

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	12 April 2016
Report:	Steph Cordon, Head of Communities
Subject/Title:	Community Right to Challenge Policy
Portfolio Holder:	Councillor Paul Bates – Portfolio Holder for Communities and Health

1.0 Report Summary

- 1.1 The Localism Act 2011 introduced a right for relevant bodies (Parish Councils, community and voluntary bodies, charitable trusts and 2 or more local authority employees) to submit an Expression of Interest (EOI) in taking over the provision of a service on behalf of an Authority. There is a statutory duty placed on all Local Authorities to consider expressions of interest received in this regard.
- 1.2 The Localism Act 2011 requires the Council to have a process in place to consider EOI received under the Community Right to Challenge. This report provides Cabinet with an overview of the Community Right to Challenge legislation, the implications, and recommends a policy for dealing with submissions of EOI to put the required processes in place.
- 1.3 As a Residents First Council, we continue to work proactively with our communities and Local Councils. We have an ambitious approach to Transfer and Devolution, and actively encourage community groups and Town and Parish Councils to approach us with any ideas they have regarding the future management of our assets and services. Our aim is to explore ideas at the earliest opportunity, and consider where local communities want to deliver local services.
- 1.4 The Council has already successfully achieved asset transfers of a number of Council owned assets, including for example: public toilets in Audlem village and Nantwich, the market and civic hall in Nantwich and Congleton Town Hall.

2.0 Recommendations

- 2.1 That Cabinet approves the Community Right to Challenge policy.

- 2.2 That Cabinet delegates authority to the Head of Communities to develop the required application and guidance forms, ensuring that the statutory duty under Community Right to Challenge legislation is fully met.
- 2.3 That Cabinet supports the implementation of the Community Right to Challenge policy with submission of EOI between the 1st and 30th September 2016
- 2.4 That Cabinet notes that the Head of Communities will, in consultation with the Portfolio Holder and relevant Head of Service, review EOI received and refer a recommendation for acceptance or refusal to Cabinet for a final decision.
- 2.5 That Cabinet will receive and consider all EOI and make a final decision (acceptance or rejection).

3.0 Reasons for Recommendations

- 3.1 The Community Right to Challenge allows relevant bodies to challenge the Council to run local services that they think they can run differently and/or better. There is a statutory duty placed on all Local Authorities to consider EOI received in this regard.
- 3.2 The Localism Act 2011 gives significant new rights direct to communities and individuals, such as taking over local assets of community value through community right to bid, adopting a neighbourhood plan under neighbourhood planning or shaping and running local services through the community right to challenge.
- 3.3 Cheshire East is required to have a process in place to respond to and consider any Expressions of Interest. The Community Right to Challenge policy sets a 30 day “window” each year for accepting EOI on a Community Right to Challenge basis. The first opportunity will be from the 1st September 2016 closing on the 30th September 2016. Upon receipt into the organisation the Head of Governance and Democratic Services will carry out the initial validation of the EOI.
- 3.4 Cheshire East will develop a specific web page to provide detailed information on the Community Right to Challenge and the process and steps relevant bodies need to follow.
- 3.5 Cheshire East will notify the relevant body that has submitted an EOI of the timescale within which a decision will be made.
- 3.6 The Head of Communities will be responsible for the strategic management of any procurement exercise. This will be supported by relevant officers within the Council.

- 3.7 During 2016 Cheshire East will be consulting on and developing a Voluntary Community and Faith Sector Commissioning Framework, which will support and be informed by Community Right to Challenge Policy and processes.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 Local Ward Members will be consulted regarding any Expressions of Interest received from their respective communities.

6.0 Policy Implications

- 6.1 A Community Right to Challenge Policy and Guidance Document is required under the Localism Act 2011.
- 6.2 Procurement - Where accepted EOI will lead to a procurement exercise. The Council needs in-house comparators against which to assess bids, to ensure best value and demonstrating that any EOI is consistent with our key corporate documents.
- 6.3 Commissioning - Where a Head of Service, after consultation with the relevant Cabinet Member, decides an in-house bid will be prepared and submitted, they must agree with the Chief Operating Officer the arrangements for the identification of separate commissioning and bid preparation teams.
- 6.4 Publicity - Information regarding the Community Right to Challenge will be made available publicly, both through Cheshire East Council and other partner websites e.g. CVSCE and ChALC. We will also use a range of communication methods to ensure the voluntary, community and faith sector and Town/Parish Councils are kept informed. Further information about the application process will be publicised as it is agreed.
- 6.5 The process will be reviewed on an annual basis to ensure it is fit for purpose. Any proposed changes will be reported back to Cabinet for approval.

