

**Manchester City Council
Report for Resolution**

Report to: Executive – 11 September 2013

Subject: Localism Act 2011 – (1) Community Right to Bid (Assets of Community Value) and (2) Community Right to Challenge

Report of: The City Solicitor

Summary

To advise the Executive of the statutory requirement for the Council to implement the (1) Community Right to Bid (and associated processes for listing Assets of Community Value) and the (2) Community Right to Challenge

Recommendations

The Executive is recommended to:

1. Note the statutory requirement for the Council to implement the **Community Right to Bid** introduced by the Localism Act 2011.
 2. Approve the draft Community Right to Bid Procedure at Appendix A to this report.
 3. Note the statutory requirement for the Council to implement the **Community Right to Challenge** introduced by the Localism Act 2011.
 4. Approve the draft Community Right to Challenge Procedure at Appendix B to this report.
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Wards Affected: All

Community Strategy Spine	Summary of the contribution to the strategy
Performance of the economy of the region and sub region	The Community Right to Challenge may have the potential to build new or existing service businesses.
Reaching full potential in education and employment	
Individual and collective self esteem – mutual respect	

Neighbourhoods of Choice	The Community Right to Bid may help communities to come together to safeguard local amenities.
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Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

The Council will have to meet the costs of compensation payments of less than £20,000 in a financial year. New Burdens payments of £8547 in respect of Community Right to Challenge and £7855 in relation to Community Right to Bid have been received from Central Government to meet the costs of the implementation of these rights in the current financial year. Access to the funding requires a Revenue Gateway submission.

Financial Consequences – Capital

None

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Community Right to Bid

1. Part 5, Chapter 3, Sections 87 to 108 of the Localism Act 2011;
2. The Assets of Community Value (England) Regulations 2012
3. Department of Communities for Local Government, Community Right to Bid: Non-statutory advice note for local authorities. (October 2012)

4. Report of the City Treasurer to Finance Scrutiny Committee 13 December 2012 – Community Asset Transfers and Community Right to Bid

Community Right to Challenge

1. Part 5, Chapter 2, Sections 81 to 86 of the Localism Act 2011;
2. The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (S.I. 2012 No. 1313);
3. Department for Communities and Local Government Statutory Guidance entitled: ***Community Right to Challenge***, published 27 June 2012.

1.0 Introduction

- 1.1 The Community Right to Bid and the Community Right to Challenge are two of the new community rights introduced by the Localism Act 2011. Although these are described as 'rights' they should be thought of more as 'opportunities' as the legislation provides community groups with a formal opportunity to bid to buy local amenities if they come on to the open market (Community Right to Bid) and to express an interest in taking over and running a local authority service (Community Right to Challenge). As will be explained in more detail in the appendices to this report, in neither case does this mean that the community groups are given preferential rights. Their bids or expressions of interest, as the case may be, are considered in competition with those from other interested parties.

2. Community Right to Bid

- 2.1 The Government thinking behind the **Community Right to Bid** provisions is to prevent the loss of local amenities and buildings of importance to the community such as 'village shops, community centres, local pubs, libraries and playing fields'. The provisions prevent disposal of the land by the owner before community interest groups have been given an opportunity to develop a proposal and raise capital to bid for the asset.
- 2.2 The Community Right to Bid is sometimes known as 'assets of community value' but should not be confused with another separate initiative called Community Asset Transfer which is referred to in more detail at paragraph 2.6 of this report.
- 2.3 Briefly, the Community Right to Bid scheme provides that voluntary and community organisations can nominate an asset (owned publicly or privately) to be included in a statutory 'list of assets of community value' that the Council has a duty to maintain. If the Council agrees that the principal current use of the asset furthers (or has recently furthered) its community's social wellbeing or social interests and is likely to do so in the future, then it will list the building or land. If the owner of a listed asset wants to sell their asset they must notify the Council in writing and a moratorium period of up to six months will be triggered during which the owner cannot sell the asset unless to a community interest group. After the moratorium period has ended the owner may sell to whomever they choose and at whatever price. There is no obligation to sell to a community interest group.
- 2.4 The Community Right to Bid came into force on 21 September 2012. In August this year the Government announced that the first 100 community pubs have been listed as assets of community value. Across the UK listed assets include village halls, sports facilities (including some high profile football grounds) and libraries.
- 2.5 Nationally, the Department of Communities and Local Government (DCLG) is providing £60m for support, advice and grants until 2015 to enable

communities to access the rights introduced by the Localism Act 2011. DCLG has made the Community Assets and Services Grants Programme available through the Social Investment Business Group to assist organisations wanting to use the new Right to Bid. Three types of grant are available;

- pre-feasibility grants of up to £10,000 for organisations to build their internal capacity to prepare to buy an asset of community value.
- feasibility grants of up to £100,000 for organisations which demonstrate that they have the potential to meet local needs through the acquisition of assets.
- capital grants of £4.75 million are available in this financial year for the purchase of an asset but the window for applications closed on 30 August .

2.6 The Community Right to Bid should not be confused with *Community Asset Transfer*, an initiative promoted by public policy which involves the transfer of management and/or ownership of land and buildings from a public sector body to a community based organisation. Community Asset Transfer allows the transfer of ownership to take place at less than market value whereas Community Right to Bid gives a defined window of opportunity for a community group to compete to buy an asset on the open market.

2.7 The main role of the Council with regard to the Community Right to Bid is to process nominations and decide, according to the legal criteria, whether a building or area of land meets the definition to be listed as an asset of community value. The Council must determine nominations received from community groups in a way that is fair, open and transparent regardless of whether or not the Council is also the landowner. The Council must also carry out a review if requested to do so by a landowner who does not agree with the decision to list their land as an asset of community value.

2.8 The Council must determine any claims for compensation which may be made by a private landowner who claims that they have incurred loss or expense as a result of the listing of their land. DCLG Guidance states that the Government will meet the costs of compensation payments that exceed £20,000 in one financial year either on one large claim or as a combined total on a number of claims. The Government estimates that only 40 claims nationally will be successful in claiming compensation in any financial year.

2.9 The role of policy in the Community Right to Bid is limited as, for example, it is not open to the Council to make value judgements about the voluntary or community body that makes a community nomination to list an asset of community value. The Council may only decide whether the group comes within the legal definition of 'a voluntary or community body with a local connection'. The meaning of 'local connection' in relation to a voluntary or community body is explained in more detail in paragraphs 2.1 and 2.3 of Appendix A but it essentially means that the community group's activities must be wholly or partly concerned with the Council's area or with a neighbouring local authority's area.

