



ALL OVERVIEW AND SCRUTINY PANELS

Panel Report

Public

- Date of Meeting:
- Community O & S Panel – 25 November 2010
 - Environment & Economy O & S Panel – 2 December 2010
 - Resources O & S Panel – 7 December 2010

Title: POLICY FRAMEWORK

Report of: Assistant Director (Governance)

Report reference: GD.61/10

Summary: The Executive is considering recommending to Council that its Policy Framework be reviewed to streamline its content; improve the Council's decision making process; and clarify responsibility for decision making. A copy of the Executive Report (GD.54/10) is attached together with the relevant Executive Minute (ref Ex.171/10).

Questions for / input required from Scrutiny:

Scrutiny is requested to:

1. Consider the proposal;
2. Consider the impact of the proposal on the Council and in particular the relationship between the Council and the Executive;
3. Identify any concerns or suggestions that Members wish to be taken into account.

Recommendations:

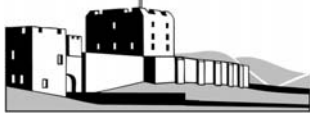
It is recommended that Scrutiny consider the proposal and respond to the Executive with their comments.

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

Contact Officer:

Mark Lambert
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PORTFOLIO AREA: CROSS-CUTTING

Date of **25 October 2010**

Meeting:

Public

Key **Yes**

Decision:

Recorded in Forward Yes

Plan:

Inside Policy Framework

Title:

POLICY FRAMEWORK

Report of:

Assistant Director (Governance)

Report reference:

GD.54/10

Summary:

The Report outlines the purpose of the Council's Policy Framework as specified in Article 4 of its Constitution and recommends improvements to it via a reduction in the number of policies reserved to Council thus streamlining both the framework and the Council's decision making process.

Recommendations:

It is recommended that the Executive:

- i. Note the content of the Report and indicate that they are minded to recommend to Council the amendment to Article 4 of the Constitution and revision of its Policy Framework to those policies as specified in Appendix 2; and
- ii. Refer the Report to all of the Council's Overview & Scrutiny Panels for comment.

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Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1. Purpose of the Policy Framework

1.1 Appendix 1 sets out where the Policy Framework sits in the Council's constitutional arrangements and the number of policies and strategies presently comprising that framework.

1.2 The relevance of the policy framework in the authority's governance arrangements is that:

- Any policies or strategies which are to form part of the framework have to be recommended by the Executive and approved by full Council, following a consultation process involving Overview and Scrutiny Panels. Full Council therefore has ultimate responsibility for signing them off;
- the Executive can only make decisions in accordance with the policy framework approved by Council. Any decision outside the framework (with the exception of some emergency provisions) would require full Council approval and any wish by the Executive to change the approved framework documents would similarly need Council consent;
- if the Executive propose strategies to Council for adoption as part of the framework and Council wishes to amend or reject them, it must first refer the proposals back to the Executive for further consideration and listen to what the Executive has to say before the Council takes a final decision on adoption.

1.3 The policies within the Policy Framework then, along with the budget, are the fixed parameters set by Council within which the Executive must act. Short of that, the Executive are entitled to take whatever decisions they deem appropriate in respect of virtually all the functions of the Council which are vested in them. Indeed, the great majority of functions are deemed to be "executive functions" under the relevant legislation. It is useful to remember the purpose behind the legislation which brought in the new governance arrangements. It was designed to streamline and speed up decision making and, more particularly, to produce greater clarity as

to where responsibility for actual decisions rested by vesting the decision-making powers in a small, identifiable body (the Leader and Executive) or, where there was an elected Mayor, in that individual personally. The checks and balances on the Executive's powers were intended to be that:

- (a) the general policy, direction and finances of the authority had to be determined by full Council through their approval of the budget and policy framework and the Executive have to act within those constraints and
- (b) Executive decisions are subject to call-in by overview and scrutiny which provides capacity to request the Executive to reconsider a decision although, ultimately, any final decision on an executive function is down to the Executive because a call-in acts as a brake only and not a usurpation of Executive functions. The Executive always has final call on an executive decision as long as it is within the budget and policy framework.

