

Birmingham City Council

Report to the Cabinet Member, Transport and Environment

14th May 2021



Subject: Clean Air Zone Agreement with the Secretary of State for Transport for the Provision of the Clean Air Zone Service

Report of: Acting Director Inclusive Growth

Relevant Cabinet Member: Councillor Waseem Zaffar – Transport and Environment

Relevant O & S Chair(s): Councillor Liz Clements – Sustainability and Transport

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Appendix A – Exempt Information 3: Information relating to the financial or business affairs of any particular person (including the authority holding that information).		

1 Executive Summary

- 1.1 The purpose of this report is to seek approval to enter into an agreement (the CAZ Agreement) with the Secretary of State for Transport. The CAZ Agreement relates to the provision of the Clean Air Zone (CAZ) Service by the Secretary of State, to the Council, for the purpose of the CAZ operation.
- 1.2 The Joint Air Quality Unit (JAQU), a joint venture between the Department for Transport (DfT) and the Department for Environment, Food and Rural Affairs (Defra), has established the CAZ Service to be used by any local authority in England that establishes a CAZ. The CAZ Service will determine whether a

vehicle is compliant with the relevant CAZ emissions standards (in Birmingham's case, those associated with a CAZ type D as specified in the Birmingham Clean Air Zone Charging Order 2021) and allow payments to be made to enter a CAZ. The Council will use these services to assess the compliance of each vehicle that enters the zone, determine whether a charge has been paid if required, and subsequently determine if the issuing of a penalty charge notices (PCNs) is appropriate. The CAZ Service has three main components which are:

- 1.2.1 an online vehicle compliance checker (VCC) which determines if a vehicle complies with the CAZ emissions standards and if a charge should be paid,
 - 1.2.2 an online payment portal through which all payments for use of the CAZ will be made, and
 - 1.2.3 a central helpdesk for central CAZ queries and digital assisted payments.
- 1.3 On 19th January 2021 Cabinet approved the decision to delegate authority to the Cabinet Member for Transport and Environment, in consultation with the Acting Director, Inclusive Growth, to finalise and enter in to a CAZ Agreement with the Secretary of State for Transport for the provision of the Clean Air Zone Services required to operate the CAZ.
- 1.4 In accordance with Cabinet's previous recommendations this report seeks approval to enter the CAZ Agreement contained in Exempt Appendix A.

2 Recommendations

- 2.1 Approves the entering of the CAZ Agreement contained in Exempt Appendix A.
- 2.2 Notes that the CAZ Data Sharing Agreement (DSA), relating to the sharing of personal data required for the CAZ Service to operate, was entered in to on the 29th March 2021. This was done in advance of the completion of the CAZ Agreement to allow systems integration and testing to commence.
- 2.3 Notes that the CAZ Service requires the use of GoCardless Ltd as a direct debit payment services provider, and Stripe Payments Europe Ltd as a card payment service provider, and the Council will therefore enter into agreements with those organisations in accordance with the necessary governance protocols.
- 2.4 Notes that the CAZ Agreement establishes a co-operation between the participating contracting authorities with the aim of ensuring that the public services they must perform are provided with a view to achieving objectives they have in common. As such, the CAZ Agreement is not required to be subject to a procurement exercise. Further information is in paragraph 7.2.
- 2.5 Authorises the City Solicitor (or their delegate) to complete any documentation necessary to give effect to any of the above recommendations.
- 2.6 Approves, in accordance Part D2.3vii of Birmingham City Council's Constitution, an exemption to the standing order Part D2.10i to enabling the CAZ Agreement

to be signed as opposed to being signed and sealed as would have been required under Part D210i of the Constitution.