- 2.10 **Appendix A** to this report summarises and explains the legislation underpinning the Community Right to Bid in detail and contains a draft procedure.
- 2.11 The draft procedure suggests that the initial nominations should be considered by Corporate Property and the City Solicitors' Division who will be responsible for notifying the parties required by the Regulations and inviting their comments on the nomination. Relevant Ward Co-Ordinators will also be notified. It is also suggested that **ward councillors** should be invited to comment.
- 2.12 City Solicitors in conjunction with Ward Co-Ordinators will prepare a report for consideration by the decision makers. It is proposed that, given the criteria for deciding if land is of community value emphasises the social wellbeing and social interests of the local community, the appropriate department from which the decision makers should be drawn is the new Growth and Neighbourhoods Directorate. It is proposed that the initial decisions should be made by the **Head of Regeneration** in consultation with the relevant Strategic Directors/Heads of Service and the relevant Directorate Executive Member.
- 2.13 The legislation provides that an owner who does not agree with the decision to list their land can request a review. This process may involve a hearing and the draft procedure proposes that the review is undertaken by the **Deputy Chief Executive (Growth and Neighbourhoods) and the Executive Member for Neighbourhood Services** (providing that this Member has not taken part in the initial decision in which case a different Member of the Executive will undertake the review)
- 2.14 With regard to claims for compensation, the draft procedure proposes that the **Head of Property** is responsible for determining compensation claims.
- 2.15 The provisions for compensation review are the same as those for a listing review referred to in paragraph 2.13. The draft procedure proposes that compensation reviews are conducted by the **Director of Capital Programmes and Property**. Where an oral hearing is requested or the Council decides to hold a hearing as part of the review process it is proposed that the **Executive Member for Finance and Human Resources** takes part in the decision making process (providing that this Member has not taken part in the initial decision in which case a different Member of the Executive will undertake the review)

3. Community Right to Challenge

- 3.1 The **Community Right to Challenge** is the right of community organisations to submit an expression of interest in running services of the Council on behalf of the Council.
- 3.2 A voluntary or community group, charity, parish council, or group of two or more Council staff can submit an expression of interest to the Council in

respect of a service they would like to run. The services may be at a local level or Council-wide. Expressions of interest can be submitted in partnership with other bodies such as a commercial business.

- 3.3 Councils may choose to specify time periods during which expressions of interest may be submitted and the draft procedure at **Appendix B** to this report suggests the period 1 November 2013 to 1 December 2013 for the financial year 2014/15 in order to fit in with the Council's budget setting process. If the Council specifies a time period then it has no obligation to consider expressions of interest outside of this period but the Council will exercise its discretion in deciding whether to consider expressions of interest received outside the specified time period.
- 3.4 If the Council accepts the expression of interest it must run a procurement exercise for the service and the interested group will need to compete with others who may wish to run the service.
- 3.5 The Council must consider the social value of expressions of interest and in any procurement exercise that may be triggered by the expression of interest. There is also a duty to consider Best Value which includes economic, environmental and social value. Expressions of interest should demonstrate how a proposal for a service might offer social, economic and environmental benefits to the community such as creating local jobs and improving local skills or improving environmental conditions.
- 3.6 When the service is delivered as part of a statutory duty the Council retains the statutory duty as is the case at present with services which are commissioned out.
- 3.7 The Community Assets and Services Grants programme referred to in paragraph 2.5 above has £10 million set aside for the Community Right to Challenge to help community groups with feasibility studies or the initial setup of the service. Pre-feasibility and feasibility grants are available up to £10,000 and £100,000 respectively as with the Community Right to Bid. A small number of service delivery grants will be (but are not yet) available. They will not be open to application but relevant bodies (described in Paragraph 3 of Appendix B) will be invited to apply against a set of published criteria.
- 3.8 **Appendix B** to this report summarises and explains the legislation underpinning the Community Right to Challenge in detail and contains a draft procedure.
- 3.9 With regard to decision making, the draft procedure suggests that the **Council's Commercial Board** (which is made up of the City Treasurer, the Assistant Chief Executive, Finance and Performance, the Head of Public Private Partnerships, the Commercial Director, the Interim Head of Strategic Commissioning, the Head of Corporate Procurement, the Head of Regeneration Legal, and the Head of Finance) should make a recommendation to the **City Treasurer** as to whether an Expression of Interest submitted to the Council within the window for submissions of 1

November to 1 December of each year should be accepted, rejected or modified. The City Treasurer will make the final decision in consultation with the relevant Directorate Executive Member.

4.0 Contributing to the Community Strategy

(a) Performance of the economy of the region and sub region

As the Community Right to Challenge can trigger a procurement exercise, this could stimulate the formation of new social or commercial enterprises or provide an opportunity for an existing business to grow. Economic activity may be stimulated by the Community Right to Bid, with community groups or others using buildings to run services or businesses.

(b) Reaching full potential in education and employment

(c) Individual and collective self esteem – mutual respect

(d) Neighbourhoods of Choice

The Community Right to Bid could stimulate community activity in a neighbourhood, bringing people together to nominate an asset and potentially galvanising local activity to fundraise, should a community then have the opportunity to buy the listed asset. If a community is successful in buying a listed asset, this could then be used to provide a needed facility/amenity for the neighbourhood as well as providing a focus for community organisation and activity.

5. Key Policies and Considerations

(a) Equal Opportunities

(b) Risk Management

There will be a need for robust contract management arrangements to be in place arising from any successful Community Right to Challenge.

(c) Legal Considerations

Legal considerations have been fully addressed in this report which explains the legislative background to the Community Right to Bid and Community Right to Challenge, the statutory duty of the Council in relation to these initiatives and draft procedures which are compliant with the legislation.

APPENDIX A

COMMUNITY RIGHT TO BID

1. Introduction

- 1.1. The Community Right to Bid was introduced by Part 5, Chapter 3 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012 which both came into force on 21 September 2012.

2. Legislative Framework

(a) Who can make a community nomination?

- 2.1 A voluntary or community body with a local connection or a parish council can nominate land for inclusion in the Council's list of assets of community value. The Assets of Community Value (England) Regulations 2012 ('the Regulations') define 'a local connection' in relation to a voluntary or community body as meaning that the body's activities are wholly or partly concerned with a local authority's area or with a neighbouring authority's area.

- 2.2 Voluntary or community bodies are defined as:-

- A body designated as a neighbourhood forum
- A parish council
- An unincorporated body with at least 21 local members who are registered to vote from an address in the Council's area or in a neighbouring authority's area
- A charity
- A company limited by guarantee
- An industrial and provident society
- A community interest company

- 2.3 An unincorporated body, a company limited by guarantee and an industrial and provident society must also satisfy the 'local connection' requirement that any surplus they make is wholly or partly applied for the benefit of the Council's area or a neighbouring authority's area and these bodies also must not distribute any surplus they make to their members.

- 2.4 It should be noted at this point that a neighbourhood forum and an unincorporated body are not community interest groups who may submit a request to be treated as a potential bidder for the land (see paragraph 2.18 below) so will have to adopt a more formal structure in order to bid.

(b). What is land of community value?

