



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

### **CABINET**

**5<sup>th</sup> February 2020**

#### **Report of the Head of Legal Services – Mr Craig Griffiths**

##### **Matter for Decision**

##### **Wards Affected: All Wards**

##### **Future arrangements in respect of Neath Port Talbot Council shareholding in Baglan Bay Company Limited and Coed Darcy Limited**

##### **Purpose of the Report:**

1. To outline the exit strategy of Neath Port Talbot Council (“the Council”) from Baglan Bay Company Limited and Coed Darcy Limited.

##### **Background:**

##### Baglan Bay Company Limited

2. The present arrangements in respect of this company goes back to the exit of BP Chemicals from Baglan Bay and Llandarcy when following a BP led procurement, St Modwen’s Developments were appointed the overall developers of the site.

3. In terms of Baglan Bay Company, St Modwen's Developments was identified as overall developer and required a vehicle to monitor remediation and to appoint a professional consultant to monitor. The company was not set up as a trading company and it depends on the income it receives from St Modwen's. St Modwen's currently has the underwriting obligations for Baglan Bay Company.
4. The total shares of Baglan Bay Company amount to four and are £1 each - the Council has two shares, St Modwen's one share and the Prince's Foundation one share. The Council entered into a Shareholders Agreement with these organisations to oversee the running of this organisation.
5. After remediation of the site, the Council and the Prince's Foundation may require St Modwen's to acquire their shares for £1 (Clause 9.2 of the Shareholders Agreement). The reason for this mechanism is to ensure Neath Port Talbot and the Prince's Foundation can exit from Baglan Bay Company once the overall remediation of the site has been signed off by the engaged consultant
6. The remediation strategy for the site has now been achieved and the Monitor has signed off the remediation of the site.

#### Coed Darcy Limited

7. Coed Darcy Limited was set up as a vehicle to monitor the remediation work, acquire and hold unadopted parts of the development and oversee and maintain the Urban Village concept set up at Coed Darcy. This was to act as an umbrella organisation for the residents as a management company and manage the business park at Llandarcy.
8. Coed Darcy Limited is not set up as a trading company. The Council has not received any dividends from them. St Modwen's has the under-writing obligations of the Company.

On completion of the remediation and after the remediation date, the Council and the Prince's Foundation may require St Modwen's to acquire their shares for a £1 so that the Council cannot be forced to remain as a shareholder going forward.

9. The remediation strategy has now been completed and a consultant has certificated the remediation of the site in accordance with the obligations.
10. The Council holds 30,168 £1 shares and St Modwen's Developments holds 32,135 £1 shares and the Prince's Foundation holds 30,279 £1 shares. In addition, the Prince's Foundation is able to offer their shares to the Council first before offering them back to St Modwen's. The Prince's Foundation has made this offer on the basis of their withdrawal and exit from Coed Darcy Limited on completion of the remediation.

#### Current Representatives

11. The Chief Executive is an unpaid Director of both companies (and has been since their formation) and as such it is proposed he remain as a single Director until such time as the legal documentation is completed. Mr Gareth Nutt, the previous Director of Environment has now retired and he has already resigned from both companies (he again was unpaid Director). Both these officers were nominated as representatives in light of their position within this Council as they were deemed the most appropriate individuals at the time. It is proposed in view of the impending return of shares to St Modwen that no further Council Directors are appointed at this stage.

#### Proposed Exit

11. As the remediation strategies have now been completed at both Baglan Bay and Coed Darcy, it is proposed that the proposed purchased agreements identified above be implemented.

12. Effectively, this means the Council in accordance with the agreement, implements the exit strategy which was envisaged when the documents were first developed, entitling the Council to require St Modwen to purchase the Council's shareholding for a £1. In addition, it is recommended that the Council decline the Prince's Foundation offer of shares in Coed Darcy Ltd so that the Prince's Foundation also offer their shares back to St Modwen on the same basis as set out in the agreement.

#### Impact of Exit Strategy

13. St Modwen's are already underwriting Baglan Bay Company Limited and it will continue to have responsibilities and liabilities in respect of discharging obligations around the environmental and on-going goals and liabilities on the site. The Council's involvement would cease as would any liabilities.
14. Upon the exit from Coed Darcy Limited, the Council's potential liabilities would cease. Coed Darcy Ltd would remain liable for ongoing environmental roles and liabilities, estate management obligations and urban village creation responsibilities.
15. The Council will continue to have control of both sites through the planning process and any Section 106 agreements made with developers on the sites.

#### **Financial Impacts:**

16. No impacts.

#### **Integrated Impact Assessment:**

17. There is no requirement for an integrated impact assessment as this is purely an administrative process to arrange the ongoing sale of shareholdings.

### **Valleys Communities Impacts:**

18. No impacts

### **Workforce Impacts:**

19. No impacts

### **Legal Impacts:**

20. A conditional sale share agreement which will provide for the Council's exist from the companies in a manner envisaged by the transaction documents will be prepared and agreed with the respective organisations.

### **Risk Management Impacts:**

21. Failure to implement the recommendations will see the Council retain its shareholding with Baglan Bay Company Limited and Coed Darcy Limited.

### **Consultation:**

22. There is no requirement for external consultation on this report.

### **Recommendations:**

23. It is recommended that:

- (a) The Council implement the provisions set out in the Shareholders Agreement for Baglan Bay Company Limited and offer back to St Modwen its shares in Baglan Bay Company Limited with the Chief Executive resigning from the Company once the legal documentation is in place
- (b) That the Council decline the offer of shares from the Prince's Foundation in respect of Coed Darcy Limited and that the Council implement the provisions set out in the Shareholding

Agreement for Coed Darcy Limited which requires St Modwen to acquire the Council's share for £1. In addition, the Chief Executive to resign from the Company once the legal documentation is in place.

- (c) That the Head of Legal Services in consultation with the Leader or appropriate Cabinet Member finalise the legal documentation in respect of the above transactions.

**Reasons for Proposed Decision:**

24. To implement the requirements of the Shareholder Agreement for Baglan Bay Company Limited and Coed Darcy Limited and to remove the Council as shareholders of these organisations.

**Implementation of Decision:**

25. The decision is proposed for implementation after the three day call in period.

**Appendices:**

26. None

**List of Background Papers:**

27. None

**Officer Contact:**

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