

Birmingham City Council

Report to Cabinet

11 February 2020



Subject: Clean Air Zone: Heavy Duty Vehicle Fund (Mitigation M4)
- Full Business Case

Report of: Interim Director, Inclusive Growth

Relevant Cabinet Member(s): Councillor Waseem Zaffar, Transport and Environment
Councillor Tristan Chatfield, Finance and Resources

Relevant O &S Chair(s): Councillor Liz Clements, Sustainability and Transport

Report author: Mohammed Zahir, Head of Business Enterprise and Innovation, Tel: 0121 303 2956
Email: mohammed.zahir@birmingham.gov.uk

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): add Wards here		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 007226/2020		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

1.1 The purpose of this report is to seek approval to the Clean Air Zone (CAZ) Heavy Duty Vehicle (HDV) Fund (mitigation M4) Full Business Case (FBC) attached at Appendix A to implement a £10.050m HDV Fund designed to help businesses with HGVs and Coaches to move towards achieving compliance with CAZ emission standards as part of the implementation of the Birmingham CAZ.

- 1.2 The fund will be available to small and medium sized enterprises (SMEs) based either within the CAZ, wider Birmingham or West Midlands and conducting commercial activity within the CAZ.

2 Recommendations

- 2.1 Approves the City Council FBC at Appendix A for the CAZ HDV Fund (mitigation M4) at a total cost of £10.200m funded from Clean Air Fund (CAF) capital grant of £10.050m and CAZ revenue income of £0.150m, noting that the proposal within the FBC is a variation on the original submission to the Joint Air Quality Unit (JAQU) in December 2018, as a result of subsequent State Aid advice and is subject to JAQU approval.
- 2.2 Notes that in line with the grant condition requirements the Head of CAZ for the Council has formally notified JAQU of the variation for approval.
- 2.3 Notes that subsequent to the Cabinet approval of the Government Clean Air Zone Full Business Case (GFBC) on 11th December 2018, the Council was awarded and accepted £27.270m of JAQU CAF capital grant to fund mitigation measures, with £10.050m specifically allocated to HDV compliance (mitigation M4).
- 2.4 In accordance with the application and award process detailed within Appendix A, and subject to JAQU approving the variation to the HDV Fund proposal, delegates authority to the Interim Director; Inclusive Growth, or their delegate, to approve and defray the CAF HDV Fund grants of:
- 2.4.1 Between £0.010m and £0.040m per HDV for purchase/lease/retrofit/relocation/exit lease costs, up to a maximum grant value of £0.170m per eligible SME not involved in 'road freight transport for hire or reward' (i.e. non-freight haulage);
- 2.4.2 Between £0.010m and £0.015m per HDV for retrofit, up to a maximum grant value of £0.085m per eligible SME involved purely in 'road freight transport for hire or reward' (i.e. freight haulage).
- 2.5 Approves estimated revenue expenditure of £0.150m to support delivery of the HDV Fund, £0.100m being allocated for financial due diligence checks required as part of the approval process and £0.050m for legal support in drawing-up and finalising Conditions of Grant Aid (COGAs) with applicants, noting that the estimated cost of £0.150m will be funded from CAZ revenue income.
- 2.6 Delegates authority to the Head of Clean Air Zone jointly with the Head of Business Enterprise and Innovation, in consultation with the Cabinet Member for Transport and Environment, to agree with the grant authority (JAQU) to amend the grant fund allocations and conditions, within the total funding limit of this report, in order to most efficiently deliver the objectives of the grant funding.
- 2.7 Authorises the Acting City Solicitor (or their delegate) to negotiate and complete any documentation necessary to give effect to any of the above recommendations.

3 Background

- 3.1 The FBC to which this report relates is derived from the Government Full Business Case (GFBC) which was presented to and approved by, Cabinet on 11th December 2018. The GFBC justified the CAZ programme and associated mitigation schemes, as detailed in the CAF report, which was also approved in the same report.
- 3.2 The GFBC and CAF reports were subsequently approved by JAQU in March 2019, followed by letters from JAQU to the Council on 20th March 2019 outlining the award of capital mitigation grant funding totalling £27.720m, which includes £10.050m to deliver the HDV Fund (mitigation M4).
- 3.3 The HDV Fund aims to help businesses with HDVs (HGVs and Coaches) to move towards achieving compliance with CAZ emissions standards as part of the implementation of the Birmingham CAZ, through support to SMEs based either within the CAZ, wider Birmingham or West Midlands that conduct commercial activity within the CAZ, using non-compliant HDVs of between 3.5 to 44 tonnes.
- 3.4 The strategic and economic case for this scheme remains unchanged from that set out in the GFBC however, the Head of CAZ for the Council has formally requested approval from JAQU to vary its approach to implementation. This variation is based on updated advice regarding compliance with State Aid rules linked to the De Minimis threshold, (limited to €0.200m public sector financial assistance over a three-year period), and a desire to offer greater flexibility to the targeted businesses to ensure that there are appropriate incentives to convert or upgrade non-compliant vehicles. This remains in accordance with the joint objective of the City Council and JAQU of achieving air quality compliance in the shortest possible time. Further information is provided in Appendix A (sections A3 and C1).
- 3.5 Whilst it is not envisaged that the variation to the approach will not be approved it should be noted that a formal response from JAQU has not yet been received.
- 3.6 The HDV FBC (Appendix A) provides further detailed information on the management and delivery of the HDV Fund covering the grant application and award processes.

