

Financial Guarantees in Ireland



Pól Ó Seasnáin
Environmental Protection Agency
Ireland
26th January 2017

*Financial
Guarantee/Security/Provision*

***Protection of the environment
and protection of the public
purse !***

Introduction

- Environmental liability is a priority for the EPA.
- Certain permitted facilities carry known liabilities (associated with closure and aftercare) and potential liabilities (associated with incidents/accidents).
- Costs can be significant and run to tens of millions of euro
- Extractive waste facilities and landfills have mandatory financial security requirements under their respective EU Directives.
- Failure to make financial provision could lead to the Member State having to intervene following site closure, an incident or insolvency

Directive on the Management of Waste from the Extractive Industries 2006

Article 14

Financial guarantee

1. The competent authority shall, prior to the commencement of any operations involving the accumulation or deposit of extractive waste in a waste facility, require a financial guarantee (e.g. in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or equivalent, in accordance with procedures to be decided by the Member States, so that:

Directive on the Management of Waste from the Extractive Industries 2006

- (a) all obligations under the permit issued pursuant to this Directive, including after-closure provisions, are discharged;
- (b) there are funds readily available at any given time for the rehabilitation of the land affected by the waste facility, as described in the waste management plan prepared pursuant to Article 5 and required by the Article 7 permit.

Part of EPA Strategy 2016-2020

- Under the *Goal of Trusted Environmental Regulator*, the EPA Strategy includes the objective to
 - *Align EPA resources to target interventions and reduce environmental risk .*
 - The associated outcome is: *Reduced environmental risks at EPA regulated facilities through tailored interventions and by ensuring appropriate financial provisions are in place*



Work Programme

- Agreed Programme with EPA Management
- Team put in place to implement programme
 - The Waste and Financial Provision Team!
- Examined old guidance and revised it
- Re-examined permit conditions
- Prioritised work on top tier of sites
 - Sites which must comply with Directive
 - Highest risk sites (Waste, Seveso)
 - Sites with known contamination etc

Work Programme

- Resources put in place including expertise in
 - Financial Assessment
 - Legal advice
 - Occasional technical advice
- Internal and External workshops
- Asked permit holders to comply with conditions & guidance
- Started communicating and ‘chasing’ permit holders
- Tracking and reporting to EPA management on progress
- Produced template financial provision docs to assist



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INTEGRATED POLLUTION CONTROL LICENCE

| | |
|---------------------------|--|
| Licence Register Number: | P0088-04 |
| Company Register Number: | 203494 |
| Licensee: | Vedanta Lisheen Mining Limited |
| Location of Installation: | Killoran, Barnalisheen, Ballyeck, Cooleeney, Derryfadda and Derryville, Moyne, Thurles, County Tipperary |

12.2.5 The licensee shall have regard to the Environmental Protection Agency guidance document 'Guidance on Assessing and Costing Environmental Liabilities (EPA 2014)' when implementing Conditions 12.2.2 and 12.2.3 above.

2.3 Financial Provision for the Mine Closure Plan

12.3.1 The licensee shall maintain, to the satisfaction of the Agency, financial provision for the implementation of the Mine Closure Plan (as required by Condition 10.2). The size and type of financial provision and the means of its release/recovery shall be agreed by the Agency. The means by which the Agency can directly access the financial provision shall be agreed by the Agency. The financial provision shall not be utilised unless agreed by the Agency. The financial provision shall only be utilised for the implementation of the Mine Closure Plan unless otherwise agreed by the Agency. Any proposed change or amendment to the type or size of the financial provision shall be agreed by the Agency prior to implementation.

12.3.2 The size of the financial provision shall, where appropriate, be calculated in accordance with Regulation 14 of the Waste Management (Management of Waste from the Extractive Industries) Regulations, 2009, and Commission Decision 2009/335/EC, or as otherwise directed by the Agency.

12.3.3 The financial provision shall be maintained in an amount always sufficient to underwrite the current Mine Closure Plan. The licensee shall, as required by the Agency, provide written evidence to assure the Agency that the licensee is at all times financially capable of complying with the mine closure provisions of Condition 10.2.

