

Birmingham City Council

Report to the Leader

23 October 2023



Subject: HS2 CURZON STATION ENHANCED PUBLIC REALM PROJECT – REVISED DELIVERY BUDGET

Report of: Strategic Director of Place, Prosperity and Sustainability

Relevant Cabinet Member: Councillor John Cotton, Leader of the Council

Relevant O &S Chair(s): Councillor Akhlaq Ahmed, Economy and Skills
Councillor Jack Deakin, Finance and Resources

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Nechells		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1 Executive Summary

- 1.1 On the 26th April 2022, Cabinet approved a Full Business Case (FBC) for the HS2 Curzon Enhanced Public Realm Project, accepting a capital grant from the Enterprise Zone (EZ) for £28.788m. Funding will enable the delivery of the preferred enhanced public realm option for Curzon, which includes Curzon Promenade, Curzon Square and Paternoster Place.
- 1.2 Following the FBC approval, HS2 notified the City Council that the Paternoster Place construction works were not covered by their route wide insurance. Furthermore, the Department for Transport (DfT) and HS2 informed the council that the inclusion of the Paternoster scheme within

HS2's main works contract for Curzon Station is subject to the City Council accepting the liability / risk associated with the construction. The City Council are unable to accept this level of risk without insurance cover or meet strict Network Rail insurance requirements. On the 28th April 2023 the EZ (formerly GBSLEP EZ) approved a Change Request for £0.703m, which provides additional funding to cover the cost of insurance; which mitigates the risk to the City Council and ensures the Paternoster works remain within HS2's main works contract. Appendix 1 includes a copy of the EZ offer letter (dated 9th June 2023).

2 Commissioners comments:

- 2.1 The recommendations are supported

3 Recommendations

- 3.1 Accepts a capital grant from the Enterprise Zone (EZ) for up to £0.703m for the HS2 Curzon Enhanced Public Realm Project, as set-out within the attached change request approval letter dated 9 June 2023 (Appendix 1). The funding will cover the costs of insurance for the Paternoster Place construction phase, ensuring the risks associated with constructing adjacent to an operational railway are mitigated.
- 3.2 In its role as Accountable Body for the EZ, approves City Council Prudential Borrowing of up to £0.703m to fund the insurance costs for the Paternoster Place construction period.
- 3.3 Authorises the City Solicitor & Monitoring Officer to execute, seal and complete all necessary documents in connection with the above recommendations.

4 Background

- 4.1 On the 26th April 2022, Cabinet approved an FBC for the HS2 Curzon Enhanced Public Realm project, accepting a capital grant from the EZ which will enable the delivery of the Curzon Masterplan (2015) 'Big Moves', Curzon Promenade, Curzon Square and Paternoster Place.
- 4.2 Paternoster Place is a key element of the enhanced public realm scheme. Improvements will see the creation of a widened landscaped gateway into Digbeth. This is achieved by constructing a new structure which is adjacent to the Network Rail owned Park Street road bridge, and bridging over the Rugby & Stafford railway lines which lead into Birmingham New Street. The scheme will open up the regeneration potential of this area, bringing activity and investment to Enterprise Zone sites. Essentially, improving connections from HS2 Curzon to major developments such as the BBC Tea Works and Smithfield.

