

Real estate environmental risks and insurance



Our specialist team advises on the management and insurance of environmental risks for those engaged in the purchase, investment, ownership, development, management and sale of real estate. As specialists in this market we can deliver innovative solutions to help protect and enhance asset values.

Background

The risk of landowners having to pay for the clean-up of their land and meet third party claims for pollution emanating from their sites, even where they were not the original polluters, has increased as a result of environmental legislation introduced in recent years. Whilst the frequency of environmental claims and regulatory actions is relatively low, the costs and losses can be very significant when they do arise, especially when rental loss, consequential losses, legal costs and management time costs are taken into account.

Environmental due diligence has therefore become a routine exercise during property transactions. However, whilst the Phase 1 and/or Phase 2 assessments conducted by consultants provide important information, they are rarely conclusive, often due to tight timescales, access limitations, etc. and usually indicate some residual environmental risk associated with known and unknown historic contamination at the property.

This residual environmental risk is frequently transacted along with the real estate, increasingly by means of extensive environmental provisions contained in sale/lease agreements.

The traditional approach has been to 'take a view' on this residual liability, negotiate a price reduction based on an estimate of the liability or to rely on the professional indemnity insurance cover of the consultant.

Neither approach provides much in the way of protection against potential environmental claims and regulatory actions or the blighting impact of pollution on the asset's future marketability. Environmental insurance can be an effective tool to protect against such risks and enhance the value of assets.

Who is affected?

Owners, funders, lenders, developers and tenants of real estate can all be held liable for clean-up, claims and other associated losses, even if they were not the original polluters. Even parties who would not normally be held liable under environmental laws can potentially face risks owing to the increasing contractual allocation of environmental liabilities in transaction agreements.



Insurance solution

We can arrange environmental insurance (also known as 'Environmental Impairment Liability' or 'Pollution Legal Liability' insurance) to help protect parties at risk against such liability. Policies are typically assignable to future purchasers and their funders, and are therefore particularly attractive in transactions involving real estate.

The benefits

- Usually underwritten for between 1 to 10 years
- Can attach to a single site or portfolio of sites
- Can include cover for development activities
- Tailored to address specific risks and transaction requirements
- Cover can include contractual liabilities
- Policies also cover changes in environmental legislation
- Available from some of the world's largest insurers.

Coverage

- New pollution and known/unknown historical contamination
- On and off site clean-up costs
- On and off site 3rd party liability (property damage/ diminution in value/bodily injury/business interruption)
- Biodiversity/natural resources damages (e.g. environmental liability directive)
- Protection against Regulatory Action
- Insured's and third party business interruption
- Legal defence and investigation costs.

These are brief product descriptions only. Please refer to the policy documentation paying particular attention to the terms and conditions, exclusions, warranties, subjectivities, excesses and any endorsements.

Case study

Our client was purchasing a large retail park, constructed on a former industrial site. The site had been extensively investigated and remediated prior to development, but the environmental due diligence revealed concerns over the extent of unknown residual contamination at the site and, in particular, the long-term risks associated with historic solvent contamination migrating from the site in groundwater. Under the terms of the sale agreement, our client was required to assume all environmental liabilities associated with new and historic contamination at the site, so the transaction was stalled, owing to the environmental concerns raised by the due diligence.

Our specialist team was able to negotiate and place, at short notice, a long-term environmental insurance policy covering both the known and unknown historical contamination risks associated with the site. Policy coverage included liabilities assumed under the sale agreement and loss of rental income. The total cost of the policy was significantly less than 1% of the transaction value, but provided the protection necessary to enable our client to successfully conclude the purchase.

Would you like to talk?

For a discussion on your requirements or to explore cover options please contact:

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