2.5 Section 88 of the Localism Act 2011 states that land is of community value if in the opinion of the local authority;

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

2.5.1 'Social wellbeing' is not defined in the legislation but 'social interests' include, in particular, each of the following;

- Cultural interests
- Recreational interests
- Sporting interests

2.5.2 'Non ancillary use' is not defined but means the principal use of the building or land.

(c) Are any categories of land excluded from listing?

2.6 Nominated assets may be owned by anybody including the Council and the Crown but Schedule 1 of the Regulations prescribes land which is not of community value and therefore may not be listed;

- A residence together with land connected with that residence

This category is subject to certain detailed qualifications as land is connected with a residence if the land and the residence are owned by a single owner *and* every part of the connected land can be reached from the residence without having to cross land which is not owned by the single owner, unless the intervening land is a road, railway, river or canal and it is reasonable to

think that if the intervening land of this nature were to be removed, no gap would be left.

- 2.6.1 A 'residence' includes a building partly used as a residence and includes residences which are temporarily unoccupied, holiday lets, hotels or buildings principally used for letting or licensing accommodation to paying occupants and houses in multiple occupation.
- 2.6.2 There is one exception to the residence exemption and that is where part of the building is used as a residence and but for that part, the land would be eligible for listing. The DCLG guidance explains that the reference is to integral residential quarters such as accommodation which forms part of a public house.
- 2.7 Two other categories of land are not considered to be of community value;
- Land licensed for use as a residential caravan site and certain residential caravan sites where such licences are not required.
 - Operational land as defined in section 263 of the Town and Country Planning Act 1990 - this generally refers to land used by statutory undertakers for the purpose of carrying on their undertaking and land in which an interest is held for that purpose.

(d) What information must be included in a nomination?

- 2.8 The Regulations provide that a community nomination must include the following matters;
- A description of the nominated land including its proposed boundaries
 - A statement of all the information which the nominator has with regard to –
 - (i) the names of current occupiers of the land and
 - (ii) the names and current or last known addresses of all those holding a freehold or leasehold estate in the land
 - The nominator's reasons for thinking that the Council should conclude that the land is of community value and
 - Evidence that the nominator is eligible to make a community nomination

(e) How long does the Council have to make a decision?

- 2.9 The Regulations provide that a decision must be made within eight weeks of receiving the nomination. The local authority is required to notify the following that it is considering listing the land; the owner of the land; the lawful occupant; all others with a legal estate and any parish council in which the land lies or partly lies.

(f) Once the decision is made what action has to be taken?

- 2.10 If the Council decides that the land is of community value it must include the land in its list of assets of community value and is under a statutory duty to publish the list and must also make the list available for inspection free of charge at a place in its area.
- 2.10.1 Entries will remain in the list for a period of five years unless the Council for any reason no longer considers the land to be of community value or certain other events occur as prescribed in the Regulations, such as a successful appeal against listing.
- 2.10.2 The Council is obliged to notify the following that it has listed the land;
- The owner
 - The lawful occupant
 - All others with a legal estate
 - The body who made the community nomination
 - Any parish council in which the land lies or partly lies
- 2.10.3 The Council must also place an entry in the local land charges register and apply to the Land Registry for entry of a restriction on the Land Register.
- 2.11 An owner whose land is listed is required to notify the local authority in writing of their wish to enter into a relevant disposal of the land. This is considered further at paragraph 2.14 below.
- 2.12 The consequences of non compliance with the scheme are that disposals of land in contravention with the legislation are void.
- 2.13 If the Council decides that the nomination is unsuccessful then it must provide written reasons for the decision to the person who made the nomination. The Council must also make an entry in a statutory list called 'a list of land nominated by unsuccessful community nominations' and include the reasons for the decision. The duty to publish the list and to make it available for inspection is the same as that relating to the list of assets of community value (see paragraph 2.10)
- 2.13.1 Entries will remain on the list for five years but the Council may decide not to remove the entry after the expiry of the five year period.

(g) What is a 'relevant disposal'?

- 2.14 A 'relevant disposal' is defined in Section 96 of the Act.

- A disposal of the freehold with vacant possession
- A grant or assignment of a qualifying leasehold estate with vacant possession

2.14.1 A 'qualifying leasehold estate' in relation to any land means of a lease of the land for a term which had at least 25 years to run when granted.

2.15 Section 95 (5) of the Act and Schedule 3 of the Regulations list the exemptions which are not caught by the legislation. The list is extensive and the following are examples;

- A disposal made in pursuance of a legally enforceable option to buy, nomination right, right of pre-emption or right of first refusal but **not** if the land was listed when the option or right was granted.
- A disposal of land to a person whose acquisition of the land is a statutory compulsory purchase
- A disposal by one body corporate to another, where the second one is in a group undertaking relating to the first.
- A disposal of land held for the purpose of certain schools, a 16-19 academy or further education institution
- If the disposal is of an estate in land in which a business is carried on and is at the same time, and to the same person, as a disposal of that business as a going concern
- disposal of land which is subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the moratorium rules were complied with

(h) What happens after the owner notifies the Council that they wish to enter into a relevant disposal?

2.16 The Act requires the Council to place an entry in the list of assets of community value revealing that an owner has notified the Council in writing that they wish to enter into a relevant disposal of the land. The list must also show the date that the Council received the notice and other dates as specified in the Act which start from the date of receipt of the notice namely;

- the interim moratorium period which is six weeks
- the full moratorium period which is six months and
- the protected period which is eighteen months.

2.17 The Council must also notify the group that made the community nomination and publicise the matters described in paragraph 2.19 in the neighbourhood of

the asset.

- 2.18 During the interim moratorium period of six weeks a community interest group may submit a written request to be treated as a potential bidder for the land. This group is defined in the Regulations and may be any of the bodies listed in paragraph 2.2 above except a designated neighbourhood forum and an unincorporated body. This group may be an entirely different group to the one who made the community nomination.
- 2.19 If no request is received in the interim moratorium period then the owner is free to dispose of their land at the expiry of the six week period and before the end of the protected period of eighteen months from the date of original notification to sell, during which no further moratorium periods will apply. If a request is received from a community interest group however, then the owner may not dispose of the asset until the expiry of the full six month moratorium period, unless to a community interest group. Once the full moratorium period has expired the owner is free to dispose of their land before the end of the protected period of eighteen months.
- 2.20 The non statutory guidance produced by the DCLG stresses that the provisions do not restrict in any way who the owner of a listed asset can sell their property to or at what price. They do not confer a right of first refusal to community interest groups. The guidance also emphasises that the provisions do not place any restriction on what an owner can do with their property once listed, as long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites.

(i) What can the owner do if they do not agree with the decision to list the land?

