



ENVIRONMENT & SUSTAINABILITY SCRUTINY COMMITTEE 25TH JUNE 2019

**SUBJECT: HAFOD-YR-YNYS AIR QUALITY FEASIBILITY STUDY - FINAL
PLAN**

REPORT BY: INTERIM CORPORATE DIRECTOR, COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 To consider the findings of the public consultation exercise together with consideration of the Final Plan (Appendix 1) and preferred option for achieving compliance with the Ambient Air Quality Directive at Hafod-yr-ynys prior to presentation to Cabinet for a decision.

2. SUMMARY

- 2.1 The national nitrogen dioxide air quality objectives are being exceeded at receptor locations on Hafod-yr-ynys Road. The continuous nitrogen dioxide monitor at Hafod-yr-ynys forms part of DEFRA's national Automatic Urban and Rural Network (AURN). The AURN is a network of continuous monitors throughout the UK that inform a national Pollution Climate Model which is used for air quality reporting purposes to Europe to demonstrate compliance with the Ambient Air Quality Directive. Caerphilly County Borough Council and Cardiff City Council are two local authorities in Wales that are highlighted in the National Nitrogen Dioxide Plan as having locations that fail to comply with the Ambient Air Quality Directive.
- 2.2 In February 2018 Welsh Government issued an Air Quality Direction to Caerphilly CBC to undertake a feasibility study for the area and to determine a preferred option or basket of options which will achieve compliance with the Ambient Air Quality Directive air quality limit value for nitrogen dioxide in the 'shortest possible time'. The draft Final Plan identified that demolition of the properties on the south side of the A472 would achieve compliance in the shortest possible time, by 2023 (now anticipated to be 2022). However, under the 'Do Minimum' option modelling predicts delivery of air quality compliance by 2025.
- 2.3 At its meeting of 27th March 2019 Cabinet expressed concerns at the prospect of residents being pushed into financial hardship by any compulsory purchase process. Cabinet had strong concerns that residents would be unable to buy an equivalent property in the locality, that perhaps retired residents might be forced to take out a mortgage, or that owners might have to turn to rented accommodation. Having regard to the financial wellbeing of the residents of the area and to prevent any

financial hardship and resultant stress Cabinet resolved to undertake a public consultation on the 'Do Minimum' option and the draft Final Plan. Welsh Government subsequently confirmed that it would make funding available including the potential for applying the value of a new similar property as opposed to the market value of the house being demolished. The draft Final Plan and proposed preferred option of "Do Minimum" were the subject of a public consultation undertaken between 4th April 2019 and 11th June 2019. The outcome of the public consultation exercise did not support the 'Do Minimum' option.

- 2.4 Scrutiny Committee are therefore asked for their views on the Final Plan (attached as Appendix 1) and the proposed preferred option of purchase (at 150% of the valuation) and demolition of the properties on the south side of the A472 at Hafod-yr-ynys to achieve compliance in the shortest possible time prior to presentation to Cabinet for a decision. The completed Final Plan and preferred option must be submitted to Welsh Government by the 30th June 2019 at the latest.

3. RECOMMENDATIONS

- 3.1 That Scrutiny Committee considers the findings of the public consultation exercise together with consideration of the Final Plan (Appendix 1) and proposed preferred option of purchase (at 150% of the valuation) and demolition of the properties at 1-20 Woodside Terrace, 1&2 Woodside Shops and Yr Adfa on the south side of the A472 together with re-alignment of the footpath for achieving compliance with the Ambient Air Quality Directive at Hafod-yr-ynys prior to presentation to Cabinet for a decision.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 So that Cabinet can take into account the views of the Environment and Sustainability Scrutiny Committee when considering the findings of the public consultation exercise.
- 4.2 To mitigate any potential impacts on health and to comply with the statutory obligations of the local authority.
- 4.3 To ensure that work required from the Air Quality Direction issued to the local authority by Welsh Government is progressed effectively and the Final plan is submitted by the deadline of the 30th June 2019.

5. THE REPORT

- 5.1 The national nitrogen dioxide air quality objectives are being exceeded at receptor locations on Hafod-yr-ynys Road. The local authority is required to designate any area failing the national air quality objectives as an Air Quality Management Area (AQMA) and produce an Air Quality Action Plan (AQAP) which details measures to bring the pollutant back within acceptable limits. The AQAP was approved by Cabinet and subsequently Welsh Government in March 2018.
- 5.2 In addition to providing results which inform the Local Air Quality Management regime and action planning process, the continuous nitrogen dioxide monitor at Hafod-yr-ynys also forms part of DEFRA's national Automatic Urban and Rural Network (AURN). The AURN is a network of continuous monitors throughout the UK that inform a national Pollution Climate Model which is used for air quality reporting purposes to demonstrate compliance with the Ambient Air Quality Directive. Hafod-

yr-yngys and some locations in Cardiff are two areas in Wales showing non-compliance with the Ambient Air Quality Directive.

- 5.3 ClientEarth, a not for profit environmental law organisation, has successfully challenged UK and Welsh Governments in the courts in relation to compliance with the European Ambient Air Quality Directive. In February 2018 Welsh Government issued an Air Quality Direction to Caerphilly CBC to undertake a feasibility study for the area and to determine a preferred option or basket of options which will achieve compliance with the legal limits for nitrogen dioxide in the 'shortest possible time'. On 18th March 2019 the Council received a letter from ClientEarth setting out its position on the legal tests that the Council's plan must satisfy. The High Court judgement obtained by Client Earth sets out a three-part test for assessing air quality plans. The test requires that plans must:
1. Aim to achieve compliance as soon as possible;
 2. Choose a route to compliance which reduces human exposure as quickly as possible; and
 3. Ensure that compliance with the limit values is not just possible but likely.
- 5.4 The findings of the Final Plan for this study at Appendix 1 conclude that demolition of the dwellings at Woodside Terrace, to include 1&2 Woodside Shops and Yr Adfa and re-alignment of the footpath will deliver compliance in the shortest possible time. Demolition is expected to be preceded by a compulsory purchase process which, allowing for the potential for a Public Inquiry should there be any objections, means that compliance is likely to be achieved by 2022 (but could be sooner if all dwellings could be purchased by negotiation). This option does not reduce emissions though does remove public access to relevant roadside locations and therefore bring about compliance as required by the Direction.
- 5.5 The study indicates that the NO₂ limit value can be met in 2025 in a Do Minimum scenario. This is because fleet renewal in years to come is predicted to deliver air quality improvements without local intervention. However, this is dependent on later iterations of Euro engine standards delivering predicted reductions in emissions of nitrogen oxides.
- 5.6 The Air Quality Direction issued by Welsh Government requires the Council to identify in detail the preferred option for delivering compliance in the shortest possible time. Modelling predicts that a do minimum option will bring about compliance with the objective by the year 2025. Introduction of a Clean Air Zone was initially predicted to bring about compliance by the year 2026, however further research in to the introduction of Clean Air Zones has concluded that existing legislation can be used to introduce a charging zone and as such the Clean Air Zone would be predicted to achieve compliance by 2023. However a further feasibility study would be required to fully understand the displacement effects of traffic and whether any infrastructure / upgrading works would be required on alternative routes.
- 5.7 In addition to the time factor relating to a clean air zone, the A472 at Hafodyrynys is an integral part of the main cross valley link between Caerphilly and Torfaen County Boroughs and designation of this section of highway as a clean air zone (with either a clean air charging regime or prohibition of certain vehicles) would have a significant detrimental effect on the economy of both County Boroughs. Furthermore, displacement of traffic north or south would be likely which would have an effect on air quality in other valley locations (north to Blaenau Gwent or South to Abercarn, Cwmcarn and Crosskeys). This traffic displacement is also likely to contribute further to the volume of traffic using the M4 in and around the Brynglas tunnels.

- 5.8 Demolition of the dwellings at 1-20 Woodside Terrace, 1&2 Woodside Shops and Yr Adfa with re-alignment of the footpath is predicted to bring about compliance by the year 2022. Therefore purchase of the properties and demolition is predicted to achieve compliance in the shortest possible time.
- 5.9 As stated above, demolition of the properties is predicted to achieve compliance in the shortest possible time. It is hoped that the acquisition of the properties could be achieved by agreement, but it may be necessary for the Council to acquire the properties and land through a compulsory purchase process. The Council will need to seek Welsh Government approval for a Compulsory Purchase Order and be able to demonstrate that taking the land is necessary and that there is a compelling case in the public interest.
- 5.10 The 23 properties at Woodside Terrace, Woodside Shops and Yr Adfa are a mix of owner occupiers and private rented tenants. At a meeting held on 12th March 2019, strong concerns were expressed by the residents regarding the amount of financial compensation likely to be payable for the acquisition of their properties. Some residents also expressed concerns regarding health impacts resulting from the high levels of pollution, including asthma. At the meeting the Council was asked by residents to lobby Welsh Government to request additional compensation payments that would allow the residents to purchase homes in the general locality; this request was expedited three days later.
- 5.11 At its meeting of 27th March 2019 Cabinet considered the draft Final Plan and preferred option. As demolition of the properties was likely to be preceded by a compulsory purchase process involving market value payments to owners the potential for hardship to residents was a very real concern. Cabinet had strong concerns that residents would be unable to buy an equivalent property in the locality, that perhaps retired residents might be forced to take out a mortgage, or that owners might have to turn to rented accommodation. Having regard to the financial wellbeing of the residents of the area and to prevent any financial hardship and resultant stress Cabinet resolved to consult on the "Do Minimum" option as the preferred option for securing compliance with the Air Quality Directive. Cabinet also agreed that the Council would lobby Welsh Government for additional financial support, in order to prevent those affected residents being forced into financial hardship if the demolition option is to progress.
- 5.12 The draft Final Plan and proposed preferred option of "Do Minimum" were the subject of a public consultation undertaken between 2nd April 2019 and 11th June 2019. There were 54 responses to the consultation (although not all respondents answered every question in the consultation questionnaire), including 12 indicating that they were residents of properties on the south side of the A472 at Hafodyrynys. In relation to the 'Do minimum' option, 49 people disagreed with the proposal and 4 of the respondents agreed. One of the respondents did not answer the question. Many respondents commented on the potential for adverse health impacts on the residents and their poor quality of life caused by traffic and congestion. 22 respondents agreed and 30 disagreed with the outcome of the draft Final Plan with 2 respondents not answering the question. This is difficult to draw conclusions from, but on reviewing the comments submitted with responses it seems likely that many respondents did not appreciate that demolition of the properties was the outcome identified in the draft Final Plan. A Consultation Summary Report is provided at Appendix 2.
- 5.13 In a letter to the Council dated 9th April 2019 the Minister for Environment, Energy and Rural Affairs confirmed that Welsh Government will make adequate funding

available for purchase and demolition of the properties and realignment of the footpath should this prove necessary, including the potential for applying the value of a new similar property as opposed to market value of the house being demolished. Section 2 of the Local Government Act 2000 gives Local Authorities the legal capacity to do anything which they consider is likely to promote or improve the social, economic and environmental wellbeing of their area. This would address Cabinet's previously expressed concern that residents should not be placed in financial hardship.

- 5.14 A review of the price of properties for sale in the area indicates that acquisition of the affected properties at market value would not enable residents to purchase a property similar to that which they currently occupy within the borough. Valuations of the affected properties range from £50,000 to £100,000. A review of the availability and prices of properties for sale has been undertaken and it is suggested that if purchase of the properties and demolition were pursued a purchase price of 150% of the market valuation, this would be the most equitable way of ensuring that residents could buy a similar property within the borough. This would mean that an owner occupier would receive 150% of market value, plus a Home Loss Payment which is 10% of original market value, plus any reasonable disbursements for selling / buying and moving. By way of example this would mean that an owner occupier of a property valued at £70,000 would receive approximately £112,000 plus any reasonable disbursements.
- 5.15 Disbursement costs would include surveyors fees, solicitors fees, travelling expense for finding a new property, potential abortive costs if a purchase does not complete, land transaction tax, removal expenses, possible interest and bank charges and any double overheads (if a new property is acquired before the old property completes), any particular adaptation costs to adapt the new property in the same manner as the current one (perhaps disabled access for instance), telephone and service connection charges if incurred, costs to redirect mail, any losses due to forced sale (perhaps where items cannot be relocated), costs to re-plumb appliances if incurred. Whilst the legislation does not put a cap on such claims, all claimants have a duty to mitigate their loss. The Council's Principal Valuer has visited many properties along the street and would estimate a disturbance claim for a freehold owner occupier not to exceed £5000 or £3000 for a tenant.
- 5.16 Section 2(1) of the Local Government Act 2000 gives a local authority a wide ranging discretionary power to do anything that it considers is likely to promote or improve the environmental, economic and social well-being of their area and persons within that area, or either of those. It is considered that this Power to promote or improve Economic, Social or Environmental Well-Being provides the legal basis for purchasing the properties at above market value.
- 5.17 Purchasing properties by agreement would enable the demolition to proceed more quickly than any compulsory purchase process, and this is the favoured approach. However, it is still possible that some owners may not voluntarily agree to sell their property; it is therefore recommended that a Compulsory Purchase process is initiated to operate in parallel, to prevent any delays in the project timescales.
- 5.18 A detailed Impact Assessment Report (IAR), containing the business case to deliver the demolition scheme will be submitted to Welsh Government to support the Final Plan.

5.19 Conclusion

The Council is required to determine a preferred option which will achieve compliance with the Ambient Air Quality Directive limit value for nitrogen dioxide in the 'shortest possible time'. The option of purchasing and demolishing the properties on the south side of the A472 at Hafod-yr-ynys has been identified as achieving compliance in the shortest possible time. The outcome of the public consultation exercise did not support the 'Do Minimum' option. Welsh Government's confirmation of the availability of funding serves to address Cabinet's previously expressed concern that residents should not be placed in financial hardship. It is therefore proposed that purchase (at 150% of the valuation), demolition of the properties and realignment of the footpath is confirmed as the preferred option.

6. ASSUMPTIONS

6.1 The following tables detail assumptions and comments for each of the two options:

| Measure | Compliance Date | Assumptions and comments |
|------------|-----------------|---|
| Do Minimum | 2025 | <ul style="list-style-type: none"> • Does not achieve compliance in the shortest possible time. • Initial Data used to inform the model has been fairly robust; including traffic counts, fleet analysis, junction counts, emission studies of vehicles using the route, air quality data (real time and diffusion tubes). • The model is based on air quality data from 2017, which produced an annual average of 70 µg/m³, however the annual average for 2018 decreased to 62 µg/m³. This is an exceptional significant reduction; which if repeated may see compliance sooner. However, if it is an anomaly, compliance may take longer to achieve. • National growth factors are used to predict traffic in future years • In terms of air quality certain assumptions are made about the fleet becoming cleaner year on year and the reality is this may not happen as quickly, which can then affect the model outcomes. • The outcome of the public consultation did not support this option. • Models have limitations and have to be treated with caution. |

| Measure | Compliance Date | Assumptions and comments |
|-------------------------|---|--|
| Purchase and Demolition | By 2022 allowing 1 year for public enquiry and working with those residents who wish to voluntarily give up their property. | <ul style="list-style-type: none"> • Would achieve compliance in the shortest possible time. • Removes the receptor (residents) from area - so positive health gain. • Applying a purchase value of 150% of market value as opposed to market value of the house being demolished would reduce the possibility of some residents facing financial hardship. • Stress/disruption of having to vacate family homes and relocate. • Residents have been given the opportunity to discuss their initial property valuations. • Meetings with residents have been held to discuss the outcomes of the study and the way forward with strong concerns being expressed regarding their ability to secure alternative homes in the locality. • There is the possibility that the Compulsory Purchase Order process may be challenged resulting in a Public Inquiry. |

7. LINKS TO RELEVANT COUNCIL POLICIES

7.1 Local Air Quality Management (LAQM) is a statutory requirement. Addressing air quality contributes to the Caerphilly Public Services Board Well-being Plan 2018-2023, supporting the Positive Change, Positive People and Positive Places objectives.

7.2 The work also supports the following Corporate Well-being Objectives, identified within the Council's Corporate Plan 2018-2023:

- WBO 4: Promote a modern, integrated and sustainable transport system that increases opportunity, promotes prosperity and minimises the adverse impacts on the environment
- WBO 5: Creating a county borough that supports a healthy lifestyle in accordance with the Sustainable Development Principle within the Well-being of Future Generations (Wales) Act 2015

7.3 Addressing air quality contributes to the following Well-being goals within the Well-being of Future Generations Act (Wales) 2015:

- A prosperous Wales
- A resilient Wales
- A healthier Wales

- A more equal Wales
- A Wales of cohesive communities
- A globally responsible Wales

8. WELL-BEING OF FUTURE GENERATIONS

- 8.1 Local Air Quality Management contributes to the Well-being Goals as set out in the Links to Strategy above. The service's activity in this regard is consistent with the five ways of working as defined within the sustainable development principle in the Act in that it is focussed on preventing harm to public health. Through consultation, public and one to one meetings residents and the wider community have been involved in the process throughout. The proposed preferred option reduces exposure to emission in the shortest possible time thereby protecting the well-being of residents in the locality.
- 8.2 The service follows a statutory process in relation to Local Air Quality Management and uses a range of strategies, activities and interventions that ensure an integrated and balanced approach to service delivery. This process seeks to balance the need for proactive intervention programmes with the need to promote, educate and inform both key stakeholders and the public; collaborating with them to promote and improve air quality over the long term. The Council is working collaboratively on a package of interventions to reduce emissions in the county borough, taking a multi-sectoral approach with action at local and regional level.

9. EQUALITIES IMPLICATIONS

- 9.1 The equalities implications associated with the Final Plan have been considered and all protected groups will gain positive health benefits from reductions in nitrogen dioxide levels. An Equality Impact Assessment has been drafted to accompany the final plan.

10. FINANCIAL IMPLICATIONS

- 10.1 The demolition option will cost approximately £5M (this figure may be subject to change dependent upon the final design of the project). Welsh Government has given a commitment that it will meet the implementation cost. The Do Minimum option has no significant cost implications. Welsh Government are currently meeting costs associated with the feasibility study and have made £20M of funding available to local authorities to cover the costs of the feasibility process and implementation of any proposed actions.

11. PERSONNEL IMPLICATIONS

- 11.1 None

12. CONSULTATIONS

- 12.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report. The draft Final Plan and proposed preferred option of "Do Minimum" were the subject of a public consultation undertaken between 4th April

2019 and 11th June 2019. A Consultation Summary Report is provided at Appendix 2.

13. STATUTORY POWER

13.1 Environment Act 1995
European Ambient Air Quality Directive (2008/50/EC)
Local Government Act 2000
Highways Act 1980

Author: Robert Hartshorn, Head of Public Protection, Community and Leisure Services

Consultees: Cllr Eluned Stenner, Cabinet Member for Environment and Public Protection
Cllr Sean Morgan, Deputy Leader and Cabinet Member for Economy, Infrastructure, Sustainability and Well-being of Future Generations
Councillor Carl Thomas, Crumlin Ward Member
Councillor Mike Davies, Crumlin Ward Member
Councillor D. T Davies, Chair of Environment & Sustainability Scrutiny Committee
Councillor A. Hussey, Vice Chair of Environment & Sustainability Scrutiny Committee
Mark S. Williams, Interim Corporate Director Communities
Ceri Edwards, Environmental Health Manager
Maria Godfrey, Team Leader, Environmental Health
Rob Tranter, Head Of Legal Services and Monitoring Officer
Richard Crane, Senior Solicitor
Steve Harris, Interim Head of Business Improvement Services and S.151 Officer
Marcus Lloyd, Head of Infrastructure
Clive Campbell, Transportation Engineering Manager
Rhian Kyte, Head of Regeneration & Planning
Anwen Cullinane, Senior Policy Officer (Equalities and Welsh Language)
Shaun Watkins, HR Manager
Mike Eedy, Finance Manager

Background Papers:

Environment Act 1995 (feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2018, dated 15th February 2018
Hafodyrynys Initial Scoping Report
Hafodyrynys Initial Plan
Letter from ClientEarth dated 15th March 2019
Letters from the Minister for Environment, Energy and Rural Affairs dated 27th March 2019 and 9th April 2019
Statutory Guidance to Welsh Local Authorities on the Power to promote or improve Economic, Social or Environmental Well-Being under the Local Government Act 2000

Appendices:

Appendix 1 Hafodyrynys WelTAG Stage Three Final Plan
Appendix 2 Consultation Summary Report