

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2527

Title: Crossrail funding update and changes to GLA Facility Agreement

Executive Summary:

The Crossrail project is jointly sponsored by the Department for Transport (DfT) and Transport for London (TfL), DfT and TfL together the 'Sponsors', with support from London's business community. The Mayor and TfL remain focussed on supporting and monitoring Crossrail Limited (CRL) as they complete the final infrastructure and testing in order to get the Elizabeth line safely and reliably into passenger service at the earliest opportunity.

Under MD2398 the Mayor approved a long-term financing and funding solution for the completion of the Crossrail project. As part of this solution, the GLA has entered into a £1.3bn Facility Agreement with the Secretary of State for Transport as Lender.

Under MD2506 the Mayor agreed that administrative precautionary measures and delegations be put in place if necessary, until 10 October 2019, relating to the Facility Agreement in order to continue to facilitate ongoing drawdowns of the loan arrangement. The approvals and delegations under MD2506 have now expired and this Mayoral Decision Form seeks approval of the terms of a waiver to implement administrative arrangements in relation to the Facility Agreement, now that they are required.

Decision:

That the Mayor:

- 1) Notes that the Board of Crossrail Limited was unable to provide on 7 November 2019 a required certification to the Sponsors of the Crossrail Project that the Crossrail Project can be completed within available funds, meaning that the GLA is consequently unable to meet a drawdown condition precedent of having received (together with the Secretary of State for Transport) a corresponding certificate from the Sponsors for the purposes of the GLA's £1.3 billion Facility Agreement of 1 February 2019 (as amended) (Facility Agreement) between the GLA as Borrower and Secretary of State for Transport as Lender (the certifications together 'the Certifications'); and
- 2) Delegates to the Executive Director of Resources (and in his absence to the Assistant Director Group Finance) authority to agree (after consultation with the Chief of Staff), the terms of a waiver from the Secretary of State for Transport to the GLA of the Certifications for a waiver period, including the associated conditions which will apply during that waiver period and authorises either of the Executive Director of Resources or Assistant Director Group Finance to execute the waiver on behalf of the GLA.

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:

14/11/19

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

Decision required – supporting report

1. Introduction and background

- 1.1. The Crossrail project (the Project) is jointly sponsored by the Department for Transport (DfT) and Transport for London (TfL), DfT and TfL together the ‘Sponsors’, 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 remain focussed on supporting and monitoring Crossrail Limited (CRL) as they complete 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 2008 and is a wholly owned subsidiary of TfL.
- 1.3. Under MD2398, the Mayor approved a long-term financing and funding solution for the completion of the Crossrail project that superseded the arrangements approved under MD2383. The long-term solution approved under MD2398 includes the payment of up to £1.4 billion by the GLA to TfL by means of capital grant under section 120 of the Greater London Authority Act 1999, funded largely by the GLA borrowing directly from the Government. Accordingly, in February 2019 the GLA entered into a £1.3 billion Facility Agreement with the Secretary of State for Transport as Lender (GLA Facility Agreement). The GLA is also providing £100m from its ring fenced business rate supplement revenues which can only be used towards the Crossrail project to fund the balance of the £1.4 billion payment. Under the long-term solution, TfL also entered into a facility agreement of up to £750m with the Government. The long-term financing and funding solution and associated arrangements approved under MD2398 continue to apply, including a delegation to the Executive Director of Resources to have the authority to negotiate, execute and complete all documentation he considered necessary or expedient for the purposes of implementing the capital funding and financing solution set out in that MD for the completion of the Project.
- 1.4. CRL announced on 25 April 2019 that it expected to open the central section within a six-month window with a midpoint at the end of 2020. CRL advised TfL at the date of such announcement that the capital costs to complete the central section of the Project were expected to remain within the long-term funding and financing solution approved in December 2018.
- 1.5. Through MD2506, the Mayor approved for precautionary administrative measures to be put in place relating to the Facility Agreement should the need arise until four weeks after the CRL Board on 12 September 2019, in order to continue to facilitate ongoing drawdowns of the loan arrangement and delegated authority to the Executive Director of Resources (and in his absence to the Assistant Director Group Finance) to agree (after consultation with the Chief of Staff) the terms of such administrative arrangements in order to continue to facilitate such ongoing drawdowns, with any changes to the Facility Agreement applying beyond the timeline of four weeks after the CRL Board on 12 September 2019.
- 1.6. On 18 September 2019, CRL announced that it remained on track to open the Elizabeth line within the October 2020 to March 2021 window and that no additional funding was needed at that time. It was noted that CRL was now delivering against a new detailed delivery schedule that had been agreed by its Board, with significant recent milestones achieved including the handover of major assets to TfL such as Mile End Shaft and Victoria Dock Portal; and the removal of construction hoardings at Farringdon station. Significant and complex work was still necessary before the Elizabeth line could open to passengers and, while the Project remains within the agreed delivery window (of a six-month window between October 2020 and March 2021 for the delivery of the central section), there was still a high level of uncertainty remaining in the Crossrail programme.

