



**Mersey Gateway Executive Board**

**Thursday, 17 March 2011 3.00 p.m.  
Marketing Suite, Municipal Building**

A handwritten signature in black ink, appearing to read 'David W R', is positioned above a rectangular stamp area.

**Chief Executive**

**BOARD MEMBERSHIP**

<b>Councillor Rob Polhill (Chairman)</b>	<b>Labour</b>
<b>Councillor John Stockton</b>	<b>Labour</b>
<b>Councillor Mike Wharton</b>	<b>Labour</b>

*Please contact Lynn Derbyshire on 0151 471 7389 or e-mail [lynn.derbyshire@halton.gov.uk](mailto:lynn.derbyshire@halton.gov.uk) for further information.  
The next meeting of the Board is on To Be Confirmed*

**ITEMS TO BE DEALT WITH  
IN THE PRESENCE OF THE PRESS AND PUBLIC**

**Part I**

<b>Item No.</b>	<b>Page No.</b>
<b>1. MINUTES</b>	
<b>2. DECLARATION OF INTEREST</b>	
Members are reminded of their responsibility to declare any personal or personal and prejudicial interest which they have in any item of business on the agenda no later than when that item is reached and, with personal and prejudicial interests (subject to certain exceptions in the Code of Conduct for Members), to leave the meeting prior to discussion and voting on the item.	
<b>3. MERSEY GATEWAY, INDUSTRY DAY AND PROCUREMENT PREPARATION</b>	<b>1 - 3</b>
<b>4. AGREEMENT WITH MERSEYSIDE INTEGRATED TRANSPORT AUTHORITY</b>	<b>4 - 28</b>
<b>5. PROCUREMENT PROCESS FOR MERSEY GATEWAY - NECESSARY DELEGATION</b>	<b>29 - 38</b>

*In accordance with the Health and Safety at Work Act the Council is required to notify those attending meetings of the fire evacuation procedures. A copy has previously been circulated to Members and instructions are located in all rooms within the Civic block.*

**REPORT TO:** Mersey Gateway Executive Board

**DATE:** 17<sup>th</sup> March 2011

**REPORTING OFFICER:** Strategic Director – Environment & Economy

**SUBJECT:** Mersey Gateway – Market Engagement and Industry Day.

**WARDS:** All

### **1.0 PURPOSE OF THE REPORT**

1.1 The report explains the recent market engagement exercise, including a local Industry Day event held to present details of the proposed Mersey Gateway procurement process to firms that are interested in being part of consortia who could qualify as bidding candidates for the project.

### **2.0 RECOMMENDATION: That**

- (1) **The MGEB note the encouraging high level of market interest evident in the market engagement exercise.**

### **3.0 SUPPORTING INFORMATION**

3.1 The work required to prepare for procurement commenced in November last year, on receiving funding approval from the Spending Review. Progress has been made towards defining the procurement process and the contract framework to be applied. Before confirming the procurement and contract strategy it is prudent to consult potential suppliers on certain key aspects of the emerging proposals.

3.2 Given that we expect government to clear the project for procurement in time for the formal expression of interest invitation to be published in early summer the market engagement has been launched through a Prior Information Notice in the Official Journal of the European Union (The PIN). The PIN was published during the week of 31<sup>st</sup> January and responses were invited on the following topics:-

- the process proposed to be adopted for the procurement;
- the proposed payment mechanism ;
- the approach to contaminated land;
- the approach to tolling infrastructure;
- the approach to operational governance arrangements;
- the scope of advance works; and
- the potential for possible alternative contractual and risk sharing arrangements in relation to the commercial support role for tolling.

- 3.3 To support the market engagement a project information memorandum has been produced which is attached at annex 1. In addition to the Industry Day event interested parties were given the opportunity to meet with the project team on an individual or group basis. Eight meetings have taken place so far.
- 3.4 Responses to the market consultation are required by close on 4<sup>th</sup> March and an oral summary of the points raised in the responses received will be given at the meeting.
- 3.6 This event focused on the organisations that are competent in forming bidding groups embracing the challenging scope of our requirements to deliver the main Design Build Finance and Operate contract for Mersey Gateway. In addition the project team intend to launch a seminar for the local suppliers, who now number over 200, that are registered on the project local supplier list. Dates and arrangements for the local supplier seminar are under consideration and any further developments will be reported orally at the meeting.

#### **4.0 POLICY IMPLICATIONS**

- 4.1 The project is a key priority for the Council which will deliver benefits locally and across the wider region.

#### **5.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

##### **5.1 Children and Young People in Halton**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

##### **5.2 Employment, Learning and Skills in Halton**

see above

##### **5.3 A Healthy Halton**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all, including improved cycling and walking facilities.

##### **5.4 A Safer Halton**

Mersey Gateway is forecast to deliver road safety benefits for vehicles and facilitate safer conditions for walking and cycling in the borough

##### **5.5 Halton's Urban Renewal**

Mersey Gateway is a priority project in the urban renewal programme.

## **6.0 RISK ANALYSIS**

- 6.1 The high number of organisations present at the Industry Day underlines the competitive interest in tendering for the Mersey Gateway DBFO contract. The market engagement at this stage alerts potential interested parties to the procurement programme and provides the project team with an opportunity to set out our requirements. This consultation prompts these interested parties to form bidding groups that embrace all the competence we would like to see in a competent bidder and consequently prepares for a successful prequalification process.

## **7.0 EQUALITY AND DIVERSITY ISSUES**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

## **8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
None under the meaning of the Act		

**REPORT TO:** Mersey Gateway Executive Board

**DATE:** 17<sup>th</sup> March 2011

**REPORTING OFFICER:** Strategic Director – Environment & Economy

**SUBJECT:** Mersey Gateway – Protective Provisions for Merseyside Integrated Transport Authority.

**WARDS:** All

## **1.0 PURPOSE OF THE REPORT**

1.1 The report deals with the proposed Agreement with Merseyside Integrated Transport Authority that will, in general, establish obligations for the Council when procuring and operating the Mersey Gateway project to consider the impact of tolling and road user charging policy on the Mersey Tunnels.

