



Mersey Gateway Executive Board

**Thursday, 19 September 2013 3.00 p.m.
The Board Room - Municipal Building,
Widnes**

A handwritten signature in black ink, appearing to read 'David W R'.

Chief Executive

BOARD MEMBERSHIP

Councillor Rob Polhill (Chairman)	Labour
Councillor Ron Hignett	Labour
Councillor Eddie Jones	Labour
Councillor John Stockton	Labour
Councillor Mike Wharton	Labour

*Please contact Lynn Derbyshire on 0151 511 7975 or e-mail
lynn.derbyshire@halton.gov.uk for further information.
The next meeting of the Board is on Thursday, 7 November 2013*

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

Part I

Item No.	Page No.
1. MINUTES	
2. DECLARATION OF INTEREST	
Members are reminded of their responsibility to declare any Disclosable Pecuniary Interest or Other Disclosable Interest which they have in any item of business on the agenda, no later than when that item is reached or as soon as the interest becomes apparent and, with Disclosable Pecuniary interests, to leave the meeting during any discussion or voting on the item.	
3. PROGRESS IN ESTABLISHING THE MERSEY GATEWAY CROSSINGS BOARD	1 - 4
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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: 19 September 2013

REPORTING OFFICER: Chief Executive

PORTFOLIO: Leader

SUBJECT: Progress in establishing the Mersey Gateway Crossings Board

WARDS: ALL

1.0 PURPOSE OF THE REPORT

1.1 Provide an update on the progress in establishing the Mersey Gateway Crossings Board;

(1) RECOMMENDATION: That the Board note the progress being made in establishing the Mersey Gateway Crossings Board Ltd.

3.0 SUPPORTING INFORMATION

3.1 Background

Requirement for Mersey Gateway Crossing Board Ltd (MGCB Ltd)

3.2 The Mersey Gateway Crossings Board Ltd (the Board) is a special purpose vehicle being established by Halton Borough Council with the delegated authority to deliver the Mersey Gateway Bridge project and to administer and oversee the construction and maintenance of the new tolled crossings including the tolling of the existing Silver Jubilee Bridge. The Board's terms of reference and delegated authority are expressed in a Governance Agreement with the Council, set to last for sixty years. The project construction costs are estimated at £600m with a total whole life cost of circa £2bn. Once operating the Board will oversee a concession business with annual turnover of circa £70m

3.3 At Previous meetings the Board has already approved the creation of the Mersey Gateway Crossings Board Ltd and delegated authority to the Chief Executive in respect of the appointment of staff and consultants.

3.4 It is envisaged that the MGCB will commence "shadow running" from early October and be operationally capable from Financial Close.

3.5 Current Position

- 3.6 The team has focused on five key areas of work required in order to deliver the Mersey Gateway Crossing Board, and these are:
- **Legal;** Overview of the legal requirements associated with the establishment of a separate legal entity and outlines areas of consideration in relation to the structure of the entity
 - **Human Resources;** Activities required in the establishment of the Board, particularly in relation to the protection of both the employer and employee through the provision of robust policies and contractual documentation. It also details the timeline associated with recruitment of staff and legal requirements in respect of employing staff.
 - **Finance;** Looking at the audit, financial and procurement policies that MGCB will require, also the support services that MGCB will require from HBC during the initial years of operation.
 - **ICT;** The equipment and support services required to enable MGCB to operate as a separate legal entity.
 - **Governance Agreement;** Reviewing the agreement in respect of the interaction between the Council and MGCB ensuring that it is suitable for purpose in respect of the reporting functions between the two parties
- 3.7 In order to ensure the objectives are delivered on time an issues document has been prepared to capture the numerous activities which need to be completed in order to achieve both shadow running form and fully operational form
- 3.8 Legal; initial focus has been on collating the information necessary to enable the formation of MGCB and confirming the structure.
- 3.9 Human Resources; This activity has seen the majority of the recent workload, and with the assistance of the Council's Human Resources team, Job Descriptions and Person Specifications all for the staff have been completed and agreed with the CEO. In addition the Terms and Conditions for MGCB employees have been drafted and agreed; Timetable for recruitment of staff (internal and external); Review and agreement of policies which need to be developed/rewritten for MGCB; Commencement of discussions with Cheshire Pension Fund regarding MGCB being admitted to the scheme; Development of the Service Level Agreement between the Council and MGCB regarding support services for Employee Relations and Payroll functions going forward.
- 3.10 Finance; Reviewing at an operational level the support required from the Council in order to deliver the "back office" functions in respect of

the financial activities of MGCB, this has included; Agresso, licencing, coding structure and workflow; Bank Accounts, creation of new bank accounts and associated costs; BACS licences, authorisation to process on behalf of third party; reviewing workload to be undertaken by the Council, payment of invoices; Development of Financial Policy for MGCB (similar to Financial Standing Orders); Development of Procurement Policy; Development of Audit Policy

