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Mid Devon District Council

## Scrutiny Committee

Wednesday, 21 September 2022 at 2.15 pm  
Phoenix Chambers, Phoenix House, Tiverton

### SUPPLEMENTAL AGENDA

- 6 **Decisions of the Cabinet** (*Pages 3 - 10*)  
To consider any decisions made by the Cabinet at its last meeting that have been called-in.

Agenda Item	Reason for Lateness/Urgency
6. Decisions of the Cabinet  Appendix: Extract from Draft Minutes	The minutes for Cabinet (6 September 2022) were not available at the time the agenda was printed and circulated as they were being consulted on. Members are requested to consider this item, as a matter of urgency.

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## Extracts from Draft Minutes – Cabinet 6 September 2022 3RDL – Funding Request – Minute 55

The Cabinet had before it a report from the Deputy Chief Executive which sought approval for a funding request from 3 Rivers Development Limited.

The Cabinet Member for Finance who raised the following:

- This report and associated recommendation is for Cabinet to authorise an increase to the current loan agreements to 3RDL of £ 2,280,784. This is for 3 specific purposes: to deal with projected overspends on the 2 active projects at St George's Court and Bampton, to increase the working capital in the business, and to allow the business to work on alternative prospects following the revised Treasury guidance on out-of-District projects. It is important to stress that these increases *do not* breach the overall funding envelope agreed within the Council's budget, in fact, far from it. Rather it reflects a pragmatic rescheduling of finance arising from the impact of external factors beyond the business's control.
- That the lending envelope approved by full council was £19.66m Lending envelope for 2022/23. The request for an additional £2.3m would put the total projected spend at circa £12.7m, £7m under the enveloped budget.
- Regular updates to Cabinet have highlighted the inflationary cost pressures on the business arising from materials and labour challenges in various guises. These have had an inevitable impact on the 2 live projects, driving these loan increase requests. On the other hand, the housing market in the region has been vibrant, reflected in an increase in sale prices. Overall, project outturns, assuming somewhat pessimistic sales forecasts, remain broadly the same. Full details are in the Part 2 element of the report.
- Both these projects fit within Treasury guidance, meeting MDDC policy to provide housing and regeneration in area. As the Lender, the Council was interested in risks and returns on its capital investment. Were Cabinet not to approve the loan increases, to cease funding the projects prior to completion as some propose, there would be a sudden and significant threat to the Council's investment. By carefully proceeding, by contrast, there is no notable change in Council capital risk by increasing loan value, while interest returns remain very beneficial to overall Council finances, particularly noting my previous report.
- It has always been the goal for the business to be a long-term net positive contributor to the Council's finances whilst fulfilling policy objectives. The change in Treasury guidance earlier this year brought an unwanted change to the business's geographical ambit and forced the abandonment of several prospects one of which was very advanced. As, in the true sense of the words, a going concern, the business must refocus on a revised pipeline of work. A sum of £580k was sought to explore new sites, as set out in the Part

2 part of the paper, to make up for the loss of a number of opportunities. As such this is no more than a redirection of existing budget allocation.

- Section 3 of your report provides an overall summary of the Council's financial position with regard to the business, indicating a healthy return on the investment to date. Risks inevitably remain, but governance is strong and the last Council external audit was positive.

The following answers were given in relation to the questions raised during Public Question Time:

Responses to questions from Nick Quinn included:

Answer to question 1:

A change in reporting of VAT, so that we now show net figures rather than gross, plus Recharges in this particular case since November 2021. This change has been reported previously.

Answer to question 2:

That impairment and the way it has been calculated for these figures is shown in the report, and that the impairment is being charged over a 5 year time frame in accordance with accounting practice. As the report clarifies 40% of the capital loan impairment has therefore been properly included along with the full working capital loan impairment.

Answer to question 3:

This is a question of principle rather than the specific figures. The established process is that the annual Business Plan for 3 Rivers is reviewed by Audit before seeking Cabinet approval. The finance to support the Business Plan then forms part of the Council's Budget agreed by Full Council prior to the start of the financial year. This is the fully approved public money funding envelope within which 3 Rivers operates. These additional loans for specific projects and working capital, as I have shown, fall well within that agreed funding envelope, the individual justification having been set out in the paper. External audit has specifically looked at current governance arrangements for lending to 3 Rivers and has expressed a positive view of what we do.

