

Bath & North East Somerset Council

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| MEETING: | Cabinet | |
| MEETING DATE: | 16th January 2020 | EXECUTIVE FORWARD PLAN REFERENCE: |
| | | E 3175 |
| TITLE: | Bath Clean Air Plan FBC Submission – January 2020 | |
| WARD: | All | |
| AN OPEN PUBLIC ITEM | | |
| List of attachments to this report: Appendix 1- Main FBC document Appendix 2- Scheme boundary Appendix 3- Latest version of the Communications Strategy Appendix 4- FBC 25c- Consultation Report Appendix 5- Equalities Impact Assessment Appendix 6- Draft Charging Order Annex 5 (application of the net proceeds) | | |

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 This report provides a further update on the report in September 2019 and sets out the decisions required to progress the project.

2 RECOMMENDATION

The Cabinet is asked to:

2.1 Delegate authority to the Corporate Director of Place to formally submit to the government's Joint Air Quality Unit (JAQU) for approval: the final Full Business Case (FBC), Clean Air Fund (CAF) bid; and the Charging Order. The main FBC is attached as Appendix 1 and the full package of

documents have been shared with Cabinet members and are published on the Council's website.

- 2.2 Agree the key project programme milestones as shown in Section 3.5.
- 2.3 Agree the revised and final scheme boundary as shown in Appendix 2.
- 2.4 Note that a draft Communications Strategy has been developed to support the implementation of the scheme that integrates with the national communications campaign. This is set out in Appendix 3.
- 2.5 Consider the FBC Consultation Report setting out the views of the respondents to the last public consultation and analysis of these views. This is set out in Appendix 4.
- 2.6 Confirm the launch of the approved scheme on 4 November 2020. This is the date upon which enforcement will commence and payment must be made for entering the Clean Air Zone (CAZ) in a non-compliant vehicle or be subject to enforcement via a penalty charge notice (PCN).
- 2.7 Note the recommendations of the independent review which have been incorporated into the FBC.
- 2.8 Note the changes made by JAQU as part of the core scheme since the end of the last public consultation.
- 2.9 Consider the updated Equalities Impact Assessment (EqIA) shown in Appendix 5.
- 2.10 Note that a meeting of the Climate Emergency and Sustainability Policy Development and Scrutiny Panel is planned to take place on 13th January 2020 and any recommendations will be subsequently reported to the Cabinet Member for Climate Emergency and Sustainability.
- 2.11 Delegate authority to the relevant Corporate Director and the Director of Legal and Democratic Services and the S151 Officer, in consultation with the Cabinet member for Climate Change and the Deputy Leader, the decision to agree and to enter into any relevant legal agreement to secure, the national operational agreement(s) for the operation of the Clean Air Zone.
- 2.12 Delegate authority to the relevant Corporate Director and the Director of Legal and Democratic Services, in consultation with the Cabinet member for Climate Change and the Deputy Leader, the decision to agree and make minor changes to the Clean Air Zone Charging Order for technical reasons before sealing.
- 2.13 Note that if the Council does not secure sufficient funds from DEFRA/DfT then the Council reserves the right to review the proposals as set out in this report to ensure that there is no impact on the Council's wider budget.

3 THE REPORT

- 3.1 Following the successful submission of the Outline Business Case (OBC) to JAQU and subsequent approval by the Minister, the Council has been progressing the development of the FBC taking into account the feedback which has been received to date and, subject to final approval, preparing to implement the scheme.
- 3.2 The FBC updates the OBC by providing a fully costed model for the final scheme based on prices from contractors, and reflects the changes made in light of the independent peer review and the responses to the public consultation in autumn 2019.
- 3.3 Once agreed by Cabinet, officers will submit the FBC to JAQU for final approval by the Minister, with a view to ensuring that the infrastructure is in place to enforce the scheme as of 4 November 2020. This is the date from when non-compliant vehicles will be charged to enter the CAZ.
- 3.4 Following the OBC stage it has been necessary to make a further amendment to the scheme boundary for technical reasons in consultation with local councillors and residents. This involved extending the boundary from Sydney Road to the canal at Bathwick Hill, taking in the following streets:
- Sydney Wharf
 - Raby Mews
 - Sydney Mews
 - Raby Place/Bathwick Hill (west of the canal)

This is to reduce the impact of signage and cameras on the amenity of the area.

