

**NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

**CABINET**

**Report of the Assistant Chief Executive and Chief Digital  
Officer - K.Jones**

**29 May 2019**

**Section B: Matter for Information**

**Ward Affected: All**

**Officer Urgency Action 0374 re:  
Grant of Officer Indemnity in respect of the Environmental Permit at  
the Material Recovery and Energy Centre (MREC).**

Details of the above Urgency Action taken by the Chief Executive in consultation with the requisite Members, was for immediate implementation.

There is no call-in of this matter.

The Urgency Action was authorised 1 May, 2019 and for Members' Information a copy of the detailed report is attached.

# **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

## **CABINET**

**1 May 2019**

### **REPORT OF THE CHIEF EXECUTIVE**

#### **MATTER FOR DECISION**

#### **WARDS AFFECTED – ALL**

#### **GRANT OF OFFICER INDEMNITY IN RESPECT OF THE ENVIRONMENTAL PERMIT AT THE MATERIAL RECOVERY AND ENERGY CENTRE**

#### **Purpose of Report**

1. To seek authority from Members to grant an officer indemnity to the Director of Environment, to enable the transfer of the Environmental Permit to Neath Port Talbot County Borough Council following the decision by Members on the 25<sup>th</sup> July 2018 to bring the Material Recovery and Energy Centre (“MREC”) in house.

#### **Background**

2. The Council by virtue of a decision of its Cabinet on the 25<sup>th</sup> July 2018 agreed that the Material Recovery and Energy Centre (“MREC”) shall be brought into house to be Council run (“the Transfer”) and that current operator Neath Port Talbot Recycling Limited (“NPTRL”) be voluntarily wound up.
3. As part of the Transfer, the Council is required to transfer the environmental permit granted under the Environmental Permitting (England and Wales) Regulations 2016 to be transferred to the Council (“the Permit”). Without this permit being completed the MREC will be unable to operate.
4. The Regulations require an individual officer to be named as having overarching responsibility for compliance with environmental

protection regulations and the formalities that are required under the permit.

5. This therefore invokes a degree of personal liability/responsibility, which an officer will be required to take on as part of any responsibility for the operational of the MREC facility.
6. National Resources Wales, as the regulatory body can potentially direct claims for noncompliance with the permit against this individual.
7. The appropriate officer for accepting this responsibility is the Director of Environment.
8. To ensure that appropriate safeguards are in place for this officer, given it is a Council appointed function, it would be appropriate for a suitable indemnity to be granted so that in the event of any action by Natural Resources Wales against the named individual, any costs incurred by the officer will be met by the Council.
9. It should be noted however that the indemnity will not extend to actions taken by the officer which
  - (a) constitute a criminal offence
  - (b) stem from fraud or deliberate wrongdoing or recklessness by the officer
  - (c) relate to alleged defamation of the officer

### **Legal Implications**

10. The Environmental Permitting (England and Wales) Regulations 2010 (“the Regulations”) stipulates the process that must be followed in respect of the transfer of any permit and the obligations that are on individuals and authorities in respect of holding such a permit.
11. Section 101 of the Local Government Act 2000, the Local Authorities (Indemnities for Members and Officers) (Wales) Order

2006 and Section 111 of the Local Government Act 1972 grants local authorities the power to grant indemnities to officers where such personal liability may arise

### **Financial Implications**

12. None at this stage. In the event that the indemnity is required to be implemented the financial obligations are as set out in the indemnity.

### **Consultation**

13. There is no requirement for external consultation on this item.

### **Integrated Impact Assessment**

14. A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. The first stage assessment has indicated that a more in depth assessment is not required. A summary is included at Appendix 2

### **Workforce Impact**

15. None.

### **Recommendations**

16. It is recommended that the Neath Port Talbot County Borough Council grant an indemnity to Gareth Nutt (in his capacity as Director of Environment) in the form annexed to this report at Appendix 1, in respect of the environmental permit obligations and statutory responsibility for the Material Recovery and Energy Centre, that the officer is required to hold.

