

RIXTON AND WARBURTON BRIDGE ORDER

THE TRANSPORT AND WORKS ACT 1992

THE TRANSPORT AND WORKS
(APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006



RIXTON AND WARBURTON BRIDGE
RWB/C1 - TWAO REPRESENTATIONS - APPLICANT'S RESPONSE REPORT

May 2022

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TWAO Representations – Applicant’s Response Report

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1 INTRODUCTION

Forward

- 1.1 Manchester Ship Canal Company Limited (**MSCC**) has applied to the Secretary of State for Transport under section 6 of the Transport and Works Act 1992 (the **1992 Act**) for an Order under section 3 of the 1992 Act (the **proposed Order**) to modify the statutory regime applicable to the Rixton and Warburton Bridge (the **Bridge**), and introduce a package of measures to ensure the continued safe and efficient operation of the Bridge and thereby safe navigation of the Manchester Ship Canal (the **Canal**). This document has been prepared in response to the key issues raised during the objection period following submission of MSCC's application in respect of the proposed Order.

Structure of the MSCC's Summary Response Report

- 1.2 A total of 314 responses were received by the Department for Transport in relation to MSCC's application for the proposed Order.
- 1.3 **Figure 1-1** below broadly identifies the groups that responded during the objection period.

Group	Number of responses
Local Council / Highway Authority	4
Parish Council	4
Councillors	1
Member of Parliament	4
Local Businesses & Societies	6
General Public	295

- 1.4 To put this number in context, between September and November 2021, the average number of vehicles crossing the Bridge in both directions each day was around 8,000. Assuming each vehicle used the Bridge twice, this would suggest there were approximately 4,000 users of the Bridge each day, equating to a response rate of 8%. For reference, this total figure is down from 9,000 vehicles per day in September 2019, before the Covid-19 pandemic.

1.5 Having reviewed the responses, MSCC has categorised the response into five overarching themes, in the same manner as the feedback from non-statutory consultation in the Summer of 2021:

1.5.1 Tolling

1.5.2 Use of revenues raised

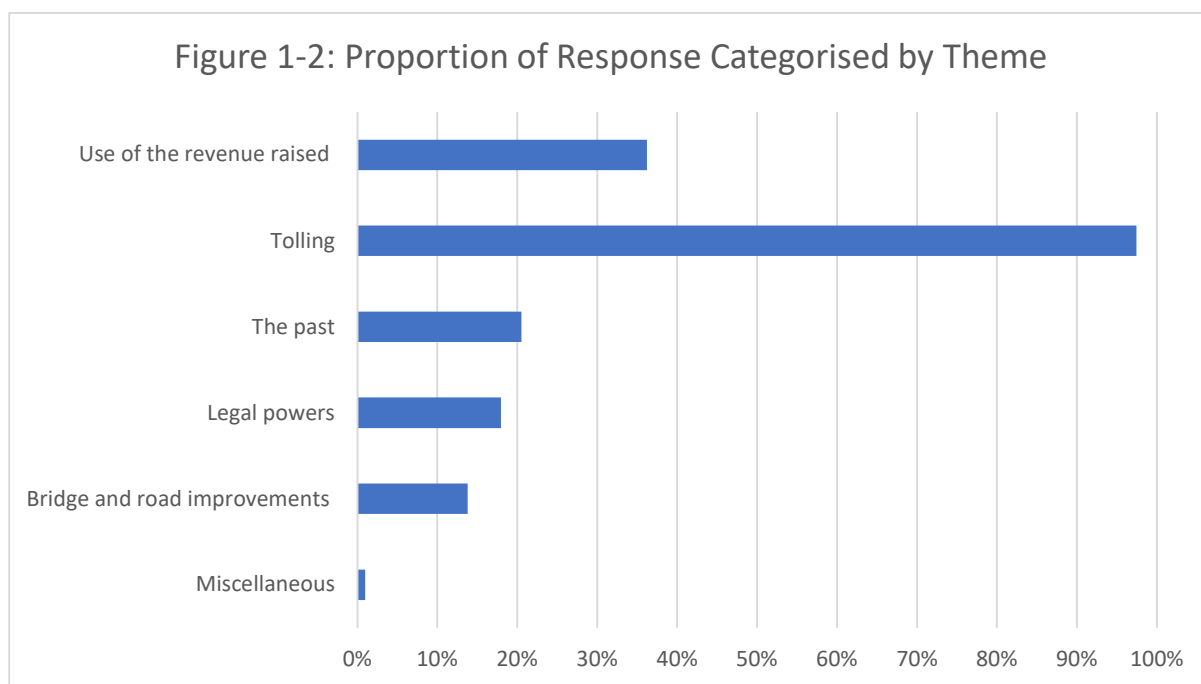
1.5.3 The past

1.5.4 Legal powers

1.5.5 Bridge and road improvements

1.6 **Figure 1-2** below shows the proportion of responses mentioning each of the key themes. Note that in total, these exceed 100% as some objectors addressed more than one theme. In the following sections, we then distil the various detailed comments into more general themes that address issues raised.

1.7 Figure 1-2 illustrates the proportion of responses categorised by theme.



1.8 MSCC notes that the miscellaneous response relates to a request to the Department for Transport for an extension to the deadline for consultation. MSCC also notes that all responses were categorised into themes whenever a theme was mentioned, even if this was indirectly, to ensure that the fairest representation of the themes raised was provided.

1.9 The rest of this document sets out the key issues raised within each of these overarching themes and MSCC's response. For ease of reference this information is presented in table format.

- 1.10 MSCC has responded directly to statutory objectors such as Warrington Borough Council and Trafford Borough Council and those parties that raised matters or questions of a specific nature not covered in the key themes identified for the purposes of this document.