- 3.5 The key milestones for the project are shown below:

| | |
|--|-------------------|
| Cabinet approval of the Full Business Case (FBC) | 16 January 2020 |
| Joint Air Quality Unit (JAQU) sign off | 14 February 2020 |
| Bus upgrade scheme opens for applications | 17 February 2020 |
| Financial assistance scheme opens for applications | 17 February 2020 |
| Secretary of State sign off | 13 March 2020 |
| Queen Square traffic management scheme complete | 24 April 2020 |
| Signage infrastructure (below ground) complete | 19 June 2020 |
| Back office infrastructure complete | 23 July 2020 |
| ANPR camera infrastructure complete | 30 July 2020 |
| Signage infrastructure (above ground) complete | 30 September 2020 |
| System integration and testing complete | 30 September 2020 |
| Baseline monitoring complete | 2 November 2020 |
| CAZ commencement | 4 November 2020 |

This shows the phasing of the works to deliver the scheme on time for launch in November 2020.

3.6 Following recommendations outlined in the independent peer review, the FBC has been updated to include:

- A revised Air Quality Report (FBC 11) to identify where gradient adjustments were applied;
- A revised Sensitivity Testing Report (FBC 31) incorporating updated sensitivity tests of the CAZ C and CAZ D scenarios, with the same gradient adjustment factors being applied to diesel cars as to LGVs and HGVs;
- A revised Monitoring and Evaluation Plan (FBC 26) including interventions in the event that implementation of the preferred option fails to achieve compliance at all locations.

3.7 As the national picture evolves, JAQU are working with all local authorities to develop the final scheme detail. As a result of these continued discussions, changes continue to be made to the core scheme requirements. These include:

- Increasing the post-entry payment window from midnight of the next working day until midnight of the 7th calendar day following entry into the CAZ;
- The mechanisms for operating exemptions and concessions;
- The provision of a central helpdesk for all CAZ's, providing the ability to pay by telephone in addition to the online payment portal.

These changes are outside of the Council's control and the scheme will need to be adapted to accommodate the evolution of the national scheme requirements.

3.8 To allow a Class C Clean Air Zone to deliver the required compliance with EU Limit Values, a restriction needs to be placed on traffic flows through Queen Square. As well as ensuring compliance the scheme also provides benefit to both cyclists and pedestrians with improved crossing facilities and provides an important step towards a wider improvement project to enhance the public realm within the area, which will come forward for consultation at a later date.

3.9 The recent public consultation has highlighted concerns about diversionary impacts and the potential deterioration in air quality (although not exceeding EU Limit Values) created by the Queen Square scheme. The areas mentioned in the responses include Marlborough Buildings, Julian Road, Whiteway Road and Rush Hill (amongst others).

There was also concern about potential diversionary impacts elsewhere, most notably for Sydney Buildings.

- 3.10 The preferred scheme is predicted to achieve compliance with air quality objectives in all locations and the modelling indicates that changes in traffic flows around the boundary will be minimal. There is therefore no technical reason to make changes to the boundary to ensure compliance. However it is proposed that priority is given to monitoring traffic flows and air quality levels on roads where responses indicate community concerns about diversionary impacts and air quality. If necessary further traffic management interventions will be developed to mitigate, where possible, the impact of the scheme on these areas.
- 3.11 With respect to diversionary impacts as a result of the scheme in Queen Square, again it is proposed that priority is given to monitoring traffic flows and air quality levels on roads where responses indicate community concerns about diversionary impacts and air quality. However given that the modelling already predicts some significant increases in traffic flows, it is proposed that officers proceed with refining their proposals to actively manage the flow of traffic through Queen Square and develop further traffic management interventions in preparation for mitigating, if necessary, the impact of the scheme on these areas.
- 3.12 Appendix 3 sets out the latest version of the Council's communications strategy and plan up to and beyond the launch date of the scheme, which integrates with the national communications strategy being developed by JAQU. Along with the business engagement and community liaison activity planned, this will ensure that all affected businesses and members of the public are aware of the changes, together with the significant financial support packages requested to help manage their transition to compliance.

4 STATUTORY CONSIDERATIONS

- 4.1 The statutory requirement to consult on road user charging schemes is contained in section 170(1A) of the Transport Act 2000, which states that the charging authority:
- "must consult such local persons, and such representatives of local persons, as they consider appropriate about the charging scheme."*
- 4.2 The public consultation encouraged interested parties to comment on the final version of the charging order, in fulfilment of the above statutory duty and comments can be found in Appendix 4 which is the report of the full response to the consultation.
- 4.3 Whilst the order is now deemed to be in a final version, due to the uncertainty around the national position, it will not be sealed in advance of the operational date. This will allow minor changes to be made to the form and function of the technical aspects of the order without a requirement to promote another version and incur further costs. No significant changes would be made to the order that would affect

compliance of vehicles or boundaries of the zone without further public consultation.