## **2.0 RECOMMENDATION: That**

- (1) The Operational Director for Legal and Democratic Services, subject to reaching Agreement on a Confidentiality Undertaking (recommendation 2), be authorised to enter into the Agreement with the MITA, as attached at annex 1:
- (2) The Chief Executive be authorised to agree and execute a Confidentiality Undertaking between the Council and the MITA to support the operation the above Agreement: and
- (3) That the executed Agreement be reported to the Liverpool City Region Cabinet at the next available opportunity.

## **3.0 SUPPORTING INFORMATION**

3.1 The Council agreed to consider the representations made by Merseytravel in response to the published Mersey Gateway Transport and Works Act Order. In essence such an agreement was initiated at the meeting of the Passenger Transport Executive/Authority (as it then was) on the 14<sup>th</sup> July 2008, which was attended by the then Council Leader, Councillor McDermott. Papers relating to the meeting are listed below.

3.2 Since that meeting discussions have taken place from time to time between the Mersey Gateway project team and officers at Merseytravel. The outcome is a proposed Agreement between the

Council and MITA that would establish arrangements for consultation where the MITA would be invited to comment on particular aspects of the Mersey Gateway proposals as they are developed through procurement, construction and into operation. The Council is also required to establish a liaison group to facilitate this consultation process. The proposed Agreement is attached to this report at Annex 1.

- 3.3 The need for this consultation arises out of the fears to MITA that there is a potential for Mersey Gateway tolling and road user charging policy and operations to have an adverse impact on Mersey Tunnels. The Agreement does not bind the Council to accept the expressed views of the MITA that are made in response to specific consultation materials but the Agreement does require the Council to take the consultation response into account in decisions that are taken, which are related to the consultation response. In taking the response of MITA into account the outcome determined by the Council may not comply with the wishes of MITA and this failure to agree could prompt the matter to be resolved using the Disputes procedure in the Agreement.
- 3.4 In general terms the Council is required to consult the MITA during procurement on the draft tender documentation and the tender evaluation criteria, and the subsequent application of such criteria to the tender results. All information which is covered by a duty of confidence to the tenderers (the bidders) is excluded from this obligation.
- 3.5 Towards the end of procurement the Council would be required to consult the MITA before exercising the following functions:-
- (a) setting of the tolls within the initial toll range (under paragraph 1 of Schedule 11 of the Order);
  - (b) the revision of toll ranges (under paragraph 7 of Schedule 11 of the Order);
  - (c) variations to the classification of vehicles or classes of vehicles in respect of which tolls may be charged (under paragraph 7 of Schedule 11 of the Order);

- (d) the granting of exemptions from tolling, discounts or any other waiving or suspending of tolls or charges (or any part of such tolls or charges) under article 41 of the Order or otherwise;
- (e) the entry into a concession agreement (under article 43 of the Order and the terms of any such agreement); and
- (f) any function the exercise of which is likely to impact on the potential for interoperability between the Mersey Tunnels and the charging of tolls or charges for the passage of vehicles over the new crossing.

3.6 Most, if not all the information relevant to the obligation to consult the MITA is likely to be in the public domain but to support an effective operation of the Agreement we have requested that these consultation arrangements are protected by a separate Confidentiality Undertaking between the Council and the MITA. The Mersey Gateway project team has proposed a draft Confidentiality Undertaking Agreement to officers at the MITA and we are advised that subject to the MGEB approving recommendation 1) above the MITA would consider the Confidentiality Undertaking at their meeting in April.

#### **4.0 POLICY IMPLICATIONS**

4.1 The project is a key priority for the Council which will deliver benefits locally and across the wider region.

#### **5.0 OTHER IMPLICATIONS**

5.1 All substantive implications are reported above .

#### **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

##### **6.1 Children and Young People in Halton**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

##### **6.2 Employment, Learning and Skills in Halton**

See above



### **6.3 A Healthy Halton**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all, including improved cycling and walking facilities.

### **6.4 A Safer Halton**

The project will produce road safety benefits for road users including improved facilities for cycling and walking.

### **6.5 Halton's Urban Renewal**

Mersey Gateway is a priority project in the Urban Renewal Programme.

## **6.0 RISK ANALYSIS**

7.1 The Agreement will constrain the Council but the obligations are similar to that it has put in place through the formation of the Mersey Gateway Group to ensure that the project takes into account the views of neighbouring authorities.

## **7.0 EQUALITY AND DIVERSITY ISSUES**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

## **8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

See below

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
1) Minutes of the meeting of the Merseyside Passenger Transport Authority on 14 July 2008	Mersey Gateway Project Office	Steve Nicholson
2) Chief Executive letter to Neil Scales Chief Executive Merseyside Passenger Transport of 17 July 2008		
3) Merseytravel letter of support for Halton Borough Council's application to the Secretary of State under the Transport and Works Act 1992.		
4) Merseytravel letter of support for Halton Borough Council's proposed A533 Silver Jubilee Road User Charging Scheme Order.		
5) Mersey Gateway Project Director letter to Merseytravel CE agreeing to put the Agreement to the Halton Executive and LCR Cabinet.		

**DATED**

**2011**

**(1) THE COUNCIL OF THE BOROUGH OF HALTON**

**- and -**

**(2) MERSEYSIDE INTEGRATED TRANSPORT AUTHORITY**

**AGREEMENT**

relating to

The River Mersey  
(Mersey Gateway Bridge) Order

and

Halton Borough Council (Mersey Gateway -  
Queensway) Compulsory Purchase Order 2008  
and the Halton Borough Council (Mersey  
Gateway - Central Expressway) Compulsory  
Purchase Order 2008 and certain other  
applications and orders

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**THIS AGREEMENT** is made on

2011

**BETWEEN**

- (1) **THE COUNCIL OF THE BOROUGH OF HALTON** of Municipal Building, Kingsway, Widnes, Cheshire WA8 7QF (the "**Borough Council**")
- (2) **MERSEYSIDE INTEGRATED TRANSPORT AUTHORITY** of 24 Hatton Garden, Liverpool L3 2AN (the "**Authority**")

**WHEREAS**

- A The Borough Council submitted the Application on 30 May 2008 and made the RUCO on 5 December 2008 for the purposes *inter alia* of seeking authorisation for the construction of a new bridge over the River Mersey between Widnes and Runcorn, associated works, permanent and temporary changes to the highway network in the Borough of Halton, the imposition of tolls for the use of the new bridge and compulsory acquisition of land and rights for the scheme.
- B The Authority has no objection in principle to the making of the Order or the RUCO or the CPOs and it enters into this Agreement and agrees the Protective Provisions and the RUCO Protective Provisions with the Borough Council in order to protect the Authority's interests.
- C The parties have entered into this Agreement in relation to the Application, the Order and the RUCO and will be bound by the terms of this Agreement.
- D The Authority is an integrated transport authority by virtue of the Local Transport Act 2008.

