



## COUNCIL – 20TH NOVEMBER, 2012

**SUBJECT: INTERIM REPORT REGARDING CWMCARN HIGH SCHOOL**

**REPORT BY: DEPUTY CHIEF EXECUTIVE**

---

### 1. PURPOSE OF REPORT

- 1.1 To provide Council with a brief chronology of events leading to the closure of Cwmcarn High School (CHS) on Friday 12 October 2012 due to the presence of widespread asbestos debris in ceiling and roof voids at the school which was assessed as posing a potential significant risk to the health of occupants of the building during normal occupation activities. The Report also provides details of the future action to be taken.

### 2. SUMMARY

CHS is a foundation school and is unique in terms of its status within the Authority.

The Governing Body at CHS is responsible for the management of the school premises and employs its staff.

The Authority has been commissioned by CHS to provide health and safety support services since 31 March 2011.

The Authority has been commissioning asbestos surveys at CHS since 2003 as part of its Priority Works programme, the full extent and condition of asbestos product and asbestos debris in CHS was not known until the asbestos investigation undertaken by Santia Asbestos Management Ltd in late September 2012. A copy of the executive summary of the report is attached as Appendix 1

No other school within the Authority is in the same condition as CHS as any asbestos removal works in maintained schools was undertaken by the Authority in line with the Asbestos Regulations in being at the time the work was undertaken.

Whilst the disruption caused to the staff and pupils at CHS is regrettable, the temporary closure of CHS has been necessitated by the need to reduce the risk to the health of its pupils and staff to the lowest possible level, to undertake the necessary improvement works and to generally reassure staff and parents.

For the avoidance of doubt, the decision to close CHS on a temporary basis was undertaken solely to safely manage the damaged asbestos product within the school. Investigations into the condition of CHS by the Health and Safety Executive are on-going.

### **3. LINKS TO STRATEGY**

- 3.1 The report links to the current Asbestos Management Plan of the authority which is aimed at reducing the risks to health posed by the planned and accidental disturbance of asbestos containing materials in public buildings including schools.

### **4. THE REPORT**

#### **4.1 Background**

CHS caters for children from age 11 to 18 and currently accommodates 850 pupils.

CHS is a 'system build' school (constructed typically in the 1940's to 1980's) the building is constructed with square flat roofs and large areas of windows. Asbestos was used extensively in the construction of system build schools – in walls and ceilings, as cladding around critical structural components, as lagging and firebreaks and as general building board.

CHS comprises 3 buildings – the main building (Building A) constructed in the 1950's is constructed from reinforced steel joists and concrete floors at ground level with asbestos insulation board (AIB) internal wall panels, ceiling tiles and floor tiles. The upper floor is a suspended floor construction. The Leisure Centre and single storey extension added in the mid 1970's. Two further buildings were constructed on the site after 2000 and are free of asbestos.

The Authority has identified Priority Works (namely asbestos, Legionella and electrical safety works) resulting from surveys and condition monitoring throughout all schools within the Authority. As a Foundation School, the Governing Body of CHS is responsible for all capital works below £10,000. Any capital expenditure above £10,000 is fully funded by the Authority. However, in respect of high risk works, the Authority has undertaken and paid capital expenditure costs below the £10,000 threshold at CHS.

Prior to 2009, all maintenance works at CHS were undertaken by the school caretaking staff and contractors appointed by CHS. Since 2009, CHS has submitted bids into the authority's' Capital Improvement Programme for Schools .

The extent of the Service Level Agreements taken by CHS with the Authority have varied, and for several years were extremely limited. The most recent included amongst other things the commission of Health and Safety Support Service.

The Authority was advised by the HSE this month that, in 2004, a contractor working in the school (T A Roden) was convicted of 2 breaches of the Control of Asbestos at Work Regulations 1987 and fined £2,000 plus costs for sawing AIB in the school hall. CHS was not prosecuted and the Health and Safety Executive did not involve the Authority in the investigation.

## **4.2 The legal status of CHS, its staff and its premises**

Until 31 August 1991, CHS was maintained by Gwent County Council. As a result of Local Government Re-Organisation in 1995 Caerphilly County Borough Council is the successor authority to Gwent County Council.

With effect from 1 September 1991, CHS acquired Grant Maintained status pursuant to The Education Reform Act 1988, the portion of the CHS site used for school purposes transferred from Gwent County Council to the CHS Governing Body. As a Grant Maintained school, the Governing Body of CHS had almost complete control over its staff, premises and budget.

In 1998, Grant Maintained schools were abolished by virtue of the provisions of the Schools Standards and Framework Act 1998 and the status of CHS was changed to that of a Foundation School in 1998. It is the only Foundation School within the Authority.

