

Delegated Decision Making Form

REF NO PH/WC/O

Decision Type

<input checked="" type="checkbox"/>	Portfolio Holder		Ward Councillor		Officer
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Department

Communities: Community Protection

Subject

Local Air Quality Management process update: Progress Report 2011, Updating and Screening Assessment 2012, Further Assessment 2012

Decision

This is not a key decision because it does not result in the Council incurring expenditure or making income or savings of more than £1 million revenue or capital, taking into account the overall impact of the decision, and does not significantly affect communities in 2 or more wards. <i>(Chair of Executive Board confirmed decision appropriate for Portfolio Holder).</i>	Subject to call-in: Yes
	Total value of decision: £ Nil
	Revenue or Capital: Not applicable
<p><u>Decision taken</u></p> <p>1. That the potential financial risks arising from the Localism Act 2011 that enables the government to 'passport' fines imposed by the European Commission (EC) are added to the Communities and Corporate Risk Register.</p> <p>2. That an air quality report is brought to affected Area Committees for discussion and comment, particularly on measures proposed and being taken to maintain and improve air quality in each area.</p>	
<p>Options Considered (with reasons for rejecting options not favoured)</p> <p>Not applicable.</p>	

Reasons for Decision(s)

The exceedances of NO2 levels create a risk for the Council as there are statutory provisions for imposing penalties upon public authorities where Air Quality Objectives (“AQOs”) are not met. Section 48 of Part 2 of The Localism Act 2011 (“the Act”) which came into force on 31st May 2012 gives the Government the power to require public authorities to make payments in respect of certain EU financial sanctions. As this is a power and not a duty, there is no mandatory legal requirement for central government to impose such payments; however the likelihood of penalties being transferred to the Council is not yet known. It is through these powers that the government may transfer or ‘passport’ penalties imposed by the European Commission on the UK Government through to the Local Authorities ‘responsible’ for the breach of EU legislation, e.g. a failure to meet EU Air Quality Limits in their local authority’s area. There may be implications for the Council should the government passport financial sanctions as there are exceedances of Nitrogen Dioxide in areas of Nottingham.

As part of the periodic Local Air Quality Management process an Updating and Screening Assessment was submitted to DEFRA in July 2012. It did not identify any significant changes to emissions, or significant increases in monitored air pollution, but did conclude that it was appropriate to extend the Detailed Assessment to include those locations where diffusion tube monitoring data exceeded 40 ug/m³. Department for Environment, Food and Rural Affairs (DEFRA) confirmed its agreement with the findings and conclusions of the USA on the 30th October 2012.

It is a DEFRA requirement to keep local people informed. It is proposed that the outcomes of the latest review, the changes to the Air Quality Management Areas (AQMA) and the agreement to carry out a detailed assessment are shared with citizens through relevant Area Committees and the Council’s web site.

Affected Wards

Arboretum, Bridge, Dales, Dunkirk and Lenton, Mapperley Park, St Ann’s, Radford and Park

Advice Sought

(Any advice sought and considered by the decision maker **must** be attached to this form, with the **name of the person that provided the advice and the date that it was provided**)(If this is a Ward Councillor Decision advice **must** be sought from the Single Gateway Unit)

	Yes	No
Legal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Finance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Human Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Equality & Community Relations Team	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Single Gateway Unit	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>
SEE SEPARATE SHEET FOR DETAILS		

Consultations

PLEASE READ – It is **crucial** for this section to be correct if the decision is to be valid. You need to be sure that you have undertaken the level of consultation applicable to the type of delegated decision which is being taken and recorded on this form.

In summary these are:

- Portfolio Holder Decision – You **MUST** consult all relevant consultees from the table below, including the Portfolio Holder and Corporate Director taking the decision, and any other Portfolio Holder and Corporate Director whose remit of responsibility may be affected by the decision being taken.
- Ward Councillor Decision – You **MUST** consult Councillors in the ward, relevant Area Manager and Director of Neighbourhoods and Communities.
- Officer decision – You **MUST** consult Portfolio Holder and Minority Group spokesperson(s).

