Warburton
Toll Bridge

RIXTON AND WARBURTON BRIDGE ORDER

THE TRANSPORT AND WORKS ACT 1992

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

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STATEMENT OF CASE

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1 Introduction

Foreword

1.1 This Statement of Case has been prepared in support of an application made by The Manchester Ship Canal Company Limited (**MSCC**) in respect of the Rixton and Warburton Bridge (the **Bridge**). On 30 November 2021, pursuant to section 6 of the Transport and Works Act 1992 (the **1992 Act**) [**RWB/B6**], MSCC applied to the Secretary of State for Transport for an Order (the Rixton and Warburton Bridge Order 202[ ] [**RWB/A1** and **RWB/A2**]) under section 3 of the 1992 Act (the **proposed Order**). The proposed Order seeks to modify the statutory regime applicable to the Bridge, and introduce a package of measures to improve and ensure the safe and efficient operation of the Bridge and thereby safe and efficient navigation of the Manchester Ship Canal (the **Canal**).

1.2 The proposed Order seeks to update and modernise provisions of the existing legislation in respect of the Bridge, including revising the tolls which MSCC may charge for use of the Bridge, which toll levels are currently set out in and limited by the Rixton and Warburton Bridge Act 1863 (the **1863 Act**) [**RWB/B1**].

1.3 The proposed Order also contains provisions for MSCC to make new byelaws in relation to the good management and use of the Bridge in order ultimately to safeguard the navigation of the Canal.

1.4 In addition, the proposed Order contains provisions for MSCC to transfer the Rixton and Warburton Bridge undertaking to the newly incorporated Rixton and Warburton Bridge Company Limited (Company No. 13617881), should MSCC so resolve, to improve financial transparency associated with the operation of the Bridge.

1.5 A formal consultation on the proposed Order application ran from 30 November 2021 to 18 January 2022. At the time of printing 314 representations have been received in response to that consultation.

1.6 The Transport and Works Inquiries Procedure Rules [**RWB/B7]** require MSCC to provide a Statement of Case by 10 May 2022. This document is MSCC's Statement of Case [**RWB/F1**] under Rule 7 of the Transport and Works Inquiries Procedure Rules and sets out the particulars of the case that MSCC intends to make in support of all of its applications set out above at the public inquiry.

1.7 Appendix 1 is a list of those documents which MSCC currently intends to refer to or put in evidence at the Inquiry. These documents are available for inspection at the locations and times set out in Appendix 2 from 10 May 2022 until the start of the public inquiry. In this Statement of Case references to documents included in the list in Appendix 1 are in bold, e.g. [**RWB/A1**] is a reference to document RWB/A1, The Transport and Works Acts Order Application Letter.

The Applicant

1.8 MSCC is the owner of the Canal and also owns and operates the Bridge. MSCC is a body corporate previously incorporated under Part II of the Manchester Ship Canal Act 1885 (the **1885 Act**) [**RWB/B3**] but which since 12 November 2010 has been incorporated under the Companies Act 2006.

1.9 Until 1993, MSCC was owned by its shareholders, with Manchester City Council being the majority shareholder. These shareholders elected a board of directors for MSCC. In 1993 MSCC became a wholly owned subsidiary of Peel Holdings. MSCC as a wholly owned subsidiary of Peel Holdings, has therefore only owned and operated the Bridge for the past 29 years out of 159 years.

1.10 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 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 MSCCL within those limits. The Canal is an artificial watercourse running between Eastham and Manchester, constructed pursuant to the 1885 Act (and subsequent Acts of Parliament) in part along the course of the former River Irwell. It includes 5 sets of locks, and as an operational port handles circa. 2,000 vessels per year, carrying over 7.5 million tonnes of cargo. In handling 1 million tonnes of cargo and above it is classified as a "major" port by the Department for Transport. By removing the movement of this cargo from the road network, the Canal makes a major contribution to the sustainable movement of goods.

1.11 MSCC's primary role and responsibility is the operation and navigational safety of the Canal.

Structure of the Statement of Case

1.12 The remainder of this Statement is structured as follows:

1.12.1 **Section 2: Background** – this section sets out this history of the Bridge from its construction in the 1860s to the autumn of 2021, as well as its relationship with the use of the Manchester Ship Canal;

1.12.2 **Section 3: Current Position** – this section provides a summary of the current position with regard to the operation and condition of the Bridge, tolling, the daily user experience and an explanation as to why a toll can be charged on the Bridge;

1.12.3 **Section 4: Purpose of the Order** – this section provides an overview of and justifications for the provisions proposed under the proposed Order, as well as an explanation regarding the decision to use the 1992 Act consent regime for this application;

1.12.4 **Section 5: Benefits of the Bridge** – this section sets out the benefits that the Bridge has on the local economy, connectivity of the local area, and the benefits to non-motor vehicle users;

1.12.5 **Section 6: Justification for the toll revision** – this section illustrates the need for the toll revision to take place, by reference to the magnitude of the works needed, the traffic and revenue data currently arising from use of the Bridge and the Business Case;

1.12.6 **Section 7: Alternatives** – this section provides detail about the alternatives that have been put forward by other interested parties, or which may happen if the proposed Order is rejected by the Secretary of State for Transport, those being 'do nothing', 'do the minimum' and 'transfer ownership to the local authorities';

1.12.7 **Section 8: Consultation and Engagement** – this section outlines the consultation and engagement undertaken with stakeholders and the public to date;

1.12.8 **Section 9: Representations and Objections** – this section outlines the representations and objections received from stakeholders and the public to date and MSCC's response to them;

1.12.9 **Section 10: Conclusion** – this section sets out MSCC's conclusion based on the information presented in the previous sections.

2 Background

History of the Bridge

2.1 The original stone bridge was built on the historic border between Lancashire and Cheshire to replace the ferry service across the River Mersey. The construction of the Bridge and the approach roads leading up to it were originally authorised by the 1863 Act which also established the Rixton and Warburton Bridge Company (the **Bridge Company**) and authorised the levying of the tolls in relation to the original stone bridge and approach roads.

2.2 The 1885 Act incorporated MSCC and permitted the construction of the Canal.

2.3 When the Canal was constructed, the River Mersey and, consequently, the original toll roads were diverted. The diversion to a new high-level cantilever bridge, the Warburton High Level Bridge i.e. the current Bridge and its transfer to MSCC, was authorised by the Manchester Ship Canal (Various Powers) Act 1890 (the **1890 Act**) [**RWB/B4**]. The maximum toll that can be charged in respect of the Bridge has remained at two and a half shillings or 12.5p (one way) since 1863.

2.4 The table below outlines key events since the Bridge first became operational in the 1860s to the autumn of 2021.

Year	Event
1860s	Acts for the Bridge passed including maximum toll level at two and a half shillings - old stone bridge operational.
1880s and 1890s	Various Manchester Ship Canal Acts, Ship Canal opens, and the R&W Toll Bridge replaces stone bridge.
1954	Transport Charges (Miscellaneous Provisions) Act.
1960	The section of M60 over the Manchester Ship Canal to the east of the bridge opens (then called the M62).
1963	Oldest official record of the car toll rate, which was 5p, and noting at this time the bridge still allowed heavy vehicles at 12.5p.
1963	The first bridge of the Thelwall Viaduct on the M6 opens to the west of the bridge.
1971	Tolls are decimalised, but the values remain unchanged.
1980	Section 271 of the Highways Act 1980 introduced including provisions for the transfer of rights for toll highways.
1981	Toll for cars is increased from 5p to 10p, heavy vehicles were 12.5p.
1984	In December the 12.5p toll is cut to 12p due to abolition of 0.5p coins.
1987	Manchester Ship Canal is privatised.
1992	Transport and Works Act (TWA) introduced as a way of requesting authorisation to the Secretary of State for works on rail transport, tramway, inland waterway and harbour infrastructure.
1993	MSCC becomes a wholly owned subsidiary of Peel Holdings.
1995	The second bridge of the Thelwall Viaduct on the M6 opens.
1998	The last major bridge refurbishment occurs (£1.7m). This cost is still being depreciated in the MSCC accounts.
2001	From 1st January all vehicles set to a toll of 12p.
2002-05	Major maintenance works occur on the Thelwall Viaduct.
2003	VAT is imposed on tolls (February) but tolls paid by users remain unchanged. This resulted in a significant decline in revenues for the Undertaking.
2014	Memorandum of Understanding (MOU) signed with Warrington Borough Council in relation to the lifting of the toll when there are severe problems on the M6.
2017	To assist in the flow of traffic at the toll booth, in September the bridge started operating free for users for 3 hours (5pm to 8pm) on certain Fridays when the Sale Sharks rugby team

Year	Event
	were playing at home. The lost revenue was compensated by the Sale Sharks Rugby Club.
2018	The toll booth was vandalised by fire and was temporarily out of operation. This resulted in a significant additional cost and a decline in revenues for the Undertaking.
2019	Website for the R&W Toll Bridge is launched, and while annual passes had been available for some time, a series of discounts and offers were introduced to try and encourage greater take up of this product to assist in the flow of traffic at the toll booth.
2020-21	Toll collection temporarily suspended on several occasions during the Covid-19 Pandemic, significantly reducing revenues.