### **Reason for Proposed Decision**

17. To enable the Council to transfer the Environmental Permit from Neath Port Talbot Recycling Limited to Neath Port Talbot County Borough Council and to ensure appropriate indemnities are in place for officers who accepting personal responsibility for such matters

## **Implementation of Decision**

18. Implementation is proposed after the three day call in period.

## **Appendices**

19. Appendix 1 - Draft Officer Indemnity  
Appendix 2- Integrated Impact Screening Assessment

## **Background Documents**

None

## **Officer Contacts**

Steven Phillips - Chief Executive  
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Craig Griffiths - Head of Legal Services  
Tel: 01639 763368 Email: [c.griffiths2@npt.gov.uk](mailto:c.griffiths2@npt.gov.uk)

## Appendix 1

**DATED**

**2014**

**NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

**- and -**

**GARETH NUTT**

**DEED OF INDEMNITY to OFFICER**

**RE: Environmental Permit with Natural Resources Wales in respect of the  
Material Recovery and Energy Centre**

Mr. Craig Griffiths  
Head of Legal Services  
Neath Port Talbot County  
Borough Council  
Civic Centre  
Port Talbot

**DATED**

**2019**

**PARTIES**

1. Neath Port Talbot County Borough Council of Port Talbot Civic Centre  
Port Talbot SA13 1PJ (“the Council”)
  
2. (“the Officer”)

**RECITALS**

- (1) The Council by virtue of a decision of its Cabinet on the 25<sup>th</sup> July 2018 agreed that the Material Recovery and Energy Centre (“MREC”) shall be brought into house to be Council run (“the Transfer” and that current operator Neath Port Talbot Recycling Limited (“NPTRL”) be voluntarily wound up.
  
- (2) As part of the Transfer, the Council is required to transfer the environment permit granted under the Environmental Permitting (England and Wales) Regulations 2016 to be transferred to the Council (“the Permit”);
  
- (3) The Permit requires a named person to have overall responsibility for the operation of the MREC under environmental protection legislation and for the purposes of the Permit this individual will be the Officer in his capacity as Director of Environment.

- (4) Personal responsibility for ensuring compliance with the Permit rests with the Officer
- (5) It has been agreed that subject to the terms appearing hereafter the Council shall indemnify the Officer acting as the named person under the Permit
- (6) By virtue of a decision on the **INSERT DATE** the Council agreed to provide the indemnity to the officer in this form.

This **DEED OF INDEMNITY** is made under section 101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, section 111 of the Local Government Act 1972 and all other enabling provisions as follows:

## **1. Indemnity**

- 1.1 Subject to clauses 2 and 3 the Council shall (to the fullest extent permitted by the laws of England and Wales) indemnify and keep indemnified the Officer on demand against all actions, claims, liabilities, charges, demands, proceedings, investigations and judgments which may be made against him or which he may suffer or incur as a consequence of, or which relate to or arise from, directly or indirectly, his powers, duties or responsibilities as the named individual under the Permit together with all reasonable costs and expenses (including legal and professional fees) and tax incurred in relation thereto from the date of the appointment as the named officer under the Permit.

1.2 All sums payable by the Council hereunder shall be paid free of, and without any rights of, counterclaim or set-off and without deduction and withholding on any ground whatsoever.

## **2. Exclusions and Limitations**

2.1 Without prejudice to the generality of this indemnity but subject to the provisions of clauses 2.2 below this indemnity shall extend to:

- (a) the defence of criminal proceedings brought against the Officer;  
and
- (b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence

### **PROVIDED THAT:**

the Council shall not be liable to make any payment to the Officer or any other party under the terms of this Deed of Indemnity nor in relation to any action or failure to act by the Officer that:

- (a) constitutes a criminal offence; or
- (b) is the result of fraud or other deliberate wrongdoing or recklessness on the part of the Officer; or
- (c) relates to alleged defamation of the Officer.

2.2 Where the Officer is convicted of a criminal offence and that conviction is not overturned following an appeal the Officer will reimburse the Council for any and all sums expended by the Council pursuant to this Indemnity in relation to those criminal proceedings.

### **3. Matters that exceed the powers of the Council and/or the Officer**

3.1 This Indemnity extends to matters which exceed the powers of the Council and or the power vested in the Officer only to the extent that:

(a) Where the act or failure to act exceeded the powers of the Council the Officer reasonably believed at the time of the action or failure to act that the action or failure to act in question was within the powers of the Council;

or

(b) Where the action or failure to act comprised the issue or authorisation of a document containing a statement as to the powers of the Council or any statement that certain steps had been taken or requirements fulfilled, the Officer reasonably believed the contents of that statement to be true;

or

(c) Where the action or failure to act exceeded the powers vested in the Officer by the Council the Officer reasonably believed at the time of the act or failure to act that it was within his powers.

#### **4. Reimbursement**

4.1 Where the Officer is obliged to reimburse the Council pursuant to clause 2 of this Indemnity those sums shall be recoverable by the Council as a civil debt.

