

## Introduction

At the request of the council, including requests from two previous Council Leaders, we undertook a review to assess the following areas related to management of 3 Rivers Development Ltd, the housing development company it owns.

We agreed the review would include:

1. Looking at the process to agree loans from the council to 3 Rivers, and whether it was part of a formal business process where approval was provided by members.
2. Review the fraud allegations detailed below and consider whether further investigation or examination is merited or possible.

The council is commissioning a review to consider the future of the company and we have not considered this aspect in our report.

## Executive Summary

### The Financial Payment Process.

Since the creation of 3 Rivers, the Council has identified and reflected the agreed company funding requirement into council documents for member agreement, such as in Budget books and the Capital programme. 3 River Business Plans map out the loans required from the council which have been subject to approval by Cabinet. Loan agreements are in place for all the different company projects, and loans have not exceeded the envelope provided, with the exception off the St Georges Court development. Loan payment requests from 3 Rivers to the Council are supported by detail of the underlying transactions relevant to each project. There is an appropriate segregation of duties to approve the transfer of funds and make the Bankwire transaction from the Council to 3 Rivers. Review of the 3 River company accounts show these are clearly recorded as loans received related to each project. It also shows the interest paid to the Council.

3 Rivers has provided business plan and supporting information for discussion and agreement by the Cabinet each financial year. The plans set out the projects proposed, and the funds required to deliver the work. Until the last year, these were submitted just prior to the start of the financial year. For 2023-24 these were provided for approval in August 2022 to allow the council to input required loans into core financial documents.

The 2019/20 Business Plan provides the five-year financial forecast providing estimates of the borrowing required from the council; this was estimated at 2019/20 - £14.934m; 2020/21 - £25,429m; 2021/22 - £20,145m; 2022/23 - £22,737m; 2023/24 - £25,942m. The Business Plans in subsequent years include a rolling Summary Cashflow showing forecast expenditure and income. The Business Plans include the annual accounts of the company. Simpkins Edwards LLP was appointed as the company's external auditors in March 2022, and subsequently audited the accounts for 2022-23.

The company has been subject to extensive review by DAP since its formation, and two other independent reviews. Anthony Collins Solicitors provided several reports on various subjects between December 2019 and February 2020. Bishop Fleming undertook a Strategic Review in May 2020 which included review of the financial position of the company over the first three years of the company's existence. The report noted that while the business case was generic in nature, "the accompanying progress reports and appendices provided a good summary of the Company's trading position and future prospects".

We reviewed the current Loan Agreements and confirmed they were in place for all the projects being undertaken by 3 Rivers. Review of 3 River accounts showed us that Loans received from MDDC were clearly recorded by the accountant and ascribed to the specific project. This also included a Working Capital Loan Agreement. We compared the loans received to the Loan Agreements and confirm that they were all within the agreed Loan Agreement Limit. The only exception related to St Georges, which had a Loan Agreement figure of £11,035,488, compared to actual loans provided of £11,494,941.50 by 31 March 2023. This situation has arisen in recent months due to questions on the future of 3 Rivers, and whether it should continue as a company or be wound up. We agree that a decision to stop providing the loans for this project would have resulted in significant immediate realisation of costs to MDDC as the work on the project would come to a halt. We also understand that Full Council formally agreed that funds for this project should continue.

Council officers undertook their own reconciliation of approved year budgets from 2017/18, to 2022/23 to the 3 River projects and provided an explanation of the differences arising over the period. A total of £32,718,000 had been allowed for in each year of the budget, against the £22,372,474 in Loan Agreements raised to cover the projects. This resulted in a difference of £10,345,526. Most of the difference can be explained

by the two significant projects relating to £7,191,888 in not taking forward phase 2 of Knowle Lane, and £3,929,000 in not progressing future 3 River Projects.

Payments requests are provided from 3 Rivers to the S151 Officer / Deputy Chief Executive. Supporting detail of the payment in terms of how it relates to expenditure incurred by each project area is provided to justify the total payment for the month. We understand that monthly transfer requests instigated by the 3 Rivers Finance Director has helped simplify monitoring of transactions.

There was appropriate segregation of duties related to the payment of loans to 3 Rivers. This involved approval of the request by the Deputy Chief Executive / S151 officer, the raising of the Bankwire by one Principal Accountant and Procurement Manager, and approval of the request by the Corporate Manager for Finance, Property and Climate Change.

In regard to the Councils External Auditors, we note that Grant Thornton has commented on operation of 3 Rivers since its inception; mainly related to governance and performance management of the company. It does not appear to have identified any issues related to financial transactions. In respect of this work, Grant Thornton told us that they had undertaken some basic work to confirm that transactions from MDDC to 3 Rivers have been received; it has been subject to some basic audit tests as part of the council accounts for 2021/22. They have liaised with Simpkins Edwards as the External Auditors for 3 Rivers.

