



# Report to the Secretary of State for Transport

by Mike Robins MSc BSc(Hons) MRTPI  
an Inspector appointed by the Secretary of State

Date: 13 July 2023

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**TRANSPORT AND WORKS ACT 1992**

**RIXTON AND WARBURTON BRIDGE ORDER**

**APPLICANT**

**MANCHESTER SHIP CANAL COMPANY**

Inquiry opened 8 November 2022

Rixton and Warburton Bridge Order

PINS Ref: DPI/B4215/22/3

Ref: TWA/21/APP/05

## CASE DETAILS

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### The Rixton and Warburton Bridge Order 202[ ]

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- The Order would be made under sections 3 and 5 of the Transport and Works Act 1992.
- The application for the Order was submitted to the Secretary of State for Transport.
- The application is made by the Manchester Ship Canal Company Limited (MSCC) and is dated 30 November 2021.
- The effect of the requested Order would be to update and modernise provisions of the existing legislation in respect of the Rixton and Warburton Bridge, in particular to revise the tolls which MSCC may charge for use of the Rixton and Warburton Bridge, and supersedes the toll levels set out in the Rixton and Warburton Bridge Act 1863. The Order also contains provisions for MSCC to make new byelaws in relation to the good management and use of the Rixton and Warburton Bridge in order to safeguard the navigation of the Manchester Ship Canal. In addition, the Order contains provisions for MSCC to transfer the Rixton and Warburton Bridge Undertaking to the Rixton and Warburton Bridge Company Limited should MSCC so resolve.

**Summary of Recommendation: That the Order be made as modified.**

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**ABBREVIATIONS & GLOSSARY**

1863 Act	Rixton and Warburton Bridge Act 1863
1867 Act	Rixton and Warburton Bridge Amendment Act 1867
1885 Act	Manchester Ship Canal Act 1885
1890 Act	Manchester Ship Canal (Various Powers) Act 1890
1954 Act	Transport Charges &c. (Miscellaneous Provisions) Act 1954
1964 Act	Harbours Act 1964
1992 Order	Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992
2000 Act	Transport Act 2000
2004 Rules	Transport and Works (Inquiries Procedure) Rules 2004
AADT	Annual Average Daily Traffic
ANPR	Automatic Number Plate Recognition
C19	19 <sup>th</sup> Century
CA	Warburton Village Conservation Area
Canal Company	Manchester Ship Canal Company
Cantilever Bridge	The Warburton High Level Bridge or WHLB
The Company/The Bridge Company	The Rixton and Warburton Bridge Company
CPI	Consumer Prices Index
EQIA	Equality Impact Assessment
HRO	Harbour Revision Order
IRR	Internal Rate of Return
MMO	Marine Management Organisation
MP	Member of Parliament
MSCC	Manchester Ship Canal Company
NAAT	National Alliance Against Tolls
New Co	The proposed new bridge undertaking organisation
Order	The Rixton and Warburton Bridge Order
Original Bridge	The first River Mersey Bridge
PBI	Principal Bridge Inspection
SoC	Statement of Case
SoM	Statement of Matters
TC	Trafford Council
TFGM	Transport for Greater Manchester
TTRO	Temporary Traffic Regulation Order
TWA 1992	Transport and Works Act 1992
TWAO	Transport and Works Act Order
WBC	Warrington Borough Council
WHLB	Warburton High Level Bridge
XX	Cross Examination

## 1. Preamble

- 1.1. This application relates to a crossing of the Manchester Ship Canal and a proposal for a Transport and Works Act Order (TWAO) to, amongst other matters, increase the existing level of tolls to fund repairs and improvements to the crossing and provide for its long-term operation.
- 1.2. The original crossing over the River Mersey is reported to have been constructed by a group of merchants under the Rixton and Warburton Bridge Act 1863 (the 1863 Act)<sup>1</sup> to replace a ferry or floating bridge. This bridge was constructed over the Mersey near the village of Warburton. The 1863 Act allowed for the charging of a toll, for a '*Carriage drawn or propelled by Steam or any Means other than Animal Power*' of two shillings and sixpence, that is the equivalent of 12.5 pence capped at a daily charge of 25 pence. The Rixton and Warburton Bridge Amendment Act 1867 (the 1867 Act)<sup>2</sup> allowed for, among other matters, the raising of additional funds. This bridge is referred to in this Report as the original bridge or the River Mersey bridge.
- 1.3. In 1885, the Manchester Ship Canal Act (the 1885 Act)<sup>3</sup> authorised the construction of the canal and a number of new crossing points, including an opening bridge proposed to the north of the original River Mersey bridge, Works No.35. The later Manchester Ship Canal (Various Powers) Act 1890 (the 1890 act)<sup>4</sup>, altered that proposal to a fixed bridge on a diverted alignment of the road, identified as the Warburton High Level Bridge (WHLB), referred to elsewhere in this Report as the cantilever bridge. It also authorised the transfer of the Rixton and Warburton Undertaking to the MSCC. This included the levying of tolls as set by the 1863 Act, but no changes were made to the amount of toll that could be charged.
- 1.4. From contemporary maps, it would appear that the original Mersey bridge remained as a crossing point despite the river being diverted along the canal, for a period until at least 1910<sup>5</sup>. However, excavation material was likely to have been used to infill the original Mersey route and with siltation or deliberate infilling, the entire span of the original bridge is now closed off. As such, the only immediately visible signs of that bridge are the stone abutments and railings alongside the road, and there appears little trace of the route that used to connect across the land now crossed by the canal.
- 1.5. Photographs of the original bridge and its condition at road level now are available under CD AO/1, and a copy of a plan relevant to the period, an annotated extract from the 1890 Act<sup>6</sup>, is reproduced below.

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<sup>1</sup> CD RWB/B1

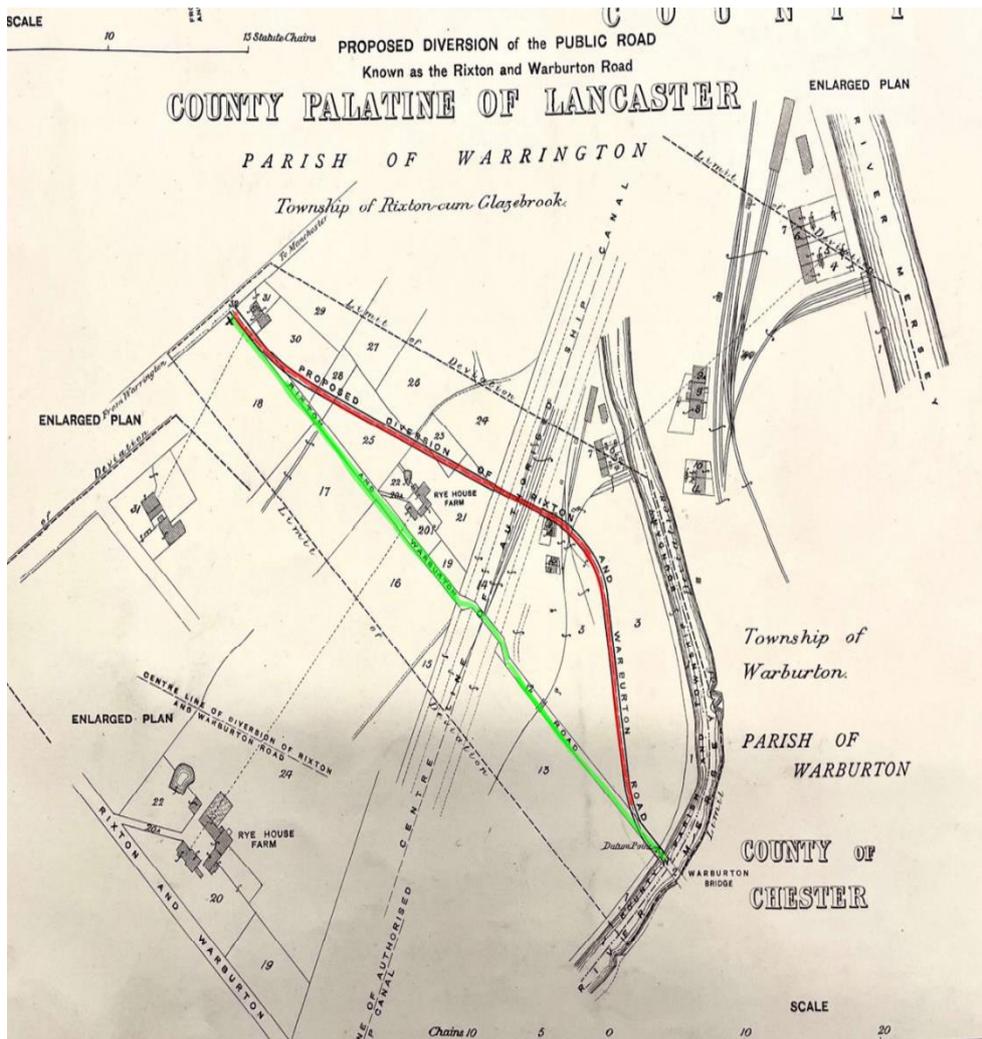
<sup>2</sup> CD RWB/B9

<sup>3</sup> CD RWB/B3

<sup>4</sup> CD RWB/B4

<sup>5</sup> CD WMBC/1 Figure GR3.4

<sup>6</sup> ID INQ2.1



## The Application

- 1.6. The application<sup>7</sup> is made by MSCC for the Rixton and Warburton Bridge Order (the Order). The application seeks to raise the toll charged for crossing the Bridge to a maximum of £1 per trip, with the option for rate rises in line with Consumer Prices Index (CPI), less 1%, to include creation of a reserve fund and the introduction of a free-flow tolling approach. The Order contains provisions to make new byelaws and to transfer the Undertaking to the Rixton and Warburton Bridge Company Limited (the New Co), should MSCC so resolve.

## Objections and Representations

- 1.7. A very significant number of objections were raised, and the Inquiry was able to hear from a number of local residents, interested parties and Members of Parliament (MPs). Substantive objections were raised by the two neighbouring local authorities, Trafford Council (TC) and Warrington Borough Council (WBC), who took a full part in the Inquiry, presenting evidence and closing statements.
- 1.8. It is important to note that the Councils' objections do not necessarily align with many of the objectors, who consider that there should be no toll in place, for example. One of those objectors, Mr McGoldrick, submitted a

<sup>7</sup> CD RWBA/1

Statement of Case (SoC) and Proof of Evidence to the Inquiry and, in addition to his role with a nationwide organisation, the National Alliance Against Tolls (NAAT), would also appear to have been in discussion with action groups and other interested parties in the area. Accordingly, Mr McGoldrick was offered opportunities to present evidence, question witnesses and submit a closing statement to the Inquiry; his position is also represented below.

### **Statement of Matters (SoM)**

- 1.9. Under the Transport and Works (Inquiries Procedure) Rules 2004 (the 2004 Rules) the Secretary of State is required to set out the matters which they particularly wish to be informed about for the consideration of the application.
- 1.10. By notice dated 21 June 2022, the matters set out are as follows:
1. The aims and objectives of, and the need for, the proposed Rixton & Warburton Bridge improvements ("the Scheme").
  2. Whether all statutory procedural requirements have been complied with.
  3. The statutory power within the Transport and Works Act 1992 (TWA 1992) to allow for an increase in the tolls.
  4. The likely impact of the provisions in the TWAO, including the increase in the toll and any other impacts on existing users, local communities and businesses.
  5. The adequacy of the proposed discount scheme for local residents.
  6. Impact of increase in the toll on alternative routes including air quality and traffic congestion.
  7. Any other matters which may be raised at the Inquiry which may be important and relevant to the Secretary of State's decision.

### **The Inquiry**

- 1.11. I held a public Inquiry at the Village Hotel in Warrington opening on 8 November 2022. The Inquiry sat for a total of 7 days and was formally closed on the 29 November, although a period to the 21 December initially, extended to the 16 January 2023, was allowed for revision and comment on a final version of the Order.
- 1.12. Helen Wilson of Helen Wilson Consultancy Ltd was appointed as an independent Programme Officer for the Inquiry. Her role was to assist with the procedural and administrative aspects of the Inquiry, including the programme; I was very grateful for her assistance in the administration of the Inquiry.
- 1.13. During the Inquiry I carried out a number of unaccompanied visits to the application site and surrounding areas as well as a formal, accompanied visit which allowed access to either side of the toll road, a view from below as

well as an opportunity to walk to the centre of the high-level bridge and to the original bridge and tollbooth.

### **Compliance with Statutory Requirements**

- 1.14. At the Inquiry, the applicant confirmed that it had complied with its obligations under the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and 2004 Rules and submitted a document to demonstrate compliance with those obligations<sup>8</sup>.
- 1.15. Notwithstanding concerns over the time available for objectors to consider the applicant's submissions and some issues regarding notification raised by individual objectors, which I note and address below, I have reviewed and considered the submissions made on this matter. I am satisfied that there is good evidence that the notices were correctly served in accordance with the requirements of Rule 13(1), and advertised in accordance with Rule 14 (1), (2) and (3). The application and accompanying documents were made available at appropriate locations and online through MSCC's website: <https://www.warburtontollbridge.co.uk>.
- 1.16. The applicant's SoC was served on statutory objectors, those who had registered an interest to appear at the Inquiry and those who had provided a SoC. I note that Proofs of Evidence were served in accordance with an agreed timescale and made available for public inspection on the Inquiry website: [Proposed Rixton & Warburton Bridge Toll Change TWA Inquiry | Helen Wilson Consultancy Limited \(hwa.uk.com\)](#).
- 1.17. These two websites have ensured that all evidence, when available, has been accessible and the notifications have meant that hard copy versions of the relevant information have been made available also. I accept that there was a very significant amount of information and evidence presented in support of and in opposition to this proposal. I also understand that this presents challenges to interested parties, and that the Order and the evidence supporting it, did change in the run up to the Inquiry, and during the event itself. However, this is an accepted part of the TWAO process, and I sought to make sure that all parties were given a fair opportunity to consider and comment on the information.
- 1.18. A member of the public attending the Inquiry suggested that they had been unaware of the proposal previously; consequently, I have reviewed the consultations and promotional information provided prior to the event, as well as the notifications against the statutory requirements. This has included the applicant's engagement record, provided as a Core Document<sup>9</sup>, which shows meetings and letters of response dating back to 2013, as well as their record of consultation<sup>10</sup>. In this case, it is clear that there was engagement with Borough and Parish Councils, independent consultation and information available on the Bridge's website, as well as an active action group utilising social media. I am satisfied that all notification requirements have been complied with.

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<sup>8</sup> ID INQ1

<sup>9</sup> CD RWB/C2

<sup>10</sup> CD RWB/C4

- 1.19. In the absence of any other concerns having been raised by any other objector or interested party, I am also satisfied that all of the statutory requirements in connection with the application for the Order and the notification of the date, time and venue of the Inquiry were also complied with.

### **The Report**

- 1.20. This Report sets out a brief description of the land and crossing covered by the Proposed Order, the main points of the cases for the promoter, for the statutory and other objectors and my conclusions and recommendations. Lists of abbreviations used in this Report are included above, and appended to the Report are lists of those appearing at the Inquiry and the Inquiry documents.

## **2. The Order**

- 2.1. An initial version of the Order was submitted by the applicant<sup>11</sup> but was subsequently updated in response to comments prior to the Inquiry<sup>12</sup>. A round table session was then held at the Inquiry allowing full commentary on the differences between the Councils' position and that of the applicant, as well as allowing questioning from interested parties.
- 2.2. Following this, final versions of a Proposed Order were submitted, one with an associated Deed of Obligation and one with those commitments included within the Order, as well as an alternative version promoted by the Councils to address their particular concerns regarding toll amounts, discount options and the Proposed transfer of the Undertaking<sup>13</sup>.
- 2.3. There were some further discussions, including some agreement but also challenges made to these versions both in the round table session and by commentary prior to the closing date in January. I have incorporated these into a final Proposed Order within Appendix C.

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<sup>11</sup> CD RWB/A2

<sup>12</sup> CD RWB/A8.1 and 8.2

<sup>13</sup> ID INQ10.1, 10.2, 11.1, 11.2, 12

### 3. The Case for the Applicant Company

3.1. The case for the Order is set out in the application, supported by the written evidence of the MSCC's witnesses and supported by their oral evidence to the Inquiry. The main points of the case are summarised below

#### A. Introduction

3.2. MSCC intends through the proposed Manchester Ship Canal Company (Rixton & Warburton Bridge) Order, to, amongst other things, fund repairs and improvements to the Rixton and Warburton Bridge, install and operate a free flow system of tolling, and create a sustainable future for the Bridge Undertaking, including by transfer into a separate undertaking.

3.3. In the SoM, dated 21 June 2022, the Secretary of State advised of the seven matters about which he particularly wished to be informed for the purposes of considering MSCC's application. The statutory procedural requirements have been addressed. The remainder of these submissions address the other matters raised in turn.

3.4. It has become apparent during the course of the Inquiry that the fundamental difference between the main parties is the underlying assumption as to whether the Bridge should be self-financing. Although the remaining differences between them do have a modest impact upon the level of toll proposed, as reported in the updated Joint Experts' Statement<sup>14</sup>, the majority of the difference results from MSCC's position that the Bridge Undertaking and its upkeep should be wholly financed by Bridge users, and the Councils' position that it is "fair and reasonable" that MSCC should contribute 60% of the cost of repairs and reserve fund from its wider financial resources.

3.5. MSCC's Opening Submissions set out in detail the reasons for its view that the 19<sup>th</sup> century (C19) Acts made provision for both the WHLB to be treated as part of the Bridge Undertaking so far as the levying of tolls were concerned; and MSCC to recover all costs associated with the Bridge Undertaking and with no legal obligation to contribute to the same.

3.6. MSCC stands by and adopts those submissions. However, the basis for the Councils' views that MSCC should make this contribution, being that the 1863 Act did not provide for the Bridge to be self-financing; and that MSCC has historically contributed to the upkeep of the Bridge as a matter of fact, have also emerged or become clearer during the course of the Inquiry. As such, it is necessary to supplement the Opening Submissions in order to address some of the points raised. Given that the 'self-financing' nature of the Bridge Undertaking is a key objective of MSCC's Proposed Order, these additional submissions are set out in Section B below.

3.7. The other main issues ventilated at the Inquiry have been the acceptability of the proposals to transfer the Undertaking and the parties' respective inputs to the level of toll. Again, because both of these relate to principal aims and objectives of the Scheme, they are also dealt with in

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<sup>14</sup> ID INQ5

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Section B below (although inputs are also dealt with in greater detail in Section G).

3.8. It is acknowledged that there are a large number of outstanding objections from a wide range of parties. As such, it is not possible to address them all individually within these submissions. Nor is it necessary; the main themes raised by those objections have been addressed both in MSCC's TWAO Representations – Applicant's Response Report<sup>15</sup> and in MSCC's evidence to the Inquiry, which was prepared having regard to those objections. MSCC has identified a small number of further, discrete points that were raised in objections which have not been previously responded to directly or discussed in detail at the Inquiry. These points, and MSCC's position, are addressed and summarised below<sup>16</sup>. Similarly, in respect of the more limited number of parties who submitted Statements of Case, the issues raised have been addressed in specific sections contained within all of the MSCC's Proofs of Evidence. In any event, it is considered that the main themes raised are addressed under the matters identified by the Secretary of State, expanded as necessary and are described below. Any miscellaneous matters raised are addressed in Section G.

## **B. The Need for, and Aims and Objectives of the Scheme**

The need for the Scheme

3.9. The need for the Scheme was set out in MSCC's Opening Submissions (ID INQ2), which referred, amongst other things, to the:

- poor physical condition of the Bridge and the approach roads;
- chronic congestion, particularly at peak periods, arising as a result of the existing manual cash method of toll collection, together with the resulting amenity and environmental issues; and
- the need to deliver a modern, fit-for-purpose crossing that is sustainable over the long term, for the benefit of all users.

3.10. Further detail on each of these matters can be found in MSCC's evidence<sup>17</sup>.

3.11. There is fundamentally no dispute as to any of these matters, although how the sustainable future of the Bridge ought to be funded and delivered is in issue. That common position has been borne out through the evidence heard at the Inquiry, including from third party objectors, who have in particular emphasised the adverse impact that the congestion has upon their lives, as well as the condition of the running surface of the Bridge road. Particularly compelling and affecting evidence of the impact of the congestion was given on Day 6 of the Inquiry by Ms Williams on behalf of the Warburton Toll Bridge Action Group.

3.12. Given the level of consensus surrounding these issues, it is not proposed to address them in any further detail in their Closing Submissions, save to

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<sup>15</sup> CD RWB/C1

<sup>16</sup> ID INQ15

<sup>17</sup> CD APP/WM/02, Section 4, APP/DF/02, Section 4, APP/PB/02, Section 3

note that it is undisputed that the condition of the Bridge is as set out in the evidence and in particular, the 2022 Principal Bridge Inspection<sup>18</sup> and also, at least so far as the main parties are concerned, that the Bridge Undertaking has been substantially loss making over at least the last five years, with revenues inadequate to meet even current expenditure, let alone future capital outlay<sup>19</sup>. The Councils have agreed that this has resulted in limited scope for investment in the Bridge from tolls.

#### The aims and objectives of the Scheme

3.13. In light of the above, MSCC has, since 2016, been seeking to develop a solution that addresses all of these issues holistically. That has involved not only liaison with stakeholders such as the Councils and the relevant Government departments, but has been more difficult and time-consuming than could have been anticipated given a number of unforeseen events.

3.14. Taking into account the range of issues that MSCC and others have identified, the following objectives were developed for the Scheme:

- a) securing adequate revenue to pay for the repairs;
- b) securing adequate revenue to pay for the future operation and maintenance of the Bridge;
- c) creating a reserve fund to insure against the costs of a future replacement of the Bridge;
- d) introducing a new means of free-flow tolling, to avoid and reduce the existing congestion and speed up traffic (with related environmental benefits);
- e) giving MSCC the relevant powers to recover unpaid tolls in a free-flow tolling scenario;
- f) ensuring MSCC could obtain a reasonable return on its investment in the Bridge (the shareholders of a private company reasonably expecting such a return on any equity deployed); and
- g) transferring the Undertaking into a special purpose vehicle owned by MSCC to provide inter alia greater transparency in relation to the operation of the Bridge Undertaking.

3.15. It will be appreciated from items (a)-(d) above that MSCC's objectives are predicated on being able to recover all costs associated with the repair and operation of the Bridge from those who use it. The headline toll now sought is reflective of the costs involved in securing the above objectives, save for the transfer of the Undertaking, the cost of which is being borne by MSCC from its own finances (along with the costs of promoting this Order). As noted, this 'self-financing' approach was justified in MSCC's Opening Submissions but is addressed in the following section, in light of MSCC's further understanding of the Councils' position.

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<sup>18</sup> CD APP/DF/03, Apx 3

<sup>19</sup> CD APP/ML/03, Apx 2

3.16. Save that they consider that MSCC ought to bear some of the costs associated with items (a) and (c) above, and that they disagree with the proposal to transfer the Undertaking, the Councils do not dispute that the objectives set by MSCC are appropriate. It is notable that, with the exception of Mr McGoldrick, who was not prepared to accept that it was a benefit, by apparently “penalising” drivers by exposing them to penalty fares and “harassment”, and Dr Fairbairn, who was worried about increased traffic and speeding, the proposal to introduce free-flow tolling has found universal favour even amongst those who fervently object to the related rise in toll. Many of the MPs who attended the Inquiry particularly noted the positive effects that this would have.

#### A self-financed future

3.17. As explained, MSCC’s solution is predicated on an assumption that the Bridge Undertaking should be self-financing from toll revenues, and that MSCC is not obliged as a matter of law to offer funding support from the profits generated by its principal business activities on the Canal.

3.18. It was initially understood that the Councils’ contrary case was based simply on the interpretation of the 1890 Act set out in their evidence<sup>20</sup>. That interpretation, which is one that was accepted by the witness that he had no academic or professional legal skills or expertise to provide, was that it would have been “incongruous” for the 1863 Act tolls “to have ever been intended, or reasonably be expected, to finance in full the construction, maintenance, and repair (and future replacement) of two bridge crossings” and that the suggestion that the Bridge Undertaking should be self-financing “incorrectly reinterprets Parliament’s intentions for the tolls at the time”. MSCC’s submissions therefore explained why and how MSCC came to stand in the shoes of the original Bridge Company (referred to as ‘the Company’) but were predicated on the understanding that it was accepted that the Company had not been obliged to contribute financially to the Bridge Undertaking, and that the 1863 Act did therefore provide for the Bridge to be self-financing. MSCC’s submissions make the point that there was no change in the statutory language between the 1863 and 1890 Acts that could be relied upon to indicate a different approach once MSCC took over the undertaking.

3.19. The Councils have since confirmed that it is their position that the 1863 Act did not provide for the Bridge Undertaking to be self-financing, because it contained no express provision to that effect. They also assert that the Secretary of State should have regard to the fact that there is no evidence that the Bridge has, as a matter of fact, been self-financing. Neither of these points is correct, for the reasons that follow.

3.20. The Bridge Undertaking (and indeed MSCC itself) is entirely a creature of statute. Any obligations, rights and powers that the Bridge Undertaking and MSCC have are to be found in the relevant statutes. As such, to understand those obligations, rights and powers, it is necessary to look at – and to confine oneself to looking at – the statute(s) pursuant to which they derive their existence and powers.

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<sup>20</sup> CD WMBC/1

- 3.21. It is not possible for MSCC to lose or abandon any statutory powers or rights contained in those statutes without legislation authorising the same (and nor do the Councils suggest otherwise). As such, what has in fact happened over a period of time, in terms of whether the Bridge has as a matter of fact been able to support itself solely from toll revenue, is irrelevant to the proper construction of those statutes. The construction of the statutes is to be determined by reference to the words used, read in the context of the statute as a whole.
- 3.22. Even if it were relevant, the truth is that there is simply no evidence as to the extent to which MSCC has historically been required to contribute to the maintenance or operation of the Bridge, save in the last 5 years. Nor is there any evidence as to what, if such contributions were made, the awareness or motivations of MSCC in making such contributions were, particularly under its former public ownership. The commercialisation of MSCC's approach under Peel Holdings in other contexts is well-documented: see, for example, *Manchester Ship Canal Company Limited v United Utilities Plc [2014] UKSC 40* which concerned MSCC's ability to charge a sewerage undertaker for sewage discharges into the Canal in circumstances where they had for several decades previously allowed the sewerage undertaker to make the same discharges for free. No conclusions could therefore be appropriately or reliably drawn about what MSCC had thought or intended in supplementing the funding of the Bridge Undertaking from its own resources.
- 3.23. It is in any event obvious, upon any common sense reading of the 1863 Act, that the Bridge Undertaking was intended to be self-financing, notwithstanding the absence of an explicit statement to that effect.
- 3.24. As per s.4 of the 1863 Act, the Company was specifically constituted for the purpose of making and maintaining the Rixton and Warburton Bridge and approach roads. The Company had no existence prior to, or outside of, the 1863 Act.
- 3.25. The ability of the Company to raise funds also derived solely from the 1863 Act (see ss.4-7 dealing with Capital, Calls and Borrowing) and the monies thereby raised, in accordance with s.9, were permitted only to be applied to the purposes of the 1863 Act.
- 3.26. Beyond the power to acquire land for the purpose of the Act, and to make the Works authorised by it, the 1863 Act did not confer upon the Company any additional property, and they would not have been entitled to acquire any as any further acquisition would not have been a purpose of the Act.
- 3.27. Significantly, the only revenue generation permitted by the 1863 Act was the raising of the tolls and the leasing of the tolls, all of which funds (like the capital monies) could only be applied to the purposes of the Act: see ss. 48 (raising of the tolls) and 60 (leasing of the tolls).
- 3.28. The Councils referred to s.41, which was an obligation to purchase the pre-existing ferries and to pay compensation to their owners. However, this is properly understood as a cost of constructing the Bridge.
- 3.29. In circumstances where the Company only existed for the purposes of making and maintaining (etc) the Bridge Undertaking; where it had no other

property or sources of income that could be deployed to pay for the upkeep of the Bridge; and where the 1863 Act expressly provided for the monies raised to be provided for the purposes of the Act, there is no rational construction available other than that the Bridge Undertaking under the 1863 Act was intended to be self-financing. If it was not, what possible alternative sources of revenue do the Councils consider were available? MSCC state that the fact is that there were none.

- 3.30. That being so, the submissions made as to the absence of any change in approach being evidenced through the drafting of the 1890 Act, which sought to place MSCC in precisely the same position as the Company, hold good. The law does not intend casual change.
- 3.31. To construe the 1863 Act so as not to provide for the Bridge Undertaking to be self-financing would be to create a significant difference between it and other private toll bridges, which are accepted to be such.
- 3.32. The principal point advanced by the Councils in support of their view that MSCC is required to fund a contribution to the capital costs of repair and reserve fund is that MSCC is the 'sole beneficiary' of the Bridge Undertaking. The Councils<sup>21</sup> accepted that current users of the Canal do not benefit from the existence of the Bridge, insofar as their ability to navigate upon the Canal is the same whether or not the Bridge exists. This, MSCC argue, is the first indicator that there is no 'justice' in requiring them to contribute to the lion's share of the repair and reserve fund.
- 3.33. The position the Councils are understood to adopt instead is that the benefit to the Canal users arises from the very existence of the Canal, and the fact that the Canal could only be constructed because of the existence of this Bridge. It is unclear if their understanding had been that MSCC had been required to pay for the construction of the WHLB, although they stated in opening that "There was no provision within the 1890 Act to [the effect]", that is that tolls should finance in full matters including inter alia the construction of the WHLB.
- 3.34. This argument in fact runs counter to the express provisions of the 1890 Act. As explained, s.15 explicitly provided that MSCC was entitled to enter into agreements for inter alia the construction of the WHLB; that such agreements were purposes of the public acts under which they derived jurisdiction (which, for the reasons explained, included the 1863 Act); that expenses incurred in relation to those agreements were expenses incurred for the purposes of those Acts; and, consequently, that the tolls were to be applied to the same. The question is, if the construction was not considered to be of 'sole' or sufficient benefit for MSCC to be required to pay for even its initial construction, why (in the absence of any express provision) should or could it be inferred that they are now required to contribute to the capital expenses associated with its repair, or the creation of a reserve fund?
- 3.35. It may be said that the C19 Acts do not say that MSCC has to recover all the expenditure from the tolls, and indeed that is true. There is no such obligation upon MSCC. But it is entitled to do so, and if it were obliged to

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<sup>21</sup> Mr Rowland in Cross Examination (XX)

contribute a proportion, then the legislation would need to have made this clear.

- 3.36. By contrast to the position of the users of the Canal, what is clear is that the current users of the Bridge obtain a very significant benefit from it, using it to go about their daily business without an extensive detour over either the M60 or M6 road bridges. If 'benefit' were the test, which it is not suggested it is, then there is only one set of users who satisfy that in any material sense.
- 3.37. The flawed nature of the Councils' position is also evidenced by the distinction they draw between MSCC's obligation to contribute to the cost of the capital works and reserve fund (at a rate of 60%) and to the operational costs (at a rate of 0%); and the rates of contribution selected for MSCC.
- 3.38. First, there is absolutely no distinction drawn in the C19 Acts between these different types of costs or indeed any costs incurred in respect of the Bridge Undertaking. They are all costs which are to be repaid from the tolls. The Councils have not even attempted to explain why they draw this distinction, or to justify it in statutory terms.
- 3.39. The Councils' approach is not even internally consistent. In their closing, they referred to there being no reference in the 1890 Act to tolls being levied for maintenance, in circumstances where, on the case they present, maintenance of the Bridge is the only area where they consider 0% contribution is required to be made by MSCC (i.e. it all comes from tolls).
- 3.40. Second, the C19 Acts are silent as to the level of contribution that the Company and/or MSCC are required to pay, as well as being silent as to the need for them to make such a contribution at all. There is nothing in the legislation to suggest whether it should be 9% or 99%, or indeed any other figure. The legislation does not even suggest who should be responsible for determining this. If correct, this would be a significant omission, leaving open a considerable degree of uncertainty, which Parliament is unlikely to have intended.
- 3.41. The Councils in the present case have plumped for a contribution from MSCC of 60%. We have not however heard from the person or persons who made that election, and the basis for that election has not been set out by any of the Councils' witnesses. That basis has therefore gone untested. Their witness also confirmed, in response to the Inspector's questions, that it was not based on the perceived cost of maintaining the road and using the Bridge. The figure is merely the view of unidentified Council individuals: indeed, it is not even the corporate view expressed by the Councils' Cabinets as the relevant authority papers make no reference to the same<sup>22</sup>.
- 3.42. MSCC consider that the Councils were wrong to say in their closing submissions that they had given evidence that 60% "would be fair" – it was expressly confirmed in XX that this was not the witness' view, but the Councils'.
- 3.43. It is difficult to understand how or why the Councils, who have no formal (or even informal) role under the C19 Acts, should be the arbiters of

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<sup>22</sup> CD RBW/C5; C6

the level of contribution that MSCC, a private sector organisation, makes from its own financial resources, which are derived from profitable (and socially useful) activities separate from the Bridge Undertaking. There is no legislative justification for MSCC to be taxed in this way. By contrast, the legislation is clear that the Bridge users should pay.

- 3.44. A further argument raised by the Councils as to why it should not be assumed that the Bridge Undertaking, insofar as it also includes the WHLB, was intended to be self-financing is the fact that the 1890 Act did not raise the level of tolls beyond those set in the 1863 Act, in spite of the scale of the WHLB. This argument does not however bear the weight the Councils seek to place upon it, again, for two reasons.
- 3.45. First, it is apparent that there was a significant degree of headroom in the maximum toll levels originally set by the 1863 Act, with the single-trip toll for animal drawn vehicles equating to c.£2.17 in current prices and the vehicular toll equating to £12.17 on the same basis<sup>23</sup>. Moreover, as is apparent from that Table, there had been a period of deflation up to 1890 which meant that the real value of the tolls had in fact increased, to £12.44 for the vehicular toll. Although the level of toll initially set by the Company is not known, the Councils acknowledged that the evidence does make clear that it was not at the maximum level allowed. As such, there is no evidence that the level of toll was not sufficient to pay for the original undertaking, and possibly even more.
- 3.46. Second, and importantly, although the original Bridge Undertaking passed to MSCC upon assent of the 1890 Act, the debt associated with it did not, a point also accepted by the Councils<sup>24</sup>. As such, it was not the case that the toll was being expected to service the cost of constructing both bridges, only their operation, with the Councils' own case being that the original bridge was a much less significant construction and as such less costly to maintain.
- 3.47. As a consequence of the above, MSCC consider the more likely explanation for the absence of any raising of the maximum toll level is that such level had not been reached and there was therefore headroom available within which tolls could increase.
- 3.48. Finally, and in any event, the decision not to increase tolls in 1890 does not impact upon the proper construction of the words of the C19 Acts, which can only properly be construed as rendering the original Bridge Undertaking as self-financing, with no change in the statutory language following the enactment of the 1890 Act, which instead contained provisions which sought to place MSCC in precisely the same position as the Company.
- 3.49. MSCC consider that there is, in all the circumstances, no proper basis for concluding anything other than that the Bridge, like all other private bridges of its ilk, is to be self-financing.

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<sup>23</sup> CD Table 1, APP/GR/R01

<sup>24</sup> Mr Rowland in XX

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## Level of toll

- 3.50. As previously noted, the maximum toll sought by MSCC of £1.00 including VAT (or 50p including VAT for those falling within the scope of the local user discount, see Section E below) has been set in order to ensure sufficient funds are available to deliver upon all of MSCC's objectives, in circumstances where a number of the inputs remain uncertain (and necessarily will, until the point at which the Scheme is ready to be delivered) and where wider economic and other circumstances remain uncertain. It has been designed to be able to ensure that, if those uncertain inputs are more negative than the central ('Base Case') assumption, the Bridge Undertaking can still manage its finances, including meeting the repayments for any debt or equity employed in its service, and also deliver some level (even if not the target level) of reserve fund.
- 3.51. The toll has been devised on MSCC's behalf by a highly experienced transport economist<sup>25</sup> who has throughout his 30+ year career specialised in toll roads and bridges, both at home and internationally. It is fair to record that, before this Inquiry, his expertise is without parallel, with the Councils' witness<sup>26</sup> confirming that he has had no prior experience of advising in respect of a toll road or bridge. It is submitted that, in those circumstances, particular weight ought to be given to the views of Mr Bates where Mr Rowland defers from him.
- 3.52. It is also fair to record, however, that the extent of difference between them is – once the question of self-financing is left out of account – relatively modest. Section 2 of Experts' Statement (ID INQ5) now reports that:
- If Mr Bates were to adopt in his model and using his Base Case assumptions (as set out in in Section 4 of his Proof of Evidence (CD APP/PB/02), the broad assumptions in the analysis by Mr Rowland (60% contribution to both Capex and Reserve Fund by MSCC, expansion of the local discount to 60% of existing users of the Bridge, and the removal of the CPI inflator minus 1%), then tolls of around £0.80/£0.35 including VAT would be derived (noting the values now proposed by WBC, based on Sensitivity Test 2, are £0.75/£0.25 including VAT).
  - If Mr Rowland were to adopt in his model and using his Sensitivity Test 2 assumptions (as set out in Section 4 of his Proof of Evidence (CD WMBC/1), the assumption that all costs were to be covered by tolls from users of the Bridge, including the building up of a Reserve Fund from this source, and that the local discount was restricted to 30% of the existing users of the Bridge, along with the inclusion of the CPI inflator minus 1%, tolls of around £0.74/£0.37 including VAT would be derived (noting the values proposed by MSCC are £1.00/£0.50 including VAT).
- 3.53. A brief summary of the primary differences between those witnesses (other than self-financing) is set out at Section G below, along with an explanation as to why MSCC's approaches are to be preferred. However, as explained in evidence, even if the Councils' approach on those issues were to be preferred, that would not give rise to any need to alter the maximum toll

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<sup>25</sup> Mr Bates

<sup>26</sup> Mr Rowland

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amount sought in the Proposed Order below £1.00 (including VAT) (on the self-financing basis). This is for two reasons.

- 3.54. First, as both experts accept, there is an absence of certainty around the ultimate outcome of the issues between them. Even if the Secretary of State considers, contrary to MSCC's submissions, that it is more likely that the Councils' view of the world will materialise, it is not certain that it will. To reduce the maximum toll below the £1.00 level currently sought would risk setting a toll that was not adequate to meet the needs of the Bridge Undertaking over the agreed 20-year time frame under consideration, either because it could not service the debt/equity or because it would fail to return a reserve fund.
- 3.55. Second, the maximum toll level approach is designed to deliver some headroom, with any underspend being able to be passed on to users in the form of reduced tolls set by MSCC, or a wider discount offered. Although objectors have been critical of this approach, with Mr McGoldrick suggesting it was a 'nonsense' that lower tolls would be charged, and others noting the absence of a framework for decision making on toll setting, it is in fact:
- consistent with the approach taken in the existing C19 Acts governing the Bridge Undertaking, in which a maximum toll was set and pursuant to which MSCC are entitled within their discretion to charge a higher or lower toll within that maximum (something it is common ground they did until the Millennium, after which time the toll was eventually raised to the maximum for all road users); and
  - the same as the approach taken in respect of other small private bridges (with Mr McGoldrick confirming that it was "the norm") – the specific example of the Kingsland Bridge being noted, where the maximum toll has, since 2012, been 30p, but where only 20p is currently charged<sup>27</sup>.
- 3.56. It is recognised that there is a suspicion on the part of objectors that MSCC will charge the maximum toll allowed regardless of costs incurred, which may in part derive from the fact that the 12p maximum is currently charged (and has been since 2001). That is however entirely the product of the 12p permitted being grossly inadequate to meet the Bridge's existing needs. If a lesser sum were charged, the losses to which MSCC is exposed (more than £Quarter Million over the last 5 years) would have been even greater. MSCC does not intend to automatically charge the maximum, if a lower toll is reasonably possible. As MSCC witnesses noted, encouraging the use of the Bridge through lower tolls will support revenue and therefore the sustainability of the Bridge Undertaking over time.
- 3.57. Moreover, pursuant to Art. 8(7) of the Proposed Order, MSCC will as a matter of law be entitled only to apply the tolls in connection with the safe, efficient and economic management, operation and maintenance of the Bridge (including those matters specific at sub-paragraphs (a)-(f)) and consequently, if the maximum toll would deliver revenues that exceed such expenditure, MSCC would not be able to charge it and would have to charge a reduced toll that delivered only revenues that met those objectives. Whether this was occurring would be apparent from the newly-transparent accounts,

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<sup>27</sup> CD Table 1, TC1.1

assuming the transfer of the Undertaking takes place. In the unlikely event that there was a breach of the obligation, affected persons could no doubt look to enforce this through local pressure or ultimately the courts.

- 3.58. As described in MSCC's evidence, the £1.00 maximum toll level performs well against a wide range of sensitivity tests. Even on the most optimistic of scenarios, the model does not return a toll below £0.78p (assuming a reserve fund of £5.22m).
- 3.59. Much has been made of the scale of the increase in toll, which arithmetically does exceed 700%. However, this is nothing more than a function of the very lengthy period (nearly 160 years) since the toll was set. Indeed, even the Councils' "fair and reasonable" 75p toll represents a 625% increase. The comparison is of little utility in assessing whether the proposed toll is acceptable in the present day, having regard to what MSCC is seeking to deliver, and the needs of the Bridge Undertaking in terms of repair and improvement.
- 3.60. Comparison has also been drawn with the tolls levied on other small private bridges, with Table 1 in the Councils' evidence<sup>28</sup> identifying the majority of small toll bridges on minor roads. It is noted that, at present, the toll on the Bridge is amongst the lowest, whereas if the Proposed Order is made (and the maximum toll charged), it will be equal to the highest. The Councils' fairly accepted that although the revised toll would be amongst the highest, it would not exceed any of those currently charged and was not therefore out-of-scale with other private bridge crossings.
- 3.61. The Councils' response was qualified to note that was the case provided that indexation was not applied (such indexation not applying to the other bridges), but that will depend on both (a) whether the toll is set at the maximum at the relevant time and (b) the rate of indexation at the time. Even with indexation, it would not necessarily exceed the toll charged at other bridges. Perhaps more importantly, however, that analysis assumes that the other tolls will not change going forward, when the reality is that each of the three highest current tolls have seen increases within the last decade, with the very real prospect that there could be further increases under the Transport Charges &c. (Miscellaneous Provisions) Act 1954 (the 1954 Act) in future.
- 3.62. By contrast to the robust nature of the maximum toll designed by MSCC, the Councils' proposed toll levels, originally 70p (including VAT) with a 20p (including VAT) discount rate, have already shown themselves to be sensitive to change. As they depend on maintaining the (claimed) 'fair and reasonable' contribution by MSCC of 60% to repairs and reserve fund, any changes to the inputs assumed require corresponding changes to the headline toll levels. It was for this reason that, when it became apparent that the Councils were accepting of the revised capital and operating expenses set out in MSCC's evidence they were forced to revise their headline toll levels to 75p/25p respectively.
- 3.63. It follows that, if the Councils are wrong about any of the other inputs to their analysis insofar as the outturn event is less favourable than assumed,

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<sup>28</sup> Mrs Lowes (CD TC1.1).

even the 75p/25p will be inadequate to maintain the same level of contribution by MSCC, and the toll levels will need to rise. MSCC's analysis, referred to above, suggests that, in the event that the MSCC contribution model is adopted, the maximum toll levels would need to be no less than 80p/35p respectively.

