

Sandwell Metropolitan Borough Council

18 October 2016

The following summary reports relate to those minutes of the Cabinet which contain a recommendation to the Council.

Meeting Date	Subject
21 September 2016	Financial Regulations and Procurement and Contract Procedure Rules 2016/17(Key Decision Ref. No. CCS12)
21 September 2016	Approval for Adoption of the Black Country Air Quality Supplementary Planning Document (Key Decision Ref. No REI1036)

The Cabinet

21 September 2016

Subject:	Financial Regulations and Procurement and Contract Procedure Rules 2016/17(Key Decision Ref. No. CCS12)
Presenting Cabinet Member:	Core Council Services

1. Summary Statement

- 1.1. The Council as a body using public resources must set and follow the highest possible standards of financial control and stewardship. The Financial Regulations and the Procurement and Contract Procedure Rules provide Members and employees with procedures to follow that will ensure the Council's expected standards are met in managing public assets and money. In addition, employees can feel confident that in the event that they have to justify their actions to Members, auditors, management or the public they will have no difficulties provided they have followed procedures.
- 1.2. The Section 151 Officer is responsible for ensuring that annual reviews of the Financial Regulations and the Procurement and Contract Procedure Rules are conducted and for submitting any proposed amendments to the Cabinet and to Council for approval. This report sets out the reviews that have taken place and the recommended amendments.
- 1.3. A full review of the Financial Regulations has been conducted and there are no fundamental changes required at this time, with the exception of the addition of a clear protocol for the sale of council-owned land and buildings. An annual update of the Financial Regulations will be taken to Cabinet and Council in early 2017 as part of the Council's budget planning approach.
- 1.4. On 22 June 2016, the Audit Committee requested that a revised policy for the sale of council-owned land and building be presented to the 18 August for approval. The purpose of the Sale of Land and Buildings Protocol (Appendix 1) is to set out the process governing the disposal of land and property owned by Sandwell Council. It does not apply to the sale of residential properties as these are subject to a different legal framework.

- 1.5. The protocol sets out the roles and responsibilities of members and officers, and clearly states the process required to dispose of land and buildings that are deemed surplus to requirement, other than residential properties.
- 1.6. Audit Committee approved the Sale of Land and Building Protocol on 18 August 2016. It is now presented to Cabinet for approval and to recommend to Council that it be formally adopted as an appendix to the Financial Regulations.
- 1.7. The Procurement and Contract Procedure Rules set procedures to ensure value for money is obtained, statutory requirements are met in terms of UK and EU law and the Council's financial affairs are managed prudently and properly controlled. The Procurement and Contract Procedure Rules form part of the Council's Constitution, and should be read in conjunction with the Financial Regulations.
- 1.8. Following a robust review of the existing rules and procedure, the CPR have been revised to reflect update regulations and provide clarity of roles and responsibilities at all levels of the Council.
- 1.9. In essence, the revised Rules retain the key principles and processes as set out in the previous versions, but provide clarity at each point. However, a number of key changes are required in order to align the Rules further with the Financial Regulations and Scheme of Delegations. It is therefore recommended that the Council adopt the following key changes:
 - 1.9.1. Increasing the threshold at which formal tenders are required from £60,000 to £100,000 – this change aligns the process to the authority set out in the Scheme of Delegations and creates a more streamlined process across the council and consistency throughout the Rules as whole. Requirements of between £5,000 and £100,000 in total value will require a minimum of three quotations to be sought in order to comply with the government's Transparency Agenda and to ensure value for money is achieved. Formal contracts are required where the value is £100,000 or above, however these can be sought should the requirement be complex or business critical.

1.9.2. Amending the minimum award criteria split from 80% price/20% quality to 60% price/40% quality in order to encourage the focus on quality of the service provision or goods purchased and derive greater value for money from contracts. Where an existing Framework Agreement is entered into, the award criteria of that Framework must be adhered to.

1.9.3. Removing disposal of land and buildings from the scope of these Rules, as this is now dealt with by the Appendix to the Financial Regulations - Sale of Land and Buildings Protocol.

1.10. There are no cost implications arising from the recommendations in this report.

Further details are attached for your information.

2. Recommendations

2.1. That the Council be recommended to approve and adopt the revised Council Procurement and Contract Procedure Rules as set out in Appendix 2.

2.2. That in connection with 2.1 above, the Council be recommended to approve and adopt the Sale of Land and Buildings protocol as set out in Appendix 1.

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Contact Officers
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3. Strategic Resource Implications

- 3.1. There are no cost implications arising directly from the revised Procurement and Contract Procedure Rules; however, they do provide the framework to ensure that procurement activity is undertaken in compliance with Public Procurement Regulations. They apply to every Member and employee of the Council and anyone acting on its behalf.

4. Legal and Statutory Implications

- 4.1. All procurement activity carried out by Sandwell Council is governed by the council's Procurement and Contract Procedure Rules, which must be read in conjunction with the Financial Regulations. These set out the procedures that members and officers must follow in order to ensure statutory requirements are met in terms of UK and EU law and the Council's financial affairs are managed prudently and properly controlled.

5. Implications for the Council's Scorecard Priorities

- 5.1. By supporting all services across the council, the actions in this report will contribute to the delivery of all of the council's Scorecard Priorities.
- 5.2. However, the main contribution will be made to the priority of 'Getting the Resources Right', by ensuring that value for money is achieved from the contracts and framework agreements required to deliver services to our customers.

6. Background Details

- 6.1. The revised Procurement and Contract Procedure Rules are attached at Appendix 1.

FINANCIAL REGULATIONS

APPENDIX 1 - THE DISPOSAL OF COUNCIL-OWNED LAND & BUILDINGS

1.0 INTRODUCTION

- 1.1 The purpose of this document is to set out the process governing the disposal of land and property owned by Sandwell MBC. It does not apply to the sale of residential properties as these are subject to a different legal framework.
- 1.2 A disposal of council-owned land and/or property includes the following:
- Freehold disposal by way of sale;
 - An exchange of council owned land or buildings.
- 1.3 The protocol applies to every Member and Officer of the Authority and anyone acting on its behalf. Any exemptions from this protocol will require approval from Cabinet.
- 1.4 The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by Council Officers, Local Councillors, members of the public and developers.
- 1.5 It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Standing Orders, Procurement and Contract Procedure rules and Financial Regulations.
- 1.6 Failure to adhere to this protocol may result in disciplinary action and / or a standards investigation.

2.0 LEGAL FRAMEWORK

- 2.1 Section 123 of the Local Government Act 1972 states that a "council may dispose of land held by them in any manner they wish" but that "except with the consent of the Secretary

of State, a council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained”.

- 2.2 Circular 06/03: “Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained” provides further guidance. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (“the undervalue”) is £2m or less.
- 2.3 It is Government policy that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action. The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.
- 2.4 In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.
- 2.5 All disposals need to comply with the European Commission's State aid rules. The Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general

guidance on this issue. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

- 2.6 Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, local authorities are strongly advised in all cases to ensure that they obtain a realistic valuation of that interest. This applies even for disposals by means of formal tender, sealed bids or auction. By following this advice, an authority will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion. Supporting documents should provide evidence that an authority has acted reasonably and with due regard to its fiduciary duty.

3.0 RESPONSIBILITIES

3.1 Council

The Full Council is responsible for:

- Adopting the Council's Constitution and Members Code of Conduct and for approving the policy framework, budget and borrowing within which the Cabinet operates;
- Approving and monitoring compliance with the Authority's overall framework of accountability as set out in its Constitution;
- Monitoring compliance with agreed policy and reporting decisions taken;
- Making or amending Procurement and Contract Procedure Rules and Financial Regulations, including this appendix to Financial Regulations.

3.2 Audit Committee

Audit Committee provides independent assurance to elected members of the adequacy of the risk management framework and the internal control environment. This appendix to Financial Regulations has been developed following a recommendation by Audit Committee and will be subject to regular monitoring by that committee.

3.3 Land and Asset Management Committee

The Land and Asset Management Committee provides the strategic direction for all matters relating to the effective use of land and property assets within the borough to maximise social and economic benefits and regeneration; and makes recommendations to Cabinet about the use of those assets.

3.4 Director – Regeneration & Economy (Chief Property Officer)

- To negotiate and agree terms for the disposal of land and property by the most appropriate method of sale and in accordance with such policy as may be determined by the Council. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on terms for the disposal of land and property in the event that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests.
- To negotiate and agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy to negotiate and agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000 in the event that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests.

- In consultation with the appropriate Director, to offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on the offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000 in the event that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests.

3.5 Monitoring Officer

- To sign off and authorise on behalf of the Council any express or implied undertakings for the disposal and acquisition of land to be given by a Council officer.
- To acquire and dispose of land and property upon receipt of instructions from the Director - Regeneration and Economy, on terms to be agreed in accordance with authority delegated to him, and being satisfied that all necessary statutory or other authorities in connection with the acquisition or disposal have been agreed.
- To dispose of land and/or premises at auction where the Director – Regeneration and Economy estimates the value of the land/property being offered for sale is less than £100,000 but the bid price exceeds that amount.
- To dispose of land up to a value of £100,000 on terms agreed by the Director - Regeneration and Economy, in accordance with the authority delegated to him.

3.6 Chief Finance Officer (Section 151 Officer)

The Chief Finance Officer is responsible for maintaining a continuous review of Financial Regulations and Procedures, including this protocol, and submitting any additions or changes to the full council for approval. The Chief Finance

Officer is also responsible for reporting breaches of Financial Regulations and Procedures to the Council and/or to Cabinet Members.

3.7 Corporate Landlord (part of Assistant Chief Executive)

Corporate Landlord is responsible for the management of land and premises required for operational purposes. This includes:

- Ensuring that the council's operational property portfolio is fit for purpose, sustainable and in good repair;
- Identifying assets surplus to council requirements;
- The formulation of business cases relating to the rationalisation and continued improvement of the council's operational property portfolio.

3.8 Property Services (part of Regeneration & Economy)

Property Services is responsible for:

- The disposal of any parcel of land or property which is surplus to council requirements;
- The grant of leases to third parties and/or organisations; and
- The management of the council's commercial estate e.g. shops, industrial units, ground leases etc.

3.9 Legal Services (part of Assistant Chief Executive)

Legal Services is responsible for:

- Completion of all legal paperwork including contract documentation for the acquisition and/or disposal of land and/or property whether the transaction is on a freehold or leasehold basis.

3.10 Strategic Finance (part of Assistant Chief Executive)

Strategic Finance is responsible for:

- Ensuring transactions relating to the disposal of land and/or property are properly recorded in the financial records of the Council.

4.0 THE DISPOSAL PROCESS

4.1 Corporate Landlord is responsible for determining whether operational land or buildings are potentially surplus to requirements and for reporting their availability to the Land and Asset Management Officer Group. The report will include:

- An initial estimate of valuation
- Proof of Ownership
- Title issues
- Restrictive covenants
- Ransom strip issues
- Rights of way and other easements
- Retaining rights over adjoining land
- Potential for grant repayment
- The relevant entry in the asset management system
- The relevant entry in the asset register, including the valuation currently assigned to that asset.

4.2 The Land and Asset Management Officer Group will consider the report presented by Corporate Landlord and will make recommendations on all property transactions prior to disposal. The Group membership will include the following officers or their representatives:

- Director – Regeneration & Economy
- Corporate Landlord
- Monitoring Officer
- Section 151 Officer

4.3 The Land and Asset Management Officer Group will consider the report and determine whether or not the sale will proceed. If approval for disposal is given a valuation will be obtained.

4.4 All valuations will be in line with Royal Institute of Chartered Surveyors professional standards.

4.5 Internal valuations will be undertaken where:

- the value of the site does not exceed a de-minimis threshold that will initially be set at £50,000 that will be reviewed after 12 months of operation;
 - an open market sale is to be undertaken.
- 4.6 In those cases where a valuation is difficult but is anticipated to not exceed £100,000 the sale will be conducted in compliance with procurement and contract procedure rules with the bids received being used to set the market valuation.
- 4.7 External valuations will be obtained for all other land sales; sales to a council employee and/or local councillor; where a sale at less than best is being considered; or if the land is to be sold subject to a restrictive covenant affecting its value.
- 4.8 Where the valuation does not exceed £100,000 the Director – Regeneration & Economy will negotiate and agree terms for the disposal by the most appropriate method of sale. The Monitoring Officer will be consulted in the event that there is a conflict arising from a relevant entry in the Members Register of Interests and the Employees Register of Interests.
- 4.9 Where the value of the asset being considered for disposal exceeds £100,000 the matter will be submitted to the Land & Asset Management Committee and to Cabinet approval.
- 4.10 The Land & Asset Management Committee will consider the report prepared by the officer group and determine whether or not the sale will proceed. The report will include:
- The valuation;
 - Legislation and Secretary of State guidance governing the disposal process;
 - The proposed method of disposal and explanation as to why that option has been chosen;
 - General guidelines which are applicable, e.g. the Crichel Down rules which apply to most disposals by the Council of property acquired using compulsory purchase or under threat of compulsory purchase. Where the rules are applicable, there is an obligation to offer the property back to the original owner before it can be placed on the open market;

- Confirmation as to whether or not the transaction is caught by the public procurement rules;
- Confirmation as to whether or not the transaction is caught by the State Aid rules;
- An indicative location plan highlighting the land/property to be sold;
- Financial implications.

4.11 If the proposed sale price is less than the valuation, then Cabinet approval will be required.

4.12 In considering the legal and financial considerations of any disposal at an undervalue, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, should be quantified in monetary terms.

4.13 In all cases, where a disposal is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it will include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.

4.14 Files will be maintained for every disposal by the Director – Regeneration & Economy (property file) and the Director – Governance (legal file) and these files will be accessible by Internal/External audit.

4.15 The property file will contain all correspondence to verify how the authority made the decision to dispose, including a copy of the appropriate minute authorising the sale or a signed delegation form, verification of value in the form of a formal written valuation in line with Royal Institute of Chartered Surveyors professional standards, signed instructions to Legal Services, completion statement and actions taken by the case officer in relation to the matter.

4.16 The legal file will contain a copy of the Legal Instructions (Legal Instructions should contain a surveyor certificate of best consideration, written valuation in line with Royal Institute of Chartered Surveyors professional standards, reason for any discrepancies in final sale price and valuation, the contract documentation, confirmation of all checks in relation to the title of the property, money laundering compliance, best value confirmation from the instructing officer and member involvement information); any correspondence in relation to the matter and a completion statement.

4.17 A completion statement will be passed to:

- Director – Regeneration & Economy
- Corporate Landlord
- Monitoring Officer
- Section 151 Officer

4.18 Receipts from the disposal of assets will be treated as a corporate resource.



Sandwell
Metropolitan Borough Council

PROCUREMENT

and

CONTRACT

PROCEDURE RULES

2016-2017

Reviewed: Autumn 2016

Procurement and Contract Procedure Rules 2016-2018

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1. Introduction

- 1.1. As a public body using public resources, Sandwell Council must set and follow the highest possible standards of financial control and stewardship. The council's Procurement and Contract Procedure Rules give elected members and employees procedures to follow which ensure the council's expected standards are met in terms of managing public money and assets.
- 1.2. These rules ensure that value for money is obtained, statutory requirements are met in terms of United Kingdom (UK) and European Union (EU) procurement law, and that the council's affairs are managed prudently and in an appropriately controlled manner. These rules will be subject to any relevant EU directives at the time being in force in the UK.
- 1.3. The council must ensure that all procurement activity is transparent and proportionate, and that all bidders are treated equally and without discrimination throughout its processes.
- 1.4. Non-compliance with these rules could result in a legal challenge to the council. Therefore, any incidence of non-compliance with these rules could constitute a disciplinary offence.
- 1.5. These rules should be read in conjunction with the following:
 - Financial Regulations
 - Scheme of Delegations
 - Member Code of Conduct
 - Officer Code of Conduct
 - Third Sector Grant Funding Guidance and Procedures
 - Social Value Act Guidance
- 1.6. All procurement activity and sales of council assets, excluding land and buildings, shall comply with these rules unless an exemption is approved under Rule 15. This includes where a partner or consultant has been instructed to invite tenders on behalf of the council.
- 1.7. Advice on any matter within these rules can be obtained from the Procurement Services Manager or the Legal Services Manager.
- 1.8. A glossary of terms is included at the end of this document.

2. Scope

- 2.1. These rules apply to all contracts with outside organisations or people, including agreements with or on behalf of other public sector organisations and partner agencies, where there is an agreement to supply materials, goods, services or works, in return for money or payments in kind, whether that agreement is formal or informal. This includes:
 - purchasing of all materials, goods, services or works; and
 - instruction of outside experts or consultants under contracts for services.

- 2.2. Where the council enters into a contract as an agent for another authority the agency agreement should specify which rules apply. Contracts let on behalf of a consortium, association, or similar body of which the council is a member, must follow the rules of that body.
- 2.3. However, these rules do not apply to the following areas:
- Expenditure funded by EU grants – European Procurement Rules must be complied with. Where use of the council's centrally arranged contracts is made then compliance with the European Procurement Rules will be achieved.
 - Grants that are made by the council to external organisations that do not constitute a contract for services – this expenditure is covered by the Third Sector Grant Funding Guidance and Procedures.
 - Locally maintained school expenditure operating under the scheme of the delegated budget.
 - Treasury management transactions, including leasing, exercising borrowing consents, cash management, investments and other transactions in accordance with the Treasury Management Policy.
 - Disposal, including sale, of council owned land and buildings – this is dealt with under the Sale of Land and Buildings Appendix to the Financial Regulations.
- 2.4. It should be noted that depending upon the terms and conditions, a Development Agreement entered into by the council may need to follow the Public Procurement Regulations. Prior advice must be sought from the Monitoring Officer/Chief Legal Officer before steps are taken to negotiate any Development Agreement.
- 2.5. Advice should be sought from the Procurement Services Manager or Legal Services Manager as to whether proposed activity is covered by the scope of these rules.

3. Roles and Responsibilities

- 3.1. All officers of the council must adhere to these rules. The rules also apply where consultants or third parties are employed to act on behalf of the council.
- 3.2. Before commencing any procurement activity, officers must ensure that they have appropriate authority and delegated approval to act. It is the responsibility of individual officers leading on a contract/procurement to ensure appropriate authority to act has been obtained and that any necessary budget is available. The officer should consult with Legal Services at the earliest opportunity regarding the proposed form of authority to ensure it is sufficient but the ultimate responsibility for obtaining appropriate authority rests with the officer. Failure to obtain an appropriate authority will cause delay to procurement activity and/or the award of a contract
- 3.3. Roles and responsibilities of members and officers across the council are set out below. Definitions of officers are as in the Scheme of Delegations.

Members

- Set the strategic direction of services, which informs the requirements from the market.
- Are not involved in the evaluation of quotations or tenders.
- Cabinet awards of all contracts with total value above the key decision threshold (£250,000).

Procurement and Contract Procedure Rules 2016-2018

- Cabinet approves exemptions from any part of these rules for contracts with a total value above the key decision threshold (£250,000).

Cabinet Member for Core Council Services

- Sets the procurement policy framework across the council.
- Approves any exemptions to these rules for contracts with a total value up to the key decision threshold (£250,000).

Chief Officer

- Ensure compliance with these rules across their service areas.
- Ensure all strategic procurement projects are properly resourced, and have financial, procurement, legal and (where necessary) HR input from the start.
- Ensure delegated authority is obtained as required.
- Ensure appropriate cabinet members are briefed on appropriate levels of procurement activity within their portfolios.
- Ensure officers are sufficiently trained, experienced and knowledgeable about these rules.
- Ensure resources are available to allow compliance with these rules.

Monitoring Officer / Chief Legal Officer

- Authorise the commissioning/procurement of legal services for all aspects of council business.
- Act as a compulsory consultee on procurement activity above £100,000 in value.
- Act as a compulsory consultee on any Development Agreement.
- Enter into contracts on behalf of the authority with delegated authority.

Chief Finance Officer

- Act as a compulsory consultee on procurement activity above £100,000 in value.
- Review all monetary limits shown in these rules annually and report any resulting amendments to the relevant Cabinet Member.
- Act as escalation point for any appeals or reviews made by bidders with regard to these rules.

Director of Regeneration & Economy

- Authorise the commissioning/procurement of advice relating to the valuation, sale or acquisition of land or property.

Service Manager – ICT

- Authorise the commissioning/procurement of ICT systems and support across the council.

All Officers of the council

- Comply with these rules, Financial Regulations, Employee Code of Conduct and with all UK and EU legislation.
- Make use of council-wide contracts and internal suppliers where available.
- Ensure they and any team members they are responsible for are suitably trained to carry out procurement activities.
- Consult with Legal Services in relation to obtaining authority to award of a contract at the earliest opportunity including obtaining advice from the lawyer who is assigned to the matter on the form and content of the authority whether in the form of a Cabinet report or delegated authority.

- Ensure procurement procedures are commenced as early as possible to ensure compliance with these rules.
- Ensure any agents, consultants and contractual partners acting on their behalf comply with these rules. Legal advice must be obtained by officers where any conflict of interest has potential to impact on a contractual relationship.
- Maintain an audit trail of all authorities given and decisions made to show how these rules have been complied with.
- Involve Procurement, Finance, Legal Services and (where necessary) HR at the earliest opportunity, and at all stages of a project.
- Store all documents electronically and in compliance with any document management and retention policies.
- Ensure that all opportunities are advertised as per procedures set out in this document to achieve value for money.
- Monitor contracts for which they are responsible, and manage issues arising to ensure optimum contract performance.

