

MID DEVON DISTRICT COUNCIL

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MINUTES of an **EXTRAORDINARY MEETING** of the **CABINET** held on 16 August 2023 at 5.15 pm

Present

Councillors

L Taylor (Leader)
J Buczkowski, S J Clist, S Keable, J Lock, and D Wulff

Also Present

Councillors

D Broom, E Buczkowski, Mrs F J Colthorpe, G Czapiewski,
G Duchesne, R Gilmour, C Harrower, B Holdman, L Knight,
and S Robinson

Also Present

Officers:

Andrew Jarrett (Deputy Chief Executive (S151)), Maria De Leburne (District Solicitor and Monitoring Officer), Andrew Seaman (Member Services Manager) and Sarah Lees (Member Services Officer)

Nick Harris a Director at Francis Clark was also present.

27. **APOLOGIES (00:03:16)**

Cllrs N Bradshaw, M Farrell, M Fletcher, A Glover, L Kennedy, F Letch, N Letch, J Poynton and J Wright attended the meeting via Teams.

28. **PUBLIC QUESTION TIME (00:05:59)**

Paul Elstone

Question 1:

Recommendation 1 uses the terms “soft closure” and “over a sensible short term”. It is fully considered that these terms are both vague and ambiguous. For complete transparency, can the Cabinet Member for Finance categorically state that it is not the intention of this Council to invest any more funds into 3 Rivers Development in order to build any further projects?

The Cabinet Member for Finance responded by explaining that it may be helpful to summarise all of the options identified by Francis Clark that will be considered by Cabinet and in turn Full Council.

Firstly, Do nothing / No action: This option keeps the company in existence and “trading” until all developments are complete and properties sold, this could be up to 3 years and ongoing overheads would be incurred during this time. This option offers around a 22% less than expected financial return than a “soft closure”.

Secondly, Administration: This could be considered a “hard closure” and the Council would appoint administrators to liquidate the company and its assets, this would hand over complete control from elected representatives to administrators. The negativity associated with administration would also likely affect the value of the company’s assets and likely affect the reputation of MDDC. This option offers around a 37% less expected financial return rather than a “soft closure”.

Thirdly, Soft Closure: This would allow the Company to complete the two current projects and then sell all of the properties and its assets for the best value in the shortest amount of time. While the intention would be to complete this in the most expeditious way, the Council may wish to give guidance on a timescale. This option offers the best expected financial return for the Council.

Finally, Creditors Voluntary Liquidation: It is unlikely that this would, in fact, be an appropriate option given that the Council has committed to fund the two in-flight projects and, in any event, would deliver the worst return for the Council. This option offers around a 45% less than expected financial return than a “soft closure”. There are no plans, or indeed intention, from this Cabinet to start any further projects via 3 Rivers Developments Limited, this is in keeping with the previous resolution of Full Council.

Question 2

What does “over a sensible short term” really mean. There must be a firm decision point. Can the Cabinet Member for Finance say what the decision point is?

The Cabinet Member for Finance responded by explaining that the intention of this Cabinet is to maximise the financial return to the Council and in turn the local residents. The recommendations seek to avoid the risk of a so called fire sale of assets for below market value, balanced with the need to minimise the risk and exposure of having a long drawn out process. Once a decision is made by Cabinet and in turn Full Council, the recommendations allow for a detailed pathway to be put in place that will be formulated with the guidance of professional advisors.

Question 3

At what point will the 3 Rivers £300,000 per annum overhead payments cease?

The Cabinet Member for Finance responded by explaining that at this point, and before a decision is made by Full Council, it is impossible and would be wrong for me to give a definitive date. But as explained in my answer for question two, it is not the intention to have a long drawn out process and it is the intention to maximise the financial return for the Council.

Question 4

The MDDC Deputy CEO and S151 Officer was a Founding Director of 3 Rivers between April 2017 and January 2021. During which time in my opinion, and that of many including Council Members that there have been a series of disastrous financial decisions which have been taken, fully involving 3 Rivers. Disastrous decisions which are now very seriously impacting on this Council’s finances and will likely do so for years to come.

