



# Birmingham Clean Air Zone (CAZ): Implementation of Main CAZ Infrastructure – Civil Engineering and Cameras Solution – Full Business Case (FBC)

**Call In by the Resources O&S Committee**

## 1 Request for “Call-In”

1.1 On 12 August 2020, the Cabinet Members for Transport and Environment, and Finance and Resources, took a decision to:

- 1. Approve the FBC and the capital expenditure for the implementation of the CAZ Infrastructure – Civil Engineering and Cameras Solution as detailed in Appendix A, including the designs and locations of the signage, poles and cameras as detailed in Appendix C, at an estimated capital cost of up to £9.218m funded from the £14.215m Clean Air Zone Implementation Fund grant, already received by the Council.
- 2. Delegate authority to the Assistant Director Transport and Connectivity to re allocate funding in relation to the projects covered in this report and detailed in Appendix A, within the overall approved budget.
- 3. Approved the estimated annual revenue expenditure of £0.657m, funded from the CAZ gross revenue income, for the operational costs of the CAZ infrastructure and camera solution as detailed in Appendix A.
- 4. Noted that the CAZ programme had been progressing since approval of the overarching FBC by Cabinet in December 2018 and that several work streams are underway or have been completed. This includes Early Contractor Involvement (ECI), detailed design, and surveys to enable accurate cost estimates to be undertaken, as approved under the overarching FBC to Cabinet on 11th December 2018, and as detailed in Appendix A, Section D2 Procurement Implications and Contract Strategy.



- 5. Noted that whilst Early Contractor Involvement (ECI) and detailed design activity was complete, the negotiations with the originally appointed civil engineering contractor were unsuccessful and the contract was terminated prior to site works commencing. As a result, a series of smaller work packages were created and the work re-tendered via the Council's Highways and Infrastructure Works Framework Agreement 2014 – 2020.
- 6. Noted that all procurement activity had been undertaken in accordance with procurement protocols to ensure value for money has been achieved and Appendix F contains exempt information detailing a breakdown of current estimated contract values and a detailed summary of contracts awarded and their tender values. The current position is as follows:
- 6.1. The procurement of five of the eight smaller work packages has taken place and contracts have been awarded in line with existing Scheme of Delegations in an effort to achieve the original 'go live' date of 1st January 2020, noting that these work packages were awarded prior to approval of this FBC.
- 6.2. Three larger civil engineering works contracts have recently been let in the period during which this report has been in production, as was necessary to meet the programme requirements. The related works have progressed in line with the terms of the contract tendered and will be formalised Page 4 of 12 through the delegation in 1.3.2 following approval of this FBC at Appendix A.
- 6.3. The award of the remaining three contracts for further work packages in Appendix A, Section D2, will be progressed in line with the delegations in paragraph 1.3.2. via the delegated procurement route.
- 7. Noted that Capita Birmingham Ltd were appointed by the Council to deliver the Automatic Number Plate Recognition (ANPR) and Back Office IT Solution as per the standing agreement at that time, but that as a consequence of the partial termination of their relationship with the Council, the contract with Siemens has been novated to the Council and is therefore now managed directly by Council officers.
- 8. Noted that significant unilateral changes made by JAQU to its deliverables now require further work to be undertaken by the Council in order to establish a complete end-to-end back office IT solution to enable effective CAZ enforcement, and it is proposed that the Council will modify its existing contract with its supplier, Siemens to accommodate the additional scope. An up to date description of the end-to-end enforcement solution is detailed in Appendix A.
- 9. Noted that in order to mitigate the risk of challenge to the existing Siemens contract modification, the Council published a voluntary ex ante transparency (VEAT) notice on 17th June 2020 to which no formal challenges were received from the market.
- 10. Authorised the Interim City Solicitor to execute and complete all necessary legal documents, including agreements with JAQU, to give effect to the above recommendations.



1.2 A request for Call-In was made to the Resources Overview and Scrutiny (O&S) Committee by Councillors Robert Alden and Ewan Mackey on 14 August 2020.

1.3 The Resources O&S Committee considered the request for call-in at a meeting on 25 August 2020. At the meeting the Committee heard from Councillor Waseem Zaffar, Cabinet Member, Transport & Environment, Councillor Tristan Chatfield, Cabinet Member, Finance & Resources, Rajesh Parmar, Senior Solicitor, Mike Smith, Head of Commissioning & Procurement, Phil Edwards, AD, Transport & Connectivity, Will Brown, Senior Project Manager, Infrastructure – Project Management, Turner & Townsend, Richard Tibbatts, Head of Contract Management, Steve Arnold, Head of Clean Air Zone, and Alison Jarrett, AD, Development & Commercial.

## 2 Request for Call-In

2.1 Councillor Robert Alden stated the following call-in criteria applied:

*3 - the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the full Council or the Executive);*

*5 – the Executive appears to have overlooked some relevant consideration in arriving at its decision;*

*8 – there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council;*

*9 – the decision appears to give rise to significant legal, financial or propriety issues;*

2.2 He and Cllr Mackey summarised the key reasons for the call-in request:

- 3 – it is not clear how this report relates to the call-in on the CAZ mitigation software back in February, which has not yet returned to Cabinet. It was made clear during the meeting that this was a separate procurement matter and a further report would be brought, and so this reason for call-in was withdrawn.
- 5 – the report relies on the over-arching full business case agreed by Cabinet, and therefore the correct route for this decision is to return to Cabinet. The Senior Solicitor explained that the December 2018 Cabinet decision delegated these additional business cases to the Cabinet Member, and on that basis the Committee voted not to call-in the decision for this reason.
- 8 – there is a lack of clarity regarding the procurement process. Officers and the Cabinet Members explained the background to the decision, in particular the evolving nature of the context for this decision. Members voted against calling-in the decision for this reason.
- 9 – the report refers to governance issues which reveals a serious failing in relation to the procurement and echoes issues discussed by scrutiny elsewhere. Indeed, the report states that “a specific full business case ... for these works was overlooked”. It was felt that the lack of clarity regarding the procurement process was relevant here. The risk register (which forms part



of the full business case) appears to be out of date – as it still refers to a July start for the CAZ. The decision was called-in for this reason.

- 2.3 There was also discussion on the status of the voluntary ex ante transparency (VEAT) notice on 17th June 2020 to which no formal challenges were received from the market. The legality of the contracts listed in Appendix A was also confirmed with the Senior Solicitor, who acknowledged that although governance processes had not been followed, procurement regulations had not been breached.
- 2.4 Members noted and welcomed the honesty of the report in acknowledging errors and noted that the report addressed those errors in terms of governance and set out how such failures would be avoided in future. The fast moving context of decisions in relation to the CAZ was also noted, and that the situation was very fluid, based on evolving guidance from the Joint Air Quality Unit.

### 3 The Committee Resolution

- 3.1 The Committee resolved to call-in the decision for reconsideration by Cabinet by a vote of 4 members to 2. The relevant criteria is:

*9 – the decision appears to give rise to significant legal, financial or propriety issues.*

- 3.2 The Committee is concerned that yet again it has seen an instance of the processes not being followed and as a result exposing the Council to financial challenge and risk. It was felt by members that it was necessary to bring this to Cabinet's attention. Whilst procurement protocols have been followed, there have clearly been governance issues – namely the incorrect reliance on previous approvals on delegated authority to Cabinet Members and officers without a further full business case being produced, as stated in paragraph 3.6 of the Cabinet Member report – that need to be understood and acted upon.

**Councillor Sir Albert Bore, Chair, Resources Overview and Scrutiny Committee**