Third Parties commissioned to act on behalf of the council

- Must comply with these rules
- Must not carry out any procurement activity without prior consultation with the Procurement Services Manager
- Ensure any conflict of interest is avoided in the first instance, or declared to the appropriate Chief Officer/Service Manager as soon as possible. Legal advice must be obtained by officers where any conflict has potential to impact on a contractual relationship.

4. Conduct of Officers, Members and Suppliers

- 4.1. The council will adopt the necessary processes and procedures to be able to demonstrate a fair and transparent procurement process, providing auditable justification for all decisions made.
- 4.2. Where bidders canvass elected members or officers, bidders will be excluded from consideration for the procurement to which such canvassing or approaches relate. Where bidders attempt to influence the outcome of a procurement process other than through proper participation (e.g. by canvassing members), they will be excluded from the procurement process.
- 4.3. Every elected member and officer of the council shall declare any personal or prejudicial interest in any contract in accordance with the council's Code of Conduct for Councillors and Code of Conduct for Officers. Such interests should be recorded in the Members' or employee's Registers of Interest.
- 4.4. Any potential conflict of interest in relation to a procurement e.g. a relationship with a bidder or a company operating in the market, or a personal interest in the matter, must be identified and recorded at the earliest opportunity in order to ensure equal treatment of bidders and a fair and transparent procurement process. Advice should be sought from the Procurement Services Manager and such action should be taken to remove the conflict e.g. employee not taking part in the evaluation of the bid.
- 4.5. No Member or officer of the council shall in a personal capacity enter into any contract on behalf of the council.

5. Use of Council-Wide Contracts and Internal Providers

- 5.1. Where an internal service can provide the goods or service, this must be used in the first instance.
- 5.2. Where the council has corporately procured a contract or framework agreement these contracts should be used as the council will be obtaining value for money by procuring corporately. The requirements of these rules will have been addressed, value for money ensured, and standard terms and conditions used.
- 5.3. A list of all corporately procured contracts will be maintained by the Corporate Procurement Service and available on the council's intranet.
- 5.4. As per the Financial Regulations, purchase orders must be raised via the Oracle Financials system (SBS). Where possible, council-wide contracts should be available through catalogues via the Oracle Financials system (SBS).
- 5.5. Subject to any pre-existing exclusivity arrangements which oblige the council to use a pre-existing contract, where the appropriate Chief Officer (in consultation with the Procurement Services Manager) considers that there are specific advantages to be obtained by negotiating non-corporately procured contracts, then written approval must be sought from the Procurement Services Manager and retained on the appropriate contract file.
- 5.6. Failure to use existing corporately procured contracts where available can be viewed as a disciplinary offence, unless approval is given as per paragraph 5.5 above.
- 5.7. Where there are no existing contracts or internal suppliers in place, officers must follow the procedures set out in this document to identify external suppliers.

6. Contracts Relating to Assets

- 6.1. These rules do not apply to the sale or disposal of council owned land or buildings. Transactions of this nature must adhere to the Sale of Land and Buildings Protocol within the Financial Regulations.
- 6.2. Where the sale of land also specifies works or services to be carried out by the developer then advice should be sought from Legal Services as the land sale could constitute a public works contract or public services contract which would be subject to the public procurement rules as well as the Sale of Land and Buildings Protocol.
- 6.3. These rules do apply to the acquisitions, leases, licenses, agreements and other matters relating to land or property, except where they have been expressly varied. Any arrangements must adhere to the Financial Regulations.

7. Procurement Cards

- 7.1. Procurement cards can be used in the following circumstances:
 - Where there is a high volume of low value, one-off spend (including for travel or accommodation purposes) or where purchase orders cannot be used;
 - There is a requirement to respond to service users' requirements in an emergency or out of hours;
 - Procurement cards can replace the need for petty cash; or
 - Online procurement routes offer the only or the most value for money option.

- 7.2. Procurement cards will be issued subject to the Procurement Card Policy. Before a procurement card will be granted to a card holder, Internal Audit must confirm that there are no significant issues that would identify a high risk of inappropriate use by that individual or that service area.
- 7.3. Procurement cards will not be used where a corporately procured contract or internal provider exists, unless this is in the form of an embedded procurement card.
- 7.4. Use of procurement cards must be in accordance with the Procurement Card Policy and these rules, including the use of internal suppliers and corporate contracts (Rule 5) and advertising thresholds (Rules 8). Procurement cards can be used for higher value purchases in emergency situations only.
- 7.5. Failure to adhere to these procedures will constitute a disciplinary offence.
- 7.6. Where a procurement card is used, it is the responsibility of the card holder and their budget manager to ensure that value for money is obtained at all times.

8. Values and Thresholds

- 8.1. Values (or genuine pre-estimated values) used in the operation of these rules will normally be the total value of the contract over the whole of the contract term including any extension. The value will be net of VAT.
- 8.2. Where a series of purchases is made for the same or similar purposes, then the value will be the aggregated value of purchases made within any single contract or period of 12 consecutive months. Where a contract is required over a multiple year period, then the total value of that contract must be considered.
- 8.3. Orders or requirements should not be artificially divided to make two or more orders of a lower value to avoid the requirement to obtain quotations or tenders.
- 8.4. Advice should be sought from the Procurement Services Manager on calculating the estimated value. It may be appropriate to obtain an independently verified estimated before commencing the procurement activity. If an external expert is required, the appointment of that expert must be in line with these rules.
- 8.5. The value (or estimated) value will determine the procurement method used, as set out in Table 1 below. The value (or genuine pre-estimated value) of the contract will depend upon the specification of the goods, services or works required. Details of how estimated figures have been calculated must be kept on the relevant contract file.
- 8.6. Should the lowest quotation/bid received be above the estimated cost and the value dictates that an alternative procurement method should have been used, Chief Officer approval is required to accept the bids and award the contract after evaluation. Should the lowest tender received be above £250,000 in total value then Cabinet approval will be required to award the contract after evaluation.
- 8.7. Table 1 below sets out the procurement thresholds, minimum number of quotations/bids required and responsibility for obtaining those bids:

Procurement and Contract Procedure Rules 2016-2018

Table 1: Advertising Procurement Thresholds

Estimated value of goods, services or works	Minimum number of bid/s required	Method of obtaining bids	Responsibility for obtaining bids	Written Records required
£0-£5,000 To be treated as a one-off non-recurring requirement. Procurement Card can be used.	One quotation	Verbal enquiries, email confirmation required	Council officers; purchaser must ensure value for money is being obtained	Written quotation from supplier(s) – email acceptable
£5,001-£100,000	Three quotations to be obtained	Advertisement is required via e-Tendering portal. If over £25,000 must also be advertised on Contracts Finder Specification and selection/award criteria to be included in the invitation to quote (Rule 11).	Corporate Procurement Team (excluding Social Care and Public Health Requirements)	Invitation to Quote, specification documents, quotations and communications from suppliers
£100,001 and above	Four tenders to be obtained	Advertisement required via e-Tendering portal and Contracts Finder. Sealed or electronic bids	Corporate Procurement Team (excluding Social Care and Public Health Requirements)	Invitation to Tender, tender schedules, bids and communications from suppliers

- 8.8. The thresholds set out in Table 1 apply to all procurement activities carried out by Sandwell Council, including those for construction and works.
- 8.9. Where the value determines that a tender is required, advice must be sought from the Procurement Services Manager or Legal Services Manager on the most appropriate tendering procedure. Where requirements relate to social care or public health services, then advice must be sought from the delegated teams in those areas.

9. Advertising Requirements and Timescales

- 9.1. Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements above £5,000 in value must be advertised on the council's agreed portal. This ensures compliance with the government's Transparency Agenda
- 9.2. All adverts will be placed by Corporate Procurement Services who will ensure that the advert is also placed on Contract Finder, with the exception of social care or public health requirements. These will be advertised by the procurement teams in those service areas.
- 9.3. Time limits for the return of quotations/tenders will vary dependent upon the value and complexity of the requirements and the process in question. It is the responsibility of the procuring officer, following advice from the Procurement Services Manager, to decide the most appropriate timescale for the return of quotations/tenders. However, this must be set to attract the minimum number of quotations/tenders to ensure that suppliers have a sufficient but not disproportionate period to respond and that value for money has been achieved.
- 9.4. In all cases, opportunities must be advertised for a minimum of five working days via the council's e-Tendering Portal. In order to demonstrate value for money, a longer advertising period should be considered. Where the OJEU procedure is to be followed, prescribed timescales that must be adhered to.
- 9.5. Where variant bids will be accepted as part of tender submissions, this must be included in the advertisement and invitation to tender documentation.
- 9.6. No quotation/tender/bid received after the closing date/time shall be accepted or considered under any circumstances. Details of the closing date/time must be clearly stated within all invitation to quote/tender documentation.

10. Provisions Applicable to All Procurement Activity and Contracts

10.1. Specification

- Officers within the service area must develop a specification for the goods, services or works required prior to commencement of a procurement activity. The level of detail will depend upon the (estimated) value of goods, services or works required.
- Specification must include as a minimum:
 - Details of the goods, services or works required, including outcomes to be achieved;
 - Timescale for delivery/completion; and
 - Expected levels of performance or quality.

10.2. Pre-Market Consultation

- Market consultations may be conducted prior to commencing any procurement exercise, in order to ensure that the best possible outcome is achieved. This advice may be used in the planning and conduct of the procurement procedure, provided that this adheres to the council's procurement principles of transparency, equal treatment and non-discrimination of all bidders.

- Independent external organisations may be appointed to assist with this. However, it remains the council's responsibility to ensure that this does not result in distorted competition (e.g. through the sharing of all relevant information or the setting of adequate timescales for submission of bids).

10.3. Division into Lots

- Advice must be sought from the Procurement Services Manager where consideration is made to dividing contracts into separate lots, especially where the contract value is above the OJEU Threshold.
- Records of all discussions and decisions must be kept on the relevant contract file.
- The intention to award lots or to award to a single contractor must be specified in the advertisement and all procurement documentation.

10.4. Period of Contract

- No contract for the supply of goods, materials, services or works shall exceed four years, including any extension, without prior written approval from Cabinet or from the Procurement Services Manager. This also applies to a framework agreement unless in exceptional circumstances.
- Details of the total contract period, including any potential extensions, must be included in the initial advertisement and quotation/tender documentation. Allowance for extension of times to projects with defined Completion Dates must be included in the documentation.
- Prior to the extension of any contract, officers must ensure that the requirements of Rule 13 have been met.
- If an additional extension is required, advice must be sought from the Procurement Services Manager and Legal Services Manager, prior to the submission of an exemption request as per Rule 15.

10.5. Electronic Tendering, Communications and Opening of Tenders

- All tendering activity must be via the council's e-Tendering portal to ensure a fully compliant and auditable tendering process. This includes the opening of tenders submitted through the e-Tendering portal, which ensures sufficient reporting mechanisms and audit trails are in place.
- Any communication relating to procurement will be via the e-Tendering portal.
- This process will be managed by Corporate Procurement Services, with the exception of social care or public health requirements, which will be managed by those dedicated procurement teams.
- Where the council's e-Tendering portal is not used (i.e. for sale of land, assets or property), then tenders must be opened in the presence of a minimum of two officers, including a nominated officer of the Democratic Services Unit and an officer of the service area requesting the tender opening delegated this task by the relevant Chief Officer.
- A record shall be completed at the time of opening tenders detailing:
 - Nature of the goods/materials/services to be supplied or work to be executed, or the title of the land/asset to be disposed of;
 - Name of each person by on whose behalf the tender was submitted
 - Date and time of receipt of tender recorded on the envelope/electronic tender system;
 - Date and time of opening the tenders;
 - Names of all persons present at the opening of the tenders; and
 - Tender or offer figure (if practicable).

10.6. Risk Assessment

- Where a contract is awarded with a value in excess of £100,000 or relates to a business critical activity, a risk register should be drawn up for the letting, award and management of the contract in accordance with the [Corporate Risk Management Strategy](#).
- Further advice should be sought from the Procurement Services Manager, Risk & Insurance Manager and Legal Services Manager.

10.7. Business Continuity:

- Evidence of compliant business continuity plans are required for:
 - Any contract in excess of £100,000; or
 - For any contract identified by the relevant service manager as relating to a business critical activity.
- Specifications and contracts must include clauses requiring evidence of the contractor's business continuity plans and the council's right of an independent audit on any or all business continuity.

10.8. Freedom of Information Act 2000:

- All tender documents shall set out the council's statement, in a form approved by the Monitoring Officer, concerning the supplier's participating in the tender process and the council's intention to comply with the Freedom of Information Act 2000.

10.9. Public Services (Social Value) Act 2012

- Where the value of a contract is above the OJEU Threshold, it is mandatory to include social value in the award criteria.
- All other procurement activity carried out under these rules must consider the inclusion of appropriate social value award criteria.
- The Act requires these criteria to be relevant to the subject matter of the contract and proportionate to the value and potential impact that could be achieved.
- Further guidance: [Public Services \(Social Value\) Act Guidance Document](#).

11. Pre-Qualification, Contract Award Criteria and Evaluation

11.1. Use of Pre-Qualification Questionnaires / Selection Criteria

- Pre-Qualification Questionnaires must not be used for procurements below the OJEU Threshold for supplies and services, other than where deemed appropriate for construction related procurements.
- Where a Pre-Qualification Questionnaire is required, this must use the Cabinet Office standard documentation,
- Selection criteria must be considered prior to publication of quotation/tender and included in the documentation.

11.2. Contract Award Criteria

- Where a framework is used, any further competition procedures must adhere to the selection and award criteria set by the framework.
- All invitations for quotations or tenders must be in writing and specify whether a contract or offer is to be awarded on the basis of an offer which either:
 - Offers the lower price when purchasing goods/services/works, or the highest price when disposing of council assets/land/property; or
 - Is the most advantageous by reference to price and quality criteria. The criteria could include price, running costs, profitability, period for completion or delivery, technical merit, aesthetic and functional

characteristics, after sales service, technical assistance, outcomes for service users, social value impact, etc.

- All tenders above the OJEU threshold for supplies and services must include award criteria based on quality as well as price.
- Where bids are evaluated on price and quality, the quality element of the Award Criteria must not exceed 40% (unless Rule 18 applies).
- Where the quality element of the Award Criteria needs to be higher, agreement must be sought from the Procurement Service Manager and records kept on the relevant contract file.
- Details justifying all elements of the Award Criteria must be kept on the relevant contract file.
- Award Criteria must be set out in the quotation/tender documentation in descending order and must be adhered to without alteration throughout the process.

11.3. Evaluation of Quotations and Tenders

- All quotations or tenders submitted in response to an advertisement under Rule 9 must be evaluated in accordance with the principles of transparency equal treatment and non-discrimination as well as the selection and award criteria disclosed in the invitation as per Rule 11 (selection criteria and Award criteria). Advice must be sought from the Procurement Services Manager on the evaluation and moderation process.
- Officers must ensure that all evaluations are undertaken in compliance with the Public Contracts Regulations and EU Procurement Directives.
- Variable bids will not be accepted unless stated within the advertisement and invitation to tender documents.
- Where examination of quotations/tender submissions reveals an error or omission, the bidder shall be notified only that the submission contains an error or omission. The bidder shall be given the opportunity of either confirming or withdrawing the submission.

12. Construction and Engineering Contracts

12.1. Construction and engineering works valued below the OJEU threshold for Works must make use of Constructionline and contractors approved for health and safety by organisations list by Safety Schemes in Procurement (SSIP).

12.2. Instructions on how to access details of the lists of contractors contained within these databases can be obtained from Corporate Procurement Services.

12.3. Advertisements for these contracts must include:

- Scope of contract;
- Registration requirements with Constructionline and SSIP; and
- How shortlisting will take place

12.4. Advice must be sought from Corporate Procurement Services with regard to the need to assess successful contractors with regard to equalities.

12.5. If the successful company does not meet the required standard, then a suitable time period should be given to ensure compliance during the contract period.

13. Contract Extensions

- 13.1. Following compliance with instructions on permitted contracting periods for goods, services and works specified in Rule 10, negotiations may only be undertaken to extend contracts provided that the following requirements are met:
- provision was made in the original advertisement and documentation that it may be subject to an extension – this includes where more than one extension of the contract has been included in the original advertisement;
 - benchmarking with similar organizations has been undertaken to prove that the contract continues to provide value for money;
 - the contract has been monitored and no concerns have been raised with regard to the level of service/quality of goods supplied or sufficient mechanisms, such as a robust improvement plan, are in place that ensure that any identified issues will be resolved;
 - any price increases are in accordance with the relevant contractual provision (e.g. in line with an appropriate published index) and as permitted under EU Procurement Regulations;
 - The appropriate Chief Officer and the Procurement Services Manager are satisfied that no better terms could be obtained by competitive tendering or that the nature or urgency of the work make it desirable that the same Contractor is employed. Comments of the Chief Officer and the Procurement Services Manager are to be kept on the contract file;
 - The Legal Services Manager has been consulted to ensure that the extension does not result in a material change to the Contract; and
 - No variations are being made.
- 13.2. Evidence of these requirements being met must be recorded in report format. Where an extension to the contract means the total value is over £250,000 Cabinet authority is required to extend the contract.

14. Contract Variations

- 14.1. Any changes to an existing contract that materially affects the original requirements (whether financial and/or services, goods etc.) may effectively amount to the award of a new contract and so should be subject to a fresh procurement exercise.
- 14.2. There are six permitted circumstances where variations are permitted to existing contracts and frameworks. Advice should be sought from Legal Services on whether these circumstances apply:
- 14.2.1. Amendments that are clearly provided for in the original procurement and contract documents.
 - 14.2.2. Necessary amendments where a change of contractor cannot be made.
 - 14.2.3. Unforeseen circumstances have arisen which the authority acting “diligently” could not have foreseen.
 - 14.2.4. Amendments to deal with a new contractor replacing the original contractor and this is permitted in the contract or procurement documents.
 - 14.2.5. The amendments are “not substantial”.
 - 14.2.6. Low value amendments:
 - Falls below the procurement threshold for works and services; and

- Is less than 10% of the original contract value for supplies or services and 15% for a works contract; and
 - The amendment does not alter the overall nature of the contract.
- 14.3. The advice of the Legal Services Manager should be sought at an early stage and in any event prior to the submission of any report for an exemption to these rules when any changes to an existing contract are being considered.
- 14.4. For construction related contracts, paragraph 13.4 applies unless the terms and conditions of the contract entered into allows for Contract Variations.
- 14.5. Records of all decisions and supporting evidence must be kept on the contract file.
- 14.6. Where a variation to a contract increases the total value to £250,000 or above, Cabinet approval is required.

15. Exemptions to the Procurement and Contract Procedure Rules

- 15.1. An exemption to these rules are not an exemption from the legislative/directive requirements and cannot be granted where a breach of any UK or EU legislation would be incurred.
- 15.2. A formal request for an exemption must be made in a report format. The request report must specify the circumstances justifying the exemption, demonstrate how the action achieves best value for money, and indicate any remedial action that may be required.
- 15.3. Comments of the Procurement Services Manager must be included in the report. Where the contract is of £100,000 or more in value, Legal Services must be contacted at the earliest opportunity for advice on why an exemption is sought as well as the content of the report. The comments from Legal Services must also be included in the report.
- 15.4. Any exemption relating to ICT requirements must include comments from the ICT Service Manager.
- 15.5. An exemption request must be approved by the Section 151 Officer where they are independent from the original decision making process, confirming that they are satisfied that the exemption is justified by special circumstances. Where the exemption applies to a service that is the responsibility of the Section 151 Officer, the exemption must be approved by the Chief Executive.
- 15.6. Any exemption request must then be approved by the Cabinet Member for Core Council Services. The exemption must be sought within a timescale to allow for the possibility that the request may not be approved. The Procurement Services Manager will arrange for the exemption request report to be presented to the Cabinet Member for Core Council Services for approval.
- 15.7. Any exemption for contracts above £250,000 in value must be approved by Cabinet.

16. Contract Award and Contracting Procedures

16.1. Contract Award

- It is imperative to ensure that the appropriate council authority exists to enter into a contract. This may be formal authority granted by the Cabinet or other delegated authority given to Chief Officers as set out in the Scheme of Delegations to Officers
- Table 2 sets out the authority to award contracts and the records required:

Table 2: Contract Award Thresholders

Contract Value	Authority to Award Contract	Records Required
Up to £100,000	Chief Officer	The Chief Officer can delegate responsibility to award to budget holders in accordance to Financial Regulations. A record of all contracts awarded must be sent to the Procurement Services Manager for inclusion in the Contracts Register.
£100,000 - £249,999	Chief Officer, in consultation with the Assistant Chief Executive If an exemption to the Procurement & Contract Procedure Rules is required, separate approval must be acquired as per Rule 15.	Awarding of a contract must be in report format, setting out the procurement process followed, details of quotations/tenders received, the evaluation methodology and naming the supplier(s) who have made the most economic advantageous offer. Report must be signed by both the Chief Officer(s) set out in this table. Report will also be required in the event that prior authority has been given by Cabinet to a Chief Officer to award a contract above £250,000.
£250,000 (KEY DECISION)	Cabinet	Report to Cabinet including content above, including where any exemptions to these rules are required. Notice must be included in the Forward Plan within sufficient time to ensure necessary public notice of the decision.