12.3.4 The licensee shall by the process laid out in Condition 10.2.2 review the cost of the Mine Closure Plan annually, or as otherwise agreed by the Agency. Any necessary adjustments to the financial provision must, within two weeks of the review, be forwarded to the Agency for agreement. No adjustment to the financial provision shall be effected unless agreed by the Agency. Any adjustment agreed by the Agency shall be effected within four weeks of said written agreement.

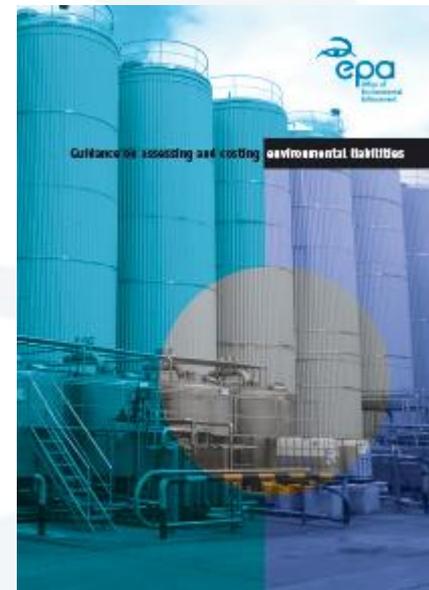
12.4 Financial Provision for the Aftercare Plan

12.4.1 The licensee shall maintain, to the satisfaction of the Agency, financial provision for the implementation of the Aftercare Plan (as required by Condition 10.3). The size and type of financial provision and the means of its release/recovery shall be agreed by the Agency. The means by which the Agency can directly access the financial provision shall be agreed by the Agency. The financial provision shall not be utilised unless agreed by the Agency. The financial provision shall only be utilised for the implementation of the Aftercare Plan unless otherwise agreed by the Agency. Any proposed change or amendment to the type or size of the financial provision shall be agreed by the Agency prior to implementation.

http://www.epa.ie/licences/lic_eDMS/090151b2804e18b3.pdf

Guidance on costings 2014

- *Guidance on assessing and costing environmental liabilities* (EPA, 2014)
- Determining costs is a discrete task, separate to financial provision
- Divided Between Two types of costs:
 - Closure & restoration/aftercare
 - Incidents

