

**Executive**

**17 January 2019**

Report of the Director of Economy and Place  
Portfolio of the Executive Members for Environment and Planning and  
Transport

## **A Clean Air Zone for York**

### **Summary**

1. The Executive meeting of 25 January 2018 approved:
  - a. The introduction of a local bus based Clean Air Zone (CAZ), subject to consultation with local bus operators, the public and others;
  - b. The introduction of an improved minimum emissions standard for CYC contracted local bus services;
  - c. Adoption of anti-idling measures (including enforcement) targeted at all vehicle types.
2. This report sets out options and timescales for the improvement of emissions standards of vehicles operating on the local bus network.

### **Recommendations**

3. The Executive is asked to note the content of the report and to:
  - a. To support the introduction of a Clean Air Zone (CAZ) for vehicles operating local bus services from January 2020 by making a request to the Traffic Commissioner pursuant to section 7(1) of the Transport Act 1985 for him to exercise his powers under that section to impose traffic regulation conditions designed to reduce air pollution.
  - b. To permit a twelve month 'sunset period' from January 2020 when vehicles not meeting the CAZ requirement may continue to be operated if evidence can be submitted by an operator that an order for

retro-fitting of an existing vehicle, or procurement of a replacement Euro VI (or better) vehicle has been placed, but not yet delivered.

- c. To recommend to Council, via the budget report in February 2019, a budget of £1.64m to establish a competitive grant fund for bus operators financed from prudential borrowing, noting the annual revenue implications of £115,000 per annum;
- d. To note the potential for grant funding to offset the cost, and that any amendment to the Council contribution will be notified in future reports to Executive;
- e. Approve the procurement of contracted bus services with Euro VI minimum emission standard and in line with the service levels offered on the existing tendered bus network. The results of the procurement exercise will be considered at a further Executive following receipt of tenders. A summary of the routes to be re-tendered is included at annex 4 to this report;
- f. Recognise the progress made towards tackling anti-idling measures and proposals for addressing bus idling from January 2019. Detail concerning the action proposed to address local bus idling is considered at annex 5 to this report.

**Reason:** To improve air quality in York through the acceleration of improvements to bus emissions levels

## **Background**

4. The Environment Act 1995 requires all local authorities to review and assess air quality in their areas and to declare Air Quality Management Areas (AQMAs) where UK health based air quality objectives are not being met.
5. Where an AQMA is declared, an Air Quality Action Plan (AQAP) must be developed to demonstrate how the local authority intends to improve air quality. York's third AQAP was adopted in 2015. The evidence base for AQAP 3 identified older diesel buses as a significant source of air pollutants. Measures to improve the emission standards of buses and reduce bus idling (as part of a wider anti-idling campaign /enforcement) are key measures in AQAP3. These measures are part of a wider package of air quality improvement measures which together are

currently predicted to deliver the health based air quality objectives for all pollutants in the city by around 2021.

6. On 25 January 2018 the Executive approved the introduction of a Clean Air Zone (CAZ) within and including the inner ring road in 2020 subject to consultation with local bus operators and the general public. The aim of the bus-based CAZ is to establish minimum emission standards for all buses used on local services based on their frequency of entry into the city centre. The majority of services will be required to be ultra-low emission or Euro VI by the agreed CAZ introduction date whilst less frequent services will be given a longer timetable to upgrade. A graduated approach was proposed to give operators time to plan and upgrade vehicles as part of their business planning whilst maintaining current levels of bus service. The aim is to address the highest polluting bus services as a priority. The full CAZ proposals are included at Annex 1 to this report.

## **Consultation**

7. The consultation on the CAZ was published on the Council's website and was open for responses for a 6 week period closing on 3 August 2018. The CAZ questionnaire is included at Annex 2.
8. The questionnaire asked eight specific questions and also asked respondents for any further comments they might have on the proposed introduction of a CAZ.
9. There were 254 responses via the questionnaire, together with 6 additional submissions via email and letter.
10. A summary of the responses to the specific questions are recorded at Annex 3. Ninety-five additional comments were included within the consultation responses.
11. A public session was held at West Offices for people to give their views. This was attended by one member of the public. In addition, bi-lateral meetings have been held with representatives of bus operators 'First York' and 'Connexions buses', the two operators most impacted by the proposed CAZ because they operate the greatest number of vehicles which would require upgrade under the current proposals and for whom there are the greatest financial implications. This follows briefings held with the York Quality Bus Partnership, attended by all of the city's bus operators, over several years.