1.4 It should also be noted that the legislation provides for a strict compartmentalisation of Council functions and responsibilities. The full Council only are allowed to take decisions on those matters deemed to be Council functions and only the Executive can take decisions on what are prescribed by the legislation as being Executive functions. There is no capacity to “mix and match” and so, for example, the Executive cannot refer to Council for decision a matter which is designated as an executive function as was possible under the old committee system, where the full Council could do anything which a committee could. It is not so under the current governance arrangements. If a matter is deemed to be an executive function and requires a decision (and most decisions will be) then the Executive must be responsible and stand accountable for taking it to reflect the original intentions of achieving clarity of accountability set out in the founding legislation. If the wrong body takes the decision then it is ultra vires and potentially challengeable. So it is important to make sure the correct body takes the decision and the point is more than academic.

1.5 It is also important to be able to identify clearly whether a decision is inside or outside the policy framework, because if it is inside then the Executive can take it

but if it is outside then it would be a matter for full Council. The number of policies and strategies within the policy framework obviously has a bearing on the ease of identifying whether a potential decision is within or outwith the framework and thereby down to the Executive or the Council. The more policies and strategies within the framework, the greater the difficulty in determining whether a decision is within or outside the framework if it has to be checked against a raft of documents and the greater capacity for lack of clarity in identifying where the decision making responsibility lies.

2. What must be in the Policy Framework?

- 2.1 The legislation sets out a limited number of core strategies which must be within the Policy Framework and which therefore must be approved by full Council. These are intended to be the most important governing strategies which go to the root of the authority's policy direction and aims and must be included as part of the policy framework by law. For the purposes of the City Council these include the Crime & Disorder Reduction Strategy; Licensing Authority Policy Statements; Sustainable Community Strategy; and Plans and alterations which together comprise the Development Plan.
- 2.2 The legislation also allows (and herein lies the potential problem) authorities to include other plans and strategies within its policy framework definition over and above the basic statutory core plans. The intention was to allow authorities some local discretion in elevating a particular plan or strategy into their policy framework to reflect local preference and give some measure of local autonomy. When Carlisle first adopted its constitution, it took the view that all the authority's plans and strategies should be deemed to be part of the policy framework and thereby approved by full Council to reflect both their importance and the sovereignty of Council in setting policy. The thinking at that time was that, on top of the statutory core plans, there would be very few additional plans and strategies which would require to be adopted and so the governance arrangements could cope with their adoption. This has proved not to be the case. As Appendix 1 indicates, there are currently around 80 plans listed in the authority's framework and the number could well be more and is growing annually. This number was certainly never within the

contemplation of the cross party member/officer group who worked up the constitution at its inception, and appears to be considerably beyond the number in other best practice authorities.

The consequences of having a large policy framework like this are:

- It ties up the administrative workings of the authority at member and officer level if large numbers of plans have to be formally adopted through the Executive, Overview and Scrutiny and full Council process. This is a draw on both member and officer time and is unlikely to be sustainable with a reduced officer establishment;
- it makes it extremely difficult, and increasingly so, to determine conclusively whether any decision is likely to be inside or outside the policy framework (and thereby a matter for the Executive or Council) as to do this with certainty would require trawling through all 80 or so plans and strategies and judging the potential decision against them to decide whether it is inside or outside the framework. The certainty of the legality of any given decision is therefore not as easy to ascertain as it should be;
- it leads to a blurring of accountability and responsibility if too many decisions which rightly could be taken by the Executive are referred to Council, simply because they are dressed up under the label of a new “policy” or “strategy” which full Council needs to adopt. This is contrary to the spirit of the legislation which envisaged the bulk of decisions being made by the Executive, with only a few key policies being approved by full Council. This can lead to the two fold disadvantage of a) full Council becoming involved in the detail of signing off relatively unimportant “policy” decisions which should really be matters for the Executive in any streamlined process and b) the Executive referring more issues to Council than they should because of a lack of clarity as to whether the referral is necessary or to get broader support for decisions;

- it leads to unnecessary theoretical discourse on whether a proposal is a “plan”, a “strategy” or simply an operational protocol in an attempt to identify whether it needs to be referred through the full policy framework adoption process or can be dealt with under a lighter regime. This is not satisfactory because a) it leads to subjective and inconsistent judgement calls on a case by case basis to determine what the exact status of a particular document is and b) relatively unimportant documents, which are really operational protocols, are wrongly given the status of “policies” and as a consequence take up too much valuable member and officer time channelling them through to adoption at full Council.

