

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET MEMBER FOR CLEAN STREETS, RECYCLING & ENVIRONMENT JOINTLY WITH THE STRATEGIC DIRECTOR FOR ECONOMY
Report of:	ASSISTANT DIRECTOR TRANSPORTATION AND CONNECTIVITY
Date of Decision:	12th December 2016
SUBJECT:	RESPONSE TO THE CONSULTATION ON THE IMPLEMENTATION OF CLEAN AIR ZONES IN ENGLAND
Key Decision: No	Relevant Forward Plan Ref:
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s) or Relevant Executive Member for Local Services:	COUNCILLOR LISA TRICKETT, CABINET MEMBER FOR CLEAN STREETS, RECYCLING & ENVIRONMENT
Relevant O&S Chairman:	CLLR ZAFAR IQBAL, ECONOMY, SKILLS & TRANSPORT
Wards affected:	All

1. Purpose of report
1.1 The purpose of this report is to: a) Approve the City Council's response to the Government's consultation on the "Implementation of Clean Air Zones in England" provided at Appendix A to this report.

2. Decision recommended
2.1 That the Cabinet Member for Clean Streets, Recycling and Environment jointly with the Strategic Director, Economy: a) Approve the City Council's response to the joint consultation by the Department for Environment, Food and Rural Affairs (Defra) and the Department for Transport (DfT) on the "Implementation of Clean Air Zones in England". b) Notes that, following the judgement in the recent Judicial Review of the Government's air quality plan for nitrogen dioxide in UK (2015), Government has been required to produce an updated national air quality plan by 31 st July 2017.

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3. Consultation

3.1 Internal

3.1.1 All Birmingham Councillors were sent an email on 4th November 2016, outlining details of the Government's consultation. The consultation was also discussed at the Air Quality Quartet meeting on 15th November 2016. The Cabinet Members for Transport & Roads and for Health and Social Care and the Chairman of the Licensing and Public Protection Committee have also been briefed on this report..

3.1.2 Officers from Growth & Transportation, Environmental Health, Public Health, City Finance, and Legal and Democratic Services have been involved in the preparation of this report.

3.2 External

3.2.1 Emails were sent to key stakeholders from a number of groups including bus/coach operators, freight organisations, taxi and private hire vehicle operators, Business Improvement Districts, emergency services and motorcycle groups. Responses were received from National Express, West Midlands Police, West Midlands Fire Service and from a private hire vehicle operator. These have been considered in the development of the Council's response. A summary of the responses is provided at Appendix B.

3.2.2 The response has also been discussed with officers at Transport for West Midlands to ensure consistency with the response from the West Midlands Combined Authority.

4. Compliance Issues

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

4.1.1 This report is consistent with the City Council's Business Plan 2016+ policies, including the primary goals for Prosperity, Fairness and Democracy.

4.1.2 The draft Birmingham Development Plan sets out that by 2031 Birmingham will be renowned as an enterprising, innovative and green city that has delivered sustainable growth meeting the needs of its population and strengthening its global competitiveness. Policy TP37, Health sets out that the City Council is committed to reducing health inequalities, increasing life expectancy and improving quality of life through a range of measures including seeking to improve air quality. In support of this and recognising that transport is a key source of emissions, TP38, A Sustainable Transport network sets out that the development of a sustainable, high quality, integrated transport system, where the most sustainable mode choices also offer the most convenient means of travel, will be supported.

4.1.3 The Birmingham Connected 20-year strategy for improving the city's transport network included proposals for a Low Emissions Zone in the city centre to improve air quality and help meet commitments to carbon reduction targets, leading to a healthier city. The Clean Air Zone and any additional measures will be developed to ensure they are commensurate with the overall aims of Birmingham Connected to deliver inclusive sustainable growth.

4.1.4 Similarly, Transport for West Midlands' Strategic Transport Plan "Movement for Growth" states that a coordinated approach to responding to the challenges of air quality targets through effective management of road traffic, innovation in vehicle and road infrastructure technology that supports efficient mobility is required. A West Midlands Low Emission Bus Delivery Plan has been published to support the adoption of low emission buses and supporting refuelling infrastructure.

4.2 Financial Implications (will decisions be carried out within existing finance and resources?)

4.2.1 This report has no financial implications for the City Council as it is purely concerned with responding to an external consultation.

4.3 Legal Implications

4.3.1 Part IV of the Environment Act 1995 introduced a national framework for air quality management whereby all local authorities are required to annually review the air quality within their boundaries. Birmingham City Council declared the whole of the city of Birmingham as an Air Quality Management Area in January 2003 for nitrogen dioxide, and an Air Quality Action Plan has been put in place. This declaration was made in accordance with the requirements of Part IV of the Environment Act 1995.

