

REPORT TO: COUNCIL

DATE: 15 July 2015

REPORTING OFFICER: Operational Director – Legal & Democratic Services

PORTFOLIO: Transportation

SUBJECT: Mersey Gateway Bridge – Proposed River Mersey (Mersey Gateway Bridge) (Modification) Order and Proposed Mersey Gateway Bridge and A533 (Silver Jubilee Bridge) Road User Charging Scheme Order

1.0 Executive Summary

1.1 This report asks the Council to formally confirm its wish to continue promoting its application for the River Mersey (Mersey Gateway Bridge) (Modification) Order (“Proposed Order”) to modify the River Mersey (Mersey Gateway Bridge) Order 2011 (“2011 Order”) (“Application”) so as to allow:

1.1.1 a Road User Charging Scheme Order (“RUCSO”) to be made in relation to the Mersey Gateway Bridge as well as in relation to the Silver Jubilee Bridge (together, the “Bridges”); and

1.1.2 the application of the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 (“Regulations”) to tolls collected by the Council under the 2011 Order.

1.2 The Application was made by the Council on Thursday, 26 March 2015 pursuant to a resolution made by the Council on Thursday, 18 March 2015 to promote the Application.

1.3 The first resolution was - and this further resolution of the Council is - required because it is an “Authority” for the purposes of Section 239 (4) of the Local Government Act 1972, and the Proposed Order is one to which Section 239 applies by virtue of Section 20 of the Transport and Works Act 1992. Under Section 239, it is required that the resolution be made by a majority of the whole number of members of the Council whether present and voting at the meeting or not.

2.0 RECOMMENDATION: Council is recommended to:

1) confirm its wish to continue promoting the Application; and

2) authorise the Operational Director – Legal & Democratic Services to take all necessary steps to secure the Proposed Order.

3.0 Background

3.1 At a special meeting of the Council on 18th March 2015, its Members (by a decision of those present, who comprised a majority of all its Members), agreed that an application should be made to the Secretary of State for Transport for the Proposed Order which would have the effect of amending the 2011 Order so as to allow:

3.1.1 a RUCSO to be made in relation to both Bridges; and

3.1.2 the application of the Regulations to tolls collected by the Council under the 2011 Order.

3.2 Before making that decision, Members at the meeting received and duly considered a detailed report and a further, supplemental report explaining the reasons for making the Application and the process for doing so.

3.3 The necessary statutory procedures have subsequently been followed. In particular:

a) the Application was made to the Secretary of State on 26 March 2015, including all necessary supporting documentation; and

b) notice of the Application was published in the local press on 25 March 2015 giving formal notice that the Application was to be made; and statutory notices were also published on 1 April 2015 in both the local press and the London Gazette advising that the Application had been made. Those notices advised the public of the general effect of the Proposed Order and of the fact that anyone wishing to object to it, or make representations about it, should do so in writing to the Secretary of State within the statutory period, which expired on 14 May 2015.

3.4 These notices also advised that copies of the Application, including the Proposed Order and other documents submitted, were available for public inspection throughout the objection period in Halton Direct Link at Brook Street, Widnes and also at Halton Lea Shopping Centre, Runcorn.

3.5 In addition, formal notice of the Application and a copy of the documents associated with it were served on the Council; and notice that the Application had been made was served on the Liverpool City Region Combined Authority.

3.6 On 11 June 2015 the Secretary of State informed the Council that it had been decided that it was not necessary to hold an inquiry or hearing in respect of the Application. Instead, the Secretary of State indicated that none of the objectors have a statutory right to be heard and stated that the issues raised by, and the objections to, the Application can be adequately

presented and examined through the written representations procedure. This would be subject to the Council satisfying its obligations under the Local Government Act 1972 in relation to the application, as set out below in section 4 of this Report.

- 3.7 Three (3) objections were received by the Secretary of State during the statutory period that expired on 14 May 2015. All three were lodged by residents of Halton and all objected to the imposition of tolls/charges on the bridges. The principle of tolling was established in the 2011 Order. Accordingly, it is not a subject of the Proposed Order and the Application documents made this clear. One objector also raised the following as reasons for the objection:-
1. The enforcement powers being sought are unfair as they would be applied by a private sector entity contracted to the Council.
 2. The cost of registering for the Local User Discount Scheme.
 3. The toll/charge system's need to access the DVLA records is an invasion of privacy.
 4. The cost of the ANPR (automatic number plate recognition) system.

None of these reasons directly apply to the provisions being sought in the Proposed Order.

- 3.8 The Secretary of State requested that the Council submit written representations addressing each of the three objections by 9 July 2015. The representations were lodged in accordance with the Secretary of State's direction on 26 June 2015.

4.0 Next Steps

- 4.1 Under Section 239(2)(b) of the Local Government Act 1972, the Council – having resolved to make the Application - and duly done so – must formally confirm its wish to continue promoting the Application. Such a resolution must be passed by a majority of the Members of the Council at a meeting of which formal public notice has been given specifying the intention to pass such a resolution. Such a notice was duly published in the local press on 10 June 2015.
- 4.2 The reasons for making the Application remain unchanged since the decision on 18 March 2015 and remain valid.
- 4.3 The three objections raise no new issues. They either raise points of principle, such as the principle of tolling which was addressed and resolved at the public inquiry held in respect of the 2011 Order, or issues that have already been considered and addressed.
- 4.4 Accordingly the Council is recommended to formally confirm its wish to continue promoting the Application and to authorise the Operational Director – Legal & Democratic Services to take all necessary steps to secure this.

5.0 Resource Implications

The Mersey Gateway Crossings Board will meet the resource implications associated with these statutory procedures, including the preparation and submission of the required written representations. As it was initially anticipated that a public inquiry would be held to aid the Secretary of State's determination of the Application, the use of the written representations procedure will reduce the cost of promoting the Application.

6.0 Risk

Without the enforcement powers, the Council will be in breach of its Demand Management Participation Agreement with Sanef [SA] dated 28th March 2014. It will not be possible for the Council to ensure that it receives all the toll/charge due to it from the users through the terms of that Agreement. The consequence of this is likely to be a shortfall in revenues which may need to be rectified through a higher toll/charge than would be the case with the enforcement powers in place

7.0 Equality and Diversity

There are no implications for equality and diversity relating to the powers of enforcement as they will apply to all who are to use the Mersey Gateway Bridge and the Silver Jubilee Bridge.

8.0 Conclusion

8.1 In light of the information contained in this report, the Council is asked to resolve to confirm its wish to continue promoting the Application.

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

Relevant Legislation: Local Government Act 1972
Transport & Works Act 1992