

Warburton Bridge TWAO Inquiry 2022  
Statement of Case submitted 10 May 2022 by John McGoldrick on behalf of  
National Alliance Against Tolls

## **Introduction**

1. This Statement of Case is being submitted to the Inquiry by John McGoldrick on behalf of the National Alliance Against Tolls. The alliance was set up in 2004 as an umbrella group for four local groups in England, Scotland and Wales. I am the 'coordinator' of the alliance, though most of the original groups are gone and at national level the alliance has not been very active in recent years.

2. I became a member of the Warburton Toll Bridge Action Group shortly after it was set up in 2017. I set up the petition on 38Degrees calling on Trafford Council, Warrington Council and the government to "Have the tolls removed on the Warburton toll bridge". From late 2018 to some time in 2020, I was on the committee of the group.

## **Tolls in general**

3. The alliance's website lists eleven reasons why we oppose all tolls-  
<http://www.notolls.org.uk/#reasons>

4. Prior to the late 1800s most river crossings and inter town roads in Britain were tolled. Most of those tolls had been removed before the end of the century, and by 1920 there were almost none left. The tolls were removed because it is an inefficient, uneconomic and unfair way of paying for the use of a road or bridge. Those tolls that remain are an anomaly. In the North West of England there are only two privately owned tolls that remain, this toll and on the Cartford bridge.

5. The power to acquire tolled roads and crossings is in Section 271 of the Highways Act 1980. The undertaking may be acquired by agreement or compulsorily. The local authority can apply to the DfT for a grant. The cost of acquiring a toll bridge will largely depend on the profits that the owners make from the tolls. If the owners are granted toll increases that generate large profits then it makes it less likely that the toll will be bought out. In this case, it is also made more difficult if the canal company is allowed to add the high level bridge over the canal to the toll undertaking

## **The application**

6. The formal application was made to the DfT by a letter dated 30 November 2021. The application was made "On behalf of The Manchester Ship Canal Company Limited ("MSCC"). In most of what follows I will refer to this entity or those acting for them as "the canal company".

7. The application to increase the tolls is unprecedented in that it is made under the Transport and Works Act 1992, rather than under the Transport Charges &c.(Miscellaneous Provisions) Act 1954.

8. The letter says-

"...The proposed Order, if made, would update and modernise provisions of the existing legislation in respect of the Rixton and Warburton Bridge, in particular to revise the tolls which MSCC may charge for use of the Rixton and Warburton Bridge and supersedes the toll levels set out in the Rixton and Warburton Bridge Act 1863.

"The draft Order also contains provisions for MSCC to make new byelaws in relation to the good management and use of the Rixton and Warburton Bridge in order to safeguard the navigation of the Manchester Ship Canal.

"In addition, the draft Order contains provisions for MSCC to transfer the Rixton and Warburton Bridge Undertaking to the Rixton and Warburton Bridge Company Limited (Company Registration No. 13617881), should MSCC so resolve.

"The application is not to be made subject to an environmental impact assessment....."

9. Section 14 of The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 deals with "Publicity for application". There did not seem to be any document made available to show that the requirements were complied with. Though at the last minute (20.46 on 9 May) I was sent by the canal company copies of some advertisements.

10. According to the latest accounts of the canal company as filed at Companies House, "The directors regard Tokenhouse Limited as the ultimate holding company and Peel Ports Investments Limited as the immediate parent company. The largest and smallest group of undertakings of which the Company is a member that produces publicly available consolidated financial statements is Peel Ports Group Limited....

"Tokenhouse Limited, which is incorporated in the Isle of Man, is controlled by the Billown 1997 Settlement trust. By virtue of its controlling interest in Peel Ports Holdings (CI) Limited and the majority voting power held by the directors appointed by the company's immediate parent undertaking, Peel Ports Investments (IOM) Limited, the company considers the Billown 1997 Settlement Trust to be the ultimate controlling party."

11. From the above paragraph it is clear that "MSCC" is part of a complex financial group, which is not a public authority and which is not based in the UK.

## **The application documents**

12. There are seven documents that can be seen by going to the Warburton Toll Bridge website. <https://www.warburtontollbridge.co.uk/twao-application/>

13. One of those is the brief letter of application, another is a letter dated 17 November where the DfT waive the requirement for hard copies of the application documents.