- 2.21 The basic procedure for carrying out a listing review is outlined in Schedule 2 of the Regulations. The owner has eight weeks to request a listing review from the date that the written notice of listing was given. The Council can allow a longer period of time. However, the land will remain listed during the review process.
- 2.22 The Regulations state that the review must be conducted by ‘an officer of ...appropriate seniority who did not take any part in making the decision to be reviewed..’ The draft procedure proposes that the review is undertaken by the **Deputy Chief Executive (Growth and Neighbourhoods)** and the **Executive Member for Neighbourhood Services** (providing that this Member has not taken part in the initial decision in which case a different Member of the Executive will undertake the review).
- 2.23 The Council must notify the owner of the procedure to be followed in connection with the review as soon as practicable after receiving the written request for the review and then has eight weeks to complete the review or such longer period as is agreed in writing with the owner.
- 2.24 The owner has the right to legal or other representation and may request an

oral hearing. The Council must then hold such a hearing. However, even if no oral hearing is requested, the Council may decide to include such a hearing in the review process.

- 2.25 An owner may appeal to the First Tier Tribunal (part of HM Courts and Tribunals Service) against the Council's decision on a listing review.

(j) Compensation

- 2.26 The legislation provides that an owner or former owner of privately owned land may claim compensation for loss or expense incurred as a result of the land being listed.
- 2.27 The Regulations provide that, without prejudice to other types of claim, claims may be made for;
- delay in entering into a binding agreement to sell the land wholly caused by the moratorium periods and
 - reasonable legal expenses incurred in a successful appeal to the First – Tier Tribunal against the decision to list the land or against a refusal to pay compensation or the amount of the compensation offered or paid.
- 2.28 Claims must be made in writing, stating the amount of compensation sought and must be accompanied by supporting evidence. The time frame for submission of the claim is within 13 weeks after the loss or expense was incurred or as the case may be, finished being incurred.
- 2.29 No time limit is prescribed for the Council to respond to the claim but written reasons must be given for the decision.
- 2.30 The draft procedure proposes that the **Head of Property** is responsible for determining compensation claims.
- 2.31 The provisions for compensation review and appeal are the same as those for a listing review as described in Schedule 2 of the Regulations and paragraphs 2.21 to 2.24 above. The draft procedure proposes that compensation reviews are conducted by the **Director of Capital Programmes and Property**. Where an oral hearing is requested or the Council decides to hold a hearing as part of the review process it is proposed that the **Executive Member for Finance and Human Resources** takes part in the decision making process (providing that this Member has not taken part in the initial decision in which case a different Member of the Executive will undertake the review).

Appendix A

Manchester City Council Community Right to Bid Draft procedure

The Legislative Background

- Part 5, Chapter 3, Sections 87 to 108 of the Localism Act 2011; ('the Act')
- The Assets of Community Value (England) Regulations 2012 ('the Regulations')
- Department of Communities for Local Government, Community Right to Bid: Non-statutory advice note for local authorities. (October 2012) (the 'non statutory guidance')

1. Receipt of a Nomination and Initial Assessment

- a) On receipt of a nomination to the Right to Bid email address, Corporate Property will acknowledge receipt and consider the nomination in conjunction with the City Solicitors Division and decide if the nomination is valid, considering such issues as;
 - Has the nomination been made by a qualifying voluntary or community body?
 - Is the nominated land included in the legal definition of land which may not be listed?
 - Does the nomination include the matters prescribed in the Regulations?
- b) If the nomination is not valid but may be rectified by, for example, the provision of further information by the nominating body, then that body will be given a reasonable opportunity to provide the additional information necessary to validate the nomination.
- c) If the nomination is unsuccessful because, for example, the land is not of community value as described in Schedule 1 of the Regulations then City Solicitors will notify the nominating body, giving reasons for the decision and Corporate Property will enter the nomination in the list of land nominated by unsuccessful community nominations.
- d) City Solicitors will also notify relevant Executive Members, ward councillors and ward co-ordinators about unsuccessful nominations which have not passed the initial assessment stage.

2. Determination of a Valid Nomination

- a) (i) If the nomination is valid then City Solicitors will proceed to notify the parties specified in Regulation 8 of the Regulations namely;

- a parish council if the land is in the area of the parish council
 - the owner of the land
 - the owner of any leasehold or freehold estate who is not the owner
 - the lawful occupant
- a) (ii) City Solicitors will also notify Ward Co-ordinators about the nomination.
- a) (iii) City Solicitors will ask the parties in Regulation 8 for their comments and will also notify ward councillors about the nomination and invite their comments.
- a) (iv) On receipt of the parties' comments, City Solicitors will prepare a report for the Head of Regeneration who will determine the nomination in consultation with the relevant Strategic Directors/Heads of Service and the relevant Directorate Executive Member.
- b) (i) If the decision is made that the land is of community value then City Solicitors will notify the parties specified in Section 91 of the Act namely;
- the owner
 - the owner of any leasehold or freehold estate who is not the owner
 - the occupier of the land
 - the person who made the community nomination
 - any parish council in which the land is situated
- Notification will also be given to ward co-ordinators and ward councillors.

Notices will include the information about the consequences for the land and its owner of inclusion in the list and the right to ask for a review.

- b) (ii) Corporate Property will enter the land in the Council's list of assets of community value.
- b) (iii) City Solicitors will arrange for inclusion of the listing in the local land charges register and will apply to the Land Registry for entry of a restriction on the Land Register.

3. Listing Review

- a) If the Council receives a request from a landowner for a review of the decision to list their land as an asset of community value, City Solicitors will check whether the request has been received within the eight week time limit or consider whether there are reasonable grounds for granting an extension of time in consultation with the Deputy Chief Executive (Growth and Neighbourhoods) and the Executive Member for Neighbourhood Services (providing that this Member has not taken part in the initial decision in which case a different Member of the Executive will undertake the review).
- b) Following consultation with the Deputy Chief Executive (Growth and Neighbourhoods) and the Executive Member for Neighbourhood Services (or alternative Member of the Executive), City Solicitors will;

- i) arrange an oral hearing if one has been requested or it is considered appropriate to hold such a hearing as part of the review process
 - ii) decide on the appropriate procedure to be followed in connection with the review
 - iii) issue directions to facilitate the review hearing.
- c) Following the conclusion of the review process, City Solicitors will issue the reasons for the decision to the person who requested the review.
- d) If the decision on review is to remove the building or land from the Council's list of assets of community value then City Solicitors will give written notice of the removal to the parties specified in Section 91(2) of the Act, namely;
- the owner
 - the occupier
 - the person who made the community nomination
 - the holder of the freehold or leasehold estate where they are not the owner
 - a parish council if any of the land is in the council's area.
- Notification will also be given to ward co-ordinators and ward councillors.
- e) (ii) City Solicitors will also arrange for cancellation of the restriction entered in the local land charges register and the Land Register.