We spoke to Paul Steele who maintains the 3 Rivers accounts and he confirmed that he accurately recorded all transactions into the accounting software. We obtained a copy of the 3 Rivers transactions for the years from 2017-18 to 2022-23 and confirm that comprehensive accounts are maintained and that Council loan transfers are recorded. The 3 Rivers external auditor (Simpkins Edwards) audited the 2022-23 accounts before they were placed on Companies House.

It is not part of the Terms of reference of this work to consider the financial performance of the company in detail since 2020. However, it appears that the company has been impacted by poor performance of the contractor resulting in termination of the contract with the main contractor for St Georges; material and labour supply / shortages / price increases; and restriction of the ability of 3 Rivers to operate outside council boundaries impacting on its ability to identify and take forward new opportunities. We also note that except for St Georges, all the developments have or are forecast to have resulted in an overall net profit, albeit the returns have all been less than 11%.

## **Assessment of Fraud / Wrongdoing**

The review was undertaken to obtain any immediately available and obvious intelligence which points towards or away from any criminality. **For this review we did not identify evidence to support the issues or allegations.**

In respect of the allegations of fraud or other criminality the review was undertaken to obtain any immediately available and obvious intelligence or evidence which pointed towards or away from any criminality. Those connected to the allegations were requested to supply any / all evidence of criminality to DAP by the end of the working day on 26th May 2023 to assist in the completion of this report in a timely manner. Despite directly approaching Elstone/Davey/Deed and Officers of 3RDL no evidence of criminality or fraud has been obtained. All involved have been advised that should they possess or become aware of any evidence which could support any allegation of fraud or criminality then they should inform DAP and or Devon and Cornwall Police as soon as possible.

It is therefore our conclusion in line with the Terms of Reference of this review that there is no evidence to warrant a criminal investigation at this time.

This report does not preclude any ‘authority’ from acting appropriately upon information, which may come to light showing evidence of criminality or inappropriate behaviour in the future.

The allegations or suggestion of potentially fraudulent activity that have made have been addressed objectively and in line with the National Intelligence Model (NIM) to show transparency of thought in the decision-making process. Each issue has been addressed separately and given a NIM marking where appropriate. Where a NIM marking is not applicable this has been explained.

There are three **source gradings** to undertake such an assessment are –

- **1 - Reliable** – this grading is used when the source is believed to be both competent and information received is generally reliable. This may include information from human intelligence, technical, scientific and forensic sources.
- **2 - Untested** – this relates to a source that has not previously provided information to the person receiving it or has provided information that has not been substantiated. The source may not necessarily be unreliable, but the information provided should be treated with caution.
- **3 - Not reliable** – this should be used where there are reasonable grounds to doubt the reliability of the source. Corroboration should be sought before acting on this information.

There are a further 5 Information/intelligence gradings which are –

- **A – Known directly to the source.** Refers to information obtained first-hand, for example, through witnessing it. Care must be taken to differentiate between what a source witnessed themselves and what a source has been told or heard from a third party.
- **B – Known indirectly to the source** but corroborated. Refers to information that the source has not witnessed themselves, but the reliability of the information can be verified by separate information that carries the information/intelligence of assessment of A. This corroboration could come from technical sources, other intelligence, investigations or enquiries. Care should be taken when ascertaining corroboration to ensure that the information that is presented as corroboration is independent and not from the same original source.
- **C – Known indirectly to the source.** Applies to information that the source has been told by someone else. The source does not have first-hand knowledge of the information as they did not witness it themselves.
- **D – Not known.** Applies where there is no means of assessing the information. This may include information from an anonymous source, or partners.
- **E – Suspected to be false.** Regardless of how the source came upon this information, there is a reason to believe the information provided is false.

## Specific Claims related to Three Rivers, and our DAP Assessment

Date	From	Question	Council response to the Question
22 February Full Council	Mr Elstone	1. A Local Newspaper has quoted the Leader as asking for an external fraud investigation involving 3 Rivers and this Council.	As previously stated, no such investigation has been commissioned. Without greater evidence to substantiate these claims, there is not sufficient reason to investigate.

		<p>A written reply on Monday to a question I previously asked, states that a Fraud Investigation has not yet been commissioned.</p> <p>The Reply also indicates there is no intention to investigate 3 Rivers.</p> <p>There is Information in the public domain which justifies including 3 Rivers in any fraud investigation:</p> <p>a) 3 Rivers paid four hundred and twenty thousand pounds (£420,000) for the land at Bampton that a professional land valuer said was only worth Two hundred and thirteen thousand pounds (£213,000).</p> <p>b) For their Bampton development, 3 Rivers gave one set of viability figures to the Cabinet in their Business Case asking for Council Loans but gave different figures to the Council's Planning Committee.</p> <p>c) When building materials were removed from St Georges Court. It is understood that an MDDC Executive Officer wrote an email which it was said these events should be kept confidential.</p> <p>Will the MDDC Chief Executive Officer implement an external fraud investigation that fully includes 3 Rivers?</p>	
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## DAP Assessment

As the request of previous council leaders, we agreed to undertake a review, including assessment of these allegations. DAP is not part of the council operations and provides independent and objective assurances to officers and members.

