GREATER**LONDON**AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2702

Title: Additional funding for Crossrail

Executive Summary:

The Crossrail project is jointly sponsored by the Department for Transport (DfT) and Transport for London (TfL) and is supported by London's business community. The Mayor and TfL remain focussed on supporting and monitoring Crossrail Limited (CRL) during the final phases of the programme in order to get the Elizabeth line safely and reliably into passenger service at the earliest opportunity.

In December 2018, under MD2398, the Mayor approved an additional funding and financing package for the completion of the Crossrail project (the Financing Package). The Financing Package included the payment by the GLA of up to £1.4 billion to TfL as capital grant, of which £1.3 billion was financed by the GLA borrowing directly from the Government.

In November 2019, CRL announced that the opening of the central section of the Elizabeth line would not occur until 2021 and that between £400 million and £650 million additional funding may be required to complete the project (at P50 and P80 confidence levels respectively). In August 2020, CRL further announced that the opening of the central section would likely not occur until 2022 and that about £450 million further additional funding may be required to complete the project, taking the total new funding shortfall to about £1.1 billion (at a P80 confidence level).

In these circumstances, the GLA, DfT and TfL have been considering an extension of the Financing Package to meet such funding shortfall in order to complete the Crossrail project, as set out in this decision.

Decision:

Subject to the confirmation of the Government's agreement to the proposed binding heads of terms described in this decision, the Mayor:

1) Agrees to the proposed binding heads of terms, which set out the terms of the extension of the Financing Package to meet the majority of the Crossrail project's additional funding shortfall, with additional borrowing of up to £825 million by the GLA (including up to £325 million borrowing which will, ultimately, be forgiven by the Government if BRS and MCIL revenues (or any replacement revenues) are insufficient to fund its repayment) and funding above £825 million to be considered with the Government;
2) Authorises the payment of up to £825 million by the GLA to TfL by means of capital grant under section 120 of the Greater London Authority Act 1999 for the completion of the Crossrail project, provided that TfL has the wider financial resources to operate sustainably while delivering the Crossrail project;
3) Notes the likely implications of the proposed extension of the Financing Package; and
4) 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 proposed extension of the Financing Package set out in this decision.

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: 30 November 2020

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 have an estimated usage of 200 million passengers per year subject to ongoing COVID-19 impacts.

1.2. The Mayor and TfL remain focussed on supporting and monitoring Crossrail Limited (CRL) during the final phases of the programme in order to get the Elizabeth line safely and reliably into passenger service at the earliest opportunity. TfL and DfT have recently made changes to the project's governance so that it is fully part of TfL's existing governance regime, with a new committee of the TfL Board, chaired by the Deputy Mayor for Transport and attended by a representative of DfT. CRL is the "nominated undertaker" for the purposes of the Crossrail Act 2008[1] and is a wholly owned subsidiary of TfL.

1.3. Prior to 2018-19, the GLA had contributed about £4.7 billion towards the Crossrail project, of which £3.3 billion was financed by borrowing and about £1.4 billion via direct contributions from the Crossrail Business Rate Supplement (BRS), levied since April 2010, and the Mayoral Community Infrastructure Levy (MCIL), levied since April 2012. TfL, primarily via borrowing, and DfT, via grant funding, also made separate contributions to the project, with other stakeholders including the City of London Corporation and business groups making direct and in-kind contributions towards the cost of the project.

1.4. In December 2018, under MD2398, the Mayor approved an additional funding and financing package for the completion of the Crossrail project (the Financing Package), including a contribution of up to £1.4 billion paid by the GLA to TfL as capital grant and financed 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 (the GLA Facility Agreement). The GLA also provided £100 million from its ring-fenced BRS revenues to fund the balance of the £1.4 billion grant payment. The Financing Package also included a contribution of up to £750 million paid by TfL and financed by TfL borrowing directly from the Government, for which TfL entered into a £750 million facility agreement with the Secretary of State for Transport as lender (the TfL Facility Agreement).

