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OUR REF: TWA 21/APP/05  
YOUR REF: PXT/OZP/ADW/004596.0009

6 OCTOBER 2023

Dear Sirs,

**TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED RIXTON AND WARBURTON BRIDGE ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the report of the Inspector Mr Mike Robins MSc BSc(Hons) MRTPI, who held an Inquiry between 8 November 2022 and 16 January 2023, into the application made by your client The Manchester Ship Canal Company Limited (“the Applicant”), for the proposed Rixton and Warburton Bridge Order (“the Order”) under sections 3 and 5 of the Transport and Works Act 1992 (“TWA 1992”).
2. The Order, if made, would authorise a modernisation and update of the provisions within the existing legislation in respect of the Rixton and Warburton Bridge (“the undertaking”). In particular to revise the tolls the Applicant may charge for use of the undertaking; superseding the toll levels set out in section 48 of the Rixton and Warburton Bridge Act 1863. This would follow a period of improvement works to the undertaking, and the introduction of an automatic number plate recognition system, as set out in Schedule 8 to the Order. Additionally, the Order would allow the Applicant to make new byelaws for management of the undertaking and allow for the transfer of the undertaking to a new company, should the Applicant wish. These matters are all collectively referred to as “the scheme” within this letter.
3. As the Order does not provide for any development requiring planning permission, the Applicant did not submit an environmental statement with the Order application or seek a direction as to deemed planning permission from the Secretary of State.

4. Enclosed with this letter is a copy of the Inspector's Report. All "IR" references in this letter are to the specified paragraph in the Inspector's Report.

### **Summary of Inspector's Recommendations**

5. The Inspector recommended that the Order should be made, subject to modifications.

### **Summary of Secretary of State's decision**

6. The Secretary of State has decided to make the Order with modifications.

### **Procedural Matters**

7. The Applicant applied for a waiver direction under rule 18 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("the 2006 Rules") to disapply the requirement of Rule 10(2) of the Rules, which requires the applicant to submit 4 copies of each of the application documents. The Applicant requested permission to submit an electronic copy of the application documents to the Secretary of State but undertook to provide, in due course, hard copies of the application documents to the Secretary of State should this have been required. On 17 November 2021, the Secretary of State sent out a letter to the applicant that he was content to make this decision that the application documents could be submitted electronically and that further hard copies be made available to the Secretary of State upon request at any time before a decision on this application is issued, for example, should a Public Inquiry be held.
8. The Secretary of State has complied with the public sector equality duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State has considered these issues where relevant below.

### **Secretary of State's Consideration**

9. In response to the application, the Secretary of State received a total of 313 objections.
10. Careful consideration has been given to all the arguments put forward by, or on behalf of, all parties. The Secretary of State's consideration of these and of the Inspector's report is set out in the following paragraphs. Where not specifically stated, the Secretary of State can be taken to agree with the findings, recommendations and conclusions put forward by the Inspector.

### ***Aims, objectives and need for the scheme***

11. The Secretary of State notes there is no material challenge as to the need for the improvement works nor to the benefits brought about by the aims of the scheme, which include improving the physical condition of the undertaking and reducing the chronic congestion caused by the manual collection of tolls. Although the Inspector

observes that there is considerable difference in opinion as to how the improvements are made and funded, there is no doubt they are needed (IR 8.6).

12. Notwithstanding this, there remains concerns about some of the objectives of the scheme such as the raising of the toll to pay for improvements, reserves and a reasonable return on investment for the Applicant; and the transference of the undertaking to a new company. These are addressed in greater detail below.
13. After thorough consideration, the Inspector concluded that the aims and objectives of the scheme would be met via the Order (IR 8.159 – IR 8.165). The Secretary of State agrees with the Inspector and is content that a suitable case has been made relating to the aims, objectives and need for the scheme.

### ***Compliance with statutory requirements***

14. In making the application, the Applicant is required to comply with the publicity requirements of the 2006 Rules, this includes serving copies of the application and accompanying documents on the persons specified in the 2006 Rules and making the documents available for public inspection. As also required by the 2006 Rules, the Applicant must display and publish notices giving information about the application and how to make representations. The Secretary of State has had sight of your sworn affidavits in relation to the publication and service of notices.
15. The Inspector has satisfied himself that correct procedure has been followed by the Applicant. Where key changes to the documents have occurred, the Inspector has also sought to notify all parties, allowing an opportunity to review and comment on the documents either prior to, or at, the Inquiry (IR 1.14 – IR 1.19). The Secretary of State is content that the statutory requirements have been complied with.