- 3.11 ICT; Reviewing the requirements of MGCB across the whole range of ICT activities, ensuring that the Council can provide a suitable and independent structure. Reviewing services current provided by external third parties to examine if the Council can now provide a suitable solution.
- 3.12 Governance Agreement; this is the agreement between the Council and MGCB regarding the management of the construction, operation and maintenance of the MGB and the tolling of the SJB. This document once entered into cannot be altered with the permission of the Department for Transport. It will also influence the articles of association for MGCB (effectively the internal governance rules of MGCB)

It is therefore important ensure that the Governance Agreement is fit for purpose regarding the interaction between the Council and MGCB particularly in respect of the reporting functions from MGCB to the Council and also the auditing ability of the Council in respect of MGCB activities without being too onerous on either party.

The Agreement also details the level of support services provided by the Council to MGCB and the associated costs at Schedule Four, and as part of the work detailed above this will be captured in Service Level Agreements from the relevant Council departments.

4.0 POLICY IMPLICATIONS

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

5.0 OTHER / FINANCIAL IMPLICATIONS

- 5.1 All substantive implications are reported above

6.0 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

Over 500 construction jobs will be required for MG and matters are in hand designed 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 cycling and walking facilities.

6.5 Halton's Urban Renewal

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

7.0 RISK ANALYSIS

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

The creation of MGCB Ltd is a requirement of the DfT Funding Letter.

8.0 EQUALITY AND DIVERSITY ISSUES

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

None under the meaning of the Act.

REPORT TO: Mersey Gateway Executive Board

DATE: 19 September 2013

REPORTING OFFICER: Chief Executive

PORTFOLIO: Leader

SUBJECT: Progress towards achieving Financial Close with the Preferred Bidder

WARD(S): Borough-wide

1. PURPOSE OF REPORT

1.1 To receive a verbal update on the progress towards achieving Financial close with the Preferred Bidder.

1.2 RECOMMENDATION: That: the Board receive and comment upon the verbal update.

2. SUPPORTING INFORMATION

2.1 Significant progress is being made with the fine tuning issues and the confirmation of project finance as laid out in the Preferred Bidder appointment letter. The Project Direct will report the current situation and invite views and comments from the Board.

3. POLICY IMPLICATIONS

3.1 The Project is a key priority for the Council which deliver benefits locally and across the wider region

4.0 OTHER / FINANCIAL IMPLICATIONS

4.1 All substantive implications are reported above

5.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

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8.1 None under the meaning of the Act.

REPORT TO: Mersey Gateway Executive Board

DATE: 19 September 2013

REPORTING OFFICER: Chief Executive

PORTFOLIO: Leader

SUBJECT: The Final Business Case and Final Funding Submissions

WARDS: All

1.0 PURPOSE OF THE REPORT

- 1.1 Prior to achieving Financial Close (when contracts are awarded to the Preferred Bidder and all project funding is committed in contractual terms), the Council is required to submit the Final Business Case, which includes the Final Funding Submission, leading to confirmation that Ministers (Department for Transport and Treasury Ministers) have approved these submissions. This report explains the key issues to be addressed in these submissions so that members can influence the preparation of the documents at this early stage.
- 1.2 Members should note that commercially sensitive information has been avoided to enable the general position to be reported openly.

2.0 RECOMMENDATION: That

- (1) The Board confirm (with any comments) that they are content with the approach being taken in preparing the Final Business Case and Final Funding Submission.**

3.0 SUPPORTING INFORMATION

- 3.1 The Board will recall that the current funding agreement with Ministers is expressed in the Conditional Funding Approval letter received in October 2011 and agreed by Full Council on 19th October 2011. A copy of the Conditional Funding Approval letter is at Annex 1.
- 3.2 The current funding agreement was secured through the approval of the Outline Business Case prepared in 2011. The approval is conditional because the confirmation of funding is subject to several requirements, all of which are in the process of being satisfied and reported in the Final Business Case (FBC).

- 3.3 The FBC will either rest on the information reported in the Outline Business Case, because nothing substantive has changed, or it provides an update of proposals, with more detail, including modified positions where they exist. The following provides an executive summary of the developments to be reported.

