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25 June 2020

Dear Member

Council – 1 July 2020

I am now able to enclose, for consideration at the next meeting of the **Council**, the following reports that were unavailable when the agenda was printed.

22 June 2020 – Minutes of the Scrutiny Committee

23 June 2020 – Minutes of the Special Meeting of the Audit Committee

To add to your agenda for the meeting on **1 July 2020**

Yours sincerely

Sally Gabriel
Member Services Manager

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 22 June 2020 at 2.15 pm

Present

Councillors

F W Letch (Chairman)
W Burke, R J Chesterton, L J Cruwys,
Mrs C P Daw, J M Downes, R Evans,
B Holdman, B A Moore, B G J Warren,
A Wilce and C R Slade

Apologies

Councillor(s)

R L Stanley

Also Present

Councillor(s)

S J Clist, R M Deed, R J Dolley, D J Knowles, L D Taylor,
Ms E J Wainwright, A White and Mrs N Woollatt

Also Present

Officer(s):

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy Chief Executive (S151)), Jill May (Director of Corporate Affairs and Business Transformation), Kathryn Tebbey (Head of Legal (Monitoring Officer)), Maria De Leiburne (Legal Services Team Leader), Andrew Busby (Group Manager for Corporate Property and Commercial Assets), Jenny Clifford (Head of Planning, Economy and Regeneration), Catherine Yandle (Group Manager for Performance, Governance and Data Security), Sarah Lees (Member Services Officer), Clare Robathan (Scrutiny Officer), Deborah Sharpley (Solicitor) and Sally Gabriel (Member Services Manager)

23 APOLOGIES AND SUBSTITUTE MEMBERS (00-03-54)

Apologies were received from Cllr R L Stanley who was substituted by Cllr C R Slade.

24 VIRTUAL MEETING PROTOCOL (00-04-15)

The protocol for virtual meetings was noted.

25 DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT

Members were reminded to make declarations of interest when appropriate.

26 PUBLIC QUESTION TIME (00-04-45)

The Chairman explained that all members of the Committee had read all statements and questions provided, the item under discussion was to consider the planning implications of the 5G mobile technology and not about possible health risks and

read the following statement: to date there have not been any proposals to roll out the emerging 5G networks across Mid Devon. Neither is there any indication at present as to the intentions of the major mobile networks for provision in Mid Devon. The item today on 5G and planning implications is this Committee taking a proactive role in looking at this issue early and will be covered in further detail during the agenda item.

The following questions were received from members of the public present:

Mr Charlie Kay referring to Item 11 (Planning Implications of 5G mobile technology) on the agenda stated that: his question related in particular to the reference to the International Commission on non-ionising radiation protection which he would refer to as ICNIRP.

When there are any questions asked in parliament by MP's, councils, or members of the public about the health, guidelines, EMF levels or planning applications of 5G structures Government and PHE talk of adhering to international standards, and this is, in essence, ICNIRP. In the report the Head of Planning Economy and Regeneration, she refers to the ICNIRP being independent, it is not independent, the ICNIRP protects the environment and there is a need for Mid Devon to protect the environment.

Louise Thomas again referring to Item 11 on the agenda stated that given the Council's concern about climate change and the environment, is the Council able to take into consideration the environmental impact. Before Mid Devon District Council gets led down the yellow brick road of the 5G, would they please consider the economic analysis of the entire carbon footprint, environmental impact, and ecological lifecycle cost of the technology, including conflict minerals and e-waste?

Rhiannon Augenthaler again referring to item 11 on the agenda urged Mid Devon to please find a broadband provider who supplied fibre only, there was a need to find technical advancement without risk. She requested that money was set aside to spend on fibre and not 5G. Please plan for fibre cables rather than masts, cables omit no radiation and communication is better. It would be the Head of Planning, Economy and Regeneration who would give objection/approval of masts and the repercussions would come back on you as you would be liable.

Lucy Wyatt again referring to the 5G report stated that alien technology did not have huge relevance for the farming community. Farmer were not gamers. She referred to the need to protect agriculture and asked whether a cost analysis had been carried out to determine a trade off between the potential damage to pollinators from wireless technology and the savings to business.

Neil Boxall again referring to the 5G report asked what planning actually meant, there were planning considerations and needs and there was also a need to consult with users and the public in the area of Mid Devon. There was a need to challenge what the alternatives to 5G were and a need to consider the proliferation of equipment, there would be a need for an expanse of street furniture and that alternatives should be considered in the planning process.

