



Committee: OVERVIEW AND SCRUTINY COMMITTEE

Date: WEDNESDAY, 27 MARCH 2024

Venue: MORECAMBE TOWN HALL

Time: 6.00 P.M.

Councillors are reminded that as Members of Overview and Scrutiny they may not be subjected to the Party Whip, which is prohibited under the Lancaster City Council Constitution.

A G E N D A

1. Apologies for Absence

2. Appointment of Vice-Chair

In accordance with Rule 8, paragraph c, Part 3 – Rules of Procedure, Section 3, the Chair and Vice-Chair shall not be members of the largest political group which has Councillors serving on the Cabinet.

3. Minutes

To receive as a correct record the Minutes of the Meeting held on 7TH February, 2024 (previously circulated).

4. Items of Urgent Business authorised by the Chair

5. Declarations of Interest

To receive declarations by Councillors of interests in respect of items on this Agenda.

Councillors are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Whilst not a legal requirement, in accordance with Council Procedure Rule 9 and in the interests of clarity and transparency, Councillors should declare any disclosable pecuniary interests which they have already declared in the Register, at this point in the meeting.

In accordance with Part B Section 2 of the Code Of Conduct, Councillors are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

6. Update on the Draft Fly Tipping Strategy

An update will be provided to the Committee at the meeting.

7. Exclusion of the Press and Public

This is to give further notice in accordance with Part 2, paragraph 5 (4) and 5 (5) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 of the intention to take the following item in private.

The Overview & Scrutiny Committee is recommended to pass the following recommendation in relation to the following item:-

“That, in accordance with Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item of business, on the grounds that they could involve the possible disclosure of exempt information as defined in paragraph 3 of Schedule 12A of that Act.”

Members are reminded that, whilst the following item has been marked as exempt, it is for the Committee itself to decide whether or not to consider it in private or in public. In making the decision, Members should consider the relevant paragraph of Schedule 12A of the Local Government Act 1972, and also whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In considering their discretion Members should also be mindful of the advice of Council Officers.

8. Eden Project Morecambe Update (Pages 4 - 12)

Report of Chief Officer Sustainable Growth.

AT THIS POINT THE COMMITTEE WILL RETURN TO THE PUBLIC PART OF THE MEETING AND ANY MEMBERS OF THE PRESS AND PUBLIC WILL BE INVITED TO REJOIN THE MEETING.

9. Work Programme (Pages 13 - 22)

Report of Chief Officer – Governance.

10. Forthcoming Key Decisions

The List of Forthcoming Key Decisions can be viewed [here](#)

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors Brett Cooper (Chair), Suhir Abuhajar, Martin Gawith, Chris Hanna, Paul Hart, Sally Maddocks, Abi Mills, Sue Penney and John Wild

(ii) Substitute Membership

Councillors Martin Bottoms, Hamish Mills and James Sommerville

(iii) Queries regarding this Agenda

Please contact Jenny Kay, Democratic Support - email jkay@lancaster.gov.uk.

(iv) Changes to Membership, substitutions or apologies

Please contact Democratic Support email democracy@lancaster.gov.uk.

MARK DAVIES,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER, LA1 1PJ

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Document is Restricted

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

OVERVIEW AND SCRUTINY COMMITTEE

Overview and Scrutiny Committee – Work Programme

27th March 2024

Report of Chief Officer - Governance

PURPOSE OF REPORT

To consider the Work Programme report.

This report is public.

RECOMMENDATIONS

- (1) That Members note the updated Work Programme, as detailed in Appendix A.
- (2) That the Committee consider the updates below.

1. Introduction

The Committee is responsible for setting its own annual Work Programme within the terms of reference, as set out in the Council's Constitution.

Members are requested to consider and note the updated Work Programme attached at Appendix A that has been produced and consider the updates set out below.

2. Updates

The Chair of the Overview and Scrutiny Committee recently met with the Chief Executive to discuss the Fair Tax Motion that had been referred to the Committee by full Council. It was suggested that a meeting should be set up with interested members of the Committee and Senior Leadership Team to scope the Task Group.

