

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
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Background Papers used to prepare Report: