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Congestion Charge Variation Order consultation (WEZ) Transport for London
Windsor House
42-50 Victoria Street
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By email: mayor@london.gov.uk and CChargeConsultation@tfl.gov.uk

27 July 2010

Dear Mayor Johnson and Transport for London

The Campaign for Clean Air in London (CCAL) welcomes the opportunity to be consulted on the proposal to remove the Western Extension of the Congestion Charge ("the WEZ").

CCAL is a voluntary organisation which campaigns to achieve urgently and sustainably at least World Health Organisation recommended standards of air quality throughout London.

CCAL is independent of any government funding, has cross party support and a large number of supporters, both individuals in London and organisations. CCAL provides a channel for both public concern and expert opinion on air pollution on London. This document provides both general and expert comments in response to the consultation.

Traffic is a major cause of air pollution in London, which in turn causes thousands of premature deaths per year, and many thousands more illnesses, chronic illness and disability. For this reason, traffic measures are also measures to deal with air quality. <http://webarchive.nationalarchives.gov.uk/20100210180753/http://www.dft.gov.uk/adobepdf/165237/ltp-guidance.pdf>

The details of our consultation response are set out below, but in brief:

1. CCAL does not think the consultation has been adequate because:
 - a) Insufficient information was provided in the consultation document
 - b) Although some has since been produced, it is too late for it to inform public comment (CCAL has provided its initial view below); and
 - c) Vital information has still not been supplied.

2. Removing the WEZ will increase dangerous air pollution.
3. TfL's own modelling suggests that removal of the WEZ would lead to an unlawful increase in air pollution, inconsistent with EU law.
4. Removing the WEZ would have a serious negative economic impact on net income for Transport for London by £55 million each year, which is unjustified.
5. There has been no, or no adequate, consideration of the impact of the proposals on particularly vulnerable groups, or minority ethnic groups.

The details of these concerns are set out below.

ADEQUACY OF THE CONSULTATION

There has already been correspondence between CCAL and the Mayor/Transport for London. CCAL believes that the consultation document published on 24 May 2010 was inadequate because it did not contain essential information.

On 11 June 2010 CCAL requested information relating to the consultation on the proposal to remove the WEZ. In particular, CCAL requested:

"copies of any information held by TfL about emissions and/or assumptions relating to Figure 5-1... in „Proposals for changes to the Congestion Charging Scheme, Public and Stakeholder Consultation May-August 2010"... (This document, with supplementary information, is referred to as the "SD"). I am interested for example in the assumptions made,...the highest concentrations of PM₁₀ within each „concentration contour" shown; and discovering what adjustments (if any) TfL has made to ERG/Kings College London's work. I am keen also and separately to see any work undertaken or estimates produced or analysis done by or for TfL about annual mean concentrations of NO₂ in that part of London for each of calendar 2010 and 2011 since it seems, on the face of it, no such analysis is provided in any of the consultation documents relating to the proposed removal of the WEZ."

The request continued:

"You are presumably aware that EU limit values for NO₂ entered into force on 1 January 2010 and that EU limit values apply everywhere (and once attained may not be exceeded). This means that if the WEZ is formally removed on 4 January 2011 annual mean concentrations of ambient NO₂ may not exceed 40 micrograms per cubic metre (µg /m³) anywhere that has attained that level in calendar 2010. In addition, if the UK obtains a time extension – perhaps until 1 January 2015 – to comply with this limit value then annual mean concentrations of NO₂ must not exceed 60 µg /m³ after 1 January 2010. I am keen to see any analysis done by or for TfL that addresses this very serious public health issue."

A response to the request was provided on 13 July 2010.

As is clear from the fact that it was necessary to make the request, the information is not contained in the consultation document itself („WEZ Consultation“), nor in the accompanying Impact Assessment documents („WEZ IIA“) nor the Supplementary Document (“SD”) (extensive though they may be); nor is it in any of the documents relating to the current consultation on the draft AQS. The WEZ IIA refers only to the outputs of models (the models themselves are not disclosed) on NO_x, not on NO₂ (see: Paragraph 6.4.9, page 45 WEZ IIA and Table 4-4, page 22).