2.4 Appendix 2 specifies what must be included within the policy framework (these policies are under the heading ‘Policies required to be reserved to Council by Statute’) together with what the Government guidance recommends is included. It is also recommended that a sentence be added to the Constitution to clarify that the term ‘Budget’ includes documents such as the Medium Term Financial Plan; Capital Strategy; Asset Management Plan and Treasury Management Strategy Statement, Investment Strategy and Minimum Revenue Provision Strategy (one document). The effect of this is that Council will retain the decision making authority over these documents.

2.5 It is proposed that the content of Appendix 2 becomes the Council’s new Policy Framework as specified within Article 4 of the Constitution. It should be noted that there will be other policies, for example the Council’s Gambling policy, which are required by their respective enabling legislation to be dealt with by Council irrespective of what is specified in the Authority’s Policy Framework.

2.6 The following table illustrates, for comparative purposes, the number of policies reserved to district councils that are rated as ‘excellent’ for CPA purposes and having gained a score of 4 in use of resources. There is some variation in the size of the policy framework, of the 11 councils, 7 have 11 or less policies reserved to full Council. The leaner policy base has no doubt assisted the councils in achieving excellence.

Cambridge	8	Sevenoaks	70
Chichester	34	South Ribble	11
Chorley	6	Staffs/Moorland	8
Elmbridge	26	Tonbridge/Malling	24
Maidstone	7	Wychavon	11
Runnymede	10		

3 The Role of Council

- 3.1 There are many positive reasons for amending the Policy Framework, not least the clarity in decision making responsibility and also the more streamlined process which the Council will operate. Members will, of course, be concerned about the role of the Council under the amended arrangements.
- 3.2 Council will still have a number of core policies reserved to it and, in respect of these, it will be the same system as operates now. The reduced policy framework will enable the Executive to determine Council policy in other areas but this will not usurp the right of the Council to debate any issues of concern. Via the Overview & Scrutiny function, any decision may be called in and, thereafter, referred to Council. Similarly, a Motion to debate any particular issue may be made direct to Council. Ultimately, any decision and the responsibility for it will rest with the Executive but, by the nature of politics, great account must be taken of the Council's view.

4. What happens to the Policies which will no longer be part of the Policy Framework?

- 4.1 The Policies will still exist and operate but will be the responsibility of the Executive. Content and operation will be able to be influenced by the Council's Overview & Scrutiny Panels and, ultimately via that route, the Council.

5. Conclusions

- 5.1 For all the reasons mentioned above, the case for reviewing the number of policies and strategies presently comprising the authority's policy framework is compelling, particularly given that the Transformation Programme is leading to a leaner officer corps and will necessitate a much sharper focus by both members and officers on what is important to the authority and a more economical use of their time. A way

forward is to consider limiting the policy framework only to the statutory core strategies which must be in it with (possibly) the addition of any other strategies which the authority concludes are of sufficient importance to warrant their inclusion, although the Council may be content to include only the statutorily prescribed strategies and nothing more. It is not possible to give a definitive estimate of what a smaller policy framework designation would save in monetary terms. What it should do, however, apart from any other advantage is to reduce the time demands on both members and officers and enable the reduced officer establishment to service the authority's decision making processes from a lower staffing base. If the authority is looking at "transformation" in its broadest sense, then undertaking a radical look at how it makes its decisions and who decides what goes hand in hand with the review of the senior management team and the directorates.

- 5.2 Agreeing any changes to the policy framework definition is a matter for full Council, given that it requires amendments to the authority's Constitution. There should, as far as this may be possible, be broad consensus on the issue because it is conducive to the sound governance of the authority that all the political groups are happy with the balance and content of the Constitution, regardless of whether they are in control or in opposition, as it is intended to serve them whichever side of the divide they may be on at any given time.
- 5.3 The proposed timetable for this matter is that a Report be brought back to the Executive on 17 January 2011 and in the interim the proposal be considered by all of the Council's Overview & Scrutiny Panels. Thereafter, if deemed appropriate, a Report with a recommendation will be presented to the Council at its Meeting on 1 March 2011.