4. Moratorium

- a) On receipt of notification in writing that a particular person wishes to enter into a relevant disposal of land City Solicitors and Corporate Property will;
- i) note on the entry in the list of assets of community value
 - that notice has been received
 - the date of the notice
 - the end dates of the initial moratorium period, the full moratorium period and the protected period
 - ii) give written notice to the person who made the community nomination
 - iii) publicise in the area where the land is situated in accordance with Section 97 of the Act
- b) Should the Council receive a written request from a community interest group to be treated as a potential bidder in relation to the land, Corporate Property will pass on the request to the owner or inform the owner of the details of the request.

5. Compensation

Claims for compensation from private landowners will be assessed by Corporate Property with assistance from City Solicitors where necessary and will be determined by the Head of Property, giving written reasons for his/her decision to the claimant.

6. Compensation Reviews

The Council will follow the same procedure as with listing reviews at paragraph 3 of this procedure save that the reviews will be conducted by the Director of Capital Programmes and Property and the Executive Member for Finance and Human Resources (providing that this Member has not taken part in the initial decision in which case a different Member of the Executive will undertake the review).

APPENDIX B

COMMUNITY RIGHT TO CHALLENGE

1. Introduction

- 1.1 Sections 81 to 86 of the Localism Act 2011, the Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (“the Regulations”), and the DCLG’s Statutory Guidance entitled **Community Right to Challenge** (“the Statutory Guidance”), together provide the legislative framework for the Community Right to Challenge (CRtC). The CRtC is the right for “relevant bodies” to express an interest in “providing or assisting in providing” a service that is currently provided by (or on behalf of) a local authority. Local authorities must consider that expression of interest and, if it is accepted, must then carry out a full procurement exercise for the future running of that service in accordance with the usual legal requirements for tenders.
- 1.2 This Appendix provides a summary of the legislation and Statutory Guidance that the Council is required to follow in determining its approach to the CRtC. A draft procedure in relation to the CRtC is attached for consideration at the end of this Appendix.

2. Legislative Framework

The Localism Act, the Regulations and Statutory Guidance set out the rules that the Council must follow in considering its approach to the management of the CRtC. These include the following:

- Specifying the “Relevant Bodies” that may submit an expression of interest;
 - Defining “Relevant Services” that may be subject to a CRtC, and specifying “Excluded Services” that cannot be subject to a CRtC.
 - Specifying the information that must be included within an “Expression of Interest”; and
 - Specifying the grounds whereby an “Expression of Interest” may be rejected.
- 2.2 Each of the above rules is explained in more detail in the following sections of this report.

3. Relevant Bodies

- 3.1 “Relevant Bodies” are those groups that are eligible to submit an “Expression of Interest to deliver “Relevant Services” on behalf of the Council. The Localism Act 2011 lists the following as Relevant Bodies:
- (a) a voluntary body (defined as being a body, other than a public or local authority, whose activities are not carried on for profit – although the fact that a body’s activities generate a surplus does not prevent it from

- being a “voluntary body” so long as that surplus is used for the purposes of its activities or invested in the community);
- (b) a community body (defined as being a body, other than a public or local authority, whose activities are carried on primarily for the benefit of the community)
 - (c) a body of persons or a trust which is established for charitable purposes only;
 - (d) a parish council;
 - (e) two or more employees of the Council;
 - (f) any other person or body specified by the Secretary of State in regulations.

3.2 The Statutory Guidance states that “the definitions of voluntary and community body are intended to cover a wide range of civil society organisations”, and that the Government expects the definition to include (but not be limited to) the following types of organisation:

- Community benefit societies (a type of industrial and provident society);
- Co-operatives whose activities are primarily for the benefit of the community (another type of industrial and provident society);
- Community interest companies;
- Charitable incorporated organisations; and
- Other incorporated forms of body such as companies limited by guarantee or shares where the company’s Memorandum and/or Articles of Association state that the company’s objects are in the interest of the community, rather than to make a profit for shareholders.

3.3 The Statutory Guidance also states that “the Government is committed to giving public sector workers the right to bid to take over running the services they deliver” and that “two or more employees” of a “relevant authority” are eligible to use the CRtC. The Statutory Guidance advises that the Government expects employees:

...to form an employee-led structure to take on running services under the right. Employees using the right are not expected to have finalised all of their arrangements before submitting an expression of interest but will probably need to form a separate legal entity in order to bid in a procurement exercise (so that management and contractual relationships are clear).

3.4 The Statutory Guidance also deals with the question of whether Relevant Bodies can work in partnership, either with other Relevant Bodies, or with non-relevant bodies in the private sector, in drawing up an Expression of Interest. The Statutory Guidance makes it clear that this is permitted and that “such cooperation may strengthen a Relevant Body’s case that it is capable of providing the service.”

4. Relevant Services

4.1 The CRtC applies to all “Relevant Services”. These are defined in the Localism Act 2011 as being “a service provided by or on behalf of a relevant

authority in the exercise of its functions (except for those services which are excluded from the CRtC by the Regulations).

- 4.2 The Statutory Guidance provides clarification in relation to the fact that the CRtC only applies to the provision of services by the Council (and does not provide for delegation of the functions of the Council). The responsibility for the function itself remains with the Council. As an example of the distinction between what constitutes a “function” and a “service” the Statutory Guidance provides the following example in respect of Planning.

Planning

Section 70(1) of the Town and Country Planning Act 1990 gives powers to the Council in its capacity as a local planning authority to grant or refuse planning permission where a planning application is made to the Council. The CRtC does not allow for the function of determining planning applications to be provided by a third party. Therefore the function of taking the planning decision is excluded from the CRtC.

By contrast, the delivery of planning services, for example the processing of a planning application (not the decision itself), may be carried out by the Council itself or by a third party on behalf of the Council. Therefore this service would be included within the CRtC.

- 4.3 Under the Regulations a limited number of services are excluded from the CRtC. Some of the “excluded” services are only excluded from the CRtC for a limited period (until 1 April 2014 in respect of certain health services in order to allow the new NHS Commissioners (i.e. the NHS Commissioning Board and the 3 Manchester Clinical Commissioning Groups established by the Health and Social Care Act 2012) to have time to become fully operational, consider the contractual arrangements they have inherited from their predecessor NHS Commissioners (primarily the former Primary Care Trusts) and develop new commissioning relationships with the Council in the period up to April 2014). Other “excluded” services are excluded from the CRtC permanently, such as services commissioned or provided by the Council in respect of a named person with complex individual health or social care needs.

