

REPORT TO: Council

DATE: 18 March 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 the A533 (silver Jubilee Bridge) Road User Charging Scheme Order

1.0 Executive Summary

- 1.1 This report asks the Council to formally resolve to apply for an Order (“the Proposed Order”) to modify the River Mersey (Mersey Gateway Bridge) Order 2011 (“the 2011 Order”) so as to allow 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.
- 1.2 The principal change to the 2011 Order effected by the Proposed Order, if made, would be to permit the Council to make the RUCSO under the Transport Act 2000 for the Mersey Gateway Bridge. This will enable the Council to introduce enforcement provisions to secure payment of tolls for users of not only the Mersey Gateway Bridge but also the Silver Jubilee Bridge. This will allow the Council to meet its contractual obligations in relation to the Mersey Gateway Crossing project.
- 1.3 A resolution of the Council to make such an application is required because it is an “authority” for the purposes of Section 239(4) of the Local Government Act 1972 (“the 1972 Act”), and the Proposed Order is one to which Section 239 applies by virtue of section 20 of the Transport and Works Act 1992 (“the 1992 Act”). Under Section 239, it is required to make the resolution by a majority of the whole number of members of the Council whether present and voting at the meeting or not.
- 1.4 This report also asks the Council to:-
- (a) grant delegated powers to the Operational Director – Legal & Democratic Services to take the necessary steps to apply to the Secretary of State for the Proposed Order.
 - (b) consider the making of a RUCSO that would apply to both the Mersey Gateway Bridge and the Silver Jubilee Bridge, and
 - (c) grant delegated powers to the Operational Director – Legal & Democratic Services in relation to the necessary procedures.

1.5 The structure of this report is as follows:

Para 2 sets out the recommendations

Para 3 sets out the background that led to the issues addressed in the report

Para 4 explains the purpose and content of the Proposed Order

Para 5 explains the purpose and content of the RUCSO

Para 6 describes the documents that are required to support an application for the Proposed Order

Para 7 sets out the pre-application consultation process undertaken on the Council's behalf by the Mersey gateway Crossings Board

Para 8 explains the next steps in the process, and

Para 9 provides an overall conclusion

2.0 **RECOMMENDATIONS: That**

Subject to due consideration of a supplemental report on the outcome of a consultation (as set out in para 7.10), the Council is recommended to:

- (a) Authorise the Operational Director – Legal & Democratic Services to make an application to the Secretary of State for Transport under the 1992 Act to modify the 2011 Order as set out in para 4;**
- (b) Authorise the Operational Director – Legal & Democratic Services to take all necessary steps to secure the making of the Proposed Order and to arrange for the preparation of all necessary documentation required to support the application for the Proposed Order;**
- (c) If it makes the resolutions under (a) and (b), authorise the Chief Executive to publish a special notice of a further meeting of the Council to take place after the Proposed Order has been applied for at which the decision to make the application must be confirmed;**
- (d) If it makes resolutions under (a), (b) and (c) above, agree to make a RUCSO that will apply to the Mersey Gateway Bridge and to the Silver Jubilee Bridge, as set out in para 5 and subject to recommendation (e);**
- (e) If it makes the resolution under (d) above, agree to delegate authority to the Operational Director – Legal & Democratic Services to decide:
 - (1) whether or not to hold an inquiry into the RUCSO (having regard to whether or not the Secretary of State determines that the application for the Proposed Order should be considered at a public inquiry);****

- (2) if the Secretary of State directs that an inquiry be held into the application for the Proposed Order, whether or not to request that it be conjoined with the inquiry into the RUCSO;**
- (3) whether or not to make the RUCSO once the inquiry has been held, having regard to:
 - (i) the outcome of the application and any inquiry into the Proposed Order**
 - (ii) the inspector's recommendations (including whether any amendments to the RUCSO are required); and**
 - (ii) whether the decision to make the RUCSO should be referred back to the Council for decision, as set out in para 5.****
- (f) If it makes resolutions under (d) and (e) above, agree to delegate authority to the Operational Director – Legal & Democratic Services to finalise the form of the RUCSO, having regard to the Inspector's recommendations; including in particular by amending any plans and by amending the name of the RUCSO to include the appropriate road classification once notified by the Secretary of State.**
- (g) if it makes the resolution under (e) above, to authorise the Operational Director – Legal & Democratic Services to revoke the 2008 Order pursuant to section 168(2) of the Transport Act 2000.**

