

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2398

Title: Crossrail further funding update and related matters

Executive Summary:

The Crossrail project is jointly sponsored by the Department for Transport (DfT) and Transport for London (TfL), with support from London's business community. Once operational it will be known as the Elizabeth Line, connecting stations such as Paddington to Canary Wharf in only 17 minutes, transforming how Londoners and visitors move across the capital. The new railway will bring an extra 1.5 million people to within 45 minutes of central London and more than 200 million passengers are expected to use it every year. Crossrail Limited (CRL) announced on 31 August 2018 that the central section is now planned to open in autumn 2019 and not December 2018. CRL also exceeded its funding envelope earlier this year. The Mayor and TfL's focus remains on ensuring CRL complete their work in order to get the Elizabeth line safely and reliably into passenger service at the earliest opportunity.

Under MD2383, the Mayor approved a capital grant of £350m to TfL for the Crossrail project as a short-term measure and that the GLA and TfL would continue to work with the Government to finalise a longer-term funding solution for the Crossrail project as a matter of urgency. This Mayoral Decision Form sets out a proposal for a longer-term funding solution for the completion of the Crossrail project that will supersede the arrangements approved under MD2383 (so that £350m of GLA borrowing and grant to TfL will not now proceed on a standalone basis and that it does not form part of the longer-term solution described in this paper).

Decision:

Subject to TfL receiving a letter from HM Government setting out the proposed funding and financing arrangements, the Mayor:

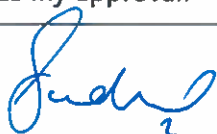
- i. Agrees to the proposed long-term capital funding and financing solution for the completion of the Crossrail project set out in this Form and notes the GLA Group annual budget planning process will take account of how matters are developing and how monies borrowed will be repaid as they fall due;
- ii. Authorises the payment of up to £1.4 billion by GLA to TfL by means of capital grant under section 120 of the Greater London Authority Act 1999 as part of that capital funding and financing solution for the project's completion;
- iii. Notes the likely implications of the proposed funding solution as set out in this Form;
- iv. Delegates to the Executive Director of Resources authority to negotiate, execute and complete all documentation he considers necessary or expedient for the purposes of implementing the capital funding and financing solution for the completion of the Crossrail project set out in this Form; and
- v. Notes that the funding arrangements set out in this MD supersede those in the MD2383.

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:

7/12/18

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

Decision required – supporting report

1. Introduction and background

- 1.1. The Crossrail project is jointly sponsored by the Department for Transport (DfT) and Transport for London (TfL), with support from London's business community. Once operational it will be known as the Elizabeth Line, connecting stations such as Paddington to Canary Wharf in only 17 minutes, transforming how Londoners and visitors move across the capital. The new railway will bring an extra 1.5 million people to within 45 minutes of central London and more than 200 million passengers are expected to use it every year.
- 1.2. The Mayor and TfL's focus remains on ensuring supporting Crossrail Limited (CRL) as they finalise the final infrastructure and testing to complete their work in order to get the Elizabeth line safely and reliably into passenger service at the earliest opportunity. CRL is the "nominated undertaker" for the purposes of the Crossrail Act 2008¹ and is a wholly owned subsidiary of TfL.
- 1.3. CRL exceeded its funding envelope earlier this year. In July 2018, DfT confirmed £590m of additional funding was being made available for the project, with £300m to CRL and £290m for Network Rail works. The £300m for CRL was jointly funded between the Government and TfL, with each contributing £150m. These contributions were paid over between late September and October 2018, as approved by the TfL Finance Committee under delegated authority on 27 September 2018.
- 1.4. CRL announced on 31 August 2018 that the central section is planned to now open in autumn 2019 and not December 2018 as previously stated.
- 1.5. In response to the announcement by CRL of a delay in the opening of the central section of Crossrail, TfL has commissioned, jointly with DfT, an independent review of CRL's financial and commercial processes and forecasts and a separate review of CRL governance by KPMG. These reviews commenced on 24 September 2018. The Terms of Reference for these reviews have been published by TfL. KPMG's work on reviewing Crossrail's financial and commercial processes and forecasts continues and is nearing conclusion. KPMG's emerging findings have influenced the financial envelope within which the proposed agreement described in this Form has been developed.
- 1.6. KPMG's work reviewing Crossrail's governance also continues and is nearing conclusion. TfL has approved Mark Wild's secondment to CRL where he has taken on the role of Chief Executive and in addition David Hendry was seconded from TfL and is serving as CRL Finance Director.
- 1.7. A £350m short term loan facility was made available by the Government and GLA committed to provide £350m to the project under MD2383. The funding and financing solution described in this decision supersedes that in MD2383.
- 1.8. Subject to TfL receiving a letter from HM Government setting out the proposed funding and financing arrangements, the Mayor's approval is now sought for a long-term solution for the Crossrail project and to pass to TfL as capital grant such sum to assist CRL to complete its part of the Crossrail project, capped at £1.4bn.

