

COUNTY COUNCIL
10th February 2021

CWM ENVIRONMENTAL LTD
LANDFILL AFTERCARE LIABILITY

The purpose of this report is to secure Council's agreement to the structure of new agreements with Natural Resources Wales to guarantee the aftercare liability for the landfill site at Nantycaws.

Recommendations / key decisions required:

To agree to a Local Authority Performance Bond as follows:

1. Council enter into a Local Authority Performance Deed with National Resources Wales in respect of the aftercare liability of the Nantycaws Landfill Site which is operated by CWM Environmental Ltd.
2. That the funds totalling some £1.514m currently held in an ESCROW account between CWM and NRW be in future held in a joint ESCROW account between CCC and CWM.
3. Council levy a premium of 2.4% on CWM in recognition of the security provided, and that this sum be then transferred to the joint ESCROW account annually to increase the actual cash available to meet actual liabilities
4. Approval of the release of funding from the joint ESCROW account be delegated to The Chief Executive and Director of Corporate Services with the balance only to be utilised solely to meet one or more of the following aftercare costs:
 - Environmental monitoring
 - Capping
 - Cap maintenance
 - Leachate management
 - Landfill gas management
 - Surface water management
 - Security (e.g. gates and fencing)
 - Production of site reports (if not included in monitoring)
 - Specified events
5. The conclusion of the Local Authority Performance Deed with National Resources Wales to be delegated to the Head of Administration and Law and Director of Corporate Services

Reasons

To agree to the entering of the Local Authority Performance Deed with Natural Resources Wales to guarantee the aftercare liability for the landfill site at Nantycaws.

Relevant scrutiny committee to be consulted No

Exec Board Decision Required	NO
Council Decision Required	YES

EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER:- Cllr David Jenkins, Executive Board Member for Resources, Cllr Hazel Evans, Executive Board Member for Environment

Directorate: Corporate Services Name of Director: Chris Moore	Designations: Director of Corporate Services	Tel No. 01267 224121 E Mail Addresses: CMoore@carmarthenshire.gov.uk
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EXECUTIVE SUMMARY

COUNTY COUNCIL

10th February 2021

CWM ENVIRONMENTAL LTD – LANDFILL AFTERCARE LIABILITY

Background

As part of its permit obligations for operating the Nantycaws site, CWM Environmental Ltd (CWM), which is a wholly owned subsidiary of the authority, must have in place 'adequate' financial provisions to discharge the obligations of the permit for as long as the landfill poses a hazard. This means that the provision has to be:

- sufficient (in monetary terms),
- secure, and
- available when required.

It is considered appropriate to provide for an aftercare period of 60 years from the date of ceasing of the depositing of waste at the site, with a contingency fund available thereafter to finance the following:

- Environmental monitoring
- Capping
- Cap maintenance
- Leachate management
- Landfill gas management
- Surface water management
- Security (e.g. gates and fencing)
- Production of site reports (if not included in monitoring)
- Specified events

The current estimated aftercare provision for CWM Environmental Ltd's landfill operation to the conclusion of Cell 7 is £4.675m, and to date the company has made provision through £1.514m cash held in a joint account (ESCROW) with National Resources Wales (NRW) with the balance of £3.2m covered through a Performance Bond provided by the Company's bankers, this bond being secured against the assets of CWM.

At renewal in February 2020 the cost of the Performance bond was £34,203.

Current position

Since February 2020 discussions have been taking place with the CWM's bankers regarding both the pricing of the bond and in particular the security that they would require from the Council, as the parent company of CWM, for them to renew the bond arrangement.

The bank has confirmed that there have been significant changes since they initially agreed the bond arrangements in 2011. Both the counterparty risk (risk grading of CWM itself driven by financial performance) and more critically, the banking industry's internal and regulatory factors (changes to regulatory driven risk models and credit policy) have impacted on the risk weightings and hence the capital that they need to set aside, which in turn impacts on the returns that they generate on the facility. To continue with the current bond arrangements they are both making losses on the provision of the facility annually, and this as well as the departure from their credit policy (for example around the provision of security for performance bonds for commercial entities) is driving the requirement from their perspective

to have the liability underwritten by Carmarthenshire County Council if the facility is to be renewed.