### ***Statutory powers***

16. The Secretary of State notes a number of parties are concerned at the use of the TWA 1992 to make an Order of this kind. The Inspector considered this matter in great detail and the Secretary of State is inclined to agree with his conclusions and finds that TWA 1992 is the most suitable route to achieve delivery of the scheme as a whole.
17. Firstly, the Inspector considered the reasons the Marine Management Organisation (“MMO”) did not believe an Order under Harbours Act 1964 (“HA 1964”) was appropriate and although he disagrees with the MMO that there is doubt over whether the undertaking is a ‘harbour’ (IR 8.80 – IR 8.81), he agrees that one of the Applicant’s primary objectives, transference of the undertaking to a new company, could not be met under HA 1964 (IR 8.92). Whether the transference of the undertaking is considered a benefit of the scheme is irrelevant; what is clear to the Secretary of State is the intention of the Applicant to transfer the undertaking as part of the scheme, as reflected in Parts 3 and 4 of their draft Order. As such, the Secretary of State is satisfied use of powers under HA 1964 would not be appropriate in this instance.
18. The specific objection regarding the transfer of the undertaking is dealt with under ‘other matters’ below at paragraphs 53 to 59.

19. One objector, Mr McGoldrick, also raised queries in his Statement of Case and closing statements (IR 5.1, IR 5.11) about why a toll increase could not be dealt with under the Transport Charges &c. (Miscellaneous Provisions) Act 1954 (“1954 Act”). Again, it is accepted that one of the objectives of the scheme, the transference of the undertaking to a new company, could not be realised under this Act. Nor could another objective of introducing a free-flow tolling system (IR 8.101). This scheme is multi-faceted and is not solely requesting an increase in toll, so the Secretary of State considers that the 1954 Act could not be applied here.
20. In contrast, the Inspector notes that sections 3 (1) (b) and 5 of TWA 1992 specifically establish that an Order can provide for the carrying out of works that interfere with rights of navigation in waters and that the Secretary of State may make any provision or amendment that appears to be necessary to give full effect to the Order (IR 8.104 – IR 8.105).
21. Some objectors questioned whether TWA 1992 included the ability to make byelaws or indeed raise the level of toll charge, which are also provisions of the Applicant’s draft Order. The Applicant argues that this is established in section 5 (3) and in Schedule 1 of TWA 1992 (IR 3.94 – IR 3.98). The Secretary of State concurs and, along with the Inspector, is satisfied that these sections allow for the provision of both byelaws and toll charging (IR 8.107 – IR 8.109). The Secretary of State also considers there is nothing which would specifically preclude the raising of tolls in this context.
22. Overall, the Secretary of State is satisfied that the application before him can be progressed under TWA 1992 and that this Act provides a legal mechanism to authorise the scheme, including the increasing of tolls.

### ***Likely impacts of the scheme***

23. The Applicant asserts there are many beneficial impacts of the scheme, most prominently, the delivery of the free-flow tolling system which will reduce congestion in the local area and improvements to the undertaking which will provide better and safer road conditions for all users (IR 3.111 – IR 3.123). The benefits of the scheme appear to be largely undisputed by the parties with the main concern being how these are funded (IR 3.16). It is said by many objectors that increasing the toll passes the cost of the improvements onto the user, when it is the Applicant who is at fault for not maintaining the undertaking properly.
24. The specific objection as to whether the undertaking is self-financing is dealt with under ‘other matters’ below, at paragraphs 40 to 44.
25. Many of the objectors, including Warrington Borough Council and Trafford Council (“the Councils”), believe it is not only the toll increase but the *level* of the toll increase for users which will have a significant negative impact, particularly in the current climate. They consider the proposed increase to be excessive, especially for users who have a need to use the undertaking regularly (IR 4.63). Mr McGoldrick also argues that the level of toll increase is unacceptable, as he believes applying inflation

to the current toll level of 12 pence results in a charge of around only 20 pence and not the £1 the Applicant is seeking (IR - 5.50).

