

Portfolio Holder for Finance, Countryside and Transport



County Hall
Llandrindod Wells
Powys
LD1 5LG

29 March 2018

For further information please contact

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NOTICE OF INTENDED PORTFOLIO HOLDER DELEGATED DECISION

The Portfolio Holder has received the following report for a decision to be taken under delegated authority. The decision will be taken on **6 April 2018** (i.e. 3 clear days after the date of this note). The decision will be published on the Council's website but will not be implemented until 5 clear days after the date of publication of the decision) to comply with the call-in process set out in Rule 7.37 of the Constitution.

1.	CLOSED LANDFILL INSURANCE POLICY RENEWAL
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(Pages 3 - 18)

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CYNGOR SIR POWYS COUNTY COUNCIL**PORTFOLIO HOLDER DELEGATED DECISION**

by

COUNTY COUNCILLOR JAMES EVANS (PORTFOLIO HOLDER FOR CORPORATE GOVERNANCE, HOUSING AND PUBLIC PROTECTION) AND COUNTY COUCILLOR ALED DAVIES (PORTFOLIO HOLDER FOR FINANCE, COUNTRYSIDE AND TRANSPORT)
March 2018

REPORT AUTHOR: Professional Lead-Environmental Health (Environmental Protection) and Professional Lead-Finance

SUBJECT: Closed landfill Insurance Policy renewal

REPORT FOR: Decision

1. Summary

- 1.1 In 2012 Powys County Council (PCC) retendered its Environmental Liability Insurance Policy on its portfolio of closed landfill sites. The policy was for 5 years and expired on the 30th September 2017. The policy has been extended temporarily to allow consideration of whether the policy should be renewed. The cost of the current policy was £200,000 over the five years. No claims were made on this policy.
- 1.2 Since 2002 when the Policy was first taken out, there have been a number of exclusions inserted into the policy. In addition, 29 sites are excluded from the policy. The purpose of this report is to consider the extent of the policy, the exclusions contained therein, and determine whether the policy should be renewed or whether PCC should self-insure, given the level of risk management in place.

2. Background

- 2.1 Historically, PCC has managed a portfolio of 80 closed landfills of which approximately half of which are owned by PCC whilst the others are privately owned sites.
- 2.2 In 2012, PCC renewed its insurance policy on these sites at a cost of £200,000 over 5 years. The cover for individual sites is £3,000,000 and is an aggregate sum meaning that this is the total payable under the policy. The excess for any incident is £100,000. The policy expired in September 2017, but has been extended until 31st March 2018.
- 2.3 The policy only relates to claims made against PCC. The policy covers only listed closed landfill sites that are no longer used and cover will include any regulatory required remedial works that are not repairs and maintenances under the normal

course of business. It also covers third party claims for those that have been affected by issues caused by landfill pollution. The policy covers emergency expenses and loss that PCC become liable for as a result of a claim for bodily injury, property damage or remediation costs resulting from a pollution incident that is on, under or migrating beyond the boundary of the site. The policy will pay prevention cost and loss that the insured becomes legally obliged to pay as a result of a claim for primary remediation, complimentary remediation or compulsory remediation arising from environmental damage that commenced on or after the delineation date, and which arises from the insured's business activities. This means that if there was a pollution incident, the policy would not cover works to remediate the site itself. What the policy doesn't cover is any claims that relate to new incidents that arise if the landfill site were changed from their existing closed status.