Strategic Case

- 3.4 The Strategic Case covers broadly the extent that Mersey Gateway is consistent with local and government policy. The need for Mersey Gateway is as least as compelling as that already accepted by Ministers and we therefore propose to rest on the strategic case already made. We will however record that the project is now a top 40 priority in the National Infrastructure Plan.

Scheme Description

- 3.4 The highway scheme is now based on the Preferred Bidder design but the scope is consistent with the scheme reported in the OBC. The Board should note that the works required to delink the approach roads to Silver Jubilee Bridge on the Widnes side including the alterations to the Silver Jubilee Carriageway are included but any works to the south in Runcorn are excluded (this reflects the position in our Conditional Funding bid).
- 3.5 The scheme will transfer the existing Central Expressway route down to M56 Junction 12 to the Project Company who will become responsible for the improvement and all maintenance of this route for 30 years after Financial Close.
- 3.6 The main development to report will be the tolling proposals drawing on the Preferred Bidder's Tolling Service Business Plan and the more detailed proposals for a Local Toll Discount Scheme. The latter is still under assessment and consideration but the Council will need to select its preferred scheme for offering local discounts prior to concluding the FBC submission. The key message will be that the project has been delivered with toll charges similar to those applying at Mersey Tunnels and there is an opportunity to offer a local discount scheme because the project is expected to be delivered under budget.

The Value for Money Case

- 3.6 This Value for Money case deals with the benefit to cost ratio and other more qualitative factors that take into account the wider economic benefits (regeneration and job creation etc.) that we expect the project to deliver. Although we plan to undertake some minor updates (for example, to reflect that the project is expected to be delivered within budget) the value for money case will remain as that approved in the Outline Business Case.

The Delivery Case

- 3.7 The Delivery Case will include the more detailed and specific construction programme proposed by the Preferred Bidder where work commences early next year with the new crossing opening in summer 2017. Much of the project management activity will transfer to the Preferred Bidder and the interests retained by the Council will be delegated to the Mersey Gateway Crossing Board. We will require a final draft of the Governance Agreement between the Council and the Crossings Board to support the FBC (progress reported separately).
- 3.8 At Financial Close we are required to give the Project Company access to all the scheme land which means we need to complete the land assembly programme. Very few plots are still to be acquired and we do not envisage any problems in completing the outstanding acquisitions. Although the Council remains the registered owner of the scheme land most of the responsibilities of ownership will be transferred to the Project Company at Financial Close (one exception being the responsibility for existing contamination on the scheme land).
- 3.9 To test the robustness of our delivery case we are required to undertake the next formal Gateway Review (No3). This is planned to take place in late October to inform the final consideration of our FBC.

Commercial Case

- 3.10 The Commercial Case (together with the Financial Case that follows) reflects the main changes since OBC.
- 3.11 In summary the Commercial Case reports the risks we have transferred to the Project Company as drafted in the Design Build Finance and Operate Contract and the Demand Management Participation Agreement. Although we have delivered the commercial case within the boundaries expected we can report a very successful outcome in limiting the Council responsibility during construction and the commencement of operations. For example the Council will be exposed to limited cost and programme overrun during construction up to the point where tolling services and the collection of toll revenue are proven (when Full Operating Commencement Certificate will be awarded to the Project Company and the service payments, called the unitary charge, will commence). During the period up to FOCC the Project Company will be responsible for delivering the new crossing and in meeting specific tests to ensure they can collect toll revenue to the contract specification before the Council (ie the Board) is required to commence payment. This means the Council will not be exposed to commencing the payments for the new crossing before it has the toll revenue to meet these payments.
- 3.12 During construction the Project Company has accepted most of the responsibility for dealing with a contaminated site. To improve value

the Council will share the cost risks where contamination is exceptional and where the requirements depart from what has been agreed with the regulators. The liability is capped at circa £8m and the Financial Submission (see below) allows for this.

- 3.12 After achieving FOCC the Project Company transfers the responsibility to collect tolls to the DMPA Company. From this point the DMPA Co has a responsibility to pass to the Crossing Board (via a Council Bank Account) 100% of the theoretical toll revenue based on the traffic using the new crossing (at this point SJB is planned to be closed for maintenance works). To manage this risk the DMPA Company is entitled to retain penalty charges provided these do not exceed more than 10% of theoretical revenue. This is an important risk transfer given the novelty of operating an open road tolling system in the UK. The Board should note however that once responsibility for toll collection passes to the DMPA Company the incentive for performance is limited to a performance bond of £20m. Should the DMPA Co fail to meet its obligations to pay 100% theoretical revenue and the gap exceeds £20m then the DMPA contract is likely to be terminated and the responsibility passed to the Council.
- 3.13 The successful procurement process will also be reported highlighting any lessons we have learned.

