

REPORT TO: COUNCIL

DATE: 14 September 2016

REPORTING OFFICER: Operational Director – Legal & Democratic Services

PORTFOLIO: Transportation

SUBJECT: Mersey Gateway Bridge – River Mersey (Mersey Gateway Bridge) Order 2011 as modified by the River Mersey (Mersey Gateway Bridge) (Amendment) Order 2016 and Proposed Mersey Gateway Bridge and A533 (Silver Jubilee Bridge) Road User Charging Scheme Order

1.0 Executive Summary

1.1 This report asks the Council to make a Road User Charging Scheme Order (“RUCSO”):

1.1.1 containing the charges to be levied from a future date; and

1.1.2 in relation to the Mersey Gateway Bridge and Silver Jubilee Bridge (together, the “Bridges”).

1.2 Following an application made by the Council on 26 March 2015, the Secretary of State on 18 August 2016 made the River Mersey (Mersey Gateway Bridge) (Amendment) Order 2016 (“Amendment Order”), thereby modifying the River Mersey (Mersey Gateway Bridge) Order 2011 (“2011 Order”).

1.3 The Council delegated authority to the Operational Director to address certain matters now covered in this Report. The Operational Director hereby refers such matters to the Council for its consideration.

2.0 RECOMMENDATIONS: That

Subject to para. 3.5 the Council is recommended to:

2.1 **confirm that no further consultation is required in respect of the RUCSO;**

2.2 **confirm that no public inquiry is required to be held into the making of the RUCSO;**

2.3 **make the RUCSO in the form (or substantially the same form) as that in Appendix A to this report and to delegate to the Operational**

Director (Legal and Democratic Services) the authority to make any non-material or consequential amendments to the RUCSO as are necessary to give it effect;

2.4 resolve that the charging scheme under the RUCSO come into effect on 1 July 2017 , subject to the RUCSO being made by the Council (the appointed day);

2.5 resolve that the charging scheme be suspended in full from the appointed day until the date that the Mersey Gateway Bridge is operational and fully open to all traffic (the "Permission to Use Date"); and

2.6 authorise the Operational Director (Legal & Democratic Services) to take all necessary steps to:

2.6.1 bring the RUCSO into effect;

2.6.2 to suspend the charging scheme until the Permission to Use Date; and

2.6.3 to lift the suspension and impose the charging scheme from the Permission to Use Date.

3.0 Background

3.1 At a special meeting of the Council on 18th March 2015 ("Special Meeting"), its Members (by a unanimous decision of those present, who comprised a majority of all its Members), agreed that an application should be made to the Secretary of State for Transport for the Amendment Order which would have the effect of amending the 2011 Order so as to allow:

3.1.1 a RUCSO to be made in relation to the Bridges; and

3.1.2 the application of the Road User Charging Scheme (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 ("Enforcement Regulations") to tolls collected by the Council under the 2011 Order.

3.2 Before making that decision, Members at the meeting received and duly considered a detailed report and a further, supplemental report explaining the reasons for making the Application and the process for doing so. The Application was made to the Secretary of State on 26 March 2015, including all necessary supporting documentation.

3.3 On 11 June 2015 the Secretary of State informed the Council that it had decided that it was not necessary to hold an inquiry or hearing in respect of the Application. Instead, the Secretary of State decided that none of the

objectors had a statutory right to be heard and that the issues raised by, and the objections to, the Application could be adequately presented and examined by him through the written representations procedure.

- 3.4 The Secretary of State made the Amendment Order on 18 August 2016. The form of the Amendment Order submitted with the Application was modified by the Secretary of State in making the Amendment Order. The Amendment Order as made by the Secretary of State is provided at Appendix B to this Report.
- 3.5 The Secretary of State's decision to confirm the Amendment Order is subject to a period for statutory challenge which will expire on 6 October 2016. The content of para 4 below and the recommendations are therefore subject to the outcome of any challenge.