26. The Inspector acknowledges that residents are reliant on the undertaking for many reasons and any increase to the toll charge will cause considerable financial pressure (IR 8.110 – IR 8.112). He also acknowledges the impact on businesses who require frequent access across the bridge (IR 8.114). That said, the current toll has been in place for more than 20 years at a very low rate, at odds with other private bridge tolls. The Inspector therefore considers that even a smaller increase, for example one that could be achieved under the 1954 Act, would still have a significant cost implication to users, but without the beneficial impacts brought about by the TWA 1992 application. Although the increase proposed is significant, the Inspector considered it realistic against the backdrop of the very low toll rate charged since 2001 and the advantages of the enhancements being made, which are only achievable if the toll is increased as proposed (IR 8.110 - IR 8.118).
27. The Secretary of State has considered this and has also had regard to the draft Order, which confirms that there will be no toll charges at all between the start and completion of the improvement works, which will clearly represent a period of savings to users, and there will also be a discount scheme for local residents (IR 8.114). The Secretary of State is also in agreement with the Inspector that as the Order could provide for more regular financial reporting and allow greater transparency in the finances of the undertaking, that the maximum toll may not always be charged (IR 8.119).
28. If made, paragraph 2 (4) of Schedule 1 to the Order secures no more than one toll increase in a 12-month period, replicating provisions in section 6 (2) of the 1954 Act. Paragraph 2 (3) also confirms that any future increases will be subject to 28-day advance notice, giving users reasonable time to adjust.
29. Whilst sympathetic to residents' finances, these factors lead the Secretary of State to agree with the Inspector's conclusion that the benefits to users brought about by the scheme, would outweigh the negative cost impact (IR 8.119). A lower toll, as suggested by Mr McGoldrick, could not deliver the necessary improvements and so would not bring about such benefits.

### ***Adequacy of proposed discount scheme***

30. When considering the scheme, the Inspector argued that a key element for consideration is the adequacy of the proposed discount scheme for local residents.
31. The Councils and others provided substantive evidence during the Inquiry that people who rely on and use the bridge the most, may have high levels of social deprivation. The discounts are set out in the Order and the Applicant proposed that that these would initially apply to the postcode areas of WA3 6, WA13 9 and M31 4. The Secretary of State notes that parts of Lymm and Partington, were added by the Applicant in response to evidence provided (IR 8.120).

32. The Secretary of State is aware that the Councils and other objectors argued that there should be other postcode areas included in the local discount, notably, WA13 0, WA3 4, WA3 5, WA3 7, and that the Applicant stated that those within that area have alternative routes that could be utilised (IR 8.121). The Applicant argues if it increased the number of residents who pay the lower toll level, this could lead to the toll being increased overall (IR 3.152 and 3.153). Overall, the Inspector concludes that the provision of a local discount is a positive measure as it limits the impact on the local residents (IR 8.125). The Secretary of State agrees with the Inspector on this issue and is satisfied the proposed postcode approach is reasonable and the extent represents the most appropriate balance between the overall toll level and support for those most reliant on the crossing (IR 8.125).

### ***Impacts on alternative routes, air quality and traffic congestion***

33. The Secretary of State understands that there have been some significant concerns expressed regarding the impacts of queueing traffic on air quality using the existing toll collection. The Inspector also considered the potential of vehicles choosing alternative routes due to higher tolls, which could represent longer routes and additional emissions. What was generally agreed by all interested parties is that the introduction of a free-flow tolling system would successfully address much of the current congestion and disruption encountered due to the current manual collection of tolls (IR 8.126).

34. The impact of diversions due to increased tolls were disputed between the main parties attending the Inquiry. The Applicant presented evidence from an experienced transport planner whose empirical evidence suggests a range, from an overall increase of traffic to as much as a 50% decrease, due to the increased toll. It was suggested that the additional costs of tolls would result in some vehicles choosing alternative routes and actively diverting away from the undertaking and that this diversion could result in additional emissions. However, the Inspector's conclusions on this were based on the Air Quality Assessment commissioned by the Applicant based on a worst-case scenario of a 23% diversion, split equally between the M6 and M60 crossings either side of the canal. It concluded that there would be minor, but negligible changes in air quality along those routes, but that the benefits from the removal of queues on the approach roads to the undertaking and consequential positive air quality improvement at that location, would outweigh any minor negative impacts of diversion (IR 8.128 and IR 3.167). The Inspector also concluded that he had no reason to question these findings, which appear to be a logical outcome of the enhanced, free-flow tolling system proposed.