Having now seen the response to our request, it emerges that the information requested is vitally important to consultees. In particular:

- i. Modelling of NO₂ concentrations has been undertaken to consider NO₂ levels with and without the WEZ. This notwithstanding that there is nothing in respect of NO₂ in either the WEZ Consultation or the WEZ IIA equivalent to Figure 5-1 in the SD and in figure 6 – 2 page 45 WEZ IIA, which illustrates the modelled outputs in respect of PM₁₀. Consultees need this information if they are to respond at all to the proposal in respect of its impact on NO₂ levels.
- ii. The modelling is incomplete.
 - a) It does not cover hourly concentrations, on the basis that these are “*more uncertain due to the very local influences within individual streets which affect short-term concentrations*”. This is puzzling, as the Integrated Impact Assessment which accompanies the draft AQS (published following a letter of 22 June 2010 sent on behalf of a member of CCAL) states that „*In 2015, without the Strategy, it is forecast that 45% of London, including roads in central and inner London and around Heathrow airport will exceed the annual mean NO₂ concentration limit value. A few locations near major roads in central London will also exceed the hourly NO₂ limit value.*” (para 3.5). That suggests that a model is available, and it is surprising that it is not being used when considering the possible impact of removing the WEZ, or is not being made available to consultees for their comments. It is particularly puzzling when Article 12 and Annex XI of Directive 2008/50/EC contains an obligation to comply with hourly limit value for NO₂ from January 2010.
 - b) It does not cover annual mean NO₂ concentrations plus margin of tolerance – the 60µg per m³ limit in Article 12 and Annex XI of Directive 2008/50/EC. The reasoning given is that “*Defra is responsible for the assessment of compliance of NO₂ concentrations, including the attainment of 60µg per m³ (related to the margin of tolerance assessment) for submission to the EU, and this work is currently ongoing and due to be reported in 2011 through the Time Extension Notification process.*” This is also puzzling. The obligation to ensure compliance with limit values plus margin of tolerance is an EU obligation which applies during and if a time extension is obtained, and that obligation attaches to Member States, irrespective of divisions of

responsibility within different national governments. Consultees cannot comment meaningfully on the proposal to remove the WEZ if they are unable to ascertain whether the proposal might hinder the UK's ability to comply with its EU obligations, and it is irrelevant that a central government department may have to undertake the relevant modelling for inclusion in the consultation document.

Consultees need the opportunity to comment on the extent of the modelling undertaken, particularly given that what has been done and/or made available is not sufficient to confirm whether the UK will meet its EU law obligations if the WEZ is removed. Consultees also need the opportunity to comment on the rationale for limiting the extent of the modelling in the manner which TfL has done. Yet consultees are unable to do either on the basis of the current WEZ Consultation document and WEZ IIA and SD.

- c) The modelling that has been done indicates that removing the WEZ would be unlawful. By way of illustration, Figure 8, forwarded by TfL in its response to CCAL's information request, indicates that removing the WEZ will increase NO₂ concentrations in the Knightsbridge / Cromwell Road / Thurloe Place / Brompton Road area, including in residential areas, in 2011. For full comment on the implications of the information that is available, please see below, under "response to the proposals".

In addition, further vital matters remain wholly unclear, notwithstanding the response of 13 July 2010. In the absence of such clarity, consultees still remain unable to comment intelligently on the proposed WEZ removal. In particular:

- i. The draft AQS, and its accompanying IIA, propose alternative measures intended to address air quality in London. However, no quantification of the impact of those alternative measures is provided. The draft AQS and its IIA do not quantify them, and the WEZ IIA has (for obvious reasons) been prepared using baseline data which does not include them. But as the draft AQS IIA notes, a "„good" score [for air quality measures] does not necessarily mean „good enough"" (para. 4.15). Consultees cannot tell what the cumulative impact of the proposals will be, even though it is only the cumulative impact that is ultimately relevant to the UK's compliance with EU law.
- ii. As indicated above, the modelling of the impact of the proposal on NO₂ levels is incomplete. It needs clearly to be shown what impact the proposal would have on the UK's compliance with hourly limit values, or limit values plus margin of tolerance (and whether any alternative measures might be sufficient to mitigate that impact).