Reasons for not consulting an individual or body **MUST** be given i.e. because they are not directly affected by the proposals

Details of Consultations undertaken	Yes	No	Name and Date
Portfolio Holder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Ward Councillors	<input type="checkbox"/>	<input type="checkbox"/>	_____
Area Committee	<input type="checkbox"/>	<input type="checkbox"/>	_____
Other Council Bodies	<input type="checkbox"/>	<input type="checkbox"/>	_____
Corp. Directors Affected	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Trades Unions	<input type="checkbox"/>	<input type="checkbox"/>	_____
Minority Group	<input type="checkbox"/>	<input type="checkbox"/>	_____
Others (Specify)	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Reasons for not consulting</u>			
<u>Those not consulted are not directly affected by the decision.</u>			

Background to the decision
 (either add in the detail of the decision in the space provided or attach as a separate sheet)

SEE SEPARATE SHEET FOR BACKGROUND DETAILS (ATTACHED)

Declared colleague/ Councillor Interests

Dispensation by Standards Committee

Date: _____ Dispensation Reference: _____

Due Regard for Equality

(NOTE – equality impact **MUST** be assessed for:

- decisions relating to new or changing policies, services or functions;
- financial decisions which will have an effect on services;
- decisions on implementation of policies developed outside the Council

EIA guidance is available on the intranet

Background Papers

(including published documents)

Exempt/Confidential report

(if 'yes', include the exempt or confidential material in an appendix and in this space explain the reason(s) why it is not in the public domain). See guidance on the intranet or ask for advice if in doubt

Has the equality impact of the decision been assessed?
 No (EIA not required)
 Yes (EIA attached)

An equality impact of the decision has not been sought as it does not relate to new or changing polices services or functions.

Progress Report 2011, Updating and Screening Assessment 2012, Further Assessment 2012

YES NO

Contact Person

Richard Taylor
Community Protection: Noise and
Pollution Control Team Leader

Contact No.
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richard.taylor@nottinghamcity.gov.uk

For Officer delegated decisions only please provide the reference number from the Scheme of Delegation under which the decision is being taken.

Scheme of Delegation Reference Number

[Empty box for Scheme of Delegation Reference Number]



AUTHORISED SIGNATORIES

PLEASE READ – It is crucial for this section to be correct if the decision is to be valid. You need to be sure which Councillor and Corporate Directors/Directors or other authorised colleagues have authority to take the decision you require to be made.

In summary these are:

- Portfolio Holder Decision – The signature of the relevant Portfolio Holder and Corporate Director is required.
- Ward Councillor Decision – The signature of either the Director of Neighbourhoods and Communities or Corporate Director of Communities.
- Officer decision – The signature of the relevant Corporate Director or authorised colleague is required.

The completed and signed form must be sent to Constitutional Services within 2 working days of the last signature(s).

Corporate Director or authorised colleague (Print name)		Date:
Signature		16/1/13
Portfolio Holder (Print name)	ALEX NORRIS	Date:
Signature		16/1/13
Date Published:		Last Date for Call-in:

Attach any additional background information to this form.

Advice sought MUST be attached to this form, along with the Equality Impact Assessment (where appropriate).

**Local Air Quality Management process update:
Progress Report 2011, Updating and Screening Assessment 2012,
Further Assessment 2012**

Summary of issues (including benefits to citizens/service users):

