

**STRATEGIC PLANNING  
SUSTAINABILITY &  
TRANSPORTATION COMMITTEE**

**5 December 2017**

**Air Quality Development Plan Document (Local Plan) -  
Scoping**

<b>Final Decision-Maker</b>	Strategic Planning Sustainability & Transportation Committee
<b>Lead Head of Service/Lead Director</b>	Rob Jarman, Head of Planning & Development
<b>Lead Officer and Report Author</b>	Sarah Lee, Principal Planning Officer (Strategic Planning)
<b>Classification</b>	Public
<b>Wards affected</b>	All

**Executive Summary**

The Maidstone Borough Local Plan (2017) states that the council will prepare a subject-specific Development Plan Document (Local Plan) on Air Quality. This report provides an introduction to the preparation of this new plan, setting out the process, statutory requirements and an outline of its potential content. If the Committee decides to proceed with the plan, the next steps will be for officers to undertake the background research and evidence gathering to enable a first stage consultation document (Regulation 18) to be prepared for the Committee's consideration.

**This report makes the following recommendations to this Committee:**

1. That the Head of Planning & Development **be instructed** to prepare the Air Quality Local Plan.
2. That the scope of the Air Quality Development Plan Document, described in paragraphs 1.6 to 1.11, **be agreed** as the basis for progressing the preparation of the plan.

**Timetable**

<b>Meeting</b>	<b>Date</b>
Strategic Planning Sustainability & Transportation Committee	5 December 2017

# Air Quality Development Plan Document (Local Plan) – Scoping

## 1. INTRODUCTION AND BACKGROUND

### National and local context

- 1.1 Poor air quality has a direct impact on people's health, in particular those with respiratory conditions, older people and children. The combustion of fossil fuels for power generation, industrial processes, domestic heating, and transportation gives rise to air pollutants including nitrogen oxides (NO<sub>x</sub>). With respect to transport specifically, additional congestion, increased volumes of traffic or an increased proportion of HGVs on our roads can all worsen air quality. Poor air quality can also impact on biodiversity; nitrogen dioxide contributes to the acidification of soil and watercourses which impacts on animal and plant life.
- 1.2 The Government has published a **UK plan for tackling roadside nitrogen dioxide concentrations** (July 2017) with the overall objective of bringing nitrogen dioxide concentrations within statutory limits. The plan focuses on the most immediate air quality challenge, namely to reduce the concentration of nitrogen dioxide (NO<sub>2</sub>) around roads and it requires local authorities to implement chosen measures to achieve statutory NO<sub>2</sub> limit values within the shortest possible time, although Maidstone is not one of the local authority areas which the plan identifies for specific action. It also signals that the Government will publish a wider **Clean Air Strategy** in 2018 (date to be confirmed) setting out how we will meet our international commitments to significantly reduce emissions of five damaging air pollutants (nitrogen oxides; particulate matter; sulphur dioxide; non-methane volatile organic compounds and ammonia) by 2020, and then 2030.
- 1.3 Local authorities are required to review and assess local air quality in accordance with the statutory Local Air Quality Management guidance. The **Maidstone Air Quality Management Area (AQMA)** encompasses areas in the town, close to the main arterial roads and junctions, where statutory limits for NO<sub>x</sub> are exceeded. Fine particulate concentrations are also of concern, although levels fall below EU thresholds. The emerging **Maidstone Low Emissions Strategy (LES)**, which is being considered elsewhere on this agenda, is a key component of the Council's ambition to improve air quality. The LES action plan proposes initiatives under 5 different themes, one of which is land use planning, and preparation of the Air Quality Local Plan is one of the specific actions under the planning theme. The LES also proposes a refined boundary for the AQMA.
- 1.4 New development does not have to be inherently negative for air quality. Whilst a new development at a particular site may have its own emissions, it may also bring an opportunity to reduce overall emissions in an area over time by installing new, cleaner technologies and applying policies that promote sustainability, including improved cycling, walking and public transport.

- 1.5 The **National Planning Policy Framework** (NPPF) and **National Planning Policy Guidance** (NPPG) provide the starting point for how air quality should be addressed through the planning system. Firstly, the potential impact of new development on air quality in areas which already have poor air quality (defined as Air Quality Management Areas) should be a factor in planning decisions<sup>1</sup>. Specifically, planning policies should sustain compliance with, and contribute towards, meeting EU limit values or national objectives for air pollutants, taking into account the presence of Air Quality Management Areas (AQMAs) and the cumulative impacts on air quality from individual sites in local areas. Planning decisions should ensure that any new development in an Air Quality Management Area is consistent with the local air quality action plan which, in Maidstone's case, would be the LES<sup>2</sup>.
- 1.6 The **Maidstone Borough Local Plan** Inspector gave specific and detailed consideration to air quality matters. He noted that the context for these matters is evolving with changes to the national air quality plan, the LES and the AQMA. His letter to the Council dated 14<sup>th</sup> July 2017 expressed some concern that the draft LES set aside modal shift measures in favour of actions on vehicle emissions. He emphasised the importance of shifting to more sustainable transport choices to achieve air quality improvements, in conjunction with technological advances, and underlined that progress with the Air Quality Development Plan Document (Local Plan) is urgent. Policy DM6 of the MBLP includes a commitment to prepare such a Local Plan.