3.64. No other party to the Inquiry has made any substantive challenge to the toll level set, with objectors commenting only on the principle of a toll being levelled in respect of the WHLB and/or at all, and upon the scale of the increase. As explained, the toll is set by reference to what is needed to deliver the objectives of the Scheme, and MSCC consider that it is acceptable in context.

#### Transfer of the Undertaking

3.65. An important aspect of ensuring the sustainable future for the Bridge Undertaking is its transfer back into a separate corporate entity, the 'New Co'. MSCC accepts that this is appropriate only in circumstances where the Secretary of State accepts that the Bridge is self-financing.

3.66. MSCC, who has called the only witnesses with any experience of managing and/or operating a statutory undertaking, considers that the transfer of the Undertaking would be beneficial for several reasons. Although described in greater detail in their evidence<sup>29</sup>, the principal benefits can be summarised as follows. The transfer will:

- provide greater financial transparency, through independent financial reporting;
- ease comparisons with the performance of other private bridge companies;
- allow for independent strategies to be pursued in the primary interests of the Bridge Undertaking alone rather than the wider MSCC business; and
- align with the approach taken at other UK toll bridges.

3.67. Neither the Councils nor any other party to the Inquiry has suggested that the above would not be beneficial. Indeed, the Councils expressly confirmed<sup>30</sup> that (a) and (c) could be, although their view was that (a) was capable of being delivered without the transfer. The same was not suggested about point (c). The claim made in closing statements that there are "no advantages whatsoever" to the transfer is therefore inconsistent with the evidence that actually came out during the Inquiry.

3.68. As MSCC sets out, the Bridge Undertaking contributes a tiny fraction of MSCC's overall turnover, less than 0.5%. It is not the only tolled crossing of the Canal in MSCC's control; the other example being the Thelwall Ferry. For MSCC to present the detailed accounting information for the Bridge Undertaking in circumstances where it does not do for any other (more substantial) aspect of its business would be inconsistent with the prescribed presentation of the statutory accounts. There is no obligation upon it to do

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<sup>29</sup> Mr Lenaghan (CD APP/ML/02, Section 3)

<sup>30</sup> Mrs Lowes

so, and in order to avoid inconsistency or precedent, it would not do so whilst the Bridge Undertaking continues to sit within MSCC. By contrast, MSCC has given a binding legal commitment to present full accounting information, and not to rely upon the small accounts exemption, in the event that the transfer is approved. The benefit is therefore a real one and the Proposed Order is the only way it will be realised.

- 3.69. The 'independent strategies' point is important. As explained, s.172 of the Companies Act 2006 imposes upon Directors of a limited company an obligation to act in the way he considers would be most likely to promote the success of the company. At the present time, the obligation upon MSCC's Directors is to promote the success of MSCC as a whole, not the, largely inconsequential (in the context of MSCC's overall assets and revenue), Bridge Undertaking. If the Undertaking was transferred to the New Co, the obligation would relate specifically to the latter.
- 3.70. In exercising that duty, s.172 also requires the Directors to "*have regard (amongst other matters) to ... (c) the need to foster the company's business relationships with suppliers, customers and others, (d) the impact of the company's operations on the community and the environment, [and] (e) the desirability of the company maintaining a reputation for high standards of business conduct...*". These are surely all matters that the Councils and local stakeholders would wish the operator of the Bridge Undertaking to be legally obliged to take into account with specific regard to the Bridge users.
- 3.71. Although Mr McGoldrick argued that the Directors of the New Co would also still be Directors of MSCC (and indeed a number of other organisations), which is accepted, this is nothing to the point. The Directors will be legally obliged to discharge their duties under s.172 and so the Secretary of State must proceed on the basis that they will do so diligently.
- 3.72. There were two further benefits identified in the evidence: the ring-fencing of the Bridge from other potential liabilities of MSCC (should MSCC become insolvent), and improving the ability to raise debt.
- 3.73. As to the former, whilst acknowledged that it was highly unlikely that MSCC will become insolvent, it was not suggested that this would not be a benefit in that unlikely scenario.
- 3.74. As to the latter, it was reasonably conceded that the stated benefit associated with improved ability to raise debt finance was not a true benefit, but nor is it a disbenefit in circumstances where the New Co is (as now) in the ownership of MSCC, whereby it continues to have access to Peel Ports finance (as MSCC itself has now). MSCC address this point in more detail below.
- 3.75. Concerns raised by the Councils about the transfer of the undertaking were expressed in evidence. Mr Rowland, whose only professional expertise is as a transport consultant, confirmed that on behalf of WBC he only argued that the transfer was inappropriate in the event that his conclusions about the need for MSCC to contribute to the Undertaking were correct. As noted above, it is accepted that the transfer should not proceed if the Secretary of State concludes that the Bridge Undertaking is not self-financing.

- 3.76. Mrs Lowes, who is a planning professional, reported TC's corporate concerns about the transfer. Those concerns were expressed as being that:
- a) MSCC need to keep the Bridge in good repair in order to maintain the safe navigation of the Canal, and that in order to do this, they need to be in control of the operation and management of the Bridge;
  - b) the financial position of the standalone Bridge may become untenable, and without the financial backing of MSCC, this poses a risk to its long-term future; and
  - c) "That there may be an ambition to sell off the Bridge Undertaking as a standalone profit-making entity, with the New Co being left devoid of the resources needed to manage the Bridge over the long term".
- 3.77. All of these concerns are either unfounded, or can be overcome through the means proposed by MSCC in the revised Order. None should prevent the transfer from being authorised as requested.
- 3.78. As to (a) above, there is no need for MSCC to be in control and operation of the management of the Bridge in order to maintain safe navigation of the Canal. Of the 24 bridges over the Canal, MSCC owns just nine, and operates a further three on others' behalf. There are therefore 15 in third party ownership (two of which are in the private sector), and yet navigation is able to be safely maintained of the Canal beneath. In order to do this, MSCC has in place with the owners of those bridges either protective provisions or private agreements.
- 3.79. Although the Councils have noted that no such arrangements are yet in place with the New Co, that is because formal arrangements are unnecessary whilst MSCC remains its owner. It is inconceivable that the MSCC-owned New Co would act in a way contrary to the interests of its only shareholder. Whilst it is in theory possible that the ownership of New Co may change in the future, or indeed that the Undertaking could in the future be transferred to an alternative company, MSCC and/or the Secretary of State would be in a position to protect the Canal's interests prior to the change of control or further transfer: see, for example, the revised Proposed Order at Art. 5(5) (no change of control of the Company without Secretary of State consent and subject to his terms and conditions) and Art. 11 (Protection of the Canal).
- 3.80. The Councils have sought to make something of the fact that the bridges in private ownership were constructed after the Canal, suggesting that is somehow relevant as to whether the navigation of the Canal can be maintained without them being in MSCC ownership; it is not. The date when the Bridge was built, by whom and for whom is wholly irrelevant to whether or not MSCC is capable of ensuring the safe navigation of the Canal beneath it without owning or controlling it. That depends solely on the arrangements (whether statutory or private) that MSCC has in place with the relevant third party, and that is within the gift of either MSCC or the Secretary of State in the case of the New Co or any future undertaker. There is absolutely no evidence before the Inquiry that MSCC's non-ownership of any of the 15 bridges is in any way prejudicial to navigation upon the Canal. It is also noted that the position would be comparable to that in respect of the Clifton Suspension Bridge, where the Bridge Trust owns the Bridge notwithstanding the Bristol Port Company is responsible for navigation in the harbour below.

- 3.81. As to (b), MSCC consider that this is wrong for two reasons. First, and as accepted<sup>31</sup>, with MSCC's Scheme enacted (based on its current business case) and a headline toll of £1.00 including VAT, the financial prospects of the Bridge Undertaking are good. The whole purpose of the Scheme is to deliver a financially sustainable future, in direct contrast to the situation which the Bridge Undertaking faces at present.
- 3.82. Second, and repeating the point made at (a), MSCC does have control of the New Co. It is its sole shareholder, and the New Co would have access to the same debt funding as MSCC via Peel Ports; and if there were to be a change in control in the future, this could only be with the consent of the Secretary of State.
- 3.83. The same point arises in respect of (c). Whilst the point being made is, frankly, not really understood, any future change of control or transfer of the Undertaking would be subject to Secretary of State consent as previously noted, and so it is not considered that such a scenario could arise.
- 3.84. The Councils accepted that if there were Secretary of State oversight over both the sale of shares in the New Co and the transfer of the Undertaking, this could "potentially" address TC's concerns. In MSCC's submission, the provisions added to those already within the Proposed Order mean none of the concerns expressed by the Councils about the implications of a future sale of shares or transfer could arise unless the Secretary of State permitted it. Since he can be assumed to act rationally and in the public interest, there is therefore no realistic prospect of those scenarios arising and they should not be regarded as reasons for declining to authorise the transfer of the Undertaking.
- 3.85. In all of the above circumstances, the transfer will result only in gains for the administration of the Bridge Undertaking and for stakeholder oversight of the same. MSCC therefore consider that the relevant provisions should be included within any Order made.

### **C. The Use of The Transport and Works Act**

- 3.86. Pursuant to Matter 3 of the SoM, and as one of the remaining objectors to the Inquiry, Mr McGoldrick, also challenges the ability of MSCC to rely upon the TWA 1992 procedure as a matter of principle, MSCC proposes to address the use of the TWA 1992 generally here.

The power of MSCC to rely upon the TWA 1992

- 3.87. The use of the TWA 1992 is not in issue between MSCC and the statutory objectors, the Councils. The Statements of Common Ground between MSCC and TC/WBC respectively record that an Order under the TWA 1992 is an appropriate mechanism for authorising the provisions set out in the Proposed Order<sup>32</sup>.
- 3.88. Section 3(1)(b) of the TWA 1992 provides that the Secretary of State "*may make an order relating to, or to matters ancillary to*" the carrying out of works which interfere with rights of navigation in inter alia waters within

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<sup>31</sup> Mrs Lowes in XX

<sup>32</sup> CD RBW/C8 and C9

England and which are of a description prescribed by an Order made under s.4 TWA 1992. The Secretary of State has made the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992 (the 1992 Order), which at art.2 sets out the works that are prescribed as interfering with rights of navigation. This expressly includes bridges. In this respect, it will be noted that Mr McGoldrick's assertion that s.3 does not include any reference to bridges in the context of waterways is incorrect. It does, by reference to the order made under s.4. The Secretary of State is therefore entitled to make orders which relate to matters ancillary to bridges over waters within England.

3.89. The Bridge is a work which was carried out pursuant to the 1890 Act and which is prescribed as interfering with navigation upon the Canal, which falls within the description of waters within England. All of the provisions of the Proposed Order relate to matters ancillary to the existence of the Bridge (all being matters set out within the scope of Schedule 2 TWA 1992) and as such fall within the scope of s.3(1)(b) of the TWA 1992. More particularly:

- Section 5(1) TWA 1992 provides that "*Without prejudice to the generality of sections 1 and 3 above, the matters as to which provision may be made by an order under either of those sections include those set out in Schedule 1 to this Act*"; and
- Section 5(3) provides that: "*An order under section 1 or 3 above may -*  
*(a) apply, modify or exclude any statutory provision which relates to any matter as to which an order could be made under section 1 or, as the case may be, 3, and*  
*(b) make such amendments, repeals and revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order*".

3.90. As set out in the preamble to the Proposed Order, all of the provisions contained therein fall within either the matters set out in Schedule 1 TWA 1992 (as provided for by s.5(1)), or the matters set out s.5(3).

3.91. The inclusion of the transfer within that Schedule is determinative that it is a matter for which provision can be made on the facts of this case. The Councils' closing statement was the first time it had been suggested by them that not all of the proposed provisions could be secured by the TWA 1992, a position which directly conflicts with both Statements of Common Ground.

3.92. It is acknowledged that MSCC may not rely on s.3(1)(a) TWA 1992 (the Proposed Order originally having been made on the basis of both s.3(1)(a) and 3(1)(b)), relating to inland waterways. The definition of 'inland waterway' contained within s.67 TWA 1992 excludes inland waterways which are managed or maintained by a person who is a Harbour Authority for the purposes of the Harbours Act 1964 (the 1964 Act); this would include MSCC. Consequently, any references to s.3(1)(a) within the application materials and evidence are to be ignored.

Power to increase tolls

- 3.93. As noted above, the power conferred by s.3 TWA 1992 is a power to make an order “*relating to, or matters ancillary to*” the Bridge. As a matter of law, provided that any matter addressed in the Proposed Order falls within this very broad description, it will be within the power conferred by the TWA 1992. However, “without prejudice to the generality” of that section, s.5(1) TWA 1992 introduces Schedule 1, which contains an express list of matters for which provision may be made by an order made under s.3.
- 3.94. Paragraph 12 of Schedule 1 expressly states that an order made under s.3 can make provision for:
- “the charging of tolls, fares (including penalty fares) and other charges, and the creation of summary offences in connection with non-payment (or in connection with a person’s failure to give his name or address in accordance with provisions relating to penalty fares”.*
- 3.95. Given that s.3 empowers the Secretary of State to make an order relating to, or to matters ancillary to the Bridge, it follows that he can also make an order that provides for the charging of tolls on that Bridge. Again, MSCC consider that Mr McGoldrick’s assertion that the power does not extend to tolls on a bridge road over a waterway is incorrect.
- 3.96. Further, and in any event, given the content of s.5(3) TWA 1992 referred to above, the Secretary of State is empowered also to amend or modify the 1863 Act insofar as it relates to the payment of tolls, amongst other modifications.

#### The power to make byelaws

- 3.97. Although not a matter raised by the Secretary of State nor the Councils, other parties to the Inquiry have questioned the ability of MSCC to make new byelaws through the Proposed Order, suggesting that such powers are usually limited to local authorities and that they do not extend to MSCC in the case of the Bridge.
- 3.98. Again, the power to make byelaws is expressly conferred by s.5 and Schedule 1 to the TWA 1992, paragraph 13 of which states that an order made under s.3 can make provision for:
- “The making of byelaws by any person and their enforcement, including the creation of summary offences”.*
- 3.99. As is apparent from the wording used in paragraph 13, the power extends to “*any person*” and is not limited to local authorities or other public bodies. This is consistent with the scope of the TWA 1992 generally, which is available to private as well as public bodies (see e.g. the *Gunfleet Sands Offshore Wind Farm Order 2004*, which benefits Gunfleet Sands Limited, and the *Channel Tunnel Rail Link (Boarley Lane Diversion) Order 1999*, applied for by Eurostar (UK) Limited).
- 3.100. It is noted that most of the objections to the byelaws relate to concerns about them being unnecessary or unduly restrictive. The likely impact of the byelaws, as opposed to the vires of including them within the Proposed Order, is addressed in Section D below.

#### TWA 1992 as the only available consenting route

- 3.101. Section 3(2) TWA 1992 provides that the Secretary of State “*shall not make an order*” under s.3 “*if in his opinion the primary object of the order could be achieved by means of an order under the Harbours Act 1964.*”
- 3.102. The Marine Management Organisation (MMO) has previously confirmed that it was their view that the Scheme could not be achieved by means of an Order under the (the 1964 Act, primarily because the primary object of transferring the undertaking to the New Co was not considered to be consistent with the 1964 Act, having regard to a particular decision of the High Court. No party disputes this.
- 3.103. A further difficulty associated with the use of the Harbour Revision Order (‘HRO’) process under the 1964 Act arises because a crucial means by which the objectives of the Scheme are to be achieved is through the amendment of the C19 Acts governing the operation of the Bridge Undertaking. The applicant did not get to the stage of raising the proposed variation of the C19 Acts with the MMO and as such they did not ever consider this point. The fact they did not refer to it cannot therefore be raised against it.
- 3.104. Section 14 of the 1964 Act provides inter alia that an HRO may be made for the purpose of “*achieving all or any of the objects specified in Schedule 2*”. Paragraph 3 of Schedule 2 permits the:
- “Varying or abolishing [of] duties or powers imposed or conferred on the authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of—*
- (a) improving, maintaining or managing the harbour;*
- (b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or*
- (c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land”.*
- 3.105. It is clear that the powers within the C19 Acts, so far as the Proposed Order varies or repeals them, regulate activities on the land comprised in the Bridge Undertaking. For example, they regulate the use of the Bridge by the public (permitting them to cross but only subject to the payment of the tolls) (s.48) and they provide for offences to arise where certain prohibited activities are undertaken on the Bridge (e.g. s.68). There is however considerable doubt as to whether all of the land comprised in the Bridge Undertaking could properly be regarded as being part of the harbour or “*harbour land*”.
- 3.106. So far as it relates to England and Wales, “*harbour*” is defined in s.57(1) of the 1964 Act as “*any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and includes a dock, a wharf...*”. The Canal and its docks and wharves are therefore clearly comprised in a harbour.
- 3.107. Although s.3 of the 1885 Act includes all “*works of the Company* [i.e. MSCC]” within the description of the Harbour and Port of Manchester, which would include the WHLB, it is not clear that the original bridge over the River Mersey and its approach roads would constitute such works, not having been constructed by MSCC as part of the Canal. It is not accepted by MSCC that

the whole of the Bridge Undertaking is a work of the Company and part of the Harbour. There is nothing in the Agreement contained in the Schedule to the 1890 Act that would have this effect.

- 3.108. "*Harbour land*" is also defined in s.57(1) of the 1964 Act, as "*land adjacent to a harbour and occupied wholly or mainly for the purposes of activities there carried on*". Even if the original stone bridge and approach roads can be regarded as land adjacent to the harbour, they do not appear to be occupied wholly or mainly for the purpose of activities carried on in the harbour (which, of course, principally relate to shipping and navigation).
- 3.109. In the circumstances, MSCC contend that the Secretary of State can be satisfied that the primary objects of the Proposed Order cannot be achieved by means of an HRO under the 1964 Act.

#### **D. The Likely Impact of the Provisions Within the TWA Order**

- 3.110. Pursuant to Matter 4 of the SoM, MSCC acknowledges that the Proposed Order will have beneficial, neutral and adverse effects, however it is considered that the benefits arising do materially outweigh the disadvantages.

##### Benefits for users of the Bridge

- 3.111. The single greatest benefit to all users of the Bridge, which is a feature of the Proposed Order that could not have been delivered pursuant to the 1954 Act process, is the delivery of free-flow tolling and the consequent elimination or reduction of congestion upon and in the vicinity of the Bridge. The Inquiry has heard extensively of the inconvenience that this causes to users of the Bridge (with some reporting queues of up to an hour), and to those who live in close proximity to it, and as such it appears to be common ground that this is an extremely significant benefit of the Proposed Order. The existing journey time benefits identified will be further improved by this reduced congestion and a reduction in driver delay.
- 3.112. In addition to the improved traffic conditions, vehicular users of the Bridge will also benefit from a new, improved carriageway with brand new running surface. This will reduce the risk of damage to vehicles caused by potholes.
- 3.113. The changed mode of toll collection will also provide improved convenience for users in an increasingly cashless society, since it will no longer be necessary to present cash in order to pass over the Bridge. This should also prevent dangerous or inconvenient U-turns by vehicles who do not have cash available for the toll.
- 3.114. There are also benefits for non-motorised users of the Bridge. Cyclists will benefit from a widened carriageway, reducing the potential for conflict with cars, and the same improved running surface as benefits vehicular users, whilst pedestrians will also benefit from a rationalised and widened footpath.
- 3.115. The improved condition of the Bridge itself should prevent the need for further inconvenient lane closures, such as occurred over Summer 2022 in order to facilitate and ensure safety pending the outcome of the weight assessment.

- 3.116. Finally, the long-term sustainable nature of the Scheme should both ensure a continuing, high-quality experience for Bridge users, and guard against future material toll price rises.

#### Benefits for local residents and the wider community

- 3.117. Local residents living in close proximity to the Bridge, and therefore the queues over it, will experience significant improvements in the ease of access to and from their properties as a result of the reduced congestion.
- 3.118. Both those residents and the wider community will benefit from the local air quality improvements arising from the reduced congestion (even accounting for the effects upon alternative routes – see Section F below).
- 3.119. The implementation of Automatic Number Plate Recognition (ANPR) and statutory weight/height restrictions in the Proposed Order will allow improved enforcement against the use of the Bridge by oversized vehicles, which should in due course reduce the number of vehicles passing through Warburton village for the purpose of using the Bridge.
- 3.120. The strengthening of the Bridge to facilitate its use by a limited number of socially useful vehicles, such as the emergency services and (subject to operators' decisions) buses, will however benefit the wider community by providing an additional route over the Canal for such vehicles. There is very limited public transport accessibility in the area at present and so this benefit could be particularly material for those who do not have ready access to a car.
- 3.121. The wider community will also benefit from the improvements to the character and appearance of the Warburton Village Conservation Area ('CA') to which the reduction in congestion and removal of the toll barrier will give rise. This is consistent with TC's own planning policies and CA guidance. This benefit was acknowledged by the Councils. MSCC also confirmed they would be prepared to improve the appearance of the original bridge through works of vegetation clearance and cleaning/re-painting of the remaining iron railings and stonework, within the existing capital expenditure budget; a further benefit to the CA.
- 3.122. Although the improvements to the conditions upon the Bridge for non-motorised users has been identified in the preceding section, it should be noted that this also delivers on national and local planning policy to improve opportunities for sustainable and active travel.

#### Benefits to the Canal

- 3.123. The Canal will continue to be able to be navigated freely, without future risk of obstruction arising from serious disrepair. The byelaws regulating the use of the Bridge will also support safe navigation on the Canal by discouraging unacceptable and dangerous behaviour.

#### Adverse financial impacts for Bridge users

- 3.124. It is common ground between MSCC and the Councils that the achievement of the preceding, very significant, benefits, will come at a financial cost to those who use the Bridge. A range of financial outcomes for occasional and regular users of the Bridge were identified in the Councils'

evidence<sup>33</sup>, and MSCC does not dispute the numerical increases set out there, including the proportions of the average Trafford salary that it is said those increases would constitute. However, as accepted, not everyone affected by the toll increase earns the same as the Trafford average, some will earn less, in which case they could be worse affected than the averages, and others will earn more, in which case they will be less affected. The extent of impact also depends on an unknown quantity, and a matter outside of MSCC's control, which is the extent of each person's own financial commitments.

- 3.125. The impact of the toll price rise will be mitigated against for those who live most locally to the Bridge, including MSCC's acceptance of the Councils' case for Partington to also be included within the discount scheme on account of its particularly challenging socio-economic profile. The adequacy of the discount scheme is dealt with in Section E below. Nor will the disabled be required to pay the toll where they are blue badge holders (again, see Section E below) and so the impact on that vulnerable group will also be mitigated.
- 3.126. Business travellers using the Bridge will now be able to secure VAT receipts for the toll crossings, with the result that they will be able to benefit from a de facto reduction in the rate of toll equivalent to the prevailing VAT rate (currently 20%) if they choose to reclaim it. This will assist with reducing the impact of the price rise on local businesses.
- 3.127. MSCC has also committed not to charge the existing toll during the period of the improvement works; and not to charge the revised toll until the improvement works (including installation of ANPR) are complete. Since this is not anticipated to occur until 2024/2025, this gives Bridge users a period of several years to prepare for the future price rise, should they wish.
- 3.128. Ultimately, whilst it is unfortunate that it has been necessary to introduce a single large price rise, the community has benefitted from unsustainably low tolls over a period of many years, subsidised by MSCC, and the revised toll simply reflects the true costs associated with operating that Undertaking.
- 3.129. It has been noted previously that the new maximum toll will not be out of step with tolls on other small private bridges, and the Councils confirmed in response to the Inspector's questions, that TC were unaware of any evidence of adverse community impacts (such as severance) arising from those bridges. Certainly, no such evidence has been presented to the Inquiry by any party.
- 3.130. Finally, it is noted that MSCC has previously sought to engage with the Councils with regards to the potential to lobby Government for the removal of VAT upon private toll bridges, which would serve to reduce the toll level in accordance with the prevailing VAT rate at a stroke. Although MSCC has not previously received any response to this suggestion from the Councils, it was agreed that it is something that could sensibly be pursued. It is also a cause that could practically be taken up by the several MPs who attended the Inquiry on behalf of their constituents. MSCC for its part is more than happy

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<sup>33</sup> Mrs Lowes (Tables 2 – 4, CD TC1.1)

to reignite interest in this issue, but it will require the proactive participation of both Councils.

### Impact of proposed indexation

- 3.131. Although considerable concern has been expressed by objectors to the Inquiry, it is considered that the proposal to index the tolls (to CPI-1%) will be, at worst, neutral in its impact upon users – and, in MSCC’s view, has the potential to be beneficial.
- 3.132. The contemporary experience is that inflation is a fact of life. That means that prices generally will rise and, necessarily, a price that is fixed to a particular point in time will decline in its real-terms value, as the 12.5p has done since it was set in 1863. The consequence of this is that, where indexation is not available, either a higher maximum toll is required to be set, so that it may weather future price increases associated with operation; and/or there are likely to be more frequent requests for toll increases, with the costs of the same being passed on to road users.
- 3.133. The Government has previously advocated for a change in the law to permit indexation (at Retail Price Index-1%), in its consultation document: *Simplifying the process for revising tolls at local tolled crossings*<sup>34</sup>. It described the current system of revising tolls (under the 1954 Act) to be *“cumbersome and time-consuming”*, arguing that the process *“deters rather than inspires long term investment in the undertaking in order to ensure its optimum efficiency”*. It also notes that *“the costs of this process are likely to be passed on through higher than necessary tolls”* and that it *“places a modest burden on Central Government resources to the cost of the taxpayer”*. As a consequence, the Government’s preferred option was to allow toll operators to vary tolls without an application annually, but limited to 1% below inflation (in the consultation, pegged to Retail Price Index) – an approach it noted was in use on the tolled Severn Crossing. It considered this approach provided *“the best balance between reducing the burden on operators and protecting the interests of users”*, with the *‘-1%’ provision specifically incentivising toll operators to keep increases below inflation, and thereby delivering real terms savings for users*.
- 3.134. MSCC agrees with all of the above. Its proposal therefore mirrors that advocated by Government, although pegging the increases to the (lower) CPI rather than Retail Price Index. Whilst it is recognised that the Government’s proposals were not taken forward, MSCC’s understanding, reported by their witness to be directly from the Department for Transport, is that the reason it had not been taken forward was simply a lack of Parliamentary time. MSCC’s position is that, if the arguments are good ones, then there is no reason not to apply such an approach here, where the consenting regime allows it.
- 3.135. Whilst objectors have expressed concerns about continual large increases in toll given the current high inflation environment, this is not considered likely to arise. Both main parties agree, and the Bank of England forecasts, that inflation will return to its target level of 2% by 2024/2025, which is the date at which the revised toll would be expected to be

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<sup>34</sup> (Department for Transport, 2014) (CD APP/PB/03, Apx 17).

implemented. As such, the increases are expected to amount to pennies (or less) on the revised toll.

3.136. Furthermore, it is noted that such modest increases on a more regular basis would avoid the 'shock' scenario that has arisen here, where a very substantial increase has been necessitated by a lack of earlier more gradual price rises; and if pegged to CPI-1%, the toll will still be delivering a real-terms decrease in price for Bridge users over time. This is so even if inflation is, contrary to expectations, running higher than the 2% target. In this latter scenario it is noted that MSCC's costs would also be increasing and so the inflation ratchet will be necessary to help the toll keep apace, consistent with the proposal to ensure the Bridge's future is sustainable.

#### Impact of byelaws

3.137. The Proposed Order makes provision for the imposition of the byelaws set out in Schedule 4, and for MSCC to be able to amend these in the future (Art.3). Any byelaws promulgated may relate solely to the regulation of the use and operation of the Rixton and Warburton Bridge, the maintenance of order on or about the Bridge or the conduct of all persons (including MSCC employees) whilst on and about the Bridge (Art. 3(1)).

3.138. There is no issue between the main parties to the Inquiry as to the byelaws now included within Schedule 4, agreed in the Statements of Common Ground. However, concerns have been raised by interested party objectors about the extent to which these are an overreach of power and unacceptably draconian in their impact. In this regard, it is worth noting that several of the proposed byelaws that caused particular vexation (those relating to smoking and playing of loud music in cars, and the ability to cross the Bridge with horses or animals) have been removed from the Schedule.

3.139. The proposed byelaws contained in Schedule 4 have the following main objectives: to regulate the traffic on the Bridge (Part 2); to prevent dangerous traffic or exclude traffic in certain situations (Parts 3, 4, 8 and 9); to prevent oversized vehicles using the Bridge (Part 5); to prescribe the means by which tolls may be made, and the consequence for evasion (Part 6); to prevent nuisance generally (Part 7); and to provide penalty for breaching the byelaws (Part 10).

3.140. Some of these byelaws reflect (with appropriate modernisation) existing offences contained within the 1863 Act; some reflect the need to ensure that tolls are paid in the absence of a physical barrier preventing passage without such payment; whilst others are new and provide MSCC with additional controls over behaviour on the Bridge. There is however nothing in any of these byelaws (as now refined) that is particularly onerous or draconian, and no one who wished to behave in an orderly and responsible manner whilst on the Bridge (whether in a vehicle or otherwise) would have anything to fear from them.

3.141. MSCC in its capacity as operator of the Canal has benefitted from byelaw-making powers for many years, with the last time new byelaws were published being 1989. There is no reason to believe that MSCC in its capacity as undertaker for the Bridge (or indeed New Co, under MSCC's ownership) would approach the byelaws for the Bridge any differently. In this regard, it is worth noting that any penalties imposed by the Magistrates for breach of the

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byelaws would go to the Magistrate's Court and not to MSCC. There is therefore no financial incentive upon MSCC to prosecute.

- 3.142. The byelaws are considered beneficial for MSCC, insofar as they ensure that ANPR can be delivered effectively and without damaging the revenue stream needed to ensure the Bridge's future, and to ensure that people act appropriately on the Bridge, for the benefit of both other Bridge users and for the Canal. The fact that they may not benefit from equivalent powers on other bridges in their ownership is nothing to the point – none of their other bridges are tolled crossings (and so the provisions relating to toll collection would not be needed) and having powers to ensure the protection of the Bridge and Canal beneath on one bridge is still advantageous even if they do not benefit from the same powers on others.
- 3.143. The nature of the other byelaws is such that the impact on the Bridge-using public will be neutral, provided those public do not wish to evade tolls, obstruct the Bridge or otherwise cause harm or a nuisance.
- 3.144. Any future byelaws made under the Proposed Order will require submission to the Secretary of State for public consultation and approval (Art. 3(9)-(15)). As such, their content will be subject to Secretary of State oversight, ensuring that any future impact is also acceptable.

#### Equalities impacts

- 3.145. Although MSCC as a private company is not subject to the Public Sector Equality Duty ('PSED') contained in s.149 of the Equality Act 2010, the Secretary of State in his capacity as decision maker for the Proposed Order is. In order to assist the Secretary of State with discharging that duty, and to ensure that MSCC has in substance addressed any adverse equalities impacts potentially arising from the Scheme, MSCC commissioned an independent Equalities Impact Assessment ('EQIA').
- 3.146. That EQIA<sup>35</sup>, which was produced by specialist consultants, considered the effects of the Proposed Order on those living and working in the study area, focussing on potential effects likely to be experienced by those with any of the statutorily prescribed 'protected characteristics'. It also identifies potential mitigation measures which MSCC may put in place to manage any effects.
- 3.147. The conclusion of the EQIA is that the Proposed Order presents both risks and opportunities so far as those with protected characteristics are concerned. Having regard to the existing mitigation proposed, Section 5 of the EQIA reports that there are:
- a) No large or major adverse financial impacts likely as a consequence of the toll increase;
  - b) No large or major adverse severance impacts likely as consequence of the toll increase;
  - c) Beneficial effects arising from the potential for public transport infrastructure to use the Bridge once the works have been carried out;

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<sup>35</sup> CD APP/WM/03, Apx 57

- d) Beneficial health effects;
  - e) Beneficial effects arising from the introduction of free-flow tolling.
- 3.148. A range of recommendations for mitigating action that may be taken are set out in Section 6 of the EQIA. MSCC is proposing to:
- a) Offer payment of the toll by annual pass payable in interest-free instalments; and
  - b) Investigate partnering with other businesses to offer additional discounts in respect of the toll.
- 3.149. Other proposed mitigation measures are already embedded within the Scheme (e.g. clear exclusions for cyclists, pedestrians, blue badge holders etc, and designing infrastructure with everyone's needs in mind within the constraints of MSCC's land ownership). Where MSCC is not proposing to pursue a recommended measure, the reason for this is clearly articulated in evidence, essentially being that any further discount for protected groups would impose an unacceptable burden on the wider toll-paying public. No party to the Inquiry has challenged the EQIA's findings.
- 3.150. In the circumstances, the Secretary of State can be satisfied that he has the information before him to discharge his PSED; that the Proposed Order will not have any unacceptable adverse equalities impacts; and that any adverse impacts have been mitigated as far as reasonably practicable.

## **E. Adequacy of the Proposed Discount Scheme**

- 3.151. The adequacy of this scheme is a principal area of difference between MSCC and the Councils, and other local stakeholders such as the MPs and individual objectors. The general view taken by the Councils and the interested parties is that MSCC's proposed discount scheme, offering a 50% discount to residents within three local postcode areas, does not go far enough, either in terms of the level of discount or its geographical extent. MSCC's position is that its discount scheme goes as far as is reasonably possible without giving rise to an unacceptable cost penalty upon users who do not benefit from the discount.
- 3.152. It must be understood that any discount offered impacts upon the revenues generated by the Bridge, and therefore the funds available to pay for the Bridge's upkeep and other needs. In the absence of national or local Government subsidy (which is unavailable here), this shortfall in funding has, in the self-funding scenario, to be made up by other Bridge users. A balance must therefore be struck between offering such discounts as are considered appropriate and ensuring that other users of the Bridge are not subsidising those discounts to a level which is inequitable or inappropriate. This is fundamentally a question of judgement.
- 3.153. It is no doubt because of the need to balance these competing interests that local user discount schemes are not typically offered on other small private toll bridges. Indeed, it is common ground between all parties to the Inquiry that no other small private bridge has been identified as offering a local user discount scheme. As such, MSCC's voluntary proposal is properly to be regarded as more far reaching and generous than that of any other

private toll bridge operator. The Secretary of State has not required such a scheme elsewhere.

- 3.154. The Inquiry will be aware that MSCC's consultant advised caution about heading down this road at all, precisely because of the difficulties involved in where to draw the line. The Inquiry has also heard variously from objectors who express disquiet as to where the line ought to be drawn, with Mr McGoldrick describing the proposal as reflecting "*the dubious ethics involved in postcode lotteries*" and Mr Openshaw saying it was "*arbitrary*". That is to some degree true insofar as there is no policy or guidance as to how such a scheme is to be developed, and the absence of other examples deprives us of useful precedent.
- 3.155. MSCC therefore approached the question from first principles, looking to keep the cost of managing the discount as low as reasonably possible, to avoid full toll paying users from being penalised by having to cover the increased operating costs associated with administering the discount, cost efficiency of validation being the principal reason for selecting a postcode-based discount; and to adopt a discount rate that was sufficient to be meaningful but applying that to an area that would mean that uptake was to some extent limited. The judgement reached was that a 50% discount would be meaningful.
- 3.156. The need to have a cost-effective and readily verifiable basis for the application of the discount is a key reason for rejecting a 'distance' based approach, such as that advocated by the Parish Councils, although in addition, the 6km selected has not been subject to any particular justification beyond being the Parish Councils' view as to what is '*reasonable*'.
- 3.157. It is considered that the two postcode areas adjacent to the Bridge are those which are affected by it to the greatest extent. User Survey results indicated that users in those postcodes account for around 1/3 of users. Analysis indicates that applying the reduced toll of 50p to these areas still has an impact on the headline toll of c.18p per trip. However, given the desire to meet the Councils' wishes to see such a scheme introduced in principle, MSCC was content that this difference could be justified.
- 3.158. Since MSCC's initial development of the postcode discount scheme both TC and WBC have put forward further candidate areas for inclusion. The justification for both was, in the view of MSCC, markedly different.
- 3.159. In the case of TC, the Council articulated a case for the inclusion of the Partington/Carrington postcode (M31 4) based on the impoverishment of that area, by reference to published data. Whilst socio-economic status was not a defining feature of MSCC's initial scheme, given the compelling nature of the information presented and the fact that the area can be included without further material detriment to 'regular' users of the Bridge (consistent with MSCC's own 'first principle' assessment), in terms of the maximum toll level, MSCC has been prepared to accept the case made and has included the relevant postcode in the updated Proposed Order/Deed of Obligation proposals.
- 3.160. WBC have contended for a more wide-reaching set of additional areas for inclusion within the discount scheme: in effect, every postcode to the east of the M6. The case for inclusion is purported to be made but under XX the

Council witness conceded that the proposed 20p rate was one that had been selected by the Council as fair and reasonable, and that he provided no independent justification for that conclusion; the postcode areas were given to him by the Council; and he presents no professional view justifying their adoption.

- 3.161. Although that evidence asserted that these areas are those where people “*need to make regular and frequent crossings*” of the Canal, no evidence has been supplied in support of that statement. Whilst it is accepted that that may be true of some residents within some of the postcodes, it is not accepted that it is true as a generality. In any event, the area is so great, making up c.60% of Bridge users, that extending the discount to cover everyone has an unacceptable effect on other users of the Bridge paying the full toll level: indeed, on the Councils’ analysis, it results in such users paying 3.5x (or 3x, on the 75p/25p analysis) the discount toll.
- 3.162. The unfairness of this is evident from the fact that some of those in postcodes adopted by the Council and who would benefit from the discount are as far as 8 miles away from the Bridge, in circumstances where other potential users of the Bridge, who may be 2 or 4 miles away, would not. Mr Rowland accepted he did not present any professional justification as to why the former should benefit from a toll 3.5 x lower (on the Councils’ original case).
- 3.163. In addition to the local discount scheme, it is worth noting that there are several exemptions from the toll that also contribute to reducing its impact on local people in general and vulnerable parties in particular. In terms of those which benefit local people generally, this includes the exemptions for motorcycle or moped users, cyclists and buses, retaining the opportunity for some users to cross the Bridge without paying a toll. In terms of that which benefits vulnerable parties, the Proposed Order exempts those in receipt of a disabled person’s ‘blue badge’.
- 3.164. Although complaint had previously been made by some about the fact that the postcode discount was not secured, this has now been addressed through the revised drafting of the Proposed Order.
- 3.165. In conclusion upon this issue, it is recognised that MSCC’s proposed discount scheme is not perfect. The very nature of a postcode-based discount is that it will include some and exclude others, even though the geographic margin between them is slight or even non-existent. However, it is considered to be the most rational and cost-effective basis for the development of such a scheme. The areas selected by MSCC, together with the addition of M31 4, reflect an appropriate compromise position that balances the recognition that local people are likely to be more regular users of the Bridge, and that some areas in proximity to the Bridge are likely to be particularly adversely affected, with the need to ensure that the scale of the toll paid by the majority remains acceptable and not unjustly inflated by the mere existence of the discount scheme.

## **F. Impact of the Increased Toll Upon Alternative Routes**

- 3.166. There is no issue between the main parties to the Inquiry as there being any unacceptable adverse impact from the increase in the toll upon alternative routes, whether in air quality or traffic terms, or otherwise.

- 3.167. As to air quality, an independent quantitative assessment of the benefits and disbenefits associated with the implementation of the Scheme has been undertaken<sup>36</sup>. The conclusion reached in that assessment was that the Scheme will result in beneficial air quality effects in the areas surrounding the existing toll booth location and at sensitive receptors at Warburton village, including residential accommodation upon Paddock Lane; and minor but negligible adverse air quality changes due to diversionary behaviour. It is expressly concluded that "*the benefits of improved air quality in the village of Warburton outweigh the negative effects of the Order*".
- 3.168. Neither Council has challenged that conclusion and it is understood that the net air quality benefits of the Scheme are matters of common ground.
- 3.169. Although it is acknowledged that Mrs Powner, of Friends of Carrington Moss, said she felt the air quality assessment required further consideration, neither she nor any other party to the Inquiry has provided any evidence that the Scheme would result in any different air quality effects to those reported. It follows that the Secretary of State may properly conclude that the increase in toll will have a negligible impact on air quality on alternative routes, with a much greater beneficial effect arising as a result of the removal of congestion on the Bridge.
- 3.170. As to the impact of diversionary traffic upon alternative routes, no quantitative analysis has been carried out. Whilst MSCC and the Councils disagree over the likely levels of diversion resulting from the toll, the diversion is applied to relatively low levels of daily traffic over the Bridge. As explained by MSCC, the Bridge carries just 3-4% of the annual average daily traffic across the Canal, with the vast majority using the M6 or M60 crossings. As a maximum of c.1,700 vehicles would be diverting in a 24hr period, based on the worst case 30% diversion, which is it noted does not apply to all traffic, see Section G below on elasticity, this would be unlikely to have any material effect on the surrounding road network.
- 3.171. As the Inspector will be aware, the Councils comprise both local highway authorities within whose area the Bridge and surrounding road network falls. Neither Council challenged MSCC's conclusion, and nor have they expressed any concern about, or submitted any evidence in relation to, adverse traffic impacts arising from the use of alternative routes by traffic diverting away from the Bridge. Nor is this an issue that has been raised by any other objector to the Inquiry. Again, the Inspector can therefore be satisfied that the increased toll will not result in any unacceptable impact on traffic on alternative routes. No other issues have been raised about the impact of raising the toll upon alternative routes.
- 3.172. In his oral evidence to the Inquiry, Dr Fairbairn did, for the first time, raise the prospect that free-flow tolling would result in adverse noise impacts upon Warburton Village caused by speeding traffic (such speeding also being a cause of concern). There is however no substantive evidence that such noise effects are likely, and speeding is a matter outside the control of MSCC (other than on the Bridge, where Byelaw 6 provides that "*the maximum*

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<sup>36</sup> CD APP/WM/03

*speed for a vehicle on the Rixton and Warburton Bridge will be that which is indicated by the displayed road signs”).*

- 3.173. The effect of the Proposed Order upon alternative routes should in all the circumstances be considered acceptable.