Environmental

- 1.1 Poor air quality is known to be detrimental to health and is linked to illness, reduced lifespan and health inequality. There is national and European legislation and guidance in place to ensure the protection of air quality.
- 1.2 Under the Environmental Protection Act Local Authorities have a duty to carry out assessments of air quality to ensure it meets Air Quality Objectives (AQOs) specified for a number of 'pollutants of concern', one of which is nitrogen dioxide (NO₂). Since 2001 there have been exceedances of the AQO in relation to NO₂ in certain parts of the City and air quality management areas (AQMA) have been established. The Local Air Quality Management Progress Report (2011) and the Updated Report and Review 2012 concluded that these exceedances continue. These are mostly near and within existing AQMAs, where both modelling and monitoring results demonstrate that the NO₂ annual mean AQO (i.e. no greater than 40 ug/m³) is being exceeded at locations with relevant exposure of members of the public. The exceedances are caused by emissions from road transport, the AQMA action plans are primarily linked to the transport plan with objectives including the reduction of NO₂.
- 1.3 The Department for Environment, Food and Rural Affairs (DEFRA) confirmed the Council's decision in 2010 to amend its two Air Quality Management Areas and that it is necessary to carry out a detailed assessment of air quality in and adjacent to the existing AQMAs. This is currently in progress.
- 1.4 An Updating and Screening assessment, which reviewed a range of changes to sources of air pollution and potential sensitive receptors was submitted to DEFRA in August 2012 and its findings accepted and confirmed by DEFRA in October 2012. It concluded that there were no new/significant sources or receptors other than those that were being considered as part of the detailed assessment.
- 1.5 It is proposed that the outcomes of the latest review, the changes to the AQMA and the agreement to carry out a detailed assessment are agreed by Executive Board and this information is then shared with citizens through Area Committees and the Council's web site.

Legal

- 1.6 The exceedances of NO₂ levels create a risk for the Council as there are statutory provisions for imposing penalties upon public authorities where Air Quality Objectives ("AQOs") are not met. Section 48 of Part 2 of The Localism Act 2011 ("the Act") which came into force on 31st May 2012 gives the

government the power to require public authorities to make payments in respect of certain EU financial sanctions. As this is a power and not a duty, there is no mandatory legal requirement for central government to impose such payments; however the likelihood of penalties being transferred to the Council is not yet known. It is through these powers that the government may transfer or 'passport' penalties imposed by the European Commission on the UK Government through to the Local Authorities 'responsible' for the breach of EU legislation, e.g. a failure to meet EU Air Quality Limits in their local authority's area. There may be implications for the Council should the government passport financial sanctions as there are exceedances of Nitrogen Dioxide in areas of Nottingham.

- 1.7 The Act contains a statutory procedure to be followed before such penalties may be imposed on public authorities which include the establishment of an independent panel and the government also has a duty to invite representations from authorities. The Council will therefore have an opportunity to make representations on matters such as the reasons why it has not been able to meet (or fully meet) the AQOs and the financial impact of the proposed penalties.
- 1.8 Additionally, there are provisions in the Act which will enable the Council to make an application for termination or suspension of periodic payments that have been imposed which may assist with discharging the financial burden on the Council.

However, as with any new legislation it is difficult to give definitive advice unless and until the new statutory provisions have been tested / precedents have been established. Further advice may therefore be appropriate in due course if and when the Council is faced with the requirement to make such payments. As DEFRA has extended the deadline to meet a number of AQOs to 2015, this may mean that any penalties are not transferred to the Council before then; however it is not known for certain if and when the government may transfer any EU penalties and it would therefore be prudent to keep these issues under review and seek further legal advice as and when required.

1 BACKGROUND

- 1.1 The Environment Act 1995 introduced the concept of Local Air Quality Management which requires Local Authorities to carry out assessments of Air Quality in their areas to ensure it meets Air Quality Objectives (AQOs) specified for a number of 'pollutants of concern', one of which is nitrogen dioxide.
- 1.2 In 2001 the air quality review and assessment process identified that the annual mean air quality objective for nitrogen dioxide of 40 ug/m³ were being or likely to be breached in the City Centre and along a stretch of the A52 in the vicinity of the Queens Medical Centre. Two Air Quality Management Areas were declared by 'Order'.