- 4.3 Following the FBC approval on 26th April 2022, HS2 notified the City Council that their route wide insurance did not cover the Paternoster works. A detailed cost breakdown including exclusions was provided by HS2 and their contractor to support the FBC process and a significant amount of work was undertaken to understand risk. Despite this, insurance cover was not raised by HS2 during the development of the OBC or FBC and only came to light once the City Council had gained all approvals. HS2 and the Department of Transport (DfT) subsequently informed the City Council that the inclusion of the Paternoster scheme within HS2's main works contract for Curzon Station is subject to the City Council accepting the liability / risk associated with the construction of Paternoster.
- 4.4 Over recent months, detailed discussions have been held between the City Council, HS2 and their respective insurance experts, to explore various options to safeguard the delivery of the Paternoster Place scheme and to mitigate the risk to the council. Initially, the City Council sought confirmation from HS2 as to whether they could extend their original route wide policy cover. This was ruled out by HS2 due to the potential risk of any claim for Paternoster potentially impacting HS2's overall premium. The City Council also considered purchasing the cover however, the council are not delivering the works and would need to source bespoke cover. Therefore, it is likely that the costs would be prohibitive. In conclusion, it has been agreed that HS2's contractor will seek quotations for the insurance and purchase the appropriate cover. HS2 will reimburse the contractor through the additional funding approved by the EZ Change Request (see Appendix 1) and subject to City Council approval. This is the preferred and most economical option. The contractor is a major multi-national company with existing access to the insurance market for comparable schemes and have a proven track record of successful delivery. The additional insurance will be an extension to their existing insurance cover for the Curzon works.
- 4.5 On the 28th April 2023, the EZ approved a change request for a total of £0.703m of additional funding for the HS2 Curzon Station Enhanced Public Realm Scheme, so appropriate levels of insurance cover can be purchased for the Paternoster project. Insurance cover will mitigate the risks to the council associated with constructing adjacent to an operational railway. The premium will be purchased approximately 6 months before the main construction works commence and covers Contractors All Risk, Primary Third-Party Liability and Contractual Financial Loss. This has been assessed by the Council's insurance expert and confirmation has been given that the policy provides an adequate level of cover and meets Network Rail's strict requirements.

5 Options Considered and Recommended Proposal

5.1 The following options were considered.

- **Option 1 – Recommendation** – Accepts a capital grant from the EZ for 0.703m delivery funding for the HS2 Curzon Station Enhanced Public Realm project as set-out within the attached change request approval letter dated 9th June 2023 at Appendix 1. This will safeguard the delivery of the Paternoster scheme and enable the Council to purchase the necessary insurance cover to mitigate the risk to the council of work being undertaken adjacent to an operational railway and meet strict insurance requirements of Network Rail as set out below in Table 1.
- **Option 2 – Not to Accept the EZ Grant** – This option has been discounted as it would result in the Paternoster Place scheme not going ahead without insurance.

6 Consultation

- 6.1 City Council officers meet on a weekly basis with HS2 to discuss the HS2 Curzon Enhanced Public Realm project and work through various issues and risks. HS2 and the City Council have worked collaboratively to develop the EZ Change Request and this report. Consultation has also been undertaken with HS2's preferred main works contractor and their insurance lead.
- 6.2 Advice from independent technical consultants, the council's insurance lead and the council's insurance brokers has been sought on the various options and to understand best practice elsewhere.

7 Risk Management

A risk register is included in Appendix 2 which highlights the scheme's strategic risks. The top risk is set out below.

The City Council do not accept the £0.703m capital grant from the EZ to increase the FBC funding in order to cover costs associated with purchasing insurance for the Paternoster project.

- 7.1 This would result in the project not going ahead. HS2 and the Department for Transport (DfT) have confirmed that the inclusion of the Paternoster scheme within their main works contract for Curzon Station is subject to the City Council accepting the liability / risk associated with the construction of Paternoster Place.

8 Compliance Issues:

- 8.1 **How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

8.1.1 The delivery of the HS2 Curzon Station Enhanced Public Realm project is set out as a priority in the Curzon Masterplan (2015) and forms a key part

of the Enterprise Zone Investment Plan (2019), which was approved by the Council on 30th July 2019. The Curzon Masterplan is key to delivery of the Big City Plan, GBSLEP Strategic Economic Plan (SEP), and the Midlands HS2 Growth Strategy, which is a priority for the GBSLEP and WMCA to maximise the economic impact of HS2.

8.1.2 The Paternoster project and wider Curzon public realm supports the Council's priorities as outlined in the City Council Corporate Plan (2022-2026):

- **A Bold Prosperous Birmingham** – the project will support inclusive economic growth by harnessing the increased patronage from HS2 through high quality public realm and improved links between Curzon Street Station and the city core and Digbeth.
- **A Bold Healthy Birmingham** – the project will encourage and enable safe physical activity through public realm enhancements which will provide wide spaces for pedestrian movement, improving links to city centre destinations, Digbeth and Smithfield and encouraging walking.
- **A Bold Prosperous Birmingham – A Bold Safe Birmingham** – the project will provide a high-quality safe environment, which will reduce anti-social behaviour.
- **A Bold Green Birmingham** – the scheme continues to reduce the dominance of private vehicles in the city centre, encouraging more sustainable forms of transport leading to improved air quality. The area will benefit from a significant increase in greening to contribute to the council's route to zero targets.