### **G. Other Matters Raised at the Inquiry**

- 3.174. Whilst MSCC would not characterise these other matters as ‘important’, they are to be addressed and include areas of difference in respect of inputs to the business case not already covered above; the timing of the Scheme and alleged inaction by MSCC; accounting for future development prospects; the provisions of the Proposed Order relating to the Transport Act 2000 (the 2000 Act); and the ‘fallback’ position.

- 3.175. MSCC has not sought to address in this section the commitments it has made regarding not charging the current toll during the works, and charging the revised toll only following the completion of the improvement works, since these are now addressed in the Proposed Order and have been discussed at the separate round table session. MSCC does however note that since those matters would now be secured, the Secretary of State can and should put significant weight on their achievement.

The remaining differences in respect of business case inputs

- 3.176. The majority of the inputs to the business case have been agreed between the parties. Those on which they remain at odds are: starting traffic levels; elasticity/diversion; cost of capital; the extent of postcode discount; and CPI indexation. The latter two of these issues have been addressed above, in Sections E and D respectively. This section of MSCC’s submissions therefore focusses on the remaining three. As noted previously, these are areas in respect of which both experts agree that there remains uncertainty which will be resolved in due course, and that this is not unreasonable at this stage. However, in all instances MSCC’s assumptions are more pessimistic than those of the Councils.

- 3.177. Starting traffic and diversion are particularly important assumptions as opening day revenues have a major impact on the sizing of the debt. Given the need, on the maximum toll approach, to ensure that the proposed toll covers reasonably foreseeable eventualities and MSCC’s considerably greater experience in preparing such business cases for tolled enterprises, it is submitted that they are to be preferred.

Starting traffic levels

- 3.178. The Secretary of State has the benefit of actual traffic data having been collected for the Bridge over a period of years, subject to the ‘patching’ for principally 2018. The experts are agreed that the data for 2019 reflected ‘normal’ (pre-Covid) conditions, for which they each have an Annual Average Daily Traffic (AADT) of 8,840 (MSCC) and 8,630 (the Councils) respectively, a difference which they agree is immaterial.

- 3.179. It is this figure (or, rather, a figure of 9,000) which the Councils use as the starting traffic level in their business case, and which therefore drives revenue, based on a view that traffic levels have returned or will shortly return to pre-Covid levels. By contrast, MSCC’s starting traffic level is the

lower AADT for 2022 (confirmed as being the average excluding January, February and August, those months either reflecting some continuing impact from Covid restrictions (Jan/Feb) or the imposition of traffic restrictions upon the Bridge (August)). This reflects the view that Covid has had a permanent depressive effect upon traffic levels, due to changes in working practices.

- 3.180. This view is consistent with: a) actual data from the Bridge itself (being based on that data); b) national data, which shows a continued depression of car traffic as compared to February 2020 data, noting that both the actual Bridge and national data show spikes in car travel in the summer months; c) a review of weekday and weekend traffic, which shows that it is the former that has declined, in contrast to weekend trips, where the decline is very small; and d) Cllr Jones' experience – in his oral statement to the Inquiry he reported that he *"wouldn't argue that traffic levels haven't gone back to normal"*.
- 3.181. The Councils accepted that both (a) and (b) showed a current continuing impact. They also accepted that they had not presented any forecasts showing that traffic levels have or would soon return to pre-covid levels. The case was instead based on a single week's data from Transport for Greater Manchester ('TFGM'), which, it was asserted, *"shows traffic flows across Greater Manchester have returned to their pre-Covid 19 levels"*. Whilst it is not considered that data from a single week could reliably be used in order to conclude that traffic has so returned, that is particularly so in the case of the particular week relied upon. The week was, as accepted, affected by rail strikes, which it is noted that the Guardian had described as the "Biggest Rail Strike in Decades". Although the Councils sought to suggest that this did not mean that it was not a neutral week, this is simply not credible. The two further weeks of data supplied by the Councils at the outset of the Inquiry in order to bolster the position were also affected by rail strikes and a school half-term.
- 3.182. Further written evidence from MSCC identified reasons why the data presented did not provide a reliable basis for concluding that traffic upon the Bridge has or will return to normal, including that the longer-range trend line shown in the TFGM data showed that traffic remained below the 35m "typical" trips line.
- 3.183. There is therefore no substantive evidence before the Inquiry that traffic levels on the Bridge have or soon will consistently return to pre-Covid levels. To assume this would risk overestimating the revenue likely to be generated, in circumstances where the toll is known to be sensitive to starting traffic levels.

#### Elasticity/diversion

- 3.184. There is a dispute between the experts as to the level of diversion likely to arise as a result of a toll. It is important to understand that in this context diversion could mean people travelling less (as during Covid), changing mode (perhaps to an active or other toll-free mode), going somewhere different (for discretionary trips), taking a different route or not making the journey at all. In this regard, there are a range of options open for avoiding the toll which are not limited only to alternative routes.

- 3.185. Reflecting this, the rate adopted by MSCC is c.23% (being a blended rate reflecting both a higher impact for those paying £1 (for whom the diversion rate is c.30%), and a lower rate for those paying the discounted rate). The Councils consider this to be too high and applies a rate of c.10%.
- 3.186. The parties are agreed that the toll increase proposed is a significant one, in circumstances where it is also common ground that the toll at present is negligible. MSCC's witness presented evidence that, in published examples of tolls being introduced at levels that were comparable to the scale of the increase seen at the Bridge, diversion rates of between 19- 36% had been observed<sup>37</sup>, which is broadly consistent. The figure adopted was also confirmed to be based on professional experience.
- 3.187. The Councils' witness, in his evidence relied upon an arc elasticity of 0.050, the figure for which showed that, around the £0.85 point, the rate of diversion begins to level off. The difficulty with this analysis is that the price could double from £1 to £2, and yet result in only an additional 1% diversion. It was accepted that this was what was shown.
- 3.188. In MSCC's submissions, this modelling therefore fails the necessary 'stand back and look' test – the result does not make sense when one considers how real people are likely to respond to such increases.
- 3.189. Although the Councils' witness pointed to the route becoming more attractive because of the improved journey time savings resulting from free flow conditions and thereby 'diluting' the negative response, there is simply no substantive evidence before the Inquiry as to the extent to which that would be likely.
- 3.190. Ultimately the experts have agreed that the diversion rate is "*inherently uncertain*"<sup>38</sup>. MSCC's position is that their diversion rate is more likely to arise and should be relied on.

#### Cost of Capital

- 3.191. The final area of dispute between the parties is the cost of capital. It is now common ground that this needs to reflect the blended cost of debt and equity, the former being likely to be at a lower cost than the latter, equity returns being considerably higher to reflect the greater risk involved. The parties are agreed that the debt/equity ratio is presently unknown, but MSCC confirmed that a recent infrastructure investment project has delivered a 65/35 ratio (which is consistent with the median ratio identified by Prequin<sup>39</sup>).
- 3.192. The difference between the parties as to the overall blended rate is not especially great, the Councils adopt a rate of 7%, with MSCC adopting a rate of 10%, argued to be fairly typical in business cases for tolled undertakings.
- 3.193. As regards the cost of debt, there is no dispute as to the rates at which Peel Ports have been able to borrow over the last decade. That has however been the consequence of a sustained period of historically low interest rates. That rate environment has changed in recent months – not only due to the

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<sup>37</sup> CD APP/GR/R01, [3.16] – [3.17]),

<sup>38</sup> ID INQ5

<sup>39</sup> CD WMBC/2.3, Apx IV, p.3909

UK Government's actions, but also due to wider economic events such as the (continuing) war on Ukraine. Peel Ports' Group Treasurer, confirmed that there is no certainty as to the rates at which it will be able to borrow going forward, a point which the Councils' witness accepted, albeit subject to the ability to look at 'trends'. In this regard, it will be noted that the higher rates within the Councils' Table<sup>40</sup> were those that were secured at times when the gilt yield was c.4%, whereas the lower rates were secured at a time when the same was 0-1%. The current gilt yield reported by the Councils' witness on Day 6 of the Inquiry, of c.3%, is markedly closer to that which applied at the time of the higher rates (between 5.25% – 6.55%). It is apparent that the potential for debt to be issued at such rates is a real one.

- 3.194. It was apparent from the Councils' witness' oral evidence that his adoption of the 7% blended rate was dependent upon an assumed cost of equity of 10%, which then also allowed some headroom in the cost of debt. This 10% figure appears to be based on the single academic study he included within his Rebuttal<sup>41</sup>, which reported equity returns at less than 10%. The fact remains that there is evidence before the Inquiry, which shows that investors do also expect, and receive, returns on equity in excess of that, with the Mercer report referred to by MSCC showing returns on toll bridges particularly in the 9-12% band<sup>42</sup>.
- 3.195. MSCC argue that a return within this band also suggests the input of a target (or hurdle) rate in excess of that. That is precisely what further informed the selected cost of capital in this case, noting that Peel Port's own hurdle Internal Rate of Return (IRR) is 15% - a rate only a little higher than the returns actually reported by Mercer. As it is common ground that it is Peel Ports who will actually finance the equity in this case, it is not inappropriate to have a blended rate that reflects equity targeting such a return. In that regard, although it is noted that the Councils sought to suggest that they did not consider 15% appropriate, that point was never put to MSCC's witness who were deprived of the opportunity to deal with it. In any event, the foregoing demonstrates why it is not an inappropriate rate in context. There is nothing in the Councils' assertion, made only during oral evidence, that where the cost of debt is higher, the cost of equity will necessarily be lower.
- 3.196. It is to be observed that at a debt/equity ratio of 65/35, a 10% blended cost of capital would be achieved if 15% IRR is applied to equity and 6.55% debt rate, an amount at which Peel Ports were able to borrow last time the gilt yield was 4%. 7% cost of capital would be inadequate for these purposes.
- 3.197. In any event, parties are agreed that the cost of capital is inherently uncertain; and MSCC has undertaken sensitivity analysis testing what the implications of adopting a reduced cost of capital in the business case would be. All things being equal, this would make a marginal difference, reducing the toll level that could be charged to £0.88 and returning a Reserve Fund of £5.15m (still less than the 30% target).
- 3.198. If £0.88 was adopted as the headline toll, and the cost of capital exceeded 7%, then that would return a deficit in several of the early years,

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<sup>40</sup> CD WMBC/2, pg [8]-[9])

<sup>41</sup> CD WMBC/2.3, Apx IV

<sup>42</sup> CD APP/PB/02, [4.16]).

and a Reserve Fund of £2.25m, excluding any further funding that might be required to finance the early years losses. As such, the maximum toll rate cannot sensibly or appropriately be lowered, and 7% cost of capital should be treated as an upside and not Base Case assumption only.

#### The timing of the Scheme and inaction of MSCC

- 3.199. During the Inquiry, several objectors to the Proposed Order, including the Councils, have criticised MSCC for not taking certain of the actions that comprise part of the Scheme sooner. In particular, it has been questioned why MSCC did not act to carry out improvements to the Bridge structure at an earlier stage, in circumstances where they were advised in 2007 and 2011 that certain works were required and that delay would result in a cost penalty; or why they have not resurfaced the road; or why they did not pursue the 1954 Act process at an earlier stage. Attention has been drawn to the level of profits that MSCC makes from its wider undertaking.
- 3.200. There are several points of context that go some way to answering these questions.
- 3.201. First is that MSCC is a large organisation with very many assets - £92.2m fixed assets in Financial Year (FY) 2022, of which the Bridge Undertaking is just a tiny part. Many of those assets have a much greater significance for the operation of the core Canal business. An example of this is the QEII Outer Caisson Gate at Eastham Dock. Overall, as reported in the MSCC accounts, there was net Group capital expenditure in the sum of £122m in FY2022, with a similar sum spent in 2021.
- 3.202. Those accounts report that: *"The Board reviews and, where appropriate, approves capital projects that exceed a certain monetary threshold in a comprehensive manner, considering the rationale for investment in the context of the long-term cash flows anticipated to be generated by the infrastructure assets is also a key consideration... During the year ended 31 March 2022, the Board approved a number of proposals to invest in port assets that directly and indirectly support customers who use those ports. This has included the construction of new warehouses and replacement of lock gates at the Port of Liverpool and the development of part of KGV Dock at Clydeport as a scrap handling facility to support a customer's expansion of its operations. Although subject to Board approvals in a prior period, the Group has continued to invest in the Liverpool2 container terminal and the roll out of an ERP system during the year ended 31 March 2022."*
- 3.203. It is therefore apparent that, in spite of MSCC's profitability, there are many competing interests seeking to draw upon those resources. MSCC necessarily has to prioritise those that support its business as a whole (noting the position would of course be different for the New Co, if the transfer is permitted – see Section B above). The position is analogous to buying a house. One has a survey, and it may recommend works to the roof, but it may also be that the kitchen requires renovation, in which case the latter may take priority.
- 3.204. The second point of context is that it must be remembered that in 2007 and 2011, the Bridge was in fair condition. Urgent works were not required. It is a counsel of perfection rather than reality to think that every organisation responds to every recommendation in respect of its assets

immediately, regardless of urgency, particularly where it has many, as MSCC does. As MSCC's witness noted in response to Mr McGoldrick, in his experience the condition of this Bridge is "not dissimilar" of the condition of many local authority and railway bridges. It follows that there must be many owners of those bridges who are not undertaking recommended actions at the recommended time.

- 3.205. Third, MSCC was not at this time receiving the level of complaints that have ultimately been received from 2016 onwards. The local highway authorities were not expressing any concern about the condition of the Bridge (and indeed have not until the TWAO process got underway) and nor were local stakeholders, whose concerns related principally to severe congestion, and potholes leading to damage to vehicles.
- 3.206. Against this background, it is unsurprising that MSCC did not react forthwith to the recommendations of the earlier reports, even if, applying the gift that is hindsight, it would have made its own life considerably easier if it had.
- 3.207. It will however be appreciated that in 2016, when the perfect storm of local authority and stakeholder concerns about congestion and the downgrading of the Bridge condition from 'fair' to 'fair to poor' arose, MSCC did sit up and take action. As Cllr Jones fairly noted, MSCC is an organisation that looks to take a long-term view. It is therefore also unsurprising that MSCC looked to develop a strategy that resolved all the issues in a single, holistic package.
- 3.208. Standing at 2016, MSCC simply could not have foreseen the length of time that it has taken to bring the consenting of the holistic package to the table. The range of events that have taken place in the period outside of MSCC's control since has been set out in evidence<sup>43</sup>, and has not been challenged by any party. It would be wholly unreasonable to lay the blame for the failure of the Scheme to come to fruition earlier within that period at MSCC's door. MSCC has progressed its proposals for consenting as promptly as external circumstance and third-party action has allowed.
- 3.209. MSCC was challenged by the Councils as to why they had not undertaken the work at its own expense and then initiated the 1954 Act process. This line of questioning ignores not only the context set out above, but also the fact that at any given point in time since 2016, MSCC could not have foreseen the multiple issues that subsequently transpired to postpone the Scheme's delivery, and that the level of toll increase ultimately secured would inform the full extent of the works and other benefits undertaken. Whilst it is accepted that MSCC has statutory duties in relation to maintenance etc these are predicated on being funded for them, and it was explicable and reasonable for them to understand the full extent of funding that would be available before undertaking them.
- 3.210. Further and in any event, it is noted that the principal concern of the Councils has always been to relieve local congestion, with the condition of the Bridge not even featuring in discussions until last year. It was agreed that the delivery of free-flow tolling was the primary benefit of the Scheme now

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<sup>43</sup> CD APP/WM/02, Section 6

proposed, and that they would not wish to see an increase in the toll without delivery of the same. One can therefore clearly anticipate what the reaction of the Councils would have been to an application to raise the tolls under the 1954 Act (to a level which has been confirmed and not challenged to be in the order of £0.76 without ANPR, see 'Fallback position' below, without a proposal to resolve the congestion (a situation that may arise if the Proposed Order is refused). It is therefore quite disingenuous of the Councils to now suggest that this would have been an appropriate course of action.

- 3.211. Finally, it is accepted that the fact that MSCC did not take action in relation to the Bridge condition in the early 2010s has meant that the capital works now required are more expensive than they would have been at that time. However:
- a) The extent of that additional cost is very limited in context. As agreed, the additional cost incurred between 2011-2016 (including inflation) was £215,000 based on the Wilde Consulting estimates – less than 4% of the total capex cost to be incurred or c.2p on the toll;
  - b) Although the increase between 2016 – 2022 is more significant, that reflects delay which has not been occasioned by MSCC and for which they cannot reasonably be held responsible.
  - c) Any increased costs should also be seen against the background of the agreed very substantial losses that MSCC has itself borne in respect of the Bridge Undertaking, which are not being passed on to users, along with the costs of promoting the Proposed Order.
- 3.212. In all the circumstances, MSCC should be regarded as having made reasonable decisions in the context of the time at which they were made. The fact that hindsight suggests an alternative course or courses may have been preferable does not justify a conclusion that MSCC acted inappropriately at the time.

#### Accounting for future development prospects

- 3.213. Dr Fairbairn on behalf of the Parish Councils argues that the traffic forecasts should take into account development proposed in the Councils' areas – the 'Places for Everyone' plan which could lead to 5,000 new homes, and WBC's draft local plan proposing 15,000 new homes over 18 years. MSCC disagrees.
- 3.214. WBC's draft local plan has only recently completed its Examination in Public ('EIP') and the Places for Everyone EIP is currently ongoing. Until such time as both plans are formally adopted as "sound" there are no plan allocations requiring delivery of these homes. Although Dr Fairbairn suggested there was no reason why these were not likely to be approved in due course, there is an obvious tension between this and the complaints he made about the ability of the local highway network to accommodate existing traffic levels, let alone those associated with substantial levels of additional residential and employment floorspace. Even if allocated, it will then be necessary for planning permissions to be obtained in respect of actual proposals for delivery of residential units and employment floorspace, and there is then likely to be a lengthy build out period.

3.215. All of the above means that such homes and employment floorspace are far too inchoate to be taken into account in the business case for the Bridge, which needs to forecast the reasonably likely use of the Bridge in order to identify the revenue that is likely to be generated. Some growth is of course already reflected in the agreed (0.9%) traffic growth level. There is however no certainty that the emerging development proposals will result in actual development, and even if they do, this is likely to be many years hence. Should that development emerge, no doubt the additional traffic would be capable of supporting revenues on the Bridge, which could in due course allow MSCC to maintain or even lower the tolls, or to extend the available discounts.

#### Transport Act 2000 provisions

3.216. Mr McGoldrick has repeatedly raised complaint about the Proposed Order incorporating reference to the provisions of the the 2000 Act, the Road User Charging powers of which he complains are only available to local authorities and the Secretary of State. He asserts that "*The device of a TWAO is being used to change who the existing legislation gives the powers to.*"<sup>44</sup>

3.217. In fact, Art. 13 of the Proposed Order simply provides that regulations made under s.173 of the 2000 Act apply 'as if' the tolls and charges payable under the Proposed Order were payable pursuant to a charging scheme made under the 2000 Act. This simply ensures that the tolls and charges payable under the Proposed Order are subject to the same rules and procedures as charges made payable under Road User Charging schemes. This ensures consistency and benefits Bridge users, as those procedures include processes for making representations against penalty charge notices, for example. Equally, ss.174-176 apply as if the Proposed Order were a Road User Charging scheme, meaning regulations made in respect of examination, immobilisation etc of vehicles, apply, as does the ability to install and maintain equipment in connection with the tolls and charges.

3.218. There is no reasonable basis for objecting to these provisions, when they simply seek to ensure a consistent approach with other road user charging schemes.

#### Fallback

3.219. The case for the Proposed Order must, finally, be seen in the context of the situation that will arise if it is not granted. This was touched upon in the evidence, although it had assumed less importance in circumstances where the Councils were not suggesting that the Proposed Order should not be made. MSCC's evidence refers to three scenarios:

- a) The potential for the need to impose temporary traffic restrictions upon safety grounds;
- b) The need to pursue the 1954 Act process; and
- c) The potential need, if that application failed, to secure a permanent restriction upon the use of the Bridge, akin to the situation that has arisen in respect of the Hammersmith Bridge.

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<sup>44</sup> CD NAAT/1, [23]

- 3.220. As is apparent from the language used above, scenarios (a) and (b) are potentialities only. At the present time, the safety of the Bridge in terms of its ability to accommodate the loading placed upon it by 3T vehicles has been confirmed by the recent bridge weight assessment, and there has been no further deterioration of its condition as reported in the recent 2022 Principal Bridge Inspection (PBI). At the present time, there is therefore no known case for imposing temporary restrictions upon safety grounds. If such a situation did however materialise at any time prior to the carrying into effect of the Scheme, MSCC would not hold back from taking action to secure such restrictions, as indeed it did in July this year pending the results of the weight assessment.
- 3.221. It is recognised that such a course of action would ordinarily require the approval by the local highway authorities of a Temporary Traffic Regulation Order ('TTRO'). If the safety of Bridge users was in issue, there is no reasonable basis for concluding that the local highway authorities would decline to approve such a TTRO.
- 3.222. The principal fallback, assuming that the Proposed Order is defeated, would be for MSCC to pursue a revised application to secure an increase in the toll under the 1954 Act process. This could not include the powers necessary to deliver ANPR tolling. As such, the single greatest benefit of the Proposed Order would be lost. This would also have knock on effects including, but not limited to, the loss of air quality benefits associated with free flow conditions, and it is likely that the 'betterment' such as the pedestrian improvements would be lost in order to value engineer the project, although the works set out in the 2022 PBI would be delivered. Nor would the local discount be proposed, this only being feasible and cost effective with free-flow tolling. The evidence, which was unchallenged, and which included removal of the local discount, is that this would still result in a maximum toll in the order of £0.76.
- 3.223. In addition to the significant loss of wider benefits, this would result in further delay to the Scheme in circumstances where MSCC's position remains that it would await certainty as to its funding envelope before undertaking the works.
- 3.224. Any permanent restriction would only be pursued in the event that funding was not forthcoming under the 1954 Act process and any safety concerns arising in respect of the Bridge. This is considered to be a relatively remote prospect, but the Hammersmith Bridge example demonstrates that it is not unprecedented.
- 3.225. In the circumstances, the public interest clearly weighs in favour of granting the Proposed Order sought.

## **H. Conclusion**

- 3.226. The Proposed Order is the result of 6 years of work by MSCC to deliver upon the needs of the users of the Bridge Undertaking and the Undertaking itself. It represents the only means by which the much-desired relief from congestion can be delivered and will result in wider benefits for both those users and the wider community.

- 3.227. The business case has been prepared with expert input so as to ensure that the Bridge is able to service those needs and continue to deliver benefits over the longer term and is resilient to future changes in its input parameters, something which is not true of the Councils' alternative.
- 3.228. The impact of the acknowledged large increase is being mitigated through the exemptions and local discount scheme proposed, a novel concept in the private toll bridge sector, and one which is only reasonably deliverable with free-flow tolling. With the CPI-1% indexation sought, no further large increases should be necessary, and 'real-terms' reductions in the tolls against other prices should be delivered over time.
- 3.229. Overall, whilst the impact on personal finances is acknowledged, the Bridge Undertaking has to be funded somehow, and Parliament has, through the C19 Acts, determined that this should be through the users. The public benefits associated with the proposal clearly outweigh the disadvantages and, in those circumstances, the Proposed Order (as amended) is commended to the Secretary of State for making.

## 4. The Case for the Councils

- 4.1. The two Councils presented a combined case both in written evidence and supported by oral evidence to the Inquiry. The main points of the case are summarised below.

### Introduction

- 4.2. Both WBC and TC (“the Councils”) as the relevant local highway authorities object to the Order as proposed on very similar grounds. A number of their concerns have been addressed by proposed changes to the draft Order since their initial objections and during the course of the Inquiry, which are welcomed. Nonetheless, significant concerns remain, and their respective objections are maintained.
- 4.3. At the outset, it is acknowledged by the Councils that benefits will flow from the proposals, not least the resulting improvements to congestion arising from the free flow technology. However, as will be returned to below, all the identified benefits and objectives are capable of being achieved on the basis of the Councils’ stance which seeks further material modifications to the draft Order for it to be acceptable.
- 4.4. The Councils’ objections are addressed as follows:
- a. Whether the WHLB is or should be self-financing;
  - b. If not, the extent of an appropriate contribution from the MSCC;
  - c. Whether the Order should permit a transfer of the Bridge Undertaking to a separate company;
  - d. The appropriate level of toll;
  - e. The extent of local discounts; and
  - f. The implications of s.3(2) of the TWA 1992.

### Whether the Bridge is Self-Financing

- 4.5. This issue is addressed first as it is regarded as the fundamental point of dispute between MSCC and the Councils, underlying much of the latter’s objections. It is a thread running through many of the Councils’ concerns and effects, or is even determinative of a number of the outstanding issues between those parties.
- 4.6. The Councils contend that the Bridge is not self-financing as a matter of law; as a matter of fact since its construction, in the same way as the River Mersey bridge; and as a matter of reasonableness.

### Legal Position

- 4.7. Starting with the legal position, it is necessary to go back to the period prior to the construction of the original River Mersey bridge under the powers contained in the 1863 Act. To place that Act in context, at that time there was no bridge crossing of the River Mersey between Rixton and Warburton. Instead, reliance was placed on ferries to cross the river for which charges were imposed. As explained in evidence, the River Mersey bridge was constructed for trade purposes with a group of local merchants proposing a

road link across the River in order to open up trade and privately financing the bridge.

- 4.8. In the preamble to the 1863 Act, it was stated: "*WHEREAS the making of a Bridge over the River Mersey in the Township of Rixton in the Parish of Warrington in the County of Lancaster and in the Township and Parish of Warburton in the County of Chester, with Roads communicating therewith, would be of local and public Advantage: And whereas the several Persons in this Act in that Behalf named are willing to make and maintain the Bridge and the Roads thereto, and it is expedient that they be incorporated as a Company for the Purpose : And whereas it is expedient that Provision be made with respect to the User and Discontinuance of Ferries and Fords through and across the River near to the intended Bridge and Roads leading to the Ferries and Fords respectively*".

It is therefore evident from the Preamble, which may be relied upon as an aid to statutory construction, that the River Mersey bridge was regarded as being of public advantage; that the named persons (merchants) were intending to make and maintain the bridge together with the approach roads and to form a Company for that purpose; and that compensation was to be paid to the owners of existing ferries which were to be discontinued.

- 4.9. Particularly relevant sections in relation to the self-financing issue are as follows:
- a) S.4 by which the Company was incorporated for the purpose of making and maintaining the River Mersey bridge and approach roads.
  - b) S.26 which set out the Works the Company was authorised by the Act to carry out. Those Works comprised the Rixton and Warburton Bridge together with the approach roads.
  - c) S.46 which provided: "*After the Bridge and Roads are completed the same shall be deemed a public Bridge and public Highways, and, subject to the Provisions of this Act, all Persons with or without Animals or Carriages shall have free Liberty on Payment of the Tolls by this Act granted to pass over the same without any Interruption whatever; but the Bridge shall not be deemed a County Bridge so as to make the Counties of Lancaster or Chester, or either of them, liable to repair, light, or watch the same, and shall be maintained and kept in repair by the Company.*" The bridge was therefore to be a public bridge and the approach roads public highway, but they were to be maintainable by the Company and not by the Counties at public expense. The public were entitled to pass over the bridge and approach roads upon payment of the requisite toll.
  - d) S.48 empowered the Company to impose tolls for passing over the bridge and approach roads.
  - e) S.50 provided that the tolls were to be vested in the Company for the purposes of the Act.
- 4.10. It is evident from those provisions that the Company was thereby empowered to construct the River Mersey bridge and approach roads at its own expense, was responsible for maintaining them at its expense rather than them being publicly maintainable, but was entitled to charge tolls for

passing over them. Those tolls were to be used for the purposes of the Act, which included the construction and maintenance of the bridge and roads.

- 4.11. However, there were other purposes set out in the Act to which the tolls could be applied by the Company, such as the requirement to purchase the ferries and pay compensation (s.41). Further, and very significantly, there was nothing in the 1863 Act providing that the entire costs of the construction and maintenance of the River Mersey bridge and roads were to be funded by the tolls. On the contrary, the tolls were to be vested in the Company for the purposes of the Act (s.50) and so could be used for any of those purposes and not merely for the construction and maintenance of the bridge and the roads. Moreover, it was a matter for the Company whether or not to exercise its power to charge tolls (s.48). There was no requirement for it to do so in order to finance the construction and maintenance of the bridge.
- 4.12. Although the 1863 Act was silent as to whether the River Mersey bridge was to be self-financing, it is submitted that the above provisions support the interpretation that it was not intended to be self-financing. It would have been easy for the Act to state the contrary position had that been the intention. In providing that the bridge and roads were to be maintainable by the Company, the Act could have gone on to state that the costs of such were to be met by the tolls. Instead, when read as a whole and in context, the correct statutory interpretation is that the tolls were vested in the Company to be spent on any such purposes of the Act as it chose.
- 4.13. Ultimately, the Act clearly made the Company responsible for the maintenance of the bridge and roads (s.46) and it was then for the Company to determine how to finance that maintenance in the same way as it was for the Company to determine how to finance the other purposes of the Act, using the tolls for such purposes as it saw fit and to the extent it saw fit. Nothing in the Act indicates that the level of tolls charged should be such as to ensure that the costs of all the purposes of the Act were to be met in full by such tolls.
- 4.14. Moreover, that interpretation is consistent with the purpose of the 1863 Act. The Company was formed of a group of merchants, seeking to benefit economically from the opening up of trade by replacing the ferries with the roads passing over the bridge. It was therefore appropriate and understandable that they were required to fund the construction and maintenance of the bridge which they themselves proposed<sup>45</sup>, albeit using contributions from the tolls they were entitled to charge which would have replaced the previous charges for use of the ferries.
- 4.15. That interpretation of the 1863 Act is supported by subsequent legislation.
- 4.16. Pursuant to the 1885, MSCC was incorporated and authorisation was given to construct the Ship Canal. Section 3 provided:

*"From and after the completion and opening for traffic of the Canal by this Act authorized the said Canal and so much of the navigable waters of the Rivers Mersey and Irwell as lie between Hunt's Bank in the township and*

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<sup>45</sup> CD APP/JB/02 paragraph 4.4

*parish of Manchester and the limit of the port of Liverpool at Warrington and all channels canals cuts docks and works of the Company within those limits shall be and are hereby constituted the Harbour and Port of Manchester and the Company shall be the Harbour Authority of that Harbour and Port ...”.*

Therefore, the Canal and all Works carried out within the stated limits became part of the “Harbour” for which MSCC became the Harbour Authority.

- 4.17. Those authorised Works were listed in s.28 and included at Number 35 an opening bridge to carry the Rixton and Warburton Road over the Canal. By s.33, all opening bridges carrying any public road over the Canal were to be maintained by MSCC “*at their own cost*”. There was no provision made for the payment of tolls over that bridge under that legislation.
- 4.18. Although that opening bridge was not in the event constructed, those provisions similarly imposed maintenance liability for all bridges being constructed by MSCC as part of the Harbour on that Company, such maintenance costs to be met at MSCC’s own expense. Importantly, the opening bridge referred to as Number 35 would have carried the road, which passed over the River Mersey bridge, over the Canal, but no additional tolls were authorised by that Act in relation to that opening bridge. It was clearly not intended to be self-financing but, rather, was to be maintained entirely at MSCC’s own expense.
- 4.19. That legislation was followed by the 1890 Act conferring further powers on MSCC. In the Preamble, reference is made to the construction of the Rixton and Warburton Road with an iron bridge by the Rixton and Warburton Bridge Company as authorised by the 1863 Act which also authorised the Company to “*levy tolls for the use thereon*”. The tolls were thereby identified in that preamble as being levied “*for the use*” of the River Mersey bridge and roads with no reference being made to them being levied in order to maintain that bridge and roads.
- 4.20. The 1890 Act authorised abandonment of some of the Works in the 1885 Act, including the opening bridge set out at Number 35, which was to be replaced by a diversion of the Rixton and Warburton Road and a new fixed bridge over the Canal, namely the Bridge in issue.
- 4.21. By s.6, MSCC was given the power to abandon the construction of the opening bridge and to “*divert so much of the of the public road known as the Rixton and Warburton Road authorized by the “The Rixton and Warburton Bridge Act 1863” as lies between its junction with the said Warrington and Manchester Road and the iron bridge which carries the first-mentioned road over the River Mersey*” (emphasis added). The diversion was therefore of the road itself and not of the River Mersey bridge which was to remain in situ. That is evidenced on the Enlargement of Sheet 1 of the Plans attached to the applicant’s Opening Submissions showing in red the diverted line and “Warburton Bridge” remaining.<sup>46</sup> There is no reference in that particular work to the construction of the new Bridge.
- 4.22. Section 9 goes on to provide:

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<sup>46</sup> ID INQ2.1

*“The said diversion of the Rixton and Warburton Road shall for all purposes (including the levying of tolls rates and charges) be substituted for the portion of the existing road so diverted.”*

By that provision, it is agreed by the Councils that MSCC is able to levy tolls for use of the diverted road. It is also agreed that as the diverted road was shown on the Plans to include the new fixed Bridge, that would include the charging of tolls for passing over the Bridge. However, significantly, there is no reference whatsoever in that provision, s9, or in any other provision of the 1890 Act that the tolls were to be the sole means of financing the construction and maintenance of the Bridge. On the contrary, the Bridge is not even specifically referenced in s.9 which authorises the continuing levying of tolls. A proper statutory interpretation of s.9 cannot make the leap from the words used that the said diversion of the Road (where the Works for that diversion do not even refer to the Bridge) shall be substituted for the Road being diverted, including the levying of tolls, so as to be interpreted as meaning that the new Bridge is to be fully financed by those tolls. That is further supported by the fact that the River Mersey bridge was to remain in situ as shown on the Plans.

- 4.23. By s.33, the Undertaking of the Bridge Company was vested in MSCC. That Undertaking, as defined in the Agreement in the Schedule to the Act, included the River Mersey Bridge.
- 4.24. By s.15, MSCC was made responsible for the repair and maintenance of the structure of the Bridge and its approach roads. MSCC was thereby made statutorily liable for the maintenance of the Bridge and approach roads which were therefore not maintainable at the public expense.
- 4.25. It is acknowledged that the tolls could continue to be levied and used for the purposes of MSCC authorised by the 1890 Act in relation to the diverted Road which included the Bridge. However, crucially, there is nothing whatsoever in the 1890 Act providing that the Bridge, which is not even referred to in the levying of tolls provision, was to be fully financed, including its construction, from those tolls. The wording of the Act simply does not state that. It enables the tolls to be used as a contribution to such, but not that they solely finance that Bridge, together with the continued maintenance of the River Mersey bridge and the diverted Road. Such words cannot as a matter of proper statutory construction be implied into the Act.
- 4.26. That position is also confirmed by the fact the 1890 Act specifically makes provision for MSCC to raise money by various means, as contained in ss.36-40, including power to borrow by mortgage, to issue debenture stock, and to apply corporate funds for the purposes of the Act, which include the construction and maintenance of the Bridge. That again suggests a clear intention that the Bridge was not to be self-financing.
- 4.27. The Applicant contends otherwise and takes the opposite approach that the wording of the 1890 Act cannot be read as imposing a liability on MSCC to contribute to the maintenance of the Bridge. That is disputed. The express conferring of maintenance liability on MSCC by s.15 provides that MSCC is to maintain the Bridge. That necessarily means that it is for MSCC to meet the costs of such maintenance, albeit its power to levy tolls enables it to use revenue from the tolls to contribute towards such maintenance that it is statutorily responsible for. S.9 does not go on to state that the maintenance

is MSCC's responsibility and that the costs of such are to be borne by users of the diverted road. Such wording would have been easy to include if intended, and that wording cannot be implied into the Act as sought by the applicant.

4.28. Moreover, that interpretation is further confirmed by the fact that there was no increase whatsoever in the maximum tolls able to be charged in the 1890 Act. That is a firm and clear indication that it was not intended that the tolls should fully and solely finance the Bridge. Indeed, it is contended that it is nonsensical to regard the tolls as being the sole means of financing the construction of a new Bridge, which was a large and complex structure, together with its future maintenance, as well as the maintenance of the approach roads and the continued maintenance of the River Mersey bridge in circumstances where there was no increase in the maximum level of tolls able to be charged.

4.29. Therefore, as a matter of law, it is contended that the Bridge is not self-financing.

#### Factual Position

4.30. That position is then fully supported by all the available factual evidence. In the first instance, all the available evidence indicates that neither the River Mersey bridge nor the new Bridge have ever been self-financing as a matter of fact. The following evidence is of note:

- a) The financial position of the River Mersey bridge is indicated in correspondence from the County Surveyor<sup>47</sup> in which it was stated that the amount produced from the tolls was "not even paying the interest on the borrowed money".
- b) That is reflected in the considerable debt of that Company evidenced in the Agreement in the Schedule to the 1890 Act. Notably, the preamble to that Agreement states that the only known liability of the Company was its statutory obligation to maintain the River Mersey bridge, but makes no reference to such maintenance intended to be fully funded from tolls levied.
- c) After the construction of the new Bridge by MSCC, there is no evidence before the Inquiry<sup>48</sup>, that the Bridge was ever self-financing prior to 1993 when ownership was taken over by Peel Ports.
- d) That is confirmed by the lack of any separate accounts for the Bridge. The Bridge could not be self-financing in the absence of separate accounts to demonstrate that revenue from the tolls was sufficient to meet all the expenditure relating to the Bridge.
- e) It was confirmed by the MSCC witnesses that the Bridge has never been self-financing since 1993.

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<sup>47</sup> CD WMBC/1 at paragraph 3.2.10

<sup>48</sup> Confirmed by Mr Lenaghan in XX

- f) Therefore, there is no evidence whatsoever before the Inquiry that the Bridge has ever been self-financing for over 150 years since its construction, and the position is the same for the River Mersey bridge.
- 4.31. Secondly, MSCC has never sought to increase the maximum level of the tolls chargeable until the present application, despite the available power to do so in the 1954 Act. MSCC has therefore never regarded it as being self-financing until 2016.
- 4.32. Thirdly, and highly significantly, it would be wholly unreasonable for the Bridge to be self-financing given the very reason for its construction and the surrounding circumstances. The reason for the construction of the Bridge was the construction of the Ship Canal. At that time, there was a road connecting Warburton and Rixton across the River Mersey via the River Mersey bridge. That road connectivity existed. Had it not been for the Canal, the new Bridge would not have been required. The Canal had the effect of severing that link and therefore due to the construction of the Canal, a new Bridge was required. That Bridge was much greater in size and complexity than the River Mersey bridge. As stated by MSCC<sup>49</sup>, it would be “significantly” more expensive to maintain than the River Mersey bridge. It was the Canal users who benefited from the new Bridge. In such circumstances, why would it be reasonable for road users to meet the full costs of constructing the new Bridge and maintaining it thereafter in circumstances where a perfectly adequate bridge for their purposes was already in existence and was “significantly” less expensive to maintain?
- 4.33. The Bridge is an inherent part of the Canal; it was constructed by MSCC as part of the Canal; it was designed to enable vessels to pass below it; it is part of the harbour for which MSCC is the harbour authority; and it would not have been necessary had the Canal not been constructed. On any reasonable view, MSCC ought to contribute to the costs of maintaining that structure.
- 4.34. To suggest that it merely replaced one bridge over a stretch of water for another misses the point. The River Mersey bridge was already in place before the Canal was constructed. It was the construction of the Canal which severed that link and replaced the Bridge with a more expensive structure in order to meet the needs of the Canal. Moreover, the River Mersey bridge remained in place for some time as evidenced by the 1910 Map<sup>50</sup> on which both bridges are shown, the River Mersey bridge being marked as a toll bridge. Indeed, it remains today, albeit filled in, as part of the approach road to the new Bridge.
- 4.35. Finally, it is wholly unreasonable for the increased costs of maintenance arising from MSCC’s failures to maintain the Bridge to be passed on in full to road users. In the Warburton PBI Report of 2007 undertaken by Cheshire County Council<sup>51</sup>, it was recommended then, namely 15 years ago, that the bridge be blast cleaned and painted “to prevent further deterioration of the steelwork” and that repairs be carried out to the steelwork “where significant loss of section has occurred”. MSCC accepted that such recommendations were not undertaken. In the following three PBIs in 2011, 2016 and 2022,

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<sup>49</sup> Mr Freeman in XX

<sup>50</sup> CD WMBC/1 paragraph 3.2.13 Figure GR3.4

<sup>51</sup> CD RWB/C7 page 4

defects were identified and recommendations made, it being expressly stated that if no action is taken within the next 12 months, the degradation will continue resulting in additional costs. In each report, the escalated costs were identified. Save for the imposition of a weight restriction on the Bridge, none of the recommendations made have been carried out by MSCC, even from the 2016 Report. That has resulted in the condition of the Bridge deteriorating from a "fair" condition to a "poor" condition.

4.36. Moreover, the costs have escalated by £215k due to such failure to respond to the recommendations. Wilde Consultants, the company who carried out the inspections and presented evidence to the Inquiry, further pointed out that inflation was relatively low at that time and so the majority of that increase was due to the increased costs themselves as a result of the lack of remedial works. MSCC<sup>52</sup> accepted that the costs of the repair works increased as a result of the lack of maintenance and that such costs are acknowledged as being passed on to users of the Bridge.

4.37. It is contended that it is manifestly unreasonable for MSCC to pass on the consequences of its continued failings to comply with its statutory duty of maintenance of the Bridge solely to users of the Bridge and not to contribute to those costs.

#### Conclusion

4.38. Therefore, for all the above reasons, it is submitted that the Bridge is not self-financing as a matter of law. It never has been as a matter of fact, and it would be wholly unreasonable for it to be regarded over 150 years on as self-financing solely by public users of the Bridge.

#### **Contribution from MSCC**

4.39. Instead, the cost of constructing and maintaining the Bridge should be met by both MSCC and via the tolls. What is a reasonable contribution for such purposes is necessarily a question of judgement. Account must be taken of the history of the Bridge, the very reason for its construction, its inherent links with the Canal and being part of the harbour, and, crucially, that MSCC is under a statutory duty to maintain the Bridge. For such reasons, the Councils are of the view that a larger proportion should be met by MSCC and have given evidence that a 60% contribution would be a fair one in such circumstances. No alternative suggested contribution has been advanced by MSCC. The Councils regard a 60% contribution as appropriate.

