09	Partial collapse of the surface at Carreghofa - excavated and backfilled
May-10	Tower partially collapsed at Tir Canol rendering the plant useless
May-10	Power cut at Rhosforlo resulted in raw leachate escaping for a maximum of one week
Jun-10	Discovered that Carreghofa did not have a discharge consent
Jun-10	The leachate drain at Carreghofa dried up
Dec-10	Adverse weather prevented access to the leachate treatment plants for three weeks, Pentrefelin, Carreghofa, Tir Canol & Rhosforlo suffered pump failures/power cuts resulting in raw and part treated leachate being discharged
Feb-11	The bund around the treatment towers at Cwrt y Plyffin failed and was replaced April 2011
Dec-11	Due to flash flooding the main lagoon at Nantmel was partially washed out. Road tankers removed the excess from the lagoon

Jan-12	Unusually high flows of raw leachate overwhelmed the treatment plant at Rhosforlo and the excess leachate was removed by road tanker
Mar-12	Leachate located in drainage ditches at Carreghofa - dairy herd drinking leachate

The revenue and capital costs associated with the management of the sites in recent years is shown below:

Year	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
<b>Capital £</b>	9,031	18,275	140,860	8,100	29,699
<b>Revenue £</b>	299,162	257,196	316,771	688,880	385,189

A range of environmental risk factors are considered in assessing each site including groundwater, surface water, and methane gas. The scores against each category are recorded on the information sheet for each site. Higher scoring sites will typically have high scores for each category. It is these 30 higher scoring sites that have been excluded by the insurance company presumably on the basis that the commercial risks are too high.

Closed landfill sites represent a continued risk to the Council. They are complex in nature and require specialist consideration. The last manager with sufficient understanding and background has left the Council and is currently working for the Welsh Government. The service is therefore considering utilising the expertise of the contaminated land officer to manage the sites. He is currently reviewing sites with discharge consents and the strategy for future management.

#### **Response from Finance:**

The Risk & Resilience Section provided assistance to Local and Environmental Services in procuring a policy of insurance in respect of certain liabilities arising from the Council's closed landfill sites. The five year policy incepted in October 2007 expired on 30<sup>th</sup> September 2012. The total premium over 5 years was £185k. It was anticipated that a five year policy from 1st October 2012 to 30<sup>th</sup> September 2017 would be in excess of the threshold of £174k that requires publication in the Official Journal of the European Union (OJEU).

Environmental Liability is a specialised insurance market. As such the Environmental Practice of the Council's insurance brokers was utilised to ensure maximum interest from the insurance market. The tender closed on 17<sup>th</sup> August 2012. No tenders were received, this was reportedly due to concerns over some aspects of the portfolio and a reluctance to offer terms in line with the specification requested, however two insurers indicated that they would be interested in working towards finding a solution. In accordance with the Council's Standing Orders, an exemption to a further full tender exercise was granted. These two insurers provided indicative quotations with one insurer being significantly more competitive. Cover was bound with this insurer in the sum of £199,280 (£188k + Insurance Premium Tax).

Thirty sites were excluded from the emergency expense cover provided under this policy, for reasons outlined by Local and Environmental Services above. It should also be note that this policy does not seek to provide cover for any losses other than those that the Council is legally obligated to pay and the policy has a £100k excess in respect of each pollution incident

The Risk & Resilience Section is fully confident that insurers underwriting this type of environmental liability cover have had the opportunity to quote and that the policy incepted is reasonable in the circumstances.

### **2.1.5 Risk of Failing to Respond to Internal Audit and Regulators Recommendations (Risk 12.89)**

Committee requested to know who is responsible for monitoring the implementation of actions identified by regulators. This could be considered as part of the role for the Cabinet Member for Corporate Governance with appropriate officer support. A simple tracker was maintained until a few years ago and this can easily be reinstated.

