

DECISION-MAKER:	CABINET		
SUBJECT:	CLEAN AIR ZONE CONSULTATION		
DATE OF DECISION:	19 JUNE 2018		
REPORT OF:	LEADER OF THE COUNCIL		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

Southampton City Council is one of the first five local authorities in England outside of London required to assess the need for a Clean Air Zone. The primary objective of a Clean Air Zone (CAZ) is to bring about compliance with EU Ambient Air Quality Directive limits of nitrogen dioxide (NO₂) within the shortest possible time. New Forest District Council have subsequently been identified as also needing to undertake an assessment to improve air quality to legal levels, and are working in partnership with Southampton City Council to ensure the city's proposals deliver legal compliance in both areas. The options have been derived and assessed in accordance with the Government's Clean Air Zone Framework, and have been undertaken with technical support from consultants Ricardo and Systra in collaboration with government's Joint Air Quality Unit (JAQU). The work has been funded by JAQU. The outcome of the assessment to date concludes that New Forest District Council are compliant with legal levels without additional measures. Without intervention by 2020, levels of nitrogen dioxide in Southampton will likely remain in breach of legal limits.

The Council published its Clean Air Strategy in 2016 which identified its intent to implement a charging Clean Air Zone for commercial vehicles by 2019/20. A city wide Class B Clean Air Zone continues to be the preferred option for implementing a Clean Air Zone. Under a city wide Class B, Buses, Coaches, Taxis (Hackney Carriage and Private Hire) and Heavy Goods Vehicles (HGVs) would be charged to enter the Clean Air Zone should the vehicle fail to meet minimum emission standards (Euro 4 petrol/Euro 6 diesel/Euro VI diesel). The preferred option would **not** charge any private vehicles, light goods vehicles (LGVs), minibuses, motorcycles or mopeds. The evidence base supporting the preferred option has progressed to a stage where it is appropriate to begin consultation with the public and other interested parties and organisations, to commence 21st June 2018, and to be undertaken as a joint exercise with New Forest District Council.

RECOMMENDATIONS:

	(i)	That Cabinet supports commencement of a 12 week public consultation exercise concerning proposals to introduce a Clean Air Zone in Southampton.
	(ii)	That Cabinet endorses the outcome of the Clean Air Zone Outline Business Case to date, the preferred option identified and its consistency with SCC's Clean Air Strategy 2016-2025 (published November 2016).
	(iii)	That Cabinet agrees to consider the outcome of the consultation at its meeting on 16th October 2018.