Financial Case

- 3.14 This section provides a summary of the Financial Case and explains what will be taken forward to the Final Funding Submission.
- 3.15 It may assist the Board by listing the various cost heads that are required to be funded and provide a status report for each

1. Land Assembly Costs;

Since the Council agreed the initial funding with Ministers back in 2006 we have managed to deliver the land assembly within the £86m capital grant. We are intending to report in the Final Funding Submission that the £86m will be sufficient to deliver the land assembly including any outstanding compensation claims. Members should note however that this is based on an estimate where compensation claims have yet to be agreed and a contingency will be held back to reflect the risk should costs outturn at higher figures than those in the estimate. The risk that cost outturn to produce a total requirement exceeding £86m is small but the Board should note that should this unlikely event occur the Council would be responsible for meeting any costs above £86m.

2. Development Cost Budget;

The Council has been responsible for funding the development cost budget through a combination of prudential borrowing (part of the

Capital Programme) and investing Council reserves. From 1 October 2013 the funds required to complete procurement will be transferred to the Crossing Board Financial Model (see 3). To assist the Council the Department for Transport has agreed to contribute towards Development Costs providing there is scope to fund such a contribution through the headroom in the £86m grant reported in 1 above. The outturn Development Cost up to 1st October 2013 is estimated at £41.4m of which £12.4m] has been secured through DfT contributions and £3.5m from the former NWDA. At Financial Close the Council will receive a reimbursement of £10m towards its reserves so the net investment made by the Council in delivering the project to the completion of procurement would be £15.5m.

3. Crossing Board Costs;

A Financial Model has been produced to cover all the costs falling to the Crossing Board from 1 October 20113 when the CB is to be established, initially in shadow running status. The model covers a thirty year period but the Financial Case will recommend that Board costs are reviewed every five years as part of the Board Business Plan to be agreed with the Council.

The Funding for Crossing Board costs is provided by the combination of the base case toll revenue and the annual availability support grant provided by the Department. The cost overrun risk will be managed through the Board financial reserves and surplus toll revenue.

4. DBFO Unitary Charge

The Council through the Board will be obliged to pay the Project Company the annual unitary charge in monthly instalments. These are 'capped' at the amount agreed in the Project Agreement for each year but could be reduced should performance fall below that required. The annual unitary charge increases to the profile agreed in the Project Agreement and the increase reflects inflation. The Council is therefore exposed to inflation risk but can manage this risk because tolls charges are also expected to be increased in line with inflation, as the Unitary Charge is funded through a combination of toll revenue and the availability support grant. The Financial Case will assess the inflation risk and demonstrate that this can be mitigated satisfactorily by regulating toll charges.

5. DMPA Service Subsidy

The Council through the Board will be obliged to pay the DMPA Co an annual service subsidy for seven years. The service subsidy is capped but again subject to inflation. Again these are funded through the combination of toll revenue and the availability support grant. To produce project funding required for 30 years the DMPA service subsidy is extrapolated to cover year eight to thirty applying the year

eight cost plus a 15% contingency. The Financial Case will recommend that the costs for procuring tolling services beyond year seven is reviewed as part of the periodic funding review proposed in the funding agreement with the Department.

To further incentivise the DMPA Co. it is proposed that they have a 50 per cent share in the first band of toll revenue above the base case up to a maximum of £2m per year.

3.16 The Financial Case will also confirm the revenue required to meet the above costs as follows;

1. Capital Grant:

As explained above the £86m capital grant is sufficient to deliver the land assembly programme even after allowing for the contribution to the development cost budget agreed with the Department.

2. Annual Revenue Grant.

The Preferred Bid requires a reduced annual revenue grant compared with that agreed at Conditional Funding Approval. The Board should note that during procurement the Department agreed to modify the profile of the grant from the flat £14.4m per annum to providing more grant in early years and less grant in later years. This revised profile keeps the total value of the grant the same but the revised profile produced better bids.

The savings in grant will be shared 70/30 with the Department. The Final Funding Submission will confirm the actual shares based on the final prices at Financial Close.

3. Council Capital Payment (loan)

To reduce the cost of finance and to provide more flexibility over the repayment of project debt the Conditional Funding Agreement included the Council paying £120m towards construction cost in the form of a loan that would be repaid out of future toll revenue. The base case revenue allows for the interest to be paid on the prudential loan. To improve value for money it is likely that the size of the loan will be increased to circa £140m to deal with cash flow requirements before toll revenue is available and because the additional interest will be more than offset by the reduced interest paid on the correspondingly lower private sector debt.