16.2. Signing of Contracts

- The signing of contracts will be carried out as per the Article 14 of the council's Constitution (Finance, Contracts and Legal Matters).
- Contracts up to the value of £100,000 can be signed by the appropriate Chief Officer.
- Contracts of £100,000 or above must be in writing and be signed by the Chief Legal Officer or by the Chief Executive and a Legal Services Manager, or sealed with the common seal of the council.

16.3. Notification to Tenders

- Notifications to successful and unsuccessful tendered, including debriefing, must be in writing and adhere to the Public Contracts Regulations and EU Public Procurement Directive. Advice should be sought from the Procurement Services Manager.

- Notification of acceptance of a tender which requires a formal contract must be given in writing clearly marked 'subject to contract' and should advise that contract documents are to follow.
- All unsuccessful tenderers are to be notified in writing that they have been unsuccessful.

16.4. Standstill Period

- No formal contract or framework agreement shall be entered into before the end of the standstill period of a minimum of 10 days from the date of notification.

17. Contents of Contracts

17.1. Standard terms and conditions of contracts are available; however, each contract should be considered on its own merit. Advice from the Chief Legal Officer should be sought as to the terms and conditions that should be used.

17.2. The council shall avoid entering into contracts under a tenderer's/contractor's terms and conditions. However, contractor's own terms may be included in contracts where they are acceptable to the council

17.3. Contracts must include the following as a minimum:

- Specification of goods/services to be supplied or works to be executed or land/asset being disposed of, and the conditions that will apply.
- Price to be paid or the rates on which price is calculated, milestones for payments and a statement of discounts or other deductions. If the contract term exceeds 12 months, future pricing structure must be included. If a price fluctuation clause is to be included, then it must make reference to a published index.
- Contract period, delivery date or times within which outputs of the contract must be completed.
- Details of any extension period and basis upon which this will be agreed.
- Required performance levels and details of monitoring/governance arrangements.
- Details of any indemnities required and how any claims arising will be dealt with and by whom
- Provision for audit inspection
- Clauses requiring evidence of the contractor's business continuity plans and the council's right of an independent audit on any or all business continuity
- Compliance with Data Protection Act, Freedom of Information Act, Modern Slavery Act
- Contractor to comply with council's Confidential Reporting Code
- Termination of contract, other than through the expiration of the contract term.
- Insurance cover requirements

18. Reporting

18.1. Records of all activity and decisions must be retained by the client officer.

18.2. Details of all tendering activity must be forwarded to the Procurement Services Manager for inclusion in the Corporate Procurement Plan.

18.3. Details of all contracts awarded over £5,000 in value must be forwarded to Procurement Services Manager for inclusion in the contracts register.

- 18.4. All contracts awarded over £5,000 in value, and all spend via procurement cards, must be published on the council's internet. Publishing this information will be the responsibility of the Corporate Procurement Service.
- 19. Employment of Agency Staff, Consultants and Interim Managers and Use of Personal Service Companies**
- 19.1. All temporary or agency workers must be engaged through either the Templink service or the Resourcing team. Any agencies used must be included on the agreed framework; failure to comply with this requirement, without approval from the Chief Executive, will be treated as a disciplinary matter.
- 19.2. All temporary or agency worker engagements or extensions / redeployments of existing workers must be approved by HR, as delegated by the Chief Executive.
- 19.3. The likelihood of temporary or agency worker engagements being approved will be greatly increased where the following business case is provided, covering:
- a rational explanation as to why the engagement is required;
 - an explanation in regard of why a permanent appointment has not been made; and
 - what steps will be taken to ensure that the temporary or agency worker engagement is kept to a limited time period
- 19.4. Prior to seeking approval to engage temporary or agency workers, managers should liaise with HR Business Partners in regard of identifying/investigating alternative approaches that may be taken to address any resourcing gaps, thus negating the need to engage temporary or agency workers. Contact details for HR Business Partners are as follows:
- **Performance** - Alan Boxley 0121 569 3820
 - **Children's Services** - Louise Lawrence 0121 569 3845
 - **Adults Services and Public Health** - Jacquie Sergeant 0121 569 5483
 - **Place** – Debbie Sant 0121 569 2378 or Manjit Gill 0121 569 5422
- 19.5. The procurement method used, if not Templink or in accordance with the council's recruitment and selection procedures, for agency staff, consultants, interim managers and personal service companies shall comply with these rules as above.
- 19.6. Individuals contracted through the Templink service, the internal agency service or an external agency provider should be limited to a contract period of three months. Contracts for longer than three months are only allowed in exceptional circumstances that must be included in the report to HR.
- 19.7. Any agency staff, consultants, interim managers and personal service companies employed by the council shall comply with these rules as though he/she were an officer of the council.

20. Children/Young People Care, Adult Care and Public Health Contracts

- 20.1. Officers procuring care and public health contracts should follow these rules. The nature of the adult and children's social care and public health services market and commissioning arrangements may require the following exceptions. However, in all instances the procuring/commissioning officer should always ensure that value for money is obtained for both the council and clients.
- 20.2. Any Social Services and Public Health related contract, with the total value above the EU threshold for these contracts for must be procured using a procedure that is at least sufficient to ensure compliance with the principles of transparency, equal treatment and non-discrimination. An OJEU Notice (or a PIN) must be published.
- 20.3. Award criteria
- Due to the nature of the services being provided a maximum of 40% quality can be applied as part of the award criteria.
 - Where it can be justified to have a higher score for quality approval must be obtained from the Procurement Services Manager.
- 20.4. Residential and nursing care
- It shall not be necessary to obtain competitive tenders (consideration should be given to Rule 20.3) for the placement of individuals in residential or nursing care provided that the contract is let on the basis that the council pays a standard fee (set by the council) and the client decides which provider shall supply the service. Where there is no standard fee then the service needs to ensure that value for money is provided.
 - Where clients select accommodation costing in excess of the standard fee, placements can be made provided a third party is willing to pay the difference where the service is one where a third party contribution applies. Suitable records must be maintained demonstrating that the client was given a choice and that it was the client or their authorised representative who exercised that right.
 - Where a placement is to be made where it is not subject to a standard fee, it will not be necessary to obtain competitive quotations provided that the Client or his/her representative has chosen the home and/or the social work budget holder (or panel where it exists) has approved the placement. To ensure that value for money is obtained, the council's approved fee calculating mechanism will be used to determine the cost of the placement. If the fee is more than the fee calculated using the approved mechanism, then this must be justified and approved by an Operations Manager (or equivalent) independent from the original decision making process. Records must be kept of the circumstances justifying the placement.
 - Where residential placements are made for Public Health services, placement selection must be based on client needs and risk factors. Consideration of market rates for similar provision must also be made to ensure value for money.

20.5. Domiciliary Care

- It shall not be necessary to obtain competitive quotations for standard; non-specialist domiciliary care services commissioned on a spot contract basis (consideration should be given to Rule 20.3). This is provided the service is purchased at the standard rate (set by the council) from a provider which has been allocated a share of the spot domiciliary care market following the periodic tendering process undertaken in accordance with these rules.
- It will be necessary to obtain competitive quotations for domiciliary care or non-residential services where there is no standard rate set by the council. Three quotations should be sought and the cheapest provider should be used. Where the cheapest provider is not used, the package request must be approved by an Operations Manager (or equivalent) independent from the original decision making process confirming the package is justified by special circumstances. A record should be kept of the circumstances justifying the package of care.
- Where the client does not wish to receive a service from the provider deemed the cheapest through the competitive exercise, a direct payment should be offered to the client who will be able to procure the service directly his/herself subject to all of the identified needs being met.

20.6. Specialist Services

- In some cases, the specialist nature of the assessed service or temporary limitations in the availability of providers will limit the range of alternative suppliers. Where there are no alternative providers such services will be treated as an exception to these rules.
- It will be the responsibility of the appropriate Chief Officer and Commissioning Manager (or equivalent) to maintain suitable records to demonstrate the appropriateness of this approach and the involvement of more than one officer in the process.
- Where it is possible to obtain the service from more than one provider quotations/tenders must be obtained, in accordance with Rule 11 and the service commissioned in accordance with Rule 16.

20.7. Child Care Contracts

- Children's residential and specialist foster care placements are contracts for individual needs and shall therefore be arranged individually for each client.
- Where it is possible to place a child at more than one establishment the officer concerned should obtain quotations (in accordance with Rule 9) or undertake a price comparison using an appropriate database.
- If utilizing a database the quality elements have already been assessed therefore organizations should be chosen in order of price which will be dependent upon availability.
- Records showing the placement process must be kept on the contract file. However, where this is impractical the following Rule 20.9 must be complied with.

20.8. Public Health Contracts

- It will not be necessary to obtain competitive quotations/tenders where it can be clearly evidenced, to the Procurement Services Manager, that the provision of a public health service is part of a care pathway. Where associated clinical services are already provided by an NHS Provider records must be maintained, demonstrating the connection between the public health service and the associated clinical service(s) within the care pathway.

- Where the public health service is subject to patient choice from NHS providers and the selection of provider is determined by where patients elect to receive treatment records must be kept to evidence that patients have chosen their healthcare provider. If the expectation is that the provider will deliver services over £100,000 the council will aim to enter into a contract. Suitable evidence will be kept to substantiate this expectation. Where the council enters into a contract Rule 16.2 shall apply.
- Officers should ensure that, where national tariffs are not utilised, that negotiation has been undertaken with healthcare providers to ensure that value for money is achieved. As a minimum, officers should benchmark to give assurances that best value is obtained.

20.9. Sole Provider, Emergency Placements or Emergency Care

- In circumstances where specialist needs can only be met by one provider, or where an emergency placement has to be made, these placements shall be treated as an exemption from these rules, in accordance with Rule 15.
- It shall, however, be the responsibility of the appropriate Chief Officer and Commissioning Manager to regularly review the situation and, should any of the circumstances change, communicate any changes of placement or policy to all appropriate parties.
- In such cases it shall not be necessary to obtain tenders but the appropriate authorization shall be obtained in accordance with Rule 15.
- The decision process concerning where the adult or child is to be placed should involve more than one person and this process together with the names of the officers concerned should be evidenced in relevant directorate records.
- Specifications and agreements should include for exit clauses when it is assessed that the care requirements are no longer required.
- Agreements should be reviewed on a regular basis and reports placed on the contract file detailing the findings and required action.

21. Annex – Definitions

- Council - means the Sandwell Metropolitan Borough Council, the Executive, a Standing Body or person(s) acting in accordance with authority delegated by the council.
- Contract - means any agreement (Including Framework Agreements) between the council and a third party for the provision of any goods, materials, services or works for whatever value. All contract documentation shall be worded and in such form so as to protect the council's interests, in accordance with advice from the Chief Legal Officer and standard contract documentation.
- Contract price in relation to all contracts - means the aggregated cost (including fees) for the whole of the period of the contract. Where a Chief Officer knows that a similar service, supply or type of work is to be ordered during a twelve-month period, this should be taken into account and used for the purposes of the estimated contract price.
- Any transaction for the supply or disposal of goods or materials; provision of services or the execution of works which forms part of a larger transaction shall not be regarded as a separate contract but shall be included in the calculation of the contract price.
- Chief Officer - is defined as a Director and above as per the Scheme of Delegations.
- Chief Officer and appropriate Chief Officer – means a Chief Officer or any subordinate officer nominated by their Chief Officer, but the Chief Officer is at all times responsible for the actions undertaken by the subordinate officer.
- Chief Financial Officer - the title is used as a generic term for the officer with Section 151 responsibilities and is included in recognition that Section 151 responsibility may be undertaken by another Chief Officer who is a qualified accountant.
- Budget - means revenue budgets, capital budgets and other spending programmes approved by the council.
- Grant – Is the payment of money or some other thing, without the expectation of goods or services in return (this could include making a financial contribution to the independent work of the Voluntary or Community Organisation). A grant is usually provided subject to conditions that state how the grant can be used. The grant aided organisation may use or offer to use the grant to provide goods or services that meet their objectives.
- Programme - A set of component projects/work streams which have been brought together under one management process to achieve an overall strategic objective/beneficial change and ensure robust governance.
- Project - a component of a programme which has a predetermined outcome or result at a pre-specified time using predetermined resources.

Report to Cabinet

21 September 2016

Subject:	Approval for Adoption of the Black Country Air Quality Supplementary Planning Document (Key Decision Ref. No REI1036)
Presenting Cabinet Member:	Regeneration and Economic Investment

1. Summary Statement

- 1.1 This report seeks approval to adopt the Black Country Air Quality Supplementary Planning Document (SPD).
- 1.2 The planning process has a significant role to play in ensuring health and wellbeing in helping to better integrate existing land-use and new development to encourage more sustainable development, and it can provide measures to secure future improvements in air quality.
- 1.3 Air quality is not limited to local authority boundaries, rather the associated effects of development can be felt across the wider regional areas. Therefore, to enable a consistent approach to implementation across the Black Country, this joint SPD has been developed.
- 1.4 The draft SPD was prepared in consultation with other Council Directorates. Following Cabinet approval on 19 August 2015, the SPD was subject to an eight week period of public consultation from 15 February to 11 April 2016.
- 1.5 40 statutory organisations and prescribed bodies were consulted. Within Sandwell all ward councillors were consulted along with around 1000 organisations, developers and individuals registered on the Consultee Database. The consultation was also publicised by press release and on the websites of the four councils.

- 1.6 A total of 17 representations were received and a number of comments made within these representations have been incorporated in the final SPD where appropriate.
- 1.7 The comments received during the public consultation and the councils' responses to them are detailed in the Consultation Statement at Appendix 1.
- 1.8 The Council is therefore recommended to approve and adopt the Black Country Air Quality SPD.
- 1.9 An Equality Impact Assessment has not been carried out. The Supplementary Planning Document does not in its self-create policy, but is guidance for existing policy in the determination of planning applications where air quality needs to be addressed.

Further details are attached for your information.

2. Recommendation

- 2.1 That the Council be recommended to approve and adopt the Black Country Air Quality Supplementary Planning Documentation as set out in Appendix 2.

Nick Bubalo
Director – Regeneration and Economy

Darren Carter
Chief Finance Officer

Contact Officer
Kaliegh Lowe
Senior Planner
Spatial Policy and Development
0121 569 4034

3. Strategic Resource Implications

- 3.1 The costs of preparing the Air Quality SPD, and subsequent Local Development Documents, has been met from existing budgets.
- 3.2 The council's corporate risk management strategy has been complied with, to identify and assess the risks associated with this decision/ recommendations. This has identified that there are no significant risks that need to be reported.
- 3.3 In terms of the risks themselves, we have considered the following and put in place suitable mitigations:
- Programme risks in terms of whether there is sufficient capability and capacity to deliver the programme of work
 - Key dependencies (i.e. key people required to deliver the documents)
 - Any risks associated with the formation of a West Midlands Combined Authority
 - Budget/ financial risks

4. Legal and Statutory Implications

- 4.1 The current Development Plan for Sandwell includes the Black Country Core Strategy, the Sandwell Site Allocations and Delivery Development Plan Document and a number of Area Action Plans and Supplementary Planning Documents.
- 4.2 Supplementary Planning Documents are intended to expand upon policy or provide further detail to policies in Development Plan Documents, but do not have development plan status.
- 4.3 Following adoption, the Black Country Air Quality Supplementary Planning Document will become a material consideration in the determination of planning applications. The Supplementary Planning Document is being prepared under the provisions of the Planning and Compulsory Purchase Act (2004) and the Town and Country Planning (Local Planning England) Regulations 2012.

5. Implications for the Council's Scorecard Priorities

- 5.1 The Black Country Air Quality Supplementary Planning Document will assist in delivering a number of Sandwell's Priorities as expressed by the Council's Scorecard, particularly Great Places and Great Prospects.

6. Background Details

- 6.1 The planning process has a significant role to play in ensuring health and wellbeing in helping to better integrate existing land-use and new development to encourage more sustainable development, and it can provide measures to secure future improvements in air quality.
- 6.2 Air quality is not limited to local authority boundaries, rather the associated effects of development can be felt across the wider regional areas. Therefore, to enable a consistent approach to implementation across the Black Country, this joint SPD has been developed.
- 6.3 The purpose of the SPD is to:
- Explain why air quality is important in the Black Country and set out the existing policy framework;
 - Present the methodology for identifying development proposals where an air quality assessment will be required, and the processes involved;
 - Identify the types of development where appropriate air quality mitigation measures will be required to be incorporated, in order to offset the incremental creep in pollutant emissions;
 - Propose various options for site specific mitigation to protect future occupiers from poor air and how such measures will be secured and delivered; and
 - Set out instances where on site mitigation is not appropriate and payment is required to the Local Authority.

- 6.4 The draft SPD was prepared in consultation with other Council Directorates. Following Cabinet approval on 19th August 2015, the SPD was subject to an eight week period of public consultation from 15th February to 11th April 2016. During the consultation period a total of 17 representations were received, and a number of comments made within these representations have been incorporated in the final SPD, as appropriate.
- 6.5 The comments received from the public consultation and the Council's responses to them are included within the Consultation Statement (Appendix 1).

Source Documents

Supplementary Planning Document: Black Country Air Quality 2015 (Appendix 2).

Black Country Nitrogen Dioxide Exceedances 2015/2016 – Appendix 3

CONSULTATION STATEMENT –Draft Black Country Air Quality Supplementary Planning Document (SPD)

In connection with the preparation of the Black Country Air Quality Supplementary Planning Document (SPD) 2015, a Consultation Statement is required to demonstrate with whom the four Black Country Councils consulted and how they engaged with local people and other interested parties during the preparation stages of the SPD.

The statement contains the following information:

- i) a summary of the organisations with whom the Councils consulted;
- ii) how those organisations were consulted;
- iii) a summary of the issues raised; and
- iv) how those issues have been addressed in the SPD.

An eight week consultation on the Draft Black Country Air Quality SPD took place between **Monday 15th February to Monday 11th April 2016.**

The following consultees were sent either a letter or email providing a link to the Council's website to view the SPD. Comments were invited on the draft SPD:

Statutory organisations and Prescribed bodies under Duty to Cooperate	40
Organisations/developers on Consultee database by email	Approx. 1000
Ward Councillors	72

In addition to being published on each of the Council's websites, paper copies of the draft revised SPD were distributed to all main libraries throughout the Black Country and at each of the 4 Council's Planning Offices.

A press release was sent out informing the general public about the consultation process and advertising on the 4 Council's websites.

As detailed in paragraphs 178-181 of the National Planning Policy Framework, public bodies have a Duty to Co-operate on strategic planning issues that cross administrative boundaries. The prescribed bodies under Duty to Cooperate were therefore consulted in relation to the draft SPD.

In addition to the external consultation process, the draft SPD was also circulated to relevant internal Council staff inviting comments relating to their particular areas of expertise.

A total of 17 representations were made on the draft SPD.

