

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Cabinet

21st March 2022

Appendix A - Not for publication pursuant to Regulation 5(2) & (5) of Statutory Instrument 2001 No. 2290 and Paragraph 13 and 14 of Part 4 of Schedule 12A to the Local Government Act 1972. Pursuant also to Paragraph 21 of the Schedule, and in all the circumstances of the case, the public interest in maintaining the exemption is considered to outweigh the public interest in disclosing the information.

**Joint Report of the
Director of Environment and Regeneration, Nicola Pearce
Chief Finance Officer, Huw Jones
Head of Streetcare, Mike Roberts
Head of Legal and Democratic Services, Craig Griffiths**

Matter for Decision

Wards Affected: All Wards

Neath Port Talbot Waste Management Limited

Purpose of the Report

The purpose of the report is provide Members with an update on the previously agreed moving of the Council's Local Authority Waste Disposal Company, Neath Port Talbot Waste Management Ltd, and its subsidiary company, Neath Port Talbot Recycling Limited, into voluntary liquidation. The report also seeks approval for final decisions in relation to winding up of the companies.

Executive Summary

In March 2019, Cabinet took the decision to put in hand the ultimate winding up of the Council's Local Authority Waste Disposal Company - Neath Port Talbot Waste Management Limited (NPTWML), along with its subsidiary company - Neath Port Talbot Recycling Limited (NPTRL). It is

necessary to wind up the subsidiary company before the parent company can be wound up.

Following the decision, the Council brought in-house and subsequently changed the operation at the Transfer Station in Crymlyn Burrows (formerly known as the “MREC”) which was previously run by NPTRL.

Unfortunately before NPTRL could be put into voluntary liquidation however there were two financial claims against the company relating to contractual matters which needed to be dealt with by the Directors. Furthermore whilst one was a relatively modest issue, one involved substantial sums and ended in prolonged legal action. Both claims have now been resolved, the substantial claim via court proceedings at the end of 2021, albeit debt recovery proceedings further to the court action are now ongoing and yet to be concluded. In light of the Council taking on responsibility for pursuing the amounts due to NPTRL, NPTRL can now be wound up. On completion of the accounts the Council can move on to winding up Neath Port Talbot Waste Management Limited.

As with NPTRL, it is necessary to in-source or otherwise make arrangements for the activity of NPTWML prior to its winding up. Once NPTRL is wound up, the only business of NPTWML is the management and aftercare arrangements of the now closed Giants Grave Landfill site.

As the realisation of winding up the companies now approaches, some additional decisions to those previously taken by the Council have been identified which are addressed in this report.

Background

Neath Port Talbot Waste Management Company Limited (NPTWM) is the Council’s Local Authority Waste Disposal Company (“LAWDC”). NPTWM was incorporated in 1991 as was required at the time by the Environmental Protection Act 1990 to operate the landfill site at Giants Grave. NPTWM is wholly owned by the Council.

Following the collapse of the original “MREC” contract, NPTWM acquired a 100% shareholding in the operating company for the site at Crymlyn Burrows which was later renamed: Neath Port Talbot Recycling Limited (NPTRL).

As such the Council is the 100% shareholder of NPTWM, which in turn is the 100% shareholder of its subsidiary company NPTRL.

The specific requirements of Environment Act with regard to LAWDaCs was repealed by the Clean Neighbourhoods and Environment Act 2005, and subsequently the Council can again own and operate waste facilities.

In March 2019 the Council took the decision to start winding up both companies. It is necessary to wind up NPTRL before its parent company NPTWM can be wound up.

Neath Port Talbot Recycling Limited

NPTRL formerly operated the 'MREC' at Crymlyn Burrows.

In October 2019, NPTRL's staff, assets, contracts and Environmental Permit were transferred to the Council. As such the Council in-sourced the operation which forms a vital part of delivering the Council's statutory function as a Waste Disposal Authority.

After the insourcing of activity, NPTRL then had no employees, no assets and no contracts, but had two claims with potential liabilities which had to be resolved by the Directors before the company could be wound up under voluntary liquidation. The second and last of these claims was settled in court proceedings in November 2021, when NPTRL was awarded £755k relating to a dispute with a former sub-contractor. On the 16th February 2022, Cabinet approved the assignment of this debt to the Council to pursue, given the Council will be likely the beneficiary of the debt on the winding up of NPTRL. Attempts are now ongoing to pursue this debt.