- 1.11 MSCC hopes that the below responses to the objections provide sufficient explanation and addresses the concerns raised by the objectors. MSCC will continue to engage with the stakeholders, where appropriate, in order to resolve and narrow down the issues between the parties in respect of MSCC's proposals and the proposed Order.

2 TOLLING

Tolling was mentioned in 97% of responses, making it the dominant theme. The responses grouped into this theme focus on the toll charge itself, possible discount schemes, and the method of tolling. Although the majority of responses were opposed to increasing the toll charge to a maximum of £1.00 (inc. VAT), others were accepting of a smaller increase in charge. Those that agreed with the increase cited the benefits of the infrastructure investment, which would include better regulation of the toll and reduced congestion through automatic collection.

Theme	Concern raised	MSCC response
<p>Necessity of the toll increase</p>	<p><i>Objections raised that there should not be a toll for the crossing of the Bridge.</i></p>	<p>The toll finances the operation and maintenance of the Bridge and so without it, the Bridge risks closure. Closure of the Bridge would likely cause greater congestion on alternative routes and longer journey times. MSCC are happy to explore alternative funding sources but at this stage, none have yet been identified.</p> <p>The Bridge at present requires significant refurbishment and ongoing maintenance, the cost of which is considerable. MSCC consider that if no action were taken, the Bridge will fall further into disrepair, as the level of surplus revenues, even in the absence of any other atypical negative events, continue to decline in real terms, and thus upgrades cannot be carried out. Free flow tolling will not be delivered. Even the ongoing essential tasks such as pothole repair will be unaffordable. This could have a significant impact on the Canal beneath, with vessels using the Canal being at risk of parts of the Bridge falling from the structure.</p> <p>However, the ultimate risk would be for the Bridge to collapse entirely, blocking the Canal, with the most serious case being for this to happen when a vessel was passing underneath and vehicles driving on the Bridge itself.</p> <p>In addition to the risks occurring beneath the Bridge, if the Bridge did not receive any repair, a greater number of vehicles using the Bridge would likely be damaged as a result of worsening potholes and road surface. Users of the Bridge and those living in the surrounding area would continue to be adversely impacted by congestion and the inefficient means of toll collection.</p> <p>If no upgrade works are carried out to the Bridge, vehicles, vessels and lives would all be put at risk. As such, MSCC may be forced to restrict the use of the Bridge before any such events could happen. This could sever</p>

Theme	Concern raised	MSCC response
		links to villages on either side of the Canal, creating longer journey times and travel costs for those needing to reroute via alternative crossings. Such outcome would not be unprecedented. One recent high-profile example of this is the Hammersmith Bridge in London, which was forced to close to all motorised traffic in April 2019 due to safety concerns, and has only since been reopened in 2021 to pedestrians, cyclists and river traffic. In order to cover the costs of upgrading Hammersmith Bridge so that it can be fully re-opened to motorised traffic, it is proposed that a toll or road charging scheme is developed.
	<i>Why can't the Canal/MSCC fund the proposed improvements?</i>	The MSCC operates a canal and port, it is not a toll road operator. The existence and operation of the Bridge is not required as part of the operation of the Canal, and the legislation that transferred the right to toll the Bridge over the Canal reflected this. The aim being that the toll Bridge was self-financing and not a burden to the Canal. While traditionally MSCC has endeavoured to absorb difficult financial periods, such as the arson attack and Covid-19 restrictions, the scale of the costs for the improvements is far beyond what could be expected to be funded by the MSCC. This means, in the absence of any other Government funding or adoption by the Highway Authorities, that the funding has to come from tolls.
	<i>Queries regarding the role of Peel Ports being responsible for managing and funding of the Bridge</i>	<p>MSCC is a wholly owned subsidiary of Peel Ports. It is a separate legal entity with its own statutory powers and duties. It is MSCC who owns the Canal and also owns and operates the Bridge. Peel Ports therefore has no responsibility for either managing nor funding the Bridge,</p> <p>MSCC is a body corporate previously incorporated under Part II of the Manchester Ship Canal Act 1885 (the 1885 Act) but which since 12 November 2010 has been incorporated under the Companies Act 2006.</p> <p>By section 3 of the 1885 Act, MSCC is the Harbour Authority of the Harbour and Port of Manchester. The Harbour and Port of Manchester includes the Canal, so much of the navigable waters of the Rivers Mersey</p>

Theme	Concern raised	MSCC response
		<p>and Irwell as lie between Hunt's Bank and the limit of the Port of Liverpool at Warrington, and all channels, canals, cuts, docks and works of MSCC within those limits.</p> <p>MSCC's primary role and responsibility is the operation and navigational safety of the Canal.</p> <p>Until 1993, MSCC was owned by Manchester City Council with the board of directors of MSCC comprising a majority of directors elected by Manchester City Council, with the balance of directors being those elected by MSCC's shareholders. In 1993 MSCC became a wholly owned subsidiary of Peel Holdings. MSCC has therefore only owned and operated the Canal and the Bridge for the past 29 years.</p>
<p>Proposed toll increase</p>	<p><i>Querying the magnitude of toll increase;</i></p> <p><i>Duty to keep the toll as low as possible as it is publicly funded.</i></p>	<p>In terms of increasing the maximum toll, the toll finances the operation and maintenance of the Bridge and so without it, the Bridge risks closure. Closure of the Bridge would likely cause greater congestion on alternative routes and longer journey times. MSCC are happy to explore alternative funding sources but at this stage, none have yet been identified.</p> <p>The new bridge company will set the toll level to meet the agreed objectives and will endeavour to keep them as low as possible. However, the cost of the improvement works is estimated to be very large and therefore a noticeably higher toll is now required.</p> <p>In terms of the need for an increased toll, Chapter 5 of the Business Case outlines future costs while Chapter 6 explains how the new maximum toll has been calculated. The very large costs involved in refurbishing the bridge cannot be supported without a significant toll increase. In addition, Section 5.2.5 of the Business Case discusses current toll collection costs (i.e. staffing) vs the anticipated costs of free-flow tolling. Current toll collection costs of staffing are removed from the estimated operating costs going forward, where operating costs are assumed in the Business Case calculations to be £455k/annum (inc. free flow tolling).</p>

Theme	Concern raised	MSCC response
		<p>The proposed Order sets the new toll at a maximum of £1 per crossing (inclusive of VAT, currently at 20%) and allows this to be indexed at a rate of CPI minus 1%. This recommendation has been calculated in order to cover anticipated costs based on forecasted traffic levels, whilst keeping the headline toll as low as reasonably possible for users. If the headline toll is reduced, the Bridge improvements, and thus safety of the highway, is at risk of not being able to be financed.</p> <p>The actual toll levied on opening will be set at the level needed to meet the objectives outlined in the proposed Order. Should the upgrade costs be noticeably lower and/or traffic levels higher than expected, a lower toll can be considered.</p> <p>The importance of the Bridge for traffic movements between the M6 and M62 is acknowledged, and is reflected in MSCC's desire to establish a long term sustainable financing plan that ensures the bridge remains open, removes the existing queues and delays for users, and supports and encourages active travel options along with public transport.</p> <p>MSCC emphasises that if the headline toll is reduced, the Bridge improvements, and thus safety of the highway, is at risk of not being able to be financed. We believe that the toll increase is at a level for many users that is still less than the increased costs of fuel, vehicle wear and tear and time lost associated with taking alternative routes.</p> <p>Discounts are proposed for local residents living in postcodes WA3 6 and WA13 9 to reduce the burden of the increased toll rate, and all users will have the toll capped at two trips per day, no matter how many times they cross the Bridge.</p>
	<i>Costs versus revenues</i>	Comparing average yearly costs with average revenues for the Bridge, and excluding the impact of atypical events like the arson attack and Covid-19, or the ever-growing costs of repairing potholes, a surplus of only

Theme	Concern raised	MSCC response
		<p>£23k a year was calculated. Even if such a surplus were simply directed to funding the required future capital expenditure of £6.5m, there is a very large gap between these costs and the surplus over twenty years (it would take 282 years of £23k payments to reach £6.5m). It is therefore clear that the existing toll cannot sustain the bridge into the future and a very significant increase, at least proportionally, is required. However, it should also be noted that even at £1 this will be significantly lower than tolls on crossing further west to cross the Mersey.</p>
	<p><i>Queries regarding whether VAT is included in the proposed toll</i></p>	<p>Following precedent of other similar orders and acts of Parliament, the maximum amount of the toll does not expressly state whether the amount includes or excludes VAT. The position is that privately owned bridges are subject to VAT and therefore unless the law changes, MSCC cannot charge more than the maximum amount set out under the proposed Order which will be set at £1,00 and under current legislation that means that VAT would have to be paid out of that sum.</p> <p>Paragraph 1(5) of Part 1 of Schedule 1 to the proposed Order, expressly provides that should the VAT rate change in the future, the maximum toll amount which MSCC may charge as provided for in paragraph 1(1) of Part 1 of Schedule 1, "will be revised by the amount of any changes to the VAT". Therefore if the VAT element decreased or became nil by virtue of being abolished than the maximum amount of the toll would have to be adjusted accordingly. For example removal of VAT at the present rate would bring down the toll level to circa 80p.</p> <p>MSCC are happy to explore with Warrington Borough Council and Trafford Borough Council lobbying the Government for the removal of VAT in respect of the Bridge.</p>

Theme	Concern raised	MSCC response
Comparison to other bridges	<i>Other bridges across the Canal do not have tolls</i>	<p>The Bridge is the only bridge between the M6 and the M60, and the right to collect a toll at this location was originally granted by the 1863 Act. The right to collect that toll was transferred to MSCC in the 1890 Act, providing compensation to cover the cost of providing and maintaining the Bridge for public use. MSCC are happy to consider other funding sources, and even transferring the Bridge to the local authorities, but no other funding sources have been identified.</p> <p>The local highway authorities have confirmed to MSCC that they are not able to take responsibility for the Bridge or the approach roads and remove the toll. The cost of refurbishing and then maintaining the Bridge and loss of toll revenue would be considerable and both Trafford and Warrington Borough Councils have confirmed that they cannot even consider taking on those additional significant financial liabilities without additional support from central Government and/or increases in Council Tax. Further, the Government has indicated that the operation and management of private tolled crossings are the responsibility of the owner and not the Government.</p>
Discounts	<i>Querying what discounts would be available</i>	<p>In terms of exemptions, it is proposed to offer local residents living in postcodes WA3 6 and WA13 9 a 50% discount on the toll. For all other users there will be a day cap, so the non-discounted toll rate would be capped at £2 per day regardless of the number of times the Bridge is used in that day. The proposed Order will be amended to include this provision.</p> <p>MSCC are also proposing to offer an annual pass which is intended to be on the same ratio to day ticket, as per the current arrangements. The price of the annual pass will be defined by reference to the toll for a single trip.</p>

Theme	Concern raised	MSCC response
		<p>Should the upgrade costs of MSCC's proposals be noticeably lower and/or traffic levels higher than expected, a lower headline toll will be adopted.</p> <p>There will also be an exemptions list for certain users such as emergency service vehicles, pedestrians, cyclists and public transport.</p> <p>Wider discounting would increase the headline toll paid by others. In advancing the above discount proposal, MSCC has sought to balance the desire to reduce the impact of the price increase on local communities, with the need to avoid an even greater increase for the majority.</p>

3 USE OF THE REVENUE RAISED

The majority of responses grouped in the use of the revenue raised theme enquire how the money collected from the previous years has been spent, and whether this can be used to fund the much needed improvements. References are also made that the public should not have to fund the proposed improvements. The responses within this theme often relate to opposition to increasing the toll. Approximately 36% of all responses raise revenue as a topic.