35. Taking into account the figures from the Air Quality Assessment, the Inspector concludes that the effect of the increased tolls on traffic and air quality would be, at its worst case, neutral (IR 8.129). The Secretary of State concurs with the Inspector.

## ***Other matters***

### Rixton and Warburton High Level Bridge as part of the undertaking

36. Although referred to throughout this letter as “the undertaking”, it is apparent the Inspector had to consider whether in fact the Rixton and Warburton High Level Bridge was included as part of the wider undertaking for which the Applicant is responsible. It had been suggested by some objectors the Rixton and Warburton Bridge Act 1863 (“the 1863 Act”), and its original stipulations, do not apply to the Rixton and Warburton High Level Bridge but only to the original River Mersey Bridge crossing (IR 8.15 - IR 8.17). The Secretary of State acknowledges that there have been various Acts following this, most notably the Rixton and Warburton Bridge Amendment Act 1867, the Manchester Ship Canal Act 1885 and the Manchester Ship Canal (Various Powers) Act 1890 (“the 1890 Act”), which allowed for the construction of the canal and new crossing point and allowed for the transfer of the undertaking to the current Applicant.
37. After review of all relevant legislation, the Inspector found that the 1863 Act specifically catered for future navigation of the water by referring to the potential for an altered crossing or bridge (IR 8.22 – IR 8.27). The Inspector’s interpretation is that the preceding legislation simply reinforces this by setting out the more precise proposals for an altered bridge, and the 1890 Act in particular, confirms this is to be transferred to the Applicant for ‘all purposes’ (IR 8.28 – IR 8.32). It is considered that neither the construction of the canal creating a need for a diversion to the alignment, nor the matter of the Rixton and Warburton High Level Bridge not being directly named in section 9 of the 1890 Act, changes this position (IR 8.48 - IR 8.56).
38. The Secretary of State concurs with the Inspector’s interpretations, and he is satisfied that the undertaking includes the Rixton and Warburton High Level Bridge.
39. As the Secretary of State has accepted that the undertaking includes the Rixton and Warburton High Level Bridge, then it follows that the stipulations of the Acts governing the undertaking are also inclusive of this Bridge.

### Self-financing position of the undertaking

40. It is the Applicant’s assertion that the undertaking has always been self-financing, meaning the bridge and its upkeep should be financed by road users, which they argue accords with the intentions of the 1863 Act (IR 3.4 – IR 3.6) later updated by the 1890 Act. It is clear that many objectors, including the Councils, disagree with this position, stating amongst other things that the wording of the 1863 Act confirms the original company were responsible for constructing and maintaining the undertaking (IR 4.5 – IR 4.29). Any tolls collected were to be used for the purposes of the Act; the original construction and maintenance of the undertaking and approach roads, although there was no requirement for them to charge tolls at all (IR 4.8 – IR 4.11). The Councils consider that it is “fair and reasonable” that MSCC should contribute 60% of the cost of repairs and reserve fund from its wider financial resources (IR 3.4). It was argued by objectors that there is no evidence to show the undertaking has ever been self-financing and the Councils believe it would be

unreasonable to consider it so, given that it is the canal users and the Applicant, rather than the road users, who benefit most from it (IR 4.32). As indicated at paragraph 23 above, objectors, including local MP's, have echoed these concerns and also criticise the reasonableness of tolls being used to maintain the undertaking when they believe maintenance has been neglected by the Applicant to the point that more expensive repairs are now required.