### **2.1.6 Liabilities Arising from Planning Applications (Risk 12.93)**

#### **Response from Regeneration & Development:**

Because the planning system is open to considerable public scrutiny, there is always the risk that an aggrieved applicant or third party will seek to challenge the legal basis on which any decision has been made. The planning system is governed by numerous statutory procedures and on this basis there is often scope to at least consider such a challenge. The courts do not generally entertain what could be regarded as frivolous challenges but, clearly, the risk is always there. The courts also would have regard for alternative remedies that might be available and an applicant that has been refused planning permission would generally have the right of appeal, in which case, the courts would generally say to go down that route. There is, however, no third party right of appeal for third parties, including objectors.

We approve somewhere in the region of 93% of all applications so the scope for legal challenge via judicial review from an aggrieved applicant is minimal. The same can be said for appeals via a public inquiry. This is probably an acceptable risk.

Given that percentage, however, there is increased risk in terms of third parties. We always seek to limit that risk by strictly following procedures, etc.

If things do go wrong, one risk is in terms of reputation. The other main risk is in terms of budget as there is never a budget set to deal with this type of eventuality. The simple reason being that you could go all year without a challenge, surrender the budget and then find, the next year, that you have to spend £5K, £10K, £15, maybe £20K to defend such a challenge. In the past, costs have been found through budget reserves. However, there are no longer any budget reserves, which places us in a potentially very challenging position.

With particular regard to wind farm applications, detailed information was provided to cabinet on 25<sup>th</sup> October and the costs associated with a planning enquiry are considerable.

## **2.2 Escalation of Concerns to the Executive**

At the 12<sup>th</sup> October meeting Audit Committee recommended the escalation of any concerns to the Executive.

### 2.2.1 – Responding to Regulators Recommendations (Risk 12.89)

The Director of Finance and Infrastructure will ensure that this concern is raised with the Executive.

### 2.2.2 Overspends and Use of Reserves

The Portfolio Holder for Finance confirms the concerns relating to overspends and the use of reserves was reported to the Cabinet on 13<sup>th</sup> November 2012.

## 2.3 Risk Identification & Analysis

A total of 40 risks are currently contained on the Corporate Risk Register. These are currently broken down into the following categories:

Count of Risk	Rating			
Category	High	Med	Low	Grand Total
Financial	5	5	0	10
Hazard	1	3	0	4
Operational	2	9	2	13
Strategic	3	3	2	8
Draft				5
Grand Total	11	20	4	40

Services are currently undertaking a review of their risks as part of the business planning process.

### 2.2 Risk Register

The following risks are currently recorded as on the corporate risk register:

Ref	SERVICE AREA	Risk	Probability	Impact	Rating	Category	Type	Service/Corporate	Mitigating Action
12.04	Corporate	Job evaluation	High	High	High	Operational	Job Evaluation	Corporate	None Received
12.100	DRAFT	Welsh Government indication that there will be significant financial cuts over the next 10 years. There is a risk that the Council is not prepared to manage the level of cuts.	High	High	High	Financial		Corporate	
12.11	Corporate	Inability to recruit skilled staff to effectively deliver services.	High	High	High	Operational		Service	None Received
12.42	LOCAL & ENVIRONMENTAL SERVICES	Uncertainty arising from re-tendering all transport contracts	High	High	High	Financial		Service	Currently, all home to school and most local bus service contracts are out to tender, to be returned on 10 <sup>th</sup> October 2012. Also, uncertainty in respect of future WG funding probable cuts of 25% coming from April 2013, plus industry costs rising at around 6% per annum. Both these factors could lead to an increase of around 10 – 15% which could be around £1.2m increase in costs to stand still.
12.57	CHILDREN'S SERVICES	Increased LAC population and its direct impact on budget deficit - Link to objective CSS.12-15.002, CSS.12-15.002, CSS.12-15.004	High	High	High	Financial		Service	* Work in progress to provide a delivery plan. * Fully implemented family support services by 31/3/13.
12.58	CORPORATE	Loss of data or personal information – Data Protection Act - Action Plan owned by Information Governance Group	High	High	High	Strategic	Information Governance	Corporate	Information Governance Plan - Verbal update provided to Audit Committee by Director of Social Services on 12/10/12.
12.85	LOCAL & ENVIRONMENTAL SERVICES	Liabilities arising from closed landfill sites	High	High	High	Hazard		Service	* Two closed landfill sites currently/shortly undergoing remedial works. * • Risk assessments recently revised on all closed landfill sites under the Council's management. *• A new policy of insurance in respect of third party liability incepted with effect from 1st October 2012.

