

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Executive Member for Environment and Transport
<b>Date:</b>	24 April 2018
<b>Title:</b>	Air Quality in Hampshire
<b>Report From:</b>	Director of Economy, Transport and Environment

**Contact name:** James Moore

**Tel:** 01962 846768

**Email:** James.moore@hants.gov.uk

### 1. Recommendations

- 1.1. That the Executive Member for Environment and Transport notes the new Government approach to Air Quality and the actions required by the County Council as Highway Authority to cooperate with a Ministerial Direction placed upon District Councils, arising from the UK plan for tackling roadside nitrogen dioxide concentrations.
- 1.2. That subject to the availability of funding, authority is delegated to the Director of Economy, Transport and Environment, in consultation with the Executive Member for Environment and Transport, to progress with feasibility work for possible interventions to support this agenda, noting the need to advance work in the "shortest possible time".
- 1.3. That authority is delegated to the Director of Economy, Transport and Environment to make outline business case submissions to the Government for future air quality interventions, as well as funding bids, and also to negotiate and enter into memoranda of understanding as appropriate to deliver air quality interventions in consultation with the Executive Member for Environment and Transport.
- 1.4. That the Executive Member for Environment and Transport supports the strategic direction set out in this report (paragraph 3.13).
- 1.5. That authority is delegated to the Director of Economy, Transport and Environment to make all necessary consultation and engagement arrangements on options considered, in consultation with the Executive Member for Environment and Transport.

### 2. Executive Summary

- 2.1. The UK Government has obligations in relation to air quality standards, arising from European Directives. As a result of recent successful legal challenges and the impending deadlines for compliance with the EU Directive, the UK Government has recently taken action to direct District Councils in areas of poor air quality to take action to make improvements. An overarching report will be

considered by the Cabinet later this year in respect of the County Council's wider role and responsibilities for air quality, including public health duties and responsibilities. In the interim, this report has been brought forward in response to the urgent measures and issues relating to transport emissions at a number of Hampshire locations identified as requiring action by the Government.

- 2.2. The purpose of this paper is to outline the immediate work that is required from Hampshire County Council as Highway Authority to assist the District Councils in reaching compliance with a Ministerial Direction related to air quality exceedances of nitrogen dioxide at the Hampshire locations listed below, as set out in the UK plan for tackling roadside nitrogen dioxide concentrations:
- Fareham for parts of the A27 and A32;
  - Rushmoor for the A331 Blackwater Valley Relief Road;
  - New Forest for the Redbridge Causeway A35; and
  - Basingstoke for part of the A339.
- 2.3. This paper seeks to set a direction on transport related air quality concerns, update the Executive Member on the issues likely to be associated with undertaking work of this nature, and seeks appropriate delegations and authority to undertake actions necessary to do the work required in the "shortest possible time". Additionally, the recommendations seek authority to be delegated to the Director of Economy, Transport and Environment to submit outline business cases and bids for funding measures.

### **3. Contextual information**

- 3.1. The EU Directive 2008/50/EC (the Air Quality Directive), sets legally binding standards for ambient air quality. It sets limits for concentrations of various pollutants and dates by which targets must be achieved.
- 3.2. In the UK, responsibility for meeting air quality requirements is devolved to the national administrations in Scotland, Wales, and Northern Ireland. The Secretary of State for Environment, Food and Rural Affairs has responsibility for England and the Department for Environment, Food, and Rural Affairs (Defra) co-ordinates assessment and air quality plans for the UK as a whole. The Air Quality Directive is implemented in the UK through the Air Quality Standards Regulations 2010.
- 3.3. The Government are bound by the Air Quality Directive to achieve compliance to certain air quality standards by 2010 (later extended to 2015). In February 2017 the Government was sent a final warning by the EU to comply or face a case at the European Court of Justice.
- 3.4. In July 2017 the Government published its finalised UK plan for tackling nitrogen dioxide concentrations. The following day Defra and the Department for Transport (DfT) delegated the legal duty to comply to each Environmental Health Authority named in the national plan, via Ministerial Direction, mandating the following time-limited actions:

- **31 March 2018** - Local authorities must submit their **Strategic Outline Case**, outlining their strategic approach and shortlist of measures to address air quality in the shortest possible time, including indicative costs.
  - **31 December 2018** - Local authorities must submit their **Full Business Case**, setting out the air quality reduction target, costed preferred option(s) and supporting evidence, as well as an implementation plan and monitoring programme.
- 3.5. The Ministerial Direction directed certain English Local Authorities to carry out their duties in respect of Air Quality under Part 4 of the Environment Act 1995 by the deadlines specified in the Direction. The local authorities named in the Direction have to comply with it. Fareham Borough Council, New Forest District Council and Rushmoor Borough Council have been named in the Direction. The Government selected these authorities based on the forecast that these areas would not comply with NO<sub>2</sub> limits by 2021.
- 3.6. On 21 February 2018, environmental lawyers from ClientEarth won a legal challenge against the Government, with Defra and DfT's position ruled 'unlawful' due to its inadequacy. This means that a further 45 local authorities will also now receive a Ministerial Direction for action. These authorities include Basingstoke & Deane Borough Council and Portsmouth City Council.
- 3.7. The New Forest exceedance (which is effectively the tip of the Southampton Clean Air Zone at Redbridge) is being addressed via Southampton's Air Quality work as one of the five Clean Air Zone cities.
- 3.8. The area of exceedance in Rushmoor is the A331, Blackwater Valley Road that also extends into the local authority areas of Surrey Heath and Guildford Borough, and therefore Highway responsibility is shared with Surrey County Council.
- 3.9. Fareham Borough Council's Air Quality area, where DEFRA's National Air Quality model predicts the A27 and A32 leading to Quay Street junction will have illegal annual levels of NO<sub>2</sub> by 2020, falls entirely within Hampshire's jurisdiction as Highway Authority. The lead minister for the Joint Air Quality Unit (JAQU) of DfT and Defra, Dr Therese Coffey MP (Parliamentary Under-Secretary, Defra) visited Fareham on 12th January and met with the Executive Member for Environment and Transport and also Councillor Seán Woodward to discuss emerging work.
- 3.10. The County Council has a history of working on air quality issues in Hampshire. It has assisted environmental health authorities in developing action plans as part of Air Quality Management Areas (AQMAs), and also in its more recent role as Public Health Authority. However, this new Government approach is different and requires significant new and additional work. This will entail considering if such areas should be designated as potential Clean Air Zones (CAZ). As such there is a requirement to consider the effectiveness of charging the most polluting vehicles in order to reach compliance and compare this to other non charging options for achieving compliance. There are different orders of CAZ zone, meaning charges can range from comprehensive to a regime where charges only apply to selected vehicle types ranging from taxis, HGVs, LGVs, buses, and the most polluting private diesel and petrol vehicles.

Examples of non charging initiatives being considered include investment in public transport alternatives, behaviour change initiatives, and operational changes to traffic controls or infrastructures changes to road networks. The work is required to be presented back to Government in the form of outline and full business cases along the timelines stated in paragraph 3.4.

- 3.11. It may also be necessary to obtain stakeholder and public views on proposals, some of which are likely to be controversial. Delegated authority is sought for the Director of Economy, Transport and Environment to undertake initial high level engagement activity on such options and packages of solutions. This delegation does not include consultation on individual schemes which are likely to require a detailed design process to determine costs, impacts and benefits more clearly before meaningful consultation can take place.
- 3.12. The approach by Government (as set out in prescribed guidance) tends to lend itself to site specific solutions to a problem that is largely caused by regional/national issues of vehicle ownership and usage, and complex commuting patterns that transcend local authority, local enterprise partnership, and sub-regional boundaries. Effective solutions are likely to be more geographically dispersed and require more systemic policy tools and measures. At a regional level the County Council is in a good position as an upper tier authority to look at these cross boundary issues and coordinate such measures, potentially through working with the emerging Transport for the South East organisation. The policy position/direction of travel set out below recognises this and suggests that a dialogue is started with District Councils and other nearby local authorities on what coordinating role might be undertaken by the County Council and how this might be resourced.
- 3.13. It is clear from the above that tackling Nitrogen Dioxide exceedances is a public policy priority, with Public Health England (PHE) regarding poor air quality as the largest environmental risk to public health in the UK. This general issue will be subject to a Cabinet report later in the summer. In the interim in terms of the immediate response to the designated area issues, the following bullet points set out an indicative direction of travel for the County Council in seeking to meet current expectations. The Executive Member is asked to endorse the working principles that follow – that as the Highway Authority, the County Council will:
  - Take all reasonable efforts to support the Districts in meeting the Secretary of State's directives where they are being made; and
  - Undertake any required immediate work, and where possible, recover its reasonable costs incurred in doing so.