The bank has proposed two ways of achieving this:

1. The Bond is renewed by CWM, with the Council providing a guarantee for the liability of CWM and they have indicated that this would be priced at a margin of 2.4% (which would equate to a premium of £76,000)
2. The bonding line is novated directly to the Council which issues in the name of CWM, and they have indicated that this is priced at a margin of 1% ((which would equate to a premium of £32,000)

Discussions have also been held with Marsh Ltd., Council's insurers to see whether they could propose alternative options, but the position of their Surety providers seems to be the same as the Company's bankers as neither are prepared to offer terms on an indemnity basis with just CWM due to its credit strength, and therefore terms could only be provided if Carmarthenshire County Council, as the parent of the company, would indemnify.

Considerations

The balance sheet net worth of CWM as at 31st march 2020 was £3.9m, of which £1.513m relates to the joint ESCROW account so from the Bank's position it sees insufficient net worth in the company that it could liquidate to cover its outlay should the performance bond be called upon. It is therefore seeking additional security from the Council, as the company parent, to underwrite the bond which is a common approach.

Pricing of the bond. As outlined above the risk grading of CWM as a Limited Company is greater than the Council and this is reflected in the pricing margins of 2.4% and 1% respectively.

It is important to note that a Performance bond is not an insurance product. As has been outlined above, the provider of a performance bond will only do so if they can secure sufficient security from the assets of the company (or its parent) that they could liquidate to cover the costs of any claim, costs or expenses that they would incur should the bond be called upon.

The main consideration therefore is that if Carmarthenshire County Council is required to provide the security for the bond arrangement, then it would be more effective to provide the security directly to National Resources Wales, under which arrangement the cost of the premium can be utilised either within the Council or to annually increase the cash balance held to meet future liabilities.

CWM Environmental Ltd is a separate legal entity so as such there is no legal obligation on the Authority to step in should the company at some stage not be able to meet its liabilities, but members will need to consider the negative publicity that would arise and any moral obligation that may be imposed. It must also be recognised that to continue operations at Nantycaws CWM is required to meet the terms of its permit, to which end it must have in place 'adequate' financial provisions to discharge the obligations.

Discussions with NRW

Discussions have taken place with NRW and they are agreeable to entering into a deed of Agreement with the Council where the Council undertakes to meet the aftercare costs up to

the calculated liability of £4.675m. On conclusion of an agreement NRW will then make arrangements to release the monies held in the ESCROW account to the company.

Discussions with Wales Audit Office

There are no particular audit implications if Council was to guarantee the obligation. Council would need to document the potential for the obligation to crystallise (i.e. CWM to stop trading and therefore not meet the obligations re aftercare). If this assessment was probable, the Council would need to provide in full for the aftercare liability as if they owned the sites directly. If the crystallising of the guarantee was possible, a contingent liability disclosure would be required and if remote, no recognition or disclosure would be required. This assessment would need to be updated annually.

Recommendations:

1. Council enter into a Local Authority Performance Deed with National Resources Wales in respect of the aftercare liability of the Nantycaws Landfil Site which is operated by CWM Environmental Ltd.
2. That the funds totalling some £1.514m currently held in an ESCROW account between CWM and NRW be in future held in a joint ESCROW account between CCC and CWM.
3. Council levy a premium of 2.4% on CWM in recognition of the security provided, and that this sum be then transferred to the joint ESCROW account annually to increase the cash available to meet actual liabilities
4. Approval of the release of funding from the joint ESCROW account be delegated to The Chief Executive and Director of Corporate Services with the balance only to be utilised solely to meet one or more of the following aftercare costs:
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DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: Chris Moore Director of Corporate Services

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NO	YES	YES	NO	YES	NO	YES

2. Legal

The EU rules on State aid no longer apply in the UK and have been replaced by the rules on subsidies found in Part Two, Title XI, Article 3 of the Trade and Cooperation Agreement between the UK and the EU (the TCA Subsidy Rules). The UK intends in time to develop legislation setting out in detail a new set of UK rules on public subsidies but, for the time being, the TCA Subsidy Rules in the Trade and Cooperation Agreement have legal effect. The new TCA Subsidy Rules prohibit certain 'subsidies' and they broadly cover the same ground as the EU's rules prohibiting State aid.