	Organisation	Summary of Response	Council Response	Proposed Amendments to SPD
1	Canal & River Trust (Ailith Rutt)	<p>The Respondent notes that as it owns and manages a substantial network of canals within the area, it is keen to ensure that the impacts of development on the canal and their users including boaters and towpath users are fully considered and mitigated properly.</p> <p>As such the Respondent welcomes the SPD as it will provide a consistent approach to planning applications and assist in assessing the impact of developments on our waterways.</p>	Support Noted.	No change required
	Canal & River Trust (Ailith Rutt)	<p>Whilst the Respondent is generally supportive of the approach taken to classification and mitigation, it is highlighted that there is no clarification as to what 'sensitive development' within para. 4.8. would include.</p> <p>The Respondent considers that the canal network should be identified as a potentially 'sensitive development' to ensure that development acknowledge the canals as a sensitive receptor and include appropriate mitigation measures.</p>	Agree, amend paragraph 4.8 to clarify what is meant by sensitive development.	Amend paragraph 4.8 to read: "When it is proposed to locate new industry or a significant combustion installation near to existing residential development or other relevant receptor where an air quality objective applies having regard to Defra Technical Guidance, an account of the potential effects of emissions from chimneys/vents must be taken. For this purpose detailed modelling of emissions and consideration of vehicle movements and associated emissions must be made. Damage costs should be calculated and mitigation measures

				<p>commensurate with the emissions calculated shall be agreed or required by condition. Where mitigation measures are not feasible or offsetting the impact is not possible, a recommendation for refusal may be made.</p> <p>For clarity, air quality objectives should apply at all locations where members of the public might be regularly exposed; building façades of residential properties, schools, hospitals, care homes etc.; and in some specific cases hotels, gardens of residential premises, kerbside sites (such as pavements of busy shopping areas), railway and bus stations, and enclosed car parks to which the public have access, and any outdoor locations where members of the public might reasonably be expected to spend one hour or longer.”</p>
	<p>Canal & River Trust (Ailith Rutt)</p>	<p>The Respondent considers that the benefits of utilising existing Green Infrastructure, such as the canal network, as transport links should clearly be set out within the SPD.</p> <p>For example para. 4.11 sets out mitigation measures; these could include using the canal network which has the potential to provide a sustainable pedestrian / cycle network.</p>	<p>Agree to make specific reference to the use of the canal network in the mitigation measures. Rather than under paragraph 4.11 is is considered more appropriate to include this under the list of mitigation measures under</p>	<p>Amend the 5th bullet point under paragraph 5.7 to read <i>‘Improved convenient and segregated cycle paths to link the cycle network, including canal towpaths.’</i></p>

			paragraph 5.7.	
	Canal & River Trust (Ailith Rutt)	The Respondent considers that future developments should be encouraged to explore the potential of utilising the existing green network at an early stage in the development process and this could perhaps be encouraged more explicitly in the SPD, especially in Section 5.	Agree that reference should be made within the SPD to the benefit that trees and landscaping can provide as a mitigation measure for air quality.	Add a new bullet point under 'All Development' in paragraph 5.7 stating: <i>'The provision of trees and landscaping features where appropriate.'</i>
	Canal & River Trust (Ailith Rutt)	The Respondent suggests that there are opportunities within the SPD to identify further mitigation measures such as urban hedges, planting trees and making more reference to the benefits that green infrastructure and the canal network in particular can play in achieving the overall mitigation and aims of the SPD.	Agree that reference should be made within the SPD to the benefit that trees and landscaping can provide as a mitigation measure for air quality.	Add a new bullet point under 'All Development' in paragraph 5.7 stating: <i>'The provision of trees and landscaping features where appropriate.'</i>
	Canal & River Trust (Ailith Rutt)	The Respondent would seek to support monitoring during and post construction to ensure the success of the objectives set out.	Agree, add new section A1.7 at the end of Appendix 1 (air Quality Assessment Protocol)	Add new section A1.7 in Appendix 1 to read: <i>"Construction phase impacts often primarily relate to dust emissions and elevated levels of particulate matter in air expressed as PM_{2.5} and PM₁₀. In some cases construction plant and machinery may have a tangible impact, and a balanced view is necessary as to whether an air quality impact assessment which includes pre and post construction monitoring is necessary. This will need to incorporate the likelihood of both long term and short-term air quality objectives being exceeded, and should be</i>

				<i>approached on a site specific basis having regard to the location of relative receptors.”</i>
2	<p>Environment Agency Martin Ross – Planning Specialist)</p>	<p>In relation to larger installations that may cause air pollution, the Environment Agency permit these sites under the Planning and Pollution Control Regulations. Across the Black Country, the Respondent permits 60 or 70 installations, although not all are with the purpose of monitoring and controlling air quality.</p> <p>The Respondents notes in Para. 4.8 the proposed controls to be put in place for the provision of new industrial uses that may cause pollution to existing housing, the development of new housing next to existing installations can at times be missed or not considered, as appears to be the case here.</p> <p>With the high concentration of PPC permitted sites within the Black Country, coupled with the high numbers of dwellings proposed across the Local Plan period, it is inevitable that this conflict of proximity between the two may arise from time to time. The Respondent would recommend therefore, that where new housing is proposed near to these installations there should also be an assessment of the likely effects to the residents of the potential new housing development, or at the least, the Environment Agency were consulted for their opinion.</p> <p>The text in point 4.8 suggests such assessment should take place when proposals are ‘near’ to residential or other sensitive development. The Respondent suggests that clarification in terms of what near means would be beneficial, either for industrial uses near houses or the other way round.</p> <p>The Respondent notes that the Environment Agency used to be consulted where new installations were likely</p>	<p>It is considered that this issue is already captured through the existing planning policy framework and does not require additional detail within this SPD.</p> <p>However agree that for clarity it would be helpful to set out within the SPD that appropriate consultations will be undertaken with relevant stakeholders in line with national and local planning guidance.</p>	<p>Add a new sentence at the start of paragraph 4.8 as follows:</p> <p><i>‘For residential developments close to industry, or the development of industry in close proximity to existing housing, appropriate planning consultations will be undertaken with relevant stakeholders in line with national and local planning guidance.’</i></p>

		to be nearer than 250m to dwellings to give an approximation of what distance may be used. This is a fairly conservative distance, so it is suggested that it was further than that.		
3	Grainrent Ltd (Katherine Lovsey-Barton, Pegasus Group)	<p>The 4 Step Approach to Assessing Planning Proposals Step 4(Determining Suitable Mitigation Measures) (Pages 12 and 13)</p> <p>The Respondent considers that the draft SPD does not provide any evidence as to why it is necessary for all developments to provide some form of mitigation. In particular the phrase ‘render it (the development) sustainable in air quality terms’ is used (i) without any indication as to what is meant by sustainable in this context and (ii) this implies that all development is unsustainable in air quality terms regardless of what is being proposed.</p> <p>The NPPF is very clear in that there are three strands to sustainable development – economic, environmental and social – and that all three should not be undertaken in isolation. Air quality is therefore one aspects of sustainable development and consequently it is difficult to understand how such a definitive view can be taken because it is doing exactly what the NPPF says should not happen and is looking at air quality in isolation without the knowledge of any other matters.</p>	Agree that clarification is required within the SPD.	<p>Amend paragraph 4.13 to read:</p> <p><i>“Concerns arise if development is likely to generate air quality impacts in an area where air quality is known to be poor and also where the development is likely to adversely impact upon the implementation of air quality strategies and action plans. The introduction of new pollutant sources or mechanisms for producing additional air pollution is a relevant planning concern. To reduce the cumulative impact(s) of development and render it sustainable in terms of air quality, mitigation measures are required for all developments within scope irrespective of whether they are sited in an area which exceeds the air quality objectives. This sustains compliance with national air quality objectives which is a material planning consideration and is aimed at future-proofing the environment. The type of assessment, mitigation and/or compensation required for each of the development classifications (which is locationally specific) is summarised below.”</i></p>
3	Grainrent Ltd (Katherine	The Respondent notes the requirement for all residential developments to provide electric vehicle charging points.	Agree that to ensure consistency with the Dudley	Add the following 2 sentences to the bottom of

	<p>Lovsey-Barton, Pegasus Group)</p>	<p>It is noted however that this would conflict with Dudley’s adopted Parking Standards SPD (2012) because this says that for flatted developments and apartments, where parking may be some distance from the dwellings, the possibility for financial contributions may alternatively be considered in exceptional circumstances. The justification for this is that it may not always be feasible or appropriate to include the charging point requirement within flatted developments / apartments.</p> <p>The Respondent considers that if a consistent approach is not taken and the same stance is not reflected in this emerging SPD then there will be a conflicting position in Dudley because both SPDs will be relevant. If this conflict is not removed then neither SPD can be relied upon because the other one provides different guidance on the same issue. As the Parking Standards SPD is already adopted it is the emerging Air Quality SPD that should be amended.</p>	<p>Parking Standards SPD reference is required to be added setting out that for flatted development a financial contribution may be acceptable in exceptional circumstances in lieu of onsite provision of electric charging points.</p>	<p>the Table under paragraph 5.6 of the SPD:</p> <p><i>‘For flatted developments and apartments where the parking may be some distance from the dwellings, it may not always be feasible or appropriate to include the charging point requirement onsite. Therefore, in exceptional circumstance such as this, the possibility of financial contributions may be considered.’</i></p>
4	<p>Hagley Parish Council (Alexandra Burkes)</p>	<p>The Respondent highlights the effect that transient traffic between the adjoining conurbations to Dudley and the other main centres of the Black Country has on Hagley and its adopted Air Quality Management Area (AQMA). The AQMA has monitored NOx emissions since 2009 with a number of monitoring points showing in excess of the regulation maximum of 40 NOx.</p> <p>The Respondent considers that this effect is pronounced by the attraction of Merry Hill Shopping Centre and the recent announcement that Brierley Hill is to be given investment to create its own Enterprise Zone. This means that there is significant pressure on the already congested A456 and A491, this intersection is considered by the Respondent to be the busiest A Road network in Worcestershire and amongst the busiest in Birmingham and the Black Country.</p>	<p>The Respondent’s comments are of a strategic nature and are considered to be outside the scope of the SPD.</p> <p>The Respondent’s comments have been passed to Dudley Council’s Highways Service for consideration.</p>	<p>No change required</p>

4	Hagley Parish Council (Alexandra Burkes)	<p>The Respondent is concerned with the effect of poor air quality, particulate matter and general ill effects of air pollution and traffic pollution throughout Hagley and asks that positive measures are taken to support pollution eradication as in the direction of recent EU pressure on the UK Government.</p> <p>The Respondent asks that the SPD takes positive action to relieve traffic flows through Hagley enroute to the Black Country through:</p> <ul style="list-style-type: none"> • Investment in Public Transport • Investment in congestion mitigation along the A456 and A491 in Hagley • Air Quality improvements in Hagley • Investment provided to Hagley Parish Council to manage highways improvements in conjunction with Worcestershire Highways • Alternative routes to popular destinations in the Black Country being advertised and encouraged. <p>The Respondent would welcome the opportunity to engage in more detailed discussion as part of the development of the SPD in coming months.</p>	<p>The Respondent's comments are of a strategic nature and are considered to be outside the scope of the SPD.</p> <p>The Respondent's comments have been passed to Dudley Council's Highways Service for consideration.</p>	<p>No change required</p>
5	Highways England (Patricia Dray, Asset Manager)	<p>The Respondent notes that the Strategic Road Network (SRN) (for which it is responsible for its operation and maintenance) is a critical national asset and as such the Respondent works to ensures that it operates and is managed in the public interest which includes preventing locations in the vicinity of the SRN from breaching national air quality objectives.</p> <p>The Respondent notes that the SPD identifies hotspots, where national air quality objectives are being breached, which include part of the SRN on the M6 Motorway and some sections of the M5 Motorway.</p>	<p>Comments Noted</p>	<p>No change required</p>
5	Highways England	<p>Highways England acknowledges that Councils within the Black Country wish to encourage sustainable</p>	<p>Comments Noted</p>	<p>No change required</p>

	(Patricia Dray, Asset Manager)	development through more stringent use of the planning process. The Respondent recognises their own contribution to that process will assist in improving the integration between existing land-sues and new development.		
5	Highways England (Patricia Dray, Asset Manager)	The Respondent agrees with the model approach that is advocated and which aims to integrate air quality consideration into spatial planning policies. It should be appreciated that this new approach would require mitigation features and, in some case, compensation in relation to some development proposals.	Comments Noted	No change required
5	Highways England (Patricia Dray, Asset Manager)	The Respondent agrees that Air Quality Assessments must address potential cumulative impacts resulting from development proposals in the vicinity of other new development proposals, believing that the changes in modelling approach will contribute to a better understanding of impacts and will allow the design of appropriate mitigation measures.	Comments Noted	No change required
6	Historic England (Rosamund Worrall, Historic Environment Planning Advisor (West Midlands))	Historic England agrees with the conclusion of the screening exercise that an SEA is not required in respect of the Black Country Air Quality SPD.	Comments Noted	No change required
6	Historic England (Rosamund Worrall, Historic Environment Planning Advisor (West Midlands))	The Respondent welcomes the joint approach to producing an air quality strategy for the Black Country, which has a rich and varied historic environment, since poor air quality can have an adverse impact on the condition of the historic environment. On the basis of the current content of the Air Quality SPD, Historic England has no concerns or other comments to make at this stage.	Support Noted	No change required
7	Intu Properties plc (Nick Hollands, Principal Planning	As a significant stakeholder in the locality and potential major developer in coming years, Intu welcomes the opportunity to comment of the SPD as this covers a relevant facet of the future development process.	Noted	No change required

	Consultant, Paris Smith LLP)			
7	Intu Properties plc (Nick Hollands, Principal Planning Consultant, Paris Smith LLP)	The Respondent considers that the draft SPD does not make clear the specific range of factors that constitute 'damage' as represented by the cost, i.e. damage in what respects and to what factors and interests? It is also not made clear if the cost benefit information was devised with any specific intention that it might be applied in the town planning context.	The respondent's comments are dealt with in Defra publication: <i>"Valuing impacts on air quality: Updates in valuing changes in emissions of Oxides of Nitrogen (NOX) and concentrations of Nitrogen Dioxide (NO2) September 2015"</i> This document provides clarification and therefore a link has been added to Appendix 3.	Appendix 3 links added: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460401/air-quality-economic-analysis-nitrogen-interim-guidance.pdf http://laqm.defra.gov.uk/review-and-assessment/tools/emissions-factors-toolkit.html
7	Intu Properties plc (Nick Hollands, Principal Planning Consultant, Paris Smith LLP)	The Respondent considers that whilst the draft SPD indicates that the 'damage cost' factor 'can be used to determine the level' of mitigation and/or compensation, it is not clear whether it would be used as a general guide, or as a firm financial target to be fulfilled through specific measures and/or financial contributions. If the latter (i.e. a firm financial target) the Respondent considers that this may be unreasonable in that one of the three essential dimensions of sustainable development is the economic role, together with social and environmental. To perform an effective economic role in sustainable development, it is likely that many forms of major development will have some environmental impacts, including on air quality.	The impact of a proposed development and its associated damage costs will be based upon the outcomes of any air quality assessments undertaken in relation to the proposed development. Assessments should summarise air quality impacts (and associated costs) and propose mitigation measures for consideration by individual Planning Authorities.	Updated Appendix 3
7	Intu Properties plc (Nick Hollands, Principal Planning Consultant, Paris	The Respondent suggests that without further explanation of its application, the 'damage costs' aspect should be removed from the approach put forward in the draft SPD and any necessary mitigation/compensation negotiated, as appropriate, in the light of the individual circumstances and assessed impacts of the major	Defra provides detailed guidance explaining how impacts on air quality should be incorporated into cost benefit analysis. Links to this and other information	Updated Appendix 3 -link added https://www.gov.uk/guidance/air-quality-economic-analysis

	Smith LLP)	development in question.	resources is provided at: https://www.gov.uk/guidance/air-quality-economic-analysis	
7	Intu Properties plc (Nick Hollands, Principal Planning Consultant, Paris Smith LLP)	<p>The Respondent considers that special care is necessary in addressing the air quality impacts of major retail or other related town centre development. In particular, it is considered important that any emissions impact is assessed as far as possible as a <u>net</u> quantity.</p> <p>This is because if major retail and related development with the necessary infrastructure was to be proposed at a main centre in the development plan, it is to be hoped this would compete positively with existing primarily car served development in out of centre locations.</p> <p>The Respondent considers that this trade redistribution, whilst potentially resulting in some additional traffic and possible emissions in the locality of the recognised centre to be enhanced, could significantly reduce traffic and emissions elsewhere. Indeed, in net terms, the Respondent considers that an overall reduction in emissions is conceivable when considered on an appropriately broad canvas.</p> <p>The Respondent considers that if such positive net effects overall were to be identified in a transport assessment for a major retail development, these should be fully taken into account in determining any necessary mitigation/compensation related to air quality. This aspect should be acknowledged in the SPD.</p>	<p>The impact of a proposed development and its associated damage costs are based upon the outcomes of any air quality assessments undertaken in relation to the proposed development.</p> <p>Developers may wish to interpret assessment results and should do so in the summary section that deals with air quality impacts arising.</p> <p>Appropriate air quality assessment protocols (Appendix 1) should be followed.</p>	Updated Appendix 3
8	Lichfield District Council (Ashley Baldwin – Spatial Planning and Delivery Manager)	The Respondent notes that as the draft SPD largely adopts the work undertaken by the Low Emissions for Towns and Cities Programme towards within the District Council has contributed, the Respondent has nothing to add regarding the technical aspects of the draft SPD	Noted.	No change required.
8	Lichfield District Council	The Respondent considers that parity is required across the black Country's CIL policies as set out in paragraphs	Paragraphs 5.22-5.23 relate to dealing with exceptional	No change required.

	(Ashley Baldwin – Spatial Planning and Delivery Manager)	5.22-5.23 of the SPD. The exceptional circumstances relief is at the discretion of the CIL charging authority and the respondent considers that the SPD appears to contradict Sandwell’s CIL which apparently has no ‘exemptions, relief and exceptional circumstances’ or ‘in kind’ policies.	<p>circumstances in relation to viability and not in relation to CIL.</p> <p>The references to CIL within the SPD (paragraphs 5.20-5.21) purely explain what CIL is and do not make specific reference to any particular CIL Charging regimes.</p> <p>As such it is considered that there is no contradiction within the SPD to any CIL Charging Schedules within the Black Country.</p>	
9	Natural England (Grady McLean, Lead Adviser – Sustainable Development)	The Respondent considers that the topic of the SPD does not appear to relate to their interests to any significant extent. As such the Respondent does not wish to comment.	Noted	No change required.
9	Natural England (Grady McLean, Lead Adviser – Sustainable Development)	Natural England agrees with the conclusion of the screening exercise that an SEA is not required in respect of the Black Country Air Quality SPD.	Noted	No change required.
10	Air Quality Consultants (Penny Wilson)	<p>Whilst appreciating that the Protocol has been taken directly from the West Midlands Low Emissions Good Practice Air Quality Planning Guidance, the Respondent considers that one of the requirements is no longer considered good practice.</p> <p>It requires that the assessment includes “a sensitivity test which assumes that there will be no reduction in traffic related emission factors from the baseline year.” This approach was originally conceived by Air Quality Consultants some years ago in the absence of any specific information about on-road vehicle emissions</p>	Agree.	<p>Amend the wording relating to a Sensitivity Test within Appendix 1 from:</p> <p><i>'A sensitivity test which assumes that there will be no reduction in traffic related emission factors from the baseline year'</i></p> <p>To be replaced by:</p>

		<p>and has since been adopted by a number of Local Authorities and practitioners.</p> <p>Since that time, testing of on-road vehicles has been carried out and more information has become available. In light of this new information, Air Quality Consultants has developed a new approach to sensitivity testing predicted concentrations in a future year, which suggests that the approach recommended in the West Midlands Guidance is unnecessarily pessimistic. Further information is available at: www.aqconsultants.co.uk/News/February-2016/New-Sensitivity-Test-for-NOx-Emissions-from-Euro-6.aspx</p>		<i>'A sensitivity test shall be carried out using real world emission data in line with current best practice'</i>
10	Air Quality Consultants (Penny Wilson)	The Respondent notes that the Damage Costs presented in Appendix 3, Table 2, are not the most recent available.	Noted and amended	Updated Appendix 3 - out of date information removed and new links provided
11	Road Haulage Association (Rhys Williams, Area Manager)	The Respondent considers that a flourishing road haulage sector is an essential part of the Black Country economy, with transport and logistics being a very significant component of the economy in the Midlands, as well as being a major employer. Trucks deliver goods to commercial enterprises, the general public, and to public sector bodies such as schools and hospitals. As such the Respondent urges the authorities of Dudley, Sandwell, Walsall and Wolverhampton to do what they can to support the industry as this process progresses.	Comments Noted	No change required.
11	Road Haulage Association (Rhys Williams, Area Manager)	The Respondent accepts that the Black Country authorities must take action and notes that as a consequence of a Supreme Court case last year, DEFRA has written to all local authorities seeking their co-operation in achieving compliance with the air quality standards.	Support Noted	No change required.
11	Road Haulage Association (Rhys Williams, Area Manager)	The Respondent welcomes the acknowledgement on page 6 that a commitment to improve air quality must be balanced against other aims of the planning system in order to achieve social, economic and environmental goals, and request that the contribution of the haulage	Comments Noted	No change required.

		sector as an essential support to business and also as a major employer is borne in mind as the strategy develops.		
11	Road Haulage Association (Rhys Williams, Area Manager)	<p>The Respondent understands the approach taken in the draft SPD in terms of classifying proposals which are likely to have major air quality impacts.</p> <p>However the Respondent stresses that any development such as the creation or enlargement of an industrial estate or of a freight consolidation centre could have massive benefits for the economy of the Black Country in terms of employment, as well as allowing for HGVs to be routed away from urban and residential centres, meaning that 'last mile' freight can be transported using lower emissions vehicles.</p> <p>The Respondent states that in some situation the optimal solution is to route HGV traffic away from population centres, which will result in truck traffic on some diversion roads increasing beyond 10% of total trips. In the view of the Respondent, such options should not be ruled out simply because truck traffic increases significantly on certain roads, if the routing has overall benefits in terms of improving traffic flow on other roads and reducing emissions near centres of population.</p> <p>The Respondent urges the Black Country authorities to build consideration of the possibility of such positive outcomes from development into its thinking, and to avoid too narrow a view of what is likely to constitute welcome development that will have a negative air quality impact.</p>	Comments Noted	No change required.
11	Road Haulage Association (Rhys Williams, Area Manager)	The Respondent notes from page 15 of the draft SPD that there is an intention to create travel plans that seek to discourage high emission vehicles and encourage modal shift. The Respondent stresses that without significant investment in infrastructure and alternative technologies, road freight is likely to remain the	Comments Noted	No change required.

		dominant mode, and so facilitating truck movements in order to support trade and employment will remain crucial if the economy of the Black Country is to thrive.		
11	Road Haulage Association (Rhys Williams, Area Manager)	<p>The Respondent has concerns that the Black Country authorities should not underestimate the impact of a push to adopt low emission vehicles on smaller hauliers, if the drive is too fast and undertaken without consulting these businesses about their capacity to adapt, including an assessment of the financial resources to which they have access, and their business cycles for replacing existing higher emitting vehicles.</p> <p>The Respondent makes reference to the fact that purchasers of new trucks must comply with the Euro VI standard which was introduced in 2014, so progress is already being made in the sector.</p>	<p>Comments Noted</p> <p>Each development proposal will be assessed individually and all relevant circumstances will be considered, including those raised by the Respondent, before mitigation measures are agreed.</p>	No change required.
11	Road Haulage Association (Rhys Williams, Area Manager)	<p>The RHA supports the use of consolidation centres on the outskirts of population centres, where HGVs come off the motorway, before goods are transferred onto smaller trucks or vans before they are sent to their final destination. However we would point out that consolidation centres may not be appropriate as a solution in all circumstances since a large numbers of lighter vans might be required to replace large trucks, and these vans could generate much more air pollution, as well as creating more congestion, unless the process of introducing low emission vehicles of all types is properly handled.</p> <p>It is also worth saying that without the co-operation of the customers of delivery firms, coordination of deliveries may be difficult to achieve since hauliers respond to customer demand, and do not set the schedules themselves.</p> <p>Therefore it is important to state that if the plan does not take into account the delivery and collection patterns of businesses, it is possible that the economy of Black</p>	<p>Comments noted, however this is outside the scope of this SPD.</p>	No change required.