- 1.7. It was reported that, to reflect this uncertainty, CRL's cost forecasts contain additional risk contingency provisions and that as at the date of the announcement, current projections showed a central cost forecast (including risk contingency) of £15,005m, which is £42m more than the funding committed under the Financing Package. Additional modelling scenarios include a significantly higher level of risk contingency, up to £394m more than the committed funding, and the central section opening later in 2021. It was noted that CRL had further work to do to fully develop its cost forecasts and risk mitigation actions including quantifying the potential savings that could arise from their implementation. No additional funding was requested on 18 September by CRL and it announced that through appropriate cost control and risk mitigation strategies, delivery could be achieved within the Financing Package. It was further announced that TfL will work with the Department for Transport, as joint sponsors, and the GLA to conduct contingency planning for the event that the identified risks are not mitigated sufficiently and additional funding in excess of the Financing Package is required in due course and would continue to keep the Mayor and TfL Board regularly updated. Any potential material financial impact would be reflected in the Mayor's Consultation Budget for 2020-21 and TfL's 2019 update to its Business Plan, which is due to be published later this autumn.
- 1.8. Subsequently, at its Board meeting on 7 November 2019, CRL advised the Mayor and Sponsors that the latest projections now show a central cost forecast (including risk contingency) of approximately £15,363m, which is £400m more than the funding committed under the Financing Package. Further modelling scenarios consider even higher levels of risk of £650m more than the funding committed under the Financing Package.
- 1.9. CRL has also advised that their latest assessment is that the opening of the central section will not occur in 2020 which was the first part of the previously declared opening window. The Elizabeth line will open as soon as practically possible in 2021. A more comprehensive update is expected early in 2020. In the meantime, TfL has advised that any potential financial impacts to TfL's passenger revenues will be considered in TfL's 2019 update to its Business Plan.

Certifications

- 1.10. Under the agreed funding arrangements every four weeks CRL must provide certifications which are required to enable continued availability of funds from DfT under the GLA Facility Agreement. If the certifications are not provided this causes a "draw stop" event under the terms of the Facility Agreement. This would mean that the GLA would be unable to continue to draw on the loan to pass to TfL as grant. TfL would then be unable to pass funds to CRL to continue with the Project.
- 1.11. On 11 October 2019, CRL provided a certification that the Project could be completed within the funds that the Sponsors have agreed to provide. However it was decided at the CRL Board on 7 November 2019, that CRL would be unable to provide the required certification (to the Sponsors under clause 5.3.3 of the Supplemental Agreement to the Crossrail Sponsors Agreement and the Crossrail Project Development Agreement) that the Project can be completed within available funds.
- 1.12. This in turn means that condition 4.2(h) of the GLA Facility Agreement which requires that such a certification has been received by the GLA in advance of a drawdown, cannot be complied with. The Department for Transport, as lender under the Facility Agreement, agreed in the short term to delayed certification by CRL, so avoiding an immediate "draw stop" event under the terms of the Facility Agreement, which would have meant the GLA would be unable to draw on the loan to pass to TfL and so TfL would be unable to pass funds to CRL to continue with the Project.
- 1.13. Pursuant to precautionary discussions which had been taking place between the GLA, TfL and the DfT on administrative measures that will enable the Facility Agreement to continue in the longer term as intended and now that the required certification by the CRL Board cannot be provided:
- (i) the DfT (having consulted with HMT) has agreed to waive the requirement for a certification from the GLA under Clause 4.2(h) of the Facility Agreement and (in its capacity as Sponsor) from CRL under clause 5.3.3 of the Supplemental Agreement for the duration of a defined waiver period as described further below (Waiver Period), such that the GLA will be permitted to continue to make drawdowns under the Facility Agreement during the Waiver Period; and

- (ii) both the DfT and TfL as Sponsors have agreed to waive any rights that arise as a result of any non-certification under clause 5.3.3 of the Supplemental Agreement for the duration of the Waiver Period.

1.14 The Waiver Period takes effect from and including the date of the non-certification and, except as otherwise agreed in writing by DfT as the Lender, expires on the day following the drawdown projected to be made by GLA on or around 29 January 2020.

