

## CABINET REPORT

27 June 2025

### REPORT OF THE PORTFOLIO HOLDER FOR ECONOMIC GROWTH, REGENERATION AND TOURISM

#### A.2 LEVELLING UP FUND – APPROPRIATION OF SITE FOR PLANNING PURPOSES

##### PART 1 – KEY INFORMATION

###### PURPOSE OF THE REPORT

To seek Cabinet approval:

1. to appropriate Council-owned land at High Street Car Park, Carnarvon Road, Clacton-on-Sea for the purposes of the Carnarvon Terrace Development;
2. of authority to grant a unilateral undertaking to the Planning Authority, to secure
  - (a) obligations relating to the Recreational Disturbance Avoidance and Mitigation Strategy (RAMS).
  - (b) Commitment to use the appropriated land solely for the delivery of affordable housing as part of the Carnarvon Terrace Development

###### EXECUTIVE SUMMARY

The Council's bid to Round Two of the Government's Levelling Up Fund (LUF) for Clacton Town Centre, the 'Clacton Civic Quarter', was successful and awarded £19.960m. The programme includes two schemes aimed at improving wellbeing and access to jobs & skills:

- Carnarvon Terrace, delivered by TDC, will provide 28 residential flats, with 40 percent designated as affordable housing.
- Clacton Hub, delivered by ECC.

The Carnarvon Terrace Development site has historically been used as a car park and healthcare facility. The proposed development will introduce mixed-use commercial spaces and repurpose the site for housing. Timely appropriation is critical to avoid delays and mitigate legal risks, particularly those related to third-party rights such as rights of light and access. Appropriation at this stage is necessary to accompany the planning consent and ensure legal certainty for the procurement process.

###### RECOMMENDATION(S)

It is recommended that Cabinet:

- a. agrees to the appropriation of the site including High Street Car Park and the former Carnarvon House site, Carnarvon Rd, Clacton-on-Sea, CO15 6QF, for the purposes of the Carnarvon Terrace Development incorporating planning purposes, housing and commercial uses, as indicated in the plan at Appendix A;

- b. approves that the Council in its capacity as landowner and developer grant Unilateral Undertaking (UU) to the Planning Authority to discharge both the Affordable Housing and RAMS payment in lieu of a S106 agreement for obligations in relation to 24/01890/FUL ("the Carnarvon Terrace Development");
- c. subject to a) delegates authority to the Deputy Chief Executive and Director of Place & Wellbeing, in consultation with the Corporate Director Finance and IT (and Section 151 Officer) and Legal Services to undertake the necessary legal steps to complete the appropriation process including but not limited to, notification of those who may be affected, publication of the relevant appropriation decision notices, and executing memorandums as required by the relevant legislation;
- d. delegates authority to the Deputy Chief Executive and Director of Place & Wellbeing, in consultation with the Corporate Director Finance and IT (and Section 151 Officer) and Legal Services to approve the final terms of the necessary legal instrument required for the purposes of unilateral undertaking to be given to the planning authority by the Council in its capacity as the owner and developer of land; and
- e. Note further decisions will be required following the outcome of the procurement exercises and on-going use of the land for different purposes to ensure the Council is fulfilling its various legal duties

#### **REASON(S) FOR THE RECOMMENDATION(S)**

##### Appropriation

Appropriation is required to ensure timely delivery of the development in accordance with funding deadlines set by the Ministry of Housing, Communities and Local Government (MHCLG). It mitigates the risk of delays arising from potential third-party claims and ensures the procurement process can proceed without legal challenges.

##### Unilateral undertaking

The Planning Committee approved the Carnarvon Terrace development on 4th March 2025, requiring the Council to enter into a Section 106 Legal Agreement for Affordable Housing, RAMS payments, and Biodiversity Net Gain (BNG). However, the Council cannot enforce this agreement against itself. Therefore, a further report will be presented to the Planning Committee to address BNG as a condition and cover affordable housing and RAM payments through a Unilateral Undertaking (UU), as opposed to a Section 106 Agreement

#### **ALTERNATIVE OPTIONS CONSIDERED**

- Stop the developments now. This would lose the opportunity for substantial improvements in Clacton and Dovercourt with external funding and potentially impact on the success of future funding opportunities.

