

Bath & North East Somerset Council

MEETING:	Cabinet	
MEETING DATE:	22 July 2020	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3212
TITLE:	Bath Clean Air Plan Grant Settlement – July 2020	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Equalities Impact Assessment – July 2020		

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 (NO₂) and these are predicted to continue until 2025 without intervention.
- 1.2 B&NES is under a Ministerial Direction to improve air quality in Bath and bring NO₂ within EU and UK legal limits in the shortest possible time and by the end of 2021 at the latest.
- 1.3 The government's Joint Air Quality Unit (JAQU) has now considered the Full Business Case submitted by the Council to discharge this Direction and, after negotiation, have proposed a final financial settlement that they consider adequate to achieve the outcomes necessary.

2 RECOMMENDATION

The Cabinet is asked to:

- 2.1 Consider the settlement as negotiated and if supported, delegate authority to the Director - Partnership & Corporate Services to formally accept the additional grant determination and assurance letters from government providing up to £15.508M in additional funding for the scheme, bringing the total funding package to £23.452M.

- 2.2 With reference to recommendation 2.2 in the September 2019 Cabinet report and subject to the approval of the recommendation above, approve the incorporation into the Council's capital programme of an additional £12.437M, bringing the total Clean Air Zone (CAZ) budget to £18.381M.
- 2.3 With reference to recommendation 2.12 in the January 2020 Cabinet report regarding the delegated authority to progress the operational agreements, note that these negotiations are ongoing and include discussions regarding the ongoing cost of providing the CAZ Central Service (which may now be subject to a separate Statutory Instrument).
- 2.4 Note the progress made towards implementing the scheme during the COVID-19 restrictions.
- 2.5 Delegate authority to the Director - Partnership & Corporate Services, the Director of Legal and Democratic Services and the S151 Officer, in consultation with the Cabinet member for Climate Emergency and the Deputy Leader, to negotiate and agree with government a new launch date following the Minister's letter dated 3 April 2020 which required a delay to the scheme, bearing in mind also the legal obligation to deliver compliance with NO₂ limit values in the shortest possible time.
- 2.6 Note that the financial assistance scheme has been kept under review and in recognition that some local residents and businesses may be suffering in light of the COVID-19 pandemic, that it has been amended to provide further support.

3 THE REPORT

- 3.1 This report confirms the final financial settlement that has been proposed by government to deliver the Bath Clean Air Zone after the submission of the Full Business Case and subsequent negotiations with JAQU.
- 3.2 Due to the complexity of the final settlement, a detailed assessment of the proposed funding package has been set out in the relevant section of the report.
- 3.3 The CAZ programme has been predicated on the overriding objective of achieving compliance with NO₂ limit values in the shortest possible time.
- 3.4 Whilst a number of tasks in the implementation programme have been delayed between 3-12 weeks due to the COVID-19 restrictions whilst contractors and suppliers amended their operations to comply with the social distancing rules, the infrastructure remains on target to be implemented by the end of September 2020.
- 3.5 It is recognized that whilst there were substantial reductions in traffic and NO₂ levels at the start of the COVID-19 restrictions, as the lockdown has eased traffic levels across the country have followed an upward trend and therefore a corresponding increase in NO₂ is expected.

- 3.6 Whilst traffic levels during the lockdown have reduced by as much as 73% in some parts of the UK and 68% locally, initial analysis suggests that NO₂ concentrations at the location of our continuous analysers in Bath have only reduced by approximately 20% more than we would normally expect to see at the same time of year.
- 3.7 There are many factors which could affect NO₂ levels other than the COVID-19 restrictions, including meteorological conditions, variations in fleet composition over the time period, journey types, changes in the location of the analysers and the impact of network changes such as the Cleveland Bridge 18T weight limit.
- 3.8 A higher level of confidence in the impact of the lockdown on air quality can only be gained by undertaking comparisons over a number of years to account for variations in weather conditions.
- 3.9 Furthermore, the Minister has advised in writing that a CAZ is still required to be implemented. The Council is to continue to work to deliver the scheme as soon as possible so that it is ready to go live at the right time in order to discharge the Ministerial Direction and ensure compliance with EU and UK legal limits in the shortest possible time and by the end of 2021 at the latest.
- 3.10 As a result of the Minister's letter and the delays due to the COVID-19 pandemic, a new launch date needs to be negotiated which takes into account both the local air quality levels (with a view to protecting health) and the local and national economic picture (with a view to protecting jobs and livelihoods).
- 3.11 It is recognized that businesses and residents need adequate notice and lead in time to make the changes necessary to comply with the CAZ and as such, once a date is agreed, a full communications and engagement strategy will be implemented.
- 3.12 Since the start of the lockdown Officers have been fully engaged with a wide range of businesses and their trade associations (including bus, coach, taxi and Private Hire Vehicle operators, both the Road Haulage Association and Freight Transport Association and small business owners) to understand the current impact of the COVID-19 restrictions, how they see the road to recovery unfolding for them (or their members) over the next 6/12 months and how the Council might modify the CAZ scheme and supporting measures to help them, whilst still achieving our air quality objective.
- 3.13 As a result of this ongoing engagement, the financial assistance scheme has been amended to allow those eligible for the scheme but failing the affordability checks, to both obtain a temporary exemption from charges and retain the ability to re-apply at a later date when their finances may have improved. And with a view to further reducing both NO₂ and CO₂ emissions, an additional temporary exemption from charges has been included for those waiting for a fully electric vehicle to be manufactured and delivered.

