

Internal Audit report – Brindley Close (Lessons Learnt)

Audit Committee

Date: 23rd February 2016

Author: Head of Internal Audit
Wards: None
Locality Affected: None
Parishes Affected: None

1. Purpose and Reasons

- 1.1 Audit Committee has a strategic role to ensure that the Council's assurance framework is operating effectively. To this end it should seek assurance that key areas that contribute to this framework are operating effectively.
- 1.2 Members requested that at least one individual audit report be presented to each meeting of the Committee. The Chair of Audit Committee requested that Internal Audit's report on Brindley Close be brought to the February meeting of the committee. This audit was carried out as a consultancy review to look at lessons learnt and therefore there is no overall audit opinion.

2. Recommendations

- 2.1 It is recommended that the contents of the report be noted.

3. Detail

Background

- 3.1 The Board Director: Service Delivery requested that Internal Audit include in their 2015/16 audit plan a 'lessons learnt' review following a waste fire on Council owned land at Brindley Close, which was leased to Averies Recycling (Swindon) Ltd.
- 3.2 Averies was operating a waste transfer site under an Environment Agency licence which allowed them to operate waste activities under specified rules. Averies stock piled waste at Brindley Close instead of transferring and paying for this to go to landfill. Following the fire at this site Averies still did not remove the waste to bring the overall levels within that allowed in the waste permit.
- 3.3 The Environment Agency took action against Averies and revoked their waste transfer licences at both the Brindley Close site and at another site they were operating from at Marshgate, also in Swindon.
- 3.4 Averies liquidated the company in January 2015. The Council, as landowner, is now in the position 'of last resort' and liable for cleaning up the significant volume of waste left at Brindley Close. The Environment Agency is in the process of taking

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court action against Averies for breach of waste permits and inadequate security at both of their former sites.

- 3.5 An Averies Task Group was set up by the Council's Scrutiny Committee to review the Local Resilience Forum's debrief report on the incident and to investigate the circumstances that led to the incident. The Task Group's Interim report on the Local Resilience Forum's debrief was presented to the Council's Scrutiny Committee in January 2016.

Key Findings for the Internal Audit review

- 3.6 Although this consultancy review does not include an overall audit opinion it is evident that significant improvements are required to processes. The key messages from this review are set out below.

(a) Site ownership and landlord duties

In the absence of an environmental waste management register it was not apparent what waste activities are conducted on Council owned land and who is monitoring these sites. However, a review of the Environment Agency website 'my back yard' by the auditor established that there are thirty-three Environment Agency licensed waste activities in the Borough of Swindon of which nineteen are on Council owned land and are either leased or deemed 'operational'.

There is an absence of local and corporate risk and performance reporting and monitoring for environmental risks including waste activities. There is also no due diligence process in place to provide an assurance that tenants, that operate waste activities on Council land, are diligently discharging their Environment Agency waste operator licence responsibilities and liabilities.

The audit found that the Council should take a more proactive and comprehensive inspection regime for the waste sites leased on Council owned land. However, as the Council has no enforcement powers it would still be for the Environment Agency to ensure appropriate action was taken.

(b) Qualifications of staff

The Council appointed a dedicated and professionally qualified waste management officer to have an overview and where necessary manage waste sites on Council owned land. Following his departure during 2012/13 there has been a gap in that the Council no longer has a responsible technically competent manager, or resource to fulfil this overview function. However, a Compliance Engineer was appointed in 2014/15 to manage closure of the Council's Shaw Farm Landfill site.

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(c) Environment Agency

The Board Director, Service Delivery stated that he has a very good working relationship with the Environment Agency and meets with their representatives periodically to discuss emerging risks and issues. However, there is no relationship with the Environment Agency at an operational level.

To date, the Council has placed reliance on the Environment Agency as the waste licensing body to be responsible for enforcing the permitted terms and conditions of tenants' waste licences. Periodic waste activity checks or inspections have not been independently conducted or commissioned by the Council, for land leased to tenants operating waste related business activities. Copies of Environment Agency inspection reports have not been obtained by the Council in its capacity as landlord.