¹ This was done by the Crossrail (Nomination) Order 2008 (SI 2008 No. 2036).

2. Proposed funding and financing solution for the completion of the Crossrail project

2.1. GLA officers have been working with TfL and the Government in recent weeks to develop an agreement on how the completion of the Crossrail project can be delivered. The key elements of the proposed agreement are set out below:

- The GLA will pay TfL a capital grant of up to £1.4bn to meet the bulk of Crossrail's capital cost overrun;
- This capital grant is to be financed as set out in the Financial comments below, including by the Government intending to allow the GLA to service and repay debt using the Mayor's Community Infrastructure Levy (MCIL);
- The Government will make a borrowing facility available to TfL to make any necessary capital payments to Crossrail above the GLA's maximum contribution of £1.4bn;
- GLA's borrowing will be directly from the Government, rather than the Public Works Loan Board, at a rate of only eighty basis points over gilts;
- In the light of the above, the DfT, GLA and TfL will agree to reform the 'put' and 'call' options (being the circumstances when the project can transfer to HM Government);
- The Government has agreed to work closely with all parties to do what is reasonably possible to support an interim timetable in December 2019 for Stage 5A Elizabeth Line services (four trains per hour Paddington - Heathrow Terminal 4 and four trains per hour Paddington - Reading) in order to mitigate some of TfL's revenue losses arising from Crossrail;
- The Government has agreed to pay all costs as may be required for Network Rail to complete the On-Network Works for Crossrail; and
- After allowing for the above, TfL to meet the revenue shortfall arising from Crossrail's delay.

3. Objectives and expected outcomes

3.1 The proposed funding and financing arrangements will enable the completion of the Crossrail project, which is a key measure of the MTS to improve London's transport capacity and bring £42bn into the UK economy.

4. Equality comments

4.1. Under Section 149 of the Equality Act 2010, as a public authority, the Mayor of London must have 'due regard' of the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not.

4.2. There are no direct public sector equality duty implications arising from this Decision.

5. Other considerations

5.1 Funding the Crossrail delay will have implications for the funding sources previously identified for London's contribution to Crossrail 2. There will now need to be discussions with the Government around the likely impacts and potential alternative funding, timing and delivery options for Crossrail 2.

6. Financial comments

6.1. The GLA intends to finance the £1.4bn capital payment to TfL by:

- using Crossrail Business Rates Supplement (BRS) revenues while maintaining the total tax generated, the tax rate and its planned duration within the parameters set out in the final Crossrail BRS prospectus; and
 - subject to the GLA being given the ability to service and repay debt using MCIL, to utilise MCIL for the balance of the capital financing costs.
- 6.2. The exact balance between BRS and MCIL to meet the capital financing costs is to be finalised by the Executive Director of Resources and presented to the Government. In doing so the Executive Director of Resources will carefully consider how these costs can best be made to minimise the impact on relevant taxpayers and taking into account the impact on TfL.
- 6.3. The BRS is hypothecated to repay the GLA's Crossrail debt and in applying the associated revenues the GLA must have regard to the policies including on variations set out in the final prospectus 'Intention to levy a business rate supplement to finance the Greater London Authority's contribution to the Crossrail project' published in January 2010 and the Business Rate Supplement Act 2009. The prospectus's key parameters in terms of the contribution from ratepayers were that the BRS would be levied at a rate no higher than 2p, operate for a period of 24 to 31 years from April 2010 with a target end date of 2037-38 and raise no more than £8.1bn.
- 6.4. As a result of lower financing costs achieved on the £3.3bn of Crossrail debt which financed its original £4.1bn contribution towards the project between 2010-11 and 2015-16 and higher tax revenues than anticipated following the 2010 and 2017 revaluations it is possible to accommodate an additional contribution now planned within these parameters, as published in the January 2010 Final Prospectus.
- 6.5. No business ratepayer will contribute more in 2019-20 or indeed until the early 2030s than they otherwise would have done had the additional BRS contribution not been required. Due to the £70,000 rateable value threshold in place – which increases at each revaluation – at least 85% of properties on the current local London valuation list are exempt from the BRS. This means the vast majority of small and medium sized firms in London are not liable to the BRS.
- 6.6. Subject to their written commitment, the Government is intending to allow the GLA to service and repay debt using the full amount of MCIL revenues to meet the balance of the capital financing costs arising from the £1.4bn payment to TfL for 10 years from 2019-20. Subject to consultation on the proposed secondary legislation and affirmative votes in both Houses of Parliament, the Government intends to introduce this new power for the GLA with effect from late July 2019. Once this power is introduced the Executive Director of Resources will finalise the financing arrangements for the GLA's additional contribution to Crossrail. The GLA is to have first call on all on the full amount of MCIL revenues from 2019-20 to ensure the GLA's capital financing costs can be met.
- 6.7. The Government has agreed that should there be any impediment or delay to this regulatory change, the Government would work with the GLA and TfL to assess how the GLA could continue to make its repayments to ensure that this agreement can be delivered on substantially the same basis. Nevertheless, the GLA must consider the position if the change in MCIL regulations is not implemented (or delayed) as the GLA will have committed to paying TfL up to £1.4bn.
- 6.8. If the power to borrow against MCIL were not granted and there were no full and satisfactory alternative agreed with the Government, in order to ensure that the GLA can service and repay the debt incurred, the Executive Director of Resources would need to consider an alternative application of the GLA's resources. The GLA must indifferently meet all its debt obligations as a first call on the GLA's available resources.
- 6.9. The Mayor's principal discretionary resource is retained business rates and currently some £2.4bn is allocated on an annual basis, after allowing for the tariff and levy payments to the Government.

Around £1.9bn of the GLA's payment of retained business rates to TfL relates to funding formerly paid by the Department of Transport through GLA transport grant. This latter figure includes £976m in respect of TfL's former investment (capital) grant.

6.10. The Executive Director of Resources advises that the proposed borrowing is prudent, affordable and sustainable as:

- the GLA's contribution to Crossrail's capital overrun is capped at £1.4bn;
- additional proceeds from the BRS can be applied to meet the GLA's capital payment;
- the Government has committed to allow the GLA to service and repay debt using one hundred per cent of MCIL, which is a new funding stream; and
- the GLA has an alternative funding stream if the change to MCIL regulations were to be delayed or not to be enacted and there were no full and satisfactory alternative agreed with the Government.

6.11. The agreement reached with the Government requires that TfL meet the revenue shortfall arising from the delay in Crossrail opening. The impact of this shortfall and how this is proposed to be managed will be set out in TfL's Business Plan and Budget Submission to the Mayor. The additional sums TfL may have to borrow to pay for any further capital cost overrun beyond the GLA's contribution of up to £1.4bn will be addressed in TfL's future business planning processes.

7. Legal comments

Mayor's general transport duty

7.1. Section 141(1) of the Greater London Authority Act 1999 (GLA Act) sets out the Mayor's "general transport duty", which is a duty to develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London. Under subsection (2) the Mayor must exercise the powers of the GLA concerning transport under Part IV of the Act for the purpose of securing the provision of the transport facilities and services mentioned in subsection (1). The general transport duty is reflected in the Mayor's Transport Strategy (MTS). Under section 142 the MTS must contain the Mayor's policies under section 141(1), and proposals for discharging the duty under section 141(2) above.

7.2. The construction and operation of the Elizabeth Line is a key measure in the MTS for the improvement of London's transport network, together with the associated investment in brings to London's economy.