- Not to progress with land appropriation – however, this could present a risk to the delivery time frame of the projects. Formal appropriation is essential in this context because the existing designation of the land does not allow for development for housing purposes.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

#### **Corporate Plan**

The LUF and CRP programmes meet the following themes in the Corporate Plan (2024-2028):

- Pride in our area and services to residents.
- Raising aspirations and creating opportunities.
- Working with partners to improve quality of life..

#### **Economic Strategy 2020-24**

The Tendring Economic Strategy was updated in 2020. The Strategy uses evidence from Office of National Statistics to demonstrate that there have been some important changes in the district's economy in recent years which require a change in approach.

The successful Levelling Up application complements the following areas for Action set out in the Strategy:

- Supporting long term investment into local civil society, citizen engagement and participatory activities within Jaywick Sands and Clacton
- Building the capacity of local civil society and third sector organisations to support the development of routes to employment in community businesses, social enterprise and alternative labour markets
- Work with core Higher Education and Further Education partners (primarily the University of Essex and the Colchester Institute)
- Accommodate the business needs of a growing population by developing new flexible spaces for start-up and micro business growth.

The Economic Strategy is currently being refreshed and updated and based on external advice much of the content remains relevant and suitable as continued priorities going forward and therefore continued strategic fit does not represent a risk in this instance.

#### **Tendring District Council Local Plan 2013 - 2033**

Delivery of these projects will align with the following strategic objectives set out in Section 1 of the Local Plan, adopted on 26<sup>th</sup> January 2021:

- Providing sufficient new homes
- Fostering economic development

Further details on the scheme's alignment to the Council's corporate priorities are available in earlier Cabinet Reports relating to the programmes.

### OUTCOME OF CONSULTATION AND ENGAGEMENT

The approach and recommendations set out within this report have been developed through consultation and engagement with multiple Council teams including Legal Services and Planning.

Further information on the consultation and engagement linked to the LUF and CRP can be found in previous Cabinet reports.

**LEGAL REQUIREMENTS (including legislation & constitutional powers)**

<b>Is the recommendation a Key Decision (see the criteria stated here)</b>	YES	<b>If Yes, indicate which by which criteria it is a Key Decision</b>	<div>■ Significant effect on two or more wards</div> <div>■ Involves £100,000 expenditure/income</div> <div>■ Is otherwise significant for the service budget</div>
		<b>And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)</b>	29 May 2025

**Appropriation of Land:**

Under Section 122(1) of the Local Government Act 1972, the Council may appropriate land it owns, which is no longer required for its current use, for any purpose for which it is legally empowered to acquire land.

Sections 226 and 227 of the Town and Country Planning Act 1990 (TCPA 1990) permit appropriation for planning purposes and uses including healthcare and commercial.

Section 203 of the Housing and Planning Act 2016 (HPA 2016) enables the Council to override certain third-party rights once land has been appropriated for planning purposes and planning permission is in place.

**Unilateral Undertaking:**

As developer, the Council may enter into a UU under Section 106 TCPA 1990 to secure planning obligations, including affordable housing and RAMS contributions.

■	<b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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The Report is essentially a technical governance requirement to ensure the Council can lawfully commit to the obligations and conditions of the planning approval, through a Unilateral Undertaking and appropriation for such purposes is required. It must be noted that once the procurement process has been undertaken and further financial information is available, further decisions at Cabinet level maybe required before the development can commence.

Decisions will be required in relation to the ongoing use of the site such as housing and car parking purposes, which are covered by separate legislative requirements and should be factored into the delivery programme to ensure they are not overlooked.

## FINANCE AND OTHER RESOURCE IMPLICATIONS

The financial implications are primarily related to the Council's exposure to potential claims. The total bid to the Levelling Up Fund for the Clacton Civic Quarter was £19,958,224, broken down across two projects

### Financial risk

It has been calculated that the Council could potentially face loss of light claims at the Carnarvon Terrace Development in the region of £185,000. This is in addition to legal costs for external barrister/s and additional surveyor costs. The Council could also be liable for the Claimants costs. In all, the total exposure could be in the region of £200,000-£225,000 for the Carnarvon Terrace Development if the sites are not appropriated for planning purposes as set out elsewhere in this report.

