PART 2 – CONFIDENTIAL FACTS AND ADVICE

MD2383
Title: **Crossrail funding update and related matters**

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not suitable for publication until the stated date because:

The information provided in this Part 2 report contains commercially confidential information which may prejudice the GLA's and TfL's interests. It would therefore, not be appropriate to publish this information annexed to this Part 2 until the date mentioned below.

Date at which Part 2 will cease to be sensitive or when this information should be reviewed with a view to publication: **1 December 2018.**

Legal adviser recommendation on the grounds for not publishing information at this time:

In the event of any request for access to the information contained in this document under section 1 of the Freedom of Information Act 2000 ("the Act"), it is considered that access can be denied on the basis that the disclosure of such information would prejudice GLA's and TfL's commercial interests and therefore, is covered by the exemption under section 43 of the Act.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information. In particular, section 43 of the Act provides that information is exempt information if disclosure under the Act would or would be likely to prejudice the commercial interests of any person (including the public authority holding it).

Information is considered commercially sensitive as its release could detrimentally affect the ability of the parties to effectively negotiate the proposed acquisition.

The section 43 exemptions are qualified exemptions and its use is therefore, subject to a public interest assessment.

Public Interest Assessment

At present, on balance, it is considered that the public interest is best served if the information is not disclosed at this point. Disclosure by the GLA would be likely to have a detrimental effect on the:

- GLA's and TfL's commercial interests and the information is commercially confidential and potentially market sensitive; and
- for the parties to effectively negotiate a long-term financing arrangement to support the Crossrail project.

The eligibility of these exemptions should be reassessed in the event of an FOI request for this information as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

Legal Adviser - I make the above recommendations that this information is not suitable for publication at this time.

Date:

Once this form is fully authorised, it should be circulated with Part 1.

1 Decision and/or advice:

Background

1.1 The Part I decision proposes that the Mayor passes £350m to TfL as capital grant to support the Crossrail project costs to the end of this financial year whilst the GLA, TfL and the Government work together to finalise a longer-term funding solution for the Crossrail project as a matter of urgency.

1.2 The delay in completion significantly impacts the cost of completing the Crossrail project. Work is ongoing within Crossrail and by TfL and DfT (the Sponsors) to fully understand those implications and possible solutions, as well as independent reviews described below.

1.3 Based on existing commitments, Crossrail Limited's (CRL) cash (including the additional £300m provided by TfL and DfT (the Sponsors)) will be depleted by late December 2018. If the project is to maintain progress, CRL will have to make commitments beyond its available funding by 31 October 2018. TfL itself is not able to commit to the required additional funding.

1.4 In the absence of agreement on further funding by 31 October (whether interim or for the entire remainder of the project), CRL will have to stand down contractors or terminate their contracts, which would stop all work on the project.

1.5 While the contractual Put and Call options remain available to the Sponsors, GLA, TfL and DfT have established a joint team to consider alternative options for meeting Crossrail funding pressures that could ensure project continuity and avoid some of the adverse implications of those contractual options.

1.6 Negotiations are continuing with DfT and more recently with HM Treasury. Ministers and officials recognise the challenge and the need for them to provide financing support to London to meet it. The position at all levels is that Government want to see the project completed.

1.7 The TfL Board met on 24 October and approved the proposed financing arrangements subject to GLA approving of the same.

2 Reviews

Financial Review

2.1 Initially KPMG has focused on understanding the basis for CRL's current forecasts which set out a revised target date for Stage 3 opening in October 2019, with a risk that it could extend to December 2019, and that the additional funding required will be £1.3bn (less the £300m committed to date) should the later opening date become real.

2.2 KPMG has shared its preliminary views, based on limited fieldwork to date. Those views confirm that the approach taken by CRL is understandable and not out with normal industry practice, but KPMG stop short of conferring a high degree of confidence in the specific forecast.

2.3 KPMG is in the process of completing further work, to understand the areas of uncertainty in the CRL forecast, with the objective of producing an updated set of views at the end of October.

Governance Review

2.4 Work is at an early stage and KPMG have yet to present any definitive views. However, preliminary work highlights the need to consider the role of the CRL Board in relation to CRL's responsibility to deliver an integrated railway, and the need to consider the relationship between the Sponsor Board and the CRL Board in the light of a revised funding agreement. As part of that discussion the importance of ensuring the right capabilities exist on the CRL Board and with the organisation has been flagged. Similarly, it is anticipated that reporting and assurance processes will need to be adjusted.

2.5 KPMG is in the process of completing further work, in the light of the emerging funding solution, with the objective of producing more detailed recommendations on the shape of future governance before the end of October.

3 Outline Proposal

3.1 The outline proposal set out by the Government require that, amongst other things, any long-term funding solution:

- Commits London to funding the full costs of the CRL budget overrun over time;
- Ensures the Government will not provide funding or finance to cover TfL's revenue shortfalls; and
- All Government finance must be secured with a commitment to return this capital quickly with a commercial return.

3.2 In order to meet these stringent criteria, the GLA and / or TfL will need to have the ability to borrow against an additional and sustainable funding source to service and repay the estimated overall £1bn capital shortfall. Such an additional income source is required to ensure that borrowing undertaken would be compliant with CIPFA's Prudential Code. Further, TfL will need to identify how their revenue shortfall from the Crossrail project will be managed.

4 Financial Comments

4.1 This Decision sets out the outline agreement to be able to complete the Elizabeth Line. Details of the longer-term arrangements are still to be agreed and finalised with the Government. It is anticipated that, before the GLA's payment of a capital grant of £350m to TfL is made, a satisfactory longer-term agreement will have been completed. The GLA and TfL are seeking to ensure the most optimal financing arrangements possible, within the principles set out in the outline proposal. The GLA will continue to seek to negotiate and agree the most optimal set of financing arrangements to cover Crossrail's capital overrun, which it is anticipated will supersede the proposed £350m loan from Government.

4.2 In considering the scale of the Crossrail cost overrun the Executive Director of Resources has carefully considered how additional payments required can be best made to minimise the costs on relevant taxpayers. Initially it is proposed that the servicing and repayment of the £350m payment to TfL would be met from the Business Rate Supplement (BRS).

4.3 The BRS is hypothecated to repay the GLA's Crossrail debt. The proposed use of BRS is forecast to extend the duration of this levy on large businesses for just over one additional year from what would otherwise be the case. However, this proposed usage is within the terms and duration of the BRS set out in the Final BRS Prospectus. So, although large businesses would pay the BRS for a longer period of time as a result of the Crossrail overspend, the duration of the BRS levy is forecast to be still well within the assumed duration of the BRS until 2037/38. We have received advice from leading counsel confirming that the use of BRS for such purpose is acceptable.