6 CONSULTATION

- 6.1 Consultation to Date: The Group Leaders have been consulted.

6.2 Consultation proposed: The Chairs of the Overview & Scrutiny Panels have indicated that they all wish their panels to scrutinise this matter. The report will be considered by O&S and referred back to the Executive and then, if appropriate, on to Council as described in 5.3.

7 RECOMMENDATIONS

It is recommended that the Executive:

- i. Note the content of the Report and indicate that they are minded to recommend to Council the amendment to Article 4 of the Constitution and revision of its Policy Framework to those policies as specified in Appendix 2; and
- ii. Refer the Report to all of the Council's Overview & Scrutiny Panels for comment.

8 REASONS FOR RECOMMENDATIONS

As detailed in the Report, the proposed changes will lead to a streamlined policy framework which will streamline the decision making process and improve the clarity of decision making and in particular the responsibility for decisions.

9 IMPLICATIONS

- Staffing/Resources – None, although the changes will reduce the burden on officer time in terms of servicing the existing Policy Framework. A great deal less time will be spent by both Officers and Members dealing with a cumbersome framework and also having to refer 'routine' operational policies to Council.
- Financial – None.
- Legal – Contained within the body of the Report.
- Corporate – The comments in the Staffing/Resources Implications section are equally applicable in this category.
- Risk Management – The reduced Policy Framework will reduce the risk to the Council as the body with the legal power to take any particular decision (the Council or the Executive) will be more easily identifiable.
- Environmental – None.
- Crime and Disorder – None.

- Impact on Customers – There will be no direct impact but the internal improvements to the Council's decision making mechanism should improve the operation of the Council and thereby the service to our customers.
- Equality and Diversity –

Impact assessments

Does the change have an impact on the following?

Equality Impact Screening	Impact Yes/No?	Is the impact positive or negative?
Does the policy/service impact on the following?		
Age	No	
Disability	No	
Race	No	
Gender/ Transgender	No	
Sexual Orientation	No	
Religion or belief	No	
Human Rights	No	
Social exclusion	No	
Health inequalities	No	
Rurality	No	

If you consider there is either no impact or no negative impact, please give reasons:

The purpose of this report does not impact upon equality in terms of specifying the policies to be included in the Council's Policy Framework. The content of those policies could have an effect but these will be dealt with when those individual policies are being developed and adopted.

If an equality Impact is necessary, please contact the P&P team.

APPENDIX 1

POLICIES IDENTIFIED IN ARTICLE 4 OF THE COUNCIL'S CONSTITUTION

POLICY	SOURCE
Advice Agencies Strategy	Article 4
Affordable Warmth Strategy	Article 4
Asset Management Plan	Article 4
Capital Strategy	Article 4
Carlisle and Eden Crime and Disorder Reduction Partnership, Strategic Assessment 2007	Article 4
Climate Change Strategy	Article 4
Community Plan for Carlisle	Article 4
Consultation Strategy	Article 4
Corporate Charging Policy	Article 4
Corporate Communications Strategy	Article 4
Corporate Complaints and Customer Feedback Policy	Article 4
Corporate Partnership Policy	Article 4
Corporate Plan 2007-2010	Article 4
Counter Fraud and Corruption Policy	Article 4
Cultural Strategy	Article 4
Cumbria Sub Regional Housing Strategy	Article 4
Customer Care Strategy	Article 4
Delivery Model for Carlisle Renaissance	Article 4
Development Framework and Movement Strategy	Article 4
Disability Equality Scheme	Article 4
Discretionary Rate Relief Policy	Article 4
Diversity Policy	Article 4
E Government Strategy	Article 4
Economic Development Strategy	Article 4
Emergency Planning	Article 4
Environmental Health Strategy	Article 4
Environmental Protection Plan	Article 4
Equal Opportunities Policy	Article 4
Equality and Diversity Policy and Corporate Equality Action Plan	Article 4
Food Safety Service Plan	Article 4
Gambling Policy	Article 4
Gender Equality Scheme	Article 4
Green Travel Plan	Article 4
Growing Carlisle – Economic Strategy for the Carlisle City Region	Article 4
Health and Safety Service Plan	Article 4
Health and Safety Strategy	Article 4
Homelessness Strategy	Article 4
Housing Renewals Policy (RRO)	Article 4
Housing Strategy	Article 4