## Responses to the consultation

12. The headline results of the consultation are as follows:

- Overwhelming support for a bus-based Clean Air Zone in York city centre to improve air quality and public health (90%);
- Overwhelming support for the proposal for the boundary of the CAZ to be within and including the York inner ring road (82%)
- General support for the proposed timetable to implement the CAZ by 2020 (64%) with detailed comments and a variety of alternative dates mentioned. It should be noted that many of the respondents may not be aware of the work, cost and availability of new vehicles or retrofitting of existing vehicles to meet the CAZ emission standards and therefore may have unrealistic ambitions with respect to the possible timetable for upgrading the fleet.
- An overwhelming majority (85%) thought bus operators should be responsible for providing lower emission buses in York, but significant numbers thought that City of York Council and central government should also be responsible (59% each). It should be noted that only 14% supported provision of lower emission buses through increased fares.
- 90% of respondents were York residents with 34% working in the city centre. 13% of those responding stated they had a health condition affected by poor air quality.
- 91% of respondents were concerned about air quality in York (59% were very concerned). Only 9% were not all concerned.
- Only 18% said the proposed CAZ should apply to local buses only.

13. The most significant issue raised by respondents in their additional comments related to the inclusion of other types of vehicles within the proposed CAZ. These were:

- |                                 |     |
|---------------------------------|-----|
| • HGVs                          | 34% |
| • Light goods vehicles / vans   | 27% |
| • Taxis / private hire vehicles | 25% |
| • All cars                      | 23% |
| • Diesel cars                   | 31% |
| • Coaches                       | 24% |

13% of respondents wanted all cars banned from the city centre;

10% were concerned about the impact of the proposed CAZ on bus services;

10% wanted the CAZ to cover a wider area;

6% wanted a congestion charge for vehicles in the city centre;

6% questioned the data behind the report and the contribution of buses to poor air quality;

### **Response from bus operators and their representatives**

14. The York Quality Bus Partnership (QBP) is the collective body representing public transport operators in the City in partnership with CYC as the Transport and Highways Authority for the area. The QBP's members welcome the opportunity to work with the Council to improve air quality. They state that buses have a significant contribution to make to improve air quality.
15. The QBP query the data in York's Third Air Quality Action Plan that bus movements account for 3% of traffic in York but cause 27% of pollution. They cite the forthcoming upgrade to the Park & Ride fleet as further evidence that if the Action Plan data is not incorrect now, it will be within the next year. They also state that emissions per passenger travelling are far lower on buses due to the significantly higher capacity when compared to that of the private car.
16. The QBP and some other respondents state that buses are being singled out for emission reduction via the CAZ. They want measures targeted where problems are greatest to ensure the best return can be made for any costs incurred. They link this to a cost-benefit analysis to strike the right balance between environment, economy and social objectives. Any application for a Traffic Regulation Condition (or a Road Pricing scheme) will need to be evidence based if it is to stand up to public scrutiny. They warn of a legal challenge.
17. The QBP is concerned that a CAZ could lead to the loss of some local bus services which the Council could not afford to subsidise and to higher fares for bus passengers. The response refers to two local bus operators that have recently ceased to operate, citing the difficult trading conditions for bus operators at the current time. They also suggest that a CAZ could be a barrier to new bus operators entering the York bus market.

