

1. **INTRODUCTION**

1.1 We have been asked by Merseytravel to provide a report on the historical context of the Queensway Tunnel and the Kingsway Tunnel (together, "**the Mersey Tunnels**"), particularly how they were originally governed and funded, including the specific legislation arrangements in place, and how the legislative mechanics have evolved over time, in order to assist Merseytravel with its annual toll setting process for FY 2016/2017.

1.2 This report is set out chronologically, and deals with the context, rationale and legislative framework for the following:

1.2.1 original construction of the Queensway Tunnel, which opened in 1934;

1.2.2 original construction of the Kingsway Tunnel, which opened in 1971;

1.2.3 the passing into law of the County of Merseyside Act 1980; and

1.2.4 the passing into law of the Mersey Tunnels Act 2004.

1.3 In light of the purpose of this report, we have opted to go into more detail on the last two elements, although we can expand on the earlier stages of the process if required.

2. **QUEENSWAY TUNNEL**

2.1 The Queensway Tunnel was conceived in the 1920s as a means of dealing with the increasing numbers of vehicles seeking to use the goods ferries from Liverpool to Birkenhead and Seacombe.

2.2 In 1922, Sir Archibald Salvidge tabled a motion before Liverpool City Council leading to the formation of a Co-ordination Committee of representatives of Liverpool City Council and the Boroughs of Birkenhead, Wallasey and Bootle, to enquire and report on the improvement of transport facilities by the provision of a tunnel or bridge across the Mersey. Sir Maurice Fitzmaurice and Sir Basil Mott were commissioned to consult with John Brodie (Liverpool's City Engineer) to report on the relative merits of such a bridge or tunnel and they were emphatically in favour of a tunnel.

2.3 The original intention had been that the four authorities represented on the Co-ordination Committee should all be parties to the undertaking. However, discussions which lasted throughout the spring of 1925 resulted in it becoming apparent that the crossing would likely link Liverpool and Birkenhead. As such, the Borough of Birkenhead and the City of Liverpool accepted the construction of the Mersey Tunnel as their joint responsibility.

2.4 Concurrent with these discussions had been the approaches to successive governments for financial assistance for the scheme. The first approach in May 1924, which was pursued when tramway services were still incorporated in the scheme, resulted in the offer from the government of one-third of the cost of the tunnel after deducting the estimated cost of the tramways. However, this offer was conditional upon the tunnel being a toll-free highway and was rejected by the Co-ordination Committee as being inadequate.

- 2.5 Later on in that year, the government presented a new cash offer, but again with the caveat that the tunnel must remain toll-free. This offer was more substantial but, again, was found to be impracticable and unacceptable.
- 2.6 A change of government in 1924 did not result in any change in the terms offered immediately, but in January 1925 the government announced that the capital contribution would be fixed, but permission was given to charge tolls for a period of 20 years, in addition to which there was the promise of a contribution towards the cost of the proposed tramway service. As a result of this, the Co-ordination Committee resolved unanimously to proceed with the scheme.
- 2.7 The acceptance of the financial proposals of January 1925 led to the promotion of the first Mersey Tunnel Bill, a private bill giving the initial necessary statutory authority to the Borough of Birkenhead and the City of Liverpool to construct and operate the scheme.
- 2.8 Opposition to the Bill came in the form of the Borough of Wallasey's claim to compensation for probable loss of revenue on the goods ferry traffic, and the Birkenhead Union Guardian's assertion that the tunnel should be rateable. Both claims were disallowed, but the Mersey Railway Company was successful in obtaining a protective provision governing the minimum tolls for public service vehicles and passengers. The Bill received the Royal Assent in August 1925 (**Mersey Tunnel Act 1925, c. cx**).
- 2.9 One of the provisions of the Act required the setting up of a statutory tunnel authority, and to comply with this provision the Mersey Tunnel Joint Committee was formed.
- 2.10 As a result of a revision of the plan for the Birkenhead entrances to the tunnel, the engineers were forced to reconsider their original cost estimates. As a result, the Ministry of Transport was approached for additional financial assistance. This was not forthcoming, but a second piece of legislation in 1927 (**Mersey Tunnel Act 1927, c. xciii**) was passed for the extension of the toll period to 25 years.
- 2.11 This Act served as the catalyst for proposals to further drastically alter the scheme design, which resulted in the re-siting of the entrances to the tunnel on both sides of the river. These alterations were embodied in the third Mersey Tunnel Act which was passed by Parliament in April 1928 (**Mersey Tunnel Act 1928, c. iii**).
- 2.12 At about this time the decision was taken that a tramway would not be installed but that the tunnel would be constructed in such a way that a lower roadway could be built at a later time.
- 2.13 Following an accident in the United States, the engineers opted to revisit the design of the scheme again. Deliberations lasted until February 1932 when it was announced that additional capital was needed, significantly increasing the estimate of the cost of the scheme.
- 2.14 Under the terms of the existing Acts, revenue charges arising out of this extra cost were to fall for the most part on the ratepayers of Liverpool, in view of the fact that Birkenhead's total liability was limited.
- 2.15 This resulted in public criticism and the Mersey Tunnel Joint Committee had to come up with a solution that safeguarded ratepayers from further financial burden.