- 2.4 A "pollution incident" is defined in the policy as "the disposal, discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste into or upon land, or any structure on land, the atmosphere or any groundwater, surface water or coastal waters.". In Section V1 15 Environmental Laws definitions in the Policy Document it states the following:- *"Environmental Laws means any European Community directive, regulation or Council decision, any national statute, statutory instrument, regulation, by-law, circular or guidance provided that they have the force of law, or any notice, request or instruction of any national or local governmental or statutory authority, agency, court or like entity concerning environmental or health and safety matters including common laws that are applicable to a POLLUTION INCIDENT"*.
- 2.5 Excluded from the policy are pollution incidents which are known to be having an adverse or harm to human health. In addition no emergency expense will be covered for 29 sites which have been identified as having a significant risk for causing pollution since 2002.
- 2.6 The sites that were perceived as having a significant risk for causing pollution were based on information provided by the Highways Department who were responsible for managing the sites at the time and inspections carried out by insurers in 2002. Some of the items identified at that time included items such as breakout from lagoons, poor condition of infrastructure and blocking of pipework. Others included no telemetry, technology power hungry, no fixed security fencing and no working lights.
- 2.7 In 2013, Powys` Environmental Protection Service which is the `regulator` under Part 2A of the Environmental Protection Act 1990 for contaminated land took over the management of closed landfills within the County. Under the Act, "contaminated land" is defined as any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land that – (a) significant harm is being caused or there is a significant possibility of such harm being caused; or (b) significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused. None of the sites have been designated as contaminated land. Furthermore there no known pollution incidents (as defined by NRW) arising from the sites. For clarity,

PCC is the lead regulator for contaminated land under the Environmental Protection Act 1990, for both human health and controlled waters. However the NRW regulate all other matters in respect of controlled waters under separate legislation e.g. Water Resources Act 1991. Pollution incidents are regulated by NRW, and all such incidents are recorded and regulated by them.

3. Insurance Options

- 3.1 Discussions with the insurance broker commenced in early 2017, to establish whether a new policy, with inclusive cover, would be available from insurers. Dialogue continued over a number of months, with information on the sites being provided by the council and the insurance broker assessing this to establish if it would be sufficient to support the potential tender.
- 3.2 The existing policy was designed based on a detailed review of the information that was made available to insurers in 2000. To move to a more appropriate policy would not be possible without significant work to establish those sites that do not need cover and those that do. Those that do also require location plans, layout and content of the landfill, protection measures such as lining, capping and leachate capture and treatment measures monitoring reports This information is not readily available and would require considerable research into historical records. Even then there may be inadequate information available and site investigations may need to be undertaken to establish this information. However the reality is that these sites are unlikely to have liners or capping layers as they were designed as “dilute and disperse” sites. Additionally the majority of the sites are not routinely monitored as they are not considered to pose a risk of causing a pollution incident. On the basis of these factors alone, the insurers may take the view that the sites are uninsurable.
- 3.3 The broker confirmed they do not have any local authority with environmental landfill insurance. They also confirmed that *“as there had been no claims on the policy, and the longer time passes, the less likely future claims may become apparent, but there is no rule as to how long environmental liabilities can last. As the waste is still there, the liabilities will continue to pass from one generation to the next, though the likely effects may lessen over time. There could be events that increase potential liabilities over time though, such as landslip that can cause the waste to move and cause liabilities in the area of the landfill, if this were the case an insurance policy could cover this liability”*.
- 3.4 In summary, the following are considered to be the limitations of the current policy:
- 1) The policy only relates to claims made against PCC. The insurance policy covers only listed closed landfill sites that are no longer used and cover will include any regulatory required remedial works that are not repairs and maintenances under the normal course of business, including new incidents. It also covers third party claims for those that have been affected by issues caused by landfill pollution. What the policy doesn't cover is any claims that relate to new incidents that arise if the landfill site were changed from their existing closed status.
 - 2) There are no known pollution incidents arising from the sites.
 - 3) 29 of the current 80 sites are excluded from the policy.
 - 4) The excess for each incident is £100,000

4. Options Considered / Available

- 4.1 Not to tender for an insurance policy on a like for like basis, because it does not afford adequate protection for PCC in the event of a claim by a third party and does not cover remediation of the sites themselves. Additionally it does not cover 29 sites. This would mean that PCC would self-insure and manage risk from the sites. This could be undertaken by transferring the £40k annual insurance cost into a reserve to be held in case of significant costs arising.
- 4.2 Renew the policy acknowledging its limitations.
- 4.3 Undertake further work that would be required to allow a more suitable insurance tender, acknowledging that this may require significant cost, with little interest from insurers.

5. Preferred Choice and Reasons

- 5.1 The preferred option is not to renew the policy as it does not afford adequate protection for PCC, and utilise the budget to build up a reserve from the unused budget to be made available in the event of major costs.

