

CABINET
29 September 2015

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

13

TITLE OF REPORT: CONSULTATION STRATEGY 2016-2020

REPORT OF THE STRATEGIC DIRECTOR OF CUSTOMER SERVICES

EXECUTIVE MEMBER: COUNCILLOR LYNDA NEEDHAM

1. SUMMARY

- 1.1 To outline the Council's obligations and proposed approach for consultation and engagement activity for the five year period from 2016-2020.
- 1.2 To highlight the different approaches and methodologies for consultation according to individual circumstance and requirements.

2. RECOMMENDATIONS

- 2.1 That Cabinet approves the proposed Consultation Strategy for the period 2016-2020.
- 2.2 That Cabinet agrees to delegate responsibility for deciding whether the Duty to Consult applies to proposed changes of policy / service, to the relevant Head of Service in consultation with the Executive Member for that service area.

3. REASONS FOR RECOMMENDATIONS

- 3.1 Consultation activity is critical to demonstrate that the Council is committed to engaging with its stakeholders to help shape the direction of future policies, to inform necessary improvement or refinement to services and to ascertain if current approaches to service delivery are meeting the needs of residents.
- 3.2 The Council has a duty to consult in some circumstances and the Council needs a clear process to follow when deciding whether a consultation exercise is necessary, which stakeholders to invite to participate and the methods used to consult.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Leader of the Council with responsibility for consultation has been consulted on this Strategy.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 17 June 2015.

7. BACKGROUND

- 7.1 The Council reviewed its Consultation Strategy in 2010, setting out a five year work programme. Since this time financial pressures and a huge growth in digital communications, combined with changes to statutory consultations have significantly altered the consultation landscape. Firstly, the then mandatory Place Survey was scrapped in 2011, meaning consultation activity has been adapted accordingly, by increasing the frequency of the District Wide Survey. The budget for corporate consultation has also decreased since the last strategy, primarily due to savings generated by the scrapping of the Place Survey and a change of methodology in conducting the District Wide Survey. Public attitudes to use of digital technology have also moved on, meaning many people are more open to filling in online surveys.
- 7.2 The Consultation Strategy 2016-2020 aims to consider these issues and highlight the different approaches to consultation which are available to the Council.
- 7.3 Cost-effective consultation is vital to help inform effective delivery of the Council's services and priorities. Opinion research exercises such as the District Wide Survey provide a useful barometer of public perception of the Council as they provide benchmarking data over a number of years. Meanwhile service-specific consultations can provide valuable insight into how residents would like to see services delivered and consider any alterations to service that the Council may propose.
- 7.4 The purpose of the Consultation Strategy is not to consider the role of Statutory consultation (where the requirement to consult is specified) but instead to consider the role of service specific consultation and opinion research exercises.

8. ISSUES

8.1 Duty to Consult

- 8.1.1 In some areas, legislation (or statutory guidance) expressly imposes a duty on a public authority to engage in some form of consultation before taking a particular decision or exercising a particular function. Even where there is no express duty to consult, the courts may imply a duty to consult as part of a public authority's general duty to act fairly, for example if nature and impact of the decision may mean that fairness requires it. The more serious the impact of a decision is on affected individuals, the more important it is that the right decision is reached and that those affected feel that their concerns have been considered by the decision-maker. Broadly, therefore, the more serious the impact, the more likely it is that fairness requires the involvement of affected individuals in the decision-making process by some form of consultation.
- 8.1.2 In March 2015, the Government introduced Best Value Statutory Guidance. Local authorities are under a general 'Duty of Best Value' 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.*" The Guidance refers to the 'Duty to Consult' representatives of a wide range of local persons when considering how to fulfil the Best Value Duty.

- 8.1.3 Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to have an interest in an area within which the authority carries out its functions. Authorities should include local voluntary and community businesses in such consultation. When consultation is carried out, there needs to be adequate time for responses to be received.
- 8.1.4 In non-statutory consultations it is up to the Authority to decide whether there is a duty to consult anyone and if so what 'fair consultation' entails in the circumstances. The Cabinet Office Consultation Principles 2013 document states that "*The governing principle is proportionality of the type and scale of consultation to the potential impacts of the proposal or decision being taken and thought should be given to achieving real engagement rather than merely following bureaucratic process.*"
- 8.1.5 In some circumstances there will be no requirement to consult and this will depend on the issues, the nature and impact of the decision and whether interested groups have already been engaged in the policy-making process. However, if the proposals could have a significant or serious impact on those affected then it is likely that consultation should take place before a decision is taken.

8.2 Public perception of consultation activity

- 8.2.1 Evidence from the 2013 District Wide Survey found that 32% of people disagree that NHDC makes an effort to find out what local people want and 28% disagreed that NHDC fully involves / consults residents on important issues. This has the potential to have a serious impact on the Council's reputation and on resident satisfaction with services. This does not necessarily mean we need to increase the volume of consultation that we undertake, but could mean that existing opportunities need to be publicised more widely or made more accessible using a range of methodology. It could also mean that we need to publicise how we have utilised the feedback from consultations, including any suggestions or comments which are not adopted in the final policy or service change, so that residents understand how they have played a role in the process.

8.3 The role of Councillors

- 8.3.1 While it would not be proportionate or provide value for money to formally consult on every initiative, the role of elected members in representing their constituents both by raising service issues with relevant officers and through the formal decision making process should not be underestimated. Residents may not be aware of the role that Councillors can play in their elected capacity and the Strategy seeks to acknowledge this role more clearly.
- 8.3.2 The Council's Member /Officer Protocol on Working Arrangements states that wherever the Council undertakes any form of consultative exercise on a local issue, the Area Committee/Ward Members should be notified at the outset of the exercise.

9. LEGAL IMPLICATIONS

- 9.1 Cabinet's terms of reference state at paragraph 5.6.1 "to prepare and agree to implement policies and strategies other than those reserved to Council".
- 9.2 The Duty to Consult is explained within the body of the report. Failure to comply with the duty could result in complaint or legal challenge. There are many examples of local authority decisions being overturned following judicial review challenges based on failure to consult or failure to consult properly. A robust strategy helps to minimise the risk of complaint or challenge.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no direct financial implications from this report as the District Wide Survey and Citizens Panel exercises undertaken will be funded from existing budget provision. Any service specific consultations will be funded by the relevant service area.

11. RISK IMPLICATIONS

- 11.1 There is reputational risk to the authority were it to fail to carry out consultation on major service or policy changes.
- 11.2 Effective consultation is crucial to the process of ensuring that the views of all areas of society are obtained. A consultation strategy is one means of achieving this and meeting a duty to consult.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 The District Wide Survey provides an opportunity to analyse data at subgroup level which can help identify any pockets of dissatisfaction apparent when looking at the gender, age, disability status and ethnicity subgroup splits, subject to meaningful sample sizes.
- 12.4 Section Six of the Consultation Strategy sets out a model for consultation which services should adopt. Part of this process is giving consideration to how any consultation activity will reach affected groups including minority and disadvantaged groups. When considering whether to consult and to what degree, the consultation method should be factored in, taking full regard of the group(s) likely to be most affected by any proposed changes.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no direct human resource implications as a result of the Consultation Strategy.

15. APPENDICES

- 15.1 Appendix A: NHDC Consultation Strategy 2016-2020

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 Cabinet Office Consultation Principles 2013
<https://www.gov.uk/government/publications/consultation-principles-guidance>