3 Background

- 3.1 The Council has been working to implement the CAZ since approval of the Full Business Case (FBC) by Cabinet in December 2018 and receipt of funding for the programme from Central Government in March 2019.
- 3.2 Following delays experienced by Central Government in delivering their systems for enforcement (the complete CAZ Service), and more recently due to the impacts of COVID-19, the launch date for the CAZ was agreed to be 1st June 2021.
- 3.3 In the most recent CAZ report to Cabinet - the Birmingham Clean Air Zone (CAZ) Update to Cabinet on Digital and Physical Infrastructure Development, Air Quality Monitoring, and Income and Expenditure Forecast report - it was noted that the Council will be required to enter into agreements with the Secretary of State for Transport for the provision of the CAZ Services. These agreements were being drafted by JAQU, on behalf of the Secretary of State, at the time that report was submitted and consequently could not be presented to Cabinet for approval. As a result, delegated authority was requested from Cabinet as detailed in paragraph 1.3 to allow these agreements to be entered into in a timely manner following their completion .
- 3.4 Also in the Update to Cabinet, it was noted that the fees to pay for the Council's use of the Clean Air Zone Services provided by the Secretary of State for Transport, through JAQU, will be recovered using a Statutory Instrument (SI namely the Clean Air Zones Central Services (Fees) (England) Regulations 2020 (SI 2020/1444). The fee is calculated on a per transaction basis which levies a £2 fee per charge per transaction.
- 3.5 A City Council full business case (FBC) detailing the digital and physical infrastructure required to establish and enforce the CAZ was reported to and approved by Cabinet on 8th September 2020. The FBC captured the process by which the Council will capture the details of those who have entered the CAZ through the use of Automatic Number Plate Recognition (ANPR) cameras. The details captured, and specifically the Vehicle Registration Marks (VRMs), will be sent on a regular basis to the CAZ Service which will respond with:
 - I. information regarding the compliance of the vehicles associated with those VRMs,
 - II. information regarding whether a payment has been made to enter the CAZ on any given day within the specified payment window, and
 - III. further information identifying the vehicle such as make, model and colour.

- 3.6 The Council will use this information to monitor the CAZ and enforce against users in non-compliant vehicles who do not pay the appropriate charge. The CAZ Agreement in Exempt Appendix A sets out the terms upon which the Secretary of State for Transport will provide the CAZ Services to the Council.

4 Options Considered and Recommended Proposal

- 4.1 The CAZ Agreement is integral to the operation of the CAZ and is necessary to secure the provision CAZ Services for use by the Council, and to give the Council confidence that the service performance will be adequate and a means for recourse if not. To not enter into the CAZ Agreement would lead to significant uncertainty for the Council, adding risk to enforcement and therefore achieving compliance with the Ministerial Direction (see paragraph 7.2.2), and is not a viable option. The risks are set out in paragraph 6.1 and 6.2 of this report. It is therefore recommended that the Council enters into the CAZ Agreement with the Secretary of State for Transport.

5 Consultation

- 5.1 A statutory public consultation was undertaken in relation to the CAZ by the Council between July and August 2018. The consultation exercise involved 10,392 respondents along with 386 organisations and businesses.
- 5.2 No specific consultation is required in relation to the CAZ Agreement. Officers from legal, finance and corporate procurement have been consulted on this report.

6 Risk Management

- 6.1 The main risks to the Council which the CAZ Agreement addresses relate to any loss of access to the CAZ Services. Without those services, the Council would be unable to determine the compliance of vehicles or whether a payment had been made in relation to specific vehicle. The CAZ Agreement includes service level agreements and key performance indicators which specify minimum service availability and performance requirements, including accuracy of information.
- 6.2 Other risks addressed by the CAZ Agreement include: removing confusion between the parties regarding roles, responsibilities and liabilities, defining the service specification for key systems interfaces, and formalising invoicing arrangements for payments required in relation to The Clean Air Zones Central Services (Fees) (England) Regulations 2020.
- 6.3 The CAZ Agreement includes provisions to encourage continuous service improvement with a particular focus on the period following go-live to ensure support is readily on hand. As the second CAZ to go-live in England, and the only CAZ type D, the continuous improvement requirements in the CAZ Agreement will create a collaborative framework for the ongoing cooperation required between parties which will be key for addressing risks and issues.