#### **Transfer Of Undertaking**

4.40. In the light of the above, the Councils are firmly of the view that the Order should not authorise a transfer of the Bridge Undertaking to a separate and new company.

4.41. If it is found that the Bridge should not be self-financing, the applicant accepts that no such transfer should be authorised. That is the Councils' primary position on the issue.

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<sup>52</sup> Mr Marshall in XX

- 4.42. If it is nonetheless found that the Bridge is self-financing, contrary to the stance of the Councils, their position remains that the transfer should not be authorised for the following reasons.

#### Legal Position

- 4.43. Starting with the legal position, the Bridge Undertaking is an inherent part of the harbour for which MSCC is the harbour authority and which MSCC has a statutory responsibility to maintain. MSCC is the owner and operator of the Bridge. There is an integral link between the Bridge and the Canal.
- 4.44. Prior to the application, consideration was given by MSCC to promoting an Order under the 1964 Act. Their evidence indicates<sup>53</sup> that the MMO regarded such a 'consenting' consent as inappropriate and states:

*"In particular, our objective to create a separate company to manage the Bridge was considered to be inconsistent with Para. 1 of Schedule 2 of the 1964 Act."*

That is expanded upon in the Legal Justification for using the TWA<sup>54</sup> in which it is stated that the transfer of part of the harbour to a separate authority would not be consistent with the 1964 Act, as was found in *R. (on the application of Humber Oil Terminals Trustee Ltd) v Marine Management Organisation* [2012] EWHC 3058. It was there held that the 1964 Act did not permit partial replacement of an existing harbour authority by a newly constituted authority. Any transfer would have to be of the whole of the harbour managed by the harbour authority. That in turn indicates the inherent inappropriateness of transferring one asset of a harbour from the control and management of a statutory harbour authority to a separate body.

- 4.45. It is further questionable whether such transfer falls within the power of the TWA 1992 now relied upon to make the Order, namely s.3(1)(b). Section 3(1) provides:

*"The Secretary of State may make an order relating to, or to matters ancillary to—*

*(a) the construction or operation of an inland waterway in England and Wales;*

*(b) the carrying out of works which—*

*(i) interfere with rights of navigation in waters within or adjacent to England and Wales, up to the seaward limits of the territorial sea, and*

*(ii) are of a description prescribed by order made under section 4 below."*

- 4.46. The draft Order was initially made under s.3(1)(a). However, that power is unavailable given the express definition of an "inland waterway" in s.67(1) TWA 1992 as including, for the purposes of that Act:

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<sup>53</sup> CD APP/WM/02 paragraph 6.8

<sup>54</sup> CD APP/WM/03 Appendix WM8

*“both natural and artificial waterways, and waterways within parts of the sea that are in Great Britain, but not any waterway managed or maintained by a person who is a harbour authority (within the meaning of the Harbours Act 1964) in relation to the waterway” (emphasis added).*

As the MSC is managed and maintained by MSCC, a harbour authority within the meaning of the 1964 Act, the Secretary of State has no power to make a TWAO under s.3(1)(a) relating to it.

- 4.47. The draft Order has been modified to be made under s.3(1)(b). In order to rely upon that power, it must be demonstrated that the matters included within the draft Order are related to the carrying out of works which interfere with rights of navigation and are of a description prescribed by order made under section 4 or, alternatively, are related to matters ancillary to the carrying out of such works. The works relied upon are the construction of the Bridge on the basis that the matters in the draft Order are ancillary to such works.
- 4.48. It is contended that the transfer of the Bridge to a separate company does not obviously fall within the meaning of a matter ancillary to the carrying out of works comprising the construction of the Bridge. At best, the statutory wording is being stretched. Moreover, although *“the transfer, leasing, discontinuance and revival of undertakings”* is expressly permitted by paragraph 15 of Schedule 1 in TWAOs generally, it does not follow that the transfer of an asset comprising part of a harbour falls within that provision. Indeed, use of the TWA 1992 to permit such a transfer would appear to be inconsistent with the specific exclusion in the 1964 Act and would result in a concerning precedent.

#### Evidence

- 4.49. Turning to the evidence, the transfer of the Bridge from the statutory harbour authority to a separate company is inappropriate, has clear disadvantages, and no advantages have been demonstrated to justify that authorisation.
- 4.50. The Bridge is an integral part of the Canal. As pointed out by the Councils there is a unique link between the Bridge and the Canal given their history. The Bridge exists due to the severance caused by the Canal. By way of an analogy with planning, the Canal is the “development”; the severance being the “harm”; and the Bridge being the “mitigation”. The Bridge must be kept in adequate repair to maintain the safe and free flowing navigation of the Canal. That in turn requires the statutory harbour authority to be in control of the operation and management of the Bridge.
- 4.51. Concerns have been expressed by the Councils over the new Company, including the implications if it becomes insolvent. It is understood that all the shares in the Company are currently owned by MSCC, and the Applicant is proposing to modify the draft Order to ensure that any transfer of the shares is subject to the Secretary of State’s consent. Nonetheless, it would remain a separate company and its solvency would be at greater risk than that of MSCC owned by Peel Ports. Further, the new Company with very limited assets and no track record would have much weaker ratings in terms of borrowing than MSCC, thereby increasing the cost of capital for future works which would in turn be passed on to the travelling public.

4.52. In any event, no advantages have been put forward to justify such a transfer. In response to the Inspector's question, MSCC's witness<sup>55</sup> stated that the main justification was the resulting financial transparency. However, that could be achieved simply by MSCC keeping its own records. Although it is not obliged to as a matter of law and may not be its current accounting practice, no reason was given why MSCC could not keep such separate records if it chose to do so. Indeed, if the Bridge is self-financing (which is the only scenario in which the transfer is pursued), MSCC would have to keep its own records going forward in any event if it wished to ascertain whether the level of the tolls was sufficient to meet the expenditure. That ground for a transfer therefore has no merit.

4.53. As to other 6 more minor "advantages" relied upon by MSCC <sup>56</sup>, the following are of note from their XX:

- a) Ease of comparisons: it was agreed that would equally be met if MSCC kept its own separate records for the Bridge;
- b) Independent strategies: it was agreed that MSCC already has a statutory duty to maintain the Bridge. That duty is enforceable in law, such as under s.56 of the Highways Act 1980.
- c) Ability to raise debt: Both financial witnesses agreed that MSCC would have a higher credit rating than the New Company and thereby a greater ability to raise debt. That is therefore not an "advantage".
- d) Ring-fencing the Bridge from other liabilities: Again, it was agreed that the New Company would have a greater likelihood of becoming insolvent than MSCC. That is therefore not an "advantage".
- e) In line with other toll bridges: There are no comparables to the Bridge in question. As agreed, none of the other bridges owned by separate companies (only two of which are private companies) have been transferred from MSCC to those companies but have always been in the ownership and control of those other companies.
- f) Future transfer to local authorities be easier: The Councils have made it clear that they do not wish to accept a transfer of the Bridge Undertaking and to become liable for its maintenance.

4.54. There are thus no advantages whatsoever to transferring the Bridge Undertaking. The proposal is also questionable given that it is proposed to transfer the Bridge Undertaking to a Company of which MSCC owns all the shares and which would have the same Directors as MSCC.

4.55. In any event, all the advantages of the scheme, including the free flow of traffic and proposed improvements could be undertaken without the transfer. Indeed, all of MSCC's own objectives could be achieved without that transfer, which has not been justified and should be removed from the Order.

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<sup>55</sup> Mr Lenaghan

<sup>56</sup> CD APP/ML/02 paragraph 3.8

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## Level Of Tolls

- 4.56. The next element of the Councils' objection concerns the level of the tolls which is another major element of dispute. As confirmed now in response to a question from the Inspector, the Councils' position is that appropriate levels of toll would be 75p/25p(headline/discount), whereas the applicant's position is one of £1/50p with a daily cap of two payments.
- 4.57. Again, as emphasised by the expert witnesses in their helpful Updated Joint Statement, the key difference between them is the underlying premise of whether the Bridge should be self-financing. Dependent upon the determination of that fundamental issue, the actual differences between them on the figures are much smaller.
- 4.58. Aside from that crucial matter, the other main differences relate to:
- Whether traffic has as yet returned to "the new norm" post Covid;
  - Elasticity, namely the extent of traffic diverting due to increase in tolls;
  - Cost of capital.
- 4.59. Traffic Flows: The Councils' position is that traffic flows are continuing to approach pre-COVID levels. That is the current trend, although we are not yet there. However, the 10% reduction applied by MSCC due to such flows not having returned to those previous levels is excessive.
- 4.60. Elasticity: The extent of traffic diverting due to the increased tolls is considerably exaggerated, namely a 23% reduction in contrast to the Councils' 10%. The applicant has made much of the considerable benefits arising from the proposals in terms of relieving chronic congestion, and lack of available diversions would result in significantly lengthened journeys both in terms of cost (from fuel), distance and time. As identified in the Tables<sup>57</sup> very significant journey times would result. The monetary cost of diversions is effectively shown in the final Table (page 6) which are very significant (even without the benefits of free flow tolling) and therefore the level of diversion would be low.
- 4.61. Cost of Capital: The cost of capital for MSCC used in the business model of 10% is again excessive. Peel Ports has a premium credit rating and able to borrow at much more preferential rates than others. As explained by the Councils, a 7% cost of capital would still afford Peel Ports a very sufficient buffer taking into account its historical rates of borrowing and its credit rating. Instead, Peel Ports are using a higher cost of capital and a higher cost of debt, namely both extremes, to justify the 10% cost of capital.
- 4.62. It is apparent from the above that, in essence, the business model passes all the risks onto the public with none taken by MSCC, thereby seeking to justify increased maximum levels of tolls. It is further of note that it will be a matter solely for MSCC, or the New Company if transferred, whether to fix tolls at below the maximum levels and, if so, to what extent.

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<sup>57</sup> CD APP/PB/02 Figure 1 page 5

- 4.63. In addition, the sheer extent of the proposed increase is excessive, namely a 700% increase in the toll payable. The Councils' Table 1<sup>58</sup> shows comparisons with other toll bridges on minor roads in England from which it is apparent that the toll would be at the top end of the scale, and a 700% increase is unprecedented. That is particularly concerning given present economic circumstances and the cost-of-living crisis and will have "real life impacts". A number of other objectors and local residents have expressed their personal concerns from which it is apparent the increase will have significant implications, even to those who will have the benefit of the discount, especially for regular users who have no real choice but to use the Bridge, for many daily, with consequent financial implications which many users simply cannot afford.
- 4.64. In reality, many will simply not make journeys rather than incur the cost of the toll. That in turn will lead to community severance. Indeed, that was noted in the applicant's EQIA. Under the heading "potential equality risks", reference is made to the risk of the proposals creating "*mobility barriers, which could cause severance and prevent some people from fully participating in community life*".
- 4.65. Those consequences must be taken into account in determining the appropriate level of the tolls. Particularly for the non self-financing case, it is not merely a matter of considering the business case and the figures contained therein, but also the reasonableness of the tolls charged.
- 4.66. Further, the Councils are concerned over the proposed indexation which will effectively see an annual increase in the maximum level of the tolls. Other similar bridges are not index linked. That is also of particular concern at a time when wages are not increasing in line with inflation.
- 4.67. Ultimately, the level of the tolls should not merely be a quantifiable exercise based on the business case. It should also take into account the actual impact on users and particularly local residents.

### **Local Discounts**

- 4.68. Since the start of the Inquiry, the issue of local discounts has moved on in a welcoming way from the Councils' point of view. A mechanism of ensuring discounts will apply is now proposed to be included in the Order. Further, the postcode area of Partington is now agreed to be included in the discount areas.
- 4.69. Aside from the level of the toll, the only outstanding issue relates to the geographical extent of areas subject to the discount toll. The areas in Warrington subject to such discount are currently limited to WA3 6 and WA13 9. In contrast to Partington which has specific justification, those areas are regarded as appropriate for a discount due to their proximity to the Bridge and thus areas from where residents will need to make regular and frequent crossings. That same justification would apply to other areas in Warrington and should be included within the local discount for the same reasons, namely WA13 0, WA 3 4, WA3 5 and WA3 7.

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<sup>58</sup> CD TC1.1 Page 11

## Implications of s.3(2) TWA 1992

4.70. Finally, it is necessary to raise the implications of s.3(2) of the TWA 1992. This matter is raised as an issue of law which has come to the Councils' attention during the course of the Inquiry, and which has been raised with the applicant. The Councils are understandably concerned to ensure that the Order is watertight from a legal perspective, not least so as to prevent any reasonable challenge. The provision states:

*"The Secretary of State shall not make an order under this section if in his opinion the primary object of the order could be achieved by means of an order under the Harbours Act 1964."*

It is thus a pre-requisite to the making of an Order under s.3 that the Secretary of State must be so satisfied in order for the Order to be legally made. It is noted that such legal requirement is contained in the Preamble to the draft Order, it being stated:

*"The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964."*

4.71. In the applicant's legal note<sup>59</sup>, it is stated on behalf of the applicant that the MMO indicated that the Order could not be made under the 1964 Act due to the inability to transfer the Bridge Undertaking to a private company. The Department for Transport stated in correspondence in relation to an Order under s.3 TWA 1992:

*"Should the primary object include measures that are not achievable by means of a Harbour Revision Order under the Harbours Act 1964, the provisions in this section seem to be met."*

4.72. Two circumstances then arise, namely:

- a) The position if the transfer element is removed from the Order. It then appears from that legal note that s.3(2) is not satisfied
- b) The position in any event as to whether the transfer is a "primary object of the Order.

That is a matter on which the Secretary of State must consider and be satisfied over.

4.73. Having raised that issue, it is understood the applicant is proposing to contend that the old legislation cannot be amended under the 1964 Act save in relation to matters relating to "the harbour" or "harbour land" and that it is questionable whether all the Bridge Undertaking is part of the harbour or harbour land. On that basis, a primary object of the Order could not be achieved under the 1964 Act.

4.74. Assuming that point is made, the Councils do not accept that contention. It is not suggested that the Bridge Undertaking is part of "harbour land". However, it is submitted that the Bridge Undertaking is undoubtedly part of the "harbour" in relation to which old legislation may be amended under the 1964 Act.

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<sup>59</sup> CD APP/WM/03 Appendix WM8

4.75. The statutory basis is s.3 of the 1885 Act raised above. It is worth stating again, namely:

*"From and after the completion and opening for traffic of the Canal by this Act authorized the said Canal and so much of the navigable waters of the Rivers Mersey and Irwell as lie between Hunt's Bank in the township and parish of Manchester and the limit of the port of Liverpool at Warrington and all channels canals cuts docks and works of the Company within those limits shall be and are hereby constituted the Harbour and Port of Manchester and the Company shall be the Harbour Authority of that Harbour and Port ..."*  
(Emphasis added).

The Bridge Undertaking in its entirety is part of the authorised works within those limits. Although the old bridge was not constructed by MSCC, it nonetheless forms part of the approach roads to the Bridge which are an express part of the works comprising the diversion of the Road and are therefore part of the harbour.

4.76. Moreover, that must be correct as MSCC is responsible for the Bridge Undertaking in its entirety. It is empowered to charge tolls for their use. It is an asset of the harbour authority and part of the harbour. It is also notable that the MMO did not suggest that such amendments to the old legislation affecting the Bridge Undertaking could not be carried out under the 1964 Act.

4.77. Therefore, the Councils are of the view that "the primary object" of the Order, which does not appear to be the transfer in any event, could be achieved by way of an Order under the 1964 Act. The Secretary of State must be of a different view in order to make the Order.

### **Conclusions**

4.78. In conclusion, subject to satisfaction of the above legal requirement, the Councils seek modifications to the draft Order addressing their concerns. It is of note that all the benefits and objectives of the scheme would be achieved by the Councils' proposed modified Order, including the reduced levels of tolls. Accordingly, they respectfully invite a recommendation that the Councils' suggested Order be made.

## 5. The Case for Mr McGoldrick

- 5.1. Mr McGoldrick was present throughout the Inquiry and took an active part in discussions and was offered the opportunity for questions; his own evidence was questioned by MSCC. He submitted a SoC (CD RWB/D5) and a Proof of Evidence (CD NAAT/1). Accordingly, I have included his closing comments as they provide a summation of his position and capture many of those raised in opposition to the scheme.

### Introduction

- 5.2. He is the 'coordinator' for the NAAT, which is an informal group. Since late 2017 he has been involved with the Warburton Toll Bridge Action Group. This submission is intended to be on behalf of the users of this toll road who might not have the knowledge or time to comment on the Company's case.
- 5.3. He submitted a detailed SoC in early May and asks that that be reread. Most of it is still relevant even though the applicant substantially changed their case nearly six months later when they submitted their Proofs of Evidence. In this submission, he has summarised what he thinks are the crucial points and to take into account what has emerged during the Inquiry.
- 5.4. The poor custodianship by the Company of the toll road that they were given, and of their Canal Bridge, illustrates that tolling is not a sensible way to finance roads. These tolls have been a nuisance to roads users and those living in Warburton village since at least the 1940s. The Canal Company did nothing about this nuisance. What they are proposing now replaces that nuisance with the nuisance of paying in some other way and introduces the risk of penalties and threatening letters. During the Inquiry, he has mentioned things that the Company could have done to reduce toll queues without the need for penalties. They could have introduced one-way tolling, moved the toll booth, increased the number of toll booths, and automated toll collection while keeping the barriers.
- 5.5. This Inquiry should never have taken place. Firstly, because there should be no tolls, secondly, because the Government should not be using the device of a TWAO to grant novel and extensive powers, and lastly, because there is insufficient justification for the amount of the increase.
- 5.6. What the authorities should have been doing is looking at removing the toll and/or the possibility of a new road and bridge, both built to current standards and minimising nuisance to areas like Warburton affected by through traffic.

### Tolls in general

- 5.7. Almost all road and bridge tolls were removed over a century ago, as they have a negative economic effect and are unfair, inefficient and unpopular. Their continuing unpopularity was illustrated by the opposition into the Greater Manchester congestion charging scheme that was defeated four to one by a referendum at the end of 2008. Objectors, including local MPs, have made it clear that their preferred option is that the Warburton to Rixton tolls are removed. If the Minister grants the Order then it makes it far less likely that this will ever happen.

## The Inquiry Process

- 5.8. Another negative effect of tolls is the time and effort expended which could have been put to a productive use. The process of opposing the applicant's plan has been difficult and he hopes that the Government's decision is not a foregone conclusion. When at various times he asked the Department for Transport about toll discussions, he was told that there had been none, though he is now aware that discussions with the Company were held as far back as 2016 or even earlier.
- 5.9. The applicant and their agents have access that is not available to those who oppose them. It even seems that at one stage legal advice was sought by a Government Agency and at least part of that advice shared with the applicant.
- 5.10. The device of using a TWAO to give very wide-ranging novel powers to the applicant, is not what was intended by Parliament. As the Department for Transport did not reject this application at the initial stage, it suggests that they may have in mind to grant the powers, with the possible intention of then granting similar powers to other private operators of tolled crossings.
- 5.11. If this had been an Inquiry into an application to revise tolls using the 1954 Act provisions, then there would have been a draft Order, and the Inspector would have been recommending to the Minister whether or not to approve the Order. Instead, we have new and alternate versions of the Order, a 'Deed of Obligation' and discussions to see how the Order could be 'improved'.
- 5.12. One of the features of this Inquiry is that many of the statements made in the Company's proofs were not reflected in the submitted Order. Some of the statements may now be covered by one of the recent versions of the Order. There are things that can now only be done with the approval of the Secretary of State, but if the Government decides to make the initial Order, then it is likely to agree to whatever the Company later seeks approval for.
- 5.13. He is glad to see that the Councils are here objecting to the Company's plans, but he wonders about the detail of their opposition. He also wonders how the Councils, given the proximity of the Mersey Gateway, seem to support penalty enforced tolling with all its implications.
- 5.14. The Councils will have extensive involvement on other matters with the owners of the Canal Company and it has been said by the applicant that they have been holding discussions on the toll issue with the Councils since about 2016. Though it is not clear who initially contacted who, and what the Councils wanted. In July 2016, WBC were suggesting to Peel Holdings an *"electronic form of toll collection/drop box"* and cited the system used at the *"Mersey Tunnel, M6 Toll Road"*, whereas a month later TC told Peel Ports that the Council were *"pleased to hear of your intention to progress an ANPR system"*.
- 5.15. When the applicant announced that there was to be a consultation, we had WBC writing to Peel Ports, surprisingly saying that they wanted the applicant to delay consultation *"until after local elections"* and that *"to go out to consultation now risks a very strong adverse reaction to your proposals by the Council and by representatives of all political parties."*

- 5.16. The application notice said that "The Secretary of State may make complete copies of the objection and other representations public, including any personal information contained in them, and will copy them to the applicant...". That warning will have put potential objectors off, and was inappropriate as it seems that the Department for Transport had no intention of publishing those details.
- 5.17. The 300 or so who objected, despite the warning, were hampered by the lack of an independent Inquiry web site with documents until two weeks before the Inquiry started. There was also a lack of the information that should have been available at the time of the application and was still not available when 'Proofs of Evidence' had to be supplied. When we did eventually get it, there were only three weeks for objectors to try and assimilate what was in 1,500 pages of documents.
- 5.18. Even with the new documents, there were things that we still did not have. He was questioned about this, so he set out what was still missing. There are no accounts for prior years, all we have is a table of five years figures constructed from accounting records. There is none of the information that is part of proper accounts, such as a balance sheet, various details provided by way of notes and an audit certificate. There is no indication of what profits have amounted to over the years and no indication of what happened to the profits. The Peel witnesses suggested that what happened before Peel bought the majority shareholding from Manchester City Council in 1993, was nothing to do with them. A very strange position as it is the same canal company going back to 1885 with the same assets and obligations. There was not even an attempt to say what had happened to profits from 1993 onwards. There has been no allowance for the substantial income that may be generated from penalty charges. It seems that the applicant does not expect any. There were no details of any tendering, because no work has been tendered. Though one of the proposed items had a dramatic change in cost. The November 2021 business case said that the cost of 'toll system installation' would be £1.0 million. The revised business case says that it will be £99,310. It was said that this was because the firm asked to give the original quote misunderstood what was wanted. Whatever the circumstances it casts doubts on any figures where there has not been any tendering.
- 5.19. There were a further 300 pages from the applicant before the Inquiry opened. And a further 200 since then, making a total of over 2,000 pages. It was suggested to some objectors that they look at the Inquiry website, and others were asked if they had seen certain documents, but almost no one would or could wade through all these documents.

### **The powers under which the application has been made**

- 5.20. The application to increase the tolls is made under the TWA 1992, rather than under the 1954 Act which covers this and most other tolls.
- 5.21. The Canal Company knew that the 1954 Act covered this toll, and approached the Department for Transport in 2016, or earlier, but abandoned use of the provisions in the Act, because *"it became apparent that other powers we were seeking fell outwith, notably deployment of free-flow technology, enforcement powers for non-payment, and creation of a stand-alone company"*.

- 5.22. The Canal Company then approached the MMO for a HRO under the 1964 Act. They abandoned that as *"In particular, our objective to create a separate company to manage the Bridge was considered to be inconsistent with...the 1964 Act"*.
- 5.23. The Canal Company then turned in late 2018 to the idea of getting a TWAO under the TWA 1992. It is now late 2022 and the Bridge and road have been neglected for over six years since the Company started their quest. A quest for powers which they should not be given.

### **The making of byelaws**

- 5.24. Making laws is a power generally reserved to Parliament, or local authorities in the case of byelaws. The Order would treat the Canal Company as if it was an elected authority by giving it seven pages worth of new byelaws. There are no byelaws on the other 24 Ship Canal bridges. For the thousands of bridges that come under the Canal & River Trust, there is only one byelaw and that relates to people on or crossing moveable bridges.
- 5.25. As the byelaws are not needed and are not likely to be enforced, it is possible that their purpose is to distract from the only byelaws that are likely to be enforced, the ones on tolling.
- 5.26. The two Councils said in their SoC that *"The use of Traffic Orders is the way the use of the road and bridge should be regulated. It is therefore questioned why power should be bestowed to the applicant for them to make byelaws for the regulation of the use of the road."* But it seems that the Councils now accept the byelaws, implying that they support penalties etc.
- 5.27. The company give three precedents (Mersey Gateway Bridge Byelaws 2016 (made under a 2011 Order), Silvertown Tunnel Order 2018, and the Lowestoft Third Crossing Byelaws 2020). As I have pointed out they are all on local authority crossings (Halton Borough Council, Transport for London, and Suffolk County Council), and two of the Orders (Silvertown & Lowestoft) were made under section 37 of the Planning Act 2008 and not under the TWA 1992.

### **Tolling power and the high-level bridge over the canal**

- 5.28. Where works, such as a new railway or waterway, interfere with a right of way, then the promoter is expected to pay for the way to go under or over the works. Following that principle, the 1885 Act required that an opening bridge, bridge number 35, be built so that the existing toll road could cross the canal. There was no provision in the 1885 Act for a new toll on the canal Bridge or making the Bridge Company pay for the new bridge over the canal or requiring the Bridge Company to share its tolls with the Canal Company.
- 5.29. The later 1890 Act gifted the Bridge Company to the Canal Company and authorised that the toll road be diverted, and that bridge number 35 would now be a fixed bridge. But the 1890 Act did not say that the use of tolls could be extended to cover the construction and future maintenance of the high-level bridge to be built over the canal. Instead, s.15 of the 1890 Act says *"...that unless otherwise agreed the structure of every bridge and the immediate approaches thereto and all other necessary works connected therewith shall be repaired and maintained by the Company..."*.

5.30. By a sleight of hand, the company aim to legalise the use of tolls on their canal Bridge. Their Proofs of Evidence are riddled with references to 'The Bridge' as if that is what the tolls are for, when that is what the tolls are not for. The Draft Order definition of the "Rixton and Warburton Bridge" and the Plan at the end of the Order makes that phrase mean the Canal Company's Bridge. By approving this Order, the Minister would override the Acts and transfer responsibility for the Canal Company's Bridge to the toll road users.

### **Transfer of the Undertaking**

5.31. One of the objectors who spoke at the Inquiry suggested that when Peel bought the Canal Company shares, their long-term plan was to neglect the canal Bridge and ultimately get rid of it and the road. He has no idea if that was the intention, but it looks as if they will achieve it, except that it involves a large amount of spending to rectify the neglect, with the road users bearing the cost and providing a profit for the Canal Company.

5.32. The Company have suggested that transferring the toll Undertaking plus their canal Bridge to a separate company would bring all sorts of benefits to bridge users. None of those benefits were credible. The main aim of the directors will be to maximise dividends payable to the share-holders.

5.33. It was suggested that a separate company would 'provide financial transparency' for users. The Company did not seem to believe him when he pointed out that a separate company would meet the conditions required to be treated as a small company and so only minimal information need be published.

### **Enforcement**

5.34. The business case proof says "*The Business Case has been developed on the principle that the impact of penalty revenues...will be revenue neutral...*". This is unlikely. At Dartford, penalties in the last financial year were 36% of the income. At the nearby Mersey Gateway, penalty income currently makes up 23% of the total income.

5.35. That proof also said "*I have never prepared a business case that is underpinned by assumptions on criminal behaviour...*".

5.36. Mr McGoldrick asked about this as it was unclear whether the Company were intending to use the powers available to local authorities under the 2000 Act etc, or were going to use the Magistrates Courts or use some other way of pursuing penalties. The witness said that he did not know, and no one from the Company has enlightened him. It is odd that the Government may grant all sorts of powers that an unelected body should never have and yet we have no idea how one of the most important powers will be enforced. Or is it that the Company do know, but we are not being told?

5.37. He has pointed out that under the existing law, the Company would have no access to the barrierless toll enforcement facilities that local authorities use. They cannot use the Traffic Penalty Tribunal which deals with appeals or use the Traffic Enforcement Centre which is the special County Court which authorises the issue of Charge Certificates and Recovery Orders. He also says that as the law now seems to stand, they cannot use the facilities of the DVLA to get registered keeper information. He was asked to

submit a document on the latter, which he did<sup>60</sup>. Though as he has suggested if the Government is willing to stretch the law to give other powers to the Company, then giving them access to the driver's records is likely to also be agreed.

### **The Business Case**

- 5.38. The business case model was done using a spreadsheet. From experience he knows that spreadsheet output may be incorrect due to logical, value, formula or cell reference errors. If a model has a lot of factors then it needs testing to ensure that the results are not misleading. All parties in a business negotiation involving models will very carefully check that the model results are valid.
- 5.39. Even if the model contains no errors, the result will depend on the assumptions that are built into it. In this particular case only the toll paying traffic and possibly the inflation figures have been estimated by the consultant, the other figures and assumptions are from the Canal Company.
- 5.40. It has been said that the applicant's model and that prepared for the Councils have similar results, when allowance is made for the differing assumptions. But no one else has had access to either model. Although he has not seen the model, the reported output shows 20% of the total tolls income as VAT. Mr McGoldrick pointed out that this was wrong as the way that VAT works is that the VAT is added to the non-VAT price. So at a VAT rate of 20%, the amount of income going to VAT should be 16.7%. Such a simple error in the figures casts doubts on the other figures and assumptions in the spreadsheets. He realises of course that the applicant did not seem to agree with the way that he said VAT was calculated.
- 5.41. There has been discussion about the effects of things like returning to normality after COVID-19 restrictions, elasticity of demand and future traffic growth. These factors do affect the toll level but are not as significant as the effect of the Company's use of a 10% 'rate of return'. Mr McGoldrick had suggested that 1% was more appropriate, the Councils have suggested 7%. Using 7% reduces the Company's estimate by £3 million over the 20-year period. Interest rates have recently increased, but that will have little effect on 20-year loans.
- 5.42. Given the question of the liability for the canal Bridge it was not appropriate that the model and the Costs figures did not isolate the cost of the work on the canal Bridge, so that we could see what the result would be if it was excluded. The applicant and the Councils say that "*it is appropriate to allow for a Reserve Fund to be built up over time*". But it is not appropriate; as reserves set aside can disappear, when ownership of an undertaking changes but reserves are kept by the previous owner, as has happened at the Aldwark Bridge which was the subject of a Toll Revision Inquiry earlier this year. Even if money set aside does not disappear, there is a question of whether it is appropriate for current users of a bridge to pay for something that they may not benefit from and which may never happen. There is, of course, the important question of why users of the toll road should pay

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anything at all towards the maintenance, repair or replacement of the Company's canal Bridge.

### **Condition of the Bridge**

- 5.43. There were no bridge inspection reports available to objectors till three weeks before the Inquiry started. We then had sight of the PBI reports for 2011, 2016 and 2022, but not the 2018 General Inspection report which was the last report available when the application was made.
- 5.44. Even as far back as the 2011 PBI report, the images of the canal Bridge show signs of neglect and to a layman some parts of the Bridge seem to be in need of some urgent attention.
- 5.45. The November 2021 business case described the canal Bridge as being in *"poor condition with urgent remedial works required"*. The date of the engineer's assessment was not stated, but we can now see from the full reports that the condition in 2016 was worse than in 2011 with some of the recommended work now graded as 'High priority'. This meant *"Work should be done during the next financial year to ensure the safety of the public or safeguard structural integrity or avoid a high cost penalty."*
- 5.46. As not even the *"urgent review of the existing assessment to determine how the 3 tonne capacity was derived and whether it is still applicable"*, was done, the condition of the canal Bridge deteriorated further by the time of the May 2022 inspection, with the overall condition summarised as being 'poor'.
- 5.47. Apart from the safety issue, if needed work is not done then the cost escalates, due to inflation and because neglect may lead to more damage. The company have suggested that this is not so, but that is not credible. This is illustrated if you compare the estimated cost of £2.0 million in the last PBI report with the estimated cost of £6.2 million, excluding ANPR but including the toll road, in the company's Costs evidence.
- 5.48. The PBI reports only cover the Company's canal Bridge. The toll road itself has also been badly neglected, with frequent damage to cars caused by potholes and there is flooding which seems to be due to a failure to clear blocked drains and gullies.
- 5.49. The 1890 Act amalgamated the Bridge Company and the Canal Company. There is nothing in the law that prevents the Canal Company from carrying out the badly needed repair work. The Company have delayed work in a long attempt to cover all the costs of the canal Bridge from the tolls and to make a profit. Their 'fallback' position is still that without a toll increase nothing will be done, though they know that there is nothing to prevent them from carrying out the work and then seeking a toll increase, that is, nothing apart from the issue of whether their canal Bridge is covered by the tolls. It is odd that the Company are prepared to continue to neglect the state of their Bridge while at the same time saying that the state of their Bridge is "a risk to navigation" on their canal. This attitude is not because the Company does not have the money. They pay substantial dividends and have access to substantial inter group loans.

**Comparison of the proposed toll with previous toll levels**

5.50. The Company have said that allowing for inflation "The original maximum toll level set by the 1863 Act of 12.5p would equate to about £11. This is an inappropriate comparison, as when the toll road opened there will have been almost nobody paying the maximum toll, and almost all tolls on other roads were removed long ago. A more usual comparison is with the toll when it was last increased. The business case suggests that the last toll change was in 1981, but I believe that the last change was on 2 January 2001 when the toll payable one way was increased from 10 pence to 12 pence. Adding inflation to the 12 pence would make the inflated toll about 20 pence. That is a substantial increase, but is a lot less than the toll that the Company is seeking.

**Conclusion**

5.51. As set out above, this application falls down on multiple grounds, and Mr McGoldrick asks that the Inspector recommends that this application be rejected.

## 6. Other Representations

- 6.1. Through provision of an evening session and a dedicated session during the Inquiry, I was able to hear from a number of local residents and from local MPs.

### Local Residents and Other Interested Parties

#### Andy Openshaw (CD RWB/D2 and CD AO/1)

- 6.2. Mr Openshaw submitted a SoC and a Proof of Evidence. The following is a summary of his points made at the Inquiry.
- 6.3. As a local, living about two miles from the bridge he still experiences the congestion in extreme circumstances. He sees two bridges, the cantilever over the canal and the Rixton and Warburton Bridge built under the 1863 Act.
- 6.4. The toll Bridge affects lives on a day-to-day basis. Although he would live outside the discount zone, he still feels that paying the toll results in a very poor return. While the introduction of free-flow would be an improvement, it is not in the public interest to bring this into a private company with the costs being borne by the users, while the justification is to aid transparency, he cannot see why Peel Ports and MSCC cannot provide this.
- 6.5. Mr Openshaw considers that this is akin to a sub-contractor, and he is concerned about who it is who takes responsibility. When he pays to cross the original bridge, He has a contract from the 1863 and 1867 Acts; he can see what he is paying for, a bridge and some approach roads.
- 6.6. In 1890 MSCC bisected the county and had a right to charge users of the canal but also to maintain the crossings. The bisection of the county, including access to Warrington is on bridges established 130 years ago. He cannot understand how the MSCC Acts changed the scope of what he is paying for. Furthermore, it appears he is also paying for MSCC in the goods that he buys and consumes.
- 6.7. The tolls are authorised by the 1863 Act, the 1890 Act does not affect the toll, it shows the diversion; it was not for existing users to pay for the new bridge. While the 1890 Act confirms that the original Company was not profitable, it changed the ownership of who is paid, but it affirms the requirement for maintenance of the bridges over the canal.
- 6.8. The toll does not cover the cantilever Bridge as it was never to cover the maintenance of that Bridge, the timescales just do not work. This Order would bring one of the many crossings of the canal into the scope of the toll, and while rights and obligations have been transferred to MSCC, these rights come from the 1863 and 1867 Acts.
- 6.9. His toll payments should have been ringfenced for purposes set out in the 1863 and 1867 Acts. While this includes maintenance of the original bridge and road, maintenance of the high-level cantilever is different. He pays his tolls but there are still potholes; the gullies are blocked and lead to flooding putting pressure on drivers to cross the flooding at further risk of damage. This took over a year to resolve. The cantilever Bridge has not been maintained, the road has patches on top of patches. Money may have

been spent, but the obligation to 'keep in proper or good condition' and 'to defend against physical attack' is not being met.

- 6.10. While the original bridge may now have been partly buried, it still supports the road and there is no consideration of it in the Order.
- 6.11. MSCC say the tolls should cover maintenance, they shouldn't. MSCC is profitable, it doesn't need to raise funds and other similar bridges, including the Latchford Bridge along the canal are maintained by MSCC.
- 6.12. The proposed byelaws are unnecessary and unjustified; there are no byelaws on the other bridges. They are similar to those on the Mersey Gateway Toll but there are no pedestrians or cyclists on that route. He would be in breach if he stopped for an ill child: who is an 'authorised person'? what is a 'dangerous article'? – it is a nonsense.
- 6.13. The proposal overall is vague, communications have been poor. It is clear that MSCC are not fulfilling their responsibilities for maintenance on any of the bridges for which there are 7 in comparable states of disrepair. Overall, the business case is not focussed and there are a lot of costs for some matters not accounted for.
- 6.14. Conclusions taken from written statements shows the historic lack of maintenance on the Undertaking has resulted in a poor service for users, many of whom have limited alternative options to cross the Manchester Ship Canal in a timely and efficient manner.
- 6.15. The Proposal incorrectly seeks to include maintenance costs for the WHLB in a Toll revision, where these should be met from MSCC's revenues (which appear to be healthy and sufficient to cover these costs.)
- 6.16. The proposal is vague, putting forward significant cost increases in return for poorly defined benefits, with significant gaps in the business case and a proposed operating structure that appears to restrict transparency about cost and spend. The proposal should be rejected.

#### **Dr Tim Fairburn (CD WPC/1)**

- 6.17. Dr Fairburn submitted a statement to the Inquiry indicting that he represented the views of some of the Parish Councils and the Friends of Carrington Moss. There are specific comments from some of these parties and Dr Fairburn indicated at the Inquiry that he was speaking as a representative of local people, including for Warburton where he lives on one of the approach roads to the toll. The following is a summary of his points made at the Inquiry.
- 6.18. He understands that the cantilever bridge is a strategic asset but this is about control, money and liability. While MSCC own the asset they are not prepared to maintain it. He believes that while there have been tolls for the original bridge, they are not for the cantilever, which he considers to be a separate entity.
- 6.19. He has concerns about the input numbers in the business case. He considers there to be a likely 20% increase in traffic in the Northwest but there is only a 0.9 factor included. This disregards the twenty thousand new homes in the area and the lack of public transport to support them.

Furthermore, the assumptions on local use are incorrect as they are based on a limited survey from 2019.

- 6.20. If it is assumed that the last maintenance was back in 1998 and operating profits are £250,000 per year, then the bridge has a profit of £6M accrued which nearly covers the projected £6.5M for the costs of the works.
- 6.21. The tolls are disproportionate and unsustainable for many local residents. The Parish Councils suggest that if they are required then discounts should be extended to a 6 kilometre radius.
- 6.22. MSCC have failed in the statutory duty to maintain the bridge despite the fact that there are over 8,000 cars using it. They have not cooperated with the Parish Councils and do not respond to the tailbacks experienced. While MSCC may say they open the toll gates within 10 minutes, the experience is that it can take hours. There is often very severe congestion, and the lack of engagement makes people worried that any proposal would work well.
- 6.23. Furthermore, they have not recognised the impacts on the whole of the local road network. Traffic management and enhancement is needed, and the toll Bridge is only one component of that. The preference is for no toll and the cantilever to be maintained by MSCC. However, if the Bridge becomes more accessible the concern will be about the increases in traffic through Warburton, which is a small, Saxon village, and the impacts on noise and air quality. A better solution would be a link across from Carrington to the A57.

#### **Cllr Gowland (Lymm Parish Council (CD RWB/D4))**

- 6.24. A written statement of case was submitted for Lymm Parish Council. The main points of his statement to the Inquiry are as follows.
- 6.25. As a Councillor, he brings a local view and the position of being a local resident. The original toll bridge was set up to encourage trade by a Lymm Councillor, although the Bridge Company was not wholly successful and went bankrupt after building. The ship canal then planned to originally widen the crossing but subsequently designed and funded a high-level bridge with incorporation of the MSCC at the same time. There was no provision for an increase in tolls despite the more complex, cantilever bridge.
- 6.26. This crossing is an important issue for the community and the costs of maintenance have always been part of the MSCC and it is clear that MSCC have supplemented the tolls; they have always understood it is a part of the operating costs.
- 6.27. However, now users are being asked to pay for upgrading the Bridge. While everyone will be grateful for the free-flow element and the desire for a safe and even running road surface, the question is how it is funded. Resurfacing and original bridge costs are acceptable for charge but not the cantilever or the diverted approach roads which are for MSCC.
- 6.28. He notes the argument that a standalone company would allow costs to be seen, but why is that necessary. It will stand on its own divorced from MSCC and has risks of failure. There is little faith in MSCC left in the community, it always feels that there is a fight to get anything done.

- 6.29. A recent event led to 90-minute queuing times, but the toll continued to be taken and it was only lifted far too late. So, while he would be happy to see improvements, especially free-flow, £1 per crossing or £10 per week is just too much.
- 6.30. Summary from written statement - The Warburton & Rixton crossing was tolled in 1863 to provide a low-level bridge over the Mersey, with linking roads between Warburton & Rixton.
- 6.31. In 1890 a new cut was created for the Manchester Ship Canal, and an additional high level Cantilever Bridge and roadways to access this were constructed. The original toll does not cover maintenance of this new Bridge, along with the maintenance of the other 'new' bridges – the Latchford Cantilever and Swing bridges as well as the Walton Swing Bridge amongst others. The responsibility to maintain these bridges sits with the operating profits of the MSCC core activities.
- 6.32. This toll Order seeks a 733% increase, mainly to cover the repair costs for a bridge that only exists to allow the Ship Canal to operate – a private business that produces millions of pounds profit each year, and should be maintaining the 'new' bridge, but this Order seeks to put what is a canal operating cost onto the tolls – something never intended.
- 6.33. The Order also seeks to apply a raft of new laws to the crossing – laws simply not needed, and which will be enforced by a private police force. The byelaws will remove rights of way along a public highway for a range of users who currently can use the crossing, and will apply potential charges and penalties that are either new, or hugely increase existing penalties.
- 6.34. The current management of the crossing does raise concerns – the poor maintenance of the 'new' Cantilever Bridge has resulted in a drop of the Bridge capacity and has seen the footpath paving removed, and the toll collection practices are so badly managed they often result in traffic jams of over an hour, but the operating Company does not seek to fix these from their own resources, but to use tolls from users, rather than existing revenue and reserves – which are considerable.

