

REQUEST FOR MAYORAL DECISION – MD2532

Title: Silvertown Tunnel: Transfer of Transport for London's Functions

Executive Summary:

Under the Silvertown Tunnel Order 2018 (the "Order"), the Secretary of State for Transport granted development consent for the Silvertown Tunnel. The Order grants various powers, obligations and other functions to Transport for London ("TfL") including powers to compulsorily acquire land, to construct and operate the Silvertown Tunnel and to impose charges and penalties.

Article 59(1) of the Order permits TfL to enter into agreements to, among other things, transfer its right to construct, maintain, use or operate the Silvertown Tunnel. Article 59(1) of the Order also permits TfL to provide for a third party to exercise or be responsible for any functions of TfL relevant to any agreement entered into under that provision, including any of its functions under the Order, either exclusively or concurrently with TfL or any other person. A transfer of TfL's functions under article 59(1) of the Order requires the consent of the Mayor of London.

The Silvertown Tunnel will be constructed and subsequently operated and maintained by a third party, Riverlinx Limited ("Riverlinx"), under the terms of a Project Agreement made under article 59(1). The Project Agreement contains a transfer of various TfL functions to Riverlinx.

This Mayoral Decision seeks the Mayor's consent for the purposes of article 59(1) of the Order for a transfer of certain specified functions (including functions under the Order) to enable Riverlinx to meet its obligations under the Project Agreement.

Decision:

In accordance with the provisions of article 59(1) of the Silvertown Tunnel Order 2018, the Mayor consents to the transfer of TfL's functions to Riverlinx as described in this paper by signing the Mayoral Consent attached as Appendix A.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

22/10/19

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

1.1. The Silvertown Tunnel proposals were developed to address the significant issues of traffic congestion and unreliability at the Blackwall Tunnel and the consequential effects these have on travel, the environment, the economy, public health and growth across the wider east and south east London area. The main issues are:

- the Blackwall Tunnel is one of the most severely congested roads in London. In the peak periods, queues routinely stretch back up to two miles, adding around 20 minutes to journey times (it is estimated that some one million hours are wasted each year in queuing for the Blackwall Tunnel, equating to an equivalent cost of c.£10m of people's time);
- journey times for trips through the tunnel are more unpredictable than anywhere else on the Transport for London Road Network (TLRN) due to a significant number of tunnel closures each year (far more than on comparable tunnels, even accounting for its heavy usage). In 2018/19 alone the tunnel was closed over 700 times. Many of these closures have significant ramifications for the performance of the wider road network across east and south east London;
- the current restricted height clearances in the northbound Blackwall Tunnel and the unreliable journey times mean that only one single decker bus service, the 108, is available for cross river bus connections between east and south east London;
- in the event of prolonged closures, rerouted drivers or bus passengers are forced to distant crossing points, which are themselves lacking in capacity and often along unsuitable routes, causing widespread disruption;
- the constant congestion and regular incidents lead to miles of standing traffic with associated impacts on air quality and public health. The areas around the Blackwall Tunnel have some of the worst air quality in London; and
- the area surrounding the Blackwall Tunnel is subject to enormous change with major employment and population growth taking place across the Isle of Dogs, Royal Docks, Greenwich Peninsula and Lea Valley. At present the Blackwall Tunnel provides the only strategic crossing of the river by road that serves these development areas (due to the physical and design restrictions of the Rotherhithe Tunnel and Woolwich Ferry). With the scale of growth taking place, there will be increasing pressure placed on the Blackwall Tunnel, which will exacerbate the issues identified above.

1.2. The Silvertown Tunnel Project consists of a twin bore road tunnel providing a new connection between the Greenwich Peninsula and the Royal Docks. It will:

- significantly contribute to eliminating congestion at the Blackwall Tunnel;
- enable the provision of new cross river bus links, transforming bus services and significantly increasing the proportion of cross river trips made by public transport;
- significantly reduce the number of unplanned closures at Blackwall, in particular closures caused by vehicles which are too tall for the tunnel;
- ensure the cross river road network is more resilient to incidents at Blackwall by providing a nearby alternative route;
- reduce the environmental impact of traffic congestion on some of London's most polluted roads; and
- support population and economic growth by enabling more reliable journeys, improving access to new markets and new homes and keeping traffic moving in east and south east London.

