

**Committee Name and Date of Committee Meeting**

Cabinet – 22 March 2021

**Report Title**

SCC/RMBC Clean Air Zone Programme - Approval to Deliver Rotherham's Air Quality Measures Projects

**Is this a Key Decision and has it been included on the Forward Plan?**

Yes

**Strategic Director Approving Submission of the Report**

Paul Woodcock, Strategic Director of Regeneration and Environment

**Report Author(s)**

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**Ward(s) Affected**

ALL

**Report Summary**

Rotherham Council and Sheffield City Council were issued a joint mandate by government in 2020 directing both authorities to reduce current Air Quality levels of nitrogen dioxide (NO<sub>2</sub>), a recognised air pollutant, by 2022. Delivery of the full business case (FBC) to Government is now underway. However, an initial funding allocation has been confirmed by Government at the outline business case (OBC) stage which is sufficient for the Council to deliver 3 key projects, which require installation for it to meet the objectives of the scheme in reducing NO<sub>2</sub> levels by the compliance date set by government and to sustain compliance beyond this. This report outlines the current position and seeks approval to proceed with the 3 projects to commissioning and delivery within the 2021-22 approved capital programme.

**Recommendations**

1. That approval is given for commencement of 3 highways works projects detailed in paragraph 1.10 to enable the Council to be in a position to achieve NO<sub>2</sub> compliance as soon as possible and that these projects, fully funded by government grant, be added to the Council's approved capital programme.

**List of Appendices Included**

Appendix 1 Equalities Impact Assessment  
Appendix 2 Summary of Responses from Rotherham Clean Air Zone consultation

**Background Papers**

2 February 2021 - IPSC Report Clean Air Zone update

“Improving Air Quality in Rotherham”,

Report to Cabinet, 17<sup>th</sup> December 2018

Minutes of Improving Places Select Commission, 6<sup>th</sup> June 2019

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

**Council Approval Required**

No

**Exempt from the Press and Public**

No

## **SCC/RMBC CLEAN AIR ZONE PROGRAMME - APPROVAL TO DELIVER ROTHERHAM'S AIR QUALITY MEASURES PROJECTS**

### **1. Background**

- 1.1 Air quality is a major issue of growing interest and significance at a national and international level. There is categorical evidence that long-term exposure to everyday air pollutants contributes to cardiovascular disease (including heart diseases and stroke), lung cancer, and respiratory disease (including asthma and chronic bronchitis).
- 1.2 The Department for Environment, Food and Rural Affairs (DEFRA) published its final National Air Quality Plan in July 2017, in response to a High Court ruling in December 2016. This Plan details how compliance with the European Union (EU) Ambient Air Quality Directive will be delivered in the United Kingdom, through focussing on improving air quality in a number of Local Authority areas. Those Local Authorities that have areas that are not compliant with the Directive were identified through national air quality modelling. 28 Local Authorities were included ('mandated') in the plan, including Rotherham Metropolitan Borough Council (RMBC) and Sheffield City Council (SCC). RMBC and SCC were 'jointly mandated' on the basis that the Parkway in both Sheffield and Rotherham was identified as being non-compliant.
- 1.3 Both Local Authorities were therefore required to work together, supported by DEFRA's Joint Air Quality Unit (JAQU), to identify options to reduce levels of Nitrogen Dioxide below the legal limit of 40µg per cubic metre of air, on an annual average, in the 'shortest possible time'. The two Councils were required to undertake local feasibility studies to identify the measures that would reduce levels of nitrogen within the 'shortest possible time'. The Councils were required by DEFRA to include options for charging polluting vehicles, where this would deliver compliance in the shortest possible time.
- 1.4 A report to Cabinet in December 2018 outlined the outcome of these feasibility studies. It concluded that a charging zone is not required in Rotherham for the Borough to achieve compliance. It did however identify measures that will need to be taken at four specific locations across Rotherham to achieve compliance. The proposals in Rotherham focussed on changes to speed limits on the Rotherham section of the Parkway, improvements to the Rotherham bus fleet and the routing of buses on Rawmarsh Hill and Fitzwilliam Road, and the restriction of HGVs on Wortley Road. These options were proposed to be accompanied by a number of additional measures, which aim to support businesses to improve their fleet and improve air quality, such as targeted support to upgrade vehicles.
- 1.5 Cabinet approved the proposed mitigating measures and agreed that consultation on the measures could begin in early 2019. Cabinet also agreed that following that a further report outlining the final proposed measures and the Full Business Case for submission to government should be presented in 2019.
- 1.6 In line with the recommendations in the Cabinet report described above, and

within the timescale set out within the Ministerial Direction to RMBC and SCC, the Outline Business Case for funding was submitted to Government in December 2018. The proposed public consultation about the mitigating measures also took place in 2019, the results of which are outlined in more detail below. The final proposals and Full Business Case have not been submitted to Cabinet and then onto Government to date for a number of reasons.

