



Mersey Gateway Executive Board

**Thursday, 25 September 2008 3.00 p.m.
Marketing Suite, Municipal Building**

A handwritten signature in black ink, appearing to read 'David W R'.

Chief Executive

BOARD MEMBERSHIP

Councillor Tony McDermott (Chairman)	Labour
Councillor Rob Polhill	Labour
Councillor Mike Wharton	Labour

*Please contact Lynn Derbyshire on 0151 471 7389 or e-mail
lynn.derbyshire@halton.gov.uk for further information.
The next meeting of the Board is on Thursday, 20 November 2008*

**ITEMS TO BE DEALT WITH
IN THE PRESENCE OF THE PRESS AND PUBLIC**

Part I

Item No.	Page No.
1. MINUTES	
2. DECLARATION OF INTEREST	
Members are reminded of their responsibility to declare any personal or personal and prejudicial interest which they have in any item of business on the agenda no later than when that item is reached and, with personal and prejudicial interests (subject to certain exceptions in the Code of Conduct for Members), to leave the meeting prior to discussion and voting on the item.	
3. BUDGET	1 - 10
4. MERSEY GATEWAY: APPOINTING COUNSEL FOR THE PUBLIC ENQUIRY	11 - 13

In accordance with the Health and Safety at Work Act the Council is required to notify those attending meetings of the fire evacuation procedures. A copy has previously been circulated to Members and instructions are located in all rooms within the Civic block.

REPORT TO: Mersey Gateway Executive Board

DATE: 25 September 2008

REPORTING OFFICER: Strategic Director Environment

SUBJECT: Mersey Gateway: Project Budget

WARDS: All

1.0 PURPOSE OF THE REPORT

1.1 This report deals with the revised development cost budget forecast for delivering Mersey Gateway up to the construction phase when a contract will be in place with the private sector (the Concessionaire) to design, build, finance and operate the project. The information updates the forecasts made in the development budget approved by the Executive Board on 20 April 2006 and the information on budget monitoring reported to the MG Executive Board since then.

2.0 RECOMMENDATION: That the Board

- i) approve the revised budget for Development Costs up to Final Funding Approval;
- ii) recommend that the Council amend the Capital Programme accordingly; and
- iii) note the potential call on the Council Priorities Fund.

3.0 SUPPORTING INFORMATION

3.1 The funding agreement with the Department for Transport (DfT) established when Mersey Gateway received Programme Entry approval in March 2006, specifies that the Council is responsible for meeting all development costs up to receiving Final Funding approval for the project. The funding agreement with Ministers is being administered by the rules for delivering local major transport schemes. These rules establish the following stages in project approval:-

- **Programme Entry** once the initial case has been made to the DfT (achieved in March 2006).
- **Conditional Approval** once statutory powers are in place and HM Treasury content for procurement to commence (ie the Treasury Project Review Group has cleared the outline business case (Expected in January 2010)

- **Full Approval** case submitted once a Preferred Bidder has been identified and firm prices have been secured (expected in April 2011).
- 3.2 The Executive Board agreed the terms of the funding conditions at their meeting of 20 April 2006 and approved the project development budget over the five year pre-construction programme, as given in Table 1 below. The Council contributions were assumed to be capital expenditure secured through prudential borrowing drawing on the Council priority fund. The approved budget was agreed by Council and the amount reflected in the Council Capital Programme.
- 3.3 When recommending the budget to members in April 2006, officers pointed out that the forecast was derived from an estimated range of between £12m and £16m. Actual expenditure during the first year of the five year development programme was in line with the budget forecast. During the second year cost pressure increased due mainly to external factors associated with satisfying the requirements of the DfT and the additional tasks associated with the development of the scheme design. These developments have been reported to the Mersey Gateway Executive Board culminating in the revised budget projection in Table 1, which was reported in the approved Outline Business Case in April 2008. The revised expenditure forecasts had consequently moved towards the high end of the range estimated in April 2006.

