



## **NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

### **EXECUTIVE MANAGEMENT TEAM'S REPORT TO CABINET**

**9<sup>th</sup> December 2020**

**Report Title:** NORTH STAFFORDSHIRE LOCAL AIR QUALITY PLAN –  
OUTLINE BUSINESS CASE

**Submitted by:** Head of Environmental Services

**Portfolio:** Environment & Recycling

**Ward(s) affected:** May Bank

#### **Purpose of the Report**

To outline the legal requirements on Stoke-on-Trent City and Newcastle-under-Lyme Borough Councils to prepare the North Staffordshire Local Air Quality Plan (NSLAQP), and to seek Cabinet approval to submit the Outline Business Case (OBC) to Central Government, including the preferred option for delivering compliance with statutory limits on roadside nitrogen dioxide (NO<sub>2</sub>) concentrations across the study area in the shortest possible time.

#### **RECOMMENDATIONS**

**That:-**

**(a) Cabinet considers the comments received in relation to the North Staffordshire Local Air Quality Plan from Economy, Environment & Place Scrutiny Committee held on 12 November 2020.**

**(b) Cabinet approve the Outline Business Case for the North Staffordshire Local Air Quality Plan for tackling roadside nitrogen dioxide exceedances, including technical addenda, as contained in Appendices C and D, for submission to Government, in line with the requirements of the Environment Act 1995 (Implementation of Measures for Nitrogen Dioxide Compliance) Air Quality Direction 2018 (the "2018 Direction") and subsequent amendments by the Secretary of State for the Environment.**

**(c) Subject to approval of (a), that Cabinet request a further report from the Head of Environmental Health Services in June 2021, setting out the Full Business Case, including the detailed costs and proposed funding bid to Government.**

**(d) Subject to approval of (a), that Cabinet delegates authority to the Director of Operational Services alongside Portfolio Holder for Environment & Recycling to enter into a legal agreement with Staffordshire County Council (SCC) and Stoke-on-Trent City Council (SOTCC) to jointly submit the Full Business Case and deliver the**

**preferred option in line with the requirements of the Environment Act 1995 (Implementation of Measures for Nitrogen Dioxide Compliance) Air Quality Direction 2018 and subsequent amendments by the Secretary of State for the Environment.**

**(e) The Chief Executive is authorised to enter into a contract to complete the Full Business Case (and inform the Cabinet Member for Environment and Recycling), by direct award to the supplier for the delivery of the Outline Business Case for the North Staffordshire Local Air Quality Plan.**

**(f) Members note the progress made in relation to the delivery of the Ministerial Direction requiring a bus retrofit scheme for busses operating on the A53.**

### **Reasons**

To complete the transport, air quality and economic assessments of the proposed option as identified in the Outline Business Case, to complete the Business Case and progress towards compliance with the requirements of the Ministerial Direction issued to the Borough of Newcastle-under-Lyme and City of Stoke-on-Trent on 4 October 2018, and subsequent requirements of the Parliamentary Under-Secretary of State (Department for Environment, Food and Rural Affairs).

### **1. Background**

1.1 In October 2018, Ministers Coffey and Norman for the Department for Environment, Food and Rural Affairs (DEFRA) and Department for Transport (DfT) respectively, served two ministerial directions on the Council; these were served under the provisions of The Environment Act 1995 (Feasibility study for nitrogen dioxide compliance) (No 2) and (Implementation of measures for nitrogen dioxide compliance) Air Quality Direction 2018. This work is being co-ordinated by the Governments Joint Air Quality Unit (JAQU).

1.2 The two directions and associated JAQU guidance require:

NULBC and SOTCC to jointly further investigate EU exceedances of nitrogen dioxide (NO<sub>2</sub>) on roads within the Borough and identify measures that could bring forward compliance with NO<sub>2</sub> limits as soon as possible **or** review the implementation of a chargeable clean air zone. (referred to as the NSLAQP);

and

NULBC to implement a bus engine retrofit programme to busses that operate on the A53 to be implemented as soon as possible in order to bring forward compliance of NO<sub>2</sub> levels.

1.3 Staffordshire County Council (as Highway Authority) is supporting the project although not included within any Ministerial Direction to date.

1.4 The background to the development of the NSLAQP, along with a summary of the work undertaken to assess the initial evidence and appraise options, the development of the



preferred option and the next steps to submit the FBC to Government, is provided in Appendix A.