We are also aware that Grant Thornton as the External Auditor is interested and may report in the context of its responsibility to comment on Value for Money.

### Allegation a) Payment of Land at Bampton.

We have reviewed the Viability report, Cabinet Business Case and discussed the procurement process with the Managing Director of 3 Rivers.

The following excerpts are relevant from the "Viability Report in Respect of Land at Elizabeth Penton Way Bampton, Devon, EX16 9GA:

*“2.10 Nevertheless, the first viability test level utilised is a land value of £250,000 per ha, i.e. circa £100,000 per acre. If this were to be applied to the Property, then the minimum land value benchmark would be **£213,000** albeit a land value at that level, as referred to within the DSP Report, is not conclusive evidence that the scheme is deliverable. It is clear from the calculations referred to above and the history of this property that viability is a significant hurdle to delivery in this case.*

*7.1 I have calculated the Residual Land Value of this site using inputs which are based on the projected sales values for the houses based on comparable evidence from the adjoining scheme. I have then utilised cost figures based upon those advised by Randall Simmonds cost consultants.*

*7.2 This residual calculation shows that the site has a Residual Land Value which is negative when all the planning obligations are factored into the calculation. In accordance with the definitions of viability referred to earlier, the site is therefore not viable with the proposed level of planning obligations.*

*7.5 3 Rivers may for non-financial reasons be prepared to proceed at a lower profit level to deliver the proposed scheme given their wider role and aim to create better quality housing”.*

The assessment of viability assumes a figure of 15-20% gross development value as a “suitable return to developers”. It notes that the report adopts a profit of 20% on GDV of the market housing, but also states the company may decide a lower GDV rate.

**The Business Case Submission to Cabinet of March 2021 provides the costs of the Land as £420k.** The estimate includes a Nil figure for the Contribution for Affordable Housing (compared to the Viability Report above). Other figures such as building costs have been reduced to make the project feasible. The actual Overhead and Profit on GDV is stated to be 12.9% (compared to the 20% listed in the Viability Report).

**Conclusion:** The Viability Report is not a Land valuation, but a calculation of the viability of the project including the costs of land and building. The price for the Land was decided by negotiations between the Managing Director of 3 Rivers and the Landowner as to what they were prepared to pay (and sell for). The final agreed figure of £420k was apparently less than the landowner initially asked for. We were told that at one stage the landowner asked for £1m, and then £600-700k. The proposal was discussed in Cabinet based on the present in their Business Case and represented a reduced overhead and profit rate of 12.9%, but this still represents a positive figure over 10%. While there are notes of 3 River meetings and other detail on how the purchase price was viable and fit in with the business case for the development, there was no record of actual process and decisions taken to reach an agreement with the landowner. As a significant expenditure we would expect this to be captured in a note, in case of challenge such as on this one (**Management Action One**).

In respect of any allegation of fraud or criminality the NIM marking in this matter is 1A/B, the information supplied in the most part is factually accurate; however, any allegation appears subjective, and nothing stated or found would constitute a criminal offence. The information is freely available to both 3RDL and MDDC, we have no intelligence or evidence that would suggest any offence involving dishonesty as defined by the Fraud Act 2006.

Allegation b) Viability figures

We were told the two sets of figures were provided for different purposes. The figures for the Planning Committee of February 2021 were to get agreement to the houses etc. The business case and figures for the Cabinet in March 2021 were as part of internal 3 Rivers management to agree the estimate costs and predicted profit values on sales. There was therefore no need for them to match up.

Fraud Assessment: In respect of any criminality, the information supplied in this matter has not been subjected to the NIM marking as there is no allegation of criminality linked to any individual that would warrant a criminal investigation.

Allegation c) Removal of building materials from St Georges Court.

We have discussed this with the Managing Director of 3 Rivers, and the S151 officer.

We understand that the Town Clerk for Tiverton e-mailed the Council on 21 Oct 2021 with his concerns that building materials were being taken off site from the St Georges Court Development. We were told that the S151 officer discussed this with the clerk, and that this was also discussed with Board members.

The building materials related to two instances:

- Removal of flagstones that were not fit for purpose.
- Other material related to an order for materials paid for personally by the 3 Rivers project manager who had asked for it to be delivered to the site (rather than his own home address). He subsequently removed the materials. We were told he was subsequently spoken to and asked not to have materials for his own use delivered to the site again.