Year	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	
Agreed Budget Profile	£3.60m	£3.75m	£2.50m	£1.55m	£2.0m	£0.60m	£14.0m
	Planning/Statutory Process			Procurement			Total
Revised Forecast Excluding Inflation	£3.61m	£4.93m	£2.5m	£1.55m	£2.0m	£0.6m	£15.19m
Agreed Budget Inflated at 5% pa	£3.6m	£3.94	£2.75	£1.80	£2.43	£0.77	£15.3m
Revised Forecast (April 08) Including Inflation	£3.61m	£4.93	£2.75	£1.80	£2.43	£0.77	£16.29m

Table 1

- 3.4 As part of the routine liaison with DfT the project team asked if consideration could be given for grant aid towards the development cost to reflect the exceptional burden on Halton. In January this year the DfT invited the Council to submit a bid for a special contribution towards development costs given the unusual circumstances where a relatively small authority is promoting a large and complex project. This invitation suggested the DfT are prepared to relieve the funding condition that placed development cost with the Council. A bid was submitted in February 2008 based on the information contained in Table 2 below.

Year	Total Preparation Expenditure	Current Contributions		HBC Contribution
		3 rd Parties	DfT	
2006 – 07	£3,613,486	-		£3,613,486
2007 – 08	£4,932,428	£3,500,000 (NWDA)		£1, 432,428
2008 – 09	£2,750,000	-		£ 2,750,000
2009 – 10	£1,800,000	-	-	£1,800,000
2010 – 11	£2,430,000	-	£350,000	£2,080,000
2011 – 12	£770,000	-	£850,000	-£80,000
Total	£16,295,915	£3,500,000	£1,200,000	£ 11,595,914
TOTAL FUNDED BY DfT AND HBC(rounded)				£12,800,000
BID FOR INCREASED DfT CONTRIBUTION (total)				£6,400,000

Table 2

- 3.5 This cost pressure has continued throughout the calendar year where the project has progressed through the submission of planning applications and Orders. The revised development budget forecast is given in Table 3 below where the new annual totals are compared against the approved budget approved in April 2006.

	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12	Total
	Planning/Statutory Process			Procurement			
April 06 Approved Budget	3.5	3.25	2.65	1.75	2.0	0.85	14.0
Revised Budget Forecast	3.6	4.9	6.7	3.8	2.6	0.0*	21.6

Table 3: Revised Budget Forecast

(* costs during 2011/12 to be charged to the PFI Contract)

- 3.6 In view of the size of this increase in expenditure the actual costs have been reconciled against the original £14m budget forecast. Actual expenditure is available up to August this year. The original budget assumed that we would submit the planning applications towards the end of 2007. Delay due to undertaking a final round of public consultation plus the extra time required to settle the statutory process with the DfT resulted in the applications being made in March and May this year, around six months later than planned. To identify where actual cost has varied from the forecast budget it is appropriate to allow for the delay, which has contributed to cost increase, and the following results compare the original budget between April 2006 and March 2008, with actual costs incurred between April 2006 and June 2008. The main differences are in Table 3 overleaf alongside comments explaining the key reasons for cost increases.

Planned Work Stream	Budget £k	Actual £k	Difference £k	Comments
Variable Demand Appraisal	890	1940	1050	The Mersey Gateway traffic model breaks new ground and the tasks required to develop the model and the subsequent scheme appraisal to satisfy DfT approval has been much greater than planned.
Environmental Assessment	800	1780	980	The resources required to produce an appropriate Environmental Statement which satisfied legal scrutiny and regulatory requirements were underestimated.
Scheme Reference Design	710	1530	820	The results of public consultation required the scope of the scheme to be extended from Bridgewater Junction to Junction 12 M56. Highway Authority review required extensive resources to settle design issues. More extensive design required to satisfy CABE.
Environmental Surveys	260	820	560	Additional information on baseline environmental data required to satisfy regulators.
Planning Services	30	300	270	Budget assumed internal resources and tasks required to support planning application underestimated.
Other			(430)	Cost savings where made elsewhere.
Total			3250	
Unplanned Tasks/Items				
Transportation			460	Operational assessments were required to be repeated using the variable traffic model forecasts. Developing the MG Sustainable Transport Strategy and supporting the MG Regeneration Strategy were additional tasks.
TWA Fee			140	Statutory Process fees not identified in budget assumptions
PR/Publicity			150	Some additional stakeholder events not planned.
HBC Staff Recharges			130	Unplanned corporate recharges to project.
Other			100	
TOTAL INCREASE			4230	

