

REPORT TITLE: AIR QUALITY SUPPLEMENTARY PLANNING DOCUMENT

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WARD(S): CITY

PURPOSE

This report seeks Cabinet approval to adopt the Air Quality Supplementary Planning Document (AQ SPD), which is one of the core measures set down within the Council's Air Quality Action Plan, approved on the 26th April 2017 CAB2906 and is designed to improve air quality in the air quality management area of the city

The draft AQ SPD, as set out in CAB3279, has been subject to public consultation between February and April this year, and in light of the comments received, it is proposed to amend the document prior to adoption as set out in this report.

The AQ SPD as recommended will supplement the policies in the Local Plan which are currently used to determine planning applications and, in particular, policies WIN2 and DM19 which deal with air quality.

In addition to seeking to mitigate air pollution impacts, this AQ SPD will have the added benefits of helping to reduce carbon emissions thereby assisting Winchester City Council in delivering a carbon neutral district by 2030.

RECOMMENDATIONS:

1. That Cabinet adopts the revised Air Quality Supplementary Planning Document (AQ SPD) as set out in Appendix A.

IMPLICATIONS:

1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the Climate Emergency and Creating a Greener District
- 1.2 This AQ SPD is intended improve air quality by reducing sources of pollution from new development in and around the town area through the mitigation of nitrogen dioxide and particulate emissions,. This will be achieved by a number of means including installation of low emission boilers, provision of infrastructure to support the uptake of ultra-low emission 'plug in' vehicles and promotion of sustainable transport options, all of which have the additional benefit of reducing carbon emissions.
- 1.3 Homes for all
- 1.4 By ensuring that all relevant development with the AQ SPD area, meets the basic standards of expectation as set out by an Air Quality Statement, this will ensure that all new developments will strive to meet environmental challenges for the future. The SPD also seeks to ensure the protection of occupants of new accommodation from exposure to existing poor air quality.
- 1.5 Vibrant Local Economy
- 1.6 Ensuring minimum development standards in support of cleaner air will reinforce the position that Winchester adopts a progressive approach to development to protect public health. This will in turn enhance Winchester's reputation as an attractive place to live and work, which will promote a vibrant economy.
- 1.7 Living Well
- 1.8 This AQ SPD, sets down a set of requirements for developers seeking to build within the area covered by the document, which is intended to improve air quality and by extension, public health, within the Air Quality Management Area (AQMA).
- 1.9 These criteria have been carefully considered to take into account the size and therefore the subsequent air quality impacts arising from development in relation to nitrogen dioxide and particulate emissions, both of which are proven impactors on public health.
- 1.10 In seeking to reduce these pollutants from developments, this policy's intent is to mitigate further NOx and particulate burdens on ambient air quality and thereby make the City of Winchester a 'healthier' place to live and work into the future.

2 FINANCIAL IMPLICATIONS

- 2.1 There is no additional financial burden to Winchester City Council in its role as the Local Planning Authority. New development proposals brought forward by the council will need to take account of the requirements of the document but it is envisaged that this should not in itself affect the viability of proposals.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The adoption of the AQ SPD will support the Council's legal duty to achieve and sustain compliance with air quality standards as set down in Section 82 Part IV of the Environment Act 1995.
- 3.2 There are no procurement implications for the Council, associated with the adoption of this AQ SPD.

4 WORKFORCE IMPLICATIONS

- 4.1 The AQ SPD as proposed has been developed in consultation between Development Control, Strategic Planning and Environmental Health and in a manner to ensure clarity of expectation through the existing planning regime in order to minimise additional work for officers. However inevitably with the introduction of additional planning requirements, and in the case of larger developments, the need to conduct an Air Quality Assessment (AQA), will mean that officers will have to assess compliance with the SPD.
- 4.2 In the case of the standard shortlist of measures set down in an Air Quality Statement (AQS), which will be required for all development inside the AQ SPD area, compliance can be addressed through the use of standard conditions and is common practice within the planning regime. This should not add significantly to workloads.
- 4.3 For larger developments required to deliver an AQA, this will necessitate officer input. However as this type of work is already required for major development applications across the district, this already forms part of the Environmental Health consultee function, so can be met by existing officer resources.
- 4.4 It is difficult to predict overall how much additional work will arise from this AQ SPD but it is expected that this will be met from within the existing staff resources.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 This AQ SPD will affect all new relevant developments within the SPD area, including those undertaken by the City Council.

6 CONSULTATION AND COMMUNICATION

- 6.1 The need for the AQ SPD was established through the adoption of the 2017 Air Quality Action plan, with the initial draft being delivered by environmental consultants AECOM, based on their extensive experience in delivering similar reports for a variety of local authorities. The draft AQ SPD that was approved for public consultation by Cabinet (CAB 3279), from which there was 21 responses.
- 6.2 A subsequent two month public consultation period was conducted between February and April of 2021 and which was undertaken concurrently with the Local Plan consultation. The draft as proposed by this report, is the final iteration subsequent to post consultation amendments made by the officer team that have been discussed and agreed with relevant Cabinet members.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 This AQ SPD, seeks to improve air quality within the AQMA, so the proposed SPD area includes the AQMA, Winchester's Settlement Area plus a 1km buffer, by requiring new developments to adhere to certain requirements intended to mitigate poor air quality and improved public health. Its entire purpose is to seek to improve the environment for residents, business and visitors to the City.

8 EQUALITY IMPACT ASSESSEMENT

- 8.1 There is nothing identified within the proposed AQ SPD that would otherwise lead to discrimination, whether directly or indirectly or in a manner that would compromise the equality of opportunity to consult by the relevant stakeholders and the public.

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 Any comments that have been submitted in response to the public consultation have been taken into account, and included people's name and contact details. The Council will publish names and associated representations on its website but it will not publish personal information such as telephone numbers, addresses or email addresses.
- 9.2 In accordance with the General Data Protection Regulations (GDPR) information will only be kept for the necessary period of time required. The Council has an updated privacy policy which can be viewed on the website.

10 RISK MANAGEMENT

Risk	Mitigation	Opportunities
Financial Exposure <i>None specific to the AQ SPD</i>		
Exposure to challenge <i>That the adoption of the AQ SPD will be subject to legal challenge and amendments to the document have not been consulted on.</i>	<i>Public Protection have worked with Strategic Planning and Legal colleagues to ensure that the consultation process was legally compliant with the requirements for SPDs and was robust so as to mitigate as far as possible against possible legal challenge. The risk of challenge is considered to be low and acceptable.</i>	<i>To better understand where legal challenge may arise and be better prepared.</i>
Reputation <i>That in adopting this AQ SPD, it may discourage developers from building in the AQ SPD Policy Area.</i> <i>Failure to deliver an SPD could harm the council's reputation regarding improving air quality.</i>	<i>The Winchester district remains an attractive place to live and work and this will be supported by the AQ SPD in maintaining high environmental standards for the future. It also takes a proportionate approach determined by the scale of development proposed.</i> <i>Proposed to adopt the SPD.</i>	
Achievement of outcome <i>That despite adoption of the AQ SPD, air quality within the AQMA does not improve.</i>	<i>Ensure robust delivery of AQ Mitigations required of the SPD. SPD only one element of a broader suite of deliverables required by the AQAP.</i>	<i>Review 2017 AQAP to identify additional measures that will improve air quality within AQMA.</i>
Project capacity <i>Staff Capacity insufficient to proactively ensure compliance with required standards.</i>	<i>Ensure performance standards are upheld and sufficient staff resourcing is maintained.</i>	

11 SUPPORTING INFORMATION:

11.1 Supporting information as set out in [CAB3279](#) remains unchanged and sets out the background as to why Cabinet approval was sought to undertake a public consultation on the draft of the AQ SPD, as then proposed. The

supporting information contained in this Cabinet Paper, seeks to summarise the key points which emerged from the consultation responses received and the amendments to the AQ SPD, as now proposed for Cabinet approval.

Public Consultation

- 11.2 A public consultation was conducted concurrently with the consultation to the Local Plan (Strategic Issues and Priorities) which ran between 15th February and 12th of April this year. Notice of the consultation was disseminated to the same extensive distribution list of potentially interested parties as the Local Plan, which included relevant stakeholders i.e. developers, planning agents and local environmental groups. A notice was placed in a local paper advertising the AQ SPD consultation and officers conducted a presentation to the Town Forum as well as providing two on line seminars. The consultation itself was conducted through the City Council's web site with responses captured through the Citizen Space Portal.
- 11.3 Overall the consultation attracted 21 responses, of which 6 were from organisations and 15 from members of the public.
- 11.4 The consultation sought views on the various policies set down within the AQ SPD, broadly summarised as follows:
 - a) Policy 1: The concept of asking smaller developments for an Air Quality Statement and for larger developments an Air Quality Assessment?
 - b) Policy 2: Views on proposed receptor sites
 - c) Policy 3: Proposed requirements for inclusion in the Air Quality Statement
 - d) Policy 4: Proposed requirements for inclusion in the Air Quality Assessment
 - e) Policy 5: Proposed requirements in mitigation
 - f) Comments in regards the proposed AQ SPD area
 - g) Asking whether the consultee supports the adoption of the AQ SPD as a means to improve air quality for the Winchester City area
 - h) Any additional comments
- 11.5 A summary of the consultation responses can be found in Appendix B, with a full transcript of comments received can be found in Appendix C. These consultation comments were collated and a brief officer response provided against each point raised. Consultation comments identified as meriting further consideration were highlighted and shared with the relevant Cabinet members and Strategic Planning colleagues, details of which can be found in Appendix D. These are summarised as follows:

- a) That in the proposed AQ SPD, adopting a complete ban on solid fuel stoves, is overzealous and it should allow for new cleaner burn 'Eco Design' stoves as advocated by the Stove Industry Alliance.
- b) If the AQ SPD were to continue the position of a ban on solid fuel stoves, how would / could the Local Planning Authority ensure by condition, that no older 'dirtier' solid fuel stoves are retrofitted in the property post occupancy?
- c) In regards the requirement for prescribed heating appliances, would this be best enforced through a 'prior to occupation' condition?
- d) Under the current proposals it is possible that a larger development *could* through an AQA deem any impacts as minimal and therefore acceptable. This would effectively negate the need for any mitigation at all, which appears to conflict with the requirement for smaller developments to adopt the provisions of the AQS. Should the AQ SPD simply adopt the AQS as a set of minimum standards for all development, to avoid a conflicted standard of expectation and ensure a consistency of approach?
- e) That the proposed AQ SPD area is inappropriate, with some comments suggesting that it should include the whole district, whilst others adopting the opposite position that there is no evidence to suggest that it should be extended beyond the boundary of the AQMA i.e. the city centre.

Response to Public Consultation

- 11.6 Officers and members acknowledged that the public consultation did raise some valid points and so, in response, the SPD has been amended and these changes were discussed and agreed through the steering group. In addition legal advice was sought as to whether such amendments could be made to the AQ SPD in lieu of the public consultation without the need for additional formal consultation.
- 11.7 The agreed responses to the points raised by the consultation were as follows:
- a) **That the proposed AQ SPD continues to recommend a ban on the installation of solid fuel appliances and open fire places.**

It is acknowledged that the Eco Design standard as advocated by the Stove Industry Alliance, does present a higher emission standard in regard nitrogen dioxide and particulates. However the Council remains committed to the primary position of protecting public health, with a ban on the installation of all solid fuel appliances and fire places supporting a desired 'zero emission' position within the AQ SPD area.

- b) **That the proposed AQ SPD cannot adopt a policy of preventing the retrofitting of solid fuel stoves and fireplaces post occupancy.**

In this regard legal advice was that such a policy did not appear to meet the 6 tests for conditions outlined in the Government guidance on the use of planning conditions, including the condition that says “relevant to the development to be permitted... and reasonable in all other respects”. The Guidance indicates that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity and that an area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. As a result the use of such a condition has not been included in the final version of the SPD.

- c) **That for the requirement for low NOx boilers be controlled through appropriate planning conditions.**

There is no need to amend the AQ SPD in this regard, simply that it be noted that these and other provisions can be effectively controlled through suitably worded planning conditions.