We have reviewed the e-mail from the S151 officer referred to in the accusation. We do not consider it states that the matter should be kept secret. It merely points out that the matter had been investigated and noted the risk of making public allegations of fraud.

Fraud Assessment: In respect of any criminality, the Managing Director (Nick Sanderson) states that the matter has been dealt with by 3 Rivers Development Ltd, by means of an internal investigation. He also confirms that the company's Board discussed the allegations and what had happened and agreed to take no further action". The 151 Officer has confirmed to us that he was kept informed of the allegations and the actions that the company had taken.

It is clear that any loss would have been to the detriment of 3RDL, therefore we must conclude that the matter has been formally dealt with. The lack of records around the investigation process, decision making, and outcomes does not assist 3RDL, MDDC or DAP to transparently conclude / dispose of this allegation in a fully satisfactory manner.

Where such allegations are made in the future, full and complete records must be kept and made available for scrutiny should the need arise. To give future assurance around protection of the public purse, clarification whether MDDC Policies and the Code of Conduct apply to those being employed by 3RDL would assist all officers in understanding their responsibilities and duties.

We suggest that to protect officers from allegations and suspicion, that future allegations involving theft / fraud or other related criminal offences should be referred to the Devon Audit Partnership at the earliest possible opportunity to assist in the professional, formal process and ultimate disposal of any such allegation.

Date	From	Question	Council response to the Question
7 February Cabinet	Mr Elstone	<p>My last question covers Agenda Items 6, 7, 8 and 9 which all deal with lending to 3 Rivers.</p> <p>I was at the last Cabinet Meeting on 31 January and witnessed the public resignation of the 3 Rivers Finance Director.</p> <p>As he left he told ME and ONE OTHER that he was resigning because of the LACK OF COMPETENCY of MDDC Officers and Cabinet Members.</p> <p>He is an experienced Commercial Director and I took him seriously and was concerned.</p> <p>Will the LEADER OF THE COUNCIL arrange an EXTERNAL INVESTIGATION into whether there is any basis for this statement?</p>	This is for the leader to decide
<p><b>DAP Assessment.</b></p> <p>We have spoken to the Finance Director who was said to have resigned. He told us that he made this comment as a personal comment to an individual outside of the meeting. The comment related to his views on the conduct of some members, and not his opinion on internal management of Three Rivers. In the event the Finance Director decided not to resign and continues in position.</p> <p>Fraud Assessment: In respect of criminality, the information supplied in this matter has not been subjected to the NIM marking as there is no allegation of criminality linked to any individual.</p>			



Date	From	Question	Council response to the Question
18 January Full Council	Mr Davey	Given that it is obvious that the council and some of its officers are incapable of controlling the expenditure on 3 Rivers will the council bring in some forensic accountants or other external body to examine all of the accounts, contracts and any other documents associated with this company?	<p>Back in 2020 the Council commissioned national accountants and a legal company to review all aspects of the company. They generally gave the company and the Council a reasonable level of assurance in the set-up and ongoing arrangements of the company and in addition recommended a number of improvements that have all been implemented. It is also worthy of consideration that this high profile development has been delivered during 2 years of Covid and the current cost of living crisis (that has massively impacted on supply chains) which has seen material and labour prices increase by circa 20-30% in some areas.</p> <p>We would expect this to be within the scope of the external review being commissioned by the council that will be undertaken shortly.</p>

### DAP Assessment

This is not an area related to fraud or corruption, but the management of the company. The company uses a separate accountancy firm to maintain its finance figures, and these are subject to audit by an external audit firm. The company was also subject to two comprehensive independent reviews in 2020.

Going forward, we would expect effective management of the company to be included as part of the external review being commissioned by the council that will be undertaken shortly.

Fraud Assessment: In respect of criminality, the information supplied in this matter has not been subjected to the NIM marking as there is no allegation of criminality linked to any individual that would warrant a criminal investigation.

Date	From	Question	Council response to the Question
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18 January Full Council	Mr Davey	<p>Of especial concern must be the way in which the original multi million pound contract for the Riverside site was awarded to EBC (who later pulled out) after a cosy chat, without going out to tender!!</p> <p>This is a flagrant breach of the public procurement regulations which 3 Rivers are bound by as a company owned by the council. These regulations insist on at least 3 companies being invited to tender. Even if the Councils usual contractors do not wish to tender there are many national firms who I am sure would have tendered had they been asked. Instead, the contract was awarded "on design and build contract 2016 following negotiations with a contractor". This is the response from my freedom of information request to 3 Rivers in 2019. This alone especially as a councillor and a council officer were directors of 3 Rivers at the time, is I believe another breach of the regulations and surely warrants further investigation by an external body</p> <p>Why was the contract awarded in this way?</p>	<p>As 3Rivers is a non teckal company it is not constrained by the same arrangements as a Local Authority. We are aware that the company utilised the services of a national cost consultant to help with appointment of a main contractor for this development</p>
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## DAP Assessment

3 Rivers is a private company registered at Companies House, albeit it is council owned as a non Tekel company. It is not therefore subject to Council regulations related to procurement or to undertake any public procurement process, although it is obliged to obtain best value when buying goods and services which includes seeking several quotes from different bidding companies.