41. Regarding the Applicant's aim to collect tolls to contribute to a reserve fund as well as for maintenance and operation, the Councils have further challenged the definition of the reserve fund, which they say should be exclusively for capital works and not for operation of the undertaking, as per the wording of the 1863 Act. The Applicant identified the reserve fund as being to insure against the cost of future bridge replacement or future major works (IR 8.173).
42. The Secretary of State notes that paragraph 8 (7) of the Order does not *require* the Applicant to pay into a reserve fund. Should they do so, the Secretary of State has noted the possibility that a reserve fund can be negatively impacted by some of the 'variables in future revenue or expenditure' (IR 8.175). He is satisfied that while the reserve fund must be for major works, it must also support other expenditure that may otherwise jeopardise the undertaking or trigger significant toll change. The Secretary of State agrees with the Inspector that the purpose of the reserve fund may not necessarily solely be capital expenditure but action to address the continued maintenance or operation of the undertaking.
43. In summary, when looking at the legal and statutory conclusions of the Inspector, the Inspector concludes that dating back to the original 1863 Act, it has always been the case and intention that the bridge is self-financing through the collection of tolls. To demonstrate this, the 1863 Act allowed for some additional costs, outside of the road and bridge construction, to be carried out by the Bridge Company, but a very small part of the overall costs. The Inspector sets out that the expectation of the Act's toll schedule was to provide sufficient funds to service the debts of construction and operation of the road and bridge required to create the crossing over the River Mersey. The Inspector, therefore, concluded that with no expressly defined proportion of funding to come from either the founding merchants or from some other route, the obvious conclusion is that the undertaking was considered to be self-financing under the 1863 Act (IR 8.47).
44. The Secretary of State therefore concurs with the arguments put forward by the Inspector and is satisfied that the legal and legislative position is clear and the bridge should be self-financing, and any increase in tolls to support this objective is legally sound and robust, including the accumulation of a reserve fund.

#### Toll level

45. It has been set out above at paragraphs 25-29 of this letter why the Secretary of State considers the level of the toll increase to be acceptable. Notwithstanding this, the Inspector recognised there were still some fundamental disparities between the Applicant and the Councils as to how the figure was arrived at (IR 8.130). In light of



this, the Inspector considered the modelling used in the application for traffic levels, diversion of traffic and the cost of capital (the minimum rate of return or profit a company must earn before generating value). He ultimately concluded that:

- It was reasonable for the Applicant to base the modelling on a 10% reduction in traffic levels given the post-pandemic national trend still shows a decline in traffic flow (IR 8.132 - IR 8.134);
- It cannot be assumed that users will choose a diverted route because of the toll increase, when the free-flow tolling system was likely to encourage use because of the time saved on journeys. Therefore, even though the Applicant has modelled on a high 'precautionary' 23% diversion rate, if this is lower, it can only be of benefit to users as more toll income means the toll charge may then be able to be decreased (IR 8.135 - IR 8.137); and
- That the cost of capital level of 10% that was used in the Applicant's modelling was reasonable, given the current position of the market and insecurity over interest rates and inflation (IR 8.138 - IR 8.141).

46. The Secretary of State has had regard to the above conclusions and the evidence of the Councils and is of the opinion that the modelling used by the Applicant to determine the level of toll is as fair as practically possible, given there are many uncertain factors or areas which are a matter of judgment, and that this has been prepared with input from relevant experts. The Secretary of State is satisfied the Inspector's conclusions are balanced and that the initial level of the toll increase has been set appropriately and will be subject to review.

### Toll collection

47. Aside from the issue of the undertaking being self-financing, which is addressed above at paragraphs 40 – 44, a concern was raised by Mr McGoldrick about whether legislation supports the Applicant in being able to collect or enforce toll payment. Mr McGoldrick particularly questioned how penalties would be pursued in the event of non-payment of tolls under the new free-flow tolling system, when the Applicant is unable to use powers under Transport Act 2000 ("2000 Act") or other methods as used by local authorities (IR 5.36 - IR 5.37).

48. The Applicant states that their draft Order simply matches the provisions that would apply to a Road User Charging Scheme made by a local authority and ensures consistency between this scheme and other charging schemes (IR 3.216 - IR 3.218). Article 13 of the draft Order sets out that the Applicant will act as *if* they were a local authority under the 2000 Act.

49. The Inspector considered this and found that the Order does ensure that the Applicant is able to operate the free-flow tolling system and is established as an authority for the collection and enforcement of tolls and penalties, and that the scheme does accord with the 2000 Act (IR 8.155 - IR 8.158). The Secretary of State agrees and is content that this ensures a consistent approach across road charging schemes and other tolled bridges.