GLA Group budget arrangements

7.3. The Mayor is responsible for the budget setting process for the GLA Group, which includes approving the capital and revenue expenditure in the budgets for the GLA itself and the functional bodies including TfL. The Mayor is required to set a balanced budget for the Group and for each functional body. These budgets must take account of all relevant or available sources of capital and revenue such as borrowings, reserves, council tax precept, retained business rates, business rate supplement revenues and other income. The Mayor's budget responsibilities include making sufficient provision for TfL, CRL (as a wholly owned TfL subsidiary) and the Crossrail project. In addition, under s 122 the Mayor is responsible for the preparation for each financial year of a capital spending plan for the functional bodies. Capital expenditure on the completion of the Crossrail project is a major item in the GLA and TfL's capital spending plans.

TfL

- 7.4. Under s 154 (3) of the GLA Act 1999, TfL is itself under a duty to exercise its functions for the purpose of facilitating the discharge by the Mayor of the general transport duty under section 141(1) and (2) above, and for the purpose of securing or facilitating the implementation of the MTS which includes the Crossrail project.

GLA and TfL borrowing powers

- 7.5. Section 1 of the Local Government Act 2003 (2003 Act) gives local authorities (including the GLA and TfL) the power to “borrow money –
- (a) for any purpose relevant to its functions under any enactment; or
 - (b) for the purposes of the prudent management of its affairs.”²

In discharging their functions under Part 1 of the 2003 Act the Mayor and TfL must have regard to CIPFA’s Prudential Code for Capital Finance in Local Authorities (as re-issued from time to time).

- 7.6. For the GLA the borrowing involved by GLA in the capital funding and financing solution for the completion of the Crossrail project set out in Section 2 of this Form is authorised under both parts of s 1 of the 2003 Act, being relevant to the Mayor’s general transport duty and for the purposes of the prudential management of the GLA financial affairs. The Mayor also has the function under sections 120 and 121 of the GLA Act 1999 of making capital and revenue grants to functional bodies (see below).
- 7.7. For TfL the borrowing involved by TfL in the capital funding and financing solution for the completion of the Crossrail project set out in Section 2 of this Form is similarly authorised under both parts of s 1 of the 2003 Act. It is relevant to TfL’s duty to exercise its functions for the purpose of facilitating the discharge by the Mayor of the general transport duty under s 154 (3) of the GLA Act 1999. Borrowing by TfL is also for the purposes of the prudent management of its affairs, including for its wholly owned subsidiary CRL.

Affordable borrowing limit

- 7.8. Under section 3 of the 2003 Act the Mayor determines how much money the GLA and TfL can afford to borrow (affordable borrowing limit) and is under a duty to keep it under review. The Assembly must be consulted before any new affordable borrowing limit is determined by the Mayor. The proposals for the capital funding and financing solution for the completion of the Crossrail project set out in Section 2 of this Form do not involve any increase in the affordable borrowing limit determined for either GLA or TfL for 2018-19.
- 7.9. Funding derived from GLA’s borrowing under s 1 of the 2003 Act for the completion of the Crossrail project will be transferred to TfL by the GLA by means of annual capital grant under s 120 of the GLA Act 1999 (see below).

² In addition, Section 34(1) of the GLA Act gives the Mayor the power to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of the Mayor’s other functions.