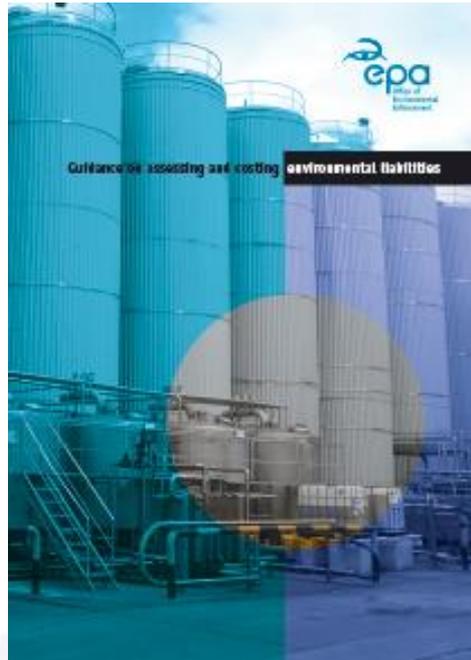


Guidance on financial provision 2015

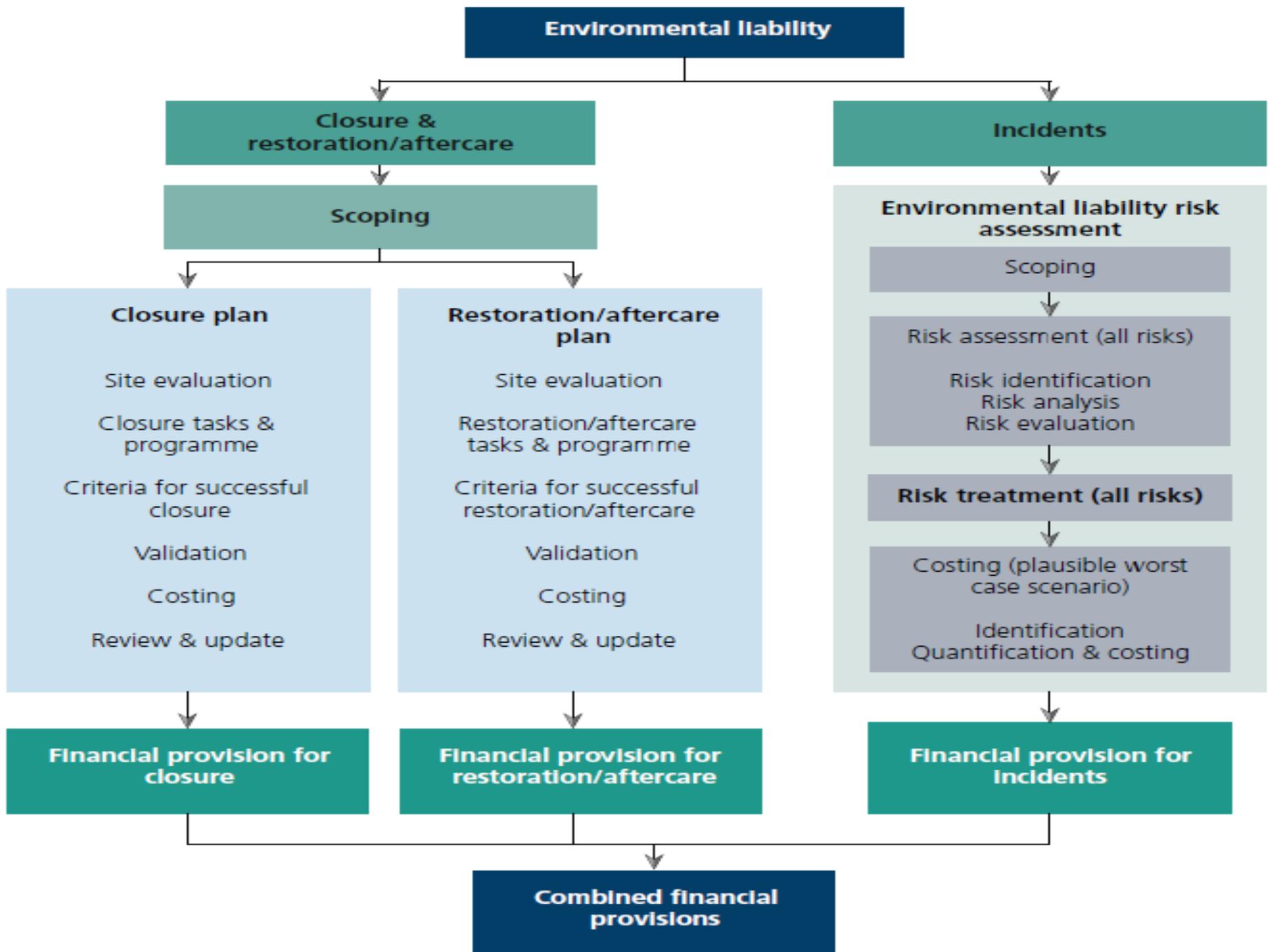
- *Guidance on financial provision for environmental liabilities* (EPA, 2015).
- Finalised September 2015
- Principles
- Overview of the FP process
- Acceptable FP Instruments



