



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

CABINET

17 September 2020

Report of Assistant Chief Executive and Chief Digital Officer – Mrs K Jones and Head of Legal Services – Mr C Griffiths

Matter for Decision

Wards Affected: All Wards

Report Title:

1. Removal of elected members (“Members) from voluntary board of Tai Tarian Limited

Executive Summary

2. The participation by Members in bodies to which they have been appointed by their local authority is governed by a number of areas of law.
3. This report is intended to provide advice about the current and future appointment of Members to Tai Tarian Limited, the consequences of any current and/or historic appointment for participation in Neath Port Talbot County Borough Council (“the Council”) or Tai Tarian Limited business and how such arrangements can be now be overseen by Members as an alternative to voluntary board membership.

Purpose of the Report:

4. The purpose of this report is to consider whether the Members on the voluntary board of Tai Tarian Limited ought to relinquish their role as members of the voluntary board taking into account the Code of Conduct for members of local authorities in Wales (“Code”),

Background:

Introduction

5. In 2011 the Council entered a transfer agreement with Tai Tarian Limited (then known as NPT Homes Limited) (“the Transfer Agreement”).
6. The Transfer Agreement saw the Council and Tai Tarian Limited agree that four nominees would be put forward by the Council to sit on their voluntary board.
7. The voluntary board has overall responsibility for ensuring that the organisation is accountable to tenants and other stakeholders, approving and monitoring policies to support the Tai Tarian Limited corporate plan and to monitor the performance of Tai Tarian Limited ensuring that the organisation is meeting the responsibilities that are set out in their corporate plan.
8. At the time of the Transfer Agreement, the Council had four member representatives who sat on the voluntary board.

Change in 2018

9. On the 14th August 2018, the Regulation of Registered Social Landlords (Wales) Act 2018 came into force.
10. The overarching purpose of the 2018 Act was to amend or remove those powers that were deemed by the Office for National Statistics to demonstrate central and local government control over Registered Social Landlords. These changes enable the Office for National Statistics to

consider reclassifying Registered Social Landlords as private sector organisations for the purpose of national accounts and other economic statistics.

11. The 2018 Act provided that no appointment may be made to a board of a Registered Social Landlord which would result in local authority appointees amounting to more than 24% of the board members of the Registered Social Landlord.
12. On the 3rd October 2018, Cabinet resolved accordingly to reduce the number of nominees that it makes to the voluntary board of Tai Tarian Limited to two representatives.

Conflict of Interest and Code of Conduct Concerns

13. If the Council appoints a Member to serve on an outside body, this may have consequences for participation by that Member in considering Council business relating to that outside body. The basic rules are found in the Code of Conduct for members of local authorities in Wales that must, by law, be adopted by every local authority in Wales ("the Code").
14. The Code defines "personal interests" which must be declared in conducting Council business, but also a narrower sub-category of interests that are also "prejudicial interests". Generally, where the Member has a personal interest that is also a prejudicial interest, he or she must declare but also refrain from participating in any Council business that relates to that interest. However, there are particular rules where the interest relates to a body to which the Member has been appointed by the Council.
15. Paragraph 10 of the Code indicates that a Member has a personal interest in any business of the Council when a decision relates to or is likely to affect any body to which the member has been elected, appointed or nominated by the Council. Therefore, a Member must declare a personal interest whenever an item of business comes before the Member that relates to the body to which the Council has appointed them.

16. However, Paragraph 12 (2) provides that a member will not have a prejudicial interest if the item of business falls within one of a number of exemptions that includes business relating to a body to which the member has been elected, appointed or nominated by the Council. This exemption will not apply where the item of business concerns the determination of any approval, consent, license or regulation. Guidance issued by the Public Services Ombudsman for Wales expresses the view that this refers to a narrow category of decisions, such as granting planning consent and licensing decisions.
17. However, there will be circumstances where there is actually a straight conflict of interest which is impossible for the Member to resolve within the terms of the Code, for example, whether the Council should continue to support an outside body in preference to an alternative course of action and as part of this consideration, the terms on which this support is offered (for example, the content and length of any contract and/or leases) or perhaps scrutinising the governance of such bodies.
18. It is and always has been clear that when Members are appointed to outside bodies their prime duty is to that body. In addition, it is clear that they do not represent the Council in meetings of those bodies.
19. Whilst it is not unusual for local authorities to have elected members on the board of organisations such as Registered Social Landlords, the position now adopted since 2018, is that Welsh Government are seeking to amend or remove that level of oversight that were deemed by the Office for National Statistics to demonstrate central and local government control over Registered Social Landlords.
20. Accordingly, anyone who exercises powers in relation to the governance of such an organisation is bound to act solely in the interest of that organisation. Whilst it may be possible to deal with a conflict of interest by requiring the conflicted Member to withdraw from discussion and refrain from voting on matters giving rise to a conflict of interest, if there is a substantial and recurring conflict of interest, it may be necessary in the

interests of the Member in question to stand down on the voluntary board all together in favour of someone not subject to conflict of interest.