Attached at Appendix B is the Briefing Note for the Motion and the Minute of Council.

If the Committee is minded to establish a Task Group, set out below is the relevant Overview and Scrutiny procedure :

Rule 2 - Task Groups

The Overview and Scrutiny Committee will decide whether a Task Group should be:

- (a) formal (subject to proportionality and Access to Information Procedure Rules) and report directly to Cabinet or Council; or,
- (b) informal (not subject to proportionality and Access to Information Procedure Rules); and they shall report back to the Overview and Scrutiny Committee.

Named substitutes appointed at the establishment of the Task Group will be permitted.

Task Groups may be established to undertake specific project work, policy development, a specific task, consultation, review investigation or similar activity. Task Groups would normally only make one final report during their lifetime.

At the first meeting of each new Task Group, the Group will carry out a stakeholder analysis exercise to determine who should be involved with their work and who should give evidence and who should be consulted. The stakeholder analysis will also highlight potential co-optees.

Task Groups may appoint any number of people (excluding staff and other Councillors) as non-voting co-optees to assist in any item of business, as they deem appropriate. Officers and other Councillors cannot be co-opted.

Each Task Group will also be required to agree a detailed Work Programme to enable them to complete their task within the agreed timescale.

Rule 3 - Who May Sit on Overview and Scrutiny?

All Councillors with the exception of members of the Cabinet may be appointed to one or more of Overview and Scrutiny bodies. No Councillor may be involved in scrutinising a decision in which they have been directly involved.

Each Group may appoint up to two named substitutes for each Overview and Scrutiny meeting (excluding Task Groups) for the Municipal Year. Substitute Councillors will have all the powers and duties of any ordinary member of the meeting.

Substitutes for the Overview and Scrutiny Committee will not be able to exercise any special powers or duties exercisable by the person they are substituting, such as counting as members of the Overview and Scrutiny Committee with regard to the quorum needed to trigger a Call-in request. No temporary substitutions will be allowed.

Rule 6 - Meetings of Task Groups

Each Task Group shall determine the frequency, times and venues of their own meetings, in accordance with the timetable for the completion of their task as set out in their Terms of Reference.

RELATIONSHIP TO POLICY FRAMEWORK

There are no direct implications as a result of this report.

**CONCLUSION OF IMPACT ASSESSMENT
(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

There are no direct implications as a result of this report.

LEGAL IMPLICATIONS

The Overview and Scrutiny Committee has overall responsibility for the performance of all Overview and Scrutiny functions (under the Local Government Act 2000) on behalf of the Council and ensuring its effectiveness.

Overview and Scrutiny Procedure Rule 9 (a) advises that the Overview and Scrutiny

Committee and Budget and Performance Panel will be responsible for setting their own Annual Work Programme within the Terms of Reference set out in Part 2, Section 5, 9 and 10 of the Constitution.

FINANCIAL IMPLICATIONS

There are no financial implications as a direct result of this report.

OTHER RESOURCE IMPLICATIONS, such as Human Resources; Information Services; Property; Open Spaces:

None.

SECTION 151 OFFICER'S COMMENTS

The S151 Officer has been consulted and has no comments to add.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments to add.

BACKGROUND PAPERS

None.

Contact Officer: Jenny Kay
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E-mail: jkay@lancaster.gov.uk

