

## Bath & North East Somerset Council

MEETING:	<b>Cabinet</b>	
MEETING DATE:	<b>12<sup>th</sup> September 2019</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 3152</b>
TITLE:	<b>Bath Clean Air Plan-September 2019 update</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b> <b>Appendix 1- Clean Air Zone Project Programme</b> <b>Appendix 2- Report of the independent Peer Review of the preferred option</b> <b>Appendix 3- Draft revenue reinvestment plan of the Clean Air Zone Charging Order</b>		

### 1 THE ISSUE

- 1.1 Poor air quality is the largest known environmental risk to public health in the UK. Investing in cleaner air and doing more to tackle air pollution are priorities for the EU and UK governments, as well as for Bath and North East Somerset Council (B&NES). B&NES has monitored and endeavoured to address air quality in Bath, and the wider B&NES area, since 2002. Despite this, Bath has ongoing exceedances of the legal limits for Nitrogen Dioxide (NO<sub>2</sub>) and these are predicted to continue until 2025 without intervention.
- 1.2 This report provides an update on the actions undertaken following the Cabinet meeting in March 2019 and sets out the decisions required to progress the project as set out within the programme shown in Appendix 1.

### 2 RECOMMENDATION

The Cabinet is asked to;

- 2.1 Note the progress on the delivery of the Clean Air Zone (CAZ) Project with a view to ensuring compliance in the shortest possible time, including;
- a) The revised project programme (Appendix 1).

- b) The outcome of the independent peer review and any recommended actions.
- 2.2 Approve the incorporation of the CAZ scheme into the Council's capital programme, with a total current cost budget of £17.996m, of which £5.944m is to be fully approved and £12.052m provisionally approved, subject to future grant awards.
- 2.3 Note the current estimates of revenue costs and funding as set out in paragraph 5.6 totalling £31.365m, of which £0.231m of grant funding has been awarded. The remainder is subject to future grant awards and Full Business Case approval.
- 2.4 Grant authorisation for officers to use the following powers:
  - a) The use of anti-idling enforcement powers under The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002;
  - b) The use of environmental weight limit enforcement powers under the Road Traffic Regulation Act 1984.
- 2.5 Following an appropriate tender process, delegate to the Corporate Director and Director of Finance (s.151 Officer) in consultation with the Cabinet member for Resources and Deputy Leader, the decision to appoint a financial partner to administer the proposed financial assistance schemes on behalf of the Council.
- 2.6 Agree that the consultation on the CAZ Charging Order and scheme overview can commence on 23 September 2019.
- 2.7 Note the updated Equalities Impact Assessment (EqIA) as published at (<https://www.bathnes.gov.uk/bath-breathes-2021-overview/outline-business-case>).

### 3 THE REPORT

- 3.1 In order to achieve the overall project programme (shown in Appendix 1) in light of the changes to the governance arrangements, and ensure compliance with the EU Limit Values for NO<sub>2</sub> in the shortest time possible and by 2021 at the latest, it is necessary for Cabinet to agree that the public consultation on the Charging Order and final scheme will commence on 23 September 2019.
- 3.2 As part of the scheme, it will be necessary to restrict the flow of traffic through Queen Square, however these measures are temporary until such time as the remaining exceedances have been eliminated in line with the monitoring and evaluation plan.
- 3.3 As agreed as part of the Cabinet decision on 5 March 2019, an in-depth review of the agreed community-led boundary extensions (which arose as a result of responses to the public consultation rather than being required to achieve compliance with relevant limit values for NO<sub>2</sub>) has now been completed. During the detailed design of the Eastern extension, Officers have identified an opportunity to reduce the signage and camera 'clutter'

in this predominantly residential area by relocating the CAZ boundary so as to more closely follow the route of the canal. As well as reducing the impact of the CAZ cameras and signage on the amenity of the area, a further advantage of revising the boundary is to more closely align it with the boundary of the Residents Parking Zone (RPZ). This will help to prevent non-compliant vehicles (owned by residents or non-residents) from parking only in the area of the RPZ that would otherwise be left outside of the zone. Ward councillors and Residents Associations are supportive of the proposals and Officers are now in the process of consulting individual residents about this amendment prior to consulting with the wider public during the proposed public consultation on the Charging Order in September 2019.