In relation to the above, we were told by the 3 Rivers Managing Director that due to pressure to start the development from members it was decided the procurement did not need to be subject to a procurement exercise but was instead directly awarded to EBC. He agreed it would normally have been subject to procurement action but in this instance, it was decided to continue. The price of the contract was also verified as reasonable by cost consultants. As the build progressed, it was decided that the build was not being well progressed by EBC, and it was mutually agreed to terminate the arrangement with the main contractor.

Currently the company does not have significant contractors; the approach now adopted is for 3 Rivers to act as the Developer Contractor placing lots of Work Packages for different suppliers for materials and works.

Fraud Assessment: In respect of the allegation of fraud or criminality, the NIM marking in this matter is 1A/B, the information supplied in the most part is factually accurate; however, any allegation appears subjective, and nothing stated or found would constitute a criminal offence. The information is freely available to both 3RDL and MDDC, we have no intelligence or evidence that would suggest any offence involving dishonesty as defined by the Fraud Act 2006.

Date	From	Question	Council response to the Question
18 January Full Council	Mr Elstone	When given 3 Rivers current project delivery record. cost exposures, and impaired loans, all available property development loan market evidence shows that the Council are providing highly preferential interest rates and loan terms to its own Company. That 3 Rivers are unable to lend from the market something confirmed by the then Cabinet Member for Finance at Cabinet on 6 September 2022. Are the Council worried about the risk of being accused of giving 3 Rivers a significant commercial advantage in any tendering process, especially where public money is involved?	All development loans made to 3Rivers are at a commercial rate of 4.5% above base rate. This has been agreed after discussions with banks and our external auditors. The company can lend from the market should they wish to, however, as part of the Shareholder Agreement they must inform the Council of this intention. As the company is a non Teckal constituted company it has to bid for any Council business through the normal formal procurement processes and these decisions are then a matter of public record.

## DAP Assessment

On formation of the company, the business case noted that it would need to rely on council loans given that there was no credit record or track record to allow reasonable lending costs. The council reportedly obtained legal advice that this was acceptable.

The question of whether the company was in breach of State Aid Regulations was considered in two reports, by Bishop Fleming and Anthony Collins.

Bishop Fleming concluded in their report of May 2020 that:

*“4.4.2 Provided those loans are made on normal commercial terms, then we do not believe there would be a breach of State Aid rules.*

*4.4.3 Loan terms are summarised in appendix 2 of this report. We noted in Section 2.3.15 that a rate of 4.5% over base, with appropriate security, would be considered a commercial rate in the current lending market.*

Anthony Collins (solicitors) noted in their Advice Note of February 2020 concerns relating to the content of the Loan Agreements vis:

*“16. For example, the Council should consider that the loan is conditional upon the company granting the Council some security over the property it owns in relation to the loan and should ensure that the other terms and conditions are those which would generally be available in*

*the market. If the Council is lending money to the company simply based on the interest rate being that which is commercially available without any consideration of the other terms and conditions which should apply to the loan, we are concerned that State aid is being granted in contravention of the regulations”.*

*They also recommend that the “Council looks very carefully at the proposals, considers obtaining specialist financial advice as to the interest rate charged to the company and our funding team can advise as to the other terms and conditions which should be applied.*

The S151 officer has confirmed to us that the loan agreements now in use are those supplied by ACS to resolve the concerns raised by Anthony Collins and Bishop Fleming and confirmed legal charges are in place on assets of the company including any work in progress.

Fraud Assessment: In respect of the any allegation of fraud or criminality, the NIM marking in this matter is 1A/B, the information supplied in the most part is factually accurate; however, any allegation appears subjective, and nothing stated or found by the review would constitute a criminal offence. The information is freely available to both 3RDL and MDDC, we have no intelligence or evidence that would suggest any offence involving dishonesty as defined by the Fraud Act 2006.

