

# RUSHMOOR BOROUGH COUNCIL RECORD OF EXECUTIVE DECISION



Decision taken by individual Cabinet Member / Officer (delete as appropriate)

(All sections must be completed (mark "N/A" as applicable))

## DECISION MAKER (Name and designation)

Karen Edwards, Executive Director

## DECISION AND THE REASON(S) FOR IT

### Union Yard Commercial Settlement Agreement relating to an Extension of Time Claim

A Decision taken on 10<sup>th</sup> December 2021 and reported to Cabinet (report ED 2102) set out the need to undertake urgent works required to an exposed party wall at 35-39 High Street, Aldershot (not part of the main Union Yard construction contract). The final forecasted costs of the repairs to the wall at £316,500 were reported to Cabinet at its meeting on 15<sup>th</sup> March 2022 (report ED2201).

Due to the concerns with the stability of the wall, an exclusion zone was placed around the wall and piling works on the main construction site were ceased on 27<sup>th</sup> January 2022. The wall has now been demolished and rebuilt and piling will recommence on 14<sup>th</sup> June. The cessation of piling and the time associated with the works resulted in an estimated potential delay of 21 weeks against the original timescale.

Under the Joint Contracts Tribunal (JCT) Design and Build Contract the Council has entered into with Hill Partnerships, the contractor is eligible to submit an Extension of Time (EOT) claim to recover their direct and indirect (sub-contractor) losses due to delays not caused by themselves. Hill submitted their EOT claim on 4<sup>th</sup> March 2022 and instead of a 21-week delay, have claimed a 15-week delay by resequencing the construction programme. The initial financial claim associated with the EOT was £1.4m but Hill indicated as they are a partner in the Rushmoor Development Partnership that they were open to working with the Council to reduce the claim.

The impact of the delay is that the original completion date of 13<sup>th</sup> June 2024 was extended to 23<sup>rd</sup> September 2024. This completion date for the scheme raises a significant issue as it would mean that the student accommodation will not be ready for the start of the Autumn term in 2024. This could result in income from the student accommodation being lost for up to a full year. The gross income from the student accommodation is forecast at approx. £900k (gross) in year 1. It was therefore important that as well as negotiating the financial claim, all opportunities were explored to ensure the build completed before the start of the Autumn term 2024.

The Council's Employers Agent has been negotiating on the Council's behalf and the following Commercial Settlement has been agreed as fair and reasonable by both parties and confirmed as such by the Council's legal advisor Browne Jacobsen (e-mail attached):

- (1) The Council grant an Extension of Time to the 22<sup>nd</sup> July 2024 (instead of 23<sup>rd</sup> September 2024)
- (2) The Loss and Expense claim associated with the delay be agreed as a Commercial Settlement at £783,000.00 (original EOT claim £1.4m)
- (3) A Deed of Variation be entered into by both parties to remove the current 6-week Liquidated Ascertained Damages (LAD) free period from the contract

An urgent decision is required to enable Hill to activate works packages to ensure no further delays and costs are incurred. Hill will also be requested to reprofile the construction payments to enable the impact on capital budget requirements for 2022/23 and 2023/24 to be assessed and the Head of Finance will then bring forward changes to the agreed budget.

Subject to final confirmation by Bailey Garner (the Council's EA) of the commercial settlement at £783,000, the proposal for the EOT claim as set out at (1)-(3) above be agreed.

This decision has been shared with the Council's Executive Leadership Team and relevant Portfolio Holders. Councillor Mike Smith (Chair of Overview and Scrutiny Committee) has been advised in accordance with the Council's Access to Information Procedure Rules, Arrangements for Urgency and Exceptions Sections (1) and (3). The Decision will be reported to Cabinet at its next meeting.

**DATE DECISION TAKEN:** 31<sup>st</sup> May 2022

**ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

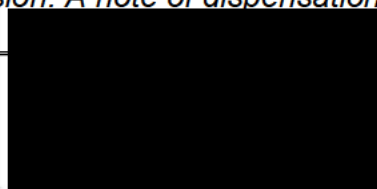
*(Those examined by officers and generated by consultation, etc)*

To continue to negotiate/contest the EOT claim. This risked ending up with a higher cost overall and the completion date extending beyond July 2024 due to contractors being deferred and difficulties in getting them back onto site given the current market conditions.

**ANY CONFLICTS OF INTERESTS DECLARED**

*(conflict of interests of any executive member who is consulted by the officer which relates to the decision. A note of dispensation should be attached).*

**Signed:**  
(Decision Maker)



**Signed:** \_\_\_\_\_  
(Cabinet Member Consultee where applicable)

**Designation: Executive Director**