

Cllr Del Morgan
Chair
Audit Committee
(By Email)

Dear Councillor Morgan,

**NEATH PORT TALBOT WASTE MANAGEMENT COMPANY LTD &
NEATH PORT TALBOT (RECYCLING) LIMITED**

1. Thank you for your email and letter of 17 August regarding paid officer appointments in the above companies. This is a very lengthy response – and necessarily so in my view for a number of reasons.
2. As you will see below, the origins of this situation date back some thirty years. It is understandable that Members (newly elected in particular) would not be steeped in the background; but I am concerned about some of the comments attributed to Members at the Audit Committee meeting on 26 July. Essentially, I do not believe that the role of officers (and others) in these companies can be divorced from the long and complex history to the matter and I hope the detail of this response allays any concerns about a lack of transparency. I return to these issues and several others towards the end of this letter; but it is essentially in two parts: the history and origins of the current arrangements and my attempt to address the issues raised at the Audit Committee meeting (at least as they were reported to me).
3. Thus I turn first to the historical background. In the late 1980's, Government policy was to take local authorities out of direct provision of waste disposal.

Chief Executive's Office
Swyddfa'r Prif Weithredwr

Steven Phillips
Chief Executive
Civic Centre, Port Talbot. SA13 1PJ
Tel 01639 763306

Steven Phillips
Prif Weithredwr
Y Ganolfan Ddinesig, Port Talbot. SA13 1PJ
Ffôn 01639 763306

4. This was embodied in section 32 of the Environmental Protection Act 1990. Essentially, if local authorities wished to continue waste disposal in their area they had to establish what were known as Local Authority Waste Disposal Companies (LAWDCs). These companies were required to win the right to provide the service through competitive tendering and they were subject to statutory rules governing the number of Directors who could be local authority Members or employees. The number was limited to one fifth of the Board of Directors. Whilst section 32 (with its specific requirement for, and controls of, LAWDCs) was subsequently repealed, the general law on local authority companies remained.
5. In addition, the former Neath Borough Council had for many years operated the Giants Grave Landfill Site. This site provided waste disposal facilities not only for Neath, but for other areas also. In 1991, the Borough Council formed Neath Waste Management as a LAWDC to operate the Landfill Site. For this purpose, the site was leased to that company for the term of fifteen years from 1 April 1993. Neath Waste Management successfully bid for the waste disposal contract from the Borough Council and from other neighbouring authorities.
6. The Directors of the company consisted of the then Chief Executive of Neath Borough Council and four others appointed by the local authority. Following local government reorganisation in 1996, the name of the company was changed to Neath Port Talbot Waste Management.
7. During the late 1990's, as a result of growing pressures to recycle and divert more waste from landfill, this Council issued tenders for the disposal of waste by alternative means including recycling, incineration, composting and residual landfill. In parenthesis, it is worth noting the sea change that has occurred on waste disposal over the last twenty years or so: in the mid-1990s circa 5% of waste was recycled; but today the figure is in excess of 60% and subject to statutory targets which can result in fines unless met.
8. The successful bid was from a Portuguese consortium known as HLC. In September 2000 an exceptionally complicated set of contractual arrangements were put into effect to secure the construction and operation of the Materials Recovery and Energy Centre (MREC). There were a number of different parties to the agreement; but two key ones: HLC (Neath Port Talbot) Limited and HLC

Chief Executive's Office
Swyddfa'r Prif Weithredwr

Steven Phillips
Chief Executive
Civic Centre, Port Talbot. SA13 1PJ
Tel 01639 763306

Steven Phillips
Prif Weithredwr
Y Ganolfan Ddinesig, Port Talbot. SA13 1PJ
Ffôn 01639 763306

Waste Management Services Limited.