The Chairman referred to a question posed by Lynette Stopford stating that as already mentioned, Item 11 will look at any planning implications of 5G infrastructure

and will not consider health or other implications of 5G. This Committee has been monitoring the Devon County Council Spotlight Review on 5G closely. He attended the DCC public session on 5G – which some of you were at, and his Vice Chair attended the talk with Barrie Trower in Exeter.

It was his understanding that the DCC Spotlight Review on 5G is on 'pause' given the unprecedented times we are currently in. The Council is currently focused on supporting vulnerable people through the crisis and as such DCC Scrutiny spotlight reviews have been put on hold to support this effort. This Committee has agreed to await the outcome of that very comprehensive and detailed review.

The Chairman also read a statement from Mr Chater who asked how much support will the Council give to community wind turbine schemes? In view of this advice from the Government is there any guidance you can give me about the minimum distance that there should be between a turbine and a dwelling? Secondly, if a house is surrounded by evergreen conifers, would this affect the acceptable separation distance? Please can you tell me what area of community consultation (if any) will your authority be seeking.

The Chairman indicated that the Head of Planning and Economic Regeneration would provide a written response to Mr Chater.

The Chairman also read a statement from Cheryl Woods who stated that

Why is there a debate on 5G when there are thousands of peer reviewed papers on 2-3G showing biological harm which are being ignored in addition to hyposensitivity to EMF being recognised as a medical condition?

Oliver Perceval again referring to the 5G report asked why was the council only looking at planning implications when there were more considerations to discuss. There was a duty to push against the County Council policy and there is the ability to lobby both Government and the County Council, could planning consideration be considered in the future.

The Chairman indicated that he would discuss this further with the Vice Chairman and the Scrutiny Officer.

Jonathan Burnes asked again referring to the 5G report: can MDDC demonstrate exactly how it has arrived at that evaluation of all potential risk exposures and dismissed the need for risk assessment?
What constitutes "other material considerations"?

The Head of Planning and Economic Regeneration stated that the risk assessment within the report referred to the planning perspective, what planning could take into consideration.

Susan Fletcher referring to the 5G report stated: I would like the council to ask why after intense lobbying from the telecommunications industry are local authorities not allowed to object to telecommunications planning applications on health grounds, why hasn't the Council challenged this?

The Chairman stated that anyone could take part in the spotlight review being considered by Devon County Council.

The Chairman then read a question from Mr Quinn My question concerns items 16 and 17 on the Agenda – Exclusion of the Public from the discussion of the 3 Rivers Governance Report.

Scrutiny Committee are being asked to exclude the public because you might reveal information relating to: individuals, the financial or business affairs of the Council, or some other persons, and some legal advice.

Item 17 is a Review of the Governance arrangements for 3 Rivers, a Company owned by the Council, whose governance is already a matter of public record.

The Directors of 3 Rivers are named in public Council reports, as well as being published at Company House. No doubt, any other Officers, or Members named in this report will also be well known to the local public, as will their duties. The salaries of the Directors and Senior Officers are also published openly.

The financial records of the Council are open for public scrutiny and loans to the Company totalling more than five million pounds have also been published in open reports to Members. The Company publishes accounts at Company House and Group Accounts, in combination with the Council, are also public.

Any legal advice must have a certain level of quality for it to qualify as exempt - it will be for Members to decide if the actual advice is worth hiding.

There is a great deal of public interest in this Company and its performance, yet the public are continually excluded, by Cabinet, from any discussions about it.

From Financial Monitoring statements to Members, and reports in the Press, it is clear that significant costs to the Mid Devon Council Tax payer are likely.

It is in the public interest that this Council is open about the governance of this wholly owned Company. So, my question is:

In view of the potential impact on the Council Tax payer and since many aspects of the governance are already open to the public - will Scrutiny Committee please uphold the Nolan Principles of Accountability, Openness and Honesty by seeing fit to discuss this report in open session?

The Chairman indicated that this would be discussed further when the item was debated.

27 **MEMBER FORUM (00-37-26)**

There were no issues raised under this item.

28 **MINUTES OF THE PREVIOUS MEETING (00-37-44)**

The minutes of the last meeting were approved as a correct record.

29 **DECISIONS OF THE CABINET (00-38-40)**

The Committee **NOTED** that none of the decisions made by the Cabinet on 11 June 2020 had been called in.