- 3.4 An independent peer review of the CAZ project was commissioned at the request of the Cabinet in July 2019. It was tasked with undertaking a thorough desktop review of the business case development processes used to arrive at the conclusions as set out in previous Cabinet reports and to ensure that no opportunities have been missed to achieve the air quality objective in the shortest possible time.
- 3.5 The total cost of the independent peer review was approximately £9k and it is appended to this report (Appendix 2).
- 3.6 The peer review broadly supports the approaches taken by the Project Team and Members to date and that they are in accordance with government guidance. It recognises that the modelling and assessment work was undertaken in relatively short timescales which have been imposed by the government's Joint Air Quality Unit (JAQU), and that there are specific, local factors which have required the Council to develop bespoke approaches. It also acknowledges that there is an absence of real-world evidence to evaluate the effectiveness of CAZ's and as such, there is uncertainty in the outcomes which will be delivered.
- 3.7 The peer review recommends the development of contingency plans to allow measures to increase the effectiveness of the CAZ, should emissions not decrease as planned. All of the recommendations of the peer review will be fed into the development of the Full Business Case (FBC) which will be brought before Cabinet for a decision in December 2019. The monitoring and evaluation plan will be updated in light of these recommendations and included as part of the FBC to ensure that the CAZ is successful in delivering its aim of improving air quality throughout the city and ensure compliance with the EU Limit Values for NO<sub>2</sub> in the shortest time possible and by 2021 at the latest.
- 3.8 In addition, the peer review acknowledges that, notwithstanding the limitations with any modelling of the CAZ, the proposed CAZ scheme has the potential to control traffic flows in order to achieve the desired outcome of compliance within the shortest possible time.
- 3.9 The Cabinet recognises that the proposed CAZ scheme is a necessary and urgent step to achieve compliance with EU Limit values and improve the environment for its residents, businesses and visitors. However, the emerging priority of tackling the climate emergency must be properly

addressed, including the need to tackle congestion by reducing the number of journeys made within the city in the short to medium term. This will improve the environment for residents and visitors, help to preserve the condition of heritage infrastructure and reduce costs to businesses through having fewer vehicles on the roads. Tackling both carbon dioxide (CO<sub>2</sub>) emissions and congestion will support the aim of making Bath a world leader in air quality improvement and sustainable transport.

#### **4 STATUTORY CONSIDERATIONS**

- 4.1 In 2010 the formal deadline passed for EU Member States to comply with legal limits for NO<sub>2</sub> concentration levels set under the Directive to protect human health. Where a breach of the limits takes place after the relevant deadline, air quality plans must be prepared to achieve compliance "in the shortest time possible". Nine years on from the deadline, the UK continues to breach legal limits.
- 4.2 The European Commission referred the UK to the European Court of Justice (ECJ) for failing to respect agreed air quality limit values and for failing to take appropriate measures to keep exceedance periods as short as possible. This action has been taken as the Commission considers that the UK has not presented credible, effective and timely measures to reduce pollution, within the agreed limits and as soon as possible, as required under EU law.
- 4.3 The ECJ may impose both a periodic penalty payment and a lump sum on a Member State, and the Commission's current position is to seek both a penalty payment and a lump sum in every case it refers to the ECJ. It is too early to quantify the potential financial sanction with any accuracy, but it would be calculated taking into account:
  - a) the importance of the rules breached and the impact of the infringement on general and particular interests,
  - b) the period the EU law has not been applied,
  - c) the country's ability to pay, ensuring that the fines have a deterrent effect.
- 4.4 Given the nature of the non-compliance, its duration and its impact on the wider population, the penalty could potentially be substantial. Whilst any financial penalty imposed by the ECJ would be imposed upon the UK government, Part 2 of the Localism Act 2011 empowers the government to require local authorities to make payments of amounts, as determined by the government, in respect of an EU financial sanction.
- 4.5 In effect, this allows UK central government to pass on all, or a proportion of, any fines imposed by the ECJ to local authorities in England which the government considers have contributed to the failings that have led to the above proceedings. As one of the local authorities involved, the Council could be at risk of having a large fine imposed on it by the UK government, depending upon the exact amount of the penalty imposed by

the ECJ. This is an important risk to the Council. At present the impact of Brexit is unclear with regard to this process and the threat of fines.