18. The QBP is concerned about the capacity of the exhaust retro-fitting industry (to bring buses up to Euro VI standard) in time for a CAZ introduction in early 2020.
19. The QBP would prefer future voluntary arrangements and a renewed partnership with the Council to promote bus usage and discourage cars in the city centre through measures including increased car parking charges, rather than a CAZ.
20. First York responded to say they are “committed to playing their full part in addressing future emissions”. They want a positive partnership with CYC to improve air quality, but not a CAZ. They say their use of anti-idling devices has led to a reduction in engine idling thereby reducing emissions. They propose that buses are part of the solution as well as being part of the problem.
21. First York believe the CAZ proposals are insufficiently evidence based. They regard the AQAP3 proportions of emissions from buses relative to other traffic ranges up to a maximum of 3% of traffic (buses) producing up to 27% of pollution as a worst case example. They suggest that an updated emission source apportionment and cost benefit analysis should be undertaken to ensure that emission reduction policies are being correctly targeted at those vehicles which have the greatest emission impact.
22. First York will deliver a Euro VI or better bus services but do not believe that they should shoulder the full burden of this cost and that a proportion should come from the public sector. The CAZ would affect all First York services and take the view that the proposed introduction date of 2020 would give them insufficient time to either purchase new or retro-fit existing buses.
23. First York make the point that Leeds City Council is investing heavily in supporting bus retro-fits to ensure compliance with their CAZ using Government funding as well as undertaking significant bus priority measures to improve journey times.
24. First York is concerned that a CAZ introduced in York in 2020 will lead to the withdrawal of local bus services, higher fares and therefore a poorer service for customers.

25. Table A (below) shows First York's current bus fleet. It also shows their projected fleet for October 2019 and March 2020 in the event that:
- The new Park & Ride electric buses have been introduced;
  - A Clean Air Zone is not implemented;
  - No third party (central or local government) funding is made available to assist with the delivery of additional Euro VI buses

<b>Table A</b>			
<b>Emissions standard</b>	Dec 2018	October 2019	March 2020
Euro II	2	-	-
Euro III	28	18	-
Euro IV	32	32	50
Euro V	32	17	17
Euro VI	-	6	6
Electric	12	33	33

26. First York commits not to relocate more, older diesel buses to York as CAZs are introduced in Leeds and elsewhere. First York state that they are prepared to work closely with CYC to submit bids for central government funding to enable a greater uptake of Euro VI buses.
27. In the event that no central or local government funding is made available, they state that they could achieve an all Euro VI / electric fleet by 2025. However, this will still be dependent on the business generating the necessary revenues to pay for new vehicles, retrofits or cascade of compliant vehicles from elsewhere.
28. In their response, Arriva Yorkshire references the large increase in diesel cars and the resulting emissions in recent years. They want more support for bus operators to improve air quality and a partnership with the Council to achieve this. They mention the costs involved in complying with the Leeds CAZ in 2020 and the limited capacity for retrofitting. Research by the Low Carbon Vehicle Partnership claims that emissions from Euro VI diesel buses are less than Euro VI diesel cars. They take the view that CYC should promote public transport over private cars.
29. York Pullman, a coach and CYC's home-to-school bus operator, reference their investment in Euro V and retrofitting older buses to Euro VI, plus 6 new Euro VI buses. They support the CAZ proposals and say that all school contract buses will be upgraded to Euro V by 2021. They

say there are no ultra low emission coaches currently available on the market.

30. Transdev Blazefield outlines their existing and proposed investment in low emission vehicles. By 2020 their plan is to have:

- City Sightseeing bus fleet 100% fully electric operation following conversion from diesel operation;
- Coastliner bus fleet 100% Euro VI operation (new vehicles);
- City Zap bus fleet 100% Euro VI operation (following conversion from Euro V);
- CYC tendered bus services are due for re-tendering before 2020 so it is anticipated that these would become compliant in line with the Council commitment to require Euro VI (or better) emissions standards for its contracts;
- The remainder of their fleet would be exempt from the proposed CAZ as they enter the city less than 5 times a day or do not enter the proposed CAZ at all.

Therefore the impact of the CAZ on Transdev is very limited as they are already in the process of upgrading their fleet. Transdev do acknowledge, however, that other operators' fleets could be impacted more significantly.

Transdev support the 5 times a day entry criteria for buses but point out potential anomalies. They suggest exemptions for bus routes operating on a less than hourly frequency. They would like to see other vehicle types included within the CAZ.

31. Although they did not respond to the consultation whilst it was open, Connexions buses has subsequently commented on the proposed introduction of emissions restrictions on local bus services operating in to the city centre. Connexions state that in the event that these restrictions were introduced, they would no longer be in a position to continue to operate route 13 (currently operated without local authority subsidy) without significant financial support.