Date	From	Question	Council response to the Question
13 January Scrutiny	Mr Elstone	I understand that a senior and very well-informed member of this Council has requested the Devon Audit Partnership have its fraud team look into the 3 Rivers business dealings with the Council. Public money should not be loaned to any Company under fraud investigation. Given that all loans to 3 Rivers are public money, will this Scrutiny Committee ensure that 3 the Rivers Business Plan approvals are rescinded. Also place on hold all future 3 Rivers expenditures, other than for safety or environmental reasons. This until the results of any fraud investigation are published?	Devon Audit Partnership (DAP) have been approached to review the handling of 3RDL finances by MDDC to eliminate any wrong doing by Officers and/or Members of the Council. Any such review will be considered and shaped as necessary before being formally commissioned.

#### **DAP Assessment:**

This has resulted in this current review being undertaken. This is not a fraud investigation, but a review to establish whether there are any areas of concern to justify an actual investigation.

Fraud Assessment: In respect of criminality the information supplied in this matter has not been subjected to the NIM marking as there is no allegation of criminality linked to any individual. No fraud investigation has taken place as there is no intelligence to warrant a criminal investigation based on the information available.

Date	From	Question	Council response to the Question
13 January Scrutiny	Mr Elstone	At the same Cabinet meeting I asked; Why was the potential loss of 1.6 million pounds on St Georges Court, known to the Cabinet, kept secret from the MDDC Electorate? The written answer given: This information is restricted due to commercially sensitive nature. This is why the Public have a complete lack of trust in MDDC Executive Officers and Cabinet Members on anything to do with 3 Rivers. Especially so as it seems a senior and very well-informed Member of this Council has said that the Public “do not know the Machiavellian things that have gone on from a finance point of view”. Machiavellian characteristics are marked by cunning, duplicity or bad faith. An example is that 3 Rivers paid four hundred and twenty thousand pounds (£420,000) for low grade land at Bampton but gave the MDDC Planning Committee a viability statement stating the professional land valuation was only two hundred and thirteen thousand pounds (£213,000). Scrutiny Committee – 13 February 2023 36 Will this Scrutiny Committee fulfil their obligation to the people of Mid Devon and remedy this serious situation. This by taking whatever steps are necessary to stop this Business from going any further into decline.	The recommendations of Scrutiny Committee are included within these minutes.
<p>While the company is owned by the Council, it operates in a business area subject to competition from other property development companies. It is reasonable that a proportionate level of confidentiality be maintained in specific areas of 3 Rivers business such as proposed developments and identification and purchase of land for building. That said, the council accepts the need for transparency and openness where commercial interests are not evident. Much detail on the company are actually included as Part 1 details, and only exceptionally as Part 2 if deemed confidential. This will be a matter for the new administration to continue to discuss with officers.</p> <p>We comment above on the valuation of the Bampton Land.</p>			
<p>Fraud Assessment: In respect of criminality the information supplied in this matter has not been subjected to the NIM marking as there is no allegation of criminality linked to any individual that would warrant a criminal investigation.</p>			

## Issues for the Annual Governance Statement

The evidence obtained in internal audit reviews can identify issues in respect of risk management, systems and controls that may be relevant to the Annual Governance Statement.

## Acknowledgements

We would like to express our thanks and appreciation to all those who provided support and assistance during this review.

**Tony Rose**  
**Head of Partnership**

## Appendix A

### Detailed Audit Observations and Action Plan

No.	Observation and Implications	Impact / Priority	Management Response and action plan
1.1	The price for the Land was decided by negotiations between the Managing Director of 3 Rivers and the Landowner as to what they were prepared to pay (and sell for). While there are notes of 3 River meetings and detail is held on how the purchase price was viable and fit in with the business case for the development, there was no record of the actual process and decisions taken to reach an agreement with the landowner. As a significant expenditure we would expect this to be captured in a note, in case of challenge such as on this one. Going forward, for significant financial events we would expect the company to keep a record of the process and negotiations.	Medium	Council's shareholder representative will request that the company maintains sufficient file notes (for operational and officer key decisions/issues to ensure an adequate audit trail.

1.2	<p>In respect of criminality and the removal of materials from the St Georges site, the Managing Director (Nick Sanderson) stated to us that the matter was dealt with by 3 Rivers Development Ltd, by means of an internal investigation, although the actual process followed is unclear and unrecorded. (No records have been retained of the investigation or its outcome).</p> <p>The lack of appropriate investigation process and records does not assist 3RDL, MDDC or DAP to transparently conclude / dispose of this allegation.</p>	Medium	<p>Council's shareholder representative will request that the company maintains sufficient file notes (for operational and officer key decisions/issues to ensure an adequate audit trail.</p>
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## Appendix B

### Scope and Objectives

As part of this review, we will provide assurance to the council on the following:

1. The overarching financial payment process. We will confirm that funds provided by the council to 3 Rivers are in accordance with agreed sums detailed in the Business Plan and annual budget and have been appropriately authorised. We will also speak to the 3 Rivers accountants to discuss the checks they have undertaken of the company's transactions, and whether they have any specific concerns.

