

Risk Resolve

An owner of contaminated land often holds a variety of environmental liabilities associated with that site .

Transform Land (TL) work with a variety of industrial and commercial land owners and corporates, for whom managing the CSR aspects of contaminated land redevelopment is the 'big issue' - often as, or more important than, commercial gain. A central issue is managing risk and ensuring a robust process for the transfer of environmental liabilities away from the current land owner who may also be the polluter.

Risk Resolve (RR) is TL's mechanism for protecting the full range of stakeholders in a contaminated land redevelopment project against long term risks associated with the contamination. It is also about managing the transfer of environmental liability away from the client . The stakeholders normally comprise, current site owner, TL , funders and future site owners.

When a contaminated land site is changing ownership and being redeveloped there are three main mechanisms for managing the environmental liability :

- 1) Legal/Contractual - warranties , indemnities etc
- 2) Environmental Insurance and
- 3) Remediation

There is often a heavy reliance placed on 1) and completion of 3) often removes the majority of risk but there are a number of drawbacks to relying solely on this strategy and TL prefer to offer a wider more secure long term package of protection. Remediation is the ultimate means of removing risk but there is an issue of timing and how protection is enabled prior to its completion. Also , remediation has its technical limitations and is mostly unable to tackle contamination which has already migrated off site.

'Remediation' is defined as the process of removing unacceptable risks to either human health or the environment by breaking identified source-pathway-receptor pollutant linkages. This is the ultimate goal of any TL project but in our view often requires additional support along the way and for the long term future.

At the heart of this tool is a bespoke environmental insurance policy which is integrated with other specialist policies (such as Contractors Pollution Liability) and a Fixed Price All Risks Remediation contract.

Environmental insurance may be used to support remediation of known pollution conditions and remove risks that other stakeholders may find unacceptable.

What is Risk Resolve?

- Fixed Price Remediation provided by Transform Land; with
- Bespoke Environmental Insurance to manage new and existing liabilities.

Transform Land use an experienced environmental insurance broker , who has access to this specialist market of underwriters, to offer a tailored 'Risk Resolve' package for each project.

Application

RR is used to help manage environmental risks during remediation projects. The combination of insurance and remediation works best when applied during the sale or purchase of a site that has already been identified to have been impacted by some known pollutants.

Known and Unknown Pollutants

Site investigations are often used as a factual presentation of the condition of a property. However, due to the nature of the investigation (small holes in a very big site), they require a large amount of interpretation.

Therefore, whilst it is likely that a pollution condition can be identified during an investigation, it is just as likely for the condition to be missed or at least not be fully defined.

RR works well when there is a concern that although one pollution condition has been identified, another may be present or that there may be repercussions from off-site migration of contaminants which has already occurred.

Reliance on Indemnities, PI and the Contractor

It is common practise that heavy reliance is made on indemnities provided by a vendor, consultant (who completed the investigation) and the contractor, and so the benefit of RR may be difficult to identify due to its additional financial cost. However, the following cautions should be raised when considering the value of the indemnities and Professional Indemnity (PI) insurance:

- PI insurance is there to protect the consultant and not a 'fund' to be drawn on' by others if things go wrong. Negligence must be proved for a successful claim against a consultant's PI and this is very hard to do in most cases, especially with competent consultants that most firms employ.
- Companies not being in business long term - client is not protected.
- Historically the largest most expensive claims from contaminated sites have come from off site third party claims relating to contaminated groundwater .
- Can't cover future changes in environmental regulations or the position of the regulator.

Therefore, whilst the indemnity should be sort, its value is very limited. Also, the indemnity has any value only while the giver– a company that is not governed by any financial controls following the transaction - is still in existence .

Drivers

The following are drivers that can be used to support a RR project:

- The transaction of a property that has been known to have been polluted;
- The need of the vendor or acquirer to fix the value of the liabilities they face; and
- Further/future stakeholders (such as funders and occupiers) who do not understand the risk.

From experience, the most frequent driver for a RR project is a major corporate investor in property.

Fixed Price Remediation

The major element of a Transform Land RR project is the ability to provide the Client with an All Risks Fixed Price Remediation solution, where:

- We will agree to complete the remediation of known pollutants; to
- A level that would be accepted by a Regulator (such as the Environment Agency); for
- A fixed price.
- In many cases we can also take the 'risk in the ground' protecting against the 'unknown unknowns'.

However, this approach does have the following limitations:

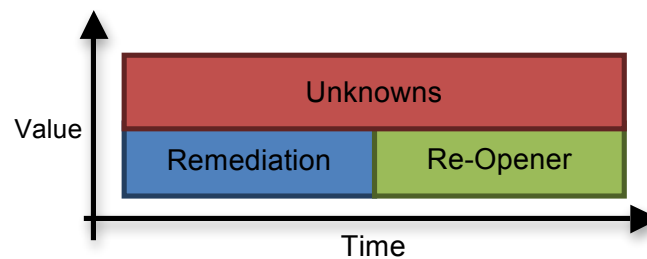
- Pollution beyond the original scope of the agreement (ie that beyond the boundary of the site or has not been identified) is not included in the contract;
- Conditions identified after the end of the project (missed, made worse, or introduced by the Contractor) can only be dealt with if the Contractor still exists and has the funds to do so; and
- If the Client wishes to then sell the site on, the new owner may not accept the above indemnities and require a fresh indemnity from the Client.

Insurance Products

Insurance products can be wrapped around this Fixed Price Remediation, by providing protection to the Client from Liabilities arising from:

- Pollution beyond the boundary of the property;
- Pollution or pathways introduced by the Contractor (but not identified until after the project); and
- Long term reoccurrence of the identified pollutants (regulatory re-openers).

Relationship of Insurance and Remediation



In the diagram above, the blue area represents the risk transferred to Transform Land, while the red and green areas are those elements of the risk transferred to the insurer.

Benefits of Transform Land Risk Resolve (TLRR) Solutions

The benefits of are therefore as follows:

- A fixed price is provided for the remediation of a known condition;
- Unknown liabilities are managed through an insurance programme;
- Long tail liabilities are managed through an insurance programme; and
- Liabilities are managed to such an extent, that both vendor and purchaser are much more likely to be able to step away from the risk upon the subsequent sale of the site.