14. Two documents are related to consultation. Any consultation carried out for the applicant should have little value put on it. It does not need a consultation to know that tolls are unpopular and that a proposal to increase tolls from 12 pence to £1 will be very unpopular whatever carrots are offered and promises made. That was evident with the result of the Manchester Toll Poll in December 2008 when 79% voted against the plan to introduce 'congestion charging' to pay for more trams and other goodies. <http://www.notolls.org.uk/manchester>  
Oddly the opposition from businesses to that Manchester tolls plan was led by the Peel Group, owners of the canal company.

15. Three of the application documents largely overlap: the draft order, the explanatory memorandum and the concise statement of aims. They and fundamental problems with this application are dealt with later in this statement of case. But first I will cover the seventh document, the business case.

## **The Business Case**

16. The document says that "Vivid Economics were engaged...to prepare an independent report".

Any firm employed by one side can not of course be said to be 'independent'. If the report was not what the client wanted then the report would never see the light of day.

17. The report is lengthy and does give some information, but it is not what you would normally expect to see with a toll increase application.

18. There are no detailed figures of traffic flows. Instead there is a difficult to read figure (4.1). Presumably the traffic figures only went to the end of October 2021 and the way that the graph has been generated, wrongly gives the impression that there was no traffic in the last two months of 2021. There is no way of knowing how reliable the source of any of these figures is.

19. There are no accounts for prior years. I realise that the undertaking is not a separate entity for external reporting purposes, but in this case there could have been certified extracts from the management accounts going back at least four years. They would need to show the toll income, the expenditure in detail, the profits, and where the profits went. Instead of that, what we have are broad uncertified summary figures of what are said to be average costs, including allocations of expenditure that were not recorded as being for the toll undertaking in the management accounts. There is no indication of what

happened to the profits and no idea of what these profits may have amounted to over the years that the canal company has profited from the bridge.

20. It seems that about 1998 there was about £1.7m spent on 'refurbishment'. Some of that apparently was spent on the 'toll collection house' but the bulk of it was spent on the high level bridge over the canal. It also seems that was treated as capital expenditure as the canal company seems to have been depreciating the cost by charging about £34K to the toll account. As detailed elsewhere in this statement, that high level bridge over the canal is not part of the toll undertaking and so there should have been no charge to the toll account except for the 'toll collection house'.

21. There is no detailed financial forecast over future years, showing the expected amount for toll income, for each item of expenditure, contributions to any reserves, any depreciation, and profits. Instead all we have is percentages and no £ figures.

22. As set out elsewhere I do not accept that the £6.5 million the canal company intends to spend, all relates to the toll undertaking, i.e. the cost of the high level canal bridge should be excluded. Though there are no expenditure figures given for each year, for that £6.5 million the canal company intends to spread the cost over 20 years at a rate of 10%. On an annuity basis that would give an annual charge of £763,000. But if you change the rate to the current Bank rate of 1%, then the annual cost falls to £360,000.

23. As I set out elsewhere there is no statutory basis that would allow a company to issue penalty charges under the Transport Act 2000, but it seems that the canal company and the government believe that they can give these powers using the device of a TWAO. Despite that there is no mention, even in non-numerical terms of the income that might be generated by penalty charges. The nearby Mersey Gateway has generated £44 million in penalty income in its first 54 months, that's £9.7 million a year, albeit with a higher volume of traffic. The latest accounts published for the Dartford Crossing show income from road user charges of £102.3 million and £58.7 million from enforcement, that means that over 36% of the income is coming from the penalties.

24. There are no inspection reports from engineers or bridge surveyors on the state of the bridge and road, and no recommendations from them on what work is needed and by when they think each item of work should be carried out. There is mention of an estimate for the cost of a new bridge from 'Wilde Consultants'. That firm does bridge inspections, so you would have expected them to have been commissioned to do a full inspection, but there are no reports from them.

25. Almost beyond belief it is stated that- "The bridge inspection carried out in July 2016 (the most recent available) highlighted that the R&W Toll Bridge was classified as in poor condition and that it was in urgent need of remedial works." Apart from the usual misdirection about the 'toll bridge', it is astounding that there has apparently not been any bridge inspection for nearly six years, though the business case says- "For the periodic inspections, it should be noted that

there is one principal inspection anticipated every six years, with two smaller general inspections two and four years after each principal inspection."

