



## CABINET – 16TH OCTOBER 2019

**SUBJECT: HAFOD-YR-YNYS AIR QUALITY PROJECT – PROPERTY ACQUISITION AND COMPENSATION FUNDING**

**REPORT BY: INTERIM CORPORATE DIRECTOR - COMMUNITIES**

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### 1. PURPOSE OF REPORT

- 1.1 To inform Cabinet of the financial arrangements associated with the voluntary acquisition or compulsory purchase of properties at Hafod-yr-ynys for demolition in order to achieve compliance with the Ambient Air Quality Directive, in accordance with the Air Quality Direction issued to the Authority by Welsh Government.
- 1.2 For Cabinet to agree that funding be set aside in an earmarked reserve from the Environmental Health revenue budget projected underspend for the 2019/20 financial year, to assist with the acquisition of properties and compensation package to residents and property owners at Hafod-yr-ynys.

### 2. SUMMARY

- 2.1 The national nitrogen dioxide air quality objectives are being exceeded at receptor locations on Hafod-yr-ynys Road. 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 objectives in the 'shortest possible time'.
- 2.2 On the 31st July 2019, Welsh Government issued a new Direction to Caerphilly County Borough Council, 'Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2019'. The Direction states that the demolition option should proceed immediately and without delay. Cabinet proposed that to minimise the risk of residents suffering financial detriment and hardship; the properties would be purchased at 150% of the market value with a home loss payment set at 10% of the original valuation.
- 2.3 Valuations undertaken indicate that the cost of purchasing all the properties in question at 150% of market value, with a 10% home loss payment (where appropriate) will amount to circa £2.770m. However, Welsh Government has now advised that to demonstrate responsible public expenditure within financial guidelines their funding should be in accordance with the Compensation Code. Whilst it is acceptable to use values reflecting a no scheme scenario, i.e. prior to the identification of the pollution issue, this increases values to 130% of the market value rather than 150%; together with a Home Loss Payment which is 10% of the elevated value (130%). This approach would result in a shortfall of Welsh Government funding to purchase the properties of circa £268k. Welsh Government has been requested to consider funding a discretionary well-being top-up payment to make up the shortfall.
- 2.4 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. The Environmental Health service is currently projecting a net revenue budget underspend of £296k for the current financial year. It is therefore proposed that £268k of this projected underspend is set aside in an earmarked reserve to fund the discretionary well-being top-up payment to residents in the event that the Welsh Government does not agree to fund the shortfall.

### **3. RECOMMENDATIONS**

- 3.1 It is recommended that £268k of the projected 2019/20 Environmental Health revenue budget underspend of £296k be set aside in an earmarked reserve to meet any shortfall in Welsh Government funding to fund the discretionary well-being top-up payments under Section 2(1) of the Local Government Act 2000.

### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 To mitigate any potential impacts on health and to comply with the statutory obligations of the local authority.
- 4.2 To minimise the risk of residents suffering financial detriment and hardship as a result of their homes being voluntarily acquired or compulsorily purchased.

### **5. THE REPORT**

- 5.1 The national nitrogen dioxide air quality objectives are being exceeded at receptor locations on Hafod-yr-ynys Road. 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 values in the 'shortest possible time'.
- 5.2 The completed Feasibility Report was approved by Cabinet on 26<sup>th</sup> June 2019, and thereafter submitted to Welsh Government. The report concluded that the preferred option to achieve compliance in the shortest possible time was to demolish the dwellings at Woodside Terrace, to include 1&2 Woodside Shops and Yr Adfa with re-alignment of the footpath. Cabinet proposed that to minimise the risk of residents suffering financial detriment and hardship; the properties would be purchased at 150% of the market value with a home loss payment set at 10% of the original valuation.
- 5.3 On the 31<sup>st</sup> July 2019, Welsh Government issued a new Direction to Caerphilly County Borough Council, 'Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2019'. The Direction states that the demolition option should proceed immediately and without delay, on the basis assessments completed to date show this is the most likely option to achieve the legal requirement with strong modelled reductions in nitrogen dioxide and the potential to reduce below the threshold. However, further modelling and assessment of the demolition option and complementary measures should also be undertaken.
- 5.4 Demolition of the properties will need to be preceded by the Council acquiring the properties and land through a voluntary acquisition or compulsory purchase process. The Council will need to seek Welsh Government approval for the 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.
- 5.5 Valuations indicate that the cost of purchasing all the properties in question at 150% of market value, with a 10% home loss payment (where appropriate) will amount to circa £2.770m.