- 1.5 A description, along with a schematic plan of the physical components of the preferred option, is provided in Appendix B.
- 1.6 Cabinet have received four previous reports in respect of this matter. In February 2019 Cabinet noted that the Ministerial Direction has been served and resolved that the leader would actively engage to lobby against any charging Clean Air Zone (CAZ) on the A53. In March 2019, Cabinet noted the content of the strategic outline case and approved the shortlist of measures to be further evaluated. A further report for the procurement of a contractor to assist with the delivery of this project was approved at April 2019 Cabinet. In addition, this matter was also reported to Council on 3 April 2019, where the previous Cabinet decisions were reported and it was noted that Cabinet firmly believes that there is a highways/transport solution to help reduce the pollution levels and that any form of parking levy or chargeable CAZ would be damaging to business and our town centre. A further report for extensions to the previously approved contracts was considered and approved in October 2019. Lastly a report was presented to Economy, Environment and Place Scrutiny Committee in February 2020, member's recommendation to Cabinet that any form or charging scheme should be avoided
- 1.7 The governance structure for the project as shown in Appendix A, has supported the project and provided assurance for the development of the preferred option and the benchmark CAZ.

## 2. **Issues**

- 2.1 The unapproved OBC was submitted to central Government on 15 May 2020, in line with the requirements of the 2018 Direction and subsequent requirements of the Minister. The entire OBC is attached in Appendix C and includes draft technical layout drawings for components of the preferred option.
- 2.2 Feedback on the OBC from the Government's Joint Air Quality Unit are being received and will be incorporated into the FBC which is to be submitted to Government by July 2021.
- 2.3 The OBC was required by Government to be submitted to the above timescale, despite the local authorities' concerns over the impact of the coronavirus outbreak at that time. In July 2020, Government issued a requirement for the local authorities to undertake a sensitivity analysis of the preferred option to the likely impacts of coronavirus on the local economy, and hence travel patterns and vehicle emissions. This work was undertaken between July and September 2020 and the results of this analysis are summarised in Appendix D. In issuing this requirement, Government advised that the required year for Stoke-on-Trent and Newcastle-under-Lyme to achieve compliance with statutory limits for roadside NO<sub>2</sub> concentrations had been changed from 2022 to 2023, to take account of the impacts of coronavirus, both on the local economy and also on the authorities' ability to complete the feasibility study caused by conflicting service pressures.



- 2.4 In short the sensitivity analysis demonstrates that various factors will affect vehicle emissions and hence roadside NO<sub>2</sub> concentrations, including:
- A slower rate at which individuals and businesses renew their vehicles, meaning that older (and more polluting vehicles) stay in use for longer than was originally assumed.
  - The acceleration of the trend to more flexible working patterns, in particular homeworking and flexible start/finish times.
  - The propensity of people to use public transport, especially for those who use public transport on a discretionary basis and may choose to avoid public transport due to fears about social distancing.
  - The impact of coronavirus on people's awareness of needing to improve personal health and fitness levels, resulting in a willingness to walk and cycle more, especially for shorter journeys.
  - The impact of coronavirus on the local economy, including impacts on unemployment and changing demand in various sectors.
- 2.5 The analysis has shown that whilst fleet renewal and economic downturn have negative impacts on vehicle emissions, the additional year to deliver compliance provides time for natural fleet replacement to counter these negative impacts. The other listed factors have been found to have small impacts within the period that the study is seeking to deliver compliance with the statutory limit for roadside NO<sub>2</sub> concentrations. However, these small impacts do not affect the overall viability of the preferred option to achieve the primary aim. This means that the preferred option is still able to deliver the primary aim of achieving compliance with the requirements of the 2018 Direction.
- 2.6 Government is reviewing our conclusions and has confirmed that the study can progress towards completion of the FBC by July 2021. Subject to Cabinet approval of the OBC, it is planned to progress the completion and submission of the FBC by July 2021, following its review by Cabinet.
- 2.7 Assuming Government then approve the FBC and issue the funding and a further Ministerial Direction for implementation, contractors will be appointed to commence delivery of the preferred option, completed by the end of 2022 and thereby achieving compliance in 2023 with the statutory limit for nitrogen dioxide concentrations
- 2.8 This report on the NSLAQP has been presented to Economy, Environment and Place Scrutiny Committee on 12 November. SOTCC and SCC are also presenting the NSLAQP to their respective Overview or Scrutiny Committees. Cabinet are asked to consider the comments received, the Committee resolved that Cabinet be advised that the Economy Environment and Place Scrutiny Committee support the preferred option and outline business case and request that additional specific detail on the tree removal is provided at the Full Business Case stage.

#### **Bus Retrofit:**

- 2.9 The separate ministerial direction in respect of bus retrofitting requires Newcastle-under-Lyme Borough Council to implement the retrofitting works to upgrade the busses that operate on the A53 from euro 3 engines so they operate at euro 6 standards. This



work is to be completed as soon as possible and by the end of 2020 at the latest, in order to bring forward compliance in NO<sub>2</sub> levels.

