

READING BOROUGH COUNCIL

REPORT BY MONITORING OFFICER AND DIRECTOR OF ENVIRONMENT  
AND NEIGHBOURHOOD SERVICES

TO:	POLICY COMMITTEE		
DATE:	10 APRIL 2017	AGENDA ITEM:	12
TITLE:	ARTHUR HILL POOL - COMMUNITY RIGHT TO CHALLENGE - CONSIDERATION OF EXPRESSION OF INTEREST - NEWTOWN GLOBE GROUP		
LEAD COUNCILLOR:	CLLR GITTINGS	PORTFOLIO:	CULTURE, SPORT & CONSUMER SERVICES
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Full Council, on 18 October 2016 (Minute 27 refers), resolved to close Arthur Hill Pool permanently from 19 December 2016 and to declare the site surplus to requirements and to dispose of it, with the sum equivalent to the capital receipt arising from the disposal being invested in a new replacement swimming facility. This followed a lengthy debate, of over one hour's duration, based on an officer report which set out the financial and structural challenges of operating Arthur Hill Pool (AHP), which operated at an annual revenue loss of £120k pa, and which had been the subject of emergency shut-downs in 2013 and 2016 with the commensurate need to spend around £700k to upgrade the facilities to enable the continued operation of swimming in the pool.
- 1.2 The Policy Committee on 30 November 2015, following consideration of a review of leisure facilities and future provision across the Borough, had previously agreed that the Council should look to replace AHP with a new 25m, six-lane swimming pool in Palmer Park, to meet the needs of local residents in East Reading.
- 1.3 The anticipated Council decision triggered an expression of interest (Eoi) to provide swimming services from AHP, submitted by the Newtown Globe Group on 14 October 2016, under the provisions of Section 81 of the Localism Act 2011 (the Community Right to Challenge). This was reported to full Council on 28 October 2016, in a memorandum tabled to all Councillors present by the Head of Legal & Democratic Services. This also gave notice that AHP had also been the subject of separate applications to list it as an asset of community value (from Wycliffe Baptist Church, Cemetery Junction); and that the decision to close the pool was the subject of legal challenge by Public Law Services.

- 1.4 A Community Interest Company - Arthur Hill Save Our Swimming CIC - has subsequently been set up to take forward the Eol. The CIC submitted their case to support the Eol on 6 March 2017. The covering letter, from Peter Burt, Company Secretary, makes clear that the information in the submission is confidential and not to be published by the Council. Therefore this information and its evaluation will be presented to the Committee in Part II, under cover of a separate report.
- 1.5 This report presents the Eol to the Committee for consideration and determination, in the light of the Part II discussion on the CIC's submission. The Committee may take three decisions on the Eol: to accept, modify or reject. If the Committee accepts the Eol, it must then carry out a procurement exercise for the services to be provided from AHP, in line with the Council's Contract Procedure Rules, in which the Arthur Hill Save Our Swimming Pool CIC may take part.
- 1.6 Representatives of the CIC will be invited to present their expression of interest and submission to the Committee.
- 1.7 The following documents are attached to this report:
  - Appendix A: Community Right to Challenge: the Council's Framework (updated August 2015)
  - Appendix B: Statutory Guidance - Community Right to Challenge (DCLG - 2012)
  - Appendix C: Initial Expression of interest - Letter from Newtown Globe Group, 14 October 2016
  - Appendix D: Arthur Hill Swimming Pool - Community Right to Challenge Information Request, issued January 2017
  - Appendix E: Submission from Arthur Hill - Save Our Swimming CIC - 6 March 2017 (circulated separately with the Part II report)
  - Appendix F: Evaluation of the Submission (circulated separately with the Part II report)

## 2. RECOMMENDED ACTION

- 2.1 The Committee is asked to consider and determine the Expression of Interest submitted by the Newtown Globe Group, with reference to the information submitted by the Arthur Hill Save Our Swimming CIC at Appendix E.

## 3. POLICY AND HISTORIC CONTEXT

- 3.1 The most recent decisions of the authority concerning AHP are summarised in paras. 1.1 and 1.2 above.

### Recent History to 2016

- 3.2 Arthur Hill Pool (AHP) is an early C20th swimming baths in East Reading, founded in 1911, and which celebrated its centenary in 2011. The tank is partially sunk into the ground, with plant and equipment in an adjacent basement. It has a central pool, with shallow and deep ends, surrounded by individual changing cubicles. A fitness suite was added in the 1980s. It occupies a tight site in a highly urbanised location at Cemetery Junction: this is a local shopping centre and road / transport hub. There is no scope for expansion. It has limited parking, and there is no public parking in the Cemetery Junction area. Users come to the pool almost exclusively by public transport, foot or bike.

- 3.3 The pool - in particular the tank and building - have significant structural problems and much of the plant have reached the end of their usable life. This is well known in Reading.
- 3.4 An independent review of sport and leisure facilities in Reading managed by Reading Sport and Leisure (RSL - the Council's operating arm) by Strategic Leisure consultants in 2003 was explicit about the problems at AHP. The position was reported to Cabinet on 14 July 2003 by the Director of Arts & Leisure in a report on the strategic review of sports facilities in Reading. In para. 7.5 the report says:
- "The pool surrounds at Arthur Hill are porous and eventually will fail, at which time the asset, which is already time-expired, will have to close or require major re-investment, well in excess of £500k".
- 3.5 The report recommended, in 7.10, that the pool should be re-provided as a new facility in Palmer Park (also in East Reading, about half a mile away from AHP), in partnership with the private sector, the existing pool closed, and the site sold to produce a capital receipt. Cabinet agreed an outline improvement plan for sports facilities which included this, and authorised the Director to establish a partner to provide the new swimming pool in Palmer Park through a procurement process.
- 3.6 The procurement process to find a private partner to build the new pool was started and pursued over the next few years, but was ended in 2008 following a drop in land values arising from the global recession. Therefore the Council continued to patch up and maintain AHP for local use, whilst facing, from 2010 onwards, a continuing period of severe financial constraint which in practical terms has prevented the authority from making significant capital investment in its leisure stock.
- 3.7 The Arthur Hill pool failed in May 2013 and had to be closed for four months for a structural survey followed by essential repairs. These included repairs to the main concrete and steel beams in the plant room, repairs to the leaking mains water supply, and the installation of additional steel frame support to the repaired concrete beams in the plant room. The total cost of these repairs was approximately £100k.
- 3.8 In early 2015, the Council commissioned Faithful Gould building surveyors and engineers to undertake condition surveys of both AHP and the Central Pool in Reading. These were presented in April 2015. For AHP, the survey concluded that the overall structural condition of AHP was poor, with significant evidence of structural defects affecting primary and basement concrete structures including the pool tank, pool surround, and suspended ground floor and support structures. It gave a cost of £650k to repair the pool and building.
- 3.9 Informed by the surveys, the Head of Economic & Cultural Development reported to the Policy Committee on 30 November 2015 on a *Review of Leisure Facilities and Future Provision* across the Borough. This made the following specific comments about AHP:

#### 4.2 **Proposal 2**

##### A New Neighbourhood Pool at Palmer Park

Arthur Hill Pool is an old facility on a constrained site that has very little scope for significantly improving its offer to local people. The building is expensive to run and requires significant investment over the next few years if it is to remain operational and has a limited lifespan. Further work is required to fully assess the implications of the condition survey work that has been undertaken and issues relating to the condition of the pool will be reported back to Committee in due course.

## 9.2 Risk Assessment.

The poor condition of Arthur Hill pool means that there is a risk of a forced closure caused by significant failure of components of the building or plant. The building has had to close for short-periods of time over the last year to enable repairs to be undertaken but there remains a risk of a more extended closure if urgent major works need to be carried out. The building is subject to regular monitoring to ensure that health and safety requirements are met and that the pool is safe for users.

- 3.10 The minute of the Committee meeting specifically noted that Arthur Hill Pool was an old facility on a constrained site, the building was expensive to run and required significant investment over the next few years if it was to remain operational, and had a limited lifespan.
- 3.11 The report recommended, and the Committee agreed, that the Council should look to replace AHP with a new 25m six-lane swimming pool in Palmer Park, linked to the existing leisure facilities in the Park. The Committee approved officers undertaking feasibility work for the provision of a new swimming pool in Palmer Park.

### Developments in 2016

- 3.12 The pool had to close again for one week in February 2016 for further essential repairs, including structural support repairs in the basement plant room, replacement of electrical panels, and over-coating on poolside tiling.
- 3.13 This further failure, on top of the evidence of the Faithful Gould survey, prompted the Head of Economic & Cultural Development to start serious discussions with the Lead Councillor for Culture, Sport & Consumer Affairs, and the Council's Leadership, about the future of AHP as a viable facility. In addition to the identified need for £650k capital investment to keep it running, which by 2016 was likely to have risen through inflation to around £700k and which the authority could not afford, the pool was running at a net operating loss of £120k a year.
- 3.14 This discussion took place within the context of very serious discussions within both the authority's Administration and Corporate Management team to identify savings to meet a forecast £40M budget gap for the Council between 2016 and 2020. The Policy Committee on 18 July 2016 had approved savings proposals totalling £19.8M, with options for the remaining £19M to be brought forward in the autumn.

### Policy Committee - 26 September 2016

- 3.15 Arising from this, the Head of Economic & Cultural Development submitted a report to the Policy Committee on 26 September 2016 under the heading *Budget Savings Proposal: Arthur Hill Pool*. This reported on the outcome of the Faithful Gould condition survey and the costs of continuing the pool in operation, and reminded the Committee of the enforced closure in 2014 and the alternative arrangements which had been made in particular with local schools to cope with these. The report stated, at para. 4.2:

"In the context of the Council's difficult financial position and budget cuts required as a result of the Government's austerity measures, it is not considered appropriate to spend large amounts of money to keep Arthur Hill Pool open for a relatively short period pending its replacement and nor would this represent good value for money for Council Tax payers. A planned closure as soon as possible is therefore proposed to better manage the impact on user

groups through alternative provision and to avoid the risk of an unplanned, forced closure that is becoming increasingly likely.

In order to enable alternative arrangements to be put in place with current users, including the four schools who currently use the pool for swimming lessons, it is proposed that the pool closes from the 19<sup>th</sup> December 2016."

- 3.16 The report was published with the Committee agenda on Friday 16 September 2016. This is when it was put into the public arena. This included being published on the Council's website.
- 3.17 A public notice, headed *Arthur Hill Pool & Fitness Studio Closure* was put up at AHP to coincide with the publication of the report.
- 3.18 A Council press release was issued on 16 September 2016 giving details of the proposal to be considered by the Committee to close AHP from 19 December and replace it in three to four years' time by a new pool in Palmer Park. The press release noted that a forced closure of AHP was increasingly likely due to its poor condition.
- 3.19 The proposal in the report generated one public question to the Policy Committee about AHP. It also generated a petition in the following terms, which by the date of the Policy Committee had attracted over 1,500 signatures:

**"Save Arthur Hill Pool**

The Council is planning on closing Arthur Hill swimming pool this year (December 2016).

Reading Council don't close Arthur Hill swimming pool until a replacement has been built.

As the Council report says the expensive repairs do not necessarily have to be done in the short term: <http://www.reading.gov.uk/media/5982/item09A/pdf/item09A.pdf>

We are concerned that if Arthur Hill is closed before a replacement has been built at Palmer Park we might not ever get a new swimming pool in east Reading.

Swimming is good for our health and children living near the River Thames and River Kennet need to learn to swim.

Save swimming in east Reading and keep Arthur Hill swimming pool open until a replacement has been built."

- 3.20 The petition was presented to the Committee by the lead petitioner, Peter Burt, who is now leading on the expression of interest submitted under the Community Right to Challenge. Under the Council's procedural Standing Orders, where a petition attracts over 1,500 signatures, the topic of the petition should be referred to the next meeting of full Council for debate. Therefore at the Committee meeting the Leader of the Council, as Chair of Policy Committee, in response to Mr Burt's presentation of the petition, announced that the Committee would not consider the report which would be included on the agenda for the Council meeting on 18 October 2016.