1.5. The GLA has now fully drawn its £1.3 billion facility, with the loan being financed and repaid over a 10-year period using BRS and MCIL revenues (Tranche 1). The use of MCIL to service this loan was made possible by a change in secondary legislation delivered by the Government in May 2019.

1.6. TfL is currently drawing down monies under its £750 million facility to fund the project. The facility is expected to be fully drawn by March 2021. The loan is to be financed and repaid from TfL's own revenues.

1.7. CRL has made a number of announcements since 2019 concerning the opening of the railway and its capital costs. In November 2019, CRL announced that the opening of the central section of the Elizabeth line would not occur until 2021 and that between £400 million and £650 million additional funding may be required to complete the project (at P50 and P80[2] confidence levels respectively). In August 2020, CRL further announced that the opening of the central section would likely not occur until 2022 and that about £450 million further additional funding may be required to complete the

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

[2] P50 and P80 confidence levels refer to the probability of the project costs not being exceeded 50% and 80% of the time respectively.

project, taking the total new funding shortfall to £1,071 million (at a P80 confidence level, the Revised Unmitigated Funding Shortfall).

1.8. The Revised Unmitigated Funding Shortfall is currently being reviewed, with work being undertaken by CRL, the Project Representative (Jacobs) and KPMG on the cost and delivery schedule. This work will be used to ascertain the level of additional costs and potential mitigations, in order for TfL and DfT to agree on a "Revised Mitigated Funding Shortfall" (at a P80 confidence level).

1.9. In these circumstances, the GLA, DfT and TfL have been considering an extension of the Financing Package to meet the Crossrail project's additional funding shortfall.

1.10. The Mayor's approval is now sought for an additional contribution of up to £825 million for the Crossrail project (including up to £325 million borrowing which will, ultimately, be forgiven by the Government if BRS and MCIL revenues (or any replacement revenues) are insufficient to fund its repayment), financed by the GLA borrowing directly from the Government and paid to TfL as capital grant, provided that TfL has the wider financial resources to operate sustainably while delivering the Crossrail project. Funding above £825 million will be considered with the Government. The Mayor's approval is subject to the confirmation of the Government's agreement to the proposed binding heads of terms for the extension of the Financing Package as described in this decision.

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

1.11. The GLA has been working with DfT and TfL in recent weeks to develop an agreement on the extension of the Financing Package to meet the Crossrail project's additional funding shortfall. It is proposed that the GLA, DfT and TfL enter into binding heads of terms for the proposed extension which would then be drafted on terms following those of the existing GLA Facility Agreement.

1.12. The key elements of the proposed heads of terms are set out below:

a. TfL and DfT will agree a Revised Mitigated Funding Shortfall by 15 January 2021 based on the costs to complete the Crossrail project at a P80 confidence level after mitigations, with TfL committing to identify a full range of further efficiency options with respect to CRL, develop a plan for Bond Street station and provide transparency on the drawdown of risk and contingency funding;

b. The agreed Revised Mitigated Funding Shortfall will be met as follows:

   i. Further GLA borrowing of up to £825 million through an extension of the existing GLA Facility Agreement in two tranches, passed on to TfL in the form of capital grant:

      - £500 million conventional fixed rate borrowing, repayable on a pre-agreed profile before 31 March 2043 (Tranche 2); and

      - up to £325 million borrowing, repayable on a pre-agreed profile before 31 March 2043 if BRS and MCIL revenues are sufficient, and without recourse to other GLA revenues if BRS and MCIL revenues are insufficient to fund its repayment (Tranche 3);

   ii. The funding of the remaining shortfall between £825 million and the Revised Mitigated Funding Shortfall will be considered with the Government;

c. The GLA will only use BRS and MCIL revenues for the purposes of servicing its Crossrail debt, together with any refinancing of such debt, until all loans made under the GLA Facility Agreement are repaid;

