

# Licensing Sub-Committee of the Regulatory Committee

9.30am, Tuesday, 29 May 2018

## Request for Approval of Clean Motion ZBRS45 – Electric Tricycle as Private Hire Car – eKogoose Ltd

Item number	4.1
Report number	
Executive/routine	
Wards	Citywide
Council Commitments	N/A

### Executive Summary

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eKogoose Ltd has asked for approval of the Clean Motion ZBRS45 Electric Tricycle, which has the capacity to carry two passengers plus a driver, for use as a Private Hire Car.

It is the intention of the applicant to provide tours lasting between 1 – 1.5 hours in the Old and New Town areas. The business hopes to extend to carry passengers for “a variety of other purposes”.

The Clean Motion ZBRS45 Electric Tricycle does not conform to the current licensing conditions, which were not designed to accommodate a vehicle of this type or the intended operation of the applicant.

If the applicant is successful with this application it is the intention to immediately license a further two vehicles, and in these circumstances they will also be required to hold a Booking Office Licence.

## Request for Approval of Clean Motion ZBRS45 – Electric Tricycle as Private Hire Car – eKogoose Ltd

### 1. Recommendations

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- 1.1 After hearing from Council officers, the Police and the applicant, the Committee will be required to:
  - 1.1.1 To note that Police Scotland have submitted a late objection;
  - 1.1.2 Decide whether to grant the licence as an exemption to the current policy, and if granted:
    - 1.1.2.1 to exempt this Clean Motion ZBRS45 Electric Tricycle from conditions detailed in paragraphs 3.14;
    - 1.1.2.2 To add the additional conditions at paragraph 3.15
    - 1.1.2.3 To make clear that, if approved, this exemption shall not have any impact on the wider PHC fleet; and
    - 1.1.2.4 To accept a valid MOT from an authorised testing station approved by the Council, supplemented by a visual check at the TEC to ensure compliance with relevant conditions, until such time as the TEC is able to modify its DVSA MOT centre approval to enable the Council to carry out inspections.

### 2. Background

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- 2.1 The licensing of taxis and private hire cars (PHCs) is an optional activity in terms of the Civic Government (Scotland) Act 1982 ('the Act'). The City of Edinburgh Council, as Licensing Authority under the Act, passed a resolution in terms of Section 9 of the Act to the effect that Sections 10 to 23 of the Act shall have effect throughout the city, and that licences shall be required for taxis and PHCs from 1 July 1984 ('The City of Edinburgh Taxi and Private Hire Car Driving Resolution 1983').
- 2.2 The City of Edinburgh Council, having exercised its powers to license taxis, PHCs and their drivers, has adopted licensing conditions which enable it to manage and control their operation within Edinburgh. These were reviewed in 2016 and took effect from 1 December 2016.

- 2.3 The licensing conditions were amended on 7 May 2018 to include an age limitation and emission standards. The relevant section of the conditions is attached at Appendix 4.
- 2.4 In terms of the Act:
- 2.4.1 Section 10(1) a licence, to be known as a “taxi licence” or, as the case may be, a “private hire car licence”, shall be required for the operation of a vehicle as:
- a) A taxi; or
  - b) A private hire car
- 2.4.2 Section 23(1) In sections 10 – 22 of this Act:
- “*private hire car*” means a hire car other than a taxi within the meaning of this subsection
- 2.4.3 Section 23(2): In subsection (1) above, “hire car” means a motor vehicle with a driver (other than a vehicle being a public service vehicle within the meaning of section 1(1)(a) of the Public Passenger Vehicles Act 1981) **which is, with a view to profit, available for hire by the public for personal conveyance.**
- 2.5 A licensing authority **shall not grant** or renew a taxi licence or a private hire car licence unless they are satisfied that the vehicle to which the licence is to relate to is suitable in type, size and design for use as a taxi or private hire car, as the case may be, and is safe for that use, and that there is in force in relation to the vehicle such a policy of insurance or such security as complies with Part VI of the Road Traffic Act 1988.
- 2.6 In terms of the Act, when granting or renewing a licence, in addition to any mandatory or standard conditions to which the licence is subject, the licensing authority may:
- (a) disapply or vary any standard conditions so far as is applicable to the licence; and
  - (b) impose conditions.
- The conditions shall be such reasonable conditions as the licensing authority thinks fit.
- 2.7 The requirement to hold a Booking Office Licence was introduced by the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009. This requires a licence to be held for premises which are used for the taking of bookings from members of the public for hire of licensed taxis or private hire cars, where more than three vehicles are involved. The procedures for processing such applications and considering objections etc. are set out in the Act.
- 2.8 The Council has previously been approached by operators seeking to offer motor tricycle tours, tuk tuk rides and other novelty vehicle rides in the city centre.

Historically the view has been that any such motorised vehicle would fall under the definition of 'private hire car' and, as the vehicles could not meet PHC standards, operators have previously been advised that they could not be licensed to operate in Edinburgh.