Appendix A - Overview and Scrutiny Committee Work Programme 2023-2024

<u>Matter for Consideration</u>	<u>Detail</u>	<u>Expected Date of Meeting</u>	<u>Outcomes</u>
Eden Project North.	Request a progress report.	27 th March 2024	
Consideration of the Draft Fly Tipping Strategy.	That the Committee request that the Cabinet Member presents the draft Fly Tipping Strategy to the Committee once the draft had been prepared.	27 th March 2024	
Health Care meeting.	That with regard to the Annual Health Care meeting, an update on the current model of the Health Care System be requested. The Committee would then consider if an annual meeting was required.	2024	
Air Quality Management Areas.	Add to Work Programme for a Teams Briefing in 2024.	2024	
Stock Condition Survey	Timeline for a report back to the Committee regarding the Stock Condition Survey be provided and added to the Committee's Work Programme.	July 2024	
Update on LGA Peer Challenge Review regarding Planning.	Update report form the Chief Officer – Planning and Place. That the LGA Peer Challenge Review regarding Planning be moved to the February meeting and further updates be provided on a 6 month basis rather than 3 month.	September 2024	
Flooding in Lancaster - Lancaster City Surface Water Management Plan.	Request an update from County Council. An update from Lancashire County Council is awaited.	2024	
Cabinet – Scrutiny Protocol.	Statutory guidance on Overview and Scrutiny in Local and Combined Authorities.	New Municipal Year.	

BRIEFING NOTE

MOTION: Motion on Fair Tax.

This Council notes that:

1. The pressure on organisations to pay their fair share of tax has never been stronger.
2. Polling from the Institute for Business Ethics finds that “corporate tax avoidance” has, since 2013, been the clear number one concern of the British public when it comes to business conduct.
3. Two thirds of people (66%) believe the Government and local councils should at least consider a company’s ethics and how they pay their tax, as well as value for money and quality of service provided, when awarding contracts to companies.
4. Around 17.5% of public contracts in the UK have been won by companies with links to tax havens.
5. It has been conservatively estimated that losses from multinational profit-shifting (just one form of tax avoidance) could be costing the UK some £17bn per annum in lost corporation tax revenues.
6. The Fair Tax Mark offers a means for business to demonstrate good tax conduct and has been secured by a wide range of businesses across the UK, including FTSE-listed PLCs, co-operatives, social enterprises and large private businesses.

This Council believes that:

1. Paying tax is often presented as a burden, but it shouldn’t be.
2. Tax enables us to provide services from education, health and social care, to flood defence, roads, policing and defence. It also helps to counter financial inequalities and rebalance distorted economies.
3. As recipients of significant public funding, local authorities should take the lead in the promotion of exemplary tax conduct; be that by ensuring contractors are paying their proper share of tax, or by refusing to go along with offshore tax dodging when buying land and property.
4. Where councils hold substantive stakes in private enterprises, influence should be wielded to ensure that such businesses are exemplars of tax transparency and tax avoidance is shunned.
5. More action is needed, however, as current and proposed new UK procurement law significantly restricts councils’ ability to either penalise poor tax conduct (as exclusion grounds are rarely triggered) or reward good tax conduct, when buying goods or services.
6. UK cities, counties and towns can and should stand up for responsible tax conduct - doing what they can within existing frameworks and pledging to do more given the opportunity, as active supporters of international tax justice.

This Council resolves to:

1. Approve the Councils for Fair Tax Declaration.
2. Lead by example and demonstrate good practice in our tax conduct, right across our activities.
3. Ensure IR35 is implemented robustly, and contract workers pay a fair share of employment taxes.
4. Not use offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty.
5. Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers as an artificial device to reduce the payment of tax and business rates.
6. Demand clarity on the ultimate beneficial ownership of suppliers UK and overseas and their consolidated profit & loss position, given lack of clarity could be strong indicators of poor financial probity and weak financial standing.
7. Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due.
8. Support Fair Tax Week events in the area and celebrate the tax contribution made by responsible businesses are proud to promote responsible tax conduct and pay their fair share of corporation tax.
9. Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies.

PROPOSERS:

Cllrs Joanne Ainscough and Jean Parr.

OFFICER BRIEFING NOTE:

By signing up to the Councils for Fair Tax Declaration, Councils need to demonstrate alignment to the Fair Tax Foundation values and encourage responsible tax practice through:

1. Leading by example on their own tax conduct;
2. Demanding to know who owns and profits from businesses the Council buys from – United Kingdom (UK) and overseas, and their full financial reports; and
3. Joining calls for UK public procurement rules to change so that Councils can do more to tackle tax avoidance and award points to suppliers that demonstrate responsible tax conduct.