d. The use of MCIL for the financing and repayment of Crossrail debt will be extended to 31 March 2043 (and up to 31 March 2045 if agreed with the Government in the event that MCIL revenues are consistently below the GLA's current prudent forecast) by an amendment to the Community Infrastructure Levy Regulations 2010 (the 2010 CIL Regulations) to be procured by DfT no later than 30 days prior to the last drawdown under the TfL Facility Agreement (as the current regulations only permit MCIL revenues to be used to finance and repay Crossrail debt up to 31 March 2033). If DfT is unable to deliver such extension in time, DfT, the GLA and TfL will liaise to consider rapidly whether there are viable alternatives that can be agreed;

e. The use of MCIL will not be restricted to the service of any particular loans, with the GLA being able to combine BRS and MCIL revenues in a single Crossrail revenue account to maximise financing efficiency;

f. Subject to agreed refinancing principles, the existing Tranche 1 and the proposed Tranche 2 and Tranche 3 will be re-financeable from any source (excluding the Public Works Loan Board in accordance with the existing GLA Facility Agreement) and without other restriction;

g. Tranche 2 and Tranche 3 will be repayable without penalty at any time and will be subject to early repayment on a pro rata basis if the cash balances of the GLA's Crossrail revenue account exceed an agreed cap profile. Such mechanism will provide for faster repayment of the new tranches in the event of cumulative upside in BRS and MCIL revenues;

h. The GLA will consult with DfT annually to review the overall financial position of the GLA's Crossrail revenue account and the expected repayment profile of the GLA's Crossrail debt;

i. Amounts outstanding under Tranche 3 will be forgiven by the Government if, as determined by a jointly appointed independent expert, the future BRS and MCIL revenues are likely to be insufficient to repay the tranche by 31 March 2043. This could be the case if BRS and MCIL revenues have been materially lower than expected or if the Government makes changes to the BRS or MCIL that have a material negative impact on expected revenues and the Government has not provided sufficient remedy. In the event that MCIL revenues are consistently below the GLA's current prudent forecast, the Government will consider an extension of the use of MCIL for the financing and repayment of Crossrail debt up to 31 March 2045; and

j. If the Mayor takes any action, beyond variations to the policies required to be made under the final Crossrail BRS prospectus published in January 2010 or any requirement of regulation or legislation, that has a material negative impact on the collection rates of the BRS or MCIL, then Tranche 3 will become fully repayable.

1.13. Acknowledging wider financial pressures on TfL, the GLA will only draw down against the £825 million loan and provide these funds as grant to TfL on the basis that TfL has the wider financial resources to operate sustainably while delivering the Crossrail project.

1.14. While the GLA can reasonably rely on the Government's commitment to deliver the MCIL legislative change, there remains a risk that it is not delivered. In this regard, the GLA is not compelled to, and would not, draw down under the extended GLA Facility Agreement unless satisfied that the MCIL legislative change is forthcoming.

1.15. The GLA will also explore with the Government how to bring its powers to hedge interest rates in line with those of TfL, in order to be able to manage its refinancing risk under the proposed extension of the Financing Package as effectively as possible.

2. Objectives and expected outcomes

2.1. The proposed extension of the Financing Package will enable the completion of the Crossrail project, which is a key measure of the Mayor's Transport Strategy (the MTS) to improve London's transport capacity and bring an estimated £42 billion into the UK economy.

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. The proposed additional contribution from the GLA to the Crossrail project will have an impact on the availability of the BRS and MCIL as funding sources for other large-scale infrastructure schemes, such as Crossrail 2 and the Bakerloo Line Extension. Discussions will need to be held with the Government around such impact and potential alternative funding, timing and delivery options for these projects. Unless alternative funding sources are found, these schemes will be significantly delayed.

4.2. There are no known conflicts of interest for those involved in the drafting or clearance of this decision.

5. Financial comments

5.1. The GLA intends to finance the £825 million capital grant payment to TfL under section 120 of the Greater London Authority Act 1999 (the GLA Act, as amended) with a loan of an equivalent amount from the Government that will be serviced using:

- BRS revenues, which will continue to be raised in accordance with the parameters set out in the final Crossrail BRS prospectus published in January 2010, i.e. maintaining the total BRS income raised over its lifetime to fund the Crossrail project within £8.1 billion, the tax rate (i.e. no more than 2p per pound of rateable value for properties above an agreed rateable value threshold, revised at each revaluation and currently set at £70,000) and its planned duration (i.e. up to 31 years from April 2010 i.e. 31 March 2041); and

- MCIL revenues, with the Government procuring an extension of the use of MCIL for the financing and repayment of Crossrail debt to 31 March 2043 (and up to 31 March 2045 if agreed with the Government in the event that MCIL revenues are consistently below the GLA's current prudent forecast).

