

**BEFORE THE PLANNING INSPECTORATE (SECRETARY OF STATE FOR TRANSPORT)**

**IN AN APPLICATION DATED FEBRUARY 2020 – PROPOSED REVISION OF TOLLS**

- THE TRANSPORT CHARGES ETC (MISCELLANEOUS PROVISIONS) ACT 1954
- THE BOURNEMOUTH-SWANAGE MOTOR ROAD AND FERRY CO ACTS 1923 & 1986

**BETWEEN**

THE BOURNEMOUTH-SWANAGE MOTOR ROAD AND FERRY CO

**Applicant**

and

SWANAGE TOWN COUNCIL

DORSET COUNCIL

BOURNEMOUTH CHRISTCHURCH & POOLE COUNCIL

**Respondents**

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**RESPONDENTS' LEGAL NOTE IN REPOSE TO:**

**WHETHER THE FERRY RESERVE FUND CAN LAWFULLY BE RINGFENCED;**

**THE REQUIREMENT FOR FERRY COMPANY ACCOUNTS TO BE**

**SCRUTINISED BY SoS TRANSPORT**

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*References to bundle volume (1, 2 or Supplementary Bundle 'sb') and page numbers appear in square brackets, eg: [1/74].*

**Preliminary**

1 This Note is provided pursuant to the Directions made by Inspector Vyes at the conclusion of the remote hearing stage of this inquiry on 7 January 2021. It responds to two Notes provided by the Company to answer specific requests made by Inspector Vyse during the inquiry hearing (5 to 7 January 2021). Those Notes are:

- a) *Legal note as to whether the Ferry Reserve Fund can lawfully be 'ringfenced' from the Ferry Company and, in the case of its insolvency, liquidators, dated 6 January 2021;*

- b) *Legal note on the requirement for the ferry company accounts to be scrutinised on an annual basis by the SoS for Transport and does the SoS have the right to reduce the tolls if he so wished, dated 6 January 2021.*

### **Ringfencing the Ferry Replacement Reserve**

- 2 The Consortium has considered the Note provided by the Company and does not disagree with its explanation of the legal principles.
- 3 In practice, the application of those principles would properly be a matter for analysis and argument on any set of facts that might arise in the future if the Company were to attempt to ringfence the FRR. Currently the Company does not intend to deploy any of the suggested ringfencing strategies proposed by the objectors, so that it seems to the Consortium that further analysis is not required.
- 4 The Consortium notes the point made by the Company at paragraph 17 of its Note, that if such a ringfencing mechanism existed, it would be widely used in commercial practice. Further, it would only delay conclusion of the inquiry and increase expense if the Consortium were to propose any alternative ringfencing structures at this stage.

### **Accounts and the Secretary of State's powers**

- 5 The Company is correct to direct the Inspector's attention to s.35 of the 1923 Act (as amended) for the obligation to furnish the Secretary of State with the Company's accounts on an approximately annual basis.
- 6 The Minister does have the power to reduce the toll charges, pursuant to s.6 of the 1954 Act [sb/61]. An application under s.6 is 'for the **revision** of any of the charges', which is apt to include reductions. This is expressly provided for in s.6(ii): 'on any application ... for an increase or a decrease'. She may therefore reduce the charges if satisfied that it is proper to do so.

- 7 However, the power to vary charges given by s.6 of the 1954 Act is triggered only by an application ‘made **to** the Minister’: s.6(2). This is reinforced by the opening words of s.6(3) which speak of ‘making any order on the application under this section’. The Minister cannot initiate a fare revision.
- 8 There is therefore no power for the Minister/Secretary of State unilaterally and of her own accord to reduce toll charge.
- 9 Before making any revision, the Minister must consult with the Company and any other persons who appear to her to have a substantial interest (s.6(2)(i)), and need only hold an inquiry if she receives objections: s.6(4) [sb/62]. A reduction could therefore be made without an inquiry if, following statutory notice of an application, there were no objections. This is quite conceivable: the only likely objector would be the Company, so that an application to reduce tolls by the Company might well be allowed by the Minister without an inquiry. However, the Consortium reiterates that the Minister has no power or obligation to initiate a reduction of toll charges.

JOSHUA DUBIN

14<sup>th</sup> January 2021

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**THE BOURNEMOUTH-SWANAGE MOTOR ROAD  
AND FERRY CO LTD**

**Applicant**

**and**

**(1) SWANAGE TOWN COUNCIL  
(2) DORSET COUNCIL  
(3) BOURNEMOUTH CHRISTCHURCH &  
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