- 4.6 It is not known how UK Government would exercise this power if at all, but it underscores the critical importance of the proposed measures to secure air quality compliance with UK and EU statutory NO<sub>2</sub> limits in the shortest time possible consistent with the constraints of the relevant legislation, its legal obligations and public law considerations.
- 4.7 Under the Environment Act 1995, an initial Ministerial Direction was issued to Bath and North East Somerset Council and many other UK cities including Derby, Leeds, Nottingham and Southampton in July 2017. This Direction stipulated that the Council should prepare a final plan for a scheme to deliver compliance within legal limits by 31 December 2018 in line with the UK Air Quality Plan (AQP) which was achieved in March 2019. A second Ministerial Direction was issued following this submission which stipulated that the Council must submit a FBC by 23 August 2019 at the latest. However, in light of the change in administration, the change to the governance arrangements, the requirement to independently review the scheme and the need to consult on the revised CAZ C proposals and to take that consultation into account in finalising the scheme, the programme has been adjusted and it is now anticipated that the FBC will be submitted in December 2019 (subject to sign-off from the Cabinet on 5 December 2019).
- 4.8 Failing to take action towards achieving compliance within the shortest possible time could leave the Council exposed to legal challenge, not only for a failure to fulfil its statutory duty to comply with the Ministerial Direction, but also its obligation under air quality legislation to achieve compliance with legal NO<sub>2</sub> limits in the shortest possible time.
- 4.9 The Client Earth No. 2 judgment gave a robust ruling on the interpretation of the obligations flowing from the Directive and, in particular, the requirement that air quality plans must be prepared to achieve compliance "in the shortest time possible". The ruling set out a three-part test for assessing whether air quality plans meet that requirement. This test requires that plans must:

- Aim to achieve compliance as soon as possible;
- Choose a route to compliance which reduces human exposure as quickly as possible; and
- Ensure that compliance with the limit values is not just possible but likely.

Achieving compliance with air quality standards across Bath will result in widespread public health improvements. Specific health impacts for nitrogen dioxide include:

- Long-term exposure to air pollution is linked to increases in premature death, associated with lung, heart and circulatory conditions.

- Short term exposure can contribute to adverse health effects including exacerbation of asthma, effects on lung function and increases in hospital admissions.
- Other adverse health effects including diabetes, cognitive decline and dementia, and effects on the unborn child are also linked to air pollution exposure.

4.10 The Council has a public sector equality duty to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people carrying out their activities. An Equalities Impact Assessment (EqIA) was drafted in September 2018 so that the Council could fulfil this duty and has been subsequently reviewed (<https://www.bathnes.gov.uk/bath-breathes-2021-overview/outline-business-case>)

4.11 The EqIA should be read in conjunction with the Distribution and Equalities Impact Analysis (as published on <http://www.bathnes.gov.uk/bath-breathes-2021>).

4.12 Transport is widely acknowledged as a key driver of air quality issues. It is estimated in B&NES that around 92% of all Nitrogen Oxide (NOx) emissions are attributable to road traffic. Consequently, the Bath Clean Air Plan (CAP) has been developed with an understanding of the wider transport, business and air quality strategies in B&NES and beyond, in order to accord with these policies (for example the Getting Around Bath Strategy and Joint Local Transport Plan), wherever possible. Whilst the objectives of the CAP overlap with other local and regional strategies, and its delivery should be beneficial to achieving the objectives within these strategies, the CAP has its own specific objectives (resulting from the legal direction on the Council) and therefore does not seek to achieve all other local transport objectives such as general reductions in traffic flows or improvements in the public bus network.