## **Analysis of bus operator responses**

### ***The evidence base for introduction of a CAZ***

32. It is acknowledged that new electric vehicles will be introduced on the Park & Ride network in 2019 following a successful bid for Government



funding and that this will have an impact on the evidence base for the source apportionment for vehicle emissions in the city centre.

33. The evidence presented in the January Executive report showed a snapshot of emissions from buses and other vehicles and their contribution to pollution at various locations in the city at a particular point in time. This was to obtain an understanding of the contribution of different vehicle types to pollution. It is accepted that these figures are now out of date due to a number of factors including:

- upgrading of the bus fleet
- upgrading of vehicle emission standards in general
- the change in proportion of more polluting diesel vehicles
- cheat and gaming devices to give incorrect emission values
- real world emissions being much higher than test laboratory conditions
- the proportion of older buses on York's roads

An updated source apportionment study would involve considerable expense (estimated around £50k) and would take 6-12 months to achieve. It would have considerable resource and cost implications for the local authority. Like the previous study it would be accurate at the time it is undertaken.

### ***Why are buses the focus of the proposed Clean Air Zone***

34. Some respondents express concern that buses are singled out for emission reduction via the CAZ, but may be unaware of other measures delivered and proposed in York's Low Emission Strategy and third Air Quality Action Plan. These include:

- Reducing all emissions through the planning process which includes requirements for electric vehicle charging points in all new developments to incentivise electric vehicle uptake
- A comprehensive electric vehicle charging network in York to incentivise the uptake of electric vehicles
- A move towards emission based parking policies to incentivise ultra low emission vehicles
- A taxi incentive scheme and emission-based taxi licensing policies to incentivise the transition from diesel to ultra low emission taxis

- A review of the council fleet to reduce emissions from all types of vehicles

### ***Why do we need a CAZ to make this happen?***

35. As reported at the January 2018 Executive and not disputed by bus operators, the approximate cost of each bus retro-fit is approximately £15-20,000. Bus operators regard this as a sunk cost which is evidenced not to increase the number of passengers using bus services. To this end, unlike the purchase of new buses which is evidenced to result in patronage gains, there is little commercial benefit to retro-fitting vehicles for bus operators.
36. Without the proposed introduction of a CAZ, it is highly unlikely that operators of commercial routes would choose to retro-fit buses of their own accord.

### ***Challenges in the introduction of Clean Air Zones***

37. The proliferation of Government mandated Clean Air Zone introductions across the UK, the industry argues, will potentially have an impact on the timescales for (and potentially cost of) bus exhaust retro-fit and indeed, the supply of new Euro VI buses. This, the operators argue, will make meeting the requirements of a CAZ in early 2020 challenging if not impossible for them.
38. Leeds City Council is mandated by Government to introduce a CAZ not later than January 2020. A recent report to the Executive of Leeds City Council (18 October 2018) presented the following issues identified by operators providing local bus services:
  - The short timescale to implementation: a sunset period is seen as critical whilst awaiting retrofit or new vehicle deliveries;
  - The risks associated with daily CAZ charges for non-compliant buses being passed onto passengers; which in turn could de-incentivise the modal shift away from cars to public transport;
  - The bus companies feel the Government CAZ framework is set in inverse proportion to the actual source of emissions and this should be addressed;
  - They would like to see more focus and proportionate charges on the emissions per passenger as they highlight these as being much higher with car use than bus use;

- There is a small risk that the total funding available through the Clean Bus Technology Fund (CBTF) will not be sufficient;
- The need to improve bus journey times through congestion measures such as traffic light sequencing and reducing car use etc. was highlighted as key to increasing bus patronage.