Country will be disrupted, and if this happens there could be an impact on employment.

The Respondent asks that consideration is given to the lifting of any night-time delivery restrictions which force truck operators to use the roads at the most congested times. If vehicles can deliver to retail premises and depots in off-peak hours then trucks will not be on the roads at the busiest periods and so there should be air pollution reduction and carbon saving, as well as road safety benefits.

The Noise Abatement Society ran a number of quiet delivery trials from 2009/11, which demonstrated that such initiatives could work very well. Details of the scheme can be found by clicking on the link.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4007/quiet-deliveries-demo-scheme-final-project-report.pdf

The Department for Transport has produced quiet deliveries good practice guidance for local authorities, as well as hauliers, which you can find by going to the link below.

<https://www.gov.uk/government/publications/quiet-deliveries-demonstration-scheme>

Vehicle manufactures are meeting the demand to supply clean, quiet vehicles aimed at night time delivery reducing the need for smaller vehicles to be involved last mile & out-of-hours deliveries. An example of such vehicles can be found here:

<http://www.daf.com/en/news-and-media/articles/global/2014/28-08-2014-daf-presents-extra-quiet-cf-distribution-truck>

In summary the RHA suggests that the involvement of

		businesses across the Black Country which receive as well as deliver goods is essential if the initiative is to achieve a significant improvement in air quality.		
11	Road Haulage Association (Rhys Williams, Area Manager)	<p>For some time the RHA has provided information to its members about the available low-emission technologies and so would be keen to work with the Black Country councils to help hauliers switch to less polluting vehicles in a time frame that does not make their businesses unviable.</p> <p>Hauliers and other commercial vehicle operators need certainty about low emission proposals so that they can make proper vehicle purchasing decisions. Uncertainty about the business environment could have a negative impact on the haulage sector with knock-on consequences in terms of employment within the sector in the area.</p>	Comments Noted	No change required.
11	Road Haulage Association (Rhys Williams, Area Manager)	The RHA welcomes any initiatives to encourage eco driver training, and confirms that many RHA members already have eco driving integrated into their operations.	Agree that it would be appropriate to add eco driver training as a possible mitigation measure under Paragraph 5.7	<p>Add new bullet point under the section in Paragraph 5.7 on 'Commercial Development – additional types of mitigations' to read:</p> <p>'Eco driver training for drivers of commercial vehicles.'</p>
11	Road Haulage Association (Rhys Williams, Area Manager)	The Respondent suggests that in terms of traffic management, they would like to see proposals pursued to upgrade IT systems in order to provide improved real time travel information that will help traffic flow smoothly, instead of stopping and starting. Hauliers have themselves already embraced the use of intelligent transport technologies which help in the efficient running of their businesses, and are likely to reduce congestion. In particular we suggest that traffic light phasing is considered, since proper phasing can help smooth traffic flow, which in turn helps to reduce congestion and pollution.	Comments noted, however this is outside the scope of this SPD.	No change required.

		<p>The Respondent also stresses that the proper positioning of road signs is of crucial importance to truck drivers, as well as other motorists. Good signage helps drivers to find correct places to park and load, but also to avoid the risk of missing turnings and, for example, hitting low bridges because signs are in the wrong place, because they are positioned too close to bridges so high vehicles have insufficient time to turn away. Therefore proper signage helps to reduce congestion, and so will have an impact on emissions reduction as well as business efficiency.</p> <p>The Respondent notes that recent research from the RAC Foundation has found that some 2,375 local authority maintained bridges are not fit to carry the heaviest vehicles, including lorries of up to 44 tonnes which inevitably leads to trucks having to take longer routes, with the related extra pollution effects.</p> <p>The Respondent hopes that efforts are made to identify congestion hot-spots as well as the rat-run routes that are used by trucks when main roads are too busy, so that any new infrastructure development can act to relieve existing problems since dealing with and minimising congestion can help reduce carbon emissions and air pollution.</p>		
12	Walsall Group of the Ramblers (Dick Turton)	The Respondent welcomes all efforts to control air quality both within Walsall and across the Black Country as a whole.	Support Noted.	No Change Required.
12	Walsall Group of the Ramblers (Dick Turton)	As a walking organisation, the Respondent notes that the Group always encourages walking as an alternative to other transport options where this is feasible, since it not only reduces the number of short car journeys that need to be made, and thus the associated impact on air quality, but also serves to provide healthy exercise for both children and adults which can be a great benefit to them in later life.	Noted	No Change Required
12	Walsall Group of	The Respondent considers that establishing additional	Agree. Encouraging links to	Add additional bullet point

	the Ramblers (Dick Turton)	<p>walking / cycling routes to new high impact developments are generally not something that can be achieved in isolation when a specific site is created, but something that requires integration into the wider expansion and re-development of the entire borough.</p> <p>With references to the Group's involvement in the provision of new Rights of Ways (ROWs) on new housing estates and protecting and maintaining existing ROWs, the Respondent considers that this type of action needs to be continued.</p> <p>As such the Respondent suggests that when a future site is being considered for development and mitigation is going to be required, suitable walking/cycling routes can be more easily implemented through established ROWs so that safe, well-maintained, lit and clearly marked alternative routes to work and school etc are easily implemented.</p>	existing Rights of Way (ROW) can improve opportunities for walking and thus be a practical mitigation measure for new developments.	<p>under 'All Development' within paragraph 5.7 to state:</p> <p>'Encourage links to existing Rights of Way (ROW) in order to improve opportunities for walking.'</p>
13	West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)	<p>Overall, the SPD on Air Quality is supported by the ITA and it clearly sets out an approach to tackle air quality issues and mitigate any problems arising from transport emissions.</p> <p>However there are areas where the ITA would support a more positive partnership working with the Black Country local authorities to develop further the sustainable transport options to improve air quality.</p>	Comments Noted	No Change Required
13	West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)	The ITA are extremely supportive of this chapter but would like to see reference being made to the importance of reducing the environmental impacts of transport and the promotion of more sustainable access for people within the region.	Accept.	<p>Add additional sentence at the end of paragraph 2.10 to state:</p> <p>'This includes reducing the environmental impacts of transport and the promotion of more sustainable access for people within the region.'</p>
13	West Midlands	Despite the chapter making clear the importance of	Agreed that it would be helpful	Add two new paragraph after

<p>Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)</p>	<p>managing the transport impacts of new developments and the role of transport in meeting air quality targets, the ITA feel that a stronger link to ITA policy should be acknowledged and thus, the following policy documents should be noted in the SPD:</p> <p>West Midlands ITA’s Strategic Transport Plan ‘Movement for Growth’</p> <p>Consideration should be given to this approved plan which covers a 20 year time period (http://wmita.org.uk/strategy-and-publications.aspx) which sets out the overarching transport strategy and sets out targets to reduce air quality impacts from transport. The Respondent provides examples of air quality related policies within the Strategic Transport Plan:</p> <p>Our Vision</p> <ul style="list-style-type: none"> • Reduce transport’s impact on our environment – improving air quality, reducing carbon emissions and improving road safety <p>Economic Growth and Economic Inclusion</p> <ul style="list-style-type: none"> • Policy 1 – To accommodate increased travel demand by existing transport capacity and new sustainable transport capacity. <p>Environment</p> <ul style="list-style-type: none"> • Policy 9 – To significantly improve the quality of the local environment <p>Public Health</p> <ul style="list-style-type: none"> • Policy 11 – To significantly increase the amount of active travel in the West midlands Metropolitan Area • Policy 13 – To assist with the reduction of health inequalities in the West Midlands Metropolitan Area 	<p>to make reference to the approved Strategic Transport Plan and the emerging Transport Emissions Framework within Section 3 of the SPD.</p>	<p>3.9 as follows:</p> <p>‘West Midlands Integrated Transport Authority (ITA) Strategic Transport Plan ‘Movement for Growth’</p> <p>Setting out the overarching transport strategy for the next 20 years, this Plan sets out targets to reduce air quality impacts from transport. https://westmidlandscombine.dauthority.org.uk/media/1178/2016-06-01-mfg-full-document_wmca.pdf</p> <p>West Midlands Transport Emissions Framework</p> <p>This emerging framework signifies the increased importance of air quality and builds upon the current work being undertaken by the various authorities in the West Midlands as well as the Government, businesses, freight and transport operators and the wider public sector, communities and commuters.’</p>
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		<p>West Midlands Transport Emissions Framework</p> <p>The Framework signifies the increased importance of air quality in the transport agenda and should be noted in the SPD. The Framework builds on the current work undertaken by the various authorities in the West Midlands as well as the Government, businesses, freight and transport operators and the wider public sector, communities and commuters.</p>		
13	<p>West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)</p>	<p>Combined Authority policies on Air Quality</p> <p>The Respondent considers that as the area enters into a Combined Authority, a more co-ordinated regional approach is required to tackle air quality issues and improve overall transport emissions. The West Midlands Transport Emissions Framework will understand the wider transport impact on air quality and also land use planning, environmental control, public health and energy policy agendas and aligned to the move to a Combined Authority and Devolution Deal, which states:</p> <p><i>“The West Midlands Combined Authority Shadow Board will bring forward proposals for potential inclusion in the West Midlands Mayoral Parliamentary Order that would enable the West Midlands Mayor and West Midlands Combined Authority to implement Low Emission Zones and potentially Clean Air Zones in the West Midlands Combined Authority area ... to achieve Air Quality Plan objectives at both the national and local level.”</i></p> <p>The Combined Authority approach will use a similar style ‘London Transport Emissions Roadmap – Cleaner transport for a cleaner London’ developed by TfL. This Roadmap outlines 10 measures to be addressed. http://content.tfl.gov.uk/transport-emissions-roadmap.pdf</p> <p>A combined authority approach will also provide more consistency across the Black Country and wider</p>	<p>Agree that reference to the West midlands Combined Authority and the emerging approach would assist in setting the context of the SPD.</p>	<p>Add two new paragraphs between paragraphs 2.6 and 2.7 to read: <i>“Achieving a fully integrated rail and rapid transit network that connects main centres is a key theme for the West Midlands Combined Authority. By delivering this, it is intended the impact of transport on the environment will be reduced, so improving air quality. The resulting transport network will enable more efficient movement goods freight.</i></p> <p><i>It is also intended to develop a West Midlands Metropolitan Area Transport Emissions Framework in partnership with local councils to ‘clean’ transport networks and tackle air quality problems. Making progress to provide clean air and tackling poor air quality are key policy objectives within the West Midlands</i></p>

		<p>Metropolitan area particularly concerning mapping and modelling of air quality.</p> <p>The Respondent notes that each of the Nitrogen Dioxide Exceedence Maps applies a different format / style and a metropolitan wide map, and suggests that a map highlighting all areas of Nitrogen Dioxide Exceedence would provide more consistency.</p>	<p>Agreed, a Black Country wide map will be incorporated into the SPD to replace the 4 individual maps.</p>	<p><i>Strategic Transport Plan “Movement for Growth”, and has direct links to strategic Public Health initiatives.”</i></p> <p>Appendix 4 to be updated with Black Country Wide map, replacing the 4 individual maps in the draft SPD</p>
13	<p>West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)</p>	<p>The Respondent has concerns that the air quality monitoring is inconsistent across the metropolitan area. For example Birmingham and the Black Country use different models, therefore identifying how we can develop a standard evidence base to record and monitor air quality is a principle the Combined Authority want to explore over the coming years.</p>	<p>Noted, however this is outside of the scope of the SPD.</p> <p>The Black Country Councils have a consistent approach to monitoring air quality.</p>	<p>No Change required.</p>
13	<p>West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)</p>	<p>The Respondent suggests reference is made to the Metropolitan Main Road Network (also known as the Key Route Network) which has been defined by the Combined Authority and will consider the air quality and carbon emissions impacts. The Key Route Network will serve the main strategic demand flows of people and freight across the metropolitan area, and provide connections to the National Strategic Road network. It will also support highway capacity effectively to cater for movement by rapid transit and core bus route, the Metropolitan Cycle Network, lorries, vans and private cars.</p>	<p>Agreed, reference to the Metropolitan Main Road Network will be incorporated into the SPD.</p>	<p>New paragraphs 3.12 and 3.13 added to read:</p> <p>The West Midlands Key Route Network (WM KRN)</p> <p>As part of the West Midlands Combined Authority (WMCA) Devolution Deal, the Mayoral role seeks functions under the Road Traffic Regulation Act to enable a WM KRN to be statutorily defined. The government will thus work with the WMCA to establish any appropriate local traffic and highway powers to be conferred as part of the KRN.</p>

In doing so this will enable Orders to be designated (such as 'Safer Vehicles', 'Air Quality', 'Moving Traffic Violation') that are uniquely identified for the WM KRN, or the equivalent provisions sought in order to allow the WMKRN of local authority roads to be strategically managed and coordinated at the West Midlands Metropolitan level, with joint asset management and procurement.

The Mayor of the CA will exercise powers - with personal accountability to the electorate - devolved from central government and set out in legislation. This incorporates an over-arching responsibility for an identified KRN of local authority roads that will be collaboratively managed and maintained at the Metropolitan level by the Combined Authority.

In the context of local air quality, the Mayor and the Mayoral West Midlands Combined Authority will have the power to create Low Emissions Zones and Clean Air Zones, with the affected highway authority(ies)

				consent. A joint WMCA/Mayoral function, and the devolution agreement accordingly includes a provision for reporting on the WM KRN.
13	West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)	The ITA support this chapter but request that additional measure be included under paragraph 4.11 : <ul style="list-style-type: none"> • Stronger emphasis on active travel measures including the development of the Metropolitan Strategic Cycle Network - linked to the ITA Cycle Charter and Strategic Transport Plan together with the emerging Black Country Cycling and Walking Strategy; • A stronger view by the Black Country on developing a Clean Air Zone as well as Low Emission Neighbourhoods and Green Travel Districts; and • Establishment of car clubs within new developments. 	The SPD already makes reference to improving cycle paths to link the cycle network (para. 5.7) and car clubs (para. 5.11) as possible mitigation measures. Until the designation of Clean Air Zones is adopted it is considered premature and inappropriate to include this within the SPD.	No Change required.
13	West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)	The Respondent strongly welcomes the measures proposed in chapter 5 for minimising unacceptable air quality, and suggests a number of additional measures that are proposed within the West Midlands Transport Emissions Framework be noted in this chapter: <ul style="list-style-type: none"> • Developing and adopting agreed metropolitan wide policies and actions for Low Emission Zones or Clean Air Zones - in specific and suitable locations such as town centres; • Bus Alliance Emission objectives through the ITA Bus Alliance and the West Midlands Low Emissions Bus Delivery Plan; • Making traffic management and regulation smarter through a West Midlands Key Route Network (KRN); • Metropolitan wide targets for the cleaning of public 	Agree that reference to the West Midlands Transport Emissions Framework is required within the SPD. As and when the emerging West Midlands Transport Emissions Framework is adopted across the Black Country relevant initiatives set out within this Framework can and will be sought. To this end Paragraph 5.11 of the SPD already states that other mitigation measures within Low Emission Strategies may	Add new paragraph after 3.9 as follows: West Midlands Transport Emissions Framework This emerging framework signifies the increased importance of air quality and builds upon the current work being undertaken by the various authorities in the West Midlands as well as the Government, businesses, freight and transport operators and the wider

		<p>and commercial fleets;</p> <ul style="list-style-type: none"> • Active travel measures and the development of the Metropolitan Strategic Cycle Network - linked to the ITA Cycle Charter, Strategic Transport Plan and emerging Black Country Walking and Cycling Strategy; • Policies towards zero emissions taxi and private hire fleets; • Low Emission Neighbourhoods and Green Travel Districts; and • Consistent recording and monitoring practices across the Metropolitan area. 	<p>be required, relevant to a particular development.</p> <p>As the Strategy is still emerging it is considered inappropriate at this point to add specific initiatives into the SPD.</p>	<p>public sector, communities and commuters.'</p>
13	<p>West Midlands Integrated Transport Authority (ITA) (Helen Davies, Economic Development and Social Cohesion)</p>	<p>The WMITA would like to reiterate their support for the partnership approach that has been taken to addressing the strategic transport needs of the plan and the wider area and would welcome further dialogue as this plan develops.</p> <p>The Respondent is also keen to explore funding mechanisms available through the planning system to make improvements to improving air quality, together with a delivery framework in partnership with Local Authorities, Stakeholders and Government.</p>	<p>Noted</p>	<p>No Change required</p>
14	<p>Andrew Whittles</p>	<p>The Respondent notes that Defra updated the damage costs for NOx last September to reflect increased awareness of health impacts of NO2 – which suggests as an inner conurbation you a figure of £61,000 per tonne rather than £955 - see below:</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460401/air-quality-econanalysis-nitrogen-interim-guidance.pdf</p>	<p>Noted and amended</p>	<p>Updated Appendix 3 - out of date information removed and new links provided</p>
14	<p>Andrew Whittles</p>	<p>The Respondent suggests that for fleet operations the SPD should say current Euro Standard rather than current and previous. Euro VI came in at the end of 2013 - if you have an application say for a supermarket it will probably open in 2018</p>	<p>Agree.</p>	<p>Amend the section on Commercial Development – additional types of mitigation under paragraph 5.7 from: <i>'All commercial vehicles</i></p>

		<p>- Euro VI will be 5 yrs old which is reasonable rather than including Euro V which will be 9 years.</p>		<p><i>should comply with either current or previous European Emission Standards from the development opening, to be progressively maintained for the lifetime of the development; ‘</i></p> <p>To: <i>‘All commercial vehicles should comply with current European Emission Standards from the development opening, to be progressively maintained for the lifetime of the development; ‘</i></p>
14	Andrew Whittles	<p>The Respondent notes that the SPD should be specifying low NOx boilers as type 1 mitigation (cf reference in para. 100 Defra Plans to improve AQ)</p>	<p>Agree that it is appropriate to make reference to low NOx boilers within the SPD, including within Paragraphs 4.14, 5.5 and Appendix 6.</p>	<p>Amend Type 1 mitigation in paragraphs 4.14 and 5.5 to include low NOx boilers as follows:</p> <p>4.14 The required mitigation is summarised as: <input type="checkbox"/> Type 1 – Electric Vehicle charging points, the installation of low NOx boilers and the adoption of an agreed protocol to control emissions from construction.</p> <p>Type 1 – Electric Vehicle Charging Points and Low NOx Boilers</p> <p>5.5 As a minimum, new developments should include the provision of electric</p>

				<p>vehicle charging points, the installation of low NOx boilers plus any mitigation requirements arising from the exposure assessment where applicable.</p> <p>New example planning condition to be added to Appendix 6 as follows:</p> <p>In order to minimise the impact of the development on local air quality any gas boilers provided must meet a dry NOx emission concentration rate of <40mg/kWh. The specification of the gas boiler(s) shall be submitted to and approved in writing by the Local Planning Authority before they are fitted and the approved specification shall be implemented prior to the first occupation of the development and shall be maintained for the lifetime of the development.</p>
14	Andrew Whittles	The Respondents suggests that for major schemes that contribute to key LES/AQ mitigation measures ie low emission buses, damage costs are calculated based on the first year of operation only rather than aggregating 5 years (as per West Yorkshire Guidance)	Noted and wording amended	Appendix 3 text amended: “The road transport emission increase should be calculated in accordance with Defra guidance up to a maximum of 5 years”.
15	Woodland Trust (Justin Milward, Lead	The Respondent is disappointed that Chapter 5 makes no reference to the important role that the natural environment and/or green infrastructure – such as trees	Comments Noted. Agree that reference should be	Add a new bullet point under ‘All Development’ in paragraph 5.7 stating:

	<p>Government Affairs Officer – Local)</p>	<p>and woodland – can play in contributing to good air quality. The Respondent notes that the only references in the SPD are in paragraphs A4.11 and A4.12.</p> <p>The Respondent notes that Trees can improve air quality through the adsorption of particulates from vehicle emissions and other sources – such that it has been estimated that doubling the tree cover in the West Midlands alone would reduce mortality as a result of poor air quality from particulates by 140 people per year. (Stewart, H., Owen S., Donovan R., MacKenzie R., and Hewitt N. (2002). Trees and Sustainable Urban Air Quality. Centre for Ecology and Hydrology, Lancaster University).</p> <p>The Woodland Trust has published a report on how trees can specifically help improve air quality – see Urban Air Quality - https://www.woodlandtrust.org.uk/publications/2012/04/urban-air-quality/.</p> <p>Urban heat island: Trees and woods can also reduce the impact of the ‘urban heat island effect’ which occurs when hard surfaces in summer act as giant storage heaters, absorbing heat during the day and releasing it at night. Dramatic summer temperature differences of as much as 10°C between London and its surrounding areas have been recorded, which in turn exacerbate the symptoms of chronic respiratory conditions. Projections suggest this problem will get markedly worse. A study by the University of Manchester has shown that increasing tree cover in urban areas by 10% could decrease the expected maximum surface temperature in the 2080s by up to 4°C (Handley, J and Carter, J (2006) Adaptation strategies for climate change in the urban environment, Draft final report to the National Steering Group, Centre for urban and regional ecology, University of Manchester). This will also help mitigate</p>	<p>made within the SPD to the benefit that trees and landscaping can provide as a mitigation measure for air quality.</p>	<p><i>‘The provision of trees and landscaping features where appropriate.’</i></p>
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the effect of poor air quality in summer heatwaves.