4.13 Section 9 of this report sets out the ongoing consultation, communication and engagement which has been carried out on Bath's CAP. The intention is to build on the engagement which has been undertaken through this process and to continue to communicate clearly and openly with local residents, businesses and visitors. In addition, the learning from the consultation on the CAP – including the high level of interest and engagement – will be fed into future consultations.

4.14 In order to take enforcement action and reinforce behaviour changes, it is necessary for Cabinet to authorise Officers to use the powers to enforce weight limits under the Road Traffic Regulation Act 1984. These powers are used by other local authorities in addition to the powers enforced by the Police to prevent vehicles contravening weight limits on the highway which will help to manage air quality and congestion and protect the character and environment of heritage areas.

4.15 Similarly, it is necessary for Cabinet to authorise Officers to use anti-idling powers under the Road Traffic (Vehicle Emissions) (Fixed Penalty)

(England) Regulations 2002 in order to help to manage air quality and congestion and protect the character and environment of heritage areas.

## 5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 Capital expenditure for the CAZ infrastructure and mitigation measures is to be funded via grant award by DEFRA and Department of Transport. Further funding opportunities through the West of England Combined Authority (WECA) to enhance the package of measures have been agreed in principle.

The current total scheme capital costs and funding awards are set out in the tables below:

<b>Capital Spend</b>	<b>For Full Approval £'000</b>	<b>For Provisional Approval £'000</b>	<b>Total £'000</b>
Implementation of CAZ Enforcement System	3,949	871	4,820
Implementation of traffic management and public realm amendments	1,995	-	1,995
Mitigation measures to support those impacted by the scheme	-	9,924	9,924
Risk allocation	-	1,257	1,257
<b>Total Capital Spend Estimate</b>	<b>5,944</b>	<b>12,052</b>	<b>17,996</b>

<b>Capital Funding</b>	<b>Funding Fully Secured £'000</b>	<b>Funding subject to grant award £'000</b>	<b>Total £'000</b>
Implementation Fund Grant (DEFRA/DFT)	5,944	2,128	8,072
Clean Air Fund (DEFRA/DFT)	-	9,924	9,924
<b>Total Capital Spend Estimate</b>	<b>5,944</b>	<b>12,052</b>	<b>17,996</b>

5.2 Capital expenditure will be incurred by the Council across a range of activities as listed below:

### **Enforcement system:**

- The supply, installation, configuration and testing of fixed Automatic Number Plate Recognition (ANPR) cameras; a fully-equipped mobile enforcement vehicle (MEV) and an integrated back office system with relevant staff accommodation;

- the provision of a server system, including replacement after five years
- a complete system test and site acceptance testing (SAT);
- Design peer review and project management for systems integration and operational planning;
- Project management of the delivery phase.

**Street works:**

- camera and communications network infrastructure (all required cabinets, mounting posts, ducting and cabling for the ANPR cameras and data communications network and associated traffic management);
- road signage (all required signage, marking and kerb realignment and associated traffic management);
- a review of the current Resident's Parking Zones (RPZ's).
- Variable Message Signs (VMS);
- Traffic restrictions and public realm enhancements at Queens Square;

**Mitigation Measures:**

- Bus upgrades (retrofits and repowering);
- Last mile delivery (cargo bike scheme);
- Improved Park and Ride security and extended opening hours;
- Electric vehicle charging points;

5.3 The funding for the capital spend is from the following sources:

**Implementation Fund Grant** (DFT/DEFRA)- £5.94m of capital has already been awarded to the Council towards design development and implementation of the scheme, this funding will support the development and submission of the FBC, which will allow the balance of £2.13m to be released. The release of these funds also enables time critical works (e.g. cable ducting) to be carried out so that the project timescales can be maintained.

**Clean Air Fund** (DFT/DEFRA)- £9.924m of capital funding subject to government approval of the FBC to fund the mitigation measures set out above.