8.2 Legal Implications

8.2.1 The Local Government Finance Act 2012 supports the development of Enterprise Zones by enabling Local Authorities to borrow for capital schemes against projected growth in business rates income. The Act allows the City Council, on behalf of the Enterprise Zone (formerly known as the GBSLEP EZ) to retain 100% of business rates income from within the Enterprise Zone.

8.2.2 The City Council has under Section 1 Localism Act 2011, a general power of competence under which it can procure services from third parties which will or are likely to benefit the authority, its area or persons resident or present in its area.

8.3 Financial Implications

8.3.1 Within the EZ all business rates are collected by the City Council with any net uplift in the business rates collected within the EZ allocated to the EZ for a period to 31 March 2046. This is not affected by the Government's recent announcement on stopping the retention scheme. The EZ Partnership Board decide how and where these funds are deployed and make the investment decisions over the resource in line with the investment

plans for the EZ, subject to the City Council in its Accountable Body role ensuring compliance with the financial governance principles.

- 8.3.2 In its Accountable Body role, the City Council undertakes prudential borrowing to support delivery of projects within the approved Enterprise Zone Investment Plan (EZIP). The costs of prudential borrowing will be fully financed by the revenue resources generated through the uplift in business rates within the EZ.
- 8.3.3 This project is included with the current approved EZIP, and therefore falls within the existing approved budget for the EZ.
- 8.3.4 Following Cabinet approval on the 26th April 2022 of £28.788m of EZ funding, HS2 notified the City Council that Paternoster Place was not within HS2's boundary and therefore additional insurance was required for the contractor to undertake works as a requirement of strict Network Rail insurance requirements as set out below (Table 1). Following detailed work between HS2's insurance lead, and the City Council's Insurance Officer, it was agreed that the contractor would seek three quotations to ensure that value for money was secured and provided the specified insurance. HS2 will be reimbursed for the contractor's additional insurance cost upon receipt of the insurance policy which will cover the period of construction up to practical completion at which point the City Council will assume responsibility as public realm subject to inspection and provision of appropriate warranties. After this point, the maintenance will be covered by the City Council's Highways PFI contract which was approved in the Cabinet Report dated 26th April 2022.
- 8.3.5 The EZ subsequently approved a Change Request for £0.703m to cover the costs of insurance. A copy of the EZ Offer Letter is included within Appendix 1. This report seeks approval to accept a capital grant from the EZ for £0.703m, which will provide additional funding to cover the cost of insurance, which mitigates the risk to the council associated with constructing adjacent to an operational railway.
- 8.3.6 This is permitted spend under the Mandatory Spend Controls as EZ spend meets the criteria because it is funded through additional business rates income generated. Authorisation has been received from the Place, Prosperity and Sustainability Spend Control Board on the 4th October 2023 and the S151 Spend Controls Board on the 17th October 2023.

Table 1 – Insurance Cover

	Cover	Premium Estimate
Contractors All Risk (CAR) Primary third-party liability (£1m) & terrorism	£5m *terrorism full value	£87K

Excess third party liability	£155m	£420K
Contractual financial loss	£20m	£196K
TOTAL		£703K

8.4 **Procurement Implications**

7.4.1 There are no procurement implications with the recommendations of this report. The procurement strategy was approved in the HS2 Curzon Station Enhanced Public Realm Project report to Cabinet dated 26th April 2022.

8.5 **Human Resources Implications (if required)**

8.5.1 All activity identified within this report will be managed by existing Council employees.

8.6 **Public Sector Equality Duty**

8.6.1 In overall terms the HS2 Curzon Station Enhanced Public Realm project has been assessed as leading to a positive effect on the equality considerations through the promotion of economic activity, job creation and improving skills that will benefit local people. It has been assessed that the project will advance equality of opportunity as a result of its promotion of development and regeneration activity (set out in Appendix 3).

9 **Appendices**

- 9.1 Appendix 1 – GBSLEP Change Request Approval Letter (dated 9th June 2023)
- 9.2 Appendix 2 – Risk Register
- 9.3 Appendix 3 – Equality Impact Assessment

10 **Background Documents**

- 10.1 HS2 Curzon Station Enhanced Public Realm Project – Cabinet 26th April 2022