

Title of meeting: Environment and Community Safety Portfolio Decision Meeting

Date of meeting: 25th June 2018

Subject: Assessment of Air Quality - Annual Statement Report 2018

Report by: Director of Culture and City Development

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1. To provide the Cabinet Member for Environmental and Community Safety information on the:
- Local Air Quality Management (LAQM) process and the 2017 Review and Assessment (R&A) of air quality (AQ) in Portsmouth through the publication of the 2018 Annual Status Report (ASR)
 - Legal responsibilities placed upon Portsmouth City Council (PCC) in respect to AQ and the appraisal undertaken by Department for Environment, Food and Rural Affairs (DEFRA) of PCC's 2017 ASR
 - UK government's position in respect AQ and the possible implications of Brexit
 - Actions undertaken and proposed by PCC which are likely to positively impact upon pollution levels in Portsmouth.

2. Recommendation

- 2.1. **That the Cabinet Member for Environment & Community Safety approves* the publication of the 2018 ASR as attached as Appendix 1 (*see section3.3).**

3. Reason for the recommendations

- 3.1. To fulfil the duties placed upon PCC under the Environment Act 1995. LAQM is the statutory process by which we are required to monitor, assess and take action to improve local AQ.
- 3.2. There are growing concerns regarding poor AQ both locally and nationally and an ever increasing expectation by all that PCC will do more to improve AQ in

Portsmouth. The publication of the 2018 ASR enables an assessment of pollution levels in Portsmouth over the 5 year period 2013 to 2017 and an update of actions undertaken to date.

- 3.3. *It should be noted that upon approval the 2018 ASR will be submitted to DEFRA on or before the 30th June. DEFRA will then consider the suitability of its content in accordance with its guidance. Only following approval by DEFRA can the document be considered to be officially accepted. Any comments made by DEFRA will be brought to the attention of the Cabinet Member at the earliest possible point in time.

4. Key AQ issues in 2018 / 2019

- 1) Deliver reductions in pollution
- 2) Compliance with statutory obligations under LAQM regime
- 3) Publication of the 2018 ASR by the 30th June 2018
- 4) Implementation of DEFRA's appraisal recommendations in respect to the 2017 ASR
- 5) Compliance with the Ministerial Direction issued under the Environment Act 1995 by the Parliamentary Under Secretary of State for DEFRA on the 22nd March 2018 to conduct a feasibility study and provide a document setting out measures that would achieve compliance with the nitrogen dioxide statutory limits in the shortest possible timeframe
- 6) Publication and implementation of a new comprehensive AQAP following consultation.

5. The need for action

- 5.1. Air pollution has substantial health, economic and environmental impacts in the UK and locally.
- 5.2. DEFRA describes poor AQ as the largest environmental risk to public health in the UK and AQ has been described by the World Health Organisation as a public health emergency.

6. LAQM

- 6.1. PCC uses the LAQM R&A process to assess and take action to improve local AQ. Where we identify areas of non-compliance with the national AQ objectives and where there is relevant public exposure, we have a statutory duty to declare the geographic extent of non-compliance as an AQ Management Area (AQMA) and to draw up an action plan detailing remedial measures to address the problem.

- 6.2. There are five active AQMA in Portsmouth and therefore we are required under Part IV of the Environment Act 1995 to provide an AQ Action Plan (AQAP) as a means to address the areas of poor AQ that have been identified within the AQMA. The emphasis of AQAP process is two-fold to:
- i. develop measures that will provide the necessary emission reductions to achieve the AQ objectives within specified timescales; and
 - ii. as a live document which is continually reviewed and developed, to ensure current measures are progressing and new measures are brought forward.
- 6.3. In addition to an AQAP we are required to produce the ASR which must present the strategies employed to improve AQ and any progress that has been made.
- 6.4. The ASR process is designed to allow sufficient understanding in the analysis of pollutant occurrence to support the identification of new non-compliant areas (i.e. 'hot spots') and to report on progress within existing AQMAs.
- 6.5. Whilst the use of the DEFRA ASR template is mandatory, this approach does not preclude the flexibility to provide detailed or extra analysis where this has taken place and in the 2018 ASR we have again taken advantage of this allowance.