26. This statement also begs the question of why the bridge was allowed by the canal company to get into a "*poor condition*". My understanding of how bridges are rated is that 'poor' means that the bridge may soon have to be closed. And if the work was '*urgent*' six years ago, then why did the canal company do nothing about it.

Apart from possible safety issues for bridge users, it is well known that if works are not done as suggested in an inspection report then the cost will dramatically escalate due to inflation, and because elements of the structure will deteriorate further if work is not done on a timely cost effective basis.

In any case, that 2016 inspection report should have been made available.

27. There is no full costing of the planned work, including details of any tendering that may have taken place. 'Wilde Consultants' were apparently not asked to do anything other than give an estimated cost for a new bridge. Instead the canal company have themselves estimated the cost of the work that they propose to do as £6.5m. The estimate is very broad brush and shows almost no detail of the various elements of work. In particular it is not possible to identify the cost of work on the high level bridge over the canal as nearly half the estimated cost is general (£1.6m preliminary costs, £0.7m contractor preliminary works and £0.8m fees and contingencies). The full cost of the bridge work should be identified as it is not covered by the toll.

28. I note that the cost of 'toll system installation' is given as £1.0 million, possibly more as there may be some related cost in the £3.1m of general elements. It is staggering that it is proposed that this sum be spent and then recovered from toll payers. The business case suggests that this cost would be recovered over 20 years and that 10% 'interest' would be charged.

Twenty years seems like a long time for such equipment to last but even if spread over 20 years on an annuity basis that would give an annual cost of £117,000. So at a toll rate of £1 a time, it would need 117,000 journeys just to cover the cost of the toll system changes. Though it is even worse than that as the business case also says that the annual running costs of "free-flow" tolling will be about £300,000 to £350,00 a year. So the total annual cost would then be about £440,000 a year, requiring 440,000 toll paying journeys a year just to cover the cost of toll collection. At the current toll rate of twelve pence it would take over 3.6 million toll paying journeys to cover the cost of toll collection. This is crazy economics.

29. I also note that money is to spent on improving the footpaths at the expense of car users, even though it seems unlikely that many people would cross the bridge by foot.

30. There is no explanation of how the road and bridge got into a state where it is claimed that £6.5 million needs to be spent to rectify the neglect by the canal company.

31. It is stated that, "The 1863 Act authorised levying tolls by the Undertaking for passing "over, along, or upon the Bridge and Roads, or any of them, or any Part thereof respectively", with a maximum one-way toll of 12.5p (i.e. two and a half old shillings)....".

This is misleading, the 1863 Act made no mention of a toll for cars.

It seems that at some time without any authority the canal company decided to toll cars on the basis that they were a "Carriage drawn or propelled by Steam or any Means other than Animal Power", the maximum toll for them was set at "two shillings and sixpence" by the 1863 Act. That is the equivalent of 12.5 pence, but it seems that they did not charge that for a long time. In 1962 the toll that they were charging cars was one shilling (= five pence). At some time between then and 2007 the toll was increased to two shillings (= 10 pence). The toll was only increased to twelve pence in 2007.

32. It is said that "20% of the toll is lost as VAT". VAT of course should be one sixth of the toll and not one fifth. VAT is only applied to private bridge tolls. It is iniquitous that drivers are not only required to pay a toll, but that the government gets a rake off. It is also clear that apart from any ideological commitment to tolling, the government also have an incentive to approve a toll increase from 12 pence to £1.00 as their related VAT income will increase over eight fold.

33. It is claimed that tolls "will not automatically be set to the maximum or increased year-on-year. Instead, the toll level will be defined having regard to the financial needs of the operation and maintenance of the R&W Toll Bridge". That is nonsense, as there is nothing to stop the canal company, or whoever they sell the undertaking to, from setting the tolls at the maximum allowed level.

34. There is also mention of "the anticipated 50% local discount" based on postcode. Apart from the dubious ethics involved in post code lotteries, there is nothing to stop the owners of the undertaking from removing any discount at any time.

35. It is also said that the new tolls "will not be implemented until the improvement works are complete..". In practice there is nothing to stop a toll undertaking from implementing new tolls as soon as they are authorised.

36. There is mention of poor air quality caused by queuing to pay the tolls. Presumably this is a justification for 'free-flow' tolls. But it demonstrates that owners of tolled undertakings do not care about people as this problem, and the associated time wasted, has been around for a very long time. It could have been removed by the toll owners coming to some arrangement with the authorities that would have seen the tolls and the queues removed.