- 4.3.2 The City Council has a duty under the Health and Social Care Act 2012 to take such steps as considered appropriate to improve the health of the people in our area. The Council must have regard to guidance from the Department of Health's Public Health Outcomes Framework in doing so. The Framework makes provision for the impact of air pollution on health, with an indicator of the fraction of mortality attributable to particulate air pollution.
- 4.3.3 Powers exist within Part III of the Transport Act 2000 which enables local authorities to introduce road user charging schemes and these would form the legal basis for the Clean Air Zone.
- 4.3.4 The decision by Government to mandate Birmingham to introduce a Clean Air Zone requires new secondary legislation which Government is also consulting on alongside the CAZ Framework. The powers giving Secretary of State for Environment authority to introduce this legislation is set out in section 87 of the Environment Act 1995.
- 4.4 Public Sector Equality Duty (see separate guidance note)
- 4.4.1 An initial Equality Analysis has been carried out (ref EA001673), and is attached at Appendix C. No adverse effects have been identified from the actions recommended in this report.

5. Relevant background/chronology of key events

5.1 Background

- 5.1.1 Under European Law, all Member States have the obligation to comply with the provisions of the Ambient Air Quality and Cleaner Air for Europe Directive 2008 which sets limiting values for a range of pollutants to protect public health. The Directive also makes provision for member states in breach of air quality limits to face infraction proceedings through which fines may be imposed. The Environment Act 1995 and Air Quality Standard Regulations 2010 obligates all UK Councils to comply with emission limits drawn from the EU Directive, one of which is an annual mean value for nitrogen dioxide, NO₂.
- 5.1.2 Birmingham, like many councils, does not fully comply with this limiting value and the Government have reminded the City Council "of the discretionary power in Part 2 of the Localism Act 2011 under which the Government could require responsible authorities to pay all or part of an infraction fine." Whilst the exact amount is unclear, values being considered are in the region of £300 million. Assessment suggests Birmingham could be fined in the region of £60 million.
- 5.1.3 The overriding cause of poor air quality is emissions from road transport, and in particular diesel vehicles. Calculations by Government in their Air Quality plan for the West Midlands set out that local traffic amounts to 63.9% of the concentrations of NO₂, while industry amounts to no more than 5.7%. Whilst vehicle emissions are progressively reducing, they are not improving quickly enough to tackle the problems and achieve compliance with air quality limits.
- 5.1.4 A number of local transport initiatives have been and continue to be delivered in support of improved air quality including Red Routes, Hybrid Buses, Birmingham Cycle Revolution and Ultra Low Emission Vehicle Refuelling Infrastructure.
- 5.1.5 As part of its duties under the Environment Act 1995, Birmingham City Council must coordinate a local response to reduce levels of NO₂ to a yearly average of less than 40µm. Despite an Air Quality Action Plan being in place since 2004, the work undertaken by the Government demonstrates that, without any action before 2020, there will be areas of exceedance along sections of the A38 in the city centre. Local modelling also shows that other areas such as Moor Street Queensway run the risk of being non-compliant without further action.
- 5.1.6 Poor air quality accounts for around 900 premature deaths a year in Birmingham and severely impacts on the quality of life for many. It is second only to tobacco-smoke as an avoidable cause of early mortality. Most deaths are due to Stroke and Coronary Heart Disease.
- 5.1.7 The original deadline for compliance with air quality limits was January 2010. This was extended by the EU through derogation to January 2015. Plans were submitted by the UK Government to the EU which were challenged by ClientEarth, an organisation of activist environmental lawyers. A hearing in the Supreme Court resulted in a ruling that confirmed that Government's plans would not comply with the Directive.
- 5.1.8 The Supreme Court ruling catalysed the EU to commence infraction proceedings against the UK Government and further, the Supreme Court directed the UK Government to prepare an updated

action plan by the end of 2015, setting out the route to compliance in the shortest time possible.

5.1.9 Following the Supreme Court ruling, Defra and DfT, in consultation with local authorities, developed proposals which would address air quality and reach compliance with the limits set out in both EU and UK legislation.

5.1.10 In December 2015, Defra published an updated plan which set out how air quality compliance would be achieved, including the requirement to implement Clean Air Zones. As a result of the plan and the Clean Air Zone (CAZ), by 2020 the most polluting diesel vehicles including buses, coaches, taxis and lorries will be discouraged from entering the centres of Birmingham, Leeds, Southampton, Nottingham and Derby.