39. It is worthy of note that for vehicles operating local bus services in Leeds, over £4m of Government CBT funding has been made available to operators for the retro-fitting of buses to Euro VI standard. Further, to address concerns about the market not being able to cater for retro-fit (or new vehicle) demand, Leeds City Council has also included an exemption (sunset period) for companies that have taken appropriate action such as ordering a new vehicle or booking a retrofit but where the market cannot respond quickly enough. For a company to benefit from this sunset period, the company will have to be able to evidence that they have taken action within 6 months of the scheme approval by Government, anticipated to be December 2018.<sup>1</sup>

40. There is no reason to doubt that York's bus operators would face the same challenges if the introduction of a CAZ in York was to be mandated for January 2020.

### ***Officer Comments on Consultation Response***

41. In response to comments made by individual operators as part of the consultation on the York CAZ:

#### ***First York***

- No conclusions can be drawn from the fact that the Government has not made a CAZ compulsory for York since their decision was based on less accurate modelled data and not York's more accurate locally monitored air quality data.
- Whilst air quality continues to improve at all monitored locations across York and it is projected that the health-based air quality objectives will be met at all locations in York around 2020-2021, this depends on all the measures in the LES and AQAP3 being delivered, including the CAZ by 2020.

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<sup>1</sup> Leeds City Council Executive Board Public Document Pack, 17 October 2018, item 8. Available: <https://democracy.leeds.gov.uk/mgChooseDocPack.aspx?ID=8193>

- CYC is willing to work with other local authorities and central government to encourage and bid for funding for the retrofitting of buses, but this should not deflect from the need to significantly reduce emissions from buses in York in the very near future.
- A continuing partnership is to be welcomed but it must achieve significant reductions in pollution by 2020-21. If bus emissions are not improved in the immediate future it is unlikely that national air quality objectives will be met in York by 2021. CYC is under a continued legal obligation to work towards delivery of the national air quality objectives.
- Notwithstanding the intensive investment in the York P&R electric fleet, in comparison to the level of investment made by First Leeds in new vehicles (£71m on 284 brand new Euro VI buses), the c.£1.34m required to retro-fit the 67 buses not meeting the Euro VI standard by 2020 is comparatively meagre.
- CYC submitted a bid to the Government department for Environment, Food and Rural Affairs (DEFRA) at the end of November 2018 for funding to retro-fit a number of buses (up to 12) to Euro VI standard. CYC worked in partnership with First York and other operators to submit the bid and we are currently awaiting the outcome.
- CYC is exploring opportunities to deliver a more comprehensive retro-fit or vehicle replacement programme making use of the Government's 'Transforming Cities' fund through Leeds City Region.

### ***Connexions***

- Connexions operate a commercial bus services which, does not deliver significant profit margins to this relatively small independent operator. It is also recognised that, in common with a number of First York operated services which fall in to the same category, it nevertheless, provides a key transport link to certain parts of the city. Members will have to consider the extent to which they would be prepared to financially subsidise bus services in the event that they could no longer be provided on a commercial basis, or whether their ceasing would be preferable than a failure to deliver cleaner air in York city centre.

## Options

### 42. Option 1

Introduce the CAZ in January 2020 in line with Annex 1. This is subject to full Council allocating £1,640,000 through its 2019/20 budget process.

### 43. Option 2

Progress the introduction of cleaner buses by working in partnership with operators to agree a programme of planned retro-fit / bus replacement measures for the next 2 years. This would be achieved through a combination of agreed levels of private investment and public financial contributions. CAZ controls anticipated to be implemented in January 2021, to enable sufficient time for retro-fitting or the procurement of new buses. This implementation date would be subject to successful public sector funding bids.

### 44. Option 3

Progress the introduction of cleaner buses without the introduction of a formal CAZ by working in partnership with operators to agree a programme of planned retro-fit / bus replacement measures for the next two years. This option would be supported using a combination of agreed levels of private investment and public financial contributions. The rate of expected investment would be linked to the level of public investment becoming available through grant applications. CAZ controls to be implemented in January 2022 should exceedances of air quality objectives still exist at the end of 2022 subject to successful public sector funding bids.