- 2.10 It has since been established that this equates to 25 buses operated by First PMT, on bus routes 3, 4 and 4a that travel on the A53.
- 2.11 This requires NULBC (this direction has not been served on SOTCC) to undertake additional NO<sub>2</sub> monitoring along this route, to implement a bus retrofit scheme, to continue to monitor NO<sub>2</sub> following the works and provide reports to JAQU on air quality and traffic changes.
- 2.12 There are a number of conditions that the Borough Council and the bus company are required to meet in respect of this work, including a requirement for the busses to remain in service for 5 years or 150,000 miles or be replaced with a euro 6 engine bus.
- 2.13 First PMT and NULBC have recently entered into a contract for the completion of this work. First PMT has commenced the work and it is anticipated that all the busses will have been retrofitted by the end of 2020

### 3. **Proposal**

- 3.1 Considerable options have been reviewed, as detailed in Appendix A, in order to determine the 'preferred option' as detailed in Appendix B.
- 3.2 The OBC as attached in Appendix C, considered the options tested alongside the comparison of a benchmark Clean Air Zone – Type D.
- 3.3 The conclusion of the OBC is that the air quality standard can be achieved in the shortest possible time through the completion of the preferred option.

### 4. **Reasons for Proposed Solution**

- 4.1 The OBC is required in order to meet the Council obligation under the Ministerial Direction.

### 5. **Options Considered**

- 5.1 The October 2018 Ministerial Direction places a statutory duty upon Stoke-on-Trent City and Newcastle-under-Lyme Borough Councils to undertake a feasibility study and identify a preferred option, which had to be assessed against a benchmark clean air zone.
- 5.2 A further Ministerial Direction will be issued after submission of the FBC, legally obliging the three local authorities to fully implement the preferred option.
- 5.3 At this stage in the study, the authorities have the options to:
  - 5.3.1 Approve the OBC for submission to Government. This will enable the authorities to progress the preferred option for inclusion in the FBC, and funding will then be secured for its delivery in late 2021 and 2022, delivering compliance with the requirements of



the Ministerial Direction and achieving compliance in 2023 with the statutory limit for nitrogen dioxide concentrations. **This is the preferred option.**

- 5.3.2 Not approve the OBC for submission to Government. This option will result in Government reviewing the local authorities' failure to respond to the requirements of the Ministerial Direction, and risks the imposition of a further Direction requiring the implementation of a charging Clean Air Zone across parts or all of the City and Newcastle-under-Lyme.

## 6. **Legal and Statutory Implications**

### **Ministerial Direction:**

- 6.1 A Ministerial Direction - the "Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) (No. 2) Air Quality Direction 2018" was issued to Stoke-on-Trent City and Newcastle-under-Lyme Borough Councils on 4 October 2018. This imposes a legal requirement on the two authorities to undertake a feasibility study in accordance with HM Treasury's Green Book approach, to identify the option(s) which will deliver compliance with legal limits for NO<sub>2</sub> in the shortest time possible
- 6.2 Following Government approval of the Full Business Case in August/September 2021, a further Ministerial Direction will be issued by Government, using the power conferred by section 85(5) of the Environment Act 1995, imposing a legal duty on the local authorities to implement the preferred option.
- 6.3 The Ministerial Direction served on the Council under the provision of The Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) (No. 2) Air Quality Direction 2018 is legally binding. Failure to comply with this Direction may result in judicial review proceedings being brought against the Council. Any such proceedings could result in adverse costs awards being made against the Council

### **Procurement:**

- 6.4 The procurement approach that has been adopted involves the use of a compliant framework and as such offers some mitigation and reduces the risk to the Council of a challenge being made concerning the appointment of the preferred supplier. Officers have identified the Project Management & Full Design Team Services Framework RM 3741 (Lot 5) <https://ccs-agreements.cabinetoffice.gov.uk/contracts/rm3741> which is operated by Crown Commercial Services (CCS) as the most appropriate OJEU compliant procurement framework.
- 6.5 Under this OJEU compliant framework, relevant services can be procured via either a mini competition amongst the relevant framework suppliers listed or via a direct award to one of these suppliers (so long as the Council can evidence the reason for such an approach). Following discussions with CCS this contract will be awarded by way of a direct award
- 6.6 The appointment of the preferred provider for technical consultancy services will be subject to them meeting the Council's insurance requirements, demonstrating



adequate risk management and health and safety arrangements and having the relevant skill sets in place to meet the needs of the specification issued.

## 7. **Equality Impact Assessment**

7.1 A joint Equality, Environmental and Community Impact assessment will be undertaken as part of the Full Business Case process and will be reported to Cabinet in June 2021.

## 8. **Financial and Resource Implications**

8.1 The costs associated with developing the Outline and Full Business Cases, and subsequent implementation, monitoring and evaluation of the preferred option, will be met through Central Government grants, administered by the Government's Joint Air Quality Unit (JAQU).