- 2.16 A provision had been incorporated in the Mersey Tunnel Act 1925 which allowed for a new approach to the Minister of Transport in the event of any unforeseen problems arising which would appreciably increase the cost of the undertaking, as was the case. However, the Minister of Transport stated there was no scope for the government to help, due to limited national resources.
- 2.17 As such, the only option was to approach Parliament for a fourth time for powers to borrow the extra money, and for authority to extend further the period over which tolls could be charged from 25 to 40 years. A fourth Mersey Tunnel Bill was presented to Parliament and passed in 1933 (**Mersey Tunnel Act 1933, c. xxxix**).
- 2.18 The first Mersey Tunnel was opened to traffic in July 1934.
- 2.19 The overall aim of the Mersey Tunnel Acts 1925-1933 in respect of tolling was to minimise the burden on local rates - instead, the tolling would meet the operating costs and debt charges of the tunnel. However, initial use of the Queensway Tunnel was below expectations - local rates were required to subsidise the tunnel's costs until 1946.
- 2.20 From 1946, however, the tunnel was used extensively and funds accumulated rapidly.
- 2.21 Further Mersey Tunnel Acts were passed in 1949 (**Mersey Tunnel Act 1949, c. xxxii**), 1955 (**Mersey Tunnel Act 1955, c. vii**) and 1961 (**Mersey Tunnel Act 1961, c. vii**) in respect of general financial amendments to the regime.
3. **KINGSWAY TUNNEL**
- 3.1 By 1959, the number of vehicles using the tunnel each year had increased to eleven million and severe traffic congestion was occurring during the morning and evening peak periods. This was partly due to low tolls.
- 3.2 By the late 1950s it was evident that the growing traffic demand would require a substantial increase in capacity and in 1958 the Mersey Tunnel Joint Committee convened a Confederation of Merseyside authorities to give consideration to the problem.
- 3.3 The results of commissioned surveys carried out confirmed the need for a further Mersey road crossing. Various bridge and tunnel schemes were considered and a second tunnel was favoured, again paid for by tolls.
- 3.4 Parliamentary powers were granted in 1965 for the construction of a new two lane tunnel between Liverpool and Wallasey approximately one mile downstream of the Queensway Tunnel (**Mersey Tunnel (Liverpool-Wallasey) Act 1965, c. xl**). This Act also re-constituted the Mersey Tunnel Joint Committee (which was granted the powers to construct the tunnel) so as to afford representation to the Wallasey Corporation.
- 3.5 In 1967, a further Private Bill was promoted for the construction of a duplicate two-lane tunnel to be constructed alongside the first Kingsway Tunnel and approval for this was given in 1968 (**Mersey Tunnel (Liverpool-Wallasey) Act 1968, c. xii**), with a further related Act passed in 1972 (**Mersey Tunnel Act 1972 c. xvi**).
- 3.6 Construction commenced immediately. The first tunnel was opened to traffic in 1971 and the second in 1974.