3.14 Businesses and trade associations have also welcomed clarification about the existing temporary exemptions on offer, which comprise:

- A range of targeted exemptions for up to two years from the launch date for those supporting vital services and disadvantaged groups i.e. community transport, blue badge holders, community-based education, health or social care service providers, those supporting the emergency services, wheelchair accessible taxis, recovery vehicles, showman's vehicles, general haulage vehicles (not HGVs) and special vehicles;
- A targeted exemption through to the expected vehicle handover date or up to two years from the launch date at the latest for those accepted for the financial assistance scheme but who need to wait for a vehicle to be manufactured and delivered; and
- A general 'means-tested' exemption for everyone (except those with pre-Euro 4 vehicles manufactured before approx. 2005/6) that is also accessed via the financial assistance scheme i.e. if a vehicle owner or operator passes the eligibility checks but fails the affordability checks they are able to apply for a temporary exemption for up to two years from the launch date.

3.15 These temporary exemptions are in addition to a wide range of permanent exemptions for hybrid and alternatively fuelled vehicles, historic vehicles, agricultural vehicles, military vehicles, vehicles for disabled people (including s19 and s22 community transport vehicles), emergency service vehicles and health service vehicles.

3.16 The financial assistance scheme is initially being targeted at those vehicles undertaking an average of two or more trips into the CAZ per week over a minimum two-month period. Applications are also being prioritised from those businesses and individuals located in the B&NES Council authority area and adjoining council areas i.e. Bristol, North Somerset, Somerset, South Gloucestershire and Wiltshire. This should serve to minimise the impact of the CAZ on local businesses and residents with non-compliant vehicles, whilst at the same time supporting natural upgrade rates, which are to some degree likely to fall as a result of the COVID-19 restrictions.

4 STATUTORY CONSIDERATIONS

4.1 The Client Earth No. 2 judgment gave a robust ruling on the interpretation of the obligations flowing from the Ministerial 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*.
- 4.2 Further correspondence has been received from Client Earth recently and they have reiterated the need to introduce Clean Air Zones as soon as possible and advocate that support for people and businesses to move to cleaner forms of transport remains crucial and should be part of the package of economic recovery measures following the COVID-19 restrictions.
- 4.3 Achieving compliance with air quality standards across Bath and the wider North East Somerset area will result in widespread public health improvements. Specific health impacts for NO₂ 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. There is also emerging evidence to suggest that improving air quality helps to reduce the effects of respiratory illnesses and therefore lowers the risk of people being more severely affected by COVID-19; and
 - Other adverse health effects including diabetes, cognitive decline and dementia, and effects on the unborn child are also linked to air pollution exposure.
- 4.4 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 first drafted in September 2018 so that the Council could fulfil this duty, and this continues to be reviewed and updated as the implementation of the scheme progresses. An up-to-date assessment is appended to this report.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 As part of the FBC process, the Minister set out the initial proposed funding settlement on 17 March and this was followed by proposed grant determination letters. The Council challenged the proposed capital and revenue funding settlement, but also the overall revenue position, which has the potential to impact on the revenue reinvestment reserve.
- 5.2 After negotiation, government have now confirmed the final settlement they are prepared to commit to the delivery of the Clean Air Zone in Bath.
- 5.3 Capital expenditure for the CAZ infrastructure and mitigation measures is to be funded via grant award by DEFRA and Department of Transport.