Table 3 Financial Variance Report

- 3.7 Most of the cost increase occurred towards the end of the last financial year until 30 May 2008 where resources in the project team were extensive in order to deliver the planning application and the submission of Orders. At this time expenditure was running at £500k per month. Mersey Gateway sets a precedent in using the Transport and Works Act combined with Road User Charging and Highway Act procedures. Although the statutory process followed is in the best interest of project delivery, there is no doubt that the work required was much greater than would have been necessary to negotiate a more conventional planning process.
- 3.8 The complexity of the Statutory Procedures, the Environmental Statement and the traffic modelling is still influencing the preparation required for the public inquiry. Consequently the revised budget allows for the additional resources required to deal with these circumstances and the higher level of expenditure is expected to continue throughout the current financial year. The revised budget forecast allows for all this activity to be completed this financial year.
- 3.9 Towards the end of this financial year the project team propose to prepare for procurement so that the timetable to contract award in 2011 can be achieved. After the Public Inquiry the assumption is that preparation of procurement will continue. Again the revised budget forecasts allow for this up until April 2011 when we expect to select our preferred private sector partner (Preferred Bidder) who would become the Concessionaire. The forecast has been increase by £1.6m to allow for the new procurement regulations applied by HM Treasury for PFI projects (the Competitive Dialogue procedure). All development costs after selecting a Preferred Bidder up to reaching contract award would be charged to the concession contract. At Preferred Bidder stage we would seek Final Funding approval from the DfT (see 3.1 above). A summary of the budget forecast for 2008/09 to 2010/11 is given in Table 4.

	2009-2010	2010-2011
Project Management and Administration	£810,806.30	£879,471.96
Scheme Development and Design	£0.00	£0.00
Scheme Appraisal and DfT Liaison	£0.00	£0.00
Legal Advice (Procurement)	£638,639.00	£155,700.00
Financial Advice (Procurement)	£314,422.00	£147,912.00
Technical Advice (Procurement)	£1,664,956.00	£1,089,275.00
Communications, Publicity & Public Relations	£81,921.00	£72,621.00
Surveys	£99,999.96	£99,999.96
HIA	£0.00	£0.00
3rd Party costs & recharges	£189,252.00	£155,016.00
Total	£3,799,996.26	£2,599,995.92

Table 4: Breakdown of Forward Budget

- 3.10 The higher budget forecast increases the case for a contribution from DfT. The DfT have advised that should our bid be approved by the Minister their contribution towards development cost (which they call preparation costs) would need to be provided for in the Regional Funding Allocation programme. The North West Executive Board on 14 July 2008 approved the reprofiling of funding for Mersey Gateway that would accommodate our bid for £6.4m. We have confirmed that the RFA has been amended and requested that our full bid is put to the Minister for a decision at her earliest convenience.
- 3.11 The revised outturn forecast of £21.6m would required the Council to meet £11.7m (excluding pre Programme Entry cost of £2.1m) in total assuming the DfT agree to contribute £6.4m and taking into account the £3.5m already secured from the Development Agency. It is assumed that it is appropriate to capitalise development costs allowing the Council to fund its contribution by prudential borrowing. Under the constitution the revised budget would need to be approved by Council (see recommendation ii). Members should note that the District Auditor has questioned this accounting treatment although he is content with our assumptions at this stage (see risks). A proportion of the strategic priorities fund has already been set aside to secure borrowing up to £8m and the Capital Programme is based on the current approved development cost budget (£14m). Table 5 below indicates the funding and financing required to support the estimated development costs assuming that the Council continues to use prudential borrowing and that we receive the full grant from DfT that we have requested.

Borrowing Req'	Sunk Cost Supported by PB	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12
Spend Profile	(2.1)	(3.6)	(4.9)	(6.7)	(3.8)	(2.6)	(0.00)
NWDA Contribution		3.5					
DfT Contribution				2.2	2.2	2.0	
Council Contribution through PB (£8M approved)	2.1	0.1	4.9	0.9			
Council Contribution through PB (Additional £5.8m required)				3.6	1.6	0.6	
HBC Aggregate Exposure	2.1	2.2	7.1	11.6	13.2	13.8	13.8
Key Risk Events (see Risks below)			Traffic Model Results		Orders Made	Preferred Bidder (Market Price Confirm')	Financ' Close

Table 5.

3.12 The above amounts do not include any land acquisition related tasks or land acquisitions cost which will be funded from the land acquisition budget established under separate arrangements.