**Council - 18 October 2016**

- 3.21 The same officer report was submitted to full Council on 18 October, with the heading changed to reflect the change of meeting. Both reports had appended a detailed Equality Impact Assessment (EIA) relating to the proposal.
- 3.22 On 14 October 2016, the Head of Legal & Democratic Services received a letter by email from Public Law Project headed *Proposed closure of Arthur Hill Pool without consultation*, at the instruction of Mr Burt. This advised that Public Law had advised their client that they (Public Law) considered that he and others *prima facie* had good

grounds to bring a legal challenge including the Council's "refusal" to hold (and take into account the responses to) a consultation as part of its decision-making on this matter. The letter set out the grounds which Public Law considered to support this view.

3.23 The Head of Legal & Democratic Services, Chris Brooks, tabled this letter to all Councillors at the Council meeting, under cover of a memorandum from himself, dated 18 October 2016, which commented on the legal case put forward by Public Law. The memo. also gave notice that the Arthur Hill Pool site was then the subject of two applications which may impact on its future disposal and use, which would be considered through separate processes involving the Policy Committee, and Housing, Neighbourhoods & Leisure Committee, as follows:

- Asset of community value (Wycliffe Baptist Church, Cemetery Junction)
- Community right to challenge (Newtown Globe Group)

3.24 The proposal generated four public questions to the Council meeting (out of six), from three questioners, including Mr Burt. These concerned the revenue cost of running the pool, the health consequences of closing the pool, the Council's current estimate of the value of the AHP site, and a request for the breakdown of costs incurred in running the pool and associated facilities [gym], and the income derived from them.

3.25 The Council meeting was attended by around 50 members of the public in the public gallery, most of whom were present to hear the debate on the Arthur Hill item. Mr Burt, as lead petitioner, was invited by the Mayor to open the debate on the Arthur Hill item by explaining the purpose of his petition. The debate was then initiated by the Lead Councillor. An amendment was moved, that "a decision on Arthur Hill Pool be deferred until a budget for 2017-18 is set in order to allow officers to consult, formulate and discuss with stakeholders other options to closure in December 2016, provide councillors with more information about costings, and allow local community organisations to prepare plans for taking over the pool". This was debated and put to the vote, where it was lost.

3.26 Following further debate, and on a recorded vote, the decision of full Council was as follows:

**Resolved -**

- (1) That the permanent closure of Arthur Hill Pool be approved from 19 December 2016 as set out in paragraph 4.2 of the report to deliver the savings identified in section 9 of the report, having full regard to the Equality Impact Assessment at Appendix 1 of the report;
- (2) That, following closure, the Arthur Hill Pool site be declared surplus to requirements and be disposed of;
- (3) That the property be advertised in line with the Council's approved policy, to both third sector organisations and on the open market and that a further report be considered by Policy Committee once bids had been received;
- (4) That a sum equivalent to the capital receipt arising from the disposal of the site be invested in new replacement swimming facilities.

For the motion: 29

Against the motion: 14

- 3.27 In total, 18 Councillors (out of 46) spoke in the debate on the Arthur Hill item, including the amendment, from all four political groups on the Council. Three of the four group Leaders spoke. Both the Lead Councillor and the Leader of the Council made specific reference to the real risk of future enforced closure due to plant failure.
- 3.28 The debate was interrupted on a number of occasions by interventions from the public gallery, and at one stage required the Head of Legal & Democratic Services to go to the public gallery and ask some disruptive persons to leave.
- 3.29 Following the Council meeting, the Head of Legal & Democratic Services received complaints from Mr Burt (19 October) and one of the other questioners (1 November) concerning the proceedings at the Council meeting. These were responded to by Mr Brooks on 1 and 7 November. Neither complaint was upheld.

#### Policy Committee - 31 October 2016

- 3.30 The next meeting of Policy Committee generated three relevant public questions, from Mr Burt, and the other two questioners to Council meeting. This Committee included on its agenda a report, *Review of Leisure Facilities and Future Provision*, which gave an update on progress with a procurement process to seek external support and investment to secure the improvement of the Borough's leisure facilities and on the facilities to be provided. This included the procurement of a new pool in Palmer Park.
- 3.31 Arthur Hill pool and fitness suite closed to the public on Sunday 18 December 2016.

#### 4. EXPRESSION OF INTEREST

- 4.1 As mentioned above, the Eol was submitted on 14 October 2016 under cover of a letter from Councillor White in his (then) capacity as Chair of the Newtown GLOBE Group. This is at **Appendix C**. Councillor White subsequently resigned from this role at the GLOBE AGM on 2 November 2016.
- 4.2 The Head of Legal & Democratic Services acknowledged receipt of the Eol to Cllr White on 16 November 2016. A Notice of receipt of the Eol was published on the Council's website on the same date.
- 4.3 The Head of Legal & Democratic Services reported the receipt of the Eol to all Councillors in his memo. tabled at the Council meeting on 18 October 2016.
- 4.4 The leadership of the Eol has been taken on by Peter Burt, who replaced Cllr White as Chair of the Newtown GLOBE Group. On November 2016, Mr Burt requested a meeting with Council officers to discuss the Eol, which was held on 2 December 2016, at the Civic Offices. This was attended by Mr Burt and Nikki Gordelier, for the GLOBE Group, and the Council's Head of Economic & Cultural Development, Recreation & Leisure Manager, Procurement & Partnership Manager, Head of Legal & Democratic Services, and Legal Services Project Officer.
- 4.5 At the meeting, Mr Burt explained that the Newtown GLOBE Group were in the process of setting up a community interest company (CIC) to take forward the Eol, with the objective of keeping a swimming service operating at AHP until the provision of a replacement pool in East Reading. At the meeting the Council officers made clear that the pool would close on 18 December 2016. The Council officers explained the Community Right to Challenge process to Mr Burt and Ms Gordelier, and confirmed

that, subject to a detailed EoI being received from the CIC, it would be submitted for consideration to the Policy Committee on 10 April 2017.

- 4.6 The officers also explained that if the committee accepted the EoI at that meeting, this would trigger a procurement process by the Council for the provision of swimming services at AHP which would be conducted under the Council's contract procedure rules, with the Council specifying the terms on which tenders would be invited, and which would result in the successful tenderer entering into a contract with the Council to provide the specified services for the duration of the contract period from AHP, which would be leased to the contractor for this purpose.
- 4.7 The officers explained how the procurement process, if triggered, would work. They also gave an indication of the criteria that the Council and Policy Committee would use to assess the final EoI submitted by the CIC, as follows:
- Demonstration that the organisation has access to adequate financial resources to commission and run the pool, conduct any necessary capital works, and maintain cash flows.
  - Likelihood of obtaining adequate insurance.
  - Explanation of what the organisation has to offer the Council in terms of running the pool.
  - Ability to run the facility in compliance with legislation.
  - Ability to call upon the necessary technical expertise and competence to run a swimming service.
  - Demonstration that appropriately trained individuals would run the pool.

More details of the discussion at this meeting and in subsequent email correspondence are given in the Part II report.

- 4.8 As agreed at the meeting on 2 December 2016, the Procurement Manager wrote to Mr Burt and Ms Gordelier on 17 January 2017, with attached a list of the information that the Council would expect the CIC to assist in the evaluation of their EoI, along with an explanation of the criteria that the Council would use in evaluating their response. The information was requested by 27 February 2017. This is **Attachment D**.
- 4.9 Mr Burt wrote to the Procurement Manager on 1 February 2017, following receipt of Attachment D, seeking clarification on a specific point, and making a number of statements setting out the position of Newtown GLOBE on a number of matters relevant to the consideration of their EoI. More details of this, and the Council's response, are given in the Part II report.
- 4.10 During the above process, Newtown GLOBE have raised with the Council the issue of draining the pool. This has also been raised with the Council by Public Law Project, the firm of London Solicitors who are pursuing a possible judicial review of the legality of the Council's decision to close AHP, as reported by the Head of Legal & Democratic Services to full Council on 16 October 2016. In this respect Public Law state that they are acting on behalf of Charles McGechan, whose connections to the Newtown GLOBE Group are not known to the Council. Their stated concern is that draining the pool may cause damage to it.
- 4.11 Since closure, the pool building has been locked and the ground floor windows boarded. The building is being visited three times a week: once by Leisure Centre staff to check it is safe; and twice by pool maintenance staff. As a result of specific requests from Public Law, the pool has not been drained. The water level is checked on each visit, and it is being topped up manually by hose when it has dropped by between 10-15cm: this is approximately every two to three weeks. While the pool is



filled with water to prevent it becoming stagnant it has to be treated and filtered. This necessitates retention of 3-phase electricity supply and the storage of hazardous chemicals on site. This, along with the keeping the pool full, presents a high risk to safety.

- 4.12 Following closure it has become possible to determine if, and to what extent, water is being lost into the ground through the broken pool tank. This is because other unquantified sources of water loss, such as evaporation, cleaning of pool filters and general activities, no longer apply. The water loss has been reported to the Environment Agency. While in the short term their view is this is of low risk, should the pool be reopened further consideration will need to be given to protecting the water table from potential contamination.
- 4.13 In addition, at the request of Thames Water, who otherwise threatened a fine, the pool itself has been disconnected from the mains water supply. A further problem occurred on 3 February 2017 when emergency works had to be undertaken to remedy failed pipes and drainage pump in the plant room. The failure was detected and repaired while only a foot of water covered the floor. If not detected the resultant higher water levels would have destroyed much of the pool plant.
- 4.14 On 23 February 2017, Mr Burt wrote again to the Procurement Manager, requesting an extension of the deadline for providing the information requested until 6 March 2017. This was granted. This was because the CIC were holding a community meeting on 2 March 2017 at which they would be seeking endorsement of their outline plans.
- 4.15 The expression of interest was submitted by the CIC on 6 March 2017. This is **Appendix E**. The covering letter submitted with the EOI included the following statement regarding the confidentiality of the submission:

*"Please note that the information in our submission is at this stage to be treated as commercial in confidence, and we request that the Council does not publish it or pass it on to any third party without our prior written consent"*

In order to respect the confidentiality of the information, which is also usual practice in procurement exercises for information of this type, the CIC submission (Appendix E) and the Council evaluation commentary on the submission (Appendix F) have been provided to Councillors attached to a separate report to be considered in Part II of the meeting.

- 4.16 Under the relevant regulations, the Council can only 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 Act or in regulations.
  - (2) The relevant body provides information in the expression of interest which in the opinion of the relevant authority, is in a material particular inadequate or inaccurate.
  - (3) The relevant authority considers, based on the information in the expression of interest, that the relevant body or, where applicable-
    - (a) any member of the consortium of which it is a part, or
    - (b) any sub-contractor referred to in the expression of interest

is not suitable to provide or assist in providing the relevant service.

- (4) The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority to stop providing that service.
  - (5) The expression of interest relates to a relevant service -
    - (a) provided, in whole or in part, by or on behalf of the relevant authority to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service; and
    - (b) the continued integration of such services is, in the opinion of the relevant authority, critical to the well-being of those persons.
  - (6) The relevant service is already the subject of a procurement exercise.
  - (7) The relevant authority and a third party have entered into negotiations for provision of the service, which negotiations are at least in part conducted in writing.
  - (8) The relevant authority has published its intention to consider the provision of the relevant service by a body that 2 or more specified employees of that authority propose to establish.
  - (9) The relevant authority considers that the expression of interest is frivolous or vexatious.
  - (10) The relevant authority considers that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty.
- 4.17 The initial submission of the EOI by Newtown Globe was sufficiently clear to identify that none of the grounds apart from potentially (3) applied to this particular proposal but did not contain sufficient information to determine whether or not ground (3) applied.
- 4.18 The further information requested at Appendix D, and the evaluation scheme, focused on the following areas:
- Information about the financial resources of the relevant body submitting the expression of interest.
  - Evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the expression of interest will be capable of providing or assisting in providing the relevant service.

This information was requested in accordance with section 4.2 of the relevant statutory guidance (**Appendix B**).

- 4.19 The purpose of the further information request was to provide the CIC with the opportunity to demonstrate that the CIC is "suitable to provide, or assist in providing the service". The criteria that the EOI was required to meet were drafted to follow closely the tests that would be applied at the selection stage of any procurement, were the Council to accept the EOI and start a procurement process.