Without appropriating the land formally, in advance of the conclusion of the Unilateral Undertaking discussed elsewhere in this report and the granting of full planning permission, the Council is exposed to risk of injunction which could relate in costs additional to those set out above.

In relation to resources and capacity, sufficient allocation is in place within the Project Delivery Unit.

X	<b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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Actions to protect the Council from potential / emerging risk will play an important role throughout the delivery of the associated projects. This needs to be set against the Council's underlying approach to risk management and be proportionate and balanced in terms of both finance and reputation.

As highlighted in previous reports, the overall funding / financial position relating to the project will need be subject to on-going review, with the next significant milestone being the outcome from the associated procurement process. This will allow a further timely opportunity to revisit the underlying funding / financial position along with any associated / required decision making as necessary.

## USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	<p>The recommendations within this report relate to measures to ensure the Council's ongoing financial sustainability through mitigating the Council's exposure to expensive claims.</p> <p>In relation to resources and capacity, sufficient allocation is in place within the Project Delivery Unit.</p>
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B) Governance: how the body ensures that it makes informed decisions and properly manages its risks; and	This report seeks approval from the Council's Cabinet to progress towards signing the Unilateral Undertaking being a legal agreement to comply with the obligations and conditions attached to the planning approvals. . The Executive is responsible for land ownership matters.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The recommendations within this report are required in order for the Council to operate efficiently and with effectiveness. By approving the recommendations made in this report, officers will be empowered to continue delivering these capital projects to required deadlines, and with transparency to the public.

## **MILESTONES AND DELIVERY**

The project progress is summarised as follows (see Annex 1):

### **Progress to date**

- Consultant team inception: Q2 2024/5
- Project brief defined: Q2 2024/5
- Public engagement – Q2-3 2024/5
- Detailed Planning Application Lodged – Q3 2024/5

### **Forward Look**

- Planning Approval: Q4 2024/5
- RIBA Stage 3 (Spatial Coordination) design completed: Q1 2025/6
- Stage 3 Cost Plan – Q1 2025/6 (costed-design)
- Tender Documentation and Employer's Requirements Produced: Q1/Q2 2025/6
- Contract Sum Analysis: Q2 2025/6 (costed and benchmarked)
- Cabinet Approval to accept preferred tender and enter contract: Q2 2025/6
- Construction start on site: Q3 2025/6
- Construction period: 15 – 18 months

Officer resource is allocated to ensure sufficient capacity by suitably experienced and qualified personnel is committed to deliver these milestones , working with the support of the external consultant team appointed for the project.

MHCLG confirmed in April 2025 an extension to the funding agreement, through to March 2027, bringing the funding period in line with the reported delivery timescales.

## **ASSOCIATED RISKS AND MITIGATION**

Project risks are constantly monitored through a systematic and ongoing process of risk identification, assessment, mitigation and monitoring. The risk register is a rolling item at the Programme Board, as regular communication and reporting on the status of risks to all project team members, stakeholders and sponsors is essential to effective delivery. Risk registers have been produced as follows;

- one for each of the two individual LUF/CRP projects and their component parts, and

- an overarching risk register highlighting the ‘top ten’ risks across the entire program

The current key risks to the entire programme are as follows:

	Risk	Mitigation	Owner
1	Procurement	Market engagement	TDC & ECC
2	Programme delays	Monitoring and project management	ECC & TDC
3	Cost escalation	Programme management	ECC & TDC
4	Ground conditions	Surveys	ECC & TDC
5	Land Appropriation	Appropriation, insurance	TDC & Legal
6	Design development	Project management	ECC/TDC
7	Construction Risk	Early engagement	ECC & TDC
8	Contracts	Timely governance and processes	TDC
9	Third party approvals	Early engagement	TDC & ECC
10	Devolution/Local Government Reform	Communication and information management	TDC & ECC

### Risks relating to Land Appropriation

- Risk of injunction due to failure to appropriate land for development, potentially causing a failure to deliver the Programme within the funding envelope
- Compensation claims
- Delay and/or cost overrun
- Community opposition
- Compliance or non-compliance with statutory powers

There is a theoretical risk that if the land is appropriated for a specific purpose and it is not used for that purpose, the rights will be resurrected. Appropriation by a local authority or its subsequent disposal can be challenged if a local authority has reached its decision on a legally flawed basis or has not carried out the correct legal process. Any claim would need to be made by judicial review. There are no extra financial resources required for this task.