Theme	Concern raised	MSCC response
<p>Claims that MSCC's proposal allows MSCC to retain past revenues</p>	<p><i>Questioning the 'clean slate' approach on the transfer of the existing undertaking to the new company.</i></p>	<p>MSCC (in its current form as a subsidiary of Peel Holdings) is not aware of what the precise position was regarding historic use of revenues. Until 1993, MSCC was owned by Manchester City Council (formerly Manchester Corporation) with the board of directors of MSCC comprising a majority of directors elected by Manchester City Council, with the balance of directors being those elected by MSCC's shareholders. In 1993 MSCC became a wholly owned subsidiary of Peel Holdings. MSCC (as a subsidiary of Peel Holdings) has therefore only owned and operated the Canal and the Bridge for the past 29 years and for the previous 130 years it was owned and operated by the Manchester City Council.</p> <p>Over the past 29 years, MSCC has significantly contributed financially towards the management of the Bridge.</p> <p>The revenues and costs are always at risk from exceptional events, and it has been subject to a catalogue of negative events over the last 5 years. For example, as a consequence of the 2018 arson attack, revenues in 2018/19 fell by around 40%, reflecting the inability to collect a toll between May and August 2018.</p> <p>Further to this lost revenue, MSCC also had to bear the additional cost of installing a temporary toll booth and fitting a new permanent booth. This amounted to £92,000 of direct costs, or over four years of the estimated revenue surplus. This excludes the additional indirect costs incurred through the time spent</p>

Theme	Concern raised	MSCC response
		<p>resolving this issue by MSCC staff, so underestimates the true cost. These additional costs, which are in excess of any pre-Covid revenue surplus from tolls, have been paid for by MSCC from their own funds.</p> <p>Additionally, during the Covid-19 pandemic, revenues took a significant hit and staff were furloughed. Traffic, and hence revenues, still remains at least 10% below pre-pandemic levels. These negative impacts are also being absorbed by MSCC, as are the costs of promoting the proposed Order to ensure a sustainable future for the Bridge going forward.</p> <p>Finally, the highway has now deteriorated to the point where pothole patching is an ongoing process. The latest assessment by MSCC this year indicates a budget of £10,000 a month for several months may be required to keep the highway operational. Even two months at this level would exceed the estimated pre-Covid revenue surplus from tolls.</p> <p>The clean slate does not retain past profits but ensures the new Bridge Company is not burdened with recent losses, and ongoing losses until the upgrade is completed. If this approach were not taken the toll would have to be even higher.</p>
<p>Lack of reserve fund</p>	<p><i>Where have previous toll revenues been spent on?</i></p>	<p>The use of revenues collected in the past have been used to cover the ongoing operations and maintenance of the Bridge, which have, year on year, increased over time.</p> <p>MSCC (as a subsidiary of Peel Holdings) has only owned and operated the Canal and the Bridge for the past 29 years and for the previous 130 years it was owned and operated by the Manchester City Council. An assessment of recent costs and revenues would suggest, in pre covid years, when there were no atypical events, a surplus of around £23k a year was generated. However, this surplus can be rapidly used up when</p>

Theme	Concern raised	MSCC response
		<p>atypical events arise, as has happened in recent years. Consequently, the toll revenues have been used to cover part of the operating and maintenance costs.</p> <p>Further, the toll for cars has been slowly escalated over time (it was 5p until 1981 when it increased to 10p, and it was raised to 12p in 2001) and there has been some modest traffic growth in the past. However, these have struggled to keep pace with the ongoing escalation of costs and inflation, heightened by the fact that traffic has recently stopped growing, largely due to the Covid-19 pandemic. It is also worth noting that 5p in 1963, which is the earliest date we have for a car toll being charged, was escalated by the Bank of England's estimates of inflation, would give a toll of £1.11 in 2021 prices..</p> <p>The 2003 imposition of VAT also resulted in a significant reduction in net revenues, further compounding the problem of high operating costs and low revenues.</p>

4 THE PAST

This theme focuses on the history of the Bridge operations. Of the 21% of responses that fall into this theme, the majority refer to the 1863 Act and how it might relate to the MSCC’s proposals as set out in the Sustainable Investment Plan (Appendix 2 of A6). Whilst the past is referenced in responses, responses in this theme often fall into at least one of the other themes previously discussed in this report.

