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**SUBJECT:** COMMUNITY RIGHT TO BID  
**DATE:** 13 DECEMBER 2012  
**RECIPIENT:** OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE

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**THIS IS NOT A DECISION PAPER**

**SUMMARY:**

This report provides the Overview and Scrutiny Management Committee (OSMC) with a summary of Southampton City Councils processes and procedures to be put in place to deal with the governance requirements arising out of the Community Right to Bid Regulations 2012.

**BACKGROUND and BRIEFING DETAILS:**

1. The Government has introduced legislation under the banner of “Community Right to Bid”, as part of their commitment to Community Empowerment, within the Localism Act 2011. The Assets of Community Value (England) Regulations 2012 sets out the basis for the open approach to Community Assets (Assets of Community Value) and their subsequent disposal
2. An ‘Asset of Community Value’ is not described precisely in the Act but is essentially a building or other land in a Local Authority’s area whose current use furthers the social wellbeing or social interests of the local community, and that it is realistic to think that such use can continue.
3. The Regulations which were published on 20<sup>th</sup> September 2012 and came into force on 21<sup>st</sup> September 2012 require the Local Authority to oversee a nomination process, decision process and review process (appeal against Listing) with the overall requirement of producing a List of Community Assets to be published and a Compensation Scheme. The Regulations cover public sector and privately owned property.
4. The Regulations prescribe that if the property owner then wishes to dispose of a property which is “Listed” it must advertise this and allows a ‘window of opportunity’ for Community Groups to make a bid/business case to acquire it, before the property can be sold on the open market. However there is no presumption that a community group has a right to purchase or that the owner will have to dispose of the property to them, or accept a value below its market value.
5. There are, however, strict procedures and timescales to be followed, for Listing a property, considering a Review of the Listing Decision and also for assessing a claim for compensation following a disposal of a private property after compliance with the ‘windows of opportunity’ moratorium.
6. In order to process any Nomination to List a property, conduct a Review of a Listing decision and to approve a claim for compensation and conduct a Review of a compensation decision, governance is required for officers to process these decisions.

7. The Decision Making process will be led by the Communities Team, as it is a community focussed decision and not a decision about property. This process is limited to making a decision as to whether the property falls within the definition of an 'Asset of Community Value'. This is where the act allows for a certain amount of subjectivity, but can be challenged as detailed below. The Listing will be determined by the Manager for Communities in consultation with ward councillors and other consultees as appropriate including relevant council officers, representatives from partner agencies and community spokesperson/people as relevant and appropriate. This broad mix reflects that every community is different.
8. If a Review of the Listing decision is requested it is to be determined by an officer of greater seniority as prescribed by the Regulations. In this regard the Senior Manager for Communities, Change and Partnership will provide the Reviewer role acting in consultation with Cabinet Member for Communities and Cabinet Member for Resources. A Review can be an oral hearing if requested by the affected land owner. It is not proposed to make this a public meeting.
9. This can again be challenged and there is a mechanism for a final appeal stage, this is outside of the Council control and will be made through the First Tier Tribunal (Lands Tribunal). The Council will be bound the decision of the Tribunal.
10. A private owner (public bodies including the City Council are excluded) can make a claim for losses and damages following compliance with the disposals procedure for a Listed property. Such a claim will be either for the initial 6 week period a sale was delayed whilst the community group decides to bid or for the 26 week period in which a sale was prevented whilst the community group prepared their bid. Whilst the vendor is not under any obligation to sell to the community group or at less than market value, they will incur losses and damages whilst a sale is prevented. These losses & damages may include security, repair and maintenance, insurance, agent's fees, solicitor's fees, rates, utilities, loss of rent and possibly a fall in market value depending upon the prevailing market conditions.
11. The approval for the payment of compensation is a property function and as such the Senior Manager for Property Procurement & Contract Management is the officer to be authorised to make such payments.
12. The Regulations require a Review of the compensation offer is to be dealt with by a senior officer and in this regard the Senior Manger Internal Audit, Risk & Assurance is the appropriate person to determine any Reviews of compensation.
13. A final appeal process is available to owners if dissatisfied with the Review conducted by the Council. This appeal will be to the First Tier Tribunal (Lands Tribunal). This as with Listing appeals will be outside the control of the City Council and the Council will be bound by the decisions.

#### **RESOURCE/POLICY/FINANCIAL/LEGAL IMPLICATIONS:**

##### **Policy**

14. The implementation of these regulations is one element of the Government's 'Localism Agenda' which is focussing on placing more power in the hands of communities.

## **Financial**

15. There are not any direct capital implications in implementing the Regulations and setting out the governance for these regulations.
16. The Regulations prescribe several new systems which have been set up to manage the Nomination process, Review process and Compensation Claims procedure. These will be resource intensive and lengthy in duration. Most of the detailed work will be undertaken by Capita under the SSP contract, but this is a new service, which will be subject to additional charges.
17. One-off set up costs have also been incurred for the construction of the processes and systems required together with the cost of constructing the web pages and online forms and there will be ongoing charges for the maintenance of these pages. To date these unplanned costs have been met from existing property management budgets following a re-prioritisation of work.
18. In addition to these one-off set up costs there will be ongoing management costs. These are still to be determined in terms of cost per application processed. These are the Capita external charges. The resource requirements of Council staff can not be quantified at this stage. The ongoing IT management costs have not been identified as this depends upon the amount of time engaged in updating the web pages.
19. In addition to these one-off set up costs and ongoing management costs, the Council will be required to pay compensation to land owners who have suffered losses and damages during the moratorium period when a sale is prevented due to Listing.
20. The quantum of compensation will also depend upon the type of property and the prevailing market conditions. Within the new burdens assessment, the Government will meet costs of compensation payments of over £20,000 of compensation costs in a financial year. This could occur through the Council paying out over £20,000 in one financial year either on one large claim or as a combined total on a number of smaller claims.

## **Legal**

21. The Council is required to make appropriate arrangements to fulfil its duties in relation to the Community Right to Bid scheme contained within the Localism Act 2011 and subordinate legislation.

## **Property**

22. The Council's property portfolio will be affected as will property from any other public sector body. There are a few exemptions from the regulations, these include, licensed caravan sites, residential units and property affected by other legal proceedings, divorce, inheritance sales, if it forms part of a wider portfolio to be sold, mortgagor in possession, and insolvency proceedings.

## **OPTIONS and TIMESCALES:**

23. Provide Decision Making through the Cabinet Report process - rejected due to the timescale imposed by the Regulations and the ability for the owner to seek an oral hearing. A Nomination must be determined within 8 weeks of submission. A Listing Review request is to be made within 8 weeks from 'Listing' and enables the owner to request an oral hearing for the Review. A Compensation Review may also form an oral hearing and be held 8 weeks from request.

24. Utilise existing Delegated authority – there is not any existing Delegated authority within the Officers Scheme of Delegation which covers the various authorities required for these new regulations.

**Appendices/Supporting Information:**

None.

**Further Information Available From:**

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