3.0 Background

- 3.1 The 2011 Order empowers the Council to construct, operate and maintain the Mersey Gateway Bridge and associated approach roads.
- 3.2 It also contains provisions relating to the concession and financing arrangements for the new crossing, its associated approach roads in Widnes and Runcorn and the approach roads to the Silver Jubilee Bridge in Widnes. In particular, it gives the Council specific powers to set and charge tolls on vehicles using the new bridge. These powers were procured on the assumption that the tolls would be collected at barrier toll payment stations before vehicles could proceed to cross the bridge.
- 3.3 At the Council meeting on 19 October 2011, it was decided that the new bridge would operate under a 'free flow' environment. This means that users would pay the toll/charge after crossing the bridge – unless they had entered into a pre-payment arrangement. To make this work, the toll/charge operator requires powers to enforce payment after the use of the bridge, since barriers for payment will not be present to prevent those crossing the new bridge unless they have paid.

3.4 The mechanism to achieve this is by the making of a RUCSO on the new bridge (and equally the Silver Jubilee Bridge) to which the Road User Charging Schemes (Penalty Charges, Adjudications and Enforcement) (England) Regulations 2013 (the 'Enforcement Regulations') could be applied. It was on the premise that these powers of enforcement would be procured by the Council that the operator, Sanef SA, entered into a contract to operate the toll/charge system on 28th March 2014.

4.0 Purpose of the Proposed Order

4.1 The Proposed Order would, if made, amend the 2011 Order which became effective on 1st February 2011. The 2011 Order enabled the Council to:

- i) toll/charge for the use of the Mersey Gateway Bridge or for any other services or facilities provided in connection with it;
- ii) permit the recovery of costs from a person who has failed to pay a toll/charge and against whom action has been taken to recover the toll/charge;
- iii) appoint a person to collect tolls/charges as its agent;
- iv) apply the tolls/charges collected to paying the costs and expenses incurred by the Council in designing, constructing, managing and maintaining the Mersey Gateway Bridge and in managing, operating and maintaining the Silver Jubilee Bridge or any costs associated with financing these purposes; and
- v) enter into a season ticket agreement which provides for the compounding of payment of tolls/charges on terms contained in the agreement.

4.2 The need to modify the 2011 Order has been created by the Council's decision on 19 October 2011 to adopt a 'free flow' toll/charge environment. The Enforcement Regulations specify certain matters that must be contained in a RUCSO (e.g. levels of penalty tolls/charges or the means to obtain them) which the 2011 Order does not contain (having come into effect before the Enforcement Regulations did).

4.3 The key modifications made to the 2011 Order by the Proposed Order would permit the Council to make a RUCSO for both the Mersey Gateway Bridge and the Silver Jubilee Bridge. (The Silver Jubilee Bridge can already be made subject to its own road user charging scheme order so the specific power sought in the Proposed Order serves to ensure that the single RUCSO not only applies to Mersey Gateway Bridge but also to the Silver Jubilee Bridge.) The RUCSO would be made under the Transport Act 2000 and would ensure that the Enforcement Regulations could be relied upon by the Council, through the operator.

This allows the Council to adopt a uniform approach to charging for the use of both bridges. The powers to charge/toll would remain subject to any limitation contained in Articles 41 and 42 of the 2011 Order; viz:

- i) ensure that if a RUCSO is in force that relates to Mersey Gateway Bridge, then its provisions apply instead of powers contained in the 2011 Order.
- ii) permits the Council to exercise additional powers (including those in para 4.1 (1) to (5) above) in respect of a RUCSO that is already in force at the date the amended provision comes into force.
- iii) if no RUCSO is in force in relation to the Mersey Gateway Bridge, then the toll/charge provisions contained in Articles 41, 42 and 46 of the 2011 Order will apply. Article 46, itself, is amended to allow the Council, through its operator, to rely on those enforcement measures in the Enforcement Regulations that do not need to be contained in a RUCSO (e.g. power to seize vehicles).