- 1.7 These reasons are detailed in the report to Improving Places Select Committee (IPSC) on 2<sup>nd</sup> February and relate to delays in the DEFRA approval of the outline business case and the impact of Covid-19. As a result, a number of potential areas of review have been identified relating to scenarios for demand for travel and impacts on air quality. These are currently being assessed prior to submission of the Full Business Case.
- 1.8 Rotherham Council's responsibilities within the proposed programme are that it will deliver 3 highway infrastructure projects (interventions) which when taken into the wider programme context will support a combined reduction in NO2 levels within the local area and therefore within the jointly mandated Sheffield City Council (SCC) and Rotherham Metropolitan Borough Council (RMBC) Clean Air Zone area.
- 1.9 Whilst RMBC and SCC are still undertaking work on the full business case prior to submission and full approval by government, Rotherham Council has assessed the Outline Business Case to identify which parts of the scheme could be delivered before then. Three schemes have been identified from this initial assessment which is outlined below.

### **The Schemes**

- 1.10 The 3 projects contained in the RMBC responsibilities for this programme are: -
  - Sheffield Parkway 50mph Speed limit (to be delivered as part of Parkway Widening)
  - Wortley Road Weight Restriction TRO
  - Rawmarsh Hill Bus Priority and Routing Changes

Their combined value for delivery is estimated at £2.885m. The projects are to be funded by government grant funding as capital projects and are to be delivered as separate projects for design and delivery during the 2021-23 financial years.

### **Sheffield Parkway 50mph speed limit**

- 1.11 A speed limit reduction on Sheffield Parkway is required in order to ensure air quality compliance and is therefore considered to be essential in terms of the legal direction received from the Secretary of State. It is at low risk of being rendered obsolete by changes in traffic patterns following the pandemic.

- 1.12 The reduced speed limit is also required as a road safety measure, in light of the narrower lanes to be provided as part of the widening scheme between Catcliffe and M1 junction 33.
- 1.13 The proposal will include Rotherway (between M1 Junction 33 and existing 50mph speed limits beyond Rotherway Roundabout), to ease driver comprehension and to avoid encouraging unnecessary acceleration on Rotherway, between the new 50mph limit on Sheffield Parkway and the existing 50mph limits beyond Rotherway.

#### **Wortley Road North-West-Bound HGV Prohibition**

- 1.14 Given that the air quality issue at this location predominantly relates to commercial vehicles, and because the HGV prohibition offers wider benefits in respect of residential amenity, this measure is considered to be highly likely to still be required, even following changes in traffic patterns following the pandemic. The limited impact of the pandemic on heavy goods vehicle traffic is demonstrated by heavy goods vehicle flows on the A629 being only 4% lower in the first full working week of 2021, compared to the same period in 2018, despite the current national lockdown.
- 1.15 The current intention is that the measure will include a requirement for the restrictions to be suspended as required to retain the use of Wortley Road as an emergency diversion route (for example in the case of an incident on the M1 motorway). This will be affected with the use of remotely operated variable signs. This will require RMBC to enter into agreements with Highways England, enabling them to operate RMBC Urban Traffic Control assets within agreed parameters. In this case, this would also enable Highways England to suspend the weight limit during incidents.

#### **Meadowbank Road Improvement**

- 1.16 This scheme is proposed to make the use of Meadowbank Road more attractive, relative to Wortley Road, for traffic accessing the M1 motorway. Current modelling indicates however that it is not likely to be required to achieve air quality compliance.
- 1.17 Concerns in terms of the potential increase in traffic on Meadowbank Road, due to the HGV prohibition have been noted, with a scheme already being designed for a controlled pedestrian crossing on Meadowbank Road near to junction with Pembroke Street. It is expected this scheme will be approved for delivery in the 2021-22 financial year.

#### **Rawmarsh Hill Bus Priority and Routing Changes**

- 1.18 There are two elements to this scheme:
- The diversion of half of the buses on Rawmarsh Hill to Barbers Avenue; and
  - Junction improvements at Bellows Road to facilitate the above.
- 1.19 The intention was to work with bus operators and the Passenger Transport

Executive, to conduct a market research exercise including surveys of passengers, to inform the decision as to which services were diverted. Clearly, given Covid-19, this work is currently on hold.