Some local authorities are already adopting good policy wording reflecting the positive role that trees can play for air quality –

Stroud District Local Plan (adopted November 2015) sets out that –

***Paragraph 6.66** Natural greenspaces are very important to our quality of life. They provide a wide range of benefits for people and the environment.*

.....In addition to their potential ecological value, greenspaces also help us adapt to changes in climate through their role in reducing the risk of flooding and by cooling the local environment. Where trees are present they also act as filters for air pollution. Nature nearby is good for people, good for wildlife and good for the environment.

Poole Town Centre - Supplementary Planning Document (Adopted December 2015) states that

Green the town

Green infrastructure enhances the visual appearance, perceptions of quality, and sustainability, of places.

- Trees can help reduce the impact of “urban heat islands”, where hard surfaces soak up heat in summer during the day and release it at night. This has been found to adversely impact health.*
- Trees absorb particulates from vehicle emissions and other sources and help improve air quality.*
- Suitable trees should be planted where space is limited.*

To conclude the Respondent would like to see the Black Country Air Quality SPD include a reference to the beneficial support that trees and woods can give to

		improving air quality and also to support more tree planting in the Black Country for this outcome.		
16	Worcestershire Regulatory Services (Chris Poole, Senior Technical Officer – Land and Air Quality Team)	<p>Worcestershire Regulatory Services (WRS) undertakes Local Air Quality Management on behalf of Bromsgrove District Council (BDC). An Air Quality Management Area (AQMA) was declared in Hagley in 2010, bordering the LA boundary with Dudley MBC.</p> <p>Due to this proximity, the Respondent considers that future development plans within Dudley MBC have the potential to impact on the Hagley area and WRS, on behalf of BDC, request that Dudley MBC advise and consult Bromsgrove DC Local Planning Authority on any development that could materially impact Hagley AQMA.</p> <p>The Respondent notes that within the appendices of the Black Country AQ SPD that there is reference to an ‘emerging Dudley Borough Development Strategy’ and WRS request that Bromsgrove District Council are consulted on this document, and any other future Dudley MBC Local Plans, when finalised.</p>	<p>Comments Noted.</p> <p>As a neighbouring authority, Bromsgrove District Council are consulted on all Dudley Council Planning Policy Consultations and will continue to be so.</p> <p>Dudley Council publishes weekly lists of registered planning applications on its website.</p> <p>Where it is considered that specific planning applications are likely to have significant effects on neighbouring authorities then such neighbouring authorities would be formally consulted as part of the planning process.</p>	No change required
16	Worcestershire Regulatory Services (Chris Poole, Senior Technical Officer – Land and Air Quality Team)	The Respondent notes that the draft SPD appears to be a formal adoption of the best practice document ‘West Midlands Good Practice Air Quality Planning Guidance (2014)’ within the existing Black Country Core Strategy 2011. This Planning Guidance is recognised nationally as a good example of best practice and WRS have adopted many of the ideas contained within this guidance and WRS have no adverse comments.	Noted	No Change Required
17	Yew Tree and Tame Bridge Group (Chairman)	The Respondent is concerned with the Nitrogen Dioxide Exceedences and notes the very obvious risk that this invisible killer has on communities. The health issues are well documented and if not looked at seriously and a proactive campaign is not put in place to sort will result	Noted	No Change Required

		in many more deaths and associated illnesses.		
17	Yew Tree and Tame Bridge Group (Chairman)	The Respondent appreciates the matters around cars, HGV's etc and the ideal to reduce emissions but feel that this is very much a long term goal and the current outcomes need to be addressed quickly.	Noted	No Change Required
	Yew Tree and Tame Bridge Group (Chairman)	The Respondent can't understand the need at any time to build any residential dwellings next to any motorways or carriageways where exceedances are known. It is considered that any planning for residential dwellings that fall in areas of recorded exceedances should be barred until such times as the exceedances are controlled reduced and the long term forecast shows further reductions.	<p>The purpose of this SPD is to manage the impact of new development in areas of exceedance through appropriate mitigation measures in order to make such development acceptable in air quality terms.</p> <p>As stated in paragraph 4.7 of the SPD, applications may be refused where mitigation measures cannot make the development sustainable in terms of air quality..</p> <p>As such, it would be considered unnecessary, inappropriate and contrary to the regeneration and growth strategy of the Black Country to barr all new residential development in areas of exceedance.</p>	No Change Required
17	Yew Tree and Tame Bridge Group (Chairman)	The Respondent suggests that there is very little evidence within the SPD of the use of natural absorbers of the emissions that being of course trees and green spaces. There is a clear need to look at green tree/shrub corridors alongside all parts of the M5 and M6 Motorways that run through our borough. Coupled with areas of sustainable wildflowers. Not only will this help with absorbtion, it will help with noise as well as being	<p>Comments Noted.</p> <p>Agree that reference should be made within the SPD to the benefit that trees and landscaping can provide as a mitigation measure for air quality.</p>	<p>Add a new bullet point under 'All Development' in paragraph 5.7 stating:</p> <p><i>'The provision of trees and landscaping features where appropriate.'</i></p>

		aesthetically pleasing.		
17	Yew Tree and Tame Bridge Group (Chairman)	<p>The Respondent notes that in some areas in Sandwell there are issues around flooding and unstable ground again tree planting as well as being absorbent can help in these areas. Increase the number of trees planted in all of our parks and green and open spaces.</p> <p>There is a greater need now more than ever to look at all initiatives that create cleaner, greener and safer streets and communities. We have a great number of carriageways, A roads and with the support and involvement of the community we should make these greener. We need to protect our trees and green and open spaces and improve for the betterment of us all.</p> <p>The Respondent is not aware that Sandwell has a tree replacement policy and the Respondent suggests that as part of any report on any trees that may need to be removed a full impact assessment be carried out and as part of it a site within the same community be identified for trees to be planted to mitigate any loss.</p>	<p>Sandwell has a tree replacement policy and this is carried out wherever possible. We acknowledge the role that trees can play in helping improve air quality, as long as they are in the right location and the right species of tree.</p>	<p>No change required.</p>

Black Country Air Quality Supplementary Planning Document (SPD)

September 2016





Contact Information

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Or ldf_planning@sandwell.gov.uk

Air Quality – Email: ehts_enquiries@sandwell.gov.uk Tel: 0121 569 6600

Walsall Council:

Planning – Email: planningservices@walsall.gov.uk Tel: 01922 652677

Air Quality – Email: pollutioncontrol@walsall.gov.uk Tel: 01922 658040

City of Wolverhampton Council:

Planning – Email: planning@wolverhampton.gov.uk Tel: 01902 554038

Air Quality – Email: environmentalhealth@wolverhampton.gov.uk Tel: 01902 551155



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1 Introduction and Aims

1.1 The Black Country comprises four local authorities – Dudley, Sandwell, Walsall and Wolverhampton. All four authorities have declared the whole of their areas as Air Quality Management Areas (AQMAs) for the purpose of redressing levels of nitrogen dioxide, primarily associated with vehicle emissions.

1.2 The planning process has a significant role to play in helping to better integrate existing land-use and new development to encourage more sustainable development, and to secure future improvements in air quality.

1.3 Air quality is not limited to local authority boundaries, rather the associated effects of development can have impacts across wider regional areas. Therefore, to enable a consistent approach to improving air quality across the Black Country, this joint Supplementary Planning Document (SPD) has been developed to cover all four local authority areas.

1.4 Recognising the wider relevance to neighbouring local authorities and air quality initiatives across the whole West Midlands, this SPD set out simplified guidance for dealing with air quality and is aimed at all those involved in the submission and determination of planning applications where air quality needs to be addressed.

1.5 Aiming to provide transparency and consistency to developers, landowners, and the community regarding the basis for identifying and calculating the air quality impact and mitigation requirements for new developments, the SPD should be read in conjunction with other relevant policies and strategies.

1.6 The SPD supplements Policy ENV8 (Air Quality) of the adopted Black Country Core Strategy (2011), and embraces the West Midlands Good Practice Air Quality Planning Guidance (2014), produced as part of the [West Midlands Low Emissions Towns & Cities Programme](#).

1.7 Compliance with this SPD is a material consideration in the determination of planning applications across the Black Country and will carry significant weight in the decision making process.

1.8 In summary this SPD is designed to:

- Explain why air quality is important in the Black Country and describe the existing policy framework;
- Incorporate air quality mitigation measures within new developments to offset the incremental creep in pollutant emissions;
- Present the method for identifying development proposals where an air quality assessment will be required, and the processes involved;
- Propose various options for site specific mitigation to protect future occupiers from poor air and how such measures will be secured and delivered; and
- Confirm where a damage calculation is required and payment made to the local authority where mitigation is not appropriate.



2 Background

Why is there a need to deal with poor air quality?

2.1 The quality of the air we breathe can have an adverse effect on human health and quality of life. It can also have major impacts on ecosystems and the climate.

2.2 [The United Kingdom's Air Quality Strategy](#) was published in 2007 and provides an outline of the UK Government's ambient (outdoor) air quality policy, including targets, objectives and measures for reducing levels of pollutants that are linked to health impacts. There are currently objectives for seven key airborne pollutants and dates by which they should be achieved. The principle aim of the objectives is to protect human health, however it is currently acknowledged there is no safe level in the case of particulate matter (PM) and concentrations should be reduced as far as practicably possible.

Government Environmental Audit Committee Report – Action on Air Quality 2014

2.3 [The Government's Environmental Audit Committee's Report](#) cites air pollution as 'an invisible killer' and a 'public health imperative', for which there is no one single solution. The Committee finds it unacceptable that that a whole generation of people living in our towns and cities could have their health seriously impaired by air pollution exceeding European (EU) limits before this public health problem is brought under control. Furthermore, urgent change is needed in transport and planning policy to save lives and ensure that the UK meets EU air quality standards.

2.4 The Report calls for a fresh approach to deal with the health challenge we face, coordinating action by local authorities and communities, as well as Central Government. It is acknowledged that new development can have an impact on pollution arising from road traffic and, in turn, on people's exposure to air pollution. The National Planning Policy Framework consequently highlights that planning policies should sustain compliance with and contribute towards EU limit values and national objectives for pollutants, taking into account cumulative impacts on air quality.


Why does the Black Country need to address air quality?

2.5 The West Midlands suffers from the most extensive exceedance of the EU health based limit value for Nitrogen Dioxide (NO₂) in the UK outside of London. Recent research has estimated that road transport emissions account for 630 premature deaths each year in the West Midlands¹. Exposure to poor air quality can also trigger and exacerbate asthma, increase the risk of low birth weight and can cause acute and chronic cardiovascular and pulmonary illnesses. The effect of air pollution is expected to reduce life expectancy in the UK by 6 months on average².

¹ Public Health Impacts of Combustion Emissions in the United Kingdom; Steve H. L. Yim and Steven R. H. Barrett *

Department of Aeronautics and Astronautics, Massachusetts Institute of Technology, Cambridge, Massachusetts, United States

² Department for Environment, Food & Rural Affairs Policy paper 2010 to 2015 government policy: environmental quality Published 7 May 2015



2.6 A report published by Public Health England in 2014³ highlighted the increase in mortality risk associated with long term exposure to particulate air pollution and estimated the Local Mortality Burden of fine particulate matter (PM_{2.5}) in all local authority areas. In 2010 there were 665 deaths attributable to exposure to particulate matter across the four Black Country authorities and approximately 7016 associated life years lost.

2.7 Achieving a fully integrated rail and rapid transit network that connects main centres is a key theme for the West Midlands Combined Authority. By delivering this, it is intended the impact of transport on the environment will be reduced, so improving air quality. The resulting transport network will enable more efficient movement of goods freight.

2.8 It is also intended to develop a West Midlands Metropolitan Area Transport Emissions Framework in partnership with local councils to 'clean' transport networks and tackle air quality problems. Making progress to provide clean air and tackling poor air quality are key policy objectives within the West Midlands Strategic Transport Plan "Movement for Growth", and has direct links to strategic Public Health initiatives.

2.9 The Black Country local authorities are committed to improving air quality. Local Authorities are required to produce an air quality action plan for all Air Quality Management Areas (AQMAs) addressing the areas where air quality objectives are not being met. There are a number of hot-spots across the Black Country where on-going action and monitoring is required to reduce pollutant concentrations and minimise exposure to air quality that does not meet with national objectives.

Air Quality and Planning

2.10 New developments have the potential to adversely affect air quality or be affected by poor air quality. Air quality is capable of being a material consideration to be taken into account as part of the planning process in order to limit exposure and protect people from unacceptable risks to their health.

2.11 These considerations must, however, be balanced against other aims of the planning system in order to achieve social, economic and environmental goals and meet over-arching national policy requirements.

2.12 In the Black Country promoting healthy living is a key element of the Sustainable Communities direction of change, which underpins the vision of the Black Country Core Strategy. This includes reducing the environmental impacts of transport and the promotion of more sustainable access for people within the region.

³ Public Health England. Gowers, AM. Miller, BG and Stedman, JR. (2014) Estimating Local Mortality Burdens Associated with Particulate Air Pollution, pp.1 & 13

3 Policy Context

3.1 **The National Planning Policy Framework (NPPF) (2012)** sets out the Government's planning policies and how they are expected to be applied. The purpose of the planning system is to contribute to the achievement of sustainable development through three key roles: economic; social; and environmental. In terms of the environmental role of the planning system the NPPF considers this to be:

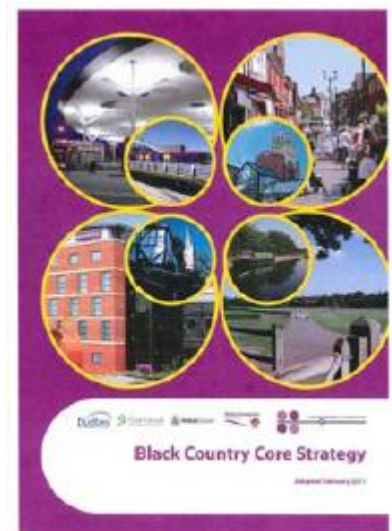
“Contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.” (Paragraph 7)

3.2 Specifically, in relation to Air Quality, Paragraph 124 of the NPPF states that:
“Planning Policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.”

3.3 **The Black Country Core Strategy (2011)** sets out the Black Country's planning policies to achieve three major directions of change: Sustainable Communities; Environmental Transformation; and Economic Prosperity.

3.4 The scale of growth proposed in the Black Country Core Strategy will have impacts upon the local environment, including levels of air pollutants. New developments may have specific and/or cumulative impacts on air quality which require mitigation in order to make the developments acceptable.

3.5 **Policy ENV8 (Air Quality)** sets out the policy framework for addressing air quality through the planning system.



Policy ENV 8 – Air Quality

New residential or other sensitive development, such as schools, hospitals and care facilities, should, wherever possible, be located where air quality meets national air quality objectives.

Where development is proposed in areas where air quality does not meet (or is unlikely to meet) air quality objectives or where significant air quality impacts are likely to be generated by the development, an appropriate air quality assessment will be required. The assessment must take into account any potential cumulative impacts as a result of known proposals in the vicinity of the proposed development site, and should consider pollutant emissions generated by the development.

If an assessment which is acceptable to the local authority indicates that a proposal will result in exposure to pollutant concentrations that exceed national air quality objectives, adequate and satisfactory mitigation measures which are capable of implementation must be secured before planning permission is granted.

3.6 **Policy TRAN2** sets out the policy framework for managing the transport impacts of new developments.

Policy TRAN2 – Managing Transport Impacts of New Development

Planning permission will not be granted for development proposals that are likely to have significant transport implications unless applications are accompanied by proposals to provide an acceptable level of accessibility and safety by all modes of transport to and from all parts of a development including, in particular, access by walking, cycling, public transport and car sharing. These proposals should be in accordance with an agreed Transport Assessment, where required, and include implementation of measures to promote and improve such sustainable transport facilities through agreed Travel Plans and similar measures.

3.7 Policy ENV 8 clearly stipulates that adequate and satisfactory mitigation measures are required for situations where assessment indicates proposal will result in exposure to pollutant concentrations that exceed national air quality objectives.

3.8 The SPD specifies which developments are considered likely to generate air quality impacts in the immediate area, and also which developments require an air quality appraisal.

3.9 In addition this SPD identifies, that for all other situations whether or not exceedances of the national air quality objectives are identified, sustainable mitigation measures will need to be implemented. This is because the majority of developments will have a moderate air quality impact which can be dealt with through standard mitigation measures, without the need for an air quality appraisal. These standard mitigation measures are designed to deal with the cumulative impact of many moderate impact developments over time and over a wide area.

West Midlands Integrated Transport Authority (ITA) Strategic Transport Plan ‘Movement for Growth’

3.10 Setting out the overarching transport strategy for the next 20 years, this Plan sets out targets to reduce air quality impacts from transport.

https://westmidlandscombinedauthority.org.uk/media/1178/2016-06-01-mfg-full-document_wmca.pdf

West Midlands Transport Emissions Framework

3.11 This emerging framework signifies the increased importance of air quality and builds upon the current work being undertaken by the various authorities in the West Midlands as well as the Government, businesses, freight and transport operators and the wider public sector, communities and commuters.

The West Midlands Key Route Network (WM KRN)

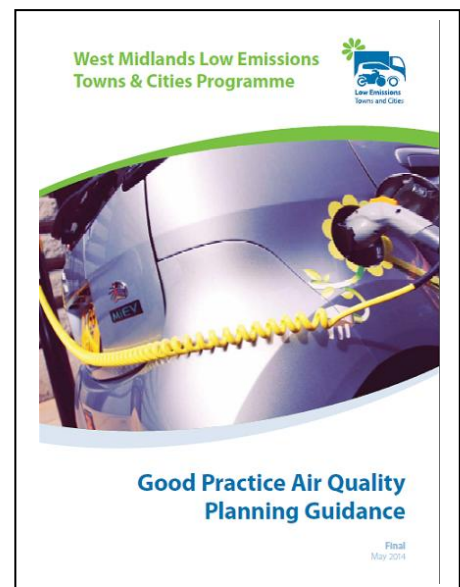
3.12 As part of the West Midlands Combined Authority (WMCA) Devolution Deal, the Mayoral role seeks functions under the Road Traffic Regulation Act to enable a WM KRN to be statutorily defined. The government will thus work with the WMCA to establish any appropriate local traffic and highway powers to be conferred as part of the KRN. In doing so this will enable Orders to be designated (such as ‘Safer Vehicles’, ‘Air Quality’, ‘Moving Traffic Violation’) that

are uniquely identified for the WM KRN, or the equivalent provisions sought in order to allow the WMKRN of local authority roads to be strategically managed and coordinated at the West Midlands Metropolitan level, with joint asset management and procurement.

3.13 The Mayor of the CA will exercise powers - with personal accountability to the electorate - devolved from central government and set out in legislation. This incorporates an over-arching responsibility for an identified KRN of local authority roads that will be collaboratively managed and maintained at the Metropolitan level by the Combined Authority. In the context of local air quality, the Mayor and the Mayoral West Midlands Combined Authority will have the power to create Low Emissions Zones and Clean Air Zones, with the affected highway authority(ies) consent. A joint WMCA/Mayoral function, and the devolution agreement accordingly includes a provision for reporting on the WM KRN.

West Midlands Good Practice Air Quality Planning Guidance (2014)

3.14 Since production of the Black Country Core Strategy, the thinking on air quality and the assessment of the impacts has developed, in particular in respect of the consideration of cumulative impacts, as stated in the NPPF. In response to these changes the West Midlands authorities have developed the West Midlands Good Practice Air Quality Planning Guidance (2014) as part of the Defra funded West Midlands Low Emissions Towns & Cities Programme (LETCP).



3.15 The West Midlands guidance aims to set out:

- A clear and consistent approach to assessment of planning applications, mitigation and compensation, thus defining what is meant by 'sustainable' in air quality terms;
- Provision of a simplified approach, reducing the requirements for Air Quality assessment while promoting the integration of mitigation into scheme design; and
- Examples of existing West Midlands development schemes incorporating low emission initiatives.

3.16 This SPD supplements the Core Strategy Policy ENV8 by incorporating the spirit of the West Midlands guidance requiring mitigation for all developments classified as minor, medium or major. It also reduces the burden of undertaking air quality assessments on minor and medium developments and where relevant exposure is unlikely.

Individual Authorities

3.17 The Black Country authorities each have their own Air Quality Action Plans and other planning guidance related to air quality which should be read alongside this SPD. See Appendix 4 for further details.

4 The 4 Step Approach to Assessing Planning Proposals

4.1 The 4-Step approach is taken from the West Midlands LETCP guidance and, as outlined below, sets out the process for assessing planning applications that either:

- a) Have the potential to create relevant exposure to road transport emissions for existing and / or future occupiers of a development; or
- b) Where the proposed development has the potential to increase concentrations of pollutants from road transport emissions.

Step 1 – Development Proposal / Pre-Application Discussions

4.2 It is important that local planning authority requirements regarding scheme sustainability and the planning application validation process are identified at the earliest stage possible. For this reason pre-application discussions involving planning and air quality professionals should take place at the outset, particularly for major schemes, to ensure optimum scheme design and avoid unnecessary delays in the planning process.