In the circumstances, CCAL's ability to respond to the WEZ Consultation is compromised.

RESPONSE TO THE PROPOSALS, INsofar AS A RESPONSE IS POSSIBLE

Notwithstanding and subject to its concerns about the consultation, CCAL outlines below the response which it *is* able to make to the proposal. This response is, of necessity, in general terms. It concerns the modelling which has been included (in respect of PM₁₀), the estimates of the potential economic impact, and the estimates of the impact on vulnerable members of society.

CCAL strongly opposes, indeed joins Environmental Protection UK in condemning, the Mayor's proposal to remove the WEZ. The WEZ area is very important in addressing poor air quality because it includes some of the busiest roads in west London (e.g. Brompton Road, Cromwell Road, Knightsbridge and Thurloe Place). Brompton Road, for example, includes: one of the UK's most popular tourist destinations (i.e. Harrods) which generates exceptionally high pedestrian traffic; street canyons; and some of the most polluted air in the UK. As the WEZ IIA itself notes "*the removal of the WEZ is thought likely to lead to an increase in traffic, congestion and emissions of both PM₁₀ and NO_x from road transport within the WEZ*" (Paragraph 7.4.2: Section on "Significant Effects")

1. Emissions impacts: Harmful emissions would increase on Tf L's own estimates by up to 8% (or more)

Emissions of the most harmful air pollutants would increase by between 3% (i.e. total tonnes in the WEZ area, page 21 WEZ IIA) and 8% (Table 3.3, page 20 Draft revised Mayor's Transport Strategy Integrated Impact Assessment: Appendix E) in the WEZ area. CCAL notes that this is very significant when compared to the expected 13% reduction between 2008-2011 across all London in the Mayor's draft AQS.

This is of particular significance in respect of PM₁₀ emissions, where the UK is already in breach of its EU obligations (CCAL refers to its response to the Government's consultation on the draft Air Quality Standards Regulations 2010, dated 28 January 2010, in which it showed in a section titled Limit values must be attained and not exceeded once attained" that there were between 46 and 53 exceedances for the PM₁₀ daily limit value at the LAQN monitoring site for Brompton Road in 2009 (which measures only NO₂ but for which a standard formula exists for conversion to annual mean PM₁₀ and then daily exceedances). (see http://www.londonair.org.uk/london/asp/publicstats.asp?statyear=2010&mapview=PM10b®ion=0&site=CT8&postcode=&la_id=&objective=All) .) , where the European Commission has already initiated infraction proceedings against the UK, and where daily limit value for a whole year has been breached in London in less than six months in 2010.⁴

The consultation documents say (emphasis added, except where otherwise indicated):

a) "*However, despite [a 4.2% reduction in PM₁₀ emissions following the*

introduction of the WEZ, see page 13 WEZ IIA], the variability of other significant determinants of air quality, for example the weather , means that it has not been possible to discern a specific impact on air quality resulting from the scheme” (paragraph 2.3, SD);

- b) *“Over the WEZ as a whole the [impact is minor], although certain major routes would experience more significant changes in air quality emissions from transport” (paragraph 7.4.14, page 57, WEZ IIA);*
- c) *“The map [Figure 6.2, WEZ IIA] shows that the highest predicted concentrations occur within the road and not on pavements. Most of the contour lines are circular and closed at various locations within the main road. TfL’s analysis, taking into account contours which lie along the road surface and close to the kerb, and the grid spacing of the modelling methodology, lead to the conclusion that the EU limit values are expected to be met along Knightsbridge, Brompton Road, Thurloe Place, and Cromwell Road when considered in the context of the WEZ removal” (paragraph 6.4.13, page 47 WEZ IIA);*
- d) *“Over time, a range of measures will deliver emissions reductions in the Western Extension area commensurate with those that the WEZ would have brought, for example the planned introduction of the age-limit for taxis [from 2012], and the deployment of cleaner buses [between 2012 and 2015] (paragraph 7.4.17, page 58 WEZ IIA)”;* and
- e) *“If air quality deteriorates more than expected further action should be taken” (paragraph 7.6.1, page 58 WEZ IIA).*