7.0 Implications for Rural Communities

- 7.1 Relevant bodies from within rural communities will be eligible to submit Expressions of Interest to deliver relevant services on behalf of relevant authorities.

8.0 Financial Implications

- 8.1 Staff time for setting up, implementing and monitoring the process, can be met within existing resources available

- 8.2 Any transfer of ownership of assets or responsibility for service delivery will have financial implications. These will be identified separately when the transfer is considered.

9.0 Legal Implications

- 9.1 The Community Right to Challenge (CRC) was introduced by s81 to 86 of the Localism Act 2011
- 9.2 The Community Right to Challenge [Expressions of Interest and Excluded Services] [England] Regulations 2012(the 2012 Regulations) set out what information must be included in an expression of interest (EOI) and which services are excluded from the Right to Challenge. The DCLG has also published statutory guidance on the CRC.
- 9.3 The CRC allows certain “relevant bodies” to challenge a “relevant authority” (the Council) by expressing interest in running a “relevant service” (all defined within the 2012 Regulations). When such a challenge is made and accepted by the Council this will then trigger a procurement process. The procurement process must comply with any applicable public procurement requirements (dependent upon the nature and value of the service which is subject to the challenge).
- 9.4 A policy, which follows the law and statutory guidance, is an open and transparent way in which to set out how the Council will deal with any EOI it does receive. It enables the Council to specify a time period for the submission of EOIs and manage the process. The policy also sets out the procedure (following the guidance and the law) and the decision making route.
- 9.5 In deciding to accept or reject an EOI the Council must satisfy its public law duties.

In essence this means that in making the decision the Council must have taken into account only relevant considerations, followed procedural requirements, acted for proper motives and not acted unreasonably. A policy provides a clear statement of the criteria that the Council is applying and is essential if the Council is to defend any challenge to its decision making process (which challenge would be by judicial review).

10.0 Risk Management

- 10.1 Community Right to Challenge may have huge implications on service delivery if not considered properly. The Council needs to be prepared for challenges to the services it delivers and commissions and be clear about the processes it follows in contracting its services. It also needs to have a clear rationale as to why any challenges would be rejected and on what grounds. A robust policy and guidance will ensure our approach is sound.

11.0 Background and Options

- 11.1 The Community Right to Challenge applies to all relevant services. A relevant service is a service provided by or on behalf of a relevant authority in the exercise of its functions in relation to England, except services which are excluded from the right in secondary legislation.
- 11.2 If a relevant group submits a valid expression of interest to run a Council service the Council must consider the proposal and either:
- a. Reject the proposal - If the Council rejects it, it must publish the reasons why. It can only reject it on grounds specified in the Regulations.
 - b. Request that modifications be made – The Council can only ask for changes to the proposal to be made if it would otherwise have rejected it.
 - c. Accept the proposal – If the Council accepts the proposal, it must start a procurement exercise in line with current procurement legislation, this means inviting interested bodies to bid for the contract to run the service.
- 11.3 The Council has chosen to specify a period during which expressions of interest can be submitted in relation to a particular relevant service. Specifying the period will help the Council to manage the flow of expressions of interest and allow this to be synchronised with any existing commissioning cycles for services, and provide relevant bodies with sufficient time to prepare submissions.
- 11.4 A relevant service is a service provided by, or on behalf of, a relevant body in the exercise of its functions, and the right only applies to the provision of services. Jointly commissioned/provided services require a joint agreement by the relevant authorities to comply with the right.
- 11.5 Excluded services cannot be the subject of an Expression of Interest. These are: - a service provided to a named person with complex individual health or social care needs; or a service which includes the exercise of a statutory power which cannot be delegated.
- 11.6 In addition to accepting Expressions of Interest on Community Right to Challenge, the Council will consider providing a list each year of services that the Council is prepared to open up to challenge. This will allow the Council to manage and define what services will be accepted for challenge, and this could be aligned to service reviews or planned changes. Any progress will be reported back to Cabinet as part of a review of the Policy.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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