### Use of indexation to increase future tolls

50. The Applicant suggests that the proposal to index the tolls to Consumer Price Index-1% (CPI-1%) has the potential to be beneficial in its impact on future users (IR 3.131). They argue when considering inflation, prices generally will rise, and a price that is fixed to a particular point in time will decline in its real-terms value, as the 12.5p has done since it was set in 1863. As a result, when indexation is not available, either a higher maximum toll price is set to overcome the future price increases associated with operation, and/or there are likely to be more frequent requests for toll increases, with the costs of this being passed on to road users (IR 3.132).
51. The Applicant argues the Government previously advocated for a change in the 1954 Act to permit local toll crossings to increase tolls by the Retail Price Index-1%. In the Government's consultation document for simplifying the process for revising tolls at local tolled crossings, describes the current system under the 1954 Act as 'cumbersome and time-consuming', arguing that the process 'deters rather than inspires long term investment in the undertaking in order to ensure its optimum efficiency'. It also adds that 'the costs of this process are likely to be passed on through higher than necessary tolls' and that it 'places a modest burden on Central Government resources to the cost of the taxpayer'. Taking this into consideration, the Government's preferred option was to allow toll operators to vary tolls without an application annually but limited to 1% below inflation, an approach it noted was in use on the tolled Severn Crossing. Whilst recognising these proposals were not taken forward, the Applicant contends that the arguments put forward were good ones, and the only reason they weren't taken forward was due to a lack of Parliamentary time. (IR 3.133 – IR 3.134).
52. The Inspector concludes the use of indexation to increase future tolls to be a fair approach (IR 8.145). At low levels of inflation, the lower than CPI rise would not result in significant increases to the toll rate that could be charged. However, at higher rates, the costs would be more noticeable, but these should be in line with those experienced by the operators of the undertaking, and with the 1% discount any future toll increases would always be less than the overall cost of living. Based on the conclusions as presented by the Inspector, the Secretary of State is satisfied with this approach.

### Transfer of the undertaking to a new company

53. One of the main objectives of the scheme is for the transference of the undertaking to a new company. The Applicant advises that the transfer will be beneficial for several reasons. This includes providing greater financial transparency through independent financial reporting and easing comparisons with the performance of other private bridge companies. They also argue that a transfer to a new company will allow for independent strategies to be pursued in the primary interests of the Bridge undertaking alone rather than the Applicant's wider undertaking responsibilities. Finally, it aligns with the approach taken at other UK toll bridges (IR 3.66)

54. However, a number of concerns were raised about the transfer to a new company. The Councils state that the transfer may be inappropriate and has no clear advantages. One of the reasons for this is the integral connection between the Bridge and the Canal. The Bridge exists due to the severance caused by the canal. This therefore means that the Canal is the “development”; the severance being the “harm”; and the Bridge being the “mitigation” (IR 4.50). Therefore, the Bridge must be kept in good condition to adequately maintain the safe and free flowing navigation of the Canal. That in turn requires the statutory harbour authority to be in control of the operation and management of the Bridge.
55. Another concern that the Councils presented over the new company is the implications of insolvency. At the moment, there is an understanding that the shares in the company are owned directly by the Applicant. The Applicant has modified the draft Order to ensure that any transfer of the shares is subject to the Secretary of State’s consent. However, it is argued it would still remain a separate company and in turn its solvency would be at greater risk than the current position. Furthermore, the Councils argue the Secretary of State must take into consideration that the new company, with very limited assets and no financial track record, would have much weaker ratings in terms of borrowing than the Applicant, therefore increasing the cost of capital for future works which would in turn be passed on to the travelling public (IR 4.51).
56. The Secretary of State has also taken into consideration the concern that the undertaking may be sold onwards resulting in little control over future toll increases. This is highlighted when looking at examples such as inter-company charges not being capped which was raised by interested party Marjorie Powner (Friends of Carrington Moss). She has highlighted that this could call viability into question and force tolls to increase to too high a level (IR 6.50).
57. The Inspector considers that although the Applicant has not persuaded him of the particular benefits of a transfer to a new company, the transfer itself does not pose a particular risk and is, overall, a neutral element of the scheme. The Inspector concluded upon questioning the witnesses directly during the inquiry, the two primary elements that the Applicant felt would be gained by a transfer, are financial transparency and independent strategic management. This contrasts with the Councils’ position that highlights clear disadvantages, and notable concerns from local residents and others that the transfer would lead the undertaking being sold for profit and the costs being transferred to those using it (IR 8.84).
58. The Inspector recognises the concerns. However, he is satisfied the safeguards proposed in the modifications to the Order, which restrict the transfer or sale of the new company without the express consent of the Secretary of State, would address these concerns (IR 8.90).
59. The Inspector concludes that the Applicant has not put forward any significant positive arguments for the transfer of the company aside from some management benefits and the potential for some internal accountancy benefits. These benefits