5. Expressions of Interest

Requirements for Expression of Interest

- 5.1 The Localism Act 2011 and the Statutory Guidance allow the Council to “specify periods during which Expressions of Interest, or Expressions of Interest in respect of a particular relevant service, may be submitted” to the Council. The Government has stated in the Statutory Guidance that “Specifying such periods will help authorities to manage the flow of Expressions of Interest and allow this to be synchronised with any existing commissioning cycles for services.” A number of Councils have chosen to specify a period for the submission of Expressions of Interest. For example, Islington Council has specified a window for Expressions of Interest from 1

September 2013 until 31 October 2013 for the financial year 2014-2015, whilst Stockport City Council has specified a window for Expressions of Interest from 11 March 2013 to 12th April 2013 for the financial year 2013-2014. If the Council chooses to specify a period during which Expressions of Interest may be submitted, then the Council must publish details of the timescales on the Council's website. If the Council specifies a time period then it has no obligation to consider Expressions of Interest outside of this period but the Council will exercise its discretion in deciding whether to consider Expressions of Interest received outside the specified time period. If the Council does not choose to set periods for Expressions of Interest, then these can be submitted at any time.

- 5.2 The Localism Act 2011 places the Council under a duty to consider an Expression of Interest if it is in writing and if it provides the "mandatory" information that Schedule 1 of the Regulations require to be included, which is set out at paragraph 5.3 below. While the Council may request additional information, the Council cannot make inclusion of such additional information a requirement in order for the Expression of Interest to be considered, or use it as the basis for rejecting an Expression of Interest. If the Council does ask for any additional information, it must make it clear to Relevant Bodies that the provision of this additional information is optional.
- 5.3 In accordance with the requirements of Schedule 1 of the Regulations, all Expressions of Interest that are submitted to the Council must include the following "mandatory" information:
1. Where the Relevant Body proposes to deliver the Relevant Service as part of a consortium, or to use a sub-contractor for delivery of any part of the Relevant Service, the information in paragraphs 2 and 3 must be given in respect of each member of the consortium and each sub-contractor as appropriate.
 2. Information about the financial resources of the Relevant Body submitting the Expression of Interest.
 3. 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.
 4. Information about the Relevant Service sufficient to identify it and the geographical area to which the Expression of Interest relates.
 5. 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:
 - (a) How the provision or assistance will promote or improve the social, economic or environmental well-being of Manchester; and
 - (b) How it will meet the needs of the users of the Relevant Service.
 6. Where the Relevant Body consists of employees of the Council, details

of how that Relevant Body proposes to engage other employees of the Council who are affected by the Expression of Interest.

- 5.4 In addition to the “mandatory” information set out above, the Council may also require that a body submitting an Expression of Interest demonstrate that they meet the definition of a “Relevant Body” as set out at Section 3 above.

Promoting or Improving the Social, Economic or Environmental Well-Being of Manchester

- 5.5 The Statutory Guidance provides clarification in relation to what is intended by the mandatory requirement for an Expression of Interest to provide information as to how it will “promote or improve the social, economic or environmental well-being of Manchester”. As the Statutory Guidance points out, the requirement for the Council to consider social value of Expressions of Interest and in carrying out procurement exercises is also reflected in the Public Services (Social Value Act) 2012 and the general duty of “best value” in the Local Government Act 1999. The Statutory Guidance states that Expressions of Interest “should demonstrate how the proposal might offer the social, economic or environmental benefits to the community and take into account social considerations, over and above the provision of the service” and suggests that this could include any of the following:
- Creating local jobs;
 - Improving local skills;
 - Increasing local volunteering opportunities; or
 - Improving environmental conditions.

Decisions on Expressions on Interest

- 5.5 The Localism Act 2011 requires the Council to specify the “maximum period” that will elapse between the date on which it receives an Expression of Interest submitted by a Relevant Body, and the date on which it notifies the Relevant Body of its decision in respect of the Expression of Interest. The time period may vary for different services, and must be published, including on the Council’s website. In addition, the Council has a duty to communicate the maximum time period for a decision directly to the body submitting the Expression of Interest. This must be done within 30 days after the close of any period specified by the Council for submitting Expressions of Interest (see paragraph 5.1 above) or, if no such period has been specified, within 30 days of the Council receiving the Expression of Interest.
- 5.6 In deciding on a “maximum” period the Council will take to reach a decision on an Expression of Interest the Council must have regard to the following factors set out in the Statutory Guidance:
- The need to notify Relevant Bodies of a decision within a reasonable period;
 - The nature, scale and complexity of the service to which Expressions of Interest relate;
 - The complexity of the Expressions of Interest received;
 - The likely need to agree modifications to Expressions of Interest in

- order to accept them; and
- The timescales for any existing commissioning cycle relevant to the service which an Expression of Interest relates to, or any other relevant Council processes (e.g. Council and Executive decision making and budget setting processes).

Grounds whereby an Expression of Interest may be rejected

- 5.7 The Council may only reject an Expression of Interest on one or more of the 10 grounds set out in the Statutory Guidance on which an Expression of Interest may be rejected. The grounds on which the Council can reject an Expression of Interest are listed at paragraphs listed at paragraph 5.8 below. If the Council decides to modify or reject an Expression of Interest, it must give reasons for that decision in its notification to the Relevant Body. The Council must also publish the notification on the Council's website.
- 5.8 The Council may reject an Expression of Interest on one or more of the following grounds:
1. The Expression of Interest does not comply with any of the requirements specified in the Localism Act 2011 or in the Regulations.

(The information that must be included with an Expression of Interest is set out at paragraphs 5.3 to 5.5 above).
 2. The Relevant Body provides information in the Expression of Interest which in the opinion of the Council, is in a material particular inadequate or inaccurate.

(The Statutory Guidance makes it clear that a judgement on the "adequacy and accuracy of information" supplied by a Relevant Body must be based only on the information that must be included within an Expression of Interest as set out at paragraphs 5.3 to 5.5 above. Where the Council considers that the information in an Expression of Interest is "inadequate or inaccurate" the Statutory Guidance suggests that the Council "should consider asking the Relevant Body for further information.")
 3. The Council considers, based on the information in the Expression of Interest, that the Relevant Body, 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.
(The Statutory Guidance makes it clear that the judgement of "suitability" must be based on the information that must be included within an Expression of Interest as set out at paragraphs 5.3 to 5.5 above and must not be based on information other than this "mandatory" information).

4. The Expression of Interest relates to a Relevant Service where a decision, evidenced in writing, has been taken by the Council to stop providing that service.

(The Statutory Guidance advises that the CRtC “is not a mechanism to require Relevant Authorities to provide services that they have stopped providing, or have taken a decision to stop providing”. The Statutory Guidance states that “A decision to stop providing a service is considered to have been taken once it has been approved or endorsed” by the Council. The Statutory Guidance advises that this ground for rejection does not allow an Expression of Interest to be rejected before the decision is made by the Council to stop the service.)

5. The Expression of Interest relates to a Relevant Service -
 - a. provided, in whole or in part, by or on behalf of the Council 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 Council, critical to the well-being of those persons.