2.5 As explained above in the Introduction, Peel Holdings acquired MSCC, which included the Bridge undertaking, 29 years ago in 1993. Before that it was administered by Manchester City Council . In numerous discussions over the past few years between MSCC and the local authorities regarding the future of the Bridge, both Warrington Borough Council and Trafford Borough Council have made it clear that they do not wish to take on the responsibility for the maintenance and operation of the Bridge.

Relationship with the Manchester Ship Canal

2.6 The Bridge has no meaningful impact on the operations of MSCC whilst it remains in good repair. However, should it start to fall into disrepair, this could have a significant impact on the Canal. MSCC have identified the first potential impacts on the Canal beneath, and the vessels using it, as being the risk of parts of the Bridge falling from the structure. This would present three potential hazards:

2.6.1 Parts falling onto vessels navigating under the Bridge which could cause injury to vessel crews or damage the vessels;

2.6.2 Parts that had fallen from the Bridge onto the bed of the Canal could reduce the available depth of water for navigation, which could lead to damage to the hulls of vessels navigating under the Bridge and in a worst case, even breaching a vessel's hull. This may lead to closure of the Canal pending removal of the vessel; or limitation upon draught (allowing vessels to pass over the obstruction) prior to removal of the object, which may require a closure.

2.6.3 Vessels navigating under the Bridge carry hazardous chemicals, including propylene (an inflammable liquified gas). Whilst vessels carrying hazardous chemicals have various levels of containment, the two hazards identified could seriously prejudice that containment.

2.7 However, the ultimate hazard would be for the Bridge to collapse, blocking the Canal, with the most serious case being for this to happen when a vessel was passing underneath.

2.8 As mentioned in previous section MSCC is the harbour authority for the Harbour and Port of Manchester, which includes the Canal. Its primary consideration is navigational safety. As such, it cannot allow events, such as those described above, to arise, and consequently, if the Bridge cannot be maintained in good repair for use by traffic, the use of the Bridge may need to be restricted on safety grounds until such time as funds can be raised through the tolls to enable necessary remedial works.

3 Current Position

Introduction

3.1 The Bridge is a three span steel bridge of cantilevered and suspended span type which was constructed in the 1890s. The Bridge carries Warburton Bridge Road (B5159) over the Canal. The north cantilever, the suspended central span and the south cantilever spans are 35.077m, 27.893m and 35.077m respectively.

3.2 The lattice steel truss members to the east and west sides of the structure were originally formed out of riveted plates. However, some of the rivets have been replaced with bolted connections. The cantilevered sections are anchored into the north and south brick abutments. The east and west cantilevers are supported on brick piers. The bottom chords to the east and west cantilevers have been encased in concrete at the pier positions.

3.3 The Bridge supports a 5.5m wide carriageway and 2 No. 1.130m wide footways. Overhead bracings/stays provide lateral restraint to the east and west lattice trusses. The overhead bracings are constructed out of rolled steel channels or steel lattice frames and are bolted to the top chords.

3.4 The original 1863 toll level with a maximum one-way toll of 12.5p equates to over £15 in today's prices. As 0.5p coins were withdrawn from circulation in 1984, and as currently only cash is accepted, the toll for a single trip is set at 12p.

3.5 In addition, for frequent users, MSCC offer multi-trip options.

3.6 All tolls include VAT, which was first introduced on the toll in 2003, so that currently 20% of the revenues collected are not available to the MSCC to cover the costs of operating and maintaining the Bridge.

3.7 There is currently a 3 tonnes weight limit on the Bridge and the same toll is levied on all permitted vehicles. There are also a number of ad hoc exemptions to the toll. For example, a registered funeral cortege is exempt from the toll. In addition, there are two informal agreements in place to suspend toll collection, one linked to requests from Warrington Borough Council, if there are significant problems on the M6/Thelwall Viaduct and one linked to days when Sale Sharks are playing a home rugby match. In both instances this is done to minimize the congestion that arises at these atypical times. Sale Sharks, unlike Warrington Borough Council, have been

re-imbursing the loss of revenue to MSCC in respect of the suspended toll collection to ease congestion.

Operation of the Bridge

3.8 Tolls are collected at a toll booth on the south side of the Bridge on the northern edge of the village of Warburton. There is one barrier controlled lane per direction and tolls can only be paid by cash and are collected manually. There is no facility for payment by credit card or any other form of cashless payment.

3.9 While tolls can legally be collected at any hour of the day and on any day of the week, historically, prior to Covid-19, they have only been collected across a more limited time span. This has been necessary to balance the costs involved in collecting the toll (i.e. employment of a toll collector) with the tolls likely to be collected. Tolls have typically been collected in the following hours, noting these are approximations:

3.9.1 7am-10pm Monday to Friday.

3.9.2 8am-10pm on Saturdays.

3.9.3 9am-10pm on Sundays (including public holidays)]

Toll level

3.10 The original 1863 Act authorising the levying of tolls "over, along, or upon the Bridge and Roads, or any of them, or any Part thereof respectively" identified the maximum one-way toll at two and a half old shillings (12.5p). The toll for a single trip is currently set at 12p. A day pass is capped at 25p, which allows for unlimited trips over the Bridge in a single day. Additionally, an annual pass is also offered, of which the price has varied over recent years with special offers looking to encourage the uptake of these passes so as to speed up the flow of traffic through the toll booth, as well as reflecting the impact of Covid-19. Around 60% of users buy a 12p ticket, with the remainder mostly using the 25p ticket (annual pass use is very low).

3.11 The oldest record of the car toll rate found is 5p in 1963, which is equivalent to £1.11 in 2021 prices. Heavy vehicles were charged 12.5p in 1963, the maximum toll, which is the equivalent of £2.79 in 2021 prices. This suggests that the current toll rate is very low based on historical purchasing power trends. It should also be noted that the original maximum toll of two and a half old shillings (12.5p), as stated in the 1863 Act, equates to over £15 in 2021 prices.

3.12 Although MSCC are legally entitled to charge cyclists, pedestrians and horse riders to cross the Bridge, they do not do so. The proposed Order provides for tolls in respect of vehicles only.

3.13 Over the past 29 years, MSCC has significantly contributed financially towards the management of the Bridge. 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. 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 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.

3.14 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 of reduced revenue are also being absorbed by MSCC, as are the costs of promoting this TWAO to ensure a sustainable future for the Bridge going forward.

3.15 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.

Condition

3.16 The condition of the Bridge has deteriorated to the point where a major refurbishment is needed, including steelwork repairs, grit blasting and repainting, expansion joint replacement and refurbishment of the timber footway detail to prevent ongoing water ingress. While the Bridge currently meets minimum safety requirements, in 2016 engineering consultants Wilde Engineers classified it as being in poor condition with urgent remedial works required. The Bridge is signed as a weak Bridge with a weight restriction over time reduced from 7.5 tonnes to 3 tonnes (a designation made by the local highway authority since 2002) and was therefore considered by the engineers to be a sub-standard structure. The Bridge road suffers from re-occurring potholes which have been and are expensive to fix as described above and a long term solution is required.