The 'free-flow' system that they want to adopt includes lots of people getting 'penalty notices' and eventually the threat of bailiffs. Mention is made of the system on the Mersey Gateway. What is not mentioned is that since that bridge opened in October 2017 there have been about 2.9 million penalty notices issued, about 100,000 people have had court recovery orders made against them, with many people having suffered harassment with property and vehicles being seized. Toll is about making money not about people's welfare.

## **Any tolling power does not include the high level bridge over the canal**

37. The area where a toll applied, under the Rixton and Warburton Bridge Act 1863, runs from just north of Warburton village to a junction about one mile north with the A57 'Manchester Road'. The road first crosses the site of the bridge built by the Rixton & Warburton Bridge Company around 1867 and then crosses a high level bridge built by the Manchester Ship Canal Company around 1893. What I know of the history of this is contained in a document that I prepared "The Two Warburton Bridges and the Canal Acts" which is attached to this statement of case.

38. In brief the situation is that Parliament in the Manchester Ship Canal Act 1885 authorised the canal company to take over the bridge company's assets while the canal was constructed. Though this would have closed the toll for a long time, it seems that there was no compensation payable to the bridge company.

39. In any case the canal company decided to move the river about half a mile north to straighten it and form part of the course of the new canal. There was a bridge built over the new canal at a point which meant that a large stretch of the toll road had to be diverted. Parliament, in the Manchester Ship Canal (Various Powers) Act 1890, permanently gifted the assets of the bridge company to the canal company. There was still nothing payable to the bridge company and that company kept all the liabilities.

40. The general rule with Acts authorising canals and railways is that there are clauses to protect any right of way that would be obstructed. In the case of a canal if it crossed an existing road, then the undertaking would generally be expected to provide at its own cost for the road to go under or over the canal.

41. Section 15 of the 1890 Act says "...that unless otherwise agreed the structure of every bridge and the immediate approaches thereto and all other necessary works connected therewith shall be repaired and maintained by the Company...". "The company" is defined in the preamble to the Act as referring to the Manchester Ship Canal Company. There is nothing in the 1890 Act to indicate that it was agreed the new high level bridge over the canal would be repaired and maintained other than by the canal company.

42. Based on the above, the high level bridge over the canal is the canal company's responsibility. Therefore they can not ask for a toll increase to pay for the maintenance, repair or replacement of the high level bridge.

43. The draft TWA defines what is the bridge that the toll may apply to. Clause 1 (and schedule 4) says- "'the Bridge" means the bridge known as the Rixton and Warburton Bridge authorised by the 1863 Act and the 1890 Act". That of course is not the high level bridge. Clause 1 also says "Rixton and Warburton Bridge" means the Bridge together with the bridge road and all toll booths or other toll collection facilities constructed on the said Bridge or the bridge road as shown in the plan in Schedule 7". It also defines "the Undertaking" as including

everything related to "Rixton and Warburton Bridge".

44. So by a sleight of hand the TWAO makes the high level bridge over the canal the responsibility of the toll undertaking. Apart from the general question about the use of a TWAO, it is not appropriate to use the order to transfer responsibility for the high level bridge away from the canal company.

18. The business case defines the "R&W Toll Bridge" 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 bridge or the Bridge Road."

That is misleading as it asserts that what most people think of as 'the bridge' was partly authorised by the 1863 Act, when it was not.

### **The government have gone out of their way to help Peel avoid the normal law on toll increases**

45. 'Transport and Works Act orders: a brief guide as updated 26 November 2013' says at Q17, "We are unbiased and so are neutral when we deal with the TWA order applicant, objectors and supporters. We aim to make sure that the procedures are carried out fairly and properly."

As I set out below, it is evident to me that the government have assisted the canal company and I wonder how likely it is that objectors will be treated in a neutral and fair way

46. It had always been accepted that this toll undertaking is one of "those privately owned and local authority statutory tolled undertakings which are required to follow the procedure set out in Section 6 of the 1954 Act to revise their tolls". Those are the words used at para 2.3 of the February 2014 consultation paper on "Simplifying the process for revising tolls at local tolled crossings" and they are followed by a list which includes 'Rixton and Warburton' bridge'.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/285342/simplifying-process-revising-tolls.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/285342/simplifying-process-revising-tolls.pdf)

47. If a TWAO is now to be used to set toll levels, then you might have expected that the government would have given some examples of precedents so that the canal company could quote them back to the government. But there are no precedents mentioned. As far as I know this will be because there are no instances where a bridge toll level has been set by a TWAO.