The TCA Subsidy Rules seek to ensure that subsidies are not granted where they have or could have a material effect on trade or investment between the EU and the UK. 'Subsidy' is defined as financial assistance which (amongst other things) confers an economic advantage on an entity which is engaged in economic activity by offering goods or services on a market.

CWM is a wholly owned subsidiary of the Council and is a 'controlled legal person' (i.e. a Teckal company) within the meaning of regulation 12 of the Public Contracts Regulations 2015. Some 83% of its activities are carried out for the Council and relate to municipal waste collection and disposal and so they are non-commercial activities not carried out on a market. The remaining 17% of Cwm's activity relates to the collection of commercial waste, an activity which CWM does carry out on the market.

CWM no longer operates the landfill at Nantycaws with any commercial waste therefore being treated and either being sent to be made into refuse derived fuel (RDF) or to other landfill sites. As such, there is no direct link between CWM's operation of the Nantycaws landfill site and the aftercare liabilities in relation to the same on the one hand and its commercial operations on the other. The commercial collections could be run in exactly the same way even if CWM did not own the Nantycaws landfill site. It is therefore the prices it obtains in the RDF market or from other landfill operators (rather than any pricing relating to disposal to its own landfill) which are factored into the Company's pricing for its commercial waste disposal service.

In light of the above analysis, the proposed arrangement with NRW will not involve the Council providing Cwm with a subsidy as that term is defined in the TCA Subsidy Rules.

3. Finance

CWM Environmental Ltd. was originally set up in accordance with the Environmental Protection Act 1990 for the purpose of Waste Disposal and is a wholly owned subsidiary company of the Authority with a share capital of £329,000.

The current estimated aftercare provision for CWM Environmental Ltd.'s landfill operation to the conclusion of Cell 7 is £4.675m, and to date the company has made provision through £1.514m cash held in a joint account (ESCROW) with National Resources Wales (NRW) with the balance of £3.2m covered through a Performance Bond provided by the Company's bankers, this bond being secured against the assets of CWM. To renew the bond in 2021 the bank has indicated that they would be seeking an increase in the annual premium to £76,000 plus they would require CCC to underwrite the bond.

If the Council is required to provide the indemnity for the bank or others to provide the bond, then it is more cost effective to provide the indemnity directly to National Resources Wales and thereby making the cost of an annual premium (of circa £78k) available to build up the cash balances to meet the aftercare costs.

The aftercare liability is for 60 years after the ceasing of depositing waste at the site and would become a potential liability on the Council if CWM Environmental Ltd was to stop trading. The joint ESCROW balance would be the first call for any aftercare costs.

5. Risk Management Issues

Failure to have in place a mechanism for making financial provision for the aftercare liability for the Nantycaws site would put the company in breach of its permit obligations and thereby its ability to continue trading.

7. Physical Assets

CWM Environmental Ltd. is a wholly owned subsidiary company of the Authority with a share capital of £329,000. The balance sheet of the company as at 31st March 2020 reflected net assets of £3.9m of which £1.514m relates to the joint ESCROW account.

It must be noted that the net book value does not reflect the 'market value' as applied between a hypothetical willing vendor and a hypothetical willing buyer in the open market.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: Chris Moore Director of Corporate Services

1. Scrutiny Committee N/A

2. Local Member(s) N/A

3. Community / Town Council None

4. Relevant Partners None

5. Staff Side Representatives and other Organisations None

Section 100D Local Government Act, 1972 – Access to Information

List of Background Papers used in the preparation of this report:

THESE ARE DETAILED BELOW

Title of Document	File Ref No.	Locations that the papers are available for public inspection
CWM Environmental Ltd 2020 Business Plan		www.carmarthenshire.gov.uk