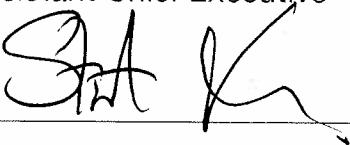


**Haringey** Council

Report for:	Leader of the Council	Item Number:	
Title:	Community Right to Challenge		
Report Authorised by:	Stuart Young, Assistant Chief Executive 		
Lead Officer:	Stuart Young, Assistant Chief Executive Bernie Ryan, Head of Legal Services		
Ward(s) affected:	Report for Key/Non Key Decisions:		
All	Key Decision		

### 1. Describe the issue under consideration

- 1.1. Regulations have recently been published that will bring the Community Right to Challenge (CRtC) into force on 27 June 2012. The CRtC forms part of the Localism Act 2011.
- 1.2. This will give community groups the right to challenge councils to run local services. Challenges will be in the form of written Expressions of Interest (EOI) and this report proposes a timetable for considering these EOI and managing the process.

### 2. Cabinet Member introduction

Not applicable

### 3. Recommendations

- 3.1. The Leader of the Council, in consultation with the Assistant Chief Executive and Head of Legal Services, is asked to approve the following recommendations, in order to put in place a process for managing the Community Right to Challenge:



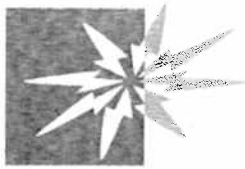
- To approve the decision and notification timetables required under sections 82 to 84 of the Localism Act 2011:
  - to accept Expressions of Interest under the CRtC during the period 1 March to 30 April annually, commencing in 2013
  - determination of those Expressions of Interest will take no longer than 5 months and be reported to Cabinet each year at its September meeting
  - following acceptance of any Expressions of Interest, the resultant procurement process will commence no sooner than three months and no later than six months from the date of determination, with the exception of complex procurement which will commence within nine months
- That the Leader agree for an officer working group to be established to develop the governance and decision making process for assessment of Expressions of Interest and that this group report back to Cabinet.

#### **4. Other options considered**

- 4.1. The Community Right to Challenge has the potential to have a significant impact on the organisation and delivery of a wide range of local authority services, however at this early stage we do not know how popular the right will prove.
- 4.2. Under the provisions of the Localism Act, local authorities must consider EOI which can be submitted at any time unless a local authority specifies “windows” in which they can be submitted.
- 4.3. A further paper will be brought to Cabinet later this year outlining proposals for governance and decision-making processes to manage the Community Right to Challenge.

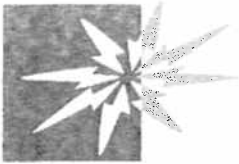
#### **5. Background information**

- 5.1. The Localism Act 2011 introduced a CRtC, giving community groups the right to challenge councils to run local services.
- 5.2. The CRtC will come into force on 27 June. The Department for Communities and Local Government published draft statutory guidance on 21 May 2012 and subject to Parliamentary approval will come into force on 27 June.



## **Haringey Council**

- 5.3. Under the CRtC, voluntary and community bodies (whether local or national) as well as employees of the authority are able to express an interest (EOI) in the running of services the Council currently provides. These may be services delivered currently and not intended to be commissioned, and functions involving decision making are excluded.
- 5.4. Local authorities must consider EOI in providing a service, and where they accept an EOI, must carry out a procurement exercise for the service. The grounds upon which the Council can reject an EOI are prescribed in Regulations.
- 5.5. An EOI can be submitted at any time unless a local authority specifies “windows” in which they can be submitted in accordance with section 82 (2) of the Act. Setting the window would:
- Help to protect and ration resources
  - Ensure that receiving EOI is a manageable process for members and officers
  - Allow for alignment with commissioning and procurement cycles
  - Afford the time for community groups to consider how they could use the Right.
- 5.6. The Localism Act requires that the Council must also specify deadlines within which it will determine EOI and commence any relevant procurement processes. The Council must publish details of these timetables, with a minimum requirement of publication on the website.
- 5.7. It is recommended that the following timetables are adopted:
- Submissions of expressions of interest (s.82(2)) – annually 1st March to 30th April (starting March 2013).
  - Determination of an expression of interest i.e. how quickly we respond (s.84(3)) – maximum 5 months. This reflects the fact that whilst some EOI may be rejected on procedural grounds within a short period of time, other EOI would then need to await September Cabinet decision.
  - Procurement (s.83(4)) – the Council must set a minimum and maximum period between acceptance of an EOI and the start of a procurement exercise. The minimum of all usual cases should be 3 months and the maximum should be 6 months; however exception is made for complex procurement (such as in-house services which may require a competitive dialogue tender procedure). In such circumstances procurement should commence within 9 months of acceptance of an EOI.
  - If the window proposed in this report is approved the Council would be open for EOI submissions from March 2013. In theory any successful challenge and procurement exercise could lead to change of delivery within 2 years, commencing April 2015. More simple procurement exercises, which under the Council’s Contract Procedure Rules would not require competitive



## **Haringey Council**

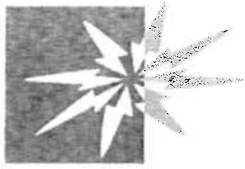
tendering procedures, may allow for a change of delivery within 1 year, commencing April 2014.