21. Because of this, Members cannot participate in any of the discussions about the business plan or operation of Tai Tarian Limited, as it is inextricably interconnected with the Transfer Agreement and obligations that Tai Tarian Limited have to the Council.
22. The issue of confidentiality is also important. A member appointed to the voluntary board should not disclose discussions at the board of Tai Tarian to the Council. This advice is consistent with the statutory and common law responsibilities of a company director in general. A board member owes duties of fidelity and confidence to the organisation and has a primary requirement to support and promote the interests and success of the organisation to which they are appointed. This opportunity creates an unsolvable dilemma for Members because they will be aware of information from their appointment to the voluntary board that reflect on their Council role but would also have an obligation not to reveal it.

Proposal

23. The current Covid-19 pandemic has highlighted a number of housing related issues, particular with the need to address homelessness in accordance with new Welsh Government policies and our own Local Development Targets.
24. Accordingly, our relationship with Tai Tarian Limited now needs to mature and move beyond the additional support that we provided to Tai Tarian Limited in its formative years and it would be advantageous for the Council to develop the relationship on a stronger strategic footing where we engage in discussions about how we can work collaboratively to meet the housing and social needs of residents in the County Borough, including meeting the strategic targets identified in the Local Development Plan and our other community strategies. A report will be brought to Members in due course

as to how the Council would wish to work with Registered Social Landlords and other strategic partners in the area to achieve this.

25. It is proposed that to address all of these concerns and as part of our ongoing work, the two Council nominee members on the voluntary board should resign from the board forthwith and the Council should no longer nominate anyone to the voluntary board of Tai Tarian Limited.
26. The Council is undertaking a thorough review of representations on outside bodies which highlights in some cases that representation could be withdrawn and reports will be brought to Members accordingly on this where appropriate.
27. Where there are continuing financial and service relationships between the Council and Tai Tarian Limited these will instead be governed by officer business meetings and referred to Members as appropriate.
28. Members are of course afforded the option to invite Tai Tarian Limited to any scrutiny committees that they might wish. The Transfer Agreement no longer stipulates that Tai Tarian Limited must attend but an invite could be extended.
29. The Transfer Agreement also provides the Council with rights to information held by Tai Tarian Limited and commits Tai Tarian (amongst other things):
 - to work with the Council in respect of certain community strategies
 - to work with the Council to tackle anti-social behaviour and community safety
 - to input into the formulation of homelessness strategies
 - to work in partnership with the Council to promote social and economic regeneration
 - to meet the requirements of the Transfer Agreement in relation to housing needs and tenancy issues.

30. It is proposed that the Council can continue to work with Tai Tarian Limited and hold Tai Tarian Limited to account by utilising the measures that exist within the said Transfer Agreement.
31. Adopting this approach will also mean the Council will have a relationship similar to other Registered Social Landlords that operate in the Neath Port Talbot locality such as Pobl and Coastal.

Financial Impacts:

32. There are no financial impacts associated with this report.

Integrated Impact Assessment:

33. A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. The first stage assessment, attached at appendix 1 has indicated that a more in-depth assessment is not required.

Valleys Communities Impacts:

34. There are no valley community impacts associated with this report.

Workforce Impacts:

35. There are no workforce impacts associated with this report.

Legal Impacts:

36. Schedule 1 of the Regulation of Registered Social Landlords (Wales) Act 2018 amends the provisions of the Housing Act 1996 and provides that Registered Social Landlords must ensure that members of their board who sit as local authority appointees cannot represent more than 24 per cent of the board members of the Registered Social Landlord.
37. The obligations on Members in the Code are identified in paragraphs 14-16 of this report.
38. The Transfer Agreement between the Council and Tai Tarian Limited will govern the relationship between the Council and Tai Tarian Limited from here on in.

Risk Management Impacts:

39. Failure to address the inherent conflict of interest that may arise could result in operational difficulties for the members appointed to the voluntary board of Tai Tarian Limited preventing them from actively pursuing a role in either with Tai Tarian Limited or the Council

Consultation:

40. There is no requirement for external consultation on this item.

Recommendations:

41. It is recommended that Neath Port Talbot County Borough Council notify Tai Tarian Limited that its two member appointments wish to resign from the voluntary board and from the date of such resignation, Neath Port Talbot County Borough Council no longer propose to appoint elected member representatives to the voluntary board of Tai Tarian Limited

Reasons for Proposed Decision

42. To ensure that suitable governance arrangements are in place in respect of the Council's relationship with Tai Tarian Limited and to prevent member appointments being placed in a position of conflict between their duties as members of the voluntary board and elected members of the Council.

Implementation of Decision:

43. This report subject to implementation after the three day call in period.

Appendices:

44. Appendix 1 – Integrated Impact Screening Assessment

List of Background Papers:

45. None

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