- 1.20 Evidence to date suggests that some diversion of buses is likely to be required, even in a post-COVID-19 scenario, and even if all buses are upgraded to the Euro VI standard. However, COVID-19 impacts may mean a lesser proportion of buses may ultimately need to be diverted.
- 1.21 Notwithstanding the above, work on the highway scheme is progressing, on the grounds that the need for the diversion of buses, and for measures to minimise adverse impacts of this on bus journey times and reliability, remains. The scheme also delivers a pedestrian crossing which is identified as a local priority. For these reasons, the scheme is considered to be at low risk of being rendered obsolete by any changes in traffic patterns following the pandemic.

## **2. Key Issues**

- 2.1 At present the CAZ programme for both authorities is at the OBC (outline business case) stage. In accordance with Treasury guidelines on capital bids (HMT Green Book) only a limited amount of funding can be made available at the OBC stage. It is only at approval of the Full Business Case (FBC) that the full project funding is made available and the programme can be commissioned.
- 2.2 This report concerns only approval for the delivery of the 3 schemes referred to in section 1.10 above. The projects can be delivered as standalone schemes as they provide benefits in improving the local environment. In approving the recommendations Cabinet will not be committing to the CAZ programme as a whole. For this to happen, a separate report will need to be brought to the Cabinets of both mandated authorities seeking approval of the Full Business Case (FBC) for the programme prior to its submission.
- 2.3 In the spring of 2020 due to the time elapsed since the commencement of the scheme development work, government chose to issue funding in advance of the FBC being submitted (and approved). This is because it wishes to see the programme of work commenced to avoid unnecessary delay in reaching compliance with NO2 monitoring levels.
- 2.4 To be able to progress in accordance with government expectations an assurance was sought from government that should any of the projects not be compliant with the details of the FBC (yet to be approved), then government will not require return of the funding that would ordinarily be a condition of any funding agreement (often referred to as “clawback” clauses).
- 2.5 Although falling short of confirming a full removal of this risk in their response the government department responsible for this work, the Joint Air Quality Unit (JAQU) advise this scenario “would appear to be a very low risk.” They then further confirm that should the Council require to change any element of the project, this should be discussed with JAQU as soon as possible, and

any substantial change may require variation to the Grant Determination.

- 2.6 This report presents this issue for consideration and to seek approval to proceed with the programme of delivery on the basis that the risk of clawback remains very low on the basis of the assurances provided by government referred to in section 2.5 above.

### **3. Options considered and recommended proposal**

- 3.1 Option 1 - Not commissioning the work and await full approval of the FBC. This would not meet the government's requirements for delivery timescales and could expose the Authority to risk of challenge should it be considered that this delay was avoidable and resulted in a delay to achieving air quality compliance. This option is not recommended.
- 3.2 Option 2 - Secure agreement from government that it would not recover the funding if the work is commenced and subsequently it was considered by government that some or all of the jointly mandated work programme was none-compliant with the grant conditions. This is the recommended option and confirmation that the risk of recovery of the funding is very low has now been received.

### **4. Consultation on proposal**

- 4.1 In line with the recommendations to Cabinet in December 2018, a public consultation on the above proposals took place between May and September 2019. Prior to this, Officers attended Improving Places Select Commission in April 2019, to provide an update on the programme of work, and to consult the Commission prior to consultation beginning. This resulted in two recommendations, both of which were subsequently completed:

That the Head of Highway Services for Community and Street Scene look at providing information, at Ward level, in relation to Public Rights of Way to Members.

That officers meet with relevant Members to discuss any potential impact on their Wards in light of the proposed changes listed as part of the Clean Air Zone to improve the air quality in Rotherham. Officers attended Ward Member meetings for the areas with proposed schemes in March 2019.

- 4.2 A summary of the outcome of the public consultation, conducted between May and September 2019 can be found at Appendix 2.

### **5. Timetable and Accountability for Implementing this Decision**

- 5.1 If approved the work will be commissioned and take place during 2021-3. This will enable NO2 compliance to be achieved in 2022-23.
- 5.2 Rotherham Council will be the project owner and will work with internal and

external consultants and works providers to deliver the projects. All work will be commissioned by Rotherham Council in accordance with the Council's Contract Procedure Rules.

**6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)**

6.1 Any procurements identified as part of these schemes will be carried out in accordance with Public Contract Regulations and the Council's Financial and Procurement Procedure Rules.

6.2 The Council has received capital grant funding of £2.885m from the Government's Clean Air Zone Implementation Fund for these 3 capital projects. It is recommended that these projects be added to the Council's approved capital programme. Government has confirmed that, in the event that changes to the project are required to enable the FBC to be approved, the risk of grant claw back is considered to be very low.