4.4 In addition, the Council is proposing that two additional changes to the 2011 Order be made through the Proposed Order:

4.4.1 It will allow the Council to use its discretion whether to void a season ticket agreement if payments are not made. The 2011 Order gives no discretion and is considered to be too severe as it requires that the agreement is voided in this circumstance; and

4.4.2 It will also allow the removal of the requirement imposed under S164(3) of the Transport Act 2000. This means that the Council will not be constrained to only be able to make a RUCSO if it directly or indirectly facilitates the achievement of the Liverpool City Region Combined Authority's (LCRCA) local transport policies. This has been included because powers relating to the levying of tolls for the bridges (Mersey Gateway Bridge and Silver Jubilee Bridge) are with the Council, and not the LCRCA. Further, the LCRCA was created in 2014, subject to those powers remaining with the Council.

5.0 The Purpose of the Proposed RUCSO

5.1 The proposed RUCSO is similar to the existing A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008 but will be updated to reflect more recent practice and have the following important new provisions:

- a) it will apply to the Mersey Gateway Bridge as well as to the Silver Jubilee Bridge and allow a uniform approach to tolling/charging for both bridges. See Appendix A for an indicative plan showing the extent of the road network over which the proposed RUCSO will apply;

- b) it will include enforcement provisions to ensure that the operator can enforce payment of tolls/charges levied for the use of the bridges, having regard to the 'free flow' arrangement;
- c) it will introduce a discretionary toll/charge post-pay period;
- d) it will contain requirements on how the enforcement mechanism will be communicated to road users;
- e) it will allow the Council to exercise discretion when deciding whether to void season ticket arrangements due to failure to pay a toll/charge; and
- f) it will specify that local service buses are to be exempt from payment of any toll/charge for use of the Silver Jubilee Bridge, provided it is entered on the exemption register.

5.2 The enforcement provisions are drawn from the 2013 Regulations. Enforcement would be by means of penalty charges leading to debt registration or immobilisation, removal, storage and disposal of 'persistent' non-compliant vehicles. The Enforcement Regulations prescribe the maximum penalty charge rate and set it at £120. The proposal before the Council is that the maximum rate at the Bridges is set at a level that aligns with those of other civil traffic offences (such as parking contraventions) that are applied in the North West of England. The initial penalty charge values recommended are as follows:

- £20 – when the penalty is paid in full within 14 days of the date on which the penalty charge notice was served;
- £40 – when the penalty charge is paid in full after the expiry of 14 days but before a charge certificate is served (which may be after 29 days after the date on which the penalty charge notice was first served); and
- £60 when the penalty charge is paid in full after a charge certificate has been served.

The date when a penalty charge notice is served is defined in Regulation 3(4) of the Enforcement Regulations, for those served in the UK, as being the second working day after the day on which it was posted. The same penalty charge rate will apply to all the classes of vehicles using the Bridges. This is because it is the offence of non-payment of the toll/charge that is attracting the penalty. It should be noted that the original toll/charge is payable in addition to the penalty.

5.3 It is a requirement of the Enforcement Regulations that the penalty charge values must either be specified in the RUCSO or that the RUCSO specify the way in which the values will be communicated to users. It is recommended that the RUCSO for the Bridges specifies that this communication should be by way of publication on the Project website –

www.merseygateway.co.uk. This does not, of course, preclude publication by other means too.