### **Cllr Jones (Salford City Council)**

- 6.35. Cllr Jones has been a councillor for 38 years and uses the bridge 2-3 times per week. He considers that it is obvious that more traffic is using the bridge because of the congestion on the motorways.
- 6.36. He highlights that many local people consider that the toll relates only to the old bridge and that the current roadway is an embarrassment in terms of the potholes. He states that the toll system is archaic and MSCC should be able to give consolidated accounts detailing the actual costs of running the Bridge; in his view the toll should be no more than 25p.
- 6.37. If the Bridge was made into a good condition, then there should be an agreement between Peel Ports and the local authorities on a split of 50%:25%:25% and he feels that Peel Ports have been too stubborn in dealing with the matter, for example, claiming they have only had control for last 29 years when MSCC has existed for far longer.

- 6.38. He considered the patching up of potholes to be a deliberate ploy and that MSCC should have maintained the Bridge and must accept the responsibility.

**Mrs Brenda Williams (Warrington Toll Bridge Action Group)**

- 6.39. The action group started as a Facebook Group, since when they formed a committee to represent local people.
- 6.40. The people around Warburton have been stuck in their homes, they sometimes cannot get to hospital or to work; buses often don't run. One family used to use the bus but had to use taxis, but the children were often late for school, so had to sell their house and move. There is a doctor who is often late for surgery. Another local resident who used to cross the Bridge to run a business also had to move. People with carers can sometimes be left for up to a day when the carers cannot get to them in time.
- 6.41. Accidents or fires lead to the tolls backing up on the road with alternatives only being on narrow country lanes. If there are problems the Bridge tolls should be opened but before 9am or after 5pm there is never anyone at MSCC to take the call and do this. The queues back up a very long way.
- 6.42. A worker crossing the Bridge currently pays £1.20 per week, this will become £10 per week, an £8.80 rise for those on minimum wage is unacceptable. A carer, who looks after her mother across the Bridge will see a rise from £91 per year to £2,184 per year. There is a business who has seven vehicles crossing per day from a yard in Rixton; their business will be ruined. A gentleman who has a horse to care for over the Bridge has to cross 3-4 times per day.
- 6.43. When it opened in the 1860s the toll was to recoup the money for construction. The company ran out of money but between 1892 and 1895 rates were raised to complete the works. These shares were sold in 1895.
- 6.44. The Act specifies that it is the Bridge over the River Mersey and not the canal; it is specified that the Canal Company should pay for that, and it allowed a toll of 12p. The 1890 Act, s15, specifies the responsibility for the Bridge and roads lies with MSCC.
- 6.45. Now MSCC say they only have figures for the last 5 years, but this is an entirely untypical period with the toll booth fire and the pandemic, and included a period where tolls were charged only one-way. Funding claims over pothole damage has also artificially changed the costings.
- 6.46. Ideally the toll should be scrapped altogether but if it had to remain it should be a reasonable 20p. The introduction of byelaws is unreasonable and risks penalising people who break down or get ill when crossing.

**Marjorie Powner (Friends of Carrington Moss) (CD RWM/D10)**

- 6.47. To supplement their SoC, there are three points set out on behalf of the Friends of Carrington Moss, which is a group that deals with matters, particularly in relation to planning issues, impacting Carrington Moss, a large area of peat moss.

- 6.48. The increase in toll charges - there are obvious concerns about the amount but they also consider there is a need for other residents to be included within the discounting scheme, including Carrington, Partington, Warburton and Dunham.
- 6.49. The ability to make byelaws – they consider this would set an undue precedent as they then may be able to do so on other bridges. It is considered a dangerous precedent for a private organisation. Having not taken responsibility for maintaining the Bridge, MSCC should not have such further responsibilities.
- 6.50. The transfer from MSCC – there is a concern that things like inter-company charges for services may not be capped and could call viability into question and force the tolls to too high a level.
- 6.51. In addition to these three points there is concern about environment, air quality and heritage impacts. Within the Friends Group there is support for an alternative bridge that would have community support and be between Carrington and Irlam.

**Mr Clemson**

- 6.52. A local resident who suggested that he had only recently found out about the proposals and stated that he was speaking for the misinformed majority and the residents of Glazebrook.
- 6.53. He considers this to be an enormous hike in a toll for a poor road with no maintenance and he would like to hope that the money goes towards the local community. He suggests that costs need to be controlled and that the M6 is only about 20p per mile.

**Mr McClachlan (Rixton and Glazebrook Parish Council)**

- 6.54. He identified that there is a funding crisis. He has lived in the area for 40 years and has crossed the Bridge many times. He considers that the toll is for the original bridge.
- 6.55. He noted the very poor state of the road and the potholes which were terrible and were being poorly repaired following complaints. The Bridge should, he suggests, have been kept in repair rather than left to disintegrate. As a result, MSCC should be paying for any works.

**Mark Bevington**

- 6.56. Stated that he was a local resident who crosses the bridge 4 times a day and his wife, five times a day. He notes that it is in disrepair and questions what has happened to all of the money that has been paid out over the years. He considers that there is a 'black hole' in the accounting prior to about 5 years ago.

**Cllr Rob Tynan (Woolston Parish Council)**

- 6.57. He commented that he questioned the maintenance costs and feels that to this point there has been only 'sticking plasters' applied. He felt that there had not been any preventative maintenance.

**Cllr Carol Barnes**

- 6.58. Glazebury Councillor and Parish Councillor, she notes that the consultation letter did not go out to these residents. She noted that the Bridge is used frequently and that maintenance had not been kept up, the toll booth was not fit for purpose and that closure of the M6 always led to chaos.
- 6.59. She was concerned about the toll not being fixed and there being an allowance for ad hoc increases. Her view is that there should be no toll booth and no tolls.

**Anita Wood**

- 6.60. A local resident who lives in Lymm and, as a volunteer for a food bank, crosses the bridge 3 or 4 times a week to collect food, but sometimes multiple times a day. She feels the increases will impact directly on the charity.
- 6.61. To have to stop working after 7 years volunteering because of the increased costs would 'break her heart'; She felt that Peel Holdings were 'not even able to maintain the traffic lights', and felt that they should take responsibility and do the necessary work as a support back into the community.

**Members of Parliament****Attending the Inquiry****Charlotte Nichols MP – Member for Warrington North (CD RBW/D9)**

- 6.62. This is a strategically significant route with communities relying on it, from Rixton in particular, as a key route. Due to the existing congestion, it can cause great disruption and there are concerns about the state of the Bridge and the road.
- 6.63. Much has been made over the inaction to this point and now the obvious anger when the costs are to be transferred to local residents who have to use the Bridge multiple times a day, including to access care facilities. Many have no choice as the alternatives are longer and potentially more congested. For some accessing medical facilities or church for example, this could result in 10-12 crossings per week, and she believes the owners should take maintenance seriously and not pass on the costs. She understands that the latest PBI confirmed that conditions have worsened since 2016.
- 6.64. The toll collection is an archaic system and while there is a clear need for improvement, local residents should not be the ones to bear the costs. It is the tolls that have been collected that should be used to fund improvements. Peel Ports is a successful and profitable company, why is there no contribution from them?
- 6.65. The 700% increase would represent a real impact with no financial protection for users and while there is some discount for postcodes, it does not appear that Glazebrook is included. Where is the acknowledgement of impact on the users? It should not be considered a blank cheque and the setting of the toll is worryingly vague. Furthermore, she objects to the creation of a separate company which allows for profit.

- 6.66. The disrepair is from a lack of maintenance over years and that sits with the owners, no costs should go to the motorists; this is an overreach of powers and she questions whether a toll should be needed at all. Ideally the toll should be removed.
- 6.67. Conclusion from written statement - the Bridge is in a state of disrepair due to a lack of planning and a lack of investment over time, which has resulted in a considerable backlog of maintenance issues. The responsibility for this sits solely with the owners of the Bridge. While she welcomes proposals to repair and modernise the Bridge, she objects strongly to any plans that would see the costs of this work being passed onto motorists through significant increases in toll charges. She believes that the MSCC should use the existing toll charges that have been collected over time to carry out the works as required and in doing so, all repairs and updates could then be achieved without the need for this Order.
- 6.68. The proposals as set out do not simply increase the costs charged for the toll, they are sweeping changes – including the introduction of byelaws and the extension of powers - which her constituents have made clear they believe are a clear over-reach of power. She agrees with WBC who state that “the use of Traffic Orders is the way the use of the road and Bridge should be regulated.” Given this, she therefore questions why the applicant would require their own additional powers to make byelaws for the regulation of the use of the road in question?
- 6.69. Finally, given the length of time that the toll has been in existence and the money that has been made from the toll charges, she questions why there is a need to continue to charge a toll. She asks you, as the Secretary of State, to review this issue and to consider scrapping the toll altogether. This would be an action that would be widely welcomed and would have a hugely beneficial impact on her constituents.
- 6.70. In conclusion, for the reasons outlined above, she formally objects to the Rixton and Warburton Bridge TWAO and she urges you as the Secretary of State to refuse the applicant the permission they seek to make these changes.

**Andy Carter MP – Member for Warrington South (CD RBW/D8)**

- 6.71. While the bridge is not within his constituency, he lives in Lymm and uses it and has seen the deterioration. He supports the upgrade to the road and Bridge.
- 6.72. He is reflecting the views of the 450 constituents who have written to him about the Rixton & Warburton Toll Bridge TWAO.
- 6.73. Located very close to the boundary of his Warrington South constituency, the Bridge provides an important local highway across the Manchester Ship Canal, connecting South Warrington villages with North Warrington. It is the only road crossing of the Manchester Ship Canal between the M6 Thelwall Viaduct and the M60 Barton Bridge, which are some distance apart and so it is a vital bridge connecting communities located either side of it. He hears that the swing bridge may be closed, further reducing available crossing points.

- 6.74. Whilst the number of vehicles crossing will be relatively low in comparison to the motorways, this is a very important local road linking communities. He disagrees that the Bridge should be self-financing. Whilst he would much prefer there are no tolls, he accepts that in the event that tolls continue to be levied on motorists, it should be a free flow tolling system. He would also be supportive of strengthening the Bridge to allow buses to travel over it and improvements to be made for pedestrians and cyclists.
- 6.75. However, he strongly opposes the suggested increase in tolling, which for a regular user, crossing the Bridge to and from work, would add around £500 to the annual cost of travel, well beyond any acceptable level. If this were a tax there would be an outcry.
- 6.76. He has heard from many constituents who travel over this Bridge many times each day, and they are currently able to purchase a discounted ticket which limits daily crossings to 25p. While he thinks 50p/25p costing could be acceptable, £1 per crossing would be a very substantial increase. You would have assumed that MSCC should have managed to build up considerable reserves.
- 6.77. With CPI at a 40 year high this just means unsuitable increases. Despite indicating that discounts would be available for regular users, the draft Order does not make any provision for toll charge discounts for all residents, particularly those within Lymm North and Thelwall and Lymm South wards, who use the bridge on a daily basis. He would like to see discounts to all of WA13 as well as WA3 4, WA3 5 and WA3 6a.
- 6.78. He does not support the proposed change to enable MSCC to make and enforce byelaws.
- 6.79. This Bridge has a strategic role in the local highway network, given the limited crossings over the Manchester Ship Canal and the frequent closures of the M6 Motorway Thelwall Viaduct due to high winds. He would therefore also request that the Order contains provisions included within the Memorandum of Understanding for removing toll charges during periods of heavy congestion and / or road closures affecting the M6 motorway.
- 6.80. It is strange that there is actually a toll on this road, it is such an important route it would not be unreasonable to have no tolls. The Bridge repairs could have been funded, the Scheme is profitable now.
- 6.81. Conclusion from written statement - whilst he welcomes long overdue investment that the MSCC plan to make, he strongly opposes the increases in the toll to pay for it. He is unhappy that the discounts suggested in informal consultations have not been included in the Order and he would wish to see a recognition of the importance of this route with tolls being lifted during periods of heavy traffic.
- 6.82. Taking steps to help residents with the increasing cost of living is of vital importance, the proposed increase will have a significant economic impact on his constituents, it will harm productivity with vehicles taking long detours to avoid the toll and it should not be levied to pay for repairs which should already be in hand.

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**Sir Graham Brady MP – Member for Altrincham and Sale West**

- 6.83. He supports the case put forward by Andy Carter MP. He comments on behalf of all, but particularly those constituents within Dunham Massey and Warburton. They have a cultural and community association with their main urban centre, Lymm, rather than Altrincham. This is the main centre they identify with.
- 6.84. He therefore considers that the discount scheme is being drawn too tightly, and there should also be the addition of Dunham Massey.
- 6.85. However, he accepts there may be costs in providing these long-overdue improvements.
- 6.86. Summary from his written objections – there is a perceived chronic lack of investment despite many years of consistent collection of tolls, residents are understandably frustrated that there now needs to be a sudden price increase to fund such works. The Bridge is of importance to the local transport network with the distance to alternatives meaning the Bridge is the only practicable option for many commuters. At the very least it is felt that a significant fixed discount ought to be guaranteed for Warburton residents.

**by Written Representations, presented at the Inquiry****Barbara Keeley MP - Member for Worsley and Eccles (CD RBW/D3)**

- 6.87. Since the MSCC first proposed a change to the toll on the Warburton Bridge, she has engaged with her constituents who will be affected by this change. On the basis of their comments, she has sent formal objections to the Inquiry and also to the former Secretary of State for Transport, Grant Shapps MP.
- 6.88. She knows that any changes to the toll at the Warburton Bridge will have significant consequences for the lives of many local residents. The Bridge is strategically significant as the only route across the River Mersey and Manchester Ship Canal between the M6 and M60. It is a vital link for many between local communities and a key route for travelling to work, to see family, to attend medical appointments and for many other local journeys. She fully supports her constituents in expressing outrage at the MSCC's proposal to increase the maximum toll to £1 which is an 800% increase from the current maximum of 12.5p and then for yearly adjustments to be made in line with inflation minus 1%.
- 6.89. It is clear to her that the 800% increase to the toll charge imposed on her constituents, who live in the 19th most deprived local authority in the country, will have a detrimental effect on the costs of their essential travel. It will also affect the local businesses either side of the man-made Manchester Ship Canal, have an impact on the environment and it will increase congestion as people seek alternative routes. The MSCC's argument is that without the increase to the toll they would not be able to fund the £6.5 million repair and improvements to the Rixton and Warburton Bridge. This is absurd because the MSCC had an operating profit of £39.6 million in 2021 alone and its parent company, Peel Ports Group Limited had a group operating profit of £129.1m in 2021.

- 6.90. According to the MSCC's own estimates nearly 4 million vehicles cross the Bridge every year, netting the MSCC nearly £500,000. The proposed maximum increase to the toll would pay for over half of the improvement works in one year. The current cost-of-living crisis is placing a heavy strain on household finances. Inflation is at a 40-year high and wages are not keeping pace. This additional charge is yet another financial pressure on local people at a time when many can least afford it. While she welcomes proposals to repair and modernise the Bridge, she objects strongly to any plans that would see the costs of this work being passed straight onto motorists through significant increases in toll charges.
- 6.91. On behalf of her constituents in Worsley and Eccles South she formally objects to the proposals as set out in the Rixton and Warburton Bridge TWAO. In previous submissions to the Inquiry, she has included quotes from her constituents who will be affected by these proposed changes. She believes that the owners of the Bridge should use the proceeds from the commercial operation of the Manchester Ship Canal and the existing toll charges which have been collected over time to carry out the required works. In doing so, all repairs and updates could then be achieved without the need for this punitive increased charge.

### **by Written Representations**

#### **Kate Green MP – Member for Stretford and Urmston (CD RWB/D12)**

- 6.92. Although the Bridge is not in her constituency, it is close to its southern edge, and is used daily by her constituents for work and social journeys, especially by residents of Partington and Carrington.
- 6.93. Partington is one of the most deprived parts of her constituency. It is also one of the most geographically isolated, with poor public transport links. Partington residents will therefore be particularly adversely affected by any increase in the toll, or the need to make long diversions during periods of closure.
- 6.94. Carrington is a significant and growing business and industrial centre, home to Carrington Business Park and a number of important businesses. Over the coming years, the area will benefit from substantial regeneration, with plans underway for new industrial space and in excess of 5,000 new homes as part of the Greater Manchester Places for Everyone proposals. This will generate high volumes of additional road traffic.
- 6.95. The lack of a resident discount for her constituents, or a proposed maximum daily toll (as exists now) is unacceptable, particularly in view of the impact on the most deprived communities such as Partington. In relation to the proposal that future toll increases are set annually at CPI minus 1%, she notes that the MSCC have suggested that non indexation of tolls is only appropriate where there is high traffic growth. This claim is disputed given the absence of reasonable transport alternatives, but she also points out that likely growth in traffic as a result of the regeneration of Carrington adds weight to the argument that annual indexation of tolls is not necessary.
- 6.96. The primary purpose of the tolls collected, including any penalty charges, must be for the maintenance of the Bridge. In addition, tolls should be waived during heavy periods of congestion or road closures.

**Written Representations / Objections**

- 6.97. In addition to the commentary above, there were 312 objections made to the proposed Order. These are summarised in redacted form on the Inquiry website.
- 6.98. These raised matters that for the most part align closely with the cases put by the local residents, interest groups and the MPs who directly addressed the Inquiry. Other matters have been summarised along with the applicant's responses and are provided in the section below.

## 7. Applicants Response to Other Objections

7.1. MSCC has reviewed all objections made in relation to the proposed Order. The main objections raised were addressed in MSCC's TWAO Representations – Applicant's Response Report, May 2022 [RWB/C1] and in MSCC's evidence to the Inquiry. MSCC has identified a small number of further, discrete points that were raised in objections which have not been previously responded to directly or discussed in detail at the Inquiry. These points were also not raised in any of the SoC submitted by third parties and therefore not directly addressed in the Proofs of Evidence on behalf of the applicant.

7.2. **Obj 142** - Summary of Issue – "Data protection is being collected for extortion by a private company for monetary gain".

Response - MSCC, or any other company which may be used to operate the Undertaking on its behalf, would be subject to the relevant Data Protection legislation. The issue of disclosure of registered keepers' information kept by the DVLA has been discussed at the Inquiry. The relevant guidance has been submitted to the Inquiry at Appendix 1 of CD APP/JM/R02

7.3. **Obj 147** - Summary of Issue – "Always shown Warrant Card (Serving Officer) for free passage to and from work - how will this work with ANPR?"

Response - MSCC are not aware of this and do not currently offer a concession for serving officers, and this discount has not and is not intended to be included in the commitments in the proposed Order, except for the exemption for military vehicles under paragraph 1(d) of Schedule 2 of the proposed Order.

7.4. **Obj 152 & 255** - Summary of Issue – "Three letters written to HMRC regarding the legality of printing incorrect VAT numbers on their tickets - no response. Incorrect VAT number on the tickets - hiding toll bridge earnings."

Response - MSCC confirms that the VAT number on current toll tickets is correct and has been for c.10 years. There was a historic administrative error, but this was corrected.

7.5. **Obj 211** – Summary of Issue – "Privately funded police to intimidate participants in a reported protest on the Bridge. When the original tollbooth was burnt down, they tried to install another booth without obtaining planning permission."

Response - MSCC confirm there was a police presence during the protest, as stated. However, this was for safety purposes given the narrow pavements on the Bridge. MSCC confirm they did not need planning consent for the replacement of the toll booth.

## 8. Inspectors Conclusions

References in square brackets [#] are to preceding paragraphs in this Report.

### Introduction

- 8.1. Currently, a toll is charged to cross over the canal via a route that includes the original bridge and the WHLB. Toll collection is manual and cash only, with a booth and barriers on the Warburton side serving drivers in both directions. Although the current toll charged is 12p, the nearest equivalent to the original 1863 Act maximum level, the historic toll levels are not fully known. However, it is reported that up until 2001, the one-way charge was 5p for cars and 12.5p, reduced to 12p, on removal of the 0.5p coin, for heavy goods vehicles. Since 2001 it has been 12p for all cars, with a 25p maximum daily rate; HGV use has been restricted to 3T limits. Tolls are not collected in the evenings or overnight, nor under certain specified circumstances.
- 8.2. The crossing is located between the M6 to the west and the M60 to the east, and while these may represent alternative routes, they are clearly not available to all motorists and represent a significant diversion, of some 7 and 10 miles respectively. The impact of these or other alternatives, in terms of increased time, distance and additional costs, are greatest on the communities local to the crossing, in Warburton and Rixton particularly.
- 8.3. The existing operations of the Bridge have a number of commonly accepted impacts. The manual collection, including motorists searching for coins or the issuing of tickets, leads to delays at the toll booth, which can translate to very significant congestion within the villages either side. This is especially pronounced when issues on the neighbouring motorways result in traffic being diverted or choosing to take the tolled route. The testimony from many local residents emphasises how acute the problem can be, and the effects have been linked not just to the delays and inconvenience to residents and users, but to matters of highway safety and air quality, as well as impacts on the character and quality of the areas either side, including the CA.
- 8.4. Furthermore, it is common ground that the condition of the WHLB and the road surface has deteriorated, both as recorded in the bridge inspections and in reports of ongoing issues with potholes and drainage. This is not just linked to potential damage to users' vehicles, but there is concern over the integrity of the Bridge in the longer term and the maintenance of the navigation of the canal.
- 8.5. The existing carriageway does not provide safe footways and use of the Bridge by buses has been materially affected by delays, while cyclists are not well catered for.
- 8.6. Consequently, although the position of parties varies considerably over how improvements should be made, in particular how they should be funded, there is no material disagreement that improvements are very necessary and needed in the short term.
- 8.7. Through the course of the Inquiry the relative positions of the various parties have become clearer, and these can be considered under a number of propositions, which I address below. However, a further issue also came to light regarding whether the TWA 1992 can be used in circumstances where

other legislation could be so used. This is separate to the matters raised regarding the general use of the TWA 1992 to deliver the objectives of the Scheme, which are addressed under SoM 3 below. It is necessary that this matter is dealt with alongside consideration of the propositions and before the full suite of matters set out in the SoM is addressed.

## Propositions

- 8.8. As can be seen from the cases set out above there are a wide range of views on the expectations, requirements and legal status of the Scheme here. There are a range of positions set out in opposition and it is clear that not all parties consider that a toll is required or even legal. These positions can be summarised into four propositions.
- 8.9. Firstly; the position of many objectors and some of the MPs representing their constituents. It is widely considered that the toll was set up to pay for the original River Mersey Bridge, and that, as that is no longer operating as a bridge, it has served its purpose. They argue that the WHLB was a necessary part of the development of the ship canal, and that any legislation allowing for tolls was not to fund capital or maintenance costs for the WHLB. Furthermore, some argue that the TWA 1992 cannot be used for the purpose of increasing tolls in any case, although this matter is addressed as part of the SoM assessment below. On that basis, it is argued that MSCC should cover the cost of its ongoing maintenance, as they do for a number of other crossings, and, as a consequence, this proposition envisages no further tolls and no need for the collection process that has led to the severe congestion. [5.28, 5.29, 6.7, 6.8, 6.18, 6.36, 6.44, 6.54]
- 8.10. Secondly; the position of some objectors who concede that a toll may still be necessary. In this case, they argue that a level of 20p or 25p, in effect a near doubling, would be the only acceptable increase in light of the financial pressures on residents in the area. Some argue that the profitability of Peel Ports or MSCC is sufficient for them to make the requisite contribution to fund maintenance and keep the tolls at this lower level. [6.11, 6.15, 6.32, 6.37, 6.46, 6.53, 6.63, 6.64, 6.76, 6.89]
- 8.11. Thirdly; the position taken by the Councils and set out above. They acknowledge the legal ability of MSCC to collect tolls and to seek to increase the amount now to support repair and ongoing maintenance of the Bridge, and strongly support the introduction of free-flow tolling. However, they consider part of that cost has always been, and remains in their view, a responsibility for MSCC. In effect, that the WHLB is not a self-financing entity, but that a toll is legitimate to support maintenance of the wider undertaking, with MSCC also contributing. This they argue is a result of the canal severing an established crossing and representative of the situation both as set out in the legislation, and as has been the approach since MSCC took responsibility for the Undertaking.
- 8.12. As a result of the contribution, they argue falls to MSCC, they disagree with the level of the toll, which they consider should be less, and that there should be a wider distribution of discounted levels. In light of their views on self-financing, among other matters, the Councils further disagree with the proposed transfer of the Undertaking to the New Co.

- 8.13. Fourthly; the position of the applicant. This, as set out above, is to instigate a programme to deal with the acknowledged poor condition of the Bridge and road surface, to address the chronic congestion with free-flow collection systems and, in the longer term, to resolve the governance of the Bridge through vesting the operation into the New Co. In order to achieve this and ensure a reserve fund is developed to respond to unexpected capital costs or even bridge replacement in the long term, they have identified the need for a toll to be set up to a maximum of £1, with increases linked to CPI, less 1%. It should be noted that the applicant suggests that this does not mean that the toll would be set at that level immediately, but that they would have the flexibility to do so in time and in response to the costs of repair and ongoing maintenance.
- 8.14. Within this context, and before I turn to my findings on the SoM, I consider it necessary to address the propositions in opposition to the applicant's proposals, as these will dictate how some of the SoM could be assessed. Notably, this must include the proposal for the removal of tolls and the Councils' proposition that the WHLB should not be self-financing.
- Proposition that there should be no tolls.
- 8.15. It is clear that there are very real concerns amongst the local residents as to the implications of a significant increase in the toll charge, as well as a conviction amongst some, that the tolls either are not appropriate for the WHLB or that they are no longer required.
- 8.16. There are a number of arguments for this, including that the toll was established by the 1863 Act, but was only to address the building of the original bridge. This capital cost is believed to have been met and that the circumstances of the original bridge, now infilled and forming just a part of the carriageway, means that there are no ongoing maintenance costs and consequently the toll is no longer required. [6.7, 6.8, 6.15, 6.18, 6.31, 6.59]
- 8.17. It was also argued that, as the 1863 Act only related to the original bridge, seeking tolls for the WHLB and diverted roads is not legitimate and any costs associated with adjacent parts of the original undertaking have been met over the years by the collected tolls. Consequently, maintenance and repair costs associated with the WHLB are argued to be the responsibility of MSCC as that bridge was to address a severance, by the canal, of the route already established by the 1863 Act. [6.7, 6.18, 6.44, 6.64, 6.69]
- 8.18. Furthermore, some argued that the use of tolls to cover public roads in this day and age is anachronistic and that the vast majority of turnpike roads and tolled crossings established in the C19 have been removed. NAAT in particular, set out a range of reasons why they consider tolls to be inefficient, uneconomic and unfair, and that the proposed increase in the tolls would only exacerbate this, but a number of MPs also support this position. [5.4-5.7, 6.64, 6.69, 6.80]
- 8.19. On this particular matter, although reference is made to the power to acquire tolled roads and crossings under s271 of the Highways Act 1980, it is beyond the scope of this Inquiry to promote removal of the tolls and their replacement with alternate funding streams, whether from MSCC or from public financing. There is no question that such a move would be welcomed by users and would resolve issues such as the congestion associated with

slow toll collection. While promoted by some of the MPs and clearly much desired by local residents, citing examples such as the Severn Crossings, such a resolution must reside elsewhere within Government decision taking; what must be addressed in this Report is the legal basis for the tolls and the current and future application of the statutory approaches and their relevance to the proposed Scheme. Although not a common feature, there are still tolled roads and crossings within the transport network, some dating from the C19, but others much more recent.

- 8.20. A further argument, that the profitability of MSCC or its parent company Peel Ports means that they should take on the responsibility as it would represent only a small part of their proceeds, is obviously attractive to some. However, they are a private company whose profitability is subject to their performance within the market generally and not a public sector organisation providing a service. It is not reasonable to suggest that they should forgo income and accept expenditure if there is a legal basis for them to receive the tolls. [6.11, 6.15, 6.32, 6.37, 6.63, 6.64, 6.89]
- 8.21. Furthermore, it was suggested in a number of the written objections to the Scheme, that the 1863 Act did not cater for a toll for cars specifically and consequently cannot legitimately seek to charge for them now. It is an obvious conclusion that the 1863 Act could not have anticipated cars per se, as it preceded the advent of such means of transport. However, I would recommend that this element of the argument cannot be supported. The 1863 Act did allow for circumstances which included 'For every Carriage drawn or propelled by Steam or any Means other than Animal Power, Two Shillings and Sixpence', which I would recommend is sufficient to address the inclusion of cars within the toll schedule set out in the Act.
- 8.22. Turning to the principle of there being no tolls, the 1863 Act established the Rixton and Warburton Bridge Company, the Bridge Company, with responsibility for the making and maintenance of a bridge and approach roads to cross the River Mersey. It allowed for the passage along the highways and over the bridge subject to payment of tolls, whose amounts were stipulated for specific categories of vehicles.
- 8.23. The works for the bridge were so defined, s.27, as to allow for towpaths, a specific height above river level and options to alter the structure to an opening or swivel bridge in the future. That this related to existing, and potential future navigation on the River Mersey, is clear in that the 1863 Act, s.28, required the bridge design to be completed to the satisfaction of the appointed engineer of the Company of Proprietors of the Mersey and Irwell Navigation.
- 8.24. The same Company of Proprietors were authorised by the 1863 Act to carry out any required changes, under their own cost, to enable future navigation by sea-going vessels. In this, s.29 of the Act is of importance in considering the longer-term expectations placed on the Bridge Company. In their opening statement<sup>61</sup>, MSCC noted that alterations to the Bridge could arise as a result of works by the Company of Proprietors to the River Mersey, including widening, deepening or diverting, and that while those costs would

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<sup>61</sup> INQ2 Page 14

be borne by them, the costs of working, managing, repairing and upholding any revised bridge would be borne and paid for by the Bridge Company, or refunded by them to the Company of Proprietors.

- 8.25. My own review of the Act concurs, and the 1863 Act therefore allowed for the construction of a bridge, which had to be adaptable, including by diversion, to respond to the potential needs for the development of a new navigable route for sea-going vessels to pass up to Manchester. While it would appear that the capital cost for such adaptation would rest with the navigation Company of Proprietors, ongoing maintenance would remain with the Bridge Company, whose income would be derived from the tolls. The 1867 Act did not change any of the fundamental requirements and responsibilities of the 1863 Act, but instead allowed for a relaxation of the powers to raise funds against mortgage or share capital.
- 8.26. The bridge was opened in 1866. A contemporary news article<sup>62</sup>, would appear to indicate that while the bridge was considered to be of 'great public advantage', it was not delivering sufficient toll receipts to meet the mortgage payments. Prior to the incorporation of the MSCC, the bridge continued to operate in its original form and provided for a crossing of the River Mersey, and while there are some questions over the consistency of toll collection and the amounts set, there is no question that the 1863 Act established the principle of a crossing point here being constructed and maintained for the long-term through the collection of tolls.
- 8.27. The conclusion must therefore be that tolls are legitimate in relation to the original bridge, and that the 1863 Act allowed the application of those tolls to cover the maintenance of any alteration of that original crossing to meet future anticipated navigational requirements. A review of the further legislation which established the Manchester Ship Canal is necessary to understand the extent of these powers, but I consider, and would recommend that there is nothing in the 1863 Act which precludes tolls being levied for a future diversion or indeed a different bridge crossing.
- 8.28. The MSCC was established by the 1885 Act, which incorporated the Mersey and Irwell Navigation Company of Proprietors and set out the initial proposal for an opening bridge under works No 35. This Act does not appear to address the issue of long-term funding of the Undertaking, although it sets out extensive powers for the Canal Company to raise tolls for navigation. At s.33 it does set out that the Company shall at their own cost maintain all opening bridges whereby any public road is carried over the canal.
- 8.29. However, it is the 1890 Act that established further details regarding the financing of such works, as well as the revision, in the particular case of the Rixton and Warburton crossing, from an opening bridge to a diversion and fixed bridge. I was referred to s.15 of that Act which sets out that '*..unless otherwise agreed the structure of every bridge and the immediate approaches....shall be repaired and maintained by the Company.*' [3.34, 4.24, 4.27, 5.28, 5.29]
- 8.30. However, the 1890 Act, both in its preamble, in detail in s.33-35 and in the attached Schedule, clearly transfers the Bridge Company to MSCC and at

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<sup>62</sup> CD WMBC/1 3.2.10

s.9 confirms that the diversion of the Rixton and Warburton Road shall be for all purposes, including the levying of tolls. The attached Schedule again confirms that the Canal Company, from the date of the Act, may exercise all rights and powers of the Bridge Company, including that to levy tolls. This much is agreed by the Councils. [4.22]

8.31. Therefore, it would appear that the 1890 Act transfers all of the powers of the Bridge Company to MSCC, including the levying of tolls, which could represent an 'agreement', so addressing the requirements of s.15 to allow for repair and maintenance, not by the Canal Company, but through the raising of toll revenue, although this part is contested in relation to the WHLB by the Councils and addressed below.

8.32. By this, I find that the 1890 Act confirmed the position of the 1863 Act. While this placed the cost of construction of a diversion of the road and bridge to accommodate navigation on the Company of Proprietors, and it is reasonable to assume, in absence of any evidence to the contrary, that this cost was within the original construction costs of the canal, ongoing maintenance of the diversion would remain to be funded by the toll. However, the 1890 Act went further in that it transferred all rights and powers to raise tolls for the purposes of repair and maintenance from the Bridge Company to the Canal Company, which had incorporated the Company of Proprietors. I would recommend that this legally allows for MSCC to collect tolls in relation to the Undertaking; the extent of those powers, I address below.

Propositions that tolls can be charged but should be less

8.33. While I note a range of objections to the proposed level of tolls set out in the proposed Scheme, the only substantive evidence before the Inquiry relates to the applicant's assessment of costs, based on fully funding repairs and ongoing maintenance and a reserve fund, and the position of the Council, that the WHLB is not self-financing and as a consequence, MSCC contributions should reduce the level of the toll. [6.46, 6.76]

8.34. While a lower toll, fixed at 20p or 25p as suggested by some would clearly have benefits for users, this is considerably below the anticipated, necessary longer-term costs set out, and in part agreed, by experts for the applicant and the Councils. On the basis that MSCC have been clear that they could not deliver the required improvements at such a toll level, and the Councils' figures would appear to support that, the implications of adopting such a lower amount can be equated to triggering the fallback options, which I address below.

8.35. Turning to the Councils' argument that MSCC should contribute part of the financing. They argue that tolls, as set out in the 1863 Act, were not solely for the construction and maintenance of the bridge but for all purposes of the Act, including, for example, compensation for the former ferry operations. In their view, it is therefore not explicit that the bridge needed to be self-financing and the absence of a clear requirement in the Act is indicative that it was not intended to be so. [4.11, 4.12, 4.13]

8.36. The Councils go further, suggesting that the merchants who formed the Bridge Company were to benefit economically and it was therefore

appropriate and understandable that they would also contribute to funding the bridge. [4.14]

- 8.37. In this context, the Councils argue that the introduction of the canal bisected the established road, and thus the link between Warburton and Rixton, which had been in use for a number of years. Authorisation for this was originally by the 1885 Act and subsequently by the 1890 Act, which the Councils argued only confers the levelling of tolls for the diversion of the road and not for the WHLB, for which the 1890 Act explicitly allowed the raising of funds to construct and maintain it. [4.22, 4.26]
- 8.38. This need for MSCC contributing to the WHLB they say, is confirmed in that there was no additional increase in the level of the tolls, something that would have been necessary in order to fund a considerably larger and more complex structure than that envisioned and delivered under the 1863 Act. [4.28]
- 8.39. The Councils argue that this statutory position is also supported by the factual circumstances since then. The finances of the Bridge over the years have not been clear<sup>63</sup>, but the Councils argue that MSCC accepts it has not been self-financing, nor is there evidence that they have sought to address a funding gap in the past through raising the toll level under the 1954 Act. [4.30, 4.31]
- 8.40. The WHLB, they say, was only necessary to serve the needs of the users of the canal and not the road, and it would be unreasonable to expect road users to finance the larger and more complex structure required, particularly as the maintenance needs of the WHLB have been known but not addressed for many years by MSCC, compounding the costs of the work now needed. [4.32–4.36]
- 8.41. The Councils concluded that MSCC should contribute 60% of the costs and have based their calculations of the appropriate toll levels on that. [4.39]
- 8.42. It is a fact that since the opening of the original bridge, around 1866, and the construction of the canal, between 1885 and its opening in 1894, there would have been a functional connection across the River Mersey at this point, the costs of which were to be addressed by tolls. The decision to divert the canal from the route of the Mersey here would have resulted in a new severance of this connection, which was to be addressed through construction of the WHLB. Consequently, it could be considered a relatively logical conclusion to suggest that, much as for other crossings required to allow the continuous provision of navigation along the canal, the WHLB should fall to MSCC to fund and maintain. However, before addressing whether the statutory position supports this, it is worth considering the other crossings of the canal.
- 8.43. The building of the canal severed both road and rail links and a number of fixed, swing and high-level bridges were required, as well as some ferry crossings<sup>64</sup>. It is reported that there are now 24 bridges over the canal of

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<sup>63</sup> Although some details of toll rates are set out in CD WMBC/1 3.2.17.

<sup>64</sup> A comprehensive review of the history of the canal's construction is available in CD APP/JB/02

which MSCC owns 9 and operates 3, with 15 in third party ownership, two of which are within the private sector. A number of objectors referred specifically to the cantilever bridge at Latchford, which they say has no tolls and no byelaws. Railway crossings were reported to have been transferred back to the ownership of the railway companies following completion of their construction. [3.78, 6.11, 6.31]

- 8.44. In general, therefore, the costs of other crossings are met by MSCC, or following their transfer or later construction, by public sector bodies or rail companies, with the other privately owned crossings being constructed after the canal itself was built. Other types of crossing, including the free Hulme Bridge ferry, are fully funded by MSCC, although the Thelwall Ferry, which now appears to operate on a reduced timetable, does attract a nominal toll charge. In terms of bridges, the WHLB and its approach road is the only one funded through tolls. [3.68, 3.78]
- 8.45. Nonetheless, the fact that other bridges were built and maintained by MSCC, does not, in any definitive way, suggest that the WHLB should be considered to be funded in the same way. Indeed, I have limited evidence on the history of ownership and maintenance payments on the range of crossing types from which to draw any particular conclusions, other than the circumstances pertaining at this crossing are different from those currently at other crossings of the canal. As I have set out above, the 1863 Act placed the capital cost for a diversion for navigation on the Company of Proprietors but future maintenance of the undertaking on the Bridge Company through the raising of tolls.
- 8.46. The argument that the toll levels should have been raised under the 1890 Act if it was to be self-financing due to additional scale and costs of the new crossing does not bear close scrutiny. The 1863 Act allowed for an alternative crossing, but this was to be provided at the cost of the Company of Proprietors. As such, the capital costs were not to be met by the toll, which was therefore to cover the ongoing maintenance of the undertaking, and while there may have been some differential in costs over the maintenance requirements of the original bridge, there is no compelling evidence to suggest that this was not considered acceptable in the decision maker's approach of retaining the same toll schedule. Furthermore, it is clear that, at the time, the maximum toll levels would represent a very significant cost if applied at that level initially. There was therefore some headroom to deal with potential additional costs, but also the inevitable increases expected in the cost of long-term maintenance. [3.45]
- 8.47. Turning then to the question of whether the WHLB can be considered as having support in the legislation and practice to be self-financing. e [3.29, 4.11, 4.14]
- 8.48. The applicant argues that the 1890 Act placed MSCC in precisely the same position as the Bridge Company as set out in the 1863 Act. In line with some of the arguments I have addressed regarding the proposition that there should be no tolls, the Councils argued that the 1890 Act does not provide for tolls to cover the full costs of the WHLB. In this, they note that the revised approach, which included abandoning the opening bridge under Works No 35, was to divert the road only between the Warrington to Manchester Road and the iron bridge. That the River Mersey bridge remained is not only evident

from contemporary accounts, but also the plans associated with the 1890 Act, reproduced in this Report in the introduction, and the remnants which survive today. The Councils argue that s.9 of that Act, which addressed the '*Rixton and Warburton Road*', has no reference to tolls being chargeable for crossing the bridge, or at least to fully funding the bridge. [3.48, 4.21, 4.22]

- 8.49. This they say, means that the tolls can be assigned for those parts of the Undertaking, which includes the original bridge and the diverted roads, but not in full for the addition element, which is the WHLB. [4.25]
- 8.50. I consider that this interpretation of the Acts aligns with the Councils' contention, which is clearly expressed in their Proofs of Evidence, that there is a shared benefit from the WHLB, whereas there was only one purpose to the River Mersey bridge, that of allowing trade by road across the river. Consequently, they consider that proportional costs of repair and maintenance should not only fall to the drivers that cross it, but to the navigation authority who charge for vessels to pass under it. I completely understand the desire for such logic to be applied here and it undoubtedly resonates with many who argued that there is a moral imperative that a company profiting from the navigational access the WHLB provides, should have some responsibility for the costs of maintaining it. Furthermore, this would align with the approach for other crossings where MSCC retain ownership. However, this moral argument cannot supplant what is set out in statute.
- 8.51. While interpreting the statute from over 130 years ago relies to some extent on assuming an understanding of what was in the mind of those who drew it up, one must consider the wording carefully. To that extent, I have reviewed all of the legal submissions made on the alternative interpretation of both the 1863 and the 1885/1890 Acts.
- 8.52. To my mind the 1863 Act is clear, that the bridge and roads which allowed crossing of the River Mersey were to be funded through tolls but were to be designed so as to accommodate alternative provision to allow for navigation, either along the River Mersey or some other diversion. The reality is that the 1885 and 1890 Acts did require a diversion to the alignment of the new canal. This included a necessary diversion of the line of the roads to allow for the new bridge, which was, after 1890, to be a fixed, cantilever bridge.
- 8.53. While much of the 1885 and 1890 Acts set out a model that raised fees and tolls for shipping, use of docks, quays and other routes to fund the canal works and bridge crossings, the funding for other works is addressed in s.15 of the 1890 Act. This sets out that all diverted roads and footpaths provided shall be repaired and maintained by the same Body or persons who maintained the existing road or footpath, but expressly provided that, unless otherwise agreed, bridges and immediate approaches would be repaired and maintained by the Canal Company. On strict reading this says that the Bridge Company would remain responsible for the diverted road, which s.6(A) identifies as being between the iron bridge and the Warrington to Manchester Road. S.9 confirms that levying of tolls can be made for the substituted stretch of the Rixton to Warburton Road, and this aligns with the expectations of the 1863 Act. The issue is whether there was an agreement otherwise

made to the duty placed on the Canal Company to maintain and repair the new WHLB, as set out in s.15.

