

# Public Document Pack



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Scrutiny Committee

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**23 August 2023**

Dear Member

## **Scrutiny Committee – 24 August 2023**

Members are advised that one of the decisions made by the Cabinet at its meeting on 16 August 2023 has been called in by Cllr R Gilmour (Scrutiny Committee Chairman). This decision referred to the '3 Rivers Options Appraisal Report'.

Attached within this pack is the call in, the advice of the Monitoring Officer and the minute Extract from the 16 August Cabinet Meeting. Please note that the reports that were considered by the Cabinet are attached to the main agenda pack.

Yours sincerely

**Andrew Seaman**  
**Member Services Manager**

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A Decision made by the Cabinet on 16 August 2023 in respect of the following report was called in for consideration by Councillor R Gilmour.

### **3 Rivers Options Appraisal Report**

1. Cabinet recommend to Full Council a “soft closure” of 3 Rivers Development Ltd. over a sensible short term period in order to minimise any potential financial exposure and maximise returns from company assets.
2. Delegated authority is given to the Deputy Chief Executive in conjunction with the Cabinet Member for Finance to deliver/instruct all necessary activities in order to deliver a “soft closure” and maintain timely decision making in order to protect the Council’s position during this process.
3. That the Deputy Chief Executive, in discussion with the Cabinet Member for Finance procure any additional professional advice required to protect the Council’s position and maximise the return to the Shareholder and minimise any potential further losses.

The reason for the call in is:

- The decisions are outside of the Budget & Policy Framework.

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## **Request for Call-In from Cabinet 16 August 2023**

### **Advice from the District Solicitor & Monitoring Officer**

I have received a request for Call-In from Cllr Rachel Gilmour as Chairman of Scrutiny Committee, thus meeting the threshold in rule 19(f) of the Scrutiny Committee etc. Procedure Rules.

The overarching rules of call-in must still be observed, namely:

1. Call-in by Scrutiny should only be used in exceptional circumstances. These are where members of Scrutiny Committee have evidence which suggests that the Cabinet did not take the decision in accordance with the principles set out in Article 15 (Decision-making) (rule 19 preamble);
2. Members who wish to call-in a decision are required to seek guidance from the Monitoring Officer on the veracity of their stated grounds for the call-in and demonstrate that they have been mindful of the advice they have received when deciding whether or not to proceed (rule 19 (f)); and
3. When the relevant Cabinet minutes are put before the Scrutiny Committee, together with the advice from the Monitoring Officer on the grounds for the call-in, the councillors who called in the decision shall have the right to attend and speak (rule 19 (h)).

### **The principles of decision-making – Article 15**

Article 15.2 provides that all decisions of the Council will be made in accordance with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consultation and the taking of professional advice from officers;
- (c) Respect for human rights;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes;
- (f) Consideration of any alternative options; and
- (g) The giving of reasons for the decision and the proper recording of those reasons

### **Call-In – 3 Rivers Options Appraisal Report**

The above rules and principles apply. In this instance, I can see that the reason put forward is that the decision is outside of the budget (Budget and Policy Framework Procedure Rules – 7.0) i.e. the Scrutiny Committee is of the opinion that an executive decision is, or if made would be, contrary to or not in wholly accordance with the Council's Budget.

As to whether the concern is an exceptional circumstance, I will leave that to the Committee. I would confirm that there is sufficient reason in accordance with the constitution for this decision to be called in.

Maria de Leburne

23 August 2023

## **Extracts from Minutes – Cabinet 16 August 2023, Minute 30.**

### **30. 3 RIVERS OPTIONS APPRAISAL REPORT (00:25:27)**

The Cabinet were presented a report\* which considered the current trading position of the Council's wholly owned property development company – 3 Rivers Development Ltd - and its potential for medium to longer term financial viability based on its own analysis and supported by external opinion from Francis Clark.

The Cabinet Member for Finance highlighted the options available to the Council along with a guideline on the potential losses for each option. And suggested that a soft closure was the most appropriate option out of the four.

The Deputy Chief Executive (S151) explained that the recommended soft closure considered and estimated a 6 to 12 month rundown for a soft closure.

The following was considered:

- Asked if there were more positive options available to the Council, the Deputy Chief Executive (S151) explained that a soft closure was the least worst option which also minimised risk.
- It was noted that the pandemic was a challenging moment for all business and that it was contemplated that 3 Rivers Development Ltd needed a second chance. However, it was suggested that a private company may not have been appropriate for a Local Authority to create. It was felt that this had put a strain on the openness and transparency of the Council. It was asked if actions of other Local Authorities had been considered. The Deputy Chief Executive (S151) confirmed that the pandemic hindered all business nationally and in particular development companies, which was further compounded by the cost of living crisis that followed. Furthermore, it was agreed that the balance between confidential information of a company in a competitive market and the need for openness and transparency had been a challenge. It was noted that other Authorities operated trading companies all with mixed results and that failures tended to be what the media focussed on.
- Asked whether the confidential reports might be published publicly in the future, the Deputy Chief Executive (S151) explained that currently reports were live commercial reports that needed to be kept confidential but some financial information might be placed on Companies House in the future.
- The expected completion time of outstanding projects was sought along with reassurance in the losses calculated in the report, given the current housing market. The Deputy Chief Executive (S151) explained that the Bampton site was due to complete in 6 months and the St George's site completion date was imminent. In addition, the Deputy Chief Executive (S151) officer along with Francis Clark were experts and estimated that there could be a 10% tolerance of the calculations presented. This was also supported by additional external advice and that the housing market was not something that could be easily predicted.

- It was established that all work requested by Full Council had been completed.
- That there was a need for the Council to move forwards on this matter.
- External reports were welcomed but encouraged that an independent survey took place at the Bampton site.
- It was felt that there was a need to maximise income from the remaining projects.

### **ACCESS TO INFORMATION - EXCLUSION OF PRESS AND PUBLIC**

The Leader indicated that discussion with regard to the following items may require the Cabinet to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Cabinet would need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

**RESOLVED:** That, in accordance with Part I of Schedule 12A to the Local Government Act 1972, the press and public be excluded from the meeting for item 4 of business, for the reason set out below:

- Information under paragraph 3 (contains information relating to the financial or business affairs of any particular person including the authority holding that information).

(Proposed by the Leader, Cllr L Taylor)

The meeting then returned to an open session.

**RESOLVED:** That

1. Cabinet recommend to Full Council a “soft closure” of 3 Rivers Development Ltd. over a sensible short term period in order to minimise any potential financial exposure and maximise returns from company assets.
2. Delegated authority is given to the Deputy Chief Executive in conjunction with the Cabinet Member for Finance to deliver/instruct all necessary activities in order to deliver a “soft closure” and maintain timely decision making in order to protect the Council’s position during this process.
3. The Deputy Chief Executive, in discussion with the Cabinet Member for Finance, procure any additional professional advice required to protect the Council’s position and maximise the return to the Shareholder and minimise any potential further losses.



(Proposed by the Leader, Cllr L Taylor)

Reason for the decision:

The Company, at its inception, was set up to help partially fund and link to a number of key strategic objectives in the Corporate Plan. However, 6 years later the Council now needs to make a fundamental decision which will enable it to concentrate on the delivery of a new Corporate Plan.

Note: \* Report previously circulated.

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