4.3 External agencies may also need to input into the planning process with respect to air quality, notably Highways England for road traffic issues and the Environment Agency for any relevant emissions from industrial installations they may regulate.

Step 2 – Classification of the Development Proposal

4.4 When a planning application is received, the development proposal will be classified according to its potential impact on air quality. The classification system is based on the Department for Transport's 2007 'Threshold Criteria for Transport Assessments and Travel Plans', which enables a consistent approach based on the development use and gross floor area. Details are set out in Appendix 5. Each development will be classified as Minor, Medium or Major which reflects its potential air quality impact, as set out in Table 1 overleaf.

4.6 The Black Country Local Authorities will reflect this development classification in their validation requirements for planning applications so that they can obtain the necessary information, assessments and provisions for mitigation measures as appropriate.

4.7 Where emissions will lead to relevant exposure or exacerbation of an existing air quality objective, a detailed air quality mitigation plan shall be submitted and approved in writing by the local authority. Applications may be refused where mitigation measures cannot make the development sustainable in terms of air quality.

Table 1: Classification system for developments in relation to potential Air Quality impacts

Scheme Type	Minor	Medium	Major
Threshold	Below threshold criteria for Transport Assessment	Meets threshold criteria for Transport Assessment Where development meets DfT threshold criteria for a Transport Assessment based on considerations other than size or scale of land use Or where the development is for any B2 or B8 use falling below the major classification ¹⁴	Developments classified as medium which also trigger any of the following criteria: i) Where development requires an EIA ¹⁵ ii) Where development is likely to increase traffic flows by more than 5% on roads with >10,000 AADT ¹⁶ or change average vehicle speeds by > 10 kph/likely to cause increased congestion (DfT Congestion) iii) Where a proposal is likely to increase traffic by more than 5% on road canyons with > 5,000 AADT iv) Where a development requires a Transport Assessment and HGV movements are \geq 10% of total trips v) Where significant demolition and construction works are proposed
Assessment	None (other than for exposure)	None (other than for exposure)	Air Quality Assessment required including an evaluation of changes in vehicle related emissions ¹⁷

Footnotes

14 – B2 and B8 uses can generate significant HGV movements and would normally require mitigation to a Type 2 standard.

15 - Required where development is within or likely to create an area of exceedence of EU Limit Values and air quality is within the scope of the Environmental Impact Assessment

16 - Annual Average Daily Traffic Flow

17 - Assessment includes monetisation of the impacts arising from emission changes in line with Defra IGCB Damage Costs (see Appendix 3)

Based upon DfT Threshold Criteria for Transport Assessments


<https://www.gov.uk/government/publications/guidance-on-transport-assessment> (adapted for Air Quality Purposes – see Appendix 5 to this SPD) and Defra Technical Guidance [TG 09] into minor, medium and major classifications (See Table 1)¹³

Emissions from Point Sources (Chimneys / Vents serving industrial operations)

4.8 For residential developments close to industry or the development of industry in close proximity to existing housing, appropriate planning consultations will be undertaken with relevant stakeholders in line with national and local planning guidance.

When it is proposed to locate new industry or a significant combustion installation near to existing residential development or other relevant receptor where an air quality objective applies having regard to Defra Technical Guidance, an account of the potential effects of emissions from chimneys/vents must be taken. For this purpose detailed modelling of emissions and consideration of vehicle movements and associated emissions must be made. Damage costs should be calculated and mitigation measures commensurate with the emissions calculated shall be agreed or required by condition. Where mitigation measures are not feasible or offsetting the impact is not possible, a recommendation for refusal may be made.

For clarity, air quality objectives should apply at all locations where members of the public might be regularly exposed; building façades of residential properties, schools, hospitals, care homes etc.; and in some specific cases hotels, gardens of residential premises, kerbside sites (such as



pavements of busy shopping areas), railway and bus stations, and enclosed car parks to which the public have access, and any outdoor locations where members of the public might reasonably be expected to spend one hour or longer.

Step 3 - Assessment

A – Assessment if relevant exposure may arise

4.9 The determination of relevant exposure should be ascertained through discussions with local authority officers dealing with air quality and reference made to the local authority's latest reviews and assessments. Where available, future air quality forecasts and local authority exceedance maps may also be consulted, although detailed assessments may nonetheless be required on a case by case basis.

4.10 Where relevant exposure is anticipated and for all major developments, an air quality assessment will be required and it should include the consideration of potential increased exposure for relevant receptors affected by the development. See Appendix 1 for details of an air quality assessment protocol.

4.11 Where relevant exposure has been identified it is important that careful consideration is given to proposed mitigation, to prevent exposure to air pollutants associated with development. Local authorities may give weight to the following mitigation measures:

- Increasing the distance between the development facade and the pollution source,
- Improving public transport access to a development;
- Implementing a travel plan to reduce the number of trips generated;
- Implementing Low Emission Strategies;
- The design of schemes to place residential units at the rear of the development or on higher floors;
- Design of schemes to avoid the creation of canyons, allowing a greater degree of pollutant dispersal; and
- Mechanical ventilation – (although this should not automatically be seen as providing effective mitigation against exposure and should be scrutinized carefully, not only in terms of the acceptability of providing living conditions in what could be described as a hermetically sealed unit, but also in terms of the increase in energy requirements, maintenance that is incurred and the attendant secondary noise effects that can arise.

This list is not exhaustive – innovative mitigation measures will be encouraged and welcomed.

B - Assessment of minor and medium development classifications where relevant exposure is not a concern

4.12 All developments classified as minor or medium, where relevant exposure is not a concern, do not require an Air Quality Appraisal. However mitigation to make the development sustainable is specified for each classification of development and is termed either Type 1 or Type 2.

Step 4 – Determining Suitable Mitigation Measures

4.13 Concerns arise if development is likely to generate air quality impacts in an area where air quality is known to be poor and also where the development is likely to adversely impact upon the implementation of air quality strategies and action plans. The introduction of new pollutant sources or mechanisms for producing additional air pollution is a relevant planning concern. To reduce the cumulative impact(s) of development and render it sustainable in terms of air quality, mitigation measures are required for all developments within scope irrespective of whether they are sited in an area which exceeds the air quality objectives. This sustains compliance with national air quality objectives which is a material planning consideration and is aimed at future-proofing the environment. The type of assessment, mitigation and/or compensation required for each of the development classifications (which is locationally specific) is summarised below.

Compensation requirements

Development Classification	Assessment Required	Mitigation	Compensation
Minor	None (other than for exposure)	Type 1	None
Medium	None (other than for exposure)	Types 1 and 2	None
Major	Full Air Quality Assessment in line with Council Guidance, including evaluation of emission and concentration changes	Types 1, 2 and 3	Type 3

4.14 The required mitigation is summarised as:


- Type 1 – Electric Vehicle charging points, the installation of low NO_x boilers and the adoption of an agreed protocol to control emissions from construction sites
- Type 2 – Practical mitigation measures supported by national policy and guidance
- Type 3 – Additional measures that may be required by either planning condition or planning obligation to make the development acceptable

See section 5 for further details on mitigation and compensation.

4.15 Minor and medium developments are required to implement Type 1 / Type 1 and 2 mitigation measures respectively. Where appropriate mitigation measures have been incorporated into a development, it will be deemed sustainable in air quality terms and should not have a significant impact on air quality.

4.16 All major developments are required to quantify the emission impact(s) of the development on air quality and calculate this in terms of a monetary damage cost. The process for the calculation of damage costs is set out in Appendix 3. The damage cost calculation can be used to determine the level of Type 3 mitigation and/or compensation required to make the development acceptable in terms of air quality.

4.17 Major development schemes may contribute to an exacerbation of air quality exceedances within an AQMA or trigger the designation of an AQMA, as ascertained through an air quality assessment. Planning authorities will make a decision as to whether a proposed



development is an appropriate use of land and this may be influenced by the impact on air quality.

4.18 In certain circumstances it may be justifiable to recommend refusal for development if there is an unacceptable impact on air quality and appropriate mitigation measures are not feasible.

4.19 Further information on Mitigation and Compensation is provided in Section 5 of this SPD.



5 – Minimising Unacceptable Air Quality Impacts through Mitigation and Compensation

5.1 National Planning Practice Guidance (para 008) states that, where necessary, air quality mitigation:

- Will be location specific;
- Will depend on the proposed development; and
- Should be proportionate to the likely impact.

5.2 Applicants are required to work with the relevant local authority to consider appropriate mitigation so as to ensure that new development is appropriate for its location and unacceptable impacts and risks are prevented.

5.3 Innovative solutions to air quality mitigation are encouraged. The type of mitigation required on a particular development will be informed by:

- Outcomes from the Transport Statement / Air Quality Assessment / Emission profiling;
- Specific needs identified in site specific spatial policy allocations;
- Travel Awareness / Planning and Highway Development requirements;
- Latest Defra air quality guidance (Defra Measures Guidance);
- Measures supported by the West Midlands Low Emissions Strategy; and
- Relevant technical guidance and acknowledged best practice.

5.4 Default mitigation and compensation measures for the 3 different 'Types' are set out below:

Type 1 – Electric Vehicle Charging Points

5.5 As a minimum, new developments should include the provision of electric vehicle charging points, the installation of low NOx boilers, plus any mitigation requirements arising from the exposure assessment where applicable. The UK Electric Vehicle Supply Equipment Association has produced a guide⁴ which is aimed at anyone involved in providing electric vehicle charging points.

⁴ Making the right connections: General procurement guidance for electric vehicle charging points, UK Electric Vehicle Supply Equipment Association (April 2015)

5.6 The electric vehicle charging point rates are set out below (further details can be found in Appendix 2):

	Residential	Other
Provision Rate*	<p>An external weatherproof and lockable covered 32 Amp external 7 pin charging socket to comply with EN 62196-2 and be compatible with a J1772 Type 2 connector. The charging unit should feature a Mode 3 (IEC 61851) communication module.</p> <p>Wherever possible the power supply and charging point should both be phase 3 compatible and be located near the parking area for each dwelling. Where only single phase power supply is available the charging unit should be capable of handling 3 phase power if supply is subsequently upgraded.</p> <p>Each charging unit to be supplied by its own independent radial circuit.</p> <p>Units with unallocated parking e.g. apartments – 1 charging point per 10 spaces.</p> <p>For flatted developments and apartments where the parking may be some distance from the dwellings, it may not always be feasible or appropriate to include the charging point requirement onsite. Therefore, in exceptional circumstance such as this, the possibility of financial contributions may be considered.</p>	<p>5% of parking provision will be sought with charging points to comply with EN 62196-2 (J1772) Type 2, Mode 3, 7 pin, 32 amp, 7kw.</p> <p>Appropriate cable provision shall be in place for a further 5% to meet any future increase in demand.</p>


*All wiring should comply with BS 7671 or equivalent replacement standard.

Type 2 - Practical Mitigation Measures Supported by National Guidance

5.7 There are a variety of other measures that can be incorporated into developments to mitigate air quality impacts. The appropriateness of each measure for individual developments must be assessed on a site by site basis. The list below is not exhaustive and alternative innovative measures will be welcomed where considered appropriate.

All Development:

- Travel Planning including mechanisms for discouraging high emission vehicle use and encouraging modal shift (i.e. public transport, cycling and walking) as well as the uptake of low emission fuels and technologies;
- Designation of parking spaces for low emission vehicles;
- Differential parking charges depending on vehicle emissions;
- Public transport subsidy for residents / employees;
- Improved convenient and segregated cycle paths to link the cycle network, including canal towpaths;
- The provision of trees and landscaping features where appropriate;

- 
- Encourage links to existing Rights of Way (ROW) in order to improve opportunities for walking..

Commercial Development – additional types of mitigation:

- All commercial vehicles should comply with current European Emission Standards from the development opening, to be progressively maintained for the lifetime of the development;
- Fleet operations should provide a strategy for considering and reducing emissions, including possibilities for the take up of low emission fuels and technologies;
- Use of ultra low emission (i.e. electric/gas) service vehicles;
- Eco driver training for drivers of commercial vehicles

Type 3 – Additional Measures

5.8 For major developments, adverse impacts on air quality, as defined in Table 1, are to be mitigated or compensated for by evaluating their contribution to increased ambient concentrations due to emissions and then translating such additional emissions into damage costs.

5.9 This approach allows the costing of additional measures, in scale and kind with the development and in line with any relevant Air Quality Action Plan, which may be required to make a development acceptable.

5.10 The formula and data required to calculate the damage costs of a particular development are set out in Appendix 3 of this SPD.

5.11 Once the damage cost has been calculated by the developer for a particular development it is then possible to determine which range of measures are suitable to offset this damage cost. A range of mitigation measures are set out below; again this list is not exhaustive and other innovative mitigation measures are welcomed where appropriate to the specific development:

- On-Street electric vehicle charging points;
- Contribution to low emission vehicle refueling infrastructure;
- Car Clubs;
- Low emission bus service provision;
- Low emission waste collection services;
- Bike / e-bike hire schemes;
- Contribution to renewable fuel and energy generation projects;
- Incentives for the take-up of low emission vehicle technologies and fuels;
- Public transport subsidy for residents / employees;
- Any other measures within an Air Quality Action Plan or Low Emission Strategy relevant to the development.



Emissions from Construction Sites

5.12 For all types of development the control of emissions from construction sites will be agreed with the local authority pollution control section.

Use of Planning Obligations, Planning Conditions and Community Infrastructure Levy (CIL)

5.13 Air quality mitigation measures are ideally integrated into a development's design and implementation. Where this is not the case, there are a range of tools that can be used within the planning process to secure any required mitigation.



Planning Conditions

5.14 Many planning applications are granted permission subject to conditions. Conditions are used to secure a good quality development and reduce any adverse impacts that might follow. Government guidance advises that where there is a choice between imposing a planning condition and requiring the developer to enter into a planning obligation / S106 Agreement, the imposition of a planning condition is preferable.

5.15 On-site air quality mitigation measures will normally be secured by planning condition(s). A range of template planning conditions for different types of mitigation are set out in Appendix 6.

Planning Obligations

5.16 As set out within the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), Planning Obligations can only be used when they meet all of the following three tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

5.17 For developments where on-site mitigation is not possible, then off-site compensation / mitigation may be required through the use of planning obligations, usually secured through S106 Agreements; for example Travel Plan requirements. This approach is supported by the NPPF (para 152) which states that “where adequate mitigation measures are not possible, compensatory measures may be appropriate.” Additionally National Planning Policy Guidance states in relation to air quality that “Planning conditions and obligations can be used to secure mitigation where the relevant tests are met.”

5.18 Planning obligations are an appropriate mechanism for mitigating or compensating for the impact of large scale major developments through the requirement to deliver Type 3 measures.

5.19 Planning obligations or conditions to improve air quality may take a number of forms and may require the following issues to be considered:

Construction Phase

- Restricting certain types of vehicles
- Setting emission standards for vehicles used on site

Operational Phase

- Required submission of an emissions assessment and a low emission strategy for the site
- Measures to reduce emissions
- Restricting on site car parking
- Making provision for alternative forms of transport such as car pooling, electric vehicle charging points and public transport improvements
- Making a one-off financial contribution to an air quality action fund or initiative

Community Infrastructure Levy (CIL)

5.20 CIL is a charge that Councils can charge on most types of new development. The proceeds of CIL are to be spent on local infrastructure and, where necessary, sub-regional infrastructure to support the new development.


5.21 Where mitigation / infrastructure measures are being sought through Planning Obligations then contributions for the same infrastructure can't also be sought through CIL.

Viability

5.22 It is recognised that in dealing with development proposals, exceptional circumstances may occasionally arise which result in genuine financial viability concerns (for example where remediation costs are above what could reasonably have been foreseen).

5.23 If a developer believes there are exceptional circumstances (not including land purchase costs) which would render a scheme unviable if the full level of Air Quality mitigation and compensation measures were required in line with this SPD, the following process is to be followed:

- (a) The applicant approaches the local authority, ideally at development concept stage so that requirements can be established at pre-application stage, and submits a detailed financial viability appraisal signed by a suitably qualified professional, to support their case. The financial viability appraisal should follow an open-book approach and include the following information as a minimum, with supporting evidence and justification where appropriate:
 - A breakdown of all cost variables and development value including level of developers profit;
 - Identification of any exceptional cost items;
 - Explanation of all assumptions made concerning the provision of mitigation;
 - Identification in cash flow terms of the effect of deferred payments.
- (b) Once the financial viability appraisal has been received from the applicant, the LPA arranges for it to be assessed by an independent, suitably qualified professional of the LPA's choosing, to inform the LPA in the decision-making process. The applicant will be required to meet the costs of this independent financial assessment and any other expert advice that the LPA considers it requires.
- (c) The independent financial assessment is usually carried out using industry standard software and normally follows a Residual Land Value approach. For larger schemes that are likely to be completed over a longer period of time a Cash Flow based approach may also be used. Once completed, results of the independent financial assessment are provided to the LPA and the applicant will be advised by the LPA of the conclusions of the assessment.
- (d) The Council's objective in viability negotiations is to secure the maximum value of obligations to mitigate the impact of development, whilst working with developers to enable developments to come forward. To this end the Council may consider the use of one or more of a range of 'Value Engineering' mechanisms, depending on the results of the independent financial assessment, including, but not restricted to:

- 
- Deferred or Staged Payments
 - Clawback
 - Phased Viability Assessments
 - Time Constrained Planning Permissions

(e) The LPA will have due regard to the independent financial assessment results and the use of any appropriate 'value engineering' mechanisms, and take into account all other planning considerations, when determining a planning application.

Appendix 1 – Air Quality Assessment Protocol (taken from Annex 1 of the West Midlands Low Emissions Good Practice Air Quality Planning Guidance)

A1.1 The purpose of any air quality assessment is to quantify changes in pollutant concentrations and/or exposure to poor air quality at relevant receptors resulting from the proposed development, and in turn the significance of impacts. Impacts must be assessed in the context of relevant national and international objectives and targets, together with any local planning or other policies or guidance where appropriate.

A1.2 An assessment must take into account the individual and cumulative air quality impacts of committed developments and schemes (i.e. including proposals and schemes that have been granted planning permission at the time the assessment is undertaken). This ensures that 'with development' and 'without development' scenarios are represented as accurately as possible.


A1.3 A suitable assessment may need to incorporate the completion of a detailed air quality modelling study, and from time to time specific pollutant monitoring may also be required. Modelling should only be carried out once information to be used and the modelling method have been agreed with the local authority.

A1.4 Typically, this would include:

- Traffic data used for the assessment including trip rates associated with the development, the frequency of the trips, the length and route of the trips, traffic congestion and the nature and types of vehicles being used;
- Emission source data;
- Meteorological data and representation of area over a suitable time frame;
- Baseline pollutant concentration(s) including any monitoring undertaken;
- Background pollutant concentration(s);
- Choice of base year;
- Basis for NO_x:NO₂ calculations

A1.5 Modelling should be carried out using a recognised local scale dispersion model to be agreed with the local authority **prior to commencement of work**. The study normally comprises four simple steps:

1. Assessment of the existing air quality situation in the study area for the baseline year(s) and agreement of specific receptor points with the local authority prior to commencement. The model should be validated against council (or other) monitoring data where available which can usually be supplied on request.
2. Prediction of future air quality without the proposed development in place using geographical and pollutant source data.
3. Prediction of future road transport emissions and air quality with the proposed development in place.
4. An assessment of the effect(s) the proposed development will have on air quality associated with road transport emissions, including proposed mitigation measures.



Note: for Stages 2 and 3 above, the future scenario year(s) will need to be agreed in advance with the local authority prior to commencement of work.

A1.6 The assessment will also need to include:

- The relevant details of the proposed development;
- Details of relevant air quality standards and objectives;
- Details of the agreed assessment method;
- Vehicle fleet composition and emission factors;
- An assessment, where appropriate, of construction related air quality impacts;
- Details of the modeling software and its validation;
- Results of the modeling exercise including uncertainties, errors, adjustments and verification;
- *A sensitivity test shall be carried out using real world emission data in line with current best practice ;*
- Summary of the assessment results and air quality impacts arising; and
- Mitigation measures to be taken to protect air quality.

A1.7 Construction phase impacts often primarily relate to dust emissions and elevated levels of particulate matter in air expressed as PM_{2.5} and PM₁₀. In some cases construction plant and machinery may have a tangible impact, and a balanced view is necessary as to whether an air quality impact assessment which includes pre and post construction monitoring is necessary. This will need to incorporate the likelihood of both long term and short-term air quality objectives being exceeded, and should be approached on a site specific basis having regard to the location of relative receptors.

Appendix 2 – Electric Vehicle Charging Point Specification (taken from Annex 5 of the West Midlands Low Emissions Good Practice Air Quality Planning Guidance)

EV ready domestic installations

A2.1 Cable and circuitry ratings should be of adequate size to ensure a minimum continuous current demand for the vehicle of 16A and a maximum demand of 32A (which is recommended for Eco developments). As a guide this includes:

- A separate dedicated circuit protected by an RCBO should be provided from the main distribution board to a suitably enclosed termination point within a garage, or an accessible enclosed termination point for future connection to an external charge point.
- The electrical circuit shall comply with the electrical requirements of BS7671:2008 as well as conform to the IET code of practice on Electric Vehicle Charging Equipment Installation 2012 ISBN 978-1-84919-515-7 (PDF)
- If installed in a garage all conductive surfaces should be protected by supplementary protective equipotential bonding. For vehicle connecting points installed such that the vehicle can only be charged within the building, e.g. in a garage with a (non-extended) tethered lead, the PME earth may be used. For external installations the risk assessment outlined in the IET code of practice must be adopted, and may require an additional earth stake or mat for the EV charging circuit. This should be installed as part of the EV ready installation to avoid significant on cost later.