3.17 Wilde Engineers have recommended that refurbishment works should be undertaken as a matter of urgency to prevent further deterioration and keep the structure in operation.

3.18 Wilde Engineers are in the process of assessing the current state of the Bridge and it is anticipated that the Bridge is likely to have deteriorated since their previous inspection in 2016.

User experience

3.19 Since early 2013, MSCC has been keeping a log of contacts made by the general public regarding the Bridge. The various comments to the end of December 2019 (i.e. just before the start of the Covid-19 pandemic) can be broadly summarised as follows:

3.19.1 43 on the number of potholes or general road surface condition on the Bridge Road (including claims for compensation related to pothole damage to their vehicles).

3.19.2 38 on traffic conditions after the arson attack on the booth (mostly favourable to the free-flow conditions in the absence of the need to stop and pay a toll).

3.19.3 28 on delays arising from stopping to pay the toll.

3.19.4 19 regarding toll booth staff performance or behaviour.

3.19.5 19 on the lifting tolls during other road closures or major incidents (both favourable when it occurs and unfavourable when they felt is should have happened but it did not occur).

3.19.6 7 related to being asked to pay the toll before 7am (on the mistaken belief the toll could not be collected before that time of the morning, as mentioned previously, the toll can be collected at any time of day).

3.19.7 7 on the temporary closure of the R&W Toll Bridge to reinstate the toll booth after the arson attack.

3.19.8 4 were on use of the R&W Toll Bridge by trucks and the weight limit.46 general comments relating to concerns over the principle of a toll, delays and pollution.

3.20 The Business Case [**RWB/A5**], specifically page 16, submitted with the Application includes further details in relation to general public comments made in relation to the Bridge.

3.21 The log, past and ongoing engagement with the public, local authorities and other key stakeholders, including the non-statutory consultation in July 2021 and the formal representation period following submission of the TWAO application, all demonstrate that a major concern of customers using the Bridge is the build-up of queues at the toll barrier particularly during peak periods. This arises because there is only one lane per direction, with cash collection only, so even the smallest issue or delay in paying can quickly result in a queue. This also results in concerns about access to, and air quality in, the village of Warburton at those times. The users and key stakeholders are also concerned about the condition of the Bridge and the approach roads leading up to the Bridge.

3.22 Furthermore due to the narrow pavements the approach roads and Bridge are not conducive at all for the use by pedestrians in a safe manner. The current layout and lack of segregated space also means that cyclists have to resort to using the road which is again not ideal from a safety perspective.

Explanation as to why toll can be charged including in respect of the cantilever Bridge

3.23 The 1863 Act incorporated the bridge company (the Bridge Company) and authorised it to construct and maintain (at s. 26) the stone bridge and the roads going over the said bridge linking the north side of the Bridge with the Warrington and Manchester Turnpike Road (now the A57 Manchester Road) and the south side of the bridge with Townfield Lane ("the Toll Roads").

3.24 Section 48 of the 1863 Act enabled the Bridge Company to levy a toll for passing over the said stone bridge and the Toll Roads.

3.25 On 2 June 1890, MSCC agreed to acquire the Bridge Company and all the property, rights and privileges associated with its undertaking. The undertaking of the Rixton and Warburton Bridge Company vested in MSCC by virtue of section 33(1) of the 1890 Act. In accordance with the 1890 Act such vesting had the like consequences and effects of a conveyance and assignment under clause 7 of the commercial agreement between the Bridge Company and MSCC (included in the schedules to the 1890 Act).

3.26 Furthermore, section 33(3) of the 1890 Act provided that the vesting was to be deemed to be an amalgamation of the undertaking of the Bridge Company according to the true intent and meaning of Part V. (Amalgamation) of the Railways Clauses Act 1863 [**RWB/B2**]. The effect of these provisions is that MSCC has effectively stepped into the Bridge Company's "shoes" acquiring not only its property but all also all its powers, rights and privileges. This included the power to levy a toll for the use of the bridge and Toll Roads authorised by the 1863 Act.

3.27 As such, since 1890 MSCC has had the right (in the place of the Bridge Company) to impose a toll for the use of the stone bridge, the Toll Roads and subsequently the Bridge as explained below.

3.28 Section 28 of the Act 1885 authorised the Company to make and maintain various works including:

Number 35: An opening Bridge wholly in the township of Rixton-cum-Glazebrook in the said parish of Warburton with all necessary machinery and apparatus to carry the Rixton and Warburton Road [being the roads authorised by the 1863 Act] over Work Number 3 [the section of Ship Canal in that area] commencing in the said road and terminating in that road at a point about two chains north-west of the point of commencement.

3.29 Subsequently, under the 1890 Act, when the Company had acquired the Rixton and Warburton Bridge Company, work number 35 under the 1885 Act was permitted to be abandoned (see section 6):

"*In the township of Rixton-cum-Glazebrook in the parish of Warrington:*

(A.) They [i.e. MSCC] may divert so much of the public road known as the Rixton and Warburton Road authorised by the [1863 Act] 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;

(B.) So soon as they have completed the said diversion and opened the same to the public the Company may extinguish all public rights of way over that road between the said commencement and termination of the said diversion; and

(C.) They may abandon the construction of the opening Bridge authorised by the Act of 1885 as work Number 35."

3.30 The recitals to the 1890 Act refer specifically to the authorization of that diversion "to carry the same over the canal by a fixed Bridge in lieu of the said Bridge Number 35". The "fixed Bridge" mentioned here is now the Bridge.

3.31 Read as a whole, it is apparent that the Act contemplated that the Rixton and Warburton Road previously included that part of it which was carried over the River Mersey, and that MSCC was authorised to divert this so that it should instead be carried over the Canal, by means of the fixed bridge.

3.32 Section 9 of the 1890 Act then states:

"9. 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."

3.33 There is no drafting to suggest that the Road should not be treated as including the part now passing over the Canal via the fixed bridge (which of course it does as a matter of fact), and it was the clear intention of the Act being to enable MSCC to step into the Bridge Company's shoes. Consequently, in the absence of express wording to the contrary, it is apparent that Parliament intended the power of levying tolls to be available in relation to the diversion as a whole (including the Bridge).

3.34 Such a construction also avoids the absurd result of MSCC being able to continue to levy a toll in respect of the approach road (at the same level as had previously been allowed in respect of the road and the Bridge), but not in respect of the part of the road likely to give rise to the greatest maintenance liability.

4 Purpose of the Order

Summary of the proposals

4.1 The purpose of the order is to ensure continued safe navigation of the Canal, while maintaining local access across the Canal in the vicinity of the Bridge, through ensuring the efficient functioning of the Bridge, including making provision for its long term viability. The Explanatory Memorandum [**RWB/A3**] sets out a detailed explanation for the purpose of each provision and the precedent. In summary, the proposals aim to:

4.1.1 permit MSCC to update and modernise provisions of the existing legislation in respect of the Bridge;

4.1.2 revise the tolls which MSCC may charge for use of the Bridge from the current rate of 12.5p, to a maximum of £1.00 (incl. VAT) and supersede the toll levels set out in the 1863 Act. The toll increase is needed to fund works to the Bridge and its approach roads that are required to ensure the continued safety and use of the Canal. Without the necessary maintenance there is risk of closure to certain classes of traffic, or complete closure of the Bridge, as has been the case at other road crossings in the country;

4.1.3 allows MSCC, to make new byelaws in relation to the good management and use of the Bridge in order to safeguard the navigation of the Canal; and

4.1.4 contains provisions for MSCC to transfer the Rixton and Warburton Bridge Undertaking to the Rixton and Warburton Bridge Company Limited, should MSCC so resolve, in order to ensure a more efficient operation and management of the Bridge and the Canal and also provide for increased transparency on costs and revenues and consequently the future setting of toll levels.

4.2 In addition, as part of the improvement plan for sustainable travel, MSCC are proposing a better/more fit for purpose combined footpath/cycleway by providing an improved wider segregated route to address the issue of safety for pedestrians and cyclists.