- 3.7 Reflecting increased debt charges on borrowing to finance construction costs of the Kingsway Tunnel, the Mersey Tunnels as a whole became loss-making in 1968.
- 3.8 These issues were further exacerbated in the late 1960s and 1970s as a result of adverse economic factors. High inflation pushed up construction costs of the Kingsway Tunnel and general operating costs. Interest rate increases also adversely affected the costs of borrowing. This all took place in the context of static travel levels. As such, the volume of losses incurred by the Mersey Tunnels increased significantly.
- 3.9 Government assistance was sought in the 1970s but was rejected on the basis that tolls could and should be increased to overcome the problem.
4. **COUNTY OF MERSEYSIDE ACT 1980**
- 4.1 Merseyside County Council, when it was formed in 1974 pursuant to the Local Government Act 1972, took over the responsibility of running the tunnels from the Joint Committee. The tunnels were run as part of the County Engineer's Department.
- 4.2 When Merseyside County Council was abolished in 1986, the Mersey Tunnels were transferred into the administration of Merseyside Passenger Transport Authority, pursuant to the Mersey Tunnels Order 1986.
- 4.3 Under section 262 of the Local Government Act 1972, local Acts resulting from bills promoted by local authorities ceased to have effect after a prescribed time. As such, those local Acts that were in effect prior to this had to effectively be re-promoted in order to ensure the continuance of the relevant statutory powers. This section applied to the various Mersey Tunnel Acts. As a result, in 1980, the relevant provisions relating to the tunnels (amongst many other matters) were consolidated and revised under the **County of Merseyside Act 1980 (c. x)**. This Act determined how the tunnels were operated and funded and toll charges determined.
- 4.4 The only substantive debates on the Bill for the 1980 Act on the floor of the House of Lords were on Second Reading and on Report. However, these debates did not consider the provisions dealing with the tunnels, as they were unopposed. As such, the House authorities do not have any record of their consideration in Committee. The remaining stages of the Bill were taken without debate.
- 4.5 The tunnels provisions were only mentioned in passing in the Second Reading debate in the House of Commons. As with the Lords, the provisions were unopposed so there is no record of their consideration in Committee. In the Commons' proceedings on consideration of the Committee's report, a new clause was moved that would abolish tolls but it was presented more of a position of principle, rather than a realistic proposal. This was defeated on the basis that financial assistance was required to operate the Mersey Tunnels.
- 4.6 One of the key changes made by the Act was in relation to the original provision for tolls to cease when the construction costs were paid off. This was changed so that tolls would remain but would be reduced so that they covered only running costs.

- 4.7 Key features of the 1980 Act were:
- Section 85(1) - power to maintain the tunnels
- 4.8 "Subject to the provisions of this Part, the county council may continue and maintain the authorised works..."
- Section 91(1) - power to take tolls
- 4.9 "The county council may continue to demand, take and recover the tolls..."
- Section 92(1) - power to apply to revise tolls and for the tolls to be revised
- 4.10 This has four important considerations as part of the process: consultation with the district councils; regard to three matters which are set out in 92(3), namely the financial position of the tunnels, other matters of a transportation nature and other matters of a social nature; the Secretary of State needed to confirm the order for the revision of tolls (92(2)); and a right for anyone to object to a toll rise and, in that an event, a public inquiry had to be held (92(8)(d)).
- Section 99(1) - limited purposes to which tolls may be applied
- 4.11 This set out the only purposes on which the money raised by the tolls could be spent.
- Section 99(2) - requirement to reduce tolls
- 4.12 This contained a requirement to reduce the tolls simply to a maintenance/operational level once the debt had been paid off.
- Subsequent developments
- 4.13 In 1992, following a public inquiry and subsequent approval from the Secretary of State, Merseytravel was given the power to double the tolls from multiples of 60p to multiples of £1.20 to ensure the tunnels could be financially self sufficient. However, Merseytravel decided to discount the rise and charge tolls only at multiples of £1.00 because of the potential impact of the authorised increase on the then fragile local economy and coin handling difficulties. The rise in tolls resulted in the tunnels' finances stabilising for the first time since 1968, with income sufficient to cover operating costs, debt charges and capital refurbishment costs.
- 4.14 Tolls remained at this level until the end of November 1999, when they were increased by removing these discounts for cash payers but partially retaining them for pre-paying "Fast Tag" users. This was specifically to raise funds for an accelerated programme of structural renewal and refurbishment in order to protect the tunnels' staff and users and to respond to increasing and more stringent health and safety requirements. Construction work of this nature became increasingly more difficult to arrange and consequently more expensive to undertake as traffic growth patterns altered. This increase exhausted the existing statutory authority regarding toll levels.
- 4.15 In 1995, the Department of Transport and the Welsh Office consulted on the regulation of 17 statutory tolled estuarial and river crossings in England and Wales (including the tunnels). The consultation paper stated that there was a need to change the way in which a number of tolled undertakings had to proceed when needing to revise their tolls. The paper considered that the procedures set out in the

