

T: 01495 355001

E: committee.services@blaenau-gwent.gov.uk



Blaenau Gwent

Our Ref./Ein Cyf.
Your Ref./Eich Cyf.
Contact:/Cysylltwch â:

THIS IS A MEETING WHICH THE PUBLIC ARE ENTITLED TO ATTEND

Dydd Gwener, 21 Ebrill 2023 Dydd Gwener, 21 Ebrill 2023

Dear Sir/Madam

CABINET

A meeting of the Cabinet will be held in via MS Teams (if you wish to view this meeting please contact michelle.hicks@blaenau-gwent.gov.uk) on Dydd Gwener, 28ain Ebrill, 2023 at 9.30 am.

Yours faithfully

Damien McCann
Interim Chief Executive

AGENDA

Pages

1. CYFIEITHU AR Y PRYD

Mae croeso i chi ddefnyddio'r Gymraeg yn y cyfarfod, mae angen o leiaf 3 diwrnod gwaith o rybudd os dymunwch wneud hynny. Darperir gwasanaeth cyfieithu ar y pryd os gwneir cais am hynny.

2. YMDDIHEURIADAU

Derbyn unrhyw ymddiheuriadau am absenoldeb.

Mae'r Cyngor yn croesawu gohebiaeth yn Gymraeg a Saesneg a byddwn yn cyfathrebu gyda chi yn eich dewis iaith, dim ond i chi rhoi gwybod i ni pa un sydd well gennych. Ni fydd gohebu yn Gymraeg yn creu unrhyw oedi.

The Council welcomes correspondence in Welsh and English and we will communicate with you in the language of your choice, as long as you let us know which you prefer. Corresponding in Welsh will not lead to any delay.

DATGANIADAU BUDDIANT A GODDEFEBAU

Derbyn unrhyw ddatganiadau buddiant neu oddefebau.

PORTFFOLIO LLE AC AMGYLCHEDD

4. RHEOLI'R ORSAF DROGLWYDDO GWASTRAFF 3 - 14 A'R CANOLFANNAU AILGYLCHU GWASTRAFF CARTREFI YN Y DYFODOL

Oherwydd yr angen i ystyried yr eitem ddilynol fel mater o frys, mae Arweinydd y Cyngor a'r Aelod Llywyddol wedi cadarnhau y gellir ystyried y mater dilynol dan ddarpariaethau Paragraff 4(b), Adran 100(b) Deddf Llywodraeth Leol, 1972.

RHESYMAU DROS FRYS

I gydymffurfio gydag amserlenni cyfreithiol.

I ystyried yr adroddiad ar y cyd gan y Prif Swyddog Masnachol a Chwsmeriaid, y Prif Swyddog Adnoddau a'r Pennaeth Cydymffurfiaeth Cyfreithiol a Chorfforaethol.

To: S. Thomas
Councillor H. Cunningham
J. C. Morgan
H. Trollope
Councillor S. Edmunds

All other Members (for information)
Interim Chief Executive
Chief Officers

Agenda Item 4

Cabinet and Council only

Date signed off by the Monitoring Officer: 27.04.2023

Date signed off by the Section 151 Officer: 27.04.2023

Committee: **Cabinet**

Date of meeting: **Friday 28th April 2023**

Report Subject: **Future Management of the Waste Transfer Station and Household Waste Recycling Centre**

Portfolio Holder: **Cllr. Helen Cunningham, Deputy Leader and Executive Member for Place and Environment**

Report Submitted by: **Bernadette Elias, Chief Officer Commercial and Customer**
Rhian Hayden, Chief Officer Resources
Andrea Jones, Head of Legal and Corporate Compliance

Reporting Pathway								
Directorate Management Team	Corporate Leadership Team	Portfolio Holder / Chair	Governance Audit Committee	Democratic Services Committee	Scrutiny Committee	Cabinet	Council	Other (please state)
	26.04.23					28.04.23		

1. Purpose of the Report

1.1 The purpose of the report is to:

- Provide Cabinet with an update on progress to deliver upon the Council resolution of 7 February 2022 to bring back in house the services provided by Silent Valley Waste Services Ltd and subsequently wind up the company.
- Seek approval for the delegation of Officers to agree final terms of the hiving up agreement and any other ancillary agreements which may be required in the future to give full effect to the transfer between the Council and Silent Valley Waste Services Limited; and
- Seek approval for the delegation of officers to agree the Deed of Performance (including the financial commitment) between the Council and Natural Resources Wales to support transfer of the Environmental Permit.

