

Committee: **Council**

Date of Meeting: **20th July, 2023**

Report Subject: **Transfer of Silent Valley Waste Services back to the Council**

Portfolio Holder: **Councillor Helen Cunningham, Deputy Leader and Cabinet 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) |
| | 6/7/23 | | | | | | 20/7/23 | |

1. Purpose of the Report

1.1 The purpose of the report is to provide Council with a position statement on the Council resolution of 7 February 2022 to bring back in house the services provided by Silent Valley Waste Services Ltd, transfer of the assets and liabilities and winding up of the company.

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 set out 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 with £390,000 included for 2022/23 and £283,000 for 2023/24 (£673,000 in total).

2.2 Immediately after the Council resolution, programme management arrangements were established to support 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 The transfer of Silent Valley Waste Services back to the Council was successfully undertaken on 1st May 2023.

3. **Recommendations**

3.1 That Council note;

- i) The position statement on the successful transfer of Silent Valley Waste Services back to the Council undertaken on 1st 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).
- ii) That given the assumptions currently applied, the estimated financial impact remains within the budget envelope agreed previously (see Appendix 1).
- iii) The assessment by Silent Valley Waste Services Ltd of financial benefits to the Council since inception of the Company (Appendix 3)

3.2 Council agree that the balance of the Silent Valley Aftercare provision and the profit and loss reserve be utilised to establish appropriate provisions / earmarked reserves within the Council to support the ongoing financial commitment of aftercare and maintenance at the Silent Valley landfill site and other liabilities.

3.3 Council approve that Officers continue to look at the Legal advice on the option of making the company dormant as an alternative to dissolution. Any proposal to make the company dormant will be reported to Council for consideration & agreement.

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 currently estimates that the net costs of providing the services in house during 2023/24 will be £1.7m within the budget envelope agreed by Council.

5.2 ***Other Financial Commitments:***

Landfill Aftercare Obligations

- 5.2.1 Silent Valley Waste Services Ltd, as the lease holder and permit holder were responsible for the Landfill Aftercare Obligations of the Silent Valley Landfill Site. These responsibilities transferred 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.

Leachate Disposal Obligations

- 5.2.2 The Council has and will continue to be responsible for the Leachate Disposal Obligations. Historically SVWS agreed to either fully fund or more recently contributed to the costs of Leachate disposal. However as reported in February 2022 these contributions have now ended.

- 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 SVWS.

As at 31 March 2022, SV's aftercare provision was £1.86m and their Profit & Loss Reserves were £1.5m (this includes £186K relating to pensions), a total of £3.36m. The final accounts for SVWS are currently being prepared, the overall level of reserves and provisions will be confirmed as part of this process. As per the proposal from the February 2022 report it is recommended that the balance on the Silent Valley Aftercare provision and the profit and loss reserve be transferred into an earmarked reserves within the Council to support ongoing financial commitments at Silent Valley.

- 5.5 The Deed of Performance between the Council and Natural Resources Wales places 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.

5.6 ***Financial Benefits – Silent Valley Waste Service Ltd (since inception of the Company in 1994)***

- 5.6.1 The Company was established in 1994 (almost 30 years ago), at the time of closure (2023) the Company estimates that the Council will have derived benefits in excess of £14m. Appendix 5 provides Members with a recent report to the Silent Valley board.

Risk including Mitigating Actions

- 5.7 The approach was to identify and manage risk through the process as part of the programme management arrangements.

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.

- 5.8 Failure to agree the Deed of Performance (which includes the financial commitment) with Natural Resources Wales would have resulted in NRW declining to transfer the landfill environmental permit and the Council would have been unable to operate or control the site. The agreement of the Deed of Performance has mitigated this risk. The ongoing risk is now around not meeting the agreed Deed of Performance, and to mitigate this monitoring of activity will be undertaken as part of normal procedures and arrangements.

Legal

- 5.9 External professional legal advice had been sought as part of the transition planning and having regard to the advice received, it was necessary for Cabinet to give final approval to the arrangements for acquisition/transfer of Silent Valley Waste Services to the Council. The report to Cabinet on the 28th April 2023 sought and secured this approval.

Human Resources

- 5.10 Employees of Silent Valley Waste Services transferred 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 were in scope to transfer to the Council. This has been done in conjunction with Silent Valley Waste Services Limited and the joint trade unions (GMB and Unison). As part of the work to transfer staff it was agreed that staff transfer under their current terms and conditions with the intention to move to the Council terms and conditions as soon as practically possible, and by the latest from 2 years from the date of transfer.
- 5.11 To maintain compliance with the Environmental Permit a suitably qualified and competent officer is required to be employed by the permit holder. The successful permit transfer satisfied this requirement. 20 staff transferred to Regeneration and Community Services with a further 1 to Resources and 1 to Payroll, all transferred under Transfer of Undertakings (Protection of Employment) TUPE.