2. Review the fraud allegations detailed below and consider whether further investigation or examination is merited or possible.

Date	From	Question	Answer
22 February Full Council	Mr Elstone	<p>A Local Newspaper has quoted the Leader as asking for an external fraud investigation involving 3 Rivers and this Council.</p> <p>A written reply on Monday to a question I previously asked, states that a Fraud Investigation has not yet been commissioned.</p> <p>The Reply also indicates there is no intention to investigate 3 Rivers.</p> <p>There is Information in the public domain which justifies including 3 Rivers in any fraud investigation:</p> <p>1) 3 Rivers paid four hundred and twenty thousand pounds (£420,000) for the land at Bampton that a professional land valuer said was only worth Two hundred and Thirteen thousand pounds (£213,000).</p> <p>2) For their Bampton development, 3 Rivers gave one set of viability figures to the Cabinet in their Business Case asking for Council Loans but gave different figures to the Council's Planning Committee.</p> <p>3) When building materials were removed from St Georges Court. It is understood that an MDDC Executive Officer wrote an email which it was said these events should be kept confidential.</p> <p><b>Will the MDDC Chief Executive Officer implement an external fraud investigation that fully includes 3 Rivers?</b></p>	As previously stated, no such investigation has been commissioned. Without greater evidence to substantiate these claims, there is not sufficient reason to investigate.
7 February Cabinet	Mr Elstone	<p>My last question covers Agenda Items 6, 7, 8 and 9 which all deal with lending to 3 Rivers.</p> <p>I was at the last Cabinet Meeting on 31 January and witnessed the public resignation of the 3 Rivers Finance Director.</p>	This is for the leader to decide



		<p>As he left he told ME and ONE OTHER that he was resigning because of the LACK OF COMPETENCY of MDDC Officers and Cabinet Members.</p> <p>He is an experienced Commercial Director and I took him seriously and was concerned.</p> <p><b>Will the LEADER OF THE COUNCIL arrange an EXTERNAL INVESTIGATION into whether there is any basis for this statement?</b></p>	
18 January Full Council	Mr Davey	<p>Given that it is obvious that the council and some of its officers are incapable of controlling the expenditure on 3 Rivers <b>will the council bring in some forensic accountants or other external body to examine all of the accounts, contracts and any other documents associated with this company?</b></p>	<p>Back in 2020 the Council commissioned national accountants and a legal company to review all aspects of the company. They generally gave the company and the Council a reasonable level of assurance in the set-up and ongoing arrangements of the company and in addition recommended a number of improvements that have all been implemented. It is also worthy of consideration that this high profile development has been delivered during 2 years of Covid and the current cost of living crisis (that has massively impacted on supply chains) which has seen material and labour prices increase by circa 20-30% in some areas.</p>
18 January Full Council	Mr Davey	<p>Of especial concern must be the way in which the original multi million pound contract for the Riverside site was awarded to EBC (who later pulled out) after a cosy chat, without going out to tender!!</p> <p>This is a flagrant breach of the public procurement regulations which 3 Rivers are bound by as a company owned by the council. These regulations insist on at least 3 companies being invited to tender. Even if the councils usual contractors do not wish to tender there are many national firms who I am sure would have tendered had they been asked. Instead the contract was awarded "on design and build contract 2016 following negotiations with a contractor". This is the response</p>	<p>As 3Rivers is a non teckal company it is not constrained by the same arrangements as a Local Authority. We are aware that the company utilised the services of a national cost consultant to help with appointment of a main contractor for this development</p>