Use of MCIL for infrastructure and borrowing

- 7.10. Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010 ("2010 CIL Regulations"). As a CIL charging authority the Mayor of London levies "Mayoral CIL (MCIL)". MCIL applies to most new developments in London granted planning permission on or after 1 April 2012. The levy raises money towards the construction costs of Crossrail and is collected by the London boroughs on behalf of the Mayor. TfL also collects MCIL for the Mayor which it pays to the GLA.
- 7.11. Under reg 59 of the 2010 CIL Regulations MCIL applied by the Mayor to funding infrastructure must be applied to funding the provision, improvement, replacement, operation or maintenance of roads or other transport facilities, including, in particular, funding for the purposes of, or in connection with, scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008³.
- 7.12. Under reg 60(1) of the 2010 CIL Regulations the Mayor may apply MCIL to reimburse expenditure already incurred on the Crossrail infrastructure.
- 7.13. However, reg 60(3) contains controls on the application of MCIL for the repayment of loans. The Mayor may only apply MCIL to repay money borrowed for the purposes of funding infrastructure consisting of roads or other transport facilities (including Crossrail) if two conditions are met:
- Condition 1: MCIL has been collected for at least one year before it is applied to repay any loans (this condition is satisfied); and
 - Condition 2: is that the total amount to be applied in any one financial year does not exceed the relevant percentage of MCIL collected by or on behalf of the charging authority in the preceding financial year, where the "relevant percentage" is such percentage as the Secretary of State may direct or, in the absence of a direction, zero per cent.
- 7.14. To date the Secretary of State has made no direction for the purposes of Condition 2. As a result, it is not currently permitted for the Mayor to apply MCIL to repay money borrowed for the purposes of funding the Crossrail infrastructure i.e. to borrow against present and future MCIL income streams. This will remain the position until either (a) such a regulation 60 direction is made or (b) the 2010 CIL Regulations are themselves subsequently amended in to allow that to happen in the absence of the making of a direction.
- 7.15. Until any such change is made, the capital funding and financing solution for the completion of the Crossrail project set out in Section 2 of this Form does not involve the application of MCIL to repay any money borrowed (including interest) by either GLA or TfL (or any other person) for the purposes of funding the Crossrail infrastructure. Subject to that constraint, MCIL may be applied towards Crossrail infrastructure costs as they fall due, including on expenditure already incurred on the project. If any when a direction under reg 60 and/ or change to the regulations (as referred to above) is made, the position will be reviewed, and an update provided to the Mayor.
- 7.16. Funding derived from MCIL for the completion of the Crossrail project will be applied to TfL by the GLA by means of annual capital grant under s 120 of the GLA Act 1999 (see below).

³ For the purposes of reg 59 any reference to "applying CIL" includes a reference to causing it to be applied and includes passing CIL to another person (i.e. to TfL in the context of Crossrail) for that person to apply to funding the provision, improvement, replacement, operation or maintenance of infrastructure.

Use of Retained Business Rates

- 7.17. The GLA's primary source of Government support apart from Home Office police grant is through the business rates retention system introduced in 2013-14. Retained business rates replaces funding previously provided for the GLA via its general grant and through revenue support grant to support fire services and policing in London as well as the former TfL capital investment grant and residual operating grant. Sums in respect of retained business rates received by the GLA can be applied for any lawful purpose by the Mayor and are not subject to any ring fencing.
- 7.18. Funding derived from this source for the completion of the Crossrail project will be paid to TfL by the GLA by means of annual capital grant under s 120 of the GLA Act 1999 (see below) and approved annually through the Mayor of London's consolidated budget and capital spending plan.

Capital grants from Mayor to TfL: s 120 GLA Act 1999

- 7.19. Section 120 of the GLA Act 1999 (as amended) gives the Mayor power to pay capital grants towards meeting capital expenditure incurred or to be incurred by a functional body for the purposes of, or in connection with, the discharge of the functions of that body. A grant under s 120 must not be made subject to any limitation in respect of the capital expenditure which it may be applied towards meeting. However, the grant must be applied by the recipient body solely towards meeting capital expenditure incurred or to be incurred by that body for the purposes of, or in connection with, the discharge of its functions.
- 7.20. All capital funding from GLA to TfL (including for CRL) will be made by means of capital grant under s 120, irrespective of the GLA's own source of that funding e.g. from GLA borrowing or from retained business rates.

Appendices and supporting papers:

None

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

Some of the issues in this MD are commercially and potentially market sensitive and it is proposed that publication of this MD is deferred until after TfL's regulatory statement to the Stock Exchange on completion of negotiations on the funding package.

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 - NO

| ORIGINATING OFFICER DECLARATION: | Drafting officer to confirm the following (✓) |
|--|---|
| Drafting officer: David Gallie, Assistant Director Group Finance has drafted this report in accordance with GLA procedures and confirms the following: | ✓ |
| Sponsoring Director: Martin Clarke, Executive Director Resources has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities. | ✓ |
| Mayoral Adviser: David Bellamy, Chief of Staff, has been consulted about the proposal and agrees the recommendations. | ✓ |
| Advice: The Finance and Legal teams have commented on this proposal. | ✓ |
| Corporate Investment Board Due to the urgency and sensitivity of this decision, relevant members of the Corporate Investment Board were briefed at its meeting on 3 December | |

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Alce

Date

7.12.18

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

7/12/2018.

