

## Bath & North East Somerset Council

MEETING/ DECISION MAKER:	<b>Cabinet</b>	
MEETING/ DECISION DATE:	<b>15/16 December 2021</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 3322</b>
TITLE:	<b>Cleveland Bridge Review</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report</b>		
Cleveland Bridge – Update and Options Report (E3303).		

### 1 THE ISSUE

At the Cabinet Meeting held on 9 September 2021, Officers were requested to:

1. Prepare a draft Traffic Regulation Order seeking to restrict HGV movements over Cleveland Bridge to preserve or improve the amenity of the area through which the road runs, in this case the Grade II\* listed Cleveland Bridge structure and environs including the London Road and Bathwick Street, in accordance with the Road Traffic Regulation Act 1984.
2. Investigate and consider any other options that may exist for achieving a similar end to a TRO and report on both actions including the draft TRO to the November meeting of this Cabinet.
3. Consult with appropriate heritage and amenity groups in Bath including Residents' Associations in the course of preparation of the TRO.

This report provides an update on progress with these actions some proposed recommendations.

### 2 RECOMMENDATIONS

The Cabinet is asked to:

1. Note that in the absence of a solution to restrict HGV movements over the bridge which has been agreed with neighbouring authorities and National Highways and which addresses the concerns of the haulage trade associations and, insofar as changes impact on the CAZ, satisfies the Secretary of State, all unilateral options carry high degrees of risk of a PRN appeal and/or a legal challenge.

2. In light of the resolution made at the 9 September Cabinet Meeting (E3303) to adopt recommendation 2.1 in the corresponding Officer report, recognise the need to maintain good working relationships with the Council's neighbouring authorities and National Highways so as not to undermine the investment being made into a wider, strategic study into north-south connectivity between the M4 and the Dorset Coast with an aim of making the A350 the strategic route and thereby limiting HGV use of Cleveland Bridge as part of the Government's Road Investment Strategy 2 (2020-25).
3. Consider strengthening the Council's transport policies to: protect the amenity of the Bath World Heritage Site setting, continue to improve air quality standards, reduce vehicular demand on road space, and respond to the climate and ecological emergencies already declared by the Council. This could include, if necessary, the introduction of further restrictions and/or increased charges on vehicles entering Bath. In line with the relevant legislation, note that any net revenues generated from any proposed charging scheme would be applied to facilitate the achievement of local transport policies.
4. Consider early engagement with the haulage trade associations, neighbouring authorities, National Highways and the Secretary of State with a view to exploring a variation to the Bath Clean Air Zone Charging Order 2021 so that all Euro VI diesel powered vehicles with weight exceeding 12 tonnes<sup>1</sup> become chargeable under the scheme, for the benefit of air quality and the amenity of the CAZ area (including the Grade II\* Cleveland Bridge) and the wider Bath World Heritage Site setting. As part of this and with a view to protecting local SMEs and their supply chains that may have recently invested in Euro VI diesel vehicles, explore the option of also introducing a time-limited exemption to complement the existing exemptions for hybrid, electric and alternatively fuelled vehicles. Subject to undertaking further feasibility work and being able to develop and implement a workable scheme, this would have the net effect of disincentivising all diesel-powered HGVs weighing over 12 tonnes from using the CAZ area as a through route.
5. Noting the high risk of appeal and/or legal challenge, and the resource implications highlighted in the report below, do not proceed with the TRO option at this time.

### **3 THE REPORT**

#### Legal framework

- 3.1 As the local traffic authority for the district, the Council has a general network management duty under s.16 of the Traffic Management 2004. This places a duty on the Council:

*“To manage its road network with a view to achieving, so far as may be reasonably practicable having regard to its other obligations, policies and objectives, the following objectives:*

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<sup>1</sup> In accordance with the Road User Charging and Workplace Parking Levy (Classes of Motor Vehicles) (England) Regulations 2001.

- a) *securing the expeditious movement of traffic on the authority's road network; and*
- b) *facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority”.*

3.14 Government has also issued guidance<sup>2</sup> which clarifies the scope of the network management duty. Of particular relevance are the following passages:

*General scope of the network management duty*

- a) *“The LTA has to manage the road space for everyone and make decisions about trade-offs between competing demands according to its policies and the particular circumstances of the part of the network being considered.”*

*Cross-boundary nature of the network management duty*

- a) *“The duty on an LTA does not stop at its borders. Each is required to facilitate the expeditious flow of traffic on the networks of others. In practice, for an LTA this will mean identifying those authorities that could be affected by their actions and making arrangements for managing this, even though they may not be immediately adjacent authorities. These would include consultation on initiatives, the sharing of information needed to meet the duty, and processes for ensuring that policies are consistent.”*
- b) *“In order that traffic can move as freely as possible across administrative boundaries and in order to minimise impacts on traffic wherever they occur, it is important that all of those traffic authorities with an interest agree joint working arrangements.”*

It is therefore clear that this duty requires local traffic authorities to work together to facilitate the expeditious flow of traffic between administrative boundaries, as well as within their own areas.

