

## PLYMOUTH CITY COUNCIL

**Subject:** Community Right to Challenge  
**Committee:** Overview and Scrutiny Management Board  
**Date:** 5 September 2012  
**Cabinet Member:** Councillor Penberthy  
**CMT Member:** Adam Broome, Director for Corporate Services  
**Author:** Tim Howes, Assistant Director for Democracy and Governance  
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**Ref:**  
**Key Decision:** No  
**Part:** I

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### **Purpose of the report:**

Following the Cabinet decision on community right to challenge taken at the meeting held on 14 August 2012, it agreed that pre decision scrutiny would be undertaken on the development of the policy and process in four specific areas –

1. The production of a comprehensive and workable timetable for submitting expressions of interest.
2. The determination of what additional information would be required of those submitting expressions of interest;
3. The setting of a timetable for making a decision on expressions of interests;
4. The setting of a timetable for a procurement exercise.

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### **Corporate Plan 2012 – 2015:**

There are no direct implications at this stage, but any successful expressions of interest will have an impact.

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### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

There are no implications at this stage, but if an expression of interest is accepted then resources will be required to undertake the procurement exercise. If a service is then put out to contract, there will be other legal, financial and human resource implications.

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### **Other Implications: e.g. Child Poverty, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

None at this stage.

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### **Recommendations and Reasons for recommended action:**

It is recommended that:

The Overview and Scrutiny Management Board recommend proposals to develop the policy and process to Cabinet on 16 October 2012.

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**Alternative options considered and reasons for recommended action:**

There are no alternative options for consideration.

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**Background papers:**

Localism Act 2011 Sections 81-85 and Regulations made under this part of the Act  
Draft Guidance on the Community Right to Challenge

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**Sign off:**

Fin		Leg		HR	1207/ 002 MG	Corp Prop		IT		Strat Proc	
Originating SMT Member: Tim Howes, Assistant Director for Democracy and Governance											
Have you consulted the Cabinet Member(s) named on the report? Yes											

## 1.0 Introduction to the Community Right to Challenge

That part of the Localism Act 2011 relating to the community right to challenge came into force on the 27 June 2012. At the same time, both the supporting regulations were enacted and draft guidance was published.

The community right to challenge requires the Council (as a **relevant authority**), to consider expressions of interest in carrying out a **relevant service** from **relevant bodies**. Where the expression of interest is accepted, the Council must carry out a procurement exercise for the service.

The Act does not give an automatic right to the organisation expressing an interest to deliver the service, nor is it guaranteed the organisation will be successful in any procurement exercise.

The **relevant bodies** that can submit expressions of interest are:

- A voluntary or community body
- A body of persons or a trust established for charitable purposes only
- A parish council
- Two or more City Council employees
- Any other person or body specified by the Secretary of State

The **relevant services** that can be the subject of an expression of interest are those provided by or on behalf of a relevant authority in the exercise of its functions. It only relates to services of the authority rather than its functions. Those services jointly commissioned with health, are excluded (either temporarily or permanently). Services commissioned or managed by individuals using direct payments are also excluded.

## 2.0 Submitting expressions of interest.

The Council may choose to specify periods during which expressions of interest may be submitted in relation to a particular service. This will allow the council to manage the flow of requests and synchronise them around commissioning cycles for services. The 'timetable' for submissions of interest must be published, including publication on the Council's website. In the event we choose not to specify periods, then they can be submitted at any time.

## 3.0 Requirements of expressions of interest.

Expressions of interest must be in writing and conform to other requirements as specified in the regulations. The Council may request further information but it must be made clear that it is optional. The required information includes:

- Information about the financial resources of the relevant body (or bodies) submitting the expression of interest.
- Evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the expression of interest will be capable of providing or assisting in providing the relevant service.
- Information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates.
- Information about the outcomes to be achieved by the relevant body or, where appropriate, the consortium of which it is a part, in providing or assisting in the provision of the relevant service, in particular:

- How the provision or assistance will promote or improve the social, economic or environmental well-being of the relevant authority's area; and
- How it will meet the needs of the users of the relevant service.
- Where the relevant body consists of employees of the relevant authority, details of how that relevant body proposes to engage other employees of the relevant authority who are affected by the expression of interest.