- 8.54. While s.9 does not include reference to the Bridge, the diversion is either side of the canal and cannot function without its inclusion. The 1863 Act allows for the construction of the bridge under its own cost by the Canal Company, successors to the Company of Proprietors, but that the ongoing maintenance would be for the Bridge Company, for which the full transfer was made by the 1890 Act to the Canal Company, albeit not the debt associated with it. [3.46]
- 8.55. The fine margin of assessment therefore lies in whether the absence of a specific reference to the WHLB in the terms of s.9, the diversion of the Rixton and Warburtons Road for all purposes, is indicative that those who drew up the Act were seeking to exclude the Bridge from funding under the toll schedule set out in the 1863 Act. On the evidence before me, I consider that the lack of direct reference to the WHLB was not a deliberate measure to exclude it. The later Acts were clearly cognisant of the 1863 Act and the requirements of that as placed upon the Bridge Company, that is the ongoing responsibility for maintenance set out therein. In this, s.29 requires the Company of Proprietors to construct and have rights to maintain a Swivel or other opening bridge, provided that the *'Expense of working, maintaining, repairing and upholding the said swivel or other opening Bridge shall be borne, and paid by the Company hereby incorporated, or, as the Case may be, shall be refunded by them to the said Company of Proprietors.'*
- 8.56. The fact that the final design of the bridge, established by the 1890 Act was to be a cantilever one, should not alter a clear understanding of the responsibility for ongoing maintenance of a bridge constructed by MSCC as a diversion of the route to cross the River Mersey at this point. I would therefore recommend that the legal position is that the expectations of self-financing established in the 1863 Act were carried forward through the incorporation of the Company of Proprietors and the Bridge Company, as enabled by the 1885 and 1890 Acts, and that this includes the full undertaking, albeit with the roads diverted and the addition of the WHLB. I deal in the conclusion of this section with the implications of the alternative conclusion that MSCC should retain a funding responsibility for the WHLB.
- 8.57. Turning then to practice since the construction of the WHLB. MSCC themselves accept that they cannot demonstrate clear accounts for the Bridge beyond a period of approximately five years and refer to the period before 1993 and Peel Holdings/Ports ownership, when MSCC was owned by shareholders from Manchester City Council, as having no records. They suggest that the Bridge and toll collection is only a very small part of their operation and in absence of any legal obligation for them to do so, there is no separate disclosure of the Bridge's past financial performance in their annual accounts. [3.22, 4.30]
- 8.58. I note the frustrations of many interested parties over this and I also consider that this is a highly unsatisfactory position. While the collection of fees and charges for navigational purposes of the canal charged to shipping contributes to the wider maintenance of the canal and structures, as well as profit for the company within its private ownership, the collection of tolls here is solely for the reinvestment in the roads and bridges which make up the

Undertaking. To be unable to account for whether that money has been spent on that purpose has made assessment of reasonable toll levels, past performance and expectations of future requirements much harder.

- 8.59. However, the evidence provided by MSCC would suggest that they have in fact been subsidising the cost of toll collection even for the limited maintenance that has been carried out over the past few years, with income reported as approximately £891,940 and costs £1,144,345. This in part is due to the restrictions on income caused by the pandemic and incidents such as the toll booth arson, but it is suggested that it goes back for many more years. In fact, the Councils argue that the Undertaking has never been self-financing, a point accepted in oral evidence by MSCC. [4.30]
- 8.60. Prior to 1993 no evidence has been presented on either income or expenditure, although it would appear that there was quite significant bridge repairs carried out and the general consensus from local residents is that the surface condition of the road has deteriorated under the more recent maintenance regimes, suggesting that this could have been a higher priority in earlier regimes.
- 8.61. What would appear the most likely conclusion is that the Bridge and approach roads would have represented an overhead for MSCC, but not one that would rank highly against the overall management of the canal network. Nonetheless, tolls would have offset some of that cost, and it is probable that in the early years of any increase up to the maximum toll, those tolls in any one year may have been sufficient to cover costs. Even more recently, the figures from 2019 suggest that tolls could exceed costs.
- 8.62. However, since 2007, when the earliest bridge condition report was reported in evidence<sup>65</sup>, it is clear that the condition of the Bridge has deteriorated, and it also appears that the levels of maintenance have been in decline, albeit it appears that direct damage to cars from potholes has triggered some temporary patching and repair. Subsequent PBIs in 2011, 2016 and 2022 have reinforced this decline as the Bridge has gone from an overall condition report of 'fair' to 'poor' and the recommended preventative maintenance proposed has generally not been delivered. [3.204, 3.207, 4.35, 5.45]
- 8.63. MSCC report that it was those findings in 2016 that triggered their search for a 'sustainable investment plan' and a route to fund repairs, maintenance, a return on investment and a future transfer to the New Co<sup>66</sup>.
- 8.64. While the Councils point to this perceived past support from MSCC providing part funding for the undertaking as evidence that it should not be considered self-financing, MSCC argues that past activities and funding decisions were under different ownership and are irrelevant for the interpretation of the statutory position. [3.21]
- 8.65. While, on the basis of the evidence before this Inquiry, it cannot be clearly concluded on the level of funding support from MSCC prior to 2018, and particularly not prior to 1993, it is likely that the Bridge and approach

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<sup>65</sup> Cheshire County Council CD RWB/C7

<sup>66</sup> CD APP/WM/01 section 6

roads have, in particular when major works have been necessary, relied on funding from MSCC in addition to the amounts raised in tolls. In recent years this has inevitably been exacerbated by the cap on the toll level, based on the 1863 Act maximums; a level that is manifestly lower than the majority of similar tolled crossings in the UK<sup>67</sup>. MSCC argued that they did not pursue a toll increase under the 1954 Act as they were seeking a holistic solution to the wider problems on the Bridge, including the delays engendered by the manual toll collection which could not be resolved under that Act. [3.209]

8.66. It is unquestioningly true that had the recommended preventative maintenance measures been carried out when identified then the condition of the Bridge is likely to have been more favourable than it is currently. The estimate is that there are some £215,000 of additional costs as a result of this, possibly more, although MSCC argue that delays since 2016 have been unavoidable in their legitimate pursuit of a resolution to issues, and a small proportion of the additional funding they have had to put into the Bridge over the years. [3.211, 4.36].

#### Conclusions on part funding proposition and self-financing

8.67. While clearly unsatisfactory that MSCC have not maintained a strong performance in timely maintenance and repair of the roads, and this has undoubtedly led to significant inconvenience for users, this cannot be counted against them in the assessment of whether they are legitimate in seeking a more equitable funding scheme and improvements for users as well as a way forward for their long-term maintenance of the Undertaking.

8.68. With the cap on tolls and the age of the infrastructure it is clear to me that the status quo cannot continue. Irrespective of the desire to change toll collection methodology or ownership, the costs of maintaining the Bridge and repairing the roads realistically must outstrip the value of tolls, whose maximum level was set 160 years ago. While custom and practice during the public ownership period of MSCC may have allowed for an ebb and flow in costs versus income for the tolls, on my review of the legislation, MSCC are entitled to seek toll funding to maintain the whole of the Undertaking, and it is legitimate for them to seek a procedure to achieve that.

8.69. This is based on my recommendation above that the statutory position allows MSCC to recover the full costs of the Undertaking. The Councils' argument remains that MSCC should pay towards maintenance costs of the bridge at 60%, but it is unclear, even when under direct questioning, as to where this figure came from. While this informed the funding calculations put forward by the Councils, the implications of a finding that MSCC do have some funding responsibility for the WHLB relates most directly to the application of the TWA 1992.

8.70. I therefore turn now to the additional issue of the implications as regards the TWA 1992 and the matter of whether the proposed transfer is an appropriate component of the Scheme.

#### **Implications of s.3(2) Transport and Works Act**

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<sup>67</sup> CD TC/1.2 Table 1

- 8.71. A comprehensive review of alternative legislative options and justification for the use of the TWA 1992 was set out in a Note<sup>68</sup> by the applicant, which concluded that the TWA 1992 was the only consenting route which allowed for both a raising in tolls and delivery of other aspects of the scheme, including free-flow toll collection. Nonetheless, the Councils question whether the legitimate objectives of the Scheme could be achieved by way of an HRO if the transfer of the Undertaking is not considered acceptable, and the primary objective could therefore be delivered by way of an Order under the 1964 Act. [4.70-4.77]
- 8.72. This is a critical point as, set out in the preamble to the proposed Order, is the statement:
- "The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964"*
- 8.73. This derives from s.3(2) of the TWA 1992, which precludes the Secretary of State from making an Order in such circumstances. However, the applicant argues that the MMO has already confirmed that the Scheme could not be achieved through the 1964 Act route, as the primary object of transferring the Undertaking was not considered consistent with the Act. Furthermore, it was argued that there is doubt that the lands comprised in the Bridge Undertaking can be considered as being within the harbour and therefore able to be consented under that Act. [3.102-3.108]
- 8.74. The 1885 Act was for '*making the River Mersey and Irwell navigable from Liverpool to Manchester*'. It established the MSCC and its responsibilities, including that '*all channels, canals, docks and works of the Company within these limits shall be and are hereby constituted the Harbour...and the Company shall be the Harbour Authority...*'. In the interpretation part of that Act, individual definitions are set out for the canal, quays and the various docks, but also for the '*works*' which are, although some elements are obscured in the copy of the Act provided in evidence, '*all lands navigations docks quays depots cuts channels graving docks...warehouses sheds buildings erection tramways...*'
- 8.75. The works are further defined in Part IV as being those shown on the deposited plans, which include a number of roads and bridges, specifically works No 35, an opening bridge, to carry the Rixton and Warburton Road. The later 1890 Act abandoned the construction of the opening bridge under works No 35, incorporated the Rixton and Warburton Bridge Company under the 1863 and 1867 Acts and authorised the Company to divert the road and construct a fixed bridge. It further expressly states that the Undertaking was to be transferred from the Bridge Company to the Company, MSCC.
- 8.76. To my mind, it is clear that the '*Harbour*', in terms of the 1885 Act that sets out the responsibilities for the Harbour Authority, is made up of considerably more elements than just the canal itself or associated docks and quays, albeit the applicant argues that the original bridge and parts of the approach roads were not built by MSCC as part of the canal. [3.106, 3.107]

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<sup>68</sup> APP/WM/02 Page 12 on- Note entitled Justification for Using Transport and Works Act Regime.

- 8.77. However, here it would appear that the entire Undertaking, including the roads, original bridge and the WHLB, was transferred to MSCC as the Harbour Authority and is a component of the 'works' that are defined as the Harbour. That they were not originally built by MSCC would not affect the extent of land transferred to them and no evidence has been put that the 1885 or 1890 Acts excludes some parts of the works from the Harbour because they are not directly associated with the activity of shipping.
- 8.78. The 1964 Act carries its own definitions of harbour and harbour lands, which would appear to link activities on those lands more directly with the operation of the harbour and its purpose of shipping and/or navigation. There is therefore a requirement to consider whether the 1964 Act can only be applied to lands which accord with its definition or to lands that are defined in other Acts as being part of a harbour.
- 8.79. In the 1964 Act 'harbour land' means land adjacent to the harbour, which could apply to the road and bridges, but also that are '*occupied wholly or mainly for the purposes of activities there carried on.*' This second part could be considered as suggesting that infrastructure providing for the public to cross the canal is not for the purpose of activities within the harbour and does not therefore fall within that definition, albeit it does reflect that Harbour Authorities exercise their functions over land as well as the waters of a harbour.
- 8.80. However, it is not clear that this interpretation can alter that defined in earlier Acts. In defining the Harbour Authority, the 1964 Act interpretation clearly refers to persons vested under the 1964 Act or other Acts or instruments. The applicant themselves, in their earlier Note justifying the use of the TWAO procedure, accepted that the bridge, presumably the WHLB, was arguably part of the harbour limits. In my own view, I would agree that that would be so, it is clearly an element not only expressly included as works under the 1885 Act but also an important element of facilitating and maintaining navigation along the canal. The question is whether the approach roads on which the toll is raised are also part of the harbour.
- 8.81. The 1964 Act clearly defers to earlier authorities on the establishment of the Harbour Authority, in this case, I prefer the Councils' findings that this applies to definition of the harbour also and consider that the approach roads, original bridge and the WHLB are all part of the harbour and the responsibility of the MSCC as Harbour Authority. This does not mean that MSCC are, as a consequence, financially responsible for the maintenance of the Bridge and roads, but that an HRO under the 1964 Act could be applied to works affecting them.
- 8.82. However, it is not clear that this matter was considered by the MMO when in discussion with the applicant over the use of the 1964 Act. In the earlier Note, it is reported that the MMO considered that the applicant's objective of transferring the Undertaking to a separate company did not fit with the remit of the 1964 Act. This referred to *R (Humber Oil Terminals) v Marine Management Organization* [2012] EWHC 3058 (Humber Oil), which, if simply put, is reported as finding that the part transfer of the harbour would not be consistent with the 1964 Act. I have no evidence to suggest that such circumstances would not apply here. That is not to say that subdivision of

harbour lands is necessarily precluded, but that it cannot be achieved through an HRO under the 1964 Act.

- 8.83. Consequently, the question of whether the 1964 Act could be used, in which case an Order under the TWA 1992 could not, rests on whether the transfer of the Undertaking to the New Co is a primary objective of, and a legitimate part of the proposal. It is strongly resisted by the Councils and others.
- 8.84. A number of 'benefits' of the transfer were set out by the applicant and summarised in the closing statements. However, on direct questioning of witnesses during the Inquiry, it would appear that there were two primary elements that MSCC felt would be gained by a transfer, that of financial transparency and independent strategic management. This is in marked contrast to the Councils' position that there are clear disadvantages, and notable concerns from local residents and others that the transfer would lead to the Bridge being sold for profit and the costs being transferred to those using it. [3.66, 3.69, 4.49, 4.50, 4.51, 5.31, 5.32, 5.33, 6.28, 6.50]
- 8.85. That only a separate New Co could report independently and transparently on the costs and income associated with the Bridge, as opposed to the current situation, was challenged. It was, in fact, accepted by MSCC that there could be a small company exemption which could mean that even the New Co would not have to report, and modifications are proposed to the Order to address that. The question of whether this is a benefit rests in part on whether it could be secured in any case. MSCC suggest that it is a minor part of their finances, and they would not wish to set a precedent of reporting independently on this Scheme when they do not do so on their wider business. [3.65, 3.68, 5.33]
- 8.86. However, to properly account for a self-financing operation it must surely be for MSCC to show that the money raised through the tolls is spent directly and only on the operation, repair and maintenance of the Undertaking, albeit that may be through financing the debt in raising capital to repair the Bridge and implement the Scheme. Consequently, while transparency in the funding of the Undertaking is necessary, I do not consider that this can only be achieved through the transfer of the Undertaking, and it is not necessarily a benefit.
- 8.87. In terms of independent strategic management, despite initial claims that the New Co would be better able to raise debt finance, this was conceded as not a true benefit. However, MSCC argue that their existing directors have a duty under s172 of the Companies Act 2006, to seek the success of the wider business interests, which may not align with the much smaller scale interests of the Undertaking. Establishing the New Co, albeit with the same directors, would, the applicant argues, transfer that duty specifically to consider the best interests of the Undertaking independently. [3.74, 3.69, 3.70, 4.54, 5.32]
- 8.88. It seems somewhat illogical that the current directors of MSCC could operate in such a way that decisions taken elsewhere within the business could disadvantage the Undertaking, which is after all to be directly and independently supported by tolls. The implication is that this could result in active decision taking that would not support the maintenance of the integrity of the Bridge, for example, which could directly affect navigation along the

canal. The corollary is that the same directors would not do so if operating as a separate Undertaking, in a case where some form of agreement would be needed to ensure that navigation is maintained, as MSCC highlight is in place for the bridges currently in third party ownership. I do not consider that the applicant has made this out as a true advantage of a transfer. [3.78]

- 8.89. There were two other advantages referred to. These were in providing comparisons with the performance of other bridges, an advantage that has no substantive benefits were proper records to be kept of toll collection and costs, and ringfencing the Bridge Undertaking from liabilities associated with MSCC. As was pointed out many times, MSCC is a much larger concern than the Bridge Undertaking, which is considered to be 'largely inconsequential' in the context of MSCC's overall assets and revenue; such a circumstance must, therefore, be considered extremely unlikely. In fact, the Councils argue that the risk could be considered to be greater for an independent bridge company. Although the Scheme presented through the Order is seeking to make the Bridge entirely self-financing with a robust long-term approach to funding, a company whose sole assets are a bridge and roads, which require continual maintenance, may not be well-placed to weather economic storms in the same way as the larger MSCC group, or indeed Peel Ports. [3.66, 3.69, 3.81, 4.51]
- 8.90. A further concern of interested parties is that the separation of the New Co would be a prelude to selling off the Bridge as a profitable business for others to exploit to the detriment of local residents, in terms of increased tolls. I can understand the concern but consider that safeguards within proposed modifications to the Order to restrict the sale of the New Co without express consent of the Secretary of State, would address this concern. [3.76, 5.31]
- 8.91. I do not consider that the operation of the Bridge by a separate company, albeit one for whom the directors and all shares would be retained by MSCC, would represent a particular risk in terms of insolvency or risks in terms of perverse decision taking to put the navigation of the canal at risk. However, nor do I consider that any particular benefits have been successfully made out for such a transfer. While there may be some management benefits, MSCC refer to the differences between this and their core business, and potentially internal accountancy benefits to MSCC, that is not before the Inquiry. Overall, I consider that the transfer would be a neutral element of the Scheme.
- 8.92. Nonetheless, even as a neutral element, it is not precluded and clearly one of the primary objectives of the scheme for MSCC. As such it could not be addressed through the 1964 Act. Before concluding on whether the requirements set out by s.3(2) of the TWA 1992 would be met, it is necessary to address the Councils' argument that the circumstances that would preclude the use of the 1964 Act, that of separating part of the harbour from the control of the harbour authority, can legitimately be sought under other legislation, in this case the TWA 1992. [4.44]
- 8.93. This matter, raised in the Councils' closing submission, was not addressed in detail at the Inquiry. Nonetheless, the question arises whether the preclusion of a transfer of part of the harbour under the 1964 Act, as set out in Humber Oil, is a definitive and sole expression of parliamentary

intention on such matters. To be so, I would suggest that the TWA 1992 could not deal with matters in relation to a harbour, which is not the case. Although s.3(1)(a) deals specifically with inland waterways, which is accepted cannot be relevant in this case as these exclude those managed by a harbour authority, s.3(1)(b) allows for works which interfere with rights of navigation, including ancillary activities. In terms of understanding what such works may be, the 1992 Order includes bridges, and the TWA 1992 allows for Orders, amongst other matters, to modify any statutory provision and make such amendments, repeals and revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient.

8.94. The question is whether what is accepted as necessary repair works to the Bridge and its approach roads are works which interfere with navigation or are ancillary to such works. The Undertaking has inextricably linked the Bridge, approach roads and the canal together, navigation within the newly constructed canal in the late C19 would not have been possible without bridges to maintain the existing links. Failure to maintain the Bridge would eventually and unavoidably lead to loss of integrity and loss of structure which would not only prevent transport over the canal but the risk of significant effects on navigation along it, were the air-draught to be compromised, for example, or debris obstruct the route. That such activities are part of s.3 is established in Schedule 1 of the TWA 1992.

#### Conclusions on s3(2) of the TWA 1992

8.95. The Scheme proposes an Order which would establish, via an increase in the toll levels, a mechanism to fund works to enable continued navigation and enhance the crossing of the canal by other users. On the evidence before me I consider that these are matters than fall under the remit of the TWA 1992. The transfer to a separate company, and not one that is an existing harbour authority, which would not be deliverable under the 1964 Act, is nonetheless addressed also in Schedule 1(15) which includes the transfer, leasing, discontinuance and revival of undertakings.

8.96. The Proposed Order, Article 11, retains the powers for MSCC to protect the operation, navigation and use of the canal and the rights, powers and duties of the harbour master. On that basis, I recommend the transfer of part of an undertaking that interferes with navigation is permissible under the TWA 1992.

8.97. However, as set out above, and notwithstanding my recommendations, if the Secretary of State considers that the WHLB is not self-financing, then the transfer of the Undertaking is not possible. Furthermore, if he disagrees with my recommendation on whether the transfer can legitimately be made under the TWA 1992, then the transfer sought would also not be possible. In such circumstances, it has not been shown that the primary aims and objectives of the scheme, absent the transfer, could not be achieved under the 1964 Act. In both circumstances, the Order should not be made. I turn then to the SoM.

## Statement of Matters

### **1. The aims and objectives of, and the need for, the proposed Rixton & Warburton Bridge improvements (“the scheme”).**

8.98. This matter has been dealt with in the evidence and within my introduction to the recommendations. [3.9, 3.13, 3.14, 3.15, 4.3, 8.3-8.6]

### **2. Whether all statutory procedural requirements have been complied with.**

8.99. This is addressed in Section 1 above, and specifically, paragraph 1.14-1.19. The conclusion is that all statutory requirements were complied with.

### **3. The statutory power within the TWA 1992 to enable the proposal sought under this application, and to allow for an increase in the tolls.**

8.100. I have addressed matters related to whether the 1964 Act represented a potential consenting option in relation to s.3(2) of the TWA 1992 above, and whether the part division of a harbour under the 1964 Act applied to all such proposals. However, the initial challenges made, and linked to this SoM, were in relation to the use of the TWA 1992 to achieve the various objectives sought under this Scheme.

8.101. In considering whether the TWA 1992 is the appropriate consenting route to achieve the applicant’s proposals, MSCC initially addressed this matter in their Note. While this accepted that the 1954 Act could be used to raise the tolls, promoted by some objectors as the most appropriate route and the mechanism employed by other private toll bridges in recent years, it concluded that this Act could not address other elements of the Scheme including the introduction of free-flow technology, and associated enforcement powers, as well as the transfer of the Undertaking.

8.102. Consequently, the Note confirms that the applicant then sought the advice of the MMO for use of an HRO. In this case, it states that the proposal to transfer the Undertaking, which would represent the transfer of part of the harbour to a separate entity, would not be consistent with that Act; this matter is addressed above.

8.103. The Note then confirms that the applicant sought authorisation under Section 3 of the TWA 1992. Although the Note found that the Scheme would fall within s3(1)(a) and s.3(1)(b), it was subsequently accepted by MSCC that they cannot rely on s.3(1)(a) as this is part of an inland waterway managed by a Harbour Authority and would be excluded. [3.92, 4.46]

8.104. Nonetheless, the applicant continues to rely on the TWAO procedure as the appropriate consenting route specifically under s3(1)(b):

#### *3. Orders as to inland waterways etc.*

*(1) The Secretary of State may make an order relating to, or to matters ancillary to—*

*(a) the construction or operation of an inland waterway in England and Wales;*

*(b) the carrying out of works which—*

*(i) interfere with rights of navigation in waters within or adjacent to England and Wales, up to the seaward limits of the territorial sea, and*

*(ii) are of a description prescribed by order made under section 4 below.*

8.105. Such an Order may make provisions under the powers set out, amongst others, in s5(1), s5(3) and s5(4), which allow for the provisions set out in the TWA 1992 and any required amendments, repeals or revocations to existing statutory provisions, meaning of an Act of Parliament or of an instrument made under such. [3.89]

8.106. Although objectors had suggested that the TWA 1992 did not cover works to bridges, such works are included on the accompanying 1992 Order. The Note also refers to other bridges so authorised under the TWA 1992, including the Mersey Gateway. [3.88]

8.107. Similarly, some objectors question whether the TWA 1992 allowed for the power to make byelaws and their use and enforcement by an organisation other than a local authority. It is clear that this is also set out within the TWA 1992, which expressly allows for the making of byelaws by 'any person', as well as their enforcement<sup>69</sup>. [3.98, 3.99]

8.108. While there are other concerns regarding the proposed byelaws, which I address below, I would recommend that they are accepted as falling within the scope of an Order made under the TWA 1992.

8.109. Although it was noted in earlier objections that it was not considered that there was a power to charge tolls within the TWA 1992, there has been no challenge to this from the Councils and no further substantive evidence presented at the Inquiry. It can be noted that the list of matters for which provision can be made also includes the charging of tolls<sup>70</sup>. Accordingly, I would recommend that the TWA procedure can also allow for the charging of tolls [3.88, 3.94]

#### **4. The likely impact of the provisions in the TWA, including the increase in the toll and any other impacts on existing users, local communities and businesses.**

##### Impacts

8.110. Significant testimony and evidence was given to the Inquiry in relation to the financial pressures currently experienced by residents who consider that they are reliant on the Bridge for personal, business, health and other commitments, and the consequential impacts of an increase in the toll. The applicant accepts that an increase in the toll would have impacts on those using the Bridge but argue that there would also be significant benefits, not just in terms of improved access and securing of the long-term condition of the Bridge but in the use of free-flow toll collection leading to a reduction in the queues associated with the Bridge currently. [3.110, 3.111, 4.63, 5.4, 6.29, 6.4, 6.42, 6.48, 6.53, 6.60, 6.61, 6.63, 6.65, 6.75, 6.76, 6.88, 6.89, 6.95]

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<sup>69</sup> TWA 1992 Schedule 1 paragraph 13

<sup>70</sup> TWA 1992 Schedule 1 paragraph 12.

- 8.111. To understand the financial element of that impact it is necessary to consider the current and future proposed positions. Currently, when the toll is collected, it is 12p per crossing with a maximum daily charge of 25p equivalent to two crossings. An annual discounted pass is available at £42. The proposed maximum toll would be £1 to include VAT, again with a maximum charge of £2, equivalent to two crossings. In addition, the Order would allow for an increase in the maximum toll by CPI -1%. I deal with the appropriateness of this figure below, but it is important to state that this level is that calculated as required by the business case as a maximum. Significant variables remain such as construction costs, operating costs, including that of toll collection systems, elasticity, that is drivers choosing to use alternative, longer routes, or not traveling at all, and even traffic levels. As these cannot be fixed, the maximum level, or headline toll, is to allow for some flexibility, including the building up of a reserve fund to meet significant future capital costs, including bridge replacement. While I note the interested parties' scepticism that anything other than the full allowable toll will be charged, this is accounted for in the Proposed Order through annual price reviews. However, I do accept that a level of around 80p is likely to be the minimum, based on the current revenue projections. [3.58]
- 8.112. This headline figure of an increase from 12p to £1 is unquestioningly a very significant increase when viewed in that light; the Councils presented uncontested evidence for regular, daily and occasional users, that at the maximum level, and not including the local discount, the toll would account for some 0.6–2% of average salaries<sup>71</sup>. It is understandable that local residents would view such a change as a very significant impact on their finances, especially where they are required to cross many times a week. [6.42, 6.56, 6.65, 6.76, 6.89, 6.95]
- 8.113. However, it must be noted that this headline rate would align with the top rate of a number of private bridge tolls on minor roads, the assessment of which clearly shows that at 12p, the costs have been very low for many years. It also has to be considered that the Scheme includes a local discount, which is reported to not be available at other similar bridges, although are on some of the major bridge crossings, such as the Tamar Bridge. This is proposed at 50% of the headline toll.
- 8.114. Additionally, while the toll increase will have a direct effect on the costs for businesses who require access across the Bridge on a regular basis, the proposed toll collection would provide the opportunity to claim back VAT, reducing the level of impact to an extent. Furthermore, the Order confirms that if made, there would be no tolls during the period of works and until the new free-flow collection system is in place. This would represent potentially a period of many months when, subject to works, the crossing would not be charged for. While this would clearly not make up for the substantial, proposed increase, it would allow for some savings during the period of any disruption that may arise.
- 8.115. It is important to record that the Councils, following a detailed appraisal of the proposed costs and benefits of the Scheme, and accepting that they do not fully agree with the MSCC business case, nonetheless found that a level

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<sup>71</sup> CD TC1.1

of 75p, discount rate 25p<sup>72</sup>, was acceptable with, what they describe as, an equitable contribution from MSCC.

#### Fallback

- 8.116. Against the proposed increase in costs, it is also necessary to consider the fallback implications of not implementing a scheme to holistically address funding, repairs and enhanced toll collection. I am satisfied that MSCC do not intend to continue to support funding of repairs and maintenance of the Bridge and roads from funding outside of the toll. While this may seem perverse if such actions result in risk to navigation, the evidence presented would suggest that MSCC consider they are legitimately able to continue to collect tolls to deliver this work, but that at the current rate they cannot achieve the fundamental repairs and enhancements needed. [3.5, 3.15, 3.17, 5.49]
- 8.117. In such circumstances, and without an increased level of funding, the continued deterioration of the Bridge and roads could lead to restrictions, either to weight limits or to single file traffic, as required recently, which could only exacerbate the very real disruption and delay experienced in the local area. This would lead to delays in crossing times and even, in time, to closure of the Bridge. [3.219, 3.220]
- 8.118. The alternative would be to seek a toll increase under the 1954 Act, reported by MSCC to be in the order of 76p without any local discounting possible and without any bridge enhancements or improved toll collection. This would clearly represent a significant increase in costs generally for all users, although potentially not as much as that under the proposed headline rate, and for local residents eligible for a discount under the Scheme, one in excess of that offered by the proposals, but without the associated benefits. [3.210, 3.222]

#### Conclusions

- 8.119. In conclusion, the Order would allow for transparency in the finances of the Undertaking, which could allow for lower levels than the headline toll to be set. Nonetheless, there would be significant additional financial burdens on users over the admittedly, very low toll rate, currently being charged. This can be set against the benefits in terms of queueing and disruption and improved conditions as well as the disadvantages of the alternative fallback options. Overall, I would recommend that there would be impacts but that these should be considered necessary subject to a robust application of the Order requirement on toll setting, discounts and financial reporting.

### **5. The adequacy of the proposed discount scheme for local residents.**

- 8.120. A key component of considering whether the proposed, significant increase in tolls is acceptable is the local discounts. This should be for those who use and rely on the Bridge crossing most and should address the fact that there some high levels of social deprivation in the areas surrounding the crossing. These discounts would be set out in the Order and would apply to

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<sup>72</sup> In their Proofs of Evidence this figure was 70p and 20p, but the higher level was conceded in oral evidence.

the postcode areas of WA3 6, WA13 9 and M31 4. These areas include Rixton and Warburton, parts of Lymm and Partington, the latter being added by MSCC in response to substantive evidence from the Councils and others on the levels of deprivation in that area and the likely need for use of the Bridge. [3.125, 3.157, 4.68, 6.93, 6.95]

- 8.121. The Councils and others argue that other areas should be included within the local discount, notable WA13 0, WA3 4, WA3 5, WA3 7. However, this is challenged by the applicant who considered that such areas have equal access to alternative routes and the increased number of residents paying the lower toll level would compromise the business case to the extent that the toll would have to increase overall. [3.151. 4.69. 6.77]
- 8.122. The Councils' extension of the postcode areas would self-evidently be welcomed by people living there. However, at distances of up to 8 miles from the Bridge, and with alternative routes available, the necessary extension of the number of eligible people, in comparison to the overall headline toll rate, has not, to my mind, been demonstrated. Put simply, the wider the net is thrown for local discounts, the higher the headline toll must be to ensure income levels meet the financial demands of the Scheme.
- 8.123. The postcode approach is probably the most practical one to such discounting, albeit it can result in some anomalies in terms of distances from the crossing. The use of set distances, as advocated by some objectors, would, in my view, be very hard to administer and would not necessarily reflect the realities in terms of relative ease of access to alternative, un-tolled routes. [3.162, 3.165]
- 8.124. Any substantive increase in the number of residents captured by the discounting, or indeed any change to the level of discount, for example to the 33% or more advocated by the Councils, must directly affect the overall income and consequently, the necessary headline toll rate as well as the discounted rate. [3.161]
- 8.125. On the basis of the evidence put to the Inquiry, I would recommend that the provision of a local discount is a positive measure to limit the extent of impacts on local residents. I would further recommend that the proposed postcode approach is reasonable, and the extent represents the most appropriate balance between the overall toll level and support for those most reliant on the crossing.

## **6. Impact of increase in the toll on alternative routes including air quality and traffic congestion.**

- 8.126. While there were some significant concerns expressed regarding the air quality impacts of queueing traffic associated with the existing toll collection, the additional costs of tolls can be considered to result in some vehicles choosing alternative routes and actively diverting away from the Bridge. In some cases, these diversions would also represent longer routes than available via the Bridge and result in associated additional emissions. What is generally agreed is that the free-flow tolling approach would address much of the congestion and disruption caused by manual collection currently. No substantive evidence was put forward to suggest that the diversion of some traffic as a result of the toll increase would lead to traffic congestion on the

wider network, although I have noted the concerns that some of the alternative routes are narrow, country roads.

- 8.127. The extent of such diversion or elasticity was contested between the main parties, although both accepted that it was inherently uncertain and a matter of judgement. The Councils argued that MSCC's case overestimated the level of diversion and consequently suppressed the level of income associate with the tolls. [3.190, 4.60]
- 8.128. In terms of actual figures, MSCC's evidence was from a well-qualified and experienced transport planner who has worked on tolled roads and crossings and indicated that empirical evidence ranged from overall increases in traffic to as much as a 50% decrease as a result of an increased toll. Their base case was for a 23% diversion, while the Councils suggested that this should be nearer 10%. I deal with the implications for toll levels below, but in terms of air quality, the applicant commissioned an Air Quality Assessment<sup>73</sup> based on the higher figure, and consequently a worst-case scenario. Not unreasonably, this allocated a 50% split to diverted traffic on routes to the M6 and M60 crossings either side of the canal. It concluded that there would be minor, but negligible changes in air quality along those routes. It also assessed the benefits from the removal of queues on roads approaching the bridge and found a positive air quality improvement, which would outweigh the minor negative impacts of diversion. [3.51, 3.167]
- 8.129. I see no reason to question these conclusions, which appear to be a logical outcome of the enhanced, free-flow tolling proposed. These findings were also not challenged by the highway authorities, who have played an active role in this Inquiry, nor did they suggest that there would be additional congestion elsewhere. While I note an interested party raised concerns regarding the increased use of the Bridge by HGVs under the proposal, such a change would not lead me to change my conclusion overall that the effect of the increased tolls on traffic and air quality would be, on its worst case, neutral. [6.51]

## **7. Any other matters which may be raised at the Inquiry which may be important and relevant to the Secretary of State's decision.**

### Toll Levels

- 8.130. I have addressed in the assessment of propositions above, the matter over whether it is reasonable to have any toll, or a continuation of very low toll rates. However, despite a significant narrowing in the differences between the main parties on the reasonable level of toll<sup>74</sup>, the Councils and the applicant remain at odds over three elements used in the modelling to assess this, as well as the application of indexation. These matters are traffic levels, elasticity/diversion of traffic and the cost of capital. [3.176, 4.58]
- 8.131. In terms of traffic flows, the Councils argue that they have, or will shortly return to pre-pandemic levels, and the use of a 10% reduction from 2019 levels would be excessive and suppress the level of income. [4.59]

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<sup>73</sup> CD APP/WM/03 p86

<sup>74</sup> ID INQ5

- 8.132. Notwithstanding the Councils submission of TFGM traffic flows for a particular period that suggested that traffic flows were equivalent to pre-pandemic conditions, I consider this was only a snapshot of a period of flows potentially influenced by other factors. Currently, either as a result of changed travel priorities following the pandemic or the acknowledged increase in homeworking, I am satisfied that the national trend generally still shows a decline in traffic flows. Whether, or how long it will take for traffic flows to fully return to pre-pandemic levels, or even to resume the general upward trend that was present then, is a matter of judgement. [3.181]
- 8.133. While it is noted that there are proposals for housing development in the surrounding area, which may result in increased flows, these await the process of adoption of the Local Plan, and subsequent development. Furthermore, it is not clear that the location of the housing proposed is fixed to the extent that it could be assessed that it would directly result in increased use of the Bridge, or the requirement for additional cross canal connections. At this stage I consider these projected increases are insufficiently evidenced to alter the proposed traffic flows, and if realised could result in increased revenue. [3.214, 3.215, 6.19]
- 8.134. I therefore consider it reasonable to use a 10% reduction, especially as the Order allows for an annual review of the toll levels, which, if revenue is increased by increased traffic flows, could reflect that in lower toll costs.
- 8.135. Turning to elasticity, as set out above, this is inherently uncertain. Local drivers may initially react to the large, proposed increases by choosing alternative, longer routes which may even, in terms of time taken, be more costly. Others may revert to using the crossing in time and it is possible that, as the Councils argue, the savings in time as a result of the free-flow tolling may encourage continued use of the crossing.
- 8.136. The applicant's diversion rate of 23% was based on some empirical evidence and the judgement of their transport witness. The Councils' witness, similarly experienced in transport planning but with more limited experience of tolled routes, argued that the benefits of improved crossing times would dilute the level of diversion and proposed an 'arc of elasticity' approach, finding levels of between around 7 and 10%<sup>75</sup>.
- 8.137. This is essentially a matter of judgement, although on reviewing the Councils' approach, it would appear that the arc of elasticity approach is more suited to lower toll rate changes and less sensitive to large increases, for example, a doubling of the rate from £1 to £2 would appear to result in very limited change in behaviour. On balance, I consider that the 23% proposed is a precautionary figure and may be reflected in the very high local perception and dissatisfaction over the proposed toll increase, which may drive higher levels of diversion initially. With dynamic annual pricing possible as a result of the Order, and encouraging use of the Bridge very much a positive expectation of the applicant to maximise funding, any additional income as a result of lower diversion rates could be reflected in the annual toll charge. [3.56, 3.57, 3.187]

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<sup>75</sup> See CD WMBC/1 and rebuttal response CD APP/GR/R01

- 8.138. Turning to cost of capital, the business case used a level of 10%. On review, the Councils argue that this would be excessive and that a rate of 7% is more reflective of the status and credit rating of Peel Ports. While a number of reports were referred to, as well as past borrowing levels, these indicated a wide range of rates, depending, in part, on both the blended costs of debt and equity and the level of gilt yields, although these did include a report that considered toll roads specifically, which concluded a level of 9 to 12%<sup>76</sup>, albeit based on equity funding. [3.194, 4.61]
- 8.139. The applicant argued that historically low interest rates over the past few years have allowed for a low cost of debt, but that the environment is changing and there can be no certainty in the rates available going forward. [3.193]
- 8.140. Nonetheless, there was some clear evidence put forward that Peel Ports, who would finance the equity in this Scheme, have had access to capital at lower rates than reflected in the business case. However, while the application of a lower rate would result in the outturn of a slightly lower headline toll rate, this would clearly introduce risks of a deficit affecting returns and the reserve fund, and potentially leading to further applications to increase the toll rate later were market conditions to be unfavourable. [3.197]
- 8.141. Although it was generally agreed that over time there would be a positive return to lower levels of inflation and interest rates, the economic situation changed during the process of the application, and as reflected at the Inquiry, was significantly affected by external factors. That situation is not settling down and the market remains volatile with inflation remaining high. At present, this leads me to conclude that the more precautionary rate of 10% cost of capital is reasonable.
- 8.142. In terms of indexation, this would be a novel approach to a private, minor road, tolled crossing. The Order seeks a level of CPI -1%. Such a rate may reflect some past Government thinking on whether the approach to tolls properly reflects the cost pressures of inflation<sup>77</sup>, although such thinking has not translated into legislation. The Councils' concerns reflect those of interested parties who consider that wages do not often reflect inflation and an annual, automatic increase would represent further costs to users. [3.133, 4.66, 6.95]
- 8.143. The applicant refutes this, suggesting that the use of such indexation would, at worst, be neutral, and over time could be beneficial as the headline toll rate would always be 1% less than the other costs of goods and services. [3.131]
- 8.144. By contrast, other toll bridges, not indexed, must seek occasional toll rises under the 1954 Act to address the inevitable increase in costs associated with inflation. There are two points to consider, firstly, is it fair to allow for such an increase in the headline rate, noting that this does not necessarily reflect the toll charged in any year, and secondly, whether this would set some form of precedent.

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<sup>76</sup> CD APP/PB/02 para 4.16

<sup>77</sup> Department for Transport Consultation 2014 – CD APP/PB/03

- 8.145. At low levels of inflation, the lower than CPI rise would not reflect significant increases in the toll rate that could be charged. Over time it could lead to regular cost increases. At higher rates, the costs would be more noticeable, but these should be in line with those experienced by the operators of the Undertaking, and with the 1% discount would always be less than the overall cost of living. To that extent I consider it to be a fair approach.
- 8.146. Nonetheless, it is not one that can be applied under the normal procedures for seeking toll rate increases; the 1954 Act. However, the route for other operators to consider the introduction of a TWAO, as opposed to toll revision under the 1954 Act is not one that has typically been sought, potentially due to the increased costs and complexity. Furthermore, to my mind, there would have to be a justification for an operator to do so. Accordingly, I do not consider that this would set an unreasonable precedent.

#### Byelaws

- 8.147. In addition to the concerns regarding the inclusion of byelaws under the TWAO, addressed above, and despite the Councils' in principle acceptance, many local residents and MPs considered them to represent unnecessary levels of control. Examples were quoted of being penalised for needed to stop on the Bridge if someone was ill or had broken down. [6.12, 6.33, 6.46, 6.68, 6.78]
- 8.148. Some of the proposed byelaws are clearly necessary to ensure that, with the introduction of free-flow toll collection, the use of penalties for not paying can be enforced. [3.140]
- 8.149. Others deal with the actions of drivers on the Bridge to avoid disruption or delay. Despite the initial concerns over wider ranging proposals, for example playing of loud music, these have been removed in the modifications to the Order. I consider it necessary that there are some controls to allow the operator to ensure safe and efficient passage of both cars over the Bridge and ships passing beneath.
- 8.150. I consider that the proposed byelaws do not remove the rights of way for users across the Bridge. In reality, access across the Bridge for pedestrians is effectively restricted at present and for other users, including cyclists, the road layout, let alone the surface, is not conducive to safe or easy crossings. There is nothing in the byelaws that would restrict such access, other than in exceptional circumstances, and the enhancements proposed would improve such access significantly.
- 8.151. With the proposed modifications, I am satisfied that the Order would allow for a proportionate level of control through the use of byelaws and for appropriate powers of enforcement to regulate the toll, with all new or revised byelaws proposed remaining subject to Secretary of State approval.

#### Toll Collection

- 8.152. Notwithstanding the obvious benefits of free-flow technology and the use of ANPR, there were concerns over the potential for unfairness or difficulties associated with the system, and whether MSCC have the power to operate such as system.