3.15 Any decision which did not adequately address the network management duty could be challenged by way of judicial review.

3.16 In addition, as explained in the report of 9 September (paragraphs 3.4, and 3.8-3.9), Cleveland Bridge is part of the Primary Route Network (PRN) and any significant changes to the PRN which have not been agreed with affected neighbouring authorities or National Highways may result in a successful PRN appeal.

3.17 Under the Transport Act 2000 the Council has the option to impose a ‘road user charge’ (RUC) on vehicles using Cleveland Bridge, provided this does not prejudice the Council’s compliance with its duties to achieve NO<sub>2</sub> compliance under its Ministerial Direction. However, under the TA 2000 no road may be subject to charges under more than one road user charging scheme. Therefore, as the current CAZ is such a charging scheme, in order

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<sup>2</sup> Traffic Management Act 2004, Network Management Duty Guidance, November 2004.

to impose any additional charge a separate scheme could not be imposed and the current CAZ scheme would need to be amended. An amendment could take a number of forms including:

- a) imposing a separate charge for certain HGVs to use Cleveland Bridge; or
- b) a CAZ-wide additional or higher charge on certain HGVs, such as the heaviest and/or most polluting.

3.18 This amendment could be done by the Council making a 'variation order', which would be subject to similar processes and consultation to the original CAZ Charging Order.

3.19 Unlike the procedures for imposing a TRO, under the TA 2000 there is no formal objection or appeals process, and any challenge is therefore typically by way of judicial review.

3.20 Any judicial review or PRN appeal is likely to involve significant costs for the Council and require the instruction of specialist legal and technical advice. Added to this is the significant impact on staff resources.

#### Policy context

3.21 The overarching Joint Local Transport Plan 4 (JLTP4) developed by the West of England Combined Authority in collaboration with this, Bristol, North Somerset, and South Gloucestershire Councils, contains numerous references to restricting HGV movements along with a key policy objective:

*"We will seek to restrict through traffic movement for heavy vehicles and most polluting goods vehicles in the central areas of Bristol and Bath."* (p80)

3.22 Similarly, the Council's Getting Around Bath: A Transport Strategy for Bath makes several references to reducing the impact of HGV movements in the city along with the key policy objective:

*"That freight movements be considered more fully, particularly to promote consolidation of deliveries and reduce the impact of HGVs."* (p33)

3.23 And as part of the action plan to deliver this policy objective, the key action:

*"Work with the Highways Agency, Wiltshire and other authorities to develop proposals and strategies to remove through traffic and HGVs in particular, from Bath."* (p33)

#### Summary of options considered

3.24 Following the 9 September Cabinet Meeting Officers examined all options for charging and/or restricting HGV movements across Cleveland Bridge to address both amenity concerns and specific air quality concerns, including but not limited to a permanent TRO, tolling, and an extension to the CAZ. This has included an analysis of the risks and an understanding of the roles and responsibilities of the key stakeholders involved.

3.25 In essence, and as explained in detail below, the Council has two main options to restrict HGV movements across Cleveland Bridge:

- a) a TRO; or
- b) a road user charge.

Imposition of a toll, either using existing local legislation or other tolling powers, does not appear to be feasible.

#### TRO option

3.26 Cleveland Bridge forms part of the PRN, linking to the A36 (connecting to Southampton) and the A4 (connecting to London). A TRO restricting HGV movements at Cleveland Bridge therefore has the potential to impact on neighbouring authorities including Wiltshire, Somerset, and South Gloucestershire Councils, as well as on the PRN and Strategic Road Network more generally, meaning National Highways may also be impacted. This creates a risk that any changes which are considered to be a 'significant change' to the PRN and which have not been agreed with neighbouring authorities and National Highways could give rise to a PRN appeal to the Department for Transport.

3.27 Any TRO, whether imposed on air quality, safety, or heritage grounds, could constitute a 'significant change' if sufficient traffic is diverted to adversely impact on other parts of the Primary Route Network. If modelling suggested this to be the case, then this could be the subject of a PRN appeal.

3.28 The experimental TRO proposed in 2012 would have banned vehicles exceeding 18 tonnes from using Cleveland Bridge by restricting movements between the A36 and Bathwick Street. This was the subject of a successful PRN appeal by Wiltshire and Somerset Councils and the Highways Agency (now National Highways) on the grounds that the ban would result in unacceptable impacts on the PRN, SRN and other local roads at that time, and that agreement from the other affected authorities was required to impose such a measure.