Information and Communications Technology (ICT) Strategy	Article 4
Information Management Policy	Article 4
Investment Strategy	Article 4
IT Strategy	Article 4
Learning City Plan	Article 4
Licensing Authority Policy Statement	Article 4
Local Agenda 21 Strategy	Article 4
Local Air Quality Strategy	Article 4
Local Strategic Partnership Strategy	Article 4
Local Transport Plan	Article 4
Marketing Strategy	Article 4
Medium Term Financial Plan	Article 4
Parks and Countryside Strategy	Article 4
Partnership for Health Strategy	Article 4
Partnerships Strategy	Article 4
People Strategy	Article 4
Physical Activity and Sport Strategy	Article 4
Planning Enforcement Policy	Article 4
Plans and alterations which together comprise the Development Plan	Article 4
Play Area Strategy	Article 4
Play Policy and Strategy	Article 4
Procurement Strategy	Article 4
Public Relations Strategy	Article 4
Quality Protects Management Action Plan	Article 4
Race Equality Scheme	Article 4
Recreation Strategy	Article 4
Rent Arrears Recovery Policy Statement	Article 4
Risk Management Policy	Article 4
Rural Strategy	Article 4
Safeguard Policy for the Payment of Housing Benefit and Local Housing	Article 4
Shared Services Policy	Article 4
Sports Development/Provision Plan	Article 4
Strategic Audit Plan	Article 4
Supporting People Strategy	Article 4
The plan and strategy which comprise the Housing Investment Programme	Article 4
Three Rivers Strategy	Article 4
Tourism Strategy/Tourism Priority Plan	Article 4
Treasury Management Strategy Statement	Article 4
Tullie House Development Plan	Article 4
Unreasonable and Unreasonably Persistent Complaints Policy	Article 4
Waste Management Strategy	Article 4

All other plans and strategies of the Council.

Other Plans and Strategies of the Council

Adoption of Revised Race Equality Scheme	OTHER
Air Quality Updating Screening Assessment Report	OTHER
Allerdale/Copeland/Carlisle Revenues and Benefits Shared Service	OTHER
Anti-Social Behaviour Act 2003	OTHER
Benefit Fraud Sanctions Policy	OTHER
Bereavement Services Policy	OTHER
Bits Park Tennis Airdome Proposal	OTHER
Building Maintenance Efficiency Review	OTHER
Calls For Proposals From the Department of Culture, Media and Sport Casino Advisory Panel	OTHER
Car Parking	OTHER
Carlisle and Eden Crime and Disorder Reduction Partnership Plan 2010-11	OTHER
Carlisle Christmas Market 2007 leaflet	OTHER
Carlisle City Council's Transformation Programme - Development of the Council's Priorities	OTHER
Carlisle Renaissance Board Action Plan	OTHER
Carlisle Renaissance Implementation Team	OTHER
Carlisle: The Christmas City	OTHER
Castle Street Public Realm Improvement Project	OTHER
City Council Priorities	OTHER
Civic Centre Accommodation - Phase 3	OTHER
Comprehensive Equality Scheme	OTHER
Concessionary Fares Scheme 2008/2009	OTHER
Consultation and Communications Framework	OTHER
Contaminated Land Strategy	OTHER
Corporate Communications Policy 2008 Incorporating the Internal Communications Strategy 2007	OTHER
Counter Fraud and Corruption Strategy	OTHER
Criminal Records Bureau	OTHER
Cumbria Choice Based Lettings Scheme - Partnership Agreement	OTHER
Cumbria School Organisation Review: Consultation - Planning 11-19 Education for the Carlisle Area	OTHER
Data Protection Policy	OTHER
Dignity and Respect	OTHER
Disabled Facilities Grants (DFGs) - process - funding and lobbying of government and virement	OTHER
Energy Efficiency - Improving Council Buildings	OTHER
Energy Efficiency Supplementary Planning Document	OTHER
Enhanced Two-Tier Working	OTHER
Environmental Conditions - Revenues and Benefits Office	OTHER