5.1.11 The City Council has been developing proposals for a Clean Air Zone and a Feasibility Study funded by the Government is now underway. At this stage no definitive timescales for implementation of the CAZ have been developed, although it is anticipated it would be operational before the end of 2019. A wider air quality programme which includes measures delivered across the Council and partners is being developed.

5.1.12 In October 2016, Defra and DfT published the Draft Clean Air Zone Framework, Impact Assessment and Secondary Legislation for consultation. The High Court subsequently ruled that the Government's 2015 Air Quality Plans were insufficient to achieve air quality improvements in the shortest possible time, and have instructed that a modified plan be put in place by 31 July 2017. The implications of this decision for Birmingham are not yet understood, but current action on developing the Clean Air Zone is to continue. These modified plans will also have to take account of diesel emissions being higher than were previously assumed.

5.2 Consultation Themes

5.2.1 The consultation includes a series of questions on which views are requested on the implementation of Clean Air Zones in England, split into a number of sections:

- A draft Clean Air Zone framework setting out:
 - The general approach to Clean Air Zones,
 - Additional access restrictions for charging zones – operational standards and requirements.
- Draft secondary legislation to mandate Birmingham, Derby, Nottingham, Southampton and Leeds to implement CAZs:
- The impact assessment.

5.3 City Council Response

5.3.1 A proposed City Council response to the consultation is attached as Appendix A, which emphasises:

- The City Council's in principle support for the introduction of Clean Air Zones and the Framework and that taking action on air quality will help achieve sustainable inclusive economic growth;
- The threat of infraction fines for non-compliance which could cost the Council £60 million – hitting Council services, further affecting the poor and disadvantaged;
- The need for reassurance from the Government that a modified air quality plan will provide stronger action on air quality including the necessary political and financial support (including revenue) to ensure Clean Air Zones and supporting measures achieve the required reductions in emissions;
- The requirement for greater action nationally in particular focusing on reducing the use of diesel vehicles through both technological and fiscal measures;
- Committing support for the level of change required including further devolution and removing the requirement for much needed funding to be sought through competitive bidding processes;
- The need for the CAZ Framework to provide a more ambitious list of measures and provide the appropriate action at the national level to complement the action being required locally;
- The need for the CAZ Framework to allow flexibility to enable local authorities to make the right decisions on the design of their CAZ based on detailed and robust local data; and
- That the secondary legislation in addition to requiring cities to introduce the zones, should require cities to implement the most appropriate class of Clean Air Zone to achieve air quality compliance in the shortest possible time;
- Concerns around the value and validity of the impact assessment given the likelihood that

they were founded on underestimates.

5.4 Next Steps

5.4.1 The City Council's response to the consultation will be submitted before 9 December 2016. The City Council will continue to engage with Government on the development of the Clean Air Zone and wider action on air quality.

- Initial outputs from CAZ feasibility study – baseline and target determination – anticipated early 2017.
- Final Clean Air Zone Framework will be published April 2017.
- Government to publish draft modified Air Quality Plan 24 April 2017.
- Government to publish final modified Air Quality Plan 31 July 2017.
- Secondary Legislation signed and Order comes into force May 2017 after which CAZ cities will have 12 months to prepare a draft scheme for approval by the Secretary of State for Environment.

6. **Evaluation of alternative option(s)**

6.1 An alternative option could be not to respond to the consultation, however, it is considered that this would not maximise the benefits of the Clean Air Zone for the city, in terms of limiting the City Council's ability to help shape the appropriate solution for addressing air quality.

7. **Reasons for Decision(s)**

7.1 To approve the City Council's response to the consultation by the Department for Environment, Food and Rural Affairs and the Department for Transport on the draft Clean Air Zone Framework.

Signatures

Date

Councillor Lisa Trickett,
Cabinet Member for Clean Streets,
Recycling and Environment

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Waheed Nazir, Strategic Director,
Economy

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List of Background Documents used to compile this Report:

- Birmingham Air Quality Action Plan, March 2011
- Birmingham Connected, November 2014
- Improving air quality in the UK - Tackling nitrogen dioxide in our towns and cities, UK overview document, Defra, December 2015
- Birmingham Development Plan 2031, May 2016
- Draft Clean Air Zone Framework consultation, Defra and DfT, October 2016

List of Appendices accompanying this Report (if any):

- Appendix A: City Council Response to the draft Clean Air Zone Framework Consultation
- Appendix B: Summary of responses.
- Appendix C: Equality Analysis

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) tackle prejudice, and(b) promote understanding.
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none">(a) age(b) disability(c) gender reassignment(d) pregnancy and maternity(e) race(f) religion or belief(g) sex(h) sexual orientation