4.20 In a regulated procurement under the Light Touch Regime of the Public Contracts Regulations 2015, the Council would apply criteria to potential providers that relate to the:

- (a) Suitability to pursue a professional activity;
- (b) Economic and financial standing;
- (c) Technical and professional ability.

The criteria that were to be used in assessing the suitability of the CIC to provide the service were provided to the CIC at the time of the information request in accordance with the principle of transparency that all procurement processes must demonstrate.

4.21 The requirements were set to reflect the level of technical and professional ability and financial standing that the organisation would be required to meet in the event a procurement exercise was started. Should the organisation be able to demonstrate that it would be able to pass the selection stage of any procurement, this would be clear evidence that the organisation is "suitable to provide, or assist in providing" the service.

4.22 The information that was provided by the CIC in **Appendix E** was both sufficient and clear. No clarifications were required from the CIC in order for officers to assess whether or not the requirements of the Council were met.

4.23 The evaluation of the submitted information is attached to the Part II report at **Appendix F**.

## 5. CONTRIBUTION TO STRATEGIC AIMS

5.1 The provision of physical activity for adults and young people and addressing obesity and excess weight is relevant to the following corporate priority set out in the 2016/19 Corporate Plan (*Building a Better Borough*):

- 2. Providing the best life through education, early help and healthy living

5.2 The decision to close AHP was made in response to the very serious financial challenges facing the Council and the requirement to make savings of £20M to balance the books in 2017-18. The following corporate priority therefore is also relevant:

- 6. Remaining financially sustainable to deliver these service priorities.

## 6. COMMUNITY ENGAGEMENT AND INFORMATION

6.1 The closure of Arthur Hill Pool in December 2016 was preceded by proactive engagement with all user groups in relation to accessing alternative provision following closure. Such consultation had happened on the two previous occasions when the pool had been the subject of enforced closure for reasons of structural or operational failure.

6.2 The Council is in the early stages of a procurement exercise for a new leisure operator to run the Council's facilities, including the design, build and operation of new pools to replace both Central and Arthur Hill pools. The development of proposals for a new pool at Palmer Park Stadium will include appropriate engagement with local communities and will also be subject to statutory consultation as part of the planning process.

## 7. EQUALITY IMPACT ASSESSMENT

- 7.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - 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.
- 7.2 An Equality Impact Assessment (EIA) was considered relevant to the decision to close AHP and was attached to the reports to both Policy Committee and full Council. In summary, the EIA acknowledged that the closure of AHP would mean that existing users would not have access to swimming in the immediate East Reading area pending the delivery of replacement new facilities at Palmer Park Stadium. This impact was mitigated for key user groups by offering alternative provision at other facilities in Reading (Academy Sport, Meadway and Central). General access to public swimming is also available at Bulmershe and Loddon Valley leisure sites to the south and east of the Borough. Those currently using the small gym have been able to access facilities at Palmer Park Stadium that is close by and has longer opening hours.
- 7.3 The information requested from Newtown GLOBE / the CIC in relation to the consideration of its EoI specifically includes details of how it will put into place arrangements actively to promote good practice and meet the requirements of the Equalities Act 2010. This includes having comprehensive policies and procedures in place at the time when a procurement process is started to meet legal obligations and high standards in terms of employment and service provision, which are consistent with Equalities and Human Rights Commission (EHRC) Guidance for Employers and Service Providers.
- 7.4 This was one areas where the response from the CIC did not meet the Council's requirements and is one factor in the recommendation to reject the Expression of Interest.

## 8. LEGAL IMPLICATIONS

### 8.1 General

- 8.1.1 Swimming and leisure services generally are not statutory services. The Council has no legal duty to provide them directly within the local community. Where they are provided, the legal basis is Section 19 of the Local Government (Miscellaneous Provisions) Act 1976: power to provide recreational facilities.
- 8.1.2 As part of their judicial review claim, Public Law Project have challenged the decision to close AHP in part on the grounds that the Council did not meet its legal obligation to consult with young people under Sections 507A and 507B of the Education Act 1996 (as amended by the Education & Inspections Act 2007). This introduced a duty on local authorities to secure access to positive activities for qualifying young persons to improve their well-being; the duty to consult cross-refers to this broader duty. Accompanying Government Guidance identifies a wide range of such activities, which includes leisure-time activities but does not specifically mention swimming. The Council has exercised this duty through its Children, Education and Early-Help Service, including consultation with the Reading Youth Cabinet.

## 8.2 Community Right to Challenge

- 8.2.1 The Community Right to Challenge (CRC) was introduced by Part 5 of the Localism Act 2011. The Council's CRC Framework is published on the website, and attached at **Appendix A**.
- 8.2.2 In summary, CRC gives voluntary and community groups the opportunity to express an interest in providing or assisting in running a Council service. The authority must consider all expressions of interest (Eols) within six months of their receipt. If it accepts them, then it must start a procurement process to tender the service, in which the voluntary or community group can take part.
- 8.2.3 This is the first CRC Eol that the Council has received.
- 8.2.4 The Council's procedure is to acknowledge receipt of all Eols received, and to publish a notice of their receipt on the website (as required by Section 84(6) of the Localism Act). It then will notify the group submitting the Eol in writing within 30 days of the timescale for when the Council will give its decision. This will be determined on a case-by-case basis, depending on the complexity of the service, the need to agree any modifications in the expression of interest, the Council's commissioning cycle and its decision-making process.
- 8.2.5 The Eol will be considered by the responsible Committee or the Policy Committee, at a public meeting which the group can attend. The Committee will decide whether to accept, reject or accept the Eol with modifications. If the decision is to accept the Eol with modifications then Council officers will consult the group and ask for their agreement to modify the expression of interest.
- 8.2.6 The final decision on whether to accept or reject the Eol will be made by the Committee within 6 months of its submission. The submitting group will be told the date in advance of the Committee meeting, and notified of the outcome of this decision within 10 working days of the meeting.
- 8.2.7 If the decision is to accept the Eol, this will trigger a procurement process for the service in question which will follow the Council's contract procedure rules, as set out in Part 4 of the constitution.

## 9. FINANCIAL IMPLICATIONS

- 9.1 As reported to full Council on 16 October 2016, the closure of Arthur Hill Pool will result in a revenue saving on RSL's current direct delivery costs of £120,000 per year from April 2017 and avoid the imminent need for capital investment of approximately £700,000 to address the building's poor condition. Closure and disposal will also result in a reduction in property maintenance costs and generation of a capital receipt.
- 9.2 The following breakdown of income and expenditure for 2015-16 was given in the answer to one of the questions asked at the Council meeting on 18 October 2016:

<u>Expenditure</u>	
Employee Costs	£202,500
Premises Costs	£62,300
Supplies and Services	£11,400
<u>Income</u>	£167,200

<b>Net Operational Cost</b>	<b>£109,000</b>
-----------------------------	-----------------

- 9.3 Estimated financial implications over the next 3 years are set-out in the table below (these reflect the overall financial impacts compared to the costs of keeping the pool open, not just the recurrent full-year revenue saving of £120k p.a.):

	2016/17	2017/18	2018/19
Saving to RSL Revenue Budget	-30,000	-120,000	-120,000
Saving to Corporate Property Maintenance Budget	-10,000	-30,000	-30,000
Costs of securing vacated building	+10,000	+5,000	
Saving on capital expenditure required to address current condition		-650,000	-50,000
Capital receipt secured through disposal of the site			To be determined

- 9.4 Running a procurement process for the provision of swimming services at AHP, as sought by the EoI, will result in the Council incurring administrative costs in the form of officer time. There would be no direct costs in running the procurement but it would impact on the capacity of the Council to deliver other procurement exercises.
- 9.5 Officers have made clear to the representatives of Newtown GLOBE that any decision to procure the service as a result of their EoI would be on the basis of a tender specification that would require the successful tenderer to provide swimming services at AHP for the duration of the contract and at no cost to the Council. This would include the cost of commissioning the service - ie bringing the closed pool back into operation. The Committee will note from the Part II report that, in January 2017, there appeared to be a mismatch between this clear position and the expectations of the Newtown GLOBE Group.

## 10. BACKGROUND PAPERS

- 10.1 Reports and Attachments to Policy Committee and full Council, September and 16 October 2016  
DCLG - Statutory Guidance - Community Right to Challenge (2012) (Appendix B)  
Newtown Globe Group letter of 14 October and attached expression of interest (Appendix C)  
Note of meeting with P Burt / N Gordelier, sent 6 December 2016  
Procurement Manager's letter to P Burt of 17 January and attached Information request (Appendix D)  
Email from Mr Burt, 1 February 2017, and Letter of response from Procurement Manager, 7 February 2017  
Final submission - 6 March 2017 (Appendix E)  
Evaluation (Appendix F)

## Community Right to Challenge (CRC) - Framework Updated August 2015

### 1. Introduction

- 1.1 The Localism Act 2011 introduced a Community Right to Challenge (CRC). This allows voluntary and community groups to express an interest in providing or assisting with the provision of a Council service which, if accepted by the Council, would require the authority to enter into a procurement process for that service. This power came into effect on 27 June 2012.
- 1.2 This framework sets out further details of the CRC and the Council's response to it. It does so in the context that the Council is strongly committed to supporting a healthy local voluntary sector, and believes it is preferable for early engagement and proactive collaboration with the voluntary and community sector in future service delivery. It is also preferable in terms of enabling positive dialogue and mutually beneficial outcomes. In addition this process is likely to be less prescriptive, bureaucratic and lengthy. As such this type of collaboration will be promoted where the Council feels the outcomes will offer Best Value to local Council Tax payers in terms of service improvement and increased value for money, and will improve the economic, social and environmental well-being of the authority's area.
- 1.3 This framework sits alongside the Council's Procurement Strategy for 2013-16, approved by Cabinet in January 2013. This makes a separation between procurement and commissioning, and covers both.
- 1.4 *Procurement* is process of securing the supply of goods and services from external suppliers that the Council requires in order to meet its overall objectives. Broadly speaking these are either:
- Services and public facilities identified through commissioning plans to be sourced from external providers, or
  - Goods and services needed to support the delivery of directly provided services and the Council's wider community leadership function.
- 1.5 *Commissioning* is the process by which public bodies decide how to spend their money to get the best possible services for people, and involves anticipating future needs and expectations rather than simply reacting to present demand.
- 1.6 The authority has a formal grants application process which forms a key part of its overall commissioning and procurement strategy.
- 1.7 The Council will monitor the effect of the CRC on the voluntary and community sector, and will consider providing specific support to local organisations to maintain their capacity to compete effectively in competitive exercises.
- 1.8 The Council recognises that voluntary and community groups have a right to make expressions of interest for Council services under CRC and this sets out a practical framework in which any such expressions of interest may be submitted and considered.

- 1.9 The framework and associated procedure are consistent with and will have due regard to the Department of Communities and Local Government's Community Right to Challenge: Statutory Guidance:  
<http://www.communities.gov.uk/publications/communities/righttochallengestatguide>
2. To whom does the CRC apply: Relevant Bodies.
- 2.1 The Localism Act sets out the groups that are able to invoke or submit a CRC. They are:
- Voluntary or community body (not-for-profit or groups where profits are re-invested into the groups' activities).
  - Charitable body (a body or persons or a trust which is established for charitable purposes only).
  - Parish Councils (including town councils).
  - Two or more employees of the authority or,
  - Any other person or body specified by the Secretary of State by Regulations.
- 2.2 The groups may submit Expressions of Interest (Eoi) proposing service delivery and partnership with a private sector partner as a joint venture. In circumstances where a consortium submits an Expression of Interest as a joint venture, a private sector company involved in this joint venture may make a profit. A charity involved in the joint venture may not make a profit.
- 2.3 Employees submitting a bid will be expected to form an employee-led structure to take on running services under CRC. They will not be 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)[Statutory Guidance Para 1.13]
- 2.4 Employees intending to submit an Expression of Interest should discuss this in the first instance with their Head of Service who will consider potential conflicts of interest and ensure appropriate arrangements are put in place. The Head of Service will involve the Human Resources Unit at this stage.
3. Expression of Interest
- 3.1 The CRC applies to all relevant services, ie a service provided on or behalf of the relevant authority in the exercise of its functions. There is an obligation on the Council to consider a written Expression of Interest to provide or assist a service which is either currently being run by the Council or being delivered on the Council's behalf.
- 3.2 The CRC is solely concerned with the provision of services. The responsibility for the function remains with the Council. The term "function" refers to those activities for which the Council is statutorily responsible, including making decisions about those functions, governance and commissioning of service provision.
- 3.3 The following services are excluded:
- The public health advice services provided by the local authority to clinical commissioning groups
  - Health visiting and related services for children under five (from 1 April 2015 to 1 April 2016)
  - A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.