Justification for the use of TWAO

4.3 The proposals fall within the 1992 Act regime. MSCC note that section 3 of the 1992 Act provides as follows:

(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.

4.4 As such, the proposals fall within section 3(1)(a) 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.

4.5 The proposals fall within the matters set out in Schedule 1 to the 1992 Act, including in particular paragraphs 1 and 2 (in relation to maintenance of and authorisation of works to the Bridge), 12 (in relation to toll charges), and 15 (in relation to transferring the Bridge undertaking).

4.6 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 MSCC) and section 5(4)(a) (in relation to ancillary and necessary aspects) of the 1992 Act. The proposals are similar to other schemes promoted under the 1992 Act – for example:

4.6.1 The River Mersey (Mersey Gateway Bridge) Order 2011 which concerned the construction, improvement, maintenance, operation (including tolling and enforcement powers) of the Mersey Gateway Bridge. That Order also modified the application of local legislation concerning the Mersey Gateway;

4.6.2 The Bridgewater Canal (Transfer of Undertaking) Order 2012 transferred part of the undertaking of the Company to a separate body; and

4.6.3 The Leicestershire County Council (Ashby de la Zouch Canal Extension) Order 2005 deals with the construction and maintenance of a Bridge over an inland waterway.

4.7 For the avoidance of doubt, MSCC confirm that, unlike the examples listed above, the proposed Order does not include works and as a result environmental impact assessment is not required under the 1992 Act.

Justification for provisions sought in the Order

4.8 Each provision sought in the Order is considered necessary to ensure the transparent and efficient functioning of the Bridge, including its long term viability, and/or to ensure the safe navigation of the Canal.

4.9 The proposals in the Order are to:

4.9.1 Improve the physical condition of the Bridge and provide better measures for its operation:

(a) through the provision made for an increased toll, that will fund works of refurbishment;

(b) allow a weight limit of up to 7.5 tonnes for a small number of socially important vehicles such as fire engines and local bus services, who are currently unable to use the Bridge;

(c) control heavy and high vehicle access more directly to protect the Bridge;

(d) control vehicle speeds to improve safety/other measures to control better operation of the Bridge/reference to byelaws;

(e) transfer of the undertaking/ transparency in management.

4.9.2 Secure continued safe operation and management of the Canal, through the raising of the toll, to fund works of refurbishment .

4.9.3 Update and modernise provisions of the existing legislation in respect of the Bridge.

4.9.4 Enable free flow toll collection to reduce congestion.

4.9.5 Secure financial viability for the operation and management of the Bridge and the Canal.

(a) Toll rise needed to enable ongoing management of the Bridge and proposals set out above.

(b) Build up a reserve fund for a possible replacement Bridge in the future.

4.10 The Explanatory Memorandum sets out a detailed explanation for the purpose of each provision in the Order including whether such provision has previous precedent in similar legislation. MSCC has further explained how each provision relates to the abovementioned objectives to further clarify the need for each provision. This is set out at Appendix 3.

5 Benefits of the Bridge

User time and distance savings

5.1 The Bridge 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.

5.2 Trips involving selected origins and destinations were compared, on the basis of users using the Bridge and then alternatively travelling via the motorway. It was found that for origins and destinations within close proximity of the Bridge, using the Bridge instead of the motorway generated journey time savings ranging between 8 and 15 minutes, and kilometre savings from 6 to 13km. For slightly longer distance journeys, the Bridge provided smaller journey time and distance savings. These savings are even more significant during peak time periods, when congestion usually builds up on the rest of the network.

5.3 For vehicle trips, benefits gained can be expressed as monetary savings derived from vehicle operating cost (VOC) and value of time (VoT) savings. VOC savings comprise of fuel impacts (savings in the amount of fuel consumed on each route) and non-fuel impacts (changes in vehicle wear and tear from additional kilometres

travelled). The price of fuel was assumed to be 139.8 pence per litre[1]. VoT applies a monetary value to the traveller's willingness to pay to reduce their journey time. Savings are represented in 2024 prices, the year the new toll is expected to be implemented.

5.4 Whilst further details on this assessment can be found in section 3.3 of the Business Case, in summary it was found that the Bridge provides a more direct route, for both shorter local journeys and longer distance journeys, and thus generates combined VoT and VOC savings of between £2.69 and £5.91 for the examples considered. As such, even with a maximum toll charge of £1.00 per trip, motorists will still derive noticeable time and cost savings from utilising the Bridge over the alternative motorway route.

5.5 In addition, based on HMRC's approved mileage rate for cars and vans, which is set at a level for businesses to recover the cost of travel, it is more cost effective for business trips to use the Bridge as opposed to the alternative motorway route for the trips identified for analysis purposes.

Environmental benefits

5.6 The time and distance savings identified should also bring about environmental benefits through reduced fuel consumption, thus reducing the carbon footprint of travel. The environmental benefits are not necessarily limited to fuel-based vehicles, as until all electric vehicles are charged using renewable energy, shorter distances would help limit the amount of non-renewable electricity required.

5.7 Further benefits may arise in the future if, as the vehicle fleet evolves to electric vehicles, the Government introduces a distance-based road tax system to replace the revenues lost from fuel tax. In such a scenario, these distance savings via the Bridge would continue to generate savings for motorists.

5.8 By introducing free-flow tolling, car users will benefit from reduced queues and congestion leading up to the Bridge, as the physical barrier will have been removed. This will improve journey times, air quality and journey quality. Going forward, this will also benefit users by providing greater options of payment methods, include cashless payments.

Benefits to non-motor vehicle users

5.9 MSSC's proposals to improve the Bridge infrastructure includes allowing for buses to use the Bridge in the future, which would facilitate vital public transport links in the local area. This in turn would enhance accessibility for more vulnerable demographics and reduce congestion if people had the option to switch from private to public transport. The creation of a segregated footpath/cycleway would also facilitate enhanced opportunities for sustainable travel i.e. walking and cycling.

5.10 The Bridge infrastructure improvements also include refurbishing pedestrian footpaths and adding barriers, improving the safety and comfort of pedestrians

[1] Average price of unleaded petrol in the WA14 post code (Altrincham) on 21/10/2021

crossing the Bridge. Resurfacing of the Bridge roads and maintaining toll-free access for bicycles looks to encourage more cyclists to use the Bridge. These upgrades aim to encourage a shift towards these more sustainable modes of transport, which would subsequently reduce congestion across the Bridge and limit greenhouse gas emissions from vehicles.

5.11 All in all, the Bridge provides benefits for local traffic by providing a more direct and efficient connection across the Canal, and thus creating time and distance savings, as well as reductions in the carbon footprint. It is important to note that despite a proposed increase in the toll rate, travellers would still derive benefits in time and distance savings greater than the value of the toll.

6 Justification for toll revision

6.1 The toll rate on the Bridge has been reviewed in order to ensure an appropriate toll level can be charged in the future to cover any revenues that are paid to the Government as VAT, the anticipated costs of the upgrade, including the cost of capital that needs to be raised upfront (i.e. the £6.5m) and then repaid over time, ongoing operating and maintenance costs consistent with this application, as well as anticipated future changes in traffic levels, including general traffic growth, diversion as a response to the anticipated toll increase, and the long term impact of Covid-19. Details of the key assumptions underpinning the Base Case can be found in section 6.3 of the Business Case.

Traffic and revenue impacts

6.2 A review of traffic levels across the Bridge was undertaken in section 4.1 of the Business Case. This found that traffic levels remained steady between 2017 and 2019 at an average of around 8,200 vehicles a day. As a result of lockdowns associated with the Covid-19 pandemic, traffic levels dropped significantly in April 2020 and remained low throughout 2020 and early 2021.

6.3 Towards the end of 2021, traffic had somewhat recovered to pre-Covid-19 levels but was still lower in 2021 compared with 2019. This likely reflects the permanent change in behaviours resulting from the pandemic, including greater levels of working from home. It is expected that this change will continue, meaning lower traffic on the Bridge, and hence, without a toll increase, less revenue to cover either ongoing or upgrade Bridge costs.

