

15 August 2012

**REPORT OF THE LEADER OF THE COUNCIL****LOCALISM ACT 2011****EXEMPT INFORMATION**

None

**PURPOSE**

To consider the Council's approach to the implementation of a key part of the Localism Act 2011 – the Community Right to Challenge set out in Part 5 Chapter 2.

**RECOMMENDATIONS**

To approve the guidance document attached (Appendix 2) and the decision and notification timetables required under sections 82 to 84 of the Localism Act 2011 as relating to the Community Right to Challenge which are set out below:-

- (1) To accept expressions of interest under the Community Right to Challenge duties annually only between 1 June and 30 June, commencing 2013,
- (2) To accept expressions of interest under the Community Right to Challenge duties for services already delivered by a third party as set out in the contracts register,
- (3) Determination of these expressions will take no more than 26 weeks from the close of the period (30 June) and follow generally the process outlined in Appendix 1,
- (4) The minimum period between the date of our decision to accept an expression of interest and the date on which the procurement exercise will begin is 12 weeks. The maximum period is 26 weeks, however depending on the complexity of the EOI on the services involved this period may be waived and the relevant body notified accordingly,
- (5) To publish the guidance document and the decision and notification periods on the Council's website as required by the legislation
- (6) To delegate to the Chief Executive and the Leader of the Council authority to make any necessary policy amendments

**EXECUTIVE SUMMARY**

The Community Right to Challenge requires relevant authorities (County, District or London Borough Councils) to consider expressions of interest in running Council services from various bodies specified in legislation, and when expressions of interest are accepted, carry out a procurement exercise.

The relevant bodies specified in the legislation include:

- A voluntary or community body;

- A body of persons or a trust which is established for charitable purposes only;
- Parish Councils;
- Two or more employees of the Council; or
- Any other person or body specified by the Secretary of State by regulations

Whilst only relevant bodies are eligible to submit an expression of interest they may do so in partnership with other relevant bodies and/or non-relevant bodies such as private companies. Relevant bodies do not have to be local to the area.

The Right to Challenge relates to **services** provided by the authority and not to **functions** of the authority. The guidance uses an example of the distinction between an authority's function of determining planning applications and the service of processing applications to illustrate this.

An expression of interest from a relevant body must be in writing and contain certain information specified in the Regulations. The guidance does not specify the form that this information could take. Information outside the scope of the requirements in the Regulations may not be used as a ground on which to reject an expression of interest.

The Council must consider the expression of interest and may accept it, accept it with modifications or reject it. The guidance sets out that any modifications should be proportionate and gives suggestions of potential modifications including rectifying omissions from expressions or clarifying details of services. The Council can only reject expressions of interest on the grounds set out in the Regulations.

If the expression is accepted, the Council must then conduct a procurement exercise for the specified service. The procurement exercise must be appropriate having regard to the value and nature of the contract. The Council will need to comply with procurement law and must consider how both expressions of interest and procurement exercises would promote, or improve the economic, social or environmental well-being of Tamworth.

The Council must make a number of decisions in respect of when it will consider expressions of interest, a maximum period for deciding whether to accept an expression of interest and a minimum and maximum periods for beginning procurement exercises once expressions are accepted. The proposed periods for Tamworth are set out in the recommendations. These periods must be published.

Particular attention needs to be given to how we will deal with expressions of interest for services which are provided on a joint arrangement with other authorities and officers will commence discussions on how these are to be handled.

A review of the process and overall approach to the Community Right to Challenge will take place after 12 months or sooner if required to reflect learning from our current arrangements and the impact of case law.

## **RESOURCE IMPLICATIONS**

The resource consequences of this report will be met primarily from within existing staff resources. However, it is likely that there will be as yet unknown costs associated with legal advice, potential procurement exercises and possible mobilisation costs should a challenge be successful. It would not be unreasonable to expect there to be additional requirements for specialist legal, procurement, and HR advice as well as support to draft service specifications.

If the Council should decide to submit an in-house bid then this will have additional resource implications. It will be necessary to ensure that the team preparing any in-house 'tender' are treated in exactly the same way as external tenderers and do not receive any information which is not made available to all other bidders and which might give the in-house bid team

an unfair advantage in the preparation of their bid.

The potential resource implications from the Community Right to Challenge will be discussed as part of the next round of the Council's budget process.

At the moment it is difficult to assess what kind of impact the Community Right to Challenge will have on the Council's services.

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

The Localism Act 2011 was enacted on 15 November 2011. The provisions relating to the Community Right to Challenge were brought into force on 27 June 2012.

There are likely to be unknown demands placed upon current resources, some of which may impact on the delivery of existing services as management attention is directed to responding to expressions of interest and any potential procurement exercises.

## **SUSTAINABILITY IMPLICATIONS**

There are no sustainability issues arising from this report.

## **BACKGROUND INFORMATION**

A range of specialist support is being put in place by the Department for Communities and Local Government to help community groups bid to take over local services. The Social Investment Business will deliver a three year support programme worth £11.5 million to help groups to use the new Right.

Cabinet will be aware that Tamworth's Public Sector Commissioning Framework is now out for consultation with a final report due this autumn.

## **REPORT AUTHOR**

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## **LIST OF BACKGROUND PAPERS**

None

## **APPENDICES**

Appendix 1 – Community Right to Challenge Process Map  
Appendix 2 – Community Right to Challenge Guidance Document  
Appendix 3 - Community Right to Challenge Statutory Guidance

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