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I am a property developer and own a brownfield site.

15:24 | 14.01.10

How can I persuade funders that I am managing the risks on the site effectively?



By **Mathew Hussey**

Finance and company solvency have dramatically changed. Many companies that may have provided company warranties or indemnities in a property sale and purchase agreement or tenant agreement are not as solvent as they were.

If an environmental claim occurs it can lead to a company seeking

compensation from those seen as at fault. The company that provided the indemnity or the consultant/contractor will be the first in the line of fire, but are they solvent to a level that action will actually be viable?

At the same time, for property owners risks have increased with the Environmental Liability Directive (ELD) and landlords are increasingly nervous of tenants operations should an environmental incident occur. The ELD reinforces the "polluter pays" principle - making operators financially liable for threats of or actual damage."

In summary, the ELD has distinct additional obligations to regulations that already apply, although these will still apply. It affects situations in which an activity results in damage to water resources, a protected species, natural habitat or land contamination which presents a threat to human health. A wide range of remediation requirements may apply including restores the natural resource and services rendered to its baseline condition (before damage occurred).

How can a landowner manage both historic and newly created environmental risks?

Indemnities are primarily based on fault and negligence, which is difficult, costly to prove and often only as good as the professional indemnity insurances behind them. Rather than ultimately paying for, and chasing, everyone else's insurance, clients, should seek insurance that actually insures their site/development. This does not necessarily lead to increased project costs and policies can include multiple insureds (funders, tenants) and the benefits of the policy can be reassigned in the future, if required.

A client can acquire an insurance policy based on financial loss occurring

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A client can acquire an insurance policy based on financial loss occurring which can streamline the process should a claim occur. Also, instead of chasing multiple parties, an insurance policy means there is only one party involved. Importantly, insurance companies are designed to take risks and are regulated by the government in terms of solvency.

The 'single project insurance' approach can be used for both environmental and construction risks. Numerous projects across the UK have successfully used environmental insurance with a range of clients from commercial developers to funding institutions.

Many investment and property funds are now seeking cover on a portfolio basis to protect against 'operational environmental risks' and large corporate portfolios on a EU and global wide and being seen in the insurance markets.

Postscript :

Mathew Hussey is an associate director at Tysers