5.2. The £500 million conventional borrowing will be drawn down first and will be repayable on a pre-agreed profile before 31 March 2043. This conventional borrowing will be followed by up to £325 million borrowing, repayable on a pre-agreed profile before 31 March 2043 if BRS and MCIL revenues are sufficient, and without recourse to other GLA revenues if BRS and MCIL revenues are insufficient to fund its repayment. Amounts outstanding under the £325 million tranche will be forgiven by the Government if, as determined by a jointly appointed independent expert, the future BRS and MCIL revenues (or any replacement revenues) are likely to be insufficient to repay the tranche by 31 March 2043.

5.3. The two tranches will be subject to early repayment on a pro rata basis if the cash balances of the GLA's Crossrail revenue account exceed an agreed cap profile. Such mechanism will provide for faster repayment of the new tranches in the event of cumulative upside in BRS and MCIL revenues. The cap profile has been set at a prudent level, allowing the GLA to maintain appropriate levels of debt service cover and provision for successful taxpayer appeals, in order to limit the requirement to refinance.

5.4. 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 Supplements Act 2009. The prospectus' 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 but with the potential to run the BRS until 31 March 2041 if required, and raise no more than £8.1 billion.

5.5. As a result of lower financing costs achieved on the £3.3 billion of Crossrail debt which financed the GLA's original £4.1 billion contribution towards the project between 2010-11 and 2015-16 and higher tax revenues than anticipated following the 2010 and 2017 revaluations, it has been possible for the GLA to accommodate an additional contribution to the project as part of the Financing Package agreed in December 2018 within the parameters of the final Crossrail BRS prospectus and it is also now possible to accommodate the further contribution proposed in this decision.

5.6. The GLA has estimated that the BRS may now need to run for the full 31-year period permitted by the final prospectus to fund the Crossrail project (i.e. until the 2040-41 financial year), with the precise duration dependent on a number of factors, including the impact of future business rates revaluations in London on the taxbase.

5.7. No business ratepayer will contribute more until the late 2030s than they otherwise would have done had the additional BRS contributions not been required. In addition, 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. In some outer London boroughs, as few as 6% of business premises on the rating list are liable to pay the BRS. This means that the vast majority of small and medium sized firms in London are not liable to the BRS.

5.8. DfT has committed to seek to extend the use of MCIL for the financing and repayment of Crossrail debt from 31 March 2033 to 31 March 2043 by no later than 30 days prior to the last drawdown under the TfL Facility Agreement (currently expected to be in March 2021). This is subject to consultation on the proposed amendment to the relevant CIL regulations and affirmative votes in both Houses of Parliament to approve the regulations in draft before they are made. In the event that MCIL revenues are consistently below the GLA's current prudent forecast, the Government will consider an extension of the use of MCIL for the financing and repayment of Crossrail debt up to 31 March 2045. The GLA is to have first call on the full amount of MCIL revenues to service its Crossrail debt until all such debt is repaid, before funding other transport infrastructure projects.

5.9. DfT will also ensure that the use of MCIL is not restricted to the service of any particular loans (as it currently is under the GLA Facility Agreement), with the GLA being able to combine BRS and MCIL revenues in a single Crossrail revenue account to maximise financing efficiency.