6. Impact Assessment

- 6.1 Is an impact assessment required? Yes
- 6.2 If yes is it attached? Yes

7. Corporate Improvement Plan

- 7.1 N/A

8. Local Member(s)

- 8.1 N/A

9 Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? No

10. Communications

Have Communications seen a copy of this report? Yes

Communications Comment: No proactive communication action required.

11. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

- 11.1 Legal: The recommendation can be supported from a legal point of view
- 11.2 Finance – The interim Professional Lead for Finance has worked with insurance colleagues and the service to consider all options and assisted in preparing this report. Can confirm that the insurers suggest that other local authorities do not undertake this type of insurance, and that extra work would be needed to provide the relevant information to facilitate a tender for more appropriate insurance. To mitigate any future costs, the annual budget of £40k could be transferred to reserve to be used if major works are needed.

12. Scrutiny

- 12.1 Has this report been scrutinised? No

13. Statutory Officers

- 13.1 The Acting Section 151 Officer, acknowledges this report and the limitations of the current insurance policy. Self-insuring, using the current budget of £40k per annum to be held in reserve, is an option that can be put in place to cover costs of any future incidents.
- 13.2 The Solicitor to the Council (Monitoring Officer) has commented as follows: “I note the legal comment and have nothing to add to the report”.

14. Members’ Interests

- 14.1 The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
That the insurance policy relating to Powys County Council’s closed landfill sites is not renewed as it does not provide adequate cover and that the budget is used to build up a reserve to address any future costs that may arise relating to the sites.	That the current policy is not fit for purpose and does not afford adequate protection to Powys County Council.

Relevant Policy (ies):	
Within Policy:	Within Budget: Y

Relevant Local Member(s):	N/A
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Person(s) To Implement Decision:	Nia Hughes/Anne Philips
Date By When Decision To Be Implemented:	As soon as possible

Contact Officer:	Nia Hughes/Anne Philips
Tel:	01938551299/01597826341
Email:	niah@powys.gov.uk/anne.philips1@powys.gov.uk

Background Papers used to prepare Report:

Cyngor Sir Powys County Council

Impact Assessment (IA)

The integrated approach to support effective decision making



This **Impact Assessment (IA)** toolkit, incorporating Welsh Language, Equalities, Well-being of Future Generations Act, Sustainable Development Principles, Communication and Engagement, Safeguarding, Corporate Parenting, Community Cohesion and Risk Management, supporting effective decision making and ensuring compliance with respective legislation.

Please read the accompanying guidance before completing the form.

Draft versions of the assessment should be watermarked as "Draft" and retained for completeness. However, only the final version will be made publicly available. Draft versions may be provided to regulators if appropriate. In line with Council policy IAs should be retained for 7 years.

Service Area	Environmental Protection/Finance	Head of Service	Ken Yorston/Jane Thomas	Strategic Director	Paul Griffiths	Portfolio Holder	Jonathan Wilkinson/Aled Davies
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Proposal

Outline Summary / Description of Proposal

Since 2000, PCC has had an insurance policy on its portfolio of closed landfills. The latest policy was taken out in 2012 and expired on the 30th September 2017. There are several exclusions in the policy which has prompted a review of whether the policy is fit for purpose and provides adequate protection to the Council. A Cabinet report has been prepared which sets out the background to the policy and its terms including exclusions. The previous policy cost £200k over the 5 year period. There have been no claims on the policy since 2002.

Page 9

1. Profile of savings delivery (if applicable)

2018-19	2019-20	2020-21	2021-22	2022-23	TOTAL
£40k (it is proposed that this be placed in a reserve if any incidents arise in the future)	£40k (it is proposed that this be placed in a reserve if any incidents arise in the future)	£40k (it is proposed that this be placed in a reserve if any incidents arise in the future)	£40k (it is proposed that this be placed in a reserve if any incidents arise in the future)	£40k (it is proposed that this be placed in a reserve if any incidents arise in the future)	£200k

2. Consultation requirements

Consultation Requirement	Consultation deadline	Feedback considered
No consultation required (please provide justification)	The decision is a matter for the Council and does not require consultation	Choose an item.