**NOW THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement where the context so admits the following expressions shall have the following meanings:

"**Application**" means the application for the Order under sections 3 and 5 of the Transport and Works Act 1992 submitted to the Secretary of State under section 6 of that Act by the Borough Council on 30 May 2008;

"**Concessionaire**" means any person with whom the Borough Council enters into a concession agreement from time to time together with the successors and assigns of such person;

"**CPOs**" means the Halton Borough Council (Mersey Gateway - Queensway) Compulsory Purchase Order 2008 and the Halton Borough Council (Mersey Gateway - Central Expressway) Compulsory Purchase Order 2008;

"**Interoperability Regulations**" means the Road Tolling (Interoperability of Electronic Road User Charging and Road Tolling Systems) Regulations 2007;

"**Interoperability Standards**" means technical standards to ensure the interoperability of electronic road toll systems used at the Mersey Tunnels and in the operation of the Project in addition to the Interoperability Regulations;

"**Liaison Group**" means the group formed of the Members and convened by the Borough Council in accordance with clause 2.4;

"**Members**" means the members of the Liaison Group established pursuant to clause 2.4 of this Agreement which shall include the representatives of the Authority, its agents and any other body acting on behalf of the Authority; the Borough Council its agents and any other body acting on behalf of the Borough Council; the Concessionaire and any other person or body who it is agreed between the parties acting reasonably should be a member;

"**Mersey Tunnels**" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the River Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Acts 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii);

"**Order**" means the River Mersey (Mersey Gateway Bridge) Order 2011 as made by the Secretary of State on 11 January 2011;

"**Project**" means a new road crossing of the River Mersey together with wider improvements to the highway network in Runcorn and Widnes;

"**Protective Provisions**" means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 1;

"**RUCO**" means the A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008 as confirmed by the Secretary of State;

"**RUCO Plan**" means the plan accompanying the RUCO;

"**RUCO Protective Provisions**" means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 2;

"**Scheme Road**" means that part of the A533 road that approaches and crosses the Silver Jubilee Bridge as shown on the RUCO Plan;

"**Secretary of State**" means the Secretary of State for Transport;

"**Transferee**" means a person to whom the Borough Council transfers its powers under the Order, or the RUCO; and

"**Works**" means the scheduled works and any other works authorised by the Order.

- 1.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 1.3 Unless the context requires otherwise references in this Agreement to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs, annexures and appendices are references to those in this Agreement.
- 1.4 The word "including" shall mean "including without limitation or prejudice to the generality of any description, defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 1.5 Words and provisions defined in the Order and in the RUCO shall unless the context requires otherwise bear the same meaning as in the Order and the RUCO respectively.
- 1.6 In this Agreement (where the context so admits) words importing the singular shall include the plural and vice versa and words importing one gender shall include all other genders.

- 1.7 Any covenant by the Borough Council or the Authority not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred and any covenant by the Borough Council or the Authority to do an act or thing may be deemed to include an obligation to procure that the act or thing is done.
- 1.8 In this Agreement the expressions "the Borough Council" and "the Authority" shall include their respective statutory successors in respect of the functions to which this Agreement relates and/or successors in title and/or Transferees as the case may be.
- 1.9 If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question.
- 1.10 In the event of any conflict between this Agreement and any document annexed hereto or referred to herein, including the Order and the RUCO, the terms, conditions and provisions of this Agreement will prevail.
- 1.11 The Interpretation Act 1978 shall apply to this Agreement.

## **2. THE BOROUGH COUNCIL'S COVENANTS**

Subject to the Authority complying with its obligations made under the terms of this Agreement the Borough Council hereby covenants with the Authority as follows:

- 2.1 the Borough Council shall:
- 2.1.1 comply with the Protective Provisions from the date the Order comes into force, in accordance with the provisions of this Agreement; and
  - 2.1.2 comply with the RUCO Protective Provisions from the date the RUCO comes into force, in accordance with the provisions of this Agreement.
- 2.2 the Borough Council shall inform the Authority prior to the Borough Council making or proposing any material amendment to the RUCO and/or the Order, or should the Secretary of State propose to make any such material amendment, and the Borough



Council shall have regard to any representation the Authority may make on any such proposed material amendment;

2.3 the Borough Council shall use reasonable endeavours to procure that the electronic road tolling system to be used in relation to the bridge roads and the Scheme Road will meet the Interoperability Standards save to the extent that the same would conflict with the requirements of the Interoperability Regulations;

2.4 no later than six months after the award of a concession for the Project the Borough Council shall establish and thereafter maintain the Liaison Group, initially by giving written notice to the Members and by procuring and holding a meeting (and thereafter such subsequent meetings as are necessary) to establish so far as is practicable:

2.4.1 the means of communication for the Liaison Group;

2.4.2 the frequency of meetings of the Liaison Group; and

2.4.3 the terms of reference of the Liaison Group.

2.5 Prior to their issue to bidders, the Borough Council shall share with the Authority, and have regard to any representations the Authority may make on:

2.5.1 the invitation to tender documents for the appointment of a Concessionaire responsible for the operation of the bridge roads and/or Scheme Road; and

2.5.2 subject to 2.7, the documents setting out the method by which the Borough Council will evaluate and score any tenders that are submitted in response to the invitation to tender.

2.6 Subject to 2.7, the Borough Council shall share with the Authority any report the Borough Council has prepared documenting how any such tenders have been evaluated and scored.