County of Merseyside Act were "costly, cumbersome and time-consuming". It was also felt that the duties imposed on the Secretary of State by such provisions were difficult to discharge and the criteria that applied were difficult to administer. Furthermore, the paper considered that the present arrangements tended to deter efficient operation and investment. The consultation paper set out the following options for change:

- 4.15.1 continued but modified regulation - involving amendment to statutory provisions but largely retaining existing procedures;
 - 4.15.2 partial deregulation - potentially permitting operators to increase tolls using an RPI-based formula, against a revised statutory criteria with the right to object restricted to local authorities, businesses and user groups; and
 - 4.15.3 full deregulation - allowing operators to charge whatever tolls they thought fit, but removing any statutory monopoly status.
- 4.16 Merseytravel consulted widely on these proposals in 1995. The majority of those who responded accepted the need for change and generally favoured the option of partial deregulation. Accordingly, Merseytravel expressed its preference for partial deregulation in its response to the Department. No further pronouncements were made by the Department or by the government at this time, however.

5. **MERSEY TUNNELS ACT 2004**

- 5.1 In the aftermath of the consultation process mentioned above, Merseytravel was of the opinion that the toll revision procedure in the County of Merseyside Act 1980 was complex, lengthy, costly to administer and deficit-driven in nature. In practice, it meant operating losses had to be incurred before tolls could be increased. Toll levels consistently lagged behind inflationary increases in costs, i.e. the Retail Prices Index. These deficits needed to be funded in the meantime through a levy on the local district councils, as they were between 1988 and 1992 when a total of £28 million had to be borrowed in this way to cover the tunnels' operating losses.
- 5.2 Further, the previous five toll increases had all involved public inquiries, bringing with them the associated administrative burdens and costs.
- 5.3 The procedure also resulted in significant periodic increases in order to take into account inflation since the previous increase. Even inflationary increases were subject to the toll revision procedure and any objection would trigger a public inquiry - a potentially lengthy and onerous process. Any critical costs would have to be picked up by levies on the local authorities.
- 5.4 Indeed, the absence of annual indexation of tolls in the past led to a decrease in the real cost of tolls. As a consequence, when tolls were increased in November 1999 by up to 20% there was only a very slight and temporary reduction in tunnels' usage.
- 5.5 In 2001/2002, refurbishment costs of the Mersey Tunnels were growing, and the existing toll revision procedure did not allow for the tolls to be increased to cover these.
- 5.6 In this context, Merseytravel deposited a Private Bill in Parliament in November 2001 and it received its first reading in the House of Commons in January 2002. (A previous Private Bill deposited in November 1999 was withdrawn by Merseytravel in

2000 because of the failure to find time for it to be debated on Second Reading in the House of Commons.)

- 5.7 The Bill sought to amend the County of Merseyside Act 1980 to allow more flexibility in the toll setting process. The amendments provided for the following fundamental points.