4. Toll Revenue.

The Final Funding Submission will assume the same Base Case toll revenue forecasts that were produced for Conditional Funding

Approval. This means the financial model will assume £44.5m toll revenue in the opening year (not allowing for the revenue lost due to the local residents discount scheme).

To ensure financial institutions have the confidence to invest in Mersey Gateway the Department has agreed to support the base case toll revenues. This support will mean that should revenues fall below base case and the measures used to recover the shortage of revenue (such as increasing tolls by up to 20%) prove to be inadequate, then the Department will make up the shortage of toll revenue in the form of additional grant (likely to be a loan that would be repaid when revenues recover above base case).

The condition for sharing surplus revenue with the Department at 85/15, after allowing for all project costs will remain.

5. Crossing Board Financial Reserve

The Final Funding Submission will include a reserve fund to assist the Crossing Board to stand the risks it is being asked to take. During construction the reserve will be provided in case the contaminated land risk sharing mechanism is applied. It is likely that during construction the reserve will be under £10m for the four year period.

During operation it is proposed to increase the reserve to circa £20m to cover short term loss of toll revenue before the use of the crossing settles down to a more steady state of demand. After five years of operation the need for the reserve will be reviewed and it could be reduced or removed.

4.0 POLICY IMPLICATIONS

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

5.0 OTHER / FINANCIAL IMPLICATIONS

- 5.1 All substantive implications are reported above

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6.5 Halton's Urban Renewal

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

7.0 RISK ANALYSIS

The substantive risks are explained in the above background section.

8.0 EQUALITY AND DIVERSITY ISSUES

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

9.0 REASON FOR DECISION

This report is for information only

10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

None under the meaning of the Act.

David Parr
Chief Executive
Halton Borough Council
Municipal Building
Kingsway
Widnes
Cheshire
WA8 7QF

19 October 2011

Dear David,

MERSEY GATEWAY BRIDGE PROJECT

I am pleased to inform you that Ministers have now agreed to award Conditional Approval to the Mersey Gateway Bridge Project, subject to the acceptance of the terms and conditions in this letter. This letter sets out the conditions which must be satisfied following Conditional Approval and the wider funding conditions for the project.

Please provide written confirmation that Halton Borough Council agrees to these terms and conditions including certification from your section 151 officer that the Council accepts the requirements set out in this document.

This Funding Offer, subject to the conditions set out below, comprises:

1. **Development Cost Grant** of up to £86m payable (including preparatory, land and remediation costs)
2. **Availability Support Grant** of a maximum of £14.55m per annum for 26.5 years following full service commencement under the proposed DBFO agreement.

This Funding Offer is made on the conditions below and is based on the Outline Business Case submitted to the Department for Transport (DfT) in February 2011, as revised in September 2011 and agreed with HM Treasury. Ministers reserve the right to re-consider this Funding Offer if there are any significant changes to the scheme or the business case at any time and/or if a complete Full Business case (FBC) has not been submitted for approval by 30 October 2014.

The Funding Offer is conditional on

- (i) Halton Borough Council implementing a process to monitor the ongoing costs of the project (including preparatory, land and remediation costs) and report the results of this to the Department on a regular basis. To the extent that Halton Borough Council becomes aware of a potential shortfall in funding available to deliver the project that it will notify the Department immediately setting out how it proposes to remedy the shortfall. The Secretary of State reserves the right to make no further payments under this

- Funding Offer if such a notification is made and is not remedied to his satisfaction.
- (ii) Approval by the Department and HM Treasury of a Final Business Case in accordance with DfT/HM Treasury guidance that applies at the time.
 - (iii) The unitary charge of the scheme does not exceed that set out in the September 2011 Finalised Outline Business Case (section 8.6, taking into account any changes in the unitary charge profile).
 - (iv) Sufficient private finance (in the context of the Outline Business Case) being raised at financial close on reasonable market terms to the satisfaction of the Secretary of State.
 - (v) The use of a privately financed procurement route remaining value for money at the point of Full Approval in the opinion of the Secretary of State.