4.0 POLICY IMPLICATIONS

4.1 The project is a key priority for the Council which will deliver benefits locally and across the wider region.

5.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

5.1 The implementation of Mersey Gateway will have significant benefits for all Council priorities.

6.0 RISK ANALYSIS

- 6.1 The Council investment in development costs is exposed to potential early termination of the project. The key events that pose a threat to early termination are shown at the bottom of Table 5. The first event is linked to the DfT funding condition where the project business case must be supported by the new traffic model. This requirement is in effect now satisfied. The next key risk event will be the confirmation of Orders in spring 2010, followed by market prices being confirmed when bids are returned from potential contractors in early 2011. Early termination would cause the capitalised debt to revert to a revenue obligation.
- 6.2 The current discussions with the District Auditor could conclude that it is not appropriate to capitalise the Council's contributions towards development costs for Mersey Gateway as a PFI transaction. Should this conclusion be reached then prudential borrowing would be excluded and the Council would need to use reserves and/or revenue to meet its contributions to the revised budget forecast.
- 6.3 Securing the full DfT contribution of £6.4m towards development cost can not be guaranteed at this stage but the outlook is very encouraging.
- 6.4 The specific risks are reported in a detailed project risk register linked to the Council's corporate risk management regime.

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

8.0 REASON(S) FOR DECISION

- 8.1 The recommended decisions are required to support the delivery of Mersey Gateway.

9.0 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 9.1 Not applicable.

10.0 IMPLEMENTATION DATE

- 10.1 The recommended decisions are required at the earliest opportunity to authorise the continued preparation of the Mersey Gateway project.

11.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

- 11.1 Files maintained by the Mersey Gateway Project Team and by the Highways and Transportation Department.

REPORT TO: Mersey Gateway Executive Board

DATE: 25 September 2008

REPORTING OFFICER: Strategic Director Environment

SUBJECT: Mersey Gateway: Appointing Counsel for the Public Inquiry

WARDS: All

1.0 PURPOSE OF THE REPORT

- 1.1 This report deals with the appointment of legal Counsel to act as advocate for the Council in the expect Public Inquiry.

2.0 RECOMMENDATION: That the Board

- i) note the decision of the officer Mersey Gateway Project Board to appoint Timothy Straker QC and Christopher Boyle (Junior Barrister) to represent the Council at the forthcoming public inquiry.

3.0 SUPPORTING INFORMATION

- 3.1 The preparation of Mersey Gateway has reached a stage where the project team require routine access to legal Counsel so that they can deal effectively with objections and representations to the proposals and to prepare a robust presentation of the Council case at public inquiry.
- 3.2 Alternative Barristers and Junior Barristers have been proposed by our legal advisers DLA Piper and their assessment was reported to the Mersey Gateway Project Board by the Project Director in April 2008. The office Project Board noted that the appointment of Counsel was now an urgent requirement to support the project delivery timetable.
- 3.3 Three candidates were assessed on the grounds of cost and their experience in dealing with complex infrastructure projects at inquiries. Previous experience with the Transport and Works Act was a particularly important requirement.
- 3.4 Although there was some difference in fees the assessment was focussed on selecting Counsel on quality grounds. The officer Project Board noted the critical influence that the barrister team will have on the outcome of the statutory process. The assessment had revealed

doubts about cheaper options and this was not an area where the project should invite additional delivery risks.

- 3.5 The officer Project Board instructed the Mersey Gateway Project Director to appoint Timothy Straker QC and Christopher Boyle (Junior Barrister) to represent the Council at the forthcoming public inquiry. The appointment would be made at the earliest opportunity to enable engagement to take place on the preparations for the Public Inquiry.

4.0 POLICY IMPLICATIONS

- 4.1 The project is a key priority for the Council which will deliver benefits locally and across the wider region.

5.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

- 5.1 The implementation of Mersey Gateway will have significant benefits for all Council priorities.

6.0 RISK ANALYSIS

- 6.1 As stated above the performance of Counsel in guiding the preparation of evidence for the public inquiry and acting as the Council's advocate, will be a critical factor in securing the planning approval at the earliest opportunity. In appointing Timothy Straker and Christopher Boyle we have secured what has been assessed as the best available team with impressive reputations for supporting complex infrastructure projects through the planning process.

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

8.0 REASON(S) FOR DECISION

- 8.1 No decisions are required.

9.0 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 9.1 Two other candidates were considered.

10.0 IMPLEMENTATION DATE

- 10.1 No decisions are required.

11.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

- 11.1 Files maintained by the Mersey Gateway Project Team and by the Highways and Transportation Department.