Guidance



<http://www.epa.ie/enforcement/financialprovisionsforenvironmentalliabilities/>



Closure Plan Contents

Table 2.1: Contents of a closure plan

| Closure Plan Section | Section Contents |
|------------------------------------|--|
| Closure plan summary | Summary details |
| 1. Introduction | <ul style="list-style-type: none"> • Site description • Activities • Licence/permit details • Closure scenarios covered in the plan • Whether restoration/aftercare plan is also required |
| 2. Site evaluation | <ul style="list-style-type: none"> • Operator performance • Environmental pathways and sensitivity • Site processes and activities • Inventory of buildings, plant and equipment • Inventory of raw materials, products and wastes • Maximum storage capacity for raw materials, products and wastes |
| 3. Closure tasks and programmes | <ul style="list-style-type: none"> • Plant and equipment decontamination requirements • Plant and equipment decommissioning requirements • Demolition (if necessary) • Waste facility closure (e.g. landfill and extractive waste facilities) • Raw materials, products and waste disposal and/or recovery requirements • Contaminated land treatment, removal and/or disposal • Programme (Gantt chart or similar) and timeframes for delivery |
| 4. Criteria for successful closure | <ul style="list-style-type: none"> • A benchmark set of criteria to evaluate the success of closure |
| 5. Closure plan validation | <ul style="list-style-type: none"> • Environmental monitoring • Closure validation audit • Closure validation audit report • Closure validation certificate |
| 6. Closure plan costing | <ul style="list-style-type: none"> • Plant and equipment decontamination costs • Plant and equipment decommissioning costs • Demolition costs • Waste recovery or disposal costs • Environmental monitoring costs • Site security costs • Validation costs • Management and utility costs |
| 7. Closure plan review and update | <ul style="list-style-type: none"> • Proposed frequency of review • Proposed scope of review |

Future Proofing Costs

- Contingency
- Cost Profile – costs may extend and vary over time
- Inflation/discounting
- Review and update

Financial Provision (FP) Principles

Secure

- The financial provision must be secure for the duration of the licensee's obligations (including in the event of an insolvency) under a licence so that funds are available to discharge the licensee's obligations.

Sufficient

- The financial provision must be sufficient to meet all of the licensee's obligations and must be adequate to cover the cost of closure and environmental liability risks.

Available when required

- The funds must be available to the EPA when required to discharge the licensee's obligations at the relevant time.

Secured fund

- A secured fund with a first ranking fixed charge in favour of the EPA is suitable financial provision for all liabilities.

On demand performance bond

- Perpetual and on-demand performance bonds are suitable financial provision for all liabilities. This is provided that the failure, on expiry, to renew or replace the bond with alternative financial provision is a drawdown event.

Parent company guarantee

- A parent company guarantee is suitable financial provision for most liabilities. It is not suitable to cover inevitable closure costs.

Charge on property

- A first ranking fixed charge on property in favour of the EPA is suitable financial provision for all liabilities. However, only a certain percentage of the property's value may be used towards the satisfaction of the licensee's financial provision obligations.

Insurance

- Environmental impairment liability insurance is suitable financial provision for potential liability from incidents arising on sites. This is provided the policy wording is acceptable to the EPA.

FP Instruments

| Instrument | Inevitable closure | Other closure | Incidents | Template | Features |
|----------------------------|--------------------|---------------|-----------|----------|---|
| Secured fund | ✓ | ✓ | ✓ | ✓ | <ul style="list-style-type: none"> Dedicated account Legally and financially complex Charge in favour of the EPA Licensee can withdraw funds to pay for works |
| On demand performance bond | ✓ | ✓ | ✓ | ✓ | <ul style="list-style-type: none"> EPA can call in if not renewed Surety must be registered with Central Bank IRL |
| Parent company guarantee | - | ✓ | ✓ | ✓ | <ul style="list-style-type: none"> Significant financial element to the assessment Annual accounts |
| Charge on property | ✓ | ✓ | ✓ | - | <ul style="list-style-type: none"> First ranking mortgage/charge over a specific piece of real estate |
| Environmental insurance | - | - | ✓ | - | <p>9 requirements including:</p> <ul style="list-style-type: none"> retroactive to date licensed EPA covered if insured becomes insolvent etc. |

Ongoing development

- Updated bank bond, parent company guarantee and secured fund templates available on website:
 - <http://www.epa.ie/pubs/advice/licensee/fptemplatesassociateddocuments/#d.en.62331>
- Detailed Funding and Drawdown Agreement (FDA) template developed for closure and after-closure funds for Extractive Sites
- 3 Different Authorities – one FDA



Two processes Can happen in parallel

Calculating the Liability:



Financial Provision:



FUNDING AND DRAWDOWN AGREEMENT

- the main FP document for Extractive Sites

- Initial Funding & Subsequent Funding
- Withdrawals from the account – in case of insolvency and default
- Annual Review
 - works/developments/costs incurred. Adjustment to overall liability required?
 - forecasted costs for next year
- Periodic release of funds for works carried out.
 - Independent certification & detailed report on spending
 - Letter to bank signed by competent authority(ies)

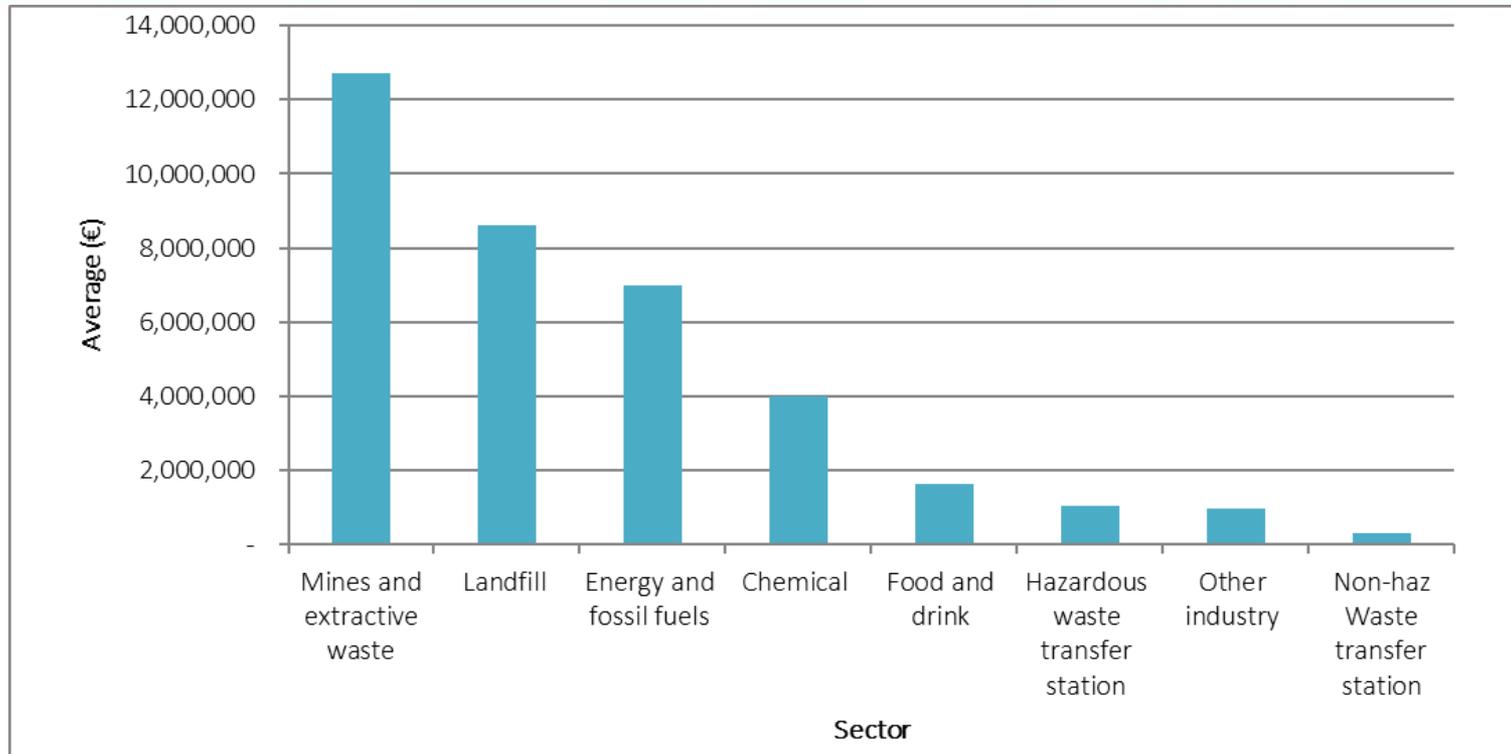
Good environmental outcomes – for closure