8.2 The preparation of the NSLAQP is being carried out in-house, working jointly with officers from Newcastle-under-Lyme Borough and Staffordshire County Councils, plus transport, air quality and project management consultancy support. Whilst the work places a significant additional burden on existing staff, all costs including staff time are being met through Central Government grants

8.3 There has been, and will continue to be, a requirement to procure additional grants to fund the completion of specific tasks, including the appointment of contractors to implement the preferred option and specialist consultants to manage its delivery and also to monitor and evaluate the impacts, in order to demonstrate to government that the requirements of the legal directions have been met.

8.4 The cost of the contract for technical consultancy services for the completion of the FBC is estimated to be £400,000.

8.5 It should be noted that all costs incurred in the delivery of this project will continue to be recorded and reported to JAQU to be fully reimbursed.

8.6 The costs to complete the OBC have already been fully met through grants from Defra, and they have confirmed commitment to cover all approved costs associated with the further work required to complete the FBC.

8.7 By the 31<sup>st</sup> May 2020, and the delivery of the OBC, £1.599m of grant funding had been received in relation to the project. The split of this expenditure was as follows:

- Employee costs across the three Authorities, £428k
- Project Management costs, £109k
- External Consultant costs, £1.062m.

8.8 Subsequently, due to the tight deadlines and the requirement to do a Covid-19 sensitivity test, work has been ongoing and an additional £84.4k has been received in grant funding. Additional expenditure has therefore been incurred or committed in relation to:

- Project Management costs, £17k
- External Consultant costs, £67k.

- 8.9 Any additional expenditure incurred in relation to time spent on the project by employees during the period of 1<sup>st</sup> June 2020 to 30<sup>th</sup> September 2020 is included with the grant claim for FBC.
- 8.10 Indicative costings for the FBC stage are £1.659m, and a grant application will be made to JAQU in order to cover these costs.
- 8.11 The OBC also outlines the costs of the implementation of the measures, this is detailed in Appendix C. In brief the 10 year costs are:
- Preferred option - capital expenditure of £7,842K, operational costs of £1,524K giving a total scheme cost of £12,966K.
  - Benchmark CAZ - capital expenditure of £36,577K, operational costs of £59,892K giving a total scheme cost of £96,496K

## 9. **Major Risks**

- 9.1 A comprehensive risk assessment has been undertaken as part of the OBC development, which has identified the following key risks:
- The uncertainty associated with the Covid-19 pandemic, although a sensitivity analysis has been completed which demonstrates that the Covid-19 linked factors that may affect travel patterns, and hence vehicle emissions and pollution, are relatively small and counterbalance each other.
  - Highways England's support for the preferred option, which is critical given the importance of the A500 and A50 in the local road network. These roads form part of the national Strategic Road Network (SRN) and are managed by Highways England on behalf of the Department for Transport. The preferred option includes measures which help to mitigate the impacts of the preferred option on the SRN.
- 9.2 The Management Case in the OBC (within Appendix C) details the risk management strategy in place to minimise the impact of risks whilst ensuring potential opportunities are maximised.

## 10. **Sustainability and Climate Change Implications**

- 10.1 Any option that is implemented to tackle nitrogen dioxide exceedances may have indirect sustainability and climate change benefits or impacts.
- 10.2 The OBC (Appendix C) assesses climate change implications through the assessment of the carbon dioxide (CO<sub>2</sub>) change throughout a 10 year operation period. This utilises data obtained through the TUBA assessment. The preferred option is calculated to have 13,324 tonne CO<sub>2</sub> Increase. The benchmark CAZ D is calculated to have a 194,854 tonne CO<sub>2</sub> decrease.





- 10.3 The increase for the preferred option reflects the increase in travel distance as some vehicles reroute to avoid the bus gates. The improvement under the CAZ scenario mostly reflects vehicle upgrades to avoid the CAZ charge.

11. **Key Decision Information**

- 11.1 This item is a key decision as it affects all wards, this has been included on the forward plan.

- 11.2 The contract values of over £100,000 make this a key decision item.

12.1 **Earlier Cabinet/Committee Resolutions**

The following reports have been submitted:

1. Air Quality Ministerial Direction - 6 February 2019.
2. Air Quality Ministerial Direction – Strategic Outline Case - 20 March 2019.
3. Award of Air Quality Local Development Plan - Technical Consultant Contract 24th April 2019.
4. Air Quality Ministerial Direction Update 10 July 2019.
5. Air Quality Local Plan Contracts 16 October 2019.
6. Air Quality Briefing – Economy, Environment & Place Scrutiny Committee – 5 February 2020.
7. NSLAQP – OBC – Economy, Environment & Place Scrutiny Committee – 12 November 2020.

13. **List of Appendices**

- A - Summary of the Feasibility Study.
- B - The Preferred Option
- C - NSLAQP Outline Business Case
- D - NSLAQP Covid Sensitivity Test Results

14. **Background Papers**