Documents provided later to CCAL show:

- a) That removing the WEZ will increase NO₂ concentrations in the area, including residential areas, in 2011 and
- b) The detailed map provided to CCAL clearly shows that the daily limit value for PM₁₀ will be breached, for example, on the pavement outside Harrods – i.e. where the public would normally have access and
- c) That in some areas limit values for each pollutant, having been attained, will then be exceeded.

In other words: if the WEZ is removed, we can expect breaches of the daily limit value in 2011 in the air breathed by thousands of people every day (i.e. in the areas outside the contour lines shown on the map of the Knightsbridge / Brompton Road / Thurloe Place / Cromwell Road area in Figure 6-2 WEZ IIA). These are areas to which people have regular access and which also entails long-term exposure for those who live or work there.

Inevitably this will also mean exceedances of the same limit value after it has

been attained (which is contrary to Article 12 Directive 2008/50/EC and Regulation 17 Air Quality Standards Regulations 2010). It may well result in the Brompton Ward regaining the dubious status of the 10th most polluted ward in the whole of Greater London which it was in 2006 before the WEZ was introduced (see „Report on estimation of mortality impacts of particulate air pollution in London“).

In relation to NO₂, the UK has not yet made an application for an extension so limits apply from January 2010. It is incompatible with such an application for the UK to take steps which will lead to a deterioration in air quality.

Should the effects be worse than anticipated, „further action“ – which is not specified – “should” be taken – though no commitment to do so is given in any of the consultation documents.

2. TfL’s own estimates appear to be internally inconsistent

The WEZ IIA indicates that the modelling of traffic and congestion has assumed a fixed road capacity in the WEZ area:

“In the [WEZ] area in the second half of 2007, there was a loss of effective vehicular road capacity of about 15 to 20%, owing to road works and alteration to traffic signals. There is uncertainty over the amount of that capacity which might be recovered and hence its effect on traffic congestion and emissions. Monitoring of traffic and congestion levels suggested at spring 2009 that some 30 to 40% of the lost effective capacity had been recovered. However, this recovery was short lived, and by the second half of 2009 observations suggested that capacity had returned to its lower level. The scenarios in Table 4-1 assume a fixed road capacity” (paragraph 4.1 bullet point 4, para. 4.1.5 page 19 WEZ IIA) (i.e. increased congestion of 15-21%; 2010 conditions);

In contrast, modelling of the impact on emissions in 2011 of this traffic and congestion appears to have assumed that 50% of the road capacity is recovered:

“Estimates of the impacts of these traffic and congestion changes on emissions of air quality pollutants and climate change gases have been made using traffic and congestion changes that broadly correspond to a scenario in which around half of the effective road network capacity that is estimated to have been lost in the [WEZ] area has been recovered” (paragraph 4.2.3, page 22 WEZ IIA. See also paragraph 4.3.1 page 23 WEZ IIA)

If this is indeed TfL’s approach, it cannot be a reasonable basis for a decision nor a fair representation on which consultees can be expected to comment. The assumptions are plainly inconsistent. As the WEZ IIA notes (paragraph 4.2.3), if road capacity is higher an implicit assumption is made that congestion is lower – and in consequence that emissions are lower (vehicles at 5 mph are about twice as polluting as those travelling at 20 mph). The impacts on the emissions are therefore underestimated.