4.0 Next Steps

- 4.1 The reasons for making the RUCSO remain unchanged since:
- 4.1.2 the resolution made by the Council at the Special Meeting; and
 - 4.1.3 the Amendment Order was made by the Secretary of State, and remain valid.
- 4.2 These reasons are:
- 4.2.1 the Mersey Gateway Bridge will operate under a "free flow" environment, rather than with the use of barrier toll payment stations;
 - 4.2.2 tolls will be paid following a user crossing the Mersey Gateway Bridge;
 - 4.2.3 the toll/charge operator requires powers to enforce payment after the use of the Mersey Gateway Bridge, since barriers will not be present to prevent those crossing the Bridge unless they have paid; and
 - 4.2.4 the mechanism to achieve this is to make the RUCSO in respect of the Bridges, to which the Enforcement Regulations could be applied.
- 4.3 The Council undertook consultation on both the Amendment Order and the proposed RUCSO in February 2015. The Council consulted a wide range of consultees it had identified as appropriate pursuant to section 170(1A) of the Transport Act 2000, the Department for Transport's *Guide to TWA Procedures* and the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. A copy of the February 2015 Consultation Document is provided at Appendix C to this Report:
- 4.3.1 the draft RUCSO is clearly identified in the Consultation Document as a separate Order to the Amendment Order;

- 4.3.2 the consultation is stated to be on both the Amendment Order and draft RUCSO; and
- 4.3.3 consultees were asked/provided the opportunity to make specific comments in relation to the draft RUCSO (see Question 11 on page 22 of the Consultation Document).
- 4.4 Since the consultation in February 2015, nothing material has changed in respect of the draft RUCSO and no new material considerations or issues have arisen concerning it. The RUCSO contains two amendments from the version included in the Council's consultation document, which address drafting errors only:
- 4.4.1 Paragraph 3(e) of Part 2 of Schedule 2 has been amended to make it clear that only vehicles carrying passengers (whether as driver or passenger and regardless of vehicle ownership) holding a current disabled person's badge are entitled to be entered onto the register of exempt vehicles;
- 4.4.2 Paragraph 3(f) of Part 2 of Schedule 2 has been amended to conform with the Council's consultation document insofar as the exemption from tolling will only apply to local bus services using the Silver Jubilee Bridge.
- 4.5 Accordingly, it is considered that nothing has materially altered since the original consultation took place such that new or additional consultation is required and sufficient consultation has already been undertaken by the Council in respect of the RUCSO.
- 4.6 It is relevant that the Secretary of State did not consider it necessary to hold an inquiry into the making of the Amendment Order.
- 4.7 In considering the responses to the consultation (which can be found in Appendix C to this Report), it is clear that many of the responses:
- 4.7.1 misinterpreted the effect of the RUCSO;
- 4.7.2 made practical suggestions for how the Council should implement the Charging Scheme; or
- 4.7.3 simply ticked the box stating that they disagreed with the Council's position but did not provide any comment (this was in relation to the levels of penalty charge being lower than the maximum allowed under the Enforcement Regulations).
- 4.8 Those responses that did criticise the RUCSO were addressed in the Consultation Report (provided at Appendix D to this Report) and the Council concluded that it did not need to make any substantive amendment to the RUCSO. For instance, this was the case when respondents:

- requested specific exemptions for breakdown recovery vehicles; and
- stated that the original road user toll/charge should not be payable in addition to the penalty charge.

4.9 Accordingly, it is not considered that an inquiry needs to be held into the making of the RUCSO because all issues have been addressed and no new issues have been raised.

4.10 The Mersey Gateway Bridge is currently expected to be commissioned in the autumn of 2017.

4.11 The Council needs to ensure that the charging scheme contained in the RUCSO is effective from the Permission To Use Date of the Mersey Gateway Bridge. Given that the commissioning date would change if construction of the Mersey Gateway Bridge is completed ahead of schedule, it is considered that the charging scheme contained in the RUCSO should be effective from 1 July 2017. However, the charging scheme should be suspended in full unless and until the Mersey Gateway Bridge becomes operational. A communications strategy will be put in place to notify the public of the Permission to Use Date and the date on which the charging scheme will be enforced. The appointed day (1 July 2017) will be advertised in accordance with the requirements of the Order.

5.0 Resource Implications

The Mersey Gateway Crossings Board will meet the resource implications associated with these statutory procedures.

6.0 Risk

Without the enforcement powers, the Council will be in breach of its Demand Management Participation Agreement with Sanef [SA] dated 28th March 2014. It will not be possible for the Council to ensure that it receives all the toll/charge due to it from the users through the terms of that Agreement. The consequence of this is likely to be a shortfall in revenues which may need to be rectified through a higher toll/charge than would be the case with the enforcement powers in place.

7.0 Equality and Diversity

There are no implications for equality and diversity relating to the powers of enforcement as they will apply to all who are to use the Mersey Gateway Bridge and the Silver Jubilee Bridge.

8.0 Conclusion

In light of the information contained in this report, the Council is asked to make the confirmation and resolutions detailed at paragraph 2.0 of this Report.