**WECA Funding** - Proposals are being developed and will be subject to the WECA funding approval process.

5.4 The Capital Programme approval can only be given for the £5.94m of secured grant funding, with the balance being earmarked in the

Provisional Programme and subject to the future approval of grant awards being confirmed.

5.5 Outside of direct Council Expenditure, First Group have provided a letter of intent to invest more than £12m in upgrading and replacing non-compliant buses, reflecting their commitment to clean air within the city. First will also receive £0.65m from the Clean Bus Technology Fund towards the cost of retrofitting of older buses.

5.6 Revenue expenditure for the CAZ infrastructure and mitigation measures is to be funded via grant award by DEFRA and Department of Transport and revenue from operating the CAZ.

The current total scheme revenue costs and funding awards are set out in the tables below:

<b>Revenue Spend over the projected life of the scheme (10 years)</b>	<b>Spend – Grant Awarded £'000</b>	<b>Spend – Subject to Grant Award and FBC approval £'000</b>	<b>Total £'000</b>
Implementation and operation of CAZ Enforcement System	213	7,148	7,361
Mitigation measures to support those impacted by the scheme	-	18,850	18,850
Underwriting Year 1-3 operational revenue costs	-	5,031	5,031
Risk allocation	-	123	123
<b>Total Revenue Spend Estimate</b>	<b>213</b>	<b>31,152</b>	<b>31,365</b>

<b>Revenue Funding</b>	<b>Funding Fully Secured £'000</b>	<b>Funding subject to grant award / FBC £'000</b>	<b>Total £'000</b>
Implementation Fund Grant (DEFRA/DFT)	213	4,818	5,031
Clean Air Fund (DEFRA/DFT)	-	18,850	18,850
Operating Revenue	-	7,484	7,484
<b>Total Revenue Spend Estimate</b>	<b>213</b>	<b>31,152</b>	<b>31,365</b>

5.7 Revenue costs such as staff and system costs for the entirety of the scheme are forecasted to be covered by income generation and government grant funding. The FBC will seek an assurance that impacts associated with any risk to the forecasted revenue generated from the scheme are fully underwritten by central government to protect the

Council's wider revenue budget position. Within the financial model, the scheme forecasts higher levels of income before income levels begin to decline as compliance is gained. A sinking fund is proposed to provide smoothing of income in future years and to ensure that monies are ring-fenced. The final revenue cost and funding position will be presented as part of the FBC approval in December 2019.

- 5.8 It is a requirement of the Transport Act 2000 that a general plan outlining the use of the net proceeds from the scheme for a period of 10 years and a detailed programme for the application of the net proceeds during the opening five year period, is developed. This is incorporated in the draft Charging Order and the relevant section is attached as Appendix 3.
- 5.9 The Council is committed to providing access through finance partners to financial assistance to upgrade to compliant vehicles for those individuals, organisations and businesses that are impacted by the implementation of the scheme. This is currently proposed to be in the form of a grant and/or interest free finance. Government grant funding is being sought to cover the administration and finance costs associated with the financial assistance scheme (£10.620m revenue on current forecasts) with the finance partners providing the capital for the scheme (£19.192m on current forecasts).
- 5.10 To provide the assistance packages the Council will need to appoint one or more financial partners. This will follow both the confirmation of the necessary government funding and the completion of a tender process to select partners with the skills and experience to manage and administer the financial assistance schemes on the Council's behalf. Due to the high level of capital funding to be provided by the finance partner(s), the specialist nature of the market, and the significant level of Council support being proposed, an expert consultant has been appointed to develop the tender documents and assist with the tender assessment process. Subject to approval at the CAZ Project Board specific authorisation is also being sought to delegate sign-off of the procurement to the Corporate Director and Director of Finance in consultation with the Cabinet member for Resources and Deputy Leader. Full details of the procurement will be publically available once finalised.
- 5.11 To deliver the other mitigation measures as proposed in the CAF, a number of tender processes will be undertaken in line with the Council's Contract Standing Orders to ensure best value is achieved. It is proposed that the outcome of each tender process is ratified at the CAZ Project Board by the appointed Cabinet Members.
- 5.12 To deliver the outcomes of the CAZ and CAF bid, it is necessary to appoint to a number of posts on fixed term contracts in line with Council recruitment guidelines. These posts will be fully funded from grant settlements from central government and work is ongoing to find the necessary office accommodation for the Project Team, consultants and contractors. This may be through the lease of an external office space which will again be funded from central government grants. Any expenditure will not be committed until government grant funding has been confirmed.