Moreover, CCAL notes that this assumption is entirely unwarranted. There is no reason to suppose that such extensive recovery of road capacity will occur (indeed, as the consultation document accepts in the extract quoted above, this is still „uncertain“). On the contrary, CCAL notes the continuing (until April 2011) major gas mains replacement work on the A4 Cromwell Road and Earls Court Road by the North London Gas Alliance, which indicates a loss of capacity, not a recovery. Also, there appears to be no account whatsoever given for the fact that the Olympic Route Network will include part of the A4 (including Brompton Road and Cromwell Road). This is likely to operate for at least two months in 2012. CCAL understands that evidence from previous Games is that background (non-Games) traffic reductions in the range of 10-30% can take place during Games time, termed the “Games Effect”. CCAL estimates that background levels of traffic in London will need to fall by 25-35% (or more) if London is not to come to a standstill when the necessary „Zil lanes“ operate for competitors and officials. There is no sign yet of the strategy, or wide variety of measures, needed to reduce and manage such background traffic.

Thus the emissions increases likely to result from removing the WEZ are very likely to be higher than those referred to at (1) above.

3. Economic impacts

Removing the WEZ would reduce net income for Transport for London by £55 million each year. This money has been used for improving transport across London and has been used to fund improvements to roads, public transport and walking and cycling, benefiting people who travel in London. The consultation documents say:

“The removal of the WEZ would reduce net scheme revenues by some £55 million each year. This money is used for improving transport across London and has been used to fund improvements to roads, public transport and walking and cycling, benefiting people who travel in London. The overall budget of TfL for 2009/2010 is close to £10 billion, in comparison to which, the effects of removing the WEZ would be minor” [CCAL emphasis] (paragraph 7.4.4, page 61, WEZIIA)

At a time of economic crisis and budget cuts, CCAL is surprised that a loss to TfL of £55m per annum and to business of £70m to £50m per annum, due to increased congestion (para. 5.4.23 page 35 WEZIIA) can be disregarded.

In addition, CCAL considers that the Mayor / TfL underestimate the potential risk of fines from the EU for the UK’s persistent breach of its EU air quality obligations. CCAL is pleased there is an official recognition at last that EU fines are „potentially in the region of £300 million per year for each pollutant“. See paragraph 5.48 in the „London Low Emission Zone Variation Order: Proposed deferral of the inclusion of larger vans and minibuses in the LEZ from 2010 to 2012“. But, the Mayor is wrong simply to assume the UK will obtain a time extension until 2011 for PM₁₀ and 2015 for

NO₂ to comply with limit values.

- i. In respect of PM₁₀ the Commission has already rejected one application from the UK and the resubmitted TEN still contains fundamental flaws;
- ii. No application for an extension in respect of NO₂ has yet been made. The limits therefore apply as from January 2010.
- iii. If the UK does obtain an extension in relation to NO₂ it will need to ensure that annual mean concentrations remain below 60 µg/m³ from 1 January 2010. The information sent to CCAL in response to its request (referred to above) simply says that this is Defra's responsibility.

As indicated above, CCAL is not able to comment properly on the likelihood of these fines being incurred, because of the significant lack of information in the consultation as to how the UK's obligations under EU law are to be met. However, if the cost-benefit analysis of the proposed removal of the WEZ were to take into account the £300m per annum fines which the European Court could impose, CCAL considers it quite clear that the proposal could not possibly be justified.

4. Equalities impacts: The most vulnerable would suffer most

The Mayor's responsibility for adopting his AQS stems, in part, from his obligation to implement the National Air Quality Strategy in London: section 362(2)(a) Greater London Authority Act 1999.