30 **CHAIRMAN'S ANNOUNCEMENTS (00-38-48)**

The Chairman had no announcements.

31 **LEADERS ANNUAL REPORT (00-39-00)**

The Committee had before it and **NOTED** the Leaders annual *report which gave a review of the progress against the Corporate Plan.

Consideration was given to:

- The final result for the recycling rate for the year was just below target at 53.02% compared with 53.43% last year
- The Carbon Emissions Baseline figure would now be discussed by the Net Zero Advisory Group
- The number of Fixed Penalty Notices issued within the year and the work of the District Officers
- The successful application for £1.2m of Government funding to support the regeneration of Cullompton's historic centre and how that money would be spent.
- The number of empty shops in Tiverton and Crediton, the help available to traders during lockdown and the plans to help the town centres in the future
- The Council's energy consumption and how further Mid Devon owned properties could be further utilised; this would be highlighted further within the Climate Change Action Plan
- The awards that had been achieved in the past year
- The need for an analysis of housing need across the district.

Note: *Report previously circulated, copy attached to minutes.

32 **CABINET MEMBER FOR CLIMATE CHANGE(00-55-19)**

The Committee had before it and **NOTED** a *briefing paper from the Group Manager for Corporate Property and Commercial Assets updating the meeting on the latest progress within the Climate Change Action Plan.

The Cabinet Member for Climate Change informed the meeting that the authority was a year on from the Devon Climate Change Declaration and that work had commenced on an action plan and that a Climate Handbook was being created to sit alongside that action plan. She outlined her new role as Cabinet Member and hoped that funding and additional/dedicated staff would be made able to help her in her role. She reported a successful meeting with officers across all services, the creation of the Net Zero Advisory Group which would have its first meeting in the coming week, the Climate Conversation event which would also take place in the coming week and the work that was taking place across Devon.

The Group Manager for Corporate Property and Commercial Assets outlined the contents of the report highlighting the contents of the action plan, the various categories within the plan and the various scoping documents. He explained that with the funding available in the Capital Programme certain end of life assets had been replaced. He outlined the draft climate CO2 reduction chart by project, work-stream, project by year and by category and the work that was taking place across Devon with regard to the Devon Carbon Plan.

Consideration was given to:

- The clear potential benefits and tracking system outlined in the report
- The lessons that could be learnt from the Covid 19 pandemic
- Funding was still work in progress
- Biodiversity and the plan to plant wild flower meadows on green infrastructure across the district
- The benefits of partnership working
- Crops being harvested to feed AD plants, rather than being using for agriculture and whether AD plants were industrial rather than agricultural practice
- Grants available for managing hedgerows etc

Note: *Briefing paper previously circulated, copy attached to minutes.

33 **PLANNING IMPLICATIONS OF 5G MOBILE TECHNOLOGY (00-25-00)**

The Committee had before it and **NOTED** a *report of the Head of Planning, Economy and Regeneration focussing on the planning system and 5G technology which had been requested by the Chairman.

The Officer outlined the contents of the report stating that this was an operating position from a planning point of view. Government guidelines stated that they were supportive of this essential technology and the report outlined the advice given in the National Planning Policy Framework. 5G infrastructure was likely to be within permitted development rights and it was unlikely that many planning applications would be received. There would be a limited number of considerations that we would be able to take into account possibly only siting and appearance. The NPPF guidance stated that the Local Planning Authority would only be able to determine applications on planning grounds and should not question the need or the health grounds.

Consideration was given to:

- How disappointing it was that the Local Planning Authority would have little involvement due to permitted development rights and Government guidance
- Social well-being and the need to allow information technology to advance
- The data provided by those who were present for public question time and that other groups may feel differently
- The work taking place by the Scrutiny Committee at Devon County Council as part of their spotlight review

Note: *Report previously circulated , copy attached to minutes.

34 **FORWARD PLAN (1-38-00)**

The Committee had before it and **NOTED** the *Forward Plan.

Discussion took place with regard to the Climate Change Strategy and that it should be removed from the plan as work was taking place within the Action Plan.

Note: *Plan previously circulated, copy attached to minutes.

35 **SCRUTINY OFFICER UPDATE (1-45-02)**

The Scrutiny Officer reported that the Customer Engagement Working Group report would be submitted to the next meeting of the Committee for consideration.

36 **WORKING GROUP - MENOPAUSE (1-45-02)**

At a previous meeting of the Committee discussion had taken place with regard to the implementation of a working group to focus on menopause issues, it was therefore suggested that a working group be formed to consider this issues.