48. For some years I have periodically been asking the DfT for details of any contacts they have had about changes to any tolls in England including at this bridge. My requests were addressed to the DfT, but were usually answered by the section that deals with the 1954 Act. In none of the DfT replies till the 31 October 2021 did they say that they had been contacted, though it is clear from a redacted document that the DfT were contacted on behalf of the canal company as early as 9 November 2018.



49. In July of 2021 Peel announced their "Sustainable Investment Plan". Their website stated that they had been holding discussions with the Marine Management Organisation (MMO), which is part of DEFRA, for a 'Transport and Works Act Order' (TWAO). That webpage was altered some time before October 2021 to omit the reference to the MMO.

50. Using What Do They Know website, I contacted the MMO in August of 2021 for details, the full correspondence is on this link-  
[https://www.whatdotheyknow.com/request/warburton\\_bridge\\_toll#comment-103714](https://www.whatdotheyknow.com/request/warburton_bridge_toll#comment-103714)

51. The MMO refused to supply the requested information. But they did give me a little bit of the background. It seems that Peel originally wanted to use a 'Harbour Revision Order' but that the MMO did not deal with TWAOs.

52. On the 1st October 2021 I asked the MMO to review their refusal. My review request included reference to the implication from the background that the MMO had obtained legal advice and shared at least some of it and that this advice may have contained the suggestion that the canal company try to get a TWAO as a way of avoiding the 1954 Act toll revision process.

53. The MMO acknowledged the review request but otherwise did not reply, so I complained to the ICO. That stirred the MMO into giving a reply on the 28th February, five months after the review request. The MMO still said that they thought the information should not be released partly because of the risk of Peel Ports making a claim against them. But the MMO did admit that they had shared the legal advice that they had obtained with Peel though not "*in its entirety*".

54. Even though the DfT were now dealing with Peel, the DfT were still denying that anyone was in contact with them about the Warburton bridge toll. This seems to be because the canal company were not following the normal process, and the section dealing with the FoI requests did not realise that Peel had contacted a part of the DfT that does not deal with tolls.

55. On 22 October 2021 I contacted the DfT saying that I understood from the MMO that tolling discussions on the Warburton bridge possibly involving a TWAO may have been passed to them and asking for any information on it. On the 29th I got a reply from the Transport Infrastructure Team admitting that they were having discussions with the Canal company but in effect refusing to supply any information. I replied on 2 November 2021 asking them to review their refusal.

56. To cut a long story short I did not actually see any documents till 7 February 2021 and they were heavily redacted. The DfT said in part that this was because "BDB would be likely to institute legal proceedings on the grounds of breach of confidence".

57. It seems that a government department has obtained and at least partly passed to the canal company legal advice. It seems unlikely that the proposed

TWAO would include such wide ranging and novel powers, unless they had either been suggested by the government departments or been raised with them by the canal company and they had been advised that such powers might be agreed. It is also clear that the government departments by claiming exemptions have not had to reveal their discussions with the canal company.

58. It was announced by the DfT on 15 February that there was to be an Inquiry. But there has been no programme officer appointed and there is no Inquiry library, even though we are up to the deadline for submission of statements of case. I queried with the DfT the lack of any of this and was told on the 9 March that "...there is no legal requirement for them to do so". The absence of such facilities which includes access to what others have submitted as an objection or evidence hampers objectors.

59. The insistence that any objectors must give a 'postal address' and saying in the notices that any 'personal information' may be made public may have deterred some people from objecting.

### **General points on the use of the Transport and Works Act 1992 for bridge tolls**

60. In their refusal of 29 October 2021 to supply requested information, the DfT as background said that "Schedule 1 (12) of the Transport and Works Act 1992 allows for TWA Applications involving the charging of tolls."

61. My reply of 2 November 2021 is relevant. I said-  
"I do not agree that this Act applies to bridge tolls. As far as I know there has never been an application to revise bridge or road tolls using the 1992 Act. The 1992 Act does mention tolls (once) but given the Preamble to the Act, it is apparent that Parliament did not mean this Act to give the power to introduce tolls on a road that happened to cross a river. It is not plausible that if they did mean that then it was not made explicit.