- 4.4 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 latest Ministerial Direction, but also its obligations under air quality law to achieve compliance with legal NO₂ limits in the shortest possible time.
- 4.5 The Council has received a total of 3 separate Ministerial Directions throughout the development of the scheme; this last Direction was received on 17 October 2019 and referred to the submission of the FBC to central government by 13 December 2019 at the latest. Due to changes in the national political landscape and the calling of a general election in November 2019, the Council was bound to comply with the requirements of the pre-election period, which prevented the submission of the FBC on time due to the cancellation of the Cabinet meeting on 5 December 2019.
- 4.6 The Council has a public sector equality duty to have due regard to the need to (in summary) eliminate discrimination, advance equality of opportunity, and foster good relations between people who share a relevant protected characteristic and those who do not. An Equalities Impact Assessment (EqIA) was drafted in September 2018 so that the Council could fulfil this duty and has been subsequently reviewed following the latest public consultation. The EqIA in Appendix 5 should be read in conjunction with the Distribution and Equalities Impact Analysis.
- 4.7 The EqIA identifies that there are potentially positive health impacts for those protected characteristics groups including age, disability, pregnancy and maternity. Potentially negative impacts for reasons of affordability and accessibility could exist for the protected characteristic groups including age, disability and race. Negative impacts could also exist for residents living outside of the CAZ and businesses. Measures to mitigate these negative impacts have been incorporated into the proposed scheme including concessions and exemptions for blue badge holders, community transport providers and wheel chair accessible taxi vehicles (an amendment to the taxi licensing policy will be made to accommodate this concession).
- 4.8 JAQU is developing a national operational agreement for all Local Authorities for the operation of a Clean Air Zone. This agreement will be in place prior to the live date of the Clean Air Zone and will set out the roles of each party and the responsibilities to ensure that the Council is protected both financially and reputationally once the scheme commences. Each agreement will also cover any local elements of the scheme to ensure that these are recorded officially. The Council will be expected to sign up to the agreement before launching the Clean Air Zone, once all parties are satisfied with the contents.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 As part of the FBC, updated financial information is provided below as an update to the Cabinet report in September 2019.

5.2 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:

| Capital Spend | Approved Budget £'000 | For Provisional Approval £'000 | Total £'000 |
|---|--------------------------|-----------------------------------|----------------|
| Implementation of CAZ | 5,950 | 1,325 | 7,275 |
| Risk allocation | | 2,797 | 2,797 |
| Mitigation measures to support those impacted by the scheme | | 14,198 | 14,198 |
| Total Capital Spend Estimate | 5,950 | 18,320 | 24,270 |

| Capital Funding | Funding Fully Secured £'000 | Funding subject to grant award £'000 | Total £'000 |
|---|--------------------------------|---|----------------|
| Implementation Fund Grant including risk allocation (DEFRA/DFT) | 5,950 | 4,122 | 10,072 |
| Clean Air Fund (DEFRA/DFT) | - | 14,198 | 14,198 |
| Total Capital Spend Estimate | 5,950 | 18,320 | 24,270 |

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

Implementation Fund Grant (DFT/DEFRA) £5.95M of capital has already been awarded to the Council towards design development and implementation of the scheme. As part of the FBC a further £4.122M (including risk allocation) is being requested.

Clean Air Fund (DFT/DEFRA) £14.198M of capital funding subject to government approval of the FBC to fund the mitigation measures as set out in the FBC.

5.4 Capital Programme approval has been given for the £5.95M of secured grant funding, and capital approval is being sought to transfer the provisional balance incorporated into 2020/21 budget proposal to full approval, subject to grant award.

5.5 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 Councils 2020/21 revenue budget will be adjusted to incorporate the CAZ income and expenditure budgets on the basis the scheme is fully funded.

5.6 Over the initial two-year period (2019-2021) the forecast scheme revenue costs and requested funding awards are set out in the table below:

| Operating Income | £'000 |
|--|---------------|
| Operating Revenue | £2,113 |
| Mitigation (CAF) Revenue Grant | £1,858 |
| Scheme (IF) Revenue Grant | £1,727 |
| Total | £5,698 |
| 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 | £1,170 |
| Contribution to Revenue Reinvestment Reserve (residual monies) | £0 |

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

| Operating Income | £'000 |
|--|----------------|
| Operating Revenue | £17,365 |
| Mitigation (CAF) Revenue Grant | £1,989 |
| Scheme (IF) Revenue Grant | £1,727 |
| Total | £21,081 |
| Operating Expenses | £'000 |
| 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) | £4,348 |

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 further 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 for known costs.