3. Version Control (services should consider the impact assessment early in the development process and continually evaluate)

Version	Author	Job Title	Date
Version 1	Nia Hughes/Anne Phillips	Professional Lead-Environmental Protection/Professional Lead Finance	25 th January 2018

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Cyngor Sir Powys County Council

Impact Assessment (IA)

The integrated approach to support effective decision making



4. Impact on Other Service Areas

Does the proposal have potential to impact on another service area? (Including implication for Health & Safety and Corporate Parenting)	
PLEASE ENSURE YOU INFORM / ENGAGE ANY AFFECTED SERVICE AREAS AT THE EARLIEST OPPORTUNITY	
N/A	
Service Area informed:	Contact Officer liaised with:
Mitigation	

Page 11

How does your proposal impact on the council's strategic vision?

Council Priority	How does the proposal impact on this priority?	IMPACT Please select from drop down box below	What will be done to better contribute to positive or mitigate any negative impacts?	IMPACT AFTER MITIGATION Please select from drop down box below
The Economy We will develop a vibrant economy	N/A	Choose an item.		Choose an item.
Health and Care We will lead the way in effective, integrated rural health and care	N/A	Choose an item.		Choose an item.
Learning and skills We will strengthen learning and skills	N/A	Choose an item.		Choose an item.
Residents and Communities We will support our residents and communities	N/A	Choose an item.		Choose an item.

Source of Outline Evidence to support judgements

This is a decision for PCC on how it manages risk arising from its portfolio of closed landfills

6. How does your proposal impact on the Welsh Government’s well-being goals?

Well-being Goal	How does proposal contribute to this goal?	IMPACT Please select from drop down box below	What will be done to better contribute to positive or mitigate any negative impacts?	IMPACT AFTER MITIGATION Please select from drop down box below
A prosperous Wales: An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.	N/A	Choose an item.		Choose an item.
A resilient Wales: A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).	N/A	Choose an item.		Choose an item.
A healthier Wales: A society in which people’s physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.	N/A	Choose an item.		Choose an item.
A Wales of cohesive communities: Attractive, viable, safe and well-connected Communities.	N/A	Choose an item.		Choose an item.

Page 12

Cyngor Sir Powys County Council Impact Assessment (IA)

The integrated approach to support effective decision making



Well-being Goal	How does proposal contribute to this goal?	IMPACT Please select from drop down box below	What will be done to better contribute to positive or mitigate any negative impacts?	IMPACT AFTER MITIGATION Please select from drop down box below
A globally responsible Wales: A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.	N/A	Choose an item.		Choose an item.
A Wales of vibrant culture and thriving Welsh language: A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.				
<i>Opportunities for persons to use the Welsh language, and treating the Welsh language no less favourable than the English language</i>	N/A	Choose an item.		Choose an item.
<i>Opportunities to promote the Welsh language</i>	N/A	Choose an item.		Choose an item.
<i>Welsh Language impact on staff</i>	N/A	Choose an item.		Choose an item.
<i>People are encouraged to do sport, art and recreation.</i>	N/A	Choose an item.		Choose an item.
A more equal Wales: A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).				
<i>Age</i>	N/A	Choose an item.		Choose an item.
<i>Disability</i>	N/A	Choose an item.		Choose an item.
<i>Gender reassignment</i>	N/A	Choose an item.		Choose an item.
<i>Marriage or civil partnership</i>	N/A	Choose an item.		Choose an item.
<i>Race</i>	N/A	Choose an item.		Choose an item.
<i>Religion or belief</i>	N/A	Choose an item.		Choose an item.
<i>Sex</i>	N/A	Choose an item.		Choose an item.
<i>Sexual Orientation</i>	N/A	Choose an item.		Choose an item.
<i>Pregnancy and Maternity</i>	N/A	Choose an item.		Choose an item.

Page 13

Source of Outline Evidence to support judgements

7. How does your proposal impact on the council's other key guiding principles?

Principle	How does the proposal impact on this principle?	IMPACT Please select from drop down box below	What will be done to better contribute to positive or mitigate any negative impacts?	IMPACT AFTER MITIGATION Please select from drop down box below
Sustainable Development Principle (5 ways of working)				
Long Term: Looking to the long term so that we do not compromise the ability of future generations to meet their own needs.	N/A	Choose an item.		Choose an item.
Collaboration: Working with others in a collaborative way to find shared sustainable solutions.	N/A	Choose an item.		Choose an item.
Involvement (including Communication and Engagement): Involving a diversity of the population in the decisions that affect them.	N/A	Choose an item.		Choose an item.
Prevention: Understanding the root causes of issues to prevent them from occurring.	N/A	Choose an item.		Choose an item.
Integration: Taking an integrated approach so that public bodies look at all the well-being goals in deciding on their well-being objectives.	N/A	Choose an item.		Choose an item.
Preventing Poverty: Prevention, including helping people into work and mitigating the impact of poverty.	N/A	Choose an item.		Choose an item.