Theme	Concern raised	MSCC response
<p>Original bridge no long exists</p>	<p><i>The Bridge was originally over the River Mersey, but the river no longer exists, so the toll is no longer valid.</i></p>	<p>The 1890 Act authorised the construction of the Canal, including the construction of the replacement bridge road and the replacement of the original stone bridge with the Bridge. The 1890 Act also authorised for the said road and the replacement bridge to be part of MSCC’s undertaking, including the levying of tolls.</p>
<p>Historic profit of the toll</p>	<p><i>Query of why when there has been excess profit from the Toll, there is any need to increase the Toll.</i></p>	<p>As explained above, MSCC (as a subsidiary of Peel Holdings) has no precise visibility on whether there were profits in years prior to Peel’s acquisition. Nor is it possible to determine this from the MSCC accounts, where as previously explained the Bridge has not been separately accounted for in full. An assessment of recent costs and revenues would suggest, in pre covid years, when there were no atypical events, a surplus of around £23k a year was generated. However, this surplus can rapidly be used up when atypical events arise, as has happened in recent years. As such, MSCC do not believe there are excess profits from which it has benefited.</p>

Theme	Concern raised	MSCC response
<p>Delay in increasing toll</p>	<p><i>Why was the Toll not raised years ago – if it's the only option to fund maintenance, before the Bridge deteriorated to such an extent.</i></p>	<p>In the past MSCC have endeavoured to abide by the 1863 Act and operate within the 12.5p per trip (including VAT) maximum constraint. In the past a number of factors, including slowly increasing the car toll along with traffic growth, facilitated this. However, recent events, including reaching the toll limit for cars, slowing traffic growth, and the imposition of VAT, along with expected traffic declines post Covid-19, have meant this is no longer the way forward. When it became clear that a significant future investment was required, one option considered was to start increasing tolls under the 1954 Act. However, on balance, it was felt that any toll increase should only be implemented once the improvements proposed by MSCC as part of the proposed Order were made and users could appreciate the benefits. While this does result in a large step in tolls, it is only being implemented in Q4 2024 at the earliest, allowing users to prepare for the change, and meanwhile, users can continue to benefit from the current very low toll.</p>

5 LEGAL POWERS

Responses falling under the legal powers theme often refer to the Rixton and Warburton Bridge Act 1863 (the 1863 Act) that originally allowed for the levying of tolls in respect of Bridge. A frequent request is in relation to the statutory authorisation required in order to conduct any upgrades or changes. Additionally, many refer to the law as being outdated. Responses relating to “legal powers” make up 18% of the responses and have been summarised in the table below.

Theme	Concern raised	MSCC response
<p>Querying the historic legislation governing the charging of the toll in respect of the Bridge</p>	<p><i>Query regarding legal basis of power to charge tolls in respect of the Bridge.</i></p>	<p>The 1890 Act authorised the diversion of the existing Rixton and Warburton Road and construction of the replacement bridge road and the replacement Rixton & Warburton Bridge (the new high-level cantilever bridge). The 1890 Act also provided for the diversion to be substituted for the existing road (which included the Bridge) within the Rixton and Warburton Bridge Company undertaking, including in respect of the levying of tolls, and for that undertaking to be part of MSCC’s undertaking. This included the power to levy tolls in respect of those parts of the undertaking. The historic legislation that governs the Bridge is explained in detail in the Applicant’s Statement of Case [RWB/D1] which will be available on the Rixton and Warburton website at https://www.warburtontollbridge.co.uk/twao-application/ from 10 May 2022.</p>
<p>Appropriacy of the TWAO regime for authorisation of MSCC’s proposals</p>	<p><i>An order granted under The Transport Charges &c. (Miscellaneous Provisions) Act 1954 would be more appropriate</i></p>	<p>The increase of the toll charges on the Bridge require statutory authorisation.</p> <p>Increase of toll charges is generally governed by the Transport Charges (Miscellaneous Provisions) Act 1954 (the 1954 Act). This permits the submission of an application to the Secretary of State for Transport at any time to revise the toll charges. However, in order to reverse the decline in the condition of the Bridge and to ease congestion through the tolling booth), to ensure efficient functioning of the Bridge, including its long term viability, and to ensure the safe navigation using the Canal, MSCC’s proposals are not limited to toll increase only and requires the following:</p>

Theme	Concern raised	MSCC response
		<p>-introduction of new technology, including a free flow tolling system at the Bridge to speed up the flow of traffic and avoid bottlenecks;</p> <p>-creation of a reserve fund for ongoing maintenance of, and any major works to, the Bridge including any potential replacement of the Bridge;</p> <p>-grant of relevant powers to recover unpaid tolls from drivers, once the free flow tolling system is used, and enforce weight and speed limits; and</p> <p>-transfer the undertaking of the Bridge out of MSCC's undertaking into a separate entity to ensure a more efficient operation and management of the Bridge and the Canal.</p> <p>These above-mentioned elements of MSCC's proposals fall outside the scope of the 1954 Act, so that the package as a whole cannot be authorised under the 1954 Act.</p> <p>MSCC's proposals fall within section 3 (1)(a) of the Transport and Works Act 1992 (the 1992 Act) regime on the basis that they relate to the operation of an inland waterway (i.e., the Canal, including the effect of the Bridge on the operation of the Canal as a result of any dilapidation). In addition, the proposals fall within section 3(1)(b) as they are ancillary to the construction of the Bridge under the 1890 Act, which is itself a work that interferes with rights of navigation, and is one of the prescribed descriptions of works under section 4 of the 1992 Act.</p> <p>The Proposals fall within the matters set out in Schedule 1 to the 1992 Act, in particular paragraph 1, 2 (in relation to maintenance of and authorisation of works to the Bridge), 12 and 14 (in relation to toll charges), and 15 (in relation to transferring the Bridge undertaking).</p>