**7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)**

7.1 The Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2017 set out the obligation for Rotherham Metropolitan Borough Council to carry out a Feasibility Study in relation to tackling roadside nitrogen dioxide concentrations and to submit initial and final plans identifying the preferred option for delivering compliance in the 'shortest possible time'. The definition of the term 'shortest possible time' is open for interpretation; however, the Council has been mandated to achieve compliance by 2021. The Council was originally required to set out the value for money considerations and implementation arrangements by 31 March 2018 (Strategic Outline Case) and 31st December 2018 (Full Business Case). For various reasons, it was not possible to meet these deadlines, despite an extensive amount of work having been conducted.

7.2 On the 24 February 2020, a further Direction was issued under the Environment Act 1995. The Environment Act 1995 (Sheffield City Council and Rotherham Metropolitan Borough Council) Air Quality Direction 2020 mandated both Authorities to implement the local plan for achieving compliance in relation to nitrogen dioxide levels. This Direction set out the requirement to achieve compliance by 2021. The Authorities were also required to submit their Full Business Case by the 24 March 2020. As a result of the limited timescale between receiving the Direction and the deadline and the resulting impact of Covid-19 pandemic, this was not possible. Further work has been required as a result of the pandemic and its impact.

7.3 The Direction is still in place and therefore compliance is still required to be achieved within the shortest possible time. This is currently set as 2021, but it is anticipated that this will be amended by Government. Failing to achieve compliance as required by the Direction has the potential to result in the imposition of financial penalties against the Council, but only where the



Council has failed to take appropriate action to comply with its duty. There is also a potential risk of Judicial Review from members of the public generally or environmental groups for failing to meet the nitrogen dioxide levels set and meet the duty placed on the Council.

- 7.4 Proceeding with the 3 schemes identified in paragraph 1.10 will ensure that the Council has taken appropriate action to meet the duty set out within the Direction and achieve compliance by within the shortest possible time. This would therefore reduce the risk of any financial penalties and/or legal challenge for failing to do so. There is however a risk in relation to the funding, as set out in section 2. Whilst there remains a risk of funding clawback (should the schemes not be compliant with those contained in the eventual approved Full Business Case) JAQU have confirmed that the risk of such clawback would be 'very low'. This risk needs to be considered against the consequences of failing to achieve compliance in accordance with the Direction, as set out in paragraph 7.3 above.

## **8. Human Resources Advice and Implications**

- 8.1 There is no Human Resources implications for this report. Design of the schemes will take place using existing internal and some external consultancy design resource already in place. Works will be delivered by a mix of internal and external works providers according to current workload of the council's internal works provider. There are no TUPE implications as, where awarded externally, these are single point in time contracts.

## **9. Implications for Children and Young People and Vulnerable Adults**

- 9.1 The implications of poor air quality for the health and well-being of children and young people, and for the adult population, are significant. Poor air quality is strongly linked with poor health outcomes, and with increased mortality rates. The proposed actions to deliver improvements in air quality will therefore impact positively on the lives of children, young people, and vulnerable adults

## **10. Equalities and Human Rights Advice and Implications**

- 10.1 There are no directly affected defined characteristic groups impacted by the action recommended in this report requiring additional mitigation measures. However, for the Bellows Road scheme a full Equality Assessment will be carried out to ensure equality implications are identified from the proposed changes prior to completion of design and implementation of the changes.

## **11. Implications for Ward Priorities**

- 11.1 Following the April 2019 Improving Lives Select Commission officers met with relevant Members to discuss any potential impact on their Wards in light of the proposed changes listed as part of the Clean Air Zone to improve the air quality in Rotherham.

## **12. Implications for Partners**

12.1 Work is ongoing with a number of partners including South Yorkshire Passenger Transport Executive (SYLTE) and Highways England to ensure that the mitigating proposals can be delivered fully to achieve compliance.

### 13. Risks and Mitigation

13.1 Not completing these projects presents a significant likelihood that RMBC will not meet its Air Quality compliance requirements as part of the joint mandate from government.

13.2 Delivery of these 3 projects may not be needed dependent on the outcome of current business case development work. However, the schemes have merit in their own right independent of whether they will or will not form part of the wider Sheffield and Rotherham CAZ programme should that be delivered.

13.3 Design and practical works risks are managed within existing works procedures and liability cover. The authority owns those risks where delivered internally and consultant's and contractors are liable for design and construction risks in accordance with the council's standard terms and conditions of procurement and contract.

### 14. Accountable Officers

Paul Woodcock, Strategic Director Regeneration & Environment

Approvals obtained on behalf of Statutory Officers: -

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	08/03/21
Strategic Director of Finance & Customer Services (S.151 Officer)	Named officer	03/03/21
Head of Legal Services (Monitoring Officer)	Named officer	03/03/21

*Report Author: Andrew Moss, Interim Head of Transport Infrastructure*

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