(The Statutory Guidance advises that the above grounds for rejection of an Expression of Interest may apply to health, health-related and social care services, such as services for frail and older people, and those with issues relating to mental health, dementia, learning and physical disabilities. However, the Statutory Guidance also advises that not all “integrated services” will be subject to this ground for rejection, and sets out the following examples of how this may apply for day centres for adults with a learning disability:

Example 1: Integration critical to the well-being of persons

A day centre for individuals with complex needs. The health and social care staff work side and side to deliver personal care support and medical treatment to individuals who require considerable monitoring and individual care.

Example 2: Integration not critical to the well-being of persons

A day centre for individuals with mild to moderate needs where they gain support with daily tasks, undertake a range of activities, including for example activities which may help them to find employment, and also receive health advice.

The Statutory Guidance recommends that if the Council receives an Expression of Interest for a service where this ground for rejection may apply, the Council should seek advice from the NHS body in assessing it.)

6. The Relevant Service is already the subject of a procurement exercise.

7. The Council and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.

(The Statutory Guidance advises that this ground for rejection seeks “to achieve a balance between giving groups the opportunity to submit Expressions of Interest and allowing processes, such as negotiations for a grant agreement, that are sufficiently progressed to be concluded”. The Statutory Guidance makes it clear that this ground for rejection cannot be applied if the Council is “merely considering options for future service provision, one of which is to negotiate for a third party to provide the service”).

8. The Council has published its intention to consider the provision of the Relevant Service by a body that 2 or more specified employees of the Council propose to establish.

(The Statutory Guidance advises that this ground for rejection seeks “to achieve a similar balance” to that relating to negotiations referred to above, in that it allows Relevant Bodies to submit Expressions of Interest before the point at which the Council has published its intention to consider the provision of a Relevant Service by an organisation that will be established by 2 or more specified employees. Once past this point, this ground for rejection allows such processes that are sufficiently progressed to continue. The Statutory Guidance makes it clear that the Council must ensure that it is able to “evidence” that it has published its intentions in order to be able to reject an Expression of Interest on this ground and recommends that the Council should consider how such publication can be made easily accessible for Relevant Bodies that may wish to submit Expressions of Interest).

9. The Council considers that the Expression of Interest is frivolous or vexatious.

(The Statutory Guidance advises that an Expression of Interest would be “vexatious” if it is “likely to cause distress or irritation without justification, or is aimed at disrupting the work of the Council or harassing individuals in it”. The Statutory Guidance advises that an Expression of Interest could be considered to be “frivolous” if it is “apparent that it is not a genuine offer to provide a service and lacks any serious purpose”).

10. The Council 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.

(The Statutory Guidance provides the following example of where this ground would apply:

Example

The Safeguarding Vulnerable Groups Act 2006 prevents anyone included on the Children's Barred List from providing childcare services. If a Relevant Body proposed that employed staff who were on the list would run such a service then the Expression of Interest could be rejected on the grounds that acceptance would be likely to contravene a rule of law).

Modifying an Expression of Interest

- 5.9 If the Council believes it would otherwise reject an Expression of Interest, it may seek instead to agree to it being modified. Any modification must be agreed with the Relevant Body. If an agreement cannot be reached, the Council may reject the Expression of Interest.

Period between an Expression of Interest being accepted and a Procurement Exercise starting.

- 5.10 The Localism Act requires the Council to specify both the minimum and the maximum periods that will elapse between the date of the Council's decision to accept an Expression of Interest and the date on which the Council will begin the procurement exercise as result of that acceptance. The Council may specify different periods for different cases and must publish this information on its website. In specifying the minimum and maximum periods that will elapse between the Council's decision to accept an Expression of Interest and the date on which the Council will begin the procurement exercise the Council must consider the following factors:

- The need to provide employees of the Council, and other Relevant Bodies, with a fair, reasonable and realistic opportunity to bid in the procurement exercise for the service;
- The nature, scale and complexity of the service being procured;
- The timescales for any existing commissioning cycle relevant to the service being procured, or any other relevant Council processes.

6. The Procurement Exercise

- 6.1 When the Council accepts one or more Expressions of Interest for a Relevant Service, it must carry out a procurement exercise for the service in accordance with procurement law.
- 6.2 Where the service is of a value or nature to which the Public Contracts Regulations 2006 apply and/or is not listed as an exempt service in Part B of those regulations, the procurement exercise must follow the procedures for advertising, specifying and awarding contracts set out in those regulations. Where the Public Contracts Regulations do not apply (i.e. where the service is worth less than the threshold value, or is listed in Part B of the 2006 regulations) it is for the Council to decide how to procure the service. This applies in the same way to a procurement exercise that is triggered by the CRtC as those which are not.

- 6.3 The Council must consider how both Expressions of Interest and procurement exercises triggered by one or more Expressions of Interest being accepted would promote or improve the economic, social or environmental well-being of Manchester. This must be consistent with the law applying to the awarding of contracts. (The Council may include social clauses in contracts provided they comply with the relevant requirements).

7. Manchester City Council Approach

- 7.1 Set out later at Appendix B is a draft procedure for the management of the Community Right to Challenge at Manchester City Council for consideration.
- 7.2 The key areas in respect of the CRtC on which the Council needs to make a decision are as follows:
- (a) Does the Council wish to specify a time period when Expressions of Interest are accepted (see paragraph 5.1 above). The Draft Procedure suggests that the time period for Expressions of Interest for the financial year from 2014-2015 should be **1 November 2013 to 1 December 2013**. The advantage to the Council of specifying such a time period is that it will enable the Council to ensure that appropriate processes are put in place for the proper management of Expressions of Interest within the resources the Council has available.
 - (b) Which body or person within the Council will take the decision as to whether an Expression of Interest should be
 - (i) accepted (leading to a procurement exercise in respect of the service that is the subject of the Expression of Interest);
 - (ii) rejected (on one or more of the statutory grounds for rejection as set out at paragraph 5.8 above); or
 - (iii) modified (as described at paragraph 5.9 above)?

The Draft Procedure suggests that the Council's Commercial Board (which is made up of the City Treasurer, the Assistant Chief Executive, Finance and Performance, the Head of Public Private Partnerships, the Commercial Director, the Interim Head of Strategic Commissioning, the Head of Corporate Procurement, the Head of Regeneration Legal, and the Head of Finance) should make a recommendation to the City Treasurer as to whether an Expression of Interest submitted to the Council within the window for submissions of 1 November to 1 December of each year should be accepted, rejected or modified. The City Treasurer will make the final decision in consultation with the relevant Directorate Executive Member.

- (c) The Council is required to specify a "maximum" time period between the end of the window for submissions of Expressions of Interest of 1 December in each year on which the Council will notify the Relevant Body of its decision in respect of the Expression of Interest (see paragraphs 5.5 and 5.6 above). It is proposed that this time period should be determined by the City Treasurer in consultation with the relevant Directorate Executive Member.