Theme	Concern raised	MSCC response
		<p>The elements of the proposals not explicitly specified in Schedule 1 fall under sections 5(3)(a) (in terms of the modification of the 1890 Act and undoing the provisions which transferred the Bridge undertaking to the Company) and section 5(4)(a) (in relation to ancillary and necessary aspects) of the 1992 Act. We further note that the proposals are similar to other schemes promoted under the 1992 Act – for example The River Mersey (Mersey Gateway Bridge) Order 2011, The Bridgewater Canal (Transfer of Undertaking) Order 2012, The Leicestershire County Council (Ashby de la Zouch Canal Extension) Order 2005.</p> <p>The Department for Transport have accepted that the proposals fall within the scope of the 1992 Act.</p>
<p>Querying the use of the penalty charge powers contained in the Transport Act 2000</p>		<p>Whilst provisions of the Transport Act 2000 referred to may apply to local authorities or government in circumstances as stated, the proposed Order seeks to apply the same provisions “as if” it was also relevant to MSCC.</p> <p>Article 13(1) states that “...Regulations made pursuant to section 173 (penalty charges) of the 2000 Act will have effect in respect of the 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.”</p> <p>Article 13 applies Part 3 of the Transport Act 2000. This provides that the provisions of the proposed Order in respect of tolls and Schedule 1 (level of tolls) are to have effect as an order making a charging scheme under Part 3 of the Transport Act 2000 and as regulations under that Act. The intention of this is to avoid the problem of sub-delegation. Provisions as to the enforcement of penalty charges are also to have effect as regulations made under the relevant provisions of the Transport Act 2000 so that the powers of a charging authority under the Transport Act 2000 are</p>

Theme	Concern raised	MSCC response
		<p>available to MSCC. This approach has also been adopted because it reflects the most up to date Government policy in respect of charging for the use of roads. This provision is derived from article 46 of the River Mersey (Mersey Gateway Bridge) Order 2011.</p> <p>MSCC has consulted with Department for Transport on the proposed Order as part of the Rule 5 consultation prior to submission of the application and the Department for Transport were comfortable with this provision.</p>
Extinguishing public rights of way	<i>Queries concerning whether the proposed Order seeks to extinguish a public right of way</i>	The proposed Order does not seek to extinguish any rights of way. There are certain restrictions on types of vehicles that can use the Bridge such as horse drawn vehicles but this is in line with standard provisions of byelaws of this type to enable efficient use of free-flow to avoid delays and as well as causing potential danger to users of the horse drawn vehicles.
Creation of new company and transfer of undertaking to the new company	<i>Concerns that the transfer of the existing undertaking to a new vehicle (company) may absolve MSCC of any liability for future maintenance, and enable funding of the Bridge via a revised toll.</i>	<p>A new bridge company will be established as part of the proposed Order. This company will be responsible going forward for the future management and operations of the Bridge, including the ANPR system. Part 3 of the proposed Order contains provisions for MSCC to allow for the transfer of the undertaking to the Rixton and Warburton Bridge Company Limited. Articles 5 to 7 allow for MSCC to update and modernise provisions of the existing legislation in respect of the Bridge.</p> <p>These articles will allow for greater transparency relating to income and expenditure associated with the Bridge, including any funds ringfenced for future maintenance or a replacement bridge and increased for the future setting of toll levels. They also ensure that any commitments that MSCC was legally bound to, in relation to the Bridge, also bind the newly formed Rixton and Warburton Bridge Company Limited.</p>

Theme	Concern raised	MSCC response
		<p>Article 5 (Transfer of Undertaking) of the proposed Order transfers the statutory powers and duties of MSCC in relation to the Bridge to the newly formed, Rixton and Warburton Bridge Company Limited. Article 6 (Saving of agreements, etc.) ensures agreements entered into by MSCC prior to the transfer day remain in force as if they had been entered into by the new company and Article 7 (Continuance of proceedings) provides for legal and other proceedings prior to the transfer of the undertaking to be carried on by or in relation to MSCC.</p> <p>The transfer of the undertaking is a matter that is being considered by the Secretary of State for Transport as part of this TWAO application process and is therefore subject to appropriate oversight.</p> <p>Furthermore, the proposed Order includes provisions to ensure that the new company cannot be simply sold off without any consideration as to the future management of the Bridge or the impact on the navigation of the Canal. Article 10(3) of the proposed Order requires the approval of the Secretary of State for Transport to transfer or sell or dispose the undertaking, on such terms and conditions as it thinks fit. Furthermore Article 11 of the proposed Order ensures that the exercise of powers to enter into concession agreements, lease or transfer the undertaking under Article 10, is subject to requirements as may be imposed by MSCC in order to ensure safe operation, navigation and use of the Canal.</p> <p>The company will be responsible for setting of tolls each year, along with defining any exemptions or discounts. This will allow for greater transparency relating to income and expenditure associated with the Bridge, including any funds ringfenced for future maintenance or a replacement bridge. The importance of the Bridge for local traffic movements is acknowledged, and is reflected in the desire of the MSCC to establish a long term sustainable financing plan that ensures the Bridge</p>

Theme	Concern raised	MSCC response
		remains open, removes the existing queues and delays for users, and supports and encourages active travel options along with public transport.
The Order	Concerns regarding power to impose byelaws and the extent of byelaws.	<p>Article 3 (Offences and power to make byelaws) authorises MSCC to make and enforce byelaws to regulate the use and operation of the Bridge, the maintenance of order on and near the Bridge and the conduct of persons, including employees of MSCC, while on or near the Bridge. Schedule 4 introduces byelaws that would be enforceable from the date the proposed Order comes into force.</p> <p>Byelaws are local laws made by regulatory bodies which require something to be done – or not done – in a specified area. They are accompanied by some sanction or penalty for their non-observance. Byelaws are standard practice for regulating the use of roads. Byelaws must be introduced by legislation and are commonly proposed under Transport and Works Act Orders.</p> <p>It is entirely appropriate and precedented in other similar legislation for a promoter, such as MSCC, to rely on byelaws to regulate the use of the approach roads and the Bridge. Precedent for these provisions can be found in the Silvertown Tunnel Order 2018, The Mersey Gateway Bridge Byelaws 2016 and the Lowestoft Third Crossing Byelaws 2020.</p> <p>The proposed level 3 fine represents a maximum cap and would not be charged automatically for any breach of the byelaws. MSCC’s priority is ensuring the safety of users of the Bridge and considers the byelaws, as drafted, to effectively address dangerous behaviour.</p> <p>Byelaws of this nature are within the scope of the TWAO procedure and to a large extent are designed to protect the Canal and give MSCC the ability to enforce what is being proposed.</p>