7. DEFRA appraisal of PCC 2017 ASR

- 7.1. In March 2018 DEFRA published an analysis of the PCC 2017 ASR.
- 7.2. The commentary confirmed that the conclusions reached were acceptable for all the sources and pollutants reported upon, however, it recommended that a series of measures be introduced in 2018 and beyond.
- 7.3. The commentary recommends improvements to the monitoring and future reporting of AQ and provides additional guidance for the AQAP process. A copy of the narrative received from DEFRA and PCC's responses can be found in the 2018 ASR.
- 7.4. Whilst all the comments within the appraisal are equally important, several areas are worthy of particular mention. These relate to the need to evidence that improvement measures have targeted emission reductions for pollution hotspots, and that new areas of exceedance should be reviewed and new AQMA be declared as required. Two areas of exceedance outside the existing AQMAs were identified in the 2017 ASR, these being busy junctions within Albert Road and Northern Road.
- 7.5. The information received has been circulated to the relevant lead PCC partner agencies for their consideration and action. The required monitoring improvements have, where possible, already been implemented and are reported within the 2018 ASR. It will take time for monitoring results to be

received for new locations and therefore these will be incorporated into the 2019 ASR.

8. Governmental enforcement of compliance

- 8.1. Enforcement mechanisms for failure to meet AQ limit values are contained in EU law and not in UK legislation. In February 2014 the EU Commission began infraction proceedings against the UK for its failure to meet AQ targets for nitrogen dioxide set by the AQ Directive in certain parts of the UK. These proceedings have not yet been concluded.
- 8.2. The European Union (Withdrawal) Bill 2017-2019 is designed to provide legal continuity by copying over the entire body of EU law onto the UK's post-exit statute book. In broad terms, this means that all EU AQ law will be converted into domestic law from exit day.
- 8.3. The Government has sought to allay concerns about changes to AQ standards following Brexit by stating that there are no plans to change AQ limit values and targets. It is not clear if the Government would follow any changes to EU AQ standards made following Brexit. It remains a possibility that equivalence between UK and EU standards could still be required under future trade arrangements.
- 8.4. While AQ standards from the AQ Directive are enshrined in UK legislation, they are currently monitored and enforced by the European Commission and overseen by the Court of Justice of the European Union.
- 8.5. In response to concern about enforcement of environmental standards following Brexit, the Government has announced plans to consult on a new independent statutory body that would hold Government to account for upholding environmental standards in England.
- 8.6. Separate to the EU Commission proceedings, but arising from the same EU AQ Directive, private judicial reviews have also been brought against the UK Government stemming from the admitted and continuing failure of the UK, since 2010, to comply with the limits for nitrogen dioxide levels. These proceedings have resulted in the Government producing a number of different AQ plans aimed at reducing nitrogen dioxide levels.
- 8.7. The most recent is the UK plan for tackling roadside nitrogen dioxide concentrations: Detailed Plan, July 2017. This set out how Government would bring the UK nitrogen dioxide concentrations within the statutory average annual limit of 40 micrograms per cubic metre ($\mu\text{g}/\text{m}^3$) in the shortest possible time.

9. The 2018 Ministerial Direction

- 9.1. Following judicial review proceedings in relation to the July 2017 Plan, the High Court ruled, on 21st February 2018, that a supplement to the 2017 Plan should be produced by the Government by 5th October 2018.

- 9.2. The 2017 Plan confirmed that Portsmouth was not required to take specific action to improve AQ. However, following its publication ClientEarth announced that it would again take legal action against the UK Government over its persistent failure to deal with illegal air pollution across the country. The High Court delivered its judgement on 21st February 2018. The court ordered the Secretary of State to produce compliant Supplement to the 2017 Plan by 5th October 2018.
- 9.3. The UK government had previously considered that it was sufficient to take a pragmatic, less formal approach to Portsmouth's non-compliance. However, in view of the Court's judgment, DEFRA implemented a more formal line against PCC on 22nd March 2018 by issuing a legally binding direction under the terms of the Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2018.
- 9.4. This instructive and absolute Direction required PCC to consider measures that could bring forward compliance in a *specific target area within the shortest possible time*. This new approach by the Government represents a further unequivocal caution in respect to the legal sanctions available to the government to require local authorities to address pollution problems. PCC should therefore be reflective of the potential for further action should city wide compliance not be achieved.
- 9.5. DEFRA also made it clear that PCC will also be expected to take steps *now* to reduce emissions if there are measures we could take to bring forward the point where we will meet legal limits.
- 9.6. The direction requires PCC to submit a Targeted Feasibility Study by 31st July 2018. PCC is *not* required to develop a local plan for the target area. This is because the Government's modelling showed the road links should become compliant quicker than the time expected to design and implement a charging Clean Air Zone (the perceived fastest means of achieving compliance).
- 9.7. It is important to note that the *target area* within the Governmental Ministerial Direction **excludes** the vast majority of existing AQMAs within Portsmouth. As it focuses only upon two stretches of road:
- **Link 1** - A3, Mile End Road between the southern end of the M275 and Church Street roundabout - located within AQMA 11. This link is predicted to achieve compliance in 2021.
 - **Link 2** - A3, Alfred Road between Hope Street roundabout and the Queen Street / Anglesea Road / Alfred Road intersection - located outside existing AQMAs. This link is predicted to achieve compliance in 2020.
- 9.8. DEFRA defined exceedances along this stretch of road are based on a combination of monitoring and modelling through the Pollution Climate Mapping (PCM) model. PCM provides outputs of pollutant concentrations in the UK at a

