

TITLE OF REPORT: **The Clean Air Plan for Gateshead and Newcastle - Joint Committee and Legal Order**

REPORT OF: **Sheena Ramsey, Chief Executive**
Peter Udall Strategic Director, Economy, Innovation and Growth

Purpose of the Report

1. It is expected that central Government's Joint Air Quality Unit will shortly agree that the introduction of a Clean Air Zone Class C will deliver compliance with legal limits for air quality in the shortest possible time. In order to bring the Clean Air Zone into force, a number of subsequent decisions and actions are required.
2. Cabinet is asked to make a number of decisions relating to the implementation and operation of the Clean Air Zone. These include making the legal order for the Clean Air Zone, maintaining a local register of exempt vehicles, entering into agreements with the Joint Air Quality Unit and to establish a Joint Committee with Newcastle City Council to manage the Clean Air Zone.

Background

3. The Council is subject to the Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2017 and the Environment Act 1995 (Gateshead Council and Newcastle City Council) Air Quality Direction 2020, which require action to be taken to secure compliance with air quality limits in the shortest possible time.
4. In September 2021, following referral by Cabinet, Full Council agreed to submit a Full Business Case for the introduction of a Clean Air Zone Class C ("CAZ") to the Joint Air Quality Unit ("JAQU").
5. The introduction of the CAZ would charge buses, taxis, private hire vehicles, and light and heavy goods vehicles, which do not meet national emissions standards, a fee for each day they are inside the CAZ. The Full Business Case also identified a funding package to support people affected, including significant grants to upgrade and retrofit affected vehicles.
6. Following submission of the Full Business Case to JAQU, officers have been engaging with them and it is anticipated that the Government will shortly agree that the Full Business Case will deliver compliance in the shortest possible time and provide the remaining funding.

Proposal

7. This report sets out a number of the legal and administrative decisions which are required to implement the CAZ. Time is critical in delivering compliance with the mandated air quality standards and therefore it is necessary to take steps relating to the introduction of the CAZ, in advance of receiving formal confirmation from the Government that the Full Business Case is approved.

Recommendations

8. It is recommended that Cabinet, subject to receipt of confirmation from the Government that the Full Business Case is approved:
 - (i) Approve the joint making with the Newcastle City Council of the Newcastle and Gateshead Clean Air Zone Charging Order 2022 (“the Charging Order”) substantially in the form attached at Appendix 2 and delegate authority to the Strategic Director Economy, Innovation and Growth, in consultation with the Leader and the cabinet member for Environment and Transport, to agree any changes to the Charging Order on behalf of Gateshead Council (and to note that such changes would also need to be agreed by Newcastle City Council).
 - (ii) Authorise, in accordance with the Council’s constitution, the sealing and dating of the Charging Order incorporating any changes to the version provided at Appendix 2 which are made as in accordance with (i) above.
 - (iii) Delegate to Newcastle City Council the authority to determine the date that charging pursuant to the Charging Order shall commence and thereafter publish notice of such date following agreement with the Strategic Director Economy, Innovation and Growth of the date.
 - (iv) Delegate functions to Newcastle City Council to undertake enforcement of the Charging Order pursuant to The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 and all other enabling powers.
 - (v) Agree that Newcastle City Council shall maintain and administer the local register which will identify non-chargeable vehicles for the purposes of Part 2 of Annex 2 and of Annex 4 of the Charging Order criteria for determining applications for entry onto such local register.
 - (vi) Delegate to Newcastle City Council the distribution of funding for grants for the CAZ in order to retrofit or upgrade potentially affected vehicles, in line with the Full Business Case and funding received.
 - (vii) Authorise the entry into a joint working agreement with Newcastle City Council and delegate authority to the Strategic Director Economy, Innovation and Growth, in consultation with the Leader and cabinet member for Environment and Transport, to agree the terms and provisions of such agreement.
 - (viii) Note that Newcastle City Council will enter into a CAZ Services Agreement with the Government and authorise the entry into all necessary Data Sharing Agreements with the Government, all such agreements to be on such terms as shall be agreed by the Strategic Director Economy, Innovation and Growth,

in consultation with the Leader and cabinet member for Environment and Transport.

- (ix) Subject also to the agreement of Full Council, agree to the establishment of an "Air Quality Joint Committee" with Newcastle City Council to exercise both executive and non-executive functions as set out the terms of reference attached at Appendix 3 and to note that Full Council shall, with the agreement of Cabinet, make appointments to such Joint Committee.
- (x) Note that decisions are also being taken by Newcastle City Council where actions are being required to be taken jointly, in relation to the delegation of enforcement functions and in relation to the setting up of the Air Quality Joint Committee.

9. For the following reasons:

- (i) To put in place the legal and administrative decisions which are required to implement the CAZ.
- (ii) Time is critical in delivering compliance with the legal air quality standards and therefore it is necessary to take steps relating to the introduction of the CAZ, in advance of receiving formal confirmation from the Government that the Full Business Case is approved.