9. The Council's main contract for the provision of the MREC service was with HLC (Neath Port Talbot) Limited. This was a "special purpose" company set up in overall charge of the project. Neath Port Talbot Waste Management Ltd had a 19.9% share in the company. However, the day to day running of the MREC was the task of another company under an operation and maintenance contract. It was originally intended that the MREC be run by another company but, as it turned out, the then Environment Agency (now Natural Resources Wales) permit was granted to a company called HLC Waste Operations Limited and that company then took on the running of the MREC. In October 1998, HLC Waste Operations Limited changed its name to HLC Waste Management Services Limited.
10. Under the contractual relationships established, the Council had what are known as "step-in rights" in relation to the contract between HLC (Neath Port Talbot) Limited and HLC Waste Management Services Limited. As far as the operation and maintenance contract was concerned the Council stepped into the shoes of HLC (Neath Port Talbot) Ltd. The MREC did not perform to contractual requirements and the contract with HLC (Neath Port Talbot) Limited was terminated. The Council stepped into the operation and maintenance contract to ensure the continuing operation of the MREC.
11. On conclusion of litigation with the Bank of Scotland (who were trying to recover loans to the company), it was intended to put HLC Waste Management Services Limited into liquidation; but that did not prove possible since the company owned the permit for the continued operation of the MREC. In order to secure the permit and the continued operation of the MREC, Neath Port Talbot Waste Management purchased the remaining issued shareholding in HLC Waste Management Services Limited which then changed its name to Neath Port Talbot (Recycling) Limited.
12. There is an issued shareholding of 86,000 shares in Neath Port Talbot Waste Management Limited. All of these shares are held by the Council. The present nominees for the purpose of exercising the shareholder vote in a general meeting of the company are the current Head of Legal and Democratic Services and me (unpaid). There are currently three Directors Mr. W. Watson, Mr. D.

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Swyddfa'r Prif Weithredwr

Steven Phillips
Chief Executive
Civic Centre, Port Talbot. SA13 1PJ
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Prif Weithredwr
Y Ganolfan Ddinesig, Port Talbot. SA13 1PJ
Ffôn 01639 763306

Davies and Mr. G Nutt (remunerated – please see below). As regards Neath Port Talbot (Recycling) Limited, there is an issued shareholding of 150,000 shares with all of the shareholding held by Neath Port Talbot Waste Management Limited. The Directors are the same as above and are appointed by Neath Port Talbot Waste Management at the annual general meeting of the company.

13. I now turn to some of the issues that I understand were raised by Members in the Audit Committee on 26 July.
14. First, concerns were apparently raised over potential conflicts of interest and the role of the Director of the Environment. I would respond by again underlining the complex history to these arrangements. Are they ideal? Answer: No; but has anybody (Members, officers or third parties) been able to come up with a better solution over the years? Answer: again, no. Some fifteen years ago, the District Auditor (the forerunner of the Wales Audit Office) effectively insisted that my predecessor be removed from the companies' boards because of a potential conflict of interest in the context of the Bank of Scotland litigation. However, the rationale for that position did not extend to other Council officers or Members. To the best of my knowledge, our external auditors have not formally objected to these arrangements since.
15. Following my appointment (in 2009), I reviewed the position again as part of my regular discussions with Wales Audit Office and I consulted them on the terms of the advice put to Members in June and July 2010 – again see below. Once more, the bottom line was that neither they nor I could come up with a better solution in the circumstances at the time. I have to say that had I been around ten years previously, I would not have advised the Council any differently either (except perhaps at the margins). I think it is very important that Members understand that had the Council's success in the £40 million Bank of Scotland litigation gone the other way, the result could have been financially and operationally catastrophic for the Council. Moreover, the Council had then and has now, a statutory duty to collect and dispose of waste (and the MREC is an integral part of that operation) plus we also have contractual commitments to Bridgend County Borough Council as their waste disposal authority. Thus the Council – then and now – must deal with the situation in front of it and in the round. This inter-dependency is essentially why

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Swyddfa'r Prif Weithredwr

Steven Phillips
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I do not think the issues can be considered in isolation from one another.