#### **5. Conduct of claims**

5.1 If the Officer becomes aware of any circumstances which may lead to the Council being required to make any payment under clause 1, the Officer shall:

5.1.1 as soon as practicable give written notice of such circumstances to the Council;

5.1.2 not make any admission of liability, agreement or compromise with any person in relation to any such circumstances without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed; and

5.1.3 consult the Council regarding the conduct of any claim arising in connection with such circumstances and provide the Council with such information and copies of such documents relating to any such claim as the Council may reasonably request.

5.2 In the event of any payment under this Deed being made, the Council shall be subrogated to the extent of such payment to all of the Officer's rights of recovery against third parties (including any claim under any applicable director's insurance policy) in respect of the payment and the

Officer shall execute all papers required and shall do everything that may be necessary to secure any rights, including:

- (a) the execution of any documents necessary to enable the Council effectively to bring an action in the name of the Officer; and
- (b) the provision of assistance as a witness.

**6. Jurisdiction**

6.1 This Deed shall be governed by and construed in accordance with the law of England and Wales as they apply in Wales. The parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in respect of any disputes or differences arising under this Deed.

**THE COMMON SEAL OF** )  
**NEATH PORT TALBOT COUNTY** )  
**BOROUGH COUNCIL** was affixed )  
to this **DEED** in the presence of: )

**Proper Officer**

**EXECUTED** as a **DEED** )  
by )  
in the presence of: )

Witness signature:  
Witness name:  
Witness address:

## Appendix 2

## Impact Assessment - First Stage

It is essential that all initiatives undergo a first stage impact assessment to identify relevance to equalities and the Welsh language as well as an evaluation of how the proposal has taken into account the sustainable development principle (the five ways of working); an incorrect assessment could ultimately be open to legal challenge.

The first stage is to carry out a short assessment to help determine the need to undertake a more in-depth analysis (the second stage).

Relevance will depend not only on the number of people/service users affected, but also the significance of the effect on them.

When completing the first step you must have regard to the following:

- Does the initiative relate to an area where important equality issues have been, or are likely to be, raised? (For example, funding for services to assist people who are victims of rape/sexual violence or individuals with particular care need; disabled people's access to public transport; the gender pay gap; racist or homophobic bullying in schools)
  - Is there a significant potential for reducing inequalities, or improving outcomes? (For example, increasing recruitment opportunities for disabled people).
  - Does the initiative relate to instances where opportunities to use the Welsh language are likely to be affected or where the language is likely to be treated less favourably? (For example, increase the number of Welsh speakers moving from/to a certain area; closing specific Welsh language services or put those services at risk services;
  - Does the initiative relate to the improvement of economic, social, environmental and cultural well-being? To what extent does the initiative prevent things getting worse? (For example, funding for services to assist in cultural well-being; changes in policies that promote independence and/or assist carers)
1. Provide a description and summary of the initiative.  
Identify which service area and directorate has responsibility for the initiative.

2. Identify who will be affected by the initiative.  
If you answer **Yes** to service users, staff or wider community continue with the first stage of the assessment  
If you answer **No** to service users, staff or wider community or **Yes** to 'Internal administrative process only', go to **Question 5 – sustainable development principle**.
3. Using relevant and appropriate information and data that is available to you think about what impact there could be on people who share protected characteristics; whether they are service users, staff or the wider community.

Some things to consider include:

- transport issues
- accessibility
- customer service
- cultural sensitivity
- financial implications
- loss of jobs

Definitions of impacts (either positive or negative):

- High – likely to be highly affected by the initiative
- Medium - likely to be affected in some way
- Low - likely to be affected by the initiative in a small way
- Don't know - the potential impact is unknown

You **must** provide reasons, and indicate what evidence you used, in coming to your decision.

4. Using relevant and appropriate information and data that is available, think about what impact there could be on opportunities to use the Welsh language and in treating the language no less favourably than English.  
Definitions of impacts are the same as in **Question 3**.

The classification 'Don't Know' should be categorised as 'High Impact' in both questions 3 & 4.

5. Consider how the initiative has embraced the sustainable development principle in accordance with the Section 7c of the Well-being of Future Generations Act 2015.