In relation to the **Development Cost Grant:**

- (vi) Development Cost Grant will be paid in accordance with normal DfT grant rules and be limited to net costs necessarily incurred directly by Halton Borough Council in the connection with the development of the Scheme.
- (vii) The £86m Development Cost Grant will be available and, subject to the aforementioned, payable as set out below:
 - a. £3.0m already paid
 - b. £1.7m at Conditional Approval (October 2011)
 - c. a maximum of £10m available in 2013/14 subject to the scheme having received full approval
 - d. a further £71.3m available from April 2014 subject to the scheme having received full approval
- (viii) To the extent that actual eligible costs incurred, net of any actual or potential cost recovery, are less than £86m in total then the total Development Cost Grant will be the lower amount.
- (ix) Halton Borough Council is responsible for seeking to minimise Development Costs incurred and any development costs above the maximum Development Cost Grant are at Halton Borough Council's own risk.
- (x) In the event that the Secretary of State decides not to proceed with the scheme or the parties agree the scheme is undeliverable at or before Full Approval is confirmed, DfT would review the situation jointly with Halton Borough Council at that time but with no obligation on our part to reimburse any costs incurred.

In relation to the **Availability Support Grant:**

- (xi) The Department, HM Treasury and Halton Borough Council acknowledge that the project is not a PFI, but recognise that the principles set out in the Department for Communities and Local Government Local Government PFI Project Support Guide 2009-10, 1st Revision (September 2009), available on DCLG's website will apply to the project unless otherwise agreed. In particular, Halton Borough Council is reminded of the requirements on the use of standardised PFI contract documentation (SoPCv4) and on sharing documentation. The Department, HM Treasury and Halton Borough Council will seek to agree prior to the commencement of procurement a flexible

procedure for agreeing any derogations from this documentation that may be required. It is also a requirement that a finalised outline business case (OBC) is published on the promoter's website (redacting any sensitive information) and we would expect this to occur by the end of October 2011. At financial close you should also provide the Department with a copy of the project agreements and the financial model.

- (xii) A recalculation of the scheme funding requirements will be performed by Halton Borough Council immediately following Financial Close to reduce permanently the maximum Availability Support Grant for 70% of project savings emerging prior to Financial Close, and confirmed at Financial Close in comparison with the base case unitary charge in the Outline Business Case on a like for like basis. The Availability Support Grant cannot exceed the £14.55m per annum noted in 2 above.
- (xiii) Should the DBFO undergo refinancing, any gains for the Authority will need to be shared on a 50/50 basis with the Department, in a manner to be agreed at the time. The option as to the manner of sharing chosen by the Department and Halton Borough Council will be based on Value for Money considerations.
- (xiv) A Crossings Board is being established and empowered as set out in Draft in Appendix 7-B of the Outline Business Case and operating with key actions as set out in this agreement. The Crossings Board will establish, prior to the introduction of charges, a Liquidity Reserve for holding cash or cash equivalent assets to a minimum value of 20% of the net revenues forecast for the following 12 months from the Crossings.
- (xv) The Liquidity Reserve should be held separately from the other assets of the Crossings Board and used solely to manage unexpected deviations in revenues and costs for the Crossings Board from the prevailing forecasts at that time, and in accordance with its objectives as set out in Appendix 7-B. It will be for the Council and Crossings Board to decide how this reserve will be established and funded prior to scheme opening and they will need to satisfy the Department that this is robust and in place before scheme opening
- (xvi) The actual amount of Availability Support Grant will be adjusted periodically, subject always to the maximum amount calculated in (xii) above, in line with the Review procedures described below.

Availability Support Grant Review Procedures

- (xvii) There will be specified Review Points following full service commencement of the project where the Mersey Gateway Crossings Board and DfT will consider the financial performance of the Crossings and the Board since the last Review Point (or in the case of the first Review Point, since the commencement of full service) and agree forecasts for the revenues and costs of the scheme together with the operating costs of the Crossing Board for the period to the next Review Period (or in the case of the last Review Point, for the period to the end of the concession period). The first Review Point will be on the 5th anniversary of full service commencement with subsequent review points every 3 years thereafter until the end of the period during which Availability Support Grant is payable.

