

## **REGENERATION CULTURE AND ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE**

**17 AUGUST 2017**

### **DECLARATION OF FOUR ELMS HILL AIR QUALITY MANAGEMENT AREA**

Report from: Richard Hicks, Director of Regeneration, Culture,  
Environment and Transformation

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#### **Summary**

The purpose of the report is to inform the Regeneration Culture and Environment Committee of the findings of the consultation which has been undertaken to inform statutory consultees and members of the public of the need to declare a new Air Quality Management Area (AQMA) at Four Elms Hill prior to the formal declaration of the AQMA. The area needs to be declared to satisfy the requirements of the Environment Act 1995 and the declaration will be a publicly available document.

The report will be formally submitted to Cabinet on 5 September 2017, when Members will be asked to approve the declaration of the new AQMA at Four Elms Hill.

#### **1. Budget and Policy Framework**

- 1.1 Local authorities have a duty under the Environmental Act 1995 to declare an AQMA where the air quality objectives are not being met. It is important that a local authority is confident it has identified an exceedance of the objectives; usually through a combination of monitoring and modelling data.
- 1.2 Once an AQMA has been designated local authorities are required to develop an Action Plan, detailing the measures it will implement to tackle the problem. Development of the plan should take no longer than 12 months from the time of declaration. It is envisaged that the measures within the current Medway Air Quality Action Plan (AQAP) (approved by Cabinet on 15 December 2015) will also have a positive impact on the new AQMA. The AQAP will need to be amended to accommodate the new AQMA and any new corresponding measures, as appropriate. The recommendation to declare the area as an AQMA is one which needs to be made by Cabinet. The impact that the Council can have on air quality is limited by the feasibility and practicalities of the measures which can be implemented.

- 1.3 Air quality is referenced within the Local Transport Plan under Priority 2 – To support a healthier natural environment by contributing to tackling climate change and improving air quality, and Transport Objective 4 – Encouraging active travel and improving health. This objective links to air quality legislation. Air quality in general terms features in the Local Plan 2003 and Policy BNE24 deals with air quality. If approval is obtained from Cabinet, the formal declaration of the new AQMA will be submitted to Defra.

## **2. Background**

- 2.1 Monitoring has been undertaken in the area and the monitoring data for 2015 shows that annual average levels of nitrogen dioxide have exceeded the Government's limits at Four Elms Hill, Chattenden. This area is currently outside of any of the declared Medway AQMAs.
- 2.2 Medway's Annual Status Report for 2016, which was submitted to Defra on 12 August 2016, recommended that a Detailed Assessment was undertaken to:
- Confirm the need to declare an AQMA at Four Elms Hill
  - Determine the spatial extent of the AQMA
  - Provide relevant information for the development of action plan measures.
- 2.3 The Detailed Assessment (Appendix 1) was completed in November 2016 and confirmed the need to declare a new AQMA at Four Elms Hill, and identified that 24 residential properties are likely to lie within the exceedance area.
- 2.4 The council is required to undertake a statutory consultation on the AQMA declaration prior to the formal declaration of the AQMA by legal order. The consultation was undertaken between 23 May and 28 June 2017 and engaged with statutory consultees, members of the public and other interested parties.

## **3. Options**

- 3.1 The options given below relate to the next steps available to the council now that the statutory consultation has been completed.

### **Option 1: Formal Declaration of AQMA and Development of an Action Plan**

- 3.2 Formal declaration of the area as set out in Appendix 2 as an AQMA. Once an AQMA has been designated local authorities are required to develop an Action Plan, detailing the measures it will implement to tackle the problem. Development of the plan should take no longer than 12 months from the time of declaration. It is envisaged that the measures within the current Medway Air Quality Action Plan (AQAP) (approved by Cabinet on 15 December 2015) will also have a positive impact on the new AQMA. The AQAP will need to be amended to accommodate the new AQMA and any new corresponding measures, as appropriate. The advantage of this option is that it will ensure that Medway will meet its statutory duty under the requirements of the Environment Act 1995. The council is legally obliged to declare an AQMA where the air quality objectives are not being met.

## **Option 2: No Declaration of Area as an AQMA**

3.3 No further action; the area is not declared as an AQMA and an Action Plan will not be developed for the area. This is not an option as Medway has a statutory duty to declare an AQMA under the requirements of the Environment Act 1995. The Secretary of State has reserve powers to direct local authorities to take action where they have failed to discharge their legal duties under the Act; this includes the making of an AQMA order.

## **4. Advice and analysis**

4.1 To ensure Medway's statutory duty under the requirements of the Environment Act 1995 is met, officers would recommend that Option 1 be approved by Members and officers should undertake the necessary work to formally declare the area as an AQMA and develop an Action Plan for the area and report back to Cabinet to gain approval of the new Action Plan.

4.2 The Corporate Sustainability Plan recognises that traffic growth can impact at a local level through poor air quality, noise pollution and busier roads. The formal designation of a new AQMA will require the development of an Action Plan detailing the measures it will implement to tackle the problem. The measures in the current AQAP encourage people to use public transport, supporting sustainable development and promoting eco-driving and car sharing, so support the Corporate Sustainability Plan.

4.3 A Diversity Impact Assessment has been undertaken on the proposals, this has highlighted that there will both negative and positive impacts. The negative impact will be that the area will be identified as an area of poor air quality with respect to nitrogen dioxide. However, this will mean that an Action Plan will be developed to work towards improving the air quality within the area, which will have a positive impact on resident's health and improve air quality within Medway. In particular the young, elderly and all others that suffer from respiratory conditions will benefit (Appendix 3).

