



DRAFT PORTFOLIO HOLDER DECISION NOTICE

PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR FINANCE AND ADMINISTRATION

TOPIC – LOCALISM ACT 2011 – COMMUNITY RIGHT TO CHALLENGE

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on Thursday 1 November 2012.

Contact Officers: Antonia Perkins, Head of Policy, Tel: 01962 848 314, Email: aperkins@winchester.gov.uk

Case Officer:

Committee Administrator: Nancy Graham, Tel: 01962 848 235, Email: ngraham@winchester.gov.uk

SUMMARY

The Localism Act 2011 creates a new Community Right to Challenge which gives groups (as specified in the Act and also as specified in Regulations) the opportunity to express their interest in taking over a local service where they think they can do it differently and better. The City Council must assess whether or not to accept expressions of interest based on set criteria and then run a procurement exercise for that service if a challenge is accepted. The group which originally expressed a successful interest in running a service can participate in the procurement exercise but may not necessarily win the contract.

The Localism Act lists the following as ‘relevant bodies’ which are eligible to submit expressions of interest (Eols) to deliver relevant service on behalf of a ‘relevant authority’ (i.e. Winchester City Council):

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

A “Relevant Service” can be the subject of a bid under the Right. Some services are excluded; however none of these apply for district councils, and any of the Council’s services (including support services) could be challenged. The Act defines a “relevant service” as a service provided by or on behalf of the authority in the exercise of its functions (other than services of a type prescribed by the Secretary of State). The Act and guidance seek to make a distinction between functions and services, stating that a service could be challenged but not a function, however at this stage it is far from clear whether the actual boundary would be.

The following process and timescales are proposed for dealing with Community Right to Challenge Eols, according to procedures set out in Regulations.

Step 1	Eol to be submitted via eform on website	Eols will be accepted at any time.
Step 2	WCC notifies period within which decision on EOI will be made	Within 30 days of the Eol being submitted, WCC must inform the relevant body of the date by when a decision will be made as to whether the Eol will be accepted (and a tender exercise opened) or if it will be rejected.
Step 3a	WCC considers Eol	<ul style="list-style-type: none"> • An Eol which contains sufficient information on which to base a decision will be assessed within five months of receiving it. • Initial assessment that the Eol meets requirements set out in Regulations undertaken by Head of Policy in consultation with Finance and Legal.

		<ul style="list-style-type: none"> • Opportunity to discuss scope of Eol with relevant body and to modify the Eol by agreement of both parties.
Step 3b	WCC considers Eol	<ul style="list-style-type: none"> • Recommendation regarding the Eol made by Corporate Management Team in consultation with relevant service Head and Portfolio Holder. • Decision on Eol undertaken by Portfolio Holder Decision Notice/Cabinet
Step 4	Notification of decision on EOI	Relevant bodies will be notified as to whether their Eol has been accepted or not within five months, as well as the decision and rationale being published online.
Step 5	Council holds a procurement exercise	<p>For Eols that are accepted for in-house services, a procurement exercise will be triggered for all interested parties, in line with the Council's current Contract Procedure Rules. The length of time between an Eol being accepted and a procurement exercise being accepted will vary from service to service, and we must specify and publish this length of time which is likely to be different for each potential contract.</p> <p>Eols for contracted-out services will trigger a procurement exercise to be undertaken when it would have taken place in any event (prior to the end of the contract period).</p>
Step 6	Take over the running of the service	The organisation that wins the contract will begin to run the service

PROPOSED DECISION

1. That the proposed approach to dealing with Community Right to Challenge expressions of interest, as set out below, is agreed.
2. That the Head of Policy, in consultations with the Heads of Finance and Legal Services, be given delegated authority to make the initial assessment as to whether an expression of Interest under the Community Right to Challenge meets the statutory requirements.

REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Most of the implementation of the Community Right to Challenge is set out in statute. However, the Localism Act allows relevant authorities to specify certain timeframes (“windows”) for particular services to “help authorities manage the flow of expressions of interest and allow this to be synchronised with existing commissioning cycles”. A variety of approaches have been adopted by other relevant authorities. It is proposed that the City Council does not set a window for accepting Eols so that organisations do not have to wait over a year to submit if they miss a set window.

Eols can also be submitted for services which are currently contracted out. Eols for contracted out services will be accepted at any time, however, relevant bodies would be advised that the procurement process will not start until a specified period before the end date of the contract. This period would be determined according to contract value and complexity, to give sufficient time for the procurement exercise to be completed before the end of the existing contract.

RESOURCE IMPLICATIONS:

Staff time from the Policy, Legal and Finance teams will be required to deal with expressions of interest under the Community Right to Challenge in the first instance. Depending on the extent to which services which are not currently contracted out are the subject of a challenge, additional time from various other teams will be needed to review the Eols. It is difficult to quantify the amount of time which will be required before any Eols are received.

CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION

Potential relevant bodies were invited to a briefing session on 26 September and the proposed approach to dealing with Eols was discussed, including the setting of an annual window during which Eols will be invited and whether this would be helpful for both relevant bodies and the City Council as the relevant authority. Limited comments were received however in light of these it was felt that an annual window would hinder groups in submitting Eols.

**FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED
FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION
NOTICE**

n/a

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR
OFFICER CONSULTED**

n/a

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

n/a

Approved by: (signature)

Date of Decision

Councillor Stephen Godfrey – Portfolio Holder for Finance and Administration