

Decision Making by an Officer with Delegated Powers

This form and any accompanying documentation must be completed and submitted to Democratic Services for retention and publishing (if appropriate) within five working days of the date of the decision being approved and signed off by the relevant Director:

Decision to be taken by:	Deputy Chief Executive – Mr. Mick Jewitt
Pursuant to an Authorisation from: (Include Minute No. if appropriate)	Delegated Authority – Urgent Decision Chairman of the Scrutiny Committee – Cllr Kevin G. Hardisty has been consulted and agrees that the decision is urgent, and it is not practical to convene a meeting of the Council. The reasons for the urgency are set out below.
Report title:	Delivery of Phase 3 of Treadmills
The decision:	To give approval to CNDCL to appoint Moody Construction LTD to deliver Phase 3 of the Treadmills development and to approve the consequent increase in the Council's budget.
Background documents: (Include location/contact for inspection of background documents)	<ol style="list-style-type: none"> 1. Moody Construction Limited Tender 2. LHL Letter 3. Value for Money Assessment Note

Reasons for the decision:

PDR Construction was appointed as contractor to deliver Phase 3 of the Treadmills development. Work commenced on site. On 11 January 2022, however, PDR appointed administrators. In consequence, CNDCL (the Council's development partner) terminated the contract with PDR on 19th January 2022. As a result, another contractor is needed to continue with the delivery of Phase 3. During CNDCL's original tender process, Moody Construction Ltd was placed second. Moody has now provided a revised tender for the contract. The revised construction costs with Moody as principal contractor result in an increase in the overall construction costs for Phase 3. The increase reflects the rise in costs (occasioned by inflation and market forces) between the date of the original contract and the new tender. Using the contingency of the Treadmills development budget and some underspend in other areas of the development budget, means that this overspend can be broadly met from within the development budget, however, there is an overall increase to the Treadmills Development budget of some £78,000. The increased contract price means that the costs of development are no longer in accordance with the Council's approved budget.

CNDCL has obtained advice from their Cost Consultant LHL, which confirms that the increases in Moody's tender price is in line with the current market conditions. LHL has also confirmed that the revised tender establishes value for money. This is explained further in the attached Value for Money assessment Note.


The decision is an urgent one and it is not practical to wait for a quorate of council to be convened. The reasons are as follows. Moody's has provided a fixed price for the outstanding works needed for the delivery of Phase 3, and at present is able to hold some of the steelwork costs to that previously agreed with the steel fabricator sub-contractor, notwithstanding that the costs of steel have increased in the interim. However, following the end of the month (31st January 2022), Moody's has advised that it would need to revise its tender costs in order to incorporate any cost increases from its subcontractors.

Another consideration is the need to appoint a new contractor as quickly as possible. This will ensure that development is not 'stalled' for more than is necessary and will, as far as possible, ensure that key development dates on site are adhered to. Also, of consideration is that the development has secured a key anchor tenant (Everman Cinema). Should the development not be completed in a timely manner (and any delay in appointing a new contractor could adversely impact on delivery), then Everyman could potentially terminate the agreement. Further, construction costs are continuously rising due to increased material and labour costs, and also due to the uncertainties that the construction market faces. There is a window of opportunity for Moody's to take over the construction quickly and at a fixed price for now, but this will be at risk if the decision is not made before the end of the month, both in terms of costs and the possible availability of sub-contractors. It is not practical to convene a meeting of council before that date.

Any relevant decisions by officers must only be taken where they are in line with the Council's budget and policy framework. Any decision which is contrary to or not wholly in accordance with the budget approved by full Council must be referred to the Council for final decision. However, such a decision may be taken by relevant officers if the decision is urgent, it is not practical to convene a meeting of Council, and the Chairman of the Scrutiny Committee agrees that the decision is a matter of urgency. This is the situation in this case.

Given the urgency in this decision, and the consequences of not appointing the contractor quickly (for the reasons set out), this urgent decision shall not be subject to the call-in procedures as this would seriously prejudice the Council's interests (e.g. by putting the development timetable at risk, the likely further increase in costs, and subsequent reputational damage), and prejudice the public interest (e.g. the risk that delivery of Phase 3 may be further delayed with risks to the provision of the cinema, increased costs and potential loss of funding).

<p>Financial implications:</p>	<p>The revised construction costs with Moody's as principal contractor result in an increase in the overall construction costs for Phase 3. Using the contingency of the Treadmills development budget and some underspend in other areas of the development budget, means that the overspend can be broadly met from within the development budget. However, there is a shortfall of £78,000 which is not provided for in the Council's approved budget.</p> <p>Council will be asked at its meeting on 22 February 2022 to approve £500,000 in additional funding to provide a contingency for this project.</p>
<p>Confirmation that the decision is within budget for the service area and resources are available</p>	<p>The additional costs can be broadly met from within the Treadmills development budget. However there will be a shortfall of £78,000 which is not currently provided for in the Council's approved budget. Also see comments above.</p>
<p>Who has been consulted? <i>(consultation can include internal consultation with elected members, officers, HR, finance, legal; external consultation includes with customers, stakeholders and the general public)</i></p> <p>What were their comments?</p>	<p>Chairman of Scrutiny Committee - Councillor Kevin G. Hardisty</p> <p>The Chairman of Scrutiny Committee has agreed that a Special Urgent Key Decision can be made based on the narrow window of opportunity for the contractor to be appointed and to deliver Phase 3 of Treadmills within existing timescales.</p> <p>Deputy Chief Executive – Mick Jewitt Monitoring Officer – Gary Nelson S151 officer – Noel O'Neill Head of Commercial and Programme Management – Hannah Heinemann</p> <p>Value for Money has been discussed among the officers above and consensus reached that this decision provides value for money. A separate note addressing value for money has been produced.</p>
<p>Alternative options considered and rejected</p>	<p>CNDCL carrying out a full retendering exercise for the contract has been considered and rejected. Another option of 'mothballing' the site risks both losing Everyman as a tenant and the Future High Street Funding of £4.75m already secured for this development and which is subject to delivery targets.</p>

Risk Analysis	The risk of the decision set out lies in the lack of contingency in the current development budget. This is being addressed through the financial reporting to Cabinet and Council, and Council will be asked at its meeting 22 February 2022 to approve additional funds. Retendering the contract risks increases in price as well as a delay to the programme, which increases the risk of losing Everyman as a tenant, and also losing £4,75m in future high street funding. Mothballing the site risks both losing Everyman as a tenant and the Future High Street Funding of £4.75m secured for this development.
Equality and Diversity Issues	N/A
<p>Has any conflict of interest been declared by any Cabinet Member consulted on the decision? <i>(The council's Monitoring Officer should be consulted, in the first instance, if any conflict of interest is declared by a Cabinet Member).</i></p> <p>If any conflict of interest declared, was a dispensation granted?</p>	No
<p>Does this decision report form or any supporting papers provided contain confidential or exempt information? <i>(Refer to Democratic Services for advice if necessary)</i></p>	The background documents at 1 and 2 above contain information relating to the financial or business affairs of the Council and also contain commercially sensitive information. At this pre-contract stage the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
<p>Does this decision need to be published on the Council's website? <i>(Refer to guidance on "Delegated decisions taken by officers")</i></p>	Yes.
Signed	 DEPUTY CHIEF EXECUTIVE
<i>(Insert Director's title and name here)</i> Dated <i>28th January 2022</i>	
Contact details for further information: Officer: Tel: Email: <i>(include relevant officer's contact details)</i>	