REASONS FOR REPORT RECOMMENDATIONS

1.	Southampton City Council are required to assess the need for a Clean Air Zone to bring about compliance with EU Ambient Air Quality Directive levels of nitrogen dioxide within the shortest possible time and by the end of 2019 at the latest. The evidence base for this assessment which includes an air quality technical assessment and economic appraisal of options, has now progressed to a stage that is appropriate for the options to be considered through public consultation.
2.	The requirements for consultation and charging schemes are set out in s.170 Transport Act 2000 where it is confirmed that it is for the individual authority to undertake consultation as they consider appropriate. Consultation must however take place at a formative stage of the proposals and allow sufficient time to engage consultees and consider responses in line with recent case law on consultation practice. For a consultation of this significance the consultation period of 12 weeks is considered appropriate and in line with case law and Cabinet Office guidance on public consultations.
3.	The Clean Air Zone Framework requires both Southampton City Council and New Forest District Council to undertake extensive engagement and consultation with neighbouring authorities, local communities and businesses to: explain the aims, including the potential health and economic benefits; understand any concerns; and assess the need for any mitigating actions or identify alternative options for consideration.
4.	While the formal 12 week consultation will mean Southampton will not achieve the date set out in the Ministerial Direction for the submission of the Full Business Case (15 th September 2018), it will not affect the date of implementing the scheme and will therefore not impact on the Council's ability to achieve compliance with the nitrogen dioxide limits within the shortest possible time. By undertaking a thorough, transparent and open consultation in line with existing case law and government guidance it minimises the risk of facing future legal challenges and therefore adds confidence that the scheme can be implemented by the end of 2019.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5.	That the Council shorten consultation timeframe and hold extraordinary meetings to ensure the Full Business Case for the preferred option can be submitted to the Secretary of State by 15 th September 2018 and meet the Ministerial Direction. It was considered that the scale of the scheme and potential impacts on the city socially and economically required the most thorough consultation in accordance with national case law, Cabinet Office guidance and the Southampton Compact Code of Good Practice. A full 12 week
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	consultation will also ensure that implementation of the approved scheme is unlikely to be delayed as a result of challenge to the Council's failure to follow standard practice, thereby providing more assurance that the Council's decision on the preferred option in due course can be put in place with the aim of achieving compliance with EU Ambient Air Quality Directive limits within the shortest possible time.
6.	That the Council do not consult on the proposals. The Transport Act (2000) s170, the Clean Air Zone Framework 2017, national case law, Cabinet Office Guidance and the local Compact Code of Good Practice require meaningful and extensive consultation and engagement to be undertaken at a formative stage of the proposals.
DETAIL (Including consultation carried out)	
7.	In 2015, Defra identified Southampton as needing to deliver compliance with EU Ambient Air Quality Directive levels for nitrogen dioxide by introducing a Class B Clean Air Zone, indicating that legislation would be passed to this effect. In 2017, a subsequent iteration of the plan revised this requirement. Southampton City Council were instead required to undertake a feasibility assessment to determine what class of clean air zone is required and to what geographic extent and produce a Full Business Case for a Clean Air Zone based on the outcome. The Council have been directed to deliver the Full Business Case to the Secretary of State by 15th September 2018 and have received a Ministerial Direction to that effect. The plan proposed within the Full Business Case and approved by the Secretary of State must be implemented as soon as possible and by the end of 2019.
8.	The technical assessment has concluded that the business as usual (existing measures only) in Southampton is not enough to achieve legal levels of nitrogen dioxide within the shortest possible time. Therefore, action is required to accelerate the improvement of nitrogen dioxide concentrations in the city, a number of options have been explored to assess their impact on air quality alongside an associated economic appraisal.
9.	New Forest District Council (NFDC) were subsequently identified as having to undertake a feasibility assessment to establish how to bring about compliance with nitrogen dioxide limits. The area exceeding in NFDC is an extension of the area being assessed in Southampton. Therefore, NFDC are now included within Southampton's assessment and has concluded that NFDC will be compliant without intervention by 2020. Measures implemented by Southampton will deliver additional improvements in nitrogen dioxide concentrations in NFDC.