- 1.3. To ensure that traffic levels are managed and that the benefits of the Scheme are secured for the long term, a user charge is proposed at both the Silvertown and Blackwall tunnels. The user charge is fundamental to the case for the scheme as a powerful means of managing traffic demand. It also provides long term funding for the scheme with the costs of the tunnel privately financed by Riverlinx and paid back by TfL over 25 years. This means that the scheme is not competing for TfL funding with other transport priorities.
- 1.4. The Secretary of State for Transport designated the Scheme a Nationally Significant Infrastructure Project in 2012 and granted a Development Consent Order (The Silvertown Tunnel Order 2018, or "Order") on 10 May 2018 giving TfL the powers to construct and operate the Silvertown Tunnel, as well as introduce user charging at both the Silvertown and Blackwall Tunnels. The DCO documents are available publicly at: <https://infrastructure.planninginspectorate.gov.uk/projects/london/silvertown-tunnel/>. The main works will be delivered through an agreement (the "Project Agreement") with a private sector special purpose vehicle, which will be responsible for raising the finance, designing, building and maintaining the Silvertown Tunnel including the operation of associated equipment for a 25 year period following tunnel opening.

Procurement

- 1.5. Following a competitive process conducted in accordance with the Public Contracts Regulations 2015, TfL announced the Riverlinx consortium as its preferred bidder to deliver the Silvertown Tunnel in June 2019. The Riverlinx consortium comprises Aberdeen European Infrastructure GP III Ltd ("Aberdeen"), BAM PPP PGGM Infrastructure Coöperatie U.A ("BAM"), Cintra Global SE ("Cintra"), Macquarie Corporate Holdings Pty Limited ("Macquarie") and SK Engineering and Construction ("SK"). TfL and Riverlinx Limited ("Riverlinx"), the special purpose vehicle set up by the consortium, intend to execute the Project Agreement and related documentation on or around 29 October 2019.
- 1.6. In August 2019, the reserve bidder, Silver Thames Connect (STC), commenced court proceedings claiming errors in the procurement process. The commencement of court proceedings automatically resulted in a legal suspension of TfL's right to award the contract to Riverlinx. STC subsequently consented to TfL's application to court to lift the automatic suspension on award of the contract on 2 October 2019. The claim is ongoing however, and TfL continues to discuss the outstanding issues relating to the challenges made by STC and will continue to robustly defend the approach against a claim for damages.

Transfer of DCO Functions to Riverlinx

- 1.7. Under the terms of the Project Agreement TfL proposes to transfer certain functions of the Order (including functions which fall under the definition of "compulsory acquisition or temporary possession function", namely those under articles 28 and 29 of the Order), and other relevant functions of TfL, to Riverlinx to enable it to deliver the Silvertown Tunnel under the Project Agreement.
- 1.8. Article 59(1) of the Order empowers TfL to transfer these functions, provided it has the consent of the Mayor of London.
- 1.9. Under article 59(7) the Mayor of London must not give consent under article 59 (1) to any proposal for the transfer of any compulsory acquisition or temporary possession function unless the Secretary of State has certified in writing that the Secretary of State is satisfied that the person proposed to exercise or be responsible for that function has sufficient resources to discharge all associated compensation liabilities. On 14 August 2019 the Secretary of State certified in writing that he was satisfied Riverlinx would have sufficient resources to discharge compensation liabilities associated with the obligations contained in articles 28 and 29 of the Order. This certification is attached as Annex 2 to Appendix A.
- 1.10. The relevant functions proposed to be transferred to Riverlinx are set out in Schedule 5 of the unsigned Project Agreement ("the Functions"). Schedule 5 is attached in full as Annex 1 to Appendix A. Schedule 5 sets out in detail both the functions under the Order which are to be retained by TfL

and those which are to be transferred to Riverlinx; and the scope of the transfer (e.g. full or limited). Schedule 5 also sets out functions of TfL under the Highways Act 1980, functions under the New Roads and Street Works Act 1991 and various other miscellaneous functions to be contracted out to Riverlinx. The functions to be transferred broadly encompass powers to acquire and possess land, undertake construction activities with associated obligations to mitigate impacts, and carry out operational/maintenance activities such as removing broken down vehicles. All of these powers are required in order for Riverlinx to perform its obligations under the Project Agreement to design, build and maintain the Silvertown Tunnel.