Policy Context

1. The proposals in this report are consistent with the Council priorities and the overall strategic approach for Gateshead as set out in “Making Gateshead a Place Where Everyone Thrives” and its policy objectives. In particular, ‘Put people and families at the heart of everything we do’ and ‘Work together and fight for a better future for Gateshead’. They also support the Core Strategy and Urban Core Plan, and the aims and objectives of the North East Transport Plan.
2. Outdoor air pollution is a major risk to human health. As outlined in prior reports to Cabinet, based on national estimates, poor air quality is considered to be responsible for hundreds of deaths each year across Newcastle and Gateshead. The main cause of roadside air pollution, including nitrogen dioxide, is road transport, which also has wider impacts on public health and is a significant contributor to carbon emissions and climate change.
3. The Council is subject to the requirements of the Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance) Air Quality Direction 2017 and the Environment Act 1995 (Gateshead Council and Newcastle City Council) Air Quality Direction 2020, which require action to be taken to secure compliance with air quality limits in the shortest possible time.

Background

4. In October 2021, following referral by Cabinet, Full Council agreed to submit a Full Business Case for the introduction of a Clean Air Zone Class C (“CAZ”) to the Joint Air Quality Unit (“JAQU”).
5. The introduction of the CAZ would charge Buses, taxis, private hire vehicles, and light and heavy goods vehicles which do not meet national emissions standards a fee for each day they are inside the CAZ. The Full Business Case also identified a funding package to support people affected, including significant grants to upgrade and retrofit affected vehicles.
6. Following submission of the Full Business Case to JAQU, officers have been engaging with them and it is anticipated that the Government will shortly agree that the Full Business Case will deliver compliance in the shortest possible time and provide the remaining funding.
7. This report sets out a number of the legal and administrative decisions which are required to implement the CAZ. Time is critical in delivering compliance with the legal air quality standards and therefore it is necessary to take steps relating to the introduction of the CAZ, in advance of receiving formal confirmation from the Government that the Full Business Case is approved.
8. The Charging Order is the legal instrument that allows the Council to implement a CAZ and introduce charges for non-compliant vehicles entering or passing through it. The Charging Order has been drafted by external legal consultants and in accordance with the requirements of the Transport Act 2000. Approval is being sought to exercise the powers conferred on the Council by the Transport Act 2000

and all other powers enabling it to make the Charging Order. As the roads which are subject to the Charging Order are located in Newcastle and Gateshead, the Charging Order has to be made jointly by the two Councils.

9. Should Cabinet not approve the making of the Charging Order, it is unlikely that clean air compliance will be achieved in the shortest possible time, with a resultant risk of action being taken against the Council by central Government.
10. The draft Charging Order is provided as Appendix 2 to this report and includes:
 - the boundary of the CAZ;
 - the scope of vehicles covered;
 - required emissions standards;
 - charges for non-compliant vehicles;
 - exemptions (temporary and permanent); and
 - penalty charges for non-payment
11. Newcastle City Council will be undertaking enforcement on behalf of both Councils and it will be carried out in a similar way to Bus Lane Enforcement, using existing and new staff. To ensure this can happen this report recommends approval of delegation of all its functions in respect of the CAZ, to undertake enforcement to Newcastle City Council.
12. While some exemptions will be maintained nationally, a local exemption list (known as the local register) will be administered by Newcastle City Council. This will have a range of permanent and temporary local exemptions.
13. The effective operation of the CAZ also requires Newcastle City Council authority to enter into agreements with JAQU as part of the national Clean Air Zone service on behalf of both councils. This service maintains the national payment database, links with DVLA and national exemptions. In order to use this, Newcastle City Council will be required to enter into a Services Agreement with JAQU. This will set out the expectations and requirements of both parties in terms of costs, service levels and technical specifications. One or more Data Sharing Agreements will also be needed with JAQU to govern the flows of data between the councils, the DVLA and central payment mechanisms. This is required due to the use of DVLA information to check payment and registration plate details.
14. As the CAZ covers areas of both Newcastle and Gateshead, it is proposed to set up a Joint Committee to make certain decisions in relation to the CAZ and to determine how any surplus or deficit arising from the Charging Order will be dealt with. The Joint Committee will exercise a mixture of Executive Functions (those matters/functions relating to the Charging Order) and Non-Executive Functions (those matters/functions relating to the management of Air Quality) and therefore its establishment will also need a decision from Full Council.
15. The Charging Order is expected to be launched into operation in July 2022. The funding support for people and businesses are expected to be launched early in 2022.

Consultation

16. All necessary consultation in relation to the making of the Charging Order has been undertaken and no inquiry is considered necessary.
17. The charging scheme being introduced by the Charging Order will not come into force before 14th July 2022. At least 28 days advance notice of its coming into operation will be given to the public by press notice.
18. In preparing this report, consultations have taken place with the Leader, Deputy Leader and portfolio holder for Environment and Transport.