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

Capital Funding Request	Approved Budget £'000	Additional Request in FBC £'000	Total £'000
Implementation of CAZ, including risk allocation across both implementation and operational phases	5,944	4,122	10,066
Mitigation measures to support those impacted by the scheme		14,580	14,580
Total Capital Funding Request	5,944	18,702	24,646

Capital Funding Award	Funding Already Awarded £'000	Funding Subject to Approval £'000	Total £'000
Implementation Fund Grant including risk allocation (DEFRA/DfT)	5,944	1,150	7,094
Clean Air Fund (DEFRA/DfT)	-	11,287	11,287
Total Capital Funding Award	5,944	12,437	18,381

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

Implementation Fund Grant (DfT/DEFRA) £5.944M of capital has already been awarded to the Council towards the implementation of the scheme, with spend to date of £3.042M on the design, supervision and installation of the ANPR cordon and traffic management scheme at Queen Square. As part of the FBC a further award of £1.15M has been approved, which, after making some adjustments to the original funding request of £10.066M that were required by JAQU (i.e. removing the Wiltshire ANPR cameras and moving all job roles to revenue), provides sufficient capital to implement the scheme given the risks that remain at this stage in the implementation programme:

CAZ Implementation	Adjusted Funding Request	JAQU Proposed Funding Award	Difference
<i>Detailed Design & Supervision</i>	372,600	372,600	0
<i>Installation</i>	6,047,538	6,047,538	0
<i>Risk/Contingency Allowance</i>	2,797,605	673,862	-2,123,743
Total	9,217,743	7,094,000	-2,123,743

Clean Air Fund Grant (DfT/DEFRA) As part of the FBC £11.287M of capital has been approved to fund the mitigation measures included in the FBC, except for the delivery and servicing plan and car club measures which were not supported. With reference to the table below the overall funding award equates to approximately 80% of the funding requested, in line with the settlements received by Leeds and Birmingham:

Mitigation Measures	Capital Funding Request in FBC	JAQU Proposed Funding Award	Difference
<i>Bus Upgrades</i>	2,214,486	1,536,000	-678,486
<i>Financial Assistance Scheme</i>	11,222,182	9,350,870	-1,871,312
<i>Last Mile Delivery</i>	805,637	400,000	-405,637
<i>Delivery and Servicing Plans</i>	248,400	0	-248,400
<i>Car Club</i>	89,010	0	-89,010
Total	14,579,715	11,286,870	-3,292,845

- 5.5 After post-FBC discussions with operators the bus upgrade request was revised down to £1,904,777 after staff costs. Funding requests from operators ranged between £16,050 and £24,146 per bus compared with the government's proposed award of £16,705 per bus after staff costs. Whilst at the lower end of the range Officers are of the opinion that with a suitably skilled member of staff in place to help the smaller operators obtain better terms and prices from retrofit suppliers, the proposed funding award is acceptable.
- 5.6 Capital Programme approval has been given for the £5.944M of secured grant funding, and approval is being sought to amend and transfer the provisional balance incorporated into the 2020/21 budget to full approval, subject to approval of the proposed grant award as set out above.
- 5.7 Revenue expenditure for the CAZ infrastructure and mitigation measures is to be funded via grant award by DfT/DEFRA and revenue from operating the CAZ. Depending on the final agreed launch date the Council's 2020/21 revenue budget will be adjusted to incorporate the CAZ income and expenditure budgets on the basis the scheme is fully funded. As such there will be no budget growth pressures, with any adjustments to revenue budgets being on a cost neutral basis.
- 5.8 Over the initial two-year period (2019-2021) the forecast scheme revenue costs and proposed funding awards are set out in the table below:

Operating Income	£'000
Operating Revenue	£2,113
Feasibility Study Revenue Grant	£364
Scheme (IF) Revenue Grant	£1,387
Mitigation (CAF) Revenue Grant	£1,320
Total	£5,184
Operating Expenses	
Mitigation (CAF) Operating Costs	£1,858
Scheme (IF) Operating Costs	£2,670
Total	£4,528
Contribution to Sinking Fund to Cover Long-Term Shortfall	£656
Contribution to Revenue Reinvestment Reserve (residual monies)	£0

Over the full 10-year period modelled (2019-30) the forecast total scheme revenue costs and proposed funding awards are set out in the table below:

Operating Income	£'000
Operating Revenue	£17,365
Feasibility Study Revenue Grant	£364
Scheme (IF) Revenue Grant	£1,387
Mitigation (CAF) Revenue Grant	£1,320
Total	£20,436
Operating Expenses	
Mitigation (CAF) Operating Costs	£2,461
Scheme (IF) Operating Costs	£14,272
Total	£16,733
Contribution to Sinking Fund to Cover Long-Term Shortfall	£2,804
Contribution to Revenue Reinvestment Reserve (residual monies)	£899