Clean Air Zone Implementation Options											
10.	<p>Table 1 Options excluded at initial assessment screening</p> <table border="1"> <thead> <tr> <th>Any option including following component:</th> <th>Reason for exclusion</th> </tr> </thead> <tbody> <tr> <td>Smaller area (i.e. City centre only)</td> <td>Causes adverse traffic impacts</td> </tr> <tr> <td>Less Stringent CAZ Class (i.e. Class A which includes only buses and taxis)</td> <td>Fails to deliver objective</td> </tr> <tr> <td>More stringent CAZ Class (i.e. Class C & D which include LGVs and Private Cars)</td> <td>Class B sufficient to deliver objective therefore associated economic impacts considered excessive and unjustified.</td> </tr> <tr> <td>Use specific components of the CAZ framework (i.e. charge HGV's, LGV's or cars only)</td> <td>Fails to maintain national consistency with CAZ framework</td> </tr> </tbody> </table>	Any option including following component:	Reason for exclusion	Smaller area (i.e. City centre only)	Causes adverse traffic impacts	Less Stringent CAZ Class (i.e. Class A which includes only buses and taxis)	Fails to deliver objective	More stringent CAZ Class (i.e. Class C & D which include LGVs and Private Cars)	Class B sufficient to deliver objective therefore associated economic impacts considered excessive and unjustified.	Use specific components of the CAZ framework (i.e. charge HGV's, LGV's or cars only)	Fails to maintain national consistency with CAZ framework
Any option including following component:	Reason for exclusion										
Smaller area (i.e. City centre only)	Causes adverse traffic impacts										
Less Stringent CAZ Class (i.e. Class A which includes only buses and taxis)	Fails to deliver objective										
More stringent CAZ Class (i.e. Class C & D which include LGVs and Private Cars)	Class B sufficient to deliver objective therefore associated economic impacts considered excessive and unjustified.										
Use specific components of the CAZ framework (i.e. charge HGV's, LGV's or cars only)	Fails to maintain national consistency with CAZ framework										
11.	<p><i>Preferred Option for Consultation:</i> The current preferred option, a city wide Class B Clean Air Zone, would charge Buses, Coaches, Taxis (Private Hire and Hackney Carriage) and Heavy Goods Vehicles (HGVs) to enter the zone. The provisional charges are based on London's Ultra-Low Emission scheme which are as follows:</p> <ul style="list-style-type: none"> • Buses, Coaches and HGVs not meeting Euro VI: £100 per day • Taxis (Private Hire and Hackney Carriage) not meeting Euro 6 diesel/Euro 4 petrol: £12.50 per day <p>Any charges introduced will not exceeded these amounts and the consultation exercise will seek to identify a lower charge that can still be effective in delivering the necessary level of behaviour change needed to achieve compliance.</p> <p>Penalties would be issued to vehicles that do not meet minimum emission standards and fail to pay the charge within 24 hours of accessing the Clean Air Zone. Private cars, light goods vehicles (LGVs), motorcycles and minibuses would not be charged to enter the Clean Air Zone.</p> <p>The scheme would be enforced using a network of Automatic Number Plate Recognition (ANPR) cameras to identify vehicles that do not meet minimum emission standards.</p>										

Table 2 Preferred Option – City wide Class B

			<i>Preferred Option</i>
Description	Business As Usual (No CAZ)	Non-charging CAZ	City wide Class B Charging CAZ (Buses, Coaches, HGVs, Hackney Carriage and Private Hire)
Meet NO ₂ objective by 2020	✘	✘	✓
Meet NO ₂ objective by 2020 in New Forest District Council	✓	✓	✓
Support Measures for Effected Stakeholders	Not applicable	✓	✓
Implementation Cost	None	Lowest	Highest
Economic Impact	Negative*	Positive	Positive

*Based on persistent exceedance of EU objective as barrier to future economic growth and indicator for ongoing detrimental health costs.

12. ***Alternative Option:*** More stringent classes of Clean Air Zone to include light goods vehicles (LGVs) and/or private cars but has not been selected as the preferred option as the adverse economic impact of introducing LGVs and private cars is unlikely to be supported locally and is not required as the preferred option is sufficient to deliver compliance within the shortest possible time.

13. ***Alternative Option:*** A non-charging Clean Air Zone has also undergone assessment. The feasibility assessment has to date concluded that a non-charging proposal consisting of alternative mechanisms to charging to enforce compliance with Clean Air Zone minimum emission standards will not meet legal limits within the shortest possible time or by 2020.

14. ***Alternative Option:*** A less stringent Class and smaller geographic extent has also been considered, a city centre Class A Clean Air Zone (charging Buses, Coaches, Private Hire and Hackney Carriage vehicles). The feasibility assessment has to date concluded that this option will not meet legal limits within the shortest possible time or by 2020. A citywide scheme has also been shown to be the only option that effectively prevents secondary congestion and local air quality issues caused by traffic diverting.

15. ***Alternative Option:*** An option that is not consistent with the Clean Air Zone Framework has been assessed. This option is city wide and enforces non-compliant Buses, Hackney Carriage and Private Hire Vehicles through alternative mechanisms and levies a charge on non-compliant HGVs. While this delivers compliance within the same timeframe as the preferred option, though there is a higher levels of uncertainty of achieving compliance associated with the alternate mechanisms of enforcement. Inconsistency with the Framework also results in a lack of consistency with other authorities implementing Clean Air Zones.