Alternative Options

19. The legal and administrative decisions set out are required to implement the CAZ. Time is critical in delivering compliance with the legal air quality standards and therefore it is necessary to take steps relating to the introduction of the CAZ, in advance of receiving formal confirmation from the Government that the Full Business Case is approved.
20. Failure to achieve compliance with air quality standards as defined in EU directives, which have also been incorporated into UK law exposes the two Councils to legal risks.
21. The primary measure of success will be through the reduction in exposure to air pollutants of the residents of Newcastle, Gateshead and across the region. While a principal focus through this work is the attainment of pollution levels below the legal limit value thresholds as soon as possible, it must be reiterated that for some pollutants (such as particulate matter) there is no safe level of exposure and other pollutants such as particulate matter also cause significant public health issues.
22. The Full Business Case contained a "Monitoring and Evaluation Plan" through which the authorities will evaluate the CAZ.
23. The Joint Air Quality Unit has also commissioned a comprehensive programme of national monitoring and evaluation for Clean Air Zones. Newcastle and Gateshead will be participating and providing data for this work.
24. The performance of the CAZ will be kept under review and the authorities are required to consider alternative options, including extending or upgrading any CAZ to incorporate private vehicles if compliance with air quality values is not achieved.

Implications of Recommended Option

Fairness

25. The CAZ could have a negative impact on users of taxis and private hire vehicles and bus services, as well as those who make use of light and heavy goods vehicles. We will attempt to mitigate these impacts through the award of grants and the temporary exemptions from the Clean Air Zone.

Economy

26. Government guidance requires that economic impacts of the proposed measures include the cost or benefit of changes in greenhouse gas emissions, the cost of inconvenience to residents and businesses of changing travel patterns due to charging, and the economic benefits of improved air quality.
27. Using standard appraisal methodology, the recommended option has a lower economic impact compared to CAZ D or a CAZ C with traffic restrictions.
28. **Resources:**
 - a) **Financial Implications** – The Strategic Director, Resources and Digital confirms that there are no financial implications arising from this report.
 - b) **Human Resources Implications** – There are no human resources implications.
 - c) **Property Implications** - No property implications have been identified.
29. **Risk Management Implication** - Poor air quality is impacting on people's lives and health and needs to be addressed as the key risk to this project. We have seen a number of improvements in recent years but need to continue to do so through this plan and engaging with people about their travel choices. This is linked to wider work the council is undertaking on climate change and investment into our transport networks.
30. A further fundamental risk is failure to achieve compliance with air quality standards as defined in EU directives, which have also been incorporated into UK law. Continued failure to achieve compliance exposes the council to legal risks.
31. The Charging Order is the legal instrument that practically implements the Full Business Case for the CAZ. It has been drafted in accordance with statutory powers pursuant to Part III and Schedule 12 of the Transport Act 2000, The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013, and all other enabling powers. Equivalent decisions will need to be made by Newcastle City Council in order for the Charging Order to be made.
32. The joint arrangements proposed through the setting up of the Air Quality Joint Committee which Newcastle City Council are in accordance with the provisions of the Council's Charter and sections 101 of the Local Government Act 1972, section 9EB of the Local Government Act 2000 and the Local Authorities (Arrangement of the Discharge of Functions) (England) Regulations 2012.
33. **Equality and Diversity Implications** - The Council fulfilled its duties under the Public Sector Equality Duty by undertaking an integrated impact assessment on the Charging Clean Air Zone in support of the full business case.
34. **Crime and Disorder Implications** – None

35. **Health Implications** – The proposed CAZ delivers compliance with Nitrogen Dioxide limits in the same timeframe as the CAZ D and CAZ C with traffic restrictions (2022) and more quickly than a ‘Do Minimum’ case without a CAZ.
36. **Climate Emergency and Sustainability Implications** - The recommended option leads to lower carbon emissions than the preferred option identified in 2020 and consequent relatively positive impacts in terms of the Council’s commitment to achieving net zero compared to other options.
37. These impacts occur due to a reduction in the total number of trips made, as well as upgrading vehicles to newer models, which emit lower levels of carbon.
38. It is important to note that the Government’s Clean Air Zone Framework, which does not charge older petrol vehicles, could lead to some users switching to older petrol vehicles with greater greenhouse gas emissions.
39. **Human Rights Implications** – None.
40. **Ward Implications** - All wards will be affected.

Background Information

41. The DEFRA Air Quality Plan July 2017 - <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>
42. DEFRA Clean Air Zone Framework - <https://www.gov.uk/government/publications/air-quality-clean-air-zone-framework-for-england>
43. Minutes of Gateshead Council, 23/1/20, Approval of Breathe: The Clean Air Plan for Gateshead, Newcastle and North Tyneside <http://democracy.gateshead.gov.uk/ieListDocuments.aspx?CId=140&MIId=2373>
44. Minutes of Gateshead Cabinet, 20/7/21, Breathe: The Clean Air Plan for Newcastle and Gateshead, Update Report [Agenda for Cabinet on Tuesday, 20th July, 2021, 10.00 am Gateshead Council](#)
45. Agenda and [minutes of Gateshead Cabinet 14/9/21](#)