

MERSEY GATEWAY EXECUTIVE BOARD

At a meeting of the Mersey Gateway Executive Board on Thursday, 23 January 2014 in the Board Room - Municipal Building, Widnes

Present: Councillors Polhill (Chairman), R. Hignett, Jones, J. Stockton and Wharton

Apologies for Absence: None

Absence declared on Council business: None

Officers present: G. Cook, E. Dawson, L. Derbyshire, S. Nicholson, M. Noone, D. Parr and M. Reaney

Also Present: 1 member of the Press and 1 member of the public

ITEMS DEALT WITH UNDER DUTIES EXERCISABLE BY THE BOARD

MGEB17MINUTES

The Minutes of the meeting held on 7 November 2013 were taken as read and signed as a correct record.

MGEB18MERSEY GATEWAY CROSSINGS BOARD LTD

The Board considered a report of the Chief Executive which gave Members details of the role of the Crossings Board in connection with the Project, specifically that:-

- the Council had been required by the DfT as a condition of funding to form the Crossings Board to manage delivery of the Project with due consideration of value for money and affordability; and
- the Crossings Board would enter into:
 - a) each of the Project Agreements and the DMPA as an additional counterparty to the selected contractors; and

Action

- b) the governance agreement to set out the terms on which the Crossings Board would manage the project on behalf of the Council and the respective obligations of the Council and the Crossings Board to the DfT

as reported elsewhere on this agenda.

The Board was advised that at previous meetings the Board had approved the creation of the Crossings Board. It was confirmed that the Crossings Board had been incorporated in October 2012 as a private company limited by shares and registered at Companies House with the number 08751307.

The Board was further advised that Section 188 of the Companies Act 2006 stated that any director's contract of two years or more duration required approval by ordinary resolution, i.e. that the shareholders of the company must agree to such contracts in advance.

It was reported that the Governance Agreement proposed that all non-executive directors were appointed for three years by way of a Directors Service Agreement, and hence approval by ordinary resolution was required for MGCB to be able to offer the directors contracts for this duration.

The Construction Director and Finance Director would both be offered a combined Directors Service Agreement and Contract of Employment for four years, and again approval by ordinary resolution was required for MGCB to be able to offer the directors contracts for this duration

The Department for Transport had been consulted on these matters, in accordance with the draft Governance Agreement and there had been no issues with the proposed duration of the contracts.

The Governance Agreement allowed the Council to appoint the initial executive directors, subsequent appoints were to be approved by the Appointments Committee of the Mersey Gateway Crossings Board Ltd.

RESOLVED: That the Board

- (1) note that the Mersey Gateway Crossings Board Ltd has been established in accordance with the

Chief Executive

Board's earlier approvals;

- (2) agree to the directors of Mersey Gateway Crossings Board Ltd being offered contracts in excess of two years;
- (3) delegate the right to vote on the above matter to the Operational Director, Legal and Democratic Services; and
- (4) authorises the Chief Executive, in consultation with the Leader, to make all the initial executive director appointments in respect of the MGCB.

MGEB19SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 AND THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

The Board considered:

- 1) Whether Members of the press and public should be excluded from the meeting of the Board during consideration of the following item of business in accordance with Section 100A (4) of the Local Government Act 1972 because it was likely that, in view of the nature of the business to be considered, exempt information would be disclosed, being information defined in Section 100 (1) and paragraph 3 of Schedule 12A of the Local Government Act 1972; and
- 2) Whether the disclosure of information was in the public interest, whether any relevant exemptions were applicable and whether, when applying the public interest test and exemptions, the public interest in maintaining the exemption outweighed that in disclosing the information.

RESOLVED: That as, in all the circumstances of the case, the public interest in maintaining the exemption outweighed that in disclosing the information, members of the press and public be excluded from the meeting during consideration of the following item of business in accordance with Section 100A(4) of the Local Government Act 1972 because it was likely that, in view of the nature of the business, exempt information would be disclosed, being information defined in Section 100 (1) and paragraph 3 of Schedule 12A of the Local Government Act 1972.

MGEB20PROGRESS REPORT AND DELEGATIONS BY COUNCIL
TO THE CHIEF EXECUTIVE IN RELATION TO MERSEY
GATEWAY - KEY DECISION

The Board was advised that Halton Borough Council (“Council”) would be required to enter into a number of contracts in connection with the Project (as defined in the Project Agreement referred to in paragraph 1 below), the primary ones being:

1. the project agreement (“Project Agreement”) between (1) the Council, (2) the Mersey Gateway Crossings Board Ltd (“Crossings Board”) and (3) the special purpose project company established by the preferred bidder to deliver the Project (“Project Company”);
2. a direct agreement between (1) the Council, (2) the Crossings Board, (3) the Project Company, (4) the agent appointed by the funders and (5) the Security Trustee (as defined in the Project Agreement);
3. the demand management participation agreement (“DMPA”) between (1) the Council (2) the Crossings Board and (3) the special purpose demand management participation company established by the Preferred Bidder;
4. the governance agreement between (1) the Council and (2) the Crossings Board; and
5. a deed of appointment for the independent certifier to be appointed in connection with the Project, such appointment to be entered into between (1) the Crossings Board, (2) the Project Company, (3) the independent certifier, (4) the Security Trustee and (5) the Council,
6. together the “Project Documents”.