"You particularly mention Schedule 1 (12) of the 1992 act. This is the only reference in the Act to "tolls". But that Schedule only applies to 'Matters within Sections 1 and 3'.

"Section 1 covers 'a railway', 'a tramway', ' a trolley vehicle system' and 'a system using a mode of guided transport.....'.

Section 3 is headed 'Orders as to inland waterways etc'.  
Neither section makes any mention of roads or bridges.

"'Inland waterways' is not defined in the Act, but according to this webpage-  
<https://www.gov.uk/guidance/inland-waterways-and-categorisation-of-waters#inland-waters-and-how-they-are-categorised>

"'Inland waters' includes any area of water not categorised as 'sea' - eg canals, tidal and non-tidal rivers, lakes, and some estuarial waters (an arm of sea that extends inland to meet the mouth of a river)."

"It is not plausible that using this 1992 Act a toll could be applied or revised to a road just because it happens to cross an 'inland waterway'. On that basis these provisions could be used to put a toll on any and every bridge that crossed any canal or river.

"As the DfT know, the Marine Management Organisation has revealed that it has obtained legal advice on how the Warburton tolls might be changed. It has not said what the advice was, though it seems that the MMO may have told the owners of the Warburton toll. It will be inappropriate if it is this advice obtained by the DfT that is the basis for the plan to use the 1992 Act to try and avoid the usual procedure of using the powers for bridges under Section 6(1) (d) of the Transport Charges etc (Miscellaneous Provisions) Act, 1954."

62. On the 4 November 2021 the Transport Infrastructure Team sent me a link to "Transport and Works Act orders: a brief guide" (as updated 26 November 2013).

I replied on 8 November 2021-

"That guide is of course not the law.

"I notice that the guide includes (at Q2 What types of scheme can a TWA order cover?) "TWA orders can also relate to:....certain types of works that interfere with rights of navigation in waters up to the limits of the territorial sea — these include bridges, piers, barrages, tunnels and so on.."

"There is, as the DfT must well know, no reference in the Act to bridges and tunnels except in the context of railways. It seems that at some time in the past the DfT decided to interpret and represent the law in a way that is outside what was really in the legislation."

63. Possibly to try and provide an argument for the use of a TWAO to modify the tolls, the Explanatory Order says "The Order contains provisions for MSCC, to make new byelaws in relation to the good management and use of the Rixton and Warburton Bridge in order to safeguard the navigation of the Manchester Ship Canal."

Similarly on the 'Concise Statement of Aims' the canal company says that they want to "introduce a package of measures to ensure continued safe and efficient operation of the Bridge and thereby safe navigation of the Manchester Ship Canal."

And the business case is riddled with statements such as "Without refurbishment the future secure and safe operation of the Manchester Ship Canal is put at risk."

64. This TWAO is really nothing to do with safety and nothing to do with the navigation of the canal. There are tens of thousands of bridges in the UK and they and the users of the water below the bridges manage without the need of TWAOs.

Amazingly the business case mentions a possible risk of parts of the bridge falling into the canal or that the bridge might collapse into the canal. If that was really anywhere near being a possibility, then it would suggest that the canal company has badly neglected their bridge and should not be trusted with its future. In any case, if there is a safety problem related to the high level bridge over the canal then it is the responsibility of the canal company who both built

that bridge and operate the canal.

65. The business case says "Tolls on private bridges may be increased pursuant to the 1954 Act. However, simply increasing the toll will not deliver the four-strand strategy, and the toll increase needs to be accompanied by a package of other measures. As such, it has been determined that statutory authorisation will be sought by means of a Transport and Works Act Order (TWAO)."

When major works are needed on other tolled bridges, that work does not usually need any authorisation and may precede or may follow a toll increase application under the 1954 Act. The other 'strands' are either not related to a toll increase or seek powers that can not be used by a company.

66. The 'History' section of the Business case tries to shore up the claim that the high level bridge over the canal is part of the toll undertaking. Though saying that the original bridge "was built at a cost of £550" does not suggest an in depth knowledge, as the original scheme cost over ten times that amount.

### **Power to make byelaws**

67. The draft order gives the canal company the power to "make and enforce byelaws". There are nearly three pages of new byelaws listed, though they do not limit the power of the canal company to make and enforce additional ones. The 'penalty for offences' section says "Any person who contravenes or fails to comply with a provision of these byelaws is liable on summary conviction to a fine not exceeding Level 3." That's up to a £1,000 fine, for not doing what the canal company says.