Theme	Concern raised	MSCC response
		<p>Furthermore, the advantages of the TWAO process is the ability to avoid the need to obtain separate consents.</p> <p>The Explanatory Memorandum, which was submitted as part of the Application, explains the purpose and effect of each article of and Schedules to the proposed Order.</p> <p>In promoting the proposed Order, MSCC is using this as an opportunity to modernise the provisions that have been regulating the use of the Bridge since 1800s and bring these line with modern times appropriate to current circumstances.</p>
	<p><i>Queries relating to the existence of historic byelaws and future plans for byelaws.</i></p>	<p>The historical legislation, the Rixton and Warburton Bridge Act 1863 (the 1863 Act), which authorised the levying of the toll in respect of the Bridge does not expressly include byelaws. However, the 1863 Act does include provisions regulating the use of the crossing. For example section 66 provides for penalty for evading tolls, section 69 covers penalties for destroying the bridge and section 70 provides for penalty for offences by toll collector. These provisions whilst still in force are dated and do not reflect the present circumstances. Therefore MSCC are proposing to introduce new byelaws to modernise provisions in line with current precedent and to ensure the proposed provisions are relevant and appropriate for the proposals MSCC is seeking to authorise under the proposed Order.</p>
	<p><i>Clarification as to what area of the Warburton Bridge Road the toll is charged for.</i></p>	<p>The toll is charged in respect of what the proposed Order refers to as the Rixton and Warburton Bridge, defined as 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 to the proposed Order. The bridge road is defined as the Warburton Bridge Road commencing from the</p>

Theme	Concern raised	MSCC response
		A57 Manchester Road in the north at national grid reference SJ6915390429 to the Paddock Lane in Warburton village in the south at national grid reference SJ689189583.
	<i>The Proposed Order includes several instances where a user must perform an action 'immediately' that are not reasonable or equitable.</i>	MSCC has considered this and will amend the proposed Order to read “as soon as reasonably practicable”.
	<p><i>Any notice under the Order must be sent to all customers that have registered for electronic communications (on the assumption that the cost of this is very close to zero).</i></p> <p><i>Any toll change must state: the reasons for the toll change, and the calculations used.</i></p> <p><i>Any pre-paid 'crossings' of the undertaking must be considered and should be redeemable at their original purchase price</i></p>	<p>The notice provisions referred to are standard and are preceded in The River Mersey (Mersey Gateway Bridge) Order 2011. In practice, notification will be sent electronically to all users registered on the system in addition to the formal procedure under the Order.</p> <p>Changes in the toll are likely to arise as a consequence of a combination of factors, including traffic or costs being materially different to expectations, and therefore it is not practical to suggest this. However, the proposed Order defines how toll revenues can be spent, and therefore, any change would be constrained within those agreed needs.</p> <p>We would agree that pre-paid crossings should be redeemable at their original purchase price, and that would be stated within any purchase agreement. However, how such pre purchase agreements operate in detail are still to be defined in detail, as there may be constraints related to the final technology adopted. They are likely to evolve over time. As such it is a commercial issue, not one for the proposed Order.</p>

6 BRIDGE AND ROAD IMPROVEMENTS

The responses categorised in this theme relate to the proposed improvements to the Bridge. This includes resurfacing the roads and strengthening the Bridge to allow for vehicles weighing up to 7.5t (although general traffic will still be limited to 3t).

Nearly all of these responses were in favour of upgrading the Bridge. Particular support was given to the proposed improvements allowing for greater active travel provision (such as walking and cycling) and the potential for public transport vehicle access. Support was also received in relation to free flow technology, reducing congestion, improving the road and maintaining the Bridge. Those who objected were primarily against the increase in toll, rather than the improvements themselves.

Theme	Concern raised	MSCC response
<p>Current standard of the Bridge</p>	<p><i>Comments that the road approaches to the Bridge are not acceptable or meet the minimum standard of a public highway.</i></p> <p><i>The junction of Warburton Bridge Road and the A57 is prone to flooding. The gullies do not appear to have been cleared in over a year, possibly much longer.</i></p>	<p>As stated in the Business Case section 5.3.1, the costs of upgrading that have been included in analysis for the revised toll level, include resurfacing and refurbishing the Warburton Bridge Road to the north and south of the Bridge. It is also envisaged that the reconstruction of the carriageway and appropriate drainage will also alleviate the flooding issues that have previously been reported.</p> <p>In this regard, MSCC acknowledges that it has received reports regarding the drainage issues around the junction of Warburton Bridge Road and the A57. MSCC is intending to deal with this issue as part of the Bridge improvement works and will liaise with the local highway authority regarding any interface with the adopted highway which forms part of the junction.</p> <p>MSCC was glad to see that the majority of objections made clear that they supported the proposed improvements allowing for greater active travel provision (such as walking and cycling) and the potential for public transport</p>

