

**CABINET**  
**5 APRIL 2022**

**3 Rivers Developments Ltd. business case for a new site and the consideration of changes to Council borrowing arrangements.**

**Cabinet Member** Cllrs Bob Evans, Deputy Leader and Cabinet Member for Housing & Property Services and Cllr Andrew Moore, Cabinet Member for Finance

**Responsible Officer** Andrew Jarrett, Deputy Chief Executive

**Reason for Report:** To review the request for further borrowing to support the attached business case and to consider the implications of recent changes to Council borrowing arrangements.

**RECOMMENDATION(S):** That the Cabinet give its support to the attached business case, but does not offer to provide finance for this project, or any others outside of the District boundary, based on the recent changes to Government lending.

**Relationship to Corporate Plan:** Being able to access cost effective borrowing during the life of the Corporate Plan supports and underpins the delivery of all of our priorities/aims included within it.

**Financial Implications:** Funding this business case could preclude the Council from access to the Public Works Loan Board for circa 3+ years.

**Budget and Policy Framework:** All new company business cases need to be considered and approved by Cabinet prior to their addition to their existing Business Plan.

**Legal Implications:** The Council has to comply with all guidance and legislation with regard to its financial activities/decisions.

**Risk Assessment:** Although all elements of the amended guidance/legislation are not explicitly clear, after giving it due consideration and seeking professional advice, the recommended course of action mitigates the Council's exposure to financial risk with regard to its future borrowing strategy/availability.

**Equality Impact Assessment:** There are no direct implications of this decision.

**Impact on Climate Change:** This decision has no direct impact on climate change.

## **1.0 Introduction/Background**

1.1 In March 2022 the Council received a business case from 3 Rivers Developments Ltd. (3RDL) to consider an investment in a project outside of the District boundary. The current Shareholder agreement does not preclude such an investment decision.

## **2.0 The Business Case**

- 2.1 The business case is attached as a part 2 annex to this report due to its commercial nature and Cabinet members are asked to consider its approval and then subsequent addition to the already agreed portfolio of projects in the company's Business Plan.
- 2.1 From a purely financial perspective this business case demonstrates a commercial return, based on a profit on cost of 12.16%.
- 2.2 The current Shareholder agreement dictates that any new projects, not included in the existing approved Business Plan must be considered by Cabinet.

## **3.0 Changes to Government Borrowing Arrangements**

- 3.1 Over the past few years and in a direct response to years of austerity and Council Tax restrictions a number of Councils have made significant commercial investments for profit/yield, both inside and outside of their political boundaries. As a consequence and in order to positively discourage Councils from further borrowing to fund commercial investments, the Government have made a significant change to the Prudential Code (the Code) and the associated ability to borrow from the Public Works Loan Board (PWLB).
- 3.2 With effect from 26 November 2020 the Code was changed to effectively restrict any access to the PWLB if a Council included any commercial projects, made primarily for financial yield, in its Capital Programme. Further amendments and guidance to this legislation was provided in August 2021.
  - 3.2.1 Preceding every new financial year the Council's S151 is required to complete a return that states whether any commercial projects are included within the Capital Programme. If there are any then the Council will not be able to access any PWLB borrowing over the next 3 years.
  - 3.2.2 On the basis that the Council's estimated capital programme for the next 3 years has been prudently estimated to require circa £72.3m of PWLB borrowing, then the risk attached to financially supporting any commercial projects is untenable.
- 3.3 The amended rules do however allow for certain activities, that may result in some potential profit/yield as long as they are for specific service related reasons and are within the Council's boundary, examples include; regeneration, housing, refinancing treasury etc.
  - 3.3.1 For Members information Appendix 1 to this report includes key points from the revised guidance issued in August 2021.

#### 4.0 **Conclusion/Recommendation**

- 4.1 Based on the changes to Government lending criteria it is recommended that no further lending is made to 3 Rivers Development Ltd. for commercial projects outside of the Mid Devon District Council boundary.
- 4.2 This decision, if agreed, will need to be formally notified to the company at the earliest convenience and any associated revisions to the Shareholder Agreement and other governance arrangements considered. In addition, the Council's Shareholder representative will need to discuss with the company what short, medium and long term implications this decision will have on the company's profitability, pipeline of potential work and estimated break-even date.

**Contact for more Information:** Andrew Jarrett – Deputy Chief Executive (S151) and Nick Sanderson - MD 3 Rivers Development Ltd.

**Circulation of the Report:** Cabinet and Leadership Team

PWLB Guidance for Applicants – August 2021

[PWLB guidance for applicants \(updated\) V1.docx \(dmo.gov.uk\)](#)

- Each local authority that wishes to borrow from the PWLB must submit a high-level description of their capital spending and financing plans (whether it is financed through PWLB borrowing or another source) for the following three years (meaning any capital spending and financing for the whole current financial year and subsequent two financial years) including their expected use of the PWLB. (Para 12)
- The PWLB will continue to support service delivery, housing, economic regeneration, preventative action, and treasury management. (Para 19)
- Individual projects and schemes may have characteristics of several different categories. In these cases, the section 151 officer or equivalent of the authority should use their professional judgment to assess the main objective of the investment and consider which category is the best fit. (Para 20)
- Local authorities may also deliver policy objectives through a third party (such as a housing authority, joint vehicle or joint venture with a private sector investor, local authority-owned company etc.).  
...the government would expect that spending to be reported in the most appropriate category (service delivery, housing, economic regeneration, preventative action, or treasury management) based on the eventual use of the money. (Para 21)
- Housing can include all spending on delivering new homes, maintaining or improving existing homes, and purchasing built homes to deliver housing services. This is the case irrespective of the financial arrangements of the housing project or housing delivery. However, the government expects that the location and value of any housing expenditure be appropriate to meet the local authority's housing needs. (Para 28)
- The investment assets bought primarily for yield would usually have one or more of the following characteristics:
  - a. buying land or existing buildings to let out at market rate
  - b. buying land or buildings which were previously operated on a commercial basis which is then continued by the local authority without any additional investment or modification
  - c. buying land or existing buildings other than housing which generate income and are intended to be held indefinitely, rather than until the achievement of some meaningful trigger such as the completion of land assembly
  - d. buying a speculative investment asset (including both financial and non-financial assets) that generates yield without a direct policy purpose (Para 44)