- 5.4 The RUCSO will have a similar provision to that in the Modified Order as set out in para 4.4 above [for the reasons set out].
- 5.5 The RUCSO will contain an exemption from toll/charge for local bus services (as defined by s2 of the Transport Act 1985) using the Silver Jubilee Bridge to reflect the terms of the contract with the toll/charge Operator dated 28th March 2014.
- 5.6 Section 164 of the Transport Act 2000 requires that a charging scheme may be made:
 - 5.6.1 only “if it appears desirable for the purpose of directly or indirectly facilitating the achievement of local transport policies of the charging authority”; and
 - 5.6.2 if it has effect “wholly within...the area of a combined authority”, only “if it appears desirable for the purpose of directly or indirectly facilitating the achievement of local transport policies of the charging authority and the combined authority”.
- 5.7 The current Halton Local Transport Plan 2011/12 – 2025/26 (the LTP) states
 - 5.7.1 in Section 2 at p12 *“Our Goals. Ensure transport resilience with particular regard to enhancing cross Mersey linkages by the implementation of the Mersey gateway project and the Mersey Gateway Sustainable Transport Strategy”*.
 - 5.7.2 In Section 5 at p 17 it states *“The road system in Halton generally has the capacity to cope with demand. The notable exceptions are the approaches to the Silver Jubilee Bridge and the Weston Point Expressway approach to M56 Junction 12 The construction of the Mersey Gateway will address these issues”*.
 - 5.7.3 At Primary Strategy No 4: Demand Management the LTP specifically addresses the use of a road user charge scheme to *“manage demand to maintain free flow traffic conditions on the Mersey Gateway Bridge and the Silver Jubilee Bridge”*.
 - 5.7.4 The LTP concludes *“Congestion on the Silver Jubilee Bridge remains a major issue and as such the provision of the Mersey Gateway Project is viewed as a top priority”*.
- 5.8 In addition, the status of the LTP was considered by the LCRCA at its meeting on 1st April 2014. Agenda Item 6 ‘Core Transport Policy Framework and Transport Budgets 2014/15’ the LCRCA approved a ‘Transport Protocol’ in which it states *“From 1st April 2014 the existing*

Halton LTP is to remain in force... and *“From 1st April 2015 Merseyside and Halton’s LTPs are to be incorporated into a single plan”*. Consequently, the requirements of s164 are met at this time.

- 5.9 Having regard to the sections of the LTP and the LCRCA’s Transport Protocol set out above, it is evident that the requirements of s164 are met at this time and the Council may, if it considers it appropriate having regard to other matters addressed in this report as well, make the Proposed RUCSO.
- 5.10 However, if the Proposed Order becomes effective and amends the 2011 Order, the requirement at 5.6.2 need not be met. Accordingly, if the 2011 Order is amended and the RUCSO is made subsequently, the Operational Director – Legal & Democratic Services may make the RUCSO without it meeting the test in 5.6.2. The same position would apply to any future road user charging scheme orders made by the Council.

6.0 Supporting Documentation

- 6.1 The application for the Proposed Order will be made under the 1992 Act. The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 require supporting documentation. The Department for Transport has indicated that, given the limited scope of the Proposed Order, many of the documents usually required will not be needed here. In particular, an Environmental Statement is not required to be submitted because the change to be made by the Proposed Order does not amount to a project requiring an Environmental Impact Assessment. In addition, since no land is being compulsorily acquired by the Council no documents are required that relate to that element.
- 6.2 In summary, the Council must submit eight supporting documents:
- i) a written application;
 - ii) the Proposed Modification Order in draft form;
 - iii) an explanatory memorandum about its effect and purpose;
 - iv) a statement of the aims of the proposal;
 - v) a report on consultation undertaken in respect of the proposal;
 - vi) a declaration of the applicant’s status (because it is not an individual or company);
 - vii) a list of other consents sought; and
 - viii) a funding statement.

These will be prepared by the Mersey Gateway Crossings Board on behalf of the Council.