Theme	Concern raised	MSCC response
		<p>vehicle access. Support was also received in relation to free flow technology, reducing congestion, improving the road and maintaining the Bridge. Those who objected were primarily against the increase in toll, rather than the improvements themselves.</p>
<p>Bridge inspections</p>	<p><i>Concerns regarding lack of recent inspection of the Bridge since 2016 and the fact the most recent inspection of 2016 inspection only covered the Bridge and not the old low-level bridge that crossed the river Mersey.</i></p>	<p>The general practice for canal bridges is that principal inspections of this nature are carried out every 6 years. Engineering consultants are in the process of assessing the current state of the Bridge and will provide for an updated condition survey.</p> <p>The old stone bridge has been subsumed into the highway.</p>
<p>Free flow toll collection</p>	<p><i>Concerns regarding lack of certainty as to the proposed method of toll collection and the fact that a free flow toll collection system has not been implemented on a comparable road (with traffic flow limited by entry and exit junctions).</i></p>	<p>The proposed Order provides for free flow technology but to ensure sufficient flexibility does not prescribe which technology is to be used. This is to ensure that legislation stays current should technology or circumstances change in the future and avoid the need to amend the proposed Order and incur the time and costs of doing so. The provisions dealing with free flow technology are based on the River Mersey (Mersey Gateway Bridge) Order 2011.</p> <p>While retaining an existing barrier and cash-based system would be cheaper, it addresses none of the wider concerns of stakeholders over delays, safety</p>

Theme	Concern raised	MSCC response
		<p>and environmental impacts in the village of Warburton. Further, expansion of the plaza to a two-lane barrier each way is considered impractical given the local constraints, and as such, has not been taken forward as an option. Only the free-flow tolling option addresses all of these stakeholder concerns and provides a toll facility that is fit for purpose, meeting the expectations of users in the 21st century. As such, it was selected as the “Do-minimum” scenario.</p> <p>Free flow toll collection technology, which critically relies on Automatic Number Plate Recognition (ANPR), is increasingly commonplace and tried and tested. The very first system was introduced on the E470 in Toronto in 1997 and is now operating around the world. Tyne Tunnel has recently converted to this system and there are many small systems operating, for example the Durham Peninsula, as well as entries to many car parks. MSCC have had preliminary discussions with several operators and are confident that a free flow toll system can be introduced.</p>
	<p><i>The cost and risk of all of the free-flow approaches is placed on the users, charged via the increased toll. The resulting capital costs will incur significant interest charges, that the users will also fund.</i></p>	<p>Free flow is more expensive but retaining a single barrier is not considered acceptable, so comparing it to current costs is not valid. Further, Central case shows 20% of the toll to be linked to cost of capital, and the toll system is 15% of the capex, so interest charges on that are about 3p per trip, noting even if we adopted another approach there would be a cost. Therefore, the cost is very minor, and the benefits to users, as well as other stakeholders, are considered to materially outweigh them.</p>

Theme	Concern raised	MSCC response
Bridge closures	<i>Queries relating to closures of the Bridge during works</i>	<p>MSCC confirm that any new toll rate will not be implemented until after all refurbishment work has been completed.. The details of the major capital investment program and the associated disruption to users has not been finalised, at this early stage. This will be a matter for detailed design. However, experience from the refurbishment of similar bridges would suggest there is a strong possibility that there will be a need to introduce one way working over the Bridge, and this could be as long as one year. During this period no toll will be charged. The precise nature and duration of any further concessions will be developed and agreed with stakeholders when full details of the upgrade program are agreed with the contractors.</p>
Local impact	<i>Queries relating to the impact of the Bridge and road improvements on the local area</i>	<p>The Bridge is an important link for local residents when the M6 Thelwall viaduct is closed . MSCC recognise the importance of the Bridge, as it offers an alternative crossing over the Canal to the M6 and M60, although it only carries around 3% of the total traffic on those three crossings despite having 14% of the lanes (2 out of 14). This is because the Bridge facilitates local movements in the area, avoiding the need to join the motorway, but does not provide benefits for longer distance or more strategic traffic. These local trips gain benefits all day but gain the most benefits during peak time periods when motorway journey times are often impacted due to excess congestion.</p> <p>The alternative routes in the locality have been taken into account throughout each stage of the development of this project. Indeed, without the increase in the level of the toll we do not consider that the vital repairs that will allow the Bridge to remain operational as an important access route for residents would</p>

Theme	Concern raised	MSCC response
		<p>be possible. If these repairs are not made, the Bridge would not be operational and the vital transport link that it provides would be lost.</p> <p>In terms of diversion to the M6 and other local roads, whilst MSCC believe the increased toll will inevitably result in some diversion away from the Bridge, the levels should be modest. In September 2019, peak hour flows were only 500-600 vehicles an hour per direction and for much of the day were between 100 and 300, of which we anticipate these being lower post Covid-19 due to increased working from home. Consequently, a small proportion of these diverting should not noticeably impact on congestion.</p> <p>Further, as local residents living in postcodes WA3 6 and WA13 9 will be able to take advantage of the 50% discount, diversion is likely to be more focused on trips from further away, who will divert onto the M6 and M60 away from Lymm and the other local villages. It should be noted that the local discount is currently proposed for those residing at postcodes WA3 6 and WA13 9. In addition, all users, wherever they live, will have a cap on the toll they pay per day at two trips, no matter how many times they use the Bridge.</p> <p>In terms of bus routes, the removal of queues at the toll plaza should improve the reliability of existing bus services in the village, whilst MSCC's proposals to improve the Bridge infrastructure, allowing for bus routes to use the Bridge in the future, facilitating an enhancement to accessibility for all to public transport, including more vulnerable demographic groups.</p> <p>In addition, as part of the improvement plan for sustainable travel, MSCC are proposing a better/more fit for purpose combined footpath/cycleway by</p>

Theme	Concern raised	MSCC response
		providing an improved wider segregated route to address the issue of safety for pedestrians and cyclists.