2. Scope and Background

2.1 On 7 February 2022, full Council considered a report on the future management and operation of the Waste Transfer Station and Household Waste Recycling Centres. At that time the Council resolution included that:

- The services be brought back in-house and the winding up of the company named therein.
- Additional costs be built into the Council's Medium Term Financial Strategy (MTFS) and agreed budget from 2022/23 onwards. It was estimated that this would be £390,000 for 2022/23 increasing to £673,000 in 2023/24, prior to cost mitigation opportunities.

- 2.2 Immediately after the Council resolution, programme management arrangements were established for the transition. The Chief Officer Commercial and Customer was assigned to the role of Senior Responsible Officer (SRO) and has led on the work to deliver the decision.
- 2.3 A Transition Working Group was established, and a term of reference agreed. The working group, chaired by the SRO, developed a transition plan and has been meeting regularly to monitor and advise on progress.

3. **Recommendation**

- 3.1 To consider and accept the update provided on the proposed transfer of services from SVWS to the Council on 1 May 2023 (including the transfer of assets and liabilities on or after the transfer date up to the point of winding up of the Company).

Note that the estimated financial impact remains within the budget envelope agreed previously and:

Provide approval for the delegation of Officers to negotiate and agree:-

- final terms of the hiving up agreement and any other ancillary agreements which may be required in the future to give effect to the transfer between the Council and Silent Valley Waste Services Limited.
- the Deed of Performance (including the financial commitment) between the Council and Natural Resources Wales to support transfer of the Environmental Permit.

4. **Evidence of how this topic supports the achievement of the Corporate Plan / Statutory Responsibilities / Blaenau Gwent Well-being Plan**

- 4.1 The Well-Being of Future Generations (Wales) Act is legislation that seeks to improve the social, economic, environment and cultural well-being of Wales. It will ensure that the Council thinks more about the long-term, works collaboratively with people and communities along with trying to prevent future problems and take an approach that will help to create a Wales that we all want to live in, now and in the future.
- 4.2 To assist with working towards this vision seven well-being goals have been established. Throughout the areas considered within this report and across this service the Council will be focused upon ensuring that the way in which the Services are delivered in the future works towards achievement of all these goals.
- 4.3 This topic links with the Corporate Plan 2022-27. The aim is to increase rates of recycling to enable us to achieve national targets set by Welsh Government.

5. **Implications Against Each Option**
Impact on Budget (short- and long-term impact)
- 5.1 **Annual Operating Costs**
- 5.1.1 The report considered by Council in February 2022 highlighted that the estimated annual costs of operating the services were in the region of £1.635m resulting in a cost pressure to the Council of between £563,820 and £673,000 (compared to the budget available in 2021/22 - £1.03m).
- 5.1.2 Consequently, the Council agreed to build these additional costs into the Medium-Term Financial strategy and agreed budget, with £390,000 included for 2022/23 and a further £283,000 for 2023/24.
- 5.1.3 After applying the agreed MTFs inflationary uplifts, the Council's agreed net operating budget for the services transferring in (for 2023/24) is therefore £1.74m. The financial modelling undertaken as part of the Transition work estimates that the net costs of providing the services in house during 2023/24 will be £1.65m (see appendix 1), within the budget envelope agreed by Council.
- 5.2 Other Financial Commitments:
- 5.2.1 *Landfill Aftercare Obligations*
Silent Valley Waste Services Ltd, as the lease holder and permit holder are responsible for the Landfill Aftercare Obligations of the Silent Valley Landfill Site. These responsibilities will transfer to the Council following the transfer of the Landfill Permit and the early termination of the lease on 1 May 2023. As the owner of the site these would have reverted to the Council following the natural end of the lease in 2044.
- 5.2.2 *Leachate Disposal Obligations*
The Council has and will continue to be responsible for the Leachate Disposal Obligations. Historically SVWS agreed to either fully fund or more recently contribute to the costs of Leachate disposal. However as reported in February 2022 these contributions will now end as scheduled.
- 5.3 As a result of the Council's application to transfer the environmental permit for the landfill, Natural Resources Wales asked the Council to prepare an updated financial model for the future landfill / leachate obligations. The model highlights a potential financial commitment of £8.76m between 2023 and 2076 (the current end of the permit). This commitment will be reassessed on a regular basis.
- 5.4 The potential financial commitment can be analysed as £2.14m for the landfill element and £6.6m for leachate disposal. The financial commitment will be satisfied over the period of the model by a mix of contributions from the agreed annual budget (leachate disposal costs are already built into the base budget) and the establishment of a reserve following the transfer of assets & liabilities from SV.