- 6.4 Risks regarding service performance and monitoring will be managed by the CAZ team at the regular programme board meetings and escalated to the CAZ Service Performance Board as necessary.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The recommended decisions are consistent with the City Council's priorities, plans and strategies because they enable the CAZ to operate. The CAZ itself is consistent with the City Council's Plan 2018-2022 (2019 update) as outlined below.
- 7.1.2 Birmingham is the second city within the UK to implement a CAZ, and the very first to operate a Charging CAZ type D. It is at the forefront of change in this area and will set the bar for future cities which wish to tackle air quality for their citizens.
- 7.1.3 Birmingham is an entrepreneurial city to learn, work and invest in. The Clean Air Zone and associated grant funds encourage investment in compliant methods of transportation.
- 7.1.4 Birmingham is a fulfilling city to age well in. Improving air quality will have a direct impact on the health and wellbeing of citizens and visitors to the city centre. People are encouraged and financially incentivised to use public transport or upgrade their vehicles rather than commuting in non-compliant vehicles, or cycle or walk.
- 7.1.5 Birmingham is a great city to live in. The CAZ will directly improve air quality in the city centre. This is a further step on the way to a clean and sustainable city.
- 7.1.6 Birmingham is a city that takes a leading role in tackling climate change. The scheme supports the Additional Climate Change Commitments agreed by Cabinet on 30th July 2019 following the motion on Climate Emergency being passed at the meeting of the City Council on the 11th June 2019, including the aspiration for the City Council to be net zero-carbon by 2030.

7.2 Legal Implications

- 7.2.1 The requirement of air quality compliance was imposed upon the UK by the EU Ambient Air Quality Directive(b) and upon the Council by the Environment Act 1995 (Birmingham City Council) Air Quality Direction 2019.
- 7.2.2 The Secretary of State for the Department of Environment, Food and Rural Affairs issued a Ministerial Direction in March 2019 which required that the Council implement its plans so that compliance within the legal

limit value for Nitrogen Dioxide is achieved in the shortest possible time, and by 2021 at the latest. The Council remains subject to this Direction.

- 7.2.3 The CAZ Agreement will be entered into pursuant to Regulation 12(7) of the Public Contract Regulations 2015 and as such does not require a procurement exercise. The CAZ Agreement for the provision of the CAZ Services seeks to establish co-operation between the Secretary of State for Transport and the Council with the aim of ensuring the achievement of the common objective of air quality compliance. The service will be provided on a cost-recovery basis.
- 7.2.4 A DSA, which is supplementary to the CAZ Agreement, has previously been agreed to enable integration between the Council's systems and the CAZ Service to be completed.
- 7.2.5 Under Section 111 Local Government Act 1972, the Council has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Therefore, the Council has a general power to enter into the CAZ Agreement in Exempt Appendix A in order to discharge its responsibility under the March 2019 Ministerial Direction.
- 7.2.6 The Council will be required to publish a privacy notice on its website in addition to its existing privacy statement to inform CAZ users of how information is collected and how it is used. To inform this JAQU will provide a joint privacy notice which sets out the responsibilities of both parties in relation to the sharing and processing of personal data in accordance with the DSA in Exempt Appendix A.
- 7.2.7 Risks associated with the DSA in Exempt Appendix A are detailed in section 6.
- 7.2.8 Birmingham City Council's Constitution at Part D2.10i requires contracts for services which exceed £1m in value to be sealed with the Common Seal of the Council and executed by a contractor as a deed. The Council will not be able to comply with this provision.
- 7.2.9 DfT have an internal protocol for agreeing contracts and deed execution. DfT decided to not to sign and seal the CAZ Agreements with all the Local Authorities as deeds but to sign them as contracts and inserted a consideration clause for a nominal sum of one pound into the CAZ Agreement to obviate the need for sealing. The above decision followed a previous decision of DfT to only seal contracts above a certain threshold and prioritise matters which were estates-related. This decision was made having taken into consideration the difficulties government departments were having in sealing documents, as a result of lockdown.
- 7.2.10 Following DfT's decision regarding the CAZ Agreement, an exemption is sought to Part D2.10i of the Constitution, pursuant to Part D2.3vii, to

enable the agreement to be signed as opposed to signed as sealed as a deed as would have otherwise been required by Part D2.10i