		<p>from my freedom of information request to 3 Rivers in 2019. This alone especially as a councillor and a council officer were directors of 3 Rivers at the time, is I believe another breach of the regulations and surely warrants further investigation by an external body</p> <p><b>Why was the contract awarded in this way?</b></p>	
18 January Full Council	Mr Elstone	<p>When given 3 Rivers current project delivery record, cost exposures, and impaired loans, all available property development loan market evidence shows that the Council are providing highly preferential interest rates and loan terms to its own Company. That 3 Rivers are unable to lend from the market something confirmed by the then Cabinet Member for Finance at Cabinet on 6 September 2022. Are the Council worried about the risk of being accused of giving 3 Rivers a significant commercial advantage in any tendering process, especially where public money is involved?</p>	<p>All development loans made to 3Rivers are at a commercial rate of 4.5% above base rate. This has been agreed after discussions with banks and our external auditors. The company can lend from the market should they wish to, however, as part of the Shareholder Agreement they must inform the Council of this intention. As the company is a non Teckal constituted company it has to bid for any Council business through the normal formal procurement processes and these decisions are then a matter of public record.</p>
13 January Scrutiny	Mr Elstone	<p>I understand that a senior and very well-informed member of this Council has requested the Devon Audit Partnership have its fraud team look into the 3 Rivers business dealings with the Council. Public money should not be loaned to any Company under fraud investigation. Given that all loans to 3 Rivers are public money, will this Scrutiny Committee ensure that 3 the Rivers Business Plan approvals are rescinded. Also place on hold all future 3 Rivers expenditures, other than for safety or environmental reasons. This until the results of any fraud investigation are published?</p>	<p>Devon Audit Partnership (DAP) have been approached to review the handling of 3RDL finances by MDDC to eliminate any wrong doing by Officers and/or Members of the Council. Any such review will be considered and shaped as necessary before being formally commissioned.</p>
13 January Scrutiny	Mr Elstone	<p>At the same Cabinet meeting I asked; Why was the potential loss of 1.6 million pounds on St Georges Court, known to the Cabinet, kept secret from the MDDC Electorate? The written answer given: This information is restricted due to commercially sensitive nature. This is why the Public have a complete lack of trust in MDDC Executive Officers and Cabinet Members on anything to do with 3 Rivers. Especially so as it seems a senior and very well-informed Member of this Council has said that the Public “do not know the Machiavellian things</p>	<p>The recommendations of Scrutiny Committee are included within these minutes.</p>

		that have gone on from a finance point of view”. Machiavellian characteristics are marked by cunning, duplicity or bad faith. An example is that 3 Rivers paid four hundred and twenty thousand pounds (£420,000) for low grade land at Bampton but gave the MDDC Planning Committee a viability statement stating the professional land valuation was only two hundred and thirteen thousand pounds (£213,000). Scrutiny Committee – 13 February 2023 36 Will this Scrutiny Committee fulfil their obligation to the people of Mid Devon and remedy this serious situation. This by taking whatever steps are necessary to stop this Business from going any further into decline	
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## Inherent Limitations

The opinions and recommendations contained within this report are based on our examination of restricted samples of transactions / records and our discussions with officers responsible for the processes reviewed.

## Confidentiality under the National Protective Marking Scheme

This report is protectively marked in accordance with the National Protective Marking Scheme. It is accepted that issues raised may well need to be discussed with other officers within the Council, the report itself should only be copied/circulated/disclosed to anyone outside of the organisation in line with the organisation’s disclosure policies. This report is prepared for the organisation’s use. We can take no responsibility to any third party for any reliance they might place upon it.

### Marking

### Definitions

Official

The majority of information that is created or processed by the public sector. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media, but are not subject to a heightened threat profile.

Official: Sensitive

A limited subset of OFFICIAL information could have more damaging consequences if it were lost, stolen or published in the media. This subset of information should still be managed within the ‘OFFICIAL’ classification tier but may attract additional measures to reinforce the ‘need to know’. In such cases where there

Appendix C

Definitions of Audit Assurance Opinion Levels

Definition of Observation Priority

Assurance	Definition		
Substantial Assurance	A sound system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.	High	A significant finding. A key control is absent or is being compromised; if not acted upon this could result in high exposure to risk. Failure to address could result in internal or external responsibilities and obligations not being met.
Reasonable Assurance	There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for	Medium	Control arrangements not operating as required resulting in a moderate exposure to risk. This could result in minor disruption of service, undetected errors or inefficiencies in service provision.

	improvement were identified which may put at risk the achievement of objectives in the area audited.
Limited Assurance	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.
No Assurance	Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks to the achievement of objectives in the area audited.

	Important observations made to improve internal control arrangements and manage identified risks.
Low	Low risk issues, minor system compliance concerns or process inefficiencies where benefit would be gained from improving arrangements. Management should review, make changes if considered necessary or formally agree to accept the risks. These issues may be dealt with outside of the formal report during the course of the audit.
Opportunity	An observation to drive operational improvement which may enable efficiency savings to be realised, capacity to be created, support opportunity for commercialisation / income generation or improve customer experience. These observations do not feed into the assurance control environment.

## Devon Audit Partnership

The Devon Audit Partnership has been formed under a joint committee arrangement comprising of Plymouth, Torbay, Devon, Mid Devon, South Hams & West Devon, Torridge, North Devon councils and Devon & Somerset Fire and Rescue Service. We aim to be recognised as a high-quality internal audit service in the public sector. We collaborate with our partners by providing a professional internal audit service that will assist them in meeting their challenges, managing their risks and achieving their goals. In conducting our work, we are required to comply with the Public Sector Internal Audit Standards along with other best practice and professional standards. The Partnership is committed to providing high quality, professional customer services to all; if you have any comments or suggestions on our service, processes or standards, the Head of Partnership would be pleased to receive them at [tony.d.rose@devon.gov.uk](mailto:tony.d.rose@devon.gov.uk)