The consultation documents acknowledge that:

- a) the National Air Quality Strategy "*recognises that „certain groups within society” are more susceptible to the impacts of poor air quality upon both life expectancy and quality of life. Older people and people who suffer from certain pre-existing medical conditions are seen as being the most vulnerable. Members of these groups would therefore be expected to benefit the most from improvements to air quality, or to suffer the most from any changes for the worse.*"
- b) "*The NAQS does not itself state whether these „more susceptible” groups include people from other EPGs, such as those from black, Asian and other minority ethnic (BAME) groups or those who live in areas characterised by high levels of deprivation. However, the government has acknowledged that there is inequality in the distribution of air pollution and tackling this inequality has become part of its social exclusion, equality and deprivation agenda.*"

Yet TfL appears to pay little to no regard to the impact which removing the WEZ would have on these groups. In particular, it states that:

- a) "*Modelling undertaken by TfL suggests that emissions of air quality pollutants from*

road transport within the Western Extension area would increase by a small amount following the removal of the WEZ (refer to Table 4-3 and 4-4pp 21 and 22 WEZIIA) and that, all other things being equal and assuming no measures in mitigation, air quality could reduce very marginally within the Western Extension area as a result, with the greatest impact occurring on and very close to the carriageway of major roads. However, it is unlikely that it would be possible to discern an impact on measured air quality owing to the variability of other factors which significantly influence air quality" (paragraph 6.4.2, WEZ IIA);

- b) "No significant health effects are likely as a result of the removal of the WEZ and therefore no mitigation measures are proposed, and any adverse impacts that do occur in some locations would be likely to be balanced by positive impacts elsewhere. If air quality were to deteriorate more than expected further action should be taken. The Draft MAQS contains provision for greater and wider use of local measures. These provide a mechanism by which further action may be taken in response to monitoring data, allowing the Mayor to respond proactively to any potential adverse effects of removing the WEZ" (paragraph 7.6.1, WEZ IIA).

This approach does not meet the Mayor's obligations to implement the National Strategy. If harmful emissions are expected to increase, and the most vulnerable (or those in particular minority groups) are expected to bear the brunt of the effects, it is no answer that they will find it difficult to prove it, or that the modelling would be difficult to conduct, or that different people in other areas will experience improvements.

OTHER COMMENTS

Greener Vehicle Discount

The Greener Vehicle Discount would undermine air quality and increase congestion unnecessarily. A 100% discount should only be offered to cars emitting 100g/km or less of CO₂ and meeting or beating the Euro 5 standard for petrol vehicles (since the Euro 5 standard for diesel vehicles is around three times higher for oxides of nitrogen (NO_x) than petrol vehicles).

Inner London low emission zone

CCAL has urged the Mayor of London and TfL on numerous occasions, including in very detailed submissions, to introduce one or more additional inner low emission zones (or „Clean Air Zones“) in London. This or these would be in addition to phase 3 of the LEZ and would ban the most polluting diesel vehicles from the most polluted parts of London.

You are aware there were some 40 such inner LEZs in Germany by the end of 2009 with scores more across Europe (see: <http://www.lowemissionzones.eu/>)

CCAL continues to advocate strongly the implementation of one or more of these additional inner LEZs in London. The implementation earlier or simultaneously of a stronger, Berlin- style, inner LEZ might allow the Mayor to slow the tightening of the outer LEZ (all other things being equal).

CCAL does not repeat details here, since both the Mayor and TfL have long had such a proposal from CCAL, but would be pleased to meet the Mayor or senior TfL officials to discuss it.

CONCLUSION

The information which has been provided to the public in this consultation is inadequate. Some further information has, following their request, been provided to CCAL. On the basis of this information, incomplete though it is, removing the WEZ would lead to:

Breaches of the PM₁₀ daily limit value in 2011;

Aggravated breaches of each of the PM₁₀ daily limit value and the NO₂ annual mean limit (i.e. exceedances of limits which had attained in 2010);

An increase in harmful concentrations generally. For the reasons outlined above this would be unlawful.

CCAL therefore concludes that the Mayor and TfL should reject the proposal to remove the WEZ.

There should be no other outcome without further information and modelling, all of which should be subject to further consultation.

Please contact me if you have any questions or would like more information on any of the points raised in this letter.

Yours sincerely

Simon Birkett Founder
Campaign for Clean Air in London