- 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 incorporated into the Charging Order. The relevant section of the Order is contained in Appendix 6.
- 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 within a high, medium and low grant funding option provided as requested (with the high level of funding proposal requesting a total of £11.222m capital on current forecasts) with the finance partners providing the capital for the scheme (£19.192m on current forecasts).
- 5.10 To provide the financial assistance scheme 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 scheme 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, expert consultants have been appointed to assist with this tender, selection and appointment process.
- 5.11 To deliver the other mitigation measures as proposed in the CAF, a number of other tender processes are being undertaken in line with the Council's Contract Standing Orders to ensure best value is achieved.
- 5.12 It is also 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 revenue from the scheme and work is ongoing to find the necessary office accommodation for the Project Team, consultants and contractors.
- 5.13 The proposed charges for entry to the Clean Air Zone in Bath are proposed to be £100 for non compliant HGVs, buses and coaches and £9 for non compliant taxis/PHVs and LGVs/vans. These charges are in line with the proposed charges released by Bristol City Council as part of their recent public consultation, providing regional alignment.

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 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 mobilising the scheme is capital expenditure, in line with 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. This is currently assessed as low risk, but will continue to be monitored through the Project Board governance processes.
- 6.4 If at any point revenue enforcement income and associated government grant income did not cover costs, any shortfall would ultimately need to be underwritten by JAQU. A significant annual surplus is also projected which will be ring-fenced for future use in a revenue reinvestment reserve. 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. It has been recognised that Government will honour the burden created following new burdens principle (subject to the test of the burden being reasonable).
- 6.5 In the event that government grant funding does not underwrite costs, then the scheme will be reviewed to ensure costs are managed within available funding as in recommendation 2.13.
- 6.6 The S151 Officer and the Monitoring Officer have been involved in the formation of both the draft FBC and Clean Air Fund bids, and have signed this report off for publication.

7 CLIMATE CHANGE

- 7.1 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 includes the need for a major shift to mass transport, 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.
- 7.2 As set out in the September 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 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

8.1 To delay the submission of the FBC further 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 and by 2021 at the latest.

9 CONSULTATION

9.1 Failing to properly consult or to consider 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 Council at risk of legal challenge. 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.

9.2 The public consultation on the proposed changes since the previous public consultation and the draft Charging Order setting out how the final proposed scheme will operate was carried out between 23 September and 20 October 2019 (a 4 week period). The consultation sought feedback and discussion on:

- The change from a Class D CAZ to a Class C CAZ;
- The updated CAZ boundary;
- The Queen Square traffic management proposals;
- The proposals for supporting measures and reinvestment of revenue;
- The proposals for signs and cameras; and
- The details of the draft charging order.

9.3 A number of public events were held where members of the public could come and speak individually with the Project Team. These events were supported by a wider communications plan involving a postcard which

was delivered to every residential and business address in B&NES through a Royal Mail door to door marketing campaign, media releases (including the use of social media) and website updates. Additional face to face meetings were held during the consultation period with key stakeholders.

9.4 The previous public consultation in November 2018 (which proposed a Class D CAZ including private cars) elicited 8,421 responses from members of the public. In the most recent consultation on a Class C CAZ, 661 responses were received; 570 online, 27 from paper questionnaires and 65 from emails/letters sent directly to the Project Team. The key themes from the responses were:

- There is general support for tackling air quality in B&NES and there is recognition that more should be done. Respondents seemed generally accepting of the scheme, whilst recognising that there were challenges to overcome.
- There were mixed views on the change in the preferred option from a Class D to a Class C CAZ; it is noted that whilst some respondents support the move to a Class C CAZ, others had comments/reservations about the Class C proposal and some expressed the view that it did not go far enough and that a Class D CAZ would better address the climate emergency.
- The changes to the scheme boundary since the last public consultation were appreciated, however despite the proposed Class C CAZ (removing private cars from the scheme) concerns remained about potential diversionary impacts and impacts on traders.

A full detailed report on the public consultation and its analysis is attached at Appendix 4.

9.5 As a result of the public consultation, the following changes to the FBC are proposed:

- A change in the definition of 'registered health care provider' to include private sector educational providers and practitioners
- Clarification that the concession for Euro 4/5 diesel vehicles used by blue badge holders are for people using LGVs/vans and taxis/PHVs and not buses, coaches and HGVs.
- Clarification that the concession for Euro 4/5 diesel wheelchair accessible taxis/PHVs are for vehicles not otherwise exempt under the disabled vehicles tax class.

These changes have all been incorporated into the scheme.

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| Contact person | <i>Chris Major x4231</i> |
| Background papers | <p><i>E3152 Bath's Clean Air Plan- September 2019 update</i></p> <p><i>Insert link</i></p> <p><i>E3132 Bath's Clean Air Plan</i></p> <p><i>Documents published on the Council's website, including the Outline Business Case and Equalities Impact Assessment</i> https://www.bathnes.gov.uk/bath-breathes-2021-overview</p> |
| <p>Please contact the report author if you need to access this report in an alternative format</p> | |