Environmental Enhancements	OTHER
Environmental Policy	OTHER
Environmental Policy Statement	OTHER
Equal Opportunities - age discrimination	OTHER
Equality and Diversity Policy - disability	OTHER
Equality and Diversity Policy - gender, race, belief etc	OTHER
Fair Trade City Resolution	OTHER
Final Report of the Evening and Late Night Economy Task Group	OTHER
First Aid	OTHER
Guidance on advertising	OTHER
Guidelines for Managers on Working Time Regulations	OTHER
Health & Safety Policy	OTHER
Healthcare in Cumbria and Lancashire: Clinical Assessment and Treatment and Support (CATS) Services - Public Consultation	OTHER
ICT Policy and Strategy	OTHER
ICT Security Policy	OTHER
Implementation of Personnel and Workforce Strategy Project	OTHER
Induction (Information for new staff)	OTHER
Internet and E-mail	OTHER
Internet Code of Conduct	OTHER
Introduction of Charges for the Collection of Bulky Wastes	OTHER
Introduction of 'Free' Off-Peak Concessionary Fares Scheme	OTHER
Job Share	OTHER
Learning and Skills Council Review of Post-16 Education in Carlisle	OTHER
Learning City Policy Statement	OTHER
Local Air Quality Management - Air Quality Action Plan	OTHER
Local Air Quality Management: Detailed Assessment Report	OTHER
Local Authority Business Growth Initiative (LABGI)	OTHER
Management of Memorials in City of Carlisle Cemeteries and Closed Churchyards	OTHER
Mandatory Licensing of Houses in Multiple Occupation	OTHER
Members' Learning and Development	OTHER
Money Laundering Policy	OTHER
Occupational Health	OTHER
Off Street Car Park Extensions	OTHER
Partnership Policy	OTHER
Play Area Policy	OTHER
Play Policy and Strategy (Play for Today, Play for Tomorrow, 2007-2012)	OTHER
Policy on Equal Opportunities in Recruitment, Employment and Training covering Gender, Marital Status, Race, Ethnic Origins, Nationality, Religion and Belief	OTHER

Policy on Equal Opportunities in Recruitment, Employment and Training covering People with Disabilities	OTHER
Policy on the recovery of overpaid Housing and Council Tax Benefit	OTHER
Review of Emergency Planning Arrangements	OTHER
Review of the New 'Free' Concessionary Fares Scheme	OTHER
Shared ICT Services Policy	OTHER
Skills for Life Strategy	OTHER
Smoke Free Environment	OTHER
The Management of Memorials in City of Carlisle Cemeteries and Closed Churchyards	OTHER
Tourism Strategy/Tourism Priority Plan	OTHER
Training Policy	OTHER
Tullie House Governance	OTHER
Violence to Staff	OTHER
Workforce Development Plan	OTHER
Cumbria Choice Based Lettings Scheme - Policy	OTHER

APPENDIX 2

This Appendix specifies the Policies which will form the Council's revised Policy Framework in Article 4 of the Council's Constitution together with a wording amendment:

POLICIES REQUIRED TO BE RESERVED TO COUNCIL BY STATUTE:

- Crime & Disorder Reduction Strategy
- Licensing Authority Policy Statement
- Plans and alterations which together comprise the Development Plan
- Sustainable Community Strategy

NB: Legislation may require other plans and strategies to be approved or adopted by the full Council

POLICIES RECOMMENDED BY THE GOVERNMENT TO BE RESERVED TO COUNCIL:

- Agenda 21
- Corporate Plan
- Food Law Enforcement Service Plan
- The Strategy and Plan which together comprise the Housing Investment Programme

AMENDMENT TO THE CONSTITUTION:

(New wording underlined)

Article 4. 4.01(b) to read:

Budget. The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council tax base, setting the Council tax and decisions relating to the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits. For the avoidance of doubt the Budget includes the Council's Medium Term Financial Plan; Capital Strategy; Asset Management Plan and Treasury Management Strategy Statement, Investment Strategy and Minimum Revenue Provision Strategy (one document).