16. The preferred option would include a range of mitigation measures to support local businesses and organisations adversely impacted by the introduction of the scheme. If subsequently approved, this will include discounts and exemptions from the charge. Access would also be available to funds for supporting the replacement of non-compliant vehicles with compliant vehicles and to support sustainable and Clean Air Zone compliant practice, for example choosing to consolidate goods and use compliant vehicles to undertake deliveries within the Clean Air Zone. An overview of the proposed mitigation measures for each vehicle class is outlined in table 3.

Table 3 Proposed Mitigation Measures

Vehicle Type	Draft Proposed Mitigation for Local Businesses & Organisations
Taxi	Discounts on charge for eligible vehicles. Incentives for upgrading to Clean Air Zone compliant vehicles for eligible vehicles.
Bus	Clean Bus Technology Fund already received to retrofit buses in Southampton with accredited retrofit technology.
Coach	Exemptions and discounts on charge for eligible vehicles. Incentives for upgrading to CAZ compliant vehicles. Access to support for promoting CAZ complaint operations.
Heavy Goods Vehicle	Exemptions and discounts on charge for eligible vehicles. Incentives for upgrading to CAZ compliant vehicles. Access to support for promoting CAZ compliant logistical operations.

The consultation will aid identification of any other potential options and mitigation measures that could be included in the current preferred option. The consultation will also provide an opportunity for stakeholders to consider the proposed mitigation measures and any alternatives.

17. The consultation will seek the views of all residents, business, organisations and individuals who will be impacted by a proposed Clean Air Zone, and will launch on 21st June 2018. A detailed consultation plan is being drafted. The preferred option would impact most likely impact those businesses and organisations that operate vehicles within Class B of the Clean Air Zone Framework (Buses, Coaches, Taxis and HGVs). This includes the taxi trade, local buses and buses that enter the zone for servicing and maintenance. HGVs servicing the port, construction, logistics and suppliers that enter the zone would also be impacted. The consultation will provide adequate opportunity for respondents to comment on the proposals and offer their own alternatives for Cabinet to consider before finalising proposals for submission to government. The consultation will be open for responses for 12 weeks, closing September 20th 2018. It will be undertaken as a joint exercise with NFDC. An Equality and Safety Impact Assessment (ESIA) has been undertaken to identify protected groups under the Equalities Act 2010 who may be impacted by the proposal and indicates how those impacts will be mitigated. The ESIA identifies concessionary bus users, users of Home to School transport, and taxi users with mobility issues as being impacted with mitigations identified. During the consultation process, efforts will be made to seek feedback on any potential impacts that may not have been identified and on other mitigating actions that may not have been considered. Positive impacts with regards to improvements in public health due to reductions in air pollution are also identified, in particular

	the elderly, young and those with existing health conditions will see the most benefit. The ESIA will be subject to consultation, if there are any particular groups that have so far not been recognised we would expect them to be identified through this process.
18.	A Campaign Plan has been drafted and includes public meetings, physical consultation materials, digital marketing, information on websites, external signage across the city (e.g. billboards), face-to-face meetings with stakeholders and press releases.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
19.	Significant Capital expenditure is required for installation of any enforcement system (including ANPR cameras, road signage, markings and associated infrastructure), and back office requirements for administration of any scheme. Government funding for implementing Clean Air Zones is being made available through JAQU's Clean Air Implementation Fund, and the financial model assumes the implementation of the scheme will be fully funded through this source. The scheme is viable subject to full Government funding being available to cover the Council's costs.
20.	There will be no statutory duty to deliver the CAZ in the absence of funding from central government. SCC anticipate that confirmation of funding will be confirmed with the Ministerial Direction requiring its implementation. That is anticipated in early 2019.
21.	The annual running costs of a Clean Air Zone will be met from the revenue generated from the enforcement system. Residual income will then be ring fenced for economic mitigation measures in accordance with the Clean Air Zone Framework.
22.	The scheme presents some financial risks to SCC if the grant funding received does not meet the capital cost of setting up the Clean Air Zone, and that revenue generated is not sufficient to reinvest in mitigation measures. A financial model is being developed to accompany the Full Business Case to ensure that any scheme is fully and accurately costed, and that appropriate sensitivity analysis on revenues and running costs are included.
<u>Property/Other</u>	
23.	None
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
24.	Part III Transport Act 2000 and s.1 Localism Act 2011.
<u>Other Legal Implications:</u>	
25.	The requirement to carry out consultation on a proposal of this nature is determined in accordance with the Transport Act 2000 together with recent case law on the adequacy of public consultation such as the Mosely and Leicestershire cases. The proposals require a full Equality Impact Assessment under the Equalities Act 2010, which has been carried out at a formative stage of the process to inform options and consultation requirements and is being updated at every stage of the process to identify potential impacts and