Give details of the initiative in relation to the 5 ways of working:

- **Long term** - how the initiative supports the long term well-being of people
- **Integration** - how the initiative impacts upon our wellbeing objectives
- **Involvement** - how people have been involved in developing the initiative
- **Collaboration** - how we have worked with other services/organisations to find shared sustainable solutions;
- **Prevention** - how the initiative will prevent problems occurring or getting worse

6. The most appropriate statement must be selected (and the relevant box ticked) based on the first stage of the assessment and an explanation of how you have arrived at this decision must be given.

In addition a summary of the how the initiative has embraced the sustainable development principle must also be included.

Where the first stage of the assessment indicates that a more in-depth analysis is required the second stage of the assessment will need to be completed and this will need to be started immediately.

A first stage assessment must be included as a background paper for all Cabinet/Cabinet Board/ Scrutiny Committee Reports.

Where the first stage assessment is completed by an accountable manager it must be signed off by a Head of Service/Director.

## Impact Assessment - First Stage

### 1. Details of the initiative

<b>Initiative description and summary:</b> Grant of Officer Indemnity
<b>Service Area:</b>
<b>Directorate:</b> Environment

### 2. Does the initiative affect:

	Yes	No
Service users		X
Staff	X	
Wider community	X	
Internal administrative process only	X	

### 3. Does the initiative impact on people because of their:

	Yes	No	None/ Negligible	Don't Know	Impact H/M/L	Reasons for your decision (including evidence)/How might it impact?
Age		X				
Disability		X				

Gender Reassignment		X				
Marriage/Civil Partnership		X				
Pregnancy/Maternity		X				
Race		X				
Religion/Belief		X				
Sex		X				
Sexual orientation		X				

**4. Does the initiative impact on:**

	Ye s	N o	None/ Negligibl e	Don' t kno w	Impa ct H/M/L	Reasons for your decision (including evidence used) / How might it impact?
People's opportunities to use the Welsh language		X				
Treating the Welsh language no less favourably than English		X				

**5. Does the initiative impact on biodiversity:**

	Ye s	N o	None/ Negligibl e	Don' t kno w	Impa ct H/M/L	Reasons for your decision (including evidence) / How might it impact?
To maintain and enhance biodiversity	X					The project is subject to full consideration by Natural Resources Wales and ensure to compliance with environmental legislation in respect of the operation of the MREC facility.
To promote the resilience of ecosystems, i.e. supporting protection of the wider environment, such as air quality, flood alleviation, etc.	X					The project is subject to full consideration by Natural Resources Wales and ensure to compliance with environmental legislation in respect of the operation of the MREC facility.

**6. Does the initiative embrace the sustainable development principle (5 ways of working):**

	Yes	No	Details
<b>Long term</b> - how the initiative supports the long term well-	X		To ensure the long term sustainability of the MREC site and service provision in line with the decision to bring the service in

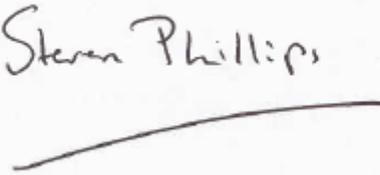
being of people			house taken by Cabinet on the 25 <sup>th</sup> July 2018.
<b>Integration</b> - how the initiative impacts upon our wellbeing objectives	X		To ensure the long term sustainability of the MREC site and service provision in line with the decision to bring the service in house taken by Cabinet on the 25 <sup>th</sup> July 2018.
<b>Involvement</b> - how people have been involved in developing the initiative	X		Natural Resources Wales will consider applications for the transfer of the permit.
<b>Collaboration</b> - how we have worked with other services/organisations to find shared sustainable solutions	X		Natural Resources Wales will consider applications for the transfer of the permit.
<b>Prevention</b> - how the initiative will prevent problems occurring or getting worse	X		To ensure the long term sustainability of the MREC site in line with the decision to bring the service in house taken by Cabinet on the 25 <sup>th</sup> July 2018.

**7. Declaration - based on above assessment (tick as appropriate):**

A full impact assessment (second stage) <b>is not</b> required	X
Reasons for this conclusion	
The report sees no decision in respect of service change but merely to afford the necessary safeguarding to officers who are taking on statutory responsibilities to ensure compliance with environmental legislation.	

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A full impact assessment (second stage) <b>is</b> required	
Reasons for this conclusion	

	<b>Name</b>	<b>Position</b>	<b>Signature</b>	<b>Date</b>
Completed by	<b>Craig Griffiths</b>	<b>Head of Legal Services</b>		<b>25 April 2019</b>
Signed off by	<b>Steven Phillips</b>	<b>Chief Executive</b>		<b>25 April 2019</b>