It was **RESOLVED** that the following Members form a working group to consider the impact of the menopause: Cllrs Mrs C P Daw, R Evans and F W Letch and that other members would be invited to provide information and evidence as required.

(Proposed by the Chairman)

37 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING (1-47-53)**

A list of items for future meetings was highlighted within the agenda.

38 **ACCESS TO INFORMATION - EXCLUSION OF PRESS AND PUBLIC (1-47-53)**

Prior to considering the following item on the agenda, discussion took place as to whether it was necessary to pass the following resolution to exclude the press and public having reflected on Article 15 15.02(d) (a presumption in favour of openness) of the Constitution with the following issues being raised:

- The names of the individuals quoted within the report were in the public domain
- The committee were aware of the public interest in the subject
- Members needed to have a full and frank discussion on the issues which should take place in closed session
- Opportunities in the future to discuss matters in open session

The Committee decided that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

It was therefore:

RESOLVED that: under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 namely information relating to any individual; paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information) and paragraph 5 namely information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(Proposed by the Chairman)

39 **3 RIVERS DEVELOPMENT LIMITED GOVERNANCE REVIEW**

The Committee had been requested by the Cabinet to review the reports and recommendations/actions listed within Appendix D of the agenda pack and report their findings and any further or suggested changes not already addressed, to Cabinet for their subsequent consideration. It had been requested that this be done in time for Cabinet to receive any reports back to its meeting scheduled for 9th July 2020.

Following consideration of the documents supplied the Scrutiny Committee returned to open session with the Chairman stating that the Committee had made a number of recommendations that would be put before the Cabinet for further consideration.

Note: *Recommendations and Actions previous circulated.

(The meeting ended at 5.25 pm)

CHAIRMAN

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **AUDIT COMMITTEE** held on 23 June 2020 at 5.30 pm

Present

Councillors

R Evans (Chairman)
Mrs C Collis, B A Moore, D F Pugsley, A Wilce, J Wright
and A Wyer

Also Present

Councillors

G Barnell, S J Clist, L J Cruwys, N V Davey, Mrs C P Daw,
R M Deed, R J Dolley, F W Letch, R F Radford, L D Taylor,
B G J Warren and Mrs N Woollatt

Present

Officers

Stephen Walford (Chief Executive), Andrew Jarrett (Deputy Chief Executive (S151)), Kathryn Tebbey (Head of Legal (Monitoring Officer)), Catherine Yandle (Group Manager for Performance, Governance and Data Security), Ian Chilver (Group Manager for Financial Services), David Curnow (Deputy Head of Devon Audit Partnership), Elizabeth Palmer (Solicitor) and Sarah Lees (Member Services Officer)

19. **Apologies (00:02:35)**

There were no apologies for absence.

20. **Remote Meetings Protocol (00:02:46)**

The protocol for remote meetings was noted.

21. **Public Question Time (00:03:08)**

The Chairman read out a question from Mr Nick Quinn, a local resident, concerning item numbers 7 and 8 on the Agenda – Exclusion of the Public and the discussion of the 3 Rivers Governance Report. The question was as follows:

I read in the Constitution that Audit Committee has a duty to: *Provide independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment;*

In the case of the Council and 3 Rivers, there is a very large exposure to risk on both sides, which has not been well controlled - hence the report before you.

The public look to Audit Committee to ensure proper controls are in place and that any risk is minimised and properly managed. However, it appears that the Council's Risk Management processes have broken down.

Monitoring checks that were supposed to manage these risks are clearly ineffective, since the last report to Cabinet was a year ago and the quarterly Officer Management Board does not appear to report to anybody.

There is a lot of public interest in the operation and performance of 3 Rivers because significant costs are being passed on to the Council Tax payer. However, the public are continually excluded from any reports on the company.

Because of the way this report is written, both Cabinet and Scrutiny Committee passed public exclusion resolutions. So, once again, a 3 Rivers report is being discussed in private and the outcomes from these discussions are not being published in minutes open to the public.

Audit Committee may also feel they must discuss this report in closed session. If they do so, whilst it may not be normal practice, I would like to ask:

In view of the impact 3 Rivers is having on the Council Tax payer and to uphold the Nolan Principles of Accountability and Openness - will the Audit Committee please state that their recommendations/resolutions are to be published in the open minutes?