6. Supporting Evidence

Performance Information and Data

6.1 Programme Management

An officer Transition Working Group was established, with term of reference agreed. Senior Management support for the different elements of the programme has been significant, including work involving members of corporate leadership team and the Head of Legal and Compliance supporting the final stages of the transition, The working group was chaired by the Chief Officer Commercial and Customer as the SRO, the Chief Officer Resources acted as vice chair, and the Team Manager, Regeneration Opportunities took the programme manager role. The working group developed a transition plan and risk register to manage the multiple work streams that were required, with leads for each work stream identified. The main activity covered;

- Organisational Development
- Legal
- Procurement- including a specific work stream on the gas contract arrangements
- Financial

- Technical / Operational
 - Communications
- 6..2 An agile project management approach was adopted so that meetings were timely, and activity could be agreed and monitored in short bursts, keeping pace and momentum. The agile approach assisted the SRO and the working group to keep good oversight of emerging issues and risks, and enabled officers to prioritise issues as they needed to be addressed. This approach also maximized the capacity and expertise of the working group and enabled the activity to be planned and delivered in a coherent way and joined up way. In line with the Council resolution, external support has been used to support the work as needed. This included legal advice which was considered and acted upon.
- 6.3 The Technical Manager from Silent Valley joined the working group which proved valuable given their knowledge of the site and operations. The group assessed which areas needed external support based on a number of factors including the level of in-house knowledge, expertise and capacity. Officers worked together with external advisors and a feature of the approach taken was to use the opportunity to develop officer knowledge and skills in areas that there was less experience in, aiming to maximizing the benefit of the external support.
- 6.4 Following the transfer, an assessment of ongoing activity was considered by the working group. It was agreed that it was appropriate to stand down the working group and set up a task and finish group to prepare for the winding up of the Company. The ongoing operational arrangements are being taken forward by the operational group established by the Directorate. Any future commercial opportunities on the site will be developed through the established arrangements in the Council. Development of a business case for a wind turbine on the site is underway as part of the agreed Bridging the Gap Programme, supporting the Councils Medium Term Financial Strategy.

Governance

- 6.5 The programme was complex, multi-faceted and involved a range of external partners. The need for careful sequencing of the transition programme to ensure all appropriate arrangements to meet requirements were in place was paramount. There was a slight delay from the anticipated transfer date- of 1st February whilst all the required legal documentation was completed.
- 6.6 As part of the final stages of the transition process a report to Cabinet on 28th April 2023 sought and gained;
- 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
 - approval for the delegation of officers to agree the Deed of Performance (including the financial commitment) between the Council and Natural Resources Wales (NRW) to support transfer of the Environmental

Permit.

- ratification (exercising shareholders role) of the resolutions passed by the Silent Valley Board of Directors.

6.7 Programme updates were provided at key points in the transition planning to council senior leadership.

6.8 The Board of Directors will remain in place until the company has been wound up, which cannot take place until a minimum of three months after ceasing trading.

6.9 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.

6.10 In order to finalise the Environmental permit, transfer the Council was required to enter into a Deed of Performance with NRW 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.

6.11 To finalise the transfer the Council was also required to 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 worked with legal advisors to draft the agreement and following review by legal advisors to Silent Valley Waste Services Limited it was agreed and subsequently approved by Cabinet on 28th April 2023.

Failure to agree the hiving up agreement with Silent Valley Waste Services limited, would have meant the transfer of the assets and liabilities of Silent Valley Waste Services to the Council would not take place and the winding up process would not be able to be progressed.

6.12 Following the transfer on the 1 May 2023, work on planning winding up has begun. An officer task and finish group of will work with legal advisors who specialise in Company Law to set out the plan. Winding up the company cannot take place until 3 months after the Company has ceased trading. The current timescales for Companies House to process applications for winding up is 2 months.

6.13 In recent weeks an alternative option to winding the company up has been mooted. The Council could consider making the company Dormant, this could result in tax advantages should the Council in future establish another company undertaking broadly complementary activities. Independent legal advice is currently being considered,

Involvement (consultation, engagement, participation)

- 6.14 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) As part of planned communication activity a 'welcome' newsletter for transferring staff was developed and induction sessions delivered.
- 6.15 Engagement has been undertaken with Natural Resources Wales to enable the transfer of the Environmental Permit to take place.

The summary decision making route is attached at appendix 2.

Thinking for the Long term (forward planning)

- 6.16 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)

- 6.17 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

- 6.18 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 Performance monitoring will be established within the Directorate alongside the existing waste monitoring, and external monitoring by Natural Resource Wales (NRW) will also transfer to the authority as the incumbent.

8. **Background Documents /Electronic Links**

- Financial Information – Appendix 1
- Future Management of the Waste Transfer Station and Household Waste Recycling Centre

http://cc-mgov-01/documents/s13925/SACB2304A1_SV_Report_230425v0.4.pdf?LLL=0

http://cc-mgov-01/documents/s13925/SACB2304A1_SV_Report_230425v0.4.pdf?LLL=0

http://cc-mgov-01/documents/s13921/SCAB2304A1A1_Appendix_One_SVWS_Estimates_and_BGC_Budget_Envelope_2023-24.pdf?LLL=0

http://cc-mgov-01/documents/s13926/SCAB2304A1A2_Shareholder_Resolution_-_Silent_Valley.pdf?LLL=0

- Decision making template – Appendix 2
- Silent Valley Waste Ltd - report to Board of Directors – Appendices 3a & b

