

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

CABINET

9 December 2019

JOINT REPORT OF THE CHIEF EXECUTIVE AND THE HEAD OF LEGAL SERVICES – S.PHILLIPS and C.GRIFFITHS

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 and Regeneration, in respect of the obligations under the Environmental Permit for the Material Recovery and Energy Centre (“MREC”) in house.

Background

2. The Council by virtue of a decision of its Cabinet on the 25th July 2018 agreed that the Material Recovery and Energy Centre (“MREC”) shall be brought in 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 was 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 the MREC would 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 and Regeneration.
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. Gareth Nutt, as Director of Environment was granted an indemnity in May 2019 to facilitate this.
10. Gareth Nutt will retire from the Council on the 3rd January 2020 and Nicola Pearce has now been appointed Director of Environment and Regeneration and therefore approval is sought for the same indemnity to now be extended to her, with a commencement date of the 3rd January 2020.
11. 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

12. 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.
13. 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

14. 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

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

Integrated Impact Assessment

16. 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

17. None.

Recommendations

18. It is recommended that the Neath Port Talbot County Borough Council grant an indemnity to Nicola Pearce (in her capacity as Director of Environment and Regeneration) 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, such indemnity to commence on the 3rd January 2020.

Reason for Proposed Decision

19. To enable the Council to hold the Environmental Permit in respect of the MREC and to ensure appropriate indemnities are in place for officers who accepting personal responsibility for such matters

Implementation of Decision

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

Appendices

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

Background Documents

None

Officer Contacts

Steven Phillips - Chief Executive
Tel No: 01639 763305 E-mail: s.phillips@npt.gov.uk

Craig Griffiths - Head of Legal Services
Tel: 01639 763368 Email: c.griffiths2@npt.gov.uk

Appendix 1

DATED

2019

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

- and -

NICOLA PEARCE

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 25th 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

1. Details of the initiative

Initiative description and summary: Grant of Officer Indemnity
Service Area:
Directorate: 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
Long term - how the initiative	X		To ensure the long term sustainability of the MREC site and

supports the long term well-being of people			service provision in line with the decision to bring the service in house taken by Cabinet on the 25 th July 2018.
Integration - 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 th July 2018.
Involvement - how people have been involved in developing the initiative	X		Natural Resources Wales will consider applications for the transfer of the permit.
Collaboration - 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.
Prevention - 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 th July 2018.

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

A full impact assessment (second stage) is not 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.	

--

A full impact assessment (second stage) is required	
Reasons for this conclusion	

	Name	Position	Date
Completed by	Craig Griffiths	Head of Legal Services	22nd November 2019
Signed off by	Steven Phillips	Chief Executive	22nd November 2019