Decisions that have already required loan impairments – bad debts - of £5.3 million and should a former Conservative Cabinet Member be believed could reach £10 million. Decisions namely but not limited to: 1. The St Georges Court Tiverton Development, 2. The Knowle Lane Cullompton land purchase. The role of an S151 Officer requires high standards of governance amongst other things. With the disastrous failure and ongoing exposure of 3 Rivers this governance has been seriously lacking. Therefore, how can the Cabinet Member for Finance, or for that matter this Cabinet more broadly, have any confidence that the MDDC Deputy CEO and S151 Officer is the right person to lead the 3 Rivers Company wind-up?

The Cabinet Member for Finance responded by explaining that the decision that is made by Full Council will be implemented by this Cabinet, led by the Leader and myself, with decisions being made by elected representatives, on and supported by the advice of professionals, including the officers of the Council. The Authority's Chief Financial Officer has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council's Financial Affairs. For the record, and complete avoidance of doubt, I have complete confidence in the Council's Chief Financial Officer to correctly and properly discharge this function.

Nick Quinn

Question 1.

The public have never been allowed to see "Confidential Information" about this Council Owned Company. Now, we are told that 3 Rivers owes the Council more than £21M of Public Money and Cabinet are recommending closing it down – but we still cannot see the papers that have led to this course of action. Recommendation 1 in the report is to "Soft Close" 3 Rivers over a "Sensible Short Term Period" - but neither of these statements are specific. Would Cabinet please explain what "Soft Close" means, and what they consider a "Sensible Short Term Period" to be?

The Cabinet Member for Finance responded by explaining that a soft closure would allow the Company to complete the two current projects, and then sell all of the properties and its assets for the best value in the shortest amount of time. While the intention would be to complete this in the most expeditious way, Council may wish to give guidance on a timescale.

Question 2.

Concerning Recommendations 2 and 3. The closure of 3 Rivers should not be managed by an Officer/Member partnership. It is recognised, in these recommendations that they are inexperienced in this field and will not be able to make the necessary progress without costly, expert help. 3 Rivers Developments was set up as a Private Limited Company, with the Council as the sole Shareholder. Surely, closing down this Company should be done in the same way as the closure of any other Commercial Company that has failed its shareholders. Professional Administrators should be brought in to manage the closure and told to obtain the maximum possible benefit for the shareholders.

Will Cabinet please consider replacing recommendations 2 and 3 with a single recommendation that says: "Cabinet recommends appointing a Professional Administrator, or Firm of Administrators, who will be charged with managing the closure of 3 Rivers Developments Ltd so as to obtain the maximum possible benefit for the sole shareholder - Mid Devon District Council"?

The Cabinet Member for Finance responded by explaining that this question is really one for Cabinet to consider during its deliberations. However, the appointment of administrators is one of the options being considered, but is not recommended for the reasons given in the answer to an earlier question, namely, this could be considered a "hard closure" and the Council would appoint administrators to liquidate the Company and its assets, this would hand over complete control from elected representatives to administrators. The negativity associated with administration

would also likely affect the value of the Company's assets and likely affect the reputation of MDDC. This option offers around a 37% less than expected financial return than a "soft closure". The appointment of external advisors from both the legal and accountancy professions is a key part of the recommendation for a soft closure.

Barry Warren

Question 1.

Can it please be confirmed that the Deputy Chief Executive was the Director of Finance (S151) when 3 Rivers Development Limited was formed and that he was one of the founding Directors of the Company?

The Cabinet Member for Finance responded by explaining that three directors were appointed by Councillors on the formation of 3 Rivers Developments Limited, the Council's Deputy Chief Executive and Section 151 Officer was one of those appointed by the Council; this action was not unusual.

Question 2.

In 2019 did the then Cabinet, which consisted of Liberal Democrat and Independent Councillors, raise concerns as to the running of the Company and commissioned two independent reports resulting in some 33 recommendations for change - one of which was that the Deputy Chief Executive (S151) Officer should not be a Director of the Company?

