

# Public Document Pack

## 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.

5.5 .....There 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 9<sup>th</sup> 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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