### **6. Comments of the Chief Finance Officer and Financial Implications**

- 6.1. Resource implications are not yet known as it is difficult to gauge the public interest in the Right and indeed this could differ year on year. The solution proposed in the report appears sensible in that it will avoid a piecemeal approach to any EOI which are usually resource intensive and enable officers to develop a draft scheme for Member consideration.

### **7. Head of Legal Services and Legal Implications**

- 7.1. In accordance with section 82(1) Localism Act, unless the Council specifies a period or periods during which EOI will be considered, an EOI can be submitted at any time.
- 7.2. Specifying submission periods for EOI will enable the Council to manage the flow of EOI and allow this to be synchronised with any existing commissioning cycles for services. It is up to the Council to decide how long the submission period should last, and it can have different periods for different services, or one general period. (section 82 (2) of the Act).
- 7.3. In deciding on a period or periods for submissions of EOI, the Council should have regard to the following:
- The need to give enough notice to the public ahead of the submission period, to allow them sufficient time to prepare and submit an EOI
  - The nature, scale and complexity of services, remembering that it will take the public longer to prepare an EOI for complex services
  - How any submission period fits in with commissioning cycles and decision making processes
- 7.4. In accordance with section 82(3) Localism Act , the Council must publish details of any time periods for accepting an EOI in a manner as it thinks fit, including on the authority's website, and may refuse to consider an expression of interest submitted outside of the specified period (section 82(4)).
- 7.5. The Council must specify the maximum period of time it will take from receipt of an EOI to make a decision to accept or reject an EOI and to notify an applicant (section 84(3)). The Council must publish details of the assessment time periods in a manner as it thinks fit, including on the authority's website (section 84(5)). The Council can have different timetables for assessing EOIs for different cases (section 84(4)).
- 7.6. In deciding on how long it will take to come to a decision on an EOI, the Council should have regard to the following:



## **Haringey Council**

- the need to notify applicants within a reasonable time;
- the nature, scale and complexity of the EOI itself and the service(s) subject to the EOI, remembering that it will take the longer to assess a complex EOI;
- the likely need to agree any modifications to an EOI
- the timescales of any commissioning cycle relevant to the EOI and any decision making processes (e.g. budget setting)

7.7. In addition to publishing its maximum timeframe to make a decision and to notify an applicant whether an EOI has been accepted or rejected, the Council must also write directly to applicants to advise of the timescale within which the Council will notify them of its decision (section 84(6)). This must be done within 30 days after the close of the period for submission of EOIs.

7.8. The Council must specify the minimum and maximum period of time it will take between a decision to accept an EOI and commencing the appropriate procurement exercise (section 83(4)). The Council must publish details of the min and max time periods in a manner as it thinks fit, including on the authority's website (section 83(6)). The Council can set different time periods for different cases (section 83(5)).

## **8. Equalities and Community Cohesion Comments**

8.1. The Council will need to bear in mind the general equality duty when implementing the Right. This requires this Council to:

- eliminate discrimination, harassment and victimisation;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

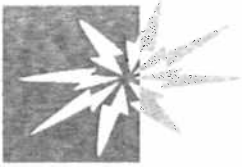
8.2. In addition, it is also worth noting that the Council is required to consider the social, economic or environmental wellbeing of an EOI and in carrying out procurement exercises.

## **9. Head of Procurement Comments**

9.1. Corporate procurement has been fully involved in this report and supports the recommendation of setting a window, which will allow the Council to manage the process.

9.2. All successful EOI will trigger a procurement exercise, these will start concurrently in January; in light of recent staff reductions as part of the Support Functions Review this may have resource implications.

## **10. Policy Implications**



**Haringey Council**

10.1. The demand on resources is not yet known and is difficult to predict. Setting a window in 2013 for receipt of EOI will afford the time for community groups to consider how they could use the Right and allow the Council to gauge public interest in the Right. This will have the added benefit of enabling officers to fully develop governance and decision making processes.

10.2. Officers in Strategy and Business Intelligence will work with colleagues in Legal and Procurement to prepare a draft scheme for managing EOI that will be brought back to Cabinet later this year.

**11. Use of Appendices**

Not applicable

**12. Local Government (Access to Information) Act 1985**

Not applicable