#### **Air Quality Local Plan – potential scope**

- 1.7 The Air Quality Local Plan gives the opportunity for the borough to have planning policies that reflect the latest national plans and guidance and best practice from elsewhere. Importantly, Policy DM6 – Air Quality in the MBLP will continue to have full weight in planning decision making whilst the new Local Plan is being prepared. Policy DM6 takes a sequential approach to assessing and addressing the air quality impacts of new development, focusing most particularly on developments which could impact on air quality in the AQMA.
- 1.8 The Air Quality planning guidance which was approved as a material consideration by the Committee last month will help in the application of Policy DM6. Aspects of this guidance could be brought into the new Local Plan, thereby meaning it could be given full weight in the planning process in the future.
- 1.9 Elsewhere in the country there are examples of good practice in terms of assessing air quality impacts and securing mitigation to compensate for those effects. As yet, we have not found an example of an authority preparing a dedicated air quality local plan; to that extent, this council will be somewhat of a trailblazer.

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<sup>1</sup> NPPF paragraph 120

<sup>2</sup> NPPF paragraph 124

1.10 The content of the Local Plan will need to be further explored through the research and evidence gathering stages of the plan's preparation. On an initial assessment, the coverage of the Plan could include development management policies which will be used to determine planning applications. This should set out the circumstances where development will be permitted because air quality impacts have been sufficiently addressed and the corollary, i.e. where the terms of the development plan are not met the refusal of an application may be justified<sup>3</sup>. The policies could include;

- a. **Good design principles:** The basic concept is that measures to reduce emissions, and people's exposure to them, are incorporated into developments at the outset. Relevant design principles could encompass the siting of development within the site (e.g. development set back from major roads), massing (e.g. to prevent 'canyons' of poor air quality) and the role that landscaping can play to act as natural barrier to the sources of emissions. The scope for some form of building standards would be an avenue to explore, recognising that the planning system should not duplicate or contradict building regulation requirements.
- b. **Air Quality Impact Assessment:** the Local Plan could include guidance on how the Council will expect the significance of air quality impacts resulting from development to be objectively assessed. This could include threshold criteria (site size; locations; types of development) for when formal assessment through an Air Quality Impact Assessment will be required. The Local Plan could also consider how the cumulative impact of a number of developments in a locality could best be assessed and addressed at the planning application stage.
- c. **Quantifying the mitigation required:** where there will be negative air quality impacts arising from development, the Local Plan could include a methodology for quantifying the measures required to address (mitigate) those effects. The approved Air Quality Guidance currently includes such a methodology for quantifying traffic impacts through a 'damage cost' approach. The outcome of this approach is a financial value which can then be 'spent' on mitigation measures, preferably by incorporating them into the design and planning of the development.
- d. **Mitigation measures:** information on the types of mitigation measures which could be delivered in conjunction with development could be set out in the Local Plan. This could include physical infrastructure such as EV charging points as well as 'travel plan' type measures such as enhanced walking and cycling facilities and improved public transport which was a key matter for the MBLP Inspector. The Plan could also distinguish between 'standard' mitigation measures sought on

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<sup>3</sup> 38(6) Planning & Compulsory Purchase Act 2004

all developments that would have an air quality impact (possibly with a threshold applied) and a more tailored approach to mitigation in cases where there will be significant impacts on the AQMA.

- e. **Financial contributions:** Where possible, agreed mitigation measures should be delivered on site as part of the development proposal. Where this is not possible, or appropriate, the Local Plan could set out the circumstances and approach to securing financial contributions towards off-site measures through s106 agreements or CIL (subject to a decision to amend the Regulation 123 list)

1.11 The Plan could also, potentially, include a strategic policy for Air Quality which would set out an overall strategy and context for addressing Air Quality issues arising from development in the context of the national and local initiatives outlined above. The need for such a policy will be explored through the preparation process. One benefit of this approach is that it will give future neighbourhood plans a framework for dealing with this issue in their plans.

1.12 At this point, it is helpful to draw some distinction between the scope of this subject-specific Local Plan compared with that of the Local Plan Review. The AQ Local Plan would not be dealing with the future development strategy for the borough, or the land allocations that would result from it; that is a matter for the Local Plan Review. At the Local Plan Review stage there is likely to be some form of strategic air quality assessment, probably linked to the plan's strategic transport assessment, to identify the air quality implications of different development locations. This information will be part of the package of evidence (including Sustainability Appraisal and Strategic Environmental Assessment (SA/SEA)) used to select the best overall spatial distribution of development.