4 Options considered and Recommended Proposal

- 4.1 A full options appraisal submitted to Cabinet on 10th September 2018 was produced following a detailed and wide-reaching consultation. Cabinet subsequently approved the preferred option which was developed into the GFBC as detailed in the background section above.
- 4.2 The specific options for grant funding remain aligned to the CAF report submitted as part of the GFBC. This is because the CAF report justified the grant amounts and target groups and was the basis upon which JAQU awarded the conditional grant funding. A formal change process must be undertaken in conjunction with

the grant award body (JAQU) should significant alterations to the grant funding be required.

- 4.3 As detailed above, the proposal within the FBC is a variation on the original submission to JAQU (December 2018) as a result of taking State Aid advice. In line with the grant condition requirements the Head of CAZ for the Council has formally notified JAQU of the proposed variation for approval and the reason for it.

5 Consultation

- 5.1 A statutory public consultation was undertaken by the Council between July and August in 2018. The consultation exercise involved 10,392 respondents along with 386 organisations and businesses. Specifically, relevant to this report, the consultation was used to identify groups most vulnerable to the introduction of a charging CAZ and shape the mitigation proposals/options, including those to which this report relates.
- 5.2 Consultation specific to the HDV Fund has been undertaken with concerned local SMEs, national retrofit providers, trade bodies and business support organisations over a period of two months in 2018.
- 5.3 A communications strategy is in place to inform internal and external parties of the grant options and when they will be available. This will be launched once the Government vehicle checker (upon which there is a critical dependency in order to verify a vehicle's compliance), becomes available. This is scheduled to be in April 2020.

6 Risk Management

- 6.1 A risk identification, mitigation and management process is employed on the CAZ mitigations programme and the specific risks to the schemes to which this report relates are detailed in Section G2 of Appendix A.
- 6.2 The risk register is a live document which is regularly reviewed at the Brum Breathes monthly Programme Board.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The implementation of the HDV Fund mitigation measure will support the delivery of the wider CAZ objectives, contributing to improved air quality whilst also mitigating the impact of a charging CAZ on those most economically vulnerable. This is consistent with the City Council's Plan 2018-2022 (2019 update) as set out below:

7.1.2 **Birmingham is an entrepreneurial city to learn, work and invest in**
- We want a city that invests in its people, so that everyone can have

opportunities to realise their potential through lifelong learning, skills and good jobs. We want to invest in the buildings and transport connections of our city to provide better places to live and work, and to enable businesses to prosper.

7.1.2.1 The HDV Fund mitigation measure seeks to provide financial relief to businesses affected by the introduction of the CAZ.

7.1.3 **Birmingham is a fulfilling city to age well in** - We want citizens to live more active, longer, healthier and independent lives. We want to reduce social isolation so that people can make positive choices and take control of their wellbeing.

7.1.3.1 Improving air quality will have a direct impact on the health and wellbeing of citizens and visitors to the city centre.

7.1.4 **Birmingham is a great, clean and green city to live in** - We want Birmingham to be a sustainable city of vibrant culture and flourishing neighbourhoods, with good quality housing. A city with clean air, safe and clean streets, and green spaces. We want to be a city where our citizens have pride in where they live, have a strong sense of belonging, and a voice in how Birmingham is run.

7.1.4.1 The CAZ will directly improve air quality in the city centre. Investing in the city's businesses will mean the essential service they provide will have much less impact on the immediate environment. This is a further step on the way to a clean and sustainable city.

7.1.5 **Birmingham is a city that takes a leading role in tackling climate change** - Climate change is an urgent issue with a global reach that directly impacts upon Birmingham residents. We will work with our partners to tackle this issue to make Birmingham a city in which all of our residents, including those from our most deprived communities, can lead healthy, safe, fulfilling lives.

7.1.5.1 Birmingham is one of the first cities to implement a CAZ, and the very first to operate a charging CAZ type D. It is at the forefront of change in this area and will set the bar for future cities who wish to tackle air quality for their citizens.

7.1.6 **Birmingham Business Charter for Social Responsibility (BBC4SR)**

7.1.6.1 The value of these grants is below the threshold for goods (£1.0m) for the BBC4SR. However, the requirement to pay the Real Living Wage will apply to the contract.

7.2 Legal Implications

7.2.1 The Government issued a Ministerial Directive in December 2017, which required Birmingham City Council to submit a Business Case to the

Government by 15th September 2018 for measures to deliver compliance with legal Nitrogen Dioxide (NO₂) limits in the shortest possible time. The full extent of the legal implications for the City Council were detailed in the Cabinet Report (Tackling Air Quality in Birmingham – Clean Air Zone) approved on the 26th June 2018, as shown in Appendix B.