Neath Port Talbot Waste Management Company Limited

NPTWM is the parent company to NPTRL. With the winding up of NPTRL, its only 'asset' is the closed landfill site at Giants Grave where it continues to look after the aftercare arrangements agreed with the regulator, NRW.

The closed site is located adjacent to the River Neath, upstream from Briton Ferry Wharf, and consists of approximately 64 hectares of land, of which 28 hectares has been subject to landfill. The site, formerly salt marshes, is protected from inundation by a perimeter bund. The former weighbridge compound and public waste site is accessed off Giants Grave Road, and the old landfill itself is some 750m further down the site haul road.

The site last received waste in 2003 further to which subsequent closure work and an aftercare plan were approved by NRW. The site moved into aftercare in 2013.

Aftercare arrangements include security and monitoring of the site, and also water, leachate and landfill gas management. The aftercare operation remains regulated by NRW in accordance with the ongoing environmental permit for the site. The leachate produced by the site is managed via a passive, gravity-fed system and reed bed treatment, and the treated leachate discharges by consent to the River Neath.

The company currently has the following contracts in place relating to aftercare management arrangements:

- A contract for landfill gas management,
- A contract for Site Management and Environmental Monitoring, which since 2018 has been undertaken by the Council (Environmental Health Section); and,
- A contract to provide site security and a number of utility agreements.

NPTWM has recently purchased the gas collection and utilisation infrastructure, to manage the landfill gas produced by the site and generate electricity for export to the grid. The Council is party to the grid connection agreement.

Under the Environmental Permit the site operator remains liable for compliance with the permit until the Regulator is satisfied that the site is no longer likely to cause any risk to the environment. Whilst there is no prescribed period for the aftercare phase, NRW consider it appropriate to base financial plans on a 60 year period after the operational phase of a landfill site. The aftercare arrangements are currently about 15 years through the 60 year aftercare plan.

It is noted that, on transfer, the Contract between the company and the Council's Environmental Health Section regarding site management will fall as the Council cannot have a contract with itself. Should the transfer be agreed the Director of Environment and Regeneration has determined that responsibility of the site will be vested by Estates with Streetcare Services and consequent to this the Head of Streetcare will need to make new arrangements to cover the 'fallen' contract. This would be by means of an internal Service Level Agreement whilst the activity remains in-house.

Directors Redundancy Costs

Information in relation to the redundancy costs of any director involved with NPTRL and NPTWML are included in Appendix A¹ (private appendix)

Liquidation Process

Members' Voluntary Liquidation (MVL) is a winding up procedure for solvent companies. A MVL can be commenced if the directors of the company are able to swear a statutory Declaration of Solvency and at least 75% of the company's voting members have agreed to pass a special resolution to wind up the company voluntarily and to pass an ordinary resolution (50%) to appoint a Liquidator of the company. Following the completion of the liquidation the company will be automatically dissolved three months after the Liquidator's final return to Companies House. A MVL is typically used where a solvent company has served its purpose and is a tax efficient way of distributing assets to the company's members by way of capital distributions subject to capital gains tax (CGT) rather than as income subject to income tax (IT) and potentially National Insurance Contributions (NIC) (or in this case Corporation tax on capital gains). The use of MVLs can also enable the tax efficient restructuring of a group of companies.

The directors must make a sworn Declaration of Solvency, which effectively confirms that they have examined the company's financial position and that the directors are of the opinion that the company will be able to pay all its debts plus statutory interest within 12 months (or maybe less). The Declaration must disclose all assets and liabilities, must be declared before a solicitor and has to be made 5 weeks or less before the MVL commences and be filed at Companies House within 15 days of the MVL commencement. The Liquidator's function is to realise the assets, pay any debts outstanding plus any statutory interest thereon at 8 % p.a. (after costs) and then distribute the remaining monies available to the shareholders, in this case the Council. The Liquidator may distribute certain assets if circumstances permit.

If cash and assets available for distribution are £25,001 or more then the distribution received will stand to be taxed at the CGT rates prevailing. It may be possible (provided that certain criteria are met) for shareholders to

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take the advantage of Entrepreneurs' Relief (ER), whereupon if an ER claim is possible capital gains tax payable will stand to be at 10%. In addition, there is an annual exemption to CGT that would apply to capital distributions if not claimed against other chargeable gains, although this is not applicable in this instance.