EV ready commercial installations

A2.2 Commercial and industrial installations may have private 11,000/400 V substations where a TN-S supply may be available, simplifying the vehicle charging installation design and risk analysis. It is therefore essential for developers to determine a building's earthing arrangements before installation.

A2.3 Commercial vehicles have a range of charge rates and it is appropriate to consider a 3-phase and neutral supply on a dedicated circuit emanating from a distribution board. More than one EV charging station can be derived from a source circuit, but each outlet should be rated for a continuous demand of 63Amps. No diversity should be applied throughout the EV circuitry. 3 phase RCBOs should be installed and the supply terminated in a switched lockable enclosure. If an external application (for example car park or goods yard) is selected, the supply should be terminated in a feeder pillar equipped with a multi-pole isolation switch, typically a 300mA RCD, a sub-distribution board (if more than one outlet is fed from the pillar). If an additional earthing solution is required, the earth stake can be terminated within this pillar. See IET guideline risk assessment.

EV Charging Point Specifications may alter. It is recommended that all electric vehicle charging point installations should comply with the Institute of Engineering and Technology (IET) Code of Practice for Electric Vehicle Charging Equipment Installation. (<http://www.theiet.org/resources/standards/ev-charging-cop.cfm>)

Appendix 3 – Damage Costs Type 3 Compensation Calculation and Formulas (taken from Annex 1 of the West Midlands Low Emissions Good Practice Air Quality Planning Guidance)

Damage Costs Calculation for Major Schemes

A3.1 The impact of the development can be quantified in terms of damage costs by estimating the emissions of NO_x and Particulate Matter. The method is summarised as follows:

Road Transport Emission Increase =

**Σ [Estimated trip rate X Emission rate per 10 km* per vehicle type X
Damage costs]**

A3.2 The road transport emission increase should be calculated in accordance with Defra guidance up to a maximum of 5 years. A trip length of 10km should be used which is derived from the Department of Transport National Travel Surveys estimation of average trip length. The emission total for the scheme can then be monetised by using the damage costs provided by the Inter Governmental Department on Costs and Benefits (IGCB, Defra). Damage costs per tonne of air quality pollutants were updated by Defra in 2015⁵ and are periodically reviewed to reflect the latest evidence. Current damage cost figures per tonne should be used when carrying out air quality economic appraisals.

The Defra Emissions Factors Toolkit (EFT) allows users to calculate annual road vehicle pollutant emission rates and tonnages for petrol and diesel fuelled vehicles, see <http://laqm.defra.gov.uk/review-and-assessment/tools/emissions-factors-toolkit.html> for a worked example.

Information on techniques and approaches to be used for damage cost calculation can be found at:

<https://www.gov.uk/guidance/air-quality-economic-analysis>

Defra publishes guidance on valuing impacts on air quality. Recent updates relating to emissions of Oxides of Nitrogen (NO_x) and concentrations of Nitrogen Dioxide (NO₂) can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460401/air-quality-econanalysis-nitrogen-interim-guidance.pdf

⁵ Air quality economic analysis: Damage costs by location and source, Department for Environment, Food and Rural Affairs (September 2015)

Appendix 4 – Specific Guidance and Local Policy Context for each Black Country Local Authority Area (correct at time of adoption of this SPD)

Dudley:

A4.1 The Black Country Core Strategy policies support the delivery of Dudley's Sustainable Community Strategy and other Council strategies and plans.

A4.2 Local Planning Policies:

Black Country Core Strategy Policy ENV8 (Air Quality) has replaced policy EP5 (Air Quality) from the Unitary Development Plan (2005).

A4.3 The emerging Dudley Borough Development Strategy (DPD) will be the replacement Plan for the UDP (2005) and will provide detail on delivering the strategic vision and aims of the Black Country Core Strategy within Dudley; it will contain Development Control/ Development Management policies including one on Air Pollution.

A4.4 The Planning Obligations SPD (2016) sets out that the Council's preference is for approved mitigation measures to be provided through on site provision however in some instances it may be appropriate for a financial contribution to be made.

A4.5 Community Infrastructure Levy (CIL) (2015)

Dudley Council implemented its CIL Charging Schedule on 1st October 2015. It is intended that aspects of Air Quality infrastructure will be delivered through CIL, however site specific mitigation for air quality will continue to be sought through Planning Obligations / S106 Agreements where appropriate.

A4.6 Parking Standards SPD (2013) supports the use of low emission vehicles by requiring the provision of infrastructure to support electric vehicle technology in the form of electric vehicle charging points at development sites. This is in accordance with the NPPF which requires local planning authorities to reduce the use of high emission vehicles.

A4.7 Dudley Council's Air Quality Action Plan (AQAP) was adopted by the Council in September 2011.

A4.8 The AQAP states that, in Dudley, the monitoring of air quality has demonstrated that objectives are being met for six of the seven nationally recognised pollutants: the only exception is nitrogen dioxide (NO₂), the main source of which has been identified as road vehicle exhaust fumes. Further action is now required to ensure that NO₂ concentrations do not increase in the future and are ultimately reduced to achieve compliance with government objectives. Clearly, there is a tie in here with spatial planning, not only in terms of transport planning in general, but also in promoting development which is sustainably located including access to a variety of transport modes.

A4.9 Section 7 of the AQAP details the actions DMBC wish to take to help improve air quality. The AQAP is a living document and is due to be revised in 2016.

A4.10 Dudley Metropolitan Borough Council declared a Borough wide Air Quality Management Area (AQMA) in December 2007 with respect to exceedances at several roadside locations of the annual mean national air quality objective for NO₂ which is based upon the E U limit value.



Sandwell:

A4.11 Site Allocations and Delivery Development Plan Document (2012) The Site Allocations and Delivery Development Plan Document (SADDPD) identifies sufficient sites and areas to meet the borough's housing and employment needs, and protects the borough's historic, built and green infrastructure. These plan for development in a sustainable way helping to improve air quality across the borough and also contain Development Management policies.

A4.12 West Bromwich AAP (2012) The Plan concentrates on developing a strategy to capture the growth required to make West Bromwich a strategic town centre within the Black Country Sub-Region, as well as looking at the wider area to support the housing needs for the town. The AAP contains polices that complement the work of the Air Quality Action Plan for the borough around travel plans and the natural environment.

A4.13 The Planning Obligations SPD (2015) provides clarity for developers and other interested parties about what contributions are required in connection with a development, and to offer an indication of the amount of the contribution, indicating the formula where appropriate. The revised SPD takes account of Sandwell's Community Infrastructure Levy.

A4.14 Community Infrastructure Levy (CIL)

CIL was implemented on 1st April 2015. It will be applied as a mandatory charge within the borough on all new eligible development in accordance with the charging schedule and legislative framework.

Sandwell Council's Air Quality Action Plan

A4.15 Sandwell Metropolitan Borough Council declared a borough wide Air Quality Management Area (AQMA) in 2005 for exceedances of the annual mean nitrogen dioxide air quality objective. Road transport emissions are considered the primary source of pollution in Sandwell. The council has developed an Air Quality Action Plan (AQAP) which was published in 2009 in order to work towards improving air quality and discharging its obligations under Part IV of the Environmental Act 1995.

A4.16 The action plan sets out a range of measures that are currently being undertaken or are proposed for future implementation to improve air quality within areas that exceed the annual mean nitrogen dioxide objective. The plan includes a total of 23 site specific actions to reduce NO₂ within the areas of exceedance and 30 borough wide actions to improve NO₂ concentrations across the region.



Walsall:

A4.17 Presently, Walsall Council is using the Black Country Core Strategy together with the provisions of the NPPF and National Planning Practice Guidance as the basis to address air quality issues in planning decisions.

A4.18 Walsall Site Allocation Document and Walsall Town Centre Area Action Plan: the Council is currently working on the preparation of these two plans. These are, respectively, to allocate development sites across the borough, and to plan for investment in and improvements to Walsall town centre. Decisions on proposed allocations and policies have taken air quality issues into account.

A4.19 Emerging Community Infrastructure Levy (CIL): the Council is currently working towards the introduction of a CIL charging regime to provide funding for infrastructure provision. It is intended this should be in place by early 2017. Where appropriate it should be able to fund infrastructure measures to mitigate air quality. However, site-specific measures will be likely to continue to be secured through planning conditions and planning obligations as at present.

Walsall Council's Air Quality Action Plan

A4.20 In 2002 Walsall Council declared five AQMAs following a review and assessment of air quality conducted in partnership with the six other West Midlands local authorities. The basis for the Council's AQMA declarations was due to predicted exceedances of the annual mean nitrogen dioxide air quality objective - which remains set at a concentration of $40 \mu\text{g m}^{-3}$ - principally due to traffic using the M6 motorway corridor and classified roads within the borough.

A4.21 Following the declarations Walsall Council was tasked with examining each AQMA in more detail to accurately determine the extent of nitrogen dioxide exceedances. This culminated in an air quality report being submitted to DEFRA in May 2005 (referred to as the 'Stage 4 Report') which confirmed the need for the AQMAs and also demonstrated that the extent of impact was actually wider than had originally been modelled. Notably, predicted exceedances were verified along the length of the M6 motorway corridor and the main arterial road network. As a consequence, cabinet approval was given to consolidate the AQMAs and a borough-wide AQMA to deal with nitrogen dioxide was declared by order in August 2006.

A4.22 Resulting from this, Walsall Council commissioned consultants to prepare an Air Quality Action Plan. In June 2008 a pre-draft Air Quality Action Plan was circulated among targeted consultees within the council and forwarded to DEFRA to seek initial comments to steer its development. This was favourably received, following on from which a number of matters and recommendations were raised for further refinement.

A4.23 A statutory consultation on the final Air Quality Action Plan was carried out under cabinet approval between December 2008 and March 2009. In March 2009 the council's borough-wide Air Quality Action Plan (AQAP) was accepted on behalf of the Secretary of State for the Environment and implemented as of June that year. The Plan contains a series of actions designed to improve air quality to meet objectives set out in the national air quality strategy published by the government and will be revised and updated following completion of the West Midlands Low Emissions Towns and Cities Programmes' Low Emissions Strategy and implementation of this SPD.



Air Quality Actions / Measures specific to Walsall

A4.24 A source apportionment study was carried out in order to inform and aid the targeting of measures within the Action Plan, which contains a series of proposed actions, including improving the road network to reduce congestion; real-time traffic flow monitoring systems to assess / mitigate traffic congestion using the West Midlands Urban Traffic Control scheme; promotion of alternative methods of transport and transport initiatives; and provision of information to road user via traffic/vehicle management systems.

Wolverhampton:

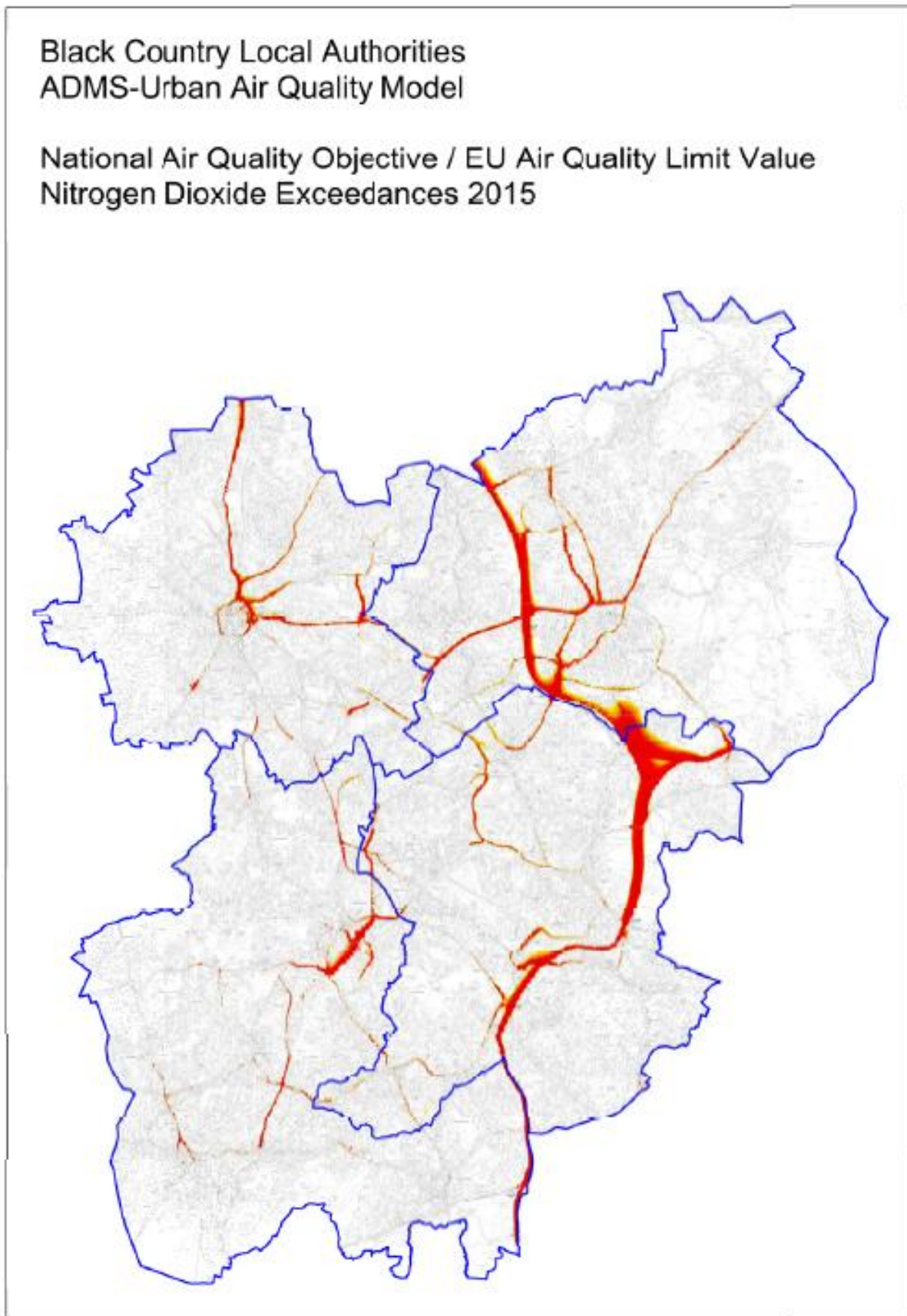
City of Wolverhampton Council Air Quality Action Plan

A4.25 The Council declared a City wide Air Quality Management Area in 2005 with respect to exceedances of the annual mean national air quality objective for nitrogen dioxide and particles in parts of the City Centre and at certain busy road junctions. As a result of this declaration the Council produced and adopted an Air Quality Action Plan (AQAP) in March 2006.

A4.26 Within the City of Wolverhampton, as with most urban environments (including much of the West Midlands conurbation), the principal source of nitrogen dioxide and particles are vehicle emissions.

A4.27 The AQAP sets out a series of measures aimed at improving air quality in order to discharge Wolverhampton City Council's obligations in respect of the Environment Act 1995 Part IV. The AQAP is a living document and is due to be revised in 2016/7. The LETCP "Good Practice Air Quality Planning Guidance" together with the over-arching Low Emissions Strategy document will form the basis of future revisions to the action plan.

Figure 1: Areas of Nitrogen Dioxide Exceedance across the Black Country (2015)



Appendix 5 – Criteria for Transport Assessments to Enable Classification of Developments

Land use	Description	Transport Assessment/Travel Plan required
Food retail (A1)	Retail sale of food goods to the public – food superstores, supermarkets, convenience food stores	>800sq.m.
Non-food retail (A1)	Retail sale of non-food goods to the public; but includes sandwich bars- sandwiches or other cold food purchased and consumed off the premises	>1500 sq.m
A2 Financial and professional services	Financial Services – banks, building societies and bureau de change, professional services (other than medical) – estate	>2500 sq.m
A3 restaurants and cafes	Restaurants and cafes – use of food for consumption on the premises, excludes internet cafes (now A1)	>2500 sq.m
A4 Drinking establishments	Use as a public house, wine-bar or other drinking establishment	>600 sq.m
A5 Hot food takeaway	Use for the sale of hot food for the consumption on or off the premises	>500 sq.m
B1 Business	(a) Offices other than in use within Class A2 (financial and professional services) (b) Research and development – laboratories, studios (c) Light industry	>2,500 sq.m
B2 General industrial	General industry (other than classified as in B1)	>4000sq.m
B8 Storage and distribution	Storage or distribution centres – wholesale warehouse, distribution centre and repositories	>5000 sq.m
C1 Hotels	Hotels, boarding houses and guests houses.	>100 bedrooms
C2 Residential institutions – hospitals, nursing homes	Used for the provision of residential accommodation and care to people in need of care.	>50 beds
C2 Residential institutions – residential educations	Boarding schools and training centres	>150 students
C2 Residential institutions – institutional hostels	Institutional hostels and homeless shelters, accommodation for people with learning difficulties and people on probation	>400 residents
C3 Dwelling houses	Dwellings for individuals, families or not more than six people living together as a single household.	>80 units
D1 Non residential institutions	Medical and health services – clinics and health centres, crèches, day nurseries, day centres and consulting rooms (not attached to the consultant's or doctor's house), museums, public libraries, art galleries exhibitions halls, non-residential education and training centres, places of worship, religious instruction and church halls.	>1000sq.m
D2 Assembly and leisure	Cinemas, dance and concert halls, sports halls, swimming baths, skating rinks, gymnasiums, bingo halls and casinos, other indoor and outdoor sports and leisure uses not involving motorised vehicles or firearms.	>1500 sq.m
Other considerations		
1	Any development generating 30 or more two-way vehicle movements in any hour.	
2	Any development generating 100 or more two-way vehicle movements per day.	
3	Any development proposing 100 or more parking spaces.	
4	Any development generating significant freight or HGV movements per day or significant abnormal loads per year.	
5	Any development proposed in a location where the local transport infrastructure is inadequate.	
6	Any development proposed in a location within or adjacent to an Air Quality Management Area (AQMA).	

Source: Taken from 'Guidance on transport assessment' (DfT 2007)

<https://www.gov.uk/government/publications/guidance-on-transport-assessment> The Black Country planning and highways authorities consider that the thresholds contained in that guidance provide the best basis for a shared consistent approach to assessment across their areas



Appendix 6 – Examples of Air Quality Mitigation Planning Conditions

Low Emission Strategies

A6.1 The following conditions may be suitable for medium and major outline applications:

Development shall not commence until a low emissions strategy for mitigating air quality impacts of the development including demolition and construction at the application site and vehicle movements around the Borough has been submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be completed before the development is brought into first use unless otherwise agreed in writing by the local planning authority. The measures in the agreed scheme shall be maintained throughout the life of the development. The Low Emissions Strategy shall have targets for emission reduction and timescales, with pollution savings quantified. At the end of each calendar year for the next 5 years an implementation plan shall be submitted for approval in writing by the local planning authority which on approval shall be fully implemented in accordance with the details and measures so approved. The Low Emission Strategy shall take in to account future changing standards and available technologies and be updated accordingly in agreement with the local planning authority.

OR

Development shall not commence, excluding demolition, until a low emissions strategy for mitigating the air quality impacts of the development is submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be completed before occupation of the development unless otherwise agreed in writing by the local planning authority. The measures in the agreed scheme shall be maintained throughout the life of the development.

Demolition and Construction

A6.2 Work shall not begin on the demolition and construction of the development until a method statement for the control of dust and emissions arising from the demolition and construction of the development has been submitted to and approved by the local planning authority. All works which form part of the approved scheme shall be implemented throughout the construction and demolition phase of the development.

Electric Vehicle Charging Points - Residential

A6.3 No development shall commence until details of the electric vehicle charging points, to be provided for the dwellings in accordance with the Council's standard (Parking Standards SPD), shall be submitted to and approved in writing by the local planning authority. Prior to first occupation the electric vehicle charging points shall be provided in accordance with the approved details prior to first occupation of the development and shall be maintained for the life of the development.



Electric Vehicle Charging Points - Other

A6.4 No development shall commence until details of the electric vehicle charging bays, each with an electric vehicle charging point, to be provided in accordance with the Council's standard (Parking Standards SPD) shall be submitted and approved in writing by the local planning authority. The details shall include signs and bay markings indicating that bays will be used for parking of electric vehicles only whilst being charged. Prior to first occupation the electric charging points and bays shall be installed in accordance with the approved details and shall thereafter be maintained for the life of the development.

Electric Vehicle Charging Points – Residential and Other: Reason

A6.5 In the interests of creating a sustainable form of development and to encourage the use of ultra low emission vehicles in accordance with Policies ENV8 (Air Quality) and DEL1 (Infrastructure Provision) of the Black Country Core Strategy.

Low NOx Boilers

A6.6 In order to minimise the impact of the development on local air quality any gas boilers provided must meet a dry NOx emission concentration rate of <40mg/kWh. The specification of the gas boiler(s) shall be submitted to and approved in writing by the Local Planning Authority before they are fitted and the approved specification shall be implemented prior to the first occupation of the development and shall be maintained for the lifetime of the development.

**Black Country Local Authorities
ADMS-Urban Air Quality Model**

**National Air Quality Objective / EU Air Quality Limit Value
Nitrogen Dioxide Exceedances 2015**