- (xviii) The review of performance for the next period will consider revenue levels achieved in the preceding years, future economic and transport forecasts and other issues that will impact on revenues as agreed between the parties. In the event that revenues for the next period cannot be agreed, then the average of the annual revenues since the last Review Point, adjusted for expected future changes in RPI, will be used as the forecast revenues for each year during the next period.
- (xix) To the extent that actual net revenues in the period since the last Review Point have exceeded the amount assumed in setting the Availability Support Grant for that period (or in the case of the first Review Point the revenues expected in the Outline Business Case), after allowing for discounts (subject to these not exceeding 10% of the revenue that would have been earned in the absence of any discount regime) and the cost of maintaining the Liquidity Reserve at the required amount (including to replenish any use of the Liquidity Reserve to cover revenue shortfalls during the last Review Period), but before any deductions for revenue leakage then this will be an Actual Excess. If forecast revenues, after taking into consideration any monies for discounts (subject to these not exceeding 10% of the revenue that would have been earned in the absence of any discount regime) and the cost of maintaining the Liquidity Reserve at the required amount (including to replenish any use of the Liquidity Reserve to cover revenue shortfalls during the last Review Period), but before any deductions for revenue leakage, exceed those used at the Outline Business Case Stage then this will be a Forecast Excess.
- (xx) The Availability Support Grant payable in each year by the DfT shall be the maximum Availability Support Grant set out in (xii), subject to a reduction for the years to the next Review Point equal to 85% of any Forecast Excess and 85% of any Actual Excess calculated at a Review Point.
- (xxi) For the avoidance of doubt, the term discounts refers to all discounts given to local residents and regular users of the bridge, including all vehicle types.

Demand Management Participation Agreement

- (xxii) The Department recognises that Halton Borough Council wishes to explore the possibility of putting in place a Demand Management Participation Agreement (“DMPA”) and Halton Borough Council will explore this during the dialogue phase of the procurement.
- (xxiii) The Department wishes to assess the benefits of such an approach based on the information gained during the procurement and agree jointly with Halton Borough Council whether such an approach will be beneficial. Decisions on whether to go ahead with the DMPA and how these proposals would be reflected in the funding arrangements will need to be made before the end of dialogue and as part of the submission of the IFBC to the DfT and the Treasury Approval Point Panel.
- (xxiv) To the extent that a DMPA or similar is put in place it will be necessary to reflect any savings in unitary charge levels in accordance with (xii) above and revenue forecasts made at the Review Points will need to be net of any revenue share due to the DMPA party under that arrangement.

Future Tolls and Charges

- (xxv) At any date prior to the date being the later of
- (a) the end of the Availability Support Grant payment period; or
 - (b) repayment in full of any Mersey Gateway Crossings Board borrowing
- no commitments shall be made by Halton Borough Council or the Crossings Board as to whether tolls/charges will or will not continue after these dates and/or at what level.
- (xxvi) At a point 3 years before the later of (a) or (b) above the Crossings Board, Halton Borough Council and DfT will jointly assess the benefits of continuing with tolling/charges in the light of the economic and transport network needs of the region, the overall context relating to road charging, and also considering any legal constraints and the prevailing legal position at that time.
- (xxvii) If tolling/charges continue then DfT will be entitled to share in the net financial benefits either directly in terms of direct payments to DfT or through reduced contributions to other local or regional transport schemes and initiatives as agreed with the Secretary of State. The sharing will be 70/30 in favour of Government unless otherwise agreed at the time.

Mersey Gateway Crossings Board

- (xxviii) The Governance arrangements of the Mersey Gateway Crossings Board will be agreed with the Secretary of State and cannot be amended without the specific agreement of the Secretary of State. Draft Heads of Terms / Governance Arrangements are detailed within Appendix 7-B of the Outline Business Case and fully detailed arrangements must be in place and agreed by the Secretary of State before Full Approval;
- (xxix) The Secretary of State reserves the right to withdraw funding if further amendments to Governance arrangements are made without his consent;
- (xxx) The Board should have an independent capability to carry out its main tasks and should not solely rely upon Halton Borough Council and / or its officers;
- (xxxi) As a minimum the Crossings Board will be required to:
- Increase average weighted tolls/charges annually by RPI;
 - Have the ability to decide independently to increase average weighted tolls/charges by as much as 20% (in real terms) above the toll/charging levels set out in the Outline Business Case during the life of the concession (subject to the limits set out in the Scheme Orders) to take into account revenue shortfalls and overall finances of the Crossings Board;
 - Act in a transparent and open book manner;
 - Operate to ensure the financial stability of the Board.
- (xxxii) It will be for the Crossings Board to establish and implement their actual discounts policy, in accordance with the Crossings Board governance arrangements.

Other Requirements

- (xxxiii) That the Department's Commercial & Technical Services team (CTS) will be invited to attend the Mersey Gateway Bridge Project Board meetings to support the successful delivery of the project and to monitor its progress;
- (xxxiv) That you keep us closely informed on the progress of this scheme, complete the Department's three monthly monitoring forms by the due date and provide such information as the Department may reasonably require in relation to this Funding Offer;
- (xxxv) That you notify the Department immediately in the event of any significant changes to the scope, design or expected benefits of the scheme;
- (xxxvi) The Department will use reasonable endeavours to ensure that all necessary regulations to permit open road tolling to be implemented on the Mersey Gateway and Silver Jubilee Bridges from the scheduled full service commencement date will be in force by October 2012 but your procurement process should still allow for a switch to plaza tolling if for any reason the required orders/ regulations are not in place by this date. If this occurs the Department and Halton Borough Council will jointly review the situation.

