

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Net Zero, Environment and Transport
<b>DATE</b>	31 October 2023
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Low Emission Zone Penalty Charge Notice - Net Surplus Income Policy
<b>REPORT NUMBER</b>	COM/23/327
<b>DIRECTOR</b>	Gale Beattie
<b>CHIEF OFFICER</b>	David Dunne
<b>REPORT AUTHOR</b>	Will Hekelaar
<b>TERMS OF REFERENCE</b>	7, 8

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### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to gain approval for a policy for the use of any net surplus income arising from enforcement of the Low Emission Zone (LEZ).

### 2. RECOMMENDATIONS

That the Committee:

- 2.1 Approve the policy proposed for the use of any net surplus income arising from LEZ enforcement; and
- 2.2 Instruct the Chief Officer – Strategic Place Planning to submit a report to this Committee in Summer 2025 identifying the costs and income associated with operation of the LEZ during the 2024/25 financial year, including a proposed programme for the use of any surplus income.

### 3. CURRENT SITUATION

- 3.1 Aberdeen City Council declared a LEZ in the city centre on 30<sup>th</sup> May 2022. A two-year grace period, during which no enforcement has taken place, commenced on that date, with full enforcement of the LEZ to commence on 1<sup>st</sup> June 2024. Enforcement will encompass the issuing of a Penalty Charge Notice (PCN) to the registered keeper of any non-compliant and / or non-exempt vehicle that enters the LEZ.

- 3.2 Legislation governing LEZs was established in the Transport (Scotland) Act 2019. In reference to PCNs, Section 27 of the Act states that:

*Any monies received from penalty charges in respect of a low emission zone scheme may be applied by the local authority only for the purposes of—*

*(a) facilitating (directly or indirectly) the achievement of the scheme's objectives, and*

*(b) if (and only if) any surplus remains, making any repayments required as a condition of a grant under section 25(1)(b).*

Officers have confirmed with Transport Scotland that, in reference to point (a), any PCN income must be used first and foremost to cover the operational and maintenance costs of the LEZ enforcement system (cameras, signage, administration of PCNs, etc.). Should there be any income remaining once such costs have been met, the local authority can put this surplus towards projects that will further improve air quality within the LEZ or wider City Centre Air Quality Management Area (AQMA). If the income exceeds the operational costs of the enforcement system and the Council cannot identify relevant projects to direct this money towards, it will have to be paid to Scottish Ministers to offset previous LEZ grant funding.

- 3.3 The level of compliance with the LEZ is assumed to be high and will further improve as individuals and businesses naturally replace their vehicles and fleet. Surplus PCN income is therefore anticipated to be low, albeit officers are in regular contact with Glasgow City Council (who commenced LEZ enforcement in June 2023) to learn from their early experiences. Nevertheless, should the situation arise where surplus PCN income exists, it is prudent for the Council to have a policy in place for assigning this, to ensure it can be used appropriately and in accordance with legislation.
- 3.4 The proposed policy is included as Appendix 1 to this report. The policy was approved by the Council's Policy Board on 20<sup>th</sup> June 2023 and by the Risk Board on 17<sup>th</sup> July 2023. The policy has also been reviewed by Transport Scotland who are content with the recommendations. Upon adoption, the policy will be published on the Policies section of the Council's intranet.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 Enforcement of the LEZ may result in income to the Council via the issuing of Penalty Charge Notices (PCNs). As mentioned in paragraph 3.3 it is unclear at this stage what, if any, this level of income will be, and will only be known with certainty once enforcement commences.
- 4.2 As mentioned in paragraph 3.2, any income must be used first and foremost to cover LEZ operational and maintenance costs. Thereafter, any surplus income can be used for measures to further improve air quality within the LEZ or wider AQMA. To ensure local application of these locally generated funds, a list of suitable projects will require to be developed, otherwise any surplus income that is not used by the Council must be paid to Scottish Ministers to offset previous LEZ grant funding.