5.10. If it appears that the necessary MCIL legislative change will not be delivered in time, DfT, the GLA and TfL will engage in a process to consider what alternative approach can be taken in order to avoid a repetition of the current challenges faced by the Crossrail project through lack of funding. The GLA has no obligation to provide an alternative solution and, without the necessary legislative change, does not have any obvious means to do so. Clearly, the Government is not so constrained. The GLA is not compelled to, and would not, draw down under the extended GLA Facility Agreement, unless satisfied that the MCIL legislative change is forthcoming. Nevertheless, the GLA must consider its position if the extension of the use of MCIL to 31 March 2043 is not delivered.

5.11. MCIL and particularly BRS revenues have been materially reduced by COVID-19, with their recovery dependent on the recovery of the wider London economy. Specifically, the current 100% business rates relief scheme for the retail, leisure, hospitality and childcare sectors applies legally to the BRS on a parallel basis, which has led to an estimated reduction in BRS revenues of about £85 million (or more than 30%) in the current financial year. It is unclear if the Government will continue with these rates relief schemes once they expire at the end of March 2021. There are separate risks relating to the future size of the taxbase and challenges in collection and enforcement for sums remaining due from both revenue streams.

5.12. The forecast reduction in BRS and MCIL revenues will likely result in a requirement to refinance part of the GLA's maturing Crossrail debt over the next 10 years to avoid negative cash balances of the GLA's Crossrail revenue account, with such refinancing requirement likely to be increased by the proposed additional borrowing. It is expected that the GLA will be able to accommodate this refinancing requirement as well as the proposed additional borrowing under its current prudent forecasts for BRS and MCIL revenues to 31 March 2043; the margin for error, however, is too slender for the full amount of proposed additional borrowing without the feature of forgiving the £325 million tranche in the event that revenues fail to meet forecast levels. The GLA will also explore with the Government how to bring its powers to hedge interest rates in line with those of TfL, in order to be able to manage its refinancing risk under the proposed extension of the Financing Package as effectively as possible.

5.13. Under the proposed extension of the Financing Package, it is expected that about 70% of the funding of the Crossrail project will come from London based sources, including BRS and MCIL revenues, farebox revenues, property sales and other contributions from London businesses. This represents about £13 billion of the currently estimated £19bn cost of the project.

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

- the GLA's contribution will be financed by the GLA borrowing directly from the Government, with £325 million of such borrowing without recourse to other GLA revenues if BRS and MCIL revenues are insufficient to fund its repayment. Amounts outstanding under the £325 million tranche will be forgiven by the Government if, as determined by a jointly appointed independent expert, the future BRS and MCIL revenues (or any replacement revenues) are likely to be insufficient to repay the tranche by 31 March 2043;

- DfT has committed to extend the use of MCIL for debt service purposes to 31 March 2043, providing a new funding stream beyond 31 March 2033 that will be applied to meet the GLA's additional debt service. In the event that MCIL revenues are consistently below the GLA's current prudent forecast, the Government will consider an extension of the use of MCIL for debt service purposes up to 31 March 2045;

- the use of MCIL will not be restricted to the service of any particular loans, with the GLA being able to combine BRS and MCIL revenues in a single Crossrail revenue account to maximise financing efficiency;

- the GLA is not compelled to, and would not, draw down under the extended GLA Facility Agreement unless satisfied that TfL has the wider financial resources to operate sustainably while delivering the Crossrail project; and

- while the GLA can reasonably rely on the Government's commitment to deliver the MCIL legislative change, there remains a risk that it is not delivered. In this regard, the GLA is not compelled to, and would not, draw down under the extended GLA Facility Agreement unless satisfied that the MCIL legislative change is forthcoming.

6. Legal comments

Mayor's general transport duty

6.1. Section 141(1) of the 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 GLA 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 (the 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).

6.2. 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 it brings to London's economy.

GLA Group budget arrangements

6.3. 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 GLA and 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, BRS revenues and other income. The Mayor's budget responsibilities include making sufficient provision for TfL, CRL (as a wholly owned subsidiary of TfL) and the Crossrail project. In addition, under section 122 of the GLA Act, the Mayor is responsible for the preparation for each financial year of a capital spending plan for the functional bodies. Capital expenditure for the completion of the Crossrail project is a major item in the GLA and TfL's capital spending plans.