- 3.4 In deciding whether to accept an Expression of Interest, the Council must consider if and how the challenge and the procurement exercise that follows will promote or improve the economic, social or environmental well-being of the area. If the Expression of Interest is accepted the Council must carry out a procurement exercise relating to that service area.
- 3.5 The Council may modify an Expression of Interest on two grounds:
- It thinks that the Expression of Interest would not otherwise be capable of acceptance; and
  - The relevant body agrees to the modification.
- 3.6 The Council may choose to specify periods during which Expressions of Interest can be submitted. This will be determined in conjunction with the authority's procurement and commissioning strategy. They are:
- If the service is subject to external procurement or commissioning, at the time the contract is put out to tender
  - If the service is provided directly by the Council, in the two month period of June to July each year.
4. Expression of Interest Requirements
- 4.1 Expressions of Interest must be submitted in writing, to the Head of Legal & Democratic Services. The Council does not prescribe a format that Expressions of Interest need to conform to. However, it does have an application form which can be used.
- 4.2 The information that must be provided in Expressions of Interest is defined by the statutory guidance. As such all Expressions of Interest must include:
- The financial resources of the relevant body
    - Where this is a consortium this needs to be for each element of that consortium - including sub-contractors.
  - The capability of the relevant body to provide the service
    - Evidence that demonstrates that by the time of the procurement exercise the submitting body will be capable of providing or assisting in the provision of the relevant service
    - Where a consortium this will apply to all elements of that consortium.
  - The service and geographic area covered by the Expression of Interest
    - Sufficient information about the relevant service to identify it and the geographical area to which the Expression of Interest relates.
  - The outcomes to be achieved by the relevant body or consortium in providing / assisting in the provision of the relevant service.
  - How the provision or the assistance of the provision will:
    - improve the social, economic or environmental well-being (social value) of the area,
    - meet the needs of the users of the relevant service.

- Where the relevant body consists of employees, details of how they propose to engage with other employee of the authority who are affected by the Expression of Interest.
- 4.3 The authority may take into consideration a number of factors when determining an Expression of Interest, including the need to make any modifications, the Council's commissioning cycle, and its decision-making processes.
- 4.4 The Council may request further information from relevant bodies but cannot make the inclusion of this information a requirement in order for the Expression of Interest to be considered. The provision of this information is optional.
- 4.5 Expressions of Interest will be considered and accepted, accepted with further modification, or rejected by the Committee responsible for the service in question or, if received between meetings, by the Policy Committee which meets on a monthly basis.
5. Notifying Decisions on Expressions of Interest
- 5.1 The timescales below refer to Eols that are received within the time periods set out in para. 3.2 above. Where Eols are received outside those time periods, the timescale for their consideration will start from the beginning of the relevant time period.
- 5.2 The Council must notify the relevant body in writing, within 30 days of receiving the Eol, of the timescale for when it will give its decision. Given that there will be different levels of complexity associated with different services, the authority will make a judgment on the timescales for achieving a decision on a case-by-case basis.
- 5.3 The maximum period the Council will take to notify a relevant body of its final decision will be six months. This maximum period allows for the relevant body to modify and re-submit its bid and for the Council to come to a final decision. Most decisions will be achieved within a shorter timescale.
6. Grounds where an Expression of Interest may be rejected.
- 6.1 There are ten grounds which can lead to an Expression of Interest being rejected. They are:
- 1) The Expression of Interest does not comply with any of the requirements specified in the Localism Act or in Regulations made by the Secretary of State under Section 81(1) (b) - duty to consider expressions of interest.
  - 2) The relevant body provides information in the Expression of Interest which in the opinion of the Council is materially inadequate or inaccurate.
  - 3) Based on the information provided in the Expression of Interest, the relevant body or members of the consortium of which it is a part or any sub-contractor is/are not suitable to provide or assist in providing the relevant service.
  - 4) The Expression of Interest relates to a service where the Council has made a decision, evidenced in writing, to stop providing that service.
  - 5) The Expression of Interest relates to a relevant service:
    - (a) Provided, in whole or in part by or on behalf of the relevant authority to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service and

- (b) The continued integration of such services is, in the opinion of the Council, critical to the well-being of those persons.

(Note: Not all integrated services may be grounds for rejection of an EoI, specifically if they are not critical to the well-being of persons).

- 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.
  - 8) The Council has published its intention to consider the provision of the relevant service by a body that two or more specified employees of the Council propose to establish.
  - 9) The Council considers the Expression of Interest is frivolous or vexatious.
  - 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 breach of statutory duty.
- 6.2 The Regulations referred to in 6.1(1) above are The Community Right to Challenge (Fire and Rescue Services and Rejection of Expressions of Interest) (England) Regulations 2012 (SI 2012 - 1647).
- 6.3 The Council will have to comply with its other legal duties when carrying out this function. On exemption (10), the Statutory Guidance refers to the duty to secure Best Value (under Section 3 of the Local Government Act 1999), and to consider social; value under the Public Services (Social Value) Act 2012.
7. Modifying an Expression of Interest
- 7.1 The Council can ask for the Expression of Interest to be modified if it believes it would otherwise reject the Expression of Interest. Any modification must be agreed with the relevant body submitting the Expression of Interest. If agreement cannot be reached the Council may reject the Expression of Interest.
8. Period between an Expression of Interest and a Procurement Exercise starting
- 8.1 This period must be specified. In doing so the Council needs to have regard to:
- (a) The need to provide employees of the Council and other relevant bodies with a fair, reasonable and realisable opportunity to bid in the procurement exercise for the service;
  - (b) The nature, scale and complexity of the service being procured;
  - (c) The timescales for any existing commissioning cycle relevant to the service being procured or any other relevant Council process.
- 8.2 Because of the variable nature of the above, the Council is not setting a fixed period as an individual assessment will need to be made of the above in relation to each Expression of Interest. Having done this the Council will then specify to the body submitting the Expression of Interest, and publish on its website, details of each Expression of Interest received and the time period for each between the Expression of Interest being received and the procurement exercise starting.

8.3 Each Expression of Interest will also be submitted to the responsible Committee or Policy Committee. The Committee will receive a report and make a judgment as to the next steps regarding the Expression of Interest. If the Committee is happy with the terms of the Expression of Interest, a procurement exercise will be triggered as set out below.

## 9. The Procurement Exercise

9.1 Once the Committee has accepted an Expression of Interest, the authority must carry out a procurement exercise for the service. This exercise must follow procurement law and the Council's Contracts Procedure Rules.

9.2 Where the service is of a value where the Public Contracts Regulations 2006 apply and/or is not listed as an exempt service in Part B of the Regulations, the procurement exercise must follow procedures set out in those Regulations.

9.3 Where the service falls below the threshold value in the above regulations or is an exempt Part B service it is for the Committee to decide how to procure the service, with reference to the Council's Contracts Procedure Rules.

9.4 The Council will have regard to the DCLG's Code of Recommended Practice on publishing new contracts and tenders information as part of the government's transparency agenda.

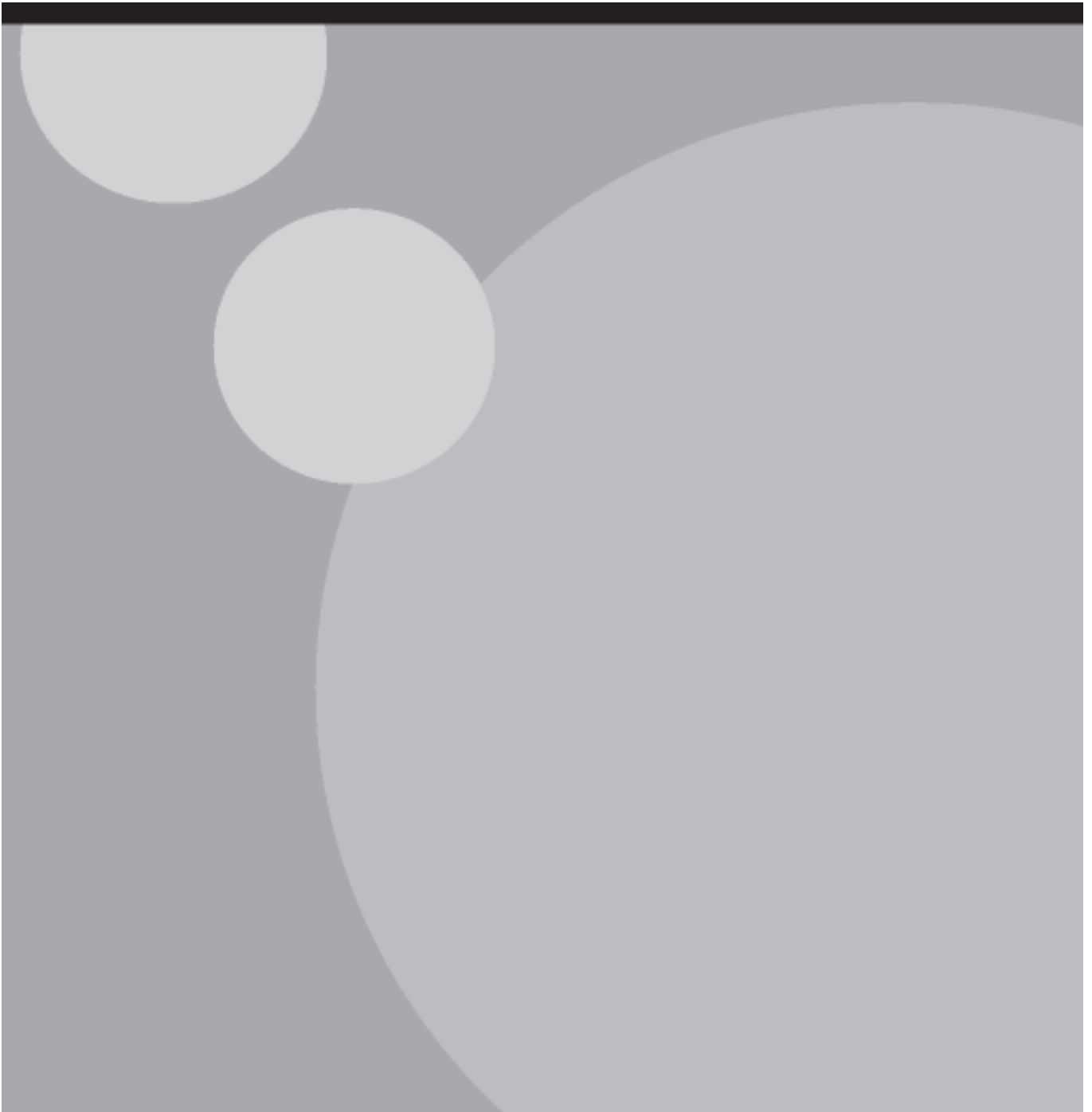
## 10. Community Right to Challenge Process

See attached spreadsheet.

JGP August 2015  
V8



# Community Right to Challenge Statutory Guidance





# Community Right to Challenge Statutory Guidance

June 2012  
Department for Communities and Local Government

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## Ministerial foreword

The Localism Act 2011 is driving a shift in power away from Whitehall and handing it back to communities, giving them more opportunities to take control locally.

The new community rights in the Act will help to create the conditions for communities to play a bigger part in shaping the world around them - whether that's shaping and running local services through the community right to challenge, taking over local assets of community value through the community right to bid, community-led development using the community right to build, or adopting a neighbourhood plan under neighbourhood planning.

Communities rightly have high expectations of local services that offer excellent value for money. But local authorities do not have to have a monopoly over service delivery in the area to ensure excellent services. Nor do they have to have all of the good ideas for where improvements can be made. The most creative authorities welcome innovative ideas from communities about how services can be reformed and improved to better meet local needs, and work with groups who believe they can run services differently and better.

