

CABINET MEETING – 17 APRIL 2013
EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

The Localism Act 2011- Community Right to Challenge

Author:

Report of the Executive Director of Commercial and Corporate Services

Purpose of Report:

To seek Cabinet's approval to the proposed steps to implement the community right to challenge provisions contained in the Localism Act 2011.

Description of Decision:

Cabinet is recommended to:

- (1) Specify the period of time for the submission of expressions of interest (EOI) to the Council under the community right to challenge as being the period 1 June to 31 July in respect of financial year 2013/2014 and for each subsequent financial year;
- (2) Authorise the Executive Director of Commercial and Corporate Services to publish details of this period of time;
- (3) Authorise the Executive Director of Commercial and Corporate Services, in consultation with the relevant Executive Director and Portfolio Holder for the relevant service, to consider and determine each EOI submitted where the estimated value of the potential contract is below £250,000 or where the EOI does not comply with the statutory requirements and to refer the EOI to Cabinet for determination where the estimated value of the potential contract exceeds £250,000;
- (4) Authorise the Executive Director of Commercial and Corporate Services to determine the maximum period that will elapse between the submission of an EOI and the date of notification of the decision;
- (5) Authorise the Executive Director of Commercial and Corporate Services to determine in each case the minimum and maximum periods that will elapse between the acceptance of any EOI and the date on which the resulting procurement process will begin.

Is the decision consistent with the Budget/Policy Framework? Yes

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

Under the provisions of the Localism Act 2011 (“the Act”), the Council is required to take a number of steps for the purpose of implementing the community right to challenge. Under Section 82(2) of the Act, the Council is entitled to specify the periods of time during which EOI for the provision of relevant services may be submitted. It is considered that this period should be 1 June to 31 July so that the determination of the EOI and any subsequent procurement process can begin prior to the budget setting process for the next financial year. The setting of a specific period of time for submission of EOI will also enable the Council to manage effectively the receipt and consideration of EOI. The proposed period will be published on the Council’s website so relevant bodies will be notified in advance and will then have sufficient time to prepare and submit any EOI. Should any organisation approach the Council outside of the specified time period to express an interest in providing a service, then, as was the case prior to the introduction of the community right to challenge provisions, the Council will have discretion as to whether it wishes to run a procurement exercise.

Alternative options to be considered and recommended to be rejected:

The Council has a statutory duty to comply with the community right to challenge provisions contained in the Act so the proposed steps outlined in this report must be undertaken to enable the Council to implement the provisions in practice.

If the Council does not specify a period of time for the submission of EOI, they may be submitted at any time throughout the financial year and the Council would then be under an ongoing obligation to determine them throughout the year and if any EOI is accepted the Council must then undertake a procurement process for that service. The setting of a specific period of time for the submission of EOI will enable the Council to manage effectively the receipt and determination of EOI and any subsequent procurement activity and to align the community right to challenge provisions with its budget processes.

Impacts analysed;

Equality **Privacy** **Sustainability** **Crime and Disorder**

Is this a “Key Decision” as defined in the Constitution? **No**

Is it included in the 28 day Notice of Decisions? **No**

Scrutiny Committee

LOCALISM ACT 2011- COMMUNITY RIGHT TO CHALLENGE

REPORT OF THE EXECUTIVE DIRECTOR OF COMMERCIAL AND CORPORATE SERVICES

1. Purpose of the Report

To seek Cabinet's approval to the proposed steps to implement the community right to challenge provisions contained in the Localism Act 2011.

2. Description of Decision (Recommendations)

Cabinet is recommended to:-

- (1) Specify the period of time for the submission of expressions of interest (EOI) to the Council under the community right to challenge as being the period 1 June to 31 July in respect of financial year 2013/2014 and for each subsequent financial year;
- (2) Authorise the Executive Director of Commercial and Corporate Services to publish details of this period of time;
- (3) Authorise the Executive Director of Commercial and Corporate Services, in consultation with the relevant Executive Director and Portfolio Holder for the relevant service, to consider and determine each EOI submitted where the estimated value of the potential contract is below £250,000 or where the EOI does not comply with the statutory requirements and to refer the EOI to Cabinet for determination where the estimated value of the potential contract exceeds £250,000;
- (4) Authorise the Executive Director of Commercial and Corporate Services to determine the maximum period that will elapse between the submission of an EOI and the date of notification of the decision;
- (5) Authorise the Executive Director of Commercial and Corporate Services to determine in each case the minimum and maximum periods that will elapse between the acceptance of any EOI and the date on which the resulting procurement process will begin.