The Board was further advised that the Council would be required to provide certificates in respect of certain of the Project Documents pursuant to the Local Governments (Contracts) Act 1997.

The Board considered a report that had been prepared by the Mersey Gateway Project Director, together with the Council’s legal advisers and the Operational Director (Legal

and Democratic Services) in respect of the Project Documents, and the other documents which the Council would be required to enter into (together with the Project Documents, the "Transaction Documents").

It was noted that the Council's final business case ("Final Business Case") together with the draft of the final funding letter from the Department for Transport (DfT) containing the capital and revenue budgets for the Project ("Final Funding letter") had each been approved by Council on 11 December 2013. It was further noted that certain relevant extracts from the Final Business Case had been appended to the report.

The Board was also reminded that the Council was required, by the terms of the Final Funding Letter, to provide written confirmation that the Council agrees to the terms and conditions of such funding, including certification from the Council's Section 151 Officer that the Council accepts the requirements set out in the Final Funding Letter.

The Board was advised that copies of the latest drafts of each of the Project Documents, the Final Business Case and the Final Funding Letter were and had been available at the Project Office for Members to review.

It was reported that some further matters of fine tuning to the current drafts of the Project Documents may be necessary between now and the date of Financial Close to implement the Project.

The Board also noted the procedure for the execution of contracts by the Council as set out in the Constitution of the Council adopted by resolution of the Council on 17 April 2013 ("Constitution").

The Board was further advised that although this was a key decision (as defined in article 14.03 (B) of the Constitution, it had not been included in the relevant forward plan. However, it was reported that the procedure in Rule 15 (General Exception) of Chapter 4 of the Constitution had been followed.

Having concluded the confidential discussions, the public and press that had been excluded from the meeting for this item of business were invited back into the meeting to be present while the decisions were taken.

Reason(s) for Decision

As described in section 1.1 of the report.

Alternative Options Considered and Rejected

No alternatives were considered.

Implementation Date

The necessary relevant approvals need to be obtained in advance of the date to allow the Council to enter into the relevant contracts at Financial Close.

Chief Executive

RESOLVED: That the Board

- (1) note the contents of the report and confirm the details of the project as set out therein;
- (2) approve the draft of the Project Documents in their current form, noting that further amendments may be required between now and Financial Close;
- (3) resolve that the entry by the Council into the Transaction Documents (as defined in paragraph 2.4 of the report) at Financial Close, will be necessary to implement the Project;
- (4) note the appointment of Mark Reaney as Operational Director (Legal and Democratic Services) by the Council's Appointments Committee on 17 April 2007 (as evidenced in the extract from the relevant resolution contained in Part 1 of Appendix 1), and note the specimen signature of Mark Reaney (contained in Part 2 of Appendix 1);
- (5) in accordance with Article 15.04 of the Council's Constitution, resolve that:-
 - i. any Officer of the Authority at Operational Director Level (as defined in the Constitution), together with another Officer of the Authority nominated by the said Operational Director, be authorised to sign any or all of the Transaction Documents; and
 - ii. the Operational Director (Legal and Democratic Services) or his nominee be authorised to attest the affixing of

the Common Seal of the Council to any or all of the Transaction Documents;

as required, provided that:-

- (1) in the circumstances set out in resolution (5) (i) such Officer and any nomination by such Officer be confirmed; and
- (2) in the circumstances set out in resolution (5) (ii) such nomination be made:

(as the case may be) by the Operational Director (Legal and Democratic Services) using the form of letter attached at Appendix 1;
- (6) resolve that each person so authorised by resolution (5) (each an "Authorised Signatory") is further authorised to negotiate, agree and amend, and complete any missing information in, any Transaction Document or other agreement related to the Project as may, in the opinion of such Authorised Signatory, be required to deliver the Project including (but not limited to) any gaps lists prepared in respect of the Transaction Documents; and
- (7) resolve that the Councils Section 151 Officer be authorised to provide such written confirmations as required by the Final Funding Letter and to sign such certificates based on the form set out in Appendix 2 as may be required in connection with the Local Government (Contracts) Act 1997 in relation to the relevant Project Documents.

Meeting ended at 3.30 pm

MINUTES ISSUED: 24 January 2014

CALL-IN: 31 January 2014

Any matter decided by the Mersey Gateway Executive Board may be called in no later than 5.00 pm on 31 January 2014