#### **4.0 Notifying decisions on an expression of interest**

The Council must specify the maximum period that it will take to notify a relevant body of its decision on an expression of interest. Different periods may be specified for different services.

The notification must be made in writing within 30 days of the closure of the period for submitting expressions of interest.

#### **5.0 Grounds for rejecting an expression of interest**

The Council may reject an expression of interest only on one or more of the following grounds:

1. The expression of interest does not comply with any of the requirements specified in the Act or in regulations.
2. The relevant body provides information in the expression of interest which in the opinion of the relevant authority, is in a material particular inadequate or inaccurate.
3. The relevant authority considers, based on the information in the expression of interest, that the relevant body or, where applicable-
  - (a) any member of the consortium of which it is a part, or
  - (b) any sub-contractor referred to in the expression of interest
 is not suitable to provide or assist in providing the relevant service.
4. The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority to stop providing that service.
5. The expression of interest relates to a relevant service -
  - (a) provided, in whole or in part, by or on behalf of the relevant authority to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service; and
  - (b) the continued integration of such services is, in the opinion of the relevant authority, critical to the well-being of those persons.
6. The relevant service is already the subject of a procurement exercise.
7. The relevant authority and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.
8. The relevant authority has published its intention to consider the provision of the relevant service by a body that 2 or more specified employees of that authority propose to establish.
9. The relevant authority considers that the expression of interest is frivolous or vexatious.
10. The relevant authority considers that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty.

#### **6.0 Modifying an expression of interest**

If the Council might otherwise reject an expression of interest, it may seek instead for it to be modified.

## **7.0 Period between accepting an expression of interest and a procurement exercise starting**

The Council must specify the period between accepting an expression of interest and a procurement exercise starting. In specifying these periods, the Council should consider:

1. The need to provide employees of the Council, and other relevant bodies, with a fair, reasonable and realisable opportunity to bid in the procurement exercise for the service;
2. The nature, scale and complexity of the service being procured. For example, it may take relevant bodies longer to prepare to bid for larger, complex services than smaller more straightforward ones; and
3. The timescales for any existing commissioning cycle relevant to the service being procured, or any other relevant authority processes. These may include Council Cabinet decision making or budget setting processes.

## **8.0 The procurement exercise**

When an expression of interest is accepted, the Council must carry out a procurement exercise for the service. This must comply with procurement law and will be in accordance with our existing processes.

## **9.0 Comment and Next Steps**

At one level, these provisions could be seen as a good thing in that the right to challenge is consistent with a range of Council commitments to better engage with the local community through pursuing cooperative working and direct service provision. In so doing, communities and voluntary sectors can take direct action in the provision of a local service for the local community themselves.

However, the Council and the local community it serves needs to be alert to concerns contained with the right to challenge provisions which appear to mitigate against this.

For example, it is worth noting that a relevant body may submit an expression of interests in partnership with other relevant or non-relevant bodies. So an expression of interest can be submitted with a partner from the private commercial sector.

There appears to be no restriction in terms of which non-relevant bodies may partner a local community or voluntary/community body. Accordingly, there must be an inherent risk that, as opposed to being used as a vehicle to support local communities in public service provision for community benefit, this will be used as an opportunity for hostile takeovers of services for profit from partner bodies with little or no local community connection or local community interest.

The Council has the right under the Localism Act 2011, to set time periods within which it will consider expressions of interest. In addition, the Council can reject expressions of interest it receives outside that time period.

Mindful of these concerns and with the intention of allowing the Council time to develop the policy and process for reviewing expressions of interest, it is recommended that the Council start accepting expressions of interest after the 5 November 2012 and that none will be considered prior to this date.

The matters to be the subject of further development include:

- The production of a comprehensive and workable timetable for submitting expressions of interest (see 2.0 above)
- The determination of what additional information will be required of those submitting expressions of interest (see 3.0 above)
- The setting of a timetable for making a decision on expressions of interests (see 4.0 above)
- The setting of the timetable for a procurement exercise (see 7.0 above)

It is planned that these matters will be the subject of a pre-decision report to Overview and Scrutiny in September and to Cabinet on the 16 October 2012 after which, the information will be published on the website.