However, Welsh Government has now advised that to demonstrate responsible public expenditure within financial guidelines their funding should be in accordance with the Compensation Code. It is acceptable to use values reflecting a no scheme scenario, i.e. prior to the identification of the pollution issue. Taking into consideration recent valuations (supported by the District Valuation Services) this would be at 130% of the market value rather than 150% and with a Home Loss Payment of 10% based on an elevated valuation (130%) instead of the original valuation. The new valuation at 130% together with the home loss payment equates to a shortfall ranging from £7.7k to £17.7k per property. This amounts to a total deficit of circa £268k for the purchase of the properties. Therefore, Welsh Government has been requested to consider funding a discretionary Well-being top-up payment to make up the shortfall.

- 5.6 The initial figure of 150% was based on best available evidence in the time available and work has been ongoing since submission of the feasibility study to better detail costings. Whilst it is unfortunate that the Compensation Code does not facilitate the original proposal Welsh Government have assured that they are doing all that they can to deliver the best outcome for residents. Welsh Government Officials will ask the Minister to consider three funding options:
1. Acquisition costs under compensation code allowable cost headings only;
  2. Acquisition costs under compensation code allowable cost headings only but with an option to consider further 'wellbeing' payments should a sufficiently robust case subsequently be made to re-visit the compensation; and
  3. Acquisition costs plus wellbeing payment.
- 5.7 Informal feedback to date, suggests that option 1 will be favoured. Therefore, if this is the case, Caerphilly County Borough Council will be required to fund the gap. In anticipation of a less favourable outcome from Welsh Government, measures are being put in place to secure the relevant budget, so that the Council may honour its commitment to residents to minimise the potential for them to suffer financial hardship.
- 5.8 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 making the top-up payment to residents. This payment will enable those people affected to purchase properties within the surrounding locality which offsets some of the impact this scheme will have on the community.
- 5.9 Environmental Health is currently projecting a net revenue budget underspend of £296k for the current financial year. This is partly due to a £155k projected underspend in salaries from a combination of staff on unpaid leave, staff on reduced hours and delayed filling of vacant posts. There is also additional income of £10k in the Enforcement Team in relation to the final year of the pest control SLA agreement with Blaenau Gwent. There is also expected to be additional funding of £131k from Welsh Government to finance staff time associated with the delivery of the Hafod-yr-ynys project.
- 5.10 **Conclusion**  
The purchase of the properties at Woodside Terrace, including 1&2 Woodside Shops and Yr Adfa; is likely to result in a financial shortfall of circa £268k. Should this shortfall not be funded by Welsh Government it is proposed that £268k of the Environmental Health projected revenue budget underspend detailed in the above paragraph is set aside in an earmarked reserve to fund the discretionary well-being top-up payment to residents using the Well-being Power contained within Section 2(1) of the Local Government Act 2000.

## 6. ASSUMPTIONS

- 6.1 Based on information obtained to date, it is assumed that Welsh Government will award funding based on the Compensation Code, which does not include discretionary well-being

top-up payments. It is therefore assumed that there will be a deficit in funding, which it is proposed to fund from the Environmental Health budget ring-fenced under-spend.

- 6.2 It is currently assumed that the projected 2019/20 revenue budget underspend for Environmental Health will be £296k. Any significant adverse variation to this projection will need to be managed within the overall revenue position for the Communities Directorate.

## **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. 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.

## **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 Equalities Impact Assessment has been developed for the demolition proposal within the Final Plan and it is assumed that all residents will benefit equally from the proposed financial protections afforded to them under the proposed acquisition mechanism.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 Welsh Government has agreed in principle to fund the acquisition of properties in accordance with the Compensation Code with funding totalling circa £2.502m. However, valuations

indicate that the cost of purchasing all the properties in question at 150% of market value, with a 10% home loss payment (where appropriate) will amount to circa £2.770k. Caerphilly County Borough Council may be required to fund the shortfall as a discretionary Well-being top-up payment of circa £268k. It is proposed that, if necessary, this will be funded through an earmarked reserve established from the projected Environmental Health 2019/20 revenue budget underspend as noted in paragraph 2.4 and paragraph 5.9.

## **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.

## **13. STATUTORY POWER**

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

Author: Ceri Edwards, Environmental Health Manager  
Consultees: Cllr D.T Davies, Chair Environment and Sustainability Scrutiny Committee  
Cllr A. Hussey, Vice Chair Environment and Sustainability Scrutiny Committee  
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  
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Mark James, Principal Valuer  
Richard Crane, Senior Solicitor  
Anwen Cullinane, Senior Policy Officer (Equalities and Welsh Language)  
Shaun Watkins, HR Manager  
Mike Eedy, Finance Manager  
Paul Adams, Senior Assistant Accountant

### **Background Papers:**

Environment Act 1995 (feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2018, dated 15<sup>th</sup> February 2018

Environment Act 1995 (feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2019, dated 29<sup>th</sup> July 2019

Hafod-yr-ynys Final Plan