2.7 The Borough Council shall not disclose any information which is subject to duty of confidence to a bidder.

### **3. THE AUTHORITY'S COVENANTS**

3.1 Subject to the Borough Council complying with the terms of this Agreement, the Authority will not after the date hereof:

- 3.1.1 make any formal or other objections to the Application, and/or the Order and/or the RUCO;
- 3.1.2 assist or encourage any third party to submit any objection to the Application and/or Order and/or the RUCO;
- 3.1.3 lodge a statutory challenge against the making of the Order and/or confirmation of the RUCO and/or decision upon any other application relating to the Project, except in the event of amendments being made to the Order or the RUCO which materially affect the Authority.

**4. INTERPRETATION OF PROTECTIVE PROVISIONS AND RUCO PROTECTIVE PROVISIONS**

Schedule 3 shall have effect.

**5. DISPUTE RESOLUTION**

- 5.1 The provisions of this clause 5 shall be the dispute resolution procedure (hereinafter referred to as "Dispute Resolution Procedure").
- 5.2 Without prejudice to any other provision of this Agreement, the parties shall attempt to resolve any lack of agreement, dispute or difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions between them by discussion and agreement.
- 5.3 Save where the statutory duties of either of the parties provide otherwise, the parties agree to use reasonable efforts to avoid any publicity regarding any dispute or difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions between them in the local or national press or by means of television, radio or internet newscasting or broadcasting.
- 5.4 In exercising the powers and rights and in observing the obligations and duties set out in this Dispute Resolution Procedure, the parties shall at all times have regard to the need to resolve any dispute or difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions with reasonable expedition and without incurring or causing others to incur unreasonable costs.

5.5 Unless otherwise agreed between the parties, any difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions (other than a difference relating to a question of law or touching or concerning the meaning or construction of this Agreement) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

**6. SERVICE OF NOTICES**

All notices, requests, demands or other written communications to or upon the respective parties hereto pursuant to this Agreement shall be deemed to have been properly given or made if despatched by first class letter to the party to which such notice, demand or written communication is to be given or made under this Agreement and addressed as follows:

6.1 if to the Borough Council, to the address above marked for the attention of the Operational Director and Monitoring Officer (Legal, Organisational Development and Human Resources); or

6.2 if to the Authority, to the address above marked for the attention of the Chief Executive.

**7. CONSENT**

Neither the Authority nor the Borough Council shall unreasonably withhold or delay any consent or approval in relation to any matter provided for in this Agreement or in the Protective Provisions or in the RUCO Protective Provisions where reference is made to the consent or approval of the Authority or the Borough Council.

**8. VARIATION**

No variation of this Agreement shall be effective unless made by deed.

**9. TRANSFER OF POWERS**

9.1 This clause shall not apply to the delegation of powers of the Borough Council pursuant to a concession agreement. For the avoidance of doubt, the Borough Council remains liable for the performance of its obligations under this Agreement where any of its powers are delegated pursuant to a concession agreement.

9.2 If any of the powers of the Borough Council under the Order or the RUCO are transferred by the Borough Council to another person then the Borough Council shall prior to such transfer procure a direct covenant from the Transferee in favour of the Authority to observe and perform such of the obligations of the Borough Council under this Agreement as relate to the exercise of the powers which have been transferred to the Transferee and thereupon the Borough Council shall be relieved of liability for those obligations thereunder.

9.3 Nothing in this Agreement shall prevent the Borough Council procuring the Works or their operation by the appointment of an agent or contractor to enable the Works to be carried out or operated.

## **10. THIRD PARTY RIGHTS**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **11. JURISDICTION**

11.1 This Agreement shall be governed by and construed in accordance with English law.

11.2 Subject to the provisions of clauses 4 and 5 the parties to this Agreement irrevocably agree that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Agreement and for such purpose the parties irrevocably submit to the jurisdiction of the courts of England.

## **12. STATUTORY POWERS**

Nothing contained or implied in this Agreement shall avoid, diminish, limit, prejudice or affect in any way the exercise by the Borough Council of any of its existing or future powers or duties as local authority or planning authority in respect of the Project and all the rights, powers and duties of the Borough Council under all public and private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Project as if this Agreement had not been entered into provided that nothing in this clause 12 shall permit the Borough Council to avoid any of its obligations on its part to the Authority contained in this Agreement and/or the Protective Provisions and/or the RUCO Protective Provisions.

**13. ENTIRE AGREEMENT**

This Agreement contains the whole agreement between the parties.

**14. COUNTERPARTS**

This Agreement may be executed in original and any number of counterparts.

**IN WITNESS** whereof this Agreement has been executed by the parties hereto and delivered as a Deed on the date first written above.

**SCHEDULE 1**

**Protective Provisions**

1. All words and phrases used in this Schedule shall unless the context requires otherwise or is so provided bear the same meaning in this Schedule as in the Order.

2. In this Schedule—

"the Authority" means the Merseyside Integrated Transport Authority;

"the Mersey Tunnels" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the river Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Act 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii);

"the Order" the River Mersey (Mersey Gateway Bridge) Order 2011 as made by the Secretary of State on 11 January 2011; and

"the undertaker" includes any other person exercising the functions of the undertaker by virtue of any arrangement made under article 43 of the Order, or otherwise.

3. In exercising the functions set out in paragraph 4 of this Schedule, the undertaker must have regard to:-

(a) the likely effect of the exercise of those functions on the Mersey Tunnels, including the levels of traffic passing through them;

(b) matters likely to impact on the potential for interoperability between the Mersey Tunnels and the charging of tolls or charges for the passage of vehicles over the new crossing; and

(c) the implications of the exercise of those functions in the event that Halton Borough Council becomes a constituent council of an integrated transport authority for an integrated transport area.