3.29 Unless some form of agreement can be reached with Wiltshire, Somerset, and South Gloucestershire Councils, National Highways, and the Secretary of State, the risk of a successful PRN appeal is very high, and the TRO option therefore appears unviable at this time.

#### RUC option

##### *CAZ-wide charge on HGVs*

3.30 The CAZ was launched in March 2021. Since the end of April compliance rates amongst Class N3 HGVs have been around 95%, with fewer than 10 non-compliant vehicles being seen in the CAZ on a typical day. Accepting that these low numbers will to some extent be impacted by the temporary closure of Cleveland Bridge, it nevertheless shows that the imposition of a £100/day charge for non-compliant HGVs has been effective in driving up compliance rates from an average 50% compliance level in 2017. The Council is extremely grateful to the owners and operators of these vehicles

for embracing the scheme and making such rapid improvements to the HGV fleet in Bath.

- 3.31 Given such a positive response to the existing CAZ from HGV owners and operators, there would seem to be an opportunity to go further, faster. With reference to the Automotive Council's HGV Roadmap<sup>3</sup>, in the period 2020-25 we should expect:
- a) Hybrid and electric powertrains to complement low emission internal combustion engine (ICE) powertrains in lighter HGVs; and
  - b) Hybrid powertrains to complement low emission internal combustion engine (ICE) powertrains in heavier HGVs.
- 3.32 ICE powertrains do not necessarily have to be fuelled by petrol or diesel – the awareness and use of alternative fuels such as compressed or liquified natural gas and biomethane continues to grow, particularly among the larger fleet operators.
- 3.33 To help encourage the adoption of these greener technologies, the CAZ already has exemptions in place for hybrid, electric and alternatively fuelled vehicles, irrespective of size or weight.
- 3.34 The Council is subject to a Ministerial Direction handed down from central government to ensure compliance with air quality limit values in the shortest possible time and by 2021 at the latest. However, in the latest CAZ performance report, the Council is still predicting a number of exceedances at the end of 2021, including at monitoring sites around Cleveland Place. In addition, tackling the climate and ecological emergency is one of the Council's two core policies.
- 3.35 Varying the CAZ Charging Order so that all Class N3 Euro VI diesel vehicles (HGVs over 12 tonnes) become chargeable under the scheme may help the owners and operators of these heavier HGVs to:
- a) Redistribute existing hybrid and alternatively fuelled vehicles in their fleets into Bath; and
  - b) Further encourage the uptake of hybrid and alternatively fuelled vehicles, in line with the HGV Roadmap.
- 3.36 Removing these heavier diesel HGVs from the city should benefit air quality and the amenity of the CAZ area and wider Bath World Heritage Site setting. It would also offer the opportunity to signal to other vehicle owners and operators that the Council is intent on achieving compliance with air quality limit values, reducing vehicular demand on road space, protecting the amenity of the Bath World Heritage Site setting and responding to the climate and ecological emergencies already declared by the Council.
- 3.37 For the avoidance of doubt, HGVs weighing under 12 tonnes would be unaffected by this approach. The Council also recognises the considerable fleet improvements already made by owners and operators of these heavier

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<sup>3</sup> Heavy Goods >3.5t and Off-highway Vehicle Roadmap 2020, Automotive Council, February 2021.

HGVs. In recognition of this and with a view to protecting local SMEs and their supply chains that may have recently invested in Euro VI diesel vehicles, the Council envisages a time-limited exemption for such vehicles, to complement the existing exemptions for hybrid, electric and alternatively fuelled vehicles. This would have the net effect of disincentivising all diesel-powered HGVs weighing over 12 tonnes from using the CAZ area as a through route.

- 3.38 Whilst a zone-based measure such as this that does not directly impact on any specific PRN road (as opposed to a specific restriction on HGVs using Cleveland Bridge) may not be susceptible to a PRN appeal, there is still a credible risk of opposition or legal challenge.

#### A charge for HGVs to use Cleveland Bridge

- 3.39 Officers also considered a separate CAZ charge for HGVs to use Cleveland Bridge. Provided that any additional charge did not adversely impact on the effectiveness of the CAZ in achieving NO<sub>2</sub> compliance, then this option would appear to be in principle viable.
- 3.40 However, implementing such a scheme would require the installation of additional infrastructure such as signage, ANPR cameras and potentially a local payment mechanism. In addition, the relationship between the CAZ charge and Cleveland Bridge charge could cause confusion.
- 3.41 For these reasons, and the high risk of opposition and/or legal challenge, and as this would mean imposing a restriction on a specific PRN road, this option is considered unviable at this time.

#### New RUC outside the CAZ

- 3.42 In addition, Officers considered the option of imposing an HGV charge on a road falling outside the CAZ, e.g., on the A4 London Road. However, it is considered that this is not viable for similar reasons to above, and because it could result in HGVs simply being diverted on to other local roads in Bath and/or charging vehicles which were entering the city but not wanting to cross Cleveland Bridge.