- 2.9 The applicant appeared at the Licensing Sub Committee meeting on 13 March 2018, and after hearing from the applicant and council officers the committee requested that:
- 2.9.1 "a report be brought back to the sub-committee in 2 cycles (29th May) detailing particular Licensing issues relating to this application, the impact granting the application under a private Hire Car licence would have on existing policies and setting out recommendations and proposals for a suitable category of licence"
- 2.10 Each application should be considered on its own merits. Previous decisions of the Committee provide context but are not binding upon the committee.

### 3. Main report

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#### Proposed Operation

- 3.1 eKogoose Ltd has asked for approval of the Clean Motion ZBRS45 Electric Tricycle Registration number SN67EMX for use as a Private Hire Car, a copy of the applications and supporting documentation are attached at Appendix 1.
- 3.2 The Clean Motion ZBRS45 is a light electric three wheeled vehicle powered by a 4Kw battery, and the speed of the vehicle is limited to 27mph. It has the capacity to carry two passengers plus a driver. The vehicles have European Certificates of Conformity, have been through the Government NOVA process, and have been type approved and registered by DVLA.
- 3.3 The applicants intend to provide two tours lasting between 1 – 1.5 hours in the Old and New Town areas and will pick up customers within a three mile radius of the City centre.
- 3.3.1 The New Town tour would include Calton Hill, Princes Street, the Scott Monument, St Andrews Square, George Street, Private Gardens, Great King Street, St Stephen's Church, The Royal Botanic Gardens, Fettes College, Stockbridge, Mews, and Charlotte Square.
- 3.3.2 The Old Town tour would include the Castle, Princes Street Gardens, the Nor Loch, Greyfriars Bobby, The Elephant House (Harry Potter), Deacon Brodie, Maggie Dickson, Burke and Hare, Arthurs Seat, Scottish Parliament and Holyrood Palace.

In addition to the tours it is intended to offer the vehicles to carry passengers for "a variety of other purposes."

- 3.4 The applicant has advised that all booking is to be done over the internet and tours or other use is to be pre-booked, therefore it does not fit the criteria for a Street Trading Licence. If the business expands beyond three vehicles then there will be a requirement for a Booking Office Licence.

#### **Consideration by Council Officers**

- 3.5 Council officers have considered the application, and given the type of vehicle and nature of the operation, consider that the vehicle meets the criteria to be a “hire car” in terms of the legislation and will be required to have a PHC licence.
- 3.6 The Clean Motion ZBRS45 Electric Tricycle is a three wheel vehicle (280Kg) and requires a class 3 vehicle examination to enable the Taxi Examination Centre (TEC) to issue a Certificate of Compliance. This is the certificate issued by the Taxi Examination Centre under section 10 (2) of the Act after examination of the vehicle on behalf of the Council certifying the Licensed Vehicle as satisfactory for use as either a taxi or private hire car. The TEC is currently approved as a class 4 testing station and was unable to carry out a full examination of the vehicle.
- 3.7 Clean Motion ZBRS45 Electric Tricycle was presented at the TEC where an inspection of the vehicle was carried out in terms of the licensing conditions of fitness of Private Hires Cars (Appendix 4). The senior examiner at the TEC identified that the vehicle did not conform to a number of the current conditions. His findings are detailed in Appendix 2.

#### **Conditions**

- 3.8 In addition to conditions mentioned in the TEC report, consideration would have to be given to:
- 3.8.1 conditions 316 - 318 require that vehicles must have at least four doors, passenger doors must be capable of being readily opened and the doors and doorways must be of such construction so as to permit a reasonably unrestricted access for passengers.
- 3.8.2 condition 338 - no advertisements may be displayed on the interior or exterior of the Licensed Vehicle.
- 3.8.3 The vehicle would be required to display Private Hire Car Door Signs issued by the Council identifying the vehicle as a City of Edinburgh Council licensed private hire car which are fitted to the front doors of the private hire cars in a position approved by the Council.
- 3.9 The Clean Motion ZBRS45 Electric Tricycle was not designed for use as a “Hire Car” and has not been subject to the same checks that would be carried out in that regard.

#### **Objections & Representations**

- 3.10 Police Scotland have submitted a letter of objection dated 9 May 2018 (Appendix 3). This followed discussion at the previous committee.

- 3.11 Representatives of the applicant have been invited to attend Committee to speak in support of the applications.
- 3.12 It is recommended that members of the Committee hear from Police Scotland and the Executive Director of Place or his representative regarding this report, and thereafter hear from the applicant.
- 3.13 Members will first have to decide whether they support this application. As previously reported, this type of licence has previously been resisted by the Council on the basis that:
- 3.13.1 The vehicle does not comply with multiple conditions; and
- 3.13.2 There risks precedent being set which may undermine how the Council currently licenses PHCs.

If members are minded to support the application and satisfied that that the vehicle to which the licence relates is suitable in type, size and design for use as a private hire car they should determine to make an exemption to policy. If not, the application should be refused.