4. The functions referred to in paragraph 3 are:

- (a) setting of the tolls within the initial toll range under paragraph 1 of Schedule 11 of the Order;
  - (b) the revision of toll ranges under paragraph 7 of Schedule 11 of the Order;
  - (c) variations to the classification of vehicles or classes of vehicles in respect of which tolls may be charged under paragraph 7 of Schedule 11 of the Order;
  - (d) the granting of exemptions from tolling, discounts or any other waiving or suspending of tolls or charges (or any part of such tolls or charges) under article 41 of the Order or otherwise;
  - (e) the entry into a concession agreement under article 43 of the Order and the terms of any such agreement; and
  - (f) any function the exercise of which is likely to impact on the potential for interoperability between the Mersey Tunnels and the charging of tolls or charges for the passage of vehicles over the new crossing.
5. Before exercising any of the functions set out in paragraph 4 the undertaker must consult the Authority, and have regard to the Authority's response to such consultation, in such manner and to such extent as may be agreed between the undertaker and the Authority.
6. Any difference arising under this Schedule shall be determined in accordance with clause 5 of this Agreement.

**SCHEDULE 2**

**RUCO Protective Provisions**

1. All words and phrases used in this Schedule shall unless the context requires otherwise or is so provided bear the same meaning in this Schedule as in the RUCO.

2. In this Schedule—

"the Authority" means the Merseyside Integrated Transport Authority;

"the Council" includes any other person exercising the functions of the Council by virtue of any arrangement made under section 192(b) of the 2000 Act, or otherwise;

"the Mersey Tunnels" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the river Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Act 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii); and

"RUCO" means the A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008 as confirmed by the Secretary of State.

3. In exercising its functions under the RUCO, and in particular those functions set out in paragraph 4 of this Schedule, the Council must have regard to -

(a) the likely effect of the exercise of those functions on the Mersey Tunnels, including the levels of traffic passing through them;

(b) matters likely to impact on the potential for interoperability between the Mersey Tunnels and the imposition of charges for the passage of vehicles over the scheme road; and

(c) the implications of the exercise of those functions in the event that the Council becomes a constituent council of an integrated transport authority for an integrated transport area,

to the extent that the consideration in question is applicable to the relevant function.

4. The functions referred to in paragraph 3 are -



- (a) the setting of the level of the charge under paragraph 7(1) of the Schedule of the RUCO;
  - (b) the waiver or suspension of charges (or any part of such charges) under paragraph 4(2) of the Schedule of the RUCO or otherwise;
  - (c) any variations to the scheme made by way of an order under section 168(2) of the 2000 Act;
  - (d) the entry into any arrangement in respect of the scheme under section 192(b) of the 2000 Act, or otherwise; and
  - (e) any function the exercise of which is likely to impact on the potential for interoperability between the Mersey Tunnels and the imposition of charges for the passage of vehicles over the scheme road.
5. Prior to exercising any of the functions set out in paragraph 4 the Council must consult the Authority, and have regard to the Authority's response to such consultation, in such manner and to such extent as may be agreed between the Council and the Authority.
6. Any difference arising under this Schedule shall be determined in accordance with clause 5 of this Agreement.

**SCHEDULE 3**

**Interpretation and Operation of Protective Provisions and RUCO Protective Provisions**

1. This Schedule shall have effect for the purpose of governing the approach to and interpretation of the Protective Provisions and the RUCO Protective Provisions.
2. All words and phrases used in this Schedule shall unless the context requires otherwise or is so provided bear the same meaning in this Schedule as in the Order or the RUCO (as applicable).
3. In this Schedule—

"the Authority" means the Merseyside Integrated Transport Authority;

"the Mersey Tunnels" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the River Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Acts 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii);

"the Order" means the River Mersey (Mersey Gateway Bridge) Order 2011 as made by the Secretary of State on 11 January 2011;

"the Project" means a new road crossing of the River Mersey together with wider improvements to the highway network in Runcorn and Widnes;

"the Protective Provisions" means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 1;

"the RUCO" means the A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008 as confirmed by the Secretary of State; and

"the RUCO Protective Provisions" means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 2.

4. In exercising the functions referred to in paragraph 4(d) of the Protective Provisions the obligation to consult the Authority and to have regard to those matters set out in paragraph 3 of the Protective Provisions shall not require:
  - 4.1 consultation with the Authority except at the same time as consultation with any other party prior to seeking a variation or amendment to the Order to amend or vary the exemptions set out in Schedule 12 to the Order or where such an amendment or variation is likely to have a material adverse effect upon the levels of traffic passing through, or the toll revenues generated by, the Mersey Tunnels;
  - 4.2 consultation in relation to exemptions, discounts, waivers or suspensions of tolls except in relation to:
    - 4.2.1 any exemptions, discounts, waivers or suspensions specifically envisaged by a concession agreement;
    - 4.2.2 the exemptions, discounts, waivers or suspensions applicable upon the opening day (to the extent that the same are not specified by a concession agreement); and
    - 4.2.3 changes to the exemptions, discounts, waivers or suspensions applicable from time to time where the change is likely to have a material adverse effect upon the levels of traffic passing through, or the toll revenues generated by, the Mersey Tunnels; or
  - 4.3 consultation with the Authority in respect of any exemption, discount, waiver or suspension of tolls in case of urgency.
5. The requirement to consult the Authority under paragraph 4(e) of the Protective Provisions in respect of any concession agreement shall not require consultation in relation to:
  - 5.1 any matter or agreement or part of any agreement that relates solely to construction of the Project, except any such matter or agreement or part of any agreement that could have a material adverse effect upon the levels of traffic passing through the Mersey Tunnels; or
  - 5.2 any operational aspect not likely to fall within paragraph 3 of the Protective Provisions.

6. The requirement referred to in paragraph 5 above to consult the Authority in respect of any concession agreement may be discharged by consultation upon relevant aspects of the concession agreement prior to issuing invitations to tender and prior to completion of a concession agreement.
7. The requirement to consult the Authority under paragraph 4(f) of the Protective Provisions shall not require consultation except in respect of:
  - 7.1 the adoption of electronic systems in relation to tolling that may at any time require integration between the Authority's undertaking at the Mersey Tunnels and the new crossing; and
  - 7.2 financial arrangements consequent upon the adoption of electronic systems in relation to tolling.
8. The requirement to consult the Authority under paragraph 4(b) of the RUCO Protective Provisions shall not require:
  - 8.1 consultation in relation to exemptions, discounts, waivers or suspensions of charges except in relation to:
    - 8.1.1 exemptions, discounts, waivers or suspensions of charges specifically envisaged in a concession agreement;
    - 8.1.2 an exemption, discount, waiver or suspension of any charge applicable upon the day that the RUCO comes into force (to the extent that the same is not specified by a concession agreement);
    - 8.1.3 a change in exemptions, discounts, waiver or suspensions of any charge from time to time where the change is likely to have a material adverse effect upon the levels of traffic passing through, or the toll revenues generated by, the Mersey Tunnels; or
  - 8.2 consultation with the Authority in respect of an exemption, discount, waiver or suspension of charges in case of urgency.
9. The requirement to consult the Authority under paragraph 4(d) of the RUCO Protective Provisions shall not require consultation in respect of any operational aspect not likely to fall within paragraph 3 of the RUCO Protective Provisions.

