

Record of Officer's Decision

The Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Date of Decision:	11/03/2025
Decision Maker (Officer):	Lee Heley, Corporate Director, Place and Economy
Authority for Delegated Decision (Cabinet/Committee Decision or Scheme of Delegation – provide reference):	Cabinet Decision 6 th October 2023 - Minute No. 38 (d) Part 3, Schedule 3 – Responsibility for Executive Functions delegated to Officers paragraph 4.3 (1) – the Corporate Director has delegated authority to discharge executive functions within their respective service areas (Part 3.43). All delegations are subject to consultation where considered appropriate in the circumstances (paragraph 4.3 (4(ii))).
Identify which Portfolio Holder(s)/Committee Chairman consulted?	Cllr Ivan Henderson, Deputy Leader of the Council and Portfolio Holder for Regeneration and Tourism
Ward Member(s) consulted?	n/a
Is it a Key Decision?	No
Is it subject to call-in?	No
Decision Made:	To ratify exercising the relevant contract clauses to terminate the existing appointment, and enter into a new contract with Baily Garner LLP (company registration number OC305198) for the provision of Employers Agent, Lead Consultant, PM, Clerk of Works and Quantity Surveyor services for the Carnarvon Terrace project which is being delivered as part of the wider Clacton Civic Quarter Levelling Up Fund scheme, and for the Homes in Dovercourt project, which is being delivered as part of the Dovercourt Town Centre Improvement Corridor scheme. The services have a total cost of £123,550.00 (Carnarvon Terrace) and £44,900.00 (Homes in Dovercourt) plus VAT
Reason for Decision (if a report was produced to support the Decision, refer to or attach it):	On 6 October 2023 Cabinet considered a report titled 'Levelling Up Fund and Capital Regeneration Projects - Progressing the Projects to Planning Permission'. As part of that report, Cabinet delegated authority to the Corporate

	Director Place and Economy in consultation with the Portfolio Holder for Economic Growth, Regeneration and Tourism to procure appropriate resources and commission a project team to carry out the associated work including for the design briefs. Further to the above and the decision to award the contract published on 27/03/2024, the appointed consultant has continually failed to perform to the required standard despite attempts by officers to rectify the situation. Formal warnings have been issued to the consultant with the consultation of the Council's Director of Governance and Monitoring Officer, and Section 151 Officer, however no improvement has been made by the consultant in the performance of the contract. The Employer's Agent and Quantity Surveyor appointment constitute a crucial element of the consultant team and important to ensure robust project management and cost control.
Highlight any associated risks/finance/legal/equality considerations:	Finance The total project costs of the Carnarvon Terrace scheme were calculated to be £19,743,739. This is broken down as follows: Request to Levelling Up Fund: £16,855,239 TDC Match Funding Contribution: £2,078,500 Brownfield Land Release Funding: £420,000 Electric Vehicle Fund: £390,000 (not yet secured) The total project costs of the Dovercourt Town Centre Improvement Corridor scheme were calculated to be £3,548,751. This is broken down as follows: Request to Levelling Up Fund: £3,332,251 TDC Match Funding Contribution: £216,500 Legal The services have been procured in line with section 4.3 of Part 5 of the Council's Constitution, which sets out the process for procurement exceeding £50,000 (excluding VAT).
Details of any Alternative Options Considered and rejected (together with reasons):	Option 1 - Not to terminate the existing appointment: due to non-performance and lack of action in response to attempts by officers to rectify the situation with the consultant, officers do not have the confidence that the consultants originally appointed are capable of delivering the services as required which will be increasingly crucial as the projects approach construction.

	Option 2 - To continue to seek improvement from the existing consultant prior to termination: This approach is not deemed appropriate given the period that has already elapsed with no improvement forthcoming. The consultant non-performance is now posing a risk to the wider programme due to non-completion of key deliverables, which could expose the Council to unnecessary risk if allowed to continue. Option 3 - Not appointing a consultant: Taking this approach would expose the Council to excessive risk including that the works did not progress.																						
Details of any declarations of interest (by Portfolio Holder/Committee Chairman who was consulted by the officer, which related to the decision) If relevant, a note of the dispensation granted by the Monitoring Officer:	N/A																						
Reason Decision, or supporting Report, is not published: <i>Tick one or more of the specific exemptions,</i> <u>and</u> <i>Give more information in the final box with regards to why the exemption applies and outweighs the public interest test (which is in favour of disclosure).</i>	<table border="1"> <tr> <td>x</td><td>Not applicable – Decision [and report] to be published</td></tr> <tr> <td colspan="2">If Report is not to be published – tick one of the following boxes:</td></tr> <tr> <td>☐</td><td>The report supporting the Decision contains confidential information</td></tr> <tr> <td>☐</td><td>The Report supporting the Decision falls within an exemption pursuant to Schedule 12A of the Local Government Act 1972 Information:</td></tr> <tr> <td>☐</td><td> - Relates to an individual </td></tr> <tr> <td>☐</td><td> - Likely to reveal the identity of an individual </td></tr> <tr> <td>☐</td><td> - Relating to financial or business affairs of a person or organisation </td></tr> <tr> <td>☐</td><td> - Relates to a claim for legal professional privilege in legal proceedings </td></tr> <tr> <td>☐</td><td> - Reveals that the Council proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment </td></tr> <tr> <td>☐</td><td> - Relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime </td></tr> <tr> <td colspan="2"> <u>And</u> is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information Reasons: [insert] </td></tr> </table>	x	Not applicable – Decision [and report] to be published	If Report is not to be published – tick one of the following boxes:		☐	The report supporting the Decision contains confidential information	☐	The Report supporting the Decision falls within an exemption pursuant to Schedule 12A of the Local Government Act 1972 Information:	☐	Relates to an individual	☐	Likely to reveal the identity of an individual	☐	Relating to financial or business affairs of a person or organisation	☐	Relates to a claim for legal professional privilege in legal proceedings	☐	Reveals that the Council proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment	☐	Relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	<u>And</u> is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information Reasons: [insert]	
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Officer

Signed: *Lee Kelay*

Title: Deputy Chief Executive

In consultation with:

Signed:

Title: Portfolio Holder for Economic Growth, Regeneration & Tourism

Dated: 24/03/2025