

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:	24/09/26
Decision Maker (Officer):	Lee Heley, Deputy Chief Executive and Corporate Director, Place and Wellbeing
Authority for Delegated Decision (Cabinet/Committee Decision or Scheme of Delegation – provide reference):	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)). Cabinet Decision 6 th October 2023 - Minute No. 38 (c) (d) Cabinet Decision 20 th December 2024 – Minute No. 100 (2) Officer decision to appoint Baily Garner, March 2025 (13411)
	Cabinet – December 2024; Progression to procurement (13113)
	March 2026; Procurement Update and Next Steps (22534)
	April 2026; Financial Report (22684)
Identify which Portfolio Holder(s)/Committee Chairman consulted?	Cllr Ivan Henderson, Deputy Leader of the Council and Portfolio Holder for Economic Growth, Regeneration and Tourism
Ward Member(s) consulted?	n/a
Is it a Key Decision?	No
Is it subject to call-in?	No

Decision Made:	<p>To agree variation to the contract with Baily Garner (company registration number OC305198) for the purposes of carrying out additional Employers Agent and PM services for the Carnarvon Terrace project which is being delivered as part of the wider Local Regeneration Fund Clacton Civic Quarter scheme, due to the programme prolongation attached to retendering the project.</p> <p>The additional services have a fixed fee (excluding VAT) of:</p> <p>Carnarvon Terrace: £21,960</p> <p>Milton Road & Victoria Street: £7003</p>
Reason for Decision (if a report was produced to support the Decision, refer to or attach it):	<p>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.</p> <p>On 24/3/25 a decision was published awarding the contract for Employer's Agent, Project Management and Quantity Surveying for the Carnarvon Terrace scheme to Baily Garner, following termination of the previous appointment (link).</p>
	<p>The consultant has completed all of their original commission obligations and is now being asked to carry out additional services due to the project delay resulting from a second procurement exercise.</p>
Highlight any associated risks/finance/legal/equality considerations:	<p>Procurement</p> <p>The Council's Procurement Procedure Rules require the following considerations be appraised when considering extensions to existing contracts:</p> <ul style="list-style-type: none"> - Legal basis – this is to be found in the contract which basically allows for variation to scope and price. - Financial – this should cover off the budgetary position ie availability of funds - Value for money – this the instruction of additional services being provided by this consultant represents value for money. - Continuity – that for time and continuity, it makes business sense to continue with the same consultant.

- Regulations – that the cumulative value falls below the relevant threshold.

Legal

The variation, and associated additional fee, has been confirmed as compliant with the terms of the existing agreement.

Finance

The appointment set out within this decision falls within the overall budget for consultant appointments within the LRF programme as approved by Cabinet on 6th October 2023.

[\(link\)](#)

The initial contract was procured in 2025 at a value of £123,550.00 (Carnarvon Terrace) and £44,900.00 (Homes in Dovercourt) plus VAT; a total of £168,450.00. The additional £28,962.10 will bring the value to £197,412.10.

Value for money

Baily Garner were substantially cheaper than other bidders when originally procured. Their additional fee has been subject to challenge and negotiation, and the figure recommended is deemed to be value for money based on the additional services provided.

Continuity

By retaining Baily Garner as the appointed Employer's Agent and Project Manager the Council will benefit from their strong understanding of the project, tender information and Council's priorities. Maintaining consultant role this important is critical for the progress, administration of the building contract and risk management of these significant regeneration projects.

This decision will enable the Project Delivery Unit to progress the project in line with the agreed timeline.

Regulations

The contract was procured in 2024 under the Procurement & Contracts Regulations 2015. The total fee including the proposed variation falls below the then PCR 2015 threshold of £214,904. Regulation 72 PCR 2015 only applies to above threshold contracts. The cumulative value falls below that threshold. Even where regulation 72 was to be applied for the purposes of transparency, the Council can rely on regulation 72 (1)(C) which allows for modification of contracts where the need for such modification has been brought about by circumstances which a diligent contracting authority could not have foreseen, the modification does not

	<p>alter the overall nature of the contract and any increase does not exceed 50% of the original value of the contract. The need for this modification has been brought about by circumstances beyond the Council's control, it does not alter the overall nature of the contract and neither does it exceed 50% of the original contract.</p>	
<p>Details of any Alternative Options Considered and rejected (together with reasons):</p>	<p>Retendering for this consultant role would leave the Council without this critical role in the project team at a significant time in project development, which would expose the Council to undue risk.</p> <p>Not appointing a consultant. Taking this approach would mean the works did not progress.</p>	
<p>Details of any declarations of interest (by Portfolio Holder/Committee Chairman who was consulted by the officer, which related to the decision)</p> <p>If relevant, a note of the dispensation granted by the Monitoring Officer:</p>	<p>N/A</p>	
<p>Reason Decision, or supporting Report, is not published:</p> <p><i>Tick one or more of the specific exemptions,</i></p> <p>and</p>	<p>X</p>	<p>Not applicable – Decision [and report] to be published</p>
	<p>If Report is not to be published – tick one of the following boxes:</p>	
		<p>The report supporting the Decision contains confidential information</p>
		<p>The Report supporting the Decision falls within an exemption pursuant to Schedule 12A of the Local Government Act 1972 Information:</p>
<p><i>Give more information in the final box with regards to why</i></p>		<ul style="list-style-type: none"> • Relates to an individual
		<ul style="list-style-type: none"> • Likely to reveal the identity of an individual
		<ul style="list-style-type: none"> • Relating to financial or business affairs of a person or organisation

the exemption applies and outweighs the public interest test (which is in favour of disclosure).		
		<ul style="list-style-type: none"> Relates to a claim for legal professional privilege in legal proceedings
		<ul style="list-style-type: none"> 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
		<ul style="list-style-type: none"> Relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
<p>And is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption the public interest in disclosing the information</p> <p style="text-align: center;">outweighs Reasons</p> <p style="text-align: center;">[insert]</p>		

Officer

Signed:

Title: Corporate Director Place and Economy

[Confirmed via email]

In consultation with:

Signed: [via email]
Tourism

Title: Portfolio Holder for Economic Growth, Regeneration &

Dated: