

REPORT TITLE: DETERMINATION OF CALL-IN REQUEST

22<sup>ND</sup> NOVEMBER 2023

REPORT OF MONITORING OFFICER: Sharon Evans, Strategic Director, 01962 848 386, sevans@winchester.gov.uk

WARD(S): ALL

PURPOSE

The Council's Constitution, Part 4.3 – Overview and Scrutiny Procedure Rules, paragraph 15, details the operation of the council's "Call-In" process. This includes the following requirement "Where a Call-In Notice is not accepted the Monitoring Officer will submit a report to the next available meeting of The Scrutiny Committee giving details of the request and the reasons for not accepting it."

The Monitoring Officer received a Call-In Notice on 21 September 2023, regarding a decision taken at the Cabinet meeting on the 13<sup>th</sup> September 2023, report reference CAB3423. The Call-In Notice was received in time and the requisite 5 Elected Members confirmed the Notice in writing.

The Monitoring Officer reviewed the contents of the Notice and assessed it against the grounds for call-in specified within the Constitution. The call-in request has not been accepted, and this was communicated to the Chair of Scrutiny Committee and the call-in signatories.

Where a Call-in Notice is not accepted the Monitoring Officer will submit a report to the next available meeting of the Scrutiny Committee giving details of the request and the reasons for not accepting it.

RECOMMENDATIONS:

It is recommended that the Scrutiny Committee note the contents of this report.

## IMPLICATIONS:

### 1 FINANCIAL IMPLICATIONS

- 1.1 The Section 151 Officers views are incorporated within the report.

### 2 LEGAL AND PROCUREMENT IMPLICATIONS

- 2.1 There are no legal implications.

### 3 CONSULTATION AND COMMUNICATION

- 3.1 The Section 151 Officer has been consulted. The Scrutiny Committee Chair has been consulted. The report has been shared with Councillors Horrill, Bolton, Cook, Wallace and Lee.

### 4 SUPPORTING INFORMATION:

- 4.1 Part 1A Local Government Act 2000 sets out the arrangements in respect of Local Authority Governance in England. Where an authority is exercising Executive arrangements, it is required to have an Overview and Scrutiny Committee. Section 9F of the Act sets out the functions of an Overview and Scrutiny Committee which includes “to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the “Executive” and “to make reports or recommendations to the Authority or the Executive with respect to the discharge of any functions which are the responsibility of the Executive”.
- 4.2 It is prudent for a Local Authority to have locally adopted procedures to enable the Scrutiny Committee to implement this scrutiny function. In this regard Winchester City Council have adopted Overview and Scrutiny Procedure Rules, set out in Part 4.3 of the Council’s Constitution.
- 4.3 At paragraph 15 of the Procedure Rules, the call-in of decisions is dealt with and the rules provide that at least five Members must request a call-in and state which of the grounds for a decision being called-in are applicable:
- i) The decision is outside the terms of reference of the Cabinet, or delegated powers of the decision-maker
  - ii) The decision appears to be contrary to, or not wholly consistent with, the Council’s Budgetary and Policy Framework or other Council Policy: or
  - iii) The information contained within the report, and/or considered by the Cabinet (or other decision-maker) was incomplete or inaccurate:
  - iv) New information has come to light which might cause the decision to be changed

v) The decision was not made in accordance with the 'Principles of Decision making' set out in Article 11 of the constitution or in some other way appears to give rise to significant legal, financial or propriety issues.

## 5 BACKGROUND

5.1 On 13<sup>th</sup> September 2023 Cabinet made an Executive Decision relating to the Adoption of the Carbon Neutrality Action Plan (CNAP) of which CAB3423 refers.

5.2 The decision made was:

1. That the revised Carbon Neutrality Action Plan for 2023-2030 be adopted.
2. That the Corporate Head of Service: Economy & Community be given delegated authority to make minor changes to the Carbon Neutrality Action Plan with regard to design and text amendments and to up-date data prior to publication.
3. That the council work with stakeholders to further develop performance monitoring and set out task and finish groups to accelerate work on priority actions

5.3 The decision was published on the Council's website and the call-in deadline was Thursday 21st September 2023.

5.4 On 21<sup>st</sup> September 2023, within the prescribed deadline, the Monitoring Officer received a Notice, for call-in of the decision from the requisite number of Elected members: Councillors Horrill, Bolton, Cook, Wallace and Lee.

5.5 In calling in this decision the members above believe the following grounds for were relevant:

- ii) The decision appears to be contrary to, or not wholly consistent with, the Council's Budgetary and Policy Framework or other Council Policy:
- iii) The information contained within the report, and/or considered by the Cabinet (or other decision-maker) was incomplete or inaccurate:
- iv) New information has come to light which might cause the decision to be changed;
- v) The decision was not made in accordance with the 'Principles of Decision making' set out in Article 13.02 of the constitution or in some other way appears to give rise to significant legal, financial or propriety issues.

5.6 Members requesting the call-in of the decision stated that their rationale for their reasons to call in was as follows:

1. *The authority has not followed the Best Value Statutory Guidance as provided by the Department for Communities and Local Government, which states ...To achieve the right balance and before deciding how to fulfil their Best Value Duty authorities are under a Duty to Consult (Section 3(2) of the Local Government Act 1999) representatives of a wide range of local persons; this is not optional. Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. The cost to tax payers is significant with minimal benefit.*
2. *The decision does not appear to be in accordance with section 8 of the Budget and Policy Framework Procedure Rules. The plan does not appear to have been fully costed or budgeted. For example, offset costs could be significantly higher if based on the 2021 figures.*
3. *The cabinet confirmed the error with the base data which is the basis for the whole report and decision making.*

## 6. ISSUES FOR CONSIDERATION

- 6.1 The Monitoring Officer considered the rationale for the reasons for call-in 1-3 above and dealt with each one in turn.
- 6.2 In addressing reason 1 above the Monitoring officer needs to consider if a Section 3 duty has to be fulfilled and if so at what point in time did that duty have to be fulfilled?
- 6.3 Under Section 3 of the Local Government Act 1999, a best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. For the purpose of deciding how to fulfil this duty, an authority must consult specified representatives. Case law establishes that the duty to consult is triggered by decisions about high-level issues concerning the approach to the performance of an authority's functions, and it is about those and not about particular implementation that consultation is required.
- 6.4 The leading case to assist is R (Nash) v Barnet LBC [2013] PTSR 1457. The judgment of Underhill LJ in this case concluded that it cannot have been the statutory intention that every time an authority makes a particular operational decision it is required by Section 3 to consult about that decision simply because that could be said to be part of 'the way in which' it performs its functions. Lord Justice Underhill stated, 'In this context that phrase connotes high-level issues concerning the approach to the performance of an authority's functions, and it is about those and not about particular implementation that consultation is required.'

- 6.5 Therefore, the Section 3 duty required consultation about a "high level" decision, policy or approach, and not one about how we implement our policy.
- 6.6 It is important to reflect that the decision subject to call-in; the adoption of the revised Carbon Neutrality Action Plan is neither a strategy nor new policy. It is a revision to existing plans and it reframes proposed delivery in line with the agreed Carbon Neutrality Roadmap.
- 6.7 The Carbon Neutrality Action Plan was realigned into themes and the tasks aligned into priorities. The roadmap directed on how to prioritise, and how to obtain the best outcomes. Where policy has been developed to deliver in accordance with the roadmap, the appropriate decision making route was taken, in particular, the offsetting policy went to Health and Environmental Policy on 2<sup>nd</sup> March 2022 HEP021, before the meeting of Cabinet 25<sup>th</sup> January 2023 CAB3386 where the Carbon Offsetting Policy was approved and it was agreed that the policy be included into the Annual Carbon Neutrality Action Plan 2023. The emerging renewable energy work went to the Carbon forum on 28<sup>th</sup> June 2023 for engagement and opinion as the project was formed.
- 6.8 As set out, decisions on the policy developed to aid in delivery of the Roadmap were taken back in March 2022 or at the latest January 2023, and on that basis, the Section 3 duty cited arose back then and not now as purported.
- 6.9 Therefore, it is not considered that the proposed decision falls into the category requiring such consultation. Reason 1 is therefore rejected.
- 6.10 Nevertheless, it is important for the Monitoring Officer to reference that the Roadmap was subject to a wide consultation process in its formation. More detail on the consultation can be found later on in this report.
- 6.11 When considering reason 2 raised it is important to highlight that there is no budget approval contained within the Cabinet report and there were no recommendations asking to take an individual project through for formal approval. Therefore, there was not a Decision made to invest at this present time as this will come forward, subject to business cases evidencing affordability in the future. This was confirmed in the Finance Section of the report.
- 6.12 Discussion also took place at the meeting of Cabinet where it was confirmed that the projects within the trajectory were each an individual project. The Leader confirmed the process for Capital projects needing to come back via separate governance routes to be authorised and it was clarified with the Chief Executive Officer who confirmed that Programme and Capital Board will monitor projects from the outset right through to formal approval. Reason 2 stated is therefore rejected.

- 6.13 With regard to point 3 raised, the data was up to date at the time of the writing of the report. There was not an error, there was new data that became available prior to the Cabinet meeting. This was clarified at the Cabinet meeting and importantly, Cabinet amended the recommendation to ensure that the action plan would be updated with the newly available data.
- 6.14 Other matters were referenced in the call-in form received. They are listed below and addressed in the order raised. There were repetitive elements in the subsequent matters raised that have already been addressed in considering the reasons for call-in stated above.
- 6.15 *'The revised plan contains new proposals such as to Build/invest in large-scale energy generation projects. This decision has not been presented to council members or the public therefore there has been no opportunity to scrutinise such a substantial financial commitment. There is a presumption in favour of openness which has not happened'.*
- 6.16 The Carbon Neutrality Action Plan (CNAP) provides a new trajectory and revised focus on the council 2024 and district 2030 carbon neutral targets as stated in the Cabinet report. The proposals in the CNAP are consistent with those identified in Winchester District Carbon Neutrality Roadmap and no new proposals have been added.
- 6.17 There is no budget approval with this paper and there is no recommendation to take an individual project through for formal approval, therefore there was not a Decision made to invest as this will come forward, subject to business cases evidencing affordability in the future.
- 6.18 At the Cabinet meeting examples were given that the individual policies and projects come via policy committee.
- 6.19 *'The investment in utility scale energy ownership to generate offset credits may represent a serious lack of value for money to council taxpayers given that this would generate no direct benefit to residents but could be a very costly and unbudgeted spending proposal'.*
- 6.20 The policy for offsetting was decided by Cabinet in January 2023 and time for call-in on that paper has expired. This policy went through Health and Environment Policy Committee as part of the policy formation as already detailed in this report.
- 6.21 Any potential investment would require a detailed business case including financial affordability and return in investment, allowing for review of value for money. Selling locally generated electricity to the grid provides a financial return to the council that can be used to offset the cost of borrowing. Any such projects will only be approved subject to being affordable to the council.
- 6.22 *'The basis of the decision is flawed. The base line data for GHG emissions was taken from the 2020 year which was artificially suppressed due to*

*COVID-19. The administration have already confirmed that the report will need to be updated with 2021 data. This means that the decision is based on incomplete and inaccurate information, which changes the outcome of the decision’.*

- 6.23 This has already been addressed above at paragraphs 6.12 and 6.13.
- 6.24 *‘Other key stakeholders such as WinACC have voiced critical issues and inaccuracies within the report that they would like to see addressed. Also, some stakeholders appear to have been missed out altogether. This casts serious doubt as to whether proper and adequate consultation is being undertaken with all stakeholders’.*
- 6.25 The Stakeholder work is clearly identified in the paper under Communication and Consultation. The stakeholder map was discussed in the meeting. The work that has informed this action plan is the milestone map which went through a number of rounds of engagement as identified in the paper DD56, please see link at the end of report.
- 6.26 *‘Other council strategies are consulted on, allowing key stakeholders, members and the public to address concerns, provide input and questions. The same should also apply to this new strategy within an existing roadmap, to allow public and member consultation prior to the decision being agreed’.*
- 6.27 This Plan is neither a strategy or a new policy. It is a revision to existing plans and reframes proposed delivery in line with the agreed Carbon Neutrality Roadmap. The Roadmap was subject to a wide consultation process in its formation, see detail below.
- 6.28 Summary of path to refreshed Carbon Neutrality Action Plan
- 5 June 2019 - CAB 3171 – Declaration of Climate Emergency
  - 9 October 2019 – HEP Presentation of proposed CNAP
  - 23 December 2019 - CAB3203 Winchester CNAP
  - 6 July 2021 – HEP013 – CNAP 2020 annual update
  - 5 July 2022 – HEP027 – CNAP annual report and action plan
  - 6 December 2022 – HEP 030 – Roadmap and actions – this report sets out the intention to revise and methodology
  - 16 January 2023 – DD56 – this report set to adopt the roadmap as the evidence base for the refreshed CNAP.
- 6.29 Consultation with internal and external colleagues and stakeholders
- Presentation to SLP to introduce consultation process
  - Meeting with each Corporate Head of Service with request to respond by conducting a mapping exercise of the Roadmap against existing commitments. The aim was to develop Department Strategies to

implement the Roadmap by May 2023 that then fed into the revision of the CNAP by Summer 2023.

- Briefing offered to Departmental Managers Meetings by Sustainability Team to support above.
- Roadmap Resources developed and published on council Intranet end Jan 23 to support officers.
- Members Briefing led by Cllr Learney supported by Sue Robbins and Anna Wyse on 2<sup>nd</sup> February 2023
- Climate Neutrality Open Forum 9<sup>th</sup> Feb 2023 introduction of Roadmap and public engagement in process.
- Roadmap published on WCC website 16<sup>th</sup> January so public attending Carbon Neutrality Open Forum and Members could access it for the briefing in early Feb.
- Meeting with HCC 16<sup>th</sup> January 2023 The kick off mapping process.

- 6.30 In addition to the work described above, quarterly updates have been provided to the Performance Panel, Scrutiny and Cabinet through the reporting regime. There have also been many presentations and papers to Health and Environment Policy Committee and Business & Housing for separate delivery strands, such as retrofit for homes and Bar End 2 (Vaultex).
- 6.31 *‘There is no evidence in the report that other options for achieving Carbon Neutrality have been considered and that a detailed analysis of those options has been performed. It is incorrect to conclude that the proposed strategy is the only viable option’.*
- 6.32 The CNAP report is based on the Roadmap work that was approved on 16<sup>th</sup> January 2023.
- 6.33 To develop the Roadmap the consultants WSP held a series of stakeholder workshops. This included a workshop with Winchester Action on Climate Change (WinACC), in-depth interviews with Hampshire County Council officers and Wessex Green Hub and a session with a wide range of stakeholders including Cycle Winchester, Friends of the Earth, Sustrans, Hampshire & IoW Wildlife Trust, BID and many more. A questionnaire was also used to engage with officers across the council to build knowledge of specific initiatives already happening or planned.
- 6.34 The Health & Environment Policy Committee considered the report at its meeting on 6<sup>th</sup> December 2022. Comments made included the need to do more and quickly and to work in partnership with residents, business and organisations to achieve the outcomes identified.



6.35 The committee supported the recommendations and in recognition of the need to be greener faster in order to meet carbon neutrality targets by 2030 and as a matter of urgency to:

- Prioritise and seek funding for highest impact actions within our scope.
- Identify ways to use developer (Community Infrastructure Levy) and other funding to drive or unlock change.
- Put carbon at heart of relationship with key partners to accelerate delivery.
- Scale up actions and increase pace of delivery.

6.36 WSP conducted a thorough review of existing national and local sustainability literature and national government net zero and sustainability policies, plans and programmes to identify opportunities with existing and emerging policies:

Intervention Areas: To reach carbon neutrality WSP identified opportunity areas for reducing carbon dioxide emissions in:

- Domestic – These are opportunities related to energy consumption and generation of dwellings. This is further divided into energy consumption reduction and efficiency, use of decarbonised fuels (primarily the electrification of heat) and lastly renewable energy generation (primarily rooftop photovoltaics).
- Commercial – These are opportunities related to energy consumption and generation of non-dwellings. This is further split into energy consumption reduction and efficiency, use of decarbonised fuels (primarily the electrification of heat considering the 5-year timeframe) and lastly renewable energy generation (primarily rooftop photovoltaics).
- Industrial - These are opportunities related to energy consumption and generation of high energy consumption industries e.g., cement manufacturing, steel and iron manufacturing etc. Specifically, the focus is on processes which use high temperatures and therefore may require technologies which are not yet commercialised such as hydrogen and carbon capture and storage.
- Transport – There are emissions associated with all forms of transportation of people and goods. This was built around the A-S-I concept of avoiding, changing, and ultimately improving. First, opportunities to reduce the need to travel were considered. Next, where travel is necessary, active travel and low-carbon modes of transport should be favoured. Ultimately, each of the transportation modes should switch to low-carbon fuel sources, likely electric in the short term, but potentially hydrogen, biofuels, or other technologies later.
- Land Use – There are opportunities to reduce carbon dioxide emissions by considering large-scale land use options. The focus here is on low value

land and how this can be used to improve natural capital or the potential for renewable energy generation.

- Waste – These are opportunities to reduce carbon emissions by increasing recycling and improving waste management.

6.37 A summary of the methodological approach for carbon neutrality roadmap is given below.

Step 1 – Prepare a baseline

Step 2 – Business-As-Usual (BAU) scenario

Step 3 – Model Climate interventions

WSP identified, designed and model an additional 16 interventions needed to achieve carbon neutrality by 2030 for the district. These interventions were identified by considering:

- Baseline emission source areas
- Winchester CNAP 2020-2030 (and priorities for 2022-2023);
- Stakeholder engagement;
- Literature review undertaken;
- Existing, and understanding of future, government policy; and
- WSP's experience in the field.

The 16 interventions have been analysed to understand the carbon reduction potential for each within the district.

The 16 interventions were then developed into the carbon neutrality roadmap for Winchester district.

Step 4 – Model scenarios and define interventions.

## 7. DECISION

On considering the grounds and other matters raised by the 5 members using the Call-In procedure the Monitoring Officer is satisfied and concludes that all grounds and reasons given have been addressed and robustly refuted.

Further, the decision called-in does not conflict with the Budget and Policy Framework Procedure Rules or the Council's Principles of Decision making. Therefore, the request for call-in is not accepted.

## 8. BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB3423

HEP021

CAB3386

Other Background Documents:-