1.15 The waiver will provide the GLA with an ability to continue to draw under the Facility Agreement, to ensure that the Project can continue whilst the plan to fund any shortfall is considered. The waiver comes with the following conditions:

- CRL identifying and presenting to the Sponsors the initial funding shortfall and in consultation with the Sponsors, developing a set of mitigation options to reduce the cost to complete the Project to within the £2.15bn funding envelope, clearly identifying a preferred mitigation option. CRL will also be required to produce an accompanying implementation plan in relation to the preferred mitigation option and provide updates to the Sponsors regarding the progress against the delivery of these matters. CRL will also need to identify any remaining funding shortfall if the preferred mitigation option is not capable of reducing the cost to complete the Project to within the £2.15bn funding envelope;
- the GLA and TfL developing a set of funding options for any funding shortfall (both before and after the preferred mitigation option has been taken into account), clearly identifying a preferred funding option;
- TfL, the DfT and the GLA within 15 Business Days of entering into the waiver seeking to agree whether any net increased amounts should be added to the funding shortfall to reflect any probability analysis conducted by CRL in relation to costs and the emerging outcomes of any relevant assurance work being conducted in relation to costs by the Sponsors' Project Representative or KPMG;
- the GLA, in consultation with CRL and the Sponsors, identifying the final preferred course of action to address the funding shortfall, which may be the preferred mitigation option, the preferred funding option or a combination of both; and
- any necessary approvals for the final preferred course of action being in place during the Waiver Period.

1.16 The waiver described in this Decision Form is essential to ensure that CRL maintains sufficient liquidity to continue with the Project, whilst further required funding sources and/or scope reductions are identified, now that CRL has been unable to provide a required certification in relation to the Facility Agreement. The Mayor is asked to delegate to the Executive Director of Resources (and in his absence to the Assistant Director Group Finance) authority to agree (after consultation with the Chief of Staff), the terms of this waiver from the Secretary of State for Transport to the GLA of the Certifications for a waiver period, including the associated conditions which will apply during that waiver period and authorise either of the Executive Director of Resources or the Assistant Director Group Finance to execute the waiver on behalf of the GLA.

2. Objectives and expected outcomes

2.1. The proposed decision and delegation will allow arrangements to be put in place now that they are required following the CRL Board on 7 November 2019 enabling the continuity of drawdowns under the GLA Facility Agreement. This will enable the Crossrail project to continue.

3. Equality comments

- 3.1. 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.
- 3.2. There are no direct public sector equality duty implications arising from this Decision.

4. Other considerations

- 4.1. None.

5. Financial comments

- 5.1. This Mayoral Decision allows the GLA to continue to draw down under the Facility Agreement with the DfT to help ensure the Project is completed. The precise level of the drawdowns whilst this waiver is in force are to be determined. These drawdowns during the Waiver Period do not increase the GLA's exposure beyond its existing agreed commitment to Crossrail, and the GLA has the capacity within its income from the Business Rate Supplement and from MCIL to service and repay them. Once the final preferred course of action to address any funding shortfall is identified by the GLA (in consultation with CRL and the Sponsors), the financial implications to the GLA, if any, will be set out.

6. Legal comments

- 6.1. The GLA's principal purposes, under section 30 of the Greater London Authority Act 1999 (GLA Act), are to promote economic development and wealth creation, promote social development, and the improvement of the environment, all in Greater London. The GLA has power to do anything which it considers will further any one or more of its principal purposes. Under section 34(1) the GLA may do anything it considers will facilitate or is conducive or incidental to the exercise of the section 30 principal purposes. Pursuant to the scheme of delegation under 'Mayoral Decision- Making in the Greater London Authority,' the Mayor can make the decision and delegate authority to Senior Members of Staff.

7. Planned delivery approach and next steps

Activity	Timeline
Entry into waiver and any other changes that may be required to arrangements relating to GLA's Facility Agreement with the Secretary of State for Transport facilitated by delegated authority sought by this MD	November 2019

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**

Publication of this MD is deferred until completion of the waiver and any other required changes to the arrangements relating to GLA's Facility Agreement with the Secretary of State for Transport, so as not to prejudice any negotiations that may arise regarding such changes.

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

✓

Sponsoring Director:

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

✓

Mayoral Adviser:

David Bellamy 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 approved in draft form by the Corporate Investment Board on 7 October 2019 and the final version has not changed materially.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature 

Date 14/11/19

for M. Davidson on BEHALF OF MARTIN CLARKE

CHIEF OF STAFF:

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

Signature 

Date 14/11/2019.