68. The draft order says that the new laws, whatever they are, can be enforced by anyone that the canal company chooses to appoint or authorise.

69. Making any laws is a power that is usually reserved to Parliament, or local authorities in the case of byelaws. The canal company was granted some byelaw powers in various private acts, but those powers relate to the canal and its navigation. The canal company powers do not extend to putting byelaws on the area that is covered by the toll road or any bridge.

70. The road like all other toll roads is a public highway and subject to the same laws as any other road. The enforcement of those laws, even on a toll road, is a matter for the police.

71. The explanatory memorandum that accompanies the draft order mentions the byelaws made for the Lowestoft Third Crossing, Mersey Gateway, and Silvertown Tunnel. It is misleading to cite these as precedents as all those crossings are local authority ones (Suffolk County Council, Halton Council and Transport for London).

72. It seems that the government intends to give the canal company, powers that a company does not usually have and should not have. That would be a gross misuse of TWA powers.

### **Transfer of the Undertaking**

73. The draft Order gives to the canal company the power to transfer the undertaking when and if it chooses to 'the Company'. This is defined as being "Rixton and Warburton Bridge Company Limited". A company which has already been set up and whose current directors seem to be linked to the canal company.

74. The canal company can of course sell the new company at any time. But then there seems to be nothing to stop any toll undertaking either being sold or selling its assets without selling the entity that owned the assets. I have just been involved in just such a case in Yorkshire, where the Aldwark bridge and the toll rights were sold but the company, Aldwark Bridge Limited, was not.

75. This power taken together with the rest of the Order seems to be intended by the canal company, as assisted by the government departments, as a way of giving to a private company powers that should under no circumstances ever be given to the owners of a privately owned toll undertaking.

76. The Concise Statement of Aims says that transfer of the undertaking- "will also 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."

77. The new company will probably be subject to the usual exemptions for smaller undertakings which means that they are not audited and the information is rudimentary with no Profit and loss account. Anyone interested will be almost as in the dark as they are now.

### **Tolling, concession and financing arrangements**

78. The Explanatory Memorandum that accompanies the draft order mentions the provisions relating to the Mersey Gateway bridge. It is misleading to cite this as a precedent as that crossing comes under a local authority, Halton Council. The powers that the Council has come from the Transport Act 2000 as amended by the Local Transport Act 2008 and they do not apply to any company.

79. Section 8 (4) of the draft order says "The person by whom tolls under this Order and penalty charges imposed in connection with this Order are payable in respect of a motor vehicle is the registered keeper."

80. The DVLA may only sell details of registered keepers in certain limited circumstances. The sale of those details to companies is only allowed where it is related to unauthorised parking on private land. The DVLA would be breaking the law if they sold the details to the canal company or whoever it might have sold the undertaking to. Though perhaps the idea is to use a TWAO to by-pass the intention of Parliament.

81. Section 8 (7) of the draft order says that tolls may be used for various items related to "the Rixton and Warburton Bridge". Elsewhere in the Order, that has been defined in such a way that it includes the high level bridge over the canal. That bridge should be wholly the responsibility of the canal company and it is wrong that the canal company through the use of this TWAO seeks to offload the costs of that bridge on to the users of the toll road.

82. Section 8 (7) also says that tolls would include- "providing a return on the undertaking". It is not appropriate that the amount of 'the return' is not defined. In any case the canal company paid nothing for the undertaking and it is not appropriate that they, or whoever the undertaking may be sold to, are allowed to set tolls at a level which includes a profit on money that will not have gone into the undertaking. I also note that the business case indicates that they plan to use an interest rate of 10%, though the Bank rate is currently 1% and the undertaking has virtually captive customers with, according to the business case, a very low 'price elasticity', i.e. price changes have little effect on demand.

83. Based on what the Explanatory Memorandum that accompanies the draft order says, the powers sought seem to be based in part on the Dunham Bridge (Amendment) Act 1994. That is a private act which the company obtained to vary the 1954 Act requirements as they applied to that undertaking, and to change what would be regarded as capital for the purpose of a return on it. If the canal company want similar powers then they should be using the same route- a private bill. The Dunham Act was in 1994 and postdates the Transport and Works Act 1992, so that company was aware that a TWAO was not an appropriate way of trying to change the law.