As a Foundation School, responsibility for its capital costs budget lies with the Authority, but (in accordance with Schedule 13 of the 1998 Act and Regulation 5 of the Control of School Premises (Wales) Regulations 2008), the school premises are in the control of the Governing Body. .

All staff at CHS (save for teaching assistants of statemented children) are employed by the Governing Body and not the Authority.

## **4.3 Relevant legislation**

As the employer of the staff at CHS and the owner and controller of the school premises, the Governing Body of CHS owes a Common Law duty of care to its employees and to visitors to the school premises in negligence.

The Governing Body also owes the following statutory duties to its staff, pupils and contractors:-

- Since the implementation of The Control of Asbestos Regulations 2002, to undertake asbestos surveys of the school premises and to maintain an asbestos register.
- Under Section 2 Health and Safety at Work Act 1974, to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all its employees.
- Under Section 3 of the Management of Health and Safety at Work Regulations 1999, to undertake an assessment of the risks to the health and safety of its employees to which they are exposed whilst at work
- Under Section 2 of The Occupiers' Liability Act 1957 to take such care as is reasonable to ensure that a visitor to the school premises will be reasonably safe in using the premises.
- Under Section 3 of the Health and Safety at Work Act 1974, to conduct the

school in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment are not exposed to risk to their health and safety.

Breach of the common law duty of care and of Section 2 of The Occupiers' Liability Act 1957 gives rise to potential civil liability for damages. Breach of the Management of Health and Safety at Work Regulations, The Control of Asbestos Regulations and the Health and Safety at Work Act 1974 gives rise to potential criminal liability. As stated previously, CHS has purchased health and safety services from the Authority under a Service Level Agreement since November 2010. The services provided to the school under the Service Level Agreement are to assist the Governing Body in meeting its statutory duties, however the provision of the service does not absolve the Governing Body of its statutory duties arising under Health and Safety legislation.

In relation to staff employed by the Authority who work at CHS, the Authority also owes the following duties:

- The Common Law duty of care in negligence
- Under Section 3 of the Management of Health and Safety at Work Regulations 1999, the duty to undertake an assessment of the risks to the health and safety of its employees to which they are exposed whilst at work
- Under Section 2 Health and Safety at Work Act 1974, to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all its employees.

In relation to CHS, the Authority does not fall within the statutory definition of a duty holder under the Control of Asbestos Regulations - whereas with maintained schools the Authority has dual duty holder responsibility with the school so that the Authority is under a duty to identify the asbestos on the premises and the school is under a duty to manage the asbestos on the premises on a day to day basis.

Whilst it is under no legal duty to do so, the Authority (at its own cost) has included CHS in the asbestos surveys it has commissioned for all maintained schools within the borough. However, having been supplied with these surveys, CHS elected not to use the Authority for any necessary improvement works which instead were undertaken by CHS staff or CHS appointed contractors.

#### **4.4 Chronology of asbestos surveys undertaken at CHS and events leading to its closure**

The Authority was not under a statutory obligation under the Control of Asbestos Regulations (2002-2012) to undertake asbestos surveys and asbestos removal works at CHS due to its foundation school status.

However, it commissioned asbestos surveys at CHS (and indeed at all schools within the borough) as part of its Priority Works Capital Expenditure Programme and in the discharge of its duty of care owed to Authority staff who worked at CHS and to pupils.

A chronology of the asbestos surveys undertaken at CHS is set out in Appendix 2.

The Santia report incorrectly states that the Authority is a dutyholder under Regulation 4 of The Control of Asbestos Regulations 2012 – the CHS premises are neither owned nor managed by the Authority and the duty holders for the purposes of those Regulations are the head teacher and Governing Body of CHS.

#### 4.5 The Santia Report

Santia was commissioned by the Authority to undertake a Report into asbestos at CHS with the following objectives:-

**Objective 1** – determine if health and safety is being/has been compromised by an exposure to asbestos contained in fugitive dust as measured by air sampling or in building dust present in the work/study area.

**Objective 2** – determine the amount of asbestos and asbestos contamination to establish the costs associated with the subsequent removal/remediation and environmental clean throughout the premises.

**Objective 3** – provide a recommendation based on the remaining asbestos containing materials and asbestos contamination to prevent / reduce the further exposure to asbestos fibres.

In addition to the objectives listed above Santia was specifically commissioned to investigate the air heaters on the first floor of Building A. There are 8 heaters in total – of these, the side walls of 2 heater cabinets were made of AIB. Air tests undertaken with the heaters in use over 1 hour in an unoccupied building detected airborne fibre levels of between 0.003 and 0.007 fibres per cm<sup>3</sup>.