## **5. Risk management**

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>	<b>Risk rating</b>
Not fulfilling Statutory Duty  (This poses both a reputational and financial risk to the Council)	The Council has a statutory duty under the requirements of the Environment Act 1995 to declare an AQMA where the air quality objectives are not being met. The Secretary of State also has the power to direct local authorities under Section 85 of the Environment Act 1995 to take specified steps, including, to declare an AQMA.	Approve the formal declaration of the new AQMA at Four Elms Hill and report to DEFRA.	C3

<p>Infraction fines being passed down to the local authority by Central Government</p> <p>(This poses both a reputational and financial risk to The Council)</p>	<p>The European Commission has launched infraction proceedings against the UK for breach of nitrogen dioxide limit values under the EU Air Quality Directive and a final warning was issued in February 2017. Central Government is seeking to work with local authorities to avoid the fines. However discretionary power in Part 2 of the Localism Act enables the Government to require responsible authorities to pay all or part of an infraction fine. If the Council does not fulfil its statutory duties under the Environment Act 1995, they will not be able to show that they are working towards improving the air quality and reducing nitrogen dioxide levels within the area and could be liable for these fines.</p>	<p>Approve the formal declaration of the new AQMA at Four Elms Hill and report to DEFRA.</p>	<p>C2</p>
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## 6. Consultation

- 6.1 The Council was required to undertake a statutory consultation on the AQMA declaration prior to the formal declaration of the AQMA by legal order. The consultation was approved by Cabinet on 9 May 2017 and was undertaken between 23 May and 28 June 2017. The consultation included members of the public and other relevant stakeholders.
- 6.2 The consultation was promoted on the Council's website. Consultation letters were sent to the individual properties which are within the proposed AQMA. Consultation information was also sent to other relevant local groups including MASH (Medway Asthma Self Help group) and the local parish councils.
- 6.3 Seven responses were received to the consultation, 4 from local residents, 2 from statutory consultees (PHE and Natural England) and 1 response from a local authority. In general the local residents who responded to the consultation, acknowledged the high level of traffic on Four Elms Hill and the impact it has on the air quality and their properties, they also welcomed the development of an Air Quality Action Plan and suggested that this should include alternative means of travel. Concerns were also raised about the proposed new residential developments on the peninsula and the potential impact this could have on the local air quality. Further information regarding the consultation can be found in the Consultation Report in Appendix 4.

## **7. Financial implications**

- 7.1 By approving the formal declaration of the new AQMA at Four Elms Hill and development of an Action Plan, Members are not being asked for additional funding.
- 7.2 The cost of undertaking the formal declaration of the AQMA and development of an Action Plan will be minimal and will be met within the existing budget.

## **8. Legal implications**

- 8.1 The Environment Act 1995 gives local authorities duties and responsibilities that are designed to secure improvements in air quality, particularly at the local level. This is carried out under the Local Air Quality Management regime. It includes the review and assessment of key pollutants in the local area on an annual basis. If it appears that any of the air quality objectives set by government are not likely to be achieved, resulting in members of the public being exposed to the pollution, the local authority must by order designate any part of its area so affected as an AQMA. It must then prepare and implement a remedial Action Plan of measures to reduce air pollution levels in the AQMAs.
- 8.2 UK Government is currently in breach of EU air quality limit values for annual average nitrogen dioxide and the European Commission has formally launched infraction proceedings and a final warning was issued in February 2017. Central Government is seeking to work with Local Authorities to avoid the fines. However, it should be noted that discretionary power in Part 2 of the Localism Act enables the Government to require responsible authorities to pay all or part of an infraction fine. Guidance on the procedures is set out in a policy statement published by Department for Communities and Local Government. It is unclear at this time if or how this could affect Medway Council.

## **9. Recommendations**

- 9.1 The Committee is requested to recommend to Cabinet that at its meeting on 5 September 2017 it approves the declaration of the new AQMA at Four Elms Hill to ensure Medway's statutory duty, under the requirements of the Environment Act 1995, are met and directs officers to:
- undertake the necessary work to formally declare the area as an AQMA;
  - develop and consult on an Action Plan for the area; and
  - report back to Cabinet to gain approval of the new Action Plan.

### **Lead officer contact**

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## **Appendices**

Appendix 1 Detailed Assessment

Appendix 2 Map of Four Elms Hill AQMA

Appendix 3 Diversity Impact Assessment

Appendix 4 Consultation Report

## **Background papers**

Environment Act (1995)

<http://www.legislation.gov.uk/ukpga/1995/25/contents>

Air Quality Strategy for England, Scotland, Wales and Northern Ireland

<https://www.gov.uk/government/publications/the-air-quality-strategy-for-england-scotland-wales-and-northern-ireland-volume-1>

Local Air Quality Management Technical Guidance LAQM TG(16), April 2016.

<https://laqm.defra.gov.uk/technical-guidance/>

Local Air Quality Management Policy Guidance LAQM PG(16), April 2016.

<https://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=19351&PlanId=272>

Air Quality (England) Regulations 2000

[http://www.legislation.gov.uk/uksi/2000/928/pdfs/uksi\\_20000928\\_en.pdf](http://www.legislation.gov.uk/uksi/2000/928/pdfs/uksi_20000928_en.pdf)

The Air Quality (England) (Amendment) Regulations

2002

[http://www.legislation.gov.uk/uksi/2002/3043/pdfs/uksi\\_20023043\\_en.pdf](http://www.legislation.gov.uk/uksi/2002/3043/pdfs/uksi_20023043_en.pdf)

Corporate Sustainability Plan

<https://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=2187>