The community right to challenge paves the way for more communities to help shape and run excellent local services. This might include making services more responsive to local needs, offering additional social value outcomes, or delivering better value for money. It may act as a springboard for radical re-shaping of services, or simply trigger small changes that will make a big difference to the quality of service communities receive.

Every council should be looking carefully at how they can improve local services, deliver better value for money, and empower their communities to do more. I hope that they will embrace the community right to challenge as a positive tool that will help them to achieve these aims.



**Andrew Stunell MP**  
**Parliamentary Under Secretary of State**

# Introduction

## Scope of the guidance

- i. This guidance provides further explanation of the legislative framework for the community right to challenge. This is contained in Part 5, Chapter 2 of the Localism Act 2011, The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012, and The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012.
- ii. The Localism Act (“the Act”) was enacted on 15 November 2011. Provisions were brought into force on 27 June 2012.
- iii. The Regulations:
  - a) Specify information required in an expression of interest;
  - b) Specify grounds whereby an expression of interest may be rejected;
  - c) State which kinds of services are excluded from the Right; and
  - d) Add certain fire and rescue authorities as relevant authorities.
- iv. The guidance only applies to England.
- v. A glossary of terms is at Annex A at the end of this guidance.

# Section 1

## Relevant authorities and relevant bodies

- 1.1 The community right to challenge refers to two sets of bodies. Relevant authorities must consider expressions of interest and, where they accept an expression of interest, carry out a procurement exercise for the service. Relevant bodies are eligible to submit expressions of interest to deliver relevant services on behalf of relevant authorities.

### Relevant authorities

- 1.2 The Act lists the following as relevant authorities:
- a) A county council;
  - b) A district council;
  - c) A London borough council; or
  - d) Any other person or body carrying out a function of a public nature specified by the Secretary of State in regulations.<sup>1</sup>
- 1.3 Certain fire and rescue authorities are added as relevant authorities in the Regulations. Many fire and rescue authorities will already be relevant authorities by reason of being a local authority.

### Relevant bodies

- 1.4 The Act lists the following as relevant bodies:
- a) A voluntary or community body;
  - b) A body of persons or a trust which is established for charitable purposes only;
  - c) A parish council;
  - d) Two or more employees of the relevant authority; or
  - e) Any other person or body specified by the Secretary of State by regulations.

### *Voluntary and community bodies*

- 1.5 A voluntary body is a body that is not a public or local authority, the activities of which are not carried on for profit. It can generate a surplus provided it is used for the purposes of its activities or invested in the community.

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<sup>1</sup> These refer to the legal status of a body. Unitary authorities fall within these categories.

- 1.6 A community body is a body which is not a public or local authority, the activities of which are primarily for the benefit of the community.
- 1.7 The definitions of voluntary and community body are intended to cover a wide range of civil society organisations. They reflect the required characteristics of such bodies rather than referring to types of organisational structure. This allows for flexibility to accommodate future forms of civil society organisation.
- 1.8 The Government expects the definition of voluntary and community body 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.
- 1.9 The way in which groups demonstrate community benefit will vary depending on their legal form and the associated requirements. Some examples are given below.

Type of body	How community benefit is evidenced
Co-operative society	A body must register with the Financial Services Authority. It must set out the society's rules, including its activities, its character and how it is organised. This is where social and community objectives should be demonstrated. <sup>2</sup>
Community benefit society	A body must register with the Financial Services Authority. Its reasons for registering must demonstrate its social objectives. It must state the society's rules and describe its activities, character and how it will be organised. It must also describe how its activities will benefit which communities, and how any surplus will be used. Its rules must not allow profit or the society's assets to be distributed to members, but that they are used to further the society's objectives. <sup>3</sup>
Company limited by guarantee or shares	A body for community interest registering with the Registrar of Companies at Companies House must provide a memorandum of association and articles of association. It may have an objects clause stating its aims and purpose. Although such objects may be commercial, if the business is a social enterprise, they must also relate to social and/or environmental objectives. <sup>4</sup>

<sup>2</sup> Further information is available at: [http://www.fsa.gov.uk/pubs/forms/MS\\_appform\\_notes.pdf](http://www.fsa.gov.uk/pubs/forms/MS_appform_notes.pdf)

<sup>3</sup> Ibid

<sup>4</sup> Further information is available at: <http://www.businesslink.gov.uk>

- 1.10 Some voluntary and community bodies may be unincorporated associations - for example, an unincorporated association where the stated purpose of the association in its constitution is primarily to benefit the community. We would normally expect bodies that will be delivering contracts for local authorities and other public bodies to be incorporated with limited liability, to limit the risk to individual members. If a relevant body identifies a need to incorporate in order to be capable of providing a relevant service in its expression of interest, the period between an expression of interest being accepted and a procurement exercise starting (see Section 8) will provide an opportunity for this.

#### *Charitable bodies*

- 1.11 Bodies of persons or trusts established for charitable purposes only may be a voluntary or community body, but are eligible to use the right.

#### *Parish Councils*

- 1.12 Parish councils are not listed as relevant authorities. They are however relevant bodies and can submit an expression of interest to provide services relating to functions of relevant authorities. The term "parish council" includes those councils of parishes that bear the style of town and call themselves "town councils".

#### *Employees of the relevant authority*

- 1.13 The Government is committed to giving public sector workers the right to bid to take over running the services they deliver. Two or more employees of the relevant authority are eligible to use the right. We expect 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). The period between an expression of interest being accepted and a procurement exercise being carried out (see Section 8) will help here.

#### *Partnership working*

- 1.14 Whilst only relevant bodies are eligible to submit an expression of interest, they may do so in partnership with other relevant bodies and/or non-relevant bodies. Indeed, such cooperation may strengthen a relevant body's case that it is capable of providing the service. Where a relevant body proposes to deliver a service in partnership with one or more other bodies, certain information must be provided in the expression of interest in respect of all partners (see Section 4).

- 1.15 Some relevant bodies will wish to form, or be part of a joint venture. Incorporated joint ventures (the joint venture is a body in its own right) will need to meet the definition of a relevant body to submit an expression of interest. One or more bodies in a contractual joint venture (co-operative arrangements between two parties that keep their separate identities) must meet the definition of a relevant body.

## Section 2

### Relevant services

- 2.1 The community right to challenge applies to all relevant services. A relevant service is a service provided by or on behalf of a relevant authority in the exercise of its functions in relation to England, except services which are excluded from the right in secondary legislation.

#### *Functions and services*

- 2.2 The right only applies to the provision of services. It does not provide for delegation of the functions of a relevant authority. The responsibility for the function itself remains with the relevant authority. The things that relevant authorities are required to do or may do, their functions, are many and varied as will be the services that it may be necessary to provide in order for the relevant authority to carry out those functions.

#### **What constitutes a function and a service?**

##### **Example 1: Planning**

Section 70(1) of the Town and Country Planning Act 1990 gives powers to local planning authorities to grant or refuse planning permission where a planning application is made to the authority. The right does not allow for the function of determining planning applications to be provided by a third party.

The delivery of planning functions, for example the processing of a planning application (not the decision), may be carried out by the local planning authority itself, or by a third party on behalf of the authority.

##### **Example 2: Youth justice**

The Crime and Disorder Act (1998) places a duty on local authorities to ensure there is appropriate provision of youth justice services. Decisions (reached following consultation with interested parties as part of the commissioning cycle) on which services are provided, where they are located, funding etc. are a function of the authority. The community right to challenge will not apply here.

Individual (parts of) services with young people to prevent further offending may be provided by the local authority, or by a third party on behalf of the authority. This means the authority would set out the requirements of the service as part of any procurement exercise which potential providers would bid to deliver. This may, for example, include addressing specific difficulties faced by young offenders, such as drug and alcohol problems or homelessness. The right will apply here.

*Delegation of functions*

- 2.3 Orders made by the Secretary of State under section 70 of the Deregulation and Contracting Out Act 1994 have authorised named persons to carry out specified local authority functions. In addition, local authorities may have arranged for other local authorities (which includes parish councils) or named committees or officers to discharge their functions, using powers in section 101 of the Local Government Act 1972. Where this is done the authority remains ultimately responsible for the discharge of the function. Services relating to those functions therefore remain within the scope of the right, unless they are excluded in the Regulations.

*Jointly commissioned/provided services and shared services*

- 2.4 Some services will be shared, jointly commissioned, or jointly provided by two or more relevant authorities, e.g. tri-borough arrangements between Westminster, Hammersmith and Fulham and Kensington and Chelsea Councils for education, adult social care and children's services. Here, those authorities should agree the relevant timescales and arrangements for considering and responding to expressions of interest and, where necessary, carrying out a procurement exercise for services.
- 2.5 Other services will be shared, jointly commissioned or jointly provided by one or more relevant authority and one or more non-relevant authority, e.g. a local authority working with an NHS body. Here the application of the right will depend on:
- a) Whether the service is excluded. Certain services are excluded from the Right until 1 April 2014; and
  - b) Where responsibility for the function lies. Only relevant services (i.e. those provided by or on behalf of a relevant authority in the exercise of its functions) are within the scope of the right; and only the relevant authority is required to consider and act on expressions of interest, though others are not prevented from doing so. It is recommended that relevant authorities should seek advice from NHS bodies in assessing expressions of interest to deliver health-related relevant services where appropriate, for example (after April 2014) for jointly-commissioned services. As a minimum, the NHS commissioner should be informed that an expression of interest has been submitted and is being considered by the relevant authority.
- 2.6 Services commissioned by a relevant authority on behalf of an NHS body (i.e. an NHS service) fall outside the scope of the right.



### *Excluded services*

- 2.7 The following services are excluded from the community right to challenge, either for a limited period or permanently:
1. Until 1 April 2014, a relevant service commissioned in conjunction with one or more health services by a relevant authority or by a Primary Care Trust, NHS trust or NHS foundation trust (in this paragraph 2.8 referred to as an “NHS body”) under a partnership arrangement or by a relevant authority and an NHS body or a Strategic Health Authority, acting jointly.<sup>5</sup>
  2. Until 1 April 2014, a relevant service commissioned by an NHS body on behalf of a relevant authority.
  3. A relevant service commissioned or provided by a relevant authority in respect of a named person with complex individual health or social care needs.
- 2.8 Services under bullets 1 and 2 in paragraph 2.7 are excluded temporarily until 1 April 2014. This is to enable the NHS commissioners (the NHS Commissioning Board and local clinical commissioning groups) established by the Health and Social Care Act 2012, to have sufficient time to become fully operational, consider the contractual arrangements they have inherited from their predecessor NHS commissioners (primarily Primary Care Trusts) and develop new commissioning relationships with relevant authorities in the period up to April 2014. A relevant authority should be able to advise relevant bodies if the service they wish to challenge is covered by this time-limited exemption.
- 2.9 Sure Start Children’s Centres deliver both local authority and health services. There are many different delivery models for children’s centre services across the country. As indicated in bullets 1 and 2 of paragraph 2.7, where relevant children’s centre services have been commissioned jointly by a local authority and an NHS body or by the NHS on behalf of the local authority, these services will be excluded from the right temporarily until April 2014. However, this exclusion does not prevent relevant bodies from expressing an interest in running children’s centre services that are delivered directly by local authority employees or commissioned by a local authority acting alone (i.e. not jointly with an NHS body). The Government wants to see a wide range of providers running children’s centres across the country helping to improve outcomes for children and families. Relevant bodies should be able to express an interest in delivering most children’s centre services as soon as the relevant parts of the Act are commenced and regulations come into force.<sup>6</sup>

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<sup>5</sup> Partnership arrangements referred to here must be made in accordance with the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.

<sup>6</sup> Services commissioned or provided wholly by the NHS or by the local authority on behalf of an NHS body are out of scope of the community right to challenge.

- 2.10 Services commissioned or provided under bullet 3 of paragraph 2.7 are permanently excluded because those services relate to named individuals with complex needs. It is not the intention of the community right to challenge to directly or indirectly disrupt the package of care provided to an individual patient or service user, as such disruption could result in social or clinical disadvantages for that individual. Named patient or spot contracts are usually contracts for complex packages of NHS continuing health care and social care for individuals. Such packages may last for months or years, often involve nursing home care and often the service user and or family/ carers have been offered choices in relation to the providers of that care.