Responses to questions from Hannah Kearns included:

Answer to question 1:

These updates were included within commercially confidential part 2 reports since April and is not unusual for Cabinet Members to discuss in a more informal manner the status of 3 Rivers on a regular basis.

Answer to question 2:

The report cites "some sense of hostage pricing" as the last of 6 reasons for cost increases. This is a standard industry term reflecting the need to pay higher material

prices and casual labour rates to secure supply in the current tight market. In this, 3 Rivers is not alone. It is certainly not a reflection on the professional contracts that exist with a range of sub-contractors and suppliers.

Answer to question 3:

Some of that £2.3m figure was working capital and so was not directed into projects. On whether the company or properties will bear the costs, it's actually a mix but the paper really states the former, it says: "Countering this is strengthened expected sales income of the properties which should allow for net profit and loan repayment profiles to be in line with previously declared expectations." As I have already noted revised sales income is based on prudent assessments by professional agents.

Answer to question 4:

The business draws down loans within the agreed facility incrementally to meet project requirements, they don't get it all upfront. The Interest Rate applied is fixed at the point of drawdown. Therefore the assumption on which the questioner's statement is made is incorrect and over-assesses interest charges and the business's exposure. The loans being requested reflect total project costs including interest and working capital.

Answer to question 5:

The request is to reallocate funding from a generic approval for future development projects. Given mandatory changes that restrict lending to in-area, some of those projects can no longer be pursued. This proposal uses some of the released funding to establish an enabling fund to identify and assess new, replacement projects. For the business to continue to be viable a pipeline of future projects is essential in a fast-moving and competitive market: delay will hamper the business.

Responses to questions from Paul Elstone included:

Answer to question 1:

2 years is a long time, the situation then, was what it was and was fully addressed at Cabinet at the time. It resulted in 33 actions to be taken; they were taken. And then the decision of Council was that we continued to proceed with 3 Rivers. So the fact that comments that were made 2 years ago, that were accurate, but life moves on, we do not have time to keep going back over the centuries as to what we said previously. We are where we are now.

Answer to question 3:

When they learnt that they had restrictions in terms of geography for their future projects they looked elsewhere, but needless to say as a start-up company in their current position there's no surprise whatsoever that it's a high credit risk. That is why the council is funding it and is very mindful with strong governance in place.

Answer to question 5:

It was agreed relatively recently that the company has their own auditors and completes an audit to be presented to the Council's auditors and that this is in process.

Answer to question 6:

St George's Court had already been discussed, the impairment, and as mentioned previously that was in accordance with accounting practice.

The Cabinet Member for Finance noted that questions not answered at the meeting would be answered in writing.

The Leader thanked the Cabinet Member for their presentation and opened the floor to questions, which were as followed:

- A Cabinet Member asked if 3 Rivers had a solid business plan and a safety net in place for emergencies. It was explained that plans were set for a year and noted that circumstances could change, for example when sites change. The plans looked at individual projects and noted that each business case had a degree of uncertainty but a reasonable amount of contingency was in place.
- Concern was raised that the Council was a bottomless pit that supported 3 Rivers financially, to which it was reassured that a pragmatic stance needed to be taken and that the Council would be at more risk financially should 3 Rivers not be funded and specific projects be approved.
- Asked how confidence could be shown in the company, to which it was explained that a sound and professional level of governance was in place and that 33 actions were established to support this.
- When commercial funding was raised it was asked why 3 Rivers were approaching the Council and were there plans for 3 Rivers to apply for commercial funding. It was explained that it was difficult to get lending at a competitive rate when compared to what the Council could provide. In addition, it was noted that once the company was more established it could be considered that the company sought commercial funding when required. Clarification was sought after over commercial funding to which it was highlighted that the Council received interest on the loans it provided to 3 Rivers.
- A Member raised concern over public confidence as well as Member confidence and highlighted that the risk assessment could not be found within the report presented to Cabinet and clarification was wanted in regards to what the risk assessment advice was and why this had not been presented to the Scrutiny and Audit Committees.

In addition, clarification was wanted as to when the business plan would be presented and highlighted that Cabinet had previously agreed not to finance projects outside of the district boundary.