Wetland Creation - low maintenance aftercare



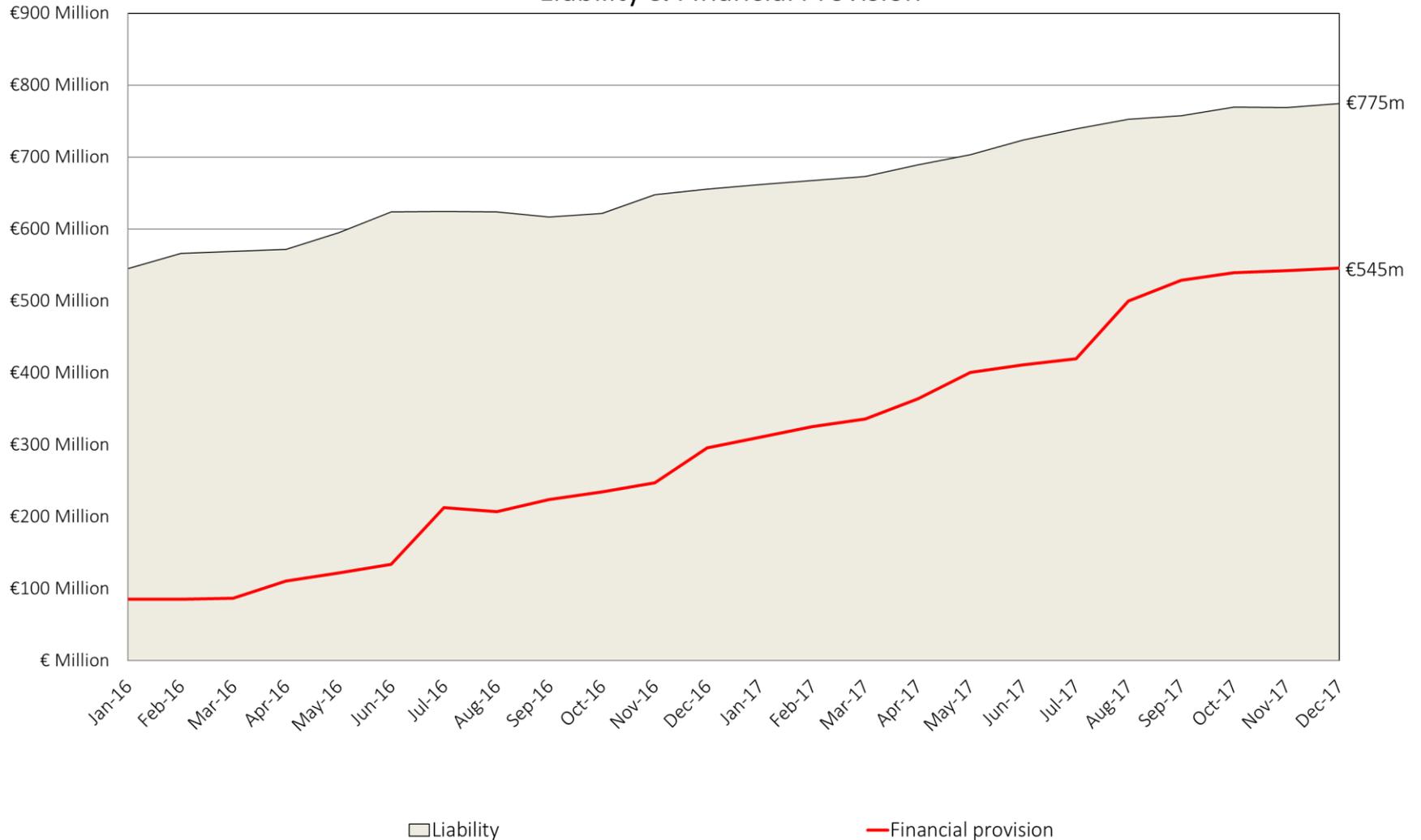
Closure Liability



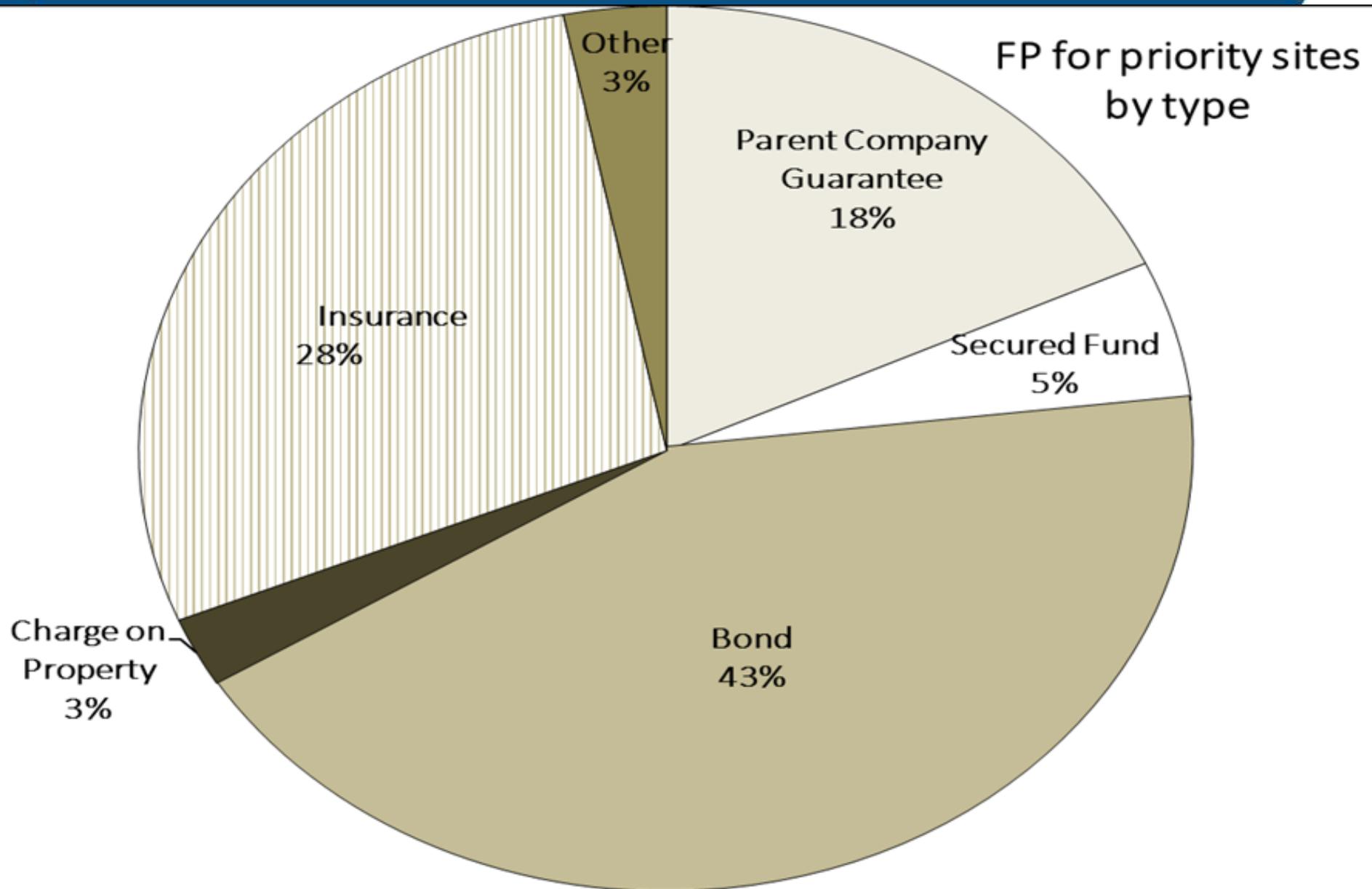
- Pre-guidance (operator estimate = 47% of final agreed costs)
- Post-guidance (operator estimate = 73% of final agreed costs)

Financial provision secured

Liability & Financial Provision



Financial provision types



Where are we at

- Guidance on costings available over 3 years.
- Guidance on financial provision finalised 2 years and EPA has developed templates further in that period.
- With all elements now in place, good progress has been made
- The EPA will continue to enforce licence requirements as a priority



Thank you

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