6.4 In addition to revising the toll rate, it is proposed to upgrade the toll collection method from a manual collection operation to free-flow tolling. This would bring about benefits including reduced congestion, improved journey times and improved air quality. Stakeholder consultation showed overwhelming support for a move to free-flow tolling from the general public and local councils alike. In order to fund this upgrade however, the Bridge would need to generate additional revenues, given free-flow tolling costs are expected to be higher than current manual toll collection costs. Further explanation as to the reasoning behind the move to free-flow tolling and how the subsequent toll rate has been determined can be found in the Business Case.

Costs associated with the Bridge

6.5 The Bridge is owned by MSCC, which has a wider asset portfolio. As such, the various costs and revenues related to the Bridge are integrated into the wider management and statutory accounts for MSCC. While major items such as revenues and staff costs for toll collection are identified in the management accounts, many other cost items are not explicitly accounted for, such as management time incurred by staff in other departments within MSCC. As a result, the current management accounts underestimate the true cost of running the Bridge. The Business Case and subsequent toll estimates looked to address this underreporting, so that the true costs could be established for assessing future revenue needs. These have been estimated at £107k a year for toll collection, and £112k a year for other costs, noting this excludes atypical costs such as the arson attack on the toll booth, or the current high costs related to pothole repairs. Full details can be found in the Business Case (section 5).

6.6 Upgrading the toll collection operation to free-flow tolling addresses stakeholder concerns and brings the Bridge into the 21st century for users. However, it also comes with extensive operating costs, compared with the position if the current barrier system is retained.

6.7 Additional capital costs in the future of £6.5m are anticipated in the form of remedial works to the existing Bridge structure and approach roads. Details of those can be found in section 5.3 of the Business Case. It should be noted that these estimates were prepared pre-Covid-19, and ongoing delays to the start of the works may increase costs above the levels originally determined.

6.8 These upgrade works will be initially funded through the raising of debt and/or equity, which in turn will need to be paid off by revenue from tolls over 20 years. This is the anticipated future life cycle for many elements of the bridge refurbishment going forward (for example the steelwork repairs, grit blasting, repainting, and refurbishment of the timber footway), and hence after 20 years it is anticipated additional debt or equity will be required for the next cycle of works. The toll required was estimated in the Business Case based on expectations of the likely level of expected debt and equity returns. Sensitivity tests on the assumed returns (see section 6 of the Business Case) confirms the toll will still need to be increased significantly even if they are lower than assumed. If actual costs of capital prove different, all other things being equal, a different toll level could be charged, although it would not be significantly different to that assumed.

6.9 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 increasing costs of repairing potholes, a surplus of only £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 revenues cannot sustain the Bridge into the future.

6.10 Consequently, the toll has to be increased significantly to meet all future anticipated costs and provide a sustainable long-term basis for the Bridge. Indeed, even if no upgrade works were to be undertaken, the financial condition of the Bridge is unsustainable at current toll levels.

6.11 The analysis in the Business Case, which identified a current surplus of £23k a year, does not account for years where costs or revenues have been atypical, and losses have occurred, such as a result of the arson attack and Covid-19 pandemic. Further, the impact of reduced revenues during the Covid-19 pandemic and costs related to the ongoing development and promotion of the Order have also been excluded from the analysis. As such, these historic costs and losses in revenue have not played a part in determining the new toll rate. However, any future costs incurred by the new toll Bridge company for similar activities, would need to be covered out of the company reserves or through toll revenues. The new toll level would not be implemented until the upgrade works are completed and there will also be a toll-free period during the upgrade works, anticipated to take up to 12 months, if the level of service on the Bridge is significantly impacted (for example through the introduction of one way only operations). Again, costs related to these decisions have not been carried forward into the Business Case. This approach has been decided upon so that the new company responsible for the Undertaking can start with a clean slate and not be burdened by old costs, which would result in a need for unsustainably high tolls from day one.

6.12 Finally, the proposed increase in the toll rate takes into account the need to build up a reserve fund in order to support future major works if required. The aim is to keep this fund to no more than 30% of the estimated nominal costs of a new bridge and bridge abutments (£15m in current prices). Section 5.5 in the Business Case outlines how the reserve fund has been incorporated into the final toll calculations.

The business model for determining the revised toll rate

6.13 A business model was produced reflecting the financial impact of the required increase in operating costs and additional capital expenditure, and can be used to estimate the proposed toll levels required to cover these costs, and the level of any balancing contributions to a reserve fund. Full details on this assessment can be found in section 6 of the Business Case.

6.14 Three models were produced, the Base Case, a Downside Case, and an Upside Case, to reflect both the anticipated outcome (the Base Case), and some of the risks and uncertainties around that Base Case (Upside/Downside Cases). The toll level requested needs to be of a sufficient level to allow the business to respond to such uncertainties if a sustainable future is to be delivered.

6.15 It should also be noted that it was assumed any revenues raised from enforcement of toll violations would be revenue neutral (i.e. revenues received would balance with the cost of enforcement). Should there be a surplus, then as with other situations where total revenues received are higher than anticipated, a lower toll could be considered.

6.16 For the Base Case, a headline toll of £1.00 (including VAT) was found to cover all costs and deliver a reserve fund that is close to (although still slightly below) the desired target after twenty years. In this case, it was assumed that a 50% postcode defined local discount would be offered, which was estimated as representing 30% of users.

6.17 The Downside Case indicated that with a headline toll of £1.00 (including VAT), it would not be possible to offer any local discount (although capping the daily toll to two trips can still be retained). This largely arose due to the assumptions in this model around lower traffic levels than in the Base Case. In addition, only a small reserve fund (less than half the target) would be achieved after twenty years. However, it did confirm that the maximum toll requested should still allow the Bridge to deliver the proposed upgrades and then operate for the next 20 years.

6.18 On the other hand, the Upside Case suggests that a headline toll of £0.90 (including VAT) could be implemented and a postcode defined local discount of 50% offered. In addition, no toll escalation was required. This scenario assumes that traffic levels will be higher and therefore revenues higher. This offers a lot more flexibility on the headline toll and discounting. Consequently, while the toll rates outlined are one option, in reality, should this scenario arise, the Bridge would have significant flexibility on toll rates, allowing a wide range of options to be discussed with stakeholders.

6.19 Additional sensitivity tests were conducted and are outlined in section 6.6 of the Business Case. These tests found that a maximum headline toll of £1.00 (including VAT), along with indexing to CPI minus 1%, should be adequate to meet a wide range of possible future uncertainties, should give sufficient flexibility for the Undertaking to undertake the upgrade works, manage its ongoing finances, and hopefully build up at least some level of reserve fund. As such it meets a key objective of providing a financially sustainable future.

6.20 Given the desire of MSCC to establish a sustainable long-term platform for the Bridge, yearly indexing of the maximum toll has been included. However, it should be stressed that with a rate of 1% below inflation the cost will still decline in real terms over time. Therefore benefits, in real terms, will be retained for users. Further, while the indexing defines the maximum possible toll in any year, actual tolls will only be set to the level required, and as demonstrated in the Business Case, in the Upside scenario indexing is not required. Consideration has also been given to a geographically based discount for local residents, on top of a planned toll capping at a maximum of two trips as day (as occurs today). However, it has to be borne in mind that as the catchment area for a local discount increases, the headline toll others would need to pay has to rise to compensate, making the selection of any such area a fine balancing act. Of course, if the proportion of users paying the local discount toll proves to be smaller than the assumption used in the Business Case (section 6), then the headline toll could be adjusted downward.

Comparison to other privately financed facilities

6.21 The toll rates on other privately financed facilities in Great Britain have been benchmarked against that proposed (Business Case section 3.4). However, due to each bridge having their own unique characteristics and costs, which influences the toll level, drawing comparisons is often of limited value. That said, if the Bridge were to implement the maximum toll rate of £1.00 (including VAT), it would set it at the higher end for small bridge tolls. However, it should be noted this analysis was undertaken before the recent request by Aldwark Bridge for permission to increase its toll from 40p to 80p, or the proposed 30% increase in tolls on the Tamar Bridge. The proposal for the Bridge includes an allowance for a Covid-19 related downturn in traffic that other bridges are only now starting to acknowledge and address. Further, the rate would still be significantly below other existing tolled crossings of the Mersey.