- 8.153. With regard to fairness, there are risks of introducing such as system. Users unaware of the toll, and in circumstances of free-flow conditions absent any sort of barrier, could, notwithstanding the obvious requirement for clear signage, still not be aware that they should have paid a charge to cross the Bridge. Quite rightly this should be seen as being the responsibility of the driver and such systems are in force elsewhere on bridge crossings and in relation to zone charging in cities. However, the concern remained regarding unwitting errors resulting in increased costs for users.
- 8.154. It is relevant that there remains a 'digital deficit' for some users in terms of the accessibility to technology to register and pay online or through mobile phones. However, I accept that this deficit is, by necessity, narrowing over time and appreciate that the applicant has looked at other approaches to support toll collection. I also note that the applicant has investigated other technologies and approaches, including toll plazas and tags, but has had to discount them. While I note an interested party referred to such methods as providing very significant profits from penalty charges, I am satisfied that this is not the intent of the applicant. [5.4, 5.34]
- 8.155. The other concern raised is that MSCC do not have the powers to raise tolls or enforce them in the way that local authorities do through the Transport Act 2000<sup>78</sup>. This would include, it was argued, access to the Traffic Penalty Tribunal or the facilities of DVLA to get registered keeper information. [5.36, 5.37]
- 8.156. The applicant points to proposed Article 13 in the Order, which establishes MSCC as an authority to raise and enforce charges pursuant to s.173 of the 2000 Act. This, the applicant states, means that they can operate as if this was a Road Charging Scheme under Part 3 of that Act. [3.217]
- 8.157. The Order would therefore ensure that operation of the toll charging scheme would accord with the requirements of the 2000 Act, including in relation to enforcement and the opportunity for users to challenge or appeal such enforcement. Evidence was submitted to suggest that the operator of an ANPR system could be provided with data from the DVLA<sup>79</sup>. The disclosure of such information is generally made to local authorities or the police, but as the guidance indicates it can also be made to any person who can show, to the satisfaction of the Secretary of State, that they have reasonable cause.
- 8.158. I accept that this guidance does not include toll bridges, but this does not define it as a closed list and use for such purpose is not specifically excluded. Furthermore, the provision of such data is made elsewhere to private companies operating toll bridges, albeit that the example of the Mersey Gateway is of an operator acting for a local authority. Overall, I am satisfied that the applicant, or agents so identified under the Order, would be able to operate a free-flow toll system requiring ANPR, both for collection and enforcement of tolls and penalties.

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<sup>78</sup> ID INQ8

<sup>79</sup> APP/JM/R02

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## Conclusions on the Statement of Matters

- 8.159. I have shown above that, notwithstanding the very understandable concerns and challenges that have been raised to the approach presented by MSCC in their proposed scheme, it is a consequence of the history of the Undertaking and the Acts of Parliament underpinning it, that the initial 1863 proposal to fund the construction and maintenance of a road and bridge to improve trade across the River Mersey has now ended up the responsibility of a private company with much wider powers and responsibilities associated with navigation along the Manchester Ship Canal.
- 8.160. While originally it may have been a partly altruistic endeavour, the statutory position, considered in some depths in this Inquiry, allows for that private company to seek to fund the very necessary repairs now needed, and to seek enhancements, which are almost unanimously agreed by all to be necessary if tolls remain for this crossing. That this cannot be done within the envelope of charging allowed for in 1863 is inevitable.
- 8.161. It is clearly of interest to local residents, who have been frequent users of the Bridge and reliant on the access that it provides, to seek to minimise that increase. Indeed, it is also unsurprising, in light of the gradual removal of tolled roads and turnpikes through the 20<sup>th</sup> Century, that they would want an alternative outcome where the Undertaking would pass back to public control to be funded centrally, and many point to those lost turnpikes or even more recent changes, such as that at the Severn Bridge, in justification for that.
- 8.162. Similarly, the imposition of VAT on such bridge crossings does increase the overall costs to users and a number of arguments were made, from both the applicant and interested parties, that this is iniquitous and should be reviewed.
- 8.163. Nonetheless, and based on my recommendations above, this is not the statutory position in place now. The need to repair and enhance this crossing is imperative, the existing statutory position, while allowing for tolls, is out of date and unable to allow for the necessary work to be done. In absence of an alternative funding route, something that is outside of the remit of this Inquiry, then the TWA 1992 procedures represent a route to allow for the enhancements and an updating in the toll level sufficient to fund them. That an element of this includes a reasonable return to the company raising the finance and managing the Undertaking is also an inevitable consequence of the history of the Undertaking and resulting responsibilities vested in MSCC.
- 8.164. In this context, I have considered whether the legislation allows for the changes proposed, whether the TWA 1992 is the correct consenting route to implement the changes and the reasonableness of the toll increase. I have considered the implications for local residents, the benefit and extent of the local discount and the effects on the wider road network in terms of air quality.
- 8.165. I have therefore concluded that the Order, subject to the modifications proposed during the course of the Inquiry, would enable the necessary repairs and enhancement and would meet the aims and objectives of the Scheme.

## The Order

- 8.166. The original Order submitted with the application under the TWA 1992 procedures relied on a Deed of Obligation, a legal commitment made unilaterally, to ensure that the applicant would deliver on relevant commitments made as part of the enhancements. During the course of the Inquiry that approach was examined, and an alternative proposed that would ensure that all such commitments formed a part of the Order itself. The applicant has considered this approach and submitted a commentary on it<sup>80</sup>.
- 8.167. No substantive reasons have been put that the commitments originally established within the Deed of Obligation could not be effectively included within the Order, and on review of the final version, I would recommend that the Order be considered, inclusive of those commitments, as this would provide greater transparency and clarity as regards enforcement and modification.
- 8.168. In addition to this, a number of modifications were proposed in the run up to the Inquiry. Alongside the applicant's proposed Order, the Councils produced an Order reflecting their considerations that the Undertaking was not self-financing, that MSCC would make financial commitments to some aspects of the scheme and that consequently the headline toll and local discount elements would be different.
- 8.169. These versions were discussed at the Inquiry, following which a number of agreed modifications were suggested and the principal differences between the two main parties defined. On request, final versions of the Orders were submitted, which slightly modified those found within the Inquiry Documents. However, the logical outcome of the Councils' closing arguments that the transfer of the Undertaking would not be possible in circumstances where it was shown not to be self-financing, would mean that an Order could not be made that could otherwise be addressed under the 1964 Act, as set out above in my assessment of s3(2) of the TWA 1992. As such, the Councils' proposed Order would not be deliverable under the TWA 1992, and has not therefore been represented as an alternative in this Report.
- 8.170. Nonetheless, through discussions at the Inquiry and some negotiation on specific elements of the Order, a significant number of these matters were resolved, and a final version was supplied of the applicant's preferred Order. Some commentary and matters of disagreement remained with the Councils, on the basis of the Secretary of State accepting that the transfer could be part of the Order and that MSCC were not required to make contributions.
- 8.171. I have identified five matters where the main parties remain in disagreement over modifications to the Order.
- 8.172. In the interpretation section of the proposed Order, the Councils challenge the definition set out by the applicant in relation to 'concession agreement' considering it to be too widely defined. However, while I can understand their concerns, the power to enter into concession agreements, Article 10, remains governed by the agreement of the Secretary of State, subject to my comments below. In which case, I consider it acceptable to

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<sup>80</sup> ID INQ9

retain a wider definition in terms of the Order when the transfer of the Undertaking forms a part.

- 8.173. The Councils challenge the definition of the 'reserve fund', arguing that it should be exclusively for capital works, and not for operation of the Undertaking, although I note their original proposed changes referred to 'maintenance'. The applicant identified the reserve fund as being to insure against the cost of future bridge replacement, although in evidence the purpose of the fund was referred to as meeting future major works. [3.14]
- 8.174. I note arguments that a reserve fund is not appropriate, [5.42], although such approaches are allowed for in the 1954 Act and would be acceptable here. They are a sensible precaution in relation to large scale infrastructure projects, including toll bridges.
- 8.175. In the business case sensitivity assessments, it is clear that the reserve fund can be negatively impacted by some of the variables in future revenue or expenditure, and in fact, some show early negative levels, although in most, these recover over time. To my mind, this is logical, and while the reserve fund must be for major works, which although not defined as yet, may include bridge replacement, it must also support other major expenditure that would otherwise jeopardise the Undertaking or trigger significant toll change. As such the purpose of the reserve fund may not necessarily solely be capital expenditure but action to address the continued maintenance or operation of the Undertaking. In that, I find the interpretation set out by the applicant to be appropriate.
- 8.176. Part 3, Article 5(5) addresses the possible future transfer of the Undertaking and the Councils consider that it needs to explicitly include a requirement for the Secretary of State to take into account all material considerations and the view of the local authorities. This Article relates to the restriction on any subsequent change of control from the registered New Co to another body without Secretary of State oversight. While the terms of the proposed Order are relatively simple, they cannot be construed as anything other than the Secretary of State being able to establish the terms and conditions of any change.
- 8.177. While it could be assumed that the Secretary of State would take such matters and views into account as necessary, for clarity, and for reassurance that local interests will always be accounted for, I can see no reason why the Councils' proposed additional elements should not form part of this Article, and I have modified the Order below, referring to the local highway authorities as these are defined in the interpretation section, which I have revised to refer to Trafford Council.
- 8.178. Article 10(4) deals with the power to enter into concession agreements, lease or transfer the Undertaking. The Councils argue, that were the transfer to be accepted as part of the Order then, if the two separate parts are required to address both the Undertaking and the Rixton and Warburton Bridge, then they should be internally consistent and both subject to Secretary of State consent. I agree and have proposed modifications to the Order accordingly.
- 8.179. Finally, under Schedule 1, the Councils seek to have the local highway authorities included within the Order as being able to apply for variation to

the discount provision. This, they say, arises from the provisions of s.5(4) of the TWA 1992, which allows the Secretary of State to include any provision that appears necessary or expedient. The Councils consider that this is necessary, as it is these authorities that have the relevant local knowledge to allow representation of the users of the Bridge. This is resisted by the applicant who consider that this has not shown to be appropriate, expedient, necessary or precedent.

- 8.180. I have reviewed the appropriateness of the discount scheme proposed here, accepting that none would be perfect but that that presented is both practicable and reasonable. While I accept that circumstances may change, the Order only allows for review after a five-year period. At that point MSCC may seek a review, but the Order ensures that the interests of relevant persons are to be accounted for and specifically that the highway authorities are to be consulted. No change can take place without regard to their responses, the adequacy of revenues and the need to mitigate the tolls.
- 8.181. It seems to me that to extend these powers to another party, the highway authority, would therefore be unnecessary.
- 8.182. Other points of disagreement have been addressed in discussions between the parties and where they remained, I have ensured that where necessary and reasonable, the party's requirements have been reflected in the modified version of the Order, under Appendix C below, and as considered in this Report.

## 9. Recommendation

- 9.1. There is a level of concern amongst users, who, it has been accepted, will be materially impacted by this change in toll rates, that the making of this Order would preclude any further discussions on alternative approaches to the future funding and operation of the Bridge. For many, including some MPs, the ambition is for the Bridge to be toll free as all other bridges across the Manchester Ship Canal are. As set out above, this is not within the scope of this Inquiry, but is raised for the Secretary of State to ensure that such routes are not being pursued prior to considering the making of the Order.
- 9.2. In conclusion, I would recommend that the proposed Scheme is necessary, reasonable in all other respects and can be delivered through the proposed modified Order.
- 9.3. If the Secretary of State disagrees with the recommendations as regards my findings that the WHLB is part of the Undertaking, and as a whole it is self-financing, then the Councils' conclusions that contributions required from MSCC would make the future transfer of the Undertaking undeliverable under the TWA 1992 would be correct. This is because the applicant would not have demonstrated that, in such circumstances, the primary objectives of the Scheme could not be met under the 1964 Act, something that precludes the use of the TWA 1992. Alternatively, if it is found, contrary to my recommendation, that the 1964 Act's restriction on the separation of part of a harbour under the control of a harbour authority, also cannot be made under the TWA 1992, then similarly, the Order cannot be made.
- 9.4. Assuming that the recommendations made within the Report are accepted, then I recommend that the Order, as amended, be made.

*Mike Robins*

INSPECTOR

**APPEARANCES**

## FOR THE APPLICANT COMPANY:

Rebecca Clutton of Counsel	Instructed by BDP Pitmans LLP
She called:	
Warren Marshall BSc(Hons) MCD FRTPI CMILT	Group Planning Director - MSCC
Joe Blythe	Marine Operations Manager – MSCC
David Freeman BEng CEng MICE	Wilde Consultants Ltd
Matt Lenaghan	Finance Manager MSCC
Adrian Brakespear	Group Treasurer MSCC
Philip Bates	Transport Consultant

## FOR WARRINGTON BOROUGH COUNCIL AND TRAFFORD COUNCIL:

Ruth Stockley and Piers Riley-Smith of Counsel	Instructed by Matthew Cumberbatch (Warrington) and Dominique Sykes (Trafford)
They called:	
Gary Rowland BEng	Technical Director, WSP Transport Planning
Dr Bob Swarup CAIA	Camdor Global Advisors
Sarah Lowes BA MA	Major Planning Projects Manager – Trafford Council

## INTERESTED PERSONS:

Mr McGoldrick	National Alliance Against Tolls
Cllr Gowland	Lymm PC and Local Resident
Cllr Jones	Salford City Council
Brenda Williams	Warrington Toll Bridge Action Group
Andy Openshaw	Local Resident
Dr Tim Fairburn	Representing Local Residents
Marjorie Powner	Local resident – Friends of Carrington Moss
Mr Clemson	Local resident

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David McClachlan	Rixton & Warburton PC
Mark Bevington	Local resident
Cllr Rob Tynan	Woolston PC
Charlotte Nichols MP	Warrington North
Statement read for Barbara Keeley MP	Worsley and Eccles South
Andy Carter MP	Warrington South
Sir Graham Brady MP	Altrincham and Sale West
Carol Barnes	Local resident
Anita Wood	Local resident

**APPENDIX A - INQUIRY DOCUMENTS**

INQ1	Note of Compliance
INQ2	Opening statement on behalf of Manchester Ship Canal Company
INQ2.1	Appendix to the opening statement on behalf of Manchester Ship Canal Company
INQ3	Opening statement on behalf of Warrington Borough Council and Trafford Council
INQ4	Additional documents submitted by the National Alliance Against Tolls
INQ5	Updated Joint Statement between Philip Bates and Gary Rowland, 18 November 2022
INQ6	Written submission by Barbara Keeley MP
INQ7	Submission by the National Alliance Against Tolls, 15 November 2022 (corrected)
INQ8	Note by Mr McGoldrick regarding the release of documents under Regulation 27, as requested by the Inspector during his statement to the Inquiry, 17 November 2022
INQ9	Note on the mechanisms to secure MSCC's commitments, 18 November 2022
INQ10.1	Option A – MSCC's commitments are made in the deed of obligation – Clean copy
INQ10.2	Option A – MSCC's commitments are made in the deed of obligation – Tracked change
INQ10.3	Schedule of Changes for proposed Order (Option A) with commitments within the Deed of Obligation
INQ11.1	Option B – MSCC's commitments are made within the Order – Clean copy
INQ11.2	Option B – MSCC's commitments are made within the Order – Tracked change
INQ11.3	Schedule of Changes for proposed Order (Option B) which contains MSCC's commitments
INQ12	Councils' tracked change version of the Order
INQ13	Closing submissions by the National Alliance Against Tolls
INQ14	Closing submissions on behalf of Warrington Borough Council and Trafford Council
INQ15	Applicant's written statement addressing additional objections
INQ16	Closing submissions on behalf of Manchester Ship Canal Company

**APPENDIX B - CORE DOCUMENTS**

<b>Formal Application Documents</b>	
RWB/A1	Transport and Works Acts Order Application Letter
RWB/A2	Draft Order
RWB/A3	Explanatory Memorandum
RWB/A4	Concise Statement of Aims
RWB/A5	Business Case
RWB/A6.1	Consultation Report
RWB/A6.2	Consultation Report - Appendices
RWB/A7	Waiver direction in relation to Rule 10(2) given under Rule 18
RWB/A8.1	Updated draft Order clean version
RWB/A8.2	Updated draft Order track changed version
RWB/A9	Schedule of changes to the Order which explains the changes made
<b>Legislation</b>	
RWB/B1	Rixton and Warburton Bridge Act 1863
RWB/B2	Railways Clauses Act 1863
RWB/B3	Manchester Ship Canal Act 1885
RWB/B4	Manchester Ship Canal (Various Powers) Act 1890
RWB/B5	Transport Charges (Miscellaneous Provisions) Act 1954
RWB/B6	Transport and Works Act 1992
RWB/B7	The Transport and Works (Inquiries Procedure) Rules 2004
RWB/B8	Transport Act 1968 Part VIII Bridges
RWB/B9	Rixton and Warburton Bridge Amendment Act 1867
RWB/B10	Highways Act 1980 - Section 271
RWB/B11	Local Transport Act 2008
RWB/B12	The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) (Amendment) Regulations 2014
RWB/B13	The Road User Charging Schemes Penalty Charges Regulations 2013
RWB/B14	The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006- correction
RWB/B15	The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006- original
RWB/B16	Transport Act 2000 Explanatory Notes
RWB/B17	Transport Act 2000
<b>Other Relevant Documents, including Scheme Development Documents and Consultation</b>	
RWB/C1	TWAO Representations – Applicant’s Response Report, May 2022
RWB/C2	Record of Engagement with Stakeholders, May 2022
RWB/C3	Sustainable Investment Plan, July 2021
RWB/C4	Consultation Feedback Report, November 2021
RWB/C5	Public Document Pack related to the Extraordinary Meeting of Warrington Borough Council held on 17 January 2022
RWB/C6	Public Document Pack related to the Extraordinary Meeting of Trafford Council held on 13 January 2022
RWB/C7	Warburton High Level Bridge Principal Bridge Inspection Report 2007

RWB/C8	Signed and Dated Statement of Common Ground with Trafford Council
RWB/C9	Signed and Dated Statement of Common Ground with Warrington Borough Council
<b>Statements of Case</b>	
RWB/D1	Statement of Case by the Applicant, May 2022
RWB/D2	Statement of Case by Andy Openshaw + documents already referenced above
RWB/D2.1	MSCC full accounts to 2020.03.31
RWB/D2.2	MSCC full accounts to 2021.03.31
RWB/D2.3	MSCC full accounts to 2019.03.31
RWB/D2.4	MSCC full accounts to 2018.03.31
RWB/D2.5	MSCC full accounts to 2017.03.31
RWB/D2.6	MSCC full accounts to 2016.03.31
RWB/D2.7	MSCC full accounts to 2015.03.31
RWB/D2.8	Stockton Heath swing bridge set for refurbishment in 2023 Warrington Guardian
RWB/D3	Statement of Case by Barbara Keeley MP
RWB/D3.1	Picture 1
RWB/D3.2	Picture 2
RWB/D3.3	Picture 3
RWB/D3.4	Picture 4
RWB/D3.5	Picture 5
RWB/D4	Statement of Case by Lymm Parish Council + Documents already referenced above
RWB/D5	Statement of Case by the National Alliance Against Tolls + Documents already referenced above
RWB/D5.1	The Two Warburton Bridges and the Canal Acts note
RWB/D5.2	Mersey Gateway Penalties 14 Oct 2017 – 31 March 2022
RWB/D5.3	2020-21 Dartford Thurrock River Crossing Charge Scheme Accounts Signed Final
RWB/D5.4	Consultation 2014 – simplifying process revising tolls
RWB/D5.5	Transport and Works Act Orders a brief guide - GOV.UK
RWB/D5.6	Letter from Department for Transport to NAAT (3 July 2018)
RWB/D5.7	Letter from MMO to NAAT (20 September 2021)
RWB/D5.8	Letter from Department for Transport to NAAT (8 December 2021)
RWB/D5.9	Letter from Department for Transport to NAAT (23 December 2021)
RWB/D5.10	Letter from MMO to NAAT (28 February 2022)
RWB/D5.11	Letter from Department for Transport to NAAT (9 March 2022)
RWB/D5.12	Manchester Toll Poll 2018
RWB/D5.13	NAAT – Reasons why we oppose tolls
RWB/D6	Statement of Case by Trafford Council
RWB/D6.1	Trafford Council Letter of Objection to the Order 22 January 2022
RWB/D6.2	Trafford Council Comments on the Draft Order 26 October 2021
RWB/D6.3	Trafford Council Response to the Sustainable Investment Plan Consultation 18 August 2021
RWB/D6.4	BDP Pitman's Response to Trafford Council's Comments on the Draft Order
RWB/D7	Statement of Case by Warburton Parish Council + Documents already referenced above

RWB/D8	Statement of Case by Andy Carter MP
RWB/D9	Statement of Case by Charlotte Nichols MP
RWB/D10	Statement of Case by Friends of Carrington Moss
RWB/D11	Statement of Case by Warrington Borough Council
RWB/D12	Statement of Case by Kate Green MP
<b>Proofs of Evidence</b>	
The Manchester Ship Canal Company	
APP/WM/01	Summary Proof of Evidence of Warren Marshall
APP/WM/02	Proof of Evidence of Warren Marshall
APP/WM/03	Appendices to Proof of Evidence of Warren Marshall
APP/JB/01	Summary Proof of Evidence of Joe Blythe
APP/JB/02	Proof of Evidence of Joe Blythe
APP/JB/03	Appendices to Proof of Evidence of Joe Blythe
APP/ML/01	Summary Proof of Evidence of Matt Lenaghan
APP/ML/02	Proof of Evidence of Matt Lenaghan
APP/ML/03	Appendices to Proof of Evidence of Matt Lenaghan
APP/PB/01	Summary Proof of Evidence of Philip Bates
APP/PB/02	Proof of Evidence of Philip Bates
APP/PB/03	Appendices to Proof of Evidence Philip Bates
APP/DF/01	Summary Proof of Evidence of Dave Freeman
APP/DF/02	Proof of Evidence of Dave Freeman
APP/DF/03	Appendices to Proof of Evidence of Dave Freeman
Rebuttals	
APP/GR/R01	Rebuttal to Gary Rowland's Proof of Evidence
APP/GR/R02	Appendices to the Rebuttal to Gary Rowland's Proof of Evidence
APP/BS/R01	Rebuttal to Dr Bob Swarup's Proof of Evidence
APP/SL/R01	Rebuttal to Sarah Lowes' Proof of Evidence
APP/SL/R02	Appendices to the Rebuttal to Sarah Lowes' Proof of Evidence
APP/TB/R01	Rebuttal to Dr Tim Fairburn's Proof of Evidence
APP/TB/R02	Appendices to the Rebuttal to Dr Tim Fairbairn's Proof of Evidence
APP/JM/R01	Rebuttal to Mr John McGoldrick's Proof of Evidence
APP/JM/R02	Appendices to the Rebuttal to Mr John McGoldrick's Proof of Evidence
APP/AO/R01	Rebuttal to Mr Andy Openshaw's Proof of Evidence
APP/AO/R02	Appendices to the Rebuttal to Mr Andy Openshaw's Proof of Evidence
Warrington Borough Council	
WMBC/1	Proof of Evidence of Gary Rowland
WMBC/1.1	Appendices to Proof of Evidence of Gary Rowland
WMBC/2	Proof of Evidence of Dr Bob Swarup
WMBC/2.1	Rebuttal proof Dr Bob Swarup
WMBC/2.2	Appendices I and II
WMBC/2.3	Appendices III-V
Trafford Council	
TC/1	Summary Proof of Evidence of Sarah Lowes, Trafford Council
TC1.1	Proof of Evidence of Sarah Lowes, Trafford Council
TC/1.2	Appendices to Proof of Evidence of Sarah Lowes, Trafford Council
TC/1.2.1	Transport for Greater Manchester Network Summary Report week ending 30/10/22

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TC/1.2.2	Transport for Greater Manchester Network Summary Report week ending 23/10/22
Warburton Parish Council, Rixton and Glazebrook Parish Council, Partington Parish Council and Friends of Carrington Moss	
WPC/1	Submission by Tim Fairburn
National Alliance Against Tolls	
NAAT/1	Proof of Evidence by John McGoldrick
Andy Openshaw	
AO/1	Proof of Evidence by Andy Openshaw

## **APPENDIX C – ORDER INCLUDING PROPOSED MODIFICATIONS**

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STATUTORY INSTRUMENTS

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**202[ ] No. 0000**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

**The Rixton and Warburton Bridge Order 202[ ]**

*Made* - - - - 202[ ]

*Coming into force* 202[ ]

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An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006<sup>(a)</sup> for an Order under sections 3(1)(b) and 5 of the Transport and Works Act 1992<sup>(b)</sup> (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Manchester Ship Canal Company Limited as applicant has powers to make the application in accordance with section 20 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, [has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals].

The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964<sup>(c)</sup>.

[The Secretary of State having considered representations duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modifications.]

Notice of the Secretary of State’s determination was published in the London Gazette on [ ] 202[ ].

The Secretary of State, in exercise of the powers conferred by sections 3 and 5 of, and paragraphs 1, 2, 5, 7, 8, 12, 13, 15 and 17 of Schedule 1 to, the 1992 Act, makes the following Order—

## PART 1 PRELIMINARY

### **Citation and commencement**

1. This Order may be cited as the Rixton and Warburton Bridge Order 202[ ] and comes into force on [ ] 202[ ].

### **Interpretation**

2. In this Order—

“the 1863 Act” means the Rixton and Warburton Bridge Act 1863<sup>(d)</sup>;

“the 1890 Act” means the Manchester Ship Canal (Various Powers) Act 1890<sup>(e)</sup>;

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(f)</sup>;

“the 2000 Act” means the Transport Act 2000<sup>(g)</sup>;

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<sup>(a)</sup> S.I. 2006/1466.

<sup>(b)</sup> 1992 c. 42. Relevant amendment instruments are S.I. 1995/1541, 1998/2226, 2000/3199 and 2006/958.

<sup>(c)</sup> 1964 c. 40.

<sup>(d)</sup> 1863 c. lxiii.

<sup>(e)</sup> 1890 c. ccxxvii.

<sup>(f)</sup> 1984 c. 27.

<sup>(g)</sup> 2000 c. 38.

“the 2006 Act” means the Companies Act 2006<sup>(h)</sup>;

“Account” means the account containing a person’s details for the purposes of paying a toll or charge for a vehicle, or registering a discount, in respect of the Rixton and Warburton Bridge which is identified by a unique account number;

“address” includes any number or address used for the purposes of electronic transmission;

“App” means a software application for use on an electronic device which provides for payment by credit card or debit card and which is provided by MSCC for that purpose;

“authorised activities” means the operation, use and maintenance of the Rixton and Warburton Bridge and the exercise of any power, authority or discretion for the time being vested in or exercisable by MSCC under this Order or otherwise;

“bridge road” means the length of the highway commencing from the A57 Manchester Road in the north at national grid reference SJ6915390429 to Warburton Bridge Road at national grid reference SJ6980489711 in the south;

“building” includes any structure or erection or any part of a building, structure or erection;

“the Canal” means the Manchester Ship Canal;

“Change of Control” means the obtaining of Control of the Company by any person or group of connected persons who did not previously hold Control of the Company;

“the Company” means Rixton and Warburton Bridge Company Limited (Company No. 13617881) incorporated under the Companies Act 2006 and having its registered office at Maritime Centre, Port of Liverpool, Liverpool L21 1LA;

“completion of the Improvements” means completion of the Improvements so that the same is complete in accordance with the relevant construction contract or contracts;

“concession agreement” means a legally binding arrangement which may be comprised in one or more documents that makes provision for financing, refinancing, operation, maintenance or any other matter in respect of the Rixton and Warburton Bridge;

“Control” has the meaning given in section 1124 of the Corporation Tax Act 2010;

“credit card” means a card or similar thing issued to any person, use of which enables the holder to defer payment of the deposit;

“debit card” means a card or similar thing issued by any person, use of which causes the deposit to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking facilities;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“exemptions register” means the register of vehicles exempt from tolls maintained by MSCC in accordance with article 8 (tolls) and Schedule 2 (register of vehicles exempt from tolls);

“harbour master” means the officer appointed by MSCC from time to time to execute the office of harbour master and includes any assistants and subordinates in so far as such assistants and subordinates are duly authorised to act on behalf the harbour master;

“Improvements” means the works specified in Schedule 8 of this Order;

“local highway authorities” means Warrington Borough Council and Trafford Council in their respective roles as highway authorities in respect of the bridge road under the Highways Act 1980<sup>(i)</sup>;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;

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<sup>(h)</sup> 2006 c. 46.

<sup>(i)</sup> 1980 c. 66.

“Manchester Ship Canal Acts and Orders 1885 to 2012” means those Acts and Orders set out in Schedule 3 (Manchester Ship Canal Acts and Orders);

“MSCC” means The Manchester Ship Canal Company Limited;

“the Order” means the Rixton and Warburton Bridge Order 202[ ];

“registered keeper”, in relation to a motor vehicle means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994<sup>(j)</sup>;

“reserve fund” means a fund to be used exclusively for the maintenance and operation of the Rixton and Warburton Bridge;

“Rixton and Warburton Bridge” means the bridge known as the Rixton and Warburton Bridge authorised by the 1863 Act and the 1890 Act together with the bridge road and all toll booths or other toll collection facilities constructed on the said bridge or the bridge road as shown in the plan in Schedule 7;

“the transfer date” means the day appointed by MSCC by ordinary resolution which must be a day at least 4 weeks after the day on which this Order comes into force and the Improvements are complete;

“the Undertaking” means the Rixton and Warburton Bridge Undertaking and includes—

- (c) all statutory and other powers and duties of MSCC conferred or imposed on MSCC by or under any provision of the Manchester Ship Canal Acts and Orders 1885 to 2012;
- (d) the property, rights, liabilities and obligations, including all lands, works, buildings, machinery, stores and other real and personal property, assets and effects, contractual rights and obligations, and other rights and privileges vested in or enjoyed by MSCC, in respect of the Rixton and Warburton Bridge; and

in relation to the transfer of the Undertaking, means those statutory and other powers and duties, property, rights, liabilities and obligations of MSCC as they exist immediately before the transfer date in respect of the Rixton and Warburton Bridge;

“UK GAAP” means the Generally Accepted Accounting Practice in the UK and is the body of accounting standards published by the UK’s Financial Reporting Council;

“VAT” means Value Added Tax or any other tax replacing that tax; and

“vehicle” means a mechanically propelled vehicle intended or adapted for use on roads including a trailer.

## PART 2

### OPERATIONAL

#### **Offences and power to make byelaws**

**3.**—(1) MSCC may make and enforce byelaws regulating the use and operation of the Rixton and Warburton Bridge, the maintenance of order on and about the Rixton and Warburton Bridge and the conduct of all persons including employees of MSCC while on and about the Rixton and Warburton Bridge.

(2) Without limiting the scope of paragraph (1), byelaws under this article may make provision—

- (a) with respect to the payment of tolls and the evasion of payment of tolls;
- (b) with respect to requirements for persons in charge of a vehicle that is used on the Rixton and Warburton Bridge to—
  - (i) display a document in that vehicle; or

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<sup>(j)</sup> 1994 c. 22.

- (ii) carry in or fix equipment to that vehicle,  
and with respect to the failure to do so or the failure to do so in accordance with MSCC's requirements;
  - (c) with respect to interference with, or obstruction of, the operation of the Rixton and Warburton Bridge or other facilities provided in connection with the Rixton and Warburton Bridge;
  - (d) with respect to the prevention of nuisances on the Rixton and Warburton Bridge;
  - (e) with respect to the safeguarding of the operation, navigation and use of the Canal arising from the operation of the Rixton and Warburton Bridge
  - (f) for the recovery, safe custody and re-delivery or disposal of any property or vehicles left on the Rixton and Warburton Bridge and for fixing the charges made in respect of any such property or vehicles;
  - (g) to prohibit vehicles from stopping or remaining at rest in prescribed places on the bridge road or elsewhere in or about the Rixton and Warburton Bridge, except in prescribed circumstances;
  - (h) to require any person in charge of a vehicle which is at rest by reason of breakdown in a prescribed place on any of the bridge roads to take prescribed steps for reporting that fact and the position and circumstances in which the vehicle is at rest;
  - (i) to prohibit any person, other than a constable or an appointed person—
    - (i) from carrying out, or attempting to carry out, a repair, adjustment or refuelling of a vehicle to which sub-paragraph (g) applies except with permission expressly given by a constable or an appointed person; and
    - (ii) from moving, or attempting to move, such a vehicle from the position in which it is at rest;
  - (j) to empower a constable or an appointed person to remove from its position to a prescribed area a vehicle which is for the time being at rest in a prescribed place on any bridge road—
    - (i) in contravention of the byelaws;
    - (ii) by reason of breakdown;
    - (iii) without any person being in charge of it; or
    - (iv) with the person in charge of it not being present in or on it;
  - (k) in the case of a vehicle which is so removed or which at the request of the person in charge of it is repaired, adjusted or refuelled (instead of being removed) by an appointed person, to require the prescribed person to pay a charge of an amount to be determined in accordance with such scales and other provisions as may be prescribed;
  - (l) to prohibit a person from obstructing any action taken by a constable or an appointed person for the purpose of removing a vehicle in accordance with the byelaws;
  - (m) to ensure the safety of vehicles passing over the Rixton and Warburton Bridge;
  - (n) to regulate the traffic on the Rixton and Warburton Bridge; and
  - (o) to restrict and regulate the passage of dangerous goods or traffic on the Rixton and Warburton Bridge.
- (3) Byelaws under this article may—
- (a) designate places on the Rixton and Warburton Bridge at which tolls (other than tolls with respect to which a prepayment has been made) are to be paid or become due to be paid;
  - (b) make provision as to the persons by whom, and the manner in which, such tolls or other charges are to be paid;
  - (c) make provision for securing that vehicles in respect of which tolls are payable do not use the Rixton and Warburton Bridge without payment of the tolls; and
  - (d) make provision for preventing a vehicle which—

- (i) having used the Rixton and Warburton Bridge; or
- (ii) being about to use the Rixton and Warburton Bridge,

has arrived at the place at which a toll is payable in respect of it from proceeding beyond that place without a toll having been paid.

- (4) Byelaws made under this article may provide for a notice specifying—
- (a) the categories of vehicles in respect of which tolls are payable; and
  - (b) the amount of the tolls in respect of each category,

to be displayed at each place designated in accordance with sub-paragraph (3)(a).

(5) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Without prejudice to paragraph (5), where MSCC considers it expedient to do so it may prosecute legal proceedings in respect of offences under this Order.

- (7) Without prejudice to paragraph (5), a person who without reasonable excuse—
- (a) refuses or fails to pay a toll for which that person is liable; or
  - (b) attempts to evade payment of such a toll,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (5), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public or MSCC or hindrance to MSCC in the operation of the Rixton and Warburton Bridge or safety of the operation and navigation of the Canal, MSCC may summarily take action to obviate or remove the danger, annoyance or hindrance.

(9) Byelaws under this article may not come into operation until they have been confirmed by the Secretary of State.

(10) At least 28 days before applying for any byelaws to be confirmed under this article, MSCC must publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(11) For at least 28 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws will be kept at the principal office of MSCC and will at all reasonable hours be open to public inspection without payment.

(12) MSCC must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as MSCC may determine.

(13) The Secretary of State may charge MSCC such fees in respect of any byelaws submitted for confirmation under this article as the Secretary of State may consider appropriate for the purpose of defraying any administrative expenses incurred by the Secretary of State in connection with such confirmation.

(14) A copy of the byelaws when confirmed must be printed and deposited at the principal office of MSCC and must at all reasonable hours be open to public inspection without payment, and MSCC must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as MSCC determines.

(15) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by MSCC stating—

- (a) that the byelaws were made by MSCC;
- (b) that the copy is a true copy of the byelaws;
- (c) that on a specified date the byelaws were confirmed by the Secretary of State; and

(d) the date when the byelaws came into operation,  
will be rebuttable evidence of the facts stated in the certificate.

(16) The provisions of the Road Traffic Offenders Act 1988<sup>(k)</sup> in relation to evidence will apply to the prosecution of offences under this provision.

(17) Byelaws made under this article may be varied or revoked by subsequent byelaws and byelaws made under this article may also vary or revoke any byelaws made under any other provision in respect of the Rixton and Warburton Bridge at any time.

(18) The byelaws in Schedule 4 (the Rixton and Warburton Bridge Byelaws 202[ ])—

- (a) are to be treated as byelaws made by MSCC under paragraph (1) and subsequently confirmed by the Secretary of State on the date this Order comes into force; and
- (b) continue to have effect until such time as they are amended or revoked by further byelaws made under paragraph (1).

(19) In this article—

“appointed person” means a person appointed by MSCC who may only act as such when wearing a uniform of a description approved by MSCC;

“breakdown” in relation to a vehicle, includes mechanical defect, lack of fuel, oil or water required for the vehicle, and any other circumstances in which a person in charge of the vehicle could not immediately, safely and without damage to the vehicle or its accessories, drive it under its own power away from the Rixton and Warburton Bridge; and

“prescribed” means prescribed by byelaws made under this Order.

### **Closing the Rixton and Warburton Bridge**

**4.**—(1) MSCC may whenever in its opinion it is necessary to do so whether in case of emergency or for the purpose of or in connection with the authorised activities close all or any part of the Rixton and Warburton Bridge whether wholly or partially.

(2) Where MSCC proposes to close any of the Rixton and Warburton Bridge it must except in an emergency—

- (a) consult with the local highway authorities not less than 28 days before any such closure;
- (b) give not less than 28 days’ notice by advertisement in at least one local newspaper circulating in the area; and
- (c) display signs throughout the period of such closure at convenient situations on the roads communicating with any public access road to the Rixton and Warburton Bridge giving visible warning of the closure.

(3) MSCC will reopen the Rixton and Warburton Bridge following closure under sub-paragraph (1), without unnecessary delay, and at the earliest appropriate opportunity having regard to safety.

## **PART 3**

### **TRANSFER OF THE UNDERTAKING**

#### **Transfer of the Undertaking**

**5.**—(1) Provided that MSCC has Control of the Company on the transfer date, all statutory and other powers and duties comprised in the Undertaking (including under the provisions of this Order) except for article 11 (protection of the Canal) of this Order are transferred from MSCC to the Company and from that date MSCC ceases to have any such duties or powers in respect of the Undertaking.

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<sup>(k)</sup> 1988 c. 53.

(2) On the transfer date, the Undertaking is transferred to and vests in the Company and from that date MSCC ceases to have any property, rights, liabilities and obligations in respect of the Undertaking.

(3) On and after the transfer date any statutory provision of local application or document (other than a document referred to in article 6 (saving of agreements, etc)) has, so far as it relates to the Rixton and Warburton Bridge, effect (except where the context otherwise requires and subject to any necessary modifications) as if any reference however worded and whether express or implied—

- (a) to MSCC, were construed as a reference to the Company; and
- (b) to any officer or employee of MSCC, were construed as a reference to an officer or employee of the Company who corresponds as nearly as may be to the first-mentioned officer or employee.

(4) MSCC must not exercise the power to transfer the Undertaking under paragraph (1) until the Improvements have been completed and MSCC has served a notice on the local highway authorities confirming the date on which the completion of the Improvements occurred.

(5) Any Change of Control of the Company may only occur with consent of the Secretary of State on such terms and conditions as it thinks fit considering all material circumstances and the views of local highway authorities.

### **Saving of agreements, etc.**

6. All sales, conveyances, leases, grants, assurances, deeds, contracts, bonds, agreements, notices and demands entered into or made by MSCC in relation to the Undertaking and in force immediately before the transfer date are, on and after that date, as binding and of as full force and effect in every respect against or in favour of the Company as they have previously been against or in favour of MSCC and may be enforced as fully and effectively as if instead of MSCC the Company had been a party, or otherwise bound by it or entitled to the benefit of it.

### **Continuance of proceedings**

7. Nothing in this Order releases, discharges or suspends any action, arbitration or other proceeding, or any cause of action, arbitration or other proceeding, pending or existing immediately before the transfer date—

- (a) by or in favour of or against MSCC; or
- (b) by or in favour of or against the Company as agent for MSCC,

in relation to the Undertaking, and any such action, arbitration or other proceeding or cause of action, arbitration or other proceeding may be maintained, prosecuted or continued by or in favour of or against MSCC or, in the case of sub-paragraph (b), the Company and may be amended in such manner as may be necessary for that purpose.

## **PART 4**

### **TOLLING, CONCESSION AND FINANCING ARRANGEMENTS**

#### **Tolls**

8.—(1) Once the Improvements have been completed and MSCC has served a notice on the local highway authorities confirming the date on which the completion of the Improvements occurred, the tolls recoverable from users of Rixton and Warburton Bridge under the 1863 Act are to be those specified in Schedule 1 of this Order and must be paid in accordance with the provisions of this Order.

(2) Where tolls or charges payable under or by virtue of this Order remain unpaid after they have become due for payment, the person to whom they are payable may recover from the person liable to pay them the amount of the tolls or charges together with all other reasonable costs and expenses

including administrative expenses, enforcement expenses and interest arising out of any such failure to pay.

(3) MSCC may appoint any person to collect tolls or charges as its agent.

(4) The person by whom tolls under this Order and penalty charges imposed in connection with this Order are payable in respect of a motor vehicle is the registered keeper.

(5) MSCC must establish and maintain an exemptions register in accordance with Schedule 2 (register of exemption from tolls).

(6) Toll will not be charged in respect of vehicles where the particulars of the vehicle have been entered upon the exemptions register.

(7) The tolls or charges charged in accordance with this article will be applied by MSCC for any purposes in connection with the safe efficient and economic management, operation and maintenance of the Rixton and Warburton Bridge, including but not limited to—

- (a) paying the costs and expenses incurred in designing, constructing, managing, operating and maintaining the Rixton and Warburton Bridge or any costs associated with financing any of the same;
- (b) providing such funds as are, or are likely to be, necessary to discharge the obligations of MSCC pursuant to a concession agreement;
- (c) paying the interest on, and repaying the principal of, monies borrowed in respect of the Rixton and Warburton Bridge;
- (d) making payment into any maintenance or reserve fund provided in respect of the Rixton and Warburton Bridge;
- (e) providing funds for, meeting expenses incurred in, or the cost of securing any necessary authority for maintenance and operation of, the Rixton and Warburton Bridge or works to the Rixton and Warburton Bridge; and
- (f) providing a reasonable rate of return on investment in the Undertaking.

### **Payment of tolls**

**9.**—(1) Subject to paragraphs (5) and (11) of this article a toll recoverable under the 1863 Act and paid in accordance with the provisions of this Order and any byelaws made under this Order, must be paid by such method as may be specified by MSCC or such other method as MSCC may in the particular circumstances of the case accept.

(2) Without limiting the scope of paragraph (1), except where MSCC elects in accordance with paragraph (5), tolls may be payable—

- (a) when demanded by a person authorised by MSCC or its agent in that behalf at a place designated by MSCC for the collection of tolls; or
- (b) by inserting the appropriate payment for a toll at any appropriate collection point.

(3) MSCC or its agent may enter into an agreement (“composition agreement”) under which persons compound, on such terms as may be provided by the agreement, for the payment of tolls in respect of the use of the Rixton and Warburton Bridge.