3. Background and Key Provisions of the Community Right to Challenge

3.1 The community right to challenge provisions are contained in Part 5 of the Localism Act 2011. In summary, the provisions give the right to voluntary and community groups, charities, parish councils and two or more employees of the relevant authority (together referred to as “Relevant Bodies”) to submit an expression of interest (EOI) to the local authority to provide, or assist in providing, any service that is currently provided either by or on behalf of the authority. If the EOI is accepted by the Council then a competitive procurement process must be undertaken for that service and the Relevant Body will have the opportunity to participate in that process.

3.2 This right applies to all Council services (other than certain limited excluded services) that are currently provided by the Council either directly (i.e. in-house) or on its behalf (e.g. through a service contract or in partnership with a third party) in exercise of its functions. The only services excluded from the right are as follows:-

- A service commissioned in conjunction with one or more health services by the Council or by a NHS body under a partnership arrangement or acting jointly (these services are only excluded from the right until 1st April 2014);
- A service commissioned by an NHS body on behalf of the Council (these services are only excluded from the right until 1st April 2014);
- A service commissioned or provided by the Council in respect of a named person with complex individual health or social care needs.

3.3 An EOI must be in writing and must comply with certain prescribed requirements set out in the regulations. These requirements include:-

- Information about the financial resources of the Relevant Body submitting the EOI;
- Evidence to demonstrate that at the time of any procurement process, the Relevant Body will be capable of providing or assisting in providing the relevant service;
- Information about the relevant service to which the EOI relates to enable the Council to identify the service and the geographical area to which it relates;
- Information about the outcomes to be achieved by the Relevant Body and in particular:-

- (a) How the provision of the service by the Relevant Body will promote or improve the social economic or environmental well-being of the Council's area; and
- (b) How it will meet the needs of users of the service.

- Where the Relevant Body comprises employees of the Council, details of how the body proposes to engage other employees of the Council who are affected by the EOI.

3.4 As explained above, only a Relevant Body can submit an EOI. However, this does not prevent a Relevant Body submitting an EOI in partnership with a non-Relevant Body (e.g. a private sector partner) who may be the proposed sub-contractor for some or all of the services. Where it is proposed in an EOI that there will be other delivery partners, the Relevant Body must identify this in the EOI and provide information regarding that organisation's financial resources and capability to provide the relevant services in addition to the Relevant Body.

3.5 Provided that the EOI meets the prescribed statutory requirements, the Council must either accept or reject the EOI. The regulations provide that the Council may only reject an EOI on the following grounds:-

- The EOI does not comply with the prescribed requirements;
- The information provided in the EOI is, in the opinion of the Council, inadequate or inaccurate in any material particular;
- The Council considers that the Relevant Body or any member of the consortium or any sub-contractor is not suitable to provide the service;
- The EOI relates to a service where the Council has taken a decision to stop providing that service;
- The EOI relates to a service that is provided by or on behalf of the Council to persons who are also in receipt of a service provided by an NHS body which is integrated with the Council's service and the continued integration of the services is considered critical to the well-being of those persons.
- The service is already the subject of a procurement exercise;
- The Council and a third party have entered into negotiations for the provision of the service (which are at least in part conducted in writing);
- The Council has already published its intention to consider the provision of the service by a body that 2 or more specified employees propose to establish;

- The Council considers the EOI to be frivolous or vexatious;
- The Council considers that acceptance of the EOI is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty.