7 Alternatives

"Do-nothing" scenario

7.1 Under a "do-nothing" scenario, namely 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. As explained earlier in section 2.6, this scenario 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.

7.2 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.

7.3 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.

7.4 If a "Do-nothing" scenario was chosen, vehicles, vessels and lives would all be put at risk. 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 until such time as funds can be raised through the tolls to enable necessary remedial works. This could sever 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 closure 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.

"Do-minimum" scenario

7.5 The Business Case considers the "Do-minimum" scenario through the analysis of the "Base Case", along with the related "Upside Case" and "Downside Case" scenarios and other sensitivity tests. The Base Case considers the most likely option, while the Upside Case assesses a "best-case scenario" and the Downside Case a "worst-case scenario".

7.6 These each assume that a free-flow tolling option will be implemented, along with improvements to the Bridge infrastructure of £6.5m. While retaining an existing barrier and cash-based system would be cheaper, it addresses none of the wider concerns of stakeholders over delays, safety 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.

7.7 The existing Bridge structure was inspected in July 2016 and classified the Bridge as being in poor condition and in need of urgent remedial works. Wilde Engineers are in the process of assessing the current state of the Bridge. Given that no major maintenance works have taken place since 1998, nor since the 2016 Bridge inspection, it is likely that the Bridge's infrastructure has only deteriorated further.

7.8 The estimated minimum costs required to bring the Bridge up to standard were incorporated in the "Do-minimum" scenario of the business model. In addition, costs have been included for improving the carriageway and including footpaths. These costs also include resurfacing the highway, which in turn will improve the current situation of consistent and costly pothole patching. MSCC do not believe it is appropriate to undertake the Bridge upgrades without addressing the approach roads, as they have deteriorated to the point where potholes may become an increasing safety concern. The upgrade to the Bridge and the approach roads need to be viewed as a single system. The existing carriageway needs to be completely reconstructed.

7.9 MSCC have at various times engaged with stakeholders regarding the future of the Bridge and notes the support of the local Councils and general public a of moving to a free-flow tolling option, as well as improving the Bridge infrastructure and approach roads. Section 2 of the Business Case and the Bridge Consultation Feedback Report summarise the responses from stakeholders. This shows widespread support for all the proposals included within the "Do-Minimum" option, other than increasing in the toll to fund these improvements.

7.10 As such, the “Do-minimum” option includes upgrading the Bridge structure in order to combat safety concerns and preserve the future lifespan of the Bridge; as well as installing free-flow tolling to address the congestion and environmental impacts. Both of which involve large costs but are essential in providing a safe and fit for purpose toll facility.

Transfer of ownership to the local authorities

7.11 The Bridge at present requires significant refurbishment and ongoing maintenance, the cost of which would be considerable. Any new owners would need to take on these cost burdens to ensure the Bridge does not fall further into disrepair or become unusable, as per a do-nothing scenario.

7.12 MSCC have over the years been in dialogue with both local highway authorities and have offered Warrington Borough Council and Trafford Borough Councils the opportunity to take on the ownership of the Bridge. Both Councils have made it clear that they cannot take on maintenance and operation of the Bridge due to the significant financial liabilities that this would involve without additional support from central Government, and/or increases in council tax. Even with this additional funding support, it would not necessarily mean that the toll would be abolished or even maintained at £0.12.

7.13 If the Councils were to lobby the DfT for funding (and secure the same), then there may be the possibility of transferring ownership of the Bridge to the Councils. However, this is beyond MSCC’s control, and the decision ultimately would lie with the Councils and central Government.

8 Consultation and engagement

Brief summary of consultation/engagement to date

8.1 MSCC recognised, and continues to recognise, the importance of continued meaningful consultation and engagement. As such it has been consulting with key stakeholders and interested parties regarding the planned upgrades to the Bridge since 2016.

8.2 Warrington Borough Council and Trafford Borough Council are the local highway authorities; consultation with them on this application has been ongoing since January 2018. Both Councils are in broad agreement with the proposed improvements to the Bridge and the surrounding roads, however the level of the toll increase and breadth of local user discounts are areas that are not yet agreed.

8.3 Both Trafford and Warrington Borough Councils have been engaged with via meetings and correspondence, feedback provided as part of the public consultation in July 2021 and feedback on the proposed Order which was shared with them in October 2021.

8.4 MSCC has, and continues to, give serious consideration to the feedback given in consultation with the Warrington and Trafford Borough Councils. Such consideration has led to a number of changes to the proposed Order, such as the delay of non-statutory consultation by 8 months to avoid crossover with the local election period, a revision of the toll from £1.00 exc. VAT to £1.00 inc. VAT, and the development of local user discounts.

8.5 Other key stakeholders such as local Parish Councils (Warburton, Lymm and Glazebrook) have also been consulted via correspondence, meetings and public consultation, with Lymm and Glazebrook Parish Councils providing responses to the July 2021 non-statutory public consultation. MSCC seriously considered the views of the Parish Councils and this led to the inclusion, in the proposed Order, of free flowing toll technology to prevent congestion, the imposition of weight and height restrictions across the Bridge.

8.6 MSCC has been in consultation with local MPs regarding the proposed Order since 2016. They have been regularly updated on the development of the same, as well as being engaged via written engagement and public consultation. One Local MP replied to the non-statutory consultation in July 2021. Following engagement with MPs, MSCC made numerous amendments to the proposed Order such as the use of free-flow toll technology to prevent congestion, raising the current toll to fund the works necessary to ensure the Bridge remains safe, allowing MSCC to build a reserve fund for a possible replacement Bridge in the future, the imposition of weight and height restrictions across the Bridge and the development of discounts.

8.7 The Warburton Toll Bridge Action Facebook Group has been in existence since 2017 and has been regularly informed about the proposals for the Bridge as well as engaged with via meetings, written engagement and public consultation. 72 members of the Group replied to the non-statutory consultation in July 2021. MSCC amended the proposed Order in light of concerned raised by the Action Group, with those made being the same as those outlined in paragraph 8.6 above.

8.8 Since 2013 MSCC has also been keeping a log of contact made by the general public. Their comments as summarised can be viewed in section 2.4.1 of the Business Case.

8.9 As noted, a non-statutory consultation took place in July 2021, within which time 72 responses from the general public were received with three from local businesses and/or societies. Most responses indicated an opposition to the toll increase, but favoured the need for infrastructure upgrades and free flow tolling. Following this consultation, MSCC made amendments to the proposed Order such as no toll being levied whilst refurbishment works take place, the works including sustainable access improvements for cyclists and pedestrians and the reinforcement of the Bridge to increase the weight limit to facilitate the use of the Bridge by public transport services .

8.10 The Rule 5 Consultation took place in September 2021, and comments were received from the Secretary of State on the technical drafting of the proposed Order. As aforementioned, a copy of the same was also provided to both Warrington Borough Council and Trafford Borough Council. Warrington confirmed they did not have any comments and Trafford raised technical queries and changes. MSCC had regard to those comments and, where appropriate, amended the proposed Order in accordance with these queries. For example, MSCC has amended the plan accompanying the proposed Order and included additional consultation provisions with the highway authorities and additions to the exemptions register. Where no changes were made, MSCC provided its reasoning.

8.11 Engagement has continued since the proposed Order was submitted to the Secretary of State via the Bridge's website (https://www.warburtontollbridge.co.uk/) and ongoing correspondence and meetings with stakeholders and interested parties, particularly the local highway authorities to seek to narrow down the issues in dispute.

8.12 For more details regarding the consultation and engagement undertaken by MSCC in respect of this application, please see the November 2021 Consultation Report submitted with the TWAO application [**RWB/A6**].

9 Representations and objections

9.1 MSCC submitted a formal application, to the Department for Transport, for the Order on 30 November 2021. The objection/representation period in respect of the application closed on 18 January 2022.

9.2 A total of 314 objections were made to the Department for Transport in relation to MSCC's application for the Proposed Order.

9.3 Figure 1-1 below broadly identifies the groups that made these representations/objections.

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

9.4 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.