- 1.3 Since 2001 air quality monitoring has continued to measure concentrations of nitrogen dioxide in excess of the AQOs at the 3 roadside automatic monitoring sites and at a number of nitrogen dioxide diffusion tube sites. All but two of these locations are within the Nottingham No.2 and No.3. Air Quality Management Areas (varied in 2010).
- 1.4 The two diffusion tube sites which exceed the AQO for NO₂ and outside AQMAs are located on the façades of residential properties; one at the junction of Abbey Bridge/Castle Boulevard and the other at the Nottingham Road/Valley Road junction on the ring road. Diffusion tubes sited on building facades at other locations on the ring road did not measure levels that exceeded the AQO.
- 1.5 A Further Assessment report (2011) concluded that, as a consequence of the 2010 monitoring results, it was necessary to progress to a Detailed Assessment for annual mean nitrogen dioxide at two locations where there is relevant exposure of members of the public.
- 1.6 In March 2011 Nottingham City Council introduced the third Local Transport Plan referred to as LTP 3. It is a statutory document that aims to address transport challenges facing the City of Nottingham from 2011 – 2026.
- 1.7 A separate report submitted by DEFRA to the EC to extend the deadlines to meet a number of Air Quality Objectives, predicted that measures currently being implemented in a number of cities, including Nottingham, together with vehicle technology improvements and national fleet composition changes will be sufficient to ensure air quality meets the annual mean nitrogen dioxide air quality objective of 40 ug/m³ by 2015.
- 1.8 Consequently the EC has issued a postponement (to the date by which the annual mean Air Quality Standard for nitrogen dioxide must be met) for a number of UK cities, including Nottingham.
- 1.9 As part of the periodic Local Air Quality Management process an Updating and Screening Assessment was submitted to DEFRA in July 2012. It did not identify any significant changes to emissions, or significant increases in monitored air pollution, but did conclude that it was appropriate to extend the Detailed Assessment to include those locations where diffusion tube monitoring data exceeded 40 ug/m³. DEFRA confirmed its agreement with the findings and conclusions of the USA on the 30th October 2012.
- 1.10 A Detailed Assessment of air quality is currently being undertaken by Community Protection's Environmental Health and Trading Standard's Pollution Control team. It is also proposed to carry out more detailed modelling to predict air quality in future years.
- 1.11 The Progress Report 2011 confirmed the findings of the Detailed Assessment 2010 which concluded that there continues to be areas of the City, mostly near and within existing AQMAs, where both modelling and monitoring results demonstrate that the nitrogen dioxide annual mean AQO (i.e. no greater than

40 $\mu\text{g}/\text{m}^3$) is being exceeded at locations with relevant exposure of members of the public. The exceedences are primarily due to road traffic emissions.

- 1.12 The mooted 'passporting' of fines places potential additional pressures on all local authorities with Air Quality Management Areas. The potential implications for Nottingham City and potential courses of action should be noted.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 None.

4 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY/VAT)

- 4.1 The ongoing costs of managing and delivering the LAQM process are absorbed within Community Protection's existing budget.
- 4.2 The costs of air quality monitoring are substantially met by Local Transport Plan Monitoring budget.
- 4.3 The potential EC fine level has not yet been published by the EC.
- 4.4 This should be recorded as a potential financial risk/liability for the Council.

5 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS AND CRIME AND DISORDER ACT IMPLICATIONS)

- 5.1 Potential future transfer (passporting) of EC imposed fines on UK Government directly to those local authorities with AQMAs.

6 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 6.1 None.

7 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 7.1 Environment Act 1995 Part IV Air Quality Air Quality (England) Regulations (as amended) 2000
- 7.2 Nottingham City Council: Local Air Quality Management: Detailed Assessment. May 2008.
- 7.3 Nottingham City Council: Local Air Quality Management: Detailed Assessment: Supplementary information October 2009.
- 7.4 Nottingham City Council: Local Air Quality Management: Detailed Assessment 2009 (consolidated report 2010).
- 7.5 Nottingham City Council: Local Air Quality Management: Progress Report 2011.

- 7.6 Nottingham City Council: Local Air Quality Management: Further Assessment Report 2012.
- 7.7 Air Quality Plan for the achievement of EU air quality limit values for nitrogen dioxide (NO₂) in Nottingham Urban Area (UK0008)
- 7.8 EUROPEAN COMMISSION DECISION of 25.6.2012 on the notification by the United Kingdom of Great Britain and Northern Ireland of a postponement of the deadline for attaining the limit values for NO₂ in 24 air quality zones.