10. The requirement to consult the Authority under paragraph 4(e) of the RUCO Protective Provisions shall not require consultation except in respect of:
  - 10.1 the adoption of electronic systems in relation to charges that may require integration between the Authority's undertaking at the Mersey Tunnels and the scheme road; and
  - 10.2 financial arrangements consequent upon the adoption of electronic systems in relation to charges
  
11. Where, pursuant to this Schedule, the Council is not required to consult the Authority, the relevant provisions of paragraph 3 of the Protective Provisions or paragraph 3 of the RUCO Protective Provisions, as the case may be, shall not apply.

Executed as a deed by **THE COUNCIL OF** )  
**THE BOROUGH OF HALTON** )  
by the affixing of its Common Seal )  
in the presence of:- )

Authorised Signatory

Executed as a deed by the )  
**MERSEYSIDE INTEGRATED** )  
**TRANSPORT AUTHORITY** by )  
..... )  
the affixing of its Common Seal )  
in the presence of: )

Authorised Signatory

<b>REPORT TO:</b>	Mersey Gateway Executive Board
<b>DATE:</b>	17 <sup>th</sup> March 2011
<b>REPORTING OFFICER:</b>	Strategic Director – Environment & Economy
<b>SUBJECT:</b>	Mersey Gateway – Project Governance for Procurement.
<b>WARDS:</b>	All

### **1.0 PURPOSE OF THE REPORT**

- 1.1 The report deals with the proposed governance arrangements for the next phase of project preparation, which will cover the pre-qualification of private sector firms (the bidders) and the competitive dialogue procurement process, leading to the selection of a preferred bidder and contract execution.

### **2.0 RECOMMENDATION: That**

- (1) The Mersey Gateway Executive Board endorse the overall governance structure proposed; and**
- (2) Approve the proposed scheme of delegation to the Chief Executive, where key procurement and project decisions will be taken in consultation with the Leader.**

### **3.0 SUPPORTING INFORMATION**

- 3.1 The Council has established a dedicated project organisation equipped with the authority and resources to deliver the project through the development and preparation phase. The established project delivery structure is shown at Annex 1. These established arrangements have been reviewed to ensure that they are appropriate to support a robust delivery plan that will progress the project through an intense procurement process.
- 3.2 The Mersey Gateway Executive Board provides a link to the Council Constitution (and democratic governance structure). The MGEB is a committee of the Council Executive with terms of reference agreed by the full Council in June 2006. These terms of reference are attached at Annex 2.
- 3.3 Membership of the MGEB comprises;
- The Leader of the Council plus two other members of the Council Executive to be selected by the Leader;
  - The MG Executive Board is chaired by the Council Leader.

- The Leaders of the largest Opposition Groups attend as Observers

3.4 A project executive structure based on best project management practice (PRINCE2) reports regularly to the MGEb. In PRINCE2 terms the Chief Executive is the Senior Responsible Owner (SRO) who is accountable to the MGEb for the success of the project. The SRO operates with specific project authority as delegated by the MGEb from time to time, where his executive decisions are taken in consultation with the Council Leader.

3.5 The SRO has the support of the Officer Project Board to assure robust and effective direction and management of the project. The OPB also provides the SRO with advice, guidance, challenge and scrutiny provided by individuals with extensive knowledge and wide experience of delivering projects of the magnitude of Mersey Gateway through both the private and public sector. This ensures that an informed and intelligent client approach can be taken by the SRO in exercising his delegations. The size of the OPB, frequency of meetings and relationships that are in place and will develop, will also ensure that decision-making on the project is not only well informed and robust but is sufficiently agile to make quick decisions where necessary.

3.6 The members of the Mersey Gateway Officer Project Board are:

<b>Project Role</b>	<b>Name</b>	<b>Job Title</b>
SRO – Chair of Board	David Parr	Chief Executive
Senior User	Mike Bennett	Bridge and Highway Maintenance Manager
Senior Supplier	Mick Noone	Operational Director – Highways and Transportation
Project Assurance	Bill Dodd	Finance Advice and Section 151 responsibilities.
Project Assurance	Stephen Dance (IUK)	Procurement/Project Finance Adviser
Project Assurance	Mark Reaney	Legal/Democratic Adviser
Project Assurance	Wesley Rourke	Property Services
Observer	TBA	Department for Transport
Private Sector Advisor	TBA	Private sector project finance and commercial expertise
Private Sector	TBA	Private sector technical



Advisor		infrastructure construction and maintenance expertise
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- 3.6 The procurement phase of delivery will require project decisions to be taken promptly, where authority is exercised at the appropriate level. The current terms of reference plus membership of the MGEb are considered to be appropriate to support procurement and the above revised membership of the Office Project Board has been designed to provide the advice and assurance that the Chief Executive will require when exercising his delegated authority. The delivery plan does however require the authority of the Chief Executive to be clearly stated and understood. A scheme of delegation is attached at Annex 3 covering the key project outcomes required to be delivered for a successful procurement and including the acquisition of all property and the completion of the advanced works programme. The MGEb are requested to approve this scheme of delegation.

#### **4.0 POLICY IMPLICATIONS**

- 4.1 The project is a key priority for the Council which will deliver benefits locally and across the wider region.

#### **5.0 OTHER IMPLICATIONS**

- 5.1 All substantive implications are reported above and in the report annex.

