

# North Tyneside Council

## Report to Cabinet

### Date: 14 May 2012

#### ITEM 6 (b)

Title: Community Right to Challenge – Localism Act 2011

Portfolio(s): Finance

Engagement and the Environment

Cabinet Member(s):

Councillor Judith Wallace

Councillor Pam McIntyre

Report from Directorate: Chief Executive's Office

Report Author:

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(Tel: (0191) 643 5339)

Wards affected:

All Wards

## PART 1

### 1.1 Purpose:

The purpose of the report is to authorise initial steps in the implementation of the Community Right to Challenge provisions contained within the Localism Act 2011.

### 1.2 Recommendation(s):

It is recommended that Cabinet agrees that the Council will:

- (1) Accept and consider expressions of interest under the Community Right to Challenge provisions of the Localism Act 2011 from 2013 on an annual basis and between the dates of 1<sup>st</sup> June and 31<sup>st</sup> July;
- (2) Determine those expressions of interest and notify the submitting body within six months of receipt, as described at paragraph 1.5.9 of this report;
- (3) Commence any procurement process resulting from the acceptance of any expression of interest within the periods specified at paragraph 1.5.9 of this report, depending on estimated value of the contract; and
- (4) Publish details of the periods specified in (1) to (3) above on the Council's website.

### 1.3 Forward Plan:

This report does not appear on the current Forward Plan. However, it is required to be considered at this Cabinet meeting to ensure the Council has set out key timescales for the Community Right to Challenge process to ensure these are in place when the relevant legislation comes into force,

## 1.4 Council Plan and Policy Framework

This report has no direct link to the Council Strategic Plan 2012-15.

## 1.5 Information:

### 1.5.1 Background

1.5.2 The Localism Act 2011 (the Act) received Royal Assent on 15<sup>th</sup> November 2011, with implementation of various parts being phased in over the coming months. Sections 81 to 86 of the Act introduce provisions for a Community Right to Challenge (CRTC). This report proposes steps which will assist the Council in preparing for the CRTC.

1.5.3 At the time of writing a firm commencement date for the CRTC provisions has not been given. The Department for Communities and Local Government (DCLG) has indicated that the provisions may come into force in May or June, with draft regulations and statutory guidance becoming available only shortly before commencement.

### 1.5.4 Community Right to Challenge (CRTC)

1.5.5 The CRTC will allow voluntary and community groups, charities and existing Council employees to submit an expression of interest (EOI) to bid to run services currently provided by the Council. This may relate to the whole or part of a service. Regulations and statutory guidance are awaited which will make further provision about the scope of the scheme, including details of services which will not be subject to the CRTC.

1.5.6 The Council must consider EOI's and will only be able to reject EOI's on limited grounds (to be specified in forthcoming regulations). Where an EOI is accepted, it triggers a procurement exercise. The group or persons that submitted the EOI may bid alongside others in the procurement exercise, which would be undertaken in compliance with the requirements of the Council's Contract Standing Orders, and if applicable, the EU public procurement directives.

1.5.7 The Act enables the Secretary of State to provide advice and assistance to relevant persons or bodies seeking to prepare an EOI, to participate in a procurement exercise or provide a service under the CRTC provisions. Such assistance may include the provision of financial assistance and the provision of training or education.

1.5.8 An EOI can be submitted at any time and must be considered unless the Council specifies particular periods of time for the submission of EOI's. An EOI submitted outside of the specified time may be refused. The Council does not know the number of EOI's it is likely to receive under the CRTC. The suggested timescale set out at paragraph 1.2(1) is designed to assist the Council in dealing effectively with any EOI's

1.5.9 Under the provisions of the Act the Council is required to specify:

- (i) the maximum period between the date the EOI was submitted and the notification of the decision; and
- (ii) the minimum and maximum periods between the acceptance of an EOI and the start of the procurement exercise.

In relation to (i) it is proposed that the maximum period between the date the EOI is submitted and the notification of the decision will be six months. It is proposed that EOIs with an estimated contract value of less than £500,000 will be determined by the relevant Head of Service. Expressions of interest received with an estimated contract value in excess of £500,000 will be referred to Cabinet for determination.