- d) **That the proposed AQ SPD require all developments regardless of size to adopt the requirements as set down by the AQS, as a minimum standard.**

Rather than adopting a separate set of standards for smaller and larger developments through an Air Quality Statement (AQS) and Air Quality Assessment (AQA) respectively, it has been agreed that all development must meet the AQS requirements. It is however acknowledged that some small scale development such as domestic extensions, would in most cases not require an AQS and would therefore be excluded.

In the case of larger (major) developments, these would, in addition to the AQS, be required to conduct an AQA and in that regard deliver any additional mitigations as identified by the this assessment.

Legal advice was sought as to whether an additional consultation be required to seek views on this proposed amendment. The advice provided was that it would be not be essential to undertake a new consultation to adopt standard mitigation measures regardless of development size so this option is not recommended. Further consultation may reduce any risk of possible challenge but this risk is considered to be low and acceptable (see below).

Further, the procedure for the production and adoption of SPDs is set out the Town and Country Planning (Local Planning) England Regulations 2012, including Regulation 12 which requires that before

adoption the LPA must prepare a summary of the main issues raised in consultation and “how those issues have been addressed”. The purpose of consultation is to allow for views to feed in to the adjustment of policy proposals, so provided the LPA at its discretion is acting reasonably and transparently in changing the AQ SPD guidance to meet an apparent inconsistency, and this is properly reflected in the adoption process, further consultation is considered unnecessary unless the effect of the changes would give rise to some substantial unfairness or prejudice to affected parties.

e) **That the AQ SPD area remain the same as per the initial proposal.**

Several comments were received suggesting a larger district wide AQ SPD, whilst others queried the need for the AQ SPD area to go beyond the current AQMA. It should be noted that this matter has been subject to extensive debate within the officer team in consultation with Cabinet members, before and after the public consultation.

The AQ SPD predicated on it having been recommended as a core measure within the AQAP which seeks to improve air quality within the AQMA i.e. predominantly the city centre. It is reasonable to assume that development and subsequent occupation inside and in the area around the AQMA, will have a material impact on air quality within it. A decision was made to draw a boundary line using Winchester’s Urban Development Area plus a 1km buffer and it is considered that this remains a reasonable and therefore tenable position.

It is recognised that Winchester City Council has set out ambitious targets toward carbon neutrality for itself and for the wider district and that some of the measures set down within the proposed AQ SPD will support these aims, although they are being introduced to address air quality issues in the town where the AQMA is designated. The AQ SPD area must therefore align with the AQMA, and does not include the wider district, where all available information indicates that air quality meets the national standards. Any such proposals to control carbon emissions more generally from new development will need to form part of the next Local Plan and other policies and strategies adopted by the council to reduce carbon emissions.

12 OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 The option of working with other Local Authorities to adopt a sub-regional AQ SPD was explored but was not pursued after jurisdictional differences stalled the process of delivery.
- 12.2 The only other option is not to adopt an AQ SPD, but this action was proposed in the AQAP, and failing to deliver it would not support the council’s commitment to improving air quality for the residents of Winchester.

GLOSSARY OF ACRONYMS

The following provides a short glossary of acronyms used in this report:

AQ SPD	Air Quality Supplementary Planning Document. The planning document being proposed for public consultation.
AQMA	Air Quality Management Area. The area identified as not meeting statutory air quality standards.
AQAP	Air Quality Action Plan. WCC's adopted plan which seeks to implement measures intended to improve ambient air quality within the AQMA.
AQS	Air Quality Statement. The statement provided by the developer simply setting out what they will deliver as part of their development in accordance with the prescribed list of actions set out in the AQ SPD.
AQA	Air Quality Assessment. A detailed assessment submitted by the developer identifying air quality impacts arising from development or as may be the case to their development and setting out their proposed detailed measures in mitigation.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

[CAB3279](#) – Air Quality Supplementary Planning Document

CAB2906 - The Adoption of the Winchester Air Quality Action Plan

Other Background Documents:- None

APPENDICES

Appendix A Revised proposed Air Quality Supplementary Planning Document

Appendix B Public Consultation Summary Report

Appendix C Public Consultation Comments (unabridged but anonymised)

Appendix D Public Consultation Comments with Officer Comments