### 45. Option 4

Introduce the CAZ over a longer period to reflect the timescales in which operators could realistically upgrade their fleets without the requirement for additional subsidy as per table B below:

<b>Table B</b>	
<b>Introduction date</b>	<b>Minimum emissions standard required</b>
<b>January 2020</b>	Euro III
<b>January 2021</b>	Euro IV
<b>January 2025</b>	Euro VI

## Analysis

### Option 1

46. Ninety percent of respondents to the public consultation supported the current proposals for a bus only CAZ to be implemented by 2020 with only five percent opposing. The original proposal for the CAZ envisaged its introduction in 2018. To this end, the proposals are already two years behind the initial schedule. The effectiveness of a CAZ declines over time due to introduction of cleaner vehicles onto the road. Some of these improvements were factored into the original study such that the reduction in emissions from a CAZ introduced now will be less than they would have been if it had been implemented in 2018.
47. This option provides the quickest route for delivery of the CAZ, reduction of emissions from older diesel buses and improvements in air quality and public health. The CAZ only reduces emissions from buses (there are other AQAP3 measures to reduce emissions from other vehicle types but some of these are behind schedule, namely those relating to emissions from delivery vehicles). The evidence for the disproportionate impact of buses upon emissions dates from a study in 2011; since then the traffic composition may have altered, some buses have been upgraded and more is known about real world vehicle emissions.
48. Some bus operators and their representatives challenge the evidence basis for targeting buses (though other vehicles are dealt with through other measures) and may use this as a legal basis to challenge the CAZ.
49. As highlighted earlier in this report (see paragraphs 40-41), it is likely that local bus operators would find it challenging to implement universal adoption of a minimum Euro VI standard by January 2020.
50. The introduction of a CAZ in January 2020 will require the upgrading or replacement of approximately 82 buses within the York fleet. This is in addition to buses which will be upgraded in any event due to prior commitments (e.g. the introduction of a new fleet on the York Park & Ride network).

51. It is anticipated that approximately 70 of the buses will be capable of Selective Catalytic Reduction equipment (SCR) exhaust retro-fit to meet Euro VI standards. The anticipated cost of this work is in the region of £20,000 per vehicle.
52. For the avoidance of doubt, it is anticipated that the Council would hold a competitive process which all seven operators currently providing local bus services in the City of York area, as well as any others who are actively planning to operate here, would be eligible to bid for. The Council would not be buying any equipment itself.
53. It is recognised that the undertaking of this work will deliver no discernible benefit for the bus operator and that therefore some level of public funding will be required to support this work. It is also anticipated that the upgrade to Euro VI standard would increase operating costs for each vehicle due to the requirement for the use of Diesel Exhaust Fluid (known as 'AdBlue').
54. Funding has been sought by the Council from a number of sources including the Department for Environment, Food and Rural Affairs' Air Quality Grant Programme to assist with this process.
55. For the remaining 12 buses which cannot be upgraded due to their age, replacement vehicles would need to be procured. The most cost effective replacement would be to procure Euro IV or V vehicles at approximately £40-50,000 per vehicle and then to retro-fit them to Euro VI standard.
56. It is anticipated that the individual operators would meet the cost of procurement of replacement vehicles. The Council might, however, consider bearing the cost of the additional £20,000 required to fit SCR equipment to bring these vehicles up to Euro VI standard.
57. Table C below summarises the anticipated capital cost of this work:

<b>Table C</b>			
Work required	Approximate number of vehicles	Estimated capital cost to the Council (£)	Estimated capital cost to operators (£)
Retro-fit of existing buses in York fleet	70	1,400,000	
Purchase of replacement buses	12		600,000
Retro-fit of replacement buses	12	240,000	
<b>Total cost</b>		<b>1,640,000</b>	<b>600,000</b>

58. There is a risk that even with the provision of funding for this work, the retro-fit industry is unable to deliver this work in time for the proposed January 2020 introduction. This is due to the wide spread implementation of CAZs across the UK. The Executive may wish to give consideration to a sunset period as per the arrangement in Leeds, where non-compliant buses might be able to continue to operate if an order for a vehicle retro-fit or new vehicle has been placed but the work has not been undertaken by January 2020.
59. The January 2018 Executive required that all vehicles to be used on CYC funded local bus services should be Euro VI emissions standard when the contracts were renewed. In addition to the CAZ proposals, members should be aware that approximately eighty percent of the current local bus contracts require re-tendering by CYC in 2019. In light of the regional and national pressures on supply outlined within this report, there is a significant chance that there will be a delay in the introduction of the Euro VI buses on the locally tendered network.