#### *Direct payments*

- 2.11 Services which are commissioned and managed by individuals or their representatives using direct payments, for example under The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 do not fall within the scope of the community right to challenge as the individuals or their representatives, as opposed to the relevant authority, commission the services. Direct payments are one way of giving people more choice and control over the services they receive. Individuals or their representatives are given funding in lieu of services. They use this money to arrange their own care and support which meets their needs in ways that are most appropriate for them.

## Section 3

### Submitting expressions of interest

- 3.1 Relevant authorities may choose to specify periods during which expressions of interest can be submitted in relation to a particular relevant service. They must publish details of any periods specified in a manner as they think fit, including on the authority's website. 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. Where authorities choose not to set periods, expressions of interest can be submitted at any time.
- 3.2 In specifying periods for submission of expressions of interest, relevant authorities should have regard to the following factors:
- a) *The need to provide relevant bodies with sufficient time to prepare and submit expressions of interest.* In considering this, authorities may take account of how much notice they are giving relevant bodies ahead of the period;
  - b) *The nature, scale and complexity of the relevant service for which a period is being specified.* For example, it may take relevant bodies longer to prepare expressions of interest for larger, complex services than smaller more straightforward ones; and
  - c) *The timescale for any existing commissioning cycle relevant to the service for which a period is being specified, or any other relevant authority processes.* These may include Council Cabinet decision making or budget setting processes.
- 3.3 Authorities opting to specify periods are encouraged to consider where such periods can be aligned to allow expressions of interest relating to two or more services to be submitted.

## Section 4

### Expression of interest requirements

- 4.1 Relevant authorities must consider an expression of interest submitted by a relevant body which is in writing and meets other requirements for such an expression of interest. These are specified in the Regulations. A relevant authority may refuse to consider an expression of interest submitted outside a specified period for submitting expressions of interest. Relevant authorities may request further information from relevant bodies but they cannot make inclusion of such information a requirement in order for the expression of interest to be considered. They should make it clear in any such request that provision of the further information is optional. Information outside the scope of requirements in the Regulations may not be used as a ground on which to reject an expression of interest. Relevant authorities should make this clear to relevant bodies.
- 4.2 Relevant authorities may require the information below to be provided in expressions of interest. They may also that require bodies demonstrate they meet the definition of a relevant body (see Section 1).

#### **Information required in an Expression of Interest**

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 the relevant authority's area; 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 relevant authority, details of how that relevant body proposes to engage other employees of the relevant authority who are affected by the expression of interest.

- 4.3 The Government has committed, in respect of the procurement exercises it runs, to eliminating the Pre-Qualification Questionnaire for procurement exercises under £100,000 and to ensuring that organisations should only have to provide Government with the information it requires once. The Local Government Association is also keen to help reduce the perceived and real barriers and bureaucratic processes on councils and businesses when services are procured through disseminating good practice across the local government sector.

*Promoting or improving the social, economic or environmental well-being*

- 4.4 Relevant authorities are required to consider social value of expressions of interest and in carrying out procurement exercises. This is also reflected in the Public Services (Social Value Act) 2012 and the general duty of best value in the Local Government Act 1999. 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. This could include creating local jobs, improving local skills, increasing local volunteering opportunities, or improving environmental conditions. An example is given below of how one organisation provides social value.

**Example: Social value**

Bulky Bob's, a social enterprise, has won contracts with Liverpool City Council and other authorities to collect, reuse and recycle bulky household waste. Bulky Bob's reuses and recycles 70% of the furniture and white goods, reducing the environmental impact and saving councils money in landfill costs. They have helped over 34,000 low-income families gain access to affordable furniture and run training programmes which have provided more than 250 long-term unemployed people with skills and experience. They assess that the social benefits to the community are 2.5 times the initial investment.

*Service user needs*

- 4.5 It is important that proposals in expressions of interest meet the needs of service users. In demonstrating how they will deliver outcomes that meet the needs of users of the relevant service, relevant bodies may refer to evidence such as needs assessments prepared by the relevant authority, or other sources. This may, for example, include a survey of service users conducted by the relevant body itself.

*Employee engagement*

- 4.6 How employees of the relevant authority engage with other relevant authority employees is best decided locally. Nonetheless, well-established staff engagement and governance channels could play a part. The face-to-face meetings, intranet updates and staff clinics undertaken when some 1,200 staff from Hull Primary Care Trust transferred to a social enterprise under the Right to Request scheme is an example of good practice. However, we would expect the level of engagement to be appropriate and proportionate to the size and nature of the service and the number of employees directly affected by the expression of interest. There is no requirement for a ballot to demonstrate support for a proposal under the NHS Right to Request or under the community right to challenge.

## Section 5

# Notifying decisions on expressions of interest

- 5.1 The relevant authority must specify the maximum period that it will take to notify the relevant body of its decision on an expression of interest and publish details of the specification including on its website. Different periods may be specified for different cases.
- 5.2 The relevant authority must also notify a relevant body that has submitted an expression of interest of the timescale within which the authority will notify the body of its decision.
- 5.3 The relevant authority must make this notification in writing. This must be done within 30 days after the close of any period specified by the authority for submitting expressions of interest or, if no such period has been specified, within 30 days of the relevant authority receiving the expression of interest.
- 5.4 In specifying periods for notifying relevant bodies of decisions on expressions of interest, relevant authorities should have regard to the following factors:
  - a) The need to notify relevant bodies of a decision within a reasonable period;
  - b) The nature, scale and complexity of the service to which expressions of interest relate (for example is the service shared with one or more other relevant authorities, or jointly commissioned with one or more other public bodies?);
  - c) The complexity of the expressions of interest received (for example do they propose radical change to the way a service is delivered?);
  - d) The likely need to agree modifications to expressions of interest in order to accept them (see Section 7); and
  - e) The timescales for any existing commissioning cycle relevant to the service which an expression of interest relates to, or any other relevant authority processes. These may include Council Cabinet decision making or budget setting processes.

## Section 6

# Grounds whereby an expression of interest may be rejected

- 6.1 Relevant authorities may only reject an expression of interest on one or more of the grounds specified in the Regulations. These are listed below.
- 6.2 If an authority decides to modify or reject an expression of interest, it must give reasons for that decision in its notification to the relevant body (see Section 5). The authority must publish the notification in such a manner as it thinks fit, which must include publication on the authority's website.

### **Grounds whereby an Expression of Interest may be rejected**

1. The expression of interest does not comply with any of the requirements specified in the Act<sup>7</sup> or in regulations.<sup>8</sup>
2. The relevant body provides information in the expression of interest which in the opinion of the relevant authority, is in a material particular inadequate or inaccurate.
3. The relevant authority considers, based on the information in the expression of interest, that the relevant body or, where applicable-
  - (a) any member of the consortium of which it is a part, or
  - (b) any sub-contractor referred to in the expression of interest
 is not suitable to provide or assist in providing the relevant service.
4. The expression of interest relates to a relevant service where a decision, evidenced in writing, has been taken by the relevant authority to stop providing that service.
5. The expression of interest relates to a relevant service -
  - (a) provided, in whole or in part, by or on behalf of the relevant authority to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the relevant service; and
  - (b) the continued integration of such services is, in the opinion of the relevant authority, critical to the well-being of those persons.

<sup>7</sup> Section 81(1) of the Localism Act

<sup>8</sup> Made by the Secretary of State under section 81(1)(b) (duty to consider expression of interest)



6. The relevant service is already the subject of a procurement exercise.

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

8. The relevant authority has published its intention to consider the provision of the relevant service by a body that 2 or more specified employees of that authority propose to establish.

9. The relevant authority considers that the expression of interest is frivolous or vexatious.

10. The relevant authority considers that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty.

#### *Inadequate and inaccurate information*

6.3 A judgement on the adequacy and accuracy of information supplied by a relevant body must be based only on the information that the relevant authority may require (see Section 4). Relevant authorities need to have sufficient information on which to base a decision on whether or not to accept an expression of interest. A relevant authority may consider whether sufficient and accurate information is given, for example, on financial resources, the area to which the relevant service relates, or how the proposal will meet service user needs. If a relevant authority considers that the information in an expression of interest is inadequate or inaccurate it should consider asking the relevant body for further information.

#### *Suitability of relevant body*

6.4 The judgement of suitability must be based on the requirements for information to be included in an expression of interest (see Section 4). For example, a relevant authority may judge that a relevant body does not have the financial resources to undertake the service, or does not demonstrate that it will be able to partake in a procurement exercise. The relevant authority may judge that the relevant body does not have the approved or qualified staff that can carry out the service. The judgement on suitability must not be based on information other than that which the relevant authority may require under the Regulations.

*Relevant authority has stopped/decided to stop providing the service*

- 6.5 The community right to challenge is not a mechanism to require relevant authorities to provide services that they have stopped providing, or have taken a decision to stop providing. A decision to stop providing a service is considered to have been taken once it has been approved or endorsed by the authority. How this is done will vary according to the authority's established processes and delegation arrangements. For example, such decisions may be taken at different levels, such as Cabinet Committee or by an individual officer. Relevant authorities should be aware that this ground for rejection does not allow an expression of interest to be rejected before the decision is made to stop the service. Indeed the situation where consideration is being given to the possibility of stopping a service is just the sort of circumstance when an expression of interest in providing that service from a relevant body may be critical.

*Continued integration*

- 6.6 A relevant authority may decide to reject an expression of interest related to integrated services (i.e. a relevant service which is provided by or on behalf of a relevant authority to a person who also receives a service provided or arranged by an NHS body) where it considers that the continued integration of the services is critical to the well-being of the persons in receipt of the integrated services. This may affect 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.
- 6.7 Not all integrated services will be subject to this ground for rejection. The examples below illustrate how this may be assessed 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 by 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 find employment, and also receive health advice.

- 6.8 If the relevant authority receives an expression of interest for a service where this ground for rejection may apply, it is recommended that the authority should seek advice from the NHS body in assessing it. As a minimum, the NHS body should be informed that an expression of interest has been submitted and is being considered by the relevant authority.

*Authority entered negotiations with a third party*

- 6.9 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. If an authority is merely considering options for future service provision, one of which is to negotiate for a third party to provide the service, this ground for rejection could not be applied.

*Authority published its intention to consider mutualising the service*

- 6.10 Under the Government's public service mutuals policy, employees proposing to establish a public sector mutual are encouraged to do so in a way that that gives employees a high degree of control. More information can be found at: <http://mutuals.cabinetoffice.gov.uk/>
- 6.11 This ground for rejection seeks to achieve a similar balance to that relating to negotiations in paragraph 6.9 above. It allows relevant bodies to submit expressions of interest before the point at which a relevant authority 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 that point, this ground for rejection allows such processes that are sufficiently progressed to continue.
- 6.12 Relevant authorities will need to publish their intention under this ground for rejection. How they do this is best decided locally. This may, for example, include a statement on the authority's website, minutes of a Cabinet Committee meeting, or an announcement in a speech. Relevant authorities must ensure they are able to evidence that they have published their intentions in order to be able to reject an expression of interest on this ground. Authorities are encouraged to consider how such publication can be made easily accessible for relevant bodies that may wish to submit expressions of interest.

*Frivolous or vexatious*

- 6.13 We consider a request would be vexatious if it is likely to cause distress or irritation without justification, or if it is aimed at disrupting the work of an authority or harassing individuals in it. A request could be considered frivolous if it is apparent that it is not a genuine offer to provide a service and lacks any serious purpose. This will allow relevant authorities to reject expressions of interest where, for example, a relevant body wishes to make a complaint about a service rather than wishing to compete to deliver it.

*Likely to lead to contravention of rule of law/statutory duty*

- 6.14 This ensures that a relevant authority is not required to accept an expression of interest which would put it in breach of the law.

**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.

- 6.15 A local authority will have to comply with its best value duty when procuring services, which requires it to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Guidance on the best value duty was published in September 2011.<sup>9</sup>

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<sup>9</sup> <http://www.communities.gov.uk/documents/localgovernment/pdf/1976926.pdf>

## Section 7

### Modifying an expression of interest

- 7.1 If a relevant authority 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 relevant authority may reject the expression of interest. Some illustrative examples of where a modification may lead to successful submission are given below.