As at 31 March 2022, SV's aftercare provision was £1.86m and their Profit & Loss Reserves were £1.5m, a total of £3.36m. These will be updated for 31 March 2023 and as per the proposal from the February 2022 report it is recommended that the balance on the SV Aftercare provision and the profit & loss reserve be transferred into an earmarked reserve within the Council to support the financial commitment.

- 5.5 The Deed of Performance between the Council and Natural Resources Wales will place an obligation upon the Council to undertake the landfill aftercare required from an environmental permitting perspective. If the Council fails to undertake this work the agreement enables NRW to carry out the required work and to recover the costs from the Council.

Risk including Mitigating Actions

- 5.6 The financial model included within the Deed of Performance assesses the potential financial commitment for the Aftercare of the site (including leachate disposal) over the next 54 years of landfill aftercare. These are only estimates and there is a risk that the actual works required, and costs incurred will exceed (or be less) than profiled. The Financial Commitment will be reassessed on a regular basis.
- 5.7 Failure to agree the hiving up agreement with Silent Valley Waste Services limited, will mean the transfer of the assets and liabilities of Silent Valley Waste Services to the Council will be unable to take place and the winding up process will not be progressed.
- 5.8 Failure to agree the Deed of Performance (which includes the financial commitment) with Natural Resources Wales, will result in NRW declining to transfer the landfill environmental permit and the Council will be unable to operate or control the site. Alternative arrangements will need to be considered since the permit will remain with Silent Valley Waste Services.

Legal

- 5.9 External professional legal advice has been sought and having regard to the advice received, it is necessary for Cabinet to give final approval to the arrangements for acquisition/transfer of Silent Valley Waste Services to the Council.

Human Resources

- 5.10 Employees of Silent Valley Waste Services will transfer to the Council under TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) arrangements. Organisational Development has carried out consultation and engagement with staff who will transfer to the Council. This has been done in conjunction with Silent Valley Waste Services Limited and the joint trade unions (GMB and Unison).

- 5.11 To maintain compliance with the Environmental Permit a suitably qualified and competent officer is required to be employed by the permit holder. This means that if the permit transfer does not take place arrangements would need to be put in place to enable Silent Valley Waste Services to maintain compliance with the existing Environmental Permit.

6. **Supporting Evidence**

Performance Information and Data

- 6.1 To complete the transfer of Silent Valley Waste Services, the Council was required to transfer the environmental permits held by Silent Valley. Without these the Council would not legally be able to operate the sites. The process to transfer the permits commenced early into the process alongside NRW and permits for the waste transfer station and household waste recycling centres were transferred without issue.
- 6.2 The process to transfer the landfill permit has been longer due to the landfill site being closed, and any operator of the site will be required to carry out landfill aftercare obligations for up to 60 years from the point of landfill closure. Definitive closure of the Silent Valley site was achieved in 2016 so there are 54 years of landfill aftercare obligations remaining.
- 6.3 In order to finalise the permit transfer the Council will be required to enter into a Deed of Performance with Natural Resources Wales that includes a financial commitment from the Council in terms of meeting the ongoing landfill obligations. The financial implications have been outlined in section 5.1-5.5 of this report.
- 6.4 To finalise the transfer the Council must also enter into a hiving up agreement with Silent Valley Waste Services Limited. This is an agreement that transfers the assets and liabilities of the company to the Council. Officers of the working group have worked with legal advisors to draft the agreement and it has also been reviewed by legal advisors to Silent Valley Waste Services Limited.
- 6.5 Once the transfer takes effect on the 1 May 2023, work will begin on the winding up process of the Company. Officers will work with legal advisors specialising in Company Law to put together a plan for the winding up process. Winding up the company cannot take place until 3 months after the Company has ceased trading.

Involvement (consultation, engagement, participation)

- 6.6 Consultation has been undertaken amongst existing staff of Silent Valley Waste Services Ltd to advise them of their situation and assist with any concerns relating to their future employment terms and conditions. This work has been undertaken with support from the Councils Organisational Development team and the joint trade unions (GMB and Unison)

- 6.7 Engagement has been undertaken with Natural Resources Wales to enable the transfer of the Environmental Permit to take place.

Thinking for the Long term (forward planning)

- 6.8 The work around the long-term liabilities associated with the aftercare of the landfill site has assisted the Council to understand the financial resources potentially required to ensure that the landfill aftercare arrangements are managed.