## **Option 2**

60. This option delivers air quality, health and environmental improvements which would meet with Government and public expectations. It recognises, however, the pressures faced by operators locally and nationally to invest heavily within a short period of time in



new buses or retro-fit technology. It also recognises the pressure which the bus manufacturing and retro-fitting industry is facing to deliver vehicles in time for the launch of a number of CAZ schemes in early 2020.

61. CYC has met with the bus operators whose businesses are most significantly impacted to better establish the likely timescales for introduction of new Euro VI buses or the retro-fitting of existing buses to Euro VI standard. If this option is selected, it is recommended that this approach is extended to the other five operators providing local bus services in York.
62. With the support of a number of bus operators, CYC has submitted a bid to the Government's Air Quality Grant Scheme (2018/19). If successful this bid would secure funding for the retro-fitting of 12 buses. Bids to further Government funding opportunities will be made by CYC as the opportunity presents moving forwards. Consideration could be given by CYC to make further capital funding available.

### **Option 3**

63. This option, in common with option 2, would result in a CAZ only being introduced in the event that sufficient partnership progress had not been made with operators over the course of the next two years.
64. The option would demonstrate CYC's confidence in the bus industry to deliver the required improvements within a period of time agreed between CYC and the operators on a partnership basis, rather than insisting that the operator meets certain deadlines.
65. Every English local authority is required under Part IV of the Environment Act 1995 to produce an Air Quality Action Plan (AQAP) as a means to address the areas of poor air quality that have been identified within the AQMA. The emphasis within AQAPs should be to develop measures that will provide the necessary emissions reductions to achieve the air quality objectives within specified timescales considered acceptable to DEFRA. AQAP3 states York's aim to meet the air quality objectives in all areas by 2021 and this has been accepted by DEFRA. Deferment of AQAP3 measures such as the CAZ leading to CYC failing to meet the air quality objectives within the previously agreed timescale could lead to legal challenge and Government action.

66. Complete abandonment of CAZ proposals could result in bus operators delaying the upgrading of their fleet. National bus operators could choose instead to focus their attention (and budgets) on areas where there is greater pressure to improve their emissions standards.

#### **Option 4**

67. This option would enable local bus operators to make improvements to their fleet within a timescale which they maintain could be reasonably delivered without the risk of withdrawal of local bus services or fares significantly above normal market levels.
68. In line with the comments applying to option 3 above, however, CYC still has a legal duty to meet its air quality objectives by 2021. Further deferral of measures which would ensure that this happens could lead to legal challenge and Government action. Complete abandonment of CAZ proposals could result in bus operators delaying the upgrading of their fleet. National bus operators could choose instead to focus their attention (and budgets) on areas where there is greater pressure to improve their emissions standards.

#### **Council Plan**

69. Poor air quality affects the health and economy of York's residents and businesses. Whilst electric buses are cheaper to operate, require less maintenance and can at least be part funded through grants, they have higher capital costs.

#### **70. Implications**

##### **Financial**

The recommended option would require insertion of approximately £1.64m of funding. External funding is being sought to meet this requirement. In the event that sufficient funding is not secured, the Council would have to consider whether it is prepared to allocate funding for the purpose of retro-fitting buses through the budget allocation process for 2019/20 in February 2019.

The ongoing revenue implications associated with borrowing £1.6m is £115k per annum. This will be incorporated into the 2019/20 budget strategy report in February 2019.

The cost of implementing the mechanism through which the CAZ would be imposed, a Traffic Regulation Condition (TRC), is thought to be very modest and not requiring of on-street signage.

**Human Resources (HR)** (Contact – Head of HR) – N/A

### **One Planet Council / Equalities**

The proposals are significant measures to improve air quality and reduce emissions of carbon and traffic pollution in the city.

### **Legal**

Unlike charging clean air zones for which there are specific statutory powers there is no specific legislation underpinning non charging clean air zones such as the one being proposed. Depending on the nature of proposals within a non charging clean air zone a variety of legal powers may be used to support its aims.