7.0 Publicity and Consultation

- 7.1 The Proposed Order and other application documents must be subject to public scrutiny and the Secretary of State must have due regard to any representations or objections made. To satisfy this requirement, the application must be advertised by the Council and made available for public inspection and a period of 42 days allowed for representations to the Secretary of State.
- 7.2 In particular the Council must publish:
- a) immediately after the application has been made, a notice in the London Gazette containing prescribed information; and
 - b) a notice in prescribed form in a newspaper circulating in the areas in which the proposals will have effect. Two notices must be published: the first must be published not more than 14 days before (and not after) the application date; the second no more than 7 days after the application date.
- 7.3 The nature and content of any representations will be taken into account by the Secretary of State in determining how the proposals should be examined and progressed by him.
- 7.4 The Council is also required to serve notice of the application on certain parties. In this case, the Liverpool City Region Combined Authority (comprising Wirral Council, Sefton Council, St Helens Council, Knowsley Council and Liverpool City Council) must be served with such notice.
- 7.5 The application documents must also be lodged with the House of Commons and the House of Lords.
- 7.6 However, statutory guidance (which effectively must be followed) on applications for orders under the 1992 Act recommends consultation with interested parties outside the statutory context.
- 7.7 In effect, the guidance requires promoters to undertake pre-application consultation with (more generally) those who are likely to have an interest in the proposals and those who are required to be served with a copy of the application documents.
- 7.8 In addition, there is a statutory requirement on the Council to consult 'appropriate persons' when making the RUCSO. This requirement is found in section 170(1A) of the Transport Act 2000.
- 7.9 Following this guidance and adhering to the statutory requirement, the Mersey Gateway Crossings Board has therefore undertaken pre-application

consultation on both the Proposed Order and the RUCSO with various bodies, including the Councils referred to in para 7.4, the general public and key stakeholders (see Appendix B). The consultation took place between 9th February and 11th March 2015 and the results will be analysed by the Mersey Gateway Crossings Board and their conclusions reported in a supplemental report.

- 7.10 The Council is asked to have regard to this supplemental report as a relevant consideration in deciding whether or not to:
- (a) accept the conclusions of the Mersey Gateway Crossings Board and
 - (b) resolve to make the application for the Proposed Order.
- 7.11 Subject to due consideration of the supplemental report on the consultation, the Council may decide to make the RUCSO or to hold an inquiry, as provided by S168 and S170 respectively of the Transport Act 2000. However, because of the relationship between the RUCSO and the Proposed Order, the process would be most appropriately delegated to the Chief Executive. The delegation would allow him to:
1. decide whether or not to hold an inquiry having regard to the TWA Order process and make the appropriate arrangements;
 2. request that, should the Secretary of State require an inquiry into the Proposed Order, it should be conjoined with the inquiry into the RUCSO if he so decides there should be one; and
 3. decide whether or not to make the RUCSO once the inquiry is held having regard to the Inspector's recommendation or to refer the decision back to the Council.

8.0 Next Steps

- 8.1 If the Council agrees with the recommendations with respect to the Proposed Order, immediate steps will be taken to publish the first statutory notice referred to in para 7.2(b) above after which the application will be formally made to the Secretary of State with immediate publication thereafter of the other two notices mentioned in para 7.2.
- 8.2 The statutory procedure in S239 of the 1972 Act also requires a second formal resolution of the Council, agreed by a majority of its total membership confirming its wish to proceed with the application. This resolution must be made at a meeting of the Council held as soon as may be after the expiration of fourteen days after the application has been submitted of which at least 30 clear days' notice has been given. In anticipation of the application being made in March 2015, it is proposed to seek the second resolution at the next full Council meeting thereafter allowing the requisite notice period, i.e. on Wednesday 15th July 2015.

9.0 Resource Implications

- 9.1 The Mersey Gateway Crossings Board will meet the resource implications associated with these statutory procedures, including preparation for and attendance at any public inquiry.

10.0 Risk

- 10.1 Without the enforcement powers the Council will be in breach of its Demand Management Participation Agreement with Sanef SA dated 28 March 2014. It will not be possible for the Council to ensure that it receives all the toll/charge revenue 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.

11.0 Equality & Diversity

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

12.0 Conclusion

- 12.1 In light of the information contained in this report, the Council is asked, subject to the supplemental report referred to in para 7.10, to consider the recommendations and resolve to authorise the making of an application for the Proposed Order as well as the further resolutions set out in para 2.1.

13.0 LIST OF BACKGROUND PAPERS UNDERSECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Relevant legislation.