#### **6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

##### **6.1 Children and Young People in Halton**

- 6.1.1 Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

##### **6.2 Employment, Learning and Skills in Halton**

- 6.2.1 Over 500 construction jobs will be required for MG and matters are in hand to ensure the local community has access to these job opportunities. In the longer term several thousand jobs are forecast to be created in the sub region due to the wider economic impact of the project.

##### **6.3 A Healthy Halton**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all, including improved cycling and walking facilities.

##### **6.4 A Safer Halton**

The project will produce road safety benefits for road users including improved facilities for cycling and walking.

#### **6.5 Halton's Urban Renewal**

Mersey Gateway is a priority project in the Urban Renewal Programme.

#### **7.0 RISK ANALYSIS**

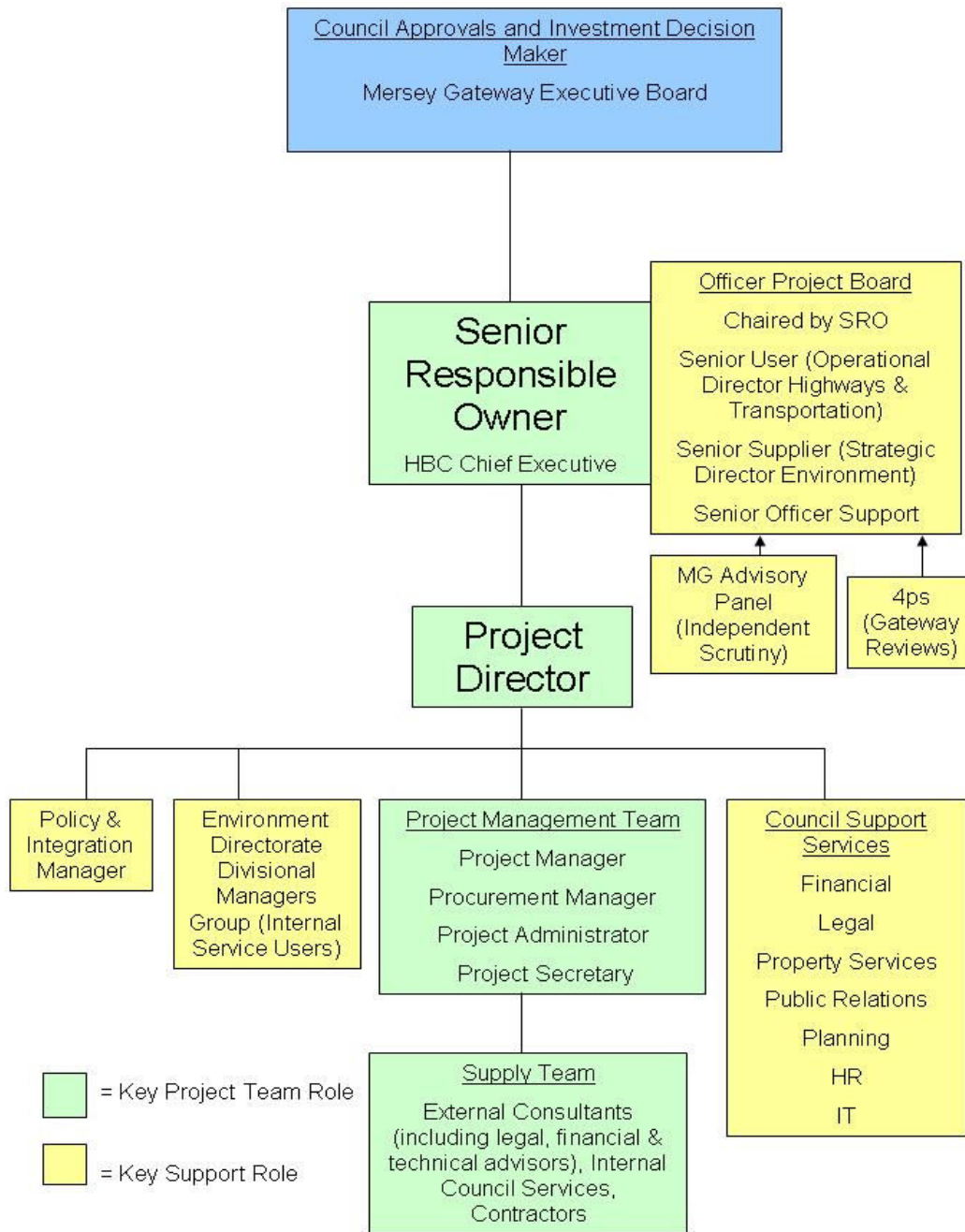
7.1 The project structure supported by the proposed delegation and decision authority will reduce the risk of delay and improve the quality of project control.

#### **8.0 EQUALITY AND DIVERSITY ISSUES**

8.1 Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

#### **9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
OBC	Mersey Gateway Project Office	Matt Fearnhead



**Mersey Gateway Project Delivery Structure**

(The structure shown above will be altered post April 2011 to highlight the proposed changes to the Council organisational structure following the efficiency review and budget cuts.)

## **APPENDIX 1**

### **Mersey Gateway Executive Board**

#### **Membership**

- The Leader of the Council plus two other members of the Executive to be selected by the Leader.

#### **Officer Support**

- The Chief Executive, Mersey Gateway Project Director, Strategic Director Environment, Operational Director Financial Services, Council Solicitor, Operational Director Major Projects, Operation Director Highways & Transportation
- Such other officers and external advisors as required

#### **Terms of Reference/Scheme of Delegation**

1. To determine the strategic direction for the Mersey Gateway Project
2. To monitor and oversee progress against the project timetable
3. To develop and refine the detail of the project as it progresses.
4. To procure the Mersey Gateway Project securing Best Value terms for the Council.
5. To support the officers of the Council in engaging with the other partners, stakeholders and the public as the Scheme progresses.
6. To take and authorise such action as is necessary to implement the project within the capital and revenue budgets approved by the Council and within the available funding derived from external sources.
7. In cases of urgency where it is not practicable to call an urgent meeting of the Mersey Gateway Executive Board, the authority of the Mersey Gateway Executive Board to take action as set out above is further delegated to the Chief Executive (in consultation with the Leader of the Council) subject to the matter being reported to the first available meeting of the Mersey Gateway Executive Board.
8. To provide regular progress reports to the Council's Executive Board.