- 5.9 Revenue costs such as staff, back office and CAZ Central Service costs are forecast to be covered by income generation and the proposed government grant funding for the entirety of the scheme. As part of ongoing negotiations regarding the operational agreements (and as part of this the cost impact of changes to the scheme since the FBC submission, including the cost of the CAZ Central Service), Officers have received written assurance from JAQU that any risk to the revenue forecast to be generated from the scheme will be fully underwritten by government in accordance with the 'new burdens' principle, thereby protecting the Council's wider revenue budget position.
- 5.10 Within the financial model, the scheme forecasts higher levels of income in the early years before income levels begin to decline due to increased compliance. A sinking fund is therefore proposed to cover the long-term shortfall and to ensure that monies are ring-fenced for known costs. Operational costs would also be correspondingly reduced to mitigate any adverse impact.
- 5.11 It is a requirement of the Transport Act 2000 that a general plan outlining the use of any 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 incorporated into the Charging Order. These net proceeds will be held in the Revenue Reinvestment Reserve. The Council is committed to providing access through finance partners to financial assistance to upgrade to compliant vehicles for those businesses and individuals that are impacted by the implementation of the scheme. This will be in the form of a grant and/or interest free finance. If accepted, the funding settlement from government will provide up to £9.351M to cover the administration and finance costs associated with the financial assistance scheme (with the finance partners providing the capital for the scheme).

6 RISK MANAGEMENT

- 6.1 A risk assessment for the project has been undertaken, in compliance with the Council's risk management protocols. Specific information can be found in the project documentation (as published on the website).
- 6.2 The delivery and success of the CAZ 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 implementation works for the scheme is capital expenditure, with that spend being covered by grant funding. If the project was not completed there is a risk that these costs, or an element of these costs, would need to revert to revenue.
- 6.4 Revenue costs such as staff, back office and CAZ Central Service costs are forecast to be covered by income generation and the proposed government grant funding for the entirety of the scheme. There is a risk that income generation could be lower than forecast. However, Officers have received written assurance from JAQU that any risk to the revenue forecast to be generated from the scheme will be fully underwritten by government in accordance with the 'new burdens' principle, thereby protecting the Council's wider revenue budget position.
- 6.5 The S151 Officer and the Monitoring Officer were involved in the formation of both the FBC and Clean Air Fund bids, have assessed the proposed funding award and have signed off this report for publication.

7 CLIMATE CHANGE

- 6.1 The Council declared a Climate Emergency in March 2019, committing it to providing the leadership necessary to enable Bath and North East Somerset to achieve carbon neutrality by 2030. Research undertaken since March 2019 has recommended three immediate priority areas for action which include the need for a major shift to mass transit, walking and cycling to reduce transport emissions i.e. implementing policies to enable a 25% cut in car and van mileage per person per year by 2030, coupled with a 76% switch to fully electric cars and 14% to petrol/electric hybrid, leaving just 10% petrol/diesel cars on the road by 2030. Full electrification of passenger rail is also proposed by 2030.
- 6.2 As stated in section 5, 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 the internal Transport Steering Group and there is opportunity for reinvestment to directly or indirectly facilitate the achievement of Bath and North East Somerset Council's transport policies. These policies include schemes to reduce the use of private vehicles, which will further contribute to a reduction in carbon dioxide generated by transport and travel.

8 OTHER OPTIONS CONSIDERED

6.1 To reject the funding settlement and delay the implementation of the Clean Air Zone, which would be contrary to the requirements of the latest Ministerial Direction. This approach was rejected as it would significantly impact the Council's ability to achieve compliance in the shortest possible time (with consideration given to COVID-19 delays).

9 CONSULTATION

6.1 Significant public consultation has been undertaken at each stage of the Clean Air Zone implementation process. All consultation reports are published on the Council's website with full analysis of the responses received and the changes to the plans that have occurred in light of feedback received.

Contact person	<i>Chris Major x4231</i>
Background papers	<p><i>E3175 Bath Clean Air Plan FBC Submission - January 2020</i></p> <p><i>E3152 Bath's Clean Air Plan - September 2019 update</i></p> <p><i>E3132 Bath's Clean Air Plan</i></p> <p><i>Documents published on the Council's website, including the Full Business Case, Outline Business Case and Equalities Impact Assessment</i></p>
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