In response to the questions asked, it was explained by the Cabinet Member for Finance that new guidance had been received and emphasised that the Council were not able to instruct 3 Rivers where to develop and were not able to lend the funds for projects outside the district as requested at that time. It was noted that a correction would be made to the wording at 2.2 of the report. The revised business plan was due to be presented to Cabinet on 1 November 2022.

In addition, The Cabinet Member for Finance highlighted that risk was involved with any commercial venture, this had been mitigated through discussions and meetings that had taken place alongside strong governance and external audits. It was noted that the controls in place were strong and that there would be risk in a competitive market. Finally, that public concerns would be alleviated as much as possible through professional mitigating actions.

- A Member raised that the public facing report was where confidence was either won or lost. Reports from architectural journals and Grant Thornton reports had shown examples of company failures. They highlighted concerns that the report was incomplete.

The Leader reminded Members to remain within the scope of the report presented to Cabinet. Questions from Members continued as followed:

- A Member was invited to speak who raised concern over that how scrutiny and audit had been handled with regards to this decision and noted that due to commercial sensitivity, certain information had been limited to the majority of Members. It was noted that the current business was potentially void due to a number of material changes that surrounded the company's circumstances and viability.

In addition, the business plan was due in the summer of 2022 but this had been delayed. A key governance control had been confirmed that a review of any business plan had to go through the Audit committee before it could be considered by Cabinet, this included amendments to an existing business plan.

It was argued that Cabinet were supporting a funding request without the support of a current business plan that had been scrutinised by the Audit Committee and urged that a decision be deferred until an up to date business plan had been scrutinised.

The Leader emphasised that if there was doubt over the decision made by Cabinet, the decision could be called in to scrutiny. The Cabinet Member for Finance added that although elements of the business plan were no longer

valid, which was due to a reduction in business operations, had not meant that the business plan was void. It was also reassured that particular elements of the business would remain in the revised version which included the report presented to Cabinet. Finally it was confirmed that the business plan would go through audit.

- A Member was invited to speak who highlighted that local site availability had not been mentioned in the report. Stated that looked outside the district due to availability which was a risk issue.

The other issues was the future profitability of the company with no analysis of the forecasts for this company. The last forecast had shown that breakeven was expected to be in 2023/24.

It was crucial that the extension of the cash that been proposed that linked to other conditions that had not been mentioned in the report and should be and unpins the proposal to extend the financing.

The Leader reminded Members that the Cabinet was still in the public domain and that Part 2 discussion were not acceptable without agreeing to move to part 2 discussion.

- The Cabinet Member for Finance noted that local site viability was an issue and there was a need to look at alternative sites. There needed to be a redirection and there is a need to move quickly so it could respond to local site availability. With regards to profitability this would be part of the upcoming business plan due to be presented to Cabinet, it was stressed that should this decision not be approved then it would be a disaster, these funds were for working capital to operate the business as well as a realignment of existing finances for funding new projects and that in respect of profitability the business plan was due in November.

The Member added that risks had not been shared with Members and were not properly analysed and that they needed to be, finally concern was raised over when the company would become profitable.

The Leader noted the comments made and noted that there were performance and risk schedules and 3 Rivers were included in the performance and risk reports.

**RESOLVED:** That

That it be agreed to increase the current loan agreements by a total of £2,280,784 to cover; the identified project overspends on 2 projects included in the previously agreed Business Plan funding envelope agreed on the 30 November 2021 and increased the working capital loan agreement. In addition, it be agreed that a transfer from a future projects budget of £0.58m in order for the business to work up new potential projects to replace the out of District projects that had to be removed from



the company's business plan after changes to the Treasury's Public Works Loan Board loan arrangements.

(Proposed by Cllr A Moore and seconded by Cllr C Slade)

(Cllr C Eginton, Cllr C Daw abstained, Cllr S Penny voted against and Cllr R M Deed, Cllr R J Chesterton, Cllr D Knowles, Cllr A Moore and Cllr C Slade voted in favour)

**Reason for decision:**

3 Rivers Developments Limited's (3Rivers) key aims are to: generate future returns in order to grow the business and to recycle monies made back to the Council to mitigate some of the cuts in Government funding, increase the level and quality of housing units within the District and look to help regenerate sites/areas in need of assistance.

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