- (d) Where the Council's Commercial Board decides to accept an Expression of Interest, the Council is required to specify both a "minimum" time period and a "maximum" time period that will elapse between the date of the Council's decision to accept an Expression of Interest and the date on which the Council will begin the procurement exercise as result of that acceptance (see paragraph 5.10 above). It is proposed that these time periods should be determined by the City Treasurer in consultation with the relevant Directorate Executive Member.

- (e) As a "valid" Expression of Interest must include certain information specified by the Regulations, the Draft Procedure proposes that the Council should require Expressions of Interest to be submitted using a "Standard Form", which will prompt applicants to supply all of the necessary information.

Manchester City Council Draft Community Right to Challenge Procedure

1. Legislative Framework

1.1 Sections 81 to 86 of the Localism Act 2011, the Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 ("the Regulations"), and the DCLG's Statutory Guidance entitled *Community Right to Challenge* ("the Statutory Guidance"), set out the rules that the Council must follow in operating the Community Right to Challenge (CRtC). This includes:

- Specifying the "Relevant Bodies" that may submit an "Expression of Interest";
- Defining "Relevant Services" and stating the services which are excluded from the CRtC;
- Specifying the information required in an Expression of Interest;
- Specifying the grounds whereby an Expression of Interest may be rejected.

This section of the Policy provides a brief summary of the key points within the legislation, but is not a comprehensive guide.

1.2 Relevant Bodies

These are the groups that are allowed to submit an Expression of Interest. The Government have currently limited this to:

- A voluntary or community body;
- A body of persons or a trust which is established for charitable purposes only;
- A Town or Parish council; or
- Two or more employees of the Council.

1.3 Relevant Services

These are the services that Relevant Bodies can express an interest in operating. They are defined as a service provided by or on behalf of the Council in the exercise of its functions.

1.4 Expressions of Interest

For an Expression of Interest to be valid it must include certain information, including:

- Information about financial resources;
- Evidence that demonstrates capability of providing or assisting in providing the Relevant Service;
- Information about the geographical area to which the Expression of Interest relates; and
- Information about the outcomes to be achieved, in particular how the provision or assistance will promote or improve the social, economic or environmental well-being of Manchester and how it will meet the needs

of the users of the Relevant Service.

The Council requires a Relevant Body to submit an Expression of Interest by completing the Council's CRtC Form and sending it in to: The Integrated Commissioning Hub,, Directorate for Children and Commissioning Services, PO Box 532, Town Hall Extension, Manchester M60 2LA.

1.5 **Rejecting an Expression of Interest**

The Government has set out 10 grounds on which an Expression of Interest may be rejected. These include:

- The Expression of Interest does not comply with any of the requirements specified in the Localism Act, the Regulations or the Statutory Guidance;
- The Council considers, based on the information in the Expression of Interest, that the Relevant Body is not suitable to provide or assist in providing the Relevant Service;
- The Expression of Interest relates to a service where a decision has been to stop providing that service; or
- The Council considers that the Expression of Interest is frivolous or vexatious.

1.6 **Council Aims and Objectives**

When an Expression of Interest is accepted the Council will ensure that the procurement exercise has a focus on:

- The quality of the service delivered;
- The value provided to the whole of Manchester;
- Ensuring that the service provider is committed and able to promote or improve the social, economic or environmental well-being of Manchester.

2. Procedure

2.1 Local authorities are able to designate certain times of year when Expressions of Interest can be submitted. Manchester City Council has agreed that Expressions of Interest may be submitted from 1 November to 1 December each year. This is to allow the City Treasurer to take a decision as to whether to accept, reject or modify any Expressions of Interest as part of the Council's annual budget-setting process.

2.2 The Council will ask Relevant Bodies to submit Expressions of Interest using the Council's standard Application Form. The Council will ask Relevant Bodies to submit their completed Application Form to the Council's Integrated Commissioning Hub either via e-mail to righttochallenge@manchester.gov.uk

or by post to ;

The Integrated Commissioning Hub
Directorate for Children and Commissioning Services

PO Box 532
Town Hall Extension
Manchester
M60 2LA.

- 2.3 Any Expression of Interest that is received by the Council's Integrated Commissioning Hub will be recorded (Date, submitting organisation, Council service to which the Expression of Interest relates) and this record will be updated as the Expression of Interest is processed.
- 2.4 The Council's Integrated Commissioning Hub will acknowledge the receipt of an Expression of Interest within 15 days of receipt by the Council.
- 2.5 The Council's Integrated Commissioning Hub will post brief details of any Expression of Interest received by the Council on the Council's website.
- 2.6 The Council's Integrated Commissioning Hub in consultation with the City Solicitor's Division will check any Expression of Interest that is received by the Council to ensure that it is valid (e.g. that the Expression of Interest has been submitted by a Relevant Body, that it has been submitted within the Council's prescribed timeframe referred to at paragraph 2.1 above, that it concerns a current and continuing Relevant Service of the Council and that the Expression of Interest contains the information that is prescribed by the Regulations). If the Expression of Interest has been received outside the prescribed timeframe but is valid in all other respects then it will be referred to the Council's Commercial Board who will make a recommendation to the City Treasurer as to whether or not to accept the Expression of Interest. The final decision will be made by the City Treasurer in consultation with the relevant Directorate Executive Member.
- 2.7 All Expressions of Interest will be considered by the Council's Commercial Board. In considering the Expression of Interest the Council's Commercial Board will have regard to how any subsequent procurement exercise can promote or improve the social, economic or environmental wellbeing of Manchester. This will ensure the Council takes account of the benefits that Relevant Bodies can provide over and above the delivery of the service. The Council's Commercial Board will also take account of the Best Value duty.
- 2.8 The Council's Commercial Board will report to the City Treasurer with their recommendations and he will decide whether to accept, reject or modify the Expression of Interest in consultation with the relevant Directorate Executive Member.
- 2.9 The organisation submitting the Expression of Interest will be informed by the Council's Integrated Commissioning Hub of the City Treasurer's decision to accept, reject or modify its Expression of Interest and will be provided with reasons for any rejection or modification of its Expression of Interest. The City Treasurer, in consultation with the relevant Directorate Executive Member, will specify a "maximum period" between the end of the window for submissions of Expressions of Interest of 1 December in each year and the date on which the

Council will notify the Relevant Body of the decision to reject, accept or modify an Expression of Interest.

- 2.10 When the Council's Integrated Commissioning Hub notifies an organisation of the decision of the City Treasurer in relation to an Expression of Interest, the decision of the City Treasurer will be posted on the Council's website.
- 2.11 When the City Treasurer in consultation with the relevant operational Executive Member decides to accept an Expression of Interest a procurement exercise will be put in place which will follow the normal Council procurement procedure. The City Treasurer in consultation with the relevant Directorate Executive Member will specify a "minimum" time period and a "maximum" time period between the date of the decision to accept an Expression of Interest and the date on which the Council will begin the procurement exercise required as a result of that acceptance.