Page 14

Cyngor Sir Powys County Council

Impact Assessment (IA)

The integrated approach to support effective decision making



Principle	How does the proposal impact on this principle?	IMPACT Please select from drop down box below	What will be done to better contribute to positive or mitigate any negative impacts?	IMPACT AFTER MITIGATION Please select from drop down box below
Unpaid Carers: Ensuring that unpaid carers views are sought and taken into account	N/A	Choose an item.		Choose an item.
Safeguarding: Preventing and responding to abuse and neglect of children, young people and adults with health and social care needs who can't protect themselves.	N/A	Choose an item.		Choose an item.
Impact on Powys County Council Workforce	N/A	Choose an item.		Choose an item.

Page 15

Source of Outline Evidence to support judgements

8. Achievability of proposal?

Impact on Service / Council	Risk to delivery of the proposal	Inherent Risk
Medium	Low	Medium
Mitigation		
The proposal is to not re-new the policy but for PCC to self-insure. An annual contribution of £40k would be put into reserve to deal with any incidents arising in the future.		

Cyngor Sir Powys County Council

Impact Assessment (IA)

The integrated approach to support effective decision making



9. What are the risks to service delivery or the council following implementation of this proposal?

Risk Identified	Inherent Risk Rating	Mitigation	Residual Risk Rating
In the event of a claim from a third party for damage arising from a pollution incident then the Council would have no insurance cover. The insurance policy covers only listed closed landfill sites that are no longer used and cover will include any regulatory required remedial works that are not repairs and maintenances under the normal course of business. It also covers third party claims for those that have been affected by issues caused by landfill pollution. What the policy doesn't cover is any claims that relate to new incidents that arise if the landfill site were changed from their existing closed status.	Medium	An annual contribution of £40k would be put into reserve to deal with any future incidents	Low
	Choose an item.		Choose an item.
	Choose an item.		Choose an item.
Overall judgement (to be included in project risk register)			
Very High Risk	High Risk	Medium Risk	Low Risk
		Medium	

10. Indicative timetable for actions to deliver change proposal, if approved

Action	Target Date	Outcome	Decisions made
The existing policy has been extended until the 31 st March 2018. If the proposal is accepted then the policy will not be renewed in April 2018	31 st March 2018	PCC will self-insure the risk arising from closed landfills	
Portfolio Holder decision required	Choose an item.	Date required	
Cabinet decision required	Yes	Date required	31 st March 2018
Council decision required	Choose an item.	Date required	

11. Indicative resource requirements (FTE) – link to Resource Delivery Plan

Support Requirements	2018-19				2019-20				2020-21			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4

Cyngor Sir Powys County Council

Impact Assessment (IA)

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N/A													

12. Overall Summary and Judgement of this Impact Assessment?

Outline Assessment (to be inserted in cabinet report)	Cabinet Report Reference:
The decision is a financial one for the Council and does not require consultation outside of the organisation. It does not impact on the Council's strategic vision, the Welsh Government's well-being goals or the Council's other key guiding principles.	

13. Is there additional evidence to support the Impact Assessment (IA)?

What additional evidence and data has informed the development of your proposal?
There have been no claims on the policy since 2002

14. On-going monitoring arrangements?

What arrangements will be put in place to monitor the impact over time?
The portfolio of closed landfills are managed by the Contaminated Land Team.
Please state when this Impact Assessment will be reviewed.
March 2018

15. Sign Off

Position	Name	Signature	Date
Impact Assessment Lead:	Nia Hughes/Anne Phillips		
Head of Service:			
Strategic Director:			
Portfolio Holder:			

16. Governance

Decision to be made by	Cabinet	Date required	
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FORM ENDS

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