- 7.2.2 The CAZ will be introduced pursuant to the Transport Act 2000, Part III, Schedule 12, Parts 2 & 6 of the Road User Charging Scheme (Penalty Charges Adjudication & Enforcement) (England) Regulations 2013. A Charging Order (the Birmingham Clean Air Zone Charging Order), has been produced which is expected to be finalised, signed and to be in force by 30th January 2020. It is this order which will provide the legal basis for charging non-compliant vehicle users of the CAZ from 1st July 2020.
- 7.2.3 State Aid advice has been sought in respect of the HDV Fund (mitigation M4) proposal. The current proposed process will be compliant with the state aid De Minimis regulations, Commission Regulation (EU) No. 1407/2013. The original offer was for £0.015m per HDV for up to two HDVs per SME. This now been revised based on the updated legal advice on state aid – the new offer is shown in para 2.4 and detailed in Appendix A, the HDV FBC.

7.3 Financial Implications

Capital

- 7.3.1 The total estimated capital cost of implementing the HDV Fund (mitigation M4) is £10.050m. This will be funded from the £27.270m CAF capital grant awarded by JAQU and accepted by the Council in March 2019. The total allocated CAF grant for the HDV Fund of £10.050m is a finite resource.
- 7.3.2 The grants will be offered on a first come first served basis following successful progression through the application and assessment process. Grant funding will only be paid on the retrospective evidence of defrayal.
- 7.3.3 Grant awards will be subject to completion of a conditions of grant aid agreement (COGA), with key conditions covering a minimum period of retained ownership of any purchased/leased/retrofitted vehicle and a minimum period of usage within the CAZ boundary, (currently planned to be three years post funding).
- 7.3.4 Where these conditions are not met grants will be subject to clawback proportional to the unexpired periods. Officers from the Business Enterprise and Innovation (BEI) team will carry out compliance checks as part of the administration of the HDV Fund. The value of individual grants and criteria is specified in Appendix A (Section A3).

- 7.3.5 Grants provided to individuals or businesses as a result of these measures are not subject to VAT and there is therefore no impact for the Council. VAT may be payable on products or services that grant funding is used to acquire, however this will be the responsibility of the recipient of the product or service.

Revenue

- 7.3.6 Administration costs of delivering the HDV Fund were factored into the original CAZ GFBC. Three Fixed Term Contract posts will be allocated to the BEI team to provide additional capacity, who will be funded from the CAF Administration Grant of £1.968m.

- 7.3.7 In order to deliver the HDV Fund additional resources will be required to complete financial due diligence checks (required as part of the approval process) and in drawing-up and finalising COGAs. The total estimated revenue cost is £0.150m (£0.100m for financial due diligence and £0.050m for legal support to complete COGAs). These costs will be funded from the CAZ revenue income.

7.4 Procurement Implications (if required)

- 7.4.1 There are no procurement implications – the Government has not attached any terms and conditions to be included in the funding agreements with SMEs. SMEs will select the most appropriate option to purchase/lease/retrofit/relocation/exist lease and undertake the agreed option in accordance with a grant agreement issued once the application for funding has been approved.

7.5 Human Resources Implications (if required)

- 7.5.1 This project will require three posts (1 Grade 5 and 2 Grade 4's) on a 3-year fixed contract based in the BEI team of the Inclusive Growth Directorate. They will be funded from CAZ revenue funding as set out in 7.3.7.

- 7.5.2 In the event of redundancies at the end of the three-year period, any associated costs will also be funded from CAZ revenue income.

7.6 Public Sector Equality Duty

- 7.6.1 An Integrated Impact Assessment (IIA) was undertaken as part of the CAZ feasibility study. The IIA assessed the economic and health impacts of the introduction of a charging CAZ. As a consequence, it identified SMEs as an economically vulnerable group, which formed the basis for developing the mitigation measure detailed in this report.
- 7.6.2 As with the IIA, an Equality Impact Assessment (EIA) (EQUA210) was undertaken which also formed the basis for the CAF report and proposed

mitigations. As it underpins the development of the grant funding detailed in this report it is therefore directly relevant.

8 Appendices

- 8.1 Appendix A – Full Business Case
- 8.2 Appendix B – Tackling Air Quality in Birmingham – Legal Implications (extract from Cabinet report on 26 June 2018)
- 8.3 Appendix C – Equality Impact Assessment

9 Background Documents

- Birmingham Clean Air Zone Submission of Full Business Case and Request to Proceed with Implementation, Cabinet Report 11th December 2018. CMIS Reference 005939/2018
- Tackling Air Quality in Birmingham - Clean Air Zone – Submission of Business Case to Government, Cabinet Report 10th Sept 2018. CMIS Reference 005425/2018.
- Clean Air Zone: Charging Order and Indicative Allocation of Net Proceeds, Cabinet Report 25th June 2019. CMIS Reference 006457/2019.