**Example 1: Part of a service not subject to challenge**

A relevant body submits an expression of interest to run all 20 library services in the area. The authority has taken a decision to stop one of the services, meaning it is no longer a relevant service. The authority proposes modifying the expression of interest to relate instead to the 19 remaining libraries.

**Example 2: Inadequate information**

A relevant body submits an expression of interest to run the waste collection services. It does not complete the financial information section. The relevant body proposes modifying the expression of interest to include this information.

**Example 3: Suitable body**

A relevant body submits an expression of interest to run a local youth club. It sets out how the outcomes it proposes to achieve will meet the needs of service users, but bases this on a survey of 3 out of the 250 young people who use the club. The relevant authority proposes modifying the expression of interest to include sufficient information on which it can base its decision to accept or reject.

## Section 8

# Period between an expression of interest being accepted and a procurement exercise starting

- 8.1 Relevant authorities must specify periods between an expression of interest being accepted and a procurement exercise starting. This enables authorities to weigh up the factors below. Depending on local circumstances, this aims to allow relevant bodies the time they need to prepare to compete in the procurement exercise.
- 8.2 In specifying these periods relevant authorities should have regard to:
- a) The need to provide employees of the relevant authority, and other relevant bodies, with a fair, reasonable and realisable opportunity to bid in the procurement exercise for the service;
  - b) The nature, scale and complexity of the service being procured. For example, it may take relevant bodies longer to prepare to bid for larger, complex services than smaller more straightforward ones; and
  - c) The timescales for any existing commissioning cycle relevant to the service being procured, or any other relevant authority processes. These may include Council Cabinet decision making or budget setting processes.
- 8.3 A relevant body may submit an expression of interest at any time if the relevant authority has not set a period under section 82(2) of the Act. The relevant authority may well already have a contract with a third party to provide that service. It is for the relevant authority to set the period between accepting an expression of interest and starting a procurement exercise. In order to take into account its contractual obligations and commissioning cycle. It would be undesirable if an expression of interest was accepted and there was a lengthy period before a procurement exercise could be started.

## Section 9

### The procurement exercise

- 9.1 When a relevant authority accepts one or more expressions of interest for a relevant service, it must carry out a procurement exercise for the service. The procurement exercise must be appropriate having regard to the value and nature of the contract that may be awarded as a result of the exercise. As is already the case, authorities will need to comply with procurement law.
- 9.2 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. Further information can be found at:  
[http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)
- 9.3 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 relevant authority to decide how to procure the service. This applies in the same way to procurement exercise triggered by the community right to challenge as those which are not. Generally, Part B services are those that the EU has considered would largely be of interest only to bidders located in the Member State where the contract is to be performed.

#### *Consideration of social value in the procurement exercise*

- 9.4 Relevant authorities 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 the authority's area. This must be consistent with the law applying to the awarding of contracts. Authorities may include social clauses in contracts provided they comply with the relevant requirements. These are explained in the European Commission publication *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*.<sup>10</sup>

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<sup>10</sup>[http://www.procurement.ie/sites/default/files/Buying%20Social\\_SocConsidPubProcu\\_101210.pdf](http://www.procurement.ie/sites/default/files/Buying%20Social_SocConsidPubProcu_101210.pdf)

**Example:**

In conducting a procurement exercise for its school transport services, London Borough of Waltham Forest asked bidders to demonstrate how their proposal could contribute to efficiencies and give added value to the service. This accounted for 10% of the assessment score and gave bidders the opportunity to demonstrate how they could achieve a wider impact from their service to local community. The contract was won by HCT Group, a social enterprise. It proposed to reinvest any profits into a learning centre for long-term unemployed people in the borough.

*Transparency*

- 9.5 Authorities should have regard to the DCLG's Code of Recommended Practice on publishing new contracts and tenders information as part of the government's transparency agenda.<sup>11</sup>

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<sup>11</sup> <http://www.communities.gov.uk/localgovernment/transparency/transparencyguidance/>



# Annex A

## Glossary of terms

<i>NHS body</i>	Except where another meaning is given in paragraph 2.7 of this Guidance, NHS body has the same meaning as set out in the National Health Service Act 2006.
Pre Qualification Questionnaire	A stage in the procurement process used to shortlist organisations to be invited to tender. The questionnaire assesses the suitability of organisations' commercial, technical and financial capabilities.
<i>Relevant authority</i>	Public body listed in the Act and the Regulations whose services can be challenged under the community right to challenge. The Act lists district, county and London borough councils as relevant authorities. Certain fire and rescue authorities are added as relevant authorities in the Regulations.
<i>Relevant body</i>	A body listed in the Act which can express an interest in providing a relevant service. The Act lists voluntary and community bodies, bodies of persons or trusts established for charitable purposes only, parish councils and two or more employees of the relevant authority as relevant bodies. Other persons or bodies can be specified as relevant bodies by regulations.
<i>Relevant service</i>	A service provided in the exercise of any of a relevant authority's functions, either by the relevant authority using its own workforce, or provided on its behalf under a service contract or some other arrangement, unless such a service is excluded from the community right to challenge in the regulations.
<i>The Act</i>	The Localism Act 2011
<i>The Regulations</i>	The Community Right to Challenge (Relevant Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 and the Community Right to Challenge (Requirements for Expressions of Interest and Excluded Services) (England) Regulations 2012.
<i>The Right</i>	The community right to challenge.

## **Commercial in confidence**

### **Provision of swimming services in East Reading**

#### **Community Right to Challenge Expression of Interest submitted by Newtown GLOBE Group Section 81, Localism Act 2011**

This expression of interest is submitted by Newtown GLOBE Group in relation to swimming services provided at Arthur Hill Swimming Pool in East Reading. Newtown GLOBE Group is a long-standing not-for-profit voluntary group working in East Reading with an interest in community and environmental issues.

#### **1. Background and context**

The Arthur Hill Memorial Baths (usually known as Arthur Hill Swimming Pool) has provided a swimming service in the Borough of Reading since 1911. In recent years the service has been extended to cover other sporting and fitness activities with the addition of a gym and a spinning studio. The centre is currently relatively well used and we estimate that it receives around 25,000 visits per year.

The pool building is now old and in need of repair if its long term future is to be guaranteed. Reading Borough Council's preferred option is to build a replacement pool, possibly in Palmer Park, which will open, according to current estimates, in three to four years time. The Council has proposed closing Arthur Hill Swimming Pool in December 2016, which would result in an extended period over which there would be no swimming provision in the eastern part of Reading Borough. Closure would result in a loss of one third of the swimming capacity offered by the Borough Council over much of this period. An Equalities Impact Assessment conducted by Reading Borough Council acknowledges that closure of Arthur Hill Swimming Pool will have an adverse impact on disadvantaged and minority groups. Mitigation measures proposed to alleviate the impact are vague and largely dependent on pool users making their own arrangements to undertake relatively difficult and time consuming journeys across Reading to alternative facilities.

The scope of the Localities Act 2011 covers Reading Borough Council and gives community interests a statutory 'Community Right to Challenge' the delivery of a Council service. The Act entitles Newtown GLOBE Group as a local voluntary and community organisation to submit an expression of interest to run a Council service as a "relevant body".

We consider that the provision of swimming and fitness services at Arthur Hill Swimming Pool is a "relevant service" as defined by the Localities Act 2011. No decision has yet been taken to close the pool, and any decision on this matter is currently scheduled to be taken at a meeting of Reading Borough Council on 18 October 2016. Statutory guidance on the Community Right to Challenge states that local authorities are not allowed to reject an expression of interest before a decision is made to stop providing a service, stating that "the situation where consideration is being given to the possibility of stopping a service is just the sort of circumstance when an expression of interest in providing that service from a relevant body may be critical".

As a local organisation with close links to the local community we consider ourselves suitably qualified to submit this expression of interest to provide swimming services in East Reading over

## Commercial in confidence

the period from December 2016 until the date when a new replacement pool is opened. In doing so we would work closely with pool users, pool staff, Reading Borough Council, and those members of the local community who wish to see the pool stay open. This application represents our formal expression of interest and has the enthusiastic support of Arthur Hill Swimming Pool users, campaigners to save the pool, and Park ward councillors.

### 2. Objectives

Our objectives in operating this service would be as follows:

- ⤴ To provide swimming services in East Reading until a new swimming pool is built in the area.
- ⤴ To work with health care agencies, local schools, and community organisations to increase usage of the Arthur Hill Swimming Pool and fitness centre, especially among disadvantaged and minority groups.
- ⤴ To strengthen community cohesion in East Reading by actively involving local people in managing, operating, financing, and supporting Arthur Hill Swimming Pool.
- ⤴ To encourage regular exercise and improve the health and well-being of targeted groups among pool users.

### 3. Financial resources

Newtown GLOBE group currently has deposits of around £900 held in an account with the Co-operative Bank (65072484). In order to operate Arthur Hill swimming pool we would raise funds as outlined below and would set up a new charitable organisation to manage both fund-raising and management of the pool. There is considerable public support for keeping the pool open, as evidenced by the 2,600 signature petition submitted to Reading Borough Council and the attendance of approximately 100 people at a subsequent community meeting to discuss the pool. We would draw on this support in setting up and running the new organisation.

The following costings are based mainly on the crude costings prepared by Reading Borough Council in a paper on Arthur Hill Pool prepared for the Policy Committee meeting on 26 September 2016. Figures presented in the paper for repair and maintenance of the pool are disputed as we consider that they represent the costs of keeping the pool open in the long term, rather than for an interim period while a new pool is being constructed. We will be requesting a copy of the condition survey report for Arthur Hill Pool, together with associated costings, before the Council undertakes a procurement exercise for this service. For current purposes, we are assuming a figure of £200,000 will be needed for repairs and maintenance to keep the pool open over a three to four year period. We consider the costings we are using to be conservative, worst case costings.

Based on these assumptions, we estimate that the annual costs of operating the pool will be roughly as follows:

Staffing costs:	£180,000
Other costs:	£70,000
Repairs and maintenance: (divided equally over four years)	£50,000

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Income will be derived annually from the following sources:

Pool customers:	£100,000
Crowdfunding:	£30,000
Volunteer work (in-kind contribution):	£10,000
High value donations:	£30,000
Fund-raising events:	£5,000
Income from schools and private hire:	£15,000
Grant funding:	£110,000

Grant funding will be sought mainly for repairs and refurbishment work, and would be requested from the Heritage Lottery Fund, the Big Lotteries Fund Reaching Communities Buildings Fund, the Berkshire Community Foundation network, and local businesses.

#### 4. Capability to provide the service

Newtown GLOBE Group (Go Local for a Better Environment) was set up as part of a network of similar groups across Reading by Reading Borough Council in the mid 1990s. The group is a constituted voluntary sector organisation but does not have incorporated status. Over the years we have worked with Reading Borough Council on a range of environmental projects, notably Reading Rescue community clean-up days. Newtown GLOBE was also a partner in the East Reading Partnership which was established in the early 2000s by Reading Borough Council to manage Single Regeneration Budget grant funding for the area.

The group currently has over 70 people on its membership list. The current Chair is Rob White, who since 2010 has been a Park ward councillor on Reading Borough Council, providing us with an excellent channel for dialogue with the Council. The current Secretary is Peter Burt, former Chair of the Reading Voluntary Sector Forum (2007-2008), voluntary sector representative on the Reading Local Strategic Partnership (2002-2003 and 2006-2008) and Vice Chair of the East Reading Single Regeneration Budget Project Partnership (2001 – 2003), who has 20 years experience of voluntary sector management. Debbie Cousins, with public sector management experience, is a third member of the organising committee.

Statutory guidance on the Community Right to Challenge states that the definitions of voluntary and community body are intended to cover a wide range of civil society organisations. The guidance acknowledges that some voluntary and community bodies submitting expressions of interest to undertake Council services may be unincorporated associations, but states that bodies delivering contracts for local authorities and other public bodies would normally be expected to be incorporated with limited liability, and that the period between an expression of interest being accepted and a procurement exercise starting will provide an opportunity for establishing an incorporated body.