The Cabinet Member for Finance responded by explaining that a report from an external advisor was received during 2020 which included 33 Recommendations, one was that the Deputy Chief Executive should not be a Director of the Company to avoid a perceived conflict of interest, and a further recommendation that a new shareholder agreement be put in place. The recommendations were approved by Councillors between June 2020 and July 2021 and the resulting Shareholders Agreement remains in force. I would point out, that as I stated in my response to question 1, it is not unusual to appoint officers to local authority owned companies and there is certainly no legislation prohibiting or, indeed, no best practice advice to avoid such an appointment.

Question 3.

When did the Deputy Chief Executive cease to be a Director of 3 Rivers and when did he take over from the Chief Executive as the 'Council representative' as referred to in the Shareholder Agreement?

The Cabinet Member for Finance responded by explaining that Companies House record the date of director resignation as 25th January 2021 and the current shareholder agreement was approved by Cabinet on 8th June 2021.

Question 4.

Since that time has the Deputy Chief Executive been the Officer who has prepared reports for Council, Cabinet and Committees involving most if not all issues in relation to 3 Rivers, including making them loans or impairing such loans or debts?

The Cabinet Member for Finance responded by explaining that the Authority's Chief Financial Officer has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Council's financial

affairs. As an ex-Leader of the Council and ex-Chairman of the Scrutiny Committee, I am sure Councillor Warren knows this, and can appreciate it would be a little odd, if not unlawful if the Council's Chief Financial Officer did not have oversight of all financial reports, including those relating to 3 Rivers.

Question 5.

Has the Deputy Chief Executive been the Officer who has prepared 'Terms of Reference' for investigations to be carried out by the Devon Audit Partnership and the external auditors where allegations of 'irregularities' have been made by third parties?

The Cabinet Member for Finance responded by explaining that As stated in the answer to the previous question, the Authority's Chief Financial Officer has a statutory responsibility under section 151 of the Local Government Act 1972 to ensure the proper arrangements for the Councils financial affairs, and along with our Chief Executive and other members of the Corporate Management Team has overall responsibility for Mid Devon District Council's Counter Fraud Policy and procedures.

The Council forwarded all allegations received to DAP and External auditors to investigate, without terms of reference due to the nature of the allegations. I view this fully in accordance with section 7 of our Anti-Fraud, Bribery and Corruption Policy presented to the Audit Committee in January 2023. It is also worthy to note that DAP and EA completed full due diligence, and reported back to the Audit Committee that the allegations were unfounded.

Question 6.

When the Terms of Reference were agreed by the previous Cabinet in accord with the wishes of Council - who finalised them, circulated them to potential candidates to carry out the independent review and appointed Francis Clark?

The Cabinet Member for Finance responded by explaining that The Terms of Reference were agreed by the Leader of the Council at the time, Councillor Warren. These were circulated to 7 potential candidates and 3 bids received; Francis Clark was the most competitive bid and the appointment was approved by the Senior Leadership Team including CEO, DCEO/ S151, Monitoring Officer and Director of Place.

Question 7.

Did anyone other than the Deputy Chief Executive have any contact with Francis Clark as a representative of Mid Devon District Council and if so who?

The Cabinet Member for Finance responded by explaining that Yes, the Deputy Section 151 Officer was also involved as a representative of the Council.

Question 8.

Bearing in mind the involvement of the Deputy Chief Executive from the outset of 3 Rivers is it now reasonable to approve Recommendations 2 and 3 in the interests of his wellbeing and/or openness and transparency of the actions proposed?

The Cabinet Member for Finance responded by explaining that this really is a question for Cabinet to consider during its deliberations. It would be highly unusual if the Council's Chief Financial Officer was not involved in such an important and

serious matter, indeed it would likely be a dereliction of their statutory duty as explained in my answer to question 4.

29. DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT (00:25:13)

No interests were declared under this item. Members were reminded of the need to make declarations of interest where appropriate.

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.

(The meeting ended at 19:07)

CHAIRMAN