- 1.11. Part 2 of this Mayoral Decision includes financial information about Riverlinx and the consortium members to demonstrate that Riverlinx will have sufficient resources to discharge all compensation liabilities arising from the Relevant Functions.

2. Objectives and expected outcomes

- 2.1. The Mayor's consent will allow for the transfer of functions from TfL to Riverlinx, enabling Riverlinx to deliver the Silvertown Tunnel under the Project Agreement. Delivering the Silvertown Tunnel, with an associated user charge, will effectively eliminate congestion around the Blackwall Tunnel, deliver an overall improvement in air quality and allow Transport for London to run frequent and reliable cross-river bus services in this part of London.

3. Equality comments

- 3.1. Pursuant to the requirements of section 149 of the Equality Act 2010, the Mayor must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010, and to advance equality of opportunity between persons who share a relevant protected characteristic (race, disability, gender, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2. A Health and Equalities Impact Assessment was undertaken by TfL for the Silvertown Tunnel scheme to ensure that the equalities impacts of the scheme have been appropriately considered and mitigated. This flows through the DCO and Project Agreement to ensure Riverlinx will perform these functions with appropriate consideration for equalities impacts.
- 3.3. Following consideration of the above requirements as they relate to the subject matter of the decision requested of the Mayor in this report, officers have concluded that there are no equalities implications relating to the proposed decision.

4. Other considerations

Link to Mayoral strategies and priorities

- 4.1. Under Proposal 93 of the Mayor's Transport Strategy the Mayor supports the construction and operation of the Silvertown Tunnel, together with the introduction of user charges on the Blackwall and Silvertown tunnels (once the latter is opened), to address the problems of traffic congestion and associated air pollution, frequent closures and consequential delays, and the lack of network resilience and reliability at the Blackwall Crossing.
- 4.2. By addressing significant traffic congestion and associated air pollution, particularly in the vicinity of the Blackwall tunnel, the scheme supports a central aim of the London Environment Strategy for London to have the best quality air of any major world city by 2050.

Key Risks

- 4.3. If the Mayor does not provide consent to the transfer of functions then the contract award would be delayed. This would directly delay the completion of the Silvertown Tunnel and realisation of the scheme's benefits. If the procurement process is delayed beyond 20 November 2019, the committed finance package will no longer be valid and will need to be renegotiated, adding significant programme delay and potentially increased costs.
- 4.4. In consenting to the transfer of functions, the Mayor is approving a third party carrying out a number of statutory functions of TfL as authorised under the Silvertown Tunnel Order, Highways Act and other legislation. This presents risks in terms of safety, operational efficiency and reputation to TfL and the Mayor should Riverlinx fail to discharge these functions appropriately. TfL has mitigated this risk by providing a clear set of objectives, requirements, and remedies in the contract to ensure TfL can provide appropriate oversight to Riverlinx. TfL has a dedicated project team that will actively monitor Riverlinx's progress against these objectives and requirements. Governance arrangements are being finalised, but TfL will have representation at all appropriate levels of the decision-making structure, providing visibility and influence to ensure appropriate oversight and control.
- 4.5. None of the officers involved in the drafting and clearing of this decision form has declared any conflicts of interest.