- 3.14 If the Committee agrees that this specific vehicle can be approved as suitable for licensing as a private hire car, it is recommended that the following Conditions of Fitness should be dis-applied to any licence granted:
- 305 Suitable size and design
  - 303 Vehicle type approval
  - 308 Must have 4 wheels
  - 312 Steering wheel must be on the offside of vehicle
  - 313 Must not be able to steering overlock
  - 316 – 318 Must have 4 doors, other related condition
  - 321 -323 Windows must be provided at sides and rear, other related conditions
  - 328 Interior lighting
  - 329 Adequate heating
  - 333 Seats for 4 people
  - 334 Rear seat width min 1.7m
  - 336 Adequate luggage space
  - 338 in relation to advertising and 62 display of company door signage
- 3.15 The Sub-Committee can add such other reasonable conditions as it sees fit. If the Committee is minded to grant the licence that additional condition should be attached to the licence conditions:
- 3.15.1 That the vehicle can only be used to transport passengers for the specific purpose of guided tour and not for general use as a Private Hire car.

- 3.15.2 The vehicle would be licensed to carry only two passengers;
- 3.15.3 That the approval would only apply to the particular vehicle named in the application whilst it is licensed by that operator and that, if the vehicle is replaced the approval would no longer apply;
- 3.15.4 Requires the display of the Private Hire Car Door Signs issued by the Council identifying the vehicle as a City of Edinburgh Council licensed private hire car which are fitted to the front doors of the private hire cars in a position approved by the Council.
- 3.16 Consideration should also be given to the interaction with the driver conditions. To ensure that the driver is not distracted while in charge of a vehicle the majority of tour buses and operation of a similar nature do not allow the driver to provide a running commentary and would either have a recording of the tour or a tour guide.
- 3.16.1 Condition 226 provides that:
- The Driver shall not:
- (a) use a mobile phone (even by means of a “hands free” kit) whilst carrying passengers; or
  - (b) any other communication device whilst carrying passengers; or
  - (c) conduct himself in any manner
- which prevents him from exercising full control over the speed and direction of the Licensed Vehicle while it is in motion

### **Taxi Examination Centre**

- 3.17 The TEC is currently a class 4 testing station. To test this vehicle would require further reclassification to test class 3 vehicles. To achieve reclassification there would be a requirement to purchase new testing equipment, additional training for examiners who would have to attain qualification to test class 3 vehicles, and a further inspection and approval by the DVSA. There are no other facilities within the council that are approved to test class 3 vehicles.
- 3.18 In the absence of the ability to test these vehicles in-house it is proposed that, as a short term measure, conditions 54(a) and 56(a) are amended for this application only, to accept a Ministry of Transport (MOT) Test Certificate from an authorised DVSA test station approved by the Council. In addition to the Test Certificate it is proposed that the vehicle should be presented at the TEC to ensure compliance with relevant licensing conditions. In the longer term it is proposed that the TEC would modify their DVSA MOT centre approval to enable the Council to carry out inspections

## **4. Measures of success**

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- 4.1 Not relevant, as decisions on individual licences have to be considered on their own merits.

## **5. Financial impact**

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- 5.1 None, as the costs of these matters are recovered through taxi and private hire car vehicle and driver licence application fees.

## **6. Risk, policy, compliance and governance impact**

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- 6.1 The development of policy in respect of the licensing of taxis and private hire cars is part of the wider policy-making role for the Council. It is essential that all strategic aims of the Council are considered, and that where appropriate the taxi and private hire car licensing policy is consistent with these aims.
- 6.2 Granting the application could encourage an influx of similar applications from tour/transport operators seeking similar exemptions to the conditions and potential difficulties should the Council find itself in the position of having to defend a challenge to the current conditions from other operators.
- 6.3 There is risk that any decision to amend or change existing policy in relation to the specification of vehicles suitable to be licensed for use as taxis and private hire cars could be subject to legal challenge.
- 6.4 The licence holder has a right of appeal against any decision made. The appeal lies to the Sheriff Court.

## **7. Equalities impact**

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- 7.1 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 7.2 The contents and recommendations described in this report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them.
- 7.3 There is no equalities impact arising from the contents of this report, as decisions on individual licences have to be considered on their own merits.

## **8. Sustainability impact**

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- 8.1 The Council's obligations or goals in terms of Sustainable Edinburgh 2020 are separate from the remit of the Licensing Sub-committee which is to determine applications for licence with regard to the suitability of applicants and public safety considerations. If a licence was granted on the basis that the vehicle is electric then this could open up to challenge future decisions to refuse applications which relate to petrol engine three-wheeled motorbikes if the engine type is the only difference.
- 8.2 There is no environmental impact arising from the contents of this report.

## **9. Consultation and engagement**

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9.1 There has been no consultation with the trade.

## **10. Background reading/external references**

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10.1 None

### **Andrew Mitchell**

Regulatory Services Manager

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## **11. Appendices**

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11.1 Application form and supporting documentation

11.2 Report from the Taxi Examination Centre

11.3 Police Objection

11.4 Licensing Conditions - Conditions of fitness of private hire cars