	mitigation. In carrying out the consultation and proposals the Council has regard to its duties under s.149 of the Equalities Act 2010 (the public sector equality duty) and in particular the need to ensure the proposals are compiled having due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between people who share protected characteristics under the Act and to foster good relations between people who share protected characteristics and those who do not.
26.	The UK Government is currently facing legal action from the European Union that could result in significant fines for infraction of nitrogen dioxide limits. The UK Government holds discretionary power within Part 2 of the Localism Act 2011 that could require responsible authorities to pay all or part of an infraction fine if compliance is not achieved by the relevant deadlines, subject to a warning and appeal process.
27.	A Data Protection Impact Assessment Statement has been completed for the consultation exercise and concluded that it is not necessary to conduct a full Data Protection Impact Assessment at this time. However, any subsequent decision made on implementing a Clean Air Zone charging scheme will require further review and is likely to require a full Data Protection Impact Assessment at that time.
RISK MANAGEMENT IMPLICATIONS	
28.	Southampton City Council has received a ministerial direction from the Parliamentary Under Secretary of State for Environment, Food and Rural Affairs to prepare and submit to the Secretary of State a Full Business Case by 15th September 2018. This must set out detailed proposals for a scheme which is the authority's preferred measure to deliver compliance in its area with legal limit value for nitrogen dioxide in the shortest possible time. Under section 85(7) of the Environment Act it is the duty of a local authority to comply with a direction given to it. A formal 12 week written consultation will mean that Southampton will not be able to submit a preferred option to the Secretary of State by September 15th 2018. However, the scale of the proposal and the potential wide reaching social and economic impacts it was not deemed appropriate to shorten the time frame. By undertaking a 12 week consultation, the risk of a future legal challenge that may delay implementation of the preferred option is minimised and outweighs the risk to the Council of the government seeking specific performance in relation to the ministerial deadline. This gives greater robustness to the scheme and in it being able to meet the objective of improving nitrogen dioxide to compliant levels within the shortest possible time.
29.	SCC's Strategic Risk Register includes "Failure to improve air quality to legal levels" and is subject to regular Service Director oversight.
POLICY FRAMEWORK IMPLICATIONS	
30.	The recommendations are consistent with SCC's Clean Air Strategy 2016-2025 (published 2016) which identifies the need to improve air quality in the city as a priority. The introduction of charging Clean Air Zone is also cited as a delivery objective in the Strategy.
31.	The recommendations are consistent with the Health and Wellbeing Strategy 2017-2025 within which an outcome is to ensure Southampton is a healthy

	place to live and work with strong active communities. This is to be achieved by delivering a cleaner environment through a Clean Air Zone with vehicle access restrictions to the city.
32.	The recommendation is consistent with the priority within the Southampton City Council strategy 2016-2020 to “improve air quality”.

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Equality Safety and Impact Assessment
2.	Data Protection Impact Assessment

Documents In Members’ Rooms

1.	None
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	Yes
Data Protection Impact Assessment	
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out?	Yes
Other Background Documents	
Other Background documents available for inspection at:	
Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None