(4) A composition agreement may relate to use on such number of occasions or during such period as may be provided by the agreement.

(5) Where the condition described in paragraph (12) applies MSCC may elect that, instead of any other method of payment, tolls may be payable by means of entering into a composition agreement in which case MSCC may require that method to apply exclusively.

(6) Where MSCC has elected pursuant to paragraph (5) that the exclusive method of paying tolls is to be by means of entering into a composition agreement, such a composition agreement may be entered into—

- (a) on the day concerned, the first day concerned or (where it relates to a single journey) the day of the journey concerned;

- (b) on a day falling within the period of 64 days immediately preceding the day concerned, the first day concerned, or (where it relates to a single journey) the day of the journey concerned; or
- (c) on the day after the day concerned, the first day concerned, or (where it relates to a single journey) the day of the journey concerned.

(7) The following provisions apply to composition agreements—

- (a) a composition agreement must be specific to a particular vehicle;
- (b) that vehicle must be identified by its registration mark; and
- (c) a person entering into a composition agreement with MSCC must specify to MSCC or its agent the registration mark of the vehicle to which the composition agreement relates.

(8) Where a composition agreement is entered into or purported to be entered into, and payment is to be made to MSCC otherwise than in cash, and payment is not received by MSCC or its agents (whether because a cheque is dishonoured or otherwise), the toll or tolls to which the composition agreement relates is to be treated as not paid and the composition agreement will be void.

(9) MSCC may require a vehicle that is subject to a composition agreement to display a document in that vehicle or carry in or fix equipment to that vehicle.

(10) MSCC may impose such reasonable conditions upon the making of a composition agreement as it considers appropriate including in relation to the transfer of the benefit of composition agreements or refund of payments.

(11) A composition agreement may provide for a discount or waiver of any toll or part of any toll in respect of the use of the Rixton and Warburton Bridge.

(12) The condition referred to in paragraph (5) is fulfilled when the method of payment for use of the Rixton and Warburton Bridge is not secured by the use of barriers preventing vehicles from proceeding until a toll is paid.

(13) Methods of payments of the tolls under this Order may include but are not limited to payments made in person, by phone, using a credit card or debit card or by App.

### **Power to enter into concession agreements and lease or transfer the Undertaking, etc.**

**10.**—(1) MSCC may, on such terms as it sees fit, at any time and for any period, enter into one or more concession agreements and for that purpose may provide for the exercise of the powers of MSCC in respect of the authorised activities or any part of them, together with the rights and obligations of MSCC in relation to them, by any other person and other matters incidental or subsidiary to them or consequential to them, and the defraying of, or the making of contributions towards the costs of the matters whether by MSCC or any other person.

(2) MSCC may charge the whole or any part of the Undertaking on such terms and conditions as it thinks fit.

(3) MSCC may, with the consent of the Secretary of State, transfer, lease, or sell or dispose of the whole or any part of the Undertaking, on such terms and conditions as it thinks fit.

(4) Subject to sub-paragraph (3), MSCC may, with the consent of the Secretary of State, grant on such terms and conditions as it thinks fit to any person or take from any person a lease, licence or any other interest in or right over any land, including land comprising or comprised in the Rixton and Warburton Bridge, if it appears to MSCC expedient to do so for the purpose of or in connection with the exercise by that person of any or all of the authorised activities.

(5) The exercise of the powers of any enactment by any person in accordance with any agreement under paragraph (1), or any sale, lease, charge or disposal under paragraphs (2) and (3), is to be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by MSCC.

(6) For the purposes of the transfer of the Undertaking from MSCC to the Company under article 5 (transfer of the Undertaking) of this Order, the making of the Order constitutes confirmation of the consent of the Secretary of State required under paragraph (3).

**Protection of the Canal**

**11.**—(1) The exercise of the powers under article 5(4) (transfer of the Undertaking) and under article 10 (power to enter into concession agreements and lease or transfer the Undertaking, etc.) are subject to such requirements as may be imposed by MSCC so as to ensure the safe operation, navigation and use of the Canal.

(2) The exercise of any powers conferred by the Order or by the provisions of the 1863 Act and the 1890 Act for the purpose of, or in connection with operation, maintenance or improvement of the Rixton and Warburton Bridge must not interfere with the operation, navigation or use of the Canal without prior written approval of MSCC which may be granted subject to such conditions as may be imposed by MSCC so as to ensure the safe operation, navigation and use of the Canal.

(3) Except as expressly provided, nothing in this Order is to prejudice the rights, powers and duties of the harbour master and MSCC under the Manchester Ship Canal Acts 1885 to 2012 in relation to the operation, navigation and use of the Canal.

**Application of landlord and tenant law**

**12.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the Rixton and Warburton Bridge or the right to operate the same; and
- (b) any agreement entered into by MSCC with any person for the carrying out of the authorised activities or any part of them,

so far as any such agreement relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

**Application of the 2000 Act**

**13.**—(1) Regulations made pursuant to section 173 (penalty charges) of the 2000 Act will have effect in respect of the Rixton and Warburton Bridge as if the tolls and charges charged in accordance with this Order were charges payable pursuant to a charging scheme made by order under Part 3 of the 2000 Act and will apply to MSCC as if MSCC were an authority listed in section 163 of the 2000 Act.

(2) The imposition and payment of penalty charges in connection with this Order will be in accordance with such regulations as the Secretary of State may make pursuant to section 173 of the 2000 Act.

(3) Sections 174 (examination, entry, search and seizure), 175 (immobilisation etc.) and 176 (equipment etc.) of the 2000 Act have effect in respect of the Rixton and Warburton Bridge as if Part 5 of this Order was a charging scheme made by order under Part 3 of the 2000 Act.

**Modification of Transport Charges &c. (Miscellaneous Provisions) Act 1954**

**14.** In its application to the undertaking section 6(3) of the Transport Charges &c. (Miscellaneous Provisions) Act 1954<sup>(l)</sup> (revision of charges) has effect as if for the reference to the paid-up share capital of the undertaking there were substituted a reference to any amounts invested in the Undertaking by MSCC and any successor company.

**PART 5****MISCELLANEOUS AND GENERAL****Service of notices**

**15.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body or monitoring officer.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(m)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

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<sup>(l)</sup> 1954 c. 64.

<sup>(m)</sup> 1978 c. 30.

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

#### **Amendments**

**16.** The enactments mentioned in Schedule 5 (amendments) are amended in the manner specified in that Schedule.

#### **Repeals**

**17.** The enactments mentioned in Schedule 6 (repeals and revocations) are repealed to the extent specified in that Schedule.

#### **Obligation to provide accounts information**

**18.** Following any transfer of the Undertaking to the Company under article 5 (transfer of Undertaking) of this Order, the Company will publish annual accounts information in line with UK GAAP and Part 15 of the 2006 Act and not seek to rely on exemption under section 477 of the 2006 Act for small companies as defined in the 2006 Act.

Signed by authority of the Secretary of State for Transport

Date

*Name*  
Head of the Transport and Works Act Orders Unit  
Department for Transport

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## SCHEDULES

### SCHEDULE 1

Articles 8 and 9

#### LEVEL OF TOLLS

##### PART 1

##### LEVEL OF TOLLS

###### *Tolls*

**1.**—(1) The maximum tolls that MSCC may demand and take in respect of passing over the Rixton and Warburton Bridge are £1.00 as may be adjusted in accordance with sub-paragraphs (2) and (5).

(2) MSCC may make an adjustment in April of any year in the amount of tolls specified in sub-paragraph (1), as may be revised under sub-paragraph (5), and any such adjustment will be no more than the percentage difference between the consumer price index for February of that year and the consumer price index for the month of February immediately preceding the making of the Order and then subtracting one per cent.

(3) References in sub-paragraph (2) to the consumer price index are to the monthly United Kingdom index of Consumer Prices (for all items) published by the Office for National Statistics (or such other measure of consumer price inflation which replaces it).

(4) If that index is not published for any month, those references are to any other index, or substitute for that index, for that month published by that office for that month.

(5) The amount of toll specified in sub-paragraph (1), as may be adjusted in accordance with sub-paragraph (2), will be revised by the amount of any changes to the VAT.

(6) MSCC may only charge the toll under sub-paragraph (1) up to a maximum of two crossings over the Rixton and Warburton Bridge per day.

**2.**—(1) Subject to article 8(7) and sub-paragraphs (2) and (3) MSCC at any time by resolution may determine—

- (a) the amount of any tolls under paragraph 1, provided it does not exceed the maximum amount set out in that paragraph; or
- (b) different level of tolls for different classes of vehicles provided it does not exceed the maximum amount set out in paragraph 1; or
- (c) the classification of vehicles or classes of vehicles in respect of which tolls may be charged in accordance with paragraph 1.

(2) Whenever MSCC proposes to exercise its power in accordance with sub-paragraph (1) MSCC must publish in at least one local newspaper circulating in the area in which the Rixton and Warburton Bridge is situated, a notice substantially in the form set out in Part 2 of this Schedule.

(3) MSCC may charge the tolls set out in a notice given under sub-paragraph (2) from the day 28 days after that on which the notice referred to in sub-paragraph (2) is published.

(4) The toll in respect of any vehicle or class of vehicles may not be varied pursuant to this paragraph if less than 12 months have passed following the previous exercise by MSCC of its powers under this paragraph.

**3.**—(1) Whenever MSCC proposes to revise the toll that applies in respect of any vehicle or class of vehicles pursuant to paragraph 2 MSCC must publish a notice substantially in the form set out in Part 2 of this Schedule—

- (a) in at least one local newspaper circulating in the area in which the Rixton and Warburton Bridge is situated; and
- (b) send an electronic transmission to the person registered to any Account.

(2) MSCC may charge the tolls set out in a notice given under sub-paragraph (1) from the day 28 days after that on which the notice referred to in sub-paragraph (1) is published.

#### *Local residents' Discount*

4. Subject to the provisions of paragraph 5 of this Part of the Schedule, MSCC must apply a discount of 50% to tolls payable in respect of passing over the Rixton and Warburton Bridge in respect of a vehicle for which the registered keeper is a local resident.

5.—(1) The obligation under paragraph 4 in respect of local residents' discount may be modified or discharged—

- (a) by agreement between the undertaker and the local highway authorities executed as a deed in respect of the Bridge; or
- (b) by the Secretary of State in accordance with provisions of this Part of the Schedule.

(2) Any request by MSCC for agreement under section 5(1)(a) must be made to the monitoring officer of the relevant local highway authority.

(3) The undertaker may, at any time after the expiry of the period of five years beginning with the date on which this Order comes into force, apply to the Secretary of State for the local residents' discount—

- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged,

and must notify the local highway authorities and any other persons as the Secretary of State considers as appropriate as soon as any such application is made.

(4) An application under sub-paragraph (2), for the modification of the obligation under paragraph 4 of this Part of the Schedule may not specify a modification imposing an obligation on any other person other than the undertaker.

(5) Where an application is made to the Secretary of State under sub-paragraph (2), the Secretary of State must consult the local highway authorities before deciding the application.

(6) When deciding an application under sub-paragraph (2) the Secretary of State must have regard to—

- (a) any responses by the local highway authorities to the consultation under sub-paragraph (5);
- (b) the adequacy of the revenue from tolls to meet the purposes set out in article 8(7); and
- (c) the need to mitigate impacts of the tolls on local residents.

(7) After having regard to the matters set out in this sub-paragraph and any other matters which the Secretary of State considers to be relevant the Secretary of State may determine that the obligation in respect of the local residents' discount—

- (a) continues to have effect without modification;
- (b) is discharged; or
- (c) continues to have effect subject to the modifications specified in the application or such other modification as the Secretary of State considers necessary.

(8) The Secretary of State must give notice of the determination to the undertaker and the local highway authorities within three months of the date of the application and provide full reasons for the decision.

(9) Where the Secretary of State determines under this paragraph that the obligation in respect of the local residents' discount has effect subject to modifications specified in the application, the obligation as modified will be enforceable not less than 28 days after the date on which notice of

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the determination is published in accordance with sub-paragraph (12) or such other date as the Secretary of State may determine.

(10) An application to the Secretary of State under sub-paragraph (2) must include the following information—

- (a) the name and address of the undertaker;
- (b) sufficient information to enable identification of the obligation which the undertaker wishes to have modified or discharged;
- (c) the undertaker's reasons for applying for the modification or discharge of that obligation; and
- (d) such other information as the Secretary of State considers necessary to enable the Secretary of State to determine the application.

(11) When the Secretary of State receives an application for the modification or discharge of an obligation under sub-paragraph (2) the undertaker will arrange for the application to be publicised by—

- (a) posting notice of the application on or near the land to which the obligation relates for not less than 21 days; or
- (b) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated and on the undertaker's website.

(12) When the Secretary of State issues the notice of determination under sub-paragraph (9) the undertaker will arrange for the notice of determination to be publicised by—

- (a) posting notice of the application on or near the land to which the obligation relates for not less than 21 days; and
- (b) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated and on the undertaker's website.

(13) The notice referred to in paragraph (7) must include the following—

- (a) the name of the undertaker;
- (b) details of the obligation that is proposed to be modified or discharged;
- (c) an address or website where members of the public may inspect copies of the application;
- (d) the address or email address to which any person who wishes to make representations may write; and
- (e) a date (no later than 21 days beginning on the date that the notice is posted or published) by which such representations should be made to the Secretary of State.

(14) Section 84 of the Law of Property Act 1925<sup>(n)</sup> (power to discharge or modify restrictive covenants affecting land) does not apply to an obligation under paragraph 2 of Part 1 of this Schedule.

(15) In this paragraph—

“local resident” means a person who permanently resides at a property in one of the following postcodes—

- (a) WA3 6;
- (b) WA13 9; or
- (c) M31 4;

“local residents' discount” means the discount applied by paragraph 4 of this Part to the tolls payable in respect of passing over the Rixton and Warburton Bridge; and

“undertaker” means MSCC or the Company if the power under article 5 (transfer of Undertaking) or under article 10(3) (power to enter into concession agreements and lease or

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<sup>(n)</sup> 1925 c. 20.

transfer the Undertaking, etc.) of the Order has been exercised, being the undertaker bound by obligations under paragraph 4 of this Part of the Schedule.

*No tolls during construction of the Improvements*

6. MSCC must not charge any toll in respect of passing over the Rixton and Warburton Bridge once the Improvements have commenced and MSCC has served a notice on the local highway authorities confirming the date on which the Improvements have commenced until the Improvements have been completed and MSCC has served a notice on the local highway authorities confirming the date on which the Improvements have been completed.

**PART 2**

**FORM OF NOTICE**

THE RIXTON AND WARBURTON BRIDGE ORDER 202[ ] (“THE ORDER”)

NOTICE OF REVISION OF [TOLLS] [VEHICLE CLASSIFICATIONS]

The [tolls/vehicle classifications] applicable to the Rixton and Warburton Bridge shall be:

[state revised tolls/vehicle classifications].

The revisions set out above shall take effect [on a date not less than 28 days after the date of the notice].

Signed: .....

\*On behalf of: .....

Date: .....

Name and status of signatory: .....

\*Delete or amend as appropriate

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**SCHEDULE 2**

Articles 2 and 8

**REGISTER OF VEHICLES EXEMPT FROM TOLLS****7.** Tolls may not be levied in respect of—

- (a) a vehicle whose details have been recorded on the exemptions register in accordance with this Schedule; or
- (b) a vehicle being used in connection with—
  - (i) the collection of tolls or charges; or
  - (ii) the maintenance, improvement or renewal of, or other dealing with the Rixton and Warburton Bridge or any structure, works or apparatus in, on, under or over any part of the Rixton and Warburton Bridge; or
- (c) a vehicle which, having broken down on the Rixton and Warburton Bridge while travelling in one direction, is travelling in the opposite direction otherwise than under its own power; or
- (d) a military vehicle, that is, a vehicle used for army, naval or air force purposes, while being driven by persons for the time being subject to the orders of a member of the armed forces of the Crown; or
- (e) a public service vehicle as defined in the Public Passenger Vehicles Act 1981<sup>(o)</sup> which is being used in the provision of a local service as defined in section 2 of the Transport Act 1985<sup>(p)</sup>; or
- (f) the following vehicles, being used in the execution of duty, at the time of passing over the Rixton and Warburton Bridge—
  - (i) a police vehicle identifiable as such by writing or markings on it or otherwise by its appearance, or being the property of the Service Authority for the National Criminal Intelligence Service or the Service Authority for the National Crime Squad;
  - (ii) a fire engine as defined by paragraph 4(2) of Schedule 2 to the Vehicle Excise and Registration Act 1994<sup>(q)</sup>;
  - (iii) a vehicle which is kept by a fire authority as defined by paragraph 5 of the Schedule; or
  - (iv) an ambulance as defined by paragraph 6(2) of that Schedule.

**8.** Vehicles falling within the following descriptions of motor vehicles are eligible to be entered upon the exemptions register—

- (a) a vehicle owned by or being used for the transport of a person who has a disabled person's badge and which displays a current disabled person's badge issued under—
  - (i) section 21 of the Chronically Sick and Disabled Persons Act 1970<sup>(r)</sup>, or
  - (ii) section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978<sup>(s)</sup>; or
- (b) a motorcycle (with or without sidecar) or a moped.

**9.** With the exception of vehicles listed in paragraph 1(f) of this Schedule, a vehicle is not eligible to be entered upon the exemption register if its height, width or weight (including load in each case) exceeds the following—

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<sup>(o)</sup> 1981 c. 14.  
<sup>(p)</sup> 1985 c. 67.  
<sup>(q)</sup> 1994 c. 22.  
<sup>(r)</sup> 1970 c. 44.  
<sup>(s)</sup> 1978 c. 53

(1)	(2)
Height	5.18 metres
Width	2.5 metres
Weight	7.5 tonnes

**10.** MSCC may amend, remove, revise or change categories of vehicles specified in paragraph 2, from time to time.

**11.** MSCC may require that an application to enter particulars of a vehicle on the exemptions register or to renew the registration of a vehicle—

- (a) includes all such information as MSCC may reasonably require; and
- (b) is made by such means as MSCC may accept.

**12.** Registration of a vehicle upon the exemptions register, and the use to which that vehicle must be put to qualify as exempt from tolls, is subject to the imposition of such further conditions as MSCC may reasonably impose.

**13.** Where MSCC receives an application that complies with paragraph 5 to enter particulars of a vehicle on the exemptions register, or to renew the registration of a vehicle, and the vehicle falls within the descriptions set out in paragraph 2 subject to the provisions of paragraph 3, it will enter the particulars of that vehicle on the exemptions register within 20 working days of receiving such an application.

**14.** MSCC may remove particulars of a vehicle from the exemptions register—

- (a) in the case of a vehicle registered in relation to the holder of a disabled person's badge, when that person ceases to be an eligible person for a disabled person's badge as set out in paragraph 2(e);
- (b) in the case of any vehicle at the end of the period of 7 consecutive days beginning with the day on which a change in the keeper of the vehicle occurred, unless MSCC renews the registration for a further period on application to it by or on behalf of the new keeper.

**15.** Where the registered keeper of a vehicle is aware that the vehicle has ceased or will cease to be a vehicle eligible to be entered on the exemptions register, the keeper must notify MSCC of the fact and MSCC will remove the particulars of the vehicle from the exemptions register as soon as reasonably practicable or from the date notified to MSCC as the date on which it will cease to be a vehicle eligible to be recorded on the exemptions register.

**16.** If MSCC is no longer satisfied that a vehicle is an exempt vehicle it may—

- (a) remove the particulars of a vehicle from the exemptions register; and
- (b) notify the registered keeper.

**17.** Nothing in this Schedule prevents the making of a fresh application for particulars of a vehicle to be entered in the exemptions register after they have been removed from it in accordance with any provision of this Schedule.

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**SCHEDULE 3**

Article 2

**MANCHESTER SHIP CANAL ACTS AND ORDERS**

Manchester Ship Canal Act 1885 c. clxxxviii  
Manchester Ship Canal (Additional Lands) Act 1888 c. cxi  
Manchester Ship Canal (Alteration of Works) Act 1888 c. clxi  
Manchester Ship Canal (Tidal Openings, & c.) Act 1890 c. lxxiv  
Manchester Ship Canal (Various Powers) Act 1890 c. ccxxvii  
Manchester Ship Canal Act 1891 c. clxxx  
Manchester Ship Canal Act 1893 c. iii  
Manchester Corporation (Ship Canal) Act 1893 c. xix  
Manchester Ship Canal (Additional Capital, & c.) Act 1893 c. xxiii  
Manchester Ship Canal (Surplus Lands) Act 1893 c. lxxiii  
Manchester Ship Canal Act 1894 c. clxix  
Manchester Ship Canal Act 1896 c. clxxxii  
Manchester Ship Canal Act 1897 c. cviii  
Manchester Ship Canal Act 1900 c. xxxvi  
Manchester Ship Canal Act 1904 c. ccxii  
Manchester Ship Canal (Bridgewater Canal) Act 1907 c. xv  
Manchester Ship Canal (Various Powers) Act 1907 c. xxx  
Manchester Ship Canal Act 1911 c. lvi  
Manchester Ship Canal Act 1919 c. xlvi  
Manchester Ship Canal Act 1920 c. cxlix  
Manchester Ship Canal Act 1924 c. lviii  
Manchester Ship Canal Act 1925 c. cxx  
Manchester Ship Canal (General Powers) Act 1926 c. lxxxiii  
Manchester Ship Canal Act 1933 c. lxvi  
Manchester Ship Canal Act 1936 c. cxxiv  
Manchester Ship Canal Act 1949 c. xxxvi  
Manchester Ship Canal Act 1950 c. lvi  
Manchester Ship Canal Act 1952 c. xiii  
Manchester Ship Canal Act 1956 c. lxxx  
Manchester Ship Canal Act 1960 c. xlv  
Manchester Ship Canal Act 1962 c. liii

Manchester Ship Canal Act 1966 c. xxvii

Manchester Ship Canal Revision Order 1970 (S.I. 1971/191)

Manchester Ship Canal Revision Order 1975 (S.I. 1975/2205)

The Manchester Ship Canal (Black Bear Canal) (Local Enactments) Order 1976 (S.I. 1976/1084)

Manchester Ship Canal Revision Order 1984 (S.I. 1984/50)

Manchester Ship Canal Revision Order 1987 (S.I. 1987/1790)

Manchester Ship Canal Harbour Revision Order 1992 (S.I. 1992/1268)

The Manchester Ship Canal (Bridgewater Canal) Act 1907 (Amendment) Order 1996 (S.I. 1996/1484)

The Manchester Ship Canal Harbour Revision Order 2009 (S.I. 2009/2579)

The Bridgewater Canal (Transfer of Undertaking) Order 2012 (S.I. 2012/1266)

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## SCHEDULE 4

### BYELAWS

Article 3

#### PART 1

#### INTERPRETATION

1. In these byelaws—

“Account” means the account containing a person’s details for the purposes of paying a toll or charge for a vehicle, or registering a discount, which is identified by a unique account number;

“ANPR” means automatic number plate recognition;

“authorised person” means a person or servant or agent or contractor or police community support officer (“PCSO”) appointed by or authorised by the undertaker to carry out duties in relation to the regulation, direction and control of traffic and for the purposes of the byelaws set out in Part 2 (regulation of traffic in the Rixton and Warburton Bridge) and Part 7 (prevention of damage and nuisance generally) of the byelaws additionally means any police constable;

“the Bridge” means the bridge known as the Rixton and Warburton Bridge authorised by the 1863 Act and the 1890 Act;

“the bridge road” means the length of the highway commencing from the A57 Manchester Road in the north at national grid reference SJ6915390429 to Warburton Bridge Road at national grid reference SJ6980489711 in the south;

“the Canal” means the Manchester Ship Canal;

“the Company” means Rixton and Warburton Bridge Company Limited (Company No. 13617881 incorporated under the Companies Act 2006<sup>(1)</sup>) and having its registered office at Maritime Centre, Port of Liverpool, Liverpool L21 1LA;

“exemptions register” means the register of vehicles exempt from tolls maintained by MSCC in accordance with article 9 (tolls) and Schedule 2 (register of vehicles exempt from tolls);

“MSCC” means The Manchester Ship Canal Company Limited;

“notice” includes a sign, signal and a digital or other display, and in appropriate circumstances, an audible announcement;

“the Order” means the Rixton and Warburton Bridge Order 202[ ];

“relevant date” means midnight on the second day following passage of a vehicle across the Rixton and Warburton Bridge;

“Rixton and Warburton Bridge” means the Bridge together with the bridge road and all toll booths or other toll collection facilities constructed on the said Bridge or the bridge road as shown in the plan in Schedule 7 (Plan);

“Tag” means an electronic device fitted to a vehicle, on the inside of the windscreen, to allow tolling without physical payment using cash, provided there is credit on the Account;

“trailer” means vehicle designed or adapted to be towed by another;

“undertaker” means MSCC or the Company if the power under article 5 (transfer of Undertaking) or under article 10(3) (power to enter into concession agreements and lease or transfer the Undertaking, etc.) of the Order has been exercised; and

“website” means <https://www.warburontollbridge.co.uk/> or as otherwise set-up from time to time and publicised by the undertaker.

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<sup>(1)</sup> 2006 c. 46.

**2.** Unless the context otherwise requires—

- (a) words importing the singular number includes the plural and vice versa;
- (b) words imparting any particular gender includes the other gender; and
- (c) any reference in the byelaws to any statute or statutory provision is construed as referring to that statute or statutory provision as it may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this byelaw) and including all subordinate legislation from time to time made under it.

**3.** The Interpretation Act 1978<sup>(u)</sup> applies to the interpretation of these byelaws as it applies to the interpretation of an Act of Parliament.

**4.** Nothing in these byelaws applies so as to restrict the execution of duties or the carrying out of works or services on the Rixton and Warburton Bridge by authorised persons or by any police officer or fire officer.

## PART 2

### REGULATION OF TRAFFIC ON THE RIXTON AND WARBURTON BRIDGE

**5.** The driver of a vehicle on the Rixton and Warburton Bridge must comply with all traffic signals and instructions given by an authorised person and with all notices (including any temporary notices), road markings and traffic signals displayed on the Rixton and Warburton Bridge.

**6.** The maximum speed for a vehicle on the Rixton and Warburton Bridge will be that which is indicated by the displayed road signs, and subject to byelaw 7, the minimum speed is 15 miles per hour except for pedal cycles or where prevented by other vehicles or at places where stops or a lower speed are unavoidable or are permitted or directed by an authorised person or displayed temporary road signs (whether advisory or mandatory).

**7.** The procedures for imposing or exceeding mandatory speed limits for emergency vehicles are prescribed under the relevant legislation and the penalties for contravening local speed limits are prescribed in the Road Traffic Regulation Act 1984<sup>(v)</sup>, the Road Traffic Act 1988<sup>(w)</sup> and the Road Traffic Offenders Act 1988<sup>(x)</sup> or any amendment thereof relating to speed limits.

**8.** A person must not use or cause to be used a vehicle on the Rixton and Warburton Bridge unless the load carried by the vehicle is at all times contained or secured (if necessary by physical restraint other than its own weight) and is in such a position that neither danger nor nuisance is caused or is likely to be caused to a person or property by reason of the load to any part of the load falling or being thrown from the vehicle.

**9.** A driver of a vehicle which has shed its load in full or in part on the Rixton and Warburton Bridge such that it has caused, or may cause, an obstruction or other hazard to users of the Rixton and Warburton Bridge or to users of the Canal must as soon as reasonably practicable—

- (a) inform an authorised person of the loss of the load; and
- (b) inform an authorised person of the identity of, and contact details for, the owner of the load.

**10.** The driver of a vehicle on the Rixton and Warburton Bridge must maintain a safe and prudent distance between that driver's own vehicle and the one immediately in front of it.

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<sup>(u)</sup> 1978 c. 30.

<sup>(v)</sup> 1984 c. 27.

<sup>(w)</sup> 1988 c. 52.

<sup>(x)</sup> 1988 c. 53.

**11.** A person driving a vehicle on the Rixton and Warburton Bridge must not stop the vehicle unless directed by an authorised person, notice or traffic signal or compelled by traffic, or unless it is necessary for the vehicle to do so—

- (a) by reason of a breakdown of the vehicle; or
- (b) by reason of, or to prevent, an accident with another vehicle or person on the Rixton and Warburton Bridge; or
- (c) by reason of illness of the driver of the vehicle or other emergency which causes the driver to be unable to continue to drive the vehicle; or
- (d) to permit any person carried in or on the vehicle to recover or move any object that has fallen; or
- (e) to permit any person carried in or on the vehicle to give help which is required by any person in any of the circumstances specified in paragraphs (a), (b), (c) or (d); or
- (f) for the discharge of functions contained in legislation relating to fires and emergencies.

**12.** A vehicle may be towed on the Rixton and Warburton Bridge provided it is secured by means of towing equipment which is appropriate for the purpose and provided that, if explicitly directed by an authorised person because of safety concerns, the vehicle and towing equipment have been examined by an authorised person.

**13.** A person must not drive onto the Rixton and Warburton Bridge any vehicle which is not provided with sufficient petrol or other fuel and mechanical power to ensure that it maintains the minimum speed specified in these byelaws and is able to traverse the Rixton and Warburton Bridge.

**14.** A person must not, except with the permission of an authorised person, refuel any vehicle or undertake any repairs to a vehicle or change a tyre or wheel of a vehicle on the Rixton and Warburton Bridge.

**15.—(1)** If the driver of a vehicle on the Rixton and Warburton Bridge refuses to move the vehicle when ordered to do so by an authorised person, or if a vehicle on the Rixton and Warburton Bridge is unable to proceed because of a breakdown, it will be lawful for it to be removed by an authorised person at the cost and expense of the owner of person in charge of the vehicle, and a person must not obstruct any such authorised person in carrying out such removal.

(2) The vehicle will be removed to a location which will be either—

- (a) the operational premises of the recovery company employed for this service; or
- (b) other designated area as specified by the undertaker or an authorised person,

details of which will be available on the website.

### PART 3

#### DANGEROUS TRAFFIC

**16.** A person must not, except with the consent of an authorised person, take or cause or permit to be taken on to the Rixton and Warburton Bridge any vehicle carrying any goods, substances or articles of a dangerous nature.

### PART 4

#### EXCLUDED TRAFFIC

**17.** A person must not enter, attempt to enter or remain on any part of the Rixton and Warburton Bridge when instructed not to do so by an authorised person or where there is a notice prohibiting or restricting access.

**18.** A person must not take or cause or permit to be taken onto the Rixton and Warburton Bridge any of the following vehicles—

- (a) vehicles which emit grit, sparks, ashes, cinders, or oily substances in a manner which contravenes any regulations for the time being in force under the Road Traffic Act 1988<sup>(y)</sup> or any amendment relating to the construction and use of motor vehicles;
- (b) vehicles which, in the opinion of an authorised person, are in such a condition or are so loaded, built or equipped as to be likely to retard traffic, injure persons or damage property.

## PART 5

### SPECIAL TYPE VEHICLES

**19.**—(1) A person must not take or permit to be taken onto the Bridge, without the prior permission of an authorised person and subject to such conditions as the authorised person may direct (which may include an escort, for which a reasonable charge may be made), any vehicle, except any vehicle entered into the Exemptions Register in accordance with article 9 (payment of tolls) and Schedule 2 (register of vehicles exempt from tolls) of the Order, whose height, width or weight (including load in each case) exceeds the following—

<i>(1)</i>	<i>(2)</i>
Height	5.18 metres
Width	2.5 metres
Weight	3 tonnes

(2) Application for permission of an authorised person under this byelaw must be made in writing at least 6 clear days before the proposed arrival at the Bridge of the vehicle the subject of the application.

## PART 6

### TOLLS AND CHARGES

**20.** A toll is to be demanded and taken in accordance with the provisions of the Order and any order modifying, amending or replacing it unless the vehicle is exempt from the requirement to pay a toll.

**21.** In respect of the passage of a vehicle across the Rixton and Warburton Bridge which is not exempt, payment of the toll may be made in the following ways—

- (a) by pre-payment of the toll;
- (b) by payment of the toll via ANPR
- (c) by payment of the toll via a Tag; or
- (d) in accordance with the payment methods published from time to time by the undertaker.

**22.** A person driving a vehicle across the Rixton and Warburton Bridge is liable to pay a toll at a level displayed at all entry points onto the Rixton and Warburton Bridge.

**23.** A liability to pay unpaid toll charges in respect of a vehicle arises where—

- (a) a liability to pay a toll under byelaw 20 has been incurred in respect of that vehicle;

- (b) a toll has not been paid in full by, or on behalf of, either the driver or registered keeper of that vehicle in respect of the passage by the vehicle across the Rixton and Warburton Bridge; and
- (c) the toll remains unpaid beyond the relevant date.

**24.** The level of unpaid toll charges to be applied to a vehicle in accordance with byelaw 23 will be—

- (a) £30.00 (thirty pounds) in addition to the toll payable when paid in full within fourteen days beginning with the relevant date;
- (b) £60.00 (sixty pounds) in addition to the toll payable when paid in full between fourteen days from the relevant date and twenty eight days following the relevant date;
- (c) £100.00 (one hundred pounds) in addition to the toll payable when paid in full after twenty eight days following the relevant date.

**25.** For the purpose of byelaw 21(b), the undertaker will use ANPR to record images of vehicles to calculate the toll due from the relevant Account.

**26.** The undertaker will retain and use any such images or information recorded from vehicles in accordance with the General Data Protection Regulation and the Data Protection Act 2018<sup>(2)</sup>.

**27.** A person, liable under byelaw 23, must inform the undertaker as soon as reasonably practicable if their vehicle is sold or stolen, and provide a unique reference number or crime reference number from the police or appropriate documentary evidence of the sale (as applicable) and, if the undertaker requests, confirm the theft or sale in writing.

**28.** If the undertaker is not informed that the vehicle has been sold or stolen in accordance with byelaw 27, charges will continue to be calculated for the vehicle in accordance with byelaw 24 and the Account will remain liable for any charges incurred by the vehicle and the Account will continue to be debited.

**29.** If the vehicle has been sold, a person may register a new vehicle to their Account by updating their Account.

**30.** The undertaker will be entitled to deduct from an Account all liable charges, and other sums due to the undertaker in accordance with the byelaws and the Order, as they are incurred.

**31.—**(1) For the purpose of byelaw 21(c), a person may apply to the undertaker for a Tag.

(2) Any such application must be made on a form issued by and obtainable from the undertaker at the website and must include the particulars and information required by such form to be supplied.

(3) The undertaker may require an applicant for a Tag to produce evidence it may reasonably require to verify any particulars, in respect of information given to it.

(4) Upon receipt of an application duly made under this byelaw, the undertaker may issue to the applicant a Tag.

**32.** The Tag holder must inform the undertaker as soon as reasonably practicable if their vehicle is sold or stolen, and provide a unique reference number or crime reference number from the police or appropriate documentary evidence of the sale (as applicable) and, if the undertaker requests, confirm the theft or sale in writing.

**33.** If the undertaker is not informed that the vehicle has been sold or stolen in accordance with byelaw 32, charges will continue to be calculated for the vehicle in accordance with byelaw 24 and the Account will remain liable for any charges incurred by the vehicle and the Account will continue to be debited.

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<sup>(2)</sup> 2018 c. 12.

## PART 7

### PREVENTION OF DAMAGE OR NUISANCE GENERALLY

**34.** A person on the Rixton and Warburton Bridge must not climb upon, damage or remove any part of (whether deliberately or negligently) the structures of the Rixton and Warburton Bridge, equipment, fittings or appurtenances or any other property of the undertaker, or post any bill, placard or notice, or write or stamp, cut, print, draw or make marks in any manner on any part.

**35.** A person must not remove, jump or otherwise manoeuvre over or under, any bar, railing, fence or barrier or open any gate or movable barrier fitted or placed on any part of the Rixton and Warburton Bridge or fix anything to the Rixton and Warburton Bridge without prior consent from an authorised person.

**36.** A person must not move, alter, or deface or otherwise interfere with any notice or sign belonging to the undertaker and exhibited or placed on the Rixton and Warburton Bridge.

**37.** A person, other than one so authorised by the undertaker, must not throw or drop in any part of the Rixton and Warburton Bridge anything whatsoever capable of injuring or damaging the bridge road or the Canal or any person or property.

**38.** A person must not place or deposit or leave on the Rixton and Warburton Bridge any vehicle or any glass, china, earthenware, plastic, tin, paper, debris, oils, waste or other material so as to create an obstruction or litter or fire risk.

**39.** A person must not wilfully obstruct or impede an authorised person in the execution of the authorised person's duty, nor use threatening, abusive or insulting words or behaviour against the authorised person, in or about the Rixton and Warburton Bridge.

**40.** A person must not offer for sale or sell any articles or produce of any description on the Rixton and Warburton Bridge without the express written permission of the undertaker.

**41.** A person must not loiter or remain on the Rixton and Warburton Bridge or in any vehicle therein after having been requested by an authorised person to move therefrom.

**42.** A person must not, without prejudice to any other requirement of the byelaws, act in any way as to cause, or likely to cause, harassment, alarm or distress to any person or cause a nuisance on the Rixton and Warburton Bridge.

## PART 8

### CLOSURE OF THE BRIDGE ROAD

**43.** During any period of closure of the Rixton and Warburton Bridge in accordance with article 4 (closing of the Rixton and Warburton Bridge) of the Order, the passage of any vehicle across the Rixton and Warburton Bridge must only be with the consent of the undertaker whose decision will be final.

## PART 9

### POWER TO EXCLUDE

**44.** It will be lawful for an authorised person to prevent from gaining access to the Rixton and Warburton Bridge the driver of any vehicle or any other person who the authorised person has reasonable cause to believe is contravening, or will, if the driver of the vehicle or the other person proceeds, contravene any of these byelaws.

## PART 10

### PENALTY FOR OFFENCES

**45.** Any person who contravenes or fails to comply with a provision of these byelaws is liable on summary conviction to a fine not exceeding Level 3.

**46.** The undertaker wherever applicable in monitoring infringements of these byelaws and in the prosecution of offenders is entitled to rely where appropriate—

- (a) on the evidence of a device adapted for measuring by radar, laser or automatic number plate recognition or any other means the speed of vehicles as may be approved by the Secretary of State; and
- (b) to make admissible recorded images from the flow of traffic on the Rixton and Warburton Bridge.

**SCHEDULE 5**  
**AMENDMENTS**

Article 18

**47.** Section 48 (power to take tolls for passing over the Bridge and Roads) of the 1863 Act is amended as follows—

- (a) delete “Persons, Animals, and Carriages, from Time to Time” and insert “vehicles”;
- (b) after “any Tolls not exceeding the” insert “tolls recoverable in accordance with the Rixton and Warburton Bridge Order 202[ ]”; and
- (c) delete the words “from following (that is to say,)” until the end of section 48.

## **SCHEDULE 6**

Article 19

### **REPEALS**

Sections 49, 51-68 and 70-74 of the 1863 Act are repealed.

# SCHEDULE 7 PLAN



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**SCHEDULE 8**

Articles 2, 5 &amp; 8

**SCHEDULE OF IMPROVEMENTS****Interpretation****48.** In this Schedule—

“ANPR” means automatic number plate recognition;

“the approach road” means the length of the highway commencing from the A57 Manchester Road in the north at national grid reference SJ6915390429 to Warburton Bridge Road at national grid reference SJ6980489711 in the south excluding the bridge road;

“the Bridge” means the bridge known as the Rixton and Warburton Bridge authorised by the 1863 Act and the 1890 Act;

“the bridge road” means the highway along the length of the structure of the Bridge;

“the DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“highway” has the same meaning it has for the purposes of the Highways Act 1980<sup>(aa)</sup>; and

“PBI 2022” means the Principal Bridge Inspection Report in respect of the Bridge dated July 2022.

**The Improvements****49.** The Bridge—

works in respect of the Bridge itemised as E1, E2, E3, E4, E5 and E6 in the PBI 2022.

**50.** Signage—

replace non-compliant weight restriction signs in respect of the Bridge.

**51.** The bridge road—

- (a) plane off existing surface;
- (b) remove existing road surface including existing timber setts to deck plates;
- (c) re-install water proofing to the Bridge’s deck plates;
- (d) reconstruct the bridge road including a new surface at the same level as the existing bridge road;
- (e) reinstate vehicle restraint barrier connection in accordance with the PBI 2022;
- (f) provide road lines, markings and signage in accordance with the DMRB and the Traffic Signs Manual 2018 (as amended);
- (g) clear any protruding vegetation along the length of the bridge road.

**52.** Drainage—

- (a) clean drains along the length of the bridge road and along the length of the approach road and carry out repairs as necessary in accordance with the DMRB;
- (b) repair, and where necessary replace, brackets and failed sections of service pipes along the length of the bridge road and along the length of the approach road.

**53.** The approach road

- (a) plane off existing surface;

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<sup>(aa)</sup> 1980 c. 66.

- (b) widen the approach road to 5.8 metres in so far as within MSCC's ownership with new carriageway reconstruction;
- (c) construct new footway up to 1.5 metres in width (adjacent to southbound running lane) in so far as within MSCC's ownership;
- (d) provide road lines, markings and signage in accordance with the DMRB and the Traffic Signs Manual 2018 (as amended);
- (e) clear any protruding vegetation along the length of the approach road;
- (f) repair existing Armco safety barriers and timber rail fencing where necessary.

**54. ANPR—**

all the necessary works to remove existing toll booth and barriers in respect of the Bridge and install a system of payment of tolls via ANPR.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

The Order revises the tolls which The Manchester Ship Canal Company Limited (“MSCC”) may charge for use of the Rixton and Warburton Bridge and supersedes the toll levels set out in the Rixton and Warburton Bridge Act 1863.

This Order contains provisions for local user discount and provisions in relation to Improvements to the Rixton and Warburton Bridge to be completed before MSCC can charge the tolls in accordance with the Order.

This Order contains provisions for MSCC, to make new byelaws in relation to the good management and use of the Rixton and Warburton Bridge in order to safeguard the navigation of the Manchester Ship Canal.

This Order contains provisions for MSCC to transfer the Rixton and Warburton Bridge Undertaking to the Rixton and Warburton Bridge Company Limited, should MSCC so resolve.

Provision is made for byelaws and agreements made or entered into by MSCC to remain in force as if they had been made or entered into by The Rixton and Warburton Company Limited and for legal and other proceedings to be carried on by or in relation to MSCC.

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STATUTORY INSTRUMENTS

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**202[ ] No. 0000**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

**The Rixton and Warburton Bridge Order 202[ ]**

**BDB PITMANS LLP**

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**Solicitors and Parliamentary Agents**

**[Master: 27117077.03 — 09.12.22 & 13.01.23]**

**[MSCC Commitments in the Order]**