

## Cabinet Member for a Safer Powys

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10/02/2023

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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 **16 February 2023** (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 7.35 of the Constitution.

1.	CWRT Y PLYFFIN CLOSED LANDFILL SITE
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**CYNGOR SIR POWYS COUNTY COUNCIL****PORTFOLIO HOLDER DELEGATED DECISION**

by

**COUNTY COUNCILLOR RICHARD CHURCH  
PORTFOLIO HOLDER FOR A SAFER POWYS**

Date: February 2023

**REPORT AUTHOR: Nia Wyn Hughes****REPORT TITLE: Cwrt Y Plyffin Closed Landfill site**

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**REPORT FOR: Decision**

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**1. Purpose**

- 1.1 Cwrt Y Plyffin is a privately owned closed landfill site. Brecknock Borough Council disposed of municipal waste at the site between 1986 and 1992 under a Lease agreement. This lease was surrendered by Brecknock Borough Council in 1993. In the early 2000's, Powys County Council installed a leachate treatment plant (LTP) which consists of a series of chambers used for leachate collection, two media towers with settlement achieved by use of chambers and three gravel beds used for the final polish of the effluent. The final effluent from the treatment plant discharges into a local stream which feeds into the river Llynfi. There is an environmental permit for the LTP that is regulated by Natural Resources Wales (NRW). The purpose of this report is to seek approval to exit the site.

**2. Background**

- 2.1 Historically Powys County Council assumed responsibility for the management of all closed landfills sites where they had disposed of waste including privately owned sites. In 2013, the Environmental Protection Service took over the management of the closed landfills and reviewed the management arrangements for these sites in the context of Part 2A of The Environmental Protection Act 1990 (EPA 1990). It considered the Council's responsibilities in light of the judgement in the case of R (on the application of National Gas Grid (formerly Transco plc v Environment Agency [2007] which found that liabilities under Part 2A did not transfer from a previous company or statutory organisation to a later new organisation. In light of this judgement, the opinion of Stephen Tromans QC was sought, and he stated that in his view, "liability for the actions of the previous councils would not pass to the Council."
- 2.2 At this time the Council was managing several privately owned sites where leachate treatment plants were installed and permits to discharge into water courses were in place. The cost of managing these sites were considerable, therefore it was decided, based on the advice received, to implement a phased withdrawal from these sites. By 2015, The Council had withdrawn from three sites namely Tir Canol, Lower Cwmtwrch, Pentrefelin Sennybridge and Rhosforlo Garth.

- 2.3 In response to the actions of the Council, the owners of Rhosforlo sought declaratory relief from the High Court. In November 2016 HHJ Milwyn Jarman QC granted the application and declared *“that the liabilities transferred to Powys County Council pursuant to Article 4 of the Local Government Re-Organisation (Wales) (Property etc) Order 1996 include liability as an “appropriate person” under Part IIA of the Environmental Protection Act 1990 in respect of the actions of its predecessor the Borough of Brecknock. In the event that it is found that the land is “contaminated” and Brecknock would have been an “appropriate person” by causing substances to be present in, on or under land at the former landfill site at Rhosforlo Garth, Builth Wells, Powys County Council is an “appropriate person” under s. 78F of the 1990 Act.”*
- 2.4 In response, Powys County Council made an application to appeal the decision which was granted by the High Court. In July 2017, the Court of Appeal granted the appeal, and the Order was set aside, the application for a declaration was dismissed and the respondent’s application to appeal to the Supreme Court was refused. The case reference was **Powys County Council v Price & Anr – A2/2017/0119.**
- 2.5 Cwrt Y Plyffin represents the last of the privately owned sites that Powys County Council historically actively managed. The proposal is to withdraw from the site in a similar way that the Council has done on the other three sites. This involves contacting the landowner to advise them of the Council’s intention. An application to surrender the environmental permit will then be made to Natural Resources Wales (NRW), a process that is likely to take 6-8 weeks. Once the surrender had been accepted the treatment plant comprising of the treatment towers and associated pumps will be removed.

### 3. **Advice**

- 3.1 The proposal is to withdraw from the site in a similar way as it has done from Tir Canol, Lower Cwmtwrch, Pentrefelin Senny bridge and Rhosforlo Garth. This involves contacting the landowner to advise them of the Council’s intention. An application to surrender the environmental permit will then be made to Natural Resources Wales (NRW), a process that is likely to take 6-8 weeks. Once the surrender had been accepted the treatment plant comprising of the treatment towers and associated pumps will be removed. At each of these sites considerable resources were required to manage the sites including cost of the environmental permit, on going maintenance/remedial work, monitoring and electricity.

### 4. **Resource Implications**

- 4.1 To withdraw from the site, Powys County Council will need to surrender the environmental permit and remove the leachate treatment plant comprising of the treatment towers and associated pumps. The cost is

estimated to be in the region of £5,000 which can be met from the revenue budget. Once these actions are implemented, Powys County Council will not incur any further costs associated with the site. The ongoing maintenance costs are currently in the region of £25,000 per annum.

- 4.2 The Head of Finance (Section 151 Officer) notes the report and can support the recommendation.

## **5. Legal implications**

- 5.1 The Principal Solicitor-Estate Agency and Enforcement-The decision to withdraw from the site could be challenged by the executors of the estate for the late landowner. However, the legality of withdrawing from such sites has already been challenged and approved in the Powys County Council v Price & Anr – A2/2017/0119 case and was dismissed by the Court of Appeal.
- 5.2 The Head of Legal Services and the Monitoring Officer has commented as follows: “ I note the legal comment and have nothing to add to the report”.

## **6. Data Protection**

- 6.1 N/A

## **7. Comment from local member(s)**

- 7.1 The local member had no comments to add to the report.

## **8. Impact Assessment**

- 8.1 The proposal is to withdraw from the site. This has been done on other sites namely Ty Canol-Lower Cwmtwrch, Pentrefelin-Sennybridge and Rhosforlo-Garth. The decision has previously been challenged but approved in the case of Powys County Council v Price & Anr- A2/2017/0119 case. This will mean that responsibility for the sites rests with the landowners.

## **9. Recommendation**

That the proposal to exit from the Cwrt Y Plyffin site including the surrender of the environmental permit and removal of the leachate

treatment plant comprising of the treatment towers and associated pumps is approved.

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