#### **4. Finance and Legal**

- 4.1. Section 86 of the Environment Act 1995 requires that where a district council is preparing an Air Quality Action Plan, the county council shall, within nine months of when the district council first consults with them, submit to the district council proposals for the exercise (so far as relating to the designated area) by the county council, in pursuit of the achievement of air quality standards and objectives, of any powers exercisable by the county council. Where the county

council submits proposals to a district council, it shall also submit a statement of the time or times by or within which it proposes to implement each of the proposals.

- 4.2. The Environment Act 1995 further provides that if it appears to the Secretary of State that, inter alia, the county council has failed to discharge any duty imposed on it under this part of the Act; or that the actions, or proposed actions, of the county council are inappropriate in all the circumstances of the case, the Secretary of State may give directions to the county council requiring it to take such steps as may be specified in the directions. These directions could be to submit its proposals, modify any proposals, and/or implement any measures included in the action plan.
- 4.3. There is a statutory duty on the county council to provide a district council with all such information as is reasonably requested by the district council for purposes connected with the action plan. The reasonable costs of providing this information to the District can be recovered by the County Council.
- 4.4. As a result of these statutory obligations, the Secretary of State would expect the County Council to actively engage at all stages of review, assessment and action planning in relation to the Local Air Quality Management.
- 4.5. Part 2 of the Localism Act contains discretionary powers under which the government could require local authorities to pay some or all of the European fines faced by the UK. A requirement to make a payment may only be imposed if there has been a Ministerial order designating a public authority and the EU sanction is one to which the designation applies. Before making such an order the public authority would have to be consulted and warnings given.
- 4.6. Payment of any fines is dependent on a decision by the EU to impose them, which is only expected to occur if the Court of Justice of the European Union (CJEU) issues a judgement and the UK fails to act on its findings. Central Government does not have an estimate of what the level of penalties would be should the UK be fined by the CJEU.
- 4.7. The timescales set for local authorities to undertake this work are short and require the County Council to seek external technical support. The Government has agreed to pay towards this work and is grant funding the district and borough councils (as Environmental Health Authorities) to do so. Most Environmental Health Authorities have agreed to pass some of this funding onto the Highway Authority to commission and undertake the technical work required. The tight timescales and large amount of technical assessment and modelling work required means that this is resource hungry. To date, the County Council is seeking just in excess of £1,000,000 from the funding allocated to the Environmental Health Authorities towards this work for the Fareham and Rushmoor zones only. This has been requested in full, but only partially funded to date, although JAQU have assured councils that there will be future opportunities to apply for further funding during this process and officers are awaiting the details of this. Additional funding may be required for Basingstoke and New Forest, but this remains unclear at the time of writing the report. The recommendations in this report are seeking authority to progress with this work on the understanding that the costs will be covered by the allocation of £1,000,000.

4.8. The funding being sought is for technical work, collection of data, modelling, scheme identification, and options assessment. In part, this will be used to pay for officer time to client-manage the business case work. An agreement has been reached with Government for County Council officer time to be recharged to the project. It is anticipated that this work is likely to require approximately 1 Full Time Equivalent staff resource across a full year.

## **5. Consultation and Equalities**

5.1. Any emerging measures which involve road and traffic changes or restrictions are also likely to require local consultations before final decisions are taken on such measures.

5.2. A high level equalities impact assessment is being scoped and conducted as part of the individual business cases. However, it is noted that the areas designated align with areas of social exclusion. It is considered that there will be equalities impacts of a potentially significant nature both positive and negative that will need to be understood as the business case work evolves.

**CORPORATE OR LEGAL INFORMATION:****Links to the Strategic Plan**

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **1.2 Equalities Impact Assessment:**

This decision relates to the delegation of authority for feasibility studies, business case development, and consultation purposes. There is therefore no direct impact on groups with protected characteristics, but equalities issues will form part of the feasibility and business case development, and assessments will be carried out at appropriate junctures, including at the decision stage for any specific schemes.

### **2 Impact on Crime and Disorder:**

2.1 There is no impact on crime and disorder.

### **3 Climate Change:**

- (a) How does what is being proposed impact on our carbon footprint / energy consumption?
- (b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This decision relates to the delegation of authority for feasibility studies, business case development, and consultation purposes. There is therefore no direct



impact on the County Councils carbon footprint or ability to adapt to climate change, but such considerations will form part of the feasibility and business case development, and assessments will be carried out at appropriate junctures, including at the decision stage for any specific schemes.