

REQUEST FOR MAYORAL DECISION – MD2598

Title: Crossrail funding update and further changes to GLA Facility Agreement

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. 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 (the Financing Package). As part of this solution, the GLA has entered into a £1.3bn Facility Agreement with the Secretary of State for Transport as Lender and TfL has also entered into a similar facility agreement of up to £750m, also with the Secretary of State for Transport.

On 10 January 2020, Crossrail Limited announced that they expect the central section to open in summer 2021. The GLA has been considering with TfL and DfT revisions to the Financing Package to address this.

Under MDs 2527 and 2583, the Mayor approved the terms of a waiver to implement administrative arrangements in relation to the Facility Agreement in order to continue to facilitate ongoing drawdowns of the loan arrangement. The waiver is due shortly to expire and, while positive progress continues on revisions to the Financing Package (subject to contract and approvals), a number of matters remain to be addressed and approval is now sought to extend further the term of that waiver.

Decision: That the Mayor:

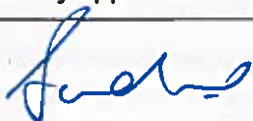
- 1) Notes that the Board of Crossrail Limited was unable to provide on 7 November 2019 a required certification to the Sponsors of the Crossrail Project that the Crossrail Project can be completed within available funds, meaning that the GLA is consequently unable to meet a drawdown condition precedent 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') and that such position continues; 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 an extended waiver from the Secretary of State for Transport to the GLA of the Certifications for a period until and including the final draw down under the Facility Agreement, including the associated conditions which will apply during that waiver period and authorises on behalf of the GLA either of the Executive Director of Resources or Assistant Director Group Finance to execute the waiver and to approve and execute any such other agreements or other documentation as may be required in relation to the waiver and the continued implementation of the Facility Agreement and TfL's £750m Crossrail facility agreement with the Secretary of State for Transport.

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:

25/2/20

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) (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 focused on supporting and monitoring Crossrail Limited (CRL) as the final infrastructure and testing is completed 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 (the Financing Package) 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 has also provided £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 (TfL Facility Agreement). 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 considers 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.

Certifications and waiver

- 1.4. 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.
- 1.5. 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.
- 1.6. This in turn meant 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, could not be complied with. The Department for Transport, as lender under the Facility Agreement, agreed in the short term to delayed certification by CRL and, subsequently, a waiver was given, as approved under MD 2527, avoiding an immediate "draw stop" event under the terms of the Facility Agreement. In January 2020, under MD2583, the waiver was extended for a short period.
- 1.7. This extended waiver expires on the day following the drawdown projected to be made by GLA on or around 26 February 2020. CRL continues to be unable to give the required certificates and, if revised arrangements are not made, the risk of a "draw stop" event arises again.

- 1.8. The waiver provides 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 (original, November 2019) 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.
- 1.9. There remains positive progress on revisions to the Financing Package, in accordance with the terms of the extended waiver as described above. Funding options were proposed by the GLA and TfL to the DfT in December 2019. These options were refined further in January 2020 following initial DfT comment, with discussions between the parties ensuing, including a meeting having been held between the Mayor and the then Chancellor of the Exchequer. However the rate of progress on revisions to the Financing Package has substantially reduced in recent weeks due to limited governmental engagement consequent to recent ministerial changes and HM Treasury resource pressures related to High Speed 2 and the Budget to be announced on 11 March. Therefore, agreement has not yet been reached on the revisions to the Financing Package. In any event, once agreed, such revisions will be subject to contract and approvals.
- 1.10. As described in MD 2527 and MD2583, 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, given that CRL was unable to provide a required certification in relation to the Facility Agreement. That position remains true and, given the progress that has been made towards agreeing revisions to the Financing Package, it is appropriate to consider extending the waiver further, for a period until and including the final draw down under the Facility Agreement. This final draw down is currently expected to be in April 2020. It is anticipated that similar waiver arrangements in relation to the TfL Facility Agreement would be discussed between the DfT and TfL, if and when required in respect of TfL's own draw down under the TfL Facility Agreement, such draw down expected to commence around April 2020.
- 1.11. The Mayor is asked, therefore, 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 an extended waiver from the Secretary of State for Transport and to authorise on behalf of the GLA either of the Executive Director of Resources or the Assistant Director Group Finance to execute the waiver and to approve and execute any such other agreements or other documentation as may be required in relation to the waiver and the continued implementation of the Facility Agreement and the TfL Facility Agreement.

2. Objectives and expected outcomes

- 2.1. The proposed decision and delegation will allow arrangements to be put in place 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 fully draw down the remaining facility balance under the Facility Agreement with the DfT, to help ensure the Project is completed. As at the time of writing this MD, there is a forecasted £141m remaining to be drawn down in 2019/20 and 2020/21. Drawdowns during the extended 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 agreement on the final preferred course of action to address any funding shortfall is finalised 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	February/March 2020

Appendices:

None

Background papers

MD2398

MD2527

MD2583

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 the wider negotiations were complete.

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 discussed and agreed in principle by the Corporate Investment Board on 24 February 2020.

✓

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. J. Bellamy

Date

24.2.20

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

24/2/2020.