#### Tolling

- 3.43 For completeness, Cabinet is advised that all tolling options have been considered in detail, but none are considered to be workable.
- 3.44 Historic tolling powers under the Bath Corporation Act 1925 would appear to be spent and in any event, the charges under the Act are too low to be of relevance today.
- 3.45 The relevant powers of the New Roads and Street Works Act 1991 have been interpreted as applying to new roads only, so are not available here.
- 3.46 To make an order under the Transport and Works Act 1991 there would generally need to be some specific works envisaged that would impact on navigation in the River Avon. That is not the case here.

## **4 STATUTORY CONSIDERATIONS**

- 4.1 The relevant law has been set out above. However, it should also be noted that:
- a) Whilst the Council currently has powers, via the courts, to enforce against drivers in breach of weight restrictions, the current process is somewhat cumbersome and time consuming. As such, parliament is currently considering providing local authorities outside of London with the powers set out in the Traffic Management Act 2004 to enforce against so-called moving traffic offences. These powers are likely to be available to all local authorities in 2022, but this is still to be confirmed.
  - b) The CAZ scheme is in place in response to a Ministerial Direction to achieve compliance with, as a minimum, national NO<sub>2</sub> limit values. Once the Secretary of State has confirmed the Council has discharged its duties under the Direction then the CAZ scheme may need to be decommissioned or repurposed in line with local objectives. Therefore, Cabinet should note that the option of an additional CAZ-wide charge on Class N3 Euro VI diesel HGVs may only provide a short-term solution and whilst the Council is still predicting a number of exceedances at the end of 2021, including at monitoring sites around Cleveland Place, these may not be sustained due to natural fleet upgrade rates.

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

- 5.1 The current forward programme does not allow for taking forward the CAZ-wide charge on HGVs option and therefore need to be adjusted to accommodate the additional works, which could result in some existing planned works being deferred.
- 5.2 The one-off spend to date is around £15,000, which will be met from in year underspends across the department. Based on proposals obtained from consultants for the feasibility study work and experience of taking forward similar projects, the Council is likely to incur around £60,000 in initial external costs should Cabinet decide to instruct Officers to proceed with a feasibility study following early engagement with key stakeholders.
- 5.3 An allowance will also need to be made for the Officer time involved in managing the work and consulting with key stakeholders, including heritage and amenity groups and residents' associations.
- 5.4 The Council's Medium Term Financial Outlook currently forecasts a further revenue savings requirement of £13.1m for 2022/23 in order to set a balanced budget. Any costs associated with taking forward the CAZ-wide charge on HGVs option would need to be developed on a cost neutral basis with additional revenue or capital costs being funded from within the approved budget for the Transport portfolio. Any unbudgeted costs will need to be considered as part of the budget process for 2022/23 and future years.

## **6 RISK MANAGEMENT**

- 6.1 A risk assessment related to the issue and recommendations above has been undertaken, in compliance with the Council's decision-making risk management guidance.

## 7 EQUALITIES

- 7.1 The public sector equality duty has been considered. Given that the key recommendation is to consider early engagement with key stakeholders on the CAZ-wide charge on HGVs option, it is not considered that this gives rise to any specific adverse impacts at this early stage. A detailed Equalities Impact Assessment has therefore not been undertaken at this time but will be developed at the feasibility study stage (if Cabinet decides to pursue this option).

## 8 CLIMATE CHANGE

- 8.1 Varying the CAZ Charging Order to encourage owners and operators to replace diesel powertrains with hybrid or alternatively fuelled powertrains, should help reduce vehicle-related CO<sub>2</sub> emissions and NO<sub>2</sub> and PM pollution and reduce vehicular demand on road space in line with the Council's local transport policies.

## 9 OTHER OPTIONS CONSIDERED

- 9.1 The other option is for Cabinet to resolve to continue to work with the Council's neighbouring authorities and National Highways to find a mutually agreed solution and not to investigate the other measures recommended above. This would include continuing to work with Wiltshire and Dorset Councils and the Sub-Regional Transport Board (STB) Western Gateway to complete a strategic study into north/south connectivity between the M4 and the Dorset Coast with an aim of making the A350 the strategic route and limiting HGV use of Cleveland Bridge as part of the Government's Road Investment Strategy 2 (2020-25). This option was recommended in the Officer report to Cabinet on 9 September and adopted in the corresponding resolution (E3303). It remains the least risky and least resource intensive option. However, Officers acknowledge that it is unlikely to yield a solution in the short term and this is something which Cabinet will need to consider.

## 10 CONSULTATION

- 10.1 This report has been agreed by the S151 Officer and Monitoring Officer.

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<b>Background papers</b>	<i>E3303 Cleveland Bridge Update and Options Report.</i>
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