TfL

6.4. Under section 154(3) of the GLA Act, 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 sections 141(1) and (2) above, and for the purpose of securing or facilitating the implementation of the MTS, which includes the Crossrail project.

GLA borrowing powers

6.5. Section 1 of the Local Government Act 2003 (the 2003 Act) gives local authorities (including the GLA) 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."[3]

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

6.6. The borrowing by the GLA in the proposed funding and financing solution for the completion of the Crossrail project set out in Section 1 of this decision is authorised under both parts of section 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's financial affairs. The Mayor also has the function under section 120 of the GLA Act of making capital grants to functional bodies (see below).

Affordable borrowing limit

6.7. 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.

6.8. Funding derived from the GLA's borrowing under section 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 section 120 of the GLA Act (see below).

Crossrail Business Rate Supplement

6.9. The BRS is raised using powers granted to the GLA under the Business Rate Supplements Act 2009 (the 2009 BRS Act). The Mayor also approves a separate Mayoral Decision each January confirming the policies for the BRS in the following financial year having regard to those set out in the final Crossrail BRS prospectus published in January 2010. These annual policies are confirmed to the 33 local billing authorities through issuing a formal notice under section 18 of the 2009 BRS Act. Under the requirements of the prospectus, the BRS can only be applied to fund the GLA's contributions to the Crossrail project, including any associated financing and repayment of debt.

Use of MCIL for infrastructure and borrowing

6.10. The 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 areas. It came into force on 6 April 2010 through the 2010 CIL Regulations. As a CIL charging authority, the Mayor of London levies the "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.

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[3] 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.

6.11. Under regulation 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 2008[4].

6.12. Under regulation 60(1) of the 2010 CIL Regulations, the Mayor may apply MCIL to reimburse expenditure already incurred on the Crossrail infrastructure.

6.13. However, regulation 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 loan; and
- Condition 2: 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.

6.14. In May 2019, regulation 60 was amended, to permit the Mayor to apply MCIL to repay money borrowed for the purposes of funding the Crossrail infrastructure until 31 March 2033, notwithstanding that the above two conditions had not been met (this was by the insertion of a new sub-paragraph (7A)[5]). The arrangements proposed in this decision rely on the Government making a similar legislative change to extend the Mayor's ability to apply MCIL to repay money borrowed for the purposes of funding the Crossrail infrastructure until 31 March 2043. Officers have identified in paragraph 5.10 above the implications of the Government not delivering this legislative change in time. An update will be provided to the Mayor if either a direction under condition 2 above is made or the repayment end date under regulation 60(7A) is amended to 31 March 2043.

6.15. 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 section 120 of the GLA Act (see below).

Capital grants from the Mayor to TfL: section 120 of the GLA Act

6.16. Section 120 of the GLA Act (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 section 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. It is anticipated that TfL will record separately its proposed use of this grant.

6.17. All capital funding from the GLA to TfL (including for CRL) will be made by means of capital grant under section 120, irrespective of the GLA's own source for that funding.

[4] For the purposes of regulation 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.

[5] Regulation 60(7A) states: "Until 31st March 2033, where the Greater London Authority or Transport for London has borrowed money for the purposes of, or in connection with, the provision of the scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008, the Mayor may apply CIL to repay that money and any interest."

7. Planned delivery approach and next steps

Activity	Timeline
Completion of contract terms	As soon as practicable
Confirmation of the Revised Mitigated Funding Shortfall	January 2021
MCIL regulation change	February 2021

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 decision are commercially and potentially market sensitive and it is proposed that publication of this decision is deferred until after TfL's regulatory announcement to the Stock Exchange on completion of negotiations on the proposed funding and financing solution.

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: Luke Webster has drafted this report in accordance with GLA procedures and confirms the following:	✓
Sponsoring Director: David Gallie 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 The principle of this decision was agreed by the Corporate Investment Board on 23 November 2020.	

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature: D. Gore **Date:** 30 November 2020

CHIEF OF STAFF:

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

Signature: D. Bellamy **Date:** 30 November 2020