## **6 RISK MANAGEMENT**

- 6.1 A risk assessment for the project has been undertaken, in compliance with the Council's decision making risk management guidance. Specific information can be found in the project documentation (as published o).
- 6.2 The delivery and success of the CAP has a range of interdependencies with national, sub-regional and local stakeholders and statutory bodies, whose activities, programmes and policies could have significant implications on the delivery of air quality compliance in the shortest possible time in Bath and North East Somerset. All relationships with these bodies are monitored by the Project Team and reported to the Project Board.
- 6.3 The initial implementation works are to be treated as capital expenditure, in line with grant funding. If the project did not complete there is a risk that these costs, or an element of these costs, would need to revert to revenue. This is currently assessed as low risk, but will continue to be monitored through the Project Board governance processes.
- 6.4 If revenue enforcement income and associated government grant income were to be insufficient for the recovery of costs, any shortfall would ultimately need to be underwritten by Council. However, along with the supporting revenue grants, a significant annual surplus is projected and will be ring-fenced for future use through the use of a sinking fund. Eventually, if income fell in the medium term, this would mean compliance has been gained and running costs would correspondingly be reduced to mitigate any adverse impact.
- 6.5 The s.151 Officer and the Monitoring Officer have been involved in the formation of both the draft FBC and CAF bids, and have signed this report off for publication.

## **7 CLIMATE CHANGE**

- 7.1 The CAP is focused on one pollutant; NO<sub>2</sub>. However, in an attempt to reduce NO<sub>2</sub> emissions, the CAP could inadvertently alter other pollutant emissions, such as CO<sub>2</sub>. Changes in CO<sub>2</sub> emissions at the same time as a reduction in NO<sub>2</sub> could be brought about by the transition from diesel vehicles (which produce high levels of NO<sub>2</sub>) to petrol vehicles (which produce less NO<sub>2</sub> but more CO<sub>2</sub>) or from adjustments to the number of trips made.
- 7.2 In addition, the declaration of a charging zone or access restrictions, may result in vehicles re-routing around the zone. This could increase fuel consumption and subsequently carbon emissions.
- 7.3 By changing travel behaviours (including number of trips, trip mode and vehicle type), the CAP may influence the quantum of Greenhouse Gas (GHG) emissions generated by road transport. A change in GHG emissions, and CO<sub>2</sub> emissions in particular, could generate variable effects on climate change processes.

7.4 The approach to estimating the economic impact of GHG emissions utilised the following data:

- Vehicle kilometres output from the traffic model;
- Euro splits as estimated by ANPR;
- Behavioural responses estimated in the traffic model;
- CO<sub>2</sub> emissions per kilometre, by vehicle class, as provided by JAQU.

This data was processed as part of the air quality modelling technical workstream to estimate the change in CO<sub>2</sub> emissions across the appraisal period for both the baseline and intervention scenarios (Table 0-1). Model data was made available for the opening year (2021) and future year (2031). Interpolation was undertaken for intervening years, based on fleet change and the anticipated reduction in non-compliant vehicles over time in both the baseline and intervention scenarios. The difference in emissions under the two scenarios was then calculated to determine the change in CO<sub>2</sub> emissions attributable to the intervention across the appraisal period.