Dust swab samples undertaken in Building A, four classrooms and one stairwell within Building A tested positive for asbestos fibres in lying dust. Following these results the classrooms and stairwell were closed off. Asbestos officers undertook an environmental clean of the areas during which time they wore personal monitors. Those monitors showed personal exposures of 0.03, 0.06 and 0.07 fibres/cm<sup>3</sup>.

In order to put these air tests results into context, the outside background airborne asbestos fibre level is generally accepted as being between 0.0001 fibre/cm<sup>3</sup> and 0.001 fibre/cm<sup>3</sup>.

There is no definitive 'safe' threshold for airborne asbestos prescribed by any regulation. The 'control limit' specified by The Control of Asbestos Regulations 2012 (which came into force on 6 April 2012) is 0.1 fibres/cm<sup>3</sup>. Under the Regulations, where it is not reasonably practicable for an employer to reduce the exposure to asbestos to below the control limit, the employer must provide the employee with suitable respiratory equipment. The HSE's own guidance stipulates that this control limit is not a 'safe' level threshold and that exposure from work activities involving asbestos must be reduced to as far below the control limit as possible.

A clearance indicator level of 0.01 f/cm<sup>3</sup> in air is used in the UK as part of a 4 stage clearance process to assess if it is safe to take down an enclosure after the asbestos removal has been completed and the area thoroughly cleaned (as detailed in HSG248: Asbestos : The analysts' guide for sampling, analysis and clearance procedures). It should be emphasised that the clearance level is only a indicator for re-occupation following an asbestos removal and is not a safe, long term exposure limit.

It will be appreciated that whilst the air tests were not in excess of the control limit or the clearance level indicator, the results were significantly higher than ambient levels in the general atmosphere. It should also be remembered that these air tests were undertaken in an empty school and there was real concern that the airborne fibres levels would be significantly higher in an occupied school due to the air movement and general vibration in the building.

#### **4.6 Future action**

The Authority is implementing the recommendations made by Santia in Section 6 of its report.

The Authority has commissioned a full invasive asbestos survey of the site and report from Santia. The required investigations are extensive and are anticipated to take two months to undertake. The further investigation work cannot be undertaken whilst the school is occupied and hence the need to decant the pupils of CHS to the former Coleg Gwent campus in Ebbw Vale for the remainder of the academic year.

The Health and Safety Executive's enquiries are continuing. The Authority last met with representatives of the Health and Safety Executive on 6 November 2012. At this meeting the Authority was advised verbally that the HSE considers the risks to health at CHS to be low as none of the air samples were in excess of the clearance indicator level of 0.01fibres/ cm<sup>3</sup>.

Public Health Wales and Aneurin Bevan Health Board, in conjunction with the Council, is holding a health clinic for pupils and parents/guardians on 21 November. The authority is providing Occupational Health Clinics on the 20<sup>th</sup> and 21<sup>st</sup> November at the Ebbw Vale site to provide support and health advice to the staff of CHS.

### **5. EQUALITIES IMPLICATIONS**

5.1 As set out in the report to the meeting of Council dated 23<sup>rd</sup> October, 2012.

### **6. FINANCIAL IMPLICATIONS**

6.1 As set out in the report to the meeting of Council dated 23<sup>rd</sup> October, 2012.

### **7. PERSONNEL IMPLICATIONS**

7.1 None arising from this report.

### **8. CONSULTATIONS**

8.1 The views of consultees are reflected within the report.

## **9. RECOMMENDATIONS**

- 9.1 Council note the interim report and agree to receive further reports on receipt of the Santia investigations and the outcome of the Health and Safety Executive Investigation.

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 To update Members.

## **11. STATUTORY POWER**

- 11.1 As set out in paragraph 4.3 of the report.

Author: Nigel Barnett, Deputy Chief Executive, barnen@caerphilly.gov.uk  
Consultees: Councillor Rhiannon Passmore, Cabinet Member – Education;  
Corporate Management Team;  
Sandra Aspinall, Corporate Director Education & Lifelong Learning  
Daniel Perkins, Head of Legal & Governance, perkid@caerphilly.gov.uk  
Robert Hartshorn, Head of Public Protection, hartsh@caerphilly.gov.uk  
Donna Jones, Health & Safety Manager, jonesd7@caerphilly.gov.uk

Appendices:

1. Executive Summary.  
Report from Santia Asbestos Management Ltd dated October 2012 (appendices referred to are available in the Members area)
2. Chronology of asbestos surveys at CHS.

### **Background Papers:**

As set out in appendices.