12.86	ADULT'S SERVICES	Adults Social Care projected overspend is as a result of a significantly higher level of demographic pressure than was expected at budget setting.	High	High	High	Financial		Service	<ul style="list-style-type: none"> <li>Current year budget pressures are being reviewed to identify the budget pressure up to march 2013 and to identify areas where savings can be achieved to mitigate some of the pressures. * Plans for the introduction of an across the board reablement service are underway</li> </ul>
12.87	FINANCE & Infrastructure	Inadequate financial planning and control in Education, Adults Social Care and Local & Environmental Services and Regeneration	High	High	High	Financial			Programme of work underway between services and finance to develop more robust budgeting and planning
12.89	Corporate	Failure to respond to internal audit and regulators recommendations.	High	High	High	Strategic		Corporate	None Received
12.92	DRAFT	<i>Inadequate corporate governance arrangements for shared services and partnerships.</i>	High	High	High	Strategic		Corporate	
12.19	LEGAL, SCRUTINY & DEMOCRATIC SERVICES	Failure of governance will result in council acting ultra vires.	Low	Med	Low	Strategic		Corporate	
12.53	BPU	Inability to meet additional service expectations of what BPU provide (other than those provide within existing resources.)	Med	Low	Low	Operational		Service	
12.80	ADULT'S SERVICES	Reputational – The audit reports make a significant number of recommendations, which this service business plan aims to address. Not achieving this has reputational risks for the SMT and politically	Low	Med	Low	Strategic		Service	The service area is working to the PCP and SBP only to manage the activity required. Links with Corporate Communications have been established and an integrated communications plan will set out and deliver messages the service vision, programme of work, timelines and achievements to staff, Members, stakeholders and partners. Further links will be established throughout the programme of work.
12.93	DRAFT	<i>Robustness of planning process</i>	Low	Med	Low	Operational		Service	
12.01	HR	Risk of damage to Powys County Council's reputation	Med	Med	Med	Strategic		Corporate	
12.101	ICS	Inadequate ICT resilience	Med	High	Med	Operational		Service	
12.102		Failure to deliver on the Powys Change Plan	Med	Med	Med	Strategic		Corporate	
12.12	ICS	Failure to agree a single plan for ICT	Med	Med	Med	Operational		Service	
12.13	ICS	Failure to co-ordinate ICT resource	High	Med	Med	Operational		Service	