Application for Full Approval

An application for Full Approval (Full Business Case) should be submitted to the Department following completion of the tender process and should include:-

1. a brief report of the tender exercise with details of the preferred bidders Best and Final Offer;
2. a revised estimated total scheme cost in light of the prices bid during the procurement process;
3. a report on the private financing of the project and confirmation from your advisors that the final proposal represents value for money in the context of prevailing market conditions;
4. updated assessment of the value for money of the procurement route chosen;
5. your confirmation that the broad scope and design of the scheme remains unaltered, with details of any substantive changes resulting from the detailed design and procurement process;
6. confirmation by the authority's Section 151 officer that a Gateway 3 Review has been completed and the necessary remedial action has been taken in respect of any 'Red' recommendations;
7. an agreed approach to monitoring and evaluation of the scheme, the scope of which will be subject to the Department's agreement prior to submission of the Full Business Case and funded by the promoter.
8. an assessment of the Social and Distributional Impacts of the scheme in accordance with DfT guidance as it stands at the time of the Full Approval application. The results of this assessment will be considered by Ministers as part of Full Approval consideration. You will be expected to show that you have made reasonable efforts to mitigate any significant negative impacts associated with the scheme.
9. an up to date risk register and project plan with milestones;
10. an up to date mobilisation and operational management plan; and
11. your confirmation that you take full responsibility to bear any further increases in cost following Full Approval;

12. your plans for the tolling structure for the crossing including how discounts will be applied including requirements to consider value for money; and
13. confirmation of the detailed Governance Structures, policies and constitution of the Mersey Gateway Crossings Board.

In addition to those areas outlined above, the Full Business Case should also specifically highlight those areas where there have been changes from the Outline Business Case

This letter is without prejudice to any other consent that may be required, for example, in connection with planning legislation.

Procedures

Please keep in touch with us about the progress of your project during procurement.

You must inform us immediately if you wish to change aspects of the project in any material way from the case agreed, in particular the scope or the timetable. If changes are required to any of these aspects of the project you will need to obtain the Department's written agreement in good time before the contract is signed. Subject to the protocol to be agreed pursuant to (xi), written consent will also be needed for any significant derogations from the standard contract conditions. Failure to obtain any of these could potentially mean withdrawal of support for the project, and would invalidate any undertaking by the Department to support your scheme. We hope our involvements in the Project Board during the procurement phase will help keep us up to date with progress.

You should be aware that the project is subject to further review by the Treasury Approval Point Panel at two points in the future; firstly at the end of the dialogue phase and then when you are seeking full approval.

This will require the submission of an **interim final business case** (IFBC) at least four weeks prior to the close of dialogue. The IFBC should comprise of a Full Business Case detailing progress from the OBC submission, financing terms and noting where there have been changes. Subject to the protocol to be agreed pursuant to (xi), the IFBC approval submission may need to include a full list of the derogations proposed by the authority and each of the remaining bidders and will require endorsement by the Department and HM Treasury before the project can proceed to close dialogue.

The Full Business Case itself will also be subject to review and appraisal by the Department and the Treasury Approval Point Panel before a full approval letter is issued.

In good time prior to the submission of the Interim and Final Business Case, please seek further guidance from the Department as to what the exact requirements are.

The full approval letter will provide details of how and when Availability Support Grant can be claimed. Your Authority will need to ensure that funds are available to cover that part of the payments to the contractor which will not be met by central Government. You will be eligible for Availability Support Grant on full service commencement under the DBFO agreement.

Availability Support Grant is not intended to match or correlate directly to the payments that arise under the DBFO contract. However, subject to affordability and value for money the Government is committed to supporting good projects and to assisting the development of such projects in the local authority sector. Its policy is therefore to maintain revenue for such projects in the long term, consistent with the long-term nature of these contracts, even though formally such support cannot be guaranteed.

The main Departmental contact point for this scheme will continue to be Charlie Sunderland although the Department's CTS (Nick Joyce/Colin Goodwillie) will be able to help if any specific technical advice is required on the procurement process.

We look forward to continuing to work with you on this project.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Ahmed', written in a cursive style.

Mostaque Ahmed