9.5 Having reviewed the responses, MSCC have categorised them, as we did for the feedback from the various rounds of consultation, into five overarching themes:

9.5.1 Tolling

9.5.2 Use of revenues raised

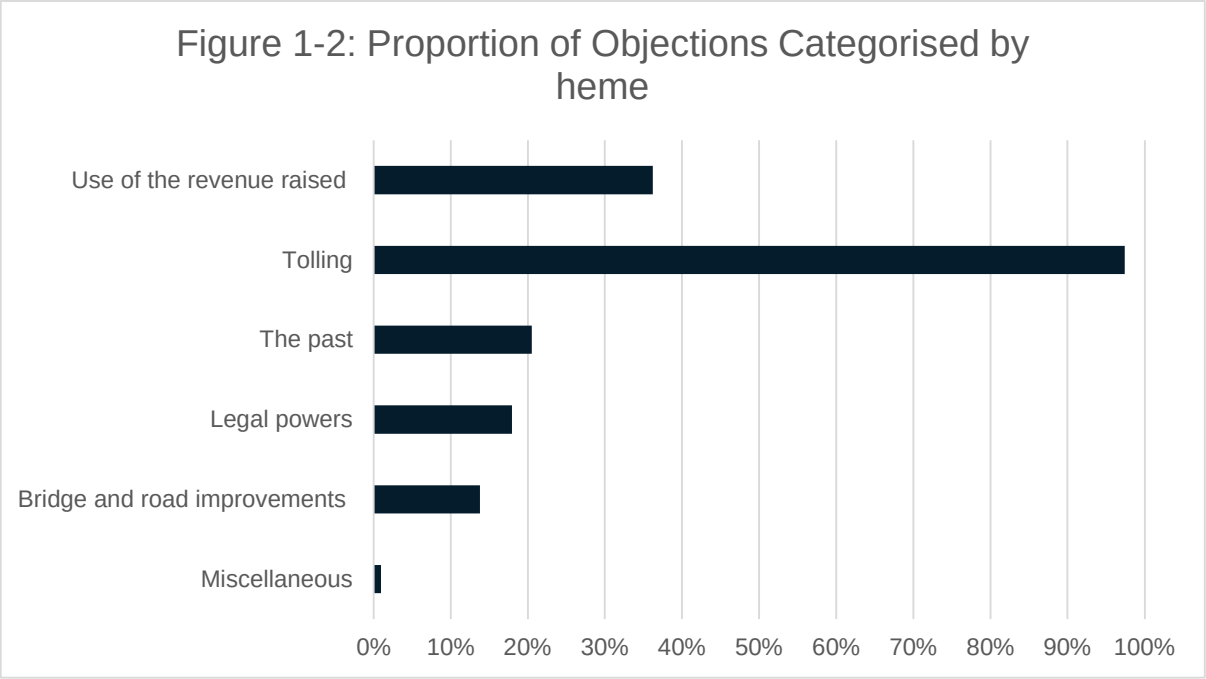
9.5.3 The past

9.5.4 Legal powers

9.5.5 Bridge and road improvements

9.6 Figure 1-2 below shows the proportion of responses mentioning each of the key themes. Note that in total, these exceed 100% as some respondents addressed more than one theme. MSCC notes that responses were allocated to themes, even if the theme was mentioned briefly or indirectly, to ensure that the fairest representation of the themes raised is provided.

9.7 Figure 1-2 illustrates the proportion of objections categorised by theme.



9.8 MSCC have responded directly to those objections that raised matters of a specific nature and responses submitted by key stakeholders. MSCC has also produced a document, TWAO Representations – Applicant's Response Report which responds to representations made during the objection period of the Application [**RWB/C1**]. The TWAO Representations – Applicant's Response Report seeks to address the issues raised in the 314 submissions made to the Department for Transport.

9.9 Tolling was the focus for 97% of responses, making it the dominant theme. The responses grouped into this theme focus on the toll charge itself, possible discount schemes, as well as the method of tolling. Although the majority of responses were opposed to increasing the toll charge to a maximum of £1 (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.

9.10 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 suggesting 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.

9.11 Responses related to the past focused 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.

9.12 Responses falling under the legal powers theme often refer to the Rixton and Warburton Bridge Act 1863 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.

9.13 In summary, MSCC reiterates in response to the feedback received that the Bridge requires urgent refurbishment. This is particularly important given that continuing deterioration of the condition of the Bridge could pose a risk to the safe navigation of the Canal. The Bridge also needs structural reinforcement to allow an increase in the weight limit for use by heavier vehicles such as emergency vehicles and buses.

9.14 In addition, the smallest issue or delay in paying the toll quickly results in traffic congestion on the approach to the collection booth and consequential air quality implications for the local residents.

9.15 If the Bridge deteriorates more and parts of its structure fall onto vessels navigating beneath it or into the Canal, reducing the depth of water for navigation, or, as the

ultimate hazard, the Bridge collapses, blocking the Canal, this will represent a considerable risk to safety.

9.16 MSCC cannot allow such events to arise. If the Bridge cannot be maintained in good condition for traffic, the use of the Bridge may need to be restricted on safety grounds until such time as funds can be raised through the tolls to enable necessary remedial works. MSCC have calculated the lowest reasonable toll rate for the Bridge and has undergone various rounds of consultation which has led to changes to the proposal. MSCC considers that £1 inc. VAT is the lowest reasonable toll rate which would enable the necessary works to the Bridge to be carried out.

9.17 Sensitivity testing of the business plan indicates that the headline toll of £1 (inc. VAT at the current rate of 20%) should be adequate to ensure the refurbishment of the Bridge under a range of different traffic and financing scenarios, although in the worst case the reserve fund for the new Bridge may not be as large as desired. These sensitivity tests also indicate the headline toll could be set lower, or more discounts given, if the outturn traffic and financing costs are better than anticipated. MSCC emphasise that the toll will not be automatically set at £1 (or indeed any other value), but will be considered each year to meet the agreed objectives.

9.18 MSCC is commissioning information to assist the Secretary of State in discharging its public sector equality duty set out in section 149(1) of the Equality Act 2010 and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not share it. MSCC has had regard throughout the design of the Application of any impacts on persons with any of the protected characteristics referred to in section 149(7) of the 2010 Act. MSCC considers that rights under the Human Rights Act 1998 are not engaged as no powers of compulsory acquisition are sought in the proposed Order.

10 Conclusion

10.1 The present Bridge dates from about 1860 and it has become clear that if the Bridge is not refurbished, it is foreseeable that it will become unpassable. It is also clear to MSCC that the finances currently generated from the operation of the Bridge are insufficient to meet its existing day-to-day maintenance requirements, even without a major refurbishment.

10.2 MSCC has detailed the many benefits that will flow from the Order. MSCC emphasises that an increase in toll is the most feasible and efficient manner in which to address the issues relating to the Bridge. MSCC has had to balance the needs of users with the cost of delivering a safe crossing, now and into the future. MSCC considers that it has struck that balance in its proposals. It will be a considerable risk to safety if the Bridge further deteriorates. If the Bridge cannot be maintained in good condition for traffic , the use of the Bridge may need to be restricted on safety grounds until such time as funds can be raised through the tolls to enable necessary remedial works. MSCC have calculated the lowest reasonable toll rate for the Bridge and have undertaken engagement with the stakeholders, which have led to changes

to the proposal. MSCC considers that £1 inc. VAT is the lowest reasonable toll rate which would enable the necessary works to the Bridge to be carried out.

10.3 In the circumstances, MSCC will invite the Secretary to make the proposed Order.

APPENDIX 1 – LIST OF SUPPORTING DOCUMENTS

Category A: Formal Application Documents

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	Consultation Report
RWB/A7	Waiver direction in relation to Rule 10(2) given under Rule 18

Category B: Legislation

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
RWB/B6	Transport and Works Act 1992
RWB/B7	The Transport and Works (Inquiries Procedure) Rules 2004

Category C: Scheme Development Documents Including Consultation

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

Category D: Pre-inquiry Documents

RWB/D1	Statement of Case, May 2022

APPENDIX 2 – INSPECTION POINTS

This Statement of Case and its supporting documents are available for public inspection at the following locations and times.