- 7.2.11 Part 2.3vii states “Exemption from any Standing Order may be authorised by the Decision Maker PROVIDED THAT the Decision Maker is satisfied that the exemption is justified by special circumstances and the Decision Maker records in writing the ground(s) for being so satisfied as part of that decision.”
- 7.2.12 The circumstances have been set out in this report, in particular DfT objection to sealing and the need to enter into the CAZ Agreement. It should be noted that there are different limitation periods for simple contracts and contracts executed as deeds by which actions (such as breach of contract) should be brought. For simple contracts the time period is 6 years and for contracts executed as deeds the time period is 12 years. Although there is a disadvantage to the contract being signed it should be taken into account that both parties to the agreement are public bodies so the likelihood of pursuing legal action against the other is not as high as it would be if the other party was a private organisation.

7.3 Financial Implications

- 7.3.1 The decisions in this report relate specifically to entering into a CAZ Agreement (in Appendix A – Exempt Information) with the Secretary of State for Transport. There are no direct capital or revenue implications associated with agreement to the CAZ Agreement.
- 7.3.2 Were the Council not to agree to the CAZ Agreement it would not have secured the CAZ Services which may jeopardise the CAZ operation and therefore the Council’s ability to meet its air quality objectives. The Council remains subject to a Ministerial Direction, as noted in paragraph 7.2.2, and may face financial penalties were it not able to meet the legal limits for Nitrogen Dioxide set out in that Direction.
- 7.3.3 The Council has forecast income and expenditure expectations, as reported to Cabinet in January 2021, which could be impacted should the CAZ Services not be secured. The Council has also invested significant capital expenditure, funded by a government grant, into the infrastructure to support and operate the CAZ; not agreeing to the CAZ Agreement could, in the extreme, lead to abortive costs and the requirement for unscheduled decommissioning works.
- 7.3.4 Fees to pay for the CAZ Services are not imposed through the CAZ Agreement itself, but rather through conditions imposed by an SI (the Clean Air Zones Central Services (Fees) (England) Regulations 2020 (SI 2020/1444)). The fee is calculated on a per transaction basis which levies a £2 fee per charge per transaction made through the CAZ Service. These charges are classed as CAZ operating expenditure and as such are funded from CAZ proceeds.

7.3.5 Whilst the fees for the CAZ Service are imposed through a separate mechanism (the SI), arrangements for invoicing are detailed in the CAZ Agreement.

7.4 Procurement Implications

7.4.1 There are no procurement implications in respect of this particular agreement as noted in paragraph 7.2.3. Any subsequent procurement activity will be subject to the Council's delegated procurement procedures.

7.5 Human Resources Implications

7.5.1 There are no human resource implications.

7.6 Public Sector Equality Duty

7.6.1 An Integrated Impact Assessment (IIA) was undertaken as part of the CAZ feasibility study. The IIA assessed the economic and health impacts of the introduction of a Charging CAZ and identified certain economically vulnerable groups which formed the basis for developing a series of mitigation measures (including exemptions and financial incentives).

7.6.2 As with the IIA, an Equality Impact Assessment (EQUA210) was undertaken, the EIA was reviewed and updated in December 2020 to ensure it remains current and aligned to CAZ initiatives. Details of the full assessment can be found in Appendix B. The assessment identifies a set of actions aimed at mitigating risks to service users and employees in the protected characteristic groupings. No additional impact assessments were undertaken in relation to the CAZ Agreement in Appendix A.

8 Appendices

8.1 Appendix A – Exempt Information. CAZ Agreement with the Secretary of State for Transport for the Provision of the CAZ Services

8.2 Appendix B – Equality Impact Assessment (EQUA210).

9 Background Documents

- Birmingham Clean Air Zone Submission of Full Business Case and Request to Proceed with Implementation, Cabinet Report 11th December 2018.
- Birmingham Clean Air Zone (CAZ): Implementation Of Main CAZ Infrastructure – Civil Engineering And Cameras Solution - Full Business Case (FBC), Cabinet Report 8th September 2020.
- Birmingham Clean Air Zone (CAZ) Update to Cabinet on Digital and Physical Infrastructure Development, Air Quality Monitoring, and Income and Expenditure Forecast, Cabinet Report 19th January 2021.