16. Second, the Council is alleged to be holding back information from Members. I hope the length and content of this letter demonstrates clearly that this is not the case. There are a whole series of reports – listed below – which have been put in front of Members over the years and I am quite content to arrange for Democratic Services to prepare a file of these reports for Members of the Audit Committee to inspect at their convenience. Most of the reports were private; but there are very probably others on the “ModernGov” system going back many years (e.g. these issues will have featured as a factor in successive Budget setting rounds). However, in the interest of complete transparency, I think it is important for Members to have access to whatever information they require.
17. Third, there was a query about the procedures for shareholders reporting back to Council? The simple answer is that there has been little or nothing to report. As the report to the Audit Committee on 26 July makes clear at Appendix 1, there has been no dividend paid to the Council for many years. However if Members require a formal report, that can be arranged on an annual basis.
18. Fourth, there was a question about whether or not the arrangements have been reviewed regularly – the essence of your letter. The answer is yes. The reports to which I refer above include the following during a key period:
 - Cabinet: 12 July 2006 – authority to negotiate a compensation package with the Bank of Scotland and other matters;
 - Cabinet (Special): 6 February 2008 – management changes at Neath Port Talbot Waste Management Limited;
 - Cabinet: 18 December 2008 - MREC governance and other matters;
 - Cabinet (Special): 17 February 2010 – the provision of a recycling storage building at the MREC;
 - Cabinet: 9 June 2010 - waste procurement strategy;
 - Cabinet: 1 July 2010 – governance arrangements plus Directorships and officer roles; and
 - Cabinet: 21 September 2011 - waste strategy and Giants Grave Landfill Site.
19. In addition, there have been a number of discussions with Cabinet Members

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Chief Executive
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Prif Weithredwr
Y Ganolfan Ddinesig, Port Talbot. SA13 1PJ
Ffôn 01639 763306

over the years about these arrangements – for example, I recall a debate in 2013 (I think). Thus I hope you would agree that all of this is clear evidence of regular reporting. Any inference to the contrary would be incorrect.

20. Fifth, the level of Directors' remuneration. In this regard, I enclose the latest published accounts of both MREC companies which list the levels of remuneration. The question that will then arise is whether or not this can be justified? My answer is unequivocally yes. I think it is important to understand what we are dealing with here. Quite apart from the complexities I have outlined and the essential role of the MREC in the Council's waste disposal arrangements, this is a facility which operates on a daily basis and at some personal risk to those running it. I underline the point by referring to an industrial accident in 2013 which resulted in a prosecution of Neath Port Talbot (Recycling) Limited by the Health and Safety Executive and a substantial fine. Accordingly, this is an inherently dangerous facility unless it is run properly. Therefore, those responsible for it need to be remunerated given the risks involved. Why would they do it otherwise? I would argue that the Council has a degree of responsibility (as the sole shareholder) in this regard, so in my view it cannot be a case of simply objecting to the arrangements. It is incumbent on the Council to come up with an alternative in these circumstances.
21. Moreover, I do not regard the level of remuneration as excessive nor do I regard comparisons (another point raised?) with the remuneration of other senior Council officers as a consequence of these arrangements as relevant. I also contrast this with my own position as an unpaid Director of Coed Darcy Limited and Baglan Bay Limited where there is no such risk and, therefore, no justification for remuneration. I might add that in my previous employment with Cardiff Council, I was a Director of their LAWDC. However, that company was dormant and non-operational and I was unpaid in the role.
22. Sixth and finally, I was very concerned to hear that there were unsubstantiated allegations of possible fraud made at the meeting on 26 July. **If this is an accurate reflection of the debate, I must insist that the Members concerned put forward their evidence or immediately withdraw the allegations.** I have no evidence before me of any such malpractice - and whilst I am fully supportive of scrutiny by Members, I do not think it is fair or reasonable to bandy about unsupported allegations which can only cause reputational

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damage to the Council and individuals.

23. From all this, I draw the following conclusion. The only way that the management and governance arrangements around the MREC companies are going to evolve is through a procurement process for more sustainable operations in the future. This authority, collaborating with Bridgend Council, has been undertaking such a process for some time, and I am pressing hard for a definitive report to be put to the Cabinet during the autumn. For many of the same reasons outlined in this report, this process has been long and complex (not helped in my opinion by a longstanding and overly rigid Welsh Government procurement framework which does not represent value for money); but advice from officers and decisions from Members are now overdue – not least because the MREC itself represents ageing technology and a difficult operational site which will be in need of major investment in the short to medium term otherwise.
24. All things considered - and should you so wish - I would welcome the opportunity to appear at the next meeting of the Audit Committee on 27 September to discuss the content of this letter and address any supplementary questions that Members may have. I think it is very important that all Members have a clear understanding of both the extensive history, the origins of the current arrangements and the issues facing the Council going forward.
25. For completeness, I am sending copies of your correspondence and this reply to the Leader of Council, the Deputy Leader and the Cabinet Members for Streetscene & Engineering and Finance.

Yours sincerely,



Steven Phillips
Chief Executive

Chief Executive's Office
Swyddfa'r Prif Weithredwr

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Chief Executive
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