(1) Stretford Library, Bennett Street, Stretford, Manchester M32 8AP

Monday – Wednesday: 10:00–7:00
Thursday: 10:00–19:00
Friday: 10:00–17:00
Saturday: 10:00–16:00
Sunday: Closed
Bank Holidays: Closed

(2) The Register Office, 1 Time Square, Warrington, WA1 2EN

Monday – Friday: 08.45–17:00
Saturday & Sunday: Closed
Bank Holidays: Closed

Documents served on The Manchester Ship Canal Company Limited ("MSCC") by others will be available for inspection from 17 May 2022 at MSCC's website at https://www.warburtontollbridge.co.uk/

Subject to payment of a reasonable charge, copies of all documents may be requested from Pam Thompson, BDB Pitmans LLP by emailing her at: pamthompson@bdbpitmans.com or by calling 020 7783 3437.

APPENDIX 3 - JUSTIFICATION FOR PROVISIONS SOUGHT IN THE ORDER

PART 1 - PRELIMINARY

Part 1 contains preliminary provisions.

1 Article 1 (Citation and commencement) details when the Order would come into force.

2 Article 2 (Interpretation) contains the definitions used within the Order.

PART 2 - OPERATIONAL

Part 2 of the Order contains provisions for and relating to the operation and maintenance of the Rixton and Warburton Bridge.

3 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 Order comes into force.

3.1 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 form of sanction or penalty for their non-observance. Byelaws are standard practice for regulating the use of roads. The byelaws that MSCC propose are all well precedented, by other toll operators, as detailed in the Explanatory Memorandum. Byelaws must be introduced by legislation and are commonly proposed under Transport and Works Act Orders.

3.2 Byelaws 5 to 35 are proposed to provide better measures for the Bridge's operation as well as to reduce congestion.

3.2.1 Byelaws 5 to 15 limits the instances in which a vehicle may stop, or disrupt traffic, on the Bridge. Examples of where stopping a vehicle is permitted are: breakdowns, accidents or when directed by a traffic signal.

3.2.2 Byelaw 16 restricts, without express permission, any vehicle carrying any goods, substances or articles of a dangerous nature to cross the Bridge.

3.2.3 Byelaws 17 to 20 set out when vehicles are not permitted to use the Bridge. For example when there is a notice stating the Bridge is closed.

3.2.4 Byelaw 21 sets out the maximum dimensions of vehicles permitted to enter or use the Bridge. Vehicles that exceed these dimensions require prior permission from an authorised person to enter or use the Bridge.

3.2.5 Byelaws 22 to 35 sets out the basis upon which the level of toll shall be displayed in the vicinity of the Bridge. It sets out the methods by which the toll can be paid, and further charges that will be imposed on unpaid tolls. The byelaws set out the process of a person applying for a Tag, an electronic device fitted to a vehicle, to allow tolling without physical payment using cash. The byelaws also set out the process of reporting when vehicles are sold or stolen to ensure that penalties on toll charges do not continue to be accrued

by the dispossessed owner. The scope of these powers are comparable to that of a local authority over a pay-and-display car park.

3.3 Byelaws 36 to 50 are proposed to: provide better measures for the Bridge's operation, reduce congestion and to ensure the safe operation and management of the Canal.

3.3.1 Byelaws 36 to 50 prohibits certain behaviour in the vicinity of Bridge, in the interests of health and safety and the prevention of damage and nuisance generally. This is particularly important as if anything falls from the Bridge into the Canal, a serious risk to human safety and the navigation of the Canal may arise. Further, reducing the scope for damage and accidents will reduce the need for funds raised by tolls to be spent rectifying damage.

3.4 Byelaws 51 and 52 are proposed to primarily allow for repairs and works to be carried out which would improve the physical condition of the Bridge and provide better measures for its operation. These byelaws would also allow MSCC to act promptly in response to emergency situations on the Bridge.

3.4.1 Byelaw 51 allows access to the Bridge, when it is closed or partially closed, if the driver has express permission from MSCC. This would likely be given to those who are carrying out repair work.

3.4.2 Byelaw 52 enables an authorised person to refuse access to the Bridge to any person that the authorised person has reasonable cause to believe is breaching, or will so if he proceeds, any of the byelaws.

3.5 Byelaws 53 and 54 relate to the repercussions of breaching a byelaw.

4 Article 4 (Closing the Rixton and Warburton Bridge) empowers MSCC to close all or any part of the Bridge during emergencies. If MSCC wishes to close the Bridge, in a non-emergency situation, the articles sets out consultation and notification requirements that need to be fulfilled .

PART 3 - TRANSFER OF THE UNDERTAKING

Part 3 of the Order contains provisions for MSCC to allow for the transfer the Rixton and Warburton Bridge 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. These articles will allow for 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.

5 Article 5 (Transfer of Undertaking) transfers the statutory powers and duties of MSCC in relation to the Bridge to the newly formed Rixton and Warburton Bridge Company Limited.

6 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 Rixton and Warburton Bridge Company Limited.

7 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.

PART 4 - TOLLING, CONCESSION AND FINANCING ARRANGEMENTS

Part 4 of the Order contains provisions for the charging of tolls at Bridge and the power to enter into concession and financing agreements with persons liable to pay a toll. These articles are necessary for securing financial viability for the operation and management of the Bridge and the Canal, as well as enabling the free flow toll collection to reduce congestion. MSCC have specified below where there is a secondary purpose to the inclusion of the article in the Order.

8 Article 8 (Tolls) empowers MSCC to use its existing powers to levy tolls under the Rixton and Warburton Bridge Act 1863 in accordance with the provisions of this Order and sets out the procedure for the payment of tolls. This article also specifies that MSCC will spend funds raised by the tolls for purposes in connection with the safe efficient and economic management, operation and maintenance of the Bridge. MSCC has to set out provisions for non-payment, as with automated toll payment being introduced there is no longer the assurance that users who have not paid will not be able to cross the Bridge. MSCC has to create a method for which there will be accountability for drivers who do not pay the toll charge within the permitted time period from crossing the Bridge.

8.1 This article also introduces Schedule 1 which includes provisions as to the level of tolls to be charged and the mechanism and procedure for any adjustments of the toll.

9 Article 9 (Payment of tolls) provides MSCC with the flexibility that is necessary to allow the use of open road tolling technology for the collection of tolls in the future. This technology would be adopted to ease free flow toll collection to reduce congestion.

10 Article 10 (Power to enter into concession agreements and lease or transfer the Undertaking, etc.) empowers MSCC to transfer its powers (including its rights and obligations) to another person. A transfer can only be done with the express consent of the Secretary of State.

11 Article 11 (Protection of the Canal) contains provisions in order to safeguard the operation and navigation of the Manchester Ship Canal. This article ensures that any transfer, in line with Article 10, will include provisions to ensure that any purchaser is bound by the same commitments that MSCC is bound by. This ensures the continued safe operation and management of the Canal

12 Article 12 (Application of landlord and tenant law) would override the application of landlord and tenant law in so far as it may prejudice agreements for the leasing of the Bridge.

13 Article 13 (Application of the 2000 Act) applies Part 3 of the Transport Act 2000, which relates to road user charging schemes. This ensure that the powers of a charging authority under the Transport Act 2000 are available to MSCC.

14 Article 14 (Modification of Transport Charges &c. (Miscellaneous Provisions) Act 1954) relates to legislation used by toll operators to raise toll charges. This article ensures that legislation remains applicable where MSCC has a successor company.

PART 5 - MISCELLANEOUS AND GENERAL

Part 5 of the Order contains a number of miscellaneous and general provisions. These update and modernise provisions of the existing legislation in respect of the Bridge.

15 Article 15 (Service of notices) details how notices should be delivered.

16 Article 16 (Amendments) makes amendments to the Rixton and Warburton Bridge Act 1863 to ensure alignment with the Order.

17 Article 17 (Repeals) repeals those provisions of the Rixton and Warburton Bridge Act 1863 which are no longer necessary as they are being updated and replaced by the provisions of the Order.