In short, to place both Companies into Members' Voluntary Liquidation, two meetings are required for both Companies, the first being a directors' meeting where all or a majority of directors will be required to sign to call a members' meeting, which typically takes place on the same day, around 30 minutes later, as long as 95% of the members are in agreement and waive their right to full statutory notice of a members' meeting (which should not be an issue in this case). In between those meetings the Declaration of Solvency will be sworn, before a solicitor, by a majority of the directors of for each Company.

Financial Impact

NPTRL's ongoing and winding up costs will be borne by NPTRL. Following winding-up, remaining proceeds will be transferred to the parent company NPTWM.

Similarly, NPTWM's ongoing cost, together with winding up costs, will be borne by NPTWM, and proceeds remaining will transfer to the Council as 100% shareholder.

The 60 year closure plan includes a financial plan for maintaining the site. On winding up the council will be in receipt of two sums of money which can be placed in reserves to help with the cost of aftercare:

- Proceeds from winding up of the companies, estimated at £1,100K, excluding any recovery of the assigned debt of £755K, noting it has previously been agreed a large part of this would be allocated to the ongoing re-modelling of the transfer station to increase recycling capacity etc.); and,
- Funds within the Company's 'site remediation and aftercare' account held by the council, currently standing at £813k).

After asset transfer, arrangements would need to be put in place with respect to an annual draw down from these funds or allocation of an annual revenue budget as provides best value to the council, to cover the ongoing

day to day annual site management and maintenance costs. The council would need to periodically review the financial plan associated with the ongoing aftercare commitments to ensure its sufficiency in the longer term.

The Council will need to acquire the landfill gas and utilisation infrastructure assets recently purchased by NPTWM from their former service provider as part of the proposed transfer, currently valued at £129,000.

Integrated Impact Assessment

A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-Being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

An initial first stage impact assessment has been undertaken, as attached at Appendix A, which has indicated a full in-depth assessment is not required.

Valleys Communities Impacts

No implications.

Workforce Impacts

NPTWM and NPTRL have no staff. Matters concerning the Directors and Company Secretaries are dealt with in the report.

There is one officer within the Council who for some time has undertaken approved secondary employment with NPTWM that will terminate and appropriate consultation will take place with this employee as part of this process.

Legal Impacts

The winding up of both companies will be in pursuant to obligations under the appropriate company legislation.

Risk Management Impacts

By winding up its LAWDaC, the Council can take direct control over the environmental maintenance of the closed landfill site at Giants Grave.

As the 100% shareholder of NPTWM and the landowner of Giants Grave, the Council already has ultimate liability for the site and its aftercare.

Consultation

There is no requirement to consult on this report but discussions have been ongoing with both companies and appropriate statutory bodies.

Recommendation

It is recommended that Cabinet, having due regard to the integrated impact screening assessment, notes the progress towards winding-up Neath Port Talbot Recycling Limited and Neath Port Talbot Waste Management Limited and that,:

- Delegated authority be granted to the Director of Environment and Regeneration to agree the acquisition of Neath Port Talbot Waste Management Limited assets for £129,000 and that this amount is built into the Council's Capital Programme;
- Delegated authority be granted to the Director of Environment and Regeneration in consultation with the Cabinet Member for Street Scene & Engineering to agree any documentation necessary for the transfer of Neath Port Talbot Waste Management Limited assets to the Council;
- Delegated authority be granted to the Director of Environment and Regeneration to transfer the Environmental Permit for Giants Grave to the Council on a date to be determined by the Director of Environment and Regeneration;
- Members note the winding up process that Neath Port Talbot Recycling Limited and Neath Port Talbot Waste Management Limited will undertake and the redundancy payments that are to be issued to directors and the company secretary;
- Delegated authority be granted to the Chief Executive and Head of Legal and Democratic Services as the Council's Shareholder Representatives for Neath Port Talbot Recycling Limited and Neath Port Talbot Waste Management Limited to enter into agreements necessary to confirm the Council's consent to the winding up of Neath Port Talbot Recycling Limited and Neath Port Talbot Waste Management Limited and issue any directions that may be necessary to implement the winding up; and,

- That a suitable arrangement be put in place for the site management of Giants Grave on terms to be agreed by the Director of Environment and Regeneration.

Reason for Decision

To ensure that suitable arrangements are in place for the winding up of NPTRL and NPTWML

Implementation

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

Appendices

Appendix A – Information concerning Directors of NPTRL and NPTWM

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Appendix B – Integrated Impact Assessment Screening

Background Papers

Report to Cabinet: Materials Recovery and Energy Centre – In House Services, 6 March 2019 and associated minutes of the meeting.

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