**Mersey Gateway  
Scheme of Delegation**

**Annex 3**

**28 February 2011**

**Introduction**

The authority delegated to the Chief Executive, as Senior Responsible Owner for the Mersey Gateway Project, is described in the table below, where the Chief Executive will exercise this authority in consultation with the Council Leader, taking into account the advice of the OPB and Project team.

	<b>Key Outcomes</b>	<b>Delegation</b>
<b>1. External Project Approvals and External Funding Agreement</b>	<ul style="list-style-type: none"> <li>DfT Conditional Funding Agreement</li> </ul>	SRO to direct the negotiations with DfT leading to the terms of the funding offer from Transport Ministers being reported to MGEB for approval.
	<ul style="list-style-type: none"> <li>HMT approval to commence Procurement</li> </ul>	SRO to direct the preparation of the OBC and any supporting evidence to secure the approval of the Project Review Group to commence procurement.
	<ul style="list-style-type: none"> <li>DfT contribution to preparation costs</li> </ul>	SRO to secure the maximum contribution from DfT and report the outcome to the MGEB as part of the project budget and funding proposal to be presented for approval (see below)
	<ul style="list-style-type: none"> <li>DfT/HMT grant Final Funding Approval</li> </ul>	(see procurement delegations)
<b>2. Next Stage Project Plan</b>	<ul style="list-style-type: none"> <li>Council approve project budget</li> </ul>	SRO presents project budget and funding proposals, embracing external funding contributions, to MGEB for approval
	<ul style="list-style-type: none"> <li>Council approve project resources</li> </ul>	SRO presents resource plans, including commissioning of external consultants to MGEB for approval
	<ul style="list-style-type: none"> <li>Council approve OBC</li> </ul>	SRO presents final OBC, as approved by DfT and HMT, to MGEB for approval.
<b>3. Land Assembly</b>	<ul style="list-style-type: none"> <li>Complete Land Acquired by Agreement</li> </ul>	SRO to direct acquisition of property and rights by agreement in accordance with the advanced land acquisition policy approved

		by MGEb.
	<ul style="list-style-type: none"> <li>Commence Compulsory Purchase Procedure</li> </ul>	SRO to approve project team proposals for commencing the formal CPO process
	<ul style="list-style-type: none"> <li>All land and rights required for the scheme in Council ownership, secured at value for money.</li> </ul>	<ol style="list-style-type: none"> <li>SRO to direct the acquisition of property and rights by the project team to ensure that Council is able to provide the DBFO contractor with an interest in all the scheme land at Financial Close.</li> <li>SRO to direct negotiations of third party claims to ensure compliance with the compensation code and on a best value basis, referring any unresolved matters to the Lands Tribunal.</li> </ol>
	<ul style="list-style-type: none"> <li>Property managed safely and securely</li> </ul>	SRO directs the interim management of property acquired to meet safety and security requirements and to secure best value.
<b>4. Advanced Works</b>	<ul style="list-style-type: none"> <li>Complete all advanced surveys to comply with third party commitments.</li> </ul>	SRO to direct the data collection required to satisfy third party commitments
	<ul style="list-style-type: none"> <li>Site Clearance Works identified and completed</li> </ul>	SRO to approve project team recommendations for site clearance on best value terms.

	<b>Key Outcomes</b>	<b>Delegation</b>
<b>5. Planning Conditions and Third Party Commitments</b>	<ul style="list-style-type: none"> <li>Determine a strategy for discharging all Planning Conditions.</li> </ul>	SRO to direct the preparation of a strategy for discharging all planning conditions and to establish a Planning Performance Agreement with Halton planning officers.
	<ul style="list-style-type: none"> <li>Determine a strategy for discharging all commitments to third parties.</li> </ul>	SRO to direct the preparation of a commitments register and to approve recommendations for discharging each commitment.
<b>6. Procurement</b>	<ul style="list-style-type: none"> <li>Procurement Strategy Approved by Council.</li> </ul>	SRO to present procurement strategy agreed by DfT and HMT to MGEb for approval
	<ul style="list-style-type: none"> <li>Contract Notice Published in OJEU</li> </ul>	SRO approves OJEU recommended by project team
	<ul style="list-style-type: none"> <li>Announce Prequalified Bidders</li> </ul>	<ol style="list-style-type: none"> <li>SRO approves selection criteria for pre-qualification</li> </ol>

		<p>2. SRO approves the assessment panel for pre-qualification</p> <p>3. SRO approves the recommendations of the assessment panel selecting the 3 bidders.</p> <p>4. SRO reports the results of pre-qualification to MGEb for information</p>
	<ul style="list-style-type: none"> <li>Commence the Competitive Dialogue</li> </ul>	<p>1.SRO directs the preparation of procurement documentation required to commence the Competitive Dialogue process.</p> <p>2. SRO approves the evaluation methodology.</p>
	<ul style="list-style-type: none"> <li>Close the Competitive Dialogue</li> </ul>	<p>1.SRO directs the procurement negotiations to ensure equity and confidentiality.</p> <p>2. SRO to approve project team recommendations for closing the Competitive Dialogue.</p> <p>3. SRO approves project team recommendation relating to the Final Submission terms and requirements.</p>
	<ul style="list-style-type: none"> <li>Final Submissions Assessed and Provisional Preferred Bidder Selected</li> </ul>	<p>1. SRO appoints the Final Submission assessment panel</p> <p>2. SRO approves the recommendations of the Assessment Panel and the selection of the provisional preferred bidder.</p> <p>3. SRO reports the selection of the Preferred Bidder with terms of offer to MGEb for approval.</p>
	<ul style="list-style-type: none"> <li>Final Business Case Approved and Preferred Bidder Confirmed</li> </ul>	<p>1.SRO agrees Final Business Case and submits to DfT and DfT/HMT for approval.</p> <p>2. SRO approves the terms for Contract Award and Financial Close</p>
	<ul style="list-style-type: none"> <li>Contract Award with Financial Close</li> </ul>	<p>1. SRO agrees the terms of Contract and Finance and reports to MGEb for approval.</p>