Points 1 and 3 above do not cause any obvious concerns at this point. However, some of the details regarding the specific resolutions covered by 2 require further exploration. This note provides high level commentary on each of the specific resolutions as included in the original Motion.

Lead by example and demonstrate good practice in its tax conduct of Lancaster City Council and its trading companies.

The wholly-owned trading companies of the Council (More Homes for the Bay – Development & More Homes for the Bay – Investment) are currently not trading and so have limited expenditure outside of its statutory obligations for filing of accounts etc. However, once trading commences the nature of its transactions may well fall into the categories outlined in this motion and have resource implications.

Ensure IR35 is implemented robustly such that contract workers pay a fair share of employment taxes.

There are IR35 procedures in place within the Council to guide Managers when appointing consultants/ agency staff. Managers are required to carry out the IR35 checks via the governments online checking process, delivering a verdict which is then documented as part of the recruitment process. To date there has been limited examples of recruitment falling within IR35, and in each instance indemnity insurance has been obtained from the individuals to protect the Council from any future tax liability.

Avoid offshore vehicles for the purchase of land and property.

The utilisation of offshore holding companies is common amongst property owners. If the Council wishes to acquire land and property, we have no control over the legal entity which owns that property who may be selling it. There could be a key piece of land for regeneration or housing for example that is required and so approval of this element of the motion this may have unintended consequences for the Council. However, demonstrating good practice as per point 2 of the Motion should provide some comfort in this regard.

Undertake due diligence to ensure that not-for-profit structures are not being used inappropriately by suppliers to reduce the payment of tax and business rates and Demand clarity on the ultimate beneficial ownership of suppliers and their consolidated profit & loss position.

Financial appraisals of potential suppliers focus on an organisation's financial viability and do not take an ethical view.

The Public Contracts Regulations 2015 (PCR 2015, regulation 57) provide for contracting authorities to exclude a supplier if they are aware, it is in breach of its obligations relating to the payment of taxes or social security contributions, where the breach has been established by a judicial or administrative decision.

Issues in relation to tax avoidance are significantly more complex. The PCRs do not make provision for discretionary exclusion based on concerns such as tax arrangements or beneficial ownership. Current procurement legislation only allow exclusion in very limited circumstances. Basing companies offshore, or other legal grounds to minimise tax are not legitimate grounds to exclude a company from a procurement and would therefore not be compliant with the PCR 2015. Excluding suppliers on this

basis would be non-compliant and therefore expose the Council to the risk of legal challenge from any supplier excluded from the procurement process on this basis.

Complex ownerships structures are becoming common even for smaller, locally owned operations who are restructuring businesses in order to mitigate costs and maintain profit margins; and large multinational corporations with complex tax arrangements, such as Microsoft ,or Amazon, who are known to have non-UK based headquarters to benefit from alternative taxation regimes and complex beneficial ownership and offshore activities.

Undertaking the level of due diligence required to evaluate bidders and manage suppliers based on their tax arrangements would require a level of skill and capacity not currently available, within Finance, Legal or Procurement. Therefore, even if there were a legal route available to achieve this, there would be a direct cost of undertaking.

These examples highlight how adoption of this element of the original motion could have significant unintended consequences, and where the decisions to examine suppliers would be influenced by subjective decisions.

Researching the response to this motion highlighted that although many Councils have signed the Councils for Fair Tax Declaration, in doing so they have made adjustments to the wording of this element of the Declaration.

Promote Fair Tax Mark certification especially for any business in which we have a significant stake and where corporation tax is due.

Fair Tax Accreditation is a paid accreditation, with costs ranging from £299 - £20,000 (exc. VAT) which could have a disproportionate impact on Small and Medium Enterprises (SMEs)and the Voluntary, Community and Social Enterprise Sectors (VCSEs) sectors. It also is likely that the Council would see this cost included in the tender price.