This risk is considered theoretical since the funding is ringfenced to provide the scheme as per the Planning submission, pending approval.

### EQUALITY IMPLICATIONS

Having undertaken an equalities impact assessment, the conclusion is that the proposal does impact on the protected characteristics. EQIAs have been developed; refer to the Cabinet report dated 23 June 2023.

#### **IMPLICATIONS RELATED TO DEVOLUTION AND/OR LOCAL GOVERNMENT REORGANISATION**

Project delivery will be completed in advance of the timescales of Local Government Reorganisation, as will the main construction works. Officers are currently working on the wider implications of Local Government Reorganisation to the scheme including future management of the housing delivered.

#### **SOCIAL VALUE CONSIDERATIONS**

These projects will deliver significant social value. Providing new housing, including social housing, will benefit local people. As of 2023/4, there were 2,260 households on the Tendring District Council housing register (up from 608 in 2017, equivalent to 222% growth in just three years). Lack of available housing also contributes to wider health and social inequalities. Both the Carnarvon Terrace scheme and the Homes in Dovercourt scheme will provide social housing. This will have a positive impact on single people, couples, and small families made up of all ages through increasing current housing provision of both types. Re-providing car parking will also boost the town centres of Clacton and Dovercourt.

#### **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050**

The development will deliver a range of sustainability measures and interventions that will represent a substantial improvement to the existing site and set a strong track record for future action by the Council. For further detail on the sustainability measures within the design, please refer to the December 2024 Cabinet Report.

#### **OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

<b>Crime and Disorder</b>	The Carnarvon House site was an existing crime hotspot in Clacton, and redeveloping this site aim to decrease crime directly. The development includes the provision of additional community services and improved visual amenity, which will contribute to the reduction of crime through increased natural surveillance, and has been informed through input from Essex County Council's Designing Out Crime Officer. For further details refer to the December 2024 Cabinet Report.
<b>Health Inequalities</b>	The development will have a positive impact on health inequalities including access to housing, education, jobs, and public services. For further details refer to the December 2024 Cabinet Report.
<b>Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)</b>	The recommendations within this report are not relevant in terms of subsidy control
<b>Area or Ward affected</b>	Pier ward

### **PART 3 – SUPPORTING INFORMATION**



## BACKGROUND

Progress since the last report to Cabinet:

Planning applications for the LUF and CRP schemes have been submitted and approved.

Designs are progressing towards the end of RIBA Stage 3, with a developed cost plan and detailed program in place.

Demolition at Carnarvon Terrace is estimated to start in October 2025, with main works beginning in January 2026.

## PREVIOUS RELEVANT DECISIONS

A full list of previous decisions relevant to the LUF/CRP programme is available in the December 2024 Cabinet Report.

- 6 October 2023; Cabinet: Levelling Up Fund and Capital Regeneration Projects - Progressing the Projects to Planning Permission ([11879](#))
- 24 May 2024; Cabinet: Update on LUF / CRP ([12439](#))
- November 2024; Executive Decision: Planning Submission for the CRP Funded project at Milton Road Car Park, Dovercourt ([12962](#))
- December 2024; Executive Decision: Planning Submission for the LUF Funded project at Carnarvon Terrace, Clacton-on-Sea ([13060](#))
- December 2024; Cabinet: Progressing the Projects to production of Tender information ([19665](#))

## BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

For a full list of background papers relevant to the LUF/CRP programme please refer to the December 2024 Cabinet Report.

## APPENDICES

**Appendix A** Plan of the Carnarvon Terrace Development

**Appendix B** Planning Officers Report to Planning Committee dated 4<sup>th</sup> March 2025

**Appendix C** Unilateral Undertaking

## REPORT CONTACT OFFICER(S)

Name	David Ousby
Job Title	Interim Assistant Director, Project Delivery
Email/Telephone	<a href="mailto:dousby@tendringdc.gov.uk">dousby@tendringdc.gov.uk</a> 01255 68 6006

Annex : Programme Plan