1x1 km resolution. PCM is a national model developed specifically to meet the requirements set out in the EU Ambient Air Quality Directive (AAQD) and transposed in the Air Quality Standards Regulations 2010. The conclusions it reaches are less accurate than the data obtained from our own air quality monitoring station located within the target area (Link 1) and which is also currently being delivered in compliance with AAQD.

- 9.9. As required by the court order, DEFRA will publish a supplement to the 2017 Plan by 5th October 2018, drawing on the findings from local authorities' feasibility studies.

10. AQAP

- 10.1. In July 2017 PCC first published its AQ Strategy. The format of this document is far more flexible than that required of the pending AQAP. The development of a new plan is underway and the process of wide community and partner engagement will now begin.
- 10.2. Through this process the selection and development of options to identify the sources where controls might be effective in reducing concentrations and which make a significant contribution to the success of a particular objective will take place. Control options will then be identified for the relevant sources and assessed in terms of the contribution they have made to achieving cleaner air.
- 10.3. PCC recognises that reductions in air quality can only be achieved with buy-in, cooperation and commitments from all. This is likely to mean that extremely difficult decisions and choices will have to be made in deciding what steps are to be taken. Although wider air pollution problems arise from a range of sources, as road transport is the main contributor to non-compliance with nitrogen dioxide concentration limits in Portsmouth, this is likely to mean that new combative solutions to local hot-spot problems are likely to be required.
- 10.4. The draft plan will be released for widespread community engagement and to seek the support (or otherwise) of the public and stakeholders for the broad themes and actions it contains. The details of actions will then be finalised, and as necessary measures will then be subject to separate consultation. It is not possible to predict the likely AQ impact of measures in more detail until options have been adopted and the modelling air pollution levels has been undertaken for them (as required).
- 10.5. Possible measures will then be considered against critical success factors based around the following themes:
- **Value for money:** Considering all of the economic costs and benefits
 - **Affordability:** Providing information on estimated financial costs for each options

- **Distributional impacts:** Considering the relative impacts on key groups, in order to determine whether there could be a disproportionate impact on one or a number of particular groups
- **Strategic and wider air quality fit:** Considering how each option interacts with other local policies already in place and what additional strategic aims it could help to achieve
- **Supply side capacity and capability:** Assessment of commercial capacity or capability limitations
- **Achievability:** Consideration whether options can be delivered given the potential resources available and management structures in place
- **Displacement:** Consideration to the potential for displacement on other roads and in particular whether this displacement might cause other exceedances.

11. Abstract of the 2018 ASR conclusions

- 11.1. Air quality statistics in Portsmouth are published annually via the ASR.
- 11.2. Historically the ASR has concentrated on the reporting of a 5 year rolling data set of nitrogen dioxide annual averages together with the reporting year's (i.e. this year it is 2017) monthly averages of nitrogen dioxide.
- 11.3. The above information is still included within the 2018 ASR however this year additional information has been provided in respect to comparisons with the previous 5 year rolling average together with a comparison with the previous reporting year's (i.e. 2016) annual average.
- 11.4. The key results are shown in Table 1 below:

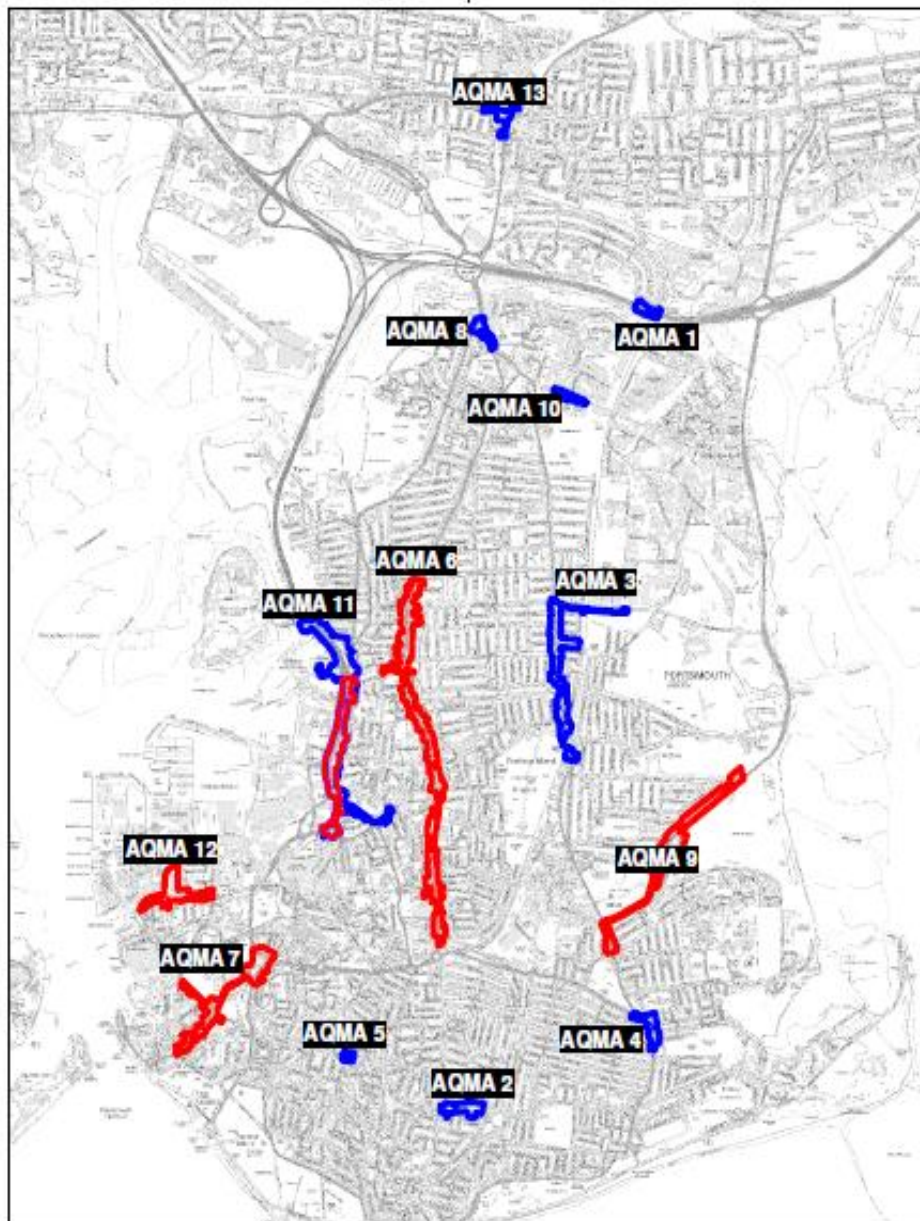
Table 1

NDDTS year	NO ₂ DOWNWARD trend* recorded at monitored locations (long term sites)	Improvement?
2013 - 2017	34.37%	No
2012 - 2016	40.70%	
2017	64.28%	Yes
2016	10.71%	
Year	Locations in excess of NO ₂ NAQO* (long term sites)	Improvement?
2017	7.14%	Yes
2016	17.86%	

NDDTS year	No. of sites exceeding NAQO* located outside an AQMA	Improvement?
2017	0	Yes
2016	2	
CAQMS Station	5 year NO ₂ trend*	Improvement?
London Road	Upward	No
Gatcombe Park	Downward	Yes
Burrfields Road	Upward	No
Mile End Road	Downward	Yes
CAQMS Station	NO ₂ 2016 compared with 2017*	Improvement?
London Road	8% increase	No
Gatcombe Park	3% decrease	Yes
Burrfields Road	3% increase	No
Mile End Road	5% decrease	Yes
CAQMS Station	Exceeding NO ₂ NAQO*	
London Road	Yes	
Gatcombe Park	No	
Burrfields Road	No	
Mile End Road	No	
AQMA No. (revoked and current)	Exceeding NAQO*	
1	No	
2	No	
3	No	
4	No	
5	No	
6	Yes	
7	No	
8	No	
9	No	
10	No	
11	No	
12	No	
13	No	

* All results are nitrogen dioxide annual averages

11.4. A plan showing both the revoked (2010) in blue and current AQMAs in red is provided below.



11.5. The 2017 data demonstrates that no exceedances of the objective levels set in respect to particulate matter (both PM_{10} and $PM_{2.5}$) have occurred.