If the Council was to require a supplier to have accreditation it could represent a procurement risk in terms of not treating all suppliers equally and fairly. For those suppliers who may have tax efficient ways of working, which are legal, this may mean they are unable to get the accreditation. The Council cannot endorse or promote one form of accreditation over another, therefore the Council would have to accept any comparable accreditation.

Support Fair Tax Week events in the Lancaster District and celebrate the tax contribution made by businesses who pay their fair share of corporation tax.

The Fair Tax Foundation's website describes Fair Tax week as: "*A UK-wide recognition of the companies and organisations that are proud to promote responsible tax conduct and pay their fair share of corporation tax*".

The Council could consider what activities planned for Fair Tax week 2024 it could support when details are published for 2024.

Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies.

Government consultation regarding the changes to procurement regulations is now closed, so it is unclear what route the Fair Tax Foundation is seeking in order to change the new drafted legislation. We are not aware of any submissions made by the Council to this consultation but would not see any major resource implications from this part of the motion.

SECTION 151 OFFICER'S COMMENTS

Adoption of this motion in its original form without amendment, or revision may expose the Council to legal and financial risk, as well as requiring additional resources and expertise to meet its requirements. Councillors may wish to propose alternative wording or refer the matter to one of the Council's Scrutiny Committees for consideration.

The recommendations of the Committee could be considered at a future Council meeting.

MONITORING OFFICER'S COMMENTS

The legal and financial risks are identified in the officer commentary and, in particular, those in relation to the Public Contracts Regulations 2015. Should members wish to refer the matter for further, more detailed, consideration the advice would be for a scrutiny committee to carry out this work.

The Overview & Scrutiny Committee's terms of reference include making suggestions on the review and development of policy. Any report would be fed back into Cabinet for consideration.

Budget & Performance Panel can also scrutinise policies & procedures and other supporting arrangements for securing value for money e.g. procurement practices.

In addition to this Audit Committee can consider and endorse amendments to the Council's Financial Regulations and Contract Procedure Rules.

Minute from Council on 27th September 2023

Councillor Ainscough proposed the following motion having given the required notice to the Chief Executive in accordance with Council Procedure Rule 15:-

"This Council notes that:

1. The pressure on organisations to pay their fair share of tax has never been stronger.
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5. More action is needed, however, as current and proposed new UK procurement law significantly restricts councils' ability to either penalise poor tax conduct (as exclusion grounds are rarely triggered) or reward good tax conduct, when buying goods or services.
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9. Support calls for urgent reform of UK procurement law to enable local authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies.”

Councillor Parr seconded the motion.

An officer briefing note accompanied the motion on the agenda.

Councillor Ainscough responded to questions from Councillors prior to the debate.

An amendment to the motion was moved by Councillor Hamilton-Cox:

“Given the legal and financial risks identified in the officer briefing note and, in particular, those in relation to the Public Contracts Regulations 2015, Council is asked to refer the matter for further, more detailed, consideration by the Overview and Scrutiny Committee.

Council notes that Overview & Scrutiny Committee’s terms of reference include making suggestions on the review and development of policy and requests that any report arising is fed back into Cabinet for its consideration ahead of any final decision by full council; aiming for Cabinet's meeting in January 2024.”

With the agreement of her seconder, Councillor Ainscough accepted this as a friendly amendment.

There was a discussion about resourcing the Overview and Scrutiny inquiry work for this matter, resulting in Councillor Cooper proposing a further amendment:

“That the words “aiming for Cabinet’s meeting in January 2024” be replaced with “as soon as reasonably possible.”

Councillor Ainscough and her seconder accepted this as a friendly amendment.

At the conclusion of a lengthy debate a vote was taken and the motion was clearly carried.

Resolved:

- (1) Given the legal and financial risks identified in the officer briefing note and, in particular, those in relation to the Public Contracts Regulations 2015, Council is asked to refer the matter for further, more detailed, consideration by the Overview and Scrutiny Committee.
- (2) Council notes that Overview & Scrutiny Committee’s terms of reference include making suggestions on the review and development of policy and requests that any report arising is fed back into Cabinet for its consideration ahead of any final decision by full council as soon as reasonably possible.