In answering this question the Chairman responded by informing those present that he had taken advice from the Monitoring Officer and he hoped that what he would be proposing would assist both Members and the public regarding the treatment of Part II minutes in the future.

His proposal was that this Council's approach to Part II minutes was consistent across the board. The Council did not publish details of the discussion and the resolutions. He did not think it would be appropriate for a single committee to take a different approach unilaterally. However, he recognised that this was an important point and should be looked at. He had spoken to the Monitoring Officer about it and understood that the Cabinet was also interested in this issue. For these reasons, he would be inviting the Monitoring Officer to present a report to full Council on this issue for discussion and debate.

The Committee were in full agreement that this should take place.

Cllr A Wilce stated that the MDDC Constitution section 9.1, Audit Committee: General Role says:

Within their terms of reference, the Audit Committee may:

- (a) Provide independent assurance of the adequacy of the risk management framework and the associated control environment including (from the perspective of the Council) those partnership or joint working arrangements the Council has with other bodies and how their risk management and controls might impact the Council.

I find it bizarre that this function is permissive according to the Constitution and not a duty or function specifically directed by the Council, to be carried out by this

Committee. Certainly, in my mind, the Audit Committee has a duty to examine and comment on risks to the Council.

With this in mind, I ask members to carefully consider what was said in the report to the Cabinet of the previous administration, setting up 3RDL on 30th March 2017. This report was about 3RDL was considered in private, as usual, but it was released on the order of the Information Commissioner. Notwithstanding that, it is not available in the meeting pack. In it, in as many words, it was stated 3RDL would not be allowed to fail.

5.5There may be a risk that it may not be able to recover any loans or property which has transferred to the company but it is very unlikely a council owned wholly owned company would be willing to allow the company to reach the point of insolvency.

This Council has to date paid 3RDL circa £10M of public money, with an option for many millions more; originally another £99 million but reduced to £12.1 million by the current administration.

Is this Committee able to give taxpayers assurance that this was done with due diligence and competence by MDDC officers, fully in accordance with the usual business risk management processes and in particular, in accordance with Section 5.17 of that report, in which it was stated that:

5.17..... The council will develop robust agreements between the council and the company to ensure the council does not cover the company's full liabilities and indebtedness.

The Deputy Chief Executive and S151 Officer stated that a full and thorough response would be provided to Cllr Wilce and the members of the Committee as soon as was practicable.

22. Declaration of Interests under the Code of Conduct (00:14:45)

There were no interests declared under this item.

23. Minutes of the previous meeting (00:14:58)

The minutes of the meeting held on 2 June 2020 were confirmed as a true and accurate record.

24. Chairman's Announcements (00:16:05)

The Chairman had no announcements to make.

25. Access to Information - Exclusion of the Press and Public (00:16:18)

Prior to considering the following item on the agenda discussion took place as to whether it was necessary to pass the following resolution to exclude the press and public having reflected on Article 15 15.02 (d) (a presumption in favour of openness) of the Constitution with the following issues being raised:

- Whether in future it would be possible to separate out Part II information from Part I as part of the reports agenda pack.
- When a proposal could be considered and moved given the wording on the agenda.
- The public interest given the amount of money being discussed.
- Possible conflicts of interest by the proper officer in making the recommendations.
- The possibility of publishing the agenda pack without disclosing sensitive information.
- The fact that Cabinet discussions about 3 Rivers had all taken place in Part II.
- The need to restore public trust and confidence regarding 3 Rivers.
- The need for the Committee to assess the sensitive nature of the information provided within the reports which included legal advice, commercial proceedings, cash flow information, personal information and the business interests of the Council.

The Committee decided that in all circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

It was therefore:

RESOLVED that: under section 100A (4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 namely information relating to any individual; paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information) and paragraph 5 namely information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(Proposed by the Chairman)

26. **3 Rivers Development Limited Governance Review (00:38:10)**

The Committee had been requested by the Cabinet to review the reports and recommendations / actions listed within Appendix D of the agenda pack and to report their findings and any suggested further changes not already addressed, to the Cabinet for their subsequent consideration. It had been requested that this be done in time for Cabinet to receive any reports back to its meeting scheduled for 9th July 2020.

Following consideration of the documents supplied, the Audit Committee returned to open session with the Chairman stating that the Committee had made a number of recommendations that would be put before the Cabinet for further consideration.

Note: *Recommendations previously circulated

(The meeting ended at 7.15 pm)

CHAIRMAN

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