are not a matter before the Inquiry, therefore the Inspector has taken a neutral stance on this matter. The Secretary of State has considered the arguments presented by both sides and is satisfied with the Inspector's conclusions on this matter, therefore allowing it to be included in the Order. (IR 8.91).

### Byelaws

60. Earlier in this letter at paragraphs 20-21, the Secretary of State has set out why he considers section 5 and Schedule 1 of TWA 1992 allow for the provision of byelaws within the Applicant's Order. Although their creation is established in statute, the Secretary of State does note the concerns about the wording and potential impacts of the byelaws themselves. Mr McGoldrick and Mr Openshaw, among others, believe them to be unnecessary and in some cases unclear (IR 5.25, IR 6.12). Cllr Gowland believes they remove the highway rights across the undertaking for some current users (IR 6.33).
61. The Applicant's position is that the byelaws recreate byelaws in the 1863 Act, with the addition of those necessary because of the introduction of the new free-flow tolling system. Nonetheless, the Applicant has since removed some of the proposed byelaws which they understood to cause unnecessary frustration or uncertainty. They are now confident that this leaves only those which are required to ensure users behave in a responsible manner, prevent dangerous or nuisance situations and to provide penalties for any breach of the byelaws or non-payment of tolls (IR 3.137 - IR 3.140).
62. It is clear the Inspector is in agreement with the Applicant and is satisfied that the byelaws which remain in the Order are those which ensure safe and efficient passage, not only for users of the undertaking but for ships using the canal underneath, and those which are required to enforce the use of penalties in cases where the toll is not paid (IR 8.148 - IR 8.149). The Inspector further considers that there is no evidence of the byelaws preventing access to any user; they will actually benefit from better access once the improvement works are complete (IR 8.150).
63. The Secretary of State's view mirrors this, as he is content that the impact of the byelaws is proportionate to what is required for the undertaking to run efficiently and effectively. He is also reassured that the impact of any potential future byelaws can be thoroughly considered before being introduced, as the current Order ensures express consent is sought from the Secretary of State.

### **Secretary of State's overall conclusion and decision**

64. The Inspector concluded that the proposed scheme is necessary, reasonable and deliverable through the Order (IR 9.2). Where the Inspector has recommended that the Secretary of State make his own judgement as to interpretation of the relevant legislation (IR 9.3), for the reasons set out in this letter, the Secretary of State has satisfied himself that the undertaking includes the Rixton and Warburton High Level Bridge and that this undertaking is considered to be self-financing through the collection of tolls. He has also satisfied himself that this application under the TWA

1992 is the most appropriate legislative route to meet the aims of the scheme and that HA 1964 is not an available option for this scheme.

65. The Secretary of State has heard a compelling case in favour of the scheme and is in agreement with the Inspector that any adverse impact, particularly in relation to the increase in the toll, is outweighed by the public benefits delivered by the scheme.

66. The Secretary of State has had regard to all matters set out above and has therefore determined in accordance with section 13(1) of the TWA 1992 to make the Order under sections 3 and 5 of the TWA 1992, subject to a number of minor modifications which do not make any substantial change in the proposal such as would require notification to the affected persons under section 13(4) of the TWA 1992.

67. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA 1992. Your clients are required to publish notices of the determination in accordance with section 14(4) of the TWA 1992.

### **Proposed modifications to the Order**

68. Where not already stated in this letter or otherwise stated below, the Secretary of State agrees to the proposed modifications to the Order and the approach as set out at IR 8.166 - IR 8.182 and Appendix C of the Inspector's Report.