In this case the proposal would be for the Council to make a request the Traffic Commissioner pursuant to section 7(1) of the Transport Act 1985 for him to exercise his powers under that section to impose traffic regulation conditions designed to reduce air pollution. The Act only allows the Commissioner to impose such conditions if he is satisfied after considering the traffic in the area in question, that such conditions are, or are likely to be, required in order to inter alia reduce air pollution. The decision must therefore be evidence based. The Act sets out the matters which may be covered by conditions. This includes routes and matters prescribed in Statutory Instruments . The Public Service Vehicles (Traffic Regulation Conditions) (England and Wales) Regulations 2004 allow for conditions regulating the emission levels of vehicles used in providing services.

Any decision the Executive makes must follow proper public law decision making principles. In particular the Executive is bound to properly consider the consultation responses when making its decision.

The Executive is bound to take into account all relevant considerations. Given the acknowledged deficiencies in the evidence base for emissions the Executive will need to consider whether it has sufficient evidence to make a decision.

The Executive is not entitled to make an unreasonable decision or at least one which is so unreasonable that no properly advised decision making body could have reached it. If the Executive accepts that market is unlikely to be able to meet the demand for retro fit vehicles then it is difficult to see how a decision based on it being able to do so could be sustained.

Every English local authority is required under Part IV of the Environment Act 1995 to produce an Air Quality Action Plan (AQAP) as a means to address the areas of poor air quality that have been identified within the AQMA. The emphasis within AQAPs should be to develop measures that will provide the necessary emissions reductions to achieve the air quality objectives within specified timescales considered acceptable to DEFRA. AQAP3 states York's aim to meet the air quality objectives in all areas by 2021 and this has been accepted by DEFRA. Deferment of AQAP3 measures such as the CAZ leading to CYC failing to meet the air quality objectives within the previously agreed timescale could lead to legal challenge and Government action.

State Aid legislation prevents the Council from giving a commercial advantage to an undertaking, such as a bus operator, over any competitor which distorts competition. If the funding is however advertised as part of the procurement process to renew the 80% of the publicly-subsidised services in 2019 then this can help avoid challenges.

Most of the services within York are however non-subsidised and an equivalent bidding process for grant aid open to these private operators and conducted at the same time as the re-tendering exercise will ensure transparency and fairness as far as possible. A clear evaluation and selection procedure will need to be developed as part of the preparation.

**Crime and Disorder** (Contact - Senior Partnerships Support Officer, Community Planning & Partnerships) - N/A

**Information Technology (IT)** (Contact – Head of IT) – N/A

**Property** (Contact – Property) – N/A

**Other** – N/A

## **Risk Management**

71. Air pollution is a significant risk in delivery of the Council's emerging Local Plan. Reducing emissions from buses is an important element of the AQAP3. Failure to deliver could result in legal challenge from Government or third parties, such as Client Earth.
72. There is a risk that the Traffic Commissioner would not agree to the introduction of a TRC. Option 2 is, however, believed to be the lowest risk as it broadly replicates an existing TRC in Oxford.

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**Chief Officer's name** Neil Ferris  
**Title** Corporate Director of Economy and  
 Place

**Report**  **Date** 8/1/19  
**Approved**

## Specialist Implications Officer(s) List information for all

Implication : Financial

Implication: Legal

Name: Patrick Looker  
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### Wards Affected:

All

**For further information please contact the authors of the report**

### List of Annexes:

1. Approved option for CAZ, Executive, January 2018
2. CAZ questionnaire, June 2018
3. CAZ consultation response summary
4. Local tendered bus routes to be procured in 2019
5. Proposal to address local bus idling

## List of Abbreviations Used in this Report

AQAP	Air Quality Action Plan
AQMA	Air Quality Management Area
CAZ	Clean Air Zone
DEFRA	Department for the Environment, Food and Rural Affairs
FPN	Fixed Penalty Notice
LES	Low Emission Strategy
LEZ	Low Emission Zone
NO <sub>2</sub>	Nitrogen dioxide
PHE	Public Health England
PM10	particulate matter less than 10 micron diameter
TRC	Traffic Regulation Condition
ULEB	Ultra Low Emission Bus