- 3.6 The Council is required to specify the maximum period of time that it will take to consider and determine all EOI. In addition, on submission of an individual EOI, the Council must notify the Relevant Body of the timescale for determining that EOI (which should not exceed the maximum period) and will reflect the complexity of the individual EOI, the nature, scale and complexity of the service, the timescales for any existing commissioning cycle relevant to that service and any other authority decision processes relevant to the EOI. It is proposed that the Executive Director of Commercial and Corporate Services will be responsible for determining both the maximum and anticipated periods for response in consultation with the Executive Director for the relevant service.
- 3.7 If the Council accepts an EOI then it must carry out a procurement exercise in respect of the relevant service to which the EOI relates. This procurement process will be carried out in accordance with the procedures set out in the Council's Contract Procedure Rules and the European Procurement Rules (if applicable). The Relevant Body will have the ability to participate in that process. The procurement process will be proportionate to the value and nature of the proposed contract. The timing of the procurement process following acceptance of the EOI will depend upon the duration of any existing third party contracts for the provision of the service, the nature, scale and complexity of the procurement (including the need to produce a service specification, tender and contract documents) and the need to ensure the Relevant Body has a fair and reasonable opportunity to prepare to participate in the process.
- 3.8 As the outcome of the acceptance of an EOI is that the Council is then obliged to carry out a procurement process for that service, it is proposed that the Executive Director of Commercial and Corporate Services be authorised to determine an EOI where the estimated total value of the potential contract is £250,000. In the event that an EOI relates to a potential contract which exceeds this estimated total value (and complies with the prescribed requirements for an EOI) it will be referred to Cabinet for determination.
- 3.7 The Council is entitled to specify and publicise periods of time during which EOI can be submitted. If this is done, the Council is entitled to refuse to consider EOI that are submitted outside this period. At this stage, it is proposed that the period of time for the submission of all EOI shall be 1 June to 31 July for each financial year. The setting of this specific period of time for the submission of EOI will enable the Council to manage effectively the receipt and determination of EOI and

any subsequent procurement activity and to align the community right to challenge provisions with its budget processes. As this proposed period of time would be publicised on the Council's website, Relevant Bodies will be notified in advance and will then have sufficient time to prepare and submit EOI.

- 3.8 It is also proposed that further work is undertaken to review existing service commissioning cycles across the Council in order to potentially align in future the periods of time for the submission of EOI for specific service areas with existing commissioning cycles. A further report will be submitted to Cabinet on this matter at a future date once this work is complete.

4. Reasons for the Decision

- 4.1 Under the provisions of the Localism Act 2011 ("the Act"), the Council is required to take a number of steps for the purpose of implementing the community right to challenge. Under Section 82(2) of the Act, the Council is entitled to specify the periods of time during which EOI for the provision of relevant services may be submitted. It is considered that this period should be 1 June to 31 July so that the determination of the EOI and any subsequent procurement process can begin prior to the budget setting process for the next financial year. The setting of a specific period of time for submission of EOI will also enable the Council to manage effectively the receipt and consideration of EOI. The proposed period will be published on the Council's website so relevant bodies will be notified in advance and will then have sufficient time to prepare and submit any EOI. Should any organisation approach the Council outside of the specified time period to express an interest in providing a service, then, as was the case prior to the introduction of the community right to challenge provisions the Council will have discretion as to whether it wishes to run a procurement exercise.

5. Alternative Options

- 5.1 The Council has a statutory duty to comply with the community right to challenge provisions contained in the Act so the proposed steps outlined in this report must be undertaken to enable the Council to implement the provisions in practice.
- 5.2 If the Council does not specify a period of time for the submission of EOI, they may be submitted at any time throughout the financial year and the Council would then be under an ongoing obligation to determine them throughout the year and if any EOI is accepted the Council must then undertake a procurement process for that service. The setting of a specific period of time for the submission of EOI will enable the Council to manage effectively the receipt and determination of EOI and any subsequent procurement activity and to align the community right to challenge provisions with its budget processes.

6. Financial Implications

- 6.1 Whilst there are no direct financial implications arising from the report, additional costs may arise as a result of assessment work relating to Expressions of Interest and any subsequent procurement exercises required. Therefore the associated financial implications will be incorporated in any relevant reports as appropriate. The review of existing service commissioning cycles across the Council in order to potentially align in future the periods of time for the submission of EOI for specific service areas with existing commissioning cycles will mitigate against these potential costs.

7. Background Papers

Localism Act 2011

The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012

The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012

Community Right to Challenge Statutory Guidance -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5990/2168126.pdf