84. Section 8 (7) of the draft order would also allow the canal company to set tolls at a level that covers contributions to funds. These contributions are not cash transactions and what has happened at other privately owned toll undertakings is that in various ways these contributions have disappeared. It is not appropriate that these contributions should be allowed.

85. And if that was not bad enough, the first paragraph of section 8 (7) includes "... including but not limited to" which gives a wide scope of what might be claimed to be related to the bridge.

86. Though what the canal company is allowed to do with the tolls as per Section 8, seems not to have any immediate effect on the level of the tolls. Part 1 of Schedule 1 says that they intend to start off with a maximum toll set at £1 and to have the power to raise that once a year in line with the CPI less 1%. So the section 8 power would seem to have no effect unless the owners at some

time want an increase above the CPI less 1% level.

87. In any case it is unprecedented for any tolls that are supposed to be regulated under the 1954 Act to have as part of the authorised level of tolls a mechanism for future increases to the specified maximum level of the tolls. This seems to be another attempt to change the law by the back door.

88. The Concise Statement of Aims says "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 Manchester Ship Canal. Without the necessary funds for maintenance there is risk of closure to certain classes of traffic, or complete closure of the Bridge, as has been the case at other bridge crossings in the country."

89. It is not stated why users of the toll road should have to bear the cost of work to benefit users of the canal. It is also not stated how the bridge got into such a poor state that major works is needed. And the crossings that have had to be closed are not named. To the best of my knowledge, there is only a permanent closure to motor traffic of a crossing when an alternative has been provided.

### **Application of the 2000 Act**

90. The 2000 Act is defined in the draft order as being the Transport Act 2000. The Notes to that Act says in the Preamble "Road User Charging....The Act enables local traffic authorities outside London to introduce road user charges...". Part III of the Notes makes it absolutely clear that the powers related to road user charging and its enforcement only relate to local traffic authorities and the Secretary of State in the case of some trunks roads.

91. I also point out that even public authorities can not introduce road user charges where there is a toll already in place. Section 172 (4) of the Act "A road shall not be subject to charges under a charging scheme under this Part if tolls are charged in respect of the use of the road".

92. The draft TWAO makes specific reference to the "Regulations made pursuant to section 173 (penalty charges) of the 2000 Act". In case it is not obvious the penalty charge arrangements are for "enforcement of charging schemes", and such schemes can not be brought in other than as I have said.

93. The current regulations are 'The Road User Charging Schemes Penalty Charges Regulations 2013' with some minor changes in the 'The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) (Amendment) Regulations 2014'. Looking at the 2013 Regulations it is defined that "penalty charge" means a "charging scheme penalty charge". You can not have a 'penalty charge' without a charging scheme.

94. It seems that this is another example of the canal company and the government intending to use the device of a TWAO to ignore what existing legislation says.

95. "*Modification of Transport Charges &c. (Miscellaneous Provisions) Act 1954*". This is Section 14 of the draft TWAO. It alters a definition as contained in the 1954 Act which limits any return to what would be "a reasonable return upon the paid up share capital of the undertaking". "Paid up share capital of the undertaking" would be changed to "any amounts invested in the undertaking by the MSCC and any successor company".

96. It is not appropriate that such a broad and vague term for capital might be used. But in any case this is an attempt to change what primary legislation says through the device of a TWAO. If the law as it applies to this undertaking is to be changed then the appropriate route would be through a Private Bill. Though it is not clear why the canal company and the government departments aim to change this bit of the 1954 Act, as they have otherwise ignored the 1954 Act and propose through the TWAO to replace it lock, stock and barrel as it applies to this undertaking.

## **Summary**

97. The high level bridge over the canal is not part of the Rixton & Warburton Bridge undertaking.

98. It seems that an attempt is being made to use the device of a TWAO to change various laws in so far as it would let the canal company do what it wants with the support of the government, but without due and proper legislation. If this is allowed then operators at other toll undertakings will seek to do the same to the disadvantage of road users.

99. There is a total failure to provide the evidence that would normally go with a toll application, including accounts for previous years, financial forecasts for future years and inspection reports. There is no mention of the significant income from 'penalty charge' schemes.

100. Objections have been discouraged and those wanting to submit a statement of case have been hampered by the lack of an online Inquiry library.

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