Integration (across service areas)

- 6.8 Officers from across the Council have been involved in the Working Group and together with the Trade Unions a wide range of stakeholders have been involved with work through the actions required to enable the transfer of Silent Valley Waste Services in-house. These include (but are not limited to):

- Organisational Development
- Legal
- Procurement
- Financial
- Technical / Operational
- Communications

Decarbonisation and Reducing Carbon Emissions

- 6.9 As outlined above this topic links with the Corporate Plan 2022-27. Silent Valley Waste Services Limited carry out activities that support the Council in delivering their waste and recycling services. The aim is to increase rates of recycling to enable us to achieve national targets set by Welsh Government.

7. Monitoring Arrangements

- 7.1 Upon completion of transfer a report will be prepared for Full Council to provide information that the resolution agreed on 7 February 2022 to transfer the assets and liabilities of Silent Valley Waste Services Limited has been enacted.

8. Background Documents /Electronic Links

- Full Council Report, 7 February 2022

SILENT VALLEY WASTE SERVICES 2023/2024 Estimates

Original Estimate

Estimated Cost of Transferred Services	Landfill	Transfer Station	Civic Amenity Sites	Transport	Overheads	Total
	£	£	£	£	£	£
Expenditure						
Employees	0.00	518,226.76	403,842.81	0.00	485,702.89	1,407,772.46
Premises Related Expenses	45,478.80	58,850.00	2,052.00	0.00	37,180.08	143,560.88
Transport Related Expenses	43,956.00	82,454.76	75,049.20	20,491.92	0.00	221,951.88
Supplies & Services	32,618.16	329,701.32	19,560.96	52,496.64	48,190.28	482,567.36
Depreciation	0.00	0.00	0.00	0.00	76,420.00	76,420.00
Total Expenditure	122,052.96	989,232.84	500,504.97	72,988.56	647,493.25	2,332,272.58
Income						
External Income	0.00	(148,060.00)	(11,201.00)	0.00	0.00	(159,261.00)
Electricity Generation	0.00	0.00	0.00	0.00	(335,462.13)	(335,462.13)
Application of Provision	(18,702.00)	0.00	0.00	0.00	0.00	(18,702.00)
Total Income	(18,702.00)	(148,060.00)	(11,201.00)	0.00	(335,462.13)	(513,425.13)
Net Service Expenditure	103,350.96	841,172.84	489,303.97	72,988.56	312,031.12	1,818,847.45
Interest	0.00	0.00	0.00	0.00	(93,000.00)	(93,000.00)
Capital Adjustment	0.00	0.00	0.00	0.00	(76,420.00)	(76,420.00)
Net Cost of Transferred Services	103,350.96	841,172.84	489,303.97	72,988.56	142,611.12	1,649,427.45

Blaenau Gwent CBC Estimate for Silent Valley	Total
	£
Estimated recharges to Silent Valley	1,739,723.00
Total 'Budget Envelope' included in BGC Estimates	1,739,723.00
Excess of BGC Budget Envelope over Estimated Cost of Transferred Services	90,295.55

Company number: 02674212

THE COMPANIES ACT 2006
COMPANY LIMITED BY SHARES
WRITTEN RESOLUTIONS

of

SILENT VALLEY WASTE SERVICES LIMITED (THE COMPANY)

CIRCULATION DATE: 2023

DATE PASSED: 2023

Under Chapter 2 of Part 13 of the Companies Act 2006 (the **Act**), the directors of the Company propose that the following resolutions are passed as ordinary resolutions of the Company (the **Resolutions**).

ORDINARY RESOLUTIONS

- 1** **THAT** the decision of the directors to approve the transfer of the assets and business of the Company to Blaenau Gwent County Borough Council (**Transfer**) is ratified by the Company; and

- 2** **THAT** the Company waives the right to take any claim against the directors for breach of directors' duties, which may relate to the Transfer being at an undervalue, or any other matter.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolutions.

The undersigned, being the only person entitled to vote on the Resolutions on the Circulation Date, hereby irrevocably agrees to the Resolutions:

Name

Signature

Blaenau Gwent County Borough Council

Authorised Signatory

Notes

1. If you agree with the Resolutions, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following methods:
 - a. By Hand: delivering the signed copy to the board of directors at the Company's registered office.
 - b. Post: returning the signed copy by post to the board of directors at the Company's registered office.
2. If you do not agree to the Resolutions, you do not need to do anything; you will not be deemed to agree if you fail to reply.
3. Once you have indicated your agreement to the Resolutions, you may not revoke your agreement.
4. Unless, within 28 days of the Circulation Date, sufficient agreement has been received for the Resolution to pass, it will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or on this date.
5. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

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