Index-linking of tolls

- 5.8 The Bill sought to simplify the method of revising tolls by linking them almost automatically to the retail prices index. The starting point for toll levels and the classification of vehicles would be those currently in place under the 1992 Order mentioned in paragraph 4.2 above. In place of the current arrangements, Merseytravel would make an annual order recalculating the level of tolls with reference to the underlying change in the retail prices index. A toll rise would only be triggered if the resulting amount was sufficiently different to the then existing toll.
- 5.9 It was calculated that at 2.5% annual inflation (HM Treasury's 10 year target), the RPI toll increase trigger would be likely to result in toll changes for most users about every 3 years, of 10 pence per journey, which would replicate the general pattern of toll rises which had occurred over the previous 30 years.
- 5.10 The Bill's index-linking provisions closely followed the precedents for measures of its kind, e.g. the Severn Bridges Act 1992, the Dartford-Thurrock Crossing Act 1988 and the A282 Trunk Road (Dartford-Thurrock Crossing Charging Scheme) Order 2002.
- 5.11 However, the Bill did require Merseytravel's Members to review the prospective social and economic impact of inflationary toll rises before implementation and to exercise Merseytravel's discounting powers if they considered that it was necessary to do so in order to temper the economic or social effects of an inflationary increase in tolls.

Real terms increases in tolls

- 5.12 The Bill also set out a procedure whereby Merseytravel could apply to the Secretary of State for an increase in tolls above the level of inflation. This anticipated exceptional circumstances such as a natural disaster, additional taxation or other circumstances external to the tunnels. Such an increase could only be made at Merseytravel's request and by order of the Secretary of State. Before an order could be made, anyone with a substantial interest could object to the increase. The Secretary of State would then have the power to hold a public inquiry.
- 5.13 The Bill also widened the matters that the Secretary of State could take into consideration when determining whether to allow an increase in tolls in real terms, by requiring him or her to have regard to relevant environmental matters as well as the financial position and future prospects of the tunnels and other transportation and social matters considered to be relevant.

Investment of surplus toll income

- 5.14 The Bill widened the purposes for which the money raised from tolls could be applied. Merseytravel was given the power to use surplus toll income (i.e. funds not required for the operation, maintenance and refurbishment of the tunnels) to improve public transport in Merseyside and so to fund projects in the Merseyside local transport plan earlier than might otherwise have been the case.

Removing the requirement to reduce tolls

- 5.15 As noted above, tolls could only be used for a number of stipulated purposes and once the tunnels' debts had been repaid, tolls had to be reduced so as only to cover ongoing operating costs. The Bill sought to remove this requirement given the proposals in respect of surplus toll income above, together with the risk of increased traffic growth in the event of lower tolls.

Rationale for and effects of the changes

- 5.16 In summary, Merseytravel submitted to Parliament that all of these changes would have the following effects:
- 5.16.1 tolls would keep up with inflation, enabling the tunnels to be self-funding for the foreseeable future;
 - 5.16.2 tolls would not decrease in real terms, meaning they would manage traffic growth to a certain extent (as motoring would not, in effect, get cheaper), the increase of which was of real concern to Merseytravel given the tunnels' limited capacities;
 - 5.16.3 funds would be available for future safety works;
 - 5.16.4 surplus toll income would be invested in public transport following the funding of necessary tunnels improvement works – as such, public transport projects could be brought forward sooner than would otherwise be the case;
 - 5.16.5 increased opportunities to invest in public transport would help to achieve social inclusion and benefit Merseyside; and
 - 5.16.6 regular toll increases would remove the delay between the need for an increase and the increase actually taking effect – this would result in there being no need for a levy on local authorities to meet debt charges and operating expenses.
- 5.17 The Bill was considered at both an Opposed and Unopposed Bill Committee in the House of Commons and an Opposed Bill Committee in the House of Lords during the course of 2003 and 2004. The proceedings concentrated predominantly on the matters set out above with the rationale and effects of the changes also set out above relied upon by Merseytravel throughout the process.
- 5.18 As it was, the Bill progressed through the Parliamentary process relatively unscathed - the arguments put forward being generally accepted by Parliament.
- 5.19 The Bill received the Royal Assent on 1st July 2004 (**Mersey Tunnels Act 2004 c. ii**), and the County of Merseyside Act 1980 as amended by that Act forms the current legislative framework within which Merseytravel operates the Mersey Tunnels.

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