69. In view of the concerns about the transfer of the undertaking to a new company, the Inspector proposed the modification of Article 5 to the Order, which will ensure that no transfer can take place until the improvement works have been completed and that consent is required from the Secretary of State prior to any change in the control of the new company.

70. Other modifications are made for reasons of clarity and transparency, ensuring the Applicant can deliver on commitments made, by their inclusion within the Order itself. These modifications are:

- Amendment of Article 2 to clarify definitions:
  - For the 2006 Act, "Account", "Change of Control", "completion of the Improvements", "Control", "Improvements", "local highway authority", "reserve fund" and vehicle" were inserted
  - For "App", "credit card" and "debit card" have been moved to article 9
  - "concessionaire" and "UK GAAP2 have been moved to Schedule 2
  - "VAT" has been moved to Schedule 1
  - "electronic transmission" has been amended to reflect the position taken by the Secretary of State;
  - For "local highway authorities", the word 'Borough' has been inserted in the name of Trafford Council
  - In the definition of "the Undertaking", sub-paragraph (c) has been converted to a tailpiece
- Omission of ex-article 3(2)(j)
- Amendment of Article 4(2) to increase consultation and notification period from 21 to 28 days

- Addition of Articles 5 (4) and 5 (5) to allow for the transfer of the undertaking only after the completion of the improvement works and with express consent of the Secretary of State
- Amendment of Article 8 (1) to clarify that no toll increases will be charged until completion of the improvement works
- Amendment of Article 8 (7) (f) to provide that the rate of return must be reasonable
- Amendment to Article 10 (4) to ensure consent of the Secretary of State applies to Rixton and Warburton High Level Bridge should it become separate to the wider undertaking
- Amendment of Article 11 (1) to ensure protection of the canal on any transfer of the undertaking
- Amendment of Article 13 (1), ensuring that regulations made pursuant to section 173 of the 2000 Act will apply to the Applicant
- Addition of Article 18 to ensure regular financial reporting and transparency
- Addition of paragraph 1(6) to Part 1 of Schedule 1 to limit tolls charged to a maximum of two crossings per day
- Addition of paragraph 2(1)(b) to Part 1 of Schedule 1 to permit different level of tolls for different classes of vehicles
- Addition of paragraph 3(1)(b) to require notification by electronic transmission when a toll revision is proposed
- Addition of paragraphs 4 and 5 to Part 1 of Schedule 1, setting out the local resident discount scheme and its review
- Addition of Article 6 to Part 1 of Schedule 1 to confirm that no tolls will be charged after the improvement works begin until after the completion of the improvement works
- Amendment of Schedule 2 to ensure emergency, military public service vehicles are not excluded from the 'exempt vehicles' category due to their height or weight and to include additional categories of emergency vehicles
- Amendment of Schedule 2 to make the power for the Applicant to amend, remove, revise or change categories of exempt vehicles subject to Secretary of State consent and to remove its ability to restrict the use to which a vehicle must be put to qualify as exempt from tolls
- Amendment of Schedule 2 to require the Applicant to notify a vehicle's registered keeper of its intention to remove that vehicle from the exemptions register no less than 14 days before removing it
- Amendment of Schedule 2 to ensure obligations are placed on users to notify the undertaker of any specific incident, "as soon as reasonably practicable"
- Schedules 5 and 6 have been moved to articles 16 and 17 respectively
- Addition of Schedule 8 detailing the improvement works to be carried out including the installation of the automatic number plate recognition system.

71. The Secretary of State considers that none of these changes materially alter the effect of the Order.

**Distribution**

72. Copies of this letter are being sent to those who appeared at the Inquiry and to all statutory objectors whose objections were referred to the Inquiry under section 11(3) of the TWA 1992 but who did not appear.

**Challenges to the Decision**

73. The circumstances in which the Secretary of State's decision may be challenged are set out in the note at Annex A to this letter.

Yours sincerely,

Natasha Kopala

## **ANNEX A**

### **RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA**

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, because—

- it is not within the powers of the TWA; or
- any requirement imposed by or under the TWA has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within 3 working days of the date of this decision letter.

**A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking action.**