12. The Future

12.1. On the 15th March 2018 The Environment, Food and Rural Affairs, Environmental Audit, Health and Social Care, and Transport Committees published their joint report on improving AQ. The unprecedented joint inquiry was launched amid concerns over the inadequacy of the Government's plan to improve air quality in the UK, as demonstrated by a series of successful judicial challenges in recent years.

- 12.2. The report from a four-way inquiry calls for a new Clean Air Act, a clean air fund financed by the transport industry, a national air quality support programme for councils, and for the Government to require manufacturers to end the sale of conventional petrol and diesel cars earlier than the current 2040 target.
- 12.3. Neil Parish MP, Chair of the Environment Food and Rural Affairs Committee, has said:

"The Government's latest plan does not present an effective response to the scale of the air quality catastrophe in the UK. We are concerned that the Government is treating air quality as a box-ticking exercise. Real change will require bold, meaningful action. We are calling on Government to develop a properly resourced support scheme available to all councils struggling with air quality, and to require manufacturers of polluting vehicles to pay their fair share by contributing to an industry-financed clean air fund".

13. Equalities Impact Assessment

- 13.1. A full equality impact assessment is not required as the recommendations do not have a negative impact on any of the protected characteristics as described in the Equality Act 2010. The provisional EIA is attached as **Appendix 2**.

14. City Solicitor's comments

- 14.1. The timetable submitting the ASR is provided Section 2.5 of the Local Air Quality Management Technical Guidance 2016 (updated in February 2018).
- 14.2. The aim of the assessment of AQ is to identify with reasonable certainty whether or not a likely exceedance of the NAQO will occur. The AQ (England) Regulations 2000 (SI 928) and The Air Quality (England) (Amendment) Regulations 2002 (SI 3043) make it clear that likely exceedances of the objectives should be assessed in relation to the quality of the air at locations which are situated outside of buildings or other natural or man-made structures, above or below ground, and where members of the public are regularly present. It is particularly important that our assessments focus on those locations where members of the public are likely to be regularly present and which are likely to be exposed for a period of time appropriate to the averaging period of the objective.
- 14.3. It is clearly noted in the body of the report that current EU enforcement is in train (Section 8) and will, in effect 'carry-over' post Brexit. Additionally in the context of national engagement the Government, by reason of a series of successful Judicial Reviews, is being put to task to cascade the message that the consequence will be applicable enforcement, further directly applicable legislation and a greater requirement upon local authorities to engage and achieve targets of compliance.
- 14.4. It is to be noted that whilst the current Judicial Review applications focus upon the Government there is nothing in law to prevent such private applications being aimed at local authorities either failing to engage or failing to achieve

compliance suitably interested individuals or groups could mount significant challenges. The defence is to fully commit and act as a reasonable LA would.

15. Head of Finance comments

- 15.1. The costs of continuing to R&A AQ in Portsmouth will need to be met from within existing budgets. The 2016 procurement of a three year contract to provide the AQ monitoring services within Portsmouth has been funded (with an ability to extend for a further two years should further funding be secured). The situation in respect to funding the contract from 2019 onwards remains unchanged in that the Directorate has identified that it will not have sufficient funding to continue to provide these services at this level.
- 15.2. The additional costs of increasing sampling required to deliver monitoring information in line with DEFRA's appraisal of the 2017 ASR will likewise be need to be found from existing budgets. These costs will place additional pressures upon the funding allocated to Regulatory Services to carry out their statutory obligations.

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 Signed by: Stephen Baily, Director of Culture and City Development

Appendix 1: 2018 Annual Status Report of AQ Appendix 2: Equality Impact Assessment

Background list of documents: The following list of documents discloses facts or matters, which have relied upon to a material extent by the author in preparing this report:

Title of Document	Location
House of Commons Briefing Paper - Brexit and AQ - 6 th March 2018	http://researchbriefings.files.parliament.uk/documents/CBP-8195/CBP-8195.pdf
House of Commons 4 th Report - Improving AQ - 7 th March 2018	https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/433/433.pdf
National Audit Office Report - AQ - 16 th November 2017	https://www.nao.org.uk/wp-content/uploads/2017/11/Air-quality.pdf
Parliamentary business - parliament uk - committee call for a new clean air Act - 15 th March 2018	https://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/news-parliament-2017/joint-improving-air-quality-report-publication-17-19/

The recommendations set out above in 2.1 above were approved / approved as amended / deferred / rejected by the Cabinet Member for the Environment and Community Safety on 25th June 2018

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 Signed by: Councillor David Ashmore, Cabinet Member for Environment and Community Safety