Consultations and Impact Assessments

- 4.6. The scheme has been subject to extensive consultation to confirm a preferred option, and the details of its development. This includes four formal public consultations:
- 2012: Proposal of a new package of crossings for east London which included Silvertown Tunnel
 - 2013: Proposals for new river crossings including further details on the Silvertown Tunnel scheme and how it might be financed
 - 2014: Detailed proposals for the Silvertown Tunnel scheme
 - 2015: Statutory consultation on proposals to implement the Silvertown Tunnel scheme
- 4.7. Furthermore, the scheme was subject to extensive assessment work as part of the DCO process including a Transport Assessment, Environmental Impact Assessment covering topics such as air quality, an Energy and Carbon Assessment considering the construction and operational carbon impacts, and a Health and Equalities Impact Assessment. This was subject to extensive scrutiny through the DCO process including a six month public examination.

5. Financial comments

- 5.1. There are no financial impacts of this decision on the GLA.
- 5.2. By entering into the Project Agreement, TfL will be committing to make availability payments over a 25 year period for the construction, financing, operating and maintenance costs of the scheme. Availability payments are linked to the provision of a safe, reliable and functional asset and will only be payable once the Silvertown Tunnel is open.
- 5.3. The Order gives TfL powers to charge users of the Silvertown and Blackwall Tunnels. The current income forecast is expected to meet the costs of availability payments over the 25 year operational period. TfL will assume revenue risk and would therefore be required to fund any shortfall (or would benefit from any surplus) between user charging income and availability payments from the TfL Business Plan. After the 25 year period, the project is expected to provide a surplus to the TfL

Business Plan. The costs and forecasts have been reported to TfL's Programme and Investment Committee which granted the required authority to proceed with entering into the Project Agreement with Riverlinx.

6. Legal comments

- 6.1. Article 59(1) of the Order provides that TfL may, regardless of any provision in any enactment, enter into agreements—

“(a) to transfer, charge or otherwise dispose of to another person (“the transferee”) any interest of TfL in the authorised development or TfL's right to construct, maintain, use or operate the authorised development; or

(b) to grant to another person (“the grantee”) for a period agreed between TfL and the grantee any interest of TfL in the authorised development or TfL's right to construct, maintain, use or operate the authorised development; and

(c) that are connected with or consequential on any agreement entered into under sub-paragraph (a) or (b),

and, with the consent of the Mayor of London, TfL may provide for the transferee, the grantee or another person to exercise or be responsible for any functions of TfL relevant to those agreements, including any of its functions under this Order, either exclusively or concurrently with TfL or any other person.”

- 6.2. Article 59(6) of the Order provides that “Subject to paragraph (7), any consent given by the Mayor of London under paragraph (1) may be given subject to such reasonable terms and conditions as the Mayor considers appropriate in the circumstances.”
- 6.3. Article 59(7) of the Order provides that “The Mayor of London must not give consent under paragraph (1) to any proposal for the transfer of any compulsory acquisition or temporary possession function unless the Secretary of State has certified in writing that the Secretary of State is satisfied that the person proposed to exercise or be responsible for that function has sufficient resources to discharge all associated compensation liabilities.”
- 6.4. The consent requested of the Mayor in this paper is consistent with the requirements of that Article 59 and, specifically, the requirements of article 59(7) are met as described in paragraph 1.9 above.

7. Planned delivery approach and next steps

- 7.1. TfL will enter into the Project Agreement with Riverlinx on or around 29 October 2019.

Appendices and supporting papers:

Appendix A – Mayoral Consent

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 – Deferral. Is the publication of Part 1 of this approval to be deferred? YES. The contract is due to be signed on or around 29 October. This MD should not be published in advance of that date.

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

The Part 2 paper contains commercially sensitive financial information concerning Riverlinx and the members of the Riverlinx consortium and its disclosure would be prejudicial to their commercial interests. Accordingly, it is considered that the information in Part 2 is exempt from publication in reliance upon the exclusions contained in section 43(2) (commercial interests) of the Freedom of Information Act and because the public interest in withholding the information outweighs the public interest in releasing it.

This decision will be reviewed on 1 November 2020.

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Tim Aldham has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Debbie Jackson has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Heidi Alexander has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 21 October 2019.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. D. Allcock

Date

21.10.19

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

pp N. Brown

Date

22-10-19