#### **5. LEGAL IMPLICATIONS**

- 5.1 Legislation governing LEZs and the use of income arising from LEZ enforcement was established in the Transport (Scotland) Act 2019. The recommendations of this report have been developed in accordance with the Act, with the proposed approach agreed with Transport Scotland.

## 6. ENVIRONMENTAL IMPLICATIONS

- 6.1 The Act states that any projects taken forward with surplus LEZ PCN income must aim to further the objectives of the LEZ, which are primarily to improve air quality. The proposals therefore should result in a reduction of harmful emissions within the City Centre AQMA.

## 7. RISK

- 7.1 The assessment of risk contained within the table below is considered to be consistent with the Council's Risk Appetite Statement.

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H)  *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
<b>Strategic Risk</b>	The Council has a statutory duty to improve air quality in the AQMAs for public health and wellbeing. The proposed policy will contribute to further improvements to air quality, in line with obligations.	Approve a policy for the use of surplus PCN income that further contributes to LEZ and wider air quality objectives.	L	Yes
<b>Compliance</b>	Failing to adopt a policy for the appropriate use of surplus LEZ PCN income (and having this agreed by Transport Scotland) could result in the Council acting contrary to the Transport (Scotland) Act 2019.	Approve a policy for the use of surplus PCN income that is in accordance with the Act and which has been approved by Transport Scotland.	M	Yes
<b>Operational</b>	No risks identified.	N/A	N/A	Yes
<b>Financial</b>	If a policy is not established and	Approve a policy for the use of	M	Yes

	agreed between the Council and Transport Scotland, any surplus LEZ PCN income would have to be returned to Scottish Ministers.	surplus PCN income that is in accordance with the Act and which has been approved by Transport Scotland.		
<b>Reputational</b>	There will be reputational risks should the Council be seen to contravene the Transport (Scotland) Act 2019 and not use any surplus LEZ PCN income for approved purposes. There are also reputational risks associated with not maximising the use of this income in the City and having to pay it to Scottish Ministers.	Approve a policy for the use of surplus PCN income that is in accordance with the Act and which has been approved by Transport Scotland.	M	Yes
<b>Environment / Climate</b>	There are risks around air quality deterioration and a gradual erosion of the LEZ benefits if supporting measures are not in place to further reduce air pollution in Aberdeen.	Approve a policy for the use of surplus PCN income that further contributes to LEZ and wider air quality objectives.	L	Yes

## 8. OUTCOMES

<a href="#"><u>COUNCIL DELIVERY PLAN 2023-2024</u></a>	
	<b>Impact of Report</b>
<a href="#"><u>Aberdeen City Local Outcome Improvement Plan 2016-26</u></a>	

Prosperous People Stretch Outcomes	The proposals within this report support the delivery of LOIP Stretch Outcome 11 – <i>Healthy life expectancy is five years longer by 2026</i> , in that projects resulting from the policy should seek to improve air quality, with benefits for the health and wellbeing of all those living in and visiting Aberdeen.
Prosperous Place Stretch Outcomes	The proposals within this report may support the delivery of LOIP Stretch Outcome 14 – <i>Increase sustainable travel: 38% of people walking and 5% of people cycling as main mode of travel by 2026</i> . Projects which support a reduction in emissions via an increase in walking and cycling would be eligible for funding via the net surplus income.
<b>Regional and City Strategies</b>	The proposals within this report support the Regional (RTS) and Local Transport Strategy (LTS) as well as the Net Zero Routemap and Air Quality Action Plan, in that they should lead to the delivery of projects that encourage sustainable travel and a reduction in harmful and climate-changing emissions.

## 9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	Yes – Stage 1 Assessment completed.
Data Protection Impact Assessment	Not required.
Other	None.

## 10. BACKGROUND PAPERS

10.1 None

## 11. APPENDICES

11.1 Appendix 1 – Low Emission Zone Penalty Charge Notice Net Surplus Income Policy

## 12. REPORT AUTHOR CONTACT DETAILS

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