### **Procedural and regulatory requirements**

1.13 The preparation of the AQ Local Plan will follow the statutory process set out in the Local Plan Regulations<sup>4</sup>. The key stages are informal consultation (Regulation 18), formal consultation (Regulation 19), submission, independent Examination and, potentially, a modification stage prior to adoption.

1.14 At Regulation 18 stage it may prove appropriate to prepare an 'issues and options' style document which seeks feedback on alternative approaches before crystallising the approach either at a further Regulation 18 stage or progress straight to Regulation 19 stage. The Council's approved Statement of Community Involvement will provide the framework for consultation on the plan.

1.15 The AQ Local Plan will need to pass the 'tests of soundness'<sup>5</sup> set out in the NPPF. It will also need to have been prepared in a way which accords with

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<sup>4</sup> The Town and Country Planning (Local Planning) (England) Regulations 2012

<sup>5</sup> Positively prepared, justified, effective, consistent with national policy

the relevant legal tests including the Duty to Co-operate and be subject to SA/SEA. Assuming the Government's latest announcements are confirmed, statements of common ground with relevant partner authorities will need to be prepared and updated at each key stage in the Plan's preparation. Exploring the scope for some common policy approach on air quality matters with neighbours in Tonbridge & Malling, Medway and Swale and making use of the expertise and advice of other expert partners will be valuable.

### **Timetable**

- 1.16 It was confirmed to the MBLP Inspector that work on the Air Quality Local Plan would start once the Local Plan was adopted which, at the time, was anticipated to happen in September. Subject to Committee's consideration of the Local Development Scheme at a forthcoming meeting, it is anticipated that the AQ Local Plan will take 2 years to complete. In the meantime, and pending confirmation in the LDS, it is proposed that work on the preparatory stages of the AQ Local Plan commence now.
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## **2. AVAILABLE OPTIONS**

- 2.1 Option A: the Committee could instruct officers to commence the preparation of the Air Quality Local Plan. This would reflect the commitment given in the MBLP and, once the plan is adopted, enable the resulting policies to be given full weight in planning decisions. Preparation of the AQ Local Plan will underline the importance the Council places on the addressing the areas of poor air quality in the borough, complementing the delivery of the actions in the Low Emissions Strategy, the Integrated Transport Strategy, the Walking and Cycling Strategy and the MBLP.
- 2.2 Option B: the Committee could decide that the Air Quality Local Plan should not be progressed, or not be progressed at this time. The Committee could decide to revise the planning policies for air quality as part of the Local Plan Review and not as a dedicated Local Plan. This would result in some clear savings in terms of officer time, specialist external expertise and examination costs. On the other hand, this option would not reflect the clear concern of the MBLP Inspector that the planning policy framework for air quality is matter which requires urgent attention.
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## **3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 3.1 For the reasons set out elsewhere in this report, Option A is recommended.
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## **4. RISK**

- 4.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy. Preparing a Local Plan is a resource and finance intensive

process and risks have mitigated by including provision for the plan in the overall Local Plan budget. The project management and professional experience the team has gained during the preparation of the MBLP will also be exploited.

## 5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 5.1 Officers will undertake further research and evidence gathering, including finding examples of best practice from elsewhere in the county, and prepare a first stage consultation document (Regulation 18) for the Committee's consideration. Without prejudice to the forthcoming LDS, we expect this consultation document to be produced late Spring 2018.

## 6. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	Accepting the recommendations will contribute to the Council's ability to achieve its priority of achieving a clean and safe environment.	Head of Planning & Development
<b>Risk Management</b>	Already covered in the risk section.	Head of Planning & Development
<b>Financial</b>	A budget has been set for the delivery of the adopted Local Plan and the preparation of the Local Plan Review. The costs of the preparation, consultation, and examination of the Air quality Local Plan is included within this existing budget provision.	[Section 151 Officer & Finance Team]
<b>Staffing</b>	We will deliver the recommendations with our current staffing. The work will be led by the Strategic Planning team with assistance from the Environmental Protection team	Head of Planning & Development
<b>Legal</b>	Acting on the recommendations is within the Council's powers as set out in the Planning and Compulsory Purchase Act	Cheryl Parks, Lawyer (Planning) Mid-Kent

	(2004) and the associated Local Planning Regulations (2014).	Legal Services
<b>Privacy and Data Protection</b>	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with data protection procedures.	[Legal Team]
<b>Equalities</b>	The recommendations do not propose a change in service therefore will not require an equalities impact assessment at this stage. In accordance with the council's own good practice, an EqIA is likely to be merited at key stages in the Air Quality Local Plan's preparation.	[Policy & Information Manager]
<b>Crime and Disorder</b>	No implications.	Head of Planning & Development
<b>Procurement</b>	No implications at this stage. If external services are required during the preparation of the Air Quality Local Plan, these will be procured in line with the council's procurement procedures	Head of Planning & Development & Section 151 Officer

**7. BACKGROUND PAPERS**

None