Table 0-1: Temporal Change in CO<sub>2</sub> Emissions (tonnes)

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>CAZ C with Traffic Management Measures</b>										
<b>Baseline</b>	49,186	49,339	49,492	49,645	49,798	49,951	50,104	50,257	50,410	50,563
<b>Intervention</b>	48,932	49,093	49,255	49,416	49,577	49,739	49,900	50,062	50,223	50,385
<b>Difference</b>	<b>254</b>	<b>246</b>	<b>237</b>	<b>229</b>	<b>221</b>	<b>212</b>	<b>204</b>	<b>196</b>	<b>187</b>	<b>179</b>

7.5 As set out in the March 2019 Cabinet report, it is proposed that any surplus revenue generated by the enforcement of the scheme will be held in a Revenue Reinvestment Reserve. Allocation of this revenue will be managed by a Steering Group and there is opportunity for reinvestment to directly or indirectly facilitate the achievement of various transport policies. These are set out in the Joint Local Transport Plan, Getting Around Bath- a Transport Strategy for Bath and Balancing your needs- a Parking Strategy for Bath and North East Somerset and are available on the Council's website. These policies include schemes to reduce the use of private vehicles which will further contribute to a reduction in carbon dioxide generated by traffic.

## 8 OTHER OPTIONS CONSIDERED

8.1 Do not progress the plans as previously agreed on March 5 2019 by Cabinet and fail to achieve compliance with the Ministerial Directions. This was rejected due to the legal requirements set out in Section 4 of this report.

## 9 CONSULTATION

- 9.1 Engagement has been a critical part of the development of the proposals to improve air quality in Bath. The Council has a legal duty to consult, engage and consider the equality impacts of the proposals taken forward. It has made a commitment to communicate with both the public and stakeholders throughout the various stages of the project, whilst both developing the plan and once agreed, during the implementation of the measures to reduce NO<sub>2</sub> emissions.
- 9.2 Failing to fully understand the outcomes from the public consultation when making a significant decision which could affect the transport and travel choices of a large number of businesses and individuals, would leave the Authority at risk of legal challenge.
- 9.3 The principles adopted to ensure fair consultation are detailed below:
- a) consultation must take place when the proposal is still at a formative stage;
  - b) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
  - c) adequate time must be given for consideration and response; and
  - d) the product of consultation must be conscientiously taken into account.
- 9.4 The engagement processes have been ongoing since the Strategic Outline Business Case was published in February 2018. These have included a wide range of engagement activities including a formal consultation with public drop-in sessions, face to face meetings with stakeholders and attendance at Scrutiny Panels and other programmed meetings. Significant work has been undertaken to ensure engagement with both vulnerable and hard to reach groups. Outcomes on all of the engagement processes undertaken are publically available on the Council's website.
- 9.5 The next step is to consult on the changes to the scheme since the last formal consultation in October/November 2018 and to seek views on the draft Charging Order. This is proposed to commence on 23 September 2019 and the consultation period will run for 4 weeks. As before, postcards will be sent to every residential and business address within Bath and North East Somerset and this will be supported by a media and communications strategy, to ensure that all residents and business owners are fully aware of the final proposals.
- 9.6 The outcome of the consultation will be used to inform the final FBC submission to central government which is programmed for December 2019 (subject to final sign-off by Cabinet on 5 December 2019).
- 9.7 The statutory requirement to consult on road user charging schemes, such as a Charging Order to introduce a Clean Air Zone, is contained in the Transport Act 2000, which states:
- "(1A) ... the charging authority ... must consult such local persons, and such representatives of local persons, as they consider appropriate about the charging scheme."

The Council is proposing to discharge this duty by consulting on the final draft Charging Order and final scheme design in a formal public consultation which is programmed to begin on 23 September 2019. Please see Section 9 for further details.

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<b>Background papers</b>	<i>E3132 Bath's Clean Air Plan</i> <a href="https://democracy.bathnes.gov.uk/ieDecisionDetails.aspx?ID=1218">https://democracy.bathnes.gov.uk/ieDecisionDetails.aspx?ID=1218</a>  <i>Documents published on the Council's website, including the Outline Business Case and Equalities Impact Assessment</i> <a href="https://www.bathnes.gov.uk/bath-breathes-2021-overview">https://www.bathnes.gov.uk/bath-breathes-2021-overview</a>
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