In relation to (ii), it is proposed that the procurement process resulting from the acceptance of any EOI will begin no sooner than 3 months and no later than 6 months from the date of acceptance of the EOI, for contracts with an estimated value of up to £500,000; for contracts with an estimated value in excess of £500,000 the maximum period between acceptance of the EOI and the start of the procurement process will be 12 months.

1.5.10 The Act requires that the Council publishes details of the specified time periods covered in this report on the Council's website. In addition, the Council may publish the details in other formats in such manner as it thinks fit.

1.5.11 Upon the statutory guidance and regulations becoming available, further work will be undertaken to consider these and identify and take forward the practicalities of meeting the requirements, including establishing suitable governance and decision making processes. A cross-Council officer working group will analyse the regulations and guidance in order to develop suitable processes. Further reports will be brought to Cabinet for consideration as appropriate.

## **1.6 Decision options:**

The following decision options are available for consideration by Cabinet:

### Option 1

Cabinet may approve the recommendations set out in paragraph 1.2 of this report.

### Option 2

Cabinet may determine that the Council will accept expressions of interest at any time during the financial year or may revise the periods set out in Option 1.

Option 1 is the recommended option.

## **1.7 Reasons for recommended option:**

Option 1 is recommended as it provides clarity as to the time periods within which the Council will accept and consider expressions of interest.

In the absence of setting a time period for considering expressions of interest, the Council will be required to consider them upon receipt at any time during the financial year. If the Council does not set out the maximum period between (i) the date of the submission of the EOI and the notification of the decision; and (ii) the minimum and maximum periods between the acceptance of an EOI and the start of the procurement exercise, it will not be complying with the relevant provisions of the Localism Act 2011.

## **1.8 Appendices:**

None.

## **1.9 Contact officers:**

Wendy Innes, Senior Manager Legal Services tel. (0191) 643 5338  
Louise Watson, Manager Legal Services, Environment, Housing and Employment Team  
(0191) 643 5325  
Sarah Heslop, Manager Legal Services, Commercial Team, tel. (0191) 643 5456  
Andrew Lowe, Principal Procurement and Commissioning Officer, tel.(0191) 643 5651  
Alison Campbell, Finance Business Manager, tel. (0191) 643 7038

## **1.10 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) Localism Act 2011
- (2) Department for Communities and Local Government: Community Right to Challenge (September 2011).

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

The immediate financial consequences of the steps proposed in this report will be met from existing resources.

If an Expression of Interest is accepted and a procurement exercise triggered, there will be costs associated with the procurement process, which would be assessed on a case by case basis.

A further Cabinet report will be prepared once the relevant regulations and Guidance have been published and considered, as set out at paragraph 1.5.10. which will also consider the detailed financial implications.

### **2.2 Legal**

The legal implications directly arising from the steps proposed are contained within the body of the report. Full legal implications will be set out in a further report to Cabinet once the relevant regulations and Guidance are available.

### **2.3 Consultation/community engagement**

#### **2.3.1 Internal Consultation**

Procurement Services have been consulted in the formulation of this report.

Briefings for the Senior Leadership Team and for Members have taken place to provide an overview of the provisions of the Localism Act 2011, including the Community Right to Challenge.

#### **2.3.2 External Consultation/Engagement**

As this report proposes initial steps only there has been no external consultation/engagement to date. The Community Right to Challenge has however been subject to discussion at the Council's quarterly Working with the Community and Voluntary Sector meetings.

## **2.4 Human rights**

There are no human rights implications directly arising from this report.

## **2.5 Equalities and diversity**

There are no equalities and diversity implications directly arising from this report.

An Equality Impact Assessment will be undertaken when the full details of the scheme are known.

## **2.6 Risk management**

Risks associated with managing the CRTC process will be assessed when the regulations and guidance are available and as the Council processes are developed.

The Chief Executive's Office Operational Risk Register records the risk of not having processes in place to meet the provisions of the Localism Act 2011. A risk management workshop has taken place to identify specific risks associated with the Localism Act 2011 which will be added to the risk register and monitored accordingly.

## **2.7 Crime and disorder**

There are no crime and disorder implications directly arising from this report.

## **2.8 Environment and sustainability**

There are no environment and sustainability implications directly arising from this report.

## **PART 3 - SIGN OFF**

- Strategic Director(s)  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Strategic Manager Policy and Partnerships  X