In order to manage and operate Arthur Hill Pool we would set up a new incorporated organisation, operating on charitable principles, to provide limited liability to members. The organisation would operate on a not-for-profit and co-operative basis, with all customers of the pool and any staff engaged by the organisation invited to join as members. The new organisation would be set up as a separate legal entity to Newtown GLOBE group.

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At present, Arthur Hill Pool is largely self-managed by the staff who work here, with limited day-to-day input from senior managers at Reading Sport & Leisure. We would envisage that the management role played by Reading Sport & Leisure would be taken over by the new organisation on a volunteer basis. Arrangements for the provision of day-to-day operations would need to be agreed with Reading Borough Council, but our preferred arrangement would be to engage current personnel based at the pool from the Council on a contract basis. Less skilled tasks would be undertaken by volunteer supporters, and a training programme would be established to ensure that relevant personnel have the necessary skills in safety, life-saving, first aid, and other key areas.

### 5. Relevant service area

The service area which we are interested in operating comprises of all services currently offered at Arthur Hill Swimming Pool, namely:

- ⤴ Public swimming
- ⤴ Schools, club, and private hire swimming
- ⤴ Gymnasium / fitness centre.
- ⤴ Spinning
- ⤴ Exercise classes
- ⤴ Swimming classes and personal tuition

The client group for these services is located mainly in the immediate area of East Reading around Arthur Hill Swimming Pool, centred on the Park, Redlands, and Abbey wards but spreading further across Reading Borough and the western fringe of Wokingham Borough.

This expression of interest is not intended to cover the service offered by Reading Borough Council at Palmer Park Sports Stadium.

### 6. Outcomes to be achieved in providing the service.

We aim to deliver the following outcomes through this application:

- ⤴ A sport and leisure service will be provided over a period of at least three to four years in a relatively deprived part of East Reading until Reading Borough Council opens a proposed new pool in the area.
- ⤴ An increase in pool usage from a current level of 25,000 customers per year to 28,000 customers per year over the period of operation. Efforts to attract new users will be focused on under 16s, retired people, women, unemployed people, and ethnic minority groups.
- ⤴ Increased physical and mental health and well-being among customers, particularly new users. We will monitor this through annual surveys of pool users.
- ⤴ An increase in social interaction between individuals and strengthening of networks between community support organisations in the Newtown, north Redlands, and Orts Road areas. We will monitor this through recording volunteer involvement, financial giving, and attendance at community and social events.

We have identified the following stakeholders with whom we will work in achieving these

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outcomes:

- ⤴ Local schools: Newtown School, Redlands School, Alfred Sutton School, St Johns and St Stephens School, Christ the King School, and Phoenix College.
- ⤴ Medical surgeries: Melrose Surgery, Pembroke Surgery, Eldon Road Surgery, Kennet Surgery, and London Road Surgery.
- ⤴ Local authorities: Reading Borough Council and Wokingham Borough Council.
- ⤴ Community Groups: Pakistani Community Centre, Indian Community Association, Communicare, Wycliffe Baptist Church, Sri Guru Singh Sabha Gurdwara, Cumberland Road Mosque, St Johns and St Stephens Church, Kennet and Brunel Residents Association.
- ⤴ Pool users: Reading Dolphin Swimming Club, Reading East Branch of the Gurkha Association, Reading Naturists, Reading Royals Synchronised Swimming Club, Friends of the Arthur Hill Memorial Baths, centre instructors and tutors.
- ⤴ Other sports associations: Reading Swimming Club, Reading FC Community Trust.

Community involvement will be an integral part of the future operation of the pool, and as well as being the principal users of the pool, we will work hand-in-hand with the local community in managing and running the pool. We will look for community support for the pool in raising funds, helping as volunteers, and playing a key role in the management of the pool. We intend to work with stakeholders in the following respects:

- ⤴ Setting the strategic direction for the pool and its management.
- ⤴ Organising fund-raising activities such as sponsored swims, special sessions, and social events, and preparing grant applications.
- ⤴ Promoting the pool through their organisations to help increase usage.
- ⤴ Organising volunteer training events to help meet both the pool's needs and their own needs.

Efforts to improve health and well-being within the local community would be targeted on older people (60 plus), especially within Asian communities, to tackle health issues such as late onset diabetes, and on children under 16 to encourage the adoption of regular exercise as a lifestyle habit and tackle childhood obesity. Our approach would be based closely on the strategy 'Towards an Active Nation' recently published by Sport England.

Operation of Arthur Hill pool for an interim period until a new pool is opened will also add to social value in the following respects:

- ⤴ Providing continued employment for 3 full time equivalent permanent staff employed at Arthur Hill Pool, 4 casual staff members, 5 fitness training instructors, and 2 swimming instructors, who would lose work opportunities if the pool is closed.
- ⤴ Create volunteer and training opportunities for local people.
- ⤴ Reduce environmental impacts by reducing requirement for customers to travel by private car or public transport to other sports facilities elsewhere in Reading.

### **7. How we intend to run the service and employees who are affected**

Management of the pool would be through a newly established charitable incorporated organisation, which would be incorporated under the terms of the Charities Act 2011.

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Any current staff working at Arthur Hill Pool who wished to join the organisation as employees would be permitted to transfer from Reading Borough Council to the new organisation under TUPE arrangements to protect their current conditions of service.

Current management structures would be retained, with staff rosters remaining much as they are at present. The supervisory role which is currently undertaken by operations managers at Reading Sport and Leisure would be replaced by accountability to a newly established community trust representing the interests of pool users, supporters, and other stakeholders. Volunteers would also be trained to take on certain tasks as appropriate. These are initially expected to be the less skilled elements of running the pool

We would expect to work in partnership with other relevant organisations (including Reading and Wokingham Borough Councils) in delivering services, if necessary through formal joint venture operations.

We propose that the pool is operated on a Council-owned charity-operated basis, with Reading Borough Council maintaining ownership of the pool but the new charity responsible for operating the pool, including undertaking maintenance and repairs needed to keep the pool open while Reading Borough Council's new pool is under construction. Alternatively, depending on the preferences of the Council, we would consider the options of an outright handover of ownership of the pool to the co-operative or a community trust, or lease of the pool to us at a minimal rent.

### 8. Procurement process

This document represents an initial expression of interest to provide the services currently offered at Arthur Hill Swimming Pool. All figures included in this expression of interest are initial estimates based on the information which is currently available. A full business case will be submitted at the appropriate point as part of a future procurement process, should the Council agree to accept this expression of interest. In the meantime, we request that you contact us should you require any further information or clarification in order to assess this expression of interest.

We reserve the right to withdraw this expression of interest if the Council decides to continue with current arrangements for providing a service at Arthur Hill Swimming Pool.

We request that Reading Borough Council makes a decision on whether to accept this expression of interest and on whether to commence a procurement exercise for the service, and require that the Council will continue to provide the current service and make no decision to terminate it until the procurement exercise has been completed.

Signed and dated,



Rob White  
Chair, Newtown GLOBE Group

13 October 2016

Arthur Hill Swimming Pool - Community Right To Challenge Information Request

Please provide a response to each of the questions below. For each question, the Council will apply the following evaluation criterion to assess whether or not your organisation is suitable to provide the service.

- The response is appropriate, relevant and detailed and meets RBC's stated requirements in all respects.

The Council's requirements for each response is set out in the table below. In order to demonstrate suitability, your organisation must meet the evaluation criterion for all of the questions. If you require any clarification about the information request or the evaluation process, please contact me directly by e-mail. In order to avoid misunderstandings, we require clarifications in procurement exercises to be obtained and supplied in writing.

Information Required	Minimum Requirements in response
<p>Please provide a statement of the financial resources that you anticipate that your organisation will have in place to support the delivery of the contract.</p>	<p>Council's Requirement In response:</p> <ul style="list-style-type: none"> <li>• Organisation can demonstrate a credible cashflow projection showing anticipated financial resources that has low risk that the organisation will be unable to meet its liabilities as they arise</li> <li>• External sources of funding identified such as grant funding should be identified. The funding sources should be explained with sufficient detail to confirm that the funding can be awarded and paid to a timetable consistent with the cashflow forecast. Evidence should be provided that the proposed funding applications will meet the funder's criteria for funding. Where possible, the funding sources should provide confirmation that they have been consulted and confirm the forecast of income receivable has a realistic chance of being awarded.</li> <li>• Evidence that the cashflow forecast has a built-in contingency sum allowing for delays in receiving income and sufficient surplus at any point should 25% of the funding at any stage not be achieved.</li> </ul>



<p>Please provide evidence that insurance at the following levels of cover would be available to you at the following levels if you were successful in winning the contract.</p> <p>Suitable evidence would be a letter from a broker or insurance provider providing confirmation that they would be able to place your insurance business</p> <p>Employers Liability Insurance £10m Public Liability Insurance £10m Professional Indemnity Insurance £5m</p>	<p>Council's Requirement In response:</p> <p>Evidence provided that suitable insurance is available to the bidding organisation in the form of brokers letter or offer of terms from an insurance provider.</p>
<p>Please describe how your organisation will put into place arrangements to actively promote good practice and meet the requirements of the Equalities Act 2010.</p>	<p>Council's Requirement in Response</p> <p>A robust plan in place that provides assurance that, by the time a procurement exercise is started (Summer 2017) your organisation will have:</p> <ul style="list-style-type: none"> <li>• Comprehensive policies and/or procedures offering good assurance of meeting legal obligations and high standards of practice in both employment and Service Provision</li> <li>• Policies consistent with Equalities and Human Rights Commission (EHRC) Guidance for Employers and Service Providers.</li> </ul> <p>See: <a href="https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-guidance">https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-guidance</a></p>
<p>Please describe how your organisation will put into place arrangements to ensure to have a Health and Safety Policy that complies with current legislative requirements including specific safety standards applying to swimming pools - see:</p> <p>HSG 179 - Managing Health and Safety in Swimming Pools</p>	<p>Council's Requirement in Response</p> <p>A robust plan in place that provides assurance that, by the time a procurement exercise is started (Summer 2017) your organisation will have:</p> <ul style="list-style-type: none"> <li>• Comprehensive policies and/or procedures offering good assurance of meeting legal obligations and high standards of practice in both employment and Service Provision</li> <li>• Arrangements for ensuring that your health and safety measures will be effective in reducing and preventing incidents, occupational ill-health and accidents?</li> </ul>

<p>Please describe how you will ensure your organisation has access to competent H&amp;S advice and assistance</p>	<p>Council's Requirement in Response</p> <p>A robust plan in place that provides assurance that, by the time a procurement exercise is started (Summer 2017) your organisation will have:</p> <p>Access to competent H&amp;S advice and assistance relevant to the operation of a public leisure facility including a swimming pool facility.</p>
<p>Please provide a statement of the experience, human resources, and technical resources that will be available to your organisation to support the safe and effective management of the Pool Facility.</p>	<p>Council's Requirement in Response</p> <p>A robust plan in place that provides assurance that, by the time a procurement exercise is started (Summer 2017) your organisation will have access to adequate technical and managerial expertise and experience in the following competencies:</p> <ul style="list-style-type: none"> <li>• HR management</li> <li>• Recruitment</li> <li>• Finance</li> <li>• ICT support</li> <li>• Day to day maintenance</li> <li>• leisure facility operation</li> <li>• swimming plant maintenance and operation</li> <li>• Business Planning</li> <li>• Payroll</li> </ul>
<p>Please provide a statement of the experience, human resources, and technical resources that will be available to your organisation to manage the commissioning of design and build works necessary for the ongoing maintenance of the pool.</p>	<p>Council's Requirement in Response</p> <p>A robust plan in place that provides assurance that, by the time a procurement exercise is started (Summer 2017) your organisation will have:</p> <p>Access to competent works design, contract letting and project management capability relevant to the maintenance of a public leisure facility including a swimming pool facility.</p>

Provide a description of the supply chain management and tracking systems that the your organisation will be able to apply when performing the required services and works.

Council's requirement in response :

Response provides evidence of a supply chain management system with all the following features:

- An assessment system for the approval of sub-contractors including checks of the technical competence and experience of your supply chain
- Checks into the economic and financial standing of your supply chain
- Checks into the health, safety & environmental management systems used by your supply chain
- A system of quality control checks & audits in respect of your supply chain
- Regular performance audits & meetings with your supply chain