

# Agenda



## Delegated Decisions - Joint Cabinet Member

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Date: Tuesday, 28 January 2020

To: Councillors R Jeavons and M Rahman

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Item		Wards Affected
1	<u>Acquisition of Land at Maesglas Tip, Newport</u> (Pages 3 - 8)	Pillgwenlly

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Date of Issue: 20 January 2020

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# Report

## Cabinet Member for Assets Cabinet Member for City Services

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### Part 1

Date: 29 January 2020

**Subject** Acquisition of Land at Maesglas Tip, Newport

**Purpose** To seek approval from the Cabinet Member for Assets and Cabinet Member for City Services to acquire the freehold of a parcel of land at Maesglas Tip.

**Author** Housing and Asset Manager

**Ward** Pillgwenlly

**Summary** The subject land is currently owned by Associated British Ports (ABP) but has been occupied by Newport City Council by way of a lease / agreement since 1991. This report seeks approval to acquire the freehold of the subject land.

**Proposal** Agree to the acquisition of the land on terms to be agreed by Head of Law and Regulation.

**Action by** Head of Regeneration, Investment and Housing / Head of City Services

**Timetable** Immediate

This report was prepared after consultation with:

- Strategic Director - Place
- Head of Finance – Chief Finance Officer
- Head of Law and Regulations – Monitoring Officer
- Head of People and Business Change
- Head of City Services
- Head of Regeneration, Investment and Housing
- Housing & Assets Manager
- Associate Director of Property Services, Newport Norse
- Associate Valuation and Estates Management, Newport Norse
- Capital Strategy and Asset Management Group
- Service Manager (Waste and Cleansing)

**Signed**

## Background

Newport City Council operates a Landfill located at its Docks Way site, between the estuary of the River Ebbw and Newport Docks. It is comprised of

1. An existing closed landfill.
2. Operational Landfill site
3. A waste reception area with access road.

This site is regulated by an environmental permit issued by Natural Resources Wales that establishes the type of activities that can be carried out, conditions and criteria for the operations, and the environmental monitoring regime that needs to be in place to provide assurance that the landfill operation does not cause harm to human health or the environment. This will include the parameters to sample and test, sampling frequency, locations that need to be monitored etc. so not only the area where waste is being landfilled, but surrounding areas, will be included in this monitoring regime.

To enable this, Newport City Council has been renting by way of a lease land owned by ABP. This land amounts to approximately 15 acres and lies along the eastern boundary of the permitted area. This ensures all areas to be monitored are covered and to allow access to some of the extraction points, as those lands are within the landfill area of influence and in fact some sampling points are located there. This is needed not only during the active phase of the landfill, whilst waste is being disposed of, but during the whole aftercare period, that according to legislation can last for a specified period of up to 60 years after the site stops accepting waste, as monitoring is a long-term commitment that accompanies the development, operation and post-closure management of all landfill sites.

The agreement for lease of the land ended in December 2017 and in effect, the Council are now holding over on that lease. ABP have approached Newport City Council inviting them to purchase the freehold of the land rather than continuing to lease the land. The current rent is £30,077 per annum. ABP have agreed they would be willing to accept £335,000 for the freehold of the land, which represents market value. They would consider a new 10 year lease at £30,077 per annum which would be subject to regular rent reviews at RPI. ABP's preference is that the Council acquire the freehold of the land.

Long-term the acquisition of the freehold of the land will not have an impact on current or future generations, and it would be beneficial for the Council as the acquisition will give the Council more power over the future of the land and also decrease costs. This will in turn also prevent additional cost to the Public purse.

It should be noted that the lease puts significant obligations on the Council as tenant regarding the land (whilst leased and indeed after the lease expiry).

An example of this is there is a clause in the Lease that directs that ABP can demand NCC to clean up the Land. This states that after the agreement ends the Council shall be liable for

1. A period of 12 years in respect of pollution and spillage and
2. A period of 15 years after agreement end for making good at Councils cost and depressions or damage as a result of settlement, subsidence, chemical or gas reaction;
3. Any claims costs. Losses actions or demands relating to increased siltation of ABP's lock or entrance channel.

This would mean additional obligations over a period of 15 years over the time the land remained leased (which would be at least 60 years)

Those costs could be considerable having regard to the use and scale of the site, and as such is an existing Liability to NCC. It is therefore recommended that if NCC purchase the Land they effectively buy themselves out of the Liability (including additional period after agreement ends of 12/15 years) and removes the long term rent liability and any potential additional rent reviews that could increase rent liability.

It would also remove the risk of ABP not wishing to extend the lease arrangement beyond the initial 10 years being offered at the moment, which would pose significant problems for the Council.

Having regard for the above, the preferred option would be for Newport City Council to take ownership of the land, not only from a financial perspective but mostly due to the legislative and environmental implications and the need to comply with the site's permit conditions. By working with ABP to acquire the land the Council is working collaboratively with them.

Previously this transaction has been a property transaction between ABP and Newport City Council. Senior Officers and local Ward Members at the Council have been involved in the decision to recommend the acquisition of the freehold. The matter was also discussed at the Capital Strategy Asset Management Group, which is attended by Senior Officers from across the Council. There is no impact on any service area apart from City Services.