12.17	LEGAL, SCRUTINY & DEMOCRATIC SERVICES	Failure to respond correctly to land charge enquiries resulting in compensation claims	Med	Med	Med	Financial		Service	
12.26	HOUSING	Management of Asbestos related issues	Low	High	Med	Hazard		Service	
12.27	HOUSING	Changes to homelessness legislation	Med	Med	Med	Operational		Service	
12.30	HOUSING	Failure to develop a new Gypsy site in the south of Powys	Med	High	Med	Operational		Service	
12.39	SCHOOLS SERVICE	The capacity of the authority Schools Service to deliver the School Modernisation Programme.	Med	High	Med	Hazard		Service	ESTYN monitoring visit Oct 2012 requires PCC to take timely action to deliver its Education Modernisation Programme. *HoS reviewing mitigating actions.
12.40	SCHOOLS SERVICE	ESTYN monitoring inspection Oct 12 stated that the Authority is to be placed in the category of an Authority "In need of significant improvement". Failure to effectively address the weaknesses identified over a 12 month period will place in the authority in need of special measures.	Low	High	Med	Strategic		Service	* Action plan to swiftly address Estyn recommendations to bring about necessary improvements in a timely manner. * Strategic Project Group and Peer Review/Challenge from Regional Consortium.
12.43	LOCAL & ENVIRONMENTAL SERVICES	Failure to ensure Health & Safety of public and workforce	Med	High	Med	Hazard		Service	
12.44	LOCAL & ENVIRONMENTAL SERVICES	Failure to meet statutory recycling targets and incurring financial penalties	Med	High	Med	Financial		Service	
12.47	REGENERATION & DEVELOPMENT	Public perception of service delivery within the development management section, particularly bearing in mind the ongoing debate over Renewable Energy provision.	Med	High	Med	Operational		Service	
12.55	PROCUREMENT	Non compliance with Standing Orders results in financial, commercial and service risk.	Med	High	Med	Financial		Service	
12.61	CHILDREN'S SERVICES	Safeguarding and managing high risk families with risk of harm, injury or death for child or children - Link to objectives CSS.12-15.002, CSS.12-15.002, CSS.12-15.008	Med	High	Med	Financial		Service	
12.84	CORPORATE	Lack of management of the procurement process within services resulting in inadequate contracts and contract management exposing the authority.	Med	Med	Med	Operational		Corporate	
12.88	SCHOOLS	Significant deficits in all schools are not brought under control	Med	High	Med	Financial		Service	*Introduction of new financing scheme for schools and enforcement of new protocols. *Schools with unlicensed deficits have approved recovery plans.



12.90	Corporate	Lack of adequate service business continuity planning	High	Low	Med	Operational		Corporate	Education and training programe previously delivered to services.
12.91	Local & Environmental Services	Inadequate management of the Council's fleet	High	Med	Med	Operational		Service	Review currently being undertaken
12.94	DRAFT	<i>Inadequate registers/notifications of items requiring statutory testing provided to the compliance team to ensure regulations are met.</i>				Hazard		Corporate	
12.95	DRAFT	<i>Inadequacy of absence management processes</i>				Operational		Corporate	
12.96	DRAFT	<i>Ineffective disciplinary processes</i>				Operational		Service	
12.97	DRAFT	<i>Fraud / Protection of council assets</i>				Financial		Corporate	
12.98	DRAFT	<i>Issues arising from regulatory reports (check WAO, CSIW, Estyn, HMRC etc)</i>				Strategic		Corporate	

### 2.3 Emerging Risks

It is anticipated that a number of emerging risks will be identified during the current business planning business process.

### **3. Insurance Matters**

#### 3.1 Insurance Claims

Insurance claims data was presented to the Committee at the October 2012 meeting and there are no further significant developments to report.

### **4. Powys Change Plan**

Risk management is a tool that can assist the Council in achieving the ten key outcomes of the Powys Change Plan through better decision making and service delivery with increased certainty and fewer surprises.

<b>Recommendation:</b>	<b>Reason for Recommendation:</b>
<b>Audit Committee monitor the implementation of risk management and escalate any concerns with progress to the Executive.</b>	<b>To ensure the adequate management of risk.</b>

<b>Relevant Policy (ies):</b>	Risk Management Strategy		
<b>Within Policy:</b>	<b>Y</b>	<b>Within Budget:</b>	<b>Y</b>

<b>Relevant Local Member(s):</b>	<b>N/A</b>
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<b>Person(s) To Implement Decision:</b>	<b>TBC</b>
<b>Date By When Decision To Be Implemented:</b>	<b>ASAP</b>

Contact Officer Name:	Tel:	Fax:	Email:
Geoff Petty	01597826363	01597826290	geoff.petty@powys.gov.uk

#### **Background Papers used to prepare Report:**