The issue of waste transfer licences by the Environment Agency to operators is not subject to the same financial assurance process that would be required from a waste landfill operator. The current arrangements for waste transfer sites do not provide any indemnity or surety to the landowner. The Council is therefore at risk if a waste transfer operator, operating on Council leased land, defaults on their waste licence and/or ceases to trade, which happened in the case of Averages.

(d) Lease agreements

It is recommended that the Council decides whether to lease any more land for the operation of waste activities and whether to renew any existing leases when they expire. In the event it is decided to enter in to new or extend existing arrangements then it is important that all relevant parties i.e. planning, fire authority, the Environment Agency etc. are contacted to ensure that all relevant information is obtained before agreeing the lease.

The terms and conditions of existing leases for waste activities are not sufficient to provide an assurance or financial surety to the Council for any environmental impact or clean-up costs i.e. in the event that a tenant operating a waste business ceases to trade and goes into liquidation.

(e) Board Director: Service Delivery

The Board Director: Service Delivery has and continues to work closely with Corporate Board and the Environment Agency following the fires at both Averages waste transfer sites in Swindon. This working arrangement is seeking to ensure that the best value and environmental option is achieved for the removal of waste from the affected Council land in Brindley Close.

The Director of Law and Democratic Services has sought and provided Queen's Counsel advice to Corporate Board to facilitate decision making on the ability of the Council to pursue Averages for the cost of cleaning up the remaining waste at Brindley Close.

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The cost of the Brindley site clean-up has been estimated by the Board Director, Services Delivery to be less than the £2m first reported by the Swindon Evening Advertiser in November 2014. Based on the current clean up options being prepared by consultants appointed by the Council the expected clean-up costs are currently estimated to range between £750,000 and £1 million.

(f) Best Practice

The Auditor, in conjunction with the Head of Property Assets and his staff met and observed the waste management arrangements of Council tenants operating Environment Agency waste licences i.e. Saunders Metals Ltd (at Kendrick Industrial Estate - waste transfer licence) and Hills Waste Management Swindon (at Chapel Farm - landfill and waste transfer licences). Whilst the Environment Agency periodically visit and monitor these sites, feedback from the tenants was that they felt in their experience, regulation of waste licences has become very much self-regulating. They perceived this followed a reduction of Environment Agency resources and presence. One tenant advised that whilst there is a risk assessment model used to evaluate waste operators this was considered to be focussed on larger operators due to the high level of impact and materiality of operations, but not necessarily and sufficiently weighted to reflect the assurance of waste management controls in place and the effectiveness of their operation. They felt this could mean smaller waste transfer operators have by comparison a lower risk profile, but potentially a high risk in their own right, regarding their trading stability and financial waste sureties/provisions.

(g) On-going issues

The Environment Agency and the Contaminated Land Officer reviewed the status of waste transfer sites operated on Council land. There are no impending actions on any sites although some concerns which need to be monitored. The responsibility for conducting the monitoring of these concerns needs to be determined.

3.7 Internal Audit has also completed a consultancy piece of work on Shaw Landfill site, again at the request of the Board Director: Service Delivery. Many of the findings of that audit are relevant to this review.

3.8 The Board Director: Service Delivery and the Head of Property Assets will be at Audit Committee to answer any questions that Members may have.

4. Alternative Options

4.1 Not Applicable

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5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There are no direct financial implications arising from this report however the detailed audit report addresses the suitability of internal controls within the systems examined

Legal and Human Rights Implications

- 5.2 Internal Audit is a statutory requirement of the Accounts and Audit Regulations 2015. The Internal Audit service also provides assurance to the Director of Finance regarding the requirements of Section 151 of the Local Government Act 1972.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 None

Links to One Swindon, Strategic Objectives, Plans and Policies

- 5.4 Effective systems of internal control within the Council will help to ensure that the Council's corporate objectives and those set out in One Swindon are achieved.

Diversity Impact Assessment

- 5.5 Not Applicable

Risk Management

- 5.6 Not applicable

6. Consultees

- 6.1 The Board Director: Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 Appendix 1: Internal Audit report: *Brindley Close – Lessons Learnt* (December 2015)