The proposed acquisition will assist with meeting some of the seven well-being goals including a prosperous Wales, by utilising resources efficiently and proportionately.

There are no staffing implications

## Financial Summary

### Option 1 – lease of land

Cost of the lease, under the current offer, would be £30,077 per annum. The land would need to be leased for as long as the landfill is in operation, plus during all the after-care period (60+ years), so total cost of the lease could be calculated as £1,804,620 for the minimum period of 60 years. This does not include extended operations, extended after-care period or future increases in rent

### Option 2 – purchase of land

Cost of purchase would be £335,000 for the freehold of the land. This equates to a lease period of 11.18 years, significantly lower than the period it is estimated the Council would need to retain access to the land. Over the 60 year period, outright purchase would bring a saving of £1,469,620

## Risks

<b>Risk</b>	<b>Impact of Risk if it occurs* (H/M/L)</b>	<b>Probability of risk occurring (H/M/L)</b>	<b>What is the Council doing or what has it done to avoid the risk or reduce its effect</b>	<b>Who is responsible for dealing with the risk?</b>
Land not available to carry out activity in the future	L	L	Outright purchase instead of lease arrangement	Waste and Cleansing Waste Manager
Additional obligations/costs during after-lease period	L	L	Outright purchase instead of lease arrangement	Waste and Cleansing Waste Manager
Increased costs due to extended lease period and potential yearly increase of rates	L	L	Outright purchase instead of lease arrangement	Waste and Cleansing Waste Manager

## **Links to Council Policies and Priorities**

The Wellbeing of Future Generations Act (2015) sets out in legislation how the Council must work towards improving the environmental wellbeing of Wales. This Act states that the Council should take into account long term and preventative measures when decision making. This proposal operates in line with that approach, as it identifies and prevents future issues by thinking long-term.

This option would also contribute to the Council's wellbeing objective 2 - To promote economic growth and regeneration whilst protecting the environment. Retention of the land under consideration is needed to ensure the Council can fulfil its obligations regarding environmental conditions at its landfill site, and allowing for future use of the area once fully restored, potentially becoming an asset in the future.

## **Options Available and considered**

1. Renew existing lease and continue to pay rent at £30,077 per annum for at least 60 years
2. Purchase freehold of the land at a cost of £335,000

## **Preferred Option and Why**

Purchase freehold of the land on terms to be agreed by Head of Law and Regulation.

## **Comments of Chief Financial Officer**

Purchase of the land at Maesglas Tip will remove the obligations that the lease currently puts on the Council and reduce the costs that are associate with these. The service area have confirmed that they currently have a budget of £30k which is currently used to pay the annual lease payments which can be used towards the purchase of the land over a period of time. This will mean that the purchase of this land will not affect overall Council headroom.

## **Comments of Monitoring Officer**

The proposed action is in accordance with the Council's legal powers under section 120 of the Local Government Act 1972 to acquire land and property by agreement, for the purposes of any of its statutory functions. The Council already leases this land from ABP for the purposes of complying with the environmental monitoring and permitting conditions relating to the landfill site. Under the Environmental Protection Act 1990 and the terms of the landfill permit, the Council remains liable for any remediation work as a result of any pollution or contamination for a period of up to 60 years after the landfill site is closed. Therefore, there will be a continuing need to have use and occupation of the ABP land for this liability period. In addition, there are indemnity provisions in the current lease that require the Council to indemnify ABP for any costs incurred as a result of the use of their land for a period of 12-15 years after the lease ends. The current lease agreement ended in 2017 and the Council are currently holding-over under the previous terms. The grant of a series of shorter-term 10 year leases is clearly insufficient for the Council's purposes, given the longer-term liabilities in relation to land contamination and remediation. Therefore, it would be prudent to acquire the freehold title outright. The current price to acquire ABP's freehold interest is equivalent to the current capitalised rental payments for 10 years and, therefore, represents market value. The current revenue budget can be used to fund the costs of the capital borrowing.

## **Comments of Head of People and Business Change**

From an HR perspective, there are no staffing implications to this report.

The report author has considered the Well-being of Future Generations (Wales) Act 2015 when writing this report. The proposal supports some of the Well-being Goals and does not adversely affect any of the others. This report also covers how the five ways of working of the Sustainable Development Principle (integration, long-term, prevention, collaboration, involvement) have been considered in the decision making process.

## **Comments of Cabinet Member**

Cabinet Members have been briefed on the report.

## **Local issues – Comments of Ward Members**

None received

## **Equalities Impact Assessment and the Equalities Act 2010**

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

## **Children and Families (Wales) Measure**

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

## **Wellbeing of Future Generations (Wales) Act 2015**

The author has given consideration to the Act throughout the background of the report. The proposed acquisition will assist with meeting some of the seven well-being goals including a prosperous Wales, by utilising resources efficiently and proportionately.

## **Crime and Disorder Act 1998**

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

## **Consultation**

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

## **Background Papers**

Site plan.

Dated: 20 January 2020

